

Civil Rights Enforcement Efforts in North Dakota

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

November 1999

A report of the North Dakota Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. Viewpoints and recommendations in this report should not be attributed to the Commission, but only to the Advisory Committee or those persons whose opinions are quoted.

The United States Commission on Civil Rights

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, as amended by the Civil Rights Commission Amendments Act of 1994, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study and collection of information relating to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections; and preparation and issuance of public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the law. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 3(d) of the Civil Rights Commission Amendments Act of 1994. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

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Letter of Transmittal

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

Members of the Commission

Mary Frances Berry, *Chairperson*

Cruz Reynoso, *Vice Chairperson*

Christopher Edley, Jr.

Carl A. Anderson

Yvonne Y. Lee

Elsie M. Meeks

Russell G. Redenbaugh

Ruby G. Moy, *Staff Director*

As part of its responsibility to assist the Commission in its factfinding function, the North Dakota Advisory Committee submits this report of its study of civil rights enforcement efforts in North Dakota. Members of the Advisory Committee who participated in the project approved the report by a unanimous vote. The study is based on background research and interviews by Committee members and staff, public factfinding meetings conducted in Bismarck and Fargo on May 16, 1996, and September 24, 1997, respectively, and followup data collection and additional interviews conducted after the factfinding meetings. Persons who provided information were given an opportunity to review relevant sections of the report and, where appropriate, their comments and corrections were incorporated.

The Advisory Committee has a longstanding interest in State civil rights enforcement. In 1984 the Committee held a miniforum where public and private sector representatives expressed concerns with the absence of administrative mechanisms for enforcement of the newly enacted Human Rights Act.

In 1990 the Advisory Committee received additional information on this subject and voted to conduct a study addressing civil rights enforcement in North Dakota. However, as a result of serious problems affecting Native American students in special education programs, the Committee determined that it would address this issue before returning to a broader assessment of civil rights enforcement.

The issue of civil rights enforcement was again visited by Advisory Committee members in 1992 where they heard presentations from State and Federal personnel, community organizations, and private individuals. In March 1993, the Advisory Committee reaffirmed its previous commitment to conduct a study of civil rights enforcement efforts in North Dakota. The Committee's objective was to review the history, intent, adequacy, effectiveness, and enforcement of human rights legislation.

This report identifies and analyzes barriers North Dakota citizens face in attempting to file discrimination complaints in pursuit of relief or remedies. The Committee found that although there is a State agency charged with investigating and resolving complaints of employment discrimination (the North Dakota Department of Labor), citizens, community organizations, State legislators, and Federal officials voiced numerous concerns regarding its effectiveness. Allegations and criticisms included unresponsiveness, inefficiency, inadequate investigations, and lack of judicial enforcement. The Committee also found that there are no State entities to address the other myriad areas of discrimination protected under the North Dakota Human Rights Act.

Among its study findings, the North Dakota Advisory Committee noted that North Dakota desperately needs a mechanism to carry out the provisions of the North Dakota Human Rights Act. In addition, the extent of discrimination in the State needs to be determined, and a human rights commission established with full investigative and enforcement powers.

During its 1999 session, the North Dakota Legislature introduced three bills that addressed human rights. Two bills focused on the establishment of a Human Rights Commission that would have addressed issues of discrimination within the State including housing. Both bills were defeated. A third bill was signed by Governor Schafer on April 19 that seeks to create a fair housing law substantially equivalent to Federal guidelines. The law will become effective October 1, 1999, and is to be administered by the State Department of Labor. Advisory Committee members were disappointed that the legislative proposals calling for the creation of an independent human rights commission were once more defeated.

The Advisory Committee urges the Commission to accept this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carole A. Barrett".

Carole A. Barrett, *Chairperson*
North Dakota Advisory Committee

Preface

The North Dakota Advisory Committee to the U.S. Commission on Civil Rights is charged with assisting the Commission in its factfinding, investigative, and information dissemination functions. In keeping with this responsibility, the North Dakota Advisory Committee held two factfinding meetings, the first in Bismarck on May 16, 1996, and the second in Fargo on September 24, 1997, to receive information on civil rights enforcement efforts in the State.

The purpose of the factfinding meetings was to provide an overview of the issue and gather information from participants who brought a variety of statistics, experiences, recommendations, concerns, and opinions. Individuals invited to the factfinding meetings were identified through recommendations from Advisory Committee members, through personal and telephone interviews, and referrals from a variety of other sources.

The factfinding meetings were especially timely in that they coincided with a number of efforts and proposals initiated by community organizations, and also a study of the extent of and level of remedies for discrimination in the State by the Judiciary Committee of the North Dakota Legislative Council.

During the first factfinding meeting held in Bismarck,¹ 25 individuals participated, and at the second factfinding meeting held in Fargo,² a total of 19 individuals made presentations. Collectively, they represented an array of experiences and viewpoints from local, State, and Federal agencies and commissions, private and community-based organizations, advocacy groups, students, parents, and interested citizens.

¹ Invited participants to the May 16, 1996, factfinding meeting in Bismarck were:

Dale O. Anderson, president, Greater North Dakota Association; Myrt Armstrong, executive director, North Dakota Mental Health Association; Dave Boeck, supervising attorney, Protection and Advocacy Project; Linda Catalano, executive director, Legal Assistance of North Dakota, Inc.; Keith Elston, executive director, American Civil Liberties Union, North Dakota chapter; Gerard T. Friesz, executive director, North Dakota Public Employee Association; Richard W. Gray, American with Disabilities Act building codes program manager, North Dakota Office of Intergovernmental Assistance; Craig Hagen, commissioner of labor, North Dakota Department of Labor; Heidi Heitkamp, attorney general, North Dakota; Clare Hochhalter, assistant U.S. attorney, District of North Dakota; Lynda Johnson, director, North Dakota Fair Housing Council; Alton Koppang, member, American Association of Retired Persons; William Kretschmar, North Dakota House of Representatives; Claus Lembke, executive vice president, North Dakota Association of Realtors; Connie McBride, State project director, Green Thumb, Inc.; Don Morrison, member, North Dakota Progressive Coalition; Honorable Marv Mutzenberger, North Dakota House of Representatives; Eileene Olson, board member, Dakota Center for Independent Living; Deborah A. Painte, executive director, North Dakota Indian Affairs Commission; Bonnie Palecek, executive director, North Dakota Council of Abused Women's Services; Curt Peterson, executive vice president, Associated General Contractors of North Dakota; Cheryl Red Eagle, columnist, Bismarck Tribune; Ora C. Robinson, former chairwoman, Martin Luther King, Jr. Holiday Commission; Catherine Rydell, North Dakota House of Representatives; Sandi Tabor, member, North Dakota Supreme Court Commission on Gender Fairness in the Courts.

² Invited participants to the Sept. 24, 1997, factfinding meeting in Fargo were:

Nate Aalgaard, executive director, Freedom Resource Center for Independent Living; Tom Disselhorst, staff attorney, Three Affiliated Tribes; Michael Edwards, Ph.D. candidate, Chemistry Department, North Dakota State University; Bruce Furness, mayor, City of Fargo; Theresa Grant, Native American Liaison, North Dakota Parole & Probation; Yoke-Sim Gunaratne, director, Cultural Diversity Project; Sandra Holbrook, director of equal opportunity, North Dakota State University; Scot Kelsh, North Dakota House of Representatives; Erich Longie, president, Cankdeska Cikana Community College; Holly Jeanotte Marion, director, Office of Community Relations, City of Grand Forks; Denise Mullen, housing and emergency assistance coordinator, Southeastern North Dakota Community Action Agency; Barry Nelson, director, Community Outreach Programs, Lutheran Social Services of North Dakota; Darrell Nottestad, North Dakota House of Representatives; Adele Hedley Page, representing Sarah Andrews-Herman of Commission on Gender Fairness in the Courts; Deborah A. Painte, executive director, North Dakota Indian Affairs Commission; John Schneider, U.S. attorney, District of North Dakota; Cheryl Schrenk, staff attorney, Migrant Legal Services; Larry R. Spain, director, Legal Aid Association; Don Warren, civil rights manager, Rural Development, U.S. Department of Agriculture.

It is our desire to lay out all the specifics with this subject. It is expected that the information found in this report will help State and local agencies to make informed decisions concerning the future of discrimination and civil rights in North Dakota.

To address these issues, this report will look at the importance of the North Dakota Human Rights Act and the role it has played in protecting North Dakota citizens. We will attempt to share with the reader other efforts, past and present, to address discrimination in North Dakota. The report will also discuss the extent to which discrimination exists in the State and identify under what bases (race, color, religion, sex, national origin, age, physical or mental disability, or marital status) individuals are affected, and it will also outline what redress North Dakota citizens have when they have experienced discrimination.

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

Carole A. Barrett, Chairperson Bismarck	Les LaFountain* Dunseith	John M. Olson Bismarck
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Leslie C. Feder* Fargo	Katherine S. Maidenberg* Grand Forks	Eric D. Salazar* Fargo
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Mary Ann Y. Keller Grand Forks	Betty L. Mills, former chair* Bismarck	Mark G. Schneider Fargo
Won W. Koo Fargo	Donna L. Nalewaja Fargo	Dean Winkjer* Williston

*No longer a member of the North Dakota Advisory Committee.

**Appointed to the North Dakota Advisory Committee after the factfinding meetings were held.

Acknowledgments

The North Dakota Advisory Committee wishes to thank staff of the Rocky Mountain Regional Office for their help in the preparation of this report. The project was the principal assignment of Malee V. Craft. Evelyn S. Bohor provided essential support services. Editorial assistance and preparation of the report for publication were provided by Dawn Sweet. The factfinding meeting phase, report drafting, and followup activities were carried out by Malee V. Craft, under the overall supervision of John F. Dulles, Regional Director.

The North Dakota Advisory Committee also acknowledges Robert A. Feder, a longtime chairperson and member of the Committee for his untiring work on drafting legislation and subsequent enactment of the 1983 Human Rights Act of North Dakota. Mr. Feder passed away in 1997.

Contents

Preface	v
1. History of Civil Rights Efforts in North Dakota	1
2. State Initiatives to Address Discrimination	9
North Dakota Human Rights Act	9
North Dakota Department of Labor	11
3. Federal, State, Tribal, and Local Government Perspectives on Discrimination	16
U.S. Attorney's Office	16
Office of the Governor	16
Office of the Attorney General	18
North Dakota State Legislature	19
Tribal Leadership of North Dakota	20
Indian Affairs Commission	21
North Dakota Supreme Court Commission on Gender Fairness in the Courts	23
Office of Intergovernmental Assistance	24
Office of the Mayor, City of Fargo	26
Office of Community Relations, City of Grand Forks	27
4. Business Perspectives on Discrimination	29
Greater North Dakota Association	29
North Dakota Association of Realtors	30
Associated General Contractors of North Dakota	30
5. Private/Community Organizations and Citizen Perspectives on Discrimination	31
American Civil Liberties Union	31
Dakota Center for Independent Living	32
Green Thumb, Inc.	32
Legal Assistance of North Dakota	34
Lutheran Social Services	36
North Dakota Fair Housing Council	37
North Dakota Federation of Families for Children's Mental Health	39
North Dakota Mental Health Association	39
North Dakota Public Employees Association	39
Protection and Advocacy Project	40
Citizen Perspectives on Discrimination	40
6. The Need for a Human Rights Agency in North Dakota	43
Federal, State, Tribal, and Local Government Comments	43
Business Community Comments	46
Private/Community Organization Comments	47
Citizen Comments	49
7. Findings and Recommendations	50

Appendices

A	"Bismarck 'Another Planet' on Racism," <i>Bismarck Tribune</i> , Editorial Page.....	53
B	"Mind Human Rights," <i>Bismarck Tribune</i> , Opinion Page	54
C	Senate Concurrent Resolution No. 4036.....	55
D	North Dakota Century Code, Chapter 14-02.4, Human Rights	56
E	Statement, Three Affiliated Tribes	71
F	Statement, United Tribes Technical College	76

Tables

1	North Dakota Department of Labor, Complaints Filed in 1995.....	13
2	North Dakota Department of Labor, Resolution of Charges Meeting Federal Guidelines Filed in 1995	13
3	Office of Community Relations, City of Grand Forks, Discrimination Complaints Filed 1992-1997	28

Chapter 1

History of Civil Rights Efforts in North Dakota

The United States was built on the premise of one nation for all. North Dakota has enacted a number of laws to ensure that all citizens are protected equally and has a history of addressing human rights issues of its citizens. Examples of such efforts follow.

In 1889 the North Dakota Constitution created the Department of Agriculture and Labor. Seventy-one years later, during the primary election in 1960, voters approved a constitutional amendment authorizing the legislature to establish a Department of Labor, separate from Agriculture. After 5 years, in 1965, State legislation created the current Department of Labor (discussed in chapter 2).¹

Over 20 years ago, during the 1977 legislative session, two bills relating to human rights were considered, and both failed to pass.² One bill was introduced to provide a human rights act known as the "North Dakota Human Rights Act of 1977."³ The proposed legislation included provision for an appropriation, and the act would have also required the establishment of a "North Dakota Commission on Human Rights."⁴

The bill prohibited discrimination because of race, color, creed, religion, sex, ancestry, national origin, age, marital status, the presence of a disability, or status with regard to public assis-

tance. The bill also specified a complaint procedure, defined discriminatory practices, and provided for enforcement and judicial review of a commission order.⁵

Senator Wenstrom, the bill sponsor, as part of his testimony, explained that since 1957, as a member of the North Dakota Legislature and from his involvement with other organizations, "the question of discrimination has always been one of the chief topics of . . . discussion."⁶

A task force and citizens committee had worked on the bill for 20 months. Gary Cardiff of Bismarck, a task force representative, testified that problems in North Dakota regarding human rights laws and a means for rectifying discrimination in the State were important.⁷ He stated that the group had also presented the Governor a list of needs, which included equal employment opportunity, equal credit opportunity, equal housing, and age discrimination protection. The task force recommendation included a 1-year budget (1977-1978) for the establishment of a human rights commission.⁸

Written testimony in support of the bill and the creation of a human rights commission was

¹ North Dakota Department of Labor, *1995-1997 Biennial Report*, Dec. 1, 1997, p. 1.

² Social Services Interim Committee, *1979 Legislative Council Report*, p. 163 (hereafter cited as *1979 Report*).

³ 1977 Legislative Assembly of North Dakota, *Bill Status Report*, Senate bill 2424, Jan. 24, 1977, pp. 134-35. The bill was introduced by Senators Wenstrom, Orange, Fritzell, Hoffner, and Schirado. The second bill introduced, Senate bill 2045, designated the North Dakota Equal Employment Opportunity Act which prohibited employers, employment agencies, labor organizations, or licensing agencies from discriminating in employment practices.

⁴ 1977 North Dakota Legislative Assembly, Senate bill 2424, pp. 2, 19. Monies to fund the commission would have come out of the State's general fund.

⁵ *1979 Report*, p. 163.

⁶ 1977 Senate Committee on Social Welfare and Veteran's Affairs, minutes, Senate bill 2424, Feb. 11, 1977, p. 1. Prior to the introduction of Senate bill 2424, Senator Frank A. Wenstrom of Williston, in its drafting, collaborated with Senator George Longmire of Grand Forks who was also preparing for the introduction of a human rights act for the North Dakota Senate. Senator Longmire did not choose to return to the senate, and Senator Wenstrom became the prime sponsor.

⁷ *Ibid.*, p. 2. Other organizations in favor of the bill were Mandan's Mayors Committee, Bismarck-Mandan Handicapped Association, Red River Valley Handicapped Association, North Dakota Institute of Community Understanding, North Dakota Association for Retarded Citizens, and Governor's Council on Human Resources. In opposition were a private citizen, a small business owner, and former State Senator Clarence Jaeger of Beulah, ND.

⁸ *Ibid.*

also provided by the Bismarck chapter of the National Organization for Women (NOW). The written testimony explained that North Dakota women face discrimination because of their sex in employment, housing, and in obtaining credit.⁹ The Bismarck chapter of NOW "became so concerned over the number of women in [the] State with employment discrimination complaints" that it attempted to inform women of their basic rights through a pamphlet titled "North Dakota's Vital Natural Resources, Legal Leverage in the World of Work."¹⁰

Despite the testimony and proposals, the Senate Social Welfare Committee indefinitely postponed Senate bill 2424, and in its final report stated:

The committee felt that prohibitions against discrimination because of race, color, religion, national origin, sex, age, marital status, the presence of any sensory, mental, or physical disability, or status with regard to public assistance as required by this bill were too sweeping and inclusive. In addition, most such prohibitions are prohibited by federal law and by that, were not warranted on the state level.¹¹

A few weeks later, during the same legislative session (1977), Senate Concurrent Resolution 4079 was passed. The resolution directed an interim study by the Legislative Council of the feasibility of enacting comprehensive human rights legislation in North Dakota.¹²

While studying the human rights issue and receiving testimony over a period of several months, the Interim Committee on Social Services also proposed a draft bill for submission during the next legislative session (1979) that "forbade" discrimination and provided for an independent commission on human rights administered by separate compliance and advocacy divisions, including a complaint procedure, enforcement powers, judicial review, and local hu-

man rights commissions.¹³ However, after all information was received and evaluated, the Committee on Social Services also elected not to take a position on the matter and made no recommendation concerning the human rights study.¹⁴

However, the citizens of North Dakota continued to voice their concerns with discrimination in the State.

Five years later, in 1983, the North Dakota Human Rights Act became law (discussed in chapter 2).¹⁵ In December 1984, a year after the passage of the act, the North Dakota Advisory Committee to the U.S. Commission on Civil Rights held a miniforum in Bismarck to discuss the act and determine if it was working as the law had intended it to.¹⁶ Testimony received during the miniforum suggested that the Human Rights Act had no enforcement powers and was weak and ineffective because the State had not provided funds to operate or enforce its own employment discrimination law, in addition to the other areas of discrimination covered under the act.

In 1985, as a public service by the Information and Service Committee of the State Bar Association of North Dakota and the Governor's Council on Human Resources, a booklet titled "The North Dakota Human Rights Act and You" was produced and distributed statewide.¹⁷ The booklet offered a description of the Human Rights Act and its purpose and explained specific topics and definitions within the act. It also provided a number of general discussions concerning areas of discrimination covered and not covered by the law.

In October 1987, the U.S. Equal Employment Opportunity Commission (EEOC) designated the North Dakota Department of Labor as a Fair Employment Practices Agency after signing a

⁹ *Ibid.*, attachment to minutes. The Bismarck chapter of the National Organization for Women was also known as the Missouri Valley chapter.

¹⁰ *Ibid.*, attachment to minutes. The pamphlet was written and published by the Bismarck chapter of the National Organization for Women.

¹¹ 1977 Senate Committee on Social Welfare and Veteran's Affairs, Senate bill 2424, *Final Report*, Feb. 11, 1977.

¹² Human Rights Study, SCR No. 4079, 1977 Session Laws, filed Apr. 21, 1977. The bill was sponsored by Senator Nething, Jamestown, ND. The study was assigned to the Interim Committee on Social Services.

¹³ *1979 Report*, p. 165.

¹⁴ *Ibid.*

¹⁵ Human Rights Act, §§ 1-21, pp. 466-73, 1983 Session Laws, chap. 173. Enacted North Dakota Century Code, chap. 14-02.4 and repealed North Dakota Century Code, 34-01-19.

¹⁶ Transcript of miniforum conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, Dec. 3, 1984, pp. i-191 (hereafter cited as *Transcript I*).

¹⁷ State Bar Association of North Dakota, *The North Dakota Human Rights Act and You*, 1985, pp. 1-29.

workshare agreement with the EEOC's Denver District Office.

Additionally, the need to examine discrimination and gender inequities in the legal system was a growing concern in the State. In 1987 North Dakota was one of the first States in the Nation to study gender fairness in the judicial system. Under the auspices of the North Dakota Supreme Court Judicial Planning Committee, a subcommittee consisting of attorneys and judges reviewed court records and other related data, including available anecdotal and statistical information regarding gender-related issues. The subcommittee found information pointing to the existence of gender inequities in North Dakota affecting both men and women, but more negatively affecting women.¹⁸ Among a number of issues, the subcommittee noted the impact of the dramatic increase in the number of women law students and women practicing law in North Dakota, suggesting a need to assess the legal system's adjustment to a gender-integrated profession. It highlighted the need for more data to be collected and recommended the formation of a task force to conduct a more comprehensive study of the issues associated with gender fairness in the courtroom.¹⁹

In 1988 the Supreme Court Committee and the State Bar Association of North Dakota separately recommended the State set up a commission or task force to investigate such fairness issues. However, there was no money in the State budget to pay for the commission's work.²⁰ Six years later funding was appropriated, and in 1994 the Commission on Gender Fairness in the Courts was established.²¹ North Dakota Supreme Court Justice Beryl Levine was a driving force behind this accomplishment, and North Dakota joined 40 other States and 5 (out of 11) Federal court circuits that had already set up or were in the process of setting up such task forces.²²

¹⁸ North Dakota Commission on Gender Fairness in the Courts, *North Dakota Law Review*, "A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts," vol. 72:1113, no. 4, Oct. 10, 1996, p. 1128.

¹⁹ *Ibid.*

²⁰ Janell Cole, "ND intends to weed out sexism in legal system," *Bismarck Tribune*, Mar. 13, 1994, p. 1-A. Part of the lack of funds was due to 1989 tax referrals.

²¹ *Ibid.*

²² *Ibid.*

In 1991 the State legislature established the Martin Luther King, Jr. Holiday as a State holiday, although 8 years earlier in 1983, it had become a national holiday enacted by Congress.²³ The Martin Luther King, Jr. Holiday Commission was responsible for the already established Federal holiday being adopted as a State holiday in North Dakota, and commission members worked tirelessly to promote and celebrate diversity and reduce discrimination in the State. However, even with these efforts, discrimination continued to be of major concern for many North Dakotans.

During April 1994 women gathered in Bismarck to provide guidance to the Governor's Commission on the Status of Women with regard to a number of issues affecting women in North Dakota.²⁴ Conference participants narrowed down their list of concerns to the following: job security and employment accessibility; economic and social family issues; rural access to services; health care accessibility, coverage, and research equity; violence; discrimination; self-esteem; child care access; sexual harassment; and equal employment and wages.²⁵ The conference, funded by the U.S. Department of Labor Women's Bureau, generated a needs assessment report, which was presented to Governor Ed Schafer and his Commission on the Status of Women.²⁶ The needs assessment outlined 10 issues that were identified as the needs and concerns of North Dakota women, and the nine-member commission planned to establish subcommittees and use each of the 10 issues raised to select project topics.²⁷

One of the initiatives to assist in efforts to challenge racism in North Dakota suffered a setback during 1995 when, according to community organization representatives and citizens, Governor Ed Schafer eliminated the North Dakota

²³ Martin Luther King, Jr. State Holiday was enacted through the passage of Senate bill 2489 in 1991. It is celebrated the third Monday in January each year.

²⁴ Deena Winter, "Women outline needs," *Bismarck Tribune*, Apr. 12, 1994, p. 8-A.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Carol Reed, chair, Governor's Commission on the Status of Women, telephone interview with Malee V. Craft, civil rights analyst, Rocky Mountain Regional Office, U.S. Commission on Civil Rights, Feb. 10, 1999.

Martin Luther King, Jr. Holiday Commission.²⁸ The elimination of the nonfunded commission was announced during the Governor's State of the State address,²⁹ and came as a surprise to commission members and many others.³⁰ Governor Schafer decided to eliminate the commission because, in his evaluation, it had met its initial purpose to draft legislation to recognize King's birthday as an official State holiday. A spokesperson for the Governor said "the removal of the commission was part of Schafer's attempt to make government more efficient and reduce the number of commissions that have outlived their usefulness."³¹ Commission Chairwoman Ora Robinson thought that the work of the commission could easily have been used as the foundation for setting up a human rights commission in the State.³² North Dakota was one of four States in the country—the others Alabama, Arkansas, and Mississippi—not to have a human rights agency.³³ Martin Luther King, Jr. Holiday Commission members thought the commission went beyond its initial role by assisting with racism complaints and compilation of statistics. It also coordinated events to celebrate diversity, confront injustice, and promote respect for the freedom and equality of all people, in addition to giving two awards annually.³⁴ Commission members vowed to continue to educate the citizens of North Dakota and hoped that the Govern-

²⁸ G. Troy Melhus, "King holiday panel vows to fight racism," *Bismarck Tribune*, Jan. 8, 1995, p. 6-D. Members of the Martin Luther King, Jr. Holiday Commission who spoke out in opposition to the Governor's decision were Ora Robinson, Cheryl Red Eagle, and Gerard Friesz.

²⁹ Luke Shockman, "Commission's demise a slap in the face for King holiday supporters," *Minot Daily News*, Jan. 15, 1995, p. 6-A. The State of the State address was given by Governor Schafer on Jan. 3, 1995.

³⁰ *Ibid.*

³¹ *Ibid.* Explanation made by Rick Collin, communications director, Governor's Office.

³² Luke Shockman, "No Human Rights Commission in North Dakota," *Minot Daily News*, Jan. 15, 1995, p. 6-A.

³³ International Association of Official Human Rights Agencies, "Directory of Official Human Rights Agencies," July 1997.

³⁴ G. Troy Melhus, "King Holiday panel vows to fight racism," *Bismarck Tribune*, Jan. 8, 1995, p. 6-D. The Martin Luther King, Jr. Award was presented to a North Dakota resident who best embodied and promoted King's philosophies. The North Dakota Martin Luther King, Jr. Educator of the Year Award went to an educator who excelled in four areas: involvement in activities, commitment to ideals, action toward ideals, and exemplification of King's teachings.

nor would reconsider his decision. However, the Governor did not rescind his decision, and the Martin Luther King, Jr. Holiday Commission was severed of State affiliation. Former commission members filed incorporation papers, and the commission functions as an independent body as members continue to work toward the elimination of discrimination in the State.

In 1995 Tom Disselhorst, general counsel for the Turtle Mountain Chippewa Tribe, indicated his desire to see if he could get a legislative sponsor to introduce a bill that would study the need for a human rights commission. He envisioned a commission, funded by the State, as a vehicle to investigate and make determinations on discrimination claims, enable people to get information on settling complaints, and in some cases, provide legal representation for individuals who could not afford to hire an attorney.³⁵ Through his and others' efforts, interest heightened around the need for some mechanism to strengthen the Human Rights Act. Members of the Martin Luther King, Jr. Holiday Commission, American Civil Liberties Union, American Federation of State, County and Municipal Employees, and other North Dakota citizens³⁶ felt the strong need to voice their concerns to as many people as possible, and finally, their concerns were taken to the State legislature.³⁷

During the 1995 54th Legislative Assembly of North Dakota, Senate Concurrent Resolution 4054 was introduced,³⁸ directing the legislative council to study the feasibility and desirability of establishing a State human rights commission with the power and duty to investigate and provide remedies in cases of discrimination against residents of North Dakota because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, and status with regard to marriage or public assistance resulting in a loss of civil rights. The Senate Government and Veterans Affairs Committee re-

³⁵ Luke Shockman, "No Human Rights Commission in North Dakota," *Minot Daily News*, Jan. 15, 1995, p. 6-A.

³⁶ Joyce Smith, "Racial discrimination," *Bismarck Tribune*, Jan. 29, 1995, p. 3-C. Ms. Smith is a resident of Mandan, ND.

³⁷ Janell Cole, "King panel pushes human rights commission," *Bismarck Tribune*, Feb. 23, 1995, p. 1-B.

³⁸ Legislative Council Office, State of North Dakota, Senate Concurrent Resolution 4054 was introduced by Senators Scherber, Holmberg, LaFountain, and Mushik, and Representatives Mutzenberger and Wentz.

ceived testimony from a handful of people in favor of Senate Concurrent Resolution 4054. Many others who came to the standingroom-only meeting to support the resolution were turned away from the podium for lack of time.³⁹ No one testified against the resolution. Senator Kit Scherber testified that the proposed study would address equal protection, laws against discrimination, investigation of discrimination by State agencies, the absence of a State agency with the power to investigate, and limited remedies regarding discrimination cases. She said there needs to be access to a State agency to provide remedies, specific enforcement options, and a means to address complaints.⁴⁰ After numerous testimonies from State agency personnel, community and private organization representatives, the business community, and private citizens,⁴¹ the resolution was moved forward for further consideration.

The Senate approved the resolution by a vote of 47-0. A *Bismarck Tribune* editorial succinctly pointed to the critical need for the State legislature to take action. Following are excerpts:

The request is minimal. Have the Legislative Council study the feasibility of establishing a State human rights commission. This proposal is one our State Legislature should have no trouble moving along and putting its council to work on.

³⁹ Janelle Cole, "Senate hears stories of abuse," *Bismarck Tribune*, Feb. 25, 1995, p. 7-A.

⁴⁰ Senator Kit Scherber, District 44, North Dakota State Legislator, 1995 Senate Standing Committee, minutes, Senate Concurrent Resolution 4054, Feb. 24, 1995, p. 1

⁴¹ North Dakota State Legislature, 1995 Senate Standing Committee, minutes, bill/resolution no. SCR 4054, Feb. 24, 1995, pp. 1-2. Persons who testified and/or submitted written testimony in support of the resolution included William Roath, coordinator, North Dakota chapter of the American Civil Liberties Union; Deborah Painte, director, North Dakota Indian Affairs Commission; Darrell Farland, director, Governor's Committee on Employment of People with Disabilities; Ora C. Robinson, member, North Dakota Martin Luther King, Jr. Holiday Commission; Howard Snortland, chairman, American Association of Retired Persons; Darla Hruby, Bismarck Civic Center employee; Victor Meza, Jr., Native American and disabled veteran; Thomas M. Disselhorst, Bismarck attorney; Lynn Hendrickson, coordinator for Race and National Origin, North Dakota Department of Public Instruction; Al Nygard, Native American business development program administrator, North Dakota Department of Economic Development and Finance; Janet Seaworth, member and representative, North Dakota Women's Economic Coalition; and Kevin Kiconas, international union representative, North Dakota American Federation of State, County and Municipal Employees.

That the road to the creation of a human rights commission has to take this circuitous route speaks volumes about the need for such a commission. But the approval of the study resolution would indicate the State has some interest in at least looking at a problem and seeking ways to meet a need.

Can there be anything more important worth studying?⁴²

On March 13, 1995, the House held a committee hearing and again Senator Scherber introduced the legislation. She explained that there is a need for this legislation in North Dakota and encouraged the committee to give it serious consideration.⁴³ At this hearing individuals testified in favor of the resolution and again there was no testimony against it,⁴⁴ and the vote passed unanimously.⁴⁵ However, after further consideration, the resolution failed 10 days later in the House on March 23, 1995.⁴⁶

Representative Cathy Rydell expressed her opinion of why the measure failed, and explained that there was no need for a debate because the legislature has continually tried to limit the number of commissions.⁴⁷ Representative Marv Mutzenberger said there was a mood in the legislature not to create anything new, which directly affected the bill.⁴⁸

⁴² Editorial Board, "Human rights commission study needed," *Bismarck Tribune*, Mar. 1, 1995, p. 4-A.

⁴³ Senator Kit Scherber, District 44, North Dakota State Legislator, 1995 House Standing Committee, minutes, Mar. 13, 1995, p. 1.

⁴⁴ North Dakota State Legislature, 1995 House Standing Committee, minutes, Mar. 13, 1995, pp. 1-2. Persons who testified and/or submitted written testimony included Thomas M. Disselhorst, attorney; Deborah Painte, executive director, North Dakota Indian Affairs Commission; Victor Meza, private citizen; Anneta Sutton, private citizen; Shelley Sieberg, staff person, Legal Assistance of North Dakota; Howard Snortland, chairman of the American Association of Retired Persons; William Roath, representing the North Dakota ACLU; Darrell Farland, State employee; Ora Robinson, Martin Luther King, Jr. Holiday Commission; Gerard Friesz, executive director of the North Dakota Public Employees Association; Darla Hruby, private citizen; and Lynn Hendrickson, coordinator, Race and National Origin, North Dakota Department of Public Instruction.

⁴⁵ *Ibid.*, p. 3.

⁴⁶ 1995 North Dakota Legislative Session, *Bill Status Report*, p. 288.

⁴⁷ Cathy Rydell, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, pp. 133-34 (hereafter cited as *Transcript 2*).

⁴⁸ Marv Mutzenberger, *Transcript 2*, p. 134.

During 1995 and 1996, events that were not orchestrated or initiated by State government or its agencies or commissions made headlines in North Dakota. Citizens of the State experienced various forms of discrimination, including acts related to housing and employment. In addition, legal services to low-income residents were cut. Representatives of the North Dakota Fair Housing Council met with the mayor of Fargo to discuss how the city addressed fair housing issues in gathering preliminary information for an analysis of the impediments to fair housing in that community.⁴⁹ A statewide poll of North Dakota women found, among other issues, that women felt discriminated against, sexually harassed, and underpaid. Fargo women reported the most discrimination (38 percent), Bismarck area was second highest (30 percent), and Williston the lowest (18 percent); and one in five women felt they had been sexually harassed.⁵⁰ The Supreme Court Commission on Gender Fairness in the Courts, over a period of several months, conducted hearings across the State in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and heard cases of unfair treatment of women in North Dakota's courts.⁵¹ Landlords discriminated against Native Americans who applied for rental housing in the State.⁵² Legal Assistance of North Dakota, a nonprofit organization, was forced to limit severely services to the poor and elderly because of a shrinking budget. This organization helped many citizens with social security disability appeals and "family law" issues.⁵³

Appendix A exemplifies how discrimination can negatively affect an individual, a family, and

⁴⁹ Patrick Condon, "Fargo housing issues scrutinized," *The Forum* (Fargo), June 20, 1995, p. 1-B. The North Dakota Fair Housing Council planned to conduct a fair housing analysis. The U.S. Department of Housing & Urban Development requires all recipients of Community Development Block Grants to undergo a fair housing analysis. Fargo receives grants under this program.

⁵⁰ Vicki Voskuil, "N.D. women rate lives," *Bismarck Tribune*, Aug. 2, 1995, p. 1-A. The poll of 350 women was commissioned by the *Bismarck Tribune* and KXMB News 12, and conducted by Precision Marketing of Fargo.

⁵¹ Janell Cole, "Women say laws must be tougher," *Bismarck Tribune*, Sept. 22, 1995, p. 1-A.

⁵² Chris Steinbach, "Council charges housing inequity," *Bismarck Tribune*, May 1, 1996, p. 1-A. Random test finds 6 out of 15 Indians faced discrimination.

⁵³ Janell Cole, "Legal help to poor cut," *Bismarck Tribune*, July 21, 1996, p. 1-A.

a community. The author shared through a newspaper article her disgust that discrimination has continued to flourish. A city of Mandan community activist also confirmed that discrimination exists and once again expressed the need for a human rights commission at the State level as well as the need to establish chambers of commerce and city human rights committees (see appendix B). These developments and others not mentioned in this report, again, made it difficult to ignore the need to address civil rights in the State.

The 1997 legislature passed Senate Concurrent Resolution 4036 to study the question of discrimination in North Dakota.⁵⁴ This resolution was a substitute measure in place of establishing a human rights commission, as many citizens had repeatedly called for. Later that year, Representative Darrell Nottestad explained that the Interim Judiciary Committee had the opportunity to study this issue, and the results would give the committee a good idea as to the level of discrimination in North Dakota, information necessary to make recommendations for legislation, and data to determine whether a civil rights commission is needed.⁵⁵

The duties charged to the Interim Judiciary Committee were specific and are outlined in appendix C. In summation, the Interim Judiciary Committee was assigned to:

1. determine if there were instances of discriminatory actions in violation of State and Federal laws;
2. determine if discriminatory actions existed and determine if existing State agencies have the power to enforce remedies;
3. examine the membership, structure, authority, duties and responsibilities, and funding of commissions in other States; and
4. report its findings and recommendations, together with legislation for implementation, to the 56th [1999] Legislative Assembly.⁵⁶

⁵⁴ Senate Concurrent Resolution 4036 was introduced by Senators Nalewaja, Cook, C. Nelson, Robinson, W. Stenehjem, and Representative Kliniske. Filed Mar. 19, 1997.

⁵⁵ Darrell Nottestad, Transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Fargo, ND, Sept. 24, 1997, vol. 2, p. 116 (hereafter cited as *Transcript 3*).

⁵⁶ Senate Concurrent Resolution 4036 to study the level of and remedies for discrimination in the State. Members of the Interim Judiciary Committee were Senators Wayne Stenehjem (Chairman), Marv Mutzenberger, Carolyn Nel-

In addition to the discrimination issue, the Interim Judiciary Committee was also responsible for studying three other topics.⁵⁷ The legislative council delegated to the committee the responsibility to review uniform laws recommended to the legislative council by the Commission on Uniform State Laws, review statutory and constitutional revisions, and review the authority of the Attorney General to enter contingent fee agreements with private attorneys.⁵⁸

The Interim Judiciary Committee held several meetings across the State between July 1997 and November 1998, and received testimony from numerous individuals, representatives of State and local government agencies, business and private organizations, elected officials, and others representing women and people with disabilities. A major portion of the testimony focused on the lack of State remedies for discrimination complaints and the need for a centralized State agency empowered to receive and investigate discrimination complaints.⁵⁹ The South Dakota Commission on Human Rights shared details of the operation of that agency. North Dakota State agencies and departments were asked to maintain data by tracking the number and nature of calls they receive and to provide a summary of statistics generated.⁶⁰ The survey revealed that the Governor's Office and the North Dakota Department of Human Serv-

ices were contacted most frequently. A representative of the North Dakota Department of Human Services testified that the department receives 10 to 20 claims of discrimination per month in a variety of areas, including employment, education, housing, disabilities, public assistance, and public accommodations.⁶¹

The news media provided extensive coverage of the activities of the North Dakota Fair Housing Council, a private nonprofit agency that receives Federal funding from the U.S. Department of Housing and Urban Development to investigate unfair housing.⁶² The North Dakota Fair Housing Council was invited to make a presentation before the Interim Judiciary Committee and provided an overview of fair housing law. Agency director Amy Nelson explained that investigated complaints where housing discrimination has been verified are forwarded to the U.S. Department of Housing and Urban Development in Denver for further action.⁶³ After the council's presentation, the committee appeared to shift its focus from all forms of discrimination and the need for a human rights commission to housing discrimination specifically.

The Interim Judiciary Committee did not follow its study plan (see appendix C) closely, nor did it fully address specific issues outlined in the resolution. As a result, the committee lost sight of its initial charge to determine the degree of discrimination in the State and to determine current and additional remedies, including educational initiatives to prevent discrimination. Instead, the committee recommended House bill 1043 for introduction during the 1999 legislative session, to repeal the current housing discrimination statutes and create new housing discrimination laws to meet Federal law equivalency. The bill included the procedures for filing a housing discrimination claim and the remedies available to a person when a finding of discrimination is made. The bill designated the North Dakota Department of Labor as the agency responsible for receiving and investigating housing

son, Rolland W. Redlin, John T. Traynor, and Darlene Watne, and Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Shirley Meyer, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, and Gerald O. Sveen. Senator James A. Berg was a member of the committee until his death on Sept. 20, 1997.

⁵⁷ *Report of the North Dakota Legislative Council, Fifty-Sixth Legislative Assembly, 1999*, Judiciary Committee Report, pp. 260-74. The other studies were House bill 1167, charitable gaming laws; House Concurrent Resolution 3001, feasibility of funding Office of the Clerk of District Court; and Senate Concurrent Resolution 4045, State funding of Office of Clerk of District Court.

⁵⁸ *Ibid.* The committee submitted its report to the legislative council in November 1998, and it was accepted by the council for submission to the 56th (1999) legislative session.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, p. 268. Agencies that provided data included the North Dakota Department of Health, North Dakota Department of Labor, Attorney General's Office, North Dakota Department of Human Services, State's Attorneys, and the Governor's Office. The period for tracking calls was from October 1997 through March 1998.

⁶¹ *Ibid.*, p. 268.

⁶² North Dakota Legislative Council, Judiciary Committee, meeting minutes, Aug. 17-18, 1998, p. 5. The North Dakota Fair Housing Council also receives approximately \$15,000 annually of Community Development Block Grant funds (Federal) from both Bismarck and Mandan earmarked specifically for education outreach. The agency receives no State funding.

⁶³ *Ibid.*

discrimination claims.⁶⁴ Unfortunately, the State legislature and citizens are no closer to determining, once again, the level of discrimination in North Dakota and whether a human rights commission is needed.

Although the North Dakota Human Rights Act has been on the books since 1983, discrimination complaints continue to rise, and State legislators have yet to see the importance of allocating funds to protect its citizens from denial of their basic rights.⁶⁵ Further, there is no State agency charged with investigating complaints of alleged violations of provisions of the State statute that deal with matters other than employment discrimination. And even then, employment discrimination complaints are limited to investigations, negotiated settlements, or conciliation agreements. None of the other prohibitions against discrimination in the North Dakota Human Rights Act is enforced.⁶⁶

In addition to these facts, many public and private organizations, as well as North Dakota citizens, have called for a mechanism to act on the types of discrimination set out in the State statute.⁶⁷ Many suggestions or proposed alternatives point back to somehow better utilizing the Human Rights Act so that it will work effectively for North Dakota citizens.

The North Dakota Human Rights Act is seemingly a strong piece of legislation, but many concerns have been raised to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights that merit exploration and raise questions about the adequacy of efforts to en-

force the act. Some of the allegations and assertions brought to the North Dakota Advisory Committee included:

1. Employment, housing, and other areas of discrimination are commonplace in North Dakota.
2. Antidiscrimination provisions of the North Dakota Human Rights Act are not well publicized and are not readily known by the general public.
3. The act's effectiveness is reduced because of the absence of a single State agency to enforce the act.
4. The State provides inadequate financial resources to the North Dakota Department of Labor to investigate and resolve complaints, and violations of the State statute must be taken to district court for remediation.
5. Though reasonable attorneys' fees in discrimination cases may be awarded to the prevailing party at the discretion of the court, taking a complaint to court is time-consuming and expensive, and has a chilling effect on efforts by injured parties to seek relief.
6. Except for alleged employment discrimination, complaints of discrimination in violation of Federal statutes must be lodged with enforcement agencies in Denver, Kansas City, Missouri, or Washington, D.C. The remoteness of these agencies and lack of information about procedures to initiate such complaints inhibits the filing of complaints.

⁶⁴ *Report of the North Dakota Legislative Council, 56th Legislative Assembly, 1999*, Judiciary Committee Report, p. 269.

⁶⁵ North Dakota Century Code, chap. 14-02.4. Areas of discrimination protected by the North Dakota Human Rights Act, public accommodations, housing, State and local government services, and credit transactions on the basis of race, color, religion, sex, national origin, age, mental or physical disability, marital status, and others.

⁶⁶ *Ibid.*

⁶⁷ 1995 Senate Standing Committee minutes, Feb. 24, 1995, pp. 1-2.

Chapter 2

State Initiatives to Address Discrimination

North Dakota Human Rights Act

In 1983 a successful attempt to address civil rights concerns in the State was made by Representative Rosie Black when she introduced to the House Judiciary Committee bill 1440, the Human Rights Act, during the 48th Legislative Assembly of North Dakota.¹ The North Dakota Human Rights Act was enacted by the State legislature and became effective on July 1, 1983.² North Dakota's State policy against discrimination said:

It is the policy of this State to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to marriage, or public assistance; to prevent and eliminate discrimination in employment relations, public accommodations, housing, State and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.³

The Human Rights Act bill was touted as being modest; complainants could take their cases to State court rather than Federal court; the bill would not impose an added cost to taxpayers because no additional agencies would be created; and the act would have no investigative powers. Proponents also explained that the Human Rights Act would establish a State policy against discrimination. The bill would tailor the rights of North Dakotans to dovetail with North Dakota situations rather than being mandated by the Federal Government. Enacting the bill would simply say that North Dakota does not

sanction bigotry and prejudice. Individuals who spoke on behalf of the legislation provided examples of discrimination in employment, business transactions, housing, education, and public accommodations.⁴

Those in opposition to the bill stated that the North Dakota Department of Labor could adequately handle discrimination complaints under Federal guidelines;⁵ the bill goes beyond Federal regulations; although previous studies had been conducted, more study needed to be done; and it would take away citizens' rights.⁶ There were others who were in opposition to the bill but chose to remain silent. A representative of a statewide real estate organization noted that his organization's legislative committee was not "happy with the Human Rights Bill but they told me not to oppose it."⁷

With those concerns, the North Dakota Advisory Committee, chaired by Robert A. Feder, conducted a miniforum in December 1984 specifically to address the act.⁸ Although the act had been State law for over a year, the extent of its effectiveness was unclear. Eleven individuals representing State agencies and commissions, private businesses and private associations participated in the daylong event. The conclusion drawn from the testimony of invited participants

¹ 48th Legislative Assembly of North Dakota, *Bill Status Report*, 1983, p. 182.

² 1983 Session Laws, chap. 173, Human Rights Act, §§ 1-21, pp. 466-73. Enacted North Dakota Century Code Chap. 14-02.4 and repealed North Dakota Century Code § 34-01-19.

³ 1983 Session Laws, chap. 173, Human Rights Act, § 1, p. 466. Repealed § 34-01-19 of the North Dakota Century Code, relating to employment discrimination.

⁴ 1983 House Judiciary Committee, minutes, Feb. 14, 1983, pp. 1-3.

⁵ *Ibid.* This State agency had the responsibility to accept and investigate employment discrimination complaints.

⁶ *Ibid.*, p. 3.

⁷ Claus Lembke, executive vice president, North Dakota Association of Realtors, transcript of miniforum conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, Dec. 3, 1984, p. 121 (hereafter cited as *Transcript 1*).

⁸ Robert Feder, a longtime member of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, wrote a significant part of the legislation and was instrumental in the passage of the 1983 Human Rights Act. Mr. Feder passed away in September 1997.

indicated that the act needed improvement. Following are excerpts:

- Al Thompson, a private contractor employed by the North Dakota Department of Labor, said while the State had the authority (under the Human Rights Act) to investigate employment discrimination complaints against employers with 10 to 14 employees, complainants in these cases were advised that they should seek private action in the courts because the State provided no funds for enforcing its own employment discrimination law. He suggested that it would be helpful if administrative procedures were available to complainants filing under the State statute, but in the absence of funds, this was not possible.⁹
- Adrian Crowfeather, civil rights officer for Job Services of North Dakota, said "There should be more awareness, educational programs . . . in regard to the Human Rights Act." He also said that a person out of work would unlikely have the funds necessary to secure a private attorney to file a discrimination action.¹⁰
- Joe Koenigsman, State monitor advocate for Job Service of North Dakota, who worked primarily with seasonal migrant workers, advised that one major problem in trying to resolve civil rights complaints was that his agency had no enforcement powers. With respect to the Human Rights Act and the lack of funding for enforcement of its provisions, he said, "I do not feel that you should make a law and then just say to the population at large—you can take it to court." In the absence of funds for administrative relief, the law is weak and ineffective, he concluded.¹¹
- Keith Magnuson, associate director and staff counsel for the North Dakota Bankers Association, indicated that the Human Rights Act had no measurable impact on his industry because of the already existing Federal laws and regulations applicable to credit discrimination.¹²

⁹ *Transcript 1*, pp. 21–33. If the employer had 15 or more employees, the North Dakota Department of Labor would investigate because these cases are covered by Federal law.

¹⁰ *Ibid.*, pp. 52–53.

¹¹ *Ibid.*, pp. 88, 92, 104.

¹² *Ibid.*, pp. 176, 180.

- Richard Gray, program manager, Community Development Block Grant Program, North Dakota Office of Intergovernmental Assistance, stated that the Human Rights Act would be helpful in his department's efforts to promote affirmative fair housing policies; however, after sharing the new Human Rights Act with officials of the U.S. Department of Housing and Urban Development, they expressed concern that in the absence of any enforcement mechanism, there are no assurances that enforcement will actually be effected.¹³

Although the Human Rights Act was now State legislation, few people were aware of the act and no dollars were appropriated by the State legislature to carry out the mandates. Juanita Helphrey of the North Dakota Commission on Indian Affairs stated that to her knowledge no information had been disseminated to citizens on the Human Rights Act and its implications. She reminded the North Dakota Advisory Committee of her involvement in pushing for the legislation: "We also felt that if we could get this bill passed . . . we could look for appropriations or creation of a human rights agency in the future." Noting that housing discrimination against Native Americans is severe and extensive, she also said that the law would not be of any assistance in the absence of an administering State agency.¹⁴

In 1991 the North Dakota Legislature further expanded the Human Rights Act to govern businesses that employ 1 or more workers instead of 10 or more workers,¹⁵ making it more comprehensive than Federal statutes that limited jurisdiction to employers with 15 or more employees.¹⁶ Additional legislation also made it unlawful to discriminate against anyone who participated in lawful activity off an employer's premises during nonworking hours.¹⁷ However, many

¹³ *Ibid.*, pp. 186–87.

¹⁴ *Ibid.*, pp. 141–42, 144.

¹⁵ Janell Cole, "ND joins other states," *Bismarck Tribune*, Nov. 12, 1991, p. 1–B.

¹⁶ 1991 Session Laws, chap. 143, Employment Discrimination, § 1, p. 407. Amended subsections 4 and 5, § 14–02.4–02 of the 1989 Supplement to the North Dakota Century Code, effective Apr. 16, 1991. Legislation introduced as House bill 1127.

¹⁷ 1991 Session Laws, chap. 142, Employment Discrimination, § 1, p. 403. Amended § 14–02.4–01 of the 1989 Supple-

North Dakota employers were unaware of the change to govern a broader number of businesses. The *Bismarck Tribune* reported that Commissioner of Labor Craig Hagen said the bill received little attention because he preferred to lobby legislators one-on-one.¹⁸ When it became law, his office actively notified employers of the legislation, he said. But Russ Richards, chairman of the Bismarck-Mandan Chamber of Commerce's retail committee, said the new legislation was still "extremely little known." Mr. Richards said he made it a habit to pursue information from various sources, but had never seen reference to the Human Rights Act change.¹⁹

North Dakota's policy of nondiscrimination was somewhat confusing due to how it was referenced in the State statute. To provide a better reading of the Human Rights Act, the State legislature in 1997 decided to make the North Dakota Century Code Chapter 14-02.4 more definitive and passed an amendment changing the chapter title from "Discrimination" to "Human Rights" (see appendix D).²⁰

Fifteen years since its inception, the State policy on discrimination continues to prohibit discrimination in employment, public accommodations, housing, State and local government services, credit, marital status, disability, or public assistance. But the State provides no funding, and no available avenues or remedies exist to protect citizens who experience discrimination, except in the area of employment. Complainants who attempt to seek relief for alleged discrimination in the other areas covered by the North Dakota Human Rights Act must take action themselves by hiring an attorney and taking their complaint through the judicial system, or contacting a Federal agency.

Keith Elston, executive director, American Civil Liberties Union, North Dakota chapter, noted that the North Dakota Human Rights Act, since its inception in 1983, has been amended

ment to the North Dakota Century Code, effective Apr. 5, 1991. Legislation introduced as Senate bill 2498.

¹⁸ Janell Cole, "ND joins other states," *Bismarck Tribune*, Nov. 12, 1991, p. 1-B.

¹⁹ *Ibid.* The first Richards knew of the change in the law was when the *Bismarck Tribune* asked him to comment on it.

²⁰ 1997 Session Laws, chap. 293, § 1. 1997 North Dakota Century Code, chap. 14-02.4, Human Rights, p. 81. This amendment became effective Aug. 1, 1997.

and improved four times.²¹ In his opinion, the legislature must feel that the Human Rights Act is an important set of laws or they would not have spent valuable time fine-tuning it.²² However, the lack of a real enforcement mechanism contributes substantially to the perception of the Human Rights Act as simply a "paper tiger" providing no tangible protection for the rights of North Dakotans.²³

North Dakota Department of Labor

Since 1983 the North Dakota Department of Labor has been responsible for investigating complaints of alleged discrimination in employment under the North Dakota Human Rights Act. In 1987 the North Dakota Department of Labor entered into a contractor relationship as a 706 agency with the U.S. Equal Employment Opportunity Commission (EEOC), Denver District Office.²⁴ At that time, the North Dakota Department of Labor only had jurisdiction, under Federal statutes, to investigate complaints regarding employers with 15 or more employees. The EEOC paid the North Dakota Department of Labor for this service under Federal guidelines; however, no funds were provided to the agency for investigation of complaints under the North Dakota statute. Additionally, under the Human Rights Act, an aggrieved person may bring action in State district court within 3 years of the alleged wrongdoing.²⁵

North Dakota Commissioner of Labor Craig Hagen spoke before the North Dakota Advisory Committee and said his agency intakes, investigates, and attempts to resolve charges of employment discrimination on behalf of the Federal Government.²⁶ In North Dakota a claimant must

²¹ Keith Elston, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, p. 11 (hereafter cited as *Transcript 2*). The North Dakota Human Rights Act was amended in 1989, 1991, 1993, and 1995.

²² *Ibid.*, p. 12.

²³ *Ibid.*, p. 14.

²⁴ Craig Hagen, *Transcript 2*, p. 336.

²⁵ *Ibid.*, p. 313. Under Federal law, complainants must first file with the EEOC before they can go to Federal court. Prior to going to Federal court, complainants must request a "Right to Sue" letter from the EEOC.

²⁶ *Ibid.*, pp. 308-09. Work is done on behalf of title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and title I of the Americans with Disabilities Act of 1990.

establish a prima facie case, and the individual has 300 days to file the complaint.²⁷ The North Dakota Department of Labor does not have enforcement powers and can only encourage settlement of a claim through negotiations or mediation.²⁸ If there is a determination of merit, conciliation takes place. If conciliation is not successful, then the complaint is forwarded to the EEOC in Denver for action under Federal statute.²⁹ The backlog of cases the EEOC has for charges from North Dakota is 1 to 3 years for resolution.³⁰ Commissioner Hagen said that in North Dakota it takes approximately 1 year to process a charge of discrimination from open to close when the complaint meets the jurisdictional requirements. For those that do not meet the Federal jurisdictional requirements but simply meet the Human Rights Act requirements, it takes approximately 6 months from open to close for a resolution.³¹

For the title VII, Age Discrimination in Employment Act (ADEA), and American with Disabilities Act (ADA) cases, the North Dakota Department of Labor is reimbursed by the EEOC \$500 for each case filed, investigated, and resolved under the EEOC contract.³² The agency also serves as a referral agent for the Equal Pay Act on behalf of the EEOC. For those cases that fall under the Equal Pay Act, the agency is paid \$50 and the cases are referred directly to the EEOC District Office in Denver.³³ The contract approved under the EEOC is based on a fiscal year and consistently has increased, allowing North Dakota to handle more and more charges each year.³⁴ Commissioner Hagen said, "Legiti-

mately filed each year, there are probably 10 to 20 discrimination complaints out of 120." However, the North Dakota Department of Labor has never refused to accept a charge of discrimination. In 1994 there were 145 complaints, and 1995 saw a slight decrease in complaints filed.³⁵

In 1995 the North Dakota Department of Labor processed 125 complaints of discrimination in employment.³⁶ Table 1 illustrates the number of complaints filed in 1995, including 117 of those that met the jurisdictional requirements for the EEOC. Eighty complaints were filed on the basis of sex, 16 on the basis of race, and 2 each regarding color, national origin, and religion (see table 1). The Age Discrimination in Employment Act has jurisdiction for complaints from employers with 20 or more employees; and for Americans with Disabilities Act complaints, the threshold is 15 or more employees.³⁷ The North Dakota Department of Labor accepted 32 complaints under the ADEA and 28 complaints under the ADA (see table 1). Complaints filed with the North Dakota Department of Labor against another State agency are also automatically referred to Denver for processing. Commissioner Hagen said that the department would prefer to handle those cases within the State because his agency could do a better job and also process them more expediently.³⁸

The 117 complaints that were under Federal guidelines are detailed in table 2. The North Dakota Department of Labor found probable cause in only 1 case, while there were 40 no probable cause findings. Fifteen people withdrew their cases from the system to pursue their claims in court. Results show, according to Commissioner of Labor Hagen, that there is not an overwhelming employment discrimination problem in North Dakota.³⁹

Commissioner Hagen said the State receives \$55,650 from the Federal Government, which subsidizes one employee. The one employee, based on the number of complaints filed, is satisfactory to handle effectively all charges of

²⁷ *Ibid.*, pp. 312-13. The 300-day limit is also applied to Federal law.

²⁸ *Ibid.*, p. 314.

²⁹ *Ibid.*, pp. 317-18.

³⁰ *Ibid.*, pp. 311-12. Those individuals who have first filed with the EEOC can, after 90 days, petition for a Right to Sue letter, and then pursue their claim in Federal court. Public Radio International reported that the EEOC has a backlog of 100,000 discrimination complaints. *Ibid.*, pp. 313 and 312, respectively.

³¹ *Ibid.*, p. 312. Resolution of an employment discrimination complaint is based on the cooperation of the employer.

³² *Ibid.*, p. 309.

³³ *Ibid.*

³⁴ *Ibid.* The annual contract determines the number of cases expected to be resolved during the contract year (October through September). North Dakota Department of Labor, *1995-1997 Biennial Report*, Dec. 1, 1997, p. 10.

³⁵ *Ibid.*, p. 319.

³⁶ *Ibid.*, p. 310.

³⁷ *Ibid.* North Dakota amended the Human Rights Act and defined an employer as one who employs a single individual or more. *Ibid.*, pp. 310-11.

³⁸ *Ibid.*, p. 311.

³⁹ *Ibid.*, p. 319.

Table 1
North Dakota Department of Labor, Complaints Filed in 1995*

Type of Complaint	Sex	Race	Color	Bases			Total
				National Origin	Religion	Other	
Title VII ¹	40	8	1	1	1		51
Discharge	14	5	1	1	1		
Failure to hire	10	3	0	0	0		
Promotion	2	0	0	0	0		
Pay	2	0	0	0	0		
Pregnancy	4	0	0	0	0		
Harassment	8	0	0	0	0		
Age Discrimination in Employment Act ²						32	32
Americans with Disabilities Act ³						28	28
Equal Pay Act ⁴						6	6
Total discrimination complaints that met jurisdictional requirements for EEOC							117
North Dakota Human Rights Act						8	8
Total discrimination complaints filed							125

SOURCE: Craig Hagen, commissioner of labor, North Dakota Department of Labor, statistics provided at Bismarck factfinding meeting, May 16, 1996.

* 1995 contract year: Oct. 1, 1994–Sept. 30, 1995.

¹ Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, gender, national origin, and religion.

² The Age Discrimination in Employment Act of 1967 prohibits employment discrimination on the basis of age. It covers employees aged 40 and over.

³ Title I of the Americans with Disabilities Act of 1990 prohibits employment discrimination based on a disability.

⁴ The Equal Pay Act of 1963 requires that men and women performing essentially similar job functions be paid similar wages. The North Dakota Department of Labor provides only intake of these complaints. Investigation and determination is made by the Denver EEOC office.

Table 2
North Dakota Department of Labor, Resolution of Charges Meeting Federal Guidelines Filed in 1995*

	Title VII	ADEA	ADA	EPA	Total
Filed	51	32	28	6	117
Settled	8	0	1	0	9
Probable causes	1	0	0	0	1
No probable causes	14	16	9	1	40
Other** (withdrawal, right-to-sue)	5	5	5	0	15

SOURCE: Craig Hagen, commissioner of labor, North Dakota Department of Labor, statistics provided at Bismarck factfinding meeting, May 16, 1996.

* 1995 Contract Year: Oct. 1, 1994–Sept. 30, 1995. Fifty-two cases were still pending at the end of the contract year. Those cases are carried over to the new contract year.

** Numbers do not include eight complaints filed under North Dakota Human Rights Act (State jurisdiction).

employment discrimination that are filed with the North Dakota Department of Labor, he said. The agency receives 45 calls a month regarding discrimination, which equates to about 4 percent of the total (1,125) employment inquiry calls received in a month. He further stated that if there continues to be an increase in discrimination complaints and a reduction in the North Dakota Department of Labor's budget, then funding to provide adequate services will have to be addressed.⁴⁰

The fact that the State is fortunate to have so few cases does not mean the State should lessen its enforcement efforts. Commissioner of Labor Hagen said:

We're meeting the needs of North Dakotans and no further regulatory action needs to be taken when it comes to employment discrimination; however, continued education on the issue is the State's greatest remedy. Ensuring that employers and employees are aware of discrimination laws, and . . . informing citizens of the avenues that are already available to them for resolution should be the focus of our State effort.⁴¹

He explained that the North Dakota Department of Labor takes a proactive approach in that the agency reaches about 1,000 people a year through educational seminars, conferences, forums, and presentations.

Commissioner Hagen has four staff who travel across the State conducting employment and labor law seminars that reach countless employers. Other sources of advertisement include publication in at least 12 trade organization newsletters, work with the State's chamber of commerce and organized labor, and classroom involvement with vocational education teachers and instructors across the State.⁴²

Commissioner Hagen conceded that his office does not necessarily do affirmative advertisement on radio or television throughout the year; however, he noted that he had recently been averaging one major media press conference a

week regarding issues of employment in North Dakota.⁴³ The commissioner of labor said that he does not "see it as the responsibility of [his] agency to inform every employee of the employment laws governing employment in North Dakota [because] it is available to them to make themselves familiar with it."⁴⁴

When Commissioner Hagen was asked if North Dakota citizens are aware of the agency, because it has been reported that many other State, local, and private agencies receive calls regarding employment discrimination, he responded, "You can't reach every citizen, you can't reach every worker out there and make them aware of what the legal provisions are that govern employment in North Dakota, but what you can do is make a good faith effort."⁴⁵ He explained:

Now, just because the numbers are low in North Dakota is not an indication that we're not reaching the public. . . . It is an indication . . . that employment discrimination in North Dakota is being handled effectively, that it is not a pervasive problem. If it was a pervasive problem, you would have people lining up at the doors of attorneys in North Dakota or at the district attorney's office or at some public forum to complain. We would have them out there making noise that they are not being represented, and we don't have that occurring . . . and that's why I will suggest and stand by the statistics of the office that there are probably only a dozen or so legitimate cases of employment discrimination in North Dakota, and it's basically because we're a fair people and our employers are fair.⁴⁶

Despite this assessment, recent statistics obtained from the North Dakota Department of Labor indicate that inquiries to the EEOC are on the rise in the State. Between February 1996 and December 1996, 742 employment discrimination inquiries were received.⁴⁷ In 1997 the agency received 1,465 inquiries, with 966 relating specifically to employment discrimination. In 1998 the agency received 2,582 calls, with 2,050

⁴⁰ Ibid., p. 316. The North Dakota Department of Labor's total budget is slightly over \$500,000, p. 323.

⁴¹ Ibid., p. 320. Employees can find out about the North Dakota Department of Labor through the required posting of employment laws in every place of business in the State. The poster contains information on how to contact the agency. Ibid., p. 325.

⁴² Ibid., pp. 325-26.

⁴³ Ibid., p. 326.

⁴⁴ Ibid., p. 328.

⁴⁵ Ibid., pp. 329-30.

⁴⁶ Ibid., p. 330.

⁴⁷ North Dakota Department of Labor, *1995-1997 Biennial Report*, Dec. 1, 1997, p. 3. In February 1996, the department implemented a communication log to track the types of inquiries received.

relating specifically to employment discrimination.⁴⁸

Others did not hold the same sentiment as Commissioner Hagen regarding the effectiveness of the North Dakota Department of Labor.

The U.S. attorney, John Schneider, District of North Dakota, stated that he had not heard of any results coming from the North Dakota Department of Labor. While in private practice, he found it unsatisfactory to ever go to the department because it slowed the process down. He said, "Never once [did I] ever see them prosecute a civil rights case themselves. So to think we have an [effective] agency right now I think is erroneous."⁴⁹

Critics of the agency voiced the following inadequacies:

Russell D. Mason, Sr., former chairman, Three Affiliated Tribes, stated:

The North Dakota Department of Labor cannot bring an action in court against an employer who is discriminatory.⁵⁰ The agency has no education component associated with its investigative efforts. Further, with but one staff member investigating employment discrimination claims from Bismarck, efforts to understand where there might be systemic discrimination and patterns of discrimination are never undertaken. The Department of Labor's investigative services are not very well known, again from lack of staffing and funding, particularly in rural areas. Even when people are aware of the agency, its lack of teeth suggests that it will not be able to accomplish very much in terms of an effective remedy.⁵¹

⁴⁸ North Dakota Department of Labor, Communication Log Summary, December 1998, p. 2.

⁴⁹ John Schneider, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Fargo, ND, Sept. 24, 1997, vol. 3, pp. 11-12. Prior to his appointment as U.S. attorney, Mr. Schneider was an attorney in private practice and also a State legislator.

⁵⁰ Russell D. Mason, Sr., chairman, Three Affiliated Tribes, Fort Berthold Indian Reservation, New Town, ND, written statement to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Sept. 24, 1977, p. 4. The task is left to the EEOC which has an understaffed regional office in Denver who are not familiar with North Dakota's employment situation, do not generally travel to North Dakota to do onsite investigations, and rarely, if ever, bring a case to court involving employment discrimination in North Dakota.

⁵¹ Ibid.

David Gipp, president of United Tribes Technical College, said:

Because we are constantly seeking to place our graduates in productive jobs, employment opportunities are critical. Complaining to the North Dakota Department of Labor about employment discrimination in State government does not seem likely to produce adequate results.⁵²

A private citizen wrote:

Filing a complaint with the North Dakota Department of Labor alleging age discrimination against a former employer proved futile and a waste of time. After filing the initial discrimination charge, I was never contacted for further information nor were the witnesses I provided as corroboration ever contacted. Many other North Dakota residents, aware of my complaint have told me "if you have any kind of employment or discrimination questions, don't go to the North Dakota Department of Labor because they will not help you." Calls placed by my wife to the agency were unproductive. She expected a little bit of understanding and help, but she certainly did not get it. It was suggested that I contact the Minnesota Department of Labor to get my questions answered.⁵³

Finally, a former North Dakota lieutenant governor provided in an article in the *Bismarck Tribune* a brief history of the labor commissioner, an elected position, and wrote: "During the 28 years of existence, the agency has never measured up to expectations . . . to put it bluntly, people do not know enough about the office to make a judgment on its performance." The author recommended that the position become Governor-appointed because "he will be more concerned and more informed about the conduct of the office than all of the voters combined."⁵⁴

⁵² David Gipp, president, United Tribes Technical College, Bismarck, ND, written statement to the North Dakota Advisory Committee, Sept. 24, 1997, p. 3.

⁵³ David Dammen, Minot, ND, written statement to the North Dakota Advisory Committee, Oct. 23, 1997, pp. 1-2.

⁵⁴ Lloyd Omdahl, "Labor commissioner shouldn't be elected," *Bismarck Tribune*, Nov. 13, 1994, p. 3-C. Former Lieutenant Governor Omdahl writes a column for the *Bismarck Tribune* that runs on Sundays.

Chapter 3

Federal, State, Tribal, and Local Government Perspectives on Discrimination

U.S. Attorney's Office

John Schneider, United States attorney, District of North Dakota, in his presentation at a planning meeting of the North Dakota Advisory Committee, stated:

The protection of the civil rights of the citizens of North Dakota is one of the highest callings of the Office of the United States Attorney. It is our task not only to protect the dignity of our citizens, but to elevate the consciousness of our community. Beyond righting these wrongs and promoting healing, our task is to demonstrate that the degradation of our peoples will not be tolerated.¹

The U.S. attorney prosecutes all Federal crimes that are committed in North Dakota, collects money that is owed the Federal Government, and defends the United States from suits brought against it.² Many of the suits are civil rights complaints brought by employees who work for Federal agencies and believe they have suffered employment discrimination.³ Other civil rights cases are taken by the Civil Rights Division of the U.S. Department of Justice in Washington, D.C., although complaints can be initiated in the local district of North Dakota.⁴ Since appointment as U.S. attorney, Mr. Schneider said there have only been two Federal civil rights cases that have gone to trial; one was

a fair housing case and the other a freedom of access to entrances case.⁵

As U.S. attorney, it is his responsibility to ensure that everyone's rights are protected and attainable.⁶ U.S. Attorney Schneider provided the Advisory Committee examples of complaints he had received such as no wheelchair accessibility to restrooms in a business, and city of Dickinson court house inaccessibility to people with disabilities.⁷ He also stated that there have been many instances of alleged police brutality that have come to his attention. Half of the crimes prosecuted arise out of the four major Indian reservations in the State, and he indicated that he would like to see a change in staffing to include individuals other than white Protestants.⁸ His concern from a Federal perspective is that North Dakota citizens are not contacting his office regarding discrimination complaints, and even if they did the U.S. Attorney's Office is not equipped to handle them. He was also concerned that North Dakota does not have a known and readily accessible means of redress for people who are experiencing discrimination. They have no agency to contact to receive relief or at least a determination concerning their complaint, he said.⁹

Office of the Governor

Deborah Painte, executive director of the North Dakota Commission on Indian Affairs, and a member of the Governor's cabinet, spoke

¹ John Schneider, statement before the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, at its planning meeting in Fargo, ND, Dec. 7, 1995, p. 1. Mr. Schneider has held the position of U.S. attorney since October 1993.

² John Schneider, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Fargo, ND, Sept. 24, 1997, vol. 3, p. 5 (hereafter cited as *Transcript 3*).

³ *Ibid.*, pp. 5-6.

⁴ Clare Hochhalter, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, p. 127 (hereafter cited as *Transcript 2*).

⁵ John Schneider, *Transcript 3*, vol. 3, p. 6. The U.S. Attorney's Office in North Dakota, the smallest in staffing in the country, is an agency of the U.S. Department of Justice.

⁶ *Ibid.*, p. 10.

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*, p. 13. Staff of the U.S. Attorney's Office include clerical workers; attorneys; FBI drug enforcement or alcohol, firearms and tobacco clerks; judges; U.S. Marshals, etc. However, none of the staff was Native American.

⁹ *Ibid.*, p. 11.

on behalf of Governor Schafer during both proceedings.¹⁰ Ms. Painte informed the North Dakota Advisory Committee that the Governor had received the invitation to submit a written statement, and it would be forthcoming within the next week or so.¹¹ She began her presentation by saying, "He [the Governor] believes there is discrimination," but raised the question to what extent discrimination exists.¹² However, Ms. Painte could not refer to any specific proactive efforts the Governor had taken to try to answer the question, but said that he testified in support of the 1997 interim study resolution enacted by the State legislature to study discrimination in the State and to ascertain if there is a need for a human rights commission.¹³ She shared an example of perceived discrimination and how State government acted in a responsible manner:

A vehicle-safety inspection checkpoint located 30 miles north of the Standing Rock Sioux Reservation alarmed a number of Indian people because the checkpoint appeared to be coincidentally set up 4 days before the opening of the United Tribes Pow Wow. The people's concerns were taken to Tribal Chairman Jesse Taken Alive, who then contacted Governor Schafer's office. [Ms. Painte also received complaints regarding the checkpoint and responded to questions.]¹⁴ Governor Schafer and Highway Patrol Superintendent Jim Hughes met with Chairman Taken Alive on quick notice. In response, and to improve communication and avoid misunderstanding or bad feelings, the patrol agreed to notify tribal headquarters hours before similar safety inspections were conducted on routes near reservations. Chairman Taken Alive, satisfied with the explanation and change in procedure, shared the information with other tribal leaders and members of the Standing Rock Sioux Tribe.¹⁵

¹⁰ Deborah Painte represented the Governor at both the Bismarck and Fargo factfinding meetings conducted by the North Dakota Advisory Committee.

¹¹ Deborah Painte, *Transcript 2*, p. 207.

¹² Deborah Painte, *Transcript 3*, vol. 1, p. 40.

¹³ *Ibid.*, p. 40.

¹⁴ *Ibid.*, pp. 27-28. This incident occurred on Sept. 2, 1997, along Highway 1806, south of Mandan, ND. The majority of traffic on the road is local, although tribal members do travel the route on their way to the Bismarck area. Travel of tribal people increases significantly during the Pow Wow. Patrols had been conducted in that vicinity for 20 years without any complaints.

¹⁵ *Ibid.*, pp. 28-29. Safety checkpoint procedures require patrol officers to check every 5th or 10th car, the exact

Ms. Painte said that "resolving this incident did not require a formal process or the involvement of some governing agency or commission. It simply required open lines of communication and good will on the sides of all parties."¹⁶

She told the Advisory Committee that Governor Schafer is committed to improving State relationships with the tribes, and the Governor believes that progress has been made.¹⁷ She cited further examples of the Governor's commitment to address discrimination, including his signing a State-tribal accord with the Standing Rock Sioux Tribe and supporting the development of similar accords with the Three Affiliated, Turtle Mountain, and Spirit Lake Tribes.¹⁸ She also mentioned "Capitol for a Day," which brings all the cabinet directors and Governor's staff to a single community for a day, to engage in dialogue between citizens and community leaders.¹⁹ Ms. Painte said the Governor realizes that incidents of discrimination can and do occur despite such concerted efforts at improving relationships, and they can happen not only on the basis of race, but for other reasons such as age or marital status.²⁰ To better address the issue of discrimination, the North Dakota Department of Labor will come under the Governor's direct administration beginning July 1, 1999.²¹ The change will allow the State to look at its responsibilities toward discrimination with new perspectives and ideas.²² In addition, the Governor's Office is open to suggestions for improving the handling of those types of cases.²³

Concerning housing, she said the U.S. Department of Housing and Urban Development

number is determined beforehand. This procedure avoids singling out any one individual or a class of people.

¹⁶ *Ibid.*, p. 29.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*, p. 29. The next "Capitol for a Day" was scheduled for New Town where leaders of the Three Affiliated Tribes would have an opportunity to meet with members of the Governor's cabinet.

²⁰ *Ibid.*, p. 30.

²¹ *Ibid.*, p. 32. The 1995 legislature passed legislation to make the commissioner of labor an appointee of the Governor, once the current term has expired. North Dakota Department of Labor, *1995-1997 Biennial Report*, released Dec. 1, 1997, p. 1.

²² *Ibid.*

²³ *Ibid.*, p. 30.

has funds available to contract with agencies to provide housing discrimination complaint processing under State and Federal laws. It might be possible, she said, for the North Dakota Department of Labor to receive additional money by processing housing discrimination complaints.²⁴

Office of the Attorney General

Heidi Heitkamp, attorney general, State of North Dakota, explained that, in her professional career, she has not had extensive legal experience in the area of equal protection and that civil rights is not one of her specialties. However, she said she had some ideas on improving the way the State handles discrimination complaints, and thoughts on some important policy initiatives, in addition to strengthening the relationship between community members and the State.²⁵ Attorney General Heitkamp said that she has come to realize that the Office of Attorney General is the agency that is frequently called when people have problems and do not know where else to turn.²⁶ For that reason, the office has become somewhat of a clearinghouse for issues. And it also evaluates where there are gaps in providing service.²⁷

The attorney general said that as Federal dollars continue to shrink:

it becomes more and more difficult for us to find referral points for the concerns that are expressed to us by citizens in the State. [As] a representative of the people of the State of North Dakota [the Office of Attorney General], must help people who, somehow, have gotten missed and have fallen through the cracks, those who have concerns and complaints regarding situations that they should not have to experience in this country, and certainly not in our State.²⁸

The Office of Attorney General is the logical place for North Dakota citizens to turn when they have a legal problem, and for that reason her office fields many calls from private citizens who believe their rights have been violated.²⁹ By law, the Office of Attorney General can only pro-

vide legal advice and assistance to State agencies, officials, and employees in certain political subdivisions; however, not all citizens understand that.³⁰ The office does not keep statistics on the number and the types of discrimination calls received; however, calls are not infrequent, and based on the information received from those calls, at least some of those complaints appear to have merit.³¹ She said a recent report released by the U.S. Department of Housing and Urban Development illustrated that North Dakota does face some discrimination issues.³² When calls are received, they are referred to the best of the staff's ability to the appropriate agency or individual. Unfortunately, in many instances, there is little hope that the referral will result in any effective remedial action because of the lack of an effective enforcement mechanism.³³ While North Dakota's Human Rights Act is quite broad, it provides limited ability for those who experience discrimination to get effective relief. The two mechanisms under the act are:

1. The aggrieved individual may bring a lawsuit.
2. The State labor commissioner may receive complaints about employment practices and attempt to obtain voluntary compliance with the law through informal advice, negotiations, or conciliation.³⁴

There are problems with both mechanisms. Attorney General Heitkamp said lawsuits are expensive and time-consuming for all parties involved. Even the first step in pursuing a lawsuit—finding a lawyer—can be formidable due to the lack of or unavailability of attorneys.³⁵ She further explained:

Victims of discrimination seldom have financial resources to saunter into a law office and obtain a top lawyer of their choice. Instead, [they] have to summon their courage to enter that very foreign environment of the courtroom. Once that hurdle is crossed, the discrimination victim will probably have to be willing to

²⁴ *Ibid.*, pp. 32–33.

²⁵ Heidi Heitkamp, *Transcript 2*, p. 278.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*, pp. 278–79.

²⁹ *Ibid.*, p. 282.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, p. 283.

³⁴ *Ibid.*, p. 284.

³⁵ *Ibid.*, p. 285.

publicly reveal a great deal of private information and endure a long and cumbersome process.³⁶

Attorney General Heitkamp said that the process of using the courts to settle a matter like this is also costly for taxpayers, and more cost-effective methods can be devised that will protect petitioners as well as the respondent.

She said the Office of Attorney General is very interested in getting additional help to guarantee that citizens who file complaints are referred to the appropriate agency and have an opportunity for enforcement of human rights laws.³⁷ There is no requirement that assistance provided by the labor commissioner will bind either party. The problem with relying on this mechanism to prevent and remedy discrimination is that the informal process is purely voluntary.³⁸

In concluding her presentation, the attorney general told of a Native American youth who expressed hurt and dismay after she and other Native American youth were followed in a Minot convenience store while purchasing snacks.³⁹ She said listening to the student tell of that event reminded her, once again, how hateful that kind of message can be to a young person.⁴⁰

North Dakota State Legislature

State legislators made presentations before the North Dakota Advisory Committee during both factfinding meetings, and their views are as follows:

Scot Kelsh of Fargo, North Dakota House of Representatives, said the Americans with Disabilities Act, major civil rights legislation passed this decade, provides access to an entire group of people who previously were denied it. The general population currently sees the civil rights issue as somewhat cloudy, and two things need to happen: (1) address the discrimination problem and (2) prevent the decay of progress already made.⁴¹ Every citizen, as well as noncitizens who come to the United States, should be granted the same rights and opportunities.

William Kretschmar of Venturia, North Dakota House of Representatives, discussed constitutional rights of North Dakota citizens, and said that if North Dakota establishes a commission, it should continually remind us of the great privileges of citizenship and how those privileges can, should, and must be maintained if our form of government is going to continue.⁴² Representative Kretschmar explained that emphasis should be placed first on issues such as the failures of cities, school systems, and even parenting to assure a stable society.⁴³

Marv Mutzenberger of Bismarck, North Dakota House of Representatives, explained that he represents a highly urban district with 13,000 residents. Within that district, about 600 people are Native American, which is the largest number of Native Americans in any district in the State, except those districts that have reservations within them.⁴⁴ There are also 1,400 mobile homes and 1,800 apartments constituting some of the poorest people in the district. Burleigh County Housing Authority has low-income housing in the district for well above 500 people, in addition to a senior facility that houses approximately 100, and another facility under construction.⁴⁵ The district also has several total care and independent living facilities. Representative Mutzenberger explained, "What I'm really saying is that we have a very high percentage of very vulnerable people, people who have less voice, people who have less power, people who have less mobility . . ."⁴⁶

He said to determine the extent of discrimination is very difficult and he knew of no social study that has attempted to determine the amount of discrimination that exists in the part of the State he represents, or any part of the State, for that matter.⁴⁷

Native Americans, women, and people with disabilities absolutely experience some discrimination, Representative Mutzenberger said.⁴⁸ But he said he doubted that mechanisms to enforce

³⁶ Ibid.

³⁷ Ibid., p. 289.

³⁸ Ibid., pp. 284-85.

³⁹ Ibid., pp. 279-80.

⁴⁰ Ibid., pp. 280-81.

⁴¹ Scot Kelsh, *Transcript 3*, vol. 2, pp. 118-119. Representative Kelsh serves on the Interim Judiciary Committee currently studying discrimination in the State.

⁴² William Kretschmar, *Transcript 2*, p. 112.

⁴³ Ibid., p. 113.

⁴⁴ Marv Mutzenberger, *Transcript 2*, pp. 116-17. Mr. Mutzenberger became a State senator in 1997.

⁴⁵ Ibid., p. 117.

⁴⁶ Ibid.

⁴⁷ Ibid., pp. 117-18.

⁴⁸ Ibid., p. 118.

discrimination regulations exist in North Dakota, and if they do, people do not know about them.⁴⁹ The North Dakota Department of Labor has some ears, but probably no teeth; and the Denver District Office of the U.S. Equal Employment Opportunity Commission is a long way away for his constituents, which presents the question of who is responsible for tracking complaints, providing education, and acting as an advocate.⁵⁰

Darrell Nottestad of Grand Forks, North Dakota House of Representatives, said that North Dakotans would like to believe that few violations of civil rights exist in the State. However, the State is not free of problems, and violations do exist. Many do not reach a point of public knowledge because the recipients are often faceless and, thus are not newsworthy in the eyes of the media.⁵¹

Cathy Rydell of Bismarck, North Dakota House of Representatives, stated that North Dakota is only one of two States that does not have a human rights commission;⁵² but there is a bigger issue than that for North Dakota, and that is the State's uniqueness.⁵³ Regarding whether that uniqueness should carry over in the fact that North Dakota does not have a formal commission, she said "I'm not sure that's a leap I wanted to make either," and that may be one of the reasons why North Dakota has not followed the other 48 States that have commissions.⁵⁴ A good human rights commission could be in place, but unless information gets out to the public, it does not do anyone any good.

Although much of what she has experienced with regard to discrimination in the State is anecdotal, Representative Rydell expressed her ongoing amazement regarding people she knows personally who are intelligent, compassionate, caring, and church-going, but who will make racist or discriminatory statements.⁵⁵ When she

tries to analyze it, she wonders if it is generational, due to national heritage or family values, or media driven, she said.⁵⁶ Representative Rydell experienced firsthand hearing derogatory remarks made about an African American strictly because of that individual's color, and also noted that discrimination occurs on a regular basis against Native Americans. She also told the Committee she has personally experienced gender discrimination in her own career.⁵⁷

Representative Rydell closed her remarks by saying that she thought tools are available to address discrimination through agencies such as the North Dakota Department of Labor, and questioned whether people are aware of services, if the services are coordinated, or duplicative, and if there are enough financial resources to get people to those services.⁵⁸

Two representatives were asked if they were aware of or if they could share with the North Dakota Advisory Committee Governor Schafer's position on the establishment of a human rights commission in North Dakota. Both stated they had never heard a position coming from the Governor.⁵⁹

Both representatives also agreed that if some form of consolidation of commissions and services could be developed without costing the State another penny, the legislature would be more receptive.⁶⁰ There is also the fear that a human rights commission would unfairly go after employers accused of discrimination. Representative Rydell said there would need to be coalition building among organizations, major business interests, and small business owners. These entities have to be brought to the table and have demonstrated to them how they can benefit.⁶¹

Tribal Leadership of North Dakota

Native Americans work and live in North Dakota cities, rural communities, and on Indian reservations.⁶² In each of these settings, they

⁴⁹ Ibid. He said his constituents do not know what to do or where to go.

⁵⁰ Ibid.

⁵¹ Darrell Nottestad, *Transcript 3*, vol. 2, p. 115.

⁵² Cathy Rydell, *Transcript 2*, p. 120.

⁵³ Ibid., pp. 120–21. One unique aspect of North Dakota is that it is the only State that does not have voter registration. Ibid., p. 121.

⁵⁴ Ibid., p. 121.

⁵⁵ Ibid., p. 122.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 124.

⁵⁸ Ibid., pp. 124–25.

⁵⁹ Cathy Rydell and William Kretschmar, *Transcript 2*, p. 149.

⁶⁰ Ibid., pp. 154–55.

⁶¹ Cathy Rydell, *Transcript 2*, p. 156.

⁶² Four Indian reservations—Fort Berthold, Spirit Lake, Standing Rock, and Turtle Mountain—and the Trenton Indian Service Area, are located in North Dakota.

deserve and are entitled to fair and equal treatment; however, many Native Americans in the State have experienced numerous forms of discrimination.

Russell D. Mason, Sr., former chairman of the Three Affiliated Tribes said, "For our tribal populations, civil rights enforcement has been infrequent, at best, in North Dakota."⁶³ He said problems have persisted for tribal members in obtaining housing, employment, and credit. Despite the presence of some legal mechanisms for redress under North Dakota law, there is a great reluctance on the part of those harmed to try to do anything about their problems, and few attorneys willing to tackle such cases, which are generally not financially rewarding.⁶⁴

Chairman Mason stated that Indian tribes and nations in North Dakota, including the Three Affiliated Tribes and its members, have suffered from discriminatory treatment. A more detailed view is presented in appendix E.⁶⁵

David Gipp, president of United Tribes Technical College in Bismarck, also shared his experiences and views in his written testimony to the North Dakota Advisory Committee.⁶⁶ President Gipp, as expressed in appendix F, said that discrimination against Native Americans in the State has been ongoing. Discrimination ranges from "we do not rent to Indians" notices that appeared over 20 years ago in a Bismarck hotel, to United Tribes Technical College students being followed today by security personnel at the local malls and stores in Bismarck.

It is apparent that incidents of discrimination against North Dakota Native Americans continue in the areas of public accommodations, services, housing, credit, and most critically employment.

⁶³ Russell D. Mason, Sr., chairman, Three Affiliated Tribes, Fort Berthold Indian Reservation, letter to John F. Dulles, regional director, U.S. Commission on Civil Rights, Rocky Mountain Regional Office, Sept. 16, 1997.

⁶⁴ *Ibid.*

⁶⁵ Russell D. Mason, chairman, Three Affiliated Tribes, Fort Berthold Indian Reservation, New Town, ND, written statement to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Sept. 24, 1997, pp. 1-5.

⁶⁶ David Gipp, president, United Tribes Technical College, Bismarck, ND, written testimony to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Sept. 24, 1997, pp. 1-3.

Indian Affairs Commission

Deborah Painte, executive director of the North Dakota Indian Affairs Commission, told the North Dakota Advisory Committee that the functions of the commission are very broad. The commission's role is to improve relationships between State and tribal governments, and Native American and non-Native American communities, and to provide educational awareness activities on culture.⁶⁷ In some instances the North Dakota Indian Affairs Commission will serve in an informal capacity, such as a mediator or an advocate. Although she does not directly represent Native American people since she is not directly elected by Native American people, Ms. Painte stated that she does advocate for Indian issues and assists in making State government and others aware of Indian needs, concerns, and perspectives.⁶⁸ The Indian Affairs Commission does receive discrimination-related concerns from Indian people who contact the office.⁶⁹ Ms. Painte said, "More often than not, others who have called our office generally do not pursue their complaints after they find out that they have to go out of State, in some instances, or for local referrals, they have said they have already talked to them [the referral agency]."⁷⁰ She said her impression was that they were not satisfied with local or out-of-State remedies.⁷¹

The Indian Affairs Commission does not handle discrimination complaints, because it does not have any regulatory or enforcement powers.⁷² It receives all types of complaints, which are referred to various agencies as appropriate.⁷³

⁶⁷ Deborah Painte, *Transcript 3*, vol. 1, pp. 37-38.

⁶⁸ *Ibid.*, p. 46. Ms. Painte was not elected to this position but was originally appointed executive director of the Indian Affairs Commission in October 1992 by former Governor George Sinner and subsequently reappointed in 1993 by current Governor Edward Schafer. Tribal governments are sensitive to those persons who state they represent Indian people if they are not elected and/or appointed directly by Indian people. Tribal councils or other tribally elected officials legally represent their respective tribal memberships and speak on their behalf.

⁶⁹ Deborah Painte, *Transcript 2*, p. 207.

⁷⁰ *Ibid.*, p. 213.

⁷¹ *Ibid.*, pp. 213-14.

⁷² *Ibid.*, p. 208.

⁷³ Deborah Painte, *Transcript 3*, vol. 1, p. 33. Complainants are referred, for example, to the North Dakota Department of Labor or to a Federal agency located in Denver.

The Indian Affairs Commission has compiled a list of resources and agencies, both in-State and out-of-State, that handle various types of discrimination complaints. These agencies are contacted when someone comes to the commission with a complaint, and the list of resources and agencies is also provided to the complainant. The commission does not specifically maintain an official log of complaints; however, complaints received are filed along with background information of the incident.⁷⁴ Individuals are also advised to contact their State district legislators to inform them of the nature and type of discrimination that occurred.⁷⁵ This action is recommended so that the legislative members will become aware of the discrimination problem in North Dakota and understand the need for a local solution in the State.⁷⁶ This step was implemented after the human rights commission enabling legislation failed in the State legislature in 1995. Some legislators said they did not know whether the extent of discrimination justified a human rights commission because there were existing remedies, Federal and State laws, and no one had ever contacted them about discrimination. Unfortunately, since the commission does not compile any statistics, it is difficult and almost impossible to determine the number or types of complaints received annually.⁷⁷ Ms. Painte shared examples of discrimination brought to the attention of the Indian Affairs Commission Office:

- Discrimination against a Native American contractor who was the low bidder on a project, but a nonminority was informed of the contractor's bid and allowed to underbid him by \$6.
- Employment discrimination occurred where an individual was passed over for promotions and was subject to racial slurs in the workplace. Some comments included, "Go back to the reservation to your squaw," "Go back to the reservation and eat dog," and "All Indian women are whores." The employee informed his supervisors about these comments and it was decided the problem would be handled quietly through education. A few days later, the employee found animal feces in his waste basket. He was harassed and charged with infractions he did not commit. His complaint was investigated by the EEOC; however, after his supervisor was contacted by the EEOC, he was terminated 3 days later. In all, the process took well over 2 years before it was resolved. The employee received minimal compensation and suffered frustration and personal humiliation, and the employer accepted no responsibility.
- Native American students expressed to their parents that one non-Native American student continually harassed them with racial slurs. When they voiced their complaints to the school administration, they were made to feel that they had somehow antagonized the situation and were the instigators. The Indian Affairs Commission was contacted and asked to attend a parent meeting to identify solutions. Two meetings were held, one with a U.S. Department of Justice investigator, and the final outcome was that a racial harassment policy was implemented by the school district.⁷⁸

⁷⁴ Ibid., p. 33.

⁷⁵ Ibid., p. 34.

⁷⁶ Deborah Painte, additional comments to clarify her statements made to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, at both factfinding meetings (May 16, 1996 in Bismarck and Sept. 24, 1997 in Fargo), correspondence, Mar. 10, 1999 (hereafter cited as Deborah Painte letter).

⁷⁷ Deborah Painte, *Transcript 3*, vol. 1, p. 35. The number of complaints filed with the Indian Affairs Commission can be counted, but any reports tallying those numbers would misrepresent the pervasiveness of the problem because of the low number actually received in the Indian Affairs Commission Office. Most Indian people do not report discrimination complaints for several reasons, such as they do not know who to report them to, or they believe nothing can be done. Some, however, report their complaints to an existing agency such as the North Dakota Department of Labor. Ms. Painte believes discrimination complaints are greatly underreported.

The Indian Affairs Commission was actively involved with attempting to resolve these situations and/or follow up with the existing agencies that had authority in those areas. Ms. Painte said it was a very frustrating and long process using the existing Federal and State agencies, because it could take years to obtain a remedy. Further, those discrimination incidents that were shared with the North Dakota Advisory

⁷⁸ Deborah Painte, *Transcript 2*, pp. 209-12.

Committee reflect that Federal channels were not adequate.⁷⁹

The commission also serves as a liaison between tribal government and State government, and although she does not represent Native American people as an elected tribal official, her sense is that the dialogue between State and tribal government is generally very good and has remained positive despite extremely sensitive issues and incidents.⁸⁰

North Dakota Supreme Court Commission on Gender Fairness in the Courts

Sandi Tabor, private attorney and member of the North Dakota Supreme Court Commission on Gender Fairness in the Courts, said that in 1987, North Dakota was one of the first States in the Nation to establish a subcommittee to study gender fairness in the judicial system under the auspices of the Supreme Court Judicial Planning Committee.⁸¹ The commission began its work in March 1994, and each member was challenged under the following premise:

Decisions made or actions taken based on preconceived notions about the nature, roles, and abilities of women and men rather than upon evaluation of each individual situation strike at the heart of the judicial system that promises fairness and impartiality. Gender inequities frustrate and impugn the struggle by judges, lawyers, and litigants alike to achieve justice.⁸²

The Supreme Court Commission began its mission of collecting data using three processes. These included sending a survey to judges, attorneys, and court personnel; conducting public hearings; and coordinating gender fairness in the courtroom seminars for attorneys and judges.⁸³

⁷⁹ Deborah Painte letter

⁸⁰ Deborah Painte, *Transcript 3*, vol. 1, pp. 38, 46.

⁸¹ Sandi Tabor, *Transcript 2*, p. 85. Ms. Tabor is now executive director of the North Dakota State Bar Association.

⁸² *Ibid.*, pp. 89–90. Supreme Court Commission work was conducted under the direction of Chief Justice Gerald VandeWalle. The commission consists of 26 members broken into five working committees established to evaluate specific tasks and issues in various areas of substantive law. *Ibid.*, p. 90.

⁸³ *Ibid.*, pp. 90–91. The survey involved the development and distribution of three formats, one for each group. 1,301 surveys were sent to attorneys, 211 to court personnel, and 144 to judges. The surveys were divided into several categories, including judicial intervention, courtroom interaction, pro-

Through the hearings, the commission learned that people were concerned about the impact of court unification on access issues, especially in the area of domestic violence.⁸⁴ Others voiced concerns about child support and custody issues. There was also some testimony presented about inappropriate courtroom behavior on the part of attorneys and judges.⁸⁵ The subcommittee of lawyers and judges reviewed court records and other related data, including available anecdotal and statistical information concerning gender-related issues.⁸⁶

The purpose of the seminars was to provide an education program for attorneys during the information-gathering phase, which defined bias behavior and provided illustrations, but which might have also encouraged dialogue and insight on the climate of courts today.⁸⁷ Ms. Tabor told the North Dakota Advisory Committee that through these seminars, she has witnessed the confusion of attorneys and judges about bias behavior.⁸⁸ She also said her belief is that gender bias is far more subtle than it was 15 or even 5 years ago, and consequently, it is far more difficult to resolve.⁸⁹

The Gender Fairness Commission found information pointing to the existence of gender inequities in North Dakota affecting both men and women, but more negatively affecting

professional conduct, domestic violence, family law, criminal law, and courtroom styles. *Ibid.*, p. 91.

⁸⁴ *Ibid.*, p. 92. In 1991 legislation was enacted unifying the existing two court systems, county court judges and district court judges, into one system. The legislation eliminated county court judges and reduced the number of district court judges to 42 by 2001. Citizens were concerned that their access to the court system would be even more limited, particularly with regard to requesting emergency orders for domestic violence, etc.

⁸⁵ *Ibid.*, pp. 92–93.

⁸⁶ *Ibid.*, p. 85. The committees included domestic law, criminal and juvenile law, professional conduct, jury service, judicial system demographics, and data collection (the heart of the commission). *Ibid.*, p. 90.

⁸⁷ *Ibid.*, p. 93.

⁸⁸ *Ibid.* Ms. Tabor said that although the information gathered is not available now, the final report will be submitted for publication by the North Dakota Law Review in the fall of 1995, *Ibid.*, p. 92. The report "A Difference in Perceptions: The Final Report of the North Dakota Commission on Gender Fairness in the Courts," was published in *North Dakota Law Review*, vol. 72, no. 4, 1996.

⁸⁹ *Ibid.*, p. 93.

women.⁹⁰ Findings of the subcommittee included differential treatment (1) toward women attorneys in and out of the courtroom, (2) toward women by the court in domestic abuse situations, and (3) toward women in the selection of jurors and foremen.⁹¹ Based on the findings, the subcommittee made recommendations for the formation of a commission to study gender fairness in more detail in North Dakota.⁹²

In the past 15 years, those practicing law in North Dakota have seen the number of women in the profession increase. In 1974 there were only 3 women practicing law in North Dakota. In 1980 only 67 women practiced law; but by 1995, the number increased by 260 percent to total 241 women.⁹³ Ms. Tabor said that with the influx of women entering the profession as officers of the court, many attorneys have discovered the behaviors that were once tolerated will be challenged, and challenges to the status quo create controversy. As a result of these findings, the North Dakota State Bar Association and the North Dakota Supreme Court have established a committee to look at mediation and arbitration and at the different mechanisms to take care of some of the concerns.⁹⁴

Office of Intergovernmental Assistance

Richard Gray, Americans with Disabilities Act/building codes program manager, North Dakota Office of Intergovernmental Assistance, told the North Dakota Advisory Committee that his agency is involved with several programs, including the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, the Fair Housing Act, the State's Consolidated Plan for the use of U.S. Department of Housing and Urban Development (HUD) funds for the Community Development Block Grant, and the Emergency Shelter Grant Program.⁹⁵ In 1992

the Housing Finance Agency for North Dakota and the Office of Intergovernmental Assistance contracted for a housing needs study to provide information for the State's Comprehensive Housing Affordability Strategy, now referred to as the Consolidated Plan.⁹⁶

Each State must write a 5-year Consolidated Plan, required by HUD, and the Office of Intergovernmental Assistance is the designated agency responsible for North Dakota.⁹⁷ In developing the Consolidated Plan, the Office of Intergovernmental Assistance conducted two public hearings in each of the State's eight planning regions in 1993 and 1994.⁹⁸ Participants in every region, both years, clearly communicated the need for the State to enact a State fair housing law that is substantially equivalent to the Federal Fair Housing Act.⁹⁹

In addition to the Consolidated Plan, each State also has to develop a Fair Housing Plan. Specific components of the Fair Housing Plan include the identification and analysis of impediments to fair housing choice.¹⁰⁰ To develop the Fair Housing Plan, a survey was designed to identify both facts and perceptions about housing discrimination in North Dakota.¹⁰¹ The results of the survey indicated that most respondents believe Native Americans face the most discrimination, and in fact, most of the actual examples of discrimination received were concerning Native Americans.¹⁰² Large families, low-income persons or families, single mothers, persons with disabilities, families with children, Hispanics, persons below age 30, and the elderly followed Native Americans in experiencing discrimination.¹⁰³ Very few respondents believed the elderly face any type of discrimination in housing.¹⁰⁴

⁹⁰ Ibid., p. 85.

⁹¹ Ibid., pp. 85-86.

⁹² Ibid., p. 86. In the late 1980s, the North Dakota Supreme Court provided money in its budget for the establishment of a commission, but because of a tax referral initiative, funds were eliminated. In March 1994, however, the North Dakota Supreme Court did establish a Commission on Gender Fairness in the Courts, which has been meeting regularly since that date.

⁹³ Ibid., pp. 88-89.

⁹⁴ Ibid., pp. 89, 100.

⁹⁵ Richard Gray, *Transcript 2*, p. 22.

⁹⁶ Ibid., pp. 22-23.

⁹⁷ Ibid., p. 23.

⁹⁸ Ibid. The State is divided into eight sections that make up the eight planning regions.

⁹⁹ Ibid.

¹⁰⁰ Ibid., p. 24. In January and February 1996, a statewide survey was conducted of State agencies, cities with populations over 2,500, public housing authorities, and numerous nonprofit entities.

¹⁰¹ Ibid., p. 24.

¹⁰² Ibid.

¹⁰³ Ibid., pp. 25-26.

¹⁰⁴ Ibid., p. 25.

The Housing Needs Assessment conducted in 1992 identified under its Action Area the following needs:

1. The need to provide training on the Fair Housing Accessibility Guidelines and enforce mandates requiring accessible housing for people with disabilities.
2. The need to encourage the creation of a State Fair Housing Act and the creation of a human rights commission to enforce it.
3. The need to provide training on the Federal Fair Housing Act.¹⁰⁵

Mr. Gray said the next step would be to identify ways to overcome some of the impediments. Plans are to pursue the housing issue over time as the Office of Intergovernmental Assistance deals with HUD programs.¹⁰⁶ However, he was not in any position to say that any particular agency in North Dakota is responsible for carrying out the recommendations of the Office of Intergovernmental Assistance. The North Dakota Office of Intergovernmental Assistance is responsible for compiling the information and data and making the needs known, working with groups to identify and target the needs, and helping and encouraging organizations to take action.¹⁰⁷ Therefore, when calls are received from individuals and attorneys concerning fair housing and the cost of fair housing investigations, and when complaints are received, Mr. Gray said his office tries to tell people to get the grassroots organizations included, not the State.¹⁰⁸ Mr. Gray also said the grassroots organizations are the ones that have to organize to bring the issue forward.¹⁰⁹ "Unfortunately, the push cannot start from the top down, it has got to start from the bottom up, which creates an awareness and everyone shares a common opinion, a common concern that there is a need for a fair housing law in North Dakota."¹¹⁰ He added, "It is time for the grassroots organizations to

¹⁰⁵ Ibid., pp. 23-24. An Action Area refers to a specific part of town or a community where housing issues need to be addressed.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid., p. 61.

¹⁰⁸ Ibid., pp. 61-62.

¹⁰⁹ Ibid., p. 62.

¹¹⁰ Ibid.

come together, bring their organizational structures together and take something to the legislature."¹¹¹

The Office of Intergovernmental Assistance primarily provides technical assistance in terms of educating people on fair housing issues.¹¹² When a housing complaint is received, the citizen is given the toll-free number to HUD's, Denver office, and it is up to the individual to make the initial contact.¹¹³

Mr. Gray said, "If [a] complaint falls under section 504 of the Rehabilitation Act, which addresses disabilities, the Office of Intergovernmental Assistance has a responsibility as a State agency distributing Federal dollars to actually monitor compliance of our grantees with various aspects of the 504 requirements."¹¹⁴ The agency provides information and tries to get both parties talking to each other. As a last resort, individuals can complete a 504 complaint form which would be sent to HUD.¹¹⁵ Mr. Gray said he receives numerous ADA complaints and attempts to provide education for both parties.¹¹⁶ With regard to section 504 of the Rehabilitation Act and the ADA, the Office of Intergovernmental Assistance receives numerous inquiries from rural areas, but people generally are afraid to do anything official because they live and work in those small communities and they do not want to rock the boat, he said.¹¹⁷ To summarize, the Office of Intergovernmental Assistance's links are either the U.S. Department of Justice, for ADA issues concerning agencies that receive Federal funds; HUD's Office of Community Planning and Development Office for issues concerning program and facility accessibility discrimination;

¹¹¹ Ibid.

¹¹² Ibid., p. 47.

¹¹³ Ibid.

¹¹⁴ Ibid. Grantees are organizations that receive Federal funds through the State.

¹¹⁵ Ibid.

¹¹⁶ Richard Gray, *Transcript 2*, p. 48. The Office of Intergovernmental Assistance has received a few title II complaints which pertain to governmental entities and accessibility of public buildings, and actually provided some guidance, in addition to assisting in the filing of complaints under title III (accessibility to business facilities). Mr. Gray said he was not sure if any of the complaints had gone through because the office has no way of tracking that.

¹¹⁷ Ibid., p. 51.

and HUD's Fair Housing Equal Opportunity Office for housing discrimination complaints.¹¹⁸

Office of the Mayor, City of Fargo

Fargo Mayor Bruce Furness addressed the North Dakota Advisory Committee at the Fargo factfinding meeting stating that cultural diversity is not viewed as a problem in the city of Fargo as evidenced by the low number of discrimination complaints.¹¹⁹ "We want to think of it as a positive and welcome these people into our community and to understand their cultures and celebrate our differences and learn from them."¹²⁰ Mayor Furness was particularly aware of discrimination against Native Americans and said that discrimination is probably still occurring.¹²¹ He explained that he was not saying that discrimination does not exist, but complaints are not coming into his office.¹²² He admitted that the opportunity for discrimination to occur is escalating because Fargo's minority population is increasing.¹²³ In 1980 approximately 2 percent of Fargo's population were minorities; and by 1990 about 4 percent or 4,400 residents were minorities.¹²⁴ The city has reacted to the increased minority population by trying to accept it and work with the various minority populations who now live in Fargo; and part of that acceptance, said Mayor Furness, "is to try to understand their needs . . . and to try to help them understand our needs and work together so that we can really celebrate the cultural diversity that we have in our community rather than consider it to be a problem."¹²⁵

To illustrate their efforts, Mayor Furness explained the city's use of the Cultural Diversity Project, a nonprofit organization that conducts diversity and multiethnic leadership training, in an attempt to educate people about the various cultures in the Fargo community, and to make people aware of the changes going on in the community. The Cultural Diversity Project is also an attempt to get people to work together so

that everyone can live in harmony in the community.¹²⁶ Some specific efforts include a translation service that enhances communication between new minority residents, other organizations within the community, and agencies such as the city Department of Health and the police department.¹²⁷ A second initiative of the Cultural Diversity Project involves bringing together city government department heads and representatives of various cultures within the Fargo community to promote understanding and determine if the city government was putting up hurdles, and if so, what the city could do to minimize or limit them.¹²⁸ Mayor Furness told the North Dakota Advisory Committee that the city has not addressed the gang issue or cultural diversity training within the ranks of the police department as they specifically relate to Hispanics.¹²⁹ However, some city departments have gone through cultural diversity training provided through the U.S. Department of Justice, and there is a goal for every employee to participate in a training class.¹³⁰

However, when asked how an individual would file a complaint with the City of Fargo, Mayor Furness said the city does not have a formal mechanism in place.¹³¹ He explained that the City of Fargo had no plans to set up a function of government to handle complaints at the city level, but if some type of function were established at the State level, Fargo would establish a similar operation.¹³² He added that during the discussions with various ethnic groups, the question of a vehicle to file a complaint was not raised, nor did a suggestion come up, and conceded that he could envision where a conclusion

¹¹⁸ Ibid., p. 49.

¹¹⁹ Bruce Furness, *Transcript 3*, vol. 1, pp. 9-10.

¹²⁰ Ibid., p. 13.

¹²¹ Ibid.

¹²² Ibid., p. 10.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid., p. 11.

¹²⁶ Ibid. The Cultural Diversity Project, in its 4th year, was sponsored the first 3 years by funds of the Pew Charitable Trusts Foundation. The Pew Foundation makes grants available for civic, arts, education, and other issues. Currently, the project is funded wholly by city government and private contributions.

¹²⁷ Ibid., p. 12. The translation service puts individuals who speak a certain language with someone from the community who speaks the same language.

¹²⁸ Ibid., p. 13. The project was conducted by North Dakota State University, Fargo, ND.

¹²⁹ Ibid., p. 23.

¹³⁰ Ibid., pp. 25-26.

¹³¹ Ibid., p. 17. The question was asked by a North Dakota Advisory Committee member.

¹³² Ibid.

might be, "there's no place to register a complaint, then it doesn't do any good to have a complaint."¹³³

Office of Community Relations, City of Grand Forks

Holly Jeanotte Marion, director, Office of Community Relations,¹³⁴ City of Grand Forks, stated that she works with individuals who have experienced disparate treatment.¹³⁵ The Office of Community Relations was established to protect not only the rights of individuals who fall within the government's definition of protected classes,¹³⁶ but to address sexual harassment, disability, social, economic, and public assistance issues where people may be treated differently. For the past 4 1/2 years, the Office of Community Relations has been the only local government office in the State to respond to various discrimination complaints, except for employment discrimination complaints which are handled by the North Dakota Department of Labor.¹³⁷

Due to the North Dakota Flood of 1997, funds were reallocated and the office was closed in December 1997. Ms. Marion was the office's only staff member. The Office of Community Relations had served all four Native American reservations in North Dakota, and additional inquiries and complaints were received from Fargo, Bismarck, Devils Lake, Williston, and Jamestown. Because of the office's ability to assist people, many former college students who continued to have ties with the Grand Forks community contacted the office. Those calls came from places as far away as Georgia, Texas, South Dakota, and Montana.

In 1992 Ms. Marion investigated 31 complaints and responded to and referred 75 to 100 telephone inquiries. Between 1992 and 1996, the

number of complaints received rose dramatically, from 31 to 167. In 1997 (January through September) the office received 71 complaints (see table 3). The complaints primarily concerned housing discrimination, sexual harassment, and racial discrimination. But the Office of Community Relations accepted discrimination complaints in a broad range of categories as also shown in table 3. The myriad and number of complaints clearly demonstrates that people desperately need assistance, information, and an agency equipped to receive, process, and enforce the rights of North Dakota citizens. She also attributed the growth of the number of complaints filed to the fact that people were becoming more aware of the Office of Community Relations.¹³⁸

Ms. Marion said statistics surrounding disabled issues would be tenfold if people were not afraid of losing their housing or employment once they complained. Many people with disabilities are told that the system is doing them a favor and they should be grateful; therefore, they do not file complaints.¹³⁹ Table 3 clearly shows that complaints are growing. Ms. Marion also said she has seen a difference in treatment of minority citizens. She said the City of Grand Forks has over 2,000 minorities, but her data indicate that single mothers with children suffer the most discrimination.

Ms. Marion explained that her duties are to mediate, conciliate, and refer. Obstacles for relief are numerous, such as attorneys who will not sue businessmen and long and tedious litigation for disparate treatment or discrimination. She shares one case:

An African American woman, employed in Grand Forks, was approached by her supervisor who wore a bed sheet and a cross, and called her "Buckwheat" when he wanted her attention, while in the presence of customers. A comment was made to her by the supervisor, "If Lincoln hadn't freed the slaves, what would you have done?" The employee was subsequently fired and the incident was referred to the North Dakota Department of Labor. The case was investigated (which took about 10 months), and a no-cause determination was issued. The complaint was appealed to the North Dakota Job Service, and at the hearing, an attorney represented the employer, while no one represented the employee. The case was denied because the employee was not specifically called

¹³³ Ibid

¹³⁴ Holly Marion, *Transcript 3*, vol. 1, p. 47. The Office of Community Relations was established in May 1992, the result of a citizen march on City Hall demanding that the city address discrimination.

¹³⁵ Ibid. Disparate treatment occurs when a person is treated differently from the main population based on a characteristic that he or she may have. Ms. Marion preferred to use the term disparate treatment rather than discrimination because she has found that "discrimination" scares people away.

¹³⁶ Ibid., p. 48. Protected classes include women, ethnic minorities, and people with disabilities.

¹³⁷ Ibid.

¹³⁸ Ibid., pp. 51-52.

¹³⁹ Ibid., pp. 57-58.

Table 3
Office of Community Relations, City of Grand Forks, Discrimination Complaints Filed 1992–1997

Bases of discrimination complaints	1992	1993	1994	1995	1996	1997 ¹	Total
Economic ²	–	2	–	2	–	1	5
Insurance	–	1	–	–	–	–	1
Familial status ³	1	2	3	1	2	1	10
Employment	–	3	3	2	1	1	10
Indian child welfare	1	2	3	–	2	–	8
Inappropriate behavior	3	–	–	–	1	–	4
Policy compliance ⁴	6	12	16	14	34	10	92
Race	7	18	10	8	12	1	56
Housing–tenant	2	15	13	13	20	9	72
Housing–landlord	3	16	43	28	68	37	195
Housing accessibility	–	–	3	1	–	1	5
Disability	–	–	1	2	1	1	5
Age	2	–	1	–	1	–	4
Sexual harassment	3	15	21	17	13	3	72
Other ⁵	1	–	–	4	4	3	12
Total	29	86	117	92	159	68	551

SOURCE: Holly Jeanotte Marion, director, Office of Community Relations, City of Grand Forks.

NOTE: An additional 42 nondiscrimination-related inquiries were received.

¹ Data compiled for months January through September. The office was inoperable for 5 months and staff were reassigned due to the North Dakota Flood of 1997. If the office had been fully operational, staff expected the total to exceed 200 for 1997.

² Persons considered low income seeking assistance in housing, employment, and social services.

³ Familial status refers to families with children.

⁴ Persons who believe that a city, county agency, or business is not following its own policies.

⁵ The following do not fit in a category. Examples include dental services and educational neglect and truancy.

black and there was no direct proof that she was fired because of her race. Fortunately, before another appeal took place, the EEOC overturned the North Dakota Department of Labor's decision. The young lady accepted a settlement and moved away.¹⁴⁰

Ms. Marion had requested that as part of the settlement, the incident be published in the newspaper; however, that request was denied. Ms. Marion said these are not isolated cases and similar ones occur in other cities throughout the State.¹⁴¹

She summarized that resources and staff are sorely needed to do followup, and mediation and

conciliation are effective. Education and avenues or litigation should be major priorities. She concluded that the majority of minorities are satisfied with the status quo because they have to be. If they speak up, they will "rock the boat and fall off," and consequently, they are reluctant to come forward and will not indicate their need for assistance. The reality is that North Dakota is a rural State, and when discussion ensues concerning civil rights, people align it with Martin Luther King, Jr., and blacks, not rights for all, she concluded.¹⁴²

¹⁴⁰ Ibid., pp. 52–54.

¹⁴¹ Ibid., p. 54.

¹⁴² Ibid., pp. 55–56.

Chapter 4

Business Perspectives on Discrimination

Greater North Dakota Association

Dale Anderson, president of the Greater North Dakota Association (GNDA), explained to the North Dakota Advisory Committee that the association represents businesses of all sizes and types throughout the State.¹ The GNDA is made up of a 25-member board of directors that researches issues in the areas of taxation, human resources, and public policy. The association makes recommendations, while the board of directors establishes policy. The association, Mr. Anderson said, "is proactive and believes in providing equal opportunity to employees without regard to age, sex, reproductive rights, race, marital status, color, national origin, religion, disability, and military affairs."² The Greater North Dakota Association believes that research and access to the most current information are essential for employers to provide equal employment opportunities for employees. To that end, the association endorses and markets resource materials that are helpful to employers in accomplishing those goals. These include:

1. Materials, updated annually, that address employment discrimination, the Americans with Disabilities Act, and Federal employment laws and regulations and how to comply with the laws.
2. A human resources letter available to employers on a monthly basis containing updates on new activities (Federal and State) and the most current information about employment issues.

3. A toll-free resources hotline to provide accurate answers to questions about daily human resources issues, including discrimination.
4. GNDA-conducted conferences and seminars in conjunction with local chambers of commerce.
5. Educational programs through an interactive on-line computer program.

The Greater North Dakota Association over the past several years has also actively participated in a program called Business Challenge, which focuses on work force training, and is coordinated by the association, Dickinson State University, and the North Dakota Department of Public Instruction. The Greater North Dakota Association has worked with over 6,000 students and educators, with more than 65 percent of the participants being women.³

Other programs mentioned included the Job Training Partnership Act through the Governor's Employment Training Forum where the Greater North Dakota Association focuses to develop an awareness of nontraditional opportunities for women, literacy issues, apprenticeship, and school-to-work transition. Members of the Governor's ADA Consortium participate by making employers aware of the opportunities through the Americans with Disabilities Act.⁴

Mr. Anderson addressed the extent of discrimination in North Dakota by stating that his organization has not conducted any surveys to measure the extent of employment discrimination nor have complaints or acts of employment discrimination been called to their attention.⁵ He said the enforcement mechanisms—North Dakota Department of Labor, the EEOC, district courts, and small claims courts—are "plenty" and there are "adequate opportunities" for deal-

¹ Dale Anderson, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, p. 197 (hereafter cited as *Transcript 2*).

² *Ibid.*, p. 198.

³ *Ibid.*, pp. 198–200.

⁴ *Ibid.*, p. 200.

⁵ *Ibid.*

ing with discrimination under current law in the State.⁶

North Dakota Association of Realtors

Claus Lembke, executive vice president of the North Dakota Association of Realtors, explained that the organization is a trade association with approximately 1,100 active licensees out of a roster of 1,500.⁷ The Association of Realtors promotes equal opportunity in housing through its code of ethics, which states that a Realtor can have nothing to do with any plan or agreement to discriminate on the basis of race, color, religion, sex, handicap, familial status, or natural origin with respect to any real estate transaction.⁸ Other initiatives include the Voluntary Affirmative Marketing Agreement (VAMA) affirming fairness, and Realtors are encouraged to display the VAMA at every opportunity. The association also works to have a disclaimer published in newspapers that states the newspaper will not knowingly print a discriminatory advertisement.

Associated General Contractors of North Dakota

Curt Peterson, executive vice president, Associated General Contractors (AGC) of North Dakota, explained that the association is a trade organization representing the general contracting industry in the State.⁹ The organization strongly supports civil rights guaranteed by Federal and State laws, which entitles all Americans to an equal opportunity to succeed without regard to race, color, gender, religion, ethnic origin, age, or any disability. AGC has

recently sponsored various seminars, workshops, and programs geared at attracting minorities and women into the industry, and has had some success from time to time.¹⁰ While the Associated General Contractors would agree that Federal and State agencies must be diligent, it does not perceive a large or growing problem. In recent years, AGC's members have received few, if any, complaints of employment discrimination.¹¹ He said AGC does, however, question many of the regulations implemented in the name of affirmative action. These regulations, he said, are excessively complex and burdensome, and in addition, they are far more focused on statistical results than on the basic fairness to which the Nation aspires.

Mr. Peterson said, "Our members have felt regulatory and other pressures" which are often hidden from public view; and they feel that the government takes whatever steps necessary, "up to and including preferential treatment, to reach the raw results that the government likes to tout."¹² He said, "Government programs for minority and women business enterprises are equally, if not more troublesome. These programs do not only distort their ultimate objective, but also neglect the immediate need to increase the stability, financial strength, and competitiveness of these firms."¹³ Every time an employment decision is made, AGC members must comply with the Americans with Disabilities Act, Age Discrimination in Employment Act, Civil Rights Act of 1964, Family Medical Leave Act, Fair Labor Standards Act, Immigration Reform, National Labor Relations Act, and a host of others.

⁶ Ibid., pp. 200-01.

⁷ Claus Lembke, *Transcript 2*, p. 234. Individuals join the association on a volunteer basis.

⁸ Ibid., p. 235. Cited from the North Dakota Association of Realtors code of ethics, which originally was established in 1913.

⁹ Curt Peterson, *Transcript 2*, p. 202. The AGC includes heavy-type contracting firms that build highways and commercial buildings. Ibid., p. 202.

¹⁰ Ibid., p. 205.

¹¹ Ibid., p. 203.

¹² Ibid.

¹³ Ibid., p. 204.

Chapter 5

Private/Community Organizations and Citizen Perspectives on Discrimination

American Civil Liberties Union

Keith Elston, executive director, American Civil Liberties Union (ACLU), North Dakota chapter, explained to the North Dakota Advisory Committee that since a permanent office was established in North Dakota in the summer of 1995, numerous complaints have been received.¹ They include discrimination in employment, housing, and public accommodations.² Mr. Elston said that during the first 6 months of the ACLU, North Dakota office operation, nearly one-third of the requests for assistance involved employment discrimination complaints against employers on the basis of gender, race, religion, age, disability, and sexual orientation.³

He said that the ACLU does not have the resources to respond to those types of complaints, and sadly, the organization was forced to decline every request for help.⁴ Many cases were referred to the North Dakota Department of Labor or the North Dakota Fair Housing Council.⁵ On occasion, cases have been referred to the U.S. Attorney's Office when it was thought there might be a violation of Federal antidiscrimination provisions.⁶ The ACLU does not get much feedback once individuals have been referred, and so far, Mr. Elston said he could not recall a situation where the complainant called back to say if he or she had been adequately served by another agency.⁷

¹ Keith Elston, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, p. 9 (hereafter cited as *Transcript 2*).

² *Ibid.*, pp. 9-10.

³ *Ibid.*, p. 10.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*, p. 49.

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The American Civil Liberties Union, North Dakota chapter, believes that North Dakotans remain especially vulnerable to discriminatory practices.⁸ In the absence of a human rights commission, employers, landlords, lending institutions, Realtors, service providers, and vendors continue to commit discriminatory acts that go undetected because the odds of them having to defend themselves in court against a charge of discrimination are low.⁹ "The absence of an effective enforcement agency creates a sense of hopelessness for victims of discrimination," he said.¹⁰

Mr. Elston told the Committee:

There are few attorneys with experience in civil rights laws in North Dakota, and fewer [attorneys] still who are willing or able to represent victims of discrimination due to unfriendly courts, the high cost of time-consuming investigations, or conflicts of interest. Victims of discrimination are also reluctant to approach attorneys because they are unaware of remedies provided by State law. In addition, citizens fear their financial condition will worsen with the addition of potentially huge attorneys' fees.¹¹

Mr. Elston told the North Dakota Advisory Committee, "With conservative North Dakota courts, it is almost certain that in many cases, the victims of discrimination will not prevail at

⁸ *Ibid.*, p. 13.

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 14.

¹¹ *Ibid.*, p. 13. According to the North Dakota State Bar Association, there are 1,393 practicing attorneys in the State. Of that number, 21 attorneys are identified to specialize in civil rights employment discrimination litigation through their participation in the Lawyers Referral Program to which they pay a fee of \$50 per year and are referred potential clients from the State Bar Association. Note: there may be other attorneys who handle civil rights cases but are not identified.

the trial court level.”¹² He cited the following example of discrimination:

A man over the age of 40 who was fired, hired an attorney to take his former employer to court. The outcome: the case was lost even though age discrimination is clearly prohibited by North Dakota’s Human Rights Act. Instead of appealing the ruling, he [the complainant] just gave up, reasoning that he had already spent \$700 of his savings to lose that round, why should he risk more of his savings on another round?¹³

This man’s feeling of hopelessness prevented him from seeing his case through to the end.¹⁴ Mr. Elston said he wondered how many other victims have just given up, accepted that there is nothing to be done about the discrimination they have experienced, and allowed people who have violated their rights to go unpunished.¹⁵

Dakota Center for Independent Living

Eileen Olson, who is disabled and a board member of the Dakota Center for Independent Living, testified that she had personally experienced discrimination in the past 8 years. Most landlords, she said, are unwilling to widen doors, put in ramps, or install adaptable faucet handles or doorknobs. She said after moving out of an apartment, the landlord told her that he would no longer rent to people in wheelchairs.¹⁶ She sent the landlord information on discrimination published by the Fair Housing Council, and apparently the landlord realized he was breaking the law and subsequently rented to another person who used a wheelchair.¹⁷ Another situation involving discrimination concerned a Bismarck business that required patrons to eat at the bar; however, the business owner refused to install a wheelchair ramp and disabled patrons quit patronizing that business. In another incident, Ms. Olson said she was transported to the Bismarck airport by ambulance, in her attempt to fly to Rochester, Minnesota, for emergency surgery. However, she was refused service by the airline,

because the airline’s policy was that she must be able to move from her wheelchair into the airplane seat without assistance from airline personnel.¹⁸ She was forced to take an ambulance from Bismarck to Rochester, Minnesota.

In a successful class action suit on a separate issue against the Bismarck Human Services Office and the State of North Dakota,¹⁹ Ms. Olson said she prevailed because she had the resources to hire an attorney, but added that people usually do not know where to turn, and financing is also a major obstacle.

Green Thumb, Inc.

Connie McBride, State project director, Green Thumb, Inc.,²⁰ discussed her work as an advocate for older workers. The agency administered 249 positions in community service in 34 North Dakota counties, and during 1995, over 600 people were served. Green Thumb provides older Americans with training and retraining to assist them in obtaining meaningful employment.²¹ Green Thumb has also assisted many people with regard to age discrimination in the workplace.²² And she said, “Contrary to commonly held misconceptions, older workers tend to be supremely good investments for business.”²³ Despite efforts to educate and provide access, Ms. McBride said:

It’s really clear to me that in North Dakota we have a very long way to go. Nearly every day my work involves a story of someone that’s trying to make sense of the mixed messages that are sent both in policy and in practice. The cosmetic message is “live longer, stay well, remain independent as long as possible, we value experience, maturity, longevity,” but the overriding message in practice and policy, particularly in

¹² Ibid., pp. 13–14.

¹³ Ibid.

¹⁴ Ibid. The complainant had the option to appeal the decision to a higher court.

¹⁵ Ibid., p. 15.

¹⁶ Eileen Olson, *Transcript 2*, p. 163.

¹⁷ Ibid.

¹⁸ Ibid., p. 164.

¹⁹ Ibid., pp. 165–66. Ms. Olson was disqualified for food stamps because the State erroneously counted federally allocated monies she received to purchase a disabled-adapted van as income. Her class action suit settlement required that she and others who met the requirements be reimbursed for food stamps denied by the Human Services Department.

²⁰ Connie McBride, *Transcript 2*, p. 26. Green Thumb, Inc., is a 31-year-old private, nonprofit organization that operates in 44 States and in Puerto Rico. Founded in 1965, it is the country’s first older worker employment program.

²¹ Ibid. Although services are targeted to people over the age of 55, people of all ages are helped.

²² Ibid., p. 27.

²³ Ibid.

employment issues, seems to be don't get sick and don't get old.²⁴

To illustrate the effect of age on employment-related decisions, she referred to a recent study that showed that age discrimination in hiring across the United States occurs more than 25 percent of the time.²⁵ Another study conducted by the Commonwealth Fund found that almost 2 million Americans, ages 50 to 64, wish they were back in the work force, but are discouraged by the negative attitudes of potential employers toward hiring older people.²⁶ Both studies substantiate that older Americans too often face barriers to employment totally unrelated to their ability to perform the job, she said.²⁷

It's no surprise, then, that during the past decade, the number of age discrimination claims filed by the U.S. Equal Employment Opportunity Commission has risen, in part due to the surge in downsizing in many businesses, and also because older workers have increased awareness of their rights under Federal and State discrimination statutes.²⁸

Ms. McBride continued that Green Thumb's experience has been that negative attitudes about aging and stereotypes of older people are still too prevalent.²⁹ Because of this, thousands of North Dakotans are being deprived of opportunities to remain productive and independent, and North Dakota, in turn, is deprived of valuable resources.³⁰ Very few negative attitudes about aging are based on fact, including the prevalent stereotypes that people learn more slowly as they age, their minds degenerate over time, and they cannot be trained in new technologies or learn new complex skills.³¹ Additional excuses include older workers cannot work as efficiently or effectively as young people, they miss work because they get sick more often, they are in-

flexible and less adaptable to change, they lose memory, and they have less stamina.³²

Although there are good employers who are receptive to older workers, Green Thumb continues to encounter a number of North Dakota employers who cling to outdated, negative assumptions. They rationalize that it is too costly to invest in older workers, she said.³³

Discriminatory practices with regard to age unfortunately represent the norm, not the exception,³⁴ and the consequence of discrimination, particularly for women in the State, is poverty. One client was told by a State agency that if she really wanted to get a job, she should color her hair to cover the gray and use more makeup.³⁵ Ms. McBride said that applicants for State employment experience great discrimination. Although the State is subject to the various employment discrimination laws, very inappropriate and illegal questions are asked of job applicants. Some of these are blatant forms of discrimination, and others are more insidious.³⁶

State and Federal laws provide a framework for protecting people; however, many people 40 and over do not know their rights and recourse for coping with discrimination.³⁷ Unfortunately, enforcement of the Age Discrimination in Employment Act (ADEA) has not been a significant deterrent.³⁸ Backlogs of pending charges and the length of time for the U.S. Equal Employment Opportunity Commission (EEOC) to take action discourages potential claimants from seeking relief. In addition, because of the expense involved in handling an age discrimination case and the difficulty in establishing proof, few attorneys will represent age discrimination plaintiffs on a contingency basis, and few individuals have the financial resources to hire counsel.³⁹ Further, people are afraid of retaliation or rejection by future employers, which is a major con-

²⁴ Ibid., p. 28.

²⁵ Ibid. This study was conducted for the American Association of Retired Persons by the Fair Employment Council of Greater Washington.

²⁶ Ibid., pp. 28-29.

²⁷ Ibid., p. 29.

²⁸ Ibid.

²⁹ Ibid., p. 30.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid., pp. 31-32.

³⁴ Ibid., p. 32.

³⁵ Ibid., pp. 32-33.

³⁶ Ibid., p. 34. Green Thumb data show the average age of workers is 69. Average income, prior to supplementary income earned through Green Thumb, is \$5,134.98 per year. Ibid., p. 37.

³⁷ Ibid., pp. 35-36.

³⁸ Ibid., p. 36.

³⁹ Ibid.

cern in North Dakota. Ms. McBride said Green Thumb refers individuals to the North Dakota Department of Labor; however, many people who live in rural communities are very reluctant to get help.⁴⁰ They are given the toll-free number to the EEOC in Denver and are told to tell an investigator their concerns, but most of them do not pursue their complaint because they are very fearful of employer retaliation. These people have to go on living in their smaller community, so they do not follow up on their complaint, many times, because they do not have the resources to continue.⁴¹

Because North Dakota is less populated, the networks are stronger, word gets out rapidly, and it does not take long before somebody who might have a substantive complaint receives, coincidentally, a cold shoulder from the employment community.⁴² In most cases, discriminatory treatment has become more subtle, and as one court put it, "Denying employment to an older job applicant because he or she has too much experience, training, or education is simply to employ a euphemism that masks the real reason for refusal, namely, in the eyes of the employer, the applicant is too old."⁴³ A new view of aging is needed, a perception of aging that assumes older Americans represent opportunity rather than a crisis, a solution rather than a problem, an asset rather than a burden, and a resource rather than a drain on resources.⁴⁴

Legal Assistance of North Dakota

Linda Catalano, executive director of Legal Assistance of North Dakota, explained that the agency is a private, nonprofit corporation primarily funded with Federal funds through the National Legal Services Corporation.⁴⁵ The agency has extensive restrictions regarding their service and very few loopholes to represent people whose civil rights are being violated.⁴⁶ Federal and State laws have prohibited the agency from taking additional cases that generate attorneys' fees or class action cases; and as a re-

sult, it referred out more cases than ever before.⁴⁷ Legal Assistance of North Dakota is focusing its services on those people who fall through the safety net, who are the most disadvantaged, low-income people, particularly those on public assistance.⁴⁸

For a number of years, Legal Assistance of North Dakota has not had the resources to take civil rights cases and has not done so.⁴⁹ The agency employs two staff attorneys to serve the State, which translates into very limited resources.⁵⁰ In 1993 Legal Assistance of North Dakota received at least 75 contacts from people who needed assistance with civil rights matters, and those individuals had to be turned away.⁵¹ In 1994 the agency had 61 documented contacts of people from across the State who had to be turned away once again.⁵² In 1995 that number doubled to 122 contacts.⁵³ These numbers do not include people who contacted Legal Assistance of North Dakota for employment discrimination matters.⁵⁴ In the Fargo office, it was estimated that the agency received one call on employment discrimination a week; unfortunately, when someone is turned away concerning an employment issue, the agency does not track the specific bases related to that complaint.⁵⁵

The agency has offices across the State, however, the majority of its complaints regarding civil rights matters have come from the Fargo office, with Bismarck ranking second.⁵⁶ Ms. Catalano said that usually when people call Legal Assistance of North Dakota, it is one of the last contacts citizens make because they have already tried other agencies and did not get help. Her concern was that although referrals are made, some people just say, "If Legal Aid

⁴⁰ Ibid., p. 50.

⁴¹ Ibid., pp. 50-51.

⁴² Ibid., p. 36.

⁴³ Ibid., p. 37.

⁴⁴ Ibid.

⁴⁵ Linda Catalano, *Transcript 2*, pp. 69-70.

⁴⁶ Ibid., p. 70.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., pp. 70-71.

⁵⁰ Ibid., p. 71.

⁵¹ Ibid. The agency did not have detailed statistics on the types of cases it received, i.e., discrimination based on gender, race, or other bases.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid., p. 72.

doesn't care, nobody cares."⁵⁷ Ms. Catalano said that the agency does not have a civil rights arm to pursue a remedy and compensation for possible damages.⁵⁸

In the Devils Lake area, the number of contacts is very limited because of the small community. Legal Assistance of North Dakota serves the Turtle Mountain Indian Reservation and has a cooperative agreement with the University of North Dakota Law School in Grand Forks to serve the Fort Totten Indian Reservation.⁵⁹ A number of complaints have been received from the Turtle Mountain Indian Reservation with regard to employment discrimination and public housing affecting Native Americans.⁶⁰ Ms. Catalano also said that housing discrimination occurs against Native Americans occupying off-reservation rental properties because "owners fear that their property will be destroyed or severely damaged."⁶¹ Ms. Catalano also told of receiving calls from Hispanic residents.⁶²

The office has also received occasional calls from Native Americans who are incarcerated and have been denied medical treatment and/or medication in a timely manner.⁶³ The Devils Lake office has also received calls from non-Native Americans housed at the State penitentiary concerning the same matter. Most of the residents in the Devils Lake area are referred to the North Dakota State Bar Association, the North Dakota Department of Labor, or the U.S. Equal Employment Opportunity Commission.⁶⁴ However, the agency senses that these people very rarely make the followup contacts that are necessary.⁶⁵ She said that many of the cases they see involve low-income people who cannot afford private attorneys.⁶⁶ She said the Bismarck office

⁵⁷ Catalano, *Transcript 2*, pp. 73-74. Ms. Catalano shared one example where an individual who had been diagnosed with AIDS was denied medical treatment, and the agency was able to resolve that situation.

⁵⁸ *Ibid.*, p. 75.

⁵⁹ *Ibid.*, p. 72.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, p. 94.

⁶² *Ibid.*, p. 103.

⁶³ *Ibid.*, pp. 72-73.

⁶⁴ *Ibid.*, p. 73. Toll-free numbers are available to citizens contacting the North Dakota Department of Labor.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, p. 74.

received the largest number of housing discrimination complaints, presumably because that office has been very active, particularly concerning Native American families with children. In Dickinson, families with mentally ill members have had personal medical information inappropriately shared with other agencies or the public, have felt personal pressure, and have experienced discrimination from housing providers.⁶⁷

In Fargo and Bismarck, an occasional call is received concerning age discrimination in employment,⁶⁸ and those persons are assisted through the agency's Elderly Law Project.⁶⁹ Ms. Catalano said she continues to have personal contact with many seniors who are denied employment because of their age, but they rarely come into the office to complain.⁷⁰ She said there are still a number of women and the elderly who live in rural parts of the State who do not think they are suffering discrimination and think that their treatment is normal.⁷¹ Obtaining assistance is much tougher for persons living in rural areas because of their limited knowledge of their rights, a limited number of attorneys willing to take discrimination complaints, and the amount of effort it takes to contact an agency that is far away.

The agency tries to inform people of their rights and provide assistance, but resources are limited and it is difficult to get information out to the public.⁷² Legal Assistance of North Dakota provides service provider information, but not on civil rights issues; and unfortunately, people do not always realize when they are being discriminated against.⁷³

Ms. Catalano confirmed that her agency's funding has been cut by one-third and is projected to be cut another one-half next year.⁷⁴ Budget cutbacks have restricted extensively what federally funded legal aid programs can do

⁶⁷ *Ibid.*, p. 75.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 76.

⁷¹ *Ibid.*, pp. 77, 106-07.

⁷² *Ibid.*, p. 76.

⁷³ *Ibid.*, pp. 76-77.

⁷⁴ *Ibid.*, p. 104. A Federal law enacted in 1974 established the Legal Service Corporation to fund civil legal services to poor people throughout the country. *Ibid.*, p. 105.

in the realm of civil legal service for people, no matter what their needs are.⁷⁵

Lutheran Social Services

Barry Nelson, director of Community Outreach Programs of Lutheran Social Services in North Dakota, said there is a great deal of generosity on the part of the State in terms of responding to individuals who are coming into the community, but there is a lot of evidence of disparate treatment.⁷⁶ Refugees are individuals who have fled their country of origin out of fear of persecution, and a small percentage of those individuals are found to meet the U.S. entrance criteria and are admitted legally into the country. Because people do enter the United States under legal and illegal circumstances, often-times, individuals arriving in the country with U.S. approval are assumed to be here illegally. Refugees arrive with little more than a piece of luggage and skills that may or may not be transferable to their new country. They are assisted by volunteers of Lutheran Social Services and other agencies for the initial few months. Approximately 400 refugees each year are relocated to seven major cities in North Dakota.⁷⁷ They usually have little information about their new country and much less information about their rights, which places them in a particularly vulnerable position. They also downplay issues and wish not to talk about things that might be disturbing them.⁷⁸

Mr. Nelson said he believes that there is discrimination in North Dakota for several reasons and acknowledged ignorance on the part of his agency as far as its role of being an advocate. He asked the question of what could be done when complaints are received, and added, "Already I

think we have minimized their complaints . . . because we didn't know what to do with them."⁷⁹

His comments to the Committee were in three general areas: housing, employment, and access to services.

Housing: Lutheran Social Services' experience with public housing has generally been very positive. A majority of landlords and housing managers appear to be fair and provide equal access to renters. Some exceptions have been:

- A housing manager who refused to continue to rent to refugees, claiming that they had violated their rental agreement, etc. The manager challenged the agency to charge him with discrimination.
- A volunteer who brought an African family to look at an apartment, and they were denied housing with the explanation that the apartment had been rented; however, when a Lutheran Social Services volunteer had a friend call the owner, the friend was told that the apartment was still available.
- Volunteers and staff have reported discrimination concerning openings for apartment rentals found in the newspaper. When informing an owner that the apartment would be for a refugee family, they were told that "we don't rent to refugees."⁸⁰

Other forms of discrimination are very difficult to identify such as tenants being charged large amounts of money for damage charges upon moving out, and non-English speaking tenants signing a document, thinking it is their notice to vacate and soon finding out they had signed a lease for another 6 to 12 months.⁸¹ Mr. Nelson said he was concerned with the practice of landlords expecting tenants, before renting a property, to have a credit rating, rental history, and the standard requirement that tenants must earn three times the amount of rent charged.⁸² Obviously, newly arrived refugees do not have a U.S. credit rating, and they may come from a country where it is difficult to pass any of these background checks. Additionally, due to the lack of established credit, refugees are vulnerable to

⁷⁵ Ibid., pp. 105-06.

⁷⁶ Barry Nelson, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Fargo, ND, Sept. 24, 1996, vol. 1, pp. 58-61. Mr. Nelson works closely with the Refugee Resettlement Program of Lutheran Immigration and Refugee Services and the Episcopal Migration Ministries.

⁷⁷ Ibid., p. 61. These individuals represent Vietnam, Iraq, the Sudan, Somalia, Cuba, Haiti, Kurdistan, the former Soviet Union, and Bosnia, among others. They arrive with English language capabilities that range from excellent to nonexistent.

⁷⁸ Ibid., pp. 58-61.

⁷⁹ Ibid., pp. 59, 62.

⁸⁰ Ibid., pp. 62-63.

⁸¹ Ibid., p. 63.

⁸² Ibid., pp. 63-64.

being taken advantage of by unscrupulous businesses offering high-risk credit.⁸³

Employment: Refugee Employment Program staff of Lutheran Social Services work with more than 150 employers throughout the State who readily hire refugees. Again, obvious issues arise regarding the refugees' English-speaking abilities and cultural differences in viewing the world of work, although the majority of employers have dealt with those issues creatively and sensitively.⁸⁴ However, there have been occasions where refugee employees have been denied raises, while increases in pay were given to other employees performing the same job duties. Supervisors have resisted working with refugees, and they are frequently passed over for promotions. There have been questionable firings and individuals forced to quit.⁸⁵ Questions as to how worker's compensation is handled, and the fact that North Dakota is a right-to-work State, make it more difficult to determine an employee's rights.

Access to Services: Language barriers limit refugees' opportunity to receive services, although most agencies and organizations have made great strides in accommodations, particularly when they are aware of Federal law. However, there still remain agencies that are resistant to change and expect individuals to bring in their own interpreter, or the resettlement agency to be responsible.⁸⁶ In his statement before the North Dakota Advisory Committee, Mr. Nelson alleged the following questionable practices:

- Persons are mandated by law to participate in job training before receiving financial assistance or food stamps; however, the programs they must participate in communicate only in English. Therefore the individual receives no services because translation services are not available.
- A 16-year-old, limited-English-speaking student is turned away from public school because there "is no space." Limited-English-speaking students experience delays when

they register for public school, although no denial of services has been documented.

- The refugee population has been publicly targeted as burdens with regard to the costs of providing services.⁸⁷

Mr. Nelson said his belief is when a controversial issue such as the growing refugee population exists, it may create a climate of hostility to those clients.⁸⁸

During the 1997 legislative session, a law was enacted permitting driver's license exams to be offered in the language of the applicant. This law became operational in August 1997; however, the service was not publicized. In the Fargo motor vehicle office, the service was originally offered during the agency's general hours of operation but is now offered only during restricted times. Non-English-speaking persons are not informed of those hours when they call in for appointments and subsequently come in at the wrong time. Finally, Mr. Nelson said, minority refugees are also closely watched in retail stores, and refugee youth have been accused of involvement in fights in their respective neighborhoods.⁸⁹

North Dakota Fair Housing Council

The North Dakota Fair Housing Council accepts housing discrimination complaints. Prior to this agency becoming operational, a person who alleged discrimination in housing had to file a complaint with the U.S. Department of Housing and Urban Development (HUD) in Denver or take action in district court.⁹⁰

The North Dakota Fair Housing Council does not have enforcement authority but only assists individuals with completing complaint forms for submission to HUD. The North Dakota Fair Housing Council also acts as an advocate for its clients; but the process is slow, and out of the complaints sent to HUD, only one case has received remedy.⁹¹

Lynda Johnson, former director of the North Dakota Fair Housing Council, explained to the North Dakota Advisory Committee that the

⁸³ Ibid., p. 64.

⁸⁴ Ibid., p. 64.

⁸⁵ Ibid., pp. 64-65.

⁸⁶ Ibid., pp. 65-66.

⁸⁷ Ibid., p. 66.

⁸⁸ Ibid., pp. 66-67.

⁸⁹ Ibid., p. 67.

⁹⁰ Linda Johnson, *Transcript 2*, p. 18.

⁹¹ Ibid., pp. 45-46.

agency is a private, nonprofit fair housing organization founded in 1995, with offices in Bismarck and Fargo.⁹² The council's main goal is to provide support, encouragement, and assistance to all North Dakota citizens seeking equal access to housing in the State.⁹³ The North Dakota Fair Housing Council believes that equal access to housing is a basic right of all Americans.⁹⁴ The dream to live where one desires can be shattered by practices where housing providers deny available housing to persons within the protected classes.⁹⁵ Ms. Johnson said that when discrimination occurs, it tears at the fabric of the community, encourages an environment where disputes escalate, encourages racism and bigotry, and results in a loss of cultural diversity.⁹⁶

The North Dakota Fair Housing Council monitors the level of housing discrimination within communities through testing that is a simulated housing transaction designed to gather information on the actual practices in the marketplace.⁹⁷ Ms. Johnson further explained that testing compares information given by a landlord with two potential applicants who are exactly alike in every respect, except for one aspect such as ethnicity, national origin, gender, or familial status (families with children).⁹⁸ As an example, during 1995, 40 random tests were conducted.⁹⁹ The purpose of the tests was to gather information with regard to the nature and extent of housing discrimination in North Dakota, and to learn more about the housing market in Bismarck and Fargo.¹⁰⁰

The random tests were conducted exclusively in the rental market over a period of several months, testing primarily for national origin and familial status discrimination.¹⁰¹ Testing provides independent evidence to support a civil rights claim against a housing provider.¹⁰² Evi-

dence derived from testing is the best way to confirm whether a housing provider may be breaking the fair housing law, and Federal courts have consistently supported fair housing testing.¹⁰³

The North Dakota Fair Housing Council, through testing it conducted in 1995,¹⁰⁴ found that in the Bismarck-Mandan area, Native Americans experienced housing discrimination 47 percent of the time in 15 of the random rental tests.¹⁰⁵ Overall, discrimination was detected 56 percent of the time in 18 random rental tests, and, in general, one out of three families experienced discrimination.¹⁰⁶

Fargo testing resulted in five out of six cases where Native Americans experienced housing discrimination, for an overall discriminatory rate of 83 percent.¹⁰⁷ In 10 tests where Hispanics were the protected class, housing discrimination was detected in eight tests, for an overall rate of 80 percent. In two tests, where race was a protected class, a 50 percent housing discrimination rate was found. Overall, Fargo testing garnered an 83 percent housing discrimination rate.¹⁰⁸

The results of testing also pointed to the fact that Hispanics were steered to particular areas, and families with children were asked to post higher deposits or were denied the opportunity to rent at all.¹⁰⁹ Seventy-nine percent of the time the housing discrimination affected the protected class financially, such as by requiring higher rent deposits and higher rent.¹¹⁰

The Bismarck and Fargo offices of the North Dakota Fair Housing Council receive anywhere from 150 to 200 phone calls each month at each office.¹¹¹ Many of those calls are tenant-landlord disputes that constitute possible evidence of discrimination.¹¹² Between August 17, 1995, and August 30, 1995, the North Dakota Fair Housing Council received 48 allegations of housing dis-

⁹² *Ibid.*, p. 18

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*, pp. 20-21.

⁹⁶ *Ibid.*, p. 21.

⁹⁷ *Ibid.*, p. 18.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*, p. 19.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.* Housing providers who either had a large number or small number of properties to rent were tested.

¹⁰² *Ibid.*, p. 21.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, p. 18.

¹⁰⁵ *Ibid.*, p. 19.

¹⁰⁶ *Ibid.*, pp. 19-20.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p. 21.

¹¹² *Ibid.*

crimination in the following categories:¹¹³ age (2), disability (16), familial status (15), gender (2), marital status (2), and national origin (11).

The North Dakota Fair Housing Council, as part of its education component, held two seminars, one in Bismarck and one in Fargo. Over 56 attorneys attended both sessions, and 3 attorneys identified themselves as interested in taking fair housing cases.

North Dakota Federation of Families for Children's Mental Health

Elizabeth Sweet, former executive director, North Dakota Federation of Families for Children's Mental Health, reiterated comments made by other presenters to the North Dakota Advisory Committee that families who have children with mental and/or physical disabilities are discriminated against through unfair eligibility criteria and guidelines. Most families do not have the financial resources to pay for services such as housing their child in an out-of-home treatment facility, which costs approximately \$70,000 per year.¹¹⁴ Ms. Sweet said that parents have also been "put in a position of having to walk into a court and lie" about their child's welfare in order for that child to receive those services.¹¹⁵ Additionally, most out-of-home placements are made to another State, and families do not have access to their children.¹¹⁶ Finally, Ms. Sweet said that with the downsizing and reorganizing of advocacy organizations, families are left with fewer and fewer options for help for their disabled children.¹¹⁷

North Dakota Mental Health Association

Myrt Armstrong, former executive director, North Dakota Mental Health Association, said the mentally ill and seriously emotionally disturbed children and families suffer discrimination through separation and the denial of education, insurance, and employment.¹¹⁸ Native Americans are the most obvious of all to suffer discrimination. To compound matters, some Na-

tive Americans do not have housing or a mailing address, but in many cases "they are expected to do what none of us could possibly do without getting some help or assistance."¹¹⁹ She added that most people who suffer from mental illness normally do not have the energy or the ability to deal with the complicated system of filing a complaint. She said that she has had numerous complaints and makes referrals when possible.¹²⁰

North Dakota Public Employees Association

Gerard Friesz, former executive director of the North Dakota Public Employees Association, said the association is a labor organization that represents State, county, and municipal employees,¹²¹ and is well aware that discrimination does exist in North Dakota. During his 9 years of employment with the Public Employees Association, he has received numerous phone calls, not only from public workers, but from private sector employees who believe they have been discriminated against.¹²² Examples of employment discrimination include promotion denial based on age, inequitable pay based on race, and sexual harassment.¹²³ Mr. Friesz said that until North Dakota has a mechanism that is affordable, accessible, and expeditious in resolving complaints, "We may never know the full extent to which discrimination exists in North Dakota."¹²⁴

Mr. Friesz said that the State employees he represents have the option of filing an employment discrimination complaint with the North Dakota Department of Labor or they can file a grievance with the State's Centralized Personnel System, which is becoming far less accessible, much more costly, and is not expeditious.¹²⁵ He explained that it is not uncommon for an employee who has a charge, whether discriminatory or otherwise employment-related, to spend a year or more going through a process that has become too legalistic. If a person cannot afford representation, he or she is in fact driven away

¹¹³ Ibid., pp. 21-22.

¹¹⁴ Elizabeth Sweet, *Transcript 2*, p. 377. The average length of stay is 1 year.

¹¹⁵ Ibid., p. 378.

¹¹⁶ Ibid., pp. 376-78.

¹¹⁷ Ibid., p. 380.

¹¹⁸ Myrt Armstrong, *Transcript 2*, pp. 63-66.

¹¹⁹ Ibid., p. 67.

¹²⁰ Ibid., pp. 66-67.

¹²¹ Gerard Friesz, *Transcript 2*, pp. 78-79.

¹²² Ibid., p. 80. Friesz said that employees call his agency with the perception that the agency is a governmental body that stands for workers' rights.

¹²³ Ibid., pp. 80-81.

¹²⁴ Ibid., p. 81.

¹²⁵ Ibid., pp. 82, 97.

from the process or goes through the hearing process unrepresented.¹²⁶ In contrast, the agency or department is represented immediately by an assistant attorney general from the Office of the Attorney General, he said.¹²⁷ The process at the State level is turning people away from having their grievances heard before a tribunal or an independent and unbiased arbitrator, and he suggested that things are far worse for people in the private sector.¹²⁸ Mr. Friesz said that time is on the discriminator's side, and it is important that a system be put in place whereby employees can have their grievances heard.¹²⁹

Protection and Advocacy Project

Dave Boeck, supervising attorney for the Protection and Advocacy Project, explained there is an incredibly low level of awareness of what discriminatory practices are, which has a negative effect on people's ability to participate fully in our society.¹³⁰ He gave as an example the fact that several hotels in Bismarck lack wheelchair lifts on their shuttle vans and have bathrooms that are inaccessible to people with disabilities. He questioned where individuals with disabilities stay and how they get to their destination when they come to Bismarck.¹³¹ Because there are serious civil rights issues that affect many people, extensive education and sensitivity to the Americans with Disabilities Act and other legislation has to be heightened.¹³² He said it is very difficult to find a plaintiffs' attorney who specializes in civil rights issues and who could legitimately claim much experience or expertise in the area.¹³³

Citizen Perspectives on Discrimination

Cheryl Red Eagle, a columnist for the *Bismarck Tribune*, stated at the factfinding meeting that it is frustrating not to be able to do anything about discrimination or provide those who contact her some recourse.¹³⁴ She said people are

angry, frustrated, and have a sense of hopelessness. Ms. Red Eagle said, because she is really "the only public voice for Native American people in this area [North Dakota]" they expect her to write about their discrimination cases or take some action on their behalf.¹³⁵ Ms. Red Eagle said, "I feel that my hands are tied as far as my ability to refer Native American people to agencies where they can get assistance."¹³⁶

She shared some examples of mistreatment of Native Americans such as employers who request employment referrals through the State Job Service and attach instructions that say "Do not send Native Americans."¹³⁷ She talked about receiving anonymous Neo-Nazi material and mail on several occasions, and said she could not help thinking that these people are living in this area, and they are employers, landowners, renters, shop clerks, and business owners embracing such negative attitudes toward Indian people.¹³⁸

Ora Robinson, a member of the Martin Luther King, Jr. Holiday Commission, and former marketing director of the Bismarck Civic Center, spoke of the insensitivity and institutionalized racism and sexism she experienced in her employment. She told the Committee she was called and referred to as a "nigger." In 1991 she filed a grievance and went through the proper chain of command, which included her immediate supervisor, personnel director, city commissioners, North Dakota legislators, and attorneys; and she told the North Dakota Advisory Committee that after 5 years, there was still no change and no recourse.¹³⁹ Ms. Robinson did not seek the services of the North Dakota Department of Labor because she felt it was ineffective. She considered hiring an attorney, but the cost was prohibitive, and she believed that most North Dakota attorneys were inexperienced in civil rights law.¹⁴⁰

During the open session of the factfinding meeting, North Dakota citizens testified and shared their personal stories of discrimination. They are mentioned below.

¹²⁶ Ibid., pp. 82-83.

¹²⁷ Ibid., p. 96.

¹²⁸ Ibid., p. 83.

¹²⁹ Ibid., pp. 83-84.

¹³⁰ Dave Boeck, *Transcript 2*, p. 158.

¹³¹ Ibid., pp. 157-58.

¹³² Ibid., p. 158.

¹³³ Ibid., p. 159.

¹³⁴ Cheryl Red Eagle, *Transcript 2*, p. 167.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid., p. 169.

¹³⁸ Ibid., p. 170.

¹³⁹ Ora Robinson, *Transcript 2*, pp. 175-76.

¹⁴⁰ Ibid., pp. 184-85.

Denny Portra, a Native American contractor from Underwood, North Dakota, told the North Dakota Advisory Committee of alleged discrimination he encountered while bidding on projects for the Rural Electric Cooperative.¹⁴¹ Mr. Portra had bid successfully for several years on projects, but after the electrical superintendent retired, his relationship with the cooperative changed dramatically.¹⁴² In 1992 Mr. Portra filed a complaint with the U.S. Department of Justice accusing the cooperative of bid fraud based on race because another contractor was allowed to underbid him by \$6.¹⁴³ He obtained two attorneys who were unable to assist him. He has made hundreds of telephone calls, spent thousands of dollars, and basically has nowhere to turn.¹⁴⁴

Lynn Iverson of Bismarck, who has been blind since birth, reported on discrimination from a personal and professional perspective. While working in the Office of the Attorney General as a legal intern, she responded to telephone and written inquiries from the general public concerning discrimination issues in employment, housing, and transportation services, etc., for people with disabilities.¹⁴⁵ She said that many people with disabilities expressed frustration with the great amount of effort required to obtain services.¹⁴⁶ Ms. Iverson said she would try to refer complainants to an individual or agency; however, they usually would call again frustrated and seeking additional assistance.¹⁴⁷ She also was asked to act as an advocate, but she

was limited to providing encouragement and referrals.¹⁴⁸

She said she would share these cases during staff meetings, and she was encouraged to do as much as she could, but the Office of the Attorney General did not have the resources to help. She became known as the "handicapped expert" and she spent her own money paying readers to research and identify referrals for people.¹⁴⁹ This same scenario was carried out while she was employed as a legal assistant with the North Dakota Workers Compensation Bureau and as an independent living counselor with an agency assisting people with alternative living concerns.

After living out of State for a period of time, in 1992 Ms. Iverson returned to North Dakota and applied for services from a State agency. She was told she was not eligible for services because her blindness did not constitute a substantial handicap to employment.¹⁵⁰ Fortunately, an attorney agreed to represent her and it took 5 long, difficult months to get the decision reversed. She was finally eligible for services, but it took an additional 17 months to receive adaptive equipment needed for employment.¹⁵¹

Carlotta McCleary, a resident of Bismarck and concerned parent, shared information at the factfinding meeting's open session about the difficulty she experienced in trying to obtain services for her disabled son and enroll him in a neighborhood school. In order for her son to receive assistance, she had to change his disability classification.¹⁵² Ms. McCleary called the North Dakota Department of Public Instruction for help, and she was told that it was not an enforcement agency and could not step in and make corrections, although it realized there were irregularities.¹⁵³ She said that parents would like to exercise their civil rights, but they

¹⁴¹ Denny Portra, *Transcript 2*, p. 345.

¹⁴² *Ibid.*, pp. 345-46

¹⁴³ *Ibid.*, pp. 346, 351 It took approximately 18 months for the U.S. Department of Justice to send a representative to investigate.

¹⁴⁴ *Ibid.*, p. 350 Some of the organizations contacted included the North Dakota Indian Affairs Commission, the Federal agency hotline, the Inspector General of North Dakota, and the Associated General Contractors of North Dakota, of which he is a member. *Ibid.*, pp. 355, 353, 356, respectively.

¹⁴⁵ Lynn Iverson, *Transcript 2*, pp. 359-60. Ms. Iverson obtained her law degree in 1985 and began employment with the Office of the Attorney General immediately after graduation until 1988. Any telephone or written inquiries were followed up with written correspondence; however, Ms. Iverson did not know whether any type of log was maintained. *Ibid.*, p. 365.

¹⁴⁶ *Ibid.*, p. 360.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, p. 361.

¹⁴⁹ *Ibid.*, p. 366.

¹⁵⁰ *Ibid.*, p. 362.

¹⁵¹ *Ibid.*, p. 363.

¹⁵² Carlotta McCleary, *Transcript 2*, p. 371. To enroll her 5-year-old son and obtain services in the local school system, Ms. McCleary changed her son's diagnosis classification from "emotional disorder" to "other health impaired." Otherwise, he would have been placed in a residential treatment center. *Ibid.*, pp. 370-71.

¹⁵³ *Ibid.*, p. 375.

cannot afford to do so because the system is stacked up against them.¹⁵⁴

Lionel Muthiah of Mandan, a United Methodist minister, advocate for civil and human rights, and chairman of the Martin Luther King, Jr. Holiday Commission, told the North Dakota Advisory Committee that minority people are treated differently because of their accent, ancestry, and the color of their skin.¹⁵⁵ He shared the following examples:

- An American Indian treated differently from whites at a business establishment when she attempted to write a personal check.
- African American university students in Bismarck who were more closely watched than other customers as they shopped in department stores.

- A Sri Lankan family denied the opportunity to rent a property because of their nationality, and also being denied employment.
- A single mother denied housing because of her children.¹⁵⁶

Mr. Muthiah raised the question of treatment of Hispanic migrant workers regarding living conditions, the lack of persons of color employed by local TV stations, and the lack of people of color working in managerial positions in local department stores.¹⁵⁷ He commented that, fortunately, Bismarck area schools and the local university and college are dealing with issues of racism, but more needs to be done.

¹⁵⁴ Ibid., pp. 373–74. Ms. McCleary sought the assistance of the Protection and Advocacy Project.

¹⁵⁵ Lionel Muthiah, *Transcript 2*, pp. 383–84.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., pp. 385–86.

Chapter 6

The Need for a Human Rights Agency in North Dakota

Federal, State, Tribal, and Local Government Comments

Assistant U.S. Attorney Clare Hochhalter, North Dakota, said he witnessed discrimination directed toward women and other minority groups, most notably Native Americans, all the time.¹ He also saw the effect of discrimination especially on young children with regard to a physical or mental handicap; they do not get the kinds of educational services that the law entitles them to, and consequently many of them grow up to be offenders.² He said education and a centralized entity of some kind is definitely at the forefront of what needs to be considered.³ U.S. Attorney John Schneider said the protection of people's basic rights should be paramount, and he hoped that North Dakota's legislators are cognizant of this.⁴ He said a State agency is needed in North Dakota where citizens can call and file or report a complaint of discrimination and receive assistance.⁵ U.S. Attorney Schneider said that an agency is needed that has the title and staff who can help North Dakotans.⁶

While Governor Schafer did not appear before the North Dakota Advisory Committee, he asked the former executive director of the North Dakota Indian Affairs Commission, Deborah Painte, to represent him again at the Fargo fact-finding meeting of the North Dakota Advisory Committee. She stated:

¹ Clare Hochhalter, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, May 16, 1996, p. 142 (hereafter cited as *Transcript 2*).

² *Ibid.*

³ *Ibid.*

⁴ John Schneider, transcript of factfinding meeting conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Fargo, ND, Sept. 24, 1997, vol. 3, p. 13 (hereafter cited as *Transcript 3*).

⁵ *Ibid.*, p. 11.

⁶ *Ibid.*, p. 12.

The Governor is reluctant at this point to endorse creation of a separate North Dakota human rights commission.⁷ In recent years, North Dakotans have resisted creating new levels of government. They worry about new costs to taxpayers, new burdens of bureaucracy, and the lack of any assurance that an extra layer of government will improve people's conditions. The Governor and many legislators share those concerns.⁸

Ms. Painte said before the question of a human rights commission is addressed, there is important work to be done at the State level because the nature and extent of discrimination in the State are still unclear.⁹ She said, "Your committee will certainly give us a better sense of the situation out there, but there is a State role as well."¹⁰ Ms. Painte recapped the failure of a resolution to study the necessity of a human rights commission in North Dakota during the 1995 legislative session, and its approval during the 1997 legislative session. She indicated that legislative action clearly signaled that lawmakers are now willing to step up to this potentially controversial issue.¹¹ The Interim Judiciary Committee of the North Dakota Legislature is trying to assess not only the number of incidents, but also their exact nature and the various authorities that exist for addressing them.¹² Ms. Painte said that the Indian Affairs Commission and the Governor's Office are eager to cooperate and work closely with State legislators during the study.¹³

Speaking on behalf of the North Dakota Indian Affairs Commission, Ms. Painte stated that

⁷ Deborah Painte, *Transcript 3*, vol. 1, p. 30.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*, pp. 30-31.

¹¹ *Ibid.*, p. 31.

¹² *Ibid.*

¹³ *Ibid.*

North Dakota citizens have no single place to turn to if they have discrimination complaints; they lack information and are intimidated, frustrated, and confused.¹⁴ She suggested creating a "one-stop shop," a single place in State government for people to call or visit if they have faced discrimination, and explained that a one-stop type of clearinghouse could be effective and avoid the creation of a complicated and expensive bureaucracy absent of data on the true extent and nature of discrimination complaints in North Dakota. A central point in State government to collect this information would aid in determining what kind of agency or structure would be appropriate.¹⁵

Former chairman of the Three Affiliated Tribes, Russell Mason, Sr., wrote he did not believe that mechanisms exist in North Dakota to allow civil rights violations to be remedied.¹⁶ He stated, "A state agency charged with the task of providing education about civil rights and the investigation of civil rights complaints, and empowered to bring appropriate actions is certainly the answer."¹⁷ He also stated one of the most important goals of any human rights commission is to educate, not just employers, but also employees "about how to recognize a discriminatory act and what can be done about it."¹⁸

Chairman Mason in closing wrote:

Those . . . who say that no human rights commission is needed have simply not faced discrimination and felt its devastating consequences when no remedy to correct the discrimination was readily available. Without an agency ready to tackle problems of discrimination head on, the true extent to discrimination in North Dakota will never be known.¹⁹

David Gipp, president of United Tribes Technical College, wrote, "Given the history of treatment of Indian people by our government, it has been difficult for me to understand why our State Legislators do not believe a State human

rights commission is necessary . . ."²⁰ He said a State human rights commission would essentially be locally controlled, and for United Tribes and its students, it would be immediate access to an agency that could produce relatively quick results.²¹

Erich Longie, president of Cankdeska Cikana Community College in Fort Totten, North Dakota, addressed the North Dakota Advisory Committee and said a commission needs to be established for the sake of all young people in the State.²² Because of the expanding population on all reservations, more and more Native American children are required to attend schools off the reservation, said President Longie. As a result, reports from Indian children of institutionalized prejudice and racism have increased.²³ He said it is subtle and it needs to be addressed.

William Kretschmar, North Dakota House of Representatives, said he thinks there should be a commission in the State, not only to help individuals, but to remind us all that we have to protect our constitutional rights "if we're going to continue to be a great Nation and we're going to continue to be a good place for Americans to live."²⁴

Marv Mutzenberger, North Dakota House of Representatives, said that the lack of resources, enforcement, finances, education, and advocates point to the need for some mechanism, be it a human rights commission or some other entity to look out for the rights of people who are very vulnerable.²⁵ He said some mechanism definitely is needed, and other people agree.²⁶

Representative Mutzenberger also discussed an account of a student who experienced racial discrimination in 1992. The student took his dis-

²⁰ David Gipp, president, United Tribes Technical College, Bismarck, ND, written testimony to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Sept. 24, 1997, p. 3.

²¹ Ibid.

²² Erich Longie, *Transcript 3*, vol. 1, pp. 127-28.

²³ Ibid., p. 129.

²⁴ William Kretschmar, transcript of miniforum conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights in Bismarck, ND, Dec. 3, 1984, p. 115.

²⁵ Marv Mutzenberger, *Transcript 2*, p. 118.

²⁶ Ibid., pp. 118-19. He had also been contacted by the Indian Affairs Commission and David Kipp, president of United Tribes Technical College, both favoring the establishment of a human rights commission.

¹⁴ Ibid.

¹⁵ Ibid., pp. 31-32.

¹⁶ Russell D. Mason, Sr., chairman, Three Affiliated Tribes, Fort Berthold Indian Reservation, New Town, ND, written statement to the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Sept. 24, 1997, p. 2.

¹⁷ Ibid., pp. 4-5.

¹⁸ Ibid., p. 4.

¹⁹ Ibid., p. 5.

pute to the Indian Affairs Commission, the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, Bismarck Job Service, Veterans Administration, the *Bismarck Tribune* newspaper, and one of North Dakota's U.S. Senators. The only recommendation he was given was to continue communicating with each agency.²⁷ Representative Mutzenberger said the *Bismarck Tribune* thinks a human rights commission is necessary, and he would at least advocate studying the issue. He said, "It seems to me there's some need for enforcement, for education, and for advocacy."²⁸ He also said, "I think if there were some mechanism that was very visible, we would have more people accessing that system."²⁹

Cathy Rydell, North Dakota House of Representatives, said if the formation of a human rights commission will take care of discrimination against Native Americans, or at least move the State in the right direction, "I would be for it 100 percent, but I don't see that at this point."³⁰ She said if the mission of a commission was to determine what services exist, if they are coordinated and cost-effective, and if the right people get the right information, it probably would have a great benefit.³¹ She said, "If I can learn enough and be convinced that it's a necessary body that will have a defined role and will help eliminate some of the duplication, misinformation, and financial waste that we see everyday then I can be supportive, but I need to be taught."³² She also said the only way to deal with discrimination in North Dakota is one person at a time. "But I will challenge this committee to decide if this is the best mousetrap and it's not going to duplicate what's already out there," she added.³³

Attorney General Heidi Heitkamp said she thinks that "a commission established to review human rights issues in our State could do a lot of good."³⁴ She suggested identifying all existing commissions within State government, possibly reducing the number of commissions, and cre-

ating instead a body that has, perhaps, more enforcement authority, but also has a broader mission than just combating gender-based, race-based, or age-based discrimination.³⁵ Regarding the number of existing commissions (Commission on Aging, Commission on the Status of Women, etc.) she said, "It would be a good idea to combine many of these good groups and begin to take a look at a commission on human rights and give that commission additional enforcement support and investigation ability."³⁶ She also noted that the human rights commission would have to be adequately staffed with the right kind of people.³⁷ If a human rights commission were established, Attorney General Heitkamp said she would also prioritize components of the commission with the most important component being mediation, then public education. One cost-effective method could be a form of binding arbitration, although she did not know if it would be the answer in cases of discrimination.³⁸ Discrimination is an issue that needs to be addressed, and establishing a human rights commission with the authority to consider the problem and establish effective, preventive, and remedial measures is a good idea, said Attorney General Heitkamp.³⁹

Speaking as a private citizen, Commissioner of Labor Craig Hagen said that he would support a resolution to study the issue of discrimination beyond the scope of employment before he would support the creation of a human rights commission.⁴⁰ He also agreed with Attorney General Heitkamp's idea that the consolidation of other commissions would be progressing in the right direction. He said the only way that the concept would succeed in the legislature is to demonstrate that the number of boards and commissions could be reduced and replaced with one body.⁴¹ However, he said that studying the pervasiveness of discrimination and the avenues needed to address it would be more appropriate.⁴² He also did not think North Dakota would

²⁷ Ibid., p. 119.

²⁸ Ibid., pp. 119-20.

²⁹ Ibid., p. 136.

³⁰ Cathy Rydell, *Transcript 2*, p. 124.

³¹ Ibid., p. 125.

³² Ibid., p. 126.

³³ Ibid., pp. 138-39.

³⁴ Heidi Heitkamp, *Transcript 2*, p. 281.

³⁵ Ibid., p. 300.

³⁶ Ibid.

³⁷ Ibid., p. 304.

³⁸ Ibid., pp. 286-87.

³⁹ Ibid., p. 287.

⁴⁰ Craig Hagen, *Transcript 2*, p. 338.

⁴¹ Ibid.

⁴² Ibid.

want to go to the extent that, for example, Montana does in suing in court on behalf of the complainant.⁴³

The North Dakota Office of Intergovernmental Assistance, from the results of a Housing Needs Assessment it conducted, recommended, among other things, the creation of a human rights commission to enforce fair housing.⁴⁴ Richard Gray, building codes program manager, further elaborated that with the creation of a human rights commission, fair housing could be addressed within such an agency.⁴⁵

Sandi Tabor said she would not, while representing the Gender Fairness in the Courts Commission, take a position on supporting a study, or supporting a human rights commission.

It's just my gut reaction, the Gender Fairness Commission is going to focus more on what the court should be doing specifically, and the chances of them suggesting that a human rights commission be formed is just something that I think is probably outside of the purview of their charge from the supreme court.⁴⁶

Mayor Bruce Furness, City of Fargo, although he did not specifically make a recommendation to establish a human rights agency, stated, "It is something I would certainly entertain based on a need."⁴⁷

Holly Jeanotte Marion, former director, Office of Community Relations, City of Grand Forks, said there needs to be a resource where people can go and not be afraid but be comfortable.⁴⁸ She suggested using terminology such as "human rights" and "disparate treatment" rather than "civil rights" and "discrimination" because such phrases tend to scare people.⁴⁹

Business Community Comments

Dale Anderson, president of the Greater North Dakota Association (GNDA), said the organization believes the State's discrimination

policy, the Human Rights Act, is strong and that there is an effective awareness campaign that will continue to exist.⁵⁰ The enactment of a human rights commission would require staffing and budgets, and therefore would generate added pressure on the overall allocation of the general fund dollars. He said all priorities must be carefully examined with respect to limited general fund revenue before any new programs are considered.⁵¹ The GNDA, he said, has a very strong policy to provide equal employment opportunities to employees, and he believes that proper education for employers is the most effective method of providing equal employment opportunities.⁵²

He said the GNDA plans to maintain a high priority in the research and education area. The current enforcement mechanisms dealing with discrimination, he said, are doing an effective job and he concluded, "We do not believe that the extent of discriminatory problems warrant a North Dakota human rights commission."⁵³

Francis X. Kartch, Jr., executive director of the North Dakota Small Business Survival Committee, in opposition to a human rights commission, wrote, "What is this human rights commission supposed to do? Investigate and enforce? Change human nature? Educate? Scold?"⁵⁴ He stated that discrimination exists; however, "North Dakota already offers several avenues for legal action if somebody breaks the law . . ."⁵⁵ He further wrote, "A commission charged with enforcement will be forced to prove that business owners discriminate to justify the commission's existence."⁵⁶ In closing his written statement, Mr. Kartch said, "The vast majority of small-business owners have no desire to discriminate . . . no desire of jumping through bureaucratic hoops to prove our innocence . . . [and] our organization will vigorously oppose any legislation

⁴³ Ibid., p. 339. Montana's Human Rights Commission processes employment discrimination complaints, and when necessary, represents the complainant in court.

⁴⁴ Richard Gray, *Transcript 2*, p. 23.

⁴⁵ Ibid., pp. 23-24.

⁴⁶ Sandi Tabor, *Transcript 2*, pp. 108-09.

⁴⁷ Bruce Furness, *Transcript 2*, p. 22.

⁴⁸ Holly Marion, *Transcript 3*, vol. 1, p. 55.

⁴⁹ Ibid., p. 57.

⁵⁰ Ibid., p. 201.

⁵¹ Ibid.

⁵² Ibid., pp. 201-02.

⁵³ Ibid., p. 202.

⁵⁴ Francis X. Kartch, Jr., executive director, North Dakota Small Business Survival Committee, letter to John F. Dulles, regional director, Rocky Mountain Regional Office, U.S. Commission on Civil Rights, Denver, CO, Oct. 3, 1997.

⁵⁵ Ibid.

⁵⁶ Ibid.

to create a North Dakota human rights commission."⁵⁷

Private/Community Organization Comments

Other individuals in favor of the establishment of a human rights commission included Elizabeth Sweet of the North Dakota Federation of Families for Children's Mental Health,⁵⁸ and Eileen Olson of the Dakota Center for Independent Living.⁵⁹

Keith Elston, director of the American Civil Liberties Union, North Dakota chapter, said recognizing the need for an enforcement agency made the creation of a North Dakota human rights commission a legislative priority.⁶⁰ The American Civil Liberties Union was engaged in a comparative study of human or civil rights agencies around the country in order to provide a context for the creation of a human rights commission in North Dakota.⁶¹ Although the study was not complete, Mr. Elston shared information on agencies polled so far.⁶² A summary of data collected showed:

- *Alabama*: the only State with no statutory provision prohibiting discrimination; and therefore, it has no agency charged with protecting its citizens from discriminatory practices.
- *Arkansas*: although the State has statutory provisions prohibiting discrimination in employment, public (State/county) employment, and credit, it also has no agency charged with enforcing those laws.
- *Louisiana*: the State has statutory provisions that protect against a limited range of discrimination practices, and the State has no agency to enforce its disability antidiscrimination law.
- *Mississippi*: the State protects its citizens within a limited range and has a committee to enforce housing laws.
- *Arizona*: the State has comprehensive statutory provisions, dependent on government departmental administration.

⁵⁷ Ibid.

⁵⁸ Elizabeth Sweet, *Transcript 2*, p. 376.

⁵⁹ Eileen Olson, *Transcript 2*, p. 166.

⁶⁰ Keith Elston, *Transcript 2*, p. 15.

⁶¹ Ibid.

⁶² Ibid. Information contained in data submitted at factfinding meeting.

- *North Dakota*: the State has statutory provisions but is dependent on the governmental department that administers the program.
- *South Dakota*: the State has statutory provisions but is dependent on departmental administration.⁶³

Twelve States have mechanisms that operate as independent agencies.⁶⁴ Thirty-one States appear to have independent, fully functioning human rights agencies or civil rights agencies created by an act of the State legislature.⁶⁵ To that end, the American Civil Liberties Union helped develop a coalition of legal, professional, religious, business, and social justice organizations to spearhead an effort to introduce legislation in the 1997 legislative session.⁶⁶ Mr. Elston said to the best of his knowledge there are no agencies, either public or private, that are dedicated to addressing discrimination in the areas of public accommodations, State and local government services, or credit transactions in North Dakota.⁶⁷ He went on to say that there is:

- No agency with the responsibility to collect information covering the full range of discriminatory practices covered by the North Dakota Human Rights Act.
- No agency dedicated to educating the public about their rights under these laws.
- No agency required by the State legislature to carry out and enforce provisions of the North Dakota Human Rights Act.⁶⁸

The American Civil Liberties Union strongly believes that the creation of an independent human rights commission by the North Dakota Legislature would go a long way toward fulfilling the promise of equal opportunity made to the

⁶³ Ibid., pp. 15–16.

⁶⁴ Ibid., p. 16. The 12 States are Colorado, Florida, Hawaii, Idaho, Missouri, Montana, New Jersey, New York, North Carolina, Oregon, Utah, and Wyoming.

⁶⁵ Ibid., pp. 16–17. The 31 States are Alaska, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

⁶⁶ Keith Elston, *Transcript 2*, p. 15.

⁶⁷ Ibid., p. 12.

⁶⁸ Ibid., pp. 12–13.

residents of North Dakota by the legislature through the North Dakota Human Rights Act.⁶⁹ A human rights commission could lessen the load of the courts in North Dakota by being able to settle disputes that probably do not need to go into the courts.⁷⁰ A human rights commission also could provide education and develop strategies with employers to create a better environment for employees.⁷¹ Mr. Elston stated that he has experience with the Kentucky Human Rights Commission, and it uses the alternative dispute mechanism frequently. In fact, it litigates very few cases because it is successful with that mechanism.⁷²

One of the real advantages of having a human rights commission is the public education work that can be done to let people know what their rights are, how they can go about filing a complaint, and what they can expect to happen as a result of that complaint.⁷³ In a State as geographically spread out as North Dakota, an education program would require funding. Because there is not an agency in the State that is either willing to provide education or has any authority, there is a huge gap in the services that need to be provided to citizens.⁷⁴ The best solution, according to Mr. Elston, is for the legislature to finish the job it started in 1993 and create a human rights commission that has the authority and the funding to do the public education work that is necessary. "Then we can avoid a lot of the problems that people are facing right now," he said.⁷⁵

Linda Catalano, executive director of Legal Assistance of North Dakota, said there is a tremendous need for public education.⁷⁶

Lynda Johnson, former executive director of the North Dakota Fair Housing Council, said that with the creation of a human rights commission, the State would hear much more about the extent of discrimination, particularly age discrimination, because if people can see that there is some success, that there is an agency

that will fight for them, they would be more apt to come forward.⁷⁷ She said that many cases of discrimination probably go unheard because people have given up and said, "What's the use? You know, I can't afford an attorney, there's no remedies for me, I guess that's just a way of life that I need to accept."⁷⁸ Ms. Johnson said that she agrees with the concept of a human rights commission in North Dakota that has enforcement powers to deal with issues that, to this point, have been without remedy.⁷⁹

Dave Boeck, supervising attorney of the Protection and Advocacy Project, said a human rights commission could provide much education and prevent the denial of civil rights. The human rights commission would be a central point to register complaints with experienced staff on civil rights issues and to advise citizens if their complaints are legitimate or not.⁸⁰ He also said the success of any human rights commission in North Dakota will depend on what powers it is given under the statute that is created for it, how it is staffed, and its budget. He said, "You can write a great statute, but if you do not have people who are genuinely interested in enforcing the law, hired to put the law in motion, and have limited resources, then we're just wasting time."⁸¹ Moreover, the mechanism that is put in place cannot be a governing body that is subject to political pressure.⁸²

Mr. Boeck's vision of a human rights commission included an education component providing information on all forms of discrimination; second, an outreach component that would identify victims of discrimination and inform them of their rights and where they could go for help; and third, a component where investigators could coordinate mediation, resolution, and represent complainants in court.⁸³

Myrt Armstrong, former executive director of the North Dakota Mental Health Association, said that a human rights commission would be a place where individuals could go to directly and at least get the process started locally rather

⁶⁹ *Ibid.*, p. 17.

⁷⁰ *Ibid.*, p. 42.

⁷¹ *Ibid.*, pp. 42-43.

⁷² *Ibid.*, p. 44.

⁷³ *Ibid.*, p. 55.

⁷⁴ *Ibid.*, p. 56.

⁷⁵ *Ibid.*

⁷⁶ Linda Catalano, *Transcript 2*, p. 76.

⁷⁷ *Ibid.*, p. 58.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Dave Boeck, *Transcript 2*, p. 159.

⁸¹ *Ibid.*, p. 189.

⁸² *Ibid.*, pp. 188-89.

⁸³ *Ibid.*, pp. 192-93.

than having to go out of State. Having a local agency also means people might obtain a better understanding of what is actually going to happen with their complaint.⁸⁴

Gerard Friesz, executive director of the Public Employees Association, said that a commitment to further explore the establishment of a human rights commission is terribly important.⁸⁵ He identified three elements that would be essential to having an effective civil rights mechanism: affordability, accessibility, and expeditiousness.⁸⁶ If a human rights or civil rights commission could develop mechanisms such as mediation or arbitration, where there would not be a need for attorneys, that might be more feasible and may be a more accepted option.⁸⁷ He said a human rights commission may provide a less cumbersome, less legalistic avenue that might expedite the handling of a grievance. In fact, people may feel when they walk away—win, lose or draw—they had a better chance of success, simply because it did not look as though the cards were all stacked up against them.⁸⁸ Mr. Friesz said, from his dealings with State workers, that has clearly been the impression that they have been left with.⁸⁹

Citizen Comments

Cheryl Red Eagle, columnist for the *Bismarck Tribune*, responded that there is no centralized place to collect statistics on discrimination in the State. "The plain fact of the matter is that people in North Dakota don't want to know," she said. They were offered the perfect opportunity during the last (1995) legislative session to fund a study to provide them facts.⁹⁰

Ora Robinson, former chair of the Martin Luther King, Jr. Holiday Commission, said a human rights commission is needed and the people of the State must be proactive instead of reactive. Dollars must be budgeted to fund an agency that will take and maintain a firm position to alleviate discrimination.⁹¹

Denny Portra, a Native American small business owner, said if a human rights commission were in place, people could at least presumably obtain representation.⁹² The commission could probably get answers where as an individual cannot get answers, he said.⁹³

Lynn Iverson, a disabled resident of Bismarck, expressed her support for the establishment of a commission in the State for the enforcement of civil rights because discrimination exists and has a profound effect on people's lives.⁹⁴ She said, "I really firmly believe with all my heart that we need an independent, accessible, affordable, and timely agency that can educate, investigate, mediate, and adjudicate claims of discrimination or civil rights violations."⁹⁵ She also said, education is needed, but it is not the total answer. Some kind of enforcement mechanism is required to level the playing field for all people so they can achieve the quality of life that North Dakota has to offer and not be dependent on political whims or on whether there is funding at the State level or the Federal level.⁹⁶

Reverend Lionel Muthiah, chair of the Martin Luther King, Jr. Holiday Commission, speaking on behalf of the need for a human rights committee or commission, said if a commission were in place, it would be reassuring to many people.⁹⁷

⁸⁴ Myrt Armstrong, *Transcript 2*, p. 69.

⁸⁵ Gerard Friesz, *Transcript 2*, pp. 81–82.

⁸⁶ *Ibid.*, p. 82.

⁸⁷ *Ibid.*, pp. 96–97.

⁸⁸ *Ibid.*, pp. 97–98.

⁸⁹ *Ibid.*, p. 98.

⁹⁰ Cheryl Red Eagle, *Transcript 2*, p. 191. Ms. Red Eagle is now married and continues to write for the *Bismarck Tribune* as Cheryl Long Feather.

⁹¹ Ora Robinson, *Transcript 2*, pp. 185–88.

⁹² Denny Portra, *Transcript 2*, p. 355.

⁹³ *Ibid.*

⁹⁴ Lynn Iverson, *Transcript 2*, p. 359.

⁹⁵ *Ibid.*, p. 363.

⁹⁶ *Ibid.*, pp. 363–64.

⁹⁷ Lionel Muthiah, *Transcript 2*, p. 390.

Chapter 7

Findings and Recommendations

Findings

The two factfinding meetings conducted by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights yielded an abundance of information outlining civil rights enforcement issues in North Dakota. Representatives of Federal, State, and local entities, the business community, private/community organizations, and individuals provided information, views, and available data willingly.

The Advisory Committee is disappointed that the Governor did not accept invitations to appear at either of the factfinding meetings. Although the Advisory Committee was advised by his representative that the Governor would submit a statement of his position on the establishment of a human rights commission for the record, this was not forthcoming. Additionally, the chairman of the Interim Judiciary Committee of the North Dakota Legislature, studying the discrimination issue, did not accept invitations to appear before the Advisory Committee.

Therefore, the views of the two principal elected officials most influential at this time in determining future State action in the area of civil rights enforcement were not heard. The Advisory Committee regrets this absence of participation and is hopeful that it does not signify a lack of interest in critical issues of discrimination. Without the active involvement of the Governor and key legislative leaders, it is unlikely that additional meaningful initiatives in State civil rights enforcement will occur.

Additionally, one of the mandates of the Legislative Interim Judiciary Committee was to study the extent of discrimination in the State. While the Interim Judiciary Committee did consider this issue, it was only one of several matters occupying its attention. Furthermore, no provisions were made for academic or scientific research to determine the extent of discrimination in North Dakota. The Interim Judiciary Committee did solicit some testimony butulti-

mately limited its recommendation to a fair housing measure, failing to address whether a comprehensive civil rights enforcement mechanism should be established.

The Interim Judiciary Committee did recommend for the 1999 legislative session the introduction of House bill 1034 to modify the current housing discrimination laws, and to designate the North Dakota Department of Labor as the agency responsible for receiving and investigating housing discrimination claims.¹

The demographic face of North Dakota is changing at an increasing rate, and the State has an obligation to further address issues of discrimination. Many forms of discrimination have been ongoing in the State for several decades, and it appears that limited accomplishments have been realized to solve those issues. The North Dakota Advisory Committee concludes that the creation of the North Dakota Human Rights Act was a major stepping stone for the State to address discrimination based on race, color, religion, sex, national origin, age, mental or physical disability, marital status, public assistance, employment, public accommodations, housing, State and local government service, and credit. However, the Human Rights Act lacks effective administrative enforcement mechanisms to accomplish its mandate.

Although the State has in place the North Dakota Department of Labor to accept and process employment discrimination complaints, citizens continue to be dissatisfied with its service,² and there are no other State agencies in operation to address the other myriad areas of discrimination protected under the North Dakota Human Rights Act. Several State agencies

¹ This law would make the State statute equivalent to Federal fair housing measures, thereby qualifying North Dakota to receive U.S. Department of Housing and Urban Development funding.

² See chap. 2, p. 10.

regularly receive and attempt to refer discrimination concerns and complaints; however, very few maintain any records of the number or types of calls received. This makes it virtually impossible to determine the extent that North Dakota citizens are experiencing discrimination, and particularly what impact discrimination has on minorities, women, and people with disabilities.

To meet the growing need to fight discrimination in the State, a number of private/community organizations have been forced to expand their scope of service by offering at least referral information, when possible. Unfortunately, they find it frustrating, not only for themselves, but for people who are desperate for help when the reality of the situation is, there is very little assistance available. These agencies have done their best, but shrinking budgets for nonprofit organizations have caused many to cut back the limited services once provided. This has left North Dakota residents even more disempowered and frustrated.

Systemic discrimination continues to occur in relation to fair housing, equal employment, and education, to name a few, particularly against Native Americans, other minorities, refugees, women, families with children, older persons, and people with disabilities. North Dakota is home to the Fort Berthold, Spirit Lake, Standing Rock, and Turtle Mountain Indian reservations and the Trenton Indian Service Area, in addition to Native American people living in rural and larger cities in the State. Native Americans account for over 25,000 State citizens or 6 percent of North Dakota's population—a small number, but they are greatly affected by discrimination.³ And, a number of communities in North Dakota have growing minority and refugee populations.

Minority populations of the State have encountered disparate treatment while trying to obtain or further their education, become gainfully employed, or compete in the business community. People with disabilities find discrimination in the same segments in addition to limited (or no) access in housing or public accommodations as they try to pursue life to the fullest. Women continue to experience discrimination most prevalently in employment and housing,

³ U.S. Department of Commerce, Bureau of the Census, *Summary Population and Housing Characteristics*, CPH-1-36, 1990, table 4. According to this same table, North Dakota's total population is 638,800.

while older residents most often experience age discrimination in employment.

The conclusions of the Advisory Committee are:

1. Employment, housing and other forms of discrimination are a reality in North Dakota. State and local governmental consideration and resolution of discrimination can only make North Dakota a better place to live and work for all of its citizens.
2. Antidiscrimination provisions of the North Dakota Human Rights Act are not well publicized and not readily known by the general public. The act's effectiveness is reduced because of the absence of a State agency to enforce it. State agencies and citizens who represent community-based or private organizations are aware of North Dakota's Human Rights Act, and are eager to see the act strengthened and enforced.⁴
3. Except for employment discrimination complaints, other violations of Federal statutes must be lodged with enforcement agencies in Denver, Kansas City, or Washington, D.C. Few complaints are filed due to the remoteness of these agencies and the lack of information about procedures. Additionally, the North Dakota Department of Labor is provided inadequate financial resources to investigate properly and resolve employment discrimination complaints, and has no jurisdiction with regard to other issues of discrimination covered under the North Dakota Human Rights Act. Furthermore, it lacks enforcement authority.

Recommendations

The North Dakota Advisory Committee believes that the Governor, State legislators, city officials, law enforcement officers, and others entrusted with protecting its citizens from all forms of discrimination should ensure that local, State, and Federal mandates are carried out and enforced to the fullest extent for improved protection of all North Dakotans.

North Dakota citizens need local and State mechanisms in operation where they can voice concerns, seek information, obtain assistance, and when necessary file discrimination com-

⁴ See chap. 1, p. 8.

plaints. These mechanisms should have the ability to negotiate, conciliate, mediate, and enforce findings of discrimination on behalf of citizens.

The North Dakota Advisory Committee hopes that the Governor, State legislature, community organizations, and North Dakota citizens rally together to actively promote and take significant steps to work toward eradicating discrimination in the State. Although there have been numerous attempts to address the issue of discrimination in North Dakota, including the establishment of the North Dakota Department of Labor; passage of the North Dakota Human Rights Act; and a study of the need for a human rights commission through the work of the Interim Judiciary Committee of the North Dakota State Legislature, numerous forms of discrimination are still prevalent. Further, because the Interim Judiciary Committee did not make a recommendation regarding the establishment of a human rights commission or determine the extent of discrimination in the State, the North Dakota Advisory Committee has identified a number of recommendations for consideration.

Many solutions have been echoed over the years with regard to strengthening the North Dakota Human Rights Act, an extremely important piece of legislation that has been on the books for 15 years.⁵

The Advisory Committee recommends:

1. Determine the Extent of Discrimination in the State. The State should fund a scientifically valid research project to determine the extent of discrimination in North Dakota. This study should be designed and administered by well-qualified academic experts. It should be undertaken without delay. In addition, the State should require all State agencies and departments to maintain documentation of all inquiries received that allege discrimination. Uniform criteria should be developed for gathering and maintaining these data, which would be used to formulate more effective antidiscrimination procedures. Timelines for reporting data should also be established.

2. Publicize and Review Procedures for Filing Complaints. All State agencies receiving and/or administering Federal funds should publicize their procedures for filing complaints under title VI of the Civil Rights Act and other related civil rights provisions that prohibit discrimination in federally assisted programs. These procedures should be reviewed to ensure they are adequate and provide for effective public access and prompt investigation and resolution.

3. Create a Human Rights Commission. The State of North Dakota should establish a human rights commission and fashion it to be as independent as possible from unwarranted political interference. The State should provide this new commission with adequate funding and staffing resources. It is possible that a reorganization and consolidation of current functions might yield sufficient resources to undertake this without the need for additional State revenues. The human rights commission should have full investigative and enforcement powers. In addition, it should be authorized to provide education, outreach, and technical assistance to employers, housing providers, and other institutions covered by civil rights laws, as well as to victims of discrimination. The commission should also be empowered to engage in mediation, conciliation, and dispute resolution. The commission should be visible, accessible, and act as a clearinghouse for statewide civil rights matters. Its membership should reflect the diversity of the State's population.

4. Consider Local Human Relations Commissions. Finally, North Dakota's major cities and counties should consider establishing local human relations commissions to assist in resolving and mediating community conflicts, providing education and outreach, and promoting diversity.

⁵ The North Dakota Human Rights Act was established in 1983.

Appendix A

Bismarck Tribune,
Sept. 22, 1996, editorial page, p. 4D.

MY VIEW

Bismarck 'another planet' on racism

KATRINA LOVEJOY,
Bismarck

I was born on the Fort Totten Indian Reservation. When I was 8, my mother moved us to Rockford, Ill., and I spent the next 15 years exploring a city of a couple of hundred thousand people, learning about life, or so I thought. People were open-minded, and I went to a multi-racial school. In 15 years my skin color was never a problem.

Every year we would go home to the reservation to visit or when someone passed away. I didn't know what to think about the reservation. I knew I didn't like visiting because my cousins were mean. All I ever heard was, "You sound like a squeaky white girl." Probably because I could never master the reservation lingo.

Well, in 1993 my boyfriend decided we needed a change. This was after I was almost car-jacked and, two weeks later, he was mugged. He went to the library and did some research on Bismarck. Bismarck had a low crime rate, and I would be closer to my father and other family.

Little did I know I was moving to another planet. I was amazed that people could still make racist remarks openly. We went to rent an apartment. The landlady said politely, with a smile on her face, "I didn't know you were an interracial couple." (My boyfriend was white.) I was shocked. For the first time in my life, I had no witty reply.

About a month later I was in a department store. This woman followed me around the whole time. I knew she worked there because I remembered seeing her before. She made it so obvious, she should just have hung a sign around her neck. After paying for my items, I walked up to her and pulled up my shirt and said, "See, I didn't steal anything." She apologized and walked away.

When I started looking for employment, I noticed the questions were different. Not, what were my skills and what hours was I available, but where was I from, did I smoke and how many children did I have? My first job here, my boss told me, bluntly, I would not last. "You people never do." After I called up his boss and told him what had happened, he was sweet to my face but was



Katrina Lovejoy, 25, Bismarck, returned to North Dakota from Illinois three years ago.

waiting for the day he could strike out at me.

For six months I was on my best behavior. One day a customer began abusing me in racial terms for a mistake not of my making. I walked away from her, and she said, "Don't walk away from me, you (bleeping) Indian." All I wanted was to control my temper, but it took everything I had not to hit her. I said, "Listen, lady, I am sorry about your cake, but you need to grow up. I don't have to stand here and listen to you."

She ran right to my boss and told him I had insulted her. They both came back to see me. He did not care what she was saying to me. I even had a witness with me. The customer blurts out, "Keep your sorry (bleep) on the reservation." After that I put in my notice.

In September of 1994 I took another job that lasted nearly two years. The other employees were making bets on how long I would last. With a lot of hard work, I managed to change their minds.

Working with the public, you meet all kinds of fruitloops. We sold blocks of American cheese, and every now and then somebody would ask, "Is this the same kind of cheese you get on the reservation?" My reply to one lady was, "How would I know?" "Because you're an Indian." I said, "I would not have known that if you hadn't told me." She had a bewildered look on her face.

One day a friend of my boss was talking about welfare reform. I was working in a corner. The friend blurts out, "It's a white man's world, soon these lazy Indians will have to get a job." Before he could say anymore, I made my presence known. "Hey, colonel," I said, "I already have a job." He quickly changed the subject. Ever afterwards, he was polite to my face.

After a while I started ignoring hate remarks. It was so hard to come down from an anger rush. I took a long look one day and realized it wasn't worth it. I did wonder what I had done to deserve this.

I think the worst part was when I went to my son's school. One of his classmates asked, "Who's your child?" and I told her. She said, laughing, "David's an Indian." My son put his head down. I said, "David, hold your head up. You're my son and we don't bow to anyone."

May of this year was a bad month for me. My brother, Terry, died from a heart attack at 28. Two years before, my baby brother, Mick, died at 14. No one could imagine the heartache you feel, losing two brothers in a lifetime.

I was having a bad month, and to top it off my boss decided to pick on me. He brought up something that had nothing to do with my job, and he kept going on in front of the other employees. He backed me into a corner and I just quit, not thinking that you should have another job before you do that.

Now I have been job hunting for more than three months. I've had to bite my tongue more times than I can count. I think my worst experience was when I filled out an application at a restaurant. The manager was nice and polite to my face. I started to leave, then turned around to ask him another question. He was walking away, crumpling up my application. I was crushed. He could just as well have stabbed me in the back.

Go into any store or business in Bismarck and see if there is a Native American working there. I have seen three, besides myself — one each at three businesses. That leaves only about 1,000 other businesses without one.

I am not one of these bleeding-heart liberals. I don't care about what happened 100 years ago — I care about today, and that there are so many people who think they are better than me just because of the color of their skin.

My blood is red, I breathe the same air as you. I have a child to feed, insurance to pay, doctor bills. I like to go shopping. The only difference is, my skin is dark. There is a life lesson here: Don't ever forget who you are, because there is always someone who is going to remind you.

Appendix B

Bismarck Tribune
Sept. 30, 1996, p. 3C

YOUR VIEWS

Mind human rights

LIONEL P.A. MUTHIAH
Mandan

Do we care? I have waited a long time to see if there would be any public outcry of shame when Katrina Lovejoy expressed her experiences in Bismarck since 1993 (Sept. 22, "Bismarck 'another planet' on racism.") Her experiences unfortunately are not unique. Other Indians have shared many similar experiences with me.

I have also met with other people of color who have been chagrined by the attitude of some of our business community. African-American students have told me they have been looked at with suspicion when they visit a store. Similar stories have been shared in other communities in North Dakota.

As one who is concerned and has worked for human rights, I hope our state Legislature will see fit to take a second look at establishing a Human Rights Commission. Some of us have already testified before the North Dakota Civil Rights Advisory Commission. Hearing testimony both before legislators and the commission was heart-rending.

This is why I have chosen to be a volunteer consultant on multiculturalism in the Bismarck-Mandan school systems. In consultation with the principals and teachers, there have been several "Multicultural Week" activities at Century Elementary School and Northridge Elementary School in Bismarck, and at Custer, Roosevelt and Fort Lincoln elementary schools in Mandan. I have also met with the multicultural committees at Bismarck State College and the University of Mary. I have been invited by Bismarck High School teachers to speak to their classes.

I do this because I believe in helping to nurture the young about human dignity, our cultural heritage, the diversity of our nation and the importance to affirm and accept each culture and heritage which make up these United States. Three years ago I even helped organize an International Club for Bismarck-Mandan so we can share our personal histories and be more aware of the richness of various cultures in our midst.

I am surprised that none of the churches and their leadership have expressed their feelings and publicly addressed the issue of racism. What indeed do we preach and do?

I feel the time has come for the Chamber of Commerce and the city commissions of both Bismarck and Mandan to establish a human rights committee. We are glad for new businesses that come to our cities, for with them come people of color. I want them to have positive experiences in our two cities, so that we can honestly say we are proud of our lifestyle and family values.

Businesses and government must provide for training of their staff in cultural sensitivity and racism. Too many words are expressed unthinkingly that hurt. I am surprised Katrina did not take to court those who used abusive language and racial remarks. Take hope, Katrina, the old song will still come true, "We Shall Overcome," for many of us have been there and are now walking hand in hand.

Appendix C

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

**SENATE CONCURRENT RESOLUTION NO. 4036
(Senators Nalewaja, Cook, C. Nelson, Robinson, W. Stenehjem)
(Representative Kliniske)**

A concurrent resolution directing the Legislative Council to study the level of and remedies for discrimination in this state.

WHEREAS, Congress and the North Dakota Legislative Assembly have enacted laws prohibiting discrimination; and

WHEREAS, this state has operating within it many state and federal agencies with the power to investigate and provide appropriate remedies in different cases of discrimination; and

WHEREAS, there needs to be a determination of whether there are instances of discriminatory actions in violation of state and federal laws before the Legislative Assembly can fashion appropriate remedies; and

WHEREAS, if discriminatory actions are found to exist, there needs to be a determination of whether existing state agencies have the power to remedy those activities; and

WHEREAS, remedies available in this state should be compared to procedures used by other states to investigate and provide appropriate remedies in cases of discrimination;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the level of and remedies for discrimination in this state; and

BE IT FURTHER RESOLVED, that the study determine the degree of discrimination in this state, determine current and additional remedies including educational initiatives to prevent discrimination, and develop recommendations to establish a commission visible to the public with representative membership able to objectively investigate citizen complaints and enforce remedies; and

BE IT FURTHER RESOLVED, that the study include an examination of the membership, structure, authority, duties and responsibilities, and funding of commissions in other states; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 19, 1997

Appendix D

NORTH DAKOTA CENTURY CODE

CHAPTER 14-02.4

HUMAN RIGHTS

Note.

The title of this chapter was changed from "Discrimination" to "Human Rights" by the code revisor in 1997, to more accurately reflect the contents of this chapter.

Section	Section
14-02.4-01. State policy against discrimination.	14-02.4-11. Rights of veterans.
14-02.4-02. Definitions.	14-02.4-12. Discriminatory housing practices by owner or agent.
14-02.4-03. Employer's discriminatory practices.	14-02.4-13. Discriminatory housing practice by financial institution or lender.
14-02.4-04. Employment agency's discriminatory practices.	14-02.4-14. Public accommodations — Discriminatory practices.
14-02.4-05. Labor organization's discriminatory practices.	14-02.4-15. Public services — Discriminatory practices.
14-02.4-06. Certain employment advertising deemed discriminatory.	14-02.4-15.1. Discrimination in governmental contracts and programs prohibited.
14-02.4-07. Requiring security clearance not discriminatory.	14-02.4-16. Advertising public accommodations or services — Discriminatory practices — Exceptions.
14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status.	14-02.4-17. Credit transactions — Discriminatory practices.
14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory.	14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination — Threats or reprisals.
14-02.4-10. Employment of individual — Exceptions — Physical examination — Investigation of medical history.	14-02.4-19. Actions — Limitations.

Section
14-02.4-20. Relief.
14-02.4-21. Optional mediation by depart-

ment of labor — Relief — Appeals — Records exempt.

14-02.4-01. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

Source: S.L. 1983, ch. 173, § 1; 1991, ch. 142, § 1; 1993, ch. 140, § 1.

Contract.

A contract cannot excuse later unlawful discrimination. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

When an important public policy would be frustrated by a promise, the policy outweighs enforcement of the promise. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

To permit a contractual term to vary the intent of a law against discrimination in commercial and contractual matters would make the law ineffective. If an employer could require waiver of an anti-discrimination law as a condition of employment, it could become a widespread practice, increasing discrimination rather than doing away with it. It would be nearly impossible to enforce anti-discrimination laws in employment. Intrinsicly, a law against discrimination outlaws contradictory contracts. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Overweight.

The mere assertion that one is overweight or obese is not alone adequate to make a claimant one of the class of persons afforded relief for discrimination; something more must be shown. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987).

Training and Transfer.

A sheriff cannot unfairly refuse to consider training and transfer for a person while later hiring applicants of another race or sex into the same division for training and transfer. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Waiver of Prior Discrimination.

A clear subsequent contract may properly waive or settle prior discriminatory conduct.

That circumstance must be distinguished, from the proscription against contractual waiver of unlawful discrimination in advance of the conduct. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Women Prisoners.

The warden of a penitentiary cannot categorically exclude all women from the Missouri River correctional center when the legislature has authorized sentencing judges to place women there. *Little v. Graff*, 507 N.W.2d 55 (N.D. 1993).

Collateral References.

Exclusion of one sex from admission to or enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law, 38 A.L.R.4th 339.

Exclusion or expulsion from association or club as violation of state civil rights act, 38 A.L.R.4th 628.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 A.L.R.4th 310.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 A.L.R.5th 349.

Application of state law to age discrimination in employment, 51 A.L.R.5th 1.

Law Reviews.

Civil Rights: Race and Sex Discrimination in Refusal to Train Correctional Officer is Not Excused by Contract Under North Dakota Human Rights Act, 66 N.D. L. Rev. 537 (1990).

Civil Rights — Employment Discrimination: Modifying Federal Standards to Reflect Principles of State Law: The North Dakota Supreme Court's Examination of the Hicks Rationale Prompts the Court to Customize Its Own Standard to Review State-Based Em-

ployment Discrimination Claims, 70 N.D. L. Rev. 207 (1994).

Employing Alternative Dispute Resolution: Working at Finding Better Ways to Resolve Employer-Employee Strife, 72 N.D. L. Rev. 299 (1996).

Civil Rights — Employment Discrimination: The Standard of Review in State-Based

Employment Discrimination Claims: The North Dakota Supreme Court Redefines the Standard-of Review in Employment Discrimination Claims, *Schuhmacher v. North Dakota Hosp. Ass'n*, 528 N.W.2d 374 (N.D. 1995), 72 N.D. L. Rev. 411 (1996).

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
4. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

5. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
6. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
7. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
8. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
9. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
10. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
11. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.
12. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
13. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.

14. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
15. "Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.
16. "Reasonable accommodations" means accommodations by an employer that do not:
 - a. Unduly disrupt or interfere with the employer's normal operations;
 - b. Threaten the health or safety of the individual with a disability or others;
 - c. Contradict a business necessity of the employer; or
 - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
17. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
18. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

Source: S.L. 1983, ch. 173, § 2; 1989, ch. 174, § 1; 1991, ch. 142, § 2; 1991, ch. 143, § 1; 1993, ch. 64, § 106; 1995, ch. 144, § 1.

Employee.

The Human Rights Act does not protect independent contractors. *Birchem v. Knights of Columbus*, 116 F.3d 310 (8th Cir. 1997).

Collateral References.

Exclusion of one sex from admission to or

enjoyment of equal privileges in places of accommodation or entertainment as actionable sex discrimination under state law, 38 A.L.R.4th 339.

Exclusion or expulsion from association or club as violation of state civil rights act, 38 A.L.R.4th 628.

Discipline or discharge for sexual conduct as violative of state fair employment laws, 47 A.L.R.4th 863.

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental disability or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period

immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least forty-four thousand dollars.

Source: S.L. 1983, ch. 173, § 3; 1989, ch. 174, § 2; 1991, ch. 142, § 3; 1993, ch. 140, § 2; 1995, ch. 144, § 2.

Age.

—In General.

Where plaintiff offered no proof of any age-conscious statements, writings, policies or discriminatory actions by defendants to or about or with reference to himself or anyone else, offered no statistical evidence from which any inference of age discrimination might be drawn, pointed to no pattern of adverse treatment of older similarly situated employees, and his assertion of a prima facie case rested solely on the notion that he was replaced by a younger man, plaintiff failed to offer any evidentiary showing which would support a jury finding of age discrimination, especially in the face of defendants' plainly articulated legitimate business explanation that plaintiff was discharged because of his involvement with a questionable real estate transaction. *Hillesland v. Federal Land Bank Ass'n*, 407 N.W.2d 206 (N.D. 1987).

Trial court did not err in granting summary judgment dismissing age discrimination claim ruling where the minutes of the board of directors meeting unequivocally showed former employee was not satisfactorily performing duties of his position. *Hummel v. Mid Dakota Clinic*, 526 N.W.2d 704 (N.D. 1995).

—Burden of Proof.

A plaintiff seeking to recover damages for loss of employment due to age discrimination must still prove that the discharge was unlawful discrimination. *Schuhmacher v. North Dakota Hosp. Ass'n*, 528 N.W.2d 374 (N.D. 1995).

—Discharge of Employee.

This act does not prohibit discharging employees who are over forty years old; it prohibits discharging employees over age forty because of their age. *Schuhmacher v. North Dakota Hosp. Ass'n*, 528 N.W.2d 374 (N.D. 1995).

At-Will Termination.

Although in North Dakota, employment without a definite term is presumed to be at will and the employer has the right to termi-

nate the employee with or without cause, there are exceptions to the at-will doctrine; several of those exceptions serve to prohibit an employer from engaging in certain discriminatory practices. *Fatland v. Quaker State Corp.*, 62 F.3d 1070 (8th Cir. 1995).

Burden of Proof.

Under this chapter, the plaintiff has the initial burden of proving by a preponderance of the evidence a prima facie case of discrimination, which creates a presumption that the employer unlawfully discriminated against the plaintiff. If the plaintiff succeeds in establishing the presumption, then, under N.D.R. Ev., Rule 301, the burden of persuasion shifts to the employer to rebut the presumption by proving by a preponderance of the evidence that its action was motivated by one or more legitimate, nondiscriminatory reasons. If the employer fails to persuade the trier of fact that the challenged action was motivated by legitimate, nondiscriminatory reasons, the plaintiff prevails, but if the employer persuades the fact finder that its reasons were nondiscriminatory, the employer prevails. *Schweigert v. Provident Life Ins. Co.*, 503 N.W.2d 225 (N.D. 1993).

Once a plaintiff proves by a preponderance of the evidence a prima facie case of employment discrimination, the burden shifts to the defendant to prove by a preponderance of the evidence that the challenged action was motivated by one or more legitimate, nondiscriminatory reasons. *Schuhmacher v. North Dakota Hosp. Ass'n*, 528 N.W.2d 374 (N.D. 1995).

Contract.

—In General.

A contract cannot excuse later unlawful discrimination. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

When an important public policy would be frustrated by a promise, the policy outweighs enforcement of the promise. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

To permit a contractual term to vary the intent of a law against discrimination in commercial and contractual matters would make the law ineffective. If an employer could require waiver of an anti-discrimination law as

a condition of employment, it could become a widespread practice, increasing discrimination rather than doing away with it. It would be nearly impossible to enforce anti-discrimination laws in employment. Intrinsicly, a law against discrimination outlaws contradictory contracts. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

—Waiver of Prior Discrimination.

A clear subsequent contract may properly waive or settle prior discriminatory conduct. That circumstance must be distinguished, from the proscription against contractual waiver of unlawful discrimination in advance of the conduct. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Independent Contractors.

The Human Rights Act does not protect independent contractors. *Birchem v. Knights of Columbus*, 116 F.3d 310 (8th Cir. 1997).

Overweight.

The mere assertion that one is overweight or obese is not alone adequate to make a claimant one of the class of persons afforded relief for discrimination; something more must be shown. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987).

Where plaintiff weighed over 300 pounds, but testified that she did not consider her weight to be a disability, and that she was unaware of any specific physical problem underlying her overweight condition, mentioned no other physical consequence of her weight, offered no expert evidence equating it to a disability or showing how it impaired her abilities, she failed to show a material issue of fact about being physically handicapped, and therefore, the trial court did not err in dismissing her discrimination claim. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987).

Physician Suffering from Addiction.

Assuming arguendo that alcoholism and drug addiction are handicaps under this chapter and that the defendants' actions in requiring physician to take leave and to secure additional patient care training were because of those handicaps, as a matter of law, the physician was not the victim of a discriminatory practice because the defendants' actions were based on "a bona fide occupational qualification reasonably necessary" for a physician. *Soentgen v. Quain & Ramstad Clinic*, 467 N.W.2d 73 (N.D. 1991).

Sex Discrimination.

—Disparate Treatment.

Where plaintiff, who alleged a sex-based disparity in severance pay, was not an elected

officer, but the men who left defendant company were, the record supported the court's finding of no sex-based disparity in severance pay; therefore, that finding was not clearly erroneous. *Schweigert v. Provident Life Ins. Co.*, 503 N.W.2d 225 (N.D. 1993).

—Manner of Termination.

Where plaintiff and several other women were called into a room, and told that their employment would end ten days later, but others who were terminated were notified individually and received more than ten days notice, the court's findings, which attributed the manner in which plaintiff was terminated to the insensitivity of the officer who fired her, and not to his "discriminatory animus," were not clearly erroneous. *Schweigert v. Provident Life Ins. Co.*, 503 N.W.2d 225 (N.D. 1993).

Standard of Review.

A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, although there is some evidence to support it, the reviewing court, on the entire evidence, is left with a definite and firm conviction that a mistake has been made. *Schweigert v. Provident Life Ins. Co.*, 503 N.W.2d 225 (N.D. 1993).

Training and Transfer.

A sheriff cannot unfairly refuse to consider training and transfer for a person while later hiring applicants of another race or sex into the same division for training and transfer. *Moses v. Burleigh County*, 438 N.W.2d 186 (N.D. 1989).

Collateral References.

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws, 44 A.L.R.4th 1044.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 A.L.R.4th 310.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap, 78 A.L.R.4th 265.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap, 81 A.L.R.4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap, 82 A.L.R.4th 26.

Application of state law to age discrimination in employment, 51 A.L.R.5th 1.

Law Reviews.

Civil Rights: Race and Sex Discrimination in Refusal to Train Correctional Officer is Not Excused by Contract Under North Dakota

Human Rights Act, 66 N.D. L. Rev. 537
(1990).

14-02.4-04. Employment agency's discriminatory practices. It is a discriminatory practice for an employment agency to accord adverse or unequal treatment to a person in connection with an application for employment, referral, or request for assistance in procurement of employees because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance; or to accept a listing of employment on that basis.

Source: S.L. 1983, ch. 173, § 4; 1995, ch. 144, § 3.

14-02.4-05. Labor organization's discriminatory practices. It is a discriminatory practice for a labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or condition of employment because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

Source: S.L. 1983, ch. 173, § 5; 1995, ch. 144, § 4.

14-02.4-06. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours which activity is not in direct conflict with the essential business-related interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

Source: S.L. 1983, ch. 173, § 6; 1991, ch. 142, § 4; 1993, ch. 140, § 3; 1995, ch. 144, § 5.

14-02.4-07. Requiring security clearance not discriminatory. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment in a position if the occupancy of the

position, or access to the premises upon which the duties of the position are performed, is subject to a requirement imposed in the interest of the national security of the United States under a security program administered under a statute of the United States or an executive order of the president and the individual has not fulfilled or has ceased to fulfill that requirement.

Source: S.L. 1983, ch. 173, § 7.

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental disability, or marital status. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental disability, or marital status in those circumstances where religion, sex, national origin, physical or mental disability, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours and which is not in direct conflict with the essential business-related interests of the employer, if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

Source: S.L. 1983, ch. 173, § 8; 1991, ch. 142, § 5; 1993, ch. 140, § 4; 1995, ch. 144, § 6.

Bona Fide Occupational Qualification.

Prohibiting employees from operating off-hours businesses that would benefit from confidential information that the employees' positions within the company would enable them to secure from competitors, resulting in resentment towards, and termination of business with, the employer is a bona fide occupational qualification that is reasonably and rationally related to a particular employee or group of employees. *Patland v. Quaker State Corp.*, 62 F.3d 1070 (8th Cir. 1995).

Physician Suffering from Addiction.

Assuming arguendo that alcoholism and drug addiction are handicaps under this chapter and that the defendants' actions in requiring physician to take leave and to secure additional patient care training were because of those handicaps, as a matter of law, the physician was not the victim of a discriminatory practice because the defendants' actions were based on "a bona fide occupational qualification reasonably necessary" for a physician. *Soentgen v. Quain & Ramstad Clinic*, 467 N.W.2d 73 (N.D. 1991).

14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

Source: S.L. 1983, ch. 173, § 9; 1991, ch. 142, § 6; 1995, ch. 144, § 7.

14-02.4-10. Employment of individual — Exceptions — Physical examination — Investigation of medical history.

1. Sections 14-02.4-03 through 14-02.4-06 do not apply to business policies or practices relating to the employment of an individual by the individual's parent, grandparent, spouse, child, or grandchild, or in the domestic service of a person.
2. The employment of one person in place of another, standing by itself, is not evidence of a discriminatory practice.
3. After a conditional offer of employment, it is not discriminatory practice for an employer, employment agency, or labor organization to:
 - a. Require a person to undergo physical examination for the purpose of determining the person's capability to perform the essential functions of the job with or without reasonable accommodations if every entering employee in the same job category is subjected to the examination; or
 - b. Conduct an investigation as to the person's medical history for the purpose of determining the person's capability to perform available employment if every entering employee in the same job category is subjected to the investigation.
4. Medical history obtained under this section must be collected and maintained separate from nonmedical information and must be kept confidential.

Source: S.L. 1983, ch. 173, § 10; 1995, ch. 145, § 1.

14-02.4-11. Rights of veterans. Nothing contained in sections 14-02.4-03 through 14-02.4-06 repeals or modifies a federal, state, or local statute, regulation, or ordinance creating special rights or preference for veterans.

Source: S.L. 1983, ch. 173, § 11.

14-02.4-12. Discriminatory housing practices by owner or agent. It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:

1. Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance;
2. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance; or
3. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

Source: S.L. 1983, ch. 173, § 12; 1995, ch. 144, § 8.

Collateral References.

State civil rights legislation prohibiting sex discrimination in housing, 81 A.L.R.4th 205.

14-02.4-13. Discriminatory housing practice by financial institution or lender. It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection therewith, based on the race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance of the person seeking the loan or financial assistance.

Source: S.L. 1983, ch. 173, § 13; 1995, ch. 144, § 9.

Evidence of Discrimination.

Where a mortgagor's evidence of race discrimination consisted solely of the fact that he was married to a Native American at the time

he sought, and was denied, a loan application, he failed to present a prima facie case of, or to raise a genuine issue of material fact regarding, race discrimination. *First Interstate Bank v. Rebarchek*, 511 N.W.2d 235 (N.D. 1994).

14-02.4-14. Public accommodations — Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public accommodations to fail to provide to a person access to the use of any benefit from the services and facilities of the public accommodations; or to give adverse, unlawful, or unequal treatment to a person with respect to the availability to the services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available because of the person's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

Source: S.L. 1983, ch. 173, § 14; 1993, ch. 45, § 2; 1995, ch. 144, § 10. requiring construction of handicapped access facilities in buildings open to public, 82 A.L.R.4th 121.

Collateral References.

Validity and construction of state statutes

14-02.4-15. Public services — Discriminatory practices. It is a discriminatory practice for a person engaged in the provision of public services to fail to provide to a person access to the use of and benefit thereof, or to give adverse or unequal treatment to a person in connection therewith because of the person's race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

Source: S.L. 1983, ch. 173, § 15; 1995, ch. 144, § 11.

14-02.4-15.1. Discrimination in governmental contracts and programs prohibited. A governmental entity may not discriminate against any health care institution or any private agency in any grant, contract, or program because of the institution's or agency's refusal to permit, perform, assist, counsel, or participate in any manner in any health care service that violates the institution's or agency's written religious or moral policies.

Source: S.L. 1997, ch. 144, § 1.

Effective Date.

This section became effective August 1, 1997.

14-02.4-16. Advertising public accommodations or services — Discriminatory practices — Exceptions. It is a discriminatory practice for a person to advertise or in any other manner indicate or publicize that the patronage of persons of a particular race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not prohibit a notice or advertisement banning minors from places where alcoholic beverages are being served.

Source: S.L. 1983, ch. 173, § 16; 1995, ch. 144, § 12.

14-02.4-17. Credit transactions — Discriminatory practices. It is a discriminatory practice, except as permitted or required by the Equal Credit Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure credit, restrict the amount or use of credit extended, impose different terms or conditions with respect to the credit extended to a person, or item or service related thereto because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance. This section does not prohibit a party to a credit transaction from considering the credit history of a person or from taking reasonable action thereon.

Source: S.L. 1983, ch. 173, § 17; 1995, ch. 144, § 13.

14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination — Threats or reprisals. It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of any device to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental disability, status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.

Source: S.L. 1983, ch. 173, § 18; 1991, ch. 142, § 7; 1995, ch. 144, § 14.

tain Relief" under the 1995 Legislative Enactments of the North Dakota Workers' Compensation Act, 72 N.D. L. Rev. 325 (1996).

Law Reviews.

Are Employees Obtaining "Sure and Cer-

14-02.4-19. Actions — Limitations. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within

three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to housing or public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained housing or public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

Source: S.L. 1983, ch. 173, § 19; 1991, ch. 144, § 1.

Collateral References.

Right to jury trial in action under state civil rights law, 12 A.L.R.5th 508.

14-02.4-20. Relief. If the court determines that the respondent has engaged in or is engaging in an unlawful practice, the court may enjoin the respondent from engaging in such unlawful practice and order such appropriate relief as will be appropriate which may include, but is not limited to, temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date the complainant has filed a sworn charge with the equal employment opportunity commission or filed the complaint in the state court. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. In any action or proceeding under this chapter the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs.

Source: S.L. 1983, ch. 173, § 20.

Attorney Fees.

A candidate for employment who prevailed in a sex discrimination suit was entitled to seek relief through the district court under this act. If she prevailed, the court could award reasonable attorney's fees under this section, but she could not be awarded attorney's fees under section 54-44.3-07. *Berger v. State Personnel Bd.*, 502 N.W.2d 539 (N.D. 1993).

lation forbidding job discrimination on account of handicap, 78 A.L.R.4th 435.

Right to jury trial in action under state civil rights law, 12 A.L.R.5th 508.

Law Reviews.

Civil Rights: Race and Sex Discrimination in Refusal to Train Correctional Officer is Not Excused by Contract Under North Dakota Human Rights Act, 66 N.D. L. Rev. 537 (1990).

Collateral References.

Damages and other relief under state legis-

14-02.4-21. Optional mediation by department of labor — Relief — Appeals — Records exempt. The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and

information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The commissioner may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the department of labor may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of fair employment practices pursuant to the agreement. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts under this section.

Source: S.L. 1983, ch. 173, § 21; 1991, ch. 144, § 2; 1995, ch. 146, § 1; 1997, ch. 293, § 1.

Effective Date.

The 1997 amendment of this section by section 1 of chapter 293, S.L. 1997 became effective August 1, 1997.

Appendix E



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

HC3 Box 2 • New Town, North Dakota 58763-9402

North Dakota Advisory Committee to the United States Commission on Civil Rights

Testimony of Russell D. Mason, Sr.

Chairman

Three Affiliated Tribes

Hearing held in Fargo, North Dakota

September 24, 1997

TRIBAL BUSINESS COUNCIL
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COUNCIL MEMBER
Thomas BirdBear
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(701) 627-4785

COUNCIL MEMBER
Edwin Hall
Four Bears
(701) 627-3944

COUNCIL MEMBER
Tex G. Hall
West Segment
(701) 759-3377

To the distinguished members of the North Dakota Advisory Committee and officials of the United States Commission on Civil Rights: I thank you for the opportunity to present some of my views concerning discrimination and civil rights enforcement in North Dakota. For the information of the Advisory Committee, I am the Chairman of the Three Affiliated Tribes, which are the Mandan, Hidatsa and Arikara Nations, and I also serve as the Chairman of United Tribes Technical College Board of Directors

First, I want to apologize for not being present today, as I am out of state on issues of national importance to the tribes in North Dakota. However, I am confident that Tom Disselhorst, one of our staff attorneys, can adequately express some of my views on the issues before the Advisory Committee.

The Advisory Committee has asked input on three critical issues, which I will address in turn. The first is information on the extent of discrimination in North Dakota. From the standpoint of the Three Affiliated Tribes, of which I am Chairman, one can look at a map of North Dakota and see that the Three Affiliated Tribes and its members, and quite likely the other Indian Tribes and nations in North Dakota, have suffered from discriminatory treatment, and in our case, quite recently. Over forty years ago, our homes, and my home in Elbowwoods, North Dakota on the Missouri bottomlands we had known for centuries were swallowed up by the rising waters of Lake Sakakawea, created behind the Garrison Dam. The Garrison dam, as are most of the dams along the Missouri river, is conveniently located just south and east of our Fort Berthold Reservation. The dam is positioned such that the largest part of the lake created behind the dam flooded reservation lands.

The flooding of our lands largely destroyed our generally self-sufficient society, forcing Tribal members to higher, less fertile and less productive land, and separating our tribal members by vast distances. Where once we had a bridge a few miles away to connect both sides of our communities, separated only by a few hundred feet of river, we now must travel 120 miles from the "New Town" created for us to our communities on the south and east side of the lake. I believe the placement of the Garrison dam, calculated to destroy the heart of our reservation, is the rankest form of discrimination, with which we must live everyday.

**Statement of Russell D. Mason, Sr.
Chairman, Three Affiliated Tribes
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 2 of 5**

Despite the dislocation and problems caused by the dam and the lake, I believe our people are now poised to move forward. We are set to begin to receive later this year compensation for our losses from the United States, in the form of a so-called "Equitable Compensation Fund", the interest from which the tribe is to receive in perpetuity. Our proceeds from this fund must be used to provide collective benefits for our people. That is what brings me to the issues at hand: the extent of discrimination in North Dakota and whether existing enforcement mechanisms are adequate to redress potential civil rights violations.

If the members of the Three Affiliated Tribes are to be able to take full advantage of the benefits the "Equitable Compensation Fund" can bring, we must be able to pursue our goals without fear of discrimination, or at the least with the knowledge that adequate mechanisms exist to allow civil rights violations to be remedied. At present, I do not believe such mechanisms exist in North Dakota. The following are a few of the examples of discriminatory behavior which are not generally remedied by what systems are available in North Dakota.

In the past twenty years, our Tribe has been subjected to several lawsuits regarding the boundaries of our reservation. The so-called "Boundary Committee", composed of local non-Indian businessmen and others with grudges against the Tribe, stirred up much anti-Indian sentiment among the local population in our area. For many years, civil conversations between local non-Indian townspeople in the City of New Town and Tribal members were difficult.

As the Tribe has become financially more powerful, with the arrival of Indian gaming, some of these barriers are coming down. Despite that, we have recently had to seek the assistance of the U.S. Department of Justice in a successful effort to set up voting districts in a local school board, previously all white, in Parshall, North Dakota in the northeastern part of the reservation where the activity to diminish the reservation boundaries had been the highest. Now, in a community where more than 50% of the elementary age children are Tribal members, two of five school board members are also Tribal members.

Aside from the school board situation in Parshall, the animosity of persons seeking to diminish our boundaries has carried over into several areas resulting in discrimination against our Tribal members. With some exceptions, employment of Indian people at local businesses run by white persons is low or non-existent. We know that some local businesses do everything they can to avoid complying with our Tribal Employment Rights laws, although such laws are permitted under the Civil Rights Act of 1964.

**Statement of Russell D. Mason, Sr.
Chairman, Three Affiliated Tribes
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 3 of 5**

Credit is another area where discrimination still exists. While because of our new found cash flow we are developing some strong relationships with relatively local banking institutions, getting credit at the local bank in New Town is still difficult for many of our members. Off reservation institutions find a variety of reasons to deny home mortgage loans.

Another area related to credit is the ability to cash checks. Checks are almost universally accepted at North Dakota businesses, but for Indian persons, it is not such a simple matter. New restrictions may appear when an Indian person of otherwise ample means, and without a history of bad checks, tries to cash one at a business where credit has not been previously established.

Another continuing problem area is at least the perception of how Indian people are treated in North Dakota's criminal system. One of our staff attorneys has been a Tribal judge and actively participated in the tribal-state court forum, comprised of state and tribal court officials, including judges, over the past three years. She notes that in that forum, some state officials perceived the reservations as safe harbors for Indian criminals because of the lack of state jurisdiction on the Indian reservations. Such an attitude cannot help but influence how Indians are treated in North Dakota's courts.

But the issue goes much beyond perception. It is the belief of some of our attorneys that Indians are still grossly under represented on state and federal juries deciding the fate of criminal defendants, Indian and non-Indian alike. While no recent study has been done of this issue, the inability of having Indian persons selected for juries and the ease with which peremptory challenges can remove the one or two Indian persons who might be available to serve on a jury continues to create the impression of unequal justice for Indian people. This perception is not eased by the statistics relating to the numbers of Indian people incarcerated at the state's penal institutions. A statistic cited by Senator LaFountain, a member of your Committee, is that more than one-third of all prisoners at the State Penitentiary in Bismarck are Native American.

These are just a few of the problems relating to discriminatory treatment of which I am aware that affect the members of my Tribe. There is also no doubt in my mind that many discriminatory acts are committed against Indian people about which the person discriminated against does nothing, because of the lack of knowledge of what can be done to remedy the act, a lack of local institutions to provide a remedy and the belief that even if a complaint is made, little will be done. It is my opinion that all of these attitudes are fostered by the lack of local civil rights enforcement mechanisms in North Dakota.

**Statement of Russell D. Mason, Sr.
Chairman, Three Affiliated Tribes
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 4 of 5**

Thus, the true extent of discrimination here cannot be gauged by statistics about employment discrimination as have been stated in other hearings by the State Labor Department, which has a contract to investigate and negotiate settlements in employment discrimination cases. To use the inadequacy of the State Department of Labor's efforts as an example: The Department of Labor cannot bring an action in court against an employer who is discriminating. That task is left to the Equal Employment Opportunity Commission, which has an understaffed regional office in Denver charged with investigating employment discrimination complaints. That staff is not familiar with North Dakota's employment situation, does not generally travel to North Dakota to do on site investigations, and rarely, if ever, brings a case to court involving employment discrimination in North Dakota. The person discriminated against in employment is left with a "right to sue letter", and faces the prospect of an expensive Federal court action or an equally expensive court action under North Dakota's Human Rights Act. These are rarely meaningful remedies in North Dakota.

Further, in the North Dakota Department of Labor there is no education component associated with its investigative efforts. One of the most important goals of any Human Rights Commission is to educate, not just employers, but also employees about how to recognize a discriminatory act and what can be done about it. Further, with but one staff member investigating employment discrimination claims from Bismarck, North Dakota, efforts to understand where there might be systemic discrimination and patterns of discrimination are never undertaken. Nor are these the kinds of problems that local attorneys are likely to uncover, very few of whom specialize in civil rights litigation and who, when they are hired, are investigating a case of discrimination for a single client.

Nor are the Department of Labor's investigative services very well known, again from lack of staff and funding, particularly in rural areas. Even when people do know about it, its lack of teeth suggests that it will not be able to accomplish very much in terms of an effective remedy.

The same can be said of many of the other problems indicating discrimination against Indian people I have mentioned. Where does one complain about the discriminatory act of having a different standard for cashing checks for Indians and non-Indians, or denial of credit, or discrimination in employment by the State of North Dakota or one of its agencies, or discrimination in housing? The answers are hard to come by.

A state agency charged with the task of providing education about civil rights and investigation of civil rights complaints, and empowered to bring the appropriate actions in state court if the investigation warrants it and no other solution is available is certainly one

Statement of Russell D. Mason, Sr.
Chairman, Three Affiliated Tribes
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 5 of 5

answer. Those who say that North Dakota has existed for more than thirty years since the passage of the Civil Rights Act of 1964 and who say that no Human Rights Commission is needed have simply not faced discrimination and felt its devastating consequences when no remedy to correct the discrimination was readily available. Without an agency ready to tackle problems of discrimination head on, the true extent of discrimination in North Dakota will never be known.

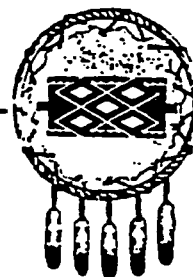
For the members of the Three Affiliated Tribes, poised, as I said earlier, to begin traveling the long road to full economic recovery from the devastation of the "great flood", as we call the creation of Lake Sakakawea, we need to know that such remedies will exist to help correct the discrimination we know will at times occur to block our path. It is my hope that the efforts of your Advisory Committee can help spur the State of North Dakota along towards making the remedies we need for civil rights violations available to all.

Thank you for your consideration of my views.

Appendix F



UNITED TRIBES TECHNICAL COLLEGE
3315 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504 • PHONE 701-255-3285 • FAX 701-255-1844



North Dakota Advisory Committee to the United States Commission on Civil Rights

Testimony of David Gipp
President
United Tribes Technical College

Hearing held in Fargo, North Dakota
September 24, 1997

Thank you for the opportunity to present my views concerning an issue about which I have a lifelong commitment, civil rights enforcement in North Dakota.

First, I would like to give you a brief description of United Tribes Technical College "United Tribes". United Tribes was founded in 1969 by the North Dakota Indian tribes as the United Tribes of North Dakota Development Corporation. Soon, United Tribes was operating a vocational training center on the grounds of Fort Lincoln, an army base constructed in the early years of this century to replace the old Fort Lincoln which was the base for Custer's wars against the Indians. The old buildings of the fort became our classrooms, dormitories and administrative buildings which have now become United Tribes Technical College, serving more than 300 Indian students per year from more than 45 tribes and providing vocational training and two year degrees in a broad variety of disciplines.

Our students are mostly housed on our campus, in dormitories, apartments and single family dwellings. We have a number of facilities and services for our students on campus, including child care, cafeteria, gymnasium a chemical health center, counselors, both academic and personal, a financial aids office, an arts and cultural center and a bookstore. United Tribes also seeks to provide placement services for our students as they graduate and seek employment.

Nevertheless, our students are often off campus seeking many services in the local city of Bismarck. It is in this vein that I want to discuss the issues for which you seek information.

Bismarck has long been a very typical near reservation community, viewed by most Indian persons who have lived there as discriminatory. Just a little more than twenty years ago, when we were using VISTA volunteers at our facility, they observed, among other things, that Bismarck's Patterson Hotel, now an apartment complex for senior citizens, had a notice under the glass that said "We do not rent to Indians." Our local city judge had different bail

Statement of David Gipp
President, United Tribes Technical College
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 2 of 3

schedules for Indians and non-Indians, with the Indian persons more likely to spend the night in jail rather than being released on their own recognizance. The gift shop at the airport sold a shot glass that depicted an Indian person in various stages of drunkenness on the side of the glass. Our local clerk of county court had a different system for providing identification cards for Indians and non-Indians, with the Indians being required to provide more references before such a card was issued.

While these more egregious examples of racist behavior have largely been eliminated, problems remain. Although we have not conducted a formal survey of our students about adverse discriminatory experiences they have had in Bismarck, we are aware generally of several problems locally. One has already been brought to the attention of the Justice Department in the past several years involving discriminatory placement of Indian children special education classes in local schools. Although this situation did not involve our students, and to my knowledge has now been largely corrected, it was indicative to me of larger problems within our community that do affect our students.

For example, our students frequent the malls and various stores of Bismarck. Consistently for a number of years, students have complained that they are followed and occasionally harassed by security forces at such establishments.

Like many other Indian people, our students, and sometimes the Indian members of our faculty and administration are unable to cash checks locally. At least one lawsuit has been filed about such practices, with mixed results. Credit opportunities can also be limited.

Each year our college sponsors a four day pow-wow which is now popularly associated with United Tribes and the end of summer. Despite our best efforts, and despite the fact that the United Tribes International Pow-wow brings in several million dollars to the City of Bismarck each year, incidents of discrimination occur almost every year against some of our out-of-town guests. For example, last year a guest of our pow-wow was eating with his spouse at a local restaurant. When he paid with a fifty dollar bill, he was returned only a few dollars in change. When he went to complain, in an unthreatening fashion, the waitress commented with words to the effect "This is always the way you people act." The racial reference was completely uncalled for and certainly sullied our visitor's stay in Bismarck.

More serious have been problems with housing discrimination. One of our faculty members, from Sri Lanka, was discriminated against several times in his efforts to find housing for himself and his family. The stories are many of landlords who vow not to rent to Indian persons because of one unfortunate incident with an Indian tenant. While we are thankful for the presence of the North Dakota Fair Housing Council, we know that its

**Statement of David Gipp
President, United Tribes Technical College
North Dakota Advisory Committee to the U.S. Commission on Civil Rights
September 24, 1997
Page 3 of 3**

efforts are limited by a lack of resources. In the past, some lawsuits have been filed but with little result. To be sure, realtor's associations do help. Discrimination in housing is not uniformly present among all rental units in Bismarck.

Perhaps most troubling in the capital of North Dakota is the lack of Indian employees in state government. Except for positions that relate directly to Indians and tribal issues, there are almost no Indian employees at major state agencies headquartered in Bismarck. While one can, to some degree, say that few Indian people apply for positions at the state capitol building, that does not entirely explain the lack of Indian employees there. Is this a case of systemic discrimination? Without a human rights commission to investigate, it is very hard to prove one way or the other, but the lack of Indian employees suggests the answer.

Because we are constantly seeking to place our graduates in productive jobs, employment opportunities are critical for us. Complaining to the State Labor Department about employment discrimination in state government does not seem likely to produce adequate results.

I am certain that many acts of discrimination against our students and faculty go unreported and no effort is made to seek a remedy, primarily because of the remoteness of the agencies charged with handling these cases. What I would welcome is the assistance of the U.S. Civil Rights Commission in conducting a survey of discriminatory acts against our students. I believe such a study would begin to determine the extent of discrimination generally in Bismarck. These are the types of studies necessary to allow a real determination of the extent of discrimination in North Dakota.

Given the history of treatment of Indian people by our government, it has been difficult for me to understand why our state legislators do not believe a state human rights commission is necessary, in a state where Indian people are the only significant racial minority. It is especially difficult to understand because a state human rights commission would essentially be locally controlled, appointed, presumably, by our governor or some other combination of political and community leaders. The advantage for United Tribes and its students would be immediate access to an agency that could produce relatively quick results.

Now, the options are to go to Denver for housing and employment discrimination cases, and other places for discriminations involving credit and public services, even though our North Dakota Human Rights laws prohibit such discriminatory actions. It is my hope, as also expressed by Chairman Mason, that your Advisory Committee can begin to provide the information and rationale for the establishment of a Human Rights Commission in North Dakota.

U.S. COMMISSION ON CIVIL RIGHTS
Rocky Mountain Regional Office
1700 Broadway
Denver, CO 80290

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