Liberty and Justice For All

A report prepared by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights

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The findings and recommendations contained in this report are those of the South Dakota Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and Congress.

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ACKNOWLEDGMENTS

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Final production of the report was the responsibility of Deborah Harrison, Vivian Hauser, Rita Higgins, Audrey Holton, Vivian Washington, supervised by Bobby Wortman, Publication Support Center, Office of Management.

LETTER OF TRANSMITTAL

THE SOUTH DAKOTA ADVISORY COMMITTEE
TO THE U.S. COMMISSION ON CIVIL RIGHTS
October 1977

MEMBERS OF THE COMMISSION
Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie Freeman
Manuel Ruiz, Jr.
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John A. Buggs, *Staff Director*

Dear People:

The South Dakota Advisory Committee, pursuant to its responsibility to advise the Commission on civil rights problems in the State, submits this report on criminal justice for Native Americans.

Through its investigation, the Advisory Committee concludes that despite progress made during the last few years in improving the quality of justice, Indian people continue to face problems in the State's criminal justice system which place them at a severe disadvantage.

The Advisory Committee examined practices by State, county, and municipal law enforcement agencies and the courts in off-reservation areas of Pennington and Charles Mix Counties. Federal courts and agencies were not included in the study. In the course of the investigation, members of the Advisory Committee and staff from the Rocky Mountain Regional Office interviewed over 130 persons including State officials, law enforcement officers, defense and prosecuting attorneys, judges, court administrators, community representatives, and Native American complainants. Information, also, was received from more than 50 persons who testified at a fact-finding meeting conducted by the Advisory Committee last December.

The study found evidence of widespread abuse of police power throughout the State. Improprieties cited included selective law enforcement, search and arrest without cause, harassment and brutal treatment, arrest of intoxicated persons on disorderly conduct charges, and simple discourtesies. The court-appointed defense attorney system in South Dakota was found to place indigent defendants at a serious disadvantage. Far too often, inexperience, difficulties in communication, and inherent conflicts of interest on the part of defense attorneys were found to be detrimental to Native American defendants.

The Advisory Committee found that Native Americans rarely serve on juries in South Dakota. As a result of this, together with prejudicial attitudes of potential jurors, it is very difficult to obtain an impartial jury for Indians on trial in South Dakota. State imposed trial delays, a high number of guilty pleas, and possible abuse of the plea bargaining system, also, were issues examined in the report. The present bail system was found to work to the disadvantage of Native Americans, and affirmative action efforts by most agencies are inadequate to change a justice system in which personnel are almost entirely white and male.

The South Dakota Advisory Committee made a total of 22 recommendations which were forwarded to the Governor, the courts, the legislature, and various State and local agencies requesting actions necessary to alleviate disparities in the criminal justice system. Federal and State grand juries were requested to investigate activities of self-styled civil defense units which allegedly bear arms and serve as a quasi-police force of questionable legality.

We urge you to consider this report and make public your reaction to it.

Respectfully,

MARIO GONZALEZ
Chairperson

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We must foster an effort to inform the people of South Dakota, the Nation, and the world that our problems are not as simple as they might seem...that beyond racial intolerance which exists here...that beyond the inexcusable poverty which exists here...that beyond cultural conflicts which exists here, are also questions of liberty, constitutional rights, and other values elemental to our beliefs as a people.

—Richard F. Kneip, Governor of South Dakota, Executive Communication to the State House of Representatives, March 12, 1975

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Preface

In the fall of 1975, the North and South Dakota Advisory Committees to the United States Commission on Civil Rights met jointly in Aberdeen, South Dakota, to discuss civil rights issues in the two States. The major civil rights concern of both groups was the quality of criminal justice available to Native Americans and the quality of treatment they received under the law.

This concern which led the Advisory Committees to undertake the present study arose from a variety of sources. Several Native American members of the Advisory Committees related personal experiences with law enforcement agencies and courts in which they felt that they had been treated unjustly. Statistical information and findings of recent reports issued by public and private agencies pointed up the special problems faced by Native Americans in the criminal justice systems of both Dakotas.[1] Reports by other State Advisory Committees to the U.S. Commission on Civil Rights have also documented problems of prejudice and unequal treatment encountered by Native Americans in the criminal justice system in other parts of the country.[2]

Indians complained to the Commission's Rocky Mountain Regional Office (RMRO) in Denver of harassment, abuse, and disparate treatment by law enforcement officials in South Dakota. Reports of alleged exclusion from jury service, discriminatory use of bail, and lack of adequate legal representation were also forwarded to the South Dakota Advisory Committee. The Congressional Liaison Unit of the Commission has received more inquiries from across the Nation about alleged mistreatment of Native Americans by law enforcement agencies and judicial and correctional systems than about any other single issue.

The present study assesses the quality of justice available to a specific geographical group of Native Americans and determines what, if any, factual basis exists for allegations of discriminatory practices in the criminal justice system. This report is the result of the study conducted in South Dakota. The project was limited to an investigation of off-reservation areas of the largely urban Pennington County and Charles Mix County which is predominately rural. Issues investigated were confined to criminal justice involving State, county, and municipal law enforcement agencies and courts. Cases and incidents under Federal or tribal jurisdiction were not included because they were outside the scope of the project.

Members of the South Dakota Advisory Committee and staff from the Commission's Rocky Mountain Regional Office conducted field investigations from June through November 1976, interviewing approximately 130 persons throughout the State. Persons interviewed included State officials, law enforcement officers, defense and prosecuting attorneys, judges, court administrators, community organization representatives, Native American complainants, and other interested persons.

Statistical data and other pertinent information were gathered as background material for the study. On December 6 and 7, 1976, the South Dakota Advisory Committee conducted an informal hearing in Rapid City at which time 52 persons testified and were questioned by Advisory Committee members and Rocky Mountain Regional Office staff.

Notes to Preface

1. John Howard Association, *Corrections in South Dakota*, Chicago, Ill., August 1976; John M. Parr and H. Jeffrey Peterson, *Prisoners' Civil Rights in North Dakota*, Institute for the Study of Crime and Delinquency, Bureau of Governmental Affairs, University of North Dakota: August 1973; Edward L. Morgan, *Law and Order*, an unpublished report to the Bureau of Indian Affairs and the Community Relations Services of the U.S. Department of Justice, June 1974; Pierre, S.D., Division of Law Enforcement Assistance, *A Plan for Action* (1975 and 1976); U.S., Department of Justice, Federal Bureau of Investigations, *Crime in the United States (1975): Uniform Crime Report* (1976); Bismark, N.D., North Dakota State Planning Division, *North Dakota Comprehensive Plan* (1976); *1974 and 1975 Reports of the South Dakota Task Force on Indian-State Government Relations;* National Center for Defense Management, *Systems Development Study of Indigent Defense Delivery Systems for the State of South Dakota*, Washington, D.C. (1977).

2. New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *The Farmington Report: A Conflict of Cultures* (1975); Arizona Advisory Committee to the U.S. Commission on Civil Rights, *Justice in Flagstaff: Are these Rights Inalienable?* (1977); Montana-North Dakota-South Dakota Joint Advisory Committee to the U.S. Commission on Civil Rights, *Indian Civil Rights Issues in Montana, North Dakota, South Dakota*, (1974).

Chapter 1

Introduction

Legal Considerations

The United States Constitution, Federal statutes, and various State laws protect the rights of all persons, including Native Americans who, since 1924, have been citizens of the United States and of the State in which they reside. Under the Constitution certain rights are inalienable:

- No person may be deprived of life, liberty, or property without due process of law;
- Except under limited circumstances, police cannot make arrests or search persons and their property without a warrant;
- All persons have the right to be represented by an attorney in all State and Federal criminal proceedings and the right to remain silent when questioned by law enforcement officials;
- Except for persons charged with crimes punishable by death or life imprisonment, all defendants have the right to bail which shall not exceed the amount necessary to ensure that the defendant will return for trial;
- No persons can be forced to testify against themselves;
- Persons arrested for serious offenses must be informed of the charges and of their constitutional rights and be given the opportunity to plead guilty or not guilty;
- Defendants have the right to speedy and public trials by a jury of their peers; and
- State and Federal governments are prohibited from denying any person "equal protection of the law."

Most States have adopted a uniform system of rules for criminal procedures which protect these rights. South Dakota, however, is one of the few exceptions. Its rules of criminal procedures are not systematized but are found throughout several sections of the South Dakota Compiled Laws (S.D.C.L.). On February 26, 1976, the State legislature declared that separate rules of criminal procedure are "necessary for the support of State government and its existing institutions" and declared "an emergency...to exist" until the rules are revised.[1]

Vital Statistics and Socioeconomic Characteristics

Native Americans living in South Dakota are by far the largest minority group in the State. The 1970 census showed a Native American population of 32,365 (15,876 male and 16,489 female) comprising 4.9 percent of the State's total population (665,507).[2] Bureau of the Census population statistics for Native Americans are generally conceded to be low and estimates of the Indian population in South Dakota vary from 45,000 to 60,000.[3] The 1970 census also showed the Native American population in Pennington County to be 2,471 or 4.2 percent of the total 59,349.[4] This is undoubtedly too low. Arthur LaCroix, a Native American and mayor of Rapid City, the county seat, estimates that in his city alone 10 or 11 percent of the 49,000 population is Native American.[5] (p. 8) During the 1975–76 school year Indians numbered 1,234 (9.5 percent) of the total 13,042 students in the Rapid City public schools (Independent School District No. 1).[6] For Charles Mix County, 1970 census data indicated that 926 or 9.3 percent of the 9,994 population were Native American.[7]

Mary Ellen McEldowney, a member of the Advisory Committee, compiled a report in 1973 from information supplied by various State agencies and from 1970 Bureau of the Census data which provides information on social and economic characteristics of Native Americans in South Dakota.[8] The median years of school completed by Indians 25 years of age and over was 9.4 years compared with 12.1 years for whites. Of the Native Americans in the civilian labor force, 20.7 percent were unemployed compared with 3.2 percent of the whites.[9] One out of every eight Indian women was unemployed and actually seeking work within the month prior to the reporting date. In South Dakota, 54.8 percent of Native American families had incomes below poverty level compared with 14.8 percent of the total population.[10]

State Arrest and Incarceration Statistics

Crime reports in 1972 showed that though Native Americans were only 4.9 percent of the State population they comprised 30.9 percent of those who were arrested.[11] Table 1 indicates that during the first 6 months of 1975 Native Americans in South Dakota were arrested for many crimes four to eight times more frequently than their number in the total population.

South Dakota Attorney General William Janklow testified at the Advisory Committee's informal hearing that during his tenure in office the proportion of Native American inmates in the State penitentiary at Sioux Falls ranged from 21 percent to 24 percent, figures four to five times their proportion in the State's population. (p.542) In November 1976, 131 of the State penitentiary's 500 inmates or 26 percent were Native American. The proportion of the Native Americans incarcerated in the Pennington County jail in Rapid City runs considerably higher than this. Sheriff Melvin Larsen stated that on December 6, 1976, 25 inmates (19 men, 3 women, and 3 boys) or 50 percent of the total county jail population, were Native American. On December 7, 1976, 26 inmates (21 men, 2 women, and 3 boys) or 55 percent of the total were Native American. The sheriff estimated that this ratio was representative of the prison population throughout the year. (p. 400) These statistics indicate that the proportion of Indian inmates in this particular jail is usually close to 10 times their proportion of the population, either in Pennington County or the State as a whole.

This study does not purport to identify all the possible factors which result in the highly disproportionate number of Native Americans who are incarcerated in South Dakota. Instead, it will analyze statistics and personal interviews that point to factors operating in society and in the criminal justice system of the State which adversely affect Native Americans.

Jurisdiction

Criminal jurisdiction over Native Americans in South Dakota is too complex to be treated here in detail.[12] A basic understanding of the special problems posed for Native Americans and the justice system is necessary, however, to treat the issues covered in this report.[13]

In South Dakota the situation is especially complex because boundaries of most reservations are the subject of litigation and two reservations, the Yankton Sioux in Charles Mix County and the Lake Traves, have a checkerboard land base resulting from recent court decisions which further complicates the the situation. Federal courts have jurisdiction over 14 enumerated "major" crimes when they are committed in Indian Country.[14] Tribal courts have jurisdiction over offenses prohibited by their codes, which are primarily misdemeanors. Because certain tribal governments have ordinances outlawing some of the 14 major crimes, it is conceivable that tribal and Federal courts may have concurrent jurisdiction in some cases. When a Native American allegedly commits a crime prohibited by city ordiance or State law on property which is not in "Indian Country," the particular city where the crime occurs has jurisdiction over the act.

As of January 1974, South Dakota has had a unified court system composed of nine judicial circuits. Charles Mix and eight other counties encompass circuit one while Pennington is among four counties comprising circuit seven. (S.D.C.L. §16–5–1.2)

If an accused person returns to the reservation or leaves the State, the court loses jurisdiction over them and cannot regain it unless they are either extradited or return voluntarily. The complexity of the situation is illustrated by the following incident. In May 1975 several Native Americans took over the pork processing plant located in Indian Country near Wagner, South Dakota. Bullets allegedly discharged from firearms inside the plant crossed over the line onto land under State jurisdiction. On the basis of this, the State's attorney general assumed jurisdiction and directed the removal and arrest of persons in the pork plant. (p. 545).

Community Attitudes

Community attitudes toward Native Americans may very well underlie many of the problems Indians face in the criminal justice system. Law enforcement officers, court officials, defense and prosecuting attorneys, as well as jury panels are members of the community and are usually

TABLE 1

Some High Incident Crimes Committed In South Dakota, January–June 1975

Crime	Proportion of Native Americans Arrested
Assault	44%
Grand Larceny	20%
Murder and Manslaughter	50%
Robbery	35%
Driving While Intoxicated	18%
Traffic Violations	31%

Source: State of South Dakota, Division of Law Enforcement Assistance, *Criminal Justice in South Dakota: A Plan for Action*, (1976), p. 8.

selected to serve by the community. Doubtless many persons who serve in these official capacities are able to divorce themselves from prevailing feelings and attitudes which are detrimental to the objective performance of their duties. However, they are nonetheless subject to political and social pressures arising from the environment in which they participate.

A number of witnesses at the Advisory Committee's open meeting in Rapid City testified to the depth of tensions between whites and Native Americans in their communities. Joseph Dvorak, director of community development and organization for the South-Central Community Action Program in Lake Andes, characterized the prevailing attitude toward Native Americans in Charles Mix County as "one of friction...tension, and distrust of one another."(p. 32) A lifelong resident of the county, he testified that, although many city, county, and State officials have a good attitude, he was still continually shocked by insensitive attitudes toward Native Americans and inhuman treatment accorded them by certain individuals.

Dvorak recalled one incident several years ago in which he observed Indian people "packed into the ambulance like...a bunch of animals" following an accident. (p. 33) On another occasion, he said he was shocked to hear an off-duty law enforcement officer remark to a judge about a case involving Native Americans, "I expect you to get them and get them good."(p. 34) Dvorak also stated that it was his observation that attitudes of some teachers and school board members, in fact, encourage existing tensions between Native Americans and whites. (pp. 39–40)

Father Michael O'Reilly, director of St. Paul's Indian Mission in Charles Mix County, also testified that in his experience remarks and behavior by the white community indicate a great deal of deep-rooted prejudice against Native Americans. (pp. 83–84).

Similarly, many community leaders in Pennington County felt, in general, that strong, negative feelings toward Native Americans exist among the white community. Frank Gangone, director of the Rapid City Indian Service Council, testified that the council was developed specifically because community and governmental agencies do not cooperate in meeting the needs of Native Americans in the city, nor do they place Indians in positions of responsibility. (pp. 155–57) Sol Bird Mockicin, director of the Rapid City Human Relations Commission, stated that judging from the frequency and kinds of requests for services that his organization receives, there is a "terrific need in the non-Indian community of Rapid City to be educated to the kinds of people that Indian people represent," before they receive fair treatment. (pp. 179–80)

Don Barnett, former mayor of Rapid City, testified that prior to the second Wounded Knee incident in 1973,[15] most of the white people felt Indians were a problem. He said that although the attitude of many whites of the younger generation has softened, activities of some of the more militant Native American leaders since Wounded Knee have been detrimental to the image held by the general public of all Indian people.[16] Father Richard Pates, pastor of St. Isaac Jogues Church in Rapid City, testified that these negative at-

titudes carry over from the community into the law enforcement agencies:

> ...you really get the feeling from most of the people here that this is a white city, and pretty much the law enforcement here is to protect the white people...and one of the main things that they are here to...be protected against are Native American people....[W]hat we're working with here is a deep ingrained prejudice that all of us white people have...against Native American people....[W]e're not born with it, but [it's] certainly bred into us as we go through school, even through our churches, and somehow or other we get to the point where it becomes pretty much unconscious in the way we react. And I think...policemen of the city are victims of that same thing. (pp. 222–23)

Notes to Chapter 1

1. South Dakota House Bill 643.

2. U.S., Department of Commerce, Bureau of the Census, 1970 Census of the Population, *General Population Characteristics, South Dakota*, PC (1)–B43 (1971), table 17 (hereafter cited as *General Population Characteristics*).

3. State of South Dakota, Division of Human Rights, *Where We're At...Statistical Report on the State of Minorities and Women in South Dakota* (Aug. 20, 1973), prepared by Mary Ellen McEldowney (hereafter cited as *Where We're At*). This publication contains a comprehensive compilation of statistical data on South Dakota Native Americans in areas such as labor force, education, income, and occupations.

4. U.S., Department of Commerce, Bureau of the Census, 1970 Census of the Population: Supplementary Report, *Race of the Population by County*, PC (1)–104 (December 1975), table 1, p. 41.

5. Page numbers in parentheses cited here and hereafter in the text refer to statements made to the South Dakota Advisory Committee at its open meeting in Rapid City, South Dakota, on Dec. 6 and 7, 1976, as recorded in the official transcript of the meeting.

6. Rapid City Independent School District No. 1, Title IV Civil Rights Proposal, Rapid City, South Dakota, Office of Education Form 296, February 1976.

7. *General Population Characteristics*,table 34.

8. *Where We're At.*

9. *General Population Characteristics*, table 34.

10. *Where We're At*, p. 42.

11. Ibid. , p. 31.

12. The comments about jurisdiction are based primarily upon information provided by Roberta Ferron at the Advisory Committee's open meeting in Rapid City. (pp. 21–28) For a full discussion of this subject see the report of the American Indian Policy Review Commission's Task Force Four: Federal, State and Tribal Jurisdiction, *Report on Federal, State, and Tribal Jurisdiction*, U. S. Government Printing Office, Washington, 1976.

13. The Advisory Committee only studied criminal justice issues in off-reservation areas and not in "Indian Country." This term is used in 18 U. S. C. §1151 to define the geographical area where both the tribal and Federal authorities have criminal and civil jurisdiction. This includes trust land to which Indian title has not been extinguished, dependent Indian communities, and land within the exterior boundaries of an Indian reservation.

14. 18 U.S.C. §1153.

15. During the winter and spring of 1973, in order to dramatize their demands for a better life, Sioux people seized the Village of Wounded Knee on the Pine Ridge Reservation and held it by force of arms. This was the site of a massacre by the U. S Cavalry 83 years before during the Indian Wars.

16. RMRO Staff interview in Rapid City, Aug. 9, 1976.

Chapter 2

Native Americans and the Law Enforcement System

Law Enforcement Agencies

The law enforcement system in South Dakota is a network of Federal, county, and municipal agencies which sometimes work together but more often operate independently of each other. The South Dakota Division of Law Enforcement Assistance has described some of the ongoing problems of this system:

> Frequently, each small agency is so intent on its own interests, it fails to seek or give the close cooperation with the other agencies that is vital to law enforcement success....Many departments operate with conflicting or total lack of direction in attempting to control crime.[1]

> Police agencies are, to varying degrees, tradition bound: concepts of crime remain moralistic rather than truly professional in nature. This is particularly true in the rural community....One of the most serious problems facing law enforcement systems in South Dakota today is that it is not a system, but numerous systems operating independently of each other. This causes duplication of records, equipment, facilities, and a lack of uniform enforcement policies....Very little cooperation and coordination exists among the various agencies.[2]

The Federal Bureau of Investigation, the Bureau of Indian Affairs, and the tribal police, all of whom provide investigative and enforcement services in Indian Country, are excluded from this study. State law enforcement as well as county and municipal police agencies in Pennington and Charles Mix Counties are included. State agencies consist of the South Dakota Division of Criminal Investigation (DCI) and the South Dakota Highway Patrol.

The Division of Criminal Investigation of the State attorney general's office has jurisdiction throughout the State and has the same power and authority to enforce the law as county and municipal police officers. Agents from this division have, as a minimum requirement, a 4-year college degree. They are stationed at strategic locations throughout the State and assist local authorities in the investigation of major offenses, maintain a fingerprint identification section, and gather arrest statistics.[3]

Comparative statistics maintained by the Division of Criminal Investigation regarding arrests, type of offense, and case disposition for Native Americans and other persons were not supplied for this study, although they were requested by the Commission's Rocky Mountain Regional Office (RMRO).[4] A breakdown of staff makeup by ethnicity and sex was also requested. Attorney General Janklow denied Donald Licht, director of the Division of Criminal Investigation, permission to furnish information or appear and testify regarding the division's program at the Advisory Committee's open meeting.[5] Janklow stated that he "just didn't want to take the time to assign somebody to take the amount of time that would be necessary to...dig that information up." (pp. 449–50)

The South Dakota Highway Patrol has statewide jurisdiction and, according to Lt. Donald Ahl, has been authorized by the Bureau of Indian Affairs (BIA) to make arrests on all reservation areas in the State.[6] (p. 473) In addition to the main headquarters complex located in Pierre, the highway patrol operates out of six district headquarters. Charles Mix County is located in District III with headquarters in Mitchell, and Pennington County is in District VI with headquarters in Rapid City.

Information supplied by Lieutenant Ahl at the December open meeting showed that the highway patrol employed 177 sworn male officers (including three Native Americans). The Native Americans are assigned, one each, to Districts II, III, and IV. The patrol's clerical staff consisted of seven women, three of whom are Native Americans. Only two women had ever made application to become patrol officers; one passed the written examination but failed to follow through on the total employment process. During the reporting

period from July 1, 1974, to June 30, 1975, no applications were received from Native Americans for either sworn or unsworn positions.[7] The highway patrol recognizes an underutilization of minorities and women on its staff, but it has not perceived a need to solicit applications other than those provided by walk-in applicants. The agency's equal opportunity employment plan pledges, however, that in future hiring it will endeavor to employ persons in a "positive spirit of equal employment opportunity."[8]

The Pennington County Sheriff's Office, located in Rapid City, has jurisdiction throughout the county including small communities which do not have their own police force. The city of Wall pays for the services of three special deputies and Hill City for one. (p. 411) There is some overlapping of jurisdiction between the sheriff's office and the Rapid City Police Department that results in confused responsibilities. The two agencies do, however, make an effort to coordinate their efforts. (p. 412)

Twenty-three deputies are employed by the sheriff's office; one is Cuban American, two are women, and the rest are white males. No Native Americans with law enforcement duties are employed by the office. The few who have applied were rejected because they either failed to meet the State's requirement of a high school education or to pass the General Education Development test, or they failed to pass the "background check,"an apparently subjective personal assessment.[9] The Pennington County Sheriff's Office has no written affirmative action plan. Sheriff Melvin Larsen declined to furnish information to the Advisory Committee regarding his agency's budget, job descriptions, and training requirements as well as comparative data on arrest patterns of Native Americans and other persons. (p. 400)

The only municipal law enforcement agency in Pennington County is the Rapid City Police Department whose jurisdiction extends only to the city limits "except for unusual situations which may arise." One Native American, a male patrol officer, is presently employed by this agency whose staff includes a total of 72 police officers, supervisors, and administrators.[10] The stated goal of the department's equal employment opportunity program is "to achieve a fully integrated work force in all organizational units and in all levels of each occupation."[11] However, no specific goals or actions are mentioned that are aimed specifically at the recruitment of Native Americans or women, Indian or not.

Law enforcement agencies in Charles Mix County include the Lake Andes, Wagner, and Platte city police and the sheriff's office located in Lake Andes. Sheriff Ruben Huber and his two deputies have jurisdiction over the entire county except for those areas which are in Indian Country. Wendall Flying Hawk, one of the deputies, is a Native American. The sheriff and the other deputy are white males. The Lake Andes Police Department employs three white male officers, Wagner has four male officers including one Native American, and Platte has three white male officers.[12]

As a result of the Omnibus Crime Control and Safe Street Act of 1968,[13] the U.S. Department of Justice issued guidelines relating to the general equal employment opportunity responsibilities of agencies receiving Law Enforcement Assistance Administration (LEAA) funds.[14] The guidelines state that recipients of LEAA funds, including State and local police and criminal courts, which employ 50 people or more and have received at least $25,000 in funds since 1968, must implement an equal employment opportunity (EEO) program (affirmative action) for minorities and women if the population they serve has a minority representation of 3 percent or more. [§42.302(d)][15] The South Dakota Highway Patrol, the South Dakota Office of the Attorney General, and the Rapid City Police Department all qualify under these requirements.[16]

EEO programs must include job classification tables, past disciplinary actions taken against employees, applications, promotions, terminations accepted and acted upon, area labor force statistics, and a detailed analysis of programs classified by race, sex, and national origin. The program must be disseminated to the general public. [§42.304] Failure to comply with the guidelines would subject recipients to sanctions, including a termination of Federal funds received. [§42.308] All EEO program records must be available for review by the State planning agency or LEAA. The State planning agency is responsible for ascertaining that EEO programs have been implemented. [§42.305] It does this by asking each agency covered by EEO requirements to certify that it has an equal

opportunity program and "that they do not discriminate."[17] Affirmative action plans submitted by the Rapid City Police Department and the South Dakota Highway Patrol at the request of the Advisory Committee do not appear to meet LEAA guidelines because both plans lack specificity and fail to include all the required information. The office of the State attorney general did not submit its affirmative action plan to the Advisory Committee.

Law Enforcement Officers' Standards and Training

The South Dakota Law Enforcement Officers' Standards and Training Commission, established in October 1971, has created minimum standards for employment as a law enforcement officer.[18] In addition to required standards for employment, such as a record free of any crime punishable by imprisonment in a Federal or State penitentiary and the possession of a high school diploma or its equivalent, individual law enforcement agencies impose discretionary subjective conditions on employment. For example, an applicant must be of good moral character "as determined...by the employing agency to determine general suitability for law enforcement service, appearance, personality, temperament [and], ability to communicate."[19]

Such subjective criteria allow for a great deal of discretion in specifying qualifications for police officers in South Dakota and permit the elimination of applicants who might otherwise be qualified. The dearth of Indian police officers in South Dakota may be, in part, attributable to the application of subjective standards. As noted earlier, Native Americans are nonexistent on the law enforcement staff of the Pennington County's sheriff's office. Sheriff Larsen stated he was unable to find a "decent Indian" to hire.[20]

One of the most pressing concerns of the police section of South Dakota's criminal justice system is the upgrading of law enforcement personnel. Many of the police officers hired at the county and local levels have lacked sufficient qualifications for employment. Although considerable progress has been made in this area since the establishment of the South Dakota Law Enforcement Officers' Standards and Training Commission and the construction in 1973 of a State Criminal Justice Training Center operated by the Division of Criminal Investigation, increased basic and regular inservice training is essential.[21] Training programs are available to all law enforcement agencies in the State. However, many smaller departments do not participate because they lack personnel to perform law enforcement duties while their officers are engaged in training.[22]

The Law Enforcement Officers' Standards and Training Commission requires all police officers in the State to attend a 5 week, 200 hour, DCI training program, including 10 hours in police community relations, within 1 year of employment.[23] Most police officials interviewed did not believe that this was enough time to provide adequate training for law enforcement officers. At the Advisory Committee's hearing, South Dakota's Attorney General Janklow recommended that the training program be doubled to 10 weeks (including year-round inservice training). (p. 533)

The South Dakota Highway Patrol provides a considerably greater amount of training for its recruits (13 weeks of classroom work and 13 weeks of on-the-job experience). Eight hours of classroom time are devoted to "The South Dakota Indian," a course taught by Trooper Elmer Drapeau, a Native American. Capt. George I. Samis, supervisor of the patrol's office of special services, believes this course has done much to improve the relationship between the patrol and South Dakota's Native American population.[24] Lieutenant Ahl felt, however, that even the additional amount of training received by the South Dakota Highway Patrol was insufficient to meet the needs of a professional police Officer. (p. 475)

Despite the training that officers receive in police community relations during the Law Enforcement Officers' Standards and Training Commission's programs, the Advisory Committee's investigation found that the communication between the police and Native Americans was, at times, minimal. Don Barnett, former mayor of Rapid City, termed police-Indian communication a serious problem on both sides.[25] A general feeling among many of those who provided information to the Advisory Committee was that Indian people often do not understand their rights. In addition, some persons who come from the reservation suffer from a language barrier.[26] Cultural factors are also involved in the Native Americans inability to communicate with the police and vice-versa. Frederick P. Whiteface, planner for Rapid City, wrote:

> The Indian youngsters' first impressions of the non-Indian world are threatening and hostile. The impression carries and even though he may appear all right and friendly the white man is classified as alien and for most Indians it will stay that way for the rest of their lives.[27]

Governor Kneip also addressed the need for intercultural understanding:

> All South Dakotans, Indians and non-Indians alike, must also recognize that there are unique and distinct differences between each other's cultures. For too long we have lived with the idea that our Nation and our State is a "melting pot." This idea is in part a myth. Each person is the embodiment of one's roots and cultural heritage and it is wrong to categorize people and force them to accept a certain mode of living.[28]

Cognizant of the problem, Rapid City Mayor LaCroix established an Indian-white relations committee in July 1976, the sole purpose of which is to establish better communications between these two groups. (p. 10) Representatives from the Indian community, law enforcement agencies, the schools, and the churches have been appointed to the committee. At the time of the Advisory Committee's informal hearing, it was still too early to assess the effectiveness of the committee.

In South Dakota this type of committee appears to be unique, since its function is to serve as liaison between the Indian community and law enforcement agencies. Sensitivity training designed to enable police officers to relate more effectively with Indian people are all too few. The employment of Native American police officers able to breech the cultural gap is rare. Lack of Indian staff carries over into South Dakota's correctional programs. The State training school, the youth services program, the board of pardons and paroles, and the probation and parole staff have no Indian personnel and the State penitentiary has few.[29]

Arrest Procedures and the Use of Force

> As a law enforcement officer, my fundamental duty is to...respect the Constitutional rights of all to liberty, equality and justice....I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence....[30]

This statement from the South Dakota Law Enforcement Code of Ethics is reinforced by the law which explicitly defines the conditions and procedures under which an arrest may be made.[31] Despite these regulations, during the present study the South Dakota Advisory Committee and staff of the U.S. Commission on Civil Rights received many complaints of improper treatment of Native Americans by law enforcement officers. These included allegations of search and arrest without warrants or without cause, harassment and brutal treatment, selective enforcement, the imposition of improper charges, and failure to communicate the right to silence and to counsel.

During the Advisory Committee's investigation, certain of these allegations were denied by police officials. The failure of many law enforcement agencies to provide the Advisory Committee with requested information made it difficult to determine how extensive the abuse of police power actually is in South Dakota. As previously stated, available records show the number of Native Americans arrested far exceeds their proportion in the population.

Most representatives of Native American organizations and of community agencies that deal extensively with the concerns of Indian people made it clear that they feel there is widespread evidence of improper action by police officers in many of their relationships with Native Americans.[32]

Randal Connelly, director of the Pennington County Public Defender's Office, testified that his office receives a substantial number of complaints of police brutality and harassment although these complaints are not limited to Native Americans. (p. 352) Ron Brodowicz of the same office stated that certain police officers seem to consistently make bad arrests or are the targets of complaints regarding the use of unnecessary force. Such charges, however, are difficult to prove and seldom pursued.[33] Father Richard Pates, a community leader who deals extensively with Native American problems, stated that in his experience, the problem of police harassment is particularly acute with Indian juveniles. He feels that rough treatment and physical abuse by certain police officers is a primary cause for much of the anger and frustration directed by Indian young people towards police. (pp. 226–27)

During the Advisory Committee's investigation, several witnesses pointed out an incident involving city police officers and a deputy sheriff on July 19, 1976, at Viola Center's home in Rapid City, as an example of the flagrant abuse of police power against Native American persons. Gerald Center, Lester Center, Harvey Pretty Bird, Larry Adams, Rachel Center, and her two young children were at the Center home when Dick Davis, a Pennington County deputy sheriff, and two officers from the Rapid City Police Department arrived to arrest Gerald Center, who was allegedly absent without leave from the U.S. Air Force. When he refused to come out of the house upon request, it is alleged that the officers sprayed mace in the windows, broke down the front door, although the back door was unlocked, and handcuffed the four men in the house. The men were thrown onto the pavement in the alley outside and beaten with billy clubs. (pp. 305–08) Larry Adams testified that one of the police officers stood on his back after he was handcuffed and severely injured his wrist with a billy club. (p. 314) Viola Center stated that her son, Gerald, was hit in the eye and the eye had swollen shut when she saw him the next day. (p. 306) Gerald Center later testified that he was in bed when the police cars pulled up to his home and that Officer Davis came over to the window to talk with him. According to Center:

> I said, "Give me a chance to put my shoes on and get dressed. I'll be right out." I think he borrowed one of those mace [cans] from those police officers. [H]e shot that mace through the widow....I couldn't see nothing, couldn't go anywhere, and they busted in the door and they came in. They had me by the back of my pants and [the] back of the neck and threw me out on the ground and those police officers and that Dick Davis worked me over while they was handcuffing me. (pp 628–29) Then after he done that...he unhandcuffed me and went inside the house and got a washrag and wiped my eyes [so I could see] and walked me over to the jail. (p. 627)

No charges were lodged against Lester Center, Harvey Pretty Bird, or Larry Adams who were returned to the Center's home by Deputy Sheriff Dick Davis. Viola Center was informed that the men were released because they had "volunteered" to fix her door which the police had broken down. (p. 306) Center's door was never repaired by either the police agencies of the city, although she repeatedly requested that they do so.

When questioned about this particular incident, Sheriff Larsen and Stanley Zakinski, deputy chief of the Rapid City police, agreed that the best police procedures had not been used. (pp. 405–07) Dick Davis was subsequently transferred to Hill city. However, Sheriff Larsen stated that this was not done for disciplinary purposes. (p. 406) The two Rapid City police officers received oral reprimands.

In another incident, Theresa Red Cloud testified that police officers came to her Rapid City apartment four separate times during October 28 and 29, 1976, and on two of these occasions entered her dwelling with neither her permission nor a search warrant. At the Advisory Committee's open meeting, she related the following events:

> [A]bout 7:30 [p.m. on October 28, 1976]...I heard a knock at the door and before I could answer it this police officer just walks in and he had a little radio in his hand, and he says, "Where are the boys?" And so I said, "Well, I don't know what you're talking about...." And he says, "Well, we've got a tip that there's a fugitive that you have in this place," and so I said, "No, there's nobody here."
>
> And...without saying a word he...radio[ed] in and he went to the back bedroom and then he was going to go in the bathroom, but there was a...lock and it was closed and so he...hesitated....And...he went...out the door and...brought two more officers beside him. They came in with the knock, and they just walked in again and they start looking around....I told them there was nobody [there] and they could look all they wanted to so they looked....(pp. 422-23)
>
> [A]bout 8:00 [a.m. October 29, 1976,] I heard this loud bang...so I went to open the door and...there was two [police] officers standing there again. That's when I got upset and I got mad...I said, "Once before I told you there's nobody here, and you ain't coming in because...I'm standing here with just my nightgown on...." (p. 424)
>
> [T]hat afternoon...while I was gone, the two officers came to the place again [her sister was there at the time]....The two officers came and then they had a search warrant, but...all the rest of the times that they came they never did show me any papers of any kind....[A]nd I guess they came inside and

looked around again and there was nobody there. (pp. 424–25)

A police report of the incident filed by Rapid City police officers Rob Moore, Tom Perry, and Mike Jacobs stated that they went to Theresa Red Cloud's apartment three times in an attempt to locate Floyd Running Hawk, a fugitive, but that they entered the apartment only once at the invitation of the young lady who answered the door. (pp. 588–89) Deputy Chief Zakinski testified that at no time did they actually have a search warrant. (p. 591) Red Cloud stated that she did not file a complaint with the police about this incident. Neither had many of the other Indian witnesses, who testified at the open meeting, filed compliants regarding alleged police improprieties. When asked if Native Americans in Rapid City might have reason to be fearful of making complaints, Zakinski replied:

> Some of the Indian people that I've talked to prefer that we don't go any further; they just wanted to make the complaint to me and wanted to let it drop and I asked why. Well, they were afraid that the people they signed the complaint against would either beat them up or catch their kid later at school. I guess I would have to...say yes, maybe there is some fear there, yes. (p. 389)

The incident which occasioned the most testimony and generated the most controversy at the open meeting involved Lois Tiger, a Native American from Wagner, and three law enforcement agencies in Charles Mix County. In an interview with RMRO staff on April 15, 1976, and in testimony at the Advisory Committee's open hearing, Tiger alleged that she, along with her three daughters, a niece, one other woman, and two men, all Native Americans, were returning home from Marty, South Dakota, in two cars during the early hours of Sunday morning, March 14, 1976. They were stopped on a county road by 20 police officers and other armed men in vehicles. These included members of the Wagner city police, the South Dakota Highway Patrol, and a civil liberties group. M–16 rifles were allegedly pointed at their heads, and they were ordered to get out of the cars and to open the trunk. When the men were asked if they had a search warrant, they replied that one was not necessary. Tiger and her companions were then ordered back into their cars and told to proceed to Wagner, but they were stopped again when Tiger's car was rammed by a pickup driven by Virgil Drapeaux, chief of the Wagner city police. This resulted in an estimated $800 worth of damage to Tiger's car for which she has never been compensated. (p. 36)

They were again ordered out of their cars and then pushed into police cars, five into a single back seat. In the process, Tiger was bruised on the shoulder by a blow from a rifle. Her niece's knee was injured when the door was slammed. The victims were taken to the Wagner police station where Charles Mix County Sheriff Ruben Huber joined the other police officers. Again loaded into police cars, Tiger and her companions were taken to the Lake Andes Law Enforcement Center and were incarcerated. They were not allowed to have visitors and were denied permission to make phone calls until they appeared in court on Tuesday, March 16, 2 days later. At that time they were told they were charged with conspiracy to kidnap. (p. 50)

John Keller, who eventually served as Tiger's legal counsel, expressed his indignation at what had happened:

> [T]hey were thrown [into jail]...early Sunday. They were not allowed visitors, they couldn't call me on the phone until after they had gone to court on Tuesday. And yet Charles Mix County conducted an open house where the public at large...were invited to wander through the halls [of the Law Enforcement Center] and stare through the windows at the people being held in the jail. I don't care if the people in there are Indian or non-Indian, that's just not a very decent way to treat human beings. (p. 108) [It took] nearly 3 weeks of their time for [a] ridiculous charge, alleging that they had conspired to kidnap someone whom I'm sure Lois had never heard of, never met, and it was dismissed rather promptly when we got the matter on for hearing. (p.110)

The bail was set at $15,000 each, with the exception of the two juveniles, and the adults were incarcerated for 20 days. The two juveniles were held with them until March 15. Three of the women, who were on medication, were not permitted their medicine for a week after they were jailed. Charges were finally dropped on March 31, and they were all released. (pp. 41–61)

Representatives of the law enforcement agencies involved in this series of events and Ray DeGeest, the Charles Mix County State's attorney, were invited to respond to allegations made by Lois Tiger. Police Chief Drapeaux declined to make any response. Dennis Jensen, a State patrol officer stationed in the county, testified that he was not at the scene of arrest and did not become involved until those arrested were being brought from Wagner to the county jail at Lake Andes. (p. 517) Sheriff Huber testified that, other than the Wagner city police, he did not know who was involved in the detention of Tiger and her companions. (p. 526) The sheriff denied that he or his men had refused medicine to any of those who had been imprisoned. (pp. 572–73) The State's attorney, however, testified that he had ordered one of the deputies to transport the persons needing medicine to the Public Health Hospital in Wagner. This order, he said, was disobeyed and the officer responsible is no longer a deputy. (p. 578) When questioned about this, Sheriff Huber testified that he must have forgotten and refused to comment further. (p. 579)

DeGeest subsequently testified that the occupants in Lois Tiger's car were charged with conspiracy to kidnap because two of them were allegedly with some 30 persons in a house from which a Mr. Tim Otte was abducted. (pp. 574–75) Otte refused to testify in a *habeas corpus* hearing and the charges were dropped. (p. 574) In a recent letter DeGeest explained that Lois Tiger's car was stopped because it was said to have contained James Weddell, an escapee from the South Dakota State Penitentiary.[34]

The Charles Mix County Civil Defense Unit

During the Advisory Committee's open meeting in Rapid City, considerable testimony, some of it conflicting, was given about a quasi-law enforcement organization operating in Charles Mix County and possibly in other areas of the State.

In her testimony, Lois Tiger referred to members of a "civil defense" group, armed with M–16 rifles, who were among the men who stopped her car. When questioned as to who the members of this group were, she stated that they are a group which "go around harassing the Indian people, chasing their cars through town...and arresting them and all that." (p. 52)

John Keller, Yankton Sioux tribal attorney, stated that the Charles Mix County Civil Defense Unit was a separate entity from the organization called Civil Liberties for South Dakotans though they have overlapping membership. (p. 103) He described the civil defense unit in the following language:

> These are the local non-Indian, all types, farmers, ranchers, filling station people, an optometrist...who are handed M–16 machine guns and no training to go along with it, are told to follow their non-Indian instincts....
>
> These are the people that Lois Tiger and her teenage daughters ran into and if you think of anything more frightening than a nervous, racist, untrained, pseudo-policeman armed with a deadly machine gun....I can't think of anything more frightening. (pp. 104–05)

Keller testified that they apparently were an official, deputized arm of the sheriff's office and that their machine guns being loaded into the jail had been seen by tribal members.[35] (p. 105) Sheriff Huber was asked the question, "Does *your* civil defense organization have M–16 rifles?" [emphasis added] He replied, "Not to my knowledge." (p. 528)

Keller stated that both members of the highway patrol and the Division of Criminal Investigation routinely carry M–16 automatic rifles and that some sheriff offices have them. These, he said, are readily procured as military surplus through a national network of "gun swappers." (pp. 106–07)

State's Attorney DeGeest confirmed that the civil defense unit and the South Dakota Citizens for Civil Liberties are separate organizations with overlapping membership. The civil defense unit, he said, is a statewide organization "that goes out in national disasters...aids in case of emergencies, aids law enforcement officials." He denied that they had been involved in any way in law enforcement in Charles Mix County. (pp. 490–91) DeGeest later stated that the civil defense unit had on several occasions been called to assist law enforcement officers in Charles Mix County.[36]

The civil defense unit in Sioux Falls, Minnehaha County, recently assisted in a search for three escapees from the State penitentiary and submitted a bill to the attorney general for $520 to cover the cost of their expenses.[37]

Harassment and Selective Enforcement

The Advisory Committee's investigation revealed that there is widespread feeling among Native Americans in the two counties studied that Indian people are frequently the objects of harassment by law enforcement officials. In many instances Native Americans are arrested while white persons would not have been apprehended.

Although Native Americans are estimated to comprise a maximum of 10 to 11 percent of Rapid City's population, Judge Charles E. Carrell, the city's magistrate who handles all misdemeanors and preliminary hearings for felonies, estimated that 80 percent of the cases which come before him involve Indian people. Statistics compiled from Rapid City Police Department records for the year 1975 show that, out of a total of 2,255 arrests, 1,249 or 40 percent were of Native Americans.[38] During the period from January 1 to October 16, 1976, a total of 1,425 arrests, excluding traffic violations, were made by the police department. Of these 588 or 41 percent were Native Americans. Table 2 indicates that a very high proportion of persons arrested by Rapid City police for the 16 most frequent alleged offenses are Native Americans.

Although the 1970 census showed that 4.2 percent of Pennington County's population were Native Americans, Judges Marshall Young and Joseph H. Bottum, of the seventh judicial circuit court, stated that the majority of criminal cases they hear involve Native Americans.[39] Records from the Pennington County Public Defender's Office show that during the period from October 1, 1975, to September 30, 1976, 262 or 47 percent of the cases they handled, including both misdemeanors and felonies, involved Native Americans.[40]

A total of 874 arrests not including those for traffic offenses, were made by the Pennington County Sheriff's Office in 1975. (p. 402) A breakdown of this figure by type of offense for Native Americans and all other persons is not available. Although this information, along with information regarding the agency's budget and training requirements for officers, was requested from Sheriff Melvin Larsen, he responded that he did not have the staff to supply it. (p. 400)

In Charles Mix County, also, precise data on arrest statistics for Native Americans compared to those for non-Indians were not made available to the Advisory Committee. Col. Dennis Eisnach, superintendent of the South Dakota Highway Patrol, replied to the Advisory Committee's request for information that the patrol does not maintain comparative studies of arrests and types of offenses for Native Americans and other persons.[41] Michael L. Sargent, chief of police in Lake Andes, reported that his agency made 275 arrests in 1975. He failed to specify how many of these were Native American.[42] The Charles Mix County Sheriff's Office, the Platte Police Department, and the Wagner City Police Department likewise failed to respond to the Advisory Committee's repeated requests for information.

The 1970 census indicated Charles Mix County was 9.3 percent Native American, yet Officer Vernon Ebright of the Lake Andes city police estimated that 90 percent of the arrests made by their agency were of Native Americans. Frank Jerman, lay magistrate who handles all low-grade misdemeanor charges in the county, stated that 70 to 80 percent of the cases he hears involve Native American defendants.[43]

The figures from law enforcement agencies, the public defender's office, and the courts demonstrate that in both Charles Mix and Pennington Counties the number of Native Americans arrested is from 4 to 10 times their proportion in the population. A large number of Native Americans interviewed during the Advisory Committee's investigation said that the explanation was due, in part, to unnecessary or selective arrests of Native Americans.

Jeannie White, a Native American resident of Rapid City and married to a white man, was involved in an incident which she believes typifies the differential treatment Indian people frequently receive at the hands of law enforcement officers. On October 6, 1976, White and her husband, who own a construction company, entertained a white executive from an architectural firm. Following dinner, they walked out of a restaurant bar, each carrying a glass containing the remains of an alcoholic drink. A Rapid City police officer, ignoring the two white men, immediately arrested Jeannie White and charged her with possessing an open container of alcohol. In her testimony, she

TABLE 2

Rapid City Police Department's Most Frequent Causes For Arrests January 1–October 16, 1976

Offense	Native Americans	Other	Total
1. Disorderly Conduct	114	60	174
2. Driving While Under the Influence of Alcohol	81	304	385
3. Shoplifting	75	79	154
4. Assault & Battery (Simple)	46	36	82
5. Broken Seal	28	49	77
6. Felonious Assaults	27	13	40
7. Burglary	24	29	53
8. Consuming in Public Place	22	12	34
9. Damage to Public/Private Property	21	4	25
10. Grand Larceny	19	10	29
11. Robbery (including strong arm and armed)	15	11	26
12. Disturbing the Peace	12	4	16
13. Concealed Weapon	10	13	23
14. Possession Alcoholic Beverage by Minor	10	25	35
15. Resisting Arrest	9	22	31
16. Obstructing	9	14	23
Total	522	685	1,207
Percentage	(43.2)	(56.8)	(100)

Source: Information provided by Rae Neal, chief, and Timothy F. Tobin, legal advisor of the Rapid City Police Department, Oct. 16, 1976.

alleged that she was rudely jerked about and shoved into a police car and that her arm was badly bruised in the process. When her husband protested, he was warned that if he interfered, he would be charged with obstructing a police officer. The officer was informed that White was a prominent citizen in the community and was a member of the District Crime Commission, the Governor's Task Force on Indian-State Relations, and the Rapid City Human Relations Commission. The police officer then tried to persuade her to get out of the police car and go home. Instead she insisted upon being taken to the police station. (pp. 337-46) In her testimony Jeannie White stated:

> [T]he only reason that happened was because I was Indian. I wasn't loud or anything....[M]y husband had a glass and so did the other gentleman....What I think is they thought these two white men just picked up this squaw and the cops were just going to rough me up a little bit. (p. 342)

When questioned about this incident, the deputy chief of police replied that he had subsequently been contacted by White and had initiated an investigation but he could not comment because the case had been referred to the State's attorney general. (p. 386) In later correspondence, chief of police Rae Neal stated that Jeannie White was treated differently than the men by the police officer because she refused to give up her glass, and the men did not.[44]

Several persons interviewed during the Advisory Committee's investigation or who testified at the open meeting complained of harassment by police. The most popular form of alleged harassment was unauthorized and unwarranted search of automobiles driven by Native Americans. A common allegation in Rapid City was that police waited outside of bars frequented by Native Americans and stopped their vehicles to inspect the occupants and contents of the car, acts not routinely done to white residents. Deputy Chief Zakinski stated that he had no knowledge of any special surveillance of Native Americans in Rapid City. (p. 391)

David Ressl, a Native American and chairman of WICONI, a family planning organization, testified that harassment by police is a serious problem for Native American people in the Rapid City area. He described a roadblock conducted by State patrol officers on December 3, 1976, which he alleged was primarily for the purpose of harassing Native Americans. His own car was stopped on Haines Avenue, leading to an Indian community at Lakota Homes. He was asked for his car's registration and for two pieces of identification. He observed that another car containing four Indian people was stopped. The occupants were required to stand in the cold for 15 to 20 minutes before being released. (p. 212) Capt. Jack Kinney of the State patrol responded to the charges by claiming that the check was no more than a routine operation with no effort to select Native American vehicles. A report by the sergeant in charge of the operation indicated that approximately 200 vehicles were checked which resulted in 2 arrests and 27 warning citations issued. No indication was given of the ethnicity of the persons stopped or cited.[45]

The American Indian Movement and Police Officers

The Advisory Committee's inquiry revealed that many persons responded negatively to the militant image acquired by the American Indian Movement (AIM) and make AIM members the objects of special attention and harassment. Donald Holman pointed to the negative treatment accorded members of AIM as one of his reasons for submitting his resignation and leaving the South Dakota Criminal Justice Commission. He stated:

> I have become increasingly aware of the fact that Native Americans who hold traditional views and are political activists are singled out for special attention by the criminal justice system in South Dakota. Members of the American Indian Movement, in particular, are singled out for harassment. Every law enforcement agency in the [S]tate, including the highway patrol, BIA police, FBI, DCI, and seemingly all local police authorities apparently agree on one thing, that the American Indian Movement is innately evil and that they should do everything in their power to suppress the Native peoples who adhere to the goals of that organization.[46]

The United State Senate Internal Security Subcommittee, in a report based entirely upon the testimony of one person, Douglas Durham a paid FBI informant, labelled AIM a subversive organization:

> [AIM] is a frankly revolutionary organization which is committed to violence, calls for the arming of American Indians, has cached explosives and illegally purchased arms, plans kidnappings, and whose opponents have been eliminated in the manner of the Mafia.[47]

AIM leaders, along with other Native Americans, were vociferous in refuting allegations that their organization is committed to violence and asserted that it is a spiritual movement attempting to motivate Native Americans to stand up for their rights. The organization's activities include administering federally-funded educational programs endorsed by the National Indian Educational Association.[48]

Madonna Gilbert, director of the Rapid City Alternative Education Program for Native Americans, commonly known as the AIM Survival School, related several incidents which she felt illustrated harassment of AIM by police officers. She said that in the winter of 1975 she was driving two Native American men to Lakota Homes when police officers from the Rapid City Police Department, the highway patrol, and the sheriff's office stopped her car on Haines Avenue. The automobile was surrounded by policemen with guns drawn and the occupants were ordered out of the car. After searching the car, the policemen released them with no explanation. She also stated that in October or November of 1975, Rapid City police broke into AIM heardquarters, held the occupants at gun point, and searched the building without a warrant. A complaint was not filed, she said, because past experience had shown that no action would be taken by the State's attorney.[49] Jack T. Klauck, Pennington County State's attorney, stated that there did not appear to be any record of either incident.[50]

Another focus of discontent and of allegations of police harassment was the widely publicized "Pork Plant Incident," which began in March 1975 near Wagner. The plant on the Yankton Sioux Reservation was initially occupied for 3 days by an AIM-affiliated wing of the Yankton Sioux Tribe, the Eagle Warrior Society, in protest against working conditions and pay and contract disagreements with the manager. This occupation ended voluntarily after an agreement was reached regarding changes in the plant's operation. In May the plant was taken over for a second time by a group of local Native American youths who were not actually members of AIM, but in the minds of the public were identified with that organization because of the initial disturbance at the plant.[51]

Marshal law was declared and the town was cordoned off by State police and BIA officers, along with local police and deputized farmers and merchants.[52] Although the pork plant was clearly on Indian land, Janklow, the State attorney general, took personal charge of the operation on the grounds that bullets fired from land under tribal jurisdiction ended up on land under State jurisdiction. (p. 545)

The young occupants of the second plant takeover sent word that they wished to talk about their situation with Steven Cournoyer, the father of one of the boys inside the plant, and with Father O'Reilly, pastor of St. Paul's Indian Mission. Both men are recognized leaders of the Native American community in the area. Although both men were promised that they would be allowed to negotiate with the occupants, they were never permitted to do so. A tear gas attack was launched by the State police on the plant, and those involved in the takeover were arrested.[53]

The attorney general's action in this incident increased the conviction of many Native Americans that he was conducting a personal vendetta against members of AIM. When questioned about his action at the Advisory Committee's open meeting, he denied that this was so. (p. 554) However, in an interview with a reporter from the *Rapid City Journal*, he gave this account of a conversation with John Gridley, a Sioux Falls attorney, prior to his election as attorney general:

> We were talking about the movement, AIM leadership. I told him [Gridley]...that in the event that I was Attorney General or in a position of authority and they came around with their guns and their arms and either threatened people or used them on people, that I would see to it that they were shot.[54]

A few days later local citizens broke into the Lake Andes county jail and released five of the seven Native American youths who had been incarcerated. Following the escape, Indian people in the area were terrorized by the search for the escapees. At the open meeting, Father O'Reilly testified:

> [W]e got a lot of harassment...[T]hey had farmers... probably they were civil defense people...walking through the fields with guns looking for the kids that had escaped and driving through the fields with pickups and so forth. (p. 90)
>
> ...I had some young Indian people that were working there at the mission and had loaned them our car to go down to the beach and go swimming, and on the way back from the beach they were surrounded by highway patrolmen and had...guns stuck through the window in their faces [and] their cars searched....[A]ny Indian...driving around... they felt had to have the guys there that escaped from jail so they stopped every Indian car. (p. 90)

On one occasion shots were fired at some unidentified boys across a field.[55] Steve Cournoyer discussed his reaction and those of his Indian neighbors during this period:

> [A] lot of the people in the community [felt] free to come to my house at any time of the day or night and talk to me about these kinds of harassing situations that they go through with officers of the law. (p. 66) [They were] afraid for their own personal safety [because law enforcement people] were very belligerent, very belittling of the Indian people in the community, all Indian people, not just a certain few. (p. 65) [T]he feelings of discrimination and all these kinds of things that the bulk of my people have experienced...really never hit home until I became very personally and emotionally involved for [the past] year and a half. (p. 62)

During the Advisory Committee's investigation, a number of persons also complained that Indian people frequently were not provided with the same quality of service that white persons received from law enforcement agencies. Roderick Rouse, a Native American resident of Marty, was involved in an incident in which he alleged that he was not accorded the same protection the State police or the State's attorney would have given to a white person. Rouse stated that on August 8, 1976, he was driving his mother's car when it was struck and severely damaged by a car driven by a white man. With the help of a friend, he obtained the license number of the second vehicle and reported it to the police dispatcher. Duane Reuland of the South Dakota police visited the scene of the accident but told Rouse that he could do nothing.[56] Rosemary Rouse, who owned the car, filed a complaint with Raymond DeGeest, State's attorney for Charles Mix County, but at the time of the Advisory Committee's open meeting no action had been taken.[57]

When questioned about his lack of response to this complaint, DeGeest replied that the owner of the vehicle had been traced through the license number, but he had proceeded no further in the prosecution of the case. He denied that complaints filed with his office by Indians are treated any differently from those brought by non-Indians. He admitted, however, that, in this case, lack of action was probably due to "neglect on my part." (pp. 489, 498) DeGeest later stated he had fulfilled his responsibility by forwarding the complaint to law enforcement officials.[58] Father O'Reilly, pastor of the Rouses' church, said, "We feel pretty strongly if that had been an Indian who backed into a white person something would have been done in a hurry." (p. 92)

Residents of Lakota Homes, a primarily Native American, low-cost housing community just outside of Rapid City, also alleged that response to their requests for police services from the Pennington County Sheriff's Office are either much delayed or not forthcoming at all. Frank Gangone, chairman of the Lakota Homes board of directors, testified that law enforcement in that community was the butt of many jokes. One of the jokes was that the sheriff would be seen around the community on Sunday mornings but never on Friday or Saturday nights. (p. 169)

The Handling of Rape Cases

Allegations that police treat Native American rape victims with indifference were made during the Advisory Committee's investigation by Hazel Bonner, a volunteer counselor for an organization entitled Citizens Against Rape. Bonner testified that in the past 2 years she has counseled 22 rape victims, 13 were Native Americans and 9 were white. While six of the white victims reported the crime, only two of the Native American women did so. (p. 192) She stated that one reason Indian women are more hesitant to report rape than white women is that they are afraid to talk to white male police officers, especially when the victims do not understand legal ramifications. Bonner was not familiar with a single Native American rape case in which an arrest had been made. (pp.

193–94) Jack Klauck, State's attorney for Pennington County, stated that during his tenure charges had been filed against two Native American men for rape of Native American women. Both had been acquitted. (p. 446)

In November 1974 Citizens Against Rape held three 2-hour seminars for Rapid City police to discuss problems women face in rape situations. A survey taken of the attitudes of police officers on the Rapid City police force at that time showed the following results:

1. Two police officers responding didn't feel it was possible for a woman to be raped.
2. Every police officer reponding believed that women in some way caused the rape.
3. Every police officer responding to the questionnaire believed that at least 45 percent of rapes reported were false reports [though nationwide] statistics show that 15–18 percent at most are actually false reports. (p. 198)

As a result of the seminars, Citizens Against Rape offered to assist the police in supporting and guiding minority rape victims through the criminal process.[59] Police Chief Rae Neal refused this offer stating that the department could adequately fulfill its functions without assistance from the organization.[60] (See appendix A)

Law Enforcement and Alcohol Problems

In 1974 South Dakota decriminalized public intoxication making it illegal to arrest persons on that charge. Instead, police officers were given the alternatives of taking intoxicated persons to an approved treatment center, to their home, or placing them in protective custody for a period not to exceed 48 hours.[61]

Randal Connelly, director of the Pennington County Public Defender's Office, testified that it was his belief that police use other statutes in lieu of the public intoxication ordinance to arrest drunken individuals:

> I...did get the impression that...if an individual was drunk and on the street and was possibly creating some minor disturbance or had contact with a police officer and used any foul language and that sort of thing, that that conduct gave rise to a disorderly conduct charge...[W]hereas before it likely would have resulted in a public intoxication charge. (p. 351)

Available statistics tend to confirm this impression. The single most frequent cause for arrests made by the Rapid City Police Department during the first 9 months of 1976 was disorderly conduct. A total of 174 persons were arrested under this charge, and of those, 114 or 66 percent were Native Americans. Chief Rae Neal denied that it was the policy of his department to use other statutes to make public intoxication arrests. He stated that the department had demonstrated a concern for alcoholics by starting a Care Center in 1973, 1 year before the South Dakota Public Intoxication Law was terminated.[62] Unnecessary arrests of publicly intoxicated Native Americans or other persons on charges of disorderly conduct would be violative of the new South Dakota law.[63]

Patty Watts, then director of West River Alcoholism Services, stated that generally the Rapid City police had been cooperative in transporting clients to their treatment center and in helping to "talk down" unruly individuals. Since the center opened in 1975, 3,208 clients, of whom 64.5 percent were Indian, have been admitted for treatment. The Rapid City Police Department transported 2,189 persons while 39 were brought by the Pennington County Sheriff's Office. (pp. 318–19)

Law enforcement officers and court officials contacted during the course of the Advisory Committee's investigation were unanimous in their contention that alcohol was a much more significant factor in crimes attributed to Native Americans than it was for those attributed to white persons. Vernon Ebright, a Lake Andes police officer, stated that 90 percent of the Indian persons arrested in that city were intoxicated at the time of the alleged offense.[64] Frank Jerman, lay magistrate in Lake Andes, said that a large proportion of the Indians who appeared before him in court were intoxicated at the time of arrest and did not know what they were accused of until the charges were read to them.[65] Ray DeGeest, Charles Mix County State's attorney, stated that 99 percent of cases brought to him involving Native Americans were alcohol related.[66]

Charles Carrell, lay magistrate for the seventh judicial circuit in Rapid City, testified that the most common offenses for which Native Americans are charged are low misdemeanors—primarily assault, assault and bat-

tery, and disorderly conduct—and that 90 percent of these are alcohol related. (p. 452) Judge Joseph Bottum, also of the seventh judicial circuit, said that burglary to obtain liquor was a much more frequent offense for Native Americans than for white persons.[67]

Over 40 percent of the arrests made in Pennington County and over 70 percent of those made in Charles Mix County are Native Americans. In both counties alcohol was a factor in over 90 percent of Indian arrests. Ample documentation shows that excessive use of alcohol is involved in a majority of Native American arrests nationwide.[68] Statistics from one study illustrated that the number of Indian arrests for alcohol-related crimes is 12 times greater than the national average.[69]

In South Dakota alcohol is also a significant factor in crimes committed by whites. For example, as shown in table 2, during the period from January 1 to October 16, 1976, arrests by Rapid City police for the 16 most frequently committed offenses included 522 Native Americans and 685 non-Indians. Thirty-seven percent of the 522 Native Americans or 141 were arrested for four alcohol-related crimes: driving while intoxicated, broken seal, consuming in a public place, and possession of an alcoholic beverage by a minor. However, 390 or 57 percent of the 685 non-Indians were arrested for these same four crimes. It would appear, therefore, that progress in solving drinking problems in South Dakota would reduce considerably the incidence of arrest for all persons.

There has been no definitive study showing that Indians have a higher propensity for alcohol than other Americans. Dr. Philip A. May has questioned much of the earlier literature which pictures Indians as different from other Americans in terms of drinking habits. He wrote that many Indians, by virtue of their culture—the structure of their society and the laws which effect them—tend to drink in places where they are conspicuous. He also noted that people in conspicuous places are easy for cultural scientists to study.[70]

The U.S. Department of Health, Education, and Welfare has estimated, however, that the prevalence of alcoholism among Native Americans to be at least twice the national average.[71] The apparent proclivity of Indian people to alcohol abuse or their tendency to drink in public places has given rise to numerous myths and stereotypes of "drunken Indians" who "cannot hold their liquor"—myths which are degrading and damaging.

Recent studies have demonstrated decisively that the rate of alcohol metabolism is virtually the same in Native Americans and whites, putting to rest the popular belief that Indians are inherently prone to "inordinate craving for liquor and more prone to lose control over their behavior when they drink."[72] The authors of these studies have concluded that the causes of Indian drinking are historical, social, and cultural rather than biological. According to Reuben Snake, chairman of the American Indian Policy Review Commission's Task Force on Alcoholism, Drug, and Substance Abuse, "Whatever [alcohol] problems Indians have, it's the social system that screwed them up."[73]

A survey on September 1, 1976, by the South Dakota Division of Alcoholism of the State's 6 inpatient treatment centers, 10 halfway houses, and 8 detoxification centers showed that 1,308 persons were receiving treatment for alcoholism.[74] The number of Native Americans treated is not known. However, Patty Watts, then director of West River Alcoholism Services, the largest detoxification center in the State, claimed that 64.5 percent of the persons who had been processed through their facility since it opened in June 1975 were Indian people. (p. 317) The 35 facilities which operate alcohol and drug programs in the State expended $4,987,592 in 1975. Of this amount, only 10 percent came from Federal programs and the remainder from patient fees, city and county treasuries, and private contributions.[75]

Notes to Chapter 2

1. State of South Dakota, Division of Law Enforcement Assistance, *Criminal Justice in South Dakota, 1976: A Plan for Action*, p. 14 (hereafter cited as *Criminal Justice in South Dakota, 1976*).

2. *Criminal Justice in South Dakota, 1976*, p. 168.

3. Ibid., pp. 16–17. The State has no jurisdiction over Indians in Indian County, Smith v. Temple, 152 N.W. 2d 547 (1967); State v. Molash, 199 N.W. 2d 591 (1972). A case involving the question of whether the tribe has jurisdiction over non-Indians in Indian Country is on appeal to the U.S. Supreme Court, Oliphant v. Schlie, 544 F.2d 1007 (1976); cert. granted *sub nom.* Oliphant v. Suquamish Indian Tribe, ___ U.S.___, 45 U.S.L.W. 3806 (1977).

4. Letters from Dr. Shirley Hill Witt, director of the Rocky Mountain Regional Office (RMRO), to William Janklow, Oct. 15 and Nov. 20, 1976, and to Donald Licht, Nov. 20, 1976.

5. Telephone conversation between Donald Licht and William F. Muldrow of the RMRO staff, Nov. 30, 1976.

6. The BIA has the authority to empower the South Dakota Highway Patrol (SDHP) to make arrests for Federal offenses. Authorization from the tribe is required for SDHP to make arrests for tribal offenses. These restrictions are specified in a letter from Marvin J. Sonosky, general counsel to the BIA's Aberdeen area office, Feb. 5, 1975.

7. *South Dakota Highway Patrol Equal Employment Opportunity Plan*, sections A, C, and G–2.

8. Ibid.

9. Sheriff Melvin Larsen, RMRO staff interview in Rapid City, Apr. 13, 1976, and testimony, Rapid City Hearing Transcript, p. 397.

10. Rae Neal, chief, Rapid City Police Department, letter to RMRO, Oct. 19, 1976.

11. Rapid City Police Department, *Equal Employment Opportunity Program* Mar. 1, 1974.

12. Wendall Flying Hawk, RMRO staff interview in Lake Andes, Aug. 12, 1976.

13. Section 501 of Pub. L. 90–351.

14. 28 C.F.R. §42.301 et. seq. Guideline citations hereafter will be cited in the text in brackets.

15. Service population is defined as the State population for State agencies, county population for county agencies, and municipal population for municipal agencies [28 C.F.R. §42.302(f)(2)].

16. Randolph Seiler, RMRO staff interview in Mitchell, July 15, 1976.

17. Randolph Seiler, testimony, Hearing Transcript, p. 482.

18. S.D.C.L. §23–3–28.

19. *Criminal Justice in South Dakota, 1976*, pp. 19–22.

20. RMRO staff interview in Rapid City, Apr. 13, 1976.

21. *Criminal Justice in South Dakota, 1976*, p. 169.

22. Ibid., p. 14.

23. Law Enforcement Officers' Standards and Training Commission, *South Dakota Law Enforcement Certification, 1976*.

24. Letter to the RMRO, Nov. 23, 1976.

25. RMRO staff interview in Rapid City, Aug. 9, 1976.

26. Jim Robideaux, RMRO staff interview in Rapid City, Sept. 14, 1976.

27. Frederick P. Whiteface, "People and Education of the Ogala Sioux," (unpublished document).

28. Richard F. Kneip, Governor of South Dakota, executive communication, Mar. 12, 1977.

29. John Howard Association, *Corrections in South Dakota* (Chicago, Ill.: August 1975), p. 7.5.

30. "Law Enforcement Code of Ethics" as reproduced in the South Dakota Highway Patrol manual, *Welcome Trooper*, 1975.

31. S.D.C.L. §§23–22–1 to 23–22–41.

32. RMRO staff interviews, June to October 1976, and testimony at the Advisory Committee's open meeting in Rapid City, Dec. 6–7, 1976.

33. RMRO staff interview in Rapid City, Aug. 11, 1976.

34. Raymond R. DeGeest, letter to Dr. Shirley Hill Witt, Sept. 8, 1977. (Attached as appendix E.)

35. John Keller, letter to Dr. Shirley Hill Witt, Sept. 21, 1977.

36. Raymond G. DeGeest, letter, September 8, 1977.

37. *Rapid City Journal*, Aug. 2, 1977.

38. Information supplied by Jim Robideaux of the Rapid City Indian Service Council, Sept. 14, 1976.

39. RMRO staff interviews, Sept. 13 and 14, 1976.

40. Alice W. Platt, *Pennington County Public Defender Case Records*, Oct. 1, 1975 to Sept. 30, 1976.

41. Col. Dennis Eisnach, letter to Dr. Shirley Hill Witt, director, RMRO, Dec. 22, 1976.

42. Chief Michael L. Sargent, undated letter to RMRO, received Dec. 16, 1977.

43. Interviews in Lake Andes, Oct. 6 and 7, 1977. 311444. Chief Rae Neal, letter to Dr. Shirley Hill Witt, Sept. 14, 1977. (Attached as appendix D.)

45. Capt. Jack Kinney, letter to Col. Dennis Eisnach, Dec. 10, 1976.

46. Donald Holman, letter to Richard F. Kneip, Governor of South Dakota, Feb. 9, 1977.

47. U.S., Congress, Senate, *Revolutionary Activities Within the United States: The American Indian Movement*, a report of the subcommittee to investigate the administration of the Internal Security Act and other internal security laws of the Committee on the Judiciary, 94th Cong., September 1976, p. 2.

48. "Bellecourt Belittles Senate Report on AIM," *Rapid City Journal*, Sept. 21, 1976; and "AIM Leaders Denounce Senate Report," *Denver Post*, Sept. 23, 1976.

49. RMRO staff interview in Rapid City, Sept. 15, 1976.

50. Jack T. Klauck, letter to Dr. Shirley Hill Witt, Sept. 12, 1977.

51. "Pork Plan Taken Over for Second Time," *Rapid City Journal*, May 3, 1975.

52. Father Michael O'Reilly, interview in Marty, Aug. 12, 1976 (hereafter cited as Father O'Reilly interview).

53. Father Michael O'Reilly, testimony, Hearing Transcript, pp. 96ff and Steve Cournoyer, testimony, Hearing Transcript, pp. 62ff.

54. "Janklow Denies He Advocated Killing Indians," *Rapid City Journal*, Mar. 24, 1976.

55. Father O'Reilly interview.

56. RMRO staff, telephone interview, Nov. 3, 1976.

57. RMRO staff, interview in Marty, Oct. 10, 1976.

58. Raymond R. DeGeest, letter to Dr. Shirley Hill Witt, Sept. 8, 1977.

59. Hazel Bonner, letter received by RMRO staff Nov. 15, 1976.

60. Rae Neal, chief, Rapid City police, letter to Citizens Against Rape, Dec. 9, 1974. (attached as appendix A)

61. S.D.C.L. §§34–20A–55, 56, and 61.

62. Rae Neal, chief, Rapid City police, letter to Dr. Shirley Hill Witt, Dec. 9, 1974. (attached as appendix D)

63. S.D.C.L. §§34–20A–93 and 94.

64. RMRO staff interview in Lake Andes, Oct. 6, 1976.

65. RMRO staff interview in Lake Andes, Oct. 7, 1976.

66. RMRO staff interview in Lake Andes, Oct. 6, 1976.

67. RMRO staff interview in Rapid City, Sept. 13, 1976.

68. Philip A. May, "Arrest, Alcohol, and Alcohol Legalization Among the American Indian Tribe," *Plains Anthropologists*, (1975), p. 130.

69. O. Stewart, "Questions Regarding American Indian Criminality," *Human Organization*, vol. 23 (1964), p. 61–66, as quoted in Edward P. Dozier, "Problem Drinking Among American Indians," *Quarterly Journal of Studies on Alcohol*, vol. 27 (1966), p. 63.

70. Philip A. May, "Not all Indians Drink: Evidence Against the Stereotype," (paper presented at the American Association for the Advancement of Science, Missoula, Mont., June 14, 1976), p. 4.

71. "Metabolic Variations in Alcohol Absorption," *Official Newsletter of the Association of American Indian Physicians*, June 1976, p. 5.

72. Lynn J. Bennon and Ting-Kai Li, in "Alcohol Metabolism in American Indians and Whites," *New England Journal of Medicine*, vol. 294 (1976), pp. 9–13; Robert A. Musicant and Arthur R. Zeiner, "Ethnic Patterns and Differences in Alcoholism," (paper presented at the Fifth Annual Meeting of the Association of American Indian Physicians, Chickasha, Okla., August 1976); Dozier, "Problem Drinking Among American Indians," p. 74.

73. *United Tribes News*, June 30, 1976.

74. *Rapid City Journal*, Sept. 12, 1976, p. 20.

75. *Rapid City Journal*, June 29, 1976, p. 2.

Chapter 3

Native Americans and the Court System

Jurisdiction, Procedures, and Staffing

In November 1972 the South Dakota Constitution was amended to reorganize the State courts into a unified system, a plan completed by July 1975. The State was divided into 9 judicial circuits and included 36 circuit judges who were elected to serve 8-year terms. Each circuit court has exclusive orginal jurisdiction in all cases of felonies, original jurisdiction in all misdemeanors, and appellate jurisdiction from justice court actions.[1]

Pennington County lies in the seventh judicial circuit which includes three other counties: Fall River, Custer, and Shannon (an unincorporated county on the Pine Ridge Reservation where governmental duties are performed by Fall River County). Pennington is by far the largest county in the circuit with a population of 63,600 out of the total circuit population of 86,500. Its caseload dominates the circuit—all five judges are based there.[2]

Charles Mix County, with a population of 10,400, is in the first judicial circuit, which also includes Union, Clay, Yankton, Hutchinson, Douglas, Lincoln, Turner, and Bon Homme Counties. The circuit has a total population of 98,900. Each of the three judges in the first circuit hears an average of 19 cases each month as compared to 50 cases by judges in the seventh circuit.[3]

Pennington and Charles Mix Counties each have a magistrate court. Pennington has a full-time law magistrate, assisted by a second law magistrate, who holds court in Rapid City once a week in addition to supervising lay magistrates throughout the circuit. Charles Mix County has a full-time lay magistrate who is supervised by a law magistrate 1 day each week. Lay magistrates handle uncontested small claims and guilty pleas in misdemeanors and ordinance violations. The jurisdiction of law-trained magistrates includes the determination of misdemeanors, preliminary hearings in felony cases, small claims, and civil actions up to $1,000.[4]

Felony cases are tried in the circuit court, but the law-trained magistrates' duties include the preliminary examination of the accused. At the initial appearance of individuals accused of felonies, the magistrate informs them of the charge, determines bail, and appoints counsel, if necessary.[5]

In 1975, 20,250 separate criminal case actions were held in Pennington County's Magistrate Court. During the first 4 months of 1976, the law-trained magistrate conducted an average of 81 actions per day.[6] The magistrates heavy caseload forces a serious delay in preliminary hearings. In 1975 defendants waited up to 139 days from original filing to preliminary hearing. The average delay was 67 days. Defendants frequently were in custody during that time.[7]

Since statistical records of cases coming into court were not kept until 1976, it is not known how many cases went into court and have never been concluded. One court worker said that she believes there are "fewer than 5,000 cases" in the backlog of Pennington County's Magistrate Court.[8]

State imposed delays can be difficult for those defendants who are not incarcerated and even harder for those who remain in custody. If such delays are found to be unnecessary, they would violate the basic right of every defendant to a speedy trial guaranteed by the Constitution. Nearly 80 percent of persons appearing before Judge Carrell in magistrate court are Native Americans, therefore, it would appear that they are affected more adversely by crowded court dockets than are other segments of the population. This is especially true when considering the fact that Indian people frequently have great difficulty in raising bail or in employing their own attorneys. This problem will be discussed later in this chapter.

As in the law enforcement agencies, few Native Americans are employed within the judicial system. On December 1, 1976, 66 persons were employed by the seventh judicial circuit including judges and administrative staff.[9] Only one Native American, a woman court service worker, is on

the staff, although the large majority of cases handled by the circuit involves Indian defendants. Under the Law Enforcement Assistance Administration guidelines, an affirmative action program is required. The circuit, however, has no program for actively recruiting Native Americans.[10] Jack Klauck, Pennington County State's attorney, stated that on his staff, which includes five deputy State's attorneys and two secretaries, no Indians are employed and to his knowledge none has ever been. (p. 446–47)

The Advisory Committee investigation revealed that an Indian defendant faces an almost entirely white court system. Almost invariably there is a white prosecutor, a white defense attorney, a white judge, an all-white jury, and a white administrative staff. Several Native Americans and attorneys interviewed indicated that often, as a result, Indian defendants feel hopeless and lack the will to fight the charges brought against them.[11]

An all-white system can place Native Americans at a disadvantage in understanding procedures involving their rights and in communicating with the court. Jim Robideaux, assistant director of the Rapid City Indian Service Council and an ex-offender, stated that Native Americans, especially those from the reservation, are at a special disadvantage when it comes to understanding the complexities of the judicial system. (p. 174)

At the Advisory Committee's open meeting, Judge Frank Henderson of the seventh circuit court stated that even though he makes a special effort to compensate for the problem, Indian people do have difficulty in understanding court procedures. He said:

> Most people are very frightened when they come into the court room...and particularly if they're the defendant. They're mystified by the proceedings, they're afraid of what's going to happen to them....With Indian people, I think they have a difficult time understanding the English language....In some cases...I talk to them almost like they're a child to make sure they understand, but yes, I do think Indians have a problem with communication just because of the fact they are not up...on the English language like white people. (p. 452)

When questioned about the effect this inability to communicate has, he stated:

> ...[Y]ou come in fearful, you come into the white man's court with all the various things that you see. You have a difficult time understanding the procedures and the language, and somebody has appointed you an attorney to defend you. What do you do sitting there? You place your faith in the attorney, like a little child.
>
> I think there are some cases where [that faith] is not well placed. I'm going to say that that's certainly a minority [of the times]. But there are few instances [where that faith is not well placed]. (p. 458)

Defense Counsel

Based upon the 6th and 14th amendments to the Constitution, the Supreme Court has firmly established the principle that a defendant is entitled to consult freely and privately with an attorney at every critical stage of judicial proceedings, including questioning by police officers when arrested.[12] This includes misdemeanor proceedings in which incarceration is threatened.[13] A counsel, appointed by the court, is required to represent any defendant who cannot afford to hire an attorney.[14] South Dakota law is even more comprehensive, requiring court-appointed counsel in any criminal action (including some offenses punishable only by fine) where it can be shown that the defendant is without means and unable to employ counsel.[15] Court appointment of individual counsel on a case-by-case basis is used throughout South Dakota to provide criminal defense services to indigents. The exception is Pennington County which has had a public defender's office (PDO) since 1973. In Charles Mix County, any of the five attorneys in private practice may be assigned to indigent clients by the court. Generally, because of their experience, only two attorneys in the county, Ken Vavra and Lee Tappe, are appointed by the court.[16] Tappe pointed out that two attorneys cannot have the expertise required for every case assigned to them.[17]

Lawyers from other counties may be appointed by the courts to serve indigent clients and occasionally are. In Pennington County, this happens rarely, however. The public defender's office usually furnishes counsel for indigent clients. However, in cases involving a possible conflict of interest or which in the opinion of the judge would be best served by outside counsel, other attorneys are appointed by the court. All practicing attorneys are eligible for this service, but only 10 to 12 in the county seek such appointments.[18]

The fee schedule for court-appointed attorneys in South Dakota is $20 per hour for out-of-court and $30 for incourt work. This schedule includes a maximum total payment for different kinds of cases. The maximum fee for a case disposed of without a trial, including guilty plea, is $175. Maximum fees for cases going to trial range from $250 to $1,000.[19] This schedule is administered inconsistently across the State. For example, in Charles Mix County, court-appointed attorneys receive $20 per hour for out-of-court work and $30 for incourt work, while in Pennington County the fees are $25 and $35 respectively for the same services.[20]

Most attorneys interviewed shared the opinion that the fee schedules was much too low. It was believed that there was additional incentive for attorneys new to the bar to seek court-appointed cases for the experience they would not acquire otherwise.[21] Even though a well-established attorney need not accept a court appointment, examples are known of prominent lawyers in the State who have accepted court appointments. Frank Brady of Yankton, a former president of the South Dakota Bar Association, served as a court-appointed defense counsel in a trial following the second takeover of the Wagner pork plant.[22]

In considering that 20.7 percent of the Native Americans in the civilian labor force in 1970 were unemployed (nearly three times the rate for whites) and 54.8 percent of Indian families had incomes below the poverty level (nearly four times that of the total population), it is evident that proportionately Native Americans are much more likely to require free legal assistance than whites. For Charles Mix County, 70 to 90 percent of the defendants with court-appointed counsels are Native Americans, and, in Pennington County, Indian defendants comprised 47 percent of the public defender's caseload. Therefore, in large part, the right of Native Americans to a fair trial is dependent upon the availability of court-appointed attorneys. Indian defendants often feel that court-appointed attorneys do not adequately represent them, either because the lawyers are inexperienced or have too many deeply ingrained prejudices and misconceptions about Indians.[23] Regarding such attorneys, Ramon Roubideaux, a Rapid City attorney, observed:

> ...[B]ecause of their meager experience in the courtroom, their meager experience in handling cases, [court-appointed counsel] have been unable to provide the quality representtion that Indian people or any people, ought to get. (p. 364)

Jim Robideaux, an Indian who had been in prison in Sioux Falls, conducted an informal survey of Native Americans who were in prison during September 1975 and January 1976 and found that 75 to 90 percent had court-appointed attorneys. "Almost all felt that they had not had fair representation or equal treatment in the court."[24]

A fair trial in America's adversary system depends, in part, upon the availability of both defense and prosecuting attorneys who are competent, qualified, and conscientious. The National Center for Defense Management's (NCDM) study of indigent defense delivery systems in South Dakota concluded that due to inherent conflicts of interest with their private practices, it was difficult to be an effective, yet aggressive, defense lawyer in the State. The study team perceived that it was equally difficult for a State's attorney to prosecute a popular local resident.[25] The South Dakota Division of Law Enforcement Assistance reinforced this position by noting that both the part-time prosecutor and the court-appointed defense counsel systems existing in the State have inherent problems with conflict of interest.[26]

James Neuhard, a consultant for the NCDM study, explained that attorneys defending Native Americans in South Dakota do so in an atmosphere heavily charged with emotions. The volatile nature of their cases and extreme public exposure places pressure on local defense lawyers which detrimentally affects the Indian's defense. Most court-appointed attorneys are in the process of establishing their own practice. As a result they are torn between loyalty to their clients and hesitancy to aggressively attack local citizens. This is espcially true for those who live in small, closely-knit, rural communities.[27]

For example, the study noted that during the trial of a prominent Native American, a sociologist was brought from New York to testify on a jury survey to be conducted in South Dakota; yet, the attorney general fought to exclude his testimony and the judge denied its submission. The local defense attorney in that case did not object.

While, technically, no objection was required, the attorney's non-assertiveness left the impression that he had been intimidated.[28]

Neuhard pointed out that, by the same token, part-time State's attorneys, instead of prosecuting a prominent citizen, may work out an agreement with the police and the individual so that the case does not come to trial. He felt that the necessity for relieving both court-appointed defense attorneys and part-time prosecutors from inherent conflicts of interest can lie only in the establishment of full-time prosecutors and a public defender system throughout the State.[29] The chief recommendation of the NCDM study was that South Dakota adopt a county-option public defender system to deliver quality indigent criminal defense services in accordance with appropriate national standards. Legislation making provision for such a system has been drafted and is under consideration by the South Dakota Legislature.[30]

Jim Robideaux, a Native American in charge of the Rapid City Indian Service Council's program for ex-offenders, reinforced the view that local, court-appointed attorneys are under a great deal of pressure which prevents them from doing their best for their Indian clients. At the Advisory Committee's open meeting in Rapid City, he explained what he saw as the reasons for this:

> ...[M]ost often the [court-appointed] attorneys, they live here, they work here, and if they do a pretty good job...pretty soon they kind of get a little bit of pressure...and the next thing you know the attorney...is not objecting to...inadmissable evidence or he is not making the motions that are...very necessary for a men's appeal....So my feeling is that if attorneys do a pretty good job...they have a tendency to get blackballed...maybe they won't get the business now that they normally would get. (p. 172)

The Pennington County Public Defender's Office (PDO) began in 1973 as a 3-year pilot project "to provide quality representation for indigent criminal defendants at a reasonable cost to the county."[31] Initially funded jointly by a grant from the Federal Law Enforcement Assistance Administration with increasing matched funds from Pennington County, the program has been financed entirely by the county since February 1976.[32] Currently the PDO is staffed by four attorneys, a legal assistant, and two secretaries.[33] The office is supervised by a seven-member advisory committee composed of two commissioners appointed by the county Commission, two lawyers appointed by the county bar, two judges appointed by the presiding judge of the judicial circuit, and the presiding judge. Indians are not represented on either the advisory committee or the staff, although 47.2 percent of the cases handled by the public defender's office have Native American defendants.[34]

In Pennington County the PDO is the primary source of defense counsel for indigents. Four of the five circuit judges assign all indigent cases, except where there is a conflict, to the PDO. One judge, who has expressed deep animosity toward all public defenders, seldom assigns cases to the public defender but uses the alternative assigned counsel system which operates in the circuit.[35]

For purposes of establishing eligibility for appointed counsel, determinations of indigency are made by the courts.[36] The PDO advisory committee, often finding that there was little uniformity in the establishment of eligibility, approved the guidelines suggested in table 3.

With the exception of one circuit judge and representatives of the Indian community, the majority of persons interviewed for the NCDM study were positive in their remarks about the Rapid City public defender's system.[37] The consultants who conducted the study were of the impression that the public defender's office in Rapid City "was delivering competent legal services consistent with the standards in South Dakota and with those provided by the vast majority of assigned counsel."[38]

Randal Connelly, director of the PDO testified that:

> ...[Native Americans] are getting better service than they would get without the public defender system, and I feel that they're getting equal service to what they would get...with a private attorney representing them under a retainer. (pp. 354–55)

Magistrate Carrell stated that it was his observation that, although PDO attorneys appearing before him were young and inexperienced, they performed well. He said, "[T]hey're vigorous [and] they really pursue the defense of their clients...." (p. 466)

TABLE 3

Financial Eligibility Guideline Limits for Court-Appointed Counsel

Number of Dependents	Misdemeanors	Felonies	Capital Offenses
	PRESENT ANNUAL INCOME		
1	$3,600	$4,800	$ 7,200
2	4,250	5,450	7,850
3	4,900	6,100	8,500
4	5,550	6,750	9,150
5	6,250	7,400	9,800
6	6,850	8,050	10,450
7	7,500	8,700	11,100

Notes: For each additional dependent, an allowance of $650 annual income per year.

For each $1,000 of debt exceeding assets, add one dependent.

For each $2,000 of unencumbered assets, subtract one dependent.

Income classification is based upon present income. Unemployed persons with less than $2,000 of unencumbered assets in felony or capital cases would automatically qualify for court-appointed counsel.

Source: Laurence J. Zastrow, *Fund Report: Pennington County Public Defender's Pilot Project, February 15, 1973 through February 15, 1976* (Aug. 16, 1976), pp. 19–20.

Indian people, however, expressed considerable dissatisfaction with the PDO. The NCDM team of consultants summed up the views of those Native Americans they interviewed as follows:

> Their impression of the Public Defender's Office was that it was overworked and suffered from a high turnover rate. They feel defense services are acceptable in some areas, but overall are inadequate because of ineffective investigations and excessive caseloads. They perceive no basic difference between the public defender and assigned counsel.[39]

PDO attorneys are indeed kept busy. Each attorney has a case load of at least 50 active cases at all times. In addition, two staff attorneys often work together on more complicated cases.[40] Jim Robideaux stated that the PDO was trying to offer adequate services but that the staff was too overworked and their resources too few.[41] The NCDM study found that in the Indian community the uncertainty and skepticism about the public defender's office is reinforced by the awareness of the absence of Native American employees.[42]

The most serious concern about the PDO during the Advisory Committee's investigation was the staff attorneys' limited amount of experience. Judge Frank Henderson of the seventh judicial circuit, when asked about the availability and quality of court-appointed counsel for Native Americans, replied that it is:

> ...not as adequate as I think it could be. And that's because of the fact that most of our Native Americans here in Pennington County are represented by the public defender's office, and the public defender's office is comprised largely of young attorneys or graduates from law school and do not have the knowledge, the wisdom, or expertise that some of the older members of the bar do. (pp. 452–53)

The NCDM study also noted that staff experience in the PDO is extremely low and although attorneys in the office have criminal case experience, they have very little trial experience. At the time of the NCDM survey, the PDO had conducted fewer than four felony trials in 18 months.[43]

Table 4 was compiled from records supplied by the PDO for the period from October 1, 1975, to September 30, 1976 (see appendix B). The table shows that out of a total of 555 cases only 7 or 1.3 percent went to trial. Four of these involved Native Americans, three had non-Indian defendants, and only three of the seven cases were for felonies.

The trial rate for the court-appointed counsel in Rapid City is nearly the same as for the defender's office. NCDM consultants judged both figures to be quite low.[44] From January 1, 1975, to July 19, 1976, only six felony trials were held in the circuit court of Rapid City.[45] Ray DeGeest, Charles Mix County State's attorney, stated that his trial rate was also low and that he had only five or six trials in the last year. (p. 495)

Most seventh circuit court judges were hard pressed for a clear-cut answer when questioned about reasons for the low trial rate but apparently believed that it was due primarily to effective plea bargaining and case disposition by the public defender.[46] (A comprehensive discussion of plea bargaining is discussed later in this chapter.)

The net result of a low trial rate is that PDO staff attorneys and others appointed by the court to serve indigent clients may have considerable criminal case experience but very little in litigation. This fact reinforces criticism that court-appointed attorneys who defend Native American clients are not able to work to Indians' best advantage in a trial situation. To overcome this weakness in the public defender system, the NCDM study suggested an organized training program in order to familiarize attorneys with trial techniques and improve their litigation skills.[47]

During the Advisory Committee's investigation and informal public hearing, a great deal was said about the high number of guilty pleas and the amount of plea bargaining in cases involving Indian defendants. The right to plead not guilty is an important constitutional right for criminal defendants. South Dakota law seeks to protect this right by requiring the magistrate or judge to advise defendants fully of their rights before they are allowed to enter a plea of guilty.[48] However, the large number of guilty pleas of indigent defendants raises the question of whether or not the right to plead not guilty is being adequately protected.

Jim Robideaux's study of 65 Indian prisoners in the South Dakota State Penitentiary revealed that nearly 90 percent had pled guilty. (p. 172) The NCDM study noted that in the seventh judicial circuit "there are currently a surprisingly large

TABLE 4

Disposition of Cases in the Pennington County Public Defender's Office, Oct. 1, 1975–Sept. 30, 1976

	Total		Plea: Guilty		Not Guilty		Dismissed		To Trial	
	No.	%	No.	%	No.	%	No.	%	No.	%
MISDEMEANORS										
Native Americans	188	100.0	110	58.5	29	15.4	73	38.9	1	0.5
Others	232	100.0	143	61.6	23	9.9	65	28.0	3	1.3
Total	420	100.0	253	60.2	52	12.4	138	32.9	4	1.0
FELONIES										
Native Americans	74	100.0	37	50.0	6	8.1	33	44.6	3	4.0
Others	61	100.0	34	55.7	5	8.2	27	44.3	–	–
Total	135	100.0	71	52.6	11	8.1	60	44.4	3	2.2
ALL CHARGES										
Native Americans	262	100.0	147	56.1	35	13.4	106	40.5	4	0.4
Others	293	100.0	177	60.4	28	9.6	92	31.4	3	1.0
Total	555	100.0	324	58.4	63	19.4	198	35.7	7	1.3

Source: Alice W. Platt, *Pennington County Public Defender's Case Records October 1, 1975, to September 30, 1976*, p. 6 (attached as Appendix B).

number of confessions," a phenomenon which may be contributed to a delay in assigning counsel.[49] Renee LeDeaux Howell, a paralegal worker for the Wounded Knee Legal Defense-Offense Committee, stated that most Indian defendants plead guilty, even if innocent, because they are afraid of the way they might be treated by the court in a jury trial.[50] Some Native Americans feel that the presently large number of guilty pleas stems from a precedent set years ago when local police used the public intoxication ordinance as an excuse to arrest Indians whether drunk or not. If the Indian pled guilty, he received a $5 fine; if he pled not guilty, he had to wait in jail, ultimately paying a $300 fine if found guilty. Everyone became accustomed to the easier and less expensive practice of pleading guilty.[51]

A review of records from the Pennington County Public Defender's Office shows that the defendant pled guilty in 324 cases or 58.4 percent of the 555 cases handled during the 1-year period from October 1, 1975, to September 30, 1976. Only 63 defendants or 19.4 percent pled not guilty (see table 4).

These statistics and the low trial rate for cases involving indigent defendants with court-assigned attorneys point to the widespread use of plea bargaining throughout the State. During the plea bargaining process, a defendant agrees to plead guilty if certain conditions are met—usually the charge is reduced. The prosecution recommends a lighter sentence or dismissal of other charges. This practice is the subject of considerable controversy, and points of view regarding its merits differ considerably.

Judge Frank Henderson, an outspoken critic of the practice, testified:

> I deplore plea bargaining. And it's simply because of the fact that it deprives the innocent defendant of the forum that he's entitled to have which is, by Constitution, a jury.
>
> And oftentimes I think people are pressured into a plea bargain by their own defense counsel when they shouldn't be. In other words, you're either innocent or you're guilty. And I don't like a system where people's rights...are bargained and haggled about like a piece of merchandise in the common mart. (p. 453)

It should be noted that a judge does not have to accept a plea bargain agreement and is empowered to hold a trial if a defendant refuses to plead guilty without any preconditions.

Magistrate Carrell was quick to point out that he, also, does not like plea bargaining, saying, "a defendant either comitted an offense or didn't."[52] Despite basic reservations about it, however, he felt that it was necessary because of the tremendous caseload carried by the courts. He observed that without plea bargaining "you'd be going on to jury trials and it would absolutely swamp the court...." (p. 465)

When asked if he felt that plea bargaining works to the disadvantage of Native American defendants, Carrell replied, "I don't feel it does. I think that the plea bargaining always brings to the accused a much lesser penalty than they might expect without it." (p. 465)

The Indian community objected to plea bargaining because it allegedly created the practice of overcharging—applying extra pressure to a defendant to plead guilty to a lesser charge.[53] Of this practice, Robideaux said:

> Now [the police] pick up a man and they'll slap a whole bunch of charges on him...only one crime is committed, but they'll slap a whole bunch of [charges] on him and then in comes a plea bargain later on. (p. 176)

When questioned about the practice of overcharging, Connelly, director of the Pennington County Public Defender's Office stated:

> I don't think that there is any blatant overcharging of Native Americans as opposed to white or other races. I feel that there...may sometimes be overcharging...of a class of individuals, that is, the poor or the uneducated or...those who possibly have alcohol problems. (p. 355)

A number of persons interviewed referred to particular cases in which they believed that charges brought against a Native American for an alleged violation of the law were more severe than they would have been for a white person under the same circumstances. For example, in the fall of 1976, an Indian man in Charles Mix County was arrested and charged with third degree burglary for allegedly breaking into a store and stealing two rings of bologna. The defendant, apparently intoxicated, was arrested shortly after the break-in. During the trial, he denied any recollection of the crime. The jury returned a guilty verdict, and the

defendant was sentenced by the court to 15 months in jail, although he had no previous arrest record. One defense attorney questioned regarding the harshness of the sentence believed that in view of the burglary charge, a white person probably would have received the same sentence. He further stated, however, that under similar circumstances, had the defendant been a prominent white person or the son of a prominent white person, he would only have been charged with petty larceny or malicious mischief, a misdemeanor rather than a felony.[54]

Bail

The eighth amendment to the U.S. Constitution clearly guarantees a defendant reasonable bail except when charged with a crime (a capital offense) punishable by death or life imprisonment. South Dakota law affirms this right:

> Bail by sufficient sureties shall be allowed upon all arrests in criminal cases except for capital offenses, and it may be taken by any magistrate or court authorized by law to order the arrest and imprisonment of offenders.[55]

The U.S. Constitution makes the purpose of bail equally clear. John Keller, attorney for the Yankton Sioux Tribe, interpreted it in these words:

> ...[T]he only legitimate purpose of bail is to assure the attendance of a defendant at a trial [or] other functions which the court has to conduct [I]t's not supposed to be pretrial punishment; it's not supposed to assure pretrial confinement of an unpopular person or to militate against an unpopular cause. (p. 100)

According to Keller, "The real horror story regarding Indians in the justice system is bonding which operates to their gross disadvantage."[56] He was not alone in making this observation. During the Advisory Committee's investigation, a number of the persons contacted believed that bail presents a special problem for Native Americans for a variety of reasons. There were some allegations that bail is set high for certain Indians in order to keep them in jail. Two witnesses who testified at the Rapid City hearing cited as an example the bail set for the young Indian men charged with burglary in connection with the second takeover of the Wagner pork plant. Bond was set at $25,000 for each defendant, despite the fact that all of them were under 21 years of age, and neither they nor their families have property or wealth of any consequence. Both witnesses believed that his high bail had nothing to do with assuring appearance in court but was set only to keep the Indians in jail.[57]

One circuit judge, who asked not to be identified, stated that though the presiding judges set a standard bail schedule, statewide bond setting is "actually pretty subjective."[58] The bail schedule adopted by the circuit court in Rapid City permits considerable variation in the amount of bond which can be set for felonies and high-grade misdemeanors (see table 5). For example, the amount of bond fixed for burglary can be set at any amount from $250 to $5,000. Factors considered in setting the actual amount of bond include the nature of the offense, the defendant's criminal record, residence, community ties, employment, and other factors which indicate general stability.

Bonds requiring a nonrefundable 10 percent fee are available through bonding companies located in the larger towns in South Dakota. A defendant who has equity in certain types of real property may also sign a personal surety bond over to the court. In both cases, special problems are involved for Indian people. A large number lack assets to pay the 10 percent fee to a bonding company, especially if the bond is for a sizeable amount. Ray Woodsen, city attorney for Rapid City, indicated that commercial bonding is inherently unfair because the 10 percent fee paid is lost whether or not the defendant is found guilty. He suggested that the court itself should act as a bonding agency and return the 10 percent fee if the defendant is found not guilty.[59]

Most Indian people in South Dakota who own any property have an interest in trust land on the reservation. However, neither the courts nor commercial bonding companies will accept this property for surety because it cannot be attached without the consent of the tribal government and the U.S. Department of the Interior.[60]

Native Americans living on a reservation are also at a disadvantage when it comes to bonding. They are considered to be poor risks for release on their own recognizance because of supposed difficulties in extraditing them if they return to the reservation.[61] Bonding companies are also hesitant to provide bail for Indians because they are difficult to locate on the reservation.[62]

TABLE 5

Bond Schedule Effective Apr. 1, 1976, Seventh Judicial Circuit of South Dakota

FELONIES

1. Murder, first degree manslaughter and kidnapping are to be brought before a circuit judge or law-trained magistrate for the first appearance by special arrangement.
2. Second degree manslaughter—$250 to $5,000
3. Grand larceny—$250 to $5,000
4. Burglary—$250 to $5,000
5. Bad checks—$250 to $5,000
6. Driving while under the influence of alcohol (third offense)—$500 to $2,500
7. Robbery—$500 to $10,000
8. Molestation—$500 to $10,000
9. Rape—$500 to $10,000
10. Forgery—$250 to $5,000
11. All other felonies—$250 to $10,000

HIGH GRADE MISDEMEANORS AND ORDINANCES

1. Driving while under the influence of alcohol (first and second offense)—$225 to $500
2. Reckless driving—$150 to $200
3. Bad checks—$100 to $500
4. All other high grade misdemeanors—$75 to $1,000

Source: Order signed by Joseph H. Bottum, presiding judge of the seventh judicial circuit, Apr. 1, 1976.

John Keller summed up the effect of the present bonding system on Indian defendants:

> ...[T]he bailing system as far as Indian people are concerned is by design or inherently...discriminatory [in its effect.] (p. 102)
>
> A white person pays his bond and doesn't lose his job. Indians often sit in custody, families are ruptured, and they are hurt financially.[63]

Jury Makeup and Attitude

The sixth amendment to the U.S. Constitution guarantees a defendant a trial by an impartial jury. Without question, all defendants who plead not guilty have this right unless they choose to be tried by a judge only. In many instances, persons contacted by the Advisory Committee questioned the impartiality of juries in trials of Native Americans. The basis for dissatisfaction with juries was the lack of representation of Indian persons on juries in South Dakota and alleged prejudicial attitudes of potential jurors.

Richard Weare, court administrator for the seventh judicial circuit, expressed the opinion that the present jury selection process effectively includes representatives from the Native American community. He stated though, that no statistics were maintained which would indicate the actual extent to which Native Americans actually serve on juries. (p. 435)

Information gathered by the Advisory Committee, however, indicated overwhelmingly that rarely is an Indian person called for jury duty. Charles Carrell, law magistrate for the high-volume magistrate court in Pennington County, stated that he could not recall a single case in which a Native American served on a jury in his court, a circumstance which seemed to him to be "a little bit unusual." (p. 471) Ken Vavra, one of the two attorneys who handle most of the court-appointed cases in Charles Mix County, also said that he had never had an Indian on the jury of any case he had litigated.[64] Judge Frank Henderson of the seventh circuit court testified, "I see very few Indians on juries. I see very few Indians on jury panels." (p. 455)

When Jack Klauck, Pennington County State's attorney, was questioned about representation of Indians, he recalled only one case in which Indians had been represented on the jury panel. In that instance, 5 Native Americans represented 2.5 percent of a panel totaling 200 people. (pp. 445–46) Keller also testified that very few Indians are chosen to appear on jury panels. He cited as a typical situation one case in Charles Mix County in which he defended a Native American, but there were only 3 Indians on the panel of 150 people. The three Native Americans comprised 2 percent of the panel although Indians make up roughly 20 percent of the county's population. (p. 115) State's attorney Ray DeGeest said that, if Indians do appear on the jury panel, the prosecuting attorney would use preemptory (arbitrary) challenges to exclude them.[65]

Presently, the voter registration list is used as the basis to select prospective jurors. Each voting precinct in the county is a jury district and is entitled to representation on the master jury list in proportion to the vote cast for Governor in the last general election. This method assures that persons appearing on the voter registration list are not excluded because of race, color, religion, sex, or national origin. However, few Indians appear on jury panels because the large majority do not register to vote.[66]

Three reasons are given for the failure of Native Americans to register to vote. First, a large number of Indian people are transient in the community and move from home to home without maintaining a permanent address.[67] Second, many traditional Indians refuse to participite in white-derived political systems either on-reservation or off-reservation. Some lack knowledge of how the system works and many others are suspicious of the workings of government. They do not want to stand out or to attract attention because experience has shown that it is safer to remain anonymous.[68] Third, Native Americans fear that if they register to vote they will be assessed a property tax which even indigents must pay, if they own any personal property.[69] Weare has initiated a demonstration project to improve the system so that source lists for jury selection would be much more inclusive.[70]

Divergence of opinion exists regarding the necessity for Indian representation on juries to ensure that a Native American can get a fair trial. In answer to a question whether or not an Indian could receive a fair trial in South Dakota, State Attorney General Janklow pointed out several

cases in which Indian defendants had, indeed, been acquitted by all-white juries. (p. 556–57) Judge Young believed that although the selection of an impartial jury for a Native American defendant's trial was possible, more experience and time was required to do so than in other cases. It was his opinion that Indians should be represented on the jury panel whether or not they were selected to served on the jury.[71] Ron Brodowicz, an attorney in the Pennington County Public Defender's Office, also stated that his experience indicated that it was extremely difficult to get an impartial jury for the trial of a Native American and that, in his opinion, the present selection of jurors based upon voter registration lists was not fair to Indians.[72]

Many representatives of the Indian community and of community agencies in close touch with Native Americans strongly believe that it is extremely important for Indians to be represented on juries to ensure the impartial trial of Native American defendants. Father James O'Connor, the white assistant pastor of St. Isaac Jogues in Rapid City, stated that even though attitudes toward Indians are improving, he would not want to be an Indian appearing in court before an all-white jury.[73]

It was widely believed among those questioned during the Advisory Committee's investigation that negative community attitudes toward members of the American Indian Movement, which Jim Robideaux said should be read, "any Indian with long hair,"[74] makes it even more difficult for them to be tried before an impartial jury. Judge Henderson testified that many defendants associated with AIM have been acquitted by juries, but there have been instances when AIM defendants could not receive a fair trial because of their association with the movement. The judge added that the disadvantage of being associated with AIM has been overcome for leaders of the movement who have been able to acquire "the finest counsel that money can buy." (p. 459)

In January and February 1976, the National Jury Project, Inc., under the direction of Jay Schulman, project coordinator, conducted a survey of potential jurors in western South Dakota. As a result of the survey, Schulman presented an affidavit to the U.S. District Court for South Dakota in which he stated:

> Although the levels of prejudice toward the defendants [two AIM members], AIM, and Indians are high throughout...six federal districts, the configuration[s] of prejudice in the South Dakota federal district are unique....
>
> The level of prejudice against the defendants among prospective jurors in the South Dakota federal district is so great that there is no chance that the defendants can obtain a jury in any of the four South Dakota divisions sufficiently free from negative predispositions to render a verdict on the evidence presented in the courtroom alone....
>
> This is because there is a pervasive pattern of prejudice among South Dakotan potential jurors in which violence, Indians, and the American Indian Movement all are interconnected.[75]

Following the survey, Schulman commented, "For a large proportion of potential jurors, the actions and very beings of individual AIM leaders represent a personification of everything white Dakotans find threatening and dangerous to their way of life."[76]

The courtroom atmosphere in trials involving persons associated with AIM is also potentially damaging because of the impressions that white jury members have of AIM members. John Keller used the trial of the young Indians involved in the second takeover of the Wagner pork plant as an example. The defendants were not actually members of AIM, but in the minds of the public they were closely associated with it, because the first takeover had been conducted by members of that organization. Keller described the courtroom procedure and atmosphere as follows:

> Number one, the jurors are searched like you get searched at an [airport]....The defense attorneys are also searched, and all around are these fellows armed with weaponry beyond anything reasonable for what's taking place. Giving the impression, naturally, of an armed camp where, my God, there must be someone terribly dangerous in this room, I wonder who it is?
>
> And then you've got these five or seven young Indian [defendants]...and they're paraded around in handcuffs, quite frequently in prison-type clothes or not allowed the grooming and showers and the rest of it that you would have if you were at liberty on bond. (p. 113)

Notes to Chapter 3

1. State of South Dakota, Division of Law Enforcement Assistance, *Criminal Justice in South Dakota, 1976: A Plan for Action*, draft copy, pp. 38–44 (hereafter cited as *Criminal Justice in South Dakota*).

2. National Center for State Courts, *Seventh Judicial Circuit, South Dakota, A Caseflow Management System*, March 1976, p. 3 (hereafter cited as *Caseflow Management System*).

3. *Criminal Justice in South Dakota*, pp. 42, 44, 45; Also see S.D.C.L.§ 16–5–1.2.

4. *Caseflow Management System*, pp. 4–5.

5. Ibid., p. 8.

6. "Magistrate Court and the Way It Functions," *Rapid City Journal*, May 12, 1976.

7. *Caseflow Management System*, p. 8.

8. "Justice is Obtained So Slowly Because....," *Rapid City Journal*, May 12, 1976.

9. Richard H. Weare, seventh judicial circuit court administrator, letter to William F. Muldrow, RMRO staff, Dec. 1, 1977.

10. Richard H. Weare, testimony, Hearing Transcript, pp. 437–41.

11. RMRO staff interview in Platte, Oct. 29, 1976.

12. United States v. Wade, 388 U.S. 218 (1966); Miranda v. Arizona, 384 U.S. 436 (1966); Coleman v. Alabama, 399 U.S. 1 (1970).

13. Argersinger v. Hamlin, 407 U.S. 25 (1972).

14. Gideon v. Wainwright, 372 U.S. 335 (1963).

15. S.D.C.L. §23–2–1 (1967).

16. Ken Vavra, RMRO staff interview in Platte, Oct. 7, 1976 (hereafter cited as Vavra interview).

17. Lee Tappe, RMRO staff interview in Platte, Oct. 29, 1976.

18. Ronald Brodowicz, RMRO staff interview in Rapid City, Aug. 11, 1976 (hereafter cited as Brodowicz interview).

19. National Center for Defense Management, *Systems Development Study of Indigent Defense Delivery Systems for the State of South Dakota*, January 1977, pp. 5–6 (hereafter cited as *Indigent Defense Delivery Systems*). Inquiries regarding the availability of this report should be addressed to the National Center for Defense Management, 2100 M St. N.W., Suite 601, Washington, D.C. 10037; or the South Dakota Law Enforcement Division, Department of Public Safety, Pierre, South Dakota 57501.

20. Brodowicz and Vavra interviews.

21. Vavra interview.

22. John Keller, testimony, Hearing Transcript, p. 112.

23. Montana-North Dakota-South Dakota Joint Advisory Committee to the U.S. Commission on Civil Rights, *Indian Civil Rights Issues in Montana, North Dakota, and South Dakota*, August 1975, p. 44; and *Indigent Defense Delivery Systems*, pp. 57–58.

24. RMRO staff interview in Rapid City, Sept. 14, 1975, and *Indigent Defense Delivery Systems*, p. 31. 425. *Indigent Defense Delivery Systems*, p. 31.

26. State of South Dakota, Division of Law Enforcement Assistance, *South Dakota 1976: A Summary of the 1976 Criminal Justice Plan for Indians*, p. 47.

27. RMRO staff telephone interviews, July 20 and 27, 1977.

28. *Indigent Defense Delivery Systems*, p. 32.

29. RMRO staff telephone interviews, July 20 and 27, 1977.

30. *Indigent Defense Delivery Systems*, p. 84.

31. Laurence J. Zastrow, *Final Report: Pennington County Public Defenders Pilot Project, February 15, 1973, through February 15, 1976*, Aug. 16, 1976, app. 0–4, p. 4 (hereafter cited as *Public Defenders Pilot Project*).

32. *Public Defense Delivery Systems*, p. 6.

33. Alice W. Platt, *Pennington County Public Defender's Case Records, October 1, 1975, to September 30, 1976*, p. 1 (hereafter cited as *Public Defender's Case Records*). This document is appendix B.

34. Ibid., p. 7.

35. *Indigent Defense Delivery Systems*, p. 9.

36. Ibid., p. 11.

37. Ibid., p. 24.

38. Ibid., p. 35.

39. Ibid., p. 33.

40. *Public Defender's Case Records*, p. 1.

41. RMRO staff interview in Rapid City, Sept. 14, 1976.

42. *Indigent Defense Delivery Systems*, p. 34.

43. Ibid., p. 12.

44. Ibid., p. 12.

45. Ibid., p. 25.

46. Ibid., pp. 25–56.

47. Ibid., p. 35.

48. S.D.C.L. §23–35–19.

49. *Indigent Defense Delivery Systems*, p. 12.

50. RMRO staff interview in Rapid City, Sept. 14, 1976.

51. *Indigent Defense Delivery Systems*, p. 33.

52. RMRO staff interview in Rapid City, Sept. 16, 1976.

53. *Indigent Defense Delivery Systems*, p. 32.

54. Lee Tappe interview in Platte, Oct. 19, 1976.

55. S.D.C.L. §23–26–1.

56. RMRO staff interview in Armour, Aug. 12, 1976.

57. Father Michael O'Reilly, testimony, Hearing Transcript, p. 94 and John Keller, pp. 101–02.

58. RMRO staff interview in Rapid City, Sept. 17, 1976.

59. RMRO staff interview in Rapid City, Aug. 11, 1976.

60. John Keller, testimony, Hearing Transcript, p. 101; Bill Wood, Arrow Bonding Co., Rapid City, RMRO staff telephone interview, Sept. 17, 1976; and 25 U.S.C. §§410 and 476.

61. Marshall Young, judge, seventh judicial circuit, RMRO staff interview in Rapid City, Sept. 14, 1976.

62. Bill Wood, RMRO staff telephone interview, Sept. 18, 1976.

63. RMRO staff interview in Armour, Aug. 12, 1976.

64. Vavra interview.

65. RMRO staff interview in Lake Andes, Oct. 6, 1976.

66. *Indigent Defense Delivery Systems*, p. 34.

67. Ibid., p. 34.

68. John Keller, testimony, Hearing Transcript, p. 115, and Madonna Gilbert, RMRO staff interview in Rapid City, Sept. 15, 1976.

69. *Indigent Defense Delivery Systems*, p. 34.

70. Richard H. Weare, *Juror Utilization and Management Demonstration Project: Grant Application*, Sept. 3, 1976. Funded by a Law Enforcement Assistance Administration (LEAA) grant, a contract for the study has been given to the Action Center for State Courts in Denver, Colo. The final report is due in June 1978.

71. RMRO staff interview in Rapid City, Sept. 14, 1976.

72. Brodowicz interview.

73. RMRO staff interview in Rapid City, Aug. 10, 1976.

74. RMRO staff interview in Rapid City, Sept. 14, 1976.

75. Jay Schulman, District Court of the United States for the Western District of South Dakota, USA v. Darelle Dean Butler-Robert Eugene Robideaux; C.R. 75–5106–3, 75–5106–2 (Affidavit: State of New York).

76. *Rapid City Journal*, Apr. 20, 1976, p. 3.

Chapter 4

Findings and Recommendations

Based upon its investigation, the South Dakota Advisory Committee to the U.S. Commission on Civil Rights makes the following findings and recommendations.

Jurisdiction

Findings

Ambiguities and complexities in the laws regarding jurisdiction over Native Americans in South Dakota adversely affect Indian people in their relationships with the criminal justice system. The amount and availability of bail, eligibility for release on personal recognizance, and responsibility for law enforcement and for the protection of persons and property are specific areas affected. Overlapping jurisdiction causes some confusion among law enforcement agencies. Police officers, especially in times of crisis, frequently overstep the limits of their agencies' jurisdiction.

Recommendations

The Governor should support legislation to authorize the establishment of a special task force, with representation from each Indian tribe in the State and from the South Dakota Commission on Indian Affairs, to identify problems in law enforcement and criminal litigation caused by ambiguities in laws regarding jurisdiction over Native Americans in South Dakota. The task force should be empowered to make recommendations for uniform policies of extradition, cross-deputization of law enforcement officers, and the use of property as surety for bail to each tribal government and law enforcement agency in the State. In addition, these recommendations should provide for the development of an instrument by which police officers can be made aware of the exact limits of their authority and jurisdiction in encounters with Native American offenders.

Criminal Justice Records

Findings

Criminal justice records maintained by law enforcement agencies and courts throughout South Dakota are lacking in uniformity and comprehensiveness. Such deficiencies make it difficult, if not impossible, to precisely define and correct problems which Native Americans and other segments of the population have in encounters with the criminal justice system. The State's attorney general and several police officials declined to provide the Advisory Committee with requested information contained in their records, even though it did not concern active cases and would not have invaded the privacy of individuals.

Recommendations

The South Dakota Division of Criminal Justice Planning should develop a comprehensive statewide criminal justice data system to provide a complete, current, and accurate criminal justice data base, including categorization by race, sex, and ethnicity with adequate provision for the protection of individual privacy. Accurate and timely information relative to crime and criminal justice activities within the State should be made available to the public upon request.

Employment of Native Americans by Law Enforcement Agencies and the Courts

Findings

Native Americans are drastically underrepresented on the staffs of many law enforcement agencies and courts in South Dakota. Neither the law enforcement agencies contacted during the course of the study nor the seventh judicial court had an affirmative action plan adequate to correct the situation. It is axiomatic that Indian officers, male and female, could contribute significantly to improved communication between the police and

American Indians by reducing the present feeling of distrust toward the generally all-white, male, law enforcement agencies which pervades the Indian community.

Recommendations

State and local law enforcement agencies and the court system should establish affirmative recruitment programs specifically designed to increase the number of male and female Native American law enforcement and court personnel. In their recruitment effort they should contact all Indian organizations in the State. A comprehensive list of such organizations compiled by the South Dakota Division of Human Rights and the United Sioux Tribes of South Dakota is included in this report as appendix C. The South Dakota Division of Law Enforcement Assistance should conduct equal employment opportunity compliance reviews of the Rapid City Police Department, the State Highway Patrol, the seventh judicial circuit, the office of the State's attorney general, and other law enforcement agencies and courts which are covered by LEAA guidelines. Those found to be in noncompliance with LEAA equal employment opportunity guidelines should be required to develop acceptable programs as a condition for the receipt of any further Federal funds. The South Dakota Division of Law Enforcement Assistance should send the results of their reviews, along with copies of the affirmative action plans of these agencies, to the South Dakota Division of Human Rights and the South Dakota Advisory Committee to the United States Commission on Civil Rights.

Law Enforcement Officers' Standards

Findings

The subjective provisions of minimum standards established by the Law Enforcement Officers' Standards and Training Commission for the employment of law officers in South Dakota permit prejudicial attitudes of officials to eliminate otherwise qualified male and female Native American applicants.

Recommendations

The Law Enforcement Officers' Standards and Training Commission should require that, where they exist, city or county human rights committees review cases in which candidates, who have met established objective standards for law enforcement positions, are rejected because of discretionary, subjective criteria. Where human rights committees do not exist, the Governor should encourage their establishment. In cities and counties which fail to establish such committees, the Governor should appoint citizen review boards representative of the general population by race, sex, and ethnicity. As discussed in the Advisory Committee's recommendation to rectify the abuse of police power, these human rights committees or citizen boards should also review complaints of police misconduct.

Upgrading Law Enforcement Personnel

Findings

Improving the quality of law enforcement personnel continues to be a pressing need in South Dakota, especially on the county and local levels. The establishment of a State Criminal Justice Training Center and increased training requirements, though commendable, are still inadequate. The amount of training devoted to police-community relations and to understanding Native American culture, values, and socioeconomic patterns is inadequate to rectify serious problems of communication which exist between Indian people and law officers.

Recommendations

Beginning within the next 2 years the Law Enforcement Officers' Standards and Training Commission should, as a permanent requirement, increase from 5 weeks to 10 weeks the classroom training provided for South Dakota police officers within the first year of their employment. In addition, a minimum of 16 hours of training should be devoted to Native American history and culture, including value systems and socioeconomic patterns. The objectives of this training would be to provide better communication between law officers and Native Americans and to develop an understanding of how Indian offenders should be treated in order to ensure that their rights are understood and protected. In addition, all police officers should be required to receive annual inservice training.

Abuse of Police Power

Findings

Specific examples of police misconduct in the treatment of Native Americans lend credence to allegations of widespread abuse of police power in South Dakota. Improprieties cited include selective enforcement, search and arrest without cause, harassment and brutal treatment, the arrest of intoxicated persons on disorderly conduct charges, and simple discourtesy. Strong indications exist that members of or persons who give the appearance of being associated with AIM are the objects of special attention and harassment by police officers.

Recommendation 1

City or county human rights committees or citizens review boards appointed by the Governor, suggested in the Advisory Committee's recommendation on law enforcement officer standards, should be empowered to review the handling of complaints of police misconduct received by law enforcement agencies in order to identify any irregularities. Complaints found to be inadequately or improperly processed should be forwarded to the State's attorney general for further investigation and action.

Recommendation 2

Beginning immediately, the Law Enforcement Officers' Standards and Training Commission should ensure that required basic training courses and inservice training familiarize law enforcement officers with statutes and procedures designed to prevent violations of rights during arrest and in the subsequent handling or processing of offenders. Police officers should also be formally apprised of the legal consequences of any discriminatory action by them which could be interpreted as a denial of equal protection of the laws under the 14th amendment.

Civil Defense Units

Findings

The activities of some self-styled "civil defense units" in South Dakota, such as those in Charles Mix County that allegedly bear arms and act as a quasi-police force, are of questionable legality and resemble those of vigilantes.

Recommendation

Federal and State grand juries should investigate allegations of illegal actions by self-styled "civil defense" units in South Dakota.

Handling of Rape Victims

Findings

Some Rapid City police officers lack an understanding of the seriousness of the crime of rape. The lack of understanding of this crime of sexual assault upon women, along with the difficulties of communication with police officers in a cynical climate, may make it difficult or impossible for rape victims, including Native Americans, to obtain justice in Rapid City.

Recommendation 1

The Law Enforcement Officers' Standards and Training Commission should require that basic and inservice training for all police officers include familiarization with the etiology of the crime of rape, its frequency, modern police and medical procedures for investigating rape, and the proper handling of rape victims.

Recommendation 2

City and county law enforcement agencies in South Dakota should develop specially trained male and female police teams to investigate rape cases and to handle the processing of victims. In cases where Indian women are involved, a qualified female Native American counselor should be used to facilitate communication. In small communities where it is not practical to establish such teams, the South Dakota Division of Criminal Investigation should fulfill that function.

Alcohol and Crime

Findings

Alcohol is a significant factor in a large proportion of the arrests in South Dakota. Progress in the treatment and rehabilitation of alcoholics would reduce considerably the incidence of crime in the State. Token appropriations made by the legislature for alcohol programs give little evidence of an awareness of the magnitude of the problem or any sense of urgency in dealing with it.

Recommendation No. 1

The Governor should appoint a special task force to assess the extent of alcoholism and its effect upon crime in the State. The task force should analyze the cost of the justice process for offenders who have committed alcohol-related crimes compared to the cost of the treatment and rehabilitation of alcoholics. On the basis of its assessment, the task force should prepare recommendations necessary to enhance the statewide alcoholism program in South Dakota and the allocation of sufficient funds for it.

Recommendation 2

The South Dakota Supreme Court, in cooperation with the State bar association, should establish guidelines for a statewide system of alternative sentencing for alcohol-related crimes to provide offenders with the option of treatment, rehabilitation, and community service in lieu of fines and incarceration.

Trial Delays

Findings

Heavy case loads in Pennington County's Magistrate Court and possibly in other courts throughout the State result in intolerable delays in preliminary hearings that violate the right of a defendant to a speedy trial.

Recommendation

Combined with the implementation of recommendations in this report designed to reduce the volume of cases handled by South Dakota courts, the South Dakota Supreme Court, in cooperation with the State bar association, should recommend legislation to the State legislature to provide sufficient facilities and court personnel to adequately handle caseloads in magistrate courts and to do all things within their power to seek the enactment of such legislation.

Communication Problems in the Courts

Findings

A serious problem of communication exists between Native Americans and South Dakota court officials which places Indians at a disadvantage in obtaining justice. This is the result of several factors: The court systems, including prosecutors, attorneys, judges, jury, and administrative staff are almost entirely white and male, despite the fact that in some counties the large majority of defendants are Native American. Language barriers; differences in social, cultural, economic, and educational backgrounds; the lack of understanding of court procedures; and fear of an unfamiliar situation all contribute to the lack of communication.

Recommendation

Each judicial circuit in South Dakota should train and employ male and female Native American paralegal personnel to assist Indian defendants in understanding their rights and the procedures used by law enforcement agencies and the courts.

The Defense System

Findings

The court-appointed defense attorney system in South Dakota places indigent defendants at a serious disadvantage. Inexperience, difficulties in communication, and inherent conflicts of interest on the part of many of the attorneys are detrimental to Native American defendants. Establishment of a public defender office has relieved somewhat the problem in Pennington County, but an extremely high caseload, limited staff experience, and lack of Native American employees reduce its effectiveness.

The extremely high number of guilty pleas and the large amount of plea bargaining involving indigent defendants in South Dakota, a prominent proportion of whom are Native Americans, also raise serious question about adequate protection of the rights of defendants.

Recommendation 1

The South Dakota Legislature should establish a statewide public defender system based upon recommendations contained in the study of indigent defense delivery systems conducted by the National Center for Defense Management. Such a system would deliver quality indigent criminal defense services in accordance with appropriate national standards.

Recommendation 2

The Pennington County Public Defender's Office and other offices established in the future which may have large Indian caseloads should design affirmative action programs aimed specifically to recruit male and female Native American attorneys to serve on their staffs. Until this is done, Indian paralegal personnel of both sexes should be recruited and trained to serve in these offices.

Recommendation 3

The South Dakota Supreme Court, in cooperation with the State bar association, should sponsor trial advocacy workshops to ensure that public defenders and court-appointed attorneys gain sufficient trial experience to represent their clients competently. The State supreme court, in conjuction with the State bar association, should also develop guidelines and regulations to ensure that the rights of defendants are adequately understood and not violated by uninformed guilty pleas and plea bargaining abuse.

The Bail System

Findings

The South Dakota bail system works greatly to the disadvantage of indigent defendants. Discretion in setting the amount of bail and in determining when to release a defendant on personal recognizance has occasionally been used by court officials to detain defendants rather than to guarantee their appearance in court. Cash bail and the requirement of property for surety often work special hardships upon Native Americans who may not only be poor but also lack ties in the community in which they are arraigned or do not have property in fee simple upon which a lien could be placed.

Recommendation 1

The South Dakota Supreme Court, in cooperation with the State bar association, should design regulations and monitor the compliance to such regulations as to ensure that where bail is required it is set at the minimum level to guarantee the appearance of the defendant in court.

Recommendation 2

The South Dakota Legislature should enact a law requiring that every person charged with a noncapital offense be released on personal recognizance, unless the prosecutor can demonstrate that when ordered the defendant will not appear in court.

Recommendation 3

Each judicial circuit should serve as a bonding agency and charge the same 10 percent fee presently required by commercial agencies. Unlike those agencies, the court should make refunds in cases where the defendant satisfies the appearance requirements of the court.

Jury Representation

Findings

It is extremely rare for a Native American to serve on a jury in South Dakota. Partly as a result of this lack of representation and partly as a result of prejudicial attitudes of potential jurors, it is very difficult to obtain an impartial jury for the trial of a Native American in the State. This is especially serious in cases involving persons explicitly or implicitly associated with the American Indian Movement or having traditional lifestyles.

Recommendation 1

The State legislature should enact a statute to broaden the basis of the jury selection system beyond that of voter registration lists to ensure the inclusion of a representative proportion of Native Americans on each jury panel. The presiding judge of the South Dakota Seventh Judicial Circuit should direct the Action Center for State Courts to include recommendations for accomplishing this objective in the jury utilization study which it is presently conducting.

Recommendation 2

The South Dakota Supreme Court, in cooperation with the State bar association, should direct a comprehensive statewide survey of the attitudes of potential jurors toward Indians. This study should be conducted by a competent, impartial organization from out-of-State. The results should be communicated to courts and attorneys throughout the State to alert them to the degree to which preju-

dice in any particular communities would interfere with the selection of an impartial jury for trials involving Native American defendants.

Poverty and Crime

Findings

Available statistics show that the level of Native American unemployment in South Dakota is much higher than that of white persons and that more than half of the Indian families in the State live below the poverty level. Alleviation of certain inequities Native Americans encounter in the criminal justice system is directly related to solving the economic problems they face.

Recommendation

The South Dakota Office of Economic Opportunity, in cooperation with the South Dakota Commission on Indian Affairs, should conduct an extensive investigation of the extent and causes of male and female Indian unemployment and poverty both on and off the reservation. The results of the study should be made available to the Governor and to the State legislature with recommendations for steps which should be taken to eliminate the causes.

CITY OF RAPID CITY
SOUTH DAKOTA 57701
In the Beautiful Black Hills

RAE NEAL, CHIEF OF POLICE
604 KANSAS CITY STREET
TELEPHONE: AC 605/343-2331

December 9, 1974

Citizens Against Rape
% Western SD CAP
220 Omaha Street
Rapid City, SD 57701

Attention: Kathy Smith

Dear Ms. Smith:

As you well know, the Rapid City Police Department performs in two worlds. One as a first agency of the criminal justice system where our mandated responsibility is to initiate criminal action against alleged law breakers. The other consists of all phases of police activity not related to apprehension and arrest: preventing crimes, abating nuisances, resolving disputes, controlling traffic, and providing other miscellaneous services.

After a careful review of your literature, as well as listening to your program for six hours we are of the opinion that your organization offers this department nothing which would aid us in discharging our functions. Furthermore, some seasoned police officers are convinced that the set of values and attitudes articulated by some of the members of your panel are actually anti law enforcement. I refer specifically to the remarks of one panel member advocating the philosophy of "lex talionis". In addition, many of the panel's remarks by the non-professional members were intellectually dishonest.

This department does not have any problem of an institutional racism, and it neither suffers from an information gap. Consequently, we know that we are able to fulfill our functions without the creation of a new unit of bureaucracy, which would impede rather than aid us in discharging our tasks.

Sincerely,

Rae Neal

RAE NEAL
Chief of Police

RN/JF/gc

Appendix B

PENNINGTON COUNTY PUBLIC DEFENDER'S CASE RECORDS

OCTOBER 1, 1975 to SEPTEMBER 30, 1976

BY:

Alice W. Platt
Legal Assistant

BACKGROUND

This project is being submitted at the request of the United States Commission on Civil Rights to obtain statistics for a study on criminal justice for Native Americans. The data here compiled is from the records of the Pennington County Public Defender's Office, Rapid City, South Dakota, which started receiving clients in February 1973 and is the only existing public defender office in the state. The office handles only criminal cases and juvenile proceedings which are assigned by the Court on the basis of indigency. An application is provided all individuals who desire court appointed counsel and their eligibility is determined by a schedule drawn up by the Board of County Commissioners based on income, the seriousness of the crime and number of dependants. The case load involves charges brought by both the City and State.

The Public Defender's Office is currently staffed by four attorneys, a legal assistant and two secretaries who are employed by Pennington County. Each attorney has his own case load of at least fifty open cases at all times; often two attorneys work together on more complicated cases. The legal assistant attends Magistrate Court each day and keeps track of all clients, court dates and dispositions. The secretaries handle appointments, phone calls, typing and financial matters. Also the staff is augmented each semester by an intern from the University of South Dakota Law School.

The State Attorney's Office and the City Attorney's Office are most often the prosecutors. They are staffed by six and three attorneys respectively. These offices initiate and file the Complaint against the people the Public Defender represents and they handle the prosecution through to the final disposition.

The courts are divided into the Magistrate Division and the Circuit Court Division both of the Seventh Judicial Circuit of the State of South Dakota. There is one full time Magistrate in Rapid City and one part time who hears cases one day a week. The initial arraignment of most cases is held in Magistrate Court. At this arraignment all persons are made aware of the charge or charges made against them, are given their Constitutional rights and a bond set if not already done so. Generally this is the proper time to request court appointed counsel and an application is furnished. The Magistrate either refuses or approves the application; upon approval the Court prepares an Order offically appointing the attorneys of the Public Defender's

Office. In Magistrate Court pleas and sentences are handed down on misdemeanors only; Circuit Court handles those on felonies. There are five Circuit Court judges who spend most of their time in Rapid City.

Once the Public Defender is appointed the case proceeds through the proper legal channels. In most cases a preliminary hearing is requested; it is court practice to have no preliminary hearings in City charges. At the hearing the evidence against the client is presented which insures that a person is not unjustly charged. After the hearing the Judge determines whether there is sufficient evidence to bind the case over for further proceedings. The case may be dismissed, a plea entered or bound over to Magistrate or Circuit Court. Because of heavy schedules it may be many weeks before a preliminary hearing can be held. As of August 1, 1976, new rules were put into effect by the Court to dispose of cases more expediantly and to protect the rights of those who cannot bond out of jail. The rules state if a person is unable to make bail a preliminary hearing must be held within fifteen days after the initial arraignment and the case disposed of within ninety days if a continuence is not requested. After a case has been bound over the prosecutor files an Information which restates the charges in the Complaint and lists all known witnesses. At this time the defense may enter a plea of guilty or not guilty. Upon a plea of not guilty a jury or court trial is requested. On City charges where no preliminary hearing is held a plea of not guilty and a jury or court trial is requested at a continued arraignment.

Often times a compromise is reached before a case is brought to trial. This is in the form of a plea bargain between the prosecuting and defending attorneys. It could involve recommendations to reduce the charge, fines, jail sentences or any number of alternatives. Not all cases are plea bargained. Sometimes the prosecuting attorney refuses to deal, a compromise cannot be reached or the defense feels the case should be brought to trial. From the cases used in this report the Public Defender took only 1.1% of its cases to trial. Even after a plea bargain is made the presiding judge does not have to accept it and to a plea of guilty can hand down any sentence which is within the law. Plea bargaining is used extensively because of heavy case loads in all offices and often a satisfactory disposition is reached.

THE STATISTICS

This report gives a comparative analysis of Native Americans to all other races of those cases handled in the Pennington County Public Defender's Office as related to criminal charges and their dispositions. Only cases opened after October 1, 1975, and those closed as of September 30, 1976, were used in the sample. All cases are misdemeanors or felonies which are subdivided into broad categories that include most of the charges in this time period. All categories are not duplicated in both misdemeanors and felonies for the deleted ones had a very small number of cases.

The data was compiled primarily from time expenditure sheets which are the records kept by the Public Defender's Office for the purpose of filing leins for its services. Each sheet has the clients name, the charge filed, the jurisdiction of state or city, the date the Public Defender was appointed, the record of all court appearances and the result, and the final disposition which closes the case. If all the necessary information was not contained on the sheets the Magistrate Court records were consulted. The race of each person was determined by my own personal recollection, the personal recollection of others, the police reports kept in the files of the Public Defender's Office or the police records of the Sheriff's Office. These written records are taken from a form each defendant fills out upon arrest in which they indicate their race.

The offenses charged have been grouped into categories to incorporate all charges that are generally related. Each category is divided into misdemeanors and felonies which go horizonally across the chart. The categories labeled in Roman Numerals are as follows:

Misdemeanors

I. Larceny
- Shoplifting
- Petit Larceny
- Tampering
- Embezzlement

II. Assault
- Assault and Battery
- Disorderly Conduct
- Obstructing an Officer
- Resisting Arrest
- Concealed Weapon
- Carrying Pistol in Vehicle Without License
- Carrying Weapon in Alcohol Establishment
- Child Abuse

III. Destruction
- Criminal Damage to Property
- Destruction of Property

IV. Commercial Transactions
- Not Sufficient Funds Check (under $50)
- Defrauding an Innkeeper

V. Controlled Drugs or Substances
- Possession of Marijuana (under one ounce)
- Broken Seal

VI. Driving While Under the Influence of Alcohol

VII. Traffic - moving
- Reckless Driving
- Eluding a Police Officer
- Racing on the Highway
- Exhibition Driving
- Drag Racing
- Hit and Run
- Leaving the Scene of an Accident
- Failure to Yield
- Wrong Way on a One Way

Felonies

I. Larceny
- Grand Larceny
- Robbery - all degrees
- Shoplifting (third or more offense)
- Embezzlement - by Employee or Bailee
- Obtaining MOney by False Pretenses
- Stolen Property - Possession of or Receiving

II. Burglary
- First, Second or Third Degree
- Third Degree Burglary of a Vehicle

III. Assault
- Assault with Intent to Inflict Bodily Harm
- Assault with a Dangerous Weapon
- Rape

IV. Commercial Transactions
- Third Degree Forgery
- Not Sufficient Funds Check (over $50)
- No Account Check

V. Controlled Drugs or Substances
- Possession of Marijuana (more than one ounce)
- Possession of Amphetamines
- Distribution of Marijuana or Amphetamines

The vertical listings on the chart indicate the pleas entered, the parts of the final disposition and the length of time to reach the disposition. For clarity a brief description of each follows.

INITIAL PLEA is the first plea entered on the record to the charges made against the defendant. When the charges are dismissed or there is a waiver of speedy trial there may be no plea at all.

GUILTY is the plea when the defendant pleas to the original charge filed and admits the facts as stated in the Complaint.

GUILTY TO AMENDED is the plea to a different or less serious charge than the original filed by the prosecution and only the prosecution can amend a charge. In most cases the amended charge carries a lighter penalty as amending a driving while intoxicated charge to reckless driving. The felonies in the sample were amended to misdemeanors except as noted.

NOT GUILTY is an initial denial of the charges. Usually it is entered after a preliminary hearing is held and an Information filed; it is entered on City charges with no hearing.

FINAL PLEA is necessary only if an initial plea of not guilty was made. If a case is dismissed or a waiver of speedy trial granted then no final plea is made.

GUILTY is when the defendant changes his original not guilty plea and admits to the charges as filed.

GUILTY TO AMENDED is the same as stated under initial plea.

DISMISSALS stop the process of pursuing the charges against the defendant. They may be initiated by the Court, the prosecution or the defense.

SUSPENDED IMPOSITION involves a guilty plea but sentencing is postponed for usually six months or one year and if a similar offense is not committed within that time the charge is stricken form the individuals criminal record.

WAIVER OF SPEEDY TRIAL involves no plea. The defendant simply waives the right to have the case disposed of quickly for a period of weeks or months. This can be done when there is a weak case and usually the charges are eventually dismissed.

TRIALS are either a court trial with only a judge to decide the verdict and sentence or a jury trial with twelve jurors to decide the verdict and a judge to give a sentence if the defendant is found guilty.

TIME ELAPSED is the time involved to close a case from the day the Public Defender was appointed until a final disposition was reached.

FINES may be imposed for most crimes. All or part may be suspended on the condition of good behavior and no like violations for usually one year. If the individual commits a similar offense within the stated period the suspension may be revoked.

JAIL or penitentiary sentences are often coupled with a fine. It also may be totally or partially suspended with the same conditions as stated for suspended fines.

MEDICAL TREATMENT may involve psychiatric help or alcohol counseling at any of the State institutions, Veteran hospitals or local counseling organizations. More people than those indicated on the chart, especially for driving while intoxicated charges, may have received alcohol treatment for strict records are not kept on this point.

RESTITUTION can be ordered by the Court as part of a sentence to repay one who has suffered a monetary loss as property damage or received an insufficient funds check.

The numerical statistics were compiled and recorded with as little error as possible. Mistakes could have been made in tabulating, inaccurate or incomplete records or in mistaken identies. The maximum estimated error is 2.5%.

PENNINGTON COUNTY PUBLIC DEFENDER'S OFFICE CASE RECORDS

OCTOBER 1, 1975 to SEPTEMBER 30, 1976

		NATIVE AMERICANS Total #: 262 Total %: 47.2												OTHER RACES Total #: 293 Total %: 52.8											
GRAND TOTAL: 555		MISDEMEANORS Total: 188							FELONIES Total: 74					MISDEMEANORS Total: 232							FELONIES Total: 61				
OFFENSE CHARGED		I	II	III	IV	V	VI	VII	I	II	III	IV	V	I	II	III	IV	V	VI	VII	I	II	III	IV	V
TOTAL PER CHARGE		26	69	12	2	8	59*	12	40	16	14	4	0	24	38	3	5	26	96*	40	20	12	9	11	9
INITIAL PLEA	GUILTY	18	18	3	2	2	35	2	-	2	1	1	-	15	7	3	-	6	34	14	1	4	-	3	1
	GUILTY TO AMENDED	-	-	-	-	-	5	-	16	10+	1	-	-	-	-	-	-	-	23	2	11	2	1	6	2
	NOT GUILTY	2	28	2	-	3	15	4	4	3	5	-	-	-	18	-	1	1	33	9	2	1	3	-	2
FINAL PLEA	GUILTY	2	9	-	-	-	10	2	2	2	-	-	-	-	8	-	1	-	20	4	1	1	-	-	-
	GUILTY TO AMENDED	-	-	-	-	-	2	-	1	-	1	-	-	-	-	-	-	-	6	-	-	-	1	-	-
DISMISSALS		5	39	9	-	6	6	8	20	1	9	3	-	7	23	-	4	20	11	20	7	5	7	2	6
SUSPENDED IMPOSITION		7	7	1	1	1	8	1	-	1	-	-	-	13	6	1	-	3	11	-	5	3	1	4	2
WAIVER OF SPEEDY TRIAL		1	1	-	-	-	-	-	1	-	-	-	-	2	2	-	-	-	-	-	-	-	-	-	-
TRIAL	COURT	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	1	-	-	-	-	-
	JURY	-	1	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-
VERDICT	GUILTY	-	-	-	-	-	-	-	-	1	2	-	-	-	-	-	-	-	1	-	-	-	-	-	-
	NOT GUILTY	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-

		NATIVE AMERICANS													OTHER RACES											
OFFENSE CHARGED		I	II	III	IV	V	VI	VII	I	II	III	IV	V		I	II	III	IV	V	VI	VII	I	II	III	IV	V
TIME ELAPSED	0-3 DAYS	13	17	4	1	1	20	-	7	-	-	-	-		8	6	1	1	2	12	6	-	1	-	3	1
	3-7 DAYS	4	13	2	-	2	9	3	-	1	2	-	-		1	2	-	1	2	7	3	1	1	2	-	-
	1-3 WKS	-	9	2	-	1	5	1	16	3	1	2	-		7	6	1	1	2	13	8	2	-	-	3	-
	3 WK-2 MO	6	5	-	1	1	9	3	10	7	4	1	-		6	12	1	1	10	17	9	11	2	2	3	1
	2-4 MO	3	21	2	-	2	10	5	3	3	6	-	-		2	10	-	1	8	36	12	5	6	4	1	5
	4-6 MO	-	2	2	-	1	6	-	4	2	1	1	-		-	2	-	-	1	10	2	-	1	1	-	1
	6 MO +	-	2	-	-	-	-	-	-	-	-	-	-		-	-	-	-	1	1	-	1	1	-	1	1
FINE IMPOSED	10-50	2	4	-	-	-	3	-	1	-	1	-	-		-	4	1	1	3	3	8	3	2	-	-	-
	51-100	-	-	-	-	-	10	2	1	-	-	-	-		-	2	-	-	-	10	5	-	-	-	-	-
	101-200	-	-	-	-	-	5	-	-	-	-	-	-		-	-	-	-	-	16	3	1	-	-	-	-
	201-300	-	-	-	-	-	22	-	-	-	-	-	-		-	-	-	-	-	41	-	-	-	-	-	-
	301 +	-	-	-	-	-	-	-	-	-	-	-	-		-	-	-	-	-	-	-	-	-	-	-	1
FINE SUSPENDED	10-50	-	-	-	-	-	-	3	-	-	-	-	-		-	-	-	-	1	1	-	-	-	-	-	-
	51-100	-	-	-	-	-	23	1	1	-	-	-	-		-	1	-	-	-	31	-	-	-	-	-	-
	101-200	-	-	-	-	-	3	-	-	-	-	-	-		-	-	-	-	-	8	-	-	-	-	-	-
	201-300	-	-	-	-	-	-	-	-	-	-	-	-		-	-	-	-	-	1	-	-	-	-	-	-
	301 +	-	-	-	-	-	-	-	-	-	-	-	-		-	-	-	-	-	-	-	-	-	-	-	1

		NATIVE AMERICANS												OTHER RACES											
		I	II	III	IV	V	VI	VII	I	II	III	IV	V	I	II	III	IV	V	VI	VII	I	II	III	IV	V
JAIL IMPOSED	0-10 DAYS	4	10	–	–	1	2	–	2	–	–	–	–	–	1	1	–	–	1	6	–	1	1	2	–
	11-30 DAYS	7	8	2	–	–	32	2	8	3	–	–	–	2	2	–	–	–	42	–	3	–	–	2	–
	1-2 MO	1	–	–	–	–	3	–	2	–	–	–	–	–	–	–	–	–	9	–	1	–	–	–	–
	2-6 MO	–	–	–	1	–	3	–	3	5	–	–	–	–	–	–	–	–	9	–	–	–	–	–	1
	6 MO-1 YR	–	–	–	–	–	–	–	2	1*	1	–	–	–	–	–	–	–	–	–	–	–	–	1*	–
	1-3 YR	–	–	–	–	–	–	–	1*	4*	–	1*	–	–	–	–	–	–	–	–	–	1	–	–	–
	3 YR +	–	–	–	–	–	–	–	1*	1*	1*	–	–	–	–	–	–	–	–	–	1*	–	–	–	–
JAIL SUSPENDED	0-10 DAYS	–	3	–	–	1	–	–	1	–	–	–	–	–	–	1	–	–	1	–	–	–	–	2	–
	11-30 DAYS	5	2	–	–	–	31	2	6	2	–	–	–	1	1	–	–	–	46	–	1	–	–	2	–
	1-2 MO	1	–	–	–	–	3	–	1	1	–	–	–	–	–	–	–	–	6	–	–	–	–	–	–
	2-6 MO	–	–	–	1	–	1	–	1	2	–	–	–	–	–	–	–	–	7	–	–	–	–	–	1
	6 MO-1 YR	–	–	–	–	–	–	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–
	1-3 YR	–	–	–	–	–	–	–	–	1*	–	1*	–	–	–	–	–	–	–	–	–	–	–	–	–
	3 YR +	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
MEDICAL TREATMENT		1	2	–	–	–	12	–	2	–	1	–	–	–	1	–	–	–	33	1	–	–	–	–	–
RESTITUTION		3	–	2	2	–	1	1	3	–	1	1	–	1	–	3	3	–	1	5	4	–	–	8	–

+ – ONE AMENDED TO DIFFERENT FELONY • – INCLUDES TWO FELONIES * – PENITENTIARY

Organizations and groups that may be able to provide state
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men:

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contact:

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Rapid City, SD 57701

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Marie Rogers, Chm.
Winona Club
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Tribal Council
Lower Brule Sioux Tribe
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Tribal Council
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Wagner, SD 57380

Tribal Council
Flandreau Sioux Tribe
Flandreau, SD 57028

Tribal Council
Sisseton Wahpeton Sioux Tribe
Sisseton, SD 57262

Tribal Council
Rosebud Sioux Tribe
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Tribal Council
Pine Ridge Sioux Tribe
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Tribal Council
Crow Creek Sioux Tribe
Ft. Thompson, SD 57339

Tribal Council
Cheyenne River Sioux Tribe
Eagle Butte, SD 57625

South Dakota CAP agencies in:

Madison
Sisseton
Rapid City
Lake Andes
Eagle Butte
Ft. Thompson
Lower Brule
Pine Ridge
Rosebud

Native American Club
SDSU
Brookings, SD 57006

Kiyospaye Council
USD
Vermillion, SD 57069

Mocassin Tracks
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Brookings - Shirley Heitland
Huron - Margaret Moxon
Rapid City - Carol Lawlor
Sioux Falls - Fern Chamberlain
Vermillion - Jan Engeman
Yankton - Carol Hamvas

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Brookings - Eunice Bruce
Gettysburg - Roberta Wisdom
Hot Springs - Colleen Waxler
Huron - Carol Koster
Lead - Deadwood - Ruth Roland-Zucco
Madison - Emma Colman
Mitchell - Irene McLaughlin
Rapid City - Kay Dunn
Sioux Falls - Linda Lea Miller
Spearfish - Virginia Boesch
Springfield - Karen Gullikson
Sturgis - Ft. Meade - Johna Rovere
Vermillion - Mary Edelen
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Brookings - Dr. Mary Frances Lyle
Canton - Helen M. Lommen
Custer -
Dell Rapids - Myrtle Krogstad
DeSmet - Nancy Montross
Huron - Sheryn Weelborg
Lead - Deadwood - Irma Hamilton
Madison - Evelyn Tweet
Milbank - Katherine Harkins
Miller -
Mitchell - Deborah Cowan
Rapid City - Elna B. Ramsey
Redfield - Lorraine Akin
Sioux Falls - Florence Holton
Spearfish - Dr. Lucy Hickenbottom
Todd County -
Wagner - Dorothy L. Piroutek
Watertown - Nancy L. York
Watertown Lake Area - Dodie J. Storms
Winner - Joan S. Bloom
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Presentation College
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Mount Marty College
Placement Director
Yankton, SD 57078

Sioux Falls College
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Appendix D

CITY OF RAPID CITY
SOUTH DAKOTA 57701
In the Beautiful Black Hills

RAE NEAL, CHIEF OF POLICE
604 KANSAS CITY STREET
TELEPHONE: AC 605/343-2331

September 14, 1977

Dr. Shirley Hill Witt, Regional Director
U.S. Commission on Civil Rights
Rocky Mountain Regional Office
Executive Tower--Suite 1700
1405 Curtis Street
Denver, Colorado, 80202

Dear Dr. Witt:

I have reviewed the report you submitted with your letter dated September 2, 1977, with the information received in an informal hearing last December in Rapid City.

In my view, the absence (in the report) of any referral to the police mission is most obvious. I am sure we can agree that one acceptable interpretation of the police mission would be the maintenance of social order within carefully prescribed ethnic and constitutional restrictions. This, of course, involves prevention of criminality, repression of crime, apprehension of offenders, regulation of non-criminal conduct and many more.

It is the objective of the administrative staff and officers of this department to provide the community with responsible police service and to enforce all laws and regulations equally to any or all persons involved. Civil rights certainly becomes a primary concern as the department moves forward in its effort to meet the responsibility of fulfilling that mission.

There is an established system of handling citizen complaints against officers. Each complaint is investigated by an internal unit of the department and at the conclusion of the investigation the facts are reviewed and suitable action taken. If the alleged violation is substantiated, there is officer discipline or prosecution.

The training program of the department provides for pay incentive based on college credits, thus, encouraging higher education and giving the officer exposure to cultural traits and increasing the officers understanding and sensitivity. In 1974 a Legal Advisor was added to the staff of the department, who is a graduate of the University of South Dakota law school. His duties are not limited to, but include,

training all members of the department and reviewing arrests and actions of the officers, checking to insure there has been complaince with laws and regulations (Civil Rights violations included). He is also available to the citizen to explain or interpret the law.

There are a number of other programs in operation at this time that we hope opens a channel of communication between all groups in the community. It is the belief of the Police Department to perform our tasks in a responsible way, the community and police must work as a team.

In the report comparisons are made with arrest data referring to Native Americans and other. The report lacks any effort in establishing crimes committed and if they were committed by Native Americans or other.

Randal Connelly testified that it was his belief that police use other statutes in lieu of the public intoxication ordinance to arrest drunken individuals. I have strong feelings, that to arrest a drunk, place that person in jail, transport to court and charge with a crime, serves no purpose. The individual in many cases would have a long list of arrests without receiving treatment of any kind.

I do not believe that because of intoxication anyone should be permitted to violate ordinances that disrupt the peace and tranquility of a community and it has been the policy of this department to care for intoxicated persons as opposed to making criminal arrests. The Rapid City Police Department started a Care Center on October 1, 1973, where intoxicated persons were taken and suspended making arrests for intoxication. The South Dakota Public Intoxication law was not terminated until July 1, 1974.

Page 37 makes reference to Jeanie White's testimony--on October 6, 1976, Officer Gilbert's report does indicate three people, two male and one female, leaving the establishment. A further note that his attention was called to this fact by a waitress in the establishment. He proceeded to contact the three people--the two men and one woman, and at that time the men willingly gave up their glasses. The woman had already gotten into the vehicle and the men were about to enter the vehicle. The woman above-mentioned did hand the officer one glass, however, refused to give the officer a second glass in similar appearance from which she was drinking. The above fact establishes a different response from the three persons contacted, and, thus explains the officer handling differently the individuals involved. Note that the alleged police abuse has not been mentioned as that case is in the hands of the States Attorney.

Page 25 of the report appears the testimony of several witnesses involving an incident on July 19, 1976, at the Viola Center home in Rapid City. The incident reports a one-sided version of the circumstances that occurred--taking testimony from individuals that were not sworn nor in any way cross-examined as to the facts or the truth of the matter reported. It would further appear to me that the commission taking the testimony made no effort to substantiate the allegations made through further investigation.

I have reviewed the report and find that in each case a continued investigation into the facts would certainly be enlightening to the hearer of facts--if, in fact, it is the Commissions desire to reach the truth. In each case reported there certainly are circumstances that do not appear in the document and I could go through each one of these setting forth information on the officers behalf, however, I feel that would be an effort in futility at this time.

In conclusion, after studying the report, it is my opinion that it is incomplete in that no effort had been made to establish the races of people actually committing crimes and a great deal of inference was placed on arrest figures alone. Further, no effort was made to establish, through testimony of officer or officers obviously involved in the incident in respect to circumstances where the police in general or individual police officers were accused of gross misconduct.

Respectfully,

Rae Neal

RAE NEAL
Chief of Police

RN/mw

OFFICE OF
STATE'S ATTORNEY
CHARLES MIX COUNTY
LAKE ANDES, S. D. 57356

TELEPHONE 605 487-7441

September 8, 1977

Dr. Shirley Hill Witt
Regional Director
United States Commission on Civil Rights
Rocky Mountain Regional Office
Executive Tower - Suite 1700
1405 Curtis Street
Denver, Colorado 80202

Dear Ms. Witt,

This letter is in answer to your letter of Sept. 2, 1977, regarding your investigation of problems encountered by Native Americans in the criminal justice system here in Charles Mix County. There are a few remarks I would like to make concerning your up coming final report.

First, in regard to the so called "civil liberties" group and any participation they may have had in the Lois Tiger event, no such group was in any way involved in that incident. Furthermore, my statement regarding a Civil Defense Unit for our county was incorrectly stated in your letter to me. At the time of the hearing in Rapid City, I indicated that there were no members in the Civil Defense organization involved in that particular incident and was correct in so stating. I have at no time indicated that the Civil Defense Unit have never been involved in assisting law enforcement here in Charles Mix County. On several prior occasions the Civil Defense was called in to assist, but were in no way involved in the Tiger incident.

As to why those people arrested in that incident were not allowed to have visitors and were denied permission to make phone calls, the reason were that those people involved refused to cooperate with the law enforcement officials in signing their jail record cards and in giving their correct names. They were told that immediately after their signing of the jail records they would be allowed to call their attorneys. It is also true that they were incarcerated during the open house of the new law enforcement center and that there was a tour given

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TELEPHONE 605 487-7441

of the facilities at that time. However, none of the participants in that particular tour were allowed to view the prisoners. It might be interesting to note that Lois Tiger and the others that were incarcerated as a result of the kidnapping incident repeatedly yelled foul and abusive language at the people involved in the tour, even though they were unable to observe them as the window of their particular cell was covered with paper.

I might add that the vehicle which Lois Tiger was driving at the time she was apprehended was positively identified as having been involved in the kidnapping of Tim Otte earlier in the evening and was also positively identified as being at the Lake Andes Indian Housing Unit at the particular place where Tim Otte was being held. Further more, the vehicle was unequivocally said to have contained one particular fugitive from justice by the name of James Weddell. Said fugitive having been identified by law enforcement officials while the car was at that housing unit. Said James Weddell was an escapee from the South Dakota State Penitentiary.

As to the incident involving the car of Rosemary Rouse, I might add that after having attended the hearing in Rapid City, I came back to Lake Andes and did some further checking regarding that incident and had found and determined that after having taken the complaint from Mrs. Rouse, I gave the complaint to the law enforcement officials to proceed upon, which is my normal procedure in a situation such as this. I then am not involved in the case again until such time as an arrest has been made. Although I took the blame for neglect at the date of the hearing, I sincerely believe that I had personally fulfilled any responsibility on my part.

In conclusion I would like to add that there are many Native American People who are handled and dealt with in our local criminal justice system. It seems a pity that you had not the time to investigate the many, many instances where members of the Indian race have been handled with particular consideration and leniencey. If you would like names of certain people

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CHARLES MIX COUNTY
LAKE ANDES, S. D. 57356

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who would substantiate this allegation I would be more than happy to provide you with them. However, I am quite certain that you would not have time to put any positive remarks in any of your reports.

Sincerely yours,

Raymond R. DeGeest
States Attorney

RRD/rb