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U.S. Department of the Interior
Office of the Assistant Secretary - Indian Affairs
PROPOSED REGULATIONS FOR
STATE COURTS AND AGENCIES IN
INDIAN CHILD CUSTODY PROCEEDINGS
"ICWA Proposed Rule" - 25 CFR 23
(TRIBAL HEARING - Morning Session)

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Taken at
Best Western Ramkota Hotel & Conference Center
Rapid City, South Dakota
April 23, 2015

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PANEL APPEARANCES

- LARRY ROBERTS - Principal Deputy Assistant Secretary for Indian Affairs, Department of Interior
- TIM LaPOINTE - Regional Director
- RODINA CAVE - Senior Advisor to Assistant Secretary - IA
- GINA JACKSON - Senior Fellow, IPA, Indian Child Welfare
- SPIKE BIGHORN - Deputy Director, Office of Indian Services, BIA
- DEBRA BURTON - Office of Indian Services, BIA
- FEMILA ERVIN - Solicitor's Office

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

3 MR. LARRY ROBERTS: Good morning, everyone. My
4 name is Larry Roberts. I'm from the Oneida Nation
5 of Wisconsin, and I am the Principal Deputy
6 Assistant Secretary for Indian Affairs at the
7 Department of Interior. It's a long title, but
8 essentially I report directly to the Assistant
9 Secretary Kevin Washburn.

10 I want to thank everyone for coming this
11 morning. And before we get started, I've asked
12 Spike Bighorn to just give us -- open up with a
13 blessing.

14 MR. SPIKE BIGHORN: Thank you, Mr. Roberts.
15 Thank you for this opportunity. So I'll just say a
16 quick prayer before we begin.

17 Heavenly Father, thank you for blessing
18 everyone who is here today. We ask that you be with
19 our families and members and friends, loved ones who
20 are back home as we come to give testimony and give
21 our input as to this very important law.

22 We ask that you be with us today as we hear
23 everyone's comments, take them to heart, and we do
24 the very best that we can as members of the Federal
25 Government to take into account what they're telling

1 us to make things better for Indian children.

2 I also ask, Heavenly Father, that you be with
3 each and every one of us as we travel to our homes
4 today or tomorrow.

5 And thank you very much for the lovely day
6 you've provided to us. For all of these things we
7 are truly grateful.

8 Amen.

9 MR. LARRY ROBERTS: So we have a number of
10 folks here. We have a large team from the
11 Department of Interior. And actually the Department
12 of Justice has been a part of this team as well in
13 terms of trying to put together a rule to better
14 implement the Indian Child Welfare Act.

15 So this morning I think we're going to have --
16 we're going to go through a Power Point. It's going
17 to take roughly about 20 minutes. Our goal with
18 this tribal consultation is to hear from all of you
19 and to be primarily in listening mode.

20 So we have a court reporter here. And it's
21 important for everyone, if you have comments on the
22 Proposed Rule, it's important for you to just
23 clearly state your name so that we have that,
24 because what we're doing here is we're going to take
25 all of your good comments on the Proposed Rule and

1 look at them and consider them as we move forward
2 with the final rule.

3 And so -- again, just a little bit of
4 background of how we got to where we are today
5 during this administration on the Proposed Rule: We
6 had a number of listening sessions in 2014 with
7 Indian Country. And what we heard loud and clear
8 from tribes was that the ICWA guidelines that were
9 promulgated in 1979 needed to be updated.

10 And we also heard loud and clear from Indian
11 Country that even the guidelines in place weren't
12 always adhered to or followed by state courts and
13 state agencies and that the Department really needs
14 to promulgate regulations to implement ICWA for
15 state courts and state agencies.

16 And so that's -- as a result of those listening
17 sessions, we issued an -- updated guidelines in
18 February of this year, and then shortly thereafter
19 we issued this Proposed Rule. And the Proposed
20 Rule, once it's finalized, will have force of law.

21 And so it's a proposal. When we put out a
22 Proposed Rule for tribal input and consultation,
23 it's never perfect. We need your input and your
24 comments to make it better, and so that's why we're
25 here today.

1 So we're going to get started with the Power
2 Point itself.

3 And I'm just going to introduce the team here
4 first. This is Rodina Cave to my right. She's a
5 Senior Advisor to the Assistant Secretary for Indian
6 Affairs. To her right is Gina Jackson who's been a
7 valuable resource here. She's Senior Counsel to the
8 Assistant Secretary -- Senior Fellow to the
9 Assistant Secretary.

10 We also have Mila here from the Solicitor's
11 Office who's been integral in helping us work
12 through this rule.

13 We have Tim LaPointe, the Regional Director.
14 And we have Spike Bighorn from the Office of Indian
15 Services, Deputy Director for the Office of Indian
16 Services.

17 And we also have Deb Burton from the Office of
18 Indian Services here as well.

19 So this is a small part of the team. There's a
20 number of folks within Interior that have been
21 really working on this and putting in a lot of hours
22 on this.

23 So the first slide is generally just an
24 overview that I'm sure all of you are aware of of
25 ICWA being passed in 1978 and why Congress passed

1 the Indian Child Welfare Act, and that by passing
2 that act they established minimum federal standards
3 for the removal of Indian children from their
4 families and the placement of children in foster or
5 adoptive homes.

6 And so it articulates, in very strong terms,
7 the strong federal policy that wherever possible,
8 Indian children should remain with their communities
9 and with their families and that that is the key,
10 the whole purpose of ICWA was to prevent that, to
11 prevent those Indian children from being taken from
12 their homes and their communities.

13 So as I talked about a little bit, in 1979 the
14 Department promulgated guidelines and also
15 promulgated regulations just involving notice under
16 the Indian Child Welfare Act.

17 And then since 1979, as I'm here a number of
18 you are familiar with, there's been a lot of
19 different interpretations of ICWA across the state
20 courts and state agencies. And we've heard at some
21 of the consultations and listening sessions that
22 even within -- across various counties, various
23 counties may implement ICWA differently.

24 And so as a part of those listening sessions in
25 2014 and then the Attorney General's Advisory

1 Committee on Children Exposed to Violence in 2014
2 issued a report also requesting and suggesting that
3 the Department update guidelines and issue
4 regulations for ICWA.

5 So the new -- we're going to go to the next
6 slide, and this is just a general overview of all
7 the different subparts of the new ICWA Proposed Rule
8 that we have. So we've added definitions in this
9 Proposed Rule for a number of things, including
10 active efforts, which we've received comments on and
11 comments that active efforts, that that definition
12 is helpful because, again, it's a consistency thing
13 about how -- and this is a helpful definition to
14 provide guidance to state courts and state agencies.

15 We also have definitions for custody, for
16 imminent physical danger or harm and other terms
17 used in the proposed regulation. So it's important
18 that if you see something here in terms of how, the
19 definitions that we should be addressing or haven't
20 addressed, we need that feedback. And it may not be
21 feedback today, but we're going to accept written
22 comments until May 21st, and -- or May 19th. And
23 we're also going to have a national teleconference
24 later in May.

25 So the goal of the Proposed Rule for the next

1 slide is consistent implementation. We're making
2 clear in this rule that ICWA applies whenever an
3 Indian child is the subject of a child custody
4 proceeding, including status offenses and including
5 juvenile delinquency proceedings, and that there is,
6 and we make this very clear in the Proposed Rule,
7 that there is no so-called "existing Indian family"
8 exception to ICWA, that that exception does not
9 exist.

10 The Proposed Rule for the next slide talks
11 about how agencies and state courts must ask at the
12 earliest opportunity, "Is this child an Indian
13 child?" And if there's any reason to believe that
14 the child is an Indian child, then ICWA must be
15 applied unless and until it's determined that the
16 child is not an Indian child.

17 That ICWA applies to voluntary placements if a
18 parent consents to placement or termination, and
19 that ICWA does not apply if the parent or custodian
20 may regain custody of the child upon demand.

21 So I'm going to turn it over now to Rodina Cave
22 to talk a little bit about the Proposed Rule's
23 provisions regarding pre-trial requirements.

24 MS. RODINA CAVE: Thank you.

25 Good morning. So you can see from the slide

1 that the Proposed Rule includes requirements that
2 state agencies and state courts must ask if the
3 child is an Indian child at the beginning of a
4 proceeding. And if there's any reason to believe
5 that the child is an Indian child, there's steps
6 that, you know, should be taken from there.

7 And the Proposed Rule also includes examples of
8 when there is reason to believe that the child is an
9 Indian child.

10 And the Proposed Rule also includes provisions
11 regarding voluntary proceedings that if the
12 consenting parent wants anonymity, then the agency
13 or court must keep the relevant documents sealed but
14 that the desire for anonymity doesn't mean that you
15 don't provide notice to the tribe, and that there's
16 a requirement to engage in active efforts. And so,
17 you know, there's been questions of, "Well, when
18 exactly does that begin? When does active efforts,
19 when does that requirement start?" And so the
20 Proposed Rule lays out clearly that it starts as
21 soon as the case or investigation may result in the
22 placement of an Indian child outside the custody of
23 a parent or Indian custodian. And it also applies
24 while there's the investigation of whether the child
25 is an Indian child.

1 For designating the child's tribe, make it
2 clear that the -- only the tribe may determine
3 whether the child is a member of the tribe. And,
4 you know, it also includes notice requirements and
5 determining -- so, you know, what are the steps for
6 when the child could potentially be a member of more
7 than one tribe, the Proposed Rule lays out the
8 process for those situations.

9 And it also provides when a state court must
10 dismiss an action as soon as it determines that it
11 lacks jurisdiction, for example that the tribal
12 court has jurisdiction.

13 It also provides when notice is required,
14 what's the process for notice. And, you know, it
15 lays out the proceedings and that notice must be
16 sent by registered mail with return receipt
17 requested to each tribe of which the child may be a
18 member or eligible for membership, and then parents,
19 and, if applicable, the Indian custodian.

20 The Proposed Rule lays out the time limits and,
21 you know, when additional extensions of time can be
22 granted and that the proceeding may not begin until
23 ten days after each parent or Indian custodian and
24 the tribe receives notice and that there's an
25 additional amount of time for when the parent or any

1 custodian or tribe receives notice and they request
2 an additional 20 days, then the proceeding may not
3 begin until 30 days after.

4 And for emergency removal, the Proposed Rule
5 makes it clear that it must be as short as possible
6 and provides the requirements for the agency or
7 state court and that, you know, that you must --
8 that the agency or state court must immediately
9 terminate placement or removal when the emergency
10 has ended.

11 And emergency removal (continued), the agency
12 must treat the child as an Indian child until,
13 again, there's a determination that the child is not
14 an Indian child and conduct active efforts to
15 prevent the breakup of the Indian family as early as
16 possible before removal, if possible, and, you know,
17 notification and maintaining records that notice was
18 provided.

19 And emergency removal (continued) again, that
20 at any court hearing on emergency removal/
21 placement, that the court must decide if removal/
22 placement is no longer necessary to prevent the
23 imminent physical damage or harm to the child and
24 that the temporary emergency custody should be less
25 than 30 days unless there's a hearing with testimony

1 of a qualified expert witness or there's
2 extraordinary circumstances.

3 And for transfers to tribal court, Spike
4 Bighorn will be explaining this.

5 Thank you.

6 MR. SPIKE BIGHORN: Thank you, Rodina.

7 Again, it's good to be here with you. My name
8 is Spike Bighorn. I'm the Associate Deputy Director
9 for the Office of Indian Services in Washington,
10 D.C., and I'm a member of the Assiniboine and Sioux
11 Tribes on the Fort Peck Reservation. Again, it's
12 good to be here with you.

13 I'll cover the next three or four slides. This
14 talks about transferring the case to tribal court.
15 And I won't go through this entire slide, but
16 basically I want to talk about two things. First of
17 all in the second point of Bullet No. 1 it talks
18 about the right to transfer can occur at any time
19 during the proceeding. There was some confusion
20 before that once the proceeding starts, the state
21 court, some people thought, that you couldn't
22 transfer the case. That's not true. At any point
23 during the proceeding if you want to have a case
24 transferred and there's a petition to the court to
25 transfer the case, then the court has to take that

1 into consideration.

2 Also the guidelines talk about under, State
3 court determines good cause to deny transfer, it
4 clarifies the definition. And there's three factors
5 down there that we thought were important to
6 clarify: Whether the case is at an advanced stage,
7 again that refers back to at any stage of the
8 proceedings, so it doesn't matter where in the
9 process and proceedings the case is, even if it's at
10 an advanced stage, that's not a good enough reason
11 to say that you're not going to transfer it to
12 tribal court.

13 The extent of the child's contacts with tribe
14 or reservation, obviously some people, at times,
15 would say that the child hasn't lived on the
16 reservation, hasn't had any contact with the tribe.
17 That can't be used to deny the transfer.

18 And then also the tribal court's prospective
19 placement for a child, that's not for the state
20 court to determine. That's obviously for the tribal
21 court. But you can't use that as a reason not to
22 transfer to tribal court.

23 Next slide, please. This talks about the
24 active efforts that are being made to get the family
25 involved before parental rights are terminated. And

1 Rodina alluded to it earlier, this question about
2 the active efforts that need to be made. Basically
3 what this talks about is the court has to document
4 that every effort has been made to try and contact
5 the tribe or the children's family and get them
6 involved as a resource to be able to place the child
7 before they go into the state court system and
8 there's any action to involuntarily terminate the
9 parental rights option of the child, and that's what
10 that talks about.

11 And finally on this slide, this talks about
12 where the court may order foster care placement only
13 if there is clear and convincing evidence and
14 evidence beyond a reasonable doubt. And this
15 outlines the testimony that has to be presented to
16 the court before any type of action is taken on the
17 termination of parental rights or involuntary
18 placement or adoptions. This talks about -- it
19 also -- the rule clarifies what is clear and
20 convincing evidence.

21 The next slide, finally we talk about a
22 qualified expert witness. This specifically
23 outlines in the guidelines in the Proposed Rule who
24 can be considered an expert witness. You'll notice
25 that there's a descending order. And the first one,

1 it talks about a member of the child's tribe. Keep
2 in mind that it has to be -- a member of the child's
3 tribe will document that these individuals can serve
4 as an expert witness. First of all, anyone who is
5 recognized by the tribal community in that child's
6 tribe can be considered an expert witness.

7 But also the second line there, an individual
8 who may not be a member of that tribe but is
9 considered to be, by the Indian child's tribe, to be
10 an expert witness in the family organization and
11 tribal customs and child-rearing of that tribe. So
12 what that means basically is -- I'll use myself, my
13 tribe as an example. If an Indian child is involved
14 in a proceeding and they're eligible to be enrolled
15 or enrolled in Fort Peck but we have someone who is
16 saying maybe he's from a different tribe living in
17 Fort Peck, the tribe could say that individual
18 qualifies as an expert witness under this descending
19 order.

20 And, of course, any person recognized as having
21 experience in these areas.

22 And finally, anyone who may be a professional,
23 works in the community, works in the tribal
24 community who has education and expertise working
25 with these types of cases can also be considered to

1 be an expert witness.

2 Who's next? Gina?

3 MS. GINA JACKSON: Good morning. My name is
4 Gina Jackson. I'm a Western Shoshone from Reno,
5 Nevada and living and working in D.C. currently.

6 I'm just going to go over a few of the
7 highlights of the next few slides. So for the
8 Proposed Rule specific to voluntary proceedings, one
9 of the things that this Proposed Rule will do is
10 require, not just the agency but also the state
11 court, so both, to ask whether the child is an
12 Indian child and not just rely on the agency's word
13 itself that they've asked but to also ask in
14 addition.

15 For dispositions, one of the things that the
16 Proposed Rule will be requiring when it comes to
17 ICWA-referred placements or tribal placement
18 preferences is that there must be clear and
19 convincing evidence that there was a diligent search
20 to meet the preferred preferences and also
21 explaining if it couldn't be met. So not just, Yes,
22 we looked and we couldn't find anybody, but
23 documentation that they're -- to the level of clear
24 and convincing evidence. So that's an important
25 change.

1 Also, in order for departure from the placement
2 preferences, it could only happen if the court finds
3 good cause. And good cause, the basis must be
4 included in the record. And the party who is
5 asserting good cause, they are the ones who have the
6 burden to prove by, again, clear and convincing
7 evidence.

8 So departing from the placement preferences,
9 good cause can be found if the parents request and
10 both attest that they reviewed the placement
11 options.

12 The child may make that request if they are
13 able to understand the decision, if the child has
14 extraordinary physical or emotional needs that are
15 established by the qualified expert witness.

16 And what they do not include is bonding or
17 attachment from the placement or just the
18 unavailability of a placement and a determination
19 that active efforts were made to find placements.

20 So this is an important clarification that the
21 Proposed Rule also gives is that good cause may not
22 be based on socio-economic status of any placement
23 relative to another.

24 For post-trial rights, the new proposed
25 regulations establish procedures to vacate an

1 adoption if consent was obtained by fraud or duress,
2 or the proceeding violated ICWA. That's big.

3 Establishes who can invalidate the action based
4 on a violation of ICWA, which is the child, the
5 Indian child, the parent, the custodian, the tribe,
6 regardless of whether that particular party's rights
7 were violated.

8 And it establishes adult adoptees' rights to
9 learn their tribal affiliation and encourages states
10 to designate someone to assist with adult adoptees.

11 And then also requires notice of any change in
12 the child's placement such as change in placement.
13 So their moving from a different home requires
14 notice.

15 So continuing with post-trial rights, states
16 must provide BIA with a copy of decree or order in
17 any final adoptions, which is already a requirement
18 but this is new in that states must establish a
19 single location for all records of voluntary or
20 involuntary foster care, pre-adoptive placement, and
21 adoptive placement that will be available within
22 seven days of request by the Indian child's tribe or
23 the Department of Interior, which, at a minimum,
24 must contain the petition or complaint, all
25 substantive orders in the proceeding and record of

1 placement determination, including findings in the
2 court record and a social worker's statement.

3 So I know that we had just a few of the
4 important highlights. You do have copies of the
5 rule in its entirety. And today you will have the
6 opportunity to speak. But also we encourage you to
7 put your comments in writing. And you can make
8 comment on any part of the provision in the Proposed
9 Rule.

10 The public meetings and the consultation
11 sessions that are coming up for tribal
12 consultations, we still have coming Albuquerque on
13 May 5th. We are going to be in Prior Lake,
14 Minnesota; a national teleconference; and then in
15 Tulsa, Oklahoma, and then public meetings also in
16 those same locations. One part of the day will be
17 for consultation, and the other part will be for the
18 public meeting. So if you think of something later
19 that you wish you would have said, you will have an
20 opportunity.

21 You can also put your comments in writing and
22 send them to comments@BIA.gov and we would love to
23 hear from you.

24 MR. LARRY ROBERTS: Thank you, Gina.

25 So the next steps are once the comment period

1 closes May 19th, we're going to review all of the
2 comments. The team will assemble here to take a
3 hard look at everyone's comments and then move
4 forward with a final rule. And so we're hoping to
5 get something finalized.

6 We've heard from Indian Country that a final
7 rule of implementing ICWA is important, and so it's
8 a priority for the Assistant Secretary. And -- but
9 we still need all of your good thoughts and good
10 work and good help in terms of trying to make the
11 rule the best it can be.

12 And so I do want to say that at our public
13 session in Portland we received a lot of comments at
14 both, at the tribal consultation as well.

15 We heard from some tribes, for example in
16 Michigan, saying that in Michigan the state courts
17 are complying with ICWA and -- for the most part,
18 and that part of that is because the tribes worked
19 really hard with the state to pass the state ICWA
20 law there. And so we've heard some positive things
21 there.

22 But we need your input not only with what's
23 working well but what's not working well and what
24 needs to be addressed to make sure that there's a
25 consistent implementation of ICWA for all of Indian

1 Country for those states and agencies.

2 So with that, I would open it up to whoever has
3 comments or questions on the Proposed Rule.

4 MS. AVIS LITTLE EAGLE: I guess you all are
5 from D.C. And here in South Dakota we've been going
6 through quite a bit with the Department of Social
7 Services, and I hope that you're aware of some of
8 those cases.

9 We do have written testimony that we provided
10 to our senators. And here in the State of South
11 Dakota I hope you're aware of what's been going on
12 here. There's a number of --

13 MR. LARRY ROBERTS: I'm sorry to interrupt.
14 Can we just get your name --

15 MS. AVIS LITTLE EAGLE: Yes.

16 MR. LARRY ROBERTS: -- for the court reporter?

17 MS. AVIS LITTLE EAGLE: Avis Little Eagle.
18 It's two words. And I'm a member of the Standing
19 Rock Sioux Tribal Council.

20 And we were fortunate on our reservation that
21 we had a strong advocacy for the children. And we
22 held meetings on both the North and South Dakota
23 side because our reservation encompasses both --
24 it's in both states. And we took testimony of
25 various parents that went through quite a bit of

1 trauma from the Department of Social Services. And
2 what was found out, there are a number of lawsuits
3 going on now. But what we found out is that a lot
4 of times they would take the children and they
5 wouldn't hold the hearings, the proper hearings.
6 And immediately when they get the children into the
7 foster care, they would prescribe them medicine for
8 ADHD or whatever they could, and the state was
9 making big money off of this because it's under
10 Medicare or whatever assistance they could get for
11 that. It's really a lucrative business for the
12 State of South Dakota.

13 But I guess my main concern with your rule here
14 is, like you said, this law has been in place since
15 '78, '79, and this is a congressional act. And how
16 is it going to be enforced with the state? Because
17 states throughout the nation continue to ignore it.
18 It could be a federal rule under the BIA, but when
19 you have a congressional act that the states just
20 ignore, how are we going to get -- how are we going
21 to get the type of assurances that there is going to
22 be -- that it's going to be followed? How are we
23 going to get those assurances?

24 Because what it's come to here in South Dakota
25 is that the parents finally had to find

1 representation to file law cases, lawsuits against
2 the judges, against the Department of Social
3 Services.

4 We've had major meetings here in this motel,
5 and the Department of Social Services was invited
6 and they said, "I'm sorry, nobody invited us." And
7 I don't see anybody in the room today, I don't
8 think. They really disregard the congressional act.
9 And if this Proposed Rule gets put in place, I'm
10 sure we will, on a tribal level, but that doesn't
11 mean the states will. You know, how are we going to
12 get those assurances?

13 I probably have some more comments, but I'm
14 getting them together here.

15 MR. LARRY ROBERTS: Thank you.

16 So I know in the Van Hunnik case that was just
17 recently decided that the tribes prevailed in, you
18 know, one of the things that the court relied on
19 there was our recent guidelines, they pointed to our
20 recent guidelines that we promulgated. And so,
21 again, these regulations, when they're finalized,
22 will have the force of law. So, you know, it's
23 another tool to ensure -- to promote compliance with
24 ICWA.

25 MS. PHYLLIS YOUNG: Good morning. My name is

1 Phyllis Young. I'm a Standing Rock Tribal Council
2 Member at Large. And I want to, first of all,
3 welcome you to the Black Hills, the center of our
4 sacred land. And I want to thank you for this
5 historic action today.

6 In 1958 the BIA, Bureau of Indian Affairs,
7 created an adoption agency, and the goal was to
8 adopt out Indian children in a plan with other
9 agencies in the United States. And by 1978 the
10 Indian Child Welfare Act, which was enacted by the
11 former Senator Abourezk here in South Dakota and
12 Standing Rock was one of the founding tribes of the
13 Indian Child Welfare Act, it was based on White
14 Eagle versus the State of Mississippi.

15 And those children were brought back. But
16 there was a party of seven tribal members who went
17 to retrieve those children, and their plane, they
18 had to be escorted secretly to another state to fly
19 out back to Standing Rock under threat of being
20 killed by parties, including the families that the
21 children were being taken from.

22 But we have a history of trying to keep our
23 children, to keep them -- take them back. And
24 that's instilled. That's part of our collective
25 memory. So if people wonder why we are

1 troublemakers, all of those troublemakers at
2 Standing Rock, it's all worth it because it's for
3 our children.

4 We have a long history of adoptions out, which
5 is contrary to our traditional law. We're working
6 on many avenues. But I don't want to belabor the
7 issue of case histories on Standing Rock or in
8 Indian Country, but I want to hit the nail on the
9 head by Resolution 49709. And this is how long
10 we've been trying to get to this point. So it's
11 been a long and arduous time.

12 And I really want to commend the BIA and those
13 advocates, those warriors who work on behalf of
14 Indian Country because I get to witness in my
15 lifetime a place and a time and a victory. I see
16 this threshold, a new threshold.

17 And I want to thank personally and on behalf of
18 the Standing Rock Tribe, Tribal Council, for holding
19 this historic consultation. It's very meaningful,
20 and it has to do with the human lives, human dignity
21 of our people.

22 So with this resolution, we made a
23 recommendation specific to the Public Law 95608
24 which was the enactment of the Indian Child Welfare
25 Act, Section 1914. We don't know if it should be

1 proposed as an amendment; however, this resolution
2 does propose that very action to give grandmothers
3 and grandfathers and aunties and uncles and all
4 relatives a private right of action to pursue legal
5 action if placement of a relative child with them
6 was unfairly denied.

7 The current Indian Child Welfare Act,
8 Section 1914 reads, "Any Indian child who is the
9 subject of any action for foster care placement or
10 termination of parental rights under State law, any
11 parent or Indian custodian from whose custody such
12 child was removed, and the Indian child's tribe may
13 petition any court of competent jurisdiction to
14 invalidate such action upon a showing that such
15 action violated" a provision of -- "any provision of
16 Section 1911, 1912 and 1913 of this title."

17 The placement is -- the placement process is
18 critical, and it has been the focus of our interest
19 and our endeavors to address that issue. And so the
20 placement preference should be made enforceable. If
21 not, then we have to pursue that as a lawsuit. And
22 so we're seeking to -- seeking that if that could be
23 an interpretation of this guideline and incorporate
24 it into the regulations or if we have to seek an
25 amendment by legislative fiat or if we have to do

1 court action to seek that change. That's how
2 important the placement procedure is to Standing
3 Rock Sioux Tribe.

4 So we have consulted with the former Senator
5 Abourezk and sought his interpretation of those
6 sections particularly of the ICWA, of the Indian
7 Child Welfare Act in 1978. So we feel confident
8 that we could clarify it in any legislative action
9 that we seek.

10 So we have also addressed in the regulations --
11 we will submit like -- the written. We're working
12 on it. We have the GEO report of foster care. We
13 have adopted our foster care provisions. We have --
14 we are petitioning the committee to eliminate racial
15 discrimination through the United Nations process to
16 file in the Mette case, the seven children who were
17 sexually abused for ten years, five of whom are
18 Standing Rock members, two Oglala. And so we are
19 petitioning that under the Proxmire Act which was
20 adopted by Congress also in 1985 and Public Law
21 100-606, adopted November 4th, 1988.

22 And Section 1891 -- or 1091, six transfers by
23 force, children of the group or attempts to
24 (unintelligible) shall be punished as provided in
25 Subsection B, which is a million dollars. So we are

1 pursuing that as well. We have asked -- we have
2 retained an attorney and have gone on record for
3 that.

4 Nowhere in these provisions does it address the
5 suicides, the deaths that have occurred in foster
6 homes and the medication, which is a big business as
7 my constituent addressed earlier, a multi-million
8 dollar business, direct ties to the pharmaceutical
9 companies in Minnesota, which we have -- we have
10 confirmed. We have hired a private investigator
11 who's a former FBI agent to validate so that we have
12 confirmed cases, that we are not just making
13 trouble.

14 And so we want to protect these children. We
15 have made every effort. And we have been at the
16 tables since 2007. I was not on Tribal Council at
17 the time, but I have been an advocate since 1978
18 trying to get children back home.

19 We try to tell the children, the parents, in
20 consolation, that -- to them that those children
21 will always return because of their -- their, um,
22 affiliation with their culture, they will always
23 return.

24 And it's almost like a human want or need to
25 reconnect with your natural family. So it's not

1 just limited to Indians or our culture. It's a
2 human thing. And you see it very prevalent in this
3 country now with the non-Indian society. So we have
4 always been the canary in the mine. And if that
5 relates to the human interests of the world, then
6 we're a big part of that.

7 So my one experience was with an international
8 figure. And I laughed when she asked if, the mother
9 asked if I could help her. And it was the other
10 side of the universe. And I laughed. And she cried
11 and she said, "Don't laugh." I apologized. And all
12 I could tell her was, "He'll come home one day."

13 When he turned 18 he called her, and he flew
14 his mother to his country. He's a member of the
15 Standing Rock Sioux Tribe, but he lives in another
16 country. And he flew her there. And he told her
17 that without a mother, he didn't have any stature or
18 he didn't have any kind of acknowledgment. So she's
19 very happy, and she flies back and forth to this
20 country. So we know that we are a universal people
21 and that we have those with experiences. I said I
22 wouldn't belabor the case histories, but I have to
23 share that because that's -- it expresses the wide
24 variety of cases that we do have.

25 And we did, at Standing Rock, a consultation of

1 sorts for those parents whose children were in
2 foster care. And we have 80 documented cases, and I
3 will submit the case histories to you so that you
4 can look at the situations and see what has occurred
5 and use as part of your consultation to see the
6 situation so that if it provides any kind of answer
7 to the rules that we do need, I do see three -- I
8 read all 20 pages, and I do -- there are three areas
9 specifically that we would like to address in
10 detail. So we will be submitting written comments.

11 And, again, I want to thank you. In my
12 lifetime, it is very meaningful that you have
13 finally promulgated rules after 37 years. And I
14 hope that they will be incorporated into federal
15 regulations and that they meet the force of the law
16 and that we can move forward and have due process.

17 We are also trying to meet the May 1st deadline
18 for the Federal District Court to submit
19 recommendations and reparation statements for those
20 illegal adoptions and illegal deaths -- or deaths in
21 the illegal care of families.

22 Here in this -- not surprising that there are
23 not many people here, and hopefully they'll show up
24 later. I know there is about five people in our
25 party that will come later for the meeting.

1 But we're wary. Lakotas are wary of the BIA
2 and the Federal Government. We fought long and hard
3 and we fought the bureaucracy to get the meeting
4 here two years ago. And I am glad they didn't move
5 the meeting for security purposes. We're considered
6 hostile. So we know the processes that we have to
7 endure and we will endure them, be what they may,
8 and we will do everything to protect our children.

9 The Federal District Court decision addressed
10 the GEO report and these regulations as well.

11 But I want to thank you wholeheartedly for
12 hosting this consultation. This is one of the most
13 important and most critical consultations that we
14 have had in decades. (Native language)

15 Thank you.

16 MR. LARRY ROBERTS: Thank you.

17 MS. JACQUELINE BROWN OTTER: Good morning. My
18 name is Jacque Brown Otter. I'm from the Standing
19 Rock Sioux Tribe. I am currently helping develop
20 the Title IV E Planning Grant, for our tribe was
21 awarded funds for the 300,000 for the two-year plan.

22 What I see as a newcomer coming into the
23 program, things are going to be wanting to change to
24 help improve our families unite.

25 What you need to know, too, is that as

1 grandparents and being a family that experienced
2 ICWA, I had left the State of Nebraska myself
3 because there's not enough training dollars on the
4 reservation. There's not enough 638 dollars to
5 carry out these duties. So that might be some
6 things you take back into consideration. The
7 dollars do not last as long as they are to be
8 anticipated.

9 Yes, the Title IV E planning grant
10 reimbursement will help improve these practices of
11 reuniting our children's families and keeping
12 families together. But that should be something to
13 take into consideration in remembering that the
14 compassion us Lakota people have for our families is
15 withheld in our hearts. There's nothing more
16 compelling to have -- than reuniting our children
17 back with their families.

18 You know, my grandson, he's my son now, he's
19 15, and he's -- he was a child that had been born
20 with drugs. I went down to Nebraska, and I wasn't
21 able to get him because nobody helped me at the
22 tribal level, not knowing the experience at the
23 time.

24 And now that -- he was told he would never be
25 able to walk, never be able to talk, never be able

1 to sit up, all of these "nevers". He's in the top
2 of his class. He mentors other children.

3 With the little bit of love that you give to a
4 child within their own blood makes a child grow
5 stronger and be a public role model within the
6 community.

7 So I'm very, very thankful to be a part of
8 this. Being that I'm fairly new, I would like to
9 enforce more training dollars on this 638. That is
10 very important because I heard the ICWA director say
11 that there's not enough money, there's not enough
12 staff to carry out these duties. There's only two
13 at our tribal level to carry out eight communities,
14 and that's just not enough people. They're
15 overwhelmed. So please take that into
16 consideration.

17 And thank you for your time.

18 MR. LARRY ROBERTS: Thank you. Thank you for
19 your comments on that, especially with regard to
20 funding.

21 And so the one thing that I just wanted to
22 share with everyone here, if they don't know this
23 already, but Kevin Washburn, the Assistant
24 Secretary, and I, we have a Tribal Interior Budget
25 Committee, and it's a budget committee of tribal

1 leaders from all the different regions of BIA. And
2 we ask those tribal leaders that are on that budget
3 committee, "For the next coming budget, what are the
4 tribal priorities?" Because that's where we take
5 our leadership from in terms of funding.

6 And so for Great Plains, I believe the
7 representative is John Yellow Bird Steele?

8 MR. TIM LaPOINTE: President Steele is an
9 alternate. I believe it's the chairman from Omaha,
10 Vernon Miller is primary representative, and
11 Chairman Frazier from Cheyenne River.

12 MR. LARRY ROBERTS: I just say that to reach
13 out to those representatives, because we really do
14 take our leadership from tribal leadership on that.

15 So thank you.

16 MS. LILA KILLS IN SIGHT: Good morning.
17 (Native language.) I want to say thank you for
18 being here.

19 My name is Lila Kills in Sight, and I'm on the
20 Tribal Council of Rosebud Sioux Tribe. I have
21 worked with child welfare under Casey Family, as
22 well as the tribal level, and this has -- this is a
23 huge passion of mine for our people. And I agree
24 with what Jaqueline said.

25 Hi.

1 And, you know, it's really, really important,
2 and I'm happy you people are here. You know, I
3 think ICWA is -- when we hear that word "ICWA," it
4 just is overwhelming, just that itself.

5 And I -- I've been, you know, educating myself
6 in this, the Indian Child Welfare Act, and right now
7 we are in desperate -- I don't know how to tell you
8 how bad we need your help, all of our reservations.
9 And I get emotional because finally somebody is
10 paying attention.

11 And we don't have the resources that we need to
12 do the job. We have the soldiers. I'll tell you
13 they're there. But we don't have the resources.

14 And I believe any reservation you go to, I
15 consider each and every one of us sitting in here
16 tonight, today, we are in the front line of this
17 battle. We understand.

18 And now because of our prayer, because of who
19 we are and who you are, you are chosen and brought
20 here to help us. You're our prayer. And I take
21 that to heart because that's all sometimes we can do
22 is pray.

23 And today on the way up here, I was thinking
24 about it. And it's significant that we're meeting
25 here in our sacred land.

1 And right now we have a lot going on. We have
2 Title IV E. We have, you know -- and that's going
3 well. But how can we move forward with another
4 venture when we don't even address what's over here
5 with ICWA?

6 Title IV E is going to take the resources from
7 ICWA, and that's Part B monies. So there's a loss
8 right there just overnight because of Title IV E.

9 Right now we have with our ICWA, same as, you
10 know, Jacqueline's over here, there are two people
11 who are working there diligently. We ain't getting
12 anywhere. We're not getting anywhere. As I speak
13 today, I'm sure there's another court case where
14 we're going to lose somebody. Each time that
15 happens, we are one less child; we are one less
16 nation.

17 And one of the values that our people have and
18 that we carry in our heart is we are compassionate;
19 we are patient; we love unconditionally our
20 children.

21 And before western civilization came upon our
22 people, when they were first introduced to the very
23 first non-Native person who came and experienced the
24 Lakota way of life, we were strange; we were not
25 okay; there was something wrong with us because of

1 how we treated our children, because of how we
2 valued our children. They were the hub of our
3 people.

4 Our children, they're beloved children. Our
5 spirit is intact to that child that we pray for
6 generation and generation and generation. And we've
7 become so -- um, the assimilation process, you know,
8 even today we don't have -- we don't have a choice.
9 We gotta go with it.

10 But today you are offering us, you're giving us
11 a voice. And I appreciate that, because as a
12 nation, as a people, we have so much work to do. I
13 think about this. But you know what? Many times
14 nobody ever asks the tribe, What works for you?

15 I'll tell you now, we don't have homes. We do
16 not have homes to take these children to. We have
17 to deal with finding more resources to employ more
18 people. MSWs, we need more of them. We need
19 training dollars. We need education dollars. And I
20 believe that, um, through that you're the messenger.
21 And I believe, you know, that you will find that for
22 us.

23 And it's like, you know, Indian child welfare,
24 that's thrown out there, you know, but our people
25 don't really know what it is. They don't. But when

1 it happens to them, it's a quick education process.
2 They still don't understand.

3 And one of the things for our people, as well
4 as every nation, indigenous nation, is the kinship
5 system. That child that was taken away may be the
6 oldest child of that sibling group. The kinship
7 system is very important to our people. If you are
8 the oldest, you come with responsibility. You are
9 trained and taught that responsibility from the day
10 you're born, as well as the youngest child. But
11 ICWA, if we break that process, we're hurting our
12 nations. We are cheating ourselves out of a future.

13 And, you know, I've been dealing with so much
14 calls working with getting on the tribal council.
15 And, just, we're losing our children. We want to do
16 something about it, but there's no resources. We're
17 stuck. That door is shut. But today you've come
18 and you've given us that voice. And I believe that
19 our people are, there's a few of us here, but you
20 know what, this eventually will be probably standing
21 room only if we continue this dialogue.

22 And, you know, resources, you know, we talk
23 about, you know. But the other thing is the formula
24 to calculate those resources, what is that formula
25 going to be? Is it based on square footage,

1 acreage? You know, you have your, what's it called,
2 your -- I know with IHS like a chazda (phonetic) or
3 something, it's perimeters. How far are you, you
4 know, with the -- the formula that the BIA uses, we
5 need to be involved in that process. Those
6 decisions are made for us by people who do not live
7 on our reservations.

8 I come -- I am one council person. And my
9 colleague and relative, Rose over there, we are two
10 of 20, 20 communities. We have a population of like
11 45-, almost 50,000 people. And, you know, that's
12 really important.

13 And the calculations and the formulas that are
14 used to give us those resources, we're not all the
15 same. All our reservations are not the same. We
16 are but we're not. That's something that I'm going
17 to ask you to teach yourselves about that, you know,
18 we all are a Sioux tribe, but -- our needs are the
19 same, but there are land issues that aren't the
20 same.

21 So when you calculate your formula for these
22 resources, I'd ask that you please take those into
23 consideration, that, you know, you study each
24 reservation, what is the land base. You know, those
25 are the things that nobody ever looks at and asks

1 us.

2 And a lot of times like -- and I'm speaking on
3 this because I think about what I've learned with
4 IHS, is that IHS uses a certain formula. They have
5 a perimeter, and there's boundaries there for
6 funding. And they also, they base their funding on
7 an acreage or percentage -- an acreage or footage
8 system. You know, that's started, and nobody has
9 ever looked at it.

10 Our healthcare down there is the worst ever.

11 But when we do our formulas, in calculating the
12 formulas, that's the challenge right there. How are
13 we going to disburse resources that are so needed to
14 every reservation and try to target and hit every
15 community, every district?

16 Back in -- about two years ago I heard more and
17 more ICWA cases coming. And right now just this
18 past week our vice president who's running our tribe
19 right now, he called me and he asked me to come. So
20 I went to see him. And he was sitting there, and he
21 was real -- didn't look well. So I said, "What's
22 wrong?" He said, "Dammit, we lost four kids again
23 today. I don't feel good about it."

24 We need legal resources. We don't have legal
25 resources. And that's huge with ICWA. You gotta

1 have legal resources.

2 And he said, "What can we do to kind of take
3 care of this?" And I said, "You know what? We need
4 to put money aside for legal fees, legal resources.
5 Go out and search for those people." And they're
6 out there. They are.

7 So, you know, these are just some things that I
8 wrote down. I won't take too much time, I'm sorry,
9 but they are important to me, that I know will help
10 you guys make the decisions you need to.

11 But this is really, really important. Today is
12 a good day. I'm not just speaking for myself but
13 all of our relatives, you know, we represent each
14 other.

15 And for you to take this information back, I am
16 going to -- working with the other groups at home
17 that we can, you know, do a written response to you
18 all, too, as well.

19 But I want to say thank you and welcome. And
20 today is a very good day.

21 Thank you.

22 MR. LARRY ROBERTS: Thank you. Thank you for
23 your comments. You talked a little about funding
24 and allocations and how that works. Before I came
25 to the Department, I was an attorney representing

1 tribes. And when I came to the Department and we
2 were talking about the different things, you know,
3 What can this administration do to update
4 regulations, you know, these guidelines hadn't been
5 updated since I was 11 years old, and that just --
6 you know, it kind of blows your mind a little bit.

7 And so we've been looking at different things
8 like the leasing regulations that we updated. And
9 we're trying to have -- I think that these proposed
10 regulations and the leasing regulations and the
11 right-of-way regulations, I think there's a
12 consistent theme there from this administration
13 which is wherever we can, we're deferring to tribal
14 decision-making and empowering tribal
15 decision-making because that's where the decisions
16 need to be made. So I appreciate your comments.

17 MS. ROSE STENSTROM: Hello. My name is Rose
18 Stenstrom, and I come from the Rosebud Sioux Tribe.
19 And I wanted to ask you guys to think about some
20 stuff. You know, earlier I had mentioned one thing
21 and that was making funds available for kids that
22 age out. Because once a child that is in foster
23 care turns 18, they're turned loose because the
24 foster providers, I mean the providers really don't
25 want them there anymore because they're not getting

1 any money for them.

2 Excuse me, I have a cold.

3 And the other thing is: Before these kids turn
4 18, it would be nice to provide money for like
5 training or, you know, workshops, you know, for
6 them, you know, that is based on our culture.

7 And the other thing that I wanted to mention
8 was the funding cycle. I often wonder what the
9 states get, you know, for taking care of our
10 children when they're taken from us. And the reason
11 why I say that is kids that get in trouble are often
12 taken from their parents. You know, this is in the
13 State of South Dakota.

14 And once they're taken away from the parents,
15 one of the things that happens afterwards is that
16 the parents are charged for services that these kids
17 get while they're, you know, in the custody of the
18 state. And to me I don't think that's right. You
19 know, if the State of South Dakota gets money for
20 taking care of these kids, then they shouldn't be
21 charging the parents. You know, the parents are
22 charged for childcare and for health and any other
23 services that they get while they're under the
24 custody of the state, and I don't think that's
25 right.

1 You know, any way you look at it, our families
2 are being, you know, victimized. And, you know, it
3 creates, you know, a lot of trauma for us. Because
4 like in our tribe, there's like an 85 percent
5 unemployment rate. And if a parent, you know, has
6 to pay this, how are they going to pay it and what's
7 going to happen to them if they can't pay it? Are
8 they going to be charged criminally next? You know,
9 that's why I say our families are being victimized
10 when those kind of things happen. It's just like,
11 you know, the poverty is used against us.

12 And the other thing is: When someone wants to
13 take in kids, one of the things that is looked at is
14 the age of the child, you know, these children, you
15 know, at such and such an age need to have their own
16 bedrooms. You know, that may work well in
17 non-Indian societies, but with us, you know, we're
18 close.

19 You know, in our home, you know, the girls have
20 bunk beds. A number of kids share, you know, one
21 bedroom. So people can't -- you know, people on the
22 reservations can't afford to have a bedroom for each
23 of their children. That's why I say those kind of
24 things are used against us where we're not able to
25 become foster parents.

1 And, you know, I tried to become a foster
2 parent at one time, and I was really offended with
3 some of the rules that they had. You know, they
4 come in and they want to inspect your home. They
5 open up your cabinets, your refrigerator. They want
6 to look in your rooms. You know, I thought that was
7 really invasive. And I thought, you know, Geez,
8 this is really bad. You know, they're treating us
9 like we're criminals or something, like we have
10 something to hide. And, you know, we don't.

11 And the other thing that I really find, you
12 know, that really goes against us is any time that
13 we say something, you know, nobody listens. And
14 even if we complain about, you know, foster parents
15 or whatever, nobody listens. And, you know, some of
16 those things need to change. And to me, you know, a
17 lot of that is used against us so that the state can
18 make money. That's how I look at it. You know, our
19 children have become something, you know, just to
20 make money off of and, you know, that needs to
21 change.

22 That's all I've got to share.

23 Thanks.

24 MR. LARRY ROBERTS: Thank you.

25 MS. RAQUEL FRANKLIN: Good morning. I'm Raquel

1 Franklin, Standing Rock Sioux Tribe, ICWA Director.

2 I like some of the changes on these
3 regulations. A lot of the things that I see on some
4 of the cases, the emergency removal part of it, even
5 though it does say in the guidelines and the policy
6 and the regulations as well, but I think the biggest
7 problem that I see is DSS not complying with a lot
8 of this stuff. They know it's there. They've read
9 it. I've told a couple of DSS's what it says in the
10 regs. And they already know that, but they still
11 continue to not comply with it.

12 One of the things would be like emergency
13 removal the night of, having relatives right there,
14 grandma, even dad who wasn't even with mom, wasn't
15 there the night of the removal, coming to the court
16 hearing and advocating, "I'll take the child; that's
17 my child," or grandma there the night of or the next
18 day of the hearing, "I'll take the child" and the
19 State still doesn't, you know, place the child with
20 relatives. I've seen that they'll place them with a
21 non-Native foster home, wait for weeks on end before
22 they do a home study on the relative, when I know it
23 doesn't take that long to do a home study. A quick
24 home study and a quick background check, you can
25 have that child placed in that relative's home

1 within a week or two. But they drag that on for
2 months.

3 And then it gets to the point where we're going
4 six months to 12 months where a child is still in
5 the same foster home and the relatives are still
6 there saying, "We want to take this child" and still
7 nothing.

8 I had a couple of cases here in Rapid City
9 where grandma was five blocks from DSS. The social
10 worker said, "I'll be down and I'll do a home
11 study." I called the relative, "Have they gone down
12 there?" "No, they haven't. They're coming
13 tomorrow." Okay, wait a couple days. I called the
14 relative, "Has DSS gone down there?" "No. They
15 haven't come yet. They said they'll come today."
16 "Okay." This went on and on and on.

17 So finally I just transferred it because I was
18 like, "What's taking so long? She lives five blocks
19 from you guys." So then I contact DSS, and they
20 have every excuse in the book, or they're not there,
21 they don't answer, they don't return phone calls,
22 e-mails.

23 And then later I get an e-mail from the
24 supervisor saying, "Let's sit down and let's talk."
25 "Okay, talk about what? Why am I talking to a

1 supervisor when I've been trying to contact the
2 worker on the case for weeks?" And it just gets so
3 frustrating.

4 Then I've got relatives sitting here thinking,
5 What's taking so long? I want my grandchild, my
6 niece, my nephew, what have you. It's just like
7 these DSS workers just refuse to comply with any of
8 this stuff.

9 So I think that training, more training needs
10 to be with the tribes, yes, but I also think that
11 DSS workers also need this intense training because
12 a lot of times they're on the scene and we're not
13 and we don't hear about this until the next day or
14 two days down the road that a child was removed and
15 placed in care. So they tell me one thing and then
16 I'm expected to believe a DSS worker and take their
17 word for it?

18 But there's a lot of parties involved, so I'll
19 get ahold of the relatives and say, or the mom or
20 dad and say, "Okay, tell me your side. What
21 happened on your side?"

22 And then you get to the hearings, the 48-hour
23 hearings, and those last two minutes. I've been to
24 another one down here, a 48-hour hearing, I called
25 in. The child was placed with supposedly a next of

1 kin, which in the court I said, "The tribe doesn't
2 view her as a kin. She has no blood ties, not even
3 by marriage to this family," but that's where the
4 child was placed.

5 So dad showed up to the 48-hour hearing. He
6 hitchhiked from Standing Rock down to Rapid City to
7 be there for the 48-hour hearing. I had grandma and
8 grandpa there the night of the removal and at the
9 48-hour hearing, and I -- the judge said, "Okay,
10 what does the tribe want?" And I said, "I'm
11 advocating for one of the relatives, if not dad, to
12 have this child." "Well, the child is already
13 placed where the placement is at and that's a good
14 placement and DSS has ordered custody of the child.
15 Court adjourned." And that literally lasted not
16 even two minutes. And they hung up on me. And I'm
17 like, You've got to be kidding me? So I was
18 fighting this case. It's been four months now and
19 I'm still fighting for these relatives to have this
20 child.

21 And then I e-mailed the DSS worker non-stop,
22 non-stop, non-stop, and then lo and behold I heard
23 from some other agency that that worker either got
24 fired or she resigned. So now they want to sit down
25 at the table with me and discuss, "Okay, let's

1 discuss the relative placement." "Okay, four months
2 in? You've got to be kidding me? These relatives
3 have been there since Day 1."

4 So DSS is not complying whatsoever. This
5 stuff, they don't even care. They're like, "We're
6 going to do what we're going to do and you have to
7 comply with us." I don't think that's how it should
8 be when it comes to Native children being removed,
9 not when we've got relatives advocating since
10 Day 1 for these children.

11 Another thing that I see in a lot of the cases
12 is that the attorney for the parent knows nothing of
13 ICWA. And I feel bad for these parents because
14 they're telling their attorneys things and the
15 attorney doesn't advocate for them, doesn't know
16 nothing of ICWA. So I don't know -- I mean, I know
17 that's not your guys', you know, job to educate
18 these attorneys, but it's hard for parents to fight
19 for their own kids when they have attorneys who know
20 nothing of ICWA, who know nothing of foster care or
21 CPS issues, know nothing about it.

22 And another issue that I run into is state
23 judges. I know that they know these rules. I know
24 they know ICWA law, but at the end of the day, at
25 the end of the hearing a lot of times it is the

1 judges who just, flat out just don't -- they don't
2 want to comply. (Unintelligible), I've had several
3 cases, court cases in front of him. I've had other
4 cases in front of him besides this one, so he's well
5 aware of what ICWA placement is all about, and he
6 still -- he doesn't want to comply with it.

7 There's other cases. And I have 13 -- I work
8 with 13 different states, and it all boils down to
9 that judge, whether they're going to view it as an
10 ICWA case or not.

11 I've gone to a case in Alabama where they were
12 arguing in days and days of hearings of whether this
13 was an Indian child. I'm like, "That's not your
14 determination to determine if this is an Indian
15 child. That's the tribe's responsibility to
16 determine." It was a Native American mother. The
17 child was very much eligible for enrollment.

18 I went down there I don't know how many times
19 and I advocated and gave documentation that this is
20 an Indian child. They still had a hearing. And
21 then they had to rule, a ruling about a month later
22 where she said, "Okay, ICWA applies." It applied
23 from Day 1.

24 So the judges as well also need some kind of
25 training. Especially in the eastern states,

1 southern states where they don't have too much
2 contact with Indian tribes, they lack knowledge
3 completely.

4 I could probably go on and on about a lot of
5 our cases. But one of the things, too, on this one
6 here where it talks about that the Court should
7 allow -- alternate methods the state needs to
8 provide the tribe, I think that's very key. Because
9 I do have a case, I want to say it's in Oklahoma or
10 Nebraska, where they're not allowing the tribe to
11 participate in hearings. Because of that one judge,
12 you have to be in person.

13 The Alabama case was the same way. She denied
14 our transfers. We put in a transfer intervene.
15 They denied it. Transfer, denied it. I came
16 onboard. I intervened. She granted it, and we put
17 in for a transfer, and we're still waiting on a
18 transfer. But she wanted to -- she denied it
19 because she wanted somebody there in person. Well,
20 you think of all the resources the tribe had to
21 expend to fly down there. I went down there three
22 times. When I walked out of the hearing, when the
23 hearing was done, I was like, Okay -- I was so lost.
24 Okay, what are we doing? What did we just have a
25 hearing on? Because it didn't go like the normal

1 hearing like they do around here, our tri-state,
2 North and South Dakota, Minnesota. But that was a
3 waste of time. We even bought a ticket for the
4 child to come back, and that ticket is still there.

5 So, yeah, I think three times I flew down
6 there. The second time I went down there they
7 rescheduled in the middle of my flight. So I
8 (unintelligible) in Denver and come back because it
9 was scheduled.

10 So them not allowing us to participate via
11 telephone, in a lot of these, you know, the
12 southern, eastern states, I think that's -- that
13 needs to change because of the resources that we
14 don't have to be flying around constantly at their
15 whim whenever they decide to have a hearing when
16 they can just let us telephone in. I think the
17 Oklahoma or Nebraska case I didn't participate in
18 one hearing on that because the judge doesn't allow
19 telephonic hearings. So that's -- I say that's a
20 big change.

21 How -- the determination of good cause not to
22 transfer, it says in here that any -- "the state
23 court believes or any party asserts." I think we
24 need to just limit that to the state, because you
25 open it up to any party, you're opening it up for

1 foster parents to be parties of the case.

2 We have a case in Virginia where because of
3 that, "any party," they file to be a party to that
4 case. It just so happens that that foster father is
5 an attorney, so any time the tribe does anything as
6 far as trying to transfer or try to do anything as
7 far as placement issues, they object. They don't
8 think that the relative is suitable to care for this
9 child. That case is still ongoing. So I think
10 limiting it just to the state to object not to
11 transfer, the state, the tribe or the parent, is
12 better than "any party" because foster parents
13 shouldn't be parties to these cases. They're there
14 simply to care for the child so the child is taken
15 care of. It leaves it open to too much other people
16 asserting their -- especially foster parents.

17 On that case in Virginia we're fighting to try
18 to get that child placed with an auntie. I don't
19 know what's going to happen with that case, but that
20 case is frustrating because they just object to
21 everything the tribe does based upon the foster
22 parents.

23 Another issue I think I had was -- oh, I'm not
24 quite sure if any of the other tribes that are here
25 are experiencing this, but where it talks about

1 child custody proceedings and then where it talks
2 about where ICWA does not apply, it does say divorce
3 proceedings in there, but this day and age it seems
4 like most parents aren't married. So you have unwed
5 mothers, you know, boyfriend, long-term boyfriend,
6 and they have children.

7 I've been experiencing a lot of phone calls
8 recently since that ruling of that lawsuit in the
9 State of South Dakota that came out about
10 third-party custody, ICWA applies to a third party
11 where mom or dad has the child and they have joint
12 custody or there's no custody papers period, one of
13 the parents goes to jail, is in jail for a long
14 term, the grandparents having the children, the mom
15 wants them back and the grandparents won't give them
16 back, which is their right. The grandparents file
17 in court for custody, again which is their right,
18 but mom or the father, either one, will call the
19 tribe and say, "I'm an enrolled member of your tribe
20 and can you guys help me get my kids?" So I have to
21 ask all of the pertinent questions of whether ICWA
22 applies to that case. And then at the very end it
23 comes down to just a custody battle between the
24 parents and grandparents.

25 And I just had gotten a phone call, I think two

1 weeks ago, from a lady in Minnesota. She says that
2 she has a case like that dealing with custody with
3 grandparents and the parent and she says ICWA
4 applies. And I said, "Were the children removed and
5 placed in foster care?" She said, "No." So she
6 told me the whole story. And I said, "ICWA doesn't
7 apply." And she said, "Yes, it does. Third-party
8 custody applies." I'm like, "I don't think that's
9 what it says." So I had to read it again and it
10 just says "divorce proceedings." She said, "Well, I
11 have an ICWA judge who told me that third-party
12 custody applies." And I said, "I don't believe it
13 does."

14 So I think taking into consideration that
15 divorce proceedings, most families, couples are not
16 married, so it does boil down to a custody battle
17 with either mom and dad or mom and dad and the
18 grandparents. I was just trying to get that across
19 to them. A lot of them don't like the answer that I
20 give them, but we have to stick with how ICWA
21 applies to the situation.

22 That's it for now, I guess, unless I think of
23 some more. Thanks.

24 MR. LARRY ROBERTS: Thank you.

25 MS. CANDACE JEANOTTE: Hi. My name is Candace

1 Jeanotte and I'm with Sisseton Wahpeton
2 (unintelligible.)

3 I just wanted to add and expand on the child
4 custody ourselves. A lot of our cases do involve
5 custody disputes, so if the language can just be
6 modified so that it's spelled out that we're not
7 here to determine parent against parent or
8 grandparent against the parents.

9 The other case is with the men, I think with
10 fathers. In reading the new ICWA guidelines it
11 really excludes the fathers. I'm here to advocate
12 we have very few fathers that step up, and when they
13 do, like I definitely want to be onboard with them.
14 So I think that the language in regards to fathers
15 should be included.

16 One of the things I want to point out, though,
17 is that the ICWA directors within the State of South
18 Dakota have teamed up on this project with working
19 and interpreting the guidelines and even approached
20 the Great Plains Tribal Chairmen's Association for
21 support. So we do have quite a few written
22 recommendations that we will be submitting. I think
23 we'll probably -- I think we're almost complete with
24 that, and it should be submitted maybe next week.
25 So it's just something that you guys can look

1 forward to from us.

2 Thanks.

3 MR. LARRY ROBERTS: Thank you. That's really
4 helpful, and it's really great to get comments well
5 before the deadline, too, because I think everybody
6 just kind of, you know, waits for the deadline. But
7 we have folks that can start going through those
8 comments and thinking about them right away, so
9 that's great if you're going to submit comments next
10 week or whenever, that's really helpful. Thank you.

11 And just a general comment on that is it's
12 always helpful to get suggested language about how
13 to fix it right. So if we've gotten something not
14 right, tell us how it should be and how it should be
15 written there. So that's helpful.

16 MS. LILA KILLS IN SIGHT: I have one more
17 thing. I'm Lila Kills in Sight.

18 In reviewing this, I'm really, really stringent
19 on our traditional customary rules as a people.
20 Those laws and traditions are still what we follow
21 today, and that's what strengthened us, you know, to
22 get to this point.

23 One of the issues that I would also like to ask
24 you to look at in this process is the tribal
25 customary adoptions. That is very, very important.

1 Ties are made for our children, and these
2 traditional customary laws of our people, we hold
3 those in very high regard.

4 I myself right now, I have four adopted
5 daughters through that process. And because our
6 ceremonies are coming back, they are returning, this
7 generation, seventh generation and on, are bringing
8 that back.

9 And I have raised my niece's daughter. I took
10 her since birth. Right out of the hospital, I was
11 there. She's mine. All of those ceremonies were
12 done for her, you know, but in my heart that
13 customary tribal adoption that was done is superior
14 to what a legal adoption is. That's my belief.
15 That's our belief as a people.

16 Because you are obligated and set -- the
17 standards are set there through our people to --
18 this is done publicly. We are upheld to them as a
19 people. So those are important factors that need to
20 be addressed as well in this.

21 When we have children come home or we work on
22 that process, there are some very important
23 ceremonies that need to be done for them, calling of
24 the spirit. You know, it's a spiritual work.

25 ICWA is a spiritual work. It is almost like in

1 us. And when you bring a child home back to the
2 people, that comes with a lot.

3 There was a time, I remember one of my
4 grandmas, she was talking about it, and she says,
5 you know, "No matter what, no matter where you go
6 and no matter where you're at, your heart is always
7 going to be with your people. Your heart, you're
8 going to want to come home and you're going to want
9 to know who you are." And there are grandparents
10 who step up and are willing to take these children.

11 But when she was talking about DSS, you know,
12 I'll tell you, they don't care. I, myself, we don't
13 have use for them. They don't even need to be on
14 our reservation.

15 I have busted in on meetings with them because
16 they have tried to separate twins. You don't do
17 that. And sad to say, they did it anyway. Two
18 weeks later one of them twins were dead. They were
19 3 years old. Those are taboos that they need to
20 learn about our cultural ways.

21 And we need cultural training dollars because
22 together -- this isn't going to work if we don't
23 have that piece of it. We have our elders who we
24 utilize every day in this work. Sometimes it's not
25 written anywhere. We can't find it.

1 Sexual abuse, 99 percent of that -- I'd say a
2 hundred percent, but that 1 percent I'll say is
3 because of the prayer, 99 percent of that when a
4 child is sexually abused. I am just appalled that
5 they're still alive. And these customs and
6 traditions are very important for the healing of
7 that child. And there are times that, you know, I
8 sit there and I think about this, and I'll tell you
9 right now, I truly believe and I've witnessed that
10 help us.

11 But, again, resources for helping grandparents
12 when DSS comes in, they take a child and they find a
13 relative placement, they just drop them off.
14 Grandma is probably living on a \$400 fixed income
15 and already has five grandkids. These are
16 relatives. This is how it is. And they bring one
17 more, she's not going to say no. She's going to
18 take them. She's going to find a way to make that
19 work, and that's through the kinship system, how we
20 live. It's unspoken of. We don't talk about those
21 things. We just know. And the reason why it's
22 unspoken is because we have that fear, We're going
23 to get busted; we're going to be the bad guy.

24 So even in these jobs, we break rules because
25 it's a child. And those are things we shouldn't be

1 ashamed of. We should not be ashamed of wanting our
2 children to have a good life and knowing who they
3 are, solidifying who they are as a human being.

4 And what really hurts me again is aging out,
5 like Rose talked about, when these children are of
6 age, they come home; they look and they try to find
7 somewhere to go. I wish we -- I dream. I dream a
8 lot. And I wish we had a resource center. And
9 every reservation where our adoptees, our children
10 who grow up in this system, find a way -- I wish
11 they had somewhere to come home to. They need a
12 place. We can't provide that because we don't have
13 the resources. But they need a place to know that
14 they're still a part of us. But their needs, their
15 issues, they're not different to me, but to them,
16 they have to ease back into their identity.

17 And our people, our elders always talk about a
18 termination, termination, "They're going to
19 terminate us some day if we lose that language." It
20 worries me and it scares me.

21 I'm very fortunate I can speak our language.
22 I'm very fortunate that I was gifted with that. But
23 when these children come back, we have a beloved
24 language. We have a language that only pertains to
25 the children from conception, from -- you know, it's

1 not when they're born.

2 And I'm going to tell you a story. About five
3 years ago -- no, 2007, so that would be eight years
4 ago, we were taking over the work of child welfare
5 for the tribe, and we had to have all of these
6 meetings. CFR 25, I had to ingrain that, pump that
7 into my head, you know. And we had all of these
8 meetings with the finance people, the bureau. I
9 mean, we had -- it was just -- it was overwhelming
10 but we did it.

11 Anyway, we had a meeting. And sad to say but
12 this is something that happened and I share it. I
13 don't like it, but I share it because it's pretty
14 powerful. This person is no longer, I think,
15 working or around. But we had a meeting, and this
16 person was acting as superintendent or something
17 they sent down, and she was a part of this little
18 process. I don't know how long she stayed with us
19 or what. But we were sitting there, and we were
20 talking about the spirit and, you know, our customs
21 and, you know, how we're really big on that. And we
22 had the finance people sitting there, and they came
23 in, you know, "CFR" right on top. And I was like,
24 Oh, God.

25 So we got into this discussion, and we talked

1 about how we were going to try to create a line item
2 or some kind of resource to even help the
3 grandparents with food money, \$75 or a hundred
4 dollars. You know, so we were discussing that.
5 Just as soon as you get this child -- when a child
6 is in trauma, the first thing our people do, what we
7 do is we feed each other. That child needs to eat.
8 I don't care what time of day it is, you feed that
9 child until they're content. Trauma, so we talked
10 about that, and that was one of the huge things,
11 there's spiritual food that needs to be fed to them.
12 You know, there's things that need to be done
13 immediately. And that's preventative and it's
14 crisis work on that end for them.

15 And here we got done. And we had from January
16 to like March, that year we had about 23 deaths,
17 infant deaths, SIDS, I don't know what it was, but
18 we were burying our babies. They wouldn't want to
19 come. And it was horrible, stillborn. I mean, it
20 was just horrible. So we touched on that. And here
21 this lady was a bureaucrat and -- I don't know. It
22 just -- and she said, "Okay, now it's my turn to
23 talk. When are you people going to get it? When
24 are you going to get it? You cannot be living like
25 that anymore." I was like (indicating). It just

1 blew me away. She was a Native woman. She said,
2 "When are you going to determine when a fetus is a
3 fetus and when a child is a child? You guys have to
4 make that determination." I was like, "Whoa." "That
5 costs money." Okay, 23, you know, infant deaths
6 that cost this much money, that was it. It was
7 just -- it just blew me away, even to this day when
8 I say that. I couldn't believe it, the mentality of
9 that bureaucracy.

10 And we just -- I mean, there was nothing to
11 say. How could you respond to that? That is not
12 our place as a tribe. It was basically, "You tribal
13 people, you guys are off in your head. There's no
14 money. There's no money." Look at how long it's
15 been that there has not been resources but we're
16 making it work.

17 And it really saddens me that our children who
18 do age out, we don't have a transition plan for
19 them. When you get 18, whatever that money is you
20 get, you get dropped off on the street of where they
21 know your family come from. And that happens. It's
22 real. From 18 I'd say to 28, even 30 years old,
23 these young people search for themselves. There's
24 nothing in place to help them. Resources, there
25 aren't many. So we're missing a piece there. Even

1 if we say 25 years old.

2 But we don't have transition dollars. We don't
3 have that with ICWA. How are you going to set them
4 up to have -- get an apartment and do all of these
5 things? Some of them still go to school. They
6 still want to go to school. So, you know, those are
7 additions to, you know, what I wanted to say before
8 that education dollars are very important. If these
9 children want to continue their education, we have
10 colleges on our reservations. Those are options
11 that, you know, we need to give to them. They need
12 options.

13 Thank you.

14 MR. LARRY ROBERTS: Thank you. So I appreciate
15 your comments about, you know, kids that age out of
16 the foster care system and, you know, what -- how do
17 we help those young kids and young adults. And it's
18 something that internally within the federal family
19 we're meeting together with Indian Affairs and HHS
20 and DOJ to just see how we can better collaborate
21 internally not only on ICWA but all of these types
22 of issues.

23 And on the foster care thing, it's something
24 that is very near and dear to the Secretary's heart
25 because she was a foster parent for a non-Native

1 child. And so she, herself, has talked about, you
2 know, when that child aged to 18, they weren't ready
3 to go out into the world on their own, you know, and
4 so she was very, very concerned about that child and
5 continuing to care for that child even though it had
6 aged out of foster care. I don't know if it was a
7 male or female, but the child had aged out of foster
8 care, so she talks about that.

9 So I just raise that because in addition to
10 these regulations that we're here to talk about
11 today and hoping to finalize these regulations under
12 the Native American Affairs Council that the
13 President established, we have agencies talking
14 internally about ICWA and how to focus those
15 internal resources and better collaborate. So it's
16 helpful to hear from a number of people that that is
17 obviously a concern in Indian Country that we need
18 to look at and do what we can.

19 MR. ROBERT TAKEN ALIVE: (Native language)

20 My name is Robert Taken Alive. I'm on the
21 tribal council for the Standing Rock Sioux Tribe,
22 and my district is in the South Dakota portion of
23 the reservation. I come from a very traditional
24 background, very traditional, and the big piece is
25 ethics.

1 I was just at a BIE consultation yesterday. We
2 were advised that there's rules to consultation. So
3 I was trying to get those last night. However, I
4 couldn't.

5 I was also invited to gaming regulations.
6 There's another consultation this afternoon. One of
7 our casinos invited me, so that's where I was this
8 morning and that's why I'm getting here late.

9 Jessie Taken Alive was going to come. He was
10 at the consultation also yesterday with BIE.

11 One of the things that I'm seeing and reading
12 here, proposed changes, is -- and I'll touch
13 slightly here on the lady's comments earlier, is
14 that education, the BIE should, you know, working
15 collaboratively and networking, would be a source of
16 saved dollars for our students for our foster
17 children.

18 My background is in education. And my
19 education, I'm an administrator, superintendent
20 certified for South Dakota. And I did work in one
21 of our bigger tribal schools.

22 And I did work with ICWA law quite a bit in the
23 transferring and bringing back and different things
24 like that with ICWA. And a lot of the people that
25 are involved are the ones that have been involved

1 for a few years with the law.

2 So if you try to be innovative with the
3 students and try to keep into them with our ICWA
4 director, Raquel Franklin, and saying, What supports
5 your needs in terms of working with -- of course,
6 the State of South Dakota is probably the toughest
7 state to work with. I say that because I was -- the
8 school I was at was in North Dakota, and the
9 legislative and the people that are in a political
10 realm seem to be more -- I used to work with them,
11 especially with students.

12 South Dakota, it seems like it's a dollar
13 issue. You know, a Native child identified with a
14 learning disability is a high priority for a lot of
15 the South Dakota entities in terms of working with
16 children. And those are some of the concerns that I
17 share as a council representative. I don't get down
18 into the specifics with our children anymore as much
19 as I used to. However, I do, once in a while, will
20 stop at our school. We have a K-8 school in my
21 community, Sitting Bull School.

22 And we do have -- we did have a case where we
23 had an ICWA transfer from the East Coast, and that
24 was last fall. And it seemed to have gone smooth.
25 However, he was placed with his grandmother. The

1 grandmother is on dialysis, and there's a lot of
2 needs that need to be met and to care for these
3 children.

4 And I asked the grandmother, "How can we help
5 you?" You know, "Just get my grandchildren back and
6 we'll figure it out then." Because it just comes
7 down, like the lady spoke about, the traditional
8 part of our people is that we want to make sure our
9 children are safe. And money isn't going to be
10 safe -- I mean, it's not going to provide that
11 security that our children need.

12 And it all ties into their adult life. You
13 know, when they age out at 18, they only age out if
14 they're identified with learning disabilities until
15 they're 21. However in ICWA they age out at 18.
16 Those are a couple of concerns that I had.

17 And for me I see a lot of our community
18 members, and specifically our children, and wonder
19 if they're getting a yearly checkup, physical
20 checkup. Because we have a clinic and then the
21 clinic is like 10 miles away.

22 Healthcare is horrible for my community. So
23 that was one of the things that I ran for council
24 for is the healthcare.

25 Now we have a mobile unit which, you know, we

1 can do in terms of clinical care for our children,
2 not only physical but mental.

3 If ICWA could collaborate with the BIA services
4 there and develop something that's mobile, it would
5 really help. Because I was raised in an atmosphere
6 of health is wealth. And what that means is to
7 be -- to take care of yourself physically. It don't
8 matter how much money you get or how much money you
9 don't have, if you're healthy, you're going to have
10 a good life. In our language it's called (Native
11 language), watch what you eat; watch what you do;
12 make sure you take care of yourself. And it's
13 instilled in the life of our community. Our
14 children are still taught that. So it's imperative
15 that along with child care, these different possible
16 entities, is that if they could collaborate with the
17 larger federal entities.

18 And when the President came to visit, his
19 question to me was, "What two things do you see that
20 you'd like changed in your community?" And so I
21 told him education was one. And the other one is
22 clean drinking water. And these are basic needs of
23 life. There's no if, ands and buts about that.

24 Well, when I got done answering his questions,
25 the President's, well, the First Lady asked, "What

1 about your youth? What would you like to see happen
2 in your community?" So I said, "After-hours
3 organized activities such as a YMCA, something that
4 would let the students be, children be children."
5 In the communities on the reservation that I've
6 worked with, I've seen the oldest child be the
7 caretaker for that home.

8 And, like I said, you know, there's a lot of --
9 I mean, I'm looking at your proposed changes.
10 They're pretty good. And I didn't get to speak at
11 the BIE consultation yesterday because there was a
12 lot older council member representatives of the
13 Great Sioux Nation. And I listened.

14 One of the things that I was concerned about
15 with that particular consultation is they were
16 changing the whole plan; they were changing the
17 whole organization of the BIE. And I don't think as
18 an educator I was even allowed to understand the
19 whole BIE plan. As it was now, they're going to
20 change the whole thing.

21 And that was one of the things that I see here
22 is that you're developing, adapting, which is good,
23 because you're not going to have to be wondering
24 what's going to work and what's not going to work.

25 But for the record I just wanted to make those

1 comments. And if -- I guess we're having an
2 election in October. And if a representative from
3 ICWA could present to the new tribal council or a
4 yearly presentation to the tribal council on ICWA
5 and what's new, that's something that, you know,
6 take care of in e-mail and that we could have in
7 front of us. In doing that, we won't be going to
8 meetings and not knowing what's going on.

9 Yesterday they gave us the re-word for it.
10 They called it the Group (unintelligible) Reform
11 Policy. And they laid it in front of us, and we had
12 maybe about four minutes to go through it. I was
13 going through it. You know, there was, I guess, the
14 views on it.

15 But, like I said, you know, it's very
16 imperative that we provide services for our
17 children. Because working with foster children,
18 you're already kind of able already.

19 And I was taking extra time -- if I know that
20 there's a foster child in my community, I'll take my
21 time to go over and I'll visit their home. As I did
22 as a teacher, I take my time and I visit with them
23 and encourage them, and then as an administrator do
24 the same thing.

25 So to this day they may be in their early 30s

1 or 20s, you know, late 20s or mid 20s, they'll get
2 ahold of me and they'll talk to me. So the
3 "age-out" part of it never happens for me. And it
4 probably won't. But I accept that as part of the
5 community and part of a community member. But yes,
6 we do need information to get out there.

7 And when I got to speak with Senator Thune, I
8 talked about ICWA with him, and I told him that
9 federal agencies, along with state agencies, if
10 they're collaborated, would provide a lot better
11 service for our community. And I tried not to say
12 just for (unintelligible), but clearly you want to
13 say it for the Standing Rock Indian Reservation
14 because there are a lot of foster children. And we
15 do have a large dropout rate, and we do have a large
16 poverty, you know.

17 But those are some of the things I'm always
18 reminding young people: You shouldn't get bored.
19 There's always that possibility to want to learn the
20 language. And when they learn the language, it
21 changes them.

22 I know our pharmacist from the BIA in our
23 clinic in McLaughlin is a self-taught language
24 learner, and he carries the conversation. And
25 he's -- he can't understand why people don't learn

1 the second language, because it broadens your view
2 on demographics or the area that you're working in.

3 So it's really a positive thing that you do
4 consultations and come out for the communities.
5 Because we as tribal council representatives -- like
6 I said, you know, I was at a training this morning.
7 And the GM said, "Well, you know, I'll take your
8 information. There's another training going on in
9 Prior Lake, so you can catch that one."

10 So when I leave here, I'm going to go home, and
11 I'll meet with some elders tonight. And I'll advise
12 them and I'll share your documentation with them.
13 So -- and they are -- they get afraid of taking
14 grandchildren now because they don't want to be the
15 bad guy. If something is going bad, they don't want
16 to be identified. So I always encourage them,
17 "Here's what it is: If somebody needs a bad guy,
18 then I'll be that bad guy." Because the bottom line
19 is those kids, when they hear "grandma" or "lala" or
20 "grandfather," they know that there's going to be
21 three square meals and there's going to be a place
22 to sleep, bottom line.

23 So I always tell our CPS program, you know,
24 when you're working with relatives, that's not just
25 a title. That means security. That means there's

1 going to be a place for them to be where there's no
2 drinking, where there's no fighting, where there's
3 no possibility of being violated.

4 So I just wanted to share those. And I know,
5 my brother Jess, I'm hoping that I could cover some
6 of his areas, too. But I just wanted to share
7 those.

8 Thank you.

9 MR. LARRY ROBERTS: Thank you.

10 And I just wanted to say we covered this a
11 little bit earlier as part of the presentation, but
12 we got to this point with the Proposed Rule because
13 of the leadership of the tribes. We had listening
14 sessions over 2014, and we heard from tribal
15 leadership loud and clear that we not only needed to
16 update the guidelines but we need to make
17 regulations.

18 And so we updated the guidelines earlier this
19 year. And it's forums like this that are really
20 helpful on our Proposed Rule because, you know, it's
21 folks like your ICWA directors that are working on
22 the front lines and they can say, "This is working
23 well; this isn't working well. This is what this
24 county is doing. This is what this county is
25 doing." And, you know, some counties might be doing

1 it well. And we need to raise those up to say, This
2 is the best practice, and, you know, we can draw
3 some consistency in implementing ICWA. But we
4 really need -- we appreciate your feedback and your
5 support on this rule making because we need to make
6 this the best rule we can in moving forward.

7 Thank you.

8 MR. WILLIAM CROSS: Good morning. My name is
9 William Cross. I'm with the Oglala Sioux Tribe Pine
10 Ridge ICWA Office called ONTRAC.

11 Sitting beside me here is Lema Richards. She's
12 an ICWA social worker with the Rapid City office on
13 Rushmore Street, and she's managing that office by
14 herself and has been for a while. We felt it was
15 necessary to have a Rapid City office due to the
16 amount of cases in the State of South Dakota that
17 one office couldn't handle it by itself.

18 Because of ICWA ONTRAC, we serve the United
19 States. We have a heck of a lot of Lakota people in
20 the states Washington, Oregon, California, Idaho,
21 Texas, even in the East. We have Lakota people all
22 over the place, and this is why we have such a large
23 caseload and that we have found it necessary to have
24 two offices to try to bring some of the cases down
25 in South Dakota.

1 And at the same time while Lema does the State
2 of South Dakota, she also does ten other states. We
3 divided the states up into groups like ten or so.
4 That's the only way we could do it.

5 And I just wanted to say ICWA is, like the lady
6 said earlier, it's a sacred law. I've always said
7 that myself, because we deal with children. We deal
8 with children which we hold sacred. We've always
9 said that.

10 And, you know, this law is sacred in more than
11 one way. It's a law that enforces tribal
12 sovereignty and jurisdiction, culture and tribal
13 membership, and education, acknowledgment nationwide
14 of who we are. We're here in the 21st Century. We
15 exist.

16 And our reservations are vital. Our membership
17 is vital. Our children are vital to us. And this
18 is what we do, fight for them, every day.

19 ICWA is a complicated law. It's probably the
20 most attacked law in my experience. It's being
21 attacked almost on a daily basis from politicians,
22 from courts, judges, social workers. Even tribal
23 leadership at times will undermine or attack ICWA.
24 And we've seen that.

25 But I'm not here to complain today. I just

1 want to say thanks for taking testimony and giving
2 me and Lema the opportunity to express our views on
3 some of these rule changes.

4 And we are supporters of any changes that's
5 going to make ICWA easier and, you know, better
6 funded and more understanding of this law. Because
7 right now we have people that don't understand this
8 law at all, and there's a lot of individual
9 interpretations, you know, the wrong interpretations
10 of ICWA law, and sometimes we're defeated in court
11 because of the application of these rules that they
12 don't seem to understand.

13 In a motion-to-transfer hearing, a lot of times
14 ICWA rules are violated. And there's nowhere to
15 turn. This does happen. We don't have a central or
16 a nationwide enforcement system for ICWA. And I'm
17 sure all of the ICWA offices have probably
18 experienced that, the violations of the Indian Child
19 Welfare Act.

20 And at times we have to let it go; we have to
21 let them go ahead and violate ICWA law because
22 there's no recourse. There's no resources and
23 attorneys available to correct these problems. So a
24 lot of our children get lost in that system. They
25 get adopted out, or some remain in that system for

1 years. Some of our cases go back several years
2 because of these type of decisions that courts make
3 not being totally familiar with ICWA law.

4 But I think the rules that we make should be
5 solid. They should be binding and that they should
6 be like one -- one interpretation.

7 I practice a lot of ICWA in Nebraska. And
8 that's one state that tries to undermine ICWA and
9 create their own statutes that counter ICWA. Like
10 (unintelligible) in a Nebraska town, they told me,
11 "No, you have to be an attorney." And I have to
12 bring out my ICWA knowledge of what's required to
13 intervene. And you do not have to be an attorney.
14 And I just can't seem to convince them of that.
15 They refer back to their own statute and that's
16 binding on them and we can't go around it.

17 And they said we don't have the legal
18 expertise. But we don't really need to be lawyers
19 just to intervene in a case. And we can't convince
20 them of that.

21 But there needs to be more ICWA education, not
22 only locally but nationwide, not only for the
23 system, the courts, the Social Services, but for the
24 families. A lot of times the families don't know
25 their own law that protects their children. They

1 don't really know the law because nobody has told
2 them or provided them with the education that they
3 need. The courts won't do that. When Indian
4 children are taken into custody and it comes to
5 court, the parents are not provided with ICWA
6 education of what their options are. If so, it's
7 done very minimally.

8 But I wanted to -- Lema also has something to
9 say about the stuff that she has coming from her
10 office.

11 MS. LEMA RICHARDS: Good morning. My name is
12 Lema Richards. I am the social worker for the
13 Oglala Sioux Tribe Child Protection Services
14 ONTRAC ICWA. The office is located at 1405
15 Mt. Rushmore Road here in Rapid City.

16 I have worked with other tribes where they come
17 in and they ask for information, "Can you help me
18 get my child back?" And I'm not able to do that
19 because they are not from Oglala Sioux Tribe. They
20 may be from Cheyenne River or Crow Creek.

21 And so what I do is I let them, you know, be
22 able to talk to the director in these other tribes
23 and give them information, their fax number. And
24 they can fax intakes to the office here that we
25 have, and they are able to fill it out and fax it

1 back to the other tribes. And I was able to do
2 that.

3 And I worked with Crow Creek also where we did
4 a dual -- we went to court in Crow Creek Tribe
5 Tribal Court, and what we did is we -- what -- they
6 turned -- the Crow Creek turned the child over to
7 the Oglala Sioux Tribe, and what we did was we
8 helped the child because the child is here in Rapid
9 City and my office is here in Rapid City. And
10 they're out in Crow Creek, so they're not able to
11 help the families and they don't know the resources
12 here in Rapid City and I do know the resources here
13 in Rapid City. So in saying that, I think that we
14 as tribes work together and help each other through
15 resources.

16 And I went to court yesterday in the State of
17 Wyoming. When I went to court there, the judge
18 said, um, "Ms. Richards, I would like it if all the
19 tribes would come to their first initial contact,
20 their first initial hearing, 48-hour hearing,
21 because I can see that you're a person that is
22 interested in your children. And after this," he
23 said, "I will do telephonic hearings. But your
24 first appearance would be in physical -- you know,
25 physically there." So we need funding for being

1 able to attend these court hearings across the
2 United States.

3 There is high rates in California, Oregon and
4 Washington that are Sioux, from the Sioux tribes,
5 and we get a lot of notices. I would say California
6 is our second highest.

7 So there's a lot of hearings here in South
8 Dakota and California, and I take care of both. So
9 it's really, really busy.

10 And our funding is very low. We need more
11 funding for staff. I'm alone up here. I answer
12 phones. I take -- do intake. I go to court
13 hearings. And I'm in court hearings with other
14 states, while I'm in another court hearing. So I'm
15 quite busy. I have a cell phone and I can be in a
16 court hearing on my cell phone.

17 And I do apologize I was late today because I
18 was working on another case before I did get here.
19 And Bill was also. So we're quite busy.

20 And there is three ICWA workers. And the
21 supervisor for the ONTRAC CPS for the Oglala Sioux
22 Tribe is Juanita Sherick. And the other of the two
23 workers is Carole O'Rourke. She is the family
24 locator who does all of our home studies throughout
25 the United States or wherever we want her to do our

1 home studies. She does background checks and does
2 the home studies in these different states.

3 And that's also another reason why we need more
4 funding for the home studies is for the safety of
5 our children before we place them. And also she
6 does a lot of transporting of our children. Because
7 Bill and I are so busy, and Juanita. We're in court
8 hearings or we're in meetings and we're not able to
9 transport the child. Because we have to be
10 representatives of the Oglala Sioux Tribe that we
11 have to go and sign for the child if he's in
12 Washington, California, wherever. We have to go and
13 sign for them. And so we need a representative from
14 the tribe to pick up our child to bring them back
15 and place them with the family that we did the
16 background check and a home study on. So funding is
17 very -- is needed a lot.

18 We need attorneys in some of these states.
19 Like I know that Bill was having a hard time in
20 Nebraska because they're violating our ICWA laws.
21 They don't -- they need -- like when I went into a
22 hearing they said, "Oh, no, an ICWA worker from the
23 Oglala Sioux Tribe is here, a social worker is
24 here." So what they do is they wait, and the judge
25 goes and looks up ICWA law real fast before I get

1 there.

2 So when I walk in, I'm probably intimidating,
3 because they're like, "Oh, no, she's here. I'd
4 better look up the ICWA law real fast before we have
5 this hearing. Let's have a recess until I can look
6 up the laws." So that has happened a lot. And they
7 don't -- they don't read the whole law. So, um, a
8 lot of violations are happening.

9 And what I do when I go into a court hearing is
10 I do a -- I have this form with me. And when I go
11 into the hearings, I fill out this form while the
12 hearings are going on: Are they violating mom, dad,
13 the child? And keeping track of who the judge was
14 and what was said, if ICWA was, if the law was read
15 in court by the judge, who the judge was and the
16 children and which tribe they're from. Because some
17 of them have -- they're from, you know, Cheyenne
18 River and Oglala Sioux Tribe. And those are also on
19 my form, and also everything that the judge said.

20 And I know that there's -- there was a lot of
21 violations here in South Dakota as people, you know,
22 have known. And we had a lawsuit because of all the
23 violations for, you know, our children being taken.
24 And it's hard to get them back because they want our
25 children because they come with money because they

1 consider them disabled. So what they do is they put
2 them on medication, prescription drugs, and it's
3 more for them, more money to get every month. So we
4 have a hard time getting them back because they have
5 all this money coming with them. And so it's a
6 struggle to get them back.

7 And I know that Bill has a hard time in the
8 states that he's working on in Arizona, Nebraska. I
9 say Bill takes care of that side, on the south side
10 of the United States, and I'm over here on the north
11 side. And Juanita is in between. So there's us
12 three workers that are working these cases and
13 trying as hard as we can. And we do intervene on
14 every case and, um -- to make sure that the Oglala
15 Sioux Tribe is known and that we will fight for our
16 children.

17 And yes, more funding is needed for trainings.
18 And different laws that are in these different
19 states, we need to know about these laws before we
20 go into court hearings that these things have
21 changed. And I know there's different laws changing
22 in different states. And Bill and I are always
23 talking, and Juanita, you know, "What's going on in
24 this state?" Because maybe the law has changed. We
25 need to know about it.

1 I know we have a, it's not an MOU or anything,
2 but we have a, how would we say it, a communication
3 with Denver Indian Center where they help us with
4 our families there. They would -- because our
5 courts on the Oglala Sioux Tribe, they would like
6 our families to have parenting classes and doing an
7 alcohol and drug assessment, or "others," which
8 means that they could -- we could have them go to
9 anger management or domestic violence classes or
10 whatever they need to help them to get their --
11 reunify with their children. And so the Denver
12 Indian Center has helped us.

13 And through cultural, we as Native, the Sioux
14 Nation, hold our language and, um, our (Native
15 language), our dances. And we want our children to
16 keep those and to -- because, you know, a lot of our
17 families or a lot of our children don't know those
18 because they're in the cities and they don't have
19 that, those dances, you know, and our culture, and
20 they lose that.

21 And so the Denver Indian Center has helped us
22 with the cultural part and doing -- helping them
23 with their parenting classes.

24 Also the Minneapolis Indian Center has also
25 helped us with home visits and will call me and let

1 me know that one of the families out there is doing
2 this or this or this, just to give us updates on
3 what's going on with those families. Because we're
4 not able to get to Minneapolis because we might be
5 in Denver in a court hearing, and then they'll call
6 and let us know.

7 And I am busy. It's hard to get ahold of me.
8 But what happens is everybody calls the Pine Ridge
9 Office, and they leave messages for me. And then
10 they either fax or e-mail me the messages. And so
11 I'm able to get back to the families on the
12 questions that they may have and the assistance that
13 I may give them.

14 And Emily Iron Cloud-Koenen is the director of
15 the OST CPS and ONTRAC. And I don't know if she
16 wants to say a few words or --

17 MS. EMILY IRON CLOUD-KOENEN: Just one thing.

18 (Native language)

19 Good morning. There was just a couple of
20 things that I wanted to bring your attention to.
21 One thing that, just very recently, the Oglala Sioux
22 Tribe passed by ordinance an action to integrate
23 Child Protection Services and ONTRAC services into
24 one service system. So that being said, we're just
25 in the very, very initial beginning stages of

1 working to identify protocols on how we will be
2 providing these services together. And I see it as
3 a really positive step towards streamlining,
4 maximizing and enhancing services to families.

5 And then overall this will help us to track our
6 children. We'll know where our children are. And
7 so with this move, we are working toward having much
8 better communication with all the court systems
9 across the United States and other DSS type of
10 agencies. And so we will have, you know, we'll have
11 that one central place on our reservation that Child
12 Protection and ICWA-related services will be, you
13 know, where we will have that one communication
14 point.

15 The other -- second point that I wanted to
16 speak to is that in our work, as we move toward
17 capacity building, you know, I have seen that the
18 ICWA program historically has been sadly
19 underfunded. And that their work is, um, is so very
20 important, as Bill says, to exercising sovereignty
21 and to ensuring that our children have that right to
22 know who they are, to know their language, to
23 have -- to know that they have education, land, and
24 medical benefits as tribal members. That there
25 needs to be more staffing and just more everything.

1 And from an administrative perspective, I would
2 like to recommend that there be serious
3 consideration given for employee -- well, let me say
4 it this way: In the past I know that the state DSS,
5 and I think IHS has had a similar program, where you
6 fund employees to obtain a degree.

7 So in our case, it would be very helpful if we
8 could have funding to help our staff obtain a
9 Bachelor of Social Work and an MSW level degree.
10 Because as you all know, you deal with the impacts
11 of poverty. And it's going to take a long while for
12 us to get to a point where we are stable and healthy
13 as Native communities. And who knows better than
14 our own people what the solutions are. So we need
15 that balance of professionalism and cultural
16 knowledge.

17 So those are, I guess, a couple of the points
18 that I wanted to make and to request your very
19 serious consideration for.

20 And I thank you very much for coming here and
21 listening to us and to know that we -- we locally on
22 our reservation are working really hard to -- to
23 address the needs of our children.

24 Pilamaya.

25 MR. LARRY ROBERTS: Thank you.

1 So I think we're just a little bit past 11:30.
2 It's scheduled until noon today.

3 We're also going to have a public meeting
4 session this afternoon starting at one o'clock.

5 So is there anyone else that wants to provide a
6 comment on the Proposed Rule this morning?

7 UNIDENTIFIED SPEAKER: Real quickly.

8 MR. LARRY ROBERTS: Yeah, sure.

9 UNIDENTIFIED SPEAKER: I can tell you two
10 things that are not working and they're not being
11 complied with is notification, notifying the tribe
12 after removal. A lot of times they'll notify me the
13 day after when they already had a hearing. I just
14 had one on Tuesday, they had a hearing on Tuesday
15 and notified me yesterday, and they already made an
16 order. So notification is a big thing that is still
17 an ongoing problem.

18 And active efforts, that's a huge, huge key. A
19 lot of times DSS will give our parents a laundry
20 list of things to do and then stop right there. And
21 then so parents are trying to jump over all of the
22 hurdles to get these services done. And then when
23 they're not done by a year, they're getting
24 terminated.

25 I've asked several DSS workers to give me a

1 list of active efforts, what have they actively did
2 with this parent to help them overcome the hurdles.
3 I never get that, ever. I've asked numerous times
4 via e-mail. Even when I'm talking to
5 (unintelligible) that I attend, you know, "What have
6 you guys done to try to help this mother get to her
7 services, get to her appointments, get here, get
8 that?" And I never get an answer. They'll give
9 them a laundry list to do, but they're struggling.
10 They're struggling to get this stuff done. And then
11 by the time it's too late, 12 months rolls around
12 and now they're finally TPR on them. So that's one
13 of them.

14 Oh, and then the state's active efforts in
15 searching for a father, there are a couple times,
16 some of the cases that I've had, where they had a
17 father on their pursuant or alleged. Well, these
18 fathers don't even know that their names are on
19 these petitions. So when I come across those, I
20 always ask DSS or the state's attorney, "Do we know
21 this is the father? Does he even know if he's the
22 father?" Because I've had a couple cases where
23 they've had four or five different fathers, you
24 know, and they're getting to the point where they're
25 going to terminate this father and the father didn't

1 even know he's a father. So trying to get that
2 established, whether it's paternity, DNA or
3 something, some kind of active efforts of, What are
4 you guys doing to try to track down who this father
5 is? I think they're violating -- whoever that
6 individual father is, they're violating their right.

7 So I think that's it for now.

8 MR. LARRY ROBERTS: Thank you.

9 And on the definition of active efforts, you
10 know, we've sort of listed a number of different
11 examples. But if there are other things that come
12 to mind in terms of comments on how that can be
13 further clarified or things that you see, that would
14 be helpful.

15 UNIDENTIFIED SPEAKER: I have one more comment.
16 Who do I submit this resolution to? And I have the
17 cases, case histories. And for the record, of these
18 80 case histories, not one has had an attorney. So
19 with reference to the attorney, I know we're
20 mandated by the district court that mandates
21 attorneys. So I'll submit these for the record.

22 Thank you.

23 MR. LARRY ROBERTS: Okay.

24 Well, thank you all for attending this tribal
25 consultation. Thank you. I know that a number of

1 you are coming away from your day jobs, and so I
2 thank you for being here and providing input.

3 And, again, I encourage that you participate in
4 the national teleconference consultation in May.
5 And any written comments would be greatly
6 appreciated.

7 So thank you all for joining us here today.

8 MR. JAMES HAWK: My name is James Hawk. I
9 represent Lakota People's Law here in South Dakota.

10 I want to express something that's been very
11 important to me and the process of our future
12 generations. Now we all know that we have a crisis
13 here in South Dakota. It's called the West River
14 Crisis because of the things that goes on and the
15 participation by the state.

16 And then we have our tribal governments that
17 are very important, instrumental in creating a
18 system that's going to be effective for our
19 children.

20 But unfortunately I missed out. I wanted to be
21 here, but I just now got here. And I just wanted to
22 express how important it is that as a Lakota that we
23 have to define the nature of what's going on with
24 the Department of Social Services and ICWA. There
25 was a federal ruling a couple weeks back that

1 addressed that. And I see that as important to
2 understand that.

3 You know, the creativity of what's going on
4 here, I have no idea what you guys are doing. I'll
5 read up on this. But I just know -- I wanted to
6 express wopila for the concerns of Lakota children.
7 Because it's very important here, especially in
8 Pennington County.

9 And, you know, I think relationships between
10 the tribes, the state government, Federal Government
11 is very important, very important role.

12 Now, I do know a little bit about IV E and the
13 system that we partake. And I know a little bit
14 about the negotiations that go along with the state
15 and the tribes. But I think -- in all due respect,
16 you know, I think the correspondence between the
17 tribes and the governments is very important, and --
18 because what I've seen in the last couple years was
19 there's been a fizz phase, I call it. You know,
20 there's negotiations that go on, but a lot of people
21 don't understand that out there. The real people
22 always say this, "I'm not a politician and I'm not a
23 lawyer but I'm real because I know Indian people."

24 But also in the same due respects, you know,
25 how do we, you know, heal? Is that part of this

1 process of healing the wounds? Especially when we
2 have federal rulings identifying the wrongdoings,
3 that's, you know -- it's always seemed to be a
4 crutch. And it's an effective crutch.

5 And we lose children constantly. I brought
6 with me statistics of what goes on with the Indian
7 Child Welfare in South Dakota.

8 And I just want to say thank you for everybody
9 that attends. It's very important, because we can
10 do this all day long but unless we're effective,
11 unless we have correspondence with truth and honor,
12 you know, I think that's very important, something
13 to address always, you know.

14 But I just want to say thank you and thank you
15 for the opportunity to at least let me express a
16 little bit. Because I could go on all day long, I
17 really could. But the most important thing is we've
18 got to have participation. And whether -- who does
19 it or whatever, we need a consistency of someone to
20 be addressing these issues that we face every day.
21 Because I feel for the children.

22 I work for people that, we're going to work for
23 bringing our children home because of the
24 violations. We're going to bring them home.

25 We need emersion schools. We need a lot of

1 things. We need a lot of funding. I always say
2 this: There should be no reason why a Lakota child
3 should go and live in poverty. Because we're land
4 based and plus we have the most richest lands, and
5 the government just loves all that gold stored up,
6 but yet we see these problems. And this is -- it's
7 the system that we have to live because genocide is
8 still here in 2015.

9 And it hurts to see this when I look in these
10 eyes, whenever I see them taken away from their
11 families. That's the feeling that I want people to
12 feel because that's where the love and the care are
13 going to come from. Because we can be legit all day
14 long but unless we're effective, we love, encourage
15 and be able to lock down the system that's going to
16 be able to bring our children up.

17 It's hard here in Rapid City for Indian
18 children. It's hard for Indian children in Pine
19 Ridge, Crow Creek, Standing Rock, Cheyenne River.
20 We got a suicide rate that just blows me away. I
21 just -- and, you know, we think about, Well, what's
22 the problem? Well, I'll tell you what the problem
23 is: Our treaties ain't honored. The treaties that
24 we live by are not honored. So what do we do?

25 But anyway, I'll tell you what: I love

1 everybody. Thank you very much for the time. And
2 thank you very much.

3 Wopila.

4 MR. LARRY ROBERTS: Thank you.

5 If you spoke today, please sign the sign-in
6 sheet just so that we have your names for the
7 transcript, because we want to use all of your good
8 comments for this.

9 Thank you.

10 * * * * *

11 (The proceedings concluded at 11:57 a.m.,
12 April 23, 2015.)

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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF PENNINGTON) ss.

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I, CINDY K. PFINGSTON, hereby certify that the foregoing pages numbered from 1 to 99, inclusive, constitute a full, true and accurate record of the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 13th day of May, 2015.

CINDY K. PFINGSTON
Registered Professional Reporter

My commission expires:
February 4, 2016