

TRIBAL CONSULTATION MEETINGS

RADISSON FORT McDOWELL RESORT

Fort McDowell, Arizona

April 20, 2012

8:00 a.m.

1 P R O C E E D I N G S

2 MR. TSOSIE: Good morning, everyone.

3 We're going to get started now. We'll get started
4 now. It's 10 after. And we'll start off with a
5 prayer, I've asked Hank Moore to come give the
6 prayer.

7 MR. MOORE: Good morning.

8 (Speaking in native language.)

9 I'll do a short prayer and say it in my
10 own language and also in English where I can be of
11 service. I'm honored to be here this morning.

12 (Speaking in native language.)

13 Heavenly Father, thank you for bringing
14 us together to share our ideas and our thoughts, for
15 we praise and provide love, love of our students and
16 our staff is precious to them. We'll do what we can
17 to provide the services that are provided for them,
18 those that are here, the leaders, tribal leaders, be
19 with them and their families. Also support members
20 that are here and teachers that are here, also be
21 with them and guide them home in peace. And they get
22 home safely.

23 Also those -- our leaders and our
24 administrators and our missionaries, be with them and
25 look over them as they travel back safely either by

1 plane or vehicle as they come down to do what they
2 can. Heavenly Father, we ask that you look over
3 them, look over our veterans, they're out there
4 protecting us, and those that are in homes, in
5 nursing homes and at home, that you bless them and be
6 with them, Heavenly Father. Also our grandmothers,
7 our grandfathers, uncles and aunts, our nephews and
8 nieces, our grandchildren, be with them today as you
9 guide them through the day, Heavenly Father, as they
10 drive. We have ask this in your name, and Jesus'
11 name. Amen.

12 MR. TSOSIE: Now, before we get started I
13 just want to reemphasize that in making your
14 comments, make sure you state your name clearly.
15 We'll get a mike to you as soon as possible. Please
16 speak clearly into the mike because, again, this is
17 being recorded. And with that being said, I'm just
18 going to turn the time over to Dr. Joe Herrin to get
19 started, so we can get through these issues.

20 MR. HERRIN: Good morning. As Paul
21 indicated, my name is Joe Herrin, I just generally go
22 by "Joe." My primary function -- I am from the
23 Washington, D.C. office; my primary function is the
24 allocation of funds to our elementary, secondary
25 schools, tribal colleges, JOM program for public

1 schools and our various technical schools.

2 This morning we would like to go through
3 the JOM program. I am one of the few in central
4 office that was involved with these JOM student
5 counts before 1995. My primary function at the time
6 was the collection of data, the calculation of number
7 of students per recipient and the allocation of the
8 funds. That changed in 1995.

9 Congress has now asked us to go back and
10 look at that count process again and make a
11 determination if we need to do a new count. So we're
12 seeking input from the tribes, the communities, with
13 regards to the Johnson-O'Malley program.

14 Congress directed us this year in our
15 2012 appropriations to go back and revisit the
16 Johnson-O'Malley count, to make a determination if we
17 should do a new count. Our last count was '94-'95.
18 The population has increased since then, so Congress
19 has asked the Bureau to take and look at do we need
20 do a new count for the Johnson-O'Malley program
21 through consultation with the Department of
22 Education, tribes, and the communities of the various
23 Johnson-O'Malley programs to make a determination if
24 we should do a new count.

25 The second thing Congress asked us to do

1 was to establish a permanent Johnson-O'Malley
2 coordinator. We have not had a coordinator in some
3 time. The last person that was responsible for
4 Johnson-O'Malley in our office wore multiple hats.
5 He was responsible for the tribal colleges. He spent
6 most of his time working with the tribal colleges,
7 but he was the contact person for the
8 Johnson-O'Malley program in our office.

9 This gives you the purpose of the
10 Johnson-O'Malley program. It's to provide
11 specialized and unique educational needs of Indian
12 children attending public and some tribal schools.

13 There was -- in the Johnson-O'Malley
14 program, Bureau-funded schools are not eligible for
15 Johnson-O'Malley funding, because those students are
16 eligible with other funding through the Bureau.
17 However, there was language in the Johnson-O'Malley
18 program that allowed previously private schools to
19 continue to receive Johnson-O'Malley funds. And
20 there are 30-some of those that would be eligible for
21 Johnson-O'Malley funding; however, most of them
22 receive their funds through their respective tribe.

23 It's a program that is designed and
24 operated at the local level with parental
25 involvement. Somewhat similar to the current Indian

1 Education Program from the Department of Education.
2 The parents select a committee, the committee then
3 designs a program and works with the public school or
4 the provider of services to implement the program
5 that the committee would like to have.

6 A little history, in 1995, as I
7 indicated, our last count was in '94-'95, that time
8 period, Congress directed us, through changes in the
9 way we developed the Bureau budget, to move the
10 Johnson-O'Malley funds from the education side of the
11 house into the tribal priority allocation side of the
12 house, where tribes then would have the
13 Johnson-O'Malley funds, and their base if they opted
14 to take and operate the program.

15 Both the House and the Senate directed
16 that the Bureau move the funds from the education
17 side of the house over to the tribal priority of
18 their 638 side of the house. So we identified the
19 number of students, the dollar amount that they
20 generated, and we did a base transfer from the
21 education program over to the tribal priority
22 allocation program. And those funds, then, remained
23 with the respective tribes until they either opted to
24 change their program or there's a change in the
25 funding for the program.

1 With the change or the transfer of the
2 funds to the tribal priority allocation and base,
3 there was no longer a need to do a Johnson-O'Malley
4 count, particularly for the tribes that took over the
5 operation of the Johnson-O'Malley programs and had
6 those funds in their 638 contract, because when we
7 did the base -- when we did the transfer, those funds
8 became the base for the tribe. And that would be the
9 dollar amount that they would receive thereafter,
10 unless there was a change in the appropriation or the
11 tribe opted to take and make a change to the funding
12 for the Johnson-O'Malley program.

13 For those of you that are familiar with
14 the 638 and the tribal priority allocation system,
15 individual tribes may opt to move monies between
16 various programs, either a plus or minus to those
17 particular programs, depending upon their priorities.
18 Our last count we had -- we counted 271,884 students.
19 Our count has been going up considerably over the
20 years. For the last five years it went up
21 approximately 4.5 percent or 4.6 percent per year.
22 So you can tell that there was a significant increase
23 in the Johnson-O'Malley count.

24 This is the current funding for the
25 Johnson-O'Malley program, and the education which --

1 education and TPA, tribal priority allocation system,
2 about 2 million -- a little over 2 million of those
3 dollars still go to public schools, either directly
4 to schools or to consortiums or to states who still
5 take and fund public school Johnson-O'Malley programs
6 within their state.

7 Office of Self Governance in the
8 education and tribal priority allocation, this year
9 in 2012, we had \$13,286,000. And the Office of Self
10 Governance, which has increased nearly each year,
11 they have 7,197,000. And in the JOM-consolidated
12 tribal grant program, there is 895,000, so the
13 current funding is 21,378,000.

14 Now, the -- as programs move from a
15 public school to a tribe or from a TPA contract to a
16 self-governance contract, as we move those funds, we
17 generally go back to that 1995 count to determine how
18 much money is moved from one recipient to the next
19 recipient.

20 Now, with TPA, those dollars are
21 determined by the base, if we have a situation where
22 we're unable to identify a specific dollar amount or
23 a TPA program that is moving from TPA to
24 self-governance, then we will go back and look at
25 that '95 count. We have that situation particularly

1 up in Alaska where we have consortiums and we need to
2 move monies from 638 TPA public school or
3 self-governance.

4 Yes, a question?

5 MR. GARCIA: Joe Garcia, Ohkay Owingeh.
6 Just a question, what was the thinking about not
7 increasing the or not redoing the count every year?
8 It seems like they're stuck on that '95 count, and if
9 we've grown on the average of more than 4 percent per
10 year since '95, the student count is a whole lot more
11 and we're still getting dollars from the '95 count,
12 it just doesn't make sense.

13 I think a lot of the tribal leaders bring
14 that as an issue. It's not going anywhere. And I
15 don't know if there's -- the funding level has
16 increased per year per student based on that count
17 and so we get increased dollars or are we still stuck
18 at the same student weight for JOM? And how do we
19 account for any increases in student count or do we
20 not? Are we still stuck with the funding based on
21 1995?

22 MR. HERRIN: Okay. The question
23 pertained to why did we not continue with the count
24 when the dollars went into the tribal priority
25 allocation, that became the base for that particular

1 tribe. And the majority of the tribes are in either
2 638 or self-governance. If we did a new count each
3 year, we wouldn't have to change the base in TPA each
4 year. That's the primary reason we have not done a
5 count since '95. Because once we transfer the monies
6 into 638, then that became the base for that tribe.
7 The tribe could take an increase or decrease of that
8 particular program if they opted to.

9 They also had the option of getting cost
10 of living increases for the Johnson-O'Malley program.
11 If they had staff involved with the JOM program, they
12 would submit the staff cost and would get a cost of
13 living increase. And that's the primary reason that
14 we no longer do a count is if we did a count each
15 year, we would have to change the base for each tribe
16 each year.

17 MR. GARCIA: But that's not a -- from a
18 budget standpoint that makes sense, but from a
19 service provision, it should -- it doesn't make
20 sense. For instance, how many students do we have
21 right now? Are we still looking at 271,000 students?
22 I don't think so. But the funding amount still is
23 based on 1995, it appears to me. Or I'm missing the
24 boat somewhere. It's a mathematical game, it
25 appears.

1 So I can understand that the base
2 funding, you do have to change the base funding.
3 That just doesn't work in terms of justifying why
4 we're still continuing to use 1995. Unless somebody
5 else can explain it to me a different way.

6 MR. HERRIN: Yes. The count has gone up
7 considerably. Even if we took the 4.6 percent over
8 17 years, that's an 80-some percent increase. If you
9 compound that, it's going to be more than the 80
10 percent increase. I did some rough calculations that
11 would have been in the range of 485 to 500,000
12 students, if they had the same rate.

13 That was the decision made with the
14 Bureau and Congress at the time. I recognize it's a
15 problem, particularly since I'm directly involved in
16 getting the allocation down at the public schools.
17 As I said, tribes have the option of increasing the
18 JOM program. They also get a cost of living for that
19 particular program, whereas the public schools do
20 not. It was a decision made at that time.

21 MR. GARCIA: Okay. So the increases, if
22 there are any increases for a tribe on the JOM, it's
23 not the base funding that increases, it increases by
24 virtue of increased operational costs or whatever
25 costs, but -- so let's say, for instance, one tribe

1 they were getting \$50,000 in 1995, their student
2 count has doubled. What would their allocation be
3 now?

4 MR. HERRIN: The allocation now would be
5 the 1995 base, plus any increases that the tribe may
6 have transferred to that program, any cost of living
7 increases that the tribe may have generated for
8 salaries, or it could have gone in the opposite
9 direction if there was a change in the appropriation.

10 MR. GARCIA: If the student count
11 increased, then that's not a factor in the increase.

12 MR. HERRIN: No.

13 MR. DRAPEAUX: Joe, one of the slides
14 that we should go back to is the House Report 103-551
15 and the Senate Report 103-294, where Congress shows
16 the counts. And so what you end up with, then, is a
17 base funding mechanism that will not increase,
18 because there's -- there's nothing to base it on.
19 The student count is frozen, the dollars are frozen,
20 and unless Congress appropriates more funds, then
21 there's nothing more, quite frankly, to be added to
22 the pool, other than what's appropriated each year.

23 So what we're being asked to do now, and
24 what we're happy to do, is to bring this discussion
25 out to you all to start talking about providing a new

1 count. And then it really comes down to a policy
2 question, in my mind, about once a new count is
3 completed, and we report to Congress what that count
4 is, then the question is, is do we want to pursue
5 more funding for JOM to reflect the new count? And
6 so what should that -- what should those dollars be,
7 should it be a flat amount of X, should it be a per
8 student allocation of Y.

9 So there are some discussion options that
10 should be considered, I think by you all, in what the
11 best opportunities are for this program and for the
12 students served by this program. So what we hope to
13 get from you, quite honestly, is, first, is to have
14 an understanding of how the program is funded and why
15 there hasn't been a new count. I think, secondly,
16 then, is to provide some new options for you in terms
17 of understanding what the opportunities are. And
18 then, third, is to get feedback from you to help us
19 talk to Congress and for you to talk to Congress
20 about what we should do with JOM going forward and
21 the appropriate cycles.

22 MR. GARCIA: The bottom line is unless we
23 go through Congress to change the language, it's
24 going to remain that way. And I'm trying to kind of
25 get a simple explanation to, not only for myself, but

1 for a lot of people who don't understand why we're
2 stuck at that count, because the same thing with
3 NAGSA. We've got the same problem with NAGSA.

4 I'm trying to decipher in my mind the
5 reality of the picture, and I guess you could call it
6 unfairness for JOM funding. And so the way I see it,
7 it's the same thing, I think, with ISEP, but it's
8 related, but I'm going to try to do an example here:
9 That if the funding pie was this big in 1995, and I
10 guess the funding pie is then divided by student
11 count, so you get so many slices, so in the next
12 year, the following years, the pie remains the same.
13 The student count increases so the slices of the pie
14 are smaller. And that's the same thing that's
15 happening at Head Start. And in fact, I think it is
16 the same for ISEP, because that's how that weight
17 comes about.

18 The pie remains the same, the student
19 count increases, and so the amount per student
20 decreases. That's the small -- that's how the pie
21 divides up into smaller pieces. And that's really
22 the explanation. And so how that kind of language
23 makes any sense doesn't make sense to me. It makes
24 sense to Congress, but I guess they felt that we were
25 all going to die away, so eventually the student

1 count would be zero.

2 But, you know, that's the explanation.
3 Unless we understand the process for why we're stuck
4 with those numbers in 1995, then it's going to be
5 hard to argue against it to try to get it changed
6 legislatively. So we're stuck, basically.

7 MR. DRAPEAUX: I don't think we disagree
8 with you. In fact, I think we very much agree with
9 you. As we looked through the last two budget cycles
10 and as the budgets go in the directions that they go
11 and our exercise as an Interior go the way they go,
12 we had to look at every line item. One of the line
13 items we looked at was JOM, and so we started to ask
14 questions about what the JOM program serves and how
15 it serves them, so on and so forth, and what's
16 important for us to understand is that, from
17 Interior's perspective and from BIE, we think that we
18 would obviously like to support all things Indian
19 education within our budget cycle.

20 And if they're positively impacting
21 Native students in the field, then we should find a
22 way to support from the administrative perspective
23 those programs, JOM being one of them. And so we did
24 get some specific language from some congressional
25 inquiries this year. Joe earlier talked about how

1 they want to us allocate a new JOM coordinator, they
2 want us to provide a new count. We think these are
3 all positive steps to start highlighting the issues
4 and start understanding back in '95 what the thought
5 of Congress is. It's a new Congress, it's a new day,
6 it's a new appropriation. And we agree with you.

7 So we're looking forward, actually, to
8 having this discussion and getting to the point where
9 we are, and then it's going to come back to the
10 administrative pieces of it. How do we allocate
11 funds to the different entities? And what Joe
12 described in this slide here that he talks about
13 education, TPA, self-governance and so on, I mean,
14 there's formulas related to all of those, and those
15 formulas, in my mind, should be reviewed, because
16 they're probably as old as the language.

17 MR. HERRIN: Yes. And if the decision is
18 made to do a new count, we would also have to look at
19 how we do that count and, once we have the count, how
20 we're going to apply weights. Under the old system,
21 before Congress recommended, we established a minimum
22 weight. We determined the funding for a particular
23 state by dividing the state per people funding for
24 the public schools by the national average.

25 So some states had a low per people

1 expenditure at that time, other states, such as New
2 York, Connecticut, Alaska, had a higher rate, so they
3 would receive a higher dollar amount per student.

4 Okay. There's a gentleman back there who
5 has had his hand up several moments now.

6 MR. TORTALITA: Good morning.

7 (Speaking in native language.)

8 My name is Lloyd Tortalita. I currently
9 direct the Pueblo of Acoma Johnson-O'Malley program.
10 I have been with JOM since the early '60s, when I was
11 in high school. I'm a product of JOM. So I
12 currently represent -- I'm currently on the board of
13 directors for the National Johnson-O'Malley
14 Association. I represent Region 2, which is the
15 state of New Mexico.

16 There's a long history behind how that
17 \$21 million came to. That's not the actual dollar
18 amount in 1995. The actual dollar amount was
19 \$24 million. Since 1995, and as late as 2006, when
20 President Bush came into office he eliminated the
21 Johnson-O'Malley program. Zeroed it out in the
22 national budget. We fought for it. And we need to
23 remember, Johnson-O'Malley program is to meet the
24 unique educational needs of Native American students
25 attending public school.

1 93 percent of our Native Americans go to
2 public schools. Every JOM program nationwide is
3 different. It's not like a Title VII program. It's
4 not like the Title VIII program. JOM, remember, has
5 that vested authority according to 25 CFR. The
6 parents have the vested authority in setting their
7 programs and how they're going to use JOM funds.
8 It's up to the IEC, the Indian Education Committee,
9 under this program. Since 2006-2007 funded, JOM was
10 cut 27.9 percent. It went from \$24 million to
11 \$16 million nationwide.

12 Finally, after the fight that we put on,
13 arguing on behalf of the parents, we finally got it
14 back to \$21.3 million. And I can say we have not --
15 we have not seen a cost of living increase anywhere.
16 This year's budget, looking at last year's budget,
17 there's a cut proposed. Last year there was a cut
18 that happened. So we don't have that luxury of
19 getting a cost of living increase.

20 Remember yesterday I made that statement,
21 the people down at the lowest level where we do a lot
22 of this, my staff hasn't had an increase since 2006.
23 Our students, we've had to cut out some of the
24 programs we used to do. I don't do that much school
25 supplies anymore. I don't do a lot of things that we

1 used to do.

2 Back in the old days, like I said, when I
3 was a part of the JOM program, JOM bought me football
4 shoes to play football at Albuquerque High School.
5 Bought me baseball shoes, bought me baseball gloves.
6 A lot of things were happening with JOM funds. But
7 now we can't afford any of that stuff. And that's
8 why we've been doing this fight.

9 But we need somebody, and I'm told never
10 mention names, I do it anyway because I have to fight
11 for my little people at home. Ed Parisian, when this
12 whole fight started, when he was in Mr. Moore's
13 position, made the statement of "JOM is not a
14 priority. Bureau operated schools are a priority."

15 Governor Garcia just asked how fair is
16 that? How fair is that? Right now, currently, and
17 since 2007, we haven't received no technical
18 assistance under the Southern or New Mexico South.
19 We're finally having meetings now with our current
20 director. And I'm glad he's doing that, because I
21 don't even know what the current -- what currently
22 the funding base is on dollar amount. I don't think
23 anybody knows.

24 I mean, what is that -- what's in the
25 books that BIA/BIE has? Is there a funding form in

1 there? I haven't seen one. There's a lot of issues.

2 Same one with this talk about retaining a position.

3 The last position we had in D.C. was a
4 position that took care of higher education, audit,
5 and JOM program. It was a one-man show, Mr. Gary
6 Martin. Mr. Gary Martin was the last individual that
7 manned that office. Because he was pro-Indian and I
8 think that's why he got fired. Because I think he
9 fought for JOM.

10 We need that position. We have
11 outdated -- outdated annual report forms. 1989, One
12 of them? 1999 for JOM. It doesn't tell us the full
13 story, just a bunch of numbers. We need to update
14 those. We submit, like the JOM policies and
15 procedures direct us to do, we submit our annual
16 reports to our funded agency. For me, it's New
17 Mexico South -- I still having a hard time saying
18 that. It was easier to say Southern Navajo Agencies,
19 but now you have to say New Mexico South BIE Office.

20 Where did it go? Nobody knows. As
21 governor I asked a couple of times, because Congress,
22 the congressman, senators, look at the stagnant
23 number of the \$271 million. And they tell us you're
24 not showing a growth. What are you doing? Well,
25 according to my understanding, the Bureau of Indian

1 Education is supposed to bring those reports to
2 Congress. I don't know where they go.

3 Fatefully, because of the revelations,
4 nothing has changed. The direction came in 1921
5 under the Snyder Act. 1934, the Johnson-O'Malley
6 came into play. It's still the same in the books.
7 It hasn't changed. 1975, we started contracting
8 under 638. Nothing has changed. President Bush
9 decided to cut us off. It's still in the books.
10 It's still in the books, same as it was written. I
11 carry my 25 CFR around with me everyplace I go. This
12 is the booklet that governs us.

13 273 -- 25 CFR 273. But we're going to
14 continue to fight for our students. Like I said, at
15 Pueblo of Acoma, my program is done at the
16 reservation level. The gentleman that's here with me
17 from Minneapolis, most of his program is done around
18 the school setting. Some programs use their dollars
19 for language, tutoring. But, remember, this program
20 is supplementary dollars. If there's tutoring going
21 on at one of my schools, I cannot do tutoring because
22 I'll be in violation.

23 I can supplement the program, which I do,
24 because at Acoma, like I said, my program is done at
25 the reservation level, all of it. 100 percent of the

1 dollars go at the reservation level. I feel that we
2 have the Title VII program, the impacting programs,
3 those are done at the school level.

4 The State of New Mexico does not -- does
5 not have an absolute transferization formula, and we
6 don't have the luxury of having a street bus, a
7 subway. My schools, 18 miles to the west, 16 miles
8 to the east. We do after school -- we have an
9 after-school transportation. We pick our students,
10 because they're participating in credit recovery,
11 after-school tutoring, other extracurricular
12 activities. Grants High School, Laguna-Acoma High
13 School, Los Alamos Middle School, Montera Middle
14 School, there's a unique need.

15 Another program that I do, the State of
16 New Mexico has a New Mexico compulsory attendance
17 law. This all came about in 2000-2001. The State of
18 New Mexico passed that compulsory attendance law. In
19 2004, the law was put into effect. At the same time,
20 where I come from, Pueblo of Acoma, like most of the
21 pueblos in New Mexico, run a traditional form of
22 government. We're not elected into the positions,
23 we're appointed into the positions.

24 In Pueblo of Acoma, I have a governor
25 here with me, at Pueblo of Acoma, we still follow the

1 traditional process from -- we have a hierarchy that
2 tells us this is what we want for you to do. This is
3 how we want you to help our people.

4 One of the things that came up down here
5 in 2005, keeping our young people in school. So
6 we're concentrating on keeping our young people in
7 school. With that truancy program or law, after
8 three days the schools are to notify the parent.
9 After five days, a conference is to happen. After 10
10 days, a parent can be taken to one of the District
11 Courts in New Mexico. That's the law in New Mexico.

12 My Johnson-O'Malley program or Acoma's
13 Johnson-O'Malley program, because we know, when, boy,
14 when he's doing something wrong at school, and coming
15 to the mail, he's going to run to the post office and
16 intercept that, and the parents will never know.
17 Now, because of the modern technology, we are able to
18 get those referrals and we can carry it to mom and
19 dad.

20 After five days when a student has been
21 absent, there's a student conference that happens.
22 Because of the directions that we got from our
23 leaders at Acoma, we attend the student conferences,
24 making sure that the parents understand the laws that
25 have been passed. We currently have a memorandum of

1 understanding with the Grants County Schools,
2 introducing truancy. Remember I said after 10 days,
3 the parent, under the law, has to go to court.

4 Pueblo of Acoma said no, we don't want
5 our people to go to court, to the outside court, you
6 see, we have a traditional form of government. So we
7 bring our parents and our students into our own
8 courts, our own traditional courts. And then it is
9 up to our second lieutenant governor who is the
10 main -- enforces all the laws at Acoma. They go
11 before him, parents are subject also. Currently two
12 students, we do contracts with those students. Two
13 students at Acoma today will be standing before the
14 Second Lieutenant Governor because they weren't
15 abiding by their contracts.

16 So those are the programs that are
17 different throughout the United States. The Santo
18 Domingos, Ohkay Owingeh, Zuni, their programs are
19 different than my program. This addresses the unique
20 educational needs of our young people. And depending
21 on how the parents -- again, they have vested
22 authority under 25 CFR to set the program.

23 Public schools, the same thing. We are
24 required to have an Indian Educational Committee. I
25 was recently, last year, in front of the congressman

1 from Oklahoma, providing testimony, and I took my
2 annual reports with me. I do my annual reports with
3 a lot of pictures that tells the story of what we're
4 doing. I hand it to the congressman, my testimony,
5 proceeded to look through the contents of the -- my
6 annual report. On the very first page of the
7 pictures I put, and I know Governor Vicentes always
8 heard about it, pictures of our 2010 Laguna-Acoma
9 cross-country championships. Those boys, those young
10 men, our grandsons, all rode the JOM van from school.

11 2011 congressman takes a look at that
12 picture, "State champions?" I told him "Yes, sir,
13 that's what JOM does. JOM can do that." Same
14 students, our grandsons, took state again, 2011, this
15 past school year. They all rode the JOM van.
16 Basketball, and I know the governor lights up every
17 time when we see our team that's out there that are
18 23 and 0, they went undefeated. The boys from Acoma
19 rode the JOM van. I don't know if that's a success
20 story for the program.

21 Our truancy program has dropped by 17.5
22 percent. Because of the MOU that we have at the
23 Grants Pueblo County Schools. Students are aware.
24 One of the things that I remember, one of my elders
25 said (Speaking in native language). This goes back

1 to our traditional process. It hurts somewhere when
2 you're led around by your tribal officials. That's
3 what the -- because of this traditional process that
4 we have at Acoma, we rely on our governor, on our
5 tribal officials, to lead us by the hand to keep you
6 on that red road, so far red road. And that's what
7 we're practicing.

8 The underside of the two worlds that our
9 Native people go through. That's just one of my
10 JOM stories. I know the national organization last
11 year at its conference last year in Tulsa put a video
12 together with this issue. Our goal is to provide
13 that to Congress. We're still doing that because
14 Congress does not get any of this information, does
15 not get our annual reports.

16 And I think we've forgotten to follow the
17 written contract in process, there's a 30, 60, 90
18 days. After 30 days BIE is supposed to send
19 information; it hasn't happened. After 60 days
20 they're supposed to notify you, but because of this
21 situation that we're in and the way we're funded, we
22 never get notice in 90 days when we're supposed to.
23 And the fiscal year starts up on October 1.

24 All the JOM programs are in that
25 situation right now. But yes, we do want a student

1 count to show growth. We need to show that either
2 this year -- 2013 is done, so it probably won't take
3 effect until 2014. But we need to come up with a
4 formula of how we're going to use the new student
5 count. Right now we're talking about maybe \$36 a
6 student. Back in the old days I heard it was about
7 \$200 a student. So there's been that fluctuation.
8 It's gone down.

9 But again, we cannot use the same formula
10 base, if there's one after we do a new student count.
11 Student count used to be done each year in October.
12 Almost around the same time as BIE does their 40-day
13 count. So there's a lot of things that are being
14 missed. And like I said, we don't have that --
15 didn't have that for the last six years, the written
16 contact with the BIE. And nobody understands,
17 really, the JOM loss and what is contained in here.

18 But again, yes, we want a student count,
19 because Congress is asking "Is there growth?" And,
20 yes, we want that. And that was my question
21 yesterday, what is going to happen under the
22 streamlining, so-called streamlining. And in here it
23 says, "Should the BIA reestablish a full-time,
24 permanent JOM position that was terminated in 2005?
25 Where should this position be located?"

1 It was in Washington, D.C. at the central
2 office. I think that's where it needs to be located
3 at. Because it was very successful up to that point
4 because we had those direct contact to Gary Moore --
5 or to Gary Martin.

6 Like I said, I've been in the JOM circle
7 for a long, long time. And up to 1995 even the time
8 when they were trying to pull this plain English on
9 us, plain English language, we fought it. And now
10 we're caught in this trap of 1995.

11 So I hope this makes some of the issues
12 clearer. And again, I sit on the board and -- but
13 there's -- we have a position statement here on
14 addressing the same issues that I spoke about. And
15 we're addressing the issue of no staff position, and
16 then a position that was frozen -- I mean, the
17 student count that was frozen, and we're requesting
18 to again go back to 24 million that was in place
19 before this 21 million. And we are going to give
20 them to Mr. Moore, and to the transcriber, so that
21 way it becomes part of the record.

22 But again, I know I get -- I speak for my
23 young people nationwide and those are our grandkids.
24 Those are our young people that we need to educate in
25 both worlds. If the JOM's taken away, it is no

1 longer in the books -- some tribes use it for their
2 language. Some tribes use it different. So please,
3 let's do the student count. Let's work together in
4 coming up with a formula in how we're going to fund
5 this program.

6 Remember, 93 percent of our Native
7 American students attend public schools. And all the
8 laws that have forced us to send our students to
9 public schools are all in existence. Nobody is
10 practicing 561 anymore. That's a lost law that gives
11 the authority to the local tribes in addressing their
12 educational needs. We practiced it once in
13 Albuquerque, but we hired a line officer. All the
14 BIAs, our school boards, presidents, JOM directors,
15 higher education directors, as Mr. Stevens knows
16 there are probably about 30, maybe, individuals sat
17 around and interviewed one young lady. That's the
18 only time we ever practiced 561.

19 But again, any questions, I'm here, call
20 me. Any questions, go to our JOM website. We have a
21 website. But again, this is for our young people
22 behind us. My little grandson, five years old.
23 Getting ready to go to school to transfer from the
24 Head Start program. He's going to become a
25 JOM student. It's been good to me, and I know a lot

1 of people, probably in this room, JOM has been good
2 to us.

3 So thank you very much. And I hope this
4 clears up what Governor Garcia was asking about
5 the -- what the funding level was in 1995, which was
6 \$24 million. So thank you very much.

7 MR. DRAPEAUX: Thank you. I'd like to
8 address a couple of items that you brought up, which
9 I think are important to understand.

10 By the way, my name is Brian Drapeaux,
11 I'm the chief of staff to Director Warren of the
12 Bureau of Indian Education. There are a couple of
13 pieces that you brought up that I'd like to
14 highlight.

15 Yesterday you were able to, if you were
16 here, be part of the broader administrative
17 assessment piece. And then we also yesterday talked
18 about the streamlining piece. And all of those
19 played into some of the issues that Mr. Tortalita
20 brought up today. Because it's important to
21 understand, and being new to you, I'm a former of
22 vice chairman of my tribe, the Indian Sioux, and I'm
23 also a JOM guy. Grew up in public school on our
24 reservation, and understand the program, worked for
25 JOM, worked at a public school. Saw how the

1 JOM program does or doesn't work.

2 And what's important to understand from
3 the perspective of the BIE that appears to be
4 intolerant in parts of the organization is really,
5 first of all, the issue of TPA. JOM going into the
6 tribal priority allocation. There's an important
7 distinction within Indian affairs that needs to be
8 understood, in particular by this group. Because, as
9 we look at and participate in the budget process with
10 the tribal interior budget committee, the Department
11 of Interior, and our participation in that, what has
12 become clear to us is that when tribal leaders get
13 together through the TPAC process and the talk about
14 budget allocation, they always talk about education
15 as a priority. That education is a priority. And
16 then when they start talking the specifics of the
17 priority they talk about only three programs: They
18 talk about JOM, adult ed, and higher ed scholarships.
19 That's it.

20 So I asked the question "Why do you only
21 talk about those three programs?" And it's because
22 those are the only three programs that are 638, or
23 self-governance structured. So that's the main focus
24 is the administrative support and the program
25 management piece that go directly into the tribal

1 coffers to be managed.

2 Well, what that means to the BIE is that
3 97 percent of our budget never gets discussed. We
4 manage 1.2 billion, but we only talk about less than
5 3 percent of our total budget through those three
6 programs.

7 And that's an important distinction,
8 because what that starts telling you is that in the
9 broader report what they're talking about is really
10 getting to the heart of your issue, is "Why hasn't
11 BIE responded to our reports?" We provide these
12 things. Well, if you know anything about the BIE,
13 what you do know is that we do not manage 638
14 contracts. They're managed by the BIA. We do not
15 have any 638 contracting officers in the BIE. All
16 that is run through the BIA.

17 Now, if we're remiss in responding to
18 written reports in our statutory responsibility, then
19 we'll talk to senior management and we'll make sure
20 that we're responding and collaborating with local
21 communities; that's an important aspect to us. But
22 the structure, Director Moore referred to it
23 yesterday, we're talking about two important items
24 here for the BIE, and it directly impacts the
25 JOM program: structure and governance.

1 The structure of the BIE, currently, is
2 that we do not manage certain aspects or functions
3 that we're ultimately responsible for. JOM is a good
4 example of that. This money goes through these
5 mechanisms, Office of Self Governance. All we do is
6 allocate money to the office of self-governance and
7 it goes to directly to tribes for management.

8 638, we allocate funds directly to 638,
9 they manage those contracts. And when in certain
10 circumstances in places like Oklahoma where we have
11 trouble, the dollar amounts are so small that the
12 management of some of those contracts are difficult,
13 so that the tribes turn it back to us. And so we
14 have line officers trying to manage JOM programs and
15 funds. We've got -- it's a completely convoluted
16 process to establish and run these programs.

17 So what we're attempting to do in the
18 BIE, and the position that we're taking, is that we
19 should manage all things education. We agree,
20 93 percent of the students in Indian Country go to
21 public school. What's the BIE's role? Well, it's
22 been expanded through the executive order. That's
23 important. Because now we should be taking this
24 fight up on behalf of those students, without a
25 doubt. All Indian students are in our purview and

1 should always have been, in my opinion.

2 This shows streamlining. The position of
3 JOM when I came in, I said "Joe" -- Joe has been a
4 valuable employee to BIE, he's been around for 45
5 years, knows where all the dead bodies are buried, so
6 I always go to Joe when I have a questions about
7 this -- and I started asking questions about JOM and
8 he started explaining to me the history of JOM,
9 what's happened to it. Its almost extinction and
10 resurrection and so on.

11 And the streamlining piece is important
12 for you all to understand, because it's really a
13 double-edged sword, as we heard yesterday. One
14 gentleman stood up and said "We need to get rid of
15 all middle management and move that money out into
16 the field." Another person said "Please don't take
17 my middle management away because that position is
18 important to me and to our school."

19 Well, the message across the organization
20 is that middle management is a problem, and the
21 response by the Department and by Congress states,
22 "You will manage 1.2 billion with less than 1 percent
23 of the total budget." So then the question comes
24 down to "How do we prioritize what our
25 responsibilities are from a management perspective?"

1 How do we as the senior management of the BIE say
2 JOM is important, but we can't put a human in that
3 position? That higher ed is important, but we can't
4 put a human in that position. That scholarships are
5 important, but we can't put a human in that position.

6 I mean, these are management decisions
7 that we face and are facing today. Because under the
8 budgetary structure we're going to have to make some
9 hard decisions about what we have in place, what we
10 look like and what we don't look like, what we can
11 prioritize and what we can't prioritize. So I agree
12 with you, because I'm a recipient. My family is a
13 recipient. I've seen the program work. I think that
14 public educated students, Indian students, should
15 have a greater advocacy in Washington, D.C. by the
16 BIE. There's no doubt. We're committed to that.

17 So the questions that you're asking are
18 hard questions, because there are decisions that are
19 going to have to be made. But we want to consider
20 all things. We're excited about this consultation.
21 It's our first consultation. Normally, in the past,
22 at all consultations, I sat where you're sitting,
23 asking these questions to people like me sitting here
24 today.

25 So I'm excited to be sitting on this side

1 of the table to understand the perspective of the
2 federal government and the challenges that we have to
3 fulfill our responsibilities. Our trust
4 responsibilities to you. To the communities that you
5 serve. We look forward to the challenge of this,
6 because it is a challenge.

7 What we're proposing in the broader study
8 is that the BIE receive administrative functions,
9 such as 638 contract specialists, that we manage
10 components of those. That we manage components of
11 HR. That we manage components of procurement,
12 acquisitions. Because we think that until we're able
13 to focus all the resources on education and education
14 outcomes that, really, we're not going to get down
15 the road very far.

16 So what that means to Indian Affairs is a
17 radical change in the structure, in line authority,
18 in budgets, who gets what, where are they going to
19 sit, who are they going to answer to. But if we're
20 serious about Indian education, which we are, then we
21 think we have to ask those questions internally of
22 the Indian Affair Organization, including BIA, the
23 DAS-M, and the BIE.

24 Construction is another piece. School
25 construction. We can't go anywhere in the field

1 without someone saying "Hey, come look at our stuff,
2 look at our building." We don't even manage
3 construction. We don't have a say-so in how they're
4 allocated.

5 It's -- I -- some of you are perhaps
6 superintendents of school boards. Could you imagine
7 having those components outside of your ability to
8 manage your structure? Governor, could you imagine
9 not being able to hire who you wanted to because you
10 had to rely on a third party to do your job for you?
11 I mean, the frustration level gets a little high.
12 But we're serious about education. We're educators.
13 We're serious about Indian education, because that's
14 who we are as well.

15 We appreciate your comments. We hear
16 what you're saying. We have big challenges in front
17 of us, but we feel we're up to the task to help you
18 down the road. We need to hear specific suggestions
19 and feedback. That's what we need. And we
20 appreciate it. So thank you.

21 MR. GARCIA: What about getting back to
22 reality, with all respect. You know, you hear a lot
23 of people complain about funding. We all complain
24 about funding. But the truth of the matter is no
25 matter what we say, we're bound by legislation in

1 this case. This one we're bound by legislation in
2 terms of the way the federal budgeting system works
3 or doesn't work, whichever is the case. And, you
4 know, I made this comment several times in my time,
5 and I'll continue to make it, because we need to fix
6 it at a different level.

7 That when we were going through TBAC --
8 when it was TBAC instead of TPAC -- I chaired that
9 committee for four years and worked for the committee
10 for the prior two years before I became co-chair.
11 But in the end, the federal budgeting process, we're
12 always saying, we're complaining to the Bureau at the
13 regional level, we're complaining to the Bureau at
14 the Agency, we're complaining to the Bureau at the
15 central office. But when it comes down to the
16 reality of the situation, they have no control. I
17 mean that's the way it breaks down, we're complaining
18 to you all, saying advocate for tribes. You are the
19 BIA, you are the Department of Interior, you advocate
20 for the tribe.

21 But the rules say different. And unless
22 we all understand that budgeting process, we're not
23 going to make a hill of beans in terms of a
24 difference that we need to make and the increases
25 that we need. That's the reality of it. The two

1 groups or the two powers that be, if you will, that
2 can make a big difference are the ones we all need to
3 be talking to. And that's the same with the tribes.
4 The tribes should be working with these two entities.
5 One is a person. Do you know who that person is?
6 Everybody needs to know this. It's the President of
7 the United States of America. President Obama in
8 this case.

9 Now, the tribal leaders have been adamant
10 about working with the President, and some of
11 increases and some of those places where we did not
12 see cuts were as a result of our efforts working with
13 the President, because he realizes where we're at as
14 Indian people of this country. The other group is a
15 group, and that one's a different, completely
16 different group than what we're used to working with,
17 and that's OMB, the Office of Management and Budget.

18 So between those two discussions, the
19 President and OMB, the OMB is not for the tribes.
20 They do not understand the needs of the tribes, and I
21 told them so when we were at the Nation to Nation
22 meeting in D.C. in December. OMB, number 1, does not
23 understand tribal sovereignty, they don't understand
24 tribal needs, they don't understand any of that, but
25 what's sad about that situation is that they don't

1 care to understand about Indian Country.

2 And so therein lies a big dilemma on how
3 we're making an impact and how we're not making an
4 impact. And so when the process starts, they're
5 already talking about three years ahead, right, for
6 the budgets, and so unless we make an impact, and we
7 began to make an impact when President Obama first
8 came online, but he had to deal with the budget that
9 had already been set by the Bush Administration, and
10 so to try to get things up to snuff and up to par was
11 a giant task. And a lot of things, good things
12 happened, but we're still struggling with that
13 federal budgeting process. And I think unless we
14 understand that process, we're not going to be
15 targeting at the right level and right places in
16 order to make a difference. That's just reality.

17 And so a lot of those things are
18 legislative issues and unless we change the
19 legislation, and we target that as Indian Country,
20 that legislation will still be hands tied. And
21 that's what the Department is telling us. Well, we
22 can't change that. You heard that yesterday, loud
23 and clear. Said, well, our hands are tied because of
24 policy, and it was the same thing with the compliance
25 issues. Our hands are tied because of compliance

1 issues set by somebody else. But that is the
2 reality. Whether we understand it or not, that is
3 the reality. And I'm not quite sure at this point
4 where we'll be after this election. That if
5 President Obama loses we're in deep you-know-what.
6 Because I've not heard any of the candidates for
7 President say anything whatsoever about Indian
8 Country. Not one word.

9 And so we're wondering should we ask them
10 to include us, or should we sit back and say it's up
11 to them to bring Indian Country into the picture, but
12 you know, but this is an unpaid announcement that
13 will support the President that has made a big
14 difference in Indian Country over three years of his
15 administration. That's a lot to do. And read down
16 the list of all the accomplishments.

17 And in my mind, I think he's a change
18 agent. We all know he's a change agent. And all the
19 things that he could have done to improve our lives
20 and our people's lives were battered and hindered by
21 Congress. If he had his way, man, we'd be sitting
22 pretty well. That's the way I feel. But we're not
23 there, because we have to battle with the others.

24 And so today I'm making this announcement
25 to tribal leaders that there is a call with the White

1 House for tribal leaders. And it's about legislation
2 that was recently moved by the Republican Party on
3 taxation and they're giving breaks to the higher
4 earners, the people that make over a million dollars
5 a year. How many of us are in that boat?

6 So they're giving these big tax breaks at
7 our cost. And that's what that calling is all about.
8 And unfortunately, or fortunately, whichever way,
9 it's a call-in for tribal leaders of New Mexico. I'm
10 going to go on that call for Ohkay Owingeh. But, you
11 know, that's what's happening. That's the reality,
12 and we have to live it or not live with it. So
13 that's a paid political announcement or unpaid
14 political announcement to vote for President Obama.

15 Thank you so much. I hope I said some
16 clarity and not confused people by what I said about
17 the federal budgeting process.

18 MR. DRAPEAUX: Well, I appreciate that,
19 Governor. I think it's important that that process
20 is well understood by Indian Country. The other
21 piece that, in terms of policy, that we have to
22 remember is that the Department of Interior policy,
23 budget policy, and priorities is different than
24 Congress. And so we also have to pay attention to
25 the U.S. Department of Education's policy, and policy

1 that comes out of the White House, in terms of
2 overall education funding and priorities.

3 And what we're making a case for in the
4 BIE, in terms of funding priorities and policy
5 alignment, is that we should have a closer alignment
6 between U.S. Department of Education policy and
7 budgeting, and Indian Country and the BIE. Because
8 unless we make the leap into the national realm of
9 discussion on policy development and funding that
10 supports that development -- because what's
11 interesting is that both Secretary Duncan and the
12 President has said we want to have an increased focus
13 on the lowest schools and students in the country,
14 which is really great, because there's not a
15 mechanism for us to tap into those funds.

16 And so although the emphasis and efforts
17 and focus is correct, there's no mechanism for Indian
18 Country to access those dollars specifically. Yes,
19 we do manage a portion of those funds through an MOU,
20 but what we're pushing and asking the Department of
21 Ed for is an expanded MOU that will bring up the
22 consultation in May and June, and that's on the
23 website, as well the consultation website, is to
24 start aligning Indian Country education policy with
25 the U.S. education policy.

1 So as those low-performing schools are
2 prioritized, as they are increased in funding --
3 funded, and as they are focused upon, that we're a
4 part of that discussion in a more succinct, planned
5 way than what we are today.

6 And so I think it's important for you all
7 to understand that that's a position that we're
8 fighting for as well. I said yesterday, Director
9 Moore talked about two things: governance and
10 structure. The structure piece is the BIE, as a
11 stand-alone Bureau to have certain aspects of
12 responsibilities that are all education-focused on
13 the governance piece is really aligning ourselves
14 with the U.S. federal policy, to move us down the
15 road educationally, so we don't get left out when
16 there's a primary focus.

17 And as those focuses are formulated
18 through SCAs, but don't include us fully as a quasi
19 SCA, so I just wanted to bring that to your
20 attention.

21 The gentleman over here.

22 MR. SEWEYESTEWA: Good morning. My name
23 is Alden Seweyestewa and I'm from the Moenhopi
24 Village of Northern Arizona, north of Flagstaff. And
25 I really appreciate the comments that were made here

1 again by our brother from the Pueblo. And it's true
2 that a lot of the things that we're talking about
3 right now, we don't have political clout. I share
4 with you that presidential candidate Romney is here
5 in the Phoenix area today; he's in Scottsdale. And I
6 thought here we are, Indian leaders talking about the
7 budget. Romney is over there at the other end of
8 town, probably having a lot of security guards out
9 there, and us guys as Indians we probably wouldn't be
10 able to get to within several blocks.

11 But here we are, talking about numbers
12 that come from 1995. I'm sitting in the back, and
13 I'm trying to do my math calculations. 1995, how
14 many years ago was that? Wow, it's almost 20 years
15 ago. That far behind.

16 I used to work for the Bureau of Indian
17 Affairs, beginning in 1966, and then feeling the
18 power of the BIA, we were hit with a RIF and I was an
19 educator with the Kunzi Public Schools and Red Hills
20 High School. At that time we were designated as the
21 largest high school -- Indian high school in the
22 United States. And then political funding came
23 around or monies came around again, the issues and
24 then those two schools, then they -- they became
25 separate entities doing their own policies. Because

1 we don't have political clout, I'm asking that all of
2 us here what can we do about it? We're giving
3 suggestions, we're giving ideas to our leaders that
4 are from Congress. And I was really impressed
5 yesterday when they introduced themselves and they
6 mentioned that they were Native Americans. I really
7 liked that. And the other part of that, too, is
8 they're young, they have innovative ideas, they are
9 facing challenges. And many of us, we tend to sit
10 back and I've gone through my young years, my
11 political days, my hell-raising and upsetting the
12 cart, and turning over the cart, and not being
13 satisfied with the way things were. And it worked.

14 And in order for things to work, you have
15 to take the lead. If you just sit back, keep the
16 chair warm, nothing's going to happen. If you go
17 back to your communities and you don't share your
18 information with your communities, nothing's going to
19 happen. When they read about it in the newspapers or
20 if it even gets that far, well, we're going to sit
21 back and we're going to say, wow, did that happen to
22 us again? Did it happen to us again that -- it's a
23 little bit off, but I hope it makes sense --
24 Flagstaff, San Francisco Peaks, did they really
25 listen? We lost that one. Grand Canyon, the

1 government intervening into some of our sacred lands.
2 They'd like to build a diagram all the way down at
3 the bottom of the Grand Canyon where we have sacred
4 sites.

5 With the sacred sites, same thing with
6 the San Francisco Peaks, the government wouldn't
7 listen, because we wouldn't reveal the location of
8 our sacred sites. If we give the government and the
9 courtroom the actual placement of our sacred sites,
10 all the tourists are going to be coming down on
11 buses; it's not going to be a sacred site anymore.
12 And we have seen that across Indian lands that when
13 we shared information, some of the things that we
14 hold sacred and dear in our hearts, they're abused,
15 and maligned, then they're mistreated.

16 With that, our children, I'd like for you
17 to think about your son, think about your daughter,
18 think about your grandkids, your great-grandkids.
19 I'm a great-grandfather now, and that's the best
20 thing that's happened with us with all of our kids.
21 We've done things pretty well. We have kids that are
22 educated and college educated. I'm a college
23 graduate and have been a union leader and other
24 things. Tried to fight, tried to show leadership.

25 When we go out, and I was surprised

1 yesterday that I heard the name Glen Salazar, and I
2 read about these and the congressional leaders.
3 These gentlemen sitting up here are giving us
4 numbers. But Congress comes in and they say, well,
5 we need to cut \$1 million; they have no choice. So
6 they come back and they have hearings like this and
7 they're sharing their information with us.

8 So they have the job to inform us, and it
9 looks like they're going to really carry the message
10 forward. And we have this -- our lady up there
11 that's doing all the recording, and I'm standing back
12 there and I say, wow, I'm going to be in some archive
13 somewhere. And I'm going to see somewhere in
14 Congress my name instead of somewhere else on the
15 wall. So that has to be pretty impressive.

16 Maybe my last example of government. The
17 lady that I won the lawsuit with the federal
18 government, Kobel [phonetic], I don't know if it was
19 Les Kobel or Kobel, well, let's look at the trials
20 and tribulations that she had gone through, and it's
21 probably going to reflect on us too. The same
22 thing's going to happen to us. By the time the
23 change is made, a lot of us are going to be gone.
24 And then using that as a reference, let's not let
25 this happen to us at this time.

1 We heard that -- or the parties,
2 Republican Party, Bush; and then before that, Gerald
3 Ford; before that, other Republican presidents,
4 that's where you're seeing the impact.

5 These gentlemen are so rich, like Senator
6 McCain, for my last example now, with the water
7 rights and Kyl, Kyl didn't even remember where his
8 homes were in Arizona. He had too many homes. Kyl
9 came out to -- Kyl and McCain came to Tuba City about
10 two weeks ago. They had protesters out there, but
11 they had a lot of police. Those of us that live in
12 the community, I'm a farmer too, tried to make an
13 approach. You couldn't even get close. They come
14 out and give you a little wave, and then they leave.

15 If you're not really aware of your water
16 rights, the government is asking us to spend and
17 determine a lawsuit against the United States
18 government. Why? Because it involves money. I'm
19 not really sure how much an ICMB cost or a fighter
20 jet cost, and -- the other night I was watching the
21 History Channel, and one of the aircraft carrier,
22 \$2 billion for an aircraft carrier, and for a fighter
23 jet, I think they said \$2 million. So here we are
24 talking about numbers up here, \$21,000 [sic], right?

25 But when you sit back and think about it

1 and you look at it, it's appalling, because we don't
2 pay taxes, that's what they say. But when we go --
3 when we go buy stuff, do you pay tax on your
4 gasoline? Do you pay a higher tax out on the
5 reservation because of the transportation cost? Then
6 when you come back into the cities, we pay more
7 taxes. We pay more taxes than people off the
8 reservation. We double our tax payout. But nobody
9 really cares about that. It's just, you know,
10 "Indians, they don't do anything. They don't pay
11 anything. A good Indian is a dead Indian." Remember
12 that? That was some time back.

13 And then, now, our responsibility. The
14 gentleman up front, we're learning to adhere to the
15 responsibilities. Those are really encouraging
16 words, because we have Indian leadership. They can
17 tie into our thoughts. They can tie into our needs.
18 They've been where we've been. They know what it's
19 like to be an Indian. Thank you for your listening.
20 Thank you.

21 MR. DRAPEAUX: We're going to try to go
22 until 10:00, and then we'll take a short break.

23 Do we have other questions or comments
24 that folks would like to make?

25 Yes, ma'am.

1 MS. THOMAS: I appreciate this
2 opportunity to address you. My name is Eleanor
3 Thomas, with the Navajo Nation Johnson-O'Malley
4 program. I'm the program manager. I also sit on the
5 National Council of Johnson-O'Malley Association
6 Board. So I just want to bring out that this lack of
7 contact person in D.C.

8 I think it's important that we have this
9 person in D.C., because he will be responsible for
10 JOM issues and student count and reports. I know I
11 work with 31 school districts, and they give me
12 annual reports. And those are all -- some are good
13 success stories, accountability. And it seems like
14 this good information doesn't go to Congress. So
15 through this person, I think information like that,
16 you know, will get to Congress.

17 And I know that we just have contact with
18 a BIA representative, and there's no one -- no person
19 who can advocate for JOM to Congress. And issues
20 like JOM issues become lost in BIA, with the
21 BIA issues. And so I've just been audited by our
22 BIA representative, and she went in and we didn't
23 receive the report. So that kind of tells us that,
24 okay, what happens to these reports? She didn't
25 produce this report to us. I know that gal would go

1 to Congress. So we didn't get the report and that's
2 kind of like important to us.

3 And also the student count and this is
4 outdated information we're giving to Congress, and I
5 just want to say that the correct number should be
6 determined to give to Congress. And this act of
7 information should be given to Congress. And I just
8 want to thank you.

9 MR. DRAPEAUX: Thank you.

10 MR. ERVIN CHAVEZ: Earlier I raised my
11 hand, Ervin Chavez from Navajo. Earlier I raised my
12 hand, but a gentleman back here answered the majority
13 of the questions that I had, as well as Mr. Garcia.
14 I guess, just looking back 17 years, if somebody
15 would do the math, 4.5 times 17 years on top of what
16 is being allocated is a chunk of money. And it seems
17 like, just listening to these gentlemen, that Indian
18 people, once again, were thrown a bone and they went
19 for it.

20 And every time something is proposed to
21 us, we have to always think what is the reason behind
22 it. That always seems to be the thinking that Indian
23 people have to take. And I think this is probably
24 another example of that. The only question I had,
25 because a lot of my questions was answered, was in

1 the paper that was passed out this morning. And I'm
2 curious why, maybe somebody has information regarding
3 this 25 CFR. Basically, it says that elder students,
4 ages 3 to 12, will enroll in public schools except
5 those enrolled in Bureau of secondary and operated
6 schools of the Interior. I'm curious why that was
7 included in that? I don't know why. Because I know
8 there's very few grant schools that receive
9 JOM funding. And a lot of it is geared towards
10 public schools.

11 And I, myself, have been raised in public
12 schools all my life. So I'm just curious why grant
13 schools or other operated schools are not included,
14 because I know our school is, because I received
15 JOM funding, so I'm just curious about that.

16 MS. YAZZIE: I don't know how traditional
17 process -- this mike works -- it's just like the
18 budget. Anyway, my name is Rose Yazzie; I spoke here
19 yesterday. And I am currently serving on the Navajo
20 Nation Board of Education, representing the Western
21 Agency of the Navajo Nation, which includes 18
22 chapters, local governments. And I have a lot of
23 experience with the JOM program, because I work in
24 the school system, and I handled the JOM program for
25 years.

1 I really totally believe that the
2 JOM program, the funding, does wonders for the
3 students. That are -- that really do need -- they
4 have a unique need, the Indian students.

5 And my question is, like, why is a fixed
6 count of 1995 being like a sacred count? To a lot of
7 us, that's outdated. Then on your handout it says
8 how should JOM count be updated in 2012? There's no
9 questions about it. It needs to be updated. It's
10 like that gentleman says, 17 years go, since 17 years
11 ago we have a lot of newborns. New school-aged
12 students. They do have a unique need, and their
13 needs need to be addressed.

14 And it's so important, this update needs
15 to be complete -- needs to be conducted ASAP. And
16 the new funding should reflect the new count.
17 Because it is important. It is an educational need
18 that is needed by our students. And you can do
19 wonders for this program. All you have to do is
20 become creative, innovative with ideas. And this is
21 the only program that is in the hands of the Indian
22 education community, which is the local parent
23 community that's in the school district. That's
24 where all the actions are. That's where all the
25 needs are. That's where the people can really

1 advocate for the needs of their students, their
2 children. They are the primary recipients of this
3 program.

4 So I strongly support updating the count
5 and have a new funding formula that will reflect the
6 new count, so more students can be served. So all
7 the newborns that have been born since 1995 can be
8 served. Thank you.

9 MR. DRAPEAUX: Thank you. And we do
10 agree. As you know, Congress stopped the count in
11 '95 and has opened the door to us to continue the
12 count. So now's about the mandate of the count, how
13 will we do it. And that's really what needs to be
14 identified by you, what your preference is.

15 MR. SCABBY: Bob Scabby, from Salt River.
16 I think in 1995 the perception was that, you know,
17 they didn't want to be counting students every year,
18 which it's been 16 or 17 years, so it's just like
19 dissing us. But recently, when they tried to do away
20 with the JOM funding, it was because it was perceived
21 as double-dipping. And anyway, Salt River wants to
22 recommend that the Bureau revisit student count at
23 the Congress. You know, they're the ones that are
24 insisting on it. But we have approached them to
25 revisit that, at least from self-governance, we

1 petitioned the congressmen to do that.

2 And we need to adjust it for JOM annual
3 base award distributions using the correct student
4 counts for this year.

5 You know that's only one part of the
6 battle. I wanted to support the argument that Joe
7 Garcia made. That's cutting right to the chase. Is
8 that we can complain all the way to the BIA or BIE,
9 but the decision on the budgets are made working with
10 and through the OMB. And self-governance tribes have
11 realized that.

12 And so we currently have what's called a
13 pilot project and tribal data exchange. We also have
14 a tribal data exchange committee that has -- we
15 petitioned for funding for that office, so that way
16 we can have a direct line into the OMB, the decision
17 makers. And we try to invite them to our
18 self-governance conferences so that way they can see
19 and hear from us. And half the time we're
20 successful.

21 But it's -- it's coming up that if this
22 tribal date exchange of this pilot program is
23 successful, then the budget that we need, you know --
24 to get a new student count without getting an
25 increase in the budget is just like rearranging

1 chairs on the deck of the Titanic. We need that
2 increase in the budget. And if they did that and
3 used 1995 level, I think our JOM director said it was
4 \$87 per kid. And our count has gone from, in 1997,
5 1,292 students, and currently, as of last week, it
6 was 2,907. So that's an increase of 1600 students
7 just on a little Salt River Reservation.

8 So it does need to be redone. But we
9 also need to get this into the right people who make
10 these budget decisions and that's the OMB. And the
11 President has shown that he will support the
12 Johnson-O'Malley program, because we do have lot of
13 innovative things. When I was going to graduate
14 school, I was asking what is JOM, getting back to the
15 basics, and it came back cash in lieu of taxes. So
16 the perception, you know, that we don't -- you know,
17 the states, they don't share, they do pay for the
18 students, but then the Indian students, you know,
19 there's a shortage there in the tax money, because of
20 the property taxes. And, of course, you know,
21 federal lands are not taxed property, and the
22 perception is that we don't pay any taxes, which is
23 not true. We pay a lot of taxes, you all know that.

24 But in closing, I just wanted to say
25 that, another thing, is that we go to Washington,

1 D.C., it doesn't matter if it's Republican or
2 Democrat, you vote for people who vote for Indian
3 Country, be they Republican or Democrat. And each
4 one of you in here states you know who some those
5 people are, some of them you can tell just don't pay
6 any attention to Indians. But then there are those
7 who really show an interest and those are the ones
8 you want to get reelected. Thank you.

9 MR. DRAPEAUX: Thank you.

10 Right here, and then back here.

11 MR. SWAIN: Yeah, I'd like to make a
12 comment. I made some comments yesterday about the
13 BIA --

14 THE REPORTER: What's your name?

15 MR. SWAIN: Oh, my name is Phil Swain
16 from Moapa; our reservation is located 30 miles north
17 of Las Vegas. If we're successful, we'll invite you
18 all out to our grand opening of our solar project.
19 But we hope to have Obama there too, that's beside
20 the point. But what I was going to say, and I heard
21 from people say it today, I've heard it time and time
22 again: I'm a product of the system, you know, the
23 BIA system.

24 And when I look at you up there, I look
25 at you as my sons, because my son is about your age,

1 my daughter's your age too. So now I've got
2 grandkids and they don't live on the reservation,
3 they live off. So that's where I have a problem with
4 JOM. But because I'm a product of the public system
5 I kind of know, and I knew as I was growing up, that
6 somebody was paying for my lunch, but I didn't know
7 why, you know, I figured I had a rich relative out
8 there. And I found out later that JOM was paying for
9 my lunch. You know, so much I was happy every time
10 lunchtime came around and they gave me a ticket. And
11 people would say to me, "How come you get all these
12 privileges?" I didn't have the answer then, but I do
13 now.

14 And what I was going to say is I hear
15 what Joe was saying and everybody else here, if you
16 look at the system, I mean, we're looking at this
17 total of, what is that, 21,000 [sic], they're
18 looking -- they're telling us, you know, I always
19 thought the people were in charge. Like we're in
20 charge of you guys. We're the people, we tell you
21 guys what to do, you don't tell us. You give us the
22 information, we make the suggestion and we make the
23 change.

24 And I'll give you a case in point. The
25 Bureau of Indian Affairs in the grant contracting

1 system there's a section called 273.71, or something
2 like that, but every year, and I didn't know this
3 until recently, that the budget process is now being
4 handled at Washington and filtered down to that SMAC,
5 or whatever that term you guys used yesterday. I
6 knew back in '74 and previous to that, the tribes had
7 no control over how the spending was, the TPA, give
8 me your priorities. JOM was not always at the top,
9 because we were more worried about our survival, and
10 638 came along.

11 And 638 said you can determine your own
12 destiny. You can do it the way you want. So they
13 gave you a dollar figure. And every year that dollar
14 figure came down and said -- I'll use my tribe for
15 example, in the law enforcement program, because for
16 a small price we get like \$100,000. Now, can you
17 imagine, who can make a program go with \$100,000?

18 Well, what's happened, because we're a
19 small -- we have a small casino that generates
20 revenue for us. We then take our money from our
21 revenue base and then we give it to our law
22 enforcement service. And we have to add another
23 200,000 -- well, this last time they called it the
24 "million dollar dream police department," because we
25 were sinking like a million dollars into our police

1 department. But none of that money was coming from
2 the BIA. The problem that we were running into, and
3 I told this to my tribal people, and being the
4 chairman, I tried to institute this in our system, is
5 that there is a system to all this madness. Is when
6 Congress gives you your allocation, your sole control
7 by the BIA that says, I'll just use a dollar figure,
8 you get \$100,000, and that's all you get.

9 And so you know what, if you have a
10 contract for \$100,000, and you submit that up to the
11 Bureau, the Bureau is happy because they don't have
12 to get up on the chair to say we contest this,
13 because no, you're within the budget that we said you
14 were going to receive. I told the tribe, I said,
15 next time we submit our budget for law enforcement, I
16 said, let's submit it for, somebody used the term
17 "reality dollars," let's submit our contract for what
18 it's going to take to run that program, not \$100,000.
19 We say we need \$500,000.

20 Now, what does that do to the BIA? That
21 says now you've got to negotiate with the tribe and
22 say, "Hey, we ain't got \$500,000 to give you, so
23 let's sit down and negotiate." I don't know how many
24 tribes do this, but there's very few that I know of.
25 And we were one of those tribes that did not sit down

1 and say "Let's renegotiate." And because of that, it
2 makes the Bureau's job a lot easier, because you're
3 within your allocations for that period.

4 Now, what the point I was trying to bring
5 up is that if you do it that way, everybody's happy.
6 But if you start to rock the boat and say no, we need
7 \$500,000, they're going to come back and say "Why do
8 you need that?"

9 I went to Senator Reid. Senator Reid's
10 my senator from Nevada. We went to Senator Reid,
11 because we had another project going, and he said, he
12 told me, I can always remember, he said, "You're the
13 tribe that doesn't ask for anything." You know, I
14 sat there and I was aghast, and I said "You're
15 right." Now, was that a pat on my back because we
16 were successful and we were making ends meet with our
17 own ingenuity, our own innovation to start a
18 business? I think it was. But at the same time we
19 still needed money to do these things.

20 So to kind of wrap up what you're talking
21 about this funding thing, is that once you start to
22 negotiate your contract, negotiate it for what you
23 think you're going to need, not what you think the
24 Bureau's can give you, like this figure, ridiculous
25 figure here. All you people that have JOM contracts

1 under 638, write up your program for what you need,
2 for your innovative ideas, for your cultural
3 identity, for your cultural languages.

4 We've lost that in our tribe. And I
5 praise the Navajos because they're still speaking. I
6 just know "ya-ta-hey," and that's about it. That
7 kind of gets me somewhere.

8 But anyway, that's what I'm saying. Is
9 that we've lost that, so if you do these things, it
10 comes down to statistics, which I almost flunked that
11 statistics course 101 in college, but the whole key
12 being is that you got to keep track of your record.
13 You got to submit this information to that man up
14 there. You know, I look at him, I thought he was a
15 white guy, but -- and that's another issue in itself.
16 But I always know the beautiful Indian ladies. In
17 fact, the lady over there in black, I said I know who
18 your boyfriend is, I said he's Colin Jay; he's white,
19 and he's got money, and he has investments. But
20 anyway, that's beside the point.

21 But if you get all these things, now
22 you've got information in your back pocket that says
23 this is what I need to run my JOM program. But the
24 Bureau told me not to do it that way, I can't do
25 that, I don't have that kind of money. Hell with the

1 Bureau, just do it. Let them negotiate with you to
2 say they can't do it. Then I can go see Senator Reid
3 and say "Senator Reid, look, here's my JOM contract
4 for this year, it's not no \$20,000, it's \$150,000.
5 That's what I need for my -- for our students within
6 the county school system."

7 And we actually are, I think, the second-
8 or third-largest school district in the United
9 States, our county. So I'm saying you have to get
10 off your cahoonies and you have to go out and fight
11 for those kind of things. Once you get those
12 statistics down, like for my law enforcement program,
13 I need \$150,000 to run it, not no \$20,000. And he
14 said "Oh, Phil, you really do need help." And I
15 said, "Well, yes, I do."

16 Now that I've got the statistics, when I
17 go fight OMB and the President and say look, here's a
18 little tribe from Moapa that has a need, well,
19 OMB looks at me and looks at the Senator and says
20 "Hey, you need anything? You mean, they were doing
21 this all on their own all these years?" "Yes, they
22 are."

23 Now, the whole key is statistics; you've
24 got to get that data together to be able to submit
25 it. This stuff here, what you're telling us, we've

1 got -- I would really be upset on this figure here,
2 and I would write to my senator, like somebody else
3 was saying, that we don't get involved in the
4 political process of how these things are being done.
5 Joe's mentioned this, and I'm kind of dismayed that
6 we don't have many tribal leaders here, and being a
7 former chairman I know they're involved in a thousand
8 other things so it's hard for them to just be here,
9 so I'm thankful for that, but as I go along and I
10 hear these things throughout the day, you know, the
11 system's there, and it can work.

12 But it bothers me, like I said yesterday,
13 we've been in these consulting meetings year after
14 year through different administrations. Now, as
15 we're nearing the end of this man's administration,
16 now the government is saying "Hey, you guys have to
17 have all your statistics together by the end of
18 September," you know, but if we had all the
19 information together, we'd just send it to you and
20 say "Here's where it is," and it won't be no \$21,000,
21 it might it be \$300,000.

22 Who gets that information? Does the
23 OMB have it? Who is going to be the head of OMB? I
24 used to know. Like Joe was saying, that's the people
25 you need to know. I mean, we criticize you guys for

1 giving us this information, but I think you need to
2 tell the people that, hey, this is how you can get
3 around it.

4 But you can't do that, because you're a
5 government employee. Me, as a tribal leader, I can
6 say what I want, and I hope they don't haul me down
7 to jail. Although the young man sitting there is
8 serious, and he says, "Phil, the government has his
9 eyes on us." So I had to stay in my room last night.

10 But anyway, that's all I want to say is I
11 think there's a solution to this madness, if we look
12 at it, and look at the CFR. A young man had a CFR on
13 JOM, and I think if it's like the 638, it contracts
14 with the BIA, you get that dollar amount every year.
15 And you say, hey, I don't like it, submit us the
16 budget that you need, and then we'll talk about it.
17 Then if you tell me no, I'm going to go to my
18 senator. "Senator Reid, look, I asked for this money
19 from the BIA and they won't give me." See, so he's
20 got that in his back pocket. So if everybody did
21 that, you know, then I think people would know.

22 And the last one, because I'm like the
23 gentleman from Hopi, I've been through the wars, the
24 Indian wars for our people, and initially I was
25 treated as "others," you guys know what others are.

1 It was "other Indians," we couldn't classify as
2 American Indians; we were the others with Hawaiians
3 and the Samoans and everyone else. And then I was
4 invisible. I stood up there and talked, Homeland
5 Security came along and I fought over here and said
6 this is what we need, and they looked over at me and
7 said "Who are you?" I said "Hey, I'm Phil Swain,
8 Native American, you're sitting on my land." "Oh, is
9 that right?" And he said "There's Indians around
10 here?" And I said "I'm one of them." And another
11 one said "Well, what do you have in your government?"
12 I said I have this and I have that, "You do?"
13 "Yeah." If you have the proper identification, you
14 can come and camp on my rez, but you're not getting
15 on there without it. You've got to have one-fourth
16 degree to get on there.

17 So these are things that are turning in a
18 round-about way. So I just think now I'm not as
19 invisible as I was before because I have a few
20 greenbacks in my back pocket. And the man out here
21 Romney, and I'm like Joe, we've come a long way,
22 baby, but we're going to go back ten steps if we
23 don't do what's right.

24 Thank you for your time. So there is a
25 solution to all this madness.

1 MR. DRAPEAUX: I think we'll have a
2 couple more comments and then we'll take a break.

3 UNIDENTIFIED SPEAKER: Good morning. My
4 name is (inaudible). I have some consultation
5 questions: Number 1, this is on student count. I
6 was doing some numbers, and I think we really shoot
7 up on the population of what the students, 1.3
8 million plus, and I think we need to show those
9 numbers to Congress or whoever is receiving this
10 information.

11 We do need to update our student count as
12 usual, and I think if we had a system in place, I'm
13 speaking on behalf of the Navajo Nation, student
14 count is done at school site, even to our contracting
15 officer, I'm sure most of the tribes have that in
16 place. So they don't take that long to get
17 information on students.

18 And then the other one is eligible JOM.
19 The only thing I see is that we need to add ancestors
20 for those tribes that don't have a degree of blood
21 count to prove. We need to put the ancestor, you
22 know, identification back in there for them. I think
23 a lot of the northern tribes use that, not the blood
24 one.

25 And then the number three question is the

1 coordinator, probably working out of D.C. office. I
2 think we need to have that, because years before we
3 had a contact person up there, and then it seems like
4 we've got better communication with that person on
5 our needs on the JOM program.

6 Back in '95 that's when Johnson-O'Malley
7 went out of money and JOM just out of money, and we
8 had several of us formed the Johnson-O'Malley
9 National Association, and we did speak to issues on
10 some of these things that are coming up now. And so
11 I think that we just need to refocus and start
12 working on these three areas here.

13 Johnson-O'Malley monies are very
14 important to the students or the school site to
15 implement programs that don't even exist at the
16 school site. For instance, parental calls. Parental
17 calls can pay for a lot of things that parents need
18 to pay for. As you all know, that our economy is way
19 down. A lot of people are out of job. They need the
20 money. And they don't have the money to pay for
21 those things for their kids. So I think that we need
22 to really get together and advocate for this funding.
23 And I'd like to see the budget increase to the
24 numbers of students that we have raised at per
25 student cap. I think it's way below with the economy

1 the way it is, I think they need to compare those
2 numbers.

3 Thank you.

4 MR. DRAPEAUX: Thank you.

5 Sir.

6 MR. KEE: Good morning.

7 (Speaking in native language.)

8 All the school board members and all
9 officials, my name is Steve Kee, K-e-e, from the
10 Navajo Nation. I represent a charter grant school.
11 JOM, my sister and her husband did reside here in
12 Phoenix, are products of JOM. I understand they used
13 to go to a lot of meetings of JOM, and I never knew
14 what JOM is. When I became a board member for a
15 public school, I began to know what JOM is. I've
16 gone to Washington, D.C. to lobby our elected
17 officials, our congressmen, who headed the Senate and
18 the House of Representatives.

19 Just by reading what Mr. Echo Hawk has
20 indicated, we are laboring under strict budget
21 deadlines but I respectfully ask you to find time to
22 by submitting written comments or by attending one of
23 the consultating sessions noted. A lot of us are
24 here, we need to address these issues. And on top of
25 that, don't say third parties' hearsay, they share

1 actually what's said here is actually recorded the
2 way it is. Don't dictate from it because these are
3 documentations. These are oral presentations that
4 the individuals that are here are providing
5 testimonies.

6 I was just testing one of my employees.
7 Actually, not the employee, but one of our workers at
8 the school, are we eligible for JOM funding. And the
9 test was no, we're under ISEP, Title II. So I guess
10 I have to go back to the school and see how can we be
11 eligible for JOM funding.

12 Under updating the BIE counts, student
13 eligibility, should the BIE reestablish a full-time
14 permanent JOM coordinator position? If so, what's
15 the location? Window Rock, Arizona, Navajo Nation.
16 That's where it shall be. It's a directive. So
17 that's where the coordinator position should be.
18 Then it goes on and on and on.

19 Then we go down to line item number 1,
20 should the 2011-2012 school year be used as the
21 JOM count year? We're already approaching school
22 year 2013, earlier it was mentioned 17 years behind.
23 So another year will pass. So we need to focus on
24 '12 and '13 school year student count by the time all
25 this information gets back to either D.C. or some

1 form of region office.

2 Again, on behalf of all Indian nation,
3 yes, we do need JOM. We need more funding, tenfold
4 is how much we need, in order to catch up.

5 And I do appreciate a moment of your
6 time.

7 MR. DRAPEAUX: Thank you. The official
8 record will remain open for written comment until
9 June 2nd, as stated yesterday. So if there are other
10 things that come to you that you would like to
11 comment on on the JOM component, please feel free to
12 submit written testimony.

13 All of the -- on the Indian Affairs
14 website, there's a consultation tab, as well as the
15 BIE website with all of the information available.
16 The comments will be taken. We have a court reporter
17 here, and the comments will be sorted as Mr. Tsosie
18 stated yesterday and put into a matrix for everyone
19 to review. And to understand our thought process
20 going forward.

21 We appreciate your time this morning.
22 We'll take a -- we're a little behind schedule.
23 We'll take a -- why don't we come back at 10:20 and
24 then convene for the next piece.

25 MR. TORTALITA: Just one more thing.

1 Thank you very much. I want to thank you personally
2 because I'm seeing light now, with you addressing the
3 way you're addressing the JOM.

4 Please continue that on behalf of our
5 people. Because some of us that are dinosaurs in
6 this category now are getting very tired and getting
7 ready to get out of the system, but I'm glad. It
8 makes me feel good of what the comments that you made
9 on behalf of Johnson-O'Malley.

10 Please stick to those. I as a tribal
11 elder ask you, because that's what I'm glad that
12 you've learned, glad you're educated on this. So
13 please send the statements that were made on behalf
14 of JOM. It's very important. Some us are not going
15 on. I'm looking forward to retirement. And as I
16 mentioned that I have a little five-year-old, I need
17 to show him what life is out there. We have so many
18 intermarriages now. I've taken him out to Navajo
19 Mountain and shown him how grandma lived, and that's
20 he's a part of this. Some of our responsibility as
21 parents.

22 Thank you very much. I want to thank you
23 personally in addressing this JOM. Please, please,
24 continue this for us. We are part of the experts in
25 the field of education.

1 Thank you very much.

2 MR. DRAPEAUX: Thank you. We'll
3 reconvene at 10:20.

4 MS. JIHNS: Good morning. Really quick I
5 have a question, Gloria Jihns, board member with the
6 Navajo Nation Board of Education. With regards to
7 number 1, updating the student count, if the update
8 is made, in terms of dollars, what are we looking at
9 across the Indian nation. And in the 17 years
10 there's a great deal of increase, so -- and how does
11 that reflect the cuts that the office is asking the
12 schools to look at? I would recommend that, you
13 know, we're looking -- we're, I think, if we do our
14 math correctly, projections at each one of the
15 tribes, we're looking into, like, billions of dollars
16 over the 17 years, there's that increase, and yet
17 you're asking the schools to make a cut.

18 So I would recommend that, you know, no
19 cuts. But looking at the reality of the student
20 count, let's look at that first before we even
21 suggest any cuts to our schools. And then also the
22 eligibility, I would also, yes, include the ancestral
23 records. And then number 3 would be to actually
24 advocate, yes, for having a position, a full-time
25 position in place.

1 So those are in the -- the three I would
2 like to add. Thank you so much. And I appreciate
3 what you're doing. And more power to you and thank
4 you so much for listening to us. And also the idea
5 of actually talking to Obama will be good, and
6 actually sitting down with him and seeing the reality
7 of things. And then also with the OMB and seeing
8 those people as well, too. So thank you so much for
9 all the work you do, and safe travels too.

10 MR. DRAPEAUX: Thank you. Let's take a
11 break.

12 (Recessed from 10:17 a.m. until
13 10:39 a.m.)

14 MR. ROESSEL: Let's go ahead and get
15 started with the last item that we have to go
16 through. This deals with getting comments on the
17 grant assurances and changes to that. The draft SF
18 424B assurance statement nonconstruction programs.
19 The BIE is seeking tribal input on revisions to the
20 provisions of Standard Form 424B, Assurance Statement
21 for Public Law 100-297 Tribally Controlled Grant
22 Schools.

23 The major input that we are looking at
24 receiving is in three areas. And those of you that
25 have been with grant schools about six years ago --

1 or six months ago, I was on that side of the table,
2 so you're familiar with this form, but sometimes we
3 never really read them carefully. So this actually
4 serves two purposes.

5 But the assurance statement accompanies
6 the transfer of funds from the BIE to Tribally
7 Controlled Grant Schools. The BIE is particularly
8 interested in tribes' perspectives on adding the
9 following to the assurance statement: issues
10 relating to environmental requirements, and issues
11 relating to the Elementary and Secondary Education
12 Act and individuals with Disabilities Act
13 requirements, otherwise known as, you know, No Child
14 Left Behind.

15 We're going to go through all of the
16 assurances so you have an understanding of the
17 context of these, as well as the specifics of them,
18 and then we'll talk about what we are actually, the
19 areas that we just mentioned about what we're
20 proposing. Assurance statement number 1, "Has the
21 legal authority to apply for federal assistance and
22 has the institutional, managerial, and financial
23 capability to ensure proper planning, management, and
24 completion of the program activities for which the
25 fund something provided." Assurance statement number

1 2, "Will give the awarding agency, the Comptroller
2 General of the United States and, if appropriate, the
3 tribal governing body, through an authorized
4 representative, access to and the right to examine
5 all records, books, papers, or documents related to
6 the award."

7 Assurance statement number 3, "Will
8 establish a proper accounting system in accordance
9 with generally accepted accounting standards."

10 Assurance statement number 4, "Will establish
11 safeguards to prohibit employees, appointed or
12 elected officials, from using their position for a
13 purpose that constitutes personal or organizational
14 conflict of interest or personal gain."

15 Number 5, "Will comply, as applicable,
16 with provisions of the Hatch Act, which limit the
17 political activities of employees whose principal
18 employment activities are funded in whole or in part
19 with federal funds." Number 6, "Will comply with any
20 applicable tribal, state, and federal environmental
21 laws and safety standards which may be prescribed
22 pursuant to the following: a) Institution of
23 environmental control measures under the National
24 Environmental Policy Act of 1969 and Executive Order
25 11514." Number 6 [sic], "Will comply with any

1 applicable tribal state and federal environmental
2 laws which may be pursuant to the following" -- we
3 went over that.

4 "b) Notification of violating facilities
5 pursuant to Executive Order 11738; c) Protection of
6 wetlands pursuant to Executive Order 11990; d)
7 evaluation of flood hazards in floodplains in
8 accordance with Executive Order 11988; e) assurance
9 of project consistency with the approved state
10 management program developed under the Coastal Zone
11 Management Act of 1972; f) conformity of federal
12 actions to state (Clean Air) implementation plans
13 under Section 176(c) of the Clean Air Act of 1995, as
14 amended; g) protection of underground sources of
15 drinking water under the Safe Drinking Water Act of
16 1974, as amended; f) [sic] protection of endangered
17 species under the Endangered Species Act of 1973, as
18 amended. Will comply with Lead-Based Paint Poisoning
19 Prevention Act, which prohibits use of lead-based
20 paint in construction or rehabilitation of residence
21 structures."

22 And number 7, "Will allow an inspection
23 for environmental and safety compliance." Number 8,
24 "Will comply with Section 106 of the National
25 Historic Preservation Act of 1966, as amended,

1 Executive Order 11593 (identification and protection
2 of historic properties) and the Archaeological and
3 Historic Preservation Act of 1974."

4 Number 9, "Will comply with existing
5 federal laws pertaining to background investigations,
6 including Public Law 101-630, Indian Child Protection
7 and Family Violence Prevention Act, and implementing
8 procedures 25 CFR part 63 and Public Law 101-647, the
9 Crime Control Act of 1990 and as codified in 25 USC."

10 Number 10, "Will comply with the required
11 financial and compliance audits in accordance with
12 the Single Audit Act Amendments and OMB Circular No.
13 A-133, 'Audits of states, local governments, and
14 nonprofit organizations.'"

15 All of those, I'm sure, the grant schools
16 here, you're aware of those as you receive your grant
17 in order to receive your money. So now we're coming
18 to what the BIA is primarily proposing and want a
19 consultation with. On March of this year, March 7th
20 and 8th, the BIA brought grant school leaders
21 together, as well as the tribal officials together,
22 and had a focus group to discuss the grant assurances
23 and changes that may be needed and listened to their
24 questions, their answers, and their suggestions. And
25 that's what follows and what was the impetus for this

1 being added.

2 These are the members of that focus
3 group. I think it's important to know it's from
4 throughout the country as well as a few BIE
5 officials. It was really a chance to hear from the
6 schools and the tribes.

7 And from that focus group the following
8 was suggested: From the focus group, "Will comply
9 with all applicable requirements of all federal laws
10 and regulations, and if applicable, tribal laws and
11 regulations governing this program." So that is one
12 item that we'd like consultation with.

13 The other one, number 12, a Department of
14 Education insert, much more specific than just all
15 federal laws, "Will comply with all applicable
16 requirements of all federal laws and regulations,
17 including Elementary and Secondary Education Act and
18 Individuals with Disabilities Education Act, and if
19 applicable, tribal laws and regulations governing
20 this program."

21 MR. DRAPEAUX: If I could, before we
22 continue questions, I'd like to -- this is Brian
23 Drapeaux -- I'd like to give you a little background,
24 I think, why this is important to the BIE. And
25 before I do that, I'd like to ask, anybody who has

1 made a comment earlier today, we want to make sure
2 that -- we put a sign-up sheet behind the, between
3 the computer and the video projection. We'd like to
4 make sure that we have your name spelled correctly
5 and which tribe you're from, so if you wouldn't mind
6 during this process walking up and just writing that
7 down clearly, so the court stenographer can make the
8 record clear.

9 I think what's important, oh, and then
10 there's one more piece, we're going to take down --
11 our computer has got to fly back to Albuquerque
12 before the end of this session, so I don't have to
13 make the plane, just the computer. And so we'll just
14 speak off the forms that we handed out.

15 What became -- coming in new to the BIE
16 there were a couple of things that were flagged from
17 the Department within the BIE and one was the A-133
18 audit process. And the BIE has a -- we had a
19 problem, and the problem is that the A-133 audits
20 that we oversee and that you are required to have
21 completed were behind; we had a backlog of audits
22 that were uncompleted. And so that's our
23 responsibility to assure that these audits get
24 completed in a timely manner, and that they come back
25 as clean audits.

1 Just to let you know, we had \$28 million
2 in disallowed costs through our audit process.
3 That's a big chunk of money. And through the audit
4 process, then, we started to take a look at how
5 what's driving the audits, what's driving the issues,
6 and then the grants assurance piece came forward, and
7 we started asking internal questions about how we
8 operate, what are we doing, and those types of
9 things. So the grant assurance came in and we
10 started hearing from staff about grant assurances.
11 We had certain schools in certain location that were
12 redacting sections of the grants assurances. They
13 were just blanking them out and then turning them in,
14 basically saying we're not going to do this. And
15 then we had other grant assurances come in saying
16 we're not going to sign it.

17 Now, for an administrator of federal
18 programs, that's a problem for us. I'll just say
19 that we cannot allow that to happen. We can't allow
20 our grant recipients to redact assurances. And we
21 cannot receive unsigned grant assurances. And so we
22 were starting to look at the structure in which we
23 communicate these issues to our schools and to our
24 constituents, and one of the things that we started
25 to do as well was to start talking to tribal

1 leadership, and what we said things was like, you
2 know, that your school is redacting grant assurances
3 and not signing grant assurances, and the tribal
4 leaders said "Why would they do that? We negotiate
5 638 contracts every year, we understand assurances,
6 we sign off on them. And we sign our contracts to
7 get our money. We understand we have to abide by the
8 rules of the federal system; why are the schools not
9 doing it?"

10 I was just kind of shocked by that, that
11 there was the disconnect between the actions of the
12 schools and tribal leadership in terms of governance,
13 because what we do know is that schools exist as a
14 result of tribal governance. Okay, that's the
15 relationship. That's the triangular approach, which
16 is you have the federal government, you have tribal
17 government, and then you have schools.

18 And so we started to have internal
19 discussions about what we were going to do to try to
20 resolve these problems and they are problems for us.
21 I mean, we still a federal responsibility. We have
22 all kinds of audits -- I mean, I got called up to the
23 Deputy Secretary's office, I sat in with the
24 assistant secretary for finance and a cadre of
25 people, and they proceeded to grill me about the

1 A-133 grant process or the A-133 audit process, and
2 what a terrible job we were doing.

3 It was, like, you know, first all, we
4 need to revisit this whole audit process, because we
5 are required by law to not only ensure that the
6 audits are done, but we also have a number of
7 compliance-type activities that we have to adhere to.
8 The program compliance, as you're well aware of, we
9 need to gather data, all kinds of pieces to this. So
10 what became clear and evident is we had a lot of
11 disconnects between these different functions within
12 the Bureau.

13 And so we've gone about attempting to ask
14 questions internally and then move towards finding
15 what the problems are and then working towards
16 solutions for those problems. And so one of the
17 clear things that we felt we needed to do was to
18 bring these assurances out to the field. And David
19 Talientos [phonetic], who is not with us today,
20 convened this focus group and what he was able to do
21 in that was to really start negotiating some language
22 that is liveable. And then, you know, some of the
23 folks that we had come in were some of the folks that
24 they were redacting assurances, we don't have to do
25 it, show me where in the law we have to do it.

1 Well, it may not be in the laws that
2 affect you, but by law we have to have certain
3 structures in place. Art mentioned the
4 Anti-deficiency Act and there are other acts'
5 regulations that we have to adhere to.

6 So what we're hoping to do today with the
7 forum is perhaps go slide by slide with you, as Monty
8 has done, and then talk specifically about the
9 assurance process, the actual form itself, problems
10 with it. One of the things that I did recognize and
11 that there's a disconnect on is that tribal
12 governments negotiate every year 638 contracts. We
13 don't negotiate these agreements every year. We
14 basically hold to a standard form, and if it doesn't
15 work, then the response is that people just redact
16 it. Or if they don't agree with the language, they
17 redact it.

18 So this is an opportunity for us to get
19 to this form, that is a critically important form for
20 us, it's a critically important form for you, and we
21 hope to talk about the specific language, if we can,
22 to get to the point to where we can set out a form
23 that's liveable, that's reasonable, and that meets
24 the responsibility that you have and that we have.

25 There is a piece of this here, that I

1 would like to highlight that may seem new to you,
2 that you are aware of them, one is the assurance
3 statement talking about the environmental safety and
4 compliance piece. Facilities is really a complicated
5 thing, in my mind. We had a situation this year
6 where over the past four or five years, apparently
7 the Environmental Protection Agency has gone out to
8 schools and they have done site reviews, and in these
9 reviews what they found is just a ton of
10 noncompliance EPA violations. So it called into
11 question the entire governance structure of our
12 school system, because what ended up happening was
13 that EPA came to the BIE and said "You've got all
14 kinds of problems out there that you need to fix. Do
15 you want us to fix the problems with grant schools?
16 Where do you want us to start?"

17 And so what ended up happening, though,
18 was what became highlighted is that the school
19 building itself became highlighted. That the
20 building is built by OFMC, which is under the
21 division of the DAS-M Division, managed by a
22 gentleman named Jack Reefer [phonetic]. School
23 operation and facility maintenance is done at the
24 local level and supported by -- the local school
25 level, but supported by BIA regional facilities

1 managers. But we're held financially responsible for
2 all of these findings in the EPA settlement.

3 So the first I heard of the EPA
4 settlement was probably three months into the job
5 where a group of solicitor lawyers came in the door
6 and sat down with us and said "Man, we saved you."
7 Okay. "What did you save us from?" "Tens of
8 millions of dollars, actually, hundreds of millions
9 of dollars in fines. We've reduced it down to 15
10 million." "Oh, you're saving us? Thank you."

11 And then we moved to a place in that
12 process where EPA said if you do not have -- you have
13 90 days to resolve all of these environmental issues
14 in your schools, in your facilities; they have to be
15 documented. You're going to work with your
16 solicitor's office, and you're going to send forms
17 out, and it all has to be fixed within 90 days. So
18 we're talking perhaps 10 years, 15 years, at least
19 five years of issues that had to be either resolved
20 within 90 days or a plan in place on how we were
21 going to correct it within an another 60 days from
22 the end of that period.

23 So we convened a group and got all of our
24 associate deputy directors and environmental office
25 person, Glen Allison, as well as OFMC staff and the

1 solicitor's office, and we embarked because there
2 were lists, and went down the list and they were
3 going to start charging us, on the 91st day, they
4 were going to start charging us a million dollars a
5 day. The BIE was going to get charged a million
6 dollars a day for noncompliance.

7 They didn't want to hear that we didn't
8 have any oversight or authority. They didn't want to
9 hear that we didn't manage the staff. They didn't
10 want to hear that these are long-standing issues that
11 schools have been aware of, that nobody took action
12 on. Nobody wanted to hear any of that. They said
13 day 91, a million dollars a day until it's fixed.
14 And we don't care where the money comes from to pay
15 us, but you will pay us.

16 So, of course, the deputy secretary,
17 assistant secretary all focused on this issue; it's
18 an ongoing important issue. And you need to
19 understand the realm and scope of what we're facing
20 in the education system within the BIE, that you have
21 this disjointed management accountability structure,
22 and then you have all this responsibility and
23 compliance component that we're ultimately
24 responsible for assuring happens.

25 90 days, and the last minute, our last

1 fix was completed. We had hundreds and hundreds and
2 hundreds of issues. A lot of effort goes into our
3 associate deputy directors, our education line
4 officers and their staff, school staff and others in
5 the BIE. We've got the deadline, no lies, five
6 years', ten years' worth of fixes done in 90 days.
7 23 states, 183 schools. It was incredible.
8 Incredible feat. It saved us millions and millions
9 of dollars. Those of you that were involved in it,
10 thank you very much. We appreciate that kind of
11 collaboration.

12 But it gets to the heart of the
13 governance piece for the BIE, how do we operate, what
14 are the guiding documents, what are the words that we
15 all agree to going down this road in terms of
16 education, and that's what we want to get to today.
17 And we appreciate the fact that we don't have an
18 overhead. I'm going to go ahead and allow Monty to
19 go back through each slide one by one, and then we'll
20 talk specifically about each of these items if you
21 have any questions on them.

22 Do you have a question, ma'am?

23 MS. BLUEEYES: Yes, I do. My name is
24 Faye BlueEyes Dzilth-Na-O-Dith School. Our concern
25 is pretty much everything in your document here,

1 they're already at the statutes, they're already in
2 our 100-297. So I guess we don't understand why,
3 then, you're adding all these things again into it.

4 The point of becoming 100-297 was to
5 alleviate all this extra bureaucratic oversight. And
6 that's primarily why 100-297 was created, but now
7 you're just putting this back in there where we're
8 becoming BIA-operated schools again. So I don't
9 understand the point of all these assurances.

10 When we received our first assurances
11 from assistant deputy director of administration's
12 office, he had things in there like we had to comply
13 with all of New Mexico laws, the State of New Mexico.
14 There was a whole list of them things that didn't
15 even apply to us as a grant school. And the other
16 thing he even put in there was it says we had to
17 comply with 93-638 when we're a 100-297 grant school.
18 So, yes, we refused to sign that assurance, but we
19 wanted them to provide the backup for some of the
20 things that were listed. And we did a big old letter
21 asking questions. As of today, we've never received
22 a response.

23 So when you talk about how some
24 organizations did not do their A-133, which is a
25 statute that we must do, whose fault is that? Who is

1 supposed to monitor that those are happening? So
2 it's like, it's frustrating when all these things are
3 being imposed on us again, which we're already
4 complying with.

5 So that -- this component of that
6 assurance is, we strongly oppose that, and it also
7 appears like there's another mechanism to control
8 grant schools, because when I look at this
9 organizational chart, you guys are talking about
10 saving money and how do we do that? I've been with
11 the school system for over 25 years, and when I
12 recall there was -- when there was no associate
13 deputy directors in this whole chart, all of a sudden
14 BIE appears with these extra slots here. From the
15 time we didn't have that to now, we've not seen any
16 increase in services or benefits directed to schools.
17 There's your 26 million that you could save by X'ing
18 all of that out. So that's my comment.

19 MR. DRAPEAUX: Thank you.

20 MR. BEGAY: Thank you. My name is Jimmy
21 Begay, with Navajo Nation Board of Education. Along
22 the line of what Faye was talking about, yes, I agree
23 with her, in 1966, the Self-Determination Act 93-638
24 came around. At that time some schools, five or six
25 schools went through that. And there's a lot of red

1 tape tied with that, so tribes screamed to BIA at
2 that time, as well as Congress, and then it was
3 amended in 1994 to sort of streamline this process
4 for schools.

5 But again, there was a lot of liberals
6 there. There was a lot of bureaucratic hoops to jump
7 through at that time. So in 1998, when 100-297 came
8 along, became the law, that was to hands-off from the
9 Bureau, totally. And according to a statement by
10 Faye, which is true, supposed to have very
11 streamlined regulations from the Bureau to the
12 schools under the grant status. I see what you're
13 trying to do here is all these statutes that existed
14 here already under 297, they're listed.

15 EPA, background that's an issue. So to
16 me it's -- it's another additional requirement to be
17 tied with the grant schools. Like statement 1, "Has
18 legal authority to apply for federal assistance,"
19 does that mean the grant school doesn't sign this
20 agreement? They can't apply for grants under the
21 federal system? Then on their assurance, talks about
22 the safety standards, we know a settlement
23 negotiating on a construction policy and procedures
24 for over about a year and a half, I guess, Mr. Monty
25 Roessel was on there and probably numerous other

1 people in here.

2 At that time we saw that between the BIE
3 operation as well as the ORCPIA, they couldn't talk
4 to each other. You remember that? We asked certain
5 things of the OFMC, and they would not comply
6 with it. For the two entities to get together and
7 draft some stuff, well, that didn't happen.

8 So a lot of these safety standards are in
9 backlogs and at that time it was about \$1.3 billion
10 on safety items and backlog. So a lot of schools
11 don't have the funds, they just put it into the
12 backlog. So I'd like to say, as Mr. Drapeaux says,
13 this is about if schools are not following the safety
14 standards, whatever, or facilities, are they liable?

15 The operation and maintenance costs have
16 dropped around 50 percent, they're just day to day
17 just for that. So this is -- we can't have this
18 here. Again, schools aren't going to upgrade the
19 standards for safety, we don't have the funds. One
20 school I know that has 4- to \$5 million of backlog.
21 Other schools that I know that has \$30 million
22 backlog. Backlog is just put into the computers and
23 it just sits there, because there's no funds to take
24 care of these. So what the funds that are available
25 comes out of O&M for the Bureau is just for

1 day-to-day minor maintenance. So I see it as a
2 problem if you look at it there.

3 Again, under environmental laws, we have
4 EPA or Office of Environmental Assessment or offices
5 that have gone to the schools in terms of
6 environmental, and they've defined some areas that
7 need to be changed, which is construction. Again,
8 the funds aren't there to do these things. They can
9 run up every year, every year, until some funds comes
10 up.

11 I also wondered if we have any
12 MOA placement of environmental EPA agency because of
13 this. If you say the schools will comply with this,
14 are they aware of this? That they'll pitch in their
15 50 percent and BIA will also pitch in 50 percent. I
16 think these are the problems that I see and will see.

17 Again, on statement number 6,
18 notification of facilities, what is that? Is that
19 again standards, those type of things? Is it the
20 same thing as safety standards for facilities? Then
21 again, a program, to go back to a lot of these items,
22 these items are in backlogs.

23 Also statement number 6 on page 6 it
24 talks about "Will comply with Lead-Based Paint
25 Poisoning Prevention Act," what about asbestos? A

1 lot of these schools that are dilapidated have a lot
2 of asbestos. It's not defined here. As well as a
3 lot of these schools that are old, 40 to 50 years
4 old. They would still have some lead-based paint
5 poisoning. We need funds to take care of these.
6 Funds aren't available.

7 So in a way, these are some of the things
8 I bring up, but again, I think under 297, 100-297
9 grant schools, they have to have a very, very
10 streamline between (inaudible) and the schools. So
11 again, it's a lot of these things.

12 Also, along the line, the BIE also
13 requires a lot of reporting to BIE. Where does it
14 say under 100-297 grant that says that schools will
15 do these things? There's tons of paperwork on Title
16 I, you know that. The grant one doesn't say that,
17 your report, Title I, on finances on programs, this
18 and that. Again, those should be streamlined, other
19 reports are required. So we're just get bombarded
20 with paperwork. People at schools do not have time
21 to do paperwork, paperwork.

22 Okay. I also wanted to say -- tell you a
23 story. I was watching a documentary the other night,
24 this comes up LINKTV.com. There was a documentary
25 that was done during President Bush's administration.

1 The documentary shows in a video that from the United
2 States \$20 billion in cash were shipped overseas to
3 Iraq to rebuild all of the stuff that's gone wrong
4 over there. Imagine, cash, they showed these are
5 wrapped new papers and everything that were shipped
6 over there. After everything was done, \$9 billion
7 was unaccounted for. Can you imagine, 9 billion?
8 They showed it, with all that's taking place over
9 there, we saw all these dollars, hundred dollars
10 bills were blowing away and people were rushing to
11 grab this money.

12 So how many of you know about this?
13 Anybody here know about this? He did. I was sitting
14 there, you know, here we run up to Congress and press
15 for so much money for our programs, facilities, we
16 can use that easily here for all these conditions.
17 So I wanted to share that story. I don't have a name
18 or a title of that documentary. If you go on
19 LINKTV.com, get on that, and show it to your people
20 and they'll know what happened to that money. So
21 9 billion was unaccounted for. They couldn't find
22 it. I was thinking about fill this out, \$20 billion.
23 Use this form. Thank you.

24 MS. SANDOVAL: Patricia Sandoval, Santa
25 Fe Indian School. I think this whole issue that

1 we're discussing right now has been -- has been the
2 biggest obstacle to establishing a good relationship
3 between the Bureau and the schools. When I took this
4 position in -- the position that I have right now,
5 and I have oversight of the reporting, I was told by
6 the then superintendent and the person that I took
7 the position from is that regarding the tribal grant
8 conditions of 100-297, you have to be very careful,
9 because this is where the Bureau tries to pull things
10 over. This is where they try to pull the wool over
11 your eyes. That was the direction that I was given
12 about, maybe, what, six, seven years ago when I took
13 this job.

14 So I've always been very careful with any
15 documents that came out regarding the tribal grant
16 conditions. So what, about three or four years ago
17 we had Van Amber [phonetic], and he worked for a
18 group of tribally controlled schools, because they
19 wanted -- we as tribally controlled schools wanted to
20 ensure that the Bureau was adherent and that we were
21 also adhering to what the specific laws were, excuse
22 me, rules and regulations that were part of 100-297.

23 But I guess the point I want to make is
24 that every year I get my document, tribally
25 controlled schools, and probably those of you

1 involved you've seen it, it's about that thick. What
2 I have to do is I go and read each page, and sure
3 enough, in red these are the things that they've
4 added this year. They've added this, added this,
5 added this. Well, why are you adding this, when you
6 have not talked to me about what you're adding?
7 Because this is a contract that we entered into with
8 the Bureau. You can't arbitrarily change a contract
9 that we entered into. Isn't that the law, that if
10 there's two people that come and sign a contract, can
11 I -- our superintendent back, what, how many years
12 ago, signed the contract for our school, Santa Fe
13 Indian School, 100-297 school; it was my
14 understanding that people can't arbitrarily change
15 things, unless I know about it.

16 But that's what's been happening with the
17 tribally control grant conditions. They insert it,
18 and they ask me to sign it, they put it in red, and I
19 say "No, I'm not going to sign it; the Bureau didn't
20 tell me about these things; they just included it and
21 now they want me to sign it." Now, maybe that's me
22 that didn't sign off on the grant conditions a few
23 years back. I have a good relationship with my ELO,
24 I called him up and I said "Why are you asking me to
25 sign this set of grant conditions, which is different

1 than the grant conditions I signed last year, and you
2 haven't talked to me about this. I'm not going to
3 sign this year; I will sign last year's, because
4 that's what I agreed to." So I think that's the
5 biggest problem that we have here, is that I want to
6 know if you're making changes to it before I
7 arbitrarily sign that document here.

8 But I also agree, someone said something
9 yesterday and I don't remember if they were talking
10 about -- I don't even remember what law they were
11 specifically talking about, but 100-297 is the law.
12 And that's the law. And that's what we agreed to.
13 And so what -- I also -- I also am wondering are all
14 of these things already in the grant conditions so I
15 agreed with -- and we're already doing these things
16 at Santa Fe Indian School.

17 So I guess what I'm understanding here is
18 that you have, how many, 121 tribally controlled
19 schools, and it makes it appear that all 121 of us
20 are not complying with anything. That's why you want
21 us to sign this paper. And obviously, it seems like
22 we're not complying with ESEA or we're not complying
23 with IDEA, but both of those things have their own
24 set of assurances that we take to the board every
25 year. We say here "Here, board, this is what you're

1 agreeing to; please sign these assurances," and the
2 board president signs the assurances. So you already
3 have those assurances from us. You have them with
4 IDEA. So now they're included in here? Why are you
5 including it if we're having to do that as part of
6 the IDEA application?

7 So I agree with what the tribal
8 divisional spoke about, and I don't want to have to
9 sign another document. That's my input.

10 MR. MOORE: Good afternoon. Good
11 morning. Again, my name's Henry Moore, I'm a board
12 member for grant school of the Navajo Nation. Going
13 back to assurance statement number 7, allowing for
14 inspection for environmental and safety compliance.
15 My background is I am a health-oriented person, my
16 background is in health, institutional health. I
17 served 12 years as public (inaudible) as secretary,
18 and I thought this was already done. That a routine
19 survey is done on several of these institutions. I
20 used to do school inspections. I inspected schools
21 at least biannually. And the reports went to the
22 appropriate entities.

23 My background in health for 30, 40 years
24 has taught me that to provide a healthy and safe
25 atmosphere for our students, especially students, and

1 our staff is part of the educational system. We do
2 provide the grants, the educational opportunities for
3 our students. We know that. But to provide that
4 educational opportunity, you've got to have the
5 health and safety environment to provide this.

6 Someone yesterday alluded to some schools
7 are old, dilapidated; that's true. We have asbestos
8 in our schools. We have problems with rodents, even
9 the new schools that were not constructed accordingly
10 allow insects and rodents to penetrate. One of the
11 teachers, at least at my schools, complained about a
12 rat or a mouse running around the classroom. And the
13 kids were having fun chasing it down. Well, they
14 were using it as amusement. But I thought the
15 inspections were already done, and you do have the
16 resources. Indian health services, OIH, like I said
17 I was an officer. And I did those routine as part of
18 my duties, be it a preschool, a high school,
19 elementary school, even a day school, done as part of
20 my duties, part of the things I used to do.

21 And sharing resources, we
22 could -- there's -- the Navajo Nation has Office of
23 Environmental Health Endorsement, which I was
24 responsible for putting together for the tribe, with
25 the help of a lot of sanitarians and using the state

1 resources, using state environmental resources, and
2 the counties and the federal governments. There are
3 standards already established. The institutional and
4 health standards are already established.

5 We know that the food service areas are
6 inspected twice a year. That's what our school does,
7 which is routine. Which is a major component of a
8 school, food service area. And that's done by
9 request, I understand. Facility management requested
10 these services. We talked about this over in one of
11 the conferences with Ms. Faye here, and also earlier
12 Mr. Chavez brought this up. We should get back
13 together and reinstitute this again for our schools.

14 So institutional health inspections,
15 that's not done routinely, only by request, but that
16 should be the heart of the whole program with the
17 schools and the administration that will honor that,
18 with the assurance that they should do this. And I
19 think it's necessary and it should be part of the
20 program. In order to provide the sectional
21 educational opportunities for our students, we should
22 provide them with a health and safety atmosphere as
23 well as buildings.

24 So the management got together and we
25 said we don't have the funding to fix this, how come

1 the budget cycle is different than the others? Their
2 budget cycle is different than the schools. So when
3 the school system -- school starts and things are on
4 a roll, they have nothing to resort to for resources
5 because they don't know how much they have. Because
6 you have to wait until October for them to do
7 anything for you. And here school's going. And that
8 could be compromised and talked about to where they
9 have a, say, budgeting factors for whatever, grant
10 schools or any schools and management so they can all
11 work together and get things done instead of holding
12 things up.

13 This is my question about the audit work
14 session we had, and that -- that goes to the top, I
15 guess; they make the decisions up there. So they can
16 compromise and get together and get the budget cycle
17 at least to make it easier to facilitate the program.

18 And I come from a health-related career,
19 I worked in public health services background and
20 also in the pharmaceutical lab as a lab technician,
21 so my background in environmental health is very
22 important and I emphasized that when I first became a
23 board member. Do you have a safety committee? Do
24 you have a form to report your incident reports? Is
25 there -- How do you follow up? Who do you talk to?

1 Oh, we fill out and send it to BIA. That's it.

2 Where does it go from there?

3 These type of things are very essential,
4 very important. And I come to find out that my
5 school doesn't have a safety committee, and
6 there's -- you've got to have somebody, especially in
7 a setting where you're dealing with consumers here.
8 Your valuable paramount responsibility is for your
9 students.

10 And that's where I'm coming from, and I'd
11 like to thank the people that are coming to this
12 consultation session, and I learned a lot and a lot
13 of concerns were issued. And there's a lot of heavy
14 feelings and a lot of major feelings and some
15 positive. And there are resolutions to anything. We
16 can sit down and talk about them and resolve a lot of
17 these issues. Thank you very much.

18 MR. DRAPEAUX: We'll go here and then go
19 here.

20 MR. EVERETT CHAVEZ: Good morning,
21 everyone, Everett Chavez, Santa Fe Indian School. I
22 have a couple of questions, one first is related to
23 the focus made in the selection of -- in Pueblo
24 Country we have 14 or 15 schools of which five are
25 tribally controlled. This is our second go-around

1 that we've not been asked to sit at the same table
2 that were negotiated through. We represent anywhere
3 from 60- to 80,000 people of which many, many are
4 kids. So that is the first question, how that
5 process was established.

6 And I think that Ms. Sandoval said that
7 sometimes I think it makes sense that we talk these
8 things through, and maybe then through that process
9 develop a list of who might be representative of this
10 group that was selected. So it's probably secondary,
11 although that's important, maybe we need to fix that
12 as well.

13 The one thing that I want to add, it's
14 been touched on, I'm going to just tell you a quick
15 background of our school. In 1976, we were the first
16 consortium of tribes that really sought, through 638,
17 to gain control of our school, because the thinking
18 then and is even stronger now, if we're going to
19 control our destiny, we have to control our
20 education. It's the premise that we used in tribes
21 through 638.

22 Since then we have been, over many years,
23 trying to regain control of the property that
24 historically has been in place for Pueblo people with
25 the Santa Fe Indian School. In the year 2000 we were

1 successful in handing those properties and land
2 transfers back to us, and while we were celebrating,
3 it was not days later that we realized that we may
4 not have asked for all that we should have. And we
5 were celebrating that land base was given back to us,
6 and all of what the BIA considered to be assets were
7 transferred to us. But over time we realized that
8 these were buildings that were 117 years old, and
9 they were falling apart. Creating not only safety
10 hazards, but also threats to human health, and the
11 end environment, because they were literally using
12 building materials at the time, lead was mentioned,
13 asbestos, and we had situations where literally the
14 second-floor building hallways were slanting at a
15 degree where you had to kind of walk sideways to make
16 sure that you remained upright. And that's how
17 seriously the buildings had fallen into disrepair.

18 And one of the issues that I have, the
19 assurance statement number 8, it was in that
20 transfer, the land was taken into the trust for the
21 19 pueblos of New Mexico and they're in addition to
22 the 100-297 governance authorities that we signed
23 onto. Subsequently it created another mandate for us
24 and we fought against not only at the national, but
25 at the state historic preservation office, that for

1 many reasons that are different from what we have to
2 deal with, they insisted that we go through the 106
3 process. But so we, in addition to that, there are
4 sentiments that were clearly verified that these
5 buildings were safety hazards to our community. Not
6 only that, but they weren't watertight so when
7 asbestos becomes friable, they begin to impact a
8 larger area than just ours.

9 And so we took a sovereign position that
10 we would not comply with 106. The BIA, when they
11 transferred all of these buildings, did it once and
12 for all. We could not find the vehicles and the
13 Bureau had to put them back on the list so that they
14 could help us mediate and even mitigate the asbestos
15 issues.

16 So we made a decision that we were going
17 to demolish those buildings that the Bureau
18 supported. Politically there was a lot of uproar,
19 even SHPO went to the state governance, but luckily,
20 we had a good relationship at the time with Governor
21 Richardson and he told SHPO to back off.

22 So we've been managing to demolish those
23 buildings that were really hazardous to our students
24 and our surrounding community, but the thing is when
25 we are asked to comply with these assurances,

1 sometimes the dollars that are attached to these
2 aren't thought about. To this day we have spent
3 almost \$5 million of what should have been dollars
4 that BIA should have done for us before that transfer
5 was or had it happen, to not only demolish the
6 buildings, but to address those other ongoing issues,
7 because the transfer of the land with no knowledge to
8 manage that 115 acres, so we had to bear that burden
9 as well. So every time we talk about assurances I
10 know that accountability is important. And I think
11 as 100-297 schools, we took on that responsibility,
12 for the most part. I think we do all the things that
13 are necessary to hold ourselves accountable to the
14 agencies and even our constituent governments.

15 But I worry that we allow -- as sovereign
16 nations, normally we keep state like SHPO and others,
17 they come to the borders, but they can't penetrate
18 the borders, and the requirements that they have for
19 other non-tribal populations, because there's always
20 things that have to do with this, so when I think
21 about the National Historic Preservation Act, they
22 have a different priority. Theirs is probably more
23 aesthetic. But even if we keep up with the
24 aesthetics, to whatever the requirements are, costs
25 money. They have these mandates, but there's no

1 dollars to address them. So when we embrace things
2 like the National Historic Preservation Act without
3 thinking about the dollar implications, that makes me
4 worry a little bit.

5 But this really covers the other areas,
6 number 6 and number 8, in terms of facility safety
7 and the Environmental Protection Agency requirements,
8 those in and of themselves are cost-intensive and
9 labor-intensive. As I had to, like I said, spend
10 about \$5 million to create management infrastructure
11 of the property, but also in addressing some of these
12 facilities back to the Bureau were assets, but really
13 ended up being liabilities to us. A huge, huge
14 costly liability. So the Historic Preservation piece
15 has many more complications, like the 106 process, is
16 tedious and cost-intensive. Thank you.

17 MR. DRAPEAUX: Thank you. We'll go here
18 then here, okay.

19 MR. ERVIN CHAVEZ: Ervin Chavez, Navajo.
20 I guess someone, Mr. Moore, was saying, I'm looking
21 at the 100-297 right here in front of me and 2505
22 reads in A, "An annual audit statement reporting
23 revenue and expenditures as defined by the costs
24 established by the grantee." B states the "Annual
25 financial audit conducted pursuant to the standard of

1 Single Audit Act of 1984." I guess you can go on, I
2 mean, the point is, all of this is already in
3 100-297. And you look at even the accounting part of
4 it, it talks about -- even goes into a section where
5 a tribe has to request for retro sessions. I guess
6 the names of the people that you put up there on the
7 screen, were they the negotiating rule-making team or
8 who came up with these assurances? I guess that's
9 the other question I had. Because I'm not sure, it
10 almost seems like our own -- it seems like some of
11 our own tribes are starting to take those positions
12 where they're not really following the law itself.
13 And if they were to sit down and look at some of the
14 laws, like Mr. Chavez stated over there about the
15 buildings, if you look at some of the buildings, if
16 you compared the budget side by side, new
17 construction for schools was zeroed out, even in this
18 budget.

19 So it doesn't make sense when you're
20 asking schools to sign assurances about paint and all
21 that kind of stuff. Mr. Moore brings up the issue of
22 asbestos. There's a lot of schools that our kids are
23 occupying that are full of asbestos. Those are
24 things if you put it all side by side doesn't make a
25 whole lot of sense. And I would be one to state

1 that, you know, really, if you look at it, I would
2 say let's not sign -- be forced to sign any more
3 assurances for these grant conditions.

4 Because that, in itself, if you look at
5 the number of the grant conditions, that has become a
6 binder on its own anymore, and we've got to put a
7 limit to that and stop that. I think if you go back
8 and look at what's in the law, you already have that
9 authority to request them to do that, why are you
10 asking for additional ones? I guess that's all I'm
11 saying.

12 MR. DRAPEAUX: Thank you.

13 MR. COHOE: Thank you. My name's Bennie
14 Cohoe, I'm from Pine Hill, New Mexico. I'm with
15 Raina Navajo Community. Raina Navajo School Board
16 has been contracting with the federal government for
17 over 40 years. Our contract predates 1986. Our
18 first contract came under the Live Indian Act
19 contract with the Department of Interior under their
20 commissioner, Dennis Bruce. But the documents and
21 rules and regulations that are catching up with us,
22 now we're talking about 422 -- 424B, that has come up
23 recently. But Raina Navajo School Board does not
24 object to these new requirements. But what's missing
25 in all of this flow of documents is that unfunded

1 mandate. We need funding to do background checks.
2 We need funding to meet these environmental
3 requirements. We need funding to keep up with all of
4 the Elementary and Secondary Education Act. These
5 are the requirements that schools, tribes, have to
6 receive funding for to meet these new requirements.
7 The Individual Disability Act, that's another.

8 We have structures, facilities, buildings
9 throughout Indian Country, Indian reservation, that
10 which Indian tribes occupy while they're using these
11 structures to school their education, health centers,
12 other tribal operations. And if they were previously
13 constructed through nefarious construction funds,
14 these new rules and regulations were not there when
15 these structures were put up.

16 So, in essence, to catch up with the
17 game, I think all of us here have to band together
18 and inform. First go home to do an inventory with
19 whatever structures that we occupy, that we use, and
20 put a dollar figure to it. And see what this now
21 requires us to do or to have in order to be in
22 compliance. And then submit those dollar figures to
23 Congress, as Mr. Garcia said. If it's Obama, if you
24 still have hope in Obama, good luck.

25 And then also, if you make this

1 information available to federal OMB, I think that's
2 where the answer lies right now as it is. And also
3 to get BIA, which is the whole Department of
4 Interior, to line up with us. And I spoke with some
5 of them as to what our issues and concerns are. I
6 think this is an initial meeting to where we can
7 actually communicate our needs and concerns to.

8 And they're here to pick up the
9 information to take it back to central office. I
10 know that we have an increase in deputy assistant
11 secretaries, but then again, the more the merrier
12 because they can cover more grounds to help us
13 generate information that's needed, so the Congress
14 can get the information that's needed from our
15 country as to what our actual needs are that can be
16 conveyed to them. Because regardless whether it's a
17 Republican-controlled House or other in the Senate,
18 they still need to hear our message and our needs,
19 because, as I hear it, sitting here yesterday and
20 today, we don't need to put BIA on a vacation. They
21 got more work to do for us.

22 Because those of us that have treaties,
23 they have treaty obligations to fulfill. And they
24 haven't done that. They have trust responsibility,
25 they need to fulfill that. They haven't done that.

1 We also have many unmet needs. And they haven't
2 helped us meet the needs that we have here that we
3 speak about. So we need to have the Department of
4 Interior and Indian tribes to continue to work
5 together.

6 Maybe the other thing that the Department
7 of Interior can do for us is also reopen the door to
8 the White House. We had a White House conference
9 with the President when he came in. I think with
10 this note and directive through his executive order
11 is calling us back. We have now identified where the
12 shortfalls are in the way of funding. There's a lot
13 of needs of the Indian Country that hasn't been met.
14 There's a lot of responsibility and trust activity
15 that has been squandered. We need to get some
16 recoveries. And some of the problems that we see
17 here today is that we talk about young people, what
18 about our elderly, our senior citizens, they need
19 help. Under the planning -- health service planning
20 with IHS, once you get to be 50 years old out in
21 Indian Country, you're no longer suitable to continue
22 living to receive healthcare. That's what it seems
23 like.

24 So we forget, we just focus on young
25 people, our grandkids, great-grandkids, what about

1 those that raised us, that have talked and are still
2 with us, they need help now. So we need to remember
3 them. Under the BIA system, the family service
4 activities out on the reservation, there's a lot of
5 neglect. There's a lot of abuse. That needs to be
6 still kept for continuance of our senior citizens and
7 elders. We can't forget them as well.

8 So what we need to do is I feel that we
9 need to go back to Obama, this is an election year,
10 and remind him what has happened within the last
11 three or four years under his administration. And if
12 he could get a second feather in his hat by
13 organizing his finance people and Congress to go the
14 second round and come back with a new plan as to what
15 our nation, the Indian Country, would look like in
16 the next four years, and then I could see us getting
17 behind him and continuing. But then again, we're
18 here today because they want to save approximately
19 \$20 million by streamlining some of the services that
20 we're receiving out here within Indian Country.

21 So I also just wanted to comment, I want
22 to say that if Bronner Group, LLC also had an
23 opportunity to assess what the Department of Interior
24 has accomplished, in meeting the unmet needs of the
25 Indian Country and see what their recommendation is

1 in the way of the federal government meeting the
2 treaty obligations that we have with the federal
3 government. And that report has also been released,
4 that should not have been left out in their
5 assessment.

6 So I don't know if we, as Indian tribes,
7 even validated the Bronner assessment, even evaluated
8 the report and did we say it was correct or not
9 correct? I think we need to respond to that report
10 as well. So most of the time that needs to go on and
11 continue has to come from us, and I just want to say
12 that get all of us together, because as Indian
13 tribes, as we've done it in the past, we never
14 established a united front.

15 When we go before the state legislature,
16 we go before Congress, we're always divided. We
17 don't present one agenda. We have to present over
18 400 different -- over 500 different agendas before
19 Congress. When we go to -- before a state
20 legislature in New Mexico, we present over 27
21 different agendas. It happens. And that's why we
22 haven't gone anywhere or made any progress in our own
23 nation within our tribes or even within our
24 community.

25 So I request that we begin to continue

1 the dialogue that we started today and we continue.
2 And I would like to invite BIA back out to the Indian
3 Country. There's three our four of our other
4 consultations that are scheduled between now through
5 May, but then even afterwards, we still have time to
6 put a better plan together that we can respond to
7 what the Obama executive order is requesting.

8 And thank you for letting me comment.

9 MR. DRAPEAUX: Thank you.

10 MR. FOHRENKAM: Good morning, or good
11 afternoon. My name is Robin Fohrenkam. I'm a school
12 board member from the Gila Crossing Community School
13 of the Gila River Indian community. I'm also the
14 president of the Native American Grant School
15 Association, better known as NAGSA. I have a
16 document resolution that I would like to submit to
17 the group today. "The Native American Grant School
18 Association, Inc., in support of developing Bureau of
19 Indian Education reorganization plans that strengthen
20 local control and maximize Indian participation in
21 the direction of education services as provided by
22 Tribally Controlled Schools Grant Act, Public Law
23 100-297. Whereas, the Native American Grant School
24 Association, Inc, corporation, is a long-standing,
25 collaborative organization of grant schools and

1 homeliving programs that is organized to act in the
2 best interest of Native American grant schools and
3 homeliving programs. NAGSA is a multi-tribal
4 organization, in part, organized to comment on
5 matters of common interest to grant schools and
6 homeliving programs. NAGSA is informed of the
7 current BIE reorganization plans which are the
8 subject of consultants. NAGSA is concerned that the
9 current reorganization plan will be similar to other
10 reorganization plans in which services are
11 diminished, centralized and administrative savings
12 are omitted from the BIE budget instead of being
13 redirected to grant schools which are all critically
14 underfunded, especially in areas of Tribal Support
15 Cost Grant, construction and operations and
16 maintenance."

17 I'm going to submit this document to you,
18 I'm not going to go to through the whole resolution,
19 but I'm going to skip down to the "Now therefore be
20 it resolved. Number 1, Engage in a consultation
21 process in which school board representatives, school
22 officials, and teachers serving Indian students have
23 a voice and role in the reorganization process as
24 they have first-hand experience as to what works,
25 what does not, what can be improved upon and what

1 should be rejected and redesigned. Number 2, Utilize
2 the Indian Self-Determination and Education Act and
3 Tribally Controlled Schools Grant Act as fundamental
4 authorities to facilitate BIE streamlining in light
5 of the proven record that the transfer of program
6 responsibility to the tribal school boards under PL
7 93-638 and PL 100-297 enhances program effectiveness,
8 cost-efficiency, and accountability."

9 There are several more here, but I'm not
10 going to go through all of them. I'm going to submit
11 this to you, but it ends up with "We hereby certify
12 that the foregoing resolution was duly considered by
13 the Board of the Native American Grant School
14 Association at a duly called meeting at which a
15 quorum was present, and that the same was adopted by
16 a vote of 15 in favor, 0 opposed, and 0 abstained on
17 this 18th day of April, 2012."

18 I want to submit this, please.

19 MR. DRAPEAUX: Thank you.

20 We have a young lady up front. We're
21 getting close to the end of our session, so I just
22 wanted to alert everybody, but feel free.

23 MS. SOCKYMA: My name is Evanette
24 Sockyma, Hopi Day School and I also sit on the Native
25 American Grant Schools as a vice president. We have

1 all heard about the common core standards. How do
2 you explain the common core standards and what does
3 this mean in detail? I don't know if this is still
4 in the works, it probably already is. That's what
5 we're stating here, what this already is.

6 Also the assurance statement number 4 in
7 your standard form, says "Will establish safeguards
8 to prohibit employees or elected officials from using
9 their positions for a purpose that constitutes
10 personal or organizational conflict of interest, or
11 personal gain."

12 In the declaration policy on the right, a
13 tribe or organization described in the policy, A, may
14 enforce its rights under subsection A(2) of this
15 section, and this paragraph includes the right
16 relating to any such tribes or organizations pursuant
17 to the dispute authority described in Section 2508 of
18 this title.

19 This does impact our Self-Determination,
20 but does the Bureau have a different policy that
21 we're not aware of. It does state in your policy --
22 in the declaration policy the recognition be the
23 commitment and the national goal. Also, in the
24 President's order in Section 3(B)(6) further, the
25 tribal sovereignty, by supporting efforts consistent

1 with applicable laws to deal with the capacity of
2 tribal education agencies and TCUs, to provide higher
3 quality of education services for Indian American
4 children.

5 Also, in your presentation, the numbers
6 are dwindling, which I've had to deal with already.
7 How are we to educate our students on these numbers
8 that are still going down. Remember, it was and
9 still the Congress's obligation to produce the
10 highest quality education for our children.

11 So far it is more money for the
12 bureaucrats and the money -- and the money for the
13 schools stays the same, even less than promised. We
14 have had the people that are to have cushy
15 retirements are doing so while the schools continue
16 to get funded at the same level. No increases or no
17 decrease -- and more decreases.

18 And today I hope that the talks here are
19 for the benefit of our generations to come, and not
20 to benefit the Congress. For we are all created
21 equal, or we should be. So that we can actually have
22 the funding and the support of the BIE and the BIA to
23 which they have already prepared through their policy
24 here.

25 We hope that this resolution here helps

1 to support our concerns and our voices are heard here
2 today, so that others that may also join in on us and
3 make a resolution regarding these standards here that
4 you are implementing on us.

5 Thank you for having us here, us from the
6 Hopi Nation, and our president here, our chairman,
7 for having the opportunity to speak, but we do hope
8 that these talks here are being heard and not just
9 being put on paper.

10 As well, thank you, and for everybody
11 here that you have shown the dedication to help to
12 change these things that they are implementing on us,
13 and that we have already complied with so far, but
14 they want us to comply more and more and more.

15 Let us hope that these talks here will
16 somehow shake them up and wake them up, you know, so
17 that they can actually do what they were saying, you
18 know. Do what they were promising for us. Thank
19 you.

20 MR. DRAPEAUX: Mr. Garcia?

21 MR. GARCIA: Thank you again. I stepped
22 out for a little bit, Joe Garcia from Ohkay Owingeh,
23 to get on this call. And it's not very good news on
24 the call, but I won't have to share all of that with
25 you. A couple of questions: I know that you began

1 to explain the reasons behind why you're adding this
2 additional language. And so I have to consult with
3 my little computer here. Question is, what is the
4 purpose of the additional assurance statement? And I
5 got a glimpse of that, and you said because you are
6 unaccountable as well as the tribes are
7 unaccountable, but the failures of the accountability
8 were on your shoulders, and so you're translating
9 that down to the tribes that are under PL 100-297.
10 That seems to be unfair.

11 There are other ways that you can ensure
12 that the compliance issues that are addressed, they
13 had to be a continuous process. They can't be let's
14 do the audit, hope for audit compliance, then we jump
15 and react. And you take really, really drastic
16 measures. And to me these are drastic measures. So
17 I've got a couple of questions relating to that.
18 Does it strengthen the agreements? Does it
19 strengthen the purpose? Does it strengthen the
20 performance of the program or the schools by adding
21 these additional assurance statements?

22 If it does, then it could be considered.
23 If it doesn't, then why bother? The second question
24 is, what is the intent of the inclusion of these
25 additional statements? And that's what I said, you

1 all mentioned that because you failed the audit test
2 or the audits, whatever. And the other question is,
3 how many PL 100-297 schools are there? 134 or
4 something like that?

5 MR. DRAPEAUX: 125, approximately.

6 MR. GARCIA: Okay. What percentage of
7 those were not compliant?

8 MR. DRAPEAUX: I can't tell you off the
9 top of my head.

10 MR. GARCIA: I can guarantee there were a
11 lot that were not compliant. It might be appropriate
12 to implement some policy changes in the agreement,
13 but if it was less than 20 percent, there are other
14 means to fix that, and so I don't know what those
15 numbers are. But if those schools are then
16 compliant, it should be known way ahead of time that
17 they are in noncompliance, not wait until the audit
18 and so measures can be taken and so again we're going
19 into reaction mode. And we're at a critical point
20 now, so we're imposing this is new statement on
21 everybody to include those that have been compliant
22 to begin with.

23 And then the statements that have -- that
24 won't be included in this, the new assurance
25 statements, at least 5, 6, 9, 10, and 11 are there --

1 are somewhat included in the terms of the funding
2 agreement that's signed by the tribe. They're
3 already included in there. So adding additional
4 language is a duplication of that.

5 And then the question is will the -- will
6 the assurance statements hinder progress of these
7 schools? If they will, then we're trekking on the
8 wrong approach.

9 And finally, if you add additional
10 assurance statements, will costs be increased to the
11 institution? And if costs are increased, I bet, and
12 I'm really not a gambling man, but I bet that 99.9
13 percent of that funding, additional funding would not
14 be made available to those institutions.

15 So thank you for your time and I want to
16 thank you all for marching on with this endeavor.
17 And I commend you for hosting these sessions, and I
18 know it's hard to do, but I think at some point in
19 time it's a way of engaging. And the tribes have to
20 do their part as well to ensure that they run
21 high-quality operations, and sometimes we forget
22 about that, and bring back to attention that, you
23 know, we're servicing our people.

24 We're servicing our students. We're
25 looking for our vision, hopefully, to have a greater,

1 better, safer place for our young ones than we are
2 in. And if we are doing that, driven by our vision,
3 then we're doing the job. Or we're doing close to
4 the job. But if we're not, if we're driven by
5 politics and self-agendas and all that kind of stuff,
6 then we're going to fail and we're not doing our job.

7 Too late for us. We're getting old, but
8 if we're creating something better for our little
9 ones, that's really what it's about. And if you
10 consider that, we are working toward that cause and
11 vision and hopefully will make it better. Thank you.

12 (Speaking in native language.)

13 Thank you very much for everything that
14 you've done.

15 MR. DRAPEAUX: Thank you. We're -- we'll
16 do final comments and then we'll wrap up for the day.
17 I just want to let everybody know that specific
18 comments, again, can be made until June 2nd -- up to
19 June 2nd. We'll ask that you make specific comments.
20 One of the things that Director Moore thought was
21 important, that those items that were kind of hot
22 button items, we want to bring to the field, and
23 we're not just -- I think coming from the perspective
24 as we all are, the issue of the problems are
25 well-defined.

1 We all know what the problems are, what
2 we're looking for today is solutions to the problems.
3 Understanding and trying to balance these
4 responsibilities, as you all have, is important, is
5 something that we're very aware of and that we really
6 are looking for specifics. We're looking for
7 language that can be -- that can be utilized to
8 maximize your opportunity and meet the
9 responsibilities that we have.

10 So we'll expect more dialogue with BIE
11 going forward. We think it's important. We think
12 that the issue of Indian Education in terms of
13 stature and position in the federal government needs
14 to be raised. We think it's done by dialogue and we
15 want to ensure that we know what all the challenges
16 are in the field and that we are doing our part in
17 terms of trying to eliminate the redundancy that may
18 exist in our current structures.

19 That's very tip of everything that we
20 want to do. We want to make corrections where we
21 can, reduce the amount of paperwork and the time that
22 everybody has to implement and buy into systems that
23 you can live with and we can live with, and that
24 would move us towards better outcomes for students.

25 So if Dr. Roessel has a final statement,

1 then we'll conclude for today.

2 MR. ROESSEL: Yeah, I would just like to
3 say I apologize for any confusion that I created by
4 the way I jumped in. I'm too used to sitting on that
5 side, that I was making my list of all the things
6 that are wrong with this type of stuff. I was still
7 sitting as if I was a grant school, of course, and
8 I'm sorry we kind of jumped off and got confused with
9 the issue.

10 Because I think if you looked at some of
11 these assurances, I think you have to look closely
12 and, of course, assurances are legal, so if you look
13 at the language in there, a lot of people talked
14 about the -- the inspections, will allow inspections.
15 It doesn't say you will perform inspections, but you
16 allow them.

17 Some of these assurances are in relation
18 to issues that we are facing all the time. The
19 question Mr. Garcia asked about how much, what
20 percentage of the schools, I don't know the
21 percentage either, but I want to give you -- Brian
22 Drapeaux mentioned \$24 million in questioned costs.
23 I do know that 13.8 of that 24 million is Navajo. So
24 we have to do a better job of that.

25 So some of these assurances, you've all

1 seen the No Child Left Behind, it's this thick. Then
2 you have the edition that's a little more. The
3 assurances highlight some of those areas that we seem
4 to have issues with out in the field. So they're not
5 additional assurances, but sometimes they're pulled
6 out to highlight to say we find a lot of problems
7 with audits. So we highlight that on the assurance
8 page. You already have either grant assurances when
9 you go through the process with your grant, but we
10 pull it out and say don't forget this, because we
11 have a lot of problems in this area.

12 Same way with ESEA, I'm not going to do
13 that report. We're required by the Department of Ed
14 to turn in these reports. They give us that money to
15 pass on to the schools, and in return, we have to
16 report. So that's why that's highlighted there. So
17 some of these, the assurances -- and again, I
18 apologize because I just jumped in ready as if this
19 was everything -- these aren't all the things, and
20 you must do that; that's not what this is.

21 What this is, is a clarification of some
22 of that trying to highlight the EPA audits that were
23 mentioned earlier, the grant schools because you are
24 a 297 school, that million dollars a day, that would
25 be paid for by the grant schools. We were told that

1 this last time, that's why all the schools, line
2 officers, BIA, BIE work so hard, because a part of
3 that would come from the grant schools, a big part.
4 So we, you know, we work together in that area.

5 So these assurances are not in addition
6 to, but a clarification of. And I think that's --
7 and again, I come back to apologize for any
8 misunderstanding that came up from there.

9 I wasn't here yesterday for the
10 streamline, I don't know if it was said, but I want
11 to, you know, with Navajo here and others, the
12 streamlining is one way that we're saying it, but
13 from my perspective, we have an opportunity to create
14 a school system that reflects what we do.

15 Right now the present system is a federal
16 agency. It is not a school system. We are a school
17 system. Find me one school district in this country
18 that is organized like the BIE is right now. It's
19 not there. So to me this is an opportunity through
20 this consultation to say, wait a minute, what we've
21 done in the past has been done by -- we tweak it, we
22 change the name from agency superintendent to line
23 office to education program administrator. This is
24 an opportunity to change the system to reflect what
25 we do, and our business is education.

1 And that's why we come to you in this
2 consultation process is to help hear from you how
3 that can change, not the job duties of the ELO, not
4 those type of things, but what kind of system. This
5 is a system that you're talking about. At Navajo
6 we've been meeting with the tribe a lot, and what we
7 done is we have a phrase that "We're in love with the
8 problem." "We're in love with the problem." And so
9 we're always talking the problem. Now when we get
10 together, Department of Education, and BIE, and
11 schools, it's no more problems, just solutions.

12 And so this process is, again, we're
13 coming in rather than just changing this and say
14 "sign it," what Director Moore wanted in this
15 consultation of the assurances, what we saw with that
16 initial group that was selected really quick, because
17 we wanted feedback. We sent the information out to
18 line offices and we sent it out to schools and we
19 didn't get a lot of response. We didn't get a lot of
20 response.

21 At Navajo we contacted the Department of
22 Education and asked them to come up with names. And
23 so it was done quickly to try to get some feedback so
24 we'd have a starting point with us. Because, you
25 know, one of the issues that comes up in this process

1 is that if you have nothing -- nothing concrete to
2 talk about, you talk about all these other things.
3 And so we wanted to have some focus and that's why --
4 and that's how that happened, but this is an
5 opportunity for everybody now to add to that
6 discussion.

7 And that's what we want with Director
8 Moore, rather than just create this, that's what we
9 want. So we really do want that feedback on these
10 assurances.

11 That's what I have again just to
12 reiterate that up to June 2nd we have the ability to
13 have written comments.

14 Yes.

15 MR. ERVIN CHAVEZ: Dr. Roessel, with all
16 respect to you with your position, as well as
17 representing, quote, unquote, the federal government.
18 I guess I have a real problem, Ervin Chavez with
19 Navajo. Numbers are thrown out, when you say 13
20 million and that is with Navajo. You use
21 questionable costs. I'd like for -- and that's where
22 I was coming from whenever I said it's already in the
23 law. Where I think it's Mr. Moore's responsibility
24 to enforce that, what's already in the law. You need
25 to identify those schools, go to those schools, and

1 break it down and take the questionable out of it.
2 And say this cost is not justified. And I think
3 talking with some of the other schools, I think there
4 was a big number that was thrown out as questionable
5 costs.

6 But then after he was set down, that
7 number really came along and was a very little
8 number. And I guess that's why I say that I'd much
9 rather see you throw numbers out that are real
10 statistics rather than say "questionable costs"
11 because that makes it really sound that Navajo is
12 terrible, and I don't think so.

13 You know, these assurances, I guess the
14 way I look at it is, it would be like tribes coming
15 forth with an assurance to you and the gentlemen that
16 were sitting there saying we want to you sign this
17 assurance that said you will deliver trust
18 responsibility. How many of you will sign that
19 assurance? No, you wouldn't, because you'll come
20 back and say, no, there's already a law that covers
21 that.

22 And vice versa. That's the way we think
23 too. There's already a law that covers all this.
24 All you need to do is enforce it on schools that are
25 truly violating that. And I would like to see that,

1 Dr. Roessel. I really do. It really comes down on
2 what these schools -- like he's saying, don't punish
3 the whole class for the few students. And that's
4 what this is doing.

5 That's all that I have. Thank you.

6 MR. ROESSEL: Thank you. I understand.

7 MR. HERRIN: Have nothing further from
8 me.

9 MR. ROESSEL: One last thing, If you can
10 please sign in, if you've spoken today, for the
11 official record.

12 (Proceedings concluded at 12:22 p.m.)

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CERTIFICATE

BE IT KNOWN that the foregoing proceeding was taken before me, ROBIN L. B. OSTERODE, Arizona Certified Court Reporter No. 50695; that the proceedings were taken down by me in shorthand and thereafter reduced to computer print under my direction; that the foregoing pages are a true and correct transcript of all proceedings had upon the taking of said proceedings, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 2nd day of May, 2012.

Robin L. B. Osterode, RPR, CSR
AZ CR 50695

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