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

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Taken at
Best Western Ramkota Hotel & Conference Center
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PANEL APPEARANCES

LARRY ROBERTS - Principal Deputy Assistant Secretary for
Indian Affairs, Department of Interior

TIM LaPOINTE - Regional Director

RODINA CAVE - Senior Advisor to Assistant Secretary -
IA

GINA JACKSON - Senior Fellow, IPA, Indian Child Welfare

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

3 MR. LARRY ROBERTS: Good afternoon, everyone.
4 We're going to go ahead and get started this
5 afternoon for this public meeting on the
6 Department's Proposed Rule for ICWA implementation
7 for state courts and agencies in Indian child
8 custody proceedings.

9 My name is Larry Roberts. I'm the Principal
10 Deputy Assistant Secretary for Indian Affairs. I'm
11 from the Oneida Nation of Wisconsin.

12 And with me today there are a number of folks.
13 I have Rodina Cave on my right here, Senior Advisor
14 to the Assistant Secretary. I have Gina Jackson who
15 is a Senior Fellow to the Assistant Secretary. I
16 have Mila Ervin from the Office of the Solicitor. I
17 have Tim LaPointe who is our Regional Director for
18 Indian Affairs, and Spike Bighorn who's from our
19 Office of Indian Services. And then at the computer
20 up front here is Debra Burton, also from our Office
21 of Indian Services.

22 So I want to thank everyone for attending this
23 session this afternoon. In terms of how we're
24 moving forward, we have a court reporter here in the
25 middle of the room, and she is transcribing

1 everything that we say so that we have a record.
2 And the reason I mention this is it's important for
3 all of you when you have comments on the Proposed
4 Rule that you state your first and last name and the
5 tribe or organization that you're with.

6 We have sign-in sheets, if you could please
7 sign in and print your first and last name that will
8 help us clarify any spellings in the record.

9 We have a Power Point that we're going to go
10 through that will take about 20 minutes roughly, and
11 then we're going to open it up to the floor for all
12 of you to provide comment on the Proposed Rule.

13 Just a couple of rules of the road here for the
14 public meeting here this afternoon: I'm going to
15 ask everybody to try to limit their comments,
16 initial comments to five minutes so that everybody
17 in the room has an opportunity to speak. There may
18 be folks coming into the room as we're going through
19 the Power Point or as we're going through this
20 public meeting, and I want to make sure that
21 everybody has a chance to provide comment who wants
22 to. And so as you're talking, those five minutes go
23 by very quickly. I'll probably give you a sign of,
24 you know, two minutes. And once everyone has had a
25 chance that wants to provide a comment has done so,

1 then you're free to come up and provide additional
2 comments.

3 The other thing I want to stress to everyone is
4 that this is an extraordinarily important issue to
5 everyone in this room, and that's demonstrated by
6 the fact that you're here to provide comment. So I
7 want to underscore the importance of respecting
8 everybody's right to provide comment, and I would
9 ask that, you know, if you agree or disagree with a
10 particular person's comment, let's not have any
11 commentary on that. The comments are to us, please,
12 to improve the rule. And so I ask that, one, you
13 direct your comments to us, not to the audience.
14 And, two, that you respect everyone's right to
15 participate in this forum today.

16 So with that I'm going to just start with a
17 brief overview. And a number of us here on the
18 panel will be taking various parts of this Power
19 Point and walking through sort of the high points of
20 the Proposed Rule.

21 So in terms of background, I think most folks
22 are aware that the Indian Child Welfare Act was
23 passed in 1978. And when Congress enacted ICWA, it
24 was enacted to protect the best interests of Indian
25 children and to promote the stability and security

1 of Indian tribes and families. And the act
2 articulates a strong federal policy that, where
3 possible, an Indian child remain in the Indian
4 community.

5 So in 1979 the Department issued guidelines for
6 state court implementation of ICWA and issued
7 regulations covering ICWA notice.

8 From 1979 to 2014 to the present, state courts
9 and state agencies have worked to implement ICWA,
10 and that implementation has been not necessarily
11 consistent across all of the different states.

12 And so in 2014 we held listening sessions on
13 the 1979 guidelines. And one of the things that we
14 heard from those listening sessions is that the
15 Department should update its guidelines and that the
16 Department should promulgate regulations to
17 implement the Indian Child Welfare Act.

18 And also the Attorney General convened an
19 advisory committee for children exposed to violence.
20 Some of the recommendations out of that advisory
21 committee from the Attorney General was to update
22 guidelines and to finalize -- and to promulgate
23 regulations.

24 So in this year, in February of this year we
25 did issue updated guidelines. And in March we

1 issued Proposed Regulations, which we're all here to
2 talk about today.

3 The next slide just covers all of the different
4 sections within this new subpart that we'll be
5 touching upon briefly. So the updated guidelines
6 provided updated definitions, definitions such as
7 active efforts, imminent physical danger or harm,
8 voluntary placement. We need your input in terms of
9 how to improve these definitions and how to make the
10 rule as good as it can be.

11 So the goal of the Proposed Rule is consistent
12 ICWA implementation in all states and in all
13 counties and that makes clear that ICWA applies
14 whenever there's an Indian child that is the subject
15 of a child custody proceeding, including status
16 offenses and juvenile delinquency proceedings. And
17 the Proposed Rule also makes clear that there is no
18 so-called "existing Indian family" exception to
19 ICWA.

20 In terms of applicability, the Proposed Rule
21 sets forth that agencies and state courts must ask
22 early on whether the child is an Indian child. And
23 if there's any reason to believe that the child is
24 an Indian child, that the agency or state court
25 should treat that child as an Indian child unless

1 and until it's determined that the child is not an
2 Indian child.

3 We also discussed voluntary placements, that
4 ICWA applies if a parent consents to placement or
5 termination but that ICWA does not apply if the
6 parent or custodian may regain custody of the child
7 "upon demand."

8 We also set forth in the Proposed Rule steps to
9 contact a tribe to provide notice and verify
10 membership.

11 So we have this requirement for whether a child
12 is an Indian child for both state agencies and state
13 courts. And we also -- so those are sort of the
14 general provisions that I'm going to cover.

15 And I'm going to turn it over to Rodina Cave to
16 talk about pre-trial requirements under the Proposed
17 Rule.

18 Thank you.

19 MS. RODINA CAVE: Thank you.

20 Good afternoon. So as Larry Roberts was saying
21 that there's a requirement in the Proposed Rule
22 to -- that agencies and state courts must ask if the
23 child is an Indian child. And if there's -- and
24 there's examples provided in the Proposed Rule about
25 that, so, you know, what are the reasons to believe

1 that a child is an Indian child.

2 And there's also the Proposed Rule provides
3 that in a voluntary proceeding that if a consenting
4 parent wants anonymity, then the agency or court
5 must keep relevant documents under seal but still
6 provide notice as provided under the Proposed Rule
7 and that there's a requirement to engage in active
8 efforts.

9 And so when does that start? When does the
10 requirement to engage in active efforts start? The
11 rule sets out that it starts as soon as a case or
12 investigation may result in the placement of an
13 Indian child outside the custody of parent or the
14 Indian custodian. And as Larry Roberts was saying,
15 that this applies while investigating whether the
16 child is an Indian child.

17 And the Proposed Rule also sets out that only
18 the tribe may determine whether a child is a member
19 of a tribe or eligible for membership in a tribe,
20 and that the agency, you know, the notification
21 requirements, and -- you know, so what if there's --
22 what if there's more than one tribe that the child
23 could be a member of or eligible for membership?
24 That Proposed Rule sets out the process for
25 determining that.

1 And then designation of a tribe -- after
2 there's designation of a tribe, that the agency must
3 notify all tribes that received notice of the
4 designation, file the designation with the court and
5 send the designation to each party and person that
6 received notice of the proceeding.

7 Also that the state court must dismiss any
8 action as soon as it determines it lacks
9 jurisdiction, for example if the tribal court has
10 jurisdiction over the matter.

11 And the Proposed Rule also provides for notice,
12 you know, what are the procedures for notice, and,
13 you know, for what proceedings do these procedures
14 apply and that notice must be sent by registered
15 mail with return receipt requested to each tribe of
16 which the child may be a member or eligible for
17 membership, and then the parents or -- you know,
18 and, if applicable, the Indian custodian.

19 And the rule also, the Proposed Rule sets out
20 time limits. Additional extensions of time, where
21 those apply, that the proceeding may not begin until
22 ten days after each parent or any custodian and the
23 tribe receives notice. And that if the Indian
24 custodian or tribe receives notice and they request
25 an additional 20 days, then 30 days.

1 So for emergency removal, the Proposed Rule
2 sets out that it must be as short as possible and
3 that the agency or state court must document whether
4 removal or placement is proper and it continues to
5 be necessary to prevent imminent physical damage or
6 harm to the child. They're to promptly hold a
7 hearing and immediately terminate placement/removal
8 when the emergency has ended.

9 And continuing with emergency removal that is
10 set out in the rule, that the -- the Proposed Rule,
11 that agency must treat the child as an Indian child
12 until there's a contrary determination, until
13 there's a determination that it isn't an Indian
14 child, and conduct active efforts. Again,
15 notification and maintaining records that notice was
16 provided.

17 And for emergency removal continued again, that
18 any court hearing on emergency removal or placement,
19 the court must decide if the removal or placement is
20 no longer necessary to prevent imminent physical
21 damage or harm to the child.

22 Temporary emergency custody should be less than
23 30 days, unless there's a hearing with testimony of
24 a qualified expert witness or extraordinary
25 circumstances.

1 And, you know, emergency removal or placement
2 must end as soon as imminent physical damage or harm
3 no longer exists or the tribe exercises jurisdiction
4 over the case.

5 And for the transfers to tribal court, Spike
6 Bighorn will be explaining this part of the Proposed
7 Rule.

8 MR. SPIKE BIGHORN: Thank you, Rodina.

9 Good afternoon. I will spend a few moments
10 talking about the next four slides, as Rodina said,
11 about transfers to tribal court.

12 What the Proposed Rule has done is it's
13 clarified the rights to request by the Indian tribe,
14 the Indian child's tribe or the parents or the
15 Indian custodian of the child that's involved in the
16 proceeding.

17 One thing I want to talk about is what's been
18 clarified as the second point under the first bullet
19 "at any stage of the proceeding," that's very
20 important to understand because at different times
21 through our research we found that when the
22 proceeding has started, in some instances the court
23 has indicated that the proceedings have started or
24 are too far along in the proceedings for us to go
25 back and try and apply ICWA. That's not the case.

1 And that's been clarified in the Proposed Rule that
2 at any stage in the proceedings you can ask for the
3 right -- the request can be made to transfer to
4 tribal court.

5 And also there's clarification as to what the
6 court may not consider, certain factors at the
7 bottom of the slide here, some very important
8 issues: Whether the case is at an advanced stage, I
9 referred to that a few minutes ago. It doesn't
10 matter where it is in the proceedings, even if it's
11 at an advanced stage, we can still make the request.
12 It doesn't have any bearing on the request.

13 The extent of the child's contacts with the
14 tribe or the reservation. And also it doesn't have
15 any impact on the request of the tribal court's
16 prospective placement for a child. Those three
17 cannot be taken into consideration when considering
18 a request to transfer.

19 Also when you're talking about involuntary
20 placement, adoption or terminations, what the rules
21 also do is it talks about the active efforts. And a
22 few moments ago we talked about the changes in the
23 rule under active efforts. Obviously what this
24 summarizes, this slide, basically the petition must
25 demonstrate to the court that active efforts have

1 been made when removing the child, that the active
2 efforts were unsuccessful, that the active efforts
3 must be clearly documented in detail that the agency
4 did document active efforts to work with the parents
5 in this instance.

6 Next slide: Also the court may order foster
7 care placement only if there's clear and convincing
8 evidence or evidence beyond a reasonable doubt that
9 it's not in the best interest of the child to
10 continue with the foster placement -- I mean, to
11 reunite with the families. And so this, again, has
12 been clarified what is and what is not clear and
13 convincing evidence in the Proposed Rule.

14 And finally when we talk about a qualified
15 expert witness that will provide this testimony,
16 this is a list of, in descending order, the
17 characteristics that need to be met to qualify as an
18 expert witness.

19 Now, as you can see in the first three
20 examples, the tribal community is -- the Indian
21 child's tribal community will make the
22 determination -- the Indian child's tribe will make
23 the determination. So the first one is a member of
24 the child's tribe who is knowledgeable in tribal
25 customs of family organization and child-rearing of

1 that particular tribe.

2 Also a member of another tribe who may be
3 familiar with the delivery of child and family
4 services to Indians in that particular tribe. And
5 that determination will be made by the tribal
6 questions. So, for example, if -- I'll use my tribe
7 as an example. I'm a member of the Fort Peck
8 tribes, Assiniboine and Sioux Tribes on the Fort
9 Peck Reservation. My tribe can indicate that
10 there's another individual who lives on our
11 reservation who has the knowledge of the
12 child-rearing and family services on our
13 reservation. Even though they might not be a tribal
14 member of Fort Peck, they still live on our
15 reservation and are familiar with our tribal
16 customs.

17 Finally, a layperson who is recognized as
18 having substantial experience in child and family
19 services and child-rearing for that particular
20 tribe.

21 And then finally anyone who is a professional
22 working on the reservation or working with these
23 issues who has education and experience.

24 So next I'll turn it over to my colleague Gina
25 Jackson.

1 MS. GINA JACKSON: Hello, everyone.

2 I'm going to briefly hit some highlights on
3 voluntary proceedings, dispositions and post-trial
4 rights.

5 So the Proposed Rule in voluntary proceedings
6 is going to lay out that the agency and the court,
7 the state court must, so this is both, not just one
8 or the other, but both must ask whether a child is
9 an Indian child.

10 And then provide the tribe with notice of the
11 voluntary proceeding, including the notice of right
12 to intervention.

13 For consent of the parent or the Indian
14 custodian, it must be in writing, recorded before
15 the court. The court must explain consequences and
16 terms of consent in detail, also certifying that
17 consequences and terms were explained and fully
18 understood by the parent or Indian custodian and
19 must set out any conditions in the consent
20 documents.

21 In dispositions, the agency must follow ICWA
22 placement preferences or tribal placement
23 preferences, even if there is a request for
24 anonymity. It must provide clear and convincing
25 evidence that there was a diligent search conducted

1 to meet preferences and explain if it couldn't be
2 met.

3 Notifying parents, custodians, family members,
4 maintaining documentation of placements. And in
5 order to depart from placement preferences, only if
6 the court finds good cause. And this good cause
7 basis must be included in the record. The party who
8 is asserting good cause has the burden to prove, by
9 clear and convincing evidence, of why it should be
10 deviated from.

11 So good cause to depart from the placement
12 preferences must be based on parents' request, if
13 both attest they reviewed the placement options; the
14 child's request, if able to understand the decision;
15 or the child's extraordinary physical or emotional
16 needs as established by a qualified expert witness.

17 What it does not include is bonding and
18 attachment from the placement or just the
19 unavailability of placement and a determination that
20 active efforts were made to find placement. Good
21 cause may not be based upon socioeconomic status of
22 any placement relative to another placement.

23 For post-trial rights, the Proposed Rule
24 establishes procedures to vacate an adoption if
25 consent was obtained by fraud or duress or, this is

1 important, the proceeding violated ICWA. It
2 establishes who can invalidate an action based upon
3 a violation of ICWA, which would be the Indian
4 child, the parent, Indian custodian, tribe,
5 regardless of whether that particular party's rights
6 were violated.

7 It establishes adult adoptees' rights to learn
8 their tribal affiliation and encourages states to
9 designate someone to assist with adult adoptees and
10 getting them the information they need to be
11 connected to their tribes.

12 The new Proposed Rule also requires notice of
13 any change in the child's status, such as a change
14 in placement.

15 Continuing with post-trial rights, I'd like to
16 highlight that states will be required to establish
17 a single location for all records of voluntary,
18 involuntary foster care, pre-adoptive placement and
19 adoptive placement that will be available within
20 seven days of request, so information being
21 available within seven days of request by the Indian
22 child's tribe or the Department of Interior, which
23 would include the petition or complaint, all
24 substantive orders in the proceeding, and record of
25 placement determination, including findings in the

1 court record and the social worker's statement.

2 So today we are seeking your comments on any
3 provision of the Proposed Rule.

4 And then we have the public meetings and tribal
5 consultation sessions that are coming up, as well as
6 a national phone call. We'll be also seeking
7 comments in person in Albuquerque, New Mexico; Prior
8 Lake, Minnesota; and Tulsa, Oklahoma.

9 There is one important date that we all need to
10 remember, and that is May 19th, comments are due by
11 May 19th. You can send comments by e-mail at
12 comments@BIA.gov.

13 So we appreciate any comments you can give
14 today and would be very grateful for comments in
15 writing. Even if you give comments verbally today,
16 giving them in writing will also be greatly
17 appreciated.

18 And, like I mentioned before, in writing would
19 be wonderful. You can also send them in, and the
20 address is here as well. But giving specific and
21 giving your ideas on paper would be so much
22 appreciated and just being a voice in this specific
23 to the regulations is going to be a tremendous help.

24 Thank you.

25 MR. LARRY ROBERTS: Thank you, Gina.

1 Okay, so we've had a few folks join us during
2 the presentation. Just wanted to, again, emphasize:
3 Please limit your initial comments to five minutes.
4 And once everyone has had a chance that wants to
5 provide comments, you can then go ahead and make
6 additional comments that you would like. But I want
7 to make sure everybody has a chance to provide
8 comments during the public meeting.

9 And so with that, I'll turn it over to whoever
10 would like to make the first comment. There's a
11 microphone in the middle of the room.

12 MR. JAY McCARTHY: Hello again. Thank you. I
13 know a lot of you traveled all night to get here
14 like I did.

15 My name is Jay McCarthy, and I'm an attorney,
16 and I work with children in Flagstaff, Arizona. And
17 I traveled both to Portland and to here.

18 I have a couple things I'd like to say. First
19 of all, I've been asked to hand deliver 115 letters
20 from individuals who could not attend, and I will
21 read into the record their names. I'll try to do it
22 very quickly: Jay McCarthy, Flagstaff, Arizona;
23 Chris Moore, 20 years old, foster child -- previous
24 foster child, Long Beach, California; Margaret Hall,
25 Milford, New Hampshire; Janet Story, Phoenix,

1 Arizona; Ann Renilds Copps, New York City; Ashley,
2 last name confidential, Missouri; Annalisa Atkin,
3 Florida; Stephany Aye, Licensed Clinical Social
4 Worker, Overland Park, Kansas; Kevin Balfour,
5 Florida; Rachel Balfour, his wife, Florida; Doreen
6 Ball, social worker, Kansas; Mary Beth, Professor of
7 Law, University of Missouri, Columbia, Missouri;
8 Dr. Vincent Burger, Camp Hill, Pennsylvania; Natty
9 Bonn, Florida; their partner Gabrielle Bonn,
10 Florida; Dr. Bonnie Cleveland, Ph.D., Charleston,
11 South Carolina; Jennifer and Ryan Meng,
12 Mt. Pleasant, South Carolina; Coalition for
13 Adoption; Cheryl Coronado-Burton, Flagstaff,
14 Arizona; Sandra Couillard, Licensed Social Worker,
15 Norwich, Connecticut.

16 MR. LARRY ROBERTS: Mr. McCarthy, I don't want
17 to interrupt you, but I'm just watching our court
18 reporter, and is it possible -- and I don't want to
19 interrupt you, but is it possible to maybe provide
20 those in writing to her after you're done reading
21 and that way she can get it all in then?

22 MR. JAY McCARTHY: Yes.

23 MR. LARRY ROBERTS: She's getting -- I can see
24 that it's a challenge to put all the names in with
25 the unique spellings. So if you can just provide

1 her copies of that after you're done, that would be
2 great.

3 MR. JAY McCARTHY: I will.

4 Kelli Cox, social worker; Drew Sethmore,
5 Missouri; Catherine Murray, Mesquite, Nevada;
6 Jennifer Curry, Tampa, Florida; Joanne Demarco,
7 Yorktown Heights, New York; Michelle Dawnard,
8 Kansas; Emily Droge, Licensed Social Worker, Kansas
9 City; Mia Diamond Paduia, White Plains, New York;
10 Tina Embrick, Pine Hills, Florida; Melinda Eggert,
11 Florida; Ruth Ellen Elinslic, Flagstaff, Arizona;
12 Erin Fawyer, Florida; Robin Fleischer, New York
13 City; William Ganoaly, Wakefield, Rhode Island; Lori
14 Galvin, social worker; Dr. Pamela Foti, I think it's
15 pronounced, Flagstaff; Natalie Granny, Florida; John
16 Greene, Annapolis, Maryland; Yvonne Haase, Florida;
17 Juliann Hartall, Flagstaff, Arizona; Randy Hicks,
18 Riverside, California; Tammy Holcombe, Florida;
19 Katie House, Kansas; Jeanne Howard, Texas; Holly
20 Hulen, Flagstaff, Arizona; Reena Jayaseqar, Florida;
21 Marsha Jollis, Florida; Mik Jordahl, Arizona; Kansas
22 City Metropolitan Adoption Council, which is
23 private -- 18 private and state agencies; Shawn and
24 Amy Kane, Missouri; Megan Kantio -- sorry if I'm
25 mispronouncing that -- Kansas; Eugene Kelley,

1 Rogers, Arkansas; Kevin Kenney, Missouri -- I'm
2 sorry, Kansas; Danielle Kinard-Friedman, Jupiter,
3 Florida. I'm trying to balance her in.

4 Steve Kirsh, Indianapolis, Indiana. And I
5 wanted to point out that Mr. Kirsh didn't know if
6 there were Native Americans who live in
7 Indianapolis. So he was educated.

8 Jennifer Kittridge, Florida; Leslie Knight,
9 social worker, Moore, Oklahoma; Kerri Koenig,
10 Jacksonville, Florida; Erin Koch, New York City;
11 Cara Kravetz, Florida; Denise Lacen, Florida; Jason
12 Laven, Florida; Melinda (sic) Leal; Robin Malinowski
13 and Dana Malinowski, Chicago; Jodi Martin, Florida;
14 Nancy Mattes, Ohio; Elizabeth McCartney, Florida;
15 Mary McNeil, Flagstaff, Arizona; Beverly McPhil,
16 Florida; Rita Meiser, Phoenix, Arizona; Wayne
17 Mellin, Missouri; Nicole Moore, Florida; Wade
18 Morris, Tampa, Florida; Jessica Mundy, South
19 Carolina; Kara O'Connor, Yonkers, New York; Anita
20 Patten, social worker, Phoenix, Arizona; Gretchen
21 Peterson, Florida; Mark Peter, Florida; Felicia
22 Pham, Florida; Samuel and Barbara Pitowsky, New York
23 City; Merrit Reed, Florida; Cole Ridley, Kansas
24 City, Kansas; Angela Rivera, Florida; Angel Roberts,
25 St. Louis, Missouri; Ismael Rodriguez, Tampa,

1 Florida; Katherine Rose, Orlando, Florida; Nina
2 Rumbold, New York City; Lara Sandowski, Rogers,
3 Arkansas; Abbi Schnell, New York, New York; Denise
4 Seidelman, New York; Laurie Shelton, Arizona;
5 Meridith Shepard, Florida; Sybil Shepard, Florida;
6 Lisa Simpson, Glendale, Arizona; Cindy Spitz, Cape
7 Coral, Florida.

8 MR. LARRY ROBERTS: Mr. McCarthy, sorry. Is
9 there a lot more on this point?

10 MR. JAY McCARTHY: There's one and a half pages
11 more. I'm almost done.

12 Miguell Siweriz, Florida; Dawn Smith, Vermont;
13 the Stewart family in Florida; the Tate family in
14 Tampa; the Weavers, Florida; Webster, Florida;
15 Van Gundy, Overland Park; Westen family, Arizona;
16 Malowski, Florida; Wheatley, Florida.

17 And I will wait until others have talked before
18 I give my presentation.

19 MR. LARRY ROBERTS: Okay, thank you. Thank
20 you.

21 MS. LINDA HERZBERG: I'm Linda Herzberg. I'm a
22 member of the Oglala Sioux Tribe, and I'm a social
23 worker.

24 I had a couple of questions or concerns. One
25 is: This is from the Federal Registry. It's 14885

1 is the page number. It's talking about engaging --
2 let's see, "Definitions" and "Active Efforts,
3 engaging the Indian child, the Indian child's
4 parents, the Indian child's extended family members,
5 and the Indian child's custodian(s)." I was
6 wondering how that affected the extended family
7 members. Does this mean they are supposed to engage
8 with the extended family members or it's just
9 suggested that they do that?

10 MR. LARRY ROBERTS: So I think the idea here,
11 and I will turn it over to my colleagues to try and
12 describe it, but I think the intent here is to lay
13 out examples what state agencies and state courts
14 can do to make active efforts, so reaching out to
15 extended family.

16 Does anyone want to add anything to that?

17 MS. RODINA CAVE: I can add to that.

18 So you'll see that, and it's under
19 "Definitions," Section 23.2, and the definition for
20 active efforts under the Proposed Rule lays out that
21 active efforts includes, for example, and then it
22 lists a number of actions and steps that agencies
23 can take. And so that is -- that's one of them.
24 "Notifying and consulting with the extended family
25 members of the child to provide family structure and

1 support for the Indian child, to assure cultural
2 connections, and to serve as placement resources for
3 the Indian child." There are many other examples of
4 what is included in active efforts.

5 MS. LINDA HERZBERG: So that's like a
6 possibility that they could do?

7 MS. RODINA CAVE: Right.

8 MS. LINDA HERZBERG: Okay.

9 Further on in that section it talks about
10 continued custody. And I know with foster care a
11 lot of times we talk about the mother. I was
12 wondering about the father, birth father, is that
13 included in continued custody, or are we just
14 talking about if the parents are separated there
15 isn't a continued custody with the birth father?

16 MR. LARRY ROBERTS: So I'm going to -- so I'm
17 going to answer it this way, and that is -- this is
18 not just for this particular definition but any
19 comments you have across the board, I think the
20 intent is for continued custody to be that of,
21 physical custody that a parent already has or had at
22 a point in the past. I don't know that it's meant
23 to exclude the biological father, but if that's
24 unclear to you, I would suggest that you provide us
25 comments on how we could clarify that and how you

1 think it should be written.

2 So it's sort of across the board here on our
3 Proposed Rule, the point of this meeting, this
4 public meeting is to get comments from you and you
5 providing input in terms of how can the rule be
6 clarified, where is it unclear, how can it be
7 bettered drafted.

8 MS. LINDA HERZBERG: Okay.

9 The next comment is, I don't know how you say
10 this but it's 23.104 under C, and this is "How do I
11 contact a tribe under the regulations in this
12 subpart?" "C" says that if you do not have accurate
13 contact information for the tribe or tribes or the
14 tribes failed to respond to written inquiries, you
15 may seek assistance in contacting the Indian tribes
16 from the BIA Regional Office. I think that should
17 be changed to "should." I think "may" gives too
18 much leeway. And if you don't have accurate contact
19 information, the letter may get lost in the tribe's
20 office some places and therefore you can think
21 you're doing what you should be doing and you're
22 not.

23 MR. LARRY ROBERTS: Okay.

24 MS. LINDA HERZBERG: The last one is 23.111
25 about notices, Part G. This talks about providing

1 translations of court documents. And I'm wondering,
2 are proceedings automatically given translators for
3 court hearings? Because this only talks about
4 notices.

5 MR. LARRY ROBERTS: That's a good question. I
6 think -- again, I think to the extent you think
7 that -- I think you should suggest language that
8 would clarify how you want it clarified.

9 MS. LINDA HERZBERG: Okay.

10 MR. LARRY ROBERTS: Okay? So -- but I
11 appreciate the specificity of your comments in terms
12 of each subsection and really identifying these
13 specific points that need to be clarified.

14 MS. LINDA HERZBERG: Okay. Thank you.

15 MR. LARRY ROBERTS: Thank you.

16 MR. KYLE KRAUSE: My name is Kyle Krause. I'm
17 an attorney here in Rapid City.

18 I'll start with some of the good. Thank you
19 for being here today. You guys have undertaken a
20 pretty sizable task in creating these proposed
21 regulations and the new guidelines. I know because
22 I probably spent ten hours myself just critiquing
23 them, not creating them. It's easier to tear
24 something down than it is to create it. So thank
25 you for the work you did do on that.

1 I can say I wish you would have taken input
2 like this with regard to the new guidelines as well.
3 Frankly, those came as a surprise to me. And I
4 think if I didn't know about them, I'm not sure if
5 very many other people did either because I usually
6 stay on top of this. So it was a bit of a surprise
7 to me. I got an e-mail, "There's new guidelines."
8 And I had no idea those were coming.

9 I have quite a few comments, but I'm going to
10 limit mine at this point to just the two major
11 changes to the law that I think these regulations
12 will make.

13 The first big one is that these new
14 regulations, more or less, eliminate the possibility
15 of anonymity in voluntary proceedings. That was
16 something clearly recognized by the previous version
17 of the guidelines.

18 The kinds of situations where that's
19 applicable, you know, hypothetical situation: I
20 have two parents walk into my office that say, We
21 don't think we can take care of our child. We've
22 got these friends we've known for years who want to
23 adopt our child. We want these people to take care
24 of our child. We don't really want the entire
25 community to know. We'll get ostracized for giving

1 up our kid if we do that. Well, under the previous
2 version I could, you know, we could put the child in
3 the home under Power of Attorney for six months,
4 file the adoption; we don't have to give any notice
5 to anyone. The parent -- the court can find good
6 cause to deviate from the placement preferences
7 based on the desire of the parents and grant the
8 adoption.

9 Under these new guidelines what would have to
10 happen is when we file the adoption, we have to send
11 notice of the proceedings to the tribe. Often these
12 are fairly close-knit communities. Frankly,
13 everyone seems to know everybody, so it wouldn't be
14 uncommon for the people not to want to spread out, I
15 guess news of this to spread in their community, and
16 that could deter some people from doing that.

17 Another hypothetical situation would be a
18 step-parent adoption. I do a lot more step-parent
19 adoptions than I do other adoptions.

20 And it might be that -- you know, usually it's
21 dad. Dad hasn't been involved for years, doesn't
22 want to pay child support and says, "Fine, I
23 terminate my rights. I don't really want anything
24 to do with this kid." But he might not want
25 everyone else to know that he's willing to just give

1 up his rights to his child. So under these, again,
2 you have to give notice to the tribe and possibly
3 others about this proceeding, which I think that's
4 something to watch out for.

5 You know, just some language from the previous
6 version of these, the 1979 guidelines very clearly
7 recognize this right, the desire of parents to be
8 anonymous. I'll just read from, the comments to
9 those. At Section B.1. of the 1979 guidelines it
10 says, "Under the Act [confidentiality] is given a
11 much higher priority in voluntary proceedings than
12 in involuntary ones. The Act mandates a tribal
13 right of notice and intervention in involuntary
14 proceedings but not in voluntary ones. For
15 voluntary placements, however, the Act specifically
16 directs state courts to respect parental requests
17 for confidentiality. The most common voluntary
18 placement involves a newborn infant.

19 "Confidentiality has traditionally been a high
20 priority in such placements. The Act reflects that
21 traditional approach by requiring deference to
22 requests for anonymity in voluntary placements but
23 not in involuntary ones. This guideline
24 specifically provides that anonymity not be
25 compromised in seeking verification of Indian

1 status. If anonymity were compromised at that
2 point, the statutory requirement that requests for
3 anonymity be respected in applying the preferences
4 would be meaningless." I think that makes some
5 sense. It's not possible to give the world notice
6 and still maintain anonymity.

7 The other big policy change that I see is that
8 these new guidelines basically do a 180 regarding a
9 good cause to deny transfer. The prior -- the 1979
10 guidelines specifically recognize that you can't
11 request transfer at any point in the proceedings. I
12 think our thinking has evolved a little bit. I
13 think there are good reasons often for tribes to
14 wait until the proceedings have played out a bit
15 more in state court before requesting transfer. But
16 under these new guidelines if I'm representing a
17 parent, every single time in the final dispositional
18 hearing if I think my parent is going to lose
19 custody of their kids, I say, Judge, transfer to
20 tribal court. And suddenly we have to then stop the
21 proceedings; the judge has to send a request to the
22 tribal court and we delay permanency for this child
23 until we can get this resolved. I don't think
24 that's what anyone really intends, but that's the
25 way these are going to work out.

1 There's -- some language from the commentary of
2 the 1979 guidelines addresses this really well, too.
3 I'll read from the comments to Part C.1. of the 1979
4 guidelines. It says, "Although the Act does not
5 explicitly require transfer petitions to be timely,
6 it does authorize the court to refuse to transfer a
7 case for good cause. When a party who could have
8 petitioned earlier waits until the case is almost
9 complete to ask that it be transferred to another
10 court and retried, good cause exists to deny the
11 [transfer] request.

12 "Timeliness is a proven weapon of the courts
13 against disruption caused by negligence or
14 obstructionist tactics on the part of counsel. If a
15 transfer petition must be honored at any point
16 before judgment, a party could wait to see how the
17 [trial] is going in state court and then obtain
18 another trial if it appears the other side will win.
19 Delaying a transfer request could be used as a
20 tactic to wear down the other side by requiring the
21 case to be tried twice. The Act was not intended to
22 authorize such tactics and the 'good cause'
23 provision is ample authority for the court to
24 prevent them." I think that should continue to be
25 the case. We don't want these kids lingering in

1 limbo because someone like me, frankly, representing
2 the parent finds out that they can delay these
3 proceedings more by requesting a transfer at the
4 very last minute.

5 So I'll save any other comments I have for
6 later.

7 Thank you.

8 MR. LARRY ROBERTS: Thank you.

9 MR. CODY WILSON: Hi. Good morning. I'm Cody
10 Wilson. I'm an Oglala Sioux tribal member. And I'm
11 also the adoptive father of three Native American
12 children that are also Oglala Sioux tribal members.

13 I'm here today. We need to think hard about
14 these measures when it comes to voluntary adoptions.
15 The placement of Native American children when it's
16 on a voluntary setting, if that mother wants to
17 voluntarily place her children, she should have the
18 right to choose where her children go. It should be
19 not mandated by the tribe where her children go.

20 With these guidelines in place, that you're
21 wanting to put into place, I probably wouldn't be a
22 father today of my three children because they
23 probably would have went to a relative. There was
24 relatives that wanted them. But our birth mom said
25 that she wanted the children placed with us. And,

1 um, you know, um, because my -- our children's birth
2 mom had the strength, the courage and the love for
3 her children to say, "I want to place with Cody and
4 Jen," I'm a father today. If the tribe would have
5 gotten involved, I probably wouldn't be a father.
6 We -- you know, it's not always in the best interest
7 of the child to go with a family member.

8 That's all I have to say right now.

9 Thank you.

10 MR. LARRY ROBERTS: Thank you.

11 MS. COLEEN GLOBKE: My name is Coleen Globke,
12 and I'm a social worker, and I would like to share a
13 little bit about my role in the clients that I work
14 with.

15 What does someone do when they find themselves
16 with an unplanned pregnancy? Hopefully they're
17 looking at the options, weighing the pros and cons
18 of all of their possible choices. I've been a
19 crisis pregnancy options counselor for the past nine
20 years. I've worked with over a hundred clients in
21 that time. And the demographics of the clients that
22 I've served are proportionate to the rest of the
23 population of South Dakota.

24 As the clients I serve weigh their choices,
25 they consider what's in the best interest of their

1 child, themselves, and those that they have a
2 relationship with. The pregnancy and ultimately the
3 child will affect all relationships in their lives,
4 whether they be romantic relationships, friend or
5 familial.

6 Those with an unplanned pregnancy have to make
7 a decision that they can live with every day for the
8 rest of their life. Those decisions are not
9 generally made hastily or without a great deal of
10 thought. Ultimately this person must decide if
11 she's going to terminate that pregnancy, parent that
12 child, or choose adoption for her child.

13 And for those that choose parenting, we help
14 them get connected to resources they need to be the
15 very best parents that they can be.

16 For those that choose adoption, they have to
17 decide what kind of adoption they want, an open
18 adoption, a semi-open or a closed adoption.

19 They also need to think about who they want to
20 raise their child. Through the counseling process
21 they identify the qualities they want in a family.
22 Do they want a family who already has a child or
23 children? Do they want a family with a particular
24 religion? Do they want a family that lives close by
25 so that they can get together often? Or a family

1 that lives far away in a big city and has different
2 opportunities? What kind of hobbies and activities
3 do they want that family to have?

4 And finally, what race do they want that family
5 to be?

6 Some clients have very specific ideas about
7 what they want, while others are much more open.

8 Adoption professionals who are doing things the
9 right way should consider these things that their
10 clients want and help them achieve that.

11 For clients who are Native American, their
12 options are different. In most cases when these
13 clients come for counseling or make an adoption
14 plan, a lot of times they don't have any idea that
15 there are different regulations that have to be
16 followed. This is upsetting to some of them who
17 don't want to be treated any differently. They
18 don't understand why they have to go through a
19 different process.

20 Currently they have three options. The first
21 is to go to the tribes, speak to the ICWA officer
22 and ask for permission to make the adoption plan of
23 their choice.

24 Their second option is for the agency or
25 attorney handling their adoption to provide notice

1 to the tribe of hearings that will take place
2 regarding the adoption of their child.

3 And the third option is for them to participate
4 in a good cause hearing, as was mentioned in the
5 previous testimony.

6 I personally have clients who have utilized all
7 three of those options.

8 In cases where the client wants the adoption to
9 be confidential and wants her privacy protected and
10 identity protected, it's unethical and
11 unconstitutional to force her to share that very
12 private information.

13 Clients who want to choose adoption should have
14 the choice of whatever qualities they want in the
15 adoptive family they choose. They're making a
16 decision for their child that they feel is best. By
17 taking away that right to do what is best for their
18 child is essentially saying that other people should
19 have more influence over their child than the parent
20 themselves.

21 When someone faces an unplanned pregnancy, they
22 could choose to terminate life. When these women
23 choose life, they should be given the option to
24 choose the kind of life they want for their child.

25 For these reasons and on behalf of many of the

1 clients that I serve, I strongly oppose some of the
2 guidelines that are proposed here.

3 And I also would like -- one of the Board of
4 Directors for the agency that I work for asked me to
5 share this. He was not able to be here today. His
6 name is Dale Denhoff (phonetic). He's from Hoven,
7 South Dakota. "I was born at St. Mary's Hospital in
8 Pierre, South Dakota on January 7th, 1955. I was
9 placed in a foster home for five months until my
10 adoptive parents adopted me. I was the first of
11 four Native American children adopted by my parents.

12 "When I was 32 years old I found my birth
13 mother and began a relationship with her. It was
14 very emotional for me to see my adoptive parents
15 meet my birth mother and personally thank her for
16 giving them a child they could not have on their
17 own.

18 "Years later my birth mother encouraged me to
19 enroll in the tribe and went with me to carry out
20 that process.

21 "I'm thankful that I was adopted by loving
22 white parents who were able to take care of me and
23 give me a stable home when my birth mother was not
24 able to do that.

25 "I feel it's important for birth parents to

1 have the right to choose to give their babies a good
2 home, a family who will take care of them.

3 "I have been blessed in the past five years to
4 be able to teach CDL classes to Native Americans on
5 the reservation because I was given an opportunity
6 to be adopted by two parents and receive a
7 well-rounded education and have numerous good jobs,
8 one being a truck driver, I now have the ability and
9 experience to teach others on the reservation how to
10 drive a truck and bus. I help them successfully
11 take their CDL tests and encourage them to get jobs
12 and better their lives.

13 "It's very rewarding for me to build
14 relationships with my Native students and help them
15 to achieve their highest potential. My students are
16 more receptive to me as a teacher knowing that I am
17 also Native and a registered member of the tribe.
18 This was only possible because one young mother
19 loved me enough to give me an adoptive family who
20 could not have a child of their own. For these
21 reasons I am opposed to the proposed regulations
22 changing the ICWA guidelines.

23 "Sincerely, Dale Denhoff."

24 MR. CODY WILSON: I'm going to try this again.
25 I'm a horrible public speaker. I apologize. I'm

1 just going to read what I have.

2 My name is Cody Wilson, and I am an Oglala
3 Sioux tribal member. And I am the adoptive father
4 of three Native American children who are also
5 Oglala Sioux tribal members.

6 I am here today to ask you to think hard about
7 the measures you are about to take regarding
8 placement of Native American children in regards to
9 voluntary adoption. My question is: Are these
10 guidelines what's best for us as a people and for
11 our children? Under these guidelines that you are
12 trying to impose, I would not have had the
13 opportunity to be the father of my three wonderful
14 children. Under these guidelines my children would
15 have been placed with a family member.

16 But because my children's birth mom, whom my
17 wife and I love with all of our heart, was strong
18 enough to say, "This is what I want for my children
19 and this is who I want to raise my children" -- that
20 is her right as a mother. That is not the tribe's
21 decision.

22 We are at a very pivotable point right now as a
23 people. My generation is not going to fix our
24 people's problems. It is the next generation who
25 will hopefully have the answers to help heal us as a

1 people.

2 We need to focus on creating leaders for the
3 future. They are the ones who will solve our
4 problems, not you, not I.

5 As you can see, I'm not a full blood. I have
6 always been able to float between both cultures, but
7 I have always been very proud of my Native heritage.
8 So I come to you today with a different perspective.
9 My perspective is maybe instead of shielding our
10 children from the white culture, we need to let our
11 children teach the white culture about us. Let them
12 heal the tensions between us.

13 What we've been doing is not working. We need
14 to figure out solutions that promote equality
15 between our cultures, not drive us further apart.

16 Please, we need to step back and reevaluate
17 what we are trying to do with these guidelines. It
18 is -- it is -- it is not always in the best interest
19 of the child to follow these guidelines. In some
20 cases it is, but in many cases it is not.

21 But by denying our children in some cases to be
22 adopted into a white family, we are denying our
23 children the opportunity to teach them -- to teach
24 the white community who we are as a people. We are
25 denying them the opportunity to bridge the gap

1 between us. Separatism is never the answer.

2 Thank you for your time and consideration.

3 MR. LARRY ROBERTS: Thank you.

4 MR. JAY McCARTHY: Can I finish up my --

5 MR. LARRY ROBERTS: Yeah, sure. Go ahead.

6 MR. JAY McCARTHY: Here are the 116 letters I
7 read. I'm going to give them to, provide them to
8 the court reporter so they're part of the record.

9 MR. LARRY ROBERTS: I'll take them.

10 MR. JAY McCARTHY: Again, my name is Jay
11 McCarthy. I grew up in Nebraska. I have family in
12 Nebraska. I was part of many members that were in
13 our family that were Omaha Winnebago.

14 I spent 15 -- or 12 years in Alaska. My home
15 in Alaska still is on the Copper River Basin Region.

16 I live in Flagstaff, Arizona. I practice with
17 the Yavapai White Mountain Apache, Hopi and the
18 Navajo courts. But the people we're most proud of
19 in our family are the Sioux. I don't think there is
20 any other nations other than the Sioux nations that
21 have the dignity and openness of mind and heart.

22 And I hope those of you in the audience will
23 open your heart and minds to what I'm going to say.
24 I do not mean it in a way to hurt, but I think it's
25 important to discuss.

1 The gentleman, I think his name was Kyle --
2 I apologize.

3 -- and Cody were talking about women's rights.
4 And my practice of 35 years has been to primarily
5 represent children and primarily also birth fathers.
6 I will tell you that no one has said, and I'm just
7 astonished, is that the parent has a Constitutional
8 right of privacy that the United States Supreme
9 Court has consistently said includes confidentiality
10 of certain information and the right, the right to
11 make decisions.

12 Now, we will disagree with this, but tribes do
13 not have Constitutional rights. This -- what you're
14 trying to make regulations will be struck down. We
15 need, as this gentleman said, to rethink this. We
16 should not be trying to have a greater amount of
17 conflict, which is what this will only bring.

18 The gentleman that was quoting the '79
19 guidelines, he was talking about the good cause
20 provision for transfer of cases. The first thing I
21 want to know is has anybody done a fiscal note? Has
22 the government done a fiscal note or the tribes?
23 That would be my first question. When I do
24 legislation, that's mandatory. I don't know if the
25 Oglala or Rosebud, the Navajo, Hopi understand the

1 fiscal.

2 I know in my community many children cannot go
3 to Tribal Social Services because they're ill
4 funded. We should be here today as an army to fight
5 for better funding for Tribal Social Services. We
6 wouldn't be having these fights if upfront we had
7 the homes and the services.

8 Let me tell you: You transfer a child from
9 state custody in state court to tribal court, do you
10 know who's going to pay for that? The tribes, not
11 the state. And where are they going to get those
12 funds? None of us in this room want children to not
13 get proper treatment.

14 The second thing is: In the first slide or
15 second they brought up a slide that said that these
16 regulations will say that in juvenile delinquent
17 proceedings, ICWA applies. Have any of you read the
18 actual law called the Indian Child Welfare Act? It
19 has a definition of child custody. It specifically
20 states it does not apply in juvenile proceedings
21 where the crime would be a crime if committed by an
22 adult. That's a fallacy. That's a trick on all of
23 you. They can't do that. You can't make a
24 regulation that overrides the statute. You can't do
25 that.

1 Now, the children's rights: There's a famous
2 U.S. Supreme Court case called Troxel. You probably
3 have heard of it. It was where a grandparent took
4 custody from the mother and the judge said, "Oh,
5 that's in the best interest." And they said,
6 "That's not appropriate."

7 But what Troxel also contains is a scathing
8 (unintelligible) of Justice Stevens of the United
9 States Supreme Court that children are not chattel.
10 They are not property of anybody, including their
11 parents. They're individuals. And many states have
12 recognized the children's rights. And I have
13 included that.

14 What the gentleman about the '79 guidelines
15 didn't say is that those of you in this room, and
16 there are many, who helped pass the Indian Child
17 Welfare Act. And it is a landmark legislation.
18 Nobody in this room, I don't think, would ever say
19 we should not have that. But that was 1978.

20 The first guidelines were in 1979. And the
21 very same people that wrote and passed ICWA were
22 involved in the passage of the '79 guidelines.

23 Now, why do I bring that to your attention?
24 Because since 1978 -- I asked to make sure I was
25 correct on this -- the Indian Child Welfare Act,

1 there have been I think four attempts to modify. It
2 has never been amended.

3 And Congress, unless you can tell me, has not
4 directed the BIA to do what they're doing here.
5 They have not.

6 This is a trick on all of us to make us fight
7 among ourselves. And why I say that: Let's talk
8 about the '79 guidelines the gentleman referenced.
9 In the 1979 guidelines, they said, for example, that
10 good cause, which is for placement preferences and
11 transfer, what did they say? They cite that good
12 cause was purposely not defined by Congress, and
13 they cite the legislative history. How is the BIA
14 going to give us regulations? That's what I want to
15 know. Where is your authority?

16 The Solicitor's Office is here, correct?

17 MR. LARRY ROBERTS: Yes. The authority is in
18 our preamble and, you know, it's in our rule making.
19 And so it's -- the purpose of this public meeting is
20 not to debate points of policy or law, but it's just
21 to get feedback from you. And I know that you feel
22 that there are various parts of the Proposed Rule
23 that are unlawful and --

24 MR. JAY McCARTHY: You're talking about U.S. --
25 U.S. 1952 I think is what you're referring to.

1 MR. LARRY ROBERTS: Everything that is cited in
2 the Proposed Rule.

3 MR. JAY McCARTHY: Okay. So I would ask,
4 because I disagree respectfully, because it says,
5 this is in the first page of the '79 guidelines,
6 these are the people that passed ICWA: Assignment
7 of supervisory authority over the courts to an
8 administrative agency is a measure at odds with the
9 concept of both federalism and separation of powers
10 and it should not be imputed to Congress in the
11 absence of express authority. Over and over and
12 over they say this.

13 They have no authority, Folks. You're here and
14 you're believing this is going to happen. And it's
15 not. And that is just not right.

16 And finally, I want to take you to task about
17 how you schedule these things. There is not a
18 single hearing east of the Mississippi River. Do
19 you know that? Other than a call-in. And if you
20 look at the map and if my map is right, the 20 most
21 populous states in our country do not have a
22 hearing. Those are the states with the most
23 children in foster care. And we all know that the
24 children in state foster care is what this is about.
25 This is not applying to tribal court.

1 So the majority of states where children are in
2 foster care, the majority of states where there's
3 adoptions are not here. I don't know what cruel
4 game you want to do, but you're doing it.

5 People in the hallway who come up to me and
6 say -- they're angry. They want their children.
7 They want help. But we're splitting all of us, and
8 that is not the way of the Sioux nations. That's
9 not the way of the Navajos or the Apaches.

10 And I ask you, as this man did: Do not blindly
11 sign on to these. Do not blindly say that women
12 have to give notice to a tribe if they're a rape
13 victim and pick adoption. Do not say that a Native
14 child who is in a home where they're thriving, that
15 the court cannot consider everything about that
16 child.

17 These guidelines, which will be rules for the
18 courts, say that a judge cannot look at bonding and
19 attachment. Now, bonding and attachment in every
20 case is different and every case is unique.

21 And it also says that the length of time of a
22 child in a placement, and that's mainly foster kids,
23 cannot be considered. What you're saying is, Judge,
24 you can't even look at that.

25 Please read these and think about the children

1 and the parents it will impact.

2 South Dakota, I'm not from here. I'm from --

3 MR. LARRY ROBERTS: Mr. McCarthy --

4 MR. JAY McCARTHY: All right. Goodbye.

5 MR. LARRY ROBERTS: Thank you. And, you know,
6 I just want everybody in the room to have an
7 opportunity to provide comment.

8 MR. JAY McCARTHY: I understand your objection.

9 MR. LARRY ROBERTS: Okay.

10 MS. LORNA TURGEON: My name is Lorna Turgeon.
11 I'm a social worker. I've been a family therapist
12 in the past. And I've worked as an investigator on
13 criminal defense cases in the past also.

14 I work for Sicangu Child & Family Services, but
15 I'm not speaking on the agencies we have.

16 I've worked also for six years for Child
17 Protective Services in the State of South Dakota,
18 four years on the reservation on the Pine Ridge and
19 then a year and a half in Rapid City before I was
20 burnt out.

21 And then I went into mental health and
22 subsequently worked as a family therapist before
23 trying to go home to my reservation and then working
24 for Sicangu Child & Family.

25 In the meantime I went for my master's in

1 social work and master's in public administration.
2 So I do have a number of years, more than 20 years
3 of experience, as well as the education.

4 And I want to address a couple of points before
5 I get to the reason that I'm up here. One is that:
6 The gentleman that just spoke, I appreciate his
7 concerns, but we really do, on a tribal level, we
8 take into consideration the bonding with the current
9 family. We take into consideration their special
10 needs. So we have the expertise and the experience
11 with children, with families to do that. We don't
12 just across the board say, They must be Indian; they
13 must be Native; they must be on the reservation. We
14 consider all of those factors on each individual
15 case.

16 And sometimes what we do when we move a
17 child -- like I have a child who's going to be going
18 back to his dad. He's been with these foster
19 parents for four years. The foster parents are
20 older. They've already adopted two Native boys who
21 are now adults, so they're not going to be able to
22 adopt this child. The father is -- it's looking
23 really, really good for reunification. He hasn't
24 stepped sideways. That's how good he's been. And
25 he's somebody who has come out of prison as well,

1 but people make mistakes.

2 And what we're going to do with this child is
3 the foster family is attached to him. He's attached
4 to them. He's known no other parents. He's bonding
5 with his father now. But it was threatening for
6 them to let him go. They wanted to see him with a
7 family who was interested in adopting him previous
8 to the father coming forward. They have better
9 financial resources, and they have their own
10 business. And that was one of the things that the
11 foster parents wanted for him was to have the best
12 possible opportunities. However, that child would
13 be giving up his tribal identity, even the basic
14 knowledge and feeling of what it is to be Lakota or
15 to be Native. So what we're going to do is the
16 foster parents will let him come for a weekend or
17 whatever whenever he wants so that he'll continue to
18 have them in his life as grandparents.

19 So what the court, the state uses so often very
20 effectively in blocking transfer when they want to
21 block transfer is they say that this child is so
22 bonded it would be traumatic for the child to leave
23 this home.

24 And then secondly, they -- if that's not strong
25 enough, they say that the child has been so

1 traumatized, that now they're doing well, they
2 should not be moved. But the reality is that these
3 children with -- sometimes when they first see their
4 parent, if they haven't seen them in a long time,
5 they will be reticent; they'll hold back. And
6 sometimes the social worker will think there's not a
7 bond there. But within a little while of the visit
8 or the second visit they've reopened those bonds. A
9 child is somewhat flexible.

10 The important part when you transfer a child is
11 to do the transition visits. Don't do it all at one
12 time, if you can anyway, and to closely supervise
13 this new placement, whether it's a foster care
14 placement, a pre-adoptive placement, a placement
15 with a relative. There has to be close supervision
16 and support. And we can provide that.

17 We're not against adoption with non-Native
18 families; however, we are losing our children at a
19 high rate. And I am glad that in the new guidelines
20 it says that the case can't be blocked from transfer
21 or -- there's a better word for it, but deny
22 transfer based on bonding. And I am glad for that
23 because it's an effective tool that DSS uses, and I
24 think it's a faulty premise. Because the children,
25 if you do it right, they will bond with the

1 relatives or whoever it is with the Native
2 placement.

3 We consider everything when we look at
4 transfer. And we are competent.

5 The second thing was waiting. If a tribe
6 intervenes late in the process I still think that
7 should not be a factor to block that transfer
8 because -- excuse me, when I'm nervous my mouth
9 dries up. And -- because it takes a short time to
10 get that transfer affected to set up a transfer
11 hearing and make the decision, and that's not much
12 to consider. It's not the damage that you would
13 think compared to the child's loss of their
14 identity, their sense of belonging and their family
15 ties with mom.

16 So thank you.

17 MR. LARRY ROBERTS: Thank you.

18 MR. CODY WILSON: I have to respectfully
19 disagree with one of her points on the point of
20 losing our children to white families. We're not
21 losing our children to white families. We're
22 gaining allies in reconciliation with white
23 families. We are gaining tribal members. They may
24 not be a part of a tribe, but if that white family
25 adopts a Native American child, that white family is

1 now a tribal member. Because I know many of them,
2 and they go above and beyond to try to teach their
3 children the ways of the Native people.

4 MR. LARRY ROBERTS: Okay, thank you.

5 Like I said at the outset, and I'll just say it
6 again: I appreciate everyone coming to this session
7 today. It's really important that we have your
8 comments on the Proposed Rule. It's a really
9 important topic. It's important to everyone in this
10 room. And if you're watching the people giving
11 presentations, you can see it. You can hear it in
12 their voice. It's important to them.

13 What I don't want this session to turn into is
14 a situation where somebody says something and then
15 the next person disagrees and criticizes that
16 person. Okay?

17 MR. CODY WILSON: I'm not.

18 MR. LARRY ROBERTS: I know.

19 But I really think it's important, on this very
20 important topic, that everybody treat everybody with
21 respect.

22 Please direct your comments to us. And please
23 respect that everybody should have an opportunity to
24 provide comment on this. And so if you already
25 commented and there's a point that you want to make,

1 just jot it down. I promise we will stay here as
2 long as we have the court reporter. Okay? And
3 we'll get it down.

4 And if we don't get it down at this session, we
5 will have the teleconference. And you can also
6 provide written comments. Okay?

7 So thank you.

8 MS. BERNICE DELORME: Good afternoon. My name
9 is Bernice Delorme, and I'm an MSW social worker and
10 a lawyer. And I was also a foster kid until I went
11 to college. So I was probably in 35 foster homes,
12 my brother and I, by the time we were grown. And we
13 were in all white foster homes. Back in those days
14 when I was growing up before ICWA, there were not
15 Indian homes that could take us. There wasn't
16 licensing procedures. There wasn't any of that
17 stuff.

18 And I can tell you horror stories about what it
19 was like to be in those white foster homes. We were
20 in a foster home where the guy was the chief of
21 police for this little border town from the
22 reservation, and we were forced to eat on the floor
23 with those little, what do you call them, aluminum
24 pie pans. We had to eat on the floor with the dog
25 because we were Indians and we were not fit to sit

1 at their table. I had a razor strap waiting for me
2 every morning because I wet my bed because I didn't
3 want to be there.

4 So I don't know where these people, where these
5 foster people came from, but they didn't come from
6 North Dakota. Because to be in a white foster home
7 in North Dakota, everybody badmouthed Indians.
8 Everything that they had to say about my parents,
9 about my grandparents, about the tribe was a
10 negative thing. And as far as -- if they would have
11 had their way, I would have never made my way back
12 there.

13 And I see this now as a social worker and as a
14 lawyer, you know, these kids get placed into white
15 homes, sometimes early on in their life, and
16 everybody, every service provider that they have
17 contact with is a white person that hates Indians.
18 They may not say they hate Indians but they'll say,
19 "Oh, you don't want your hair to be long like that.
20 You want short hair." Or, "You don't want to go to
21 school and, you know, wear that funny jewelry. You
22 don't want to be like that."

23 You know, I went through boarding school. I
24 went through foster care. My kids are the first in
25 four generations to even be raised at home, and

1 that's why ICWA was passed, and that's why it needs
2 to be strengthened now.

3 As a lawyer I read these cases. I remember
4 this Fishing case over in Washington, and they said
5 that the supreme courts had -- never have I seen a
6 state go to such lengths to circumvent the law. And
7 that's what happens with ICWA here. All of these
8 practitioners can tell you how the State of South
9 Dakota uses this registry. This registry keeps
10 track of everything an Indian has ever done wrong in
11 their life. And I have seen them turn down
12 placements of grandparents because they had a DUI 25
13 years ago. That needs to stop. People have a
14 chance to fix their lives, to come out of prison, to
15 be a father, to be a mother. Those things, they
16 need to have that chance.

17 And tribes do have Constitutional rights. You
18 know, you cannot be a tribal person without your
19 relatives. You cannot. And so for these people to
20 stand here and say, "Children have their rights.
21 Everybody else has rights but tribes don't have
22 rights," a tribe is not a tribe without its
23 children. And my people say that all the time. I
24 don't know -- I don't know what they think. But I
25 know that if somebody comes to me and they say,

1 "Hey, you're from Turtle Mountain. You know, who do
2 you know?" I got -- "So and so over here is my
3 cousin. So and so over here is, you know, related
4 to me by marriage," or whatever. So those
5 relationships are very, very, very important, and
6 there would be no tribe without those relationships.

7 So the things that I wanted to leave you here
8 with today is when a child is taken, if everybody
9 they see is white and everybody -- you know, if they
10 stay in care for any period of time, it's really
11 hard for them then to try to come back and re-bond
12 with their family. They hear all of these awful
13 things about how awful Indians are and about how
14 they have these weird dances and they wear these
15 beads and feathers and all of this stuff and that
16 you don't really want to be like that.

17 And then the social worker comes and they're
18 supposed to be going and trying to meet with those
19 parents to give those kids back. And those kids are
20 scared. They may be Indian but they're scared of
21 those Indians because everybody else has told them
22 that being Indian is not a good thing. So I think
23 that's something that needs to be addressed.

24 And, you know, by those non-Indian providers,
25 in their mind those kids are thriving. But are they

1 thriving in the tribal sense of the word without
2 their relatives? No.

3 And in terms of the cultural practices part, I
4 saw that in one of the definitions, and what I've
5 seen is sometimes the non-Indian service providers
6 will try to ship in a spiritual advisor, say, and
7 bring that person over to the foster home to come
8 and talk to the kids about their cultural practices.
9 But cultural practices happen in the context of a
10 tribe. It should be the other way. Those kids
11 should have to go home. They should have to go back
12 to the reservation. They should be able to see the
13 teepee or see the wigwam or see, you know, the lodge
14 or whatever, you know, where their tribe practices
15 those spiritual traditions.

16 And it's not the same thing to ship one guy
17 over or one woman or whoever over to talk to these
18 kids in a white foster home so that those kids don't
19 have to go back to the reservation. That's not the
20 same thing to me that can meet the spiritual needs
21 of those kids.

22 The other thing I want to say is sometimes --
23 okay, I have two minutes left.

24 We see judges. We see judges all the time that
25 have adopted kids from other cultures. And these

1 judges don't think they have a conflict of interest
2 in dealing with Indian kids and the possibility of
3 placing them in white foster homes.

4 In Minnesota if you go to court over there and
5 you get a judge, no matter if there's a conflict of
6 interest or anything, you can't change the judge.
7 So I think that those personal conflicts of interest
8 need to be recognized.

9 I think that's it.

10 I just wanted to say that this South Dakota
11 Register, there needs to be some kind of limit, time
12 limit on how far back they can go to disqualify
13 tribal families from being able to be considered as
14 placement options for kids.

15 Thank you.

16 MR. LARRY ROBERTS: After this comment we're
17 going to take like about a ten-minute break because
18 we had one scheduled for 2:15. We're going to give
19 the court reporter a break after this comment, and
20 then we'll resume after ten minutes.

21 Thank you.

22 MR. RUSS CONTI: My name is Russ Conti. I'm an
23 MSW. I grew up in New York, Long Island. My wife
24 is an Oglala Lakota tribal member. So are my
25 children.

1 I have worked in the community as a, Pine
2 Ridge, as a social worker, supervisor, director
3 with -- for the Casey Family programs and with the
4 Tribal Child Welfare Agency in Pine Ridge.

5 I would like to speak on behalf to support the
6 changes to strengthen the Indian Child Welfare Act
7 based upon my professional experience and my belief
8 that the essence and the spirit of the law is to
9 help the children stay connected to their relatives
10 and their families.

11 And how that, you know, through practice and
12 other agencies and other means of trying to help
13 that not happen, some of the examples that were
14 shared about the ways that states and state courts
15 can circumvent that, I think it's desperately needed
16 to be strengthened and I applaud the effort.

17 And I realize in hearing a lot of the testimony
18 and the heartfelt struggles of some parents, about
19 the parents, providers, I understand how hard that
20 can be. However, from a social justice standpoint,
21 it's so critical that this work happen.

22 The gentleman talked about funding and the
23 importance of tribes having access to do this work
24 in a way that will help keep the children with their
25 relatives. And I think that is one of the --

1 unfortunately ICWA being an unfunded mandate, that,
2 I presume, will change, but, you know, really
3 helping states truly collaborate with the tribes to
4 do this work in a way that realizes that the tribes
5 have the answers. They know the solutions. The
6 solution of keeping the children with their relative
7 is the answer. And that's what the spirit of the
8 law has been to maintain. So I hope that we can get
9 there.

10 Over time I know there are many hurdles. It
11 really comes down to the, people hate to say it, but
12 the institute of racism that's embedded in those
13 practices in the court systems, in the child welfare
14 systems, to really look at, you know, how long
15 that's been perpetuated and how long it's needed to
16 stop. So hopefully, you know, with these efforts
17 and with empowering the tribes to do the work in the
18 way that they're meant to, that this may change.
19 And I wake up hopeful every day that that can
20 happen.

21 Thank you.

22 MR. LARRY ROBERTS: Thank you.

23 So it's 2:30. We will take a break here for
24 ten minutes. We will start promptly at 2:40.

25 Thank you.

1 (Recess taken.)

2 MS. COURTNEY TWO LANCE: I am Courtney Two
3 Lance, Oglala Sioux Tribe.

4 We work with the budget for our tribe. And we
5 also noticed that, you know, ICWA is underfunded or
6 it's an unfunded mandate.

7 We have a program on our reservation that's
8 manned by three people. And I have a question.
9 Working with the budget, there was an initiative
10 that was implemented, the Tiwahe Initiative. How
11 much is this going to be affected? Or can we tap
12 into that? Because I think for Social Services
13 there was a set-aside of like 12 million. Are you
14 going to help the tribes tap into that? Because it
15 is reconnecting the family or helping the families.
16 So how will we be able to do that with this?

17 MR. LARRY ROBERTS: It's a great question. I
18 don't have a complete answer for you right now, but
19 I can tell you a little bit about that we did get
20 funding for the Tiwahe Initiative through the BIA.
21 We are looking at, like other initiatives,
22 implementing it as a pilot in a few tribal
23 communities but also looking to see what we can
24 provide to all tribes as part of that increase.

25 So once we have that increase sort of provided

1 to all tribes, whatever that is -- it probably is
2 not going to be a lot just because obviously there
3 are some 566 federally recognized tribes. But,
4 again, and I said this this morning in terms of one
5 of the things that we do as part of our budget
6 formulation process is we have tribal leadership.
7 We have a budget committee, Interior Tribal Budget
8 Committee. And tribal leadership is on that
9 committee from every region. There's two
10 representatives and I think an alternate from every
11 region. And so we take our leadership from them.

12 And so we're going through the '17 budget
13 process right now. And we'll -- so to the extent
14 that we hear tribal leaders prioritizing ICWA and
15 funds for ICWA, you know, we're going to follow the
16 lead of those tribal leaders as part of that budget
17 process.

18 So for Tiwahe we're looking at a handful of
19 locations, but we're also looking at probably modest
20 increases across the board. But that hasn't been
21 finalized yet.

22 MS. COURTNEY TWO LANCE: Okay.

23 The other thing to add to that: With that
24 initiative, when I was looking at the uses of it --
25 because it was not only in Social Services. It was

1 also in tribal courts and corrections and
2 detentions. I looked through the authorized uses,
3 so I can say: ICWA, why can't you do this or modify
4 (unintelligible)? If you do have shortfalls or
5 unfunded mandates, why couldn't you address it
6 through this initiative?

7 If you look in the green book, there's no
8 direction.

9 MR. LARRY ROBERTS: So the reason for that is
10 sort of twofold. One is that Tiwahe, the idea is to
11 sort of promote wrap-around services in tribal
12 communities, right? So right now all of our funding
13 is so siloed across different areas that might touch
14 upon the family, right? So you could have Social
15 Services; you could have law enforcement; you could
16 have substance abuse. You could have all of these
17 different services or programs, 477. And the idea
18 is for some of these pilot locations to work very
19 closely with tribal leadership to tailor what that
20 tribal leadership views in the -- what tribal
21 leadership views as to what will work best in that
22 community for Tiwahe for these wrap-around services.

23 So it's going to be a little bit different
24 every place, right? What may work for one location
25 in Minnesota on a reservation could be completely

1 different than in Montana or Arizona. I'm just
2 throwing those out.

3 So it is meant to be flexible, and I suppose
4 it's meant to provide flexibility as we're working
5 with those tribes on the pilot projects.

6 I'm happy to talk with you about that further,
7 but I want to keep us focused on this Proposed Rule.

8 And I want to say we really appreciate your
9 comments on this. We really appreciate your
10 specific comments where you have comments on
11 particular sections of the Proposed Rule, how it
12 should be changed or modified or whether we got it
13 just right.

14 So with that, I will open it back up to the
15 floor. And, again, if you've already provided
16 comments, please, let's pause for a few minutes and
17 let someone who hasn't had a chance to provide
18 comments provide those. And we will endeavor to
19 make sure that everybody has an ample opportunity to
20 provide their comments here today.

21 Thank you.

22 MS. LIZ GLOBKE: My name is Liz
23 Globke (phonetic). I'm a member of Oglala Sioux. I
24 live in Sioux Falls at this time.

25 Now, I have a sister who's a social worker. I

1 kind of see it from lots of different areas because
2 I've lived through stuff where they should have
3 removed us. I've had my kids removed. I've had a
4 couple of my grandkids removed. So I've seen this
5 from a lot of different perspectives.

6 One of the things I'd like to see addressed in
7 your changes is how they explain to the parents
8 about if the tribe steps in. Because the way it was
9 explained to my daughter when my grandchildren were
10 removed was that if it was transferred to tribal
11 court, these kids were going to be shipped clear
12 across the state, and she had no car at the time to
13 go visiting, clear across the state to come back to
14 the Pine Ridge Reservation. And so she was scared
15 to say, you know, Leave the tribe out of it. She --
16 you know, that was her fear was that she wouldn't be
17 able to visit her children.

18 And they did end up in a white home. We were
19 lucky they were very wonderful, positive parents.

20 My other daughter went through all of the hoops
21 for the state, got okayed, but it was like three
22 months after she was told she was -- had passed
23 their background check and everything before they
24 ever placed her nieces with her. It was actually
25 the third time the one child, one grandchild had

1 been removed, the second time for her sister, that I
2 brought up to the social worker that when -- because
3 I've been refused entrance to any of the hearings,
4 and they weren't willing to talk to me at all about
5 my grandchildren, even though I was the primary
6 babysitter.

7 But it was the third time that the one child
8 was removed, and she's half black. And the other
9 one is very white looking, blonde hair. I went up
10 to the social worker, "Have you contacted the tribe?
11 Do you realize these children are Native American?"
12 "No, no, they can't be." I'm like, "Yes, they are.
13 Their mother is a member of the Oglala Sioux." They
14 had not even questioned, you know, whether they were
15 Native American or not, and yet the State of South
16 Dakota says that they do. Now, this was a few years
17 back. But I'm a member of the (unintelligible)
18 Group out of Sioux Falls, and we hear stories like
19 this all the time that they're not being asked if
20 they're Native American unless they've got a Native
21 American name, obvious name, or look obviously
22 Native American. It's scary.

23 There's also another concern I have is that the
24 homes that the tribes okay and license are not
25 necessarily recognized by the State of South Dakota.

1 I know one of our, one of the grandmas that has come
2 to our (unintelligible) Group, she was okayed by her
3 tribe. She was licensed. And that's been like five
4 years. And they've never placed a child with her.
5 You know, they should be covered like with an
6 interstate compact where different states recognize
7 foster homes and relative homes in the other states
8 because of the licensing by that state. Why are the
9 tribes not treated with the same respect as other
10 states? You know, to me there should be some
11 collaboration there.

12 But mostly I'm concerned about the fact that
13 just because my grandkids don't look Native, their
14 parents aren't being asked whether they're Native
15 American children.

16 And the state did go and ask us for names and
17 addresses and everything like they were supposed to
18 once I brought it to their attention, but this was
19 the third time that the one child had been taken
20 away. And I have been told that I had no -- no
21 right to input that other two times.

22 And that's some things that I think need to be
23 thought of when talking about setting guidelines and
24 giving the states ideas of what we mean by following
25 the input. It's not ask only if they look Indian or

1 if they have an Indian last name. Ask if these
2 children are Native American.

3 That's all I've got to say.

4 Thanks.

5 MR. LARRY ROBERTS: Thank you.

6 MS. LINDA HERZBERG: I wanted to say that I'm
7 glad that you addressed finding out whether the kids
8 are Native and treating them as Native until you
9 find out otherwise.

10 I worked in the State of Missouri as a foster
11 care worker, and I was told that --

12 MR. LARRY ROBERTS: Would you just provide your
13 name?

14 MS. LINDA HERZBERG: Linda Herzberg.

15 I was told that all I had to do was ask them if
16 they had a card and if they had a card they were
17 Indian and if not they weren't, which of course I
18 knew wasn't right, but there were many other workers
19 that didn't. And I had to train my office and
20 actually train the state on what ICWA was.

21 The other thing I have to say is I'm a citizen
22 of the state and of the country until I'm on a
23 tribal reservation and then I can't access some of
24 my state's funding that should be mine anyway. So I
25 want to make that part of the record. I think

1 that's very unfair that our children don't get the
2 same benefits of funding that everybody else does in
3 this country just because we live on a reservation.
4 Because we're still a part of the state.

5 MS. A. GAY KINGMAN: Hi. My name is Gay
6 Kingman. I'm the Executive Director, Great Plains
7 Tribal Chairmen's Association. And the Great
8 Plains' tribes are still, we still do not have the
9 full testimony that we will be providing. We will
10 submit it by the deadline of May 19th. Right now
11 we're working with the 16 ICWA officers or Social
12 Services Offices on the reservation and getting
13 input from those offices on these new regulations.

14 But I will say generally we support the
15 regulations. And in particular we're most happy
16 because in South Dakota they're a great asset as we
17 move forward with the lawsuit against the State of
18 South Dakota, and we see a lot of that in the ICWA
19 regulations.

20 And as you can see today, ICWA is very
21 important to us and highly emotional because it
22 means our children and our families.

23 And my own degree is in education, but in my
24 years of service I was a former counselor for many
25 years and had the opportunity to counsel a lot of

1 Indian children who had been taken out and away from
2 their family homes. This was down in Arizona. They
3 were raised in Mormon homes, and they had problems
4 later because they were -- didn't know who they
5 were. They were -- had some different religion
6 forced upon them. And a lot of them were like lost
7 children, lost adults. And -- so we are facing some
8 of that here. I know -- as I said, it's a highly
9 emotional problem, and we're trying to do as much as
10 we can; the tribes are.

11 One thing we did do -- you mentioned the budget
12 formulation process. For several years in a row now
13 the budget for the Great Plains Tribes that they
14 have recommended and put forward: Law enforcement,
15 tribal courts has been our number one. Social
16 service, ICWA, that has always been in our top five
17 priorities for the tribes in the Great Plains.

18 And we hope that as this goes forward that
19 Interior will make a strong recommendation for more
20 funding in this area. And I know when the tribes
21 went in to testify before the House Appropriations
22 Committee on March 26th, all of them had it in
23 there, appropriations testimony for more money for
24 Social Service and ICWA.

25 It was mentioned over here about the -- Tiwahe.

1 I'm not sure how to say it. But this came up during
2 the budget formulation, the T-back meeting also.
3 And we're hopeful that in the Great Plains with our
4 poverty, counties with the highest poverty and our
5 large lands and our large populations that our Great
6 Plains will be recipients of some of those tribal
7 priorities, pilot projects. We have the resources
8 and the people and the administrations that can
9 carry it out. And we certainly would like to have
10 that, those pilot projects be in the Great Plains.

11 And so with that, I'll leave. But we will be
12 submitting official comments by May 19th.

13 Thank you.

14 MR. LARRY ROBERTS: Thank you.

15 MS. MARJORIE WINTERS: My name is Marjorie
16 Winters. And I guess I'm a grandmother that has
17 seen her grandchildren go through the system. So I
18 had to be passive-aggressive and got aggressive.

19 I think something should be put in there for
20 the state to close out cases. It's 2015. They took
21 the kids and they transferred them from South Dakota
22 back to Montana because their grandpa was the
23 president. This is not normal. You have to know
24 people to get through this system.

25 That social worker up there, they didn't even

1 bother to come and do a diligent search. Well,
2 that's a long story.

3 They should -- I just now closed out the South
4 Dakota case this year myself. The local work --
5 social workers kept playing that game, "She has to
6 cut her parental rights." I was working with the
7 child support. They wouldn't work with me. The
8 social worker didn't close out the case.

9 My daughter's child support was way over 4,000.
10 The state, thank God, e-mailed me. They're crazy.
11 It's documented. And they helped me close the case
12 against the local DSS workers here in town. And
13 actually got her first check, they took too much
14 money from her. This year she got a final check.
15 So from 2011 to 2015. How many people are in jail
16 down there with cases unclosed with high child
17 support because Tiffany, or whatever her first name
18 is, didn't close their cases on these parents?
19 That's one of my concerns.

20 There should be a limit in there, too, on the
21 state where they should close these cases. And
22 that's their responsibility. They're getting paid,
23 while our Indians may be in jail for child support.
24 And they may be too young, and not like me, to care,
25 my own daughter having that high child support and

1 investigate it and figure it out and take years to
2 figure it out. You know, our population is 16 to
3 26, the majority.

4 Another situation started with: The mom lost
5 them here. We got the case back to Montana.
6 Everything was fine. And then the kids went with
7 their dad. Then he lost them in New Mexico. So
8 now -- I fought the white people and I guess I won.
9 Now I'm fighting Mexicans, you know, down there.
10 And that's a whole different scenario, a whole group
11 of different people.

12 The kids are under -- since the first case here
13 they're under the tribal court in Montana, that
14 tribe, so they're under the -- they're wards of the
15 tribal court, and they used total tribal
16 jurisdiction of them.

17 So another thing you should have is an 800
18 number in case things go wrong like this. Because
19 there's nobody to enforce the fact that it is
20 written in the law that as a grandparent, you know,
21 that if the extended family -- it must be written.
22 It must be there already. It's in one of your
23 additions. It's in black, so it's in there. That I
24 had a right to go get them. And I did have a right
25 to go get them. But they wouldn't give them to me.

1 So, um, it's been two years now. And I don't
2 have anybody like I did before behind closed doors,
3 important people to go get them or help me get them.
4 I don't have nobody right now to go to New Mexico to
5 get them, but I'm still working on it because I'm
6 still investigating this law, trying to see if
7 there's somebody.

8 And I need \$5,000, you know, to get a lawyer,
9 an Indian lawyer, because there's no white lawyer
10 gonna know nothing about this ICWA.

11 Because when I was in South Dakota the judge
12 was new. Tiffany was new, the social worker, and
13 the daughter's court-appointed lawyer. If ONTRAC
14 didn't come to court that day and ask for another
15 month, she would have been on the registry and her
16 parental rights would have been cut.

17 But they came. And her lawyer said, "I don't
18 even know anything about ICWA." The judge said, "I
19 don't know about ICWA." And so they extended it one
20 month. It took me one month to get to Montana, go
21 in front of the council. Her dad was the president
22 of the tribe, but he didn't come in. But behind
23 closed doors they will talk to him, the community,
24 and he sent these social workers down here to get
25 the kids.

1 I don't have that in New Mexico. In fact, I
2 don't even know what I have right now. I know I
3 have the children as wards of the tribal court, but
4 there's nobody gonna help me enforce it. You see
5 why I'm saying you should have an 800 number?
6 Somebody should be able to help me enforce it.
7 Because as wards of the tribal court they should be
8 able to go down there. And their tribal lawyer did
9 send all of that documentation through those
10 hearings, and still they denied to transfer the
11 case.

12 So we need an 800 number when things go wrong.

13 MR. LARRY ROBERTS: Thank you.

14 MS. HENRIETTA SCOTT: I don't want to use a
15 microphone. It's too high up.

16 But my name is Henrietta. I'm from the
17 Cheyenne River Sioux Tribe. And for one thing, I
18 want to say we did -- our family unit, we're broke
19 apart. And they are still broke apart.

20 And when I was finally out of high school and I
21 lived in Denver, there was a lot of people over
22 there that were older and they were taken away far
23 from their families and scattered about. They
24 weren't always put together. And so you turned
25 around and you see the people say, "Oh, I'm part

1 white; I'm part white, but only if you've lived in
2 our homes, only if you've been without."

3 And we were without. When we were children, we
4 didn't have toys. We didn't have anything like
5 that. But we had our countryside where we could go
6 swimming and do things like that.

7 And not too long ago I was thinking when the
8 people talk about they're going to the beach or
9 something like that, then they go. And it got into
10 my head, Well, we have a beach, too. We have our
11 own beach down by the river and nobody to bother us.

12 We didn't have drinking and alcohol in our
13 communities. We had little communities over there,
14 and most us were raised in those communities until
15 about high school.

16 But I went to Catholic school, and it was good
17 that we learned a lot of things, but our little
18 bodies, like we were only in the 4th and 5th
19 grade -- how many of you are (unintelligible) to
20 iron or getting into the kitchen to cook or working
21 in a bakery or different things? We had to do all
22 of those before we got to sit down and do our
23 studies.

24 And so we're always -- we've always been
25 scattered and separated, but in the end we come back

1 together. Our spirits are always here with us.

2 And about taking the children, still taking the
3 children out of the homes, that isn't right. No
4 matter how much you write about in these papers with
5 your proposals, or whatever they are, you know what
6 the fellow said, It's never going to be corrected
7 unless, you know, you let us go. We know how to
8 manage our families. We don't need someone coming
9 in to tell us how to keep our homes clean and stuff
10 like that.

11 I had three children. My youngest one had a
12 disability. And we always thought that we could get
13 help from Social Services like when they have
14 disabilities. And we just forgot about it. And she
15 graduated. I made them keep her in the same classes
16 as her other peers and that. She graduated. And
17 she went on to Santa Fe and graduated from
18 (unintelligible) school, went on to beauty school
19 and graduated. And she's on her own raising her
20 children.

21 So that's saying -- you know, you might think
22 that we don't have any discipline or things like
23 that. Sure we all get corrected, and it's what you
24 do with what you hear.

25 And a lot of it, too, is -- I was saying, you

1 could write these all up. But we barely have the
2 money to live on, but we are surviving with what
3 we're going through.

4 And I also have, like the lady was saying, my
5 son's children, he has four of them. One has light
6 hair; one has blonde hair and one has a little
7 darker hair. And just tell -- the little boy, he's
8 the last one. He has a little darker hair. And one
9 day I was sitting there watching them play. And the
10 oldest one, she was so tiny, and I was looking at
11 her and I said, "Oh, my goodness, I'm glad that my
12 son and his wife are having the kids at home, that
13 they're able to do that and they can go and be
14 picked up and taken home and not have to be
15 scattered about with strangers or foster care and
16 things like that."

17 And I just want to pray for all of our
18 children. And for all of the elderly people, that
19 we are there. Just because we don't, you know,
20 speak up and be really loud and stuff with our own
21 children or grandchildren doesn't mean that, you
22 know, we're not teaching them anything.

23 Because the best thing, instead of always
24 getting up and talking, is to listen with your ears
25 and just watch and be able to talk with your

1 children. And that's the way I was raised with my
2 grandparents. And my grandfather had a car, but he
3 also had a team and wagon. And in the summertime
4 we'd go out there and they'd go out looking for
5 different vegetables in the ground that we always
6 used.

7 But it is a shame. You know that our kids are
8 the most picked on or the elderly are the most
9 picked on. While the middle people, they just go on
10 about their business.

11 But I would rather see our kids, you know, be
12 at home.

13 I've also worked with ICWA for about four or
14 five years in the shelter where I originally was
15 from. And when they brought the kids in, we cleaned
16 them up and everything and made them feel good. And
17 the other lady I was working with, we always fixed
18 them a big meal on Saturday with fry bread and soup
19 and (unintelligible). And we did it from Friday to
20 Sunday. And we could hear it when they were saying
21 they liked being there with us. And that's --
22 that's the same thing, if you have good parenting or
23 your parent is willing to stop and take care of you
24 as a mother and a father, that's real good.

25 We didn't have all kinds of riches and stuff

1 like that, but we still got out and about.

2 And so I just -- I just wanted to say, you
3 know, if you're having your things in Washington,
4 then you gotta take some of the people, the real
5 people that things are happening to.

6 Thank you.

7 MS. PHYLLIS YOUNG: When everybody is done,
8 could I take one more minute?

9 MR. LARRY ROBERTS: Absolutely.

10 MS. PHYLLIS YOUNG: Okay.

11 MR. LARRY ROBERTS: Absolutely.

12 MR. JAMES HAWK: My name is James Hawk. And I
13 just wanted to make sure that I'm understanding what
14 I'm hearing here, that we all understand. Because
15 there's a crisis. It's evolution of crisis of
16 genocide.

17 Let me put everything aside here because our
18 children is at stake. We have children that belong
19 home, kinship value. We don't need people dictating
20 what's going to happen with our children. We can do
21 that on our own.

22 But the most important thing is I heard the
23 spirit witch, and that's a heartbreaker. I'm going
24 to tell you an example. I went to court. They
25 brought the family in and they brought the children

1 in to the same courtroom. And they turned around
2 and they told the parents that they wasn't adequate
3 yet, so they gave them another 30 days. And then
4 they marched those kids right out screaming and
5 hollering wanting their mom and dad. That hurts.
6 It's the system that's failed us. It's the system
7 that needs to be fixed. But the benefits, there's
8 no benefits.

9 I'm from Red Shirt, South Dakota. I was taken
10 from my home. I lived in boarding schools from
11 second grade. And when I came home, I finally got
12 to meet my family. And I got a big family.

13 But I see it all the time. And I just want to
14 call it neglect. A lot of us in here have a lot of
15 empowerment. But I see it on both sides, a trap.
16 So combining effort, positive movement, progressive
17 movement, we don't need to drag this on 20 years.
18 We knew the problems long ago, but they're just
19 being ignored. Selfishness.

20 You know, I gave everybody a piece of paper. I
21 just wanted to let you know that we have to have an
22 understanding here, and we want to say our children
23 are sacred to us. Let's really get behind the
24 children.

25 I heard this one guy, you know, non-Native

1 home, grew up and flourished. What are the
2 statistics? Because the violation is not just ICWA.
3 You're violating the soul, the spirit. You're
4 traumatizing. It's been going on for generations
5 and generations.

6 We can take care of our struggles. We're
7 fighters. We're survivors. We have to show
8 existence for our future.

9 Before I get wound up here I'm going to get off
10 this mike because I can lay it heavy. But
11 acknowledgment, perception, let's see it. It's
12 happening. It's unraveling. And all of this
13 ugliness is coming out.

14 How many people here is from the Department of
15 Social Services of South Dakota? How many? Not
16 one? We got this cat (indicating).

17 So anyway, before I start directing at
18 you (indicating), I'm going to jump back.

19 But anyway, I appreciate your time and your
20 efforts, everybody. Because it takes a team, a
21 whole team for solutions.

22 Just don't toss that piece of paper I gave you
23 guys. Read that. It's education. It's the real
24 truth. It has no lies in it. Honesty, if you can
25 say it, you own it.

1 But anyway, thank you very much for your time,
2 everybody. I could just ramble on all day, but they
3 don't want that.

4 This is my star right here (indicating), and
5 she can tell a story that will just break your
6 little heart and break it in half.

7 MS. ILENE BROWN: My name is Ilene Brown from
8 Standing Rock. And I'm a grandmother that left the
9 reservation and came to Pennington County to get my
10 two grandsons back. When I went in the courtroom
11 they didn't know who I was, and so I remember
12 talking to some man and I said, "Could you tell that
13 judge I'm here to get my grandsons and take them
14 home?" Well, that was the only time I was ever
15 given an opportunity to speak. And I was never
16 advised to get legal counsel. I never had an
17 attorney. They told me I had to comply with Social
18 Services. So I did. I did everything. And I did
19 their classes, but I was never licensed. They had
20 plenty of time to license me.

21 And then I was let go of my job. So I returned
22 to the reservation to get ICWA to help me. And we
23 came eventually with two elders from the tribe, a
24 niece that was a witness at the night of the
25 incident when the boys were taken away from my son,

1 and my cousin as a character witness for me, because
2 I had babysat for her. But my grandsons were never
3 given to me. They're still adopted out illegally.

4 We come from the Sitting Bull's side of the
5 tribe. And, you know, he used to go far places. He
6 would earn money for his autograph. But he would
7 always feed the children in the streets, the little
8 orphans.

9 I had wondered about the tribe, how they look
10 at terminating parental rights. How do you undo
11 blood? How do you do that? There seems to be a
12 little mental problem there for me sometimes. But
13 when I asked that they said, "There's no such thing
14 in the tribe." There's -- (Native language) is
15 where you take someone and adopt them and you tell
16 everybody, have a ceremony and you tell everybody
17 and everybody knows that's your new son, daughter.
18 But that just -- that's just a real ugly statement,
19 "terminating parental rights." I don't like that at
20 all.

21 The last time I seen my sons -- my grandsons
22 was about, let's see, right after Obama got
23 inaugurated into office. And I believe our time to
24 do anything about our big problems is now while
25 Obama is still in.

1 And I watched the ICWA's directors incorporate
2 their groups so that they can share information.

3 And I'm so glad you're here today.

4 And BIA, I was one of them that went in and
5 demanded the summit.

6 I also have some other children, grandchildren
7 that were involved in a very, very ugly sexual
8 perverted white foster home, very. And the man only
9 serves seven years for the ten years' damage he did.
10 And the foster mother had my grandchildren returned
11 to her. Oh, it's really hard to talk about this.

12 But, you know, I know my rights were violated.
13 I know my son's rights were violated. And those
14 kids were really crying that night. And my nieces
15 were right there, got out of their bed, went right
16 there to get the boys. And the social worker said,
17 "Are these little boys enrolled anywhere?" They
18 said, "No, they're not." Boom, they were snatched
19 up just like that. You know, it's a form of grief.
20 And I felt that in here (indicating), and it went to
21 my back.

22 And I know we're on the right track. I believe
23 this. I believe in God, and he has shown me about
24 three or four times that we're on the right track to
25 try to solve all of this mess. And yes, we want to

1 keep track of our people.

2 That's all I have.

3 Thank you.

4 MR. LARRY ROBERTS: Thank you.

5 MS. PHYLLIS YOUNG: Thank you.

6 I'm Phyllis Young, Standing Rock Tribal Council
7 Member. I already spoke this morning. And I want
8 to read for the record this statement from the
9 Lakota People's Law Project who is one of Standing
10 Rock's contractors. And they have submitted -- they
11 have been working for us. They have assisted us
12 greatly in our endeavors.

13 "I would like to take this opportunity to thank
14 the Bureau of Indian Affairs for strengthening the
15 ICWA guidelines. This will help address the ongoing
16 child seizure crisis in South Dakota.

17 "We here in the state have a very clear-eyed
18 view of how rules are implemented in the state, and
19 we are convinced now more than ever, that South
20 Dakota officials cannot be trusted to maintain the
21 welfare of Indian tribes, our families, and, above
22 all, our children. The remaining five tribes must
23 be funded with HHS IV E planning grants to develop
24 their own Child and Family Service Programs. South
25 Dakota tribes want to bypass the abuses of the state

1 and run our own programs for Lakota, by Lakota.

2 "However, we believe in strengthening ICWA not
3 only for the good of the Lakota, but for all
4 Indigenous peoples in the United States. With this
5 in mind, we would like to recommend five items
6 designed to strengthen the existing ICWA guidelines
7 or provide ones that don't currently exist.

8 "One: 'Active efforts' needs a legal
9 definition. Furthermore, active efforts must
10 contain all reasonably available efforts. There
11 should be a definitional burden placed upon the
12 state so there are no questions and state officials
13 cannot make one routine phone call and claim they
14 have made active efforts. Protocols for ICWA must
15 be articulated and enforced.

16 "Two: Similarly, in keeping with active
17 efforts, the idea of preferential treatment should
18 extend beyond the nuclear family and include
19 extended family such as aunts, uncles and
20 grandparents. ICWA was designed to keep Indians
21 rooted in their tribes and culture if the nuclear
22 family breaks down. ICWA mandates preferential
23 placement for the nuclear family, the extended
24 family, the tribe, and other tribes. The Department
25 of Justice should insist that the Congress include

1 those placement mandates in the 'enforcement
2 section' of ICWA, thereby giving relatives legal
3 recourse when they are unfairly ignored and denied
4 placement.

5 "Three: The Department of Justice must counter
6 Supreme Court Judge Samuel Alito's misguided
7 assertion that a parent or relative needs to apply
8 for and qualify as a foster parent in order for the
9 preferential treatment portion of the law to be
10 applicable. Indian relatives should not need to
11 apply to become a foster care parent or an adoptive
12 parent. This provision runs contrary to the spirit
13 of ICWA.

14 "Indian people must be removed from the State
15 Index for crimes committed over five years ago. The
16 DSS refuses a relative placement for DUIs or
17 mistakes they made decades ago.

18 "Most important, the Department of Justice
19 knows the level of illegality in and around Indian
20 Child Welfare in South Dakota where the care of
21 Indian children is a lucrative industry for the
22 state economy, the pharmaceutical companies, the
23 medical industry, and top state elected leaders. It
24 is imperative that the DOJ urge the HHS to give the
25 IV E Planning grants to the Lakota tribes to develop

1 their own Child and Family Service Programs.

2 "Thank you for your time and attention. Lakota
3 People's Law Project."

4 I just want to, again, reiterate my gratitude
5 for hosting this very important consultation. For
6 37 years we've been waiting for the promulgation of
7 rules. And an act of Congress generally does that
8 within a year of enactment. And we think 37 years
9 is a long time.

10 We know that we have incredible opposition to
11 any action that we seek on our children. We took
12 this to the NCAI in 2011, the National Congress of
13 American Indians. We attempted to get amendments to
14 ICWA.

15 We realize that this is for states to adhere to
16 and not tribes, maybe Standing Rock are not -- are
17 probably the only tribe that is not in sync with
18 ICWA because all the other tribes have ICWA offices
19 on their reservations. And clearly ICWA is supposed
20 to be for the states.

21 And so we -- we have protocol within the tribe.
22 The tribe does provide for adoptions. We do have
23 people who come and petition. We do accommodate
24 them. We do allow for the adoptions based on the
25 families that come. And we realize that we have

1 good positive people that have raised our children
2 and remind us that they are good and productive
3 people wherever they may be.

4 But as I said this morning, I provided you with
5 80 cases, case histories. And if you look at those,
6 there were no attorneys for these children.

7 You know, Sitting Bull was our leader. Ilene
8 is a great, great granddaughter of Sitting Bull.
9 And so the stealing of Sitting Bull's children is
10 not a good thing. And like she said, when he went
11 to the city and he had money, coins, he gave them to
12 the hungry and homeless children in Washington, D.C.
13 because he pitied these children.

14 This country is predicated on immigration. And
15 they brought orphan trains to Indian Country, so
16 there were a lot of white people who came as orphans
17 who were raised among our people.

18 My grandfather belonged to the White Horse
19 Society. When they stole a white woman from across
20 the river, my grandfather was one of those in the
21 Whitehorse Society delegated to return that white
22 woman across the river.

23 So Sitting Bull was an honorable person, an
24 honorable leader, and he created those societies to
25 enforce our system. We are an honorable people. We

1 are fair. We believe in consensus. And we
2 acknowledge the beauty of other cultures, and we
3 allow our children to go there.

4 What ICWA is about is to enforce and protect
5 the rights of those who are being abused. And that
6 means sexually. There's a new article in the Argus
7 Leader today about the Mette case. For the record,
8 five of the many children are Standing Rock, and at
9 least two of the children are Oglala. And we intend
10 to pursue legal action where necessary.

11 Once again, I'm very grateful for you to host
12 this very important consultation, and I'm very proud
13 that I'm a part of it.

14 Thank you.

15 MR. LARRY ROBERTS: Thank you.

16 MR. KYLE KRAUSE: I'll take another crack at
17 this.

18 And I apologize in advance to the court
19 reporter because I might run through some of these
20 quickly, but I want to hit on some of the specific
21 provisions of these regulations that I think there
22 are some issues with.

23 First, Section 23.2, the definition of
24 domicile, I think you pulled that straight from the
25 case. But it says that in the case of unmarried

1 parents, it's the domicile of the mother. Half of
2 kids now are born out of wedlock. The father could
3 certainly be the primary caretaker either just by
4 practice or court order even. And in those
5 situations I think the domicile should follow the
6 domicile of the father. It's really whoever has
7 been the primary parent that it makes sense to base
8 domicile on.

9 23.2, the definition of imminent physical
10 damage or harm, I have some concern with the phrase
11 "serious bodily injury or death" being used there.
12 What immediately comes to mind is that's the exact
13 way we define felony assault in South Dakota at
14 least, and probably in a number of other states. So
15 you look at the appeals cases and they turn on the
16 definition of serious bodily injury or death, and
17 you see people arguing basically, "Yeah, I beat the
18 snot out of that person, but I didn't hurt them so
19 bad that this was felony assault." So I would hate
20 to see any definitions from those cases influence
21 this one. I think it makes sense to use more of
22 your definitions from later. That's where that
23 comes into play is with the emergency removals. If
24 you use the same definition as later on in the case
25 I think you'll be all right.

1 Under -- at Section 23.103(e)(3), "When does
2 ICWA apply?" It's the same as the old guidelines.
3 It says -- basically it's ICWA is not applicable to
4 custody proceedings between parents. The definition
5 used there still says "in a divorce proceeding." As
6 I mentioned, half of custody cases now don't occur
7 in the context of a divorce proceeding. So you've
8 got a great opportunity there to clarify what's a
9 really common misconception that ICWA is applicable
10 to custody cases between parents.

11 There's -- this may be a pet peeve of mine. The
12 regulations use "and/or" repeatedly, and I'd
13 strongly suggest picking one. You don't see that in
14 drafting very often anymore.

15 In Section 23.109, you've got two sets of
16 factors that are different from each other for
17 determining which child -- which tribe is the
18 child's tribe when the child is eligible for
19 enrollment but not enrolled. It doesn't make sense
20 to have two different sets of factors for the exact
21 same thing. So you're going to want to probably
22 consolidate those into one set of factors.

23 23.113 and it's Section (d)(4), it asks that
24 the -- basically it says facts necessary to
25 determine the residence or domicile of the child

1 should be included in the petition. Something you
2 guys -- there's some interplay between that and what
3 should already be in there pursuant to Section 209
4 of the Uniform Child Custody Jurisdiction &
5 Enforcement Act which is the UCCJEA. It's got stuff
6 that's supposed to be in there in my experience in
7 child welfare cases, but that includes information
8 about whether there's been prior court proceedings,
9 you know, where the child has been living for the
10 past five years, things like that. If you included
11 that information that should be in there, according
12 to another statute, that would satisfy a lot of
13 those.

14 23.113(e), I have concerns that it requires a
15 determination by a court of any hearing regarding
16 emergency custody as to whether that's still
17 necessary. You're all familiar with the OST v. Van
18 Hunnik federal case here. My -- I'm concerned that
19 this may -- that requiring a judicial determination
20 in every proceeding might actually limit the number
21 of hearings the state provides to parents. One
22 potential outcome of that proceeding that I think
23 would be Constitutional would be for these 48-hour
24 hearings to basically serve in the role of an
25 advisory hearing, a probable cause hearing and a

1 chance to appoint counsel to then give the parents
2 the chance to have full evidentiary hearing within a
3 short time frame thereafter after they've had the
4 chance to actually consult with their lawyers,
5 lawyers for both parents, and the kids have had the
6 chance to get information about the case.

7 If you require that -- if you require the court
8 to take evidence at that 48-hour hearing, one option
9 the state would have is to say, The heck with it.
10 We're not having 48-hour hearings. The legislative
11 goes -- they say, We're doing away with these
12 48-hour hearings because our courts say they can't
13 hold these evidentiary hearings within 48 hours.
14 We're going to have 10-day hearings now or two-week
15 hearings. And what you end up doing is you have a
16 hearing further down the road; it takes longer for
17 counsel to get appointed and you have basically put
18 up you're going to have a hearing later where
19 parents and counsel aren't as prepared as they would
20 be if you could have treated those 48-hour hearings
21 in a different fashion. So I'd strongly urge some
22 caution with that. I think there can be hearings
23 for other purposes under the emergency context.

24 I mentioned concerns over changes to the
25 transfer to tribal courts, good cause proceedings.

1 One thing I think should be a strong consideration
2 is the opinion of a child old enough to provide a
3 reasoned opinion as to whether the case should be
4 transferred. You've got a big list of things that
5 shouldn't be considered that, frankly, are going to
6 be the main factors a child thinks of when they
7 decide whether they think the case should be
8 transferred. It might not be -- you know, whether a
9 placement might change, obviously to a child where
10 they're going to be placed is the most relevant
11 thing in their life at that point in time. So I'd
12 urge some clarification to make sure that the wishes
13 of older children can be fully given the full weight
14 they deserve there.

15 You've got a typo in the heading for
16 Section 23.119. There's an extra "or Terminations"
17 in that heading.

18 And it's 23.120, I think you probably need to
19 clarify that active efforts are not applicable in
20 voluntary proceedings.

21 23.121 (a) and (b), you leave out the emotional
22 damage part of the burden. You're quoting directly
23 from Sections 1912 (e) and (f) there which deal with
24 emotional or physical harm to the child, and then in
25 your regulations you refer only to the physical

1 harm. You get down to Section (c) and you properly
2 include that back in there. But one thing
3 23.121 (c) does is it requires a showing of a
4 relationship between particular conditions but it
5 doesn't say, basically the second item, that these
6 conditions are supposed to relate to. So I think
7 what your goal is that both that and (d) in that
8 section is you want the court to say -- you know,
9 the court receives evidence that says the parents
10 are using drugs. You want the court to say, The
11 parents using drugs is putting the kids in danger
12 "because," and then have them spell out how that is
13 creating an issue. But that's not especially clear
14 given how you've written it there.

15 I also have concerns with Section (d). It
16 lists basically a whole bunch of things that say in
17 and of themselves these can't be considered
18 evidence. What I think you're going for is
19 requiring the court to make that connection between
20 those things and why it's a danger to the child, but
21 what evidence is presented is still going to be that
22 list of things that you say is insufficient. If I
23 go to the court and I say, We pulled these kids out
24 of the house where the parents are cooking meth, you
25 know, it's -- that's probably sufficient -- that

1 should be sufficient evidence to say, Yeah, we need
2 to get these kids out of there. You know, the
3 conditions are inherently harmful, if you know
4 anything about what's involved in doing that. But I
5 can see an attorney making an argument based on that
6 section. All you've shown is that the parents are
7 using drugs and there's inadequate housing. The
8 regulations say that's not sufficient. So it might
9 be going a little too far there.

10 In Section 23.128 (b) I have some concerns that
11 you might be running contrary to the baby girl
12 decision with that. The other thing is that the
13 number of notices required is a bit excessive. If
14 you want notices to, in every case to every Native
15 foster home licensed by the state or the tribe, I'm
16 guessing there probably isn't going to be too much
17 detail in any of these notices. They'll probably
18 say, We have kids ages 10, 12 and 13 that are Native
19 and need a home. I don't think most Native parents
20 want to be getting a letter in the mail saying that
21 every few days. And if you provide more, I think
22 you're possibly breaching some confidentiality that
23 should be due to these kids and families.

24 23.135 (a) (3), it requires -- it requires that
25 notice be given to the bio parents whenever an

1 Indian child is removed from a foster home to
2 another foster placement. I think what happened
3 there is that you're conflating Sections A and B of
4 Section 1916 of ICWA. You know, the scenario that
5 immediately comes to mind: Suppose we get to the
6 point where we've terminated parental rights, the
7 kids have been in a foster home and we're going to
8 move the kid to a pre-adoptive placement, the way
9 you've got these regulations written is that the
10 parents should be able to jump back into the
11 proceeding at that point in time and get a second
12 bite at the apple because we're changing the
13 placement of the kids. I think that was really only
14 intended to apply to situations where the adoption
15 has failed, not where you move kids to a different
16 placement post termination.

17 I think that's most of my list. I'll be
18 submitting written comments as well to some of
19 these. But it took me this long to just get it into
20 an outline format.

21 MR. LARRY ROBERTS: Okay, thank you.

22 MS. LORNA TURGEON: If I could have one more
23 minute.

24 MR. LARRY ROBERTS: We just need your name
25 again.

1 MS. LORNA TURGEON: Lorna Turgeon,
2 T-U-R-G-E-O-N.

3 The other thing I'm concerned about is that
4 with the -- the parent can object to transfer and
5 the transfer won't happen to tribal court, but it
6 also says that the child now would be able to object
7 to transfer. And I think that at the very least it
8 should be, that I would suggest that it be a child
9 of at least 12 or 13 years old or older.

10 I'm going to give you a couple of different
11 instances that hopefully could shed some light on
12 why I feel that way. The little boy I told you that
13 we're working to reunify with the father and doing
14 transition visits over several months, if you -- you
15 know, if the foster parents or anybody had asked him
16 at first he would have said -- even though yeah, he
17 liked this couple, he didn't even know they were his
18 mom and dad until we got direction from the court,
19 then I let him know. But he would have said, No, I
20 don't want to go. This is my mom and this is my
21 dad, the foster parents, and I'm not going anywhere.
22 And that's exactly what he said over the first three
23 visits. Now he does want to. But I think that I
24 would -- you know, for those cases and especially if
25 the child doesn't know the relative or the parent

1 where reunification is intended.

2 With another case out of another state that I
3 was involved in as an expert witness, I asked to
4 meet with the children alone. And the Department
5 was fighting placement changes. All the court was
6 requesting, or tribe was requesting was a placement
7 change from the foster parents who wanted to adopt,
8 to the maternal aunt.

9 So I met with the boy. I think he was 8, and
10 the girl was 7. I met with them alone. I asked
11 them a number of questions. And one of those
12 questions is, "Who loves you?" And then something
13 in an indirect way to get to the feelings that they
14 have about their mom and dad. And one thing that
15 was unusual was the father had no abuse or neglect
16 on him, but he was deported, so -- the mother was
17 the one, the offending party.

18 The little boy denied any feelings for his
19 mother or that he loved his mother. When it came to
20 his dad, the little girl said, "Yeah, I love him and
21 I miss him." But the little boy said he didn't.
22 And when he said that, the little girl, his sister,
23 looked at him and said, "That's not true," and
24 several times, you know, said, "But you did this" or
25 "You cried when Dad left or when he was taken away

1 to be deported."

2 Then at some point -- the little boy at first
3 vehemently denied that he missed him and so on. And
4 I was wondering why it was so important to him to
5 say that or to deny that. And at one point he said,
6 "Yeah, I miss my dad." And then they started
7 talking about all the things that he did for them,
8 where he would take them and just other things that
9 demonstrated all the love and that he did miss him.
10 And I told him that, both of them, that it's okay to
11 care for the people that you're with right now and
12 still love your parents or still miss them and still
13 acknowledge that.

14 But the stated purpose of the counseling was
15 to, it said was to get the children to bond with the
16 new parents. And a lot of times the kids, they can
17 read between the lines and they know that -- when
18 the guardian ad litem, a social worker and the
19 counselor all want them to forget about their
20 parents and to bond with this new family, they pick
21 up on that.

22 If they haven't had contact with the
23 perspective relative -- the aunt was denied access
24 for two years -- or with their birth parents, these
25 kind of dynamics can take hold and then you'll have

1 kids say that no, they want to stay with this
2 family. So I would advise to look at the age of the
3 child when doing that.

4 So that's all I have.

5 Thank you.

6 MR. LARRY ROBERTS: Thank you.

7 MS. LORNA TURGEON: And I really want to thank
8 you for coming up with these regulations. I think a
9 lot of them are really needed.

10 Thank you.

11 MR. LARRY ROBERTS: So we're coming up on four
12 o'clock. I want to make sure that everyone has a
13 chance to provide comment that wants to. Is there
14 anyone else here that wants to provide comment this
15 afternoon?

16 MS. EMILY IRON CLOUD-KOENEN: Good afternoon.
17 My name is Emily Iron Cloud-Koenen, and I'm from
18 Porcupine, South Dakota on the Pine Ridge Indian
19 Reservation.

20 I spoke a little bit this morning. I have been
21 involved in the child welfare, how shall I say it,
22 movement, a movement for adjusting the child welfare
23 needs of our families on the reservation and on a
24 statewide basis.

25 I first began looking at how we could address

1 the needs of children and families when I became
2 involved with a group on our reservation. At that
3 time it was called the Oglala Sioux Tribe
4 Multi-Disciplinary Team. And that was around 1998.
5 And at that time that group was talking about how to
6 address the needs of children and families.

7 So we began talking about it for something like
8 six months. Every month we would meet and we would
9 have these long conversations about what the reality
10 of our life -- lives were on the reservation. And
11 one of the issues that came up over and over was the
12 loss of our children to the state and illegal
13 removals and a lot of grief. There was a lot of
14 grief expressed about how children were taken from
15 families, their cases dealt with outside of the
16 reservation by the state court system and by the
17 loss of children as a result of the ESPA (sic) law.

18 And because at that time the state was applying
19 the ESPA law and not the ICWA law, they really
20 didn't have -- I guess they -- no one at the state
21 level or at any level held the state accountable to
22 families. So children were fast track adopted out.
23 And so we had that discussion about what to do.

24 And then at the same time there was a lot of
25 concern being expressed by other -- other people on

1 other reservations. And so there was a concerted
2 effort to bring these issues to the state. And from
3 that resulted the Governor's Commission on ICWA
4 Compliance. And there were many families who
5 participated in that, along with state judges,
6 federal judges, private, state and independent child
7 placement agency directors, the tribal ICWA programs
8 and several of our tribal council leadership.

9 And from that, there -- as a result of meeting
10 for about a year and a half, there were 30
11 recommendations made to address ICWA compliance.

12 Also during this time there was a group out of
13 Denver, and I believe their name was, or the --
14 yeah, the organization was Indian Legal Services.
15 And they came to every reservation and looked at the
16 tribal court records, records of the ICWA programs.
17 And then at the state level they looked at their
18 compliance records. And what was found was that
19 there was -- one of the findings was that there was
20 very little notice given to families other than a
21 written letter.

22 And so tribes recommended that there be family
23 locators within every state office and that they
24 should come out to the reservations and actively
25 look for family. And so that was done. And that --

1 I think that occurred for a short while after the
2 Governor's Commission was decommissioned.

3 And then recently -- I'm sure it doesn't work
4 that way anymore. But at that time in the early
5 2000s there was a real active movement by all the
6 tribes. And today, you know, there's a real, I
7 guess -- the tribe, because they have been -- the
8 state has been cited with noncompliance in a number
9 of areas, they are actively looking on ways to look
10 for -- to work with the tribes, and yet there's
11 still a lot of questions about how they do their
12 work.

13 And one of them -- you know, one of their
14 charges was to provide -- provide efforts to those
15 tribes that want to create their own tribal child
16 protection systems. So we had -- the Oglala Sioux
17 Tribe did that. We did it through a charter of the
18 tribe. And the name of that charter was Lakota
19 Oyate Wakanheja (Native language), which translates
20 to "Oglala Lakota people caring for our children."

21 And we -- over a 14-year span we've really
22 worked hard to provide services that will -- that is
23 more culturally relevant. We've put together a code
24 that, where termination of parental rights is not in
25 our code, and we -- you know, we have to work to

1 reunify families.

2 So I think that the Oglala Sioux Tribe has
3 really worked hard to provide those services and to
4 express that sovereignty through the work that we
5 do. So I'm very supportive of the work that is
6 brought on to bring more structure, more substance
7 to the ICWA proposed revisions.

8 And very recently, about two weeks ago our
9 tribal council, by ordinance, approved an
10 integration plan to bring the ICWA program under
11 CPS. And so that's -- that transition is occurring
12 right now. And I believe that these proposed
13 revisions are going to be very, very helpful to our
14 ONTRAC program.

15 There was a couple provisions here that I was
16 particularly excited about, and that relates to
17 adoptions and the state being required to have an
18 essential place where all the information on
19 adoptions and other types of placements will be
20 kept. Because of the grief that our families
21 experience in the loss of their children, now
22 they'll have that ability to access information.
23 And I don't know how that is going to impact the
24 adoption procedures where families are not allowed
25 to know where their children are or who they have

1 been adopted by, but I'm real excited to see how
2 this is going to play out.

3 So thank you very much for the work that you
4 have done. I and the Oglala Sioux Tribe, we're very
5 supportive of the proposed revisions.

6 Thank you.

7 MR. LARRY ROBERTS: Thank you.

8 Is there anyone else that would like to make a
9 comment today?

10 UNIDENTIFIED SPEAKER: I don't have comments.
11 I have written.

12 MR. LARRY ROBERTS: Sure.

13 UNIDENTIFIED SPEAKER: Just give it to you?

14 MR. LARRY ROBERTS: Yes, that's fine.

15 MR. WILLIAM CROSS: Good afternoon. I'm
16 William Cross, Oglala Sioux Tribe, Pine Ridge.

17 I'm an ICWA worker. I used to be an ONTRAC
18 worker. But I just wanted to say that, you know,
19 the Proposed Rule changes to me sound good, but I'm
20 not an attorney. My understanding of them could be
21 different, but I would like for our legal people to
22 really look at this close and -- because the state
23 courts are always finding loopholes and ways to
24 counteract what the tribe is trying to do and
25 interfere with the existing law. Like I said this

1 morning, their own rule statute is to go against
2 ICWA and interpret it their way.

3 But I would like to see that there are no
4 loopholes or ways that the state can determine it
5 different. That goes also for DSS, the state
6 agency, they have that same tendency.

7 But I would like to say that on the issue of
8 Indian children, I have a case that's two years old
9 now. The mother is just now calling me saying that
10 her parental rights are going to be terminated. And
11 I said, "Well, wasn't ICWA involved?" She said,
12 "No." I asked her, "Why not?" She said, "No one
13 ever told me about it." And I said, "Did they ask
14 you if you wanted ICWA involved?" She said, "No."
15 I said, "Do they know you're Indian and your
16 children are Indian?" She said, "That was never
17 mentioned; it was never talked about." Based on
18 that, she didn't know that ICWA applied, and the
19 state didn't do their job by defining or identifying
20 these children as Indian children. So we may have
21 some kind of legal action there. But they're in the
22 process of terminating her rights. And these are
23 the kind of things that we need to deal with because
24 they're occurring all the time. Any time we mention
25 cases, these are only instances of what's really

1 going on out there.

2 Like I said earlier, too, I do a lot of
3 Nebraska cases. And that's a Republican state, and
4 it seems to reflect everything they do, even in
5 child welfare proceedings, courts, denying of a
6 transfer based on real petty reasons like distance,
7 timeliness of parental objection to the transfer
8 when the parent is not in a position to object.
9 They may be out on the streets doing meth, living on
10 the streets, not participating in their child's
11 court proceedings. But when a tribe puts in a
12 motion to transfer, somehow they locate that parent,
13 bring them to court or get them on the street to say
14 they object to the transfer. I think that's really
15 unfair to the tribe, to the children, when they have
16 no interest in the children they can object. I
17 think that part of ICWA needs to be amended or
18 changed in some way.

19 Also with identifying Indian children, I think
20 there needs to be something better in place where
21 they have to do that. Whether the children have
22 blond hair or are African American, part Indian
23 children, they still need to definitely find a way
24 to ask, make it mandatory that they do that. Right
25 now it doesn't seem to be mandatory; they have a

1 choice not to ask.

2 When I got up on the stand to ask the social
3 worker why they didn't, they said, "Because," like
4 someone said earlier, "Because they didn't look
5 Indian I had no reason to think they were Indian."
6 But I think it should be mandatory.

7 The last thing I would say: The tribe, the
8 Oglala Sioux Tribe, we won a major lawsuit against
9 the State of South Dakota for the children that's
10 going to make a difference in the way courts and DSS
11 practices Indian custody proceedings. And we've
12 uncovered some really devious activities by the
13 courts here in Rapid City. And this is something
14 major. And I don't know why the tribes are not
15 celebrating this victory. It's a victory for all of
16 the Sioux tribes in South Dakota and Natives, too,
17 clear across the United States because it's going to
18 change the way courts handle Indian cases. And I
19 believe that it is worthy of celebration. But why
20 is the tribes not celebrating?

21 Instead, the day after the victory our tribe
22 went and literally stopped ONTRAC in our tracks from
23 going any further. I don't know if it was in
24 retaliation for the lawsuit or if it's something
25 that just had to happen, but that's where we're at

1 right now.

2 We're talking about strengthening ICWA.
3 There's proceedings right now (unintelligible) to
4 weaken ICWA, putting us under other organizations
5 when we believe that ICWA should exist by itself.
6 It is a federal law. It's a federal entity. What
7 we do is federal work, state work, off reservation,
8 and it's mandated, the law, but yet there are
9 efforts like this to weaken ICWA.

10 I know this effort today is to strengthen it,
11 but at the same time while this is going on there
12 are efforts out there to weaken ICWA. And the state
13 wants to have a say-so in how we proceed with our
14 cases. They want to have a say-so in who intervenes
15 and whether we get to transfer or not. And we can't
16 allow this to go on. This is going to have an
17 impact on what we do. It's going to have an impact
18 on Indian child welfare clear across the United
19 States if this is allowed to go on, if we are
20 subjected to or only answerable to another
21 organization then when we practice off the
22 reservation in state court and we're mandated by the
23 federal law.

24 I just wanted to say that much to you. And
25 I'll let you know that we appreciate this effort

1 here to strengthen ICWA, and everybody has good
2 intentions to do that. But I just wanted to express
3 my views on this.

4 Thank you very much.

5 MR. LARRY ROBERTS: Thank you.

6 MS. LIZ GLOBKE: Hi. My name is Liz Globke.
7 I'm from Sioux Falls, South Dakota, Oglala Sioux.
8 And I just wanted to say one more thing.

9 My sister was teaching social work down at
10 Lawrence, Kansas. And as a Native American parent
11 and grandparent that I dealt with DSS, I went and
12 talked to the (unintelligible) students. And I
13 think that's one thing that all of us could do to
14 help the people who end up working for the state to
15 understand where we're coming from, okay?

16 And I also feel like, and I know this isn't
17 something that you probably have anything to, any
18 control over, but if we did -- one of the things I
19 think we need to do is have it where, you know, on
20 any job that we have, we have certain things that if
21 we don't follow the job description, these certain
22 things of our job description, that we don't have a
23 job anymore. We should have, social workers,
24 whether they're with the state or with tribes or
25 whatever, if they don't follow ICWA, that that is

1 one of the things that they can be fired for.

2 Because this is law. This is a national law.
3 And I don't know how you would go about making this
4 have to be part of their job description or whatever
5 that they can be fined for not meeting evaluation
6 expectations. But I just thought of those two
7 things.

8 This is a way that we can all -- you know, by
9 either -- going and talking to social worker classes
10 and stuff like that, we can get through to some of
11 these people that are going to be our CPS workers
12 and have them see us as more than just "that kind of
13 parent," you know. The more they see us as people
14 who have a name, that they hear actual stories where
15 the system has worked, the system hasn't worked or
16 it's worked part of the time and not part of the
17 time, you know, these are the people that are going
18 to be in charge of whether our kids are taken or
19 not, and maybe not our kids but other Native
20 children. And I just wanted to bring that as kind
21 of a more positive, you know, note on this.

22 MR. LARRY ROBERTS: Thank you.

23 MS. LIZ GLOBKE: Thank you also for having this
24 program.

25 MR. LARRY ROBERTS: Okay.

1 Is there anyone else who wants to make a
2 comment today?

3 MS. ILENE BROWN: I have one.

4 MR. LARRY ROBERTS: Oh, great.

5 MS. ILENE BROWN: It'll make you laugh. Once
6 in Rapid City when one of my bosses was giving me a
7 ride home, I was talking about blood quantum. And
8 she looked at me and she says, "Ilene, do they
9 really take all the blood out of you and measure
10 it?" And I said, "Oh, no, they don't." So their
11 thinking is so -- you know, they're not on the same
12 level as us. But that's just a little something to
13 leave you with.

14 MR. JAMES HAWK: Court is almost over, so I've
15 got to (unintelligible). But I'll tell you what,
16 (unintelligible) is a little humor. It's called
17 love.

18 But also, too, is you know what I've got to
19 say: If this NPR report never came out, we wouldn't
20 be sitting here today. So I want to thank Lakota
21 People's Law Project for the victory we had down
22 here at the federal court. I know it was a big part
23 of that.

24 But also, too, is mandating things and getting
25 things established, we're all going to have to work

1 together one way or another. We're going to figure
2 it out for ourselves. We need the tribes, tribal
3 people.

4 How many of you here are treaty council people?
5 Any treaty council people here? Well, nobody ever
6 asked them. They should be the first, because we
7 are treaty. Remember that, treaty. We have a say
8 in our life.

9 I heard "Sitting Bull." Yeah, he would be
10 ashamed what's happening right now.

11 But anyway, Guys, I love everybody. Thank you
12 very much.

13 And I like talking because that guy listens
14 over there.

15 But I know that's your job. You inherited this
16 mess. And, you know, if it was me, I'd move BIA out
17 of the way for this one power punch and I would
18 resurrect South Dakota. But that's me.

19 But I know if Oglala Sioux grandmothers never
20 went to an American Indian movement leader named
21 Russell Means and tell him our children are being
22 stolen, this would never be happening. We would be
23 under dictatorships today here yet.

24 Everybody says, "Shed the light." We don't
25 want to go around and say, Hey, man,

1 (unintelligible) over in America, man, just like
2 Palestine. Or they could say all kinds of things.
3 But we have to be functional. We have to function
4 as a unit. And if we don't, it will never work.
5 We're always going to have opposition. And believe
6 me, Lakota People's Law, we got opposition, but we
7 handle it because we have faith.

8 But anyway, I love all of you guys.

9 Thank you.

10 MR. LARRY ROBERTS: Thank you.

11 MS. SARAH DUHL: Excuse me for arriving so
12 late. We had a long drive to get here.

13 MR. LARRY ROBERTS: Just say your name.

14 MS. SARAH DUHL: My name is Sarah.

15 And what I basically -- what I most of all want
16 to emphasize --

17 MR. LARRY ROBERTS: Do you want to give your
18 last name?

19 MS. SARAH DUHL: Okay, let me -- we've been
20 driving about six hours.

21 MR. LARRY ROBERTS: Okay.

22 MS. SARAH DUHL: My name is Sarah Duhl,
23 D-U-H-L, by adoption. I want to make that
24 distinction. And I want to say also as an adoptee,
25 I was taken away from my natural mother pre ICWA. I

1 was born in 1960, okay?

2 And I don't know if any of you folks sitting up
3 there at the table or anyone else here in this room
4 is familiar with something that had pre ICWA,
5 enormous, a huge historical impact across Native
6 America all over or Native American families
7 throughout North America or what sometimes
8 traditionally is still called Turtle Island, okay?
9 If anybody here is familiar with the Indian Adoption
10 Project, I didn't even know growing up about it.
11 And what I want to emphasize -- because there were
12 so many lies done against me and lies against my
13 natural mother, lies made to my adoptive parents
14 about who and where I come from.

15 Most important of all, with any proposed
16 changes being made to ICWA, that there has to be
17 complete honesty, honesty in this matter and then
18 honesty upfront for all Indian families involved.
19 And there has to be that honesty. There has to be
20 absolute respect given to them.

21 I have had -- I've had certain kinds of traumas
22 happen in my life that I know would not have
23 happened if there had been complete honesty in my
24 adoption. To make a long story short and not go
25 into personal details here, okay, but this is --

1 this issue is something I am paying very close
2 attention to because it's very, very personal in my
3 life.

4 I know my mother's name now, at least our
5 family name. I know my biological father's family
6 name. It's taken enormous energy, and at times that
7 energy has been emotional exhaustion for me to get
8 as much information so far as I've been able to get.

9 And I know of some personal stories, too, for
10 Native children here -- primarily here in South
11 Dakota but elsewhere who, bottom line, is they've
12 been through some severe traumas. And any changes
13 that are proposed, they have to be in -- they have
14 to be in the best interest for, most of all for the
15 children and for their families to protect them.

16 And that family unit, we talk about children,
17 children being sacred, and families. And they are.
18 And the children are our future. And if the
19 children are not protected and allowed to be raised
20 in a healthy, safe environment, what kind of future,
21 one, will the children have? What kind of future
22 will there be for this world and for Native families
23 to continue to carry on and for our culture to carry
24 on as a people?

25 All right, thank you very much for listening to

1 me. And thank you for being here, all of you.

2 Sorry I got here late. We had about six hours
3 to drive.

4 MR. LARRY ROBERTS: Thank you.

5 MS. ERNESTINE CHASING HAWK: My name is
6 Ernestine Chasing Hawk, and I'm from the Native Sun
7 News. I was covering this case. I got in late on
8 it, so -- but when the OST versus Van Hunnik case
9 found that the State of South Dakota was violating
10 the Constitutional rights of parents and depriving
11 them of their rights to care and custody of their
12 children, one of the victories that they won wasn't
13 just for Indian children, it was also for non-Indian
14 children in the state, that 48-hour hearing violated
15 their Constitutional right to an attorney and to be
16 heard.

17 My point here is, and he just brought it up,
18 Mr. Cross, we are making the state jump through
19 loopholes to follow the ICWA law. And my concern is
20 what are we doing in the tribal courts to have them
21 not violate the rights, Constitutional rights of
22 Indian parents? There's many cases when children
23 are taken from their parents in tribal court where
24 they're never allowed an attorney.

25 I was given my grandchildren, my granddaughter,

1 and I'm glad to have her. My children were never
2 given an attorney. They were never asked. They
3 were never told, These are what you need to do to
4 get your daughter back. So I have her, and I'm glad
5 to have her.

6 But that's my biggest concern: We make the
7 state jump through loopholes, and I'm glad, but what
8 are we doing on the tribal level?

9 He just pointed out that instead of supporting
10 what happened with OST, his tribe instead took away
11 some of their power. So, you know, what do you do
12 about tribal courts?

13 This applies in state courts, and I'm glad, but
14 I would just like to see ICWA made mandatory for
15 tribal courts, too. That's my point.

16 MR. LARRY ROBERTS: Thank you.

17 All right. Are there any other comments?

18 (No response.)

19 MR. LARRY ROBERTS: Okay. So it's 4:24. I
20 just want the record to reflect that we've stayed
21 over almost half an hour longer than we had been
22 scheduled and that we have provided everybody an
23 opportunity to comment who wants to do so. And
24 we're going to close this public meeting as there
25 are no further public comments.

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Thank you.

I just want to say very quickly to everyone:
Thank you all for coming today and for providing
your comments at this session.

Thank you.

* * * * *

(The proceedings concluded at 4:24 p.m.,
April 23, 2015.)

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

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I, CINDY K. PFINGSTON, hereby certify that the foregoing pages numbered from 1 to 125, inclusive, constitute a full, true and accurate record of the proceedings had in the above matter, all done to the best of my skill and ability.

DATED this 13th day of May, 2015.

CINDY K. PFINGSTON
Registered Professional Reporter

My commission expires:
February 4, 2016