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WHO BELONGS
FROM TRIBAL KINSHIP
TO NATIVE NATION CITIZENSHIP
TO DISENROLLMENT

A NATIONAL CONFERENCE IN HONOR OF VINE DELORIA, JR.

UNIVERSITY OF ARIZONA
JAMES E. ROGERS COLLEGE OF LAW
INDIGENOUS PEOPLES LAW & POLICY PROGRAM
UNIVERSITY OF ARIZONA AMERICAN INDIAN STUDIES DEPARTMENT

TUCSON, ARIZONA
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P.M. SESSION

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8
9 APPEARANCES:

10 HISTORICAL AND COMTEMPORARY LEGACIES: INTRODUCTION AND
11 COMPARATIVE DISCUSSION OF BLOOD QUANTUM, CATAGORIZATION,
12 CRITICAL RACE/FIRST NATION IDENTITY & CITIZENSHIP

13 Robert A. Williams, Jr., (Lumbee), E. Thomas Sullivan
14 Professor of Law, and Faculty Chair, Indigenous Peoples
15 Law and Policy Program, University of Arizona Rogers
16 College of Law

17 Pamela Palmater (Mi'kmaw Eel River Bar First Nation),
18 Associate Professor & Chair in Indigenous Governance,
19 Ryerson Univeristy, Toronto, Canada

20 NATIVE NATION BUILDING/DISMEMBERED: NATIVE DISENROLLMENT
21 AND THE BATTLE FOR HUMAN RIGHTS

22 David Wilkins, (Lumbee), Professor of American Indian
23 Studies, University of Minnesota

24 Wenona Singel, (Little Traverse Bay Bands of Odawa
25 Indians), Associate Professor of Law and Associate
26 Director, Indigenous Law & Policy Center, Michigan State
27 University College of Law

1 PROFESSOR HERSHEY: All right, everybody.
2 Welcome back. God, I can't believe this. It's seven
3 minutes past 1:30, and we're ready to go. Good job,
4 everybody. Waiting for the camera.

5 Welcome back, everyone. What I tell my law
6 students in preparing them to work for indigenous
7 communities is that first and foremost you can't
8 represent a Native American or indigenous communities
9 without knowing the entire historical genesis of that
10 tribe or that community. You have to know everything
11 from precontact to contact, and all the machinations and
12 all the intrusions that make what a contemporaneous
13 society what it is. All the aspects of genesis, contact,
14 resistance, whatever that may be.

15 So in this segment I'm very pleased to present
16 Pamela Palmater, who comes -- she is Mi'kmaw from the
17 Maritimes in Canada. And she has written extensively on
18 this. She is a professor at Ryerson University in
19 Toronto, and she is an expert in -- she knows the
20 historical basis, certainly publically for indigenous
21 cultures, most certainly Canadian history colonization,
22 the imposition of membership criteria, Indian status.

23 Next to Pamela is one of my dearest friends on
24 the planet, one of my most sensational mentors and
25 colleagues, Rob Williams. We've known each other since

1 about the 1990s. So, and we worked together for close to
2 27 years. And Rob has written extensively on this.

3 I consider him the foremost authority on
4 American Indian law in the country, and I am so pleased
5 that he's been part of my life for this and he's been
6 part of many of your people's lives.

7 We have many of our former students here. I saw
8 Wilma, that gal right there, that's Wilma Jackknife.
9 She's come down from Canada for this. And I know thee's
10 many other people. But she's received her doctorate from
11 our program as well.

12 And, Laurinda. Oh, here our first LLM class, Al
13 Kimona, he Indigenous from Taiwan. He's got a master's
14 from us, too. And Laurinda, yeah. Anyway, oh, Lorinda
15 is another one of our doctorate of law students and our
16 JD program as well.

17 I think the goal of our program is to keep
18 students here as long as we can. Because not only do
19 they share so much of their culture and truly involve
20 themselves, as Rebecca was talking about, we have such a
21 wonderful community here.

22 But without further ado, let me turn this over
23 to this kind of historical component of Who Belongs.

24 MR. WILLIAMS: All right. So I'm going to have
25 to walk, click and talk at the same time. That will be a

1 challenge for an Indian. We'll see.

2 So, that's the subtopic, as Robert said,
3 historical contemporary legacies. My talk today is
4 racial formation, Federal Indian law and disenrollment.
5 There will be a quiz afterwards. Okay?

6 So, this idea of racial formation comes from one
7 of the seminal texts on race and seminal texts in
8 critical race theory, of the 1990s, and really the last,
9 you know, 20 years. My goal, me and Howard Winon, racial
10 formation in the United States from the '60s to the
11 1990s. And it's actually much more than that 30-year
12 period. It's really the history of racial formation in
13 America.

14 And they start with a rather bold provocative
15 thesis that I always present to my students. I never
16 really thought about it this way. For most of its
17 existence, both as a European colony and as an
18 independent nation, the US was a racial dictatorship. In
19 fact, it was a white racial dictatorship. It was a
20 white, gendered dictatorship. It was a white, male,
21 straight dictatorship. And you think about what a
22 dictator is, one of the key qualifying definitional
23 characteristics of a dictatorship is that it rules
24 through the power of exception.

25 Bernie got in trouble because he said well,

1 Hitler won elections, too. And he did. He was elected
2 constitutionally and promoted and then to the head of the
3 Weimar Constitutional Republic, and then declared martial
4 law, which is the power of exception: The ability to
5 declare the end of law as the rule of law. And rule by
6 martial law. That's what dictators do.

7 If you think about the United States from its
8 earliest colonial origins, if it had to do enslavement
9 and the enforcement through the Slave Penal codes of the
10 1600s. It had to do with the American Indians and the
11 Doctrine of Discovery.

12 If you move into the 1800s and the war against
13 Mexico, and the taking of some of the largest real estate
14 in the history of North America from Mexicans who had
15 held property under Spanish land grants, and then those
16 are were confiscated by white dictatorships, you can see
17 that as productive as it is, it does give you an
18 interesting perspective.

19 And that's really all I wanted to do, was shift
20 your perspective a little bit and think of America as a
21 counter history to the way you usually think of it, as a
22 racial dictatorship in which varying groups, women, gay,
23 straights, American Indians, Japanese Americans, all
24 sought to free themselves from the chains of racial
25 dictatorship.

1 And it was legalized until Brown v. Board of
2 Education, 1954. You think about all the cases up until
3 that point that validated the racial dictatorship of
4 white America over all sorts of different groups.

5 Now, what they then go on to say is that racial
6 dictatorships are unique in that they engage in these
7 processes of racial formation. They form races.

8 Columbus gets off the boat. He asks the Arawak
9 Indians do you believe in Christ, Jesus Christ. Jesus
10 Cristo. They had no idea what he was talking about.
11 Which meant they had not received the word of Christ.
12 And so therefore they were classified amongst as
13 infidels, heathens and savages. Infidels were followers
14 of the false prophet Muhhamad. And heathens were those
15 who worshipped false idols, and savages had no god at all
16 that Europeans could recognize.

17 And so Columbus was able to classify them
18 through the power of exception. He says that these
19 people are going to be subject to white racial
20 dictatorship, Spanish colonial rule. And so from very
21 early on you see the U.S. and the colonies forming races.
22 I mean, defining the one drop rule. For a negro who was
23 1/128th was classified as negro. And you had Octoons and
24 Maroons. And you begin to find that this tool of blood
25 quantum used a tool of racial dictatorship from the

1 earliest points in our history.

2 And so what we mean by racial dictatorship is,
3 this idea that these dictatorships use these processes of
4 racial formation to justify governing conquered peoples,
5 enslave peoples, governing women, governing those who
6 aren't straight, using their powers of racial
7 dictatorship to, by law, discriminate against them on the
8 basis of those differences.

9 And so, crucial to this idea of racial
10 formulation is the treatment of races as the central axis
11 of social relations, which cannot be subsumed under or
12 reduced under subcategory or conception. You are
13 Indians. You live on a reservation. You, as Gavin said,
14 you don't look Indian.

15 So these racial formations are all around us.
16 These racial formation projects that are the vestiges,
17 the legacy of this period of white racial dictatorship.
18 And I will tell you that of all races in the United
19 States, only Indians are still subject to this legal form
20 of white racial dictatorship in the Congressional Plenary
21 Power Doctrine, and in the Doctrine of Discovery, which
22 even Ruth Bader Ginsburg cites as still good law.

23 We've have Brown v. Board of Education. We've
24 had Brantwell, which recognizes the equality of women.
25 We haven't had a case that overturns Johnson v. McIntosh.

1 Indians are the last race, the last group, really, to
2 live under this legalized form of white racial
3 dictatorship.

4 So give you an example of a racial dictatorship
5 project, run by a dictatorship. A Racial Formation
6 Project: Kill the Indian, Save the Man. The Indian
7 reservation schools were one of the last great racial
8 formation projects. Here is what a savage looks like.
9 Here is the picture that the BIA provided afterwards to
10 Congress.

11 You see, the BIA had to go to Congress to get
12 appropriations for its civilizing program. And so they
13 would bring these before and after photos. See what
14 we've done to the Indian? We formed him into a white
15 man. So my colleagues, Shanena Wilma Wyma, who was
16 writing her first book on the Indian reservation school
17 system, came across these pictures, said this is weird.
18 He's white. How did he get white. What is that?

19 And so she goes to the Smithsonian and she talks
20 to the guy who is one of the curators of the photography
21 collection. Says, oh, that's intentional. What do you
22 mean? You just don't hold it under exposure as long for
23 the black guy and for the white guy you keep it there a
24 long time, and you turn him white. Because the belief
25 was if you civilized the Indian, he would turn from tawny

1 to white.

2 That is a racial formation project. That -- do
3 we understand, class? Example one.

4 Here's another racial formation project that
5 Indians have taken on themselves. And it's Steve said
6 this morning I'm, quite amazed. Citizen. Did you ever
7 look up the etymology, fancy word, the origins of the
8 word citizen? Early 14th century, before white men even
9 came to the New World, from the Anglo French zitizan.
10 Spelling subsequently altered probably by influence of
11 denizen. Later I define that for you. Modern French
12 sense of a town dweller, citizen. City dweller. That's
13 a great word for Indians to take on this project of
14 decolonizing their membership rule, citizenship.

15 Blacks were -- in the west, citizenship has
16 always been used as a tool of division. If you don't see
17 that now, you'll never see that. Right? The only time
18 citizenship matters is when you want to use it as part of
19 a racial dictatorship.

20 So Indians weren't citizens until 1924. Blacks
21 weren't even citizens until after the Civil War. That
22 took a revolution. That took a civil war. Japanese
23 Americans were citizens. They went to the internment
24 camps. You want to go see something on your trip here?
25 Go up to Mt. Lemmon. See the Japanese internment camp up

1 there. Freddie Koramatsu spent time at that internment
2 camp.

3 That's what citizenship gets you. Why would you
4 ever use that and as this idea of having a country again
5 late 14th century, 1300. Are we listening, people.

6 This word has no connection whatsoever to who
7 you are. I go all around the world. I talk to Mallory
8 people. I talk to Navajos. I talk to Native people in
9 Australia. I say the same thing again and again. What's
10 your native word for sovereignty?

11 What's your native word for citizenship? Okay,
12 this is, you know, one of my students is now a professor,
13 signs all of his emails, a colonized mind in a horrible
14 thing to waste. Okay? Are we paying attention?

15 So then it says it comes from denizen, which is,
16 again, from within, inside, historically alienated, made
17 with certain rights with a naturalized citizen. So
18 Europeans can't even get this crap straight. Okay?

19 A denizen now means this. We are going to give
20 it to you and we're going to really mess it up. Because
21 it has nothing to do with who you are. It's a racial
22 formation project.

23 Now, again, what is a racial formation project?
24 Refers to the processes by which social, economic, and
25 political forces determine the content and importance of

1 racial catagories and by which they in turn are shaped by
2 racial meanings. Trust me, when you're talking about
3 tribble citizens using racial categories, you're implying
4 racial meanings. And so now the only difference is
5 you're responsible for it. You're the one that has
6 agency under this racial formation project.

7 And many of you here fought for that in the '60s
8 and '70s. And many of your elders and your parents and
9 your aunties and your uncles fought for that, and so you
10 owe it to them to take the responsibility for this racial
11 formation project. It's just another one in the long
12 line of racial formation projects in America, but this
13 one is being dictated by you.

14 A lot of them in fact say that the conquest was
15 the first, and given the dramatic nature of the case, the
16 greatest racial formation project. Anyone who wasn't a
17 Christian, anyone who wasn't a Christian, could have
18 their lands declared conquered and subject to
19 appropriation by any European subject. Look at the last
20 line. With this proviso, the islands and mainlands found
21 to be discovered by Spain, beyond that said lying to the
22 west and south being in the actual possession of any
23 Christian king or prince.

24 So, basically the papal bull gave European
25 monarchs a hunting license. Wherever you go and find

1 peoples who didn't believe in Christ, who didn't have the
2 same civilization, in fact, that you thought were savage
3 and backwards, you could take their property. They had
4 no property rights. And that's why it is the greatest
5 racial formation project.

6 Europeans took the Doctrine of Discovery, and
7 applied it around the world. And there were indigenous
8 peoples who had no property rights except which the
9 Europeans might grant by treaty. And then there are the
10 Europeans who claimed everything else. All of it as part
11 of their sovereign rights.

12 You look at European colonial discourse as a
13 racial formation project. Why do we call it America?
14 Because he got the first book out there. He beat
15 Columbus. He published his book in English. It was the
16 first book in English to describe the Americans. So
17 that's why his name is appropriated to the continent.

18 And if you look at his description, it's the
19 same as Columbus. It's the same as Cabbot. It's the
20 same as the Jesuits in the 17th century. Indians are
21 savages. As savages, they have noble qualities and
22 ignoble qualities, but they cannot be civilized. Kill
23 the Indian, save the man. They know nothing of the
24 immortality of the soul. They have no private property.
25 Everything they have in common. They hold no boundaries

1 of kingdom or province. They obey no king or lord.

2 And this is the civilization that you're turning
3 to to help you resolve your membership issues or
4 citizenship issue. I don't know, whatever you want to
5 call them. But if you don't think this stuff is messing
6 up the inside of your head, okay, then you need to take a
7 step back and think about where we're deriving these
8 ideas. Where do they come from. Whose racial formation
9 project are they?

10 England incorporated this racial formation
11 project of the Indians lacking any rights that whites had
12 to pay attention to in the first legal document
13 establishing the first permanent colony in America:
14 Jamestown. Here is what the King told the company, the
15 corporation. Sound familiar? A corporation seeking
16 natural resources on Indian lands invades with no legal
17 rights whatsoever and proceeds to massacre, and
18 appropriate.

19 I just took a wonderful course from Noam
20 Chomsky. He makes the point, I feel sorry for Indians.
21 You guys encountered the most savage group of people in
22 the history of the world. They had wars that killed 20,
23 30, 40,000 people at a time. They lived like pigs.
24 They'd have black death. It was just wipe out -- they
25 were so backwards and uncivilized. They had the black

1 death and plagues. They burned people at the stake for
2 their religious beliefs. Can you believe how backward
3 and vicious they were. No wonder the Indians lost.
4 Nobody could have survived that encounter.

5 And you know what? In the entire history of
6 Western Hemisphere and the history of the world, no one
7 has survived the encounter. They have colonized the
8 entire world with their ideology and their civilization.
9 I love Ghandi. What do you think of Western
10 civilization? Nice idea if only it existed. Okay?
11 Great concept.

12 So Indians tell them we're soveign, okay. No
13 you're not. I'm got a sure-fire test for sovereignty.
14 If you want to know you're sovereign. It comes from Carl
15 Schmidt, a Nazi political philosopher. Okay. He
16 understood dictatorship. That's what he studied. He saw
17 the rise of the Nazi dictatorship from the inside. And
18 he had a lot of insight as to how dictators worked.

19 So it is well worth looking at sovereign is he
20 who decides on the exception. Who can suspend the rule
21 of law. Who can change the rule of law? Who can dictate
22 your membership code? Aski yourself and your
23 communities, truly, what do you have the power of
24 exception over? Nada, basically.

25 And if they give you the power of exception, it

1 must mean it's not very important to them. So guess what
2 you have the power of exception over? Membership.
3 Membership. Because, you've appropriated our system
4 anyway. You've socialized yourself to our system. You
5 operate our system as an engine of extinguishment and
6 extermination and genocide better than we could have ever
7 done. That was the whole philosophy of the British
8 Empire is get the Indians in India to run the damn thing
9 for you. And then pull back and just reap the profits.
10 Rape the land. Abuse the people. Transport their labor.
11 It's colonialism. It's a great system. As early as
12 1600.

13 Guess what? Lord Coke, guess what he was? He
14 was the lawyer for the Jamestown colony that just wrote
15 the King's charter. And then he sitting, conflict of
16 interest, right? Then he's sitting on the King's bench
17 and he issues Calvin's case and he says, guess what, a
18 pagan cannot have or maintain any action in the King's
19 court. Have you ever heard of sovereign immunity? You
20 ever heard of the Indian claims Commission where you
21 don't get interest on your judgments because Congress
22 dictated the terms?

23 You ever hear of the Plenary Power of Congress?
24 I tell my students don't be impressed by the white man's
25 law. Hasn't really developed very much over 500 years.

1 It's all Calvin's case. I tell you, just Calvin's case.

2 What happens? If the king of a Christian
3 country invaded infidels? Their the laws are not only
4 the abrogated because they are against The 10
5 Commandments, the king can establish whatever laws he
6 wants among them.

7 Which is kind of what happens at the very
8 beginning of Indian law and policy. Washington was
9 asked, immediately after the revolution, two weeks after
10 the treaty of peace, peace with Paris, what should be our
11 Indian policy? And the red states, you know who they
12 are, they wanted to go kill the Indians or drive them to
13 Canada, and make them play hockey instead of basketball.
14 Okay?

15 A thought that many Indians just couldn't deal
16 with in the US. Okay?

17 So he says, no, no, no. You don't understand.
18 We're going to make the treaties work as a racial
19 formation project. We're going to draw a boundary line
20 and we're going to promise the Indians all the land and
21 trees to the west of that boundary line for as long as, I
22 don't know, the river flows and the grass grows. How do
23 you like that? Yeah, let's get that in there.

24 So they signed treaties, all these tribes,
25 because they think they are a doomed race. They're

1 savages. They can't withstand the forces of civilization
2 so why would you bother fighting them when you can
3 acquire the property by treaty.

4 And soon as civilication approaches the
5 frontier, the savages is the wolf we will retire. As
6 that metaphoe really becomes Indian law and policy. That
7 the treaty is a tool of racial formation. It puts you on
8 reservations. It's what Schmidt calls a spatial
9 organization of the world. Wow.

10 And this idea that Indian treaties are racial
11 formation projects isn't my idea. I got it from the
12 leading scholarly authority in the country on this topic,
13 who tells us that curing the tribal disenrollment
14 epidemic in search of a remedy, that after the
15 Revolutionary War, the U.S. in fact begins adopting the
16 British practice of naming chiefs and see who is eligible
17 to sit in on the treaty and get benefits.

18 They pick up the practice of using membership
19 and enrollment and picking their leaders as a racial
20 formation project, forming you to sign treaties that give
21 away everything that they really want from you. And
22 again, you're a doomed race, you're going to lose it
23 anyway in the bargain at the end.

24 The tribes of Indians were fierce savages whose
25 occupation was war. To leave them in possession of the

1 country was to leave the country a wilderness.

2 So this is the power of exception. Why don't we
3 have to recognize Indian rights? Because they're
4 savages. Sovereign is he who has the power of exception.

5 Conquests?

6 So what you begin to see is that at the very
7 beginnings of Indian law, Indians are classified. The
8 racial formation projects is to treat them and legislate
9 and deal with them as conquered peoples, pushed onto
10 reserves. Conquest gives a title which the court of the
11 conqueror cannot deny.

12 Remember Calvin's case? A pagan can't have a
13 right of action in the King's Court. Marshall's just
14 quoting. They occupy a title independent of their will,
15 the US. Meanwhile, they are a state of pupillage. There
16 is guardian word analogy.

17 Now do you understand the racial formation
18 project is that Indian law, the law you're operating
19 every day of your life, Federal Indian law is a tool of
20 racial formation. It is the US -- it's 1783, that was
21 four years before the Constitution and the racial
22 formation project of classifying blacks as 3/5th for the
23 purpose of vote. This is the first and still continuing
24 racial formation project.

25 And if you think you're going to get any help

1 from that in working on some of the toughest problems, it
2 is absolutely true today, probably the major issue in the
3 21st century demographically, economically, politically,
4 is how we address this issue of Who Belongs.

5 But I don't think citizenship is the right
6 notion. As the leading scholarly authority says, if you
7 lose through all the great periods of Indian law this
8 idea of blood quantum, this idea of the U.S. determining
9 who is and who isn't an Indian for various purposes
10 proliferates and grows, you see it used in the removal
11 era. You see it used in the General Law Act, and I
12 don't -- I will make these slides available and you can
13 use them. Just say Rob showed them to me. Okay.

14 Congress gave the commission six months to issue
15 a complete role of citizenship. I think, honestly, give
16 Congress six months and what are they going to do? They
17 can't even get a roll of toilet paper requisitioned for
18 the Senate bathroom in six months, for God's sake. And
19 they gave it to a commission.

20 I mean, can you imagine the guys who sat on
21 those commissions? If you look at their biographies,
22 they are all from railroads. They're former political
23 buddies. They are getting a pretty nice per diem. Not
24 as good as you get from UN if you go for one of the
25 indigenous events, but it's still pretty good.

1 And the irony? Good old Felix Combs, the savior
2 of Indian law, I've had Indian law professors, not an
3 Indian tell me if it wasn't for John Marshall, Indians
4 would be here any more. Thank you, Masked Man. Okay.
5 What do you do with that?

6 And so what's happened is we have internalized
7 the system of oppression and we think it's our own. I
8 can tell by looking at your faces that you are all
9 shocked. My God, how come they teach us this in public
10 school. What, are you crazy? How would that have messed
11 you up, and we'd all be sitting here today if not --

12 I always ask my students, and I will close with
13 this, what would the US look like if Indians had better
14 immigration laws? Thank you very much.

15 PROFESSOR HERSHEY: Absolutely, Rob.

16 MS. PALMATER: Wow. Thank you.

17 Pam Palmater. It's an honor to be here in this
18 territory. I appreciate the privilege of being able to
19 speak in your territory. And I want to acknowledge the
20 Mague and Cold Lake First Nations both from Canada, and
21 it's great to see that we're all working together as
22 Nations. And I guess that's part of the problem, none of
23 these words come from our languages, and we all speak
24 different languages. So, whether it's nations or people
25 who had or citizenship or sovereignty, whatever terms

1 we're going to use, they are not going to fit. But I
2 think what we're really talking about is our collectives,
3 and who we are.

4 And, you know, whether you call it a government
5 or a system, we're not going to find that perfect word.
6 But what's important is not so much that as it is making
7 sure that we're here. Making sure that we honor our
8 ancestors and all of the sacrifices and the lost lives to
9 make sure that we exist in the future, and provide that
10 space for our future generations like our ancestors did
11 for us.

12 And we don't want to have a repeat of history,
13 and I think it's important that we talk about this. And
14 not just about the history. Because I'm fairly confident
15 that in this room I could say we're all pretty much aware
16 of the history of what's happened in Canada and the
17 United States in terms of colonization. The problem is
18 when I go into First Nations in Canada to talk about
19 this, they don't all know that history in detail. They
20 can't make all of those links between here is what the
21 colonizers put in our head, versus what we think is our
22 tradition and our culture.

23 Because they worked very hard, and where I'm
24 from, the unseeded lands of the sovereign Mi'kmaw nation,
25 we've had 500 years of colonization. Some have had less

1 than 100. But 500 years is a very long time to start to
2 believe what they told you in residential schools. And
3 so it's really important that we make that link between
4 what the colonizers put in our head versus what we're
5 doing today.

6 And the last thing we want to do is their job
7 for them. We really don't want to do that, especially on
8 membership, citizenship, people who have Nation, whatever
9 you want to call it. Because Canada's Indian policy is
10 very simple and it hasn't changed to this day: Two
11 objectives, that's it. To acquire Indigenous lands and
12 resources, and to reduce financial obligations that they
13 inherited through treaties and other agreements. Very
14 simple, and it's still on the books.

15 Their methods were also very basic. They only
16 had two: Assimilation and elimination. Canada's only
17 recently gotten around to talking about the assimilation
18 part of it a little bit, and that's really uncomfortable.
19 They don't do a lot of talking around the elimination;
20 the scalping bounties, the forced sterilization, the role
21 of police officers in both killing indigenous women and
22 children and using rations to force sexual violence upon
23 these women and how our country started out this way.

24 Those kind of things we don't -- we're not
25 really good about talking about yet. But one of the

1 other tools they use is something called the Indian Act.
2 And since 1896, it still exists, and it controls every
3 aspect of our lives.

4 Now just anecdotally, earlier before we started,
5 I was looking at the different tribal membership cards or
6 citizenship cards issued by the different tribes here.
7 And when I pulled mine out, mine is issued from the
8 government of Canada. It's the government of Canada that
9 tells the majority of Canada who we are and who we
10 aren't.

11 And that's significant. Because it's not just
12 who we are, it's everything that we do. All of our
13 politics, and all of our governing structures, it's all
14 controlled under this Indian Act. What it essentially
15 did is it created a fictional race of Indians. Because
16 there is no such thing as race of Indians. There is only
17 Mi'kmaw, Shoshone, Cree, Malsee. There is no fictional
18 race of Indians.

19 But they set it up that way and taught us to
20 believe that's who we are, and that they are the boss of
21 who that is. And over time we have been Indians and then
22 not Indians and then Indians again. All by the stroke of
23 a pen from the Canadian government.

24 So we are in a little bit of a different
25 scenario but we are struggling with this issue of who

1 gets to reside in our territories, who gets to reside in
2 our local communities, who gets to be a member, who gets
3 to be a citizen and what does that entail.

4 The problem is the legacy of the Indian Act,
5 which you can't even really call legacy because it's
6 still our reality, we are the only country in the world
7 now with this document, is that it tried to eliminate
8 Indians in two ways: One is regarding women, because
9 it's the fastest way to get rid of a nation is the women.
10 They are life givers. They are also the ones who
11 intermarried all of the settlers and all of the trader,
12 it was all of the men that was coming over.

13 And the other thing it did, probably the most
14 destructive thing it did, is it tied entitlements to
15 blood. And that blood is an entitlement to identity. So
16 instead of talking about culture or language or
17 relationship or your territory, it all became how much
18 blood you had in the first Indian Act entitled you to how
19 much money you would get.

20 And now today, the biggest problem in our
21 communities is trying to have a conversation around
22 membership without raising the words housing, education
23 benefits, welfare benefits. To have a conversation about
24 who am I as a Mi'kmaw person. And if the first words out
25 of your mouth is welfare check or housing, we've gotten

1 so far away from what it means to be who we are, but it's
2 the biggest impediment to having these conversations.
3 And it really requires a lot of work.

4 I've found that the most success I've had,
5 because I have worked with lot of different First Nations
6 who are working on their membership codes, and there is a
7 lot of challenges, however, I've found the most success
8 when I don't walk in and start talking about a code. And
9 here is your options for codes, and here is different
10 criteria.

11 The most success we have is when we spend a lot
12 of time, multiple times going into communities and saying
13 here is the history of how the Indian Act was developed.
14 Here is the science that it's based on: Eugenics,
15 phrenology, white supremacy, and here is why they
16 designed these rules. To take away your land. And here
17 is the formula. Why is it designed the way it is. And
18 it's to legislatively ensure our extinction.

19 That changes peoples minds from saying hey, I'm
20 a status Indian. That's what makes a Mi'kmaw person, to
21 oh, my goodness, this is meant to bring about our
22 extinction? In Canada, there is an extension date for
23 every First Nation. Every single one.

24 So when I did the research for my book, all I
25 had to do was make an access to information request to

1 Canada, because I had always heard this rumor, and I got
2 the report. And it showed me every First Nation and all
3 of the dates in which they are going to be extinct.

4 Wow. Why on earth would we want hold up a
5 process that's meant to eliminate is as the one on which
6 we are going to base our membership codes on? But you
7 cannot have that conversation about membership until you
8 get to that place where everybody in the community even
9 knows that fact. Until I can say oh, what First Nation
10 are you from? Here is your date.

11 Now the clock is ticking. It's not just
12 theoretical any more. It's not political any more. It's
13 not just maybe an interesting academic thing to do. It's
14 oh, my goodness, I have 75 years. I have 35 years.
15 Because we won't be gone. We will still be there. I was
16 a Mi'kmaw long before contact. My ancestors were Mi'kmaw
17 long before contact. And we will always be.

18 But the world in which we live and the laws of
19 that we're subjected to, at least in Canada, say if there
20 is no more status Indians registered under the Indian
21 Act, that means there is no more band members for the
22 vast majority of First Nations in Canada. No more band
23 members means no more bands, which is a First Nation or
24 like a tribe.

25 If you no longer have a band, under the law, all

1 the property and assets is shieked to the crown. And
2 shieked just means it reverts back to the true owners,
3 which is the Federal and/or provincial government.

4 So extinction isn't just about I don't like your
5 race, I want you out of here. It's always been about I
6 want your lands and resources and I want to reduce these
7 financial obligations and the best way to do it is make
8 sure you don't exist. And the treaties don't change
9 that.

10 Because some people say well, maybe the
11 treaties, you gave up your right to determine your
12 membership or you put a timeline on it, but not our
13 treaties. All the treaties that the Mi'kmaw signed in
14 the 1700s long predate the Indian Act. And more than
15 that, the treaties are forever. And our treaties say all
16 of the rights and benefits are for our heirs and the
17 heirs of our heirs forever.

18 So what did Canada do? You can't actually
19 retroactively put the Indiana Act in treaties. They have
20 a policy which interprets treaty holders and treaty
21 beneficiaries are only those who are registered under the
22 Indian Act. Why on earth do you do that? You do that
23 because some day there will be no more status Indians and
24 there will be no more treaty beneficiaries.

25 The problem is all of our communities aren't

1 educated about this. So some our own community members
2 will say unless you have a registration card from Canada,
3 you don't get to access your treaty rights.

4 You've essentially just said yes, Canada, I will
5 be extinct in 35 years. And there will be no more treaty
6 rights.

7 But we can't get to the place of changing that
8 until everybody knows what's happening. And I know it's
9 not the exact same here in the US, but it's pretty close
10 in terms of what's happening with blood quantum.

11 And so I decided for my doctorate that I would
12 do research on our traditions. Too much talking about
13 the Indian Act and what the government wants. I wanted
14 to see what all the traditions and values were in as many
15 indigenous nations as I could find to see what's the
16 origin of blood quantum, and there wasn't a single one.
17 Not a single one.

18 In all the ones that I looked at, citizenship,
19 belonging, peoplehood, was all based on a relational
20 concept; who you're married to, born to, lived with,
21 loyal to, worked with. It was all about relations.
22 Kinship. And it was a birthright.

23 I haven't come across a single indigenous nation
24 yet where citizenship wasn't a birthright. You're born
25 Mi'kmaw. And that's it. You're born into your Nation.

1 And the other really important thing which I
2 think changed my mind in terms of membership, because I
3 went into it with a very different view, was that for
4 every single benefit or perceived benefit that indigenous
5 nations had, there was always a corresponding obligation.
6 You never had one without the other.

7 So you could never say, for example, I have a
8 right to fish, without the according obligation to
9 protect the river that those fish live in so that the
10 bears can also have the fish, and so that the fish can
11 actually live. There is never one without the other.

12 But the Indian Act changed our thinking into I
13 want to be registered as an Indian because then I get
14 this and I get this and I get this and I get this. And
15 you don't even have to talk to your First Nation if you
16 don't want to. Because it's about benefits. Where is
17 the obligation? Where is the corresponding obligations?

18 And so that's why my work on citizenship codes
19 or membership codes it's always about where is your
20 balance. We are out of balance. Colonization has
21 unbalanced our brains and unbalanced our ideas. How do
22 we put this balance back in in a fair way.

23 Because the problem isn't that we are losing
24 blood. That's not even based in reality or science.
25 They debunked those theories long ago. Humans do not get

1 half of their blood from their mom and half of their
2 blood from their dad. It's physically impossible.

3 And if it was about blood, then all of our
4 brothers and sisters who've had blood transfusions would
5 no longer be Indian. And that's ridiculous. It's
6 ridiculous and it doesn't come from our thinking.

7 And turn it around. So I also try to work with
8 settler populations. And say okay, how many generations
9 removed are you from the Founding Fathers. How many?
10 Seven? Eight? Then maybe you're not a pure Canadian any
11 more. Right?

12 Do they still follow those bizarre traditions?
13 Do they wear wigs? Are they all governed by men? Do
14 they follow all those traditions? And if not, maybe
15 they're not real Canadians.

16 And maybe after two generation of marrying
17 immigrants, you're no longer a pure Canadian and you lose
18 your citizenship.

19 And worse, imagine telling a Canadian or an
20 American, because your country has a debt or deficit, I
21 don't know which one it is, that no more babies born can
22 be Americans or Canadians because we can't afford you.
23 There won't be enough housing. Never in a million years
24 would you hear that. You would hear about budget cuts.
25 But you would never hear about people cuts.

1 So, in that way, we're the only ones willing to
2 sacrifice our own people for this. And who benefits from
3 that? The Canadian and Americans governments do. The
4 states and provincial governments do. We don't.

5 Why on earth would we look at someone and say we
6 don't have enough education money, so you can't be a
7 member here. Since when -- keeping in mind that we have
8 been here since time immemorial. Since time immemorial.
9 Who we are had nothing to do with that.

10 And in fact, they even mentioned in some of the
11 indigenous nation ceremonies and stories they say just
12 because this winter there is not enough moose in the
13 forest, that doesn't mean we throw away our people. But
14 conversely, just because we have lots of fish in the
15 ocean doesn't mean everyone gets to be a part of our
16 Nation. It's not based on the resources.

17 So this conversation we had about resources,
18 resources are secondary. Those are decisions that
19 government and people make. But who we are as people and
20 being the Mi'kmaw nation into perpetuity is a completely
21 different consideration.

22 And so when I go into communities, my first
23 request of them is, before we even start this, can we
24 please forgive ourselves for being colonized. Please?
25 It is not our fault that we were kicked off the reserve

1 by Indian agents. It's not our fault that we can't speak
2 the language because our three generations of family were
3 in residential schools. It is not our fault if we never
4 danced in powwows because the government wouldn't let us
5 on the reserve. It is not our fault for all the ways in
6 which we judge one another as to who's more Indian and
7 who is not.

8 So let's first forgive ourselves for being
9 colonized, and then focus on how we go about healing our
10 nations.

11 And, there is a silver bullet. I believe there
12 is. I believe that the cure is just including our
13 people, bringing all of our people back home. And when I
14 say all of our people, I mean the people in prisons, in
15 foster care, who are missing, who are lost in spirit, who
16 want to commit suicide because they don't know who they
17 are, and all of them are rightful people who are
18 excluded.

19 I think the minute we bring our people home and
20 increase the strength of our Nations, we'll be taking
21 back our lands in very short order. We'll be taking back
22 our governments in very short order. And we'll have the
23 strength and the people and the unity to do it.

24 And no, I'm not worried about all the wannabes.
25 It's so easy to take care of those people. You cannot

1 let the wannabes and the opportunists be how we design
2 our codes. That I am going to let your self-interests
3 determined what my Nation does. No. You can deal with
4 the exceptions.

5 And I think if we can get to that stage, then we
6 can have this conversation. Then we can go in and say
7 okay, let's talk about citizenship. Let's get away from
8 sole based criteria. You must be 75 percent blood or
9 you're out. Well, what about everybody else? What if we
10 had a whole range of things? We went back to our
11 traditions and said there is 20 criteria, and it's based
12 on kinship and ancestry and birth place and culture and
13 language and loyalty and commitment. And if you meet
14 three of those, you're in.

15 Because this guy over here, he is the one with
16 the language, but he's never lived here. Wow, imagine if
17 he could come back and bring back language to us. Or
18 this person who's lived here forever but doesn't know the
19 language, but knows all the community history and can
20 share that with people. We all have -- bring something
21 different. We do not have to be some fictional notion of
22 what an Indian should be all to be a part of our
23 community. There is no nation on earth that's like that.

24 So I think there is lots of ways in which we can
25 do it. And that part is the easy part. The hard part is

1 getting us all to the place where we can have this
2 conversation in understanding and respect, and take it
3 away from the personal. And I think that -- I think that
4 if we do that, we can stop effectively banishing our
5 people, dismembering our people, committing genocide
6 against our own Nations to our own demise.

7 Because I'm telling you, no matter what anyone
8 says, whether everyone agrees or everyone disagrees, I
9 will keep fighting to make sure my community is not
10 extinct in 35 years. Thank you.

11 (Applause.)

12 PROFESSOR HERSHEY: All right.

13 A SPEAKER: Rob, I never get tired of listening
14 to you. But the one thing that it always seems like is
15 it always does come down to economics. If you look at
16 what the -- all these things are trying to do, they are
17 always -- there is always an economic motivation
18 underlying it. The race is merely a tool. Racial
19 constructs are merely a tool. If you look at the way
20 blood quantum is designed, it was designed under the
21 premise that you described, that Indians would eventually
22 dilute themselves out of existence.

23 So we set the minimum blood quantum for things,
24 the Indians dilute themselves, and then we don't owe
25 anything. Eventually they dilute themselves out of

1 existence in 35 or 75 years and all of a sudden we get
2 the stuff back. They didn't have the stuff to begin
3 with. It wasn't their stuff to begin with. But in their
4 open conception, because of the Papal bulls that gave
5 them those rights, all of a sudden it's their stuff.

6 PROFESSOR HERSHEY: Hang on one second.

7 How are you doing?

8 THE COURT REPORTER: Slower would be better.

9 (Laughter.)

10 A SPEAKER: One example that I remember from
11 Rob's class was the notion of, and I always ask my
12 students this question, why is it that when Homer Plesce
13 in Plesce v. Ferguson, is one-eighth black and
14 seven-eighths white, they make him a black man. But if
15 you were one-eighth Indian and seven-eighths white, they
16 made you a white person? Why would we have this
17 completely opposite construct of Indianness and
18 blackness. And the answers then always comes back to
19 economics.

20 Because if you think about it, Indians, we had
21 the initial resources endowments. We had the stuff.
22 Black folks were brought over here by force with only the
23 labor in their hands. And so what we needed to do was by
24 making the Indians incompetent, unless they had diluted
25 themselves below a quarter, that was the only way you can

1 alienate land because you couldn't alienate land without
2 permission of the crown or without permission of the
3 central government.

4 So you make the Indians less than a quarter, and
5 you can steal their land because they are still poor.
6 And like you steal from other poor people. But then you
7 still need a labor force to work that land. So you make
8 the one-eighth black person the slave to work the land you
9 just stole from the Indians.

10 It's a perfectly rational economic maximizing
11 policy that the Federal government used over and over and
12 over again.

13 So, the only thing, the only obligation would be
14 that always race is being used as a tool by the conqueror
15 for the conqueror's economic objectives.

16 Is that slow enough?

17 THE COURT REPORTER: That was better. Thank
18 you.

19 PROFESSOR HERSHEY: One of my students.

20 A SPEAKER: I sit here and I listen to
21 everything, and to a person from Yavapai, the one way
22 that you could probably get them to come over here, fill
23 it out, is hold onto their checks until we come in and
24 fill it out.

25 A SPEAKER: We've tried that. We've tried that.

1 And it doesn't work, unfortunately. Direct deposit.

2 (Laughter.)

3 A SPEAKER: That, too, I guess. Just thinking
4 about it. I said I became Tohono on Ancestry.com.

5 We were discussing that, that somebody said that
6 somebody tried to buy -- on Ancestry.com they found out
7 that they were part Native American. And they said okay,
8 well, I filled out an application. Ancestry.com says I'm
9 part Native American. I came here to enroll. I don't
10 know what became of that.

11 But that was the only story I heard. But that
12 comment, it was kind of interesting to hear that. If you
13 find that your lineage someplace is there, how does that
14 work? If you find out on Ancestry.com you were part
15 Native American, whatever tribe, I don't know if they
16 told him what tribe they were, be interesting to kind of
17 hear what -- how that goes about.

18 I was talking to a gentleman, one of our elders,
19 and we were asking, you know, how did people get a house
20 in the district. I'm from San Xavier District, Tohono
21 O'odham Nation. And they said well, there was a leader
22 that you would always go to. They would point you to
23 that leader of the village. And as you walked over there
24 and said, you know what, well, I'm starting a family and
25 I need a home, so I need a home site. So I want to build

1 a home for me and my family. And so the elder would --
2 the leader of the district would say okay, well, who was
3 your family.

4 You know, so you tell him who who your
5 grandfather was, who your father is, who your mother is,
6 and you go by this and they said oh, yeah, yeah, yeah. I
7 know your grandfather. I remember him, you know. Stuff
8 like that, you know. So they would -- and, he said,
9 okay, well, have you picked out a site. He says, well, I
10 was thinking about over here and they said yeah, go
11 ahead. Because, that was kind of identifying him as a
12 member or, you know, identifying him as from the village
13 of Wa'k, from San Xavier.

14 And so a couple of years ago, there was some
15 things that changed in enrollment. And I'm glad to see
16 that our enrollment committee is here. Hello, enrollment
17 committee. Wave your hands, from Tohono O'odham Nation.
18 Good to see you guys.

19 But when someone wanted to be enrolled with the
20 San Xavier District of the Tohono O'odham Nation, they
21 would come in. We had them in fill out the paper, fill
22 out an application, but we would also see their lineage,
23 where they came from, who their parents were, who their
24 grandparents were. But of course, you can only go back
25 so far because you didn't have tribal enrollment back

1 then. And so, but you named who your grandfather was and
2 some elder at some point or another knew who they were.

3 But then you start saying the numbers, 91SX316,
4 91 -- 92SX, so San Xavier told you where actually your
5 lineage was from and what district. We have 11 political
6 districts in our Nation, and each district was able to
7 determine who would be in their district as long as they
8 had the lineage in there.

9 But now, and correct me if I'm wrong, that now
10 somebody can come in and say okay, I want to be enrolled
11 in San Xavier District. They fill out an application.
12 The application goes directly to enrollment. And if the
13 San Xavier district doesn't respond within a certain
14 amount of time, which I think is 20 or 40 days or
15 something like that, they automatically become a San
16 Xavier district member.

17 And I'm thinking this -- and we have only come
18 to a couple of people that have applied for this and I
19 think we opposed one of them, because their lineage came
20 from another district. And I don't know if that's wrong.
21 But people from our community would like to see the
22 lineage stay in our community.

23 Everybody wants to be in San Xavier. Everybody.

24 And I think one of the reasons is is because of
25 Tucson. We're so close to Tucson. And people want --

1 because the jobs are here and such. And so everybody
2 wants to be enrolled in San Xavier.

3 Now, we had one application say I want to enroll
4 my child in San Xavier, but we are enrolled in Sells and
5 Tuk a Kuk district. They say but we want to enroll our
6 child. And so we are wondering, well, this is new. Have
7 you guys come across that? Yeah?

8 What did you decide? No, just kidding.

9 (Laughter.)

10 PROFESSOR HERSHEY: I think you got to go back
11 and forth.

12 A SPEAKER: Well, we had some cases like that.
13 But, you know, we're only going down according to our
14 constitution, or base role. It's the lineage, the base
15 group, and we don't place people in districts. I think
16 you kind of got off there. It's elections that you can
17 get into any district you want if you're allowed from
18 that district.

19 PROFESSOR HERSHEY: There you go.

20 A SPEAKER: Ms. Palmater, pleasure to meet you.
21 I have heard a lot about you. I have a question for you
22 directly based on what you mentioned about, you know,
23 just accepting everybody and at one point, you know,
24 like, bringing everybody back I guess that belongs was
25 your words. But, you talk about weeding out the

1 wannabes. Because we're dealing with a lot of that.

2 There was recently a Canadian court decision
3 recognizing and as a result of that there is groups
4 springing up all over the place claiming if you want to
5 call it, not registration, but --

6 PROFESSOR HERSHEY: Status

7 A SPEAKER: Treaty rights, status, yeah. That
8 they are Indians. My question is so when does someone
9 stop being Indian? I mean we are talking about blood
10 quantum. To me, there has to be a cut off at some point
11 because then everybody in Canada will want to be an
12 Indian, again because of economics, because of the
13 benefits, that they want to have tax exemption, they want
14 to have, they want to have. And there is this, you know,
15 I guess double standard, you know. The Canadian taxpayer
16 in their mind, you know, I'm paying money to I guess, pay
17 for all of the reservation people, you know. That's the
18 concept and mindset that they have, not that it comes
19 from the resources and about the trees and all that.

20 So, I just curious in your estimation or your
21 explanation how do you deal with the wantabes and when
22 does someone stop being Indian? Or can anybody say
23 I'm -- I identify as a Native American. I mean, or
24 Indian or whatever you want to call it, as a person who
25 belongs to this Nation, and at what point does it stop?

1 Thanks.

2 MS. PALMATER: That's my favorite question.
3 There is a couple of them.

4 A SPEAKER: Forgive me for a colonized mind.
5 (Laughter.)

6 MS. PALMATER: Very favorite question. When do
7 we stop being Mi'kmaw or Cree or Passamaquoddy. When do
8 Canadians stop being Canadians? When do citizens of a
9 nation stop being citizens of a nation?

10 If we're looking at ourselves as a race and
11 there is a -- and you assign a biological trait to that
12 race, like brown hair, well, maybe as you're hair gets
13 lighter and lighter and lighter and lighter, then you're
14 less, or maybe if it's -- because it's a fictional blood
15 quantum. There is no such thing. As I said, doesn't
16 come 50 percent from your mom and dad. You actually have
17 different blood.

18 So if it was real, if it was -- you could
19 biologically measure it, then that would be -- you could
20 answer your own questions and just make that decision.
21 It's when your hair is this grade of lightness or blood.

22 But it doesn't work that way. And we're not
23 races. We're Nations. So citizens never stop being
24 citizens of their Nation.

25 Now there is two different issues in your

1 question. One is the what they call the charter group.
2 People who are already there. The people who managed to
3 escape colonial exclusions or gender exclusions or death
4 in residential school, so the people who survived and are
5 in the community on the reserve.

6 The second question is, what about all of the
7 people who have been captured by discriminatory laws or
8 lack of funding on reserve so they couldn't live on
9 reserve, which is the majority of our people, more than
10 half live off reserve because of lack of housing and
11 funding, do we use -- do we use the impacts of
12 colonization against our people to keep them out? Or do
13 we try to undo some of those harms.

14 And I think in most First Nations at least in
15 Canada that I have worked with, we know who our people
16 are. So someone might have been adopted out, but there
17 is always someone in the community who knows who got
18 adopted out. Or someone's grandchild was taken by Child
19 and Family Services and now lives in Spain, we know, we
20 can reach out and touch our people.

21 The question comes to someone who just walks up
22 to your community, has his application form, says
23 Ancestry.com says I'm 17 percent Native American. I
24 identifies as Mohawk. I assert myself as Mohawk, and I
25 want to be a Mohawk. That's a very, very different

1 scenario.

2 What I'm saying is that we get ourselves into
3 trouble if our membership code says the only thing that
4 matters is blood. Because that means, when I adopt a
5 child, that child is out. They are not blood. Or
6 someone with 1/100th blood can come and say well, I have
7 blood, I have a legal right because you've said that
8 blood matters. When if our membership code said well
9 maybe residency in our traditional territory matters, not
10 just on reserve, maybe ancestry, not blood, matters,
11 kinship matters, things like adoption matter, culture and
12 language matters, so, ways in which we can establish a
13 proven relationship. Not just the Joseph Boiden's of the
14 world who want to come and say I am Native and I speak
15 for Native people.

16 You could easily weed out those people. I've
17 never seen a scenario where you can't weed out those
18 people. And there is lots of them, you know, for
19 perceived benefits. Little do they know we actually get
20 less than Canadians. The tax benefit is so limited now,
21 and most people don't know that. They think they can get
22 gas and tax for free in Canada if you're Justin Bieber,
23 anyway.

24 (Laughter.)

25 MS. PALMATER: Honestly, so my point is just

1 that because we are relational people, we are
2 collectivities, we can reach out and touch our people.
3 Those we can't reach out and touch, those are the ones we
4 need to sit back and scrutinize a little more.

5 But if we just have one criteria, we're going to
6 exclude our own people who are rightfully members,
7 rightfully, who may only be 49 percent blood but they
8 speak the language, lived in the community forever, they
9 know everyone in the community, they work for the
10 community. Really, they're not included?

11 So, that's all. And I know we all have a
12 different view on this. We are all at different places.
13 And I think we have to respect that we are in different
14 places. Just -- I just want us to think about it
15 differently and not be so obsessed with the Joseph
16 Boidens of the world that we eliminate ourselves just to
17 spite him.

18 People like him are never going to determine how
19 I determine citizenship in the Mi'kmaw Nation, for
20 example.

21 PROFESSOR HERSHEY: Thank you.

22 Hang on one second. No, hang on one second. We
23 are going to do so stuff a little different here. I'm
24 going to tell you what that is right now. I used to have
25 hair really down to here and some people would say oh,

1 you're trying to be an Indian. And then my aunt clued me
2 in. She said -- this is the '60s, she was a little
3 fuzzy. And she said no, your hair was your antenna to
4 the cosmos.

5 (Laughter.)

6 PROFESSOR HERSHEY: So, that's how I answered
7 people when they said do you want to be an Indian. And
8 then when I left the Navajo reservation, this wonderful
9 friend of mine, she put a Thunderbird around my neck and
10 she said, this is to bring you luck in your whole white
11 life.

12 (Laughter.)

13 PROFESSOR HERSHEY: So I take that as a supreme
14 complement. I really did.

15 So what we're going to do so right now, if you
16 look at the program, we are going to get David -- david,
17 can you come on down, please? And Wenona, where are you?
18 Wenona, come on down. We are going ahead and continue on
19 talking about the humans rights issues right now, and
20 then we're going to take a quick break.

21 When we come back, we are going to have a lot of
22 time to talk among yourselves, ask questions. The people
23 that were speaking are also going to be in the audience
24 as well. So we are going to have a great deal of time
25 for group reflections. And you can talk among yourselves

1 and ask questions among yourselves and also the people
2 that have spoken here.

3 So, with that, I wanted to thank Rob and Pamela.

4 (Applause.)

5 PROFESSOR HERSHEY: A very dear friend of mine
6 who used to be here a professor at the University of
7 Arizona when we had a tremendous program here, and David
8 Wilkins, who's a professor of American Indian studies.
9 He's got a much more fanciful title but he prefers to
10 keep it to professor of American Indian Studies at the
11 University of Minnesota.

12 He, as Gabe said earlier, David was really the
13 pioneer in studying this idea of banishment and then
14 disenrollment, has spent a great deal of time studying
15 the statistics, quantifying the statistics. And
16 wherever we look to, we look to David for guidance on
17 the nature of disenrollment and how extensive it might
18 be.

19 And again, his bio in the packet you have here,
20 too.

21 Wenona Singel, a professor of law at Michigan
22 State University to be, along with Matthew, future
23 professors here at the University of Arizona, they
24 don't -- they haven't agreed to that yet, but it's part
25 of our wish list. A big wish list, okay. And so, it's

1 absolutely fantastic to have Wenona and Matthew visiting
2 us, and teaching this class. But also experts on the
3 human rights implications of this topic.

4 And so, I'm going to turn it over to both of you
5 here. And who wants to leads off? David?

6 MR. WILKINS: Can you hear me all right?

7 Thank you. I really don't like to hold these.
8 Uncomfortable.

9 Thank you, Robert. And thank you, Gabe, for the
10 invitation to come down. Thank you, Wenona. Nice to
11 finally get a chance to meet you.

12 I'm really honored to be back here. The last
13 time I was in this room was 2006, a year after Vine
14 Deloria passed away. We had a one-year memorial. It was
15 a day-and-a-half long event. It was quite powerful,
16 quite moving.

17 Vine was my dear mentor, and became a good
18 friend and he taught me most of what most of what I know.
19 And I still miss the guy.

20 And, I was really happy to see this conference
21 was named in honor of him. And it really ties in well
22 with everything that Vine stood for. Many of the
23 questions that he focused on and much of what he
24 researched.

25 In fact, I want to open up with a quote from

1 Vine, because it ties in what I've been hearing all
2 morning and this afternoon. Writing in 1974 he said,
3 that the gut question has to do with the meaning of the
4 tribe. Should it continue to be a quasi political
5 entity, should it become primarily an economic structure
6 or should it become once again a religious community.
7 The future, perhaps, the immediate future, will tell.

8 And so that was '74. I think we're approaching
9 that question in more emphatic terms given the surge of
10 disenrollment activity that's been going on for the last
11 two decades.

12 But, as I said, I'm happy to be here. I spent
13 my 1980 to '82 as a student of Vine's in the first
14 master's program that he started in political science.
15 And then I graduated, moved and taught on the Navajo
16 reservation. Then I went back to graduate school, got my
17 degree. And Vine left here in '89, moved up to Colorado.
18 He created a big void in the political sciences
19 department. I was hired in 1990 and I taught here for
20 nine years as in the political science department. And
21 before the heat finally drove me up to Minnesota. And
22 now the heat in Minnesota is driving me away from there.
23 So my body is all confused with the weather, its changes,
24 So.

25 But I am really happy to be here and see a lot

1 of old friends. Good to see David Gibbs, who I haven't
2 seen for some time.

3 I'm Lumbee, from North Carolina. And I'm
4 political science by training, although I incorporate big
5 doses of history and law in my teaching and research,
6 following Vine's good advice. His talk has drawn from
7 the book that my wife Shelly and I wrote for Udub Press,
8 just came out really at our insistence because we knew
9 this conference was coming up. And so we got a captive
10 audience so make the book available. And so, somehow
11 they did. So presses can sometimes move faster than they
12 allegedly can. Right, Norbert? Or not.

13 In the last four decades or so, as Federal
14 policy has shifted toward more human pursuits, that is
15 until the Trump administration, that more often affirms
16 Native self determination, one of the newest and most
17 devastating developments has been that an ever-increasing
18 number of our Nations, 79 at least out of the 567, that
19 are Federally acknowledged, have begun to act in ways
20 reminiscent of the Federal government and what it did to
21 our ancestors in the 19th and 20th and continuing to the
22 21st centuries.

23 In other words, a growing number of our
24 governments and officials are acting to banish, that is
25 to formally and socially expose and exclude various

1 individuals, or in many cases do legally disenroll, that
2 is formal legal and political termination of a citizen's
3 rights, or the term that Shelly and I came up with, to
4 dismember otherwise bona fide Native citizens.

5 In at least five nations, including the Grand
6 Ronde and the Saginaw Chippewa, they have gone so far as
7 to posthumously disenroll individuals so they could then
8 legally be authorized to terminate their living relatives.
9 And one case involving the Redding Rancheria and our good
10 friends Carla and Mark Masson, what are you, Carla and
11 mark? Right over here, they -- her grandmothers were
12 actually exhumed and had their DNA tested. And even
13 though the tests confirmed that they were direct
14 descendants of those individuals, they were still
15 disenrolled.

16 This power to denationalize member citizens of
17 our nations by forcing them to leave their reservations,
18 pueblos, rancherias or Alaska Native villages is having
19 devastating consequences for those excluded and is
20 adversely impacting the integrity of the nations engaging
21 in such tactics, and may well prove detrimental to all
22 nations if the federal government decides to step in via
23 congressional action over judicial opinion, which they
24 did regularly throughout the 1800s, and 1900s.

25 The subject of Native dismemberment is one that

1 is most troubling and bedeviling to me as a Native person
2 and as an academic. The vital question of who belongs to
3 a Native nation, and what are the grounds upon which that
4 individual's relationship to his or her nation may be
5 emphatically severed by the governing elites of that
6 nation is at the heart of our research.

7 While not as important as that most fundamental
8 of human rights, the right to life as a free human being,
9 the right to belong to and rest assured of one's integral
10 place, both psychically and organically, and in
11 particular indigenous community is a vital question.
12 Tribal belonging, long viewed as an absolute given by
13 bona fide Native citizens since the early 1990s, has
14 become more of a political privilege than a sacred and
15 organic kinship right as defined by tribal officialdom in
16 an ever-increasing number of our communities.

17 And since the U.S. Supreme Court's decision in
18 Santa Clara versus Martinez in 1978, which affirmed the
19 tribal nation's right to be ultimate arbiters of its own
20 membership, enrollment, not disenrollment requirements,
21 an expanding list of Native peoples, at least 30 tribal
22 communities in California alone, and at least 49 Native
23 communities in 20 other states, have disenrolled,
24 banished or denied an ever-growing number of otherwise
25 legitimate Native citizens.

1 Such dismemberments are happening for a variety
2 of reasons, but the two most apparent factors associated
3 with the practice are increased gaming revenue, and civil
4 violations or criminal activity that presumably threatens
5 community civility.

6 Interestingly, gambling revenue or other large
7 financial windfalls that come to some Native nations and
8 the way they are dispensed via per capita distribution
9 programs in many tribes typically leads to disenrollment,
10 that is the legal and political termination of a members
11 citizenship. Whereas civil violations or criminal
12 activity, malfeasance, drug involvement, gang activity,
13 tends in many cases to lead to banishment; that is
14 physical exclusion or expulsion from tribal and not
15 necessarily the losses of tribal membership.

16 But these two concepts are often times
17 conflated, but they are in fact distinctive legal
18 concepts. In some contemporary tribal cases, however,
19 they have become functionally similar.

20 Interestingly, the Federal courts have sometimes
21 allowed banished members to challenge their punishment,
22 but they have thus far refused to provide any substantive
23 justice to those who have been disenrolled, arguably the
24 greater sanction. Right?

25 Disenrollment was used by Native governments

1 against whites who had acquired tribal citizenship dating
2 back to 1897. In one case the Chickesaw Nation enacted
3 to disenfranchise a white man who had been adopted as a
4 tribal citizen. The Supreme Court in the case Roth
5 versus Bernie upheld the right of the Nation to decide
6 who could be a citizen. The Cherokee and Osage also
7 disenrolled a number of whites during that time who had
8 intermarried and become citizens of the tribes.

9 The first substantial evidence we found of a
10 tribe seeking to disenroll their own citizens involved
11 the Northern Utes in the 1950s, in a battle over claims
12 fund determination.

13 Banishment, on the other hand, is an ancient
14 concept that has been utilized by societies and states
15 throughout the world dating back to at least 2285 B.C.
16 The U.S. never engaged in the process, although it
17 reserves the right to deport undocumented individuals, as
18 we are learning quite obviously these days. But some
19 states like Georgia, and increasing numbers of cities
20 like Seattle, engage in banishment quite frequently, even
21 though they rarely use the term publically. Right?

22 The uses of banishment in disenrollment can be
23 divided into two categories. Non politically motivated,
24 e.g. fraud, failure to prove lineal descent, dual
25 membership, or error; or politically motivated,

1 vindictiveness, pure racism, greed, power plays, treason.

2 Indigenous Nations rarely use banishment
3 historically, and only then after all other attempts,
4 ceremonies, public ridicule, restitution, shaming, et
5 cetera, have been employed to attempt to restore
6 community harmony. And when it was employed
7 historically, it was largely used for rehabilitative
8 purposes or for community protection.

9 Native Nations have always possessed the
10 inherent authority to denationalize any tribal member.
11 Moreover, they will the power unknown to any other
12 sovereign in the United States to formally exclude
13 non-Natives from their territorial homelands.

14 But our study argues that far too many tribal
15 are engaging in banishment and disenrollment practices in
16 clear violation of their own historic values and
17 principles, which at one time utilized peace making,
18 mediation, restitution, and compensation, to resolve the
19 inevitable disputes that arise when you live in close
20 proximity to others.

21 Although the 1968 Civil Rights Act extended to
22 all persons in any country, a modified version of the
23 U.S. Bill of Rights, the only remedies spelled out in
24 that act is a writ of habeas corpus, an order to bring an
25 inmate before court to determine if they are being

1 lawfully held. Habeas corpus has thus far offered
2 dismembered Native individuals very little in substantial
3 justice. And since Native nations are also sovereign,
4 they can and frequently invoke the Doctrine of Sovereign
5 Immunity, leaving disenfranchised tribal members with
6 virtually no resource.

7 Dismembered Native citizens are also citizens of
8 the state they reside in and have Federal citizenship as
9 well, if they choose to acknowledge that. Theoretically,
10 these individuals should be the most protected class of
11 individuals in the land, armed as they are with three
12 distinctive layers of citizenship. Such, of course, has
13 not proven to be the case. With regards to Native
14 citizenship, tribal political elites can and are wielding
15 the power, the absolute power to terminate Native
16 citizenship, a power that not even the United States
17 government or state governments can wield over American
18 citizens.

19 As the Supreme Court held in *Afroyim versus Rusk*
20 in 1967, citizenship is an inviolable right. And while
21 it can be given away, it cannot be taken away. In other
22 words, an involuntary expatriation, that is a stripping
23 of citizenship, is not an available penalty under any
24 Federal or state statute. As the court held, in our
25 country, people are sovereign, and the government cannot

1 sever its relationship to the people by taking away their
2 citizenship. All right?

3 A central question raised in our book is the
4 following: What does it mean that the U.S., a very
5 large, heterogenous secular state, has in place laws and
6 policies that protect its citizens' rights far more
7 comprehensively than Native nations which are much
8 smaller, more homogenous, and ostensibly more kin-based
9 policies. Right?

10 For if Native nations are indeed communities of
11 kinsfolk that are ancestry, culturally, psychologically,
12 territorially related, then it would appear that the
13 grounds on which to sever or terminate such a
14 fundamentally organic set of human relationships would
15 have to be unequivocally clear and would in fact rarely
16 be carried out, given the grave threat that such actions,
17 the literal depopulation of the community's inhabitants,
18 would pose to the continued existence of the Nation.

19 And yet that's what's happening in numerous
20 tribes. Right?

21 A corollary to the central questions of our book
22 and of the sanctity of U.S. citizenship in comparison to
23 Native citizenship is the following: What does it mean
24 the only class of citizens in the United States who
25 cannot avail themselves of such sacrosanct rights are

1 Native individuals?

2 The very concept of tribal sovereignty means
3 that the people, the tribal community members themselves,
4 are the sovereign. Not the government. Not the
5 governing bodies of those nations. Tribal councils and
6 other governing institutions have merely been delegated
7 limited authority to fulfill the needs and protect the
8 rights of the members, of the citizens. Right? And
9 should not have the power to sever their relationship to
10 their people by taking away that most important of
11 statuses, the status of belonging to, of having
12 citizenship in or membership in an indigenous nation and
13 living on the lands of their ancestors.

14 Of course, for many indigenous people, the very
15 notion of sovereignty is rooted in their creation
16 accounts and their lands, suggesting that their core
17 identity flows not from human-made constitutions or
18 charters or ordinances, but as directly linked to the
19 ancient origin accounts, and the holy beings and sacred
20 lands they are connected to.

21 The issue of our connection to land is a
22 critical dimension. In a conversation I had with the
23 aboriginal scholar Christina Black two years ago, she
24 said that for Native peoples in Australia, there is an
25 implicit understanding that belonging was not just about

1 belonging to a particular group of people, but also
2 belonging to a particular landscape. And to be banished
3 indefinitely from one's own sacred lands had an even more
4 debilitating impact on the mind and the spirit of the
5 banished person.

6 So this was something even the offending
7 community knew, that ultimately it did not have spiritual
8 support to make a categorical decision on who belonged to
9 country, as the aboriginee say. Because all were equally
10 responsible for caring for one's homeland, even those who
11 violated societal norms. I think too many of our Nations
12 are engaging in activities, have forgotten this essential
13 reality that our ancestors knew implicitly.

14 Why then is legal, political and cultural
15 termination of a Native nation's own citizens occuring at
16 such a heightened level now? Are the tribal governmental
17 officials engaged in such harsh decisions acting in a
18 manner that comports with the traditional notions of
19 identity mentioned earlier, or are they now acting like
20 privileged and exclusive corporate clubs.

21 What rights do the disenrolled or banished
22 citizens have to contest this most profound of
23 severances? Can Native nations insure justice and
24 individual civil rights for the citizens and still
25 protect and exercise their nation's sovereignty in

1 membership decisions?

2 And finally, what role if any should the Federal
3 government play in these contentious intratribal affairs,
4 since those dismembered also happen to be U.S. citizens
5 are supposedly entitled to the same basic civil liberties
6 as all other citizens. The Nicksaw case may well tell us
7 something about that in the not-too-distant future.

8 Right, Gabe?

9 The U.S. purports to have a trust relationship
10 with federally recognized Native nations and their
11 citizens. Which means it is pledged with protecting the
12 lands, rights and resources of those nations. When
13 tribal governments are violating the rights of their own
14 citizens, including their vested property rights, the
15 Federal government as principal trust agent, we argue,
16 has a constitutional, moral and treaty responsibility to
17 assist those individuals suffering such violations.

18 When I first began this research in 1996,
19 banishment and disenrollment were the dominant terms used
20 to describe the depopulation occurring, that was
21 beginning to occur, throughout Indian country. But in
22 recalling Vine Deloria's definition of a tribe, I've
23 begun using the term dismember and dismemberment to
24 describe what's transpiring.

25 This makes good sense to me because the three

1 general criteria that many would agree are central to the
2 meaning of what is a Native nation are the following: We
3 are unique aggregations of people sharing a common
4 territory, who are in some way biologically or
5 ancestrally or geneologically related, and who share
6 common culture affiliation.

7 In other words, Native nations are communities
8 of related kin inhabiting a defined territory who view
9 the world through a shared cultural paradigm.

10 Etymologies of the terms dismember and
11 dismemberment conveys how appropriate these terms are to
12 our work. Dismember dates back to 1297, and originally
13 meant, quote, to deprive of limbs or members, or to tear
14 or divide from limb to limb. But by the 17th century it
15 also came to have a geographical meaning, as in the
16 statement by Milton about Poland, where he said, the
17 wresting of the kingdom of Poland from papal subjection,
18 as it were a horn dismembered from the head of the beast,
19 or Carlyle's description of Italy: Italy, poor Italy,
20 lies dismembered. Scattered asunder, not appearing in
21 any protocol or treaty as a unity at all.

22 And in my conversations with many Natives who
23 have been or face dismemberment, they emphasize the
24 profound concern about the multitude of losses they have
25 or will be sustaining. They acknowledge and bemoan the

1 important loss of resources, services and benefits as
2 tribal citizens. But it's when they describe the
3 cultural, the psychic and the organic deprivations that
4 they will suffer by having been forcefully removed from
5 the familial lands, that one feels the full weight of how
6 traumatic dismemberment really is.

7 The fact that an increasing number of Native
8 elites are now engaging in precisely the kinds of forced
9 removals and political terminations that many of our own
10 ancestors experienced at the hands of the Federal or
11 colonial lawmakers is a tragic reminder that colonized
12 peoples sometimes become exquisite perveyors of the very
13 policies they once endured, all while maintaining a naive
14 belief that somehow their actions are different than
15 those that were heaped upon their ancestors.

16 Thank you very much.

17 (Applause.)

18 MS. SINGEL: Yeah, I am going to see if this
19 works. Hello. Can everyone hear me? Wonderful.

20 Thank you so much, Professor Wilkins, for your
21 words.

22 My name is Wenona Singel. And I want to say
23 that I come at this from a perspective wondering about
24 the remedies, what -- why don't we have remedies
25 available for individuals who are suffering from being

1 disenrolled from their tribes. Why is it that I read
2 stories of tribes who have denied opportunities for
3 effective judicial review within tribal court systems of
4 those who are being disenrolled from their tribes?

5 Why do we read stories of tribes which are
6 responding by destroying, dismantling their tribal court
7 systems and replacing them with tribal council members to
8 avoid judicial review of those who are being disenrolled
9 from their tribes?

10 And so, when I was thinking about this, I was
11 also thinking about making a connection to a comment that
12 was made earlier today by Governor Lewarky from the
13 Laguna Pueblo. And he referred to how we are losing the
14 children of our tribe. We are losing the children who
15 are our future. And that reminded me so much of this of
16 that same statement being made repeatedly within the
17 context of the Indian Child Welfare Act, and the struggle
18 that tribes participate in to retain connections with
19 children who are being removed from the tribe.

20 And what a profound irony it is that in the
21 context of the Indian Child Welfare Act, tribes use every
22 effort possible to retain the connection with their
23 children who are being placed into foster care, who are
24 being potentially placed into adoptive placements.

25 In the context of ICWA, we see tribes embracing

1 extra procedural protections to avoid children being
2 removed to their Native families and possibly being
3 placed with non-Native families. We see tribes embracing
4 this notion that there must be -- the value of that
5 tribal connection, and the fact that it should never be
6 lost; the notion -- many tribes have embraced the notion
7 that there can be no termination of the relationship
8 between the biological parent and the child. There
9 should always be that permanent relationship, even if
10 there is placement into another family.

11 And we also see within the context of ICWA this
12 embracing of the fact that there needs to be active
13 efforts to protect the child, and its ability to maintain
14 that relationship with the family. So, we see these
15 concepts employed in one context, ICWA, and yet in the
16 context of disenrollment, where are the procedural
17 protections? Where is the embracing of active efforts to
18 prevent the tearing apart of our families? Where is the
19 notion that there should be some form of permanent
20 connection to the tribal community?

21 I find it fascinating that there is a very
22 powerful double standard when we compare what tribes are
23 embracing in the ICWA context and the deprivation of
24 these same procedural rights and the deprivation and a
25 failure to acknowledge and respect the relationship, the

1 important relationship between an individual and their
2 tribal community in the context of disenrollment. Why do
3 we see this distinction?

4 And so in thinking about that, I have a couple
5 thoughts. And one is that one thing that we see tribes
6 doing in some cases is holding on to this concept of
7 tribal sovereignty, that this tribal -- that tribal
8 sovereignty is also associated with sovereign immunity,
9 and that this is an incredibly important feature of
10 governance because it's a shield that can present a tribe
11 from being haled into court against its wishes; in order
12 to prevent the tribe from being deprived of its assets or
13 its resources and its wealth.

14 At the same time, however, as mentioned earlier
15 today, this concept of sovereignty and also of sovereign
16 immunity, these are not inherently indigenous concepts.
17 In fact, I think that many tribal communities would
18 acknowledge that there should be a right to receive
19 responses, a right to be heard, a right to be given an
20 explanation for one's treatment.

21 So where does this come from? Well, of course
22 it comes from the Federal Indian Law and its
23 interpretation of sovereignty and sovereign immunity.
24 And I want to point to one thing which I found very
25 powerful in my work, which is this notion that in Indiana

1 law, the concept of sovereignty developed in Federal
2 common law at a period of time early in the 20th century
3 and in the 19th century which predated a later
4 development within international human rights law. That
5 in international law and in the mid 20th century
6 following World War II, there was this fundamental shift
7 in our understanding of sovereignty. That a sovereign is
8 not somebody who can be shielded from external
9 accountability and who can abuse the rights of those
10 citizens or members of the polity without any external
11 accountability.

12 That fundamentally as we see in the development
13 of the UN charter and the universal declaration of human
14 rights and of the additional international covenant of
15 civil and political rights and other human rights
16 conventions that there is a recognition that there is --
17 that individuals do have a right to find recourse by
18 looking to other actors outside of the sovereign, and
19 that sovereigns can be accountable, that that veil of
20 sovereignty can be pierced when fundamental human rights
21 are at stake.

22 Now in Indian law, however, this development and
23 the concept of sovereignty and sovereign immunity has not
24 incorporated this notion of accountability for human
25 rights. And I want to acknowledge a few reasons why

1 there may still be a resistance to identifying a set of
2 human rights which tribes collectively might acknowledge
3 that they are responsible for, and which they might
4 collectively choose to be held accountable to.

5 Number one, I think that there is a sense of
6 extreme doubt and skepticism regarding rights that are
7 articulated. For example, in the Bill of Rights, there
8 is a fundamental link between, for example, the rights to
9 due process and equal protection, when those -- we've
10 seen them implemented under the U.S. Constitution. We've
11 seen them imposed on tribes under the 1968 Indian Civil
12 Rights Act. To tribal communities, these rights looked
13 like a form, of veiled form, of colonization,
14 imperialism.

15 And furthermore, constitutional rights and human
16 rights, which the United States claims to adhere to, have
17 often proven to be ineffective. We've often been unable
18 to benefit from their enforcement in the Federal courts.
19 And so tribal members more than probably any other
20 population in the United States recognized that these
21 rights can be deeply flawed. They can be ineffective.

22 And so perhaps there is also a reason for our
23 communities to perhaps be skeptical about embracing human
24 rights norms in, say, an intertribal treaty.

25 But, at the same time, there could be concerns

1 this external accountability could be ethnocentric. It
2 could result in judgments of others who don't understand
3 or are unwilling to understand tribal cultures and values
4 and norms.

5 And so, and furthermore, there is concern and
6 skepticism. Could human rights be another means of
7 forced assimilation of tribal communities. And so, I
8 think that we have to consider these possible concerns.

9 And yet, what we also see in the context of
10 disenrollments is that while tribal communities have not
11 entered into, say, an intertribal treaty that embraces
12 human rights and allows for external accountability by
13 other tribes. The other opportunity for external
14 accountability is the federal court system. And we've
15 seen repeatedly that the federal courts do a terrible job
16 of respecting Native rights.

17 And furthermore, in this particular context of
18 disenrollment, there is what's been called the double
19 jurisdictional whammy of both sovereign immunity and
20 exclusive tribal jurisdiction over membership disputes.
21 So the Federal courts do not have access to the -- they
22 do not have the power to review the claims of individuals
23 who are being disenrolled from their tribal communities
24 where there is no Federal question involved.

25 And so, what can we do in spite of this? Is

1 there something that we can do to convince -- to shed the
2 skepticism about human rights, to shed the skepticism
3 about whether an intertribal treaty and an external
4 mechanism for accountability for human rights in the case
5 of those who are disenrolled, is there a way to embrace
6 it as something safe, that does not represent another
7 form of imperialism or forced assimilation.

8 Now I've been thinking about this and one of my
9 thoughts, once again, brings me back to the Indian Child
10 Welfare Act and ICWA. So let me explain to you why I
11 have made this connection to ICWA.

12 In the context of ICWA, I personally am working
13 on this project later at this year and it's going to
14 document how in my own family there are five consecutive
15 generations of children having been removed from their
16 families. Through two generations of adoption, multiple
17 generations of family members attending Indian boarding
18 schools, and through a generation that moved from
19 southwest Michigan to avoid removal and moved into -- in
20 with another family in northern Michigan, another Ogala
21 family.

22 And one of the themes of my research, first of
23 all, is that this is not only my story. This is a story
24 that many of us collectively share. This is the
25 experience of many of our ancestors across the

1 generations. So one of the themes that I've been
2 exploring is this concept of intergenerational trauma,
3 and how it impacts us today. That we have experienced
4 across multiple generations, across far more than a
5 century, repeated examples of different forms of colonial
6 violence against our communities.

7 And what's fascinating as well is that there is
8 growing research which indicates that that trauma
9 experienced by our ancestors, who had been dispossessed,
10 who had been displaced, who have lost their children
11 repeatedly in various contexts including the boarding
12 schools, including adoptions, that this is passed on to
13 the next generation as well. It can affect the next
14 generation.

15 There can be experiences of the mother during
16 gestation of a child that can affect the child. There
17 can be experiences of an individual that turn on and turn
18 off genes that can affect the next generation, and can
19 create vulnerabilities, certain vulnerabilities to trauma
20 in the future. And so in the context of
21 intergenerational trauma, one of the themes that I've
22 been exploring is how do we -- how is this experienced
23 and how can it be remedied.

24 Because, its' experience, particularly in the
25 form of PTSD, can include fragmentation of memory,

1 forgetting one's history, ones -- because of the trauma.
2 It can include numbness and an inability to react
3 emotionally to other -- contact other individuals. It
4 can also include a tendency to be avoidant. To not
5 engage. To not respond. Unresponsiveness.

6 It can contribute to a desire to alienate
7 oneself from others. And I know I don't want to
8 overpsychologize this, but does this not describe some of
9 the actions of those tribal communities that are failing
10 to give an adequate opportunity in court to those
11 individuals who are being disenrolled?

12 Does that failure to give them access to
13 justice, access to a court hearing, a right to receive
14 proper notice and reasons for their disenrollment, is not
15 not a form of avoidance? Is that not a form of numbness
16 to someone else's pain?

17 And so we see that this symptom of our
18 communities collectively experiencing this
19 intergenerational trauma. But one positive hope that I
20 have is that intergenerational trauma, even experienced
21 collectively as a community, does not always have to
22 result in negative impacts. In fact, it can also result
23 in growth. It can also result in positive meeting
24 making.

25 Those who experience it can also experience, for

1 example, resilience, added strength, stronger
2 interpersonal relationships, stronger empathy for others,
3 greater compassion for others. And so what I want to
4 also acknowledge is that one way to address this is for
5 external accountability, for example, to recognize that
6 that tribal community, that tribal council that is
7 engaging in disenrolling individuals, perhaps we can have
8 intertribal treaty with other tribes participating
9 acknowledging human rights of those members of tribal
10 communities.

11 And then when they engage in an investigation or
12 examine the context of a particular disenrollment where
13 someone claims that they have been denied access to
14 justice and opportunity to a hearing, to receive a
15 hearing, cannot that panel also engage in paying
16 attention to the history of trauma of that community, of
17 paying attention to the history, noting, for example,
18 writing a report which not only penalizes and stigmatizes
19 and blames the tribal community for the disenrollment,
20 but that also says, look, I see your pain. We recognize
21 this history that you are struggling with. We recognize
22 this history of disposition. This history in which you
23 have perhaps experienced termination, in which you
24 perhaps have experienced the loss of your children, and
25 connect that to the disenrollment action as well, in a

1 way that is not as -- in a way that is not insensitive to
2 this way which tribal communities are experiencing
3 colonization.

4 And so I think that it would be a mistake to
5 hope that greater access to the Federal courts is going
6 to provide an effective remedy for individuals who are
7 being disenrolled and denied a right to justice in their
8 tribal courts. We are not likely to see this kind of
9 sensitivity to this intergenerational experience of
10 dispossession and loss, in that kind of forum, in that
11 setting.

12 But we can provide it for each other. But in
13 order to do that, we need tribal communities to end the
14 silence. When we hear about a tribal community that is
15 disenrolling its members, we don't generally hear a
16 response from other tribal governments. In fact, we hear
17 crickets.

18 There is a fear that any criticism of another
19 tribal government constitutes an attack on that tribe's
20 sovereignty and autonomy. But that silence is
21 fundamentally based on the false belief that sovereignty
22 means no accountability to external groups, and that is
23 not a modern conception of sovereignty. There must be
24 external accountability.

25 This is the lesson that we learned from World

1 War II. This is the lesson that nations around the world
2 learned. We've always known it. We have always
3 experienced these harms at the hands of United States,
4 and European colonies. But I think that I'm hopeful that
5 we can, together, work collaboratively as tribal nations,
6 as representatives, and end this period of silence, this
7 period of refusing to criticize other tribal governments.

8 And I think that it would be extremely powerful
9 for there to be an intertribal treaty in which human
10 rights access to justice, such as the right to due
11 process, the right to a fair trial by an independent
12 judge, that these are fundamental rights to be embraced.
13 And I think it's important that if that is denied, that
14 there be a mechanism, a protocol, a process allowing for
15 external accountability by other tribes who are
16 sensitive, who are willing to document not just a denial
17 and the -- to the individual who is being disenrolled,
18 but who are also willing to document that history of the
19 generations of history experienced by that community.

20 So, these are just some of my thoughts. And so
21 I'm absolutely open to any comments or criticisms of
22 that. But thank you very much.

23 (Applause.)

24 PROFESSOR HERSHEY: I'm going to continue this
25 on just a little bit. We're going to take a short break.

1 We will be back, we have this group discussion. So there
2 is a gentleman in the very, very back.

3 A SPEAKER: I am amazed at this conference.
4 First of all, thank you to each and every one of you.
5 The speakers, Hayden and Gabe, our champion.

6 The words you spoke about, you know, the
7 accountability from the experienced peoples come to my
8 mind as well. When the NookSack, which I'm a member of,
9 the NookSack, I'm here with fellow NookSacks that are
10 planning disenrollment as we speak, there was even a
11 fraud attempt to disenroll them recently in some vague
12 maneuver.

13 But nevertheless, the point that you brought up
14 about this is accountability. You know, let me backstep
15 a little bit. You know, we felt we were, you know,
16 Horton Hears the Whos, kind of a thing. When the
17 NookSack 306 was being disenrolled, hardly anybody heard
18 our voice. But I see now that the extent of this
19 travesty reaching nearly 80 other tribes tells me that
20 this phenomena is extensive.

21 But the point that you brought out about the
22 extraneous forces, I believe, are real. They are
23 effective. And let me tell you why. Because our
24 illegitimate council, as we speak, back in September of
25 this year declared themselves the Supreme Court of the

1 NookSack tribe. And along with being so-called council
2 members of the a tribal counsel. To me that displays the
3 mentality of a group of people going awry, meaning they
4 have lost contact with any concept of justice, equal
5 justice under the law, and all these other precepts of,
6 you know, of an organized people.

7 Yes, we need to get each and every one of you
8 here to take home with this concept that to help and
9 support each other, to quell this rise and this
10 banishment, if you want to call it, or disenrollment, or
11 whatever you want to call it. Because it's getting more
12 and more evident. To me it's the new smallpox. To me
13 it's the new -- new disease that's taken our people.
14 Decimating our people.

15 And I want this to be clearly understood that
16 this is not us. This is not who we are. For we are
17 from, like you, we're from the earth. Our words, our
18 language, tie us to the earth. Our place names are
19 villages. We are village people. We moved, and my
20 (native language). I channel these, that's (native
21 language). The smallpox. His village up river, too long
22 houses were decimated from the disease. He moved down
23 river. But, since we lived to the Canadian border,
24 speaking of the Canadian border, our heritage does not
25 stop at that border.

1 In fact, villages are well-known on the other
2 side of the border, just like the Mohawk spoke earlier.
3 We, too. Which adds another layer of complication to
4 this. Because now the 306 are so-called NookSack 306 are
5 called those are the Canadian ones. I'm going to say
6 Canuck Indians.

7 When you hear that expression, it became a new
8 layer of complication because now there is another
9 rationale to support the notion that gives the excuse to
10 cull the 306. Oh, them. Those other. And not we, the
11 people of the -- and so it complicates because it's
12 drives home this whole notion of the fallacy of this
13 disenrollment in any regard.

14 This is a contraction of colonization. We lived
15 in villages. If we all lived in one village and emanated
16 from one village, we would -- we'd be five legs and four
17 arms and whatever. We did this because our cousins are
18 over everywhere else.

19 So the primary mechanism of our government,
20 let's say, in the before treaty, was not the council, but
21 was village. The village was premier. The heads of
22 village. I like what they say about, you know, from
23 different districts but they still belong.

24 But the thing is, the thing that I want to
25 caution is that oh, we want to go back to the base role.

1 My great great grandfather didn't make the base role
2 because he was already moved out of the village, and
3 moved to Canada, Langley, B.C., and married there. And
4 then my -- and then his granddaughter, my grandmother,
5 was born in Aswig, just a mile away from where I grew up
6 or a couple miles anyway. But she is NookSack, through
7 heritage, but born in Aswig, near Evansport.

8 Now am I part Canadian? I see that whole
9 concept is flawed, because I am from (Native speaking.)
10 I'm also having relatives in Sumass. I have heritage,
11 all of us could say the same thing. We are not from one
12 village. We're from many. And it's getting more, as
13 generations proceed.

14 I don't want to take much more time. But I
15 think the point I think we should take away here is that
16 the councils, even the ones that we reach out to, you
17 notice if you are affected by disenrolled situations, I
18 talked to many people, people I have talked to, local
19 tribes, good friends of mine, they'll talk personal.
20 They will say that it's wrong. But unofficial capacity.
21 An official capacity, I can't say nothing. I am -- I
22 have to silence myself.

23 Until we do, what happens over here in NookSack
24 is also can happen to anyone else if we don't check this,
25 this travesty, put it in check.

1 So the reason I'm here is to learn from you, to
2 gain knowledge to bring back to put on the table, you
3 know, that put the end to this. And I thank each and
4 every one of you for being here.

5 And I'd like our 306 here to stand?

6 These people belong. I'm not part of the 306,
7 but I'm NookSack. They belong. (Native speaking.)

8 (Applause.)

9 PROFESSOR HERSHEY: Thank you very much for
10 sharing that.

11 We have much more time this afternoon to get
12 your personal stories that you share and to ask that the
13 people, the speakers, will be here. Not necessarily
14 sitting up here but we will have an interaction.

15 I do want to take a few minutes for a break. I
16 do want you to know that the Federal government's
17 position on this issue will be spoken about tomorrow at
18 least now that Kevin Washburn, the Assistant Secretary
19 for Indian Affairs, has left the Obama administration, he
20 will lead off tomorrow with what he determined as tribal
21 sovereignty and the Federal government's role in
22 determining this membership issue.

23 And then tomorrow we will move into a great
24 number of -- Gabe will be presenting tomorrow on
25 strategies. We will also then have a tribal leaders

1 forum here, too.

2 So can we take 10, 15 minutes, for a break right
3 now? And then be back in your chairs so we can hear and
4 share your stories.

5 (Recess.)

6 PROFESSOR HERSHEY: Good afternoon once again.

7 Okay. Welcome back. Thank you for your
8 patience today. I certainly enjoyed every instance of
9 this and, I always learn something. The greatest thing
10 about being a professor is that you're also a student.
11 And there's great opportunities for me to learn. And
12 like I said earlier today, it's a big family situation.
13 And not only is it a family situation, but we learn
14 something about so many different communities.

15 And the fact that an attorney and a professor in
16 Native American law can be surrounded by such wonderful
17 appreciative people, it's really been an extraordinary
18 time for me to be alive and to be a part of your
19 communities and your lives, and I thank you dearly for
20 all the experiences that you've given me.

21 With that said, tomorrow's agenda is filled as
22 well with extraordinary people with extraordinary
23 stories.

24 But you talk about our stories tonight. We
25 still have a number of our speakers in house here. We

1 had a gentleman from NookSack share that story. I would
2 like to -- Doug, can you talk about White Earth?

3 Sorry. Excuse me. You'd like to share, too?

4 I asked Jill first. I will come right back to
5 you, too. You want to give her a mic or do you want to
6 come forward?

7 Describe a little bit, too, about the six tribes
8 and that six communities and then what White Earth was
9 trying to do. And that's pretty significant, too.
10 Because it goes a little bit what Wenona was talking
11 about, intertribal issues. Thank you.

12 Can you introduce yourself, too?

13 A SPEAKER: Sure. Okay. Thank you. I'm Jill
14 Doerfler, faculty in American Indian studies up at the
15 Duluth campus of the University of Minnesota, and also a
16 White Earth descendant. So one of those first degree
17 descended people. My mother was enrolled in White Earth,
18 and I'm not enrolled because of the blood quantum which
19 was implemented as a citizenship requirement in 1961 in
20 the Minnesota Chippewa tribe.

21 And so the Minnesota Chippewa tribe is six
22 nations together in Minnesota. White Earth is one of
23 those. And just as I was wrapping up my dissertation on
24 identity and tribal citizenship in 2007, our chairwoman
25 at the time, Irma Visner announced her goal to work on

1 constitutional reform of White Earth, which was really
2 exciting, amazing timing for me.

3 So, I obviously immediately called up the office
4 and said what can I do to help? I have been working on
5 this with a dissertation. And so I was really privileged
6 to work under what I would say is really the visionary
7 and leadership of Irma Visner at White Earth.

8 And we embarked on a process of constitutional
9 reform just for White Earth in part because there had
10 been other initiatives throughout time for change at the
11 Minnesota Chippewa tribe level, but those efforts were
12 never successful. With the six nations that were
13 involved, there was always a variety of vested interests
14 to each tribe, has it's real own distinct issues,
15 distinct populations, and so it was never possible to get
16 reform at that level.

17 And so Irma felt that we should move ahead with
18 reform at White Earth and so we did so. We worked on
19 writing a constitution for the White Earth Nation. And
20 long story short, after getting it written, the
21 referendum was held in 2013. 80 percent of those who
22 voted in the referendum voted in favor of the new
23 constitution, and Irma at that point really felt we had a
24 mandate to move forward. It was really exciting for us
25 to get something as close to consensus probably as you're

1 going to get in a contemporary election. 80 percent in a
2 tribal election is pretty rare.

3 So what was disheartening and disappointing
4 after that point was the other members of the tribal
5 council basically refused to move on the constitution.
6 And we just ended up in sort of a limbo, sort of locked
7 in type situation, where we have been unable to move
8 forward despite that kind of mandate from the people.
9 It's been real -- a real kind of silent majority, I
10 think, Pat or somebody talked about that kind of silent
11 majority this morning.

12 So even though there is a lot of people in favor
13 of change, a few people in leadership still -- still in
14 that case kind of carry the power.

15 So, that's a short little annotated version of
16 White Earth.

17 PROFESSOR HERSHEY: There was one other aspect,
18 too. Because you were trying to enact your own
19 constitutional reform separate from the other five
20 Chippewa --

21 A SPEAKER: Correct.

22 PROFESSOR HERSHEY: -- groups, and that was
23 controversial to begin with, too. That brought up some
24 jealousies and some fears. And that was before -- that
25 consensus was within White Earth.

1 A SPEAKER: Right. So there had been efforts at
2 MCT to try to change. Those were never able to really
3 work. So White Earth sort of moved on its own.

4 The White Earth constitution is basically silent
5 on the Minnesota Chippewa tribe, and so there could have
6 been a number of ways it might have worked out to
7 implement the White Earth constitution. One Minnesota
8 Chippewa tribe could have found a way to accommodate.
9 They have made a significant accommodation for the Malax
10 band, for example, as a part of the six nations. They
11 have a little bit different governing structure.

12 So they could have made a constitutional
13 interpretation. Minnesota Chippewa tribe has a
14 one-branch system so the tribal executive committee makes
15 ordinances but they also interpret the constitution so
16 they will often issue constitutional interpretations
17 based on the preamble, which are pretty wide-reaching.
18 So they could have issued some type of interpretation of
19 the constitution that said White Earth can govern under
20 its constitution, and yet maintain some kind of
21 participation in this broader structure.

22 Or, worse come to worst, the other option could
23 be some way of secession or some way of White Earth maybe
24 no longer participating in the Minnesota Chippewa tribe
25 or re-envisioning a different structure that included

1 maybe not only the six that are already participating but
2 other Anishinaabe Nations either in Minnesota which would
3 be Red Lake or Wisconsin, Michigan, some other broader
4 kind of participatory coalition.

5 PROFESSOR HERSHEY: Which exemplifies how
6 extraordinarily difficult it is.

7 Norbert, did you have --

8 A SPEAKER: I would like to add that, to this,
9 two things that I'd like to talk about. One, the Indian
10 Reorganization Act of 1934. This reorganization act
11 separated all our families. They put -- I have families
12 on Red Lake, Leach Lake, and White Earth. My husband had
13 some of his family on top of our brothers and sisters'
14 siblings, so they hadn't -- our families were split up by
15 in my opinion it's a form of genocide. My husband's
16 family also went to -- placed them, divided them up and
17 put them on Red Lake, Leach Lake and White Earth.

18 So, our families were on these different --
19 different tribes. So I think that's part of the problem
20 we're dealing with. We're dealing with BIA, or as we
21 used to be in the different, you know, some people
22 believe that we can't survive without the BIA. So there
23 are BIA people and there are a lot of tribes that are
24 independent nationally, and I believe that all these
25 tribes can survive in White Earth.

1 At the time I read their constitution and we did
2 vote for that constitutional change and I don't see
3 anything wrong with it. You know, it's just a way of
4 managing and operating. So I worked for the Minnesota
5 Chippewa tribe at one time. It was back in '78, '79.
6 And I read all the -- I read a lot. And there's been
7 some issues like I brought up at one time we were working
8 on the tribal community college program to get, you know,
9 get our own educational system on six reservations.

10 I was hired to do that because I did work in a
11 college for six years. And so I helped write a tribal
12 community college bill. I got appointed from -- it was
13 under Carter and Mondale, I got appointed to that.

14 So back then, we reviewed. We did research.
15 Where Rex Miat was acting director for the tribal
16 executive committee up in the BIA, through the BIA. So
17 the BIA was located in our building and they said move
18 because we're doing everything.

19 So part of the issue was Roger Buffalohead was
20 the first director at the University of Minnesota. He
21 was a Ponca and he was very knowledgeable and very smart
22 and he knew a lot about Indian history and treaties and
23 all this stuff. And I have always been a treaty woman
24 and into Indian sovereignty because we studied that when
25 I was in graduate school.

1 So we looked at the government and we read a lot
2 of paper and, how the MCT should be -- each tribe -- each
3 tribe is a tribe, but MCT is not a tribe. It's just a
4 group of tribes that are supposed to cooperate with each
5 other. But the rules have changed and I don't know how
6 they changed and we're kind of looking at that, too.

7 So, I think it's you know, some kind of power
8 distribution. And I worked there for two years. And
9 then I went back to Minneapolis, and -- so anyway, what I
10 look at is going back and reviewing all the history,
11 which would be the Indian Reorganization Act and Nelson
12 Act and, you know, some of the other laws.

13 And I hear a lot of things here with in regard
14 to laws that are affecting American Indian children, and
15 I'd like to move on to my job. I've been working with
16 Upper Midwest American Indian Center since 1986 after I
17 left the tribe and helped set up another organization in
18 Minneapolis.

19 Can you hear me?

20 Okay. Anyway, I'm looking at how people are
21 losing their children. And I've been working at Upper
22 Midwest since 1986. And since I started there, I worked
23 with families from different tribes, because our agency
24 used to work with Indians that are living in a urban
25 area, and we are an all-Indian organization. Our board

1 of directors are all Indian. We were -- it was founded
2 in 1937, and it was to preserve and perpetuate the
3 culture and recognize all Indians.

4 And we have a chairman over here, and he used to
5 live in an urban area and he was on our board of
6 directors, and now he's a tribal chairperson of Leach
7 Lake, and he is very familiar with the ICWA, Indian Child
8 Welfare Act, and other laws and the history.

9 Well, anyway, what I'd like to talk about is the
10 children who are -- who are not recognized. I call them
11 American Indian children and adults of American Indian
12 love. I mean I heard that part today, too.

13 But anyway, these children are comprised of
14 different -- they're not recognized by the tribes. They
15 are not enrolled under the Indian Child Welfare Act. And
16 I've been working with this act since 1986. And we were
17 looking at I call it systemic discriminatory practices.
18 And I got involved with the State of Minnesota about
19 three years ago, and prior to that I worked with -- I
20 helped families to, you know, adopt their relatives. And
21 our chairman is one.

22 But what I found out is through the process is
23 that Indian people, well, you know, Indians, our history
24 and our culture is not taught in the schools. Our
25 children and our families are not learning their history.

1 So I think that's very important.

2 But one of the things that we found out, like
3 children that are mixed blood quantum, blood, like their
4 parents are could be from White Earth and Red Lake, White
5 Earth and Leach Lake, White Earth and Fon-Du-Lac, White
6 Earth and Standing Rock, White Earth and Standing Rock
7 and Potawatomes, Leach Lake and Oneida and Red Lake,
8 Leak Lake, Fon-Du-Lac and Valcourt.

9 I have been working with a lot of Indian people
10 who come from these different tribes. And there was a
11 rule that was passed by the State of Minnesota where we
12 had to make sure we notify tribes that these children are
13 now in child protection for various reasons. So we have
14 to find out the tribes of the parents, and we have to
15 make sure that those tribes are notified their children
16 are in protection, and the counties also have to do that.

17 And when the counties find out that these
18 children are not enrolled, they are not recognized as
19 American Indian. They are recognized as non-Indians. So
20 they can be placed in anybody's home that are, you know,
21 not our home. But they go to non Indian homes.

22 So that's one of the problems we're dealing
23 with. And we work with a lot of tribes in Wisconsin and
24 Minnesota, and 11 tribes in Minnesota, and North Dakota,
25 South Dakota, Nebraska, and any other state. We work

1 with Washington in the Interstate Compact Agreement.

2 So there's always these laws that we have to
3 deal with. And the hardest part is these children have a
4 right to be Indian, who are -- they probably have over a
5 quarter Indian blood. And but none of these tribes are
6 recognized in other Federal Indian blood.

7 So I think that's important. That's what I
8 didn't hear too much about it today. I heard a lot of
9 interesting things, and lot of interesting ways to use
10 things.

11 So, Farren here, he is a full-blooded Indian.
12 His mother comes from Red Lake and his father comes from
13 Leach lake. And they were both full bloods. But he is
14 only recognized by one tribe. So what we are looking at
15 is the grandchildren, my grandchildren, also. My
16 daughter -- my daughter married a Standing Rock Sioux.
17 And they had two children. And one of the daughter, her
18 daughter married a Potawatomi. So my great grandchildren
19 now are three tribes. And we're just thinking who is
20 going to recognize them? Who is going to recognize all
21 their Federal blood?

22 And this is happening to, you know, a lot of
23 Indian children, in Minneapolis, and that's kind of where
24 I work.

25 In the State of Minnesota, we've been working

1 with the State. I've been on that committee. And so
2 what I'm telling them, the commissioner and all them,
3 under the -- I think it was 2020 elector team, there was
4 under the Affordable Care Act there was -- they found
5 that Minnesota, out of 50 states, was at the bottom for
6 American Indians. Out of 50 states. We can't go any
7 lower.

8 And so the legislature, after a year or so, they
9 didn't like to hear all that, so they gave a Department
10 of Human Services some money to have Minnesota look at
11 all the disparities and why is Minnesota at the bottom.
12 So I've been involved in that.

13 And we're looking at Indian Child Welfare, too.
14 And there's no money behind the Indian Child Welfare Act,
15 even though they passed it. So I'm wondering who is
16 going to monitor and make sure they're following the
17 laws, and they're. Because if the children are comprised
18 of two tribes, they should be recognized as American
19 Indian children.

20 So we're looking at who is going to monitor,
21 monitor the children, or this law, because there is no
22 money behind it. We're going to have it do it ourselves.

23 So, so anyway, that's kind of what I wanted to
24 bring up. Because I think American Indians have Indian
25 ethics. And I've got a list of those but I don't have it

1 with me. I didn't know what was going to go on here.
2 And I find it very interesting.

3 And, I think the other thing we are looking at,
4 I'm looking at and I've been doing is our culture is very
5 important. And we have to write up the objectives on
6 what's important when we take children to a powwow, like
7 what do they do there? You raise the self-esteem of
8 children. So we are going to have to look at the
9 cognitive, emotional, and other kind of behaviors of our
10 people.

11 So that's kind of what I have to say here.

12 PROFESSOR HERSHEY: Thank you very much.
13 Appreciate it.

14 Yes, sir?

15 A SPEAKER: My name is Mark Maslin. I'm non
16 native, and hopefully I can get through this.

17 My wife, Cora Maslin, was disenrolled in 2004.
18 76 of her family members were also disenrolled.

19 Just a little brief history.

20 In 1958, the tribe was terminated and her great
21 grandmother was one of the 17 original distributees. In
22 1983, the tribe was restored. Her father was elected
23 first tribal chairman, and her grandmother was elected to
24 treasurer.

25 In 1993 they opened up a casino that was built

1 on her grandmother's land. And in 1995 her grandmother
2 passed away. 2002, the family received a letter from the
3 chairperson claiming that a tribal elder had written a
4 letter questioning the parentage of her grandmother,
5 basically saying that she wasn't a daughter -- actually
6 the letter didn't even say that. It was a just a
7 rambling nothing, really.

8 But, basically the agreement said well, your
9 grandmother doesn't have a birth certificate. Her
10 grandmother was born in 1916. Indians weren't even
11 citizens. She was seven-eighths Indian, could not even
12 go to a hospital to have a baby.

13 So at that point her family went to the Bureau
14 of Indian Affairs, received a letter from them basically
15 stating that this is who these people are, and this is
16 what we recognize as their lineage.

17 And so, that wasn't good enough for them. So,
18 the family obtained a court ordered delayed birth
19 certificates. They rejected that. They wanted documents
20 from Social Security. They got that. All the while
21 never, ever producing anything that questioned anything.
22 It's just what the family's always known, that this is
23 her family history.

24 So then there's two Ph.D anthropologists who
25 both came to the same conclusion, that Wenona Butler was

1 the daughter of Virginia Timmons. And at that point they
2 had a tribal council hearing, and they basically rejected
3 all the evidence. There was numerous Indian rolls, all
4 kind of documentation. It was unbelievable. Probably
5 most documented person I know.

6 And the tribe required that the family -- I'm
7 sorry -- provide genetic DNA. And so both women were
8 exhumed. And two separate labs came back with a finding
9 of 99.998, some high obscure, that the two were mother
10 and daughter. And it was rejected. It basically it was
11 ended up being just basically a lynch mob.

12 And so when the gentleman from the 306 says this
13 can happen to you, I'm here you to tell you that it can.
14 And I hope it never does. Because the pain that it
15 causes is unbelievable. And my wife, she would probably
16 tell you, but I don't think she can get as far I could
17 get.

18 But anyway, that's our story. And I hope that
19 out of this conference some good will come out of it.
20 And that's all.

21 PROFESSOR HERSHEY: Thank you very much.

22 (Applause.)

23 PROFESSOR HERSHEY: I had talked to someone
24 earlier from Cold Lake. Tom, with his University of
25 Arizona shirt.

1 A SPEAKER: Thank you. (Native language.)

2 I was speaking to a gentleman earlier, and I was
3 in residential school for 10 years, from the time I was
4 five years old. As you can tell, I am disguised as a
5 white guy. But I am a Dene from Cold Lake, and I am now
6 on that council on the reserve. Something that I'm very
7 proud of this accomplishment.

8 When I was in residential school, starting at
9 the age of five years old, I was -- I was set aside. And
10 the first thing they did was separate my twin brother and
11 I. That's the first thing they did, for 10 years. But
12 they -- the nuns and priests used us as examples of how
13 the other children are supposed to turn out. How they
14 are supposed to behave. So if you can imagine putting
15 that stress on a five-year-old, six-year-old, that's a
16 tremendous amount of stress to have to deal with.
17 Because we didn't want that. We wanted nothing to do
18 with that.

19 But, you know, it was something that we were
20 forced into. We were forced to study extra hard. If we
21 didn't have top marks in school, we were -- we were made
22 to study extra hard and lost privileges. And so it
23 wasn't an easy go. But, through it all, with the grace
24 of God, I was able to survive. And I use my experiences
25 in life, you know, in whatever I do.

1 I wanted to share something that happens to me
2 quite often. Because I don't look like your typical
3 Indian, people who are racist and derogatory to Native
4 people are -- do this very openly in front of me, not
5 realizing I'm a Native person. So, I experience numerous
6 times the raw, I guess, feelings of some people towards
7 Native people. The, you know, the damn Indians. We're
8 paying this. They get free housing. They got this free
9 stuff. I don't know of too many people here have gotten
10 anything for free.

11 But, anyway, it's quite -- it's quite
12 interesting for me to witness this, this raw feelings
13 that people have, and they don't hold back when they're
14 talking to me, not realizing that I'm a Native person.
15 And so, you know, if I was obviously a, you know, darker
16 and stuff like that, people, I think, wouldn't be as open
17 and honest, if you can put it that way, about their
18 opinions towards Indian people.

19 And so I use this knowledge that I gained, you
20 know, from what I've listened to, to non Native people,
21 and I've tried to take that information and use it to
22 formulate my thinking, my thoughts, to try to, I guess,
23 as much as I can, change that, that dynamic; to try and
24 change that thinking. So, quite often I'll let them know
25 that I'm a Native person and I'm then we'll get into a

1 conversation. It's very, very interesting dynamics that
2 happens there where a person says oh, some of my best
3 friends are Native. Yeah, well we all heard of that. We
4 all heard that one before.

5 But as soon as they know that you're a Native
6 person, the conversation changes. And, you know, the
7 honesty goes away, you know. And so, I just wanted to
8 share that with you that, you know, we talk about blood
9 quantum, and it really is all about who you are inside.

10 I still speak my language fluently, even though
11 they were suppressed from speaking it in residential
12 school. Later on in life when I became a teacher I
13 worked in little small communities that spoke the same
14 language as I did, and I was able to use my language as a
15 teaching tool.

16 So anyway, I just wanted to impart that
17 experience that I had with you all. That when you see
18 somebody, it's not who they appear. You know, it's
19 what's inside a person that really matters, not what
20 their skin color is. Because, you know, that really
21 doesn't matter at all. The skin color doesn't matter.
22 It doesn't. Thank you for listening.

23 PROFESSOR HERSHEY: Thank you.

24 (Applause.)

25 PROFESSOR HERSHEY: In the Canadian experience,

1 if you, I don't know what year, '30s, '40s, '50s, if you
2 moved out off reservation, or if you became a doctor or
3 you became a teacher or something, you were denied. You
4 lost your status as Indian because you were enfranchised
5 into the great Canadian experience. You were all part of
6 that great Canada experience at that time.

7 And then comes along bill C31, we talking 20
8 years ago? 15 years ago? Something like that.

9 A SPEAKER: 1985.

10 PROFESSOR HERSHEY: What is that? 1985. See,
11 this is what happens. Time goes by. And basically they
12 said that there could be a right of return. And so the
13 increase, in the swell, in members to that community was
14 something that I think that most communities and
15 societies were unprepared for.

16 I also want to say one thing before we continue,
17 is that, I truly appreciate the safe space that you're
18 all creating here. That people can share very intimate
19 things. And you're treating everything with such respect
20 and this was the overwhelming goal for me, was to try and
21 lay this out so that you can go ahead, and as I knew you
22 would, and make this a safe space to talk.

23 Who else? Yes, sir.

24 A SPEAKER: I'm William Foster. I'm a professor
25 in government and public policy here at the University of

1 Arizona. I want to speak on why I am not a Mohawk.

2 As you all know, the Haudenosaunee are
3 matrilineal. It's your mother's mother's mother that's
4 important. My father is a full blooded Mohawk
5 Abernacki. We speak the Abernacki language. We live on
6 Abernacki land. But I, my mother, is not a Mohawk.
7 Therefore I am not a Mohawk. I can be adopted into the
8 tribe, but I have no right to claim Mohawk ancestry.
9 Thank you.

10 PROFESSOR HERSHEY: Thank you.

11 Yes. Mona?

12 A SPEAKER: Oh, we're on a first name basis now?

13 PROFESSOR HERSHEY: Well, let's talk about that.

14 A SPEAKER: Well, I'm Mona. I'm from Ft.

15 McDowell. I know I shared with you our enrollment
16 situation and everything. And I spoke to the gentleman
17 that was -- he talked about his disenrollment. You're
18 good. You're good. And you're good as well. But I
19 mean -- oh, love to you, too.

20 PROFESSOR HERSHEY: Thank you. Thank you.

21 A SPEAKER: That was an afterthought.

22 PROFESSOR HERSHEY: I'm Jewish. We hug and we
23 do all that kind of stuff.

24 A SPEAKER: Take me forever to get up there.

25 So, you know, I was talking to the gentleman out

1 there at our break. And again, please excuse me for
2 giving you my back. But, you know, I was -- as I was
3 talking with him, it was kind of like, why do we create
4 this self-mutilization, you know, within our own tribes.
5 Personally, I don't understand it. Why?

6 In my tribe, yeah, they have tried to do, you
7 know, by saying oh, no, you have to be at least, you
8 know, one quarter Ft. McDowell Yavapai, you know, which
9 all it did was just create this big old mess.

10 And then talking -- Pam was talking about, you
11 know, the blood. We never lose our blood. We never do.
12 Or, you know, it can go away because we intermarry,
13 intermarry, intermarry. It does, but kind of like why,
14 why are we doing this to ourselves? You know, here I go.

15 But, and I see people who are disenrolled. The
16 young man that was talking earlier this morning, oh,
17 forgot you, too.

18 But, you know, it just -- it hurts, you know,
19 just to hear this. And it hurts because, you know, we
20 have all shades here, all shades from dark to medium to
21 light. And yet, you know, sometimes it takes the
22 conversation of the gentleman who said I have to tell
23 them that, you know, I am native American and then all of
24 sudden, you know, it's like you're the best thing in the
25 whole wide world. We shouldn't have to do that. We

1 shouldn't have to do that. But we do.

2 You know, and that's -- to me I'm just like,
3 really? Do we really have to do this? You know, even
4 amongst ourselves. I'm sure, you know, like with my
5 tribal members, you know, they'll look at you and they go
6 yeah, you look like you're from the Jones family, which I
7 am. I'm from the Jones family. But you know or, you
8 know, you don't look like, I don't know, I don't know
9 about you.

10 But because we base -- all of a sudden we are
11 basing ourselves on the color, just like everybody else
12 does.

13 But in getting back to those who are
14 disenrolled, my heart goes out to you, you know.
15 Hopefully, we'll find a solution together. I don't say
16 I. I say we. We find a solution at least to give that
17 person or persons the opportunity to defend themselves,
18 to bring forth documentation, information, and even
19 though I know tribal councils change. Some change on a
20 yearly basis. Some change every two years. Some change
21 every four years. At least to give that and those
22 individuals an opportunity again to try to bring forth
23 that information.

24 Because hopefully, with Creator's interception,
25 you will be put back on the role.

1 That's all I have to say.

2 (Applause.)

3 PROFESSOR HERSHEY: Thank you. The chairman of
4 the Robinson Rancheria, who will be here tomorrow, he is
5 not here today because they are repatriating at least
6 half of their community that were disenrolled. And they
7 already repatriated the other half. And there was a
8 ceremony today to do that.

9 And E.J. Crandall will be here tomorrow with one
10 of his council people, Jaime Buds. But he will tell you
11 it's taken about 10 years to gain that kind of political
12 control to make that happen.

13 Yes? Yes, sir.

14 A SPEAKER: I'm just talking so I can get a
15 kiss.

16 (Laughter.)

17 A SPEAKER: I'm from Oklahoma originally and --

18 PROFESSOR HERSHEY: Excuse me one second.

19 One second. Not that safe a space.

20 A SPEAKER: So I was meeting with the Cheyenne
21 Arapahoe tribe. I'm Chickasaw. And I said to this
22 gentleman, he was obviously he had all the physical
23 and -- physical features of Native American. And I said
24 you probably wouldn't know it but I'm Chickasaw. He said
25 you probably wouldn't know it, I'm Cheyenne. Cheyenne

1 Arapahoe, get it?

2 After that, I don't worry about it any more.
3 Okay. He's told me, you are who you are, just what this
4 lady just said. I don't worry about telling people that
5 I am Indian any more. If I'm at a meeting or if I'm
6 presenting something, I'm Indian. I'm a member of the
7 Chikasaw tribe.

8 (Applause.)

9 PROFESSOR HERSHEY: Mr. Chairman?

10 A SPEAKER: (Native language.) I just said my
11 Ojibewa name is North Wind, which was given to me when my
12 dad passed away and he was a real staunch supporter of
13 the tribe. And we had a lot of father-son discussions
14 about the reservation because he was very passionate. He
15 said Farren, he said I'm uneducated man. I only went to
16 the 6th grade. You know I said, I said dad, I said
17 you're a full fluent Ojibewa speaker. You know, you're
18 well respected in this community.

19 You know, you helped a lot of people out. You
20 don't take any money for anything, you know. I said
21 that's very important to people here on the reservation.

22 So, you know, when my dad passed away, it was
23 like from the reservation line to the cemetary there was
24 so many cars there that people were just amazed about
25 what happened, you know. They had thought that the

1 tribal chairman had passed away. So we were very
2 honored, you know, when we laid my dad to rest.

3 And he told me a story one time when we
4 were riding on the res roads in his res truck, which I
5 still drive today. And he said Farren, you know, he said
6 a lot of the elders, they kind of respect you. They kind
7 of like to talk to you. And I could feel that myself,
8 you know, and I don't know where it came from because I
9 really enjoyed their company as well.

10 And my dad said to me, he passed away in '98,
11 must have been about '94, he said, Farren, you're going
12 to be somebody some day. I think you're going to be
13 somebody. I says you know, dad, I already am. I'm your
14 son. I'm your son Pinocchio. I'm a real boy and I can
15 walk and talk, you know. And he just got -- he used to
16 get so serious sometimes. So I always try to make him
17 chuckle a little bit.

18 It was really good that we had time to do these
19 things. And he was always worried about the land and
20 blood quantum issues. And like Jill and her, too, spoke
21 about, you know, with the MCT, we're all kind of tied
22 together here. Sometimes it seems like a big ball of
23 barb wire, you know, where all six of us are kind of in
24 the constitution. And if one of the tribes wants to do
25 something or enact an amendment or revision to the

1 constitution, basically that the rest of the tribes have
2 to concur with that. And then if that doesn't happen,
3 and then, you know, then what each tribe was trying to do
4 doesn't happen.

5 On Leach lake we got 10,000 band members.
6 Roughly 5,000 of them live on the reservation and the
7 other five in the big cities. White Earth, I think, has
8 close to 20,000. And so with Leach lake and White Earth,
9 at 20 and 10, we know, we make up 75 percent of the MCT
10 membership, which is right around 40,000.

11 So then we each have a chairman and a secretary
12 treasurer that sit on the TEC Board so anything we vote
13 on, it's a majority vote, of course, but we always seem
14 to be outvoted. And this blood quantum issue has always
15 been touchy with our own family from with my wife, who is
16 from Turtle Mountain. And we have a lot of passionate
17 dialogue regarding blood quantum because a lot of our
18 kids are not recognized because of this.

19 And out of the six tribes that make up the MCT,
20 four of them are able to do per caps. And the other
21 White Earth and Leach Lake do not do per caps. So, you
22 know, we face kind of a dollar sign every time it's
23 brought up. And then when we vote on it, the other four
24 tribes, basically, they -- they vote as a block.

25 So, you know, we've been trying to find a way to

1 kind of separate, to be self-governed so we can determine
2 our own membership. I think White Earth, with Irma, I
3 think that's the path that she was on. Unfortunately, a
4 lot of things came to surface and the rest of the tribal
5 TEC voted her out. You know, politics came into play.

6 You know, yeah, it's nice to have some dollars
7 coming your way. We all need it for to live on. But
8 when you look at what's more important than these dollars
9 are the kids that we're leaving behind, you know. And
10 that's the dialogue we have on Leach Lake, and at a lot
11 of our MCT meetings, you know.

12 And then we try to emphasize the importance of
13 these kids as we all -- a lot of our population is Baby
14 Boomers and older now. You know, them are things that we
15 have to consider, you know. Who's going to carry on
16 after a lot of us are started our journey. So time is of
17 the essence here.

18 And I told Gertrude about this meeting when we
19 were having a board meeting in Minneapolis just two,
20 three days ago. I said I'm going down to Tucson for a
21 blood quantum meeting. She got very excited because she
22 is very passionate, too. The next day she made her
23 reservation, the airline was set. And she is here, just
24 on a two-day notice. It wasn't anything that was planned
25 out, meanwhile. But that's how important these meetings

1 are to her.

2 So I just, you know, the gentleman in the back
3 talking about his family being disenrolled and having
4 them stand up was awesome, you know. We have to speak
5 and speak up for our families and our people now as
6 tribal chairman of Leach Lake here, I'm not even a year
7 into my term and we always have something to discuss when
8 it comes to that, you know. It's -- sometimes it's
9 barely a 50-50 split. 50 of them, 50 of them say no. I
10 said just because you become a member of a tribe doesn't
11 mean you're entitled to a home. Like somebody talked
12 about a house, housing. You use that a deterrent. Oh,
13 we got to provide housing.

14 We open up the doors, we go we are going to have
15 to provide jobs, you know. They got all these deterrents
16 to justify not -- not recognizing these members. And I
17 know it's not right. I mean, like they said earlier,
18 they are worried about getting a few extra dollars, less
19 dollars because of their per caps if they open up that
20 window of opportunity here.

21 So any time we have blood quantum meetings and
22 issues, I always -- I always try to be positive and stay
23 optimistic that something will change before -- while I'm
24 still here, you know.

25 Me and my grandsons go hunting on the res,

1 because they don't recognize my Red Lake side, my Ojibewa
2 blood, I can't transfer that on to my grandkids. You
3 know, we have a lot of issues there with a lot of the
4 families. And you know, these meetings and these
5 dialogues are -- it's only important of what comes after
6 this. You know, you can have meetings and meetings and
7 have discussions, what the main thing is what's going to
8 come from this. And we got to always be positive about
9 something.

10 And hopefully, if we stay persistent, a lot of
11 these issues here, hopefully something can change in the
12 next 10, 20, 30 years. So I'm just, once again, thank
13 you for listening to me. And I'm just real thankful that
14 me and my wife were able to be a part of this conference.

15 Thank you, Richard.

16 (Applause.)

17 PROFESSOR HERSHEY: Thank you. Very good.
18 Thank you.

19 Yes, Kevin?

20 A SPEAKER: For the Anishinaabe in the audience,
21 in the room, (Native language.) That's about all the
22 Ojibewa I know. But my friend from the LDS said, I
23 should tell you all that, for those who don't speak
24 Ojibewa, that's translated loosely as mercenary
25 capitalist.

1 (Laughter.)

2 A SPEAKER: I guess it makes sense as I do
3 travel, finances and economic develop.

4 But just thinking about this in terms of the
5 whole notion of who looks Indian and how much we as a
6 social construct, but my girlfriend, she is Dene from
7 Crown Point, but we live in Las Cruces. And so everybody
8 assumes that shes Mexican. And of the two of us, I'm the
9 only one who speaks Spanish.

10 So, it's like everybody comes up to the two of
11 us and starts speaking to her in Spanish. And she looks
12 at them and then looks at me, and then I answer back in
13 Spanish, and the person talking to us is looking -- it's
14 very interesting in Puerto Rico.

15 We always have -- I sympathize with the black
16 man, my Chickasaw brother up there. It's very much -- we
17 have a very visual racialized construct of identity. And
18 as our society progresses, that becomes less and less
19 instantly accurate.

20 So, it's -- I also, from my own background,
21 I'm -- the Choctaw did not necessarily do the same thing
22 as the Cherokee and the Seminole did. We did not enroll
23 our freedmen. So in addition to having -- I'm enrolled
24 in Choctaw. My mom is enrolled Cherokee. I'm also one
25 thirty-second black through a freedman ascendancy. That

1 is something that at least in the Choctaw that doesn't
2 count as anything.

3 But when -- we are going to talk about Native
4 Hawaiians tomorrow. And I appreciate you putting my
5 Native Hawaiian article in the materials. And if you get
6 a chance to read it, the structure that the -- for the
7 Native Hawaiians, if you look at their history, every
8 time they came on the Congressional radar screen, it was
9 the worst possible time. And yet when they came on the
10 radar screen for final time in 1970s, they chose a racial
11 construct of identity rather than a sovereign citizenship
12 construct. And apologies to Rob Williams for using the
13 citizen term. He didn't give us a good synonym yet for
14 something else.

15 But the -- if you look at the way -- I didn't
16 know you were Jewish. But it turns if you have a Jewish
17 mother or a Jewish grandmother, you have a right to
18 return to Israel as a citizen. And therefore -- it is.
19 And therefore and so but --

20 PROFESSOR HERSHEY: Politics.

21 A SPEAKER: But it doesn't matter whether you're
22 Ashkenazi, Sephardic or black Ethiopian Jew or you're in
23 that little Jewish enclave on the far side of India, it
24 doesn't matter. And so therefore you get that chance to
25 return as a citizen, irrespective of your racial

1 construct.

2 PROFESSOR HERSHEY: I'm going to return to
3 Hollywood.

4 Thank you.

5 Let me tell you something. What I teach -- I'm
6 the director of clinical education for Our Indigenous
7 People's Law and Policy. When I was teaching my clinic,
8 the first class is introducing ourselves, and tried to
9 encourage all my Native students to introduce themselves,
10 and learn how to introduce themselves the way I hear most
11 Native people introduce themselves.

12 Number two, I have them read poetry. And
13 stories. Number three, the next class is Imagery and
14 American Indian policy. Because the Indian is a white
15 construct.

16 And we can go in -- I'm not going to give the
17 classroom lesson here. But think of cowboys and Indians.
18 Think of all the Hollywood movies. Think of all the
19 perpetuations of stereotypes, Indian princesses and on
20 and on and on and on. These are more than racial
21 stereotypes. These are imaginary stereotypes.

22 And so as part of the education I would suggest
23 when you go back to your communities, you start talking
24 about the Indian as a white construct, and you talk about
25 this idea of the imaginary Indian.

1 Anyway, let me ask you this. We're a little
2 past our time. We are going to go ahead and reconvene.
3 We'll have -- tomorrow morning we'll have more
4 refreshments out there by 8 o'clock. And so we invite
5 you to participate then.

6 And I look forward to seeing you tomorrow, and
7 tomorrow we'll have more time to discuss. And again,
8 thank you for all of your stories. Thank you.

9 (Applause.)

10 (Meeting adjourned.)

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