BUREAU OF INDIAN AFFAIRS
TRIBAL CONSULTATION
Proposed Regulations for State Courts and Agencies
in Indian Child Custody Proceedings
"ICWA Proposed Rule" (25 CFR 23)

DOI University/National Indian Programs Training Center
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REPORTED BY: MICHELE NELSON
INDEPENDENT COURT REPORTERS
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MS. DURAN: I'm Elizabeth Duran from Pojoaque Pueblo. I'll be doing the morning prayer. Would you all please remove your glasses and hats? (Native American spoken). We thank you for the gift of life that you present us each day. We thank you for all the blessings that are sent forth each day through you and our ancestors that strengthen our hearts and lead us in our lives. We thank you for all the teachings that our ancestors have passed down to us from generation to generation. Many of these teachings also teach the right way to live our lives. Today we get together to talk about a very important issue, our children, the future of our lives and our tribes. I ask you to please send forth blessings upon each and every person in this room so that our minds, our spirits and our hearts may be pure in addressing those needs, those issues that affect our children. I ask you to bless every person here with long life and good health. (Native American spoken).

MS. HARRIS: Thank you, Betty, for the lovely prayer. Betty's from Pojoaque Pueblo, as she mentioned. She is the social services director, the former governor, a former governor, and a retired professor, and we thank her very much for opening this up with a prayer to begin the day this morning.

Good morning. Sarah Harris. I'm the chief of
staff for the assistant secretary for Indian Affairs, Kevin Washburn. He's very sorry that he couldn't join us here today. Unfortunately, a scheduling conference wouldn't allow for him to be at this particular tribal consultation. But this is a very important issue for him and a top priority, and he's sad that he couldn't join us here today, but continues to be very involved in the process, and we'll certainly relay all of the comments back to him.

I just wanted to recognize a few people in the room with us today. We have Councilman Gil Vigil who is also the president of ICWA, and just wanted to recognize him and say, "Thank you very much for your leadership in this area."

And then we also have Gina Tyner-Dawson from the Department of Justice, Office of Justice Programs, with us here today.

I thank you all, the tribal leaders that are here, you know, we know that your schedules are just as packed as the assistant secretary's schedule is and understand that your time is very valuable, and we really appreciate you being here today to share your input on our regulations.

So I'm going to quickly introduce our panel, and then I'll tell you a little bit about our efforts in the
Native youth area, in general, and then we'll get into sort of the specifics of this particular presentation.

So down on the end, we have Gina Jackson, who is a senior fellow with the assistant secretary for Indian Affairs. We have Vanessa Ray-Hodge who is a member of the Pueblo of Acoma and is the senior advisor -- I'm sorry -- senior councilor to Solicitor Hilary Tompkins of the Department of Interior. We have Hankie Ortiz from the Office of Indian Services at BIA; we have Rodina Cave who is the senior advisor to the assistant secretary for Indian Affairs; and we have Debra Burton who is with the Office of Indian Services for the BIA.

On just a quick note, I know that the agenda says that Sarah Walters who is the Councilor to the Assistant Secretary would be here, but she's unable to join us here today.

So as many of you may know last year, around this time, President Obama and the First Lady visited Standing Rock Sioux, and there they met with a group of Native youth. Indian issues have always been a top priority for this administration. Having met with the youth and hearing some of the struggles that they've experienced and some of the barriers that they have to overcome in order to be successful, the President and the First Lady were incredibly moved and they have redoubled their efforts,
particularly in the Native youth space.

And our Indian Child Welfare regulations -- or the guidelines -- first, that we have already released now, our proposed regulations are a major part of that effort. So this is a top priority, and we can't do this without you. Everyone's voice here is incredibly important to this process. And so we thank you for all of your input.

So on, quickly, sort of how today is going to work, there will be a presentation with some slides that are included in your materials and hard copy, and the members of the panel will walk you through the slide and sort of go through our proposed regulations. We welcome comments from everyone, and everyone's comments are important. That being said, since this is a tribal consultation, we would like for tribal leaders that are joining us here today to be able to offer their comments first, and then once we're through with tribal leaders, we'll move on to everyone else that is here.

We ask that everyone limit their comments to five minutes, at least initially, that way we can hear from everyone. And once everyone has had an opportunity to speak, we can then move on, and folks can offer additional comments, if they would like, until the time is through.

We have a court reporter here with us today. We
ask that everyone speak slowly so the court reporter can
capture everything that everyone is saying. We'll use
that transcript of the comments for when we're doing our
proposed rule and reviewing everything that's been said
here today.

So if you could also state your name, who you are
representing, and spell out your name as well, that way we
can capture that, that would be great.

In particular, we would really be interested --
and, you know, we know everyone has feedback and comments,
generally, but we would love to hear particular language
that you think may -- you know, for the proposed
regulations, if there are tweaks or changes that you feel
would address your concern, you know, we would love to
hear particular language. And we also welcome written
comments to be submitted at comments@bia.gov up until, I
believe May 19th; is that right, through May 19th?

So I think -- unless I'm missing anything -- I
think that we're probably good to begin with the morning
session.

And, Rodina, if you can go ahead and start the
slides. Thank you.

MS. CAVE: Good morning. So we have some slides.
We have some slides to go through to give some background
what we're here about. And so as most of you know, the
Indian Child Welfare Act was passed in 1978, and it was to address an alarmingly high percentage of Indian families that were broken up by unwarranted, removal of Indian children, and that Congress enacted ICWA to protect the best interest of Indian children, and to promote the stability and security of Indian tribes and families, establish minimum federal standards for removal and placement of Indian children.

In 1979, the BIA published guidelines for a state court implementation of the Indian Child Welfare Act, and also regulations that addressed notice, and there were also sections regarding grants. In 2014 -- so between 1979 and 2014 -- there were many different court opinions and interpretations of the Indian Child Welfare Act.

In 2014, we held a number of listening sessions on the 1979 guidelines, and received a lot of comments and feedback on various aspects of the guidelines. And also, in 2014, the Attorney General's Advisory Committee on American Indian and Alaskan Native children exposed to violence, between 2013 and 2014, they held hearings around the United States and produced a report and recommendations in November 2014, and in the recommendations, the committee recommended that the guidelines be made into regulations. And so in 2015 -- in February of 2015 -- the Department published updated
revised guidelines, and in March of 2015, the Department published a proposed rule.

And so in the proposed rule, my colleagues here will be getting into the details; there's new and updated definitions. And you can see that, you know, that it adds a new sub part to 25 CFR 23, and you can see the different provisions. The proposed rule adds definitions for active efforts, continued custody, custody, domicile. Again, we'll be going through that in more detail later in the presentation, and revise several other definitions. And that the goal of the proposed rule is a consistent implementation of the Act in all states.

So what we've learned in the 2014 listening sessions is that the -- you know, the Indian Child Welfare Act is not consistently applied or complied with, and the goal of the proposed rule is consistency. And again, my colleagues will be getting into the details of the applicability. But also, that there is no so-called existing Indian family exception.

The proposed rule provides that agencies and state courts must ask whether a child is an Indian child, and that if there is reason to believe that the child is an Indian child, the Court and state agency must treat the child as an Indian child unless and until it's determined that the child is determined not.
And again, the proposed rule provides examples for when an agency has reason to believe that a child is an Indian child. And in voluntary proceedings, the proposed rule provides that if a consenting parent wants anonymity, then the agency or court must keep relevant documents under seal, but still provide notice to the tribe, and that there's a requirement to engage in active efforts.

And so when do active efforts begin? And the proposed rule provides that active efforts, the requirement to engage in active efforts, begins as soon as the case or investigation may result in a placement of an Indian child outside of the custody of the parent or Indian custodian, and it applies while investigating whether the child is an Indian child.

The proposed rule also goes through -- has provisions -- for designating the child's tribe, and that only the tribe may determine if the child -- whether the child is a member or eligible for membership in the tribe. And after that is determined, the proposed rule sets out, you know, what if there's more than one tribe that is possibly the child's tribe; there's provisions for that, and also -- you know, so after designation of the tribe, that the agency must notify all the tribes, file the designation with the Court, and that the State Court must
dismiss an action as soon as it determines it lacks jurisdiction.

The proposed rule also provides for notice when an agency or court knows or has reason to believe a child is an Indian child; so that is when notice is required, and the proceedings are listed in your PowerPoint, and that notice must be provided by registered mail with return receipt requested.

The proposed rule also has provisions regarding time limits, that no substantiative proceedings, rulings or decisions on a child's placement or termination of parental rights may occur until notice and waiting periods have elapsed, that there -- you know, additional extensions of time can be granted, and that the proceeding may not begin until 10 days after each parent, Indian custodian, and the tribe receives notice, and that an additional 20 days can be requested.

And the proposed rule has provisions regarding emergency removal. That emergency removal must be as short as possible, that the agency or state court must document whether removal or placement is possible, and continues to be necessary to prevent imminent physical damage or harm to the child. The Court must promptly hold a hearing to evaluate whether continued removal or placement is necessary and immediately terminate the
placement removal when the emergency has ended. So provisions regarding emergency removal -- again, that the agency must treat the child as an Indian child until a contrary determination has been made, and conduct active efforts to prevent the breakup of the Indian family as early as possible before removal, if possible, and maintaining records, of course.

And again, continuing with emergency removal, the proposed rule provides that at any court hearing, an emergency removal or placement, the Court must decide if the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child, and that temporary emergency custody should be less than 30 days unless there is a hearing with the testimony of a qualified expert witness or extraordinary circumstances exist.

And I will hand this off to Debra Burton.

MS. BURTON: Yeah. The proposed rule stresses that the right to request a transfer to tribal court can occur at any stage of the proceeding, because we've had cases where state courts have denied transfer because the transfer was later in the case, and we want to be clear that the statute provides the transfer can occur in any stage of the proceeding.

And something else that is changing in the
proposed rule is that the state court may not consider
certain good-cause factors to deny transfers such as,
whether the case is at an advanced state, the child's
contacts with the tribe or reservation, and the tribal
court's prospective placement for the child.

Okay. This is better?

All right. The petition for placement must
demonstrate to the Court that active efforts to avoid the
need for removal were made, and that active efforts were
unsuccessful. And something that the proposed rule
stresses and explains in more detail is that active
efforts have to be documented in detail and there has to
be showing that the resources of the extended family,
tribe, Indian social service agencies were sought out and
used or attempted to be used.

Now, the Court may order foster care placement
only if there is clear and convincing evidence that
continued custody with the parent or the Indian custodian
is likely to result in serious physical damage or harm to
the child, and the Court may order termination of the
parental rights only if there's evidence beyond a
reasonable doubt. And these were existing in the statute
already, but the rule is clarifying what is and what is
not clear and convincing evidence.

The rule also goes into detail as to what a
qualified expert witness is, and it has to be somebody with specific knowledge of the tribe's culture and customs. And these designations are in descending order. So the first preference would be that that expert witness would be a member of a child's tribe, is recognized by the tribal community in tribal customs and family organization and child rearing. And then it goes down to, if you don't have someone who is a member of the child's tribe who qualifies, then someone in another tribe who has that same qualification, a layperson who has knowledge in that area, and the fourth is a professional with education and experience who can demonstrate knowledge in that area.

MS. JACKSON: Good morning, everyone. My name is Gina Jackson. And I'm Western Shoshone from Northern Nevada. I'm going to be going over the slides in regards to voluntary proceedings, disposition and post-trial rights. I'm going to hit a few of the highlights that the proposed rule in bringing clarify and, hopefully, strengthening, enforcement with.

So in voluntary proceedings, the agency and state court, both, must ask whether the child is an Indian child, providing the tribe with notice of voluntary proceeding including notice of the right to intervene, consent of the parent or Indian custodian must be in writing, recorded before the Court, and explain
consequences in terms of consent in detail. Certifying
the consequences and terms were explained and fully
understood by the parent or Indian custodian.

In the dispositions, the agency must follow ICWA
or tribal placement preferences even if there is a request
for anonymity, providing clear and convincing evidence
that a diligent search was made to meet preferences and
explain if they couldn't be met, giving notice to parents,
Indian custodians, family members, tribe, et cetera, and
also maintain documentation of the placements.

In order to depart from the placement
preferences, it can happen only if the Court finds good
cause, which the basis must be included in the record, and
the party that's asserting good cause, they have the
burden to prove good cause. So good cause, to depart from
the placement preferences, must be based on the parents'
request, if both attest that they reviewed the placement
options, child's request, if they are able to understand
the decision, the child's extraordinary physical or
emotional needs as established by a qualified expert
witness, and it does not include bonding and attachment
from the placement or just the unavailability of placement
and a determination, or the Court has determined that
active efforts were made to find placements. And it may
not be based upon -- good cause may not be based upon
socio-economic status of any other placements in regards to one another.

Post-Trial Rights. Post-trial rights in the new proposed rule will establish procedures to vacate an adoption if consent was obtained by fraud or duress, or the proceeding violated ICWA. The proposed rule establishes who can invalidate an action based on violation of ICWA, which is the Indian child, the parents, Indian custodian, the tribe, regardless of whether that particular party's rights were violated.

It establishes adult adoptees' rights to learn their tribal affiliation and encourages states to designate someone to assist adult adoptees, and requires notice of any change in the child's status, such as a change in placement, that notice be given.

States -- the proposed rule includes that states must provide BIA with a copy of the adoption or any final decree including information on the child. States must establish a single location for all records of voluntary or involuntary foster care, pre adoptive placement, and adoptive placement that will be available within seven days of request by the child's tribe or the Department of Interior. These records must contain, at a minimum, the petition or complaint, all substantive orders in proceedings, and a record of placement determination.
including findings in the Court record and the social worker's statement.

So today we're seeking your comments on any provision of the proposed rule. And the more specific with your specific comments of what should be included or changed, added, we really are very interested in anything, any provision on the proposed rule.

We do have a few more public meetings and tribal consultation sessions later this week. On Thursday, we'll be in Prior Lake, Minnesota. Next week is another opportunity for a national teleconference, and then finally on May 14th, we'll be in Tulsa, Oklahoma.

Just a reminder, that comments are due again, on May 19th, at the latest. E-mail is a welcome way to submit comments. And even if you give comments today verbally, if you have specific language or specific ideas, and you'd like to send that in, in addition to your comments today, that would be wonderful.

We appreciate it very much. You can e-mail your comments to bia.gov. We're excited to hear from you today.

MS. HARRIS: Great. We made it through all the slides, so we're going to open it up now for first, tribal leaders who are in attendance and to anyone else who is here as a representative for their tribe. And also, just
to remind everyone that we're going to limit comments to five minutes. If you could face the court reporter when you're speaking or at least speak slowly so that she can pick up everything, that would be great and, you know, to announce your name first, and who you're representing, and also spell out your name for the court reporter. And we do have the court reporter here today so that we have a record of the consultation, and we can use it when we're, you know, reviewing all the comments to evaluate the proposed rule.

But this is a closed press event, so we just want to hear from everyone that is here and we want everyone to be able to speak freely and offer their comments, so the event is closed press. So there are two microphones here.

Chairman Vigil.

CHAIRMAN VIGIL: (Native American spoken). Good morning. My name is Gil Vigil. I am a tribal council member from Tesuque Pueblo, former governor of the pueblo. I'm also the president of National Indian Child Welfare Association, and I'm the executive director of the Eight Northern Indian Pueblos Council. And I would be remiss if I didn't introduce Jerry Bado who is from one of our National Indian Child Welfare board members also from New Mexico.

You gave me five minutes, but I have this big,
old document, so it's going to take more -- probably about
an hour-and-a-half or something. Excuse me -- no. This
is probably the third time I'm testifying on behalf of the
National Indian Child Welfare Association, but also as a
tribal leader.

First of all, thank you, BIA, for doing this. In
your presentation you talked about the Act passed in 1978
and then rule-making didn't happen until '79. And since
then, nothing has been done to amend these rules. And I
say that because of being involved in the National Indian
Child Welfare and being involved more recently in the Baby
Veronica case, it's clear that a lot of courts or
attorneys or states are not understanding what the Indian
Child Welfare Act is about, why it was passed, and
basically it was to protect our Indian children from
being, I feel, illegally taken from their communities and
their families. And so I'm glad that these amendments are
being proposed.

Secondly, for Native people, our children are the
important part of our life, of our community, and it's our
responsibility to protect them. And I think we failed to
do that, because of many reasons that today, we are
encountering in life itself.

The other part of this, my presentation, is
different from my -- and I will give you a written
statement also. But I guess I'm just trying to let you
know that even the highest court in the United States
failed to implement the Indian Child Welfare Act as it was
supposed to have been. I felt that they should have just
stood by the South Carolina Supreme Court decision that
ICWA was not followed, and that we're supporting that
decision of the South Carolina Supreme Court. That's how
it should have been decided. But, of course, that was not
the case.

When they referred it back to the South Carolina
Supreme Court, they also denied the section that says, "In
the best interest of the child." They were told, "You
cannot use that part." How can you tell this court how to
implement the Indian Child Welfare Act? So we need to do
new rules and regulations that are being developed. I
hope that will bring that clarity that the Courts and the
judges will see this is the intent of the Indian Child
Welfare Act that we should follow.

In your presentation also, you mentioned some of
the areas that you're going to be changing. And for
clarity's sake, I would like to talk about some of those
ones, and I'm going to go ahead and read my statement to
be specific. Our children and families are often denied
the protection of the Indian Child Welfare Act because
courts and state agencies aren't asking the children in
their care if they are Native. The regulation required early identification of Native children. They will promote compliance with ICWA and the stability of Indian children. It will also increase opportunities for tribes to be involved early in the proceedings to protect and support their children and families.

ICWA applies based on a child's political status, their membership in a tribe. As sovereign governments, we are the only entity with the legal authority to determine whether a child is a member of our tribe. We are pleased that the regulations are clear on this point.

Too many of our children have been denied the opportunity to know their families, communities and culture because of the existing Indian families' accepted doctrine. Just like the overwhelming trend in state laws and cases, including the Baby Veronica case, the proposed regulations prohibit the use of this exception, and we strongly support that.

Native children and families don't always get the services they need when they are in the state care. Our state often fails to provide cultural services to our children and families who work with our tribes' programs. That hurts our children and families. They don't have a chance when they can't get services they need or services that work.
The regulations provide a much needed definition of active efforts -- those efforts required by ICWA to prevent the breakup of our families and be able to help parents. The regulations also contain examples that will help states work with Native kids and families. An example is, in New Mexico, there's a state statute that requires the state to inform the tribes of youths being in their custody. ICWA was asked to assess that a couple of years ago, and we've concluded that assessment. And what we found out was there's no clear communication between the state and our tribes or their programs in making sure that this happens. And again, this is a clear indication of ICWA not being done properly also. So the statute is being worked on.

And having said that, the problem is, I think, a lot of times the counties themselves, are not aware of this Indian Child Welfare Act or the statute that's in New Mexico, and so it's not applied how it should be applied.

And so again, we thank the Bureau for their efforts and having these hearings so that we can provide that testimony. But also, I know there are others that are against these laws, the guidelines that are being proposed. And it's sad to say because the reason the Indian Child Welfare Act was passed was to protect our children and our families. And because some of the
atrocities that took place in our history in our children being taken away from their communities, and that's clearly what's still happening today in some communities. And while there are some non-Native people that are looking out for the best interests of the child, there are also those that are not.

An example is at our recent National Indian Child Welfare conference in Portland a couple of weeks ago; we had a panel of youth that were in foster or adoptive homes, and they told their story. And I wish we could do more of that, where these individuals tell their stories. Some were good, but I think the majority of them were not good. The conditions they were in, and the biggest part of their -- I guess their statement was they lost their tradition and culture. They lost their identity as Native people. Now, if they are going to have non-Native adoptions take place, I think we should require those non-Natives to at least offer that child, if they know if it's a member of a certain tribe, to give them that culture.

One of the youth that testified said that that wasn't allowed by his foster parents. They didn't allow him to be knowledgeable of the tribe that he was. In fact, they denied him those kind of services to him. So I think we need to have more of our youth and adoptive homes
or foster homes to tell their story so that they can truly understand what the law is intended for. Thank you.

       MR. VALDO: Good morning. My name is Derek Valdo. I'm a councilor from the Pueblo of Acoma. I am also a board member of the National Indian Child Welfare Association, so you're getting our comments from us. I'm really -- two specific -- the chairman elaborated well many of the issues. But many times these regulations are welcome and they're needed. We need a standardized process across the United States, so the Pueblo of Acoma is here in New Mexico, but we have children up in Washington, California, as far east as Florida and as far as northeast. So we really need the help in standardization across the jurisdictions so people know and understand that this does apply to protect our children.

       But really, two specific comments is regulation. It's nice to have a rule in place, but if nobody's following up and making sure the states are accountable for their actions, we need somebody to really enforce that. So it's nice to have a team to make states accountable. That's important. You know, we hear horror stories at the ICWA board prior to these regulations. You know, some jurisdictions were saying, "How many powwows do you go to" to determine how Indian you are. You know,
don't get me started. And the other thing is the Baby Veronica case. And really, we support the regulation that states that it doesn't apply. But I think we need to clarify it should not be applied outside for a private adoption context.

And again, you know, in my short tenure on the tribal council, our head councilman was a foster parent, and it was very sad for him to experience the loss of the child that he had taken care of for a few years. He gave it back to the young lady, the parent, and then something happened, and then unfortunately, she lost her life because of whatever the circumstances. And the system, I guess, really in a sense, takes too long in getting our children back into our communities. This is important. I know when they look at -- and my staff -- I'm very happy to see five of the Pueblo of Acoma staff here, so kudos to Acoma. I just want to give a shout out to the people.

But, you know, our communities are very rural. The socio-economic status is not favorable in the sense when we measure some of these things. But we have communal families. We have multiple generations living in one home. And that's what makes us Acoma. That's how we learn our culture. That's how we learn our language. That's where we learn our songs, our prayers. And that's a measurement of why a safe household is important to us.
And don't get me wrong, I understand. There's a lot of issues. There's a lot of need and there's a lot of behavioral issues in the community that I sat on the council for 11 years, and it's been a trial and a tribulation. But ultimately, I think this is a good move. It standardizes the process. It gives us a fair playing ground to go after our children and bring them home. So thank you for your support.

MS. IMUS: Good morning. My name is Carrie Imus. I'm a council member for the Hualapai Tribe. I also am the director of the Hualapai Human Services. And I just jotted down some things that I felt that really stood out in the proposed regulations.

And the first one clarifies the tribe has the right to intervene at any time, clarifies the tribe, alone, retains the responsibility to determine tribal membership, guidance on how to identify an appropriate qualified expert witness to be put in, expert knowledge related to the tribal community and now establishes a preferential order for a witness who are expert in the culture and customs of the Indian tribe or the child's tribe.

Good cause may not be based on socio-economic status of any placement relative to another placement, and that has predominantly been used the majority of the time.
and I put the comment made by the individual that spoke before me, and that doesn't include normal bonding or attachment. You know, that's something that the states use heavily. So I will be submitting comments in further detail, but these are the parts that stood out in my mind.

Thank you.

MS. DURAN: Hi. I'm Betty Duran from Pojoaque Pueblo. I am a council member and director of social services and a foster parent. I really like the fact that by standardizing the ICWA regulations creates consistency and uniformity across the states. In the state of New Mexico, when they talk about ICWA training, that consists of 30 minutes. Some -- my experience has been that some district CYFD offices really try to adhere to ICWA, the current policy, and they do inform the tribe. But so many of the other districts have their own interpretations, their own bias, and the judges contribute to that as well. So it's very, very critical that we have this standardized policy that clearly identifies membership, active efforts, the rights of tribes to intervene, and all the other conditions as well.

I will make sure that my tribal council does a resolution, and we will write detailed comments on that resolution. My governor will send a letter, and I will solicit letters from all my tribal committee members, even
if I have to draft out one saying, have them sign it and send it in. Thank you.

MR. GOMEZ: (Native American spoken). Good morning, everybody. My name is Christopher Gomez, and I am the lieutenant governor for the Ysleta del Sur Pueblo. And I am here today in support of the proposed regulations. I really feel they help our community and standardize all the proceedings across states.

I do feel though, that they lack -- there needs to be more oversignt put on states at the state level and accountability for when these new regulations are not adhered to. But overall, I really feel that the intention of the whole ICWA was to ensure that future generations of our tribes survived regardless of whether they were going into foster care.

All of our foster children should have the opportunity to be placed in a loving home despite whatever socio-economic status those homes are, and the tribes should have a say in determining where that home is.

Thank you. (Native American spoken.)

MS. BEGAY: Good morning. My name is Sharon Begay McCabe. I'm the Navajo Nation Division of Social Service division director, and I was appointed by the Navajo Nation president to read into the record his letter, and this is the Navajo Nation position as far as
the ICWA.

"Please accept this letter as the Navajo Nation's comment to the proposed rule of the Bureau of Indian Affairs guidelines for state court and agencies in Indian Country custody proceedings. The Navajo Nation appreciates the manner in which the Department of Interior handles the comment period when revising the guidelines and extends further appreciation in allowing for further comments from tribes in the proposed regulation.

"The Navajo Nation agrees with all the areas of the proposed regulation, and finds it relevant in meeting the purpose of the Indian Child Welfare Act to accomplish positive outcomes from all Native American children.

"It is understood that these regulations will be required by state courts and agencies to follow. These regulations have been needed since state courts and agencies have failed to comply with or maneuver around the ICWA law. The Navajo Nation hopes these regulations will address the ongoing concerns with state courts and agencies continued non-compliance with the provisions of the ICWA.

"Currently, state agencies have within their policies and procedures on the process of the ICWA case. However, far too often the state fails to notify the Navajo Nation of these proceedings in a timely manner. It
has also been the Navajo Nation's experience that private attorneys handling termination of parental rights and/or adoption of Navajo children, find every avenue to circumvent the provisions of the ICWA in their practice. Although, these private attorneys and adoption agencies claim they are on the Native American child's best interests, who is more appropriate to determine what is in the Native American child's best interest but the child's tribe?

"The Navajo Nation will continue to defend for Navajo child's best interests. In the past, the Navajo Nation has not intervened in particular cases until being contacted by a relative of the Navajo Nation ICWA office. This cannot happen again. The tribe needs to be notified immediately upon the proceeding of their child. Therefore, the Navajo Nation is hopeful these regulations will be addressed.

"The Navajo Nation ICWA office has over 550 ICWA cases with over 1,100 children on their caseload. These cases are coordinated were at least 28 states across the country. Arizona, New Mexico, Utah, California, and Colorado being the top five states in having the highest ICWA cases.

"In 2014, the Navajo Nation legally intervened on five ICWA cases that involved eight children. Of these
five, two were transferred to the Navajo Nation Tribal Court; four of the eight children were permanently placed with relatives or as the remaining four were reunited with a parent; three of the cases were legally intervened, and was completed. The Navajo Nation did not agree with the state's permanent C plan of adoption with a non-relative, non-Native American family. In these cases, the child were ultimately placed in a relative's home.

"These are real examples of cases with state office and courts. The Navajo Nation recommends the Bureau of Indian Affairs, BIA, should coordinate with appropriate federal departments whether that is with the Office of Management and Budget, Department of Justice, Department of Human Health and Human Services, and Administration for Children and Families to establish some type of enforcement monitoring audit mechanism on the state court and agencies related to ICWA case management.

"Those state courts and agencies that are found to be deficient should be mandated to implement a corrective action plan that includes input from tribal agencies. The plan should also include how the state would coordinate with tribes to ensure Native American children are receiving culturally appropriate service, and how states can fully comply with the ICWA mandates. Therefore, case audits should be conducted on an annual
"Thank you for the opportunity to provide these comments. If you should have any questions, please contact Regina Yazzie, program manager for the Division of Social Services, this is the ICWA office, Navajo Children and Family Services. And her phone number is (928) 871-4806. Sincerely, Ben Shelly, President of the Navajo Nation."

Thank you.

MS. HARRIS: I'm going to ask if you would like to submit that to the court reporter, and anyone else that has written comments here today that would like them to be used in the official record, just feel free to give them to the court reporter as well.

MR. SEKAYUMPTEWÁ: Good morning. (Native American spoken). I just introduced myself in my own language, Hopi. I come from Montebella, Arizona. My name is Arrow Seeker in Hopi. I'm Sun Clan, so good morning to all of you (Native American spoken). Good morning. The sun came up. You're all beautiful this morning. Blessings to all of you. I'm also the Sun Clan chief for my people out there in Montebella, and also the eagle chief (Native American spoken).

Our people cost a lot (Native American spoken). Our children also, you know, cost a lot. In our
traditions on Hopi, when we're first born, our mothers and
grandmothers come early in the morning to basically bless
us and give us a name. And alongside of that, they take
our umbilical cords and put in an arrow and stick it in
the rooftop to assure that every Indian child who is born
Hopi knows where he came from. And other tribes basically
have that, you know, same custom. We must never forget,
you know, where we come from, and we must never forget who
we are.

So that's an advisement to all of you and to us,
as Indian people; we must always remember to take care of
our Indian children, you know, in that way, and not allow
them to basically be taken away from us into other, you
know, homes and circumstances. Because if they are, then
they might forget who they are and where they come from.

Our strength, our abilities to know who we are,
to guide and direct our people, comes from our cultures
and from our traditions. And a child robbed of that is
less because he hasn't been given that right to be placed
where he needs to be in the safe comforts of his home, his
community, and with his people, and her people.

I wrote a lot of comments here, and I'll give you
the written comments as well. But in summary, first of
all, in regards to government-to-government relationships
and good-faith efforts, I believe that each state should
be mandated to have listening sessions of their own, and that they should work in tandem with tribal governments to develop ICWA, you know, laws that consider the tribal customs and traditions of each and every state. We're different from one another. We're not all the same.

Even though the federal government recognizes more than 500, you know, federally-recognized tribes, there's more than that, you know, throughout the nation. there are those that are federally-recognized and those that are not, and there are those that are state-recognized. But nevertheless, there are tribes out there who, you know, stand by these recognitions, and others who stand by their traditional recognitions, which are still there into eternity.

The other one is that I think there should be mandated cultural awareness and education training at every state level where ICWA is concerned, where customs and traditions of our people are concerned in regards to child-rearing practices, and how we relate one to another. I think without this cultural sensitivity training and awareness, the federal and state and judges, caseworkers at the state level, will not be able to basically understand us unless they basically, you know, have these training sessions, and they should be held annually. And for every new worker that comes into employment in these
circumstances so that they understand, you know, how we take care of our children and how we deal with our people. Since, you know, a lot of these cases result from child neglect, abuse, domestic violence, which is spurred on by substance abuse and dual-diagnosis situations, I think every effort should be made to provide for early intervention and prevention programs at the state level. There should be funding alongside the ICWA laws to basically allow for families to gain strength, parents to be good parents, and for reunification to occur where children are basically given back to their parents as soon as possible. So, you know, these efforts need to be made, also.

Also, the fact is that most children are usually placed with grandparents. They're usually the best, you know, I guess, next-of-kin placement. Yet, you know, elderly parents usually don't have the income and fiscal resources to basically take care of some of these children who are placed in their regard. I think, you know, since we are sometimes not allowed that resource, it should also be included in there for consideration. That no matter what Indian person or family or extended family member they are placed with, fiscal resources, along with entitlement programs, should be made easier for access so that parents can basically take care of children that are
placed within their guardianship. And temporary
guardianship should be enhanced so that permanency occurs
as soon as possible, if that's the best outcome, you know,
for the children.

A lot of times these children are placed with us
for a long time but on a temporary basis, and that makes
it difficult for entitlement programs, you know, to happen
and occur. I'm a good example of that. My grandson has
been living with me for 14 years. And, you know, all of
us fall under or turn into a CPS case. But I never asked
for any recompensation on taking care of him, but it
impacts, you know, even getting him health insurance under
my coverage.

I'm 65. I'm still working, you know, good for an
elder, right? I never asked for anything. But, you know,
if those enhancements or permanency could happen sooner,
both at the state and tribal levels to whoever is the
best, you know, person to place those people or children
with, then that would make it easier for us to basically
do things for our children that need to be done for them.

I also included that language interpretation that
needs to be included, deleted. Sometimes are elders, in
particular, still speak their traditional language. But
they don't understand your laws. They don't understand
the interventions that are basically being impacted or,
you know, implemented on them, on their children. I know
that Hopi and Navajo and some of the pueblos and other
tribes in these Four Corners area still speak their
language and practice their customs, and interpretations
need to be given to them so they understand this clearly
and precisely, so they can act in the best interest of
their children.

Expert witness, I agree with Mrs. Imus, and, good
morning, to you, again. Okay. I think I went to school
with some of your relatives.

But, you know, when it comes to expert witness,
you always think about psychologists and psychiatrists
with Western training and education. I don't always agree
with that. We need experts to understand our culture and
our tradition.

Bonding and Indian culture, also, you know, they
have to understand us. What does it mean to bond and be
comfortable in a home environment and community that is
Native American, that is Hopi, that is from their tribes.

Also, tribes who have the right to records that
are basically documented in every state. We have trials
in Colorado, and I think that we should always have the
right to basically access to see what tribal members are
basically listed on there that have gone through tribal
courts for eternity. Because, you know, there might be
some time in the future where we might be able to identify
or some relative might be able to identify a child or a
tribal member, and they might be able to place them
appropriately and connect them back up with their
families.

Also, along with your ICWA laws, I think the
federal government, BIA, and the state, needs to recognize
our traditional jurisdictions and our rights to our own
children and our people. They need to come to our
reservations, sit down with our elected tribal leaders,
our traditional leaders as well. You know, like me,
understand how we take care of our children, how we
conceive, you know, what taking care of children means.
If they understand that, then I think they can have a
better understanding of what us Indian people, you know,
understand as our customs and our traditions.

Lastly, in regards to accountability, up at
Southern Ute we have what is called a Citizens Review
Committee. And they review every case where a complaint
was filed against Social Services about the way they
handle any Social Services case that comes before us in
Social Services. I think ICWA, the Bureau, and the states
need to have a citizen review that handles this, as well,
where any Indian citizen, tribe, can file complaints if
they want. Cases where there's neglect of accountability
so that these cases can be reviewed, and fair proceedings
can basically be heard, and good decisions can be made in
those cases.

I'll give you the written comments. I am from
the Southern Ute Tribe, currently. But I've worked with,
you know, Hopi, Division of Social Services, Human Service
as well as Zuni Human Services, and with Navajo.

Good morning, Chairman, and good morning to all
of you. (Native American spoken). Thank you.

MS. HARRIS: Thank you very much for your
comments.

We're here for everyone's. We want to hear them
all. Just a quick reminder for everyone to, you know, try
to be respectful of everyone's time and allow everyone,
you know, five minutes that we've allotted for folks. So
if we can try to be conscious of that. Okay. Thank you.

MS. DAILEY: Good morning, everybody. My name is
Caroline Daily, and I'm the program director for the
Pueblo of Ysleta's ICWA program as well as the Social
Services program.

ICWA is very close to my heart -- I promise to
keep this five minutes or less -- very close to my heart.
I was actually a foster parent when I was a young person
and younger person and working in Mescalero. And there
were several children actually from the tribe, Mescalero
Apache Tribe, that were removed from their homes back in 19 -- early 70s. And many of these children were actually placed in a group home in Taos for whatever reason, and a number of various alleged atrocities that occurred with those children, those children were brought back to Mescalero, and there were no homes available for them.

I happened to be a caseworker with no degree, and my first job at Indian Child Welfare. And I lived up in Alamogordo and I found a job for a couple of years in Mescalero, and I was asked to be a foster parent.

My husband and I back then for a 10-year-old child, male, that was brought back from the group home. So this was prior to ICWA. He was 10 years old at the time. So obviously, he was born pre ICWA, and I believe in 1977, around that time.

And so I talk about this now, because this young man who is now 40 years old, paid me a visit a couple of weekends ago. And I hadn't seen him in several years, and came to Isleta and said, "Mom, I came to visit you." So this is very close to my heart.

One of the things that we've been talking about, and some of the meetings that we've been having with some of the other tribes is something that someone already mentioned around accountability, and holding all of us accountable, tribal workers as well as state workers.
The State of New Mexico conducts social work training on a regular basis, and as Betty mentioned, the last piece of that training is around ICWA, 30 minutes of it. So one of the recommendations that we are making, and we'll have further comment in writing too, to also submit -- but one of the recommendations that we do have as part of that training that the state involve ICWA tribal workers to conduct that training, and that training be conducted in Indian Country, in our own arena.

Many times we were asked to participate in that training with the state here in the state of New Mexico, and our recommendation is that training occur in Indian Country. Thank you.

MS. ALLARE: Good morning, everybody. My name is Marie Allare. I am the program manager for the Social Service Department with the Pueblo of Laguna. And unfortunately, our lieutenant governor could not make it today, so I'm going to be giving some of the information that he and myself, and our governor's affairs department have discussed. And it's right out of our regulations that we have right now, so it's just experiences that our pueblo itself has had regarding these certain areas.

One of them is the Section 23.104, and it's in regards to how do we contact a tribe under the regulations? We all know that many of our tribes have
designated an agent for receipts of our ICWA notices. And the BIA publishes a list of these tribes designated for agents for the service of ICWA.

It has been our experience, and this is very true, but -- however, BIA does not take into account changes in personnel, and therefore, the lists are not always updated when a person leaves or moves on to another position within their agency or otherwise. And so, therefore, those lists are not always current or accurate. And so it's always been our experience that if we are going to be moving on or otherwise, that we contact BIA ourselves and notify them of the changes.

Because that helps us when we are responding to our notices and otherwise, it makes it very, very difficult. And recently at our agency, we have noticed though, a lot of people who are sending the notices, they kind of float around within the tribe until they finally get to the person that is needed. So it's something that's really, really important that we need to keep mindful of and always put into practice.

The other one is also another section, and it's 23.107. And it talks about the actions that an agency and the state courts undertake in order to determine whether a child is an Indian child. It's kind of interesting on this one because not all agencies ask. People assume and
people just -- it's not necessarily that they take the
word of others, but they prey on that action.

    So unfortunately, we are down to the point of if
that is not a tribal member or a descendant of -- or
cannot be eligible for, for whatever reason,
nationalization or otherwise, it makes the outcome a very
undetermined situation for everybody concerned. And it's
the hope that our families will always remind themselves
that sometimes when membership is not acquired, is not
established or otherwise, the outcomes can definitely make
a change. And that has always been the existence and the
practice that we have at Laguna. Thank you.

    MS. HARRIS: Thank you. I just want to quickly
comment on one of the things that you said. That's a very
practical comment. You're requiring the other tribes to
contact us with contact information because we struggle
with notice in our own offices with folks that change, and
keeping our lists updated for all of you-all's contact
information is a challenge for us that we recognize and,
you know, I really appreciate that for this regulation and
just for other things that we do in our office just
generally speaking. So thank you for that.

    MR. MONTOYA: (Native American spoken). My name
is Mike Montoya. I'm the lieutenant governor from Ohkay
Owingeh, and I'm here to, I guess, testify to some
personal issues, and then, I guess to kind of give comment on these proposed rule change guidelines.

I was born in 1958, November, but I was born in a state hospital here in the state of New Mexico. And the reason why I was born there was my mom, biological mom, got pregnant at age 16. And being the traditional and strict family that she came from, she ran away to have me, and that's where she had me. After she had me, she left me there because I think back then, it was kind of unheard of kind of behavior.

It took my grandparents almost a whole year to find out where I was. You know, and we're talking about -- I'm grateful that, you know, all you people that work with these ICWA issues, BIA, you know, all our ICWA employers or employees throughout United States, you know, I really appreciate it, what you guys are trying to do. You know, it's -- it's hard, and it's -- you know, when a child is born and, you know, sometimes this kid doesn't know where he belongs, and I think as far as holding the states accountable for reporting this kind of situations is -- I think something that should be mandated. You know, and our laws, you know, whether it's federal or state, you know, doesn't really protect our Indian kids.

You know, I'm not just a second lieutenant governor of Ohkay Ohwingeh, but I'm also a spiritual
leader there. And in our traditions and customs, all the kids in that village are my children. You know, I was fortunate that I was appointed in this position as lieutenant governor, which, you know, gives me some kind of -- more reason to do for my people and for my kids, you know. But, you know, I really -- I thank BIA for giving us this due diligence and the Casey Foundation for the work study program we had yesterday. You know, it gives me a general idea of what we're dealing with here.

But in reading, you know, me, personally, I support these rule changes. But the obstacles that we still face is federalism. You know, Executive Order 13132. The states don't have to, from what I read, are not being held accountable for what they report and what they don't report.

You know, the other thing we talk about is active efforts. Active efforts, you know, the gentleman from Southern Ute talked about funding. You know, part of that came from active efforts in making sure that the ICWA workers tap into our resources possible. You know, whether it be housing, whether it be anything that family needs, whoever is given that responsibility to take care of that child. You know, I think funding is very key to helping out our kids.

The other thing is, as far as active efforts go,
what about trainings at the state level, and other people have brought that up. You know, I mean, we talk about CYFD getting training, and other people at the state level getting training, what's 30 minutes? How many in here understand ICWA in and out and at the state level? You know, 30 minutes of ICWA training -- what's that?

You know, I think not just employees need to be held accountable, but I think their supervisors, their key leaders, you know, even the state, for that matter. And I don't know through legislation, at a federal level, at a state level, I think some kind of amendment needs to be introduced into law. You know, whether -- I mean, when we talk about tribal government-to-government relations, sometimes those things fail. You know, I mean, there's a lot of things that need to be looked into as far as active efforts on our side as well.

But, you know, I will -- and I have the judge here also from Ohkay Owingeh, but I think we will be proposing these new guideline changes to our tribal council come Wednesday, and we will get back to you.

Thank you.

MR. WYASKET: Good morning, everyone. My name is Floyd Wyasket, spelled W-Y-A-S-K-E-T. I represent the Ute Indian Tribe at Fort Duchesne, Utah, and wanted to express to you that my tribe supports the proposed rule changes to
It was not too long ago in 1998, 20 years after ICWA was passed, that we realized that our children were being placed with the state and Utah DCFS and agencies. And by the way, my title is I'm the director of the Ute Family Services. We realize that we had all these 150 kids. And over the years, it goes to thousands of kids that I've taken care of by the state of Utah. We started a committee that talked about why, why wasn't our children being removed and placed with non-tribal entities, and we came to the conclusion that we needed to do something. So our movement, since 1998, has been to return all of our children back to the care and custody of the Ute Indian Tribe, which I can proudly say today has been accomplished. And so all of our kids are back in the care of the Ute Indian tribe.

We provide all of the necessary programs, all of the funding, all of the foster care, all of the kinship placements. We have a Ute Family Council where the children are discussed, and the family makes the decision as to where the child should go. And it is not necessarily with -- sometimes it's not with families, but they stay within the tribe or with other tribes for ICWA placement. So we know that we have -- we had to meet and educate and discuss and negotiate with the state.
At first they were very reluctant because they didn't want to give up their state involvement. But as of this date, they have reluctantly gave us full cooperation and care and placement, and they have educated their judges to transfer all the state -- where they pick up the children -- back to the tribe. And so that occurs on a regular basis, and it doesn't hurt that some of our judges have worked for the Ute Indian Tribe. So they don't need to be educated. They need to educate their peers.

And so the state involvement is limited to meeting with us and discussing with us. Where we used to be on the bottom, we are now on top, and they are listening to things that we say and do because our staff is professional and they're educated, by the way of education and experience. And we use our staff -- I have a staff of 28 people that I -- you know, which includes attorneys and professional people that run that program with me. And so we wanted to address the best interest of the children.

What better way than for children to learn their own culture, their own language, and their ways, than to remain and stay with their family, the tribal family? Only a Ute knows what is best for our children.

As all of these other tribes all say, "Only a Zuni, only an Acoma, only a Sioux," whatever tribe it is,
that's where they know more about that. Personally, if you really know the intent of these people that are going to protest best interests, these people have never been on a reservation. They have never mingled with our culture. They don't know our ways. They don't dance with us. They don't sing with us. They don't participate. They're off on some ivory tower and trying to call the shots for our children, which is not fair.

So I just wanted to testify to this. We have not compromised our jurisdiction, our sovereignty, and we will continue to do that. And thank you for this opportunity to give you my testimony.

MS. SARRACINO: (Native American spoken). Good morning, everyone. My name is Donalyn Sarracino, and I'm from the Pueblo of Acoma. I'm the director of Acoma Social Services, and one of the founding members and co-chair of the newly-established New Mexico Tribal Consortium. And I want to thank you for putting these regulations together because they are much needed.

There are a few things, talking points, that I would like to share with you. Right now, Acoma, we are a small tribe, and I am a staff of six. And right now we have 10 children in state custody, and of those 10 children, one is in a relative placement. The other children are all in non-relative, non-Native placements.
One of the things I want to talk about is early identification. This is really important so that it gives the tribes an opportunity to ensure that active efforts are being provided to keep the family from separating. Oftentimes when we request from states to be notified early, their answer to us is, "Well, it's not in court yet, so we don't have to notify you."

The other thing in regards to this is oftentimes when we get notice, it's incomplete. So they're asking us to verify whether a child is a member of our tribe, and there's very little information to go on. We got one last week, and all it had was the mother's information. Everything else said, "Unknown. Unknown. Unknown. Unknown." And they want us to be able to verify whether a child is a member of our tribe.

The other thing, one of my suggestions is in regards to clarification on membership eligibility. And that's making sure that states know it's the tribes who determine that membership eligibility. And it doesn't mean if a child is enrolled. It means if a child is a member as defined by the tribe.

The big thing is always active effort. And I am a staff, like I said, of six, including our admin assistant who is also here today. So I want to thank my entire staff for being here today.
And we have a number of cases, not just ICWA cases, but cases on our tribe, on our reservation. And if we can provide active efforts, there's no reason that the state worker should not be able to provide active efforts because they have more resources than we do.

We have a case -- we actually just had court on this yesterday, and it just breaks my heart because the case -- we got notified to verify whether or not a child was eligible for membership, and the children -- it's a sibling group of five -- the children are eligible for membership. And we also -- and we helped them get enrolled. Three months into the case, the permanency plan changed to adoption. So what kind of active efforts can be made to help the family get the resources that they need to change their lives around when it's being changed three months -- I'm sorry -- on this particular case, back in August, we got notified by the state. And they asked us to appear in court as expert witnesses for a TPR hearing that was set that next week. That's when we got notified.

The other thing -- I'm going to talk about this, okay, I'm sorry. Because it's just -- this is probably one of the cases where this is why ICWA was created, and we need to be able to hold the states accountable.

The other point I want to make is on
intervention. As tribes, we have the right to intervene. We have the right to protect our children and our culture and our families. When we started to intervene, and Acoma has made it a point that on every case where a child is a member or eligible for membership we are going to intervene legally. And once we started to intervene, the states started just putting up all kinds of obstacles. And one of the biggest obstacles was they were telling us, "This intervention is not acceptable to us because you are not an attorney," and state attorneys are telling us this.

And so not only do state case workers need to be educated, but state attorneys also need to be educated on ICWA, because if they're requiring us to have an attorney, many tribes cannot afford that. And so if states are wanting tribes to have an attorney just to intervene, they're taking away our right to intervene. So we should be able to intervene with or without legal representation, and I think this is something that needs to be clarified in the new regulations as well as -- as well as transferring.

We're at a point in this case where we want to transfer, and it was just almost comical yesterday in court because the state workers, the state attorney, and even the state judge is trying to scramble on how they can keep this court -- this case in state court when these are
our children, and they deserve the right to come home.

And the big -- one of the other big points I want to make is on placement preference. We have a lot of families who are willing to take our children in, and the states are not pursuing that. Even when we offer to help them to identify family, which we have, they are not pursuing it. And so this needs to be something that's enforced, and like everybody else has said, there needs to be some accountability for states who -- for caseworkers who are not doing this.

In this particular case with a sibling group of five, both grandmothers, maternal and paternal grandmothers, voiced they wanted the children. But because they lived out of state, the caseworker never pursued that, and she told the parents that their grandparents did not want them. And we've identified a family at Acoma who is willing to take them.

And yesterday in court, some of the concerns that the state worker had and the attorney and even the judge voiced concerns about, "Well, they're bonded now. They're doing good now in this non-Native, non-relative placement."

So I think that that's something we have to really enforce, and also, if placements are going to be made because there may be a lack of tribal foster care
homes, that if placements are made with non-Native, non-relative individuals, that those foster parents are also educated and know that this is a temporary placement, and that once family is identified, that move will be made, so that placements will be ICWA-compliant. Thank you.

MS. RAY-HODGE: Can I ask a follow-up question just on some of your comments? When you said that you have -- some of the states are telling you specific things, is it just the state of New Mexico or are you working with other states?

MS. SARRACINO: We're working with other states as well.

MS. RAY-HODGE: So off the top of your head or maybe later, could you just let us know what states that you're working with where these things might be happening? It's helpful for us to know where we're seeing patterns.

MS. SARRACINO: New Mexico is the big one, and California and Colorado.

MS. VALLO: (Native American spoken). My name is Marsha Vallo, and I'm from the Pueblo of Acoma, and I'm here to testify on behalf of all our Native children. Yes, we do need mandatory training, not only for CYFD, but for our judges as well and our state attorneys.

One of my very first cases I went into with the
ICWA, I walked into a family center meeting, and I was
attacked literally by a state lawyer asking me why did our
tribe intervene? I've gotten left voicemail from
attorneys in this state as well asking why is our tribe
intervening, and we've been told, "Because you're not a
lawyer." We need to get this corrected, and we need to
educate.

I'm piggying-back on a lot of what was said today
about the tribes being the ones to educate these workers.
It should be mandatory. All judges, all CYFD, get this
training, and we should do it here because we are the
experts of our children. We know how to raise them.

I made a comment, "We have been raising our
children since 600 A.D., and you're going to question our
ability to raise our children?"

Also, to make the states accountable for things
when they're not having active efforts. Again, not being
a lawyer, not being allowed into treatment team meetings
because I didn't legally intervene. Also, we have our
tribal leaders here, our council. I ask for you that you
push in this state of New Mexico for guardianship. It is
on your level that we need you to go to our state and push
for that. Because again, the financial hardship on our
families when they do take in their grandchildren, their
niece, nephews, it costs a lot of money to raise a child
in today's society. So we need to get that guardianship money. A lot of different states have that, and I just don't understand why New Mexico does not push for guardianship.

Also, under the 4(e), there's a lot of backgrounds, fingerprints -- that has to get done. Maybe this is just a personal thing on my side, but I don't like that we will get subsidies, but you're telling me in order to get this subsidy, I have to have an 80-year-old grandma or grandpa do a background who has never left the reservation in their life; what kind of crimes have they committed? I think that part of the background is very rude and invasive on our families that you question our elders as to they need a clean background to raise our children, which we have been doing for years, again.

Also, have an accountability about the active efforts, just holding all the social workers accountable from day one. Again, California, just a couple of weeks ago, I asked what are the active efforts, and I was told, "You're too early to be asking that to intervene."

And we are going to intervene, and we have been in most of our cases right now. But I support all these efforts and these changes, and these regulations need to be put forward. I have to be honest with you: When I first heard about it in February, I was very doubtful,
because why has this change just happened now? It should have already been when it was state law in '78.

But I thank you, and let's keep working for our children.

MS. HARRIS: Thank you for your comments. And I think that no one will disagree that these are long, long overdue. I mean, I was one when they promulgated the first regulations, and they haven't been touched again since then. But, you know, this administration is very committed to Indian Country, and Assistant Secretary Washburn is very committed to these issues. And they are complicated and they're difficult. But they're important, and it needs to be revisited, and that's why I would say now. That's why it's being done now.

But I though we could take maybe just a quick 10-minute break.

Sorry. You'll be first up, I promise. But folks might need to use the restroom or get up and stretch and, you know, grab some water or whatnot. So we'll reconvene just in -- 10:53 -- and we'll make sure this gentleman is first in line for comments. Thank you.

(A break was taken at 10:53 AM.)

MR. TAGER: My name is Geoff Tager, G-E-O-F-F T-A-G-E-R, and I'm the chief judge at Ohkay Owingeh. And I have to say that it's a great thing to be here. It's a
wonderful opportunity. I thought perhaps things had changed more since I was starting out at Hopi, and I guess this was '93 when I was thrown out of my first courtroom for trying to represent the tribe and not being an attorney at that time in Superior Court in Arizona.

So it's disappointing to hear that some of these things are still going on, because in addition to being the judge at Ohkay Owingeh, I also work with the New Mexico Tribal State Judges Consortium. We do have an ICWA subcommittee, and we have promulgated a bench card for New Mexico state judges. And we've also started through the Children's Law Institute and at the New Mexico Judges Conclave to have some programs to try and educate our brethren on the state bench, and it sounds like there's a ways to go now in terms of some of the judges. Obviously, those that are involved with the consortium are very committed.

I'd also like to discuss active efforts briefly because I think that's going to be a huge issue for everybody, and I think when we talk about active efforts on the tribes, we want to see what's being done. And I think that some of the folks on the state side would read that as the least exhaustive means possible. No offense, but I think that's sometimes what they hear.

And I think it's also critical in this time,
because you also need to know that this is the tribe's right, in terms of the intervention and in terms of the transfer. I have to tell you as a judge, I've had some people come into my court that don't want to be in tribal court.

Now, that's -- we all expect that because of the bias, people think that, you know, we're just going to be for the tribal member or the non-Native person doesn't want to be in tribal court. But I've also had it come to my attention that they want to be in state court because they think that CYFD is not going to issue a finding, that we're going to be a lot more involved in the process than the state court maybe in terms of outcome, in terms of taking custody, in terms of trying to work with parents on reunification. And so I think that that's something that the group needs to be aware of as well.

So we may have, when you talk about active efforts, parents who are hiding identity. They may not want to notify the folks at home, what's going on in terms of dealing with a referral or an intervention. The other issue obviously, is notification. And we talk about this in terms of dealing with a parent who's from pueblo A, another parent from pueblo B, and a caretaker, an on-and-off caretaker who may be from pueblo C. And so maybe only pueblo A gets the notice, and maybe everything
else is unknown as they were saying in terms of the reports we get and what investigation has gone on.

And I know that some folks have a staff of six or other staff -- we have a staff of one in terms of our ICWA program. So it becomes very difficult in terms of sometimes dealing with the identification process.

I'd also like to just mention a couple of things as far as the notice goes via registered mail, and I know that it also says that there are other efforts or other notices can be made. And I'm not saying we take it down a notch to actual notice with a phone call, per se. But it would be really nice to see some documentation required on the notice so that we have some accountability. Who was notified.

You know, in our state we have -- also, and I guess Bernie Teva's not here. But CYFD is the tribal liaison. And sometimes the CYFD tribal liaison is getting notice instead of the tribe. And so there needs to be some clarification. I like the idea of updates. I like the idea of notifying who the ICWA contact is in the Federal Register, but we also have to realize that, you know, the tribe may not even have an ICWA program in terms of notification.

Also, with regards to the parent, just the definition on the regs means, "Any biological parent or
parents of an Indian child or any Indian person who has
lawfully adopted an Indian child, including adoptions
under the tribal law or custom." I'd really like to just
see "lawfully" taken out of there, so that we're not
fighting over what the definition of lawful adoption is.

Does that mean the tribal court has to pass on
it? In a lot of circumstances, the adoption may be done
through family, may be done through clan, may be done
through leadership, and may not be passed on by a tribal
court. And so -- and I don't think "lawfully" really
needs to be in there, if it is a traditional and customary
adoption.

The other thing that I'd also like to see because
I'm not -- I know there are issues in terms of the law
that need to be fixed. These regs are not going to be the
answer that we're all searching for. We recently had a
case in Missouri that we couldn't get it transferred
because the non-Native parent -- the native parent
happened to be deceased. The non-Native parent was
objecting to the transfer, and that's why the case was in
court.

And so that parent -- when that parent can object
to a transfer under ICWA, it's a huge hole in the law.
And I know that these regs are not necessarily going to
fix some of the issues that just need to be changed in a
law, itself. But I also notice that when you talk about representation, there's a provision that says, "Subject to state law." And this is under -- this is under (B)(6). And we're all talking about funds, access. You know, it's tough enough, we sent our ICWA worker all the way to Missouri to intervene in that case. That was not an easy process. And even though they refused the transfer, we got the child on the intervention. But we had issues with our placement. They said, "Well, thank you very much. We want the child back."

But my question also, is why we have to have that the -- if there's indigency, an Indian custodian is unable to afford counsel based on a determination by the Court, counsel will be appointed to represent where authorized by state law. Well, if we're talking about federal rules and federal regs, why are we leaving representation up to the state? Why isn't there a directive that the parent be entitled to representation if they're indigent?

The other thing that I'd just like to address briefly is the qualified expert. And I think that this is on the tribes that are present here too, to identify members. Because I think that this number four -- and I understand that you have a descending priority, in terms of what an expert is. But I think everybody in this room shudders that we still have number four on the table, and
that we're going to have a non-Native anthropologist coming into court and testifying about what family means or what -- you know, what the tradition and custom of that tribe is.

Because I'll tell you, when Ohkay Owingeh has a tribe in Missouri, I really doubt that anybody over there has a clue about how the pueblo operates and what an expert would even look like under that context. So I think that really needs to be strengthened, and maybe the issue is to add language in number four that's in number three where you have a layperson who is allowed to represent a subject to a layperson who is recognized by the Indian child's tribe as having substantial experience in delivery.

I mean, that language needs to, I think, be changed as well just so that the tribe at least has some passing say in terms of, "If we're not going to appoint the expert, then we should at least be able to have somebody." Because in a state without a lot of tribal representation, you're looking at number 4 as your default position, plain and simple. That's what you're dealing with, and that's what we're going to constantly be faced with in terms of looking at an expert, that individual who studied tribes, that anthropologist, whoever that may be.

And last, but not least, I'd like to say that I
don't really see it specifically in the regs. I know that there's discussion in -- that's promulgated about active efforts or continuing delays on. And I have to tell you that, God forbid, if there's determination or an adoption out whether it was followed or not, once that case is done, it's closed, you know.

And I realize that we don't want to have these things open on the docket forever, but then how do we enforce, what efforts are being made to continue that child's contacts with the tribe if it's over and done with and closed?

And I know that you talked about that with the privacy and allowing the child to access some -- or has some knowledge of where he may be from. But I think that those efforts aren't continuing the contact, because there was an issue that was raised in my last adoption in tribal court, and our adoptions that go out, even -- and this was to a sister pueblo who adopted a member -- have to go through our council.

And they said, "Well, we want to make sure your case stays open for the purpose of making sure that child is involved with us." And so we need to have that in the federal regs as well. Thank you very much.

MS. TORRES: (Native American spoken). My name is Tanya Devon Torres, and I'm here on behalf of Governor
Jay Leroy Arquero, and on behalf of Lieutenant Governor Duane Herrera from Cochiti Pueblo. And Cochiti Pueblo is in support of the proposed regulations to enforce the Indian Child Welfare Act for the reasons, that is, proposed regulations, number one, provide clear and concise elucidation and implement uniform best practices for all parties involved. To include, however, not limit to, child welfare agencies, adoption agencies, and court assistance. This nationwide policy is crucial to minimize inconsistent interpretation.

Number two, the notice language from the proposed guidelines ensures the opportunity for the tribe to fully participate with proceedings on behalf of their citizens, and for the child to have the provisions of the Indian Child Welfare Act of 1978. The regulations ensure that tribes receive notification at all phases of the case.

Number three, explicate the variance between active efforts and reasonable efforts. Active efforts, which are best practice required by the Indian Child Welfare Act of 1978 truly are best practice, and should be done in the best interest of all children as a whole. The collaborative approach is fundamental for the betterment of the child welfare system. The notice language in the proposed guidelines ensures the opportunity -- oh, I went back up -- I said number three -- furthermore, with full
compliance with active efforts, and with placement preference being followed on initial placement in the Indian Child Welfare Act, assures the health, safety, and best interests of tribal children are met. This repudiates any concerns for those in opposition about best interests being ignored by the Indian Child Welfare Act. As far as the engaged language used in the active efforts portion, the suggestion is to change that because what does "engaged" mean? And what it could be is obtain or contract for services.

Number four, these proposed regulations help uphold the political status and rights of each Indian child. The child has their own independent set of rights that cannot be waived by the parents, guardians, or the tribe. The child has a right to safety and a right to thrive as a member of their tribal community, and that's it. Thank you.

MS. HARRIS: Thank you.

Do we have anyone else?

MR. TOLEDO: Good morning. My name is Allan Toledo. I'm a tribal judge for the contemporary court in the Pueblo Santa Ana. And my comment is stemming from the practical side of dealing with ICWA.

Over my 20 years' experience in this and being a tribal judge, I've only had two ICWA cases. One involved
out of state -- the state of Montana had requested -- had
sent notice that there was a pueblo member not from Santa
Ana, but from -- I'm not going to name the pueblo -- but
this child was in custody in their state system. And that
they had been -- sent notices to the tribe to intervene,
and the social worker said they were going to intervene,
and I had no knowledge of it.

And the judge says, "Well, you know, we're going
to send" -- a couple of the children, there was four
children -- a couple of the children down to -- you know,
for 30 days, just to see how things go. I didn't have any
idea of what he was talking about.

I said "I'm not aware of any such proceedings.
The tribe doesn't have a tribal attorney. They do have a
tribal attorney, but they're in D.C., and I don't know."
So I asked the governor about it, and he said, "That was
last year's governor. I didn't have anything to do with
it."

So the tribe needs to establish a protocol for
procedure once they gets notice that the tribal courts
need to be involved. And so what I did, you know, the
social worker filed a petition for custody and all that,
and we had a hearing. And in the tribal court, we looked
at the best interest of the children. And looking at the
best interests of the children, these children had special
needs, and it would be unfair for the children to be transferred because the tribe didn't have any resources to take care of the children's needs.

So I said, "I don't think it's wise to intervene in this case because you can't provide services to these children. They are special needs children."

And so the judge withdrew his intervention of whatever he did, and he just advised the tribe that they will just send, you know, whatever orders that he had made concerning the children to the tribe so that they'll be aware of what's taking place.

The other case I had also involved an out-of-state child. In this case, it was -- there was -- the child was eligible for two pueblos, A and B. And the tribe, pueblo A, decided that, you know, they would look at the intervention. And so we set up a hearing, and in order for me to determine which -- looking at best interests of the child, which family would be best to have this child, either pueblo A or pueblo B.

And I asked for home studies to be conducted. And pueblo B said, "You know, you have no jurisdiction over us. You cannot tell the social worker what to do."

So I could not get home studies from pueblo B. And, you know, that's how we are in Indian Country. We don't -- we don't have full faith in court orders. We can't even get
subpoenas served sometimes. And we need to ask Indian
tribes, if we want our sovereignty, we ought to get
together and -- if we're really concerned about our
children -- we need to get together and establish
protocols on how we're going to handle these cases.

We just can't let them linger. If we're really
concerned about kids, some have been in custody for -- I
know a child that grew up in foster care because the
tribe, you know, couldn't intervene. For what reason?
Because they don't have any procedures.

And I think if we're going to have sovereignty,
we need to establish our own procedures so we can have
full faith and credit or some kind of procedure to
accommodate and recognize our orders and take care of our
kids, if we're really concerned about kids.

Maybe the BIA needs to establish protocols for
the tribes as well as the states. But I don't know.
Maybe that's what needs to be done, but we need to do
something.

MS. HARRIS: Let me ask just a quick question.
Do you know if there's ever been any sort of effort with
Indian Country to do that, to set up some sort of, you
know, protocol or any efforts of full faith that will
accommodate anything like that? I'm just curious if
there's been any Indian Country efforts from the bottom up
rather than us saying this is what folks should do?

   MS. JAMES: I could say in some cases what
governors do is communicate amongst each other and give
that common courtesy for Social Services --

      COURT REPORTER: Okay. I didn't hear you from
"Social Services."

   MS. HARRIS: And if you could also state your
name, just for the record. Thank you.

   MS. JAMES: For this morning I will tell you my
name. No, just kidding. Good morning. My name is
Janette James. I work for the Pueblo of Tesuque, and I'm
glad to see my uncle here who is the president of ICWA
presently, Gil Vigil.

   Hi, Judge.

   When it comes to -- there's really -- to my
knowledge, I don't know of anything formally, formally in
place. But when it comes to tribes, there's tribes that
work together, and there's tribes that don't. And I'm
glad you put that out there because I'm not ashamed to say
that we have issues, too. But the thing about it is the
governors do work together on a case-by-case basis, and
that's happened before.

   But sometimes there's barriers because we need to
understand what is really the best interest of our
children before we just jump the gun. And I think, yeah,
we're pointing the finger at how the state -- yeah, we have issues with the state. I mean, some social workers, even when I went to school at Highlands, when I took a law and ethics class, the professor said, "Why bother having ICWA? Why bother having the ICWA Act?"

And then he made reference to, "Okay. Well, look at the Intercourse Act." I mean, come on? So I filed a grievance against him, and he's saying that the ICWA Act is pointless to even have because any Indian child could be raised by any non-Native. Okay. Well, maybe that is true to some point.

But when it comes to cultural identity to being accepted, and there is from the moment that child is born a spiritual connection, I mean, a non-Native is naturally not going to understand. So there's a lot of barriers, you know, with the state, as well as other states, not just New Mexico.

But I think if we continue to educate from time to time, you know, these social workers. And then last week, we had a Title IV-B meeting, I thought that was productive. We had a state representatives there, and they listened to us. It was kind of funny because, "Oh, yeah. We have to do our reports," and then in those reports, yeah, we just put there that, "Yeah, we met with them today." What about the remainder of the year before
we have to do reporting?

And sometimes there are providers from CYFD that come and help us. And again, you know somebody had mentioned Bernie Teva. Where is he today? Maybe he has another meeting. I don't know. But we'd like to get, you know, some, you know, voice from him, too. He makes promises to us saying he's going to do this and that, but never follows through. I'm sorry. I hate to say that, and I think other neighboring community pueblos can say the same, because we had that discussion last year. Remember? At the Title IV meeting?

So anyhoo (sic), the fact of the matter is we need to work together. And I think we're all here for the same thing, for the best interest of our children and our community. And thank you for giving me the opportunity, thank you for being here, most importantly.

And again, I don't want to be pessimistic, but look at that ICWA case, you know, that was in the media. Money talks. Money talks. And was that what made the decision for the Supreme Court? I don't know. They had lawyer representation, big-shot lawyers. Can we get some representation, too, for the tribes? Can we get some hot-shot lawyers to help our kids? It's just a matter of playing that game. And, unfortunately, it's who wins. You know, if you know how to play the game, that's who's
going to win. But nobody wins when you have innocent
children who can't fight for themselves.

And initially, if we do what we say we're going
to do today, and our comments are being, you know,
acknowledged and, hopefully, there will be a light at the
end of the tunnel for these kids, and we won't have all
these barriers that we're having now.

I mean, look. We're in 2015 and we're still
having these problems. It shouldn't be. So our children
are why I'm here, and, you know, we need to keep striving
for the best interests of our children. Thank you.

MS. THOMPSON: Thank you for that. I want to
introduce myself. My name is Rochelle Thompson. I'm the
ICWA manager on behalf of Ohkay Owingeh. And I first want
to just say that as far as Ohkay Owingeh goes, we
intervene in every single case. We don't allow them to
stay within the state courts. If we are going to be able
to help our children, we are intervening on every single
case, and we are responsible as workers.

But as the tribe, the council, the tribal
officials, are going to provide those resources to our
children. So I feel like -- do I talk to you guys, or
everybody, or how does that work? I mean, because I feel
like everybody's in the back. But anyway, I'm a little
bit nervous.
Despite the -- I support the proposed regulations to enforce the Indian Child Welfare because despite the problems and the progress made through tribal state collaboration over the last 35 years, a wide range of inconsistency in applications exist, and I think we all know that. I think it's critical to have a nationwide policy for all states to minimize their inconsistent interpretation of ICWA.

ICWA clarifies the best interests of tribes, which is the protection of children, and preserves our cultures as Natives. It also protects the interest of the tribe in general. And then, the proposed regulations are helpful because they explain the difference between active efforts, and I think we can all go on and on about active efforts, but I think time is very limited. And I think the majority of us here are on the same page regarding that, which are the best practice required by ICWA and reasonable efforts.

There is no uniform guidance on what constitutes active efforts, no accountability on the state level, there's no understanding that the tribe -- there is not the understanding that the tribes are the ones that identify who is an enrolled member or whether it comes, you know, from descendancy. So that determination comes strictly from the tribes. And, of course, you know, what
we've always said is that's the workers, the supervision and accountability for the states as well.

The notice language in the proposed regulations ensures that the tribes have an opportunity to fully participate in the proceedings affecting their citizens. This -- and what we would like to see would be, you know, like Donalyn mentioned, that there is not enough information on those forms, "unknown." You know, we want to be able to have a full indication of date of births, their name, maybe basically a completed genogram of what we can look at to identify the children and the families within the pueblos or the tribes.

Opposing groups concerning about interests being ignored are misguided because if there is full compliance of active efforts and placement preferences, ICWA assures that the health and safety and best interests of tribal children are met. So basically, that they are staying connected within the communities, their siblings are staying together, are very crucial as well. And I think this basically goes back to the placement, the placement preference, I guess.

As -- us, as natives, we all know that we take care of our neighbors. We go next door to borrow butter. We go -- you know, we've all been raised on general commodities. But you know what? There is no reason why
our children are being placed elsewhere and not being placed back into our community, whether it's with grandparents or whether it's with extended family members or not even just, you know, somebody within the tribe or the reservation. We are all willing. I'm sure. I can speak on behalf of the majority of the people and myself that, you know, hey, sometimes we have to take care of, you know, kids that don't even belong to us, that are not even family, but we're all one. So I think I really want to express that highly.

And I think lastly, that the proposed regulations help uphold the political status. Again, what she indicated, the rights of each Native child. They have a right to a tribal advocate. They have a right to an attorney. They have a right to know where they belong and where they come from and what their history and their culture is. They have a right to become a part of their clan and know what that's about and be initiated. And, you know, every pueblo is different, and I'm sure as far as initiation and stuff like that. But they have that right as being Native. And that they are -- they have the right to be enrolled members if they're not.

So I just want to thank you for your time, and if you have anything further, I could be contacted. So thank you.
MR. BEGAY: Good morning. My name is Aaron Begay. I'm the Indian Child Welfare Act coordinator for the San Carlos Apache Tribe. There's some -- I guess the tribe will be submitting our comments to the BIA via letter, I guess, before the deadline. But I just wanted to touch on a few points from this morning.

With our tribe the -- I think the state courts need to be included in active efforts. I know that with the language that's being proposed, it seems that's mainly the social service agencies or county agencies. But the judges in the courts are the ones who make the final decision, and this is what I tell my clients. You know, it's not up to me. It's not up to the state. It's really up to the judge. That individual essentially holds the power to decide a child's life. So I think that courts should be included in active efforts.

For instance, with us, we've had cases in Nebraska, which we have one case now, and in the past, Oklahoma and Montana, where we were not allowed -- I guess there was barriers put up against us where they required pro hac vice, so we had to find another -- I guess an attorney within those states who could act on our behalf.

But also, we have instances where the tribe is not called for hearings. The tribe is left out of decisions regarding the child or children involved, so, I
think that the active efforts should also be included, judges as well.

Another one is good cause. Currently -- and we have a case that we're trying to transfer from Maricopa County, involving a child. And we found an Indian placement for this child, but the GAL, guardian ad litem, recently filed a position to transfer to the tribal court. And one of the main arguments that she used is that she said there was good cause to deviate from the placement preferences because number one, the -- she says that the child has been in state care, and that the case is at an advanced stage. I disagree with that because one of my case -- or one of the cases that the tribe had, it took nine years for the courts to decide what would happen to a child. And this child has been in custody for almost 10 months. So in my view, it's not at an advanced stage.

And the other argument she used is having a bonding assessment. I indicated to her that the tribe was not noticed initially. The child was taken into custody in July, and we actually didn't get notice until six weeks later at the beginning of September, so there was that six-week timeframe in which several hearings were held, and the tribe was not involved until we intervened in that case.

So -- and then I guess my recommendation would
be, I guess for BIA and the individuals who are here from D.C., I guess. I'm not sure if you guys are all from D.C., but it would be to follow up with the tribes and the states after these rules are implemented maybe annually or five years from now to see how it's really going, because there's really a difference between what you see on paper, and what is actually carried out in the court. Thank you.

MS. HARRIS: We only have about 20 minutes left, I think, in this session, maybe a little less. If anyone else had something more to share or maybe in reflecting on some of the things that have been shared.

MR. SEKAYUMPTEWÁ: I forgot to mention a couple of things that I wrote down on my paper.

MS. HARRIS: Could you introduce yourself, again?

MR. SEKAYUMPTEWÁ: Yeah, Loren Sekayumptewa, director of tribal services and the acting director of social services, Southern Ute Tribe.

In terms of active effort, I think it would behoove the tribes to work in tandem with the state Human Services Divisions to include in their plans that they submit annually to the federal government for federal government funding, how they're going to basically work in tandem with tribes in implementing ICWA.

We did that recently with the Department of Human Services in Colorado, and that was very successful. And I
know that we've done that in Arizona and New Mexico with the Divisions of Human Services, CYFD divisions. And it helps to have written plans that basically include, you know, provisions like this, along with the state, you know, plans. I should also have mentioned on that. Also the gentlemen from Fort Duchesne mentioned family involvement and the discretion of tribes to get involved. What we implemented -- well, what we're considering up in Southern Ute now, is what is called family group decision-making. It's a national movement based upon Maori traditions where they involve the traditions and cultures of indigenous people to determine best interests and best placement of children.

So up at Southern Ute, and they've already done some at Northern Ute and been successful at it, as he mentioned, and brought all their children back home. What we're going to basically do is allow for a family-court type version program to allow for families to make that decision.

But one of the things that's lacking is loss of culture and identity amongst our own tribes. We don't -- many of us, understand our own traditions and cultures anymore, what our roles and responsibilities are to our children. And it behooves us to basically reconsider those traditions and cultures, what our roles and
responsibilities are as aunts, uncles, grandfathers, grandmothers, mothers and fathers of our children, because if we lose that, then our whole tribe and our children are in jeopardy, and no wonder they're lost even in state courts where we can't define how we take care of our children in the first place. Maybe it would be good to have a blue-ribbon panel of our own tribal experts look at that for consideration; what are our customs, what are our traditions, you know, that we can basically help advise you on at the federal level and at the state levels.

Just like somebody mentioned, I hate to have so-called experts at the federal, state, and local levels define for us, you know, what we are and who we are. It's been too long that the anthropologists, as was mentioned, lawyers and judges, define for us, and the people who work in Washington D.C., who are not us, define those, you know, terms for us. So we need to do our own work ourselves, and put together that effort -- active effort, best interest effort, for our own people, you know, what that definition means. So let's get to work. Thank you very much.

MS. DURAN: I just wanted to inform everybody here that if you look at the website for all the comments that have been submitted on the ICWA modifications, the majority of the comments that have been submitted are in
opposition of the modifications, and that they are coming
from the adoption attorneys. And we felt, in talking as a
group, that these people are trafficking our Indian
children. This is a further genocide of American Indian
culture and tradition, so we have got to get back to our
communities, and not just have our tribal officials
writing letters. But get our people to even e-mail in,
sign a letter that we can go ahead and send on to the BIA
and talk about. Nobody, except our tribal governments,
have the right to determine the future of our children, so
that we do not support the further genocide of tribal
culture and tribal communities, and that these non-Indian
attorneys and adoption agencies have no voice in decision-
making as to what happens to our children. Thank you.

MS. HARRIS: We really appreciate your comments
on that point, too. You know, as we go through the
rule-making process, the Administrative Procedure Act
requires us to consider all comments that are relevant to
the rule. So the more comments that we can get, you know,
in support of the regulation, especially unique comments
that comment on, you know, some portion of the rule and
saying more. Obviously, we will take a simple letter of
support. Things that are unique are especially helpful to
us. Things in particular with respect to offering
language, you know -- folks, you know, do have concerns,
and there's been a lot of great comments here today that we'll take back.

And, you know, if you have particular ways that you think of language to address your particular concern, that's really helpful to us. Because as we sit there and we say, "Oh, this is the issue. Well, how would we address this?" It's helpful for us to see, like, how you, as petitioners, and will it work in the community would address it. So those things are really helpful. But the more support we can get in writing, that would be very helpful. And all comments can be submitted to comments@bia.gov before May 19th is when the official comment period ends. So -- and you should feel free to, you know, reach out to any of us, you know, on the panel as well, and, you know, if you have questions or concerns or anything that needs to be submitted.

Also, we're having a listening session that's open to the public, not just to tribal leaders and representatives of tribes this afternoon. It starts at 1:00. It starts at 1:00. We've seen from past consultations that, you know, these -- the listening sessions that are open to the public do have some folks that, you know, may have different opinions than many of them that have been expressed here today.

We hope that as many of you that are here right
now can join. I think it's important for everyone to hear. While we won't be responding directly to each other's comments, I think it's helpful for -- to have supportive folks to, you know, respond to other people's comments, you know, substantively. And also, to express your points of views, so that folks with other points of view can hear them from you, not necessarily from us. So the more of you that's here at one o'clock. It's from 1:00 to 4:00. So you can come for any -- all or any portion of that, and it will be -- you know, the same rules will apply except that it will be open to everyone. So we expect that we will have a mix of folks that will show. But again, it can be very helpful to have anybody here that's able to join.

So thank you again, for joining us today. We really appreciate all the comments. We look forward to have a continuing discussion on this, and feel free, and please do submit comments before the 19th at comments@bia.gov. Thank you.

(The consultation concluded at 11:53 PM.)
CERTIFICATE

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  

I, MICHELE NELSON, working under the direction and direct supervision of Yvonne Gonzales, New Mexico CCR License Number 62, hereby certify that I reported the attached proceedings; that pages 1-86, inclusive, are a true and correct transcript of my stenographic notes.

Dated at Albuquerque, New Mexico, this 1st day of June, 2015.

Michele Nelson

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