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
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
PROCEEDINGS

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

Lori.

LORI WATSO: Thank you. You don't have to write the prayer. Okay?

THE REPORTER: Okay.

(Ms. Watso recites prayer.)

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

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

(Prayer.)

MR. KEVIN WASHBURN: Thank you so much.

That was beautiful.

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

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

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

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

Gina Jackson, who is on IPA -- I can't remember what that stands for -- an IPA -- in Washington we only do acronyms, but she's on loan to us from KC
Family Programs, in her personnel agreement, I think. But Gina's been a really important part of our team that we brought on really to help with this kind of initiative, and she's been absolutely terrific in helping us keep this going.

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

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

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

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

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

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

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

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

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

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

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

Sarah Walter.

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

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

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

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

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

And as I mentioned, only a tribe can determine its own membership, so it's important that
tribes get notice and also respond to the notice about whether the child is a member of that tribe. So notice is required when an agency or court knows or has reason to believe that a child is an Indian child. Now, a proceeding could be a volunteer or involuntary placement, temporary custody proceeding, removal or foster care placement, adoptive placement, or any termination of parental or custodial rights.

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

Procedures are slightly different in emergency removal situations. And those, we make clear, must be as short as possible in duration. And the agency or state court must document whether the removal or placement is proper and continues to be necessary, and the requirement is that there must be imminent physical damage or harm to the child. So they also have to promptly hold a hearing to evaluate whether the continued removal or placement is necessary. They also have to
immediately terminate the placement or removal when the emergency has ended. Again, even in emergency situations, active efforts and determination of whether the child is or could be an Indian child is necessary. So they have to treat the child as an Indian child until a contrary determination is made.

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

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

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

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

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

Now, the court can order foster care placement only if there is clear and convincing evidence that continued custody with the parent or Indian
custodian is likely to result in serious physical, damage, or harm to the child. And this has to be supported by testimony of one or more qualified expert witnesses. And this is -- this is not new. This is in the statute, and this is not the new -- the new thing. But the court may order termination of parental rights only if there's evidence beyond a reasonable doubt; and that, again, is not new, but it's emphasized in the rules. But what the rule does do now is clarify what is and what is not clear and convincing evidence.

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

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

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

Can you hear me okay?

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

In dispositions, the agency must follow placement preferences or tribal placement preferences, even if there's a request for anonymity. The standard is clear and convincing evidence that a diligent search was made to meet the placement preferences and explain if
they couldn't be met. Notification to parents, custodians, family members, the tribe, et cetera, must be given, and documentation of the placements must be recorded.

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

Continuing with dispositions, good cause to depart from placement preferences must be based on parents' request. If both attest, they review the placement option. The child can request if they're able to understand the decision. The child's extraordinary physical or emotional needs as established by a qualified expert witness. And what it doesn't include is bonding and attachment from the placement or just the unavailability of a placement in a determination that active efforts were made to find placements. Good cause may not be based on the socioeconomic status of any placement relative to another. So the proposed rule clarifies that, which is very important.
In post-trial rights, the proposed rule establishes procedure to vacate an adoption if the consent was made by fraud or duress or if the proceeding violated ICWA. It establishes who can invalidate an action based on a violation of ICWA, which is the Indian child, the parent, Indian custodian, the tribe, regardless of whether that particular party's rights were violated. The proposed rule also establishes the adult adoptee's right to learn their tribal affiliation and encourages states to designate someone to assist in with adult adoptees and also requires notice of any change of the child's status, such as changes to be given to -- to the parties.

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

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

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

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

MR. KEVIN WASHBURN: All right. We promised we would be relatively brief, and so we are now ready to hear your comments. And so -- which we're
anxious to do. So we ask you to, when you make your
comments, step to the mic, state your name clearly, and
spell it if it's an unusual name, and also give us your
tribal affiliation, too, for the record. Thank you so
much.

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

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

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

But, myself, I see some of these comments
there, but some tribes receive per capita payments. Some
have trust funds for these kids. For me, I adopted two
children from Prairie Island. They were in state
custody, and they did receive some monetary subsidies
from the state; but during that, when they found out the
affiliation of the tribe, I was told that the minute they
received their dollars or monies when they turned of
legal age, that they would have to reimburse the state. So my question is, is that if the state

takes that responsibility and ICWA does not come into play or they don't move that child to where it is

necessary to be, what -- what financial obligations are those children or their parents obligated to if they do receive per capita payments under that tribe's organization or under the NITC's gaming revenue allocation ordinance? So the concern I have is that what penalties are going to lie if that happens, if the state continues to hold that child and subsidize those needs and wants for the parents there? So I'm a little set back on that one, if that -- if there's been any talk with the state on. So that's my main concern on that one.

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

RON JOHNSON: I just want to thank Andrew Small, too, because he helped me in that procedure. He's been an awesome help in that. So, I mean, I really encourage -- yeah, it's tough, but it's a good thing to do for them, so...
MR. KEVIN WASHBURN: Thank you, Ron. When you take that on yourself, a chairman of a tribe like that, it's really good leadership for the rest of the tribe.

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

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

So I'm glad you put us on to that issue because it's something we need to be aware of. I don't have a lot of answers for you, but it's something that we will certainly look at. And we will take that back to ACF because we've been working -- you know, back in Washington to try to work with their policy and see what policy changes might need to be made in their programs. And they, frankly, have been very willing to talk to us.
about these things. And this is a -- kind of a nationwide problem, but it's nice to -- it's important to hear how it plays out individually. Thank you.

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

Thank you.

MR. KEVIN WASHBURN: Thank you.

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

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

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

But I do work for the Department of Health and Human Services Administration for the children and families. I work out of the children -- or regional office from Chicago, Unit 5. What I can you about Title IV-E -- because I am a program specialist, I work with tribes in Michigan -- is that every regional office does have a child welfare program specialist assigned to work with your state and the tribes within your state. And to
make sure that the eligibility criteria are being met and that you are getting the monies that you're entitled to, I would recommend that your tribal social services directors do contact your regional office program specialist to make sure you're getting what you're entitled to.

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

MR. KEVIN WASHBURN: Thank you, Irene.

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

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

The Department of Interior and the Bureau of Indian Affairs have taken a commendable action in proposing these regulations. As we are all aware, the absence of Federal regulations has led to both state
inattention and intentional misuse and manipulation of
the law. It is inconceivable that after 37 years, we are
still confronting those who believe they know better than
we as tribal members what "family" means and what "tribe"
means. Again, the Department and Bureau efforts have
created the potential for heightened application of this
critical law, and we thank you.

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

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

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

Some of the changes we would like to suggest for the proposed regulations are as follows:

First, all descriptions and references to children who are eligible to receive the protection of ICWA must be referenced "member" and "membership," not "enrolled" or "enrollment."

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

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

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

No more tribal member children or any of
them eligible for membership should lose the protection ICWA provides. It will secure their identity, their sense of family, and ultimately their well-being.

Thank you very much.

MR. KEVIN WASHBURN: Thank you, Madam Secretary.

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

So thank you for that.

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

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

I emphasize the unending part of that description because we never stop having to confront those who would avoid or ignore or weaken the law when it is supposed to be applied for the benefit of children -- Indian children and families. We fully applaud the
Bureau of Indian Affairs efforts to promulgate enforceable regulations that leave very little question as to how a state or its political subdivisions must act so that neither disinterest or intention robs these children of their rights and their identities and their families and their futures as potential tribal leaders. These are lost if our children are not stable and secure when another government must impose its ways on these children.

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

I sincerely believe that there's no excuse for the continuation of this damage to our children and families. Our own legal experts will respectfully advise you as to oversights in drafting that may have occurred between the promulgation of the recent guidelines and
regulations. We all know nothing comes out in perfect form the first time around. But I want to emphasize on behalf of the Grand Portage Band of Minnesota Chippewa Tribe and make it very clear that before we fully support your efforts and will continue to offer our partnership to you to make sure that these needed regulations become a reality.

Thank you.

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

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

Thank you.

And Chairman Deschampe came from a long way.

CHUCK SANDERSON: Good morning. Excuse me. Assistant Secretary Washburn, Members of the Panel, thank you for being here today. My name is Chuck Sanderson.
I'm the ICWA director for Spirit Lake Nation, located in Fort Totten, North Dakota.

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

COUNCILMAN BAKER: I can't hear you.

CHUCK SANDERSON: Thank you, Councilman Baker.

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

So I -- do need to go back and repeat? Okay. I follow direction well, so...

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

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

One of the experiences that we've had at Spirit Lake, we have had multiple Native American families come to our agency and say, "We would like to become foster homes." We ask, "Where do you live?" They said, "Well, we are just outside the reservation."

"Okay. Well, then you need to go to the county to become licensed." They look at us and say, "We're not interested then. We want the tribe to license."

Now, I know that Federal IV-E I believe allows for tribes to license off reservation under their Title IV-E agreement. I would like to see these guidelines, these regulations put a little bit more meat behind that of saying there must be a commitment from the state court and the state agencies that Federal tribes will be recognized in their licensing procedure whether it be on or off the reservation. That would be one suggestion that I would have. I believe, along with many
other people, that would open up the door. Let me give you an example.

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

We need to figure out a way -- and maybe this is just a state of North Dakota problem, but I don't think it is. We need to figure out a way of where we can get more Native American families. We need to figure out a way that we can get relatives more involved. And what I mean by that -- and please don't take this the wrong way, but I call it "relative rehab." All of us -- well, I shouldn't say all of us. I in my young days did a lot of stupid things. Okay. And like other people they have, too. But unfortunately some of the -- some folks got caught. I was lucky, I didn't. Okay. But that lingers on in their background check. We have very good people that because of one reason or another are disqualified because of background checks. I think it's
up to us to clear the way so that we can look at how do
we safely get relatives greater access to the children
that they love.

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

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

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

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

Thank you.

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

But we are trying to do something here that
will give you -- protect tribes' legal rights, and your
employees of tribes' legal rights to have access and
notice to children. But, honestly, it's that kind of
cooperation on the ground that's really going to -- you
know, we can give you more leverage, but it's that
cooperation on the ground that will make all the
difference. So thank you. Those are great ideas which
you presented.

Thank you.

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

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

Don't be staring at me that way.

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

And there was just a couple of questions,
first of all, that I was concerned about was the word
"proposed." So does that mean that what we're saying
here -- what you're saying in this new -- what'd you call
it -- "enforceable rules" that you're making here, that
that's going to be like a Federal law?

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

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

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

WILFRID CLEVELAND: That's good to hear.

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

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

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

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

One of the things that we've heard in other
comments, there are some exceptions to the Indian Child
Welfare Act. For example, when a child is -- I won't get
this language quite right -- is in imminent physical
danger. And one of the things we've heard is that people
have taken those exceptions and actually turned them into
loopholes in some respect so that they don't have to
apply the Indian Child Welfare Act, and we're watching that. And that's why we think these terms need to be defined better so that everybody knows when there is an exception and when there's not an exception to the Indian Child Welfare Act. So that's the kind of thing that we're trying to get to.

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

Sarah would like to add a word.

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

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

WILFRID CLEVELAND: Yeah, somewhat.
MS. SARAH WALTERS: Debbie, do you have anything to add to it?

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

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

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

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

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

MR. KEVIN WASHBURN: That's right, Mr. Cleveland. This session is for tribes, basically,
and for tribal officials, tribal employees. The other session -- because we have a responsibility to consult specially with tribes, and so this is a session just so that we can speak with tribes. And then we have the public session because there are other people that are interested in these issues, and we certainly want to hear from those folks. But, you know, we have a heightened duty of consultation with tribes.

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

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

Because, like I was saying, way back -- I don't know if lawyers or you -- I'm not going to say lawyers would know better -- they make money off
these kind of cases that are going on or not. But I'd just like to say thanks for giving the tribes this consideration, going around through the Indian Country and giving us this opportunity.

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

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

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

And so -- and let me just comment on one other thing. Mr. Cleveland, you're right, we probably
should have done this years and years ago. Someone once said that wisdom too often never comes, so please don't criticize it when it arrives late.

Chairman.

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

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

One issue we're dealing with down here, though, is that grandparents that are okay is the grandparents' rights. We're having an issue right now, and it seems to have surfaced here just in the last couple months, is that those kids that are in foster
care, the grandparents want to visit with them, and they're being denied that, they say; but we don't know the full case on that. I don't know what's all involved in that. But through ICWA I don't know if there's any kind of ruling in there or wording that would protect the grandparents in light -- if the kids were placed into a non-Native foster care facility. So I'm kind of worried about that, that we're still being challenged by that as tribal leaders to what we can do to help them out in that case. So thank you.

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

Thank you.

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

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

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

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

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

While case law and regulation discuss that at any time in the proceedings, tribes have still had to defend when we determine the child was eligible or an enrolled member and not specifically a case that we insisted and had to deal with a few years back where instead of worrying -- you know, devoting our time to the child, we spent the majority of that time while the child
was in foster care arguing about whether the state court should transfer jurisdiction when the child was determined to be an Indian child, when really we should have been more focused on the best interests of the child instead of all that time in the legal world, even though I say that as an attorney, that it seemed like it was more about the legal aspect of it and not -- not the child.

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

Include tribal representative before state court. This would allow tribal representatives who are not necessarily attorneys the ability to come to state court. And again, I say that as an attorney, but a lot of times our people on the ground that aren't licensed
attorneys are the ones that are most knowledgeable in ICWA and can come to the state court and explain it to everybody. I really think that that should be something included in our regulations.

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

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

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

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

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

And it is nice to have someone from the Children's Bureau -- the Federal Children's Bureau here, and I will tell you they have been asking about reporting, just requiring states to report how well they have complied with ICWA, and just getting them to do that
forces them to do better. So there's a lot of different ways to enforce.

Would you like to say a few words?

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

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

PAUL MINEHART:  Thank you.  Good morning.

I want to thank you for coming here and giving us the opportunity to address you directly. My name is Paul Minehart, and I'm a tribal attorney with the Leech Lake Band of Ojibwe. And I just want you to know that the Leech Lake Band of Ojibwe supports the proposed rules and sees them as being needed and good.

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

And speaking to that, you know, one of the things -- even though I don't know exactly how we got here -- one of the things -- I have a theory about that, is that child safety is equated with removal. And really removal is one of the tools that's available to ensure the safety of a child, but there are other tools available. But I feel like in Minnesota it's too
commonly used as the tool to protect a child, remove the child from the home.

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

I also want to comment on Rule 23.117, which deals with good cause to deny a transfer to tribal court. And so 23.117 tells us what is not good cause. And, again, very supportive of that rule. I think it's very good. I like what it says. But the 1979 guidelines, they defined what is good cause. In the proposed rule, we have what isn't good cause. In my mind, that opens it up to really expand how a court can find good cause. Because as long as it's not one of those things listed -- and I didn't take notes on what
they are -- but advanced stage, whatever else was there, you know, any thought that comes to mind in terms of good cause could become good cause.

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

I'd also just want to comment on Rule 23.122, which is the qualified expert witness testimony and who can serve as a qualified expert witness. Again, I like that a lot. I think that's a good change from what we had previously with the other guidelines, and I'd like to see that become a rule as well. One of the things I'll just comment on that specifically. Under the 1979 guidelines, when you got to -- you know, it had an expert in their own field, a doctor or medical person who had knowledge of the Indian community. I like the change that's in the proposed rule. It's within the Indian child's tribe, and it stays within the Indian child's tribe, and that's what you need to be a qualified expert witness. That's a good change.
I just have one more -- well, a few more comments. Rule 23.121, A and B deal -- what they discuss is the need for qualified witness testimony when the court is ordering foster care or ordering termination of parental rights. The language of that rule says that the court may not order a foster care placement or may not order termination of parental rights.

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

Just to finally -- I did -- you asked for comments regarding the word "must" and the word "should," and I did go through and circle all the "musts," and I did not find a spot where I thought that "must" was used inappropriately. I don't feel like the proposed rule is
going beyond what's already required under the law. So I think it's a good use of that, and I didn't find places where I thought that should change.

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

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

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

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

In following up with the gentleman that just spoke, in my experience working in the South Dakota courts over the last 20 years with all of the nine tribes
in our state, one thing that has always stuck out to me was the expert witness. Now, I don't know because I haven't been able to read thoroughly the guidelines, but does it say in the new guidelines that an expert must be involved from the beginning of the case?

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

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

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

And I think that it's next to impossible for an expert to take mounds of documents to go through. But one thing that I think is significant that I have seen over the years is that I really do support that the expert should be coming from the particular tribe.
However, in many of the cases I have been involved with that have involved termination of parental rights, is that the ICWA expert has been retained by the State of South Dakota, and therefore his -- his fees were paid by the Department of Social Services.

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

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

And so we are looking at funding and how funding issues can impact the way ICWA works. Again, the rule won't deal with that, but it's something that we're working with and we're working with again ACF, Children's
SHIRLEY SCHWAB: Because it's important -- it's important because I've seen many times where the children's attorney was supporting -- wasn't supporting termination of parental rights, and they have to go up against the ICWA expert. It makes it very difficult.

MR. KEVIN WASHBURN: Thank you. Good point.

CANDACE LAGOU: Good morning.

MR. KEVIN WASHBURN: Good morning.

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

This is a very good piece of work. I really liked it when you said that it's enforceable. I was worried about that, if it's just more words; because there's things happening in Indian Country, and this needs to -- that needs to be enforced. I wanted to talk about active efforts and how they begin immediately and
how they construe details in court proceedings on what
the agencies are doing concerning them.

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

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

And this also includes the overcrowding.

In the states they have area measurements per person.
This is not how it happens on reservations, and it never has been. I remember growing up in a -- we were actually rich. We had a two-room tarpaper. And we bunk bed and crammed in, and this is -- was traditionally how we lived. An uncle would show up, sure, and we'd move out of the bedroom and make room for him. So this is traditionally how we as Native Americans look at things is the more, the merrier. This is family, we'll take you in.

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

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

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

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

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

I was raised in foster care. I aged out in 1977, so I was not -- I did not receive the benefits of
going home and knowing my people.

Thank you.

MR. KEVIN WASHBURN: Thank you, Candace.

Thanks for your commitment to helping Indian children. That's terrific.

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

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

(Recess 10:33-10:42.)

MR. KEVIN WASHBURN: We will go until a little bit over an hour. We'll have a public session this afternoon from 1 to 4.
We've been joined by our regional director, Diane Rosen. By the way, she said she brought "save the date" cards for BIA Partners in Action conference, which is going to be June 23 and 24 in Baraboo, Wisconsin. Is that right?

DIANE ROSEN: Yes.

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

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

We are open for more comments.

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

First and foremost, the tribe cannot extend enough support for the implementation of enforceable regulations so that after 37 years, the intent of the ICWA may finally be fully realized. My brief comments
today will be followed by the submission of comprehensive written comments in advance of the May 19th deadline.

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

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

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

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

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

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

Thank you.

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

Thank you.

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

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

NELDA GOODMAN: Excuse me for falling all over you.

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

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

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

But six months to a year later, I found out -- well, she got tired of -- she didn't have no clothes but the clothes she wore and a little suitcase of personal stuff. And so I said, we'll try to get you some
help financially, some clothes to wear. So we did that.
And she needed medication, and the treatment program said
she needed something called Seroquel; and now knowing
what I know about medication, it's a psychotropic drug
that they give children when they have emotional
problems.

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

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

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

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

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

MR. KEVIN WASHBURN: Thank you for sharing that. These are -- there's some really tragic and heartbreaking stories. It's amazing how many of those there are, too. So thank you for sharing that one. We hear those all over Indian Country, and these are great
challenges. And we can only -- we can improve the law a little bit, and that's what we're hoping to do, but I think the challenges are going to be with us for a while.

Yes, sir.

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

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

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

What -- what is being done to the state for not reporting these to ICWA? That's one question I have. Because to me it seems like, well, once they find out, okay, well, we'll transfer the case over to the tribe,
and then that's it. I know a lot of us -- if you follow
along with the people down in Rapid City, the
racketeering the state had against the Native people
there where they were coming in and taking their children
and placing them in non-Native homes.

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

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

I know I had some other stuff I forgot, but that's one of the very important pressing things I see that needs to be addressed, especially with the state and tribe and reporting these to the tribes in a manner of
time, and they should be held accountable if they do not report.

    Thank you.

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

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

    Thank you.

    LENORE BARSNESS: Good morning. My name is Lenore Barsness, and I am the director of human services
for Leech Lake Band of Ojibwe. Our council members were very sorry that they were not able to be here and participate this morning, but I have to say they were a little bit relieved that I was able to do so.

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

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

So one of the things that caught my eye in
the guidelines and regulations were references to, you know, in lieu of -- were references to customary extended family; customary family, you know, not only looking at who is your cousin, who is your aunt and who is your uncle, but what may be customary to that community or even to that family in particular in who we see as extended family, whether we're looking at foster placement or adoption.

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

And I think one of the things that we will encounter and do encounter when we're looking at that is when we're dealing with state systems and county systems, and that is so foreign to them, you know, and in understanding and it's difficult for them to wind their way through. Every time I deal with a tribe, it could be a different rule, and I know that's one of the
difficulties in building those kinds of relationships; but we're not a foreign country, so I think that's really helpful.

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

And we are just beginning, but we are held to a similar standard when we look at what our infrastructure looks like in regards to child welfare and other things, of course. So I think those -- I think we have to also be careful when we adopt regulatory procedures with that in mind. You know, the tribes have not had the privilege for that kind of financial support for its infrastructure until very recently, so we are still in our infancy. And not only in creating infrastructure that may be well matched to a state infrastructure, but an infrastructure that is well matched to our cultural uniqueness.
So that's my comment, and I don't know if that pertains or not, but I just needed to say that.

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

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

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

MS. SARAH WALTERS: 12 days.

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

CHUCK SANDERSON: Chuck Sanderson.

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

We've heard other folks talk about relative care, grandparent care, and the -- it would be interesting to do a survey of grandparents that have assumed custody and responsibility and ask them the
question, "How well are you supported either by the systems or by the community?"

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

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

Thank you.

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

And we know that Spirit Lake has -- is doing much better in part because we provided more
resources, so we know that that's a big part of this. Getting a good rule in place won't solve all the problems. We need to help -- tribes need to be able to have the capacity to enforce the rule and respond to notice and participate in these proceedings. So that is on our minds. Tribal courts, too, need to have the resources to deal with these things.

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

Thank you, though. Good point.

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

The Chairman earlier this morning gave our official position from Grand Portage, but I think it's important too -- my father was from the Red Cliff Nation over in near Bayfield, Wisconsin. I think it's important we talk about the rules. But I don't think it's important that we -- I'd like to give a personal experience and personal perspective of how important the
Child Welfare Act was when it was passed in 1978, and at that time to undo a lot of the harm and damage that it had done to our children, our people over the years.

I come from a personal experience of having to be placed in white foster homes after my mother passed away. She really told me who I was. I was about six years old the first time I experienced race prejudice.

My father after World War II worked his way through business college. He wanted to be an accountant, so he took the Civil Service test and was offered a position at the Veteran's Hospital here in South Minneapolis, and he took that.

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

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

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

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

Just because of the negative experience she experienced in the 1930s when she was able to go to a public school after the Indian Organization Act and
Johnson O'Malley and that, because they lived close to a public school, she was able to not go to the boarding school anymore. She was able to stay at home with our community and our family and then go to the public school. She only made it to sixth grade just because of the negative environment in that school system.

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

Well, I lost her when I was nine years old. You know, unfortunately, her and my dad were in a car accident; and she didn't live and my father did. Six children living in South Minneapolis. I'm nine. My youngest brother is 16 months old. Fortunately, my three
younger brothers were 16 months and two and a half. They were able to be placed with relatives. My youngest brother was placed with an uncle on my mother's side. My other brother who was two and a half was placed with my grandmother on my father's side. They were fortunate.

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

So many times me and my three sisters are the only Indian kids in the school system. As much as I -- as much pride as my mother tried to instill in me to be strong enough to deal with much of the prejudice that existed in the United States toward us as a people, it began taking a toll on me. So how important the Indian Child Welfare Act is, is that reinforcement of identity, positiveness of identity, culture is when I didn't have that no more. I couldn't -- I could go to school and get called a name, but I couldn't go home to my white foster parents and -- they couldn't understand that, or they
couldn't sympathize with me. They couldn't reinforce my positive image because they knew nothing about it. They knew nothing about who I was as a Shinobi and our culture.

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

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

You know, 1978 when the Indian Child Welfare Act came about, finally -- finally maybe some of
our young people will not have to experience what I did and the toll that it took on me. But I somehow made it through high school. Fortunately, I was an athlete. I was a very good runner. I was on the cross-country and track. I played basketball. The creator gave me these tools, and that's what got me through school. Because I knew that once if I could be on an athletic team, then maybe some of the kids would tolerate me or accept me because of some type of -- I could contribute, you know, in a positive way; and that's what sustained me, but I'm internalizing all these negative things inside of me.

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

It wasn't really until -- of course, one of the pitfalls of that, that happened to many of our people, is we've got all this pain inside of us that
we're carrying. Don't even understand -- it's in there
many times, but with the culture and the language and
culture that my mom instilled in me, I was able to at
least continue developing as a human being.

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

I always asked my mom, "How come you don't
speak to me the way you speak to grandma?" "Well, I want
you to speak English. I didn't graduate from high
school. I want to make sure you succeed in school, and I
think if I teach you the language, that that might be an
obstacle for you to really learn English well and
graduate from high school." So she loved me, she loved
our culture, she loved our language; and it must have
been very hard for her to not teach me the language.
So I had to go to college to learn how to speak our language. That's why I went to the university. I so wanted to find myself, my identity. And so probably one of the best things that happened to me is joining the American Indian movement in 1970. Because of what I was hearing at these meetings, it had me proud again of who we are as a people. That's where I began starting to regain my pride.

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

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

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

So for the first time now we come to these sessions, and I really believe you're hearing us. You're not only our hearts, our minds, but the spirit that we really believe has to be brought back into our communities, and it's very important that that spirit starts with our children, virtually that positive spirit about who we are as tribal people in the United States. And I think that's what's important because those are the people that are going to be able to deal with a lot of racism that exists.
I'll just end this with one -- because I was asked this question. I'm also a trainer with a group that has helped me heal as a Native person. We do racism workshops. We try and keep people how racism came about in this country and how it's important to understand this thing called -- specious thing called race. And so it was in that -- it was through that -- these trainings that I began to heal again, to learn what had been done to me as far as racism.

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

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

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

I'm always looking for young people to step into the shoes of some of us older folks who have taken on that responsibility. I just wanted to share that I think it's important we hear the anecdotal stories to personal experiences and how I -- I was able to -- I meet many foster adults now, Native people that grew up in foster homes, and they're really struggling. They're really struggling because there wasn't an Indian Child Act in the '50s and the '60s and until the late '70s. I see many of these people, and we share our experiences;
but I can just still see the pain and the struggle they're going through to undo much of the harm and damage that they experienced.

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

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

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

I'm here today on behalf of our Tribal Chairwoman Erma Vizenor, who could not be present, from the White Earth Nation. And Erma wanted to share that the White Earth Nation supports the BIA's proposed rule that clarifies the expectations of ICWA. And our support
for the proposed rule includes the definitions for
previously undefined terms, such as active efforts and by
providing guidance and interpretation of important
concepts, such as the QEW testimony, travel determination
of membership; and I just want to echo that we support
some other comments in the room today, that it should be
always membership, and not enrollment; and it should
always be tribally defined.

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

White Earth Nation is supportive of the
majority of the provisions, but we do ask for some
consideration of the following. And the first is to
consider strong data collection and monitoring of states'
compliance with ICWA, to annually review the state
outcomes, and to tie ICWA compliance with state Title
IV-E reimbursement for stronger consequences for failure
to comply with it. We think that if you tie this to
money, then maybe the states will begin to listen and be
consistent in their application.
Second, we're concerned with some of the requirements to obtain QEW testimony within 30 days of removal, because it's important that the QEW testimony be provided by tribal people who are truly knowledgeable about the tribe and child rearing practices. And that burden, since it typically lands upon the tribe, we ask for 60 days to be able to provide that so that we can ensure that states aren't out there just trying to find anyone to provide this, but that it's actually quality testimony from the tribal itself.

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

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

So in closing, the proposed rule is welcome, it's necessary, to address the implementation of
the ICWA and approved consistent application and hopefully provide long overdue consequences for states who continue to ignore it, such as our state. So on behalf of White Earth Nation, first of all, thank you for developing the BIA guidelines and listening to public comments and developing the proposed rule that we're talking about today.

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

And I just want to say thank you.

Hopefully we can stop this at all of the local levels and not have to have these cases proceed on up to the Supreme Court.

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

JERI JASKEN: My name is Jeri Jasken from
White Earth.

MR. KEVIN WASHBURN: Thank you, Jeri.

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

Thank you.

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

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

JUDGE ANDREW SMALL: Thank you, Assistant Secretary. As several of the tribes have testified,
there will be written comments -- more detailed written comments being submitted, but I did want to take the opportunity since people were here with you to suggest something that might be considered.

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

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

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

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

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

Thank you.

MR. KEVIN WASHBURN: That was Judge Andrew Small.

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

Thanks.

We've got about 15 minutes left. We don't want anybody to not get a chance to be heard if they'd like to be. I don't mean to hold you hostage either if
anybody's been able to get up to the mic.

Is there anybody else?

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

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

MR. KEVIN WASHBURN: Thank you. Thank you.

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

And so sometimes -- you know, we can learn from all different people, and we need to have the input of all different people. So -- so we're grateful for that. We invite you to stick around, if you'd like to be around this afternoon, to hear what those comments are.
Sometimes it helps you to figure out what your comments to us should be if you hear what other parts of the community have to say about what we're doing.

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

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

You all get to live in God's Country; and we're out there in Washington, D.C. So thank you for all the good comments, and we really appreciate that. Thank you for coming out, and thank you for the comments that you will submit. Again, the deadline's coming up quick,
so please get those comments in if you want to submit written comments.

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

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

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

Thank you, thank you, thank you. Miigwech.

(Recess 11:49-1:04.)

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

This is our public session to hear comments on our
proposal and to take those back, so hopefully we can
learn from you and get good ideas about how the proposal
should be performed before it goes to a final rule.

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

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

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

My name is Kevin Washburn. I'm the
Assistant Secretary for Indian Affairs. I'm a member of
the Chickasaw Nation of Oklahoma, I have been serving in
this role for two and a half, nearly three years, since before Obama's election for the second time to the presidency.

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

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

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

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

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

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

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

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

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

So that's the purpose for being here. Those proposed regulations were proposed in March, and they are being worked on. This is a big part of the work, getting out to the public and getting out to tribes and hearing what people think they need to look like. And so they're a draft -- they're a proposed regulation at this point, which means they're just a draft. They are subject to change, and we will take all the public comments that we get and assimilate those and try to take the ones that we really think are improvements and incorporate those into the sessions.
So the one thing I would add is guidelines are just guidelines. Rules are enforceable. It's really important that we get these right because they are enforceable. They won't be ignored. They're going to be rules. And so we need to hear from everybody so that we can make sure that we get them right and so that we ensure that the Indian Child Welfare Act is properly implemented coast to coast. That's the goal.

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

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

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

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

Agencies, state agencies or private
agencies, must ask if the child is an Indian child or if they have reason to believe that the child may be an Indian child, they have too treat the child as an Indian child until it's determined that the child is not an Indian child.

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

There's no time limits for tribes to intervene in an Indian Child Welfare Act case. So at any time the tribe determines a child is a membership -- is a member of the tribe or that -- or becomes aware that there is an Indian child welfare proceeding, they may intervene. A proceeding may not begin until 10 days after each parent or Indian custodian and the tribe receives notice that that proceeding is going to go forward, or 30 days if the Indian custodian, the parent, or tribe requests an additional 20 days.
I mentioned earlier emergency removal. Those must be as short as possible. And the agency or state court has to document whether the removal or placement is proper and continues to be necessary and promptly hold a hearing to evaluate whether the continued removal or placement is necessary. And if they determine that it is no longer necessary, the child must be immediately returned to the child's home.

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

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

Thank you.

MS. DEBRA BURTON: Thank you.

Transfers to tribal courts, we clarify in
the proposed regulations that the right to transfer to tribal court exists at any stage of the proceeding, and it occurs with each proceeding. And the state court must transfer unless either parent objects, the tribal court declines, or the state court determines that good cause exists to deny the transfer.

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

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

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

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

The third preference is a layperson that has this kind of knowledge of the child's tribe and has
experience in delivery of services to the tribe. And the fourth and least preferred category is a professional that has education and experience that can demonstrate the knowledge of the prevailing social standards and practices within the tribe.

And Gina Jackson's going to take over now.


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

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

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

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

In post-trial rights, the proposed rule establishes procedures to vacate an adoption if consent
was obtained by fraud or duress or the proceeding violated ICWA. It establishes who can validate an action based on violation of ICWA, the Indian child, the parent, the Indian custodian, the tribe, regardless of where that particular party's rights were violated.

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

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

One of the most important things right now to remember is that the comments that you give here today
can also be given in writing, as well as additional comments. We have a couple of other opportunities. And we're looking for comments specific to any provision of the proposed rule, including specific language that you would suggest, in addition or in lieu of any kind of specific language you are very welcome to have, as well as any other comment.

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

Thank you.

MR. KEVIN WASHBURN: Thank you, Sarah, Deb, and Gina. We are now ready to accept public comments. Thank you so much for coming out. We're thrilled to have so many people interested. And the mic is now open; so like I said before, when you step up to the mic, please
identify yourself and who you represent, if anyone, and
make sure you state your name clearly for the court
reporter. I invite anybody to come up as they wish.

RICHIE SMITH: I'll do it.

MR. KEVIN WASHBURN: Thank you.

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

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

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

ICWA guardian litems protect the best
interest of the Indian child by recognizing that the
child and the tribe are interwoven, and that should never
be broken. I'm supporting the new BIA guidelines. My hope is this will help reduce the number of out-of-home placements by protecting our American Indian children by keeping them connected to their tribe, family, and our culture. These new guidelines are in the best interest of our American Indian children.

Miigwech.

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

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

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

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

Growing up I knew that I was American Indian, and yet I had no idea what it meant to be Indian. I struggled with identity; and as a result, I carried a tremendous amount of self-doubt and shame. It was working in Indian Country that I began to learn about my culture. My journey home really began in 2002 when I participated in a wiping of the tears ceremony for the first time. I finally felt as though I was -- that I belonged, and I was recognized to be one of theirs. My
heart and my spirit had long yearned for that. I was now on the road to healing. What was most memorable about that day was that my parents were standing outside of the circle supporting me as I went through ceremony, and it all culminated in my mind, and I was finally able to articulate that this was exactly what my parents could not give me all these years. They provided me with all the love and support and advantage they could, but they could not give me my culture.

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

I share this story because I feel it
illustrates that not much has changed for Indian families. Parents are still losing their children, and these children are losing their culture, and tribes are losing their future. There are many, many schools of thought as to what constitutes good child welfare practice. In addition to the main tenants of safety and permanency, we need to consider culture to be of equal importance. With culture comes a host of family stories and traditions.

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

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

Thank you.

(Appplause.)

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

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

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

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

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

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

After six long years, Sierra was returned to us. Although we were not supposed to see her again, she came back at age 15. Gone was the happy creative child who loved to play with her sisters. She was dressed all in black, black fingernail, dried blood to scare the kids at school. She was a devil-worshipping teen. She had learned this in St. Cloud Children's Home. She met another teen at a roller skating rink where they
devised a plan to kill those who were destroying their lives, parents, went down the road filled with community to the anti-Christ.

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

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

I am proud today to be Sierra's mother. She is here with me. She is going to speak in a moment. And I always will be. She has successfully completed her probation program and paid her fines. She is a student.
at Itaska Community College in Grand Rapids, Minnesota, has earned high grades. She is happily married.

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

If we had been able to adopt the girls, would there have been problems? Of course. Fetal alcohol was involved here. But I do know that the pain that they suffered was far greater even than the pain I suffer as a paraplegic and as the pain of losing them.

Two years ago Sierra wrote to me. This is a little text. This is what's happened in our relationship, and then I'm going to close.

"Mom, thank you for everything. It means a lot to me for the words of support and encouragement. You and dad are an amazing, one-of-a-kind people. Truly, I am rich and blessed, not in the materialistic sense, but by the loving deep bond we share. There's no higher proud honor for me than to call you my mom and dad. It
gives me strength and courage to continue forth in my life. You were always there for me. Thank you so much. Words cannot describe. I love you. Sierra."

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

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

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

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

MR. KEVIN WASHBURN: Thank you.

CAROL CAMPBELL: Sierra.

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

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

I came to live with Carol and Gene when I was seven, and I finally realized that I was home. I immediately had a secure attachment with them. I think that's like really important with the bonding. Parents can love their children, but they need the secure
attachment which will help with their physical, emotional, and intellectual development.

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

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

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

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

Thank you.

MR. KEVIN WASHBURN: Thank you, Sierra.

What are you majoring in?

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

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

(Applause.)

GERTRUDE BUCKANAGA: Good afternoon. I do not want to be -- I don't want my spirit to be somewhere else where it's -- I don't want to know where it's going. My name is Gertrude Buckanaga. I'm a member of the White Earth Band of Ojibwe. I've been married for 61 years, and I have a real challenging job. I've been working at Upper Midwest American Indian Center since 1986, working
in Indian child welfare. And what I'm going to speak on today is on membership.

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

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

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

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

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

I'm working with children that are enrolled in the -- you know, their parents come from Belcourt, Standing Rock, other tribes like Pipe Ridge and other tribes in the -- that live in an urban setting. Whether they live in Minneapolis, St. Paul, or one of the metro areas, these people are Indian. They are not counted.
So we have to look at future generations. We have to look at our grandchildren and our great-grandchildren. They are Indian whether they have different amounts of blood. But that's the main thing that I want to present today.

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

That's my spiel for today.

(Applause.)

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

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

Well, when he went to jail, his parents filed for temp custody. That was granted to them, and I
nor the tribe was ever notified. Now they filed for permanent custody, and I just received notice the beginning of March. In the temp order of 2014, they acknowledged I was Native, and the children could be eligible members, but that's as far as they went with that. Despite that, the judge signed the temp order. I asked the court to appoint me an attorney, but they said I had to get my own attorney.

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

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

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

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

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

Thank you.

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

(Applause.)

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

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

My mother hit hard times, and we ended up
homeless. No relatives helped us, no friends, and no
tribe or Indian organizations. After sleeping in the
people's backyards, peeing in buckets, and getting food from restaurant garbage cans, we ended up in an abandoned apartment. There were strangers there. No electricity, no running water, or no food. We slept on boxes.

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

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

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

The tribe had no business in my life. They didn't help when we were homeless or when my mother was struggling to take care of us. They came into our lives when we didn't need them, and they fought hard to disrupt us when we were finally thriving for the first time in our lives. My mother didn't even know she -- the name of the tribe she was a member of. She was enrolled when she was a baby by her father. He was abusive and left the
family when she was young, and she had a very hard life. She never went to the reservation, never practiced any Native culture, nor told us that we were part Native; yet, her slight tribal connection caused so much trouble for me.

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

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

In most ways I am no different from other
kids in foster care. I need security and stability, and I had it with my parents. What made me different was one-sixteenth of my blood and nothing more, and that difference nearly prevented me from being adopted by the first people I called mom and dad. Is that what tribes in BIA envision for kids like me, or can they just let us be kids and allow us to stay in homes where we are loved and well cared for, regardless of our genetic makeup or eligibility for membership in a fairly recognized tribe?

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

Childhood is fleeting. Traumatized children should never be ripped out of their homes. I'm now 20 years old, and I have done extremely well in my non-Indian home. I work, go to college, am active in my church as a youth leader, have a great relationship with my family, including my biological family, and I finished as the highest ranking male student in my high school.
I'm so thankful ICWA wasn't used to remove me from my loving and stable home; but I am angry it nearly was, and I'll do everything in my power to prevent it from happening to others like me, including testifying before Congress and enhancing the media to help.

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

Thank you.

(Applause.)

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

CHRIS MOORE: It's Moore.

MR. KEVIN WASHBURN: Moore. Thank you.

Thanks for standing up and telling your story. Thank you.

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

My wife and I can have biological children, but we chose to adopt because there are more than 100,000 children who have been abused, neglected, and/or
abandoned in U.S. foster care waiting for permanent families.

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

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

We are also interested in their non-Native heritage as well and we researched that. To deny my sons their non-Native heritage is to treat them as less than the full human beings that they are and disrespects most of their biological family's history. And yet the BIA wants to define them only as Indian children and not as multicultural children and wants to limit their placement
options on that narrow view -- based on that narrow view of who they are. We should all be deeply offended at that proposition.

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

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

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

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

Do you think Congress would have passed ICWA for kids like that? It really is nonsensical to apply ICWA to kids like Chris when you think about it. Congress was trying to put a stop to the unjust removals of Indian kids from their homes by social workers who used non-Indian parenting standards in judging fitness of Indian parents. Chris was homeless and abandoned with complete strangers in Compton, California, 1,500 miles from the reservation he had no connection with. Were
social workers showing bias against Indian mother? Of course not.

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

Congress wanted to protect the stability and security of tribes, but how does forcing a permanent home on him 1,500 miles from the tribe accomplish that? The tribe could still have had a relationship with him, but chose not to. Of course, the tribe wasn't rendered unstable or insecure by his adoption. Had he stayed with his biological mother, he would have likely gone his entire life not knowing he was eligible for membership in that tribe. Most of all, Congress wanted to protect the best interests of Indian children; and, yet, the social workers involved in the case didn't look at his best interest, and they failed to even talk to his therapist about what he thought his best interests were.
They made an independent decision that his best interests were served by applying ICWA, which is nothing more than ridiculous; and, yet, that is what the new BIA guidelines support now. That was not the intent. If you don't believe me, read the transcripts from the hearings that led to the passage of ICWA. You will hear much language from Native leaders concerned about the best interests of children. You will also hear supporting -- you will hear support for the existing Indian family doctrine, interestingly enough, including from the head of the BIA back then.

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

Was it right for the entire focus of their case to shift because of the status of one of their 16 great great-grandparents? How is it right to deny their placement in our home when they were thriving and wanted to stay with us and when their own mother wanted them to
stay with us? Had they'd moved, do you think they would have celebrated their Native heritage growing up, or do you think they would have cursed it?

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

Thank you.

(Applause.)

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

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

That has to be our ultimate test. For ICWA itself says: Congress hereby declares it is the policy
of this nation to protect the best interests of Indian children. That's the first sentence in Congress' statement of policy.

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

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

And so understandably the Bureau -- Mr. Washburn, you wanted to define what that means. But the definition is deplorable. What you do is state -- everybody listen here. This matters. The Devil is in the details. Imminent physical damage or harm means present or impending risk of serious bodily injury or death. Okay. Serious bodily injury or death.
So that rule literally means that lesser crimes against the child, such as domestic assault, sexual abuse, misdemeanor, gross misdemeanor assaults, these are not grounds to remove the child.

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

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

Again, this standard protects the rights of the parents and leaves Indian children vulnerable to abuse and neglect in cases where the county is unaware of the case and have not had the chance to provide an active reference. The rule as written literally prevents the
removal of Indian children if active efforts prior to commencement have not been provided. I don't think that's what Congress had in mind. I can't believe you're serious about that.

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

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

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

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

You really think they don't do that? I'm down in those trenches, and I know what goes on. I've had tribal Indian experts come up to me, guardians, threatened with the loss of employment or tribal housing for telling the truth in ICWA cases. Who then is going to testify and speak out for the children? Abuse is abuse. This rule, what it does ultimately is protect tribal control of the ICWA case at the expense of the
Finally, Mr. Washburn, Panel Members, I want to condemn in the strongest possible terms what the BIA totally fails to say, what Congress said in its first sentence of the statement of policy, that the child's best interests are paramount. That's the gold standard of American Child Welfare Law. They're paramount over the parents and paramount over the tribes. Your new guidelines even come out and say that the child's best interests are not an independent consideration.

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

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

This is serious stuff. These regulations
are a travesty of justice, a shock to the conscience, and an offense to the sense of decency and compassion that I know tribal people have for children. I ask that you reject these regulations in the best interest of Indian children.

Thank you for your time.

(Applause.)

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

When the Indian Child Welfare Act was passed in 1978, Congress found an alarmingly high percentage of Indian children being removed from their families. Often these removals were unwarranted. Congress then declared that it's a national policy to promote the stability and security of Indian tribes and
families by establishing minimum Federal standards for removal of children from their families. Congress further established placement preferences for foster and adoptive homes that reflect the very unique values of Indian culture.

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

Since 1985, Minnesota law has required that a determination of whether ICWA applies cannot be based on whether an Indian child is part of an existing Indian family or based on the level of contact that the child has with their Indian tribe preservation society or off-reservation community. To further enhance the proposed rule, Minnesota Department of Human Services
supports the strengthening of cultural considerations and
tribal participation when working with American Indian
families, engaging parents, including fathers, and
protecting their rights.

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

Miigwech.

(Applause.)

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

GIOVANNI CERISE: My name is Giovanni
Cerise, an adoptee born in 1965 on the White Earth
Reservation in Menominee, Minnesota, then adopted out
when I was only two weeks old. I am in support of the
new regulations that will strengthen ICWA, and I also
feel strongly about opening adoption records. Why?
Simply for the right to belong.
Being adopted out of my Native culture, I always felt like I was sitting on a fence, one foot dangling in white man's world, and the other dangling wanting to touch my homeland's ground; not knowing a thing about my people's culture, just what I've read, just even stripped of who I am, a Native.

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

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

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

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

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

Thank you.

(Applause.)

MR. KEVIN WASHBURN: Okay. Thank you. Let's take a about a 10-minute break. Let's start back up at about -- let's say 2:40. Thank you.
MR. KEVIN WASHBURN: Okay. I hope everybody got a good break. Let's go ahead and get started. I want to thank everybody who has gotten up to the microphone and spoken. The heart-felt comments are very, very helpful; and the very specific comments are also very helpful, giving a sense of how we need to amend what we've done. Because I think we do intend to do something here, and the question is what is it going to look like at the end. So we are very grateful for those of you who have given specific recommendations and all of you who have opened up your heart to come -- it's not easy to open up your heart in a big forum like this, and so we really appreciate it. It takes a lot of courage, so thank you for that.

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

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

I come from a different era than most of -- most of you, so Boozhoo, hello. My name is Mary Lyons. I'm Ojibwe. I'm the second modern woman. My sister was the first. I'm from the Leech Lake Reservation.
I am a mother, grandmother, and a great-grandmother, and a product of the early displacement of Native children. I've been a foster parent for over 40 years and an adoptive parent of Fetal Alcohol Syndrome boys. I have worked in this arena of displaced families nearly all of my life, and this is what we would like to share with the panel that are taking many nations in their hands.

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

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

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

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

The children were given new white names, including surnames, as it was felt that it would help
when they inherited property. Traditional Native foods were abandoned forcing students to acquire the food rights of white society, including the use of knives, forks, spoons, napkins, and table cloths. In addition, students were forbidden to speak their native languages, even to each other.

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

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

Some Native American parents have boarding school education for what it was intended to be, the total destruction of Indian culture. We all know what
happened to the children that were removed from their homes in the early and mid part of the century. The experiences these children went through created a war within humanity. What was stripped from them, destroyed life, and ruined their spirit. The aftermath, the fallout brought us -- all of us to today. "Kill the Indian, save the man" didn't work then, and it's not going to work now.

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

While we're not here to bash yesterday's history, we are here to bring light so we don't repeat yesterday's Holocaust. As an elder and a witness to yesterday's tragedies, we see both sides of the fence, the best interest of the child and the much needed help for the parent. We know our children, grandchildren, great-grandchildren need help and a safe place to call
home. This we do not dispute; yesterday's tragedies, the fallout, like trail of alcoholism, drug addiction, human trafficking, physical and mental abuse, and the list goes on.

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

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

This sounds a lot like board school errors. The outcome is pretty similar. So how would it advance the best interest of the Native child? We do know that the child is not safe in their own biological home due to the craziness of disparities and addictions. But, really, have we thought about going back to the
blackboard and rethinking a better approach? Our children are sacred.

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

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

Our decisions will mold a child's life. We say -- us elders say that each child that is born is a leader of many nations. Their journey will take the path of many to follow. If we choose not to act in the best way -- the best way of life of a Native child, then we are repeating the first removal act of the Native
children, and we're adding to the destruction of a people.

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

(Appause.)

MR. KEVIN WASHBURN: Thank you.

Sir, you may proceed.

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

And I'm sure that there are other parents that step up and fight for their kids, too. My kids are currently in foster care, and we've been going by the plan, and this is our third time going. And our efforts to follow the plan are being viewed as -- as -- that we've been down the road before, and that -- I don't know, the way I look at it is they got a crystal ball, and we're doomed to fail, and we're going to lose our kids.
As far as active efforts to reunite my family, from the start of this year, current case, as far as the way I see it is, is the efforts are that the kids are going to be adopted; and that no matter what we do, that's been the plan from the beginning. And in, oh, so many words, we've been told it over and over again; but they do still tell us not to give up, to keep trying.

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

(Applause.)

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

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

We have been battling assimilation from the onset of non-Native influence. Hearing some of the testimony here today, we must contend assimilation within our own ranks. Again, the Ho-Chunk Nation generally
supports these proposals in order to ensure that -- the future of our families and our culture. Thank you.

(Applause.)

MR. KEVIN WASHBURN: Thank you.

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

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

I didn't even have a voice in the court.
Everything she presented, they chunked out the door.
They brought in their expert witness on the day I went.
My wife was raised by her grandmother. Like she needs
some academic Grand Poobah of her spirituality dictating
to her tradition. You know, what's occurring right here
is ludicrous.

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

I don't even know why I'm standing here,
because for the regulations to come out the way they've
come out, it doesn't leave a lot of hope of protecting
the children, not the mental part or physical health of
these kids. I just hope you-all can find a way to get it right. You talk about -- people speak about our culture, about our spirituality. What's changed since the '70s when all this ban American craziness has occurred? We have pow-wows in New York, Florida, Washington, all a mirror image of one another, all the spirituality and image of one another, and nothing's changed.

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

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

That's my piece. I appreciate the time.

Thank you.

(Applause.)
MR. KEVIN WASHBURN: Yes, ma'am.

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

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

They're not here today to speak to you because some of them do not want to be a face. We have had birth moms from the Native American community that have told us explicitly, "We do not want the tribe notified." And depending upon where they are from, we have told them that we need to follow the ICWA laws; and if that state requires that reporting, we would have to
do that. They have told us then they would leave and go somewhere else. Not because they do not want what's best for their child, not because they are making a plan that is forced on them, but because they want to make a plan that they feel is the best plan for their child.

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

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

To say anything other or to restrict that right is to discriminate against this one segment of our population based on ethnicity alone. It is to say this woman of all women in our nation is not allowed to have the same rights and privileges and protection that every other woman in our country has. It is to say that
someone else knows better for what is the best plan for her child.

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

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

The present Indian Child Welfare Act allows that birth mom to make that choice. It allows that birth
mom to come to us to look at this baby that she's carrying, with that birth father, and to say, "This is what we want for our child." The proposed regulations also state that the best interest of the child is not the first priority. And through these regulations the future well-being of the child is to be sacrificed in order to maintain a bureaucratic empire.

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

One of them came at six months, and she would not allow us to hold her. She would scream. It took a long time before we could finally hold her. She had been moved multiple times from one situation to another before she came to our home. She was not Native American. This is not conducive to one population or one race. She is now in her 30s. She's had multiple relationships. One was a young man that we really truly
liked. He was great. He came to me and he said, "You know, she will only allow me so close, but there is always a part she will never let me know," and that's who she is. Because for six months she had reactive detachment disorder.

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

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

Can we take that right away from them?

Thank you.

(Appause.)

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

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

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

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

The Minneapolis American Indian Center supports the proposed regulation and commends the efforts the proposed rules make to keep emergency removal for
children as short as possible. Agencies and courts should document whether removal or placement is proper and continues to be necessary. Too oftentimes we find that this doesn't happen. We need to ensure that these regulations go forward to protect our children and keep working to preserve our families.

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

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

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

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

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

Because this is where we are grounded in our spirituality, it's not something we do once a week like Christmas or Easter, but something we live every
day. His grandmother is Fourth Degree -- going on 4th degree Mida. And unless you know where you come from, you know, probably don't know what that means.

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

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

On a professional level, I've been working in ICWA since 1999. The Minneapolis American Indian Center has been at the forefront of creating better outcomes for children since we have been monitoring ICWA
compliance in Hennepin County for over 20 years. In
2010, we received a five-year grant from the Office of
Minority Health to develop something on ICWA compliance,
and we developed a software program.

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

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

And the other one is no implementation data
that is regularly collected and analyzed. That data is
uncoordinated between agencies, frequency, and contained
reports of noncompliance are uninvestigated by any
Federal agency. And performance improvement plans are now required for agencies that are out of compliance. So I really ask you to put some teeth into this so that we can continue to try to know what's -- what we can do for our children.

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

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

And the new guidelines and regulations, I'm so happy to see that this is going to be something you're going to look at. And we have been doing this data -- we have baseline data, and we have the tools to implement
this if we have ways to work with the BIA. You know, you're going to have people coming out of the woodwork to develop systems to do this. We have the expertise of court monitoring from a lot of the people that are here today to support these regulations. So a lot of our partners know what this is about and really support us, and we are thankful for that.

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

Thank you.

(Applause.)

MR. KEVIN WASHBURN: We've got lines at both mics, so I think we're going to have to alternate back and forth.
So let's go to the back mic, and then we'll come to the front mic, and like that. And we have about 40 minutes left or so. I will try to get to everybody. I'll ask you, say what you need to say, but keep -- keep moving as fast as you can.

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

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

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

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

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

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

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

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

Thank you.

(Applause.)

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

I was put into foster care in a non-Native home when I was six years old. I was told by the placement agency that my father killed my mother, and I believed this all my life until I turned 18, and I went
home, and I found my real family, who the state said she
died of complications of a pacemaker. So the social
service agency made sure that I hated my father growing
up.

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

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

Thank you.

(Applause.)

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

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

First and foremost, I have to just give you
a very big heartfelt thanks for your work that you've
done with the BIA regulations and also with the BIA guidelines. They are wonderful. When I read them, I kind of gave a little cheer. They're fabulous and exactly what we wanted to see. So we are -- White Earth is wholeheartedly in support of those regulations.

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

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

And so your timing couldn't have been better for coming with these regulations, and we thank
you again wholeheartedly for doing that.

Thanks.

(Applause.)

MR. KEVIN WASHBURN: Thank you, Rebecca.

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

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

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

I understand that it was part of the guidelines; but also understanding that for families, for children, for people involved in these, everyone walks into a courtroom with this idea that they want what's
best for a child. The reality is that what everyone
thinks is best for the child is not always the same. And
so having some guidance in regards to recognizing that
for Indian children, the connection to family, the
connection to tribe absolutely has to be considered.

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

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

The new guidelines provide -- excuse me.
The proposed rule provides the opportunity through active
efforts to change the course of what's happening. It
gives a voice to families. It gives a voice to tribes
and it absolutely is necessary in regards to a healing path to keep families together. It's needed.

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

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

Certainly no one wants a child to be hurt. No one wants a child to experience abuse. But we need a path to healing. ICWA provides that. It doesn't dictate in regards to ultimately what the end decision's going to be. What it does is it gives us a process that's just, that is fair, that absolutely recognizes the tribal
connection, the family connection that children need and would only make our community stronger.

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

Thank you.

(Applause.)

MR. KEVIN WASHBURN: Barbara.

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

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

Thank you.

(Applause.)

RED BIRD WOMAN: (Speaking in Native
language.) My name is Red Bird Woman, and I am Lake Manitou First Nation, and I'm Ojibwe. And my personal -- I'm also an adult adoptee, and my personal experience has to do with international boundaries. So I was adopted here after ICWA was passed, and it didn't apply because it was international. And there's a whole bunch of other things that happened along with it, and I won't go into the detail.

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

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

But I know that we reached out to the family that my sister knew, and then we also did the
official route, and we got totally integrated with my family. And now I've been with them longer than I've been away, so it's been -- that's been wonderful.

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

MR. KEVIN WASHBURN: Thank you.

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

What I would like to say is I am absolutely in support of the regulations that are being provided; however, every state expedites ICWA differently. And language -- language is extremely important. But also, along with the language, I think it's important that these states -- we have language in there that holds the
states accountable for noncompliance of the regulations that you are proposing to pass so that things like Baby Veronica don't happen.

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

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

Thank you. Miigwech.

WILFRID CLEVELAND: (Speaking in Native language). Good afternoon. My name is Wilfrid Cleveland from the Bear Clan of the Ho-Chunk Nation. And I waited a little bit to come on up to the mic again because when Ho-Chunk is full, he can just go on and on and just talk.
I waited so I wouldn't take so long because I knew you were having a long day.

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

And I found out through years that we as a Ho-Chunk people, we have relationships. We don't have cousins. We have parents; we have grandparents; we have uncles; we have aunts; but we don't have cousins. This goes on -- I mean, I could explain a lot about that, but just briefly to let you know. These boys -- this family that left, they were my uncles. Some of them were younger than me, and some of them were older; but they were all my uncles. Once they came home, we reconnected. And so at times they would be sharing their stories, and they were like -- they were kind of -- went to several foster homes during that time, and they were like farm hands. They'd have to get up early and make sure they
did all their chores. And then they went to school, and then they did their thing at school, came home, and did more chores and kind of that's the way it was for them back in those days.

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

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

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

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

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

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

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

(Applause.)

MR. KEVIN WASHBURN: Yes, ma'am.

NANCY MARTIN: Hi. I'm Nancy Martin. I'm a member of the Turtle Mountain Band of Chippewa, and I'm director here for family and children services for the
Shakopee Tribe. I'll be real quick here. I just want to say that I'm in favor of the proposed regulations.

Thank you.

(Applause.)

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

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

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

Two years ago on Mother's Day, she tried to kill my daughter. She beat her so bad that she still to
this day has a dent in her forehead. In this whole time, for the year that they were with their mom, my family -- the only family my kids ever had -- was called -- we were hounding them and harassing them. When we'd bring them proof of all this that's happened, police reports, people like Rebecca McConkey would come into court and say, "Oh, we're sovereign, we don't have to cooperate." How was that in the best interest of the kids? Who's interests are they protecting?

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

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

When she got out, they made her go through over 100 hours of outpatient treatment because she smoked grass a couple times, because her mom was laid out with a needle in her arm, beating them, neglecting them. Tribe
courts and ICW, everybody in White Earth knows what ICW does. Nobody likes them. They're talked about on the reservation like they're the boogie man. Parents use it -- families use it against each other as threats over disputes that have nothing to do with the kids.

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

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

There's a conspiracy going on. People in
different departments working with each other to enable the flow of money through all these programs. They made laws against that a lot of years ago, RICO. Okay, they're criminals. They don't give a damn about our kids. They don't give a damn about mine.

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

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

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

MR. KEVIN WASHBURN: Sir, you didn't give us your name, not that you have to.
UNIDENTIFIED SPEAKER: I don't have to.

MR. KEVIN WASHBURN: Fair enough. Thank you.

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

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

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

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

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

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

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

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

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

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

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

JESSICA RYAN: Yes.

MR. KEVIN WASHBURN: Give me one point on
each -- if you're going to give me 11 points, I want one sentence.

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

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

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

With regard to the voluntary proceedings, there were many heartfelt stories shared today by folks that are in opposition to these regulations being enacted. I want to share, that when the tribes that I represent are contacted for voluntary adoptions, the values of those tribes shine through. The values of those tribes often do not get in the way of the
individual preference of that parent. Instead what the
tribes that I represent have done is say we respect your
choice to this, and what we would like to do is make sure
that there's a way for those babies to come back, there's
a mechanism for this contact.

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

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

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

I'm going to jump to my seventh point.

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

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

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

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

(Applause.)

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

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

What I know as an urban Indian is none of
us holds all of the practices that we have lost in our tribes, that were taken from us. And what we've come together through community is to share those ways, and I'm not ashamed to say that I am still learning, and we're still learning from each other.

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

(Applause.)

MR. KEVIN WASHBURN: Yes, sir.

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

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

If an ICWA worker has 35 cases in a small urban town, then let's hire some more ICWA workers or pass some of that work to us Indian people in the
community who are about supporting our families. There are a lot of things out there. I walk with them. We have a Buffalo herd camp. We have -- I go to court with them. We do things in school with the kids. And we are not funded, and we do this on our own because these are our people. We know how to take care of our people.

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

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

(Applause.)

MR. KEVIN WASHBURN: Thank you.

KRIS GOODWILL: Hi, I'm Chris Goodwell. I'm an attorney. Don't be hard on me because I'm an attorney. I am a member of the Menominee Nation. I am also a tribal judge for my tribe. And I just wanted to speak today because I just wanted to say that in Wisconsin we worked toward passing the statute. And since the statute was passed with what we call
Wisconsinizing of the Indian Child Welfare Act, our statistics that were very dismal with noncompliance before that have improved.

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

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

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

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

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

So I thank you very much.

(Applause.)

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

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

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

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

There's also a huge dispute about whether private voluntary adoptions are covered by ICWA. I have always been of the opinion that they are. Our two only U.S. Supreme Court cases that we have addressing ICWA both involve private voluntary adoptions. I don't think it could be clearer. And I think these new regulations will make that clear so everybody understands that.
And then I'm also impressed by the fact that these will ease the transfer of these cases into tribal courts, which is where I think they really belong; and perhaps this will encourage more of my colleagues that don't practice in tribal courts to get into tribal courts, a better understanding of American culture, and the impact that adoption has had historically and culturally on the Native American community.

So thank you.

(Applause.)

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

Thank you, everyone, for your patience.

If you'd like to speak. You've been there for a long time, so let's go -- yeah, you're next.

You're out here in the front.

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

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

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

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

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

Thank you.
(Applause.)

MR. KEVIN WASHBURN: Yes, ma'am.

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

For numerous reasons, as far as extinction, you know, we're -- I'll put it bluntly that we're looking upon that day compared to what we were 100 years ago, 150 years ago. And coming to you and speaking to you, I hope that you would really -- consideration -- you know, communicating with each tribe about the degree for enrollment because I know that there's a lot of families out there that are not eligible for enrollment that don't get the help of ICWA that need the help.

And just that there's a lot of mixed blood. The reality of that situation, seven more generations from now, 50 years from now the mixed bloods are going to outnumber the full bloods, and they're going to be representing who we are and what we do today, but we need to educate them on that stuff at the Indian centers, at the tribal offices.

And I'm ashamed to say what I'm about to say; but in my lifetime I have seen a mixed blood, a man,
who has beaten a mixed -- a full blood because, you know, this man he beat this little girl because she was mixed blood, you know. And I do what I can to, you know, help that little girl and stuff so that she can get the healing that she needs. But it makes me ashamed that, you know, a full blood could do that to a little girl. And where I was fighting for my child who's a mixed blood while this man over here is beating this little girl, you know. Where's the justice for that little girl?

(Speaking in Native language.)

(Applause.)

MR. KEVIN WASHBURN: Thank you.

JENNIFER CROSS: I'm Jennifer Cross.

(Speaking in Native language.)

My name is Jennifer Cross. I am from the Leech Lake Reservation, and my clan is Martin. I am coming today from a unique perspective. I work at the Indian Child Law Center as a legal assistant, and I also was given the opportunity to be an on-the-ground worker at Leech Lake working every day in the trenches helping families -- or helping children make sure that they stay connected to their families.

To make a long story short, I just want to touch on two quick points. Because of my experiences of working for Leech Lake, it's important that we have these
rules because ICWA is applied differently, even within
the own state -- within the state of Minnesota, but not
mentioned in Alaska or North Dakota or South Dakota; so
it's important that we have consistency.

Because people will give more weight to
professionals who are not from the tribe, and they have
no actual knowledge about the history or the culture of
where these children come from. And then also the
importance of having tribal consultation, that will help
alleviate a lot of the issues that we see with bonding
and attachment.

For example, I was a foster care worker --
excuse me -- foster care placement for my niece and my
nephew. Because the tribe was consulted, Hennepin
consulted Leech Lake, it was a smooth transition. The
kids were placed with me immediately when they were
filing a petition. And I strongly urge that we use
language which is -- of "must" versus "shall" -- or
excuse me -- "must" versus "should" -- sorry -- because
it will force people not only to build relationships with
tribal social services, but it will help create long-term
relationship building.

So Miigwech.

(Applause.)

MR. KEVIN WASHBURN: Well, you've all
stayed a very long time, and we've heard some wonderful comments. This has been enormously helpful. I want to thank all of you for being here. And I want to say that whoever said -- Laura Newton I think said every person in this room is here because they care about children, and I know that's true. Even though people disagree about what that means, I know that's why every one of you is here, so I honor every one of you for coming forth and giving us your viewpoint because we need that. We need to hear from everyone.

And especially I have to say those people who we heard from who have taken in foster children, those are heroes; and so I don't care if you're Indian or non-Indian, if you try to do that kind of work, you're a hero. So thank you all for that.

We've got a lot of work to do ahead of us. We've got -- and you do, too, if you haven't given us written comments yet because our deadline is March 19th -- May 19th. I'm sorry. I'm tired. We really want to hear from you if you wish to do written comments as well. This has been enormously helpful. It really gives texture to those written comments when you get to hear from you, so thank you for that.

I want to thank my staff, too. They're tired. They all had to travel to be here. And we all
live in Washington, D.C. and do -- you know, this is public service, the sacrifice to try to make the world a better place in some small way, and we feel like this is an important initiative in doing that.

And we thank you for all your comments and helping us to try to get to a good place with our rule. We will be moving forward. One more consultation over the phone. If you wish to -- if you didn't get to say what you wanted to say today, you can attend that way, and we've got another consultation in Tulsa, Oklahoma; so we're getting close to being through. And then we've got to assimilate all the comments that we've heard and then fashion those into a final rule.

So you all have been an important part of that process, and I want to thank you for that, and I especially want to thank all of you who spend every day of your lives working to help children in need because you all deserve credit for that. Thank you so much.

Thank you.

(End of proceedings 4:16 p.m.)
REPORTER'S CERTIFICATE

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN  ) ss.

I, Dawn Workman Bounds, hereby certify that I reported the above proceedings on the 7th day of May, 2015, in Prior Lake, Minnesota;

That the cost of the original has been charged to the party who noticed the proceedings, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or Has a substantial tendency to affect my impartiality.

WITNESS MY HAND AND SEAL THIS 19th day of May, 2015.

Dawn Workman Bounds
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2019