

<p style="text-align: right;">67</p> <p>1 Q Okay. All right. So the specialist assigned to the</p> <p>2 case must submit an ICWA affidavit, at least at a</p> <p>3 48-hour hearing, correct?</p> <p>4 A <b>Correct.</b></p> <p>5 Q Were you trained on how this affidavit must be filled</p> <p>6 out?</p> <p>7 A <b>Yes.</b></p> <p>8 Q Before an affidavit is submitted, is a supervisor</p> <p>9 supposed to review it?</p> <p>10 A <b>Yes.</b></p> <p>11 Q And we previously submitted Exhibit 17. As I</p> <p>12 understand it, DSS has created a model ICWA affidavit</p> <p>13 and I am aware that they've changed it from time to</p> <p>14 time, but this is one example, isn't that correct?</p> <p>15 A <b>Yes.</b></p> <p>16 Q And this is Exhibit 17. Now, paragraph 13 of this</p> <p>17 model is where the specialist is required to list the</p> <p>18 reasons why she believes the child shouldn't be</p> <p>19 returned home, is that right?</p> <p>20 A <b>That's correct.</b></p> <p>21 Q And according to paragraph 13, the standard to be</p> <p>22 used and the standard that she uses is whether</p> <p>23 returning the child, quote, would likely result in</p> <p>24 serious emotional or physical damage to the child.</p> <p>25 And this is the standard you were trained to use</p>	<p style="text-align: right;">69</p> <p>1 Q Correct?</p> <p>2 A <b>Yes.</b></p> <p>3 Q Yes. And, in fact, Ms. Van Hunnik testified that at</p> <p>4 least 75 percent of the time that's exactly what DSS</p> <p>5 is doing, seeking custody based on emotional damage</p> <p>6 and not physical damage?</p> <p>7 MR. MORRIS: Objection, form, foundation.</p> <p>8 Q Has that --</p> <p>9 MR. PEVAR: Well, it's in her transcript.</p> <p>10 MR. MORRIS: I don't have her deposition in front</p> <p>11 of me.</p> <p>12 MR. PEVAR: Okay.</p> <p>13 MR. MORRIS: I have to trust you.</p> <p>14 MR. PEVAR: Okay. Well --</p> <p>15 MR. MORRIS: So I have to make my objection.</p> <p>16 MR. PEVAR: Then you don't trust me.</p> <p>17 Q All right. She testified that at least 75 percent of</p> <p>18 the times that DSS seeks continued custody it's based</p> <p>19 on emotional damage, not physical. Is that your</p> <p>20 experience?</p> <p>21 A <b>If I'm understanding you, I'm understanding you more</b></p> <p>22 <b>about physical damage being actual physical abuse</b></p> <p>23 <b>whereas emotional being more neglect-related. If</b></p> <p>24 <b>that's the way that -- I mean, that's the way I'm</b></p> <p>25 <b>understanding it, then yes, I would agree.</b></p>
<p style="text-align: right;">68</p> <p>1 at the 48-hour hearing, correct?</p> <p>2 A <b>That's correct.</b></p> <p>3 Q And, in fact, Ms. Van Hunnik testified that she</p> <p>4 helped write that standard. I don't know if you're</p> <p>5 aware of that, but she came up with that, helped come</p> <p>6 up with that language?</p> <p>7 A <b>Okay.</b></p> <p>8 Q Now, who trained you to use that standard?</p> <p>9 A <b>My supervisor, when I first started, would have been</b></p> <p>10 <b>Dottie Pugsley, so she would have been my hands-on</b></p> <p>11 <b>trainer. DSS legal trained through certification and</b></p> <p>12 <b>in-office training.</b></p> <p>13 Q And this is the standard you still use today,</p> <p>14 correct?</p> <p>15 A <b>Yes.</b></p> <p>16 Q Now, the standard says, emotional or physical damage.</p> <p>17 And Ms. Van Hunnik testified that this standard does,</p> <p>18 indeed, allow you to seek continued custody of a</p> <p>19 child, including an Indian child, based entirely on</p> <p>20 the risk of emotional injury. That's correct?</p> <p>21 A <b>Can you rephrase that?</b></p> <p>22 Q Sure. The standard says, emotional or physical. So</p> <p>23 you do have the choice. You can seek continued</p> <p>24 custody based exclusively on emotional?</p> <p>25 A <b>Okay.</b></p>	<p style="text-align: right;">70</p> <p>1 Q Okay. Were you trained that the same standard</p> <p>2 applies after the 48-hour hearing? In other words,</p> <p>3 when DSS is determining when to return a child, is</p> <p>4 this the same standard that you use?</p> <p>5 A <b>Yes.</b></p> <p>6 Q Okay. Now, as the name applies, a 48-hour hearing is</p> <p>7 generally held within 48 hours after you've obtained</p> <p>8 physical custody, correct?</p> <p>9 A <b>Correct.</b></p> <p>10 Q Okay. Now, the ICWA affidavit is supposed to</p> <p>11 describe the emergency that precipitated your</p> <p>12 acquiring that custody, is that right?</p> <p>13 A <b>That's correct.</b></p> <p>14 Q Is the affidavit also supposed to describe why DSS</p> <p>15 believes the emergency or danger is ongoing? In</p> <p>16 other words, why returning the child remains</p> <p>17 dangerous?</p> <p>18 A <b>Yes.</b></p> <p>19 Q Okay. So it should do both things?</p> <p>20 A <b>Yes.</b></p> <p>21 Q What have you been trained, on the duty of DSS to</p> <p>22 describe in the ICWA affidavit not only what gave</p> <p>23 rise to the emergency but also why DSS believes</p> <p>24 continued custody is necessary?</p> <p>25 A <b>Based on the emergency itself obviously would be</b></p>

*Ex. 5-Vargo*

<p style="text-align: right;">239</p> <p>1 A <b>Yes. Based on the information we had at the time,</b></p> <p>2 <b>that's correct.</b></p> <p>3 Q When was the child returned?</p> <p>4 A <b>That same day, April 6th.</b></p> <p>5 Q Yeah. So I don't get it. Why were you asking for</p> <p>6 continued custody on April 6th and then returned the</p> <p>7 child that same day?</p> <p>8 A <b>What happened was --</b></p> <p>9 Q I mean, how can we trust this?</p> <p>10 A <b>We had requested continued custody based on the</b></p> <p>11 <b>assessment still being pending and based on there</b></p> <p>12 <b>being an indication there could very likely be</b></p> <p>13 <b>impending danger. On this date, I was contacted by</b></p> <p>14 <b>our State's Attorney who shared that there's going to</b></p> <p>15 <b>be testimony provided later that afternoon or</b></p> <p>16 <b>requested about the determination of impending</b></p> <p>17 <b>danger. And so we talked about it and I talked with</b></p> <p>18 <b>my staff about it and had a discussion about what the</b></p> <p>19 <b>findings had indicated although the assessment wasn't</b></p> <p>20 <b>completed.</b></p> <p>21 Q Okay. So you asked the Court to continue custody and</p> <p>22 then you changed your mind?</p> <p>23 A <b>Essentially. We came to a different conclusion.</b></p> <p>24 Q Okay. And it was based not on information that you</p> <p>25 had obtained but that your attorney gave you?</p>	<p style="text-align: right;">241</p> <p>1 recollection of requesting this?</p> <p>2 A <b>That's correct. That's not always our practice.</b></p> <p>3 <b>There have been times I have requested a petition be</b></p> <p>4 <b>filed and she's declined. There have been times we</b></p> <p>5 <b>have requested there's no petition and she has</b></p> <p>6 <b>proceeded. So although it's standard that there</b></p> <p>7 <b>typically is on custody cases, that doesn't</b></p> <p>8 <b>necessarily mean there was an actual conversation</b></p> <p>9 <b>with her requesting this be filed.</b></p> <p>10 Q And I apologize if I did ask you this. Do you recall</p> <p>11 if you did request it?</p> <p>12 A <b>No.</b></p> <p>13 Q Oh.</p> <p>14 A <b>We didn't.</b></p> <p>15 Q Oh. You know you didn't request it?</p> <p>16 A <b>I can confidently say we didn't request it on this</b></p> <p>17 <b>particular case and that we rarely would request it</b></p> <p>18 <b>-- they're typically filed on all custody cases, so</b></p> <p>19 <b>there's not usually a conversation requesting it, if</b></p> <p>20 <b>that makes sense.</b></p> <p>21 Q All right. You've had the child five weeks and</p> <p>22 there's no petition filed. So I am confused then.</p> <p>23 A <b>Okay.</b></p> <p>24 Q You're saying that, generally speaking, whenever</p> <p>25 there is one of these cases, a petition is filed?</p>
<p style="text-align: right;">240</p> <p>1 A <b>No, not necessarily. My attorney -- our attorney</b></p> <p>2 <b>provided us with some information and then we -- I</b></p> <p>3 <b>discussed it with the staff about her findings.</b></p> <p>4 Q Okay. All right. The last exhibit, 117. This is a</p> <p>5 petition for abuse or neglect that the State's</p> <p>6 Attorney did file against these parents on April 2.</p> <p>7 Do you -- now, the State's Attorney is your attorney,</p> <p>8 DSS's attorney. You're aware of their relationship?</p> <p>9 A <b>Yes.</b></p> <p>10 Q Okay. So I'm assuming that this was done not just</p> <p>11 haphazardly but based on consultation with you.</p> <p>12 Why did you recommend that a formal petition</p> <p>13 alleging both Mom and Dad were abusing and neglecting</p> <p>14 Kayleigha on April 2?</p> <p>15 MR. MORRIS: Objection, form and foundation.</p> <p>16 A <b>There wouldn't have been a specific conversation with</b></p> <p>17 <b>her requesting a petition be filed. She would base</b></p> <p>18 <b>that off of the information that was provided to her</b></p> <p>19 <b>about the incident. She may or may not file a</b></p> <p>20 <b>petition based on our request.</b></p> <p>21 Q Huh. So she has the authority to go ahead, as you</p> <p>22 understand the relationship, without asking you --</p> <p>23 you're the supervisor for this case. I guess I just</p> <p>24 assumed that she wouldn't have done this without</p> <p>25 asking you or you asking her, but you don't have any</p>	<p style="text-align: right;">242</p> <p>1 MR. MORRIS: Object to form and foundation.</p> <p>2 There's a petition for temporary custody.</p> <p>3 MR. PEVAR: Right. Right. Right.</p> <p>4 MR. MORRIS: But now you're talking about a</p> <p>5 petition for A&amp;N.</p> <p>6 MR. PEVAR: Yes, that's right.</p> <p>7 MR. MORRIS: And you understand A&amp;N and impending</p> <p>8 danger are two different things?</p> <p>9 MR. PEVAR: Well, I'm just asking about A&amp;N.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 MR. PEVAR: Yeah.</p> <p>12 MR. MORRIS: All right.</p> <p>13 Q Could you explain for me the A&amp;N petition process?</p> <p>14 There are times at which you've requested a formal</p> <p>15 petition when it's been declined and times at which</p> <p>16 you haven't requested one and one has been filed?</p> <p>17 A <b>That's correct.</b></p> <p>18 Q And you don't know why she filed this, but you didn't</p> <p>19 ask for it?</p> <p>20 A <b>I can say that as a supervisor of cases, typically</b></p> <p>21 <b>when they get into custody, when we're requesting</b></p> <p>22 <b>continued custody throughout a proceeding, it would</b></p> <p>23 <b>not be unusual for our State's Attorney to file this</b></p> <p>24 <b>petition. Sometimes there's question. If she sees</b></p> <p>25 <b>something that maybe I've missed or an issue with</b></p>

<p style="text-align: right;">243</p> <p>1 potentially filing a petition where we'll actually</p> <p>2 have a conversation on that. If I could retract what</p> <p>3 I previously said? I don't recall there being a</p> <p>4 specific request on this case and I really don't</p> <p>5 believe there was. But that doesn't mean that it was</p> <p>6 done on her own volition. It would have been just</p> <p>7 kind of natural to progress that way --</p> <p>8 Q Okay.</p> <p>9 A -- based on our practice.</p> <p>10 Q Okay. Now, when you do -- and I'll use your word for</p> <p>11 it, staff.</p> <p>12 A Um-hmm.</p> <p>13 Q When you staff a case, that means discuss a case?</p> <p>14 A Yes.</p> <p>15 Q Yes. Okay. Typically when you staff a case with</p> <p>16 someone from the State's Attorney's Office, would</p> <p>17 that be documented in the chronology of the IFA?</p> <p>18 A It could be.</p> <p>19 Q But it doesn't have to be?</p> <p>20 A Not necessarily always.</p> <p>21 Q Okay. Because the IFA in this case, the first entry</p> <p>22 of staffing with anyone from the State's Attorney's</p> <p>23 Office is -- was April 2nd, the day that this was</p> <p>24 filed. And I didn't know. That would be -- what's</p> <p>25 the IFA number?</p>	<p style="text-align: right;">245</p> <p>1 A Is what you're referencing?</p> <p>2 Q Yes.</p> <p>3 A Again, back to timeliness. Typically, again, which</p> <p>4 wasn't happening in this case, is the IFA is</p> <p>5 completed and submitted to our State's Attorney</p> <p>6 within 30 days who then makes a determination on</p> <p>7 filing a petition or not. So it's not that there's a</p> <p>8 formal staffing so much as she obtains it, reviews</p> <p>9 it, and then files the petition. There's definitely</p> <p>10 often conversations that occur regarding a family or</p> <p>11 a case.</p> <p>12 Q Okay. Well, let me rephrase. Why didn't you ask for</p> <p>13 a formal petition?</p> <p>14 A It would not have been our practice to ask without</p> <p>15 the IFA being completed.</p> <p>16 Q I see. All right. But it wasn't completed on April</p> <p>17 2nd either?</p> <p>18 A Right.</p> <p>19 MR. PEVAR: If I could have 30 seconds and just</p> <p>20 ask them, I think I'm done.</p> <p>21 MR. MORRIS: Do you want us to leave?</p> <p>22 MR. PEVAR: Well, we can leave. It would be</p> <p>23 easier.</p> <p>24 MR. MORRIS: Stephen, we're going to read and</p> <p>25 sign. Because of her condition, can we figure out a</p>
<p style="text-align: right;">244</p> <p>1 (A brief pause.)</p> <p>2 A 121.</p> <p>3 Q Oh. You have it?</p> <p>4 A I found it, yes. Thank you.</p> <p>5 Q All right. Looking over the chronology, I don't see</p> <p>6 any indication that it was staffed with anyone from</p> <p>7 the State's Attorney's Office prior to that?</p> <p>8 A I don't see that it was staffed at all in the IFA,</p> <p>9 unless I'm missing it.</p> <p>10 Q Oh. I see. I misread my own notes. There's no</p> <p>11 indication that the State's Attorney staffed this at</p> <p>12 all prior to filing this petition. That's what I</p> <p>13 meant to ask, which would be consistent with your</p> <p>14 testimony, that you don't recall talking about it?</p> <p>15 A Right. It's not documented.</p> <p>16 Q Okay. In your mind, were there legitimate grounds to</p> <p>17 accuse these parents of abuse and neglect of their</p> <p>18 child?</p> <p>19 MR. MORRIS: Objection, form.</p> <p>20 Q I mean, you hadn't asked for it. I have to assume</p> <p>21 you would have asked for it if you felt that there</p> <p>22 was legitimate grounds for it?</p> <p>23 MR. MORRIS: Objection, form and foundation.</p> <p>24 A Do you mean the filing of the petition?</p> <p>25 Q Right.</p>	<p style="text-align: right;">246</p> <p>1 deadline with Carolyn --</p> <p>2 MR. PEVAR: Sure.</p> <p>3 MR. MORRIS: -- as to the errata sheet?</p> <p>4 MR. PEVAR: Sure.</p> <p>5 MR. MORRIS: Okay.</p> <p>6 (A recess was taken from 5:11 p.m. to 5:13 p.m.)</p> <p>7 MR. PEVAR: Okay. We are done.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. PEVAR: Have a successful break.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 MR. MORRIS: We will read and sign the</p> <p>12 deposition. Ms. Wehrle has provided the court</p> <p>13 reporter with her home address because as anticipated</p> <p>14 in the very, very, very, very, very near future,</p> <p>15 she'll be on maternity leave. And normally it's 30</p> <p>16 days, Carolyn. Can we say 60 days unless I would</p> <p>17 send you a request for an extension.</p> <p>18 THE COURT REPORTER: Sure.</p> <p>19 MR. MORRIS: Is counsel agreeable to that?</p> <p>20 MR. PEVAR: Yes. I mean...</p> <p>21 MR. MORRIS: Or 45?</p> <p>22 MR. PEVAR: Okay.</p> <p>23 MR. MORRIS: You're supposed to have your baby</p> <p>24 either this week -- I mean, any time now?</p> <p>25 THE WITNESS: I can read this while on maternity</p>