

Native Americans and the Administration of Justice in South Dakota

South Dakota Advisory Committee to
the U.S. Commission on Civil Rights

Transcript of a Community Forum
Held December 6, 1999, Rapid City, South Dakota

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Publication date: October 2000

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Proceedings*

December 6, 1999

Rapid City, South Dakota

CHAIRPERSON FEINSTEIN. This meeting of the South Dakota Advisory Committee to the U.S. Civil Rights Committee shall come to order.

Opening Statements

For the benefit of those who are in our audience, I shall introduce myself. I'm Marc Feinstein from Sioux Falls, South Dakota, Chairman of the State Advisory Committee of the Civil Rights Commission, and I will introduce the members of my committee. Immediately on my right is Dorothy Butler from Brookings, Alys Ratigan from Rapid City, Bill Walsh, William Walsh from Deadwood, Jim Popovich from Rapid City. Who's next? Oh, BJ Kim also from Brookings, Amy Arndt from Sioux Falls, Rae Burnette from Sioux Falls.

We are also honored and privileged to have with us today members of the U.S. Commission on Civil Rights. They will be introduced following my statement.

We are here to conduct a public forum on Native Americans and the administration of justice in South Dakota. The Committee has invited federal, state, local, and tribal leaders and advocates for civil rights, law enforcement officials and prosecutors as well as community leadership to share their perspectives on the administration of justice in South Dakota for Native Americans.

At the outset, I want to remind everybody present of the ground rules. This is a public meeting open to the media and the general public. We have a very full schedule of participants

that have to fit within the limited time available. The time allotted must be strictly adhered to.

To accommodate persons who have not been invited to make a presentation, but wish to address our Advisory Committee, we have scheduled an open session this evening from 7:00 to 10:00 p.m. Anyone wishing to make a statement during that time period shall contact one of the staff members for instructions and scheduling. Or if you want to produce a written statement, they can be submitted to the Commission staff here today or any time prior to December 20. And the staff will have an address; I can give you the address. It's the U.S. Commission on Civil Rights, 1700 Broadway, Suite 710, Denver, Colorado, 80290. The record of this meeting, as I said, will close on December 20, 1999. So if you have a written statement, it should be produced by then.

Though some information provided here may be controversial, we want to ensure that all the invited guests do not unfairly or illegally defame or degrade any person or organization. In order to ensure that all aspects of the issues are represented, knowledgeable persons with a wide variety of experience and viewpoints have been invited to share the information with us. Any person or organization that feels defamed or degraded by statements made in these proceedings should contact our staff during the meeting so that we can provide them a chance for public response. Alternatively, such persons or organizations can file written statements for inclusion in the proceedings. I urge all persons participating to be judicious and factual in what you say.

The Advisory Committee appreciates the cooperation of those who have agreed to participate and share the information with us. I will now invite Dr. Mary Frances Berry, Chairperson of the Commission, to share comments with us.

* Under the defame and degrade guidelines of the Commission, which afford an opportunity to identifiable persons to respond to specific types of statements, the Commission offered several individuals and organizations an opportunity to review and respond to testimony. A sample of the Commission's letter requesting a response and a list of recipients are attached as appendix A.

COMMISSIONER BERRY. Thank you very much, Mr. Feinstein. I want to first say how much we appreciate the South Dakota Advisory Committee and the work that you and your Committee do as volunteers in the cause of civil rights and to say how pleased we are that you agreed that you would have this forum today on these important issues.

Before I make a very brief, brief, brief statement, I want to introduce my colleagues who have come with me here to participate at your invitation. My colleagues are, on my left, the Vice Chair of the U.S. Commission on Civil Rights, Cruz Reynoso of California. He's a law professor at the University of California at Los Angeles and a former member of the Supreme Court of the State of California. Next to Cruz Reynoso is Elsie Meeks who is a member of the Sioux Nation and who, in fact, is the first Native American, the first Indian, the first indigenous person to be appointed to the U.S. Civil Rights Commission. And next to Commissioner Meeks is Yvonne Lee who is a rather distinguished member who has been active in the cause of human rights for a long time in northern California in the Bay Area. And next to Commissioner Lee is the newest Commissioner, Christopher Edley of Massachusetts, who is a lawyer, and he has his own distinguished, albeit short, record in the cause of civil rights.

COMMISSIONER EDLEY. Thank you.

COMMISSIONER BERRY. Let me just say—he's a friend of mine so I can do that. Anyway, let me just say that I also want to thank John Dulles, who's down at the other end, who is the director of the Rocky Mountain Region Office of the Commission, for the work that they do. And I want to point out that in the back is Melvin Jenkins who is our regional director for the region that includes Nebraska, so he has White Clay under his jurisdiction, who is here, and there are other staff members of the Commission who have made this possible.

We are here to listen and to pay attention. Yesterday we went out for site visits. We went to White Clay. We went to the council meeting office and we went to Pine Ridge. We looked at the creek out here where some people died in that creek. We've heard from a wide variety of people already and have some feel for what's going on here. We certainly do not believe that one day or two days, as it were, is enough time to learn everything or most of the things about the issues

that have concerned the Native American Indian community here for so long and about racial tensions that exist in this community, but we do hope that we will, with this first bite of the apple, hear enough and know enough that we may reach some conclusions based on what the Advisory Committee has to say to us.

There's been some question about what this Commission can do, can this Commission do anything about anything? So let me say that, very briefly, and I may say it again tonight before we have the open forum for the people who are there, the Civil Rights Commission, yes, does not enforce anything. We don't put people in jail or prosecute people or anything like that, but we do have powers. We have the power to subpoena any witness or any person, including the President of the United States to the lowliest person who lives in this country, on any matter that we please at a hearing. When it's a matter of civil rights, we can do that. We have the power to make recommendations to all of the government agencies, and we are watchdogs over the enforcement of civil rights by all of the other agencies, including the FBI, the Justice Department and its U.S. attorneys, and everyone else. And we can, in fact, monitor what they do, report on what they do, and we can call them before us time and time again and make recommendations to the Attorney General and other officials to do such things as establishing task forces, to have investigations if they don't seem to be occurring fast enough. We can make recommendations not only to the Justice Department, but all the other departments of the government, and we can have our recommendations acted upon, and the history of having them acted upon is very, very good indeed. So we may walk softly and the stick we carry may not be the biggest in the world, but it's big enough.

With that, Mr. Chairman, let me thank you again for the work that you do and turn this back over to—first, I guess, John Dulles has some words to say about the proceedings, and then I'll hand the microphone back to you. Thank you, Mr. Chairman.

MR. DULLES. I think Mr. Feinstein has covered the procedural information, and why don't we go ahead and get started.

Overview and Background

Charles Abourezk, Attorney, Rapid City

CHAIRPERSON FEINSTEIN. Okay. Our first presenter today is Mr. Charles Abourezk, attorney at law, from Rapid City. Welcome. Just for matter of those that are going to be presenting, as I said earlier, we're going to be under a restriction of time so everybody can have a chance and opportunity to speak who has been scheduled, we will be indicating to you when you have two minutes remaining of your open time, and we're going to be leaving time for questions, so it doesn't mean that you're totally done.

MR. ABOUREZK. Thank you. I'd like to begin by thanking the members of the Commission who have come from so far to listen, particularly to Commissioner Berry whom I've spoken with on the phone years ago. Nice to see you out here and also—

COMMISSIONER BERRY. Nice to see you.

MR. ABOUREZK.—Ms. Meeks. I'd also like to thank the members of the Advisory Committee for inviting me to speak and to the Regional Director John Dulles for his tireless work in our area on behalf of trying to bring about greater civil rights.

I wanted to begin by disclosing that I represent the family of Wilson Black Elk, Jr., one of the deceased at White Clay. With respect to Mr. Black Elk, I think it's important to say that we don't know one way or the other whether his death and that of Mr. Hard Heart was racially motivated. This case could result in one of several outcomes. We're thankful that the federal authorities have informed us in a general way about the progress of the investigation, and we've cooperated with them and tried to assist them in every way we could, and we have a belief that that case may be near the point where it will be solved. I believe members of the family have submitted statements to the Advisory Committee which I hope will be made part of the record here today, and I feel a little bit limited in what I can say publicly about that particular case.

I also want to say that I represent the family—or the foster mother—of Robert Many Horses, the individual who was found dead in a trash can up in Mobridge, and I think it's fair to say that his foster mother, who I just talked with this morning again, has not yet been able to go into Robert's bedroom since his death, and she's extremely embittered by how that case was han-

dled by local authorities. She has not yet heard anything from the federal authorities who are reportedly investigating the case, but it is clear that the local authorities have not provided her or Robert with justice in this case, and she asked me to say that to the panel here today because she is not able to be here. And she also asked me to remind the panel that on December 30, it will be approximately six months since Robert's death, and no one has been brought to justice yet in that case.

I want to begin my larger remarks by saying that it's heart-warming to see so many people here trying to find a way to make the justice system inclusive of all of our citizens, to expand civil rights to include those whom our society has historically left out here in our area, American Indians. Unfortunately, all too often in South Dakota and the nation, we see economic and social polarization and the resulting disequilibrium. In our state, as well as the rest of America, large segments of our minority populations, including American Indians, are often forced into the basement of society by both historical and present-day mechanisms that create and perpetuate social and economic injustice.

The status of minorities has now been further reduced by the self-fulfilling prophecy of these institutions who point to minorities and now condemn them for exhibiting basement behavior. All over America, we see the signs of urgent restlessness, and South Dakota is no different. We've seen a number of marches and so on in our area. Rather than trying to find ways to bring minorities back to a place where they can benefit from our society, we have seen since 1981 an America that all too often tells its elites that it's okay to have a racially and economically polarized society. The few devices that we have formulated in our society to help bring the isolated back into the group—affirmative action, welfare—are in the process of being eliminated while nothing is being done to address the causes of social and economic isolation experienced by minorities.

As we saw in the unrest in Los Angeles and other flash points, we are clearly in a society in a warm up to civil unrest. If we eliminate the social, economic, and moral glue that holds our nation and our state together, it is almost scientifically certain that, with any catalyst at all, we will come apart in an ugly way, and this nation will have to go through another painful period

until we recover our senses and realize that we cannot imprison significant portions of our citizenry as a solution to their cries for social and economic justice, in whatever form those cries come.

Unfortunately, South Dakota's largest minority, American Indians, have suffered from the same inequities and neglect as the rest of the nation, and the results are often more drastic for American Indians. Our contradictions here in our state are as stark, if not more stark, than the rest of the nation. Racial polarization, while improving in certain sectors of our state, has long been a reality for us. Acts of racial violence are as much a part of our state history as they are of the history of the South. Racial violence has always had one primary target, which is to send a message that any minority could be the next random victim and therefore, they need to stay in their place. And I think it's important to be cognizant of this history because although non-minorities may not carry this history in their consciousness, minorities do.

We've had our own strange fruit here in South Dakota which has fallen far from the tree of society. Because of this history, any new act of violence with an American Indian victim, whether that act of violence was racially motivated or not, sends ripples of fear through Indian communities. This fear is not irrational. In fact, it would be irrational for American Indians to not be afraid when members of their group turn up along roadsides, face down in creeks, upside down in trash cans, or dragged to death as occurred several years ago in the Candace Rough Surface case which was up near the Standing Rock Reservation. Our James Byrds often appear with little notice here in our region, and their killers often get probation rather than the death penalty or do not get charged at all.

Racial violence operates with latent malice set in motion like a self-adjusting perpetual machine, and when minorities react to new deaths among their members, it is minorities who appear excitable and prone to exaggeration while the rest of society looks on with calm reasonableness as if they are disconnected from it all.

There's been a lot of talk over the last two decades regarding people needing to take more responsibility. If we're going to be a cohesive society, then everyone, including those who have taken the most from our social and economic system, need to recognize their responsibility for

the condition of all parts of our society. Taking responsibility means not pretending that racism was not involved when a young Native American man who is impaired as a result of fetal alcohol syndrome is given too much to drink, slapped around, thrown in a ditch, and then placed in a trash can by non-Indians where he was found dead.

Taking responsibility means checking in with how our justice system would have reacted if Robert Many Horses had been non-Indian and the people he had been drinking with were Native Americans and had treated him in the manner that Robert was treated. Taking responsibility means that when the sword of justice is wielded, it is wielded equally. Taking responsibility means recognizing the connection between the social and economic advantage of nonminorities and the disadvantaged condition of minorities. Taking responsibility means looking closer at our institutions to see whether they are mediating the wealth and benefits of society between all of our members, or whether they are part of the enforcement mechanism that maintains social advantage for one part of society while ensuring that the other part of society stays in the basement.

In conclusion—and I really wish there was a conclusion, but there's not, only a challenge, the justice system cannot by itself cure the racial and economic inequities that exist in South Dakota and the rest of the nation, but equal application of the law is a good beginning. While the justice system cannot cure the larger inequities of society, it can address and resolve its part in those inequities. Real civil and human rights, equally applied, always brings societies together and create the basis for dialogue and interaction. Failure to do so creates unspeakable pain such as that felt by the families of all of the recent Native American deaths in South Dakota and eventually leads to a downward spiral of racial division, mutual and irreparable infliction of social wounds, and eventually a scarred society.

I'd like to thank the members of the Commission and the Advisory Committee for helping South Dakota pull back from the brink of that kind of polarization and to get us talking again with each other in an appropriate manner. Thank you very much.

Discussion

CHAIRPERSON FEINSTEIN. I'll ask for questions from the Advisory Committee for Mr. Abourezk.

MR. WALSH. Mr. Abourezk, in the last 10 years there's been a tremendous economic boom in America. From your perspective, have Indian people benefited at all from this economic boom?

MR. ABOUREZK. I don't believe so, Mr. Walsh. First of all, when Ronald Reagan came into office, Pine Ridge Reservation had 35 percent unemployment. When George Bush left office, that unemployment had inflated to 85 percent. I think that the situation is critical economically, and I also have a belief that because of discrimination in the job place that there's sort of like an invisible barrier thrown up around reservations where people cannot even go off the reservation and get jobs, and on the reservation when you don't have investment or you don't have fairness in lending, essentially you either end up with an illicit economy or no economy at all.

And so I think there's sort of like a cordon around Indian reservations, and I think even in Rapid City where there's a significant minority of Native Americans here, it's almost impossible for young Indian males to get work in this area because of job discrimination. And I think we need to recognize that and do something to alleviate that because that's the source of so much—that feeds into so many other problems that we are always talking about, but never seem to be able to find the solution for.

CHAIRPERSON FEINSTEIN. Anybody else on the Advisory Committee?

MS. KIM. Mr. Edwards, if you were one of the local authority members for these victims, what would you have done differently?

MR. ABOUREZK. Are you speaking about the Mr. Many Horses case?

MS. KIM. Yes.

MR. ABOUREZK. I think that that's a little difficult because I represent the family to really speak as openly as I'd like to on that issue, but I wanted to go so far today as what I had authority from my client to talk about. But I think in a general sort of way, you know, first of all, recognizing the humanity of the victim is a big step. The foster mother of Mr. Many Horses was unable to get any cooperation from local authorities. She didn't receive the autopsy report for about three weeks after his death. They've been totally unresponsive to her. She feels that they

were not aggressive in the way that they prosecuted the case, and I think that's about the extent of what I can say with regard to that. I do know from discussions with her that I'm free to say that much.

MS. KIM. Thank you.

CHAIRPERSON FEINSTEIN. Anybody else on the Advisory Committee? Jim?

MR. POPOVICH. Mr. Abourezk, Native Americans have a perception that they're not well represented in the jury system and also in the justice system within South Dakota. Can you speak to that?

MR. ABOUREZK. I think that that's probably improving. When they changed the system not from voters, but rather from driver's license holders, I think that's going to be a great benefit. We are seeing more and more Native Americans on juries, but still, I think oftentimes the perceived inequities that Native Americans feel when they go through the judicial system have a lot to do with being judged by people who are not part of their milieu or part of their way of life and therefore, have difficulty interpreting behaviors that weigh very much in their decision with regard to the system itself.

I think that the federal system has done a much better job here in South Dakota of including Native Americans on the juries because they draw from such a wide panel. I think we still have a ways to go in the state judicial system in being more inclusive and helping Native Americans to feel that they're being treated fairly when they go through the judicial system. Whether there's actually an inequity or not, I can't say statistically speaking, but the perception is very important, and oftentimes there are many things that can be done to improve the perception.

I think Justice Miller of the South Dakota Supreme Court has done a great job of reaching out to tribal court systems and trying to find out, or reach out and have an interaction with these court systems to make the state judicial system look inclusive. When Justice Konenkamp was invited to be sworn in, he invited the tribal judges from all around South Dakota to attend and view part of his swearing-in ceremony. Those are things that are maybe superficial on one level, but on another level, they do go quite a ways toward creating trust in the system and feeling that Indian people are participants in that system.

MR. POPOVICH. Thank you.

MR. WALSH. What else needs to be done between the state and tribal government to continue this dialogue and search for social justice?

MR. ABOUREZK. Well, I think that the state could do quite a bit, and I don't want to necessarily name names and point fingers today, but when Governor Mickelson was the Governor of South Dakota, he did begin a process where we started to talk, and so often the front line in friction between Indians and non-Indians in South Dakota is in the area of tribal-state relations, and I think a lot more can be done in that area, and I'm sure other people will speak to that today. But I mean really, we don't have any dialogue and that's essential in the state right now.

CHAIRPERSON FEINSTEIN. Are there any more questions? Now I'll ask Dr. Berry.

COMMISSIONER BERRY. Okay. Thank you. Any Commissioner have any questions for Mr. Abourezk? You do, Vice Chairman? Well, let's let our junior member go first. Go ahead, Commissioner Edley.

COMMISSIONER EDLEY. You're so kind, Madam Chair. Mr. Abourezk, in lots of parts of the country, there are civilian or citizen review boards, complaint review boards that monitor and serve as a watchdog for law enforcement authority, and some of them have subpoena powers, some of them have independent investigatory authority and resources, others of them are less formal. Are there such mechanisms in place in any communities in South Dakota, and if so, what do you think about their effectiveness?

MR. ABOUREZK. I'm not aware that there are any such committees here in Rapid City, which would be one place, or anywhere else in the state of South Dakota. I think that they can be wonderfully effective, not only in providing an ear for the Indian community when they do have complaints or when things bubble up that appear to be unfair or that there's unfair treatment by law enforcement or whatever. So I think I would welcome that, and there may be something around that I'm not aware of, but I think here in Rapid City, particularly, whether that perception has really been a fact or not, there is a perception that oftentimes officers are not trained to be sensitive to Native Americans.

I remember years ago when I worked for South Dakota Public Television; I did a program on discrimination, and I thought Chief Hennies made some incredibly sensitive comments about

race relations and I was real impressed. This was back in the '80s. But over time, Chief Hennies is not out on the street most of the time, and people have encounters with law enforcement and they come away from those encounters not having very much faith in law enforcement. And I'd like to see some sort of mechanism, and I'm sure Chief Hennies and the sheriff's department would welcome such a mechanism, to sort of help mediate between law enforcement and the community.

COMMISSIONER EDLEY. On a very different area, of course, the problem of adequate, capable legal representation for the poor is chronic and pervasive around the country. In South Dakota are you aware of any studies, or if not, can you just give us your impressions of whether or not access to legal representation by the poor, both civil and criminal, is comparable for the Native American and non-Indian populations? Are they all in the same boat sharing the same plight, or is the situation worse for one or another group?

MR. ABOUREZK. My sense of that is that although the public defender's system, which is not in every county in South Dakota, but in the larger counties, does a valiant job of trying to provide that representation, but they're swamped and understaffed. Out in the rural areas people who cannot afford counsel have local attorneys appointed for them. I can't always say that those attorneys—I mean, I have no way of saying one way or the other whether those attorneys are adequate or not. You take what you get in the local system.

Same thing is true in the federal system here, although that's changing because they're introducing a federal public defender system, but I'm even concerned about that because they only funded two positions in Rapid City, two in Pierre, and one in Sioux Falls, and 80 percent of the criminal—as I understand it, 80 percent of the criminal defendants in the federal court system in Rapid City, anyway, are Native Americans, so I'm real concerned about how that's going to spin out.

COMMISSIONER BERRY. Okay. Vice Chairman?

COMMISSIONER REYNOSO. I'd like to follow up on that previous question with respect to representation for the poor in civil matters. What is the situation in this state in terms of Legal Services programs representing both Indian Native Americans and non-Native Americans?

MR. ABOUREZK. Well, I think that there's even more of a deficiency because the Legal Services corporation is so restricted now by Congress in what it can and cannot do in terms of the types of cases it takes, and they're also incredibly understaffed and underfunded. I was on the—

COMMISSIONER REYNOSO. Excuse me, is there any state or local funding for Legal Services for the poor on the civil side?

MR. ABOUREZK. None that I know of, unless South Dakota contributes to the Legal Services program.

COMMISSIONER REYNOSO. And one quite different question. Of course, the administration of justice system begins with its enforcement in terms of police officers and investigation, and at least yesterday as we went around, we found a great deal of suspicion of the quality of representation and investigation by the FBI. Despite its generally stellar reputation, many of the local folk, particularly Native Americans, were concerned about the quality and the expeditiousness of investigation and, frankly, there is a large aura of suspicion based in part on the historic disagreements between the FBI and some of the Native American people of this state. One, what are your impressions? Two, what can be done to help in that regard?

MR. ABOUREZK. That's a little more difficult for me to comment on. I know that back in the '70s and early '80s that there was a lot of tension between the FBI and people that were involved in Indian rights on the reservation, but in recent years my real experience—I do largely civil work so my real experience has only been in these cases involving Mr. Black Elk and Mr. Many Horses. And I would say that with regard to Mr. Black Elk's case, Mr. Vukelich, who's the special agent in charge here in Rapid City, has been pretty good about communicating with us. I've talked to family members. He's gone down there and kept them updated on the investigation. So it's hard for me to be critical with regard to that case.

With regard to Mr. Many Horses, I really don't know because they have not contacted either me or the family regarding their investigation, which they have assumed an investigation after the state apparently—or the local authorities ended their investigation.

So I do honestly believe that in the Black Elk case, they really are making a sincere effort to

resolve that, and I don't have any reason not to expect that to continue.

COMMISSIONER REYNOSO. Thank you.

COMMISSIONER BERRY. Any other Commissioners have any questions? [No response.]

COMMISSIONER BERRY. All right. I just have one. The one question I have is, is there any evidence—well, I have a question and a half. Is there any evidence that when Native Americans or Indians are in the police force or in the juries or in the judiciary, to the extent that that happens, that they seem to be any fairer in considering the situation of Indians than other people? I ask that because in the African American community, we have experiences which indicate that you can't count on the fact that you get somebody appointed—I call it the Clarence Thomas syndrome—that you will then have somebody who will look favorably on your interests, and we know of cases of police officers who try to treat African Americans worse just to prove to everybody else they can be just as brutal. So I was just wondering if you knew whether having more people on juries and so on seems to be having any kind of impact?

MR. ABOUREZK. Well, my experience with Native Americans on juries has been a positive one, whenever they vote for my client, I expect, but—

COMMISSIONER BERRY. How about judges? Have you got any—

MR. ABOUREZK. Well, we're safe in that regard in the sense—

COMMISSIONER BERRY. There aren't any?

MR. ABOUREZK.—there are no Native American judges, that I'm aware of anyway, in South Dakota. Tribal judges, I think, really do make an effort and most now are law trained, some are not, but they really do a great job of administering justice under very severe financial constraints.

COMMISSIONER BERRY. I thought one of the judges in one of the cases, Many Horses or one of them, was one-eighth Indian or something.

MR. ABOUREZK. I'm sorry?

COMMISSIONER BERRY. Did I read that wrong, that Judge Portence or P-o-r—

CHAIRPERSON FEINSTEIN. Portra.

COMMISSIONER BERRY. Judge Portra? It says in the press at least he was one-eighth Indian.

MR. ABOUREZK. I was unaware of that, I guess.

COMMISSIONER BERRY. I wondered if it made any difference.

MR. ABOUREZK. Apparently not in that case, but—

COMMISSIONER BERRY. Okay. All right. I just wanted to get the answer to that. Thank you, Mr. Abourezk.

MR. ABOUREZK. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Thank you, Charles.

Community Panel

CHAIRPERSON FEINSTEIN. We'll move on about one minute ahead of schedule, which is positive. Just to remind everybody that this process is an informal system, but we do have to keep in line with time, and in that interest, we'll move on to the next group. We've got a panel with Darlene Renville Pipe Boy of Peever, South Dakota, and Ted Means of Porcupine, South Dakota. And as on the schedule, Darlene Renville will go first. And, Jim, you have the timecard? Jim will flash the timecard when you have two minutes left and that will give everybody time to respond and for questions.

Darlene Renville Pipe Boy, Peever

MS. RENVILLE PIPE BOY. Excuse me. I think Native Americans have always been noted for their humor. I came today wearing my halo. Perhaps that might help the situation.

I want to mention some facts I think that those of the Commission should be aware. I come from a significant family. My name is Renville; it's French. In the 1700s, the Renville raiders went to help the British fight the Americans. We lost the war, perhaps not the battle. In 1862 President Lincoln, while signing the Emancipation Proclamation, also signed a proclamation killing 38 Dakota men in Minnesota. I'm one of the descendants. This killing of Indians has always been acceptable to America. This is nothing new; it's always been accepted. We're the younger generation that stands up and says, we are more educated, perhaps.

Genocide, oppression, invisibility. There are numerous incidents, not only the ones that have been publicized, numerous incidents of Sioux people, Native American Indians dying on the reservations. It just so happens that these more current incidents have been in the media. There is a lack of media coverage in the state of South Dakota. I went to a Civil Rights Commission hearing last May in Fargo. The question I had for the Commission was, is South Dakota in the

United States of America? Why hasn't there been Civil Rights Commission hearings in the state of South Dakota on each reservation? And I want that to be a recommendation.

The U.S. policy in the world concerning human rights, civil rights obligations has to stem from what is happening in the United States. If the United States deems it right, shall we say, that you can take the life of a human being, I'm sure that same policy is extended into the world as a whole. When you talk to China about human rights, I think the United States better look at its own policy concerning Native Americans.

In South Dakota—and I'm glad I have Mr. Means sitting by me, Sioux people—Dakota, Lakota, Nakota people reside in the state of South Dakota. We are one tribal grouping, and we have always been fighters, both women and men alike. That is how we have survived, without any help from the system. I think the backlash began when we defeated Custer. It is the only time in United States history that the United States military has ever been defeated, and it took the Sioux people, the Cheyenne people, and other tribal groupings.

South Dakota itself—I'm 59 years old, I'm not ashamed of my age. I grew up in the '50s and the '60s. Perhaps I was a flower child, but I grew up with prejudice and oppression and racism, all of these words we do not like to hear. I was educated in the public school. Boarding schools are another issue that the Commission should undertake. I went to a public school. Because of prejudice it seemed like every day, even though I was a young lady, I was always fighting for my rights.

This fear, you know, that is really pervasive in the system that I can sit in a restaurant, go into the judicial system perhaps, walk the streets, and have people move away from you. Why? Why? Is there equal protection of the law? We fall under three judicial systems that say tribal, state, federal. Do we have equal protection of the law? Is there equal enforcement of the law? I think that's the great concern that we have today.

I've often said Sioux people do not have human rights, civil rights that at some point in time cannot be taken away. United States policy shows that. I'm a history teacher. Civil rights violations: All facets of the society, whether we look at law enforcement, health, education, social issues, what have you, there's all kinds of

violations. Racial profiling: Like the black people, Native American men, Native American women, we look at a highway patrol the wrong way perhaps, he's going to follow me and stop me without having a reason why. All of these minor incidents that occur in each community within the state of South Dakota or traveling across perhaps, you know, that's the beginning of these greater incidents that occur. And we don't have a handle on racial profiling perhaps, and I've been a victim of it and I didn't like the experience.

Border town experiences: White Clay. We have border town experiences in Watertown, South Dakota. I brought along a signed statement by my nephew that he's currently—he doesn't know if they're going to charge him, but they want to charge him with stealing money from McDonald's. And why? Because he's an Indian. He's the only Indian working there. White people don't steal, but Indians do, evidently. But I think I better stop and allow Mr. Means to address the Commission. Thank you.

CHAIRPERSON FEINSTEIN. Darlene, we're going to open up the panel for questions to you first, but I would like to ask you to state your name for the record for us, please.

MS. RENVILLE PIPE BOY. Darlene Renville Pipe Boy, P-i-p-e, B-o-y.

MR. DULLES. Mr. Chair, procedurally I think we will go ahead and proceed with Mr. Means' statement and then open for questions.

CHAIRPERSON FEINSTEIN. Okay. And, Mr. Means, could you state your name for the record, please.

MR. MEANS. My name is Ted Means, Porcupine, South Dakota.

CHAIRPERSON FEINSTEIN. Thank you.

Ted Means, Porcupine

MR. MEANS. Good morning. I first of all would like to greet each of you with a hearty handshake, and that I think that it's a positive step in the right direction that you're here. This room is full of Indian people that have come here because they are concerned. They also come here with a hope that something is going to change.

Back in the '70s I was involved with the American Indian Movement. I went to prison for actions that we took attempting to expose the dual standard of justice in the state of South Dakota. My appeal was denied by the State Supreme Court in South Dakota, but fortunately

when I got into the federal system, my conviction was overturned and I was ordered to be either released or retried. The state chose to appeal that decision to the Eighth Circuit Court of Appeals, which upheld the lower court decision which overturned my conviction.

But back then in the '70s, I remember that at that time there were only 400 and some men in the South Dakota State Penitentiary, and of that population, 140-some were Indian. I would venture a guess that the percentage is similar today, and I'm not going to go into specific statistics and that kind of thing, but I think that racism is something that has changed over the years from the frontier mentality of the only good Indian is a dead Indian to now where it has become more subtle and harder to identify and put your finger on. But believe me, racism exists, and every Indian in this state will tell you that they have experienced this racism, be it in the stores and restaurants, be it in the judicial system, or having to deal with the police forces of this state.

Mr. Abourezk mentioned the effort initiated by Governor Mickelson, but I think that unfortunately that policy, if you will, was not embraced by the state of South Dakota and certainly not by the people of the state of South Dakota.

Every so often, we come to a forum like this with the idea again that things are going to change, but they never seem to change. But I think that in terms of a recommendation that I would have is that I would like to see a continuous dialogue bringing in people from the judicial systems and police forces, people from the Christian community, people from the education community because I think that this racism is something that goes very deep into our society, and it can only change if our young people are taught about racism and how does racism come about and how is it experienced by people.

Racism is something that you have to experience in order to understand, but I think that the educational systems in this state and in this country are key if we ever hope to change the situation that we are in today. There are numerous examples of those Indians found along Rapid Creek here in Rapid City, up in Mobridge, or you name any community where there are Indian people and you will find incidents of racism. We had one in Martin that was identified as a hate crime, but how many Indians in the state have been killed by white people and how often have

those been identified as hate crimes, even though these Indians were killed because they were Indian and only because they were Indian?

So again, I'm encouraged that you are here, but I hope that it doesn't end here, you know, at the end of the agenda. That we could come up with strategies together to address the racism because it's not a question of whether or not it exists, because it certainly exists or this room wouldn't be full.

But I appreciate you taking the time to come here in this type of a forum to hear from Indian people, but you have to hear not only with your minds, but with your hearts because the majority of Indian people have a relative in prison or in jail. And why is that? We shouldn't have to come up with the answer.

So with that, again, I want to thank you. [Speaking in language other than English.]

CHAIRPERSON FEINSTEIN. Thank you, Mr. Means. Questions from the Advisory Committee? Dorothy?

Discussion

VICE CHAIRPERSON BUTLER. Hello, Ted Means. I haven't seen you since the '70s when the hair flowed.

MR. MEANS. And you see it now.

VICE CHAIRPERSON BUTLER. Very happy to see you. I have two questions. One is about a very minor thing, maybe, in some respects, and then I'd like to ask more about the hate crime committee on which I think you serve. The first one is that I was told recently by an enrolled member of the Rosebud Tribe that he had been prevented from boarding an aircraft for a flight out of South Dakota because he couldn't produce a driver's license, but did have his tribal membership card which everybody found unacceptable and so he simply wasn't allowed to board. He did say that it was a picture ID, that all of the same information was there, but that since he doesn't drive, he didn't have a driver's license, doesn't own a car. Have you heard of that before, because I would think that we could address that in very simple terms and do something quickly.

MR. MEANS. I've experienced that right in my own family. One of my daughters had the very same situation. Went to try to cash a check and did not drive, did not have a driver's license. All she had was a tribal ID, and she couldn't cash that check anywhere.

VICE CHAIRPERSON BUTLER. Have any steps been taken to see if someone could address that, not maybe at the airline level, but I believe that this person said that he had written to Senator Daschle who said he'd look into at least making this an option for people who don't have to have driver's licenses.

MR. MEANS. I believe that that's something that needs to happen.

VICE CHAIRPERSON BUTLER. The other thing is that I know that your new federal judge, Karen Schreier, has set up a hate crimes commission. Are you a member of that commission?

MR. MEANS. No. I was asked, but I haven't participated.

VICE CHAIRPERSON BUTLER. I see. Thank you.

CHAIRPERSON FEINSTEIN. Any other members of the Advisory Committee? Alys?

MS. LAFLER-RATIGAN. I'd like to ask each of you, I know both of you mentioned the border towns and the discrimination that exists there. In each of your perceptions, do you feel that discrimination is any different in border towns than in other locations throughout the state?

MS. RENVILLE PIPE BOY. Perhaps one of the ways I can explain, I'm from the Lake Traverse Reservation, Sisseton and Wahpeton Dakota people. Our town is called Sisseton. A comment is always made when other Native Americans come to Sisseton to visit us perhaps, and the comment they make is that there's something here not quite right. When you come into Sisseton and there are both Indian and non-Indian people on the street, they have this sense of tension in the air, and it's always been that way, tension in the air. And we don't notice it because we're used to it. When you go to the larger towns perhaps, I think people are civil to you, but I think they follow you in the stores and they're very vocal perhaps in their comments.

So this border town mentality, where does it come from? Can we call it racism? Can we call it prejudice, bias, what have you? But we all know it exists because we've all lived close to a border town. Behavior, vocal comments perhaps. We're going into the year 2000 and it's not too far away. Is this part of the education system? Do we educate our children to become racists and become biased?

Perhaps it's only a comment, but within the education system, are we taught about Native Americans? We as Native Americans, we're very proud of who we are. I'm very proud I'm a Da-

kota woman. It elevates me above all of these kinds of situations that we have to be a part of, and I think that's equally true of all the people who are here. We're very proud of who we are and it elevates us, but there is a border town mentality.

I think one of the questions was, is there any kinds of commissions, reconciliation going on? I would like to think so, but when Governor Mickelson was alive, he was the one individual that said, "Let's begin this era of reconciliation." And of course, when he passed away, it seemed to have also died.

So I think sincerity, sincerity by both Indian and non-Indian people is what's going to solve problems in border towns. But they also take our money.

CHAIRPERSON FEINSTEIN. Bill?

MR. WALSH. As a followup to that, both of you are from areas where there are Indian casinos, and in the past so often, racism is the result of isolation and fear and noncontact. Has that helped to break down some of the racial stereotypes, because I know a lot of white people go to the various casinos and interact with Indian people. From your perspective is that helping to break down some of these racial barriers that we've had in the state?

MR. MEANS. I don't frequent these casinos that often, but I have been to them, both Rosebud and Pine Ridge in this area, and I don't see that much interaction. I mean, they're there to gamble and they do their gambling and then they're out, they leave, so I don't believe that there's a whole lot of interaction taking place.

But I wanted to get back to respond to the other question in terms of these border towns, that I think it is more pervasive, racism is more pervasive in these border towns because they are confronted more with it on a regular basis, on a daily basis, but it still exists, and throughout the state, because you can feel it. It's something that you can feel as soon as you walk into one of those communities.

I want to give you an example of how racism works here in South Dakota. In 1981 my daughter Kimberly was participating in a spiritual run from Porcupine to the state penitentiary in Sioux Falls. She was run over and killed by a drunk driver at Colome, South Dakota, and the gentleman that ran over and killed my daughter was only charged with drunk driving. He was legally drunk. He was only charged with drunk

driving and given a 30-day sentence and he only did 15 days. And I can tell you today that had the situation been reversed and I ran over and killed his daughter, I'd still be in prison today.

But a small example of this racism or the thinking here in the state, in South Dakota, wherever there has been a fatality on one of the highways, the state puts up these signs that say, "Think." One was put up where my daughter was killed right in the town of Colome, and the city saw fit to remove that sign. Now I don't know why, but it was taken down and it was never put back up. So I mean, these small towns—Colome is between the east end of the Rosebud Reservation and the reservation itself—I mean, the reservation boundaries, but that racism exists everywhere.

CHAIRPERSON FEINSTEIN. Any other questions from the Advisory Committee? BJ?

MS. KIM. Mr. Means, you talked about the instance in Martin as a hate crime, you know, how it was publicized. Can you think of any hate crimes committed by white to Indian people?

MR. MEANS. I can't give you specific examples off the top of my head, but I know that there are situations where Indians have been killed for no other reason than being Indian, and that's something that's gone on throughout our history, and as Darlene mentioned, it's something that we've grown up with and have experienced all our lives.

CHAIRPERSON FEINSTEIN. Any other questions from the Committee? Mutch?

MR. USERA. Either one can answer this question. I was just wondering, you had mentioned, Ted, about learning this at a young age as far as racism and I agree. I have four teenage children, and I've read their books and talked to them as they grew up and what they've learned in the schools, and I guess my question to you is, do you feel that the schools are doing an adequate job in at least educating our kids about racism?

MR. MEANS. You know, I attended a forum at Todd County High School this past Friday, and a number of issues were being addressed in workshops. I believe that where you have Indian students, you find a lot of dialogue about issues like this. I was asked to speak there previously last spring about the American Indian Movement and its history and everything. So I think that in these schools where there are Indian children, you find dialogue, you see dialogue taking place, but not throughout the state where you have

very few Indians in those schools or even here in Rapid City. We have a substantial Indian population. Those kinds of things are not talked about a whole lot. And if you look at any of the history books and go to a current history book and see what it says about Indian people, you know. You'll find that they'd be lucky to have a page in there about Indian people and our history.

CHAIRPERSON FEINSTEIN. Any other questions of the Committee? Dorothy?

VICE CHAIRPERSON BUTLER. For Mrs. Renville, I'll have to say "Ronvee" [phonetic] just because I like the French background. I wanted to ask two questions. One had to do with your mentioning the racial profiling which is so common, and what we need—I think there might be something small in this respect. As a person of color who has seen all of these things happening, even I'm surprised to see the number of men of color who—well, people of color, especially if their cars are late model cars and so on, who are being stopped. And on the Internet there's a site maintained by the American Civil Liberties Union and they call it "driving while black." We need to have them expand this term so that it includes all people of color.

And you mentioned teaching children about racism. I am proposing that just as we teach our children in terms of sex education, that we do need to teach boys particularly and maybe girls as well, but boys love cars so much and they look forward to driving, but to say that you'll need to learn that wherever you are, if you are stopped by an officer, what you do is pull over immediately even though you haven't violated any law. That you keep your hands at the 2:00 and 10:00 positions on the steering wheel so that they'll have no reason to say you've reached for something. That if you must produce your driver's license, then you say you're reaching for it before you reach for it. And some of them really don't understand why this is necessary, but a lot more families do.

So I need to ask, when you were stopped and pulled over and knew it was—how did you fit the profile with halo and all?

MS. RENVILLE PIPE BOY. Maybe elderly people carry guns, too. I don't know. I think it's interesting because when you look at factors as to why people do things, you know, the highway patrolmen—I live in a little housing area, it's called Peever Flats, and we always take the

same road. Racial profiling occurs on that road probably once a month, and the only people that they will stop and catch, take into court will be Dakota people because everybody else has insurance and a driver's license.

But this one highway patrolman was parked on the south side of the road and we were going past. I have two sons. If you look at my son—John, stand up, please. He's got long hair, you know, and he's proud of his hair. He's had that since he was a child. Thank you. So my other son, he has long hair also, and the color of your skin.

So I'm driving, and my older son, he was in the passenger side. We went by the patrolman, driving very slow because we went across a railroad crossing. So my older son looked at the highway patrolman, and as soon as he did that, you know, right now, the highway patrolman came by, and my son said, "It's because I looked at him. I was threatening to him. I have long hair, I'm dark." But he stopped us, and for what other reason? There wasn't a stop sign violation, nothing, nothing. So we say he stopped us because of my son or myself being Native Americans. For what other reason?

So when you look at that stereotype, you know, that's kind of a unique word, that all of the articles that have been written about Native Americans, and we all appreciate the media attention we have been given, but alcohol? You know, are we all alcoholics? Is the stereotype that we're all alcoholics? We all use, or perhaps we use drugs. Is that the stereotype that is pervasive here? I believe that it is. I have non-Indian friends and when I talk to them, the comment that always comes up is, "Alcohol was part of that crime, wasn't it, alcohol?" Or "They were alcoholics, weren't they?"

So this stereotype, I think, creates many problems. I think we have to realize that many elderly people sitting in this room have never touched a drop of alcohol and yet they're caught up in that scenario also. So I think the idea in the back of our mind perhaps is, does the stereotype fit and should we use the stereotype or continue to use the stereotype?

My son, who's 20 years old, said, "I think on the reservation, the only time we receive help from the United States government is because you're an alcoholic. They don't provide positive reinforcement, but if you're an alcoholic, you get help." So the stereotype crosses many lines. It

crosses many lines. But this image of us being alcoholics, we do have people who use, yes, but we're not all alcoholics.

CHAIRPERSON FEINSTEIN. Any other questions?

MR. USERA. I have one.

CHAIRPERSON FEINSTEIN. Mutch?

MR. USERA. Again, either one can answer this question. You are obviously perceived as community leaders in your area, and my question to you is, do you see communities around you, at least community leaders, coming to your communities trying to better understand? And if they are, do you believe they're actually doing something about it?

MR. MEANS. I'm from Porcupine which, of course, is on the Pine Ridge, and there's a number of communities, small communities, Martin, Gordon, Nebraska, of course, White Clay, and Kadoka. I see absolutely nothing in terms of any kind of real dialogue taking place in any of these communities or in any of our communities.

CHAIRPERSON FEINSTEIN. Is that it from the Advisory Committee? [No response.]

CHAIRPERSON FEINSTEIN. Now I'll go to Dr. Berry.

COMMISSIONER BERRY. Do any Commissioners have any questions for the panel? Ms. Meeks?

COMMISSIONER MEEKS. Yes, I do. To what extent do you think the media could play a role in alleviating or educating the public at large, or do you think they've been effective or in what way, negatively or positively?

MR. MEANS. I think that they've been effective in maintaining this racist mentality here in the state. I mean the only time there's any front-page coverage is when you have a situation like the one in Martin or there's a demonstration or a march or that kind of thing. I believe the *Rapid City Journal* has an advisory committee on Native American issues, but you don't see any real change in that newspaper, for one. I think that the media is key to educating people about racism.

COMMISSIONER BERRY. Anybody else down there for the Commission have any questions?

COMMISSIONER REYNOSO. I had a general question. We've had a project in the U.S. Commission of Civil Rights on racial tension; actually it went on for several years. And it's always difficult to deal with those tensions, and both of you have mentioned that you think racism is preva-

lent in South Dakota. Now all the surveys indicate that invariably a large percentage of minorities feel there's racism and a large percentage of nonminorities feel there's nonracism. My question to both of you is, how can the two communities come together in a mutual understanding of racism and the extent of racism or where does it exist?

MR. MEANS. Racism really is born out of ignorance, and the more we can do to educate people, the more we can address the issue of racism. Maybe she—

MS. RENVILLE PIPE BOY. I think I've often thought that people have to accept truth. We all have to accept truth, whether that's in our past or whether or not we have skeletons in our closet perhaps. We have to accept truth in the past. I believe the burden of the United States of America is that it has not accepted the truth of its past, and we're very much a part of that past. If we—and I look at myself. If I deny that I'm growing older and try to look younger, I'm denying who I am as an individual, and I think that same definition applies to conciliatory groups, perhaps, within the United States. Are we denying that a holocaust occurred with the Native American population? Are we denying this? Even with the Jewish population in the United States, did they not say Germany looked at the United States and its concentration camps of Native Americans. Did they not say this, you know?

So I think before we take steps, giant steps perhaps, we take baby steps. And are we in denial? I think we always talk about positives and negatives in our lives. We know what the positives and negatives are. We have to be able to talk equally about positive things that have happened, but you also have to talk about the negativity that exists because it harms our children. Our children are the future. That's what we say as Sioux people, Native Americans, we say [speaking in language other than English], the future belongs to the children. My son tells me, "When I get older, Mom, do I have to deal with the same problems that you are dealing with today?" And I tell him, "I hope not, Son. I hope that I will make an impact as a parent, as a woman, as a mother on the system that you will not have to deal with issues of racism or bias."

We as Native Americans cannot be racist; only the greater population can be. We are not the majority population. We will never be racist.

We can be prejudiced, and at times I am, I will admit that. I can be biased, but I can't be a racist. That belongs to the majority population.

COMMISSIONER BERRY. I had a couple of questions, but first let me ask the Chairman if the staff could enter without any objection in the record from the textbooks that are most commonly used by students in the public schools—I'm talking about non-Indians in South Dakota—the pages in their history, if they take history or civics or whatever it is they take that's relevant, about Indians so we can see what it is indeed that they are learning about American Indians since there's some dispute.¹ Would your panel have any objection to doing that for us?

VICE CHAIRPERSON BUTLER. No objection.

CHAIRPERSON FEINSTEIN. I think it looks like a good suggestion.

COMMISSIONER BERRY. All right. Without objection, so ordered.

I have a couple of points to ask about. First of all, Ms. Renville Pipe Boy, while it is indeed true that it would be stereotypical to say that Native Americans are all drinking and are all alcoholics, that, of course, would be a stereotype, we understand from what we learned here that at Pine Ridge at least, even if you have an alcohol abuse problem, the federal government doesn't do anything to help you, so they don't even help you if you have that problem, so maybe your son ought to know that.

And wouldn't you consider—and we've also been told by various officials different figures on this, but that 70, 80, 90 percent, some number of persons who have either been abused in the criminal justice system, where there are allegations of being abused, or caught up in the criminal justice system, that alcohol was somehow implicated in those incidents. So if that is the case, do you think it is appropriate as we concern ourselves with what has happened to some of these people that we could be concerned about any role that alcohol abuse might have played in making them be in a predicament that something like that could happen to them? Do you think it's appropriate for us to have that concern?

¹ See appendix I. Letter to John F. Dulles, director, Rocky Mountain Regional Office, U.S. Commission on Civil Rights, from Ray Christensen, Secretary, South Dakota Department of Education and Cultural Affairs, Feb. 2, 2000.

MS. RENVILLE PIPE BOY. I believe, you know, because with Mrs. Redday, who is here, the factor of alcohol use perhaps shouldn't be a factor. I think that when you litigate a case and if there was equal protection of the law, a life was taken, we should not be able to have to deal with—she should not have to deal with the fact that the first question that came up was, "Your son was drinking, wasn't he?" No, you're changing the issue when you do this. A life was taken; someone ran over him. So alcohol being a factor, you know, shouldn't be a factor. I think you're looking at and dealing with issues of justice here and are we treated equally. That's what you're looking at. It's not the issue of alcoholism, even though there were X amount of cases, perhaps, where individuals had been shown to use alcohol.

I don't like to use negative examples. There have been numerous times in our community when non-Indian officials, high officials have been caught using alcohol, but they conveniently called up the family and escorted them home rather than to charge them with alcohol use. We've seen this. We're not here to bring skeletons out of the closet, no, but I think when you use the factor of alcoholism, you have already prejudiced a jury, a prosecutor, a public defender, perhaps.

When Mr. Abourezk was talking about the public defenders, well, we have public defenders in Sisseton. I don't know how much they get paid, but it's probably not enough for them to represent all of the cases that come before them. And when that public defender stands up and says, "I'm defending Mr. Means here," is he defending him from the heart and will do the very best to get him out of the situation that he's become a part of, or is he just pushing them through the system? We say yes. We say yes.

COMMISSIONER BERRY. Okay. I only have one other question and it's about how much dialogue across racial lines takes place in South Dakota. All last year the President had a One America Initiative which was supposed to stimulate dialogues all across the country about race issues, and I would have assumed that here in South Dakota, as a result of that, there would have been every week or every day Indians sitting down with non-Indians talking about racial tensions and problems and education and interaction for the whole year. Did that happen in South Dakota?

MR. MEANS. Not that I'm aware of.

MS. RENVILLE PIPE BOY. No.

COMMISSIONER BERRY. Okay. And has South Dakota had a reconciliation commission of some sort?

MR. MEANS. I'm not sure exactly where that is since, you know, Governor Mickelson was killed.

COMMISSIONER BERRY. And the Governor—who's the Governor?

MR. MEANS. Janklow.

COMMISSIONER BERRY. Janklow.

MR. MEANS. And I doubt very seriously that Governor Janklow has initiated any kind of dialogue.

COMMISSIONER BERRY. So maybe Governor Janklow might be persuaded to—I don't know Governor Janklow.

MR. MEANS. He'd be a hard sell, believe me.

COMMISSIONER BERRY. Well, thank you very much, Mr. Chairman.

CHAIRPERSON FEINSTEIN. Thank you, Mr. Means, and thank you, Darlene. We appreciate it.

MS. RENVILLE PIPE BOY. I might want to comment. I think I've been very rude here in not saying it's an honor to have all of you here, and we appreciate you coming to listen to our complaints, and we hope that again the recommendation, come to all reservations and listen to the people talk. I'm only one person, there are many others, and I will say, please come to the reservations. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. We appreciate your comments as well.

Federal Enforcement Panel

CHAIRPERSON FEINSTEIN. Now we'll have the federal law enforcement panel. First up, we have Mr. Ted McBride, the U.S. attorney for the state of South Dakota. Would you state your name for the record, please.

Ted McBride, U.S. Attorney, South Dakota

MR. MCBRIDE. Thank you. Ted McBride. I'm the United States Attorney for the District of South Dakota. First let me welcome—or thank you, not welcome, thank all of you from the Commission for coming, for providing this mechanism for exploring these serious issues. And I'd also like to thank those of the Committee who are here. Many of you I recognize, some of you I don't. This is a marvelous opportunity. And

while I know many of you, Justice Cruz Reynoso, your writings were very formative for me. This is quite an honor to appear in front of you. I'm also a little saddened but also glad that Professor Frank Pommersheim isn't here because anything I could say about Indian country jurisdiction, he can say it twice as well and far clearer.

The United States attorneys are the trial lawyers, in effect, for the federal government. Both criminally and civilly, the large majority of the trial work done by the federal government is done by the United States attorney's office. The United States attorney is said to be the chief federal law enforcement officer for his or her district, although that does not mean that there's a hierarchal supervision. Each agency has its own—or bureau has its own hierarchy, and consequently, they are not ordinarily subject to the direct supervision by the United States attorney.

When we're in the criminal area, the responsibility for criminal statutes is divided up in the Justice Department. There's a Criminal Division, a Civil Rights Division, Tax Division, Environment and Natural Resources. Each have a piece of various types of criminal jurisdiction, and they provide varying degrees of oversight. For instance, the Civil Rights Division—we have a representative here today, Ms. Fernandes, from Civil Rights who will explain this in a little greater detail—maintains a great deal, perhaps not control, but the consultation level is extremely high, to put it mildly. At one time it was virtually controlled. That has somewhat lessened in recent years, but all civil rights cases there is—we don't bring a civil rights case without the Civil Rights Division, just to put it succinctly, and we don't decline them without oversight from the Civil Rights Division, and we're talking criminally. This is not true of our general criminal jurisdiction.

Now generally the federal government is not involved in street or violent crime. If something happened outside here on Mt. Rushmore Road, there was a fight or a gun fight, normally that wouldn't be a federal case, that would be a state case, a case for the local district attorney. In what is termed Indian country, however, the United States attorney, in effect, acts as the state's attorney whenever an Indian person is either the victim or the perpetrator of enumerated serious crimes.

Now I want to start out by pointing out one thing. When I speak of the terms "Indian coun-

try" and "Indian," this is a legal term of art, and being an Indian legally is not—well, let me say, being ethnically a Native American may mean that you are legally an Indian for Indian country jurisdiction, but it may not. For instance, Canadian Indians are not Indians for federal Indian country jurisdiction. If a Canadian Indian went to Pine Ridge and was involved in a violent crime against another Canadian Indian or against a non-Indian person, there would be state court jurisdiction.

The status of the defendant as an Indian is a material element, and the reason for this is that the Supreme Court has held that the classification Indian is not an impermissible racial classification, but is rooted in the unique status of Indians as a separate people with their own political institutions and their own special long-term relationship with the federal government. There are certain obligations placed on these people, but also certain rights; for instance, the ability to possess migratory bird treaty parts that non-Indians don't have. And the Supreme Court and other courts have held that those distinctions are justified on this historical political relationship.

To try to put it in the simplest fashion, Indian country is defined by statute, 18 U.S.C. § 1152, and involves either a nondisestablished reservation, a reservation that still has exterior boundaries such as Pine Ridge. It also involves land where the federal government owns the property in trust for either a tribe or an individual Indian person, even though a reservation may have been disestablished such as Sisseton. Sisseton is one where we don't have the boundaries.

The distinction there is important because on Pine Ridge, Pine Ridge even where there is deeded land and a non-Indian owns that land, it's within the exterior boundaries. Consequently, there is federal jurisdiction whenever an Indian person is either the victim or the perpetrator of a serious crime, regardless of the ownership. If you go up to Sisseton, you have a checkerboard jurisdiction situation which complicates the ability of the state, tribal, and federal law enforcement officers in providing law enforcement services.

We also have, as I said, we have jurisdiction when a non-Indian commits a crime against an Indian person. Now the Indian country jurisdiction, when you are dealing with an Indian defendant, only goes to felonies, and a Indian per-

son who commits a misdemeanor offense against either an Indian or a non-Indian is only subject to tribal court jurisdiction. And tribal court jurisdiction is limited by the Indian Civil Rights Act to punishment up to one year; in effect, a misdemeanor jurisdiction.

Tribal courts do not have criminal jurisdiction over non-Indians, so if a non-Indian commits a misdemeanor offense against an Indian person, tribal court does not have jurisdiction. Since 1990, I believe, or '91 in the *State v. Larson* case when the South Dakota Supreme Court said the state did not have jurisdiction over non-Indians committing offenses over Indian persons, the United States has had sole jurisdiction of those misdemeanor non-Indian defendant cases. It has been the practice of all U.S. attorneys, and I've only been the interim U.S. attorney since August, but all U.S. attorneys, at least since that time, take those cases where a non-Indian commits a misdemeanor assault, for instance, on an Indian person; those are investigated and handled federally.

I mentioned that the United States attorney does not have line authority or hierarchical authority. The law enforcement jurisdiction in Indian country primarily rests with the FBI and the BIA. Now the BIA has the ability—and in many places in South Dakota through what's known as a 638 contract, that's named after a public law, the BIA has contracted with tribal governments to provide basic law enforcement services and investigative law enforcement services. As a matter of fact, I was a little concerned and had asked Mr. Dulles when he mentioned this panel, I said, "Is there going to be a tribal person here?" because the tribal investigators are an integral part of the federal enforcement system in Indian country in South Dakota, and a case almost always starts with the tribal input.

We have developed guidelines pursuant to an agreement with the Secretary of Interior and the Attorney General setting out when a case will ordinarily be primarily a tribal investigator who will then come present directly to the United States attorney's office. These tribal investigators act as full federal officers and have the protections of federal officers under statute in terms of if they're assaulted by someone. And there's a certain category of cases where they do the entire investigation, bring it, present it our office, work with our office, the tribal investigator presents it at grand jury, and conducts the entire

case. There are other cases that a joint investigative jurisdiction has been arrived at. All cases are considered appropriate for joint work and many—perhaps not all, but many of the cases—and I know some of the cases that have been talked about here today involve joint investigation between the FBI and either BIA or tribal officers.

I had a lot more to say and it seems I'm out of time, but I want to go to one area that I know has been of some concern and that's in the area of telling the community about what's going on in an investigation. This presents from a federal prosecutor's standpoint a very difficult balancing. The Department of Justice recognizes that the public does have a right to know, but there are severe constraints provided by rule 6-E of the Federal Rules of Criminal Procedure. We cannot reveal what occurs in front of a grand jury. We also have to balance an individual's right to a fair trial, the defendant. And sometimes if you give information and then you can't make a case, you never are able to indict, you may have unfairly tarred somebody with a brush and they never have an opportunity to have a public cleansing; they never have a real opportunity to get their story out.

Because of that, the Department of Justice has very strict rules about not revealing much of anything in precharge or nonpublic documents. And I know this causes problems and it's a balancing and it's a difficult issue. It's one reason why we met with the families of the two individuals with the White Clay murders, met with their families, as Mr. Abourezk has indicated.

I'm sorry I took a little more than my time. I usually give the court time back, Justice. I'm sorry about that.

CHAIRPERSON FEINSTEIN. Okay. Mr. Chip Burrus?

MR. BURRUS. Yes.

CHAIRPERSON FEINSTEIN. Would you state your name and position for the record, please.

James "Chip" Burrus, Jr., Assistant Special Agent in Charge, Federal Bureau of Investigation, Minneapolis Division

MR. BURRUS. Yes, sir. My name is Chip Burrus. It's James H. Burrus, Jr., and I'm the assistant special agent in charge for the FBI of the Minneapolis Division, and I, too, want to welcome the Commission to South Dakota. We're very happy to have the native South Dakotans

as members of the Commission here to explore these issues.

I have a statement that I'd like to read, and I'd like first to introduce two agents that I've brought with me today: Supervisory Special Agent Mark Vukelich who is in our Rapid City office. He also handles investigations out of Pierre, South Dakota, and David Heller, who is in our Sioux Falls office who also handles investigations out of our Aberdeen office.

On behalf of the Director, Louie Freeh, and Special Agent in Charge Doug Domin, I'm pleased to represent the FBI before this Commission. Both Mark and Dave are here to answer questions should you have questions about specific areas.

As we sit here today, most of our agents in South Dakota are working on one of the nine reservations collecting evidence, talking with citizens, and solving crimes. If they're not on the reservations, it's likely that they're doing paperwork associated with work that they've done while they were on the reservations. Indian country investigations are synonymous with the FBI in South Dakota. We're proud of our agents and their accomplishments on the reservations in South Dakota.

The FBI is a creation of Congress and our authority is limited by Congress. Federal laws passed by Congress give the FBI responsibility to investigate major crimes that occur within the boundaries of all nine Indian reservations in South Dakota. On these reservations within those boundaries, as Mr. McBride had mentioned earlier, we have authority over major crimes like rape, murder, and serious assault. We work these cases in cooperation with our tribal and our BIA partners. Many times maps must be used, as Mr. McBride indicated, to determine who has investigative responsibility. This isn't to duck an investigation, but to determine which laws apply and which courts must hear the case. Bringing the case to the wrong court results in delayed justice for everyone. For that reason, location of crime scenes in South Dakota is an integral part of everybody's first review.

The FBI in South Dakota is part of the Minneapolis Division, which covers North Dakota, South Dakota, and Minnesota. In South Dakota we have offices in Rapid City, in Pierre, Sioux Falls, and in Aberdeen. We have supervisors in both Rapid City and Sioux Falls that oversee the

work and are responsible for the daily oversight. They report issues and concerns to Minneapolis. Minneapolis in turn reports issues and concerns to our FBI headquarters in Washington, D.C.

Since January 1995, the FBI has opened more than 1,100 cases originating on reservations in North Dakota, South Dakota, or Minnesota. Of those investigations, about half of them involved death, serious bodily injury, or assault. Another third are sexual abuse cases. An equal number of allegations were investigated but not found sufficient to justify opening a case. These include tips, rumors, things that you might hear on the street.

The bulk of these investigations were conducted on the nine reservations in South Dakota. Murders, rapes, child molestations, and other serious crimes are a sad, but all too familiar occurrence in America today. The reservations in South Dakota unfortunately are not exempt.

Currently, the FBI has more than 300 Indian country investigations underway in South Dakota. Of these investigations, about 9 percent are death investigations, 8 percent embezzlements, 6 percent burglaries, 4 percent controlled substances, 34 percent child sex abuse, 5 percent assaulting a federal officer, and 34 percent are assault cases.

This past year Congress gave the FBI more agents and support employees to work Indian country crimes. Minneapolis got eight of those agent positions and five of the support positions, the most of any office in the United States. As a result, we were able to increase the size of each of our offices in South Dakota. For these assignments we selected experienced agents who wanted to work in Indian country.

We have dedicated an employee in Rapid City to help with victim witnesses on the reservation, specifically Pine Ridge. We will also hire a victim witness specialist to work the reservations out of Pierre, South Dakota, and one for Bismarck, North Dakota. We split the state of South Dakota into two squads and promoted Mr. Vukelich, an experienced Indian country investigator, to the supervisory position. Lastly, we've dedicated an assistant special agent in charge, me, to head Indian country initiatives on a full-time basis.

One of the myths about FBI agents working on Indian reservations is that they are "dumped" because of performance problems. This is just

plain wrong. Poor performance gets an agents removed from, not assigned to, an Indian country office; the work is just too important. Rapid City is the most desirable RA, resident agency, in the Minneapolis Division and has a list of experienced agents from across the country that know about the work and want to come. One of our recent additions, Charlie Cresalia, an agent with more than 10 years of experience, came to us from Orlando, Florida, where he worked violent crimes cases. Charlie was an award-winning agent in Orlando who had a choice of offices and chose Rapid City. Agents working on the South Dakota reservations are some of the finest I have ever seen.

Partnership: One of the most important parts of our job, Madam Commissioner, is our work with tribal, Bureau of Indian Affairs, local, state, and other law enforcement officers. We work with them in a variety of ways. On reservations like Rosebud, Pine Ridge, and Cheyenne River, we work with and need tribal police partners. We work side by side with our tribal partners on most of our investigations. They're fine officers who know the reservation and its people. We depend on them. On Yankton, Standing Rock, Sisseton, Lower Brule, Crow Creek, we work with our BIA partners. On Flandreau we work with the local sheriff who provides law enforcement through a contract. On all of these reservations, the FBI interacts with our partners on a daily basis, locating and interviewing witnesses, collecting evidence, drawing conclusions from the evidence, and working with Mr. McBride and his office for prosecution.

Work with our tribal law enforcement partners goes beyond investigations. Tribal departments who request training are provided with FBI agent instructors who teach topics such as crime scene preservation, child molestation investigations, basic homicide schools, and report-writing skills. We have attempted to recruit tribal officers for our national academy, our 10-week advanced school for upcoming law enforcement executives. Native American officers have attended our weeklong school in Minneapolis on advanced police management. Our agents and tribal officers interact on a personal level playing sports and engaging in weekend activities with our respective families.

One of the most noteworthy accomplishments over the past years—and this is important from our standpoint and from the jurisdiction stand-

point Mr. McBride mentioned—is the formation of our Northern Plains Safe Trails Task Force. For the first time, tribal, local, state and federal law enforcement officers are working together on a drug problem that plagues communities both on the reservation and off the reservation. Drug dealers don't recognize jurisdiction boundaries and neither does this task force. Officers from Rosebud, Pine Ridge, Cheyenne River, the Pierre Police Department, Todd County Sheriff's Office, Mellette County Sheriff's Office, the Division of Criminal Investigation for the state of South Dakota, the Bureau of Indian Affairs, and the FBI work together identifying reservation drug kingpins, targeting them for investigation, collecting evidence, and presenting these cases for prosecution. The FBI pays travel, overtime, and in the near future will provide office space, vehicles and other tools necessary for this task force to operate. This is important. This is the first time in the state of South Dakota that tribal, local, state, and law enforcement officers have teamed up to work within each other's territory and lock up dealers in a task force setting.

Civil rights investigations are some of the most important investigations that we undertake. The FBI has a long history of successful civil rights investigations dating back to the inception of the law. All allegations are reviewed by our agents and opened consistent with federal laws. There's strict reporting deadlines which must be met on these investigations. Notice of the allegation must be filed with our headquarters and with the Department of Justice within five days and reports must be completed within 21 or an interim report must be completed within 21 days and every 21 days following that. Completed investigations are forwarded to both the United States Department of Justice and the United States attorney. Charging decisions are the province of both of these entities.

One high-profile example of a civil rights investigation was our work on the Boo Many Horses case in Mobridge. This case did not occur on the reservation so the FBI did not have primary jurisdiction. When the state of South Dakota announced its intentions, the FBI took the initiative in determining whether there were any violations of federal civil rights laws. The investigation was completed and now rests with the Department of Justice.

I want to make some comments about a specific investigation, and that's the White Clay

murders. Horrific murders and acts of violence are an unfortunate part of life in America including Indian reservations. Most murders on the reservations, like the murders in large cities, have suspects that are quickly identified because of witnesses, relationships, or even the murder weapon. Most of you probably already know that most of the murders in America occur in some type of a domestic setting, and as a result, suspects are fairly easy to locate. The murders of Mr. Black Elk and Mr. Hard Heart were absolutely senseless. Outside the family, no one wants to solve these murders more than the FBI and the Oglala Lakota Nation Department of Public Safety.

On the day of the murders, the FBI had four agents on the crime scene. We've assigned two of our most experienced investigators to this case. With our tribal partners, we've conducted more than 300 interviews. We have expedited the testing of forensic evidence and obtained other forensic crime scene and profiling assistance. We've deployed search dogs and evidence response teams, conducted aerial surveys, offered \$20,000 in reward money for anybody that would provide us with information that will help us solve the crime. The Director and the Attorney General have both been briefed on this case and remain diligent concerning the outcome. Both have offered suggestions on investigative avenues. We will continue to work this case collecting evidence and following its trail wherever it leads.

As FBI agents, our evidence and testimony must convince a jury of an accused's guilt beyond a reasonable doubt. We're not free to discuss details of the investigation, nor are we free, as Mr. McBride mentioned, to alter reputations by naming suspects. The FBI and the Oglala Lakota Nation Department of Public Safety will not take investigative shortcuts. We destroy the justice Mr. Black Elk and Mr. Hard Heart deserve if we don't follow the rule of law. Outside the family, no one wants to solve this matter more than the investigators.

I just want to mention quickly that we attempt to recruit Native Americans in our work force, and I will address that if there's some specific questions. I only have a couple of minutes remaining and I want to move to my conclusion.

You've asked for our views on whether there are disparities or discrimination in justice and law enforcement systems within the state. These

judgments on the overall picture are best left to others. The success or failure of the FBI in South Dakota hinges on cooperative reservation residents. We need their help to solve crimes and put away dangerous people. Disparities or discrimination in justice or law enforcement systems in which the FBI operates would undermine the trust placed in us by the residents. I'm going to remain here today to hear the evidence that you hear and be sure that the system that the FBI is involved in is free of disparities and discrimination.

The FBI's been a fixture on the reservation for more than 60 years. Our strength comes from the integrity of our agents and their ability to follow the evidence no matter where it leads without regard to race, color, creed, position, or other factors. I believe reservation residents want the FBI involved in Indian country law enforcement, but we must continue to earn their trust by working every day for justice. Thank you very much.

CHAIRPERSON FEINSTEIN. Let's move on to Mr. Vukelich.

MR. BURRUS. Well— [inaudible.]

CHAIRPERSON FEINSTEIN. Okay. Well, then Julie Fernandes. That's why we ran over time. Will you state your name for the record, please.

Julie Fernandes, Special Assistant, Civil Rights Division, Department of Justice

MS. FERNANDES. Yes, my name is Julie Fernandes. I'm a civil rights attorney, and I'm currently the special assistant to Bill Lann Lee who's the Acting Assistant Attorney General for Civil Rights in the Justice Department. This morning I'd like to just talk a little bit about the Civil Rights Division and what we do in criminal and civil matters that involve law enforcement agencies.

The Civil Rights Division under the direction of Bill Lee is responsible for enforcing the nation's civil rights laws, including statutes that prohibit discrimination on the basis of race, color, national origin, sex, disability, citizenship status, and religion. I have with me this morning and I have a stack outside of a brochure that we produced last year that talks about all the various civil rights statutes that we enforce. It includes phone numbers, 800 numbers. I encourage everyone to pick up one and call if you can't get one. It includes an 888 number, a toll-free number for any allegations of police misconduct,

excessive use of force. I'll talk more about that in a second, but I want to make sure everyone sees it.

The Criminal Section of the Civil Rights Division investigates and prosecutes alleged violations of the federal criminal civil rights statutes. These are statutes designed to preserve personal liberties and safety. These statutes include, among others, 18 U.S.C. 242, which prohibits any person from acting under color of law, such as a federal or state police officer, from depriving anyone of any federally protected right.

And 18 U.S.C. 245, which is the federal hate crime statute, prohibits any person from using force or threats of force to injure or intimidate another person because of that person's race or ethnicity and his or her exercise of certain federally protected rights. These are rights such as the right to apply for or have a job, the right to go to public school, or to use public accommodations.

We also enforce 18 U.S.C. 241, which prohibits conspiring to deprive any person of his or her federally protected rights, and 42 U.S.C. 3631, which prohibits any person from using force or threats of force to injure or intimidate any other person because of that person's race or ethnicity and his or her exercise of a federally protected housing right. These statutes operate to protect the rights of Native Americans both inside and outside of Indian country as well as other citizens of the U.S.

Over the course of this Administration, the Criminal Section of our Civil Rights Division, working together with local U.S. attorney's offices and the FBI, has investigated and prosecuted many allegations that involve Native Americans, including allegations that BIA and other law enforcement officials have violated 242, the excessive force statute, and allegations of 241 and 245 violations. We have also investigated and prosecuted allegations that Native American persons inside or outside of Indian country have been threatened or assaulted because of their race, the federal hate crimes statute.

More recently, we have successfully prosecuted defendants for burning a cross in front of the home of a Native American woman and her children in order to threaten and intimidate them because of their race and in connection with their housing rights. In another recent case, we successfully prosecuted a defendant for

assaulting and threatening with a firearm a Native American woman and her African American boyfriend, also because of their race and their exercise of federally protected housing rights.

We receive complaints of criminal civil rights violations in many different ways. Criminal Section investigations may result from a complaint from a victim, a third-party complaint, or indirect notice such as a news article. We investigate all allegations of abuses by public officials and all allegations that appear to fall within the federal hate crimes statute.

The Civil Rights Division seeks to maintain a very close, cooperative working relationship with the 93 U.S. attorneys across the country with whom we have, as Ted McBride explained, overlapping jurisdiction in criminal civil rights matters. Both the U.S. attorney's office and the Civil Rights Division may investigate or possibly indict these matters either together or separately.

While we often work with local investigators to do investigations of these allegations of criminal civil rights violations, our decisions about whether to bring a federal prosecution are independent of any state decisions. And also as Ted McBride mentioned, there are two circumstances in which the role of the Civil Rights Division is more pronounced. Those are, first, in criminal civil rights cases and excessive force cases that are of national interest, and that's a term of art that is defined really on a case-by-case basis where we think it's important that this case is important for our national civil rights enforcement. In those cases, the U.S. attorney's office must obtain approval of the Civil Rights Division before either seeking an indictment or declining to seek an indictment.

The other circumstances are hate crimes prosecutions. Hate crimes prosecutions brought under 18 U.S.C. 245 require prior written approval of the Associate Attorney General, so the Associate Attorney General who is the third highest ranking official in the Department of Justice is involved in and signs off on 245 hate crimes prosecution decisions.

I do want to mention our work on the civil side because we've been doing more of it in the last few years, and I think it's an important piece of our law enforcement and civil rights work. The Civil Rights Division really has two—I'll have to speak more quickly—really has two primary statutes. The first is title VI. Title VI, the Civil Rights Act of 1964, prohibits discrimi-

nation on the basis of race, color, sex, national origin for people who receive federal funds. The division investigates discrimination complaints that are filed against recipients who are recipients of Department of Justice funds which are funds from either OJP, the Office of Justice Program, or the COPS Program. They give money to local law enforcement. That gives us an ability to investigate them for title VI violations.

The second statute and one that's been very important with us has been 42 U.S.C. 14141, which is part of the 1994 Crime Act. This statute gives the Department of Justice, the Civil Rights Division, authority to investigate allegations that state or local law enforcement departments are engaged in a pattern or a practice of conduct that deprives persons of their rights protected by the Constitution. Now the types of conduct covered by this law include, among others, excessive force, discriminatory harassment, false arrest, coercive sexual misconduct, unlawful stops, searches, and arrests. This statute does not apply to tribal police officers or federal BIA police officers, but it does apply to state and locals, and it's been an effective tool that we've used in many jurisdictions around the country for the past few years.

Our work enforcing civil rights statutes with regard to law enforcement entities is and continues to be a priority of the Civil Rights Division. I already mentioned the brochures that we have with us, and I'd be happy to answer any questions.

I do want to take my last minute, I think, to mention two other components of the Justice Department that are instrumental in our work with regard to the civil rights of Native Americans. The first is the Office of Tribal Justice. Mark VanNorman sends his regrets for not being able to be here this morning. They serve to help coordinate Indian policy matters and promote government-to-government relationships between us and the tribes. OTJ really serves as a tribal advocacy entity within the Department of Justice and also consults with other agencies in their work with Native Americans.

The second group I want to mention briefly is the Community Relations Service. Here today is Philip Arreola. He's the regional director for the Rocky Mountain Region of CRS. Here he is right here [indicating]. Also with us is Silke Hansen who is the senior conciliation specialist. CRS is an arm of the Department that specializes in

conciliation efforts, bringing communities together. There were questions earlier about dialogues in communities, and you all are probably very familiar with CRS.

So I want to just thank you for the opportunity to be here and would be happy to answer any questions about the Civil Rights Division and how we can help.

CHAIRPERSON FEINSTEIN. Okay. Questions of the Committee? Dorothy?

Discussion

VICE CHAIRPERSON BUTLER. Mr. McBride, first I hope you'll forgive me because I need to set background for a particularly painful thing that happened in South Dakota in 1976, and it's painful for us, for the tribes, for the FBI, for everyone. But I need to ask you to please state your definitions and the features of whatever laws with regard to what you call American Indians and Canadian Indians.

So what I do know from 1976, that after the body of Anna Mae Aquash was found, and it was a long time before the body had been identified, it had been buried in an unmarked grave, but at the time before the first burial, the hands had been severed at the wrists, put into Mason jars and, we're told, sent to the FBI lab for identification. And what came out of that, though, was the fact that the Canadian government did require the presence of the person who was then the regional director of the Denver office and had to go before both houses of parliament to explain why it was that the body of a Canadian citizen had been so mutilated.

The other thing we were told is that under the terms of Jay's Treaty, that Canadian and American indigenous people can cross borders at will. So could you just tell me now how that works and what are the differences as you stated them earlier?

MR. MCBRIDE. Well, I can't answer all those questions, to be honest. I've not been around since 1976, and I must be quite honest with you, the case you're talking about, as I'm sure you know, is still an open case.

VICE CHAIRPERSON BUTLER. Still open?

MR. MCBRIDE. And some of this rule 6-E about grand jury, I know there was an individual who stood on a courthouse step and said he'd been to the grand jury. I can't tell you whether he was or not. People who appear in front of grand jury don't have the same obligations of se-

crecy that those of us who practice in front of the grand jury.

The point I was trying to make when I mentioned the Canadian Indian is that as many of you may know, there is a great deal of kinship in some Northern Plains tribes with tribes in Canada, and Sitting Bull, I believe, sought refuge there after Little Big Horn, and there's a great deal of back and forth, so you may have people who are actually related who may be a Canadian Native American who would not be considered an Indian for Indian country jurisdiction because they are not a member of a federally recognized tribe. The touchstone being whether first you have a federally recognized tribe.

Once you have the federally recognized tribe, then if there's enrollment, that pretty much sets it up. Even if there's not enrollment, one may look at some blood quantum, so there's an element of ethnicity there with the blood quantum, but more importantly whether that person has held themselves out to be an Indian or whether they are treated as an Indian by the Indian community to which they may seek to be affiliated with, or in the case of a criminal prosecution, they may seek to not be affiliated with. And so that's where the distinction really comes in is in identifying who is subject to this special relationship with the tribal peoples which then translates into the special relationship and obligations and responsibility that the federal government has to those tribal peoples that are part of a federally recognized tribe.

VICE CHAIRPERSON BUTLER. Thank you.

CHAIRPERSON FEINSTEIN. Other members? Bill?

MR. WALSH. Mr. Burrus, it's stated in here that you currently have Native Americans in the FBI both as agents and support personnel. How many—what is the quota and do we have any here in South Dakota? And you also state that the number is low and you're trying to employ more. What are some of the challenges in that area?

MR. BURRUS. Let me get to the first question. In South Dakota we don't have any Native Americans here. In the FBI, I'm going to take a guess here at about 47 this past year. I know we hired four. The difficulties a lot of times when it comes to the Native American population, as it is with a number of different diverse ethnic—those with diverse ethnic backgrounds—is getting them through our process. The age for an FBI

agent is 23 to 37. You have to be able to get a security clearance. You have to have a college degree and usually some type of work experience.

Just speaking for Minneapolis, we were able over the last several years to get five of our Native Americans through the panel—or to the panel. Two of them didn't make it through the initial interview panel, and the others, I believe, declined employment with the FBI for a lot of reasons, including salary. It wasn't what they wanted it to be.

We are targeting anything and everything. If anybody here knows of any Native American or anybody else that wants to join the FBI, I'd be happy to hear from them. We recruit at job fairs, we go to colleges, we go to the reservation, our agents are on the reservation every day. We're always looking for qualified Native Americans to join our ranks.

And one of the things that I didn't mention was during the searches that we had last week, Chief Bernard White Face was able to tell us some cultural sensitivities, and it's in my statement, but this is so important for the FBI to have that. And so as a result, hopefully, in answer to your question, we look for qualified people all the time.

CHAIRPERSON FEINSTEIN. I'd like to have a quick followup on that. From our site visit yesterday, some individuals said that they were maybe interested in going into the FBI, but then they wanted to end up back on the reservation, but they get sent to the cities to do drug work etc., etc. How does that reconcile?

MR. BURRUS. Well, I'll tell you what we try to do. The placement of personnel in the FBI is as close to rocket science as you could get. As openings come up, everybody goes to different locations. Generally you don't go back to the reservation from which you came or to the city from which you came. I'm from North Carolina and they certainly didn't send me back there, and the reason for that a lot of times is to get the agent, the new agent experience in a variety of things.

One of the things that we found, particularly with our Hispanic agents, was that they tended to go on what was called at the time "the taco circuit," and that's where you tend to put Spanish-speaking agents on Spanish wires. They don't get perspective and they don't see the other things, foreign counterintelligence, the different things that we do in the FBI. They didn't get the diversity.

So to answer your question, it would be probably unlikely that somebody would come immediately back to the reservation, but just as soon as they began to get that perspective, if they still had the desire to go back to the reservation, there's not an ASAC in the FBI that would act on it quicker than I would. So does that answer—

CHAIRPERSON FEINSTEIN. Yes. Thank you. Jim?

MR. POPOVICH. Yes. I think this would be directed to Mr. Burrus, but maybe some of the others could answer it. In a recent Justice Department study, it stated that American Native Americans were twice at the rate of the American public as far as violent crimes. It also stated in that report that the BIA chief law enforcement officer has asked for more staffing for understaffed people on the reservations, and this is to help out on patrolling and detention centers throughout the reservations.

Has the FBI, has the Justice Department responded to that study? I notice you mentioned something about training that's ongoing within the FBI and the tribal governments. Are there other things that are happening that we can point out here that will help people understand that that study is being addressed?

MR. MCBRIDE. I'll let Chip maybe fill in a little more, but one, the Justice Department does not have the line authority over those BIA officers; that's the Department of Interior. And the allocation of funds, of course, rests with Congress. I will tell you that I know that the COPS Program, the actual policing program, which has provided officers throughout the country to communities, that the Justice Department reevaluated its original position and determined that COPS monies, while they can't go to the BIA, to another federal agency, could go to tribal entities. And I know, I was just talking to William Brewer, I've known him for years as "Shorty" and I've got to remember to call him William now that he's the director. You'll be seeing him this afternoon with the Oglala Sioux Tribal Police. A large part of their police force will now be employed under COPS grants. There will sort of be a core under what we call a 638 contract, that's money from the Interior Department, but most of the Pine Ridge police force, for instance, will be funded by COPS grants, money granted to the tribe through a Department of Justice program.

There's also a project that the Attorney General started called the Circle Project which is—there's three tribes that are in this pilot program, the Oglala Sioux, the Zuni, and the Northern Cheyenne of Montana, to provide a one-stop shopping to help bolster their ability to tap into various Department programs.

So the concern has been registered to the extent—maybe not to the greatest extent, but there's been a start, certainly, by the Department of Justice under the very direct leadership of this Attorney General; I can tell you, very direct and hands on. This Attorney General has been looking at that issue. Chip?

CHAIRPERSON FEINSTEIN. Thank you. I'd like to ask a question; I'll let the rest of the Committee do it in a second. This has a couple of parts to it and gets back to the White Clay incident in particular, and in your talk you mentioned expediting tests of the forensic evidence obtained from the crime scene. Yesterday I had the opportunity to see Camp Justice and the culvert where the bodies were found. It's been stated to me that that was not where they were murdered. And the followup question or the other part of the question is, what was the cause of death? What did the autopsy report say?

MR. BURRUS. We have shared the results of the autopsy with the families, and we have not made the rest of the details public in terms of the cause of death. Both of those questions, I'm not sure that we can even answer those as a result of the ongoing investigation. You had an opportunity to visit Camp Justice and see the culvert and see the location—

CHAIRPERSON FEINSTEIN. Yes.

MR. BURRUS.—where the bodies were found?

CHAIRPERSON FEINSTEIN. Yes.

MR. BURRUS. Okay. What was the other part of the question, I guess?

CHAIRPERSON FEINSTEIN. Well— [inaudible.] Well, I guess we'll save that for later, but I sort of understand where you're coming from, but we'll wait on—

MR. BURRUS. Let me tell you this: We have explored absolutely every investigative theory that anybody has offered us; I think that is very safe to say. We have two experienced investigators that are on this. If there are theories that have come out as a result of contacts with the families or contact with the community, we have done our very best to explore those. We have to follow the evidence. We just have to follow the

evidence. We can't deviate from where the evidence is taking us, and there are a number of investigative avenues that we're looking at. So I hope that helps. It's about as far as I could go.

CHAIRPERSON FEINSTEIN. Okay. I think BJ was next?

MS. KIM. Yes. Mr. Burrus, you earlier mentioned that there are about 300 Indian-related cases in South Dakota, and among those 300, how many cases have a history of a year or older?

MR. BURRUS. I don't have those figures off the top of my head. I can certainly get that to the Committee, and I would be more than happy to do that. I don't know.

MS. KIM. How many agents are involved to investigate these cases?

MR. BURRUS. We have 23 agents in South Dakota, 25 with you two, Mark?

MR. VUKELICH. I have eight agents here in Rapid City and seven agents actively working in Pierre covering the western part of South Dakota. Dave has—

MR. HELLER. I have six in Sioux Falls and two up in Aberdeen.

MR. BURRUS. Does that add up to 23?

CHAIRPERSON FEINSTEIN. My calculator is broken. Okay. Mutch?

MR. USERA. It sounds to me like that performance-wise you're very proud of what you're doing, but how are you communicating all this? I mean, you're telling us that your people are doing a great job. How are you communicating? Do you have a communicative process? Especially when these cases are lasting a year or more, are you somehow trying to communicate to the general public or to the communities that are obviously concerned? Do you have some kind of process to inform these people so they're not waiting a year, two years? Obviously, that is a frustration with everybody.

MR. BURRUS. Clearly. Specifically with the victims and the witnesses, we have one victim witness coordinator in Minneapolis, we have one in Rapid City, and we soon will have one in Pierre and in Bismarck, North Dakota. Those are primarily the vehicles that, under the guidance of our Attorney General and through the benefits that Congress has bestowed, we've been able to hire those people. Previously investigators generally would conduct the investigations, the U.S. attorneys would prosecute, and then relaying the information back generally would come

through the tribal officers or if the FBI agent was down on the reservation. I think to answer your question, there was no formalized process to advertise what we have done on the reservation.

MR. USERA. Do you think that would have helped, I mean, if there was some kind of process to communicate that to the public?

MR. BURRUS. To answer your question, yes, phrased correctly, it probably would, but a lot of times what the FBI can say and what it can't say in terms of what we looked at and what we didn't look at is very restrictive because as Mr. McBride says, we don't want to tar somebody with a reputation. But believe me the FBI is more than willing to blow its own horn when we do a good job, and we try to do that, giving credit to the other people, the tribal officers or BIA in a teamwork type of a setting. And we do press releases a lot on the results of arrests and things like that. There are times when that perhaps isn't newsworthy and we don't get the information to the press and—but I will certainly take your point and I certainly see where you're going with that.

CHAIRPERSON FEINSTEIN. Okay.

MR. BURRUS. I'm sorry, Dave mentioned one more thing. Dave?

MR. HELLER. Yes, also we have a monthly meeting with tribal people on each of the reservations on the eastern part of the river and, I'm sure, on the west where we sit down with the tribal attorney, prosecutor, also individuals that represent health and welfare services of the tribe and agents and U.S. attorney's office each month and sit down and talk about cases, new cases coming on board, the status of the cases that we're currently investigating, and this is a monthly thing that we all attend. So we do have a form of that, and their families then are continually contacted and in contact with the representatives from the tribes that we're meeting with. We even have tribal members, victims come into these meetings and talk to us.

MR. DULLES. I'm sorry, I need to interrupt. The tape has expired for the court reporter and until they get that set up, why, we'll just hold on. Thank you.

CHAIRPERSON FEINSTEIN. Rae, did you have a question?

MR. MCBRIDE. Could I just real briefly follow up on Mutch's question because we also now have six people involved full time in victim wit-

ness issues throughout the state. Every prior U.S. attorney for several years now has done what they call the *Indian Country Report*, and I'll be doing that after the first of the year where we'll go in front of each tribal council with a report showing the breakdown of cases, the types of cases that were worked on all the reservations, but broken down by reservations. Since I became U.S. attorney I've been—I haven't been to Standing Rock, but I've been to every reservation to meet with a wide variety of both the law enforcement tribal people and the treatment communities. So it's something that needs to be done. We try to do it. We can always do a better job, and you're right, we need to do more of it, always remembering the constraints we have—

MR. USERA. Sure.

MR. MCBRIDE.—both ethically and legally. Thank you.

MR. USERA. Thank you.

MR. FEINSTEIN. Any more questions? Rae?

MS. BURNETTE. I have two different questions for two different individuals. Mr. Burrus, I have never heard an agent speak so eloquently. It's as if the FBI has adopted all the tribal police forces in Indian country, and perhaps with your resources, we should look at sharing some of them with Indian country because we're aware of the fiscal and human resource crisis that they have in their law enforcement divisions.

But I would like to know, did I misunderstand you, but you cannot tell us out of your 60-year history of FBI presence on the reservations and in doing investigations, that you cannot tell us today how many unsolved crimes there are remaining, are out there on the books?

MR. BURRUS. Are you talking about—

MS. BURNETTE. You cannot tell us the numbers of unsolved crimes on reservations today?

MR. BURRUS. Unsolved crimes—assaults, batteries, child molestations?

MS. BURNETTE. Yes, that have been committed on the reservations, you cannot tell me that number?

MR. BURRUS. No, ma'am, not off the top of my head.

MS. BURNETTE. Could you tell me what the FBI's protocol is in working with unsolved crimes and current cases and what your administrative protocol is to respond to a tribal call for assistance when a crime's been committed and your reliance upon—what specifically is the FBI's reliance upon tribal law enforcement in

terms of your criteria and your priority of assistance from them?

MR. BURRUS. Sure. You actually have asked three questions. The first one has to do with—I'll take the last one first, and that has to do with how we interact with tribal law enforcement, and really on six of the reservations, it's BIA. We get referrals from BIA and from tribal officials all the time. A lot of times, our agents go down—I mean, clearly geographically from the reservations' locations, the tribal and the BIA officers are going to be the first ones there, I mean just from a distance standpoint; it was reported to them, they reported there first. Our agents come after the fact. Usually the crime scenes have been preserved and we work with those guys. That's why we give courses in crime scene training. That's why we try to train as many people as we can in evidence collection and things like that. That was one of the questions.

How do we track, how do we follow up on cases that remain unsolved in Indian country? Those cases are assigned to agents. Even the one that was spoken of earlier by Ms. Butler, the Anna Mae Aquash case, it's still assigned; it's an active case. We've still got it assigned to an agent here in Rapid City. Those cases are assigned and remain with the agents.

If you're talking about specifically death investigations, in response to some community concern that there were hundreds of unsolved murders in Indian country, we did go back and specifically canvass our files for the exact numbers, and I can tell you that as far as murders go, there are less than 10 that are unsolved from the FBI's standpoint. If anyone has a list of 60 or 100, I would certainly like to see them because clearly we don't have that type of information. Did I hit the questions that you asked?

MS. BURNETTE. But just to clarify, so the FBI's reliance upon tribal or BIA law enforcement on reservations in response to a criminal act is preservation of the crime scene until the FBI gets there and then you take over the investigation?

MR. BURRUS. Oh, no. Oh, I hope I didn't give that impression. We work hand in hand with our—just initially—if we respond to the crime scene, we work hand in hand with the reservations, with the tribal officers and the BIA officers on all of our—on most all of our investigations. I could think of a couple that maybe we didn't for

corruption concerns or things like that, but that's over the 60-year history of the FBI.

Mark, is there anything that I'm missing there?

MR. MCBRIDE. Well, let me quickly say, because I've got more history here than these folks; I've been here 20 years. What you describe, Rae, was the case 20 years ago, but there was a shift and it was a slow shift. I can't point to which U.S. attorney, but certainly by the time Karen Schreier, my predecessor, came in, it was clear that that was not the way it was going to work. There—and the FBI had a corporate—a shift of corporate personality; it no longer had to be the lead agency. If you'll remember, there used to be something called lead agency. That doesn't really exist anymore. It is a cooperative effort now, but what you describe very much did exist.

CHAIRPERSON FEINSTEIN. Okay. We'll move to the—

MS. BURNETTE. I have one more quick question for Ted.

CHAIRPERSON FEINSTEIN. Okay. Go ahead.

MS. BURNETTE. Ted, the perception out there, and I'm sure you've heard as the U.S. attorney in South Dakota and in particular in Indian country, when crimes are committed, your office is an aggressive pursuer of those prosecutions, and your success rate has been quite successful in prosecuting tribal people, particularly for crimes committed. But for tribal people, there's this adage out there that if you do the crime, you do twice the time if it's committed on the reservation as opposed to committing those same crimes or similar crimes off reservations. Do you want to speak to the federal sentencing guidelines, and is there any perspective you have on that type of information that comes forth that we hear all the time?

MR. MCBRIDE. The sentencing guidelines, as many of you may know, were promulgated as a result of an act of Congress and a desire to have more of a uniformity in sentencing. The foundation for them was the review of 10,000 sentences to determine what factors were significant, and then there were policy decisions made, and what they ended up with is sort of a grid, and Congress has said that this is the law. The Department of Justice has been committed to doing what it can to enforce that law. And our basic premise is whatever we do, we have to be honest with the court and then let the court decide

where to go on the guidelines and whether to depart from the guidelines.

I have heard anecdotally it said that they are tougher than state sentences, and there are some—you know, I can—I mean we talked about non-Indian, Indian sort of crime. On Pine Ridge, the Martin incident, this is the first Indian/non-Indian violent crime I can remember in the last few years. There actually have been three non-Indian on Indian, and I know those three people all received—those non-Indians received significant jail sentences as a result of their activities. Now would they have received the same thing in the state, either the Indian or the non-Indian person? I can't tell you. I've heard people say this. I do not know of any study that has directly correlated South Dakota real sentences. You can't—a 15-year South Dakota sentence and a 38-month federal sentence don't correlate because with a 38-month sentence, you do your time except for a little bit of good time. The state sentence of 10 or 15 years is really subject to interpretation and to the largess, if you will, of the parole commission which we don't have in the federal system. So I think it would take a very specific number-driven, empirical study before any of us could really say you get hit harder if you do the crime in Pine Ridge than if you do it in Rapid City.

MS. BURNETTE. Is that a recommendation?

MR. MCBRIDE. I am not in a position to recommend, merely to expound.

CHAIRPERSON FEINSTEIN. Dr. Berry?

COMMISSIONER BERRY. Yes. Let me first ask Commissioner Meeks if you have a question, some questions?

COMMISSIONER MEEKS. Yes, I do. Thanks. Got a couple of questions. Ted, I've seen your *South Dakota Indian Country Report*, and while the crime in the United States has been dropping for the last seven years, crimes in Indian country have just really been skyrocketing. And Judge Kornmann asked me to come to a meeting where he could brief me about some of the issues in federal courts, and he felt like the federal courts are just clogged with Indian country crimes that really should be in tribal court. And do you know of any efforts to strengthen the tribal court systems, public safety systems?

MR. MCBRIDE. There are clearly efforts ongoing. There's a program that BJ Jones has been involved in. He's the tribal judge at Sisseton and also affiliated with the University of North Da-

kota providing training for tribal courts. Part of the Circle Project I was talking about, the Attorney General's sort of brainchild has a component for getting tribal courts in Pine Ridge a probation officer and process server, which they've never had, and also providing increased training. There are efforts that have been made. More efforts need to be made. One of the things, as long as you only have a one-year jurisdictional max, there are clearly some crimes that are not going to be appropriate for that type of prosecution.

Having said that, there are times when one looks at a case and, you know, something needs to be done. You look at it, you say, "Something needs to be done." And if there is a credible tribal court alternative, then that is a good ground and actually in the U.S. attorney's manual is a stated reason for us to withhold prosecution.

And there's some people here from Sisseton. This is something that I spoke to the tribal council at Sisseton about as well as at Lower Brule, the need for that credible tribal response because there are some people that don't need to go to federal court, but if it comes down to going nowhere or taking them to federal court and there's an abused woman out there who needs some protection, my job's going to be to take it to federal court. It's that simple.

COMMISSIONER MEEKS. One other question, and I don't know who can address this, but Mr. Burrus talked about the Safe Trails Task Force which is related to drug enforcement and which is important work. However, when I look at the crimes that are committed and that you work on in Indian country, controlled substances is only 4 percent of those crimes, whereas assault and sexual abuse and death investigations are in the top three. Why isn't there some kind of program like this that works on those issues that are clearly the most problematic in Indian country?

MR. BURRUS. The drug task forces that we've had success with in the past where you had to worry about jurisdiction have traditionally been the drug type cases. The 4 percent is low. We think it should be much higher because we know that drugs is increasingly becoming a problem on the reservation—methamphetamine, marijuana, each reservation's a little different.

What we're trying to do with the Safe Trails Task Force is that you can't—we don't think that methamphetamine is being made on the reserva-

tion or that marijuana in substantial amounts or cocaine is being processed on the reservation; it generally comes from outside. That's where state, local, federal officers, and tribal can all work together. We all have pieces of the puzzle. It seemed to fit in that particular environment first.

The other thing is that, especially for some of the assaults and murders and things like that that take place, we'll form case-specific task forces if it's necessary. If there's a link to Rapid City, if there's a link to Pierre, clearly those police departments would have an interest in working with us on those particular cases, so it's not exclusive. What we find is that the agents and the police officers tend to form task forces within themselves. They'll call somebody that they know, "Hey, do you have anything on X, Y, Z?" But they work together very well, and that's more of a liaison function than a formalized task force, Ms. Meeks, which specifically we needed to codify so that our agents and state officers and local officers can work on the reservations and the tribal officers can work off the reservations.

COMMISSIONER MEEKS. I'm sorry. At the risk of hogging the microphone here, I just want to talk more specifically about the White Clay issues. How closely did the FBI work with the Sheridan County Sheriff's Department in investigating those murders?

MR. BURRUS. Mark?

MR. VUKELICH. In investigating the White Clay case?

COMMISSIONER MEEKS. Right, right.

MR. VUKELICH. Not very closely. We worked primarily, at least on the initial stages, jointly with the Oglala Sioux Tribal Public Safety Commission. The Sheridan County sheriffs and deputies have been and continue to be extremely cooperative and assist in any way, shape or form, whatever we've asked to include the Nebraska Highway Patrol, which has also taken an active role in the investigation. But to say, did we go to them at the early stages and formally work jointly with them? No, we didn't, but they were there to assist us whenever on whatever we needed.

COMMISSIONER MEEKS. Well, when we met with them yesterday, I mean, it seemed like they had a lot of knowledge of these two particular individuals, and so I just wondered how that—

And the other thing, in these cases where it seems like a lot of suspicion is directed towards

the FBI and the different people involved, the pathologists and—I mean, across the country, how common is it for you to switch people during a procedure, switch pathologists?

MR. BURRUS. Switch pathologists?

COMMISSIONER MEEKS. Yes, or other people, other agents involved in investigations.

MR. BURRUS. We've had the same two agents on this particular case since the very beginning. It's not a—they're generally—in the FBI there are—in this particular case, we have two full-time investigators on this case. It's not to say that's the only two people working on this case. If we have somebody that needs to be questioned in New York or—

COMMISSIONER MEEKS. But in general, you know, in, say, the Aquash murder and those just generally, does it happen that pathologists are switched if there's a lot of suspicion that—

MR. BURRUS. Okay. Referring to—

COMMISSIONER MEEKS.—reports are being—we just hear this and this is just a question that I want to ask, is it that the pathologist gave a report that wasn't accurate or an autopsy that wasn't accurate? Does it ever happen then that there are two autopsies done or—

MR. BURRUS. I really can't answer your question. I don't know that I've ever heard of a case like that. Obviously, our credibility and the credibility of our expert witnesses in court, if there are inaccuracies or it was done sloppily, we probably would hesitate to use that type of expert witness just because it destroys our credibility before a jury. So is it common to reassign? Probably not for reasons of—more for if there's a reason for it, I mean, clearly we'd explore that, but I just don't think—it's not a common rotating type thing, "Well, it's your turn to have this case this week." You need the institutional knowledge.

COMMISSIONER BERRY. Commissioner Lee?

COMMISSIONER LEE. I have a question for Ms. Fernandes. We heard yesterday and earlier today that many individuals did not think that—even though they knew that hate crimes against Indians had occurred, they were not aware any investigation had taken place, and you mentioned there were two cases. And you also mentioned that in order for a federal hate crime investigation or charge, you have to meet dual standards, you have to meet two criteria. How difficult is it to meet both criteria? And secondly, how many cases have you looked into where the crime had met one standard, but not the other?

And finally a question, you mentioned earlier that in order for you to file those charges, you will need, was it the Associate Attorney General or Assistant?

MS. FERNANDES. Yes, Associate.

COMMISSIONER LEE. Why is it that you need that approval before you proceed?

MS. FERNANDES. Okay. First, I can tell you that I don't know—I can't tell how many cases in general fit one criteria and not the other of the two that need to be met in order to trigger a federal hate crime, for it to be a federal violation of 18 U.S.C. 245, but I can tell you that we supported legislation last year that didn't succeed that would have eliminated the federally protected activity requirement in the hate crime statute and allowed us then to have a greater ability to bring federal hate crimes prosecutions than we currently have. Certainly, we have a very effective enforcement program currently, but we supported this change that would have given us a greater ability.

On your question about the Associate, the reason I think that we have the Associate involved is because these cases are very important, and we want to make sure that we have high-level people in the Department in place who are involved in making these decisions.

COMMISSIONER BERRY. Commissioner Edley?

COMMISSIONER EDLEY. Well, just to stick with that last point a moment, it does seem rather bureaucratic to have the third-ranking official in the Justice Department involved in every routine law enforcement decision that's made in this particular arena. You don't have the Associate Attorney General involved in every civil case involving Defense Department contracts, so why isn't it sufficient to have it be done at the AG level or even below, at the level of the person who runs the Criminal Section?

MS. FERNANDES. Well, all I can say is that I don't think I can answer that question, but I can say that I think the mechanism works well for us. I don't think that we find it to be unnecessarily bureaucratic. We work very well with the Associate's office, meeting with them two or three times a week on various issues beyond just our general communication. They're not that far away from us.

COMMISSIONER BERRY. Any other questions?

COMMISSIONER EDLEY. Yes. And I want to say that I think all the Associate Attorney Generals have been swell people, so that's not my objec-

tion. With the 21-day reporting cycle that you described, Mr. Burrus, is there an analogous time constraint, or what happens in the DOJ when the investigations are completed and referred to DOJ, or are there situations in which, after the investigatory report is filed, cases are left to languish while you get on the Associate Attorney General's calendar?

MS. FERNANDES. Well, I certainly wouldn't say that we have languishing cases. We have internal deadlines that we try to keep to, barring unusual circumstances, but yes, we have cases that we've gotten reports on from the FBI that are continuing investigations over time. If you would like, I could provide any kind of data that you would want about how many cases, how long they've been open.

COMMISSIONER BERRY. Please provide us with a record. So ordered.

COMMISSIONER EDLEY. Thank you. On the issue of jurisdiction and the description that you gave us of the decision by the State Supreme Court to not exercise jurisdiction over, was it non-Indian defendants when there's an Indian victim?

MR. MCBRIDE. Yes.

COMMISSIONER EDLEY. It sounds a little bit—please correct my misimpression, it sounds a little bit sort of like dumping of cases into the federal system.

MR. MCBRIDE. Well, they're always willing to—you know, no.

COMMISSIONER EDLEY. I'm not trying to get you in trouble here.

MR. MCBRIDE. I'm not going to let me—the United States attorney's manual for years recognized concurrent jurisdiction between the state and the federal government in Indian country throughout wherever there is Indian country.

COMMISSIONER EDLEY. Yes, but it's hard to have concurrent jurisdiction if they're dumping, though.

MR. MCBRIDE. No, the concurrent jurisdiction of a non-Indian committing an offense against an Indian person. Now that position shifted. The Solicitor General took the opposite position about eight years ago, I think. And at that time the U.S. attorney's manual changed and it was about the same time that the state of South Dakota came out with *State v. Larson*, and I think there was another—Montana had always been that way, and I think it was sort of a growing

thing amongst the states. And it's now—let me say the Solicitor General has taken that position in a case in front of the U.S. Supreme Court, that is, if an Indian person is involved in Indian country, then it's either tribal or federal; there is no state jurisdiction. So it's kind of—it's consistent.

COMMISSIONER EDLEY. Okay. One last question or, I guess, area of concern—I've got to tell you I am not overwhelmed with a sense of you all having depths of self-awareness about the credibility problem that's pretty apparent to us as visitors in terms of just the magnitude, the number of comments, the vehemence of the comments, the pain that comes across in the comments with people not trusting that the FBI is investigating aggressively and effectively. Even most recently this 20-plus folks who went down to do some more investigating, I gather a couple of days ago, comments that we've heard suggest, "Well, why now? Why in December? Why not in June, July, August, September, October, November? Why so long to have this substantial show of investigatory resources?" It smells like politics rather than aggressive law enforcement.

So it's really a twofold question, I guess. In particular, what response could you have to those who look at this and say, "Is this politics or is this overly delayed effective aggressive enforcement? What's going on in this story?" But then the broader question of, are you absolutely sure that you're striking the balance the right way between what you understand to be your ethical constraints in effectively communicating the progress of your investigations on the other—with the—you've got to be concerned with your effectiveness, your legitimacy in the eyes of the community that you're serving.

COMMISSIONER BERRY. Christopher, before they answer that, in the interest of time, I'm going to rephrase the question so that you can just answer once, okay?

COMMISSIONER REYNOSO. She's the Chair, she can do that.

COMMISSIONER BERRY. Let me just say that I am deeply disappointed with this entire panel. I am disappointed with you. I am distressed by your testimony. I have never heard a federal panel give such testimony which reflects a sort of obtuseness about the real conditions that exist with the people. We were only here yesterday and last night, and the pain and the suffering

and the lack of confidence and the people we talked to and listened to, what we heard. And I've been doing this a long time, much longer than Christopher who's a junior member of the Commission, and I can say emphatically, which is why I'm saying it before you answer, based on my experience, I have had FBI before me before and officials from the Justice Department, U.S. attorneys. When we did the church fires in the South, we went state by state and had them, and I've had them in every kind of crisis, and I have never heard such unawareness of how people distrust you, people you're supposed to be serving in the Indian country and how they feel about you.

What it seems from your remarks would be as if everything was fine and dandy and there just happened to be these unexplained killings which we're here to talk about, but otherwise, everything is fine and dandy. Well, everything isn't fine and dandy, folks. And it seems to me that your remarks ought to reflect greater sensitivity, and I apply that not just to the FBI, but to the U.S. attorney and to you, Ms. Fernandes. I'm very fond of you, but what you have told us is something you could have just put in a press release and sent out here, what does the office do. In fact, we want know, is there a time line on your getting a response on what happened to Many Horses in that case? You've gotten a report from the FBI. You may not be able to tell us exactly what you're going to do, I know that, but you can tell us whether there is a timing issue here. Is it a priority? Where is it? I have listened to the AG talk time and time again, and I know how she can say, "No comment" and "I'm not going to comment on that," but you have been more obtuse than the AG when she deals with people because she does indeed give information that she can give so that people can feel confident about what's going on.

So what are you doing on the Many Horses case? Are you going to have a response at some point, do you know, and is it going to be soon? Are you and the FBI here aware that it's been months and months and months in the minds of the people? Are you aware that people say that the tribal police aren't sufficiently experienced in doing criminal investigations? That is the view of many people in the Indian community. If they are, tell us about it. If they aren't, what are you doing about it?

Are you aware also that the entire history of law enforcement at the federal level, FBI and so on in the communities, is that because you cooperate with state officials because you have to, we understand that, you're not large enough to be a national police force and nobody's saying that, I'm aware of all of this, but that there is a lack of confidence because you have to rely on officials? We also know the history of when police are implicated or may be implicated in incidents, what problems the Justice Department has in trying to prosecute. I know what the numbers are on that. I know problems the FBI has on that.

So what you've given us is sort of a pie in the sky sort of, "Here's where we are and we're great guys. We're doing a great job and we're working on this." Why is it taking you so long? Do you need a task force? Should we recommend to the AG there be a task force set up somehow, people from outside here, to help you? Do you have a time line on when you're going to finish? Are you aware of how people feel about you? And why don't you be more forthcoming and talk to them more and make them feel better?

Now can you answer any of this and display some kind of sensitivity to the predicament in which you find yourselves? Whether you know you're in one or not, you're in one. So what is the answer to all these questions? Ms. Fernandes, do you have an answer?

MS. FERNANDES. I don't think I have an answer, but I think one thing that I would like to say, certainly, on behalf of Bill Lee and the Civil Rights Division is that we have an Indian Law Enforcement Task Force within the Civil Rights Division in which we bring together all the folks who litigate in Indian country to try and raise the profile and sensitize our attorneys on the issues that are longstanding in the communities here. We work regularly with the Office of Tribal Justice who has longstanding relationships in the community to be able to better understand how we can appreciate the concern, the longstanding concerns and the real concerns about fairness of treatment, about equal protection as was mentioned, and about marginalization both on and off the reservation.

So though I don't have a specific response, I would like to represent for the Division and for the Department that we are committed to trying to move forward. It's a slow movement, I agree, but we are working to become more sensitive, more responsive, and more in the community. I

know we've done a lot of work, for example, in the voting rights area where we have gone in slowly over the past 10 or 12 years to build relationships and trust. When we first sent federal observers to Indian country to say, "We're going to observe election processes," you can imagine the reaction that we got from the Native American community.

COMMISSIONER BERRY. But, Ms. Fernandes, can we count on you to find out—

MS. FERNANDES. Yes.

COMMISSIONER BERRY.—whether there's any time line—

MS. FERNANDES. Yes.

COMMISSIONER BERRY.—on a response to the Many Horses—

MS. FERNANDES. Yes.

COMMISSIONER BERRY.—report and to provide it to us? When can you find that out and give us what you can at least find?

MS. FERNANDES. I can find that out for you tomorrow.

COMMISSIONER BERRY. Okay. Well, would you let us know that tomorrow?

MS. FERNANDES. Absolutely.

COMMISSIONER BERRY. And could you, Mr. Burrus, could you provide us with the information on your track record? That is, how successful—I don't mean you personally—

MR. BURRUS. I understand.

COMMISSIONER BERRY.—has the FBI been in solving cases, death cases in Indian country here and what's your record and how many cases—the kind of question that Ms. Burnette, I think it was, asked: What's your record, how many open cases, how long have they been open, what are the prospects, if any? And if the U.S. attorney knows about that, fine. I know the U.S. attorney has to wait until he gets the evidence before he can begin prosecution, so that's the predicament he's in, okay, but if you could let us know that. How soon can you let us know, how soon can you give us this information on your cases?

MR. BURRUS. By the end of the week. Are you talking—

COMMISSIONER BERRY. We want to see how successful you are.

MR. BURRUS. Is there a timeframe that you're looking for? Are you talking about as far back as 1990, the success rate or—

COMMISSIONER BERRY. As far back—we want to know as far back as the case that Ms. Butler asked you about.

MR. BURRUS. '76.

COMMISSIONER BERRY. And you said that case was still open. That was in 1976?

MR. BURRUS. '76.

COMMISSIONER BERRY. Wow, you guys. And tell us, to the extent you can, is it a resource problem? Is it an expertise problem? What kind of a problem have you guys got with these cases being open all this time? And then, I guess beyond that, have you done any work, Mr. Mark—I can't see your last name. I'll call you by your first name, Vukelich. Have you done any work—you're in Rapid City, right?

MR. VUKELICH. Yes, ma'am.

COMMISSIONER BERRY. Have you done any work on these people falling in the river strangely, the creek out here strangely? And have you done any work about all these people dying, mysteriously falling in the water?

MR. VUKELICH. Yes.

COMMISSIONER BERRY. And has that come to your attention at all or is that a local—they're still dealing with it?

MR. VUKELICH. Well, it's a local issue. We were asked to assist and have done exactly what we've been asked to do. Our people from the Behavioral Science Unit have come out, worked with the local—

COMMISSIONER BERRY. Could you speak up, please, in a big, strong voice?

MR. VUKELICH. Yes, ma'am. We were asked to review the case. We did so locally, and the FBI has brought its foremost experts from the Behavioral Science Unit out to work with the local law enforcement in that investigation.

COMMISSIONER BERRY. Okay. Do you presumptively find it at least a matter of curiosity that this many people would keep falling in the river or creek and die?

MR. VUKELICH. Obviously, it's a concern not only to the local law enforcement, which are actively pursuing this case, but as well as the federal government. Because it's a local case, when we're asked to participate, we will and have.

COMMISSIONER BERRY. Okay. And the question about why on Thursday, in the press at least it was reported that the FBI stepped up its investigation. That's all we know, what we heard from the press and from people on the reservation walking around talking to us on Thursday, and the big question was why then. And why then? Did you find out something new or—and I would like it to be that we were coming because

that would be great, you know, to have it be that, "You guys were coming. We knew you were coming," but I really have no idea. You maybe had this as—

MR. BURRUS. No.

COMMISSIONER BERRY.—part of your investigative schedule or how ever you were doing it.

MR. BURRUS. Yes, ma'am.

COMMISSIONER BERRY. Do you want to respond to that specifically?

MR. BURRUS. Yes, ma'am, I would be happy to. It had nothing to do with the Commission's hearing. There are investigative procedures and steps that you take in each case, and you are well aware, you just have to follow the evidence. I would love to turn all seven volumes of my White Clay murder case over and let everybody go through it. Maybe there's an avenue we hadn't thought of, but believe me, we have consulted with outside crime scene experts. We have consulted with so many people, it's not out of the ordinary. I mean, this is what we would do in cases like this.

But the searches last Thursday, we did a press release on that particular thing because there was a substantial amount of interest in it. But let me assure you and the rest of the Commission that it had nothing to do with your hearings today; it was simply investigative avenues that we were naturally following up on.

COMMISSIONER BERRY. Would you like us to ask the AG to set up a task force to help you in here to try to resolve these things? Would you like us to do that right now?

MR. BURRUS. On the White Clay—

COMMISSIONER BERRY. Do you believe that's a need right this minute?

MR. BURRUS. On the White Clay case?

COMMISSIONER BERRY. Yes, because I'm willing to do that if that's what you want us to do.

MR. BURRUS. And I certainly appreciate the support that you've shown on this. I don't think it's necessary at this point for a task force. I don't know that—we have gotten every single resource that we've ever asked for from the Director of the FBI and from the Attorney General. I would tell you if I thought that a task force needed to be set up. It's not. It's just not necessary at this point.

COMMISSIONER BERRY. Okay. All right. Mr. Chairman—

COMMISSIONER EDLEY. Well, you mentioned—

COMMISSIONER REYNOSO. You mean she didn't ask your question right?

COMMISSIONER EDLEY. Well, she didn't—well, she tried, but she failed to really get an answer and that's the problem. Let me just put it pointedly. I think that when you have a community that just doesn't have confidence in its law enforcers, explaining to them the intricacies of rule 6-E and the need for grand jury confidentiality is not going to enhance the legitimacy of the agency, and it's not likely to produce more cooperation in investigations. So what I'm looking for is some sense either that you have or that you think you might need to develop a more effective strategy for persuading the community that they are indeed being served effectively.

MS. FERNANDES. Can I mention just a second, not to say that I'm going to answer your question, but I want to just mention that—

COMMISSIONER BERRY. Well, if you're not, then we want an answer to the question first.

MS. FERNANDES. It's relevant.

COMMISSIONER BERRY. But first, Ms. Fernandes—

MS. FERNANDES. It's relevant.

COMMISSIONER BERRY. But first we need an answer to the question. I'm going to come back to you.

MS. FERNANDES. Okay.

MR. BURRUS. Just speaking simply from the FBI's standpoint, there are always things that we can do. We have our agents down there. We try to work fairly. We briefed the family members in the White Clay case. We've talked with Ms. Meeks individually. We've met with the chief of police down there. We've met with absolutely everybody, including this Commission, everybody and anybody that we possibly can to try to improve. We can always improve and that's where we're headed. We've got victim witness coordinators. I'm willing to listen to any suggestions, but are we aware of it? Absolutely. Would we like to improve it? There's no doubt. I mean, there's no doubt about it. We'd like to work with the Native American community. We have to have the cooperation of the citizens of Pine Ridge, I mean, we just have to, and all the reservations or we can't do our jobs. So anything that we can—steps that we can take, I'm more than willing to listen to from anybody.

COMMISSIONER BERRY. Okay. Ms. Fernandes, yes?

MS. FERNANDES. I just wanted to say something briefly about the Community Relations Service. We rely very much and work very closely with CRS and CRS works with us, they work with FBI, they work with local enforcement, they work with the U.S. attorney. They are a strength of the Department well supported by the Attorney General. Rose Ochi is very committed to CRS' work in South Dakota, in Indian country, and in general. So I want to say again, Phil Arreola is here. He is the regional director, and I think that's a good place for us—

COMMISSIONER BERRY. Ms. Fernandes, you shouldn't have said that—

MS. FERNANDES. Oh, no.

COMMISSIONER BERRY.—because I know and have talked to people at the Justice Department about the fact that CRS doesn't have enough resources to put somebody here, and there needs to be somebody here. We've talked about that already.

MS. FERNANDES. I agree.

COMMISSIONER BERRY. And CRS' budget was not increased at all and that's a problem. I want the answers to the two questions that I asked and an answer to Mr. Edley's question. Were you aware that there were issues raised about the lack of training of the tribal police to engage in criminal investigations? Are you aware of that at the FBI? Had you ever heard of that? Did you know about that? Are you aware of that?

MR. BURRUS. We agree with you.

COMMISSIONER BERRY. And are you going to do anything about it? Do you agree that it's a problem? What's your view on that?

MR. BURRUS. Yes, ma'am, we have heard that, and we offer training to tribal law enforcement all the time.

COMMISSIONER BERRY. Do you believe it's a problem, sir?

MR. BURRUS. In particular areas. There are always areas that you can improve in. Do I think the tribal police department is a good police force and we work with them—

COMMISSIONER BERRY. I didn't ask you that.

MR. BURRUS. Okay.

COMMISSIONER BERRY. I asked you, sir, with all due respect, do you believe there may be a problem with experience and the knowledge of how to conduct criminal investigations, at least limited, among some tribal police?

MR. BURRUS. Among some tribal police?

COMMISSIONER BERRY. That's what I asked you.

MR. BURRUS. Yes, ma'am.

COMMISSIONER BERRY. All I asked is that you answer that. The next question I want to ask you, as I asked you before, whether you are aware of how the community felt about you, many people in the community in the Indian—on the reservation and in the community? Were you aware of the lack of confidence and any real trust and difficulty, not at you personally.

MR. BURRUS. I understand.

COMMISSIONER BERRY. You just got here, but at the FBI based on its history and their relationships and that this was a barrier that you had to overcome. Are you aware of that?

MR. BURRUS. Absolutely; and we work to try to improve that every single day.

COMMISSIONER BERRY. All right. Then I'll turn it back over to the Chair. Thank you for indulging us.

CHAIRPERSON FEINSTEIN. Thank you.

MR. BURRUS. Thank you.

CHAIRPERSON FEINSTEIN. This is just a little brief note to the panel. We went a few minutes over time, by about 45 minutes. We're going to just continue, and everybody can take a break on your own. We have to have three members of the Advisory Committee here to maintain our quorum for any point in time.

[Discussion off the record. A recess was taken from 1:31 to 2:05.]

State Prosecutors Panel

CHAIRPERSON FEINSTEIN. If we could have the next two, Dan Todd and Kerry Cameron.

MS. BURNETTE. You have 20 minutes until 2:00, according to the timeframe. You've got 45 minutes between the two of you.

CHAIRPERSON FEINSTEIN. We have with us now Dan Todd, the state's attorney from what county, McPherson County?

MR. TODD. No, I'm from Walworth County.

CHAIRPERSON FEINSTEIN. And Kerry Cameron from Roberts?

MR. CAMERON. Roberts.

CHAIRPERSON FEINSTEIN. Roberts County. And Mr. Todd will go first. State your name and position for the record.

Daniel Todd, State's Attorney, Mobridge

MR. TODD. Thank you, Your Honor. My name is Dan Todd. And if it's pleasing to this Commit-

tee, I'll read a few open remarks and then be available for some questions afterwards.

I'm state's attorney in Walworth County, South Dakota. Walworth County is a rural county in north-central South Dakota, population of about 7,000 people. The county consists of the cities of Mobridge, Selby, Java, Glenham, and Akaska, with the largest population being located mostly in the west side of the county in and around the city of Mobridge. Mobridge has traditionally been somewhat of a trade center for a large radius around the city. This includes being a trade center for residents in Corson and Dewey Counties, which are located on the west side of the Missouri River and totally within the Standing Rock and Cheyenne Indian Reservations.

This Committee has invited me to be part of this forum with the general question of whether there is disparity or discrimination in the treatment by law enforcement of Native Americans or in the prosecution of Native Americans. I do not have any personal knowledge or information as that question relates to the state of South Dakota, but I can respond without hesitation that there is no disparity or discrimination of treatment by law enforcement of Native Americans or in the prosecution of Native Americans in Walworth County.

The facts and circumstances are different in every case. No matter what color, sex, age, or religion of the parties involved, the enforcement of laws are restricted to the facts and circumstances of the respective cases. Some of the factors that vary include what criminal charges are involved, the classification of charges, the number of charges, are they crimes of violence, was a firearm used, if there's a victim what are the injuries, are there witnesses and how clearly can they testify, is there physical evidence, is the defendant a local resident and employed, were drugs and alcohol involved, were the defendants—or does the defendant have alcohol or drug problems, prior criminal history is important, social factors such as family support come into play, and the probability of successful prosecution. Nonetheless, it seems there is an irresistible urge by many to make an assessment of possible disparities or discrimination in cases based solely on only a selected number of the factors. Such an assessment based on only a limited number of factors is not a credible assessment.

The only way a credible assessment can be made is to look at all the cases or possibly a random selection of the cases and compare all the facts and circumstances of the case. The review must find cases and factors and circumstances that are identical, or at least very similar, before you can see if race became a factor that controlled or influenced the outcome of the case. Anything less is nothing more than an opinion poll.

Walworth County has more than its share of capital cases and/or criminal cases that have been highly publicized. It seems that it is human nature to be interested in the negative effects of life, and this is fueled by what seems like an insatiable appetite of news companies. I have had more than one reporter tell me that they have information that they felt was without merit, but they felt, because the case was such a big case, that they needed to report it and they, in turn, wanted my response. If the information is without merit, then it would seem the news company should have enough integrity not to report it.

It's interesting and ironic that justice is supposed to be blind. If I'm doing my job the way it's supposed to be done, I'm supposed to supervise investigations and conduct the prosecution in such a way that race, sex, age, and religion cannot be seen. Yet the inquiry and discussion of issues before this Commission ultimately asks the participants to be the absolute opposite of blind. In order to respond to any claims of discrimination, we ultimately are asked to seriously review each of those factors that give cause to discrimination and then make decisions as if we didn't look at those factors. Amidst this frustration, I've found over the years that the perception of truth often overshadows the value of the actual truth. Thus, even though this process may be uncomfortable, I suppose it's important to be involved in to bring the perception of truth as close to the actual truth as possible.

I stated earlier that there is no disparity or discrimination in treatment by law enforcement or in the prosecution of individuals in Walworth County. If the appropriate entities want to seriously consider whether or not there is disparity or discrimination, an indepth review, including review of files, must be made. The pleadings and the office of the clerk of courts are public record, unless specifically sealed by the court. The files in my office are not public records, but I will make those available to a designated and

agreed-upon person or entity for review. Any other type of assessment is bound to be just a summary of that opinion poll.

I thank you for the opportunity to allow me to address this Commission. If you have questions or comments, I'll be glad to respond, either at this setting or in writing subsequent to this date and time. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Mr. Cameron, state your name for the record and your position.

Kerry Cameron, State's Attorney, Sisseton

MR. CAMERON. My name is Kerry Cameron. I'm Roberts County state's attorney. Roberts County is a county located in the extreme northeast corner of South Dakota. It's been my home all my life. I've served as Roberts County state's attorney there for 25 years. The only controversy in Roberts County that could lead to me being invited here today is the Justin Redday matter.

This matter is not an unsolved or unexplained death. Justin was run over while laying on the road on May 23, 1999, only a half mile from his parents' home. I first met Justin Redday in 1997 when he was arrested for a second DWI. I've known his mom, Peggy, since she was a small child. Her uncle lived across the street from my parents' home.

In my dealings with Justin Redday, he was an articulate, soft spoken, very nice young man. And my memory is that Justin's mother convinced him to go to alcohol treatment when he had that second DWI. The next time I met Justin was when he came to court in March of 1998, on charges of third degree burglary and grand theft. At that time he was looking at 20 years in the penitentiary. That was the maximum sentence that was staring him in the face. And Justin, his mother, and I sat down with his defense attorney, and I told him if he didn't quit drinking, he was going to die somehow; he was going to be in a car accident. He had taken a pickup truck from a man's garage and in his own words told us that he didn't know what he was doing when he was driving the truck. So I made a deal with him. I told him if he'd go to alcohol treatment at the Human Services Center in Yankton, South Dakota, that I would request that the court give him a suspended imposition of sentence on those charges. And he took the deal. He went to treatment. And he was placed on probation. Now, possibly had I sent him to

the pen at that time, he'd be alive now. But what he had to do to avoid the penitentiary was successfully complete three years' probation. He was to do no drinking and he was to be on good behavior, basically.

I guess I kind of question after the rally that was held for Justin on October 16, 1999, in Sisseton, Peggy Redday,² Justin's mom, had her picture on the front page of the Watertown paper holding and sign that said, "State's attorney grooms our Indian youths for prison. Protect our youth." Well, had I had any inclination to send Justin to the penitentiary, I think I could have done it on those two charges. We had very good prosecutable cases. I thought there was a lot of ability being wasted in Justin's case and that he deserved a suspended imp., so that's what I asked for him. I guess I don't understand that sign and I still wonder if it was directed at me or if it was a sign that was left over from some other rally and she just ended up holding it or what, I don't know.

The loss of a child is definitely the most traumatic thing that could happen to any of us. And I can't hold anything Peggy said in the press or otherwise against her. And she and John have my complete sympathy for the loss of their son. When I got the phone call at 3 o'clock in the morning on May 23, 1999, the first thing I thought about was that it could be in regard to one of my kids. I had three kids out on the street that night. I didn't know if they were home or not.

I was told to go to the IHS hospital because someone had been run over on the road. And I only live about a block away from the hospital, so I got up there in about 10 minutes. By the time I arrived up there, State Trooper Jerry Skubic, Sheriff Neil Long, the city police, and the tribal police had already started the investigation of the matter. And within a half-hour of our arrival at the hospital, Sheriff Long and Trooper Skubic and I were out on the highway investigating the matter. We found parts of an exhaust system, a watch, and some shreds of clothing out there. The area was secured at that time. Trooper Skubic and the city police officers worked well into the morning marking the location of the evidence and making measurements

² The Commission afforded Peggy Redday an opportunity to respond to statements by Kerry Cameron. No response was received. See appendix A.

out there. And city policeman, Pat Hammerud, interviewed the people that were in the vehicle that struck Justin while we were out at the scene.

After Sheriff Long and I returned from the scene, we again interviewed these people after having reviewed the statements they had already made. Justin was airlifted to Fargo where he died at about 7 o'clock in the morning. We ordered a full autopsy and gathered as much information about the matter as possible. One thing we were very interested in was whether he was standing or not when he was hit, and the autopsy report indicates he was laying down on his face when he was hit.

Understandably enough, Peggy Redday, Justin's mother, became increasingly dissatisfied with our investigation. We weren't finding that anyone had intentionally killed her son. And due to her increasing dissatisfaction, I requested that the DCI become involved in the investigation, and an agent was immediately assigned. Agent Bob Schugard helped us with the investigation from there on. And at the time of this occurrence and investigation, I had a grand jury impaneled for other matters. So I presented the case to them, thinking that civilians might have a different point of view than law enforcement people in this investigation. Justin's mother didn't think that her son was just laying on the road and he was hit by a pickup truck, so we wanted to do everything we could. And presenting this to the grand jury was a factfinding mission on my part. The last day of the grand jury, Peggy had asked to testify, and I told her that she was welcome to do so. She had also asked if she could have some people with her for support, which I said was fine.

On the 12th day of August and when I arrived at the courthouse, the courthouse was full of people. The grand jury was intimidated and they were mad at me for having them there with a courthouse full of people. During Peggy's testimony she stated that if the grand jury didn't give her justice, she would allow activists to come to town and do what they wanted. Now, from the very beginning of this case, I told Peggy that we didn't have—I didn't believe that we had a manslaughter case because her son had been laying in the middle of the road when he was hit. I believe Agent Schugard told her the same thing when he started to investigate the case.

The grand jury ended up indicting the driver of the vehicle that struck Justin Redday for motor vehicle homicide. He was 17 at the time of the accident, so we moved the court to bind him over and treat him as an adult. The circuit court refused to bind the juvenile over to be treated as an adult, so the matter was left in juvenile court. Prosecutive merit of the case is one of the main factors in consideration of whether the case should be bound over by the court.

Now, it's against the law in the state of South Dakota for me or for anyone to discuss juvenile proceedings. They're to be secret, closed proceedings. So I've not divulged what happened at the juvenile proceeding. Saturday morning the defense attorney for the driver of the vehicle that hit Justin, Mark Appel, called me on the phone and he told me that Mark Appel's family wanted the Commission to know what happened to their son. And he gave me full authority to talk to you folks about what happened to her son.

Now, Mark Appel pled guilty to DWI on September 14, 1999. That's what made the paper. In South Dakota traffic offenses are adult offenses. That's public record. So that's what the newspapers could find out about what happened to Mark Appel. And they reported that I had dismissed the manslaughter charge and he plead guilty to DWI. But what also happened at that time and what the newspapers couldn't find out, what they couldn't report was that the plea bargain to dismiss the charge of motor vehicle homicide against Mark Appel included the fact that he be sentenced to the Department of Corrections until he was 21 years old on a probation violation. Mr. Appel was also on probation at the time of this accident. He had no business being out at the hour he was out, and he had no business drinking alcohol at that time. And the newspapers can't be faulted for the way they reported this because we were unable to divulge the complete plea bargain on this matter. The manslaughter indictment was dismissed. They reported that correctly.

The sentence that Mark Appel received was the same as it would have been had he been convicted of the manslaughter charge. He got the absolute maximum that he could get as a juvenile in the state of South Dakota. And that was part of the plea bargain. The judge had agreed to that. The defense attorney had agreed to that before the matter was finished. Mark Appel is incarcerated at this time. He was sentenced to

the Department of Corrections until he's 21. It's the most severe sentence the court could have given him as a juvenile, and he is incarcerated at this time.

Now, as I indicated before, I liked Justin Redday, and I'm sorry that he's dead. But the investigation revealed the following: Justin left his home sometime after 2:00 a.m., and he arrived at the IHS hospital sometime before 3:00 a.m., being brought in by the people who had hit him on the road. At the time he was hit on the road, he was wearing a black jacket and blue jeans. It was a very, very dark night. There was a very cold wind that night. And when I got out to the scene, I did make a point of checking the pavement to see if it was warmer than the air temperature, and it was quite warm still. And the autopsy report, all the evidence shows that Justin was laying down when he was struck, that he was not standing up. The blood spots and other evidence would indicate that Justin was near the center of the eastbound lane when he was struck.

Mark Appel's blood alcohol level was 0.123 at the time he struck Justin Redday. Justin Redday's blood alcohol level was 0.22. Both Mark Appel and Justin Redday were on probation at the time Justin was hit, and neither of those people was to be drinking or to be out at that hour. Maybe Justin could be out at that hour. Justin had been drinking with his brothers and friends in his parents' yard at home. And his brothers last saw him just prior to 2:00 a.m. The boys arrived at the hospital with Justin just before 3 a.m. And he was about a half mile from home when he was hit.

Now, we did a lot more investigation on this case than we normally do. When a person is hit lying in the road, it's fairly cut and dried normally. We don't normally have a DCI agent in. We don't normally present the matter to the grand jury. We normally would do an autopsy. The investigation went on for about 4 months, and we followed up on every single lead that we had.

I've been criticized by various people in the press for not doing a complete investigation of this matter. I don't know what else we could have done. I don't think that people that have criticized my investigation have any basis for that criticism because none of them have ever come and asked me what I've done or asked to

look at the file. They've just made these statements in the press.

My conclusion here is that alcohol is responsible for the death of Justin Redday. And I suspect that alcohol or drugs are responsible for most of the deaths that we're discussing here today. I think that we should stop bickering among ourselves and work together to do everything we can to eliminate the drug and alcohol problems in our communities, use our energy to put positive programs and positive people in leadership roles in our communities so that this can add something.

And I sincerely hope that the publicity that I've received from this doesn't discourage Native American people from coming to my office for help. A lot of a prosecutor's job in a small community like ours is social work. And if you can help somebody save their job or save their marriage, if you can get them into alcohol treatment or drug treatment, if they need it, or gambling treatment, whatever, if you can help them get their driver's license back so they can keep their job, my door is always open to those people. And I'm afraid that the publicity from this matter is going to indicate to them that I don't care about them and that I'm not available to help them. I guess if you don't care about the people that you work for in a small community like the one I live in, you don't want to do a little bit of social work, you shouldn't be state's attorney. And that's basically my prepared statement.

CHAIRPERSON FEINSTEIN. Thank you. Questions from the Advisory Committee?

Discussion

MS. BURNETTE. I have one, Mr. Cameron. What is the distinguishment between the Redday case, if you will, and the Seaboy case that was prosecuted in your county where the—can you give us the details?

MR. CAMERON. Yes, I can. One big difference would be that Melanie Seaboy was unlucky enough to have reached the her 18th birthday just prior to the accident that she had, and Mark Appel was lucky enough to be 17 years old at the time of the accident he was in. And that's a big difference in South Dakota. Melanie Seaboy was partying all night long. At about 8 o'clock in the morning, she ran a stop sign just west of town. She hit a man that was on his way to work in the driver's door of a Jeep Cherokee, and he was killed instantly. He was a full-time person at our

National Guard Armory in Sisseton. And I guess there's been a lot of question about why that case didn't take very long, why was she in the penitentiary immediately and this Justin Redday matter dragged on for 4 or 5 months.

Well, Melanie Seaboy was in the hospital for a period of time. She was injured quite seriously in the accident. And her mother called me nearly every day from the date of the accident until she got out of the hospital to tell me that she wasn't out yet; that she didn't know when she was going to get out. She called me the day she got out of the hospital. She called me the day they got home and told me they were home so I could set a court date for her. So when Melanie's family requested a personal recognizance bond on her case, I recommended it. Unfortunately, Melanie violated that personal recognizance bond within a couple of weeks, being caught drinking in an automobile. And the judge chewed me out for recommending a PR bond for her, and it was obvious from that point in time that any input from me was going to be ignored on that case.

Melanie came in and she took her medicine like an adult. She just came in and pled guilty to the charge, and that's why the matter didn't drag on. She chose to come in and enter a guilty plea. She was sentenced to 14 out of a maximum of 15 years on the charge of motor vehicle homicide.

CHAIRPERSON FEINSTEIN. Any other questions? Jim?

MR. POPOVICH. Yes, Mr. Cameron, I appreciate you coming forward and giving that testimony. I think you talked from your heart about what happened there, and I think that's commendable. For you, Mr. Todd, though, we did not hear anything from you as far as about Robert "Boo" Many Horses and the problems that you went through at Mobridge. And I'd like to hear you come forward and tell us something, as Mr. Cameron did, about what that case involved and how you rectified the situation with the four youths that got off in that case.

MR. TODD. I can do that. And in preparation for this, I specifically asked, "Are there specific things that will come up," and was told there would probably be questions about the Many Horse case, and I'll be glad to answer those, at least to the extent that I can. As somewhat of a background, the case—the testimony that's on file will—I'll try to summarize that very briefly.

The situation occurred when Mr. Many Horses was picked up by four juveniles. They picked him up probably at 2 o'clock or so in the morning. It appears all of them had been drinking, including Mr. Many Horses. They drank some more together. They went outside of town some distance and drank. I would assume that was because it was more private outside of the community areas of Mobridge. Mr. Many Horses ultimately became unconscious and was brought back to town, left headfirst in a garbage can.

When law enforcement became aware of the situation by a report from a citizen at about 7 in the morning, we responded, found Mr. Many Horses—immediately found him to have been dead at the scene of that alley, that garbage can, and investigations started from there. We made arrests on those four juveniles. I think everybody was in jail by 6 or 7 or 8 o'clock that night. So we had parties in custody within 12 to 15 hours. Mr. Many Horses' body was sent for an autopsy, and the results of that autopsy basically were that he died of alcohol poisoning.

The case was presented to the court at a preliminary hearing and the results of the preliminary hearing, as probably most of you have been aware, the court held that the criminal charges that we filed against all four of those individuals were unfounded and dismissed all of those charges. The charges, to give you a little background, if you may not recall, were manslaughter. And we charged alternatively manslaughter in the second degree. So, of course, what that means is they could have been convicted of one or the other, but not both. We charged them with aggravated assault, or in the alternative, abuse of a disabled adult. Again, it's in the alternative, so they could be convicted only of one. And then there were—I believe those were the main charges. Some of them were charged with aiding and abetting those charges as compared with the actual charge themselves.

As indicated, the court ruled after the preliminary hearing and after a set of briefs were submitted by both the state and all defense counsels that the actual elements of the offenses had not been met, and so the charges were dismissed. I believe one of the comments that the court made, and probably very appropriately, was there was no dispute as to the facts. There was a dispute as to whether the elements of the offense were there, and he ruled on those in the negative.

CHAIRPERSON FEINSTEIN. Other questions? Dorothy?

VICE CHAIRPERSON BUTLER. For Mr. Todd and also for Mr. Cameron, I believe you when you say you're convinced that there are no disparities in Walworth County. I believe you're convinced of that. Do you really think that that's true all over the state? Do you think that you have the problem solved in Walworth County, but the problems exist in other places? Tell me what you see as the racial climate in your county currently.

MR. TODD. I'll try to answer that question, and it may be somewhat twofold. As I indicated, I'm convinced that there is not any discrimination in the prosecution. That isn't a response that everybody else believes the same. And I've seen that in our community. I've seen the marches. I've seen the comments. I've had some of the phone calls. And it's very apparent that there's people in the community that aren't convinced of that at all. And that's why I have suggested that if we really want to get to the root of that, then we really need to look deeper than my opinion, the next person's opinion. I mean, let's look at some of the specific factors.

So maybe in somewhat of an evasive answer, the prosecution from one person to the next, be they Native American or not, I believe is the same. But the perception at times is still that it's not. And so we probably have a race problem. Because if the community believes that we have a race problem, then we probably have a race problem, whether there's equal treatment or not.

So we probably don't have the answer in Walworth County. I wish we did. And maybe it's in public relations. I'm not a public relations person. I probably should be. Maybe that's what we as prosecuting attorneys in the state of South Dakota need some training on. But there's obviously some things we can't report to the press and will not report to the press. How can we present enough information so people feel more confidence? If you've got some suggestions, I'd love to hear them.

VICE CHAIRPERSON BUTLER. There is hope. We made reference earlier today that there is an arm of the Department of Justice that has community relations services. Training is available, but I'm not sure how one might go about getting people into your community. But you mentioned public relations. Sometimes interpersonal communications, sometimes comparing perspectives

in terms of cultures and how we might bridge gaps, because there really are chasms. So I would like to visit with you later indicating where you might find people who do such training. There might be even grants available for training of your personnel if you—

MR. TODD. I would be very interested in speaking with you. Obviously, the smaller the department, the more strained the resources are. And resources in time also as far as being able to cover that. So, yes, I'd be interested in visiting with you.

VICE CHAIRPERSON BUTLER. I'll give you my card and some information.

MS. BURNETTE. I have a short question for each of you. Out of your total caseloads of prosecutions, just in general, then, not specific—perhaps at a later date you could introduce that to the record, we have until December 20—out of your total prosecutions, how many are Native American prosecutions? And out of those Native American prosecutions of your total caseloads, how many of those prosecutions are a result of border checks where law enforcement goes and sets up a stop, a safety check stop or just off the reservation boundary? How many charges come through your office that you attempt to prosecute for border checks and how many are Native American? Do you have a ball park figure on that? And what types of charges do you bring, criminal, DUI, no driver's license, anything?

MR. TODD. As far as Walworth County, I have not done a recent statistical check, but historically it would appear that the prosecution of Native Americans is about 65 percent of my total. Now, I say that it appears because I go by either what I know individuals or Native Americans by their name or appears to be Native American, and I can tell you that that's not always the case. But historically it's been about 65 percent. How many of them come from border checks, I would say zero. We, at least to my knowledge, have not set up, in a sense, border checks to say those coming across the river into Mobridge, let's check to see for DWIs, etc. The prosecutions that we do have in Walworth County are significantly alcohol related, and a huge number of those are DWIs. The number that are actually alcohol related, whether they be alcohol or DWIs or not, I would estimate to be probably 90 percent or plus.

MR. CAMERON. I'd say for Roberts County, that percentage would be similar. It would be 90

percent or more. I don't think a great percentage of our arrests are the result of a border check. We have—nearly every time the Watertown squad or the highway patrol has a saturation DWI enforcement program, they run it in Roberts County; I don't know why they do that, but we just had one again the other night. I haven't seen the results of that because I've been gone. They ran a drug checkpoint on the interstate the night of the Bruce Springsteen concert in Fargo, North Dakota. The signs read, "Drug Checkpoint Ahead" and "Drug Dogs in Use," or something like that. And I had people throwing stuff out of cars. And they stopped the cars. It wasn't really a border check. But they do that stuff occasionally in Roberts County. As far as the percentage of total prosecutions of Indians and non-Indians, I don't think we have those figures.

MS. BURNETTE. They're not accessible, or you can't get them?

MR. CAMERON. Well, it would be kind of hard because you know how hard it is to tell who's an Indian and who isn't. We could make a guess, but they would not be exact.

CHAIRPERSON FEINSTEIN. Dr. Berry?

COMMISSIONER BERRY. Is there any Commissioner who wants to ask a question?

COMMISSIONER EDLEY. I'll let you ask one and I'll straighten everything out for you.

COMMISSIONER BERRY. Okay. In the interests of time, I'll just ask a couple because we're running behind. Let me just say that, Mr. Cameron, do you believe that there are no disparities or that there's no discrimination in law enforcement or prosecution in your county?

MR. CAMERON. No, I can't say that. I think there's probably disparities and discrimination everywhere you go.

COMMISSIONER BERRY. Okay.

MR. CAMERON. I hope I'm not responsible for those disparities.

COMMISSIONER BERRY. Also, in the case of Seaboy, Ms. Seaboy, that you described, is there some reason why she got 15 years in jail? That's one thing. But let me ask a more general question. I had said I'd be fast because of time. Let me put it this way: You as prosecutors have discretion to determine what charges you bring; let's use a grand jury and there's an indictment and so on. Your testimony, both of you, gave no sense of that to people who did not know better. It sounded as if there was just this black letter sort of law kind of thing and there are rules and

we have to follow them and we go along and the outcome comes out this way and we're really sorry if it happens this way or that way, but, gosh, it's just the law and we're just moving along. But prosecutors have discretion. You decide what charges to bring. You're also very influential when there's a grand jury. There's history on this. It's well documented. I'm not making this up. So that prosecutors are not just people who are sort of puppets for the law or rules. So decisions that you make, you are responsible for. You are responsible in your case, Mr. Cameron, for deciding not to abide by the grand jury indictment, and you said that. That was a choice you made for good reasons.

In your case, Mr. Todd, you gave this opening statement that described you just following your little procedures and whatever. But you had discretion and you didn't talk about your discretion and how you exercised it. The other thing is I'm curious, Mr. Todd, have you done a study of law enforcement or law or prosecutorial outcomes or decisions in your county and documented the ones involving Indians and the ones involving non-Indians over any period of time, a year, two years? I don't know how long you've been a prosecutor. Do you have a document or have you done research or do you have statistics which would show, compare your statistics on these matters?

MR. TODD. I'll try to answer your last question first. Several years ago I was asked to present some comments to the Rotary Club, and that was one of their specific requests of how much of my work involved prosecutions against Native Americans. So several years ago I went through, as best I could, my list of criminal cases. And as indicated, I tried to make an estimate of who was Native American and who was not and made that assessment and that was the basis for my comments that historically it's been about 65 percent.

COMMISSIONER BERRY. I was not asking you that.

MR. TODD. Okay.

COMMISSIONER BERRY. Let me try to make the question more precise. Do you have research that shows the prosecuting of Native Americans as compared to non-Native Americans for specific offenses in your county and the outcomes, that is, guilty, not guilty, what the penalties were and the like from which data one could draw inferences about the treatment of Indians

versus non-Indians? Do you have such data in your possession or someplace where we can get it?

MR. TODD. I don't want to sound evasive, but yes and no. I have a running list of every case that I handled since I started in Walworth County. And that running list will basically give the defendant's name, it will give the charges that were pursued and a very short synopsis or summary of the sentence given by the court. From that list, I can make an estimate of who were Native Americans and who were not. So I may be able to come up with some information that you're requesting, but it is not a very empirical or documented stash to be able to respond.

COMMISSIONER BERRY. In a case of prosecutions for assault, what percentages, what were the penalties on the average for Native Americans who were convicted as compared to the penalties of non-Native Americans over any period of time you care to pick?

MR. TODD. I can't give you an answer to that without trying to go back and do more research as it pertains to an aggravated assault. As it pertains to simple assault, the court has—

COMMISSIONER BERRY. Do all of them, any of them. Just give me comparisons and statistics.

MR. TODD. Okay. In simple assaults, I can tell you the court has a standard sentence, and it will almost inevitably follow that sentence to the T for every defendant.

MR. CAMERON. With a little bit of deviation for aggravation, I might add. We have some of the same judges. We're in the same circuit.

COMMISSIONER BERRY. Deviation for aggravated. How about cases of murder? Sentencing for Native Americans compared to non-Native Americans.

MR. TODD. I probably can't give you any definite response on that. I can try to look, but we don't have a lot of murders in Walworth County, thank the Lord.

COMMISSIONER BERRY. How about burglary, comparing the sentencing.

MR. TODD. A few more burglaries. Without going through and doing a case-by-case assessment, my opinion is that they're consistent.

COMMISSIONER BERRY. How do you know this if you can't give me any data? That's precisely my point. On what basis do you conclude and tell this panel that you know for a fact that there is no disparate treatment and there is no discrimi-

nation in any part of law enforcement or prosecutions in your county? How do you know this for a fact? What is the basis for that conclusion that you presented to this panel? Or is it that you don't know or that you think that and believe this, this is your belief? You said you knew for a fact. I want the basis of the fact.

MR. TODD. I can tell you that's my opinion.

COMMISSIONER BERRY. Fine. I won't argue with your opinion. You presented it as fact. And if it's fact, I want a report so we could put it in the record so we can see. But you did offer if someone wants to come and look at your files and do such research and make such assessments, make such a judgment, you'd be willing to have them do that?

MR. TODD. That's correct, and I stand by that.

COMMISSIONER BERRY. All right. So we don't know whether there's discrimination in your law enforcement, except for your opinion, and prosecutions in your county. And we don't know about your county either, do we? Is that correct?

MR. CAMERON. That's correct.

COMMISSIONER BERRY. Okay. Are both of you aware that there is a lot of opinion—well, first of all, are you aware that there seems to be a racial divide in terms of opinion about law enforcement and disparities in your county and in the state, have you sensed that?

MR. TODD. I've sensed it in Walworth County.

MR. CAMERON. I think there's a great division among the Indian people as to whether there's disparity or not. I don't think they all have the same opinion.

COMMISSIONER BERRY. What about the white community?

MR. CAMERON. I'd say there, too.

COMMISSIONER BERRY. There's a difference of opinion?

MR. CAMERON. Yes.

COMMISSIONER BERRY. Can you cite me polling data or any other opinion?

MR. CAMERON. No, I can't.

COMMISSIONER BERRY. This is your opinion?

MR. CAMERON. That's my opinion.

COMMISSIONER BERRY. Thank you. Commissioner Meeks?

COMMISSIONER MEEKS. I just felt like I really had to ask this. And I want to thank you both for coming. I know your jobs aren't easy. In the case of Boo Many Horses, I think that at least I, and I know that other people, really struggled with this fact that he was found upside down in a

garbage can. When you think about that, it's astounding. And I think I struggle with how can an autopsy report be conclusive that being upside down in a garbage can did not contribute to his death, even though his alcohol level was high? I mean, I know that being upside down for any period of time isn't good for anybody. I just wondered if there's some way that that can be really conclusive. Because I think it sort of hinges on that fact in the case. And I felt compelled that I had to ask that question.

MR. TODD. In response to that, that's my very opinion. And I quizzed as hard as I could with the autopsy specialist we had if we could get any definitive on that, and basically his response was no. Now, I'm not a forensic pathologist. It just doesn't sound right to me. But that's the opinion and the best opinion we could come up with. And the approach that I used to address that was that those individuals had a responsibility, whether being upside down or right side up made a factor or not. And the court said no. And I guess many people disagree with judges and probably do in this case. That's the decision I obtained.

COMMISSIONER BERRY. I hate to do this because I know we're late, but this is just so very frustrating. In terms of discretion, as I read the counts of the Many Horses situation, the judge is quoted as saying that the elements of the offense were not proven. Is that basically what the judge said?

MR. TODD. That's correct.

COMMISSIONER BERRY. Couldn't you as prosecutor, couldn't you find some offense that the elements of it could be proven? I mean there must be a whole range of offenses that one can identify when any kind of criminal matter takes place of this kind. Is it an offense to throw people upside down in garbage cans, I don't know. Or is there some—I mean, within your discretion, you just couldn't find anything that the elements of the offense could be proven, that's basically it?

MR. TODD. There are some offenses that are probably misdemeanor offenses that we could prove. And I guess the final decision has not probably been made as to whether those would be pursued or not. I can tell you that we took our best shot at offenses which would make a difference. You know, charging someone with underage consumption and the result is Mr. Many Horses died sounds like a slap in the face. Charging those individuals with some kind of

abuse to a dead body also sounds like a slap in the face. We will, I guess, still look at those, but you have to make some decisions at one point or another whether the interests of justice in a case like that warrant a Class 2 misdemeanor prosecution.

COMMISSIONER BERRY. What does it say to the folks, the young people who were involved in the incident who left the guy in the garbage can when they get off with nothing? I mean, not what it says to the Indian people, to the law or whatever conclusion they want to draw or the family or whatever, but what does it say to perpetrators when you can put somebody in a garbage can, whether they're drunk or not drunk or whatever it is, and you just walk away and eventually nothing happens to you? I guess that's not your job because you're a prosecutor. You haven't been to PR school, so you don't have to answer that question. But it bothers me. If you want to, you can, but I'm not pressing you or anything.

MR. TODD. I don't know what it says to defendants. I had hoped for a lot different result. If the judge says that's what happens, I'm kind of bound by the judge's results. I would hope that somebody doesn't draw a conclusion that, hey, those four got away with it, let's try.

COMMISSIONER BERRY. Absolutely. Then really last, Mr. Cameron, you were the one who decided to prosecute Ms. Seaboy, right?

MR. CAMERON. That's correct. I made that decision. It was charged by a complaint.

COMMISSIONER BERRY. In your prosecutorial discretion, it was not possible for you to find a lesser offense?

MR. CAMERON. I could have charged her with a simple assault or something on that, but it was not called for under the circumstances.

COMMISSIONER BERRY. So you lament her going to jail for 15 years?

MR. CAMERON. Pardon?

COMMISSIONER BERRY. I heard you lament earlier the sadness of the situation. You said it was because she was not a juvenile and that's why she got that—

MR. CAMERON. I think that had quite a bit to do with it. In fact, her demeanor at her arraignment had quite a bit to do with her sentence, I believe.

COMMISSIONER BERRY. Did you know that she was going to be beyond the juvenile age when she would be convicted and sentenced?

MR. CAMERON. She was 18 when the accident occurred.

COMMISSIONER BERRY. So you knew this?

MR. CAMERON. Yes, ma'am.

COMMISSIONER BERRY. But you had an opportunity to charge her with a lesser offense and you did not?

MR. CAMERON. I don't think I had an opportunity in that case. I don't think there was any room there for a different charge.

COMMISSIONER BERRY. You, as prosecutor, cannot decide to charge people with lesser offenses?

MR. CAMERON. I certainly can, but in that case Ms. Seaboy and the car ahead of her were playing what would be commonly known as bumper tag. Both cars ran the stop sign. She had a high blood alcohol.

COMMISSIONER BERRY. I'm not challenging your decision. I'm only pointing out that you, in your discretion, have the opportunity to make a decision.

MR. CAMERON. Yes, ma'am, I did.

COMMISSIONER BERRY. And you did not.

MR. CAMERON. I made the decision that manslaughter was the proper charge.

COMMISSIONER REYNOSO. Just a quick question for Mr. Todd. You had sort of a gut—I would describe it as a professional gut reaction, that maybe the expert in this case, in terms of the decision of what had caused death, might or might not be correct. Experts might make mistakes, as we all know. Did you have the resources or authority to maybe bring in another expert to take a look at the cause of death?

MR. TODD. I don't know if I had those resources. I guess I can't say that I asked to have resources allocated for that. That is a cost, of course, to the county and we will have to pay for those and did pay for what was done. I can tell you that when visiting with the autopsy specialist, that he assured me he would run the—in a sense, the factors by other—a pathologist before he gave his final report and indicated he did that before it was submitted to me. So I don't know who those specific people were, but at least I trusted he did that. I don't want to imply and dump it on the feds, because I'm not at all, but when they come in after our decision and indicated they were going investigate some of the civil rights potentials, there was some indication that there might be some autopsy review from their department and had indicated that they

would provide me reports with that. So, I mean, if there is more information out there, I'm anticipating that we will have a chance to review those.

COMMISSIONER REYNOSO. Thank you.

CHAIRPERSON FEINSTEIN. I still have one question nagging me. It goes to both of you, in a sense, because you're in the same circuit, but it starts with Mr. Cameron. Ms. Seaboy got 14 out of a possible 15-year sentence. You further described what the incidents were. How did that compare to other sentences of people in similar circumstances that maybe are non-Native American? And I guess it's the same circuit; you've got the same judges doing the sentencing. Elaborate, if you want.

MR. CAMERON. I can elaborate a bit on that because I recently looked up as many similar cases as I could for Ms. Seaboy's father. And the longest sentence that I found was three years that anybody got.

CHAIRPERSON FEINSTEIN. Three years?

MR. CAMERON. Three years.

CHAIRPERSON FEINSTEIN. And she got 14?

MR. CAMERON. She got 14.

CHAIRPERSON FEINSTEIN. That doesn't speak very well.

COMMISSIONER EDLEY. I'm sorry, I'm a little confused. I gather that the three versus 14 was a matter of the judge's sentencing discretion?

MR. CAMERON. Yes, it was.

CHAIRPERSON FEINSTEIN. Thank you.

COMMISSIONER BERRY. Under the circumstances, especially based on what was just asked and you answered, can you understand why some people in the Indian community would be a little bit upset and figure that there might be some disparity?

MR. CAMERON. Yes, ma'am, I can.

COMMISSIONER BERRY. You understand?

MR. CAMERON. Yes.

COMMISSIONER BERRY. Could you understand it, Mr. Todd, after hearing what you just heard?

MR. TODD. I can. From that specific fact, yes, I can. I don't know that I recall any of those that are that far spread in my local area. You need, of course, to recognize that there are so many factors in sentencing, and it's hard to outguess the judge. And, of course, as prosecutors, we're told not to.

COMMISSIONER BERRY. All right. I understand.

CHAIRPERSON FEINSTEIN. Thank you. You're done. You're free to go. Thank you. We're now officially 45 minutes behind schedule.

Law Enforcement Perspective

CHAIRPERSON FEINSTEIN. I'd like to introduce Mr. Robert Dale Ecoffey, superintendent of the Bureau of Indian Affairs in Pine Ridge. Can you state your name and title for the record?

Robert Ecoffey, Superintendent, Bureau of Indian Affairs, Pine Ridge

MR. ECOFFEY. Yes, sir. My name is Robert D. Ecoffey. I'm currently the superintendent of the Bureau of Indian Affairs of the Pine Ridge Agency in Pine Ridge, South Dakota.

CHAIRPERSON FEINSTEIN. Thank you.

MR. ECOFFEY. I am pleased today to welcome Dr. Mary Frances Berry, Chair of the Commission of the Civil Rights, and other members of the Commission to this very important forum on administration of justice for Indian people in South Dakota.

I am an enrolled member of the Oglala Sioux Tribe and have spent most of my life on the Pine Ridge Indian Reservation. I have over 18 years of law enforcement experience working in the area of law enforcement, mostly in Indian communities. I have the proud distinction of being the first Indian to serve as United States Marshal in the 207-year history of the Marshals Service. I was appointed to the position of the United States Marshal for the District of South Dakota in 1994 by President Clinton and served until April of 1996.

It is very important that the United States Civil Rights Commission is in place to monitor the treatment of Indian people involved in the criminal justice system in the state of South Dakota and border town communities in the state of Nebraska. There has been some improvement in the administration of justice to Indian communities throughout the state of South Dakota over the past 25 years. This was brought about by forums such as this and an ability of Indian people to stand up and confront incidents of racism and unfair treatment. Still today across the state, Indian people are often subject to unfair treatment in decisions to prosecute when the Indian is either a victim or subject in a case. Often there appears to be disparity in sentencing between Indian and non-Indian defendants.

I feel that it is important for the Commission not only to focus on administration of criminal justice, but also look into equal housing practices, equal lending practices, and equal medical treatment across the state. I feel that the current moratorium by the state legislature and the Governor of South Dakota and the licensing and construction of new nursing homes in the state is violating equal access to health care for many elderly Indian people. As a result of this policy, many elderly Indian people are forced to be placed on waiting lists to get into nursing homes and are often left to live in substandard housing, receiving no or inadequate supervised health care. When an elderly person is able to get into a nursing home, it is often hundreds of miles away, creating a financial hardship for families wishing to visit them. Often these nursing homes are not culturally appropriate.

I'd like to address the issue of White Clay, a border town in the state of Nebraska, which is located two miles south of the Pine Ridge Indian Reservation. This town has several beer establishments. They sell over four million cans of beer every year. The majority of the purchases are made by Indian people who live on the Pine Ridge Indian Reservation. The state of Nebraska provides little or no law enforcement in the town of White Clay, which leads to assaults and other crimes being committed against Indian people. Just recently the murder of two Indian males occurred with no arrest at the present time. The establishments in the state of Nebraska receive the profits and benefit from the sales of beer, while the Indian people in the communities on the Pine Ridge Indian Reservation continue to suffer the pain through the loss of life due to vehicle accidents, suicide, health-related problems as a result of long-term drinking. Lack of interest on the part of the state of Nebraska and the community of White Clay in providing law enforcement protection is a direct violation of civil rights of Indian people who are faced with the sorrow and poverty which exist on the Pine Ridge Indian Reservation. The Commission should exercise any influence on the state of Nebraska to stop the sale of beer in White Clay, Nebraska. Thank you.

Discussion

VICE CHAIRPERSON BUTLER. Thank you. I'm serving temporarily in Mark's absence, so I'll

start with the panel and ask if you have any questions?

MR. POPOVICH. I have a question. Thank you for coming today. The Bureau of Indian Affairs' chief has said that you're grossly underfunded throughout the whole department. I want to ask you, first of all, if you feel that you are there, and what other assistance can you use out on the reservation? And my second question is we heard at one time from Harold Salway, your tribal president, that he would support civil rights offices on the reservation. Would you also support civil rights offices on the reservation, and would that help relieve tensions and be a place where the Indian people can provide an outlet to relieve their grievances?

MR. ECOFFEY. Your first question, yes, the Bureau of Indian Affairs is totally underfunded. There has been several reports to Congress, the Assistant Secretary of Indian Affairs has been working hard to try to get the budget increased with Congress. Any influence that the Commission of Civil Rights through any statistical data, any reports that you might write in terms of improving the lives of Indian people, not only on the Pine Ridge Indian Reservation, but other tribes across this country, would be greatly appreciated and would be beneficial.

MR. POPOVICH. What would you do with that money if you had it to improve the lives of the people?

MR. ECOFFEY. The money could be used basically to improve in all areas where we are very short in terms of health care, in terms of law enforcement protection, in terms of other services that are provided to Indian communities.

The other issue in terms of establishment of civil rights offices, particularly on the Pine Ridge Indian Reservation, I feel that you can see from past testimony that there appears to be a communication problem in terms of either law enforcement agencies, prosecution agencies, and the general Indian community. Anything that you could do as a commission in terms of maybe establishing a civil rights office, to launch or to look over or to act as a monitor so that communities would have someplace to go to, to at least get their questions answered in terms of dealing with law enforcement and prosecuting decisions.

The other area, I feel, that is grossly underfunded that you talked about earlier is the Community Relations Service. I believe they have one or two people in the Denver area that

serves the entire Midwest here. And I feel that that office itself does try to do a very good job in terms of opening up some communication lines between law enforcement and the Indian people.

MR. POPOVICH. Lastly, do you have any statistics or do you know of any civil rights violations that have been brought specifically to you that you've pushed forward that have not been solved yet?

MR. ECOFFEY. I don't have any statistical data, but if and when a case of civil rights violation is reported to me, then it is forwarded on to the Federal Bureau of Investigation, which has that responsibility for investigation.

MR. POPOVICH. And there are none currently in Pine Ridge?

MR. ECOFFEY. At this point in time—I can't say that there's none in Pine Ridge, but there's none that I have forwarded recently.

VICE CHAIRPERSON BUTLER. Are there other questions?

MS. LAFLER-RATIGAN. My question relates to your interaction with other law enforcement entities. Are there areas that you would like to see improvement in the areas of cooperation and interaction?

MR. ECOFFEY. Yes, there is other areas where I'd like to see improvement and interaction. One area, and I think an area that is really plaguing Indian communities across this country, is an area of illegal drug activities. As we know, drugs are not made and produced, I think, on any Indian reservation across the country. So the majority of drugs that come into Indian country come from the outside area. So it's very important that, I think, the local law enforcement people open up any communication with outside law enforcement, both federal, state, and county, so that there could be information shared as to where the drugs might be coming from and what could be done to stop the flow of drugs into Indian country.

VICE CHAIRPERSON BUTLER. Other questions?

MS. KIM. Is there any organized educational activities promoted by your agency that are, I'll call, problems?

MR. ECOFFEY. Currently, there's no organized funding under the Bureau of Indian Affairs. That funding comes from the Department of Health and Human Services through Indian Health Services. And on the Pine Ridge Indian Reservation they do have a project called Project Recovery, which is one area which is greatly un-

derfunded. There is a large waiting list of individuals that are wanting to seek treatment for both drugs and alcohol-related problems. So that's another area where funding continues to be a problem.

There is some hope, I think, on the horizon with the Circle Project—Justice Department, Attorney General Janet Reno, and funding of the Circle Project. Approximately \$1.2 million was made available to renovate the jails on the Pine Ridge Indian Reservation. But in working with the current administration and other members of the community, there's an effort now to utilize this money to create a detox treatment center right on the Pine Ridge Indian Reservation.

VICE CHAIRPERSON BUTLER. Are there other questions?

MR. WALSH. Let me go back to one of Jim's questions and observations. It's been an observation of mine for 20 years sitting on this thing, so often we have Indian people coming in and testifying to the fact that they have no redress on the reservation for what is perceived as a violation of their civil rights. And what I just heard is you throwing that back on us. Why can't the Bureau set something up for that or tribal government in that area?

MR. ECOFFEY. Well, again, it goes back to funding and to priority as to what blood of the turnip do you take it from in order to create a new program, and what are the priorities that the tribal government sets in Indian country. I think that your question of setting up—it's not a fact that the FBI or the U.S. attorney or Justice Department does a bad job when it comes to a civil rights complaint, but there is a total lack of communication and timeliness of response when it comes to response to either the victim or the victim's family. In many cases I feel that there simply may not be a civil rights violation in terms of, say, for instance, police misconduct, but there must be an effort from the local police departments within Indian country to adopt and to enforce their procedures and regulations so that when they have an officer that does not operate within their policies or procedures, that there is something done with that officer in terms of disciplinary action and that that response is given back either to the victim or to the claimant that, yes, this officer is acting within the department's policy, or, no, the officer is outside the department policy, and that some effort will be taken to correct this problem.

VICE CHAIRPERSON BUTLER. Thank you. Other questions?

MR. POPOVICH. I have another one. Are you satisfied with the ongoing investigation of the deaths of Wilson Black Elk, Jr., and Ronald Hard Heart? And specifically, I guess, I'm sure that you've been in on the investigation all along, but this happened just a quarter of a mile from the border. And it seems to me that it's very suspicious that these deaths always seem to happen right on or near the border versus happening near their home or happening somewhere else throughout the reservation. And there's continuous rumors by the people that are saying that law enforcement has a tendency to pick these people up, carry them for a short distance, and drop them at the border, leaving them at their own demise at that point, if they're drunk or whatever, and then these deaths always seem to occur very close to the borders. So I guess I'm asking two questions: Are you satisfied, and are you concerned about other deaths in your area?

MR. ECOFFEY. Well, in response to your question, am I satisfied, no, I am never satisfied when we have the deaths of Indian people on or near the Pine Ridge Indian Reservation. And number two, you know, I think, like in my testimony, I feel that it is incumbent upon us to work together to see if the beer sales are going to be allowed within White Clay, Nebraska, that someone be forced to increase the law enforcement protection there for Indian people. If that is not going to occur, then that itself should be a reason why these establishments should be closed. Some cases—again, I heard earlier testimony by the FBI and other agencies.

Some cases as a result of lack of cooperation or lack of witnesses are very difficult to solve in Indian country. In this case, if people that might have information would step forward and cooperate with the federal authorities, then I think that this case can be solved. I feel that it will eventually be solved, but these cases are very difficult when you have people that are left basically out in the middle of no place with very little witnesses. It's not a simple case as you walk into a bank in the middle of a robbery and somebody gets shot and you have it all on videotape. You're talking isolated areas here. But I feel that in time this case is solvable and will be solved.

VICE CHAIRPERSON BUTLER. Other questions? I would just like to make an observation that

several people today have suggested that if only we could get the drugs and alcohol—and incidentally, alcohol is a drug; it's just a legal drug, but we could lump them all together as drugs—but that if we could get rid of those, then we probably wouldn't have any other problems. And I can tell you, I've seen now how many years there have been wars on drugs in this country, drug czars appointed and so on. Could you suggest other means of addressing problems that are real? They're not going away. We're probably not going to get rid of all of the drugs. There will still be the legal alcohol. What other means would you say we might find to offer real help to people in need of help? Treatment centers might be one. But tell me what other means would you have, other than law enforcement?

MR. ECOFFEY. It goes back to the earlier question of funding. Just simply, in this country a 75 to 95 percent unemployment rate in any area is totally unacceptable. And until we have opportunities for our Indian people to work in meaningful jobs so that they can adequately support their family, so they can buy the simple things that are needed in life, then often we're going to have our Indian people turn in a sense of hopelessness and despair to alcohol and drugs. So the crux of the problem is helping create a better economy in Indian country across this nation. And that's really the crux of the problem. If we had our families working, if we had a very low unemployment rate, people would not have the need to turn to alcohol or drugs to cover up their feelings of hopelessness and despair. And the fact that you have five, six, and 10 families living in one house is simply unacceptable.

VICE CHAIRPERSON BUTLER. It's been far more complicated than that, because I can tell you in cities in South Dakota where people do have employment, one of the problems will be that their new employees, of course, get the least desirable shifts. Those happen to be night shifts, whether they're at the poultry plant and such as that. And what we find is that since they do not have public transportation in these little cities and since the people who are working don't have their own transportation, we have people who walk sometimes miles to and from their place of employment. And if you're seen walking in the middle of the night in some of the little towns, you can be certain that you're going to be stopped by the police and asked where you're going. And sometimes they don't always accept the

fact that you say, "I'm going home from work." So even outside of the reservation, and I know what terrible figures there are in terms of unemployment and not enough for any family to sustain themselves, but it's happening all over. So maybe we'd better look at starting much earlier to begin—well, I know that funding is a big problem, but sometimes I think just creative zeal in getting a program started, maybe, just seed money. Do you agree?

MR. ECOFFEY. I agree. And there, you know, I don't mean to paint a whole picture of doom and gloom for Indian country, because there has been a large sobriety movement across our reservation. There has been a lot of people and families and communities that have had events in conjunction with the law enforcement, in conjunction with the communities, in conjunction with local district governments and tribal governments that apply in terms of marches for sobriety, rights for sobriety. So there is awareness, not only in our communities, but within our school systems for teaching a healthy lifestyle, of teaching our youth that alcohol and drugs are simply foreign to our culture, foreign to us as the identity of Indian people. And just recently in one of the marches into White Clay, one of the comments was that if only we could get our people to quit using alcohol, beer or drugs, White Clay would not exist. But we have to work together to try to take care of some of the underlying problems and try to solve some of the issues that we're faced with on a daily basis.

VICE CHAIRPERSON BUTLER. Dr. Berry?

COMMISSIONER BERRY. Thank you very much. Any comments for this panel? Yes, Commissioner Lee?

COMMISSIONER LEE. You mentioned earlier about the need for housing and asked us to look into lending practices and economic development issues. To what extent has the Community Reinvestment Act impacted the reservation?

MR. ECOFFEY. Actually, I believe that there is no impact in Indian country, just simply because you cannot get lending institutions. Even with 90 percent and 100 percent loan guarantees, you simply cannot get them to loan money in Indian country. It's basically redlining. When you walk into a lending institution within this state or within the state of Nebraska and they find out where you're living, you simply do not get the same fair treatment as if you were not living on the reservation. And that goes in the area of

lending practices. That goes in the area of housing practices. Just recently over a four-year period of time, the Pine Ridge Indian Reservation signed an agreement with the Fannie Mae Corporation which finally after all this time gave access to the secondary housing market for Indian people. You would walk into any of these banks, 23, 24 banks and try to borrow money to build a house, it simply cannot be done because you lived on an Indian reservation. So there is a border there. There is a red line there when it comes to equal opportunity for Indian people within this state.

COMMISSIONER BERRY. Commissioner Meeks?

COMMISSIONER MEEKS. Yesterday when we were at Pine Ridge, and of course I hear it not just yesterday, but you know, one of the big complaints really was against the tribes' own Public Safety Department. And do you have any suggestions on what needs to be done there, how that can be improved?

MR. ECOFFEY. You know, that's a very tough question. Simply historically you went from the Bureau of Indian Affairs running all of law enforcement where local Indian people did not have any control over their law enforcement to what you have now on the Pine Ridge Indian Reservation, where you have a Public Safety Commission and you have local district review boards which have the hiring and firing authority there at the local level. So in all reality, the quality of law enforcement on the Pine Ridge Indian Reservation currently is in the hands of the local people because they maintain that authority under a charter they have with the Oglala Sioux Tribe.

And there is some efforts on behalf of the Public Safety Commission. And just, I believe, in a couple weeks here, they'll be sending in another dozen officers to Artesia, New Mexico, to the Indian Police Academy. So the Bureau has opened its door to open up training opportunities for the local law enforcement people. But what happens is you send 10 or 12 people, you have very high turnover rates. Law enforcement in Indian country is very difficult. It is a very tough job. You're often put into positions of arresting your own relatives, your own relations. It creates a lot of stress, a lot of economic hardship for police officers because of low salary, long working hours, and lack of resources. Again, I feel that there is some light at the end of the tunnel with the Circle Project and additional funding that is

going to be made available for the Department of Public Safety.

But, again, I think that it comes to perception, it comes to communication and response from the local department as to how they address problems when a community comes to them and says, "Your officer beat up my grandson last night. They used excessive force. What are you going to do about it?" The local police department has to be in a position, number one, of looking out to see if there was a civil rights violation, and if it was a civil rights violation, they are restricted by law in terms of investigating themselves. But on the other hand, they need to see that their policies and procedures are handled and that something less than a civil rights charge, if that officer was not acting within the policies or procedures, that some disciplinary action is handled, and that that report goes back to that grandmother, to that mother or that father saying this is what we're going to do and this is how we're going to respond. And it comes down to really, I think, a communication issue and a response issue of dealing with community complaints.

COMMISSIONER MEEKS. I just have one more, and this may be more a statement or it could be a question. But I get lots of calls about civil rights issues, which it's not my job, I mean, to handle individual cases. And I know that sounds terrible, but anyway, it's just what I see is that people have such a lack of legal representation. They have no place to turn and no money to hire good attorneys. Do you know what South Dakota Legal Services is doing in Pine Ridge or do you know of any resources or some way that people could have access to legal representation?

MR. ECOFFEY. Well, I think that maybe one of the suggestions that the panel had made earlier of setting up some types of oversight or civil rights office or somebody there that can act as maybe an advocate when there is specific complaints, that at least those questions are answered. And, you know, that's something, I think, that the tribe and perhaps the Bureau, within the department itself, could set up in terms of their public relations of setting somebody aside, maybe setting money aside to hire one person and assigning them to such an office of dealing with the community and taking those complaints and responding to those issues.

COMMISSIONER BERRY. Just so it's clear, because the question was raised, that what we

could do as a commission and what Commissioner Meeks can do is when people have individual complaints, she can tell the Commission staff about them. And if there are complaints about some federal agency not doing something or it should go to a federal agency like the EEOC or any number of federal agencies, it can be forwarded to them. But the Commission itself doesn't hear or defend people on individual complaints.

I have just one question, I guess. Did I hear you right, you said earlier, if I heard you, that there was a proposal to use some of the money for the Circle Project for perhaps some kind of detox center? Did I hear that right?

MR. ECOFFEY. Yes, you did.

COMMISSIONER BERRY. What is the idea? I hadn't heard this. There is no detox treatment facility at Pine Ridge, right?

MR. ECOFFEY. No, there isn't. Like I said, under the Circle Project, the Pine Ridge Indian Reservation received \$1.2 million to renovate two of the jails there. And there is some effort now being talked with the current administration and communities that this money could probably—and not only probably, but would be better used to construct a local detox treatment center on the Pine Ridge Indian Reservation. So I believe that the Department of Justice is in support of that. And we're going to be meeting here at the end of this week and hope to have meetings over the next couple months to see that this becomes a reality.

One other issue, I think, that when you talked about younger people and what you could do with them, there is also an effort, since the President's visit, to create a wellness fitness center on the Pine Ridge Indian Reservation. Already \$3 million has been raised from the Department of HUD, the Department of Agriculture, and Bureau of Indian Affairs. And there will be \$5 million raised for the construction of this center to work with the youth across the reservation. And they're looking at a \$3 million endowment that would fund the operations of the center in its existence.

COMMISSIONER BERRY. What would you think of the idea of a temporary detox, short-term diversion facility in White Clay if some way could be found to get Nebraska officials to set up such a thing to take care of folks who can't make it across or would be put in jail otherwise, what would you think of that as an idea?

MR. ECOFFEY. If you had a commitment from the state of Nebraska or Sheridan County to man, to staff, and to basically enforce, for somebody to put somebody in detox, that would take care of a lot of the problems. But you cannot get the commitment. The county says they don't have the resources. You can't even get 24-hour law enforcement protection in that small community.

COMMISSIONER BERRY. So it's a problem to be worked on. Has there been any thought at Pine Ridge about organizing some kind of rescue operation for people who are in White Clay and on their way back to make sure they get home?

MR. ECOFFEY. Not that I'm aware of, but I feel that that's an excellent idea. And we do have some programs there with the housing authority in terms of dealing with victims, dealing with crimes, and maybe that's something that they could take a look at.

COMMISSIONER BERRY. Thank you. I'll turn it back so we can call the next panel. Thank you very much.

Community Panel

VICE CHAIRPERSON BUTLER. The community panel is next, that's Scott German, Agency Village, South Dakota; Eileen Iron Cloud, Porcupine, South Dakota; Rosalie Little Thunder, Rapid City, South Dakota; Faith Taken Alive, McLaughlin, South Dakota. I'd like to welcome you to the community panel. I'll say that you would each have six minutes for presentation. We'll give you the times. Could you state your name for the record, please.

MS. LITTLE THUNDER. My name is Rosalie Little Thunder.

VICE CHAIRPERSON BUTLER. We have Rosalie Little Thunder and the next person—oh, we have the names. Shall we begin, then, with Rosalie.

Rosalie Little Thunder, Rapid City

MS. LITTLE THUNDER. Thank you. I've lived in the Rapid City community for many years, probably 20-plus years, and one of the observations that I've been able to make in being a Native person, being a woman, and being poor, one of the biggest problems that we have is racism. But even deeper than that, I think we have, and as you've witnessed in the testimonies just recently, is that the biggest problem we have is a denial of that racism, a lack of understanding of

what it is. I believe I was told by many people dealing with this that racism—we've heard the term reverse racism, and I was very curious about that and asked a lot of people, particularly the civil rights people, a lot of people who had a better understanding of what it was.

Racism is a prejudice that we all have. I have it. When I was a child, I was told that white people were hairy, smelly, controlling, and greedy. And that was my stereotype that I grew up with. And likewise, I believe that a lot of white people, not a lot, but I believe everybody has their prejudices. And we have heard different people sitting up here saying there is no discrimination, there is no racism. I've seen that to extremes here. It's here, but we're not willing to admit it. And when we deny it, we don't recognize it. We don't recognize it, we don't deal with it. In my time here in Rapid City, I've seen, like I said, extremes of it. I've worked in law enforcement. I've worked in the court system. I've worked in the community, too, hopefully representing people's needs. And I'll give you just a real quick example so you can see where it is. We had a program, a juvenile advocacy program for Native juveniles in the court systems. And we had to raise the money and establish that ourselves. It was not something that the traditional system saw as a need, nor did they care to have it around, but we were there.

In one instance, we were working with a young man who was arrested for burglary, for partying, and going back to the wrong house. He was too drunk to know. And he was placed on probation. He violated his probation because his daughter died and he got drunk. And he got 42 months for that. At the very same time, my brother's adopted brother was murdered hitchhiking back from Sturgis from the VA center, very deliberately run down, killed. And the people who did this were prosecuted and they got five years with three and a half suspended for credit with time served and they walked. These happened at exactly the same time. They were different judges and one was in the Seventh Judicial Circuit, the other was in the Eighth Judicial Circuit. But it's a very classic example of the disparity that we have here. One of the judges, the one that sentenced the young man to 42 months, I thought I would call up at midnight and tell him, "If I can't sleep, then you won't either." And he admitted, I told him about the

other situation and he said there was a disparity, but what do we do?

So there is institutional racism in the judicial system. And it exists at all different levels. As I've said before, racism is still in denial. I've heard the administrators of law enforcement sit many times saying there is no racism, but there is in many different places. I've witnessed a brutality. I reported it. I'm the last person to be quiet about it or not do anything about it. That went that way for three years. I witnessed it. I saw it. And just like with the Many Horses case, this man was on pass for mental health, was not a threat to society, he was provoked, and he was beat up. I saw it, and nothing happened. So, you know, it's an example. Even for those of us who are not willing to stand still for it, what do we do? They go unresolved. The incident report for that brutality was lost for three years. When it was finally found, the police chief says, "We can't do anything. The man is gone now."

So I think the problem is much bigger. And I think one of the things that I would really, really stress is that at one time the police department had cultural sensitivity training. And it did not go well. There was a lot of friction there. But I think before you can even deal with another culture, that people have to deal with their own attitude. Before you can even sit down at the table with Native people, there is an attitude, a serious attitude problem.

Racism is not just prejudice, but the power to exercise it. You have to have that power over other people to exercise that prejudice. Reverse racism, I can't do that because I don't have any power to exercise over anybody else. And so those are serious problems that must be dealt with. The gentlemen sitting up here saying there is no discrimination, they hold power. Law enforcement, most of all, holds lot of power. The judicial system holds a lot of power over Native people. And so those attitudes have to be examined. Those attitudes have to be dealt with. And it's a huge job and it's a huge challenge, I believe, to this Commission.

I had many recommendations. First of all, that self-analysis may be a base line study of sentencing. There's a lot of areas where there is power. The arresting officer has power. The prosecution has power. I have seen discrimination even by defense attorneys. The judicial system, the jurors, and the judges have a lot of

power, and this is where racism happens. Thank you.

VICE CHAIRPERSON BUTLER. Thank you, Ms. Little Thunder. Are there people on the panel here who have questions?

MR. POPOVICH. I thought you were going to go through them all.

VICE CHAIRPERSON BUTLER. Then Ms. Iron Cloud.

Eileen Iron Cloud, Porcupine

MS. IRON CLOUD. First, I would like to say thank you for the invitation to provide testimony today. I'd like to say welcome to the beautiful Black Hills, home of the Great Sioux Nation. I would also like to welcome the participants sitting here and to those who are listening from KILL.

I want to begin my testimony here by saying that I'm going to be sharing stories from the community with you. And the first one is written by my sister, and this is a testimony of Alberta Iron Cloud Miller. On November 15, 1999, my niece was sentenced to two years in the South Dakota prison for women as a result of entering pleas of guilty to two counts of felony forgery in Pennington County. Though she had no prior arrests for any type of criminal records, she received the sentence to be served concurrently. This young lady is a mother of four children, ages 8, 6, 3, and 17 months. She also has a health condition which could possibly be breast cancer. My niece cooperated fully with the criminal justice system by attending every hearing and complying with every request made upon her, though she was homeless, without transportation, and in poor health.

She did miss an appointment with the court services officer, though she did call him to advise him that she would not be able to attend this meeting due to her health condition. At the time, she was 80 miles away from Rapid City. Upon hearing from her, the court services officer advised her that she had better make the appointment, as he had the power to make or break her life. His exact words. My niece did not speak up for herself and felt very intimidated by this aggressive response. We attempted to contact this individual on numerous occasions to reschedule the appointment, but he never returned our calls. Consequently, she appeared for sentencing without the opportunity to have the presentence investigation completed.

My husband and I attended the hearing to support her and to ask the court for an opportunity to speak on her behalf. We also submitted many letters of support attesting to her character, her role as a mother, and addressed the issue of her health. We asked a public defender to request time from the judge so that we could share positive information about her life. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] and the sentence was based on the prosecutor's remarks that she was obviously the most irresponsible woman he had ever met since she missed the appointment with the court services officer. The judge also mentioned that she must be very irresponsible, and based on the state's recommendation, imposed two, two-year sentences to be served concurrently at the women's prison.

She was then taken immediately from the courtroom and not allowed to make arrangements for her children. At the time she was also working at a local business and was not allowed to contact her employer. She had indicated that her attorney would ask for a one-week period in order to make arrangements for her family. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

My niece was raised in an environment of abuse and neglect and was also raised without a mother. The abuse that was inflicted upon her in childhood created a victim personality. She was virtually unable to speak up for herself. When I insisted that she talk about her health condition, she became very embarrassed and stated that she just could not share this information with a man.

I see an obvious injustice in the state's criminal justice system toward Native Americans. The power and control of this system lies in the hands of the court services officer. He obviously does have the power to make or break the offenders in this system. Perhaps this is the reason why there is a high population of Native Americans in the system. The culture is virtually ignored. The concept of fairness and justice is a farce.

In summary, I questioned why this 25-year-old Oglala Lakota woman was treated with such obvious contempt, all because she could not meet with the court services officer. Her cooperation with the system and her willingness to attend all the court hearings was never considered. She now sits in the women's

prison in Pierre, South Dakota, terrified, depressed, and extremely confused about her circumstances.

I ask the Commission to review the sentencing practices and the unfair sentences received by Native Americans in Pennington County. You will find that non-Indian offenders who are violent receive lenient sentences and usually receive probation. This young woman is nonviolent and does not deserve the sentence she received, a sentence imposed because she could not speak for herself. Thank you, Alberta Iron Cloud Miller.

I have another example, another statement here. And this is on behalf of parents from our reservation. In December 1995, the Loneman School girls' basketball team participated in the 16th annual girls' quad-state basketball tournament sponsored and run by the Young Men's Christian Association, also known as YMCA of Rapid City, South Dakota.³ The girls were forced to submit to a strip search and detained while the search was illegally performed. The illegal strip search was performed by the YMCA representatives only to the female members of the Loneman School basketball team who were minor, female Native Americans who reside on the Pine Ridge Indian Reservation. No other team in the tournament was subjected to the strip search. The strip search took place after the girls were about to play in the championship game. YMCA used the pretext that some of the players may be males. The lawsuit states the girls were taken into a room in the facility where the game was to take place and held without consent or permission and against their will, forced to expose their genitalia, panties, and bras to numerous persons present and in the presence of one another. After the incident, the parties responsible for the illegal acts confronted the girls and their parents causing them further great shame and embarrassment.

The complaint filed in the United States District Court and Western District of South Dakota states, "This action arises under the Civil Rights Act of 1966, 48 U.S.C, § 1981, et al., 20 U.S.C, § 1681, race discrimination, sexual discrimination, age discrimination, and negligence." In January 1996, representatives from the YMCA and the Custer School District came to Loneman School.

³ Rapid City YMCA's response to statements by Eileen Iron Cloud is attached as appendix B.

The representatives gave each girl a rubber basketball after talking with the parents and the girls regarding the strip search. The Eighth U.S. Circuit Court of Appeals said that the U.S. District Judge Battey's dismissal of the lawsuit was appropriate. This portion of the testimony is on behalf of Pansy Weasel Bear and Connie Weasel Bear who are members of the Oglala Sioux Tribe and residents of the White Clay district, Oglala, South Dakota, and are also parents of two of the girls.

The two cases I have mentioned here are indicative of the racism and discrimination we Native Americans are subjected to on a regular basis. In fact, this is promulgated by South Dakota's highest official, Governor Bill Janklow.⁴ Consider the following examples: January 1997, at the Governor's summit on tourism, Governor Bill Janklow made a statement that tourists were not safe on Indian reservations. July 1997, at a high level meeting in Senator Tom Daschle's office in the Capitol Building with the Department of Health and Human Services Secretary, Donna Shalala, several South Dakota tribal chairmen, South Dakota congressional delegation, and government officials, Governor Janklow stated, "I have to spend my infrastructure money to send down cops to pick up drunks from Indian reservations." This statement was made during the discussion on how the tribes in South Dakota could access state monies needed to develop their own tribal TANF, Temporary Assistance to Needy Families Program. Your letter of invitation states, "The purpose of the forum is to obtain information and perspective on the administration of justice on Native Americans in South Dakota." There is no justice for Native Americans in South Dakota when Governor Bill Janklow, Senator Tom Daschle, and the other members of South Dakota congressional delegation—

VICE CHAIRPERSON BUTLER. Excuse me, Ms. Iron Cloud, could perhaps we save this for a time when you'd have questions? We want to make certain that—we're not accusing you that you can't defend yourself, but right now, because your time is up, I'd like to get to the other two panelists. And I'm certain that you have—

⁴ In response to Eileen Iron Cloud's statements, Governor William Janklow submitted to the Commission a videotaped excerpt from a Jan. 23, 1997, Governor's Tourism Summit. Commission files.

MS. IRON CLOUD. I would like to continue. I'm almost through here. And besides that, I think this is indicative of what she spoke about earlier, and that's the denial, and that is why I'd like to share this.

VICE CHAIRPERSON BUTLER. Yes, I understand. Could you share it with us after the other two panelists have presented, please, because then it could come out in questions.

MS. IRON CLOUD. I would like to say that this would stop the flow.

VICE CHAIRPERSON BUTLER. All right. How much more do you have?

MS. IRON CLOUD. It's just about a minute.

VICE CHAIRPERSON BUTLER. About a minute. Certainly.

MS. IRON CLOUD. Thank you. There is no justice for Native Americans in South Dakota when Governor Bill Janklow, Senator Tom Daschle, and other members of South Dakota's congressional delegation⁵ proposed legislation to Congress which negatively impacts the Great Sioux Nation. I speak specifically of the enactment of the Cheyenne River Sioux Tribe, the Lower Brule Sioux Tribe, and the state of South Dakota Terrestrial Wildlife Habitat Restoration Act or otherwise known as the Mitigation Act. This act gives South Dakota approximately 96,000 acres of treaty land along the Missouri River. We and our supporters have requested hearings, as outlined in the democratic process. There remains a silence to our request. The Great Sioux Nation and the U.S. government, on a nation-to-nation, basis signed the 1868 Fort Laramie Treaty. In fact, the U.S. Constitution states the treaties are the supreme law of the land. I bring forth the treaty and the specific violations today because they are justice issues. I respectfully recommend to the South Dakota Advisory Committee, the United States Commission on Civil Rights, one, that an indepth written report of today's proceedings be submitted to the Commission with firm recommendations for change, including consequences and penalties; and, two, that the Commission designate a minimum of two full days of hearings, one in eastern and one in western South Dakota, since today is referred to as a public forum. And thank you for the time. Again,

⁵ The Commission afforded Sen. Tom Daschle, Sen. Tim Johnson, and Rep. John Thune an opportunity to respond to statements by Eileen Iron Cloud. No responses were received. See appendix A.

my name is Eileen Iron Cloud from Porcupine, South Dakota.

VICE CHAIRPERSON BUTLER. I thank you very much. As you know, everything is being entered. If they were not, I would ask for copies of everything so we have it for the record. I thank you. Ms. Faith Taken Alive.

Faith Taken Alive, McLaughlin

MS. TAKEN ALIVE. Good afternoon and greetings. I come to you from the Standing Rock Indian Reservation of McLaughlin, South Dakota. It's been about five years since we dealt with the disruption of this case. But I ask you in her memory to look at the extreme disparity of the prosecution and investigation in Walworth County. Mr. Dan Todd⁶ did have discretion in the case of Candace Rough Surface and did not use it. According to the former sheriff, Walworth County Sheriff James Spirey, the gun which killed Candace Rough Surface remained in the home of her killer because there were no ballistic tests conducted. Her killers were questioned and released in 1980 when Candace disappeared. As a result of inadequate prosecution, inadequate investigation, her killers' sentences and their charges were greatly reduced because of the lack of investigation in Walworth County.

COMMISSIONER BERRY. What was her name? I didn't hear.

MS. TAKEN ALIVE. Candace Rough Surface. Again, as in the case of Robert "Boo" Many Horses, all law enforcement officials will conclude that they operate on the basis of a gut feeling. Native American people operate on the basis of a gut feeling. I ask you to question and investigate Mr. Daniel Todd as to why there was no grand jury convened in the death of Robert Many Horses. I ask you to investigate why Mr. Dan Todd failed to inform this Commission that Mr. Robert "Boo" Many Horses was slapped up and thrown into a ditch. This testimony was provided in a court hearing in the county of Walworth, Selby, South Dakota. Why did he not use his discretion in the case of a mentally disabled person? Why did he not use that discretion that he holds in the palm of his hand?

I also ask you to seek facts as to why a young Native American, Jeremy Thin Elk, spent 30

days from July 14 to August 14, 1999, in the South Dakota State Penitentiary for killing a dog, as well as \$300 court costs, a public apology for which Jeremy was forced to make to the owner of the dog, not once, but twice, and to further humiliate this young man with hundreds of hours of community service. I invited Jeremy Thin Elk along today. However, Mr. Thin Elk was picked up Wednesday night in the city of Mobridge, South Dakota, because he was wearing the same shirt as somebody who had just robbed a liquor store. Mr. Jeremy Thin Elk was on his way from his home to the home of a friend. He was picked up and is being held in the Walworth County jail in Selby, South Dakota, as we sit here today on a \$10,000 cash bond because he was wearing a sweatshirt that looked like somebody else's that had just robbed a liquor store.

I also ask you to seek the true and factual story of why a 16-year-old mentally disabled young Native American, David Dog Skin, who now sits in the South Dakota State Penitentiary on trumped-up charges in the city of Mobridge, Walworth County, South Dakota, for the murder of another young Indian person while the true killer walks. I implore you to investigate the prosecution practices of Walworth County as to the fairness, legality, or the complicity by the prosecution and defense attorneys in Walworth County. I implore you to investigate the investigation procedures of the Mobridge City police and the Walworth County police in order to protect and preserve the human dignity of the Lakota people in South Dakota.

I also want to put on the record that as of this day, I am in fear of my life having been placed in jeopardy by my pictures having been taken by the press. I wish to have, for the record, that I am now a sitting duck for law enforcement in the state of South Dakota. They now know who I am and what I look like, and they'll probably know what my vehicle looks like by tomorrow morning. This is the racial tension and the racial fear that we live under in South Dakota.

And as to the gut feeling that us Native American people operate under, we knew from day one when Robert "Boo" Many Horses was killed and placed in the trash can that something was definitely wrong. We put in chronological order for you to view the support that this young man received from his home reservation of Standing Rock. And if I could get that young

⁶ The Commission afforded Daniel Todd an opportunity to respond to statements by Faith Taken Alive. No response was received. See appendix A.

lady to pass this across to the Commissioners. I would really like to thank you for your time today and again implore you to investigate the sentencing, the investigation, and the prosecution procedures in the state of South Dakota. Thank you.

VICE CHAIRPERSON BUTLER. Thank you. Scott German, Agency, South Dakota. And our Chair is back, so he'll probably take over his job.

CHAIRPERSON FEINSTEIN. Could you state your name for the record, please.

MR. GERMAN. Scott German.

CHAIRPERSON FEINSTEIN. Okay. You're from Agency?

Scott German, Agency Village

MR. GERMAN. Yes, sir. Let me begin by introducing myself. My name is Scott German. I'm from the Big Cowlee District of the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe. Secondly, let me say how appreciative of the honor of being invited to address such an impressive group of people convened, to search for the truth, I am. Thank you. Except for the time that I was in the service, I've lived my entire life on the reservation. It has been that perspective that I hope to bring to this meeting today.

The search for truth is a pretty high calling, and I think probably if anybody realizes how impressive and how weighty an issue that is, you do. And I think that's what we're trying to do here today. It can be said that the journey and the search for truth is a lonely one. And you've changed that today for a lot of the Indians in South Dakota. With your assistance and leadership, the process of getting questions answered will be made easier for those who have chosen to go on record today to begin the journey of searching for truth and answers to questions that have haunted Indians for some time. That question is and has been, is the system of justice in South Dakota equal for all of its citizens? From my perspective and 31 years in this state, I'd have to say that it is not. But it simply won't do for you to take my word on this or the word of the other panelists that have been before me. I expect you, as representatives of the federal government, and you, on the Commission on Civil Rights Committee for the state of South Dakota advisory board, to get your hands dirty and begin asking these types of questions of the justice system in the state of South Dakota.

In trying to put together a presentation for you, I consulted a number of associates and tribal members at home. And some of them advised me to put together a very detailed factual presentation for you. Still a small voice, on the other hand, told me to simply come out and address a few questions to you in the hope that it will prompt the Commission on Civil Rights to begin asking the types of questions in the state of South Dakota that Indians ask when they're among other Indians. When I shared this with a few other tribal members, they felt that the still small voice route was the course to go. In the end, I chose to strike a balance and do a little of both.

I will begin by making a comparison for you on the apparent disparity in regard to the quality—or equality of justice served in South Dakota. And then I will pose a few questions and challenges to the Commissioners present today. I brought with me a sentencing comparison that I know that you will hear and some of you are familiar with. It was addressed already earlier to Mr. Kerry Cameron. That's the Melanie Seaboy 14-year sentence and the—I think I've got a list of seven in the information I have, and the sentences ranged from two years to three years, suspended sentences, those types of things.

And I've also got another case—two cases, rather, one involving a non-Indian young man who broke into his employer with the assistance of a juvenile, the Supervalu Store in Sisseton, and they were caught in the process of breaking in by one of the assistant managers. Now, those two young white men were sentenced to 30 days and given three years suspended sentences. And there was an Indian young man just over the age of 18, as well, by the name of Tilmer Salvage that broke in with two counterparts and stole roughly \$624 worth of Slim Jims and beer from a liquor store or from a drinking establishment. Well, his portion of that blame was \$208 and some odd cents, and that young man is sitting in the South Dakota State Penitentiary for two years. And when you look at the sentence that the two young white men, the one adult man was given, since he was in college he was given the luxury of serving that sentence around his class schedule and around the school schedule. Now, I'm willing to sit here today and guarantee you that if Tilmer Salvage was given the opportunity to work his two years around something, I'm sure he would have worked it around some-

thing. But he wasn't given that luxury. And yet we've got two non-Indians, rather one non-Indian who was given that luxury. Well, you know, he's trying to better his life. Well, yeah, he's trying to better his life, but he violated a trust. He stole from his employer. He broke in to steal from his employer. And he's given the luxury of picking the days when he serves his sentence.

I guess I have to preface all of this with the reminder that I'm a simple man. I'm not trained in the law, nor am I articulate, so the observations that I'm making here today are from the perspective of an uneducated, simple man. I heard of something that happened in the state of Pennsylvania along the lines of civil rights where a trustee selected by the Department of Justice goes to the city that was found to be violating the rights of its citizens by racial profiling and targeting and those types of things. And they do audits. I believe they're quarterly audits. And this outside auditor comes in and he reviews the arrest records, reviews where they happen, and he makes the decision as to whether or not—it was either Pittsburgh or Philadelphia—that they have to do more to make their enforcement of law more color blind and less likely to target segments of that city's population. And this was a condition of it receiving federal grant funds.

And I think maybe that's something we need to look at doing here in South Dakota because I'll tell you, it may be news to the four of you or three of you, but it's not news to any other South Dakotan in this room that South Dakota is one of the premiere welfare states in the country. We receive more in federal assistance than we pay out in federal taxes. So we're a welfare state. So if there's anything that you guys can do, it's begin to audit how those federal justice funds are appropriated.

I would challenge you to get your hands dirty. Subpoena these arrest records within the state of South Dakota. If you were to take my county, Roberts County, and overlay the road system with a map of where the Indian communities are and then you overlaid the arrests and the traffic checks, you would have some X's that would begin to line up. And they would begin to line up in proximity to those Indian communities within the county of Roberts. And if you were to go one step further and subpoena the patrol routes of the county sheriff and of the highway patrol in

Roberts County, you would see that those patrol routes encompass the Indian portion of the county significantly more than they encompass the non-Indian section or portion of the county.

So I challenge you. Do those types of things. It feels good to clap when the county prosecutors are sitting here and they're in the hot seat because you're asking them 20 questions. It feels good to do those things. They're cathartic. But you guys need to go one step further and begin to look at the arrest records, the patrol routes, those types of things because I feel as though I'm targeted. I would be willing to bet you that those Indians around the first weekend of the month when they're having these traffic checks between two Indian communities feel as though they're targeted.

I would have to say that we would have to look at the enforcement of law in South Dakota. The prosecution of the law, that's a foregone conclusion. That happens and, you know, there are guidelines that govern how that's going to happen. There is some discretion that can be exercised at that point, but the enforcement of law is where people feel the most, I guess, pressure or scrutiny or focus, because that's where people run into their first encounter with the law. And that's when they enter this process that grinds them up.

In closing, I would like to say that when I was in the service, I worked the intelligence section of our battalion, and we had a saying, "Once is happenstance. Twice is coincidence. Three times is enemy fire." Let me tell you, from my county, it feels an awful lot like there's enemy fire. Thank you very much.

Discussion

VICE CHAIRPERSON BUTLER. I would like to thank every member of this panel because this was my one time to stand in Mark's stead. And don't say you're not articulate, Scott. Every single panelist was so articulate. Thank you very much for seeing me through. Thank you. And we'll talk about getting our hands dirty, and I accept your challenge.

CHAIRPERSON FEINSTEIN. Questions from the Advisory Committee? Questions from our Committee for the panel?

MR. USERA. And any one of you can answer this or if each of you would like to answer it, this would be fine. Obviously, it sounds like us against law enforcement kind of an approach.

But do you think the discrimination of law enforcement is more towards—is it the non-Indian peace officer that you're more concerned about or is it law enforcement in general?

MS. LITTLE THUNDER. My comments were on non-Indian law enforcement officers or people in the justice system.

MR. USERA. Any of you others, do you have an answer to that? Are you basically concerned about non-Indian peace officers, or are you concerned about law enforcement in general?

MS. TAKEN ALIVE. Non-Indian police officers. In Mobridge, South Dakota, some of our people hang things from their mirrors. Some hang medicine bundles from their mirrors, some hang decorative objects, such as medicine wheels, dream catchers. They have a spiritual or cultural significance to the owner of the vehicle. As a form of harassment in Walworth County, Indian people are pulled over for having things hanging from their mirrors. Ultimately they are checked for insurance. Our Indian nations don't require us to have vehicle insurance. But in order to not be harassed, not be thrown in jail, many of us who travel away from the reservation are forced to buy insurance. But this is, I guess—it's not so subtle. It's out there. They harass us because there are things hanging from the mirror. And I fear white law enforcement in South Dakota and even more so because now they have my picture.

MR. GERMAN. I guess one of the things I have in my written testimony is a comparison, and it's simply a comparison that I've made, not at all scientific, nothing empirical about it. It's just an observation I've made within my community. And those people from Sisseton that are here could probably say the same thing, probably have made the same observation. When you have a non-Indian function at the local American Legion Hall and it's a big to-do, people are parked on the lawns, they're parked on the sidewalk, they're parked all pell-mell in the lot. And you know that it's a non-Indian function because all these things are posted in the courier. There's an advertisement that goes out the week before. You would be hard pressed to find law enforcement in that town that night. Maybe one car, but you'd have to find it.

Now, you turn that situation around and you put an Indian function at that American Legion Hall and, shoot, you can't shake an ugly stick without hitting a cop. You've got both city cars out patrolling, you've got probably two, maybe

three cars of the county sheriff; his department is there patrolling. You've got the highway patrol, maybe one or two of their cars patrolling. And on top of that, you've got the tribal police thrown in for good measure. So you can't tell me that it's simply our tribal police.

To answer your question, no, I don't feel that I have to worry about our tribal police. In fact, it's a comfort to me as a citizen to know that should I be pulled over for some infraction, that the tribal police will probably be notified because there's somebody there to ensure my safety in that situation. So to answer your question, no, I don't feel as though it's law enforcement as a whole. I feel it's the non-Indian law enforcement that's present within our reservation towns.

MS. LITTLE THUNDER. I have one more comment on that. One of our biggest concerns, if you look at the disparity of arrests, in sentencing, you know, we're talking about institutional racism, too, here—who holds the power and how that power is exercised. So you'll find the disparity more, you know, institutionally, collectively.

CHAIRPERSON FEINSTEIN. Thank you. I'd just remind the members of our Committee and Commission, please speak into your microphone because people are having difficulties hearing in the back. Questions from the Advisory Committee?

COMMISSIONER BERRY. Do the Commissioners have any questions for this panel?

COMMISSIONER REYNOSO. I have a question for Ms. Thunder. You had mentioned that you thought it would be of help to have sensitivity training for law enforcement personnel. But you also mentioned there had been some sensitivity training, and that it "Did not go well," if I remember your testimony. What happened? Why do you think it did not go well? And in light of that, why are you still hopeful it can go well?

MS. LITTLE THUNDER. I think that the cultural sensitivity training that was provided before brought together maybe people who had a lot of frustration and a lot of animosity, together with law enforcement who had, I believe, their own racism to deal with. And so bringing them together in the same room was not pleasant. But I think what I was suggesting was that some way to deal with that very issue, people's racism—you know, deal with it, not with us. That's not good. We're angry, and we're very frustrated. But I think that people, the dominant society needs to examine its own attitudes and start to

deal with that. I think that that should be a piece of police training. I believe it should be a part of law school, even. Anybody who is going to exercise that kind of power over other people should address that. And I think it even happens at the jury levels. We don't have juries of our peers. We do not. And in the examination of jurors, I believe that should be a piece of it. You know, people hold this feeling. And everybody does, to different extents, to different degrees.

But I think we really, really need to look at that because sometimes we get some very racist people in very dangerous positions. And I've seen it. It's particularly evident with law enforcement because law enforcement has, you know, there's that power point, that control over other people. And it corrupts the best of people. I've been there. I've seen it. So I think that it's very crucial in that field. I believe that, you know, law enforcement, particularly, have contact probably with the most unhappy of our people. I've listened here to a guy say, "Well, they were drinking," and that's blaming. People drinking are in pain. And that's who they have contact with. And so there should be a focus, some kind of training, some kind of awareness of how to deal with that and within themselves, too. Because this is who they're going to have contact with and this is where they're going to exercise that authority.

COMMISSIONER REYNOSO. Thank you.

COMMISSIONER BERRY. Any other comments?

CHAIRPERSON FEINSTEIN. Any other comments? Thank you very much.

Local and Tribal Law Enforcement

CHAIRPERSON FEINSTEIN. Next we have the local and tribal law enforcement. With us first is—if the order is not correct, please correct me—William Brewer, director of the Department of Public Safety, the Oglala Sioux Tribe. Can you state your name and position for the record, please.

William Brewer, Director, Department of Public Safety, Pine Ridge

MR. BREWER. My name is William Brewer. I'm presently the director of the Department of Public Safety for the Pine Ridge Indian Reservation. I've been in this position for the last seven months.

CHAIRPERSON FEINSTEIN. Okay. Begin with your testimony or your talk.

MR. BREWER. I really didn't have a statement ready. I wasn't aware that I was going to be sitting on this panel. There are a lot of concerns, issues out there that I feel that really need to be looked into. A lot of concerns I've heard today I have seen and I've been a part of. And what I can offer today is that I can answer to the Committee questions to the best of my ability that they may have and that I'm aware of what occurred down there. Thank you.

CHAIRPERSON FEINSTEIN. We'll move on and we'll ask some questions in a minute. Thomas Hennies, chief of police for Rapid City. State your name and position for the record, please.

MR. HENNIES. As you stated, my name is Thomas Hennies. I'm chief of police in Rapid City.

MR. FEINSTEIN. Do you have a statement?

Thomas Hennies, Chief of Police, Rapid City

MR. HENNIES. Like Mr. Brewer, I don't have one. I didn't realize that I was going to serve on a panel, although I think Mr. Dulles told me that, but I missed it. But I would like to say this: I've listened for about the last hour, hour and a half to some of the testimony. And I want to make it abundantly clear that we view things from our own perspective. I personally know that there is racism and there is discrimination and there are prejudices among all people and that they're apparent in law enforcement, and that those of us that are heading these agencies are doing what we can to try to eliminate that kind of behavior. But it isn't something that you can do overnight.

Now, when Rosalie was talking about sensitivity training and it didn't go well, I can explain to you why it didn't. I had an officer who was pretty bombastic. And during the training, the Fort Laramie Treaty of 1868 was discussed, in which the Black Hills were given to the Indians, everything west of the Missouri River were given to the Indians. And my officer stood up and said he didn't steal the land and he was tired of getting accused of it, and then he and the moderator got into an argument. And we had to shut it down at noon because we were only polarizing views.

And I think instead of that, as a responsible administrator, we need to go out and recruit people of the various minorities in our communities to serve in these positions in order to make our officers more sensitive. And we have done

that. And, you know, this story I tell a lot, and I hope I'm not taken wrong at this, but when you have one or two Indian people on your department, you will hear your officers say that there are only two good Indians in Rapid City and they both work for the Rapid City Police Department. And then when you get three or four, they'll go on to say that these people are a little bit different than the other Indians that we deal with. You get six or eight or 10, and pretty soon they start realizing, after they've spent eight hours in the car, that they talk about religion and politics and food and family and their history and their culture, and pretty soon through osmosis, your white officers begin to understand Indian officers or minority people. And they have a greater sensitivity through that learning of culture that's not forced on them.

Because I have never seen sensitivity training where you order a person to go to sensitivity training and order them to become more sensitive while they're there. It just simply doesn't work. So I think we in law enforcement need to spend our time trying to recruit people so we adequately reflect the makeup of the entire population in our community. We reflect all of those views and then we try to deal with those issues.

Now I certainly—I've been a policeman here for 35 years. I've been chief of police for 16 years. And I am certainly not without my detractors, I want to tell you. But we have made great strides in those 35 years. When I became a policeman here, if you found a drunk Indian downtown, you'd put him in a garbage can. And when he got out, he was sober enough to leave, and that's just the way things were. I can tell you that that doesn't happen anymore. I can tell you that if those things do occur, and I'm not so naïve as to say never, but if they do occur, they will be dealt with because we are trying to make a difference.

About three years ago a group in Rapid City brought several complaints to the Rapid City Police Department. Actually they didn't bring the complaints to us, they demonstrated about the complaints and had never bothered to give us the information. We took that information and gave it to the FBI to investigate so we could be very clear that someone else was looking at this information. They investigated all four cases and then came back and said, "We find no fault with the police department on this investigation or in its conclusion." But that was not satisfactory.

And about a year, year and a half ago, the same complaints and others were brought to the mayor, who established a committee under the chairmanship of Judge Patrick Lee of the Pine Ridge Reservation. And again they came back and said, "We find no fault with the police department or how they are doing their work." But that didn't say that we were never wrong, that we never behaved in a prejudiced manner or in a discriminatory fashion.

So I would just like to end this by saying that I appreciate the opportunity to come. I appreciate the opportunity to tell my own version of how we become more sensitive, and I'm more than willing to answer any questions. But I absolutely cannot answer for every little incident that occurred over the last 20 years of which I may or may not be aware. Thank you very much.

CHAIRPERSON FEINSTEIN. Thank you. Mr. Don Holloway, sheriff of Pennington County. State your name and position for the record, please.

Don Holloway, Sheriff, Pennington County

MR. HOLLOWAY. Don Holloway, sheriff of Pennington County. I started my career in law enforcement here in Pennington County as a deputy sheriff in 1968. I was elected sheriff in 1983 and have served in that capacity since then. In addition to having a law enforcement function, I'm also responsible for the operation of the county jail and the Juvenile Services Center, which is a regional facility that houses for Pennington County and six other counties. I'm also the manager or the budgetary authority manager over at the City-County Drug and Alcohol Program, which includes a detox facility and treatment facility.

One of the things that was indicated in the letter that I received and obviously some discussions that I had prior to this meeting was a concern about the creek deaths that have gained some publicity in our community. I would say that there's eight deaths that I'm sure that you've probably been furnished information on and may have already received some testimony. The first one of these was May 21, 1998, and the last one that we had was July 8 of 1999. They all have some similarities to them. Six of these are Native American people, and two are white. Seven out of the eight had a very high blood alcohol content. All of the locations where the death took place or at least where the body was

found were in close proximity located along the creek that runs through Rapid City.

Obviously, when these first started happening, we didn't have the same picture of this as we have today. I think after a period of time we started seeing a pattern, something that was not familiar or not consistent with what we had seen happening along that creek in the past. We refocused our investigation. We have asked the Midwest Organized Crime Information Center to help us do an analysis of those cases. We've requested the FBI to do a profile based upon the information of those cases. We've taken those cases and assigned a case manager to put all the cases together so that we can look at any leads or new developments as a group rather than on an individual basis. We continue to respond to any leads or information that might come to light.

One of the things that we're faced with is that we believe that some of the witnesses that have probably seen something that may have not come forward yet are people that have frequented or spent time along that creek. Unfortunately, a lot of these people are homeless and many of them are also Native American. You've heard here today from Rosalie and other people about prejudices and the perception of prejudices in our community, and I think that those are true or accurate descriptions. Obviously, that does create a problem for us in gaining the trust and confidence of the people that we really need to help us with these cases. We've held several meetings, attended rallies, and I believe that we do have some working relationship with some of the local Native American people who live here and share our concern for trying to find the people responsible for these cases. As a result of that, we have a group of people who are helping law enforcement patrol that creek area to try to keep people safe there that are frequenting that area after dark. Both the police department and sheriff's office are working with these individuals to try to make that a go. And luckily and thankfully we have not had another death since July 8 of 1999.

I wish I could come to you today and tell you that we have arrests either pending or have made arrests and have people in jail for either some, all, or a few of these cases. But I can tell you that they're still very serious investigations that we're looking into and working on and we'll continue to work on until we come to a positive

conclusion of what happened during those incidents. So with that I would close my comments and make myself available to any questions you might have concerning what I do as a sheriff and also these particular cases. Thank you.

Woodrow Starr, Tribal Police Chief, Standing Rock Sioux Tribe

CHAIRPERSON FEINSTEIN. Thank you. Woodrow Starr, tribal police chief of Standing Rock Sioux Tribe. Please state your name and title for the record, please.

MR. STARR. Yes, sir. My name is Woodrow Starr. I'm the supervisory criminal investigator for the Bureau of Indian Affairs. I'm stationed at Standing Rock Agency, which covers North Dakota and South Dakota. I've been in law enforcement since October of 1970. I've been a criminal investigator since January of 1988.

I had come prepared to speak about the question of fair treatment by law enforcement in South Dakota. And after today, listening to everything, it seems that a real point of all of this has been directed towards non-Indian enforcement. And I'm not really prepared to discuss something like that. I don't have specific instance where—of having bad dealings with—there's a lot of issues in the past, and a lot of that is gone. A lot of those people no longer work for the police, are not working today—former FBI agents, former police officers, county deputies like that. They're all gone now, some even deceased. So I haven't experienced any of that.

The problems that we have experienced as far as racial issues towards Indians that I can speak to is probably towards the racial profiling. And it seems to be more along the lines where some of the younger law enforcement officers out there, they even stop some of our Indian police officers. We see each other. Then when they stop us, they realize it's us. They don't recognize us out of uniform. And I don't want to say that they're doing a bad thing, but it makes a bad feeling. It does. The Indian officer comes home and says, "I thought that guy was my friend." And it just kind of brings those things out. And then it's not done, I believe, intentionally towards the individual officer. I believe it's because he's an Indian driving a nice vehicle or something and he just happened to be in the wrong place at the wrong time. The young officer was aggressive in trying to do his job. That was basically what I had. And I'll be prepared to answer any ques-

tions about BIA law enforcement or what we're doing as far as how we handle allegations.

Discussion

CHAIRPERSON FEINSTEIN. We would like to hear what you're doing at the tribal level, just because the discussion so far has been on the other end. We have you here. Tell us what you know.

MR. STARR. All right. Well, law enforcement, Indian police officers, tribal, BIA, are pretty much understaffed nationwide and especially in the Dakotas, North Dakota, South Dakota. A lot of stress is placed on these young officers, and sometimes they react to the stress. I know one agency here, one reservation, Rosebud, we can match our statistics with them on activities and arrests. It's just as high as the community of Rapid City. But we have maybe 10, 11 officers who are working at that time. So a large amount of activity that was going on—a lot of it doesn't get addressed.

A lot of people's calls for help never get answered. And a lot of the officers after a period of time experience burn out and sometimes give into the stress and hurt some of the tribal people out there. Some of the tribal members become victims of the police, and there's a lot of allegations about that. The Bureau of Indian Affairs has an internal affairs organization, a new organization within the BIA, and they're responsible for doing these investigations, along with the FBI. And we don't investigate ourselves. Each agency—there's tribal or BIA. When an allegation comes across, we don't do our own investigations. We make a report to the FBI and to the BIA and then hopefully one or the other will work it out with the FBI and then they'll come to the agency and address it.

A lot of the allegations where individuals have been hurt don't get prosecuted, but still—the ones where I was involved, there's still administrative responsibility, excessive force or misconduct on the part of the individual officer, and the situation will be dealt with in that manner. The problem with that is that a lot of the victims only know about the federal allegations being declined for prosecution, but when you take an administrative action between an employee and employer, those are the only two people that are going to know about that and you can't really divulge that information to the

victim or the victim's family. That's about all I have.

CHAIRPERSON FEINSTEIN. Thank you. Mr. Brewer, do you have any experience about that that you'd like to explain to us, or do you just want to wait for questions?

MR. BREWER. Experience?

CHAIRPERSON FEINSTEIN. Any experiences in your the tribal law enforcement and what your experience is that may be relative to Mr. Starr, or would you just prefer to wait for questions?

MR. BREWER. Right now I'd rather wait for questions.

CHAIRPERSON FEINSTEIN. Okay. Advisory Committee? Mutch?

MR. USERA. Since this is a factfinding hearing, I just want each of you to answer this for me. Could you tell me how many law enforcement employees each of you have in your agency; how many of them are white; how many of them are minorities, including women as being a minority; and how many are Indian. And if you don't know that, could we get that information just for the record? And I can repeat the question, if you want me to. I'll have each of you answer that. Thank you.

MR. HENNIES. Did you want to call on us or just—

MR. USERA. No, Tom, you can start.

MR. HENNIES. I have 130 employees, 101 sworn officers. Now, is it the officers you're looking at?

MR. USERA. Yes, just the officers.

MR. HENNIES. I can't tell you exactly how many minorities I have. Very frankly, you know, you get tired of trying to count those. I think it's counterproductive. But somewhere around 15 or 20, if you include women and other minorities, South Pacific Islanders and Hispanic and so on. I think I probably have 10 or 12 Indian officers, but I can't tell you for sure. To add to that, let me add that we have Indians in higher ranks in the department also who have been there for a number of years, worked their way up. I have a detective lieutenant, Louie Lang, who is an Indian man, and our head of the juvenile investigations is Tim Amos, he's a sergeant who's also an Indian man. But, again, I want to say, you know, I think just hiring or promoting or moving people because of a skin color or culture is wrong. They should be qualified. And I'll tell you this: every employee I have is qualified. Thank you.

MR. BREWER. I have 88 police officers working for me.

COMMISSIONER BERRY. How many?

MR. BREWER. Eighty-eight. I don't know the exact numbers, but we do have women working for us. We do have some nonmembers that do work for us. These numbers I can get for you.

MR. USERA. That would be good. Thank you.

MR. HOLLOWAY. I believe my law enforcement count today is 52. I have one Native American deputy sheriff and must have five, six, or seven females. I can't tell you right off the top of my head, somewhere in there.

MR. STARR. At Standing Rock Agency, we have 12 police officers. One is a female. And every one of them is an enrolled tribal member.

CHAIRPERSON FEINSTEIN. Thank you. Del?

MR. WALSH. In regards to the creek deaths, it's been five months now since the last victim, and you've indicated, Mr. Holloway, that you have people working on it. In the last five months, have they saved anybody from drowning, or have there been incidents where you think that that is working well to prevent that kind of incident?

MR. HOLLOWAY. Prevention is always a hard thing to measure. But there hasn't been anybody else drown since then. And there has been, I believe, a couple of incidents where people have fallen in and they've been pulled out, but I guess we haven't stopped an active assault taking place or something like that. And so whether or not we've run off the people or person that may have been doing this, I really don't know. But I think it's a positive move. I think it's positive to have those people in there trying to keep that area as safe as we can for the people that have to be there.

CHAIRPERSON FEINSTEIN. I've got a quick question. On the front page of yesterday's Sioux Falls paper was this Thomas Pay-Pay who said he was told that he was going to be number nine of the victims. I don't know if you've had the opportunity to see that paper, but I got the impression that law enforcement just sort of swept it under the table. I guess I'm talking to both the sheriff and the police chief. Could you comment on that, please?

MR. HOLLOWAY. I guess I would just say I haven't seen the article in the paper that you're referring to, but the name is familiar to us and we have interviewed him.

MR. HENNIES. For my response, I'd tell you if that occurred, if he did, in fact, hear that or had that said to him and he came and told us about it, it would be part of the investigative record. I'm not privy to any knowledge that this may or may not have occurred.

CHAIRPERSON FEINSTEIN. We'll give you a copy of the paper right here. That's our knowledge. We just found out about it yesterday.

MR. HENNIES. I'd rather hear from Mr. Pay-Pay than I would from the *Argus Leader*.

MR. FEINSTEIN. Dorothy?

VICE CHAIRPERSON BUTLER. Chief Hennies.

MR. HENNIES. How are you?

VICE CHAIRPERSON BUTLER. I hope you remember me.

MR. HENNIES. I do.

VICE CHAIRPERSON BUTLER. It was about 32 years ago that you invited me to present, and those sessions, I think, went very well. We presented to the police officers a kind of sensitivity training, but what they desired more was to talk in terms of personal experiences. And they had never experienced any of the kinds of things that I had experienced. And that led to my riding around with them in the police car. That was not all together great because people thought I had been arrested. At any rate, what happened to those programs? Well, let me ask you this: The bombastic officer with whom the sensitivity training just didn't work, what's the status now, has he just continued to be bombastic and he doesn't have to try to communicate?

MR. HENNIES. First of all, let me tell you, I do remember when you came down and taught us. Those classes were good. We continue to have cultural training. However, it's not geared as being sensitivity training. I really think that if our officers just learned to know more about other people—Rosalie taught us the Lakota language class, to those who were interested, anyway. Because I think if you just know more about them, you become more sensitive, rather than saying this is politically correct and this is not. Those classes that you taught and others we've taken and even last year and the year before, they all help us. The officer that was bombastic—I've been termed that way myself a time or two, I know that's hard to believe—but he's still bombastic, but he's no longer an officer. And that's what's important, I think. I don't think he's changed his views one iota, but he's no longer an

officer and he's no longer in a supervisory position on my department.

VICE CHAIRPERSON BUTLER. Oh, and congratulations on winning the—I noticed your name among the new legislators last year.

MR. HENNIES. Thank you.

VICE CHAIRPERSON BUTLER. Have you reached some of them with sensitivity?

MR. HENNIES. I'm still working on that.

CHAIRPERSON FEINSTEIN. I'd like to follow up a little. I'll give you that article and we'll get you a copy of that article and could you provide—I guess both the sheriff and the police chief—a written response to us, at least to answer what might be in the newspaper article and what your solution is and update the article and maybe make it correct so we could understand what the truths are from your department?

MR. HENNIES. Mr. Feinstein, we don't operate independent of one another in these kind of circumstances. We have one joint investigation going and someone in the team will respond to that, right, Don?

MR. HOLLOWAY. That's correct.

CHAIRPERSON FEINSTEIN. Do you want us to get you an article?

MR. HOLLOWAY. Yes, or—

CHAIRPERSON FEINSTEIN. We'll get you one.

MR. HOLLOWAY. We can get a copy of the *Argus Leader* article and also we'll provide you a copy of the interview we've already done with Mr. Pay-Pay.

CHAIRPERSON FEINSTEIN. Thank you. Other questions from the Advisory Committee? Jim?

MR. POPOVICH. Welcome, gentlemen. Sheriff Holloway, you mentioned that you believe or state that these deaths along Rapid Creek were actually drownings. Is it known now for sure that they are drownings, is there any other evidence towards homicide? Do you have any investigation going on that would give any other leads? And I guess the reason I ask is because we keep hearing from the Native American community that people aren't getting the answers that they want. They're not hearing from the community. They're not hearing from law enforcement on how these issues are going and whether these cases are being solved. And I, too, have been reading the paper and I haven't seen too much as well. So I guess the question bodes is, is there more to it than just drownings, and what is the investigation to this date?

MR. HOLLOWAY. Well, obviously they're being homicides with them being drownings.

MR. POPOVICH. Forced homicide, I mean, literally somebody put them in the water?

MR. HOLLOWAY. Absolutely. If someone throws an individual in the water and as a result of that action they drown, that could be a homicide. The autopsy reports did not give us any other indications of cause of death as it would relate to gunshot wounds or stabbings or things like that. But that hasn't changed our view in trying to make a determination as to what, you know, who is responsible, what the course of action took place up to and at the time these people wound up in the creek. And as I said, we're continuing that investigation. And whether all of these turn out to be a homicide case or whether they're all connected, or just some of them, I guess will remain to be seen. At this point in time, we're keeping them all together in the case as active cases just because there's so much similarities or coincidences with the cases.

MR. POPOVICH. A followup question, what kinds of communication do all of you have? Rapid City, being considered a border town, I would guess, what kind of communication do you have with the reservation to talk about certain crimes or elements of crimes that might be related to the Indian people? Do you share information, do you share statistics?

MR. HENNIES. From my part, unfortunately, no, we don't share a lot. I share resources with the officers on the reservation in our particular specialties such as gangs and those kind of things, but we don't share, we don't talk to each other a lot for a multitude of reasons, but it's not right. Let me just end it that way.

MR. POPOVICH. You would like that to happen?

MR. HENNIES. Oh, yes, I would like to see it improve, and we can. And I think the officers from the reservation would also. It's pretty difficult to facilitate that, and I think that a lot of times the people who are in charge of the—not these people, but the people who are in charge of them kind of hold up that communication. It would mean we'd have to get together in Rapid City or on the reservation. We would have to get the right people down and have a meaningful discussion over certain items and those kinds of things. And it's just hard to get everybody together and do those kinds of things, frankly.

MR. POPOVICH. Mr. Brewer, Mr. Starr, do you also see that same thing?

MR. STARR. That's correct. There's not that much type of communication, except for probably LECC meetings that are every three months, unless an incident occurs. Myself, I've talked to both the sheriff and the chief on the telephone, but I've never met them. This is the first time I've met them face to face. And it's been over incidents in the past where someone has escaped from here and we would have caught them on the reservation and wrote letters back and forth and did a lot of planning. But other than having a meaningful exchange of information, captain—I can't think of his name now, he's the gang—

MR. HENNIES. Grant.

MR. STARR. Captain Grant has come up to the reservation and he's come out to various locations for the Bureau of Indian Affairs and has given presentations on gangs, Indian gang members. And that's been about the limit. But I would say this: I know that we're open to it and we welcome it and with community policing, it's like we're learning something new again. It's an old concept, but with a new name. And it goes beyond borders, so we really need to work together and that's going to be our effort from our side.

CHAIRPERSON FEINSTEIN. Any questions from the Commission?

COMMISSIONER LEE. I have a couple of questions, the first one is to Chief Hennies. You mentioned about your efforts trying to recruit officers to reflect the makeup of the community. Have you worked with the tribal police to see if they can help you with the recruitment effort? Have you recruited the tribal police themselves to work in your department?

MR. HENNIES. We recruit not specifically in the police department on the reservations, but we recruit on the reservations, from the colleges on the reservations, and from various technical schools. There's an Indian school in Bismarck, North Dakota, from which we recruit annually. We go all the way to Michigan, in fact, and all the states around trying to make those recruitments for minority officers.

COMMISSIONER LEE. Have you considered using tribal police themselves since they are already in some ways law enforcement officers?

MR. HENNIES. Certainly, except in the police culture; that's called poaching. When they get

good officers on the reservation, they don't want to lose them, and I don't blame them.

COMMISSIONER LEE. The second question I had is regarding the reward system. Do you normally provide rewards on unsolved murders to try to draw out potential witnesses and what happened? If that was a practice, was it applied to the drownings or the eight deaths?

MR. HENNIES. We do that on a regular basis on unsolved or very serious crimes. And in this case, in fact, we offered \$3,000 from the community reward fund for information. It did not require leading to arrest or conviction but for information regarding the deaths so we could have firsthand information. And a member of the community has added \$2,000 to that from the McKie Ford. So the reward is out there, \$5,000, for information leading to the information regarding someone's death and how they died.

COMMISSIONER BERRY. Commissioner Meeks?

COMMISSIONER MEEKS. I've had calls from several people that said that they wanted to set up camps along Rapid Creek to help monitor the creek and that they had been denied by the City of Rapid City or the police department. Can any of you answer that?

MR. HENNIES. I can enlighten you a little bit on it, if you'd like, although I'm not the city Planning Commission, remember that. But as I understand it, I think the Planning Commission is hearing their application for that tomorrow. It has not been denied. Although they were required to go through the same application process as every person that's looking for a variance. And where they want to set up their camps, frankly, is in the flood zone, which we absolutely cannot allow overnight staying in the flood zone. And we've made room for them in Roosevelt Park, and they've made an application which is quite a ways away from the creek but still in the flood fringe. And the police department has asked that they be given approval for a certain portion of their request. And I haven't seen the request, but as I understand it, they wanted to have permission for 35 tipis plus 10 council fires and so on. And we recommended that that be narrowed down, but that they have council fire permission and that they be attended and that there be tipis there but they not be used for detoxification, those kind of things. And no sleeping all night in those places because of the hazards that are involved. But we support the ef-

forts of the community getting involved in trying to prevent these deaths.

COMMISSIONER REYNOSO. I have a question for the chief also. You mentioned the efforts of sensitivity training and that sometimes they go well and sometimes not. Have you had occasion to investigate a variety of plans? For example, there was a consent decree after the Denny's restaurant litigation where I've heard the monitor in that consent decree indicates that they've had a very successful training. In fact, she feels they have actually turned around Denny's in a matter of two or three years from an organization that was viewed as racist to one that's viewed as quite favorable by the African American and other minority communities. So I guess my question is, to what extent has the department searched out these opportunities? Because some apparently have worked, as you indicated, and some don't, but some have been particularly effective apparently.

MR. HENNIES. Those sessions that did not work, just as Rosalie said, they're a little acrimonious to begin with. But we put on cultural training annually in our department and we search out people who give a different perspective every year so it isn't the same thing over and over. They come from different areas of the community and so on, from the minority community. Two years ago we hired a professor from Black Hills State University who happens to be a white man from Germany who came over and knows the Indian culture and history better than most of the Indian people who can present these things to us. And he was very good. And in fact, some of my officers didn't like him very much because he was that good. But you have to deal with those circumstances, and I'm willing to do that. I don't know if that answers your question, but we look every year for a new perspective still in dealing with culture rather than saying this is politically correct and this is not.

COMMISSIONER BERRY. The only question I have is for Mr. Brewer, Mr. Brewer the silent one. Mr. Brewer, have there been complaints of misconduct or other problems by people who are in your community against the police or any police officers to your knowledge?

MR. BREWER. Yes, there is.

COMMISSIONER BERRY. And what is your procedure for responding to them, and how do you go about dealing with those?

MR. BREWER. We have a committee, internal review committee that will look at this. It's made up of nine representatives from each one of our nine districts on the reservation, plus two officers. And if it's a civil rights violation, we forward it to the FBI office. And then if it's a policy violation or something, then our board, our committee will deal with that.

COMMISSIONER BERRY. The other question I wanted to ask you and Mr. Starr, do you believe that some tribal police are not adequately trained in how to conduct a criminal investigation in such manners as the killings that have taken place, other kinds of death cases and assaults? Do you believe that could be the case, both of you?

MR. BREWER. Yes, I believe that, and it's something we're working on. I've got 12 officers that are leaving for the academy as of January. I'm presently trying to get two of my criminal investigators into the criminal investigations class out of Quantico. For our reservation—it's a large reservation. I have 88 officers, but these are divided up into nine districts and each of those districts has several different smaller communities. We cover a vast area. We are inadequately funded so that I don't have the dollars to send everybody at once. And that's one area now that I'm dealing with, that we are going to address, and hopefully I will have most my officers trained by this time next year.

COMMISSIONER BERRY. What is your answer to the same question, Mr. Starr?

MR. STARR. Yes, it's true that some of the Indian police officers don't have all the training they need. It's really kind of on an individual basis scattered out about the country. At my agency, there's two investigators, myself and another investigator. We can initiate an investigation from the very beginning all the way through mailing our stuff to the crime lab and FBI lab, write our own letters, do the grand jury, write all our own affidavits to present to the judges. And we have some investigators that don't have those abilities. And they all work directly with the FBI. In fact, some of us help the FBI when they come out to the reservations, show them a lot of the places, show them evidence, because they haven't seen a felony crime like that, you know, for their first time. So it varies back and forth.

COMMISSIONER BERRY. The other question is, Mr. Holloway and Chief Hennies, do you believe

that your officers are all adequately trained to engage in criminal investigations from start to finish without the FBI or somebody else helping them?

MR. HOLLOWAY. Well, obviously not all of them because you assign people where their expertise is and where their training is.

COMMISSIONER BERRY. How about enough of them?

MR. HOLLOWAY. Yes, I believe the people that I have assigned to the investigative unit are capable and able to handle those types of investigations.

COMMISSIONER BERRY. Is that your answer, too?

MR. HENNIES. That is my answer, ma'am, yes.

COMMISSIONER BERRY. And then, Mr. Brewer, Mr. Starr described racial profiling, even police, tribal police. You heard his testimony. Do you have similar incidents at all that occur with your force?

MR. BREWER. I guess there is. And even from the citizens, I get people coming in asking, you know, what I can do to help them or, you know, they're being targeted. And I guess this is a start. Bring these out here and hopefully something will get done to curb this. A lot of them are simply afraid to drive to the next town come first of the month when they have any money. Chances are they're going to get pulled over.

COMMISSIONER BERRY. One of the local people said to me during the break today, and it was a non-Indian person, that didn't we realize that all this has been going on forever, the racial bias in South Dakota, the attitude that Indians are a separate nation, they're not the responsibility of anybody else; that whites are another separate nation, and that there's no mutual reality of interest or no seamless web of mutuality, as Martin Luther King used to talk about or sense of community, and what did I think we could do that would make any difference. And that that would be true of law enforcement, it would be true of everything. Do any of you think that this is just some reality, that basically you can't do anything? Nobody can really do anything about it? That law enforcement, of course, operates in a microcosm, you're just simply one part of the issue. You're part of the community; you're just a small part. Can you reflect? I guess I shouldn't ask that question. That was a statement. Forget it. That's not a question.

MR. HENNIES. I'd like to hear the answer.

COMMISSIONER BERRY. I don't know the answer. Thank you very much and thank you, Mr. Chairman.

CHAIRPERSON FEINSTEIN. Thank you.

Community Panel

CHAIRPERSON FEINSTEIN. The group that is supposed to come on now is the 4:30 panel of Floyd Hand, Phyllis Hollow Horn, Elaine Holy Eagle, and Tom Poor Bear. Is Phyllis here, Phyllis Hollow Horn? We'll get started then and if she comes in, she can join us. Floyd Hand, Pine Ridge, will you please state your name for the record?

MR. HAND. Okay. My name is Floyd Hand, Oglala Sioux from Pine Ridge, South Dakota.

CHAIRPERSON FEINSTEIN. And do you care to make a statement?

MR. HAND. Oh, yes.

MR. POPOVICH. Mr. Chairman, do you want to make a note about how much time they have?

CHAIRPERSON FEINSTEIN. Oh, okay. What we are doing is you have eight minutes to talk, and then the next person on the panel we'll give eight minutes, and so forth, and then at the end we will ask questions starting with the Advisory Committee and then with the Commission. Okay? And then we will flash what the time is, when you've got two minutes left so you at least can summarize at that point.

Floyd Hand, Pine Ridge

MR. HAND. Well, my statement today will be that I would like to ask the European Americans to use empathy to understand the Native Americans because the people of color who are sitting up there in the Commission area, you know what I'm talking about: racism. And this is happening all over because I just pulled in from Syracuse, New York, Oneida Nation, and yesterday I saw a poster that says, "Indian go home."

One of the things that I feel is important is education. You need to start it at a early age. You need to change that outdated curriculum with stereotyping the landlords of this country by the tenants, the European Americans. It's important. This is why racism exists throughout the world because it has began 500 years ago and is still going. And my question to you is, is this a sugarcoated investigation? Once again we'll be forgotten.

I am a direct descendant and a full blood, and we are suffering on the Pine Ridge Indian Res-

ervation. There is racism there; there is nepotism there. And if you are a full blood, you run into nepotism and racism on Pine Ridge Indian Reservation. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

CHAIRPERSON FEINSTEIN. Excuse me, we have to refrain from—

MR. HAND. Yes.

CHAIRPERSON FEINSTEIN.—degrading or defamatory remarks.

MR. HAND. This is not degrading, sir.

CHAIRPERSON FEINSTEIN. Well, it is. You have to refrain—

MR. HAND. I believe in freedom of speech.

CHAIRPERSON FEINSTEIN. But not in a degrading or defamatory sense. Please—

MR. HAND. There's no degrading.

CHAIRPERSON FEINSTEIN. You can talk in generalities.

MR. HAND. This is what is happening. I'm generalizing it. I'm generalizing the abuse.

CHAIRPERSON FEINSTEIN. What I'm saying is don't use names, please.

MR. HAND. Most of us reservation people are sitting in here today in South Dakota, and I believe the state of South Dakota needs to be educated right from kindergarten on up. Let's change the school curriculum, and let's talk to our parents. Let's talk to the parents because it is the parents that need to set the attitude and example of these young people. Therefore, there will be no racism, and this is what I believe. Because you're going to say equality, we need to start teaching at a early age, and I believe today that this is why I'm here, because I believe in a direct, honest statement and hope you can take it home with you and think about it. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Elaine, state your name and where you're from for the record, please.

Elaine Holy Eagle, Rapid City

MS. HOLY EAGLE. Okay. My name is Elaine Holy Eagle. I live here in Rapid City. I'm a full blood Lakota person. I'm half Oglala and Hoho-shugan. I'm an enrolled member of the Cheyenne River Sioux Tribe. I was born and raised in South Dakota. I have been a resident of Rapid City, South Dakota, for over 40 years. In those 40 years, we have never had this many drownings in Rapid Creek. There have been some people who drowned accidentally, but I can't understand how eight men drowned in Rapid Creek,

and in December of 1998 four men drowned in four days.

Also, I wanted to talk on behalf of Ronald Hard Heart who was one of my relatives, and you will find a picture of him right here [indicating]. I wanted to say that Ronald was my relative and he was a brother. He had hopes and dreams just like you and I. He loved his family and he loved his Lakota ways. I have known Ron to be kind and gentle, even when he was in pain and he could still laugh about himself getting hurt.

As a Native American person, we awaited for justice in the white man's justice system. I have been a silent observer for too long. The injustice that has been going on is totally unacceptable. It is time to make changes to meet the needs of all the people.

I remember a few years ago in New England there was attention to an incident where a woman was raped in a bar and people in the bar just watched it happen. The people who watched are an accessory to the crime, and the people of New England were outraged. Why wasn't there outrage when there was Native American men or the people who drowned in the creeks? And why is there a dual system of justice? Is it because people are conditioned to believe it's okay if an Indian person is killed?

There are many examples of racism and discrimination. A few years ago there was a Native American woman who was attacked by two white women and she had long black hair and her hair was cut and they shaved her head, and was there justice for her? A Native American woman was hit and killed by a pickup truck. The driver was never cited for anything because he said he thought he had hit a deer. On November 1, 1999, just last week, Ms. Red Paint, a Native American woman was walking across the street on Mt. Rushmore Road when a car struck her. The driver was not cited because Ms. Red Paint was walking outside of the crosswalk line.

The Native American people have tried to address the racism and discrimination towards Native American people by reporting it to the police department, the mayor's office, and various organizations, only to be unheard. Some of the Native American people are not aware of the proper procedure of reporting incidents of racism and discrimination against them while other Native American people fear for their lives and of retaliation.

There was a mayor's committee task force on gangs. When the current mayor, Jim Shaw, was appointed, a committee to investigate the treatment of Native American youth was appointed. Some of the Native American youth were forced to strip off their shirts to look for tattoos of gang signs on their bodies. These things were forced upon Native American youth without the permission of the parents. According to the committee, there was some findings and recommendations. I spoke with one of the persons who was on the committee who said they followed through with most of the recommendations. However, one of the discrepancies was that they hire 8 percent Native American men, but the police department answer to that was that Native Americans were put into a group with the minorities to include other minority people and women. They could have hired the majority of women and filled their quotas for hiring minorities.

The judicial system has disparities and discrimination that exists within operation of law enforcement and the justice system in the state. There is definitely a dual justice system, one for white people and one for Native Americans. This dual justice system has been in place for a long time. And one of the things is that racism and discrimination is so subtle that you can't identify it. It's only how you feel as a Native American person. Somebody can make you feel bad just by how they look at you. They don't necessarily have to touch you, but it's how you feel. And I've worked here in Rapid City long enough to know that I have been discriminated against many times, but I've learned to address it. One of the things is that if I go shopping and if I'm mistreated by a clerk or something, then I know that I have a right that I can go call the manager and I talk to the manager about this person, and most of the time the person that's working there will back off because they know that I know that I have a right.

But this isn't always necessarily for all people. You know, a lot of our Native American people—I'm full blood, but I learned to stand up for myself, and a lot of our Native American people who are full bloods are very respectful and they're not going to do that, and that's who I'm speaking up for today because they're the ones that are so respectful that they're not going to say anything bad about anybody.

But I feel like times have changed. I just read the Constitution the other day that we have a right to pursue happiness, and some of us are not getting that same right and there's something wrong. We need to change. We need to change the laws to meet the needs of our people. We can't just go by laws that were good for the people 40 years ago. Times have changed, technology, there's a lot of things.

And I guess right now one of the things I want to do is that I am taking a stand against racism and discrimination and the unfair and unjust treatment of Native American people. And I did have some recommendations, but I think Tom Hennies had already mentioned some of it. You know, racism and discrimination have been here for over 400 or 500 years, you know, so if you have sensitivity training, one of them is not going to do it. You need to have ongoing training or cultural sensitivity all the time.

And I just wanted to say that one last thing is that I'm aware that as Indian people we have alcoholism, we have a lot of problems as Indian people, but I still love my Lakota people and the Lakota culture, and that's how my grandparents raised me, to love my people, and so that is why I'm here today. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Tom Poor Bear, state your name and title for the record, please, where you're from.

Tom Poor Bear, Pine Ridge

MR. POOR BEAR. My name is Tom Poor Bear. I'm from Camp Justice of the Oglala Lakota Nation. In the spirit of justice, Camp Justice and the traditional Lakota Nation along with the American Indian Movement and along with our many supporters and organizers throughout the world wish to thank the representatives of the United States Commission on Civil Rights and the Rocky Mountain Regional Office members and staff who have made it possible for us to have this civil rights platform for the world to see.

The March for Justice in honor of Wally and Ron, Wally Black Elk and Ron Hard Heart, our Lakota brothers who were found dead, brutally murdered and mutilated a few feet from the Nebraska/South Dakota border, it was in their honor and because of all the other unsolved murders of our people that Camp Justice and the American Indian Movement marched for justice to White Clay. That's why it was established.

But this is a statement, but I'm going to submit it to the panel. I don't want to read it right now. I will submit a copy to the panel so you can go over it. But myself, I'm here in respect and honor of Wally Black Elk and Ron Hard Heart and all our other tribal members who were found dead on the streets of Gordon and in the jails of Sheridan County and the streets and alley of White Clay.

Our people have been murdered, our tipis have been burnt, our ponies have been killed for over 500 years now. And this panel, I hope that you are not here to see if these are racial problems. The racial problems started to exist 500 years ago, and when Custer discovered gold in our sacred Black Hills, our people have been murdered over their land and their way of life. Our rights have been violated. Wally and Ron's right to live were violated. Our people have been mistreated far too long in Sheridan County and western South Dakota. We have run into a dual standard of justice far too long where if an Indian person and a non-Indian person were charged with the same crime, the non-Indian's bond would be a lot lower. And when a non-Indian and an Indian are sentenced, an Indian is always the one to get more time than a non-Indian.

Personally, I feel the investigation of my little brother Wally, my cousin Ron, I don't feel the FBI,⁷ our local Public Safety are doing a thorough and adequate investigation. If those were two white people that were found, the FBI would have been there in full force the day they found my little brother and Ron. Last week, the FBI did come to Camp Justice and did a sweep and they brought a dog, six months later.

What I don't understand about this investigation is they really focused around Camp Justice where the bodies were found, and as a people of the Oglala Lakota Nation, we know the bodies were moved. I feel that this investigation should also have included Sheridan County because of the racial problem that's been existing there for many years; I could go way back to Raymond Yellow Thunder of 1972. But Sheridan County, its officials, its sheriff's department⁸ needs to be

⁷ Mark Vukelich, supervisory senior resident agent, FBI, Rapid City, SD, notified the Commission by telephone on Mar. 30, 2000, that he would not have a response to statements by Tom Poor Bear.

⁸ Sheridan County sheriff Terry Robbins' response to statements by Tom Poor Bear is attached as appendix C.

investigated because Camp Justice and the American Indian Movement will not allow another family to go through the tragedy that the Hard Heart and Black Elk family has already been through. It needs to stop.

Also, I want to mention a of couple young relatives of ours from Allen, South Dakota, where a white man brought alcohol illegally on our lands, and these were young brothers that were underage, too young to drink, and he brought alcohol onto our lands and got our young people drunk and tried to molest one, and he was beaten. That was considered a hate crime by the sheriff of Bennett County, Waterbury, which hit national news. The next day, Waterbury took back his words and said it was a hateful crime, but still, it didn't matter.

I look at Boo Many Horses who was stuffed face down in a trash can in Mobridge by four white kids, and all charges were dismissed against them. They blamed it on alcohol, but Boo was an FAS baby. He was born with alcohol in him, but still, some type of charges should have been filed because Boo might have still been alive before they stuffed him in the trash can. If that was four Indian kids that stuffed an FAS baby in the trash can, they would have found some charge with them. But the two brothers in Allen are facing prison time for the action of this non-Indian who brought alcohol illegally on our lands.

I look at the creeks of Rapid City and our people who were found dead in the creeks. I feel that Pennington County Sheriff's Department and the community of Pennington County should support the people that are trying to establish Camp Stronghold and work together in unity. That is what Camp Justice strives for is unity, to unite the authorities to do a thorough and adequate investigation. Six months is too long for Wally and Ron's justice. Camp Justice will continue to stay until justice is found.

But I really want this panel to really take a look at the racial problems that exist and the dual standard of justice of our people. Our human rights have been violated, our civil rights have been violated, and people are suffering from that. I don't look at it as an alcohol problem on the Oglala Lakota Nation; I look at it as pain. Every time we walk to White Clay, I see pain in our people that have to stay up there and handle what change they can. The pain of their dignity being stripped away, the pain of seeing

their land stolen, the pain of being treated as second-class citizens, and being herded out of White Clay like cattle.

We have produced documentation to Sheridan County that that belongs to our land. We have been arrested going into White Clay. We were met by snipers, dogs, tear gas, SWAT teams to try to provoke us into violence, but it didn't happen. One store was damaged during our first walk. It wasn't the intent of the Walk for Justice, but you have to look at the years and years of frustration, of racial abuse—physically and verbally—by the people that are in White Clay. I apologize to the people for the store being damaged, but I will not apologize to someone that has harmed my people.

Wally was a very spiritual man, a very quiet man. I keep his Bible in my tipi out of respect for him. Ron was also a nonviolent person who helped people around White Clay when he could and other places around our lands on the ranches and different places, but these two men were murdered very violently, very hatefully. I look at that as a hate crime.

And Sheridan County needs to be investigated on this. I feel the state patrol, Sheridan County Sheriff's Office and whatever criminal investigators they have there should be involved in this also because of the decades of deaths of our people. Every time, they say our people die of natural causes, but when they are identified by family members, they are beaten. And every time one of our people are found dead, they're always last seen with somebody from the sheriff's department, way back to Raymond Yellow Thunder when he was made to dance in the Legion Hall half naked. He was escorted out of there by a deputy sheriff of Sheridan County.

So out of respect and honor for Wally and Ron, Little John Means, Don Bordeaux, Gordie Bordeaux, Tom Twiss, Francis Thunder Hawk, Rich Big Crow, Martin Bull Bear, Dennis Cross, and Raymond Yellow Thunder, we ask that this panel do a complete and thorough investigation of Sheridan County because I personally hold that county responsible for these deaths, as many of our Lakota people do. A lot of our people cannot come forward because they're scared of the repercussions that might occur, but they have been mistreated too long. So with that, I thank you for your time.

CHAIRPERSON FEINSTEIN. Thank you, Tom. Any questions from the Advisory Committee?

Discussion

MR. POPOVICH. Where do you start? We've covered a lot of the deaths today, and we understand your pain, and we hope that the Commission can do more and certainly we're going to make recommendations back, and we hope some of those recommendations will help your grieving and your sorrow. But I have to ask, too, how do you feel when you're on the reservation? Do you feel like you're being listened to when you come across with grievances of civil discrimination or civil rights in your own community on the reservation? Are you being listened to by your tribal government, and what would you do different to change that?

MR. POOR BEAR. Our tribal government, I have a lot of respect for tribal government. I come from a family that has been involved in tribal government for many years. I don't want to offend our government, but I do have to say that they haven't taken a position in the deaths of our people in Sheridan County. I am also a part of the tribal council, and a month ago the Wounded Knee District out of Pine Ridge did pass a resolution in support of Camp Justice and the unsolved deaths in Sheridan County and also the return of the land to Pine Ridge. That was presented before the tribal council and the council did pass that unanimously on the land issue and the murders, but that's as far as that got. They haven't took action on it yet. But they haven't really took a position as far as contacting you people or the FBI or any other authorities in these murders.

MR. POPOVICH. Would a civil rights office there on the reservation help you, do you believe?

MR. POOR BEAR. We do not have a civil rights office. That is one of the goals of Camp Justice is to establish a civil rights and a justice office on the Pine Ridge.

MR. HAND. We need more money.

MR. POOR BEAR. Also the American Indian Movement is with us on that also.

MR. HAND. Civil rights office will do us good.

MR. POPOVICH. It would help?

MR. HAND. Yes, it really will.

MR. POPOVICH. Do you believe that people would go there and use it?

MR. HAND. Yes, I believe so. But I must recommend that nonmembers of our tribe run it.

MR. POPOVICH. And why would that be?

MR. HAND. Because of our extended family concept. We're all related on that reservation, so it's best that we have people from the other reservations or other—with degrees and education in the way to process grievances and keep records as to all the grievances. I think this will really help our people.

MR. POPOVICH. Thank you.

CHAIRPERSON FEINSTEIN. Other members of the Committee?

MS. LAFLER-RATIGAN. I do.

CHAIRPERSON FEINSTEIN. Alys?

MS. LAFLER-RATIGAN. I don't know if this microphone is working or not. Say that these crimes are solved and the people responsible are brought to justice and they receive what is, in your eyes, a fair sentence. How would the healing begin after that? What would have to happen between, for instance, you and law enforcement personnel for there to be a more trusting relationship built? What in your assessment has to happen? And I'd like any or all of you to respond.

MR. HAND. Okay. In the sentencing guidelines, like we heard all afternoon, that is not quite followed for Native people, and this is the fear that we have when they do find the people who have done it eventually—it took so long. Look how long it took for the FBI to go to the camp there, six months, and they'll say that they have taken too long and probably give them a lighter sentence or give them probation because again, a lot of our information leads to Sheridan County.

And I personally asked Federal Bureau of Investigation man Moreno, which he was assigned to, and I asked him why is it that those telephone numbers and evidence that was handed from Sheridan County to our police department and FBI never surfaced? And the story is that that was misplaced and never found, so that's where we're at today.

MS. HOLY EAGLE. I wanted to make a comment that I think that if the Native American people could see that the police department or the sheriff's department or the FBI or whoever was making an attempt to solve these problems, then we as Native American people would realize it and understand that they were trying to help, but at this time it's just like there's no communication. We don't know what's going on, what the police are doing; they haven't given us any update. But I think when and if that ever happens, then there would be some kind of heal-

ing that will be going on in the Native American community because so far we as a Native American people feel that we're not being heard. And if the case was that they are listening, then it wouldn't come to this point. So that's all.

MR. POOR BEAR. The matter of trust, you have to be trustworthy. I don't mean to sound disrespectful when I say this, but because of the lack of communication between the FBI, our local law enforcement, and the families of Wally and Ron and the lack of manpower under the FBI and our own tribal police, to me a murder of this caliber, they should have every person they can find to help with this investigation.

A while back I had the opportunity to meet with some delegates from Johanness' office, Governor Johanness out of Nebraska. I confronted the state patrol on that, on why they didn't get involved in this investigation, and they informed me at the request of the FBI; they didn't want their help in this investigation. When I hear stuff like that, then I lose trust in people. But I don't feel I can answer that question until these murders are solved, and then I'd be able to bring out my trust in people because we are a trusting people. We have been for 500 years, but look where we're at today.

CHAIRPERSON FEINSTEIN. Mutch?

MR. USERA. You all mentioned communication, and I do believe again, I think communication seems to be lacking extremely on everybody's part. There's two types of mediums. There's the, what I call the rumor mill communication and then there's the factual communication side or hearing it from the horse's mouth, so to speak. How do you recommend or do you have any ideas of how people should communicate to one another? I mean, are they going to read the newspaper to find out this information? Some say they wouldn't dare read the *Argus Leader* or the *Rapid City Journal*, that it's not factual. Do you have town meetings? Is there a membership publication? Do you have any recommendations on how law enforcement, government agencies, whatever, can communicate to the appropriate people? Obviously, it's got to be a one-on-one to the victims, relatives, family, I understand that, but it goes beyond that because you're talking about a community, especially small communities. When something happens to a victim, it's not just the relative. Obviously, it impacts the whole community, so how do you reach that

community? Do you have any suggestions on how they can do that?

MR. HAND. I work internationally and nationally, and a lot of the people, like New York, they ask me about Camp Justice and what we are doing here, and there's a complete news blackout as far as newspaper goes especially from—

MR. USERA. Sure.

MR. HAND.—Rapid City, Sheridan County, Nebraska, that surrounds us. So what we do is by word of mouth that we communicate to get this information out because as far as news media go, they just don't carry no stories. And I did a needs assessment with some of the Chadron ranchers, Hay Springs and Sand, and they live only what, 27 miles from there, and they don't even know this is happening in White Clay as well because their newspaper don't carry it.

MR. USERA. Sure.

CHAIRPERSON FEINSTEIN. Anybody else on the Committee, Civil Rights Committee?

COMMISSIONER BERRY. Yes, Commissioners? Commissioners?

COMMISSIONER MEEKS. Well, Elaine, I just don't know, what would be some examples of some activities or—I guess that would be the word to use, that the police department could use with community members to really get face to face with them and to make Indian community members to feel like they were equal partners in this whole thing?

MS. HOLY EAGLE. I think that the police force or the sheriff's department can implement the racism and discrimination policy in their policies and procedures because I don't think they have one, or if they do, it's not clear.

I think that also, like I said before, this cultural sensitivity needs to be ongoing. And when Tom Hennies said that some of the police officers felt like they didn't want to go, it brings back to my mind how some of our ancestors and relatives, they didn't want to go to boarding school either. They didn't want to give up their language. They were forced to cut their hair. They were forced to do things. You know, that—and that's our people, and the policemen who don't want to go because they don't want to or whatever, you know, I find that that comes to my mind as he said that.

I feel like there's really—you can't change a lot of people because some of them are so set in their ways that I really don't know how you can

get the point across to them. But I did write some recommendations down, and one of the things was to have more education to all the people in Rapid City that there is a state and federal law on racism and discrimination because some of the state and federal programs do have it, but there's community organizations or different—like Wal-Mart or different places don't have that, or if they do, they don't seem to go by their rules or whatever. These organizations who have employees who are racist should be held responsible. So if these business owners need to hire somebody, then they need to be very clear when they hire these people that, "You will not discriminate against minorities." That the store owners or business owners need to take more responsibility to their employees and say, "We do not do this. This is not acceptable." That they need to spell it out or whatever so that their employees understand fully that that is totally unacceptable because at this point in time, there's a lot of organizations here in town who employ people and maybe they're good workers, but they're racist.

So I guess I really don't—you know, the only thing that I could say was that if we do find organizations or people who are racist, maybe we should fine them just like you fine somebody who gets picked up for DUI. They have to be fined, they have to attend cultural sensitivity classes, do volunteer work at the mission or somewhere where there's minorities. I feel like something should be done because right now nothing is being done. It's like it's okay. If you want to be racist, it's okay because everybody's going to accept it. You know, our Indian people have complained and nothing's being done.

CHAIRPERSON FEINSTEIN. Thank you.

COMMISSIONER REYNOSO. I just wondered what your reaction would be to or what your reaction has been to the experience that we've had in California. In California the Indians have been really disfavored because instead of having large reservations, we've traditionally had those rancherias which were so small that the federal government hardly paid any attention, and they had a very difficult time getting the state and other local agencies to pay any attention to the subject of those folk who very often were in reservations of only 40 square miles or even smaller.

But something magical happened a few years ago because many of those rancherias are near

large concentrations of population, and many of them—not all, but several of them, quite a few have had casinos, and the casinos have brought a lot of money to them, and they in turn have contributed a lot of money to political campaigns, and they have money now to send their children to college. And somehow in those rancherias, you don't see any used cars, you see mostly new cars, and not only that, you don't see used cars not being used. You see the Indian leaders now meeting regularly with the Governor of the state of California and with the legislators, and they're now on the same page as those politicians, and all of a sudden, all these magical things have happened, and the Indians are still the same people. A few years ago, they were completely ignored and now they seem to have a great deal of power. What was the difference? Money. Power that came with that money.

So I guess my question—and I must say that in listening to the stories that the community has brought to us, I can't help but think of the hearings we had in Mississippi where mostly black folk there brought stories to us that sounded very much like the stories that the Indians, Native Americans, indigenous people are bringing to us today and the absences of economic development and power.

So I just wonder what observations you might have in terms of the possibilities in South Dakota for the Native peoples to develop that economic power that in turn will give them political and educational and other power, because eventually it seems to me that will be more the solution. In some ways, I don't care if somebody is prejudiced as long as they don't act out on that prejudice, and if I'm the boss and I own the factory, I own the store and I have a person working for me who's Anglo, chances are they won't act out their prejudice against me because I might fire them. So power means a lot, and that in turn, I think, is dependent so much on economic power. So I just wonder what observations you all have on the possibilities of bringing that sort of economic power to—

MR. HAND. Education.

COMMISSIONER REYNOSO.—the Indians of this state.

MR. HAND. Education. I for one have tested it out. I left here 23 years ago, and I found out that I had to work to make a living. So after 23 years I also developed a company in New York City, and now I'm able to try and encourage my neph-

ews and family to get education. And by doing so, I know as far as casino goes, we're too overpopulated, about 45,000 of us in 3.8 million acres, so the best we could do is HEW, health, education and welfare for our casinos. But again, we have to encourage our young people. Education, again I go back to that curriculum. If we do that, I think we can hold hands throughout the nation.

COMMISSIONER REYNOSO. Thank you.

MR. POOR BEAR. Well, I agree with my [speaking in language other than English]. I don't know if this is kind of away from your question, but what Camp Justice focuses on is White Clay and the murders, and to me, to gain power we need to shut White Clay down because of the mistreatment of our people and the racial attitudes, the prostitution that goes on there. White Clay makes \$4.2 million a year. Ninety-nine percent of that money is Lakota money. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] to shut that place, a lot of our money would stay on our lands and within our communities.

MS. HOLY EAGLE. I wanted to say that I guess my feeling on that is that I think we as Indian people have rights to respect and dignity just because we're people. It's just a human right that we have. It's a wonderful thing and it can happen and it has happened to a lot of our people, they do have casinos, but once we do that, then we become like the haves and the have-nots. And the point here I see is that we as Indian people still deserve human—we have human rights to dignity and respect regardless of whether we have two cents or no money at all. So thank you.

COMMISSIONER BERRY. Thank you. I don't have anything.

CHAIRPERSON FEINSTEIN. Okay. Thank you very much. The next community panel includes Peggy Redday, David Seaboy, and Mark White Bull. This is the 5:15 panel, and we're going to try to conclude this in 45 minutes which is the time you had allotted initially, so we might be able to get a little 15-minute break ourselves.

Okay. First we have Peggy, do you pronounce it Redday?

MS. REDDAY. Redday.

CHAIRPERSON FEINSTEIN. Redday. Do you want to state your name and your location for the record, please.

Peggy Redday, Sisseton

MS. REDDAY. My name is Peggy Redday. I'm from Sisseton, South Dakota. I'm here on behalf of my son Justin Redday, Sr., who was killed on May 23 a fourth of a mile from my home. You all heard and listened to Mr. Cameron sit here earlier, the Roberts County state's attorney, and kind of sugarcoat his version of the facts. I've put together a packet for each of you that has information in it and my side of the story.

He gave all the details of my son, his drinking problems, his other problems with the law. I don't deny them, but he was working on them. Last New Year's he fell, broke his shoulder, finally gotten that in order again and was healed up. He was going back to work. He was supposed to start his new job the day after he was killed. He leaves a little boy who will be 2 years old Christmas Eve.

What Mr. Cameron⁹ neglected to tell you was the five boys driving in this pickup . . . [Words deleted as potentially defamatory, degrading, or incriminating.] They were on probation. They all had a curfew which wasn't 1:00 to 1:30 in the morning. I left that morning. A couple other ladies and I were taking a group of students to the Bahamas for a senior class trip. I got up early, I cooked breakfast, I fed my family, and I sat for about an hour and I talked to Justin that morning, and I helped him re-string his fishing line. Him and his brothers were going to spend the day fishing. Little did I know that was going to be the last time I'd have to see him.

But at about 3:20 the next morning, the phone rang and it was my husband and he was crying, and he told me Justin had been hit and he was in really bad shape. So I called the airport, I switched my reservation from the Bahamas, I took an emergency flight to Fargo. But by the time I got there, he was already gone.

These boys were all at a party up in some rancher's field about eight miles northwest of my house. This Mark Appel had been up there . . . [Words deleted as potentially defamatory, degrading, or incriminating.] Even these white boys kicked him out of there; they didn't want him there. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] That was when he apparently came past my house. You'll

find in those packets at—those boys say they left that party between 12:30 and 1:00, which would put him about a half an hour to get to my house which is about right. My boys say it was 1:15 to 1:30 when Justin left them and said he was going into my house.

He went in and I don't know if he ate or got a can of soda pop or what he did, but the girls that were upstairs, my daughter-in-laws, heard him in the refrigerator, and instead of going to bed, he must have decided to walk home. He lived in Sisseton which is five miles away. He started walking, and I don't know, it would only take him five minutes to get as far as he got. His blood alcohol was 0.2, which is high but not enough to make him pass out. I have no reason and I can't understand why he would be laying in the middle of the road.

But anyway, after we went to court, the grand jury, we went to court and I didn't know—I had asked Cameron, "Could I have at least three days' notice when the court date is set so I can tell my sons because they all work other places?" "Yeah," he said, "we'll tell you." And it was on October 11, I had some business to take care of. I took the afternoon off from work, picked up my daughter-in-law and my grandson, and we did our business and we came back, and I decided to run my truck through the car wash. I was sitting and parked in front of the car wash when Mr. Cameron came flying up in his pickup, pulled up beside me and he said, "Oh, by the way, we go to court tomorrow at 10:00." And I asked him, "What happened to the notice?" "They want to go now," he said.

But I come to find out later the reason why they pushed this so fast was because while this Mark Appel was on house arrest—I had been telling Mr. Cameron, "He's out partying every weekend." He wouldn't believe me or he didn't want to acknowledge it. But we went to court so fast because Mr. Appel, while on house arrest, was arrested again in Watertown, Codington County, for DUI and underage consumption. They turned around and they bound him over to Roberts County because of his pending charges, and I've never heard anything that happened with his second DWI. They've only charged him with one. So in other words, all he got was he was just being charged for his probation violation and his DUI. He got absolutely nothing for the death of my son. They say he's locked up now, but for how long and where?

⁹ The Commission afforded Kerry Cameron an opportunity to respond to statements by Peggy Redday. No response was received. See appendix A.

MR. POPOVICH. Thank you.

MS. REDDAY. I would just like to say I'd like Cameron investigated, and I really do hope that this Committee comes to our reservation. There are so many other deaths there that are unsolved. They're just pushed under the carpet and forgotten. I don't want this to happen to any more of our young people. I know it will never bring my son back, but it might prevent something else. Thank you.

MR. POPOVICH. Thank you.

David Seaboy, Sisseton

CHAIRPERSON FEINSTEIN. David Seaboy, you're next. Can you state your name and where you're from for the record, please.

MR. SEABOY. Yes. My name is David Seaboy and I'm from Sisseton also, and I'm also here in behalf of one of my children, Melanie, and I understand I've got eight minutes to make a presentation. And what I would like to say is on November 5, we had a petition for a hearing for reduction in sentence. The lawyer of the family of the victim had to be in court. He had a court case so he couldn't make it, so they postponed to the 15th of this month, that's next week, and I'm hoping that my appearing here today and with what I have to say will not bring repercussions on the 15th for her. That's my only fear.

I'd like to start my presentation now, if I'm being timed. My grandfather who died in 1967 told me of two incidents involving alcohol with our people that stuck in my mind, and in turn, I have told my seven children the dangers and the effect of alcohol on our people, on any people. And out of the seven of my children, none of them have ever used alcohol until Melanie. She is the next to my youngest. I am hoping to draw questions on that. I am also hoping to draw questions on what my grandfather told me before he died about the use of alcohol.

My daughter Melanie got in a car accident July 29 of '98. On August 29—or October 29 of '98, she pled guilty. She accepted her responsibility and pled guilty to the charge of vehicular homicide, and I hope to draw questions on that. So she pled guilty and put herself at the mercy of the court. The mercy of the court was that out of a maximum of 15 years, she would serve 14 years in the South Dakota State Penitentiary for Women, and so we petitioned for reduction in hearing. I'm hoping to draw questions on that petition, too, that we filed.

What I'd like to do for the next so many minutes before my eight is up, I'd like to cite 10 cases very similar to my daughter's, but the large disparity in the sentencings. I won't mention names, but I got these cases from a legal person from our county, and I'm hoping to draw questions on that. And these 10 cases, I will not mention names. I'll just say state of South Dakota versus blank. I don't know if you have any copies, but if somebody is willing to make copies of this, the cases and hand them out to the panel for your future use and future decisions in this hearing today, I'll be glad to hand it over to them.

The first case is the state of South Dakota versus this fellow, Fifth Judicial Circuit, 1991. The court sentenced the defendant to five years in the state penitentiary after the defendant pled guilty to the charge of vehicular homicide for driving a motor vehicle in a negligent manner and thereby caused the death of Lora—okay, no names here, a lady. The defendant did not enter his guilty plea until after his request for a jury trial.

The second case, in the state of South Dakota versus this fellow, Fifth Judicial Circuit, 1976, the court sentenced the defendant to one year in a county jail with nine months suspended after the defendant pled guilty to manslaughter in the second degree for driving in a negligent manner while under the influence of an intoxicating liquor without design to effect the death and therefore caused this fellow to be killed.

In the state of South Dakota versus this fellow, Fifth Judicial Circuit Court, 1995, suspended the imposition of the sentence after the defendant pled guilty of manslaughter in the second degree. Here the circuit court exercised its judicial clemency under South Dakota PL 2380-27-13, and the defendant was placed on probation for two years.

MR. POPOVICH. Mr. Seaboy, you do have two minutes, please.

MR. SEABOY. I have two minutes?

MR. POPOVICH. Yes.

MR. SEABOY. Okay. Now all these cases, the severest one was five years. Now I would like to also state then in my final two minutes here out of 10 cases that I have here, there is one woman. In the state of South Dakota versus this lady, fifth judicial district, 1998, the court suspended the sentence of five years to the state penitentiary after the defendant pled guilty to vehicular

homicide, the very same charge as my daughter received.

So I guess that will be my presentation, and I'm hoping as the other panels went through that I would draw questions and I will be very happy to answer anything.

MR. POPOVICH. We can enter those in your record, too, the ones that you have there; is that right, Mr. Chair?

CHAIRPERSON FEINSTEIN. Yes.

MR. SEABOY. Okay. If you would, I would like to enter all these cases. Is that what you're talking about?

CHAIRPERSON FEINSTEIN. Yes. If you give them to the table over there, they'll be able to enter them into the record.

MR. SEABOY. Okay. Thank you.

Mark White Bull, Kenel

CHAIRPERSON FEINSTEIN. Okay. Mark White Bull, if you want to state your name for the record and where you're from, please.

MR. WHITE BULL. Mark White Bull from Standing Rock Reservation and for the Justice for Boo Committee and also for Justice for Candy. I'd like to enter a lot of these documents into the record for you to look at, but I'm just going to read some of them. Otherwise it would take up all my eight minutes or whatever I have.

I'd like to state very candidly that these deaths such as Candy Rough Surface and also Robert Many Horses are acts of terrorism because as Senator Kennedy, Edward Kennedy stated, it wrenches at the very heart and soul of victims and our race. This lady here is a prime example [indicating].

Also, last week my daughter and I went to Mobridge where I attended a meeting, and my daughter walked 10 blocks to visit her brother, and she expressed fear to her brother and so he gave her a knife to walk back with. So this terrorism is embedded in the psyche of American Indians in Mobridge, South Dakota, and there are other cases where Indians have expressed their fear of being in Mobridge after dark.

Shifting gears, after these four white defendants were set free in Mobridge . . . [Words deleted as potentially defamatory, degrading, or incriminating.] the FBI began their investigation, and we kind of took a lead from Mr. Clyde Bellecourt in that he stated we need to conduct our own investigations, and so we did that. We investigated many American Indians and whites

in the community to trace Robert's footsteps, and we turned these over to the FBI, and as a result, the FBI started that investigation.

Initially we felt relieved that the FBI was going to come in, and that it was very frustrating when the white defendants were set free and all charges were dropped. It was a sad day for us, very frustrating and—but that would soon—when the FBI came in, we thought something's going to happen, but they turned around and they started threatening Ron Oxford, the individual that I worked with to do these investigations. And so when the FBI was up here stating that everything was really nice in South Dakota and they were doing a thorough job, PR man that was sitting here, everything was rosy, it really upset me because the FBI agent . . . [Words deleted as potentially defamatory, degrading, or incriminating.] and another individual, I don't remember his name, they began to throw their weight around in Mobridge. And so Ron Oxford called me and told me he was afraid for his life and he didn't want to work anymore on these investigations.

So I proceeded to call the FBI and told them that same thing with me, I'm not going to work with them. I'm not going to answer anything. And if they came in, I was going to tell them, "I'm not talking to anyone unless there's an attorney present." So I believe the FBI investigation was not in the spirit of determining that there was any wrongdoing.

And then I reiterate that the FBI has absolutely no credibility with the Native American community, and so I have my doubts on whether they have conducted a thorough investigation in Mobridge. And I also reiterate that Dan Todd did not pursue this case aggressively.

Ron Oxford and I did our own investigations, and we're alleging that the Mobridge Police Department¹⁰ kept pertinent information away from the DCIs, and they also hindered the investigation in the Many Horses case. Certain members of the Mobridge police are racially biased and related to one of the defendants. Due to these reasons, as well as others, we state that the DCI did an improper investigation for the following reasons. Investigators did not trace

¹⁰ The Commission afforded Chief William Johnson, Mobridge Police Department, an opportunity to respond to statements by Mark White Bull. No response was received. See appendix A.

Robert's movement to be able to determine how much alcohol Robert actually consumed. They just took one statement from his foster sister, who . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

MR. POPOVICH. Two minutes, Mr. White Bull.

MR. WHITE BULL. Okay. Well, I guess I'm going to submit all these things right here, all this material. So I guess I have to just sum it up in stating that there is a fear of retaliation also from the Mobridge Police Department and also the FBI on my part that they are building a file on me and they're not going to quit. But these are the kind of risks that Faith and other activists have taken in order for there to be justice attained in South Dakota and for also civilization to come to Mobridge and also the reservations.

I know that there has to be a followup to these meetings. It's really nice that you've come here, but I also demand that there be a followup investigation to these hearings, and I think other people in the audience would agree that there needs to be a followup and not just a one-time thing. There needs to be more.

And I also allege that Dan Todd sugarcoated a lot of his statements, but it is apparent to me that he pleaded ignorance when it come to being prejudiced. And if they're prejudiced, they don't really—he doesn't really know he's prejudiced because he's practiced it so long, it's become natural for him in that environment. And the police department, state's attorney, and everybody else, they cover for each other, so there's no justice. So I implore this panel to continue with their investigations of these and other crimes committed against the American Indians. Thank you.

MR. POPOVICH. Thank you.

CHAIRPERSON FEINSTEIN. Any questions from the Advisory Committee? BJ?

Discussion

MS. KIM. When I'm listening to your stories, my heart goes out how you can hold your strength. Is there any community counseling service or support network you get?

MS. REDDAY. Me?

MS. KIM. Yes, any of you.

MS. REDDAY. Well, my strength and my support comes from my family and my friends.

MR. WHITE BULL. I guess for me it would be my AA meetings; I usually go to those. And also

when we have these marches and we invite other groups to come and participate, and that's when we get the support of other people within these communities. And they express a lot of the same fears, a lot of doubt that there's going to ever be any justice, so I guess that's our only support that we do have.

MR. SEABOY. I'd like to have the lady repeat her question now. Any questions asked of me I might have to ask you to repeat for the simple reason that while I was in Korea in the war, we had a rocket attack by some Russian planes; killed four guys around me and knocked my hearing out pretty good. They brought some of it back, but most of this after, I couldn't hear or see what's going on. So I might have to ask you to repeat your questions. Would you repeat your question, ma'am, please?

MS. KIM. Throughout this kind of experience, do you get any counseling service from your community?

MR. SEABOY. I'll have to say the same thing that I believe I understood Peggy to say. Normally in anything like this, and there have been cases in the system where counseling could have taken place for people who were harmed in any way by the non-Indian community. But like Mr. White Bull—did I state it right?

MR. WHITE BULL. [Nodding head up and down.]

MR. SEABOY.—has stated, we live in fear. We don't want to say nothing out of fear. And also mostly, we still have the feeling of respect for the people. We don't want to disturb how they feel or any bad reaction from them.

MS. KIM. Thank you.

CHAIRPERSON FEINSTEIN. Any other questions of the Advisory Committee? Alys?

MS. LAFLER-RATIGAN. I have a question for Mr. Seaboy. The resentencing hearing that you mentioned that will occur on the 15th?

MR. SEABOY. Pardon?

MS. LAFLER-RATIGAN. The resentencing hearing for Melanie?

MR. SEABOY. Yes, ma'am.

MS. LAFLER-RATIGAN. That's on the 15th?

MR. SEABOY. Yes, ma'am.

MS. LAFLER-RATIGAN. In what courtroom will that be held?

MR. SEABOY. That will be in the Roberts County courtroom.

MS. LAFLER-RATIGAN. Will that be in front of the same judge who originally sentenced her?

MR. SEABOY. Yes, I come to understand that and he—

CHAIRPERSON FEINSTEIN. Who was the judge, for my information?

MR. SEABOY. Who was the judge?

CHAIRPERSON FEINSTEIN. Who was the judge?

MR. SEABOY. Judge, I forget his first name, but it's Lovrien.

CHAIRPERSON FEINSTEIN. Lovrien?

MR. SEABOY. Yes, it will be held there.

MS. LAFLETER-RATIGAN. And does Melanie have representation for that hearing, legal representation?

MR. SEABOY. Pardon?

MS. LAFLETER-RATIGAN. Does Melanie have an attorney?

MR. SEABOY. I'm glad you asked that, ma'am, because for this past year, especially since March, I have been contacting different lawyers throughout the state of South Dakota and some in Minnesota to ask if they could represent her on an appeal type thing, and the cheapest one that I could get were for two lawyers from here in Rapid City was \$7,000 to represent her, and I just don't have that kind of money. I live on a small pension, and there's no way I can come up with that kind of money.

So I notified my daughter. When she called me one time, I told her that I was trying to get lawyers for her appeal, but I told her the cheapest I could get, like I just said, and her comment was, "Dad, you still got Cameron to support," that's my little 9-year-old now, "and you still got Ronald to support in college," that's my—he just turned 21 Ronald. He's in his fourth year at Northern State in Aberdeen, and he thinks he'll be graduating next December from college. And if I understood the FBI director from Minneapolis, they're always looking for recruits for their FBI people. I'm going to talk to my son about that, and maybe we could get an FBI person that can really look into things for our people. And if he had to go, it's one of the things—I've always wanted him to take up business administration so he can get into anything he wanted to, but if he's looking for a goal, a solid goal, maybe it will be to become an FBI agent and do justice for his people.

CHAIRPERSON FEINSTEIN. Thank you. Other Committee members? [No response.]

CHAIRPERSON FEINSTEIN. I guess I have a question for Mr. Seaboy.

MR. SEABOY. Yes.

CHAIRPERSON FEINSTEIN. In the sentencings that you gave us a few examples of a lesser sentence for the same or similar crime. Is there anything that you would know of maybe that—in any of those situations or your daughter's situation that may have been a reason for a higher and/or a lower sentence? I mean, are there any extenuating circumstances that we're not really aware of that maybe are not out in the press yet or something like that?

MR. SEABOY. I'm glad you asked that question, too. I'm glad of any questions that I can express my side and my daughter's side. Thank you. Yes, I had hoped that this sentence that the judge¹¹ handed down after she threw herself at his mercy was not racially motivated, but may have been emotionally motivated, and the reason why I'm saying that is she was sentenced on October 29. That November was election time, and I seen those cards floating around by people campaigning for different circuit court judges, and his was one of them. And in Indian country, an Indian person is not looked at as a voter, but the non-Indian people who are taxpaying people are looked at as voters. And that courtroom had quite a few voters.

And then the lawyer, the brother-in-law of the fellow that got killed, made quite an appeal, emotional appeal on behalf of his brother-in-law's family to a point where it frustrated me and angered me, which probably also carried on that emotion to the judge himself.

So on November 15, if his original sentencing is racially motivated, then I am hoping that this Commission will look into it, and I am hoping that you will listen, find out information some way, contact me if you have to, to see what the judge's decision was at the time of this. Like I say, if he does not reduce her sentence, then I am looking at a racially motivated sentencing and then I am hoping that this Commission will understand that. If he does reduce her sentence—and in our petition for a reduction hearing, all we're asking for is to match the same type of a sentence, the harshest sentence that was received by any of these 10 cases that I presented, especially the woman, the very same charge, I still don't know the circumstances of her case where she was charged with vehicular

¹¹ Fifth Judicial Circuit Court judge Larry H. Lovrein's response to statements by David Seaboy is attached as appendix D.

homicide, my daughter, because she was drinking, but she got five years' probation, no jail time. So that's all we're asking for is to match that.

Now if the judge in this one-year time since he sentenced her to 14 years, if he says, "I will honor your request. I think this young lady, this 18-year-old lady," she just turned 18 two months prior to this accident. If he would say, "This young lady needs a chance, and I will reduce the sentence as you've requested to match the harshest that was sentenced of anybody in this circuit court," then I will know that it was an emotional sentencing, too. Plus the fact that at that time, he took that action because it was election time. So I hope I answered your question.

CHAIRPERSON FEINSTEIN. Oh, you sure did, thank you. Commission?

COMMISSIONER BERRY. Commissioner Meeks?

COMMISSIONER MEEKS. Mark, do you feel encouraged at all that Mr. Abourezk is representing Robert's mother in this? Do you feel like there will be some justice that will come from that?

MR. WHITE BULL. After talking with the foster mother, Lila Martell, we felt that it was the only alternative we had left was to hit him in the pocketbook, so to speak, because, like Faith stated, there was no grand jury investigation. It was just a very biased investigation, so we're hoping that if there is an investigation by Mr. Abourezk, it would be more thorough. And if they're made to pay, and this family is very wealthy, the chief suspect, and that's one of the reasons why these guys are out, that's the way that we feel. And also if the Mobridge Police Department and the state's attorney were made to be part of that settlement, then I think Mobridge is going to start thinking about what they did and also exercising more equal justice for American Indians.

COMMISSIONER BERRY. Mr. Seaboy, you're represented in the rehearing by the public defender; is that who's representing you?

MR. SEABOY. Well, no, ma'am. We have gotten a . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

COMMISSIONER BERRY. Is a lawyer representing you at this next time you go to court? Do you have a lawyer?

MR. SEABOY. Yes, ma'am.

COMMISSIONER BERRY. It's a different lawyer?

MR. SEABOY. Yes, ma'am. I'd like to tell you about that.

COMMISSIONER BERRY. Uh-huh.

MR. SEABOY. I've been scouring the community, Indian and non-Indian community, because the non-Indian community knows me. And I don't like to brag myself up or anything or put myself in a position like somebody, but the non-Indian community in Sisseton, they know who I am and they know that I don't drink. They know that I worked all my life, and they know that I take care of my family.

And so I was scouring both communities for letters from anybody that will write to the judge, but they would have to write their letter, send it to my daughter at the penitentiary, and she in turn would have to send those letters to the lawyer—or to the judge. And I got about three letters written. Then I approached our tribal chairman, if he would write a letter for me because I knew him, good friend of mine, and I also know that her daughter was—or his sister was killed on the road near where he lives in a little community called Waubay, and that was never investigated. She was killed on the road at night while she was walking home from the community, the Waubay community. So I asked him if he could write a letter of support, and he said, "Sure, I will."

He wrote the letter to me, and then he went one better. He told our newly hired tribal lawyer, who is also a tribal member. He came back from someplace out East after we advertised for a lawyer. We had just gotten rid of one lawyer, and we advertised hoping that we will get somebody of Indian descent, Native American descent, especially a member of the tribe, and we lucked out and this fellow came and he's been one of our lawyers since summer, this past summer. And so our tribal chairman talked to this lawyer and said, "I'd like to have you represent Mr. Seaboy because I know he doesn't have that much money."

So he did, and he was the one that drew up this petition, and he faxed it to Judge Lovrien with about two minutes left to the deadline of the one-year limitation of appeals. But I've got to admit, that could have been denied, that appeal, that petition could have been denied, but the judge was kind enough to go ahead and set up appeal, court hearing for the 5th, now the 15th. So I am hoping with that decision that he made to go ahead and allow this hearing that he has

maybe calmed his emotional decision, if that was what it was.

• So yes, we do have a lawyer, and it's our tribal lawyer that is going one better than what his job description is supposed to be. He's supposed to represent the tribe in all legal and government business, not personal business for tribal lawyers. So he opened himself up to—and set quite a precedent for himself to represent tribal members now, and I am very thankful to them.

COMMISSIONER BERRY. Okay. Thank you. Thank you, Mr. Seaboy.

CHAIRPERSON FEINSTEIN. Thank you. I guess we have a 15-minute break right now for our panel, and we're going to begin the public session at 7:00.

MR. SEABOY. Sir, can I make a few comments here on my daughter's behalf, about two minutes?

CHAIRPERSON FEINSTEIN. Sure.

MR. SEABOY. I'd mentioned I was hoping I'd draw questions that out of seven children, all of them don't drink until Melanie. And I also mentioned my grandfather telling me of two cases which involved alcohol that he told me about that stuck in my mind. Those two cases—that affect our people so negatively was back shortly after the Minnesota Indian wars with our particular band of Indians, Sioux people in Minnesota.

The treaties were made with them, and they were allowed a reservation, to set up a reservation, to call it the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Indian people. And the government sent surveyors out to our leaders at the time, and our leaders assigned two scouts to these surveyors, and their choice of land extending anywhere around Lake Traverse up into what we know as the Kodoko Hills [phonetic] for as big a portion of that land as they wanted and that would be their treaty-initiated reservation.

So when these surveyors got these two scouts, and these two scouts were given orders by which they probably—if that's the right word, to these two scouts to take these surveyors and show them the area that they're supposed to have. Well, these government surveyors fed these two scouts alcohol, and don't you know the effect of the alcohol on those two scouts was such that they lost their way as to what our tribal leaders told them to do, and we lost half of the area that

we were supposed to get and that our leader told them to guide these surveyors. We lost half of it because those two scouts lost their way because of alcohol that the government surveyors fed them.

The second incident was after this reservation was established, and my grandfather was telling me this because he was a young man at the time this negotiation started. He said the government approached our leaders to open up the reservation for settlement. First they would give each individual Indian of the tribe, I think it was 80 acres. That's including a family of five, each one got that many acres. And so the tribe had to agree to that to open up the reservation after land was distributed to our Indian membership.

So when these government negotiators came in to negotiate with the tribe to open up the reservation, the tribe would have to agree, the membership would have to agree to open up the reservation. And my grandfather took me to the spot where they negotiated and he showed me and that was where he told me how the negotiations ended up. He said, "That was where it happened," he said. "That's where we lost our reservation." He said that the government negotiators gathered all the people there to take a vote, as our Indian people did back in those days, and if they agreed, then they would sign an agreement, they would go back—whether they agreed to open or not to open, that would be final and they'd go back.

Well, what happened then was as the negotiators got together with the tribal leaders and told them the Great White Father wants to have you open up your reservation boundaries for settlement, they didn't want to. So they said, "We will meet for two weeks and we'll talk about this negotiation. In two weeks we will settle this. Whether you agree to it or not, that will be what it is."

So they did. They met for two weeks. By the end of two weeks, there was a few people that were bribed with, oh, different material things that were in agreement to open up the reservation. The majority didn't want to. So when that deadline of two weeks came around, it was the negotiators that said, "Well, it's too early yet to decide whether we should open up the reservation so we're going to extend it another day. When that sun goes down tomorrow." And they drew a big long line—now this is what my

grandfather told me and we were standing there by the car and he was pointing to the area. He drew a big long line and he said, "All of those people who want the reservation to be opened up for settlement will get on this side of the line. Those who don't want to will stay on this side. When the sun goes down tomorrow, we will count the people on both sides and then we will settle it then."

The following day at sundown, there was still as many people on the side that didn't want to open up the reservation than there was on those people that were bribed. So the government negotiator said again, "Well, this is only one day. We'll extend it again tomorrow." And so they went on, and don't you know, they brought them alcohol that time. They fed some of the people that didn't want to alcohol, and then the officer bribed them with material things.

And so that took five days. He said they extended it each day to the next sundown, and finally he said that they had agreed and the government negotiators shut down the negotiations. At sundown there was three more people on the side that would agree to opening up the reservation for settlement and as soon as they counted those three on that side, they shut down the negotiations. That's how we lost our reservation.

But anyway—and so my daughter, I will never understand why she was charged with vehicular homicide because she told me, "Dad"—after she came out of the hospital, she had a broken leg and hip. She said, "Dad, I didn't know what was going on." She said, "I woke up because my leg was hurt," and she said, "when I was laying outside the car." So she did not design—she didn't even know this fellow that got killed. She did not design his death. It was an accident due to alcohol, and she was the only one of my children who used alcohol up to that point.

And Mr. Cameron also stated that when she was out on personal recognizance bond, PR bond, that she was hosting a party at her mother's house. I and her mother separated when she was 12 years old. And so after three months of taking care of her and my two boys, I knew I had to turn my daughter back over to her mother because she wanted to be with her. She missed her mother, so I let her go. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

CHAIRPERSON FEINSTEIN. Thank you very much. We need to take a break.

MR. SEABOY. Thank you.

CHAIRPERSON FEINSTEIN. We'll be back at 7:00, about seven minutes.

MR. SEABOY. Thank you, Commissioners, and I hope that something will come out of this.

COMMISSIONER BERRY. Thank you.

[A recess was taken from 6:53 p.m. to 7:10 p.m.]

Public Session

CHAIRPERSON FEINSTEIN. We'll reconvene. This is our public forum, and our first speaker is going to be President Harold Salway of the Oglala Sioux Tribe, and if he would like to come up here. As he's coming up here, I could just explain a couple of ground rules. Everybody will be given three minutes. After the first couple of groups—people are going to be coming up in groups of five with and each person in the group will have three minutes; that will help us expedite the process. If you wish to speak and are not on the list, the list is going to remain open until 7:30 this evening, which is about 20 minutes from now. So if you want to speak and you're not on the list already, please get your name signed in. Also recall, this is an informal type hearing, but we cannot degrade, defame, or denounce anybody because that is not in the spirit—not proper for what we're doing tonight. We will also notify you, and James will get some method of doing that, when you have one minute remaining.

MR. POPOVICH. You want one minute remaining?

CHAIRPERSON FEINSTEIN. We're going to have to do one minute remaining because we are going to start with three. So is Harold here?

MR. POPOVICH. We'll just call this one minute remaining. I'll change it.

CHAIRPERSON FEINSTEIN. Is Harold not here, Harold Salway? Well, we'll call Mr. Salway when he comes. We'll have to move on. So the next group, we're going to have Vernon Bellecourt, Clyde Bellecourt, and Dennis Banks as national representatives of the American Indian Movement Grand Governing Body. If you guys would come up and sit down. And since you're in a group, if you want to do it, one person speak for nine minutes or each of you for three, however you want to do that, that's—

MR. HANEY. We drove all day—it's going to take all night—to be here. I don't know if we can do it in three minutes.

CHAIRPERSON FEINSTEIN. Well, unfortunately we have a limit of time with the number of people.

MR. HANEY. Can I just wave at you?

CHAIRPERSON FEINSTEIN. But, you know, in the interest of time and to enable everybody to speak tonight, that's why we have the limitation on time.

Vernon Bellecourt

MR. VERNON BELLECOURT. First of all, I want to greet the members of the United States Commission on Civil Rights for holding what is obviously a very important and timely hearing here in Rapid City, South Dakota. My name is Vernon Bellecourt. I'm the national representative for the American Indian Movement Grand Governing Council. I'm also president of the National Coalition on Racism in Sports and Media, and I am also a field services coordinator for development of American Indian OIC [Opportunities Industrialization Centers of American, Inc.] employment job training centers. We are currently developing a network of training centers in various reservations and urban communities across the country to get our people off the welfare rolls and put them on payrolls. So we are certainly into every phase of human development, and the American Indian Movement has been doing that for at least 30 years.

I am going to try to get right to the point and to share with you just a little bit about the fact that recently the U.S. Justice Department put out a document showing that Indian people suffer the greatest amount of crimes perpetrated against them across the country, yet we are considered the smallest percentage of the population. And that's rooted in a history, the history of the American holocaust. And what you have heard here the past two days are many stories that will support that fact that Americans longest war yet continues against Indian people, our lands and our resources, against our sacred shrines and burial sites. The prisons of this country are crammed, a very disproportionate high population of men and women in various institutions and it's something that has to be seriously dealt with.

Here in the state of South Dakota, beginning around 1972, the U.S. government forces created a climate of terror and violence, and you have the documentation in front of you, each of you, and that continues today in Mobridge and Rapid

City and White Clay, Nebraska. We say in the interest of human rights, justice, and fairness, we respectfully request that you and your office support our request that the Committee on the Judiciary of the United States Senate hold hearings on the Oglala Lakota Nation's reservation at Pine Ridge, South Dakota.

We request an appointment of a special investigator to investigate not only the recent deaths of Indian people in Rapid City and Mobridge, South Dakota, and White Clay, Nebraska, but the many unsolved deaths that occurred on the Pine Ridge Reservation during the violent and turbulent 1970s that took place during and after the armed confrontation between Indian people and the United States government forces at Wounded Knee.

Attached to your document is a sampling of the first of 17,000 pages of declassified White House, CIA, FBI documents that clearly show that it was, in fact, the U.S. government forces, particularly the FBI,¹² that were responsible for a climate of terror that claimed literally dozens of our men and women, whose deaths have gone uninvestigated and unsolved.

I'm going to just jump to the last part and talk to you about the Committee on the Judiciary of the United States Senate now must investigate what role the FBI and their admitted extremist agent informants and other U.S. government agencies played during the reign of terror in 1973 and thereafter in South Dakota. The families of the victims have waited long enough, such as the families of Anita Wilcox, Jeanette Bissonette, Pedro Bissonette, Byron DeSersa, Anna Mae Aquash, Jancinta Eagle Deer, Frank

¹² See appendix E. FBI Director Louis J. Freeh letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, May 23, 2000. In his letter, the Director responds to the South Dakota Advisory Committee's March 2000 report, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, which was based on statements made in this transcript.

See also appendix F. Attorney General Janet Reno letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, July 31, 2000. The Attorney General responds to the South Dakota Advisory Committee's March 2000 report, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, which was based on statements made in this transcript. The Justice Department also submitted a May 2000 report from the FBI's Minneapolis Division, *Accounting for Native American Deaths, Pine Ridge Indian Reservation, South Dakota*, which is also attached as appendix F.

Clearwater, and Buddy Lamont who came back from Vietnam where he was highly decorated to be killed by an FBI sniper at Wounded Knee.

Moreover, the Committee on the Judiciary must include in its investigation the shootout on June 26, 1975, at the Jumping Bull residence on the Pine Ridge Reservation which claimed the lives of Joseph Stuntz and FBI agents Ronald Williams and Jack Coler in what appears to have been a botched FBI operation due to the actions of their extremist agent informants.

Additionally, the Committee must review the Justice Department's prosecution of the Leonard Peltier case who is still in prison after 23 years, a principal victim of not only the violation of his civil rights, but his constitutional rights as well. And a very important issue here, and we would hope that the Commission could expand their vision, could expand their scope of concern and to join with us in asking Senator Hatch,¹³ Chairman of the Senate Judiciary Committee, who has played a historic role, incidentally, in this campaign against us to now right a wrong. We cannot go into the millennium, we cannot leave the 20th century and have these families on Pine Ridge and across this country who are distraught and are saddened today; they don't know what happened to their children. So I want to thank you very much, whatever you can do to further that effort.

Dennis Banks

CHAIRPERSON FEINSTEIN. Thank you. Clyde, you're next. You're Clyde?

MR. BANKS. I'm Dennis Banks.

CHAIRPERSON FEINSTEIN. Oh, Dennis, okay. Welcome.

MR. BANKS. I'm better looking than Clyde Bellecourt. I'm a lot older, but I look better. I want to say that for the record.

CHAIRPERSON FEINSTEIN. It's on the record, duly noted.

MR. BANKS. That makes it true. I want to say to the Commission I appreciate the convening of such a bold move by this body to come here to South Dakota and to hear complaints. And it must be frustrating that you might be restricted in some of the things that you can do with all

¹³ Kent Cook of the Senate Judiciary Committee notified the Commission by telephone on Apr. 11, 2000, that Senator Hatch feels the statements made by Vernon Bellecourt were not defamatory and therefore the Senator would not have a response.

this information. I appreciate the fact that you're here. And it must be frustrating to some law enforcement people to come under such heavy attack because we know that there are law enforcement officials who are trying to uncover what has been the wrongs that have been committed against our people that they are trying to expose.

We also believe, however, that there is a greater amount of people that are not doing anything in law enforcement to uncover the wrongs. Otherwise the stacking of unsolved mysteries, the unsolved crimes, the murders, hundreds, we're not talking about 10 or 20 that have occurred, and many members of the American Indian Movement have fell to the sniper's bullet during the last 30 years. Otherwise a lot of those murders would have been investigated long ago if there was the same initiative that was shown after Waco, after Ruby Ridge, now after even the last week along the borders between Mexico and the United States where they fear over 100 people have been killed over the past 20, 30 years. And there is two international governments, the United States and Mexico, involved using helicopters and people are down there, swarming down there. If they would show that much initiative to come here, and when we say that there is not 10 or 20 or 30 or 40, but there has been hundreds of deaths of our people out here and compounded with racial discrimination, bigotry, and outright racism, then we would view the code of justice with a much different eye, but we can't do that. The American Indian Movement cannot. We cannot rest until there is some form, some sense of justice coming.

So we appreciate that this body has come here, a very courageous move, very bold move. The only other agency that has come here in force has been law enforcement, but they have not come to investigate; they have come to punish. And I saw them in 1973 surrounded by over 300 FBI¹⁴ agents, and we called the government to end the corruption at Pine Ridge and they sent us agents, 300 FBI agents, but not to investigate. They came to hurt, they came to kill peo-

¹⁴ See appendix E. FBI Director Louis J. Freeh letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, May 23, 2000. In his letter, the Director responds to the South Dakota Advisory Committee's March 2000 report, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, which was based on statements made in this transcript.

ple. And not only U.S.—I mean, federal agents of the FBI, but they also sent 90 U.S. marshals. So this is who we see. So when there is a body of representatives from this government that come here, we feel good that you're not here to arrest us, you're not here to indict us. So that's why I say very courageous, very courageous body of people coming out.

One time they arrested Clyde Bellecourt and they thought it was Dennis Banks, so we had to put on buttons that said, "No, I'm not Clyde Bellecourt," and we had to put on buttons that said, "No, I'm not Dennis Banks." So even Mr.—is it Feinstein?

CHAIRPERSON FEINSTEIN. It's Feinstein.

MR. BANKS. This is Clyde Bellecourt.

CHAIRPERSON FEINSTEIN. Now for the record, this probably would have clarified it for me, state your name for the record. I failed to have you do that, if you would.

MR. BANKS. All right. Okay. So, Mr. Walsh, good to see you on the other side of this table here. Usually there's food here. Thank you.

MR. VERNON BELLECOURT. Mr. Feinstein, if I could also ask that our written testimony be put into the record here.

MR. DULLES. That will be done.

CHAIRPERSON FEINSTEIN. That be will done.

MR. DULLES. It will be part of the official record.

CHAIRPERSON FEINSTEIN. Okay. Now, Clyde, do you wish to say anything?

Clyde Bellecourt

MR. CLYDE BELLECOURT. [Speaking in language other than English.] My spirit name is Gone Away With Thunder Before the Storm and I kinda prefer that to Clyde.

CHAIRPERSON FEINSTEIN. Okay. That's on the record.

MR. CLYDE BELLECOURT. This afternoon I talked to the press crowds about the fact that we have been coming out here ever since the formation of the American Indian Movement in July of 1968 when we stood up in Minneapolis and felt that little or nothing was being done to upgrade the conditions that Indian people are forced to live under here in America. And we organized at a time when nothing, virtually nothing was being taught in the public and parochial school systems about Indian culture, tradition, history, the trust relationship that we were supposed to have with the federal government.

So when we formed, we thought that America and many of our own Indian people, because they went through that educational system, too, was totally scholastically retarded about Indian people and their culture and their tradition and their history. Henceforth, we had this—I call it the John Wayne frontier mentality. You see it on weekends when you turn on television and see 30,000 people with paint on their face and chicken feathers in their hair waving tomahawks up and down. That's the problem that we have here in America. They don't know anything about Indian people.

So from the very first day, almost a week after we formed, the people started hearing about us, we started getting requests to go to different parts of the country because they felt that nothing was being done to resolve crimes against Indian people. And one of the very first cases that I came across was a young man named Raymond Yellow Thunder who went across that water and fought in those wars believing he was fighting for democracy and freedom and was kidnapped right over here in Gordon, Nebraska, taken out into the woods and beaten in the coldest part of winter, stuffed in a trunk and hauled to the American Legion Post, stripped from the waist down. They threw lighted cigarette butts and made him dance Indian. And he ran out of that place, of course, and they found him, and he was just another victim that died of exposure, as they said. And the family requested our help because we are the court of last resort. We are the ones that come in when nobody else will respond to these terrible crimes. And we exhumed him with the family's permission, found our own pathologist because we didn't trust the FBI, we didn't trust the local law enforcement, and then the whole story was revealed about what they did to Raymond Yellow Thunder.

There have been over 60 of those kinds of murders that have taken place that we know of since then that have never been investigated all the way up to Robert Many Horses, as you have heard, that was taken and stuffed headfirst in a garbage can. That's kind of the way they feel about Indian people. And when I marched in Mobridge, almost a six-mile march with Indian people and spoke in the town square, almost a park in the middle of town, before I spoke I asked church leaders to come forward. I asked the city council, the mayor, law enforcement, Bureau of Indian Affairs, I even pleaded and

begged for somebody from the tribal council to come forward and deplore this terrible crime, and not one single person came forward. And I told them it would just be a matter of weeks because that's who they select the grand juries from. It will just be a matter of weeks when they will be able to return a no-bill. That it was perfectly legal yet in America to kill an Indian and you get away with it.

This afternoon I heard an FBI agent tell Ms. Berry when she asked him if he needed her to go back to the Attorney General and ask that a special task force be established to assist them in their investigation. He said they needed none. We need a special federal inquiry and that's what we're requesting here today. We are asking this Commission to back us and support us in that effort to bring forth a Judiciary Committee with subpoena power to subpoena and do a full-scale investigation as they do in Mexico and other places when American citizens are kidnapped and murdered. We want something done to put a stop to the killing fields here in South Dakota. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Any questions? We'll take the next group.

MR. CLYDE BELLECOURT. Mike?

MR. BANKS. We have one more.

CHAIRPERSON FEINSTEIN. I'm sorry? Oh, okay. Well, there are only three on that list. Are you on the list?

MR. HANEY. Yes, I am. My name is Michael Haney and maybe we should give him an updated list. Mr. Feinstein?

CHAIRPERSON FEINSTEIN. Sure, go ahead.

Michael Haney

MR. HANEY. My name is Michael Haney and I serve as one of the board members of the American Indian Movement, but I am also the executive director of the National Coalition on Racism in Sports and Media. We're the organization that has been working with the universities and colleges and high schools and, to some degree, Major League sports in getting rid of negative imagery of Native people. I am from Oklahoma. I'm half Seminole and half Sioux and I got a little bit of white blood in me, too, but I can't prove it.

It's been our experience that a lot of the imagery of Native people is coming in a negative way. I've noticed that the recent Justice Department survey said this: that in black-on-black crime, 80 percent of the crimes being committed

against black people were committed by other black people, right? I remember that statistic from earlier this year, and it was the same with Latino or Hispanic crime. The one departure was the crime on Native people, over 83 percent of the crimes committed against Native people were by people from other cultures, primarily the white culture. I think there's a real alarming factor there that I would like your body to look into: why Americans think it's open season on Native people.

I think that our images, the way that they use our logos, our sacred objects like eagle feathers and fans and ceremonial headdresses for entertainment, they name basketball and football teams after our people. Maybe at one time it had not been inappropriate, but today it is. Today it is causing us a lot of problems, and I still feel that our images should be protected. I think using Native mascots and symbols, logos is a violation of the church and state separation. You wouldn't think of putting a crucifix on your wall, you wouldn't think about putting a Star of David on the walls of your schools, high schools and elementary schools, but you will put a Native eagle feather and a Native headdress, and to us there's no difference. They should be protected by law. They are protected by executive order, eagle feathers, but yet schools in South Dakota all the time have brave contests, squaws, princesses, and when they reduce us to mascots or dehumanize us, it is easy to commit crimes against us. And if it's easy to make fun of Native people by painting yourselves up in stadiums and basketball field houses for fun and sports sanctioned by educational institutions, then certainly it's okay to go ahead and taunt a Native person in a playing field or in a school. Certainly, that translates into the world and the economy. And I think there is a dangerous relationship, and I would like to see the use of Native images, logos, nicknames, mascots, and symbols eliminated throughout the United States.

I would like to issue a challenge for your Commission to seriously look into the negative impact these practices have on Native people and on the way that people view us. The media has a very important role there. They create the limits by which a lot of people see us and judge us by. A lot can be accomplished, I think, by just reducing the use of Native mascots, logos, and names within the public schools. And, you know,

recently we won that nice Patent and Trademark Office decision. Remember that earlier this year we beat the Washington Redskins. Did you guys know that? The Washington Redskins can't be called the Redskins anymore? I don't care if they call themselves the rednecks, just as long as they leave Indians alone. That's a real ugly term, and I guarantee there's a relationship between that tomahawk chop and a budget chop because we always got it first. As long as those Congressmen and as long as those Senators can go in the Washington football stadium and play Indian, we will always be getting budget cuts.

And finally, I would like to reaffirm our support and demand for an independent inquiry. I was the one that authored a resolution for my tribe and the Seminole Nation of Oklahoma two years ago when we met at the National Congress of American Indians in Santa Fe, New Mexico, and it passed unanimously. Every tribe voted that they wanted to have it, and the resolution was directed to Senator Hatch, the Chairman of the Senate Judiciary Committee, and Senator Ben Campbell, Chairman of the Senate's Committee on Indian Affairs, asking them to look into the appointment and have a special investigation, find out the relationship between the Department of Defense, the Department of Interior, and the Department of Justice. And I think those things could be accomplished and it would go a long way towards easing tensions between Native people everywhere, I think, and the law enforcement community. Thank you very much.

CHAIRPERSON FEINSTEIN. Thank you. Questions? We'll move—thank you. I would like to call up now Charmaine White Face, Edward Seaboy, Gordon Spotted Horse, Kay Allison, and Robert Milo Yellow Hair. If you five could please come up. And you will have three minutes. We will start with Charmaine White Face. State your name for the record, please, and where you are from.

Charmaine White Face

MS. WHITE FACE. My name is Charmaine White Face, I am Oglala Lakota, and I reside on the Great Sioux Reservation. I am a writer, I am a columnist, and I have a written statement here I am going to read part of. In order to arrive at an all-encompassing conclusion, the Civil Rights Commission needs to know the history of this area which will help, in part, to explain the reasons for the racism in this part of the country

with the subsequent prejudice, discrimination, and hate crimes coming from that racism. Racial murders are the final step in a long line of discriminatory practices directed at the Native American population. It is a travesty that these lives had to be the catalyst to trigger a look into the racist activity of this state.

Lakota people can trace their origins within this geographic area from before time began to an emergence from the sacred sites in the Black Hills known to the white man as Wind Cave. Using scientific calculations based on Lakota astronomy places the Lakota, Dakota, and Nakota people in this and a wide-ranging area approximately 7,000 years ago which coincides with the reduction of glacial activity from the Ice Age. However, this knowledge contrasts starkly with non-Indian historians who say the Oglala Lakota came to the Black Hills in 1775.

In 1868, according to maps developed by the U.S. Geological Survey, the Lakota, Dakota, and Nakota covered a land area encompassing more than 12 states and three Canadian provinces. How they could have gained control of such a vast land area in less than 100 years is amazing if non-Indian historians are to be believed. It was in 1868 that the three branches of the Great Sioux Nation, as we were named by the United States, agreed to reside on a land area of only western South Dakota, half of one state, with a hunting area reserved in parts of Nebraska, Wyoming, and Montana.

In 1871 the United States Congress passed a law that stated no more treaties would be made with American Indian tribes. Yet, in 1889 the Congress tried to justify the passage of another law, the law that created the state of South Dakota. Congress tried to fool the American people by stating that a new treaty was passed with the required signatures of Sioux men and the 1868 Treaty was amended. Not only was the act of 1889 a violation of previous federal law, but the way in which it was passed using coercion, chicanery and fraud was a mockery of the congressional system.

Although the complete history of South Dakota is seldom taught in public school systems, non-Indian people residing in western South Dakota are constantly reminded that they are living on stolen land with the advent of Native American newspapers, writers such as myself, television reporters, and Native American radio stations. In 1980, when the U.S. Supreme Court

verified what the Lakota people have been saying for more than a century, that the 1868 Treaty was violated, many non-Indian people of this state became afraid of losing their homes, businesses, and livelihoods. Are they remembering the fashion in which many of their ancestors forced the loss of the homes and livelihoods of Lakota people and think the same will happen to them, or are they afraid that the federal government will turn on them also as it has turned on Lakota people? Either way, guilt and fear always lead to anger and finally to hatred. That hatred is displayed in actions against the weakest or the different, in this case, the Lakota people. The fact that Rapid City has the most concealed weapons permits in the nation is a symptom of that fear. I have—

CHAIRPERSON FEINSTEIN. Is it possible to sum up? We want to hear everybody.

MS. WHITE FACE. I have skipped some and I want to read the last paragraph. A permanent civil rights office is desperately needed in South Dakota at least for a minimum of five years. Such an office would have the ability to document the thousands of complaints that it would receive in many different areas such as housing, employment, financial accessibility, and also in areas both on and off the reservations. It could also help to educate the public to dispel the fears caused by racism and assist in the development of legislation regarding hate crimes. Such an office could assist greatly in disintegrating the racism that is growing in South Dakota.

Conducting a hearing for one or two days does not even touch the surface of the problem. I realize that there are many places throughout the United States that need the attention of the Civil Rights Commission, and I thank you for conducting these hearings. However, I think it is deplorable that there had to be so many deaths before these hearings were held. The problems involving injustice in this state are myriad. I keep wondering if some of these problems had been worked on prior, would there have been so many deaths. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Next we have Edward Seaboy.

Edward Seaboy

MR. SEABOY. Good evening. My name is Edward Seaboy from the Sisseton-Wahpeton Sioux Tribe. What I was going to say, I have heard it all afternoon, in support of my nephew and my

niece from Sisseton, Justin Redday and Melanie Seaboy. Coming from the reservation in Sisseton where they supposedly have taken our boundaries away, we are faced with this dilemma all the time of asserted jurisdiction. Whereas we are supposed to be a treaty tribe, have a court system, but we all end up in the state court and we always end up with a state-appointed attorney, and I that that state-appointed attorney drinks out of the same water trough as the prosecutor. So I heard a lady here, I think it was Mrs. Butler here—

MS. DOROTHY BUTLER. Dorothy.

MR. SEABOY.—would have asked about—and Mary Berry over there, when they were talking about attorneys, well, when you got a Lakota-appointed attorney as a Native American, especially in the state of South Dakota, you can flip a coin and almost believe how you're going to come out.

Now we live in a dual standard; you've been hearing this all afternoon. This dual standard someplace along the line should apply to some of these crime acts, like the Simulated Crimes Act, General Crimes Act, and Major Crimes Act. That should apply to some of us people, but yet when it comes to assertive jurisdiction by the state, we fall under their courts. And as Indian people, we are low income. We can't afford attorneys. I worked for South Dakota Legal Services at one time—

CHAIRPERSON FEINSTEIN. Edward, one minute.

MR. SEABOY. Okay. But I couldn't still represent my people because I hadn't legally passed the bar. But I'm going to ask right here to back up what's been said, we need this team here, this panel to be on the reservation to go to the root of the problem and you will find out more than what has been said here. I want to thank you for your time.

CHAIRPERSON FEINSTEIN. Thank you. Gordon Spotted Horse?

Gordon Spotted Horse

MR. SPOTTED HORSE. My name is Gordon Spotted Horse, and I am from the Standing Rock Indian Reservation, but I do own property in the town of Mobridge and I guess I will make my statement very short. As far as racism goes, law enforcement and juries are whites only, the full-blooded Indian is the one who is targeted most, and it is kind of like a form of ethnic cleansing.

It's so terrible, I would say it is similar to what the Ku Klux Klan used to do to the black people back in 1960s. I was a young man in the service back in those days and am familiar with what took place. It's identical. That's about all I have to say. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Kay Allison, can you state your name for the record and where you're from.

Kay Allison

MS. ALLISON. My name is Kay Allison. I am an elderly woman, and my name is [speaking in language other than English] Brings Her Back. And my statement here is in 1995, I was coming back from the flea market on Highway 16 and the police—or three cars are chasing down and they stopped me and I got scared. They pulled me from the car and they tried to harass me and push me around and they were going to put me in a cop car, but I was so scared because I had never been in jail.

So I said, "Wait," I said, "I have my ID," and I showed my ID to the sheriff, and then he saw my ID so they let me go, and they have not apologized to me, but everything in the newspaper, they said they apologized me, but they scared me because I had never been in jail because—and I had a picture of this lady, they said that was me, but I was older than her. Anyway, I have no sisters and nobody; I'm the only one.

CHAIRPERSON FEINSTEIN. Thank you. Robert Milo Yellow Hair? Oh, we have a sheet here from you on the resolution, and we will present that for the record. Is that correct?

MS. ALLISON. Yes.

CHAIRPERSON FEINSTEIN. Okay. Did you have something else?

MS. ALLISON. No, this picture that say I looked like her.

CHAIRPERSON FEINSTEIN. Okay. Thank you. Okay, Robert Milo Yellow Hair.

Robert Milo Yellow Hair

MR. YELLOW HAIR. Thank you very much. I would like to have this opportunity to comment on this particular issue that we've been wrestling with ever since 1492. I have been listening with great interest throughout the day, the efforts of the legal department, legal offices, the Justice Department, all the other institutions that are here to safeguard what makes America

great. Obviously, we wouldn't be having this meeting if those things were absent.

The American Indian is looking for justice in this American country that he calls his own, that he is indigenous to. The walls of racism that surrounds Indian reservations is very similar to the Berlin Wall. It is very similar to what is the apartheid policies in South Africa. And today I would like to mention that the story, the statement of Desmond Tutu should be considered very deeply by this panel here that's assembled because the root of all the problems is human rights, access to justice, access to financial institutions, access to each other. These are all done through institutions that have been set up specifically to hold down initiatives of Indian people in this part of the country.

History will tell you that the western half of the state of South Dakota is to be for the undisturbed use of said Indians, and said Indians in this case, of course, is what you know as Sioux Indians. We call ourselves after the language that we speak, the ceremonies that we carry, and the mountains that we love that we call the Black Hills.

"Whatever comes from water must be pure," my people say. You see we pulled our people from this water that we call Minneluza. So you see, this strikes at the very heart of everything that we are talking about because it points to a human tragedy, and we have been shouting to commissions, Congress, news media that this is so, but what justice have we received? And what is our part as individuals sitting here to the responsibilities, to the ideals that makes America great and worth dying for? These are the questions that we must look at, and I urge you to take a look at it and have Mr. Jenkins here call a similar meeting for the Nebraska district, that we can take a hard look at Sheridan County, at Cherry County, and all the other counties that surround Indian reservations in Nebraska. This is what I would ask.

I must also make sure that you get a response back to the appropriate authorities of the proceedings of this meeting here. We don't want you to go away and we don't hear from you again. I don't want us to be sitting here 26 years from today asking for justice again. So on behalf of all the people that testified, I support every one of them, their positions, but let's do justice, let's do right because that's what makes America great. It does not make it great because of the police

brutality, discrimination policies, and institutional racism that we face on a daily basis. [Speaking in a language other than English.]

MR. POPOVICH. Write that down.

MR. YELLOW HAIR. If you can translate that, then you have a good direction in solving the problem of this part.

Discussion

CHAIRPERSON FEINSTEIN. Any questions?

MR. POPOVICH. I don't have a question, but as I was out in the audience here tonight and I noticed there's a lot of people here tonight that weren't here earlier today. I guess I would like to hear from Mary Frances Berry or our constituent here in Denver as to when some information might come back from these hearings because I was getting a lot of questions from those people with that sort of request.

COMMISSIONER BERRY. It's not a matter of opinion, the report. We have promised that there will be a report within 90 days of this hearing. Is that the question?

MR. POPOVICH. Very good. That's the question. I just wanted that on record for the—

COMMISSIONER BERRY.—and that resources will be committed to make sure that they are available to have that done.

MR. YELLOW HAIR. Thank you very much.

MR. POPOVICH. Very good.

CHAIRPERSON FEINSTEIN. Do you have a question?

MS. WHITE FACE. No, I just had a—Kay Allison here asked me if this also—she would like to have this newspaper report also. She would like to have this—

CHAIRPERSON FEINSTEIN. Oh, yes. Is that that second article?

MS. WHITE FACE.—on the record.

CHAIRPERSON FEINSTEIN. Yes, that's fine. If you want it on the record, give it to her. Okay. The next group, Marvin Kammerer—

MS. WHITE FACE. The other thing I wanted to say was I testified in front of this Civil Rights Commission here in July of 1976 on this identical same issue. I brought forth a bunch of cases. Nothing happened. Here I am 20-some years later, 20 years older, 30 pounds heavier. Thank you.

MS. BUTLER. Charmaine White Face, I did hear your wonderful testimony. I wanted to talk to you about it. That's a long subject, so perhaps we could have time to visit.

CHAIRPERSON FEINSTEIN. Marvin Kammerer, Myrna German, Robin Bair and Frances Zephier, Valerie Eagle Tail Davis, Stacey Scares Hawk. We may need one more chair. Okay. Marvin Kammerer, would you state your name for the record, please, and where you're from.

Marvin Kammerer

MR. KAMMERER. My name is Marvin Kammerer and I am a squatter on treaty land about 10 miles from here. My grandfather came out here about 1880 and he squatted, and if the treaty means anything and if the Constitution means anything, we are still squatting. We are talking today about history, but when two of my daughters are teachers of history, and I do not see the truth in these history books, we aren't telling our kids the truth.

Lakota people have paid their dues and they have got plenty coming back. Civil rights are hooked up with human rights. Human rights is the right to own your land, walk on your own land at your own discretion, and have your own say on your land without interference from the state. I feel complimented by the Lakota people being able to participate here, and thank you gentlemen and women for coming here.

If the Constitution of the United States means anything, you have a tough job to do. The Constitution, by the way, is not talked about in the history books as being a document that derived its source from the Native American nations, Iroquois. How many kids—how many of you people have graduated knowing that? You weren't told the truth and that's what's seriously lacking, is the truth. The Lakota people in this state have participated in every war of this century, given of their blood, given of their lives far in proportion to any other segment of population in this state and gotten damn little when they come back.

Human rights means that we must have funding for schools, we must have funding for colleges, we must have funding for homes, home health for old people, and for health care. That is a human right and it also is tied on to a civil right. This nation, if it can come up with 300 million bucks to repair an airplane that should never have been, that is the B-1, for repairs, can damn well afford a Civil Rights Commission in this state and can damn well afford to go ahead and let these people have what I have just mentioned.

I am a wasichu, but I feel for my red brothers and sisters. The white man, the white rancher is the next Indian unless he wakes up. And this state here, in this town and in every town around, you have leaders who have the power to change this thing called racism because of their position, because of their economic power. They are the ones that could lend a voice to the top head of this state in the state government. They are the ones and they are not here. They are in the media, they are in business. They are not here to direct and they help put that element in office here. They are not here to say, "Hey, we've got a problem."

We want to be proud of the state, and we could never be a proud state if we continue to allow racism to exist to the point that it still is. In the last 20 years that I have been working with Native Americans, it has not gotten any better, and I am sure glad you people are here, and I know you are going to start a fire; I know you are not going to let it stop because we aren't going to let you. I am one white man, but there is others out here. You owe it to us. You owe it to them especially because we've gotten so much from them. You have to tell our congressional crowd to quit stealing water, quit stealing the treaty resources, to deal with them as a nation because they are a nation. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Myrna German?

Myrna German

MS. GERMAN. My name is Myrna German. I am from the Sisseton-Wahpeton Sioux Tribe in Northeastern South Dakota, specifically Roberts County. I am here on a personal matter, actually. My relative, 6 years old, was molested by a white man . . . [Words deleted as potentially defamatory, degrading, or incriminating.] and she told her mother and her mother reported it to the sheriff's department and they initiated the investigation. And my niece, she did the interview and was videotaped and examined, and they determined that there was enough evidence there to proceed with the case. So it went to the grand jury. A grand jury was convened of 12 people, and the grand jury, based on the evidence, decided that there was enough evidence for an indictment. And the state's attorney decided that rather than indict him immediately, he would send him to Yankton to be evaluated

and then he would determine what would be done next.

Well, nothing is done. It's seven months later. It started at the end of May and it's December, and my family has been calling the state's attorney, and he doesn't return the phone calls. And this man . . . [Words deleted as potentially defamatory, degrading, or incriminating.] it seems like they are taking pity on him because he's an elderly man. He is a white man, I think I said that, but when you reverse cases like, we know as Indian people that if it were the other way around, that man would be in prison. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

MR. DULLES. Pardon me. Just for purposes of assuring that we do protect everybody against any defamatory information, please refrain from making any allegations that might allege criminal activity where the individual could potentially be identified by name or location. Those are just part of our procedural safeguards.

MS. GERMAN. Okay. I was trying to be careful.

MR. DULLES. Yes, I know you were and we appreciate that.

MS. GERMAN. Okay. So I guess since that time, anyway, my sister has relocated and, in fact, moved her entire home from the area, and I guess there just isn't anything being done. And I just want to bring that to your attention that there are these cases where they just sweep them under the rug, and maybe if they keep calling and you don't return the calls, then maybe they'll forget about it but I don't think so. I come from a big family and we are known to defend ourselves, but at the same time stereotyped as violent, but we're not, and those are the kinds of stereotypes we have to go through when you are an Indian person and try to stand up for yourself and—

CHAIRPERSON FEINSTEIN. Can you sum up, please.

MS. GERMAN. Okay, I will. I guess I just want to ask you, what can you do about this? Can you investigate it? Can you find out why nothing is happening to this man?

CHAIRPERSON FEINSTEIN. Well, I think Mr. Dulles could answer that, if you would talk to John Dulles.

MR. DULLES. I would suggest that we just maybe have an interview in the hall or somewhere else and we can talk about the situation and possibly we can provide some advice on this

particular situation. I would be happy to offer my services to do that.

MS. GERMAN. Okay. Thank you. And just one more thing, I would just ask that you investigate the prisons because I have been involved with the prisons, like, for 20 years, and there is a lot of disparity in the sentencing that they have received, and I know that for a fact. I mean, I have talked with many prisoners and they get extreme sentences in comparison. Okay.

CHAIRPERSON FEINSTEIN. Thank you.

MS. GERMAN. Thank you.

CHAIRPERSON FEINSTEIN. Okay. I have two people down, Robin Bair and Frances Zephier together.

MR. BAIR. Yes.

CHAIRPERSON FEINSTEIN. Okay. Are you speaking as one?

MR. BAIR. Separate. No, I am going to speak and she is going to speak.

CHAIRPERSON FEINSTEIN. Okay.

Robin Bair

MR. BAIR. My name is Robin Bair. I am from the Ponca Tribe of Nebraska. This is my wife, Frances Zephier. She is from the Yankton Sioux Tribe of South Dakota. We reside in Charles Mix County; that's where we live. We have a 14-year-old daughter, and our daughter was sexually assaulted by a non-Indian on the reservation. She was lured down to an apartment with cigarettes and jewelry. The non-Indian locked the door and forced himself on her and tried to take her clothes off and go down in her pants and things.

We teach our children what to do in these certain situations, and so she did what she was taught to do and that was to holler and run and get away. My cousin came to me and he told me, "I seen this man luring your daughter. I seen him offer her cigarettes."

MR. DULLES. Excuse me. May I caution you, please don't provide information which might—

MR. BAIR. Okay.

MR. DULLES.—in fact identify or even lead to an identification of a specific person.

MR. BAIR. Okay. We began to ask, you know, about this non-Indian. There was a lot of suspicion, a lot of talk that he was a narc, he was a part of the DEA. That was the rumor going around, and we went to the proper authorities.

MR. DULLES. Please, do everything you can to refrain from identifying—

MR. BAIR. We went through the proper chain of command and nothing happened. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

MR. DULLES. I'm sorry, but that's out of order and that will have to be deleted from the record. Just a point of information, if there is individual specific situations where you feel the need to provide that information to our Commission or the staff that might, in fact, violate our very, very careful procedures against defame and degrade, I give you my word that I will be available to meet with those individuals and to discuss the particular case.

COMMISSIONER BERRY. Excuse me, point of privilege, Mr. Chairman. That was not defame and degrade because he did not give any factors that would specifically identify a person. There must be at least more than 10 FBI agents, narcs, DEA people, and as long as you don't characterize it in such a way that would lead to the specific identification of a person—

MR. BAIR. Okay.

COMMISSIONER BERRY. You can tell stories. You just don't want to identify anybody specifically, don't mention anybody's name and don't say things that point directly at just one person, okay? Thank you.

MR. POPOVICH. Now you have one minute to wrap up.

MR. BAIR. Okay. We have been looking for help for a long time now; it's been over a year, and we have been fighting. We have been in front of civil rights before over our school systems and things like that. Same thing happens. We can't talk. We can't say what we need to say, but we need justice today. Not tomorrow, today. They hurt my baby, and you got to do something about this. We are living in an institute of racism, and nobody wants to stand up and fight for our people. But I am here today. If we have to file a class action suit against someone, then we need to as Indian people, as an Indian nation. We need to come together and we need to fight because if you can't do it for us, we have to find a way. We have to. Thank you very much.

Frances Zephier

MS. ZEPHIER. I am Frances Zephier. I am from the Yankton Sioux Reservation. As you all know, our reservation is being diminished by 90 percent and that's for lack of maintenance—the tribal administration failing to maintain our ju-

isdiction within our own government. But what happens when the Justice Department fails to maintain their officers, when they fail to do their duties? These are crimes against humanity, against our people. Our daughter, she has a spirit and her spirit was taken from her. But yet our people are regulated by how many institutions? By how many agencies? We are regulated by city, county, tribal, state, federal, BIA. All these agencies, but not one can protect us, but yet they regulate us and they prosecute us when there is a crime against a non-Indian.

And why can't you diminish an agency? You can diminish a people, a whole people, a whole tribe you can diminish, but why can't you diminish an agency that fails to do their duty, and our children are being hurt every day. Are you aware of the chances of a person who was molested becoming a molester? It used to be 90 percent of all males that were molested become molesters. Now it's 99 percent. And how many of our children are being molested every day and because the federal agencies, the DEA protects criminals?

This isn't the only act. Down in New Mexico this happened before . . . [Words deleted as potentially defamatory, degrading, or incriminating.] And where do we get that help? How do we get the finances to do those kind of things? We have to take from our children's mouths to come here for our three minutes of your time today. Our whole lives we have to say in three minutes time. We do not have the finances, but we come here because we would die like our ancestors. We would die for our people, and we stand here today. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Valerie Eagle Tail Davis, would you state your name and address for the record.

Valerie Eagle Tail Davis

MS. EAGLE TAIL DAVIS. Yes, my name is Valerie Eagle Tail Davis. I am here tonight to support my brother Francis Kevin Eagle Tail, and he has the support of a motion for a new trial with his codefendants LaVonne Roach and Rodney Jackson. In March of 1997, the three of them were indicted for conspiracy to sell drugs, and when they were going to court, there was one Indian lady that was on the jury and she was harassed. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] And that day I believe that was discrimination. So this,

my brother Kevin Eagle Tail got 25 years, LaVonne Roach got 30 years, and Rodney Jackson got 25 years.

Now all three of these people were taken from our Lakota community. We have big families here in Rapid City. There's three big families right there, and that was a bad thing for giving those many years. I believe that this is a motion for new trial or just to let them walk free for what happened to them that day in the courtroom to this lady. It's signed, sealed, and delivered here, the lady that was being harassed, this Indian lady. . . . [Words deleted as potentially defamatory, degrading, or incriminating.]

MR. POPOVICH. One minute, Valerie, please. One minute.

MS. EAGLE TAIL DAVIS. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] So I believe that this has to be looked into. It's been a long time now, and you know they will be about like 60 years old when they get out of prison. In this state alone is a lot of non-Indians that do the same thing and they only get six months in jail or a slap on the hand or what they call, I believe, it's a rule 35 for their—whenever they are telling on some other Indian people.

But this to me is a good reason for a new trial, and I would like to see something happen with these three Indian Lakota people from Rapid City. You know, to me it's just, you got a long, long time, and I just hope that, you know, that you all will look at this and at least give these three people a chance. Thank you very much.

CHAIRPERSON FEINSTEIN. Thank you. Okay. Next, Stacey Scares Hawk, Richard Grass, Alice Bear Shield, Frank King, and Rick Grey Buffalo Quinn.

MR. GRASS. Do we sit in order here somewhere?

CHAIRPERSON FEINSTEIN. The order doesn't matter. Just sit down and I'll call you by name in the order that you are on the list. If you have written materials, hand them to the table behind John over there. Okay. Stacey Scares Hawk? Not here. Okay. Richard Grass, state your name and where you're from, please.

Richard Grass

MR. GRASS. Greetings. My name is Richard Grass. I am the treaty chief of the Lakota, Dakota, Nakota Nation here. I am formally greet-

ing you here and welcoming you here on our jurisdiction.

The problems I've been hearing here is very wide and great. We are all in despair for the reasons of great treaty violations, and I am talking about jurisdiction. We are under three presidential executive orders here which is martial law, military occupation, and military jurisdiction which you probably are not aware of.

The first one started in 1869. They put us on reservations; they called it the Indian Removal Act. The second one is the 1875. They came in here and found our gold here and they protected their cooperates and their citizenry with the military government. It is a military government, both of them, the U.S. and Canada. And the third one is the Allotment Act. They divide the concentration camps up into individualized ownership which they knew was genocide.

And so that is one of the greater reasons why we went international. So now we have international recognition, and with that, we brought back international resolutions here to our International War Crimes Tribunal here. So maybe now you as a panel can be invited to our next International War Crimes Tribunal that will be coming about. We are not going to let this down no more. Too many of our people have been hurt with it. And so this is our stance as a traditional government, and we are working as a traditional government here domestically and internationally to resolve these very inconsistent patterns of discrimination, racially biased constitution that's taking place here. And what's really taking place is the constitutional bureaucratic corporate genocide on our people here.

Although we are educated to use charters, we cannot charter because we are prisoners of war here in the United States and Canada. And I want this panel to understand directly that we are prisoners of war and we did exhaust all remedies with the system; that means the lawyers and judges are out now.

With this, I want to thank you very much, and I will leave this here, and if you want any more information, I have it. We are working with the President of the United States, we are working with the State Department, and we do have a 53-member nation called Unrepresented Nations People's Organization that promulgated this tribunal to take place here, plus the United Nations, so we will not stop here. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Alice Bear Shield, state your name and where you're from for the record, please.

Alice Bear Shield

MS. BEAR SHIELD. My name is Alice Bear Shield and I reside in O'Kruk, South Dakota. It's part of the Rosebud Indian Reservation. And I am here to ask for an investigation on two incidents that I am concerned about on the disparate treatment that goes on in Tripp County courts.

COMMISSIONER BERRY. You need to speak more directly into the microphone. We are having trouble hearing you.

MS. BEAR SHIELD. Okay, sorry. Can you hear now?

COMMISSIONER BERRY. Yes, I can.

MS. BEAR SHIELD. All right. One case regards a Native teenage girl that got in a scuffle with another teenage girl which was non-Indian, Indian and non-Indian. The non-Indian girl was drinking, the Indian girl pulled the can away from her so the other girl in the car ran for the girl's father from a bar. So these two men, non-Indians, left the bar. In the meantime, the other argument had settled. The 15-year-old girl got in her brother's car and was going to leave, and these men drug her out of the car from the back seat, beat up her 16-year-old brother. They threw the girl in the pickup and took off with her, first off. The brothers followed the truck around till the driver got scared or sobered up a little bit and went to the police department where there was 13 witnesses for this young Indian girl of what happened. And so what they decided to do was drug and alcohol test all the teenagers without any parents' permission and release the two men and the daughter. And when it was taken to court, the district attorney refused to hear the case because he was friends with one of the drivers of the truck. So they asked a Bennett County attorney to take the case, and he told us there's no way she could stand a chance in court because it would be an all-white jury. The parents insisted it go on to court, and all the evidence got lost, the pictures, some of the statements. They still had the hospital report from the girl's neck and things that had happened to her.

MR. POPOVICH. One minute.

MS. BEAR SHIELD. Okay. The other case regards a boy that was holding up a convenience

store. There was a gun involved. No harm was ever done to anyone in the store. The Indian officer went and stopped the boy because he waited for the police. He got 55 years, all right? We're talking about two white men kidnapping a young girl and getting away with nothing, and a boy that never took anything from the store, he was drunk, had a gun, go to prison, I understand that, but 55 years? It was appealed, filed habeas corpus. He was granted that and went to court for that, and the judge stood by her original statement of 55 years.

And this is what they are talking about, the disparity of treatment in the courts and the difference in the sentencing. You have non-Indians killing Indians and at the most getting two years' probation or being called involuntary manslaughter, where they have to go home and dig for the gun and load it and come back and do the shooting. And then you are giving somebody that doesn't even hurt anyone, doesn't even make any attempt to get out of a place 55 years. That's the difference in what's happening.

Well, Winner is Tripp County. You're thinking you've got a reservation to—the young man is 98 miles from the Rosebud center, the tribal office. That's called the east end of the reservation. The other situation of the young lady is, like, what—58 miles from Rosebud? So they kind of get lost without that backup. Tribal police—

CHAIRPERSON FEINSTEIN. Can you sum it up, please.

MS. BEAR SHIELD. Pardon?

CHAIRPERSON FEINSTEIN. Can you sum up, please, your minute.

MS. BEAR SHIELD. Yes, I would like to see these investigated because this is just two cases of many. I don't ever hear anyone bring up Tripp County or Winner and the prejudice that goes on there.

CHAIRPERSON FEINSTEIN. Thank you. Frank J. King, Jr.?

Frank John King III

MR. KING. [Speaking in language other than English.] I would like to say that—

CHAIRPERSON FEINSTEIN. Could you state your name and where you're from for the record, please.

MR. KAMMERER. He already did.

MR. KING. My name is Frank John King III.

CHAIRPERSON FEINSTEIN. Okay.

MR. KING. Or Junior. I went to go get my driver's license one day and being that my dad passed away, they gave me his name. I don't know what that was about, but ever since then, I'm Junior.

CHAIRPERSON FEINSTEIN. Okay.

MR. KING. But I would like to say that Native Americans throughout history have always come under the pressure of discrimination. It's one and the same. It's synonymous with Native American rights, Native American civil rights. Where you have a Native American in the community, you will have discrimination. The first civil rights movement was started by the Alaskan Natives in 1920. I don't know if any of you know that. Before the civil rights movement started with Rosa Parks sitting inside that bus, before that, the Alaskan Natives in 1920 were fighting for their civil rights in Alaska. And they felt that at that time they had to form a group called the Alaskan Native Brotherhood, which later became the Alaskan Federation of Natives. And they discovered and they understood that finding their people hung, finding their people shot and ran over, tied on train tracks was wrong.

And if you think about it, history repeats itself because it repeated itself with the African Americans of this country. Whenever I think of the racism in South Dakota, I am remembered of something that I studied with the Reverend Vernon Johns. I don't know if any of you ever heard of him, but he got so fed up with the discrimination against his people that on his pulpit—he was a minister—outside his church he put there, "It's Christian to kill Negroes," and he brought a lot of controversy to his church and it was because so many people were being shot, murdered, dumped in the trash cans, tied to railroad tracks. And when they went to court, they let everybody go. I mean, he just got so fed up with it, he based it on the morality of the Bible where these laws come from, the Bible. If you look at our laws, you look at the Ten Commandments, and South Dakota claims to be the moral high ground of the United States. That is a sham in the eyes of your God—

MR. POPOVICH. One minute, sir.

MR. KING.—because if they can truly say that, that is wrong. You got to look through history, look in the history books and it will show you that. There are so many stories, I could give you so many stories. A highway patrolman tap-

ing a microphone to a guy mangled up in a car getting a statement from him because one of the guys he was riding with died in the car accident. There are so many things in South Dakota, and discrimination is something that is just here and it needs to be changed. Something needs to happen. Something very drastic needs to happen. And like the guy who was sitting here before, when he said that he's willing to fight for it. And Martin Luther King, when he gave a speech in Detroit, one of the things he said was, "There is a militancy amongst our nations, and that militancy is showing America that we are tired of it." And that's what's going on here with us. We are going through the same thing, we are tired of it. And we should look through history. If you want to find out what is happening to Native Americans in South Dakota, you look at what happened to the African Americans back in the '60s and you will find it here today, tomorrow, the next day, and you watch everybody go free.

I was talking with somebody back there. If they found the guy who—let's say they did find somebody who drowned the people in the creek or murdered them or whatever, they would probably let him go if he was non-Indian. That's the feeling around here, and this needs to change. I look around—

CHAIRPERSON FEINSTEIN. Can you sum up, please.

MR. KING.—and I see a lot of Native Americans here. I don't see anybody from Rapid City or Sioux Falls or any non-Indian communities here, and they should be here also. And with that, I would like to say, in the immortal words of Martin Luther King, "Injustice anywhere is a threat to justice everywhere." Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Rick Grey Buffalo Quinn, can you state your name and where you're from for the record, please.

Rick Grey Buffalo Quinn

MR. GREY BUFFALO QUINN. My name is Rick Grey Buffalo Quinn. I am from the Sisseton-Wahpeton Dakota Nation. I grew up only knowing my name was Hotuntana [phonetic], which was given to me by my grandmother. As I grew up, I felt only love, and in the town that I grew up in, there was nothing but peace at that time. And when I came here to Rapid City, I have never felt so hated, so degraded, and so mistreated and so stepped on in my entire life. So I started an organization here, I'm founder

and director of the Seventh Circle here in Rapid City, South Dakota, and I started an organization to help the homeless. And the reason that I started this organization was because of an elderly lady who I met when I was in the siege of the occupation of Wounded Knee in 1973. She was one of the last survivors of the first Wounded Knee; her name was Sally Hat. And she had three daughters here. Two of her daughters were turned away from the mission here because they smelled of alcohol. It was in the bitter wintertime. It was cold, and they were turned away from this mission, and in front of this mission there's a small sign says, "Because we care."

MR. POPOVICH. One minute, sir, please.

MR. GREY BUFFALO QUINN. I'm sorry about that, I mentioned that, but it had to come out.

MR. POPOVICH. No, I was just reminding you of one minute left.

MR. GREY BUFFALO QUINN. Okay. But what I would like to see, I've been investigating these incidents around the creeks here. I started a security long before anybody in this town has ever cared and have been on—the Seventh Circle has been running on now going on nine years, and yet there is still no person that ever been found who killed these people.

You know, you can say that an Indian is an alcoholic. Even though he does not drink, he is called an alcoholic because he's Indian, but those—

CHAIRPERSON FEINSTEIN. Can you summarize, please.

MR. GREY BUFFALO QUINN.—those who do drink and are thrown in the water here is because there's somebody out there killing these people, and I'm out there to investigate these, and if the cops don't help me, who do I turn to? There are even cops out there that I know of that break the law. They even hit the people before they even put them inside the cop cars, and that's a violation of our rights. And if the cops break the law, there ain't no law, just a matter of survival. And that's all I got to say.

CHAIRPERSON FEINSTEIN. Thank you.

MR. GRASS. I would like to say one thing more. We don't have any representation starting from the reservation, the county or the state or even at the federal level except you people now that's shown up here, and I want to thank you for this.

CHAIRPERSON FEINSTEIN. Thank you. Okay. The next group, Lionel Bordeaux, Paul Valan-

Valandra, Fremont Fallis, Tom Katus, Jessie Taken Alive, and Roberta F. Crazy Thunder. Okay. Lionel Bordeaux, could you state your name and your title and position and where you're from for the record, please.

Lionel Bordeaux

MR. LIONEL BORDEAUX. My name is Lionel Bordeaux. I am president of Sinte Gleska University, a tribal-controlled institution of higher learning, and also serve on the Sicangu Oyate and the Rosebud Sioux Tribal Council.

Sitting here listening this afternoon I heard words such as, "search for truth," "forum," "hope" and also unfortunately "retaliation," and I'm trying to think of what to say myself. I guess I'm reminded of a story that I used to use. In fact, I even used it for testimony in Washington on occasion, and it has some lessons and it's a short passage and it tells about a nonconforming sparrow who refused to fly South for the winter. It became quite cold and it reluctantly started its southward journey all too late. Ice began to form on its wings and it came crashing down in a barnyard almost frozen. The sparrow thought it was the end. A cow come along and crapped on the little sparrow. The sparrow definitely thought it was the end. Lo and behold, the manure warmed it, brought it back to life. Warm and happy, it began to chirp and sing. A nearby cat heard the chirping sounds, investigated, found the chirping bird and promptly ate it.

The three lessons: Number one, not everyone who craps on you is your enemy. Number two, not everyone who gets you out of crap is your friend. And number three, if you are warm and happy in a pile of crap, it would do well to keep your damn mouth shut. I guess sitting here thinking that—

MR. POPOVICH. Who's that for us?

MR. LIONEL BORDEAUX. You have your choice, sir. Thinking, "Grandpa, were you there when this tremendous monumental event took place when the U.S. Civil Rights Commission come and come to our sacred Black Hills? Did you stand up and say anything?" And I want to say, "Yes, Lacotia, I was there." And everything probably has been said today, but I guess in taking a look at justice in terms of education, culture, economics, and tribal government. Judicially, I'm also here on a personal note. My son here is going to testify later, Shawn Bordeaux, on my daughter-in-law being shot to death and

the inability to get the FBI involved in the investigation.

MR. POPOVICH. One minute, sir.

MR. LIONEL BORDEAUX. But I guess education, which is really my area of—true we lack a lot of cultural things in our curriculum and I would like to see this body push and recommend that tribal nations have our own accreditation so that we can plug in all the cultural information that we need for our little ones.

Culture: We need customary laws incorporated into the judicial system as well as into all of our laws. We are Lakotas. We need our own customary values from generations ago.

Economics: We have got to have jobs; we need employment. A lot of unrest calls for a lot of—a mind that wanders and too often we get in trouble, but we've got to have employment.

Tribal government: Our treaties must be upheld. Our treaty must be an everyday working document within our everyday existence. And with that, thank you for coming here, and I hope again down the line someplace, you will be back to sit down and come up with some results for these. [Speaking in language other than English.] Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Paul Valandra. Is Paul here? State your name and your title and where you're from, please.

Paul Valandra

MR. VALANDRA. Yes, my name is Paul Valandra and I'm from the Rosebud Reservation, and I have had the good fortune to be the state senator down in that area for the last 10 years, and I want to thank this panel for coming here to South Dakota. We have had a lot of unrest with the deaths in Rapid City and White Clay and Moberly. And I want to just say I think the system is going to work for us because we have got Elsie here on the panel now, and I know we have got Pat Duffy as a full-time staffer with the Commission, and I know that we are going to continue to correspond with these people.

And I guess the main thing I wanted to get up here today and talk about is the federal sentencing guidelines that we're subject to on the reservations and how they are ripping our families apart and we are developing a lot of the same demographics. I couldn't believe it years ago when I went to a civil rights conference back in the late '60s when I was in high school and they were talking about how one out of every

four black men was either in prison or on parole or on probation, and I think that we are getting close to that benchmark now with the things that are happening here.

And all day long this panel has asked, "Is there injustice and is there disparity?" And I would just like to put a few things into perspective for you. South Dakota has a population of about 700,000 people. We are about the same as North Dakota, but we have got a few more people. We have got about the same amount of Indians as North Dakota, percentage of the population. That's about 9 percent of the population, and I would say less than half live in the urban areas, over half live on the reservations, so you are only talking about 4 percent of the Indian population living in South Dakota. Now 35 percent of the male inmates in our penitentiary are Indian men.

MR. POPOVICH. One minute, sir.

MR. VALANDRA. Over 50 percent of the females are Indian women, and we have got twice as many people in South Dakota as North Dakota does. So you would think that we would be safe if we didn't leave the reservations and we stayed home, but we are not because at home we are subject to the federal sentencing guidelines.

I know that you can't do a lot about these things that have been talked about here today, but I know that you are an arm of the Justice Department, and I know if this Committee would commit itself, then it could do something about getting these sentencing guidelines changed. We have a federal judge here out of Aberdeen, Judge Charles Kornmann, he has wrote many times about how his hands are tied and how young Indian males can't get probation or a break. They have got to go to prison for a year or two on the first simple offense.

They talked about the demographics here today. I would like to commend Mary Frances Berry there, Dr. Mary Frances Berry for giving them guys heck today because I don't think they are doing such a great job either. But five percent of their caseload, they said today, was assault on federal officers which on the reservation we call resisting arrest. But anyway, we see these young kids that go down the road for several years, have their voting rights taken away, the right to bear arms, and like I say, that's a huge problem. I am going to make it a personal point to fire up tribal governments here in the next year or so to correspond with the Commis-

sion and see if we can get these judges some flexibility to be able to have a little discretion. And with that, I would like to once again thank you for coming to South Dakota.

CHAIRPERSON FEINSTEIN. Thank you. Fremont Fallis, did I pronounce that right? State your name. Is Fremont here? No? Okay. Tom Katus and Jesse "Jay" Taken Alive?

Tom Katus

MR. KATUS. I am Tom Katus. I am director of the Rural Ethnic Institute, and we have just had, about a year ago, a race relations dialogue in western South Dakota made up of community and state leaders across the whole spectrum, about half Native American, half non-Indian. Senator Valandra was on that, so was Marvin Kammerer who spoke earlier, and momentarily Jay Taken Alive will address some of the issues. But I wanted to outline the process because certainly we have heard of the many, many problems that exist in the state, and we are hopeful that maybe these dialogues could be one very small step in the direction of addressing some of this.

The dialogues went on in 17 different sessions over the course of a year; the participants were purposefully selected to be representative of the entire state, consequently more Republican than Democrat, but the socioeconomics were very similar to the state as a whole.¹⁵ Bottom line was the group deliberated on 53 different

¹⁵ Editorial note: After his presentation Mr. Katus sent the Commission the following information to be included with his remarks. "Originally, the group was purposefully split 50:50 Native American and non-Indian. However, because of the addition of the journalists and spouses, in the end, there were 14 non-Indians and 12 Native Americans. There were 16 men and 10 women. Fifteen were residents of reservation counties and nine residents of the Rapid City area. Closely reflecting the population as a whole, they were 47% Republican, 42% Democratic, and 11% of other parties. One-third considered themselves politically conservative, 13% as liberal, and 53% as moderate. They were older than the average South Dakotan, undoubtedly reflecting their leadership positions. Thirty-five percent were 45-54 years old, 30% were 55-64, and an active 15% were over 75. They were well educated. Twenty percent had graduated from high school, 35% had attended college, 15% had bachelors degrees, and fully 30% had graduate degrees. Reflecting their age and leadership positions, they were wealthier than the average South Dakotan whose median family income in 1990 was \$22,503. Seventy percent of the participants had incomes above those levels, with 15% above \$100,000 annual income." Tom Katus, fax to U.S. Commission on Civil Rights, Jan. 7, 2000.

policy issues that they themselves identified. Then they voted on those and they decided that it should be at least a two-thirds vote to give it legitimacy for public support. Of those 53 considerations, 42 were recommended which should say to everyone if people of good will and deliberation sit down and talk, there's probably some solutions that can be sorted out.

As it relates to the specific focus of this community forum, Native American justice in South Dakota, the participants voted overwhelmingly (80 percent) that the South Dakota Legislature should authorize a study commission on why South Dakota incarcerates more than twice the number of criminals as its neighboring state and why Native Americans comprise four times the prison populations compared to their percentage in the state's total population.

These recommendations were made public. They were publicized in *Indian Country Today*, *Rapid City Journal*, the South Dakota Public Radio. When Paul was having real trouble with the State Tribal Relations Committee, one of his members wanted to deep-six it, we distributed copies of the report to all the commissioners, and especially with Paul's help, the next meeting they had was the best they had ever had in their history.

So there are some of the results that can come out of this. I don't want to speak further on it. I've left a whole copy, it's a 60-page report, but we have submitted it to the President's Commission on Race and nothing much has come of it, but we have had more impact locally. So we are hopeful that this Commission will look at it and do something other than just deep-six it; maybe disseminate it further, maybe use it as a model for community dialogues throughout the state. And with that, I would just like to turn it over to one of the most eloquent spokespeople on that entire panel, Jay Taken Alive.

CHAIRPERSON FEINSTEIN. State your name for the record, please.

Jessie Taken Alive

MR. TAKEN ALIVE. My name is Jessie Taken Alive. I am from the Standing Rock Reservation. I would like to thank Mr. Dulles for the letter he sent to my house in McLaughlin, South Dakota, and for this opportunity to share information and views and to find out if there are disparities or discrimination that exist in South Dakota and

for the U.S. Commission on Civil Rights on this factfinding agency.

I am somewhat amazed as to how you are going to be able to find out these facts, understanding the limitations that you all work with. But with the testimony given here—I can speak the English language and the Lakota language, and my rough understanding of "testimony" is when people pour their hearts out, and I hope that at some point in time, you will be able to follow up on these heartfelt testimonies because, yes, there are numbers and numbers of these, but those equate to human beings. Those of you who are from heavily populated areas can only crunch numbers. We have to deal with lives on the reservation.

When I am done here, I am going back to Standing Rock to try to help with these matters of economic and social disparities that are brought on by the United States of America. When you decolonize a race of people, this is what happens. So I want to respectfully ask this Commission, as it was said earlier, to set up an office or offices in South Dakota. There is well over 100 years of disparities and discrimination and it's going to take a long, long time to correct these. The reason I ask for that is because we have the solutions. We have educators, we have people with hearts and minds just as you, and together we can find these solutions. We are not looking for your wand of understanding, your wand of knowledge, your wand of wisdom. We are asking to be treated as a nation of peoples just as the President of the United States has so said.

I would like you to investigate the wrongdoings that occurred when the March 2nd Act of 1889 was passed, the acts of duress, the acts of threats that were taken upon our people when they were forced to sign this act.

MR. POPOVICH. One minute.

MR. TAKEN ALIVE. And unfortunately, what's happened is that they didn't get the three-fourths clause. If this is a U.S. Commission on Civil Rights, I think we stand to gain millions upon millions of real estate back just as any commission on civil rights would do in the United States of America.

I know I only got three minutes and I ask these things of you because we have people who live humble, God-fearing, God-loving lives back home that can't get up here to speak because Rapid City is four hours away from the southern

part of our reservation. So there are many, many things that we can share with you and many, many ways to solve them with you as long as you respect us as people, as human beings and not minorities, not icons of history, but human beings. And I welcome you to come to Standing Rock so we can talk about what goes on in the border towns when our young people are strip searched of their vehicles by the South Dakota Highway Patrol. We can talk to you about the supposedly—

CHAIRPERSON FEINSTEIN. Can you sum up, please.

MR. TAKEN ALIVE.—jurors who are our peers when our American Indian people sit in front of juries of all non-Indian people when we are supposedly economically disadvantaged and yet they are sitting in judgment with all the stereotypical messages that they have received throughout the years. So let's continue this process. This is the door that opens it, but I'm asking you again respectfully, look at the March 2nd Act of 1889 and begin with the duress process with that. Thank you very much. [Speaking in language other than English.]

CHAIRPERSON FEINSTEIN. Thank you. Roberta F. Crazy Thunder. Could you please state your name and where you are from for the record, please.

Roberta Crazy Thunder

MS. CRAZY THUNDER. My name is Roberta Crazy Thunder. I am from the Pine Ridge Reservation, but I live here in Rapid City, South Dakota. I would like to request that you people come back here and help us out. There is a lot of discrimination going on here especially done by the police department. A lot of our people are getting killed and they are saying there's nothing wrong.

I wanted to bring up my case, too, because I was damaged—I'm only 37 years old—at the time of April of '97. The police came into my house and drug me out because of a false statement being made that I had a gun in my house, and they didn't have no search warrant so I told them they couldn't come in. And one officer said, "Well, how about if just one of us comes in." And I said, "Well, fine. That will be fine, one of you can." And when the first one went past me, he grabbed me and the other two grabbed my legs and drug me out of my house. I now have a spinal injury, arthritis of my neck, TMJ they call it

temporomandibular joint, a blood clot, broken arm, broken toe, and I think we need your help. I think we need the police department investigated, the way they handled their matters here.

My head gets swollen in the back at times, and I'm concerned because some of the people that died along the creek, their heads were swollen and they were badly bruised like I was, but I am a living example of it. I survived it. So I would really appreciate it if you guys could come back and help us.

Also, the whole state of South Dakota, I think our Governor here needs to be checked on, too, the way he handles the matters here. You know, he disregards us as a race of people, but we are people, too. We do care about each and every one of human beings, the way of life for everybody, not just for ourselves. That's where our land issue comes in and our water, you know, all that. That's for everybody. We don't want to keep it for ourselves.

MR. POPOVICH. One minute, please.

MS. CRAZY THUNDER. We just want to live on for everybody. But I would like you guys to come back and investigate the police department here. I am only 30—at the time I was only 37, I am 39⁴⁴ now. Before that I was an able-bodied person. I⁴⁵ raised my four children on my own and I was self-supportive until then. About six months ago, they approved me for social security with all my medical reports I have on the police department, you know, because of excessive force used on me. So I would really appreciate for you guys to come back and help us a whole amount. We need it. We're human just like you guys.

CHAIRPERSON FEINSTEIN. Thank you. Okay. Next group, we have Josephine LaPointe, Charles Yellow Bird, Bradley D. Peterson, Geraldine Jackson, Alfred T. Bone Shirt. Okay. There are only two in that group? Okay. Josephine? Okay. We will go with Charles Yellow Bird. State your name for the record and where you're from, please.

Charles Yellow Bird

MR. YELLOW BIRD. My name is Charles Yellow Bird. I am from Pine Ridge Reservation. I am here tonight to talk about the racism between the Bennett County police¹⁶ and the tribal

¹⁶ The Commission afforded Sheriff Russell Waterbury, Bennett County, an opportunity to respond to statements by Charles Yellow Bird. No response was received. See appendix A.

police. I grew up in Gordon, Nebraska, at the time there was racism all over with the cops and our people. I grew up around racism and I moved to Martin. I thought I got away from it, but it was still there. The cops, they go and pick on our people, the elders, the young ones and always throw us in jail. There's a time when a cop came into our house, not just one cop, about 20 cops came into our house looking for a gun, a gun that wasn't there. We didn't have a possession. You know, they came in and put guns to our heads. They took all my family, my brothers and sisters, in-laws to jail, charged us all with assaulting officers. There was no assault, but the fact that there was kids in the house and brandishing their weapons, guns and shotguns.

And the tribal police in my district, they are concerned with the Bennett County police, cross-deputize, I guess. I am pretty sure you guys heard about what happens in Bennett County. There was a number of issues that happened at that time, and I would just like for the Civil Rights Commission to investigate these things. There is a lot of people that make complaints and made a list. I got a list here that people in my community gave me to hand to you guys. So hopefully you guys will help us out in our district. That's all I got to say.

CHAIRPERSON FEINSTEIN. Thank you. Josephine, are you Josephine?

MS. HILL. She is.

CHAIRPERSON FEINSTEIN. Josephine LaPointe? Josephine, could you state your name for the record and where you're from, please.

Josephine LaPointe and Katie Hill

MS. LAPOINTE. My name is Josephine LaPointe and I am from the Sisseton Reservation, and I came here to tell about what happened to me. It's been over a year.

CHAIRPERSON FEINSTEIN. Could you move the microphone a little closer? Or is there—I think, is there a wireless microphone there?

[Discussion off the record.]

MS. LAPOINTE. What happened to me is a little over a year, it all happened over my son's car. He bought a car and he said he bought that for me, and his granddaughter that he raised. But after he passed away, I had the car over to my house, and then my daughter came after it and she brought the city cop. His name was Robert Fisher. He brought—

MS. HILL. Can I say something? I would like to speak on behalf of my mother. Would that be okay?

CHAIRPERSON FEINSTEIN. Sure.

MS. HILL. My name is Katie Hill and I am from the Sisseton-Wahpeton Sioux Reservation in Sisseton, South Dakota. Okay. I am here on behalf of my 90-year-old mother with federal elder abuse charges and police brutality charges committed by federal, state, and tribal authorities. This has been an ongoing case for a year and a half which began on June 3 of 1998 when my mother was assaulted by a tribal police officer and a state police officer in which she received serious injuries and now has limited use of both hands and arms, and she has severe back pain which she experiences every day. And I was a witness to this assault on her where the tribal police officer grabbed her right wrist with both hands and twisted her wrist, and the state police took her cane away for no reason. And she wasn't a threat or a danger to either one of them, and they treated her this way. And my mother is a heart patient and she has high blood pressure, and we have a doctor's statement that proves that we took her to the emergency room at the public health hospital in Sisseton. And I wrote a formal complaint and presented it to the director of the Elder and Disabled Affairs Office which is in Sisseton, with the tribe, and they have never done anything about this.

MR. POPOVICH. One minute, please.

MS. HILL. And then I contacted the Sisseton-Wahpeton Police Commission, and they have never done anything about it. And on August 5, two months after my formal complaint, there were criminal charges brought against my mother in tribal court charging her with disorderly conduct, which she became the perpetrator and the other people became the victims, which I think is wrong.

And I confronted the tribal chairman and tribal secretary and I asked them where the case was going, and they told me that it was turned over to the Federal Bureau of Investigations—I mean, excuse me, they told me it was turned over to the BIA criminal investigator. And when I confronted the BIA criminal investigator, he told me that her case was going to be handled by the Internal Affairs Unit in Albuquerque, New Mexico, and we haven't received any reports or we haven't been interviewed or we haven't been questioned or anything like that.

And finally, I wrote a letter telling about my mother's case to the FBI agent in our area, and nothing has ever been done about this. And there is a Sisseton-Wahpeton tribal code, chapter 48, which entitles an elder to protection, and the law requires any person working with elders or disabled persons and who becomes aware of elder abuse, to report it to law enforcement or the BIA for investigation. Failure to do so is a criminal act.

CHAIRPERSON FEINSTEIN. Can you summarize?

MS. HILL. When these people—oh, we shouldn't be here today. My mother should be home enjoying her life.

MR. POPOVICH. We agree.

MS. HILL. She fell today in this place. She should be home enjoying her life and she shouldn't have to be here tonight fighting for her rights. There hasn't been any charges, there hasn't been anything done about what the police did to her, and this has been going on for a year and a half.

MR. POPOVICH. Thank you.

CHAIRPERSON FEINSTEIN. Do we have your name and how to get in touch with you? If you could leave them with Mr. Dulles over there, we will go forward from there.

COMMISSIONER BERRY. May I make a statement?

CHAIRPERSON FEINSTEIN. Sure.

COMMISSIONER BERRY. I just wanted to tell everybody that I am asking that we give the transcript of the testimony that's been given here tonight to the FBI agent in charge so that where you have made allegations and complaints about specific matters, they can follow up on it and we can ask them to do so. That's one of the things that we can do, okay? All right.

CHAIRPERSON FEINSTEIN. Thank you. Bradley Peterson, state your name and your position and where you're from, please.

Brad Peterson

MR. PETERSON. Thank you. My name is Brad Peterson. I am the managing attorney of the Fort Yates office of Dakota Plains Legal Services, and my office is responsible for representing low-income people on Standing Rock, Corson County, South Dakota, Walworth County, South Dakota, and Campbell County, South Dakota. I've asked for an opportunity to talk about observations I've made representing Native Ameri-

can people in the Mobridge community in Walworth County.

My first and obvious observation is there are no Native American police officers, sheriffs, deputy sheriffs, judges, court administrators, courthouse employees, or court service officers from Walworth County. This needs to be changed.

I defend the Native Americans in Walworth County, and these are some of the reasons they were stopped: for having air freshener on their rear view mirror, for having a bent front license plate, for possessing a broken seal on a bottle of alcohol while walking on the sidewalk in Mobridge. I find it hard to believe that investigation of these types of charges would show many non-Indian people being arrested for these types of charges.

Ms. Taken Alive made reference to the dog shooting incident in Mobridge. They are actually worse than what she made reference to because the young gentleman who went to the state penitentiary over that charge actually had a felony charge that he went to the state penitentiary over shooting a dog. There were also two juveniles who were similarly charged with felony counts resulting from this dog shooting incident.

During Mr. Todd's testimony today, he indicated approximately 65 percent of his prosecutions were Native American. I would tend to believe that that number is higher, at least from the three and a half years that I have been working in Walworth County and doing representation for Native Americans. Yet this fall, the jury list of potential jurors for that 65 percent, there were only three Native Americans on that jury list.

MR. POPOVICH. One minute, sir.

MR. PETERSON. Thank you. There is also a curfew in Mobridge. You violate it, your option is to be in the Selby jail. This is the one that's being, I believe, under investigation by the ACLU. This is the same jail that houses many, many, many more Native Americans than non-Native Americans on any given day, and that's one of the main requests I bring before this Commission. And I request for the Commission to ask Walworth County to provide the names and lengths of stay in the Walworth County jail. I will guarantee you the disparity of numbers will alarm you. And one of the main reasons for this extended time is bond. When the court sets too high of a bond, the court has a policy not allowing bondsmen to be used in Walworth County.

As such, the people have to come up with the cash up front to get out.

Solutions I would like to see, possibly for Walworth County: there needs to be some type of community police commission to oversee the actions of the police department. There needs to be a concerted effort to hire and recruit and retain Native Americans in the legal system so a friendly face can be found. Also, Mr. Todd testified today he's not a PR expert. Walworth County desperately needs a victim witness coordinator to provide clear and needed assurance to its victims of crimes in Walworth County and Mobridge.

The South Dakota Attorney General's Office has a special prosecutor for drugs, special prosecutor for sexual abuse cases. Why can we not have one for murder cases? Let's get these murder cases out of the hands of these part-time district attorneys and get them in the hands of full-time prosecutors.

There must be an effort by this Commission to look at the cold hard numbers of Walworth County in Mobridge. Numbers can't lie, they can't be sugarcoated, they can't be modified or changed. I believe upon reviewing the numbers regarding arrests and prosecutions and end results, you will find what you're looking for and it's not a pleasant sight. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Geraldine Jackson, state your name and where you reside for the record, please.

Geraldine Jackson

MS. JACKSON. My name is Geraldine Jackson. I reside here in Rapid City. Everything I've wanted to say has been said through the people here, Lakota people, so I would like to say, the protection we get from the police departments, as I made—I went down to ask a question about an unlawful assembly charge on my grandson. All I wanted to do was find out what would be the charge, what would be the outcome if my grandson was fined with unlawful assembly and aggravated unlawful assembly.

I went down to speak to the department, and they sent me a fellow who was in charge of the area, and I sat down and all I said was, "On the arrest that you made last night"—and he jumped up and said, "Get out. Get out. I don't want to hear from you. Every time you come down and make a complaint"—and this is the first time I've ever been down to see any of them or talked

to anybody at the police department. And he said, "I know your children. They are all good-for-nothing bums." And I said, "My children—you do not know my children." He said, "I know every one of them. Get out. If you ever come back in this police department in here again," he said, "I will throw you in jail," and he said, "I'll throw away the key." And so he said, "I will throw away the key. Get out. Get out and never come back here again. If you ever walk back in here again, I'll have you arrested. All your children are good-for-nothing bums." And he came forward with his hands towards his hips and we saw the gun. There was two of us. We backed out of there and I said, "If I ever needed help, if I was being attacked just as I walked out," I said, "you know, then I can't call you?" And he said, "No, don't you ever call us. Get out."

This is the protection we get from our police department. It's ongoing. This was in '94. It's still going, and I—we need—we had at one time asked for individual—

MR. POPOVICH. One minute.

MS. JACKSON.—panel, yes, review panel for the police department, and at the meeting like they told you, it was refused. If we can't get a panel, then I would like to invite you people, if you could find somebody for us here to help the Lakota people. And as they say, the disparities are great and it's ongoing. And I would like to thank everybody who is here tonight, every one of you, I thank you from the bottom of my heart. I hope we can get something done. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Alfred T. Bone Shirt, state your name and where you're from for the record, please.

Alfred Bone Shirt

MR. BONE SHIRT. My name is Alfred Bone Shirt. I'm from Rosebud Reservation, and what I am here for tonight is several issues all pertaining to race and our people. The first issue I wanted to bring out was when Clinton was here in Pine Ridge, we had a banner that stated "Stop Lakota Ethnic Cleansing," and after everything was over, Secret Service came over and examined our banner and us, and Clinton came over and talked with us and we asked him to endorse this. And I would like to ask this Commission that if you go back to Washington and you get a chance to see Clinton, ask him if he remembers signing that banner that says "Stop Lakota Ethnic Cleansing," because somewhere in his de-

partment, somewhere in the recesses of his mind, he had to know what he was signing because he seen Jessie Jackson sign the other corner of the banner. So somewhere the President of the United States is aware of this. And ending Lakota ethnic cleansing as a nation of people, that's what I would like to have him institute, whether it means taking this as a document for the Lakota Nation and asking him to have Janet Reno come down here to investigate the law enforcement agencies for their inability to work with our people, their failures and their actions, covert actions, whatever it might be, that harmed our people, caused deaths among our people, they more or less acted like a—in Nazi Germany with the—what do you call them, the secret police?

MR. POPOVICH. Gestapo.

MR. BONE SHIRT. Yes. But anyway, that feeling is why people don't trust the law enforcement agencies because of the ethnic cleansing added to the racial superiority displayed by them, and a lot of this has to do with Christian international law. I come from Rosebud. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] we need your help to do something about the media suppression in the state of South Dakota and the United States of America when it comes down to these violations of human rights.

We need countries overseas to look at this. We need countries' representatives sitting here with you listening to these stories of these men and women and the cries of these women and men because this is ethnic cleansing. Nothing is being done about it. It's being contained and it has to stop. This is why we're here, and I'm glad you came, but don't stop here. These congressional members, that's where they could probably stop it because ethnic cleansing is a hate crime, and a lot of the treaty violations are a result of ethnic cleansing from congressional leaders. That's the way we look at it. And it has to stop because somewhere—look what they did to Clinton, the Republicans; they almost had him. Look what they did to OJ. The media was in charge of this and the media plays an important role in South Dakota.

CHAIRPERSON FEINSTEIN. Can you summarize, please.

MR. BONE SHIRT. In summarizing, it's just that end ethnic Lakota cleansing here in South Dakota, and I know it's in your direction. You

may not be able to do it yourselves, but somewhere if you can talk to the right people down there, maybe it will be a start for our people.

CHAIRPERSON FEINSTEIN. Thank you. The next group, Jaymie Elaine Fairbanks, Eldridge Grinnell, Sr., James Big Bear, Selena Wolf Black, and Margaret Ross. Is one of you Jaymie? Is Jaymie not here? Okay. Eldridge Grinnell? Are you Eldridge?

MR. GRINNELL. Yes.

CHAIRPERSON FEINSTEIN. Okay. State your name and where you are from for the record, please.

Eldridge Grinnell

MR. GRINNELL. My name Eldridge Grinnell. I live here in Rapid City. Earlier today Mr. Burrus gave testimony and gave a high degree of competence and performance for the FBI for this area and it sounded impressive, and yet Native American deaths go unsolved, not only the six mentioned in the news accounts, but they have been happening before that. I came here in 1990 and there was a death that was reported and it's still unsolved.

CHAIRPERSON FEINSTEIN. Can you speak into the microphone a little better or raise it up a little bit? Thank you.

MR. GRINNELL. But I have listened to a lot of testimony today, and these are the same concerns that they looked to events that happened in '93 in Wounded Knee—or in '63 in Wounded Knee—or '73. And those concerns are still with us today, and somebody has got to look into these kinds of things so that they will be resolved. If not, then we'll back here maybe next year or maybe 10 years from now, maybe 30 years from now with the same concerns.

And today I have some documents, seven-page documents reflecting my case that was never looked into, and I wrote this letter in 1993 and I presented it to the judge, presiding judge in the Seventh Judicial Circuit and it still hasn't been looked into. And I was denied due process, I was denied an appeal and I was denied a fair and impartial hearing—

MR. POPOVICH. One minute, sir, please.

MR. GRINNELL.—by the state of South Dakota, and I would like to submit this to whoever is taking these down here.

CHAIRPERSON FEINSTEIN. Thank you.

MR. GRINNELL. And I have an article that was in the paper here I think in '95 in October

concerning the Governor and his feelings on Native Americans and he went on to say how he felt and he gave some very derogatory statements about his feelings towards Native Americans, and I would like to submit that, too. And if I can just finish this statement, then I—

MR. POPOVICH. Please summarize.

MR. GRINNELL. Okay. The laws of this country were designed to be shared equally, and yet when it comes around to applying these same laws to American Indians, the applications weigh against them. Their concerns are considered trivial, and terms and definition of the law are manipulated, and they apply to American Indians as they see fit. The Constitution's declaration on equality doesn't carry much weight in South Dakota if the justice system isn't for and allowed to protect all its residents. As it is, the scales of justice tip in favor of the wealthy and those who have influence. And I want to thank you for taking the time to hear me out.

CHAIRPERSON FEINSTEIN. Thank you. Is James not here? Selena, you want to state your name and where you are from for the record, please.

Selena Wolf Black

MS. WOLF BLACK. My name is Selena Wolf Black. I am from the Rapid City community. I am originally from the Cheyenne River Reservation. The Memorial Walk Committee would like to welcome you to the Black Hills area and to thank you for your presence here today. The Memorial Walk Committee, a community group, was formed last summer to bring awareness to the community of the eight deaths through prayer. The eight deaths happening within a span of one year of each of other, some of them just a day of each other, brought concerns from the Indian community. By working towards positive communications and developing dialogue with each other, local government and law enforcement and other entities in the community, we feel we will be making a positive step.

The Memorial Walk Committee is presenting to the Commission various recommendations that will be beneficial to the Indian and non-Indian community in Rapid City. Your favorable consideration to the following recommendations would be greatly appreciated.

Number one, a request for a three- to five-year study done on the Rapid City and the surrounding areas to be done on racism in the

areas of economic, housing, work force, employment, educational system, local government, local law enforcement, and the judicial system, plus the local appointed attorneys. Also a three- to five-year study to be conducted by a seven-member panel from the grassroots Indian community members, possibly two non-Indian members that are not prominent in the community to sit with your panel of your Commissioners and so that way these people can look into the problems, look into all these statements that were given to you, to help you do a study on them and to work closely with you so there could be some results in solving some of these problems that are happening in our community. And if you can recommend a three- to five-year study, we will surely appreciate it because three months to come back with your dialogue, three minutes a person is not enough. We need these years of study so we can do something positive for our community and your community.

Next we would like to request the local government and law enforcement to have a better communication and working relationships with the Indian community.

MR. POPOVICH. One minute, please.

MS. WOLF BLACK. Okay. And the rest will be given to you, but we are requesting an independent investigation into the eight deaths along Rapid Creek. We realize that the local law enforcement is doing an excellent job. Also an independent investigation would be helpful for all unanswered questions that come to mind about these unsolved deaths, whether they are really crime-related or racial incidents or by accident.

We are requesting—oh, some of these you have already answered for us, that you are going to come back with a three-month study, so those we will leave for you to read. But once again, we would like to thank the Commission for their presence and interest in the concerns of the community people here. By you coming to us in our area, we greatly appreciate it because the last time you came, it was also a factfinding, but we did not get any results from that. In fact, it has gotten worse since the last time you came here. And I grew up here in the city, and when I was growing up as a teenager, I could just walk out my door, walk anywhere I wanted to in the city, but my children can't. They can't walk out my door and be without me knowing where they are. I have to drive them to where they are go-

ing. My son has gotten beat up. My son was shot here in Rapid City. And it is in the paper; it is recorded by the police department, and that man went and identified himself from the Wide World Web of white supremacists. He identified himself after he shot my son.

CHAIRPERSON FEINSTEIN. Thank you.

MS. WOLF BLACK. Thank you. But this will be given to you. It's already been submitted to you and one of your staff members already has this. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Next, Margaret Ross, can you state your name and where you're from for the record, please.

Margaret Ross

MS. ROSS. My name is Margaret Ross. I am from Porcupine, South Dakota; it's on the Pine Ridge Indian Reservation. I am employed with the Oglala Sioux Tribe and I'm the judiciary committee coordinator, and I deal almost on a daily basis with complaints due to civil rights violations. And it's kind of funny because probably back in June or July, we were informed by our chief judge that we really didn't have civil rights, we didn't on the reservation as tribal members because our tribe had never adopted the Indian Civil Rights Act so we didn't have civil rights. That's one of the reasons why I'm here speaking with you people. I know when our tribal officials are sworn in, they swear to uphold the Oglala Sioux tribal constitution and the United States Constitution, but in the United States Constitution we have civil rights that we don't have with our tribal constitution.

One example I will give you has to do with the tribal program. ICWA is—you know, it's not the name of the program, but it's an Indian Child Welfare Act case and had to do with the consensual adoption of a baby and a tribal official interfering with the court matters. The two employees, they were never summoned—or they were never court ordered. They were summoned to go to court, and they get to court and the judge that was presiding over the case says that they had violated the court order, and they said they had never received a court order. The judge holds up a legal tablet and says, "Here's the order." It was never put out.

So the two employees were put in jail; they were in jail for four hours. And through this whole process, they come to the committee and the committee decides, "Yeah, we'll hear it," and

then our tribal attorney comes in and says, "No, you can't hear it. You have to sit with the Executive Committee to hear this." Well, the tribal official—

MR. POPOVICH. One minute.

MS. ROSS. The tribal official that was involved sits on the Executive Committee and tabled the action, so it never went anywhere. The reality of it was the two employees had contacted one of their attorney friends who had told them the process of filing a civil complaint or a civil matter against these officials for violating their civil rights, and the reality was they really didn't—they were told they didn't have civil rights because of the procedure that fell within our constitution.

And that's kind of what I wanted to address for tribal members that live on the reservation, where do we have our civil rights? Especially if our tribe didn't adopt, you know—it's a federal act, but if we didn't adopt it, then do we have civil rights? So that was one of my main concerns that I wanted to address or get somebody to look into because there are a lot of complaints that do happen. And I got files and files of complaints on violations of civil rights from police officers to judges to tribal officials to, you know, working. And we don't have an agency to go to. EEOC, it's out of their jurisdiction. Department of Labor, it's out of their jurisdiction. So, you know, we really don't have a federal agency to go to or to come in. Department of Justice told us it was hardball politics so they wouldn't get involved and so—

MR. POPOVICH. Can you summarize, please.

MS. ROSS. Oh, well, my main concern is if you're here to address civil rights questions, then for tribal members, is it really doing us any good to come and sit here when it was stated by our chief judge that we don't have civil rights on the reservation? Thank you.

CHAIRPERSON FEINSTEIN. Thank you. We're going to try to address that in our report about the Indian Civil Rights Act. Okay. Next group, we have James Murphy, Celia Martin, Linda Johnson, Keith Janis, and Gary Loudner. James Murphy, you want to state your name and where you're from for the record.

James Murphy

MR. MURPHY. Hi. My name's James Murphy and I have been a resident of Rapid City, South Dakota, for 32 years now. You'll have to excuse

me a little, I'm just trying to get over a cold. My complaints are, I think for one, it's the public defender's office where they bill their clients when they can't afford an attorney, and when they acquire assets, liens are put against their personal properties. And they stated that the Constitution—that's what they had in the *Rapid City Journal*, is that the Constitution didn't guarantee free services for legal representation. That's if you can't afford it, so they charge the clients. So I say the Lakota people and the black people have hardships out of this, and it just seems to be going nowhere, and I think that that should be looked into on a national level.

And as far as traveling the Dakotas, my wife and children are enrolled in Rosebud and it seems as though we are losing a generation of children. I've raised my children and tried to raise them right, and I've got two at home and I've got one that's incarcerated and he's been railroaded, but I mean, I'm not going to get into that. I'm just talking about some of the things I don't like.

And speed traps, I traveled this summer all across the United States and I come back this summer and I was going to see my son in Rosebud, and coming between Murdo and Kadoka I was pulled over. They've got a speed trap in Kadoka. It's about 100 feet long. Coming up over the hill it's 45, you run into a 30 for about 100 feet and it's back up to 45, and the highway patrol just sits there and waits for the Lakotas to check for drinking or whatever, but I feel as though it's a speed trap just to stay on the Lakota's harassment list. They have got names they use for this patrolman, I won't get into that. But like I said, I think between Murdo and Kadoka going south toward the reservation that it should be looked into because I, for one, don't think it should be there. And I've met some good highway patrolmen and stuff—

MR. POPOVICH. One minute, sir.

MR. MURPHY. Okay. And let's see. And like some of the Indians that were murdered—I say murdered—on Rapid Creek, I donated some funds when I run my business here in Rapid to the memorial funds of the Lakotas, and then after a period of time, I don't know who disbursed the money or whatever, they took the monies and transferred them over into the white memorial funds, and I didn't like that; I thought it should have went to the families.

And then as far as getting false charges, they trump them up and they are making the Lakotas take plea bargains for things they're really not doing, but they are scaring them because the jury is just not giving the Indians or blacks a fair deal in court.

And I feel as though Rapid City especially is on the infancy stages of total corruption because Lakotas or anybody else at night just don't stand a chance. We all make sure we are on their database in the computers and—

MR. POPOVICH. Can you summarize, please.

MR. MURPHY. Okay. And for one, I'm disappointed because they are making sure that all of our children have criminal records or criminal marks on their records. They can't finish school and they can't get jobs because these criminal marks hinder their employment, hinder their benefits and grants and everything else that they want to get from the government. And I think if you all look into some of the charges and some of the complaints that the people have here tonight that you will see that it's valid. We're all hurting and we are all trying to do something and we have nowhere to turn, and I thank you for your time and effort and diligence and putting up with me and listening to me, and I thank you.

CHAIRPERSON FEINSTEIN. Thank you. Celia Martin, state your name and where you're from for the record.

Celia Martin

MS. MARTIN. My name is Celia Martin and I'm from Porcupine and I am here—I have been seeing you in Rushville—

CHAIRPERSON FEINSTEIN. Could you speak a little closer to the microphone, please. Thank you.

MS. MARTIN. I've seen you people in Rushville and I was over there, and then I seen you people at White Clay, and now I am over here. And the reason why I'm over here is I got a lot of complaints, and you hear all the testimony all day and up till now. Some of the people, they come over here with tears, and I hope you people will understand what they are talking about, and they need help. We need help.

And the reason why I come over here is—I'll send some of my complaints because I didn't copy them, but I will send it to you because I got the address; they give it to me. And the one that I wanted to mention to you is my grandson, and

this is back in '92. My grandson was going in the service, Marines, and he made it. And I was working at Red Cloud and I was coming back to work and he was with me, and my car was—I had a '72 Chevy I was driving and I let him drive because I caught a ride in with some other people. And so he's driving my car, and when you hit 40, it wobbles, and so I told him to watch it. And here, he must have hit 40 and the cops came over and they stopped him. And he doesn't even have a drop of alcohol in him and they got him for drunken driving; they put him in. They took him back to the police station and—

MR. POPOVICH. One minute, please, ma'am.

MS. MARTIN. He put—beforehand they put him in, he lift his ankle and put it—his—and he kicked the door, and then they put him in jail. And when I come back from work, why, they told me he was in jail. So I called over there and they said they got him for that. There isn't a drop of alcohol in his body and they put him in. And then they said he was sick. All night he was sick and complaining about his ankle, that he had pain, but they didn't do nothing about it.

Well, the next day they demand to turn him loose, so he came back. And on the way—I came back from work, he was still jumping around so we took him up and here—he didn't come back for a long time. I came back at 5:30 and they took him and they didn't come back till 8:00. So I called over there and said, "How is he doing over there?" I said and here he said, "He broke his ankle." So I said, "What?" They put a cast on him because he broke his ankle.

MR. POPOVICH. Can you summarize, please.

MS. MARTIN. And so I went after him and I came back, and we went by and he's still complaining. So I took him back again, and they took that cast off. And they broke his ankle in three places and so he didn't make the Marines, and these cops are still cops in Pine Ridge.¹⁷ And I told him, these two Public Safety, and I asked him, "Who is going to replace that bone so he can go to service?" And they didn't even say nothing.

So I made that statement and I faxed that to Janet Reno, and no response up till this date, and they made into federal and they never did do nothing about it, and my grandson is home

now. And they're going to go through another operation on his ankle, and why, why they have to do this and they get by. And the two policemen that done that, one I think they made into chief of police, and the other one is a sergeant and they are still working.

So that's the reason why I come over here. And we used to have a civil rights office—

CHAIRPERSON FEINSTEIN. Thank you.

MS. MARTIN.—on Pine Ridge when my granddaughter Wallene Herman and Ron Two Bulls, we had a civil rights office there, and we are really doing good until this next one that come in. There's nothing we asked them—

CHAIRPERSON FEINSTEIN. Thank you. Thank you.

MS. MARTIN. There's nothing. So that's reason why I come over here.

CHAIRPERSON FEINSTEIN. Thank you.

MS. MARTIN. And I'm not a big talker, but I come over here. I need your help, I need your help. All these people need help. That's why we come to you, and I hope you people understand what we're talking about because I'm an elderly, I'm 79 years old and I'm still taking care of my grandkids. One of them is on dialysis, and I'm still taking care of them. And I come over here, and actually I wait up here so many hours sitting here, waiting to talk to you people, and I hope you'll do something about all these people. Some of them are crying here, and I hope you people understand why, why they are crying. They need help.

And also us Lakotas are slave. The black people and us Lakota, we're slave. We are slave to the white people. We are slave to the Public Safety. We are slave to the federal, too. We are slave, and look at Martin Luther King. He was helping us Indians. I got a nice letter from him before they killed him. And so the black people and us Indians, we're slave. We are still slave to you guys, the white people. They don't even help us. They don't even care to help us or what our grandkids—today one of my grandkids, they gave him five years in prison and the other one is 15 years coming to him, and that happened today. And who are we going to go to to tell our troubles, what's going on?

CHAIRPERSON FEINSTEIN. Thank you.

MS. MARTIN. We don't even have nothing.

CHAIRPERSON FEINSTEIN. Thank you.

¹⁷ The Commission afforded William Brewer, director, Department of Public Safety, Oglala Sioux Tribe, an opportunity to respond to statements by Celia Martin. No response was received. See appendix A.

MS. MARTIN. We don't even have no leaders. We need a good leader. That's why we come to you people.

CHAIRPERSON FEINSTEIN. Okay.

MS. MARTIN. And I pray that you will do something about this.

CHAIRPERSON FEINSTEIN. Thank you. We'll certainly try. Can we move on to the next person, please.

MS. MARTIN. [Speaking in language other than English.] Yeah, wait now. I want to tell these Lakota people that understand some of the—

CHAIRPERSON FEINSTEIN. Well, we have to allow others—there are a lot of other people here.

MS. MARTIN. You understand what I'm saying. [Speaking in language other than English.] We have to fight for our rights. Okay. Thank you.

MR. POPOVICH. Thanks for not letting us push you around.

CHAIRPERSON FEINSTEIN. Okay. Linda Johnson, state your name and where you're from for the record, please.

Linda Johnson

MS. JOHNSON. My name is Linda Johnson. I am from Rapid City, South Dakota. I am here because of a charge of police brutality . . . [Words deleted as potentially defamatory, degrading, or incriminating.] on my daughter who was 13 years old at the time this happened in 1996. She was consuming alcohol, and the other girls ran and she didn't run. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] her lips and she needed dental work because her tooth was broken, too, but being as that I'm Indian, I can go up to Sioux San and get this done free. So Gina went into the bathroom to see herself and cried and said, "Well, I guess I ruined my life now. I will never be Miss Black Hills." That was her ambition; she was a fancy dancer and a hoop dancer.

When I took her up to the hospital because she tried to commit suicide . . . [Words deleted as potentially defamatory, degrading, or incriminating.] So there went that, you know. And, of course, everything was unfounded with the panel that was formed by the mayor. And also my daughter started drinking more and more and she assaulted a police officer.

MR. POPOVICH. One minute, Linda.

MS. JOHNSON. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] And she got charged with aggravated assault at the same time this little white boy kicked two officers in the groin and in the chest and he was charged with simple assault. He was able to go to school, serve weekends in detention. My daughter was put in 30 days without school. And so I took it before the international people. So right now her case is before the UN; it's sitting in the UN now. I done this through the War Crimes Tribunal here in Kyle, and it's ongoing and I am not going to give up. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Keith Janis, can you state your name for the record and where you're from?

Keith Janis

MR. JANIS. My name is Keith Janis and I was born in Rapid City, but my parents are from Pine Ridge and my mom, she is from Cheyenne River.

I am going to give something to you all while I'm here, but, you know, I think this is really important because first of all, I am here to represent the Stronghold Community Action Patrol. We are the ones who walk up and down this creek to protect our people because law enforcement can't do that. But I think that once you want to look for the truth and you want to find the civil rights violation—I am going to present a list and I want to remember those that aren't here because they can't speak for themselves, and so if I'm allowed to do so, I will give those names to you right now. And look into them because there you will find the truth of why everybody is here.

Ricky Little Boy, Lonny I'sham, Ben Long Wolf, George Hatten, Randall Two Crow, Loren Two Bulls, Timothy Bull Bear, Arthur Chamberlain, Irving Odys, Ronny Hard Heart, Wally Black Elk, Boo Her Many Horses, Warlene Gayton, Ted Standing Soldier, Leon L. Swift Bird, Lydia Cut Grass, Wesley Gun Hammer, Ivan Kills Right, Larry Morrison, Larry Standey, Bob High Eagle, Jamie Thunder Hawk, Edward Means, Jr., Byron DeSersa, Anna Mae Pic-tou-Aquash, Lena R. Slow Bear, Edward Standing Soldier, Hobart Horse, Stacy Cottier, Edith Eagle Hawk and her two children, Cleveland Reddest, Jeanette Bissonette, Hilda R. Good Buffalo, Jancinta Eagle Deer, Priscilla White Plume, Frank Clearwater, Roxeine Roark,

Buddy Lamont, Betty Jo Dubray, Marvin Two Two, Julia Pretty Hips, Ben Sitting Up, Sam Afraid of Bear, Kenneth Little, Kevin Hill, Leah Spotted Elk, Clarence Cross, Joseph Bedell Stuntz, Sr., Betty Means, James Briggs Yellow, Andrew Paul Stewart, Julius Bad Heart Bull, Sandra Wounded Foot, Randy Hunter, Dennis LeCompte, Howard Blue Bird, Jim Little, Jackson Washington Cutt, Robert Reddy, Melvin Spider, Philip Black Elk, Aloysius Long Soldier, Phillip Little Crow, Pedro Bissonette, Olivia Binais, Janice Black Bear, Michelle Tobacco, Delphine Crow Dog, Elaine Wagner, Allison Fast Horse, Carl Plenty Arrows, Sr., Frank LaPointe, Floyd S. Binais, Yvette Loraine Lone Hill, Candace Rough Surface, Wesley Bad Heart Bull, Phillip Red Elk, Kimberly Means, Dennis Cross, Raymond Yellow Thunder, Brian Eagle Star, Wayne Hand, and Megan McClosky.

And there are many, many more who can't speak for themselves whose human and civil rights were violated here, and they rest in a cemetery called Wounded Knee. That's where you'll find the truth. Investigate these people who have been murdered and the means and how those cases were handled. Pull these cases open and there you will find the truth of why we are all here. And look at this man whose picture I'm holding up. His rights were violated here in defense of our people. His name is Leonard Peltier. He needs to be free. Free Leonard Peltier. [Speaking in language other than English.]

CHAIRPERSON FEINSTEIN. Gary Loudner, state your name and where you're from for the record, please.

Gary Loudner

MR. LOUDNER. I'm Gary Loudner. I'm president of Native American news media organization Black Hills Satellite Communications News here in Rapid City. I'm also a candidate for State Senate District 34 in Rapid City, South Dakota, in the year 2000. I ran last year, as well.

The reason I am here is I realize you have been here all day. I would like to thank you for coming to Rapid City in southwestern South Dakota and the Black Hills area. I served on the Rapid City Indian/White Relations Committee back in 1988 to 1995. Our racial relations board dealt with issues like what you heard all day long, but we dealt within the incorporated boundaries of Rapid City here, and although

there were representatives from the Rapid City Police Department, there was no representatives from the Pennington County Sheriff's Department that ever showed up at the meetings. Those members of the Rapid City Police Department that showed up did field complaints and they handled them on their own, and we never did as a committee ever find out how they resolved it or how or where it ever got resolved or if it ever did get resolved.

So I thought I would let you know that the Rapid City community and the Rapid City government has taken an interest in human rights and civil rights in our community for a long time between 1968 and 1995 when the committee was just ended because of lack of interest.

So I appreciate you coming to our community, and if you have any questions, I would like for you to get a hold of me at my fax number or my telephone number, feel free to write to me.

MR. POPOVICH. One minute.

MR. LOUDNER. Also, while I am running for State Senate in District 34 and I've suffered a little concern of my own, a . . . [Words deleted as potentially defamatory, degrading, or incriminating.] of my own with the local newspaper here not announcing my state legislative candidacy. So that's all I would have to say now.

CHAIRPERSON FEINSTEIN. Thank you. Okay. Next group, Shawn Bordeaux, Charles Fast Horse, William Kindle, Shirlee Bettelyoun—I'm sorry if I butchered your name—and Pearl Redfish.

Shawn Bordeaux

MR. SHAWN BORDEAUX. My name is Shawn Bordeaux. I am a Sicangu Lakota from the Rosebud Reservation. In 1995 I was hired by a consulting group to go down and open the first casino in Kansas. Mr. Jenkins, I appreciate your being here. And we opened the first casino for the Kickapoo Tribe, and my wife and I were just married. I was a manager and she was a supervisor at the casino. In 1997, two years later, she was murdered in a drive-by shooting. She was pregnant with our first baby. We just found out two weeks before it was a little girl, had her named and were ready to start our family off.

But the reason I am before you here today is to try to get help from the FBI on this case so we can resolve it. For the last two years, I have been frustrated by the process of trying to deal with jurisdictional issues and not being able to get as-

sistance from the FBI. We have the local county officials (the sheriff's department) who have been doing their best and also you have one agent from the Kansas Bureau of Investigation working on the case. However, this person is spread too thin with a huge region to cover in addition to our case. I am not able to get any financial help from my tribe, the Rosebud Sioux Tribe, for reward money.

Any time somebody finds a little bit of marijuana on a juvenile here in South Dakota, we have several FBI agents running around. Just last week in front of my mother's office at Legal Services in Mission, South Dakota, there was an arrest being made, and one of the lawyers from her office had asked for the arresting officer's name, and in a matter of hours, because of asking his name, there were two FBI agents there questioning everyone in the whole office about obstructing justice.

Now I don't understand how easy we can get FBI agents to come to South Dakota here, but for some reason on my case in Kansas, we can't get any FBI agents to assist us. I've contacted the Department of Justice Office of Tribal Jurisdiction; the attorney general from Kansas; the BIA law enforcement; the Governors, Senators, and Congressmen from Nebraska where my wife was from; South Dakota, my residency; and Kansas where we had resided; as well as the KBI and FBI and different liaisons. None of these agencies can seem to implore the FBI to assist on the case, which won't assist on the case because I had not lived on the reservation.

MR. POPOVICH. One minute.

MR. SHAWN BORDEAUX. Well, the jurisdictional issue is that the Kickapoo Tribe's boundaries were reduced from one treaty in 1854 to another in 1862. Their tribal constitution is approved by the first boundary by the federal government. As a tribal member from another tribe living there, I didn't have to pay taxes for a vehicle purchase and state income, so for that instance I could be considered an Indian living on the reservation by the IRS. But when we tried to contact the FBI they wouldn't consider me living on the reservation. They had called the BIA and the BIA doesn't recognize the old 1854 boundaries, they recognize the current 1862 boundaries. If you contact the tribe, they will tell you that their constitution and the courts recognize the old boundaries of the reservation. In 1970 they won a case using the old reservation boundaries.

And for me getting out of taxes, I could use the old boundaries and be considered an Indian living on the reservation. But the FBI won't recognize the old reservation boundaries and, hence, won't assist in investigating the case.

Now that has to go to probably the Supreme Court before they figure out what boundaries the tribe is able to use. Meanwhile, I can't get the FBI, and Kansas, I might add, is a 280 state with concurrent jurisdiction, so they should help you. You have a kid over in Wyoming a couple of years ago—the hate crime against the homosexual kid who was killed—the FBI is right in there assisting. You have the senator who was killed in Tennessee about the same time, and once again the FBI comes in to assist.

MR. POPOVICH. Will you summarize, please.

MR. SHAWN BORDEAUX. Yes. Anytime you have the FBI and all these high-profile cases, they are all over it. Now I understand that maybe my wife and baby aren't as significant to the media or to the different agencies, including the FBI, who are trying to get their name and recognition, but I think it's important to me. My wife was an only child and it's difficult, you know, every day to go home to an empty house and know that the FBI and these different agencies aren't doing everything that they can to try to resolve this case. And if you check into this, it should be a simple case that if you bring in the proper resources, it should be resolved. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Charles Fast Horse, do you want to state your name and where you're from for the record, please.

Charles Fast Horse

MR. FAST HORSE. My name is Charles Fast Horse. I am an enrolled member of the Oglala Sioux Tribe, born there, that land and come from great people. I guess I've heard a lot of testimony tonight and there's some things that they didn't hit on. I would like to tell about the relationship between the indigenous Indian people and the European colonists which was characterized by administrative oppression, entitlement to our lands, and by that administrative policy that began in the early years.

One of the policies that I would like to read you all would be the Trade and Intercourts Act of 1834 restated the general principles of all of the previous nonintercourts acts and added that the powers of the Constitution and previous law

had bestowed on Congress a unique relationship with Indian people. It outlined the rules for trading with Indians and provided that crimes of Indians against Indians on tribal lands defined as Indian country were not within the federal jurisdiction.

Today from that administrative oppression and the relationship that stigmatized our people as fearless, warlike and barbaric, blood-thirsty savages, community attitudes today, of Native Americans may very well underlie many of the problems Indians face in the criminal justice system. So today my summary would be that we must make a pledge not only to the people of South Dakota, the nation, and the world that to make a treaty with an Indian nation as well as making a treaty with another nation such as Europe, that that is viable and a law of the Constitution. And if those treaties that are breaking with the Indian nation, then those treaties are worthless overseas also because to make this effort to inform the people of South Dakota, the nation, and the world that the problems that exist here and the racial intolerance that exists here and the poverty which exists here are questions of liberty, constitutional rights, and values elemental to our beliefs. I stand up today and to prove to the people that I am an original inhabitant of this land and take what is directly mine by survival in both worlds. This is what we need to do is to stand up for our inherent rights, and this is my statement.

CHAIRPERSON FEINSTEIN. Thank you. William Kindle? Doesn't look like he's here. Shirlee, could you state your name so I don't have to try to pronounce it for the record, please.

Shirlee Bettelyoun

MS. BETTELYOUN. Shirlee Bettelyoun from Pine Ridge. If alcohol and drugs are existing reservation problems as stated by our peers and considering all aspects of surviving daily life, why do our own tribal police department with federal agencies indict and sentence a large percent of Native Americans? Tribal Public Safety brutality, excessive force, harassment, rapes, drive-by shootings, and nepotism occurs often. I sit and listen to testimony by authorities concerning the Circle Fund; that it is the answer. More money? Our problems still exist as long as directors, chief of police on down the line stand with their heads in the sand and choose not to listen to complaints made against them by mem-

bers. There is little or no trust in our own backyards. We, too, fear to travel late at night, and today there will be retaliation as we speak out against them only because unprofessional staff replaced professional people. Dual justice takes its place on reservations by the good old boys with badges.

During 1996 my Main Street business was involved in a drive-by shooting. Tribal police officers were involved and then went on duty at midnight. As of today nothing has been done. Tribal and federal authorities cleared him of all charges. This tribal officer succeeded in getting my son indicted over an incident he said occurred a year before the night of the shooting of my business and my son's home. An assaulting a federal officer charge was brought against him within a week of this incident, and he was 18 years old, two days into being 18 years old at that time. He was taken off the reservation and kept away from me until he was 21 years old even though—

MR. POPOVICH. One minute.

MS. BETTELYOUN.—he was a tribal land owner and enrolled member. And today again, because of the family name—and we, too, stand up for ourselves and fight back, and because of our family name, we are known as, I don't know, gangsters, I guess, ourselves. And so today now, my son is facing 25 years and he just turned 21 from the same police department, same officers for the same charges again. Thank you.

CHAIRPERSON FEINSTEIN. Thank you, Shirlee. Pearl Redfish, state your name and where you're from for the record, please.

Pearl Redfish

MS. REDFISH. My name is Pearl Redfish. I am from Rosebud, South Dakota. I am a Rosebud Sioux. One of the incidents that happened, we always talk about education for our kids. Our kids from the Todd County School District went to play basketball over in Winner, South Dakota. I went with them. I thought this would never happen to me. One of the things that happened, we were in the National Guard Armory and it was during parents night so it was getting a little bit hot in there. We all walked out. The city police in Winner,¹⁸ South Dakota, told us, "You can't come out here." So I asked him, "Why not?"

¹⁸ Winner police chief Paul Schueth's response to statements by Pearl Redfish is attached as appendix G.

Because I was raised in a law and order background, one of the things that I asked him is I said, "There's no rape, there's no murder, there's no vandalism, and no shooting out here. There's no crime scene. Why are you keeping us in there?" "Because we just don't want you out here." And they were all white men looking at me.

One of the things was our football players were coming in from Todd County so I told them, "Go get the principal that's walking around in there." I said, "Tell him just the way they are treating the parents out here." They let those kids over there who are non-Indian smoke, walk through the doors, everything, but when it came to our people, they told them that they couldn't go out that door.

After the incident had happened and after we had brought the principal's attention to it, he took it to the south side of the armory and then walked into the gym, took the microphone and told the rest of the people that were in there, "If you ladies and gentlemen need to go anywhere, use the south entrance of the armory." I did take that to all of our congressional people in South Dakota, and the other thing I did is went beyond that. I called the Defense Department and I did find out from a lady that was more than willing to tell me that when all of these National Guard units were made and after they were all finished, they were put under the Governor of that state. So I asked Governor Janklow's office to send me anything that they had showing that they owned that building or they were leasing it, any type of thing that would hold us and show us a purpose for why—how they treated us.

One of the other incidents, he sent me this booklet. There's no summary that I can't write a complaint in here. It only gives just what it is. It gives what disabilities are, what it means and everything.

The other one is on . . . [Words deleted as potentially defamatory, degrading, or incriminating.] bank and it's in our general area. I went there to make a loan, and it wasn't a big loan; \$200 isn't much. But when I signed my name as Redfish, the president of that bank came over there and he said, "If you cross through that last name and put your maiden name on there," which is Ian, "I can give you the money right now."

So how often do we have to face this? This is one of the things I can't understand because I

was born and raised in a law and order background. My mother was a postmaster, my father retired as a criminal investigator. And when I'm faced with these charges, that's why I am bringing it to you because none of our other parents, none of our kids, and none of the elderly people need to be brought into any of this type of institution.

The other thing, I petitioned Congress for an elementary school. We're beyond the maximum capacity that's stated by the United States Supreme Court that we can do this. President Clinton just signed into law that he said he wanted smaller classrooms. Now if we need smaller classrooms on our reservations and for those kids, then we need a new school. I would like to find out how far that petition got down the line because all of our Senators have had copies of it and so has the Congressman, and they used some of that part to make their call on the education that just went by this past summer. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. The next group is Katie Hill, Elizabeth Cook-Lyna, Earl Buck, Mary Moran, and Cathy Yellow Hawk. Okay. Just two of you out of that group? Why don't I—as the first person starts, why don't Marletta Pacheco come up, Mary Wright and Scott Herron. Could you come up, too. And then is Katie here, Katie Hill? Elizabeth? Are one of you Elizabeth? Okay. Mary Moran? Okay. Would you state your name for the record and where you're from, please.

Mary Moran

MS. MORAN. I am Mary Moran. I am a Cheyenne River Sioux tribal member. I live in Aberdeen, South Dakota, and I am here to make a statement about the Justice Department, how unfair it is to our children.

I have a son that was picked up and sentenced to two years in prison because he's, they say, a violent offender and he's a menace to society. He's 19 years old. He's been living with me, and I could never see where he was a menace to society. My nephew was also in the same predicament, and they condemned him as being a menace to society and sent him to prison, and he's also only 19 years old.

I can't understand how they can take our children that we raised. We fought to get them to where they are, and the justice system takes them and puts them away like animals that

have no rights. And there is nothing, there is nowhere that we can turn, nobody that would help us. And although I don't live on a reservation, don't have a high-paying job, can't afford to buy the services of an attorney, I would like to say that all the small towns near reservations need to be looked into.

MR. POPOVICH. One minute, Mary, please.

MS. MORAN. Well, that's all I have to say is that I would like to have a little justice. I'm human. I go to the jail, Brown County jail,¹⁹ to visit my son and the doors are slammed in my face. The jailers talk down to me like I am incompetent and don't know anything. They talk to me like I'm a child and don't know anything. I am human, I'm working, I pay taxes just like everybody else. That's all I have to say.

CHAIRPERSON FEINSTEIN. Thank you. Cathy Yellow Hawk, state your name for the record, please.

Catherine Yellow Hawk

MS. YELLOW HAWK. My name is Catherine Yellow Hawk. I am from the Cheyenne River Reservation. I currently reside here in Rapid City, South Dakota. I am working on my master's degree in business. I just feel like the police system here in Rapid City is very biased. My people are treated very discriminatorily, and I see it happening every day. I know there's a lot of alcoholism and that's due to the high unemployment rate. And I just feel like, where do we turn to other than violence?

The Commission here, thank you for coming today. We have our treaty rights, 1868 treaty rights, Fort Laramie Treaty, that has to be recognized. This land here in Rapid City is Lakota territory. This is our land here, and all we're asking for is a place for our future, our children. What are we going to do for our children? That's what we want. We want something for the future generation. Our children are taken away from us and put in institutions over little or no reasons only because they're part black or part American Indian or some other race. And it's just not right. It's just not right that they don't stand a chance, and it's up to us, all of us, to try

¹⁹ The Commission afforded John VanderHoek, jail administrator, Brown County Jail, an opportunity to respond to statements by Mary Moran. No response was received. See appendix A.

to do something for this younger generation coming up.

MR. POPOVICH. One minute, please.

MS. YELLOW HAWK. So what I am saying and what I am asking today is, we need to have some kind of check on our police system and on our Governor Janklow. They get into office because they are still fighting against American Indians, but really all it is, is it comes down to the treaty again. This is a treaty violation, and this treaty is still in our Supreme Courts today being acted upon. Thank you once again for coming to hear our people here.

CHAIRPERSON FEINSTEIN. Thank you. Can I ask what your name is, please.

MS. PACHECO. Marletta Pacheco.

CHAIRPERSON FEINSTEIN. Oh, you're Marletta, okay. Okay. State your name and address for the record, please.

Marletta Pacheco

MS. PACHECO. My name is Marletta Pacheco. I live here in Rapid City. I've lived here all my life; I was born here, and I am enrolled on the Rosebud Reservation. I am here because I have a daughter that's doing 30 years in prison. She was charged with conspiracy to distribute methamphetamines. . . . [Words deleted as potentially defamatory, degrading, or incriminating.] because throughout the whole trial, I seen things that I couldn't believe could happen in a courtroom.

A young lady got up there to testify. She was a state witness or a federal witness, and she got up there and said she refused to testify because they told her if she did, they wouldn't take away her kids, and they did anyway, she said, so they put her in contempt of court. You know, to see those kind of things in the courtroom, it scares me.

In the early '80s—I have a niece. She lived in Sioux Falls with the family, and she was killed by a white man.

MR. POPOVICH. One minute, please.

MS. PACHECO. He used a gun and he killed her, and his sentence was that he was to pay money, probably less than what most men pay in child support, into a trust fund for the kids. They haven't received a penny of that. They said they would probably only get it if they went to college. I have a nephew who is in prison. He has a head injury. They put him in segregation, and they say they can only keep him there for so long, but

he goes to a hearing and they sentence him back into it. I've had other nephews with the same treatment, and it's affected their minds. I have my nephew not talking to me normal anymore. And they are taking our children and they are burying them alive, and I feel so helpless.

We need somebody. Maybe God is listening. We need help. We love our children. They get into trouble just like everybody else's kids, but they get so much punishment. My brother always tells me the wheel that squeaks gets the oil. Well, that's good if you tell somebody your troubles, but if you're an Indian in the court system, don't you make noise because they will come after you, and that's been my experience here in Rapid City.

I pray that God uses you to help us because we need justice. We have a right to be with our families. We have a right to some kind of peace and happiness here without the fear of them taking away our children all the time. I have my grandchildren that suffer from it. A lot of Native Americans that live and they are raising a new family now because they took away their parents, and it's hard to deal with. I want to thank you for coming and I want to thank you for listening. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Next Scott Herron, state your name and where you're from for the record, please.

Scott Herron

MR. HERRON. My name is Scott Herron. I am not originally from here. My mother is Southern Cheyenne, we are from Kansas, but I have lived here the past three years where I spent most of my time in the school system as a teacher's aide. I would like to start off by apologizing. I feel like I am probably too young to be up here voicing my opinion, but I had some things to say and I wouldn't have felt good about myself if I didn't say them, so I apologize for my boldness.

I have heard a lot of good things said here tonight, but two things especially stand out in my mind. I heard Mr. Abourezk say, "Responsibility lies with everyone, the rich and the poor." And I heard Scott German say, "The road to truth is a lonely one." I think it is lonely because it's difficult, but most importantly, it's lonely because it takes courage. I read an old speech once where the speaker said, "English is a funny language. It can make right look like wrong and wrong look like right." So I guess it shouldn't surprise

us that maybe we live in the only country that a people could take over the entire continent and somehow never have done anything wrong. And maybe it shouldn't surprise me that in a state with a room full of people with so many stories like this that I heard an attorney sit up here today and tell you there was no discrimination in the court system.

I am afraid that when we focus so closely on the details of each case, it's like missing the forest for the trees. I am glad to hear people talking about the past tonight. There are a lot of people in this country who would like to forget the past and they would wish Indian people would do so also. Everyone in this room and everyone in this country knows there's inequality, but let's face the truth, most people are unwilling to make the sacrifices necessary to fix it.

As an example, some friends of mine and I got together a drum group when I was here in Central High School and we did so because we were worried about what we saw in the school system, the closing of several Lakota history classes including the Lakota language class. We encountered a lot of barriers. I remember finally a couple students asked if we could sing at the graduation and they wanted to do so to show the people what they had learned and to show their pride and to show honoring to those graduates. And they approached me for it and I went to one faculty member I won't mention, and he told me no and he explained that if the Native students wanted to do something, then the black students would want to do something and the Asian students would want to do something. I wonder where we've gone in this country when that's a bad thing.

I have learned one thing in this life, that if you are walking along and drop something, you can't pick it up if you keep moving forward. We have dropped something special in this country that's very important, but no one seems willing to stop, back up, and pick it up. You don't take everything from a people and then ask with seriousness why they or their descendents have alcoholism problems, why they have the highest suicide rate, why they are distrusting and why they are angry.

So in summary you ask what the solutions are here tonight. I think all of us know what the solutions are. We have to have the courage to say it. It's going to take self-sacrifice from the top to the bottom, and so I wanted to thank you

for the sacrifice of your time and energy to come here. Thank you.

CHAIRPERSON FEINSTEIN. Thank you, Scott.

COMMISSIONER BERRY. Very well done.

CHAIRPERSON FEINSTEIN. Next up, Leo Herman, Lise Balk King, Jean Roach, Faith White Dress, and Cedric Goodhouse? Okay. Leo Herman? Is Leo here? Lise, would you state your name for the record and where you are from, please.

Lise Balk King

MS. BALK KING. My name is Lise Balk King. I live here in Rapid City and we also have a home in Saint Francis on the Rosebud Reservation which is where my husband is from. There is so much to say. It's three minutes and so much to say. Every story that everyone has told, I know probably every one in the room is going, "Yeah, I know one just like that. I know 10 just like that." It's really hard to just sit up here and think, how can I focus and add something new to what's already been said, but I'm going to give it my best shot.

First of all I want to say I came here from the East Coast and I came here with a very different attitude than I have now. I really believed in the system of government that we live under. I still do believe in it, but I have a much less naïve attitude than I do now. I have to say that I really believed in if you see something wrong, you can fix it. And we have a lot of people who come to us, my husband and I, Frank John King III, and ask us for help with different problems dealing with the judicial systems on the reservation, dealing with all different kinds of problems, and the most frustrating thing is so many times, we don't really know what to do to help them. We do the best we can, but it seems like there just aren't enough resources to deal with the problems.

One of the most simple things that could be done would be to put together some kind of a list of organizations or resources that are available to address specific problems. Someone comes to you and has a very specific problem and they need a specific answer, "Where can I go for help?" And we'll do research on the Internet and we will make tons of phone calls, spending lots of money on phone calls and come up almost empty every time. That would be a very specific thing that could be very helpful here, and to make it available through the Internet and through the

tribal colleges, just a list of resources, the people and organizations and different groups that are available to help or groups that are available to do research to find the groups that are available to help. It just seems like it's an empty pit right now when you go out there looking for answers and looking for assistance.

The next thing I wanted to say is I have a bit of a different perspective because I am a non-Indian who came here believing in sort of a liberal, multicultural community which is where I have lived most of my life. And I have come to understand the pressure of living under racism, and I feel like I see it maybe where other people don't who are non-Indian because I have lived without it and now when I go around, I'm treated very differently than I was before because people see me as being part of the Indian community, which I am very proud to be.

But I can give you instance after instance where specific things have happened to show me that I'm treated differently when a non-Indian person here sees me as an Indian or part of the Indian community and I'll just give you one quick example which is, we lived in Winner, South Dakota, which is where my husband grew up, and I had lunch at a cafe there with my boss and we had a meeting there and it was great and I really had a good time, and I was pregnant and it was, like, "Oh, this steak is excellent," you know. And a couple days later I said, "Frank, let's go eat. Let's go have another steak. That was a really good meal." And he said, "I don't want to go there." And I said, "Well, why not?" He said, "You don't want to eat at that cafe." And I said, "Well, come on, let's go." And he said, "All right. You are going to learn the hard way."

And we went over there and instead of being with a group of non-Indians, I was with my husband, and they looked at me and they saw Indian and they looked at my husband, of course, and saw Indian. And we stood there while everyone walked around us and couldn't get seated at a table. And then I, with my attitude, just walked right around them and sat at the open table that was sitting there and sat there and waited and it was like, "Excuse me, can we get a menu? Can we get something to eat here?" And I was pregnant out to here and hungry and getting a little bit upset and agitated, and they completely walked around us and ignored us. They made it very clear with their glances and their attitude that we were not welcome there. I

got so upset that I looked at him and I just couldn't believe it, and he said, "I told you." He said, "I told you we shouldn't have come here, but you had to learn the hard way."

I can tell you an arm's length worth of stories like that that I have experienced since living here. And I just want to say one thing more which is that I called my mother and I would say, "Mom, I can't believe this. I'm just shocked. I can't believe that this kind of situation, this kind of environment still exists here in the United States of America today." And you know what she told me? She said, "Lise, civil rights is not about changing the way that people think. It's about changing the way that they are allowed to behave." And that's what I think we need to do here in South Dakota because we are not going to overnight change the way that people believe or people feel or people think about Indians or non-Indians or vice versa, but we can change the way that they are allowed to behave. That's all I have to say. Thank you very much for your time.

CHAIRPERSON FEINSTEIN. Thank you, Lise. Jean Roach, state your name and where you're from for the record, please.

Jean Roach

MS. ROACH. My name is Jean Roach. I am raised here in Rapid City, originally from the Cheyenne Indian Reservation. I am here to talk about the South Dakota Department of Corrections²⁰ concerning juveniles. My daughter has been in the Department of Corrections for two years now which would be considered a petty theft. The snowball effect that happens is that she was originally charged with first degree burglary and she went to just, you know, get it over with. She wanted to plead guilty. She was sentenced to 30 days in jail and probation. When they gave her 30 days, she backed out and she took her plea back because she didn't feel real comfortable with it. So she went back to court with a court-appointed attorney who had actually researched the case, looked at some other transcripts of other juveniles that were involved. The charges were reduced to what would be a petty theft, a misdemeanor. When she was sentenced for pleading guilty to that, she was given

Department of Corrections versus her pleading guilty to the first degree burglary.

What I don't like about this Department of Corrections is once the juveniles are turned over to the Department of Corrections, the judge, nobody has no access. It's totally up to the department to decide when these kids can come out, and then the snowball effect happens. If they don't behave themselves—with my daughter, they took her to a psychiatrist and he labeled her having an authority disorder, whatever that means. Tried to put her on medication to control her anger or whatever, but I didn't agree with that, okay? When they're in that custody, us parents have no more rights for these kids. This is one of Janklow's programs and the boot camps and group homes and the juvenile prisons.

Right now we have a lot of things going on in Plankington, but one of the policies that the department has with these juveniles is that all the medical costs and child support are charged to the parents. Okay. As indigenous people, we have rights to Indian Health Services, okay? The state does not recognize that. They take them to their state-chartered hospital or wherever they decide, and then we have to pay for this as parents, which I don't think is right and—

MR. POPOVICH. One minute, please. One minute.

MS. ROACH. Okay. Another thing, too, that I'm real concerned about is Social Services comes into our homes to do home studies. I've had a home study done trying to get custody of my grandson. When the state of South Dakota comes to my home, they don't see the same effects. They judge me on their standards, whatever that might be. Each one of my children don't have a room to themselves; I have four children living in a three-bedroom home. You know, to them that's not good.

And another thing that they deny them is access to Native American religion. Anything that they want to do to heal was to go through our own, and I could give you some more background, but they are subjected to the blue church or you don't go at all. Part of this brainwashing technique includes the medications that they put them on, the belittling of them in boot camps which has happened to my daughter. They can't meet their special education needs. They are faced with racist attitudes of the workers. They are restrained four points, their ankles and their hands handcuffed to the beds, put in

²⁰ South Dakota Department of Corrections secretary Jeff Bloomberg's response to statements by Jean Roach is attached as appendix H.

cells for at least a month without knowing what's going on, running five miles a day at the boot camp. My daughter is overweight so she has ankle problems. They didn't do a thing about that until I screamed for about a month to get it, you know, x-rayed because I don't think anyone can make that determination without an x-ray, if it's broke or not.

And I think that this Department of Corrections needs to be investigated. I think that there needs to be investigation how long these Indian kids are staying in there. Their length of stay, the snowball effect. I mean, two years for petty theft is too long for a child to be in prison or within their system. All they are trying to do is institutionalize them. I think they need to respect that these are our children who need to come back to their homes to heal into their community. And they need to investigate the gang laws that they have here against the youth. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Faith, would you like to state your name and where you're from for the record, please.

Faith White Dress

MS. WHITE DRESS. My name is Faith White Dress and I am from the Cheyenne Creek community on the Pine Ridge Reservation. And I am here today and I want to thank you for giving me this opportunity to talk about something that hasn't been addressed by the tribal police, the tribal court. It hasn't been looked into very well, and that's two years ago on October 19, 1997, my oldest daughter was taken to an off-duty police party where confiscated liquor was drank, and my daughter, 17 and a senior in high school, was brutally raped. As a result of this rape, she had reconstructive surgery, and when she was seen in the hospital, she had lost one-third of her blood.

And to this day, nothing has been done to the police. They have been overlooked. The FBI exonerated them before my daughter was even out of the hospital. And we tried everything. We waited for justice. On March 25 I asked the director of the Public Safety then to reinvestigate his officers. His department agreed, him and his chief of police, and they were fired the next day.

In '97 when this happened to my daughter, there was a turnover going on with Public Safety, and I had just moved back in June; I didn't know anything about this. When this hap-

pened to my daughter, she was home for one month, exactly 29 days, before this happened. She had lived with her adopted father and his wife sent her and her sister home unexpectedly. And when this turnover rate was going on, the acting chief of police then of Public Safety who exonerated the officers is on the executive board of tribal council now as executive director. And as executive director he fired the people that were going to reinvestigate the police. Police internal records were destroyed or taken that weekend.

And I don't think that any amount of money—I hear the police are asking for money—Circle Project. I don't think any amount of money will buy a conscience. We need officers that are good. We have good people on our reservation that can make good officers. We need more female investigators, more female officers. And I don't want to hear of these things ever happening again to any of our young children, any young woman because we're the ones that take care of families, we make homes, and we are responsible for the next generation. And I want to thank you for this time.

CHAIRPERSON FEINSTEIN. Thank you. Cedric, do you want to state your name and where you're from for the record, please.

Cedric Goodhouse

MR. GOODHOUSE. My name is Cedric Goodhouse and I'm from the Standing Rock Reservation. I wanted to first read a couple of statements that have been made by a couple of federal judges, and my comments are going to be in relationship to the federal sentencing guidelines. And then I want to give you a couple specifics in relationship to just one case and it involves my son.

"Because many convictions for reservation crimes carry harsher penalties than the same crimes committed elsewhere, a disproportionate share of Indians are in prison. Does that make any sense that these Indians are subject to greater penalties than the rest of us?" That's one of the judge's statements.

The second judge's, "The sentencing guidelines leave no discretion or precious little discretion to the courts. I am adamantly against them. I have always been against them, but they are here, and until Congress in their infinite wisdom changes them, they will remain in, I guess." That second statement was said at my son's sen-

tencing, and when he said that sentence, when he said that statement prior to sentencing my son, he also sentenced the family because we sat there and looked at him, and although he didn't want to apply that, he went ahead and did it anyway.

I don't condone the crime my son was convicted of, but the jury that convicted him shared nothing in common with my son. They were all white and if they committed a crime, a similar crime, they would be subject to lesser penalties in the state courts. To back that up some, the presentence investigator made contact with my wife and I, and they were going to come to the reservation and visit us and visit the people where my son grew up. My son was never in jail in his entire life and never had a record, and because he could not find anything wrong in his background, he never came to Standing Rock. So he was looking for things that were wrong and not looking for anything that was good, and that's what's wrong with those guidelines. They only measure—

MR. POPOVICH. One minute.

MR. GOODHOUSE.—negative things. The other thing is that during the sentencing, that the presentence investigator wanted another 10 years because they found my son guilty. The judge said no because my son was entitled to a defense, and he felt that that was overstepping the boundaries. But they had to aggressively pursue this and try their best to make it look as bad as possible just so that could give credibility to the federal sentencing guidelines. And I hope that in your report that you bring this out because there is a lot of people here and elsewhere that are serving crimes and serving time for crimes that they shouldn't be. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Next group is Jessie Taken Alive, Pat Bordeaux, Robert Demery, Harvey White Woman, and Sheryl Jean Lu. Are there only three in this group? Then I would also have LaBrea Beautiful Bald Eagle and Mary Wright. Are those other two here? Okay. Is Jessie here? Jessie has already spoken? Oh yeah, Jessie spoke earlier today. Okay.

MR. DEMERY. That was Jay.

CHAIRPERSON FEINSTEIN. Jessie "Jay" Taken Alive or—

MR. DEMERY. No, Jay, just J-a-y. He's got a brother named Jessie so don't get—

CHAIRPERSON FEINSTEIN. Okay. Well, they are both listed on our chart, but anyway, he's not here anyway. Okay. Pat Bordeaux? No? Robert?

MR. DEMERY. Demery.

CHAIRPERSON FEINSTEIN. Okay. State your name and where you're from for the record, please.

Robert Demery

MR. DEMERY. My name is Robert Demery. I'm an enrolled member of the Standing Rock Lakota Nation. I live here in Rapid City. I want to talk a little bit about the lack of responsibility that comes down from the top people in state government. I am not going to mention any names, but it is from the Governor's office. There is no guidance, there is no participation between Indians and the present administration. We did have a Governor who started the reconciliation program at the urging of the editor of the *Lakota Times* at that time and he was doing a wonderful job, I think anyway, until a tragic plane accident killed him, and then the Lieutenant Governor took over and followed up on it a little bit.

And then—just getting a little ahead of myself, but this same office—people don't appoint people, Indians to state boards and commissions. However, the riot down at the penitentiary in, I think, 1971 investigated by the ACLU recommended that there should be Indian representation on the Board of Charities and Corrections. This is a board that oversaw the charitable and correctional facilities in the state. And so the Governor at that time appointed me to that position and I served until he went out of office, and the next Governor came in, took me off of that board. He was asked why since the ACLU had recommended that there be an Indian representative on that commission. The Governor's statement was that it was not mandated. Therefore, I was replaced by a non-Indian.

Time goes by and another Governor comes along, the one that started the reconciliation. Because of an illness of a member of the Board of Pardons and Paroles who was an Indian who became ill, and so the Governor appointed me to fill his place. And as I say, he met this tragic accident, and lo and behold, here comes the same office-holder that took me off of the Board of Charities and Corrections. He's back in office again and he takes me off of this board and appoints a non-Indian to that board.

So there's never been an Indian on the Board of Regents. There's never been an Indian on the Finance Board, the Board of Agriculture, or any other board in this state. That's the way it is. Now if that isn't some racism involved in there, taking an Indian off of two boards and replacing him by non-Indians, then my name isn't what it is.

The second thing I want to talk about a little bit is that a statement was made here about American Indians serving in the military in all the wars of this century. American Indians served in the military of all wars since the Revolution. Even in the Civil War. Not being prejudicial people some served in the North and some served in the South. They served in the Spanish American War, and the thousands that served in World War I were not even citizens of this country. I am glad that I served in World War II because I was able to get a college education through the GI bill. I was able to get a decent job, raise my family and so on and so forth decently.

But during that time, I was dedicated and worked real hard for the American Legion, and I was urged by some people to run for commander of that organization. Someone else was running, and so we competed for the title of commander of the American Legion of the state of South Dakota. I won that race. I am the only American Indian that's ever served as commander of the American Legion in this state.

That's when the bird fell in the stuff that Dr. Bordeaux was talking about. I was called a goddamn Indian. One guy made the statement that, "It looks like we'll have to put up with a drunken Indian for a year," and I don't even drink. Another guy got up and said, "You know, I don't like Indians in general and Bob Demery in particular."

And so it came along that we decided that if they didn't like us, we would form our own organization. I am now the commander of the American Indian Veteran's Association. We are chartered by the state of South Dakota, we have a constitution, we have bylaws and we at the present time have over 200 American Indians that belong to our organization, and we are going to get bigger and people are going to find out about the American Indian veterans. Thank you.

CHAIRPERSON FEINSTEIN. Thank you.

MR. DEMERY. Oh, the only other thing I would say is it's going to be interesting to find

out what the translation is going to be that comes out of the court reporter's notes on some of the language that was spoken here.

CHAIRPERSON FEINSTEIN. We're looking forward to that, too.

MR. DEMERY. If anything can change, everything that goes on in this country among the minority people, specifically the Indian people, it's one word and that's education. Education will pull us by the bootstraps out of the doldrums that we are in. Education is going to do it, not money. Thank you.

CHAIRPERSON FEINSTEIN. Harvey, do you want to state your name and where you're from for the record, please.

Harvey White Woman

MR. WHITE WOMAN. My name is Harvey White Woman and I'm from Kyle, South Dakota. I am an Oglala Lakota tribal member. First of all, I would like to thank you for being here and listening to the people all day that have come before you. I just want to say a few things, and for me, I am not here for myself. I am here for my little niece; she's 18 months old. I'm here for my nephew who is 4 years old, Dallas and Allissa. I am here for my huncasa [phonetic], my adopted son Casius who is 3 years old, and I am here also for the children that you seen running around and crying around back there. I am here for them because I don't want these children, my kids, my nephews, my nieces, and my adopted kid, my adopted son, to grow up in a place that is very prejudicial, and that's what's happening here in the state of South Dakota.

I've seen and I, for one, have experienced prejudice here in Rapid City, and I will get over it. I'm adult enough to say that, you know, I have to deal with it because there are ignorant people out there that don't know what's right from wrong sometimes and don't see nothing for what the person has on the inside and not what's on the outside, on the color.

And for myself, children, in Lakota what we call them are wakinja [phonetic], sacred ones, and for us, that's very sacred, they are sacred. And we do not want them to grow up in an environment that is going to be holding them back, holding them down because of the color of their skin, because of their race. And I for one am going to make sure and make that stand to make sure that never happens. But again as, in your jobs, it's going to be very tough. I don't expect

you to wave a magic wand over the state of South Dakota and see everything change overnight because it's not going to happen, but you will start in one of the areas that have affected all of us as individuals, as Native people here in the state of South Dakota and that's the justice area.

And for you being here, with this Commission being here, it is putting the state of South Dakota on call that we are no longer going to take this. We no longer want to be prejudiced against, and those are the things that we have to realize and understand, that I and the Native people in the state of South Dakota will no longer tolerate it. We cannot. The state of South Dakota has to realize that we are not going to go away and we have to realize that the people of the state of South Dakota are not going to go away, and so there has to be that certain connection, but unfortunately we are not there yet. And unfortunately also, we do see some of the civil rights violations done off the reservation. They are done also on the reservation, and those are the things that I myself as a tribal member have to address eventually down the road.

And in my closing comments, I wanted to read a piece that I have carried in my billfold for years, since 1995, and it was written by my little niece, Leah Dubray, and I don't think she minds me using her name. She just graduated out of the eighth grade at that time, and she wrote this piece and I kept it to remind myself at that time, as I was a tribal council person, to know why I was in that position, and I think that's something that you also as Commissioners should look at also and take heed.

It's just a small piece and I'll go ahead and read it for the record. "Hello. My name is Leah Dubray. I am a member of the Oglala Lakota Nation. I am an eighth grader and will graduate this year. I wish to say something. As a child growing up here, I have heard many good things, things good and bad, but most of all, I would like to focus on the good, the positive side. We as children have a vision, too. The vision is how good of a future will you as adults build for us children and youth? We the children and youth deserve a better future, so I suggest each of us must learn how to work together, overlook each other's faults, stop criticizing each other, and begin that journey of togetherness for our future. I will do my part to help our nation become healthier both mentally and physically, but I

cannot do it alone. I need your help and involvement to make a safer and better place to grow up. It's not only for us, it's for those yet unborn, your future children, grandchildren, and relatives. With respect, thank you. Leah Dubray."

And that's something I think we all need to realize, that we are all here together and none of us are ever going to go away, so we need to learn to work together. And again, don't do it for me, but do it for these children back here, do it for my nephews and my nieces and my tacocias [phonetic], my grandchildren and those yet to come up. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. Okay. And does George Bartlett want to come up and sit there so he can be ready to go, please. Okay. And then, Sheryl, do you want to state your name and where you're from for the record, please.

Sheryl Lu

MS. LU. Yes. My name is Sheryl Lu and I am from Rapid City, South Dakota. I want to give you a few examples of how our children have to live their lives here in Rapid City. They are discriminated against throughout school and just—the police department, it doesn't matter where they are at, work, but here's a few examples. Being stopped by law enforcement just so the law enforcement officer can say to them, "How can you afford this car? I work hard and I don't even have a dime in my pocket. Why do you have that car?" Another example, the young people can't listen to Lakota music because it is called disturbing the peace. Another example is law enforcement lying and saying, "Who will the judge believe?" That I have a problem with right now. Also they have broken—you know, breaking the door saying they thought it was a house party when we don't drink. We don't allow drugs or anything at our house. That's how our parents raised us. That's how I'm raising my children, but they still did that to me. I was part of a Lakota, Dakota, Nakota General Council and I wasn't the only person they did that to.

Of course, excessive force even on intoxicated people when they are harmless. I personally am afraid to call the police because it's like playing Russian roulette; you don't know who you're going to get, who's going to hurt you, who's going to hurt one of your children and start grabbing

at them. You don't know what's going to happen, so I don't like to call the police for any reason.

These actions and numerous others are steps taken toward genocide. Our people are stripped of their civil rights, self esteem, identity, culture, and language. Our children grow up knowing that civil rights protection does not work for them here. Some people say, "Let the past stay in the past. Think forgiveness," and I have and my family, we have forgiven a lot and prayed, but the past is our history. It is taught in school every day and at least one version, just one version of it because we have our own version of our history. So we, too, cannot forget the past and we can learn from it. We can teach about it, but it cannot and should not be forgotten. And that's all I have to say. Thank you.

CHAIRPERSON FEINSTEIN. Thank you. George Bartlett, state your name and where you're from for the record, please.

George Bartlett

MR. BARTLETT. My name is George A. Bartlett of Rapid City, South Dakota, and I have four documents, but I can't use the names on this, so I'll just say a social service organization at 815 Kansas City Street, the Division of Human Rights, Veterans Service Organization, the police department, and the sheriff's department.

And I guess for many years, I never did know what civil rights was, but I studied up on it and it's when a person is walking from the bar home by the Rapid Creek, that he can walk safely through, that they won't find him dead the next morning. And then they all say—they charge somebody with a violation of civil rights and the Bill of Rights. And I would like to turn these in to this Commission. And there is no democracy in this town and there is no equality. That is my opinion, okay. [Speaking in language other than English.] Thank you.

Discussion

CHAIRPERSON FEINSTEIN. Thank you. First, one reminder to the people that had questions or have some personal information, if you give it to John Dulles or tell Mr. Dulles, get your address to him, your number, and they are over there in the corner. And that concludes the speakers that we had. I would like Dr. Berry to sum up, please.

COMMISSIONER BERRY. Oh, I'm not going to try to sum up everything that happened today. I just wanted to say that it has been a long day. It's been very useful to us. I want to thank the State Advisory Committee members for putting this on. Thank you especially, Marc, and thank John Foster Dulles and Mel Jenkins and all the staff that is here on behalf of the Commissioners. And we have heard some very stirring testimony. We have heard a number of allegations about such matters as police brutality which, if even half of them are true, it's chilling. We have heard some information here and yesterday about the racial divide that exists in South Dakota which is chilling, but we hope and we expect that we will get some recommendations from you that we can follow up on in addition to assessing your 1977 recommendations. When I say "your," I don't mean you around the state, but the State Advisory Committee recommendations and in terms of how many of those were implemented or how much change has taken place there. And then we will be able to respond and get back to the people here with our response and do that in the timeframe that we have already asserted we will meet.

And so I just want to thank everybody and thank everybody for coming. Some of you came from very long distances and I appreciate that, although I've been told that to go anywhere in South Dakota, it's a very long distance to go almost anywhere at all. And thank you very much for having us here.

CHAIRPERSON FEINSTEIN. I will remind everybody, too, that the record is going to remain open for additional statements through December 20, two weeks from today, and you would have to get those statements to the regional office in Denver. Again, if you need the address, see Mr. Dulles at the end. I've been on this State Advisory Committee for 14 to 15 years, the last two as Chairman, and I want to personally thank Mr. Dulles for all his efforts he has done in the four years he has been our regional director and the extraordinary effort he did to help put together this program, as well as others, but I want to especially extend that to him. Thank you, and I call this meeting adjourned.

[The proceedings were adjourned at 11:00 p.m.]

Appendix A



UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

SAMPLE

March 21, 2000

Director
YMCA, Rapid City
815 Kansas City St.
Rapid City, SD 57701-2605

Dear Sir:

Pursuant to the rules and regulations governing State Advisory Committees to the U.S. Commission on Civil Rights, "if a [draft publication of a State Advisory Committee tends to defame, degrade or incriminate any persons, then the draft of the publication shall be delivered to such person thirty days before the publication shall be made public in order that such person may make a timely answer to the publication." Each person so defamed, degraded or incriminated in a Commission draft publication may file any answer to the report not later than twenty days after receiving said draft publication. Please review the enclosed pages of the South Dakota Advisory Committee's transcript of a community forum held December 6, 1999, in Rapid City, South Dakota. You or your organization are identified in the transcript that will be published in statements made by witnesses that may tend to defame, degrade or incriminate.

We ask that you provide your timely response. However, upon showing good cause an extension may be granted to you. Your response shall plainly and concisely state the facts and law constituting your reply to the allegations contained in the transcript. Your answer shall be published as an appendix to the transcript to the extent that your response is relevant and provided that it does not tend to defame, degrade or incriminate. Please send your reply to:

U.S. Commission on Civil Rights
Regional Programs Coordination Unit
Washington, DC 20425

Thank you for your cooperation in this undertaking. If you have any questions regarding this matter, please feel free to contact me at 202-376-7700. After March 31, 2000, please contact Dawn Sweet, at the same number.

Sincerely,

A handwritten signature in black ink that reads "Carol-Lee Hurley".

CAROL-LEE HURLEY
Chief, Regional Programs Coordination Unit

Enclosure

Letters sent to the following:

Mr. Paul Schueth, Chief
Winner Police Department
217 East Third St.
Winner, SD 57580

Mr. Mark Vukelich
Supervisory Senior Resident Agent
Federal Bureau of Investigation
909 St. Joseph St., Suite 400
Rapid City, SD 57701

Dan Todd, Esq.
State's Attorney
P.O. Box 9
Mobridge, SD 57601

Kerry Cameron, Esq.
State's Attorney
610 Veterans Avenue
Sisseton, SD 57262

Mr. William Brewer, Director
Department of Public Safety
Oglala Sioux Tribe
P.O. Box 300
Pine Ridge, SD 57770

Mr. Dan Holloway
Sheriff
Pennington County Sheriff's Department
300 Kansas City St.
Rapid City, SD 57701

Ms. Peggy Redday
Route 3, Box 138
Sisseton, SD 57262

The Honorable William Janklow
Governor
State Capitol
500 East Capitol Ave.
Pierre, SD 57501-5070

Director
YMCA, Rapid City
815 Kansas City St.
Rapid City, SD 57701-2605

Honorable Larry H. Lovrein
Judge, Fifth Judicial Circuit Court
P.O. Box 1087
Aberdeen, SD 57402-1087

The Honorable Orin G. Hatch
United States Senate
SR 131, Russell Senate Office Bldg.
Washington, DC 20410-4402

Mr. Jeff Bloomberg, Secretary
South Dakota Department of Corrections
3200 East Highway 34, Suite 8
Pierre, SD 57501-5070

The Honorable Tom Daschle
United States Senate
SH-509, Hart Senate Office Building
Washington, DC 20510-4103

The Honorable Tim Johnson
United States Senate
SH-234, Hart Senate Office Building
Washington, DC 20510-4104

The Honorable John R. Thune
United States House of Representatives
1005 Longworth House Office Building
Washington, DC 20515-4101

Mr. John VanderHoek
Jail Administrator
Brown County Jail
22 SE Court St.
Aberdeen, SD 57401

Mr. William Johnson, Chief
Mobridge Police Department
205 East Second
Mobridge, SD 57601

Sheriff Russell Waterbury
Bennett County Sheriff's Department
Courthouse
Martin, SD 57551

Mr. Terry Robbins
Sheriff, Sheridan County
Box 510
Rushville, NE 69360

The Honorable Louis J. Freeh
Director, Federal Bureau of Investigation
FBI Bldg., 935 Pennsylvania Ave., N.W.
Washington, DC 20535-0001

Appendix B



Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

818 St. Joe Street
Mailing Address P.O. Box 2670
Rapid City, South Dakota 57708-2670
605-343-1040
Telecopier 605-343-1503
www.bangsmccullen.com

Writer's e-mail address: vbowen@bangsmccullen.com

April 3, 2000

United States Commission on Civil Rights
Office of Staff Director
Carol-Lee Hurley
Chief, Regional Programs Coordination Unit
Washington, DC 20425

Re: South Dakota State Advisory Committee Transcript

Dear Ms. Hurley:

Your letter of March 21, 2000, was referred to me for a response by my client, the Rapid City YMCA. I represented the YMCA in the lawsuit which is referenced in the transcript you enclosed with your letter.

Here are the facts. In April of 1996, a member of the Loneman School girls basketball team filed an EEOC charge of race and sex discrimination regarding the allegations detailed in the transcript. The South Dakota Division of Human Rights investigated thoroughly and found no probable cause to believe that the Rapid City YMCA discriminated against the complainant in any way. Although appeal of this administrative finding was available, the determination was not appealed.

Subsequently, a civil complaint was filed against the YMCA in United States District Court for the District of South Dakota, Western Division, on behalf of most of the members of the Loneman School girls basketball team. The complaint alleged claims of race, sex, and age discrimination as well as several state-law based claims. After nearly a year, the District Court dismissed the lawsuit for failure to provide any proof at all of race, sex, or age discrimination. That dismissal was appealed to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit affirmed the District Court's dismissal, finding that no evidence of discrimination was produced. Plaintiffs filed petitions for rehearing before the same Eighth Circuit panel and for rehearing before the Eighth Circuit court as a whole. Both petitions were denied.

Joseph M. Butler
Thomas H. Foye
Thomas E. Simmons
Charles L. Riter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger*
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Bowen
John H. Reforath
Terry G. Westerosend
Steven R. Nolan
Gregory J. Erlandson
Kyle J. Sipprell
Rachel V. Jepsen

George A. Bangs (1843-1985)
W.A. McCullen (1843-1987)

*Also admitted in Minnesota,
Nebraska and North Dakota

United States Commission on Civil Rights
Ms. Carol-Lee Hurley
April 3, 2000
Page 2

The YMCA has always denied the allegations that any "strip search" was conducted involving the Loneman girls. The YMCA's position was upheld by an administrative agency and two separate courts. Furthermore, the subsequent "confrontation" following the tournament consisted of the parents of the Loneman girls demanding that the YMCA appear at a public healing ceremony that the parents and the Loneman School had planned. The YMCA did appear in a conciliatory posture, attempting to address the concerns of the Loneman girls. It was the YMCA's demanded attendance at the healing ceremony that forms the basis for the statement that the YMCA "confronted the girls and their parents causing them further great shame and embarrassment." This allegation was also part of the federal lawsuit and was also found to be baseless.

If you have any questions about this matter, or if you would like documentation of any of the proceedings referenced above, please feel free to contact me.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Veronica L. Bowen

vlb:ke
cc: Client

Appendix C

SHERIDAN COUNTY SHERIFF'S OFFICE

P.O. BOX 510
RUSHVILLE, NE 69360-0510
Telephone: 308-327-2161

May 8, 2000

U.S. Commission on Civil Rights
Regional Programs Coordination Unit
ATTENTION: Carol-Lee Hurley
Chief, Regional Programs Coordination Unit
Washington, DC 20425

Dear Ms. Hurley:

This responds to your original letter of March 21, 2000 which was not received here until April 19, 2000. I reviewed your letters with the Office of the Sheridan County Attorney. We find it unusual that the U.S. Commission on Civil Rights would publish something it knows contains defaming, degrading and incriminating statements and material when it also knows that no investigation of the same has been made. I am sure all U.S. citizens receiving letters from your organization are equally astounded that in this country such a publication of personally damaging material could find its way into print. It is even more stunning to know that our government sponsors this kind of activity.

Even so, we will try to respond to the virtually uncorroborated, unsubstantiated statements of one man made to the South Dakota Advisory Committee to the U.S. Commission on Civil Rights. We received five pages of the transcript of ramblings by Tom Poor Bear. From that we reason that no similar statements were made by any other person allowed to speak in public. Your warning letter is correct. Tom Poor Bear has certainly defamed many people associated with law enforcement in Sheridan County and the State of Nebraska. I assume the Advisory Committee knew that Ronnie Hard Hart and Wally Black Elk were found dead in South Dakota. I was informed that they had been found in South Dakota on the day of their discovery. Coincidentally, I happened to be in Whiteclay at that time. No one knew who the deceased persons were when they were first discovered, but I immediately began an investigation in Whiteclay, talking to everyone that we knew on the street and in businesses in Whiteclay. I gave the report of our contacts and verbal statements to the OST Public Safety Officers and the FBI before either asked for the same.

OST Public Safety and the Sheridan County Sheriff's Office have had a good, close relationship for many years through changes of administration in both Sheridan County and the Oglala Sioux Tribe. I believe that the officers working with Sheridan County officials will tell your investigators that there has been whole-hearted cooperation between the two agencies for decades.

I understand that the Hard Heart and Black Elk deaths are under investigation by the FBI and other agencies in South Dakota. Comments by Poor Bear or anyone about what may or may not have happened to them are pure speculation at this point. The public reaction to inflammatory statements made by Poor Bear contributed to the contamination of the crime scene. Rumors of all kinds have traveled through all of our border communities, allegedly involving law enforcement in Nebraska, in South Dakota, Black Elk family members, Poor Bear himself and others as having been involved in some way with the fate of the two victims. What Poor Bear said before your advisory committee has no basis in fact. Apparently anyone could have appeared there and made allegations about other persons without any fear of contradiction or interrogation from your committee.

On page 243, lines 1 through 8, Poor Bear refers to snipers, dogs and tear gas at Whiteclay. I am sure your record must show that no shots were fired, no dogs were released, no tear gas used in the face of gross provocation by demonstrators during the Tom Poor Bear walks from South Dakota into Nebraska. The only violence came from Poor Bear demonstrators who broke into and burned the grocery store and committed other criminal acts. Two persons have been convicted for that activity.

We note that Poor Bear, page 243, line 16-18, professes personal knowledge about the manner in which Hard Hart and Black Elk were murdered. If he has that information he should immediately give it to the FBI and other investigating agencies.

The most harmful allegations, however, relate to Poor Bear's claims of deaths by "our people" apparently in Nebraska. His references first to Raymond Yellow Thunder are wholly inappropriate. See page 244, line 3-5 where it says Yellow Thunder was escorted "out of there by a deputy sheriff of Sheridan County." That is wholly false. That case was prosecuted by an existing member of the Sheridan County Attorney's Office. The record confirms no law enforcement officer was involved in helping Yellow Thunder from the Legion Club. Incidentally, five people were prosecuted and convicted for that crime. They were charged, arrested and in custody before anyone in the public was aware of the incident or the facts relating thereto.

The transcript at page 244, lines 6-9, refer to a number of people who apparently Tom Poor Bear claims had died in Sheridan County while in custody of the Sheriff's Office. We feel compelled to respond to the specific names mentioned.

As noted above there has been no scintilla of evidence to tell the public, including this office, how and by whom Hard Heart and Black Elk were killed. We find no record of Gordie Bordeaux or Francis Thunder Hawk. We believe they may have died in Pine Ridge, South Dakota.

John Means died on April 12, 1997. He was found in Whiteclay. There were no visible signs of any injury. An autopsy was performed which showed no evidence of external violence. It did reveal evidence of severe alcohol abuse with a blood alcohol content of .266 and urinary alcohol of .350. The pathologist concluded alcohol and exposure were the likely causes of death. Mr. Means was not in the custody of any law enforcement agency when he died.

Donald Bordeaux died June 19, 1994. Again an autopsy was conducted. Unfortunately, it did not reveal any specific cause of death. Mr. Bordeaux was found in Whiteclay with a .237 blood alcohol content. The autopsy did show right scalp bruise and a fracture of tenth left rib. He was not in custody of any law enforcement agency at the time of his death. He was found dead on the scene. There was no evidence available to show any attack by any person. No witnesses were found to show any involvement in the death of Mr. Bordeaux by a third party.

Thomas Twiss, Sr. died July 3, 1995 in the Pine Ridge Hospital. An autopsy revealed a fractured skull, an injury found by the pathologist to be consistent with that of a fall. The back of his head revealed a horizontal surface laceration not through the thickness of his scalp. Mr. Twiss died about two days after his injury. He fell and apparently struck the back of his head on the siding of a building in Whiteclay. He did have a cut lip and mouth that was observed by witnesses the day before he was found unconscious in Whiteclay.

Martin Young Bull Bear died September 30, 1995. He was extremely intoxicated and fell on the street. He was taken to jail. Inmates reported that he fell in his cell. He sustained a subdural hemorrhage. His death was investigated by the FBI, the Nebraska State Patrol and Civil Rights Division of the Justice Department. A Grand Jury was empanelled and found that no crime had been committed, and that Mr. Bull Bear had died as a result of his fall in the street.

Carol-Lee Hurley
May 8, 2000
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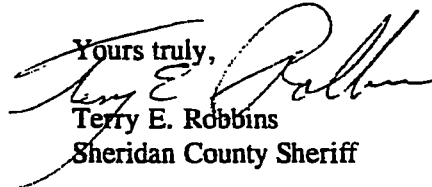
Richard Lee Big Crow was laying on the highway north of Rushville, Nebraska when run over by Leon W. Long Soldier who was later arrested and convicted for motor vehicle homicide (November 1, 1999).

The death of Dennis M. Cross was investigated by the Nebraska State Highway Patrol and the Sheridan County Sheriff's Office. He was shot by a Gordon, Nebraska Police Officer on February 4, 1992 in the early morning hours after pointing a stolen rifle at the Officer. The incident was investigated by the Grand Jury which returned no bill, finding the Officer's actions to have been justified.

Please note that in the cases of the Grand Juries, Native Americans were members and participated in the decisions. In many of the cases alcohol was certainly a contributing factor.

Our office, and law enforcement in general in Sheridan County, Nebraska has probably had more scrutiny from State and Federal authorities than any comparable law enforcement agency on either side of the border. We believe that our record and conduct, having surveyed such scrutiny without one finding of negligence, ill will or bad conduct, would match the results for any agency in South Dakota or Nebraska.

Tom Poor Bear has little credibility in his own country. You ask us to reply to the "allegations contained in the transcript." The transcript you provided us, however, contains no specifics of any kind. On the contrary they are nothing more than calculated, defaming, unsubstantiated demagoguery which any public or private agency should be ashamed to publish, especially when you have no evidence or corroboration which would lend any credence to the things said.

Yours truly,

Terry E. Robbins
Sheridan County Sheriff

Appendix D



LARRY H. LOVRIEN
Circuit Court Judge

101 SE 1st Ave., PO Box 1087, Aberdeen, SD 57402-1087
Phone # 605-626-2450 • Fax # 605-626-2491

JEANNE HAUG, RPR
Court Reporter

April 14, 2000

Dawn Sweet
U.S. Commission on Civil Rights
Regional Programs Coordination Unit
Washington, DC 20425

Re: State v Seaboy, 98-312
Comments of Mr. David Seaboy on 12-6-99

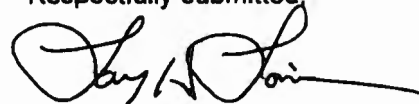
Because I do not think it would be proper for the Court to publicly comment on the sentence imposed in any case, including the above entitled matter, I will respectfully decline to do so. However I will state that the sentence in this case was:

1. was within the maximum penalty provided by law,
2. was within the sound discretion of the sentencing court,
3. was based solely on the facts of the case including a detailed pre-sentence investigation and a lengthy sentencing hearing,
4. was consistent with other sentences currently being imposed in other parts of South Dakota for similar offenses involving the taking of a human life as the result of drunk driving,
5. was not the product of politics, race or emotion.

The defendant, who was represented by counsel, could have appealed the sentence had she thought it was unfair or inappropriate. She did not do so. The transcript of the sentencing hearing is a public record and is on file with the Roberts County Clerk of Court, Sisseton, SD.

Since the Commission has heard from the perpetrator's family concerning this matter, I have referred your inquiry to the attorney for the victim's family so that he might also share with you the family's view of the appropriateness of the sentence in light of the facts.

Respectfully submitted



Larry H. Lovrien
Circuit Judge

Appendix E



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

May 25, 2000

Ms. Mary Frances Berry
Chairperson
U.S. Commission on Civil Rights
624 Ninth Street, N.W.
Washington, D.C. 20425

Dear Madam Chairperson:

This letter is meant as a response to the recently issued report of the South Dakota Advisory Committee, U.S. Civil Rights Commission. My letter points out what I believe are flaws in the report, but also seeks to provide you with information concerning what the Federal Bureau of Investigation (FBI) has done and intends to do with regard to the conclusions and recommendations of the report.

A significant amount of the report criticizes the FBI on a variety of issues, but the specifics to back up the criticisms are largely lacking. The report, for instance, only mentions two specific FBI cases and a third case for which the FBI provided profiling assistance to a local police department, despite the length of the criticism of the FBI. The report also appears unbalanced in that it is largely bereft of information concerning the many improvements which the Department of Justice and the FBI have made in Indian country law enforcement in recent years. These factors tend to lessen the credibility of the report.

The report also describes what it calls a lack of confidence in the FBI. It does not mention, however, that frequently tribal members want the FBI to be involved and have

Ms. Mary Frances Berry

more confidence in the FBI than in other investigative agencies. The primary purpose of a protest at Pine Ridge in January 2000, for instance, was to seek an FBI investigation of a tribal officer for mismanaging tribal funds. The Pine Ridge Tribal Council also recently retroceded its 638 page contract with the Bureau of Indian Affairs (BIA) for Criminal Investigators. This left the FBI with the function of providing all criminal investigative functions at Pine Ridge for over a week. These actions bespeak a certain degree of confidence in the FBI on the part of the citizenry at Pine Ridge.

The report is insensitive to the dedication and commitment of the numerous FBI staff in Indian country. These agents have helped many victims in Indian country, particularly child abuse victims, to have a better life by putting serious offenders in jail. If the Advisory Committee had heard testimony from some of these victims, perhaps the report might also have included a balanced description of the good things which the FBI does every day in Indian country.

In addition, the report calls for a federal task force with subpoena power to address law enforcement issues affecting Native Americans. The report contains no mention, however, of the Indian Country Law Enforcement Review prepared by the Office of the Associate Attorney General in December 1999. The Associate Attorney General has formed a committee to implement the recommendations of the 1999 Indian Country Law Enforcement Review. As this committee's function is duplicative of the task force recommended by the report, there is no need for the task force.

Despite the above observations about the report, the FBI intends to take the report's recommendations seriously. The following are some things the FBI has done in the recent past and plans to do in order to address issues raised in the report:

Keeping victims, witnesses and their families informed of the criminal process and the progress of cases is a function most effectively handled by full-time Victim-Witness Specialists (VWS). The FBI asked for congressional funding for fiscal year (FY) 2000 to employ 31 VWSs in Indian country, a substantial number of whom would have gone to South Dakota. This funding was not approved, however. The FBI has again asked to fund these 31 VWSs in its FY 2001 budget request and will continue to do so until it has adequate personnel to meet the community outreach and victim witness needs of Indian country.

Ms. Mary Frances Berry

Separate from this funding, the FBI's Rapid City, South Dakota, Resident Agency (RA) hired a VWS in April 2000 who will primarily work on the Pine Ridge Indian Reservation. The FBI in South Dakota now has two VWSS, one in Rapid City and one in Pierre, both of whom will primarily provide victim-witness services in Indian country. These services include keeping victims and witnesses informed of trial proceedings, transporting victims and witnesses to court, and community outreach. With regard specifically to community outreach in Indian country in South Dakota, the recently hired VWS in Rapid City is exploring putting in a toll-free line so that Pine Ridge residents can telephone the FBI without cost to themselves. The same VWS is also drafting a request for FBI Headquarters to fund anti-alcoholism advertisements for a year in a Pine Ridge newspaper.

On the issue of recruiting of Native Americans into the FBI, the FBI this year established two regional Native American recruiting positions. As a result, the FBI now has two Native American FBI agents whose only job is to recruit fellow Native Americans into the FBI. FBI Headquarters is also stressing the need to recruit Native Americans into the FBI to all of its Applicant Coordinators as well as agents who have regular contacts with Native American communities.

With regard to unsolved homicides, the FBI still has received no information which verifies the allegations of numerous unsolved Pine Ridge homicides, which significantly vary in number depending on the forum and speaker. FBI Headquarters plans to direct field offices covering the Indian reservations on which the FBI has primary jurisdiction to contact appropriate tribal authorities for information on all suspicious deaths during the last five years. A review will be made of cases not investigated by the FBI to determine if any additional investigations should be opened. In addition, the FBI has directed the field to conduct a fresh review with logical investigative follow-up of 19 Indian country "cold case" homicides throughout the United States. The FBI's Laboratory Division will be enlisted to determine if there is any new technology which can be applied to forensic evidence in these older cases. Profilers in the FBI's National Center for the Analysis of Violent Crime at Quantico, Virginia, will also be used to assist the FBI field offices to develop investigative strategies for these older cases.

In 1999, the FBI's Criminal Investigative and Laboratory Divisions initiated the Indian Country Evidence Program in order to significantly improve FBI Indian country crime scene processing for homicides, serious assaults and other

Ms. Mary Frances Berry

Indian country violations involving forensic evidence. In the past year, the Indian Country Evidence Program has provided Indian country agents with state-of-the-art equipment and training for solving homicides. The FBI will continue to provide additional equipment and specialized training to agents in Indian country in order to ensure that Indian country homicides are adequately investigated.

Another part of the Indian Country Evidence Program is an effort to improve the turnaround time for examination of forensic evidence in Indian country cases in order to more effectively solve homicides and other cases. The FBI has asked Congress in its FY 2001 budget request for approximately \$1.4 million to contract accredited state and local laboratories to process Indian country forensic evidence from South Dakota and the other primary Indian country states. The FBI Laboratory also recently established a Laboratory Task Force of examiners who would give first priority to FBI Indian country cases.

The FBI has also improved Indian country law enforcement in Indian country in recent years by training hundreds of tribal, BIA and FBI investigators since 1997 in fields pertinent to Indian country. The FBI will continue to provide training to investigators in Indian country in such areas as Crimes Against Children, Basic Death Investigation, Advanced Death Investigations, Basic Indian Country Investigations and other schools. These schools, as they have in the past, will include cultural awareness training.

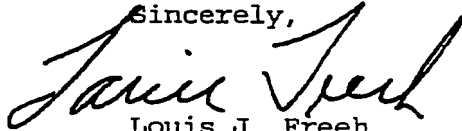
The FBI will also continue to promote Safe Trails Task Forces (STTFs) throughout Indian country when doing so improves the ability of tribal, BIA and FBI agents to work well together. To date, the FBI has established 11 STTFs throughout Indian country including the Northern Plains Safe Trails Task Force (NPSTTF) in South Dakota. The NPSTTF includes investigators from the FBI; the Pierre, South Dakota, Police Department; the South Dakota Division of Criminal Investigation; the Rosebud Sioux Tribe Police Department; the Oglala Lakota Nation Department of Public Safety; Cheyenne River Sioux Tribe Law Enforcement Services; the Mellette County, South Dakota, Sheriff's Office; the Todd County, South Dakota, Sheriff's Office; the South Dakota Highway Patrol; the BIA Lower Brule Sioux Tribe; the BIA Crow Creek Sioux Tribe; the BIA Aberdeen, South Dakota; and the BIA, Standing Rock Agency in Fort Yates, North Dakota. The NPSTTF is fully funded by the FBI and for the first time has caused all of these agencies to work together without regard to jurisdictional boundaries.

Ms. Mary Frances Berry

The FBI will also continue to work to ensure that there are adequate personnel resources in South Dakota to address Indian country cases. Since 1997, the FBI's Minneapolis Division has received 12 additional slots for agents to be dedicated to Indian country. The largest percentage of these agents went to South Dakota. During this year's upcoming annual evaluation of the distribution of personnel resources, the FBI will determine if there are additional violent crime personnel resources who can be shifted to South Dakota.

In summary, the FBI has actively sought in recent years to improve Indian country law enforcement in many ways. It will continue to strive to improve law enforcement services for Native American communities.

Sincerely,



Louis J. Freeh
Director

1 - Honorable Janet Reno
The Attorney General
Washington, D.C. 20530

Appendix F



**Office of the Attorney General
Washington, D. C. 20530**

July 31, 2000

The Honorable Mary Frances Berry
Chairperson
United States Commission on Civil Rights
624 Ninth Street, NW, Room 700
Washington, DC 20425

Dear Dr. Berry:

Thank you for your letter of March 28, 2000, enclosing the report of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*. The report and its recommendations identify many of the problems confronting Native Americans that we have been working to address for many years. We recognize that the problems are numerous and serious. Regrettably, progress in solving them is neither quick nor easy. The Department of Justice is committed to fulfilling its trust responsibility by working with tribes and other federal agencies to help solve these problems and improve the well-being of Native Americans. Enclosed with this letter is our response to the State Advisory Committee's report, which describes some of the major work we are doing for Native Americans, particularly the work that is most responsive to the South Dakota Advisory Committee's recommendations.

We appreciate the interest of the State Advisory Committee and the Commission in improving the lives of Native Americans both in South Dakota and in the Nation as a whole. I am grateful to the many fine people in the various offices, bureaus, and components of the Department who have dedicated a substantial part of their lives to public service devoted to Native Americans. Because of their hard work, we are making a difference in Native American communities. We realize that we have a long way to go, and we hope that the State Advisory Committee and the Commission will support us in those efforts. By moving forward in a cooperative and collaborative way, we can make significant progress.

Sincerely,

A handwritten signature in cursive script that reads "Janet Reno".

Janet Reno

Enclosure



U.S. Department of Justice

Washington, D.C. 20530

Response of the U.S. Department of Justice

to the March 2000 report of the

**South Dakota Advisory Committee to the
U.S. Commission on Civil Rights**

on

***Native Americans in South Dakota: An Erosion of
Confidence in the Justice System***

July 2000

Response of the U.S. Department of Justice to *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*

Background: The Trust Relationship Between the United States and Indian Tribes

Historically, the United States has recognized Indian tribes as sovereign nations to which the Federal Government owes a trust responsibility. The United States set aside Indian reservations as permanent homes for Indian tribes, and the United States has a trust responsibility to promote the welfare of native peoples, which includes a duty to assist tribes in making their reservations livable homes. The basic responsibility of the Department of Justice (DOJ) to preserve public safety for residents of Indian communities derives from the unique trust relationship between the United States and Indian tribes and from specific statutes, such as the Major Crimes Act, the General Crimes Act, and other Acts that establish general federal jurisdiction over felony crimes by or against Indians, including homicide, rape, and aggravated assault. In recent years, DOJ has been authorized to make grants to Indian tribes to assist tribal law enforcement and criminal justice systems.

Based on this authority and responsibility, the U.S. Attorneys prosecute felony crimes committed by or against Indians throughout most of Indian country. Tribal criminal justice systems handle crimes by Indians, subject to a 1-year limitation on sentences. 25 U.S.C. sec. 1302. The Interior Department's Bureau of Indian Affairs (BIA) has historically policed Indian reservations or contracted with Indian tribes to provide basic law enforcement services. 25 U.S.C. secs. 450 *et seq.* BIA and tribal police generally serve as first responders to Indian country crime. The Federal Bureau of Investigation (FBI), working cooperatively with BIA and tribal police, investigates felony crimes by or against Indians. DOJ victim-witness coordinators assist witnesses and crime victims in Indian country. In short, the United States has unique law enforcement responsibilities in Indian communities.

It is important to recognize, however, that not every crime affecting a Native American is one that the Federal Government has the authority to investigate or to prosecute. Thus, in order to improve the safety of Native Americans, DOJ has made an effort to work with all the relevant government entities -- tribal, state, and local -- as well as other federal agencies, to attack the problems on every front. Sometimes these efforts are direct, such as prosecuting a crime. At other times, our efforts are necessarily indirect, such as providing the resources or training needed to enable the entity with jurisdiction over the matter to resolve the matter itself. In all these efforts, we have consulted with tribes, worked with tribes, and have attempted to restore the trust and confidence that are essential for progress. We recognize that we have much work ahead of us, but we believe that the Report of the South Dakota Advisory Committee would be more accurate and more constructive if it recognized that considerable progress has been made.

Improving Law Enforcement in Indian Country¹

The first recommendation of the South Dakota Advisory Committee is that the Commission on Civil Rights call for the Attorney General to immediately appoint a federal task force to address the crisis of law enforcement affecting Native Americans, both on and off Indian reservations. (Report at page 39.) DOJ agrees that there are truly serious problems of law enforcement and public safety affecting Native Americans. As described in the next few pages, DOJ has already undertaken a multi-year process to identify these problems, their causes and likely solutions, and we have already put in place an Indian Country Law Enforcement Initiative Working Group to carry this out. Accordingly, the creation of an additional task force would largely duplicate efforts that are already underway.

Recognizing the Need for an Indian Country Law Enforcement Initiative

In 1997, recognizing the severe problem of violent crime among American Indians, President Clinton directed the Secretary of the Interior and the Attorney General to work with tribal governments to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian country. Beyond the increasing crime rates in Native American communities, the President cited the lack of police officers, criminal investigators, and detention facilities as evidence of the importance of addressing this problem. In response, the Secretary and the Attorney General formed an Executive Committee for Indian Country Law Enforcement Improvements with tribal leaders and representatives from the Interior Department and DOJ. At the request of the Executive Committee, U.S. Attorneys in districts with Indian tribes led an extensive series of tribal consultations on Indian country law enforcement in the fall of 1997. Consultations revealed a large gap between public safety in Indian country and the rest of the United States. Based on the U.S. Attorneys' consultations, the Executive Committee concluded that to fight crime effectively in Indian country and to improve public safety, the United States must work with Indian tribes to ensure that there is a full spectrum of federal and tribal law enforcement resources. That could include BIA and tribal uniformed police, criminal investigators, tribal courts, FBI agents, U.S. Attorney personnel, support staff, victim-witness coordinators, juvenile justice programs, detention facilities, law enforcement equipment, and training.

After giving serious consideration to these factors and the information gathered through consultations with tribal leaders across the country, the Secretary of the Interior and the Attorney General approved the Executive Committee's report and recommended to the President that Justice and Interior undertake ongoing efforts to improve law enforcement in Indian country. In response, the President sought funds for both Departments to establish the Indian Country Law Enforcement Initiative.

¹ This response by DOJ includes some information previously provided to you by the FBI in a May 25, 2000, letter from Director Louis J. Freeh.

Fighting for More Resources for Indian Country

In FY 1999, in response to our increased request, Congress appropriated \$89 million for DOJ for the Indian Country Law Enforcement Improvement Initiative. Under the Initiative, DOJ funded 30 additional FBI agents to investigate Indian country crimes. The Community Oriented Policing Services (COPS) provided \$32.8 million in grants to 140 tribal governments to fund 213 police officer positions, law enforcement equipment and technology, and police officer and administrative training. The Office of Justice Programs (OJP) Corrections Program Office received \$34 million in funds for detention facilities and funded 11 Indian tribes to assist them with the design and construction of juvenile and adult correctional facilities. The OJP Office of Juvenile Justice and Delinquency Programs (OJJDP) received \$10 million and made grants to 34 Indian tribes to prevent and control juvenile crime. The OJP Bureau of Justice Assistance (BJA) received \$5 million to assist tribal courts and awarded 76 grants to develop and enhance tribal courts, including several intertribal courts.²

For FY 2000, again in response to another increased request from the Administration, Congress appropriated \$91.5 million for the initiative for tribal police officers, training, and equipment, the construction of tribal detention facilities, juvenile crime prevention, and tribal courts. In furtherance of this year's program implementation, DOJ held regional consultation meetings for tribal governments throughout the Nation from March 17 through March 26, 2000. In addition, DOJ organized and co-sponsored a meeting with tribal leaders and others in early March to discuss promising tribal practices for addressing alcohol abuse, and associated crime and violence. Building on that effort, DOJ is developing a brochure of such promising practices and strategies currently being employed by Native American communities, in order to share that information with other Native American communities so that successful measures can be replicated.

Past increases in appropriations, however, have not been sufficient. In light of the serious and rising violent crime problems in American Indian and Alaska Native communities, DOJ has requested from Congress \$173.3 million for FY 2001 for the Indian Country Law Enforcement Improvement Initiative to be used to increase the number of fully trained and equipped police officers in Indian country, improve the quality of the criminal justice system (including tribal courts, detention facilities, evidence gathering and crime information systems), enhance substance abuse programs, combat tribal youth crime, and increase federal prosecutorial and investigative resources in Indian country.

² A chart summarizing discretionary and formula subgrants to Indian Tribes in South Dakota for FY 1995-2000 is attached at Tab A.

DOJ's \$173.3 million FY 2001 request for the initiative is broken down as follows:

- **FBI:** \$4,639,000 for 31 Indian country victim-witness coordinators, funding for Indian country forensic exams, and funding for overtime for tribal police who are part of the FBI's multi-jurisdictional Safe Trails Task Forces.³
- **United States Attorneys:** \$4,699,000 for 60 positions (33 Assistant U.S. Attorneys and 27 support staff) to increase federal prosecutorial and investigative resources to address violent crime, including gang violence and juvenile violence, in Indian country.
- **Office of Tribal Justice (OTJ):** \$932,000 for eight positions under the Office of the Associate Attorney General to institutionalize OTJ as an integral, ongoing part of DOJ. OTJ coordinates with departmental components that have responsibilities concerning tribal issues, including improving Indian country law enforcement, assistance to tribal law enforcement and courts, civil rights protection, environmental protection, tribal land and resource protection, and litigation involving Indian interests.
- **Criminal Division:** \$70,000 for 1 position for the Criminal Division to increase capacity to analyze Indian country crime problems.
- **COPS Tribal Resources Grant Program:** \$45 million to improve tribal law enforcement, including funding for police officers, training, and equipment. (\$5 million increase from FY 2000 Appropriation.)
- **COPS Indian Country Forensics Evidence Gathering:** \$5 million to increase the capacity of tribal law enforcement to collect forensic evidence to address the current serious lack of tribal capacity in this area.
- **OJP Corrections Program Office:** \$34 million for the construction of detention facilities to provide adequate space to incarcerate violent offenders punished under tribal law.
- **Tribal Youth Crime Prevention Program:** \$20 million for grants to Indian tribes to fund comprehensive tribal delinquency prevention, control, and juvenile justice system

³ \$2.6 million would hire and equip 31 victim-witness specialists to assist witnesses and crime victims in Indian country. \$1.4 million would provide funding for contracts for forensic evidence to facilitate FBI investigation of violent crimes and sexual assaults in the Albuquerque, Minneapolis, and Salt Lake City field offices, where 75% of federal Indian country crime cases originate. \$634,000 would provide for overtime for tribal, state and local police officers on 10 to 12 Safe Trails Task Forces.

improvement for tribal youth. OJJDP administers this tribal youth program. (\$7.5 million increase from FY 2000 Appropriation.)

- **Tribal Court Enhancement:** \$15 million for grants to Indian tribes for the development, enhancement, and the operation of tribal courts. BJA will administer this program and will promote funding for intertribal courts to maximize the distribution of funds. This program is an essential part of DOJ's overall effort to reduce violent crime in Indian country because tribal court resources are necessary to address the increased volume of cases resulting from increased police resources and rising crime. (\$10 million increase over FY 2000 Appropriation.)
- **OJP Indian Country Grants Program:** \$21 million to address specific problems of violent and alcohol-related crime particular to Indian communities, including \$8 million to establish diversionary programs for non-violent recidivist alcohol offenders; \$5 million to establish Sexual Assault Nurse Examiner Units to address the alarmingly high rates of rape and sexual assault against American Indian women; and \$8 million for tribal youth in the juvenile justice system suffering mental health and/or behavioral problems.
- **OJP Zero Tolerance Drug Supervision Program:** \$10 million for comprehensive programs of drug testing, drug treatment and graduated sanctions for offenders in tribal detention facilities.
- **OJP Tribal Criminal and Civil Legal Assistance Program:** \$6 million for criminal and civil legal assistance for indigent Indians appearing before the tribal courts and to fund the development of tribal college criminal and civil legal assistance curriculum.
- **OJP Police Corps:** \$5 million for the Police Corps Program to provide scholarships for students committed to entering the field of law enforcement in Indian country.
- **Tribal Criminal Justice Data Collection Systems:** \$2 million for the Bureau of Justice Statistics to improve tribal law enforcement capacity to gather information and statistics about crime and tribal criminal justice systems.

DOJ also includes Indian tribes in general programs, such as the Violence Against Women Program and the Drug Courts Program. To ensure that these programs provide the maximum support for tribal law enforcement possible, DOJ is closely coordinating its efforts with the BIA and we are in frequent consultation with tribal law enforcement agencies.

Improving and Tailoring Programs for Indian Country

In addition to fighting to obtain much-needed resources for law enforcement affecting Native Americans, DOJ is working to improve existing programs to better serve Native Americans. Among the efforts currently underway are:

- Making the COPS grant programs as responsive as possible to the unmet needs of Indian country law enforcement and the unique conditions facing tribal communities;
- Increasing the ways in which tribal law enforcement can participate and access national information systems such as the National Crime Information Center (NCIC), the National Criminal History Improvement Program (NCHIP), the Sex Offender Management Resource (SOMR), and others;
- Ensuring access to training for tribal prosecutors and including them in DOJ training and seminars when space and funding are available;
- Providing "tribal liaisons" in most U.S. Attorneys' Offices with significant amounts of Indian country in their districts, in order to serve the role played by a district attorney or community prosecutor, by being familiar with and available to the community for a variety of programmatic activities, such as sitting on Weed and Seed Steering Committees and Child Protective Teams;
- Promoting inter-jurisdictional cooperation, mutual respect, and understanding with tribal courts and tribal judges; and
- Increasing coordination and implementing services for Indian youth in custody.

We hope through these and related efforts, DOJ can empower tribal communities to improve public safety and well-being for their members.

Consulting with Tribal Governments

This Administration has taken seriously its obligation to consult with tribes on a government-to-government basis. In the Executive Order on Tribal Consultation, the President explained that:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation guaranteed the right of Indian tribes to self-government.⁴

These treaty pledges form part of the basis for our federal trust responsibility to promote the welfare of the Native American peoples. In the State of the Union address this year, the President reminded all Americans that "we should begin this new century by honoring our historic responsibility to empower the first Americans."

⁴ Executive Order No. 13084 (1998).

During the Attorney General's tenure, DOJ has worked hard to honor the federal trust responsibility and our government-to-government relationship with tribes. Soon after she took office, tribal leaders told her that true government-to-government relations means that we, as representatives of the United States, must listen to the concerns of Indian tribes. So, in 1994, along with the Departments of Interior and Housing and Urban Development, DOJ held the National American Indian Listening Conference. We have also held regional listening conferences and conferences on particular subjects, such as Banking in Indian Country, Economic Development, and Tribal Courts.

In 1995, the Attorney General issued a Policy on Indian Sovereignty and Government-to-Government Relations, which calls upon our divisions and offices to respect tribal rights and to consult with tribal leaders whenever appropriate. Our government-to-government relations policy also pledges to assist Indian tribes as they develop strong law enforcement, tribal courts, and criminal justice systems. To coordinate our policy, promote government-to-government relations, and serve as a direct avenue of communication with tribal governments, we established OTJ and are making sure that it has a permanent place within DOJ.

We believe that consultation is a vital part of rebuilding trust and confidence between DOJ and Indian tribes.

Providing Victim-Witness Services to Indian Country

As indicated in the Advisory Committee's first recommendation, keeping victims, witnesses and their families informed of the criminal process and the progress of cases is an important function. We believe it is most effectively handled by full-time Victim-Witness Specialists (VWS). The FBI asked for Congressional funding for FY 2000 to employ 31 VWSs in Indian country, a substantial number of whom would have gone to South Dakota. This funding was not approved, however. As mentioned above, DOJ has again asked to fund these 31 VWSs in its FY 2001 budget request and will continue to do so until it has adequate personnel to meet the community outreach and victim witness needs of Indian country.

Separate from this funding, the FBI's Rapid City, South Dakota, Resident Agency hired a VWS in April 2000 who will primarily work on the Pine Ridge Indian Reservation. The FBI in South Dakota now has two VWSs, one in Rapid City and one in Pierre, both of whom will primarily provide victim-witness services in Indian country. These services include keeping victims and witnesses informed of trial proceedings, transporting victims and witnesses to court, and performing community outreach. With regard specifically to community outreach in South Dakota, the recently hired VWS in Rapid City is arranging for a toll-free line so that Pine Ridge residents can telephone the FBI without cost to themselves.

Protecting Native American Children

DOJ's Office for Victims of Crime has agreed to fund a Forensic Child Interview Specialist (FCIS) position within the Indian Country Unit at FBI Headquarters. This position will be advertised in the very near future, both within the FBI and externally. Once hired, the FCIS will provide training to FBI agents and other investigators in Indian country on interviewing children, participate in consultations on Indian country cases involving children, and be available to interview children in specific situations in Indian country where the FCIS's expertise would be helpful, usually high profile cases or cases involving severely traumatized children.

Solving Crimes in Indian Country

In response to concerns about a large number of unsolved deaths in Indian country, the Attorney General directed the FBI to form a "cold case task force" to conduct a fresh review with logical investigative follow-up of approximately 19 Indian country homicides throughout the United States. In addition, FBI Headquarters is directing field offices covering the Indian reservations on which the FBI has primary jurisdiction to contact appropriate tribal authorities for information on all suspicious deaths during the last 5 years. A review will be made of cases not investigated by the FBI to determine if any additional investigations should be opened. The FBI's Laboratory will be enlisted to determine if there is any new technology which can be applied to forensic evidence in these older cases. Profilers in the FBI's National Center for the Analysis of Violent Crime at Quantico, Virginia, will also be used to assist the FBI field offices to develop investigative strategies for these older cases.

In 1999, the FBI's Criminal Investigative Division and the FBI's Laboratory initiated the Indian Country Evidence Program in order to significantly improve FBI Indian country crime scene processing for homicides, serious assaults and other Indian country violations involving forensic evidence. In the past year, the Indian Country Evidence Program has provided Indian country agents with state-of-the-art equipment and training for solving homicides. The FBI will continue to provide additional equipment and specialized training to agents in Indian country in order to ensure that Indian country homicides are adequately investigated.

Another part of the Indian Country Evidence Program is an effort to improve the turn-around time for examination of forensic evidence in Indian country cases in order to solve homicides and other cases more effectively. The FBI has asked Congress in its FY 2001 budget request for approximately \$1.4 million to contract accredited state and local laboratories to process Indian country forensic evidence from South Dakota and the other primary Indian country states. The FBI Laboratory also recently established a Laboratory task force of examiners who would give first priority to FBI Indian country cases.

Training Investigators and Promoting Coordination With Tribes and the BIA

The FBI has also improved Indian country law enforcement by training hundreds of tribal, BIA and FBI investigators since 1997 in fields pertinent to Indian country. The FBI will continue to provide training to investigators in Indian country in such areas as Crimes Against Children, Basic Death Investigation, Advanced Death Investigations, Basic Indian Country Investigations and other schools. These schools, as they have in the past, will include cultural awareness training.

The FBI will also continue to promote Safe Trails Task Forces (STTFs) throughout Indian country when doing so improves the ability of tribal, BIA and FBI agents to work well together. To date, the FBI has established eleven STTFs throughout Indian country including the Northern Plains Safe Trails Task Force (NPSTTF) in South Dakota. The NPSTTF includes investigators from the FBI; the Pierre, South Dakota, Police Department; the South Dakota Division of Criminal Investigation; the Rosebud Sioux Tribe Police Department; the Oglala Lakota Nation Department of Public Safety; Cheyenne River Sioux Tribe Law Enforcement Services; the Mellette County, South Dakota, Sheriff's Office; the Todd County, South Dakota, Sheriff's Office; the South Dakota Highway Patrol; the BIA Lower Brule Sioux Tribe; the BIA Crow Creek Sioux Tribe; the BIA Aberdeen, South Dakota, office; and the BIA Standing Rock Agency in Fort Yates, North Dakota. The NPSTTF is fully funded by the FBI and for the first time has caused all of these agencies to work together without regard to jurisdictional boundaries.

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In summary, the FBI -- like DOJ as a whole -- has actively sought in recent years to improve Indian country law enforcement in many ways. We will continue to strive to improve law enforcement services for Native American communities. In these ways, we hope to restore confidence in the legal system.

Protecting the Civil Rights of Native Americans

Enforcing the Nation's Civil Rights Laws

One of DOJ's highest priorities during this Administration has been to protect the civil rights of all Americans. We have worked hard to protect the rights of Native Americans. The Report of the State Advisory Committee makes several recommendations bearing on our work in this area, including the fourth recommendation, which suggests that DOJ should reconstitute an

Indian Section in the Civil Rights Division. The Division is made up of nine subject-based Sections (Coordination and Review, Criminal, Disability Rights, Education, Employment Litigation, Housing and Civil Enforcement, the Office of Special Counsel, Special Litigation, and Voting), an Appellate Section, and a Front Office that functions as a policy and coordination office. Our enforcement efforts are thus organized by statute, not by protected group. Though we recognize that Native Americans are often both a racial and a political group, for purposes of the civil rights laws enforced by the Division, they are protected as members of a racial minority group. While each racial or ethnic group brings unique issues to the task of civil rights enforcement, we have found our current structure to be the most effective way to organize our work.

However, in order to enhance coordination among the Division's lawyers who work on civil rights issues related to Native Americans, we established an Indian Litigation Working Group. The Working Group -- which is made up of representatives from each of the Sections -- provides a forum for discussion of shared issues or concerns. The Division also consults frequently with OTJ to ensure appropriate coordination on civil rights issues that impact Native Americans and has actively participated in the Native American Indian Subcommittee of the Attorney General's Advisory Committee (AGAC).

In recent years, the Division has been very active in conducting investigations and bringing cases that involve Native Americans. For example, the Employment Litigation Section is currently investigating several government employers in the Southwest to determine whether they are engaged in a pattern or practice of discrimination against Native Americans; the Housing and Civil Enforcement Section has worked on lending discrimination and redlining matters involving Native Americans; and the Voting Section has several active cases involving allegations of Native American vote dilution through the use of at-large voting systems and/or racial gerrymandering -- two of these cases (in Roosevelt County, Montana, and Benson County, North Dakota) have recently been resolved by consent decree.

In addition, in 1998 the Division published a brochure entitled *Protecting the Civil Rights of American Indians and Alaska Natives*. This brochure -- which has been widely distributed by our lawyers and mailed to numerous tribal representatives and groups -- outlines the non-discrimination laws enforced by the Division and how those laws apply to Native Americans. We are constantly looking for new avenues and methods for outreach to the Native American community regarding civil rights enforcement.

Finally, we agree that it is important that the Division do better in making sure that the results of our criminal and other civil rights investigations be disclosed in a timely fashion. The concern about timely disclosure of findings is one that impacts all of our work, not just where we have Native American victims. In recent months, we have begun to explore ways to streamline our processes to ensure that once our decisions are made, there is minimal delay in getting appropriate information to the public.

Preventing Discrimination in Federally Assisted Programs

In addition to the civil rights protections that the Civil Rights Division enforces, OJP, through its Office for Civil Rights (OCR), provides aggrieved Native Americans an opportunity to seek administrative relief for civil rights violations that involve federally assisted programs. OCR attorneys investigate administrative complaints from Native Americans who allege that an OJP- or COPS-funded entity has discriminated against them, either in employment practices or in the delivery of services. Although OCR attempts to resolve complaints through voluntary means, a funded entity that refuses to come into compliance with federal civil rights laws may face suspension or termination of financial assistance.

OCR is also responsible for reviewing Equal Employment Opportunity Plans (EEOs). An EEO provides an analysis of an organization's workforce by race, national origin, and sex in comparison to community labor statistics. Federal regulations require all public entities that have more than 50 employees and receive more than \$500,000 in financial assistance from OJP or COPS to submit an EEO to OCR for approval. Through monitoring EEOs, OCR is able to identify state and local governmental agencies, especially law enforcement organizations, that underutilize Native Americans in their workforce. OCR works with the funded entity, often by making specific recommendations regarding recruitment or promotion practices, to address the underutilization.

Most recently, as part of OCR's national training program for state planning agencies, OCR has targeted states with a large Native American population to advise them of their civil rights responsibilities, especially in regard to ensuring that Native Americans and Indian tribes have access to federally assisted programs. Consequently, OCR and OJP's American Indian and Alaska Native Affairs Office, in consultation with OTJ, formed an Indian Issues Working Group. The Working Group has been examining the broader systemic issue of whether Native Americans, as individuals, and Indian tribes, as units of local government, have equal access to OJP- and COPS-funded programs that states administer. In the coming year, the Working Group will be offering technical assistance to state grant administrators and tribal leaders.

Increasing Diversity by Recruiting Native Americans

DOJ strives to recruit, hire, and retain attorneys and other staff that reflect our Nation's diversity, including doing our best to provide outreach to the Native American community about employment opportunities at DOJ.

The Office of Attorney Personnel Management (OAPM) is the office in DOJ devoted to recruiting and hiring of attorneys. OAPM undertakes extensive recruitment and outreach efforts to attract a diverse pool of highly qualified applicants. Their efforts include:

- **Participation in numerous minority recruitment fairs, conferences, and symposia.** In 1999, OAPM participated in 28 diversity events across the country, including two of those

most likely to attract American Indian lawyers and law students: the Rocky Mountain/ Public Interest Career Fair and the Federal Bar Association's Indian Law Conference. OAPM has for many years been an active participant in the annual career fair at the Federal Bar Association's Indian Law Conference. (In addition to the nationally recognized leaders in the field of Federal Indian Law who attend the Conference, the Native American Bar Association and the Native American Law Student Association each hold their annual meeting at the Conference.) This forum provides OAPM with a unique opportunity to discuss Department employment opportunities with many American Indian law students and experienced attorneys.

- **Preparation and extensive dissemination of customized recruitment materials** to encourage different minority students (including American Indians) to apply to these programs.
- **Mailing of applications and recruitment materials to law student minority associations** and legal minority associations, more than 45 of which are American Indian organizations and contacts.
- **Sending each attorney vacancy announcement to additional sources** we select from our database of more than 2,400 national, state, and local legal resources (including law schools, minority and disability organizations, specialty bars, judges and academics). OAPM's database allows us to undertake a customized supplemental outreach effort to sources most likely to produce the best (and most diverse) group of candidates for the particular vacancy. OAPM's database includes approximately 425 diversity sources, more than 30 of which are American Indian sources. These sources include individual network leaders within the American Indian community and such organizations as: the Association of American Law Schools (Native American Rights Section); Commission on Indian Affairs; Federal Bar Association (Indian Law Section); Indian Bar Association of New Mexico; Indian Country Today; Indian Law Resource Center; National American Indian Housing Council; Native American Rights Fund; Navajo Nation Bar Association; Senate Select Committee on Indian Affairs; State Bar of Montana (Indian Law Section); Texas Indian Bar Association; and the University of Colorado College of Law's Indian Law Clinic.

Our outreach to American Indian law students is necessarily directed to a very small group: American Indians comprise less than 1 percent of the law student population. So when we measure the success of our efforts statistically, we are dealing with very small numbers where variances may not be meaningful. Subject to that caveat, we believe it worth noting that for the 1999-2000 Honor Program, American Indian candidates were hired at a rate that is more than twice as favorable as the overall hiring rate. For last year and for our Summer Law Intern Program for the past 2 years, the rate was equivalent or slightly more favorable than the overall hiring rate.

Similarly, the FBI and other components of DOJ are recruiting and hiring people who reflect our Nation's diversity.⁵ For example, the FBI this year established two regional Native American recruiting positions. As a result, the FBI now has two Native American FBI agents whose only job is to recruit fellow Native Americans into the FBI. Although this effort is still too new to have measurable results, especially due to current constraints on our hiring ability, we intend to continue this effort for the long-term so that we can broaden diversity within our ranks. FBI Headquarters is also stressing the need to recruit Native Americans into the FBI to all of its Applicant Coordinators as well as agents who have regular contacts with Native American communities.

This Administration is committed to these outreach and recruiting efforts, and we agree with the Report of the Advisory Committee that we should continue them and to expand them where possible.

Researching the Administration of Justice

DOJ's two research arms are both doing work involving the administration of justice in Indian country. The National Institute of Justice (NIJ), as the research and development arm of DOJ, supports independent evaluations and research. Although NIJ is not currently supporting research that deals directly with the issue of whether there is bias in the operation of the federal and state law enforcement and prosecution functions, as recommended in the State Advisory Committee's Report (page 40), NIJ is doing and has done significant research on public safety and the administration of justice in Indian country, including South Dakota. Also, based on recommendations made at the 1998 Strategic Planning Meeting on Crime and Justice in Indian Country, NIJ is collaborating with tribes in the design and development of evaluations.

Attached at Tab B is a list of NIJ's recent research and evaluation projects that are based in Indian country or involve Indian people in particular. A number of these projects have sites in South Dakota.

The Bureau of Justice Statistics (BJS) is the statistical arm of DOJ. BJS collects, analyzes, and publishes statistical reports describing offenders processed at every phase of the criminal justice system -- both federal and state. Additionally, as part of its National Crime Victimization Survey, BJS annually surveys approximately 43,000 households -- representing more than 80,000 individuals -- on the frequency, characteristics and consequences of criminal victimization in the United States.

⁵ We have not collected information about hiring and recruiting in every DOJ component for this letter. However, additional information about DOJ's hiring and recruiting is available upon request.

In February 1999, BJS published *American Indians and Crime*, which is discussed in the Advisory Committee's Report (pages 7-8). This report, primarily based on BJS's National Crime Victimization Survey, indicates that Native Americans are the victims of violent crime at nearly twice the national average. By contrast to non-Native Americans, the victimization rate is higher across age groups, housing location, income groups, and gender.

Currently, BJS is working on several other projects that are relevant, at least in part, to some of the concerns and recommendations contained in the Report.

First, as part of its ongoing statistical programs describing defendants convicted and sentenced in federal and state courts, BJS currently reports on sentences imposed on defendants in both federal and state courts. These statistics are reported annually for federal offenses in the BJS publication *Compendium of Federal Justice Statistics* and bi-annually for state offenses in the publication *Felony Sentences in State Courts*. Currently, statistics describing sentences imposed on Native Americans are not reported in either the federal or state publications. Publications describing federal defendants can be modified in the future to report on the processing of Native Americans in the federal criminal justice system. However, due to sampling issues regarding the state-level data, BJS is unable to report reliable statistics describing Native American sentences for felony offenses in state courts.

Second, BJS is planning to prepare a Special Report on changes in federal sentencing practices that resulted from the Sentencing Reform Act of 1984 and subsequent legislation. While this report will primarily focus on trends in aggregate sentencing practices, it will include a section on sentences imposed across racial groups — including Native Americans — and describe the extent to which any differences in sentences imposed may have resulted from federal legislation. This would address some of the concerns reflected in the sixth recommendation of the Advisory Committee's Report.

BJS is also planning on preparing a Special Report describing Native Americans processed in the federal criminal justice system. This report would describe the number of Native Americans arrested on federal charges, prosecutorial decisions made by U.S. Attorneys, the outcome of criminal cases, and sentences imposed in U.S. district courts.

BJS has recently obtained data from the Bureau of Indian Affairs describing crime incidents and arrests made by law enforcement in approximately 12 tribal jurisdictions. Once these data are appropriately structured, BJS plans to prepare a statistical report describing crime in these jurisdictions. To the extent practicable, data describing U.S. Attorney activity in these 12 jurisdictions will also be included.

Finally, BJS plans to release a report on jails in Indian country in July 2000. Based on the 1998 and 1999 survey of jails in Indian country, the report captures the number of inmates housed in confinement facilities, detention centers, jails and other correctional facilities located on Indian land. Data on the number of offenders under community supervision, and offender characteristics

are also included. The 69 facilities in Indian country are described by capacity, function of the facility, confinement areas, programs offered, personnel characteristics, and facility needs.

Improving Data Collection to Ensure an Adequate Basis for Determining Fairness

We are in general agreement with the Report's seventh recommendation, which states that data collection procedures should be improved to provide better information about the fairness of the justice system. In response to the President's Executive Memorandum on Fairness in Law Enforcement, DOJ -- along with the Departments of the Treasury and Interior -- has initiated a process for collecting data on the use of race and ethnicity by federal law enforcement officers, including FBI, Immigration and Naturalization Service, and Drug Enforcement Agency officers and agents. We hope to have the preliminary results from that data collection in the coming months. At the same time, we are working with law enforcement, civil rights, and community groups to develop training materials, promising practices, and model policies on data collection and policies on racial profiling. And we are funding the publication of a resource guide on how best to go about collecting traffic stop data. We are grateful that more than 100 law enforcement agencies on the state and local level -- in addition to what the federal agencies are doing -- have begun collecting traffic stop data voluntarily.

Promoting Conciliation and Conflict Resolution

The State Advisory Committee recommends that DOJ immediately assign a professional, experienced mediator from the Community Relations Service (CRS) to provide these services full time to communities in South Dakota. We appreciate the State Advisory Committee's recognition of the work of CRS in helping to resolve racial and ethnic tensions in South Dakota. CRS mediators have worked closely with tribal leaders, state and local officials in South Dakota, and other federal agencies in helping to resolve issues involving law enforcement and the administration of justice, environment and religious sites, conflicts with non-Indian communities, and cross-cultural misunderstandings.

Our commitment to providing full CRS services to South Dakota is limited only by its very modest staffing levels at this time. The CRS Regional Office located in Denver provides services to South Dakota and operates with a staff of just three professionals, a Regional Director and two conciliators. This office must also respond to racial and ethnic tensions and conflicts in Colorado, North Dakota, Montana, Utah, and Wyoming. Until CRS is restored to its full strength, one of the Attorney General's strong commitments, its response will be limited necessarily to only the most urgent conflict conditions. In the meantime, we will continue to look for ways to make CRS staff more available in South Dakota.

We believe that CRS is especially well-suited to help people find ways to overcome the suspicion and distrust which too often characterize relationships between and among tribal leaders and federal, state, and local officials. CRS's skills and experience place it in a unique position to help -- as mediators to help build the bridges for improved communication, cooperation and

understanding and as teachers to train state, local, and tribal officials to resolve conflicts and disputes on their own. With sufficient resources, CRS will be prepared to undertake both tasks wholeheartedly.

Working to Fight Hate Crimes

The State Advisory Committee recommends strengthening hate crimes legislation at the federal level to respond to egregious crimes involving racial bigotry. Although the Commission did not request a response from us to this recommendation, we wish to note that strengthening the existing federal hate crimes legislation is a major priority for DOJ. The Administration supports a current proposal that would address some of the limitations of the current law. First, the proposal would eliminate the law's requirement that the government be required to prove that the defendant committed an offense not only because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of six narrowly defined "federally protected activities." Second, the proposal would amend the current statute to provide coverage for violent hate crimes committed because of the victim's sexual orientation, gender, or disability.

Also, DOJ's Civil Rights Division has dedicated significant resources in recent years to investigating and prosecuting hate crimes, including hate crimes committed against Native Americans. The Division sought and obtained significant increases in funding for FY 1999 and FY 2000 that will allow us to bring more cases, including those hate crimes. During FY 1999, the Division filed 31 racial violence cases, charging 46 defendants in connection with crimes such as cross-burnings, arson, vandalism, shootings, and assault.

Conclusion

We appreciate the interest of the State Advisory Committee and the Commission in improving the lives of Native Americans both in South Dakota and in the Nation as a whole. We hope that you will not overlook the many fine people in the various offices, bureaus, and components of DOJ -- including the FBI, the Civil Rights Division, the U.S. Attorneys' Offices, CRS, OJP, and OTJ -- who have dedicated a substantial part of their lives to public service devoted to Native Americans. Because of their hard work, we are making a difference in Native American communities. We realize that we have a long way to go, and we hope that the State Advisory Committee and the Commission will support us in those efforts. By moving forward in a cooperative and collaborative way, we can make significant progress.

Attachments (2)

**Discretionary and Formula Subgrants Funding Summary
Indian Tribes of South Dakota
Office of Justice Programs • May 2000**

Indian Tribes	FY1995	FY1996	FY1997	FY1998	FY1999	FY2000	TOTAL
<u>Cheyenne River Sioux Tribe:</u>							
(d) VAWO-Arrest			370,381				370,381
(d)VAWO-Rural			224,936		250,000		474,936
(d)VAWO-STOP		84,000		100,000	121,441		305,441
(f)BJA-LLEBG		208,349	114,237	109,055		106,132	549,890
(d)BJA-Open Solicitation						150,000	<u>150,000</u>
Subtotal							1,838,531
<u>Flandreau Santee Sioux Tribe:</u>							
(d)VAWO-STOP		84,000			100,000		184,000
(d)DCPO			16,275		126,000		<u>142,275</u>
Subtotal							326,275
<u>Lower Brule Sioux Tribe:</u>							
(d)VAWO-STOP			88,696		133,920		222,616
(d)DCPO-TA			19,104				19,104
(d) JJ-Drug Free Communities...				100,000	100,000		<u>200,000</u>
Subtotal							441,720
<u>Oglala Sioux Tribe/OST Department of Public Safety:</u>							
(d) VAWO-Rural				215,000			215,000
(d) VAWO-Arrest			56,527			390,968	838,463
(f/d) OVC-VAIC		20,150	28,150	72,020			120,320
(d)VAWO-STOP	75,000	9,000	222,150	40,300	231,663		537,813
(d)DCPO-TA			17,820				17,820
(f)BJA-LLEBG			39,865				39,865
(d) CIRCLE					7,580,610		<u>7,580,610</u>
Subtotal							9,349,891

<u>Waconi Wawokiya, Inc.</u> (serving Crow Creek Indian Tribe and others):							
(d)VAWO-STOP		84,000				100,000	184,000
(f/d) OVC-VAIC		17,000	55,350	91,503		161,738	325,591
(d) OVC-CJA						60,000	60,000
(d) OVC-Telemedicine						100,000	100,000
(d) JJ				100,000			100,000
(d) OVC-Direct Services			26,350				<u>26,350</u>
Subtotal							795,941
<u>Watchful Home (Misson, SD):</u>							
(f) OVC - VAIC		8,500	10,400	13,055			31,955
(f) VAWO-STOP			5,770	5,770			<u>11,540</u>
Subtotal							43495
<u>White Buffalo Calf Women Society (Mission, SD):</u>							
(f) OVC - VAIC		8,500	18,500	30,997	54,196		112,193
(f) VAWO-STOP			5,770	5,770			11,540
(d) VAWO-Rural				213,542		225,000	<u>438,542</u>
Subtotal							562,275
<u>Women's Circle (Sisseton, SD):</u>							
(f) OVC - VAIC		9,850	10,000	17,635	19,535		57,020
(f) OVC - Direct Services		8,700	8,700				17,400
(f) VAWO-STOP		5,770	5,770				<u>11,540</u>
Subtotal							85,960

BJA-Open Solicitation: Bureau of Justice Assistance (BJA)-Discretionary Open Solicitation (various focuses of program initiatives);

BJA-LLEBG: BJA-Local Law Enforcement Block Grant Program;

BJA TSAV: BJA-Tribal Strategies Against Violence;

CIRCLE: Comprehensive Indian Resources for Community and Law Enforcement;

CPO-Tribal: Corrections Program Office-Construction of Detention Facilities in American Indian & Alaska Native Communities Discretionary Grant Program;

DCPO: Drug Court Program Office (planning, development and enhancement grants are provided along with technical assistance to grantees);

JJ-Drug Free Communities: Office of Juvenile Justice and Delinquency Prevention (OJJDP)-Safe Schools and Drug Free Communities;

JJ: OJJDP-Discretionary

OVC-CJA Office for Victims of Crime (OVC)-Child Justice Act for Native American Communities;

OVC-Telemedicine: OVC discretionary grant program on telemedicine;

OVC-VAIC: OVC-Victim Assistance in Indian Country;

VAWO-Arrest: Violence Against Women Office (VAWO)-Encouraging Arrest Policies;

VAWO-STOP: VAWO-Stop Violence Against Indian Women Discretionary Grant Program

VAWO-Rural: VAWO-Rural Domestic Violence Discretionary Grant Program.

Table reflects funds obligated, to date. Totals may not include funding provided for training and technical assistance. Also, these totals do not include funds provided to large projects, such as D.A.R.E. America and the National Crime Prevention Council, which may directly or indirectly provide funding or assistance to Indian tribes and tribal organizations. Source is the OJP PAL.

"Indian Tribes" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 USCS §§ 1601 et seq] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians., 25 U.S.C. § 450b(e).

July, 2000

National Institute of Justice

The National Institute of Justice (NIJ) is the research and development agency of DOJ. It was established by Congress to prevent and reduce crime and to improve the criminal justice system by sponsoring research projects and development programs, developing new technologies to fight crime, evaluating the effectiveness of criminal justice programs, and identifying and recommending programs that have been successful or are promising. NIJ publishes materials that allow criminal justice research professionals, policy makers, and researchers to stay abreast of the latest NIJ research and the results of program evaluations.

Partnership Initiatives:

- *Policing on American Indian Reservations.* This 18-month discretionary grant program provides an opportunity for Indian tribes to examine and assess the effectiveness of policing strategies and determine how tribes and private and public agencies concerned with the welfare of American Indian communities might apply the findings. In FY 1995, NIJ awarded \$334,010 for this project. The final report completed for this project is currently under review.
- *Understanding Partner Violence in Native American Women.* Though data on violence against Native American women are scant, some reports suggest that rates of partner violence are 13 times the national average. This project will survey women of several Plains Indian tribes to determine the prevalence of partner violence. The study will address cultural beliefs and the possible contribution of substance abuse to domestic violence. The study fills a need to address major concerns affecting the well-being of American Indians, who are not well represented in violence research, and is of particular interest to the National Institute for Alcohol Abuse and Alcoholism (NIAAA) and the Office of Research on Minority Health. NIAAA awarded \$144,967 for this project, which NIJ will monitor. The expected completion date is September, 2000.
- *Impact Evaluation of STOP Grant Programs for Reducing Violence Against Women Among Indian Tribes.* The purpose of this 24-month project is to evaluate the impact of the STOP Violence Against Indian Women Discretionary Grant Program. The study is intended to develop a basic understanding of the cultural and legal context of reducing violence against women among Indian tribes, evaluate the impact of tribal programs aimed at reducing violence against women in terms of effectiveness and identify program elements that require adjustment or modification, and make recommendations for improving existing programs and developing effective new programs for tribes to reduce violence against women. In FY 1996, a total of \$144,666 was awarded to the University of Arizona for this project. The final report completed for this evaluation is currently under review.

- Demonstrating a Cost-Effective Approach for Locally-Initiated Police Research in Small and Medium Cities.* This police/researcher partnership links police departments in Eureka and Redding, CA, Pocatello, ID and Rapid City, SD with police researchers affiliated with the Police Executive Research Forum (PERF), the Institute for Law and Justice (ILJ) and the Joint Centers for Justice Studies (JCSC). An expansion of this collaboration includes sheriffs' offices in rural counties of the partner cities and police departments policing tribal lands. The primary goals of the project are: 1) to develop, test and evaluate new interactive processes for linking researchers and police departments, and for maximizing the cost effectiveness and long-term usefulness of the research tasks; 2) to encourage each department to learn from other departments' experiences on an ongoing basis; 3) to enable researchers to learn about and report on community policing in contexts that until now have remained essentially unreported; and 4) to provide police departments with research support for community policing. In FY 1995 and FY 1996, NIJ awarded a total of \$399,029 to LINC to support these research partnerships. This project will be completed in 2000.
- Indian Country Justice Initiative Evaluation.* The DOJ Indian Country Justice Initiative sought to improve the Department's responsiveness to criminal justice needs in Indian Country and to increase its enforcement of the laws against violent and other major crimes there. The Department implemented the initiative at Laguna Pueblo in New Mexico and Northern Cheyenne Nation in Montana. NIJ sponsored an evaluation project to work with and provide feedback on a regular basis to the Department's site managers to document and describe the project's implementation process. In FY 1996, NIJ awarded \$149,977 to Arizona State University to conduct this evaluation, which was completed in February, 1998. The final report and video are currently available from NCJRS.
- Evaluation of the Tribal Strategies Against Violence Program.* The evaluation of BJA's TSAV program will focus on the development and implementation of comprehensive tribal crime control and prevention strategies. It will document the TSAV process, detailing how TSAV approaches to crime control and prevention have evolved; how sites have implemented comprehensive strategies; and how differences in physical environment, service delivery, breadth and depth of participation in planning activities, and government structure have affected development and prevention strategies. The evaluation will also assess interim outcomes, such as whether the partnerships are in place and working and establish indicators for longer term effects on the community and youth. The evaluation will be conducted in four of the seven TSAV sites. In FY 1997, NIJ awarded \$239,583 to Orbis Associates to conduct this evaluation. A supplement of \$40,586 was awarded to Orbis Associates to enhance this evaluation in FY 2000. The evaluation will be completed in November, 2000.
- Navaho Peacemaking Project.* The primary purpose of this research project was to use a balanced methodological approach comprising qualitative and quantitative techniques to

measure the efficacy of the Peacemaker Court. This study sought to answer such questions as: Does the work of the Peacemaker Division contribute to greater social harmony? What is the actual recidivism rate among Division participants and how does this compare with rates for comparable crimes as handled by the Nation's courts? Do Peacemaker participants perceive the Division as having helped communities deal with violence and disorder? How do Peacemaker Division results compare in standard measures of justice effectiveness with the western justice model? The longer term ancillary goal was to assist the Navajo Judicial Office in the development of a comprehensive computerized information system to organize data measuring Court performance, and enable administrators to monitor and evaluate the effectiveness and impact of Court operations. In FY 1997, NIJ awarded a grant to Temple University to conduct this research. The study is complete and is available from NCJRS.

- *An Assessment of Suicide Ideation Among Indians in County Jails.* The purpose of this 12 month project is to examine cultural/social factors affecting suicidal thoughts and behavior among incarcerated Northern Plains Indians (nine Indian nations, including the Blackfeet, Cheyenne, Chippewa, Crow, Delaware, and Omaha). Specific objectives are to (1) assess rates of suicide ideation among Indian and non-Indian detainees; (2) develop measures of culture-specific symptoms/syndromes of suicide ideation and incorporate them into a screening protocol; and (3) recommend more culturally-sensitive intervention and treatment policy and procedures. In FY 1999, NIJ awarded \$49,120 to the University of Kansas Center for Research, Inc. to conduct the research, which will be completed in 2000.
- *A Pilot Study Regarding the Interrelationships of Alcohol and Drugs on Crime Among Adult American Indians - A Prevalence and Methodical Study.* The purpose of this study is to fully investigate the nexus between alcohol and/or other drugs and crime in Indian Country. This study will employ a rigorous scientific study of a large sample (N=1,000) at the Oglala Sioux Tribal Reservation (SD) and the Turtle Mountain Band of Chippewa Indians reservation (ND). It will be the first systematic empirical study of alcohol and drug involvement in crime in the two Indian communities. This eighteen-month effort will also explore commonalities and differences among men and women who are arrested for alcohol and drug related crimes. In FY 1999, NIJ awarded \$201,621 to the University of New Mexico's Center on Alcoholism, Substance Abuse, and Addictions.
- *Turnover Among Alaska Village Public Safety Officers (VPSOs): An Examination of the Factors Associated with Attrition.* The demands of the physical geography and a lack of economies of scale have made it a challenge to provide policing services to rural Alaska Native villages across the state. Different policing programs developed to meet that challenge using specially appointed native police officers have all been plagued with the problem of officer attrition. The Village Public Safety Officer (VPSO) Program, which currently provides police and other public safety services to 85 Alaska Native villages, is no exception to that rule. This research done by the University of Alaska at Anchorage

examined the extent of turnover in the VPSO program to identify the reasons former VPSOs left the program as well as the reasons current VPSOs stay with the program. A two-part research strategy was employed. First, an analysis of VPSO personnel records was completed to fully document the extent of the turnover problem and to identify patterns in the employment records for factors that could be associated with the problem. The second part of the research sought information about decisions to stay with or leave the VPSO service by means of a self-administered survey of current (n = 85) and former (n = 160) VPSOs. The final report of this study is currently under review

- *Community Based Institutional Assessment to Reduce Risk of Continued Abuse to Native American Women.* This project is being implemented by Minnesota Program Development, Inc. It examines how Native American women's safety is affected by responses from the criminal justice system. The goal of this study is to uncover how institutional practices carried out by a non-Native criminal justice system enhance or marginalize attention to the safety needs of Native American women. Institutional ethnography will be used to adapt the Duluth Safety and Accountability audit process. Researchers will form a community-based audit team of up to 18 members, consisting of elders from the Fond Du Lac Tribe, and staff from community agencies serving Native American women. The research staff will investigate the processing of misdemeanor assaults involving Native American women. Those studying the criminal justice system will obtain their data from the Duluth Police Department. They will review 50 emergency 911 transcripts, including Native and non-Native American women; 100 police reports and follow-up investigations involving Native and non-Native American women; ten presentence investigations involving Native American offenders who have children; and outcome data on 100 misdemeanor cases involving Native and non-Native-American battered women with children. This committee will work in small groups observing and conducting interviews pertaining to court processes. The project will be completed in September, 2001.
- *Research on Violence Against Indian Women: Community Readiness and Intervention.* The objectives of the project that is being implemented by Colorado State University are to: 1) identify differences in community readiness for primary and secondary prevention in urban and reservation populations; 2) assess the climate and attitude of communities toward violence; 3) assess how Native populations differ in their cultural norms and prevention approaches. This project will be based on community readiness theory. The first component will be an assessment of a community's readiness to accept and address violence against women in Native American communities. During phone interviews, a community readiness assessment interview will be administered to four or five key community members or service providers from different disciplines in each of eight rural reservations and two urban Native communities. The second component will involve conducting focus groups with key community leaders in one urban and two reservation communities. Data analysis will utilize a nested MANOVA to determine if there are mean differences across types of communities in readiness, with subsequent ANOVAs used to

determine which scales account for overall differences and which types of communities differ on which scales. Analyses using CONCORD and ANTHROPAC 4.0 will allow content analysis, domain and thematic evaluation, multidimensional analysis, and cluster analysis. The project is scheduled for completion in September, 2001.

- *Partner Drug and Alcohol Use, Mediating Factors, and Violence Against Women.* This 18-month study will examine the effects of women's and men's illegal drug use, alcohol use, and binge and problem drinking on IPV (Intimate Partner Violence) against women. Specific types of drugs, multiple drug use, and drug/alcohol intoxication at the time of violent incidents will be examined in relation to severe assaults, minor assaults, injuries, and frequencies of assaults. The study will identify factors that mediate the effects of drugs and alcohol use on IPV, including age of victim and partner, marital status, individual and neighborhood level socioeconomic factors, power control issues, and witnessing domestic violence as a child. The study will involve primary data collection from the Arrestee Drug Abuse Monitoring (ADAM) participants in Oklahoma City. All male and female ADAM participants who are married, cohabiting or dating a steady partner, or who were divorced or separated within the past year will be eligible to participate. An IPV addendum will be administered to 575 women and 950 men. Drug and alcohol and IPV data will be based on self report. IPV questions will be adapted from the Conflict Tactic Scale and will include questions on emotional, physical, and sexual abuse, as well as resulting injuries during the past year. NIJ awarded this \$186,752. project in FY2000. The principal investigator is Lorraine Malcoe, Ph.D., University of New Mexico.

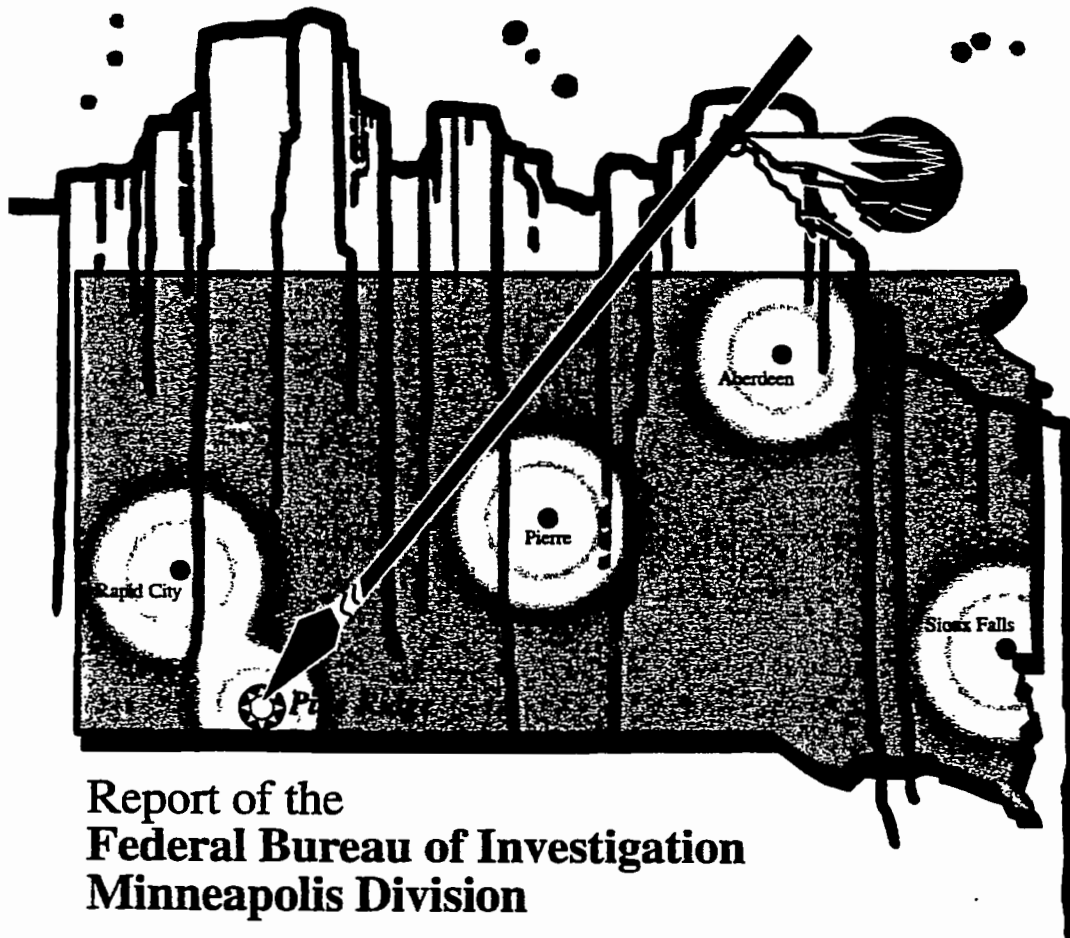
Other Partnership Initiatives:

- *Restorative Justice Symposium.* In January 1996, a Restorative Justice Symposium was sponsored by NIJ and the Office for Victims of Crime, in cooperation with BJA and the Office of Juvenile Justice Delinquency Prevention. The symposium brought together a diverse, interdisciplinary group of over 120 individuals from the United States and Canada to discuss the emerging concept of restorative justice and its potential for addressing criminal justice issues. Several American Indians, Alaska Natives, and Native Hawaiians participated as either key speakers, panelists, conference planning committee members, or attendees.
- *Strategic Planning Meeting on Crime and Justice Research in Indian Country.* In October, 1998, NIJ in partnership with the Office of American Indians and Alaska Natives, OJJDP and other OJP offices sponsored this strategic planning meeting. Twelve papers were commissioned to provide a background for the discussion of approximately 50 researchers and practitioners experienced in this area. These papers are now being revised for publication as a book. The meeting also resulted in a summary proceedings.

- *Requests for Solicitation.* In December of each year, NIJ solicits proposals for investigator initiated research projects. Specialized solicitations are also issued at various times throughout the year.

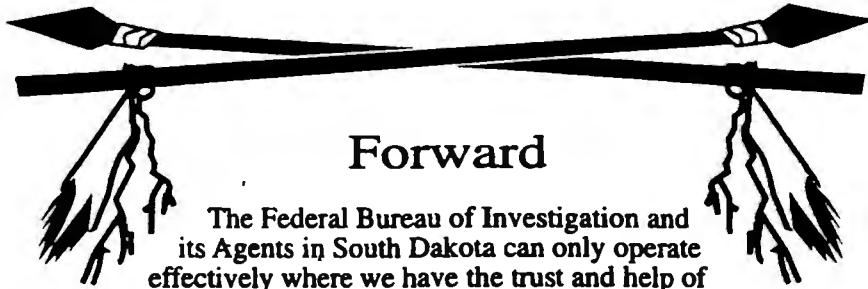


Accounting For Native American Deaths Pine Ridge Indian Reservation South Dakota



Report of the
Federal Bureau of Investigation
Minneapolis Division

May 2000



Forward

The Federal Bureau of Investigation and its Agents in South Dakota can only operate effectively where we have the trust and help of the American people. For South Dakota, much of our work revolves around crimes occurring in Indian Country. The trust and help of reservation residents are vital to the accomplishment of our sworn duty.

For many years, rumors of unresolved murders of Native Americans have come to our attention. At times, these allegations represented that there were hundreds of murdered Native Americans that had not been investigated by the FBI. The names of murder victims were not attached to the rumors and addressing the allegations could not be accomplished.

In December of 1999, the South Dakota Advisory Committee of the United States Commission on Civil Rights (Commission) held a community forum in Rapid City, South Dakota to discuss the criminal justice system and how it impacts Native Americans. These allegations were proffered during the hearings and the Commission was sufficiently impressed by them to incorporate the allegation in its findings. (See *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, March 2000; p. 38)

Shortly after the forum, the FBI received a list of fifty-seven names with allegations that their deaths had not been investigated. This list came from a number of media outlets and for the first time, provided the FBI with specific information to address. We reviewed our records of these deaths and found that most had been solved either through conviction or finding that the death had not been a murder according to the law. The remaining unresolved murders were known to the FBI and remain under investigation.

The following pages include the allegation and the results of our investigations. The names of unindicted suspects and some other identifying information must be excluded to protect privacy interests. It is hoped the dissemination of this information will clear up allegations of unresolved murders and protect the confidence the FBI must have to accomplish its mission.

Douglas J. Domin
Special Agent in Charge
Minneapolis Division

Allegation:

AIM member killed at Pine Ridge by GOONs ["Guardians of the Oglala Nation"]. Investigation "ongoing."

Finding:

On 01/05/75, Leon L. Swift Bird was killed near Pine Ridge, SD, by Dorothy Iris Poor Bear. Poor Bear stabbed Swift Bird to death with a knife. On 09/15/75, Dorothy Iris Poor Bear appeared in U.S. District Court, Rapid City, South Dakota, and entered a guilty plea to an indictment which charged her with Voluntary Manslaughter in violation of Title 18, U.S. Code, Sections 1153 and 1112. On the same date, Poor Bear was sentenced to the custody of the Attorney General for a period of three years. Execution of the prison sentence was suspended, and Poor Bear was placed on probation.



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⊙ **Lydla Cut Grass** ⊙

Allegation:

AIM member killed at Wounded Knee by GOONs. No investigation.

Finding:

On 01/05/76, Lydla Cut Grass died at a residence in Wounded Knee, SD. Initial information suggested that Cut Grass may have died as a result of a beating that took place three weeks prior to her death. An autopsy determined her death was not linked to the prior beating, but was a result of over consumption of liquor.



Allegation:

AIM member found dead in Pine Ridge alley, beaten. No investigation.

Finding:

On 01/07/74, Edward Means, Jr. was found dead in an alley behind the Wesleyan Lakota Mission, Pine Ridge, South Dakota. The autopsy determined the cause of death to be hypothermia related to acute alcoholic intoxication.



⊙ **Byron DeSersa** ⊙

Allegation:

OSCRO organizer and AIM supporter assassinated by GOONs in Wanblee. Arrests by local authorities resulted in two GOONs - Dale Janis and Charlie Winters, serving two years of five year sentences for "manslaughter." Charges dropped against two GOON leaders, Manny Wilson and Chuck Richards, on the basis of "self-defense" despite DeSersa having been unarmed when shot to death.

Finding:

Byron De Sersa was shot and killed 01/31/76 while driving his motor vehicle on the outskirts of Wanblee, SD. The defendants were acquitted by a jury on 03/2/77. Codefendant Charles David Winters pleaded guilty to being an accessory after the fact to second degree murder and was sentenced to 5 years in prison. A juvenile defendant was tried on second degree murder charges and found guilty by a federal jury and was sentenced 05/16/77, under the Federal Youth Corrections Act, 18 U.S.C. 4219.



◎ Anna Mae Pictou Aquash ◎

Allegation:

AIM organizer assassinated on Pine Ridge.
FBI involved in attempt to conceal cause of death. Ongoing attempt to establish "AIM involvement" in murder. Key FBI personnel never deposed. Coroner never deposed.

Finding:

In September, 1976, Anna Mae Pictou Aquash's partially decomposed body was discovered in a remote area in the northeastern part of the Pine Ridge Indian Reservation, South Dakota. Cause of death was determined to be a gunshot wound to the head. The Aquash murder has been linked by media reports to the RESMURS investigation. In June, 1975, FBI SAs Jack Coler and Ron Williams were ambushed and killed execution-style on Pine Ridge. The ensuing major case investigation, RESMURS, resulted in the trial and conviction of Leonard Peltier, and the trial and acquittal of two other individuals. Some attention had been focused on Aquash for her possible knowledge of the slayings. Rumors circulated that Aquash cooperated with the government and was an FBI informant. These rumors were untrue. The coroner, who died shortly after performing the autopsy on Aquash, was not deposed. The Aquash murder has not been solved.

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◎ Lena R. Slow Bear ◎

Allegation:

AIM supporter killed at Oglala by GOONs.
No investigation.

Finding:

On 02/06/76, Lena R. Slow Bear was found dead beside a road near Pine Ridge, South Dakota. The autopsy determined that death was caused by alcohol intoxication and exposure.



◎ Edward Standing Soldier ◎

Allegation:

AIM member killed near Pine Ridge by "party or parties unknown."
No investigation.

Finding:

On 02/18/74, Edward Joseph Standing Soldier died of a gunshot wound to the abdomen. Investigation by the FBI revealed Standing Soldier died of a .22 caliber gunshot wound fired by Gerald Janis.

Investigation revealed that three juvenile subjects, including Standing Soldier, were involved in an armed robbery in Janis' residence at Pine Ridge, South Dakota. Janis shot Standing Soldier with a .22 caliber rifle as a result of this armed robbery. The matter was presented to a U.S. Grand Jury on 2/22/74, and a no bill was returned resulting in no prosecution and the FBI investigation being closed.



◎ Martin Montileaux ◎

Allegation:

Killed in a Scenic, South Dakota, bar. AIM leader Richard Marshall later framed for his murder. Russell Means also charged and acquitted.

Finding:

On 03/07/75, Martin Montileaux died after being shot in the neck in a bar in Scenic, South Dakota. Montileaux's dying declaration was "Russell Means' friend" was the person who shot him. Russell Means and Richard Marshall were arrested by the Pennington County Sheriff's Office for the shooting of Montileaux. Scenic, South Dakota, is approximately 20 miles north of the Pine Ridge Inuian Reservation border. The FBI had no investigative jurisdiction in this matter.



☉ **Hobart Horse** ☉

Allegation:

AIM member beaten, shot and repeatedly run over with automobile at Sharp's Corners. No Investigation.

Finding:

Hobart Kenneth Horse died on 03/27/77 from multiple gunshot wounds. Roger James Cline was charged with the death on 03/28/77, and found guilty of voluntary manslaughter on 09/08/77. Cline was sentenced to 10 years.



☉ **Stacy Cotter** ☉

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Allegation:

Shot to death in an ambush at Manderson.
No investigation.

Finding:

Stacy Cotter, true name Stacy G. Cortier, aka Stacy G. Cottier, was found 03/21/75 in Manderson, SD with numerous bullet wounds. Cortier was shot sometime during the evening or early morning of 03/20-21/75. Investigation revealed that after apparent arguments and a car being shot up, Jerry Bear Shield may have been shot in the neck by Cortier and Bear Shield in turn killed Cortier. Jerry Bear Shield was convicted 10/23/75 upon a plea of guilty in U.S. District Court, Rapid City, SD to an information charging violation of 18 USC, Section 1153 and 1112, Voluntary Manslaughter. Bear Shield was sentenced to one year in custody.



☉ **Edith Eagle Hawk** ☉
(and her two children)

Allegation:

AIM supporter killed in an automobile accident after being run off the road by a white vigilante, Albert Coomes. Coomes was also killed in the accident. GOON Mark Clifford identified as having also been in the Coomes car, escaped. Investigation closed without questioning Clifford.

Finding:

Edith Eagle Hawk died 03/22/75. She died as a result of a two-car automobile accident four miles north of Scenic, South Dakota, in Pennington County, outside the exterior boundaries of the Pine Ridge Indian Reservation. Her injuries described on her death certificate indicate the immediate cause of death was a crushed chest.

This matter was not investigated by the FBI because it occurred off the reservation, outside of federal jurisdiction.



☉ **Cleveland Reddest** ☉

Allegation:

AIM member killed at Kyle by "person or persons unknown."
No investigation.

Finding:

Cleveland Reddest died 3/26/76, as a result of a hit and run accident 18 miles east of Kyle, South Dakota. Evidence points to Reddest lying in the road before the accident. Two suspects were identified. One of the individuals acknowledged driving the car. The case was not prosecuted because there was insufficient evidence of criminal conduct.



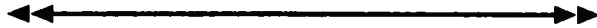
⊗ Jeanette Bissonette ⊗

Allegation:

AIM supporter killed by sniper at Pine Ridge. Unsuccessful attempt to link AIM members to murder. No other investigation.

Finding:

Jeanette Bissonette died 03/26/75, as a result of being shot about eight miles north of Pine Ridge, South Dakota, when her car broke down. No positive information was developed to identify the individual responsible.



⊗ Richard Eagle ⊗

Allegation:

Grandson of AIM supporter Gladys Bissonette killed while playing with loaded gun kept in the house as protection from GOON attacks.

Finding:

Richard Eagle died of a gunshot wound to the head which occurred on 03/30/75. Eagle was shot with a .22 caliber sawed off rifle that he and other children were handling at a relative's home on the Pine Ridge Indian Reservation. The South Dakota U.S. Attorney's Office declined to prosecute the case which appeared to be accidental.



⊗ Hilda R. Good Buffalo ⊗

Allegation:

AIM supporter stabbed to death at Pine Ridge by GOONs. No investigation.

Finding:

Hilda R. Good Buffalo was found dead 04/04/75, in her home in Pine Ridge. She had a superficial stab wound on her neck and there had been a small fire in her home. The autopsy determined the cause of death to be carbon monoxide poisoning, acute alcoholism and other factors. There was insufficient evidence of a crime to support filing of criminal charges.



⊗ Jancita Eagle Deer ⊗

Allegation:

AIM member beaten and run over with automobile. Last seen in the company of federal agent-provocateur Douglass Durham. No investigation.

Finding:

Jancita Eagle Deer died near Aurora, Nebraska on 04/04/75. She was the victim of a car/pedestrian accident, and her death was reported as accidental. Since her death occurred outside the jurisdiction of the FBI, no investigation was conducted by the FBI. However, a motor vehicle accident report from the State of Nebraska indicated that Eagle Deer was standing in a lane of traffic at night and was hit by a driver who did not see her. The driver stopped, called for an ambulance and police assistance at the time of the accident.



☉ Priscilla White Plume ☉

Allegation:

Aim supporter killed at Manderson by GOONs.
No investigation.

Finding:

Priscilla White Plume was found dead 07/14/73. She was believed to have been struck and killed in a hit and run accident, near Manderson, South Dakota, by a vehicle. On 09/28/76, the South Dakota U.S. Attorney's Office declined prosecution in this matter because there was insufficient evidence to establish a Federal crime. Further, there was inadequate information to identify a perpetrator. In view of the declination, no further investigation was conducted by the FBI.



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☉ Frank Clearwater ☉

Allegation:

AIM member killed by heavy machine gun round at Wounded Knee.
No investigation.

Finding:

Frank Clearwater, true name Frank J. Clear, was shot at a road block in Wounded Knee, South Dakota, in April 1973 during a gunfight which started when Federal agents were fired upon. They returned fire. Clearwater died in a hospital on 04/25/73. The facts gathered indicated Clearwater's death was the result of gunfire received from Federal law enforcement officials after 6-8 individuals began firing at Deputy U.S. Marshals at a road block on 4/13/73.



☉ Roxeine Roark ☉

Allegation:

AIM supporter killed at Porcupine by "unknown assailants."
Investigation open, still "pending."

Finding:

Roxeine Roark, a teacher at the Porcupine Day School, was shot in stomach with a .357 magnum pistol at her residence in Porcupine, South Dakota. Investigation revealed that Roark and a friend were handling the weapon when it discharged accidentally. Roxeine died enroute to the hospital. No prosecution was undertaken due to the lack of sufficient evidence of a crime.



☉ Buddy Lamont ☉
(true name Lawrence Dean Lamont)

Allegation:

AIM member hit by M16 fire at Wounded Knee and bled to death while pinned down by fire. No investigation.

Finding:

Buddy Lamont, aka Lawrence Dean Lamont (TN), was shot and killed 04/27/73 during a gunfight with Federal officers at a roadblock in Wounded Knee. The facts of the matter, along with the autopsy report, were reviewed by the U.S. Attorney. No charges were filed.



⊗ Betty Jo Dubray ⊗

Allegation:

AIM supporter beaten to death at Martin, South Dakota.
No investigation.

Finding:

Betty Jo Dubray died 04/28/76, approximately three miles north of Longvalley, South Dakota, on Highway 73, in Washabaugh County, as a result of a brain injury in an automobile/truck accident.

Her death was the result of an automobile/truck accident, and no investigation was conducted by the FBI.



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⊗ Marvin Two Two ⊗

Allegation:

AIM supporter shot to death at Pine Ridge.
No investigation.

Finding:

Marvin Two Two died in Portland, Oregon on 01/02/93. David Martin Two Two died 05/06/76. A review of death certificates in all surrounding counties in South Dakota and Nebraska reflect no record of his death.

The FBI had 27 Agents assigned to Pine Ridge during that time and would have addressed this case if Two Two had been murdered on Pine Ridge.



⊗ Julia Pretty Hips ⊗

Allegation:

AIM supporter killed at Pine Ridge by "unknown assailants."
No investigation.

Finding:

Julia Pretty Hips was found 05/09/76, near the public school at Pine Ridge. An autopsy was performed. The cause of death was attributed to carbon tetrachloide poisoning which led to pneumonia. No signs of trauma were observed on her body. Since there was no evidence of a crime, no charges were filed.



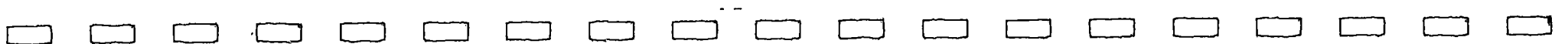
⊗ Ben Sitting Up ⊗

Allegation:

AIM member killed at Wanblee by "unknown assailants."
No investigation.

Finding:

Ben Sitting Up was killed in May, 1975, by an individual using an axe. A suspect was identified but was not prosecuted because of impairment caused by a mental condition.



☉ **Sam Afraid of Bear** ☉

Allegation:

AIM supporter shot to death at Pine Ridge.
Investigation "ongoing."

Finding:

Sam Afraid of Bear was discovered on the Pine Ridge Reservation on 05/20/76. He had been beaten to death. Two subjects were identified. Rudolph Running Shield pled guilty in 07/77. Luke Black Elk, Jr. was found guilty in U.S. District Court of 2nd Degree Murder and sentenced to serve 15 years on 02/09/78.



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☉ **Kenneth Little** ☉

Allegation:

AIM supporter killed at Pine Ridge by GOONs.
Investigation still "pending."

Finding:

Kenneth Lee Little died on 06/01/75, in Pine Ridge after being struck with a tire iron by Antoine William Bluebird during a quarrel. Bluebird was found guilty in U.S. District Court, Rapid City on 10/14/75, and sentenced on 10/14/75, to 7 years; 6 months probation.



☉ **Kevin Hill** ☉

(true name **Kenneth Mansfield Hill**)

Allegation:

AIM supporter killed at Oglala by "party or parties unknown."
Investigation "still open."

Finding:

Kenneth Mansfield Hill, a resident of Los Angeles, was hitchhiking in Oelrich, SD when picked up by four individuals. He was stabbed 19 times, presumably for his money, by a 17 year-old Indian youth. The juvenile was convicted of second degree murder on 10/12/76 in U.S. District Court. He was sentenced on 01/03/77, to 15 years in prison.



☉ **Leah Spotted Elk** ☉

Allegation:

AIM supporter killed at Pine Ridge by GOONs.
No investigation.

Finding:

Leah Spotted Elk was murdered near Wolf Creek, SD on 06/15/75. Her husband, Kenneth John Returns From Scout, was charged. Subject pled guilty on 10/13/75, to shooting his wife while the two were drinking. He was sentenced to 2 years with 5 months probation.



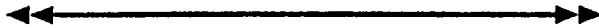
☉ Clarence Cross ☉

Allegation:

AIM supporter shot to death in ambush by GOONs. Although assailants were identified by eyewitnesses, brother Vernal Cross, wounded in ambush, was briefly charged with crime. No further investigation.

Finding:

This was a color of law-law enforcement brutality case involving two BIA police officers who allegedly shot victims during an arrest on 07/11/73, near Batesland, SD. Clarence Cross died and another family member was wounded. The victim's car was stopped by the subject officers and when victims resisted arrest they were shot by the officers. Vernal Cross was treated at Gordon, NE hospital and released. Clarence Cross was shot in the stomach and right thigh and ultimately died of complications at Fitzsimons Army Medical Center, Aurora, CO. An autopsy was performed and cause of death was linked to the gun shot wound to the abdomen. The U.S. Attorney's Office advised that there was insufficient evidence to charge the officers with a crime.



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☉ Joseph Stuntz Killwright ☉ (true name Joseph Bedell Stuntz)

Allegation:

AIM member killed by FBI sniper during Oglala firefight.
No investigation.

Finding:

Joseph Stuntz Killwright, aka Joseph Bedell Stuntz (TN), was shot and killed 06/26/75, during the RESMURS investigation. Stuntz was seen shooting at FBI SA's Williams and Coler at Jumping Bull Community and his body was subsequently found alongside the Green house near the edge of the cliff. Stuntz was apparently shot by a law enforcement officer at the scene. When the body of Stuntz was found, he was wearing a SWAT fatigue jacket with "F.B.I." on the back, belonging to SA Coler, that had apparently been taken from the trunk of SA Coler's vehicle after SA Coler was murdered.



☉ Betty Means ☉

Allegation:

AIM member killed at Pine Ridge by GOONs.
No investigation.

Finding:

On 07/03/76, Betty Lou Means was found dead along Highway 18 several miles east of Pine Ridge, South Dakota. She was apparently hit by vehicle. Investigation reflected that an individual was driving a vehicle which struck the victim. Investigation also reflected that the passenger, Arlene Good Voice, grabbed and jerked the steering wheel which caused vehicle to hit Ms. Means. On 12/02/76, the U.S. Attorney's Office, Sioux Falls, South Dakota, declined prosecution of the driver. Although he left the scene of an accident, his actions were not a violation of Federal law. On 07/08/77, Arlene Good Voice pled guilty to Assault, a violation of Title 18, United States Code, Sections 1153 and 113(d). She received a sentence of 18 months probation on 08/22/77, in United States District Court, Rapid City, South Dakota.



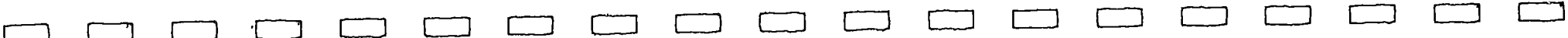
☉ James Briggs Yellow ☉

Allegation:

Heart attack caused by FBI air assault on his home.
No investigation.

Finding:

James Briggs Yellow, true name James Brings Yellow, was in the Pine Ridge Hospital at least one day prior to his death and may have been in for five days prior to his death. A review of his death certificate showed that he died of three causes. The three causes were ascending cholangitis, gram negative sepsis and resulting shock. Other significant conditions included pneumonia and lung shock.



☉ Andrew Paul Stewart ☉

Allegation:

Nephew of AIM spiritual leader Leonard Crow Dog, killed by GOONS on Pine Ridge. No investigation.

Finding:

On 07/26/75, a Bureau of Indian Affairs (BIA) Officer, Rosebud Indian Reservation, South Dakota advised that Andrew Stewart was dead on arrival at the Rosebud Public Health Service Hospital. Stewart was shot in the head. On 02/05/76, an Assistant U. S. Attorney at Sioux Falls, South Dakota declined prosecution. The autopsy report revealed the cause of death was probably a self-inflicted gunshot wound. No credible information was developed suggesting that any specific person caused the death.



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☉ Julius Bad Heart Bull ☉

Allegation:

AIM supporter killed at Oglala by "person or persons unknown." No investigation.

Finding:

Julius Bad Heart Bull was the victim of an assault occurring near Oglala, South Dakota, on 07/30/73. Witnesses to the incident said Bartholomew Joseph Long knocked the victim to the ground with his fist, picked up a 2 x 4 board, approximately three feet long containing several protruding nails, and hit victim in the head several times. Victim died at Rapid City, South Dakota on 07/31/73. Long was arrested on 08/03/73, and charged with Second Degree Murder. On 01/11/74, he appeared in United States District Court, Rapid City, South Dakota and was sentenced to the custody of the Attorney General. On 04/19/74, Long was committed to the custody of the Attorney General for 10 years.



☉ Sandra Wounded Foot ☉

Allegation:

AIM supporter killed at Sharp's Corners by "unknown assailants." No investigation.

Finding:

On 08/16/76, Sandra Ellen Wounded Foot, age 15, was found shot in the head in a remote area of the Pine Ridge Indian Reservation. Suspect Paul Duane Herman, Jr., who was a Bureau of Indian Affairs Investigator, was believed responsible for the murder. The victim was last seen alive with Herman in the early morning of 08/14/76. On 08/16/78, a Federal Grand Jury for the District of South Dakota, Sioux Falls, South Dakota, returned a true bill charging Paul Duane Herman, Jr., with violation of Title 18, U.S. Code, Sections 1153 and 1111, Herman was arrested on 08/24/78, at Fort McDowell, Arizona. On 12/19/78, Herman pled guilty in U.S. District Court, Rapid City, South Dakota, to a superseding information charging him with violation of Title 18, U.S. Code, Sections 1153 and 1112, Voluntary Manslaughter. On 02/09/79, he was sentenced to ten years in the custody of the Attorney General.



☉ Randy Hunter ☉

Allegation:

AIM supporter killed at Kyle by "party or parties unknown." Investigation still "ongoing."

Finding:

On the evening of 08/25-26/75, Randy Hunter was shot to death in Kyle, South Dakota. Vern Carlin Top Bear was identified through witnesses as threatening victim with a rifle and subsequently shooting the rifle which resulted in Hunter's death. On 10/13/75, Vern Carlin Top Bear was found not guilty by a jury in United States District Court, Rapid City. The indictment had charged him with Second Degree Murder in violation of United States Code, Title 18, Sections 1153 and 1111.



⊗ Dennis LeCompte ⊗

Allegation:

AIM member killed at Pine Ridge by GOONs.
No investigation.

Finding:

On 09/07/74, the Pine Ridge, South Dakota, Police Department officers responded to a fight at the Glenn Three Stars residence, Pine Ridge, South Dakota. Upon arrival, police found children in living room and Dennis LeCompte dead in the northwest bedroom. Three Stars admitted shooting Dennis LeCompte during a struggle after LeCompte stabbed Three Stars' son with a knife. On 06/23/75 Three Stars was indicted by a Federal Grand Jury, Sioux Falls, South Dakota. On 10/15/75, his trial commenced in U.S. District Court, Deadwood, South Dakota. On 10/17/75, Three Stars was acquitted of the charge Voluntary Manslaughter.



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⊗ Howard Blue Bird ⊗

Allegation:

AIM supporter killed at Pine Ridge by GOONs.
No investigation.

Finding:

On 09/04/75, the Pine Ridge, South Dakota Police Department received a telephone call from an unknown female who reported a fight and stabbing at the Le Roy Apple residence in Pine Ridge, South Dakota. Pine Ridge Bureau of Indian Affairs (BIA) police officers found the victim, Howard Blue Bird, lying in the kitchen. On 09/05/75, a Federal Grand Jury, Rapid City, South Dakota returned a true bill charging Le Roy Apple with violation of Title 18, USC, Sections 1153 and 1112. On 09/10/75, Apple was interviewed and admitted stabbing Blue Bird. On 10/15/75, Apple appeared in U.S. District Court, Deadwood, South Dakota, and pled guilty to violation Title 18, U.S. Code, Section 113(c), Assault with a Deadly Weapon to Commit Bodily Injury. He was sentenced to one year in the custody of the Attorney General.



⊗ James Little ⊗

Allegation:

AIM supporter stomped to death by GOONs in Oglala.
No investigation.

Finding:

On 09/10/75, James Little was kicked and beaten to death at Oglala, South Dakota. Tom Chief Eagle, Cecil Bear Robe, Fred Marrowbone and a juvenile were identified by witnesses as having participated in the beating death of Mr. Little. The suspects were arrested by Bureau of Indian Affairs (BIA) Officers on 09/11/75. On 10/20/75, a Federal jury sitting in trial at Rapid City, South Dakota found subjects Thomas Chief Eagle, Fred Marrowbone and the juvenile guilty of Voluntary Manslaughter, Title 18, U.S. Code, Section 1112(a). Cecil Bear Robe was acquitted. On 12/05/75, Thomas Chief Eagle was sentenced to the custody of the U.S. Attorney for a period of six years, the juvenile was sentenced to the custody of the U.S. Attorney General for a period of four years pursuant to the Federal Youth Corrections Act and Fred Marrowbone was sentenced to the custody of the U.S. Attorney General for a period of six years.



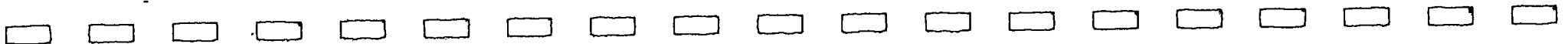
⊗ Jackson Washington Cutt ⊗

Allegation:

AIM member killed at Parmelee by "unknown individuals."
Investigation still "ongoing."

Finding:

On 9/11/73, Jackson Washington Cutt was found dead in front of a residence in Parmelee, South Dakota. Information from witnesses indicated the victim was involved in fight earlier in the morning. An eyewitness observed a suspect hit the victim over head with hatchet. The suspect was arrested on 12/27/73 in Parmelee, South Dakota by the Rosebud Police Department. On 01/29/75 a witness was re-interviewed and advised that he did not actually see the suspect strike the victim with a hatchet. On 01/29/75 the suspect was re-interviewed. He admitted being near the scene but denied involvement and denied knowledge of who perpetrated the crime. An Assistant U.S. Attorney, Sioux Falls, South Dakota, advised that a motion and order to dismiss the indictment in the above captioned matter was filed on 03/13/75. There was insufficient evidence to achieve a conviction.



☉ **Robert Reddy** ☉

Allegation:

AIM member killed at Kyle by gunshot.
No investigation.

Finding:

Robert Reddy was found dead on 12/16/1974, near Kyle, SD, on the Pine Ridge Reservation. An autopsy revealed Reddy died of two stab wounds through the heart. Although a suspect was identified, there was insufficient evidence to charge and convict the suspect.



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☉ **Melvin Spider** ☉

Allegation:

AIM member killed in Porcupine, South Dakota.
No investigation.

Finding:

On 09/22/73, a BIA officer requested FBI assistance with regard to Melvin Spider, who was found dead on the road between Porcupine and Sharp's Corner on the Pine Ridge Reservation. Initial investigation suggested Spider was either a victim of a vehicular hit and run or a severe blow to the head. Interviews revealed Spider was drunk prior to his death. An autopsy on 09/22/73 revealed Spider died on 09/21/73, of extensive cerebral lacerations of the brain, which were traumatic in nature, the cause of which was not obvious. Although a suspect was developed, there was insufficient evidence to charge that person with the death.



☉ **Philip Black Elk** ☉

Allegation:

AIM supporter killed when his house exploded.
No investigation.

Finding:

On 06/30/73, the private residence of Phillip Black Elk was completely destroyed by a propane gas explosion. Investigation determined that the explosion was caused by a leakage of propane gas within the residence. A thorough neighborhood investigation was conducted which revealed there had been a previous problem with propane gas leakage in the neighborhood over the previous two weeks. Immediately after the explosion, Black Elk advised he entered the residence and attempted to light the pilot on the hot water heater when the explosion occurred. Black Elk suffered severe burns and was immediately taken to the Pine Ridge Community Hospital, where he was listed in serious condition. Shortly thereafter, Black Elk was flown to Fitzsimmons General Hospital, Denver, Colorado, where he died. Since the injury was accidental and caused by actions of the victim, no further criminal investigation was conducted.



☉ **Aloysius Long Soldier** ☉

Allegation:

AIM member killed at Kyle, South Dakota, by GOONs.
No investigation.

Finding:

On 02/09/77, South Dakota DCI advised the FBI of investigation into the death of Aloysius Long Soldier. He died on 10/07/74. On 02/16/77, a family member requested a review of the death investigation. The BIA investigative file into the death was reviewed. It was the conclusion of the BIA that there was no evidence that the death of Aloysius was anything other than a suicide. The BIA case was closed. In view of the BIA investigative results, and since the family member was unable to offer any factual evidence suggesting that the death was a homicide, no further investigation was conducted.



☉ Phillip Little Crow ☉

Allegation:

AIM supporter beaten to death by GOONs at Pine Ridge.
No investigation.

Finding:

On 11/14/73, on the Pine Ridge Reservation, Irby Leroy Hand killed Phillip Emery Little Crow by striking him with his fists. Hand signed a confession. Autopsy results revealed Little Crow died of a skull fracture. On 08/28/74, Hand was sentenced to five years custody of the Attorney General.



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☉ Pedro Bissonette ☉

Allegation:

Oglala Sioux Civil Rights Organization (OSCRO) organizer and AIM supporter assassinated by BIA Police/GOONs. Body removed from Pine Ridge jurisdiction prior to autopsy by government contract coroner. No investigation.

Finding:

Pedro Bissonette was killed on a highway four miles north of Pine Ridge. BIA officers tried to arrest Bissonette on two fugitive warrants, one stemming from his Wounded Knee activities. When Bissonette advanced on the officers with a raised 30.06, he was shot. Five hours prior to the time he was shot, Bissonette had eluded two other BIA police officers. Autopsy results revealed Bissonette was killed by a single shotgun blast in the chest fired by a police officer.



☉ Olivia Binas ☉ (true name Olivia Bianas)

Allegation:

AIM supporter killed in Porcupine by "person or persons unknown."
Investigation still "open."

Finding:

On 10/26/75, BIA police contacted the FBI to advise that Olivia Bianas was found dead at her home. An autopsy revealed Olivia died of a cerebral hemorrhage caused by a severe beating. Witnesses observed Norman Bianas beat his wife on the day she died. On 10/27/75, Norman Bianas was arrested. On 11/13/75, he made an admission of his role in the death. On 01/23/76, Bianas pled not guilty to voluntary manslaughter. He subsequently withdrew the plea on 03/08/76. On 07/09/76, he was sentenced to eight years custody of the Attorney General. The U.S. Federal Appeals Court upheld his conviction.



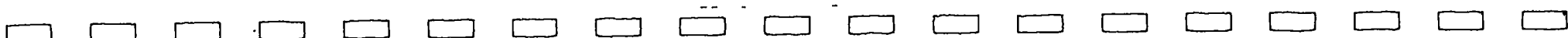
☉ Janice Black Bear ☉

Allegation:

AIM supporter killed at Manderson by GOONs.
No investigation.

Finding:

Janice Joyce Black Bear died on 10/26/75. An autopsy revealed the cause of Black Bear's death was cerebral contusions. Contributing death factors were acute alcoholism and phenobarb/qualude intoxication. A suspect, George Michael Twiss, admitted to spending the evening with the victim. Twiss recalled that he woke up at home and had blood on his arms, shirt and pant leg. Twiss was arrested by the BIA when they arrived at his home and he was washing his hands. On 07/06/76, Twiss pled guilty to Involuntary Manslaughter. On 09/03/76, Twiss was sentenced to three years custody of the Attorney General.



☉ Michelle Tobacco ☉

Allegation:

AIM supporter killed at Pine Ridge by "unknown persons."
No investigation.

Finding:

Michelle Linda Tobacco, age 9 months, died on 10/27/75. A relative of the victim advised that she consumed liquor, tripped and fell with the baby. When the relative awoke, Michelle was dead. Autopsy revealed victim died on 10/27/75, of acute pneumonitis and hemorrhage to her adrenal gland. The U.S. Attorney's Office declined to prosecute the relative.



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☉ Delphine Crow Dog ☉

Allegation:

Sister of AIM spiritual leader Leonard Crow Dog. Beaten by BIA police and left lying in a field. Died from "exposure." No investigation.

Finding:

Delphine (Crow Dog) Eagle Deer died 12/06/72. The cause of death listed on her death certificate was exposure and sub-zero weather. Other significant conditions included acute alcoholism. More specifically, the death certificate indicated that the injury occurred as the result of "accidental freezing to death," in an open field approximately 2.3 miles southwest of St. Francis, South Dakota, within the exterior boundaries of the Rosebud Reservation. An autopsy was conducted and the findings of the autopsy determined the above-listed causes of death.



☉ Elaine Wagner ☉

Allegation:

AIM supporter killed at Pine Ridge by "person or persons unknown."
No investigation.

Finding:

On 11/30/74, the body of Elaine Wagner was found in a creek bottom in Pine Ridge, South Dakota. Autopsy showed Wagner died of exposure. Interviews revealed that at about 4:00 p.m. on 11/29/74, Wagner joined two car loads of persons and drank with several individuals on the evening of 11/29/74. After drinking for several hours, Wagner went to a nearby home. At approximately 10:00 p.m. on 11/29/74, Wagner left the house. Her body was found on the afternoon of 11/30/74 approximately 100 yards from the house. No subject has been developed and all available investigative leads were exhausted. From all the evidence, this matter appeared to be a non-felonious death. The U.S. Attorney advised that there was insufficient evidence to charge any person.



☉ Allison Fast Horse ☉

Allegation:

AIM supporter shot to death near Pine Ridge by "unknown assailants."
No investigation.

Finding:

Allison Fast Horse, aka Allison Little Spotted Horse, Jr. (TN), was found shot to death on Chadron Road approximately one mile south of Oglala, SD on the morning of 11/23/73. He had been shot in the chest with a .22 caliber bullet. An autopsy indicated death was attributed to the bullet wound. Examination of physical evidence failed to provide any indication as to the identity of any possible suspects.



Allegation:

20 year old Penobscot from Maine, AIM supporter stabbed to death in Lincoln, Nebraska. With stab wounds through the neck and face, and with other cuts and bruises, death was ruled a "suicide." Eight years later, the "suicide" ruling was changed, but no further investigation.

Finding:

On 12/02/74 Lincoln, Nebraska, Police Department executed a search warrant for the barracks housing the Wounded Knee Defense Offense Legal Committee. The warrant was based on the armed robbery of local residents by four Indian males. Three individuals, Laurence V. Red Shirt, Garrett E. Wounded Head and Larry J. Martinez, were arrested in connection with the robbery. John S. Moore, the fourth suspect in the robbery, was found dead in the barracks. He was fatally stabbed through the neck and the right side of his face. The autopsy report indicated death was caused by suicide. This matter was not investigated by the FBI.



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⊗ **Carl Plenty Arrows Sr.** ⊗

Allegation:

AIM supporter shot to death near Pine Ridge by "person or persons unknown."
No investigation.

Finding:

At 6:30 p.m. on 12/05/75, Glen Thomas Janis shot Carl Plenty Arrows, Sr. and Frank Claude LaPointe at Pine Ridge, South Dakota. Carl Plenty Arrows, Sr. was pronounced dead at the scene. Frank LaPointe subsequently died at Gordon Hospital, Gordon, Nebraska, on 12/05/75. Janis voluntarily turned himself in to Pine Ridge authorities on 12/05/75. During an interview with FBI Agents on 12/06/75, Janis admitted shooting Carl Plenty Arrows, Sr. Janis was also identified by witnesses as the person who shot both victims. On 03/29/76, Glen Janis pled guilty to second degree murder and voluntary manslaughter (Title 18, USC, Sections 1153, 1111, and 1112). On 06/15/76, Janis was sentenced to 20 years on count II and 10 years on count I, sentences to run concurrently.



Allegation:

AIM supporter killed at Pine Ridge by GOONs.
No investigation.

Finding:

At 6:30 p.m. on 12/05/75, Glen Thomas Janis shot Carl Plenty Arrows, Sr. and Frank Claude LaPointe at Pine Ridge, South Dakota. Carl Plenty Arrows, Sr. was pronounced dead at the scene. Frank LaPointe subsequently died at Gordon Hospital, Gordon, Nebraska, on 12/05/75. Janis voluntarily turned himself in to Pine Ridge authorities on 12/05/75. During an interview with FBI Agents on 12/06/75, Janis admitted shooting Carl Plenty Arrows, Sr. Janis was also identified by witnesses as having shot both victims. On 03/29/76 Glen Janis pled guilty to second degree murder and voluntary manslaughter (Title 18, USC, Sections 1153, 1111, and 1112). On 06/15/76 Janis was sentenced to 20 years on count II and 10 years on count I, sentences to run concurrently.



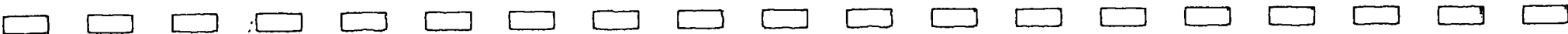
⊗ **Floyd S. Binals** ⊗

Allegation:

AIM supporter killed at Pine Ridge by GOONs.
No investigation.

Finding:

On 12/25/74 Floyd Sherman Binas, age 16 months, was killed at the residence of Marion High Bull. High Bull stated he fell with Binas. No one else was present. The body of Yvette Lorraine Lone Hill, age 7, was discovered on 12/28/74. Lone Hill had scars and bruises all over her body and had obviously been beaten. A witness advised he observed Marion High Bull hit Yvette Lone Hill. On 12/30/74, Marion High Bull was arrested by FBI Agents. Marion Allen High Bull was tried by a jury and on 10/08/75 High Bull was found guilty of one count of voluntary manslaughter (Title 18, USC, Section 1112) and one count of second degree murder (Title 18, USC, Section 1111). On the same date he was sentenced to 10 years count 1 and 20 years count 2, sentences to run concurrently.



⊗ Yvette Lorraine Lone Hill ⊗

Allegation:

AIM supporter killed at Kyle by "unknown party or parties."
No investigation.

Finding:

On 12/25/74, Floyd Sherman Bianas, age 16 months, was killed at the residence of Marion High Bull. High Bull stated he fell with Bianas. No one else was present. The body of Yvette Lorraine Lone Hill, age 7, was discovered on 12/28/74. Lone Hill had scars and bruises all over her body and had obviously been beaten. A witness advised he observed Marion High Bull hit Yvette Lone Hill. On 12/30/74, Marion High Bull was arrested by FBI Agents. Marion Allen High Bull was tried by a jury and on 10/08/75 High Bull was found guilty of one count of voluntary manslaughter (Title 18, USC, Section 1112) and one count of second degree murder (Title 18, USC, Section 1111). On the same date he was sentenced to 10 years count 1 and 20 years count 2, sentences to run concurrently.



Appendix G

WINNER POLICE DEPARTMENT

217 E. 3rd. Street PO BOX 691
Winner, South Dakota 57580-0691
605-842-3324 FAX 605-842-0415

April 03, 2000

United States Commission on Civil Rights
Regional Programs Coordination Unit
Washington, DC 20425

RE: Transcript of Ms. Pearl Redfish:

Dear Ms. Hurley,

Thank you for sending the transcript of Ms. Redfish's testimony. I am glad to be made aware of the incident. As I read thru the transcript that you provided me concerning the alleged incident that happened in Winner, South Dakota, I do see several discrepancies. Ms. Redfish states that she was talked to by the City of Winner Police Department. In essence it was a deputy from the Tripp County Sheriff's Office with whom she had the conversation. Ms. Redfish also states that she called the Department of Defense concerning this incident, she called the office of the Governor of South Dakota, but at no point in time did I receive a phone call, letter or any correspondence from Ms. Redfish concerning this incident. Had Ms. Redfish called the Winner Police Department or had made contact with any officials of the City of Winner this incident would have been explained to her.

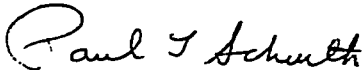
The National Guard Armory in Winner, South Dakota sets in the Winner High School complex. The entrance to the National Guard Armory where the basketball game was conducted faces the North. The front of the building is a no parking zone except for handicap, law enforcement and emergency vehicles. The front of the building needs to be kept clear of congestion and one of the ways this is done is by making a designated smoking area. This designated smoking area is located behind the National Guard Armory, or the South entrance of the National Guard Armory. This area is well lit and is away from the congestion and those that want to smoke can go outside and smoke.

The designated smoking area is purposeiy set in the South entrance of the building to try and keep tne young people from being exposed to those smokers who are, by law, over the age of 18. This also helps with security and vandalism that sometimes occurs at these kind of events. With the smokers who are more mature and being over 18 years old at one entrance and the younger people going out the North entrance or the main entrance of the Armory, it keeps those people from intermingling thus creating lesser numbers or groups in the area at one time. If people are going to just go outside, this separation means that fewer people are needed to be kept track of, going in and out of the doors, seeing whether those people have paid admission or not.

Please find enclosed a copy of a letter from the Tripp County Sheriff's Office concerning their involvement in the alleged incident and a letter from the principal of the Winner High School concerning their policies.

Again, I would like to thank you for sending me the transcript. I am somewhat in awe of your cover letter where it states that witnesses have defamed, degraded or incriminated the Winner Police Department. I am also awed that Ms. Redfish could call all these individuals, drive to Rapid City, South Dakota to appear in front of your committee with these allegations concerning us and not at any time have we been notified concerning this incident. The Winner Police Department has made great strides in trying to treat all individuals the same.

Sincerely,



Paul J. Schueth
Chief of Police
Winner, South Dakota

Enclosures:
letter from Deputy Connot, Tripp County Sheriff's Office
letter from Dean Keith, Principal Winner High School

**TRIPP COUNTY SHERIFF'S OFFICE
P.O. BOX 531
WINNER, SOUTH DAKOTA 57580
(605) 842-3600**

March 27, 2000

To Whom It May Concern,

My name Robert J. Connot, and I am a Deputy Sheriff in Tripp County, South Dakota. I have held this position since September of 1994. I was the officer that was working at the high school girl's basketball game between Winner and Todd County High Schools on October 19, 1999. I recall the events of that evening concerning the allegations set forth in the letter sent to Winner Chief of Police Paul Schueth.

First of all, it should noted that the Winner Police Department was not involved in the conversation that occurred between myself and any other parties. I do not recall if I had my uniform shirt with patches clearly identifying myself as a Deputy Sheriff or if I had my light jacket on which has "Sheriff's Office" applied to the back on a large screen, but either way, I was clearly identified as an officer of the Sheriff's Office that evening.

When I arrived at the game shortly before the beginning of the varsity game, I parked in front of the Armory, and got out my car. I approached three boys that I did not recognize and told them that they needed to go back into the building. The boys appeared to be of high school age and Native American. One of the boys told me that they did not have to, and I told them that if they did not want to go back in, they would be asked to leave or may be charged admission again. They said that it was hot in the building and that they just came out to get some air. I told them that it was a school policy and that they could either go inside or leave. One of the boys said that his Mom worked for the school in Mission and he didn't think I could do this. I said that it is a school policy, and that if they came to watch the game they needed to stay inside. One of the boys made some kind of remark in a sarchastic tone and I asked him for some identifiaction, which he failed to show me, as they then went back inside.

The boy did then go get his mother, who said that she was a secretary at the Todd County School and did not think what I did was right, and that she did not know of any laws against smoking or going outside the building and that I could not make these laws. I told the woman that this was not a law or one that I had made, that the school had put the policy in place as a means to deter vandalism and thefts, which was quite a problem at games a couple of years ago. Another woman who had joined speaking to me said that she would call Congressman John Thune about this as this was a federal building which the schools could not make decisions like that. The woman went on to later talk indirectly to me about how this was pretty easy to see what this is about and that this would not

happen with any other school, which I believe was an inference to discrimination, but I made no response to this.

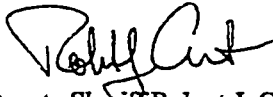
Shortly thereafter High School Principal Dean Keith came out to where I was and repeated what I had told the people, and that was followed by the Athletic Director Harvey Naasz getting on the public address system to tell people that the smoking area or fresh air area was at the the south end of the building and that this is where people needed to go if they wanted to do either.

This designated smoking area is set forth in South Dakota Law by 22-36-2, which clearly states "this section does not prohibit the smoking of tobacco or tobacco products in the places named in this section," which does include elementary or secondary schools, and continues, "if the smoking is confined to areas designated as smoking areas." The area that the Winner School Board designated for these purposes is the area outside the south door.

The kids that were later referred to in the statement which I read concerning that evening to my best recollection were band students or danceline students that had reason to go in and out. Also, the inference that I would let some kids smoke is absurd, as I am a law enforcement officer and serve as D.A.R.E. officer and would not let anyone that I knew to be under 18 smoke, no less at a school sanctioned event.

I showed no favoritism to anyone that evening acting in my official capacity. My actions that evening were acting as a law enforcement officer and were in response to a standing school policy.

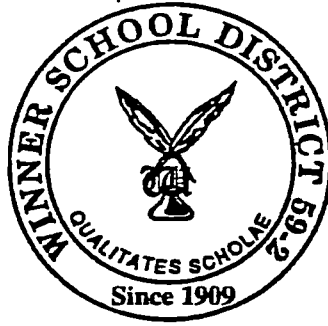
Respectfully Submitted,



Deputy Sheriff Robert J. Connot
Tripp County Sheriff's Office

BOARD OF EDUCATION:

ROCKY BLARE, Chairperson
DAN VIEDT, Vice Chairperson
JIM DAY, Member
DOUG LONG, Member
STEVE MEYER, Member
WAYNE MEYER, Member
CLINT VANNEMAN, Member



ADMINISTRATION:

DAVID NICHOLAS, Superintendent,
Middle School Principal
DEAN KEITH, Senior High Principal
MARY FISHER, City Elementary Principal
JUDY AUDISS, Special Education Director,
Rural Principal
PHIL HUSHER, Business Manager
NADIENE MCCREADY, Asst. Bus. Manager,
Superintendent Secretary

March 29, 2000

To Whom It May Concern:

In order to keep the front of the armory open and clear of vehicles and patrons the Winner School District has a policy that only handicapped or emergency vehicles may park in front of the building during activities. Since we are a drug free school, we prohibit smoking in front of the armory. In order to accommodate those adults who have to smoke during activities, we ask that they use the exit door in the back and smoke outside in the designated area. To assist us with this policy, the school has asked the police department and/or sheriff department to help monitor this situation. The biggest problem occurred between games and during half time with students and/or adults who exited the front door congesting this area. The smoking and congestion problem then occurred. By not allowing students to leave and by having the smokers in the back of the building have greatly reduced this congestion.

Sincerely,

Dean S. Keith
Dean S. Keith
WHS Principal

DSK/bl

WINNER SCHOOL DISTRICT 59-2 • 142 W 4TH ST • WINNER SD 57580-1711
TELEPHONE: 605-842-0626 • FAX: 605-842-0276

Appendix H



GREAT FACES. GREAT PLACES.

DEPARTMENT OF CORRECTIONS

CENTRAL OFFICE
3200 East Highway 34
c/o 500 East Capitol Avenue
Pierre, SD 57501-5070
Phone: (605) 773-3478
Fax: (605) 773-3194

April 10, 2000

U.S. Commission on Civil Rights
Regional Programs Coordination Unit
Washington, DC 20425

To Whom It May Concern:

This letter shall serve as a response to the comments directed at the South Dakota Department of Corrections (DOC) during a December 6, 1999 community forum held by the South Dakota Advisory Committee. The individual making these comments has a child that has been placed in the custody of the Department of Corrections by the circuit court.

The Department of Corrections has no control over the decision to commit a child to our custody. That decision is made solely by a circuit court judge. Only after that commitment is made by the judge is the DOC responsible for placement of juveniles in our custody. These placement decisions are based on very detailed process of intake, assessment and classification. Once a child is placed in a program determined to best meet their needs it is up to the child to earn their way out of the program. Under South Dakota law the DOC may keep a child under its jurisdiction until that child reaches the age of 21 or until discharged by the Secretary of Corrections. This provision has been in the law for many years.

The DOC is required by law to provide to youth in custody is medical services. Under state law parents are required to pay for medical services provided to their children while they are in placement. This provision can only be waived by a circuit judge that determines on the record that the parents should not be held responsible for these costs. The law also requires that parents pay support for their children while in custody. These costs are also determined by the court and are to be in accordance with the established child support guidelines. The DOC does not have authority to modify an order by the court and is responsible to enforce these orders, including collection of parental support and medical costs. The DOC attempts to get eligible youth services at an Indian Health Services program when reasonable, however this is not always possible due to failure by the parents to provide adequate information or the access to services is impractical. It is simply not possible in every situation to transport a youth to an Indian Health Services Program located 40 miles from the facility.

Youth in the custody of the DOC are not denied access to religious services. Each week youth have time allotted to observe religious beliefs. Under the DOC visitation policy religious leaders are included as approved visitors and are certainly welcome to visit youth wishing to express religious beliefs. Religious leaders from many different faiths currently come on campus and provide opportunities for youth to express their religious beliefs and youth are not denied access to these individuals. The DOC is not aware of any situation where racism has been allowed to exist openly on campus and will not tolerate such conduct. Should anyone be able to provide specific instances of such conduct they should immediately report them to the DOC so action may be taken.

The Department of Corrections is just what it says it is, a correctional department. Youth that are committed to the DOC are in many cases violent, assaultive and dangerous to themselves or others. In order to protect juveniles and staff the DOC has a very strict policy that allows the use of force and restraints. Any abuses of this policy are immediately reported to the proper authorities. The DOC policy in this area is in compliance with the standards of the American Corrections Association. These standards are nationally recognized and accepted as proper practices within a correctional program.

I hope this response has shed some light on the issues raised within the Department of Corrections. It is certainly understandable that some individuals will not be satisfied with the actions of the DOC. The fact that a parent has had their child removed from their homes can cause hard feelings. We also understand that there may be times when an employee's conduct may be unacceptable and we are committed to a full and fair investigation of such conduct. We are committed to dealing with any allegation of misconduct quickly and fairly and individuals with specific allegations are encouraged to contact the DOC so that we might respond accordingly.

Sincerely,



Jeff Bloomberg, Secretary
South Dakota Department of Corrections

Appendix I



Department of Education and Cultural Affairs

February 2, 2000

John F. Dulles, Regional Director
Rocky Mountain Regional Office
United States Commission on Civil Rights
1700 Broadway, Suite 710
Denver, CO 80290

Dear Mr. Dulles:

Thank you for your letter requesting assistance from this agency. We are pleased to have an opportunity to provide information to the chairperson of the United States Commission on Civil Rights, Dr. Mary Frances Berry, as well as members of the commission and its South Dakota Advisory Committee.

This agency's mission includes not only K-12 public education but also a responsibility for life-long learning opportunities for all citizens of South Dakota. It is within this broader context that the responses to questions are framed. Below you will find this agency's response to the questions that are posed in your letter.

1. Are there requirements in state educational laws, codes, regulations or policies governing the inclusion of Native American history, culture, language and contributions to American and/or South Dakota history or contemporary society? If so, please describe and include appropriate references.

State Laws

The fundamentals of public policy regarding the inclusion and recognition of Native American history, culture, language and contributions are set forth in three noteworthy sections of codified law, described below.

- In 1995, the South Dakota Legislature established the Office of Tribal Government Relations within the executive branch of state government (SDCL 1-4-1) and directed all state agencies (including the Department of Education & Cultural Affairs) to render "...advice and assistance..." to the office as "...deemed necessary..." Thus, a formal relationship is established across the executive branch of state government for matters concerning Indian people, including but not

Office of the Secretary, 700 Governors Drive, Pierre, SD 57501-2291
Office - (605) 773-3134 Fax - (605) 773-6139

limited to those that fall within the responsibilities of DECA, i.e. education and cultural affairs.

- In 1990, the South Dakota Legislature established a statewide legal holiday, known as Native Americans' Day, on the second Monday in October. The holiday is marked with celebrations throughout the state, and with special events and units of study in public schools. As stated in statute (SDCL 1-5-1.2), Native Americans' Day is "...dedicated to the remembrance of the great Native American leaders who contributed so much to the history of our state."
- The Legislature has also-established two working holidays that commemorate significant events in South Dakota history and bring them to the attention of all citizens for reflection and recognition on an annual basis. They are:
 - Little Big Horn Recognition Day (SDCL 1-5-8);
 - Wounded Knee Day (SDCL 1-5-9).
- In 1997, the South Dakota Legislature enacted a law requiring that character development instruction be given in all public and nonpublic elementary and secondary schools in the state (SDCL 13-33-6.1). The statute specifies that the instruction should "...impress upon the minds of the students...respect for the contributions of minority and ethnic groups to the heritage of South Dakota... ." The curriculum for the required instruction is locally determined (see further discussion of local control below).

K-12 Public Education

Unlike the laws of many states, current educational law and code in South Dakota reserves the determination of academic curriculum in local K-12 schools for the locally-elected board of education. There are no state requirements set forth in law for academic curriculum for each grade.

A recent development is the establishment of state standards in four core content areas and the requirement that local school districts implement them by creating and adopting local course guidelines. The four content areas are language arts, mathematics, science, and social studies.

The state standards are adopted by official action of the South Dakota Board of Education and hence are official state documents.

John F. Dulles
February 2, 2000
Page 3

SDCL 13-3-48 requires each local school district to adopt and implement the content standards via the use of locally-developed and approved "course guidelines." The schedule for this local activity is:

- Language arts and mathematics course guidelines must be adopted by the local board of education by July 1, 1999;
- Science and social studies course guidelines must be adopted by the local board of education by July 1, 2000.

The social studies content standards that were adopted by the South Dakota Board of Education include several references to inclusion of Native American history and culture in the required content, including:

- Kindergarten History Standards (p.11 *South Dakota Social Studies Content Standards*): "Students will: 1. Describe examples of past events in legends and historical accounts, such as stories of ... Squanto...; ...3. Connect people and events honored in commemorative holidays, including Native American Day... ."
- First Grade History Standards (p. 13 *ibid.*): "Students will: ...2. Compare the lives of people and events associated with major holidays, including Native American Day... ."
- Second Grade History Standards (p. 15 *ibid.*): "Students will: ...2. Study various community structures and the roles of men, woman, and children within the community with emphasis on ...Native Americans (Sioux); and reservation...communities of the present."
- Fourth Grade History Standards (p. 19 *ibid.*): "Students will: ...2. Explain the impact of people and geographic location on the growth and expansion of South Dakota, emphasizing Mandan, Arikara, Sioux, and other historic tribes;...: ...3. Trace the history of South Dakota with emphasis on notable South Dakotans such as Red Cloud, Sitting Bull...; ...4. Analyze issues of concern in South Dakota, including...Indian and non-Indian relationships;"
- Fifth Grade History Standards (p. 21, *ibid.*): "Students will: 1. Describe life in America before the 17th century by identifying and describing the arrival, settlement, and culture of the First Americans, including Indians of the Northwest, Southwest, Plains, Eastern Woodlands, and Middle America; and inferring how climate and geography influenced the way various Indian tribes lived."
- Eighth Grade History Standards (p. 27, *ibid.*): "Students will: ...13. Examine how the following conflicts during the early to mid 1800s led to acquisition and settlement of land, including...Indian Conflict...; ...17. Explain how, following the Civil War, massive immigration combined with the rise of big business...transformed American life with emphasis on: ...changing federal policy regarding Indians... ."

- 9-12 Civics Standards (p. 31 *ibid.*): "Students will: ...2. Compare the state, local, and tribal governments with emphasis on their structures, functions, and powers; ..."

Life-long Learning

- State laws (SDCL 13-57-3.2 and 13-59-2.1) recognize two Indian Studies Centers located on the campuses of Black Hills State University, Spearfish, SD, and the University of South Dakota, Vermillion, SD. The purposes of the centers as set forth in codified law are: "...to provide persons of Indian descent with educational opportunities both on and off the campus...and to provide to all persons the opportunity to research and study the history, culture, and language of the Indians of North American and South Dakota."

Governance of public universities in South Dakota is granted to the South Dakota Board of Regents (SDCL 13-49-1).

- An additional state commitment to opportunities for life-long learning resides within the functions of the Department of Education and Cultural Affairs, Office of History (SDCL 1-18-2). The law states in part: "...publish and otherwise diffuse information relating to the history of the region to schools and communities; and in general encourage and develop within the state the study of history."

Therefore, a significant portion of our agency's mission to provide life-long learning opportunities is fulfilled through the programs of the Office of History and the South Dakota State Historical Society. The mission of the Office of History states in part:

History provides tools for defining our diverse cultural identities and understanding our past. The South Dakota State Historical Society shall promote, nurture and sustain the historical and cultural heritage of South Dakota by collecting, preserving, researching and interpreting evidence of the state's irreplaceable past and making it available for the life-long educational enrichment of present and future generations.

The statutory and regulatory authority of the Office of History and the South Dakota State Historical Society as set forth in code and law (SDCL §§ 1-18, 1-18C, 1-19, 1-19A, 1-19B, 1-20, 34-37 et al) as well as in administrative rule (ARSD 24:52) is inclusive, not exclusive. Operations of the agency reflect the commitment to define history to encompass all peoples. Inclusion of Native American history, culture, language and contributions is evident in the opportunities for life-long learning programs offered by this agency, including:

John F. Dulles
February 2, 2000
Page 5

- Publications
- Exhibits
- Collections
- Archives
- School Programs.

Highlights from the detailed report attached to this response include:

- The department publishes both the 41-volume biennial series *South Dakota Historical Collections, 1902-1982*, and the award-winning quarterly journal *South Dakota History*. Both have published primary documents such as treaties, ledger drawings, archaeological finds, and oral histories.

Over the past 30 years, since its inception in 1970, the quarterly journal has published award-winning historical essays on American Indian history, especially Lakota, Dakota, Nakota Indian history, but also Arikara, Mandan, Hidatsa, and tribes of earlier eras. The journal reaches 1,450 subscribers plus countless other readers in 165 libraries that offer the journal within their collections.

- The published essay "Indian Heirship Lands: The Lake Traverse Experience," by Michael Lawson (*South Dakota History*, vol. 12, pp. 213-231) won a national award (the 1984 Ray A. Billington Award from the Western History Association) for outstanding publishing in the field of Western History.
- The publishing of Great Plains history is a growing field; in the past five years, fully one-quarter of the articles published in this department's *South Dakota History* journal have been devoted to American Indian history.
- The most recent issue of *South Dakota History* includes three articles:
 - "Reservation Akicitas: The Pine Ridge Indian Police, 1870-1885" by Mark R. Ellis;
 - "Cowboys on the Reservation: The Growth of Rodeo as a Lakota National Pastime" by Allison Fuss;
 - "Spontaneous Combustion: Prelude to Wounded Knee 1973" by Akim D. Rinhardt.
- The department administers the state's Cultural Heritage Center, a building constructed in the 1980s in commemoration of the state's Centennial. It is located in Pierre and is open to the public as a center of historical collections, exhibits and special events. The newest permanent exhibit in the state's Cultural Heritage Center is called *Oyate Tawicoh'an: The Ways of the People*. It is a 1,500 sq. ft. exhibit featuring historical objects, contemporary traditional arts, ancient pictographs, and audio of modern Lakota, Dakota, Nakota speakers and musicians presenting Sioux culture on a continuum from past to present. An average of 22,500 people visit the center each year.

- The collections stored in the climate-controlled museum facilities of the Cultural Heritage Center include an extensive section of American Indian artifacts. Scholars and artisans studying American Indian art have access to the collections to research traditional Native American art as well as historical artifacts. A highlight in the collection is the world-renowned Sioux Horse Effigy c. 1875, a masterpiece of Sioux horse sculpture that has become the symbol of the state's Office of History.
- At the urging of South Dakota's Governor, a special and extensive collection of all known federal records relating to the nine South Dakota Indian reservations has been established, creating access to documents previously available only in Washington, D.C.

In addition, arrangements have been made to microfilm reservation newspapers on an ongoing basis and to add them to the permanent collections. This includes *Indian Country Today* and *Sicangu Sun Times* (by special arrangement with Sinte Gleska University on the Rosebud reservation). The archives are open to researchers on a daily basis.

- Through the Office of History's Historic Preservation Program, many American Indian archaeological sites and properties throughout the state have been identified and listed in the National Register of Historic Places or designated as National Historic Landmarks. The status of the designations underscores their importance and brings them to the attention of researchers, travelers, school groups, cultural organizations, and residents.
- The department administers an annual matching-grant program set forth in statute as the "Deadwood Fund" (SDCL 42-7B-48 and SDCL 1-19A-13.1). An established priority within the program is funding of projects in which "...the property is associated with minority or ethnic groups, particularly American Indians."
- The agency is also a contributing exhibitor at the Journey Museum, a major tourist attraction and school-tour highlight in Rapid City, SD. The Office of History has built archaeological exhibits that focus on American Indian prehistory and history in the facility (opened in 1997); the displays are seen by more than 71,000 visitors annually.

Participation by Native American experts or tribal representatives in the department's programs occurs in a much broader context than textbook selection as was referred to in the January 10, 2000, letter from your office. Therefore, it is addressed here in the discussion of inclusion policies rather than in the textbook response below. Highlights of participation include:

John F. Dulles
February 2, 2000
Page 7

- Appointment of tribal members and/or educators from schools educating large numbers of Native American students to seats on several boards and committees, including but not limited to the South Dakota Board of Education, the South Dakota Title I Committee of Practitioners, the content standards review panels, Title I performance standards workgroups, Healthy Children/Healthy Future Network, Be Proud/Be Responsible curriculum committee, HIV/AIDS-education community planning group, HIV/AIDS-education materials review panel, Lakota Women poster series advisory group, Title I statewide school support team, suicide prevention teams, rape prevention and violence teams;
- It is standard practice to include educators from schools educating Native American students in announcements/invitations to conferences, workshops, seminars, meetings and hearings sponsored by the department, and on the department's mailing lists, and in directories and reports issued by the department.
- The highly popular annual summer health education conference sponsored by the department includes a segment devoted to Native American perspectives on health and spirituality.
- Since 1990, the department biennially conducts a survey of adolescent risk behaviors throughout public, private, and BIA schools in South Dakota. In 1994, the Bureau of Indian Affairs contacted the department with a request to conduct the same survey exclusively in schools having significant numbers of Native American students. Through collaboration with Bureau of Indian Affairs staff, tribal officers, and school officials, the department began to conduct a highly successful set of surveys of risk behaviors among Native American middle school students and Native American high school students. It is now conducted periodically based on recommendations from local BIA line officers as a part of continued collaboration. The activity has received the support of the Centers for Disease Control and Prevention. Copies of the report are included in the attachments.
- BIA and tribal officials impress upon department officials the importance of health education for Native American students; through their advocacy and cooperation, BIA schools were included in studies of health education done in middle/junior high schools and senior high schools throughout the state. Within the public school system, a random sample of schools was used. However, within the BIA schools, every school was surveyed at the urging of BIA and tribal officials. Copies of the reports are included in the attachments.
- Tribal colleges in South Dakota contributed to the work of the department to re-draft administrative rules governing teacher education program approval and teacher certification.
- Tribal colleges seek approval of their teacher-training programs from the state Board of Education. This requires on-going participation in department processes as well as on-site review procedures.

- The design of the department's *Oyate Tawicoh'an: The Ways of the People* exhibit in the Cultural Heritage Center was informed by an Indian Advisory Committee and a Sioux scholar. The experiences of the department in working with the Indian community were chronicled in the article "Advisors to Partners: Bridging the Cultural Gap" published in *History News*, Autumn 1995.
- An archivist for a tribal government or from a tribal college serves on the South Dakota Historical Records Advisory Board.
- LaVera Rose, a Office of History staff member and a Rosebud tribal member, serves on the Minority Scholarship Committee of the Midwest Archives Conference, the Buechel Museum advisory board of the St. Francis Indian Mission, and the advisory board of the Cultural Center of Sinte Gleska University.

2. **How are textbooks approved for use in the state's public schools? Does this process include participation by Native American educational experts or tribal representatives? Does your department play a role in assuring adequate curricula in the schools on diversity and multiculturalism? Please describe and explain.**

In education circles, South Dakota is known as a "local control state." In general terms, this means that governance of public schools in South Dakota is largely in the hands of elected local boards of education. State government, in both policy and practice, does not exert a heavy influence on the operation of public schools via mandates and regulations. In response to the commission's specific interest in textbooks, it should be noted that in South Dakota, textbooks for use in the public schools are selected and adopted by the local board of education. There is no state approval process.

Regarding curriculum on diversity and multiculturalism, as noted in the response to Question 1, the 1997 South Dakota Legislature enacted a law requiring that character development instruction be given in all public and nonpublic elementary and secondary schools in the state (SDCL 13-33-6.1). The statute specifies that the instruction should "...impress upon the minds of the students...respect for the contributions of minority and ethnic groups to the heritage of South Dakota..." Curricula taught in fulfillment of this requirement are locally determined by each school district.

Any role the department had in monitoring schools' curriculum on any subject was taken away when the 1995 South Dakota Legislature repealed more than 500 statutes and administrative rules governing K-12 education, including rules that had previously defined subjects to be taught, and number of minutes-per-week to be allocated to each subject.

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During the repeal, the South Dakota Board of Education's administrative rule, ARSD 24:03:06:06.01, that sets forth South Dakota high school graduation requirements was left intact. A copy is included in the attachments.

3. Are certified teaching personnel in South Dakota required to complete courses or master curricula designed to assure knowledge of Native American people, history, culture, language and contributions? Are there continuing education requirements for teachers which provide this? Please explain.

- All persons seeking certification as an educator in South Dakota are required to complete 3 semester credits of college coursework in Indian Studies. The requirement is set forth in ARSD 24:02:03:05 for K-8 elementary teachers, and in ARSD 24:02:03:07 for 7-12 secondary teachers.

Further, certification in South Dakota requires completion of three credits of coursework in human relations. The requirement is set forth in ARSD 24:02:03:05 for K-8 elementary teachers, and in ARSD 24:02:03:07 for 7-12 secondary teachers.

- All persons renewing a certificate that was issued prior to the establishment of the three-credit human relations requirement outlined above are required to complete a one-credit course in human relations in order to renew their certificate.
- The Indian Studies and human relations requirements have also been extended to persons who have completed a teacher education program in another state if they apply for a South Dakota teacher certificate. The requirement for out-of-state applicants is set forth in ARSD 24:02:02:01.06.
- Effective September 1, 2000, it is possible to earn a "specialty" certificate in South Dakota as a certified Indian Studies teacher. Completion of the specialized program as outlined in ARSD 24:16:08:43 will allow the teacher to conduct Indian Studies classes K-12. A copy of the administrative rule is included in the attachments.
- In addition to the requirements established for all holders of certificates in South Dakota, the South Dakota Board of Education has also seen fit to establish a "specialty" certificate endorsement for teachers of Native American languages. This includes a provision that allows this agency to issue a certificate in recognition of special expertise in Native American languages, history and culture, even if the person has not graduated from college with a bachelor's degree. This provision is set forth in ARSD 24:02:01:09, a copy of which is included in the attachments.

4. Does your department contain Indian education specialization? If so, please describe and advise if this includes collaboration with tribal colleges and/or other educational interests representing Native American students.

- The structure of the K-12 education staff in the department does not support specialists of any kind. The Division of Education Services and Resources, Office of Technical Assistance, is the main arm of the department that works with schools regarding best practices in curriculum, instruction, technology, and management. It is staffed by education generalists who are cross-trained across disciplines and federal programs. All requests for assistance, including those from schools having significant numbers of Native American students, are handled in this manner. The small size of the staff requires staff to adopt inclusionary practices and to serve as resource brokers in meeting the needs of all school districts.

The model described above results in integrated service delivery and dissemination; the department's expanding use of technology further heightens accessibility of information and resources. Staff from tribal colleges and K-12 schools serving Native American students, as well as tribal school boards and Bureau of Indian Affairs representatives, are in the mix of audiences served daily by the department.

- The department's Teacher Education Approval Program assures that approved teacher training programs in South Dakota meet standards established for the preparation of K-12 educators. Rules adopted by the South Dakota Board of Education establish standards that educators must meet to be recommended for certification; those rules also provide the standards for higher education preparation programs.
- Any institution seeking to recommend candidates for certification must have its programs approved by the South Dakota Board of Education. On a five-year cycle, the department reviews the courses and experiences an institution requires candidates to complete and recommends approval to the state board. As part of the collaborative process, the department works with and has approved teacher preparation programs at two tribal institutions in South Dakota, Oglala Lakota College at Kyle and Sinte Gleska University, Mission.

5. Please describe your own views and policies governing inclusion of Native American materials in public school curricula.


I am not sure what is meant by "Native American materials in public school curricula." However, I will assume it means materials that are available in school to all students in

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South Dakota. For the record, it is my view that the Native Indian culture is important to our South Dakota heritage. All students need to understand our state's history and the contribution of the Native American culture.

Thank you for contacting us about the K-12 and lifelong learning policies and responsibilities of this department. I hope the information I have provided is useful in your deliberations.

Sincerely,


Ray Christensen
Secretary

Enclosures

Appendix J

STATEMENT OF MARK BARNETT
SOUTH DAKOTA ATTORNEY GENERAL

BEFORE THE
SOUTH DAKOTA ADVISORY COMMITTEE
UNITED STATES COMMISSION ON CIVIL RIGHTS

RUSHMORE PLAZA HOLIDAY INN
DECEMBER 6, 1999

I'm happy to have the opportunity to address the South Dakota Advisory Committee via a written statement.

Unfortunately, a long-standing prior commitment prevents me from appearing personally. Your invitation asked several questions.

I will try to generally comment on each topic area.

Overview of the South Dakota Criminal Justice System.

The responsibility for investigation and prosecution of crime in South Dakota rests with the State, the federal government, or one of nine different tribal governments. Certain illegal conduct in South Dakota may simultaneously be a violation of both state and federal law or federal and tribal law. On the other hand, some conduct may violate the law of only one jurisdiction.

At the state level, investigation of crime is the responsibility of two local law enforcement units; namely, the city police department and the county sheriff's office. Each of South Dakota's 66 counties has a separately elected county sheriff who has a statutory obligation to keep the peace and investigate crimes within his county. The sheriff is assisted by the city police force for investigation of crimes within the towns in his county.

Each of South Dakota's 66 counties also has an elected state's attorney. The state's attorney has responsibility for prosecution of all crimes committed within his county. In all but a handful of counties in South Dakota, the Office of State's Attorney is part-time and is discharged by an attorney who also maintains a private practice. These 66 independently elected prosecutors prosecute approximately 26,000 felonies and Class 1 misdemeanors which are filed each year in the South Dakota court system.¹

The role of the Attorney General's Office in the state criminal justice system is to supplement and assist local law enforcement. The Attorney General has an investigative arm; that is, the South Dakota Division of Criminal Investigation (DCI). DCI has about 35 field agents stationed around the state who assist local law enforcement with investigation of crime upon request. Of those, 17 DCI agents are funded through federal drug interdiction grants. Consequently, those agents, with rare exceptions, can only be utilized for drug-related investigations. DCI agents are law enforcement officers with the power of arrest and execute search warrants, etc.

¹ In 1998, the South Dakota courts system also processed 139,432 Class 2 misdemeanors and petty offenses. The vast bulk of these cases are minor traffic offenses which are handled through the clerk's office. These cases do not ordinarily require any involvement by the state's attorney.

Further, the State also has a Highway Patrol (SDHP). Even though SDHP troopers are law enforcement officers, they focus on traffic- and highway-related offenses, which result largely (but not exclusively) in Class 2 misdemeanor prosecutions.

Consequently, I have not included Class 2 misdemeanor prosecutions in my discussion.

The Attorney General's Office also provides assistance to state's attorneys. The Attorney General's Office has 27 lawyers when fully staffed. Of these, about ten handle appellate practice, and another six are involved in natural resources and similar specialized areas of law. An additional six federally funded attorneys are dedicated to drug interdiction efforts and investigation of federal medicaid fraud. Consequently, I have four (sometimes five) lawyers who are available to assist state's attorneys in cases which are extremely complex, time consuming, or require some unusual expertise which my Office can provide. The larger offices such as in Minnehaha and Pennington counties almost never request our prosecution assistance because they have a large, full-time experienced staff.

The Attorney General's Office has concurrent jurisdiction with the various state's attorneys throughout the state. In 1998, South Dakota prosecutors commenced 20,220 Class 1 misdemeanor and 5,703 felony cases in the South Dakota state criminal court system.² Of that total, slightly over 250 criminal cases were actually commenced by the Attorney General's Office; virtually all of these were drug-related prosecutions. Consequently, the real service that the Attorney General provides to state's attorneys is advice and assistance as requested. Although the Attorney General's Office enjoys the same prosecution power as each state's attorney, practically, this Office does not have the resources to investigate, oversee,

² See "1998 Annual Report of the South Dakota Unified Judicial System," Table 14, page 39.

second-guess, or the authority to manage 66 prosecutors handling 26,000 files.

Disparities in Law Enforcement.

You asked whether disparities exist in law enforcement systems within the state. The short answer is, of course. Each case presented to a state's attorney for prosecution has been investigated by one of over 100 separate city police departments or 66 different sheriff's offices. The personnel staffing these agencies will vary widely based on age, training, education, intelligence, experience, and talent. The State of South Dakota through the Standards and Training Commission requires an eight-week officer basic training course to reduce these natural variations through high quality standardized training for every city police officer and deputy sheriff in South Dakota.

Also, the decisions to prosecute are distributed among 66 independently elected state's attorneys. The decision whether and what to charge also involves a considerable amount of discretion and judgment based upon the quality of the evidence, experience, training, and talent of the prosecutor. Each locally elected state's attorney makes his or her charging decision independent of every other state's attorney, and independent of this Office. Experience among state's attorneys varies widely. However, one thing is true; all prosecutors were brand new and inexperienced at the beginning of their careers. My Office annually provides training (usually a two-day workshop) particularly targeted at newly elected state's attorneys. We provide them with instruction from experienced prosecutors who

are willing to share their experiences and professionalism. We work hard at getting high participation at these functions. We also work hard at securing experienced instructors who can give high quality training. Further, my staff is in daily contact with local prosecutors who have questions about a wide variety of issues relating to prosecution. We give advice on evidentiary questions, criminal procedure, trial strategy, tactics, and the entire spectrum of day-to-day prosecution in the criminal courts. My Office provides this advice and assistance to the extent that we are asked.

Policies, Procedures, and Protocol.

The committee asked about policies, procedures, and protocol in law enforcement and prosecutorial decision making in South Dakota law enforcement. Each state's attorney follows the South Dakota criminal code and follows the South Dakota rules of criminal procedure. Each defendant is guaranteed under state and federal law the same constitutional and statutory rights. Consequently, in that sense there is great uniformity in the state criminal justice system. On the other hand, as I have said before, each state's attorney is the designated and final decision maker for his county. There may be internal policies and protocols written for some of those offices; however, no statewide policies or protocols (other than statutory and constitutional law) govern prosecutorial decision making.

Law Enforcement Operations in Indian Country.

Law enforcement responsibility within Indian country is divided among federal, state, and tribal authorities. If the

victim or the perpetrator is an American Indian, ordinarily the prosecution responsibility will rest with the United States Attorney for serious crimes and the tribal authorities for minor offenses. Generally, state prosecutions of crimes within Indian country are limited to those situations where both the perpetrator and the victim are non-Indians or the non-Indian commits a victimless crime (drunk driving or drug possession, for example). The above statement is very generalized and is subject to several exceptions and distinctions. You will hear from Ted McBride, U.S. Attorney from South Dakota, and other individuals who have greater expertise than I in the unique challenges to effective federal law enforcement within Indian country. I suggest you focus your more detailed questions at them.

Special Issues Relating to Border Town Law Enforcement.


I understand from Mr. Dulles that the committee is primarily interested in discussing four incidents. One is the death of two Indian males whose bodies were found on the Pine Ridge Indian Reservation just north of White Clay, Nebraska. The second involves the death of Robert Many Horses who was found dead in a trash can in Mobridge, South Dakota. Third is the death of Justin Redday who was apparently hit by a motor vehicle while he was lying unconscious on a Roberts County highway. Finally, the committee will address the deaths of six American Indian and two white adult males who have been found deceased in or near Rapid Creek in Rapid City, South Dakota, within the last two years.

In regard to those incidents, let me make a couple of observations. First, any successful resolution of the investigation of the deaths near White Clay will likely require the coordinated effort of the federal authorities, the Nebraska law enforcement authorities, and perhaps South Dakota law enforcement; but, not every investigation of a crime results in a successful prosecution. Second, with regard to the Mobridge and the Sisseton cases, you will have the opportunity to discuss both of those cases with the state's attorneys who handled them. As is often the case, I believe the complete story in each case has not been reported in the media. Please withhold judgment until after you have heard their explanations. Further, some have suggested that I should simply take these two cases from the state's attorneys and start over. Simply put, it cannot be done. In Mobridge, the charges were dismissed by the magistrate. I do not have the power to overrule the court. Those who are dissatisfied may wish to visit with the magistrate. In Sisseton, a binding plea agreement has been made and implemented by the duly elected prosecutor. The defendant has been sentenced. I do not have the power to reopen a completed prosecution.

Next, the deaths of the six Indian and two white men along Rapid Creek is extremely unfortunate. Having said that, I will add that local law enforcement is properly investigating these incidents. As I'm sure you will hear from local testimony, substantial law enforcement investigative resources from the Rapid City Police Department, the Pennington County Sheriff's Office, the Division of Criminal Investigation, and the FBI

Behavioral Science Team have been allocated to those investigations. Again, I suggest you withhold judgment until you have heard from the Pennington County and Rapid City authorities.

In conclusion, the South Dakota criminal justice system is decentralized by design. Prosecution decisions are made locally and daily by city policemen, county sheriffs, and state's attorneys. Each sheriff and state's attorney is responsible to their electorate for the decisions which they make. Advice from my Office to sheriffs and state's attorneys is often sought and freely given; however, decisions made and implemented cannot be reversed by me or anyone else.


Mark Barnett
Attorney General

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