

Native Americans in South Dakota: An Erosion of Confidence in the Justice System

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

March 2000

A report of the South Dakota Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. Statements and recommendations in this report should not be attributed to the Commission, but only to participants at the community forum or the Advisory Committee.

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An Erosion of Confidence in the Justice System

Letter of Transmittal

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

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As part of its responsibility to assist the Commission in its factfinding function, the South Dakota Advisory Committee submits this Statement of Concerns, Conclusions, and Recommendations for your consideration. The document, approved by a committee vote of 12 in favor and 1 opposed, is based on the Advisory Committee's December 6, 1999, public forum in Rapid City, where nearly 100 persons addressed issues affecting the administration of justice and Native Americans in South Dakota. Among those participating were: State prosecutors, local and tribal law enforcement officials, the United States attorney, FBI, Civil Rights Division of the U.S. Department of Justice, tribal officials, Native American advocacy organizations, victims of alleged discrimination, and many other private citizens. While there was a diversity of views presented, it is clear that the overwhelming majority of Native Americans heard by the Advisory Committee believe there is a crisis in the justice system that needs immediate attention. Consistent information presented at the forum suggests a widespread perception of a dual system of justice, where Native Americans are treated in a disparate and discriminatory manner by the Federal, State, and local criminal justice systems. So pervasive is this belief, that the Advisory Committee believes that much of Indian Country has lost confidence in our democratic institutions.

As noted in the Advisory Committee's Statement, both the Commission and this Committee have previously studied these issues, releasing comprehensive reports more than 20 years ago. It is disturbing that many of the problems identified in these research reports persist to this day. Clearly, there is a need to expeditiously implement strategies for corrective action. For this reason, the Advisory Committee is recommending, among other initiatives, that the Commissioners call for the appointment of a Federal task force to begin immediately addressing inequities in the administration of justice affecting Native Americans. The Advisory Committee also calls for enhanced inclusion of Native Americans in the establishment and implementation of justice and law enforcement policies and practices. The Advisory Committee suggests additional research to measure accurately the extent of disparities in all aspects of the criminal justice system.

Finally, the South Dakota Advisory Committee wishes to express its gratitude to the members of the Commission who participated in the forum and also conducted information-gathering visits to Indian Country prior to the meeting. Unquestionably, the presence of the Commissioners was deeply appreciated by many Native Americans, especially victims of discrimination whose voice so often has gone unheeded. Your presence and concern have in-

creased hope in Indian Country and elevated the prospects for change that are necessary to rebuild trust of Native Americans in our justice system. The South Dakota Advisory Committee pledges its continued support to your efforts as we work together toward the attainment of this important objective.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc S. Feinstein". The signature is written in a cursive, flowing style with some loops and flourishes.

Marc S. Feinstein, *Chairperson*
South Dakota Advisory Committee

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Contents

1. Introduction	1
Recent Cases	2
Historical Perspective	3
Fort Laramie Treaty	3
Wounded Knee 1890, 1973 and the Pine Ridge Shoot-out	4
South Dakota Demographics	5
Native Americans in South Dakota.....	5
Economic Conditions.....	5
Health	6
Crime.....	7
The Border Town of White Clay	9
Criminal Jurisdiction	10
Indian Civil Rights Act.....	11
2. Executive Summary	13
Opening Statements	13
Overview and Background	13
Community Panel	14
Darlene Renville Pipe Boy, Peever	14
Ted Means, Porcupine.....	14
Federal Enforcement Panel	15
Ted McBride, U.S. Attorney, South Dakota	15
James Burrus, Jr., Assistant Special Agent in Charge, Federal Bureau of Investigation, Minneapolis Division.....	16
Julie Fernandes, Special Assistant to Bill Lann Lee, Assistant Attorney General for Civil Rights, Department of Justice	18
State Prosecutors Panel	19
Daniel Todd, State's Attorney, Walworth County.....	20
Kerry Cameron, State's Attorney, Roberts County.....	21
Law Enforcement Panel	23
Robert Dale Ecoffey, Superintendent, Bureau of Indian Affairs, Pine Ridge	23
Community Panel	24
Rosalie Little Thunder, Rapid City	24
Eileen Iron Cloud, Porcupine	24
Faith Taken Alive, McLaughlin	25
Scott German, Agency Village.....	25
Local and Tribal Law Enforcement Panel	26
William Brewer, Director, Department of Public Safety, Oglala Sioux Tribe.....	26
Thomas Hennies, Chief of Police, Rapid City	26
Don Holloway, Sheriff, Pennington County	27
Woodrow Starr, Tribal Police Chief, Standing Rock Sioux Tribe.....	27

Community Panel	28
Floyd Hand, Pine Ridge	28
Elaine Holy Eagle, Rapid City.....	28
Tom Poor Bear, Pine Ridge.....	29
Peggy Redday, Sisseton	29
David Seaboy, Sisseton	30
Mark White Bull, Kenel.....	30
Public Session	31
3. Concerns, Conclusions, and Recommendations	37

Tables

1. Percentage of the Labor Force Unemployed by Reservation, 1997	6
2. Annual Average Rate of Violent Victimization by Race of Victim, 1992–96	8
3. Percentage of Violent Victimizations by Race of Victim and Race of Offender, 1992–96.....	8

1. Introduction

By many accounts racial tensions in South Dakota have heightened over the past year. A recent series of high-profile cases involving the unsolved deaths of several American Indians has brought tensions to the surface. Rumors of coverups by law enforcement, allegations of halfhearted or nonexistent investigations, and seemingly disparate jail sentences have spurred protests throughout American Indian communities, and further strained already tenuous white-Indian relations. Although tension has been exacerbated by the perception of racial injustice surrounding these cases, for some it reflects "a vast cultural divide and a gulf of suspicion and mistrust between Indians and whites in a State that historically was one of the bloodiest battlegrounds between the races during the great westward expansion."¹

In the summer of 1999, in response to widespread claims of unfair treatment at all levels of the State's criminal justice system, the South Dakota Advisory Committee to the U.S. Commission on Civil Rights voted to undertake a project on the administration of justice as it applies to Native Americans. The Committee, composed of South Dakota residents, underscored the importance of determining whether a double standard of justice does indeed exist, from treatment by law enforcement officers through the sentencing phase. Commissioner Elsie Meeks, a member of the Oglala Sioux Tribe from South Dakota and the first Native American to serve as a Commissioner for the national Commission on Civil Rights, had urged the Advisory Committee to look into allegations of injustice, later characterizing the situation in the State as "explosive." As a result, the Advisory Committee hastened its efforts and began planning for a community forum to collect information.

On December 6, 1999, the South Dakota Advisory Committee held a community forum enti-

tled "Native Americans and the Administration of Justice in South Dakota" in Rapid City at the Rushmore Plaza Holiday Inn. Viewpoints from a wide variety of sources were solicited. Accepting invitations to speak before the Committee were Federal enforcement officials, including the South Dakota U.S. attorney, FBI agents, and a Justice Department representative; State's attorneys; a Bureau of Indian Affairs superintendent; local law enforcement, including Rapid City's chief of police and the county sheriff; tribal law enforcement from the Oglala and Standing Rock Sioux Tribes; and community members. The presenters were divided into panels according to topics (e.g., Federal Enforcement panel, State Prosecutors panel, and Community panel), and at the conclusion of each panel's presentations was a question and answer period.

A session for public participation was held from 7:00 p.m. until approximately 11:00 p.m. More than 50 people, most of whom were Native American, spoke of their experiences with South Dakota's criminal justice system and other issues. Many had arrived before the proceedings began at 10:30 a.m. and stayed after the conclusion of the open session, filling the large facility to standing-room-only throughout the day and into the night.

In addition to Elsie Meeks, the Advisory Committee was joined at the forum by four other Commissioners: Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, Christopher Edley, and Yvonne Lee. The Commissioners welcomed the opportunity to hear firsthand accounts of specific cases and general assessments on the state of criminal justice in South Dakota to determine what, if any, action is needed at the Federal level.

South Dakota's two largest newspapers, the Sioux Falls *Argus Leader* and the *Rapid City Journal*, published editorials supporting the Committee's upcoming visit. The *Argus Leader* commented that "the commission's decision to make itself available . . . could not have come at

¹ William Claiborne, "A River of Indian Anger," *Washington Post*, Oct. 23, 1999, p. A3.

a more opportune time" and "we are proud that law enforcement and community leaders are already on record as supporting the commission's visit."² At the community forum, however, some Native Americans expressed concern that nothing would result from the Committee's project and questioned if any effort, Federal or otherwise, could reduce the racial tension and inequalities that have existed, in their view, "forever."

From the statements presented at the forum, the Advisory Committee prepared conclusions and recommendations for the Commission's consideration. These begin on page 37 and follow an executive summary of the proceedings. A transcript of the proceedings will be made available at a later date. The Committee hopes that its project has brought attention to inequities, real or perceived, in South Dakota's justice system and that it has made a step toward reducing racial tension in the State.

The Commission and the South Dakota Advisory Committee have studied administration of justice issues in the State in the past. In 1978 the Commission held hearings in Rapid City (American Indian Issues in the State of South Dakota) and Washington, D.C. (Federal Bureau of Investigation-Indian Reservations; Police Practices), and issued a June 1981 report titled *Indian Tribes: A Continuing Quest for Survival* based on testimony received at the hearings and other research. The South Dakota Advisory Committee held factfinding meetings in 1975 and 1976 addressing law enforcement and justice concerns affecting American Indians and released a report in 1977, *Liberty and Justice for All*, which included findings and recommendations. It is both remarkable and disconcerting that many of the concerns brought before the Commission in the 1970s were the same ones heard more than 20 years later in Rapid City.

Recent Cases

The South Dakota Advisory Committee's decision to hold a forum on administration of justice issues was precipitated by a series of American Indian deaths in Rapid City, Pine Ridge, Mobridge, and Sisseton, all of which have garnered much media attention and deepened the

² Editorial, "S.D. Will Benefit from Hearings on Racial Issues," *Argus Leader*, Nov. 9, 1999, p. 5B.

perception of inequality. In an editorial, the *Rapid City Journal* contends that because of their dissimilarities these cases may not prove the existence of a statewide pattern of injustice, but within their context "the growing perception that Indian lives are not as valued by our justice system becomes understandable."³ A brief summary of the incidents follows.

Since May 1998 the bodies of eight men, six of them American Indian, have been found drowned in the shallow waters of Rapid Creek. Most of the men were homeless; all but one had a high blood-alcohol level. Joint investigations by the Rapid City Police Department and the Pennington County Sheriff's Office have revealed no signs of foul play. The investigative team has sought the assistance of several outside agencies, including the South Dakota Division of Criminal Investigation, the Mid-States Organized Crime Information Center, and the Federal Bureau of Investigation. Approximately 100 people have been interviewed in the search for information, and more than 1,500 pages of documentation have been generated.⁴ Nevertheless, that eight people could accidentally fall into the creek is greeted by skepticism from many. No arrests have been made, but the investigation is ongoing.

On June 8, 1999, just inside the Pine Ridge Reservation in the southwestern part of the State, Wilson Black Elk, Jr., and Ronald Hard Heart, were found beaten and murdered. Many American Indians are convinced that the case is not being aggressively investigated, and rumors abound that law enforcement officials are covering up facts.⁵ (Panelist Tom Poor Bear, a relative of both victims, expressed this sentiment during the community forum.) The rumors have sparked weekly demonstrations calling on the FBI to intensify its efforts. A month after the murders, congressional delegations from South Dakota and Nebraska as well as the U.S. Commission on Civil Rights sent letters to Attorney General Janet Reno informing her of frustration

³ Editorial, "Civil Rights Probe Welcome," *Rapid City Journal*, Nov. 17, 1999.

⁴ Thomas L. Hennies, chief of police, Rapid City Police Department, letter to John F. Dulles, director, U.S. Commission on Civil Rights, Rocky Mountain Regional Office, Dec. 9, 1999.

⁵ Keith Bradsher, "Tensions Grow after 2 Sioux are Killed," *New York Times*, Aug. 27, 1999 <www.nytimes.com/yr/mol/day/news/national/sd-indians.html>.

and suspicion on the reservation and requesting that the FBI commit whatever resources necessary to solve the case in a timely manner. Two days before the Commission's forum in Rapid City, and 5 months after the crime, 25 FBI agents returned to the scene to search for evidence.

In Mobridge, near the Standing Rock Sioux Indian Reservation, the body of 22-year-old Robert Many Horses was found on June 30, 1999. Many Horses, who was born with fetal alcohol syndrome, had been stuffed headfirst into a garbage can. After an autopsy revealed he died of alcohol poisoning, charges against the four white teenagers implicated in his death were dropped. The move outraged many American Indians, who alleged that the defendants received preferential treatment and that prosecutors and law enforcement were lackadaisical in their efforts. The State's attorney for Walworth County, who was responsible for prosecuting the teenagers, spoke at the community forum and said that the evidence simply could not support a manslaughter charge and the decision on whether to pursue misdemeanor charges had not been made.

In the spring of 1999, a pickup truck struck and killed a 21-year-old Native American Sisseton resident, Justin Redday, on a dark, deserted stretch of road in Roberts County. The truck's driver, Mark Appel, then 17, said Redday had been lying in his lane of traffic and that he did not swerve to avoid running over him because "it is illegal to cross the white line, or if it is a solid yellow line, or even if it wasn't, it is illegal to swerve."⁶ The case has fueled racial tensions in the county because Appel, who is white and who was legally drunk at the time of the accident, was indicted by a grand jury for vehicular homicide, but prosecutors later dismissed the indictment and instead charged him with driving while intoxicated. Justin Redday's mother told a South Dakota newspaper, "If my son had been driving, rather than the victim, he'd be serving 20 years."⁷

For the American Indian community, the Redday case demands comparisons to another, that of Melanie Seaboy. A year earlier in Roberts County, 18-year-old Seaboy, an enrolled tribal

member, was driving a car that struck a truck driven by a non-Indian, killing him instantly. Seaboy was legally drunk and charged with vehicular homicide and second-degree manslaughter. Within a month of the accident, she began serving a 14-year prison sentence.

At the community forum, the Roberts County State's attorney, who has taken the brunt of criticism from Native Americans, defended his actions in the Redday and Seaboy cases. He pointed out differences between the cases, namely that Melanie Seaboy at 18 years of age was charged as an adult, whereas Mark Appel could not be. Justin Redday's mother and Melanie Seaboy's father also spoke before the Advisory Committee.

Historical Perspective

Law enforcement issues facing American Indians cannot be understood fully without reference to South Dakota's history and the historical relationship between Indian and non-Indian people. Volumes have been written on events that have defined Indian-white relations: the westward expansion of whites in the late 19th century, broken treaties, and policies aimed at assimilation and acculturation that severed Indians of their language, customs, and beliefs. This report will not explore those subjects, but a brief mention of some may provide a backdrop for the summary of testimony from the community forum that follows.

Fort Laramie Treaty

South Dakota was home to the fiercest battles between Indians and Government troops during the great westward expansion. By the late 1870s, in a fight to keep their land, the Oglala Lakota Sioux led by Red Cloud and Crazy Horse "had been responsible for two of the three greatest defeats ever inflicted on the United States Army by Indians."⁸ It was the Lakota, along with the Cheyenne, who defeated Custer and 200 of his troops at Little Big Horn. By fighting, the Sioux people managed to keep approximately 10 percent of their original tribal land, much greater than the 3.5 percent retained by the Great Plains tribes overall.⁹

⁶ South Dakota Highway Patrol Voluntary Statement Form, May 23, 1999.

⁷ Lee Williams, "Penalty in Road Death Sparks Charges of Racial Injustice," *Argus Leader*, Oct. 15, 1999, p. 1A.

⁸ Vine Deloria, *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 1985) p. 64.

⁹ Microsoft Encarta 2000 CD-ROM, South Dakota Profile, p. 12.

After a series of skirmishes with the Sioux, the U.S. Government in 1868 signed the Fort Laramie Treaty, which set aside 60 million acres of land west of the Missouri River and guaranteed the Indians "absolute and undisturbed use of the Great Sioux Reservation," stating that "no persons . . . shall ever be permitted to pass over, settle upon, or reside in territory described in this article, or without the consent of the Indians pass through the same."¹⁰ But with the discovery of gold in the Black Hills, transgressions in Lakota country soon became commonplace. In November 1875, the Secretary of War predicted trouble in the Black Hills "unless something is done to gain possession of that section for the miners."¹¹ And in February 1877, after obtaining signatures from some tribal members, Congress abrogated the Treaty of 1868 and took possession of the Hills. The Sioux's 60 million acre reservation promptly became 13 million acres.

The Sioux sued the United States for illegal expropriation of the Black Hills, and after more than 40 years of winding its way through lower courts the case went to the Supreme Court. In the 1980 decision the Court upheld a \$17.5 million award to the Great Sioux Nation for the land, and another \$88 million in interest.¹² Justice Blackmun, who authored the opinion, quoted the lower court, stating, "A more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history."¹³ Despite the ruling, the issue continues to be a divisive one between Indians and non-Indians in South Dakota. The Great Sioux Nation refused the money believing that its acceptance would mean the abandonment of any claims it had on the Black Hills. The money is held in a Federal escrow account, and with interest the fund is now in excess of \$500 million.¹⁴ The current governor of South Dakota, William Janklow, recently said, "If I was an Indian, I could under-

stand the shaft, because this land was stolen in spite of the treaty. But we didn't do it, the federal government did it, and now it's leaving us to try to deal with it."¹⁵

Wounded Knee 1890, 1973 and the Pine Ridge Shoot-out

In December 1890, Sitting Bull, who had helped lead the Sioux and Cheyenne against the U.S. Army at Little Big Horn, was killed by Government troops on the Standing Rock Reservation while "resisting arrest." His followers then fled on horseback to what they thought was the sanctuary of Pine Ridge Reservation, 175 miles to the south. The U.S. Army pursued the Sioux and found one group at an encampment near Wounded Knee Creek. In the ensuing confrontation, the Seventh Cavalry gunned down between 150 and 370 Sioux men, women, and children, and lost about 25 of its own men. Custer's avenged regiment received 20 Congressional Medals of Honor. The Wounded Knee massacre "irrevocably affected the Lakota and Sioux people. The event's significance and memory have not diminished throughout the hundred and more years since it occurred."¹⁶

The tragedy at Wounded Knee was followed by a long period of acculturation. Peter Matthiessen writes:

After Wounded Knee, the soldiers were replaced by bureaucrats, including "educators" whose official task was to break down the cultural independence of people. On pain of imprisonment, the Lakota were forbidden the spiritual renewal of traditional ceremonies; even the ritual purification of the sweat lodge was forbidden. They were not permitted to wear Indian dress or to sew beadwork, their children were seized and taken away to government boarding schools at the Pine Ridge Agency, and use of their own language was discouraged.¹⁷

Although many Native Americans point out that they never stopped resisting the seizure of their lands or the subordination of their cultures, the 1960s and 1970s saw an upsurge of Indian activism. In February 1973 members of

¹⁰ Treaty of Fort Laramie with the Sioux, 15 Stat. 635, article II, Apr. 29, 1868.

¹¹ Peter Matthiessen, *In the Spirit of Crazy Horse* (New York: Penguin Books, 1992), pp. 9-13.

¹² *United States v. Sioux Nation of Indians*, 448 U.S. 371, 387 (1980).

¹³ *United States v. Sioux Nation of Indians*, 448 U.S. 371, 387 (1980) (quoting *United States v. Sioux Nation of Indians*, 518 F.2d 1298, 1302 (Ct. Cl. 1975)).

¹⁴ Ian Frazier, *On the Rez* (New York: Farrar, Straus & Giroux, 2000), p. 211.

¹⁵ William Claiborne, "A River of Indian Anger," *Washington Post*, Oct. 23, 1999, p. A3.

¹⁶ James G. Abourezk, *Papers 1970-1983, Wounded Knee 1973 Series*, University of South Dakota, Special Collections <www.usd.edu/library/special/wk73hist.htm>.

¹⁷ Matthiessen, *Crazy Horse*, p. 21.

the American Indian Movement (AIM) began a 71-day occupation of Wounded Knee, by then a small village, to protest mistreatment of tribal people and what they believed was the oppressive leadership of Richard Wilson on the Pine Ridge Reservation. Surrounded by Federal troops, the armed activists demanded that the U.S. Senate investigate conditions on the reservation. For weeks the two sides exchanged tens of thousands of rounds of ammunition, and two Oglala men were killed.¹⁸ After the standoff had ended, 185 tribal people were indicted by Federal grand juries on charges of arson, theft, assault, and "interfering with Federal officers."¹⁹

A few years later, in 1975, tensions between the Sioux and the FBI once again peaked. On June 26, two FBI agents drove onto Pine Ridge Reservation near the village of Oglala. Here a shoot-out occurred in which both agents and one Indian man were killed. The death of the agents provoked one of the largest manhunts in FBI history. Four Indians were subsequently indicted for the killings, but charges against one were dropped and two others were acquitted, with the jury concluding that the men had fired shots in self-defense. The fourth man, Leonard Peltier, is serving consecutive life sentences.

During the 5-month period preceding the 1975 shooting deaths, more incidents of violence were reported on the Pine Ridge Reservation than in the rest of South Dakota combined.²⁰ According to William Muldrow, a former Commission on Civil Rights analyst sent to the reservation, a perception predominated among the Sioux that the FBI, whose responsibility it was to investigate the incidents, was not concerned for the welfare of the tribal people. The Commission received numerous complaints alleging weak investigative efforts on the part of the Bureau during this time.²¹

South Dakota Demographics

The Census Bureau estimated the 1998 population of South Dakota to be 738,171,

¹⁸ Robert Allen Warrior, "Native Americans: The Road to Wounded Knee and Beyond," November 1998 <encarta.msn.com>.

¹⁹ Matthiessen, *Crazy Horse*, p. 82.

²⁰ William F. Muldrow, former U.S. Commission on Civil Rights analyst, background memorandum regarding FBI involvement on Pine Ridge, Nov. 1, 1999, p. 1.

²¹ *Ibid.*

ranking it 45th among States.²² It is among the least urbanized, with only 33 percent of its residents living inside metropolitan areas.²³ Sioux Falls is the largest city in the State with 105,634 residents, followed by Rapid City in the Black Hills with 57,053.²⁴

The estimated white population in South Dakota is 669,007, or 90.6 percent. American Indians are by far the largest minority group, making up 8 percent (59,292) of the population. Only Alaska and New Mexico have larger percentages of American Indian residents. Blacks and Hispanics represent 0.7 and 1.2 percent of the population, respectively.²⁵

Native Americans in South Dakota

Nationwide, American Indians number approximately 1.2 million, with 900,000 living on or near Indian reservations.²⁶ The Bureau of Indian Affairs (BIA), Great Plains Regional Office in Aberdeen, compiles demographic data on its service area encompassing North Dakota, South Dakota, and Nebraska. South Dakota's nine reservations vary in size from Lower Brule, with about 1,200 residents to Pine Ridge, with more than 30,000, making it the second largest reservation in the United States.²⁷

Economic Conditions

Despite a booming economy, nationwide half of the potential work force in Indian Country is unemployed.²⁸ For American Indians in South

²² U.S. Department of Commerce, Bureau of the Census, Population Division, Population Estimates Program, Internet release on Sept. 15, 1999 <www.census.gov/population/estimates/state/st-98-1.txt>.

²³ U.S. Department of Commerce, Bureau of the Census, Population Division, South Dakota Profile, Statistical Abstract of the United States, 1999 <www.census.gov/statab/www/states/sd.txt>.

²⁴ U.S. Department of Commerce, Bureau of the Census, *County and City Data Book: 1994* (Washington, DC: Government Printing Office, 1994), p. 818.

²⁵ U.S. Department of Commerce, Bureau of the Census, Population Division, Population Estimates Program, Internet release on Sept. 15, 1999 <www.census.gov/population/estimates/state/st-98-1.txt>.

²⁶ U.S. Department of the Interior, Bureau of Indian Affairs, *American Indian Today: Introduction* <www.bialaw.fedword.gov/>.

²⁷ U.S. Department of the Interior, Bureau of Indian Affairs, *1997 Labor Market Information on the Indian Labor Force*, p. 1.

²⁸ *Ibid.*, p. iii.

Dakota the statistics are even worse. Unemployment rates for Indians living on or near South Dakota's reservations are shown in table 1. The estimates were collected from the tribes by the BIA and compiled in the Bureau's report, *1997 Labor Market Information on the Indian Labor Force*. (In 1997 the unemployment rate for the white population in South Dakota was 2.7 percent.²⁹)

Table 1
Percentage of the Labor Force Unemployed by Reservation, 1997

Reservation	Percent unemployed
Yankton	85
Cheyenne River	80
Rosebud	74
Standing Rock	74
Pine Ridge	73
Flandreau	71
Crow Creek	68
Lake Traverse (Sisseton)	58
Lower Brule	40

SOURCE: U.S. Department of the Interior, Bureau of Indian Affairs, *1997 Labor Market Information on the Indian Labor Force*, pp. ii, 1.

Even when Indian people are employed, their low wages often keep them below the poverty line. According to the BIA report, 30 percent of adult Indians employed in 1997 were still living below poverty guidelines established by the Department of Health and Human Services.³⁰ The major employers on South Dakota's reservations are the tribes, Bureau of Indian Affairs, and the Indian Health Service.³¹

Of the 10 poorest counties in the United States in 1990, 4 were on Indian reservations in South Dakota.³² The poorest county in the Nation is Shannon County, which includes much of

Pine Ridge Reservation: 63.1 percent of county residents have incomes that fall below the poverty line.³³ The average annual income for families living on Pine Ridge is just \$3,700.³⁴

The effects of poverty are far reaching. According to the director of BIA's Great Plains Regional Office, on South Dakota's reservations "economic depression has manifested itself in the form of suicides, alcohol and drug abuse, juvenile gangs, and dropping out of school, to physical abuse, sexual abuse, and child abuse."³⁵

Health

On average, men in Bangladesh can expect to live longer than Native American men in South Dakota. A study by the Harvard School of Health in conjunction with health statisticians from the Centers for Disease Control found that Native American men living in six South Dakota counties had the shortest life expectancy in the Nation. The study shows a 40-year difference between the longest lived people in the country—Asian American women in parts of the Northeast and Florida who live on average into their late 90s—and Indian men in South Dakota who usually live only into their mid-50s.³⁶

Causes of death among American Indians are outlined in an Indian Health Service report titled *1997 Trends in Indian Health*. The report notes that American Indians die much more often from certain causes than the general population. In 1993, age-adjusted death rates for the following causes were considerably higher for American Indians: alcoholism, 579 percent greater; tuberculosis, 475 percent; diabetes mellitus, 231 percent; accidents, 212 percent; suicide, 70 percent; pneumonia and influenza, 61 percent; and homicide, 41 percent.³⁷ Further, infant mortality in Indian Country is double the

²⁹ U.S. Department of Labor, Bureau of Labor Statistics, *Geographic Profile of Employment and Unemployment, 1997*, tab. 12.

³⁰ U.S. Department of the Interior, Bureau of Indian Affairs, *1997 Labor Market Information on the Indian Labor Force*, pp. iii.

³¹ U.S. Department of the Interior, Bureau of Indian Affairs, demographics report, Jan. 5, 2000, prepared for Patrick Duffy, special assistant to Commissioner Elsie Meeks, tab 1 (hereafter cited as BIA demographics report).

³² Frazier, *On the Rez*, p. 172. Mr. Frazier cites from 1990 census data. Ibid.

³³ Ibid.

³⁴ Allies of the Lakota Web site <www.lakotamall.com/allies/pineridgefacts.htm>.

³⁵ BIA demographics report, tab 1.

³⁶ *Harvard Public Health Review*, "Study Finds 'Life Gap' in U.S." <www.hsph.harvard.edu/review/life_gap.shtml>. The study is titled *U.S. Burden of Disease and Injury*.

³⁷ U.S. Department of Health and Human Services, Indian Health Service, *1997 Trends in Indian Health*, p. 6. Rates are based on the IHS service area and have been adjusted for miscoding of Indian race on death certificates. American Indian death rates are compared with "U.S. all races" category. Ibid.

national average,³⁸ and Pine Ridge Reservation has the highest infant mortality rate in the Nation.³⁹

Crime

In an October 1997 report, the Justice Department's Criminal Division concluded "there is a public safety crisis in Indian Country." While most of the Nation has witnessed a drastic reduction in serious crime over the past 7 years, on Indian reservations crime is spiraling upwards. Between 1992 and 1996, the overall crime rate dropped about 17 percent, and homicides were down 22 percent. For the same period, however, the Bureau of Indian Affairs reported that murders on America's Indian reservations rose sharply. Some tribes, the Justice Department report says, "have murder rates that far exceed those of urban areas known for their struggles against violent crime." And other violent crimes parallel the rise in homicide.⁴⁰

Tribal law enforcement agencies do not have the resources to meet their growing caseloads. The Criminal Division's report concluded, "The single most glaring problem is a lack of adequate resources in Indian Country. Any solution requires a substantial infusion of new money in addition to existing funds." A chronic shortage of personnel plagues most agencies. For example, in 1996 Indian Country residents were served by less than one-half the number of officers provided to small non-Indian communities.⁴¹ Tribal officers are also in dire need of training. According to the BIA, no reservation in South Dakota has a fully staffed, adequately trained law enforcement program.⁴²

In February 1999, the Department's Bureau of Justice Statistics issued what many consider to be the first comprehensive analysis of Indians and crime,⁴³ and "the findings reveal a disturb-

ing picture of American Indian involvement in crime as both victims and offenders."⁴⁴ The severity of the problem, affecting Indians of all ages and socioeconomic backgrounds, surprised even the report's authors. "We now know that American Indians experience a much greater exposure to violence than other race groups," Lawrence A. Greenfeld told reporters. "I was very surprised," he said, "the common wisdom was that blacks experience the highest exposure to violence. And when we release the [crime] survey results year after year, that was the result. This adds a new dimension to our understanding of the problem."⁴⁵

The study finds that American Indians experience per capita rates of violence which are more than twice those of the U.S. population.⁴⁶ From 1992 through 1996 the average annual rate of violent victimizations among Indians 12 years and older was 124 per 1,000 residents, compared with 61 for blacks, 49 for whites, and 29 for Asians (see table 2).⁴⁷ The rate of violent crime experienced by American Indian women is nearly 50 percent higher than that reported by black males.⁴⁸

The report also found that in 7 out of 10 violent victimizations of American Indians the assailant was someone of a different race, a substantially higher incidence of interracial violence than experienced by white or black victims (see table 3). Among white victims, 69 percent of the offenders were white; similarly, black victims are most likely to be victimized by a black assailant (81 percent). For American Indian victims of rape/sexual assault, the offender is described as white in 82 percent of the cases.⁴⁹

Alcohol is more often a factor in crimes committed by and against American Indians than for other races. Seventy percent of Indians in local jails for violent crimes had been drinking when they committed the offense, nearly double the rate for the general population.⁵⁰ In 55 percent

³⁸ Ibid.

³⁹ Allies of the Lakota Web site <www.lakotamall.com/allies/pineridgefacts.htm>.

⁴⁰ U.S. Department of Justice, Criminal Division, *Report of the Executive Committee for Indian Country Law Enforcement Improvements, Final Report to the Attorney General and the Secretary of the Interior*, October 1997 <www.usdoj.gov/otj/icredact.htm>.

⁴¹ Ibid.

⁴² BIA demographics report, tab 1.

⁴³ The report is titled *American Indians and Crime* (NCJ 173386). In the study, the American Indian category includes Alaska Natives and Aleuts.

⁴⁴ U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime*, February 1999, p. iii.

⁴⁵ JS Online, "Crime against Indians Widespread" <www.jsonline.com/news/0215indians.asp>.

⁴⁶ U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime*, February 1999, p. v.

⁴⁷ Ibid., p. 3.

⁴⁸ Ibid., p. vi.

⁴⁹ Ibid., p. 7.

⁵⁰ Ibid., p. 29.

Table 2
Annual Average Rate of Violent Victimization by Race of Victim, 1992–96

Number of victimizations per 1,000 persons age 12 or older in each racial group

	All races	American Indian	White	Black	Asian
Violent victimizations	50	124	49	61	29
Rape/sexual assault	2	7	2	3	1
Robbery	6	12	5	13	7
Aggravated assault	11	35	10	16	6
Simple assault	31	70	32	30	15

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime*, February 1999, p. 3.

Table 3
Percentage of Violent Victimization by Race of Victim and Race of Offender, 1992–96

Race of victim	Race of offender			
	Total	Other	White	Black
All races	100%	11%	60%	29%
American Indian	100	29*	60	10
White	100	11	69	20
Black	100	7	12	81
Asian	100	32	39	29

NOTE: Table excludes an estimated 420,793 victims of violence (3.9% of all victims) who could not describe the offender's race.

* Likely to have been American Indian.

SOURCE: U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime*, February 1999, p. 7.

of violent crimes against American Indians, the victim said the offender was under the influence of alcohol and/or drugs.⁵¹ The offender's use of alcohol is less likely for white and black victims (44 and 35 percent, respectively).⁵²

Other important findings of the study are as follows:

- The arrest rate for alcohol-related offenses among American Indians (drunken driving, liquor law violations and public drunkenness) was more than double that for the total population during 1996. However the drug arrest rate was lower than for other races.
- Almost four in 10 American Indians held in local jails had been charged with a public order offense—most commonly driving while intoxicated.

- During 1996 the American Indian arrest rate for youth violence was about the same as that for white youths.
- On any given day an estimated one in 25 American Indians 18 years old and older is under the jurisdiction of the nation's criminal justice system. This is 2.4 times the rate for whites and 9.3 times the per capita rate for Asians but about half the rate for blacks.
- The number of American Indians per capita confined in the state and federal prisons is about 38 percent above the national average. However, the rate of confinement in local jails is estimated to be nearly 4 times the national average.⁵³

In 1999 Roberts County South Dakota officials retained an outside firm to prepare a feasi-

⁵¹ Ibid., p. 9.

⁵² Ibid.

⁵³ U.S. Department of Justice, Bureau of Justice Statistics, "American Indians are Violent Crime Victims at Double the Rate of the General Population," news release, Feb. 14, 1999 <www.ojp.usdoj.gov/bjs/>.

bility study of current and future needs of the county's jail. The firm's November 1999 report, *Justice Center Planning: Roberts County*, states that over the past 6 years, 75–85 percent of the county's inmates were Native American.⁵⁴ According to the Sisseton-Wahpeton Sioux Tribe, tribal members make up only 23 percent of the Roberts County population.⁵⁵

Incarceration rates for American Indians in South Dakota's State penitentiaries reflect national trends. South Dakota's two State prisons for men house 2,322 inmates. Although American Indians make up only 8 percent of the State's population, they are 21 percent of the State's male prison population. Whites are 76 percent and blacks are 4 percent. In the South Dakota women's prison, which has 202 inmates, 66 percent of the inmates are white, 31 percent are American Indian, and 3 percent are black.⁵⁶ The racial breakdown for juvenile inmates in State facilities is as follows: 63 percent white, 31 percent American Indian, 2 percent black, 1 percent Asian or Pacific Islander, and 3 percent "other."⁵⁷

That Native Americans are arrested and sentenced to prison disproportionately to their numbers in the population is indisputable, but the reasons why are unclear. Many speakers at the Advisory Committee's forum contended that racism plays a role. In 1998 a Mayor's Task Force on Police and Community Relations was formed in Rapid City to look into allegations of police prejudice against Native Americans. At the time, Native Americans were only 8 percent of the city's population but accounted for 51 percent of adults arrested and 40 percent of juveniles arrested.⁵⁸ The task force eventually exonerated the police department of any wrongdoing. Its final report states: "It is true that American Indians are over represented in their involve-

ment in crime. . . . There may be many reasons for this over representation, but this committee does not feel that prejudice is one of the major causes."⁵⁹ The report continues:

It is very apparent to this Committee that some members of the American Indian Community have the perception that racism and selectivity exists in the Rapid City Police Department. However from the examination of formal complaint files and circumstances surrounding certain arrests spoken about at the public hearing . . . it is also apparent that the accusations of prejudice against the Rapid City Police Department are not supported by fact.⁶⁰

Bruce Long Fox, an Indian member of the task force, later told reporters the arrest rates were the product of alcohol, drugs, poverty, and unemployment, not racial bias on the part of police officers.⁶¹

The Border Town of White Clay

Throughout the community forum, the Committee heard from Pine Ridge residents who blame much of the area's crime and social blight on a small Nebraska border town named White Clay. With only 22 residents, all of whom are white, and four stores that sell beer, in many people's eyes the unincorporated town exists for one purpose: to supply the dry reservation with a steady supply of alcohol. (Pine Ridge is the only reservation in South Dakota that still prohibits the sale of liquor within its borders.) The four stores sell more than \$3 million (4 million cans) of beer annually,⁶² with more than 90 percent of their customers coming from the reservation.⁶³ The State of Nebraska also benefits: White Clay businesses paid almost \$88,000 in Nebraska State liquor taxes in 1997, and \$152,000 in State sales taxes.⁶⁴ Tribal police estimate that they issue more than 1,000 DUIs

⁵⁴ Amcon CM and DLR Group, *Justice Center Planning: Roberts County*, Nov. 5, 1999, p. 1.

⁵⁵ Steven D. Sandven, general counsel, Sisseton-Wahpeton Sioux Tribe, letter to Jacob Thompson, vice chairman, Sisseton-Wahpeton Sioux Tribe, Jan. 27, 2000.

⁵⁶ Michael Winder, South Dakota Corrections Department, telephone conversation with Dawn Sweet, U.S. Commission on Civil Rights, Dec. 21, 1999. Note Hispanics are included in the "white" category. Ibid.

⁵⁷ Michael Winder, South Dakota Corrections Department, facsimile to U.S. Commission on Civil Rights, Dec. 21, 1999.

⁵⁸ City of Rapid City, *Report of Mayor's Task Force on Police and Community Relations*, Apr. 7, 1998, p. 1.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ The Associated Press, "Panel Clears Police of Race-bias Allegations: Accusations of Prejudice against American Indians Unfounded, Report Says," *Argus Leader*, Apr. 10, 1998, p. 2D.

⁶² Claiborne, "A River of Indian Anger," p. A3.

⁶³ Frazier, *On the Rez*, p. 125.

⁶⁴ Ibid.

annually on the 2-mile stretch of road between White Clay and Pine Ridge.⁶⁵

Some Native Americans contend White Clay business owners are unfairly taking advantage of people who live on a reservation where alcoholism is rampant. The idea is a hard sell for merchants, who see their existence in terms of free enterprise and supply and demand. One store owner told the *Wall Street Journal*, "The Indians say we exploit them. Well, tell me a business that doesn't. Would you put an air-conditioning business in Antarctica? . . . We offer convenience. That's our business."⁶⁶

A group of U.S. Commission on Civil Rights Commissioners and staff traveled to White Clay the day before the Rapid City forum to hear merchants' perspectives on the controversy. A few residents of Pine Ridge were also present. The White Clay store owners explained to the Commission that over the years they have maintained a friendly relationship with Pine Ridge residents and that racism is not a problem. When questioned about their stores' close proximity to the reservation and the perception of exploitation, the merchants responded that their stores' short walking distance from the reservation serves as a convenience, even a public service, to Pine Ridge residents by decreasing the number of intoxicated drivers on the road. Acknowledging alcoholism as a problem on the reservation, the business owners stated that a detoxification center on the reservation would be a good idea.

The Pine Ridge residents who attended this site visit strongly disagreed with the merchants' description and portrayal of the current state of affairs in White Clay. According to one Pine Ridge resident, Tom Poor Bear, the stores' proximity to the reservation only fuels the alcoholism problem. He stated that most Pine Ridge residents who drive the short 2-mile distance to White Clay travel in cars that often do not have license plates, mufflers, or windshields. He contended that these "Indian cars" could not travel

the longer distances to places like Rushville to purchase alcohol.⁶⁷

Although relations between Pine Ridge residents and White Clay merchants have never been placid, the murders of Wilson Black Elk, Jr., and Ronald Hard Heart have ignited protests calling for White Clay to be shut down. Many tribal members believe their deaths had some connection to alcohol and by extension to White Clay.⁶⁸ (Their bodies were found 100 yards north of White Clay on reservation land.) In late June 1999, Pine Ridge residents began a series of weekly marches into White Clay demanding that the stores close. The first march, which had as many as 1,500 participants, turned violent, with demonstrators looting and burning a store that sold beer and groceries. Later marches have been more peaceful.

More is at stake, however, than the closing of beer stores. A group of Native Americans has gone to court maintaining that according to the details of the 1868 Fort Laramie Treaty, White Clay is actually within the boundaries of Pine Ridge Reservation and should be returned to the Sioux. In 1904 President Theodore Roosevelt ordered the southern edge of Pine Ridge removed to create a buffer zone between white settlers and the Indians, an action counter to the wording of the 1868 treaty. An Oglala Sioux tribal court had ruled that White Clay is indeed part of Pine Ridge. But in February 2000, the group suffered a legal setback when a Sheridan County court ruled that White Clay and the dozens of square miles surrounding it are within the jurisdiction of Nebraska.⁶⁹

Criminal Jurisdiction

Criminal jurisdiction over Native Americans is far too complex to be covered here in detail.⁷⁰ Its governing principles have been established by hundreds of court decisions and statutes over the past 200 years. But a basic understanding of

⁶⁵ Carl Quintanilla, "A Double Homicide Rouses Latent Fury on Sioux Reservation," *Wall Street Journal*, July 7, 1999, p. A1.

⁶⁶ *Ibid.*

⁶⁷ Notes prepared by Kim Alton, special assistant, U.S. Commission on Civil Rights, during Dec. 5, 1999, site visit of White Clay, NE.

⁶⁸ Quintanilla, "A Double Homicide," p. A1.

⁶⁹ David Hendee, "Indians Lose Border Ruling," *World-Herald*, Feb. 12, 2000, p. 13.

⁷⁰ For a complete discussion of jurisdiction, see Steven Pevar, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights* (Carbondale: Southern Illinois University Press, 1992).

some jurisdictional issues may be helpful to appreciate the testimony that follows. In South Dakota the responsibility for investigation and prosecution of crime rests with the State, its counties and cities, the Federal Government, or one of nine tribal governments depending on where the crime occurred and its severity, and sometimes on the Indian status of the victim and offender.

Whether a crime occurs in "Indian Country" often dictates jurisdiction. The Indian Country designation "is the benchmark for approaching the allocation of federal, tribal, and state authority with respect to Indians and Indian lands."⁷¹ As a general rule, State jurisdiction does not extend into Indian Country; either Federal or tribal laws govern depending on the crime.⁷² Broadly speaking, Indian Country is "all the land under the supervision of the United States government that has been set aside primarily for the use of Indians."⁷³ All land within an Indian reservation is considered Indian Country even if it is owned by a non-Indian.⁷⁴

An Indian who commits a crime in violation of State law off reservation land is subject to the same treatment as a non-Indian.⁷⁵ The local police department or county sheriff's department handles the investigation, and the State's attorney prosecutes if sufficient evidence is uncovered.

The Federal Government has primary responsibility for the investigation and prosecution of serious crimes that occur in Indian Country. Serious crimes are enumerated under the Major Crimes Act and include, among others, murder, manslaughter, rape, burglary, robbery, and kidnapping⁷⁶—offenses constituting the greatest threat to public safety. For these crimes, the FBI carries out the investigation and the South Dakota U.S. Attorney's Office is responsible for prosecuting defendants. The Federal Government also has jurisdiction over all offenses committed on a reservation by a non-Indian offender against an Indian victim and an Indian offender

against a non-Indian victim.⁷⁷ The South Dakota U.S. Attorney's Office publishes an annual *Indian Country Report* that provides case statistics by reservation, and summary tables show a breakdown of charges filed by the office according to type of violation.⁷⁸ In 1998, for example, Federal prosecutors pursued 92 cases on Pine Ridge, 85 on Rosebud, and 39 on Cheyenne River.⁷⁹

In Indian Country, tribal governments hold exclusive jurisdiction over all crimes committed by one Indian against another that are not subject to Federal prosecution. The Supreme Court noted that "an Indian tribe's power to punish tribal offenders is part of its own retained sovereignty."⁸⁰ But over the years, Congress has limited the right of tribes to engage in law enforcement, perhaps most profoundly through provisions contained in the 1968 Indian Civil Rights Act. The act limits tribal punishment in criminal cases to a year's imprisonment and a \$5,000 fine, or both,⁸¹ which as practical matter confines tribal courts to misdemeanor offenses.

Indian Civil Rights Act

In 1968 Congress passed the Indian Civil Rights Act (ICRA)⁸² after a series of Senate hearings on the administration of justice by tribal governments. The ICRA, also referred to as the Indian Bill of Rights, provides certain rights to people who are subject to the jurisdiction of a tribal government. Similar to the United States Constitution, the ICRA confers the right to free speech, press, and assembly; protection against unreasonable search and seizure; protection against prosecution for the same offense twice; the right to a speedy trial; the right to hire a lawyer in a criminal case; protec-

⁷¹ Steven Pevar, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights* (Carbondale: Southern Illinois University Press, 1992), p. 16.

⁷² *Ibid.*, p. 134.

⁷³ *Ibid.*, p. 16.

⁷⁴ *Ibid.*, p. 18.

⁷⁵ *Ibid.*, p. 148.

⁷⁶ 18 U.S.C. § 1153.

⁷⁷ Pevar, *The Rights of Indians and Tribes*, pp. 139, 141.

⁷⁸ Violation categories are the following: assault resulting in serious bodily injury, assault with a dangerous weapon, burglary/larceny, drugs, embezzlement, firearms, juveniles, manslaughter, murder, other, probation and supervised release revocations, sexual abuse, sexual abuse—minor. U.S. Department of Justice, U.S. Attorney's Office, District of South Dakota, *Indian Country Report 1998*.

⁷⁹ U.S. Department of Justice, U.S. Attorney's Office, District of South Dakota, *Indian Country Report 1998*, pp. 10, 14, 15.

⁸⁰ *United States v. Wheeler*, 435 U.S. 313, 328 (1978) (citing *Talton v. Mayes*, 163 U.S. 376 (1896)).

⁸¹ 25 U.S.C. § 1032(7) (1998).

⁸² 25 U.S.C. §§ 1301–1303 (1998).

tions against self-incrimination; protection against excessive bail or fines; protection against cruel and inhumane punishment; and the right to equal protection of the laws and due process of the law.⁸³ This infringement by the Congress on the power and sovereignty of tribal governments has generated controversy surrounding the application and enforcement of the ICRA.

For several years after the enactment of the ICRA, Federal courts heard various claims under the act, such as challenges to tribal elections and enrollment, the right to vote, right to counsel, freedom of speech, search and seizure, and excessive force cases.⁸⁴ In deciding these cases pursuant to ICRA, Federal courts “[h]eld that the ICRA waived the tribe’s sovereign immunity with respect to each right listed in the act, thereby authorizing federal courts to resolve all disputes arising under the ICRA.”⁸⁵ However, in the 1978 U.S. Supreme Court decision *Santa Clara Pueblo v. Martinez*⁸⁶ the Court held that the ICRA was unenforceable in the Federal courts except for writs of habeas corpus and that the act did not waive the tribe’s sovereign immunity from suit in Federal court. This ruling essentially left the tribal forum (e.g., tribal court or tribal council) as the only avenue available for

a person to pursue ICRA violations other than a habeas corpus action. Hence, most ICRA violations have no Federal judicial remedy and the outcome of ICRA claims heard in tribal forums is difficult to determine because many tribal court opinions are not published.

The U.S. Commission on Civil Rights conducted an examination of the ICRA beginning in 1986, including five public hearings, that resulted in a report documenting many problems associated with the implementation of the law.⁸⁷ However, the Commission concluded that in passing the Indian Civil Rights Act, the Congress “did not fully take into account the practical application of many of the ICRA’s provisions to a broad and diverse spectrum of tribal governments, and that it required these procedural protections of tribal governments without providing the means and resources for their implementation.”⁸⁸ Underlying the Commission’s conclusions was a recognition that “the United States Government has established a government-to-government relationship with our nation’s tribal governments; [and] that these tribal governments have retained the powers of self-government.”⁸⁹

⁸³ 25 U.S.C. § 1302.

⁸⁴ U.S. Commission on Civil Rights, *The Indian Civil Rights Act*, June 1991, p. 13.

⁸⁵ Pevar, *The Rights of Indians and Tribes*, p. 245.

⁸⁶ 436 U.S. 49 (1978).

⁸⁷ U.S. Commission on Civil Rights, *The Indian Civil Rights Act*, June 1991.

⁸⁸ *Ibid.*, p. 71.

⁸⁹ *Ibid.*

2. Executive Summary

The Rapid City community forum, "Native Americans and the Administration of Justice," consisted of seven panels of speakers and a 4-hour public session. The South Dakota Advisory Committee heard perspectives from Federal, State, and tribal law enforcement, as well as from members of the American Indian community. A summary of the proceedings follows. It is not, however, intended to cover all the statements and opinions expressed at the forum. A transcript of the proceedings will be made available at a later date and contains a myriad of assessments on the state of criminal justice in South Dakota.

Opening Statements

Advisory Committee Chairperson Marc Feinstein opened the forum by introducing fellow Committee members in attendance: Vice Chair Dorothy Butler, Amy Arndt, C. Rae Burnette, Bang Ja Kim, James Popovich, Alys Lafler-Ratigan, J. "Mutch" Usera, and William Walsh. After outlining the ground rules for the proceedings, he invited Mary Frances Berry, Chairperson of the Commission on Civil Rights, to make a statement. She introduced other Commissioners present, and then discussed the scope of the national Commission. Although the Commission does not have enforcement powers, it can make recommendations to other Government agencies, including the Justice Department, on ways to strengthen their civil rights enforcement functions. Acknowledging that a 1-day forum is not sufficient to learn everything about issues of justice affecting Native Americans, Chairperson Berry said the Commissioners hoped to learn enough to draw conclusions based on the Advisory Committee's recommendations.

Overview and Background

Charles Abourezk, an attorney in Rapid City with a lengthy record of advocacy on behalf of Native Americans, presented an overview of race

relations in South Dakota and treatment of Native Americans within the judicial system. Racial polarization, although improving in some segments of society, has long been a reality in South Dakota, he said. Acts of racial violence are as much a part of South Dakota's history as they are for the South, he told the Committee. Referring to the 1998 dragging death of a black man in Texas, Abourezk said, "Our James Byrds often appear with little notice here in our region, and their killers often get probation rather than the death penalty or do not get charged at all." He noted that an act of violence against one Native American, whether racially motivated or not, spreads fear throughout Indian communities. When minorities react to these deaths, he continued, it is they who "appear excitable and prone to exaggeration while the rest of society looks on with calm reasonableness as if they are disconnected from it all."

Equal application of the law, while it cannot cure far-reaching racial and economic inequalities, is needed before constructive dialogue between Indians and non-Indians can take place, Abourezk told the Committee. As to whether there are pervasive inequalities throughout South Dakota's judicial system, Abourezk said that statistically he was uncertain but noted the importance of perception. Clearly, many Native Americans perceive the system to be unfair, but steps can be taken to repair this image. First, he said, for Native Americans to begin to trust the judicial process, they must have greater representation as jurists and judges. Native American perceptions of inequity often derive from being judged by people who are not part of their "milieu" or their "way of life," he said. No Native American judges serve within South Dakota State courts, he noted. Second, he said because much of the tension between Indians and non-Indians is in the area of tribal-State relations, the State must maintain ongoing communication with tribal courts. Third, in response to a question from Commissioner Edley, Abourezk said

citizen review boards could provide recourse for American Indians who believe they have been treated unfairly by law enforcement. But he said he was unaware of any review boards in the State.

Abourezk also commented on the availability of adequate legal representation, which poor Americans often have a problem obtaining. He said public defenders do a "valiant job" of trying to provide quality representation but are overloaded with cases. He noted that a new Federal public defender system was being implemented but that he was concerned because only two positions are funded in Rapid City, two in Pierre, and one in Sioux Falls. In Rapid City's Federal courts, 80 percent of the criminal defendants are Native American, he said.

Abourezk is currently representing the families of Wilson Black Elk, Jr., and Robert Many Horses, and although he was unable to divulge details of the cases, he was able to comment generally on the progress of the investigations. Regarding Black Elk's death, Abourezk said it remains unclear whether his murder was racially motivated. For this case, the FBI's special agent in charge has kept him and Black Elk's family informed, he said. Conversely, in the Robert Many Horses case, Abourezk alleged local authorities have been "totally unresponsive" to his foster mother's request for information (she did not receive an autopsy report until 3 weeks after his death) and he has not heard from Federal authorities, who have reportedly assumed the investigation.

Community Panel

The first of three panels of community members followed Charles Abourezk's overview. Darlene Renville Pipe Boy of Peever, South Dakota, and Ted Means of Porcupine made up this panel.

Darlene Renville Pipe Boy, Peever

Native Americans, according to Darlene Renville Pipe Boy, are denied fundamental human rights granted other Americans. When considering human rights issues in China, the United States should look at its own policy toward Native Americans, who have been subjected to a history of genocide and oppression, she said. "I believe the burden of the United States of America is that it has not accepted the truth of

its past, and we're [Native Americans] very much a part of that past," she said. Although the recent murders of Indian people have received much media attention, she alleged that many more deaths on reservations have gone unreported.

Renville Pipe Boy, who is from the Lake Traverse Reservation, also discussed racial profiling by law enforcement. She said that, like black people, officers stop Native American drivers without just cause and described experiences she and her son have had being pulled over by highway patrol officers. These seemingly minor occurrences, she said, culminate into larger incidents between the races. Committee Vice Chair Butler suggested that the term "driving while black" be expanded to include other people of color.

The pervasive stereotype of Indian people as alcoholics contributes to the inequities they face in the judicial system, Renville Pipe Boy told the Committee. "I have non-Indian friends and when I talk to them, the comment that always comes up is, 'Alcohol was part of that crime, wasn't it, alcohol?' Or 'They were alcoholics, weren't they?'" she said. Commission Chairperson Berry, noting that most crimes committed by and against Native Americans somehow involve alcohol, asked Renville Pipe Boy if it was appropriate to consider alcohol's role in criminal acts. Renville Pipe Boy responded that alcohol use should not be a factor in the provision of equal protection of the law. "I think you're . . . dealing with issues of justice here and are we treated equally. That's what you're looking at. It's not the issue of alcoholism."

Concluding her remarks, Renville Pipe Boy recommended that the Commission on Civil Rights visit each reservation in South Dakota to hear the experiences of Indian people not present at the community forum.

Ted Means, Porcupine

For Ted Means, a member of the American Indian Movement, racism in South Dakota has become more subtle over the years. But, he said, "Every Indian in this State will tell you that they have experienced racism, be it in the stores and restaurants, be it in the judicial system, or having to deal with the police forces of this State." Education, he said, is the key to reducing racism; only if young people are taught about racism—how it starts and its effect on people—can

race relations improve. He recommended a "continuous dialogue" on racism, bringing in perspectives from the education and judicial systems, police departments, and religious communities. Means also noted the dearth of attention paid to the history of Indian people in children's textbooks.

Racism, Means said, was evident after the death of his daughter in 1981. Kimberly Means was killed by a drunken driver while participating in a spiritual run from Porcupine to Sioux Falls. The driver, he said, was only charged with drunken driving and served 15 days in jail. "Had the situation been reversed and I ran over and killed his daughter, I'd still be in prison today," Means added.

In response to questions from the Advisory Committee, Means discussed race relations in towns bordering reservations. Racism, he said, is more pervasive in towns on the fringes of Pine Ridge Reservation, like Martin, Gordon, Nebraska, and, of course, White Clay—areas where people confront intolerance on a daily basis. Renville Pipe Boy had earlier referred to the presence of a "border town mentality" neighboring the Lake Traverse Reservation.

Federal Enforcement Panel

Ted McBride, U.S. Attorney, South Dakota

Federal prosecution of criminal cases on Indian land is handled by the U.S. Attorney's Office. As Ted McBride told the Committee, U.S. attorneys are, in effect, the trial lawyers for the Federal Government. Typically, when an American Indian is the victim or perpetrator of a serious crime in Indian Country, the U.S. attorney assumes jurisdiction. The 14 crimes implicating Federal jurisdiction are outlined in the Major Crimes Act. Further, the U.S. attorney prosecutes cases where a non-Indian has committed a misdemeanor assault on an Indian person. McBride said these nonfelony crimes have been handled federally since the early 1990s, when the South Dakota Supreme Court ruled in *State v. Larson*¹ that the State did not have jurisdiction over non-Indians committing offenses against Indian persons. On civil rights cases, McBride said, the U.S. Attorney's Office regularly consults with headquarters staff in the Justice Department's Civil Rights Division.

Whether criminal jurisdiction falls under tribal, State, or Federal authority depends in large part on the Indian status of the victim and offender, as well as the location of the crime. McBride pointed out that being ethnically a Native American does not necessarily mean one is legally an Indian for Indian Country jurisdiction. For example, a Canadian Indian who commits a crime on a South Dakota reservation would be prosecuted by a State's attorney because he is not a member of a "federally recognized tribe." To meet the legal definition of an Indian, a person must not only have identifiable Indian ancestry but, simply put, he or she must be recognized by his or her tribe as being Indian. McBride also noted the difficulty in some parts of South Dakota in determining exactly what is Indian Country. Unlike Pine Ridge Reservation, which has contiguous borders, some of the State's reservations are "checkerboarded"—that is, through various allotment acts, their original land was broken up into many noncontiguous sections. The trust land of the Sisseton-Wahpeton Sioux Tribe, for example, lies within five counties in northeastern South Dakota. In Sisseton, McBride said, the "checkerboard jurisdiction situation . . . complicates the ability of the State, tribal, and Federal law enforcement officers in providing services," because jurisdiction must be established before an agency takes over law enforcement or prosecutorial responsibilities.

McBride also discussed concerns that the U.S. Attorney's Office withholds information on criminal proceedings from the community. From a Federal prosecutor's standpoint, he said, there is a difficult balance to maintain. The Justice Department recognizes that the public does have a right to know, but the Federal Rules of Criminal Procedures put severe constraints on information that can be released by prohibiting disclosure of grand jury testimony. Further, the defendant's right to a fair trial must be upheld. Because of these factors, McBride said, the Justice Department has "very strict rules about not revealing much of anything in precharge or non-public documents." The U.S. Attorney's Office does, however, take some steps to inform the Indian community on the status of criminal cases. The annual *Indian Country Report*, published by the office, is presented to each tribal council and shows a breakdown of charges by reservation that the office has filed according to

¹ 455 N.W.2d 600 (1990).

type of violation. McBride also noted that his office met with the families of Ronald Hard Heart and Wilson Black Elk, Jr., who were murdered outside White Clay. And, he said, in his short tenure as U.S. attorney he has visited all reservations in the State except Standing Rock.

In response to a question from Committee member Burnette, McBride discussed the effect of the 1987 Federal sentencing guidelines on Native American defendants. Because cases originating in Indian Country are often tried in Federal court, Native American defendants are frequently subject to the guidelines. Burnette noted the widespread perception that if someone commits a crime on the reservation, because of the strictness and inflexibility of the guidelines he or she will receive a harsher prison sentence than a person who commits a similar crime off the reservation. McBride said he had heard it said anecdotally that Federal sentences are typically longer than State sentences, but a study would be needed to determine if that is true. "I think it would take a very specific number-driven, empirical study before any of us could really say you get hit harder if you do the crime in Pine Ridge than if you do it in Rapid City."

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

James Burrus began his presentation by introducing two FBI agents at his side who would be available later to answer questions from the Committee: Mark Vukelich, supervisory special agent from the FBI's Rapid City office; and David Heller from the Sioux Falls office.

The FBI is responsible for investigating major crimes that occur within the nine Indian reservations in South Dakota. The FBI has offices in Rapid City, Pierre, Sioux Falls, and Aberdeen, all of which report to the central office in Minneapolis. Approximately 23 FBI agents are assigned to South Dakota, none of whom are Native American, Burrus said. Efforts to recruit Indian agents have been unsuccessful. Since January 1995, the Minneapolis Division has opened more than 1,100 cases on reservations in Minnesota, North Dakota, and South Dakota, with the bulk of investigations taking place in South Dakota, Burrus said. Currently, he said, the FBI has more than 300 Indian Country investigations underway in South Dakota; of these investigations about 34 percent are assault

cases, 34 percent child sexual abuse, 9 percent are death investigations, 8 percent embezzlements, 6 percent burglaries, 5 percent assaulting a Federal officer, and 4 percent involve controlled substances.

According to Burrus, FBI investigators work hand-in-hand with tribal and Bureau of Indian Affairs officers, local police and sheriff's departments, and State law enforcement personnel. "On all of [South Dakota's] reservations, the FBI interacts with our partners on a daily basis locating and interviewing witnesses, collecting evidence, and working with Mr. McBride and his office for prosecution." The FBI's involvement with tribal police goes beyond investigations, Burrus said. At the request of tribal departments, the FBI provides training on such topics as crime scene preservation, child molestation investigations, and report-writing skills. Later, in response to a question from Chairperson Berry, Burrus admitted that some tribal police lack experience and knowledge on conducting criminal investigations.

One of the most noteworthy accomplishments highlighting the cooperation among agencies, he said, is the Northern Plains Safe Trails Task Force aimed at reducing drugs on reservations. Formed a few years ago, the task force made up of tribal, local, State, and Federal officers works to identify drug kingpins, collects evidence against them, and presents the cases for prosecution. Commissioner Meeke noted Burrus' earlier statement that drug crimes account for only 4 percent of FBI investigations in Indian Country, whereas assault, sexual abuse, and death investigations are at the top, and asked why there were not task forces for the bigger problems. Burrus responded that the 4 percent figure underestimates the extent of drugs on reservations. And, he said, case-specific task forces are sometimes formed, particularly for murder investigations.

Burrus discussed general FBI practices for civil rights investigations, along with the FBI's investigation of the Many Horses case and the White Clay murders. Allegations that a crime involves civil rights violations are reviewed by agents, and if a case is opened, notice must be given to Justice Department headquarters within 5 days, and a report must be issued within 21 days, he said. The Justice Department and the U.S. attorney then decide whether to file charges. Regarding the Robert Many Horses case

in Mobridge, Burrus noted that since Many Horses' death occurred off reservation land, the State had primary jurisdiction. The FBI, however, began a concurrent investigation to determine if Many Horses' death violated Federal civil rights laws, and the investigative report was forwarded to the Justice Department for review, he said.

For the Black Elk and Hard Heart case, the FBI has assigned two of its most experienced agents, he said. The day of their murders, the Bureau had four agents on the crime scene, has subsequently interviewed more than 300 people, deployed search dogs and evidence response teams, conducted aerial surveys, expedited forensics evidence testing, and offered a \$20,000 reward for information, he told the Committee. During the question and answer period, Chairperson Berry asked Burrus if the Commission should recommend that the Attorney General set up a task force to assist the FBI since the case remains unsolved 6 months after the murders. Burrus responded that a task force was not needed at this time.

In closing his presentation, Burrus said whether there are disparities or discrimination in justice and law enforcement systems within South Dakota is a judgment "best left to others." Disparities or discrimination, he said, would "undermine the trust placed in us by the residents." He added, "The FBI's been a fixture on the reservation for more than 60 years. . . . I believe reservation residents want the FBI to be involved in Indian Country law enforcement, but we must continue to earn their trust by working every day for justice."

After Burrus' presentation, Committee members and Commissioners pressed him for specific details on the numbers of open FBI cases and how long they have remained unsolved. Committee member Burnette said, "I would like to know, did I misunderstand you, but you cannot tell us out of your 60-year history of FBI presence on the reservations and in doing investigations, that you cannot tell us how many unsolved crimes there are remaining, are out there on the books?" Burrus responded, "No, ma'am, not off the top of my head." But regarding death investigations he told the Committee:

In response to some community concern that there were hundreds of unsolved murders in Indian Country, we did go back and specifically canvass our files

for exact numbers, and I can tell you that as far as murders go, there are less than 10 that are unsolved from the FBI's standpoint. If anyone has a list of 60 or 100, I would certainly like to see them because clearly we don't have that type of information.

In a January 14, 2000, followup letter to the Commission, Senior Supervisory Agent Mark Vukelich provided information on the number of ongoing cases and how long they have been open. As of January 14, FBI agents were investigating 315 cases in South Dakota's Indian Country. The letter provides the following breakdown:

Category	Cases open as of 1/14/00
1 month or less	42
1-5 months	138
6-12 months	95
1-2 years	32
2-5 years	7
6 years or more	1

Of the 315 cases, 145 are considered to be in the "investigative status." In 51 of the cases, the investigation is "totally or partially complete," and in 110 cases individuals have been charged in Federal court and the agent "follows the prosecution with the U.S. Attorney's Office."²

Chairperson Berry and Commissioner Edley expressed concern that the testimony of Burrus and the other Federal panelists lacked recognition of the longstanding mistrust and lack of confidence Native Americans hold for Federal law enforcement agencies. Regarding the image of the FBI, Commissioner Edley said:

I'm not overwhelmed with a sense of you all having depths of self-awareness about the credibility problem that's pretty apparent to us as visitors in terms of just the magnitude, the number of comments, the vehemence of the comments, the pain that comes across in the comments with people not trusting that the FBI is investigating aggressively and effectively.

Burrus acknowledged he was aware that many American Indians mistrust the FBI and said "we work to try to improve that every single day."

Committee member Usera asked Burrus if the FBI had a process in place to inform people

² Mark Vukelich, Federal Bureau of Investigation, letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, Jan. 14, 2000, pp. 1-2.

living on reservations about the status of its investigations. Without communication frustration mounts, especially when cases are lasting a year or more, Usera noted. Burrus responded that no formal procedures exist but that some information is relayed by the Bureau's victim witness coordinators, through press releases, and sometimes by the agents themselves. He noted, however, that FBI agents are restricted in how much information they are allowed to release. Agent Heller said in his region of eastern South Dakota, agents attend monthly meetings on reservations with tribal attorneys, other tribal officials, and representatives from the U.S. Attorney's Office to discuss new cases and the status of ongoing ones. Sometimes, Heller said, tribal members and crime victims speak at these meetings.

Julie Fernandes, Special Assistant to Bill Lann Lee, Assistant Attorney General for Civil Rights, Department of Justice

In her presentation, Julie Fernandes discussed the functions of the Justice Department's Civil Rights Division. The Division is responsible for enforcing the Nation's civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, citizenship status, and religion. The Criminal Section of the Division investigates and prosecutes alleged violations of Federal civil rights statutes, including 18 U.S.C. § 245, the hate crimes statute; 18 U.S.C. § 242, which prohibits excessive use of force by law enforcement officers; and 18 U.S.C. § 241, which proscribes conspiring to deprive any person of his or her federally protected rights. Recently, the Civil Rights Division successfully prosecuted defendants who, in an effort to intimidate, burned a cross in front of the home of a Native American family, Fernandes said. Criminal Section investigations are launched as a result of a complaint from the victim, a third party, or from indirect notice such as through a news article. The Division investigates all allegations it receives regarding abuses by public officials and allegations that appear to fall under the hate crimes statute, she said.

Fernandes noted that the Civil Rights Division maintains a "close, cooperative working relationship" with the 93 U.S. attorneys, with whom the Division often shares overlapping jurisdiction. The U.S. Attorney's Office and the

Division may investigate cases and indict alleged offenders either together or separately. However, in two circumstances, she said, the role of the Civil Rights Division is particularly directive: First, all decisions to prosecute a crime under the hate crimes statute require prior written approval of the Associate Attorney General at Justice Department headquarters. Second, in criminal civil rights cases that are of "national interest"—a term of art defined on a case-by-case basis—the U.S. Attorney's Office must obtain approval before either seeking or declining to seek an indictment.

Fernandes also discussed the role of the Division's Civil Section, which has taken on more cases in the past few years. Here, alleged violations often involve title VI of the 1964 Civil Rights Act, which prohibits discrimination by entities receiving Federal funds. For example, the Civil Section investigates title VI complaints filed against recipients of Department of Justice funds originating from the COPS program, which allocates money to local law enforcement, Fernandes said. Another statute often implicated in Civil Section cases is 42 U.S.C. § 14141, provided in the 1994 Crime Act. This statute gives the Civil Rights Division authority to investigate allegations that State or local law enforcement departments are engaged in a pattern or practice of violating people's civil rights. Types of conduct covered by the statute include excessive force, false arrest, and unlawful stops and searches, Fernandes told the Committee.

In her concluding remarks, Fernandes mentioned two Justice Department divisions that are "instrumental" in the Department's effort to protect the civil rights of Native Americans. First, the Office of Tribal Justice coordinates Indian policy matters and promotes government-to-government relationships between the Department and the tribes. It serves as a tribal advocacy entity within the Department, Fernandes said. Second, the Community Relations Service (CRS) is an arm of the Department that works with the FBI, local law enforcement, and the U.S. attorney, providing mediation services to help resolve racial conflict. For instance, during recent demonstrations and marches at White Clay, CRS arranged for meetings between Nebraska law enforcement and protest organizers. CRS has also been on site in Mobridge and pro-

vided assistance in the Sisseton incident.³ Chairperson Berry later noted that due to a lack of resources CRS has been unable to place a much-needed representative in South Dakota, and Congress did not increase CRS' budget for fiscal year 2000.

During the question and answer period, Chairperson Berry requested more information from Fernandes on the status of the Robert Many Horses investigation and on her division's overall caseload. As Agent Burrus told the Committee earlier, the FBI forwarded its final investigative report on the Many Horses case to the Civil Rights Division for review. Acknowledging that Fernandes was perhaps not at liberty to disclose whether the Justice Department was going to pursue civil rights charges, the Chairperson asked that Fernandes at least provide a time line for the Department's response. Fernandes said she that was currently unable to give a time line, but that she would inform the Commission later.

The Justice Department subsequently confirmed that the FBI has sent its final report to the Civil Rights Division and that the Division, along with the U.S. Attorney's Office in South Dakota, is reviewing the FBI report to decide whether further action is warranted.⁴ In a letter to the Commission, Albert Moskowitz, the Division's section chief, wrote, "You may be assured that this office and the United States Attorney's Office will carefully assess all pertinent information in a timely fashion and that if this review reveals the existence of a prosecutable violation of the federal criminal civil rights laws, appropriate action will be taken."⁵

Moskowitz provided a breakdown of the Division's fiscal year 1999 caseload. During this period, the Criminal Section received more than 12,000 complaints alleging violations of Federal

criminal civil rights statutes. Violations include excessive force and other criminal misconduct by local and Federal law enforcement officials, and racially or religiously motivated violence, among other acts, he wrote. Approximately 3,600 of these complaints were sufficiently specific to civil rights statutes to justify a preliminary investigation by the FBI. But most of these investigations failed to uncover sufficient corroborating evidence to warrant prosecution. Nevertheless, in the past year, 72 new investigations were presented to the grand jury and 89 cases were filed, charging 138 defendants with violations of the Federal criminal civil rights laws. Convictions were obtained against nearly 100 defendants, Moskowitz wrote.⁶

State Prosecutors Panel

South Dakota's 66 counties each have an elected State's attorney who is responsible for prosecuting crimes occurring within his or her county. In written testimony submitted to the Commission a few days before the forum, the Attorney General for South Dakota, Mark Barnett, noted the prosecutorial discretion granted to State's attorneys:

The decisions to prosecute are distributed among 66 independently elected state's attorneys. The decision whether and what to charge also involves a considerable amount of discretion and judgment based upon the quality of the evidence, experience, training, and talent of the prosecutor. Each locally elected state's attorney makes his or her charging decision independent of every other state's attorney, and independent of this Office.⁷

The attorney general also said that "no statewide policies or protocols (other than statutory and constitutional law) govern prosecutorial decision making," but some State's attorneys' offices may have internal policies.⁸

Two of South Dakota's State's attorneys spoke at the community forum: Daniel Todd, who serves Walworth County; and Kerry Cameron from Roberts County. These counties were the scenes of the Robert Many Horses and Justin

³ Philip Arreola, regional director, Rocky Mountain Region of the Community Relations Service, written statement submitted to John F. Dulles, director, U.S. Commission on Civil Rights, Rocky Mountain Regional Office, December 1999.

⁴ Dan Marcus, Acting Associate Attorney General, U.S. Department of Justice, telephone conversation with Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, Feb. 2, 2000.

⁵ Albert N. Moskowitz, Criminal Section, Civil Rights Division, U.S. Department of Justice, letter to Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights, Jan. 21, 2000, p. 2.

⁶ *Ibid.*, p. 1.

⁷ Mark Barnett, attorney general, Office of Attorney General of South Dakota, written statement submitted to John F. Dulles, director, U.S. Commission on Civil Rights, Rocky Mountain Regional Office, Dec. 3, 1999, p. 3.

⁸ *Ibid.*, p. 5.

Redday deaths—cases that spurred the Advisory Committee's decision to hold a forum.

Daniel Todd, State's Attorney, Walworth County

Early in his presentation Daniel Todd responded to the question the community forum sought to answer: whether disparity or discrimination against Native Americans exists in the administration of justice in South Dakota. As for the entire State, Todd said, he lacked information to make an assessment but, he said, "I can respond without hesitation that there is no disparity or discrimination of treatment by law enforcement of Native Americans or in the prosecution of Native Americans in Walworth County."

Todd told the Committee that every case has unique facts and circumstances, and for this reason determining whether discrimination exists is difficult. Many factors, he said, influence both the prosecutor's decision to bring forth charges and the harshness of those charges, including whether the crime was violent; if a firearm was used; if there was a victim, and if so, if he or she was injured; if there were witnesses who could testify clearly; and if there was physical evidence. Also important, Todd continued, is the defendant's prior criminal record, the involvement of drugs or alcohol, and the probability of successful prosecution. "Nonetheless," he said, "it seems there is an irresistible urge by many to make an assessment of possible disparities or discrimination in cases based solely on only a selected number of factors."

To determine whether disparity or discrimination exists in South Dakota's judicial system, all cases, or a random sample, would have to be reviewed accounting for facts and circumstances of each case, Todd said. Before one can conclude Indian status to be a factor in prosecuting or sentencing, an analysis must compare identical, or at least very similar, cases to see whether outcomes differ according to race. "Anything less," he said, "is nothing more than an opinion poll." Todd encouraged a future examination and said that although his office files were not public records, he would make them available for an agreed-upon entity to review.

During the question and answer period, Commission Chairperson Berry asked Todd if his records show variations in guilty versus not guilty findings and the length of sentences imposed of Native Americans as compared with non-Native Americans for specific offenses and

outcomes. From these data, one could draw inferences about whether Native Americans face disparate treatment. Todd replied "yes and no"; his office's case tracking system lists the defendant's name, whether charges were pursued, and gives a short synopsis of the sentence imposed by the court. From that list Todd said he can estimate "who were Native Americans and who were not," but to determine the average penalties for Native Americans convicted of aggravated assault, for example, would require an empirical study. For simple assaults, he remarked, the State's court has a standard sentence "and it will almost inevitably follow that sentence to the T for every defendant." On the equity of murder sentences, he said he could not make a definitive conclusion, and on sentences for burglary, he said, "without going through a case-by-case assessment, my opinion is that they're consistent." Chairperson Berry responded to this statement, asserting, "How do you know this if you can't give me any data? That's precisely my point. On what basis do you conclude and tell this panel that you know for a fact that there is no disparate treatment and there is no discrimination in any part of law enforcement or prosecution in your county?" Todd replied, "I can tell you that's my opinion."

In a December 17, 1999, followup letter to Advisory Committee Chairperson Feinstein, Todd provided a cursory breakdown of charges filed by the Walworth County State's Attorney's Office. In 1998 the office prosecuted 270 class 1 misdemeanors and 46 felony cases. Of those 316 cases, it appears at least 142 of those persons were Native American. In 1999 (up until December 17) the office had prosecuted 296 class 1 misdemeanors and 57 felony cases. Of those 353 cases, at least 145 were Native American. But Todd said that "this accounting does not say very much" for the following reasons: (1) nationality is not recorded in case statistics, so the figures are based solely on a name review; (2) sentences imposed were not examined; and (3) specific factors involved in the investigation or prosecution of cases were not considered.⁹ During his presentation at the forum, Todd said prosecutions in

⁹ Daniel Todd, Walworth County State's attorney, letter to Marc S. Feinstein, Chairman, South Dakota Advisory Committee to the U.S. Commission on Civil Rights, Dec. 17, 1999, p. 1.

Walworth County are "significantly alcohol related, and a huge number of those are DWIs."

Committee member Popovich asked Todd during the question and answer session to elaborate on the Robert Many Horses case, which he was responsible for prosecuting. Todd summarized the case: Many Horses was picked up around 2:00 in the morning by four juveniles. Apparently everyone, including Many Horses, had been consuming alcohol and together they drove outside of town to drink more. Many Horses ultimately became unconscious and was brought back to Mobridge and put headfirst into a garbage can. Many Horses' body was found around 7:00 a.m., and the four juveniles were arrested later that day. The body was sent for autopsy, and the results showed Many Horses had died of alcohol poisoning. Consequently, at a preliminary hearing the court dismissed all charges filed against the youths, which included manslaughter and aggravated assault, on the grounds that the elements of the offenses were not proven. Chairperson Berry asked Todd, as prosecutor, whether he could not find a charge that would hold in court. There are some offenses, probably misdemeanor offenses, Todd replied, that his office could prove. And a decision has not been made whether to pursue those. But, he said, "charging someone with underage consumption and the result is Mr. Many Horses died sounds like a slap in the face."

Commissioner Meeks noted that the one component of the case that people in South Dakota have most struggled with is that Many Horses was found upside down in the garbage can. How, she asked, can an autopsy report conclude that being upside down did not contribute to his death, the fact on which the case hinges. Todd said he too had that concern, but the autopsy specialist could not give a definitive answer—only a medical opinion. But, nevertheless, the court ruled that Many Horses' position in the garbage can was immaterial, he said.

Throughout his testimony Todd maintained there is no prosecutorial discrimination in Walworth County, but he acknowledged that the perception is sometimes otherwise. And, he said, "If the community believes that we have a race problem, then we probably have a race problem, whether there's equal treatment or not."

Kerry Cameron, State's Attorney, Roberts County

Kerry Cameron's presentation focused on the Justin Redday case, the only controversy, he said, that could have led to his invitation to the forum. The case, he said, does not involve an unsolved or unexplained death. An autopsy report indicated that Redday was lying face down near the center of the road with a blood-alcohol level of 0.22 when he was struck by a Ford F-150 pickup. "My conclusion here," he said, "is that alcohol is responsible for the death of Justin Redday."

As the Roberts County State's attorney for the past 25 years, Cameron first met Redday in 1997 when he was arrested for his second DWI. Cameron remembers him as an "articulate, soft spoken, very nice young man." At that time, Justin Redday's mother convinced her son to seek help through an alcohol treatment program. (A summary of Peggy Redday's statement begins on page 29.) Cameron said he next saw Redday in March 1998, and this time he was charged with third-degree burglary and grand theft, with 20 years in the penitentiary a looming possibility. Believing that Redday had potential and deserved another chance, Cameron said he made him a deal: If he would agree to complete another alcohol treatment program at the Human Services Center, Cameron said he would request that the court suspend his sentence. Redday accepted the offer, went to treatment, and was placed on probation.

In a small community much of a prosecutor's job entails social work, Cameron said. His "door is always open" to help people find treatment for alcohol or drug abuse, or to get their driver's license back so they can keep their jobs. But, he said, "I'm afraid that the publicity from this matter is going to indicate to them that I don't care about them and that I'm not available to help them." Particularly troublesome to Cameron was a front page picture in a Watertown newspaper. It showed Peggy Redday, Justin Redday's mother, at an October 1999 rally for Justin holding a sign reading "State's attorney grooms our Indian youths for prison. Protect our youth," he reported.

Cameron told the Committee that the Redday case was investigated and prosecuted properly. Within a half-hour of Redday's arrival at the hospital, Cameron said he along with the county sheriff and a State trooper were searching the accident scene for evidence. Over the 4-month

investigation, Cameron said, Peggy Redday grew increasingly dissatisfied because "we weren't finding that anyone had intentionally killed her son." Normally, when a person is killed lying in the road, it is a "fairly cut-and-dried" case, he said. But for the Redday case a Division of Criminal Investigation agent was called in to assist in the investigation and all findings were presented before a grand jury, two events that are not commonplace. Although he had been criticized in the press for not doing a complete investigation, Cameron said, "I don't know what else we could have done."

The grand jury indicted the driver, Mark Appel, then 17, for motor vehicle homicide, and his case ended up in juvenile court. South Dakota State law prohibits anyone from divulging information on juvenile court proceedings, but 2 days before the community forum Appel gave Cameron permission to discuss his case. His family wanted the Commission to know what happened to their son, Cameron said. As newspapers reported, believing the evidence did not support manslaughter, Cameron dismissed the grand jury's charge, and on September 14, 1999, Appel pled guilty to DWI. What the newspapers could not report, Cameron said, is that the plea bargain dismissing the manslaughter charge was conditioned on Appel being confined to the Department of Corrections until he was 21 for violating a standing probation order forbidding him from consuming alcohol. The sentence Mark Appel received was the same as it would have been if he had been convicted of manslaughter, Cameron said.

In his closing remarks, Cameron made the following recommendation: "I suspect that alcohol or drugs are responsible for most of the deaths that we're discussing here today. I think that we should stop bickering among ourselves and work together to do everything we can to eliminate the drug and alcohol problems in our community. . ."

After his presentation, Committee member Burnette asked Cameron to comment on the differences between the Redday case and the Melanie Seaboy case, which he prosecuted a year earlier. Seaboy, an 18-year-old Native American, received a 14-year prison sentence (out of a maximum of 15 years) for causing an accident while driving drunk that killed a non-Indian motorist. After the accident, Seaboy's family requested a personal recognizance bond so that

she could remain at home until her court date, which Cameron then recommended to the judge. Unfortunately, Cameron said, Seaboy violated the bond within a couple of weeks when she was caught drinking in an automobile. "The judge chewed me out for recommending a PR bond for her, and it was obvious from that point in time that any input from me was going to be ignored on that case," he said. Unlike the Redday case, which lingered on, Seaboy, charged with manslaughter, began serving her sentence immediately because "she took her medicine like an adult" and pled guilty, he said.

For those who think Seaboy received an unusually harsh sentence, Cameron provided confirmation. At the request of Seaboy's father, he said he recently examined court records to compare the sentences of as many similar cases as he could find. The longest sentence for a comparable offense was 3 years, he said. (A summary of David Seaboy's statement begins on 30.)

Differences between the circumstances of Melanie Seaboy and Mark Appel preclude comparisons, chiefly that Seaboy turned 18 just prior to the accident, whereas Appel was treated as a juvenile, Cameron said. And he said he thought Seaboy's "demeanor at her arraignment had quite a bit to do with her sentence." Nevertheless, he acknowledged understanding why some Native Americans, because of Seaboy's sentence, perceive the justice system to be unfair.

Chairperson Berry commented that Cameron's testimony did not reflect the role he played in Seaboy's 14-year sentence. To both State's attorneys she said, "You as prosecutors have discretion to determine what charges you bring. . . . Your testimony, both of you, gave no sense of that to people who did not know better." To Cameron, she said, "You were the one who decided to prosecute Ms. Seaboy, right?" And he responded, "That's correct. I made that decision . . . I could have charged her with a simple assault or something on that, but it was not called for." Manslaughter, he maintained, was the appropriate charge for the offense.

Addressing the general question of whether judicial discrimination exists in Roberts County, Cameron said he had sensed a racial divide in terms of perception. But he also noted "great division" among Native Americans as to whether or not there is disparity. As far as the percentage of total prosecutions of Indians and non-Indians in the county, Cameron said his office did not

have those figures. But he did estimate that 90 percent of the prosecutions are alcohol related.

Law Enforcement Panel

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

Dale Ecoffey has more than 15 years of law enforcement experience, time mostly spent in Indian communities. He is the first American Indian to serve as a U.S. marshal in the 207-year history of the Marshals Service. Over the past 25 years, he said, there has been "some improvement" in the administration of justice for American Indians in South Dakota. However, Indian people "are often subject to unfair treatment in decisions to prosecute when the Indian is either a victim or subject in a case." And, he continued, "Often there appears to be disparity in sentencing between Indian and non-Indian defendants."

Historically, Ecoffey said, the Bureau of Indian Affairs has been responsible for providing all law enforcement services on the Pine Ridge Reservation. But, over time, Indian people have gained more autonomy, and now hiring and firing of tribal officers are in the hands of local residents. Commissioner Meeks, who visited Pine Ridge the day before the forum, commented that many of the complaints she heard were directed at the tribe's own Public Safety Commission and asked Ecoffey how the commission's performance could be improved. Ecoffey noted the difficulties tribal police officers face, with low salary, long hours, and lack of resources, all contributing to a very high turnover rate. The Public Safety Commission has taken steps to improve its service by sending officers to an Indian Police Academy in New Mexico for training, he remarked. He said he is optimistic that future improvements will be made through additional funding the commission is slated to receive from the Justice Department's Circle Project.

Ecoffey also discussed the border town of White Clay, Nebraska, neighboring the Pine Ridge Reservation. Every year, White Clay merchants sell more than \$4 million of beer, and most customers come from Pine Ridge, he said. The State of Nebraska provides "little or no" law enforcement in White Clay, which leads to assaults and other crimes being committed against Indian people, he alleged. Nebraska's unwillingness to provide police protection is "a direct vio-

lation of civil rights of Indian people who are faced with the sorrow and poverty which exist on the Pine Ridge Indian Reservation," he concluded. Merchants are also culpable, making money at the expense of Indian people on the reservation, who suffer disproportionately from fatal car crashes, suicide, and health-related problems associated with long-term drinking, according to Ecoffey.

In relation to White Clay and generally, Ecoffey discussed alcohol abuse among Native Americans and the availability of detoxification centers. Vice Chair Butler remarked that several earlier panelists had suggested that if alcohol use could be curbed, a reduction in crime committed by and against Indian people would follow. Ecoffey contended that until economic conditions on the reservation improve, Native Americans will continue to turn to alcohol. He told the Committee:

Just simply, in this country a 75 to 95 percent unemployment rate in any area is totally unacceptable. And until we have opportunities for our Indian people to work in meaningful jobs so that they can adequately support their family, so they can buy simple things that are needed in life, then often we're going to have our Indian people turn in a sense of hopelessness and despair to alcohol and drugs. So the crux of the problem is helping create a better economy in Indian Country across the Nation.

There is no detoxification facility on the Pine Ridge Reservation; the reservation's new 46-bed hospital, to the amazement of many, was constructed without detoxification ability. A treatment referral service called Project Recovery exists, Ecoffey said, but it is greatly underfunded and has a long waiting list. Some discussion has taken place on the feasibility of redirecting Project Circle funds to build a detoxification center, he said. Under the project, the reservation is to receive \$1.2 million to renovate two of its jails, but many believe a detoxification center is needed more than refurbished jails. Further, no detoxification services are available in White Clay. (The closest facility, Northeast Panhandle Substance Abuse Center is 40 miles away in Gordon, Nebraska. Sixty percent of its clients are Native American and the facility does serve South Dakota residents, depending on income, for as little as 50 cents per day. But the 6-bed center consistently has a 1-2 month waiting list, and because of funding restraints can only pro-

vide social-setting detoxification, not the medical detoxification that so many White Clay "participants" need.¹⁰)

Ecoffey made several recommendations to the Advisory Committee. First, civil rights offices should be set up on reservations to provide advocacy and redress for Indian people who believe they have been discriminated against. "It's not a fact," he said, "that the FBI or the U.S. attorney or Justice Department does a bad job when it comes to a civil rights complaint, but there is a total lack of communication and timeliness of response when it comes to a response to either the victim or the victim's family." Ecoffey agreed with Committee member Walsh that with increased funding perhaps the BIA could assign staff to such an office to receive and respond to complaints. Second, the Committee should recommend that Congress increase funding for the BIA and the Department of Justice's Community Relations Service, which he said has only two or three staff members working out of Denver for the entire Rocky Mountain region. Third, the Advisory Committee or the Commission should examine other issues in addition to the administration of justice, including equal access to housing and bank lending practices, specifically redlining. "Even with 90 percent and 100 percent loan guarantees, you simply cannot get [banks] to lend money in Indian Country," he said.

Community Panel

Rosalie Little Thunder, Rapid City

Rosalie Little Thunder has lived in the Rapid City area for over 20 years. Racism is a problem in the community, she said, but an even bigger issue is the denial of its existence. "We have heard different people sitting up here saying there is no discrimination, there is no racism. I've seen that to extremes here. And when we deny it, we don't recognize it. We don't recognize it, we don't deal with it." Racism, she continued, is not merely prejudice but the power to exercise that racism; and for that reason reverse racism is impossible. "The gentlemen sitting up here saying there is no discrimination, they hold the power. Law enforcement, most of all, holds the

power. The judicial system holds a lot of power over Native people," she said.

Before racism can subside, she said, those in power must confront their attitudes toward Native Americans. Police officers, in particular, need some type of sensitivity training because of the control they exert over others. A few years ago the Rapid City Police Department offered cultural sensitivity training to its officers, but she contended "it did not go well," erupting in friction.

Alleging racism exists throughout South Dakota's judicial system—by judges and juries, even by defense attorneys—Little Thunder recommended to the Advisory Committee that a study be done on sentencing patterns.

Eileen Iron Cloud, Porcupine

Eileen Iron Cloud sees "obvious injustice in the State's criminal justice system toward Native Americans." She began her presentation by describing two court cases she believes exemplify widespread disparity. On November 15, 1999, she said her niece, having no prior criminal record, was sentenced to 2 years in the South Dakota prison for women after pleading guilty to felony forgery in Pennington County. The mother of four children, ages 8, 6, 3, and 17 months, she was taken immediately from the courtroom without time to make arrangements for their care, Iron Cloud said. Conversely, non-Indian perpetrators of crime, even violent crime, usually receive lenient prison sentences or just probation in Pennington County, she alleged. For proof, the Commission should examine the county's sentencing records, she said. The second case Iron Cloud discussed involved a Pine Ridge high school girls' basketball team participating in a 1995 tournament. A lawsuit was filed and subsequently thrown out in court claiming that some team members were illegally strip searched by tournament officials. Other high school teams were not subjected to the search, she said.

Iron Cloud also discussed legislation engineered by Governor Bill Janklow and Senator Tom Daschle transferring about 96,000 acres of Missouri River shoreline to the State. The move, she said, violates the 1868 Fort Laramie Treaty. And as long as State leaders work against the Great Sioux Nation, there will be no justice for Native Americans in South Dakota, she concluded.

¹⁰ Jane Morgan, director, Northeast Panhandle Substance Abuse Center, Gordon NE, telephone conversation with Dawn Sweet, U.S. Commission on Civil Rights, Dec. 20, 1999.

Iron Cloud finished her presentation by making recommendations to the Advisory Committee and the Commission on Civil Rights. For the Committee, an indepth report of the day's proceedings, along with recommendations for change, should be forwarded to the Commission. And the Commission in turn should hold full-fledged hearings on the administration of justice in the eastern and western parts of the State.

Faith Taken Alive, McLaughlin

Faith Taken Alive called on the Commission to examine investigation, sentencing, and prosecution practices in South Dakota, particularly in Walworth County. She discussed several cases that for her illustrate disparate treatment of Native Americans.

Taken Alive lives on the Standing Rock Indian Reservation, once home to Robert Many Horses. Before Many Horses was put into the garbage can, Taken Alive alleged that he was "slapped up and thrown into a ditch." Native American people knew from day one that Many Horses was killed and then stuffed in the trash can—that he did not die merely from alcohol poisoning, she told the Committee. And she questioned why Walworth County State's Attorney Daniel Todd did not use "the discretion that he holds in the palm of his hand" to prosecute the four teenagers involved, particularly given that Many Horses was mentally disabled.

A case similar to Many Horses' divided the Mobridge community a few years ago, when charges were reduced against two white men who had raped and killed a young Lakota woman. In August 1980 Candace Rough Surface disappeared, and 9 months later her badly decomposed body was found in a Missouri River bay. At the time, Nicholas Sherr and James Stroh were questioned by police but released. Then, 15 years later in 1996, Stroh's estranged wife informed police of his involvement, and both men were charged with murder. But the complaint against Stroh was reduced to second-degree manslaughter when he agreed to testify against his cousin. And the State dropped the murder charge against Sherr in exchange for his guilty plea of first-degree manslaughter. Again, Taken Alive said, the State's attorney did not exercise his discretion. "As a result of inadequate prosecution, inadequate investigation, her killers' sentences and their charges were greatly

reduced because of the lack of investigation in Walworth County," Taken Alive contended.

Another case Taken Alive discussed was that of Jeremy Thin Elk. In the summer of 1999, Thin Elk spent 30 days in the South Dakota State penitentiary for killing a dog. He also had to pay \$300 in court costs, make a public apology to the dog's owner, and do community service, she said. Later, during the public session, Brad Peterson, an attorney with Dakota Plains Legal Services, referenced this case and noted that two other juveniles also faced felony charges over the dog's death.

In addition to perceived prosecutorial and sentencing disparities, Taken Alive discussed treatment of Native Americans by law enforcement. She told the Committee that she fears law enforcement, not tribal police but white officers. And she claimed in Mobridge, police harass Indian motorists by pulling them over for having items like medicine wheels and dream catchers hanging from rearview mirrors.

Scott German, Agency Village

Except for time spent in the military, Scott German has lived all his 31 years on the Lake Traverse Reservation of the Sisseton-Wahpeton Sioux Tribe. From his perspective, he said, South Dakota does not provide equal justice for all its citizens. But his word, and that of other panelists before him, is not enough, he said. The Commission must subpoena arrest records.

German, like Taken Alive, said he is not fearful of law enforcement as a whole—only of non-Indian officers patrolling the reservation's perimeters. "I don't feel that I have to worry about our tribal police. In fact, it's a comfort to me as a citizen to know that should I be pulled over for some infraction, that the tribal police will probably be notified, because there's somebody there to ensure my safety in that situation," he said. In Roberts County, German alleged, an examination of records would show "patrol routes encompass the Indian portion of the county significantly more than they encompass the non-Indian section," which means more arrests of Indian people, he said. Law enforcement also sets up traffic checkpoints between Indian communities, he added.

It is at the police officer level, not the sentencing phase, that the Commission should focus its future efforts, he said. Because of sentencing guidelines, a judge's discretion is often limited

and the sentence imposed is frequently a "foregone conclusion," he said. Conversely, officers have leeway in how they treat people.

Toward the end of his presentation, German recommended that the Commission audit the distribution of Federal funds throughout the State's justice system. (Title VI of the 1964 Civil Rights Act prohibits discrimination by entities receiving Federal funds.) South Dakota, he said, receives more Federal assistance than it pays out in Federal taxes, making it one of the "premiere welfare States" in the country.

Local and Tribal Law Enforcement Panel

William Brewer, Director, Department of Public Safety, Oglala Sioux Tribe

William Brewer has been director of Pine Ridge's police department for the past 7 months. Brewer told the Committee that he was unaware he was going to present on a panel, so he did not have remarks prepared. But he said he would be free to answer any questions. The Department of Public Safety has 88 officers, some of whom are female and nontribal members. But he did not have a precise breakdown.

During the question and answer period, he acknowledged receiving some complaints of officer misconduct from community members. An internal review committee, composed of nine representatives from each district on the reservation and two officers, investigates these complaints, he said. All civil rights violations are forwarded to the FBI, he added. Brewer also admitted that some tribal officers are not adequately trained to conduct criminal investigations, specifically for murder and assault cases. "It's something we're working on," he said. In January 2000, 12 officers are leaving for a police academy, and he said he is trying to get two of his criminal investigators into a criminal investigation class offered in Quantico, Virginia. Because of insufficient funding not all officers can be trained at once. But by the end of 2000 he hopes that every officer will have completed some training, he said.

Brewer agreed with earlier community panelists that police officers sometimes engage in racial profiling. "A lot of [residents] are simply afraid to drive to the next town come first of the month when they have any money. Chances are they're going to get pulled over," he said.

Thomas Hennies, Chief of Police, Rapid City

Thomas Hennies has been a Rapid City police officer for 35 years, and for the past 16 years he has been chief of the 101-member force. Recently he was elected to the South Dakota State Legislature. He told the Committee, "I personally know that there is racism and there is discrimination and there are prejudices among all people and that they're apparent in law enforcement." But, he said, great strides have been made over the past 35 years. "When I first became a policeman here, if you found a drunk Indian downtown, you'd put him in a garbage can. And when he got out, he was sober enough to leave, and that's just the way things were." But people in charge are committed to change, he said. "I can tell you if those things do occur [today], and I'm not so naive as to say never, but if they do occur, they will be dealt with because we are trying to make a difference."

Sensitivity training, Chief Hennies said, simply does not work. Instead, police departments need to recruit officers to reflect the racial makeup of the community, which in turn will increase cultural awareness among officers. To make this point, he said, he often tells the following story:

When you have one or two Indian people on your department, you will hear your officers say that there are only two good Indians in Rapid City and they both work for the Rapid City Police Department. And then when you get three or four, they'll go on to say that these people are a little bit different than the other Indians that we deal with. You get 6 or 8 or 10, and pretty soon they start realizing, after they've spent 8 hours in the car, that they talk about religion and politics and food and family and their history and their culture, and pretty soon through osmosis, your white officers begin to understand Indian officers or minority people. And they have greater sensitivity through that learning of culture that's not forced on them.

Chief Hennies estimated that his police department has between 15 and 20 minority officers, including women; and of those, around 10 or 12 are Native American. But he added, "Just hiring or promoting or moving people because of skin color or culture is wrong. And I'll tell you this: Every employee I have is qualified." The Rapid City Police Department recruits potential officers from colleges and technical schools on

reservations, and goes all the way to Michigan to recruit minority applicants, he said.

Hennies responded to a comment from an earlier panelist, Rosalie Little Thunder, that a sensitivity course at his department "did not go well." He agreed with her assessment and explained what happened: During a discussion on the Fort Laramie Treaty, which gave Indian people the Black Hills, an officer stood up and said he did not steal the land and he was tired of being accused of it. An argument between him and the moderator ensued, and the class had to be terminated at noon. (The officer is no longer on the police force, Hennies said.) Although his department has abandoned sensitivity training and focused instead on recruitment, it still provides annual cultural training, he said. For example, Little Thunder was called in to teach officers the Lakota language.

Committee member Popovich, noting that Rapid City is a reservation border town, asked Hennies whether his department shares information on crimes with tribal police. "Unfortunately, no, we don't share a lot," he responded. But he said his department, and presumably tribal police too, would like to see communication improve.

Don Holloway, Sheriff, Pennington County

Don Holloway started his law enforcement career in 1968 as a deputy sheriff in Pennington County. He was elected sheriff of the 52-member force in 1983. His department has one Native American deputy sheriff and five to seven female officers, he said.

Sheriff Holloway discussed the Rapid Creek deaths, which his office, along with the Rapid City Police Department, is investigating. Since May 21, 1998, eight men have drowned in the creek that runs through Rapid City. (The last death was on July 8, 1999.) The cases, all unsolved, have some similarities. Six of the men were Native American, seven out of the eight had a very high blood-alcohol level, and the bodies were found in relatively close proximity to one another. "I think after a period of time we started seeing a pattern, something that was not familiar or not consistent with what we had seen happening along the creek in the past. We refocused our investigation," the sheriff said.

Currently, the deaths are being investigated as homicides. But whether they are all ruled homicides and if they are indeed connected, re-

mains to be seen, the sheriff said. The Mid-States Organized Crime Information Center has assisted with evidence analysis, and the sheriff's department asked the FBI to do a criminal profile based upon information gathered so far, he said.

An obstacle to solving these cases, the sheriff said, is the mistrust Native Americans hold for law enforcement. He told the Committee:

You've heard here today from Rosalie and other people about prejudice and the perception of prejudices in our community, and I think that those are true or accurate descriptions. Obviously, that does create a problem for us in gaining the trust and confidence of the people that we really need to help us with these cases.

The sheriff believes there are witnesses who have not come forward.

To bolster confidence in his department's efforts, the sheriff said he has held meetings with community members and attended rallies on behalf of the victims. "We do have some working relationship with some of the local Native American people who live here and share our concern for trying to find the people responsible for these cases," he said.

Woodrow Starr, Tribal Police Chief, Standing Rock Sioux Tribe

Woodrow Starr is the supervisory criminal investigator for the Bureau of Indian Affairs (BIA) and is stationed on the Standing Rock Reservation. All 12 of Standing Rock's police officers are enrolled tribal members and 1 is female.

Beginning his presentation, Chief Starr remarked that panelists before him had focused on negative encounters with non-Indian officers. But, by and large, he has not had "bad dealings" with white officers. "There's a lot of issues in the past, and a lot is gone," he said. One problem he has faced, however, is racial profiling. And his own officers are sometimes the ones pulled over. He told the Committee:

Some of the younger law enforcement officers out there, they even stop some of our Indian police officers. We see each other. Then when they stop us, they realize it's us. They don't recognize us out of uniform. . . . It's not done, I believe, intentionally towards the individual officer. I believe it's because he's an Indian

driving a nice vehicle or something and he just happened to be in the wrong place at the wrong time.

Crime levels on reservations like Standing Rock and Rosebud are as high as in the community of Rapid City, Chief Starr said. But his department's resources are not adequate to handle the caseload, and tribal people and the officers themselves often suffer the consequences. With only 12 officers, "a lot of people's calls for help never get answered." And because they are overworked, "a lot of officers after a period of time experience burn out and sometimes give into the stress and hurt some of the tribal people," he acknowledged. Allegations of excessive force and officer misconduct are forwarded to BIA's internal affairs unit and the FBI. But "a lot of allegations" never get prosecuted and the only recourse is internal disciplinary action, he said.

Chief Starr admitted that some Indian police officers do not receive the training they need. Some BIA criminal investigators cannot perform requisite investigatory tasks such as preparing evidence to send to the crime lab or the FBI and writing letters and affidavits to present to judges, he said. But others actually have to assist the FBI on the reservation because the agents "haven't seen a felony crime." There is a gamut of abilities.

Chief Starr concurred with Rapid City Police Chief Hennies that communication between tribal police and county and city law enforcement is limited and said he welcomed increased communication.

Community Panel

Floyd Hand, Pine Ridge

Racism, Floyd Hand said, can be combated with education. Children need to be taught about racism at an early age, and outdated school curricula, with its stereotypical descriptions of Indian people, must be revised. Parents also need to be educated, because by example they determine their child's attitude, he said.

Because of racism people are suffering on Pine Ridge Reservation, Hand said. Agreeing with other panelists, he said a civil rights office on the reservation would be helpful, with one caveat: The office should not employ members of the Oglala Tribe. Everyone is related on the reservation, he said, and because of the extended

family concept, people from other reservations or nontribal people should be in charge of processing grievances to ensure neutrality. Earlier he claimed that nepotism and discrimination against full-blooded Indians by other tribal people exist on Pine Ridge.

Elaine Holy Eagle, Rapid City

Elaine Holy Eagle is an enrolled member of the Cheyenne River Sioux Tribe and has lived in Rapid City for more than 40 years. In those years, some people have drowned accidentally in the creek, but the number of recent deaths is unprecedented. "I can't understand how eight men drowned in Rapid Creek, and in December 1998 four men drowned in 4 days," she said. Holy Eagle questioned why people are not outraged over their deaths. "Is it because people are conditioned to believe it's okay if an Indian person is killed?" she asked.

Disparate treatment of Native Americans is pervasive in South Dakota, according to Holy Eagle. "There is definitely a dual justice system, one for white people and one for Native Americans." Some Native Americans have reported incidents of discrimination to the police department and the mayor's office, but many others are unaware of the proper procedures for filing a complaint, and some remain silent, fearing retaliation, she alleged. Further, cultural factors discourage Indian people from coming forward. Native Americans, particularly "full bloods," Holy Eagle said, are taught to respect authority, and out of this respect, they do not stand up for their rights.

To reduce prejudice among law enforcement officers, Holy Eagle recommended that the police and sheriff's departments continue cultural and sensitivity training. Responding to Chief Hennies' comments that some officers have resisted sensitivity training, she said, "It brings back to my mind how some of our ancestors and relatives, they didn't want to go to boarding school either. They didn't want to give up their language." In addition to training, the departments should implement a policy against racism and discrimination, she said.

Native Americans would trust law enforcement agencies more if they would simply communicate with local people, she said. Currently, "there's no communication. We don't know what's going on—what the police are doing; they haven't given us any update." But if communica-

tion were to improve, she said, "some kind of healing . . . will be going on in the Native American community because so far we as Native American people feel like we're not being heard."

In response to a question of how Native Americans could lure money onto the reservation—through casinos or other ventures—which in turn would increase their economic power and reduce the impact of prejudice, Holy Eagle concluded her remarks by saying, "I think we as Indian people have rights to respect and dignity just because we're people . . . regardless of whether we have 2 cents or no money at all."

Tom Poor Bear, Pine Ridge

In response to the June 1999 murders of Wilson Black Elk, Jr., and Ronald Hard Heart, Tom Poor Bear, a relative of both men, set up an encampment called Camp Justice near the culvert where the bodies were found. With four tipis, a half-dozen more comfortable tents, and a sweat lodge for traditional worship, Camp Justice is home to about 20 Native Americans who have vowed to remain there until the murders are solved. In addition to bringing the killers to justice, camp organizers want the tiny, unincorporated Nebraska border town of White Clay shut down. They blame White Clay, with its four beer stores, for rampant alcoholism on the dry reservation and for violence against Indian people, including the recent murders, that alcohol use brings.

Poor Bear said if Black Elk and Hard Heart had been white, the response by law enforcement would have been much different. "If those were two white people that were found, the FBI would have been there in full force the day they found my little brother and Ron. Last week, the FBI did come to Camp Justice and did a sweep and they brought a dog—6 months later." Both the FBI and the tribe's Department of Public Safety are guilty of inadequate investigation and lack of communication with family members, he alleged.

Sheridan County, Nebraska, law enforcement—the sheriff's department and its criminal investigators—should be investigated, Poor Bear said. "I personally hold that county responsible for these deaths, as many of our Lakota people do," he said. Over the years, Sheridan County, which encompasses White Clay, has been the scene of many American Indian deaths, he alleged. And, he said, "Every time, they say our

people die of natural causes, but when they are identified by family members, they are beaten."

Since the Black Elk and Hard Heart murders, Camp Justice, together with the American Indian Movement, has organized weekly protest marches into White Clay. Protesters maintain that according to the 1868 Fort Laramie Treaty White Clay actually sits on reservation land and belongs to the Sioux. And they want the town, with its 22 residents and beer stores, to vanish. The first march, in late June 1999, turned violent and VJ's Market was vandalized. "It wasn't the intent of the walk for justice, but you have to look at the years and years of frustration, of racial abuse—physically and verbally—by the people that are in White Clay," Poor Bear explained. The next weekend, Poor Bear said, marchers were greeted by more than 100 riot-clad State troopers with tear gas and attack dogs.¹¹ By closing White Clay, not only will crime against Indian people lessen but money will stay on the reservation, where it is desperately needed. Ninety-nine percent of the millions of dollars White Clay store owners reap is "Lakota money," Poor Bear contended.

Peggy Redday, Sisseton

Peggy Redday said that in his presentation before the Committee the Roberts County State's attorney had "sugarcoated" the facts surrounding her son's case. She has known Kerry Cameron all her life, Redday wrote in a supplemental statement to the Committee. And when meeting with him shortly after Justin's death, she said, "I told him that I didn't think anything would be done because Justin was Indian and the driver was white. He kept assuring me that it didn't make any difference."¹²

Justin was walking home from a party when he was struck by Mark Appel's pickup truck. His blood-alcohol level was 0.2—high but not high enough to cause him to pass out in the road, his mother said. Appel had also been drinking, and because he was on probation, he should not have even been out at 1:00 in the morning, she said. After the accident, Appel was placed on house

¹¹ Tom Poor Bear, supplementary written statement to the U.S. Commission on Civil Rights, Rocky Mountain Regional Office, Dec. 6, 1999, p. 3.

¹² Peggy Redday, supplementary written statement to the U.S. Commission on Civil Rights, Rocky Mountain Regional Office, Dec. 6, 1999, p. 3.

arrest, but she said, he was arrested again for DUI in Codington County. "I had been telling Mr. Cameron he's out partying every weekend," she said.

Nearly 3 months after Justin was killed, on August 12, 1999, a grand jury indicted Appel on vehicular homicide, DUI, probation violation, and underage consumption. Redday said she was told the lesser charges would be dropped and in exchange the State would pursue the vehicular homicide charge. "We were very happy about that," she said. Instead, the next morning the State's attorney did the opposite and requested that the judge throw out the grand jury's ruling and only charge Appel with DUI and probation violation, Redday wrote in her written submission.¹³ The driver "got absolutely nothing for the death of my son," she told the Committee. For Redday, her son's case sends a message that justice is not guaranteed for Native Americans. She wrote:

In my opinion, the message the courts are sending to our community is that its okay to kill someone as long as it [is] an Indian in this county and state. This state treats Native Americans just like blacks are treated in Mississippi. Why wasn't something done when [Mark Appel] was caught the second time? Why did my son have to die because this white boy seems to have the right to drive around drunk. My son, Justin Redday, is dead. The court system leaves a family with no closure, no justice, and peace of mind for our Native American community.¹⁴

David Seaboy, Sisseton

On July 29, 1998, a car driven by David Seaboy's daughter Melanie plowed into a Jeep Cherokee, killing the other motorist instantly. Melanie, who had just turned 18, had been drinking. Seaboy said Melanie accepted her responsibility, pled guilty to vehicular homicide, and put herself at the mercy of the court. And "the mercy of the court was that out of a maximum of 15 years, she would serve 14 years in the South Dakota State penitentiary for women," he said.

During his presentation, Seaboy listed the sentences for 10 comparable cases in the fifth judicial circuit, where his daughter was sentenced. (He also gave a letter to the Committee providing case citations.) Melanie's sentence was

nearly 3 times more severe than any other sentence handed down in the circuit for a comparable offense, he discovered. The harshest sentence for vehicular manslaughter or homicide was 5 years, and some defendants served no time at all, he said. The only female defendant among the 10 cases pled guilty to vehicular homicide, like Melanie, but received a suspended sentence of 5 years, he added.

A newly hired attorney for the Sisseton-Wahpeton Sioux Tribe has taken on Melanie Seaboy's case and petitioned the court for a reduced sentence. The same judge who sentenced Melanie to 14 years agreed to hear the resentencing motion on December 15, David Seaboy said. (The sentence reduction hearing was held at the Roberts County courthouse on December 15, 1999, at which time Judge Larry Lovrien allowed parties to submit supplementary pleadings until January 3, 2000. Both Melanie Seaboy and the attorney for the victims provided pleadings. But on January 21 the court dismissed the motion to amend the sentence.¹⁵)

Mark White Bull, Kenel

Mark White Bull is an American Indian Movement leader and organizer of a committee seeking justice for Robert Many Horses. After charges were dropped against the teenagers who stuffed Many Horses in the garbage can, White Bull said he began his own investigation. He interviewed several people, whites and Indians, to "trace Robert's footsteps" that night. The information he unearthed was then sent to the FBI, which, in turn, started its own investigation, he told the Committee. "Initially we felt relieved that the FBI was going to come in," he said. But that feeling soon changed when he realized that "the FBI investigation was not in the spirit of determining that there was any wrongdoing." White Bull concluded, "The FBI has absolutely no credibility with the Native American community."

White Bull claimed he and his investigative partner, Ron Oxford, discovered that, like the FBI, the local police department did not aggressively investigate the Many Horses case. Investigators failed to uncover crucial facts, including how much alcohol Many Horses had consumed that night, White Bull alleged. Some police officers, he charged, were "racially biased" and one

¹³ Ibid., p. 3.

¹⁴ Ibid., p. 4.

¹⁵ State of South Dakota v. Melanie Seaboy, 98-312 Memorandum Decision, Fifth Judicial Circuit, Jan. 26, 2000.

was a relative of one of the defendants, which clouded objectivity.

Commissioner Meeks, noting that attorney Charles Abourezk is now representing Many Horses' mother, asked White Bull if justice for Many Horses is imminent. Pursuing civil charges against the chief suspect in Many Horses' death gives his mother some redress, but others should be charged as well, he said. "If the Mobridge Police Department and the State's attorney were made part of the settlement then I think Mobridge is going to start thinking about what they did and also exercising more equal justice for American Indians."

Public Session

A public session followed the scheduled panels. More than 50 people signed up to speak before the Advisory Committee, and because of the large turnout each person was allotted 3 minutes. Nearly all the speakers were Native American, which prompted one man to say, "I don't see anybody from Rapid City or Sioux Falls or any non-Indian communities here, and they should be here also." The remarks heard during the public session largely mirrored earlier comments by panelists. Racism, uneven prosecution, disparate sentencing, mistrust of the FBI, and officer misconduct were all mentioned by community members. Additionally, several speakers noted the historical underpinnings of racial tension in the area, namely broken treaties and bellicose FBI tactics. Perhaps most important, community members offered the Advisory Committee and the Commission several recommendations for promoting fairness throughout the State's judicial system.

As some speakers noted, exactly 23 years earlier, on December 6-7, 1976, the South Dakota Advisory Committee held a factfinding forum in Rapid City on the quality of criminal justice for American Indians. Although many people expressed gratitude for the Committee's return, Selena Wolf Black and others also remarked that the situation for Native Americans in South Dakota has gotten worse, not better, over the years. Charmaine White Face, a writer and columnist, who also spoke at the first forum, said, "It is deplorable that there had to be so many deaths before these hearings were held." And others, including Robert Milo Yellow Hair, worried that the Committee's current effort

would prove fruitless. "We don't want you to go away and we don't hear from you again. I don't want to be sitting here 26 years from today asking for justice again," he said.

Many speakers at the public session discussed cases of family members who, in their view, have been unfairly prosecuted or received unusually harsh prison sentences. Others discussed complaints of police brutality that have gone unheard. Chairperson Berry told the audience the Commission would send a transcript of the proceedings to the regional FBI office so that agents could follow up on specific allegations. And throughout the evening, an agent stood by to offer assistance and did meet with a few speakers in an adjacent room.

The public session began with presentations by American Indian Movement (AIM) representatives, including its founders, Dennis Banks and Clyde and Vernon Bellecourt. Earlier in the day, AIM held a well-attended press conference outside the meeting room and called on the Advisory Committee to set aside time for its members to testify. During their presentation, members explained to the Committee the role AIM has played in South Dakota since its founding in 1968. "Almost a week after we were formed . . . we started getting requests to go to different parts of the country because [Native Americans] felt nothing was being done to resolve crimes against Indian people," Clyde Bellecourt noted. And over the past 30 years, Banks claimed, hundreds of American Indians have been murdered and law enforcement has not aggressively investigated the crimes. "It is perfectly legal yet in America to kill an Indian," Clyde Bellecourt concluded.

AIM board member Michael Haney, who is also executive director of AIM's splinter-group National Coalition on Racism in Sports and Media, discussed an issue not previously addressed at the forum. He spoke of items sacred to Indian people—eagle feathers, Native headdresses, and traditional dances—being exploited by high school, college, and professional sports teams. "When they reduce us to mascots or dehumanize us, it is easy to commit crimes against us," he said. Therefore, Native images, nicknames, mascots, and symbols should be taken out of the public domain, he maintained.

AIM members asked the Commission to support their request for a Federal inquiry into the recent deaths of Indian people in Mobridge,

Rapid City, and White Clay, as well as the "many unsolved deaths" that occurred on Pine Ridge Reservation during and after the FBI occupation of Wounded Knee. AIM, Vernon Bellecourt said, has appealed to the Senate Judiciary Committee to hold hearings on Pine Ridge and to appoint a special investigator. Clyde Bellecourt said, "We need a special Federal inquiry, and that's what we're requesting here today. We are asking this Commission to back us and support us in that effort to bring forth a Judiciary Committee with subpoena power to subpoena and do a full-scale investigation as they do in Mexico and other places when American citizens are kidnapped and murdered." The Committee "must investigate what role the FBI and their admitted extremist agent informants and other U.S. Government agencies played during the reign of terror in 1973 and thereafter in South Dakota," Vernon Bellecourt said. Further, he added, the investigation should encompass the 1975 shoot-out on Pine Ridge that claimed the lives of two FBI agents and the resultant prosecution of Leonard Peltier, who remains in prison.

South Dakota's history has, to a large extent, shaped current race relations, many speakers contended. "The Civil Rights Commission needs to know the history of this area which will help, in part, to explain the reasons for the racism in this part of the country with the subsequent prejudice, discrimination, and hate crimes coming from that racism," Charmaine White Face said. Charles Fast Horse remarked that the historical relationship between indigenous Indian people and European colonists was "characterized by administrative oppression [and] entitlement to our lands." In particular, several people mentioned the abrogation of the 1868 Fort Laramie Treaty, which had given Indian people sole possession of a large chunk of western South Dakota, including the mineral rich Black Hills. In 1980, the Supreme Court affirmed what Indian people had been saying for more than a century: that the treaty was broken in violation of Federal law. And with the advent of Native American newspapers and radio stations, "non-Indian people residing in western South Dakota are constantly reminded that they are living on stolen land," White Face said. Catherine Yellow Hawk expressed a sentiment held by many at the forum: "This land here in Rapid City is Lakota territory. This is our land here, and all

we're asking for is a place for our future, our children."

A few speakers, including Jesse Taken Alive and Lionel Bordeaux, said the Commission should press the Federal Government to comply with Sioux treaty rights. Marvin Kammerer, one of the few non-Indians to testify at the public session and a self-described "squatter on treaty land," said, "You have to tell our congressional crowd to quit stealing water, quit stealing the treaty resources, to deal with them as a nation because they are a nation."

Racism is widespread in South Dakota, according to some speakers. "As far as racism goes, it's so terrible, I would say it is similar to what the Ku Klux Klan used to do to black people," Gordon Spotted Horse said. Rick Grey Buffalo Quinn said, as a child on the reservation "there was nothing but peace." But of moving to Rapid City, he remarked, "I have never felt so hated, so degraded and so mistreated and so stepped on in my entire life." As a non-Indian who married an Indian person, Lise Balk King said she has gained a new perspective on race relations. "I'm treated very differently than I was before because people see me as being part of the Indian community," she said.

Two speakers noted past undertakings initiated in the State to ease racial tensions. Gary Loudner, president of Black Hills Satellite Communications and a State senate candidate, said that from 1968 to 1995 there was a Rapid City Indian/White Relations Committee, on which he served for many years, that tackled the same issues heard all day at the Advisory Committee's forum. Representatives from the Rapid City Police Department participated in the meetings and fielded complaints from community members. But in 1995 the committee was dissolved for lack of interest, he said. Tom Katus, director of the Rural Ethnic Institute, informed the Advisory Committee about the institute's 60-page report, *Western Dakota's Pilot Project of the Evolving Roles of Tribal People in Nation States*. The report is the result of 26 State and community leaders engaged in a year-long dialogue (1996-1997) on race relations. In 17 sessions, the participants, about half of whom were Native American, deliberated on 53 policy issues they identified. Eventually, by a two-thirds majority vote, 42 policy recommendations were included in the final report, showing a commitment to reconciliation, Katus said.

Speakers at the public session concurred with earlier panelists that Native Americans are targeted by overzealous, and sometimes abusive, law enforcement officers. However, unlike previous statements which primarily focused on misconduct by white officers from local police and sheriffs' departments, in the public session the finger pointing was often at tribal police. Some speakers accused tribal police officers of brutally assaulting their family members and getting off scot-free.

Katie Hill from the Sisseton-Wahpeton Sioux Reservation spoke on behalf of her 90-year-old mother, Josephine Lapointe, who sat at her side. On June 3, 1998, Hill said her mother was assaulted by an officer from the tribe's Police Commission. He "grabbed her right wrist with both hands and twisted her wrist." After the incident, she said she drove her mother to the emergency room at the public health hospital in Sisseton. She filed a formal complaint with the tribe's Elder and Disabled Affairs Office, contacted the tribal chairman and tribal secretary, and followed up with the Sisseton-Wahpeton Police Commission. Not only were her efforts rebuffed, but 2 months after the formal complaint, criminal charges of disorderly conduct were brought against her mother in tribal court, Hill told the Committee. "She became the perpetrator and the other people became the victims," she said.

Celia Martin from Porcupine on the Pine Ridge Reservation said her grandson had just been accepted into the Marines when he was pulled over by officers from the tribe's Public Safety Department. He was charged with drunken driving and while getting into the squad car to go to the station, an officer slammed the door on his ankle, breaking it in three places, Martin alleged. Because of the injury, his offer from the Marines was rescinded. The officers are still at Pine Ridge, and, in fact, have been promoted, she said. Faith White Dress, also from Pine Ridge, said her oldest daughter was raped by off-duty tribal officers at a party. "They exonerated themselves before my daughter was even out of the hospital," she said. The director of Public Safety eventually agreed to reinvestigate but soon after was fired by the tribal council's executive board. And the investigation was never reopened, she said.

Because of alleged tribal police misconduct, two residents of Pine Ridge questioned the pru-

dence of redirecting Justice Department Circle Project funds to the tribal police department—a proposal that was discussed by panelists earlier in the day. Shirlee Bettelyoun said, "Tribal Public Safety brutality, excessive force, harassment, rapes, drive-by shootings, and nepotism occurs often. I sit and listen to testimony by authorities concerning the Circle Fund—that it is the answer. More money? Our problems still exist as long as directors, chief of police on down the line stand with their heads in the sand and choose not to listen to complaints made against them by members." Faith White Dress concurred: "I hear the police are asking for more money . . . I don't think any amount of money will buy a conscience. We need officers that are good."

In addition to tribal officers, some speakers discussed practices of officers from Rapid City and Walworth County. Complaints ranged from harassment to assault. Young Native American drivers in Rapid City are pulled over for playing Lakota music too loudly or simply for driving an "expensive" car, Sheryl Lu said. In Walworth County, Brad Peterson, an attorney for Dakota Plains Legal Services, said Native American drivers are stopped for such minor infractions as having air freshener hanging from rearview mirrors and having bent license plates. He added, "I find it hard to believe that investigation of these types of charges would show many non-Indian people being arrested for these types of charges." Geraldine Jackson said she was chased out of the Rapid City Police Department after inquiring about her grandson's arrest. An officer, she alleged, told her he would "throw her in jail and throw away the key" if she came back. Linda Johnson said a Rapid City officer slammed her daughter face-first onto the trunk of a squad car. A panel set up by the mayor exonerated the officer, she said. Roberta Crazy Horse described another encounter with Rapid City officers: When she refused to let officers who did not have a search warrant into her house to look for a reported gun, they dragged her out by her legs, she alleged. As a result, she suffered a spinal injury, a broken arm, and severe bruises, she said. She asked the Commission to investigate the department.

Several speakers suggested ways to curb officer misconduct. First, Brad Peterson said the Commission should review arrest records for the hard data needed to prove Native Americans are targeted by officers. He recommended starting

with Walworth County. Second, Peterson and Faith White Dress said officers need to be more diverse—both in terms of race and gender—to better serve the community. Peterson said there are no Native American police officers, sheriffs, or deputy sheriffs in Walworth County. And White Dress said the Pine Ridge Public Safety Department must hire more female criminal investigators and officers. Third, Geraldine Jackson said a review board to monitor police departments' policies and practices, specifically in Rapid City, would be useful.

High arrest and prosecution rates necessarily translate into prison sentences for many Native Americans. And numerous speakers perceived the sentences of Indian defendants to be disproportionately tough. Racism, Federal sentencing guidelines, and racially unbalanced juries were among the top reasons cited for the disparity.

To illustrate disparity, many people discussed specific cases of family members and friends, including Marletta Panceco, who told the Committee that her daughter is serving a 30-year sentence for conspiracy to distribute methamphetamines, while a white man who shot her niece to death was merely ordered to put money into a trust fund for her orphaned children. Alice Bear Shield informed the Committee about a young Indian man, who while drunk, held up a convenience store. No one was harmed in the robbery, and he was apprehended peacefully in the store. Nevertheless, she said, he received a 55-year sentence. "You have non-Indians killing Indians and, at the most, getting 2 years' probation . . . and somebody that doesn't hurt anyone, doesn't even make any attempt to get out of a place [gets] 55 years. That's the difference in what's happening," she said.

Federal sentencing guidelines, some speakers contended, are primarily to blame for sentencing disparities between Indians and non-Indians. Promulgated in 1987, the guidelines dictate, within a narrow range, the sentences judges must give for specific offenses. Because cases originating in Indian Country are often tried in Federal court, Native American defendants are frequently sentenced under the guidelines. As discussed earlier in the forum, the perception among many Native Americans is that Federal sentences are typically harsher than sentences handed down in State court. U.S. District Judge Charles Kornmann of Aberdeen, who has been an outspoken critic of the guidelines, agrees.

People prosecuted in the State's Federal court system often receive tougher sentences than those convicted of the identical crime in State courts, he told reporters. "Does it make any sense that these Indians are subject to greater penalties than the rest of us?" the judge asked. "It's ridiculous."¹⁶

State Senator Paul Valandra, who lives on the Rosebud Reservation, spoke at the public session and told the Committee, "The main thing I wanted to get up here today and talk about is Federal sentencing guidelines that we're subject to on the reservations and how they are ripping our families apart." In addition to being locked away for years, many young Indian men have permanently lost their voting rights because of felony convictions, he added. Later, Cedric Goodhouse said the judge who presided over his son's trial was forced to hand down an excessively tough sentence. At the sentencing hearing, Goodhouse said the judge told his son, "The sentencing guidelines leave no discretion or precious little discretion to the courts. I am adamantly against them. I have always been against them, but they are here, and until Congress in their infinite wisdom changes them, they will remain in." Senator Valandra asked the Commission to work toward getting the guidelines changed. For his part, he said he would solicit involvement of tribal governments to help judges regain the discretion and flexibility they once had.

Disparate sentencing, for some speakers, often stems from Native American defendants not being judged by a jury of their peers. Statements such as "she could not stand a chance in court because it would be an all-white jury" and "it was 10 white people versus 1 Indian," were common. Jessie Taken Alive said, "American Indian people sit in front of juries of all non-Indian people when we are supposedly economically disadvantaged and yet they are sitting in judgment with all the stereotypical messages that they have received throughout the years." Brad Peterson, a Legal Services attorney, provided data to back up what other speakers had alleged. Noting earlier testimony by the Walworth County State's attorney that about 65 percent of his prosecutions are Native American, Peterson said the county's fall 1999 list of poten-

¹⁶ Joe Kafka, "Crimes on Reservations Get Tougher Sentences," *Rapid City Journal*, Apr. 23, 1999.

tial jurists for that 65 percent included only three Native Americans.

Unreasonable bonds are also responsible for high incarceration rates among Native Americans, Peterson reported. The average length of stay in the Walworth County jail is much higher for Native Americans because often they cannot afford to put up the bond needed to be released. And when the county court sets a high bond, it has a policy of not allowing bondsmen to be used, he said.

Three parents discussed the devastating effect incarceration has on Native American children, particularly those in the State's boot camp, and on families collectively. Mary Moran, a member of the Cheyenne River Sioux Tribe, told the Committee, "I can't understand how they can take our children that we raised. We fought to get them where they are, and the justice system takes them and puts them away like animals that have no rights. And there is nothing, there is nowhere that we can turn, nobody that would help us." Marletta Panceco echoed similar concerns: "We have a right to be with our families. We have a right to some kind of peace and happiness here without the fear of them taking away our children all the time."

Jean Roach said her daughter has been confined to the Department of Corrections on petty theft charges for 2 years due to the department's discretion in setting release dates based on good behavior. She also broached the subject of boot camps, which recently have sparked much controversy in the State because of the July 1999 death of a 14-year-old girl at the State Training School in Plankinton. After being forced to complete a 2.7-mile run, Gina Score, who was overweight and out of shape, collapsed and was left lying on the ground for 3 hours frothing at the mouth. She eventually died of hyperthermia. Two staff members, who said they thought Score was feigning symptoms, were charged with felony abuse and manslaughter. (On January 13, 2000, a circuit court judge threw out the manslaughter charges but agreed to try the defendants for child abuse.) Following Score's death, the South Dakota Department of Corrections asked the Justice Department to review conditions at the juvenile facility. And on January 18, 2000, the Department released a report concluding the school overemphasizes physical conditioning, needs better trained staff, and must

improve medical services.¹⁷ Between 30 and 40 percent of the children in the facility's boot camp program are Native American, who, according to Jean Roach endure belittlement and racist attitudes from staff in addition to physical abuse.

In response to perceptions of inequitable sentencing, some speakers called on the Commission to initiate a study on sentencing patterns. As Brad Peterson said, "Numbers can't lie, they can't be sugarcoated, they can't be modified or changed." A few years ago, participants in the Rural Ethnic Institute's project voted overwhelmingly (80 percent) that a study was needed. Finding 6.1.1 in their final report states, "The [South Dakota] Legislature should authorize a study commission on why South Dakota incarcerates more than twice the number of criminals as its neighboring state and why Native Americans comprise 4 times the prison population compared to their percentage in the State's total population."¹⁸

While many speakers described being targeted by overzealous officers, prosecutors, and judges, they also spoke of being disregarded by the justice system when they most needed help. Frances Zephier summed up the view of many at the forum: "Our people are regulated by how many institutions? . . . They are regulated by city, county, tribes, State, Federal, BIA. All these agencies, but not one can protect us, but yet they regulate us and they prosecute us when there is a crime against a non-Indian."

A few people said their children had been assaulted by non-Indian men, but when they sought assistance from authorities, help never came. One speaker said that after his daughter was abused, "We went through the proper chain of command and nothing happened. Everybody, BIA all the way up to the State's attorney, they stopped everything. It never even went to a grand jury or anything. They never even investigated."

Shawn Bordeaux from the Rosebud Reservation told the Committee of his frustration in seeking justice for his wife and unborn child who

¹⁷ See U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Assessment of Medical and Program Issues Related to Conditions of Confinement at the South Dakota State Training School and Juvenile Prison*, Jan. 18, 2000.

¹⁸ Rural Ethnic Institute, *Western Dakota's Pilot Project of the Evolving Roles of Tribal People in Nation States*, December 1997, p. 28.

were killed in a drive-by shooting. Jurisdictional complications have hindered the investigation, with the Bureau of Indian Affairs and the tribe recognizing different boundaries, he said. Further, he said, he has not been able to get assistance from the FBI. "I don't understand how easy we can get FBI agents to come to [the forum], but for some reason on my case in Kansas, we can't get any FBI agents to assist us." And, he added, whenever "a little bit of marijuana" is found on a juvenile, several agents come to the reservation.

Despite hours of testimony pointing to inequities in South Dakota's justice system, many speakers remained optimistic that the situation for Native Americans could improve. "I think all of us know what the solutions are. We have to have the courage to say it. It's going to take self-sacrifice from the top to the bottom," Scott Heron said. And several people recommended courses of action to the Committee. Many people, recognizing deep inequities outside the justice system that also must be addressed, recommended additional funding for schools, housing, and health care as well as programs to lure jobs into Indian Country. Selena Wolf Black, representing the Memorial Walk Committee, asked the Commission to initiate a 3- to 5-year study in the Rapid City community on racism in areas of housing, employment, education, and local government, in addition to the judicial system. Other recommendations were specific to the administration of justice, including examining sentencing patterns and changing Federal sentencing requirements that were mentioned above.

From testimony, it is clear many people do not know who to contact when they believe their

civil rights have been violated. Avenues for redress are not widely available, and resources that do exist are not well publicized, some speakers said. A civil rights office in South Dakota, perhaps several on the reservations, is essential according to many people. Charmaine White Face said that "such an office would have the ability to document thousands of complaints . . . and could assist greatly in disintegrating the racism that is growing in South Dakota." Lise Balk King suggested compiling a list of resources. "One of the most simple things that could be done would be to put together some kind of list of organizations or resources that are available to address specific problems."

In addition to increasing the number of Native American police officers, judges and jurists, one community speaker said the Governor's office must promote diversity among the many State committees. Robert Demery of the Standing Rock Lakota Nation said the board that monitors State correctional facilities—the Board of Charities and Corrections—has no Native American members. Further, he said, "There's never been an Indian on the Board of Regents. There's never been an Indian on the Finance Board, the Board of Agriculture, or and other board in this State."

Many speakers simply asked the Commission on Civil Rights to come back to South Dakota. A 1-day forum can only touch the surface of problems facing Native Americans in the State. Roberta Crazy Horse said, "I would like to request that you people come back here and help us out. There is a lot of discrimination going on here . . . A lot of our people are getting killed."

ferent law enforcement agencies serving Indians in South Dakota.

The task force will need to develop strategies and aggressive initiatives for rebuilding Native American confidence in Federal law enforcement functions in Indian Country, especially those carried out by the FBI. Briefings and consultations with Indian tribal leaders, grassroots organizations, and community representatives should be initiated. Permanent mechanisms need to be established for institutionalizing Native American participation in Federal law enforcement activities. Formal complaint procedures need to be instituted which ensure that allegations of improprieties are thoroughly and independently investigated. Police-community concepts should be incorporated in FBI operational practices. FBI outreach should be designed to provide as much information as possible concerning Federal law enforcement policies and protocol. The results of investigations into major crimes in Indian Country should be publicized in a timely manner. Procedures for initiating Federal review of criminal cases by the Civil Rights Division for potential prosecution should be made public. Where cases are referred for Federal civil rights scrutiny, results should be reported on a timely basis.

2. The FBI and other Department of Justice divisions that serve Native Americans should expand their efforts to recruit Native Americans at all levels of employment, including law enforcement and management positions. Additional training concerning Indian Country should also be provided to all enforcement officers. Agents assigned to reservations should include American Indians and other personnel with knowledge of cultural differences.

3. The Departments of Justice and Interior should expand their efforts to provide funding, training, and technical assistance to tribal courts and tribal law enforcement. Tribal governments should make every effort to insulate their professional law enforcement entities and courts from the pressures of political influence and patronage. Federal evaluations of contracts with tribal governments for law enforcement functions should be expanded, and recommendations for improvements should be implemented as appropriate.

4. The South Dakota Advisory Committee recommends that the U.S. Commission on Civil Rights renew its 1981 recommendation calling for the U.S. Department of Justice to reconstitute an Indian section within the Civil Rights Division. (See *Indian Tribes: A Continuing Quest for Survival*.) It is imperative that there be a component within the Civil Rights Division with an exclusive interest in Native American discrimination issues. This is especially critical in view of the rural isolation and political disenfranchisement confronting First Americans. An Indian civil rights section would be responsive to the unique issues of Indian Country discrimination.

5. Hate crimes prevention legislation needs to be enacted at the State level and strengthened at the Federal level to respond to egregious crimes involving racial bigotry. Some of the information presented to the Advisory Committee suggested that racism might be a factor in certain violent crimes. In any event, this enforcement tool should be made available to Federal and State prosecutors.

6. Research should be conducted to determine whether there is bias in the operation of the Federal and State court systems, and all other significant components of the Federal and State law enforcement and prosecution functions. This includes such factors as law enforcement stops, racial profiling, arrests, bail, legal representation, pleas, prosecutions, jury selection and composition, and sentencing. Analysis should be conducted to determine if race is a factor associated with the decision to prosecute in arrests for various categories of criminal violations. The exercise of discretionary authority by justice system officials must be closely examined for potential bias. The adequacy of current public defender and court-appointed attorney systems should be reviewed. The discriminatory impacts of Federal sentencing guidelines must be rigorously scrutinized. Racial factors affecting the administration of justice must be eliminated to restore full confidence in both the Federal and State court systems. Carefully constructed research methodology must be designed to assess accurately whether disparities exist. (The Department of Justice's Bureau of Justice Statistics

sence from the electoral process results in a lack of political representation at all levels of government and helps to ensure the continued neglect and inattention to issues of disparity and inequality.

12. The town of White Clay, Nebraska, has become a symbol of oppression and exploitation for many Native Americans. This tiny community, located just a couple of miles south of Pine Ridge, serves as a convenient source for alcohol, which cannot be legally purchased on the reservation. Because so many criminal justice problems involve alcohol, many American Indian leaders believe that White Clay represents a threat to the well-being of their people. In addition, there are few, if any, detoxification centers or other alcohol treatment facilities available in this region.

13. There appear to be limited legal resources available for Native Americans in South Dakota. Victims of discrimination often find it difficult to secure legal representation. Court-appointed defense attorney systems and local public defender programs have been described as inadequate, due to inexperience, lack of funding, and potential conflicts of interest. There are also few Native Americans in the legal professions. National civil rights legal organizations are not easily accessible, and there are few such programs at the State level.

The expressed feelings of hopelessness and helplessness in Indian Country cannot be overemphasized. There is a longstanding and pervasive belief among many Native Americans that racial discrimination permeates all aspects of life in South Dakota and that prejudice and bigotry play out on many levels, including the workplace, schools, business, and public accommodations. Ample research exists to establish disparities in almost all indicators of social well-being, including income, health, education, employment, and housing. While some have overcome the obstacles and achieved great success, most American Indians have been left behind. For the most part, Native Americans are very much separate and unequal members of society. Thus, it is not surprising that they are underrepresented in terms of economic status and overrepresented in the population of the State's jails,

juvenile facilities, and prisons. Systemic, institutionalized, and historic discrimination disadvantage Native Americans in many ways, and therefore the problems they encounter when caught up in the criminal justice system are wholly consistent with other forms of discrimination.

Despair is not too strong a word to characterize the emotional feelings of many Native Americans who believe they live in a hostile environment.

Recommendations

1. The South Dakota Advisory Committee recommends that the Commission on Civil Rights call for the Attorney General to immediately appoint a Federal task force, conferring upon it the full force of the law (including subpoena power) to address the crisis of law enforcement affecting Native Americans, both on and off Indian reservations. Its focus should be on equal protection of the laws and civil rights protections. Appointments should include representatives from the Department of Justice's Civil Rights Division, Office of Justice Programs, Office of Tribal Justice, and Community Relations Service. The U.S. attorneys in affected jurisdictions should also serve. The Secretary of Interior should be requested to appoint high-level representatives from the Bureau of Indian Affairs, which has law enforcement responsibilities in Indian Country.

While the task force should consider issues in all areas of the country with significant Native American populations, its initial focus should be on South Dakota, where a lack of confidence in the justice system among Native Americans has reached crisis proportions.

The task force should be charged with bringing together key Federal, State, tribal, and local elected officials and law enforcement agencies to develop a plan for addressing the issues identified by the Advisory Committee and the U.S. Commission on Civil Rights. While many of the criminal justice problems relate to State jurisdiction, Federal influence is considerable due to the large number of enforcement matters that fall within its purview. The U.S. attorney, FBI, and Bureau of Indian Affairs all play major roles in law enforcement affecting Native Americans in South Dakota. The task force should also make recommendations for improving cooperation and jurisdictional agreements among the many dif-

3. Concerns, Conclusions, and Recommendations

Background

On December 6, 1999, the South Dakota Advisory Committee to the U.S. Commission on Civil Rights convened a public forum in Rapid City to obtain information on issues affecting Native Americans in the criminal justice system. This followed several high-profile cases of violent crimes against Indians that were perceived as having been insufficiently investigated or prosecuted, and other recent cases resulting in alleged disparate sentencing. Nearly 100 individuals addressed the forum, including Federal, State, and tribal officials; Native American advocacy, grassroots, and community leaders; and concerned private citizens. In addition, voluminous exhibits, documentation, and civil rights complaints were submitted to the Commission and its Advisory Committee.

The Commission has previously studied administration of justice issues in South Dakota, holding hearings in 1978 in Rapid City (American Indian Issues in the State of South Dakota, July 27–28, 1978); and Washington, D.C. (Federal Bureau of Investigation-Indian Reservations; Police Practices) and releasing findings in its June 1981 report, *Indian Tribes: A Continuing Quest for Survival*.¹ The South Dakota Advisory Committee held factfinding meetings in 1975 and 1976 addressing law enforcement and justice concerns affecting Native

¹ The U.S. Commission on Civil Rights released a report in June 1981, *Indian Tribes: A Continuing Quest for Survival*, which addressed the performance of Federal law enforcement in Indian Country. The Commission found that "many facets of Federal law enforcement in Indian Country have received widespread, repeated, and justified criticism from public and private organizations over the past decade." Among the study's findings: inadequate FBI resources for the investigation of criminal offenses in Indian Country; FBI agents are widely perceived as biased against "militant" Indians; procedures for filing, investigating, and reporting complaints of agent misconduct are lacking; insufficient Federal prosecutorial resources; lack of coordination; and inadequate statistics required to analyze accurately the quality of law enforcement.

Americans, and released a detailed report of findings in October 1977 (*Liberty and Justice for All*).² This body of research is invaluable in comprehending the current situation, as it demonstrates that many of the conclusions reached by the Commission and its Advisory Committee more than 20 years ago are in large measure still valid.

Major Concerns and Conclusions

1. Many Native Americans in South Dakota have little or no confidence in the criminal justice system and believe that the administration of justice at the Federal and State levels is permeated by racism. There is a strongly held perception among Native Americans that there is a dual system of justice and that race is a critical factor in determining how law enforcement and justice functions are carried out. This perception includes a belief that violent crimes involving Native Americans are dealt with differently from those involving whites. It is believed that crimes perpetrated by whites against Indians are investigated and prosecuted with less vigor than those committed by Indians against whites.

Information was received by the Advisory Committee suggesting disparities in many aspects of the criminal justice system, including law enforcement stops and racial profiling, arrests, prosecutions, legal representation, and sentencing. The belief that systemic and institu-

² Civil rights issues in the justice system were the subjects of a report released by the Advisory Committee of South Dakota in October 1977. In that study, *Liberty and Justice for All*, the Committee examined practices by State, county, and municipal law enforcement agencies. The Committee found: selective law enforcement; search and arrest without cause; harassment and brutal treatment; arrest of intoxicated persons on disorderly conduct charges; and simple discourtesies. The study was critical of the court-appointed defense attorney system and the bail system. It found serious underrepresentation of Native Americans in the juries and among the personnel in the courts and law enforcement agencies.

tionalized discrimination pervades the justice system in South Dakota cannot be ignored or lightly dismissed. Indeed, this belief is pervasive throughout the Indian community.

Many Native Americans are skeptical that changes in the justice system will occur to correct injustice and discrimination. They have lost faith in our democratic institutions and have no reason to expect reforms.

2. The Federal Bureau of Investigation in Indian Country confronts significant problems resulting from lack of confidence by Native Americans in this agency, born of years of conflict, controversy, and bitter emotional confrontations. For example, this lack of confidence is evidenced by Native American advocates citing significant disparities in the numbers of unsolved murders and those reported by the FBI.

3. At the State level, there is also a long history of distrust and a widespread perception that State and local law enforcement agencies, prosecutors, and the courts have not treated Native Americans in an equitable manner. Some characterize the existing relationship between Native Americans and State government as adversarial. Whether true or not, the perception is so pervasive as to negatively affect State-Indian relations.

4. There is an absence of civil rights organizations and civilian oversight mechanisms to address grievances involving police misconduct and other criminal justice discrimination. Positive police-community relations require citizen participation, and the advisory structures for this purpose are virtually nonexistent. Therefore, those who believe they are victims of discrimination in law enforcement lack adequate redress. And Native American input is not solicited on a systematic basis in law enforcement policies and practices.

5. Federal and State civil rights oversight in South Dakota is limited. There are no Federal civil rights agencies in the State, and discrimination issues requiring Federal attention most often must be handled by regional offices out of State or in Washington, D.C. The South Dakota Human Rights Commission is limited in authority and resources. There are few viable and ef-

fective local human relations commissions in the State.

6. The Advisory Committee heard many complaints concerning Federal sentencing guidelines. It was alleged that crimes prosecuted in the Federal system require harsher sentences than similar offenses prosecuted in State courts. Because of the much broader Federal jurisdiction applicable to crimes committed by Native Americans in Indian Country, disparate sentencing—with more severe punishment for Native Americans—may result. This serves to reinforce and strengthen the perception of unequal justice for American Indians.

7. Data collection and reporting systems in the criminal justice system are insufficient to provide an adequate basis for determining the extent of discrimination. Uniform reporting procedures are inadequate or nonexistent.

8. Native Americans are underrepresented in the employment of all institutions involved in the administration of justice, at the Federal, State, and local levels. They are also largely excluded from elected positions and other decisionmaking positions that govern the administration of justice.

9. Tribal court systems and tribal law enforcement agencies receive insufficient training, technical assistance, and funding from the Federal Government. The professionalism and integrity of these institutions are vital to public confidence in law enforcement and justice in Indian Country.

10. Jurisdictional issues involving the administration of justice for Native Americans in South Dakota are often complex, confusing, and misunderstood. This complexity contributes to the perceived breakdown of law and order in communities both on and off the reservations. Also, because of jurisdictional uncertainties, it appears that key officials can often avoid accepting responsibility for problems. Thus, accountability for the administration of justice is difficult to achieve.

11. Native Americans do not fully participate in local, State, and Federal elections. This ab-

might be an appropriate entity to design and conduct some of this research.)

7. Data collection procedures should be improved at all levels of the criminal justice system to ensure an adequate basis for determining equity, fairness, and consistency in the application of the law.

8. Racial tensions in South Dakota are high and require the careful attention of Federal civil rights officials. The Community Relations Service of the Department of Justice is uniquely equipped to assist communities in resolving these problems, and in promoting racial dialogue, mediation, conciliation, and conflict resolution. The Commission should request that the Department of Justice immediately assign a professional, experienced mediator from the Community Relations Service to provide these services full time to communities in South Dakota.

9. Tribal and Native American organizations should expand voter registration and educational efforts, and promote Native American candidates for elective office in South Dakota.

10. The State of South Dakota must initiate steps to build cooperation with its Native American citizens. Confidence in the administration of justice will not be restored in the absence of increased mutual respect and improved communications between Indian people and State officials. Meaningful and constructive dialogue must be established to accomplish this objective. This will not be an easy task, based on past history, but it is essential to the healing process. The Governor should call a summit and invite not only tribal government officials, but also Native American advocacy organizations and grassroots leaders who work directly with the victims of racial discrimination. This advisory process should be made permanent and result in positive recommendations for new legislation and policies designed to make State government more responsive to the needs of its Native American citizens.

11. The State of South Dakota should expand the authority and resources of its Human Rights Commission to include more educational, enforcement, and mediation services. City and

county governments should consider establishing human relations commissions and police-community advisory boards to assist in resolving racial tensions and addressing problems that might arise from law enforcement activities. These entities should be designed to encourage citizen participation in public policy (including Native Americans). Effective civilian oversight and complaint procedures for law enforcement should be implemented. Community-based policing methods should also be promulgated or expanded. Law enforcement agencies, prosecutors, and court systems must aggressively recruit Native Americans at all levels of employment. And comprehensive orientation on Indian Country culture and history should be required of all law enforcement and justice personnel.

12. The State of South Dakota should establish a statewide public defender program with adequate staffing and funding resources.

13. Tribal governments should consider establishing civil rights offices to assist their constituents in seeking redress for discrimination problems. These offices could serve as referral agencies for complaints and as clearinghouses for information on discrimination. They might also develop the capacity for providing mediation and conciliation services. Tribal authorities might also seek out resources to provide greater legal assistance and counsel to victims of discrimination.

14. While the Advisory Committee did not focus on issues of alcoholism and alcohol-related criminal justice problems, it is clear that there are insufficient resources available to address these serious matters. Alcohol treatment facilities, rehabilitation programs, and detoxification centers need to be established and expanded in South Dakota. Federal, State, tribal, and local governments should work together to expand these programs.

15. Finally, the U.S. Commission on Civil Rights is encouraged by the Advisory Committee to revisit discrimination issues affecting Native Americans. Both the Commission and this Advisory Committee have previously documented much discrimination in the criminal justice system, both at the Federal and State levels. The

Commission has carefully documented critical failures by the Federal Government in fulfilling its mandate for law enforcement in Indian Country. However, these conclusions were reached in studies conducted at least 20 years ago. The issues deserve reexamination, especially in light of the extensive and disturbing testimony received by the Advisory Committee at its December 1999 forum. The issue of Federal sentencing guidelines is a major current issue that has not been previously addressed by the Commission, and is heavily affecting Indian Country. The Commission should focus on this problem, including legal research and briefings. It should also consider holding full hearings in Indian Country on issues of discrimination and unequal protection of the laws. Native American civil rights and tribal leaders should be consulted before finalizing the project design.

It is evident that studies and hearings alone will not produce necessary changes and reforms. The commitment for change must be secured

from appropriate political leadership in Washington, D.C., and much more importantly, in South Dakota. This will not occur without a recognition that a crisis exists and that Native Americans have lost confidence in our justice system. As noted above, there is a widespread perception among Native Americans that there is a dual system of justice and that longstanding disparities have not been redressed. The erosion of faith in our democratic institutions by First Americans must be corrected soon. Federal and State officials must reach out to the many alienated American Indians whose people have borne the brunt of governmental neglect, indifference, and sometimes hostile treatment over many generations. The human resources are there to accomplish this, but the resolve has been missing. We believe that the U.S. Commission on Civil Rights could serve as a catalyst for initiating the necessary reforms. This Advisory Committee pledges its efforts and support to this essential objective.

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