

1 PROPOSED REGULATIONS FOR
2 STATE COURTS AND AGENCIES IN
3 INDIAN CHILD CUSTODY PROCEEDINGS
4 "ICWA PROPOSED RULE" - 25 CFR 23

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8 TRIBAL CONSULTATION

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10 April 20, 2015

11 Hilton Portland & Executive Towers

12 921 SW Sixth Avenue

13 Portland, Oregon

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17 SINEAD R. WILDER, RPR, CSR, CCR

18 Court Reporter
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1 APPEARANCES:

2 Panel Members:

3 Larry Roberts
4 Principal Deputy Assistant Secretary
5 Indian Affairs

6 Rodina Cave
7 Senior Adviser to Assistant Secretary
8 Indian Affairs

9 Vanessa Ray-Hodge
10 Office of the Solicitor

11 Gina Jackson
12 Senior Fellow IPA
13 Indian Child Welfare

14 Angie Campbell
15 Office of Indian Services, BIA

16

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1 PORTLAND, OREGON; MONDAY, APRIL 20, 2015

2 3:30 p.m.

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4 TRIBAL CONSULTATION

5 LARRY ROBERTS: All right. Good afternoon,
6 everybody. We're going to go ahead and get started
7 here this afternoon.

8 I want to start off by saying thank you to
9 everyone for attending this tribal consultation this
10 afternoon.

11 Before we get started, I've asked President
12 Vigil if he would open us up with a blessing.

13 (Greeting spoken in Native language.)

14 GIL VIGIL: Good afternoon. It's always an
15 honor to be asked to do a prayer, especially for a
16 meeting of this type. You need to have the wisdom
17 and fortitude because of the issues at hand and do it
18 in a good way for -- on behalf of our kids.

19 (Blessing by President Vigil.)

20 LARRY ROBERTS: Okay. Thank you, President
21 Vigil, for that.

22 There are a number of open seats over here
23 in this end of the room. And -- and please -- I hope
24 everybody can -- can find a seat.

25 So for this afternoon we're going to -- we

1 have two hours for this tribal consultation. And we
2 have a number of folks here with us today from the
3 Department of Interior.

4 We also have a number of folks here from
5 the Department of Justice, and from Health & Human
6 Services.

7 So I'm going to start with the panel here.
8 My name's Larry Roberts. I'm the Principal Deputy
9 Assistant Secretary for Indian Affairs and a member
10 of the Oneida Nation of Wisconsin.

11 And with me today I have Rodina Cave, who's
12 a Senior Policy Adviser to Assistant Secretary
13 Washburn.

14 I have Gina Jackson here, who's a Senior
15 Fellow with Indian Child Welfare here with the Indian
16 Affairs, but permanently with Casey Foundation.

17 I have Gina Jackson -- or I'm sorry, Angie
18 Campbell, Office of Indian Services BIA.

19 Debra Burton --

20 DEBRA BURTON: Here.

21 LARRY ROBERTS: -- right here with us from
22 Office of Indian Services.

23 And Vanessa Ray-Hodge from the Office of
24 Solicitor's Office.

25 I also have the Regional Solicitor, Lynn

1 Peterson, who's right there in the back of the room.

2 And then from DOJ, I know I saw Sam Hirsch,
3 Principal Deputy Assistant to the Attorney General
4 from ENRD. Amber Blaha is with him.

5 Gina Tyner-Dawson from Department of
6 Justice.

7 And I think I saw JooYuen Chang here from
8 Health & Human Services.

9 There she is. Great.

10 So we are going to run through a Power
11 Point relatively quickly. The idea is that it's just
12 to provide a very general overview. The idea is to
13 get comments from all of you.

14 I would ask that because this is a tribal
15 consultation, that we ask that tribal leaders and
16 representatives from tribal leadership speak first.

17 And I would ask that folks try to -- we
18 have a very full room here. I would ask that folks
19 try to keep their initial comments to five minutes or
20 less, so that everyone has a chance to provide
21 comments. And then we'll -- we'll circle back with
22 folks, if you want to give additional comments that
23 are going to be longer than five minutes.

24 And I should say everything is being
25 transcribed by our court reporter here. So please,

1 when you do have comments, introduce yourselves. Let
2 us know which tribe you're from. And we'll -- we'll
3 get all of that transcribed.

4 And then that'll be put up on our website.
5 And it'll be part of the rule-making process.

6 I also want to encourage everyone to submit
7 written comments. And the end of the comment period
8 is May 19th of this year.

9 So -- okay. So I think that that's
10 everything in terms of how the consultation will be
11 run today.

12 So we're going to just jump right into it.
13 All of you should have a Power Point in front of you.

14 I think most folks are -- in this room are
15 familiar that ICWA was passed in 1978 to promote and
16 protect the best interests of the child. It
17 established minimum federal standards. And it
18 articulated a strong federal policy that -- wherever
19 possible, that that Indian child should remain in the
20 Indian community.

21 So in 1979 the Department promulgated
22 guidelines for state courts implementing ICWA. From
23 1979 to 2014 those state courts had implemented ICWA
24 in a variety of ways.

25 We held the listening sessions shortly

1 after the Baby Veronica case with tribes to hear
2 about what we could do more in terms of guidelines
3 and potential regulations.

4 We had issued updated guidelines in
5 February of this year. And today we're talking about
6 the proposed rule that was issued in March.

7 And it essentially tracks a number of the
8 provisions in the guidelines.

9 So we've added new definitions. This is
10 just a general overview of all the different
11 provisions of this new subpart in terms of state
12 courts' and state agencies' implementation of ICWA.

13 We have definitions here that we're seeking
14 comment on, including active efforts, voluntary
15 placement, imminent danger -- physical danger or
16 harm, a number of the definitions here that we'll be
17 talking a little bit more in detail.

18 But we encourage your comments on all of
19 these definitions.

20 We have general provisions in terms of the
21 purpose. The purpose of this is to promote
22 consistent ICWA implementation in all states.

23 We have the applicability that ICWA applies
24 whenever an Indian child is the subject of a Indian
25 child custody proceeding. And this includes status

1 offenses and juvenile delinquency proceedings. And
2 we make clear in the preamble and in the proposed
3 rule that there is no so-called existing Indian
4 family exception.

5 So the proposed rule provides for agencies
6 and state courts, that they must ask at the outset
7 whether the child is an Indian child. And if there's
8 any reason to believe that the child is an Indian
9 child, then courts must -- the courts and the State
10 agencies must treat that child as an Indian child
11 until and unless it is determined that it is not an
12 Indian child.

13 We have provisions in here with regard to
14 the -- obviously, voluntary placements, and that ICWA
15 applies to these if the parents consent to placement
16 or termination.

17 And now we're going to talk a little bit
18 about the pretrial requirements. I'm going to ask
19 for Rodina Cave to cover those portions of it. And
20 I'll turn it over to Rodina.

21 RODINA CAVE: Thank you.

22 Good afternoon.

23 So as Larry already covered, what are the
24 pretrial requirements for -- for the proposed rule?

25 Agencies and state courts have to ask if

1 the child is a -- is an Indian child. And there's --
2 there's examples that are given in the proposed rule
3 for, you know, when there is reason to believe that
4 the child is an Indian child.

5 And also, there's, in the proposed rule, a
6 requirement that, if the consenting parent wants
7 anonymity, then the agency or the state court must
8 keep the relevant documents under seal, but that --
9 but still provide notice and obtain verification from
10 the Tribe.

11 So when does the requirement for active
12 efforts begin? And the proposed rule provides that
13 it -- it starts as soon as the case or the
14 investigation may result in a placement of the Indian
15 child outside of the custody of the parent or the
16 Indian custodian.

17 And as Larry says, it applies in all
18 investigating whether the child is an Indian child.

19 The proposed rule provides that only the
20 Tribe may determine whether a child is a member or
21 eligible for membership in a tribe.

22 And the agency must notify all tribes in
23 which the child is potentially a member. And the
24 proposed rule sets out the steps for if the child is
25 potentially a member of more than one tribe.

1 And after there's a designation of the
2 tribe, the agency must notify all tribes that receive
3 notice of the designation, file the designation with
4 the court and send -- send it to each party or person
5 that received notice of the proceeding.

6 The proposed rule also provides that a
7 state court must dismiss an action as soon as it
8 determines that it lacks jurisdiction, for example,
9 that the tribal court has jurisdiction.

10 When is notice required? Or how is this
11 process of notice?

12 An agency or a court -- when an agency or
13 court knows or has reason to believe that the child
14 is an Indian child.

15 And, you know, we list the proceedings out,
16 voluntary or involuntary proceeding, temporary
17 custody, et cetera.

18 And how is -- how is notice required?

19 By registered mail with return receipt
20 requested to each tribe where the child may be a
21 member, and parents, and, if applicable, the Indian
22 custodian.

23 It also -- the proposed rule also provides
24 time limits, and, specifically, that a proceeding may
25 not begin until ten days after each parent or Indian

1 custodian and tribe receives notice. And that
2 there's -- you know, if they receive notice and
3 request an additional 20 days, then 30 days after --
4 after that receipt.

5 So there's also provisions regarding
6 emergency removal, that it must be as short as
7 possible; that the agency or state court must
8 document whether removal or placement is proper and
9 continues to be necessary to prevent imminent
10 physical damage or harm to the child.

11 Promptly hold a hearing to evaluate whether
12 that continued removal or placement is necessary.
13 And immediately terminate when emergency -- when the
14 emergency has ended.

15 Continuing with emergency removal, the
16 agency must treat the child as an Indian child until
17 a contrary determination is made, and conduct active
18 efforts, as provided under the rule, to prevent the
19 breakup of the Indian family as early as possible
20 before removal, if possible.

21 Ask and take steps to document -- take and
22 document steps to confirm whether the child is an
23 Indian child. Again, notice -- notify parents,
24 custodians and tribe about each proceeding, and
25 maintain records that notice was provided.

1 Continuation with emergency removal, the
2 court must decide if removal/placement is no longer
3 necessary to prevent imminent damage or harm to the
4 child. This would happen at, you know, any court
5 proceeding.

6 And temporary custody should be less than
7 30 days.

8 Sorry.

9 Temporary emergency custody should be less
10 than 30 days, unless there's a hearing with testimony
11 from a qualified expert witness, or extraordinary
12 circumstances exist. And emergency removal or
13 placement must end as soon as imminent physical
14 damage or harm no longer exists, or the tribe
15 exercises jurisdiction over the case.

16 And I will pass this along to Angie
17 Campbell, who will talk about transfers to tribal
18 court.

19 ANGIE CAMPBELL: Thanks, Rodina.

20 And thank you all.

21 The transfers to tribal courts. The
22 proposed rule now clarifies that the request for
23 transfer for -- to tribal court can happen in any
24 stage. Also, it includes special factors that
25 weren't considered before.

1 So for example, the state court now, under
2 this proposal, can't just make a decision about the
3 transfer arbitrarily, for example. Or, like, for
4 example, how engaged is the child with the tribe.
5 Or, you know, are they members -- truly enrolled
6 members of the tribe.

7 So that's a significant change.

8 Another area that was included in the
9 revisions is the placement or termination of parental
10 rights.

11 Now, the courts have to truly engage in
12 an -- an active efforts -- in active efforts. And
13 this conversation about active efforts has come up,
14 because reportedly, oftentimes the courts were often
15 ambiguous. Or there was a lot of gray area in terms
16 of what effort -- active efforts meant.

17 But now, you know, they have to be done
18 prior to the removal of the -- of the child. But
19 more importantly, I think now the new provisions
20 require that the tribe and the extended family be
21 engaged in this effort.

22 Also, too, the proposal now states, in
23 addition to the active efforts, that there has to be
24 clear and convincing evidence that is supported by
25 testimony.

1 The courts may also order the termination
2 of parental rights only if the evidence is beyond a
3 reasonable doubt. The rule specifically clarifies
4 what is and is not considered clear and convincing
5 evidence.

6 Of significant importance is -- is the --
7 the provisions under the qualified expert under the
8 new provisions.

9 You know, the regulations specifically --
10 proposed regs specifically line out by order what
11 constitutes a -- an expert witness.

12 And I want to make note, too, that, first
13 and foremost, a member of the child's tribe would be
14 considered first and foremost an expert witness,
15 someone who is familiar with the community and
16 customs of that culture where the child is
17 potentially being removed.

18 And that was short and sweet, and now I'm
19 going to turn it over to Gina Jackson.

20 GINA JACKSON: Hi, everyone. I'm going to
21 be talking about voluntary probation, disposition and
22 post-trial rights.

23 And I'm going to highlight a few areas and
24 not go through every bullet. You do have the Power
25 Point. You do have the proposed rule itself. And you

1 know, those are reference for more detail.

2 So for voluntary proceedings, I'm going to
3 highlight that the agency and the State must ask -- so
4 it's both, not just the agency, but the agency and
5 the -- and the state court as well.

6 And so that is very important, that both are
7 asking.

8 Under dispositions, under placement
9 preferences, an agency must follow ICWA or tribal
10 placement preferences, even if there's a request for
11 anonymity.

12 And also provide clear and convincing
13 evidence that it conducted a diligent search to meet
14 the preferences, and explain if it couldn't be met in
15 order to depart from placement preferences, only if
16 the Court finds good cause.

17 And good cause must be recorded on the
18 record. And the party that is asserting good cause
19 has the burden to prove good cause by clear and
20 convincing evidence.

21 Good cause to depart from placement
22 preferences must be based upon the parents' request,
23 child's request, if they're able to understand the
24 decision, extraordinary needs of the child, or -- that
25 are established by the qualified expert witness.

1 What it does not include is bonding or
2 attachment from the placement, or just the
3 unavailability of a placement. And that a
4 determination by the Court that active efforts were
5 made to find placements.

6 Good cause may not be based upon
7 socioeconomic status of any relative or other
8 placement.

9 Under proposed trial rights, procedures must
10 be established to vacate an adoption if consent was
11 obtained by fraud or duress, or a proceeding violated
12 ICWA. That's really important.

13 Also, who can ask for it to be -- to be
14 invalidated, which could be the child, the parent, or
15 even the custodian, the tribe. And regardless of
16 whose rights were violated.

17 And then this is really important. It's
18 requirement of notice of change in child's status,
19 such as change in placement. So notice must be given
20 for that.

21 Continuing on with post-trial rights, I'd
22 like to highlight that in the new proposed rule,
23 States must establish a single location for all
24 records of voluntary or involuntary foster care,
25 preadoptive placement, and adoptive placement that is

1 available within seven days of request by the child's
2 tribe or the Department of Interior to obtain
3 information regarding the child, such as a petition,
4 complaint, orders, placement determination, findings,
5 statements, all of that. So that's something new.

6 The comments can be made on any part of the
7 provision of the proposed rule. That we also are
8 looking at tribal consultations in -- here, of course
9 is our kickoff. We're going to be doing one in Rapid
10 City; Albuquerque; Minnesota; a teleconference that
11 anyone can participate in, regardless of where you
12 are; Tulsa, Oklahoma.

13 And then public meetings for other voices to
14 be heard. So not specifically tribal leaders and
15 their designees, but everyone else.

16 And we're having a public meeting this
17 Wednesday here in Portland at the BIA offices. And
18 the information for that is in the letter that's one
19 of your handouts. Also Rapid City -- again,
20 Albuquerque, Minnesota, a teleconference, and then in
21 Tulsa.

22 The one important thing to remember, that
23 the deadline for comments on the proposed rule is
24 May 19th. And email really is a preferred method to
25 submit comments in writing. But the email address is

1 comments@bia.gov.

2 And you know, I hope that each and every one
3 will consider making comments. This is a chance to
4 make your voice heard.

5 LARRY ROBERTS: Thank you, Gina.

6 So just in terms of next steps, after --
7 after we're finished with the tribal consultations,
8 and after the comment period closes, we have a whole
9 team of folks at the Department of Interior.

10 And we also work very closely with our --
11 our federal partners at the Department of Justice and
12 HHS.

13 And we'll work together to work on a final
14 rule and -- based on all the comments that we
15 receive. So we're hoping to get a lot of helpful
16 comments through this process.

17 Obviously, the final rule will look a
18 little different than the proposed rule, based on the
19 comments that we receive.

20 So with that, I would like to open it up to
21 any comments from tribal leaders or tribal
22 representatives first. And then we'll open up the
23 floor to others.

24 And just please remember to say your name
25 and the tribe that you're with, and so that the court

1 reporter can get that down.

2 Thank you.

3 LIZ MULLER: Good afternoon. I'm Liz
4 Muller. I'm the vice chair for the Jamestown
5 S'Klallam Tribe in Washington state.

6 And first of all, I would like to thank the
7 BIA for these new guidelines. I feel that it's very
8 important in supporting our family and children.

9 Secondly -- well, I also just wanted to
10 make a mention that I will be sending informal
11 comments. But I just wanted to make this brief.

12 Secondly is the -- our -- one of our issues
13 within the states is the state courts. Sometimes we
14 can have a decent relationship with a caseworker and
15 be working right along and -- and where a state court
16 will just completely ignore what we have worked on
17 and place children in non-Indian homes.

18 I think that these guidelines will be
19 advantageous to keeping our children in their tribes.

20 Wednesday -- I just wanted to make this --
21 there's a public comment time at the BIA office from
22 nine to twelve. And I really hope as many of you can
23 be there. Because there's going to be a lot of
24 adoption attorneys and agencies there that make money
25 selling our children.

1 So I just want to -- you know, we just have
2 to be there very strongly to -- and I believe that
3 you have to register. So make sure that you're
4 registered, so you're not coming in and being turned
5 away.

6 But that, you know, there -- adoption
7 attorneys don't have a lot of sad stories about our
8 children and how things did not -- I see Debbie did
9 not work. Well, we still have the same stories on
10 our side, too.

11 But the point I really wanted to make
12 for -- to BIA and to all of you is that we are a
13 nation who have a right to our children, just as any
14 other sovereign nation has a right to their children.
15 That's the bottom line is that that is our right.

16 China does not want to send any more
17 children to the United States to adopt. They have
18 the right to do this.

19 Russia, the same way. We should have that
20 very same right. We are a sovereign nation, and our
21 children belong to our country.

22 So thank you.

23 LARRY ROBERTS: Thank you.

24 THE COURT REPORTER: Larry, I have a
25 request.

1 When people say their tribal name, I'm not
2 from this area, and I don't know all the tribes. So
3 if they could just say it very slowly, that would be
4 helpful.

5 Thank you.

6 LARRY ROBERTS: Sure.

7 So the -- we want to make sure that all of
8 the comments here are transcribed accurately; right?
9 That's why we're all here, to get your comments on
10 the record.

11 And so our court reporter isn't familiar
12 with a lot of the tribes in the area. And so if
13 you'd just say your tribal name slowly.

14 You may have to spell it, if -- look at the
15 court reporter when you're giving your information.
16 You may have to spell it for her. So we just get an
17 accurate record.

18 MS. MULLER: Okay. Liz Muller. I'm from
19 the Jamestown S'Klallam -- that's S, apostrophe,
20 capital K-L-A-L-L-A-M.

21 THE COURT REPORTER: Thank you.

22 NANCY DUFRAINE: Good afternoon. My name
23 is Nancy Dufraine -- D-U-F-R-A-I-N-E. And I'm here
24 representing our chairman, Don Secena -- S-E-C-E-N-A,
25 from the Confederated Tribe of the Chehalis

1 Reservation here in Washington state.

2 We have a couple comments on the rules.
3 And like my colleague Liz, I also, before we get into
4 that, want to thank the BIA for proposing
5 rule-making.

6 Thirty-seven years is a long time to have a
7 federal legislation that is not followed
8 consistently. And it is a new day.

9 So hopefully, with -- with some new
10 guidelines and regulations, we can finally start
11 implementing Indian Child Welfare consistently across
12 all of the states and all of the courts.

13 Because our children live all over. They
14 don't just live on a reservation.

15 With that, a couple comments specific to
16 definitions.

17 One specifically around domicile. The
18 definition that is proposed under domicile seems
19 pretty vague. And in the -- in the occurrence of
20 parents who are not married, the proposed rule states
21 that the domicile will be with the mother.

22 But it doesn't necessarily state that if
23 the father is -- is acknowledged, and is a tribal
24 member, and the child may be living with him or on
25 the reservation. That may be a conflict. And/or

1 it's just not clear.

2 So I think clarification on the definition
3 of domicile is something that you may want to
4 consider.

5 Because nowhere in the definition of
6 domicile does it say where the child is residing. So
7 we strongly recommend that we add language that
8 identifies where the child is currently residing and
9 give recognition to -- to that, specifically.

10 The other area that we had some concerns
11 about is under the time frame in the post-trial --
12 post-tribal rights. Excuse me -- post-trial rights.

13 And there doesn't seem to be any time
14 frames identified within the proposed. And we -- we
15 think that there should be some -- some timelines
16 attached to that, reasonable timelines.

17 Not necessarily two weeks or -- or, you
18 know, three days. But reasonable timelines that may
19 be as long as -- as 90 days, where we can assure
20 that -- that the good -- things are done in a good
21 way.

22 The other thing that -- that we see that
23 may be a total omission is, in the event that there
24 is a -- and you kind of alluded to it, but it wasn't
25 real clear -- either a failed adoption or a change of

1 circumstance after adoption has been finalized, if in
2 the case that an adoption is finalized.

3 And in those situations we believe that the
4 Indian Child Welfare Act starts -- again, that Tribes
5 be notified if there's any change of circumstance
6 that prevents that child to permanency. Because that
7 family still is available, and that tribe still is
8 interested.

9 So I think those are the two areas,
10 specifically, within the rule-making that we -- we
11 have chosen to comment on here.

12 We are also preparing for in-depth written
13 comments.

14 The other -- the major question that we
15 also have is, How are these going to be enforced?
16 How are they going to be monitored?

17 And it's one thing to have rules. Because
18 we know that we've had a federal law for 37 years
19 that has not been implemented, and has not been
20 monitored, and has not been followed.

21 So I think we have some questions as to
22 the -- the actions that we expect from the Bureau of
23 Indian Affairs. Because you are our trustees. It's
24 your responsibility. Because -- because you have
25 that trust responsibility over us, over our children,

1 and over our lives, and over our future. We ask you
2 to exercise that.

3 The other thing is is we have -- many of us
4 have gotten grants from the feds for everything under
5 the sun. And everything recently, within the past
6 15 -- 10, 15 years, there's always a -- a caveat that
7 we -- we need to collaborate and coordinate with
8 other providers and other agencies. And on a
9 government-to-government basis.

10 We are requesting that the BIA also
11 coordinate with ACF. Because ACF has all of the
12 tools that will help monitor. They have the -- the
13 documentation. They have the Legislative Court
14 Improvements Act that can be a vehicle to ensure that
15 States implement ICW trainings through the Court
16 Improvement Act process with all of the states.

17 So that's a -- that's one thing that we --
18 we strongly expect the BIA to reach out to their
19 sisters.

20 And I know Associate Commissioner James is
21 here. And I'm glad that you're here, and I
22 appreciate that.

23 But you can't work in a silo anymore. Our
24 children deserve better. Our families deserve
25 better. And our communities deserve better.

1 You expect us not to silo our services.
2 Well, we expect the same. And we expect monitoring.
3 And we expect reports back.

4 We don't want this to go into the void of
5 the beltway. We can't afford that any longer. We're
6 losing as many children today as we did before the
7 Act. And that's unconscionable.

8 And as a trustee, we are going to hold you
9 accountable for that, in a good way. No disrespect
10 intended.

11 But -- but we can't continue the way we
12 are, because our children are valuable. And our
13 families are valuable. And our tribes are valuable.

14 Thank you.

15 LARRY ROBERTS: Thank you. Thank you for
16 all those comments.

17 I don't -- I don't want to eat up a lot of
18 our time today with responding to a number of
19 comments. But there are a couple of things I want to
20 touch upon.

21 And that is, number one, it's the reason
22 why we're going through this rule-making. We know
23 this is vitally important to Indian country; right?
24 I mean, what is more important than our children,
25 number one.

1 Number two, I just want to share with you
2 all that -- and I don't want to steal the thunder for
3 tomorrow's inter-agency session, where HHS, Assistant
4 Secretary Washburn and DOJ will be here. But we're
5 going to talk about -- a little bit about how we've
6 been collaborating, but also listening directly from
7 tribes about how the Federal -- how the Federal
8 Government can collaborate internally, so we don't
9 have those silos.

10 So I appreciate your comments, and I
11 appreciate your detailed comments on the regulation
12 itself. Those are things that we'll take a very close
13 look at.

14 So thank you.

15 SHAWN BACKBONE: Thank you.

16 My name is Shawn Backbone. I'm the vice
17 secretary of the Crow Tribe.

18 And I just want to say thank you for the
19 consultation for the Indian Child Welfare Act.

20 We support this new regulation. It's not
21 going to be a guideline. It's going to be a
22 regulation. So you know, that'll be taken care of.
23 And for the State of Montana to -- you know, to work
24 with us as a Crow Tribe. And to better protect our
25 Crow kids and any other Native American that lives

1 with us.

2 And then the state foster care systems,
3 too. So I just want to elaborate that -- and in
4 depth and other consultations, that our attorneys
5 will be getting with you and adding more to that.
6 But I just wanted that for the record.

7 Thank you.

8 LARRY ROBERTS: Thank you.

9 GIL VIGIL: Good afternoon. My name is Gil
10 Vigil, spelled V-I-G-I-L. And I'm from the Pueblo
11 Tesuque. But also, I'm the President of the National
12 Indian Child Welfare Association.

13 The National Indian Child Welfare
14 Association has been concerned with this topic long,
15 long, long time ago, because of the lack of the
16 implementation of Indian Child Welfare Act, or the
17 misinterpretation of the Indian Child Welfare Act by
18 different entities, like courts, judges.

19 And so for this to be happening now, it's
20 happening very long overdue. And we thank the Bureau
21 of Indian Affairs for proposing these regulations.
22 They are needed.

23 We applaud the BIA for their work on the
24 proposed regulation. These rules provide the clarity
25 and certainty necessary for practitioners to ensure

1 compliance with the law.

2 Indian Child Welfare Act promotes the best
3 interests of Indian children. Clarity and certainty
4 can help preserve our families and promote permanency
5 for our children.

6 Even before the Big Girl case, as we call
7 it, the Veronica case that we refer to, these things
8 were needed. But I think the case -- the Veronica
9 case, while the outcome wasn't what we wanted, I
10 think it clearly found that we needed to address this
11 issue because of what happened with Baby Veronica.

12 Our children and families are often denied
13 the protections of Indian Child Welfare Act, because
14 courts and States' agencies aren't taking -- aren't
15 asking if the children in their care are Native. We
16 are glad to see that the -- the regulations require
17 all agencies to inquire if children have Native
18 ancestry.

19 Native children and families do not always
20 get the services they need, when they are in State
21 care. Our State often fails to provide cultural
22 development services to our children and families or
23 work with the Tribes' programs.

24 The regulations provide a much-needed
25 definition of active efforts. The regulations also

1 contain examples that will help States know how to
2 better work with Native children and families.

3 I'm from New Mexico, and this is a case
4 where a lot of -- if it's not the State, it's a lot
5 of time, it goes to the counties that these children
6 are in. And we have the children, youth and families
7 department.

8 And sometimes interpretation by these
9 counties, who are not aware of these regulations, are
10 interpreted in a way that's not good for Indian
11 children.

12 Tribes are an essential resource for States
13 and agencies looking to identify family and tribal
14 placement. Without working with a Tribe, a State or
15 adoption agency may have a hard time finding
16 placement consistent with Indian Child Welfare Act's
17 placement preferences.

18 This often results in agencies overlooking
19 the fit and willing relatives that could adopt a
20 child. It can also lead to placement instability
21 later. The regulation addressed this issue by
22 requiring notice of tribes in all voluntary placement
23 and proceeding.

24 State courts often block cases from
25 transferring into our tribal courts, because they

1 believe our courts will make a decision different
2 from its own.

3 This is an end run around the jurisdiction
4 provisions in ICWA and supports unfounded biases
5 against our tribal agencies and courts.

6 The regulation clarifies that the reasoning
7 cannot be used to deny transfer to tribal court.

8 Finally, one of Indian Child Welfare Act's
9 primary purposes is to keep Native children connected
10 to their families and tribal communities. Yet, I
11 know of many children in my tribe who may not -- who
12 have been placed in non-Native homes, when had family
13 willing to -- willing and able to care for them.

14 The regulation provides requirements that
15 will promote placement with families in my tribe and
16 my community.

17 Thank you.

18 LARRY ROBERTS: Thank you.

19 VERA DAWSEY: My name is Vera Dawsey. I'm
20 the Secretary of the Absentee Shawnee Tribe. And
21 Indian Child Welfare is one of the programs that
22 comes under my umbrella.

23 I have a statement here that I'd like to
24 read. It's from one of my ICW workers.

25 And we -- we have quite a bit of problems

1 with the State of Oklahoma and the Department of
2 Human Services.

3 The Indian Child Welfare workers across the
4 state of Oklahoma find themselves fighting for rights
5 of our tribal children, who are forced to go into
6 State custody through no fault of their own.

7 Native American children throughout the
8 counties in Oklahoma are having their Native American
9 heritage ignored by the Department of Human Services
10 child welfare workers on a daily basis.

11 State child welfare workers are educated
12 about child welfare state policies, but are given
13 very little training on dealing with the Native
14 American children and implementing the Indian Child
15 Welfare or ICWA in its case plans of those children.

16 Often what little training they do receive
17 regarding the ICW Act is at odds with their own
18 agencies' policies.

19 The Department of Human Services in the
20 state of Oklahoma has a turnover rate of five months
21 for child welfare caseworkers.

22 ICW workers often have to work with
23 numerous State child welfare workers during the
24 duration of a case involving a Native American child
25 because of these turnovers. The Department's

1 problems of keeping the child welfare staff often
2 results in Native American children falling through
3 the system's cracks.

4 It is a constant struggle for the Indian
5 Child Welfare worker to ensure that this doesn't take
6 place.

7 The Absentee Shawnee Tribe has not had an
8 updated foster care agreement between the Tribe and
9 the Oklahoma Department of Human Services since
10 July 1st of 2010. This agreement expired
11 June 30th, 2011.

12 The Tribe has asked the Department to work
13 on an updated agreement. And we were told to get
14 ahold of their leader department. After doing this,
15 we were told that they were currently working on
16 another tribe's agreement.

17 I suppose we should work on being more
18 patient with the State. After all, it's only been
19 four years since our tribe's tribal agreement with
20 the State has expired.

21 Tribes in the state of Oklahoma need
22 updated tribal agreements with the State. Indian
23 Child Welfare staff members follow their tribe's
24 orders of placement preferences that have been
25 mandated by their Tribal Government.

1 This order of placement preferences
2 supports the foundation of the Native American
3 family, ensuring that our culture and our way of life
4 is not banished by government agencies that make
5 policies that are often benefiting to no one but
6 them.

7 One of the problems that the ICW staff
8 often faces is the DHS policy is often written in a
9 way that conflicts with the ICW, or ICWA. And
10 furthermore, interpretation of the policy often leads
11 to the conflict between the State child welfare
12 worker and the tribal -- tribal child welfare worker.

13 **A meeting -- a meeting was held a couple**
14 **weeks ago in Oklahoma with the Department of Human**
15 **Services and the tribal child welfare staff**
16 **concerning DHS policy and the new BIA guidelines.**

17 She says, There were many complaints and
18 suggestions, frustrations from ICW workers and the
19 constant disregard of ICWA in cases that involve
20 Native American children.

21 It was also said that the State many times,
22 in their responses to the comment made by the Tribes,
23 that the new BIA guidelines were not suggestions --
24 were just suggestion, not law.

25 Some of their responses by the State that

1 were made is that it is not a policy issue. It's an
2 in-house issue. It is an employee issue. It is a
3 County issue. Or that it was a practice issue, not a
4 policy issue.

5 After the meeting it was said that the
6 Department seemed to blame everyone within the
7 Department for the problems that the tribes were
8 experiencing, but not lay any of the blame on itself.

9 The truth is that the State agencies can
10 make excuses all day long for ICWA not being followed
11 by their staffs. But excuses don't fix problems.

12 Our Native American children need to see
13 action from the State. They need assurance that the
14 State is going to hold County child welfare agencies
15 responsible for their employees' actions when it
16 comes to implementing ICWA and their caseloads that
17 involve Native American children.

18 It is time to stop playing the blame game
19 and start playing the accountability game.

20 Tribes are being told by the DHS, and the
21 DHS child welfare workers have the final decision on
22 placement of Native American children in State
23 custody.

24 My worker has been told that once our Tribe
25 approves a home to be a tribal foster care home, it

1 has to be approved by the State before our children
2 in State custody can be placed in them.

3 What is the result of this practice? It
4 opens the door for our children to be put in
5 non-ICWA-compliant homes until the State approves one
6 of our homes.

7 How is this right for the State caseworker
8 to tell the Tribe that we can't have our children
9 placed in one of our homes that -- one of our homes
10 that the Tribe has approved? How is this ensuring
11 the implementation of ICWA? What is happening to our
12 children that are in State custody?

13 An agency has had their own issues with
14 ensuring safety of children entrusted into their
15 care. This should be a concern for every one of us
16 who work on a day-to-day basis to ensure the safety
17 of our tribal children while striving to maintain our
18 connection to their tribe.

19 In the counties all over the state of
20 Oklahoma, state child welfare workers are being
21 called to serve as expert witnesses in hearings that
22 deal with Native American children. This includes
23 hearings that involve termination of parental rights.

24 DHS policy states that a child welfare
25 worker can be called as an expert witness in a State

1 proceeding. District Attorneys are using this policy
2 when an expert witness is needed in cases that
3 involve Native American children.

4 We should be concerned that this is a --
5 this is taking place in State proceedings, especially
6 in cases where termination of parental rights is an
7 issue. When this practice was questioned during the
8 meeting, discussing DHS policy and the new BIA
9 guidelines, the Department's reply was, The DA is
10 responsible for determining who can serve as an
11 expert witness.

12 State child welfare workers continue to
13 refuse to keep Indian Child Welfare workers updated
14 on State cases that involve our children. Oftentimes
15 supervisors in State Counties are teaching their new
16 employees the same practice.

17 ICWA is not an option in cases that involve
18 Native American children. It is our right -- it is
19 the right of our children.

20 Indian Child Welfare workers need to
21 help -- need the help of the Bureau of Indian Affairs
22 to ensure that these rights are just not written
23 words on a piece of paper. We need the State
24 Government to look in our State child welfare
25 department and demand accountability to employees who

1 refuse to follow the Indian Child Welfare Act.

2 We need State government to listen to us
3 and do more to make -- do more than make excuses. We
4 need them to make a change.

5 Thank you. And I will leave the copy up
6 there for you.

7 LARRY ROBERTS: Thank you very much.

8 MITZI SABORI: Good afternoon, everyone.

9 My name is Mitzi Sabori -- S-A-B-O-R-I --
10 Tribal Secretary of the Fort Hall Business Council of
11 the Shoshone-Bannock Tribes in Fort Hall, Idaho.

12 We came prepared. We have some written
13 statements, and we will also be doing a presentation
14 for the -- not presentation. But we'll -- also,
15 we'll be reading for tomorrow's session.

16 First, the Shoshone-Bannock Tribes wish to
17 thank the Bureau of Indian Affairs and Assistant
18 Secretary Washburn for their work on proposed rules
19 and increasing State compliance with the Indian Child
20 Welfare Act.

21 And I have our Tribal Attorney,
22 Ms. Brandelle Whitworth here to read the
23 recommendations.

24 BRANDELLE WHITWORTH: Hi. Brandelle
25 Whitworth -- B-R-A-N-D-E-L-L-E -- last name --

1 W-H-I-T-W-O-R-T-H.

2 Recommendations. Add or create definitions
3 for the following terms: ICWA compliant placement,
4 means any foster preadoptive or adoptive placement
5 that meets one of the specifically identified
6 placement preferences as identified in 25 U.S.C.,
7 Section 1915.

8 ICWA-compliant placement does not include a
9 placement made outside of the identified placement
10 preferences, whether or not there has been a
11 good-cause finding to deviate from the preferences.

12 Party, means any actual party to a child
13 custody proceeding, and does not include the
14 placement resource family.

15 This is directly to address, in California,
16 if a placement is made, California can deem that
17 family to be a de facto parent. And the courts have
18 found that de facto parents actually have a right to
19 object to transfers. And can actually assert that
20 there's good cause to deviate from placement
21 preferences.

22 And if they are included within the term,
23 Party, as in these regulations, they would also have
24 those rights.

25 The definition for, Domicile, needs to be

1 amended to include the possibility that the father or
2 an Indian custodian could have custody of the child.
3 So as amended, sub (2) would read, For an Indian
4 child, the domicile of the child's parents, in the
5 case of an Indian child whose parents are not married
6 to each other, the domicile of the Indian child's
7 mother, unless custody is otherwise established by
8 court order with either the father or an Indian
9 custodian.

10 Please set out what a -- when a term, such
11 as, Indian family, or, Indian community, is used,
12 that it -- that is not specifically defined in the
13 ICWA or in these regulation, that the term, Indian,
14 should be used as defined to qualify the trailing
15 noun.

16 We have had an agency take the position
17 that a non-Indian foster family was an Indian home
18 based upon the fact that there was no definition for
19 Indian home in the law.

20 And they asserted, via a motion before the
21 state court, that the home was an Indian home, based
22 upon some vague tribal connections; i.e., the foster
23 mother's dad fought in Vietnam with a Hopi who
24 granted him honorary Hopi warrior status. This was
25 in a State motion.

1 They were allowed to argue this issue
2 before the Court, because the term, Indian Family,
3 was not specifically defined to mean a family that
4 contained at least one Indian person.

5 In sub -- pardon me. In Section 23.11(a)
6 please correct to read, In any involuntary
7 proceeding, ellipses, Tribe by registered mail with
8 return receipt requested of the pending proceedings
9 under the right of intervention; so that the term,
10 Registered Mail, replaces the term, Certified Mail,
11 23 U.S.C., Section 1912(a).

12 In Section 23.102, please remove the term,
13 State Licensed, as the ICWA applies to all agencies,
14 whether -- whether public, private or state licensed.

15 In 23.109, sub (d), there is a typo. Child
16 custody case, should read, Child custody proceeding.

17 By the way, the same typo occurs in the
18 guidelines at Section (b)(4), sub (d).

19 In Section 23.111(g), you may wish to
20 specify that, to secure an Indian language translator
21 or interpreter, to contact the BIA or the Tribe.
22 Because the Tribes and/or the BIA may not have
23 Spanish or other language interpreter information.

24 Proposing a modification to Section 23.113,
25 sub (b), sub (1) to read, Treat the child as an

1 Indian child until there is a legal determination
2 that the child is not an Indian child.

3 To clarify that it is not just a court
4 determination, which sounds discretionary; but
5 instead, a legal determination, that a child is not
6 an Indian child.

7 Further, in same Section 23.113, sub (f),
8 sub (2), the term, Extraordinary Circumstances, needs
9 to be better defined, or the exception to the 38-day
10 emergency custody rule will swallow the intended
11 rule.

12 In sub -- pardon me.

13 In Section 23.117, we would like to see
14 language from the new guidelines at (c)(3), sub (c)
15 added, which, in relevant part says, Whenever a
16 parent or Tribe seeks to transfer the case, it is
17 presumptively in the best interest of the Indian
18 child, consistent with the Act, to transfer the case
19 to the jurisdiction of the Indian Tribe.

20 This language has been disregarded by a
21 local court, as the Court determined that the
22 guidelines were not binding, and that clearly could
23 not be the intent that that be the actual best
24 interests of the child.

25 In Section 23.122(a), the word, Child's,

1 was erroneously left out. The sentence should read,
2 A qualified expert witness should have specific
3 knowledge of the Indian child's tribe, cultures --
4 culture and customs to set forth that the knowledge
5 is specific to that specific Indian child's tribe.

6 Further in 23.122, we would offer that a
7 QEW -- that is to say, a qualified expert witness --
8 should not be an employee or other agent of the
9 agency that is a party to the child's custody
10 proceeding. We believe this is a conflict of
11 interest, where the agency is seeking placement of an
12 Indian child, to claim to be the expert in whether
13 the child should be placed.

14 In Section 23.131, sub (c), sub (3), we
15 request that the term, Ordinary bonding, be amended
16 to read, Bonding, as there is no definition for what
17 is ordinary bonding versus extra-ordinary bonding.

18 In a local case -- in a local case, the
19 Court actually found that the bonding between an
20 Indian child and a non-ICWA-compliant adoptive
21 placement was extra-ordinary, not just ordinary. So
22 there was good cause to deviate from placement
23 preferences.

24 In Section 23.133, sub (1) should read, An
25 Indian child who is or was the subject of any action

1 for foster care placement or termination of parental
2 rights, to add the term, Or was, to account for
3 actions that have occurred in the past.

4 Please amend the language after the final
5 comma in 23.133, sub (b), as there is no court
6 discretion in 25 U.S.C., Section 1914 about whether
7 it is appropriate to invalidate an action, once there
8 is a showing that specific ICWA provisions have been
9 violated.

10 So it should then read, Upon a showing that
11 an action for foster care placement or a termination
12 of parental rights violated any Provision of
13 25 U.S.C., Sections 1911, 1912 or 1913, the Court
14 must invalidate the action.

15 In subsection 23.136, sub (a), the first
16 line should read, in relevant part, Any State
17 entering a final adoption decree or order of an
18 Indian child must furnish.

19 While these regulations will add strength
20 to ICWA, what will be the penalty for not complying
21 with these regulations? ICWA compliance must be tied
22 to funding, sanctions, or other consequences.

23 The agencies -- the agencies responsible
24 for the noncompliance must also shoulder some of the
25 of consequences. Our suggestion is that it has the

1 same consequences for noncompliance as those set
2 forth in the Adoption and Safe Families Act.

3 Indian -- pardon me.

4 ICWA placement preferences must be
5 universally applied in all adoptions, including
6 voluntary adoption.

7 When ICWA was written, no one predicted the
8 big business that voluntarily adoptions are today.
9 Indian children are routinely being placed in
10 non-Indian homes.

11 The adoption agencies control which homes
12 the birth mothers choose from. So the argument that
13 it's the mother's freedom of choice is false. There
14 are hundreds, if not thousands of homes studied,
15 eligible and appropriate Native homes, who would like
16 to complete private adoptions.

17 We understand that this is threatening to
18 the private adoption industry. But needed children
19 are not commodities, and they belong in Native homes.

20 The same standards which are used to screen
21 children for possible tribal connections should be
22 used to screen Indian foster homes.

23 Our State has attempted to create
24 ICWA-compliant placements at non-Indian homes by
25 motion to the court. The State has too often

1 attempted to place our Indian children into
2 ICWA-compliant homes who are, in reality,
3 non-relative, non-Indians.

4 These are people who have lived next-door
5 to Indians, or have Indians as friends, and the State
6 will label them as ICWA compliant. There needs to be
7 some sort of standard to determine what is an
8 ICWA-compliant home, such as receiving benefits or
9 being eligible for services at IHS, or such screening
10 questions as applied to our children.

11 This would be a good standard for
12 determining if a foster home who's non-relative is
13 otherwise ICWA compliant. Not having a standard to
14 determine if a home is compliant gives an easy out
15 for States to sabotage ICWA.

16 We would recommend that the BIA ask Tribes
17 involved in the ICWA proceedings if a State agency is
18 following ICWA. If BIA relies on agency
19 documentation alone, only half the picture is
20 represented.

21 There are cases that have occurred in Idaho
22 when the State has claimed compliance, but the Tribes
23 strongly feel the State is out of compliance. The
24 BIA needs to listen to the Tribes regarding
25 compliance.

1 In summary, we do not live in a state that
2 is Native friendly, and have ICWA cases in many
3 states across the United States. Leaving too much
4 interpretation of States and other agencies hurts our
5 tribes and our children.

6 We strongly feel, based upon years of
7 experience in these matters, that the States will
8 actively work to sabotage ICWA and Indian placement
9 preferences without the additional safeguards found
10 in these draft regulations, as well as our requested
11 additions or modifications to the regulations as set
12 forth herein.

13 Thank you.

14 LARRY ROBERTS: Thank you.

15 I just want to make a brief comment on your
16 comments. And that is, I really appreciate the
17 detailed comment and the time that you took to go
18 through this.

19 One of the things that I would just request
20 in general, if you have comments on the regulations,
21 it's very helpful to -- to identify where you have
22 concerns, what those possible solutions may be.

23 And one of the things that I wanted to flag
24 out of your comments, if the Tribe's able to submit
25 written comments. I know you mentioned 23.113(f)(2)

1 about extraordinary circumstances and defining that.

2 And so what I would ask is, on terms like
3 that, and terms across the rule itself, the -- the
4 purpose of the notice and comment is, Tell us how to
5 define it; correct?

6 Because if you say, This needs to be
7 defined in a certain way, or this needs to be
8 clarified in a certain way, we're going to go back to
9 our offices, and we're going to -- we're going to
10 work together to try to define it.

11 But we need the -- the good work from
12 everyone here to say, This is how it should be
13 defined.

14 So thank you.

15 CANDACE LAGOU: My name is Candace LaGou --
16 L-A-G-O-U. I'm from the Red Lake Nation in Red Lake,
17 Minnesota. I'm an ICWA advocate for the band. And
18 it's my job to go into State and District Courts and
19 advocate for our tribal members in court off the
20 reservation.

21 I cannot tell you how happy I was when
22 active efforts was coming out to revise, that helped
23 us in our struggles in court.

24 One of things that our tribe is running
25 across is the qualified expert witness. And it's

1 good to see how they're defined in here.

2 We -- Minnesota has the highest number of
3 Native Americans in out-of-home placement disparities
4 in the United States. And the county that I live in
5 is the highest one in the state of Minnesota.

6 We live in a very unfriendly county toward
7 Native Americans. I have 44 cases on my caseload,
8 and half of them come from the county that I live in.

9 I have, I guess, gone to battle with this
10 County in the past over their refusal to defer to
11 placement.

12 We do license our own tribal homes. And
13 they, at times, refuse to divert our tribe home
14 placement. This is happening now, and it has to do
15 with qualified expert witness.

16 They are not willing to defer to the Tribe
17 on placement with family due to non-Natives'
18 definition of what's best for our child. They are
19 aware they're noncompliance. It is on record.

20 And I know that our Tribe is going to have
21 to do a legal battle again. As most Tribes, we are
22 not well-funded. We don't have a lot of money to do
23 these legal battles. But we believe that our
24 children are worth it.

25 So if we -- you know, what I wanted to talk

1 about is, there is no enforcement. You know,
2 there -- we went through this with him before, and
3 the State sided with the Tribe.

4 And so we now have a judge who thinks that
5 he does not have to follow placement according to
6 ICWA. And he's aware of it. And the State's on
7 record. He knows he's not in compliance. There is
8 no enforcement.

9 LARRY ROBERTS: So I'm just going to speak
10 very -- very briefly to the enforcement question.

11 And that is that right now we're -- we're
12 focused part of this on -- on this proposal making;
13 right. And so if there are comments on enforcement
14 and actions that the Federal Government should be
15 looking at as part of the rule-making, that -- that
16 is helpful.

17 I would also just say that -- and probably
18 most everyone is aware in this room, about the
19 Van Hunnik case in South Dakota, where the Court
20 relied on the guidelines in ruling against the State.

21 So hopefully there will be -- the
22 guidelines, regulations, other actions will promote
23 compliance with ICWA as we're moving forward. So --

24 BEVERLY COOK: Oh. I'm sorry.

25 Good afternoon. My name is Beverly Cook.

1 I'm from the St. Regis Mohawk Tribe in New York. I
2 am one of three tribal council chiefs. And I'm here
3 to deliver a few comments. We will be structuring
4 some wording to submit for your review.

5 Initially, our -- our first comment was
6 that throughout the document, whenever there's an
7 opportunity to mandate a criteria or a regulation,
8 that it should be mandated. Our experience is that
9 the courts will take every opportunity -- and as
10 you've heard from others, every loophole to move
11 against our people.

12 As far as active efforts, I -- it -- it
13 wasn't clear to me if all of them are required, only
14 two are required, or five. It seems that a certain
15 number should be mandated in combination with others
16 that are recommended. I'm not -- we'll have to think
17 about that some more.

18 But it -- it almost looks like you could do
19 one of those things, and that would constitute active
20 efforts. So that wording would need to be more
21 clear.

22 Also, in terms of the definition of,
23 Domicile, where it reads, In the case of an Indian
24 child whose parents are not married to each other --
25 in New York State -- still, our traditional longhouse

1 marriages are not recognized by New York State, even
2 though it's a regular occurrence.

3 It would be akin to marriages in the church
4 not being recognized. There's no difference to us.
5 So that creates an issue that that would even be
6 considered.

7 So we'll do some additional verbiage for
8 that, so that we're not included in that definition
9 in that way.

10 Also, in terms of bonding, I know that some
11 of the opposition to ICWA is centered around the
12 bonding issue. And that feeling that, you know,
13 children are already placed in non-Native homes and
14 have bonded over a certain period of time, that that
15 would be a reason to not remove them.

16 And I can only say from experience, I
17 worked for 22 years in Partridge House, which is a
18 residential alcohol -- drug and alcohol treatment
19 center for 20 years. And we have taken care of some
20 of your relatives, I'm sure, from the west. We're
21 the only Native American drug and alcohol treatment
22 center east of the Mississippi.

23 And we have had numerous people from Lakota
24 country, from Diné country, young men and women who
25 never knew their birth families. And I'm sure were

1 very much bonded to their non-Native adoptive
2 families in the east.

3 So not only were they adopted into
4 non-Native families nearby, but all the way clear
5 across the country displaced from their people.

6 And though they all love their adoptive
7 parents, and many of them came from well-to-do
8 adoptive parents, they were suffering from addiction,
9 from issues of identity, confusion, and so on.

10 And so I argue that using bonding, or
11 arguing that bonding is a reason to defer -- or to
12 move away from the guidelines that are outlined in
13 here is not correct. There's something way beyond
14 the bonding experience that harms our young people,
15 even from birth.

16 So I just wanted to say that much.

17 LARRY ROBERTS: Thank you.

18 JOYCE GUERRERO: Thank you. Thank you for
19 all the comments that -- that I've heard. And thank
20 you for this opportunity.

21 And I am Joyce Guerrero. I am Tribal
22 Council Vice Chairperson for the Prairie Band
23 Potawatome Nation, Mayetta, Kansas.

24 And I am here with Sandy Shopteese. She's
25 the Children and Family Services Manager dealing with

1 ICWA. And Vivien Olsen, Tribal Attorney.

2 And I tell you, Tribal Council -- I just
3 really -- I hear all these stories from the people
4 that work on the front line. And Tribal Council
5 wants to support as much as we can. And sometimes
6 money's an issue.

7 But I spent more time today with the social
8 service staff. And they've told me stories. And --
9 and we will be submitting more detailed comments.

10 But I would like to just read a short --
11 the Prairie Band Potawatomi Nation routinely
12 intervenes in every case in Kansas. The Potawatomi
13 Nation has been active in working with Kansas to
14 educate and inform their staff, as well as working
15 cooperatively with their staff.

16 However, a rule will take the gray out of
17 the guidelines. We appreciate the efforts of the BIA
18 to quickly provide the revised guidelines. However,
19 the proposed rule would greatly ensure their
20 implementation.

21 We echo the earlier question of how will
22 this proposed rule be enforced.

23 There's a couple of comments that we talked
24 about. The proposed rule seems to distinguish the
25 emergency removal and foster care plan sections,

1 which is good. The new timeline for under 30 days is
2 a good improvement from the old guidelines of 90
3 days.

4 We recommend the foster care action also
5 include more details.

6 We also suggest an expanded definition of,
7 Imminent danger, in addition to the impending
8 language.

9 And as I said, when we get back, we are
10 going to work closely and get more details after we
11 have a Tribal Council meeting. And we'll provide a
12 letter by the May 19th date.

13 So thank you very much.

14 LARRY ROBERTS: So I want to -- because you
15 touched upon enforcement again. And again, I don't
16 want the rule-making to -- to go off on that too much
17 in terms of this consultation.

18 But I do want to recognize the fact that
19 the Department of Justice has been very active in --
20 in the ICWA context in filing amicus briefs and other
21 actions. And I think they'll touch upon that
22 tomorrow at the listening session.

23 RAJU DAHLSTROM: My name is Raju Dahlstrom.
24 I'm the director of the Indian Child Welfare
25 department for the Sauk-Suiattle Tribe.

1 And I'll spell Sauk-Suiattle. It's Sauk --
2 S-A-U-K, hyphen, S-U-I-A-T-T-L-E.

3 We're located in the foothills of the
4 Cascades in Darrington, Washington.

5 I would like to address the compliance
6 issues within the questions that were raised here.

7 The Sauk-Suiattle Indian Tribe does not
8 terminate the parental rights of any parents
9 interfacing with the tribal courts.

10 I think this is a very important statement
11 to make, because not all tribes exercise a very clear
12 and cogent definition of their child welfare
13 prerogatives. And that is that the Sauk-Suiattle
14 Tribe does not terminate the parental rights.

15 The second thing that the Sauk-Suiattle
16 Indian Tribe does not do is adopt its children out.

17 So given that the Sauk-Suiattle Tribe has
18 removed two very large pieces of child welfare
19 legislation, it is incumbent on -- on the Federal
20 Government to recognize that that puts a
21 disproportionate burden on many tribes who exercise a
22 fervent desire to protect their children and their
23 families.

24 And how does it do this? And how does it
25 get undermined?

1 When we have children in our State-licensed
2 homes that can garner up upwards of 80,000 to
3 \$100,000 a year in moneys flowing through the
4 Title IV-E and Title IV-B processes; and when we are
5 trying to struggle to get permanency plans approved
6 through tribal court, and the State says, Oh. But
7 hold on. We have children that are special needs.
8 You cannot provide that comparable level of service
9 within your own program.

10 So when we -- when we are successful in
11 removing children from the State foster care system
12 into relative homes, the funding stream from
13 \$100,000 -- just a show of hands, how many of you --
14 how much dollars do you think translates to the Tribe
15 to carry out the ICWA -- or the child welfare program
16 programs? Do you know? Anybody want to take a
17 guess?

18 Zero. Did somebody say, Zero?

19 Okay. So when we're looking at compliance,
20 when we're looking at what's wrong with this
21 picture -- the justice department just released its
22 own findings regarding what is going on in Ferguson.
23 And it blames the District Courts for revenue-based
24 decision-making where disproportionate numbers of
25 African-Americans are incarcerated, day after day,

1 month after month, year after year, while Ferguson --
2 the City coffers improve their fundings through the
3 millions and millions of dollars.

4 So take what the DOJ report represents in
5 that, and you know what? If you were to take that
6 corollary and apply it to the ICWA, our children, our
7 tribal children, are being commoditized, not only
8 through the adoption world, but through the foster
9 care world. It's time to put an end to that.

10 The -- the second aspect of -- of our
11 Sauk-Suiattle plan for families is whenever we have
12 proceedings in the state courts, the court judges
13 don't invite the representatives -- I can speak for
14 myself -- to the table. We are required to stand,
15 and sometimes at a considerable distance, from all
16 the established parties.

17 I think the Federal Government needs to
18 look at how Tribes, when they send a representative,
19 whether it's a legal counsel or a social worker, that
20 they be recognized in the state courts as having a
21 legitimate basis for being there.

22 Thirdly, I think the state courts need to
23 be reminded that their legal guardians that they
24 appointed to represent the best interests of our
25 Indian children, the language needs to be changed to

1 the state courts recognizing that when a Tribe sends
2 a representative, whether it's an attorney or a
3 social worker or a family relative, they be provided
4 the special title of ICWA Legal Guardian for the
5 Tribe.

6 And that language needs to be put
7 somewhere, so that the best interests of the child
8 now is no longer defined by the State proceedings,
9 but by the tribal interests and the health and
10 welfare of that child.

11 The -- I may be moving around in numbers
12 here.

13 Five -- number five. We have a lot of
14 juvenile proceedings that are occurring in the state
15 courts, whether they be criminal or civil in nature.

16 There needs to be language that allows that
17 ICWA still has compatible interest in our children,
18 whether they're being processed through the criminal
19 court system or through the Becca Bill in Washington
20 state, where children are referred because of
21 absenteeism.

22 They're being -- they're being processed
23 through state courts. And -- and we don't want yet
24 another stream and mechanism for the State to be able
25 to grab our children into their legal system. So I

1 think there may be some work that needs to be done
2 there.

3 Last, but not the least, I think it is
4 absolutely imperative that when we are looking at
5 placement of children, oftentimes our children enter
6 into the State's care system at 2 a.m. in the morning
7 or at 4 in the afternoon on a Sunday.

8 And what we find is a lot of homes -- at
9 least in Washington state -- they are presumptively
10 defined as permanent homes.

11 We need to be very careful that these
12 homes -- whether they are approved to take in as
13 adopted children or permanent children into their
14 homes, we need to make sure that ICWA governs that
15 placement. And that the foster homes are not being
16 promised, Hey. There's another Indian child here.
17 It's very likely this child is adoptable.

18 We need to put a stop to that at the front
19 end of the system.

20 Thank you.

21 LARRY ROBERTS: Thank you.

22 THE COURT REPORTER: Larry, first name? I
23 didn't catch the first name.

24 LARRY ROBERTS: I'm sorry. We need the
25 first name for the record.

1 THE COURT REPORTER: Just a spelling.

2 RAJU DAHLSTROM: Raju -- R-A-J-U.

3 THE COURT REPORTER: Thank you.

4 RAJU DAHLSTROM: My Indian name is
5 Troublemaker.

6 NATHAN ST. GODDARD: Oki. That means,
7 Hello, in Blackfeet.

8 My name is Nathan St. Goddard. I'm an
9 enrolled tribal member of the Blackfeet Tribe. I'm
10 the general counsel for the Blackfeet Tribe. And I'm
11 also the tribal representative for purposes of this
12 panel.

13 Recently, I brought a case to the Montana
14 Supreme Court, the most recent Montana Supreme Court
15 regarding ICWA, 2014 MT 345.

16 Had the guidelines been implemented prior
17 to this case, I would be undefeated before the
18 Montana State Supreme Court. But the Tribe lost 43,
19 split decision.

20 One of the -- I got four different
21 recommendations. And I'll try to keep them within
22 the five-minute allotment, because I know we're all
23 hungry.

24 One is that the parent definition and
25 custody, and the Montana Supreme Court, how they're

1 defining that with regards to Baby Girl, the Court of
2 Montana, in my case, denied the father -- denied to
3 apply ICWA, and the provisions in subsections, to the
4 father because of its interpretation of Baby Girl.

5 And it held that the father did not -- ICWA
6 did not apply to the father, because the father did
7 not have physical or legal custody of the baby -- of
8 the child.

9 And the Blackfeet child has an issue with
10 this. Because we all know in Indian country, a lot
11 of times the father doesn't have physical or actual
12 custody of the child at the time of removal. Because
13 a lot of times the baby will be removed early on in
14 the stage. So there's no way that the father could
15 have legal or physical custody at the time of
16 termination, et cetera.

17 So if we can work that into the guidelines
18 and the regulations.

19 Secondly, the Tribe is a proponent of the
20 regulations to address the state court in violating
21 what -- I mean, who's to hold them accountable for
22 violating the guidelines? That's why we would like
23 these regulations -- or guidelines to be regulations.

24 For instance, the socioeconomic standards
25 in 23.11(d)(2), in the dissent -- and if anyone

1 here's a legal person, dissent doesn't mean anything.
2 But in the dissent, the Chief Judge Mike McGrath
3 said, At best, the courts -- this was a refusal by
4 the Court to comply with ICWA, and at worst, a strong
5 bias against a Tribe.

6 Such statements have no place in the
7 District Court and were highly inappropriate.

8 So to the dissent, three of them -- I mean,
9 the Court's use of socioeconomic standards to -- as a
10 basis to deny transfer was inappropriate. But
11 nonetheless, didn't win.

12 Third, so we can address that problem, for
13 courts -- state courts to violate the guidelines,
14 what happens?

15 Three is a transfer on 23.117. The
16 Court -- Montana Supreme Court denied transfer, found
17 good cause not to transfer, because the case was in
18 advanced stage.

19 In Montana, prior to my case -- the Tribe's
20 case, there was AT. And the Court said that, If
21 parental rights are terminated, that's good cause to
22 not transfer, once the parental rights are
23 terminated.

24 In my case, the Blackfeet Tribe filed a
25 motion to transfer prior to the parental rights being

1 terminated. So as a matter of law, the proceedings
2 were not made backstage, but the Supreme Court found
3 different.

4 So the Tribe was very -- they agree with
5 the 21 -- 23.117(c).

6 Fourth is -- what's not addressed is
7 attorneys or representatives going off the
8 reservation on behalf of a Tribe. Not every Tribe
9 has a Nathan St. Goddard to fight their legal battle
10 involving ICWA, or me, myself, to go to a state where
11 I'm not licensed at.

12 I don't think that's the intention of ICWA,
13 to make attorneys represent on behalf of a Tribe. I
14 don't think that should be a requirement. The Tribes
15 don't think that should be a requirement. I think
16 the Tribe, whoever they designate, should be -- be
17 able to represent the Tribe.

18 You don't -- it's not a requirement that
19 the ICWA expert is licensed or have all these
20 credentials for purposes of the ICWA expert. They
21 could, you know, be anybody.

22 So I think that the Tribe -- it should be
23 up to the Tribe and the state courts to allow any
24 representative that the Tribe chooses on behalf of
25 the Tribe to proceed in ICWA proceedings.

1 And just a quick fact. In Montana, Indian
2 children are being placed with non-Indian homes at a
3 higher rate than prior to ICWA being enacted.

4 Thank you.

5 LARRY ROBERTS: Thank you.

6 MELISSA DAVIS: Hello. My name is Melissa
7 Davis. I'm from the Cedarville Rancheria in
8 California.

9 And mine is, I would like see state and
10 local judges, attorneys, social workers go to ICWA
11 trainings as well, and not just do the few, quote,
12 unquote, webinars. We've had issues with that.

13 And we -- we have so many authorities who
14 don't know native services, but live near native
15 country. And this is why our Tribes started up our
16 own tribal court.

17 And this is our tribal judge, who's helping
18 us out with that, Judge Lundsy.

19 And so maybe we could have something in the
20 regulations to reflect that, to have them -- the --
21 them also study the ICWA regulations, too, so they
22 are --

23 LARRY ROBERTS: Yeah, I think what you're
24 saying is you want something in the regulations that
25 requires training by state judges.

1 MELISSA DAVIS: Yes.

2 LARRY ROBERTS: Yes. Okay.

3 Okay. That's it?

4 Okay. Thank you.

5 KIMBERLY FUHRMAN: Hello. I'm Kimberly
6 Fuhrman from the Wintu Tribe -- W-I-N-T-U -- of
7 northern California.

8 And we, too, want to extend our
9 appreciation for the change in regulation. We are a
10 state-recognized tribe, but not federal.

11 We would like to know if we can use a
12 child's CDIB, even though we're not federal at this
13 time, to be a QEW. I'm a paralegal to the Tribe,
14 a casa (sic), and we have actively advocated for our
15 ICWA cases. We'd like to continue to do that.

16 And we've been afforded the opportunity to
17 consult with you. And we thank you.

18 Please continue to consult with the tribes
19 who are waiting for decades for federal
20 acknowledgment.

21 And we appreciate the transparency and the
22 collaboration of ideas.

23 And so thank you.

24 LARRY ROBERTS: Thank you.

25 BRENDA SWETT: Hello. My name is Brenda

1 Swett -- S-W-E-T-T. I'm from the St. Croix Chippewa
2 Tribe in Wisconsin.

3 I just wanted to make you aware that
4 Wisconsin passed a Safe Haven Law, which is a State
5 law, without considering Federal ICWA law. I
6 actually got into an argument with them, when I went
7 to a meeting for the very first time and kind of told
8 them off, told them they were the second coming of
9 the soldiers to take our children.

10 But it kind of lit a fire under me.
11 Because I'm short-staffed in my office. And so I do
12 all of the ICWA responses myself. I read them. I
13 read what the responses are, whether they're
14 enrolled, what their last names are, which state
15 they're coming from.

16 Sometimes I look at a child's name, but no
17 parents, seeing if they're enrolled in our tribe.

18 Now, I have an issue with that, because I
19 need to know who the parents are. Because most --
20 most -- especially if they're parents that are on
21 drugs, they're not going to take the time to enroll
22 the child.

23 So the child may very well be eligible for
24 enrollment. But we don't know that, because they
25 won't tell us who the parents are.

1 We also have the issue in Wisconsin that
2 we're currently working on with counties, SaintA's,
3 BMCW -- and I told them this -- send in me the name
4 of a brand-new baby that was just born last week.
5 They gave them the first name and the last name of
6 the hospital with no parents, asking if he's enrolled
7 in our tribe.

8 I said, You're wasting my time. You're
9 wasting enrollment's time. I need to know who the
10 parents are.

11 They're -- Barron County -- the document
12 they use, which will only tell us the name of the
13 child, date of birth, whether it's neglect, sexual
14 abuse, whatever. They don't have to give us the
15 parents. They're still a legal document. Legally,
16 they can still use that document.

17 And to me, it's unfair. Because that child
18 may be eligible for our services, but we don't know
19 who the parents are.

20 I am concerned -- I -- I have a gut
21 feeling -- and I -- I'm concerned with Catholic
22 Charities. I get a lot of ICWA inquiries from the
23 Catholic Charities. It's not just in Wisconsin.
24 It's not just in Minnesota.

25 They're from -- coming in from all over the

1 country, where I am thinking, it's coming from a
2 human services person. But the person doing that
3 work on there is from Catholic Charities, where I
4 expect to see a social worker's name.

5 And these are coming from DHS departments.
6 But Catholic Charities is getting in there somehow.
7 So just keep that on your radar, please.

8 So yeah, that's -- are we going to have
9 any -- I just skimmed through this, and I apologize
10 for not reading it thoroughly.

11 But are there going to be any safety
12 precautions put in place where groups like SaintA's,
13 who have a lot of lobbyists and a lot of money, and
14 the attitude that they don't have to listen to
15 anybody else, that they will be able to pass these
16 kind of laws in the State that would supersede
17 Federal ICWA law?

18 LARRY ROBERTS: Thank you. Thank you for
19 your comment.

20 I think -- I know you said, you know,
21 you're still working through this proposal.

22 And so like I said earlier, you're working
23 on this on a day-to-day basis. You're seeing
24 firsthand sort of the -- the issues that are coming
25 up. And we need, as part of your comments, how to

1 address those issues.

2 So for example, we were looking at --
3 there's a section in here about what information
4 courts should consider requiring an agency to provide
5 in terms of the child and the parents and that sort
6 of thing, in 23.107.

7 And so that's something that we're -- we're
8 going to look to you for comments on in terms of how
9 to appropriately address that issue.

10 BRENDA SWETT: Can I just mention that
11 they're trying to hide behind the HIPAA law.

12 LARRY ROBERTS: Okay. So -- so we'll need
13 to take a look at all of those issues as part of
14 the -- as part of the rule-making. But I appreciate
15 you bringing that up.

16 So we're coming up -- we're a little after
17 5:00. I just want to make sure that all tribal
18 leaders and tribal representatives had -- who haven't
19 spoken have had a chance to, as part of this tribal
20 consultation.

21 KARAN COLB: Thank you. My name is Karan
22 Kolb -- K-A-R-A-N -- Kolb -- K-O-L-B.

23 And I'm from the Rincon Band Luiseno
24 Indians. And I'm representing Chairman Bo Mazzetti
25 today. And I'm also a consortium tribe of seven

1 tribes out in San Diego County.

2 San Diego has 18 tribes in our county. And
3 we are working collaboratively with all the tribes
4 and Casey Family and Tribal STAR on doing MLU with
5 our county. And we're almost finished.

6 And just want to let you know that we are
7 citing the BIA 31 division regs in that proposal.
8 And I think it's a good thing.

9 The one thing I do want to say is thank you
10 to the Bureau for being here. Kind of forgot what
11 you guys look like. It's nice to see you.

12 I think that -- we are big on digital
13 stories right now. And we just did another one on
14 our child protection team meetings. And it's called
15 An Act of Congress, where ICWA programs across the
16 state depend on the 638 funding. And it's not
17 enough.

18 And we would like for the BIA to consider
19 augmenting our programs. Because we do this work out
20 of our hearts and on a shoestring budget. And
21 although we do good, because we care about our
22 community, we could do better.

23 And we could also train the counties.
24 Instead of the counties doing the training, we could
25 train them as well as, if we had the sustainability

1 for our programs.

2 Again, thank you for that.

3 I do have a question on 23.122, on the
4 layperson of the QEW. I also want to join the
5 gentleman earlier who said that the QEW -- the
6 layperson should not be from the County, that it is a
7 conflict of interest. Because we know that the QEWs
8 in our area get paid quite a lot for that testimony,
9 up to \$5,000.

10 And ICWA programs, one idea is that you can
11 get that money, too, if you do that QEW for your own
12 tribe, which you should. Have that go into your
13 budget, like it went into mine.

14 Thank you.

15 And I'll send you that video.

16 KEKEA STARKS: Hello. My name is KeKea
17 Starks on behalf of the Lac Courte Oreilles Band of
18 the Lake Superior Chippewa.

19 And just briefly, we'd like to support the
20 guidelines, support the Bureau's efforts. And we
21 will be submitting comments in writing as well.

22 Thank you.

23 RON JACKSON: My name is Ron Jackson. I'm
24 a tribal attorney for Governor Carlos Hisa --
25 H-I-S-A -- of the Tigua -- T-I-G-U-A -- Indians

1 Ysleta -- Y-S-L-E-T-A -- del Sur Pueblo.

2 With respect to the QED issue, I'm looking
3 at Section -- proposed Section 23.122,
4 subsection (b): Persons with the following
5 characteristics in descending order are presumed to
6 meet requirements for a qualified expert witness:
7 Number one -- which I suggest be renumbered, changed
8 to number two, and the rest be renumbered.

9 And number one being, A qualified expert
10 witness is an individual designated by the Indian
11 tribe -- the child's Indian tribe, who is recommended
12 by the tribal community as the -- ya-de-ya-da, is the
13 way it reads now.

14 I think all throughout these regulations,
15 which I compliment the BIA for undertaking this
16 project, should be, to the greatest extent possible,
17 Indian Tribe driven.

18 You know, in most -- in many of these court
19 proceedings I've been involved in, you know, they're
20 not even in the back seat. They're in the trunk.
21 And I think the Tribe should be at least in the front
22 seat, if not behind the wheel.

23 The other thing is perhaps the most
24 important part of the notice that was provided is
25 subsection six of part six of the supplementary

1 information pertaining to federalism.

2 I think it's -- it goes without a doubt to
3 say these regulations, when enacted, will be caught up
4 in litigation. And every crazy, cockamamie objection
5 that the amicus filed in the Baby Veronica case, the
6 equal protection, the due process, the federalism
7 issues will be churned up in that litigation.

8 Not necessarily me, but some attorneys in
9 Indian country have expressed their disappointment in
10 the quality of the Federal Government's briefing in
11 the Baby Veronica case.

12 I don't know if that is a legitimate
13 observation or not. But if it is, could the --
14 somebody do something to make sure that there's a
15 better quality product this time around?

16 Thank you.

17 LARRY ROBERTS: Not a lot of people wanting
18 to stand between everyone and dinner tonight; is that
19 it?

20 All right. Well, before we wrap up, I just
21 want to, again, emphasize that we are having a public
22 meeting on Wednesday. So if further -- if you
23 have -- if you have a chance to go to the proposed
24 rule, and you want to come to the public meeting, you
25 can certainly provide comments there.

1 If you're going to come to the public
2 meeting on Wednesday, please RSVP -- because it is in
3 the Federal Building at BIA -- please RSVP at
4 consultation@bia.gov.

5 And we'll try to work with NICWA to -- to
6 provide that information to folks as well, to make
7 that available. I don't know if there's a bulletin
8 board here or what have you.

9 UNIDENTIFIED SPEAKER: It's out on the
10 registration table.

11 LARRY ROBERTS: Okay. Great. So if there
12 are no further comments. I really appreciate
13 everyone's input.

14 Remember, please submit your written
15 comments. We need everyone's input and viewpoints on
16 this proposed rule as we go forward.

17 And thank you very much.

18 (The Tribal Consultation concluded at
19 5:17 p.m.)

C E R T I F I C A T E

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, Sinead R. Wilder, a Notary Public for Oregon, do hereby certify that, pursuant to stipulation of counsel for the respective parties hereinbefore set forth, that the proceedings occurred before me at the time and place set forth in the caption hereof; that at said time and place I reported in Stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 1 to 75, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand and notarial seal at
Portland, Oregon, this 28th of April, 2015.

Sinead Wilder
SINEAD R. WILDER
Certified Shorthand Reporter
Certificate No. 13-0426

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