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DEPARTMENT OF THE INTERIOR
TRIBAL CONSULTATION
AND
PUBLIC MEETING
MYSTIC LAKE CASINO - HOTEL
PRIOR LAKE, MINNESOTA
MAY 7, 2015

REPORTED BY: DAWN WORKMAN BOUNDS, CSR, CLR

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PANEL MEMBERS IN ATTENDANCE FROM THE
UNITED STATES DEPARTMENT OF THE INTERIOR:
Kevin Washburn, Assistant Secretary - Indian Affairs
Rodina Cave, Senior Advisor to the Assistant
Secretary - Indian Affairs
Sarah Walters, Counselor to the Assistant Secretary
- Indian Affairs
Gina Jackson, Senior Fellow, IPA, Indian Child
Welfare
Angie Campbell, Office of Indian Services, BIA
Debra Burton, Office of Indian Services, BIA
Venus Prince, Office of the Solicitor

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

2 MR. KEVIN WASHBURN: Good morning,
3 Everybody. It's after 9:00, so I think we will go ahead
4 and get started. The first item on our agenda is a
5 Welcome and an Opening Prayer. And Secretary/Treasurer
6 Lori Watso from the tribe here at Shakopee has offered to
7 welcome us, so we're thankful for that.

8 Lori.

9 LORI WATSO: Thank you.

10 You don't have to write the prayer. Okay?

11 THE REPORTER: Okay.

12 (Ms. Watso recites prayer.)

13 LORI WATSO: Good morning, Everybody. I'm
14 Lori Watso, Secretary and Treasurer for the Shakopee
15 Mdewakanton Sioux Community. My fellow business council
16 members, Chairman Charlie Vig and Vice Chairman Keith
17 Anderson, I want to welcome you. Also on behalf of our
18 community members, welcome to our community, and I hope
19 that your stay here is a good one.

20 I am not a -- I'm honored by this -- the
21 request to offer a prayer this morning. Thank you. I'm
22 not a spiritual leader. I'm hardly very religious, but I
23 do firmly believe in our energy and our intention, the
24 energy of our ancestors that's with us, so I'll just say
25 a few words to help kind of bring our intention together

1 this morning, so thank you.

2 (Prayer.)

3 MR. KEVIN WASHBURN: Thank you so much.

4 That was beautiful.

5 We are here today for a very important
6 tribal consultation. And the chairman has just come as
7 well.

8 Chairman, it's good to see you, Chairman of
9 the Shakopee Mdewakanton Community.

10 We are here to talk about the Indian Child
11 Welfare Act and host a tribal consultation on our
12 proposed changes to development of regulations to enforce
13 the Indian Child Welfare Act. There's a big federal team
14 here. We're going to ask that -- we're going to mostly
15 be listening today, but we're going to start with some
16 introductory comments and run through a slide show so that
17 you can see what we're doing here.

18 Let me introduce the folks that mostly are
19 out here from Washington, D.C. Our chief lawyer Venus
20 Prince is here. She's been working with us on this very
21 closely for the last couple years and working really
22 hard. She's from the solicitor's office.

23 Gina Jackson, who is on IPA -- I can't
24 remember what that stands for -- an IPA -- in Washington
25 we only do acronyms, but she's on loan to us from KC

1 Family Programs, in her personnel agreement, I think.
2 But Gina's been a really important part of our team that
3 we brought on really to help with this kind of
4 initiative, and she's been absolutely terrific in helping
5 us keep this going.

6 Sarah Walters to my right is one of my
7 counselors and works really closely with me on this and
8 has helped in every step of the process. We worked on
9 our guideline and our proposed rule.

10 Deb Burton, who's with the BIA, Office of
11 Indian Services, and has also been a really important
12 part of the team.

13 And Angie Campbell in the back is also a
14 really important part of the team from the BIA that's
15 working on putting our proposals, our initiatives
16 together in this area.

17 So we need to hear from you, and we will do
18 a little bit of talking at the beginning; but we will
19 then turn it over to you and start asking for comments
20 from all of you. We do have a court reporter here, so I
21 would ask you to use the mic whenever you speak so she
22 can take down your words more easily. And we will stop
23 you if she signals to us do so and make sure she can hear
24 you. It's really important for us to capture your words.

25 So I think many of you probably have a

1 little bit of an inkling of what we've been up to for the
2 last couple of years working on the Indian Child Welfare
3 Act. As you know, the Indian Child Welfare Act was
4 passed in 1978, and it was designed to address a very
5 serious problem. We were losing a lot of our children
6 from Indian reservations because of good intentions or
7 bad intentions, perhaps both, some social workers and
8 others were taking our children and placing them in
9 non-Indian homes. And it got to be such a serious
10 problem that Congress decided to step in and in 1978
11 passed the Indian Child Welfare Act.

12 It's designed to protect the best
13 interest of children. It's designed to keep their
14 connection with their communities, their Indian
15 communities and promote the stability and security of
16 Indian families. It does a whole lot of things, and we
17 will talk in great detail about some of those things
18 later on, but basically articulates a very strong Federal
19 policy that we need to keep our children within our
20 communities if at all possible. And it's clear that the
21 Indian Child Welfare Act was also intended to give tribes
22 a real voice in these issues to help the tribes in the
23 driver's seat when these kind of issues arise,
24 particularly through the tribal courts. And those
25 include notice to the tribe, right to be heard by the

1 tribe, and a right to have tribal courts handle these
2 issues in appropriate cases.

3 So those are some of the -- a big overview.
4 Again, we'll go through detail on some of the specific
5 provisions as we talk about what we've done in our
6 guidelines and in the proposed rule. We first enacted
7 guidelines to the Indian Child Welfare Act in 1979,
8 shortly after it was passed. And, honestly, we hadn't
9 reconsidered those guidelines in the interim, since 1979.
10 About two years ago the Supreme Court decided a case that
11 was a tragic case, honestly; and that caused us to look
12 to see what we could do to try to be part of a
13 solution to prevent cases like that one from arising in
14 the first place.

15 So this is the outcome of our efforts. We
16 produced new guidelines. We went all around the country
17 listening to tribes, listening to others, and including
18 tribal court judges and state court judges who deal with
19 these issues, and we ultimately came up with guidelines,
20 updated guidelines. And one of the things that we heard
21 throughout our travels around the country as we were
22 talking to people to update guidelines, though, was that
23 guidelines are only guidelines. People said that they
24 want enforceable rules.

25 And so we stayed to our course because we

1 wanted to get the guidelines updated because people will
2 rely on those guidelines; and if all of us got hit by a
3 bus tomorrow, we wanted to make sure we had something in
4 place that would improve the implementation of the Indian
5 Child Welfare Act. But we heard what people said, and so
6 shortly after issuing the new guidelines, we have issued
7 a proposed rule that we are now accepting comments on
8 that would largely implement a lot of the things that we
9 said in the guideline that make them a rule, make them
10 enforceable.

11 So that's what we're here for, is to hear
12 from you on our proposed rule, our proposed regulation.
13 This regulation would have the force of law. That's why
14 it would be much stronger than the guidelines. And,
15 frankly, because of that, it's all the more important to
16 get it right. Guidelines don't have to be followed.
17 Rules do. So this is actually a further step, and it's
18 even more important that we give it our utmost attention
19 and try to make sure that we get to the right outcome.
20 So we need all your guidance to be able to do that. So
21 thank you for getting up on a rainy and windy morning and
22 coming out here to meet with us.

23 I'm going to turn it over to some other
24 members of my team to continue walking through some
25 additional slides just to give you some more background.

1 Sarah, I'm going to turn it over to you.

2 Sarah Walter.

3 MS. SARAH WALTERS: Good morning. How are
4 you. As Kevin mentioned, my name is Sarah Walters. I'm
5 a member of Cheyenne River Sioux Tribe, and I am
6 counselor to the Assistant Secretary for Indian Affairs.

7 I'm going to talk with you a little bit
8 about what we're going to be talking about today, which
9 is the proposed rule. So as a brief overview, we have
10 some new and updated definitions from what we had
11 published in the initial 1979 guidelines, as well as our
12 existing ICWA regulations. We have general provisions,
13 pretribe requirements, procedures for making requests to
14 transfer to tribal courts, and others, as you will see up
15 on the slide there.

16 So we have several new and dated
17 definitions, and these are really important because what
18 words mean really determines how courts see things like
19 active efforts, continued custody, domicile, imminent
20 physical danger or harm, and others. So the general goal
21 of the regulation is to have consistent implementation of
22 the Indian Child Welfare Act in all states and
23 consistency in a good way. We want people to be
24 following it.

25 Now, we also addressed applicability of

1 ICWA. Many state courts thought that ICWA wouldn't apply
2 in their state because they don't have a high population
3 of Native children. However, this proposed rule makes
4 clear that state courts and agencies must ask whether
5 every child is an Indian child or may be a member of a
6 tribe. And if there's reason to believe that the child
7 is an Indian child, they must treat the child as an
8 Indian child until they make a determination that the
9 child is not an Indian child. So that's a very big
10 difference from the way that ICWA has been implemented so
11 far. So the court also has a requirement to make the
12 determination of whether a child is an Indian child;
13 however, tribes are the only ones that can make the
14 determination of tribal membership.

15 So there's also a requirement to engage in
16 active efforts, and that begins -- active efforts, we
17 kind of say that as an abbreviation. It's active efforts
18 to keep the Indian family intact. So active efforts is
19 actually a higher standard than the reasonable efforts
20 that they have -- that agencies have to take in every
21 child welfare case. They have to -- they have to make
22 active efforts right from the beginning of a case to
23 retain -- to maintain the Indian family intact.

24 And as I mentioned, only a tribe can
25 determine its own membership, so it's important that

1 tribes get notice and also respond to the notice about
2 whether the child is a member of that tribe. So notice
3 is required when an agency or court knows or has reason
4 to believe that a child is an Indian child. Now, a
5 proceeding could be a volunteer or involuntary placement,
6 temporary custody proceeding, removal or foster care
7 placement, adoptive placement, or any termination of
8 parental or custodial rights.

9 Another important clarification that we are
10 making is that notice and waiting periods have to have
11 elapsed before any substantive proceedings or rulings can
12 occur. And a proceeding may not begin until 10 days
13 after the parent or Indian custodian and tribe receives
14 notice and 30 days after the parent or Indian custodian
15 or tribe receives notice if they requested an additional
16 20 days, which is their right to do.

17 Procedures are slightly different in
18 emergency removal situations. And those, we make clear,
19 must be as short as possible in duration. And the agency
20 or state court must document whether the removal or
21 placement is proper and continues to be necessary, and
22 the requirement is that there must be imminent physical
23 damage or harm to the child. So they also have to
24 promptly hold a hearing to evaluate whether the continued
25 removal or placement is necessary. They also have to

1 immediately terminate the placement or removal when the
2 emergency has ended. Again, even in emergency
3 situations, active efforts and determination of whether
4 the child is or could be an Indian child is necessary.
5 So they have to treat the child as an Indian child until
6 a contrary determination is made.

7 Again, in emergency removals, any court
8 hearing an emergency removal or placement must decide if
9 the removal or placement is no longer necessary. And
10 temporary custody, if that is required, has to be 30 days
11 or less, unless the hearing -- a hearing is held with
12 testimony of a qualified expert witness or extraordinary
13 circumstances exist.

14 And now I am going to hand the presentation
15 over to -- to Debbie Burton -- sorry about that -- to
16 Debbie Burton, who is social worker in the Bureau of
17 Indian Affairs.

18 MS. DEBRA BURTON: Hi. Good morning. One
19 of the changes on the proposed rule is that there is an
20 added clarification that the right to request the
21 transfer to tribal court occurs with each proceeding and
22 can happen in any state of the proceeding. That's
23 something that some state courts have ruled that requests
24 for transfer have come too late in the proceeding, but
25 the new rule clarifies that that right comes at any

1 stage.

2 And the state court must transfer, unless
3 either parent objects, the tribal court declines, or the
4 state court determines good cause to deny transfer. And
5 the proposed rule sets out good cause factors that the
6 court is not allowed to consider. The first one is
7 whether the case is in advanced stage, the child's
8 contacts with the tribe or reservation, and the tribal
9 court's prospective placement for the child; because
10 these factors have been used by courts to deny transfer,
11 and we wanted to make sure those courts knew that those
12 are not allowed.

13 Now, the petition for placement and
14 termination of parental rights must demonstrate to the
15 court that active efforts were made prior to and until
16 the commencement of the proceedings, and that the active
17 efforts were unsuccessful. And something that the
18 proposed rule adds clarification on is that these active
19 efforts must be documented in detail in the court record,
20 and there must be evidence that the court and the agency
21 attempted or did use the resources of the extended family
22 tribe or other Indian caregivers.

23 Now, the court can order foster care
24 placement only if there is clear and convincing evidence
25 that continued custody with the parent or Indian

1 custodian is likely to result in serious physical,
2 damage, or harm to the child. And this has to be
3 supported by testimony of one or more qualified expert
4 witnesses. And this is -- this is not new. This is in
5 the statute, and this is not the new -- the new thing.
6 But the court may order termination of parental rights
7 only if there's evidence beyond a reasonable doubt; and
8 that, again, is not new, but it's emphasized in the
9 rules. But what the rule does do now is clarify what is
10 and what is not clear and convincing evidence.

11 Okay. The proposed rule sets out a list of
12 preferences for the qualified expert witnesses, and these
13 are in descending order. So the first preferred
14 qualified expert witness would be a member of the child's
15 tribe who is recognized by the tribal community as
16 knowledgeable in the tribal customs. The second order of
17 reference would be member of another tribe that is
18 knowledgeable on delivery of child and family services to
19 any of the tribes. The third preferred person is a
20 layperson that is recognized as having substantial
21 experience in delivering services to Indians and having a
22 knowledge of the cultural standards in the tribe. And
23 the fourth and least preferred qualified expert witness
24 is a professional that has education and experience of
25 prevailing social and cultural standards of child rearing

1 practices within the tribe.

2 Now I'm going to turn it over to Gina
3 Jackson.

4 MS. GINA JACKSON: Good morning, everyone.
5 My name is Gina Jackson. I'm a Western Shoshone from
6 Reno, Nevada. And today I'll be talking about voluntary
7 proceedings, disposition, and post-trial rights.

8 Can you hear me okay?

9 So the proposed rule will provide that in
10 any voluntary proceeding the agency and the state court
11 must ask if the child is an Indian child - so that is
12 something that the agency and the state court would have
13 to be asking - providing the tribe with notice of the
14 voluntary proceeding, including the right to intervene;
15 the consent of the parent or Indian custodian, which must
16 be in writing, recorded before the court, explaining
17 consequences and terms in detail, and that the parent or
18 Indian custodian fully understood the consequences and
19 terms in detail; and then just the recording of the
20 documents that provide the consent.

21 In dispositions, the agency must follow
22 placement preferences or tribal placement preferences,
23 even if there's a request for anonymity. The standard is
24 clear and convincing evidence that a diligent search was
25 made to meet the placement preferences and explain if

1 they couldn't be met. Notification to parents,
2 custodians, family members, the tribe, et cetera, must be
3 given, and documentation of the placements must be
4 recorded.

5 The order to depart from the placement
6 preferences can only happen if the court finds good cause
7 to depart. And the good cause basis must be included in
8 the record, and that the party who is asserting good
9 cause to deviate from the placement preferences, they
10 have the burden to prove there's good cause by clear and
11 convincing evidence. So that clarification is in the
12 proposed rule.

13 Continuing with dispositions, good cause to
14 depart from placement preferences must be based on
15 parents' request. If both attest, they review the
16 placement option. The child can request if they're able
17 to understand the decision. The child's extraordinary
18 physical or emotional needs as established by a qualified
19 expert witness. And what it doesn't include is bonding
20 and attachment from the placement or just the
21 unavailability of a placement in a determination that
22 active efforts were made to find placements. Good cause
23 may not be based on the socioeconomic status of any
24 placement relative to another. So the proposed rule
25 clarifies that, which is very important.

1 In post-trial rights, the proposed rule
2 establishes procedure to vacate an adoption if the
3 consent was made by fraud or duress or if the proceeding
4 violated ICWA. It establishes who can invalidate an
5 action based on a violation of ICWA, which is the Indian
6 child, the parent, Indian custodian, the tribe,
7 regardless of whether that particular party's rights were
8 violated. The proposed rule also establishes the adult
9 adoptee's right to learn their tribal affiliation and
10 encourages states to designate someone to assist in with
11 adult adoptees and also requires notice of any change of
12 the child's status, such as changes to be given to -- to
13 the parties.

14 Continuing with post-trial rights, states
15 must provide BIA with a copy of the decree or order in
16 any final adoption, which is really already -- the
17 decree -- filed decrees are supposed to be sent anyways.
18 But they also must establish single location for all
19 records of voluntary or involuntary foster care,
20 preadoptive placement, and adoptive placement that would
21 be available in seven days by request by the child's
22 tribe or the Department of Interior. And these records
23 must contain at a minimum the petitioner consent, all
24 substantive orders in the proceedings, and a record of
25 placement determination, including the findings on the

1 record and social worker statements.

2 So we're excited to be here, and we are
3 looking forward to your comments on any provision of the
4 proposed rule. We have a couple more opportunities if
5 you would like to give further comment, other than today;
6 and we will have a national teleconference coming up next
7 Tuesday, which anyone can join, as well as a final tribal
8 consultation and public meeting in Tulsa, Oklahoma, which
9 is Thursday, May 14th.

10 The important date to remember is May 19th.
11 That's our deadline, the final date to submit comments.
12 E-mail is the preferred method. You can send comments to
13 bia.gov. It's not the only way, but probably the quick
14 and easiest way. You can mail comments, as well.

15 The public meeting this afternoon, everyone
16 is welcome, in addition to this. One of the things that
17 we really appreciate is if you have a question on a
18 certain provision of the proposed rule and you have
19 some -- some suggested specific clarification, we would
20 love those words. So in addition to sharing with us
21 today, you can also submit those comments in writing, and
22 we would really appreciate it. Thank you.

23 MR. KEVIN WASHBURN: All right. We
24 promised we would be relatively brief, and so we are now
25 ready to hear your comments. And so -- which we're

1 anxious to do. So we ask you to, when you make your
2 comments, step to the mic, state your name clearly, and
3 spell it if it's an unusual name, and also give us your
4 tribal affiliation, too, for the record. Thank you so
5 much.

6 RON JOHNSON: Can you hear me? Morning.
7 Assistant secretary, it's good to see you again.

8 My name is Ron Johnson, Prairie Island
9 Indian community. I'm the tribal council president.

10 It's a coincidence that this came up today. Yesterday
11 we had a tribal member come in under the ICWA law,
12 and it's hard for tribal councils to sit here -- since
13 we're all related, we have to sit here and help them and
14 try to direct them in what we can, but stay neutral in
15 that because it is a conflict of interest in our
16 procedures that we do here. So moving forward, I hope we
17 can make some changes.

18 But, myself, I see some of these comments
19 there, but some tribes receive per capita payments. Some
20 have trust funds for these kids. For me, I adopted two
21 children from Prairie Island. They were in state
22 custody, and they did receive some monetary subsidies
23 from the state; but during that, when they found out the
24 affiliation of the tribe, I was told that the minute they
25 received their dollars or monies when they turned of

1 legal age, that they would have to reimburse the state.

2 So my question is, is that if the state
3 takes that responsibility and ICWA does not come into
4 play or they don't move that child to where it is
5 necessary to be, what -- what financial obligations are
6 those children or their parents obligated to if they do
7 receive per capita payments under that tribe's
8 organization or under the NITC's gaming revenue
9 allocation ordinance? So the concern I have is that what
10 penalties are going to lie if that happens, if the state
11 continues to hold that child and subsidize those needs
12 and wants for the parents there? So I'm a little set
13 back on that one, if that -- if there's been any talk
14 with the state on. So that's my main concern on that
15 one.

16 MR. KEVIN WASHBURN: Thank you, Chairman
17 Johnson. Thank you for your long leadership, and thank
18 you for adopting those kids. Because that's one of our
19 biggest problems in Indian Country is making sure we've
20 got good places to put kids, so thank you for that.

21 RON JOHNSON: I just want to thank Andrew
22 Small, too, because he helped me in that procedure. He's
23 been an awesome help in that. So, I mean, I really
24 encourage -- yeah, it's tough, but it's a good thing to
25 do for them, so...

1 MR. KEVIN WASHBURN: Thank you, Ron. When
2 you take that on yourself, a chairman of a tribe like
3 that, it's really good leadership for the rest of the
4 tribe.

5 The exact questions you asked, I'm not sure
6 that anyone up here has the answers to that. I will tell
7 you, though, that we have been working very closely with
8 the administration for children and families over at HHS.
9 That is where the -- it's called the Title IV-E program,
10 and we have learned a lot about that program generally as
11 we have done this, because we know that we -- the Federal
12 Government needs to be working together.

13 And so one of the things we have been doing
14 is working with them on some other developments to try to
15 ensure that tribes are getting proper resources for
16 foster care and to carry out all the things that ICWA
17 hopes that they will be able to carry out.

18 So I'm glad you put us on to that issue
19 because it's something we need to be aware of. I don't
20 have a lot of answers for you, but it's something that we
21 will certainly look at. And we will take that back to
22 ACF because we've been working -- you know, back in
23 Washington to try to work with their policy and see what
24 policy changes might need to be made in their programs.
25 And they, frankly, have been very willing to talk to us

1 about these things. And this is a -- kind of a
2 nationwide problem, but it's nice to -- it's important to
3 hear how it plays out individually. Thank you.

4 RON JOHNSON: Fortunately for me, I could
5 afford it, so I ended up stopping that from the state,
6 and so I won't be penalized on that. But it's just --
7 it's still out there, and it's -- I just wanted you to be
8 aware of it.

9 Thank you.

10 MR. KEVIN WASHBURN: Thank you.

11 IRENE CARRILLO: I do work for the
12 Department of Health and Human Services.

13 MR. KEVIN WASHBURN: Use the mic if you're
14 going to...

15 IRENE CARRILLO: Hi, my name's Irene
16 Carrillo, and I did -- I called and let you guys know
17 that I was coming.

18 But I do work for the Department of Health
19 and Human Services Administration for the children and
20 families. I work out of the children -- or regional
21 office from Chicago, Unit 5. What I can you about Title
22 IV-E -- because I am a program specialist, I work with
23 tribes in Michigan -- is that every regional office does
24 have a child welfare program specialist assigned to work
25 with your state and the tribes within your state. And to

1 make sure that the eligibility criteria are being met and
2 that you are getting the monies that you're entitled to,
3 I would recommend that your tribal social services
4 directors do contact your regional office program
5 specialist to make sure you're getting what you're
6 entitled to.

7 A lot of determinations are made based on
8 the ability of the environments prior to any adoption or
9 any child coming into foster care. So I would make sure
10 that -- as it relates to Title IV-E, that those criteria
11 are being implemented. So that might just be one extra
12 help. I hope I didn't...

13 MR. KEVIN WASHBURN: Thank you, Irene.

14 IRENE CARRILLO: I was going to introduce
15 myself, but...

16 LORI WATSO: Good morning again. My name
17 is Lori Watso. I'm a member and the elected
18 secretary/treasurer of the Shakopee Mdewakanton Sioux
19 Community. On behalf of our members, I welcome you to
20 our home and thank you for proposing regulations to more
21 firmly guide ICWA application.

22 The Department of Interior and the Bureau
23 of Indian Affairs have taken a commendable action in
24 proposing these regulations. As we are all aware, the
25 absence of Federal regulations has led to both state

1 inattention and intentional misuse and manipulation of
2 the law. It is inconceivable that after 37 years, we are
3 still confronting those who believe they know better than
4 we as tribal members what "family" means and what "tribe"
5 means. Again, the Department and Bureau efforts have
6 created the potential for heightened application of this
7 critical law, and we thank you.

8 I would like to note some of the helpful
9 provisions as they now exist and then offer some
10 suggestions on how others might be improved. Number one,
11 recognition of tribes' exclusive authority to determine
12 membership is important. We as sovereigns exist as the
13 only entity with the authority to determine membership,
14 and that acknowledgement is important.

15 Number 2, ICWA applies to all cases where
16 an Indian child is involved in an Indian custody
17 proceeding. We in Minnesota have prohibited use of the
18 existing Indian family exception. The proposed rule
19 provides adequate guidance in this area.

20 Number 3, a critically important element of
21 the proposed regulations is providing specific
22 requirements so that both tribal and statutory placements
23 for Indian children are adhered to. The lack of
24 compliance with both foster care placement preferences
25 and adoption placement preferences should be a deep

1 source of shame for our country.

2 Some of the changes we would like to
3 suggest for the proposed regulations are as follows:
4 First, all descriptions and references to children who
5 are eligible to receive the protection of ICWA must be
6 referenced "member" and "membership," not "enrolled" or
7 "enrollment."

8 Secondly, "domicile" in the proposed
9 regulation relies on physical presence. This is much too
10 narrow. Where one feels, intends, or represents their
11 home is much more accurate in both Indian and non-Indian
12 understandings.

13 We would also offer that the guidelines
14 that were issued earlier this year contain a much better
15 description of "parent" than what is currently proposed.
16 And what you have in your guidelines is there.

17 In Minnesota we have worked tirelessly to
18 improve the care our children receive when they are in
19 state care by clarifying Minnesota's own ICWA law
20 creating tribal state agreements and working on rules and
21 judges' bench votes. The Shakopee Mdewakanton Sioux
22 Community fully believes that the imposition of these
23 important regulations will effect the same kind of
24 specific guidance in the application of ICWA.

25 No more tribal member children or any of

1 them eligible for membership should lose the protection
2 ICWA provides. It will secure their identity, their
3 sense of family, and ultimately their well-being.

4 Thank you very much.

5 MR. KEVIN WASHBURN: Thank you, Madam
6 Secretary.

7 And then for everybody else, that was a
8 textbook example of how to be helpful, because very
9 specific provisions were referenced.

10 So thank you for that.

11 If anybody needs guidelines, talk to
12 Secretary/Treasurer there.

13 NORMAN DESCHAMPE: I want to thank you for
14 your time today. My name is Norman Deschampe. I'm the
15 elected Chairman of the Grand Portage Band of Lake
16 Superior Chippewa. I'm also President of the Minnesota
17 Chippewa Tribe. We collectively have been involved in
18 ongoing and seemingly unending efforts to ensure our
19 children and families receive the protection the Congress
20 of the United States promised in 1978.

21 I emphasize the unending part of that
22 description because we never stop having to confront
23 those who would avoid or ignore or weaken the law when it
24 is supposed to be applied for the benefit of children --
25 Indian children and families. We fully applaud the

1 Bureau of Indian Affairs efforts to promulgate
2 enforceable regulations that leave very little question
3 as to how a state or its political subdivisions must act
4 so that neither disinterest or intention robs these
5 children of their rights and their identities and their
6 families and their futures as potential tribal leaders.
7 These are lost if our children are not stable and secure
8 when another government must impose its ways on these
9 children.

10 Again, the Bureau's undertaking with these
11 proposed regulations and with the recently issued
12 guidelines is much needed and benefit -- and a beneficial
13 addition to Congress's original intent to protect our
14 children's best interests. These same discussions have
15 gone on among all leaders from the 11 tribes in Minnesota
16 over the years. This has resulted in a favor -- in
17 favorable changes to Minnesota's version of the Indian
18 Child Welfare Act and in agreement among all the tribes
19 in a state that is in full compliance with the Indian
20 Child Welfare Act.

21 I sincerely believe that there's no excuse
22 for the continuation of this damage to our children and
23 families. Our own legal experts will respectfully advise
24 you as to oversights in drafting that may have occurred
25 between the promulgation of the recent guidelines and

1 regulations. We all know nothing comes out in perfect
2 form the first time around. But I want to emphasize on
3 behalf of the Grand Portage Band of Minnesota Chippewa
4 Tribe and make it very clear that before we fully support
5 your efforts and will continue to offer our partnership
6 to you to make sure that these needed regulations become
7 a reality.

8 Thank you.

9 MR. KEVIN WASHBURN: Thank you, Chairman;
10 and thanks for your long-time leadership. It's really
11 heartwarming to see such important leaders personally
12 coming to this consultation because it really reinforces
13 the importance of this whole effort and ensures that
14 we've got good support on the ground for whatever we do.

15 Because we can make the most perfect rule
16 imaginable; but if tribes aren't using it, then it --
17 something gets lost. So thank you so much Chairman,
18 and it's really, like I said, heartwarming to see so many
19 important tribal leaders here and stepping forward.
20 Thank you.

21 And Chairman Deschampe came from a long
22 way.

23 CHUCK SANDERSON: Good morning. Excuse me.
24 Assistant Secretary Washburn, Members of the Panel, thank
25 you for being here today. My name is Chuck Sanderson.

1 I'm the ICWA director for Spirit Lake Nation, located in
2 Fort Totten, North Dakota.

3 I too echo what everyone has said relative
4 to the clarification and actually putting meat on the
5 bones to ICWA, and I think that that's going to have
6 better results for our children. There are a couple of
7 things that are probably more opinion than suggestion, so
8 if you would allow me.

9 COUNCILMAN BAKER: I can't hear you.

10 CHUCK SANDERSON: Thank you, Councilman
11 Baker.

12 The good thing about Kenny, he's always
13 there when you need him.

14 So I -- do need to go back and repeat?

15 Okay. I follow direction well, so...

16 Just a couple of opinions. The first, in
17 regards to the money issue, the children that we deal
18 with have gone through tremendous amounts of trauma.
19 They have been subject to sometimes multiple placements.
20 And to penalize them while they're starting their
21 adulthood just doesn't seem to be very fair. They did
22 not cause this placement to happen. It was the parents.
23 The parents should be the ones that are accountable for
24 any payment due. And I would hate to see children, as
25 they begin their adulthood, have that taken away from

1 them. They've had enough taken away from them.

2 The second opinion, one of the real big
3 issues that we have at Spirit Lake, and just recently we
4 were at a meeting in Albuquerque, and it's not just
5 Spirit Lake or North Dakota, but it's also places like
6 Oklahoma and Alaska have a difficult time recruiting
7 Native American foster homes, getting foster homes,
8 keeping foster homes.

9 One of the experiences that we've had at
10 Spirit Lake, we have had multiple Native American
11 families come to our agency and say, "We would like to
12 become foster homes." We ask, "Where do you live?" They
13 said, "Well, we are just outside the reservation."
14 "Okay. Well, then you need to go to the county to become
15 licensed." They look at us and say, "We're not
16 interested then. We want the tribe to license."

17 Now, I know that Federal IV-E I believe
18 allows for tribes to license off reservation under their
19 Title IV-E agreement. I would like to see these
20 guidelines, these regulations put a little bit more meat
21 behind that of saying there must be a commitment from the
22 state court and the state agencies that Federal tribes
23 will be recognized in their licensing procedure whether
24 it be on or off the reservation. That would be one
25 suggestion that I would have. I believe, along with many

1 other people, that would open up the door. Let me give
2 you an example.

3 We had two people who had been employed a
4 long time in one of the tribal schools at Spirit Lake.
5 They knew a young man who needed placement. They were
6 willing to take him in. They lived off the reservation.
7 They had worked for the school for 20 years. Good
8 people. I have known them since I moved to this area.
9 We referred to the county. After the eighth two-hour
10 visit, home study, they said enough is enough. We're not
11 going to do it.

12 We need to figure out a way -- and maybe
13 this is just a state of North Dakota problem, but I don't
14 think it is. We need to figure out a way of where we can
15 get more Native American families. We need to figure out
16 a way that we can get relatives more involved. And what
17 I mean by that -- and please don't take this the wrong
18 way, but I call it "relative rehab." All of us -- well,
19 I shouldn't say all of us. I in my young days did a lot
20 of stupid things. Okay. And like other people they
21 have, too. But unfortunately some of the -- some folks
22 got caught. I was lucky, I didn't. Okay. But that
23 lingers on in their background check. We have very good
24 people that because of one reason or another are
25 disqualified because of background checks. I think it's

1 up to us to clear the way so that we can look at how do
2 we safely get relatives greater access to the children
3 that they love.

4 Last thing. I experienced these new
5 guidelines yesterday. Let me tell you what happened. A
6 county worker called up, very diligent. Okay. And
7 almost like in two big, long sentences proceeded to tell
8 me about three families involving seven kids and started
9 to list out absolutely everything. And by the time she
10 got done, I was overwhelmed. I was overwhelmed. And it
11 started me thinking that -- and what I mentioned to her
12 when she was all done, I said, I think when we get back
13 from here, we need to sit down, and we need to come up
14 with a process that makes sense; because over the phone
15 it certainly didn't make sense.

16 She was following the guidelines. She
17 wanted us to have immediate knowledge. But either I'm
18 slow or not smart enough, I couldn't keep up with my
19 pencil. Okay. And so when we get back, we're going to
20 start looking at, for lack of a better word, an intake
21 process that we're going to share with the counties that
22 would list the demographic information. It would list
23 out the active efforts, the reasons for considering
24 removal, or the removal; and to be able to have that in a
25 fillable format so that as they're calling, they can send

1 that fillable format to us so that we can get on more
2 with the meat of the matter instead of just data
3 recording.

4 I would really suggest that we consider
5 that as some kind of process that's going to be helpful,
6 not just to the state agencies, but for tribal ICWA
7 workers. Because, I'll be honest, by the time she was
8 done yesterday, I was confused. I didn't know which
9 family she was talking about. I didn't know what kid she
10 was talking about. And I tried to keep notes as good as
11 I could.

12 And I thank you for listening to some of my
13 opinions, some of my suggestions; and I really look
14 forward to these guidelines becoming more regulations.

15 Thank you.

16 MR. KEVIN WASHBURN: Thank you,
17 Mr. Sanderson. Let me comment on the last point. I
18 think some of the social workers in the state are
19 overwhelmed, too, and that's probably what that reflects.

20 But we are trying to do something here that
21 will give you -- protect tribes' legal rights, and your
22 employees of tribes' legal rights to have access and
23 notice to children. But, honestly, it's that kind of
24 cooperation on the ground that's really going to -- you
25 know, we can give you more leverage, but it's that

1 cooperation on the ground that will make all the
2 difference. So thank you. Those are great ideas which
3 you presented.

4 Thank you.

5 I used to be a law professor at the
6 University of Minnesota. I'm really good at staring at
7 the class until someone stands up.

8 MS. PRINCE: I was just going to say if
9 some of you are -- just don't like standing up and
10 talking, we'll also accept any written comments. You can
11 just give them to us afterwards, too; because I know some
12 people just don't like talking, so we understand that.

13 Don't be staring at me that way.

14 WILFRID CLEVELAND: Good morning. My name
15 is Wilfrid Cleveland from the Ho-Chunk Nation. I was
16 asked to come on over here and express some words. I
17 don't really know what I'm to express, but I'd like to
18 first of all say thank you for coming around Indian
19 Country and getting our thoughts and concerns about ICWA;
20 our President, John Ranier, kind of asked if I would say
21 something regarding this.

22 And there was just a couple of questions,
23 first of all, that I was concerned about was the word
24 "proposed." So does that mean that what we're saying
25 here -- what you're saying in this new -- what'd you call

1 it -- "enforceable rules" that you're making here, that
2 that's going to be like a Federal law?

3 And what we -- what our concern is to
4 strengthen those on behalf of the best interest of the
5 child is what you will be proposing, if they're like -- I
6 was just reading a little bit, and there was talk about
7 changing some words where there is some flexibility in
8 some of the wording that was -- that was in the
9 guidelines. So I was just kind of curious about that,
10 first of all.

11 MR. KEVIN WASHBURN: Yes, Mr. Cleveland,
12 we -- this would constitute Federal law, in essence. If
13 we enact these rules as a final rule and it gets
14 published in the Federal Register, which is the process,
15 if we've properly considered the comments that have been
16 submitted and we address those as we issue that rule, it
17 would be Federal law, in essence. And one of the effects
18 of that is that it might have the effect of actually
19 overturning some existing state court decisions.

20 So when a matter came before a state court,
21 they would have to follow our rule rather than, you know,
22 the precedent cases from that jurisdiction. So it's
23 actually pretty powerful, and we've heard from people in
24 some states that there are several state court decisions
25 that might get overruled if we enact this as a final

1 rule. So, yeah, it would have the effect of a law and
2 could have great power.

3 WILFRID CLEVELAND: That's good to hear.

4 And there was a -- when Deborah was
5 explaining her portion of it, she mentioned -- she
6 mentioned physical harm to the child regarding the
7 placement. And so I was thinking about does that include
8 like if there was mental harm to the child in that
9 statement. But then a little bit later then the other
10 young lady mentioned emotional needs.

11 So I was just kind of wondering how those
12 words -- because I think that there may be some -- some
13 mental or emotional harm that's being done to a child in
14 different situations.

15 MR. KEVIN WASHBURN: Thank you,
16 Mr. Cleveland.

17 And that's exactly the kind of -- we're
18 trying to get input on those terms.

19 One of the things that we've heard in other
20 comments, there are some exceptions to the Indian Child
21 Welfare Act. For example, when a child is -- I won't get
22 this language quite right -- is in imminent physical
23 danger. And one of the things we've heard is that people
24 have taken those exceptions and actually turned them into
25 loopholes in some respect so that they don't have to

1 apply the Indian Child Welfare Act, and we're watching
2 that. And that's why we think these terms need to be
3 defined better so that everybody knows when there is an
4 exception and when there's not an exception to the Indian
5 Child Welfare Act. So that's the kind of thing that
6 we're trying to get to.

7 The Indian Child Welfare Act defines some
8 terms, but it doesn't define all the terms. And we've
9 seen across the United States different states interpret
10 those terms differently in their jurisdictions. So we're
11 trying to get more uniformity so they get interpreted the
12 right way in every case.

13 Sarah would like to add a word.

14 MS. SARAH WALTERS: When she was talking
15 about the imminent threat of physical damage or harm, she
16 was talking about a very specific instance, which is an
17 emergency removal, which the child has to be taken
18 immediately out of the home.

19 That doesn't mean that -- that children
20 wouldn't be protected in the situations that you're
21 talking about where there could be neglect or emotional
22 or mental abuse happening to the children. It's just
23 that those might not constitute the emergency or removal
24 that is contemplated in a rule. Does that help?

25 WILFRID CLEVELAND: Yeah, somewhat.

1 MS. SARAH WALTERS: Debbie, do you have
2 anything to add to it?

3 WILFRID CLEVELAND: I don't know how fast
4 it would be to recognize there was mental harm to a child
5 if that's like you're saying that kind of emergency
6 situation, but I don't know how -- if that could be
7 detected immediately.

8 MS. DEBRA BURTON: This issue was mentioned
9 in Albuquerque, the language about us not having the
10 emotional harm in that section you were talking about in
11 the proposed rule. And so that's something we are going
12 to be looking at, so thank you for bringing that up
13 again.

14 WILFRID CLEVELAND: Yeah, those are -- but
15 I really appreciate that after -- since 1978 and just
16 like -- I'm imagining general guidelines that have been
17 followed, whether you can do this, you don't have to do
18 that type of thing. And then, say, 37 years later
19 we're -- the Federal Government is looking at making
20 these guidelines -- what was that you said now --
21 enforceable rules. So I really kind of -- I guess it's
22 never too late is kind of what I was thinking about after
23 getting -- because way back before 1978, there was --
24 like it was a business, you know, with -- even when they
25 were taking children from homes and putting them into

1 foster care, some of those foster care people that they
2 were putting them in were like -- had little slaves
3 and -- so to speak.

4 So I guess the change is getting better
5 from that point on and realizing I really appreciate that
6 the United States recognized in this instance that they
7 have a duty to protect our -- the Native people on these
8 lands, so they are enforcing it to this extent as time
9 goes on. I guess like all rules, as time goes on, then
10 there's always room for improvement to make things
11 better. And I -- from what I'm reading and understanding
12 and hearing, that's the direction that the Indian Child
13 Welfare Act is going. Just like things are happening
14 just recently. Like in 2009, the state of Wisconsin
15 codified the Indian Child Welfare Act.

16 So -- and I guess the other question that I
17 have, seeing that I'm just representing the Ho-Chunk
18 Nation through our president, with this consultation,
19 then there's going to be the public forum later on today,
20 what we say here is going to be -- be taken into
21 consideration, and we don't have to go to the public
22 hearing if we decide not to, to say again what we're
23 talking about here?

24 MR. KEVIN WASHBURN: That's right,
25 Mr. Cleveland. This session is for tribes, basically,

1 and for tribal officials, tribal employees. The other
2 session -- because we have a responsibility to consult
3 specially with tribes, and so this is a session just so
4 that we can speak with tribes. And then we have the
5 public session because there are other people that are
6 interested in these issues, and we certainly want to hear
7 from those folks. But, you know, we have a heightened
8 duty of consultation with tribes.

9 President Obama has told us distinctly that
10 we need to have consultation with tribes on matters that
11 affect them. And so this is a special session for
12 tribes, and then we will have the public session later
13 for any citizens that care to comment.

14 WILFRID CLEVELAND: I really appreciate
15 that consideration that's being taken here, and that -- I
16 don't know, I would -- I'm just imagining and thinking
17 about the public and some of the attorneys that, I don't
18 know why they would refute or why they would want this
19 law any other way, personally, if it's going to be in the
20 best interest of a citizen of the United States or of a
21 nation. So I really was thinking about those kind of
22 things, too.

23 Because, like I was saying, way back -- I
24 don't know if lawyers or you -- I'm not going to
25 say lawyers would know better -- they make money off

1 these kind of cases that are going on or not. But I'd
2 just like to say thanks for giving the tribes this
3 consideration, going around through the Indian Country
4 and giving us this opportunity.

5 MR. KEVIN WASHBURN: Thank you,
6 Mr. Cleveland.

7 And let me just say, I met with one of your
8 council members from Ho-Chunk; and for the rest of you,
9 Ho-Chunk is a community that's sort of scattered around
10 Wisconsin. They've got numerous different communities.
11 And one of the tribal council members was in my office
12 probably six or seven months ago just in agony because in
13 a two-week span they had six infants born with narcotics
14 in their system, and every one of those six children had
15 to be taken and placed with another family.

16 And it is hard to find six healthy families
17 to take each of these to deal -- have an infant. If
18 you've had children, you know how much work that is. And
19 trying to find six tribal families in a perfect
20 situation, it's really hard to find those. So it
21 underscores why -- Chairman Johnson, why it's so
22 important to have families that are willing to do that
23 sort of thing and then help those children long-term.

24 And so -- and let me just comment on one
25 other thing. Mr. Cleveland, you're right, we probably

1 should have done this years and years ago. Someone once
2 said that wisdom too often never comes, so please don't
3 criticize it when it arrives late.

4 Chairman.

5 RON JOHNSON: Mr. Secretary, thank you for
6 saying that because I was just going to bring up -- and
7 it really helps me to understand. You hit the point, and
8 I was going to apologize if I offend anybody on this, but
9 we have children having children in tribal communities
10 here, and that's a big hurt to us, especially per Allen
11 here. There's a lot of stake, and that's another problem
12 for us. We've got our internal issues that we have to
13 deal with. The two daughters I have were AFS and
14 cocaine-addicted babies.

15 So that's the point that I'm trying to
16 drive across, is that there's a lot more than that, and
17 then I hear that there might be some -- if there's any
18 mistreatment in these facilities that they do go to, but
19 also there's things they're born with that really kind of
20 put the dampers to everything moving forward here.

21 One issue we're dealing with down here,
22 though, is that grandparents that are okay is the
23 grandparents' rights. We're having an issue right now,
24 and it seems to have surfaced here just in the last
25 couple months, is that those kids that are in foster

1 care, the grandparents want to visit with them, and
2 they're being denied that, they say; but we don't know
3 the full case on that. I don't know what's all involved
4 in that. But through ICWA I don't know if there's any
5 kind of ruling in there or wording that would protect the
6 grandparents in light -- if the kids were placed into a
7 non-Native foster care facility. So I'm kind of worried
8 about that, that we're still being challenged by that as
9 tribal leaders to what we can do to help them out in that
10 case. So thank you.

11 UNIDENTIFIED SPEAKER: Thank you, Ron. And
12 ICWA doesn't have preferences for extended family
13 members. And we think that's one of the things that --
14 you know, some officials don't understand how tribes work
15 and how often it's an extended family activity to raise
16 children. And so we have heard comments like yours
17 often, and we are certainly looking at those issues.

18 Thank you.

19 MS. EASTMAN: Good morning. I even need to
20 move this down further.

21 My name is Shaun Eastman, and I'm an
22 attorney -- sorry, no -- from Sisseton. I'm here on
23 behalf of Chairman Renville, for the Sisseton Wahpeton
24 Oyate of the Lake Traverse Reservation. Thank you for --
25 today for the opportunity to appear before you to discuss

1 the proposed ICWA regulation.

2 Chairman Renville is unable to be here
3 today due to a scheduling conflict; however, because this
4 is an issue of great importance, he asked that I come
5 today to provide testimony on his behalf.

6 All too common on our reservations and
7 communities are the ones that were adopted out and come
8 back years later attempting to find their family and who
9 they are. One can only imagine the headache/heartache
10 our people go through trying to understand this.

11 Specific suggestions -- and we do plan on
12 submitting more elaborate written comments before the
13 deadline, but specific suggestions would be: No time
14 limits on active efforts. Blood quantum should be
15 carefully included in the regulation. We have seen that
16 language in there, and you want to make sure to be
17 careful when we discuss blood quantum. There should be
18 no time limit on determination of an Indian child.

19 While case law and regulation discuss that
20 at any time in the proceedings, tribes have still had to
21 defend when we determine the child was eligible or an
22 enrolled member and not specifically a case that we
23 insisted and had to deal with a few years back where
24 instead of worrying -- you know, devoting our time to the
25 child, we spent the majority of that time while the child

1 was in foster care arguing about whether the state court
2 should transfer jurisdiction when the child was
3 determined to be an Indian child, when really we should
4 have been more focused on the best interests of the child
5 instead of all that time in the legal world, even though
6 I say that as an attorney, that it seemed like it was
7 more about the legal aspect of it and not -- not the
8 child.

9 We would also include that -- like the
10 gentleman from Spirit Lake said, we need to be able to
11 license our own a lot easier. Like he was saying, people
12 don't want to go to the state and become licensed. They
13 want do that with the tribe. There needs to be
14 safeguards in place for Indian fathers if paternity has
15 not has established. All too many times -- and you know,
16 we've all been -- remember the big case that happened,
17 but we really need to look at making sure that when
18 there's -- paternity hasn't been established for a child,
19 that the Indian father isn't being left out; and by the
20 time they become part of the case, it might be too late.

21 Include tribal representative before state
22 court. This would allow tribal representatives who are
23 not necessarily attorneys the ability to come to state
24 court. And again, I say that as an attorney, but a lot
25 of times our people on the ground that aren't licensed

1 attorneys are the ones that are most knowledgeable in
2 ICWA and can come to the state court and explain it to
3 everybody. I really think that that should be something
4 included in our regulations.

5 When asked that the tribes get a legal
6 opinion regarding consequences of states not following
7 these rules, I know that's what we have been discussing,
8 that these aren't going to be guidelines. They're going
9 to be rules. If the Department of Interior could put
10 something out, some kind of position paper on what would
11 happen if a state didn't follow the rules, that would be
12 helpful, especially from a state like South Dakota who
13 has time and time again refused to implement ICWA.

14 We have a concern of when state challenges
15 a tribe's transfer, in some instances maybe a strategic
16 delay. That was again in a case we were involved in
17 where it seemed like we spent so much time. One of the
18 arguments that the state tried to use later in the case
19 was that, well, the child's been with this foster parent
20 for all this time now. Well, that's true; but that was
21 more of a legal situation, not what was in the best
22 interest of the child.

23 On behalf of Chairman Renville, thank you
24 for the work you're doing, and we look forward to further
25 consultation.

1 Thank you.

2 MR. KEVIN WASHBURN: Ms. Eastman, thank you
3 so much. You raised a bunch of very good and detailed
4 comments, and some of which we've certainly heard before,
5 so that's helpful. It's always here when we start to see
6 consensus develop around some issues, that's very
7 helpful.

8 We've heard a lot about the legal question,
9 and there's a lot of different ways to enforce legal
10 rules; and to some degree, these can be self-enforcing
11 because the people can raise them. It is true what you
12 said that sometimes we get -- out of desperation we get a
13 child put somewhere, and it takes a long time for us to
14 get the right action to happen, and equities have built
15 up because the person's been in a place for a long time.
16 And disruption for the child is something that certainly
17 is -- no one wants to see. So that's one of the reasons
18 we think if we can get agencies and courts to follow
19 these rules strictly the first time, then we can prevent
20 a lot of bad situations from ever happening.

21 And it is nice to have someone from the
22 Children's Bureau -- the Federal Children's Bureau here,
23 and I will tell you they have been asking about
24 reporting, just requiring states to report how well they
25 have complied with ICWA, and just getting them to do that

1 forces them to do better. So there's a lot of different
2 ways to enforce.

3 Would you like to say a few words?

4 UNIDENTIFIED SPEAKER: I just wanted to
5 point out quickly - and I am thrilled HHS is here as
6 well - just to let you know that on the enforceability
7 aspect of the Rule, we are working very closely with HHS
8 and DOJ because we're looking for creative ways that we
9 might be able to enforce the rule, because the rules
10 focus on trying to establish those minimum Federal
11 standards that the statute allows for. But we're working
12 with HHS to see if there's any other ways that HHS might
13 be able to assist in compliance and by states, state
14 agencies, and courts. And we're also working very
15 closely -- and I don't know, some of you might be aware
16 that Attorney General Holder -- I should say former
17 Attorney General Holder now, you know, had announced that
18 DOJ has an initiative as well to try to see better ICWA
19 compliance.

20 And we just won a case in South Dakota
21 essentially saying that state agencies and courts were
22 not following ICWA. So we are actively working with them
23 to identify cases, you know, in the state courts that we
24 might be able to get involved in, kind of help with the
25 compliance from a big picture.

1 MR. KEVIN WASHBURN: Paul.

2 PAUL MINEHART: Thank you. Good morning.
3 I want to thank you for coming here and giving us the
4 opportunity to address you directly. My name is Paul
5 Minehart, and I'm a tribal attorney with the Leech Lake
6 Band of Ojibwe. And I just want you to know that the
7 Leech Lake Band of Ojibwe supports the proposed rules and
8 sees them as being needed and good.

9 As you probably know, Minnesota has the
10 worst disproportionality of placement of Indian children
11 in the country. I'm not sure exactly how we got to that
12 point, but what I am sure of is things need to change.
13 What's nice about the rules and these proposed rules is
14 they force change. Now, we have been working on change
15 in Minnesota, but when you're working with a state
16 system, change doesn't happen very quickly. So it's nice
17 to have at the Federal level rules coming out that would
18 force change.

19 And speaking to that, you know, one of the
20 things -- even though I don't know exactly how we got
21 here -- one of the things -- I have a theory about that,
22 is that child safety is equated with removal. And really
23 removal is one of the tools that's available to ensure
24 the safety of a child, but there are other tools
25 available. But I feel like in Minnesota it's too

1 commonly used as the tool to protect a child, remove the
2 child from the home.

3 So I really like Proposed Rule 23.113,
4 which has the process for emergency removal. I like it
5 just the way it is, so I'm hoping that the rule comes out
6 with no changes in terms of that. I think that's a very
7 good provision. And I think it would work well. And it
8 will get people to start thinking about, in those
9 emergency removals, what's the process we're doing now,
10 and is it consistent with this rule. And it gets
11 everybody to reevaluate what's going on with that and
12 just think it through a little more because we tend to
13 get our routines, and removal is one of those places
14 where I feel like it's more routine than an actual
15 assessment and thinking about it in terms of the need.

16 I also want to comment on Rule 23.117,
17 which deals with good cause to deny a transfer to tribal
18 court. And so 23.117 tells us what is not good cause.
19 And, again, very supportive of that rule. I think it's
20 very good. I like what it says. But the 1979
21 guidelines, they defined what is good cause. In the
22 proposed rule, we have what isn't good cause. In my
23 mind, that opens it up to really expand how a court can
24 find good cause. Because as long as it's not one of
25 those things listed -- and I didn't take notes on what

1 they are -- but advanced stage, whatever else was there,
2 you know, any thought that comes to mind in terms of good
3 cause could become good cause.

4 And so I think the rule has to be clear
5 that good cause is only in very limited circumstances.
6 And the previous guidelines -- the 1979 guidelines gave
7 that when they said this is what good cause -- you know,
8 you need these circumstance under which to find good
9 cause. So I think we need something like that or at
10 least just a statement of limited circumstances under
11 which good cause can be found.

12 I'd also just want to comment on Rule
13 23.122, which is the qualified expert witness testimony
14 and who can serve as a qualified expert witness. Again,
15 I like that a lot. I think that's a good change from
16 what we had previously with the other guidelines, and I'd
17 like to see that become a rule as well. One of the
18 things I'll just comment on that specifically. Under the
19 1979 guidelines, when you got to -- you know, it had an
20 expert in their own field, a doctor or medical person who
21 had knowledge of the Indian community. I like the change
22 that's in the proposed rule. It's within the Indian
23 child's tribe, and it stays within the Indian child's
24 tribe, and that's what you need to be a qualified expert
25 witness. That's a good change.

1 I just have one more -- well, a few more
2 comments. Rule 23.121, A and B deal -- what they discuss
3 is the need for qualified witness testimony when the
4 court is ordering foster care or ordering termination of
5 parental rights. The language of that rule says that the
6 court may not order a foster care placement or may not
7 order termination of parental rights.

8 I'm just wondering about the word "may."
9 That just seems like -- in my mind, if you say "may,"
10 then there's also the "may not." So it seems to me like
11 that could get interpreted as saying you can do a foster
12 care placement without qualified expert witness
13 testimony. That's my concern, and so I would just
14 suggest that we change that to "can." It's like what --
15 when we're talking about the "must" and the "should" and
16 what is really mandatory. That needs to be mandatory
17 language in those two provisions, A and B, under 23.121.
18 And the use of the word "may" in my mind does not make it
19 mandatory, or it leaves it open for the argument that
20 it's not mandatory.

21 Just to finally -- I did -- you asked for
22 comments regarding the word "must" and the word "should,"
23 and I did go through and circle all the "musts," and I
24 did not find a spot where I thought that "must" was used
25 inappropriately. I don't feel like the proposed rule is

1 going beyond what's already required under the law. So I
2 think it's a good use of that, and I didn't find places
3 where I thought that should change.

4 Leech Lake Band will be submitting written
5 comments as well before the May 19th deadline, but I
6 wanted to bring these forward today. And, really -- I'll
7 say it one more time -- we are supportive of the proposed
8 rules, and we want them to go forward. So thank you.

9 MR. KEVIN WASHBURN: Thank you so much,
10 Paul. There was a lot of good in that. So thanks for
11 such detailed guidance. I think it captured -- the
12 really important thing when you said "removal should not
13 be routine," that's exactly right. I think that's
14 exactly the spirit of the Indian Child Welfare Act, that
15 removal should not to routine and should be a tool used
16 as a last resort, if possible. So thank you.

17 SHIRLEY SCHWAB: My name is Shirley Schwab,
18 and I am the independent consultant for some of the South
19 Dakota tribes over the last 20 years.

20 Kevin, I was at the ICWA conference in
21 Rapid City two years ago, and it's hard to believe it's
22 been two years.

23 In following up with the gentleman that
24 just spoke, in my experience working in the South Dakota
25 courts over the last 20 years with all of the nine tribes

1 in our state, one thing that has always stuck out to me
2 was the expert witness. Now, I don't know because I
3 haven't been able to read thoroughly the guidelines, but
4 does it say in the new guidelines that an expert must be
5 involved from the beginning of the case?

6 MS. SARAH WALTERS: I believe what it says
7 is that the placement cannot occur without the testimony.
8 And as Mr. Minehart pointed out, we're going look at that
9 "may not" and maybe replace it with "must not," depending
10 on other comments and the analysis that we do.

11 But the idea was that those actions could
12 not happen, that determination to place the child could
13 not happen without the testimony of an expert witness,
14 not necessarily that the expert witness has to be
15 involved from the very beginning of the proceeding.

16 SHIRLEY SCHWAB: Okay. What I've seen over
17 the years is twofold. I have seen in most of the cases
18 that I've been involved with -- and there's been many --
19 that an expert has been brought on when we are
20 approaching the final phase, final disposition.

21 And I think that it's next to impossible
22 for an expert to take mounds of documents to go through.
23 But one thing that I think is significant that I have
24 seen over the years is that I really do support that the
25 expert should be coming from the particular tribe.

1 However, in many of the cases I have been involved with
2 that have involved termination of parental rights, is
3 that the ICWA expert has been retained by the State of
4 South Dakota, and therefore his -- his fees were paid by
5 the Department of Social Services.

6 So basically they were giving him a
7 substantial amount of money to come in and basically, in
8 most cases, support what the State was recommending. So
9 in that, if this -- these new guidelines are going to
10 really support the importance of an expert witness,
11 which I really believe is essential, is there any way
12 that that funding could come through the tribes so they
13 would not have to rely on the State paying for their
14 expert?

15 MR. WASHBURN: That's a great question.
16 We -- the rule won't deal too much with funding issues,
17 but it's something that we have been looking at in other
18 contexts, and so it's helpful to hear this. I think we
19 all -- there's always a question in any kind of
20 proceeding that involves testimony that's been bought and
21 paid for, there's always a question about that testimony.

22 And so we are looking at funding and how
23 funding issues can impact the way ICWA works. Again, the
24 rule won't deal with that, but it's something that we're
25 working with and we're working with again ACF, Children's

1 Bureau, on those issues.

2 SHIRLEY SCHWAB: Because it's important --
3 it's important because I've seen many times where the
4 children's attorney was supporting -- wasn't supporting
5 termination of parental rights, and they have to go up
6 against the ICWA expert. It makes it very difficult.

7 MR. KEVIN WASHBURN: Thank you. Good
8 point.

9 CANDACE LAGOU: Good morning.

10 MR. KEVIN WASHBURN: Good morning.

11 CANDACE LAGOU: My name is Candace LaGou
12 and I'm from the Red Lake Nation in Northern Minnesota.
13 I'm not a tribal chairman or on the council, but I do
14 ICWA advocacy for the tribe. There's two of us that work
15 for the tribe, and we work for -- advocated for our
16 family members off the reservation. So I've gone to
17 state and district courts, and many times I'm the only
18 Indian in the room. So I'm the one that goes and does
19 battle for the tribe

20 This is a very good piece of work. I
21 really liked it when you said that it's enforceable. I
22 was worried about that, if it's just more words; because
23 there's things happening in Indian Country, and this
24 needs to -- that needs to be enforced. I wanted to talk
25 about active efforts and how they begin immediately and

1 how they construe details in court proceedings on what
2 the agencies are doing concerning them.

3 I think that a lot of times the agencies
4 don't even know what active efforts are. They're barely
5 doing reasonable. And when I said that, many times I'm
6 the only Native American in the room. We run into -- I
7 don't want to say "conspiracy," but everybody in there is
8 on the same page except me. So when I ask for active
9 efforts, it doesn't even look like what it should be, so
10 I was really glad these are outlined.

11 Another thing I wanted to talk about was
12 clear and convincing evidence in 23.121. This has to do
13 with that -- the prejudice that non-Native people and the
14 preconceived notions that they may have about us and the
15 placement of our children. When they come to look at our
16 Native American licensed foster homes, it doesn't have
17 the boat in the yard, the RV, the manicured lawns, and
18 flower. It's full of toys. It might have an old washing
19 machine out there. When one of our quali -- our Native
20 American assessors comes and looks at the home, they see
21 a home that is geared toward children. A non-Native
22 social worker sees something that's not what they
23 envision for children.

24 And this also includes the overcrowding.
25 In the states they have area measurements per person.

1 This is not how it happens on reservations, and it never
2 has been. I remember growing up in a -- we were actually
3 rich. We had a two-room tarpaper. And we bunk bed and
4 crammed in, and this is -- was traditionally how we
5 lived. An uncle would show up, sure, and we'd move out
6 of the bedroom and make room for him. So this is
7 traditionally how we as Native Americans look at things
8 is the more, the merrier. This is family, we'll take you
9 in.

10 One of the things that -- another one I
11 want to talk about is good cause to depart from placement
12 preferences. And in 23.133, it talks about who can
13 invalidate, I believe it says here, and it says that the
14 tribe can. And it's up to the court to make that
15 finding. Well, what if it's a court that's in the
16 compliance? The judge doesn't want you to get up and
17 argue with him, telling him he's in the wrong. So I
18 would like to see a little bit more clear language
19 concerning courts. I can take on a social worker, but
20 it's harder to take on a judge.

21 Another thing about that is bonding with
22 foster homes. I believe that if they listened and
23 deferred or have spoken with tribes in placement of these
24 children that we would not have to worry about bonding
25 with non-Native foster homes. They would already be in

1 Native homes bonding with their family or their people.

2 And then I love 23.122 where it says a
3 professional person has to have knowledge of the culture,
4 child-rearing practices of the tribe. Many times they
5 have no clue who we are. They don't even know where our
6 reservation is located.

7 And then imminent harm and danger, I know
8 that this refers to emergency removals. I have heard
9 comments that don't like this language and feel that we
10 should think about the emotional harm to the children.
11 Because this has to do with emergency removal, I think at
12 that time we do have to just look -- focus on if this
13 child's in danger. But they want to move that into
14 across the case load.

15 Our tribe feels that they're looking at a
16 small time frame, a small space in time. The tribe is
17 looking at the long-term effects of the children. It has
18 to do with their culture, their identity, and their
19 growing up knowing their tribes. So I think that this
20 may be brought up later on today, but this is what we
21 feel -- that's just a small place. We're looking at the
22 life span of that child and where they'll be after they
23 age out.

24 I was raised in foster care. I aged out in
25 1977, so I was not -- I did not receive the benefits of

1 going home and knowing my people.

2 Thank you.

3 MR. KEVIN WASHBURN: Thank you, Candace.
4 Thanks for your commitment to helping Indian children.
5 That's terrific.

6 Yeah, we -- the active efforts -- you made
7 a bunch of great comments, so let me note that we
8 certainly -- we worry that some agencies don't know what
9 that means, and they at least ought to be able to
10 articulate what they did because law requires them to
11 take active efforts. And so one of the things we can do
12 through this rule is create a record that they have to
13 articulate what they did. Just asking them that, it will
14 become really apparent if they didn't do anything
15 special, so that's really important. We'd love to have
16 suggestive language from you, if you're interested,
17 especially on that last comment that you made.

18 I have been asked for a break, a 10-minute
19 break. So seeing no objections, why don't we resume in
20 10 minutes at 15 till 11 and get some more comments.
21 Thank you all for the wonderful comments so far.

22 (Recess 10:33-10:42.)

23 MR. KEVIN WASHBURN: We will go until a
24 little bit over an hour. We'll have a public session
25 this afternoon from 1 to 4.

1 We've been joined by our regional director,
2 Diane Rosen. By the way, she said she brought "save the
3 date" cards for BIA Partners in Action conference, which
4 is going to be June 23 and 24 in Baraboo, Wisconsin.

5 Is that right?

6 DIANE ROSEN: Yes.

7 MR. KEVIN WASHBURN: Mark your calendars,
8 Folks, June 23 and 24.

9 All right. At least we've got great
10 comments so far, and we really appreciate all of you
11 coming and so many of you spending your whole morning
12 with us. We've had some great comments from tribal
13 leaders, and it's terrific to have so many people here
14 and interested in this important subject.

15 We are open for more comments.

16 COURTNEY ALLENSWORTH: Mr. Assistant
17 Secretary, Agency Representatives, Tribal Leaders, good
18 morning. My name is Courtney Allensworth, and I'm a
19 staff attorney for Lac Courte Oreilles Band of Lake
20 Superior Chippewa Indians, and I'm here today at the
21 direction of the tribal governing board.

22 First and foremost, the tribe cannot extend
23 enough support for the implementation of enforceable
24 regulations so that after 37 years, the intent of the
25 ICWA may finally be fully realized. My brief comments

1 today will be followed by the submission of comprehensive
2 written comments in advance of the May 19th deadline.

3 I'd like to address a few specific parts of
4 the proposed regulations. First, as to part 23.2, the
5 Active Efforts definition, the tribe endorses the
6 definition as proposed but would like to see an
7 additional mechanism that requires courts consult with
8 the tribes as to the actual performance of active
9 efforts.

10 In Wisconsin we regularly see that the
11 county social worker submits an affidavit indicating what
12 they have done that they believe is active efforts, and
13 the court is readily accepting these as such, leaving
14 little room for the tribe to contest the provision of
15 active efforts.

16 As to part 23.111, Notice to Tribes, again
17 the Lac Courte Oreilles agrees with the language there,
18 but would like additional language addressing the fact
19 that multiple tribes may be party to these proceedings,
20 and it's not, as we say in legal terms, the proverbial
21 race to the courthouse, meaning that two, three, four, or
22 more tribes may have an interest in a child based on
23 eligibility, and those tribes should all be able to
24 participate fully in the proceedings and decide among
25 themselves if one tribe over another will take the

1 lead.

2 Finally, in regards to placement, section
3 23, 128, 129, and 130, again, we agree with the placement
4 preferences as indicated; however, it would be beneficial
5 for the regulations to address time as it relates to
6 placement preference. What I mean by that is we
7 regularly see in rural Wisconsin the deviation from
8 placement preferences is necessary on the practical
9 reality of availability of placement.

10 Now, as proceedings advance and if
11 ICWA-compliant placement comes available, if the tribe, a
12 parent, any party really requests that a child be then
13 moved into a preferred placement, that the court grants
14 that request. We're too often being told that because a
15 child has been in a home for so long, they should not be
16 moved. LCO believes that when placement preferences are
17 available, children should be moved.

18 And finally, in regard to placement 23.131,
19 just that good cause should not include time as it
20 relates to placement. And, finally, LCO cannot state
21 enough its request that some sort of mechanism for
22 sanctions against states who are not noncompliant be put
23 into place.

24 Thank you.

25 MR. KEVIN WASHBURN: Thank you, Ms.

1 Allensworth. That was great, very helpful. And we are
2 certainly trying to address some of the things that
3 you're talking about, and we've heard some comments like
4 that. It is true that the short-term deviation from a
5 place of preference shouldn't result in a long-term
6 deviation, if we can avoid that, absolutely; so this is
7 helpful.

8 Thank you.

9 UNIDENTIFIED SPEAKER: Mr. Assistant
10 Secretary, you can start calling on people.

11 MR. KEVIN WASHBURN: I'll call on you
12 first.

13 NELDA GOODMAN: Excuse me for falling all
14 over you.

15 Good morning, Ladies and Gentlemen. I was
16 inspired by the last speaker. I can see some old
17 friends, old coworkers that I worked with over the past
18 few years. Anyway, my name is Nelda Goodman. My maiden
19 name was Kapishkowitz. And I'm here -- I was hoping to
20 see my tribe represented here, the Menominee Nation or
21 Potawatomi Nation. And I wanted to just piggyback on her
22 conversation and lend testimony to what my family member
23 went through way back years ago when I was living on the
24 reservation.

25 A young child came -- they knew I was

1 related to this young child who was in a treatment
2 program. I was a chemical dependency counselor at the
3 time. And they said, I think you're related to this
4 young girl, and I have to get placement for her. And
5 they looked for placement for this young girl, and I
6 think she was -- at the time she was only like 15 years
7 old, and they couldn't find a sober relative, the tribe
8 that was doing this.

9 And I don't think they showed active effort
10 for my niece. It turned out to be she was my niece. And
11 I took her into my home; and I said, sure, she can stay
12 with me. And she stayed with us. She stayed with us
13 for, gosh, like three or four months. I put her in
14 school. She had to go to a special ed school. She was
15 suffering from a lot of emotional stuff that she went
16 through, and she was in a chemical dependency treatment
17 program. That's where she ended up at. And so they sent
18 her back to the tribe where maybe she could find
19 relatives. I don't know the consequences of what -- how
20 she ended up with us, but -- through the state or the
21 tribe.

22 But six months to a year later, I found
23 out -- well, she got tired of -- she didn't have no
24 clothes but the clothes she wore and a little suitcase of
25 personal stuff. And so I said, we'll try to get you some

1 help financially, some clothes to wear. So we did that.
2 And she needed medication, and the treatment program said
3 she needed something called Seroquel; and now knowing
4 what I know about medication, it's a psychotropic drug
5 that they give children when they have emotional
6 problems.

7 Anyway, I couldn't access that because I
8 wasn't her legal -- legal parent or legal foster care
9 person. We tried to get foster care for this child.
10 They put us through a background check that took forever.
11 I think it was about three months she lived with us. It
12 was past Christmas and into the spring of the year, and
13 she discovered where her mother lived, her biological
14 mother lived. So I says, well, sure, you can go visit
15 her. I'll drop you off, and I'll go pick you up. So we
16 did that.

17 But then she followed her mother. Wherever
18 her mother went, she would go; and her mother was
19 actively using. Her mother bought a car, and then she
20 started borrowing the car from her mom. I didn't know
21 this until the police brought her home one night for
22 stealing. They said stealing a vehicle. And it was her
23 mom's vehicle. She took her mom's car keys and went
24 joyriding with her other relatives.

25 So anyway, once the court got involved,

1 they met with me and said, will you take her back? I
2 said, when she starts stealing, I said, she needs some
3 really -- some intervention ASAP, and I'm financially not
4 responsible for her, neither am I legally responsible
5 because she's a ward of Milwaukee County. The tribe -- I
6 went to the tribe to get her help, and the tribe refused
7 to help this young girl, and she was a ward of Milwaukee
8 County and Menominee Nation would not financially accept
9 her back in their case load.

10 So now she was in jail -- incarcerated.
11 They sent her back to Milwaukee to the foster home who
12 took care of her before she went into the treatment
13 program. So that's my history personally, what happened
14 to my relative. And it goes on way before that. I have
15 a nephew out there who is looking for his mother, and he
16 never got to see his mother. He was trying to find his
17 family, his mother, an enrolled member, but she has since
18 deceased, and he's out there looking for his mom.

19 So that's my history from my family. Thank
20 you for listening to me, but this is the truth.

21 MR. KEVIN WASHBURN: Thank you for sharing
22 that. These are -- there's some really tragic and
23 heartbreaking stories. It's amazing how many of those
24 there are, too. So thank you for sharing that one. We
25 hear those all over Indian Country, and these are great

1 challenges. And we can only -- we can improve the law a
2 little bit, and that's what we're hoping to do, but I
3 think the challenges are going to be with us for a while.

4 Yes, sir.

5 KENNETH BAKER: Thank you. I'd like to
6 start off (speaking in Native language) means good
7 morning. My name is Kenneth Baker, Jr. I am from the
8 Spirit Lake Tribe, and I'm councilman and St. Michael's
9 district representative.

10 As we have been sitting here hearing
11 comments from people from all over, the pressing thing
12 that I see, some of the stuff that goes on in Indian
13 Country and versus the state. Now, just recently our
14 tribe in the state of North Dakota, our relationship has
15 gotten better through the last couple years.

16 One thing that I see is -- with the ICWA,
17 we just had a case maybe a while ago where the state is
18 not informing the tribe of these children that are off
19 the reservation. It was brought to our attention by one
20 of the family members that live on Spirit Lake that we
21 had a child that was off in state custody.

22 What -- what is being done to the state for
23 not reporting these to ICWA? That's one question I have.
24 Because to me it seems like, well, once they find out,
25 okay, well, we'll transfer the case over to the tribe,

1 and then that's it. I know a lot of us -- if you follow
2 along with the people down in Rapid City, the
3 racketeering the state had against the Native people
4 there where they were coming in and taking their children
5 and placing them in non-Native homes.

6 So this is very concerning to me as a
7 tribe. And I know they spoke about when not to turn a
8 case over to ICWA. I don't believe any cases, if it's
9 involving a Native child, it should always go to the
10 tribe, because we as a Dakota and a lot of us Indians
11 here, we know our culture is very sacred, and it's part
12 of our identity. So when you take that away from the
13 child, most of the time what happens is the child will
14 seek their relatives out and want to know who they are.

15 And for somebody to be stripped that for 18
16 years of whatever it may be, they're in foster care, it's
17 hard to catch up on this; and you have this void,
18 sometimes you never get it filled. So as for cases
19 involving Native American children, I believe that they
20 should always be active, the tribe, to be a part of their
21 people.

22 I know I had some other stuff I forgot, but
23 that's one of the very important pressing things I see
24 that needs to be addressed, especially with the state and
25 tribe and reporting these to the tribes in a manner of

1 time, and they should be held accountable if they do not
2 report.

3 Thank you.

4 MR. KEVIN WASHBURN: Thank you, Councilman
5 Baker. You raise some really good points. One of the
6 things that we heard a lot about are the research that
7 shows that the kids that have been adopted away from
8 their communities, we've heard higher rates of depression
9 for those kids; because there is such a void that they
10 don't -- it's hard to take someone from their community,
11 and we've heard a lot of problems -- that a lot of
12 problems happen later in life for them, even as adults;
13 so that's the goal here.

14 The notice provisions, we are -- we worked
15 really hard on the notice provisions so that it's clear
16 what states have to do to notify tribes, not just at the
17 very beginning of the proceeding, but throughout the
18 proceeding; so we hope that that will make a difference
19 and say we get better notice so that children don't fall
20 through the cracks like that. So thanks for making the
21 comment, and we'll continue to look at ways to make that
22 more enforceable.

23 Thank you.

24 LENORE BARSNESS: Good morning. My name is
25 Lenore Barsness, and I am the director of human services

1 for Leech Lake Band of Ojibwe. Our council members were
2 very sorry that they were not able to be here and
3 participate this morning, but I have to say they were a
4 little bit relieved that I was able to do so.

5 I have had a long history of working for
6 Leech Lake; but most recently have just returned as of
7 March, so I am just trying to gain speed and momentum and
8 pick up the issues again. I was very privileged to hear
9 the testimony of others and the comments of others this
10 morning, and I know that's helpful to me in my new role.
11 A couple of comments I have -- and I know I will be
12 submitting written comments at a later date, and I can be
13 a little more studious about that at that time.

14 But a couple of comments I have this
15 morning is I, like many in the room, grew up in the
16 generation where most of my family was devastated by
17 out-of-home placement and adoption to non-Native homes
18 and communities and just trying to learn how to be a
19 family again. And my children are also affected because
20 they lost ties with their extended family that still live
21 out in their lives today, and that's such a loss of a
22 rich cultural experience that I think we see
23 intergenerational loss, and I'm certainly not alone in
24 that, as this room speaks.

25 So one of the things that caught my eye in

1 the guidelines and regulations were references to, you
2 know, in lieu of -- were references to customary extended
3 family; customary family, you know, not only looking at
4 who is your cousin, who is your aunt and who is your
5 uncle, but what may be customary to that community or
6 even to that family in particular in who we see as
7 extended family, whether we're looking at foster
8 placement or adoption.

9 I think any time in the rule that we can
10 support -- I'll make specific comments to this in
11 writing -- that we can support those local tribal
12 customary practices, I think are -- and I think the
13 recognition of customary adoption practices was an
14 important statement and always should be an important
15 statement. And because I -- the rules that we often end
16 up living or have ended up living are rules made for us
17 by others. And any time that is supported, that will be
18 helpful.

19 And I think one of the things that we will
20 encounter and do encounter when we're looking at that is
21 when we're dealing with state systems and county systems,
22 and that is so foreign to them, you know, and in
23 understanding and it's difficult for them to wind their
24 way through. Every time I deal with a tribe, it could be
25 a different rule, and I know that's one of the

1 difficulties in building those kinds of relationships;
2 but we're not a foreign country, so I think that's really
3 helpful.

4 The other thing I just wanted to make note
5 of -- and with all the procedures being so clearly laid
6 out in some respects, I think that's something that
7 mainstream systems have often ignored and still ignore
8 even when we're looking at Title IV-E and we're doing all
9 the work in regards to child welfare on our reservation
10 and on other reservations is that the mainstream system
11 has had decades and decades to build its infrastructure
12 to match its need and to match its ethos and mores and
13 norms.

14 And we are just beginning, but we are held
15 to a similar standard when we look at what our
16 infrastructure looks like in regards to child welfare and
17 other things, of course. So I think those -- I think we
18 have to also be careful when we adopt regulatory
19 procedures with that in mind. You know, the tribes have
20 not had the privilege for that kind of financial support
21 for its infrastructure until very recently, so we are
22 still in our infancy. And not only in creating
23 infrastructure that may be well matched to a state
24 infrastructure, but an infrastructure that is well
25 matched to our cultural uniqueness.

1 So that's my comment, and I don't know if
2 that pertains or not, but I just needed to say that.

3 MR. KEVIN WASHBURN: Lenore, tell us your
4 last name again.

5 LENORE BARSNESS: Barsness,
6 B-A-R-S-N-E-S-S.

7 MR. KEVIN WASHBURN: Thank you. Those were
8 great comments, and there's a lot of wisdom in what you
9 just said. We'd love to have your written comments, too;
10 and just remember it's May 19th. It's coming up really
11 quick, so you've got -- what is it? Is it up there?

12 MS. SARAH WALTERS: 12 days.

13 MR. KEVIN WASHBURN: Yeah, 12 days, so get
14 to work. I'm sending you home with homework, Lenore.
15 Thank you.

16 CHUCK SANDERSON: Chuck Sanderson.

17 One of the things or one of the thoughts
18 that I've been sitting thinking about is when these
19 become regulations, there is a counterpart to that in
20 building capacity. And I know that these regulations
21 don't necessarily address capacity building.

22 We've heard other folks talk about relative
23 care, grandparent care, and the -- it would be
24 interesting to do a survey of grandparents that have
25 assumed custody and responsibility and ask them the

1 question, "How well are you supported either by the
2 systems or by the community?"

3 One of the things that I see is probably
4 not very well. So there becomes an interesting dynamic
5 that occurs. Grandma and grandpa will take in four- or
6 five-year-old, and maybe they're 55, 60, 65. As the
7 child ages, so does the grandparent. And oftentimes I
8 think we forget about the grandparents. And in order to
9 build capacity, I think that's one of the things that we
10 really need to look at as to how do we support them? How
11 do we assure that permanence can be there for the child?

12 So I would like the panel to give that some
13 consideration, too. As we develop these regulations,
14 there needs to be a flipside relative to capacity.

15 Thank you.

16 MR. KEVIN WASHBURN: Chuck, you're
17 absolutely right; and I have to tell you Spirit Lake is
18 one of the places where we learned that. We've been
19 asking for -- the President, in this proposed budget that
20 would start this October, has asked for a big increase in
21 our budget for the Tiwahe Initiative, which is an
22 initiative to partially increase funding for social
23 services on reservations.

24 And we know that Spirit Lake has -- is
25 doing much better in part because we provided more

1 resources, so we know that that's a big part of this.
2 Getting a good rule in place won't solve all the
3 problems. We need to help -- tribes need to be able to
4 have the capacity to enforce the rule and respond to
5 notice and participate in these proceedings. So that is
6 on our minds. Tribal courts, too, need to have the
7 resources to deal with these things.

8 We'll never have as much money as we want,
9 I'm convinced of that. Hopefully we will have a little
10 bit more closer to what we need, but it's challenging
11 these days.

12 Thank you, though. Good point.

13 JOHN MORRIN: (Speaking in Native American
14 language.) Good morning. My English American name is
15 John Morrin, M-O-R-R-I-N. My spirit name is Eagle
16 Warrior. I come from the Eagle Clan of the Shinobi
17 Nation. I'm enrolled in the Grand Portage Nation and am
18 a council member for our nation of tribal government.

19 The Chairman earlier this morning gave our
20 official position from Grand Portage, but I think it's
21 important too -- my father was from the Red Cliff Nation
22 over in near Bayfield, Wisconsin. I think it's important
23 we talk about the rules. But I don't think it's
24 important that we -- I'd like to give a personal
25 experience and personal perspective of how important the

1 Child Welfare Act was when it was passed in 1978, and at
2 that time to undo a lot of the harm and damage that it
3 had done to our children, our people over the years.

4 I come from a personal experience of having
5 to be placed in white foster homes after my mother passed
6 away. She really told me who I was. I was about six
7 years old the first time I experienced race prejudice.
8 My father after World War II worked his way through
9 business college. He wanted to be an accountant, so he
10 took the Civil Service test and was offered a position at
11 the Veteran's Hospital here in South Minneapolis, and he
12 took that.

13 So we moved to South Minneapolis, to the
14 Twin Cities area, when I was three years old. So I grew
15 up in Minneapolis at a young age and began attending the
16 public school systems. Well, the first time I faced race
17 prejudice -- I'm going to date myself -- talking about
18 1950s in Minneapolis. And a lot of the things that we
19 had to experience, especially in the public school
20 system, many times being the only Indian kid in the
21 school. And the first time I faced race prejudice, an
22 older woman who -- I was riding my bike, and I stopped,
23 as she was coming out of the store, and she dropped her
24 groceries; you know, turned to me and looked at me and
25 said, "Why don't you watch where you're going, you dirty

1 little Indian savage."

2 So I didn't quite understand what she was
3 calling me at the time, but I knew it was kind of
4 negative by the tone of her voice. And when I went home
5 my mother knew something was wrong, and so I told her
6 what the woman called me, and I asked her, "What's a
7 savage?"; and she said, "You're not that."

8 And she felt that -- her and my grandma
9 would speak the language. She was raised traditional, so
10 she knew all our teachings and values and principles of
11 our society prior to 1492. And so she said, no, you're
12 not that. She said you're a Chippewa. Always be proud
13 of that. It was then I began learning who I was, my
14 identity. She was trying to teach me pride even though
15 she had experienced many negative things in boarding
16 schools.

17 My dad was raised in a mission school, kind
18 of got pretty assimilated, didn't speak our language, and
19 mother kept speaking the language and felt it was
20 important, but she felt that she shouldn't teach me the
21 language because she so wanted me to succeed in the
22 public school system, which she only went to sixth grade.

23 Just because of the negative experience she
24 experienced in the 1930s when she was able to go to a
25 public school after the Indian Organization Act and

1 Johnson O'Malley and that, because they lived close to a
2 public school, she was able to not go to the boarding
3 school anymore. She was able to stay at home with our
4 community and our family and then go to the public
5 school. She only made to it sixth grade just because of
6 the negative environment in that school system.

7 So she began teaching me who I was, wanted
8 to make sure. She also taught me a lot of the negative
9 things that she had experienced in boarding school and
10 public school and wanted to tell me the truth, that I
11 might have a hard time as a Chippewa, but always be proud
12 of that, in other words, teaching our history, our
13 traditions, our values, our principles. She said this is
14 what's going to make us strong; you know, holding onto
15 our culture and our traditions and our identity, this is
16 what's going to get us through many of the negative
17 experiences; and always, always be who you were born to
18 be, the Chippewa, sharing, and respect for elders and
19 giving and love and all these values and principles that
20 our culture gives us, also through our language.

21 Well, I lost her when I was nine years old.
22 You know, unfortunately, her and my dad were in a car
23 accident; and she didn't live and my father did. Six
24 children living in South Minneapolis. I'm nine. My
25 youngest brother is 16 months old. Fortunately, my three

1 younger brothers were 16 months and two and a half. They
2 were able to be placed with relatives. My youngest
3 brother was placed with an uncle on my mother's side. My
4 other brother who was two and a half was placed with my
5 grandmother on my father's side. They were fortunate.

6 My three sisters and I were unfortunate.
7 We ended up in foster homes. And at that time, I'm not
8 really sure what kind of conversation there was with
9 social services at that time, whether we could have been
10 placed with relatives, but somehow the decision was made
11 that that was not in our best interest to be placed with
12 relatives because we were a little bit older. So we
13 ended up in foster homes, predominantly in all white
14 communities.

15 So many times me and my three sisters are
16 the only Indian kids in the school system. As much as
17 I -- as much pride as my mother tried to instill in me to
18 be strong enough to deal with much of the prejudice that
19 existed in the United States toward us as a people, it
20 began taking a toll on me. So how important the Indian
21 Child Welfare Act is, is that reinforcement of identity,
22 positiveness of identity, culture is when I didn't have
23 that no more. I couldn't -- I could go to school and get
24 called a name, but I couldn't go home to my white foster
25 parents and -- they couldn't understand that, or they

1 couldn't sympathize with me. They couldn't reinforce my
2 positive image because they knew nothing about it. They
3 knew nothing about who I was as a Shinobi and our
4 culture.

5 So I internalized it. I internalized these
6 negative experiences. I didn't understand what -- I was
7 trying to survive. I was trying to develop as a good
8 human being, the good human being that my mother taught
9 me I should be, but it began taking a toll on me. By the
10 time I got to seventh grade, I was really becoming
11 ashamed of who I was. It was very difficult to really
12 maintain that pride of my -- not only me as an
13 individual, but all the negative things that I hear about
14 our people, still see on TV, see in movies, still get
15 stared at in the stores, even with my foster parents.

16 So these things began to take a toll on me.
17 By the time I got to tenth grade, I ended up in another
18 foster home. I was ashamed of who I was. One of my
19 worst fears was that somebody walked up to me and said,
20 "Are you an Indian?" Now, this is hard -- this is really
21 hard to talk about, but that was -- so I'm trying to
22 develop as this positive human being, but I can't even be
23 positive about who I am.

24 You know, 1978 when the Indian Child
25 Welfare Act came about, finally -- finally maybe some of

1 our young people will not have to experience what I did
2 and the toll that it took on me. But I somehow made it
3 through high school. Fortunately, I was an athlete. I
4 was a very good runner. I was on the cross-country and
5 track. I played basketball. The creator gave me these
6 tools, and that's what got me through school. Because I
7 knew that once if I could be on an athletic team, then
8 maybe some of the kids would tolerate me or accept me
9 because of some type of -- I could contribute, you know,
10 in a positive way; and that's what sustained me, but I'm
11 internalizing all these negative things inside of me.

12 I finally made it through high school,
13 start community college, same thing, same terrible
14 experiences of people just being ignorant about us as a
15 people; yet, not understand -- unless they meet one of
16 us. That's what my mother always told me. People are
17 going to treat you bad because they don't understand us.
18 They're not learning about us. She knew that when I was
19 going to go to school, I wouldn't learn about us
20 historically and culturally; so she made sure that she
21 became my teacher, but I lost her at a young age; but she
22 gave me enough to keep me going.

23 It wasn't really until -- of course, one of
24 the pitfalls of that, that happened to many of our
25 people, is we've got all this pain inside of us that

1 we're carrying. Don't even understand -- it's in there
2 many times, but with the culture and the language and
3 culture that my mom instilled in me, I was able to at
4 least continue developing as a human being.

5 But the first time I drank a beer in
6 college is -- that was probably one of the greatest
7 feelings in my life, I thought. I didn't understand what
8 was happening to me. I didn't understand that the
9 alcohol was numbing all this pain I'm carrying with me as
10 a human being. And so I got in -- that was a pitfall
11 that I had to really -- took me a while to figure that
12 one out. But I did. I finally came to the Twin Cities
13 where all of my relatives, my aunts and uncles were, and
14 I so much wanted to be part of the community, the Indian
15 community that I went to the University of Minnesota
16 because of the Indian studies department.

17 I always asked my mom, "How come you don't
18 speak to me the way you speak to grandma?" "Well, I want
19 you to speak English. I didn't graduate from high
20 school. I want to make sure you succeed in school, and I
21 think if I teach you the language, that that might be an
22 obstacle for you to really learn English well and
23 graduate from high school." So she loved me, she loved
24 our culture, she loved our language; and it must have
25 been very hard for her to not teach me the language.

1 So I had to go to college to learn how to
2 speak our language. That's why I went to the university.
3 I so wanted to find myself, my identity. And so probably
4 one of the best things that happened to me is joining the
5 American Indian movement in 1970. Because of what I was
6 hearing at these meetings, it had me proud again of who
7 we are as a people. That's where I began starting to
8 regain my pride.

9 But it's important that we hear these
10 personal stories about what has happened to generations
11 of our people, and it's still happening. And so I'm
12 really here to say miigwech, thank you. Mr. Washburn and
13 his staff are now finally looking at these regulations
14 that are so loose and so vague that they've been
15 manipulated by county courts and state courts.

16 We had an important case in Grand Portage.
17 We spent extensive money, a case in California that
18 intervened in, and we won at district court. Because we
19 sent out our attorney; we sent out a qualified expert
20 witness. We were out there for two weeks spending money
21 because we felt so -- we wanted our children to be with a
22 relative to retain that identity and that culture. We
23 won at the district level, lost at the appeals court,
24 understood that California has never entertained an
25 Indian Child Welfare Act case, and so we lost at the

1 state appeals court.

2 And in the -- when they gave their final
3 decision, they even questioned the constitutionality of
4 the Indian Child Welfare Act. So this type of mindset is
5 still prevalent in this country around the Indian Child
6 Welfare Act. I'll just say miigwech now for these
7 changes in these rules, that now we've got some teeth to
8 work with. And we now know that our children will be
9 protected. Our parents will be given more chances than
10 they have in the past, not just ruled out right away
11 because of yet many of the social behaviors that we still
12 have in our communities through no fault of our own,
13 though a history. We all know that history of genocide,
14 assimilation, all those things that we've gone through as
15 Native people in this country.

16 So for the first time now we come to these
17 sessions, and I really believe you're hearing us. You're
18 not only our hearts, our minds, but the spirit that we
19 really believe has to be brought back into our
20 communities, and it's very important that that spirit
21 starts with our children, virtually that positive spirit
22 about who we are as tribal people in the United States.
23 And I think that's what's important because those are the
24 people that are going to be able to deal with a lot of
25 racism that exists.

1 I'll just end this with one -- because I
2 was asked this question. I'm also a trainer with a group
3 that has helped me heal as a Native person. We do racism
4 workshops. We try and keep people how racism came
5 about in this country and how it's important to
6 understand this thing called -- specious thing called
7 race. And so it was in that -- it was through that --
8 these trainings that I began to heal again, to learn what
9 had been done to me as far as racism.

10 But I was asked - people in the workshop -
11 where are we in commercials? Where are tribal people in
12 commercials, other -- all the other races, so to say, in
13 the United States? You don't see Indian -- we've been
14 invisibilized in this country. We're still invisibilized
15 as a people. It's like the institutions and systems of
16 this country wish we just weren't here, we just weren't
17 here as tribal people.

18 So it's -- this is how important the Indian
19 Child Welfare Act is to us as tribal people. It
20 reinforces that we are here. We have survived the
21 genocide that -- that they tried to wipe us off -- wipe
22 us off the face of the earth. And we survived because of
23 our culture, the strength of our culture that we had for
24 thousands of years.

25 I'll just end it with an old Indian -- I

1 was in community organizing for a number of years, really
2 in tribal communities; and I went to a workshop in Pine
3 Ridge, South Dakota, one time. This one elder stood up
4 and -- and we were wondering, "How did we survive? We
5 were almost wiped out? How did our culture survive? And
6 he stood up and said, "Quit whining," he said. "Our
7 culture that we had for thousands of years was so
8 strong," he said, "there's no way any humans could wipe
9 that out in 500 years." That just reinforced the
10 strength of our culture and how important it is to ensure
11 that our children are growing up with an understanding of
12 who they are and how important their culture and how
13 important that will -- that will keep them as strong
14 human beings to become good people and hopefully become
15 good leaders.

16 I'm always looking for young people to step
17 into the shoes of some of us older folks who have taken
18 on that responsibility. I just wanted to share that I
19 think it's important we hear the anecdotal stories to
20 personal experiences and how I -- I was able to -- I meet
21 many foster adults now, Native people that grew up in
22 foster homes, and they're really struggling. They're
23 really struggling because there wasn't an Indian Child
24 Act in the '50s and the '60s and until the late '70s. I
25 see many of these people, and we share our experiences;

1 but I can just still see the pain and the struggle
2 they're going through to undo much of the harm and damage
3 that they experienced.

4 So I want to miigwech, and thank you, for
5 these rules now and putting some teeth into this very
6 important law that is going to protect our future
7 generations. Miigwech.

8 MR. KEVIN WASHBURN: Miigwech. Thanks for
9 sharing that personal story. I have to say I'm sure
10 you're not the only one in the room -- I can personally
11 vouch you're not the only one in the room who went
12 through those feelings of shame at points in their
13 childhood, and I'm lucky that I had my mother there with
14 me when I was going through it, and so I can only imagine
15 what it was like for kids in foster care with parents
16 that don't -- that don't understand all that, and so it
17 must be really hard to get through, so thank you for
18 sharing that.

19 JERI JASKEN: I want to say, thanks, John,
20 for hitting it home on the reason why we're here.

21 I'm here today on behalf of our Tribal
22 Chairwoman Erma Vizenor, who could not be present, from
23 the White Earth Nation. And Erma wanted to share that
24 the White Earth Nation supports the BIA's proposed rule
25 that clarifies the expectations of ICWA. And our support

1 for the proposed rule includes the definitions for
2 previously undefined terms, such as active efforts and by
3 providing guidance and interpretation of important
4 concepts, such as the QEW testimony, travel determination
5 of membership; and I just want to echo that we support
6 some other comments in the room today, that it should be
7 always membership, and not enrollment; and it should
8 always be tribally defined.

9 The procedures for transfer to tribal court
10 and a good cause to deny transfer and good cause to place
11 outside of placement preferences and rights of adoptees.
12 The rule also addresses the existing Indian family
13 doctrine and concepts of which have always been
14 anti-Indian, so we thank you for that to be able to
15 abolish that.

16 White Earth Nation is supportive of the
17 majority of the provisions, but we do ask for some
18 consideration of the following. And the first is to
19 consider strong data collection and monitoring of states'
20 compliance with ICWA, to annually review the state
21 outcomes, and to tie ICWA compliance with state Title
22 IV-E reimbursement for stronger consequences for failure
23 to comply with it. We think that if you tie this to
24 money, then maybe the states will begin to listen and be
25 consistent in their application.

1 Second, we're concerned with some of the
2 requirements to obtain QEW testimony within 30 days of
3 removal, because it's important that the QEW testimony be
4 provided by tribal people who are truly knowledgeable
5 about the tribe and child rearing practices. And that
6 burden, since it typically lands upon the tribe, we ask
7 for 60 days to be able to provide that so that we can
8 ensure that states aren't out there just trying to find
9 anyone to provide this, but that it's actually quality
10 testimony from the tribal itself.

11 Third, we ask that the rule support
12 participation of more than one tribe when a child is
13 eligible for membership in more than one tribe. You've
14 heard those comments already today, and we support that.
15 We think that by including other tribes where the child's
16 a member, that there will be an increased likelihood of
17 tribal participation in ICWA proceedings.

18 And, last, sealed adoption records are
19 culturally inappropriate and make it impossible for
20 adoptees to fully connect with their extended families
21 and tribes. So Indian adoptees need to have the right to
22 view their adoption records to fully exercise their
23 rights as tribal members.

24 So in closing, the proposed rule is
25 welcome, it's necessary, to address the implementation of

1 the ICWA and approved consistent application and
2 hopefully provide long overdue consequences for states
3 who continue to ignore it, such as our state. So on
4 behalf of White Earth Nation, first of all, thank you for
5 developing the BIA guidelines and listening to public
6 comments and developing the proposed rule that we're
7 talking about today.

8 And last I just want to say that on behalf
9 of myself, with respect my comments, I've been the ICWA
10 director for White Earth for 19 years. And human
11 trafficking is a subject that's in the news a lot;
12 however, we never seem to make that tie to Indian
13 children, and I think that it's necessary. And what we
14 see in our state is a lot of human trafficking of our
15 children that's stamped and approved by our local
16 district courts, and now we've seen it approved at a
17 larger level, the Appellate Court level and the Supreme
18 Court level; so it's time for that to end.

19 And I just want to say thank you.
20 Hopefully we can stop this at all of the local levels and
21 not have to have these cases proceed on up to the Supreme
22 Court.

23 MR. KEVIN WASHBURN: Thank you. And,
24 Madam, your name -- I'm not sure we got your name.

25 JERI JASKEN: My name is Jeri Jasken from

1 White Earth.

2 MR. KEVIN WASHBURN: Thank you, Jeri.

3 Okay. Great comments. And, again, let me
4 once again thank -- be thankful for the fact that we've
5 got someone from the Children's Bureau to hear the IV-E
6 comments, and they are actively going through the AFCARS
7 comment period to try to figure out better data so that
8 we can get better data on this sort of thing. And I'm
9 sure they're thinking about these other things, too; and
10 I'll ask Ms. Carrillo to take that back to her
11 management, and we will certainly talk about it with them
12 in Washington.

13 Thank you.

14 And, Council Member Morrin, I'm also sort
15 of an alum of the Indian studies department at the
16 University of Minnesota. When I was at the law school, I
17 had sort of a joint appointment with them. And I always
18 joked that -- I'm Chickasaw from Oklahoma, and I always
19 joke that when they were looking for a Chippewa to teach
20 law at the University of Minnesota, I thought they said
21 Chickasaw, and I froze my butt off for five years.

22 All right. Well, we don't have to take all
23 the time to -- Judge.

24 JUDGE ANDREW SMALL: Thank you, Assistant
25 Secretary. As several of the tribes have testified,

1 there will be written comments -- more detailed written
2 comments being submitted, but I did want to take the
3 opportunity since people were here with you to suggest
4 something that might be considered.

5 We all know what the results of certain
6 reports and analysis in the Baby Veronica case was, and
7 one of the difficulties in that case was the issue of
8 who's a parent. And I see in your proposed definition
9 that the language reads that it does not include an
10 unwanted father where paternity has not been acknowledged
11 or established. And that naturally is going to fall to
12 compliance with state law. And we really don't believe
13 that it has to just fall to compliance with state law.

14 The suggestion that we're going to make
15 more in a detailed fashion but I wanted to bring it up
16 now is that if the definition were expanded to include
17 where paternity has not been acknowledged or established
18 under tribal law or custom or under applicable state law.

19 And I speak from a perspective of a
20 long-time sitting judge in family court matters and child
21 welfare matters. And I see that the assertions arise in
22 a number of different contexts. And in different tribes
23 there are different -- obviously different ways of
24 looking at it, but they're distinct from what state law
25 requires in terms of what your action is to -- to

1 acknowledge or establish.

2 And I think that we would be granting much
3 more protection to people in this category if we used the
4 same language as you have here about including adoptions
5 under tribal law or custom and add that onto the
6 acknowledgement and establishment provision. There are
7 just too many instances where people are of their own
8 society, and there are certain ways of doing things. And
9 accepting tribal law or custom shouldn't be so grandiose
10 exception to -- to understanding what can become legal or
11 legally recognized.

12 And so I would just offer that, and we'll
13 have a much more detailed explanation; but I think it's
14 important for all of us to share these when we can.

15 Thank you.

16 MR. KEVIN WASHBURN: That was Judge Andrew
17 Small.

18 Thank you, Andrew. That's -- I'm not
19 sure we've heard -- I haven't heard that comment before,
20 so that's very helpful. Thank you. Thank you. And
21 we'll look forward to your written comments, too.

22 Thanks.

23 We've got about 15 minutes left. We don't
24 want anybody to not get a chance to be heard if they'd
25 like to be. I don't mean to hold you hostage either if

1 anybody's been able to get up to the mic.

2 Is there anybody else?

3 SAMUEL MOOSE: Morning. My name is Samuel
4 Moose, Commissioner of Health and Human Services for
5 Mille Lacs Band of Ojibwe, representing Melanie Benjamin,
6 the Chief Executive for Mille Lacs.

7 Thank you for coming out today. The Mille
8 Lacs Band of Ojibwe proposes the regulations that enforce
9 ICWA. Like many of the comments that you heard today, we
10 support those, and we will follow up with a written
11 comment. So thank you very much.

12 MR. KEVIN WASHBURN: Thank you. Thank you.

13 Let me just say this. We're going to have
14 a session this afternoon, and these sessions, frequently
15 we get a lot of kudos in the morning sessions. We get a
16 lot of criticism in the afternoon sessions, which is
17 fine. We need to make sure we hear from both sides
18 because we need to come out with a rule that's workable,
19 and that's important to us. We won't make a difference
20 if not everybody -- if the rule doesn't work.

21 And so sometimes -- you know, we can learn
22 from all different people, and we need to have the input
23 of all different people. So -- so we're grateful for
24 that. We invite you to stick around, if you'd like to be
25 around this afternoon, to hear what those comments are.

1 Sometimes it helps you to figure out what your comments
2 to us should be if you hear what other parts of the
3 community have to say about what we're doing.

4 And we need a lot of people to be engaged
5 to help us, because pushing us over the finish line is
6 going to be a lot of work. This is children. Children
7 are the most important thing -- people in any society in
8 some respects, so we -- it's controversial; and so we
9 need your support. We're so thankful that each of you
10 have come out to help guide us in this effort, and so
11 many of you in supporting our effort. We really
12 appreciate that.

13 The people up here - and Angie Campbell,
14 who is in the back or was here earlier - we all worked
15 really hard on this rule, and we really want to get it
16 right; but we really appreciate all those comments
17 positive about the rule. Because it's really rewarding
18 to us because we do work hard, and we're all sacrificing
19 by living in Washington, D.C., to do this work; and that
20 is a sacrifice, I assure you.

21 You all get to live in God's Country; and
22 we're out there in Washington, D.C. So thank you for all
23 the good comments, and we really appreciate that. Thank
24 you for coming out, and thank you for the comments that
25 you will submit. Again, the deadline's coming up quick,

1 so please get those comments in if you want to submit
2 written comments.

3 Thank you for speaking up here. This is
4 actually a more -- it's a much more fun way of getting
5 the information to actually get to speak face to face
6 with people, rather than just reading a cold record,
7 as it's called; so thank you for that. We appreciate all
8 of you coming out, and we will be moving forward with
9 this. We have a couple more consultations.

10 We've got a teleconference if any of you --
11 if things come to mind that you didn't get to say that
12 you want to be able to say in a forum like that, we have
13 one more teleconference consultation that you can attend
14 and then another consultation in Tulsa, Oklahoma.

15 Anybody else got anything to add before we
16 close it down?

17 Thank you, thank you, thank you. Miigwech.

18 (Recess 11:49-1:04.)

19 MR. KEVIN WASHBURN: Good afternoon,
20 Everybody. It's after 1:00, so we should probably get
21 started. All right. Welcome to our public session on
22 the proposed regulation for state boards and agencies on
23 the Indian Child Welfare Act that's been proposed by the
24 U.S. Department of the Interior. Thank you for coming.
25 This is our public session to hear comments on our

1 proposal and to take those back, so hopefully we can
2 learn from you and get good ideas about how the proposal
3 should be performed before it goes to a final rule.

4 We are scheduled to go until almost 4:00 --
5 around 4:00. We have a court reporter with us today, so
6 we will ask folks that want to make statements, make
7 comments, to please, when you do, step to the mic, and
8 state your name clearly and who you represent, if you
9 represent anybody but yourself, and to make sure that the
10 court reporter can take down your words. So it's very
11 important -- the wisdom that you have to give us, we want
12 to make sure we get it down, so please make sure the
13 court reporter can hear you.

14 We also have some filming going on of this
15 session, and that's not being done by the United States
16 Department of the Interior. But this is an open forum,
17 so it's -- people can film if they want. If you don't
18 wish to be filmed, please let the man behind the camera
19 know that you object to that, and I'm sure he would
20 accommodate you.

21 So we are going to start with a little bit
22 of information about the proposed rule. I'll start.

23 My name is Kevin Washburn. I'm the
24 Assistant Secretary for Indian Affairs. I'm a member of
25 the Chickasaw Nation of Oklahoma, I have been serving in

1 this role for two and a half, nearly three years, since
2 before Obama's election for the second time to the
3 presidency.

4 And I am going to introduce first my team
5 that's here with me. And I've got Venus Prince, who is
6 from our solicitor's office; and she's the head of the
7 Indian Affairs branch from the solicitor's office, so
8 she's our head attorney -- chief attorney.

9 Gina Jackson, who is a senior fellow with
10 us, she's on loan to us from KC Family Programs and has
11 been really working very hard on these initiatives.
12 Honestly, we wouldn't have been able to get to this
13 point, I think, without her, so it's really been
14 wonderful to have her with us.

15 To my right is Sarah Walters, who is a
16 counselor to me, an assistant secretary, and also has
17 worked very, very hard on this stuff.

18 Deb Burton from the BIA is with us, and
19 she's running the PowerPoint over there, and she's been
20 working really on hard on this as well.

21 We've had numerous other members of this
22 team, some of whom have been here, some of whom are back
23 at the office; but we've been working really, really hard
24 on this for quite a while now.

25 The Indian Child Welfare Act, as many of

1 you probably know, was enacted in 1978. It's been with
2 us for a long time. We drafted guidelines for the Indian
3 Child Welfare Act in 1979. And we hadn't revisited them
4 since until about two years ago, and we started looking
5 to see how can we ensure that the Indian Child Welfare
6 Act is living up to its promise when it was passed.

7 It was enacted because there was a concern
8 that children were being taken from Indian communities at
9 alarmingly high rates, and it has had some good effects
10 in addressing that problem; but a lot of folks
11 believe that it's not living up to its full potential,
12 and we're trying to create clearer rules and clearer
13 guidelines so that it will result in its full potential
14 so that we don't take Indian children from their family's
15 and communities unless absolutely necessary and we make
16 all efforts to ensure they get placed in places
17 consistent with their needs.

18 It's also clear that the Indian Child
19 Welfare Act was intended to give tribes a greater role
20 and a greater voice in the issues involving their
21 children, and that's a challenge because tribes don't
22 always have the resources to do everything they need to
23 do in this area; but that's something that we need to
24 address over the long-term as well.

25 So we did our first set of guidelines in

1 1979. We revisited them in the past two years or so.
2 And in enacting new guidelines or developing new
3 guidelines, we went around all over the country; and one
4 of the things we heard from people was the guidelines are
5 great, but we need rules. We need things that are
6 legally enforceable. So we did finish our guidelines.
7 We thought it was important to develop new guidelines so
8 that the state courts and state agencies and others who
9 have to apply the Indian Child Welfare Act have good
10 guidance. But we also heard those requests that this be
11 turned into something more enforceable, and so we enacted
12 our -- we proposed a proposed rule that will eventually
13 become regulations in some form to try to get some of the
14 same things we got at in our guidelines.

15 So that's the purpose for being here.
16 Those proposed regulations were proposed in March, and
17 they are being worked on. This is a big part of the
18 work, getting out to the public and getting out to tribes
19 and hearing what people think they need to look like.
20 And so they're a draft -- they're a proposed regulation
21 at this point, which means they're just a draft. They
22 are subject to change, and we will take all the public
23 comments that we get and assimilate those and try to take
24 the ones that we really think are improvements and
25 incorporate those into the sessions.

1 So the one thing I would add is guidelines
2 are just guidelines. Rules are enforceable. It's really
3 important that we get these right because they are
4 enforceable. They won't be ignored. They're going to be
5 rules. And so we need to hear from everybody so that we
6 can make sure that we get them right and so that we
7 ensure that the Indian Child Welfare Act is properly
8 implemented coast to coast. That's the goal.

9 So we've got a proposed -- we've got an
10 overview of the proposed rule that we'll go through
11 rather quickly. We're not going to go into every detail,
12 but we wanted to start the conversation. We'd like to
13 kind of give an overview of some of the things that are
14 in the proposed rule. I'm going to turn it over to Sarah
15 Walters to walk you through that.

16 MS. SARAH WALTERS: Good afternoon. My
17 name is Sarah Walters. I'm a member of the Cheyenne
18 River Sioux Tribe, South Dakota; and I'm, as Kevin
19 mentioned, counselor to the Assistant Secretary for
20 Indian Affairs. I'm going to go through generally what
21 we're going to be talking about today, which is some of
22 the new items that are going -- that are proposed for
23 regulations that we have adopted from the guidelines that
24 were updated in February.

25 We have some new and updated definitions.

1 We had added some pretrial requirements, procedures for
2 making requests to transfer to tribal courts Indian Child
3 Welfare proceedings and several others as you'll see up
4 on our board. And as I mentioned, we've changed -- we've
5 updated some definitions. The definition of "active
6 efforts." And those are active efforts to maintain the
7 Indian family intact need to be executed at every stage
8 of the proceeding; and active efforts are more than the
9 reasonable efforts that are required for every child
10 welfare case. We have definitions of continued custody;
11 custody; domicile; imminent physical danger or harm;
12 which is important in emergency removal situations; and
13 others.

14 The goal of the proposed rule is to promote
15 consistent implementation of the Indian Child Welfare Act
16 and compliance with the Indian Child Welfare Act. And
17 the Indian Child Welfare Act applies whenever an Indian
18 child is the subject of a state court child custody
19 proceeding. As part of that, we clarify this proposed
20 rule that state courts and agencies must ask whether a
21 child is or might be an Indian child at the beginning of
22 the proceeding, and the court must make a determination
23 that -- whether the child is an Indian child during the
24 proceeding.

25 Agencies, state agencies or private

1 agencies, must ask if the child is an Indian child or if
2 they have reason to believe that the child may be an
3 Indian child, they have too treat the child as an Indian
4 child until it's determined that the child is not an
5 Indian child.

6 Only tribes can designate their own
7 membership, so tribes have to determine whether a child
8 is a member of that tribe. Courts make the determination
9 of whether the child is an Indian child based on the
10 child's tribal membership or eligibility for membership
11 in a tribe. Notice is a very important component of the
12 Indian Child Welfare Act. And notification to families,
13 as well as tribes, must be conducted as soon as an agency
14 or court knows or has reason to know that the child may
15 be an Indian child.

16 There's no time limits for tribes to
17 intervene in an Indian Child Welfare Act case. So at any
18 time the tribe determines a child is a membership -- is a
19 member of the tribe or that -- or becomes aware that
20 there is an Indian child welfare proceeding, they may
21 intervene. A proceeding may not begin until 10 days
22 after each parent or Indian custodian and the tribe
23 receives notice that that proceeding is going to go
24 forward, or 30 days if the Indian custodian, the parent,
25 or tribe requests an additional 20 days.

1 I mentioned earlier emergency removal.
2 Those must be as short as possible. And the agency or
3 state court has to document whether the removal or
4 placement is proper and continues to be necessary and
5 promptly hold a hearing to evaluate whether the continued
6 removal or placement is necessary. And if they determine
7 that it is no longer necessary, the child must be
8 immediately returned to the child's home.

9 As I mentioned, an agency must treat a
10 child as an Indian child until a contrary determination
11 has been made, and they must conduct active efforts to
12 prevent the breakup of the Indian family as early as
13 possible in a proceeding. At any court hearing for
14 emergency removal placement, courts have to decide if the
15 placement is no longer necessary, and the hearing must
16 occur within 30 days unless they have testimony of a
17 qualified expert witness or extraordinary circumstances
18 exist.

19 Now I am going to turn it over to my
20 colleague, Debbie Burton, who is a social worker for the
21 Bureau of Indian Affairs. She's going to take you
22 through the next part of the slide presentation.

23 Thank you.

24 MS. DEBRA BURTON: Thank you.

25 Transfers to tribal courts, we clarify in

1 the proposed regulations that the right to transfer to
2 tribal court exists at any stage of the proceeding, and
3 it occurs with each proceeding. And the state court must
4 transfer unless either parent objects, the tribal court
5 declines, or the state court determines that good cause
6 exists to deny the transfer.

7 Now, we've clarified and set out certain
8 factors that the court may not consider as good cause not
9 to transfer. The first is whether the case is in an
10 advanced stage. The court's not allowed to take that
11 into consideration. The child's contacts with tribe or
12 reservation is not a factor that can be considered, and
13 the tribal court's prospective placement for the child
14 cannot be considered.

15 Now, the petition for placement or
16 termination of parental rights must demonstrate to the
17 court that active efforts would need to avoid removal of
18 the child and that the active efforts were unsuccessful,
19 and the addition to the regulation, the proposed
20 regulation, is not we're clear that these active efforts
21 must be documented in the court record in detail, and
22 there must be a showing that there was an attempt made or
23 the resources of the extended family tribe or Indian
24 social service agencies were used to the extent possible.

25 Now, the court may order foster care

1 placement only if there's clear and convincing evidence
2 supported by qualified expert witness that continued
3 custody with a parent or Indian custodian can -- is
4 likely to result in serious physical damage or harm to
5 the child. And the court may order termination of
6 parental rights only if there's evidence beyond a
7 reasonable doubt, again supported the qualified expert
8 witness testimony and likely to result in serious
9 physical damage or harm to the child. The proposed rule
10 clarifies what is and what is not clear and convincing
11 evidence because the courts have not ruled consistently
12 in that area.

13 Qualified expert witness, the proposed rule
14 clarifies that there are four different types --
15 categories of qualified expert witness, and that the
16 first -- they're listed in the descending order of
17 preference. So the first preference for a qualified
18 expert witness is a member of the child's tribe who's
19 recognized by that tribe as being knowledgeable in tribal
20 customs. And the second preferred qualified expert
21 witness category would be a member of another tribe who
22 is recognized by the child's tribe as an expert based on
23 knowledge and delivery of child and family services.

24 The third preference is a layperson that
25 has this kind of knowledge of the child's tribe and has

1 experience in delivery of services to the tribe. And the
2 fourth and least preferred category is a professional
3 that has education and experience that can demonstrate
4 the knowledge of the prevailing social standards and
5 practices within the tribe.

6 And Gina Jackson's going to take over
7 now.

8 MS. GINA JACKSON: Hello, Everyone. Gina
9 Jackson, Western Shoshone, from Reno, Nevada. Good
10 afternoon, Everyone.

11 I'm going to be talking about voluntary
12 proceedings, disposition, and post-trial guidance. The
13 proposed rule sets out in any voluntary proceeding that
14 the agency and state court must ask whether the child is
15 an Indian child. So the point I'd like to highlight is
16 the agency and the state court for voluntary proceedings
17 must ask. Also providing the tribe with notice of the
18 voluntary proceeding, including the notice to intervene.
19 Consent of the parent or Indian custodian must be in
20 writing before the court, and the court must explain the
21 consequences and terms in detail, certifying the
22 consequences and terms were explained and fully
23 understood by the parent or Indian custodian. And any
24 conditions that are consented to as well.

25 In these positions the agency must follow

1 placement preferences or tribal placement preferences,
2 even if there's a request for anonymity. The agency must
3 provide clear and convincing evidence that it conducted a
4 diligent search to meet placement preferences and explain
5 if they couldn't do that, documenting each of the
6 placements as well.

7 Departure from placement preference can
8 only happen if the court finds there is good cause to
9 depart, and this basis must be included in the record
10 with the party asserting good cause having the burden to
11 prove that by clear and convincing evidence.

12 Continuing with dispositions. Good cause
13 to depart from placement preferences must be based upon
14 parents' request, if both attest they've reviewed the
15 placement options; the child's request if able to
16 understand the decision; extraordinary, physical, or
17 emotional needs as established by a qualified expert
18 witness. What it doesn't include is bonding and
19 attachment from the placement or the unavailability of a
20 placement and determination that active efforts were made
21 to find placements. Good cause may not be based on
22 socioeconomic status of any placement relative to
23 another.

24 In post-trial rights, the proposed rule
25 establishes procedures to vacate an adoption if consent

1 was obtained by fraud or duress or the proceeding
2 violated ICWA. It establishes who can validate an action
3 based on violation of ICWA, the Indian child, the parent,
4 the Indian custodian, the tribe, regardless of where that
5 particular party's rights were violated.

6 The proposed rule established adult
7 adoptee's -- it clarifies the adult adoptee's rights to
8 learn their tribal affiliation with detailing,
9 encouraging states to designate someone to assist adult
10 adoptees. Also requires notice of any change in the
11 child's status, such as change in placement.

12 The proposed rule will, as ICWA says, the
13 adoption decrees must be provided to the BIA to give some
14 clarification and some specific detail on requiring
15 states to establish a single location for all records of
16 voluntary or involuntary foster care, pre-adoptive
17 placement, and adoptive placement that would be available
18 to tribes and the Department of Interior within seven
19 days of request. These records must contain at a minimum
20 the petition or complaint, all substantive orders in the
21 proceeding, record of placement determination, including
22 findings in the court record and the social worker's
23 statement.

24 One of the most important things right now
25 to remember is that the comments that you give here today

1 can also be given in writing, as well as additional
2 comments. We have a couple of other opportunities. And
3 we're looking for comments specific to any provision of
4 the proposed rule, including specific language that you
5 would suggest, in addition or in lieu of any kind of
6 specific language you are very welcome to have, as well
7 as any other comment.

8 So your opportunities for the next public
9 meeting or public meetings that are coming up is, next
10 Tuesday is a national teleconference, and you can call in
11 and share your comments through the teleconference. Next
12 week in Tulsa, on May 14th, we have another public
13 meeting which you can come to and attend as well. The
14 most important date is May 19th. That's the deadline to
15 provide comments. E-mail is a preferred method in
16 that -- they're written comments, and you can send them
17 to comments@bia.gov. We are excited to hear from you and
18 look forward to getting some really good feedback
19 specific to the rule.

20 Thank you.

21 MR. KEVIN WASHBURN: Thank you, Sarah, Deb,
22 and Gina. We are now ready to accept public comments.
23 Thank you so much for coming out. We're thrilled to have
24 so many people interested. And the mic is now open; so
25 like I said before, when you step up to the mic, please

1 identify yourself and who you represent, if anyone, and
2 make sure you state your name clearly for the court
3 reporter. I invite anybody to come up as they wish.

4 RICHIE SMITH: I'll do it.

5 MR. KEVIN WASHBURN: Thank you.

6 RICHIE SMITH: Hello. My name is Richie
7 Smith. I'm an enrolled tribal member. My clan is the
8 Loon Clan. I have been an ICWA guardian litem. I've
9 worked out of district court. I've been representing
10 American Indian children for 18 years now. I average
11 about 36 cases, just about 70 to 80 children on my case
12 load. All these children are American Indian. Minnesota
13 is number one in the nation at removing American Indian
14 children, something not to be proud of.

15 With all those years I've worked with, I've
16 noticed the kids that I've worked with when they were
17 five years old, I'm now working with them when they're
18 adults. It's like a circle.

19 Also, with the new North Star System that
20 Minnesota's came up with, it's even harder for us to
21 place children with relatives now because they have to be
22 licensed through the TLC.

23 ICWA guardian litems protect the best
24 interest of the Indian child by recognizing that the
25 child and the tribe are interwoven, and that should never

1 be broken. I'm supporting the new BIA guidelines. My
2 hope is this will help reduce the number of out-of-home
3 placements by protecting our American Indian children by
4 keeping them connected to their tribe, family, and our
5 culture. These new guidelines are in the best interest
6 of our American Indian children.

7 Miigwech.

8 MR. KEVIN WASHBURN: Thank you, Mr. Smith,
9 and thank you for your hard work for Indian children, for
10 making a career out of it. Thank you.

11 RACHEL BANKS KUPCHO: Boozhoo. My name is
12 Rachel Banks Kupcho. I am also from the Leech Lake Band
13 of Anishinaabe. I am an adoptee. Excuse me. Just a
14 moment. I'm going to get this mic clipped.

15 I'm here today to provide a message in
16 support of the regulations, and my message is that love
17 is not enough. I am an American Indian adult adoptee who
18 was adopted as an infant in 1977, just a year before the
19 Indian Child Welfare Act was passed. Until 2011 I only
20 knew by wonderfully loving, non-Indian adoptive family.
21 I have since then been reunified with my Indian mother
22 and family. This is what I can now say from my own
23 experience. You cannot give someone their culture, but
24 you can take it away.

25 I was voluntarily placed for adoption. My

1 Indian mother was 19 years old when I was born and felt
2 she was too young and ill-equipped to raise a baby. With
3 tears in her eyes she shared with me that leaving the
4 hospital without me was the hardest day of her life.
5 Although I was placed on a voluntary basis, I still grew
6 up without my culture. A generation before me, my mother
7 was removed from her mother. As a single woman, her
8 mother, my grandmother, was not deemed fit to raise her
9 girls. My grandmother was quite simply coerced into
10 relinquishing her rights to her three daughters with the
11 promise that she would be able to raise her three sons.
12 My grandmother did not want to risk losing all of her
13 children, so she agreed to a voluntary termination of
14 parental rights; yet, there was nothing voluntary about
15 it. As a result, my mom and two aunties were raised
16 outside of the family, community, and the culture.

17 Growing up I knew that I was American
18 Indian, and yet I had no idea what it meant to be Indian.
19 I struggled with identity; and as a result, I carried a
20 tremendous amount of self-doubt and shame. It was
21 working in Indian Country that I began to learn about my
22 culture. My journey home really began in 2002 when I
23 participated in a wiping of the tears ceremony for the
24 first time. I finally felt as though I was -- that I
25 belonged, and I was recognized to be one of theirs. My

1 heart and my spirit had long yearned for that. I was now
2 on the road to healing. What was most memorable about
3 that day was that my parents were standing outside of the
4 circle supporting me as I went through ceremony, and it
5 all culminated in my mind, and I was finally able to
6 articulate that this was exactly what my parents could
7 not give me all these years. They provided me with all
8 the love and support and advantage they could, but they
9 could not give me my culture.

10 From 2006 to 2009, I served as an Indian
11 Child Welfare Act court monitor through the Minneapolis
12 American Indian Center. My most vivid memory in
13 monitoring child welfare hearings for compliance with
14 state and federal law for Indian children in out-of-home
15 placement was of a mother and father who were voluntarily
16 terminating their parental rights. At one point during
17 the hearing, mother, who was overwrought with emotion,
18 stood up sobbing; and it appeared that she might become
19 combative. The deputies immediately encircled her and
20 were ready to physically restrain her if need be. The
21 father put his hand out to her and said something in
22 Lakota. She immediately sat down and stifled her tears.
23 My heart absolutely broke. She fought until the bitter
24 end to keep her children; yet, she was defeated.

25 I share this story because I feel it

1 illustrates that not much has changed for Indian
2 families. Parents are still losing their children, and
3 these children are losing their culture, and tribes are
4 losing their future. There are many, many schools of
5 thought as to what constitutes good child welfare
6 practice. In addition to the main tenants of safety and
7 permanency, we need to consider culture to be of equal
8 importance. With culture comes a host a family stories
9 and traditions.

10 When a child is placed outside of the home,
11 it is not just taking that child away from the parents,
12 but from the entire extended family, community, and a way
13 of life. It is critical for children's healthy
14 development to know who they are and from where they
15 come.

16 I did not fully understand the virtue and
17 benefit of that until I was 34 years old. It was in a
18 conversation with one of my Indian aunties who said to
19 me, "Rachel, we always knew that you would come home."
20 My heart has been filled in ways I could not have
21 imagined, and I have a stronger sense of self. Now I can
22 proudly say I am Rachel Banks Kupcho from the Leech Lake
23 Band of Ojibwe. I am the daughter of Jean Winslow and
24 the granddaughter of Ozzie Banks. I am also the daughter
25 of Lisa and Keith Kupcho, whose unconditional love and

1 support has only furthered my healing in this amazing
2 journey home.

3 Thank you.

4 (Applause.)

5 MR. KEVIN WASHBURN: Thank you, Ms. Banks.

6 CAROL CAMPBELL: Thank you for this
7 opportunity to share my story. In 1991 my husband and I
8 became foster parents -- you can see that I'm white,
9 non-Indian -- of three Native American sisters; namely,
10 Sierra, Amber, and Velvet, ages 7, 5, and 3. The
11 following -- that was in April of '91 that we received
12 them. And then in 1992, in that fall, we applied for
13 adoption, and we were approved. Because there was no
14 permanent home for them, we were approved by the Beltrami
15 County District Court, and this decision was upheld by
16 the Appeals Court by a two to one vote, stating that
17 there wasn't now or in the near future an Indian family
18 willing to adopt the girls.

19 In January 1994, the Minnesota Supreme
20 Court gave the unanimous decision that we would not be
21 able to adopt the girls. The Leech Lake Tribe said that
22 we would never be able to see them again. They were
23 adopted by relatives, and they went to live in Cass Lake,
24 Minnesota, on the Leech Lake Indian Reservation.

25 The goal was for a permanent home for them.

1 In their young years and during that time, there were
2 several placements, even after they were adopted, between
3 foster care and placements in treatment facilities, group
4 homes, psych wards, and juvenile detention centers, with
5 eventually termination of parental rights for the three
6 girls and the family that adopted them. So that hope for
7 a permanent home did not work out.

8 Part of Sierra's sentencing, she was
9 repeatedly -- one of the oldest daughters -- said, "I
10 didn't fit in. Please send me back to the Campbells. I
11 just want to live with the Campbells." She had two
12 serious suicide attempts; one cut down from hanging,
13 another attempting to jump off a water tower.

14 We lived 20 miles from her home. This is
15 incredible. She made it to our place at age 13. It was
16 in February. She hid in ditches of snow and walked most
17 of the miles. Incredible.

18 After six long years, Sierra was returned
19 to us. Although we were not supposed to see her again,
20 she came back at age 15. Gone was the happy creative
21 child who loved to play with her sisters. She was
22 dressed all in black, black fingernail, dried blood to
23 scare the kids at school. She was a devil-worshipping
24 teen. She had learned this in St. Cloud Children's Home.
25 She met another teen at a roller skating rink where they

1 devised a plan to kill those who were destroying their
2 lives, parents, went down the road filled with community
3 to the anti-Christ.

4 The young man was 14 years old who was her
5 friend. He shot his father, killing him. He hid the gun
6 in our home, and we had gone out of town. So then he
7 attempted to kill my husband and I with a knife. He
8 severely injured us. My spinal cord was severed, and I
9 became a C-7 paraplegic. My husband suffered a severed
10 artery. We miraculously survived through the
11 ministrations of Gene and receiving almost immediate
12 medical help, which we attribute to God. Sierra received
13 a sentence of 22 years in prison and probation for 20
14 years. The prison time was stayed, and she received
15 treatment at Woodland Hills in Duluth, Minnesota.

16 When Sierra turned 18, she asked Gene and I
17 if we would adopt her. It was a thrill. Of course, we
18 joyfully said "yes," and what took two and a half years
19 to learn that we wouldn't be able to adopt Sierra and her
20 sisters, she became our daughter. We were in court for
21 10 minutes.

22 I am proud today to be Sierra's mother.
23 She is here with me. She is going to speak in a moment.
24 And I always will be. She has successfully completed her
25 probation program and paid her fines. She is a student

1 at Itaska Community College in Grand Rapids, Minnesota,
2 has earned high grades. She is happily married.

3 I'm here just to speak of the importance --
4 please consider two things. If you do not have a home --
5 I think Indian children should be placed in Indian
6 families. I love Indian people. I've been doing a
7 ministry in Minnesota at the Red Lake Indian Reservation
8 for 13 years. And I would say, please, if you don't have
9 a safe home, please make bonding a consideration and make
10 a home -- a non-Indian home that's available a
11 consideration.

12 If we had been able to adopt the girls,
13 would there have been problems? Of course. Fetal
14 alcohol was involved here. But I do know that the pain
15 that they suffered was far greater even than the pain I
16 suffer as a paraplegic and as the pain of losing them.
17 Two years ago Sierra wrote to me. This is a little text.
18 This is what's happened in our relationship, and then I'm
19 going to close.

20 "Mom, thank you for everything. It means a
21 lot to me for the words of support and encouragement.
22 You and dad are an amazing, one-of-a-kind people. Truly,
23 I am rich and blessed, not in the materialistic sense,
24 but by the loving deep bond we share. There's no higher
25 proud honor for me than to call you my mom and dad. It

1 gives me strength and courage to continue forth in my
2 life. You were always there for me. Thank you so much.
3 Words cannot describe. I love you. Sierra."

4 And, by the way, while they were with us,
5 we did make an attempt -- it was kind of a feeble
6 attempt, but we did try to help them with their culture.
7 We had a naming ceremony and some other things, but it
8 was feeble.

9 But, anyway, I'm going to turn the mic over
10 to Sierra.

11 MR. KEVIN WASHBURN: Ms. Campbell, would
12 you give me your first name.

13 CAROL CAMPBELL: Yes. I'm sorry. Carol.

14 MR. KEVIN WASHBURN: Thank you.

15 CAROL CAMPBELL: Sierra.

16 SIERRA HOLT: Sierra Holt, Leech Lake Band
17 of Ojibwe.

18 I've been devastated by ICWA. I've been in
19 27 different foster homes, both Native and non-Native.
20 And I've been to at least 30 different schools.

21 I came to live with Carol and Gene when I
22 was seven, and I finally realized that I was home. I
23 immediately had a secure attachment with them. I think
24 that's like really important with the bonding. Parents
25 can love their children, but they need the secure

1 attachment which will help with their physical,
2 emotional, and intellectual development.

3 The children watch for clues in nonverbal
4 communication; and if you are depressed, anxious, angry,
5 grieving, preoccupied, or otherwise unable to be home or
6 be present for your children, in a sense they are aware;
7 and then they could either pull away or look for another
8 attachment somewhere else. That's what I have with Carol
9 and Gene was the secure attachment, and I bonded with
10 them.

11 I attempted numerous amounts of suicide. I
12 tried overdosing on pills, hanging myself, contemplating
13 on setting myself on fire. I stabbed myself. I tried
14 drowning. I wanted to jump off a water tower, jump into
15 traffic. It's -- I was devastated. I wanted to go back
16 home, and I attempted 13 different times to run away to
17 get back to Carol and Gene, which actually I succeeded
18 once. That was in February when I was 13.

19 I just wanted to go home, but no one wanted
20 to hear me. My words were -- fell on deaf ears. I
21 really, really, really wanted to go home. And I made
22 really bad, terrible mistakes as I was getting older.
23 But now I will be a college graduate next year, and I am
24 with my mom and dad now, and I'm really thankful.

25 Anyone can tell you how painful it is to

1 lose a child, whether through a divorce, separation,
2 accidents, or diseases, or in this case having your child
3 be taken from your home if you're Native, non-Native, or
4 any other race out there. It's in humanity's nature to
5 be nurturing to young ones, and it hurts when you see
6 them taken away. And my question is, why give that pain
7 to someone else?

8 Thank you.

9 MR. KEVIN WASHBURN: Thank you, Sierra.
10 What are you majoring in?

11 SIERRA HOLT: I'll be finishing my
12 generals, associate of arts degree; and then I'm going to
13 get a bachelor of science degree in business management,
14 so I can create recreational establishments for the local
15 community youth.

16 MR. KEVIN WASHBURN: Thank you, and thanks
17 for stepping forward and speaking up today. Thank you.

18 (Applause.)

19 GERTRUDE BUCKANAGA: Good afternoon. I do
20 not want to be -- I don't want my spirit to be somewhere
21 else where it's -- I don't want to know where it's going.
22 My name is Gertrude Buckanaga. I'm a member of the White
23 Earth Band of Ojibwe. I've been married for 61 years,
24 and I have a real challenging job. I've been working at
25 Upper Midwest American Indian Center since 1986, working

1 in Indian child welfare. And what I'm going to speak on
2 today is on membership.

3 I was reviewing the rules, and it really
4 says membership -- that tribes can define membership, but
5 today we have American Indian people that are
6 intermarried by different tribes, and we have children
7 who come from, say, three or four different tribes, and I
8 am working with those children who are not recognized as
9 members.

10 I have great-great-grandchildren that are
11 in child protection due to their mother using drugs. And
12 the father, the mother, grandmother, the
13 great-grandmother are enrolled in Red Lake. And the two
14 great-grandparents are enrolled in White Earth. That's
15 me. And the father of these children are members of a
16 youth tribe, and he's enrolled; but the children are not
17 being recognized as being Indian. And they are Indian by
18 their blood, the Federal blood that they have in their
19 veins.

20 We have a number of grandparents that are
21 from Red Lake, Leech Lake, White Earth, Fond du Lac,
22 Mille Lacs, Net Lake, and some from the Dakota tribes and
23 from some other tribes in the nation. And these children
24 come from three or four different tribes, and they're not
25 being recognized as American Indian children. There has

1 to be a method to recognize them.

2 I'm dealing with another grandmother who
3 has her grandchildren, and they're not being recognized
4 as American Indian. And that's from the Fond du Lac Band
5 and the Leech Lake Band. I have been doing a lot of
6 letter writing saying that these children should be
7 recognized. Right now our tribal chairperson, Erma
8 Vizenor, has been recognizing them as descendants based
9 on their blood quantum and where their parents are. We
10 have to do an in-depth interview with the mother of these
11 parents, the grandparents to recognize where these kids
12 are coming from.

13 Some of my grandchildren -- I have five on
14 Fond du Lac. I have some on Leech Lake, some of Red
15 Lake, White Earth, and Mille Lacs. So you can see that
16 my descendants are on different reservations and have
17 different quantum of blood. Within the Minnesota
18 Chippewa Tribe, they need to work on recognizing, I
19 think, other Federal Indian blood.

20 I'm working with children that are enrolled
21 in the -- you know, their parents come from Belcourt,
22 Standing Rock, other tribes like Pipe Ridge and other
23 tribes in the -- that live in an urban setting. Whether
24 they live in Minneapolis, St. Paul, or one of the metro
25 areas, these people are Indian. They are not counted.

1 So we have to look at future generations. We have to
2 look at our grandchildren and our great-grandchildren.
3 They are Indian whether they have different amounts of
4 blood. But that's the main thing that I want to present
5 today.

6 I do know Rachel -- where did she go -- oh,
7 she left. And I do know many grandparents right here in
8 Minnesota. And if we had the time, they would have been
9 here. They said they would do whatever they had to do to
10 protect the Indian rights of their children. We have a
11 right to be Indian. We're in the Constitution. And we
12 need to do something about that.

13 That's my spiel for today.

14 (Applause.)

15 MR. KEVIN WASHBURN: Yes, ma'am, in back.

16 STEPHANIE SEEWALKER: Hello. Stephanie
17 Seewalker of Standing Rock Tribe. And I have a
18 third-party custody case going on. My children are half
19 Native and half Caucasian. And they're enrolled members
20 of Standing Rock also. And if the county followed ICWA,
21 it would work. Because they're not following ICWA, I
22 almost lost my three children. I have a court order that
23 I have custody along with their dad.

24 Well, when he went to jail, his parents
25 filed for temp custody. That was granted to them, and I

1 nor the tribe was ever notified. Now they filed for
2 permanent custody, and I just received notice the
3 beginning of March. In the temp order of 2014, they
4 acknowledged I was Native, and the children could be
5 eligible members, but that's as far as they went with
6 that. Despite that, the judge signed the temp order. I
7 asked the court to appoint me an attorney, but they said
8 I had to get my own attorney.

9 I contacted the ombudsperson for help. She
10 wrote a letter to the court. The judge said he hopes the
11 ombudsperson can be present at the next hearing -- that's
12 June 3rd -- to provide case law, appellate law cases.
13 And he sent us letters, and I don't know if it was
14 public, but: "Dear Sir or Ma'am, this letter is sent to
15 provide notice that the three children of Stephanie
16 Seewalker and Charles Higgin, Jr. are involved in a Pine
17 County grandparents custody case. It's not a CHPS case.

18 "In Minnesota District Court, it is my
19 understanding that the children have resided with their
20 Pine County grandparents since the spring of 2014. These
21 grandparents are seeking permanent custody of the
22 children pursuant to MNSTAT CH 257C. I am enclosing a
23 copy of the petition filed herein. Ms. Stephanie
24 Seewalker has received assistance from Minnesota
25 ombudsperson for Native American families, Ms. Jill

1 Kehaulani Esch.

2 "A copy of her letter on April 15, 2015, is
3 attached. I am not aware of any governmental
4 involvement, including financial assistance, social
5 services, or children -- child -- children protection and
6 care being provided to the children since have been with
7 their grandparents, as legal materials provided to me by
8 Ms. Ash, indicated that ICWA-related child custody
9 proceedings were limited to, one, foster care placement;
10 two, termination of parental rights; three, preadoptive
11 placement; and, four, adoption placement. Federal
12 Register, slash, Volume 80, Number 37, Wednesday,
13 February 25, 2015, Notice P-10151.

14 "It appeared that no ICWA notice was
15 required. As a member of the state court tribal court
16 forum, I discussed this notice question with two tribal
17 court judges at the April 24, 2015, meeting. They agreed
18 that notice to standing reps through tribal was required
19 by ICWA, that my understanding was incorrect. In April
20 2015, Ms. Seewalker served and filed an answer to
21 grandparent's custody petition. She asked the courts to
22 have the children returned to her care at the end of the
23 school year. A hearing on her motion has been scheduled
24 for June 3, 2015, at 1:30 p.m."

25 And I'm fighting for my children and --

1 since the very first time that I've been able to have
2 visitation with them and phone contact with them. So I
3 just prayed for help, and I found the ombudsperson, and I
4 was guided about the ICWA law. Now I have hope. We need
5 ICWA to be strong for our people. There needs to be
6 consequences if they don't follow the ICWA laws. I hope
7 and pray to get my children back.

8 Thank you.

9 MR. KEVIN WASHBURN: Thank you, Ms.
10 Seewalker.

11 (Applause.)

12 CHRIS MOORE: My name is Chris Moore, and
13 I'm eligible for membership in the Iowa Tribe of Kansas
14 and Nebraska. I'm a former Indian child who was adopted
15 by a non-Indian family when I was eight years old.

16 Growing up with my biological mother, I
17 never thought of myself as an Indian child. I never
18 participated in Indian culture. I grew up 1,500 miles
19 from the reservation, and I never visited or was ever
20 pursued by my tribe. No one ever mentioned my Native
21 heritage. It simply wasn't who I was. To me I was just
22 a kid living in Southern California.

23 My mother hit hard times, and we ended up
24 homeless. No relatives helped us, no friends, and no
25 tribe or Indian organizations. After sleeping in the

1 people's backyards, peeing in buckets, and getting food
2 from restaurant garbage cans, we ended up in an abandoned
3 apartment. There were strangers there. No electricity,
4 no running water, or no food. We slept on boxes.

5 One night my mother said that she was going
6 to get us breakfast. She never returned. The strangers
7 called the police who came and got us. We were placed in
8 a foster home not far from where we grew up. From the
9 moment we walked in the door, we connected with our
10 foster parents, even calling them mom and dad after only
11 three weeks in their home. Everything was going great
12 for us for the first time in our lives.

13 Turns out my brother and I are
14 one-sixteenth Native American, through our mother, who is
15 a member of the Federally recognized Iowa Tribe of Kansas
16 and Nebraska, though no one knew until we had been in our
17 home for several months. That made us subject to ICWA.
18 We got new social workers who never tried to get to know
19 us. All they did was work with the tribe to try and take
20 us from the first stable loving home we've ever had. The
21 tribe sent someone to California to observe us with our
22 parents with my relative who was seeking custody, even
23 though I had no memory of this relative. My relative put
24 on a show for her, even giving me something with
25 turquoise in it. I guess it was to show the tribal

1 worker that she was promoting my Native culture. It was
2 all a game.

3 And if the people promoting ICWA won, my
4 brother and I would stand to lose the most. It was a
5 long, scary battle. We told our social worker we wanted
6 to stay with our parents, but he didn't listen, and he
7 didn't tell the court what we wanted. We were truly
8 traumatized by the fear of leaving our home. It was an
9 awful time, and I hate to think what would happen to
10 other kids, though it will if the BIA regulations are
11 passed. Our biological mother who had been missing at
12 the time was arrested and came to court and told the
13 judge she wanted us to stay with our parents. That gave
14 the judge good cause to leave us where we were, as did
15 the strong attachment we had for them. We were finally
16 adopted after almost three months in -- I'm sorry --
17 three years in foster care.

18 The tribe had no business in my life. They
19 didn't help when we were homeless or when my mother was
20 struggling to take care of us. They came into our lives
21 when we didn't need them, and they fought hard to disrupt
22 us when we were finally thriving for the first time in
23 our lives. My mother didn't even know she -- the name of
24 the tribe she was a member of. She was enrolled when she
25 was a baby by her father. He was abusive and left the

1 family when she was young, and she had a very hard life.
2 She never went to the reservation, never practiced any
3 Native culture, nor told us that we were part Native;
4 yet, her slight tribal connection caused so much trouble
5 for me.

6 It's obvious that no one considered kids
7 like me when ICWA was passed, and anyone who argues
8 otherwise is either very naive or a liar. The Indian
9 kids being fostered and adopted into non-Indian homes
10 back then had nothing to do with kids like me; yet, the
11 same law that was passed to help kids like them is
12 hurting kids like me. It's wrong, and now the new BIA
13 guidelines and proposed regulations want to take things
14 even further.

15 Tribes complain that their kids are losing
16 their culture. Indian culture wasn't and isn't my
17 culture now. It was the culture of one of my 16
18 great-great-grandparents. How can I lose a culture that
19 wasn't mine to lose? The tribe has ignored us for 12
20 years since we were adopted. They really didn't care
21 about us. I think they were just trying to dictate where
22 we were going to live because ICWA somehow allowed them
23 power over us that they hadn't earned or deserved. That
24 should not be allowed.

25 In most ways I am no different from other

1 kids in foster care. I need security and stability, and
2 I had it with my parents. What made me different was
3 one-sixteenth of my blood and nothing more, and that
4 difference nearly prevented me from being adopted by the
5 first people I called mom and dad. Is that what tribes
6 in BIA envision for kids like me, or can they just let us
7 be kids and allow us to stay in homes where we are loved
8 and well cared for, regardless of our genetic makeup or
9 eligibility for membership in a fairly recognized tribe?

10 I'm an individual, and I deserve to have my
11 best interests considered, independent of a tribe three
12 states away; and, yet, you want to tell me my best
13 interests were defined by a bunch of members of Congress
14 37 years ago. You have no right to tell me that. The
15 Indian Child Welfare Act nearly ruined my life, and I'm
16 not the only one. If the proposed BIA regulations go
17 into effect, countless more children just like me will be
18 hurt. I ask you not to allow it to happen.

19 Childhood is fleeting. Traumatized
20 children should never be ripped out of their homes. I'm
21 now 20 years old, and I have done extremely well in my
22 non-Indian home. I work, go to college, am active in my
23 church as a youth leader, have a great relationship with
24 my family, including my biological family, and I finished
25 as the highest ranking male student in my high school.

1 I'm so thankful ICWA wasn't used to remove me from my
2 loving and stable home; but I am angry it nearly was, and
3 I'll do everything in my power to prevent it from
4 happening to others like me, including testifying before
5 Congress and enhancing the media to help.

6 I really believe that if you don't listen
7 to the public, then people in Congress will. I stand
8 against the new guidelines and proposed regulations, and
9 I stand for the best interests of children in foster care
10 and adoption. For me love is enough.

11 Thank you.

12 (Applause.)

13 MR. KEVIN WASHBURN: Chris, could you say
14 your last name again?

15 CHRIS MOORE: It's Moore.

16 MR. KEVIN WASHBURN: Moore. Thank you.
17 Thanks for standing up and telling your story. Thank
18 you.

19 JOHNSTON MOORE: My name is Johnston Moore.
20 I'm the proud dad of seven children adopted from Los
21 Angeles County foster care, including Chris. And as you
22 can see, he was adopted so he didn't get my height.

23 My wife and I can have biological children,
24 but we chose to adopt because there are more than 100,000
25 children who have been abused, neglected, and/or

1 abandoned in U.S. foster care waiting for permanent
2 families.

3 We have done our best to introduce our sons
4 to their native heritage. We traced their genealogy,
5 discovering that they are descended from Chief White
6 Cloud himself and his wife Flying Pigeon. We found Chief
7 White Cloud's portrait hanging in the National Gallery in
8 Washington, D.C. We wrote to the tribe asking for
9 information. We took them to the reservation and found
10 their family homestead, as well as photos of their
11 ancestors. We took them to pow-wows in Indian villages.
12 My brother purchased them books on Native art and poetry.

13 We did all this not because we wanted to
14 appease the tribe or the BIA. We did it because we loved
15 them, and we wanted them to know their biological
16 family's history. In doing so we have done far more than
17 their tribe, their social workers, and the BIA have ever
18 done to connect them to their Native roots.

19 We are also interested in their non-Native
20 heritage as well and we researched that. To deny my sons
21 their non-Native heritage is to treat them as less than
22 the full human beings that they are and disrespects most
23 of their biological family's history. And yet the BIA
24 wants to define them only as Indian children and not as
25 multicultural children and wants to limit their placement

1 options on that narrow view -- based on that narrow view
2 of who they are. We should all be deeply offended at
3 that proposition.

4 I know the history. Tribes were concerned
5 of the often abusive child welfare practices that removed
6 many Indian children from their families and tribes. I
7 have no doubt that these abusive practices persist in
8 some places today. However, the reach of ICWA today has
9 gone far beyond what Congress and the tribes ever
10 intended. And many children, including those with little
11 or no prior contact to tribal life and mere traces of
12 Native American ancestry are being hurt. If the proposed
13 BIA regulations go into effect, more innocent children
14 will be hurt.

15 Louis LaRose was chairman of the Winnebago
16 Tribe of Nebraska. He summed up the problem Congress was
17 trying to address in the early 1970s very well. He said,
18 "I think the cruelest trick that the white man has ever
19 done to Indian children is take them into adoption
20 courts, erase all of their records, and send them off to
21 some nebulous family that has an A1 -- that has a value
22 system that is A1 in the State of Nebraska, and that
23 child reaches 16 or 17, he is a little brown child
24 residing in a white community, and he goes back to the
25 reservation, and he has absolutely no idea who his

1 relatives are, and they effectively make him a nonperson,
2 and I think they destroy him."

3 That was the problem the tribes asked
4 Congress to address in the 1970s. ICWA was the solution
5 Congress came up with to solve that problem.

6 You heard Chris' story. Please use your
7 common sense and think about it honestly. What did my
8 son have to do with what Mr. LaRose was lamenting? The
9 answer, if you are honest, is nothing. Imagine if tribes
10 had come to Congress and said the following: We have
11 children in the U.S. who have grown up with no connection
12 to tribal culture, with mere traces of Indian ancestry,
13 who have never been anywhere near the reservation who are
14 being abandoned or abused and neglected. And those kids
15 are being placed in non-Indian homes. We want you to put
16 a stop to it.

17 Do you think Congress would have passed
18 ICWA for kids like that? It really is nonsensical to
19 apply ICWA to kids like Chris when you think about it.
20 Congress was trying to put a stop to the unjust removals
21 of Indian kids from their homes by social workers who
22 used non-Indian parenting standards in judging fitness of
23 Indian parents. Chris was homeless and abandoned with
24 complete strangers in Compton, California, 1,500 miles
25 from the reservation he had no connection with. Were

1 social workers showing bias against Indian mother? Of
2 course not.

3 Congress wanted ICWA to prevent the breakup
4 of Indian family's. Chris was never part of an Indian
5 family, at least as his mother saw it. And even if he
6 had been, his family was broken up when his biological
7 father abandoned his mother during the pregnancy and then
8 when she abandoned him in that apartment. Congress
9 wanted children placed in homes that reflected the unique
10 values of Indian culture; yet, the tribe wanted him
11 placed with a relative who has never practiced Native
12 culture.

13 Congress wanted to protect the stability
14 and security of tribes, but how does forcing a permanent
15 home on him 1,500 miles from the tribe accomplish that?
16 The tribe could still have had a relationship with him,
17 but chose not to. Of course, the tribe wasn't rendered
18 unstable or insecure by his adoption. Had he stayed with
19 his biological mother, he would have likely gone his
20 entire life not knowing he was eligible for membership in
21 that tribe. Most of all, Congress wanted to protect the
22 best interests of Indian children; and, yet, the social
23 workers involved in the case didn't look at his best
24 interest, and they failed to even talk to his therapist
25 about what he thought his best interests were.

1 They made an independent decision that his
2 best interests were served by applying ICWA, which is
3 nothing more than ridiculous; and, yet, that is what the
4 new BIA guidelines support now. That was not the intent.
5 If you don't believe me, read the transcripts from the
6 hearings that led to the passage of ICWA. You will hear
7 much language from Native leaders concerned about the
8 best interests of children. You will also hear
9 supporting -- you will hear support for the existing
10 Indian family doctrine, interestingly enough, including
11 from the head of the BIA back then.

12 When our sons were placed with us, no one
13 knew they were part Native. They became attached to us
14 very quickly. And as no relative stepped forward, the
15 county put them on a fast track for adoption by us. We
16 were all thrilled. When it was discovered that they were
17 eligible for membership in a tribe, everything changed.
18 However -- and this is the most important thing -- they
19 themselves hadn't changed. The boys were the same as day
20 before their eligibility was discovered.

21 Was it right for the entire focus of their
22 case to shift because of the status of one of their 16
23 great great-grandparents? How is it right to deny their
24 placement in our home when they were thriving and wanted
25 to stay with us and when their own mother wanted them to

1 stay with us? Had they'd moved, do you think they would
2 have celebrated their Native heritage growing up, or do
3 you think they would have cursed it?

4 I stand with my son in strong opposition to
5 the proposed BIA regulations. And I stand with him in
6 supporting the best interests of children as the driving
7 force in all foster care and adoption proceedings.

8 Thank you.

9 (Applause.)

10 MARK FIDDLER: Good afternoon. My name is
11 Mark Fiddler. I'm an enrolled member of the Turtle
12 Mountain Band of Chippewa Indians. I come to you both as
13 an Indian and as an attorney experienced with the Indian
14 Child Welfare Act.

15 I am honored to say that I founded the
16 Indian Child Welfare Act Law Center in 1993, the only
17 ICWA-dedicated law program in the country, with the help
18 of others, of course. I believed then, as I still do
19 now, in the goals of the Indian Child Welfare Act; that
20 is, keeping Indian children and Indian families in homes
21 whenever possible, which means to me we should keep in
22 place Indian children in Indian homes as long as it's
23 consistent with the child's best interests.

24 That has to be our ultimate test. For ICWA
25 itself says: Congress hereby declares it is the policy

1 of this nation to protect the best interests of Indian
2 children. That's the first sentence in Congress'
3 statement of policy.

4 But these regulations miserably fail that
5 test of protecting the best interests of Indian children.
6 Instead they exalt the rights of tribes and parents over
7 the child and as a result they go way beyond what
8 Congress intended in passing the Indian Child Welfare
9 Act.

10 So let me get really specific. I'm a
11 lawyer, so I get into the weeds of statutes. And I know
12 there's some lawyers on the panel up here. I know I have
13 limited time, so I'm only going to talk about a few of
14 what I consider the most egregious examples of anti-child
15 regulations, and you really have to pay attention.
16 Proposed Rule 23.2. This rule sets the standard for when
17 state authorities can intervene to remove a child from
18 the home in an emergency based on imminent damage.

19 And so understandably the Bureau --
20 Mr. Washburn, you wanted to define what that means. But
21 the definition is deplorable. What you do is state --
22 everybody listen here. This matters. The Devil is in
23 the details. Imminent physical damage or harm means
24 present or impending risk of serious bodily injury or
25 death. Okay. Serious bodily injury or death.

1 So that rule literally means that lesser
2 crimes against the child, such as domestic assault,
3 sexual abuse, misdemeanor, gross misdemeanor assaults,
4 these are not grounds to remove the child.

5 So do we really mean to give Indian parents
6 the right to assault and abuse their children? I don't
7 think so. I think Indian parents, tribal members
8 everywhere should be insulted to think that we need this
9 kind of protection and shelter by Federal -- Federal
10 regulations.

11 Then there's proposed Rule 23.120, talking
12 about what active efforts are. And it says active
13 efforts have to be provided before the child's removed.
14 That all sounds fine and dandy; but, no, it says: Any
15 party petitioning a state court for foster care placement
16 or termination of parental rights to an Indian child must
17 demonstrate that -- and here's the problematic
18 language -- prior to the commencement of the proceeding
19 that active efforts have been made to avoid the need to
20 remove the Indian child from his or her parents.

21 Again, this standard protects the rights of
22 the parents and leaves Indian children vulnerable to
23 abuse and neglect in cases where the county is unaware of
24 the case and have not had the chance to provide an active
25 reference. The rule as written literally prevents the

1 removal of Indian children if active efforts prior to
2 commencement have not been provided. I don't think
3 that's what Congress had in mind. I can't believe you're
4 serious about that.

5 Let's talk about the standards of evidence,
6 23.121. This is the famous standard in foster care
7 termination of proceedings. The court may not issue an
8 order effecting the foster care placement of an Indian
9 child unless clear and convincing evidence is presented,
10 including the testimony of one or more qualified expert
11 witnesses demonstrating that the continued custody with
12 the child's parent or Indian custodian is likely to
13 result in serious physical damage or harm to the child.

14 Again, that sounds okay, right? But no,
15 because the rule -- the Bureau doesn't state what you
16 left out. So what was left out? Here, Mr. Washburn,
17 your Bureau has rewritten ICWA itself by removing the
18 standard of emotional harm from the removal standards
19 under 1912. Yeah, it's right there. Go look it up, 25
20 USC 1912, says Indian kids can be removed for emotional
21 harm under ICWA, but not under your proposed regulations.
22 So now if these regulations pass, Indian parents would
23 literally have the right to inflict emotional abuse on
24 their children, to abandon them, all three a state
25 interference.

1 Are you serious?

2 Then there's 23.122, which defines who can
3 be a qualified expert witness. This rule means that no
4 state can remove a child from a home or terminate
5 parental rights unless the state gets an expert from the
6 child's tribe who will support removal or termination.
7 Under your proposed rule, Mr. Washburn, a qualified
8 expert witness should have specific knowledge of the
9 Indian child's -- Indian tribe's culture and customs.

10 Well, let me tell you of the cases I've
11 seen where parents burn their children with cigarettes or
12 sexually abuse them or beat them up. Do we really think
13 a culture expert from the tribe is needed to say this is
14 wrong? Your rule would mean ICWA won't protect children
15 if the tribe intimidates its own witness into keeping
16 quiet and prohibits other experts from supporting removal
17 or termination.

18 You really think they don't do that? I'm
19 down in those trenches, and I know what goes on. I've
20 had tribal Indian experts come up to me, guardians,
21 threatened with the loss of employment or tribal housing
22 for telling the truth in ICWA cases. Who then is going
23 to testify and speak out for the children? Abuse is
24 abuse. This rule, what it does ultimately is protect
25 tribal control of the ICWA case at the expense of the

1 child.

2 Finally, Mr. Washburn, Panel Members, I
3 want to condemn in the strongest possible terms what the
4 BIA totally fails to say, what Congress said in it's
5 first sentence of the statement of policy, that the
6 child's best interests are paramount. That's the gold
7 standard of American Child Welfare Law. They're
8 paramount over the parents and paramount over the tribes.
9 Your new guidelines even come out and say that the
10 child's best interests are not an independent
11 consideration.

12 This is appalling. Just ask Sierra whether
13 the court should have considered her attachment and
14 bonding evidence in her case before she was
15 unceremoniously ripped out of the home of her parents and
16 what happened to her. It's appalling that the court
17 cannot consider that evidence presented by expert
18 witnesses, cannot consider her best interests under your
19 guidelines.

20 I think the regulations in some -- your
21 failure to repudiate this anti-child rule clearly sums up
22 the BIA's priorities here, that of protecting parents at
23 all costs and protecting the tribe's right to control
24 ICWA case outcomes.

25 This is serious stuff. These regulations

1 are a travesty of justice, a shock to the conscience, and
2 an offense to the sense of decency and compassion that I
3 know tribal people have for children. I ask that you
4 reject these regulations in the best interest of Indian
5 children.

6 Thank you for your time.

7 (Applause.)

8 SHIRLEY CAIN: Good afternoon. My name is
9 Shirley Cain, and I'm the American Indian disparities
10 consultant with the Department of Human Services.
11 And I am here on behalf of Assistant Commissioner Jim
12 Koppel, and he apologizes for not being able to be here,
13 so I have a statement that I wish to read. The Minnesota
14 Department of Human Services Child and Family Services
15 Administration acknowledges and appreciates the special
16 trust relationship between the United States Government
17 and Indian tribes, tribal members and the Federal
18 responsibility to protect the interests of Indian
19 children.

20 When the Indian Child Welfare Act was
21 passed in 1978, Congress found an alarmingly high
22 percentage of Indian children being removed from their
23 families. Often these removals were unwarranted.
24 Congress then declared that it's a national policy to
25 promote the stability and security of Indian tribes and

1 families by establishing minimum Federal standards for
2 removal of children from their families. Congress
3 further established placement preferences for foster and
4 adoptive homes that reflect the very unique values of
5 Indian culture.

6 The Minnesota Department of Human Services
7 emphatically supports the proposed rule to Federal
8 regulations for state courts and county agencies
9 regarding Indian custody proceedings. These
10 regulations will support the department's efforts and
11 commitment to implementing ICWA and reducing the
12 disproportionate number of American Indian children
13 represented in Minnesota's foster care system. The
14 regulations update the definitions, replace notice
15 provisions from early identification of Indian families,
16 and clarify court requirements. In addition, the
17 department is pleased to see that the proposed rule
18 rejects the existing Indian family exception.

19 Since 1985, Minnesota law has required that
20 a determination of whether ICWA applies cannot be based
21 on whether an Indian child is part of an existing Indian
22 family or based on the level of contact that the child
23 has with their Indian tribe preservation society or
24 off-reservation community. To further enhance the
25 proposed rule, Minnesota Department of Human Services

1 supports the strengthening of cultural considerations and
2 tribal participation when working with American Indian
3 families, engaging parents, including fathers, and
4 protecting their rights.

5 Thank you very much for the opportunity to
6 express support for the Bureau of Indian Affairs'
7 proposed regulations for state courts and agencies and in
8 child custody proceedings. We believe these changes will
9 improve ICWA implementation, compliance, and improve
10 stability and security of American Indian families and
11 tribes.

12 Miigwech.

13 (Applause.)

14 MR. KEVIN WASHBURN: Let me just say we're
15 going to take a break in about -- I promised the court
16 reporter a break at 2:30. So after this comment would
17 probably be a good time to do that. So thanks,
18 Everybody.

19 GIOVANNI CERISE: My name is Giovanni
20 Cerise, an adoptee born in 1965 on the White Earth
21 Reservation in Menominee, Minnesota, then adopted out
22 when I was only two weeks old. I am in support of the
23 new regulations that will strengthen ICWA, and I also
24 feel strongly about opening adoption records. Why?
25 Simply for the right to belong.

1 Being adopted out of my Native culture, I
2 always felt like I was sitting on a fence, one foot
3 dangling in white man's world, and the other dangling
4 wanting to touch my homeland's ground; not knowing a
5 thing about my people's culture, just what I've read,
6 just even stripped of who I am, a Native.

7 I was fortunate to be adopted in a loving
8 family, but loving adoptive parents couldn't give me my
9 identity. There are no words how it makes one feel when
10 you feel like you don't belong. Maybe it's like a
11 costume. One gets adopted and is given an identity, and
12 you are to become that. So you try -- you really try to
13 fit in; but in the quiet hours you know that you are not
14 that person. Your soul is fighting to be who you were
15 born to be, and that is Native.

16 Don't Native adoptees deserve that? Yes.
17 All Native adoptees deserve to know their true culture,
18 to feel like they belong, to feel that they matter, and
19 to truly feel they're Native. Who else should speak?
20 Our children. They too struggle with who they are and
21 where they come from. Like my two sons, they only know
22 half of their true selves. They have said to me
23 quizzically, looking at themselves, where my hands come
24 from? Could they come from my relatives? Most
25 importantly, who are my relatives? Once again, not

1 belonging, not knowing. Everyone deserves to know their
2 culture and their relatives.

3 What are my hopes that would come from this
4 session? Education, understanding, healing, action, and
5 change. The Native adopted souls have been stolen. Our
6 souls cry. Our souls long to belong. As a Native drum
7 beats, it reflects my soul. It cries out to who I know I
8 am, but I cannot yet touch it. Please try to understand
9 how it must try -- must feel not to truly belong and
10 truly not know who you are.

11 Why do others have their liberty - they
12 have Irish pride, Italian pride, Norwegian pride - one
13 simple answer: They know where they come from. They
14 know their relatives. They do not have to hide under a
15 false costume. Please let us Native adoptees get to feel
16 that, too.

17 And ending I'd like to leave you with a
18 visual. Here are my husband, who's not -- non-adoptee,
19 family tree, and here is mine. We belong. We have the
20 right to belong.

21 Thank you.

22 (Applause.)

23 MR. KEVIN WASHBURN: Okay. Thank you.

24 Let's take a about a 10-minute break. Let's start back
25 up at about -- let's say 2:40. Thank you.

1 (Recess 2:23-2:39.)

2 MR. KEVIN WASHBURN: Okay. I hope
3 everybody got a good break. Let's go ahead and get
4 started. I want to thank everybody who has gotten up to
5 the microphone and spoken. The heart-felt comments are
6 very, very helpful; and the very specific comments are
7 also very helpful, giving a sense of how we need to amend
8 what we've done. Because I think we do intend to do
9 something here, and the question is what is it going to
10 look like at the end. So we are very grateful for those
11 of you who have given specific recommendations and all of
12 you who have opened up your heart to come -- it's not
13 easy to open up your heart in a big forum like this, and
14 so we really appreciate it. It takes a lot of courage,
15 so thank you for that.

16 Okay. Madam, why don't we start with you
17 in the front, and then we'll go to the gentleman in the
18 back.

19 MARY LYONS: Thank you. I think -- do you
20 mind if I sit down because I've got this thing here. Can
21 you help me. Put that microphone down.

22 I come from a different era than most of --
23 most of you, so Boozhoo, hello. My name is Mary Lyons.
24 I'm Ojibwe. I'm the second modern woman. My sister was
25 the first. I'm from the Leech Lake Reservation.

1 I am a mother, grandmother, and a
2 great-grandmother, and a product of the early
3 displacement of Native children. I've been a foster
4 parent for over 40 years and an adoptive parent of Fetal
5 Alcohol Syndrome boys. I have worked in this arena of
6 displaced families nearly all of my life, and this is
7 what we would like to share with the panel that are
8 taking many nations in their hands.

9 We would like to begin with a brief history
10 to think about before making some harsh decisions about
11 our children. There was a time that was laid out before
12 us, the boarding school era. The boarding school
13 experience for Indian children began in 1860 when the
14 Bureau of Indian Affairs established the first Indian
15 boarding school on the Yakima Indian Reservation in the
16 state of Washington.

17 The goal of these reformers was to use
18 education as a tool to assimilate Indian tribes into the
19 mainstream of the American way of life, a Protestant
20 ideology of the Mid 19th Century. Indian people would be
21 taught the importance of private property, material
22 wealth, and monogamous nuclear families. The reformers
23 assumed that it was necessary to civilize Indian people,
24 make them accept white man's beliefs and value systems.

25 We would like to bring the awareness to the

1 Panel that the history will repeat itself if we do not
2 truly act in the best interest of the Native child. The
3 removal of Native children went from "Kill the Indian,
4 save the man." At this juncture it was felt that the
5 reservations schools were not significantly removed from
6 the influences of tribal life. In the eyes of a
7 simulationist, off-reservation boarding schools would be
8 the best hope for changing Indian children into members
9 of the white society.

10 For Richard Henry Pratt, the goal was
11 complete assimilation. In 1879 he established the most
12 well-known of off-reservation boarding schools, the
13 Carlisle Indian School in Carlisle, Pennsylvania. He was
14 headmaster of the school for 25 years. He was the single
15 most impactful figure in Indian education during this
16 time. Pratt's motto, "Kill the Indian, save the man,"
17 Pratt believed that off-reservation schools established
18 in white communities could accomplish this task by
19 immersing Indians into the mainstream of American life.
20 The system created by Pratt had students living amongst
21 white families during the summer. He hoped Indian youths
22 would not return to the reservations, but rather become a
23 part of the white community.

24 The children were given new white names,
25 including surnames, as it was felt that it would help

1 when they inherited property. Traditional Native foods
2 were abandoned forcing students to acquire the food
3 rights of white society, including the use of knives,
4 forks, spoons, napkins, and table cloths. In addition,
5 students were forbidden to speak their native languages,
6 even to each other.

7 Naturally, Indian people resisted the
8 schools in various ways. Sometimes entire villages
9 refused to enroll their children in white man's schools.
10 Indian agents on the reservations normally resorted to
11 withholding rations and sending in agency police to
12 enforce the school policy. In some cases police were
13 sent into the reservation to seize children from their
14 parents, whether willing or not. The police would
15 continue to take the children until the school was built,
16 so sometimes orphans were severed -- were offered up, and
17 family's would negotiate a family quota.

18 In 1893, court ruling increased pressure to
19 keep Indian children in boarding schools. It was not
20 until 1978 with the passing of the Indian Child Welfare
21 Act that Native Americans gained the right to deny their
22 children placement in off-reservation schools.

23 Some Native American parents have boarding
24 school education for what it was intended to be, the
25 total destruction of Indian culture. We all know what

1 happened to the children that were removed from their
2 homes in the early and mid part of the century. The
3 experiences these children went through created a war
4 within humanity. What was stripped from them, destroyed
5 life, and ruined their spirit. The aftermath, the
6 fallout brought us -- all of us to today. "Kill the
7 Indian, save the man" didn't work then, and it's not
8 going to work now.

9 We would like you to think about a
10 different scenario. As we know now, Native and minority
11 children are placed into non-minority homes. This
12 placement is a norm. How is this different from the
13 boarding school era? How often -- how often would you
14 see a social worker, a county, a courtroom, all in the
15 white system, place a white child in permanency in a
16 Native, black home, or Hispanic home today? If it
17 happens, it would be very rare, or it would be from a
18 sibling group that has a half-sibling. Just a thought.

19 While we're not here to bash yesterday's
20 history, we are here to bring light so we don't repeat
21 yesterday's Holocaust. As an elder and a witness to
22 yesterday's tragedies, we see both sides of the fence,
23 the best interest of the child and the much needed help
24 for the parent. We know our children, grandchildren,
25 great-grandchildren need help and a safe place to call

1 home. This we do not dispute; yesterday's tragedies, the
2 fallout, like trail of alcoholism, drug addiction, human
3 trafficking, physical and mental abuse, and the list goes
4 on.

5 The children that came from these mothers
6 were born with disabilities that the health is still
7 trying to identify with; fetal alcohol syndrome, organic
8 brain disorder, the silent disability of fetal alcohol
9 effects, et cetera. This conversation has been left
10 silent for much too long, as the majority of these
11 children that are being displaced have disabilities.

12 Not only are children being placed into
13 non-Native homes with very little knowledge of our
14 culture, they lack a knowledge of caring for a disabled
15 child. When the child does not fit into their way of
16 life, they are returned to the system, and repeat of
17 these little ones have multiple placements begin to paint
18 their way of life, lack of trust, low self-esteem,
19 worthlessness and anger.

20 This sounds a lot like board school errors.
21 The outcome is pretty similar. So how would it advance
22 the best interest of the Native child? We do know that
23 the child is not safe in their own biological home due to
24 the craziness of disparities and addictions. But,
25 really, have we thought about going back to the

1 blackboard and rethinking a better approach? Our
2 children are sacred.

3 We have to have a system within the
4 hospitals that they're aware that this child could
5 possibly be a Native child and let the Tribal Chair and
6 protection workers know this. We need documentation.
7 Our tribal officials need to come to a consensus to work
8 together and have an enrollment and to be aware of
9 procedures and the possibilities of a Native child. We
10 have to take responsibility. We all do, not just because
11 they're only one-fourth Indian.

12 Our states have to invest in our Native
13 children with services that work for them. Please
14 forgive me as we do not wish to insult or discriminate
15 against another race, but we still get less, less than
16 the refugees that are let into the country today. We
17 have to really do active efforts as it is in the best
18 interest of the child. ICWA works as long as everybody
19 works together.

20 Our decisions will mold a child's life. We
21 say -- us elders say that each child that is born is a
22 leader of many nations. Their journey will take the path
23 of many to follow. If we choose not to act in the best
24 way -- the best way of life of a Native child, then we
25 are repeating the first removal act of the Native

1 children, and we're adding to the destruction of a
2 people.

3 Miigwech, thank you, from this old lady
4 from the North.

5 (Applause.)

6 MR. KEVIN WASHBURN: Thank you.

7 Sir, you may proceed.

8 BRADLEY GOODSKY: Hello. My name is
9 Bradley Goodsky. I'm from the Bois Forte Band of
10 Chippewa Indians. I'm currently -- this is my wife,
11 Rachel Goodsky, and we are currently going through a
12 parental rights custody trial. And I'm just here to
13 speak on behalf of ICWA, that I believe that if the ICWA
14 guidelines were to be followed, as far as like the
15 reunification aspect of it, that my family would be
16 together.

17 And I'm sure that there are other parents
18 that step up and fight for their kids, too. My kids are
19 currently in foster care, and we've been going by the
20 plan, and this is our third time going. And our efforts
21 to follow the plan are being viewed as -- as -- that
22 we've been down the road before, and that -- I don't
23 know, the way I look at it is they got a crystal ball,
24 and we're doomed to fail, and we're going to lose our
25 kids.

1 As far as active efforts to reunite my
2 family, from the start of this year, current case, as far
3 as the way I see it is, is the efforts are that the kids
4 are going to be adopted; and that no matter what we do,
5 that's been the plan from the beginning. And in, oh, so
6 many words, we've been told it over and over again; but
7 they do still tell us not to give up, to keep trying.

8 And I just feel if the ICWA rules are
9 followed the way they're intended to be that my family
10 will be back together. I'd just like to thank you all
11 for listening.

12 (Applause.)

13 BRIAN GREENDEER: Good afternoon. I am
14 Brian Greendeer, a member, and a government relations
15 officer of the Ho-Chunk Nation.

16 I want to thank you, Secretary Washburn,
17 and the staff of the Bureau of Indian Affairs for taking
18 the time to revise these important regulations. We
19 generally support these proposed rules and will submit a
20 comprehensive written comment. The Indian Child Welfare
21 Act protects the interests of children and the tribes.

22 We have been battling assimilation from the
23 onset of non-Native influence. Hearing some of the
24 testimony here today, we must contend assimilation within
25 our own ranks. Again, the Ho-Chunk Nation generally

1 supports these proposals in order to ensure that -- the
2 future of our families and our culture. Thank you.

3 (Applause.)

4 MR. KEVIN WASHBURN: Thank you.

5 JOEY WADE: My name's Joey Wade. I was
6 born in the swamps of the end of the Mississippi River.
7 Now I'm currently residing at the beginning of the
8 Mississippi River. Now, my background and my ancestry is
9 very diversified. I have ancestry from the north. I
10 have ancestors from south. I have French ancestry. I
11 have Irish ancestry and Scottish ancestry. I have German
12 ancestry.

13 According to these guideline, if I were to
14 have a child, tribal courts at a whim can take that child
15 under ownership. I'm a person of nations, and I
16 think it's ludicrous for -- to have these guideline that
17 give such a corrupt judiciary system an avenue to harvest
18 more children for abuse. Just two years ago I was in
19 Leech Lake Tribal Court, summoned. I gave a reply in
20 writing. I showed up. I was denied to even enter that
21 court. Court proceedings proceeded. B.J. Jones, the
22 acting judge, wanted to attach a banishment to both
23 myself and my wife, who is a Shinobi from the Leech Lake
24 Reservation, as a penalty to a bogus civil suit.

25 I didn't even have a voice in the court.

1 Everything she presented, they chunked out the door.
2 They brought in their expert witness on the day I went.
3 My wife was raised by her grandmother. Like she needs
4 some academic Grand Poobah of her spirituality dictating
5 to her tradition. You know, what's occurring right here
6 is ludicrous.

7 And when we look back at the history of our
8 people, we enslaved one another. We stripped one another
9 of our ceremonial rights. We stripped one another of our
10 languages. So this is nothing new that's occurring with
11 the onslaught of people from Europe on this continent.
12 When people elected to no longer be buried in massive
13 mounds, they broke away, and they created their own
14 individual nations. So for people to bring this up,
15 generational trauma as a tool to initiate white guilt and
16 sympathy for the continuance of abuse of these
17 children -- and we can go right back to Spirit Lake on
18 this one and show just how the court system and the abuse
19 of these children has gotten so extremely out of hand.
20 Nobody wants to say anything about it. They all want to
21 back away and just, none of my business, you know.

22 I don't even know why I'm standing here,
23 because for the regulations to come out the way they've
24 come out, it doesn't leave a lot of hope of protecting
25 the children, not the mental part or physical health of

1 these kids. I just hope you-all can find a way to get it
2 right. You talk about -- people speak about our culture,
3 about our spirituality. What's changed since the '70s
4 when all this ban American craziness has occurred? We
5 have pow-wows in New York, Florida, Washington, all a
6 mirror image of one another, all the spirituality and
7 image of one another, and nothing's changed.

8 Suicide rates, 2009, Pine Ridge, epidemic.
9 2015, guess what, Pine Ridge, another epidemic. What's
10 changed on the foundation of these cultural traits in the
11 spirituality that's been in place since the '70s?
12 Nothing. You want to know a secret? Nothing's going to
13 change. You keep on with that dog-and-pony show, these
14 kids don't have a prayer.

15 You know, I hope sometime -- I hope
16 somewhere down the road people can figure out you can't
17 keep making the same mistakes. You can't keep beating
18 your head against the wall and expecting something to
19 change. It ain't changed in 40 years. It ain't going to
20 change now. And by putting more children into that
21 script, it's not going to preserve the identity of the
22 nations.

23 That's my piece. I appreciate the time.

24 Thank you.

25 (Applause.)

1 MR. KEVIN WASHBURN: Yes, ma'am.

2 MARLYS UBBEN: My name is Marlys Ubben, and
3 in this room I am a minority. I am not Native American.
4 But I am a social worker and a birth parent and a
5 counselor. And I've worked with birth parents from all
6 social, economic, and ethnic backgrounds. They're not
7 all poor. They are not all unfit. They are not all not
8 capable of parenting. But they are birth parents that
9 have one factor, and that is that the majority of them
10 have in common a desire to have the best plan for their
11 child. They want their child to grow up in a loving,
12 stable, secure home.

13 Some of these birth parents are very
14 capable of being parents and of parenting their child;
15 but instead they choose to look at an adoption plan.
16 They choose to make that choice. It's not forced on
17 them. It's not coerced on them. And the plan is not
18 taken away from them. They're allowed to make that plan.

19 They're not here today to speak to you
20 because some of them do not want to be a face. We have
21 had birth moms from the Native American community that
22 have told us explicitly, "We do not want the tribe
23 notified." And depending upon where they are from, we
24 have told them that we need to follow the ICWA laws; and
25 if that state requires that reporting, we would have to

1 do that. They have told us then they would leave and go
2 somewhere else. Not because they do not want what's best
3 for their child, not because they are making a plan that
4 is forced on them, but because they want to make a plan
5 that they feel is the best plan for their child.

6 Hopefully, I'm here on some of the urging
7 of some of those birth moms to speak for them and in
8 their place because I can be their face. As an American
9 we fight for equal rights for all; and, yet, here today
10 we fight for the rights of a woman to make her plan for
11 her child.

12 And, again, I'm not speaking about an
13 involuntary relinquishment or movement of the child. I'm
14 talking about a birth mom who comes who wants to make a
15 plan, a good plan for her child. When a woman is making
16 a voluntary decision to place her child with an adoptive
17 family, she has the right to select that adoptive family,
18 whether it be a family member, a tribal member, a Native
19 American family, or any other stable family.

20 To say anything other or to restrict that
21 right is to discriminate against this one segment of our
22 population based on ethnicity alone. It is to say this
23 woman of all women in our nation is not allowed to have
24 the same rights and privileges and protection that every
25 other woman in our country has. It is to say that

1 someone else knows better for what is the best plan for
2 her child.

3 I know from the hundreds of women I have
4 counseled over the years -- and, yes, I am older. I'm
5 well past that 60 mark. I've been doing this for a long
6 time. But I also know that these women come to me -- and
7 I've done birth parent counseling. They come to me with
8 tears in their eyes wanting the best plan for their
9 child. When they come to us we offer and we tell them
10 they have the right to place this child with a family
11 member, they have the right to place the child with a
12 tribal member or anyone else. We offer to show them
13 families if they want to look at tribal members. And
14 they have explicitly said, "I want to look at other
15 families." We have had birth moms who have explicitly
16 said, "I do not want to place with a family member or in
17 a tribe."

18 I'm not putting those words in their mouth.
19 My job is not to convince them to place their child. My
20 job is not to tell them where to place their child. My
21 job is to help them work through this very difficult
22 decision that they are making for the best interests of
23 their child.

24 The present Indian Child Welfare Act allows
25 that birth mom to make that choice. It allows that birth

1 mom to come to us to look at this baby that she's
2 carrying, with that birth father, and to say, "This is
3 what we want for our child." The proposed regulations
4 also state that the best interest of the child is not the
5 first priority. And through these regulations the future
6 well-being of the child is to be sacrificed in order to
7 maintain a bureaucratic empire.

8 I'm the parent of six children. My husband
9 and I raised nine. They came to us by birth, by
10 adoption, and we say some just came and didn't leave;
11 because three that just appeared on our doorstep, and we
12 had to put another plate on the table. Not all our
13 children are the same race or culture that my husband and
14 I, but each child was important, and each child had a
15 place at our table. Of those children, two of them
16 suffer from attachment disorder. Those children are now
17 in their 30s.

18 One of them came at six months, and she
19 would not allow us to hold her. She would scream. It
20 took a long time before we could finally hold her. She
21 had been moved multiple times from one situation to
22 another before she came to our home. She was not Native
23 American. This is not conducive to one population or one
24 race. She is now in her 30s. She's had multiple
25 relationships. One was a young man that we really truly

1 liked. He was great. He came to me and he said, "You
2 know, she will only allow me so close, but there is
3 always a part she will never let me know," and that's who
4 she is. Because for six months she had reactive
5 detachment disorder.

6 Our other child came at five years. He's
7 gone though a divorce. He does well in his own world.
8 He's attached in his own way. But because of multiple
9 moves in the system, he pays for it for the rest of his
10 life.

11 Moving our children and not considering
12 best interests is a travesty for our children. I've
13 raised my children. I love them all, and I see their
14 pain. And I see the pain of many children as I'm
15 working, and birth parents and wanting the very best for
16 their child.

17 Can we take that right away from them?

18 Thank you.

19 (Applause.)

20 LAURA NEWTON: Boozhoo. My name is Laura
21 Newton. I'm the Indian Child Welfare Program Director at
22 the Minneapolis American Indian Center. The Minneapolis
23 American Indian Center is located in Minneapolis. It's
24 an urban community center which serves urban Native
25 Americans from across the country. We work with many

1 different tribes.

2 I've worked with Native American children
3 and families for the past 16 years. In that time that I
4 have worked with the community, I have known and can
5 experience -- have experienced firsthand the importance
6 that the Indian Child Welfare Act can have when active
7 efforts are actually followed and provided to families.

8 In the unfortunate times that children
9 aren't able to be with their parents, they should always
10 be able to be with their extended family if possible.
11 They should always be able to remain connected to their
12 families. In our work at the Minneapolis American Indian
13 Center, we work with tribes all over the country. This
14 gives us a unique viewpoint on how the law affects many
15 different people in different states and in different
16 areas.

17 Each of the tribes that I have worked with
18 in the past has had varying degrees of difficulty with
19 compliance with the Indian Child Welfare Act. Our work
20 in compliance has taught us how much these new
21 regulations are really needed to ensure that compliance
22 occurs at the same rate everywhere.

23 The Minneapolis American Indian Center
24 supports the proposed regulation and commends the efforts
25 the proposed rules make to keep emergency removal for

1 children as short as possible. Agencies and courts
2 should document whether removal or placement is proper
3 and continues to be necessary. Too oftentimes we find
4 that this doesn't happen. We need to ensure that these
5 regulations go forward to protect our children and keep
6 working to preserve our families.

7 We've heard a lot of difficult testimony
8 today and many personal stories. I would like to first
9 say "thank you" to many of our elders who are in the room
10 who have fought this fight long before I have. I would
11 also like to thank everyone for sharing their personal
12 stories. Each person here is here because they care
13 about Indian children.

14 At the Minneapolis American Indian Center,
15 I would like to state that we do support the proposed
16 regulations. We also know that there are problems within
17 our foster care system. There are issues with Indian and
18 non-Indian children alike in which children are often
19 placed way too many times, have too many disruptions, are
20 not -- are bounced around from place to place. But
21 unfortunately that is happening across the board. That's
22 not just with Indian children.

23 And I'd like to turn it over now to my
24 colleague, George McCauley.

25 GEORGE MCCAULEY: (Speaking in Native

1 language.) I come from the Omaha Tribe in Nebraska, and
2 I just said my name in Omaha, and some of the history of
3 our tribe is that a lot of our names -- George McCauley
4 was what the missionaries brought to the reservation and
5 couldn't say names like Monkoos, K'nashua and all these
6 other names, so they gave us these white names. There
7 are names like Sheridan and a couple other people in
8 white history. So their names are given to us is what we
9 are known by today, but our Indian names are very
10 important. It is what is -- when you cross over to the
11 other side what our relatives will recognize us by. So
12 that is why we should introduce who we are.

13 Again, my name is George McCauley, and I
14 work at the Minneapolis American Indian Center. Today is
15 my oldest grandson's birthday. He is 16 years old.
16 Fortunately for us he hasn't been involved with the court
17 system, and that's the reason I am here today. His name
18 is Jose George Santos McCauley. He is a champion grass
19 dancer, and he's very humble. He's been taught to have
20 respect for his elders. He has long hair that comes down
21 to his waist. He has participated and knows about our
22 ceremonies.

23 Because this is where we are grounded in
24 our spirituality, it's not something we do once a week
25 like Christmas or Easter, but something we live every

1 day. His grandmother is Fourth Degree -- going on
2 4th degree Mida. And unless you know where you come
3 from, you know, probably don't know what that means.

4 He has witnessed his other grandmothers,
5 aunts, uncles, cousins participate in our ceremonies, and
6 he knows how important these ways are. For these
7 reasons, I wholeheartedly support the new ICWA
8 regulations because this is the way our young relatives
9 should have the opportunity to live, if it's the way they
10 choose that they want to. I wholeheartedly support these
11 new regulations.

12 How many of our children in foster homes do
13 you know that have long hair or attend ceremonies?
14 Taking them to a pow-wow is not enough for those -- for
15 those of our -- and for those who oppose the new
16 guidelines, our grandparents, they would know how special
17 these connections and this way is to us as grandparents.
18 But, again, things are different; basically, how people
19 who aren't coming from our way of life are telling us
20 what is best for our children. So that is on a personal
21 level.

22 On a professional level, I've been working
23 in ICWA since 1999. The Minneapolis American Indian
24 Center has been at the forefront of creating better
25 outcomes for children since we have been monitoring ICWA

1 compliance in Hennepin County for over 20 years. In
2 2010, we received a five-year grant from the Office of
3 Minority Health to develop something on ICWA compliance,
4 and we developed a software program.

5 But now that I think about it and when we
6 got that grant, what were we thinking. It was a
7 difficult task that nobody wanted to take on. A report
8 in 2005 from the U.S. Government of Accountability said
9 that the minimum oversight of ICWA compliance in national
10 data on children subject to ICWA are unavailable, and
11 that AFC did not have explicit oversight or
12 responsibility for states' interpretation of ICWA and the
13 information the agencies obtained through its general
14 oversight of state child welfare systems sometimes
15 provides little information to assess states' efforts.

16 Oftentimes the limited data from charts is
17 given back -- was not given back to the tribes. More
18 than likely the information was used to apply funds to
19 states to use and then give money or whatever little
20 funding they give to tribes. So with that, it's another
21 reason why the guidelines are very important to us.

22 And the other one is no implementation data
23 that is regularly collected and analyzed. That data is
24 uncoordinated between agencies, frequency, and contained
25 reports of noncompliance are uninvestigated by any

1 Federal agency. And performance improvement plans are
2 now required for agencies that are out of compliance. So
3 I really ask you to put some teeth into this so that we
4 can continue to try to know what's -- what we can do for
5 our children.

6 The project I coordinate is the QUICWA
7 Compliance Collaborative, and we have recruited partners
8 from eight states who monitor compliance in state court
9 systems. These five states fall into five of the 12
10 regions, and these five states contain 70 percent of
11 American Indian population according to the 2000 census.
12 We are in the process of putting together a report of the
13 data collected for the past four years.

14 And one of the important questions on the
15 checklist that we have data that I would like to share
16 with you says that if a judge asks in court whether or
17 not the child is affiliated with an Indian tribe through
18 maternal relatives or paternal relatives. And emergency
19 hearings, when that question was answered, it was only
20 54.8 percent of the time. So there's a lot of work that
21 needs to be done in the area.

22 And the new guidelines and regulations, I'm
23 so happy to see that this is going to be something you're
24 going to look at. And we have been doing this data -- we
25 have baseline data, and we have the tools to implement

1 this if we have ways to work with the BIA. You know,
2 you're going to have people coming out of the woodwork to
3 develop systems to do this. We have the expertise of
4 court monitoring from a lot of the people that are here
5 today to support these regulations. So a lot of our
6 partners know what this is about and really support us,
7 and we are thankful for that.

8 The last thing is in an emergency case, the
9 question was asked, and 23 percent of the time the judge
10 made a finding of -- on the record that ICWA does or does
11 not apply. And he asked that question -- or answered
12 that question 23.1 percent of the time. Numbers that
13 really need to change, and we just know that what is
14 really -- and we have the data to show this. I know a
15 lot of people come up here and talk and say they know
16 hundreds of people that they worked with and thousands of
17 people that are in a situation, but all we hear is just
18 the words. Where are the people? We have the
19 documentation to show what is going on, and we would like
20 to share it with you.

21 Thank you.

22 (Applause.)

23 MR. KEVIN WASHBURN: We've got lines at
24 both mics, so I think we're going to have to alternate
25 back and forth.

1 So let's go to the back mic, and then we'll
2 come to the front mic, and like that. And we have about
3 40 minutes left or so. I will try to get to everybody.
4 I'll ask you, say what you need to say, but keep -- keep
5 moving as fast as you can.

6 PAUL MINEHART: Good afternoon. Paul
7 Minehart. I am here as a board member on the First
8 Nations Repatriation Institute. The First Nations
9 Repatriation Institute is an organization that helps
10 adult adoptees find their way back home and connect with
11 their tribal communities.

12 So I want to thank you for being here
13 today, and First Nations is in support of the proposed
14 rules. They see the rules as part of the Federal
15 Government upholding its trust responsibility to protect
16 tribes. As ICWA says, the greatest resource for tribes
17 are their children.

18 However, access to birth records is
19 necessary for adult adoptees to be able to connect with
20 their tribe. It's also necessary for tribes to be able
21 to welcome back children who have fallen through the
22 cracks and been separated from the tribe. So I want to
23 talk about proposed rule 23.134, which is the rights of
24 adult adoptees.

25 Subparagraph A of that is really good. And

1 we really want to support the word "must" being there in
2 terms of the court must provide this information when an
3 application is made by an adult adoptee. However, if
4 that application doesn't result in the information needed
5 for that adult -- for that adoptee to find their tribe or
6 to be enrolled in their tribe, then we're looking at
7 subparagraphs B and C, and we need to strengthen those.

8 Subparagraph B just says, "The assistance
9 of the BIA should be sought." It doesn't say who seeks
10 out the assistance of the BIA. It doesn't require
11 seeking out the assistance of the BIA. So we would
12 suggest to change that language to the court that entered
13 the final decree must notify the BIA of the application
14 by an Indian individual for information and seek
15 assistance of the BIA to help an adoptee. Make that
16 mandatory and not just "should," and nobody has really
17 responsibility for it.

18 Under paragraph C, it says in states where
19 adoptions remain closed, the relevant agency should
20 communicate directly with the tribe. Again, we're going
21 to have disagreements over who's a relevant agency and
22 whose responsibility it is. This just opens it up for
23 people saying it's not our job, it's their job, and going
24 back and forth. And as an -- and then the adoptee who's
25 really looking for this information has run into another

1 closed door.

2 So we would suggest changing that, again,
3 to saying similarly as above that the court that entered
4 the final decree must communicate directly with the
5 tribe's enrollment office so that the adoptee just goes
6 to the court and makes the application. If the
7 information isn't made available, it's on the court to
8 really contact the BIA, to work directly with the tribe,
9 to see that that adoptee is able to become a member of
10 their tribe.

11 And then you have paragraph D, and I just
12 want to say, "Thumbs up to paragraph D. That sounds
13 really good."

14 Thank you.

15 (Applause.)

16 CANDACE LAGOU: Boozhoo. (Speaking in
17 Native language.) My English name is Candace LaGou, Red
18 Lake Nation. My Indian name -- my grandson said, "Do the
19 wind." I got up this morning, and I talked about the
20 regulations. This afternoon I want to kind of talk about
21 a personal story.

22 I was put into foster care in a non-Native
23 home when I was six years old. I was told by the
24 placement agency that my father killed my mother, and I
25 believed this all my life until I turned 18, and I went

1 home, and I found my real family, who the state said she
2 died of complications of a pacemaker. So the social
3 service agency made sure that I hated my father growing
4 up.

5 I had to go back and find who I was. Today
6 I'm a traditional woman. I follow our ceremonies. I'm a
7 member of the lodge. My son and my grandson are members
8 of the lodge. They follow our ceremonies. It was lost
9 to me. It's not lost to them.

10 I am so happy to see not only the
11 guidelines, the regulations; and it really offends me
12 when people get up and talk about how you should be
13 ashamed of them. You should be proud of yourself.

14 Thank you.

15 (Applause.)

16 REBECCA MCCONKEY-GREENE: Sorry, I'm a
17 little bit short, so I'll have to stretch here a little
18 bit.

19 But I'm Rebecca McConkey-Greene. I'm an
20 attorney in private practice here in Minnesota. I'm
21 officed in Park Rapids. And one of my clients is the
22 White Earth of Ojibwe, who I represent in state court
23 child welfare proceedings.

24 First and foremost, I have to just give you
25 a very big heartfelt thanks for your work that you've

1 done with the BIA regulations and also with the BIA
2 guidelines. They are wonderful. When I read them, I
3 kind of gave a little cheer. They're fabulous and
4 exactly what we wanted to see. So we are -- White Earth
5 is wholeheartedly in support of those regulations.

6 There has been a lot of word -- what you're
7 hearing today is you're hearing all of these stories that
8 are coming forward is a lot of pain that has come from
9 people having been removed over generations and
10 generations from their culture and their tribes and their
11 families, and it's a generatcide. And we're hearing
12 these very difficult stories because it's a recovery from
13 generatcide. So the work that is going on with revising
14 the BIA guideline and putting in place the regulations is
15 very important.

16 Individually, states are working on -- some
17 states are working on those things, as well; and
18 Minnesota is following the lead of Wisconsin and Michigan
19 and adapting our own guidelines here to make sure that
20 Indian children are treated well in the family; that
21 their best interests, including their interest in being
22 part of their tribe and part of their culture, is
23 protected.

24 And so your timing couldn't have been
25 better for coming with these regulations, and we thank

1 you again wholeheartedly for doing that.

2 Thanks.

3 (Applause.)

4 MR. KEVIN WASHBURN: Thank you, Rebecca.

5 And Rebecca makes a good point. One thing
6 I have to tell you is that we actually have looked to
7 what states are doing. In some cases the best practices
8 were developed by state courts, so that's what we were
9 looking to, so that's where we got some of the ideas for
10 these, so thank you for making that point.

11 SHANNON SMITH: Thank you. Hi, I'm Shannon
12 Smith, and I'm the director of the ICWA Law Center in
13 Minneapolis. And on behalf of the ICWA Law Center, we
14 fully support the new proposed rules.

15 In regards to the new rules in regards to
16 ICWA, I think it's very important to understand that ICWA
17 does not dictate a decision. What it does is sets up a
18 process that is fair, that is just, and that makes sense.
19 And with that we would ask that the BIA consider
20 including the definition "best interest" in regards to
21 the regulations.

22 I understand that it was part of the
23 guidelines; but also understanding that for families, for
24 children, for people involved in these, everyone walks
25 into a courtroom with this idea that they want what's

1 best for a child. The reality is that what everyone
2 thinks is best for the child is not always the same. And
3 so having some guidance in regards to recognizing that
4 for Indian children, the connection to family, the
5 connection to tribe absolutely has to be considered.

6 In regards to what the ultimate decision
7 is, that's going to be decided by the process; and ICWA
8 certainly is an absolutely necessary process for families
9 involved in the system. Minnesota, an Indian child is 15
10 times more likely to be placed out of their home than a
11 non-Indian child. Simply, we can't continue that way.
12 Those statistics are absolutely tragic.

13 I have the honor and the privilege to
14 represent families in ICWA proceedings throughout the
15 last 15 years, and I've represented hundreds of families.
16 The reality of a child being placed out of home causes
17 trauma for that child, for that family in and of itself.
18 Certainly multiple placements adds to the trauma.
19 Oftentimes the moms that I'm representing now, I knew
20 them as children who were placed out of the home. We
21 have to change what's going on.

22 The new guidelines provide -- excuse me.
23 The proposed rule provides the opportunity through active
24 efforts to change the course of what's happening. It
25 gives a voice to families. It gives a voice to tribes

1 and it absolutely is necessary in regards to a healing
2 path to keep families together. It's needed.

3 In regards to the moms that I work with on
4 a daily basis, oftentimes they're not coming to us
5 because there's allegations that they've abused their
6 child in the sense of physical abuse or sexual abuse.
7 Certainly those cases happen, but the reality is a lot of
8 the moms are coming to us broken. They're suffering from
9 issues of chemical dependency, domestic violence,
10 homelessness, and trauma in their own lives.

11 Giving them the opportunity to move
12 forward, to heal, to give them a path to be with their
13 children will not only impact them and their children,
14 but will impact them and their grandchildren. And the
15 active efforts in the new proposed rules gives us
16 guidance, gives us a way to look at really what needs to
17 happen, ensures that placements are not just something
18 that happen on a day-to-day basis, but that are really
19 looked at and used only when absolutely necessary.

20 Certainly no one wants a child to be hurt.
21 No one wants a child to experience abuse. But we need a
22 path to healing. ICWA provides that. It doesn't dictate
23 in regards to ultimately what the end decision's going to
24 be. What it does is it gives us a process that's just,
25 that is fair, that absolutely recognizes the tribal

1 connection, the family connection that children need and
2 would only make our community stronger.

3 And so with that, we absolutely support the
4 regulations, and we look forward to providing reg
5 comments to discuss some of the specifics in regards to
6 proposed language.

7 Thank you.

8 (Applause.)

9 MR. KEVIN WASHBURN: Barbara.

10 BARBARA COLE: Hi, my name is Barbara Cole.
11 I'm an attorney for the Mille Lacs Band of Ojibwe, and I
12 handle state child protection proceedings on their
13 behalf. I'm here to express the Band's support for the
14 new guidelines and the proposed rule and just to briefly
15 state that in my experiences in state court child
16 protection proceedings, outcomes for kids are better when
17 tribes and counties work together.

18 So we're particularly happy to see that the
19 "active efforts" definition includes early engagement
20 with the child's tribe, and the BIA is clarifying to
21 county agencies that may not handle ICWA cases frequently
22 that these requirements begin before removal.

23 Thank you.

24 (Applause.)

25 RED BIRD WOMAN: (Speaking in Native

1 language.) My name is Red Bird Woman, and I am Lake
2 Manitou First Nation, and I'm Ojibwe. And my personal --
3 I'm also an adult adoptee, and my personal experience has
4 to do with international boundaries. So I was adopted
5 here after ICWA was passed, and it didn't apply because
6 it was international. And there's a whole bunch of other
7 things that happened along with it, and I won't go into
8 the detail.

9 But one thing that we haven't heard a lot
10 about today - and Paul just went into a really in-depth
11 comment about it, so I'll be a little bit more brief than
12 he was - I really believe that adult adoptees have the
13 right to know who they are, and I especially want to
14 speak to that part of the regulations. You know, I echo
15 everything about the placements and active efforts
16 reference, so I won't go into that much.

17 But I really -- and I know that because it
18 really was helpful for me. We -- you know -- and I won't
19 go into that either, but we weren't meant to find out who
20 we were; and if it wasn't for my big sister, who was
21 seven years older when we were taken, we wouldn't know.
22 And it's because of her that we even stayed together, and
23 I won't go into that detail either.

24 But I know that we reached out to the
25 family that my sister knew, and then we also did the

1 official route, and we got totally integrated with my
2 family. And now I've been with them longer than I've
3 been away, so it's been -- that's been wonderful.

4 And then I get this letter back from Canada
5 saying, you know, we can't find your family, sorry. It's
6 just not -- I think -- I hear -- I know a lot of
7 adoptees, too. You know, we find each other. And I hear
8 a lot of stories about them not having that same
9 opportunity to connect with their family after they've
10 been taken away. So thank you for adding that provision.

11 MR. KEVIN WASHBURN: Thank you.

12 LAURA LAPLANTE: I guess it's my turn.
13 Boozhoo and (speaking in Native language). My name is
14 Laura Laplante. I've been a licensed ICWA provider for
15 over 20 years. I've been blessed with raising over 30
16 American Indian children in this state. My mother was
17 taken when she was four years old. My aunts and uncles
18 are all a product of being taken, put in boarding schools
19 and orphanages.

20 What I would like to say is I am absolutely
21 in support of the regulations that are being provided;
22 however, every state expedites ICWA differently. And
23 language -- language is extremely important. But also,
24 along with the language, I think it's important that
25 these states -- we have language in there that holds the

1 states accountable for noncompliance of the regulations
2 that you are proposing to pass so that things like Baby
3 Veronica don't happen.

4 The other thing that I would like to say is
5 that I want to thank you. I'm nervous because I don't
6 speak in public, because normally I'm doing foster care.
7 I take care of babies, which, by the way, just so you
8 know, that baby that you guys hear at the back of the
9 room, everything that you do in this room today is going
10 to affect the quality of her life.

11 So it's really important that you stay
12 focused on protecting the descendency of our race because
13 we are becoming extinct. Mary Lyons said it very well,
14 that it is absolutely imperative to pay attention to our
15 children that are the next seven generations out. They
16 are not just one nation. They are multiple nations.
17 That is important that we have language in ICWA that
18 defines recognizing the different descendancies of our
19 nations, including first nations.

20 Thank you. Miigwech.

21 WILFRID CLEVELAND: (Speaking in Native
22 language). Good afternoon. My name is Wilfrid Cleveland
23 from the Bear Clan of the Ho-Chunk Nation. And I waited
24 a little bit to come on up to the mic again because when
25 Ho-Chunk is full, he can just go on and on and just talk.

1 I waited so I wouldn't take so long because I knew you
2 were having a long day.

3 But we -- we've had these adoptions and
4 children leaving our home for years among the Ho-Chunk
5 people. I remember -- I recall back in the late '50s
6 when I was in grade school, I had some friends that I
7 went to school with; and they were there, and the next
8 day they were gone. And I never knew what happened to
9 them until they became of age, and they came home, and
10 then they were expressing where they were and expressing
11 some of the stories that happened to them while they were
12 gone.

13 And I found out through years that we as a
14 Ho-Chunk people, we have relationships. We don't have
15 cousins. We have parents; we have grandparents; we have
16 uncles; we have aunts; but we don't have cousins. This
17 goes on -- I mean, I could explain a lot about that, but
18 just briefly to let you know. These boys -- this family
19 that left, they were my uncles. Some of them were
20 younger than me, and some of them were older; but they
21 were all my uncles. Once they came home, we reconnected.
22 And so at times they would be sharing their stories, and
23 they were like -- they were kind of -- went to several
24 foster homes during that time, and they were like farm
25 hands. They'd have to get up early and make sure they

1 did all their chores. And then they went to school, and
2 then they did their thing at school, came home, and did
3 more chores and kind of that's the way it was for them
4 back in those days.

5 So this is the kind of experience that had
6 its own plan that the Federal Government, the United
7 States, in 1978 adopted this or made this Indian Child
8 Welfare Act with the thought that their duty and the
9 power that they had to look over the Native Americans
10 throughout -- throughout the United States and making
11 this; but I guess like is at the very beginning just
12 making guidelines and not putting any real strong words
13 to say this is the way it's going to be, but kind giving
14 the counties and giving different ones the options of
15 doing things; but here, like 37 years later, then kind of
16 making it so that these things are going to -- it's going
17 to be supportive.

18 But I just wanted to share that story and
19 also to say that these people that were adopting
20 children, they weren't aware of our culture. They didn't
21 know how we were in our spirituality, and it probably
22 didn't matter to them. And because of that, these -- my
23 uncles when they came home, they were kind of lost for a
24 while until family kind of got to know them. Then their
25 dad passed away. Then we had ceremony. Then they came

1 back into the ceremonies through that.

2 And so like we as Native people, we don't
3 have no religion. This spirituality that we have it's
4 our everyday life. Like we're in harmony with the
5 surroundings, the environment, the creation that we are
6 with. That goes on every day, every day making these
7 kinds of ceremonies that we have, so they finally came
8 back in there. And it's important that our children, our
9 grandchildren, that they know who we are and how we are
10 and why we're here and why we have this language. That's
11 to make an acknowledgment to the Creator of all these
12 good things he does to us.

13 When they go into the foster home, they're
14 lost. They don't have that. They don't have nobody
15 telling them to do that. So this is kind of the thing
16 that that's the way it is. Over the years -- over the
17 years as -- way from the beginning of time when -- when
18 the white man first came here, they tried to get rid of
19 us right off the jump.

20 Then over the years with the government
21 they made assimilation, they did termination, relocation,
22 all these different things to try to change us from the
23 way that we were. Sometimes I think that if these
24 people, they knew how we were and they came and they
25 assimilated and became like us, this world wouldn't be

1 the way that it is.

2 So that's just a thought that I have here.
3 I really appreciate that these guidelines are more going
4 to more precise and saying "must" instead of "should"
5 doing those kind -- put those kinds of words in there
6 that make it so that these things are going to be
7 followed, and like we was hearing that maybe there's
8 going to be some kind of a penalty or something done if
9 doing these things are not followed; that these rules,
10 they're enforceable rules if they're not followed,
11 something's got to be done with that also.

12 I just wanted to say this much here. Like
13 I said, like I got this book here. I could just go on
14 and on with it, but I wanted to say this much here. Once
15 again, I'd like to thank you, Assistant Secretary
16 Washburn, for doing this, taking the time, taking the
17 staff, taking these people around, and listening to how
18 we feel about what's going on and in country, the laws
19 that are being -- the laws that we're going to be using
20 to help us to be stronger as the generations come up.

21 (Applause.)

22 MR. KEVIN WASHBURN: Yes, ma'am.

23 NANCY MARTIN: Hi. I'm Nancy Martin. I'm
24 a member of the Turtle Mountain Band of Chippewa, and I'm
25 director here for family and children services for the

1 Shakopee Tribe. I'll be real quick here. I just want to
2 say that I'm in favor of the proposed regulations.

3 Thank you.

4 (Applause.)

5 UNIDENTIFIED SPEAKER: Hi. I'm here from
6 White Earth today to talk about -- well, I'm here on
7 behalf of my two kids that are, along with -- at least
8 200, 300 kids being held for ransom right now in White
9 Earth.

10 Does anybody know that there's a special
11 judge that they have in the -- B.J. Jones, who --
12 somebody mentioned him. Does anybody know he wrote a
13 book that basically describes how to steal kids but make
14 it legal?

15 My experience with ICW started in 2012 --
16 well, maybe about 2007; but 2012, I'd say, they made
17 their minds up what they wanted. And they brought B.J.
18 Jones in, a special judge, they said. They were waiting
19 for him, hand picked basically. They ripped my kids out
20 of my home that I raised them in. Their mom is an
21 enrolled member. I'm a descendant. My dad is enrolled.
22 She's a heroin addict. She's been in treatment time and
23 time again. Severely beat my daughter.

24 Two years ago on Mother's Day, she tried to
25 kill my daughter. She beat her so bad that she still to

1 this day has a dent in her forehead. In this whole time,
2 for the year that they were with their mom, my family --
3 the only family my kids ever had -- was called -- we were
4 hounding them and harassing them. When we'd bring them
5 proof of all this that's happened, police reports, people
6 like Rebecca McConkey would come into court and say, "Oh,
7 we're sovereign, we don't have to cooperate." How was
8 that in the best interest of the kids? Who's interests
9 are they protecting?

10 After she tried to kill her, for four days
11 she was missing. She was a runaway. ICW was hiding her
12 in the case worker's friends house. Tribal police were
13 asking me in court and the judge and ICW lawyers Zenus
14 Bear, asking me if I knew where my daughter were, and
15 they were alienating my whole family from them. So I
16 thought she was laying out somewhere dead for four days.

17 Then they finally found her. They had an
18 apprehension order on her. Put her in a detention center
19 for the last month of her sixth grade year of school.
20 And they arrested me for some total BS the next day, so
21 we were both in lockdown over that weekend.

22 When she got out, they made her go through
23 over 100 hours of outpatient treatment because she smoked
24 grass a couple times, because her mom was laid out with a
25 needle in her arm, beating them, neglecting them. Tribe

1 courts and ICW, everybody in White Earth knows what ICW
2 does. Nobody likes them. They're talked about on the
3 reservation like they're the boogie man. Parents use
4 it -- families use it against each other as threats over
5 disputes that have nothing to do with the kids.

6 Stealing drugs from each other, stealing
7 money, oh, I'm going to call ICW. A lot of times I know
8 a lot of people where that's happened to them; and the
9 simplest, stupidest thing, their kids are in a foster
10 home, and now they're jumping through all these hoops for
11 ICW. Funding all these programs, keeping all these
12 people in these comfort positions. The whole damn tribe
13 is riding around in \$25,000 cars. There's kids walking
14 around in the streets, six, seven years old, looking like
15 they're damn homeless.

16 They got their big multimillion dollar RTC
17 and their cops spending hundreds of thousands of dollars
18 on what? Prevention or continuation of the -- people are
19 still being oppressed. Kids are being set up for
20 failure. Right now I don't know how many times I
21 probably just got exhorted, \$500 every time I say
22 something in public. On-line I don't know how many
23 thousands it's into. But they ain't getting it from me.
24 I ain't paying them nothing.

25 There's a conspiracy going on. People in

1 different departments working with each other to enable
2 the flow of money through all these programs. They made
3 laws against that a lot of years ago, RICO. Okay,
4 they're criminals. They don't give a damn about our
5 kids. They don't give a damn about mine.

6 My daughter's tried to commit suicide, and
7 she's only 13 now. This was when she was 11 and 12,
8 while she was with her drug-addicted, abusive mom,
9 because she's enrolled. I know the RTC has funneled at
10 least a couple hundred thousand dollars around in their
11 programs by corrupting my kids, setting them up for
12 everything that they went through and are still going
13 through.

14 Now they're totally alienated, eliminated
15 from my family. And we're here asking the Government for
16 help? To put more regulations on us? I consider myself
17 a member. I'm white as hell, but I'm a member. My
18 daughter's dark like her mom. My son is light like me.
19 They're considered members, but I'm not. I was until
20 B.J. Jones got on the scene and changed all the court
21 orders to say that I'm not eligible for enrollment.

22 If I talk any longer I'm probably just
23 going to upset the Government.

24 MR. KEVIN WASHBURN: Sir, you didn't give
25 us your name, not that you have to.

1 UNIDENTIFIED SPEAKER: I don't have to.

2 MR. KEVIN WASHBURN: Fair enough. Thank
3 you.

4 UNIDENTIFIED SPEAKER: I got all the proof
5 for everything I've just said on this. You guys know
6 what a hash tag is.

7 JESSICA RYAN: Boozhoo. (Speaking in
8 Native language). My English name is Jessica Ryan, and
9 I'm a member of the Brothertown Indian Nation. I want to
10 thank you from the bottom of my heart for coming here
11 today, for listening with your hearts, listening with
12 your minds to the important words that are being shared
13 with you today.

14 I want to spend just a couple minutes
15 sharing a little bit about where I come from and my
16 experience in this, not because I want to boast, but
17 because I want you to know from where I come with regard
18 to these issues.

19 I graduated from law school in 1997 and
20 went to work for one of the only and probably the first
21 American judge in Hennepin County District Court, Judge
22 Robert Blaeser, who sat on the juvenile bench exclusively
23 and practiced in the area of the Indian Child Welfare
24 Act. He worked very diligently to make sure that I had a
25 good understanding, a practical understanding of how to

1 apply this law in a good way.

2 He worked very hard to help with the
3 Minnesota American Indian Bar Association and established
4 the ICWA guardian ad litem panel, which is a panel of
5 folks familiar with this specific area of the law, so
6 that we could provide some support to Indian families, to
7 tribes, and to the court in applying this particular law
8 in a very good way.

9 I had an opportunity to work in district
10 courts and in tribal courts. Right now and since 1999, I
11 have worked for an Indian law firm, Bluedog Paulson &
12 Small. I have the distinct honor of -- honor and
13 privilege to represent tribal governments in that
14 capacity. And a large majority of the work that I do is
15 in the area of the Indian Child Welfare Act.

16 I've been completely honored to be invited
17 by the Supreme Court for the State of Minnesota and many
18 other entities to participate in processes to help
19 implement this law in a good way. I'm very proud of
20 what's happening in Minnesota. Our statistics are not
21 great. They're abysmal in so many regards. But when I
22 look at what's happening in some of the surrounding
23 states, we're working collaboratively in most efforts to
24 get us moving forward in a good way.

25 The Tribal/State Agreement, which was

1 revised in 2007, is a terrific example of collaborative
2 efforts between all 11 tribes that are located
3 geographically within the state of Minnesota and the
4 Department of Human Services. We also have the voices of
5 guardians ad litem and county attorneys at the table for
6 two years having conversation about: How do we together
7 do a better job providing services for American Indian
8 families? How do we collaboratively work to apply the
9 ICWA in a good way?

10 And I was pleasantly surprised to look at
11 what the Feds came out with because so many of those
12 areas of concern that we in Minnesota identified were
13 also replicated in the concerns that you identified
14 across the country. Many of the ways that you identified
15 to handle those, I am proud to say we are very consistent
16 in how we want to apply that in Minnesota.

17 There are 11 points that I wanted to make,
18 and I'm going to try to fly through them quickly because
19 I know there's a big old line behind me here. The
20 first --

21 MR. KEVIN WASHBURN: I'll try to stop
22 violence from breaking out. You're an attorney, so I can
23 be harsh with you. You've got to be brief.

24 JESSICA RYAN: Yes.

25 MR. KEVIN WASHBURN: Give me one point on

1 each -- if you're going to give me 11 points, I want one
2 sentence.

3 JESSICA RYAN: I'm going to do one sentence
4 on each one.

5 With regard to the comment raised earlier
6 about this being a race-based law, that's absolutely
7 false. Tribes are sovereign entities, and that is based
8 on our political relationship with the Federal
9 Government.

10 Number 2, qualified expert witness. We
11 need to have a descending order of placement for
12 qualified expert witness preferences; because when
13 somebody hires an Indian from one of the other 565
14 tribes, which is not that child's tribe, the values, the
15 language, the medicines, the clans, there are varying
16 differences among tribes, and it's really important that
17 the voice of that child's tribe is heard and considered
18 when that important testimony is provided to the court.

19 With regard to the voluntary proceedings,
20 there were many heartfelt stories shared today by folks
21 that are in opposition to these regulations being
22 enacted. I want to share, that when the tribes that I
23 represent are contacted for voluntary adoptions, the
24 values of those tribes shine through. The values of
25 those tribes often do not get in the way of the

1 individual preference of that parent. Instead what the
2 tribes that I represent have done is say we respect your
3 choice to this, and what we would like to do is make sure
4 that there's a way for those babies to come back, there's
5 a mechanism for this contact.

6 Sometimes what they'll do is ask for an
7 agreement; so as that little one grows, there is an
8 opportunity for that ongoing connection. You heard many
9 adult adoptees testify today about the importance of the
10 ability to have that connection and to know their roots
11 in a meaningful way. And in my experience, those Indian
12 values support that nonintervention -- the nonintrusive
13 intervention, but providing that safety net for
14 connection.

15 Number 4, I think that in my personal
16 opinion, a lot of people that oppose the tribe's
17 involvement in these areas are actually folks that are
18 uneducated about the importance of it.

19 Number 5, the immediate needs of a child
20 need to be looked at in context of the long-term
21 relationship that a child may have. We are a seventh
22 generation looking community, and we need to have those
23 long views taken into consideration.

24 I'm going to jump to my seventh point.
25 Bonding and attachment is something that we've heard a

1 lot of discussion about today. I'm very supportive of
2 the way that it's been identified by the Federal
3 Government. Bonding and attachment in Indian Country is
4 extremely different than bonding and attachment in
5 non-Indian communities. And if those considerations will
6 be made, it needs to be done in a cultural context.

7 I think an important point that was made by
8 Shannon Smith, the Director of the Indian Child Welfare
9 Law Center is that parents retain rights. There was a
10 lot of discussion about placement preferences; and if a
11 parent opposes the placement preferences, that can be
12 respected, and that could be good cause for a placement
13 preference, so this doesn't dictate and take away those
14 rights.

15 I'm going to jump to my last point, which
16 is best interests of an Indian child. I would urge you
17 to consider putting into the regulations the definition
18 of "best interest of an Indian child" that is similar to
19 that definition that's contained in the Tribal/State
20 Agreement. It does talk about those connections that
21 each of those individuals has between their extended
22 family and the tribe and the fact that those connections
23 are interwoven and can't be separate.

24 So thank you very much for your time, and
25 thank you so much for your effort to move these issues

1 forward.

2 (Applause.)

3 TERRI YELLOWHAMMER: All right. I'll make
4 this really brief. My name is Terri Yellowhammer. I am
5 staff attorney at the Indian Child Welfare Law Center.
6 I'm a former ICWA consultant for the State of Minnesota
7 Department of Human Services. I'm a former guardian ad
8 litem specializing in the Indian Child Welfare Act. I am
9 a tribal judge, as well.

10 And having come from all of these different
11 backgrounds, I wholeheartedly approve and support and
12 applaud these regulations. I am a product of a failed
13 attempt at assimilation. I was born in Chicago,
14 Illinois. My parents moved around the country. They
15 ended up there. I think what you've heard today when
16 folks talk about just having a trace of Indian blood, I
17 feel bad for those people that they don't have a sense of
18 their own identity and belonging. Thanks to my own
19 parents, I know who I am in this world, and I know that I
20 have a responsibility to others in my community to help
21 them. And I want to thank all of you in the community
22 for turning out and being here and speaking, especially
23 those adoptees and elders because I know this is a hard
24 thing to do.

25 What I know as an urban Indian is none of

1 us holds all of the practices that we have lost in our
2 tribes, that were taken from us. And what we've come
3 together through community is to share those ways, and
4 I'm not ashamed to say that I am still learning, and
5 we're still learning from each other.

6 And that's all I have to say. Miigwech.

7 (Applause.)

8 MR. KEVIN WASHBURN: Yes, sir.

9 ANTHONY HERNANDEZ: Hello. My name is
10 Anthony Hernandez. I'm Sicangu, South Dakota, Rosebud.
11 I live in Duluth, Minnesota. I am an advocate for Native
12 American families. I also am the coordinator for All
13 Nations Indigenous, which hasn't gotten off the ground
14 yet.

15 What I'm here -- I fully support the
16 guidelines. The other thing is, is that where's the
17 accountability of the ICWA workers? When they come into
18 a home they take -- the IU workers are there first, and
19 they -- a day or two later the ICWA worker gets -- the
20 Indian ICWA gets the report. The kids are already gone,
21 sent somewhere. And a lot of damage is being done
22 because there needs to be some accountability.

23 If an ICWA worker has 35 cases in a small
24 urban town, then let's hire some more ICWA workers or
25 pass some of that work to us Indian people in the

1 community who are about supporting our families. There
2 are a lot of things out there. I walk with them. We
3 have a Buffalo herd camp. We have -- I go to court with
4 them. We do things in school with the kids. And we are
5 not funded, and we do this on our own because these are
6 our people. We know how to take care of our people.

7 Now, when those ICWA workers with a tribal
8 ID have no clue as to what smudging is, is in there
9 making decisions for our children, I think that's really
10 wrong. I think that's really wrong. So when they come
11 to me and ask me what that means, I will educate them. I
12 will share what I know with them, but I shouldn't have to
13 do that because there's other children out that I need to
14 help.

15 I just want to say thank you very much for
16 coming and letting me be here. Thank you.

17 (Applause.)

18 MR. KEVIN WASHBURN: Thank you.

19 KRIS GOODWILL: Hi, I'm Chris Goodwell.

20 I'm an attorney. Don't be hard on me because I'm an
21 attorney. I am a member of the Menominee Nation. I am
22 also a tribal judge for my tribe. And I just wanted to
23 speak today because I just wanted to say that in
24 Wisconsin we worked toward passing the statute. And
25 since the statute was passed with what we call

1 Wisconsinizing of the Indian Child Welfare Act, our
2 statistics that were very dismal with noncompliance
3 before that have improved.

4 So I know Mr. McCauly talked about some of
5 those statistics, but those are better, I think, that the
6 Federal Government needs to look at because these rules
7 are much along the same lines as what we did in Wisconsin
8 in putting some meat on the bones.

9 I just want to say, too, that on a personal
10 level, while I wasn't raised in foster care, my mother
11 was raised -- had to go to boarding school, and she was
12 removed from her grandparents who raised her; and as a
13 result of that, she learned to hate her tribe and to --
14 and she lost language, and she's had a lot of personal
15 problems because of that. And it's the same thing that
16 we see in the social studies that talk about Indian
17 children who were removed and removed from that placement
18 of their families. It's the same thing.

19 I've also worked with tribes that do abide
20 by the wishes of the parents as much as they possibly
21 can -- we work with other tribes -- if we can possibly
22 place an infant with another Native tribe or with a
23 family who lives in a different community, if that's what
24 the family wishes for.

25 I come from the Menominee Nation. We are

1 saturated in social ills and poverty. We were just
2 identified as the nation that has the highest binge
3 drinking rates in the country. And so for people to be
4 insulting of tribes and for people to be insulting of
5 tribe courts is very hurtful. We're trying the best that
6 we can, absolutely. But we've only had tribal courts for
7 probably the last -- maybe some of them, the last 20
8 years, some of them less than that. States have had
9 courts for hundreds and hundreds of years.

10 So I just wanted to say that I'm here to
11 say that these rules have to be passed. We need
12 enforcement mechanisms. There's all kinds of
13 noncompliance going on.

14 So I thank you very much.

15 (Applause.)

16 MR. KEVIN WASHBURN: Gary, I know you can
17 write, so make it quick.

18 GARY DEBELE: Thank you, Assistant
19 Secretary, for giving us the opportunity to talk. I'm
20 coming as a private adoption and family law attorney who
21 has practiced in the field 25-plus years. I suspect I'm
22 one of the few adoption attorneys in the country that
23 supports these guidelines - both the guidelines and the
24 regulations - and I come at it for a variety of reasons.

25 A growing part of my practice has been

1 tribal courts over the last couple of years, primarily in
2 Wisconsin and Minnesota. And through that work I've come
3 to get a better understanding of Native American culture
4 and the impact that adoption has had on that culture.
5 And I think the three most important parts of the
6 regulations that I see adding to the importance of this
7 matter have to deal with the discussion of best interests
8 of the child and the bonding and attachment issues.

9 As you heard today, a lot of adoption
10 attorneys and family law attorneys are very troubled by
11 that. But I think if you work among Native American
12 people, you understand that there's a different
13 prioritizing upon the analyzed best interests. It's not
14 the Western European view of things, but the tribal
15 interest supersedes that. I think if we all come to
16 understand that, we'll appreciate that more in terms of
17 how ICWA applies. I think the regs will help in that
18 regard.

19 There's also a huge dispute about whether
20 private voluntary adoptions are covered by ICWA. I have
21 always been of the opinion that they are. Our two only
22 U.S. Supreme Court cases that we have addressing ICWA
23 both involve private voluntary adoptions. I don't think
24 it could be clearer. And I think these new regulations
25 will make that clear so everybody understands that.

1 And then I'm also impressed by the fact
2 that these will ease the transfer of these cases into
3 tribal courts, which is where I think they really belong;
4 and perhaps this will encourage more of my colleagues
5 that don't practice in tribal courts to get into tribal
6 courts, a better understanding of American culture, and
7 the impact that adoption has had historically and
8 culturally on the Native American community.

9 So thank you.

10 (Applause.)

11 MR. KEVIN WASHBURN: Okay. We have two
12 people left at the mic. We'll take both those, and then
13 we're going to -- I'll just make a very short closing
14 statement, and then we'll conclude.

15 Thank you, everyone, for your patience.

16 If you'd like to speak. You've been there
17 for a long time, so let's go -- yeah, you're next.
18 You're out here in the front.

19 SANDY WHITE HAWK: Thank you. Good
20 afternoon. My name is Sandy White Hawk. I am an adult
21 adoptee from the Rosebud Reservation in South Dakota.

22 Much of what I want to share with you, I am
23 going to share in writing, so -- but I do want to just
24 say these words out loud for everyone to hear.

25 Ever since I read the first thing around

1 ICWA, it never occurred to me until I was in court that
2 best interests keeps us very limited. Best long-term
3 interests reminds us that the life of the child is going
4 to be impacted. The best interests keeps us focused
5 immediate on immediate need. And certainly we want
6 children to be safe. I'm so -- I get kind of tired that
7 we have to even say that as Indian people.

8 There's nothing in ICWA that says that we
9 want our children to stay in a place that's going to be
10 harmful. However, we understand -- and those of us that
11 have lived a life separated from our family and our
12 culture and our understanding and our life ways, we know
13 how detrimental -- we know that the psychological impact
14 of that, we are just now finding words for. So I will
15 share with you in writing the results of the survey that
16 we have done that talks about that long-term impact.

17 What I want us to remember is that when the
18 adoption decree is finalized, no one goes back into that
19 home to make sure that the child is, number one, safe
20 from sexual abuse or physical abuse or emotional abuse.
21 They assume that the job is done; because the child is
22 placed, they now have a permanent home. So we have to
23 look at that as well if we are really truly going to look
24 at the best long-term interests of our children.

25 Thank you.

1 (Applause.)

2 MR. KEVIN WASHBURN: Yes, ma'am.

3 CHRISTINA: My name is Christina from
4 Rosebud Sicangu. I would say that I am in agreement with
5 your proposal just on numerous reasons. And forgive me
6 if I offend anybody. I'll try to make this quick and to
7 the point.

8 For numerous reasons, as far as extinction,
9 you know, we're -- I'll put it bluntly that we're looking
10 upon that day compared to what we were 100 years ago, 150
11 years ago. And coming to you and speaking to you, I hope
12 that you would really -- consideration -- you know,
13 communicating with each tribe about the degree for
14 enrollment because I know that there's a lot of families
15 out there that are not eligible for enrollment that don't
16 get the help of ICWA that need the help.

17 And just that there's a lot of mixed blood.
18 The reality of that situation, seven more generations
19 from now, 50 years from now the mixed bloods are going to
20 outnumber the full bloods, and they're going to be
21 representing who we are and what we do today, but we need
22 to educate them on that stuff at the Indian centers, at
23 the tribal offices.

24 And I'm ashamed to say what I'm about to
25 say; but in my lifetime I have seen a mixed blood, a man,

1 who has beaten a mixed -- a full blood because, you know,
2 this man he beat this little girl because she was mixed
3 blood, you know. And I do what I can to, you know, help
4 that little girl and stuff so that she can get the
5 healing that she needs. But it makes me ashamed that,
6 you know, a full blood could do that to a little girl.
7 And where I was fighting for my child who's a mixed blood
8 while this man over here is beating this little girl, you
9 know. Where's the justice for that little girl?

10 (Speaking in Native language.)

11 (Applause.)

12 MR. KEVIN WASHBURN: Thank you.

13 JENNIFER CROSS: I'm Jennifer Cross.

14 (Speaking in Native language.)

15 My name is Jennifer Cross. I am from the
16 Leech Lake Reservation, and my clan is Martin. I am
17 coming today from a unique perspective. I work at the
18 Indian Child Law Center as a legal assistant, and I also
19 was given the opportunity to be an on-the-ground worker
20 at Leech Lake working every day in the trenches helping
21 families -- or helping children make sure that they stay
22 connected to their families.

23 To make a long story short, I just want to
24 touch on two quick points. Because of my experiences of
25 working for Leech Lake, it's important that we have these

1 rules because ICWA is applied differently, even within
2 the own state -- within the state of Minnesota, but not
3 mentioned in Alaska or North Dakota or South Dakota; so
4 it's important that we have consistency.

5 Because people will give more weight to
6 professionals who are not from the tribe, and they have
7 no actual knowledge about the history or the culture of
8 where these children come from. And then also the
9 importance of having tribal consultation, that will help
10 alleviate a lot of the issues that we see with bonding
11 and attachment.

12 For example, I was a foster care worker --
13 excuse me -- foster care placement for my niece and my
14 nephew. Because the tribe was consulted, Hennepin
15 consulted Leech Lake, it was a smooth transition. The
16 kids were placed with me immediately when they were
17 filing a petition. And I strongly urge that we use
18 language which is -- of "must" versus "shall" -- or
19 excuse me -- "must" versus "should" -- sorry -- because
20 it will force people not only to build relationships with
21 tribal social services, but it will help create long-term
22 relationship building.

23 So Miigwech.

24 (Applause.)

25 MR. KEVIN WASHBURN: Well, you've all

1 stayed a very long time, and we've heard some wonderful
2 comments. This has been enormously helpful. I want to
3 thank all of you for being here. And I want to say that
4 whoever said -- Laura Newton I think said every person in
5 this room is here because they care about children, and I
6 know that's true. Even though people disagree about what
7 that means, I know that's why every one of you is here,
8 so I honor every one of you for coming forth and giving
9 us your viewpoint because we need that. We need to hear
10 from everyone.

11 And especially I have to say those people
12 who we heard from who have taken in foster children,
13 those are heroes; and so I don't care if you're Indian or
14 non-Indian, if you try to do that kind of work, you're a
15 hero. So thank you all for that.

16 We've got a lot of work to do ahead of us.
17 We've got -- and you do, too, if you haven't given us
18 written comments yet because our deadline is March
19 19th -- May 19th. I'm sorry. I'm tired. We really want
20 to hear from you if you wish to do written comments as
21 well. This has been enormously helpful. It really gives
22 texture to those written comments when you get to hear
23 from you, so thank you for that.

24 I want to thank my staff, too. They're
25 tired. They all had to travel to be here. And we all

1 live in Washington, D.C. and do -- you know, this is
2 public service, the sacrifice to try to make the world a
3 better place in some small way, and we feel like this is
4 an important initiative in doing that.

5 And we thank you for all your comments and
6 helping us to try to get to a good place with our rule.
7 We will be moving forward. One more consultation over
8 the phone. If you wish to -- if you didn't get to say
9 what you wanted to say today, you can attend that way,
10 and we've got another consultation in Tulsa, Oklahoma; so
11 we're getting close to being through. And then we've
12 got to assimilate all the comments that we've heard and
13 then fashion those into a final rule.

14 So you all have been an important part of
15 that process, and I want to thank you for that, and I
16 especially want to thank all of you who spend every day
17 of your lives working to help children in need because
18 you all deserve credit for that. Thank you so much.

19 Thank you.

20 (End of proceedings 4:16 p.m.)

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