

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

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1 MS. DURAN: I'm Elizabeth Duran from Pojoaque
2 Pueblo. I'll be doing the morning prayer. Would you all
3 please remove your glasses and hats? (Native American
4 spoken). We thank you for the gift of life that you
5 present us each day. We thank you for all the blessings
6 that are sent forth each day through you and our ancestors
7 that strengthen our hearts and lead us in our lives. We
8 thank you for all the teachings that our ancestors have
9 passed down to us from generation to generation. Many of
10 these teachings also teach the right way to live our
11 lives. Today we get together to talk about a very
12 important issue, our children, the future of our lives and
13 our tribes. I ask you to please send forth blessings upon
14 each and every person in this room so that our minds, our
15 spirits and our hearts may be pure in addressing those
16 needs, those issues that affect our children. I ask you
17 to bless every person here with long life and good health.
18 (Native American spoken).

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

25 Good morning. Sarah Harris. I'm the chief of

1 staff for the assistant secretary for Indian Affairs,
2 Kevin Washburn. He's very sorry that he couldn't join us
3 here today. Unfortunately, a scheduling conference
4 wouldn't allow for him to be at this particular tribal
5 consultation. But this is a very important issue for him
6 and a top priority, and he's sad that he couldn't join us
7 here today, but continues to be very involved in the
8 process, and we'll certainly relay all of the comments
9 back to him.

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

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

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

24 So I'm going to quickly introduce our panel, and
25 then I'll tell you a little bit about our efforts in the

1 Native youth area, in general, and then we'll get into
2 sort of the specifics of this particular presentation.

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

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

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

1 particularly in the Native youth space.

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

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

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

25 We have a court reporter here with us today. We

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

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

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

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

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

23 MS. CAVE: Good morning. So we have some slides.
24 We have some slides to go through to give some background
25 what we're here about. And so as most of you know, the

1 Indian Child Welfare Act was passed in 1978, and it was to
2 address an alarmingly high percentage of Indian families
3 that were broken up by unwarranted, removal of Indian
4 children, and that Congress enacted ICWA to protect the
5 best interest of Indian children, and to promote the
6 stability and security of Indian tribes and families,
7 establish minimum federal standards for removal and
8 placement of Indian children.

9 In 1979, the BIA published guidelines for a state
10 court implementation of the Indian Child Welfare Act, and
11 also regulations that addressed notice, and there were
12 also sections regarding grants. In 2014 -- so between
13 1979 and 2014 -- there were many different court opinions
14 and interpretations of the Indian Child Welfare Act.

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

1 revised guidelines, and in March of 2015, the Department
2 published a proposed rule.

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

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

20 The proposed rule provides that agencies and
21 state courts must ask whether a child is an Indian child,
22 and that if there is reason to believe that the child is
23 an Indian child, the Court and state agency must treat the
24 child as an Indian child unless and until it's determined
25 that the child is determined not.

1 And again, the proposed rule provides examples
2 for when an agency has reason to believe that a child is
3 an Indian child. And in voluntary proceedings, the
4 proposed rule provides that if a consenting parent wants
5 anonymity, then the agency or court must keep relevant
6 documents under seal, but still provide notice to the
7 tribe, and that there's a requirement to engage in active
8 efforts.

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

16 The proposed rule also goes through -- has
17 provisions -- for designating the child's tribe, and that
18 only the tribe may determine if the child -- whether the
19 child is a member or eligible for membership in the tribe.
20 And after that is determined, the proposed rule sets out,
21 you know, what if there's more than one tribe that is
22 possibly the child's tribe; there's provisions for that,
23 and also -- you know, so after designation of the tribe,
24 that the agency must notify all the tribes, file the
25 designation with the Court, and that the State Court must

1 dismiss an action as soon as it determines it lacks
2 jurisdiction.

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

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

18 And the proposed rule has provisions regarding
19 emergency removal. That emergency removal must be as
20 short as possible, that the agency or state court must
21 document whether removal or placement is possible, and
22 continues to be necessary to prevent imminent physical
23 damage or harm to the child. The Court must promptly hold
24 a hearing to evaluate whether continued removal or
25 placement is necessary and immediately terminate the

1 placement removal when the emergency has ended. So
2 provisions regarding emergency removal -- again, that the
3 agency must treat the child as an Indian child until a
4 contrary determination has been made, and conduct active
5 efforts to prevent the breakup of the Indian family as
6 early as possible before removal, if possible, and
7 maintaining records, of course.

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

17 And I will hand this off to Debra Burton.

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

25 And something else that is changing in the

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

6 Okay. This is better?

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

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

25 The rule also goes into detail as to what a

1 qualified expert witness is, and it has to be somebody
2 with specific knowledge of the tribe's culture and
3 customs. And these designations are in descending order.
4 So the first preference would be that that expert witness
5 would be a member of a child's tribe, is recognized by the
6 tribal community in tribal customs and family organization
7 and child rearing. And then it goes down to, if you don't
8 have someone who is a member of the child's tribe who
9 qualifies, then someone in another tribe who has that same
10 qualification, a layperson who has knowledge in that area,
11 and the fourth is a professional with education and
12 experience who can demonstrate knowledge in that area.

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

20 So in voluntary proceedings, the agency and state
21 court, both, must ask whether the child is an Indian
22 child, providing the tribe with notice of voluntary
23 proceeding including notice of the right to intervene,
24 consent of the parent or Indian custodian must be in
25 writing, recorded before the Court, and explain

1 consequences in terms of consent in detail. Certifying
2 the consequences and terms were explained and fully
3 understood by the parent or Indian custodian.

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

11 In order to depart from the placement
12 preferences, it can happen only if the Court finds good
13 cause, which the basis must be included in the record, and
14 the party that's asserting good cause, they have the
15 burden to prove good cause. So good cause, to depart from
16 the placement preferences, must be based on the parents'
17 request, if both attest that they reviewed the placement
18 options, child's request, if they are able to understand
19 the decision, the child's extraordinary physical or
20 emotional needs as established by a qualified expert
21 witness, and it does not include bonding and attachment
22 from the placement or just the unavailability of placement
23 and a determination, or the Court has determined that
24 active efforts were made to find placements. And it may
25 not be based upon -- good cause may not be based upon

1 socio-economic status of any other placements in regards
2 to one another.

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

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

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

1 including findings in the Court record and the social
2 worker's statement.

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

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

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

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

22 MS. HARRIS: Great. We made it through all the
23 slides, so we're going to open it up now for first, tribal
24 leaders who are in attendance and to anyone else who is
25 here as a representative for their tribe. And also, just

1 to remind everyone that we're going to limit comments to
2 five minutes. If you could face the court reporter when
3 you're speaking or at least speak slowly so that she can
4 pick up everything, that would be great and, you know, to
5 announce your name first, and who you're representing, and
6 also spell out your name for the court reporter. And we
7 do have the court reporter here today so that we have a
8 record of the consultation, and we can use it when we're,
9 you know, reviewing all the comments to evaluate the
10 proposed rule.

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

15 Chairman Vigil.

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

25 You gave me five minutes, but I have this big,

1 old document, so it's going to take more -- probably about
2 an hour-and-a-half or something. Excuse me -- no. This
3 is probably the third time I'm testifying on behalf of the
4 National Indian Child Welfare Association, but also as a
5 tribal leader.

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

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

24 The other part of this, my presentation, is
25 different from my -- and I will give you a written

1 statement also. But I guess I'm just trying to let you
2 know that even the highest court in the United States
3 failed to implement the Indian Child Welfare Act as it was
4 supposed to have been. I felt that they should have just
5 stood by the South Carolina Supreme Court decision that
6 ICWA was not followed, and that we're supporting that
7 decision of the South Carolina Supreme Court. That's how
8 it should have been decided. But, of course, that was not
9 the case.

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

19 In your presentation also, you mentioned some of
20 the areas that you're going to be changing. And for
21 clarity's sake, I would like to talk about some of those
22 ones, and I'm going to go ahead and read my statement to
23 be specific. Our children and families are often denied
24 the protection of the Indian Child Welfare Act because
25 courts and state agencies aren't asking the children in

1 their care if they are Native. The regulation required
2 early identification of Native children. They will
3 promote compliance with ICWA and the stability of Indian
4 children. It will also increase opportunities for tribes
5 to be involved early in the proceedings to protect and
6 support their children and families.

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

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

19 Native children and families don't always get the
20 services they need when they are in the state care. Our
21 state often fails to provide cultural services to our
22 children and families who work with our tribes' programs.
23 That hurts our children and families. They don't have a
24 chance when they can't get services they need or services
25 that work.

1 The regulations provide a much needed definition
2 of active efforts -- those efforts required by ICWA to
3 prevent the breakup of our families and be able to help
4 parents. The regulations also contain examples that will
5 help states work with Native kids and families. An
6 example is, in New Mexico, there's a state statute that
7 requires the state to inform the tribes of youths being in
8 their custody. ICWA was asked to assess that a couple of
9 years ago, and we've concluded that assessment. And what
10 we found out was there's no clear communication between
11 the state and our tribes or their programs in making sure
12 that this happens. And again, this is a clear indication
13 of ICWA not being done properly also. So the statute is
14 being worked on.

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

19 And so again, we thank the Bureau for their
20 efforts and having these hearings so that we can provide
21 that testimony. But also, I know there are others that
22 are against these laws, the guidelines that are being
23 proposed. And it's sad to say because the reason the
24 Indian Child Welfare Act was passed was to protect our
25 children and our families. And because some of the

1 atrocities that took place in our history in our children
2 being taken away from their communities, and that's
3 clearly what's still happening today in some communities.
4 And while there are some non-Native people that are
5 looking out for the best interests of the child, there are
6 also those that are not.

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

21 One of the youth that testified said that that
22 wasn't allowed by his foster parents. They didn't allow
23 him to be knowledgeable of the tribe that he was. In
24 fact, they denied him those kind of services to him. So I
25 think we need to have more of our youth and adoptive homes

1 or foster homes to tell their story so that they can truly
2 understand what the law is intended for. Thank you.

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

17 But really, two specific comments is regulation.
18 It's nice to have a rule in place, but if nobody's
19 following up and making sure the states are accountable
20 for their actions, we need somebody to really enforce
21 that. So it's nice to have a team to make states
22 accountable. That's important. You know, we hear horror
23 stories at the ICWA board prior to these regulations. You
24 know, some jurisdictions were saying, "How many powwows do
25 you go to" to determine how Indian you are. You know,

1 don't get me started. And the other thing is the Baby
2 Veronica case. And really, we support the regulation that
3 states that it doesn't apply. But I think we need to
4 clarify it should not be applied outside for a private
5 adoption context.

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

18 But, you know, our communities are very rural.
19 The socio-economic status is not favorable in the sense
20 when we measure some of these things. But we have
21 communal families. We have multiple generations living in
22 one home. And that's what makes us Acoma. That's how we
23 learn our culture. That's how we learn our language.
24 That's where we learn our songs, our prayers. And that's
25 a measurement of why a safe household is important to us.

1 And don't get me wrong, I understand. There's a
2 lot of issues. There's a lot of need and there's a lot of
3 behavioral issues in the community that I sat on the
4 council for 11 years, and it's been a trial and a
5 tribulation. But ultimately, I think this is a good move.
6 It standardizes the process. It gives us a fair playing
7 ground to go after our children and bring them home. So
8 thank you for your support.

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

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

23 Good cause may not be based on socio-economic
24 status of any placement relative to another placement, and
25 that has predominantly been used the majority of the time,

1 and I put the comment made by the individual that spoke
2 before me, and that doesn't include normal bonding or
3 attachment. You know, that's something that the states
4 use heavily. So I will be submitting comments in further
5 detail, but these are the parts that stood out in my mind.
6 Thank you.

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

22 I will make sure that my tribal council does a
23 resolution, and we will write detailed comments on that
24 resolution. My governor will send a letter, and I will
25 solicit letters from all my tribal committee members, even

1 if I have to draft out one saying, have them sign it and
2 send it in. Thank you.

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

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

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

20 Thank you. (Native American spoken.)

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

1 the ICWA.

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

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

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

22 "Currently, state agencies have within their
23 policies and procedures on the process of the ICWA case.
24 However, far too often the state fails to notify the
25 Navajo Nation of these proceedings in a timely manner. It

1 has also been the Navajo Nation's experience that private
2 attorneys handling termination of parental rights and/or
3 adoption of Navajo children, find every avenue to
4 circumvent the provisions of the ICWA in their practice.
5 Although, these private attorneys and adoption agencies
6 claim they are on the Native American child's best
7 interests, who is more appropriate to determine what is in
8 the Native American child's best interest but the child's
9 tribe?

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

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

24 "In 2014, the Navajo Nation legally intervened on
25 five ICWA cases that involved eight children. Of these

1 five, two were transferred to the Navajo Nation Tribal
2 Court; four of the eight children were permanently placed
3 with relatives or as the remaining four were reunited with
4 a parent; three of the cases were legally intervened, and
5 was completed. The Navajo Nation did not agree with the
6 state's permanent C plan of adoption with a non-relative,
7 non-Native American family. In these cases, the child
8 were ultimately placed in a relative's home.

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

18 "Those state courts and agencies that are found
19 to be deficient should be mandated to implement a
20 corrective action plan that includes input from tribal
21 agencies. The plan should also include how the state
22 would coordinate with tribes to ensure Native American
23 children are receiving culturally appropriate service, and
24 how states can fully comply with the ICWA mandates.
25 Therefore, case audits should be conducted on an annual

1 basis.

2 "Thank you for the opportunity to provide these
3 comments. If you should have any questions, please
4 contact Regina Yazzie, program manager for the Division of
5 Social Services, this is the ICWA office, Navajo Children
6 and Family Services. And her phone number is (928)
7 871-4806. Sincerely, Ben Shelly, President of the Navajo
8 Nation."

9 Thank you.

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

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

24 Our people cost a lot (Native American spoken).
25 Our children also, you know, cost a lot. In our

1 traditions on Hopi, when we're first born, our mothers and
2 grandmothers come early in the morning to basically bless
3 us and give us a name. And alongside of that, they take
4 our umbilical cords and put in an arrow and stick it in
5 the rooftop to assure that every Indian child who is born
6 Hopi knows where he came from. And other tribes basically
7 have that, you know, same custom. We must never forget,
8 you know, where we come from, and we must never forget who
9 we are.

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

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

22 I wrote a lot of comments here, and I'll give you
23 the written comments as well. But in summary, first of
24 all, in regards to government-to-government relationships
25 and good-faith efforts, I believe that each state should

1 be mandated to have listening sessions of their own, and
2 that they should work in tandem with tribal governments to
3 develop ICWA, you know, laws that consider the tribal
4 customs and traditions of each and every state. We're
5 different from one another. We're not all the same.

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

15 The other one is that I think there should be
16 mandated cultural awareness and education training at
17 every state level where ICWA is concerned, where customs
18 and traditions of our people are concerned in regards to
19 child-rearing practices, and how we relate one to another.
20 I think without this cultural sensitivity training and
21 awareness, the federal and state and judges, caseworkers
22 at the state level, will not be able to basically
23 understand us unless they basically, you know, have these
24 training sessions, and they should be held annually. And
25 for every new worker that comes into employment in these

1 circumstances so that they understand, you know, how we
2 take care of our children and how we deal with our people.

3 Since, you know, a lot of these cases result from
4 child neglect, abuse, domestic violence, which is spurred
5 on by substance abuse and dual-diagnosis situations, I
6 think every effort should be made to provide for early
7 intervention and prevention programs at the state level.
8 There should be funding alongside the ICWA laws to
9 basically allow for families to gain strength, parents to
10 be good parents, and for reunification to occur where
11 children are basically given back to their parents as soon
12 as possible. So, you know, these efforts need to be made,
13 also.

14 Also, the fact is that most children are usually
15 placed with grandparents. They're usually the best, you
16 know, I guess, next-of-kin placement. Yet, you know,
17 elderly parents usually don't have the income and fiscal
18 resources to basically take care of some of these children
19 who are placed in their regard. I think, you know, since
20 we are sometimes not allowed that resource, it should also
21 be included in there for consideration. That no matter
22 what Indian person or family or extended family member
23 they are placed with, fiscal resources, along with
24 entitlement programs, should be made easier for access so
25 that parents can basically take care of children that are

1 placed within their guardianship. And temporary
2 guardianship should be enhanced so that permanency occurs
3 as soon as possible, if that's the best outcome, you know,
4 for the children.

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

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

21 I also included that language interpretation that
22 needs to be included, deleted. Sometimes are elders, in
23 particular, still speak their traditional language. But
24 they don't understand your laws. They don't understand
25 the interventions that are basically being impacted or,

1 you know, implemented on them, on their children. I know
2 that Hopi and Navajo and some of the pueblos and other
3 tribes in these Four Corners area still speak their
4 language and practice their customs, and interpretations
5 need to be given to them so they understand this clearly
6 and precisely, so they can act in the best interest of
7 their children.

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

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

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

20 Also, tribes who have the right to records that
21 are basically documented in every state. We have trials
22 in Colorado, and I think that we should always have the
23 right to basically access to see what tribal members are
24 basically listed on there that have gone through tribal
25 courts for eternity. Because, you know, there might be

1 some time in the future where we might be able to identify
2 or some relative might be able to identify a child or a
3 tribal member, and they might be able to place them
4 appropriately and connect them back up with their
5 families.

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

17 Lastly, in regards to accountability, up at
18 Southern Ute we have what is called a Citizens Review
19 Committee. And they review every case where a complaint
20 was filed against Social Services about the way they
21 handle any Social Services case that comes before us in
22 Social Services. I think ICWA, the Bureau, and the states
23 need to have a citizen review that handles this, as well,
24 where any Indian citizen, tribe, can file complaints if
25 they want. Cases where there's neglect of accountability

1 so that these cases can be reviewed, and fair proceedings
2 can basically be heard, and good decisions can be made in
3 those cases.

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

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

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

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

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

21 ICWA is very close to my heart -- I promise to
22 keep this five minutes or less -- very close to my heart.
23 I was actually a foster parent when I was a young person
24 and younger person and working in Mescalero. And there
25 were several children actually from the tribe, Mescalero

1 Apache Tribe, that were removed from their homes back in
2 19 -- early 70s. And many of these children were actually
3 placed in a group home in Taos for whatever reason, and a
4 number of various alleged atrocities that occurred with
5 those children, those children were brought back to
6 Mescalero, and there were no homes available for them.

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

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

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

21 One of the things that we've been talking about,
22 and some of the meetings that we've been having with some
23 of the other tribes is something that someone already
24 mentioned around accountability, and holding all of us
25 accountable, tribal workers as well as state workers.

1 The State of New Mexico conducts social work
2 training on a regular basis, and as Betty mentioned, the
3 last piece of that training is around ICWA, 30 minutes of
4 it. So one of the recommendations that we are making, and
5 we'll have further comment in writing too, to also
6 submit -- but one of the recommendations that we do have
7 as part of that training that the state involve ICWA
8 tribal workers to conduct that training, and that training
9 be conducted in Indian Country, in our own arena.

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

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

23 One of them is the Section 23.104, and it's in
24 regards to how do we contact a tribe under the
25 regulations? We all know that many of our tribes have

1 designated an agent for receipts of our ICWA notices. And
2 the BIA publishes a list of these tribes designated for
3 agents for the service of ICWA.

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

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

21 The other one is also another section, and it's
22 23.107. And it talks about the actions that an agency and
23 the state courts undertake in order to determine whether a
24 child is an Indian child. It's kind of interesting on
25 this one because not all agencies ask. People assume and

1 people just -- it's not necessarily that they take the
2 word of others, but they prey on that action.

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

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

23 MR. MONTROYA: (Native American spoken). My name
24 is Mike Montoya. I'm the lieutenant governor from Ohkay
25 Owingeh, and I'm here to, I guess, testify to some

1 personal issues, and then, I guess to kind of give comment
2 on these proposed rule change guidelines.

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

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

24 You know, I'm not just a second lieutenant
25 governor of Ohkay Ohwingeh, but I'm also a spiritual

1 leader there. And in our traditions and customs, all the
2 kids in that village are my children. You know, I was
3 fortunate that I was appointed in this position as
4 lieutenant governor, which, you know, gives me some kind
5 of -- more reason to do for my people and for my kids, you
6 know. But, you know, I really -- I thank BIA for giving
7 us this due diligence and the Casey Foundation for the
8 work study program we had yesterday. You know, it gives
9 me a general idea of what we're dealing with here.

10 But in reading, you know, me, personally, I
11 support these rule changes. But the obstacles that we
12 still face is federalism. You know, Executive Order
13 13132. The states don't have to, from what I read, are
14 not being held accountable for what they report and what
15 they don't report.

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

25 The other thing is, as far as active efforts go,

1 what about trainings at the state level, and other people
2 have brought that up. You know, I mean, we talk about
3 CYFD getting training, and other people at the state level
4 getting training, what's 30 minutes? How many in here
5 understand ICWA in and out and at the state level? You
6 know, 30 minutes of ICWA training -- what's that?

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

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

22 MR. WYASKET: Good morning, everyone. My name is
23 Floyd Wyasket, spelled W-Y-A-S-K-E-T. I represent the Ute
24 Indian Tribe at Fort Duchesne, Utah, and wanted to express
25 to you that my tribe supports the proposed rule changes to

1 the ICWA.

2 It was not too long ago in 1998, 20 years after
3 ICWA was passed, that we realized that our children were
4 being placed with the state and Utah DCFS and agencies.
5 And by the way, my title is I'm the director of the Ute
6 Family Services. We realize that we had all these 150
7 kids. And over the years, it goes to thousands of kids
8 that I've taken care of by the state of Utah. We started
9 a committee that talked about why, why wasn't our children
10 being removed and placed with non-tribal entities, and we
11 came to the conclusion that we needed to do something. So
12 our movement, since 1998, has been to return all of our
13 children back to the care and custody of the Ute Indian
14 Tribe, which I can proudly say today has been
15 accomplished. And so all of our kids are back in the care
16 of the Ute Indian tribe.

17 We provide all of the necessary programs, all of
18 the funding, all of the foster care, all of the kinship
19 placements. We have a Ute Family Council where the
20 children are discussed, and the family makes the decision
21 as to where the child should go. And it is not
22 necessarily with -- sometimes it's not with families, but
23 they stay within the tribe or with other tribes for ICWA
24 placement. So we know that we have -- we had to meet and
25 educate and discuss and negotiate with the state.

1 At first they were very reluctant because they
2 didn't want to give up their state involvement. But as of
3 this date, they have reluctantly gave us full cooperation
4 and care and placement, and they have educated their
5 judges to transfer all the state -- where they pick up the
6 children -- back to the tribe. And so that occurs on a
7 regular basis, and it doesn't hurt that some of our judges
8 have worked for the Ute Indian Tribe. So they don't need
9 to be educated. They need to educate their peers.

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

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

24 As all of these other tribes all say, "Only a
25 Zuni, only an Acoma, only a Sioux," whatever tribe it is,

1 that's where they know more about that. Personally, if
2 you really know the intent of these people that are going
3 to protest best interests, these people have never been on
4 a reservation. They have never mingled with our culture.
5 They don't know our ways. They don't dance with us. They
6 don't sing with us. They don't participate. They're off
7 on some ivory tower and trying to call the shots for our
8 children, which is not fair.

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

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

20 There are a few things, talking points, that I
21 would like to share with you. Right now, Acoma, we are a
22 small tribe, and I am a staff of six. And right now we
23 have 10 children in state custody, and of those 10
24 children, one is in a relative placement. The other
25 children are all in non-relative, non-Native placements.

1 One of the things I want to talk about is early
2 identification. This is really important so that it gives
3 the tribes an opportunity to ensure that active efforts
4 are being provided to keep the family from separating.
5 Oftentimes when we request from states to be notified
6 early, their answer to us is, "Well, it's not in court
7 yet, so we don't have to notify you."

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

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

22 The big thing is always active effort. And I am
23 a staff, like I said, of six, including our admin
24 assistant who is also here today. So I want to thank my
25 entire staff for being here today.

1 And we have a number of cases, not just ICWA
2 cases, but cases on our tribe, on our reservation. And if
3 we can provide active efforts, there's no reason that the
4 state worker should not be able to provide active efforts
5 because they have more resources than we do.

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

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

25 The other point I want to make is on

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

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

21 We're at a point in this case where we want to
22 transfer, and it was just almost comical yesterday in
23 court because the state workers, the state attorney, and
24 even the state judge is trying to scramble on how they can
25 keep this court -- this case in state court when these are

1 our children, and they deserve the right to come home.

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

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

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

23 So I think that that's something we have to
24 really enforce, and also, if placements are going to be
25 made because there may be a lack of tribal foster care

1 homes, that if placements are made with non-Native,
2 non-relative individuals, that those foster parents are
3 also educated and know that this is a temporary placement,
4 and that once family is identified, that move will be
5 made, so that placements will be ICWA-compliant. Thank
6 you.

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

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

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

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

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

25 One of my very first cases I went into with the

1 ICWA, I walked into a family center meeting, and I was
2 attacked literally by a state lawyer asking me why did our
3 tribe intervene? I've gotten left voicemail from
4 attorneys in this state as well asking why is our tribe
5 intervening, and we've been told, "Because you're not a
6 lawyer." We need to get this corrected, and we need to
7 educate.

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

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

16 Also, to make the states accountable for things
17 when they're not having active efforts. Again, not being
18 a lawyer, not being allowed into treatment team meetings
19 because I didn't legally intervene. Also, we have our
20 tribal leaders here, our council. I ask for you that you
21 push in this state of New Mexico for guardianship. It is
22 on your level that we need you to go to our state and push
23 for that. Because again, the financial hardship on our
24 families when they do take in their grandchildren, their
25 niece, nephews, it costs a lot of money to raise a child

1 in today's society. So we need to get that guardianship
2 money. A lot of different states have that, and I just
3 don't understand why New Mexico does not push for
4 guardianship.

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

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

21 And we are going to intervene, and we have been
22 in most of our cases right now. But I support all these
23 efforts and these changes, and these regulations need to
24 be put forward. I have to be honest with you: When I
25 first heard about it in February, I was very doubtful,

1 because why has this change just happened now? It should
2 have already been when it was state law in '78.

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

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

15 But I thought we could take maybe just a quick
16 10-minute break.

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

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

23 MR. TAGER: My name is Geoff Tager, G-E-O-F-F
24 T-A-G-E-R, and I'm the chief judge at Ohkay Owingeh. And
25 I have to say that it's a great thing to be here. It's a

1 wonderful opportunity. I thought perhaps things had
2 changed more since I was starting out at Hopi, and I guess
3 this was '93 when I was thrown out of my first courtroom
4 for trying to represent the tribe and not being an
5 attorney at that time in Superior Court in Arizona.

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

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

25 And I think it's also critical in this time,

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

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

17 So we may have, when you talk about active
18 efforts, parents who are hiding identity. They may not
19 want to notify the folks at home, what's going on in terms
20 of dealing with a referral or an intervention. The other
21 issue obviously, is notification. And we talk about this
22 in terms of dealing with a parent who's from pueblo A,
23 another parent from pueblo B, and a caretaker, an
24 on-and-off caretaker who may be from pueblo C. And so
25 maybe only pueblo A gets the notice, and maybe everything

1 else is unknown as they were saying in terms of the
2 reports we get and what investigation has gone on.

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

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

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

24 Also, with regards to the parent, just the
25 definition on the regs means, "Any biological parent or

1 parents of an Indian child or any Indian person who has
2 lawfully adopted an Indian child, including adoptions
3 under the tribal law or custom." I'd really like to just
4 see "lawfully" taken out of there, so that we're not
5 fighting over what the definition of lawful adoption is.

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

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

22 And so that parent -- when that parent can object
23 to a transfer under ICWA, it's a huge hole in the law.
24 And I know that these regs are not necessarily going to
25 fix some of the issues that just need to be changed in a

1 law, itself. But I also notice that when you talk about
2 representation, there's a provision that says, "Subject to
3 state law." And this is under -- this is under (B)(6).
4 And we're all talking about funds, access. You know, it's
5 tough enough, we sent our ICWA worker all the way to
6 Missouri to intervene in that case. That was not an easy
7 process. And even though they refused the transfer, we
8 got the child on the intervention. But we had issues with
9 our placement. They said, "Well, thank you very much. We
10 want the child back."

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

19 The other thing that I'd just like to address
20 briefly is the qualified expert. And I think that this is
21 on the tribes that are present here too, to identify
22 members. Because I think that this number four -- and I
23 understand that you have a descending priority, in terms
24 of what an expert is. But I think everybody in this room
25 shudders that we still have number four on the table, and

1 that we're going to have a non-Native anthropologist
2 coming into court and testifying about what family means
3 or what -- you know, what the tradition and custom of that
4 tribe is.

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

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

25 And last, but not least, I'd like to say that I

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

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

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

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

24 MS. TORRES: (Native American spoken). My name
25 is Tanya Devon Torres, and I'm here on behalf of Governor

1 Jay Leroy Arquero, and on behalf of Lieutenant Governor
2 Duane Herrera from Cochiti Pueblo. And Cochiti Pueblo is
3 in support of the proposed regulations to enforce the
4 Indian Child Welfare Act for the reasons, that is,
5 proposed regulations, number one, provide clear and
6 concise elucidation and implement uniform best practices
7 for all parties involved. To include, however, not limit
8 to, child welfare agencies, adoption agencies, and court
9 assistance. This nationwide policy is crucial to minimize
10 inconsistent interpretation.

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

17 Number three, explicate the variance between
18 active efforts and reasonable efforts. Active efforts,
19 which are best practice required by the Indian Child
20 Welfare Act of 1978 truly are best practice, and should be
21 done in the best interest of all children as a whole. The
22 collaborative approach is fundamental for the betterment
23 of the child welfare system. The notice language in the
24 proposed guidelines ensures the opportunity -- oh, I went
25 back up -- I said number three -- furthermore, with full

1 compliance with active efforts, and with placement
2 preference being followed on initial placement in the
3 Indian Child Welfare Act, assures the health, safety, and
4 best interests of tribal children are met. This
5 repudiates any concerns for those in opposition about best
6 interests being ignored by the Indian Child Welfare Act.

7 As far as the engaged language used in the active
8 efforts portion, the suggestion is to change that because
9 what does "engaged" mean? And what it could be is obtain
10 or contract for services.

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

18 MS. HARRIS: Thank you.

19 Do we have anyone else?

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

24 Over my 20 years' experience in this and being a
25 tribal judge, I've only had two ICWA cases. One involved

1 out of state -- the state of Montana had requested -- had
2 sent notice that there was a pueblo member not from Santa
3 Ana, but from -- I'm not going to name the pueblo -- but
4 this child was in custody in their state system. And that
5 they had been -- sent notices to the tribe to intervene,
6 and the social worker said they were going to intervene,
7 and I had no knowledge of it.

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

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

19 So the tribe needs to establish a protocol for
20 procedure once they gets notice that the tribal courts
21 need to be involved. And so what I did, you know, the
22 social worker filed a petition for custody and all that,
23 and we had a hearing. And in the tribal court, we looked
24 at the best interest of the children. And looking at the
25 best interests of the children, these children had special

1 needs, and it would be unfair for the children to be
2 transferred because the tribe didn't have any resources to
3 take care of the children's needs.

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

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

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

20 And I asked for home studies to be conducted.
21 And pueblo B said, "You know, you have no jurisdiction
22 over us. You cannot tell the social worker what to do."
23 So I could not get home studies from pueblo B. And, you
24 know, that's how we are in Indian Country. We don't -- we
25 don't have full faith in court orders. We can't even get

1 subpoenas served sometimes. And we need to ask Indian
2 tribes, if we want our sovereignty, we ought to get
3 together and -- if we're really concerned about our
4 children -- we need to get together and establish
5 protocols on how we're going to handle these cases.

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

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

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

20 MS. HARRIS: Let me ask just a quick question.
21 Do you know if there's ever been any sort of effort with
22 Indian Country to do that, to set up some sort of, you
23 know, protocol or any efforts of full faith that will
24 accommodate anything like that? I'm just curious if
25 there's been any Indian Country efforts from the bottom up

1 rather than us saying this is what folks should do?

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

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

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

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

14 Hi, Judge.

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

23 But sometimes there's barriers because we need to
24 understand what is really the best interest of our
25 children before we just jump the gun. And I think, yeah,

1 we're pointing the finger at how the state -- yeah, we
2 have issues with the state. I mean, some social workers,
3 even when I went to school at Highlands, when I took a law
4 and ethics class, the professor said, "Why bother having
5 ICWA? Why bother having the ICWA Act?"

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

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

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

1 we have to do reporting?

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

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

17 And again, I don't want to be pessimistic, but
18 look at that ICWA case, you know, that was in the media.
19 Money talks. Money talks. And was that what made the
20 decision for the Supreme Court? I don't know. They had
21 lawyer representation, big-shot lawyers. Can we get some
22 representation, too, for the tribes? Can we get some
23 hot-shot lawyers to help our kids? It's just a matter of
24 playing that game. And, unfortunately, it's who wins.
25 You know, if you know how to play the game, that's who's

1 going to win. But nobody wins when you have innocent
2 children who can't fight for themselves.

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

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

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

20 But as the tribe, the council, the tribal
21 officials, are going to provide those resources to our
22 children. So I feel like -- do I talk to you guys, or
23 everybody, or how does that work? I mean, because I feel
24 like everybody's in the back. But anyway, I'm a little
25 bit nervous.

1 Despite the -- I support the proposed regulations
2 to enforce the Indian Child Welfare because despite the
3 problems and the progress made through tribal state
4 collaboration over the last 35 years, a wide range of
5 inconsistency in applications exist, and I think we all
6 know that. I think it's critical to have a nationwide
7 policy for all states to minimize their inconsistent
8 interpretation of ICWA.

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

19 There is no uniform guidance on what constitutes
20 active efforts, no accountability on the state level,
21 there's no understanding that the tribe -- there is not
22 the understanding that the tribes are the ones that
23 identify who is an enrolled member or whether it comes,
24 you know, from descendancy. So that determination comes
25 strictly from the tribes. And, of course, you know, what

1 we've always said is that's the workers, the supervision
2 and accountability for the states as well.

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

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

22 As -- us, as natives, we all know that we take
23 care of our neighbors. We go next door to borrow butter.
24 We go -- you know, we've all been raised on general
25 commodities. But you know what? There is no reason why

1 our children are being placed elsewhere and not being
2 placed back into our community, whether it's with
3 grandparents or whether it's with extended family members
4 or not even just, you know, somebody within the tribe or
5 the reservation. We are all willing. I'm sure. I can
6 speak on behalf of the majority of the people and myself
7 that, you know, hey, sometimes we have to take care of,
8 you know, kids that don't even belong to us, that are not
9 even family, but we're all one. So I think I really want
10 to express that highly.

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

23 So I just want to thank you for your time, and if
24 you have anything further, I could be contacted. So thank
25 you.

1 MR. BEGAY: Good morning. My name is Aaron
2 Begay. I'm the Indian Child Welfare Act coordinator for
3 the San Carlos Apache Tribe. There's some -- I guess the
4 tribe will be submitting our comments to the BIA via
5 letter, I guess, before the deadline. But I just wanted
6 to touch on a few points from this morning.

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

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

23 But also, we have instances where the tribe is
24 not called for hearings. The tribe is left out of
25 decisions regarding the child or children involved, so, I

1 think that the active efforts should also be included,
2 judges as well.

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

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

25 So -- and then I guess my recommendation would

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

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

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

14 MS. HARRIS: Could you introduce yourself, again?

15 MR. SEKAYUMTEWA: Yeah, Loren Sekayumtewa,
16 director of tribal services and the acting director of
17 social services, Southern Ute Tribe.

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

24 We did that recently with the Department of Human
25 Services in Colorado, and that was very successful. And I

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

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

20 But one of the things that's lacking is loss of
21 culture and identity amongst our own tribes. We don't --
22 many of us, understand our own traditions and cultures
23 anymore, what our roles and responsibilities are to our
24 children. And it behooves us to basically reconsider
25 those traditions and cultures, what our roles and

1 responsibilities are as aunts, uncles, grandfathers,
2 grandmothers, mothers and fathers of our children, because
3 if we lose that, then our whole tribe and our children are
4 in jeopardy, and no wonder they're lost even in state
5 courts where we can't define how we take care of our
6 children in the first place. Maybe it would be good to
7 have a blue-ribbon panel of our own tribal experts look at
8 that for consideration; what are our customs, what are our
9 traditions, you know, that we can basically help advise
10 you on at the federal level and at the state levels.

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

22 MS. DURAN: I just wanted to inform everybody
23 here that if you look at the website for all the comments
24 that have been submitted on the ICWA modifications, the
25 majority of the comments that have been submitted are in

1 opposition of the modifications, and that they are coming
2 from the adoption attorneys. And we felt, in talking as a
3 group, that these people are trafficking our Indian
4 children. This is a further genocide of American Indian
5 culture and tradition, so we have got to get back to our
6 communities, and not just have our tribal officials
7 writing letters. But get our people to even e-mail in,
8 sign a letter that we can go ahead and send on to the BIA
9 and talk about. Nobody, except our tribal governments,
10 have the right to determine the future of our children, so
11 that we do not support the further genocide of tribal
12 culture and tribal communities, and that these non-Indian
13 attorneys and adoption agencies have no voice in decision-
14 making as to what happens to our children. Thank you.

15 MS. HARRIS: We really appreciate your comments
16 on that point, too. You know, as we go through the
17 rule-making process, the Administrative Procedure Act
18 requires us to consider all comments that are relevant to
19 the rule. So the more comments that we can get, you know,
20 in support of the regulation, especially unique comments
21 that comment on, you know, some portion of the rule and
22 saying more. Obviously, we will take a simple letter of
23 support. Things that are unique are especially helpful to
24 us. Things in particular with respect to offering
25 language, you know -- folks, you know, do have concerns,

1 and there's been a lot of great comments here today that
2 we'll take back.

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

17 Also, we're having a listening session that's
18 open to the public, not just to tribal leaders and
19 representatives of tribes this afternoon. It starts at
20 1:00. It starts at 1:00. We've seen from past
21 consultations that, you know, these -- the listening
22 sessions that are open to the public do have some folks
23 that, you know, may have different opinions than many of
24 them that have been expressed here today.

25 We hope that as many of you that are here right

1 now can join. I think it's important for everyone to
2 hear. While we won't be responding directly to each
3 other's comments, I think it's helpful for -- to have
4 supportive folks to, you know, respond to other people's
5 comments, you know, substantively. And also, to express
6 your points of views, so that folks with other points of
7 view can hear them from you, not necessarily from us. So
8 the more of you that's here at one o'clock. It's from
9 1:00 to 4:00. So you can come for any -- all or any
10 portion of that, and it will be -- you know, the same
11 rules will apply except that it will be open to everyone.
12 So we expect that we will have a mix of folks that will
13 show. But again, it can be very helpful to have anybody
14 here that's able to join.

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

20 (The consultation concluded at 11:53 PM.)
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C E R T I F I C A T E

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

Yvonne Gonzales

YVONNE GONZALES
Certified Court Reporter #62
License Expires: 12/31/15

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