
UNITED STATES SENTENCING COMMISSION



WRITTEN TESTIMONY

**PUBLIC HEARING
JUNE 19, 2001**

United States Sentencing Commission

NATIVE AMERICAN HEARING



June 19, 2001

Rapid City, South Dakota

Briefing Book

Gerardo Meeks - Cheyenne River - Chief

Tom Peckham

Agenda Page 1



United States Sentencing Commission
PUBLIC HEARING

Tuesday, June 19, 2001
9:00 a.m. to 1:00 p.m.

Judge Diana E. Murphy, Presiding

*United States Courthouse, Courtroom No. 1
515 Ninth Street
Rapid City, South Dakota*

I. Welcome and Introductions
Judge Diana E. Murphy – Chair

II. Opening Prayer
Gregg Bourland – Chair, Cheyenne River Sioux Tribe

III. Background on Commission and Purpose of Hearing
Judge Diana E. Murphy – Chair

IV. Panel I

- Elsie Meeks – Commissioner, U.S. Commission on Civil Rights*
- John Yellow Bird Steele – President, Oglala Sioux Tribe*
- William Kindle – President, Rosebud Sioux Tribe*
- Gregg Bourland – Chair, Cheyenne River Sioux Tribe*
- Michael Jandreau – Chair, Lower Brule Sioux Tribe*

*add agenda
to Tribal Cts
USCC would like a
class w/ Indians
Go to other states*

*Rosebud - 1 P.D. > 10,000 cases
1 P.D.*

*In Dept. of Justice
via info of P.D.*

V. Panel II

- Tom J. Peckham, Esq. – Nordhaus, Haltom, Taylor, Albuquerque, NM*
- Andrew Grey, Sr. – Chair, Sisseton-Wahpeton Sioux Tribe*
- Tom Ranfranz – Chair, Flandreau Santee Sioux Tribe*
- Roxanne Sazue – Chair, Crow Creek Sioux Tribe (invited)*
- Madonna Archambeau – Chair, Yankton Sioux Tribe (invited)*
- Charles Murphy – Chair, Standing Rock Sioux Tribe*

VI. Panel III

The Honorable Lawrence L. Piersol – Chief U.S. District Judge
Michelle G. Tapken – Interim U.S. Attorney, South Dakota
Marlys Pecora – Victim Witness Specialist, U.S. Attorney's Office, Pierre, SD
Ted L. McBride, Esq., Beadsley, Jensen & Von Wald, Rapid City, SD
Robert Van Norman, Esq., Federal Public Defender, Rapid City, SD
Lisa Thompson, Executive Director, Child Advocacy Center,
Ft. Thompson, SD

VII. Panel IV

Professor Frank R. Pommersheim, University of South Dakota School of Law
Terry L. Pechota, Esq., Viken, Viken, Pechota, Leach & Dewell, L.L.P.
Marty Hansford, District Manager, BIA

VIII. Closing Remarks

Judge Diana E. Murphy, Chair

(Panel participants are subject to change.)

Michael B. Jandreau,
Chairman



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MEMORANDUM

TO: United States Sentencing Commission

FROM: Michael B. Jandreau, Chairman
Lower Brule Sioux Tribe *Michael B. Jandreau, Chairman, LBS*

RE: Federal Sentencing Guidelines: Public
Hearing at United States Court House in
Rapid City, South Dakota

DATE: June 19, 2001

As the Chairman of the Lower Brule Sioux Tribe, I appreciate this opportunity to address this Honorable United States Sentencing Commission on the Federal Sentencing Guidelines.

The Lower Brule Sioux Tribe is a federally recognized Indian tribe under the Indian Reorganization Act of 1934. The presently diminished boundaries of the Lower Brule Indian Reservations are geographically situated within Lyman County and Stanley County in the State of South Dakota.

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

My observation is that the Federal Sentencing Guidelines appear to result in more harsh sentences for Native Americans in Indian country than for persons convicted on federal charges and state charges.

Part of the unfair, separate sentencing appears to result from the federal court treating all prior tribal court convictions in a manner similar to prior convictions in any other court -- notwithstanding that a tribal court criminal defendant has no right to a court-appointed attorney under the Indian Civil Rights Act of 1968, unlike a criminal defendant in most other court systems.

Federal court sentencing consideration of prior tribal court convictions is almost guaranteed to result in unequal treatment of different tribal convicts, because prior-conviction record-keeping in many tribal court is far from precisely organized in many underfunded, developing tribal court systems.

As a practical matter, the record of a particular tribal convict may depend upon the memory of a tribal clerk of court or other tribal court official, to help the clerk find a particular paper-trail record of a conviction.

Record-keeping that depends upon long-time court-official memory has the inherent flaws of any dependence upon human memory -- compounded by sometimes frequent turnover of tribal court employees.

Particularly in often small Indian communities, whether a tribal court official chooses to remember

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

a particular tribal member's prior conviction could understandably depend upon how that official feels about the particular tribal defendant.

In my opinion, most tribal court systems that I know about have used their limited resources remarkably well -- but, nevertheless, those limited resources do result in those tribal court systems having far from readily-available, predictable, computer-driven information processing of prior-conviction and other record-keeping.

A federal sentencing system's assumption that tribal prior-conviction records are virtually identical to state and federal prior-conviction records is a little like a train company's assumption that a team of horses is virtually identical to coal and diesel locomotive engines.

I find it difficult not to just think of the Federal Sentencing Guidelines as one of the many excessive federal laws that were described by Forbes magazine (Dec. 11, 2000) in its review of the book by Paul Craig Roberts and Lawrence M. Stratton entitled *The Tyranny of Good Intentions: How Prosecutors and Bureaucrats Are Trampling the Constitution in the Name of Justice*. Part of that review read as follows:

"Congress and its penchant for overly broad criminal statutes [has resulted in] sweeping criminal laws [through which] the prosecutor can find some technical charge to hang on just about anybody.... [W]e have at work ... an unholy alliance between business-hating liberals and crime-hating social conservatives."

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

In preparing these remarks, I have looked at some other comments and criticisms about the Federal Sentencing Guidelines. In all references to quotations and other sources, I have relied upon the research of the Tribe's General Legal Counsel Julian Brown, whose law office is in Pierre, South Dakota.

In February 1997, the National Center on Institutions and Alternatives in Alexandria, Virginia, published the following excerpts in its *Coalition for Federal Sentencing Reform: The Case for Reform*, on pages 1-3 of its web site printout [emphasis added]:

"Frederick Eiselt made some mistakes in his youth but his life was pretty well straightened out when he found himself in federal court charged with possession of a firearm. [Note 1. *United States v. Eiselt*, 988 F2d 677 (7th Cir. 1993).] Eiselt had held the same job for seven years. He earned eleven dollars an hour and health benefits for his entire family; he had a baby boy and his wife was pregnant. Eiselt's criminal history consisted of several old misdemeanor convictions, none of which resulted in a prison sentence.

"The Sentencing Guidelines committed Eiselt to 10 to 16 months in prison. But in light of Eiselt's family responsibility and modest criminal history, the judge considered that sentence too severe. He concluded that Eiselt was 'not a model citizen' but that the Guidelines calculation over represented his actual dangerousness. 'If we put him in jail, he will lose his job; and his wife and baby

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

will be on welfare. I don't know that's going to do anybody any good,' the judge declared. He sentenced Eiselt to three years probation with six months of community confinement.

"The Court of Appeals reversed. Strictly interpreting the Guidelines' mandates, it ordered the trial judge to apply the rules as written and check his discretion at the courtroom door.

"Cases like Frederick Eiselt's characterize the new era of federal sentencing. The Sentencing Guidelines, which promised to bring order and rationality to sentencing, have instead brought inconsistency and disproportionality. Serious crimes sometimes lead to minor sentences, while minor crimes sometimes lead to many years in prison. Judges have lost the ability to tailor the sentence to fit the circumstances of each individual case. One size does not fit all.

"The Guidelines are one cause of the dramatic growth in the federal justice system. The number of federal prisoners has quadrupled since 1980, rising from 24,000 in 1980 to 106,000 in 1996. [Note 2. *Bureau of Justice Statistics: Prisoners in 1980* (May 1981) table 1; *Bureau of Prisons: Monday Morning Highlights* (January 13, 1997).] The surge has required the construction of 50 new federal prisons and a fourfold budget increase. [Note 3. 40 federal prisons had been built in 1995; 10 more are currently under construction. *Bureau of Justice Statistics: Sourcebook of Criminal Justice Statistics 1995* (1996): table 1.98, page 101. Federal law enforcement

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

totaled \$4.1 billion in 1979 and \$17.4 billion in 1992. *Bureau of Justice Statistics: Sourcebook of Criminal Justice Statistics 1995* (1996): table 1.1, page 2; *Bureau of Justice Statistics: Justice Expenditures and Employment, 1992....*] Taxpayers now spend approximately \$20 billion every year on the federal criminal justice system.

"Contrary to popular belief, few people sent to federal prison committed violent crimes like murder, robbery and rape. 77% of the admissions in 1994 were for non-violent crimes. Many of these people are serving disproportionately long sentences, or they could safely be sentenced to non-custodial alternatives. In 1992, the federal system held 12,727 non-violent, low-level drug offenders with zero criminal history -- for an average time served of nearly six years. [Note 4. *U.S. Department of Justice: An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories* (February 1994).] It costs American taxpayers approximately \$22,000 to keep each of these men and women locked up for one year -- the full tax burden of roughly four American families.

"The budget arithmetic is astonishing. Taxpayers spent approximately \$1.7 billion incarcerating this single category of offender -- people who are non-violent by definition. That money could be better spent in other ways: for example, \$700 million could provide drug treatment and community supervision, and the remaining \$1 billion could be returned to the taxpayers as savings.

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

"....

"If the expenditures bought safety they might be justified -- but they don't. A 1992 survey of federal judges found that judges believe only one in four sentences they impose under the guidelines is appropriate. Many prominent senior judges are so distressed they have exercised their option not to hear criminal cases because they do not wish to participate in an unjust scheme. The most common complaints are the mismatch between the punishment and the crime, and the general irrationality of the system.

"One problem in the federal system is the complexity of the grid. The federal grid contains 258 boxes and the calculations needed to determine the proper box occupy a 393 page rule book with 539 pages of appendices. Every calculation opens the possibility of arithmetic error or interpretive disagreement, so the final product contains disparities that may be as bad as those the Guidelines were designed to resolve. A system intended to streamline and simplify the sentencing process has instead created a far more complex system that has clogged the courts with appeals over Guidelines' applications.

"Furthermore, the federal Guidelines are not simply guidelines, as the name suggests: they are mandatory. Judges are required to follow them, no matter how inappropriate the result. The loss of flexibility makes it impossible to tailor the punishment to fit the crime and the criminal.

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

"Another particularly urgent problem is the shift of sentencing power to the prosecutor's office. Prior to the Guidelines, prosecutors charged people with crimes and then judges sentenced people for those crimes. The two tier system created checks and balances that left neither party with too much power. Under the Guidelines, however, the charging decision becomes for all practical purposes the sentencing decision. A prosecutor who opts to charge a person with one crime rather than another determines the base offense level and thus for all practical purposes the sentence. Because there are thousands of offenses in the federal criminal code and because individual crimes often violate more than one section of the code, the prosecutor's decision about which section to charge under, or how many counts to bring, effectively determines the sentence. The concentration of power into a single party invites distortion in the system.

"Another reason power shifts to the prosecutor is that only the prosecutor can reward suspects for providing information on other suspects. The judge cannot initiate the process and has only the smallest oversight. Unfortunately, many crime kingpins have substantial information to trade for lesser charges, whereas the low level participants have little information to trade. That is one reason our prisons are filled with low grade drug offenders while kingpins sometimes get off easy.

"The Coalition for Federal Sentencing Reform will examine a variety of issues relating to the operation of the Federal

Sentencing Guidelines, and seek to make recommendations for reform. Although the agenda is still being developed by Coalition members, the Coalition expects to examine whether the Guidelines:

- are excessively complex and lead to excessive litigation
- should be mandatory or advisory
- should incorporate conduct that was acquitted after trial or could have been charged at trial, but was not
- have reduced disparity and successfully balanced the goals of uniformity and proportionality
- have disrupted the balance of power between the courts and the prosecution
- should be expanded to include non-custodial sentences
- should grant judges added flexibility to take into account human elements such as family responsibility, employment history, or physical or mental condition

"In addition, the Coalition will examine some larger issues relating to the role of the United States Sentencing Commission and the scope of the Guidelines. These issues may include:

- The relationship between the Guidelines and the mandatory minimums
- Whether the Guidelines structure should be constrained by the capacity of the federal Bureau of Prisons

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

- How the widespread dissatisfaction of federal judges can be developed into recommendations for reform
- Whether the proceedings and deliberations of the Sentencing Commission should be opened to increased public scrutiny and input
- Whether good time credit should be increased for certain classifications of prisoners, such as first time non-violent offenders
- Whether the Sentencing Commission is carrying out the statutory mandate described in the legislation that created it"

Through February 16, 2001, the *Action Alerts* of the Coalition for Federal Sentencing Reform have included the following excerpt:

"Supreme Court Justice Stevens, dissenting in *U.S. v. Christopher Lee Armstrong, et al.*:

" 'Finally, it is undisputed that the brunt of the elevated federal penalties falls heavily on blacks. While 65% of the persons who have used crack are white, in 1993 they represented only 4% of the federal offenders convicted of trafficking crack. Eighty percent of such defendants were black. *Id.* at 39, 161. During the first 18 months of the full guideline implementation, the sentencing disparity between black and white defendants grew from pre guideline levels: blacks on average received sentences over 40% longer than whites. See *Bureau of Justice Statistics, Sentencing in the Federal*

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau

Courts: Does Race Matter? 6-7 (Dec. 1993). Those figures represent a major threat to the integrity of federal sentencing reform, whose main purpose was the elimination of disparity (especially racial) in sentencing. The Sentencing Commission acknowledges that the heightened crack penalties are a "primary cause of the growing disparity between sentences for Black and White federal defendants." ' "

End of Memorandum

Testimony: Lower Brule Sioux Tribe Chair Michael Jandreau



Sisseton - Wahpeton Sioux Tribe

LAKE TRAVERSE RESERVATION

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OFFICE OF THE TRIBAL CHAIRMAN
ANDREW J. GREY, SR.

By Facsimile at 202 502-4699 and U.S. Mail

June 14, 2001

Honorable Diana E. Murphy, Chairperson
United States Sentencing Commission
One Columbus Circle NE
Suite 2-500
Washington D.C. 20002-8002

RE: JUNE 19TH U.S. SENTENCING COMMISSION HEARING (RAPID CITY SD)

Dear Ms. Murphy:

These written comments are provided to you on behalf of the Sisseton-Wahpeton Sioux Tribe after extensive communication with the Sisseton-Wahpeton Tribal Council. I am unable to attend the June 19th hearing because of unavoidable scheduling conflicts. However, I am asking for your careful consideration of the concerns expressed by tribal members of the Sisseton-Wahpeton Sioux Tribe. The paramount issue that was shared by each Tribal Councilperson recently was the continuing communication from their respective District members regarding numerous examples of disparity between the sentences issued in state and federal court. Thus, the Tribe formally requests that the Federal Sentencing Commission consider modifying the federal sentencing guidelines for those offenses prosecuted under the Major Crimes Act in a manner where there is consistency with local jurisdictions.

Instead of providing you with numerous examples of disparity between the sentences received by our tribal members and non-Indian prosecuted in state court in northeastern South Dakota, the Sisseton-Wahpeton Sioux Tribe is requesting an analysis of the disparity in sentencing contingent on where the offense occurred, i.e. Indian country versus state lands. Additionally, it is our recommendation the described study distinguish sentences by each offense currently prosecuted under the Major Crimes Act on a jurisdiction by jurisdiction basis. It is the Tribe's position that a study of this nature will display disproportionate sentencing and the sentence associated with each offense under the Major Crimes Act can be addressed individually. Finally, we request the described study include a comparison of the sentences given to non-Indians versus Indians in the

Page 1 of 3

five (5) state courts for the counties included in the Lake Traverse Reservation.

Although the Major Crimes Act dealt a major blow to Indian self-government, federal criminal jurisdiction over Indian country existed prior to its enactment.¹ Today, the Major Crimes Act includes fourteen enumerated crimes and remains the major federal jurisdiction statute for offenses committed by Indians on tribal land.² As a result of federal criminal jurisdiction over major felonies in Indian country, many Indians are sentenced according to the federal Sentencing Guidelines. This is problematic because individuals convicted in federal court are generally subject to harsher penalties than those convicted in state or tribal courts.

Most South Dakota criminal offenders are prosecuted in the state system and do not face the harsher consequences of the federal sentencing guidelines; Indians are the exception. As a result of their jurisdictional status, Indians often receive the harsher federal penalty for committing crimes that are normally adjudicated in state court. Thus, Indians have consistently argued that the disproportionate consequences they face under the federal system violate their equal protection rights. The Supreme Court, however, has consistently upheld federal statutes that create substantial disparities between Indians and non-Indians, reasoning that the statutes are not based on impermissible racial classifications.

The Fourteenth Amendment provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Although federal regulation of Indian appears to be racially based, the Supreme Court has stated that the category "Indian" is a political classification.³ Because political classifications are non-suspect, legislation expressly singling out Indians as a group only warrants a rational basis review, and the statute is presumed to be constitutional. Further, the Supreme Court reasoned that the category "Indian" is political because federal regulation of Indian affairs is the governance of a "once-sovereign" political community" and not that of a "'racial' group consisting of 'Indians.'"⁴ However, the Tribe does not agree with this analysis and realizes that our remedies are limited to legislation action.

Indian country is confronted with additional issues that are currently unaddressed by the federal sentencing guidelines. Chronic, heavy alcohol consumption (alcoholism) and sporadic heavy use (episodic or binge drinking) are both problems in many Indian communities. Amongst most tribes, fewer Indian adults drink at all than among the general U.S. population; however, the heavy binge pattern of drinking among those who drink is associated with a great degree of social and health pathology in the form of deaths from motor vehicle and other injuries, suicide, homicide, and

¹See *General Crimes Act*, ch. 645, 62 Stat. 757 (1817) (codified as amended at 18 U.S.C. 1152 (1994)).

²See U.S. Sentencing Guidelines Manual 1A2 (1995) (establishing strict sentencing guidelines, abolishing parole and reducing good behavior adjustments).

³*United States v. Antelope*, 430 U.S. 641, 642-44.

⁴See *Antelope*, 430 U.S. at 646.

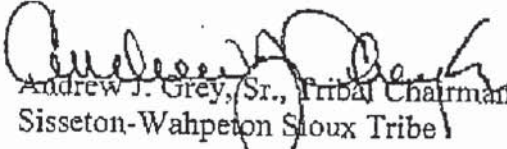


child abuse and neglect. Binge drinking is generally coupled with chronic alcohol consumption among a small minority of Indians at any one time period; but those who are actively drinking cause a large number of deaths and arrests. Further, a very high percentage of all Indian arrests are associated with alcohol abuse. These problems are socio-cultural, for intoxication is not associated with poor alcohol tolerance as measured by most biophysiological variables.⁵ Thus, judicial discretion in sentencing is appropriate where an analysis of substance abuse and the effectiveness of Indian customs and practices in reducing crime is considered.

In conclusion, I look forward to reviewing the results of the requested study and provide further comment on the federal sentencing guidelines on an offense by offense basis for those crimes prosecuted federally under the Major Crimes Act.

Please contact me at 605 698-3911 if there are any questions.

Sincerely,


Andrew J. Grey, Sr., Tribal Chairman
Sisseton-Wahpeton Sioux Tribe

⁵See Rex et al., 1985: Mail 1998, and May, 1994 for reviews.





U.S. Department of Justice

Washington, D.C. 20530

STATEMENT

OF

MICHELLE G. TAPKEN

UNITED STATES ATTORNEY

DISTRICT OF SOUTH DAKOTA

BEFORE THE

UNITED STATES SENTENCING COMMISSION

CONCERNING

THE IMPACT OF THE UNITED STATES
SENTENCING GUIDELINES ON NATIVE AMERICANS
AND PROPOSED SENTENCING GUIDELINE
AMENDMENTS RELATING TO
CULTURAL HERITAGE CRIMES

JUNE 19, 2001

Chair Murphy and members of the Commission: I am pleased to be here at the Sentencing Commission's hearing. Because of the significance of the sentencing guidelines in federal criminal prosecutions, it is most fitting that the Sentencing Commission hold a hearing to explore the impact of the federal sentencing guidelines on Native Americans in South Dakota -- a state known for the importance of its Native American population. We are pleased to take part in this effort.

The United States Attorney's office in South Dakota has taken important steps to ensure continuing communication and dialog between the South Dakota United States Attorney's Office and Native Americans. We meet with tribal entities and organizations on a regular basis to discuss issues of importance. The United States Attorney meets with each of the nine tribes in South Dakota on an annual basis to review and discuss issues of concern. The United States Attorney's Office publishes an annual South Dakota Indian Country Report that provides case statistics by reservation. The United States Attorney's Office has assigned Assistant United States Attorneys responsibility for specific tribes so that each tribe has a point of contact in the United States Attorney's Office who is familiar with the law enforcement concerns of the tribe and who brings a measure of continuity to the relationship between the tribe and the United States Attorney's Office. Each United States Attorney assigned to a tribe holds monthly meetings with a multi-disciplinary team

composed of representatives of tribal law enforcement, Social Services, prosecutors, IHS medical personnel, medical health professionals, the FBI, and the BIA to discuss ongoing law enforcement issues in the area of child abuse and child sexual abuse. The purpose of these meetings is to ensure a comprehensive and coordinated approach to the investigation and prosecution of child abuse and child sexual abuse in Indian Country in South Dakota.

Our office is always open to suggestions for ways to improve prosecution and investigation of crime in Indian Country and to increase cooperation among the various entities that share this goal.

We understand that there are concerns in South Dakota regarding sentences imposed under the federal sentencing guidelines for crimes committed in Indian Country as compared to sentences imposed under state law for like offenses. However, it is important to bear in mind the purposes of the sentencing guidelines. Chief among the goals of Congress in enacting the Sentencing Reform Act of 1984 was to increase fairness in sentencing by avoiding unwarranted sentencing disparities for similar federal defendants found guilty of similar criminal conduct. See 28 U.S.C. § 991(b)(1)(B). This means, for example, that the sentencing guidelines generally provide the same sentencing range for all defendants in federal court with the

same criminal history who commit aggravated sexual abuse in a similar manner and who accept responsibility for their offenses in the same way, regardless of the basis for federal jurisdiction. Thus, the offense may have been committed in Indian Country by an Indian or by a non-Indian against an Indian, or it may have been committed on a federal enclave, and the guidelines provide a limited range of sentences for the offense, with the goal of treating federal defendants fairly and equally. In fact, to promote fairness the Sentencing Reform Act specifically requires the Sentencing Commission to assure that the sentencing guidelines are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of the offender.

The objective of reasonable uniformity in federal sentencing resulted from the rampant disparity that existed in the prior federal system. Of course, Congress realized that there was a need to maintain flexibility to permit individualized sentences warranted by aggravating or mitigating factors not taken into account by the Sentencing Commission in formulating the guidelines, and the law authorizes departures from the guidelines.

It is not surprising that the federal sentence for a particular crime committed in Indian Country may be greater or less than the State sentence for the same crime committed off-

reservation in the State where the reservation is located. The Sentencing Commission could not have matched federal sentences with the sentences imposed in 50 States. Moreover, it had specific purposes of sentencing in mind in establishing the guidelines that may not have been the same as the purposes envisioned by the states. While concerns have been raised that federal sentences under the sentencing guidelines may exceed state sentences in South Dakota for certain crimes, some federal sentences under the guidelines are perceived as too low, for example, for involuntary manslaughter involving drunk drivers. Prosecutors must explain to distraught victim families that the long sentences imposed in the state system do not apply because the fatality occurred in Indian Country.

The public is, of course, free to bring to the Sentencing Commission's attention any guideline that results in sentences that the public believes are too harsh or too lenient, and the Commission can then analyze the guideline and assess its impact. In so doing, the Commission must consider the goals of sentencing set forth by Congress in the Sentencing Reform Act -- namely, just punishment, deterrence, protection of the public from further crimes of the defendant, and rehabilitation. A sentence that may be adequate from the standpoint of punishing a particular defendant may be inadequate from the standpoint of

detering others from committing the offense. The balancing of these various goals is a challenging job for the Commission.

The Report of the South Dakota Advisory Committee recommended that research be conducted into the discriminatory impacts of the federal sentencing guidelines. The Bureau of Justice Statistics is sponsoring a study of the changes in federal sentencing practices that resulted from the Sentencing Reform Act of 1984 and subsequent legislation. While the report will focus primarily on trends in aggregate sentencing practices, it will also include a section on sentences imposed across racial groups, including Native Americans. In addition, it will describe the extent to which any differences in sentences imposed may have resulted from federal legislation. We understand that the report is still being developed, but we look forward to its completion in the near future and hope it will give insight into the nature of federal sentencing, including the sentencing of Native Americans. We also invite the tribes in South Dakota and other states to review the report and inform us of any particular concerns it raises.

Before concluding my remarks today, I would like to touch upon an additional issue in which the Department of Justice has a great deal of interest and to urge the Commission to continue its work with the goal of adopting an amendment to the sentencing

guidelines during the current amendment cycle. This area concerns cultural heritage resources.

The sentencing guidelines currently do not provide adequately for the severe loss to society when national treasures, often buried in grave sites in Indian Country, are stolen or destroyed. Monetary loss cannot capture the harm, which may be of a permanent nature, flowing from crimes involving cultural heritage resources. The damage resulting from these crimes is more than the loss of the particular cultural artifacts. Typically, the criminals taking the artifacts harm or, at the very least, tamper with the sites in which the artifacts are located. Therefore, these crimes result in an irreplaceable loss of knowledge that could have been extracted by archeologists, anthropologists, or historians from the site itself, as well as the damaged or stolen artifacts. The Commission should adopt a guideline that addresses the true nature of the invaluable loss caused by such offenses and that recognizes the non-monetary value to society inherent in cultural heritage resources. The Department of Justice would be pleased to work with the Commission in developing such a guideline.

That concludes my remarks. I would be happy to answer any questions you may have.



U.S. Department of Justice

*Michelle G. Tapken
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STATEMENT

OF

MARLYS R. PECORA

VICTIM WITNESS SPECIALIST

DISTRICT OF SOUTH DAKOTA

BEFORE THE

UNITED STATES SENTENCING COMMISSION

JUNE 19, 2001

Chairman Murphy and members of the commission:

I am honored to be here today at the sentencing commission's hearing. I am the Victim/Witness Specialist for the United States Attorney's Office and have worked with victims at various stages in the criminal justice system. My experience in working with victims dates back to 1980 when I worked as a Police Cadet in Fort Hall, Idaho. I have also worked as a criminal investigator for the Crow Creek Sioux Tribe in the investigation of child abuse and child sex abuse on the Crow Creek Reservation. I have provided direct services to domestic violence victims at the Missouri Shores Domestic Violence Center and also served as its Executive Director. I have been the Victim/Witness Specialist for the United States Attorney's Office for the past three years.

I would request that any of your decisions or discussion regarding the United States Sentencing Guidelines give consideration to and weigh the victim's interest in formulating an appropriate guideline range.

A lot has been said and written lately concerning the impact of the Sentencing Guidelines on Native Americans in Indian Country. The prospective that always seems to be forgotten in this consideration is that the victims are also Native American. I have worked with victims of crime ranging in age from less than five years to more than 70 years during my last three years as the Victim/Witness Specialist in the United States Attorney's Office. More than 90% of the victims I have worked with have been Native American. The Honorable Charles B. Kornmann recently cited statistics that show that a Native American female is three times more likely to be the victim of a crime than an African American male. Based upon this, I would urge the

Commission to proceed with caution before it undertakes any modification to the guidelines regarding Native American offenders.

I am here to share the perspective of some of the victims that I've worked with regarding their cases. When a person has been victimized by another person or persons, they are not always the only person affected by the crime. The mother of a 14-year-old sexual assault victim sought counseling for herself to deal with her feelings of rage toward the defendant, helplessness and failure as a parent to protect her child. The child also received counseling as this case began and today, years later, both mother and daughter are still seeing a counselor to work out issues relative to this case.

Another case involved the systematic sexual abuse of a 16-year-old girl that began when she was in the first grade and continued through the years, as she stated "over 100 times." During the course of the investigation, several other females were identified as prior victims of the defendant. The family of the defendant, including the child's mother, supported the defendant and ostracized the victim and the aunt whom she had told about the abuse. This young girl lost her mother, father, brothers, and extended family because she was the victim of a crime and had the courage to tell. After the trial, the victim and her aunt sent a card to the Assistant United States Attorney and me, which stated the following: "Thank you for believing."

Sometimes when you hear directly from the victim, the words have much more meaning. I would like for the commission to hear some of the words from the victims themselves. The following is from a 13-year-old victim of sexual assault:

"My life changed a lot because when I sleep at night I sometimes dream about that night. When I wake up, I'm still thinking of that night and it plays over and over in my head. I remember one night when I heard a lot of rumors about me and about what they did to me, I just

couldn't take it any more so I tried to kill myself. I remember everyone in my house was trying to help me but I just wanted to end my life. I didn't want to survive that night; I didn't want to live to tell anyone. My family is drifting apart because every time someone tries to talk about what happened we just fight about it. I guess you could say they have control over me. I don't know what to do sometimes. I hope they get help for themselves and that they get the punishment that they need. I don't really have nothing else to say that could be put into words of how I feel. I just really hate them, and I hope and pray that they will open their eyes and see how much they hurt me, my family, themselves, and their family."

In another case, a woman, now 33 years old, spoke of when she was four or five years old her grandmother warned her to stay away from one of the men in her adopted family. She wouldn't tell the girl why, just that she should always stay away from him. One day the man told her he had a baby rabbit that he wanted to show her. He reached into his car as though he was picking up something small, held his hands together, and asked if she wanted to see it. She went toward him hoping to see a baby rabbit. But once there, he grabbed the girl, forced her into the car, and raped her. When she told her grandmother what had happened, her grandmother told her not to tell anyone. She was repeatedly raped for approximately six more years. This man was a spiritual leader and well respected by the community. This sexual abuse continued over the course of a generation and we have currently identified six additional victims. In this case, the defendant sexually abused the mother and then years later also sexually abused the daughter. Since this case began 18 months ago, the daughter, now age 15, has had to be moved seven times to various group homes and psychological treatment facilities to deal with issues related to her abuse. The following represents a summary of one of the caseworkers who worked with this young victim.

“Since the victim’s arrival at the Youth Program, we have noticed that her behavior has greatly affected her ability to live a responsible productive life. Her self-abusive behavior, aggression, and psychological issues present potential life long treatment issues and have caused her permanent injury. The rapes of the victim by the defendant are relived by her several times a week in dreams and flashbacks. Her relationships with other individuals have been greatly impaired and she is reluctant to trust and to allow displays of affection. She may never have a healthy relationship with a significant other due to this. She becomes physically violent at times with the smallest corrective measures. She becomes very upset when other individuals need to be held for their safety and will lash out at staff, assaulting them. She states that her memories of the defendant’s violent behavior make her scared and these situations bring it back to the forefront of her memory. She was not only raped physically, but was raped of her childhood. She will never have the opportunity to experience what it might have been like to grow up with a normal childhood without having been subjected to abuse. She will never have the chance to fall in love with another, and have the experience of what a healthy sexual relationship could be.”

Not only are Native American females the victims of crimes, but also Native American males. A male victim was physically assaulted by three individuals by being kicked so frequently and forcefully that his head stuck into the back of the couch with such force that the couch had to be cut apart to remove him. He stated the following:

“I don’t understand why they did this to me, I thought we were friends. I can’t sleep at night, I am constantly going from door to door to make sure they’re locked. I pull the shades down on the windows and I’m afraid to leave the house. If a car pulls up outside, I get scared and run to the window to see who it is. I’m always afraid they’ll come back and beat me up again.”

In an involuntary manslaughter case involving a drunk driver in which a 16-year-old girl was killed and her 4-year-old passenger injured, the mother of the 4-year-old girl, who is paralyzed from the neck down, stated at the sentencing hearing that “My daughter thinks when she leaves the hospital she’s going to run again, she doesn’t understand and I don’t know how to make her understand that she may never leave the hospital, and she will never walk again. I have to check her breathing tube all the time for her because she’s always afraid it’s going to come loose. It came loose once and she passed out because she didn’t have any air. She really likes Barbie dolls and she can’t play with them so we just set them up so she can look at them. As a parent, it hurts so much to see your child like this and know there’s nothing you can do to help them.”

Intense fear is a factor that most victims of crime feel as the crime is being committed. A woman whose house was broken into reported the following: “I was so scared, while he was raping me, I was constantly thinking of my 8-year-old daughter sleeping in the next room. I was afraid he was going to rape her next and I couldn’t do anything about it because I was tied up. He told me if I just did what he said, he wouldn’t hurt my daughter, but I didn’t believe him. She’s my only girl, I’ve wanted a little girl for so long, I was terrified he would kill me and then rape and kill her too, I felt so helpless.”

This woman also received a visit from the defendant’s mother who apologized for his behavior and asked her not to testify against him.

Many of the victims of crime that I have worked with are victims of sexual assault. Sexual assault is a very personal crime and it’s difficult for victims to speak about it. Some of them have the courage to come to the sentencing hearings and speak to the Judge about what they feel is an appropriate sentence, many do not.

I have been present on numerous occasions while the Assistant United States Attorney explains the criminal justice process and the United States Sentencing Guidelines to the victim. It is comforting for the victim to know that a sentence will be imposed based upon factors that do not include whether the defendant knows the tribal chairman or tribal councilmen, her race, or any other subjective factors. It is consistently reassuring for the victim to be told that the sentence imposed by the court will be based upon guidelines that have been established by the United States Sentencing Commission and that the perpetrator in her case will receive a sentence similar to perpetrators in other cases. In no instance since I have been working with victims has the victim expressed the opinion that the sentence under the United States Sentencing Guidelines is too harsh or too long for the crime committed.

I would request that you consider the plight of victims of crimes in your consideration. When the district judge imposes a sentence, the perpetrator knows the number of years that he or she will have to serve before they are released. Often times, the victims that I deal with feel that they have been given a life sentence and they have to continue to deal with all the issues of being a victim of a crime throughout the rest of their life.

This concludes my statement to the commission.

FEDERAL PUBLIC DEFENDER
District of South Dakota

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Pierre

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Timothy J. Langley
William A. Delaney III

June 17, 2001

Honorable Diana E. Murphy, Chair, and Members of the United States Sentencing Commission:

I will respond to each of the questions in Judge Murphy's letter, dated June 7, 2001, in the same order as they were presented. Before doing so, I will generally address the issues as I see them. I thank the Commission for the opportunity to address it. I also wish to express my gratitude to the Commission for coming to this District in the heart of Indian Country.

Introduction

The Office of the Federal Public Defender is new in this District. I was appointed as the first Defender two years ago. There are six Assistants Defender on my staff, two in each of our three offices which are located in Rapid City, Pierre and Sioux Falls. We have been handling cases for a year and a half. Approximately 90 percent of our clients are Indians.

My law experience, prior to becoming the Defender, was limited primarily to criminal defense for 20 years, including two years as an assistant public defender in the Pennington County Public Defender's Office in Rapid City. While in private practice 25% of my clients were Indians. All but one of my Assistants Defender were county public defenders in various cities in South Dakota. About one-half of their county defender offices' clients were Indians. My First Assistant Defender has been a trial lawyer in federal defender offices for 10 years; seven of those years have been in Indian Country jurisdictions. I recount these backgrounds because many of my comments will be based on collective knowledge and, I trust, based on collective wisdom from all of the attorneys in my Office. In addition, I have relied on the experiences of several long-time county public defenders in this State. Having acknowledged

those debts, any shortcomings in my comments are mine alone.

The foci of several of the issues which Judge Murphy has outlined in her June 7 letter is on apparent sentencing disparities between the South Dakota and Federal systems along with what may be done about the disparities. The word "disparity" is defined in Black's Law Dictionary as "marked difference in quantity or quality between two things or among many things." Webster's New Twentieth Century Dictionary (unabridged) defines "disparity" as "inequality or difference, as in degree, rank, amount, condition, or excellence." In the realm of sentencing, disparity equates with unfairness. An important related issue is whether or not the U.S. Sentencing Guidelines have an unfair impact on Indians.

My opinions are these: There are both apparent and real disparities between the State's and the Federal government's sentencings of similarly situated Indians. Moreover, the U.S. Sentencing Guidelines are unfair to Indians. Many of my clients are bereft of one of the most important aspects of human existence, that is, hope – hope that they will be treated fairly and that they will have a realistic chance to improve themselves, to overcome, at least, some of the many obstacles that they face. Hope for my clients would be significantly increased by this remedy: a reworking of the Guidelines in ways which recognize and alleviate the harsh impact that they have on Indians.

Included among the general ways in which revised Guidelines would begin to address the unfairness are the following: 1. Increased discretion to the learned judges who sit on my clients' cases in Indian Country. 2. Grounds for departure from otherwise mandated sentences which recognize what the sordid history between the Federal government and the Indian tribes has produced – specifically, a lack of faith in the dominant society's justice system based on a string of broken treaties and other discarded promises; and, socio-economic realities which are drastic and which include epidemics of alcoholism and other substance abuse, depression, and suicide among youth; unemployment rates of over 80 percent; fetal alcohol syndrome and fetal alcohol effect which afflict many of my clients; the absence of the money for and a history of readily available treatment programs, ranging from sustained Alcohol Anonymous groups to out-patient

and in-patient treatment programs on the reservations; and, the list goes on. 3. A recognized departure ground for “failure to thrive in Indian Country” which would be the corollary of the departure ground which judges of this District have fashioned for limited numbers of offenders who have “thrived in Indian Country.” In the latter regard, I refer the Commission to United States v. One Star, Sr., 9 F.3d 60 (8th Cir. 1993), and United States v. Big Crow, 898 F.2d 1326 (8th Cir. 1990).

I will now turn to the specific questions posed by Judge Murphy.

I. Question: “What has your experience been regarding any apparent disparity between federal and state sentences for similar offenses?” I generally have answered this question in my earlier comments. My experience has been that there are both apparent and real disparities between federal and state sentences for similar offenses. As to the appearance of disparity, my clients oftentimes share anecdotes with others in their communities and while in jail. Many of these anecdotes may be apocryphal; others are factual. The appearance or perception of disparities often is the function of violated obligations between the federal government and the tribes as well as the history of racism in this jurisdiction. After all, the State and Federal justice systems, including my Office, are overwhelmingly dominated by white people who are, inevitably, associated with this history.

The appearance and the reality of disparities also are structural. On the State level the following sentencing options are available: (a) deferred prosecution, under which a suspected offender enters into a written agreement allowing him or her to benefit from a dismissal of a charge(s), in exchange for restitution in some instances and an informal period of probation which, if successfully completed, results in no revival of the charge(s); (b) suspended imposition of conviction, under which an offender may be sentenced to up to 60 days in jail or prison, fined, and placed on probation for a term, the successful completion of the latter resulting in a sealed record and no conviction; (c) suspended execution of sentence, under which an offender is convicted, fined and may be sentenced to jail for a time with prison time suspended during a period of probation; (d) conversion of a suspended execution of sentence to a suspended

imposition of conviction within one year of sentencing; and, (e) the availability of parole for a convict at some point during his or her prison term. The foregoing options are available in the State system with only a few exceptions where mandatory sentences exist, such as for second degree murder and first degree murder convictions which carry mandatory life terms without parole, drug distribution offenses (and for drug distribution, statutes allow a sentencing judge to waive mandatory prison sentencing upon written findings in support of a waiver), and rape involving children of tender years.

None of the foregoing options under State law exists under Federal law although pretrial diversion in the federal system roughly parallels deferred prosecution under the State system. Insofar as pretrial diversion is available, at the U.S. Attorney's sole option, that form of disposition is utilized infrequently in this District and is not based on clearly established or publicly divulged criteria. In contrast, all of the State sentencing options are well known. These structural differences between the State and Federal systems, undoubtedly, contribute both to apparent and real disparities in sentencing for similarly situated Indian offenders.

I. (a). Questions: "Do you believe these are issues which the Sentencing Commission should address relating to the application of the federal sentencing guidelines to Native Americans in South Dakota? What are they? What sentences would you like to see?" These are issues which the Sentencing Commission should address. The biggest obstacles, in a general sense, between the State and Federal sentencing laws are the structural differences outlined above. As also is implicit to the State sentencing options described above, state judges have a broad range of discretion which is denied under the guidelines to federal judges. Moreover, the sentencing guidelines, unlike State sentences, are characterized by mandatory minimum sentences for virtually all offenses, plus they require convictions to be imposed on offenders. The guidelines should be amended to explicitly allow federal judges to compare what State law allows or requires for the same or similar offenses. I will further comment on specific offenses in response to Judge Murphy's next question.

II. Question: "Assault, sexual assault, incest and manslaughter are crimes some have

mentioned that have different sentences under the state and federal systems. Is that your experience?" That is a fact. "For what crimes?" For example, first degree manslaughter carries a maximum of life imprisonment without a mandatory minimum sentence under State law. Second degree manslaughter, a lower degree of homicide, likewise, carries no mandatory minimum and up to ten years in prison. S.D. Codified Laws §§ 22-16-4, 22-16-9, 22-6-1. Aggravated assault exposes an offender to up to 15 years in prison, but again without a mandatory minimum sentence. S.D. Codified Laws §§ 22-18-1.1, 22-6-1. Simple assault carries a maximum sentence of one year in a county jail and no mandatory minimum. S.D. Codified Laws §§ 22-18-1, 22-6-2. "Sexual assault" is a term which can describe a broad range of offenses under State law, nearly none of which carry a mandatory minimum prison term unless a child has been raped. S.D. Codified Laws Ch. 22-22. This is a State sentencing fact with regard, also, to statutory rape. S.D. Codified Laws § 22-22-7. Incest under State law allows a judge to sentence the offender to up to five years in prison and, like most of the other offenses already described, does not carry a mandatory sentence. S.D. Codified Laws §§ 22-22-30.1, 22-6-1. To reiterate, the State statutes for the forgoing offenses do not prohibit use of the various state sentencing options which starkly distinguish the sentencing guidelines from the State sentencing laws. Criminal pedophilia, which excludes incest under State law, is a Class 1 felony which exposes an offender to a maximum of life imprisonment. S.D. Codified Laws §§ 22-22-30.1, 22-6-1. On the other hand, the guidelines require imprisonment for most of the same crimes which I have outlined, plus entry of convictions in all instances.

I also direct the Commission, with regard to incest, to comments submitted to the Commission in a letter, dated April 3, 2001, by the Federal Public Defenders from the Districts of New Mexico and Arizona, as follows:

Native American incest offenders are amenable to treatment. Therapy addressing the roots of the inappropriate behavior patterns and integrating tribal and community concepts can positively treat the Native American sex offender. Dewey Ertz, "The American Indian Sex Offender," in 2 The Sex Offender: New Insights,

Treatment Innovations, and Legal Developments (Barbara K. Schwartz and Henry R. Cellini, eds., 1997). "The most important issue to keep in mind when treating the American Indian sexual offender is that the American Indian people are victims by nature of their history and life experience, and they are offenders with respect to inappropriate behavior patterns." Id. at 14-6, 14-7. Those patterns often find their roots in substance abuse and dependency, attention deficit and impulse control disorders, and affective disorders such as depression. Id.

These are considerations which should be permitted under the guidelines, for all Indian offenders, but which are generally prohibited under the scheme in Chapter 5, Section H. By the way, Dewey Ertz, Ed. D., is a respected author and therapist in Rapid City; he, also, is an enrolled member of the Cheyenne River Sioux Tribe from South Dakota. Dr. Ertz has had many years of experience in counseling and treating Indian offenders both on and off the reservations.

II.a. Question: "Is it desirable or undesirable" that these different sentences exist under the State and Federal systems? "Why?" I previously have alluded both to the apparent and real sentencing disparities between the State and Federal sentencing systems and what I believe is a destructive nature of the disparities. That is, Indians are treated unfairly under the guidelines in comparison with State sentencing. Furthermore, Indian offenders are unfairly treated under the guidelines, irrespective of comparisons to the State's sentencing laws. The State sentencing options are nonexistent under the guidelines. Federal judges operate without the sentencing discretion accorded state judges. State judges can, and do, take into consideration many of the factors which are either prohibited or discouraged under the guidelines. As a matter of course, the "heartland" of cases which form the bases for the guidelines cannot have included or anticipated the plight of most Indian offenders.

III. Question: "Currently, the federal sentencing guidelines do not have specific guidelines for crimes involving destruction or damage to unique or irreplaceable items of cultural heritage. Most often, sentencing judges use the federal guideline for larceny, embezzlement and theft (§ 2B1.1) to sentence such crimes. What has your experience been regarding these types of

crimes?" I have had no experience with these types of crimes. "Do the federal guidelines adequately address these types of crimes?" Given my lack of experience, I hesitate to comment on this question and on question IV except for the following suggestions. Indian leaders, likely, will have insights regarding these issues. These are matters of considerable sensitivity and may be peculiar to a given Indian culture. Questions that may be pertinent are: Is it more offensive to possess such items in one or another manner (e.g., for "legitimate" purposes of study)? Is an unauthorized non-Indian who possesses such items more culpable than an Indian, a member of the tribe to whom the items belong, who possesses the items? What if the Indian who possesses the items is not a member of the tribe of origin? Is the sale of such items, as opposed to mere possession, more offensive?

IV. Question: "With respect to the trafficking of cultural heritage items, can you provide any insights into the nature of the offenses and the characteristics of the offenders? Who are the victims of crimes that damage and destroy items of cultural heritage? How are the victims affected by such crimes?" Again, as with respect to Question III., I must defer to Indian leaders who have special knowledge regarding these matters.

Miscellaneous observations. Before I conclude my remarks, I wish to point out that there are various other provisions of the guidelines, and of other federal statutes, which unfairly affect Indian offenders. The federal "drunk driving law" and its child endangerment (passenger) provision carry penalties, including felony status, unknown under State law. Being an Indian arrested for drunk driving while on a reservation can mean something entirely different than if arrested for the very same offense in the State's jurisdiction. Specifically, under State law a first offense DUI conviction, irrespective of a child passenger's presence, is a misdemeanor and usually would result in a fine of several hundred dollars and no jail.

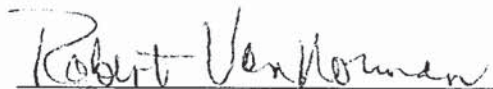
Similarly, the statute (21 U.S.C. § 860) on "protected locations" and the two-level enhancement (U.S.S.G. § 2D1.2(a)(1)), for drug sales from "protected locations" is not paralleled in State law. In fact, because most of the housing on Indian reservations in this District is run by Indian housing authorities and consists of single family residences, most drug

sales from places of residence on the reservations automatically qualify the Indian offenders for harsher treatment. Such treatment cannot have been considered clearly in structuring these penalties. One must suspect, instead, that drug dealing in city high-rise housing projects was the object. Further facts of reservation life are based in economics and highlight the unfairness of this situation: lenders seldom extend loans to Indians on reservations so that they might build their own houses; Indians face astronomical rates of unemployment on the reservations; they are the "poorest of the poor;" Indians usually have no other option but to live in Indian housing authority residences on the reservations.

Finally, in preparing my comments I consulted several written authorities on crime in America. Among those was Dr. James Q. Wilson's book, Thinking About Crime (1975). Although Dr. Wilson, then a renowned professor of government at Harvard University, was immersed in the study of the causes of and potential remedies for crime in this country, and had served on various presidential task forces and national advisory commissions, he made no mention whatsoever of crime on Indian reservations or the problems Indians experience. I must presume that the issues before us today were then forgotten or, at most, considered negligible. The work of the Commission and the purpose of this hearing in Rapid City, South Dakota reflect that the Indian people should not and cannot be forgotten; nor, can we fail to study and fairly consider their problems, including their treatment under our sentencing laws.

Dated this 17th day of June, 2001.

Respectfully submitted,



Robert Van Norman

(DRAFT 6/12/01)

**Public Hearing of the U.S. Sentencing Commission
June 19, 2001
United States Courthouse, Courtroom No. 1
515 Ninth Street
Rapid City, South Dakota
9 A.M. to 1 P.M.**

WELCOME/INTRODUCTION

9:00a.m. - 9:05 a.m.

Judge Diana E. Murphy, Chair

OPENING PRAYER

9:05a.m. - 9:10 a.m.

Gregg Bourland, Chair, Cheyenne River Sioux Tribe

**BACKGROUND ON COMMISSION/
PURPOSE OF HEARING**

9:10a.m. - 9:20 a.m.

Judge Diana E. Murphy, Chair

PANEL I

9:20a.m. - 10:10a.m.

Elsie Meeks, Commissioner, U.S. Commission on Civil Rights

John Yellow Bird Steele, President, Oglala Sioux Tribe

William Kindle, President, Rosebud Sioux Tribe

Gregg Bourland, Chair, Cheyenne River Sioux Tribe

Michael Jandreau, Chair, Lower Brule Sioux Tribe

BREAK

10:10a.m. - 10:20a.m.

PANEL II
10:20a.m. - 11:10a.m.

Tom J. Peckham, Esq., Nordhaus, Haltom, Taylor, Albuquerque, New Mexico
Andrew Grey, Sr., Chair, Sisseton-Walpeton Sioux Tribe
Tom Ranfranz, Chair, Flandreau Santee Sioux Tribe
Roxanne Sazue, Chair, Crow Creek Sioux Tribe (invited)
Madonna Archambeau, Chair, Yankton Sioux Tribe (invited)
Charles Murphy, Chair, Standing Rock Sioux Tribe

BREAK
11:10a.m. - 11:20a.m.

PANEL III
11:20a.m. - 12:20p.m.

The Honorable Lawrence L. Piersol, Chief United States District Judge
Michelle G. Tapken, Interim U.S. Attorney, South Dakota
Marlys Pecora, Federal Victims Right's Office, Office of the U.S. Attorney, Pierre, South Dakota
Ted L. McBride, Esq., Beadsley, Jensen & Von Wald, Rapid City, South Dakota
Robert Van Norman, Esq., Federal Public Defender, Rapid City, South Dakota
Lisa Thompson, Executive Director, Child Advocacy Center, Ft. Thompson, South Dakota

BREAK
12:20p.m. - 12:30p.m.

PANEL IV
12:30p.m. - 1:00p.m.

Professor Frank R. Pommersheim, University of South Dakota School of Law
Terry L. Pechota, Esq., Viken, Viken, Pechota, Leach & Dewell, L.L.P.
Marty Hansford, District Manager, BIA (invited)

CLOSING REMARKS
1:00p.m. - 1:05p.m.

Judge Diana E. Murphy, Chair

* Times are approximate and panel participants are subject to change.

SOUTH DAKOTA HEARING BRIEFING BOOK

| | | |
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| | Hearing Agenda | In Front of Tabs |
| 1. | Executive Summary..... | Tab 1 |
| 2. | Witness List and Biographies..... | Tab 2 |
| 3. | S.D. Advisory Committee’s March 2000 Report to the U.S. Commission on Civil Rights..... | Tab 3 |
| 4. | Attorney General’s Response to S.D. Advisory Committee’s March 2000 Report..... | Tab 4 |
| 5. | Indian Country Report 2000..... | Tab 5 |
| 6. | List of S.D. Indian Tribes and Map of Reservations..... | Tab 6 |
| 7. | U.S.S.C. Crime Statistics for South Dakota’s Native American Population (2000)..... | Tab 7 |
| 8. | Bureau of Justice Statistics: “American Indians and Crime” February 1999 | Tab 8 |
| 9. | Letter dated April 4, 2001, to Chair Murphy from Robert Van Norman re: Proposed U.S.S.C. Amendment V and the Sexual Predator Act of 1998 | Tab 9 |
| 10. | Related Newspaper Articles and Public Comment | Tab 10 |

EXECUTIVE SUMMARY

RAPID CITY, S.D. HEARING JUNE 19, 2001

A. INTRODUCTION

The Commission is holding this hearing in response to the March 2000 Report of the South Dakota Advisory Committee to the United States Commission on Civil Rights ("Advisory Committee"), which recommends an assessment of the impact of the United States Sentencing Guidelines on Native Americans in South Dakota. The purpose of this hearing is to provide the Commission with an opportunity to hear from various witnesses who have first hand experience with the federal sentencing guidelines, and the process of criminal investigation, prosecution, and sentencing in South Dakota. In addition, the Commission will hear from tribal officials and chairs who will give voice to the impact of prison sentences on their people and communities. The Commission will also hear from a victims' rights advocate, a representative from the Bureau of Indian Affairs and a widely published professor of Indian Law.

B. BACKGROUND AND THE ADVISORY COMMITTEE'S MARCH 2000 REPORT

In December 1999, the Advisory Committee convened a one day public forum in Rapid City, South Dakota for the purpose of exploring issues relating to the administration of justice and Native Americans in South Dakota. The Advisory Committee heard from over one hundred witnesses representing a variety of interest groups including state prosecutors, local and tribal law enforcement officials, the U.S. Attorney, the FBI, the Civil Rights Division of the U.S. Department of Justice, tribal officials, Native American advocacy organizations, victims of alleged discrimination, and more than 50 private citizens (almost all of whom were Native Americans). The remarks of the private citizens generally centered on the themes of racism, uneven prosecution, disparate sentencing between state and federal prison terms, mistrust of the FBI and officer misconduct. Testimony presented at the forum reinforced the existence of the perception among Native Americans in South Dakota that they are, by virtue of racism, the federal sentencing guidelines, and racially unbalanced juries, subject to high arrest and prosecution rates and disproportionately high prison sentences.

The Advisory Committee's Report summarized the proceedings and testimony and included a number of conclusions and recommendations. Relevant to this Commission's hearing is conclusion number six which states "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." Additionally,

recommendation number six states that “[t]he discriminatory impacts of Federal sentencing guidelines must be rigorously scrutinized.” See Tab 3, pp.38, 40.

C. ATTORNEY GENERAL’S RESPONSE TO ADVISORY COMMITTEE’S REPORT

On July 31, 2000, the Attorney General issued its “Response of the U.S. Department of Justice to the March 2000 Report of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights.” The DOJ’s Response generally describes the Department’s efforts and work relating to Native Americans. Some of the DOJ’s current efforts are responsive to the specific concerns enumerated in the Advisory Committee’s Report.

D. DOJ’S FUNDED STUDY TO ASSESS SENTENCING ISSUES AT THE STATE LEVEL

In the fall of 2000, the Department of Justice’s Bureau of Justice Statistics provided a grant to the state of South Dakota to undertake a study to determine if disparities exist in the processing of Native Americans in South Dakota’s criminal justice system. The funding was initially rejected by South Dakota Attorney General Mark Barnett on the basis that the South Dakota Statistical Analysis Center lacked the necessary resources to carry out such a study. The Attorney General eventually reconsidered and accepted the funds. The study, being conducted by Dr. Steve Feimer, associate professor at the University of South Dakota, will assess such factors as charging decisions, sentencing rates, and incarceration rates. Dr. Feimer expects to complete the study in Fall 2002. Dr. Feimer is attending the June 19th hearing.

E. FEDERAL JURISDICTION IN INDIAN COUNTRY

In 1953, Congress promulgated Public Law 280, 18 U.S.C. §1162, which withdrew Federal criminal jurisdiction on Indian reservations in six designated states¹ and authorized those states to extend their state criminal and civil jurisdiction over crimes committed in “Indian country.”² The effect was an elimination of Federal criminal jurisdiction over reservations in the states specifically named in the law. For all other states, Public Law 280 provided for future assumption of the same type of criminal and civil jurisdiction through either enactment of

¹ These six states are called the “mandatory states:” Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin.

² “Indian country” is a legal term defined at 18 U.S.C. §1151, and means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, ... (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished....”

legislation accepting authority over reservation Indians or by state constitutional amendment. Indian tribes neither requested nor approved of the states' Public Law 280 jurisdiction; congressional intent was to impose upon the tribes this state jurisdiction in order to relieve federal financial obligations and to address perceived "lawlessness" on reservations.³

In "non-280" states, the federal government has authority over most crimes committed by Indians against non-Indians (or vice versa) in Indian country, and certain major crimes committed by Indians against other Indians; tribes have jurisdiction over crimes committed by Indians, subject to limits on punishment imposed by the 1968 Indian Civil Rights Act; and states lack civil and criminal jurisdiction over Indian defendants for matters arising on reservations.

South Dakota is a "non-280" state, and therefore, State jurisdiction generally does not extend into Indian Country. Therefore, the investigation and prosecution of crime committed in "Indian Country" is the responsibility of either the federal authorities or the tribal police. The federal Government has primary responsibility for investigating and prosecuting crimes that are specified in the Major Crimes Act, 18 U.S.C. § 1153, and include murder, manslaughter, rape, burglary, robbery, and kidnaping. The federal Government also has jurisdiction over crimes committed on a reservation by a non-Indian offender against an Indian victim and an Indian offender against a non-Indian victim. These crimes are investigated by the FBI and prosecuted by the South Dakota U.S. Attorney's Office. Tribal governments (tribal police and tribal courts) have jurisdiction over all crimes committed by one Indian against another that are not subject to federal jurisdiction; for all practical purposes, these crimes are misdemeanors.⁴

note: Fedz prosecute non Indian who commits a crime by Indian on a reservation.

³ See Carole Goldberg-Ambrose, *Public Law 280 and The Problem of Lawlessness in California Indian Country*, 44 U.C.L.A. L. Rev. 1405, 1406 (1997).

⁴ Federal jurisdiction in Indian country:

| <u>Crimes by Parties</u> | <u>Jurisdiction</u> | <u>Statutory Authority</u> |
|-----------------------------------|---------------------------|----------------------------|
| a. Indian v. Indian: | | |
| i. "Major crimes" | Federal/Tribal concurrent | 18 U.S.C. §1153 |
| ii. Other crimes | Tribal | |
| b. Indian v. Non-Indian | | |
| i. "Major crimes" | Federal/Tribal concurrent | 18 U.S.C. §1153 |
| ii. Other crimes | Federal/Tribal concurrent | 18 U.S.C. §1152 |
| c. Victimless Crime by Indian | Tribal | |
| d. Non-Indian v. Indian | Federal | 18 U.S.C. §1152 |
| e. Non-Indian v. Non-Indian | State | |
| f. Victimless Crime by Non-Indian | State | |

F. FEDERAL GUIDELINES AND APPLICATION

As discussed above, because South Dakota is a "non-280" state, federal law enforcement jurisdiction extends to certain offenses, investigations and prosecutions that would otherwise fall under State jurisdiction, specifically, crimes committed by Native Americans in Indian Country. These crimes generally fall into the following three categories: manslaughter, assault, and sexual abuse crimes. The perception in South Dakota that there is a dual system of justice is grounded in large part by the fact that these types of crimes receive different sentences depending on whether the crime is prosecuted in the Federal system or the State system. Some observers claim that sentences for assault in the Federal system are higher than in the state system, while Federal sentences for manslaughter are measurably lower than in the state system. Because Native Americans who commit these crimes (in Indian country) are subject to Federal prosecution, they are sentenced differently, more or less harshly, than they would be sentenced under similar State law for the same offense off the reservation. When non-Native American defendants commit these types of crimes, they are sentenced under applicable state laws, which adds to the perception among Native Americans that there is a dual system of justice.

But not if they commit them on the reservation (Indian country)

G. SPEAKERS

The speakers have been divided into four panels and grouped by affiliation. The nine tribal chairs and Elsie Meeks comprise Panels I and II. Speakers on Panel III represent the judiciary and various arms of law enforcement and include Judge Lawrence L. Piersol, Chief United States District Judge, Michelle Tapken, Interim U.S. Attorney, Robert Van Norman, Federal Public Defender for South Dakota, Ted L. McBride, a lawyer in private practice and the immediate past U.S. Attorney, and Lisa Thompson, a victims' rights advocate on the Crow Creek reservation. The final fourth panel is comprised of Frank R. Pommersheim, professor at the South Dakota School of Law and former tribal judge, Terry L. Pechota, a defense attorney and former U.S. Attorney for South Dakota, Marty Hansford, District Manager of the BIA, and Tom Peckham, an Indian lawyer from New Mexico.

[Note: Ted McBride also spoke at the Advisory Committee's public forum in 1999 in his capacity as U.S. Attorney. A brief summary of his remarks follows.

McBride gave an overview of Federal jurisdiction in Indian Country; he discussed the allegation that the U.S. Attorney's Office withholds information on criminal proceedings from the community. He stated that there is a difficult balance to strike between the constraints on information that can be released in the precharge phase of an investigation or information contained in non-public documents. The U.S. Attorney's Office compiles an annual *Indian Country Report* that contains a breakdown of charges by reservation that the office has filed according to the type of violation. In response to a query from Advisory Committee member C. Rae Burnette, McBride discussed the effect of the 1987 Federal sentencing guidelines on Native American defendants. He stated that Native Americans are subject to the guidelines because cases originating in Indian Country are often tried in Federal court. Burnett commented on a

widespread perception that someone who commits a crime on a reservation will receive a harsher sentence due to the guidelines strictness and inflexibility than someone who commits a similar crime off the reservation. McBride responded that only an empirical study could determine whether such a result actually exists. *See* Tab 3, p. 15]

SPEAKERS

Elsie Meeks, Commissioner
U.S. Commission on Civil Rights
Member of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights

John Yellow Bird Steele, President
Oglala Sioux Tribe
Pine Ridge, S.D.

William Kindle, President
Rosebud Sioux Tribe
Rosebud, S.D.

Gregg Bourland, Chair
Cheyenne River Sioux Tribe
Eagle Butte, S.D.

Michael Jandreau, Chair
Lower Brule Sioux Tribe
Lower Brule, S.D.

Tom J. Peckham, Esq.
Nordhaus, Haltom, Taylor, Albuquerque, New Mexico


Andrew Grey, Sr., Chair
Sisseton-Walpeton Sioux Tribe
Agency Village, S.D.

Tom Ranfranz, Chair
Flandreau Santee Sioux Tribe
Flandreau, S.D.

Roxanne Sazue, Chair (invited)
Crow Creek Sioux Tribe
Ft. Thompson, S.D.

Madonna Archambeau, Chair (invited)
Yankton Sioux Tribe
Marty, S.D.

Charles Murphy, Chair
Standing Rock Sioux Tribe
Ft. Yates, N.D.



The Honorable Lawrence L. Piersol
Chief United States District Judge

Michelle G. Tapken, Esq.
Interim U.S. Attorney, South Dakota

Marlys Pecora
Federal Victims Right's Office, U.S. Attorney's Office, South Dakota

Ted L. McBride, Esq.
Private Attorney, former U.S. Attorney for South Dakota (1999-2001)

Robert Van Norman, Esq.
Federal Public Defender

Lisa Thompson, Executive Director
Child Advocacy Center

Frank R. Pommersheim, Professor
University of South Dakota School of Law



Terry L. Pechota, Esq.
Private Attorney, former USA for South Dakota (1976-1980)

Marty Hansford, District Manager (invited)
Bureau of Indian Affairs



PROFESSIONAL RÉSUMÉ OF ROBERT VAN NORMAN
Attorney at Law

Date and Place of Birth: 7/25/46; Bassett, Nebraska
Married, 2 children

S.D. Federal Public Defender
703 Main Street
Rapid City, SD 57701
Telephone: 605-343-5110
Fax: 605-343-1498

Education:

- B.A., History, University of Nebraska, Lincoln 1968
National History Honor Society--Pi Alpha Theta
- Graduate Study, European Intellectual History, University of Nebraska, Lincoln 1969-1970
- M.P.A., Arizona State University, Tempe 1974
Graduate Teaching Assistant (Political Science)
Thesis: "Arizona Administrative Procedures Act"
National Public Affairs and Administration Honor Society--Pi Alpha Alpha
- Juris Doctor, University of Nebraska, Lincoln 1977
National Law Honor Society--Order of the Coif

Significant Work:

- 1968, 1970 VISTA, New Mexico and Texas, community organizer
- 1971-72 Secondary School Teacher, African History, Department Chair; Kitwe, Zambia (Africa)
- 1974-75 Epidemiologist and Field Supervisor, U.S. Public Health Service, St. Louis, Missouri
- 1978-79 Lawyer, Pennington County Public Defender's Office, Rapid City, South Dakota
- 1979-82 Assistant Regional Attorney and Acting Regional Chief Civil Rights Attorney, U.S. Department of Health, Education and Welfare, Kansas City, Missouri
- 1982-99 Sole practitioner, Rapid City, SD. Emphasis in criminal law. Defense of 7 capital cases; appointment as consultant and interim counsel on 2 additional capital cases. Prior qualifications as expert witness in habeas corpus cases in First, Seventh and Eighth Judicial Circuits, State of South Dakota, both privately retained and court-appointed
- 1999 - Federal Public Defender, U.S. District of South Dakota

Memberships, Honors, Presentations, Community Activities:

- South Dakota State Bar, 1978-
- Chairman, Board of Directors, Black Hills Legal Service Corp., 1983-85
- Counsel, S.D. Nuclear Waste Vote Coalition, initiated measure, 1983-84
- South Dakota State Bar Criminal Law Committee, 1986- (2 years, Chair)
- National Association of Criminal Defense Lawyers, 1990-
- Black Hills Criminal Defense Bar Association, 1986- (President, 1987)
- Association of Federal Defenders, 1999-
- Martindale-Hubbell "AV" rating, 1992-
- Top Pro Bono Award, Pennington County Legal Assistance Project, 1989-90
- National Directory of Criminal Lawyers, ed. Barry Tarlow (3rd ed. 1991-92)
- The Best Lawyers in America, ed. Steven Naifeh (7th ed. 1997-98; 8th ed. 1999-2000), criminal defense category
- Trainer, Pennington County Public Defender's Office, various topics, 1985-1994; Speaker, Black Hills Criminal Defense Bar Association, various topics, 1988-99; Presenter, SDTLA, "Trial Tactics," University of South Dakota School of Law, 1989; Speaker, S.O.S., Emporia, Kansas, "Rape Victims, the Police and Testifying," 1990; Presenter, SDTLA, People's Law School, "Criminal Law and Procedure," 1990; Presenter, Annual Conference of Rocky Mountain Council of Community Mental Health Centers, "On Becoming an Expert Witness," 1990; Trainer, South Dakota Highway Patrol, "Stops and Searches," 1991; Speaker, S.D. School of Mines & Technology, "Ethics and Capital Punishment," 1994; Trainer, Rapid City Police Department, "Testifying and Report Writing," 1994; Presenter, SDTLA, People's Law School, "Capital Punishment," 1996; Speaker, SDTLA Seminar, "Ethics in Federal Criminal Trials," 1996; Co-authored with Barbara Van Norman, "South Dakota Can't Afford Death Penalty," Rapid City Journal, "Forum", p. A4, August 16, 1997; Speaker, SD State Bar CLE, "Defending a Capital Case," 1998; Speaker, SDTLA Seminar, "Federal Evidentiary Issues at Sentencing," 1999; Speaker, SDTLA Seminar, "Murder: Tools of the Trade, a Brief Essay," 2000; Speaker, SDLAA Fall Seminar, "Federal Public Defense Work: The Folks in the White Hats" 2000
- Literacy tutor, Pennington County Jail, 1992-94
- Vice President, Board of Directors, High Place Homeowners Association, Rapid City, SD 1996-99
- Rare book appraisals, including for Devereaux Library, S.D. School of Mines & Technology, 1994, and semi-annually at Journey Museum, Rapid City, SD, 1998-

Court Admissions:

- Supreme Court, State of South Dakota, 1978
- U.S. District Court, District of South Dakota, 1982
- U.S. Court of Appeals, Eighth Circuit, 1983



Ted L. McBride
1601 West Boulevard
Rapid City, SD 57701

Phones

(605) 721-1601 (Home)
(605) 342-2800 (Rapid City office)
McBride

Age: 51

Spouse: Mary Linda

Education

1972: University of South Dakota, BFA
1978: University of South Dakota, JD
Law Review
Moot Court Board

Legal Career

Internships

summer 1977: South Dakota Department of Game, Fish & Parks
summer 1978: United States Attorney's Office

Law Clerk

1979-80: Chief Judge Fred J. Nichol, United States District Court, District of South Dakota

Assistant United States Attorney, Rapid City, South Dakota

1980-89: Responsible for a full range of civil and criminal cases including medical malpractice, personal injury, and administrative review cases. Supervisor of this office from 1983

First Assistant United States Attorney, Sioux Falls, South Dakota

1989-92: Responsible (under the United States Attorney) for supervising the full range of activities in the United States Attorney's Office.
In addition to legal supervision, carried a significant criminal and civil caseload.

Assistant Director, Attorney General's Advocacy Institute, Washington, D.C.

1992-93: Responsible for the training program for Criminal Assistant United States Attorneys throughout the United State. Formulated curriculum, obtained instructors, and presented Continuing Legal Education in basic trial advocacy, bank fraud, grand jury practice, health care fraud, Indian gaming issues, and narcotics prosecutions.

Interim United States Attorney, District of South Dakota

April 1993-July 1993

First Assistant United States Attorney, Sioux Falls, South Dakota

April 1993-November 1994

Supervisory Assistant States Attorney, Rapid City, South Dakota

1994-99: Supervised Criminal Assistants and all support staff in the Rapid City branch office of

the United States Attorney's Office for the District of South Dakota and carried a full criminal case load.

United States Attorney, District of South Dakota

1999-2001: Within the District of South Dakota, the responsibility and authority to prosecute all offenses against the United States and to prosecute or defend all civil actions in which the United States is concerned.

Legal Instructor

1983-present:

Taught on a recurring weeklong basis: civil, criminal, and appellate advocacy courses

based on the NITA (National Institute for Trial Advocacy) model for the Department of Justice. Awarded a diploma by NITA in 1992 for completing intensive training program in the teaching of advocacy skills.

Provided training on a recurring basis to federal, local, and tribal agencies. Examples include FBI homicide training for Special Agents, BIA and tribal investigators; National Park Service; and Sioux Falls Police Department.

Recipient

1998: Director's Award for Superior Performance from the Executive Office for U.S. Attorneys

Bar Activities

Member

State Bar of South Dakota
South Dakota Trial Lawyers Association (SDTLA)
Pennington County Bar Association
United States Supreme Court Historical Society
Sioux Falls Inn of Court: founding member

Lecturer

October 1989: SDTLA "Trial Tactics"
October 1993: SDTLA "Civil Issues"
June 1994: State Bar CLE "Evidence"
April 1996: State Bar CLE co-chair "Appellate Practice"
March 1988: State Bar CLE "Federal Criminal Defense"

Committee Work

Since 1994: State Bar of South Dakota Committee on Continuing Legal Education
1994-95: SDTLA Education Committee

Representative Community Activities

1998-present: Black Hills Playhouse Board of Directors

1995-2000: Rushmore Invitational High School Speech Tournament Judge

1998-2000: Judge at National Finals "We the People" High School Constitutional Competition

1979-99: Actor and Director of staged productions
Group Theatre (Rapid City), Homemade Theatre (Rapid City),
Sioux Falls Community Playhouse, Black Hills Community Theatre (Rapid City)

Fundraising for various organizations such as the March of Dimes Birth Defects Foundation, YMCA, Allied Arts Fund, and Congregational Church

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Terry L. Pechota
Viken, Viken, Pechota, Leach & Dewell, L.L.P.
Rapid City, South Dakota
(Pennington Co.)

Rating Info

Born 1947; Admitted 1972; Black Hills State College, B.S.; University of Iowa, J.D.

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Background Info on Terry Pechota

US Attorney for South Dakota in the Carter Administration (1976-1980)

Feb. 2001 represents Rosebud Tribe in Eight Circuit Court of Appeals argument over project involving 24 hog barns on tribal trust land along South Dakota Highway 44/environmental impact assessment is in issue

October 1999; represented James Weddell (described as career criminal) in manslaughter conviction (head injuries during fight near liquor store); captured on Pine Ridge Reservation - state case; expert testimony in issue

Dec. 1998: represented Sheriff Cecil Brandis - charged with assault with dangerous weapon for hitting David Lee in head with a metal flashlight on Lower Swift Bear community; US Attorney also charged Brandis with violation of victims' civil rights by unreasonable force; defense was that Brandis acted properly when arrested victim after lengthy chase; self-defense case; occurred on tribal land, federal jurisdictions

1998 Local counsel for the Rapid City Health Board

June 1997: attorney for Rosebud Sioux Tribe (article on Head Start safety issue)

August 1998 Testified as character witness for former circuit judge Joseph Troisi in St. Mary's West Virginia ; was Troisi's first boss (when he was a young lawyer practising on the reservation)

January 1995 attorney for Turnkey Gaming Inc. (Owns building and equipment for casino on Oglala Sioux land/Prairie Wind casino)

April 1994: represented family of 13 year old girl in lawsuit against Oglala Sioux Tribe's Public Safety Commission because one of its police officers, while in uniform and in a patrol car, repeatedly had sex with a minor

March 1986: represented an Indian convicted of killing bald Eagles; argued that 100 year old treaty gives members of the Yankton Sioux tribe the right to kill bald eagles; result of undercover investigation by agents of Fish and Wildlife Service

May 1983: represented American Indian Movement (AIM); article discusses government demand to take back land granted for an American Indian College

July 1980: As US Attorney, said tribes must form a plan of how to use money awarded by US Court of Claims as compensation for Congress taking the Black Hills from the Sioux Indian Nation.

Frank R. Pommersheim, Professor



Education:

B.A., Colgate University; J.D., Columbia University, M.P.A., Harvard University

Bar Member:

South Dakota, Oregon

Courses:

Indian Law, Indian Jurisdiction, Criminal Law, Criminal Procedure, Federal Jurisdiction, Education & the Law

E-mail:

fpommers@usd.edu

- 1. 71 U. Colo. L. Rev. 123 University of Colorado Law Review Winter 2000 Article "OUR FEDERALISM" IN THE CONTEXT OF FEDERAL COURTS AND TRIBAL COURTS: AN OPEN LETTER TO THE FEDERAL COURTS' TEACHING AND SCHOLARLY COMMUNITY Frank Pommersheim [FNa1]

- 2. 31 Ariz. St. L.J. 439 Arizona State Law Journal Summer, 1999 COYOTE PARADOX: SOME INDIAN LAW REFLECTIONS FROM THE EDGE OF THE PRAIRIE Frank Pommersheim [FNa1]

- 3. 66 Fordham L. Rev. 1181 Fordham Law Review March, 1998 Symposium REPRESENTING NATIVE PEOPLE AND INDIAN TRIBES: A RESPONSE TO PROFESSOR ALLEGRETTI Frank Pommersheim [FNa1]

- 4. 7-WTR Kan. J.L. & Pub. Pol'y 8 Kansas Journal of Law and Public Policy Winter, 1997 WHAT MUST BE DONE TO ACHIEVE THE VISION OF THE TWENTY-FIRST CENTURY TRIBAL JUDICIARY Frank Pommersheim [FNa1]

- 5. 58 Mont. L. Rev. 313 Montana Law Review Summer 1997 TRIBAL COURTS AND THE FEDERAL JUDICIARY: OPPORTUNITIES AND CHALLENGES FOR A CONSTITUTIONAL DEMOCRACY [FNa] Frank Pommersheim [FNaa]

- 6. 14 T.M. Cooley L. Rev. 457 Thomas M. Cooley Law Review Michaelmas Term, 1997 Indian Law Symposium DEMOCRACY, CITIZENSHIP, AND INDIAN LAW LITERACY: SOME INITIAL THOUGHTS Frank Pommersheim [FNa1]

- 7. 21 Vt. L. Rev. 7 Vermont Law Review Fall, 1996 Symposium: Stewards of the Land: Indian Tribes, the Environmental and the Law TRIBAL COURT JURISPRUDENCE: A SNAPSHOT FROM THE FIELD Frank Pommersheim [FNa1] ✓

- 8. 12 J.L. & Religion 455 Journal of Law and Religion 1995-1996 SEPARATION OF CHURCH AND STATE Frank Pommersheim [FNa1]

- 9. 79 Judicature 110 Judicature November-December 1995 TRIBAL COURTS: PROVIDERS OF JUSTICE AND PROTECTORS OF SOVEREIGNTY Frank Pommersheim [FNa1]

- 10. 71 N.D. L. Rev. 415 North Dakota Law Review 1995 DIMINISHMENT OF INDIAN RESERVATIONS: LEGISLATIVE OR JUDICIAL FIAT? [FNa] James M. Grijalva, Robert Laurence, N. Bruce Duthu, Frank Pommersheim, Alexander Skibine

- 11. 71 N.D. L. Rev. 541 North Dakota Law Review 1995 DISPUTE RESOLUTION IN INDIAN COUNTRY: DOES ABSTENTION MAKE THE HEART GROW FONDER? [FNa] Patti Alleva, Lynn Slade, Robert Clinton, Phillip Wm. Lear, Frank Pommersheim, Laurie Reynolds, Alexander Skibine

- 12. 19 Okla. City U. L. Rev. 1 Oklahoma City University Law Review Spring, 1994 A Symposium on Tribal Courts INTRODUCTION Frank Pommersheim [FNa1]

- 13. 1992 Wis. L. Rev. 411 Wisconsin Law Review 1992 Essay LIBERATION, DREAMS, AND HARD WORK: AN ESSAY ON TRIBAL COURT JURISPRUDENCE Frank Pommersheim [FNa1] Shermann Marshall [FNaa1]

- 14. 27 Gonz. L. Rev. 393 Gonzaga Law Review 1991/92 Symposium A PATH NEAR THE CLEARING: AN ESSAY ON CONSTITUTIONAL ADJUDICATION IN TRIBAL COURTS Frank Pommersheim [FNa1]

- 15. 36 S.D. L. Rev. 239 South Dakota Law Review 1991 TRIBAL-STATE RELATIONS: HOPE FOR THE FUTURE? Frank R. Pommersheim [FNa]

- 16. 31 Ariz. L. Rev. 329 Arizona Law Review April, 1989 Indian Law Symposium THE CRUCIBLE OF SOVEREIGNTY: ANALYZING ISSUES OF TRIBAL JURISDICTION Frank R. Pommersheim [FNa]



17. 12 Am. Indian L. Rev. 195 American Indian Law Review 1987 ECONOMIC DEVELOPMENT IN INDIAN COUNTRY: WHAT ARE THE QUESTIONS? Frank Pommersheim [FN1]

LISA THOMPSON

Lisa Thompson has worked in the field of domestic violence and sexual assault for over ten years. Ms. Thompson is the Executive Director of Wiconi Wawokiya, Inc., a domestic violence shelter for women and their children and The Children's SAFE Place (Children's Advocacy Center). In the past three years, Ms. Thompson developed The Children's SAFE Place, a child advocacy center for Native American Children who have been sexually abused. The only co-located shelter and child advocacy center model program in Indian Country.

**MICHELLE G. TAPKEN
UNITED STATES ATTORNEY
230 SOUTH PHILLIPS AVENUE, SUITE 600
SIOUX FALLS, SD 57104
(605)330-4400**

PROFESSIONAL WORK EXPERIENCE

2001 to Present

Interim United States Attorney

1990 to 2001

Assistant United States Attorney
United States Department of Justice
District of South Dakota
Sioux Falls, South Dakota

Prosecute all violent crimes occurring on the Yankton Sioux Indian Reservation and the Flandreau Indian Reservation in South Dakota.

Extensive trial experience in cases involving immigration violations, child sexual abuse, adult sexual assault, robbery, burglary and assault.

Coordinate with the Immigration and Naturalization Service to develop procedures for prosecution of illegal aliens.

Assistant Director, Office of Legal Education
EOUSA, Victim/Witness
Washington, D.C.

One-year detail position responsible for developing and implementing victim/witness training into course offerings for the Office of Legal Education.

1989 Law Clerk
The Honorable Warren Urbom, United States District Judge
District of Nebraska
Lincoln, Nebraska

1982-1989

Victim's Advocate - State of South Dakota

1980-1989

Private Practice - Psychology
Yankton, South Dakota

1970-1980

Counselor and Teacher
South Dakota Public Schools

1967 - 1970

Director of Education
South Dakota Human Services Center
Yankton, South Dakota

SUPERVISORY EXPERIENCE

South Dakota Board of Regents of Higher Education (10 years)
Board President (2 years)

Responsible for administration of annual budget, hiring of university presidents and oversight of all state universities

Special Consultant, State of South Dakota

Exercised supervisory role throughout the State of South Dakota and training social workers to investigate child sexual abuse cases

Director of Education
South Dakota Human Services Center

AREAS OF EXPERTISE OR SPECIALTY

Child sexual abuse, immigration, violent crime, victims' rights, licensed psychologist

EDUCATIONAL AND PROFESSIONAL LICENSES

1989 Juris Doctor - University of South Dakota School of Law, Vermillion, South Dakota

1970 Master of Arts, University of South Dakota, Vermillion, South Dakota

1967 Bachelor of Science, Education, University of South Dakota, Vermillion, South Dakota

Member, State Bar of South Dakota

Licensed Psychologist, State of South Dakota

AWARDS, HONORS, AND SPECIAL APPOINTMENTS

1996 United States Department of Justice Director's Award for outstanding performance as an Assistant United States Attorney

1988-1989 Symposium Editor, "Children and the Law"
Volume 34, S.D. L.Rev. Issue 3 (1989)

University of South Dakota School of Law
Vermillion, South Dakota

- 1985 Commissioner's Award
 United States Department of Health and Human Services
- 1979-1989 South Dakota Board of Regents of Higher Education
 Board President for two years
- 1977 South Dakota School Counselor of the Year

Marlys Pecora

Marlys Pecora is the Victim Witness Specialist for the United States Attorney's Office in Pierre, SD. Ms. Pecora helped establish the Model Federal Victim Witness Program in the U. S. Attorney's Office, which provides direct services to victims or witnesses in Indian country. Her duties include providing crisis intervention, advocacy and support services referrals, assisting with court preparation and providing court assistance. Ms. Pecora has an Associate of Science Degree in Business Administration from Northern State University. Her previous work experience includes a position as the Executive Director of Missouri Shores Domestic Violence Center and a Criminal Investigator on the Crow Creek Reservation. She currently serves on the Executive Coordinating Committee for the Western Regional Institute for Community Orienting Policing institutionalizing promising practices in Indian Country. Since joining the US Attorney's Office in 1998, Ms. Pecora has received a "Special Service Award" for her direct service work with victims, an "On The Spot" award for her efforts in the production of an educational video for victims of crime, a "Time Off" award for going above and beyond during off hours on behalf of child victims and the "Sustained Superior Performance" Award. Ms. Pecora is a dedicated advocate for victims of crime in Indian Country and recently spoke about victim's issues at the Third National Symposium on Victims of Federal Crime in Washington, D.C.

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.

The United States Commission on Civil Rights

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

The State Advisory Committees

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

Native Americans in South Dakota:

An Erosion of Confidence in the Justice System

Letter of Transmittal

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

Members of the Commission

Mary Frances Berry, *Chairperson*
Cruz Reynoso, *Vice Chairperson*
Carl A. Anderson
Christopher Edley, Jr.
Yvonne Y. Lee
Elsie M. Meeks
Russell G. Redenbaugh
Victoria Wilson

Ruby G. Moy, *Staff Director*

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 cursive script, reading "Marc S. Feinstein".

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

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

Marc Stuart Feinstein, *Chairperson*
Sioux Falls

Amy H. Arndt
Sioux Falls

Charlotte Black Elk
Manderson

C. Rae Burnette
Sioux Falls

Dorothy M. Butler
Brookings

Bang Ja "B.J." Kim
Brookings

Alys JaVay Lafler-Ratigan
Rapid City

Cynthia E. Hart Mickelson
Sioux Falls

Frank R. Pommersheim
Vermillion

James G. Popovich
Rapid City

Julio "Mutch" Usera
Rapid City

David L. Volk
Fort Pierre

William E. Walsh
Deadwood

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 standingroom-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/mo/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-

¹⁰ Treaty of Fort Laramie with the Sioux, 15 Stat. 635, article II, Apr. 29, 1968.

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.

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

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

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.

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

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 Victimizations by Race of Victim and Race of Offender, 1992–96

| Race of victim | Total | Race of offender | | |
|-----------------|-------|------------------|-------|-------|
| | | 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

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.

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-

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.

¹ 455 N.W.2d 600 (1990).

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 necessary 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

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 Meeks 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 state-wide 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

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.

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.

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.

Good argument for GHS

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.

*What was the ally
ref. for these 7 cases?*

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.

might have
or
misinterpreted

X

why such low representation of
Indians on juries?

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."

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-

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 over-emphasized. 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-

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

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.

U.S. COMMISSION ON CIVIL RIGHTS
Rocky Mountain Regional Office
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Office of the Attorney General
Washington, D. C. 20530

July 31, 2000

The Honorable Mary Frances Berry
Chairperson
United States Commission on Civil Rights
624 Ninth Street, NW, Room 700
Washington, DC 20425

Dear Dr. Berry:

Thank you for your letter of March 28, 2000, enclosing the report of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*. The report and its recommendations identify many of the problems confronting Native Americans that we have been working to address for many years. We recognize that the problems are numerous and serious. Regrettably, progress in solving them is neither quick nor easy. The Department of Justice is committed to fulfilling its trust responsibility by working with tribes and other federal agencies to help solve these problems and improve the well-being of Native Americans. Enclosed with this letter is our response to the State Advisory Committee's report, which describes some of the major work we are doing for Native Americans, particularly the work that is most responsive to the South Dakota Advisory Committee's recommendations.

We appreciate the interest of the State Advisory Committee and the Commission in improving the lives of Native Americans both in South Dakota and in the Nation as a whole. I am grateful to the many fine people in the various offices, bureaus, and components of the Department who have dedicated a substantial part of their lives to public service devoted to Native Americans. Because of their hard work, we are making a difference in Native American communities. We realize that we have a long way to go, and we hope that the State Advisory Committee and the Commission will support us in those efforts. By moving forward in a cooperative and collaborative way, we can make significant progress.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno".



U.S. Department of Justice

Washington, D.C. 20530

Response of the U.S. Department of Justice

to the March 2000 report of the

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

on

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

July 2000

Response of the U.S. Department of Justice to *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*

Background: The Trust Relationship Between the United States and Indian Tribes

Historically, the United States has recognized Indian tribes as sovereign nations to which the Federal Government owes a trust responsibility. The United States set aside Indian reservations as permanent homes for Indian tribes, and the United States has a trust responsibility to promote the welfare of native peoples, which includes a duty to assist tribes in making their reservations livable homes. The basic responsibility of the Department of Justice (DOJ) to preserve public safety for residents of Indian communities derives from the unique trust relationship between the United States and Indian tribes and from specific statutes, such as the Major Crimes Act, the General Crimes Act, and other Acts that establish general federal jurisdiction over felony crimes by or against Indians, including homicide, rape, and aggravated assault. In recent years, DOJ has been authorized to make grants to Indian tribes to assist tribal law enforcement and criminal justice systems.

Based on this authority and responsibility, the U.S. Attorneys prosecute felony crimes committed by or against Indians throughout most of Indian country. Tribal criminal justice systems handle crimes by Indians, subject to a 1-year limitation on sentences. 25 U.S.C. sec. 1302. The Interior Department's Bureau of Indian Affairs (BIA) has historically policed Indian reservations or contracted with Indian tribes to provide basic law enforcement services. 25 U.S.C. secs. 450 *et seq.* BIA and tribal police generally serve as first responders to Indian country crime. The Federal Bureau of Investigation (FBI), working cooperatively with BIA and tribal police, investigates felony crimes by or against Indians. DOJ victim-witness coordinators assist witnesses and crime victims in Indian country. In short, the United States has unique law enforcement responsibilities in Indian communities.

It is important to recognize, however, that not every crime affecting a Native American is one that the Federal Government has the authority to investigate or to prosecute. Thus, in order to improve the safety of Native Americans, DOJ has made an effort to work with all the relevant government entities -- tribal, state, and local -- as well as other federal agencies, to attack the problems on every front. Sometimes these efforts are direct, such as prosecuting a crime. At other times, our efforts are necessarily indirect, such as providing the resources or training needed to enable the entity with jurisdiction over the matter to resolve the matter itself. In all these efforts, we have consulted with tribes, worked with tribes, and have attempted to restore the trust and confidence that are essential for progress. We recognize that we have much work ahead of us, but we believe that the Report of the South Dakota Advisory Committee would be more accurate and more constructive if it recognized that considerable progress has been made.

Improving Law Enforcement in Indian Country¹

The first recommendation of the South Dakota Advisory Committee is that the Commission on Civil Rights call for the Attorney General to immediately appoint a federal task force to address the crisis of law enforcement affecting Native Americans, both on and off Indian reservations. (Report at page 39.) DOJ agrees that there are truly serious problems of law enforcement and public safety affecting Native Americans. As described in the next few pages, DOJ has already undertaken a multi-year process to identify these problems, their causes and likely solutions, and we have already put in place an Indian Country Law Enforcement Initiative Working Group to carry this out. Accordingly, the creation of an additional task force would largely duplicate efforts that are already underway.

Recognizing the Need for an Indian Country Law Enforcement Initiative

In 1997, recognizing the severe problem of violent crime among American Indians, President Clinton directed the Secretary of the Interior and the Attorney General to work with tribal governments to analyze law enforcement problems on Indian lands and suggest ways for improving public safety and criminal justice in Indian country. Beyond the increasing crime rates in Native American communities, the President cited the lack of police officers, criminal investigators, and detention facilities as evidence of the importance of addressing this problem. In response, the Secretary and the Attorney General formed an Executive Committee for Indian Country Law Enforcement Improvements with tribal leaders and representatives from the Interior Department and DOJ. At the request of the Executive Committee, U.S. Attorneys in districts with Indian tribes led an extensive series of tribal consultations on Indian country law enforcement in the fall of 1997. Consultations revealed a large gap between public safety in Indian country and the rest of the United States. Based on the U.S. Attorneys' consultations, the Executive Committee concluded that to fight crime effectively in Indian country and to improve public safety, the United States must work with Indian tribes to ensure that there is a full spectrum of federal and tribal law enforcement resources. That could include BIA and tribal uniformed police, criminal investigators, tribal courts, FBI agents, U.S. Attorney personnel, support staff, victim-witness coordinators, juvenile justice programs, detention facilities, law enforcement equipment, and training.

After giving serious consideration to these factors and the information gathered through consultations with tribal leaders across the country, the Secretary of the Interior and the Attorney General approved the Executive Committee's report and recommended to the President that Justice and Interior undertake ongoing efforts to improve law enforcement in Indian country. In response, the President sought funds for both Departments to establish the Indian Country Law Enforcement Initiative.

¹ This response by DOJ includes some information previously provided to you by the FBI in a May 25, 2000, letter from Director Louis J. Freeh.

Fighting for More Resources for Indian Country

In FY 1999, in response to our increased request, Congress appropriated \$89 million for DOJ for the Indian Country Law Enforcement Improvement Initiative. Under the Initiative, DOJ funded 30 additional FBI agents to investigate Indian country crimes. The Community Oriented Policing Services (COPS) provided \$32.8 million in grants to 140 tribal governments to fund 213 police officer positions, law enforcement equipment and technology, and police officer and administrative training. The Office of Justice Programs (OJP) Corrections Program Office received \$34 million in funds for detention facilities and funded 11 Indian tribes to assist them with the design and construction of juvenile and adult correctional facilities. The OJP Office of Juvenile Justice and Delinquency Programs (OJJDP) received \$10 million and made grants to 34 Indian tribes to prevent and control juvenile crime. The OJP Bureau of Justice Assistance (BJA) received \$5 million to assist tribal courts and awarded 76 grants to develop and enhance tribal courts, including several intertribal courts.²

For FY 2000, again in response to another increased request from the Administration, Congress appropriated \$91.5 million for the initiative for tribal police officers, training, and equipment, the construction of tribal detention facilities, juvenile crime prevention, and tribal courts. In furtherance of this year's program implementation, DOJ held regional consultation meetings for tribal governments throughout the Nation from March 17 through March 26, 2000. In addition, DOJ organized and co-sponsored a meeting with tribal leaders and others in early March to discuss promising tribal practices for addressing alcohol abuse, and associated crime and violence. Building on that effort, DOJ is developing a brochure of such promising practices and strategies currently being employed by Native American communities, in order to share that information with other Native American communities so that successful measures can be replicated.

Past increases in appropriations, however, have not been sufficient. In light of the serious and rising violent crime problems in American Indian and Alaska Native communities, DOJ has requested from Congress \$173.3 million for FY 2001 for the Indian Country Law Enforcement Improvement Initiative to be used to increase the number of fully trained and equipped police officers in Indian country, improve the quality of the criminal justice system (including tribal courts, detention facilities, evidence gathering and crime information systems), enhance substance abuse programs, combat tribal youth crime, and increase federal prosecutorial and investigative resources in Indian country.

² A chart summarizing discretionary and formula subgrants to Indian Tribes in South Dakota for FY 1995-2000 is attached at Tab A.

DOJ's \$173.3 million FY 2001 request for the initiative is broken down as follows:

- **FBI:** \$4,639,000 for 31 Indian country victim-witness coordinators, funding for Indian country forensic exams, and funding for overtime for tribal police who are part of the FBI's multi-jurisdictional Safe Trails Task Forces.³
- **United States Attorneys:** \$4,699,000 for 60 positions (33 Assistant U.S. Attorneys and 27 support staff) to increase federal prosecutorial and investigative resources to address violent crime, including gang violence and juvenile violence, in Indian country.
- **Office of Tribal Justice (OTJ):** \$932,000 for eight positions under the Office of the Associate Attorney General to institutionalize OTJ as an integral, ongoing part of DOJ. OTJ coordinates with departmental components that have responsibilities concerning tribal issues, including improving Indian country law enforcement, assistance to tribal law enforcement and courts, civil rights protection, environmental protection, tribal land and resource protection, and litigation involving Indian interests.
- **Criminal Division:** \$70,000 for 1 position for the Criminal Division to increase capacity to analyze Indian country crime problems.
- **COPS Tribal Resources Grant Program:** \$45 million to improve tribal law enforcement, including funding for police officers, training, and equipment. (\$5 million increase from FY 2000 Appropriation.)
- **COPS Indian Country Forensics Evidence Gathering:** \$5 million to increase the capacity of tribal law enforcement to collect forensic evidence to address the current serious lack of tribal capacity in this area.
- **OJP Corrections Program Office:** \$34 million for the construction of detention facilities to provide adequate space to incarcerate violent offenders punished under tribal law.
- **Tribal Youth Crime Prevention Program:** \$20 million for grants to Indian tribes to fund comprehensive tribal delinquency prevention, control, and juvenile justice system

³ \$2.6 million would hire and equip 31 victim-witness specialists to assist witnesses and crime victims in Indian country. \$1.4 million would provide funding for contracts for forensic evidence to facilitate FBI investigation of violent crimes and sexual assaults in the Albuquerque, Minneapolis, and Salt Lake City field offices, where 75% of federal Indian country crime cases originate. \$634,000 would provide for overtime for tribal, state and local police officers on 10 to 12 Safe Trails Task Forces.

improvement for tribal youth. OJJDP administers this tribal youth program. (\$7.5 million increase from FY 2000 Appropriation.)

- **Tribal Court Enhancement:** \$15 million for grants to Indian tribes for the development, enhancement, and the operation of tribal courts. BJA will administer this program and will promote funding for intertribal courts to maximize the distribution of funds. This program is an essential part of DOJ's overall effort to reduce violent crime in Indian country because tribal court resources are necessary to address the increased volume of cases resulting from increased police resources and rising crime. (\$10 million increase over FY 2000 Appropriation.)
- **OJP Indian Country Grants Program:** \$21 million to address specific problems of violent and alcohol-related crime particular to Indian communities, including \$8 million to establish diversionary programs for non-violent recidivist alcohol offenders; \$5 million to establish Sexual Assault Nurse Examiner Units to address the alarmingly high rates of rape and sexual assault against American Indian women; and \$8 million for tribal youth in the juvenile justice system suffering mental health and/or behavioral problems.
- **OJP Zero Tolerance Drug Supervision Program:** \$10 million for comprehensive programs of drug testing, drug treatment and graduated sanctions for offenders in tribal detention facilities.
- **OJP Tribal Criminal and Civil Legal Assistance Program:** \$6 million for criminal and civil legal assistance for indigent Indians appearing before the tribal courts and to fund the development of tribal college criminal and civil legal assistance curriculum.
- **OJP Police Corps:** \$5 million for the Police Corps Program to provide scholarships for students committed to entering the field of law enforcement in Indian country.
- **Tribal Criminal Justice Data Collection Systems:** \$2 million for the Bureau of Justice Statistics to improve tribal law enforcement capacity to gather information and statistics about crime and tribal criminal justice systems.

DOJ also includes Indian tribes in general programs, such as the Violence Against Women Program and the Drug Courts Program. To ensure that these programs provide the maximum support for tribal law enforcement possible, DOJ is closely coordinating its efforts with the BIA and we are in frequent consultation with tribal law enforcement agencies.

Improving and Tailoring Programs for Indian Country

In addition to fighting to obtain much-needed resources for law enforcement affecting Native Americans, DOJ is working to improve existing programs to better serve Native Americans. Among the efforts currently underway are:

- Making the COPS grant programs as responsive as possible to the unmet needs of Indian country law enforcement and the unique conditions facing tribal communities;
- Increasing the ways in which tribal law enforcement can participate and access national information systems such as the National Crime Information Center (NCIC), the National Criminal History Improvement Program (NCHIP), the Sex Offender Management Resource (SOMR), and others;
- Ensuring access to training for tribal prosecutors and including them in DOJ training and seminars when space and funding are available;
- Providing "tribal liaisons" in most U.S. Attorneys' Offices with significant amounts of Indian country in their districts, in order to serve the role played by a district attorney or community prosecutor, by being familiar with and available to the community for a variety of programmatic activities, such as sitting on Weed and Seed Steering Committees and Child Protective Teams;
- Promoting inter-jurisdictional cooperation, mutual respect, and understanding with tribal courts and tribal judges; and
- Increasing coordination and implementing services for Indian youth in custody.

We hope through these and related efforts, DOJ can empower tribal communities to improve public safety and well-being for their members.

Consulting with Tribal Governments

This Administration has taken seriously its obligation to consult with tribes on a government-to-government basis. In the Executive Order on Tribal Consultation, the President explained that:

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation guaranteed the right of Indian tribes to self-government.⁴

These treaty pledges form part of the basis for our federal trust responsibility to promote the welfare of the Native American peoples. In the State of the Union address this year, the President reminded all Americans that "we should begin this new century by honoring our historic responsibility to empower the first Americans."

⁴ Executive Order No. 13084 (1998).

During the Attorney General's tenure, DOJ has worked hard to honor the federal trust responsibility and our government-to-government relationship with tribes. Soon after she took office, tribal leaders told her that true government-to-government relations means that we, as representatives of the United States, must listen to the concerns of Indian tribes. So, in 1994, along with the Departments of Interior and Housing and Urban Development, DOJ held the National American Indian Listening Conference. We have also held regional listening conferences and conferences on particular subjects, such as Banking in Indian Country, Economic Development, and Tribal Courts.

In 1995, the Attorney General issued a Policy on Indian Sovereignty and Government-to-Government Relations, which calls upon our divisions and offices to respect tribal rights and to consult with tribal leaders whenever appropriate. Our government-to-government relations policy also pledges to assist Indian tribes as they develop strong law enforcement, tribal courts, and criminal justice systems. To coordinate our policy, promote government-to-government relations, and serve as a direct avenue of communication with tribal governments, we established OTJ and are making sure that it has a permanent place within DOJ.

We believe that consultation is a vital part of rebuilding trust and confidence between DOJ and Indian tribes.

Providing Victim-Witness Services to Indian Country

As indicated in the Advisory Committee's first recommendation, keeping victims, witnesses and their families informed of the criminal process and the progress of cases is an important function. We believe it is most effectively handled by full-time Victim-Witness Specialists (VWS). The FBI asked for Congressional funding for FY 2000 to employ 31 VWSs in Indian country, a substantial number of whom would have gone to South Dakota. This funding was not approved, however. As mentioned above, DOJ has again asked to fund these 31 VWSs in its FY 2001 budget request and will continue to do so until it has adequate personnel to meet the community outreach and victim witness needs of Indian country.

Separate from this funding, the FBI's Rapid City, South Dakota, Resident Agency hired a VWS in April 2000 who will primarily work on the Pine Ridge Indian Reservation. The FBI in South Dakota now has two VWSs, one in Rapid City and one in Pierre, both of whom will primarily provide victim-witness services in Indian country. These services include keeping victims and witnesses informed of trial proceedings, transporting victims and witnesses to court, and performing community outreach. With regard specifically to community outreach in South Dakota, the recently hired VWS in Rapid City is arranging for a toll-free line so that Pine Ridge residents can telephone the FBI without cost to themselves.

Protecting Native American Children

DOJ's Office for Victims of Crime has agreed to fund a Forensic Child Interview Specialist (FCIS) position within the Indian Country Unit at FBI Headquarters. This position will be advertised in the very near future, both within the FBI and externally. Once hired, the FCIS will provide training to FBI agents and other investigators in Indian country on interviewing children, participate in consultations on Indian country cases involving children, and be available to interview children in specific situations in Indian country where the FCIS's expertise would be helpful, usually high profile cases or cases involving severely traumatized children.

Solving Crimes in Indian Country

In response to concerns about a large number of unsolved deaths in Indian country, the Attorney General directed the FBI to form a "cold case task force" to conduct a fresh review with logical investigative follow-up of approximately 19 Indian country homicides throughout the United States. In addition, FBI Headquarters is directing field offices covering the Indian reservations on which the FBI has primary jurisdiction to contact appropriate tribal authorities for information on all suspicious deaths during the last 5 years. A review will be made of cases not investigated by the FBI to determine if any additional investigations should be opened. The FBI's Laboratory will be enlisted to determine if there is any new technology which can be applied to forensic evidence in these older cases. Profilers in the FBI's National Center for the Analysis of Violent Crime at Quantico, Virginia, will also be used to assist the FBI field offices to develop investigative strategies for these older cases.

In 1999, the FBI's Criminal Investigative Division and the FBI's Laboratory initiated the Indian Country Evidence Program in order to significantly improve FBI Indian country crime scene processing for homicides, serious assaults and other Indian country violations involving forensic evidence. In the past year, the Indian Country Evidence Program has provided Indian country agents with state-of-the-art equipment and training for solving homicides. The FBI will continue to provide additional equipment and specialized training to agents in Indian country in order to ensure that Indian country homicides are adequately investigated.

Another part of the Indian Country Evidence Program is an effort to improve the turn-around time for examination of forensic evidence in Indian country cases in order to solve homicides and other cases more effectively. The FBI has asked Congress in its FY 2001 budget request for approximately \$1.4 million to contract accredited state and local laboratories to process Indian country forensic evidence from South Dakota and the other primary Indian country states. The FBI Laboratory also recently established a Laboratory task force of examiners who would give first priority to FBI Indian country cases.

Training Investigators and Promoting Coordination With Tribes and the BIA

The FBI has also improved Indian country law enforcement by training hundreds of tribal, BIA and FBI investigators since 1997 in fields pertinent to Indian country. The FBI will continue to provide training to investigators in Indian country in such areas as Crimes Against Children, Basic Death Investigation, Advanced Death Investigations, Basic Indian Country Investigations and other schools. These schools, as they have in the past, will include cultural awareness training.

The FBI will also continue to promote Safe Trails Task Forces (STTFs) throughout Indian country when doing so improves the ability of tribal, BIA and FBI agents to work well together. To date, the FBI has established eleven STTFs throughout Indian country including the Northern Plains Safe Trails Task Force (NPSTTF) in South Dakota. The NPSTTF includes investigators from the FBI; the Pierre, South Dakota, Police Department; the South Dakota Division of Criminal Investigation; the Rosebud Sioux Tribe Police Department; the Oglala Lakota Nation Department of Public Safety; Cheyenne River Sioux Tribe Law Enforcement Services; the Mellette County, South Dakota, Sheriff's Office; the Todd County, South Dakota, Sheriff's Office; the South Dakota Highway Patrol; the BIA Lower Brule Sioux Tribe; the BIA Crow Creek Sioux Tribe; the BIA Aberdeen, South Dakota, office; and the BIA Standing Rock Agency in Fort Yates, North Dakota. The NPSTTF is fully funded by the FBI and for the first time has caused all of these agencies to work together without regard to jurisdictional boundaries.

The FBI will also continue to ensure that there are adequate personnel resources in South Dakota to address Indian country cases. Since 1997, the FBI's Minneapolis Division has received 12 additional slots for agents to be dedicated to Indian country. The largest percentage of these agents went to South Dakota. During this year's upcoming annual evaluation of the distribution of personnel resources, the FBI will determine if there are additional violent crime personnel resources who can be shifted to South Dakota.

In summary, the FBI -- like DOJ as a whole -- has actively sought in recent years to improve Indian country law enforcement in many ways. We will continue to strive to improve law enforcement services for Native American communities. In these ways, we hope to restore confidence in the legal system.

Protecting the Civil Rights of Native Americans

Enforcing the Nation's Civil Rights Laws

One of DOJ's highest priorities during this Administration has been to protect the civil rights of all Americans. We have worked hard to protect the rights of Native Americans. The Report of the State Advisory Committee makes several recommendations bearing on our work in this area, including the fourth recommendation, which suggests that DOJ should reconstitute an

Indian Section in the Civil Rights Division. The Division is made up of nine subject-based Sections (Coordination and Review, Criminal, Disability Rights, Education, Employment Litigation, Housing and Civil Enforcement, the Office of Special Counsel, Special Litigation, and Voting), an Appellate Section, and a Front Office that functions as a policy and coordination office. Our enforcement efforts are thus organized by statute, not by protected group. Though we recognize that Native Americans are often both a racial and a political group, for purposes of the civil rights laws enforced by the Division, they are protected as members of a racial minority group. While each racial or ethnic group brings unique issues to the task of civil rights enforcement, we have found our current structure to be the most effective way to organize our work.

However, in order to enhance coordination among the Division's lawyers who work on civil rights issues related to Native Americans, we established an Indian Litigation Working Group. The Working Group -- which is made up of representatives from each of the Sections -- provides a forum for discussion of shared issues or concerns. The Division also consults frequently with OTJ to ensure appropriate coordination on civil rights issues that impact Native Americans and has actively participated in the Native American Indian Subcommittee of the Attorney General's Advisory Committee (AGAC).

In recent years, the Division has been very active in conducting investigations and bringing cases that involve Native Americans. For example, the Employment Litigation Section is currently investigating several government employers in the Southwest to determine whether they are engaged in a pattern or practice of discrimination against Native Americans; the Housing and Civil Enforcement Section has worked on lending discrimination and redlining matters involving Native Americans; and the Voting Section has several active cases involving allegations of Native American vote dilution through the use of at-large voting systems and/or racial gerrymandering -- two of these cases (in Roosevelt County, Montana, and Benson County, North Dakota) have recently been resolved by consent decree.

In addition, in 1998 the Division published a brochure entitled *Protecting the Civil Rights of American Indians and Alaska Natives*. This brochure -- which has been widely distributed by our lawyers and mailed to numerous tribal representatives and groups -- outlines the non-discrimination laws enforced by the Division and how those laws apply to Native Americans. We are constantly looking for new avenues and methods for outreach to the Native American community regarding civil rights enforcement.

Finally, we agree that it is important that the Division do better in making sure that the results of our criminal and other civil rights investigations be disclosed in a timely fashion. The concern about timely disclosure of findings is one that impacts all of our work, not just where we have Native American victims. In recent months, we have begun to explore ways to streamline our processes to ensure that once our decisions are made, there is minimal delay in getting appropriate information to the public.

Preventing Discrimination in Federally Assisted Programs

In addition to the civil rights protections that the Civil Rights Division enforces, OJP, through its Office for Civil Rights (OCR), provides aggrieved Native Americans an opportunity to seek administrative relief for civil rights violations that involve federally assisted programs. OCR attorneys investigate administrative complaints from Native Americans who allege that an OJP- or COPS-funded entity has discriminated against them, either in employment practices or in the delivery of services. Although OCR attempts to resolve complaints through voluntary means, a funded entity that refuses to come into compliance with federal civil rights laws may face suspension or termination of financial assistance.

OCR is also responsible for reviewing Equal Employment Opportunity Plans (EEOPs). An EEOP provides an analysis of an organization's workforce by race, national origin, and sex in comparison to community labor statistics. Federal regulations require all public entities that have more than 50 employees and receive more than \$500,000 in financial assistance from OJP or COPS to submit an EEOP to OCR for approval. Through monitoring EEOPs, OCR is able to identify state and local governmental agencies, especially law enforcement organizations, that underutilize Native Americans in their workforce. OCR works with the funded entity, often by making specific recommendations regarding recruitment or promotion practices, to address the underutilization.

Most recently, as part of OCR's national training program for state planning agencies, OCR has targeted states with a large Native American population to advise them of their civil rights responsibilities, especially in regard to ensuring that Native Americans and Indian tribes have access to federally assisted programs. Consequently, OCR and OJP's American Indian and Alaska Native Affairs Office, in consultation with OTJ, formed an Indian Issues Working Group. The Working Group has been examining the broader systemic issue of whether Native Americans, as individuals, and Indian tribes, as units of local government, have equal access to OJP- and COPS-funded programs that states administer. In the coming year, the Working Group will be offering technical assistance to state grant administrators and tribal leaders.

Increasing Diversity by Recruiting Native Americans

DOJ strives to recruit, hire, and retain attorneys and other staff that reflect our Nation's diversity, including doing our best to provide outreach to the Native American community about employment opportunities at DOJ.

The Office of Attorney Personnel Management (OAPM) is the office in DOJ devoted to recruiting and hiring of attorneys. OAPM undertakes extensive recruitment and outreach efforts to attract a diverse pool of highly qualified applicants. Their efforts include:

- **Participation in numerous minority recruitment fairs, conferences, and symposia.** In 1999, OAPM participated in 28 diversity events across the country, including two of those

most likely to attract American Indian lawyers and law students: the Rocky Mountain/ Public Interest Career Fair and the Federal Bar Association's Indian Law Conference. OAPM has for many years been an active participant in the annual career fair at the Federal Bar Association's Indian Law Conference. (In addition to the nationally recognized leaders in the field of Federal Indian Law who attend the Conference, the Native American Bar Association and the Native American Law Student Association each hold their annual meeting at the Conference.) This forum provides OAPM with a unique opportunity to discuss Department employment opportunities with many American Indian law students and experienced attorneys.

- **Preparation and extensive dissemination of customized recruitment materials** to encourage different minority students (including American Indians) to apply to these programs.
- **Mailing of applications and recruitment materials to law student minority associations and legal minority associations**, more than 45 of which are American Indian organizations and contacts.
- **Sending each attorney vacancy announcement to additional sources** we select from our database of more than 2,400 national, state, and local legal resources (including law schools, minority and disability organizations, specialty bars, judges and academics). OAPM's database allows us to undertake a customized supplemental outreach effort to sources most likely to produce the best (and most diverse) group of candidates for the particular vacancy. OAPM's database includes approximately 425 diversity sources, more than 30 of which are American Indian sources. These sources include individual network leaders within the American Indian community and such organizations as: the Association of American Law Schools (Native American Rights Section); Commission on Indian Affairs; Federal Bar Association (Indian Law Section); Indian Bar Association of New Mexico; Indian Country Today; Indian Law Resource Center; National American Indian Housing Council; Native American Rights Fund; Navajo Nation Bar Association; Senate Select Committee on Indian Affairs; State Bar of Montana (Indian Law Section); Texas Indian Bar Association; and the University of Colorado College of Law's Indian Law Clinic.

Our outreach to American Indian law students is necessarily directed to a very small group: American Indians comprise less than 1 percent of the law student population. So when we measure the success of our efforts statistically, we are dealing with very small numbers where variances may not be meaningful. Subject to that caveat, we believe it worth noting that for the 1999-2000 Honor Program, American Indian candidates were hired at a rate that is more than twice as favorable as the overall hiring rate. For last year and for our Summer Law Intern Program for the past 2 years, the rate was equivalent or slightly more favorable than the overall hiring rate.

Similarly, the FBI and other components of DOJ are recruiting and hiring people who reflect our Nation's diversity.⁵ For example, the FBI this year established two regional Native American recruiting positions. As a result, the FBI now has two Native American FBI agents whose only job is to recruit fellow Native Americans into the FBI. Although this effort is still too new to have measurable results, especially due to current constraints on our hiring ability, we intend to continue this effort for the long-term so that we can broaden diversity within our ranks. FBI Headquarters is also stressing the need to recruit Native Americans into the FBI to all of its Applicant Coordinators as well as agents who have regular contacts with Native American communities.

This Administration is committed to these outreach and recruiting efforts, and we agree with the Report of the Advisory Committee that we should continue them and to expand them where possible.

Researching the Administration of Justice

DOJ's two research arms are both doing work involving the administration of justice in Indian country. The National Institute of Justice (NIJ), as the research and development arm of DOJ, supports independent evaluations and research. Although NIJ is not currently supporting research that deals directly with the issue of whether there is bias in the operation of the federal and state law enforcement and prosecution functions, as recommended in the State Advisory Committee's Report (page 40), NIJ is doing and has done significant research on public safety and the administration of justice in Indian country, including South Dakota. Also, based on recommendations made at the 1998 Strategic Planning Meeting on Crime and Justice in Indian Country, NIJ is collaborating with tribes in the design and development of evaluations.

Attached at Tab B is a list of NIJ's recent research and evaluation projects that are based in Indian country or involve Indian people in particular. A number of these projects have sites in South Dakota.

The Bureau of Justice Statistics (BJS) is the statistical arm of DOJ. BJS collects, analyzes, and publishes statistical reports describing offenders processed at every phase of the criminal justice system – both federal and state. Additionally, as part of its National Crime Victimization Survey, BJS annually surveys approximately 43,000 households – representing more than 80,000 individuals – on the frequency, characteristics and consequences of criminal victimization in the United States.

⁵ We have not collected information about hiring and recruiting in every DOJ component for this letter. However, additional information about DOJ's hiring and recruiting is available upon request.

In February 1999, BJS published *American Indians and Crime*, which is discussed in the Advisory Committee's Report (pages 7-8). This report, primarily based on BJS's National Crime Victimization Survey, indicates that Native Americans are the victims of violent crime at nearly twice the national average. By contrast to non-Native Americans, the victimization rate is higher across age groups, housing location, income groups, and gender.

Currently, BJS is working on several other projects that are relevant, at least in part, to some of the concerns and recommendations contained in the Report.

First, as part of its ongoing statistical programs describing defendants convicted and sentenced in federal and state courts, BJS currently reports on sentences imposed on defendants in both federal and state courts. These statistics are reported annually for federal offenses in the BJS publication *Compendium of Federal Justice Statistics* and bi-annually for state offenses in the publication *Felony Sentences in State Courts*. Currently, statistics describing sentences imposed on Native Americans are not reported in either the federal or state publications. Publications describing federal defendants can be modified in the future to report on the processing of Native Americans in the federal criminal justice system. However, due to sampling issues regarding the state-level data, BJS is unable to report reliable statistics describing Native American sentences for felony offenses in state courts.

Second, BJS is planning to prepare a Special Report on changes in federal sentencing practices that resulted from the Sentencing Reform Act of 1984 and subsequent legislation. While this report will primarily focus on trends in aggregate sentencing practices, it will include a section on sentences imposed across racial groups — including Native Americans — and describe the extent to which any differences in sentences imposed may have resulted from federal legislation. This would address some of the concerns reflected in the sixth recommendation of the Advisory Committee's Report.

BJS is also planning on preparing a Special Report describing Native Americans processed in the federal criminal justice system. This report would describe the number of Native Americans arrested on federal charges, prosecutorial decisions made by U.S. Attorneys, the outcome of criminal cases, and sentences imposed in U.S. district courts.

BJS has recently obtained data from the Bureau of Indian Affairs describing crime incidents and arrests made by law enforcement in approximately 12 tribal jurisdictions. Once these data are appropriately structured, BJS plans to prepare a statistical report describing crime in these jurisdictions. To the extent practicable, data describing U.S. Attorney activity in these 12 jurisdictions will also be included.

Finally, BJS plans to release a report on jails in Indian country in July 2000. Based on the 1998 and 1999 survey of jails in Indian country, the report captures the number of inmates housed in confinement facilities, detention centers, jails and other correctional facilities located on Indian land. Data on the number of offenders under community supervision, and offender characteristics

are also included. The 69 facilities in Indian country are described by capacity, function of the facility, confinement areas, programs offered, personnel characteristics, and facility needs.

Improving Data Collection to Ensure an Adequate Basis for Determining Fairness

We are in general agreement with the Report's seventh recommendation, which states that data collection procedures should be improved to provide better information about the fairness of the justice system. In response to the President's Executive Memorandum on Fairness in Law Enforcement, DOJ -- along with the Departments of the Treasury and Interior -- has initiated a process for collecting data on the use of race and ethnicity by federal law enforcement officers, including FBI, Immigration and Naturalization Service, and Drug Enforcement Agency officers and agents. We hope to have the preliminary results from that data collection in the coming months. At the same time, we are working with law enforcement, civil rights, and community groups to develop training materials, promising practices, and model policies on data collection and policies on racial profiling. And we are funding the publication of a resource guide on how best to go about collecting traffic stop data. We are grateful that more than 100 law enforcement agencies on the state and local level -- in addition to what the federal agencies are doing -- have begun collecting traffic stop data voluntarily.

Promoting Conciliation and Conflict Resolution

The State Advisory Committee recommends that DOJ immediately assign a professional, experienced mediator from the Community Relations Service (CRS) to provide these services full time to communities in South Dakota. We appreciate the State Advisory Committee's recognition of the work of CRS in helping to resolve racial and ethnic tensions in South Dakota. CRS mediators have worked closely with tribal leaders, state and local officials in South Dakota, and other federal agencies in helping to resolve issues involving law enforcement and the administration of justice, environment and religious sites, conflicts with non-Indian communities, and cross-cultural misunderstandings.

Our commitment to providing full CRS services to South Dakota is limited only by its very modest staffing levels at this time. The CRS Regional Office located in Denver provides services to South Dakota and operates with a staff of just three professionals, a Regional Director and two conciliators. This office must also respond to racial and ethnic tensions and conflicts in Colorado, North Dakota, Montana, Utah, and Wyoming. Until CRS is restored to its full strength, one of the Attorney General's strong commitments, its response will be limited necessarily to only the most urgent conflict conditions. In the meantime, we will continue to look for ways to make CRS staff more available in South Dakota.

We believe that CRS is especially well-suited to help people find ways to overcome the suspicion and distrust which too often characterize relationships between and among tribal leaders and federal, state, and local officials. CRS's skills and experience place it in a unique position to help -- as mediators to help build the bridges for improved communication, cooperation and

understanding and as teachers to train state, local, and tribal officials to resolve conflicts and disputes on their own. With sufficient resources, CRS will be prepared to undertake both tasks wholeheartedly.

Working to Fight Hate Crimes

The State Advisory Committee recommends strengthening hate crimes legislation at the federal level to respond to egregious crimes involving racial bigotry. Although the Commission did not request a response from us to this recommendation, we wish to note that strengthening the existing federal hate crimes legislation is a major priority for DOJ. The Administration supports a current proposal that would address some of the limitations of the current law. First, the proposal would eliminate the law's requirement that the government be required to prove that the defendant committed an offense not only because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of six narrowly defined "federally protected activities." Second, the proposal would amend the current statute to provide coverage for violent hate crimes committed because of the victim's sexual orientation, gender, or disability.

Also, DOJ's Civil Rights Division has dedicated significant resources in recent years to investigating and prosecuting hate crimes, including hate crimes committed against Native Americans. The Division sought and obtained significant increases in funding for FY 1999 and FY 2000 that will allow us to bring more cases, including those hate crimes. During FY 1999, the Division filed 31 racial violence cases, charging 46 defendants in connection with crimes such as cross-burnings, arson, vandalism, shootings, and assault.

Conclusion

We appreciate the interest of the State Advisory Committee and the Commission in improving the lives of Native Americans both in South Dakota and in the Nation as a whole. We hope that you will not overlook the many fine people in the various offices, bureaus, and components of DOJ -- including the FBI, the Civil Rights Division, the U.S. Attorneys' Offices, CRS, OJP, and OTJ -- who have dedicated a substantial part of their lives to public service devoted to Native Americans. Because of their hard work, we are making a difference in Native American communities. We realize that we have a long way to go, and we hope that the State Advisory Committee and the Commission will support us in those efforts. By moving forward in a cooperative and collaborative way, we can make significant progress.

Attachments (2)

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|--|--|--|--|--|--|--|--|--|--|--|---------|---------|
| <u>Living Crow Creek Indian Tribe and others</u> | | | | | | | | | | | | |
| (d) VAWO-STOP | | | | | | | | | | | | 184,000 |
| (f) OVC-VAIC | | | | | | | | | | | | 325,591 |
| (d) OVC-CJA | | | | | | | | | | | | 60,000 |
| (d) OVC-Telemedicine | | | | | | | | | | | | 100,000 |
| (d) JJ | | | | | | | | | | | | 100,000 |
| (d) OVC-Direct Services | | | | | | | | | | | | 26,350 |
| Subtotal | | | | | | | | | | | 100,000 | 795,941 |
| <u>Watchful Home (Misson, SD):</u> | | | | | | | | | | | | |
| (f) OVC - VAIC | | | | | | | | | | | | 31,955 |
| (f) VAWO-STOP | | | | | | | | | | | | 11,540 |
| Subtotal | | | | | | | | | | | | 43,495 |
| <u>White Buffalo Calf Women Society (Mission, SD):</u> | | | | | | | | | | | | |
| (f) OVC - VAIC | | | | | | | | | | | | |
| (f) VAWO-STOP | | | | | | | | | | | | |
| (d) VAWO-Rural | | | | | | | | | | | | |
| Subtotal | | | | | | | | | | | | |
| <u>Women's Circle (Sisseton, SD):</u> | | | | | | | | | | | | |
| (f) OVC - VAIC | | | | | | | | | | | | |
| (f) OVC - Direct Services | | | | | | | | | | | | |
| (f) VAWO-STOP | | | | | | | | | | | | |
| Subtotal | | | | | | | | | | | | |

BIA-Open Solicitation: Bureau of Justice Assistance (BJA)-Discretionary Open Solicitation (various focuses of program initiatives);
 BIA-LLEBG: BJA-Local Law Enforcement Block Grant Program;
 BJA TSAV: BJA-Tribal Strategies Against Violence;
 CIRCLE: Comprehensive Indian Resources for Community and Law Enforcement;
 CPO-Tribal: Corrections Program Office-Construction of Detention Facilities in American Indian & Alaska Native Communities Discretionary Grant Program;
 DCPO: Drug Court Program Office (planning, development and enhancement grants are provided along with technical assistance to grantees);
 JJ-Drug Free Communities: Office of Juvenile Justice and Delinquency Prevention (OJJDP)-Safe Schools and Drug Free Communities;
 JJ: OJJDP-Discretionary
 OVC-CJA Office for Victims of Crime (OVC)-Child Justice Act for Native American Communities;
 OVC-Telemedicine: OVC discretionary grant program on telemedicine;
 OVC-VAIC: OVC-Victim Assistance in Indian Country;
 VAWO-Arrest: Violence Against Women Office (VAWO)-Encouraging Arrest Policies;
 VAWO-STOP: VAWO-Stop Violence Against Indian Women Discretionary Grant Program
 VAWO-Rural: VAWO-Rural Domestic Violence Discretionary Grant Program.

Table reflects funds obligated, to date. Totals may not include funding provided for planning and technical assistance.

... and tribal organizations. Source is the OJP PAL.

"Indian Tribes" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 USCS §§ 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians., 25 U.S.C. § 450b(e).

July, 2000

National Institute of Justice

The National Institute of Justice (NIJ) is the research and development agency of DOJ. It was established by Congress to prevent and reduce crime and to improve the criminal justice system by sponsoring research projects and development programs, developing new technologies to fight crime, evaluating the effectiveness of criminal justice programs, and identifying and recommending programs that have been successful or are promising. NIJ publishes materials that allow criminal justice research professionals, policy makers, and researchers to stay abreast of the latest NIJ research and the results of program evaluations.

Partnership Initiatives:

- *Policing on American Indian Reservations.* This 18-month discretionary grant program provides an opportunity for Indian tribes to examine and assess the effectiveness of policing strategies and determine how tribes and private and public agencies concerned with the welfare of American Indian communities might apply the findings. In FY 1995, NIJ awarded \$334,010 for this project. The final report completed for this project is currently under review.
- *Understanding Partner Violence in Native American Women.* Though data on violence against Native American women are scant, some reports suggest that rates of partner violence are 13 times the national average. This project will survey women of several Plains Indian tribes to determine the prevalence of partner violence. The study will address cultural beliefs and the possible contribution of substance abuse to domestic violence. The study fills a need to address major concerns affecting the well-being of American Indians, who are not well represented in violence research, and is of particular interest to the National Institute for Alcohol Abuse and Alcoholism (NIAAA) and the Office of Research on Minority Health. NIAAA awarded \$144,967 for this project, which NIJ will monitor. The expected completion date is September, 2000.
- *Impact Evaluation of STOP Grant Programs for Reducing Violence Against Women Among Indian Tribes.* The purpose of this 24-month project is to evaluate the impact of the STOP Violence Against Indian Women Discretionary Grant Program. The study is intended to develop a basic understanding of the cultural and legal context of reducing violence against women among Indian tribes, evaluate the impact of tribal programs aimed at reducing violence against women in terms of effectiveness and identify program elements that require adjustment or modification, and make recommendations for improving existing programs and developing effective new programs for tribes to reduce violence against women. In FY 1996, a total of \$144,666 was awarded to the University of Arizona for this project. The final report completed for this evaluation is currently under review.

measure the efficacy of the Peacemaker Court. This study sought to answer such questions as: Does the work of the Peacemaker Division contribute to greater social harmony? What is the actual recidivism rate among Division participants and how does this compare with rates for comparable crimes as handled by the Nation's courts? Do Peacemaker participants perceive the Division as having helped communities deal with violence and disorder? How do Peacemaker Division results compare in standard measures of justice effectiveness with the western justice model? The longer term ancillary goal was to assist the Navajo Judicial Office in the development of a comprehensive computerized information system to organize data measuring Court performance, and enable administrators to monitor and evaluate the effectiveness and impact of Court operations. In FY 1997, NIJ awarded a grant to Temple University to conduct this research. The study is complete and is available from NCJRS.

- *An Assessment of Suicide Ideation Among Indians in County Jails.* The purpose of this 12 month project is to examine cultural/social factors affecting suicidal thoughts and behavior among incarcerated Northern Plains Indians (nine Indian nations, including the Blackfeet, Cheyenne, Chippewa; Crow, Delaware, and Omaha). Specific objectives are to (1) assess rates of suicide ideation among Indian and non-Indian detainees; (2) develop measures of culture-specific symptoms/syndromes of suicide ideation and incorporate them into a screening protocol; and (3) recommend more culturally-sensitive intervention and treatment policy and procedures. In FY 1999, NIJ awarded \$49,120 to the University of Kansas Center for Research, Inc. to conduct the research, which will be completed in 2000.

- *A Pilot Study Regarding the Interrelationships of Alcohol and Drugs on Crime Among Adult American Indians - A Prevalence and Methodical Study.* The purpose of this study is to fully investigate the nexus between alcohol and/or other drugs and crime in Indian Country. This study will employ a rigorous scientific study of a large sample (N=1,000) at the Oglala Sioux Tribal Reservation (SD) and the Turtle Mountain Band of Chippewa Indians reservation (ND). It will be the first systematic empirical study of alcohol and drug involvement in crime in the two Indian communities. This eighteen-month effort will also explore commonalities and differences among men and women who are arrested for alcohol and drug related crimes. In FY 1999, NIJ awarded \$201,621 to the University of New Mexico's Center on Alcoholism, Substance Abuse, and Addictions.

- *Turnover Among Alaska Village Public Safety Officers (VPSOs): An Examination of the Factors Associated with Attrition.* The demands of the physical geography and a lack of economies of scale have made it a challenge to provide policing services to rural Alaska Native villages across the state. Different policing programs developed to meet that challenge using specially appointed native police officers have all been plagued with the problem of officer attrition. The Village Public Safety Officer (VPSO) Program, which currently provides police and other public safety services to 85 Alaska Native villages, is no exception to that rule. This research done by the University of Alaska at Anchorage

examined the extent of turnover in the VPSO program to identify the reasons former VPSOs left the program as well as the reasons current VPSOs stay with the program. A two-part research strategy was employed. First, an analysis of VPSO personnel records was completed to fully document the extent of the turnover problem and to identify patterns in the employment records for factors that could be associated with the problem. The second part of the research sought information about decisions to stay with or leave the VPSO service by means of a self-administered survey of current (n = 85) and former (n = 160) VPSOs. The final report of this study is currently under review.

Community Based Institutional Assessment to Reduce Risk of Continued Abuse to Native American Women. This project is being implemented by Minnesota Program Development, Inc. It examines how Native American women's safety is affected by responses from the criminal justice system. The goal of this study is to uncover how institutional practices carried out by a non-Native criminal justice system enhance or marginalize attention to the safety needs of Native American women. Institutional ethnography will be used to adapt the Duluth Safety and Accountability audit process. Researchers will form a community-based audit team of up to 18 members, consisting of elders from the Fond Du Lac Tribe, and staff from community agencies serving Native American women. The research staff will investigate the processing of misdemeanor assaults involving Native American women. Those studying the criminal justice system will obtain their data from the Duluth Police Department. They will review 50 emergency 911 transcripts, including Native and non-Native American women; 100 police reports and follow-up investigations involving Native and non-Native American women; ten pre-sentence investigations involving Native American offenders who have children; and outcome data on 100 misdemeanor cases involving Native and non-Native-American battered women with children. This committee will work in small groups observing and conducting interviews pertaining to court processes. The project will be completed in September, 2001.

Research on Violence Against Indian Women: Community Readiness and Intervention. The objectives of the project that is being implemented by Colorado State University are to: 1) identify differences in community readiness for primary and secondary prevention in urban and reservation populations; 2) assess the climate and attitude of communities toward violence; 3) assess how Native populations differ in their cultural norms and prevention approaches. This project will be based on community readiness theory. The first component will be an assessment of a community's readiness to accept and address violence against women in Native American communities. During phone interviews, a community readiness assessment interview will be administered to four or five key community members or service providers from different disciplines in each of eight rural reservations and two urban Native communities. The second component will involve conducting focus groups with key community leaders in one urban and two reservation communities. Data analysis will utilize a nested MANOVA to determine if there are mean differences across types of communities in readiness, with subsequent ANOVAs used to

determine which scales account for overall differences and which types of communities differ on which scales. Analyses using CONCORD and ANTHROPAC 4.0 will allow content analysis, domain and thematic evaluation, multidimensional analysis, and cluster analysis. The project is scheduled for completion in September, 2001.

- *Partner Drug and Alcohol Use, Mediating Factors, and Violence Against Women.* This 18-month study will examine the effects of women's and men's illegal drug use, alcohol use, and binge and problem drinking on IPV (Intimate Partner Violence) against women. Specific types of drugs, multiple drug use, and drug/alcohol intoxication at the time of violent incidents will be examined in relation to severe assaults, minor assaults, injuries, and frequencies of assaults. The study will identify factors that mediate the effects of drugs and alcohol use on IPV, including age of victim and partner, marital status, individual and neighborhood level socioeconomic factors, power control issues, and witnessing domestic violence as a child. The study will involve primary data collection from the Arrestee Drug Abuse Monitoring (ADAM) participants in Oklahoma City. All male and female ADAM participants who are married, cohabiting or dating a steady partner, or who were divorced or separated within the past year will be eligible to participate. An IPV addendum will be administered to 575 women and 950 men. Drug and alcohol and IPV data will be based on self report. IPV questions will be adapted from the Conflict Tactic Scale and will include questions on emotional, physical, and sexual abuse, as well as resulting injuries during the past year. NIJ awarded this \$186,752 project in FY2000. The principal investigator is Lorraine Malcoe, Ph.D., University of New Mexico.

Other Partnership Initiatives:

- *Restorative Justice Symposium.* In January 1996, a Restorative Justice Symposium was sponsored by NIJ and the Office for Victims of Crime, in cooperation with BJA and the Office of Juvenile Justice Delinquency Prevention. The symposium brought together a diverse, interdisciplinary group of over 120 individuals from the United States and Canada to discuss the emerging concept of restorative justice and its potential for addressing criminal justice issues. Several American Indians, Alaska Natives, and Native Hawaiians participated as either key speakers, panelists, conference planning committee members, or attendees.

- *Strategic Planning Meeting on Crime and Justice Research in Indian Country.* In October, 1998, NIJ in partnership with the Office of American Indians and Alaska Natives, OJJDP and other OJP offices sponsored this strategic planning meeting. Twelve papers were commissioned to provide a background for the discussion of approximately 50 researchers and practitioners experienced in this area. These papers are now being revised for publication as a book. The meeting also resulted in a summary proceedings.

• *Requests for Solicitation.* In December of each year, NIJ solicits proposals for investigator initiated research projects. Specialized solicitations are also issued at various times throughout the year.

SOUTH DAKOTA
INDIAN COUNTRY REPORT
2000



Ted L. McBride
United States Attorney

Artwork by David Little, Criminal Investigator Bureau of Indian Affairs. Mr. Little is an enrolled member of the Mescalero Apache Tribe of New Mexico.



U.S. Department of Justice

*Ted L. McBride
United States Attorney
District of South Dakota*

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Rapid City, South Dakota 57701

(605)342-7822
FAX:(605)342-1108

April 12, 2001

Dear Tribal Leaders:

This is the sixth annual Indian Country Report for the District of South Dakota, covering the period of January 1, 2000, to December 31, 2000. This report reflects the continuing commitment of the United States Attorney's Office to serving Indian country, through prosecution and crime prevention. In past years, this report has often been presented during a visit by the United States Attorney to your Reservation. The change in administration necessitates mailing this year.

The prosecution of violent crimes continues to be this office's highest enforcement priority, especially when children are the victims. Nationwide, the rate of violent crime has gone down. The rate at which Indian people are victimized by violent crime, however, remains high. Working in partnership with the FBI, BIA, and tribal law enforcement, our office is committed to making Indian country a safer place.

Our office has continued to support education and crime prevention programs throughout the District of South Dakota. If any of you are interested in staging a crime prevention week in your community, please feel free to contact us.

The people in tribal and federal law enforcement and related agencies have been quietly working during the past year to improve services in Indian country. We can all be proud of the efforts of these dedicated men and women.

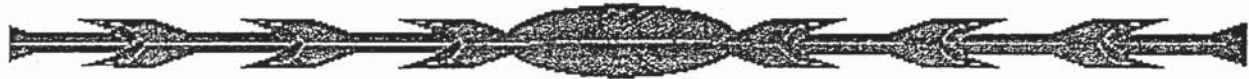
As I leave this office after 20 years, I am proud of the efforts we have all made to make Indian country a better place to live.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted L. McBride".

TED L. MCBRIDE
United States Attorney

TLM/jh



A. ADDRESSING CRIME IN INDIAN COUNTRY

1. **Violence Against Women and Children:** Representatives from the US Attorney's Office, FBI, BIA, tribal law enforcement, tribal prosecutors and social service agencies continue to participate in multi-disciplinary teams (MDTs) which have been designed to facilitate the investigation and prosecution of child abuse cases.

Specific assistants have been designated to work with law enforcement on each of the reservations to promote better communication between tribal and/or Bureau of Indian Affairs law enforcement officers and the United States Attorney's Office. The assistants have been designated as follows:

| | | |
|-------------------|--|--|
| Cheyenne River | Thomas J. Wright | 605-224-1256, ext. 34 |
| Crow Creek | Mikal Hanson | 605-224-1256, ext. 36 |
| Flandreau | Michelle G. Tapken | 605-330-4401, ext. 129 |
| Lower Brule | Mikal Hanson | 605-224-1256, ext. 36 |
| Pine Ridge | Gregg Peterman Sally Galluzzo Jeannine Huber | 605-343-2913, ext. 103 605-343-2913, ext. 107 605-343-2913, ext. 120 |
| Rosebud | Randy J. Seiler | 605-224-1256, ext. 24 |
| Sisseton-Wahpeton | John J. Ulrich | 605-330-4401, ext. 102 |
| Standing Rock | Mikal Hanson | 605-224-1256, ext. 36 |
| Yankton | Michelle G. Tapken | 605-330-4401, ext. 129 |

B. Case Statistics by Reservation

| | |
|-------------------------|----|
| Cheyenne River | 7 |
| Crow Creek | 8 |
| Flandreau | 9 |
| Lower Brule | 10 |
| Pine Ridge | 11 |
| Rosebud | 12 |
| Sisseton-Wahpeton | 13 |
| Standing Rock | 14 |
| Yankton | 15 |

C. Prosecutive Highlights

16

D. Important Information

21

E. Conclusion

21

F. Summary of Statistics

22

2. VICTIM-WITNESS SERVICES

The goal of the Federal Victim/Witness Program is to ensure that victims of federal crimes are treated with fairness and respect when they are involved with the criminal justice system. Services provided include meeting with the victims, explaining the court process, obtaining victim impact statements, providing notices of court actions and dates, conducting court orientation, assisting in obtaining victim compensation and coordinating communications with other federal agencies, such as U.S. Probation and the Bureau of Prisons.

Surviving Sexual Assault, Dealing with Crisis and Federal Domestic Violence Laws are the topics of three new informational brochures being developed by the District. To obtain copies, please contact any one of the Victim/Witness staff.

Each Victim/Witness Advocate has been assigned to assist witnesses and victims from specific reservations. Please call the advocates directly if you have questions or require their assistance. Their assignments are as follows:

| RESERVATION | V/W ADVOCATE/OFFICE | PHONE NUMBER |
|--|--------------------------------------|--|
| Cheyenne River Crow Creek Lower Brule | Nancy Lampy Pierre, SD | 800-603-8157 605-224-1256, ext. 30 |
| Rosebud Standing Rock | Marlys Pecora Pierre, SD | 800-603-8157 605-224-1256, ext. 37 |
| Pine Ridge | Barbara Dull Knife Rapid City, SD | 800-603-3750 605-343-2913, ext. 111 |
| Flandreau Santee Sisseton-Wahpeton Yankton | Margie Mercado Sioux Falls, SD | 800-804-6790 605-330-4401, ext. 131 |

a. Emergency Witness Assistance Program (EWAP)

The U.S. Office of Management and Budget (OMB) and the U.S. Congress approved the implementation of the Emergency Witness Assistance Program (EWAP) in 1997. This program is designed to provide assistance to witnesses on an immediate emergency basis. This assistance is designed to provide short-term help (up to 30 days) to a witness in an ongoing case, such

as providing a home security system, relocation funds, or a bus ticket to another town. EWAP does not provide protection but does provide very limited financial assistance to victims and witnesses so that they may help themselves.

b. South Dakota Crime Victims' Compensation Program.

Awards of compensation of up to \$15,000 may be made from the South Dakota Crime Victims' Compensation Fund. Those eligible for crime victim compensation include an innocent victim of a violent crime who has suffered harm; a family member of a deceased victim; a person authorized to act on behalf of a victim or a dependent; or parents or other family members under limited circumstances.

For the victim to be eligible, the crime must be reported to law enforcement within five days of its occurrence or when a report could have reasonably been made; the claim for compensation must be filed within one year of the crime; and the victim and claimant must reasonably cooperate in the investigation and prosecution of the incident. Also, compensation cannot be awarded to a claimant if it would unjustly benefit the offender or accomplice.

For more information, please contact the South Dakota Crime Victims' Compensation Program at 1-800-696-9476 (in-state only) or 605-773-6317 or a Victim/Witness Advocate at the numbers listed above.

c. A Journey Through the Federal Justice System - a Video

The U.S. Attorney's Office, with support from the U.S. Department of Justice Office for Victims of Crime, joined Linn Production of Rapid City to produce a 19-minute educational video about the federal criminal justice process. *A Journey Through the Federal Justice System* introduces the viewer to several service professionals that one may encounter prior to and in preparation for trial. This video attempts to provide a better understanding of the federal criminal justice system, the courtroom, courtroom procedures, and the people who participate in these proceedings. The video begins with a crime scene re-enactment and follows the victim and eyewitness through the federal justice process beginning at the investigative stage, through the trial and, finally, to victim allocution at sentencing. An actual court scene is portrayed where the victim and an eyewitness are shown giving their testimony

about the federal offense while the narrator describes the court process and explains what a witness can expect during a trial.

Copies of the video can be obtained by calling Marlys Pecora, Victim Witness Advocate, in Pierre, at 1-800-603-8157 or 605-224-1257, ext 37.

3. DRUGS IN INDIAN COUNTRY

Drug use continues to be a problem in Indian Country. During the last few years we noted an increase in the presence of and use of methamphetamine and cocaine on some reservations. The U.S. Attorney's Office is committed to working closely with multi-agency drug investigations and helping to stop this problem.

4. CONFERENCES AND TRAINING

a. Family Violence is Not a Tradition Conference

The Sixth Annual Family Violence Conference was held in Rapid City in August. United States Attorneys from Nebraska, North Dakota, South Dakota and Wyoming joined with the U.S. Department of Justice, Office for Victims of Crime and the Bureau of Indian Affairs, Division of Law Enforcement Services to bring training on family violence issues to Indian Country. There were over 350 participants this year with an overwhelming majority of attendees from South Dakota. There were 26 different Native American Tribes represented at the conference. Workshop topics included Family Violence, Depression and Suicide in Native American Youth, Intervention and Treatment of Physical and Sexual Abuse in Native American Communities, Inhalants, Dispelling the Myths of Fetal Alcohol Syndrome and Fetal Alcohol Effects, Breaking the Cycle of Violence and Shaken Baby Syndrome.

b. Crime Prevention Week

Nine districts in Pine Ridge sponsored Crime Prevention Weeks in the year 2000. Programs were held in 13 schools, which included approximately 3600 students and 8500 adults. Each week started with opening ceremonies conducted by tribal and school officials. Guest speakers for the students and general public addressed issues such as gangs, child abuse, sexual abuse, domestic violence, cultural awareness, alcohol, drugs, and inhalant abuse.

The Pine Ridge Crime Prevention Week is sponsored by the U.S. Attorney's Office, Department of Public Safety, Indian Health Service, Bureau of Indian Affairs, Oglala "Lakota" Housing Authority-Drug Elimination Program, Cangleska Domestic Violence Center and Oglala Sioux Tribe.

Districts that sponsored Crime Prevention Weeks are Pass Creek, Pine Ridge/Wakpamani, Oglala, Eagle Nest, Medicine Root, and Porcupine.

c.. **Law Enforcement Training (LECC)**

The Spring LECC meeting was held in Rapid City in May. Participants included federal, state, local and tribal law enforcement personnel, as well as correction and prosecution agencies. Topics ranged from Sudden Infant Death Syndrome to Criminal Thinking.

The Fall conference was held in Sioux Falls in November. This conference covered such topics as Child Pornography and Child Exploitation, Search Warrants in Child Abuse/Exploitation Cases and Forensic Interviewing in Child Abuse/Exploitation Cases. There were over 180 attendees at this conference.

d. **Gang and COP Training**

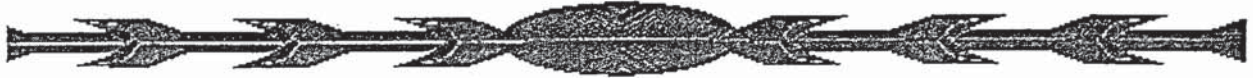
In August, Community Policing programs were held on the Crow Creek Sioux Indian Reservation and in Chamberlain, South Dakota. The featured presenter at these programs was Mr. Jacob Flores of the Office of Native American Programs in Silver Springs, Maryland. Mr. Flores spoke to the student body of the Crow Creek High School and then met with law enforcement, school faculty and community members in Chamberlain. The objectives of this program were to bring an awareness to these communities of the increase in violence and crime among young people, to identify what constitutes individuals being labeled as gang members, to identify types of gang members (from hard core to those on the peripheral), to provide information to those in attendance on ways to recognize gang activity when it becomes illegal, to discuss prevention models for youth a risk of becoming involved with gangs and to provide access to local resources dealing with gang and violence prevention by providing a venue to bring law enforcement and the community together. There was a definite dialog established between law enforcement and the community and requests have been made for future training activities and awareness programs.

5. WEED AND SEED

Weed and Seed is an anti-crime strategy program for reclaiming neighborhoods and making them safe for families. The strategy attempts to “weed” out crime and “seed” the community with positive resources. The Weed and Seed program is a two-pronged approach: law enforcement agencies and prosecutors cooperate in “weeding out” criminals; and “seeding” brings human services to the area, encompassing prevention, intervention, treatment and neighborhood revitalization. The US Attorney’s Office facilitates coordination of federal, state and local law enforcement efforts. Official Recognition has been granted to the Rapid City site and the Waubay Enemy Swim site. Martin, South Dakota and Brown County, South Dakota have applied for official recognition.


6. DEPARTMENT OF JUSTICE GRANTS

The Department of Justice (DOJ) continues to offer grant opportunities to tribal applicants. Information can be found on the Internet at <http://www.ojp.usdoj.gov.BJA>. Grants will be available to fund community oriented policing, drug courts, local law enforcement block grants and STOP-Violence Against Women, among others.



C. CASE STATISTICS BY RESERVATION

From January through December 2000, the United States Attorney's Office for the District of South Dakota filed charges against 301 defendants. Of these cases, many are still pending. The summary tables that follow indicate the number of indictments, informations, and probation and supervised release revocations that were filed from cases arising within the reservations.

|  CHEYENNE RIVER Population 11,813 | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|
| Violation | 1996 | 1997 | 1998 | 1999 | 2000 |
| Assault Resulting in Serious Bodily Injury | 1 | 4 | 2 | 2 | 6 |
| Assault with a Dangerous Weapon | 3 | 4 | 6 | 8 | 9 |
| Burglary/Larceny | 3 | 2 | 9 | 7 | 2 |
| Drugs | 0 | 1 | 2 | 0 | 5 |
| Embezzlement | 0 | 0 | 5 | 1 | 2 |
| Firearms | 1 | 0 | 0 | 0 | 0 |
| Juveniles | 2 | 1 | 4 | 3 | 2 |
| Manslaughter | 2 | 2 | 0 | 2 | 0 |
| Murder | 1 | 0 | 2 | 0 | 0 |
| Other | 0 | 3 | 1 | 1 | 1 |
| Probation & Supervised Release Revocations | 7 | 9 | 3 | 14 | 5 |
| Sexual Abuse | 1 | 5 | 2 | 3 | 7 |
| Sexual Abuse of Minor | 6 | 7 | 3 | 2 | 2 |
| Total | 27 | 38 | 39 | 43 | 41 |



CROW CREEK
Population 3,002

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| Assault Resulting in Serious Bodily Injury | 1 | 1 | 2 | 0 | 0 | 1 |
| Assault with a Dangerous Weapon | 1 | 2 | 1 | 3 | 4 | 4 |
| Burglary/Larceny | 3 | 2 | 0 | 1 | 0 | 2 |
| Drugs | 3 | 0 | 0 | 4 | 0 | 0 |
| Embezzlement | 0 | 0 | 1 | 0 | 0 | 0 |
| Firearms | 0 | 5 | 0 | 0 | 0 | 0 |
| Juveniles | 3 | 2 | 1 | 3 | 3 | 5 |
| Manslaughter | 0 | 0 | 0 | 0 | 0 | 0 |
| Murder | 0 | 0 | 2 | 1 | 0 | 0 |
| Other | 3 | 0 | 2 | 1 | 1 | 3 |
| Probation & Supervised Release Revocations | 3 | 6 | 4 | 6 | 5 | 11 |
| Sexual Abuse | 2 | 2 | 3 | 1 | 8 | 2 |
| Sexual Abuse - Minor | 3 | 4 | 2 | 3 | 4 | 0 |
| Total Cases | 22 | 24 | 18 | 23 | 25 | 28 |



FLANDREAU
Population 1,828

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|----------|----------|----------|----------|----------|----------|
| Assault Resulting in Serious Bodily Injury | 0 | 0 | 0 | 0 | 0 | 0 |
| Assault with a Dangerous Weapon | 1 | 0 | 0 | 4 | 2 | 0 |
| Burglary/Larceny | 0 | 2 | 0 | 0 | 0 | 0 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 0 |
| Embezzlement | 0 | 0 | 0 | 1 | 0 | 0 |
| Firearms | 0 | 0 | 0 | 0 | 0 | 0 |
| Juveniles | 1 | 0 | 0 | 0 | 0 | 0 |
| Manslaughter | 0 | 0 | 0 | 0 | 0 | 0 |
| Murder | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 0 | 2 | 0 | 0 | 0 |
| Probation & Supervised Release Revocations | 1 | 1 | 2 | 0 | 0 | 1 |
| Sexual Abuse | 0 | 0 | 0 | 0 | 0 | 0 |
| Sexual Abuse - Minor | 1 | 0 | 0 | 0 | 0 | 0 |
| Total Cases | 4 | 3 | 4 | 5 | 2 | 1 |



LOWER BRULE
Population 1,164

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|-----------|----------|-----------|----------|----------|
| Assault Resulting in Serious Bodily Injury | 2 | 1 | 0 | 1 | 0 | 0 |
| Assault with a Dangerous Weapon | 1 | 1 | 0 | 1 | 0 | 4 |
| Burglary/Larceny | 1 | 2 | 1 | 1 | 0 | 0 |
| Drugs | 1 | 3 | 0 | 4 | 0 | 0 |
| Embezzlement | 0 | 0 | 0 | 0 | 0 | 0 |
| Firearms | 2 | 0 | 0 | 0 | 0 | 0 |
| Juveniles | 2 | 3 | 0 | 3 | 4 | 0 |
| Manslaughter | 0 | 0 | 0 | 0 | 1 | 0 |
| Murder | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 0 | 3 | 1 | 1 | 0 | 1 |
| Probation & Supervised Release Revocations | 6 | 4 | 0 | 5 | 0 | 1 |
| Sexual Abuse | 1 | 0 | 2 | 0 | 1 | 1 |
| Sexual Abuse - Minor | 1 | 1 | 1 | 2 | 0 | 0 |
| Total Cases | 17 | 18 | 5 | 18 | 6 | 7 |



PINE RIDGE
Population 38,426

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|------------|------------|-----------|-----------|------------|
| Assault Resulting in Serious Bodily Injury | 4 | 0 | 3 | 5 | 5 | 13 |
| Assault with a Dangerous Weapon | 8 | 7 | 10 | 16 | 12 | 17 |
| Burglary/Larceny | 4 | 3 | 2 | 1 | 1 | 3 |
| Drugs | 5 | 13 | 31 | 10 | 3 | 7 |
| Embezzlement | 0 | 2 | 0 | 0 | 1 | 6 |
| Firearms | 3 | 1 | 0 | 1 | 1 | 1 |
| Juveniles | 4 | 17 | 8 | 3 | 6 | 6 |
| Manslaughter | 1 | 1 | 4 | 1 | 1 | 0 |
| Murder | 0 | 1 | 1 | 0 | 1 | 1 |
| Other | 17 | 26 | 20 | 4 | 0 | 19 |
| Probation & Supervised Release Revocations | 14 | 16 | 33 | 39 | 24 | 22 |
| Sexual Abuse | 1 | 5 | 8 | 2 | 4 | 4 |
| Sexual Abuse - Minor | 7 | 11 | 3 | 10 | 4 | 4 |
| Total Cases | 68 | 103 | 123 | 92 | 63 | 103 |



ROSEBUD
Population 24,217

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| Assault Resulting in Serious Bodily Injury | 1 | 2 | 2 | 0 | 4 | 4 |
| Assault with a Dangerous Weapon | 15 | 8 | 10 | 16 | 18 | 11 |
| Burglary/Larceny | 3 | 8 | 4 | 8 | 1 | 2 |
| Drugs | 1 | 7 | 11 | 7 | 1 | 3 |
| Embezzlement | 0 | 0 | 1 | 2 | 6 | 2 |
| Firearms | 1 | 6 | 0 | 0 | 2 | 0 |
| Juveniles | 6 | 16 | 24 | 11 | 10 | 6 |
| Manslaughter | 3 | 4 | 3 | 3 | 5 | 1 |
| Murder | 0 | 1 | 1 | 1 | 4 | 4 |
| Other | 10 | 8 | 7 | 6 | 2 | 1 |
| Probation & Supervised Release Revocations | 17 | 18 | 13 | 13 | 25 | 26 |
| Sexual Abuse | 1 | 2 | 1 | 3 | 8 | 6 |
| Sexual Abuse - Minor | 8 | 8 | 11 | 15 | 7 | 4 |
| Total Cases | 66 | 88 | 88 | 85 | 93 | 70 |



SISSETON-WAHPETON
Population 3,277

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|----------|-----------|----------|-----------|----------|----------|
| Assault Resulting in Serious Bodily Injury | 0 | 1 | 0 | 0 | 0 | 0 |
| Assault with a Dangerous Weapon | 1 | 1 | 0 | 1 | 1 | 0 |
| Burglary/Larceny | 0 | 0 | 0 | 1 | 0 | 0 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 0 |
| Embezzlement | 0 | 2 | 0 | 1 | 0 | 1 |
| Firearms | 0 | 1 | 0 | 0 | 0 | 0 |
| Juveniles | 0 | 4 | 0 | 3 | 1 | 2 |
| Manslaughter | 0 | 0 | 0 | 0 | 0 | 0 |
| Murder | 0 | 0 | 0 | 0 | 0 | 0 |
| Other | 2 | 1 | 1 | 2 | 0 | 0 |
| Probation & Supervised Release Revocations | 4 | 3 | 1 | 1 | 1 | 0 |
| Sexual Abuse | 2 | 1 | 0 | 0 | 0 | 1 |
| Sexual Abuse of Minor | 0 | 0 | 1 | 1 | 0 | 0 |
| Total Cases | 9 | 14 | 3 | 10 | 3 | 4 |



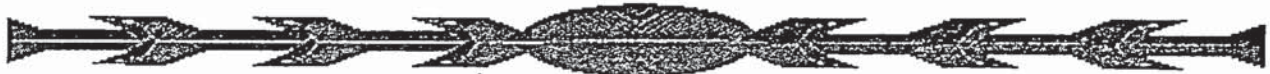
STANDING ROCK
Population 4,918

| Violation | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| Assault Resulting in Serious Bodily Injury | 0 | 0 | 0 | 0 | 1 | 1 |
| Assault with a Dangerous Weapon | 0 | 2 | 4 | 2 | 3 | 3 |
| Burglary/Larceny | 0 | 0 | 0 | 3 | 6 | 4 |
| Drugs | 0 | 0 | 0 | 0 | 0 | 1 |
| Embezzlement | 0 | 0 | 0 | 0 | 0 | 0 |
| Firearms | 1 | 0 | 0 | 0 | 0 | 1 |
| Juveniles | 4 | 6 | 3 | 1 | 4 | 3 |
| Manslaughter | 0 | 0 | 0 | 0 | 0 | 0 |
| Murder | 0 | 2 | 0 | 0 | 0 | 0 |
| Other | 2 | 0 | 0 | 0 | 0 | 0 |
| Probation & Supervised Release Revocations | 2 | 5 | 2 | 2 | 4 | 3 |
| Sexual Abuse | 1 | 0 | 1 | 0 | 0 | 2 |
| Sexual Abuse - Minor | 2 | 5 | 1 | 5 | 0 | 0 |
| Total Cases | 12 | 20 | 11 | 13 | 18 | 18 |



YANKTON
Population 6,528

| <i>Violation</i> | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| Assault Resulting in Serious Bodily Injury | 0 | 2 | 2 | 2 | 0 | 0 |
| Assault with a Dangerous Weapon | 1 | 2 | 9 | 7 | 0 | 1 |
| Burglary/Larceny | 0 | 0 | 2 | 2 | 3 | 0 |
| Drugs | 0 | 0 | 3 | 0 | 0 | 0 |
| Embezzlement | 1 | 0 | 1 | 1 | 0 | 1 |
| Firearms | 0 | 0 | 0 | 0 | 0 | 0 |
| Juveniles | 3 | 6 | 17 | 23 | 8 | 13 |
| Manslaughter | 1 | 0 | 2 | 0 | 0 | 0 |
| Murder | 0 | 2 | 0 | 0 | 0 | 0 |
| Other | 2 | 1 | 2 | 1 | 0 | 1 |
| Probation & Supervised Release Revocations | 4 | 10 | 13 | 13 | 15 | 11 |
| Sexual Abuse | 1 | 0 | 2 | 0 | 1 | 3 |
| Sexual Abuse - Minor | 8 | 5 | 1 | 9 | 1 | 1 |
| Total Cases | 21 | 28 | 54 | 58 | 28 | 31 |



C. PROSECUTIVE HIGHLIGHTS

United States v. Thomas P. Lalley

PINE RIDGE

CHARGE: Money Laundering Conspiracy and Criminal Forfeiture

Defendant was charged with Money Laundering, Conspiracy and Criminal Forfeiture. Defendant was part of a money laundering conspiracy that was involved in the theft and embezzlement of approximately \$2.7 million dollars from Oglala Lakota College. The defendant was the owner of Theodore's Bar & Grill in Omaha, Nebraska, through which the defendant and other co-conspirators laundered approximately \$600 thousand dollars in embezzled funds. Defendant was found guilty after a jury trial in January of 2000. He was sentenced on April 24, 2000, to 70 months of imprisonment, three years of supervised release and ordered to make restitution to Oglala Lakota College in the amount of \$630,894.50. All five defendants involved in the Oglala Lakota College theft and embezzlement have been convicted and sentenced to prison.

United States v. Robert Richards

PINE RIDGE

CHARGE: Violation of Protection Order

Robert Richards was sentenced to 51 months of imprisonment after he entered a guilty plea to violating a protection order after traveling across Indian country jurisdictional lines. The victim of the offense testified at sentencing about the nature and length of the defendant's stalking conduct. The victim also testified that the criminal harassment began six months after the defendant was released from prison.

United States v. Theodore Good Voice Flute

PINE RIDGE

CHARGE: Assault with a Dangerous Weapon

The defendant forcibly entered the home of a female acquaintance because he was jealous the woman was with another man. Also at home was the female's minor daughter. The defendant found all three occupants asleep. Good Voice Flute then armed himself, probably with two 2 by 4 pieces of wood, and proceeded to beat his female friend, her male companion and the young girl. All three victims suffered extensive bruising, deep wounds, and lacerations about the face, head and body. Good Voice Flute pled guilty and was sentenced to serve 41 months of imprisonment.

United States v. Timothy Has No Horse

PINE RIDGE

CHARGE: Assault

The defendant assaulted his girlfriend following an argument by grabbing her hair, punching her in the face, and beating and kicking her about the body. As a result, the woman suffered chipped teeth, a broken nose, a laceration to her arm which required stitches and several bald spots on her hair where defendant pulled it out. Has No Horse forced his girlfriend to shower to wash her blood away and then, while his brother looked on, forced the naked victim into a room. The victim escaped out of a window and ran naked to a neighbor's home to call police. A day or so later, Has No Horse told the victim to say she had accidentally fallen down a flight of stairs. Has No Horse pled guilty the day the trial was to begin and was later sentenced to serve 72 months of imprisonment.

United States v. Wounded Head, et al.

PINE RIDGE

CHARGE: Assault with a Dangerous Weapon

Reuben and Delmar Wounded Head, along with their juvenile cousin, entered the Badlands Ranch Resort near Interior in an intoxicated condition. When asked by the owner to leave the business, Reuben exited his automobile and struck the owner in the head with a bottle knocking him unconscious. Delmar and the juvenile then proceeded to kick the unconscious victim about the head and body. A worker at the ranch intervened and rescued the owner. Reuben Wounded Head pled guilty to Assault with a Dangerous Weapon and was sentenced to 37 months of imprisonment. Delmar Wounded Head pled guilty

to a reduced charge and was sentenced to two years of probation. The juvenile was tried, convicted and sentenced to probation. Shortly thereafter, his probation was revoked and he was resentenced to 27 months of imprisonment.

United States v. Michael Petersen

CHEYENNE RIVER

CHARGE: : Aggravated Sexual Abuse and First Degree Burglary

Defendant Michael Petersen and the victim were married for approximately four years. The victim wanted a divorce due to the abuse the defendant had imposed on her during the marriage. At the time of the offense, the victim and the defendant were living in separate residences. In November of 1999, defendant broke into victim's trailer, assaulted her with a flashlight, choked her, and raped her. The trial testimony showed that the defendant had previously sexually abused two other women. The defendant was found guilty of aggravated sexual abuse and first degree burglary and is currently serving a sentence of 100 months. The government has appealed the downward departure.

United States v. Douglas LaPlant

CHEYENNE RIVER

CHARGE: Sexual Abuse

Defendant was living with his girlfriend and his girlfriend's daughter. When the defendant's girlfriend went out of town for the weekend, the defendant attempted to sexually abuse his girlfriend's daughter. The victim woke up and was able to secure help. The defendant was eventually charged and convicted of sexual abuse. The defendant was sentenced to 78 months without parole, was ordered to serve three years of supervised release, was ordered to make restitution in the amount of \$12,905, and was ordered to pay a \$100 special assessment.

United States v. Greg Jewett

CHEYENNE RIVER

CHARGE: Assault With A Dangerous Weapon

Defendant and the victim got into a dispute over the victim's car. During the

argument, the defendant hit the victim in the face with a tool and kicked her a number of times. The victim suffered serious bodily injury to her stomach area. Defendant was eventually charged with and convicted of assault with a dangerous weapon. The defendant was sentenced to 33 months of imprisonment and ordered to pay a \$100 special assessment.

United States v. Merle Marrowbone, Sr.

CHEYENNE RIVER

CHARGE: Sexual Abuse and First Degree Burglary

Defendant was a friend of the victim and the victim's ex-husband. The defendant was over at the victim's house and when the hour got late. The defendant pretended to go home. Instead of leaving the house as the victim believed, the defendant went down in the basement and waited for the victim to fall asleep. While the victim was sleeping in her bed and victim's ex-husband was sleeping in the living room, the defendant came back upstairs, got in bed with the victim and tried to rape her. The defendant and victim struggled, and the victim and the victim's ex-husband were eventually able to get the defendant out of the house. The defendant was charged with sexual abuse and first degree burglary. The defendant pled guilty and was sentenced to 57 months without parole, three years of supervised release and ordered to pay a \$100 special assessment.

United States v. Jayme Two Crow

CHEYENNE RIVER

CHARGE: Sexual Abuse of A Minor

Defendant engaged in a sexual act with a minor. The victim's parents became concerned, and took extensive efforts to keep the defendant away from the victim. The defendant was charged in federal court with sexual abuse of a minor and pled guilty. The defendant was sentenced to 18 months without parole, two years supervised release and ordered to pay a \$100 special assessment.

United States v. Peterson Neal

YANKTON

CHARGE: Sexual Contact

Defendant was charged with sexual contact with a child under the age of 12. The defendant had sexual contact with two young girls over a period of time. He pled guilty in federal court and was sentenced to 32 months of imprisonment, 3 years of supervised release, and a \$200 special assessment.

United States v. Wendell Archambeau

YANKTON

CHARGE: Sexual Abuse of Minor

Defendant was charged with sexual abuse of a minor. He engaged in a sexual act with a 14-year-old girl. The defendant was 18 years old at the time. He pled guilty in federal court and was sentenced to 15 months of imprisonment, 3 years of supervised release, and a \$100 special assessment.

United States v. Anthony Weston

YANKTON

CHARGE: Abusive Sexual Contact

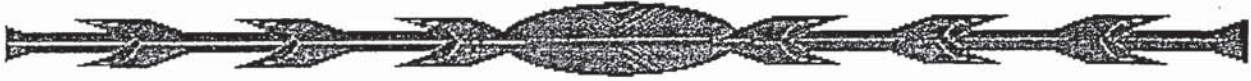
Defendant was charged with abusive sexual contact. He had sexual contact with a 10-year-old child. He was indicted in federal court and eventually entered a plea of guilty. Defendant was sentenced to 22 months of imprisonment, 3 years of supervised release, and a \$100 special assessment.

United States v. Quentin Bruguier

YANKTON

CHARGE: Interstate Domestic Violence

Defendant was charged with interstate domestic violence. This was the first case of this nature prosecuted from the Yankton Sioux Reservation. The defendant forced an intimate partner to leave Indian Country and assaulted her. He pled guilty in federal court and was sentenced to 24 months of imprisonment, 3 years of supervised release, and a \$100 special assessment.



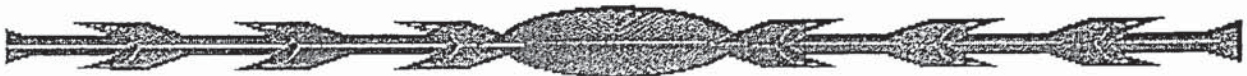
D. IMPORTANT INFORMATION

If you need to reach an Assistant to discuss a case in which you are the victim or a witness, our telephone numbers are:

| | |
|-------------|---|
| Pierre | 605/224-5402 or 605/224-1256 (voice mail) |
| Rapid City | 605/342-7822 or 605/343-2913 (voice mail) |
| Sioux Falls | 605/330-4400 or 605/330-4401 (voice mail) |

E. CONCLUSION

The prosecution of crimes in Indian Country is a high priority for this office. We are trying to do a good job, but there is always room for improvement. Our goal is to work closely with all of you to meet the needs of your tribal members and to help provide a safe place to live for all tribal members.





F. SUMMARY OF STATISTICS

| 1993 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 1 | 1 | 0 | 0 | 0 | NA | 1 | 0 | 3 | NA | 5 | 11 |
| CROW CREEK | 1 | 0 | 0 | 0 | 0 | NA | 1 | 0 | 1 | NA | 3 | 6 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 2 | NA | 0 | 3 |
| LOWER BRULE | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 2 | NA | 1 | 4 |
| PINE RIDGE | 10 | 3 | 1 | 1 | 2 | NA | 1 | 2 | 15 | NA | 9 | 44 |
| ROSEBUD | 13 | 0 | 5 | 1 | 1 | NA | 3 | 1 | 2 | NA | 8 | 34 |
| SISSETON- WAHPETON | 1 | 0 | 6 | 1 | 0 | NA | 0 | 0 | 0 | NA | 5 | 13 |
| STANDING ROCK | 2 | 0 | 0 | 1 | 0 | NA | 0 | 0 | 2 | NA | 2 | 7 |
| YANKTON | 2 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 0 | NA | 3 | 5 |
| TOTALS | 32 | 4 | 12 | 4 | 3 | NA | 6 | 3 | 27 | NA | 36 | 127 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse



| 1994 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 2 | 3 | 0 | 0 | 0 | NA | 1 | 1 | 4 | NA | 3 | 14 |
| CROW CREEK | 2 | 0 | 0 | 2 | 1 | NA | 0 | 0 | 5 | NA | 7 | 17 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 1 | NA | 0 | 2 |
| LOWER BRULE | 1 | 0 | 0 | 2 | 0 | NA | 0 | 0 | 1 | NA | 3 | 7 |
| PINE RIDGE | 18 | 11 | 4 | 3 | 1 | NA | 1 | 1 | 10 | NA | 20 | 69 |
| ROSEBUD | 15 | 3 | 4 | 0 | 0 | NA | 1 | 6 | 15 | NA | 8 | 52 |
| SISSETON- WAHPETON | 0 | 0 | 0 | 1 | 0 | NA | 0 | 0 | 5 | NA | 3 | 9 |
| STANDING ROCK | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 0 | NA | 7 | 8 |
| YANKTON | 1 | 0 | 0 | 4 | 0 | NA | 0 | 0 | 0 | NA | 11 | 16 |
| TOTALS | 41 | 17 | 8 | 12 | 2 | NA | 3 | 8 | 41 | NA | 62 | 194 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse



| 1995 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 9 | 1 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 8 | 5 | 26 |
| CROW CREEK | 2 | 3 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 3 | 5 | 22 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 1 | 4 |
| LOWER BRULE | 3 | 1 | 1 | 0 | 2 | 2 | 0 | 0 | 0 | 6 | 2 | 17 |
| PINE RIDGE | 18 | 4 | 5 | 0 | 3 | 4 | 1 | 0 | 11 | 14 | 8 | 68 |
| ROSEBUD | 18 | 3 | 1 | 0 | 1 | 6 | 3 | 0 | 8 | 17 | 9 | 66 |
| SISSETON- WAHPETON | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 2 | 9 |
| STANDING ROCK | 0 | 0 | 0 | 0 | 1 | 4 | 0 | 0 | 2 | 2 | 3 | 12 |
| YANKTON | 3 | 0 | 0 | 1 | 0 | 3 | 1 | 0 | 0 | 4 | 9 | 21 |
| TOTALS | 55 | 12 | 12 | 1 | 7 | 24 | 5 | 0 | 26 | 59 | 44 | 245 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse



| 1996 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 4 | 3 | 0 | 0 | 1 | 2 | 2 | 1 | 0 | 7 | 7 | 27 |
| CROW CREEK | 3 | 2 | 0 | 0 | 5 | 2 | 0 | 0 | 0 | 6 | 6 | 24 |
| ELANDREAU | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 |
| LOWER BRULE | 2 | 2 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 4 | 1 | 18 |
| PINE RIDGE | 7 | 3 | 13 | 2 | 1 | 17 | 1 | 1 | 26 | 16 | 16 | 103 |
| ROSEBUD | 10 | 8 | 7 | 0 | 6 | 16 | 4 | 1 | 8 | 18 | 10 | 88 |
| SISSETON- WAHPETON | 2 | 0 | 0 | 2 | 1 | 4 | 0 | 0 | 1 | 3 | 1 | 14 |
| STANDING ROCK | 2 | 0 | 0 | 1 | 1 | 8 | 0 | 0 | 0 | 5 | 3 | 20 |
| YANKTON | 4 | 0 | 0 | 0 | 0 | 6 | 0 | 2 | 1 | 10 | 5 | 28 |
| TOTALS | 34 | 20 | 23 | 5 | 15 | 58 | 7 | 5 | 39 | 70 | 49 | 325 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse



| 1997 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 8 | 2 | 1 | 0 | 0 | 1 | 2 | 0 | 3 | 9 | 12 | 38 |
| CROW CREEK | 3 | 0 | 0 | 1 | 0 | 1 | 0 | 2 | 2 | 4 | 5 | 18 |
| FLANDREAU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 4 |
| LOWER BRULE | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 5 |
| PINE RIDGE | 13 | 2 | 31 | 0 | 0 | 8 | 4 | 1 | 20 | 33 | 11 | 123 |
| ROSEBUD | 12 | 4 | 11 | 1 | 0 | 24 | 3 | 1 | 7 | 13 | 12 | 88 |
| SISSETON- WAHPETON | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 3 |
| STANDING ROCK | 4 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 2 | 2 | 11 |
| YANKTON | 11 | 2 | 3 | 1 | 0 | 17 | 2 | 0 | 2 | 13 | 3 | 54 |
| TOTALS | 51 | 11 | 46 | 3 | 0 | 54 | 11 | 4 | 38 | 77 | 49 | 344 |

- AS Assault
- BL Burglary/Larceny
- DR Drugs
- EM Embezzlement
- FR Firearms
- JV Juveniles
- MS Manslaughter
- MR Murder
- OT Other
- PR Probation and Supervised Release Revocations
- SA Sexual Abuse



| 1998 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 8 | 9 | 2 | 5 | 0 | 4 | 0 | 2 | 1 | 3 | 5 | 39 |
| CROW CREEK | 3 | 1 | 4 | 0 | 0 | 3 | 0 | 1 | 1 | 6 | 4 | 23 |
| FLANDREAU | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| LOWER BRULE | 2 | 1 | 4 | 0 | 0 | 3 | 0 | 0 | 1 | 5 | 2 | 18 |
| PINE RIDGE | 21 | 1 | 10 | 0 | 1 | 3 | 1 | 0 | 4 | 39 | 12 | 92 |
| ROSEBUD | 16 | 8 | 7 | 2 | 0 | 11 | 3 | 1 | 6 | 13 | 18 | 85 |
| SISSETON- WAHPETON | 1 | 1 | 0 | 1 | 0 | 3 | 0 | 0 | 2 | 1 | 1 | 10 |
| STANDING ROCK | 2 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 2 | 5 | 13 |
| YANKTON | 9 | 2 | 0 | 1 | 0 | 23 | 0 | 0 | 1 | 13 | 9 | 58 |
| TOTALS | 66 | 26 | 27 | 10 | 1 | 51 | 4 | 4 | 16 | 82 | 56 | 343 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse



| 1999 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 10 | 7 | 0 | 1 | 0 | 3 | 2 | 0 | 1 | 14 | 5 | 43 |
| CROW CREEK | 4 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 1 | 5 | 12 | 25 |
| FLANDREAU | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| LOWER BRULE | 0 | 0 | 0 | 0 | 0 | 4 | 1 | 0 | 0 | 0 | 1 | 6 |
| PINE RIDGE | 17 | 1 | 3 | 1 | 1 | 6 | 1 | 1 | 0 | 24 | 8 | 63 |
| ROSEBUD | 22 | 1 | 1 | 6 | 2 | 10 | 5 | 4 | 2 | 25 | 15 | 93 |
| SISSETON- WAHPETON | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 3 |
| STANDING ROCK | 4 | 6 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 4 | 0 | 18 |
| YANKTON | 0 | 3 | 0 | 0 | 0 | 8 | 0 | 0 | 0 | 15 | 2 | 28 |
| TOTALS | 60 | 18 | 4 | 8 | 3 | 39 | 9 | 5 | 4 | 88 | 43 | 281 |

- AS Assault
- BL Burglary/Larceny
- DR Drugs
- EM Embezzlement
- FR Firearms
- JV Juveniles
- MS Manslaughter
- MR Murder
- OT Other
- PR Probation and Supervised Release Revocations
- SA Sexual Abuse



Note: Assaults on the increase.
 JV, MS, SA decreased.

| 2000 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 15 | 2 | 5 | 2 | 0 | 2 | 0 | 0 | 1 | 5 | 7 | 39 |
| CROW CREEK | 5 | 2 | 0 | 0 | 0 | 5 | 0 | 0 | 3 | 11 | 2 | 28 |
| FLANDREAU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| LOWER BRULE | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 7 |
| PINE RIDGE | 30 | 3 | 7 | 6 | 1 | 6 | 0 | 1 | 19 | 22 | 8 | 103 |
| ROSEBUD | 15 | 2 | 3 | 2 | 0 | 6 | 1 | 4 | 1 | 26 | 10 | 70 |
| SISSETON- WAHPETON | 0 | 0 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 4 |
| STANDING ROCK | 4 | 4 | 1 | 0 | 1 | 3 | 0 | 0 | 0 | 3 | 2 | 18 |
| YANKTON | 1 | 0 | 0 | 0 | 1 | 13 | 0 | 0 | 1 | 11 | 4 | 31 |
| TOTALS | 74 | 13 | 16 | 12 | 2 | 37 | 1 | 5 | 26 | 80 | 35 | 301 |

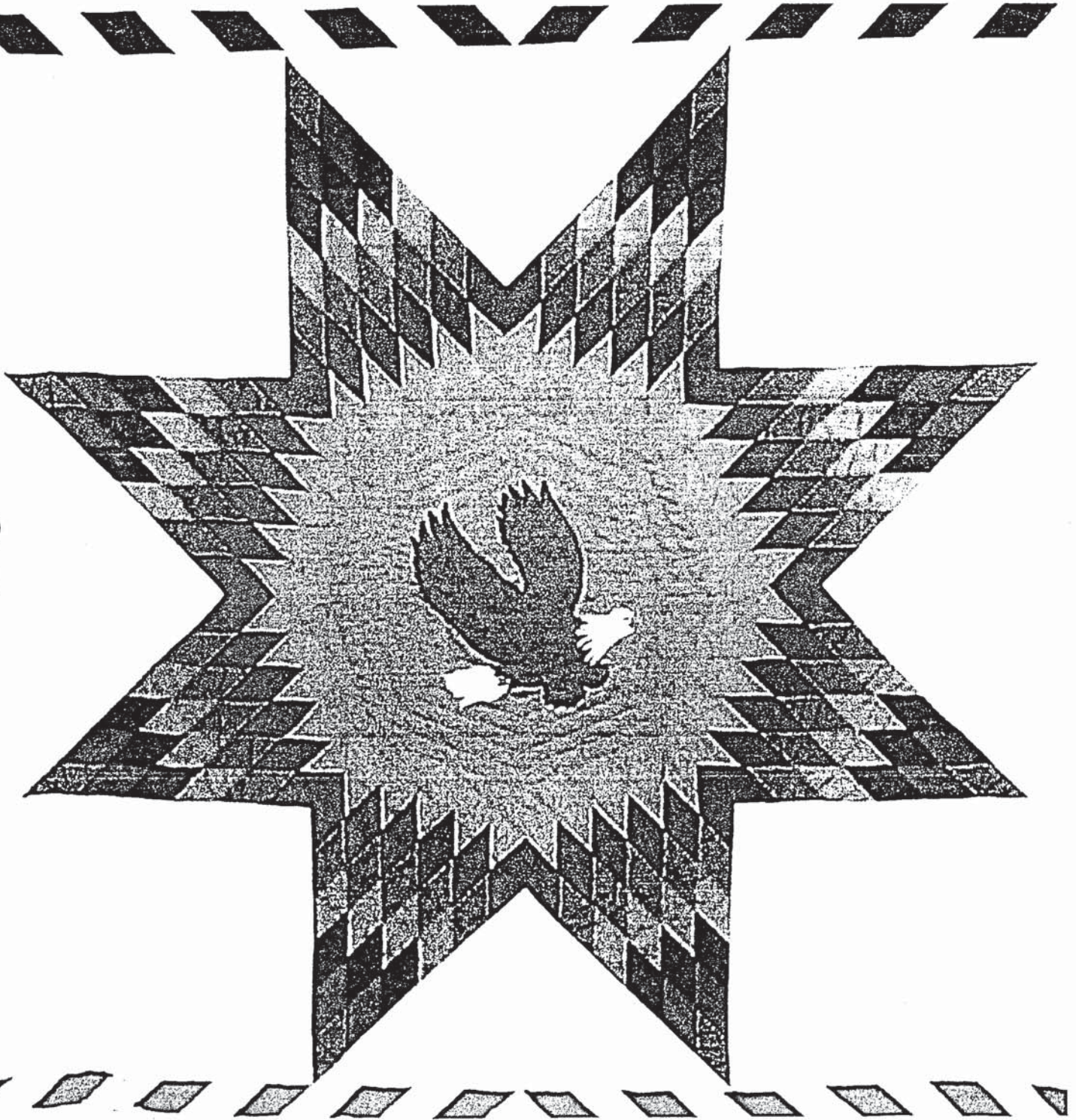
99 60 4 39 9 43 why drugs down
 98 66 27 51 4 56

- AS Assault
- BL Burglary/Larceny
- DR Drugs
- EM Embezzlement
- FR Firearms
- JV Juveniles
- MS Manslaughter
- MR Murder
- OT Other
- PR Probation and Supervised Release Revocations
- SA Sexual Abuse

97 51 46 54 11 49
 96 34 23 58 7 49
 95 55 12 24 5 44



SOUTH DAKOTA
INDIAN COUNTRY REPORT
1999



TED L. MCBRIDE
UNITED STATES ATTORNEY

C. CASE STATISTICS BY RESERVATION

From January 1999 to December 1999, the United States Attorney's Office for the District of South Dakota filed charges against 281 defendants. Of these cases, many are still pending. The summary tables that follow indicate the number of indictments, informations, and probation and supervised release revocations that were filed from cases arising within the reservations.

| CHEYENNE RIVER Population: 11,813 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 1 | 3 | 1 | 4 | 2 | 2 |
| <i>Assault with a Dangerous Weapon</i> | 1 | 3 | 3 | 4 | 6 | 8 |
| <i>Burglary/Larceny</i> | 3 | 1 | 3 | 2 | 9 | 7 |
| <i>Drugs</i> | 0 | 2 | 0 | 1 | 2 | 0 |
| <i>Embezzlement</i> | 0 | 0 | 0 | 0 | 5 | 1 |
| <i>Firearms</i> | 0 | 0 | 1 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 1 | 2 | 1 | 4 | 3 |
| <i>Manslaughter</i> | 1 | 0 | 2 | 2 | 0 | 2 |
| <i>Murder</i> | 1 | 0 | 1 | 0 | 2 | 0 |
| <i>Other</i> | 4 | 3 | 0 | 3 | 1 | 1 |
| <i>Probation & Supervised Release Revocations</i> | 0 | 8 | 7 | 9 | 3 | 14 |
| <i>Sexual Abuse</i> | 0 | 0 | 1 | 5 | 2 | 3 |
| <i>Sexual Abuse - Minor</i> | 3 | 5 | 6 | 7 | 3 | 2 |
| Total Cases | 14 | 26 | 27 | 38 | 39 | 43 |

| CROW CREEK Population: 3,002 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 1 | 1 | 2 | 0 | 0 |
| <i>Assault with a Dangerous Weapon</i> | 2 | 1 | 2 | 1 | 3 | 4 |
| <i>Burglary/Larceny</i> | 0 | 3 | 2 | 0 | 1 | 0 |
| <i>Drugs</i> | 0 | 3 | 0 | 0 | 4 | 0 |
| <i>Embezzlement</i> | 2 | 0 | 0 | 1 | 0 | 0 |
| <i>Firearms</i> | 1 | 0 | 5 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 3 | 2 | 1 | 3 | 3 |
| <i>Manslaughter</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Murder</i> | 0 | 0 | 0 | 2 | 1 | 0 |
| <i>Other</i> | 0 | 3 | 0 | 2 | 1 | 1 |
| <i>Probation & Supervised Release Revocations</i> | 5 | 3 | 6 | 4 | 6 | 5 |
| <i>Sexual Abuse</i> | 1 | 2 | 2 | 3 | 1 | 8 |
| <i>Sexual Abuse - Minor</i> | 6 | 3 | 4 | 2 | 3 | 4 |
| Total Cases | 17 | 22 | 24 | 18 | 23 | 25 |

| FLANDREAU Population: 1,828 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Assault with a Dangerous Weapon</i> | 2 | 1 | 0 | 0 | 4 | 2 |
| <i>Burglary/Larceny</i> | 0 | 0 | 2 | 0 | 0 | 0 |
| <i>Drugs</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Embezzlement</i> | 0 | 0 | 0 | 0 | 1 | 0 |
| <i>Firearms</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 1 | 0 | 0 | 0 | 0 |
| <i>Manslaughter</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Murder</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Other</i> | 0 | 0 | 0 | 2 | 0 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 0 | 1 | 1 | 2 | 0 | 0 |
| <i>Sexual Abuse</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Sexual Abuse - Minor</i> | 0 | 1 | 0 | 0 | 0 | 0 |
| Total Cases | 2 | 4 | 3 | 4 | 5 | 2 |

| LOWER BRULE Population: 1,164 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 2 | 1 | 0 | 1 | 0 |
| <i>Assault with a Dangerous Weapon</i> | 1 | 1 | 1 | 0 | 1 | 0 |
| <i>Burglary/Larceny</i> | 0 | 1 | 2 | 1 | 1 | 0 |
| <i>Drugs</i> | 0 | 1 | 3 | 0 | 4 | 0 |
| <i>Embezzlement</i> | 2 | 0 | 0 | 0 | 0 | 0 |
| <i>Firearms</i> | 0 | 2 | 0 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 2 | 3 | 0 | 3 | 4 |
| <i>Manslaughter</i> | 0 | 0 | 0 | 0 | 0 | 1 |
| <i>Murder</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Other</i> | 0 | 0 | 3 | 1 | 1 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 1 | 6 | 4 | 0 | 5 | 0 |
| <i>Sexual Abuse</i> | 0 | 1 | 0 | 2 | 0 | 1 |
| <i>Sexual Abuse - Minor</i> | 3 | 1 | 1 | 1 | 2 | 0 |
| Total Cases | 7 | 17 | 18 | 5 | 18 | 6 |

| PINE RIDGE Population: 38,426 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 8 | 4 | 0 | 3 | 5 | 5 |
| <i>Assault with a Dangerous Weapon</i> | 8 | 8 | 7 | 10 | 16 | 12 |
| <i>Burglary/Larceny</i> | 11 | 4 | 3 | 2 | 1 | 1 |
| <i>Drugs</i> | 4 | 5 | 13 | 31 | 10 | 3 |
| <i>Embezzlement</i> | 3 | 0 | 2 | 0 | 0 | 1 |
| <i>Firearms</i> | 1 | 3 | 1 | 0 | 1 | 1 |
| <i>Juveniles</i> | NA | 4 | 17 | 8 | 3 | 6 |
| <i>Manslaughter</i> | 1 | 1 | 1 | 4 | 1 | 1 |
| <i>Murder</i> | 1 | 0 | 1 | 1 | 0 | 1 |
| <i>Other</i> | 3 | 17 | 26 | 20 | 4 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 9 | 14 | 16 | 33 | 39 | 24 |
| <i>Sexual Abuse</i> | 1 | 1 | 5 | 8 | 2 | 4 |
| <i>Sexual Abuse - Minor</i> | 19 | 7 | 11 | 3 | 10 | 4 |
| Total Cases | 69 | 68 | 103 | 123 | 92 | 63 |

ROSEBUD
Population: 24,217

| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Assault Resulting in Serious Bodily Injury</i> | 3 | 1 | 2 | 2 | 0 | 4 |
| <i>Assault with a Dangerous Weapon</i> | 10 | 15 | 8 | 10 | 16 | 18 |
| <i>Burglary/Larceny</i> | 3 | 3 | 8 | 4 | 8 | 1 |
| <i>Drugs</i> | 4 | 1 | 7 | 11 | 7 | 1 |
| <i>Embezzlement</i> | 0 | 0 | 0 | 1 | 2 | 6 |
| <i>Firearms</i> | 0 | 1 | 6 | 0 | 0 | 2 |
| <i>Juveniles</i> | NA | 6 | 16 | 24 | 11 | 10 |
| <i>Manslaughter</i> | 1 | 3 | 4 | 3 | 3 | 5 |
| <i>Murder</i> | 6 | 0 | 1 | 1 | 1 | 4 |
| <i>Other</i> | 3 | 10 | 8 | 7 | 6 | 2 |
| <i>Probation & Supervised Release Revocations</i> | 14 | 17 | 18 | 13 | 13 | 25 |
| <i>Sexual Abuse</i> | 2 | 1 | 2 | 1 | 3 | 8 |
| <i>Sexual Abuse - Minor</i> | 6 | 8 | 8 | 11 | 15 | 7 |
| Total Cases | 52 | 66 | 88 | 88 | 85 | 93 |

| SISSETON-WAHPETON Population: 3,277 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 0 | 1 | 0 | 0 | 0 |
| <i>Assault with a Dangerous Weapon</i> | 0 | 1 | 1 | 0 | 1 | 1 |
| <i>Burglary/Larceny</i> | 0 | 0 | 0 | 0 | 1 | 0 |
| <i>Drugs</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Embezzlement</i> | 1 | 0 | 2 | 0 | 1 | 0 |
| <i>Firearms</i> | 0 | 0 | 1 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 0 | 4 | 0 | 3 | 1 |
| <i>Manslaughter</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Murder</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Other</i> | 5 | 2 | 1 | 1 | 2 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 0 | 4 | 3 | 1 | 1 | 1 |
| <i>Sexual Abuse</i> | 0 | 2 | 1 | 0 | 0 | 0 |
| <i>Sexual Abuse - Minor</i> | 3 | 0 | 0 | 1 | 1 | 0 |
| Total Cases | 9 | 9 | 14 | 3 | 10 | 3 |

STANDING ROCK

Population: 4,918

| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 0 | 0 | 0 | 0 | 1 |
| <i>Assault with a Dangerous Weapon</i> | 0 | 0 | 2 | 4 | 2 | 3 |
| <i>Burglary/Larceny</i> | 0 | 0 | 0 | 0 | 3 | 6 |
| <i>Drugs</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Embezzlement</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Firearms</i> | 0 | 1 | 0 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 4 | 6 | 3 | 1 | 4 |
| <i>Manslaughter</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Murder</i> | 0 | 0 | 2 | 0 | 0 | 0 |
| <i>Other</i> | 1 | 2 | 0 | 0 | 0 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 0 | 2 | 5 | 2 | 2 | 4 |
| <i>Sexual Abuse</i> | 1 | 1 | 0 | 1 | 0 | 0 |
| <i>Sexual Abuse - Minor</i> | 6 | 2 | 5 | 1 | 5 | 0 |
| Total Cases | 8 | 12 | 20 | 11 | 13 | 18 |

| YANKTON Population: 6,528 | | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| <i>Violation</i> | <i>1994</i> | <i>1995</i> | <i>1996</i> | <i>1997</i> | <i>1998</i> | <i>1999</i> |
| <i>Assault Resulting in Serious Bodily Injury</i> | 0 | 0 | 2 | 2 | 2 | 0 |
| <i>Assault with a Dangerous Weapon</i> | 1 | 1 | 2 | 9 | 7 | 0 |
| <i>Burglary/Larceny</i> | 0 | 0 | 0 | 2 | 2 | 3 |
| <i>Drugs</i> | 0 | 0 | 0 | 3 | 0 | 0 |
| <i>Embezzlement</i> | 4 | 1 | 0 | 1 | 1 | 0 |
| <i>Firearms</i> | 0 | 0 | 0 | 0 | 0 | 0 |
| <i>Juveniles</i> | NA | 3 | 6 | 17 | 23 | 8 |
| <i>Manslaughter</i> | 0 | 1 | 0 | 2 | 0 | 0 |
| <i>Murder</i> | 0 | 0 | 2 | 0 | 0 | 0 |
| <i>Other</i> | 0 | 2 | 1 | 2 | 1 | 0 |
| <i>Probation & Supervised Release Revocations</i> | 0 | 4 | 10 | 13 | 13 | 15 |
| <i>Sexual Abuse</i> | 0 | 1 | 0 | 2 | 0 | 1 |
| <i>Sexual Abuse - Minor</i> | 11 | 8 | 5 | 1 | 9 | 1 |
| Total Cases | 16 | 21 | 28 | 54 | 58 | 28 |

Population statistics were taken from the U.S. Department of Interior, Bureau of Indian Affairs web page, www.doi.gov.

G. SUMMARY OF STATISTICS

| 1993 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 1 | 1 | 0 | 0 | 0 | NA | 1 | 0 | 3 | NA | 5 | 11 |
| CROW CREEK | 1 | 0 | 0 | 0 | 0 | NA | 1 | 0 | 1 | NA | 3 | 6 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 2 | NA | 0 | 3 |
| LOWER BRULE | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 2 | NA | 1 | 4 |
| PINE RIDGE | 10 | 3 | 1 | 1 | 2 | NA | 1 | 2 | 15 | NA | 9 | 44 |
| ROSEBUD | 13 | 0 | 5 | 1 | 1 | NA | 3 | 1 | 2 | NA | 8 | 34 |
| SISSETON- WAHPETON | 1 | 0 | 6 | 1 | 0 | NA | 0 | 0 | 0 | NA | 5 | 13 |
| STANDING ROCK | 2 | 0 | 0 | 1 | 0 | NA | 0 | 0 | 2 | NA | 2 | 7 |
| YANKTON | 2 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 0 | NA | 3 | 5 |
| TOTALS | 32 | 4 | 12 | 4 | 3 | NA | 6 | 3 | 27 | NA | 36 | 127 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

| 1994 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 2 | 3 | 0 | 0 | 0 | NA | 1 | 1 | 4 | NA | 3 | 14 |
| CROW CREEK | 2 | 0 | 0 | 2 | 1 | NA | 0 | 0 | 5 | NA | 7 | 17 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 1 | NA | 0 | 2 |
| LOWER BRULE | 1 | 0 | 0 | 2 | 0 | NA | 0 | 0 | 1 | NA | 3 | 7 |
| PINE RIDGE | 18 | 11 | 4 | 3 | 1 | NA | 1 | 1 | 10 | NA | 20 | 69 |
| ROSEBUD | 15 | 3 | 4 | 0 | 0 | NA | 1 | 6 | 15 | NA | 8 | 52 |
| SISSETON- WAHPETON | 0 | 0 | 0 | 1 | 0 | NA | 0 | 0 | 5 | NA | 3 | 9 |
| STANDING ROCK | 1 | 0 | 0 | 0 | 0 | NA | 0 | 0 | 0 | NA | 7 | 8 |
| YANKTON | 1 | 0 | 0 | 4 | 0 | NA | 0 | 0 | 0 | NA | 11 | 16 |
| TOTALS | 41 | 17 | 8 | 12 | 2 | NA | 3 | 8 | 41 | NA | 62 | 194 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

| 1995 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 9 | 1 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 8 | 5 | 26 |
| CROW CREEK | 2 | 3 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 3 | 5 | 22 |
| FLANDREAU | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 1 | 4 |
| LOWER BRULE | 3 | 1 | 1 | 0 | 2 | 2 | 0 | 0 | 0 | 6 | 2 | 17 |
| PINE RIDGE | 18 | 4 | 5 | 0 | 3 | 4 | 1 | 0 | 11 | 14 | 8 | 68 |
| ROSEBUD | 18 | 3 | 1 | 0 | 1 | 6 | 3 | 0 | 8 | 17 | 9 | 66 |
| SISSETON- WAHPETON | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 2 | 9 |
| STANDING ROCK | 0 | 0 | 0 | 0 | 1 | 4 | 0 | 0 | 2 | 2 | 3 | 12 |
| YANKTON | 3 | 0 | 0 | 1 | 0 | 3 | 1 | 0 | 0 | 4 | 9 | 21 |
| TOTALS | 55 | 12 | 12 | 1 | 7 | 24 | 5 | 0 | 26 | 59 | 44 | 245 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

| 1996 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 4 | 3 | 0 | 0 | 1 | 2 | 2 | 1 | 0 | 7 | 7 | 27 |
| CROW CREEK | 3 | 2 | 0 | 0 | 5 | 2 | 0 | 0 | 0 | 6 | 6 | 24 |
| FLANDREAU | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 |
| LOWER BRULE | 2 | 2 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 4 | 1 | 18 |
| PINE RIDGE | 7 | 3 | 13 | 2 | 1 | 17 | 1 | 1 | 26 | 16 | 16 | 103 |
| ROSEBUD | 10 | 8 | 7 | 0 | 6 | 16 | 4 | 1 | 8 | 18 | 10 | 88 |
| SISSETON- WAHPETON | 2 | 0 | 0 | 2 | 1 | 4 | 0 | 0 | 1 | 3 | 1 | 14 |
| STANDING ROCK | 2 | 0 | 0 | 1 | 1 | 8 | 0 | 0 | 0 | 5 | 3 | 20 |
| YANKTON | 4 | 0 | 0 | 0 | 0 | 6 | 0 | 2 | 1 | 10 | 5 | 28 |
| TOTALS | 34 | 20 | 23 | 5 | 15 | 58 | 7 | 5 | 39 | 70 | 49 | 325 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

| 1997 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 8 | 2 | 1 | 0 | 0 | 1 | 2 | 0 | 3 | 9 | 12 | 38 |
| GROW CREEK | 3 | 0 | 0 | 1 | 0 | 1 | 0 | 2 | 2 | 4 | 5 | 18 |
| FLANDREAU | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 4 |
| LOWER BRULE | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 5 |
| PINE RIDGE | 13 | 2 | 31 | 0 | 0 | 8 | 4 | 1 | 20 | 33 | 11 | 123 |
| ROSEBUD | 12 | 4 | 11 | 1 | 0 | 24 | 3 | 1 | 7 | 13 | 12 | 88 |
| SISSETON- WAHPETON | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 3 |
| STANDING ROCK | 4 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 2 | 2 | 11 |
| YANKTON | 11 | 2 | 3 | 1 | 0 | 17 | 2 | 0 | 2 | 13 | 3 | 54 |
| TOTALS | 51 | 11 | 46 | 3 | 0 | 54 | 11 | 4 | 38 | 77 | 49 | 344 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

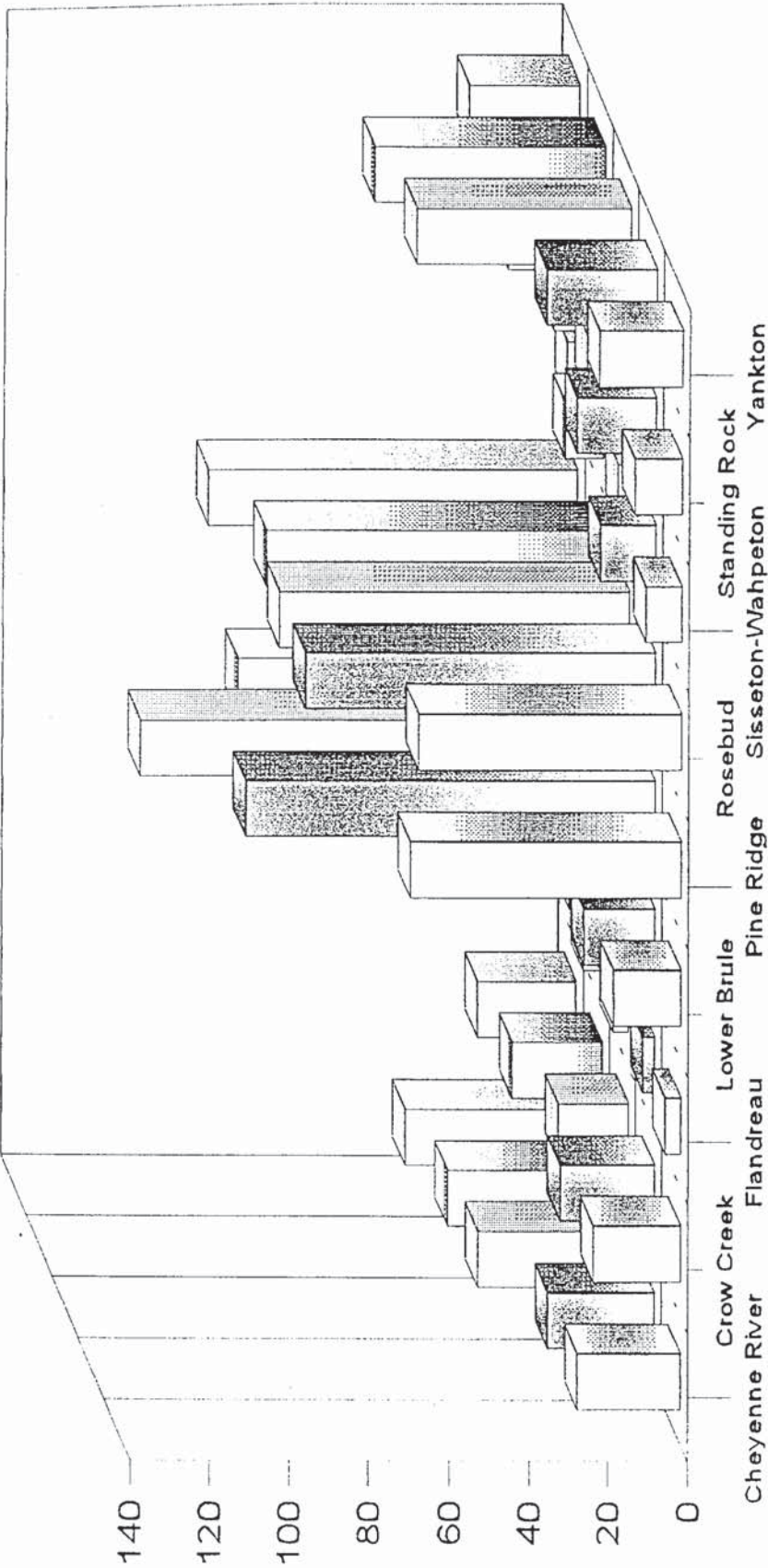
1998

| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| CHEYENNE RIVER | 8 | 9 | 2 | 5 | 0 | 4 | 0 | 2 | 1 | 3 | 5 | 39 |
| CROW CREEK | 3 | 1 | 4 | 0 | 0 | 3 | 0 | 1 | 1 | 6 | 4 | 23 |
| FLANDREAU | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 |
| LOWER BRULE | 2 | 1 | 4 | 0 | 0 | 3 | 0 | 0 | 1 | 5 | 2 | 18 |
| PINE RIDGE | 21 | 1 | 10 | 0 | 1 | 3 | 1 | 0 | 4 | 39 | 12 | 92 |
| ROSEBUD | 16 | 8 | 7 | 2 | 0 | 11 | 3 | 1 | 6 | 13 | 18 | 85 |
| SISSETON- WAHPETON | 1 | 1 | 0 | 1 | 0 | 3 | 0 | 0 | 2 | 1 | 1 | 10 |
| STANDING ROCK | 2 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 2 | 5 | 13 |
| YANKTON | 9 | 2 | 0 | 1 | 0 | 23 | 0 | 0 | 1 | 13 | 9 | 58 |
| TOTALS | 66 | 26 | 27 | 10 | 1 | 51 | 4 | 4 | 16 | 82 | 56 | 343 |

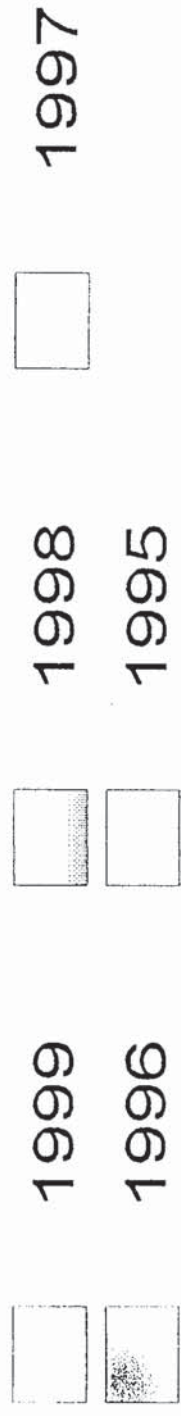
AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

| 1999 | | | | | | | | | | | | |
|-----------------------|----|----|----|----|----|----|----|----|----|----|----|-------|
| RESERVATION | AS | BL | DR | EM | FR | JV | MS | MR | OT | PR | SA | TOTAL |
| CHEYENNE RIVER | 10 | 7 | 0 | 1 | 0 | 3 | 2 | 0 | 1 | 14 | 5 | 43 |
| CROW CREEK | 4 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 1 | 5 | 12 | 25 |
| FLANDREAU | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| LOWER BRULE | 0 | 0 | 0 | 0 | 0 | 4 | 1 | 0 | 0 | 0 | 1 | 6 |
| PINE RIDGE | 17 | 1 | 3 | 1 | 1 | 6 | 1 | 1 | 0 | 24 | 8 | 63 |
| ROSEBUD | 22 | 1 | 1 | 6 | 2 | 10 | 5 | 4 | 2 | 25 | 15 | 93 |
| SISSETON- WAHPETON | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 3 |
| STANDING ROCK | 4 | 6 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 4 | 0 | 18 |
| YANKTON | 0 | 3 | 0 | 0 | 0 | 8 | 0 | 0 | 0 | 15 | 2 | 28 |
| TOTALS | 60 | 18 | 4 | 8 | 3 | 39 | 9 | 5 | 4 | 88 | 43 | 281 |

AS Assault
 BL Burglary/Larceny
 DR Drugs
 EM Embezzlement
 FR Firearms
 JV Juveniles
 MS Manslaughter
 MR Murder
 OT Other
 PR Probation and Supervised Release Revocations
 SA Sexual Abuse

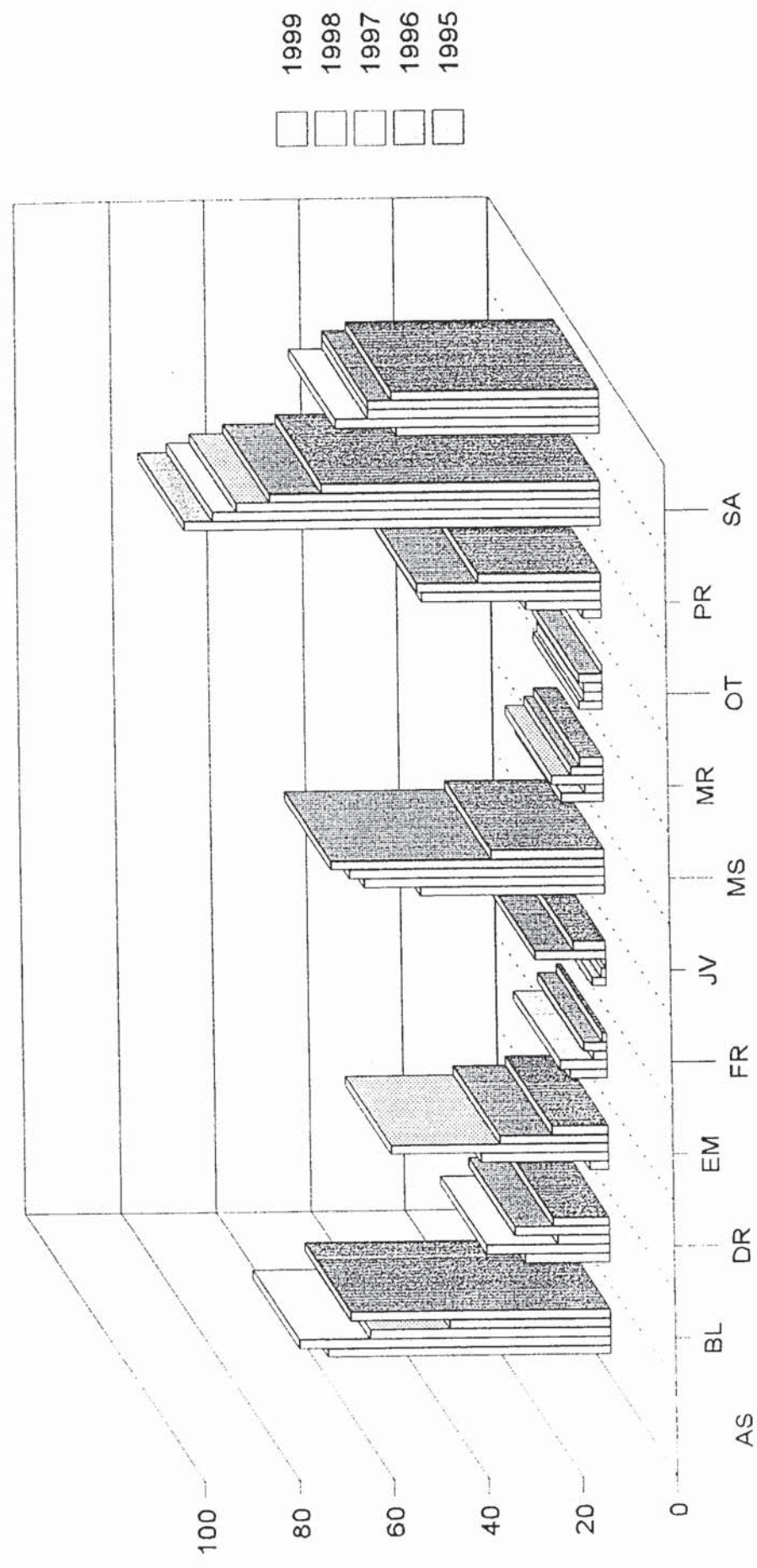


SUMMARY OF PROSECUTIONS



Summary of Statistics by Charge

1995 - 1999



Total Cases of Offense Per Reporting Period

AS: Assault, BL: Burglary/Larceny, DR: Drugs, EM: Embezzlement, FR: Firearms, JV: Juveniles, MS: Manslaughter, MR: Murder, OT: Other, PR: Probation Revocation, SA: Sexual Abuse

SOUTH DAKOTA INDIAN TRIBES

1. Cheyenne River Reservation
2. Crow Creek Sioux Tribe
3. Flandreau Santee Sioux Tribe
4. Lower Brule Sioux Tribe
5. Oglala Sioux Tribe
6. Rosebud Sioux Tribe
7. Sisseton-Wahpeton Tribe
8. Yankton Sioux Tribe
9. Standing Rock Sioux Tribe

South Dakota Counties and Indian Reservation Boundaries



All map links, with additional tribal information:

FEMA Region VIII Main Tribal Map

Montana

[Blackfeet Tribe](#) | [Crow Tribe](#) | [Confederated Salish and Kootenai Tribes of the Flathead Reservation](#) | [Fort Belknap Indian Community](#) | [Assiniboine and Sioux Tribes of the Fort Peck Reservation](#) | [Northern Cheyenne Tribe](#) | [Chippewa-Cree of the Rocky Boy's Reservation](#)

North Dakota

[Spirit Lake Tribe](#) | [Three Affiliated Tribes of the Fort Berthold Reservation](#) | [Standing Rock Sioux Tribe](#) | [Turtle Mountain Band of Chippewa Indians](#)

South Dakota

[Cheyenne River Sioux Tribe](#) | [Crow Creek Sioux Tribe](#) | [Flandreau Santee Sioux Tribe](#) | [Lower Brule Sioux Tribe](#) | [Oglala Sioux Tribe of the Pine Ridge Reservation](#) | [Rosebud Sioux Tribe](#) | [Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation](#) | [Standing Rock Sioux Tribe](#) | [Yankton Sioux Tribe](#)

Wyoming

[Arapahoe Tribe of the Wind River Reservation](#) | [Shoshone Tribe of the Wind River Reservation](#)

Utah

[Confederated Tribes of the Goshute Reservation](#) | [Skull Valley Band of Goshute Indians](#) | [Paiute Tribe](#) | [Northern Ute Tribe of the Uintah and Ouray Ute Reservation](#)

Colorado

[Southern Ute Tribe](#) | [Ute Mountain Tribe](#)

Federal Emergency Management Agency

Brief Analysis
Native Americans Sentenced Under the Federal Guidelines
June, 2000

Native American cases rising faster than all federal cases

Between 1995 and 1999, the number of Native Americans sentenced under the Guidelines increased from 548 cases to 854. This represents an increase of 55.8 percent (compared to a 44.3% increase, from 38,500 to 55,557, for all federal cases during this period) (see Figure 1).

Seven Federal Districts account for 60 percent of Native American cases

Of 94 federal judicial districts, 63 (67.0%) reported at least one case involving a Native American (see the map in Figure 2 and Table 1). However, in 45 of these districts (71.4% of the 63) ten or fewer offenders were sentenced. In 13 additional districts Native American cases only numbered between 11 and 30. The majority of cases (540 of the total 854 cases, or 63.2%) are from five districts: Arizona (n=187), South Dakota (n=182), North Dakota (n=58), New Mexico (n=57), and Montana (n=56) (see Figure 3).

Three offense types consistently account for over half of Native American cases:

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|-------------------------|--------------|--------------|--------------|--------------|--------------|
| <u>Sexual Abuse</u> | 24.1% | 20.3% | 21.3% | 18.1% | 18.5% |
| <u>Assault</u> | 13.9% | 18.9% | 16.7% | 18.1% | 16.6% |
| <u>Drug Trafficking</u> | 14.2% | 11.6% | 14.7% | 15.6% | 16.2% |
| Total | 52.2% | 50.8% | 52.7% | 51.8% | 51.3% |



The mix of offenses for which Native Americans are sentenced differs from the overall federal population

Among all federal offenders, drug trafficking is the most frequently sentenced crime (approximately 40%). However, a much smaller percentage of Native American offenders (between 11 and 16 percent) are sentenced for this offense.

In contrast, cases involving “Offenses Against the Person” (Chapter 2, Part A of the *Guidelines Manual*) account for only 1.7 percent of all federal cases in 1999 but 45.2 percent of cases involving Native Americans.

The bulk of offenders sentenced under Chapter 2, Part A (Offenses Against the Person) are Native American

In 1999, Native Americans account for only 1.6 percent of all federal offenders but 28.9 percent of cases sentenced under guidelines in Chapter 2, Part A.

Native Americans account for:

| | | | |
|--------------|----|--------|--|
| <u>75.5%</u> | of | §2A1.2 | <u>Second Degree Murder</u> |
| <u>57.1%</u> | of | §2A1.3 | <u>Voluntary Manslaughter</u> |
| <u>66.7%</u> | of | §2A1.4 | <u>Involuntary Manslaughter</u> |
| <u>45.7%</u> | of | §2A2.2 | <u>Aggravated Assault</u> |
| <u>67.7%</u> | of | §2A3.1 | <u>Criminal Sexual Abuse</u> |
| <u>40.5%</u> | of | §2A3.2 | <u>Criminal Sexual Abuse of a Minor (Statutory Rape)</u> |
| <u>79.7%</u> | of | §2A3.4 | <u>Abusive Sexual Contact</u> |

compared to a trivial proportion of other offenses:

| | | | |
|------|----|--------|---------------------------|
| 0.6% | of | §2D1.1 | Drug Trafficking |
| 0.7% | of | §2F1.1 | Fraud, Deceit and Forgery |

Overall, Native Americans are sentenced within the determined guideline range at rates similar to the entire federal population but departure application differs markedly

Application rates for departures vary substantially between groups, particularly upward departures and those for substantial assistance (see Table 2).

The 13 guidelines reported in this table account for 711 of the Native American cases in 1999 (83.3% of the total). Comparing Native American and non Native American cases, only three guidelines, as reported in the table, present similar rates of departure across departure types: §§2B1.1, 2B2.1, and 2D1.1.

The remaining 10 guidelines present substantially different patterns of departure application between these groups.

Rates of confinement across guidelines indicate somewhat greater similarity between these groups despite differences in departure application

However, confinement rate differences of 10 percentage points or greater are present in six guidelines: §§2A3.2, 2A3.4, 2B1.1, 2D1.1, 2F1.1, and 2L1.1.

The length of confinement for the majority of these offenses is similar between these groups

But several result in substantially different sentences: §§2A1.2, 2A3.1, 2B3.1, 2D1.1, and 2K2.1.

Findings Summary

The number of Native Americans sentenced under the guidelines is increasing.

Over 60 percent of cases involving Native Americans occur in five federal judicial districts.

The types of offenses for which Native Americans are sentenced differ from the overall federal population.

In the limited number of guidelines with sufficient numbers of cases for comparison, patterns in application of departures vary substantially between Native American offenders and all other federal offenders.

Similarity (or its lack) in patterns of departure application is not a good predictor of receiving a sentence of confinement or the duration of that confinement.

**COMPARISON BETWEEN NATIVE AMERICAN AND ALL OTHER FEDERAL
OFFENDERS BY SELECTED GUIDELINES**

District of South Dakota

Fiscal Year 1999

| Guideline | Racial Category | Total Cases | Departure Status | | | | Percent Receiving Confinement | Median Prison Sentence |
|--|------------------|-------------|-------------------|------------------|--------------------|------------------------|-------------------------------|------------------------|
| | | | Within Guidelines | Upward Departure | Downward Departure | Substantial Assistance | | |
| Total | Native American | 182 | 141 | 5 | 19 | 4 | 74.2 | 15 |
| | All Others | 198 | 126 | 6 | 20 | 16 | 79.5 | 5 |
| §2A1.2 | Native American | 2 | 1 | 0 | 1 | 0 | 100.0 | 94 |
| | All Others | 0 | NA | NA | NA | NA | NA | NA |
| §2A1.4 | Native Americans | 4 | 3 | 0 | 1 | 0 | 100.0 | 16 |
| | All Others | 1 | 0 | 1 | 0 | 0 | 100.0 | 27 |
| §2A2.2 <i>Assault</i> | Native Americans | 31 | 22 | 2 | 6 | 1 | 90.3 | 37 |
| | All Others | 1 | 1 | 0 | 0 | 0 | 100.0 | 41 |
| §2A3.1 <i>Sex Abuse</i> | Native Americans | 19 | 14 | 2 | 1 | 0 | 94.7 | 97 |
| | All Others | 1 | 1 | 0 | 0 | 0 | 100.0 | 86 |
| §2A3.2 <i>Minority Statutory Rape</i> | Native Americans | 8 | 5 | 0 | 2 | 0 | 75.0 | 14 |
| | All Others | 0 | NA | NA | NA | NA | NA | NA |
| §2A3.4 <i>Sex</i> | Native Americans | 11 | 8 | 0 | 2 | 0 | 90.9 | 21 |
| | All Others | 0 | NA | NA | NA | NA | NA | NA |
| §2B1.1 <i>Theft</i> | Native Americans | 13 | 12 | 0 | 0 | 0 | 15.4 | 0 |
| | All Others | 23 | 20 | 0 | 3 | 0 | 47.8 | 0 |
| §2B2.1 <i>Burglary</i> | Native Americans | 13 | 10 | 0 | 2 | 0 | 100.0 | 15 |
| | All Others | 0 | NA | NA | NA | NA | NA | NA |
| §2B3.1 <i>Possession</i> | Native Americans | 3 | 2 | 0 | 0 | 1 | 100.0 | 30 |
| | All Others | 0 | NA | NA | NA | NA | NA | NA |
| §2D1.1 <i>Drugs</i> | Native Americans | 29 | 23 | 0 | 2 | 2 | 58.6 | 4 |
| | All Others | 49 | 22 | 1 | 6 | 14 | 95.9 | 60 |
| §2F1.1 <i>Fraud</i> | Native Americans | 19 | 19 | 0 | 0 | 0 | 68.4 | 10 |
| | All Others | 23 | 13 | 1 | 6 | 0 | 59.1 | 3 |
| §2K2.1 <i>Fraud</i> | Native Americans | 2 | 2 | 0 | 0 | 0 | 100.0 | 66 |
| | All Others | 9 | 6 | 0 | 1 | 0 | 88.9 | 41 |
| 1 <i>alter smug.</i> | Native Americans | 0 | NA | NA | NA | NA | NA | NA |
| | All Others | 2 | 0 | 2 | 0 | 0 | 100.0 | 12 |

Offense types and ethnicity

----- CIRCDIST=South Dakota -----

The FREQ Procedure

Table of OFFTYPE2 by NEWRACE

| OFFTYPE2 | NEWRACE | | | | | Total |
|--------------|---------|-------|----------|-----------------|-------|--------|
| | White | Black | Hispanic | Native American | Other | |
| Murder | 0 | 0 | 0 | 3 | 0 | 3 |
| | 0.00 | 0.00 | 0.00 | 0.79 | 0.00 | 0.79 |
| | 0.00 | 0.00 | 0.00 | 100.00 | 0.00 | |
| | 0.00 | 0.00 | 0.00 | 1.65 | 0.00 | |
| Manslaughter | 1 | 0 | 0 | 5 | 0 | 6 |
| | 0.26 | 0.00 | 0.00 | 1.32 | 0.00 | 1.59 |
| | 16.67 | 0.00 | 0.00 | 83.33 | 0.00 | |
| | 0.99 | 0.00 | 0.00 | 2.75 | 0.00 | |
| Kidnapping | 0 | 0 | 0 | 1 | 0 | 1 |
| | 0.00 | 0.00 | 0.00 | 0.26 | 0.00 | 0.26 |
| | 0.00 | 0.00 | 0.00 | 100.00 | 0.00 | |
| | 0.00 | 0.00 | 0.00 | 0.55 | 0.00 | |
| Sex Abuse | 0 | 0 | 1 | 36 | 0 | 37 |
| | 0.00 | 0.00 | 0.26 | 9.52 | 0.00 | 9.79 |
| | 0.00 | 0.00 | 2.70 | 97.30 | 0.00 | |
| | 0.00 | 0.00 | 1.39 | 19.78 | 0.00 | |
| Assault | 1 | 1 | 2 | 41 | 0 | 45 |
| | 0.26 | 0.26 | 0.53 | 10.85 | 0.00 | 11.90 |
| | 2.22 | 2.22 | 4.44 | 91.11 | 0.00 | |
| | 0.99 | 5.26 | 2.78 | 22.53 | 0.00 | |
| Robbery | 0 | 0 | 0 | 3 | 0 | 3 |
| | 0.00 | 0.00 | 0.00 | 0.79 | 0.00 | 0.79 |
| | 0.00 | 0.00 | 0.00 | 100.00 | 0.00 | |
| | 0.00 | 0.00 | 0.00 | 1.65 | 0.00 | |
| Total | 101 | 19 | 72 | 182 | 4 | 378 |
| | 26.72 | 5.03 | 19.05 | 48.15 | 1.06 | 100.00 |

TOTALS

Continued)

Offense types and ethnicity

----- CIRCDIST=South Dakota -----

The FREQ Procedure

Table of OFFTYPE2 by NEWRACE

| OFFTYPE2 | NEWRACE | | | | | Total |
|------------------|------------------------------|------------------------------|----------------------------|------------------------------|-----------------------------|---------------|
| | White | Black | Hispanic | Native A merican | Other | |
| Drug Trafficking | 26 6.88 30.95 25.74 | 16 4.23 19.05 84.21 | 6 1.59 7.14 8.33 | 35 9.26 41.67 19.23 | 1 0.26 1.19 25.00 | 84 22.22 |
| Drug Comm Fac | 2 0.53 100.00 1.98 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 2 0.53 |
| Drug Simp Poss | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 1 0.26 33.33 1.39 | 2 0.53 66.67 1.10 | 0 0.00 0.00 0.00 | 3 0.79 |
| Firearms | 8 2.12 53.33 7.92 | 0 0.00 0.00 0.00 | 1 0.26 6.67 1.39 | 6 1.59 40.00 3.30 | 0 0.00 0.00 0.00 | 15 3.97 |
| Burglary/B/E | 1 0.26 7.69 0.99 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 12 3.17 92.31 6.59 | 0 0.00 0.00 0.00 | 13 3.44 |
| Auto Theft | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 1 0.26 50.00 0.55 | 1 0.26 50.00 25.00 | 2 0.53 |
| Total | 101 26.72 | 19 5.03 | 72 19.05 | 182 48.15 | 4 1.06 | 378 100.00 |

(Continued)

Offense types and ethnicity

----- CIRCDIST=South Dakota -----

The FREQ Procedure

Table of OFFTYPE2 by NEWRACE

| OFFTYPE2 | NEWRACE | | | | | Total |
|----------------|------------------------------|----------------------------|-------------------------------|-----------------------------|----------------------------|---------------|
| | White | Black | Hispanic | Native American | Other | |
| Frequency | | | | | | |
| Percent | | | | | | |
| Row Pct | | | | | | |
| Col Pct | | | | | | |
| Larceny | 9 2.38 56.25 8.91 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 7 1.85 43.75 3.85 | 0 0.00 0.00 0.00 | 16 4.23 |
| Fraud | 25 6.61 41.67 24.75 | 0 0.00 0.00 0.00 | 16 4.23 26.67 22.22 | 18 4.76 30.00 9.89 | 1 0.26 1.67 25.00 | 60 15.87 |
| Embezzlement | 7 1.85 58.33 6.93 | 1 0.26 8.33 5.26 | 1 0.26 8.33 1.39 | 3 0.79 25.00 1.65 | 0 0.00 0.00 0.00 | 12 3.17 |
| Launder | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 1 0.26 100.00 0.55 | 0 0.00 0.00 0.00 | 1 0.26 |
| Extortn/Racket | 1 0.26 33.33 0.99 | 1 0.26 33.33 5.26 | 1 0.26 33.33 1.39 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 3 0.79 |
| Immigration | 2 0.53 4.55 1.98 | 0 0.00 0.00 0.00 | 41 10.85 93.18 56.94 | 0 0.00 0.00 0.00 | 1 0.26 2.27 25.00 | 44 11.64 |
| Total | 101 26.72 | 19 5.03 | 72 19.05 | 182 48.15 | 4 1.06 | 378 100.00 |

(Continued)

Offense types and ethnicity

----- CIRCDIST=South Dakota -----

The FREQ Procedure

Table of OFFTYPE2 by NEWRACE

| OFFTYPE2 | NEWRACE | | | | | Total |
|-----------------|-------------------------------|---------------------------|----------------------------|----------------------------|---------------------------|---------------|
| | White | Black | Hispanic | Native American | Other | |
| Frequency | | | | | | |
| Percent | | | | | | |
| Row Pct | | | | | | |
| Col Pct | | | | | | |
| Porn/Prost | 1 0.26 50.00 0.99 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 1 0.26 50.00 0.55 | 0 0.00 0.00 0.00 | 2 0.53 |
| Prison Offenses | 1 0.26 50.00 0.99 | 0 0.00 0.00 0.00 | 1 0.26 50.00 1.39 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 2 0.53 |
| Admin Justice | 2 0.53 50.00 1.98 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 2 0.53 50.00 1.10 | 0 0.00 0.00 0.00 | 4 1.06 |
| Env/Fish & Wild | 12 3.17 100.00 11.88 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 0 0.00 0.00 0.00 | 12 3.17 |
| Other | 2 0.53 25.00 1.98 | 0 0.00 0.00 0.00 | 1 0.26 12.50 1.39 | 5 1.32 62.50 2.75 | 0 0.00 0.00 0.00 | 8 2.12 |
| Total | 101 26.72 | 19 5.03 | 72 19.05 | 182 48.15 | 4 1.06 | 378 100.00 |

Frequency Missing = 2



Department of Justice

ADVANCE FOR RELEASE AT 4:30 P.M. EST
SUNDAY, MARCH 18, 2001

BJS
202/307-0784

DIFFERENCES IN RATES OF VIOLENT CRIME EXPERIENCED BY WHITES AND BLACKS NARROW

American Indians Are The Most Victimized By Violence

WASHINGTON, D.C. -- Violent victimization of both blacks and whites has decreased significantly since 1993, the Justice Department's Bureau of Justice Statistics (BJS) announced today in a report analyzing crime statistics from 1993-1998. The study focused on rape, sexual assault, robbery, aggravated assault and simple assault.

During the period studied, victimization rates among whites decreased 29 percent, and victimization of blacks decreased 38 percent, narrowing the differences between the rates of the two groups. Among Hispanic people (who can be of any race) the rate of violent victimization fell 45 percent between 1993 and 1998. Declines in violent victimization rates among American Indians and Asians were not statistically significant.

Violent crime against whites and blacks was committed primarily by members of the victims' own race: Sixty-six percent of white victims and 76 percent of black victims stated the offender was of the same race as the victim. American Indians and Asian victims, however, were most often victimized by an offender of a different race.

American Indians were victims of violent crime at about twice the rate of blacks, whites or Asians during 1998, when they experienced 110 violent victimizations per 1,000 American Indians age 12 and older, compared to 43 victimizations per 1,000 blacks, 38 per 1,000 whites and 22 per 1,000 Asians.

American Indians accounted for about half of 1 percent of the U.S. population but 1.3 percent of all violent crime victims:

| | <u>Percent of population</u> | <u>Percent of violence victims</u> |
|-----------------------|------------------------------|------------------------------------|
| Whites | 84.2% | 82.2% |
| Blacks | 12.1% | 14.7% |
| American Indians | 0.5% | 1.3% |
| Asians/Pac. Islanders | 3.2% | 1.8% |

(MORE)

In addition, American Indians females were victimized by an intimate partner at rates higher than others--23 per 1,000 American Indians females, 11 per 1,000 black females, 8 per 1,000 white females and 2 per 1,000 Asian females between 1993 and 1998. Sixty-six percent of intimate partner violence against black females was reported to the police compared to 52 percent against Asian females, 51 percent against American Indians and 51 percent against white females.

The most often cited reason for not reporting the violence was because it was a "private or personal matter" or the victim "feared reprisal."

The study also showed that blacks were murdered at far higher rates than other U.S. residents. During 1998 there were 23 blacks murdered compared to 4 whites and 3 victims of other races per 100,000 persons of each racial group. On average each year between 1993 and 1998, the homicide rate fell 5 percent for whites, 7 percent for blacks and 8 percent for persons of other races. In 1993, there were 12,435 black homicide victims and 11,278 white victims of homicide; in 1998, there were 7,903 black victims of homicide and 8,359 white victims.

Offenders had a firearm in a higher percentage of crimes against black (18 percent of violence victims) and Asian victims (14 percent), compared to white (8 percent) and American Indian (9 percent) victims.

American Indians (35 percent) and black (29 percent) victims of violence were more likely to report being injured during the crime than were whites (24 percent) and Asians (23 percent).

These data were gathered using BJS' National Crime Victimization Survey (NCVS), which from 1993 to 1998 interviewed approximately 574,000 people 12 years old or older in 293,000 U.S. households. The NCVS has been continuously administered by the Department of Justice since 1979. The Bureau of the Census carries out the interviews of the U.S. population for the Bureau of Justice Statistics. The information on homicide was obtained from the Federal Bureau of Investigation's Supplementary Homicide Reporting program which gathers data from State and local law enforcement agencies across the nation.

The special report, "Violent Victimization and Race, 1993-98" (NCJ-176354), was written by BJS statistician Callie Rennison. Single copies may be obtained from the BJS fax-on-demand system by dialing 301/519-5550, listening to the complete menu and selecting document number 231. Or call the BJS clearinghouse number: 1-800-732-3277. Fax orders for mail delivery to 410/792-4358.

The BJS Internet site is:

<http://www.ojp.usdoj.gov/bjs/>

Additional criminal justice materials can be obtained from the Office of Justice Programs homepage at:

<http://www.ojp.usdoj.gov>

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BJS01046

After hours contact: Stu Smith at 301/983-9354



Bureau of Justice Statistics Special Report

March 2001, NCJ 176354

Violent Victimization and Race, 1993-98

By Callie Rennison, Ph.D.
BJS Statistician

Estimates from the National Crime Victimization Survey (NCVS) indicate that between 1993 and 1998 compared to people of other races American Indians sustained violence at the highest per capita rate (119 victimizations per 1,000 American Indians age 12 or older). This rate of violent victimization is about 2 times that experienced by blacks, 2½ times that sustained by whites, and 4½ times that experienced by Asians.

Between 1993 and 1998 violent victimization rates declined for whites and blacks. Because of a greater decline in black victimization rates during this period, by 1998 black and white overall violent crime rates were similar. Over the same period, apparent changes in the per capita violent victimization rates of American Indians and Asians were not significant.

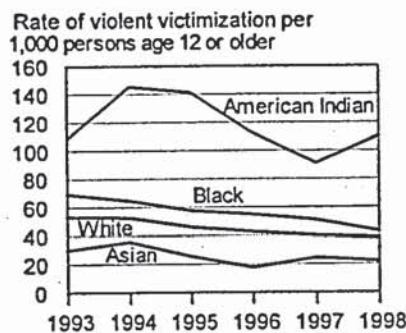
Data

Findings about rape, sexual assault, robbery, and assault come from National Crime Victimization Survey (NCVS) data collected by the Bureau of Justice Statistics (BJS). Findings about homicide come from the Uniform Crime Reporting (UCR) program of the Federal Bureau of Investigation (FBI).

This report presents rates and characteristics of violent victimization of

Highlights

The rates at which black and white persons experienced violent victimization were converging between 1993 and 1998.



- In 1998, per 1,000 persons age 12 or older in each racial group, 110 American Indians, 43 blacks, 38 whites, and 22 Asians were victims of violence.

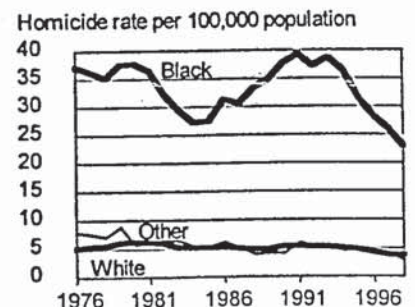
- In each year from 1993 to 1997, black persons were victimized at rates significantly greater than those of whites. By 1998 black and white persons were victimized overall at similar rates.

- The rate of violent victimization of whites fell 29% and of blacks fell 38%, 1993-98. Over the same period no measurable change in the victimization rates of American Indians or Asians occurred.

- From 1993 to 1998 violent crime in which the race of the offender was known was largely intraracial for whites (66%) and blacks (76%). For American Indian and Asian victims, violent crime was primarily interracial.

- From 1993 to 1998 higher percentages of black (36%) and Asian (32%) victims than of white (24%) and American Indian (28%) victims faced an armed offender. Higher percentages of black (18%) and Asian (14%) victims than of American Indian (9%) and white (8%) victims faced an offender with a firearm.

- 48% of the violence against blacks, 42% against whites, 46% against American Indians, and 41% against Asians were reported to the police, 1993-98.



- Blacks were disproportionately represented among homicide victims. In 1998, 4 whites, 23 blacks, and 3 persons of other races (Asians and American Indians together) were murdered per 100,000 persons in each racial group.

- On average each year between 1993 and 1998, homicide rates fell 5% for whites, 7% for blacks, and 8% for persons of other races.

how the data on race and victimization are collected and categorized.) The racial categories are separate from Hispanic ethnicity and include Hispanic and non-Hispanic persons.*

Violent victimization and race, 1993-98

American Indians experienced overall violence, aggravated assault, simple assault, and serious violent crimes at rates higher than those for whites, blacks, and Asians, 1993-98 (table 1 and figure 1). Asians sustained overall violence, aggravated assault, simple assault, and serious violent crimes at per capita rates lower than all other groups during the same period.

On average, American Indians (10.8 robberies per 1,000 persons age 12 or

*For information about Hispanic and non-Hispanic victimization, see *Criminal Victimization 1999, Changes 1998-99, with Trends 1993-99*, August 2000, NCJ 182734.

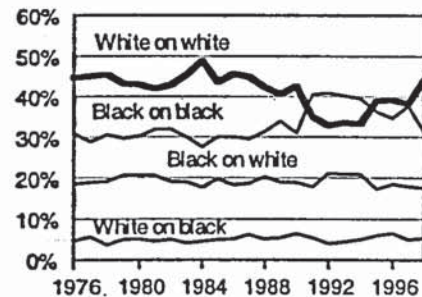
Homicide

Blacks historically have been and continue to be disproportionately represented among homicide victims. In 1998 per 100,000 persons in each racial group, 23 black, 4 white, and 3 persons of other races were murdered in the United States. Blacks were 6 times more likely than whites and 8 times more likely than persons of other races to be murdered during 1998 (*Highlights*, page 1).

Homicides, by race of offender and victim, 1976-98

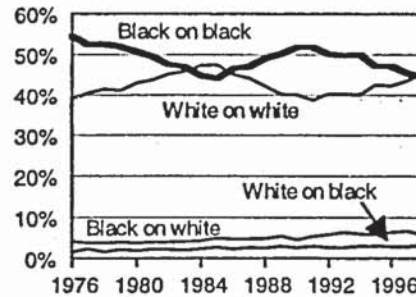
Stranger

Percent



Friend or acquaintance

Percent



Among homicides in which the race of offender is known, most are intraracial. From 1976 to 1998, 86% of white victims were murdered by whites, 94% of black victims were murdered by blacks, and 58% of victims of other races were murdered by an "other race" person. Stranger homicides were more likely to cross racial lines than those that involved friends, acquaintances, or intimates. Three in ten homicides committed by a stranger to the victim were interracial, compared to 1 in 10 when the offender was the victim's friend or acquaintance.

Note: Trend lines for American Indians and Asians are not shown because all values are under 1%. These data, and additional information about the relationship between race and homicide, are available on the BJS website: <http://www.ojp.usdoj.gov/bjs/homicide/race.htm>, and in *Homicide Trends in the United States: 1998 Update*, March 2000, NCJ 179767.

Table 1. Average annual victimizations, by race, 1993-98

| | For persons age 12 or older, average annual — | | | | | | | |
|------------------------|---|-------|-----------------|-------|-----------|-----------|-----------------|---------|
| | Rates per 1,000 | | | | Number | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 45.4 | 56.5 | 118.8 | 25.5 | 8,298,140 | 1,480,970 | 134,460 | 178,880 |
| Rape or sexual assault | 1.8 | 2.2 | 5.8 | 1.2 | 321,410 | 57,230 | 6,550 | 8,150 |
| Robbery | 4.4 | 10.6 | 10.8 | 5.7 | 807,470 | 278,090 | 12,200 | 40,020 |
| Aggravated assault | 9.4 | 14.4 | 28.4 | 5.7 | 1,709,690 | 378,060 | 32,200 | 39,720 |
| Simple assault | 29.9 | 29.3 | 73.8 | 12.9 | 5,459,570 | 767,590 | 83,520 | 90,980 |
| Serious violent crime* | 15.5 | 27.2 | 45.0 | 12.5 | 2,838,570 | 713,380 | 50,940 | 87,900 |

*Serious violent crime includes rape and sexual assault, robbery, and aggravated assault.

older) and blacks (10.6) were victims of robbery at similar rates, 1993-98. These rates were higher than those of whites (4.4) and Asians (5.7), which, in turn, were similar.

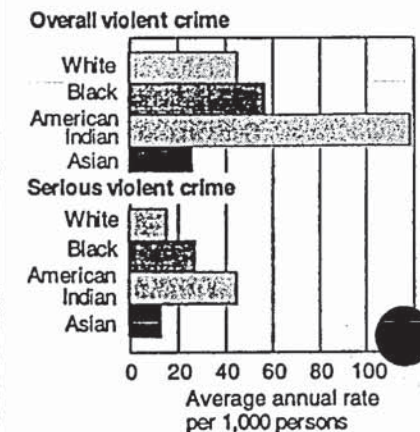
From 1993 to 1998 the average annual rate of rape or sexual assault was somewhat higher for American Indians than that for blacks, and significantly

higher for American Indians than that for Asians and whites. The rates for rape or sexual assault for Asians and whites were similar during this period.

Characteristics of violent crime victims, 1993-98

Victimization research demonstrates a relationship between demographic attributes and the rate of victimization. (See box on page 10.) When examining victimization differences by race, one should account for factors such as gender, age, ethnicity, income, marital status and location of residence. The patterns that emerge suggest that each of these characteristics taken alone does not account entirely for the violent victimization rates among racial groups. However, combining several of these characteristics may account for some of these differences in rates between racial groups.

Average annual victimization rates of overall and serious violent crime, by race, 1993-98



See table 1 for rates.

Figure 1

Table 2. Average annual violent victimization rates, by gender, 1993-98

| Type of crime | Average annual victimization rates (per 1,000 persons age 12 or older) | | | | | | | |
|------------------------|--|-------|-----------------|-------|--------|-------|-----------------|-------|
| | Male | | | | Female | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 53.6 | 62.8 | 142.2 | 33.8 | 37.6 | 51.3 | 96.8 | 17.4 |
| Rape or sexual assault | 0.3 | 0.3* | 3.9* | 0.5* | 3.1 | 3.7 | 7.5* | 1.8 |
| Robbery | 5.9 | 14.7 | 13.7 | 9.1 | 3.1 | 7.2 | 8.1 | 2.4 |
| Aggravated assault | 12.7 | 17.9 | 36.3 | 7.5 | 6.2 | 11.5 | 21.1 | 3.8 |
| Simple assault | 34.8 | 29.9 | 88.3 | 16.6 | 25.2 | 28.8 | 60.2 | 9.4 |
| Serious violent crime | 18.9 | 32.9 | 53.9 | 17.1 | 12.4 | 22.5 | 36.7 | 8.0 |

Note: Serious violent crimes include rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

Gender

Among males, without exception, overall victimization rates for each racial group differed significantly from all others. American Indian males were victims of overall violent crime at a rate about twice the rate of blacks, 2½ times the rate of whites, and 4 times the rate of Asians (table 2).

Rates of aggravated assault against males also differed among the races, 1993-98. American Indians were

victims of aggravated assaults at a rate greater than that of blacks, who were victimized at a rate greater than that of whites, who were victimized at a rate greater than that of Asians.

For serious violent crime the same pattern of differences between the races emerged, with one exception: Asian and white males had similar per capita rates, 1993-98.

Among females, American Indians were victims of overall violence and serious violence at per capita rates greater than those of blacks, who were victimized at rates greater than those of whites, and whites were victimized at rates greater than those of Asians.

Apparent differences in rape and sexual assault rates between American Indian, white, and black females were not significant. Asian females had a rate of rape or sexual assault that was slightly lower than the rate for American Indian females and significantly lower than those for white and black females, 1993-98.

Age

Within each age category and with few exceptions, American Indians experienced overall violent crime at the highest rate, Asians at the lowest rate, and blacks and whites at similar rates, 1993-98 (table 3). An exception was among persons ages 12 to 15 for whom apparent differences in victimization rates between American Indians, blacks, and whites were not significant.

Ethnicity

Ethnicity is defined independently of race. Therefore, an individual may be

Table 3. Annual average violent victimization rates, by age, 1993-98

| | Average annual victimization rates (per 1,000 persons age 12 or older) | | |
|------------------------|--|-----------------------|----------------|
| | Crimes of violence | Serious violent crime | Simple assault |
| Age 12 to 15 | | | |
| White | 108.7 | 30.5 | 78.2 |
| Black | 112.0 | 42.1 | 69.9 |
| American Indian | 141.1 | 41.7 | 99.4 |
| Asian | 55.0 | 21.4 | 33.5 |
| Age 16 to 19 | | | |
| White | 110.8 | 40.4 | 70.4 |
| Black | 109.4 | 60.9 | 48.5 |
| American Indian | 207.9 | 90.3 | 117.6 |
| Asian | 43.3 | 22.7 | 20.6 |
| Age 20 to 24 | | | |
| White | 84.8 | 31.7 | 53.1 |
| Black | 92.4 | 48.2 | 44.3 |
| American Indian | 207.5 | 109 | 98.5 |
| Asian | 40.9 | 22.1 | 18.7 |
| Age 25 to 34 | | | |
| White | 55.9 | 19.8 | 36.1 |
| Black | 60.0 | 28.6 | 31.4 |
| American Indian | 173.5 | 54.1 | 119.4 |
| Asian | 26.2 | 12.6 | 13.7 |
| Age 35 to 49 | | | |
| White | 37.1 | 12.4 | 24.7 |
| Black | 42.5 | 20.6 | 21.9 |
| American Indian | 72.5 | 26.6 | 45.9 |
| Asian | 19.9 | 10.3 | 9.7 |
| Age 50 to 64 | | | |
| White | 16.6 | 5.5 | 11.1 |
| Black | 15.4 | 8.4 | 7.0 |
| American Indian | 41.9 | 10.7* | 31.2 |
| Asian | 7.4 | 2.9* | 4.5* |
| Age 65 or older | | | |
| White | 4.4 | 1.8 | 2.6 |
| Black | 9.4 | 4.6 | 4.8 |
| American Indian | 16.6* | 10.8* | 5.8* |
| Asian | 4.8* | 4.2* | 0.6* |

Note: Serious violent crimes include rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

described as Hispanic or non-Hispanic and of any race examined.

Among Hispanics, American Indians were victims of overall violence at rate greater than rates for whites, blacks, and Asians, 1993-98 (table 4). During the same period Hispanic blacks were victimized at rates greater than rates for Hispanic whites and Asians. Hispanic Asians and whites were victimized at similar rates, 1993-98.

Among non-Hispanics, American Indians were victims of overall violence at rates greater than those for whites, blacks, and Asians, 1993-98. During

American Indians and violent crime

For more information about American Indians and their experiences with violent crime, convictions and correctional supervision, see *American Indians and Crime*, BJS report, February 1999, NCJ 173386. Highlights of this report include:

- Indigenous people in the United States belong to about 550 federally recognized tribes that have a distinct history and culture and often a separate language.
- A higher percentage of American Indian victims of violent crime than victims of other races stated the offender was drinking or on drugs, 1992-96.
- About 4% of the American Indian population age 18 or older were under the care, custody, or control of the criminal justice system on an average day, 1992-96. By comparison, an estimated 2% of white adults, 10% of black adults, and less than half of 1% of Asian adults were under correctional supervision.

Table 4. Average annual violent victimization rates, by ethnicity, 1993-98

| Type of crime | Average annual victimization rates (per 1,000 persons age 12 or older) | | | | | | | |
|------------------------|--|-------|-----------------|-------|----------|-------|-----------------|-------|
| | Non-Hispanic | | | | Hispanic | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 44.8 | 56.0 | 117.2 | 25.1 | 49.2 | 75.5 | 149.3 | 39.9 |
| Rape or sexual assault | 1.8 | 2.2 | 5.6 | 1.2 | 1.6 | 3.1* | 8.7* | 0.0* |
| Robbery | 3.9 | 10.5 | 9.2 | 5.7 | 8.5 | 17.1 | 30.2* | 2.6* |
| Aggravated assault | 9.0 | 14.2 | 28.2 | 5.5 | 12.3 | 21.8 | 35.7* | 16.4* |
| Simple assault | 30.1 | 29.2 | 74.3 | 12.8 | 26.9 | 33.4 | 74.7 | 21.0* |
| Serious violent crime | 14.7 | 26.8 | 43.0 | 12.3 | 22.4 | 42.1 | 74.6 | 18.9* |

Note: Serious violent crime includes rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

the same period blacks were victimized at rates greater than rates for whites and Asians, and Asians were victimized at the lowest rates. The same pattern existed among non-Hispanics for aggravated assault rates and for serious violent crime.

Marital status

Among persons who were married and those who never married, American Indians were victims of overall violence at rates greater than rates for whites and blacks, and whites and blacks were victimized at rates greater than that for Asians, 1993-98 (table 5). American Indians who never married sustained overall violence at about twice the per capita rate of whites and blacks who never married. American Indians who were divorced or separated were victimized at about 3 times the rate of divorced or separated Asians during this time.

Among widowed persons, blacks experienced almost twice the rate of overall violence as whites. Small sample sizes prevent testing the apparent differences across races in the widowed category.

As with overall violent crime, American Indians in most marital categories experienced serious violent crime at rates greater than those for persons in other racial categories. Among those divorced or separated, American Indians were victimized at rates slightly greater than rates for Asians, and significantly greater than rates for blacks and whites. Among married persons for serious violent crime, rates for each racial group differed significantly from all others.

Place of residence

American Indians experienced the highest rates of overall and serious violent crimes regardless of the locality of residence considered (table 6).

Table 5. Average annual violent victimization rates, by marital status, 1993-98

| | Average annual victimization rates (per 1,000 persons age 12 or older) | | |
|--------------------|--|-----------------------|----------------|
| | Crimes of violence | Serious violent crime | Simple assault |
| Never married | | | |
| White | 87.9 | 30.0 | 57.9 |
| Black | 84.6 | 41.0 | 43.7 |
| American Indian | 164.8 | 64.5 | 100.4 |
| Asian | 40.9 | 20.0 | 20.9 |
| Married | | | |
| White | 22.5 | 7.2 | 15.3 |
| Black | 24.7 | 11.1 | 13.5 |
| American Indian | 62.0 | 22.0 | 40.0 |
| Asian | 14.2 | 6.6 | 7.6 |
| Widowed | | | |
| White | 8.2 | 3.4 | 4.8 |
| Black | 13.7 | 7.0 | 6.8 |
| American Indian | 31.2* | 7.7* | 23.6* |
| Asian | 5.6* | 2.8* | 2.9* |
| Divorced/separated | | | |
| White | 75.0 | 28.2 | 46.8 |
| Black | 59.9 | 29.8 | 30.1 |
| American Indian | 172.5 | 65.4 | 107.1 |
| Asian | 54.8 | 32.6 | 22.2 |

Note: Serious violent crime includes rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

American Indians in urban areas sustained overall violence at about 2 times the rate of blacks and whites and 5 times the rates of Asians. American Indians in urban areas experienced serious violence at about 2 times the rate of blacks, 3 times the rate of whites, and 5 times the rate of Asians, 1993-98.

Table 6. Average annual violent victimization rates, by urban, suburban, and rural residence, 1993-98

| Type of crime | Average annual victimization rates (per 1,000 persons age 12 or older) | | | | | | | | | | | |
|------------------------|--|-------|-----------------|-------|----------|-------|-----------------|-------|-------|-------|-----------------|-------|
| | Urban | | | | Suburban | | | | Rural | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 59.1 | 68.0 | 147.4 | 27.1 | 43.8 | 48.5 | 136.1 | 24.4 | 34.0 | 31.1 | 93.0 | 20.5 |
| Rape or sexual assault | 2.4 | 2.7 | 12.1* | 0.8* | 1.6 | 1.4 | 6.5* | 1.5 | 1.4 | 1.9 | 2.3* | 0.0* |
| Robbery | 7.5 | 14.5 | 26.3 | 8.2 | 3.7 | 7.6 | 7.9* | 3.9 | 2.5 | 2.7 | 5.7* | 1.4* |
| Aggravated assault | 12.6 | 17.0 | 33.7 | 6.0 | 8.8 | 12.1 | 35.7 | 5.4 | 7.0 | 9.7 | 20.8 | 5.9* |
| Simple assault | 36.5 | 33.8 | 75.3 | 12.1 | 29.6 | 27.3 | 86.0 | 13.6 | 23.0 | 16.7 | 64.2 | 13.2* |
| Serious violent crime | 22.5 | 34.2 | 72.1 | 15.0 | 14.1 | 21.1 | 50.1 | 10.8 | 10.9 | 14.3 | 28.2 | 7.3* |

Note: Serious violent crime includes rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

Appendix table. Victimization rates, by year and race, 1993-98

| Type of crime | Victimization rates (per 1,000 persons age 12 or older) | | | | | | | | | | | |
|------------------------|---|-------|-----------------|-------|-------|-------|-----------------|-------|-------|-------|-----------------|-------|
| | 1993 | | | | 1994 | | | | 1995 | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 53.5 | 69.3 | 108.6 | 30.1 | 52.8 | 64.8 | 145.3 | 35.7 | 46.1 | 57.6 | 141.1 | 25.5 |
| Rape or sexual assault | 2.5 | 2.7 | 7.6* | 1.3* | 2.1 | 2.8 | 10.4* | 1.4* | 1.7 | 1.6 | 4.3* | 1.0* |
| Robbery | 5.3 | 13.4 | 14.1* | 7.0 | 4.9 | 14.4 | 12.5* | 8.4 | 4.3 | 12.6 | 7.9* | 7.0 |
| Aggravated assault | 11.9 | 19.1 | 28.2 | 6.4 | 11.4 | 17.5 | 39.5 | 8.5 | 8.7 | 12.4 | 31.7 | 5.2 |
| Simple assault | 33.7 | 34.3 | 58.8 | 15.4 | 34.4 | 30.2 | 82.9 | 17.4 | 31.3 | 31.1 | 97.1 | 12.3 |
| Serious violent crime | 19.8 | 35.1 | 49.8 | 14.7 | 18.4 | 34.6 | 62.3 | 18.3 | 14.8 | 26.6 | 44.0 | 13.2 |
| | 1996 | | | | 1997 | | | | 1998 | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 42.8 | 55.0 | 112.6 | 17.5 | 39.9 | 50.9 | 91.2 | 24.3 | 38.1 | 42.8 | 110.4 | 22.0 |
| Rape or sexual assault | 1.4 | 2.2 | 7.4* | 1.4* | 1.6 | 1.4 | 4.4* | 0.4* | 1.4 | 2.5 | 0.0* | 1.5* |
| Robbery | 4.4 | 10.8 | 20.4* | 4.4 | 3.9 | 7.9 | 8.8* | 3.2* | 3.7 | 5.1 | 0.0* | 5.0 |
| Aggravated assault | 8.9 | 14.2 | 26.1 | 3.8 | 8.3 | 12.7 | 19.6* | 5.8 | 7.2 | 11.1 | 24.2* | 4.7 |
| Simple assault | 28.2 | 27.7 | 58.7 | 7.9 | 26.2 | 28.9 | 58.4 | 14.8 | 25.9 | 24.1 | 86.2 | 11.0 |
| Serious violent crime | 14.6 | 27.2 | 53.9 | 9.6 | 13.7 | 22.0 | 32.8 | 9.4 | 12.2 | 18.7 | 24.2 | 11.2 |

Note: Serious violent crimes include rape and sexual assault, robbery, and aggravated assault.
*Based on 10 or fewer sample cases.

Survey methodology

This Special Report presents data on rape, sexual assault, robbery, aggravated assault, and simple assault from the National Crime Victimization Survey (NCVS), and data on homicide from the FBI's Uniform Crime Reporting Program. The NCVS gathers data on crimes against persons age 12 or older, reported and not reported to the police, from a nationally representative sample of U.S. households. The NCVS provides information about victims (age, gender, race, ethnicity, marital status, income, and educational level), offenders (gender, race, approximate age, and victim-offender relations) and the nature of the crime (time and place of occurrence, use of weapons, nature of injury, and economic consequences).

Between 1993 and 1998 approximately 293,400 households and 574,000 individuals age 12 or older were interviewed. For the NCVS data presented, response rates varied between 93% and 96% of eligible households and between 89% and 92% of eligible individuals.

In some instances the sample size used to generate an estimate is small. For instance the sample of Asian males experiencing intimate partner violence was fewer than ten for every year from 1993 through 1998. While the estimate is reliable it is also likely associated with a relatively large

confidence interval and should be viewed with caution.

Testing trends and annual differences in violent victimization

When a statement is made describing the increase or decrease of a linear trend, it was tested using a linear trend test. This test compares the slope of the trend to a horizontal line that has a slope of zero, determining whether the slope generated from a change in an estimate differs from a flat trend.

The linear trend test was conducted as a regression equation with an independent variable of time and a dependent variable of the victimization rate. A regression coefficient (b) and its corresponding standard error (σ) are computed, and a t -statistic — the ratio b/σ — is calculated. If the t -statistic is greater than 1.96 for a two-tailed test (or greater than 1.645 for a one-tailed test), the slope is considered significantly different from zero. If the t -statistic is greater than 1.645 for a two-tailed test (or 1.28 for a one-tailed test), the slope is considered slightly different from zero. If the t -statistics are less than the critical values, the analyst must conclude that the change in the estimate did not differ significantly from zero and was not statistically significant.

Standard error computations

Comparisons of percentages and rates made in this report were tested to determine if observed differences were statistically significant. Differences described as higher, lower, or different passed a hypothesis test at the .05 level of statistical significance (95% confidence level). The tested difference was greater than twice the standard error of that difference. For comparisons that were statistically significant at the 0.10 level (90% confidence level), "somewhat," "slightly," or "marginally" is used to note the nature of the difference.

Caution is required when comparing estimates not explicitly discussed in this Special Report. What may appear to be large differences may not test as statistically significant at the 95% or the 90% confidence level. Significance testing calculations were conducted at the Bureau of Justice Statistics using statistical programs developed specifically for the NCVS by the U.S. Bureau of the Census. These programs take into consideration many aspects of the complex NCVS sample design when calculating generalized variance estimates.

Definitions

In the NCVS the household respondent identifies the race of each household member by choosing from a flashcard. These categories and their corresponding race defined in this report follow:

| Flashcard category | Report category |
|--|-----------------|
| White | White |
| Black | Black |
| American Indian | American Indian |
| Aleut | American Indian |
| Eskimo | American Indian |
| Asian (Japanese, Chinese, Korean, Asian Indian, Vietnamese, and other Asian) | Asian |
| Pacific Islander (Filipino, Hawaiian, Guamanian, Samoan, and other Asian) | Asian |

Violent acts covered in this report include murder, rape, sexual assault, robbery, aggravated assault, and simple assault. Overall violent crime is a combination of each type of crime. Serious violent crime includes all types except simple assault: rape/sexual assault, robbery, and aggravated assault. Note that for most tables homicide was not included in the analyses because data are not available for Asians and American Indians. Definitions are as follows:

Murder and nonnegligent manslaughter are defined as the willful killing of one human being by another.

Rape is forced sexual intercourse, including both psychological coercion and physical force. Forced sexual intercourse means vaginal, anal, or oral penetration by the offender(s). This category includes incidents where the penetration is from a foreign object such as a bottle. Also included are attempted rapes, male and female victims, and heterosexual and homosexual rape.

Sexual assault covers a wide range of victimizations distinct from rape or attempted rape. These crimes include completed or attempted attacks generally involving unwanted sexual contact between the victim and offender. Sexual assaults may or may not involve force and include such things as grabbing or fondling. Sexual assault also includes verbal threats.

Robbery is a completed or attempted theft directly from a person, of property or cash by force or threat of force, with or without a weapons, and with or without an injury.

Aggravated assault is defined as a completed or attempted attack with a weapon, regardless of whether or not an injury occurred, and an attack without a weapon in which the victim is seriously injured.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is acting director.

BJS Special Reports address a specific topic in depth from one or more datasets that cover many topics.

Callie Rennison, Ph.D., wrote this report under the supervision of Michael Rand. Cathy Maston provided statistical assistance and verification. Tom Hester and Ellen Goldberg edited the report. Jayne Robinson prepared the report for publication.

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Simple assault is an attack without a weapon resulting either in no injury, minor injury (such as bruises, black eyes, cuts, scratches or swelling) or an undetermined injury requiring less than 2 days of hospitalization. Simple assaults also include attempted assaults without a weapon.

Intimate partner violence, 1993-98

Between 1993 and 1998, an average of 1.1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends annually. An average of 87% of this violence, termed intimate partner violence, was committed against women.

Between 1993 and 1998 intimate partner victimization of women differed by race. American Indians were victimized by an intimate at rates higher than those for all other females — 23 American Indians per 1,000 persons age 12 or older compared to 11 blacks, 8 whites, and 2 Asians. Black females were victimized at higher rates than white and Asian females, and white females experienced violence by an intimate at rates higher than Asians.

Average annual rate of intimate partner violence per 1,000 persons age 12 or older, 1993-98

| | Female | Male |
|-----------------|--------|------|
| White | 8.1 | 1.3 |
| Black | 11.2 | 2.0 |
| American Indian | 23.2 | 4.2* |
| Asian | 1.9 | 0.3* |

*Based on 10 or fewer sample cases.

Trends in intimate partner violence

The rate of intimate partner violence against white females fell significantly between 1993 and 1998, from 10 victimizations to 8 victimizations per 1,000 women.

The apparent decline in the rate of intimate partner violence against black females as measured by comparing the 1993 and 1998 rates was not significant. Insufficient sample sizes for American Indian and Asian females prevented examination of trends.

Female victims of intimate partner violence, by year, 1993-98

| | Female victims of intimate partner violence | | | |
|-------|---|------|---------|------|
| | White | | Black | |
| | Number | Rate | Number | Rate |
| Total | 4,560,740 | 8.1 | 961,380 | 11.2 |
| 1993 | 895,090 | 9.8 | 162,600 | 11.9 |
| 1994 | 813,670 | 8.8 | 174,470 | 12.5 |
| 1995 | 731,850 | 7.8 | 188,510 | 13.3 |
| 1996 | 689,170 | 7.3 | 177,530 | 12.3 |
| 1997 | 695,930 | 7.4 | 129,610 | 8.9 |
| 1998 | 735,040 | 7.7 | 128,660 | 8.7 |

Note: Multiple-offender victimizations are classified by the most intimate relationship between the victim and one of the offenders. There were too few cases of Asian and American Indian females to provide reliable estimates for each year.

Among white males there was no discernible trend in the occurrence of intimate partner violence. The rate in 1998 was similar to the 1993 rate. There were too few sample cases for black, American Indian, and Asian males for estimation of changes in rates by year.

Reporting of intimate partner violence

Intimate partner violence is reported to police in lower percentages than violent crime in general. The percentage of intimate partner violence against females reported to police did not differ by the race of the victim, 1993-98. The only exception was that 66% of violence by intimates against black females was reported to police compared to 51% of violence against white females. The percentage of violence against white, Asian (52%), and American Indian (51%) females reported between 1993 and 1998 was similar (not shown in table).

Reasons for *not* reporting the victimization were similar across the victims' racial

White male victims of intimate partner violence, by year, 1993-98

| | Number | Rate |
|-------|---------|------|
| Total | 713,466 | 1.3 |
| 1993 | 136,380 | 1.6 |
| 1994 | 146,610 | 1.7 |
| 1995 | 104,050 | 1.2 |
| 1996 | 96,940 | 1.1 |
| 1997 | 87,370 | 1.0 |
| 1998 | 142,120 | 1.6 |

Note: Multiple-offender victimizations are classified by the most intimate relationship between the victim and one of the offenders. There were too few cases of black, Asian, and American Indian males to provide reliable estimates for each year.

groups, 1993-98. Violence by intimates against females was not reported to police most commonly because the victim stated it was a "private or personal matter." Other commonly stated reasons this violence was not reported to the police was because the victim "feared reprisal" and the victim wished to "protect the offender."

For additional information see *Intimate Partner Violence*, BJS Special Report, May 2000, NCJ 178247, and *Violence by Intimates*, BJS Factbook, March 1998, NCJ 167237, available on the BJS website.

Reasons for not reporting intimate partner violence to the police, females, 1993-98

| | Female victims of intimate partner violence | | | |
|----------------------------|---|---------|----------------|---------|
| | White | | Black | |
| | Average annual | Percent | Average annual | Percent |
| Private or personal matter | 124,210 | 34% | 19,400 | 36% |
| Afraid of reprisal | 70,760 | 19 | 10,390 | 19 |
| Protect offender | 45,630 | 12 | 6,830 | 13 |
| Small/no loss | 27,500 | 7 | 1,380* | 3* |
| Police will not bother | 21,570 | 6 | 2,850* | 5* |
| Other reason given | 147,850 | 40 | 26,290 | 49 |

Note: Percentages may not total to 100% because respondents could suggest more than one reason. "Other reason given" include responses such as "police ineffectiveness or biased," "not clear a crime occurred," "inconvenient," and "reported to another official." There were too few cases of Asians and American Indians to provide reliable individual year estimates.

*Based on 10 or fewer sample cases.

Victim-offender characteristics, 1993-98

Victim-offender relationship and gender

Males were victimized by strangers at significantly higher percentages than by nonstrangers regardless of race, 1993-98 (table 13). When the offender was someone known to the male victim, it was most often a friend or acquaintance.

American Indian males were more likely to identify the offender as an "other relative" than were males of other races. "Other relatives" can include a parent, stepparent, child, stepchild, brother, sister, or other related person. Asian males were victimized by a stranger at higher percentages, and by a nonstranger at lower percentages, than other males.

Victim-offender relationships among females differed somewhat across racial categories. Black, white, and American Indian females were more

likely to be victimized by someone they knew, 1993-98. Asian females were equally likely to be victimized by a stranger or a nonstranger during this time.

Among females, Asians were less likely than other races to be victimized by a nonstranger. Asians were more likely than whites and American Indians, and somewhat more likely than blacks, to be victimized by a stranger. Asian females were less likely than other females to be victimized by an intimate. American Indian females were slightly more likely to say that the offender was a friend or acquaintance than were white or black females.

Victim and offender race

Violent crime was primarily intraracial for black and white victims (table 14). Sixty-six percent of white victims and 76% of black victims were victimized by an offender of the same race, 1993-98 (when the race of the offender was known).

Violent crime was primarily interracial for American Indian and Asian victims. Fifty-eight percent of the American Indian victims and 35% of the Asian victims of violence stated the offender was white.

Offenders were identified as black by 10% of the American Indian and 26% of the Asian victims. A quarter of American Indian and about a third of Asian victims were victimized by an offender described as "other races." Because the NCVS collects data for offenders whom victims describe as white, black, and "other race," it is not possible to report on American Indian or Asian offenders separately.

Table 13. Victim-offender relationship, by gender and race of victim, 1993-98

| Relationship with offender | Percent of victims of violence | | | |
|--|--------------------------------|---------|-----------------|---------|
| | White | Black | American Indian | Asian |
| Male | | | | |
| Nonstranger | 40% | 41% | 42% | 27% |
| Intimate | 2 | 3 | 3 | 1* |
| Other relative | 3 | 3 | 9 | 1* |
| Friend/acquaintance | 34 | 35 | 30 | 25 |
| Stranger | 58 | 57 | 58 | 71 |
| Relationship unknown | 2 | 2 | 1* | 2* |
| Female | | | | |
| Nonstranger | 66% | 65% | 76% | 53% |
| Intimate | 22 | 22 | 24 | 11 |
| Other relative | 7 | 7 | 5* | 6* |
| Friend/acquaintance | 37 | 36 | 47 | 36 |
| Stranger | 33 | 34 | 24 | 45 |
| Relationship unknown | 1 | 1 | 0* | 2* |
| Average annual number of violent victimizations | | | | |
| Males | 4,779,650 | 749,550 | 77,820 | 116,540 |
| Females | 3,518,490 | 731,420 | 56,640 | 62,340 |

Note: Percentages may not total to 100% because of rounding. Multiple-offender victimizations are classified by the most intimate relationship between the victim and one of the offenders.
*Based on 10 or fewer sample cases.

Table 14. Race of victim, by perceived race of offender, 1993-98

| Race of offender | Percent of victims of violence | | | |
|--------------------------------------|--------------------------------|-----------|-----------------|---------|
| | White | Black | American Indian | Asian |
| Total | 100% | 100% | 100% | 100% |
| White | 66 | 12 | 58 | 35 |
| Black | 17 | 76 | 10 | 26 |
| Other | 9 | 6 | 25 | 30 |
| Mixed races | 3 | 3 | 4 | 3 |
| Unknown | 4 | 4 | 2 | 6 |
| Average annual victimizations | | | | |
| | 8,298,140 | 1,480,970 | 134,460 | 178,880 |

Note: Percentages may not total to 100% because of rounding.

Further reading or other data

This report and others like it, as well as the original data, are available on the BJS website, <http://www.ojp.usdoj.gov>.³ Some BJS reports that include aspects of race in their discussions of crime include *Homicide Trends in the United States: 1998 Update*, BJS Crime Data Brief, March 2000, NCJ 179767; *American Indians and Crime*, BJS report, February 1999, NCJ 173386; *Criminal Victimization 1999, Changes 1998-99 with Trends 1993-99*, BJS Bulletin, August 2000, NCJ 182734; and *Intimate Partner Violence*, BJS Special Report, May 2000, NCJ 178247.

See also Michael Hindelang, Michael Gottfredson, and James Garofalo, *Victims of Personal Crimes: An Empirical Foundation for a Theory of Personal Victimization*, Cambridge, MA: Ballinger, 1978.

Household income

Generally, when considered by income levels, American Indians experienced overall violence at the highest rate, Asians experienced overall violence at the lowest rate, and blacks and whites experienced overall violence at similar rates, 1993-98 (table 7). Exceptions include those earning between \$15,000 and \$24,999 and over \$50,000 annually: blacks and American Indians experienced overall violence at similar rates. Expressed as rates per 1,000 persons, blacks were victimized more

than whites among those earning from \$7,500 to \$34,999 annually.

Fewer racial differences emerge for serious violent crime. In general, blacks and American Indians experienced serious violent crime at similar rates, and their rates were higher than rates for whites and Asians.

Owned versus rented residence

Within the "owned housing" group, American Indians sustained violence at a rate about twice the per capita rates for blacks and whites, and 3½ times

the rate for Asians (table 8). Blacks were victimized at rates higher than those for whites, and whites were victimized overall at rates greater than those for Asians.

Within the "rented housing" group, American Indians sustained violence at about twice the rate for whites and blacks, and 5½ times the rate for Asians. While there was no measurable difference between the rate of black and white overall victimization, both groups were victimized at rates greater than that for Asians, 1993-98.

Table 7. Average annual violent victimization rates, by annual household income, 1993-98

| Annual household income and race | Average annual victimization rates (per 1,000 persons age 12 or older) | | |
|----------------------------------|--|-----------------------|----------------|
| | Crimes of violence | Serious violent crime | Simple assault |
| Less than \$7,500 | | | |
| White | 82.5 | 33.1 | 49.4 |
| Black | 75.6 | 40.8 | 34.7 |
| American Indian | 169.2 | 71.6 | 97.6 |
| Asian | 32.9 | 17.6 | 15.3 |
| \$7,500-\$14,999 | | | |
| White | 54.1 | 20.6 | 33.6 |
| Black | 64.6 | 31.0 | 33.6 |
| American Indian | 172.9 | 76.7 | 96.2 |
| Asian | 33.3 | 22.4 | 10.9 |
| \$15,000-\$24,999 | | | |
| White | 47.3 | 17.5 | 29.8 |
| Black | 60.0 | 29.4 | 30.6 |
| American Indian | 75.5 | 24.0 | 51.5 |
| Asian | 24.9 | 13.9 | 11.1 |
| \$25,000-\$34,999 | | | |
| White | 47.5 | 15.8 | 31.7 |
| Black | 52.5 | 20.6 | 31.9 |
| American Indian | 110.7 | 41.3 | 59.4 |
| Asian | 28.8 | 12.9 | 15.9 |
| \$35,000-\$49,999 | | | |
| White | 44.4 | 14.1 | 30.3 |
| Black | 46.0 | 19.4 | 26.6 |
| American Indian | 121.2 | 34.4 | 86.8 |
| Asian | 18.9 | 9.1 | 9.8 |
| \$50,000-\$74,999 | | | |
| White | 42.5 | 12.5 | 29.9 |
| Black | 43.8 | 19.1 | 24.7 |
| American Indian | 50.8* | 27.0* | 23.8* |
| Asian | 23.5 | 10.7 | 12.9 |
| \$75,000 or more | | | |
| White | 35.4 | 10.4 | 25.0 |
| Black | 59.1 | 20.7 | 38.4 |
| American Indian | 47.2* | 24.2* | 23.0* |
| Asian | 19.7 | 6.7 | 13.0 |

Note: Serious violent crimes include rape and sexual assault, robbery, and aggravated assault.

*Based on 10 or fewer sample cases.

Table 8. Average annual violent victimization rates, by home ownership, 1993-98

| Type of crime | Average annual victimization rates (per 1,000 persons age 12 or older) | | | | | | | |
|------------------------|--|-------|-----------------|-------|--------|-------|-----------------|-------|
| | Owned | | | | Rented | | | |
| | White | Black | American Indian | Asian | White | Black | American Indian | Asian |
| Crimes of violence | 34.3 | 41.6 | 79.5 | 22.2 | 74.4 | 71.7 | 163.5 | 29.7 |
| Rape or sexual assault | 1.0 | 1.0 | 2.0* | 0.9* | 3.6 | 3.4 | 10.1 | 1.5 |
| Robbery | 2.9 | 7.9 | 5.1 | 4.6 | 8.4 | 13.4 | 17.2 | 7.1 |
| Aggravated assault | 6.8 | 10.8 | 14.9 | 4.5 | 16.0 | 18.1 | 43.8 | 7.1 |
| Simple assault | 23.5 | 21.9 | 57.5 | 12.1 | 46.4 | 36.8 | 92.3 | 14.0 |
| Serious violent crime | 10.7 | 19.7 | 22.0 | 10.0 | 28.0 | 34.8 | 71.1 | 15.7 |

Note: Serious violent crimes include rape and sexual assault, robbery, and aggravated assault.

*Based on 10 or fewer sample cases.

Victimization trends, 1993-98

The rate of violent victimization against whites fell 29%, and that of blacks fell 38%, 1993-98. Over the same period apparent changes in the victimization rates of American Indians and Asians were not significant (figures 2 and 3 and appendix table).

For whites, in addition to a decline in rates of overall violence, rates of specific types of violence decreased 1993-98: a 44% decline in rape and sexual assault rates, a 39% decline in aggravated assault rates, and a 30% decline in robbery rates.

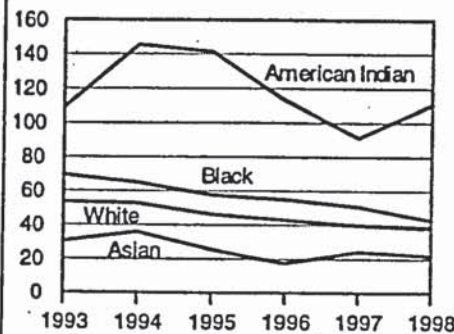
For blacks, the rate of all types of violence except rape and sexual assault fell 1993-98: a 62% decrease in robbery rates, a 42% decline in aggravated assault rates, and 30% decline in simple assault rates.

The rate at which American Indians sustained overall violence did not change significantly between 1993 and 1998; however, the rate at which American Indians experienced serious violent crime declined slightly, 1993-98. Declines in rates of overall and serious violent crime against Asians between 1993 and 1998 were not significant. Because of a lack of sample cases, trends of rates for specific types of crime against Asians and American Indians were not examined.

The rate at which non-Hispanic whites, non-Hispanic blacks and Hispanics (regardless of race) experienced overall and serious violence declined between 1993 and 1998 (figures 4 and 5). Non-Hispanic whites experienced violent victimization at rates 27% lower in 1998 than in 1993. Among non-Hispanic blacks violent victimization rates fell 38% from 1993 to 1998, and among Hispanics, 45%.

Overall violent crime rates, by victim race, 1993-98

Rate per 1,000 persons age 12 or older

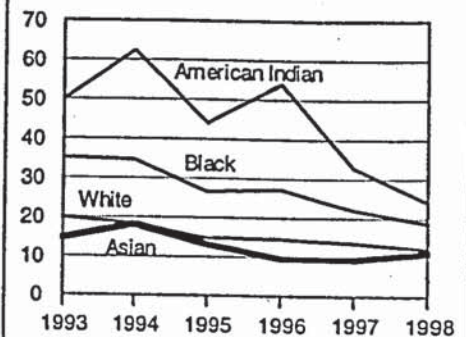


See appendix table on page 11 for rates.

Figure 2

Serious violent crime rates, by victim race, 1993-98

Rate per 1,000 persons age 12 or older

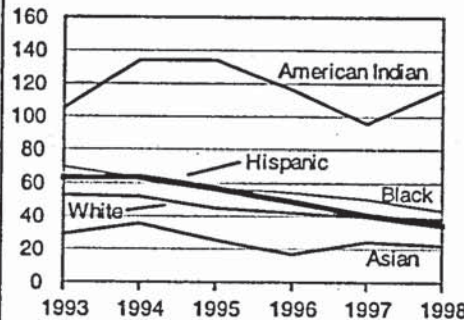


See appendix table on page 11 for rates.

Figure 3

Overall violent crime rates, by race and Hispanic origin, 1993-98

Rate per 1,000 persons age 12 or older

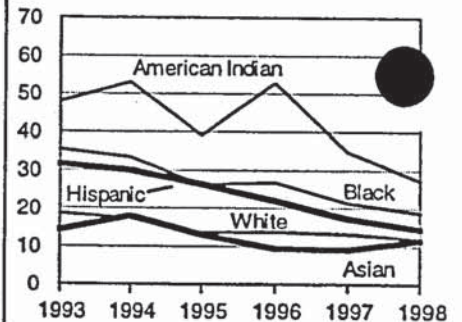


Note: White, black, American Indian, and Asian categories are non-Hispanic. The Hispanic category includes all races.

Figure 4

Serious violent crime rates, by race and Hispanic origin, 1993-98

Rate per 1,000 persons age 12 or older



Note: White, black, American Indian, and Asian categories are non-Hispanic. The Hispanic category includes all races.

Figure 5

Declines in victimization rates were more pronounced for serious violent crime than for violent crime overall. Hispanics experienced serious violent crimes at rates 54% lower in 1998 than in 1993. Serious violent victimization rates were 36% lower for white

non-Hispanics and 47% lower for black non-Hispanics during this time.

For non-Hispanic American Indians and Asians there were no measurable changes in overall and serious violent victimization rates from 1993 to 1998.

| Year | Rates per 1,000 persons | | | | | | | | | |
|------|-------------------------|-----------------------|--------------------|-----------------------|--------------------|-----------------------|------------------------------|-----------------------|--------------------|-----------------------|
| | Hispanic | | Non-Hispanic white | | Non-Hispanic black | | Non-Hispanic American Indian | | Non-Hispanic Asian | |
| | Violent crime | Serious violent crime | Violent crime | Serious violent crime | Violent crime | Serious violent crime | Violent crime | Serious violent crime | Violent crime | Serious violent crime |
| 1993 | 62.8 | 31.5 | 52.5 | 18.5 | 69.5 | 35.4 | 104.7 | 48.0 | 28.8 | |
| 1994 | 63.3 | 30.0 | 51.8 | 17.3 | 63.2 | 33.3 | 134.3 | 53.1 | 35.4 | |
| 1995 | 56.8 | 26.3 | 44.8 | 13.5 | 57.2 | 26.1 | 134.1 | 39.0 | 25.3 | |
| 1996 | 48.7 | 22.0 | 41.9 | 13.8 | 54.0 | 26.8 | 116.2 | 52.8 | 16.8 | 9.4 |
| 1997 | 40.5 | 17.3 | 39.5 | 13.1 | 50.2 | 21.4 | 95.7 | 34.7 | 24.3 | 9.1 |
| 1998 | 34.8 | 14.5 | 38.2 | 11.9 | 43.1 | 18.8 | 116.1 | 27.3 | 22.1 | 11.6 |

Table 9. Location and time of violent victimization, by race, 1993-98

| Location of occurrence | Percent of victims of violence | | | |
|--------------------------------------|--------------------------------|------------------|-----------------|----------------|
| | White | Black | American Indian | Asian |
| Victim's home | 14% | 18% | 15% | 11% |
| Near victim's home | 11 | 14 | 12 | 10 |
| Friend/neighbor's home | 9 | 10 | 14 | 5 |
| Friend/neighbor's home | 14 | 8 | 14 | 17 |
| Parking lot or garage | 8 | 6 | 7 | 11 |
| School | 14 | 11 | 6 | 12 |
| Open area | 20 | 26 | 23 | 27 |
| Other | 10 | 7 | 9 | 8 |
| Time of occurrence | | | | |
| Day (6 a.m. to 6 p.m.) | 51% | 51% | 41% | 52% |
| Night (6 p.m. To 6 a.m.) | 44 | 44 | 52 | 43 |
| Don't know | 5 | 5 | 7 | 5 |
| Average annual victimizations | 8,298,140 | 1,480,970 | 134,460 | 178,880 |

Characteristics of the violent crime event, 1993-98

Time and location

The largest percentage of violent crime occurred in open areas for each racial group (table 9). Between 1993 and 1998, 27% of Asian, 26% of black, 23% of American Indian, and 20% of white victims were victimized in an open area.

Blacks were victimized at their homes in percentages similar to American Indians, and higher than whites and Asians. Blacks were victimized in commercial locations in lower percentages than other racial groups.

Whites were victimized in school in higher percentages (14%) than blacks and American Indians (11% and 6%) between 1993-98. American Indians were victimized in schools in percentages lower than all other groups.

Whites, blacks, and Asians were victimized during the day in similar percentages. These percentages are greater than the percentage of American Indians victimized during the day. Fifty-two percent of American Indians were victimized at night. Slightly more than 4 in 10 whites (44%), blacks (44%), and Asians (43%) were victimized at night between 1993-98.

Table 10. Presence of weapons during violent crime, by race of victim, 1993-98

| | Percent of victims of violence | | | |
|--------------------------------------|--------------------------------|------------------|-----------------|----------------|
| | White | Black | American Indian | Asian |
| No weapon | 68% | 54% | 65% | 58% |
| Weapon | 24 | 36 | 28 | 32 |
| Gun | 8 | 18 | 9 | 14 |
| Knife | 6 | 8 | 6 | 9 |
| Other | 9 | 9 | 12 | 8 |
| Type not ascertained | 1 | 1 | 1* | 1* |
| Don't know | 8 | 10 | 8 | 10 |
| Average annual victimizations | 8,298,140 | 1,480,970 | 134,460 | 178,880 |

*Based on 10 or fewer sample cases.

Presence of weapons

All violent crime victims were more likely to face an unarmed than an armed offender, 1993-98 (table 10). Black victims (36%) faced an armed offender in percentages similar to those for Asians (32%), and in percentages higher than those for white (24%) and American Indian (28%) victims.

Black and Asian victims were more likely to face an offender with a firearm than were white and American Indian

victims. During this time, 18% of black victims, 14% of Asian victims, 9% of American Indian victims, and 8% of white victims faced an offender with a firearm.

Injuries and medical treatment

Most victims of violent crime were not injured, 1993-98 (table 11). Seventy-seven percent of Asian, 76% of white, 71% of black, and 65% of American Indian victims were uninjured as a result of violence that they sustained.

Table 11. Injuries and treatment as a result of violence, by race of victim, 1993-98

| | Percent of victims of violence | | | |
|--|--------------------------------|------------------|-----------------|----------------|
| | White | Black | American Indian | Asian |
| Not injured | 76% | 71% | 65% | 77% |
| Injured | 24% | 29% | 35% | 23% |
| Serious injury | 3 | 6 | 7 | 3 |
| Gunshot wound | 0* | 1 | 0* | 0* |
| Knife wound | 1 | 2 | 2* | 0* |
| Broken bones | 1 | 1 | 2* | 1 |
| Knocked unconscious | 1 | 1 | 2* | 0* |
| Internal injuries | 0* | 1 | 1* | 1* |
| Rape or sexual assault without additional injury | 1 | 1 | 1* | 2* |
| Minor injuries only | 20 | 22 | 27 | 18 |
| Injured | 100% | 100% | 100% | 100% |
| Injured, not treated | 59 | 45 | 43 | 55 |
| Injured, treated | 41 | 54 | 57 | 45 |
| At scene or home | 17 | 21 | 26 | 19 |
| Doctor's office or clinic | 6 | 6 | 3* | 5* |
| Hospital | 17 | 26 | 27 | 21 |
| Not admitted | 4 | 6 | 4* | 3* |
| Emergency, not admitted | 11 | 15 | 18 | 16 |
| Emergency, admitted | 2 | 4 | 5* | 2* |
| Other locale | 2 | 1* | 1* | 0* |
| Average annual victimizations | 8,298,140 | 1,480,970 | 134,460 | 178,880 |
| Average annual not injured | 6,273,920 | 1,057,580 | 87,310 | 137,200 |
| Average annual injured | 2,024,220 | 423,390 | 47,150 | 41,680 |

*Based on 10 or fewer sample cases.

Larger percentages of American Indians and blacks (35% and 29%) were injured from violent crime than were whites and Asians (24% and 23%), 1993-98.

American Indians were seriously injured in percentages similar to blacks, slightly higher than those of Asians, and significantly higher than those of whites. Serious injuries include gunshot wounds, knife wounds, rape, internal injuries, broken bones, and being knocked unconscious.

A higher percentage of American Indians received minor injuries than whites and Asians. Blacks sustained minor injuries in slightly higher percentages than whites, 1993-98. Minor injuries include bruises, cuts, scratches, black eyes, swelling, and chipped teeth.

Among injured victims, whites and Asians were less likely to receive

treatment than were blacks and American Indians.

Reporting victimizations to the police

For blacks and whites between 1993 and 1998, violence against females is reported to the police in greater percentages than violence against males. There was no difference in the percentage of violence reported to the police based on the victim's gender for American Indians and Asians.

Among male victims, violence was reported in similar percentages across racial categories. Among female victims, violence against blacks (53%) and American Indians (52%) was reported to police in similar percentages. The percentage of violence against black females reported to the police was higher than violence against whites (45%) and Asians (41%). The percentage of violence against white

and Asian females reported to the police was similar.

The reporting of the victimization of whites has increased significantly from 40% to 45% between 1993 and 1998, as determined by a linear trend test (figure 6). Apparent changes, 1993 to 1998, in percentage of victimizations reported to police were not statistically significant for other racial categories.

Victims' race and the reasons for not reporting a victimization to the police were unrelated, 1993-98. The primary reason given for not reporting a victimization to police was that the incident was a "private or personal matter," that it was minor involving "no loss," or that it was "reported to another official" (table 12).

Percent of violence reported to the police, 1993-98

| | Male | Female | Total |
|-----------------|------|--------|-------|
| White | 40% | 45% | 42% |
| Black | 43 | 53 | 48 |
| American Indian | 41 | 52 | 46 |
| Asian | 41 | 41 | 41 |

Percent of violent victimizations reported to the police, 1993-98

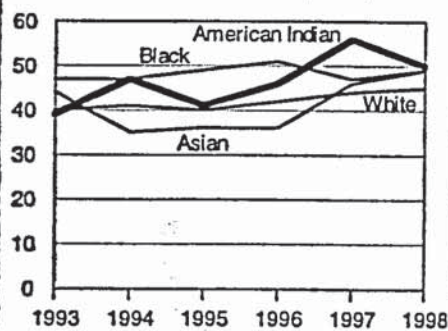


Figure 6

Table 12. Reasons for not reporting violence to the police, by race of victim, 1993-98

| | Percent of victims of violence | | | |
|------------------------------|--------------------------------|-------|-----------------|-------|
| | White | Black | American Indian | Asian |
| Private or personal matter | 24% | 23% | 28% | 20% |
| Small/no loss | 21 | 18 | 19 | 24 |
| Reported to another official | 16 | 14 | 12 | 16 |
| Police will not bother | 6 | 7 | 12 | 8 |
| Afraid of reprisal | 5 | 6 | 6 | 7 |
| Not clear a crime occurred | 4 | 3 | 2* | 4 |
| Lack of proof | 4 | 6 | 3* | 6 |
| Protect offender | 4 | 4 | 4 | 3* |
| Police inefficient | 3 | 4 | 3* | 3* |
| Police biased | 1 | 2 | 5* | 2* |
| Inconvenient | 3 | 4 | 3* | 7 |
| Other reason given | 25 | 27 | 25 | 20 |

Note: Percentages may not total to 100% because respondents could suggest more than one reason. In instances where each racial group had less than 4% for a reason, that reason was included in "other reason given."

*Based on 10 or fewer sample cases.

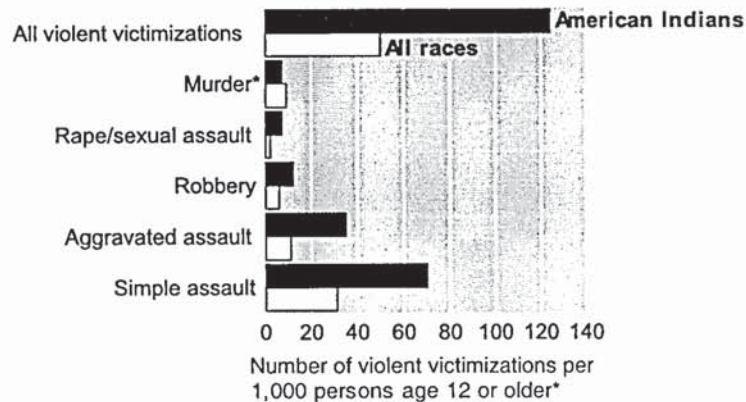


Bureau of Justice Statistics

American Indians and Crime

Average annual number of violent victimizations per 1,000 persons age 12 or older, 1992-96

The rate for American Indians (124 violent crimes per 1,000 American Indians) was more than twice the rate for the Nation (50 per 1,000 persons)



*The annual average murder rate is per 100,000 residents of all ages.

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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics



American Indians and Crime

By Lawrence A. Greenfeld
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February 1999, NCJ 173386

U.S. Department of Justice

Bureau of Justice Statistics

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Yvonne Boston, prepared the
report for final publication.

This report and its data are
available on the Internet:

<http://www.ojp.usdoj.gov/bjs/>

The National Archive of
Criminal Justice Data also
offers the data for the National
Crime Victimization Survey,
the Survey of Inmates in
Local Jails, and the Surveys
of Inmates in State or Federal
Correctional Facilities:

[http://www.ojp.icpsr.umich.edu/
NACJD/home.html](http://www.ojp.icpsr.umich.edu/NACJD/home.html)

Contents

| | |
|--|-----|
| <i>Foreword</i> | iii |
| <i>Highlights</i> | v |
| Measuring criminal victimization among American Indians | 1 |
| Types of violent crime | 3 |
| Sex, age, and location of residence of victims of violent crime | 4 |
| Household income of victims of violent crime | 5 |
| Victim-offender relationship | 6 |
| Race of offender | 7 |
| <i>Intimate and family violence</i> | 8 |
| Alcohol, drugs, and crime | 9 |
| Location of violent crime | 10 |
| Time of violent crime and crime in the workplace | 11 |
| Weapons and self-protective measures used in violent crime | 12 |
| Injury rates, hospitalization, and financial loss | 13 |
| <i>Child abuse and neglect</i> | 15 |
| Reporting violent crime to the police | 16 |
| Arrests of offenders and services to victims | 17 |
| <i>Race and ethnicity in violent victimization</i> | 18 |
| Murder among American Indians | 19 |
| Circumstances of murder | 21 |
| Murder victim-offender relationship | 22 |
| Race of murderers | 22 |
| Murder weapons | 23 |
| Arrests and convictions of American Indians | 24 |
| Felony convictions in State courts | 25 |
| American Indians under correctional supervision | 26 |
| <i>Offenses charged in U.S. district courts</i> | 30 |
| <i>American Indians and the death penalty</i> | 31 |
| American Indian tribal criminal justice | 32 |
| <i>Sources of data on American Indians and crime</i> | 34 |
| <i>Tables for the graphical figures</i> | 38 |

Foreword

This report represents a compilation and new analysis of data on the effects and consequences of violent crime among American Indians. The report uses data from a wide variety of sources, including statistical series maintained by the Bureau of Justice Statistics (BJS), the FBI, and the Bureau of the Census. Data are reported from American Indian crime victims on how they were affected by the victimization and about who victimized them. The report also includes the first BJS estimates of the total number of American Indians under the custody or supervision of the justice system.

The findings reveal a disturbing picture of American Indian involvement in crime as both victims and offenders. The rate of violent victimization estimated from responses by American Indians is well above that of other U.S. racial or ethnic subgroups and is more than twice as high as the national average. This disparity in the rates of violence affecting American Indians occurs across age groups, housing locations, income groups, and sexes.

With respect to the offender, two findings are perhaps most notable: American Indians are more likely than people of other races to experience violence at the hands of someone of a different race, and the criminal victimizer is more likely to have consumed alcohol preceding the offense. However, the victim/offender relationships of American Indians parallel that of all victims of violence.

On a given day, an estimated 1 in 25 American Indians age 18 or older is under the jurisdiction of the criminal justice system — 2.4 times the per capita rate of whites and 9.3 times the per capita rate of Asians. But black Americans, with a per capita rate nearly double that of American Indians, are more likely to be under the care or custody of correctional authorities.

This report is the first step in a vigorous BJS effort to document issues of crime and justice affecting American Indians. Statistical programs have been instituted to learn more about tribal criminal justice agencies, such as law enforcement and confinement facilities, and these will complement data available from other BJS series covering the justice system.

This study was prepared as a resource to respond to frequent inquiries. Since the number of American Indians in our annual samples are inadequate to provide definitive statistics, this report cumulates data from over a 5-year period. I hope that this report will serve as a foundation for other reports and discussions about how best to address the problem of crime affecting this segment of our population.

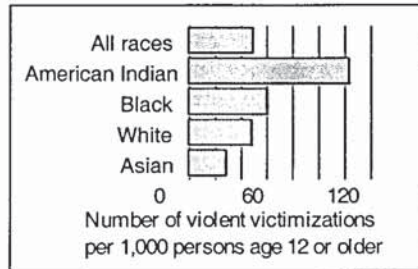
BJS has undertaken improvements in the National Crime Victimization Survey (NCVS), designed to improve future data collection on crime and its consequences for American Indians. This year BJS enhanced the NCVS to permit future analyses to report statistics on victimizations occurring on tribal lands. In addition, victim descriptions of the offender were modified to permit greater precision in future statistics about the victim's perceptions of the offender's race. Together, these NCVS upgrades will result in much greater detail about both locations of crime incidents and perpetrators.

Valuable contributions to the report were made by Norena Henry, Director of the American Indian/Alaska Native Affairs in the Office of Justice Programs, and Melvinda Pete, a BJS university student intern. In the development of the report, they helped to provide context for the statistical findings.

Jan M. Chaiken, Ph.D.
Director, Bureau of Justice Statistics

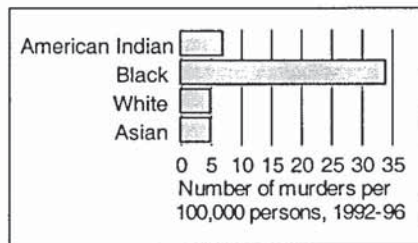
Highlights

Violent victimizations*



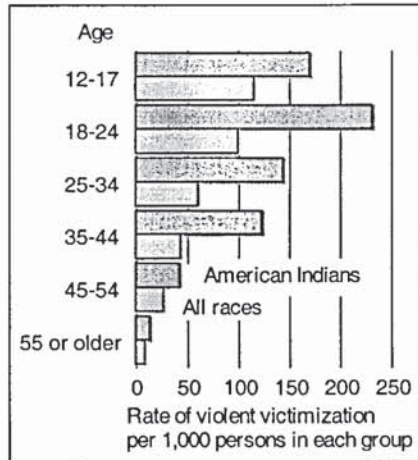
- American Indians[‡] experience per capita rates of violence which are more than twice those of the U.S. resident population.

Murder*



- The murder rate among American Indians is 7 per 100,000, a rate similar to that found among the general population. The rate of murder among blacks is more than 5 times that among American Indians.

Age*

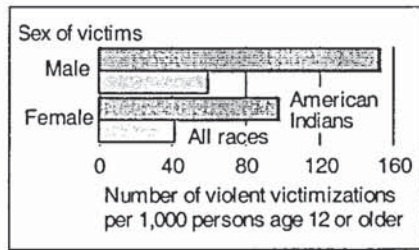


- Rates of violence in every age group are higher among American Indians than that of all races.
- Nearly a third of all American Indian victims of violence are between ages 18 and 24. This group of American Indians experienced the highest per capita rate of violence of any racial group considered by age — about 1 violent crime for every 4 persons of this age.

*Average annual rate, 1992-96.

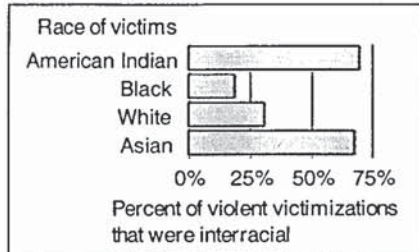
[‡]American Indians in this report include Alaska Natives and Aleuts. Asians include Hawaiian Natives and Pacific Islanders.

Sex*



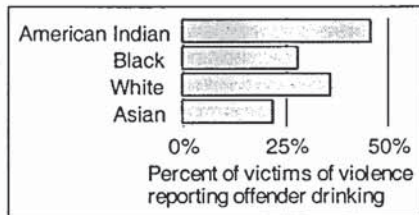
- Rates of violent victimization for both males and females are higher among American Indians than for all races. The rate of violent crime experienced by American Indian women is nearly 50% higher than that reported by black males.

Offender race*



- At least 70% of the violent victimizations experienced by American Indians are committed by persons not of the same race — a substantially higher rate of interracial violence than experienced by white or black victims.

Alcohol use by offender*



- American Indian victims of violence were the most likely of all races of victims to indicate that the offender committed the offense while drinking.

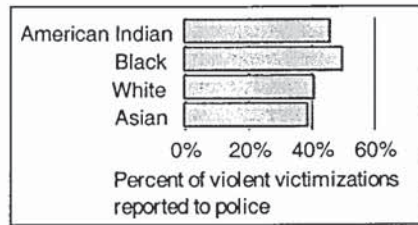
Weapon use by offender



- More than 10% of American Indian nonlethal violent victimizations involved a firearm. American Indian murder victims were less likely to have been murdered by a handgun than victims of all races.

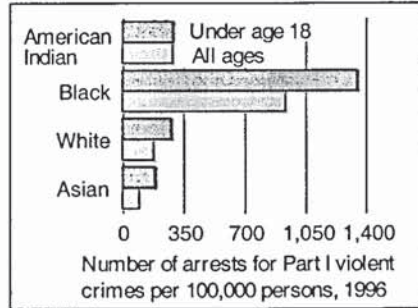
*Average annual rate or percentage, 1992-96.

Crimes reported to police*



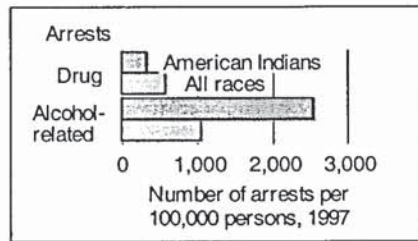
- American Indian victims of violence reported the crime to the police at about the average rate for all races.

Arrests of adults and youth



- American Indian arrest rates for violence among youth were about the same as the rates among white youth in 1996.
- Violent crime arrest rates for American Indian adults were similar to those for youth. Among other racial groups, arrest rates for adults are lower than for youth.

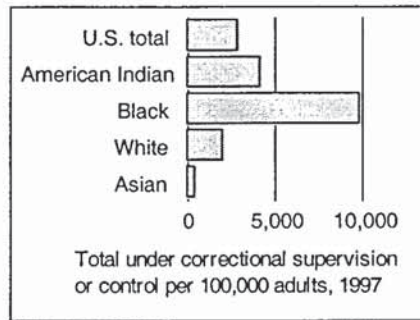
Arrests for drug and alcohol offenses



- The 1997 arrest rate among American Indians for alcohol-related offenses (driving under the influence, liquor law violations, and public drunkenness) was more than double that found among all races. Drug arrest rates for American Indians were lower than average.

*Average annual percentage, 1992-96.

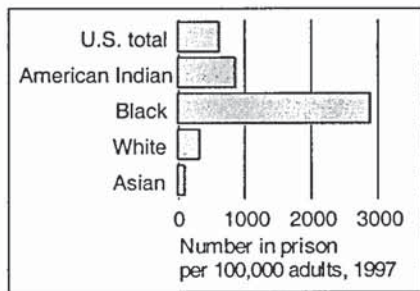
Under correctional supervision or control



- An estimated 63,000 American Indians are under the care, custody, or control of the criminal justice system on an average day — about 4% of the American Indian population age 18 or older.

- On average in 1997 about 2,000 American Indians per 100,000 adults (persons age 18 or older) were serving a sentence to probation, about half the rate found among blacks.

In State or Federal prison



- In 1997 about 16,000 American Indians were held in local jails — a rate of 1,083 per 100,000 adults, the highest of any racial group.

- The rate of American Indians on parole is similar to that of the general population, about 300 per 100,000 adults.

- On a per capita basis, American Indians had a rate of prison incarceration about 38% higher than the national rate.

Federal convictions

| | | |
|-----------------|-----|------|
| Total | 854 | 100% |
| Violent | | |
| Murder | 81 | 9% |
| Assault | 153 | 18 |
| Robbery | 22 | 3 |
| Rape | 168 | 20 |
| Other | 23 | 3 |
| Property | 178 | 21 |
| Drug | 93 | 11 |
| Other* | 134 | 15 |

*Includes persons for whom the offense was unknown.

- American Indians accounted for 1.5% of Federal case filings in U.S. district courts in 1997, and half of these were for violent offenses.

- 854 American Indians were convicted in Federal court — 9% for murder and 20% for rape.

Measuring criminal victimization among American Indians

American Indians have higher per capita rates of violent criminal victimization than whites, blacks, or Asians in the United States, according to data from the National Crime Victimization Survey (NCVS).

Population estimates from the Bureau of the Census for July 1, 1998, indicate that American Indians account for just under 1% of the U.S. population:

| | | |
|------------------|-------------|--------|
| All races | 270,029,000 | 100.0% |
| American Indian* | 2,357,000 | 0.9 |
| White | 222,932,000 | 82.6 |
| Black | 34,370,000 | 12.7 |
| Asian | 10,370,000 | 3.8 |

Two demographic factors distinguish American Indians from other racial groups: in 1998 the median age of the American Indian population is nearly 8 years younger than the U.S. resident population, and American Indians are the most likely to report Hispanic ethnicity.

| Race | Median age | Percent Hispanic |
|-----------------|------------|------------------|
| All races | 35.2 years | 11.3% |
| American Indian | 27.4 | 15.2 |
| White | 36.3 | 12.4 |
| Black | 29.9 | 5.0 |
| Asian | 31.2 | 5.8 |

This report presents data on the rates and characteristics of violent crimes, including murder, experienced by American Indians. Information is also

*In this report the term *American Indian* refers to Alaska Natives, Aleuts, and American Indians. The term *Asian* encompasses Asians, Hawaiian Natives, and Pacific Islanders.

provided on American Indians in the criminal justice system.

The NCVS collects information on the Nation's experience with crime. It also collects information on the race of the victim and the race of the offender as reported by the victim.

The NCVS provides estimates of the violent crimes of rape, sexual assault, robbery, and assault for persons age 12 or older. During 1992-96 the NCVS found that American Indians experienced an average of almost 150,000 violent crimes per year from among the estimated 10.8 million violent crimes occurring on average per year among all racial groups. Victimization data for 1996 indicate that American Indians accounted for about 1.4% of all violent victimizations that year, about the same percentage as in preceding years.

American Indian tribes in the United States, 1996

The indigenous peoples in the United States belong to about 550 federally recognized tribes that have a distinct history and culture and often a separate language.

| Tribe | Percent of American Indians |
|------------------|-----------------------------|
| Cherokee | 16.4% |
| Navajo | 11.7 |
| Chippewa | 5.5 |
| Sioux | 5.5 |
| Choctaw | 4.4 |
| Pueblo | 2.8 |
| Apache | 2.7 |
| All other tribes | 51.0 |

Source: U.S. Bureau of Census, *Statistical Abstract of the United States, 1997*, table 51, p. 51.

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| All other tribes | 51.0 |

Source: U.S. Bureau of Census, *Statistical Abstract of the United States, 1997*, table 51, p. 51.

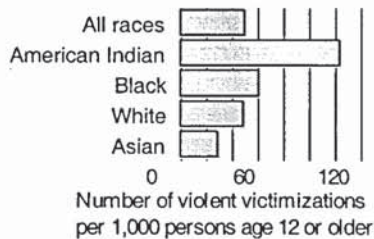
Table 1. Annual average violent victimization rates for persons age 12 or older, by race, 1992-96

| | Annual average | | |
|-----------------|----------------------------|----------------------------------|---|
| | Population age 12 or older | Number of violent victimizations | Rate of violent victimization per 1,000 persons age 12 or older |
| All races | 213,660,000 | 10,784,826 | 50 |
| American Indian | 1,204,014 | 149,614 | 124 |
| White | 180,543,825 | 8,880,083 | 49 |
| Black | 25,587,158 | 1,570,386 | 61 |
| Asian | 6,325,003 | 184,743 | 29 |

Note: The NCVS estimates of the racial distribution of the resident population age 12 or older for the period 1992-96 correspond closely to the estimates reported by the Bureau of the Census in their P-25 series of population estimates. The NCVS estimate shows that American Indians represented 0.6% of those interviewed while the P-25 estimate shows that American Indians account for 0.8% of the resident population age 12 or older.

The average annual violent crime rate among American Indians — 124 per 1,000 persons age 12 or older — is about 2½ times the national rate (table 1).

The average annual violent crime rate per 1,000 persons age 12 or older during that period was 49 for whites and 61 for blacks.



The aggravated assault rate among American Indians (35 per 1,000) was more than 3 times the national rate (11 per 1,000) and twice that for blacks. The rate of robbery experienced by American Indians (12 per 1,000) was similar to that of black residents (13 per 1,000) (table 3).

American Indians are overrepresented among victims of violence compared to their share of the general population age 12 or older.

| | Annual average for persons age 12 or older, 1992-96 | |
|-----------------|---|---------------------|
| | NCVS estimates of population | Victims of violence |
| Total | 213.7 million | 10.8 million |
| American Indian | 0.6% | 1.4% |
| White | 84.5 | 82.3 |
| Black | 12.0 | 14.6 |
| Asian | 3.0 | 1.7 |

Table 2

Table 3. Annual average rate of rape and sexual assault, robbery, and assault, by race of victim, 1992-96

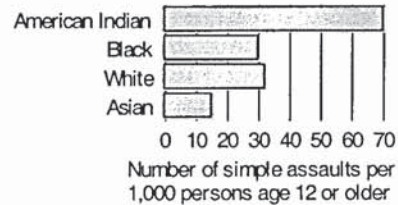
| | Number of victimizations per 1,000 persons age 12 or older in each racial group | | | | |
|------------------------|---|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| Violent victimizations | 50 | 124 | 49 | 61 | 29 |
| Rape/sexual assault | 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 |

For the 1992-96 period, the average annual per capita rate of violent victimization translates into about 1 violent crime for every 20 residents age 12 or older. Substantial variation, however, was evident by race. American Indians experienced about 1 violent crime for every 8 residents age 12 or older compared to 1 violent victimization for every 16 black residents, 1 for every 20 white residents, and 1 for every 34 Asian residents.

Types of violent crime

The Nation's population of American Indians age 12 or older experienced an annual average of 126,400 simple and aggravated assaults, 14,800 robberies, and 8,400 rapes or sexual assaults during 1992-96.

The types of violent crimes experienced by American Indians were generally similar to that found across the Nation (table 4). The most common type of violent crime experienced by American Indian victims was simple assault (56%).



Among all the violent crimes reported by American Indians, 28% were aggravated assault, 10% robbery, and 6% rape/sexual assault. Asian and black victims of violence were more likely than American Indian or white victims to have reported a robbery.

Table 4. Violent crime, by type of crime and race of victim, 1992-96

| Type of crime | Percent of violent victimizations | | | | |
|---|-----------------------------------|-----------------|-----------|-----------|---------|
| | All races | American Indian | White | Black | Asian |
| Total | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Rape/sexual assault | 4.3 | 5.6 | 4.3 | 4.4 | 4.1 |
| Robbery | 11.7 | 9.9 | 9.7 | 21.5 | 24.6 |
| Aggravated assault | 21.8 | 28.4 | 21.0 | 25.7 | 21.0 |
| Simple assault | 62.2 | 56.1 | 65.0 | 48.5 | 50.2 |
| Average annual number of victimizations | 10,784,826 | 149,614 | 8,880,083 | 1,570,386 | 184,743 |

Sex, age, and location of residence of victims of violent crime

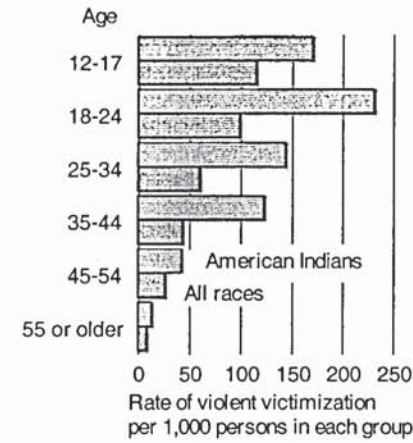
The violent crime rate among American Indian males was 153 per 1,000 males age 12 or older, more than double that found among all males (60 per 1,000 age 12 or older) (table 5). The violent crime rate for American Indian females during this period was 98 per 1,000 females, a rate higher than that found among white females (40 per 1,000) or black females (56 per 1,000).

In 1995 the Bureau of Census reported 2.2 million American Indians and Alaska Natives residing in the United States, about 1.94 million of whom were American Indians. In 1990 over half of American Indians and Alaska Natives lived in 10 States:

| | |
|----------------|---------|
| Oklahoma | 252,000 |
| California | 242,000 |
| Arizona | 204,000 |
| New Mexico | 134,000 |
| Alaska | 86,000 |
| Washington | 81,000 |
| North Carolina | 80,000 |
| Texas | 66,000 |
| New York | 63,000 |
| Michigan | 56,000 |

Source: U.S. Bureau of the Census, 1990 CP-2-1A, *Social and Economic Characteristics, American Indian and Alaska Native Areas.*

Among the different age groups, violent crime rates were highest (232 per 1,000 persons) for American Indians age 18 to 24. This



violent crime rate was more than twice that found among whites and blacks of the same age.

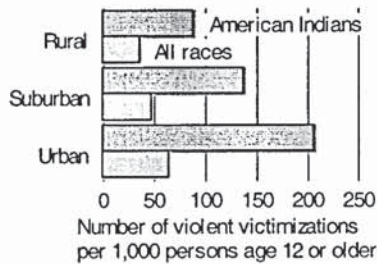
About 40% of American Indians reside in rural areas, compared to 18% of whites and 8% of blacks. The violent crime rate for American Indians was highest for those in urban areas, 207 per 1,000, and lowest for those in rural

Table 5. Violent crime rates for persons 12 or older, by age, sex, location of residence, and race, 1992-96

| Victim characteristic | Annual average rates of violent victimization per 1,000 | | | | |
|-----------------------|---|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| Total | 50 | 124 | 49 | 61 | 29 |
| Sex | | | | | |
| Male | 60 | 153 | 59 | 68 | 37 |
| Female | 42 | 98 | 40 | 56 | 21 |
| Age | | | | | |
| 12 to 17 | 116 | 171 | 118 | 115 | 60 |
| 18 to 24 | 100 | 232 | 101 | 105 | 41 |
| 25 to 34 | 61 | 145 | 61 | 66 | 34 |
| 35 to 44 | 44 | 124 | 43 | 51 | 24 |
| 45 to 54 | 27 | 43 | 27 | 30 | 15 |
| 55 or older | 9 | 14 | 8 | 11 | 5 |
| Location | | | | | |
| Urban | 65 | 207 | 63 | 75 | 29 |
| Suburban | 48 | 138 | 48 | 52 | 29 |
| Rural | 37 | 89 | 37 | 33 | 30 |

Table 6. Violent victimizations, by age, sex, and race of victim, 1992-96

| Victim age/sex | Percent of violent victimizations | | | | |
|----------------------------------|-----------------------------------|-----------------|-----------|-----------|---------|
| | All races | American Indian | White | Black | Asian |
| Total | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| 12-17 | 24.2% | 20.4% | 23.8% | 26.8% | 24.0% |
| 18-24 | 23.6 | 31.5 | 23.4 | 24.0 | 21.7 |
| 25-34 | 23.6 | 23.5 | 23.6 | 23.2 | 26.3 |
| 35-44 | 17.0 | 18.0 | 17.1 | 16.6 | 18.3 |
| 45-54 | 7.5 | 4.7 | 7.8 | 6.1 | 7.3 |
| 55 or older | 4.1 | 1.9 | 4.3 | 3.3 | 2.4 |
| Male | 57.4% | 58.9% | 58.4% | 50.5% | 62.6% |
| Female | 42.6 | 41.1 | 41.6 | 49.5 | 37.4 |
| Number of violent victimizations | 10,784,826 | 149,614 | 8,880,083 | 1,570,386 | 184,743 |



areas, 89 per 1,000. However, this rural crime rate for American Indians is more than double that found among rural whites (37 per 1,000) or blacks (33 per 1,000). The urban crime rate

for American Indians is more than 3 times that found among urban whites.

About half (52%) of the violent crimes committed against American Indians occurred among those age 12 to 24 years (table 6). Two percent of the violent crimes committed against American Indians were against the elderly, age 55 or older.

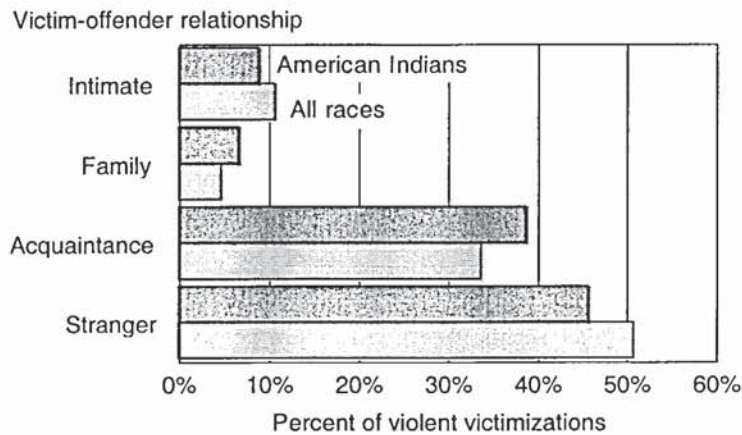
Nearly 6 in 10 of the violent crimes experienced by American Indians had been committed against males, similar to the national distribution.

American Indians with incomes under \$10,000 had the highest rate of violent victimization, 182 per 1,000. At every income category American Indians had a higher rate of violent victimization than persons of other races.

Table 7. Violent victimization rates, by annual household income and race, 1992-96

| Household income | Number of victimizations per 1,000 persons | | | | |
|--------------------|--|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| Less than \$10,000 | 73 | 182 | 74 | 71 | 30 |
| \$10,000 - 19,999 | 54 | 137 | 51 | 70 | 30 |
| \$20,000 - 29,999 | 48 | 104 | 47 | 56 | 32 |
| \$30,000 - 39,999 | 46 | 72 | 46 | 54 | 22 |
| \$40,000 or more | 42 | 84 | 42 | 50 | 22 |

More than half the violent victimizations of American Indians involved victims and offenders who had a prior relationship, about the same percentage as for all violent victimizations.



Note: Figure excludes those victimizations in which the victim did not know the relationship to the offender or those in which the number of offenders could not be specified.

Victim-offender relationship

Overall, strangers were reported to have committed 46% of the violent crimes against American Indians (table 8).

More than half of the violent victimizations of American Indians involved offenders with whom the victim had a prior relationship. About 1 in 6 violent victimizations among American Indians

involved an offender who was an intimate or family member to the victim, about the same as for victims of all races.

| Victim-offender relationship | Percent of violence | |
|------------------------------|---------------------|------------------|
| | All races | American Indians |
| Intimates | 11% | 8% |
| Family members | 5 | 7 |
| Acquaintances | 34 | 38 |
| Strangers | 51 | 46 |

Table 8. Violent victimizations of American Indians, by victim-offender relationship and type of victimization, 1992-96

| Type of victimization | Percent of violent victimizations against American Indians | | | |
|-----------------------|--|------------------------------|---------------|-----------|
| | Total | Intimates/ family members | Acquaintances | Strangers |
| All | 100% | 15% | 38% | 46% |
| Rape | 100 | 25 | 43 | 32 |
| Robbery | 100 | 10 | 14 | 76 |
| Aggravated assault | 100 | 7 | 41 | 51 |
| Simple assault | 100 | 19 | 40 | 40 |

Race of offender

Violent crime against white or black victims is primarily intraracial. Among white victims of violence, 69% of offenders were white (table 9). Likewise, black victims of violence were most likely to have been victimized by a black offender (81%).

The NCVS classifies as "other race" those offenders whom victims perceive to be Asian or American Indian.

However, based on self-reports of offender race, it is clear that American Indians and Asians, when victimized by violence, were the most likely to report that the offender was from a different race.

The majority (60%) of American Indian victims of violent crime described the offender as white, and nearly 30% of the offenders were likely to have been other American Indians. An estimated 10% of offenders were described as black.

The less serious the offense, the higher was the percentage of American Indian victims of violence describing the offender as "other race" (table 10).

Table 9. Percent of violent victimizations, 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.

American Indian victims of rape/sexual assault most often reported that the victimization involved an offender of a different race. About 9 in 10 American Indian victims of rape or sexual assault were estimated to have had assailants who were white or black.

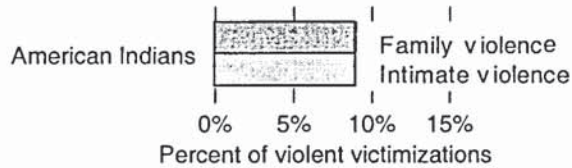
Two-thirds or more of the American Indian victims of robbery, aggravated assault, and simple assault described the offender as belonging to a different race.

| Race of offender | Percent of American Indian victims, 1992-96 | | | | |
|------------------|---|---------------------|---------|--------------------|----------------|
| | All violent victimizations | Rape/sexual assault | Robbery | Aggravated assault | Simple assault |
| Total | 100% | 100% | 100% | 100% | 100% |
| White | 63% | 82% | 55% | 61% | 59% |
| Black | 10 | 6 | 24 | 12 | 8 |
| Other | 29 | 12 | 21 | 27 | 34 |

Table 10

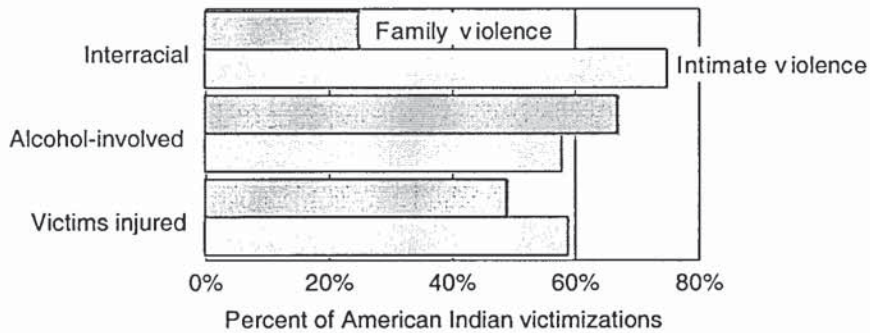
Intimate and family violence

Intimate and family violence each account for about 9% of all violent victimizations experienced by American Indian victims, about the same percentage as found among all victims of violence. (See Note on the graph below.)



Most striking among American Indian victims of violence is the substantial difference in the racial composition of offenders in intimate violence incidents when contrasted with family violence. Among violence victims of all races, about 11% of intimate victims and 5% of family victims report the offender to have been of a different race; however, among American Indian victims of violence, 75% of the intimate victimizations and 25% of the family victimizations involved an offender of a different race.

Intimate and family violence involve a comparatively high level of alcohol and drug use by offenders as perceived by victims — as is the case for Indian and non-Indian victims. Indian victims of intimate and family violence, however, are more likely than others to be injured and need hospital care.



Note: *Intimate violence* refers to victimizations involving current and former spouses, boyfriends, and girlfriends. *Family violence* refers to victimizations involving spouses and other relatives. Alcohol-involved incidents included only those incidents in which the victim felt that he/she could determine whether the offender had been using drugs or alcohol.

Table 11. Violent crime, by the perceived drug or alcohol use of the offender and by race of victim, 1992-96

| Race of victim | Perceived drug or alcohol use by offender | | | | |
|-----------------|---|---------|-------|------|---------|
| | Total | Alcohol | Drugs | Both | Neither |
| Total | 100% | 28% | 8% | 7% | 57% |
| American Indian | 100 | 38 | 9 | 8 | 45 |
| White | 100 | 29 | 8 | 7 | 56 |
| Black | 100 | 21 | 7 | 7 | 65 |
| Asian | 100 | 20 | 3 | 2 | 75 |

Note: Table excludes those respondents who were unable to report whether they perceived the offender to have been using drugs or alcohol.

Alcohol, drugs, and crime

Alcohol and drug use was a factor in more than half of violent crimes against American Indians (table 11).

Substantial differences can be found by race in the reports of victims of violence of their perceptions of drug and alcohol use by offenders. Among those who could describe alcohol or drug use by offenders, American Indian

victims of violence were the most likely to report such perceived use by the offender.

Overall, in 55% of American Indian violent victimizations, the victim said the offender was under the influence of alcohol, drugs, or both. The offender's use of alcohol and/or drugs was somewhat less likely in violent crimes committed against whites (44%) or blacks (35%).

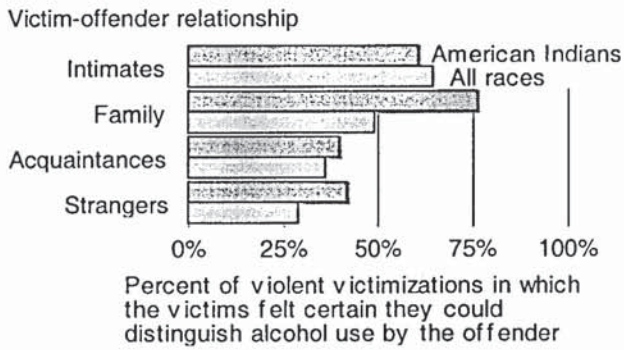
Offenders' use of alcohol and drugs reported by American Indian victims of violence varied with the race of the offender: Intraracial violence was more likely to involve a drinking offender while interracial violence involved higher levels of offender drug use.

According to American Indian victims of violence, offender use of alcohol was a factor in nearly two-thirds of the violent victimizations in which the offender was neither white nor black.

| Race of victim/offender | Percent of victimizations in which the offender was perceived using— | | | |
|-------------------------|--|-------|------|---------|
| | Alcohol | Drugs | Both | Neither |
| American Indian/white | 30% | 10% | 8% | 52% |
| American Indian/black | 35 | 13 | 3 | 49 |
| American Indian/other | 57 | 1 | 8 | 34 |
| White/white | 36% | 8% | 1% | 48% |
| Black/black | 21 | 8 | 6 | 66 |
| Asian/other | 18 | 2 | 3 | 77 |

Table 12

An estimated 3 in 4 American Indian victims of family violence reported that they perceived the offender to have been drinking at the time of the offense. About half the persons of all races who were victims of family violence reported a drinking offender.



Note: *Intimates* include current and former spouses, boyfriends, and girlfriends. *Family* includes all other family members.

Location of violent crime

Just over 40% of American Indian victims of violence reported that the incident occurred in or around their own home or that of a friend, relative, or neighbor (table 13). This is higher than the approximately one-third of violent victimizations reported by

victims of all races to have occurred at or near a home.

Nineteen percent of violent victimizations against American Indians took place in open areas, on the street or on public transportation. Fewer than 1 in 10 violent crimes were reported to have occurred at school.

Table 13. Violent incidents, by place of occurrence and race of victim, 1992-96

| Place of occurrence | Percent of violent victimizations | | | | |
|--|-----------------------------------|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| Total | 100% | 100% | 100% | 100% | 100% |
| Home or lodging | 14 | 12 | 14 | 17 | 12 |
| Near own home | 11 | 17 | 11 | 14 | 9 |
| At, in, or near friend's, relative's, or neighbor's home | 9 | 14 | 9 | 10 | 7 |
| Commercial places | 13 | 13 | 14 | 9 | 19 |
| Parking lots/garages | 8 | 9 | 8 | 6 | 9 |
| School | 13 | 7 | 13 | 11 | 12 |
| Open areas, on street or public transportation | 22 | 19 | 21 | 28 | 24 |
| Other | 10 | 9 | 10 | 6 | 9 |

| Time of occurrence | Table 14. Violent crime, by time of occurrence and race of victim, 1992-96 | | | | |
|---|--|-----------------------------------|-------|-------|-------|
| | Time of violent crime occurrence | Percent of violent victimizations | | | |
| | | American Indian | White | Black | Asian |
| Half of the violent crimes committed against American Indians occurred after dark. About 1 in 5 of the violent victimizations took place between midnight and 6:00 a.m. | Total | 100% | 100% | 100% | 100% |
| | Light | 44 | 52 | 51 | 51 |
| | Dark | 52 | 44 | 46 | 45 |
| | Dawn | 5 | 4 | 4 | 4 |
| | Total | 100% | 100% | 100% | 100% |
| | 6 am-12 noon | 11 | 14 | 13 | 17 |
| | 12 noon-6 pm | 30 | 38 | 38 | 34 |
| | 6 pm-midnight | 40 | 35 | 38 | 38 |
| | Midnight-6 am | 19 | 13 | 11 | 11 |

| Crime in the workplace | | | | | |
|---|--------------------------------|-----------------|-------|-------|-------|
| On average nearly 2 million violent crimes occurred in the workplace every year. The workplace accounted for about 1 in 5 violent crimes experienced by the public. | | | | | |
| Among American Indians about 14% of the violent victimizations were reported to have occurred in the workplace. | | | | | |
| About 1 in 4 employed American Indian victims of violence said that the incident occurred in the workplace. | | | | | |
| | Percent of victims of violence | | | | |
| | All races | American Indian | White | Black | Asian |
| Unemployed | 40% | 48% | 37% | 52% | 41% |
| Employed | 60 | 52 | 63 | 48 | 59 |
| Percent reporting workplace violence | 31% | 26% | 32% | 25% | 31% |
| Percent of all violent incidents which occurred at the workplace | 19% | 14% | 20% | 12% | 18% |

Table 15

Table 16. Violent victimizations, by use of weapon and race of victim, 1992-96

| Offender use of weapon | Percent of violent victimizations | | | | |
|------------------------|-----------------------------------|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| No weapon used | 74% | 66% | 76% | 62% | 68% |
| Hands/feet only | 35 | 33 | 35 | 34 | 34 |
| Weapon used | 26% | 34% | 24% | 38% | 33% |
| Firearm | 11 | 13 | 9 | 19 | 17 |
| Knife | 7 | 7 | 6 | 9 | 8 |
| Blunt object | 4 | 7 | 4 | 4 | 5 |
| Other weapon | 5 | 6 | 5 | 5 | 4 |

Weapons used in violent crime

In about a third of the violent crime incidents American Indian victims were faced with an offender who had a weapon (table 16). About 13% of the crimes involved an offender with a firearm.

In almost 70% of the violent crime incidents, the American Indian victim resisted the offender, most frequently through the use of physical force (table 17). American Indian victims used a weapon in self-defense in less than 3% of the violent incidents committed against them.

Table 17. Self-protective measures employed by victims, by race of victim, 1992-96

| Self-protective actions taken during incident | Percent of violent victimizations | | | |
|---|-----------------------------------|-------|-------|-------|
| | American Indian | White | Black | Asian |
| None | 31% | 28% | 31% | 37% |
| Confrontational actions | | | | |
| Used physical force toward offender | 18% | 14% | 15% | 9% |
| Weapons | 3 | 3 | 4 | 1 |
| No weapons | 16 | 11 | 12 | 9 |
| Chased, tried to catch/hold offender | 2 | 1 | 1 | 1 |
| Defended self/property | 16 | 15 | 16 | 11 |
| Scared or warned off offender | 4 | 5 | 5 | 5 |
| Nonconfrontational actions | | | | |
| Persuaded or appeased offender | 7% | 9% | 8% | 11% |
| Ran away, hid, locked door | 12 | 12 | 11 | 14 |
| Got help or gave alarm | 4 | 4 | 4 | 3 |
| Other | 7 | 12 | 10 | 9 |

Note: Victims may have used more than one measure.

Table 18. Violent victimizations in which the victims sustained physical injury or received medical care, by race

| Victim reported physical injury | Percent of violent victimizations | | | | |
|---------------------------------|-----------------------------------|-----------------|-------|-------|-------|
| | All victims | American Indian | White | Black | Asian |
| Yes | 25% | 32% | 24% | 31% | 25% |
| Type of Injury | | | | | |
| Sexual assault | 2% | 4% | 2% | 2% | 3% |
| Shot/internal injuries | 1 | 3 | 1 | 3 | 2 |
| Broken bones/concussion | 2 | 5 | 2 | 2 | 1 |
| Bruises | 18 | 18 | 18 | 19 | 17 |
| Other injuries | 3 | 2 | 2 | 4 | 2 |
| Treatment for injuries | | | | | |
| Not treated | 57% | 48% | 59% | 45% | 55% |
| Treated | 44 | 53 | 41 | 55 | 44 |
| At hospital | 19 | 32 | 16 | 26 | 24 |

Note: The percent treated was calculated on those injured during the violent incident. Detail may not add to total because of rounding.

Injury rates, hospitalization, and financial loss

American Indian victims of a violent crime were more likely to have been injured than were white or Asian crime victims. Nearly a third of the American Indian violent crime victims were injured during the incident (table 18). About a quarter of all violence victims of all races were injured during the incident.

As a result of their victimizations, an estimated 18% of American Indian victims of violence sustained bruises, the most commonly reported injury. Among those injured, about half received some kind of medical treatment — a third at the hospital.

Seventy-one percent of American Indian crime victims who were injured during the incident and sought medical treatment had medical insurance or qualified for public medical benefits.

Injured American Indian victims of violence who sought treatment for their injuries were as likely as other racial groups to have some form of coverage for medical benefits.

| <u>Injured victims</u> | <u>Percent with coverage</u> |
|------------------------|------------------------------|
| American Indians | 71% |
| White | 69 |
| Black | 71 |
| Asian | 64 |

Victims of violence were asked to report the value of losses associated with the violence they experienced. These losses could include medical expenses, property lost or damaged, and pay lost by missing work.

About 1 in 4 American Indian victims of violence suffered an economic loss as a consequence of the victimization. The average per-victim loss among American Indian victims of violence reporting a loss was \$936 (table 19).

The total annual loss for American Indians arising from violent criminal victimization translates into more than \$35 million (table 20). The losses reported by American Indian victims of violence largely resulted from medical expenses that accounted for more than \$21 million.

Losses to American Indian victims of violence were distributed as follows:

| | |
|--------------|-------|
| Medical | 60.4% |
| Cash | 2.7 |
| Property | |
| Loss | 4.0 |
| Repair | 5.4 |
| Replacement | 2.9 |
| Lost pay | |
| From injury | 12.6 |
| Other causes | 11.7 |

Table 19. Average dollar loss per victim of violence, by race of victim, 1992-96

| Race of victim of violence | Average dollar loss |
|----------------------------|---------------------|
| All | \$878 |
| American Indian | 936 |
| White | 818 |
| Black | 1,081 |
| Asian | 810 |

Table 20. Economic loss to American Indian victims of violent crime, by type of loss, 1992-96

| Reason for loss | American Indian victims of violence | |
|-------------------------|-------------------------------------|-----------------------------|
| | Average loss per victim. | Estimated total annual loss |
| Total | \$936 | \$35,123,400 |
| Medical expenses | \$2,407 | \$21,227,333 |
| Cash loss | 223 | 960,907 |
| Property | | |
| Loss | \$155 | \$1,403,370 |
| Repair | 152 | 1,907,680 |
| Replacement | 191 | 1,013,064 |
| Lost pay from — | | |
| Injury | \$641 | \$4,433,797 |
| Other causes | 754 | 4,116,086 |

Child abuse and neglect

In the United States from 1992 to 1995, American Indians and Asians were the only racial or ethnic groups to experience increases in the rate of abuse or neglect of children under age 15, as measured by incidents recorded by child protective service agencies.

The increase in reported incidents involving American Indian children was more than 3 times as large as that for Asian children. The per capita rate for American Indian children was 7 times that of Asian children.

| | Number of victims per 100,000 children, age 14 or younger | | |
|-----------------|---|-------|----------------|
| | 1992 | 1995 | Percent change |
| All children | 1,866 | 1,724 | -8% |
| American Indian | 2,830 | 3,343 | 18 |
| White | 1,628 | 1,520 | -7 |
| Black | 3,560 | 3,323 | -7 |
| Asian | 454 | 479 | 6 |
| Hispanic | 1,486 | 1,254 | -16 |

Note: Rates were calculated on the number of children age 14 or younger because they account for at least 80% of the victims of child abuse and neglect.

Each year the National Child Abuse and Neglect Data System of the Department of Health and Human Services obtains from child protective service agencies nationwide the number of reports of alleged maltreatment of children. Published data for 1995 indicate that about 1 million children were substantiated to have been victims of neglect, physical abuse, sexual abuse, emotional maltreatment, medical neglect, or other forms of verified maltreatment.

| | Number of victims of maltreatment* | Percent American Indian |
|------|------------------------------------|-------------------------|
| 1992 | 1,044,480 | 1.5% |
| 1993 | 966,163 | 1.6 |
| 1994 | 1,011,595 | 1.8 |
| 1995 | 1,000,502 | 1.9 |

*Reported by child protective agencies. Data may contain duplicate counts of incidents.

Source: National Child Abuse and Neglect Data System

Non-Hispanic American Indians accounted for just under 2% of the victims of child abuse/neglect in reports collected nationwide in 1995. There is evidence that their share has been increasing. Non-Hispanic American Indians, who accounted for just under 1% of the population age 14 or younger, were overrepresented twofold as victims of child abuse.

On a per capita basis, 1995 data indicate about 1 substantiated report of a child victim of abuse or neglect for every 30 American Indian children age 14 or younger.

Nationwide, the 1995 rates translate into about 1 child victim of maltreatment known to a child protective services agency for every —

- 58 children of any race
- 66 white children
- 30 black children
- 209 Asian children
- 80 Hispanic children

Table 21

American Indians differ little from other racial groups in their reporting of violent crime to the police or in the likelihood that the victim knows of the arrest of the offender.

| | Victims | Average annual number of victimizations 10,785,800 | |
|-----------------|-----------|---|--|
| | | Reported to the police | Subsequent arrest of offender (reported offenses only) |
| American Indian | 149,600 | 45% | 28% |
| White | 8,880,100 | 41 | 28 |
| Black | 1,570,400 | 50 | 22 |
| Asian | 184,700 | 39 | 19 |

Table 22

Reporting violent crime to the police

Forty-five percent of American Indian victims of violent crime reported the crime to the police (table 22). This level of crime reporting was similar to that found among white (41%) and black (50%) violent crime victims.

Among victims not reporting the crime to the police, the reasons that persons of different racial backgrounds had for not reporting were also similar. Nearly half of both American Indians not reporting the violent crime to the police and victims of all races who did not report the violence to the police said that they considered the matter private or too minor to bother the police (table 23).

Table 23. Reasons why victims of violence did not report the victimization to the police, by race of victim, 1992-96

| Reason for not reporting to the police | Percent of victims of violence not reporting the victimization to the police | |
|--|--|------------------|
| | All races | American Indians |
| Total | 100% | 100% |
| Personal matter | 21 | 26 |
| Too unimportant | 24 | 24 |
| Police of limited assistance | 11 | 14 |
| Reported to other authority | 13 | 8 |
| Fear of or worry about offender | 7 | 6 |
| Too busy | 3 | 2 |
| Other reasons | 22 | 20 |

For those violent crimes reported to the police victims said that police made an arrest in about a quarter of the cases (table 24).

Twelve percent of the victims who reported their violent crime to the police received victim services assistance.

Arrests of offenders and services to victims

Table 24. Violent victimizations reported to the police, by whether an arrest was made and whether victim services were provided, by race of victim, 1992-96

| | Percent of violent victimizations reported to the police | | | | |
|------------------------------------|--|-----------------|-------|-------|-------|
| | All races | American Indian | White | Black | Asian |
| Was an arrest made? | | | | | |
| Yes | 27% | 27% | 28% | 22% | 19% |
| No | 66 | 65 | 65 | 70 | 71 |
| Do not know | 7 | 8 | 7 | 8 | 11 |
| Victim services assistance? | | | | | |
| Yes | 10% | 12% | 10% | 9% | 9% |

Note: The percent reporting an arrest and the percent reporting that they had received assistance from a victim services agency were based on those victimizations reported to the police.

There were no differences between victims of violence who were American Indians and victims of all races in the percentage having contacts with the prosecutor's office or a victim services agency.

For all victims such contacts were higher in those cases in which an arrest was known to have occurred.

| | Average annual number of violent victimizations reported to the police | |
|--------------------------------|--|------------------|
| | 4,525,200 | |
| | Resulted in — | |
| | Arrests | No arrests |
| Victims of all races | 1,228,400 | 3,296,800 |
| Subsequent contact with — | | |
| Prosecutor's office | 23% | 3% |
| Victim services agency | 17 | 7 |
| American Indian victims | 19,000 | 49,000 |
| Subsequent contact with — | | |
| Prosecutor's office | 25% | 3% |
| Victim services agency | 21 | 8 |

**Average annual rates of violent victimization,
by race and ethnicity, 1992-96**

| | Number of violent victimizations, per 1,000, age 12 or older | | |
|-----------------|---|----------|--------------|
| | All ethnicities | Hispanic | Non-Hispanic |
| All races | 50 | 58 | 50 |
| American Indian | 124 | 243 | 116 |
| White | 49 | 56 | 48 |
| Black | 61 | 85 | 61 |
| Asian | 29 | 63 | 28 |

Note: The table excludes respondents who did not provide complete data on race and ethnicity.

Race and ethnicity in violent victimization

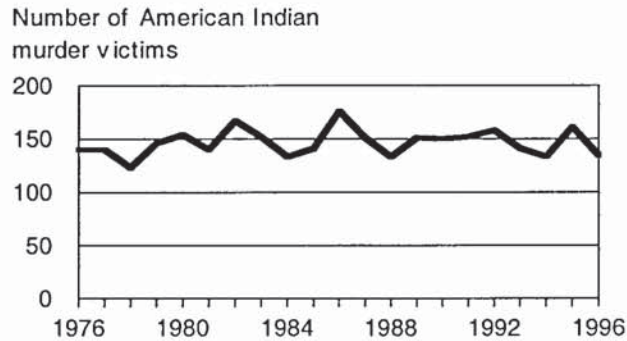
The NCVS asks respondents about both race and ethnicity. For 1992-96 about 9% of all participants, or about 18.5 million residents age 12 or older in an average year, were of Hispanic origin and belonged to one of the four primary racial groups sampled in the survey— white, black, American Indian, or Asian. Hispanic residents were estimated to consist of 17.8 million whites, 0.5 million blacks, about 0.1 million Asians, and a slightly smaller number of American Indians.

Across each racial group, Hispanic residents were found to have higher average per capita rates of violent victimization. Among all racial and ethnic groups, non-Hispanic Asians were found to have the lowest estimated rates of violent victimization, about 1 violent crime for every 36 residents. By contrast, American Indian residents who also identified themselves as Hispanic reported a rate of violent victimization that translated into about 1 violent crime for every 4 residents.

- While about 7% of all American Indian participants in the NCVS reported they were also of Hispanic ethnicity, nearly 14% of those American Indians victimized by violence were of Hispanic origin.
- Among American Indians who also described themselves as Hispanic, the rate of violent victimization was 4 times the rate found among all Hispanics and twice the rate found among non-Hispanic American Indians.

Table 25

Annual number of murders of American Indians, 1976-96



Murder among American Indians

Each year about 150 American Indians become murder victims. Little year-to-year variation occurred in the number of American Indian murder victims, but recent years were below the peak reached in 1986.

American Indians were 0.7% of all murder victims nationwide, about the same as their share of the population (table 26). From 1976 to 1996 an estimated 3,100 American Indians were murdered. Because of variations in reporting by law enforcement agencies over time, detail on these murder victims is available for 2,826 American Indian murder victims or about 92% of the total estimated number of victims.

Over the 21-year period, just under 14% of the murders of American Indians occurred in California, proportional to California's share of the American Indian population. Alaska, by contrast, accounts for about 10% of American Indian murder victims over the period but just over 4% of the American Indian population

nationwide. In Alaska in 1976-96, American Indians and Alaska Natives composed about 16% of the population but 28% of that State's murder victims. The 10 States in which about 63% of the American Indian population reside have accounted for about 75% of the murders.

Rates of murder

As observed across the other racial groups, the number of murders per capita among American Indians has been declining. The rate of murder among American Indians in 1996 was below the national average for ages under age 40 (table 27). For ages 40 or older, murder rates are close to the national average.

For persons age 24 or younger in 1996, American Indian rates of murder closely paralleled the rates among whites and Asians and were well below the rates among black victims. For those age 25 to 29, the 37% decline in the rate of murder among American Indians reflects the largest decline of any racial group.

Table 26. Murders of American Indians, as a percent of all American Indians and of all murder victims, by State, 1976-96

| States with the largest number of American Indian murder victims | Number of murders of American Indians | Percent of — | | American Indians as a percent of — | |
|--|---------------------------------------|---------------------------------|--------------------------------|------------------------------------|---------------------------|
| | | All murders of American Indians | The American Indian population | All murder victims | Total resident population |
| U.S. total | 2,826 | 100.0% | 100.0% | 0.7% | 0.8% |
| California | 386 | 13.7 | 13.7 | 0.6 | 1.0 |
| Oklahoma | 326 | 11.5 | 11.9 | 6.2 | 8.1 |
| Alaska | 268 | 9.5 | 4.2 | 28.0 | 15.5 |
| North Carolina | 245 | 8.7 | 3.9 | 2.0 | 1.2 |
| Arizona | 233 | 8.2 | 10.8 | 4.1 | 5.8 |
| Washington | 191 | 6.8 | 4.4 | 4.2 | 1.8 |
| Minnesota | 164 | 5.8 | 2.5 | 7.4 | 1.2 |
| New Mexico | 160 | 5.7 | 6.7 | 7.5 | 8.9 |
| New York | 75 | 2.7 | 3.1 | 0.2 | 0.4 |
| Oregon | 71 | 2.5 | 2.0 | 2.7 | 1.4 |
| All other States | 707 | 25.0 | 36.8 | 0.3 | 0.4 |

Note: Supplementary Homicide Data are for 1976-96. Population data are for 1994.

Table 27. Number of murders per 100,000 population, by race and age, 1991 and 1996

| | Age of murder victims | | | | | | |
|--------------------------------|-----------------------|--------|--------|--------|--------|--------|-------------|
| | 17 or younger | 18-24 | 25-29 | 30-34 | 35-39 | 40-49 | 50 or older |
| Murder rate, 1996 | | | | | | | |
| Total | 7.9 | 19.6 | 14.5 | 10.8 | 9.2 | 6.6 | 4.4 |
| American Indian | 4.0 | 9.1 | 11.2 | 10.8 | 8.8 | 7.2 | 5.7 |
| White | 4.9 | 9.5 | 7.4 | 6.2 | 5.8 | 4.3 | 3.3 |
| Black | 24.3 | 76.6 | 58.2 | 40.8 | 32.7 | 24.1 | 14.0 |
| Asian | 4.3 | 9.0 | 6.2 | 5.3 | 3.4 | 3.2 | 3.3 |
| Murder rate, 1991 | | | | | | | |
| Total | 9.3 | 23.9 | 18.6 | 15.0 | 12.0 | 8.7 | 5.7 |
| American Indian | 5.0 | 9.7 | 17.8 | 14.1 | 11.7 | 7.0 | 5.1 |
| White | 5.4 | 11.6 | 9.8 | 8.5 | 7.2 | 5.6 | 4.0 |
| Black | 30.6 | 97.4 | 75.0 | 60.0 | 46.3 | 34.1 | 21.1 |
| Asian | 4.7 | 9.9 | 9.5 | 7.7 | 7.9 | 6.2 | 4.9 |
| Percent change, 1991-96 | | | | | | | |
| Total | -15.1% | -18.0% | -22.0% | -28.0% | -23.3% | -24.1% | -23.6% |
| American Indian* | -20.0 | -6.2 | -37.1 | -23.4 | -24.8 | 2.8 | 12.7 |
| White | -9.3 | -18.1 | -24.5 | -27.1 | -19.4 | -22.4 | -18.7 |
| Black | -20.6 | -21.4 | -22.4 | -32.0 | -29.4 | -29.4 | -33.6 |
| Asian | -8.5 | -9.1 | -34.7 | -31.2 | -57.0 | -48.9 | -33.2 |

*Increases occurred from 4 additional murders of persons age 40 to 49 and 4 additional murders of persons age 50 or older. Denominators for the oldest group included persons age 50 to 74 years.

Table 28. Circumstances of murder, by race, 1976-96

| Murders with known circumstances | Murders | | | | |
|--|-----------|-----------------|---------|---------|-------|
| | All races | American Indian | White | Black | Asian |
| Total | 100% | 100% | 100% | 100% | 100% |
| Violent felony | 14 | 11 | 16 | 11 | 27 |
| Other felony offenses | 10 | 5 | 10 | 11 | 8 |
| Suspected felony | 4 | 4 | 4 | 3 | 3 |
| Brawl under the influence of alcohol/drugs | 5 | 13 | 6 | 4 | 2 |
| Arguments | 43 | 45 | 38 | 50 | 35 |
| Other circumstances | 24 | 22 | 27 | 21 | 25 |
| Number | 344,928 | 2,515 | 181,043 | 156,203 | 4,545 |

Note: Table excludes an estimated 101,446 murder victims for whom the circumstances were not known.
 Source: FBI, Supplemental Homicide Reports, 1976-96.

Circumstances of murder

Supplemental data regarding murders with known circumstances indicate that American Indian murder victims were more likely to have been killed during a brawl involving alcohol or drugs (13%)

than white (6%), black (4%), or Asian (2%) murder victims (table 28). Forty-five percent of American Indian murder victims were killed during an argument, and 11% were killed during the commission of a violent felony.

American Indian and Asian murder victims, whether victims of violent felony murder or murders arising from arguments, were more likely than whites or blacks to have been victimized by an offender of a different race.

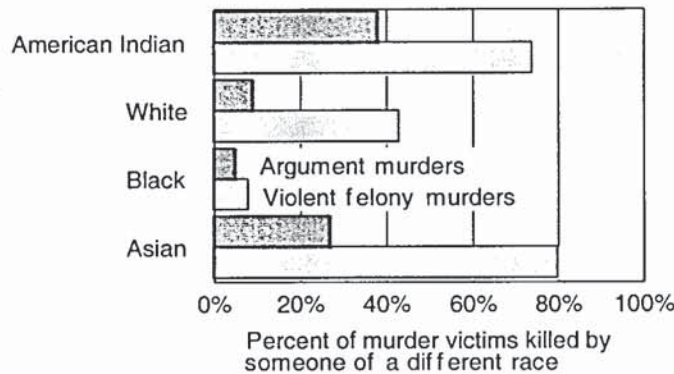


Table 29. Murders, by victim-offender relationship and race, 1976-96

| | Percent of murder | | | | |
|--|----------------------|-----------------|---------|---------|--------|
| | Victims of all races | American Indian | White | Black | Asian |
| Total | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Victim/offender had prior relationship | 81.2 | 83.9 | 78.4 | 84.5 | 70.9 |
| Victim/offender were strangers | 18.8 | 16.1 | 21.6 | 15.5 | 29.1 |
| Same race | 13.8 | 3.9 | 14.4 | 13.4 | 8.2 |
| Different races | 5.0 | 12.2 | 7.1 | 2.1 | 20.9 |
| Number of murder victims | 281,603 | 2,242 | 147,417 | 128,551 | 3,393 |

Note: Table excludes victims with unknown relationship to offender and victims and offenders of unspecified races.

Victim-offender relationship in murder cases

In American Indian murder cases in which the victim offender-relationship was known, strangers accounted for approximately 16% of the murders (table 29). Acquaintances accounted for about half the murders. Victim-

offender relations in American Indian murder cases were similar to those found among all murders.

American Indian and Asian murder victims were more likely than white or black murder victims to have been killed by a stranger of a different race.

Table 30. Murders, by race of offender and victim, 1976-96

| Race of offender | Race of murder victim | | | | |
|------------------|-----------------------|-----------------|---------|---------|-------|
| | All races | American Indian | White | Black | Asian |
| Total | 100% | 100% | 100% | 100% | 100% |
| American Indian | 0.8% | 56.9% | 0.6% | 0.1% | 0.4% |
| White | 47.6 | 32.5 | 85.6 | 5.8 | 22.1 |
| Black | 50.4 | 9.7 | 13.3 | 94.0 | 18.1 |
| Asian | 1.0 | 0.7 | 0.5 | 0.1 | 59.2 |
| Number | 313,032 | 2,381 | 162,609 | 143,854 | 3,688 |

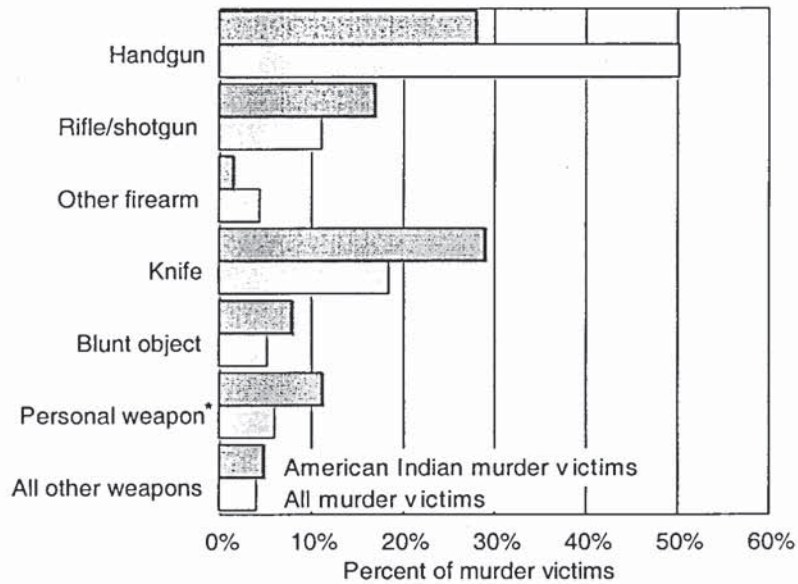
Note: Table excludes cases in which the race of the victim or offender is unknown.
Source: Supplemental Homicide Data are for the period 1976-96. Population data are for 1994.

Race of murderers

In most murder cases involving a white or black victim, the offender was of the same race as the victim (table 30).

However, when the races of the offender and victim were known, more than 40% of American Indian murder victims were killed by an offender who was not an American Indian; in 33% of the cases the offender was white.

Compared to all murder victims, American Indian murder victims were substantially less likely to have been killed by a handgun but more likely to have been killed by a rifle or shotgun or stabbed.



*Includes hands and feet.

Note: Excludes cases in which type of weapon is unknown.

Murder weapons

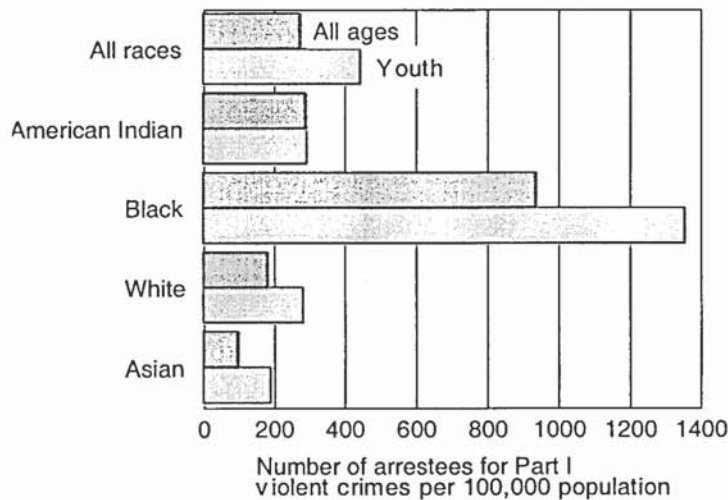
American Indian murder victims were substantially less likely (28% to 50%) than all murder victims to have been killed by a handgun. Almost 30% of American Indian murder victims were killed by a knife, compared to less than 20% of all murders.

Arrests and convictions of American Indians

Arrest data for 1996, provided by local law enforcement agencies, indicate that American Indians account for 0.9% of the arrests for Part I violent crimes (murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault) — an estimated 6,600 arrests for these offenses.

Approximately 17% of American Indians arrested for these violent offenses are under age 18, nearly the same percentage found among arrestees for all violent crimes in 1996. The 1996 arrest rates for Part I violent crimes among American Indian youth were about the same as for white youth and were about a fifth of those of black youth.

Unlike the pattern of violent crime arrest rates for other racial groups — higher for youth than for the whole population — among American Indians the arrest rates for those under age 18 did not vary from the overall rate.



Note: Arrest rates for youth were based on the estimated number of arrests of persons under the age of 18 and calculated on the number of residents age 10-17.

Source: FBI, *Crime in the United States, 1996*.

American Indians have a rate of arrest for alcohol violations (DUI, liquor law violations, and public drunkenness) more than double the national rate. Arrests of American Indians under age 18 for alcohol-related violations are also twice the national average.

| | Number of arrests per 100,000 population | | | |
|---------------------------------|--|-----------------|-----------|-----------------|
| | All ages | | Youth | |
| | All races | American Indian | All races | American Indian |
| Total violent | 275 | 291 | 445 | 294 |
| Murder | 7 | 7 | 9 | 5 |
| Rape | 13 | 16 | 19 | 14 |
| Robbery | 59 | 37 | 165 | 67 |
| Aggravated assault | 197 | 231 | 252 | 208 |
| Total property | 1,039 | 1,369 | 2,783 | 3,026 |
| Total alcohol violations | 1,079 | 2,545 | 649 | 1,341 |
| DUI | 553 | 1,069 | 61 | 98 |
| Liquor laws | 255 | 727 | 510 | 1,108 |
| Drunkenness | 271 | 749 | 78 | 135 |

Note: Arrest rate is the number of arrests per 100,000 resident population. Arrest rates for youth were based upon the estimated number of arrests of persons under the age of 18. The youth arrest rate was calculated on the number of residents age 10-17.

Table 31

Felony convictions in State courts

On average there are annually about 900,000 felony convictions in State courts. American Indians account for just over 1/2 of 1% of felony convictions across the Nation (table 32).

In 1996 State and local felony courts throughout the United States convicted an estimated 1 million defendants. Among these were an estimated 7,000 felony convictions of American Indians, a rate of approximately 1 felony conviction for every 200 American Indians age 18 or older. By contrast in 1996 whites experienced a felony conviction rate of about 1 conviction per 300 adults; among blacks the rate of felony

Table 32. Annual average number of felony convictions in State courts, by race, 1990-96

| | Felony convictions | |
|-----------------|-----------------------|---------|
| | Average annual number | Percent |
| Total | 898,290 | 100% |
| American Indian | 4,980 | 0.6 |
| White | 468,944 | 52.2 |
| Black | 418,124 | 46.6 |
| Asian | 6,243 | 0.7 |

Note: The annual average estimates are based on the National Judicial Reporting Program, 1990, 1992, 1994, and 1996.

conviction was 1 for every 51 adults; and Asians reflected the lowest rate, about 1 felony conviction for every 600 Asian residents age 18 or older.

Table 33. Correctional population, by status and race, 1997

| | Number | Percent of correctional populations | | | | |
|--|-----------|-------------------------------------|-----------------|-------|-------|-------|
| | | All races | American Indian | White | Black | Asian |
| Number of offenders | | | | | | |
| Total corrections | 5,751,277 | 100% | 1.1% | 58.8% | 39.6% | 0.5% |
| Probation | 3,261,888 | 100% | 0.9 | 66.5 | 32.3 | 0.4 |
| Local jails | 557,974 | 100% | 2.9 | 53.1 | 42.8 | 1.0 |
| State prisons | 1,131,581 | 100% | 1.0 | 43.1 | 55.4 | 0.5 |
| Federal prisons | 112,973 | 100% | 1.5 | 60.1 | 37.0 | 1.5 |
| Parole | 685,033 | 100% | 0.6 | 52.6 | 46.4 | 0.5 |
| Offenders per 100,000 resident population age 18 or older | | | | | | |
| Total corrections | | 2,907 | 4,194 | 2,036 | 9,863 | 414 |
| Probation | | 1,650 | 1,965 | 1,306 | 4,561 | 183 |
| Local jails | | 282 | 1,083 | 178 | 1,031 | 78 |
| State prisons | | 572 | 757 | 294 | 2,714 | 80 |
| Federal prisons | | 57 | 113 | 41 | 181 | 24 |
| Parole | | 346 | 275 | 217 | 1,376 | 48 |

American Indians under correctional supervision

American Indians accounted for about 1% of the more than 5.7 million adults under correctional care, custody, or control on a single day in 1997 (table 33). The estimated 62,600 American Indians with a correctional status accounted for just over 4% of the American Indian adult population (not shown in a table).

By comparison, an estimated 2% of white adults, 10% of black adults, and less than a half of 1% of Asian adults were under correctional supervision (not shown in a table).

In 1997, 54% of the American Indians under correctional supervision were in the community — on probation (47%) or parole (7%). Twenty-five percent were held in local jails, 18% in State prisons, and 3% in Federal prisons.

In 1997 just under half of the American Indian offenders under the care, custody, or control of Federal, State, or local correctional authorities were confined in prisons or jails. By contrast, less than a third of correctional populations nationwide were confined in prisons or jails.

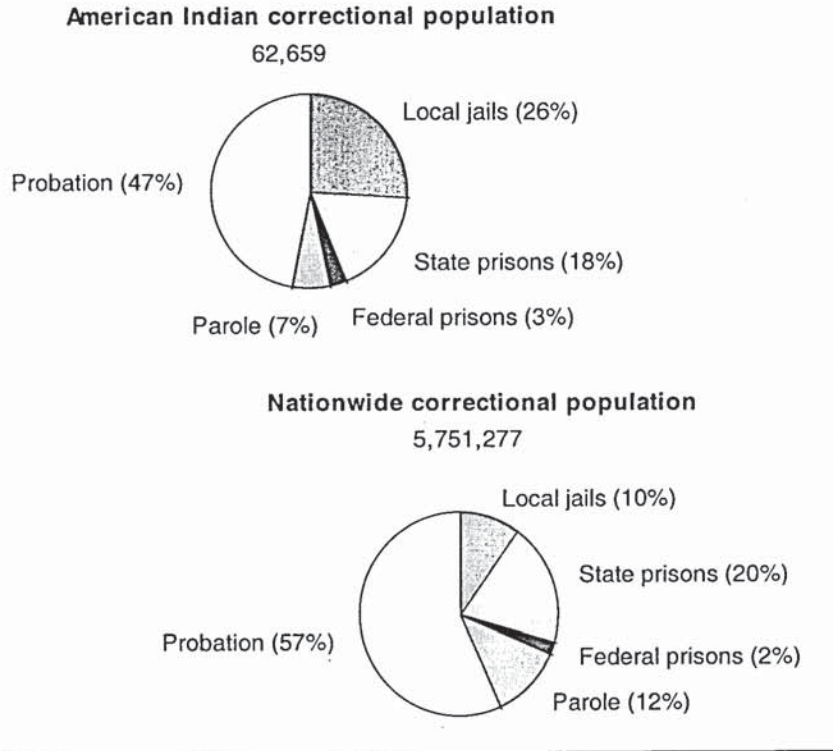


Table 34. American Indian jail inmates, by offense, 1996

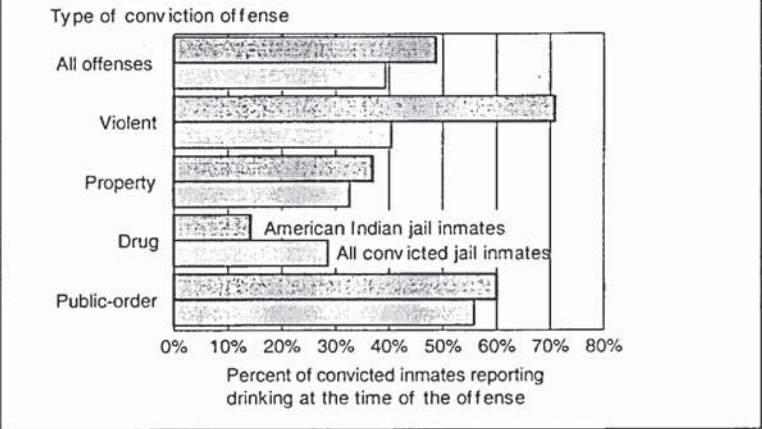
| | Unconvicted jail inmates | | Convicted jail inmates | |
|---------------------|--------------------------|------------------|------------------------|------------------|
| | All races | American Indians | All races | American Indians |
| Total | 100.0% | 100.0% | 100.0% | 100.0% |
| Violent | 36.7% | 26.6% | 21.7% | 21.9% |
| Homicide | 6.6 | 2.7 | 1.5 | 0.2 |
| Sexual assault | 3.8 | -- | 3.0 | 7.1 |
| Robbery | 8.8 | 2.2 | 5.5 | 7.9 |
| Assault | 15.4 | 15.7 | 10.0 | 10.1 |
| Other violent | 2.1 | 5.9 | 1.7 | 1.6 |
| Property | 25.6% | 27.4% | 28.6% | 27.0% |
| Burglary | 7.7 | 11.5 | 8.0 | 8.1 |
| Larceny | 5.6 | 2.3 | 9.5 | 6.2 |
| Motor vehicle theft | 3.3 | 7.3 | 2.3 | 4.7 |
| Other property | 9.0 | 6.3 | 8.8 | 7.9 |
| Drugs | 20.2% | 6.5% | 23.7% | 15.8% |
| Public-order | 17.4% | 39.5% | 25.6% | 35.3% |
| Weapons | 2.2 | 8.2 | 2.4 | 0.7 |
| DWI | 3.6 | 13.8 | 9.6 | 13.1 |
| Other public-order | 11.6 | 17.5 | 13.6 | 21.5 |
| Number | 165,733 | 4,241 | 314,867 | 9,824 |

--Too small to estimate.

American Indians comprised just over 1% of the offenders on probation or parole or in State or Federal prisons but an estimated 2.9% of persons in local jails nationwide. American Indians accounted for 2.5% of those detained in local jails who had not been convicted of crimes and 3% of the convicted offenders in jail serving shorter sentences or awaiting transfer to other institutions.

Compared to jail inmates of all races, when the statuses of conviction are combined, American Indians were less likely to have been jailed for a violent or drug offense (table 34). However, consistent with their higher arrest rates for driving under the influence of alcohol, a substantial percentage of American Indians reported that they were in jail charged with or convicted of an offense involving driving while intoxicated (DWI). American Indians accounted for an estimated 10% of unconvicted jail inmates charged with DWI and just over 4% of convicted DWI offenders in local jails.

About half of convicted American Indian inmates in local jails had been consuming alcoholic beverages at the time of the offense for which they had been convicted. An estimated 7 in 10 American Indians in local jails convicted of a violent crime had been drinking when they committed the offense.



Blood alcohol concentration calculated from inmates' reports of drinking at the time of their offense

| | Jail | Prison |
|-----------------|------|--------|
| All races | 0.20 | 0.27 |
| American Indian | 0.23 | 0.32 |
| White | 0.20 | 0.28 |
| Black | 0.18 | 0.26 |
| Asian | 0.20 | 0.20 |

Note: Blood alcohol concentration (BAC) is the number of grams of alcohol per deciliter of blood.

Nearly 4 in 10 American Indian inmates held in local jails had been charged with a public-order offense — most commonly driving while intoxicated.

Sixteen percent of convicted American Indians serving time in local jails had been convicted of a drug offense.

In fiscal year 1996 U.S. attorneys investigated 1,927 suspects for offenses committed in Indian country.

Distribution of Indian country suspects investigated, by Federal court district—



Table 35. Types of offenses charged in cases filed in U.S. district courts, 1997

| Type of offense | Federal district court filings, 1997 | |
|-----------------|--------------------------------------|-----------------------|
| | All cases | American Indian cases |
| Total | 100.0% | 100.0% |
| Violent | 6.7 | 47.5 |
| Fraud | 18.3 | 9.1 |
| Property | 5.2 | 12.9 |
| Drugs | 39.5 | 14.7 |
| Regulatory | 3.3 | 2.0 |
| Other | 27.0 | 13.8 |
| Number | 60,403 | 1,126 |

American Indian youth detained

In September 1994, American Indians were 75 of the 124 juvenile delinquents confined under Federal jurisdiction — about 60% of such juveniles.

American Indians in the Federal justice system

In 1997 U.S. attorneys filed cases in Federal district court against 1,126 American Indians. Almost half of these cases involved a violent crime.

The majority of cases were filed in U.S. district courts in South Dakota, Arizona, New Mexico, and Montana.

The BJS Special Report *Juvenile Delinquents in the Federal Criminal Justice System*, February 1997, NCJ 163066, describes the circumstances of youth in the Federal system.

American Indians and the death penalty

Over the period 1973-97, 6,139 persons were sentenced to death in the United States. During the same years 52 American Indians were sentenced to death, 0.8% of the total. Between 1976 and 1997 a total of 432 persons were executed, including 3 American Indians (0.7% of those executed). This translates into a rate of execution for those sentenced to death of about 7 per 100 persons receiving a death sentence and for American Indians, about 5.8 per 100.

Among the 6,139 persons sentenced to death, 3,335 were still under a death sentence at the end of 1997—54.3% of those entering death row over the period. For American Indians, 28 of the 52 (53.8%)

| | All races | American Indians |
|--|-----------|------------------|
| Sentenced to death, 1973-97 | 6,139 | 52 |
| Executions, 1976-97 | 432 | 3 |
| Percent executed | 7.0% | 5.8% |
| Removed from death row by means other than execution | 2,372 | 21 |
| Percent removed by other means | 38.6% | 40.4% |
| Remaining under sentence of death, 1997 | 3,335 | 28 |
| Percent remaining, 1997 | 54.3% | 53.8% |

sentenced to death between 1973 and 1997 still remained under a death sentence at the close of 1997.

About half of all death sentences imposed upon American Indians were in North Carolina (11) and Oklahoma (14). Oklahoma (8) had the largest number of American Indians currently under a sentence to death. No Federal death sentences were imposed on American Indians during the period 1973-97.

| State | Total sentenced to death 1973-97 | Executed | Died from other causes | Sentence overturned or commuted | Under sentence of death 12/31/97 |
|----------------|----------------------------------|----------|------------------------|---------------------------------|----------------------------------|
| Alabama | 1 | | | 1 | |
| Arizona | 5 | | | 1 | 4 |
| California | 5 | | | 1 | 4 |
| Delaware | 1 | 1 | | | |
| Florida | 1 | | | | 1 |
| Georgia | 1 | | | | 1 |
| Idaho | 1 | | | 1 | |
| Maryland | 1 | | | 1 | |
| Montana | 3 | | | 2 | 1 |
| Nebraska | 2 | | | 1 | 1 |
| New Mexico | 1 | | | 1 | |
| North Carolina | 11 | | | 7 | 4 |
| Ohio | 1 | | | | 1 |
| Oklahoma | 14 | 1 | 1 | 4 | 8 |
| Oregon | 1 | | | | 1 |
| Tennessee | 1 | | | | 1 |
| Texas | 1 | 1 | | | |
| Utah | 1 | | | | 1 |
| U.S. total | 52 | 3 | 1 | 20 | 28 |

Table 36

American Indian tribal criminal justice

The BJS Census of State and Local Law Enforcement Agencies, 1996 identified 135 tribal law enforcement agencies with a total of 1,731 full-time sworn officers. The Bureau of Indian Affairs (BIA), which also has law enforcement responsibility for selected tribal jurisdictions, reported 339 full-time officers authorized to make arrests and carry firearms.

In addition to law enforcement services, American Indian tribes and the BIA operate jails in tribal areas.* Data provided by BIA indicate that these facilities employed 659 persons and had an authorized capacity to house just over 2,000 adults and juveniles (table 37).

*BJS has conducted a survey of tribal confinement facilities. Analysis of survey responses will be reported in *Survey of Jails in Indian Country, 1998*, forthcoming, NCJ 173410.

Table 37. Tribal jail capacity and jail staff, by State and tribe, 1998

| State | Tribe | Capacity | | Staff |
|-------------|--|----------|----------|-------|
| | | Adult | Juvenile | |
| Alaska | Metlakatla Indian Community | 8 | | 4 |
| Arizona | Navajo Nation | 208 | 36 | 96 |
| | Colorado River Indian Tribes | 30 | 8 | 12 |
| | Fort Mohave Indian Tribe | 1 | 1 | 4 |
| | White Mountain Apache Tribe | 31 | 17 | 22 |
| | Hopi Tribe | 68 | 28 | 8 |
| | Tohono O'Odham Nation | 33 | 16 | 31 |
| | Gila River Indian Community | 73 | 32 | 40 |
| | Salt River Pima-Maricopa Indian Community | 70 | 33 | 18 |
| | San Carlos Apache Tribe | 38 | | 14 |
| | Hualapai, Havasupai, Prescott Apache, and Tonto Apache | 36 | 8 | 7 |
| | Supai Tribe | 4 | | 2 |
| California | Pascua Yaqui Tribe | 1 | 1 | 6 |
| | Chehalis Indian Tribe | 2 | | 1 |
| Colorado | Southern Ute Tribe | 4 | | 5 |
| | Ute Mountain Ute Tribe | 14 | 2 | 5 |
| Idaho | Shoshone-Bannock Tribe | 24 | 4 | 4 |
| Michigan | Saginaw Chippewa Tribe | 2 | 6 | 9 |
| Minnesota | Boise Forte Tribe | 8 | 1 | |
| | Red Lake Chippewa Tribe | 18 | 4 | 13 |
| Mississippi | Mississippi Band of Choctaw Indians | 32 | 8 | 17 |
| | | | | |
| Montana | Blackfeet Tribe | 34 | 34 | 12 |
| | Crow Tribe | 12 | 2 | 5 |
| | Gros Ventre and Assiniboine Tribe | 8 | | 5 |
| | Assiniboine and Sioux Tribe | 21 | 21 | 19 |
| | Northern Cheyenne Tribe | 10 | 3 | 3 |
| | Chippewa Cree Tribe | 22 | 4 | 3 |
| Nebraska | Confederated Tribes of Salish and Kootenai | 16 | 4 | 11 |
| | Omaha Tribe | 20 | 12 | 9 |

Table 37. Continued.

| State | Tribe | Capacity | | Staff |
|--------------|---|----------|----------|-------|
| | | Adult | Juvenile | |
| Nevada | Battle Mountain, Duckwater, Ely, Goshute, South Fork, Elko Band, and Wells Band | 28 | | 5 |
| New Mexico | Jicarilla Apache Tribe | 0 | 8 | 0 |
| | Laguna Pueblo Tribe | 12 | 4 | 5 |
| | Mescalero Apache Tribe | 24 | | 7 |
| | Taos Pueblo | 8 | | 5 |
| | Ramah Navajo | 10 | | 5 |
| | Isleta Pueblo | 6 | | 6 |
| | Zuni Pueblo | 22 | 12 | 13 |
| North Dakota | Navajo Nation | 41 | 14 | 21 |
| | Spirit Lake Sioux Tribe | 25 | 8 | 5 |
| | Standing Rock Sioux Tribe | 42 | 8 | 8 |
| | Turtle Mountain Chippewa Tribe | 22 | 8 | 8 |
| Oklahoma | Three Affiliated Tribes | 8 | | 6 |
| | Sac and Fox Nation | | 69 | 23 |
| Oregon | Confederated Tribes of Warm Springs | 32 | 12 | 13 |
| | BIA Law Enforcement Services | | 4 | |
| South Dakota | Cheyenne River Sioux Tribe | 53 | 10 | 24 |
| | Crow Creek Sioux Tribe | 10 | 4 | 2 |
| | Lower Brule Sioux Tribe | 14 | 2 | 4 |
| | Oglala Sioux Tribe | 52 | 32 | 31 |
| | Rosebud Sioux Tribe | 48 | 16 | 12 |
| | Sisseton-Wahpeton Sioux Tribe | 16 | 4 | 5 |
| Utah | Uintah and Ouray Tribe | 24 | | 5 |
| Washington | Olympic Peninsula Tribe | 14 | 4 | 8 |
| | Puget Sound Tribe | 7 | 1 | 7 |
| | Kalispel and Spokane Tribe | 8 | | 4 |
| | Confederated Tribes of Yakama Nation | 30 | 17 | 10 |
| Wisconsin | Menominee Tribe | 32 | 10 | 16 |
| Wyoming | Shoshone and Arapaho Tribe | 26 | 4 | 6 |
| Total | | 1,462 | 536 | 649 |

Note: Data were supplied by the Bureau of Indian Affairs, U.S. Department of the Interior. Data are for April 1998. Staff of the facilities includes juvenile and adult detention officers and dispatchers.

Sources of data on American Indians and crime

One of the challenges facing all Federal statistical agencies is that representative statistical data about American Indians are difficult to acquire and use. This is true for a number of reasons with respect to crime data:

Sampling — Most Federal surveys utilize nationally representative samples of persons or households, thus limiting the capability to describe small population subgroups in detail. (American Indians comprise under 1% of the U.S. population.) In addition, sampling procedures, relying upon selection of respondents within clustered geographical sampling units, may by chance miss those areas where concentrations of residences of small subgroups (such as American Indians) may be located. Finally, the fluidity of population movement between tribal and nontribal areas for both Indian and non-Indian populations makes it difficult to systematically describe those living in these areas. The 1990 Census revealed, for example, that nearly half the population of reservation and trust lands was non-Indian.

The design of national surveys such as the NCVS does not permit calculating separate statistics for each American Indian tribe.

Coverage of data — Statistical coverage of incidents or cases in Indian country utilizing law enforcement, judicial, or corrections data is difficult to quantify because Federal, State, and

local authorities may have overlapping jurisdiction on tribal lands. Data about some crimes are collected by the Bureau of Indian Affairs (BIA) in Indian country while other crimes by or against American Indians are recorded by local sheriffs or police. Arrest data are profoundly limited by the lack of information on arrest coverage among tribal and BIA law enforcement agencies.

Data on trends — Crime data relying upon either samples of population or incident and case-level data from administrative records suffers from the lack of repetitive collection so that change rates and trends can be analyzed. Much data on the employment, education, and quality of life measures of American Indians are only available from periodic collections and are often of only limited value for comparisons over time. Often many years have passed since they were last conducted. Agencies do not generally use some form of aggregation or multi-year averages for examining change or for comparisons to other racial or ethnic groups.

These limitations severely circumscribe the depth and generalizability of data on American Indians and inhibit the Nation's ability to know much of the details about victims, offenders, and the consequences of crime for both. BJS has made a strong commitment toward improving this situation through the National Crime Victimization Survey, improvements planned for the National Incident-Based Reporting System, and periodic BJS surveys of offender populations.

National Crime Victimization Survey

The National Crime Victimization Survey (NCVS) is one of two statistical series maintained by the Department of Justice to learn about the extent to which crime is occurring. The NCVS, which gathers data on criminal victimization from a national sample of household respondents, provides annual estimates of crimes experienced by the public without regard to whether a law enforcement agency was called about the crime. Initiated in 1972, the NCVS was designed to complement what is known about crimes reported to local law enforcement agencies under the FBI's annual compilation known as the Uniform Crime Reports (UCR).

The NCVS gathers information about crime and its consequences from a nationally representative sample of U.S. residents age 12 or older about any crimes they may have experienced. For personal contact crimes the survey asks about the perpetrator. Asking the victim about his/her relationship to the offender is critical to determining whether the crime occurred between intimates.

In the latter half of the 1980's, BJS, with the Committee on Law and Justice of the American Statistical Association, sought to improve the NCVS components to enhance the measurement of crimes including rape, sexual assault, and intimate and family violence. The new questions and revised procedures were phased in from January 1992 through June 1993 in half the sampled households. Since July 1993 the redesigned methods have been used for the entire national sample.

One of the important contributions of the NCVS is that it permits multiple years of responses to the same questions to be analyzed, facilitating research on small subgroups of the population. For this study 5 years of NCVS data (1992-96) were combined, resulting in more than 1.1 million interviews, just over 7,000 of which were conducted among American Indians. This represents the largest national sample of American Indians assembled for purposes of better understanding the incidence and effects of criminal victimization. In addition, changes are being introduced to the NCVS which will permit future disaggregation of those incidents occurring on tribal lands from those occurring elsewhere.

Uniform Crime Reporting program

The UCR program of the FBI provides another opportunity to examine the issue of crime and violence among American Indians through the incident-based Supplementary Homicide Report program and the summary compilation of national arrest data. The summary-based arrest component of the UCR provides data by race of arrestees for both Part I crimes and the less serious Part II crimes.

In 1996 detailed data by race and offense were available for about 3 out of 4 arrests nationwide (about 11.1 million of the estimated 15.2 million arrests that year). American Indians are estimated to account for just under 1% of those arrested for Part I violent crimes and a slightly higher percentage of those arrested for Part I property crimes. Part II arrest offenses show that American Indians comprise larger percentages of those arrested for DUI,

vagrancy, liquor law violations, and public drunkenness.

Specific UCR coverage of those arrests by tribal or BIA law enforcement agencies is not known, and the extent to which they are included in the national estimates of arrests is not systematically described. In addition, the 1996 UCR does indicate reduced reporting of arrests by race (table 43) and that a number of jurisdictions (Kentucky, Illinois, the District of Columbia, Florida, Vermont, Kansas, and Montana) supplied either limited or no arrest data. Some of these incomplete or missing States, notably Montana, may affect the national estimates for American Indians.

National Incident-Based Reporting System

The National Incident-Based Reporting System (NIBRS) represents the next generation of crime data from law enforcement agencies. Rather than being restricted to a group of 8 Index crimes that the summary-based program uses, NIBRS obtains information on 57 types of crimes. The information collected on each violent crime incident includes victim-offender demographics, victim-offender relationship, time and place of occurrence, weapon use, and victim injuries. An important contribution of NIBRS is that investigating officers are asked to record information on the race of victims and offenders in the incident.

As of the end of 1997, jurisdictions certified by the FBI as capable of reporting incident-based data in the required format accounted for just over

7% of the U.S. population (about 19 million Americans) and just over 6% of all Index crimes (murders, rapes, robberies, aggravated assaults, burglaries, larcenies, and motor vehicle thefts). In those States with certified NIBRS systems, about 50% of the population is now covered by NIBRS reporting to the FBI.

BJA is currently funding preliminary studies of NIBRS data on two Indian reservations and their utility for improving our knowledge of crime with special regard for such concerns as intimate violence, family violence, and domestic violence and the role alcohol may play in these kinds of police-reported incidents. The Mille Lac (Minnesota) and Lummi (Washington) tribal law enforcement agencies will use NIBRS data as a part of a case-tracking system to follow the subsequent processing of criminal incidents brought to the attention of police.

Surveys of probationers and jail and prison inmates

BJA also conducts national surveys of persons under probation supervision and those confined in local jails and State and Federal prisons. These nationally representative surveys are the principal source of information on those serving time following a conviction: their backgrounds, their prior criminal histories, and the circumstances surrounding the offense for which they had been incarcerated. Both jail and prison surveys obtain from violent offenders details about the offender's relationship to the victim and how the crime was carried out. All surveys ask respondents to identify their race and ethnicity.

Law Enforcement Management and Administrative Statistics

BJS maintains the Law Enforcement Management and Administrative Statistics (LEMAS) series as the principal national source of data on the operations of police and sheriff's departments nationwide. LEMAS compiles information every 3 to 4 years from all large law enforcement agencies (at least 100 sworn personnel) and a sample of all other departments. To create the sample BJS also sponsors the Census of State and Local Law Enforcement Agencies, collecting basic information about the functions and number of personnel of all agencies in the United States.

LEMAS data are obtained on the organization and administration of law enforcement agencies, agency responsibilities, operating expenditures, job functions, weapons policies, and demographic characteristics of sworn personnel. BJS obtains similar information from campus law enforcement agencies and Federal law enforcement agencies.

LEMAS data are available on the race and ethnicity of law enforcement personnel since 1987.

National Judicial Reporting Program

The National Judicial Reporting Program (NJRP) is a biennial sample survey of court records on convicted felons nationwide. Using a nationally representative sample of counties, NJRP compiles information on the sentences that felons receive in State courts and on the characteristics of convicted felons. The NJRP first

reported felony sentencing data for 1986 and has provided national estimates at 2-year intervals since that time.

In addition to the convicted felon's race and ethnicity, NJRP obtains individual-level data on the conviction offense, sentences received, case-processing, methods of conviction, and a wide variety of other defendant characteristics.

Federal Justice Statistics Program

The Federal Justice Statistics Program (FJSP) provides annual data on workload, activities, and case outcomes in the Federal criminal justice system. Information is reported on all aspects of case processing in the Federal justice system including the number of persons investigated, prosecuted, convicted, incarcerated, sentenced to probation, released prior to trial, handled by magistrates, sentencing outcomes, and time served. Data for this series are obtained from the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Federal Bureau of Prisons.

Data are available by defendant race and ethnicity at each processing stage of the Federal criminal justice system. The FJSP was initiated in 1980.

Numerical tables for the graphical figures

Cover. Violent victimization rates, 1992-96

| Age of victim | Rate of violent victimization per 1,000 persons under age 12 in each group | |
|---------------------|--|------------------|
| | All races | American Indians |
| All violent | 50 | 124 |
| Murder* | 9 | 7 |
| Rape/sexual assault | 2 | 7 |
| Robbery | 6 | 12 |
| Aggravated assault | 11 | 35 |
| Simple assault | 31 | 70 |

*The average annual murder rate is for 100,000 persons, all ages, 1992-96.

Highlights. Pages v and 2. Violent victimizations, 1992-96

| | Number of violent victimizations per 1,000 persons age 12 or older |
|-----------------|--|
| All races | 50 |
| American Indian | 124 |
| Black | 61 |
| White | 49 |
| Asian | 29 |

Highlights. Page v. Murder, 1992-1996

| Race of victim | Number of murders per 100,000 persons |
|-----------------|---------------------------------------|
| American Indian | 7 |
| Black | 34 |
| White | 5 |
| Asian | 5 |

Highlights. Pages v and 4. Age of victim, 1992-96

| Age of victim | Rate of violent victimization per 1,000 persons in each group | |
|---------------|---|------------------|
| | All races | American Indians |
| 12-17 | 116 | 171 |
| 18-24 | 100 | 232 |
| 25-34 | 61 | 145 |
| 35-44 | 44 | 124 |
| 45-54 | 27 | 43 |
| 55 or older | 9 | 14 |

Highlights. Page vi. Sex of victim, 1992-96

| Sex of victim | Rate of violent victimization per 1,000 persons age 12 or more in each group | |
|---------------|--|------------------|
| | All races | American Indians |
| Male | 60 | 153 |
| Female | 42 | 98 |

Highlights. Page vi. Offender race, 1992-96

| Race of victim | Percent of violent victimizations that were interracial |
|-----------------|---|
| American Indian | 70% |
| Black | 19 |
| White | 31 |
| Asian | 68 |

Highlights. Page vi. Alcohol use by the offender, 1992-96

| Race of victim | Percent of victims of violence reporting offender drinking |
|-----------------|--|
| American Indian | 46% |
| Black | 28 |
| White | 36 |
| Asian | 22 |

Highlights. Page vi. Weapon use by offender, 1992-96

| Age of victim | Percent of violent victimizations or murders | |
|--------------------------------|--|------------------|
| | All races | American Indians |
| Firearm in non-lethal violence | 11% | 13% |
| Handgun in lethal violence | 50% | 28% |

Highlights. Page vii. Crimes reported to the police, 1992-96

| Race of victim | Percent of violent victimizations reported to the police |
|-----------------|--|
| American Indian | 46% |
| Black | 50 |
| White | 41 |
| Asian | 39 |

Highlights. Page vii. Arrests of adults and youth, 1996

| Race of arrestees | Number of arrests for Part I violent crimes per 100,000 persons in each group | |
|-------------------|---|--------------|
| | All ages | Under age 18 |
| American Indian | 291 | 294 |
| Black | 937 | 1,356 |
| White | 182 | 283 |
| Asian | 98 | 192 |

Highlights. Page vii. Arrests for drug and alcohol offenses, 1997

| Arrest offense | Number of arrests per 100,000 persons | |
|-----------------|---------------------------------------|------------------|
| | All races | American Indians |
| Drug | 592 | 344 |
| Alcohol-related | 1,064 | 2,550 |

Highlights. Page viii. Under correctional supervision or control, 1997

| | Total under correctional supervision or control per 100,000 adults |
|-----------------|--|
| U.S. total | 2,907 |
| American Indian | 4,193 |
| Black | 9,863 |
| White | 2,036 |
| Asian | 414 |

Highlights. Page viii. In State or Federal prison, 1997

| | Number in prison per 100,000 adults |
|-----------------|-------------------------------------|
| U.S. total | 629 |
| American Indian | 870 |
| Black | 2,895 |
| White | 335 |
| Asian | 104 |

Page 3. Simple assault rates, 1992-96

| Race of victim | Number of simple assaults per 1,000 persons age 12 or older |
|-----------------|---|
| American Indian | 70 |
| Black | 30 |
| White | 32 |
| Asian | 15 |

Page 5. Location of victims of violence, 1992-96

| Residence of victim | Number of violent victimization per 1,000 persons age 12 or more in each group | |
|---------------------|--|------------------|
| | All races | American Indians |
| Rural | 37 | 89 |
| Suburban | 48 | 138 |
| Urban | 65 | 207 |

Page 6. Victim-offender relationship in violent victimizations, by race, 1992-96

| Victim-offender relationship | Percent of violent victimizations | |
|------------------------------|-----------------------------------|------------------|
| | All races | American Indians |
| Intimate | 10.7% | 8.9% |
| Family | 4.7 | 6.7 |
| Acquaintance | 33.7 | 38.7 |
| Stranger | 50.8 | 45.7 |

Page 8. Characteristics of intimate and family violence among American Indians, 1992-96

| | Percent of violent victimizations against American Indians | |
|------------------|--|----------------|
| | Intimates | Family members |
| Interracial | 75% | 25% |
| Alcohol-involved | 58 | 67 |
| Victims injured | 59 | 49 |

Page 10. Violent offender use of alcohol, by victim-offender relationship and race, 1992-96

| Victim-offender relationship | Percent of violent victimizations in which the victims felt certain they could distinguish alcohol use by the offender | |
|------------------------------|--|------------------|
| | All races | American Indians |
| Intimate | 64.7% | 60.9% |
| Family | 49.2 | 76.5 |
| Acquaintance | 36.1 | 40.0 |
| Stranger | 28.9 | 42.0 |

Page 19. Number of murders of American Indians, 1976-96

| | Number of murders of American Indians |
|------|---------------------------------------|
| 1976 | 140 |
| 1977 | 140 |
| 1978 | 123 |
| 1979 | 146 |
| 1980 | 154 |
| 1981 | 140 |
| 1982 | 167 |
| 1983 | 152 |
| 1984 | 133 |
| 1985 | 141 |
| 1986 | 176 |
| 1987 | 151 |
| 1988 | 133 |
| 1989 | 151 |
| 1990 | 150 |
| 1991 | 152 |
| 1992 | 158 |
| 1993 | 141 |
| 1994 | 133 |
| 1995 | 161 |
| 1996 | 134 |

Page 21. Murders by someone of a different race from the victim, by race of victim and type of murder, 1976-96

| Race of murder victim | Percent of murder victims killed by someone of a different race, committed during — | |
|-----------------------|---|-------------|
| | Commission of a felony | An argument |
| American Indian | 74% | 38% |
| Black | 8 | 5 |
| White | 43 | 9 |
| Asian | 80 | 27 |

Page 23. Murder weapons used, by race of victim, 1992-96

| Weapon* | Percent of murder victims | |
|---|---------------------------|------------------|
| | All races | American Indians |
| Handgun | 50.3% | 28.1% |
| Rifle/shotgun | 11.2 | 17.0 |
| Other firearm | 4.5 | 1.6 |
| Knife | 18.5 | 29.1 |
| Blunt object | 5.3 | 8.0 |
| Personal weapon, including hands and feet | 6.1 | 11.3 |
| Other types of weapons | 4.1 | 4.9 |

*Excludes cases in which type of weapon is unknown.

Page 24. Arrests of adults and youth for violent crimes, by race, 1996

| Race of arrestees | Number of arrests for Part I violent crimes per 100,000 persons in each group, 1996 | |
|-------------------|---|--------------|
| | All ages | Under age 18 |
| All races | 275 | 445 |
| American Indian | 291 | 294 |
| Black | 937 | 1,356 |
| White | 182 | 283 |
| Asian | 98 | 192 |

Page 29. Use of alcohol by convicted jail inmates at the time of their offense, by offense type and race, 1996

| Most serious offense | Percent of convicted jail inmate reporting alcohol use at the time of their offense | |
|----------------------|---|------------------|
| | All races | American Indians |
| All offenses | 39.5% | 48.8% |
| Violent | 40.6 | 71.0 |
| Property | 32.8 | 37.1 |
| Drug | 28.8 | 14.3 |
| Public-order | 56.0 | 60.2 |

Page 30. Map of Federal district courts. Investigations by U.S. attorneys of suspects in Indian country, fiscal year 1996

| U.S. district court | Number of suspects from American Indian country |
|------------------------|---|
| Northern Alabama | 2 |
| Arizona | 355 |
| Central California | 2 |
| Northern California | 2 |
| Southern California | 1 |
| Colorado | 21 |
| Middle Florida | 3 |
| Southern Florida | 1 |
| Northern Iowa | 3 |
| Idaho | 47 |
| Northern Illinois | 1 |
| Western Louisiana | 5 |
| Maine | 3 |
| Eastern Michigan | 6 |
| Western Michigan | 10 |
| Minnesota | 15 |
| Montana | 115 |
| Western North Carolina | 21 |
| North Dakota | 149 |
| Nebraska | 21 |
| New Mexico | 333 |
| Nevada | 7 |
| Northern New York | 1 |
| Eastern Oklahoma | 66 |
| Northern Oklahoma | 31 |
| Western Oklahoma | 44 |
| Oregon | 6 |
| Western Pennsylvania | 1 |
| South Dakota | 479 |
| Utah | 46 |
| Eastern Washington | 58 |
| Western Washington | 19 |
| Eastern Wisconsin | 15 |
| Western Wisconsin | 2 |
| Wyoming | 24 |

Source: Federal Justice Statistics Program

FEDERAL PUBLIC DEFENDER
District of South Dakota

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Federal Public Defender

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 Telephone: 605-343-5110 Fax: 605-343-1498

April 4, 2001

Honorable Diana E. Murphy, Chairperson
 United States Sentencing Commission
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VIA FACSIMILE: 202-502-4699

Re: Amendment V

Dear Madam:

Thank you for the opportunity to address the Commission regarding proposed Amendment V and issues in the Sexual Predator Act of 1998. As recited in Mr. McGrath's letter, dated March 23, the District of South Dakota is an Indian Country jurisdiction which, indeed, will be most affected by guideline amendments under the Act.

Roughly, 90 percent of this Office's clientele is Native American. The Office defends a significant portion of the sexual abuse offenses which are prosecuted in federal court. Most of these Native American offenders are charged pursuant to the Major Crimes Act. Accordingly, the proposed guideline amendments would directly and heavily impact our clientele.

South Dakota has a large Native American population (U.S. Census: 62,000; B.I.A. Census: 90,000). The Native Americans, primarily, are Sioux who are divided into nine recognized tribes. The reservations are rural, isolated and far from the judicial and small urban centers in this State. The reservations include Pine Ridge, Rosebud, Lower Brule, Crow Creek, Cheyenne River, Standing Rock, Lake Traverse, Yankton, and Flandreau.

The Sioux are a proud people with strong traditions. However, it is clear that the dominant American society has failed, dismally, in its relations with and social obligations toward the Sioux. This failure is reflected, not only by history, but also by stark current facts. For example, the two poorest counties in the United States are Jackson County and Shannon County which

Honorable Diana E. Murphy
April 4, 2001 -- Page 2
Re: Amendment V

comprise much of the Pine Ridge Indian Reservation. Unemployment is 80-90%. Substance abuse, including alcoholism, and depression, with alarming rates of suicide, are epidemics.

Moreover, crime among and against Native Americans has some startling facets. The report, entitled "American Indians and Crime," Bureau of Justice Statistics, U.S. Department of Justice (Feb. 1999), contains the following data:

1. The annual rate (1992-96) of violent victimizations for Native Americans (124 violent crimes per 1,000 Native Americans) was more than twice the rate for the Nation (50 per 1,000 persons).

2. In 1997 U.S. Attorneys filed cases in federal district courts against 1,126 Native Americans, nearly half of which involved violent crime. The majority of these cases were filed in federal courts in South Dakota, Arizona, New Mexico, and Montana.

3. In 1996 U.S. Attorneys investigated 1,927 suspects for offenses committed in Indian Country. By far the greatest number of suspects -- 479 -- were in South Dakota, 25 percent of the total. (There were 355 suspects in Arizona; 333 in New Mexico; and, 115 in Montana.)

4. Sixty-seven percent (67%) of the violent victimizations involved alcohol. Forty-nine percent (49%) of all crimes by Native American offenders in 1996 involved alcohol use.

5. The rural crime rate for Native Americans from 1992-96 was more than double that found among rural blacks and rural whites.

6. From 1992 through 1996, the number of sexual assault victimizations among Native Americans was seven per 1,000 (that is, six percent of all violent crimes reported by Native Americans), as contrasted with two per 1,000 for the Nation. Native American victims of sexual assaults most often reported that the victimizations involved an offender of a different race, that is, in 9 of 10 instances. *

The latter point highlights a significant consideration: The proposed guidelines in Amendment V will drastically impact Native Americans because over 60 percent of the sex offenders in federal court are Native Americans. Many of those offenders themselves were sexually victimized. Many of them offend under the influence of alcohol. Yet, most of the sex offenders against Native Americans nationwide are of other races. Most of the sex offenders against Native Americans, if caught and prosecuted, are sentenced in state courts which, oftentimes, less harshly penalize these non-Indian offenders. Certainly, that appears to be the case in South Dakota State courts in which I have extensively practiced for twenty of the past twenty-three years. *

Honorable Diana B. Murphy
April 4, 2001 -- Page 3
Re: Amendment V

My further concern is that the spokespersons for the Native American communities and others among these peoples in this Indian Country District have not had the opportunity to address the Commission in a way meaningful to them. Specifically, they need the opportunity to address the Commission in their communities, that is, in this District. In my view it would be a critical opportunity foregone if the Commission were to adopt any of the proposed Amendments without first hearing from the spokespersons from this most affected and afflicted population.

I understand that the Commission is planning a public hearing in Rapid City, South Dakota on June 19, 2001, to address the impact of the federal sentencing guidelines on Native Americans in South Dakota. Delaying action on the amendments until after that hearing would aid the Commission in fully responding to the criticisms about disparate sentencing of Native Americans which are contained in the recent report by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, entitled "Native Americans in South Dakota: An Erosion of Confidence in the Justice System" (March 2000).

I strongly urge the Commission to delay any action on the proposals until after the June 19 hearing in Rapid City. I, further, wish for the Commission to know that I subscribe to the comments by Federal Defenders Stephen McCue and Fred Kay in their letter of April 2 to the Commission. Please do not hesitate to contact me if you have any questions.

Sincerely,



Robert Van Norman

RVN/jjb

cc: Timothy McGrath
Susan Hayes
Pamela Montgomery



'I have not been in an area where the divide and the suspicions between racial groups seem to be as great as they are in South Dakota.'
 — Cruz Reynoso, vice-chairman of the U.S. Commission on Civil Rights



There is a crisis in South Dakota today. Native Americans here have lost confidence in the criminal justice system.'
 — Dr. Mary Frances Berry, chairwoman of the U.S. Commission on Civil Rights

Racial divide 'intense' in S.D.

in Indian Country

Panel wants U.S. probe, state summit, hate-crime law

By STEVE YOUNG
 Argus Leader

Racial tensions in South Dakota are greater than in New York and Los Angeles, members of the U.S. Commission on Civil Rights said Tuesday, before offering a series of recommendations for addressing the problems.

In a 42-page report, the commission set out 15 recommendations, including:

- A call for Attorney General Janet Reno to appoint a task force to look into the role race plays in the way justice is carried out in the state — and to give it the power to subpoena.

- A request for a comprehensive study to determine whether there is racial bias in law-enforcement stops and arrests, or in prosecutions, jury selection and sentencing in this state.

- The need for hate-crimes prevention legislation to be enacted at the state level and strengthened at the federal level.

- And a request that Gov. Bill Janklow call for a summit of Indian leaders and organizations to help come up with legislation to make state government more responsive to the needs of its tribal citizens.

Cruz Reynoso, a UCLA law professor and vice chairman of the Civil Rights Commission, said the need for change became readily apparent to him last Dec. 6 during a Rapid City hearing on justice as it relates to tribal people in this state.

'I've been on this commission for six years, and I have not been in an area where the



Marcia James stands up and asks to be heard of the inequity of justice in her sister's death at the hands of a drunken driver in Sioux Falls. James met privately with commissioners to file a complaint of discrimination.

Val Hoepfner
 Argus Leader

FBI chafes at critical comments

By LEE WILLIAMS
 Argus Leader

Accused by the U.S. Civil Rights Commission of moving too slowly when investigating crimes in Indian Country, angry FBI agents lashed back Tuesday.

"They took 12 hours of testimony (last December during a hearing at Rapid City), and tarred two dozen agents whose life work is Indian Country, and that's just wrong," said Chip Burrus, assistant special agent in charge for the Dakotas and Minnesota.

Commission Chairwoman Mary Francis Berry flatly stated that FBI agents were slow to investigate, adding that the agency's tempo did not pick up until it was prodded by the

More inside

- The family of a woman who was killed by a drunken driver pleads for help.

- South Dakotans react to the panel's recommendations.

- Excerpts and the rights panel's proposals.

See stories page 6A-7A
 See full report online at www.argusleader.com

commission last December.

"Our principal focus is the unexplained deaths and foot-dragging by the FBI," Berry said during a press conference.

Burrus and Sioux Falls FBI supervisory agent David Heller called the commission's criti-

cism misplaced.

"We have an immediate notification — immediate response policy," Heller said.

Simply put, he added, if the FBI has jurisdiction, agents roll.

"We just sent two agents at 5 a.m. Saturday morning for a stabbing on the Yankton reservation," Heller said. "There is no waiting around."

The FBI coordinates major crime investigations on South Dakota's Indian reservations. But the agents stressed that lacking federal jurisdiction, the FBI can respond to a crime only if asked. For example, the FBI got involved in the 1999 deaths of eight American Indians

FBI / See 6A

■ SUNDAY: Feud threatens good will by President Clinton

■ MONDAY: Families live in crime-ridden neighborhoods.

■ TUESDAY: Tribes reclaim culture by raising bison, gardening and teaching Dakota

U.S. Commission on Civil Rights releases a review of

■ THURSDAY: Tribes promise of higher education, the perspective of boarding schools.

STRUGGLE IN INDIAN COUNTRY

Convictions run deep that justice in S.D. is a dual system

By DAVID KRANZ
Argus Leader

Accusations that South Dakota surprised a double standard of justice surprised neither American Indians nor non-Indians on Tuesday.

The question, they said, is whether anything will change in the wake of recommendations endorsed by U.S. Commission on Civil Rights.

Martin Brokenleg, an Augustana College professor, hopes it does. He said he didn't need a federal report to tell him that the court system treats Indians unfairly.

But now the call for change should be clear, he said. Justice must be for all.

"I remember being told about my aunt who lived in Martin. She was walking one day and stumbled on a crack in the sidewalk. A police car pulled up and she was arrested for public intoxication," Brokenleg said. "She was diabetic and never touched alcohol."

Carolyn Downs, director of The Baqoyn, which provides meals for the poor in downtown Sioux Falls,

said one of her staff is struggling now with what she called the justice system's dual standard.

"There are definite feelings about Native Americans that they haven't been treated fairly, and we need to air the differences," Downs said.

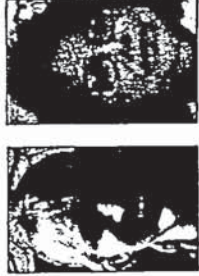
"There is room on both sides for understanding of one another's system. Some of the anger is very deep-seated in this city and nationwide." Countless incidents around Pine Ridge demonstrate an unfair treatment of Indians, said Cody Morton, 19, of Pine Ridge.

"You look at what goes on in Whiteclay, Nebraska. They just come and arrest you just because you are an Indian," he said. "I know a white girl who was raped here and they didn't ask questions. They just arrested an Indian."

Morton thinks the solution is more Indian police in places such as Rapid City.

"But too often when an Indian becomes a cop they try to live in the white man's world, and then it does no good," he said.

Sioux Falls businessman Jerry



Ann Cape

Mary Tsosie

Bowman said the accusations of a dual system of justice don't surprise him.

"It should be a wake-up call to the governor and Legislature to change some things," Bowman said.

"We've got to start paying attention to the educational and economic concerns of Native Americans, too."

Yet it will be difficult to convince the majority of the people, he said.

"I think the average person would say it is not happening," he said. "They will bad mouth it, say the report isn't accurate."

Mike Rousseau of Ridgeview, Minn.

east of Eagle Butte, said he thinks the justice system is fair.

"If the evidence is there, if you walk into court, you will be judged on that," Rousseau said. "I suppose some days it is and some days it isn't fair, but most of the time it is fair."

One thing that needs attention, though, is the problem with young police officers, he said.

"If there are problems, it is because they don't have the experience they should have," he said.

Norma Pederson, a retired nursing-home employee from Colman, said Indians have a right to be skeptical about substantive change.

"I have never treated the Native Americans fairly, so they are bound to be cynical," he said.

The report itself will not bring change, said Rae Burnette of Sioux Falls, a member of the South Dakota Advisory Committee for the U.S. Commission on Civil Rights, which wrote the recommendations endorsed by the federal commis-

"It is only as good as what Chairperson (Mary Frances) Berry and the U.S. commissioners can bring to bear using their influence with other federal agencies like the Department of Justice," Burnette said.

"Without the full force of the Department of Justice behind it, nothing will change."

"We should not be involved in this if we can't deliver to the people some kind of resolve. Is it any wonder tribal people don't trust government?"

Until recently, Mary Tsosie said her 41 years in Sioux Falls have not been tainted by racism. But when her niece Renae Bird recently was killed by a drunk driver, Tsosie said she began to see things differently.

"I was angry and couldn't talk for a while," she said. "Then I realized there is one system of justice for whites, one for Indians."

She said she is convinced there are plenty of people in the South Dakota State Penitentiary who shouldn't be there.

As long as Brokenleg can remember, he recalls his dad, an Episcopal priest on Rosebud, saying the same thing.

"Many people would tell him they just pled guilty because they don't want the consequences of being not guilty," he said.

Ann Cape, an Augustana College biology major, said she has not witnessed any dual standards of justice since she came to study in South Dakota, but has heard much about it.

"I have Native American friends who talk about the courts going by stereotypes," Cape said. "It is pretty obvious around here that there are preconceived notions about Native Americans."

Cape, the daughter of a career Air Force father, said the presence of racism here hasn't surprised her.

"People are really the same everywhere," Cape said. "The only difference is, other places it's black and white and in South Dakota it is red and white."

Family asks panel to look into death

State's attorney defends decision in fatal accident

By JENNIFER GERRIETTS
and LEE WILLIAMS

Argus Leader

Family members of an American Indian woman who was killed by a drunken driver on Minnesota Avenue took their pleas for justice to the U.S. Commission on Civil Rights on Tuesday.

What they heard gave them hope, but no assurances.

On Feb. 26, Renae Bird of Sioux Falls was struck by a drunk driver while crossing Minnesota Avenue. She died of her injuries March 8.

Bryan Todd Vennard, 23, of 4205 West Ave. No. 4, will plead guilty this morning in Minnehaha County Magistrate Court to drunk driving, a charge that guarantees him no more than one year in jail and a \$1,000 fine.



Surrounded by her family, Marcia James talks about the death of her sister, Renae Bird, at the hands of a drunken driver in Sioux Falls. The Bird family is outraged that the driver that hit her sister is not being charged with vehicular homicide.

Val Hoopner
Argus Leader

PHOTO BY VAL HOOPNER FOR ARGUS LEADER

REPORT EXCERPTS

Following are excerpts from the report by the U.S. Commission on Civil Rights. The first entries summarize testimony from a Dec. 8 hearing in Rapid City:

Charles Abourazzak, a lawyer in Rapid City, told the committee that acts of racial violence are as much a part of South Dakota's history as they are for the South. Referring to the 1998 dragging death of a black man in Texas, Abourazzak 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."

Kerry Cameron, Roberts County State's Attorney, said: "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."

Dale Keeffley, superintendent of the BA office in Pine Ridge, said that during the past 25 years 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."

Heidi Libbie, Thunder has lived in Rapid City more than 20 years. "We have heard a lot of stories about people

...to date a summary, there's not just a...
 tice. They say if Vennard had been Indian and Bird white, he would have been charged with vehicular homicide.
 "We're not doing very good, because he's getting away with this," said Wilma James, Bird's mother.
 On Tuesday, Bird's family took their grievance to the Civil Rights Commission.

"They expressed a deep concern," she said. "They promised they would provide us any assistance they can."
 The police response to the death was massive, but their conclusions haven't pleased Bird's family.
 More than 17 officers put hundreds of hours into the investigation and concluded that Vennard wasn't driving negligently.

"We interviewed over 30 people about the accident," said traffic Lt. Steven Nyhaug. "We tried to reconstruct her (Bird's) day as best we could."
 Police say three things contributed to the fatal accident: rainy weather, Bird's dark clothing and Vennard's drinking.
 Bird was struck on the west side of Minnesota Avenue, approximately 115 feet south of 13th Street, by Vennard's vehicle, which police say was not traveling faster than 30 mph.

They based their conclusions on physical evidence, such as the location of clothing, items Bird carried and pieces of the vehicle, as well as interviews and formulas used by accident reconstructionists to determine a vehicle's speed.
 after they're gone."
 At the press conference, Commissioner Cruz Reynoso said the FBI should be more open about its investigations, provide more information and issue frequent press releases.
 "I would urge the FBI to consider issuing statements, and be more conscious about reporting their ongoing investigations," Reynoso said.
 The agents said that would be improper.
 "We can't conduct our investigations in the open," said Burrus, adding that public disclosure could compromise sources and lead to destruction of evidence.
 To keep communication open between the FBI and the state's tribes, Heller said, the agency participates in Multi-Disciplinary Teams - monthly meetings at each reservation between tribal councils, prosecutors, tribal officers, FBI agents and victims. These meetings allow information to be shared without breaking confidentiality, the agents said.
 Heller invited the commissioner to accompany agents for a day as they conduct criminal investigations on

...ing up here saying there is no discrimination, there is no racism, I've seen that to extreme here. And when we do it, we don't recognize it. We don't recognize it, we don't deal with it."
 Williams Brewer, director, Department of Public Safety, Ojibwa Sioux Tribe: "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."
 Thomas Henales, Rapid City's chief of police told the committee that while discrimination and prejudices exist among all people and are apparent in law enforcement, articles have been made during the past 35 years.
 "When I first became a policeman here, 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... they will be dealt with, because we are trying to make a difference."

Among concerns the report lists:
 ■ Many Native Americans in South Dakota... believe that the administration of justice at the federal and state levels is permeated by racism.
 ■ The FBI 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.
 ■ 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.
 ■ There is an absence of civil rights organizations and civilian oversight mechanisms to address grievances.
 ■ Native Americans are underrepresented in employment of all institutions involved in the administration of justice at federal, state and local levels.
 ■ Tribal court systems and tribal law enforcement agencies receive insufficient training, technical assistance and funding from the federal government.
 ■ Native Americans do not fully participate in local, state and federal elections.

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.
 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



ular homicide is based on a 1996 S.D. Supreme Court decision - State v. Two Bulls.
 The high court upheld Ernest Two Bulls' conviction for vehicular homicide after his vehicle collided with a sand truck during poor weather. The accident killed one of Two Bulls' passengers and injured another.
 Because Two Bulls had a blood-alcohol content of twice the legal limit and was overdriving road conditions, the high court decided his conviction should stand.
 Surrounding states have different criteria for vehicular homicide.
 ■ In Minnesota, prosecutors must prove that a motorist killed someone and was either driving in a grossly negligent manner, driving while under the influence or had left the scene.
 ■ Nebraska statutes allow prosecutors to charge those who kill someone while driving with vehicular homicide, a misdemeanor charge. The charge can be raised to a felony if other factors, including drinking, are met.
 ■ Iowa has two levels of felony

vehicular homicide. To be convicted of vehicular homicide, a person has to unintentionally kill someone while driving. The penalties are enhanced if the driver kills someone while driving recklessly, trying to run away from police or is drag racing.
 Changing South Dakota's law to make driving drunk the only criteria for vehicular homicide makes some state lawmakers uneasy.
 "It's always difficult to start talking about a change in the law for one set of circumstances," said Rep. Roger Hunt, R-Brandon. "I'm not sure that the law needs to be changed."
 Sen. Fred Whiting, R-Rapid City, agrees with Hunt, but said: "If you're drunk that in itself is an act of negligence." Changing the law merits consideration, he said.
 Rep. Ron Volesky, D-Huron, is ready to make that happen.
 "Our current law is antiquated and needs to be updated," Volesky said. "The clause requiring negligence needs to be removed."

Respect reporter Jennifer Gornitz at 331-2212 or jgornitz@argusleader.com

their mind."
 He has made such a decision in a drunken-driving case. After a 1995 fatal accident caused by Jay Robert Gunderson, Nelson's office chose not to charge Gunderson with vehicular homicide.
 Although Gunderson was drunk when he hit another car and killed the passenger, he was not breaking any traffic rules, Nelson said.
 The easy way out, Nelson said, would be for him to pass the buck and let a grand jury or judge decide whether the charge would stick.
 "It would be very easy for me to look like the hero in this case, but ethically I'm not going to do it," Nelson said.
 Prosecutors have to file charges following the law, not public opinion, he said.
 South Dakota's vehicular homicide statute applies to motorists who are under the influence and driving negligently during fatal accidents. The crime carries up to 15 years in prison.
 The legal rule of thumb for vehic-

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Respect reporter Jennifer Gornitz at 331-2212 or jgornitz@argusleader.com

FBI: Invites commission to spend day on reservation

Continued from 1A

found in Rapid Creek only after being requested by local authorities.

A question of openness

Burrus also was troubled by a finding in the commission report that said, "The FBI in Indian Country confronts significant problems resulting from a lack of confidence by Native Americans in this agency, born of years of conflict, controversy and bitter emotional confrontations."
 Not true, said the FBI's top regional official, who is headquartered in Minneapolis.
 "That's just plain wrong," Burrus said. "Our agents are insulted. We've been on the reservation for 60 years before the commission met, and we'll be working there

after they're gone."
 At the press conference, Commissioner Cruz Reynoso said the FBI should be more open about its investigations, provide more information and issue frequent press releases.
 "I would urge the FBI to consider issuing statements, and be more conscious about reporting their ongoing investigations," Reynoso said.
 The agents said that would be improper.
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 To keep communication open between the FBI and the state's tribes, Heller said, the agency participates in Multi-Disciplinary Teams - monthly meetings at each reservation between tribal councils, prosecutors, tribal officers, FBI agents and victims. These meetings allow information to be shared without breaking confidentiality, the agents said.
 Heller invited the commissioner to accompany agents for a day as they conduct criminal investigations on

after they're gone."
 At the press conference, Commissioner Cruz Reynoso said the FBI should be more open about its investigations, provide more information and issue frequent press releases.
 "I would urge the FBI to consider issuing statements, and be more conscious about reporting their ongoing investigations," Reynoso said.
 The agents said that would be improper.
 "We can't conduct our investigations in the open," said Burrus, adding that public disclosure could compromise sources and lead to destruction of evidence.
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David Heller (left), and Alan Peak of the FBI talk with Sisap-ton-Wahpeton-Wahpeton-Darlene Pipebo about attending a meeting and explaining Federal jurisdiction to her group.

Via Hoopner Argus Leader

Targeting Walworth County

State's Attorney Dan Todd was hammered during December's hearing for saying that there was no evidence of racism or bias in Walworth County, where he works. Todd offered last year to open his case files to commissioners to prove that there is no disparate treatment of American Indians - in either prosecution or sentencing.

Berry said Tuesday he may have his chance. "We will conduct a study in either Walworth or Roberts County, to verify claims of disparate treatment," she said.

Reached at his office in Moline, Todd said he would welcome the inquiry.

Respect reporter Lee Williams at 331-2212 or william@argusleader.com

STRUGGLE IN INDIAN COUNTRY

Argus Leader, Sioux Falls, South Dakota, Wednesday, March 29, 2000

Report: 'There is crisis' in S.D.

RECOMMENDATIONS

Recommendations adopted by the U.S. Commission on Civil Rights:

1. The U.S. Attorney General should be asked to 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. The task force should consider issues in all areas of the country with significant Native American populations, but 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 also make recommendations for improving cooperation and jurisdictional agreements among the many different law enforcement agencies serving Indians in South Dakota.
2. The FBI and other Department of Justice divisions should expand efforts to recruit Native Americans at all levels of employment.
3. The Departments of Justice and Interior should expand 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.
4. The U.S. Department of Justice should reconstitute an Indian section within the Civil Rights Division.
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.
6. Research should be conducted to determine whether there is bias in the operation of the federal and state court systems and other significant components of the federal and state law enforcement and prosecution functions. This includes such factors as law enforcement

Continued from 1A

divide and the suspicions between racial groups seem to be as great as they are in South Dakota," Reynolds said. "It is more intense here than in Los Angeles, New York and Miami, where we commissioners have held hearings."

He and other commissioners came to South Dakota last year because of unrest brewing over a series of high-profile Indian deaths, including two men whose bodies were found near Whiteclay, Neb., a half-dozen tribal men who drowned in Rapid City's Rapid Creek, an Indian man who was stuffed in a garbage can in Mobridge after a night of heavy drinking and an Indian who was struck and killed on a Roberts County road.

As a result of that hearing, the state advisory panel concluded that many tribal people 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. That advisory committee wrote a report to the U.S. Commission on Civil Rights. The national panel unanimously endorsed the state committee's recommendations.

According to the state committee, information received at the hearing suggested there are disparities in the way law-enforcement officers make stops, in arrests that are made or aren't made, in the way prosecutors pursue charges, and in sentencing.

"There is a crisis in South Dakota today," said Mary Frances Berry, chairwoman of the Civil Rights Commission. "Native Americans here have lost confidence in the criminal justice system. Nothing is more corrosive to a democratic form of government than the widespread belief that justice is administered unfairly."

The question on many minds Tuesday was whether the commission's recommendations actually will result in any change. It has no enforcement power. And 20 years ago, after studying similar issues in South Dakota, commissioners issued a report with recommendations that Berry conceded went largely unmet.



Nearly 100 people gathered Tuesday to hear the U.S. Civil Rights Commission's report. "I think (residents) will be very happy... and will think it is a good report and has good recommendations," said Elsie Meeks, the only American Indian on the civil rights commission.

ARGUS LEADER PHOTOS BY VAL HOEPPNER

Legislators see good, bad in panel proposals

By TERRY WOSTER
Argus Leader
PIERRE - The possibility of establishing a statewide public defender and passing a hate-crime law created with skepticism by South Dakota lawmakers Tuesday.

The proposals were included in a list of recommendations adopted by the U.S. Civil Rights Commission to address alleged inequities in the state's justice system toward American Indians. But legislators from both political parties said they unlikely to pass.

"I think the way the incident is handled is a crime, I don't think a hate-crime bill is the answer, in my opinion," said Jarvis Brown of Faulkton, the Republican chairman of the House Judiciary Committee.

Hate-crime legislation generally adds penalties to existing crimes such as assault, when it can be proven that race, ethnicity, religion or sexual orientation were a motivating factor.

The commission's report called for Gov. Bill Janklow to hold a summit to open communications with the public. Janklow said he would call a public defender office at the state level, would be effective. An ongoing summit called at the level of the governor's office, though, would get moving toward resolving a lot of difficult issues.

And the authority and resources of the state Human Rights Commission should be expanded to include educational, enforcement and mediation services, the report said.

A Huron lawmaker said he signed with the recommendation to hold a summit on American Indian issues. "That's absolutely something it needs to be done," said Democ. Rep. Ron Volesky. "I'm not sure the proposals for hate-crime legislation or a public defender office at the state level would be effective. An ongoing summit called at the level of the governor's office, though, would get moving toward resolving a lot of difficult issues."

more we communicate the issues and hold people's feet to the fire, the more we will be able to change perceptions." As to whether the commission and the advisory committee can convince white South Dakota to embrace racial reconciliation, and to support changes in the justice system to provide more equality that remains to be seen, non-

RECENT CASES
The decision to hold a summit on the issue of hate crimes was the result of a long process. The commission was formed by a bill of Attorney General Janklow in 1980. It was the first of its kind in the state. The commission's report was issued in 1999. It was the first of its kind in the state. The commission's report was issued in 1999. It was the first of its kind in the state.

would be sent to arrive by today. "As a courtesy, we aren't going to comment until we see the official report and its recommendations," Mercer said.

Brown said he's unsure whether a hate-crime law would give prosecutors more options.

"I don't think we improve things with that kind of law and, in fact, it might increase the level of hate," said Brown. "In a lot of crimes, there's hatred. A murder is still a murder. That kind of law looks good on paper, but murder is murder."

Democrat Rep. Mike Wilson, a lawyer in Rapid City, said the report is a challenge to state's attorneys and the judiciary to look at the concerns and to ask whether there is validity in the criticism.

"It's a very disturbing report," Wilson said. "It echoes a pervasive theme that Indian people don't believe they have an equal chance at fair treatment in the judicial system. That's profoundly disturbing."

South Dakota does have a law that prohibits intimidation or harassment of anyone because of race, color, religion, ancestry or national origin.

"If making a law would solve the problem, we wouldn't need any cops," said Republican Rep. Tom Hennies, chief of the Rapid City Police Department. "There should be laws that say you can't behave in certain ways just because people are a different color or religion or whatever. I agree with that."

"But hate-crime laws don't change things. We need to teach people how to behave, and adults have to set the example."

Two years ago, Brown worked with a legislative summer committee that studied the benefits of a public defender's office. Two bills that would have created such an agency to represent indigent defendants charged with major crimes were defeated in the 1999 session.

"The issue was the funding," Brown said. "I don't see that kind of legislation getting a lot of support."

Neither does Volzsky.

"I'd be willing to look at that proposal, but the thrust of the problems given to the Civil Rights Commission when they met here in December seemed to involve prosecution, not that defendants weren't getting adequate representation," he said. "I'm not real hopped up to say we have to reform our current system."

South Dakota has had a Human Rights Office since 1972.

Records on the agency's Web page show that 19 of 127 complaints in 1997 related to racial discrimination. Sixty-one related to sex discrimination that year, 28 to disabilities complaints. In 1999, nine of 105 complaints involved race, 39 were related to sex and 30 to disabilities.

Reach reporter Terry Wostar at 605-224-2780 or wostar@mlkco.net

Bill Walsh of Deadwood, a member of the advisory committee, said he thinks clergy talking about the issue in church and educators talking about it in schools are the best ways to carry the message to South Dakota's large non-Indian population on the east side of the state.

He also said economics is not a reason to turn down recommendations in the report.

"That's just an excuse, an absolute copout on the part of county commissioners and state legislators if they're saying they can't pay for some of this," Walsh said. "It's a copout, and isn't recognizing the crisis that is out there."

Action up to citizens

Amy Arndt of Sioux Falls, another advisory panel member, said she believes white South Dakota wants to see issues in the report addressed.

"Part of the problem is simply awareness," Arndt said. "Much of white society is not aware of the depth or travesty of the problem that is occurring."

"When you hear that a drunk has fallen into a creek in Rapid City and drowned, that seems easy to explain away. But that's not what happened out there in every case."

Before she left Sioux Falls on Tuesday, chairwoman Berry said she didn't have a personal conviction one way or another that something substantive will happen to change the lives of Indians in this state.

"By trying to get these processes up and going, we will contribute to trying to get something done," she said. "Whether anything gets done depends on the people on the ground here in South Dakota... the governor, the Native Americans and everyone else. It depends on how the people of South Dakota respond."

Reach reporter Steve Young at 337-2306 or syoung@argusleader.com

STOP LAKOTA ETHNIC CLEANSING

Hokelia Pipoboy (left) and John Renville, both members of the Sisseton-Wakpato tribe, hold up a banner that President Clinton signed when he visited Pine Ridge last July. The two stood quietly with the banner at the back of the meeting room during the final minutes of the press conference.

Many horses, the man who was stuffed into a garbage can in Mobridge and later died of alcohol poisoning and the murders of Wilson Black Elk and Ronald Hard Heart near Whiteclay.

"The FBI has completed its investigation of Many Horses, and the Civil Rights Division expects to report soon whether any federal civil rights prosecutions are warranted," Berry said. "Their investigation into the two deaths at Whiteclay are not complete. But I will follow up until we get answers."

Relief - and skepticism

Reno people on hand to hear the release of the report met Tuesday's news with skepticism, part relief. Duane Seaboy of Sisseton was disappointed that few elected officials were at the news conference beyond Rep. Mary Patterson, D-Sioux Falls.

"To me, one of the most important things brought out was, 'Where are the elected officials?'" Seaboy said. "The crowd of about 100 people included representatives of Rep. John Thune, Sen. Tom Daschle, and Sen. Tim Johnson. No Sioux Falls or Minnehaha County officials attended."

Anita Paz of Sioux Falls said the release of the report means little if there isn't any action to follow it up.

"We're frustrated with words," Paz said. "Treaties are words, and you can see how concrete those are."

She also noted that it was appropriate that Berry brought up the report the Civil Rights Commission completed after taking testimony in South Dakota 20 years ago "because nothing changed."

Will that change now? Will tribal

woman of the board back then. But she said she was new to the commission in 1980, and that many of the commissioners back then had been appointed by the Reagan administration and seemed more interested in "telling off things like affirmative action ... than following up on the kinds of reports there were getting."

"There was no real follow-up back then," Berry said. "This time it is different."

This time she already has met with Gov. Mike Johanns of Nebraska to discuss the stores in Whiteclay that are selling alcohol to the tribal people from Pine Ridge and exacerbating the chronic disease of alcoholism on that reservation.

Johanns has said he would appoint his lieutenant governor to sit on a task force to discuss cross-border issues with South Dakota. Berry said she will ask Gov. Bill Janklow to appoint someone to that task force, and wants to include tribal and federal representatives as well.

"The governor of South Dakota did not disagree" with the need for such a task force, Berry said. But he wanted to know whether she would come back to South Dakota to discuss it with him, and she said she would, perhaps within the next week.

Study of justice practices

Berry said she asked the attorney general's office in South Dakota to conduct a study of law-enforcement stops, arrests, prosecution patterns, sentencing and other aspects of the justice system in a South Dakota county. Perhaps Walworth or Roberts. When told it wasn't in a position to do that, Berry said she would see whether the Bureau of Justice Statistics in the U.S. Department of Justice could perform such a study.

"If we can't find someone to do it, the commission would consider doing it itself," said John Dulles, director of the commission's regional office in Denver.

Berry also indicated that she had talked to Attorney General Janet Reno about appointing a federal task force to bring together federal, state, tribal and local officials to discuss justice issues in South Dakota. There was no word yet on whether Reno will do that. Calls to the Justice Department on Tuesday were not returned.

But Reynolds said federal officials are mandated by law to cooperate with the Civil Rights Commission. And Berry said that when her commission joined the call for Reno to create a task force to look into church burnings in Mississippi earlier this decade, "a task force was formed."

"Our track record in having recommendations generally accepted is pretty good," Berry said.

She told the news conference at the Sioux Falls Convention Center that she continues to keep on top of the FBI about its investigations into possible civil rights violations involving Robert

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ment stops, racial profiling, arrest, bail, legal representation, plea negotiations, jury selection and composition, and sentencing ... 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.

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. The Department of Justice should immediately assign a professional, experienced mediator from its Community Relations Service to provide services to South Dakota communities.

9. Tribal and Native American organizations should expand voter registration and educational efforts, and promote Native American candidates.

10. 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.

11. The state 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 ... And comprehensive orientation on Indian Country culture and history should be required of all law enforcement and justice personnel.

12. The state should establish a statewide public defender program with adequate staffing and funding.

13. Tribal governments should consider establishing civil rights offices to assist their constituents in seeking redress for discrimination problems.

14. Alcohol treatment facilities, rehabilitation programs, and detoxification centers need to be established and expanded in South Dakota.

15. The commission should revisit discrimination issues affecting Native Americans ... The issue of federal sentencing guidelines has not been previously addressed. ... 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 Native Americans have lost confidence in our justice system.

Congress should give tribes the money to prosecute all crimes on reservations, shifting the savings from the federal court system to tribal governments, Pommersheim said. That would allow sentences that more adequately fit crimes, he said.

"Tribes are very, very capable of handling those prosecutions," he said.

Tribal courts now are limited to cases in which penalties do not exceed one year in jail and \$5,000 fines, Pommersheim said.

Kornmann said sentencing guidelines should be changed to acknowledge social conditions and the special culture on reservations. High unemployment, poverty and alcoholism often are factors in Indian crimes, he said.

"If we have to use sentencing guidelines, which I don't believe in, then they should take into account that reservations are different," Kornmann said.

U.S. Magistrate Mark Moreno, a former state assistant attorney general and state's attorney, said the guidelines should allow for "gut instincts."

But judges who try to be fair in circumstances where the guidelines don't allow it risk being overturned on appeal, he said.

"State judges have wide discretion in sentences they impose to really balance intangible things, whereas federal judges don't," Moreno said.

Kornmann said his criminal and juvenile caseloads from Indian Country are growing rapidly. Many young defendants come from broken homes where no one cares if they go to school or use drugs and alcohol, he said.

"I can't tell you how many cases I see where the parents should be locked up," Kornmann said.

Woodrow Star, police chief at Rosebud, said he thinks there's a slight increase in crime on the reservation.

"I'd also like to think that my staff is doing a better job," he said. "We're catching more of the bad guys."

Congress has approved the hiring of 20 more officers on the Rosebud reservation, Star said. That will more than double the current force of 15, he said.

4-23-99 EC Jorndal

Crimes on reservations get tougher sentences

■ Judge decries federal sentencing guidelines as 'unfair,'

By Joe Kafka
Associated Press Writer

PIERRE — People prosecuted in the state's federal court system often receive tougher sentences than those convicted of the very same crimes in state courts, said U.S. District Judge Charles Kornmann.

The judge said he is appalled by some of the sentences he must hand down. Kornmann's hands are tied by strict federal sentencing guidelines that give him little discretion.

Most of those who appear in his courtroom are American Indians who have been accused of reservation crimes. People charged with assaults and sex offenses, among the most frequent crimes on reservations, are prosecuted in federal court.

"In other states, hardly anybody is prosecuted in federal court for an assault," Kornmann said.

Because many convictions for reservation crimes carry much harsher penalties than the same crimes committed elsewhere, a disproportionate share of Indians are imprisoned, Kornmann said.

"Does that make any sense that these Indians are subject to greater penalties than the rest of us?" the judge asked. "It's ridiculous."

Frank Pommersheim, a University of South Dakota law professor and member of two tribal appellate courts, said sentencing rules in the federal court system are unfair to Indians.

"The impact of the federal sentencing guidelines is particularly severe and disproportionate in Indian Country," he said. "Crimes that if they were committed off the reservation and would be subject to state jurisdiction would, for the most part, have much less severe sentences than are available and almost mandatory in the federal system."

FUTURE OF CIVIL RIGHTS

Barnett wants to study racial disparities in state

By STEVE YOUNG

PIERRE — Attorney General Mark Barnett says research could help prove or disprove bias in South Dakota's criminal justice system, but he's not certain what form such a study could take.

Speaking after Tuesday's meeting between Gov. Bill Janklow and members of the state advisory committee to the U.S. Civil Rights Commission, Barnett said how American Indians are treated by police, prosecutors and judges is worth studying.

But he's unsure how to secure data that looks at such factors as law enforcement stops, racial profiling, arrest decisions, bail, pleas, prosecutions, jury selection and composition and sentencing.

"We need to get with the feds and figure out how to put such statistics together," Barnett said. "I don't know how we're going to conduct that kind of research. But

I'm satisfied that there has to be a way to ferret out the kind of information that sociologists and analysts agree would be reasonable, fair and informative."

It's not an endeavor the statistics people in his office could undertake on their own, he said. It would require financial and technical assistance from the federal government. It could mean that police reporting forms would have to be revamped to capture such data.

The difficulty with such research is trying to get past the subjective decision-making that all law enforcement officers, prosecutors and judges make, Barnett said.

Like why some police write a ticket for speeding and some don't. Or why there are more charges filed in one drunken driving case compared to another.

"It's going to take time, and it's going to be very challenging to do a fair, objective study," he said.

The reason is, some of these categories deal with very subjective decision-making.

Among other potential solutions he sees is a proposal he's been working on for the past year that would expand tribal and Bureau of Indian Affairs police training at the state training academy in Pierre.

Right now, the only Indian police training academy is in New Mexico, Barnett said. And that poses problems for tribal policemen because of the distance they have to travel, the cost and the lack of numbers left behind to cover for them.

Training officers in Pierre would address most of those issues. But with a turnover rate of 70

percent, tribal and BIA officers a year, South Dakota would need federal assistance to expand its program, Barnett said.

"To me I don't see a downside to it," he said. "You place that many tribal officers in training with non-Indian officers, and the interaction has to be good for both sides."

He plans to talk to tribal leaders about that plan today in Rapid City. He'll also tell them that he is expanding the number of weeks officers spend at the training academy from eight to 12. That will allow expanded cultural diversity training — from four hours to a full day.

Barnett cited a number of positive efforts already being undertaken to improve cultural relations. One is a program at the academy.

any, where officers going through basic training are required to participate in community service.

In recent years, a large number of those officers have opted to take part in a mentoring program with the Pierre Indian Learning Center, where they work with young tribal children.

"It's comparable to the DARE program," he said. "It puts officers and kids together in a more positive light. That's not something people hear about."

But more can be done, he agreed. Among the suggestions he would make:

- Increase staffing for the FBI and U.S. Attorney's Offices to offset heavy caseloads.
- Change federal sentencing guidelines to allow federal judges to use the same sentencing as



Mark Barnett

states now use. States should continue supporting any Congressional bill that would improve funding for tribal law enforcement and tribal courts.

Barnett bristles at suggestions that he isn't attuned to racial and diversity issues in his state.

His two young adopted sons are Asian, and his younger son was born without a left hand. He has in-laws who are Native American.

"I'm not blind to the fact that there is racism," he said. "Believe me — I am sensitive to that issue."

Reach reporter Steve Young at 331-2306 or young@argusleader.com

Many are disappointed with Janklow comments, solutions

By LEE WILLIAMS

Argus Leader

Some residents who listened to the discussion between Gov. Bill Janklow and the South Dakota Advisory Committee on Civil Rights Tuesday saw little new in the governor's opinions.

"Most Indians know what his tactics are by saying he's working with the civil rights commission. It's all an act. He's minimizing and excusing," said Shirley Duggan, an enrolled member of the Sisseton-Wahpeton Tribe.

Janklow met for more than three hours Tuesday with advisory committee members to discuss the group's report, which is critical of the treatment of American Indians in the state's judicial system. The discussion was broadcast live on South Dakota Public Television



Darlene Pipeliney



Art War Bonnel

A faulty Internet connection in Denver prohibited John Dulles from hearing all of the governor's meetings.

But Dulles, regional director for the U.S. Commission on Civil

rights, said the report was not ordered by the U.S. Commission on Civil Rights. Rather, the hearing was the idea of the state's advisory committee.

"It's their project," he said. "They own it." After hearing testimony from Rapid City area residents last August, the advisory board decided to study the administration of justice to American Indians in South Dakota.

The U.S. Commission then saw fit to lend their support to that effort, Dulles said, by coming to South Dakota, holding hearings, making site visits and taking testimony.

"Any suggestion that this was driven by the (U.S. Commission) is not true," Dulles said. "It's a criticism Janklow and I heard on Tuesday."

racism. Janklow says, "Show me a case. He should come to the reservation. We'll give him plenty," she said. "Anybody can make allegations. But will it take another 20 years to make a difference?"

In Huron, Democratic state representative Pat Haley was angered by what he called the shifting focus

of Janklow's meeting. "He moved the focus away from the civil rights issues, to himself, which is a habit of his," he said, adding that he saw Janklow use similar tactics when discussing concerns about juvenile corrections in the state.

"I have almost no faith in the governor's ability to deal sincerely and

honestly with problems because of my experience with juvenile corrections," Haley said.

"We brought facts to him, at his request, but he was no longer interested in facts. He began attacking the sources."

Reach reporter Lee Williams at 331-2378 or william@argusleader.com

SAVE THRU SUNDAY, MAY 14

SHEELS
ALL SPORTS

It's Time

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Reservation crimes swamp federal courts

By Joe Kalka
Associated Press Writer

PIERRE — Life is often difficult on South Dakota's American Indian reservations, where joblessness and poverty help fuel crimes that clog federal courts.

South Dakota leads all states in the number of criminal investigations in Indian Country. Arizona and New Mexico are next.

The problem has become obvious to U.S. District Judge Charles Kornmann. In the four years he has handled federal criminal cases from the central and northern sections of the state.

Kornmann presided over 135 criminal cases in Pierre federal court last year but already has handled 47 cases in the first quarter of this year. If that pace continues, he will be the busiest federal judge in the nation. And that doesn't include his caseload at Aberdeen.

"All these criminal cases make it difficult for me to spend the time that I should on civil cases," Kornmann



Kornmann.

said. "If we didn't have plea bargains, the entire system would collapse."

Serious crimes on reservations are handled in federal courts although many would be handled in state courts if they were committed elsewhere, he said.

"For every Saturday night brawl, they prosecute somebody in federal court," Kornmann said.

Federal courts originally were set up to have limited jurisdiction, the judge said. "We need to get back to the concept that it's got to be an unusual case to be in federal court," he said.

The combined criminal caseload of the three federal judges in South

See Crime on page A2

Crime statistics grim

PIERRE (AP) — The rate of violence among American Indians is much higher than for other minorities and more than double the national average for all races, according to a federal analysis. Indians suffer 124 violent crimes, such as assaults, rape, robbery and murder, for every 100,000 people in the population.

Other statistics from the U.S. Justice Department reported in February show that the rate of violent crime in the state is 100 percent higher than the national average.

Crime: Courts

Continued from page A1

Dakota was the sixth highest in the nation last year.

Congress continually adds to the burden by creating new federal crimes, Kornmann said.

"I don't know whether the courts can handle all these cases," he said. "There isn't a month that goes by that Congress doesn't make something else a federal crime."

Most of Kornmann's cases come from the Rosebud Sioux Indian Reservation although he also holds court for crimes committed on the Crow Creek, Lower Brule, Cheyenne River, Standing Rock and Sisseton-Walperton reservations.

Reservation crime is so prevalent in the central and northern parts of South Dakota that eight FBI agents, seven assistant U.S. attorneys and five deputy U.S. marshals are assigned to those areas. Most of those law officers and prosecutors are stationed here.

Kornmann said he has written members of the state's congressional delegation to tell them Congress has gone overboard on federal crimes. Most of those crimes can be handled in state courts, he said.

"There's even a federal drunk driving law, for God's sake," Kornmann said. "If you're driving on a reservation and you have a child killed, and you're drinking, I think the sentence is enhanced by 10 years."

"And if you're drinking and driving on the reservation and someone is injured, you get a year on top of what anybody else in the state would receive for a similar crime," he said.

Congress has put far too many federal crimes on the books in the

Grim:

Continued from page A1

■ The murder rate among Indians is 40 percent higher than for whites. Indian murder victims are more than twice as likely as whites to be killed during a brawl or fight involving alcohol or drugs.

■ 37 percent of Indian murder victims are killed by guns and 28 percent by knives.

■ Most common violent crimes among Indians — in order of prevalence — are simple assault, aggravated assault, robbery, rape and sexual molestation.

name of law and order, Kornmann said.

"It's easy to pass a federal law making something else a federal crime," he said. "It's a feel-good thing."

The large number of trials and sentencing take their toll on judges, he said.

"When I went to judges' school, they said, 'Never sentence more than three people in a day,' because it's too stressful," Kornmann said. "I do eight or nine a day, sometimes."

Finding places to house prisoners awaiting trial at Pierre is even getting difficult, he said. Many federal prisoners are lodged in the Hughes County Jail, but often it is full, the judge said. Some with Dakota prisoners, he said, are sent to a jail in Jamestown, N.D.

R. O. S. 4/21/99

June 6, 2001

United States Sentencing Commission
Thurgood Marshall Federal Judiciary Building
Suite 2-500, South Lobby
One Columbus Circle, N.E.
Washington, D.C. 2002-8002
Attn: Michael Courlander, Public Affairs

Sentencing Commission:

I live in Rapid City, South Dakota. I am sending information for the hearings to be held here on June 19, 2001. I have enclosed an extensive report that I did first in 1995 and then updated in April, 2001 on racial bias in the criminal system in South Dakota. I do not deal very much with the federal sentencing guidelines in that report. I wish to point out to you the section on racial profiling and ask that the entire report be provided to the commission members coming to Rapid City. I would like time to personally testify at the hearing. I will be mailing this on June 7th by first class mail and it should be received by you by June 12th, one week before the hearing. I apologize for the delay in getting the material out, but ask that someone take time to go over it and provide it to the commission members who will be here in Rapid City.

As with the entire system, my complaint with the sentencing guidelines is with the manner in which they are implemented in individual sentencing courts throughout the land. Minorities, are more likely to get guideline upward departures and less likely to get downward departures. I'm sure this has been documented.

As with the state system, a system controlled primarily by white males, just does not seem to have the capability to deal justly with people of color. Those women and minorities who get involved tend to become members of the good old boy network who in some cases just happen to be girls or who happen to have brown skin. They often are the most difficult to deal with as they have to prove their loyalty to a system that is overall very disparate in the treatment of women and people of color.

In 1994, I was a law student at the University of South Dakota when a fellow student one year behind me was charged with grand theft by the United States Parks Service. U.S. Attorney Karen Schrier prosecuted her case on behalf of the government. I attended the sentencing and was appalled that a licensed attorney would seek sentence enhancement because she had not acknowledged her guilt and had taken the case to trial. But since she had been convicted she was guilty and still had refused to accept responsibility for her crime. Attorney Schrier sought sentencing enhancement because she had not accepted responsibility for her crime and had been convicted by a jury. Apparently the prosecuting attorney had not studied the large number of cases and studies that have shown that a factually innocent person can be found legally guilty. Fortunately the judge was quick to point out that legal guilt does not, in fact, mean factual guilt and chided the U.S. Attorney about what a wet blanket that would throw over the right to trial, if their sentence could be enhanced for maintaining their innocence and taking a case to trial. That was my first contact with Karen Schrier.

I studied the sentencing guidelines and as a law student did research for the former student and aided her attorney in her appeal. I learned a lot about the guidelines and the way they are implemented through that process. I did graduate from law school in December, 1994. I made a conscious choice not to apply for or take the state bar, but to use the skills I had gained there to research and write about the law. I also became what is known as a writ writer and do research and writing for inmates seeking release. I do case investigations for attorneys when requested to do so by an inmate's family. I have perhaps written more successful writs for filing by public defenders or court appointed attorneys or for filing pro se by an inmate than any licensed attorney in South Dakota. I currently teach college classes part time and work a full time job that is totally unrelated to the legal system. I did a legal internship the summer of 1994 for the South Carolina Death Penalty Resource Center. I wrote a writ for a woman who had been imprisoned 14 years earlier following a capital trial, 3 days after her 15th birthday. The writ led to her release from prison.

Then in 1997 my son was charged with the gamut of drug crimes in the Federal District of Wyoming. Based solely on the testimony of his codefendant who pleaded guilty to distribution and conspiracy to distribute methamphetamine and who clearly perjured herself because she gave different statements three times. Witnesses she named against my son who could be located were contacted and six of them agreed to testify for my son. The prosecution knew they were presenting perjured testimony and could find not one person to corroborate her testimony. An over zealous prosecutor, who in this case also happened to be female, and an under zealous defense attorney are a deadly combination in any criminal case. That is the combination that occurs too frequently in this country. Richard offered to plead guilty to simple possession for the only drugs he knew about and did possess. My son was acquitted of conspiracy and distribution and convicted of possession with intent for the 3.5 grams he had on him when he was arrested. That had been a gift from his co-defendant for their use on the trip.

Richard agreed to plead guilty to simple possession though they offered him a plea bargain for possession with intent if he would de-brief and tell them all he knew about the drug trade. Since his co-defendant had given all kinds of statements, some true, and much not in order to implicate him, he refused to cooperate in their investigation and maintained his right to silence. He did want to testify at trial but his attorney refused to let him.

The presentence investigation report was so fraught with errors, it was almost laughable. The investigator said Richard did not want me contacted and had given him a wrong number to get in touch with me. Fat chance of that. He also said Richard had admitted to being given 6 grams before leaving Rapid City, in order for him to be sentenced at the over 5 gram level-his co-defendant had testified that she had given him 6 grams. Fortunately, Richard was able to get a copy of the pre-sentence report out to me in time for me to correct the inaccuracies in a letter directly to the judge. Since it would have been a physical impossibility for them to use 2 ½ grams on the trip from Rapid City to Gillette, based on the governments charts that they use to determine such things, that was not a very intelligent argument, but they made it.

The prosecution was not pleased about the acquittal for conspiracy and distribution because that meant that the jury believed that Richard had not participated in the distribution of the drugs the co-conspirator had in her bird cage in the car nor had he conspired with her to distribute them. He had an innocent reason for being with her and an innocent reason for the possession of \$300 which she claimed to be drug sale proceeds. Two witnesses testified that the money was a gift from me given to him just prior to the trip. In spite of that, the prosecution sought to enhance his sentencing for constructive possession of the drugs possessed by his co-defendant-which was nearly a pound. They tried to snatch victory from the defeat at trial by sentencing him for being in constructive possession of those drugs. They wanted my son to serve 30 years. The maximum he could get with his prior history for the possession of under 5 grams was 33 months. He got 33 months. This is not the general result of cases similar to my sons. I knew the law and how to investigate and interview witnesses.

In the majority of cases involving minority defendants, the circumstances that exist are so similar to his. Often the only thing the government has is perjured testimony of co-defendants who are rewarded for their cooperation. Three Indian defendants here received 30 and two 25 year sentences in Federal prison on drug charges based solely on perjured testimony by government informants. They had minimal drugs on their person or found in searches of their homes. Under zealous defense attorneys don't present credible evidence to counter the governments' paid informants. In this case, one of the government witnesses wrote a letter to another inmate who got it out to one of the defendants families that said that he didn't even know Lavonne, against whom he was testifying. He didn't need these "small town fuckers" because his uncle is a cook. That letter was made available to the defense attorney who never raised it at trial. And following conviction, the sentencing enhancement process takes its toll. This young mother is serving 30 years in Federal Prison.

The War on Drugs has undoubtedly become a war on people of color. The most blatant example of that is the sentencing disparity for crack cocaine-a drug of the streets- compared to powder cocaine-a drug of the board room. But much of the disparity occurs, not because of blatant discrimination as in this guideline, but in the way in which sentencing is carried out with upward and downward departures weighing against minorities.

In 2001, I was again to come in contact with Karen Schreier. This time it was Judge Karen Schreier and it was a revocation of supervised release for my son, Richard. Again the U.S. attorney was female. Richard agreed to plead guilty to one of the alleged violations. His attorney said no evidence would be taken because he was admitting one. In court the US attorney wanted to prove all allegations even though the defense was not prepared to present any defense. The judge allowed them to do that. They presented only probation officers who had not even been Richard's officer as he had retired. He was convicted of a level 3 violation, the lowest level. The maximum sentence is 13 months. The prosecution did not seek any upward enhancements, but the judge enhanced it 5 months and gave him 18 months. She said his explanations and mine were excuses. They were facts which pointed out that it was impossible for Richard to meet the conditions of his probation and continue working-he had to give up a job to do treatment and then the never-ending after care interfered with work hours on another job. Judge Schrier said he had not taken responsibility for his actions, even though he had pleaded guilty to one of the infractions because he was guilty of that one. He was not allowed to present a defense on the others.

Any consideration of sentencing has to include the revocations of supervised release. The level of proof required is lessened and the hearings are travesties of justice. The fact that revocations are in almost all instances discretionary and that sentencing, even with the guidelines, becomes discretionary, means that it weighs against people of color.

Any consideration of sentencing also has to include a discussion about the shoddy jobs that are done on PSI reports. They are done by arms of the prosecution and often look like a report for the U.S. Attorney not a fair representation of the person or his criminal history. Those reports have often led to enhancements based on information that is blatantly false. That subject is discussed in the paper included here. How many PSI reports recommend electronic monitoring or house arrest for persons of color compared to white defendants, who have committed similar, and at times worse crimes?

Any consideration of sentencing disparity has to include a review of the steps before and after conviction as pointed out in my report. What ends up being the charge that a person is actually sentenced for depends on all the other steps in the process and those steps weigh heavily against people of color.

There has been so much written about the costs of the "War on People of Color Who Use Drugs". In my sons case a conviction means that he can never receive food stamps, can never qualify for a pell grant, can never be accepted for housing assistance and finds it difficult to find jobs. When I was in law school, I heard white children of influence and affluence brag about crimes involving drugs, rape, and property crimes, that would have sent a poor person or person of color to prison. When he finds a job, it is often interfered with by a condition of supervised release and he is cited for violating the conditions for giving up a job to meet the condition. In his case, as in many others, it means that he gives up a job, paying taxes and becomes again held at taxpayer expense.

I certainly do not believe that the disparity in prison sentences of persons of color compared to whites is because they commit that disproportionate amount of crimes or that the crimes they commit are that much worse.

Please give consideration to this information and allow me to make a personal appearance at the hearing.

Sincerely,



Hazel P. Bonner

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CC: Robert Van Norman, Federal Public Defender

***RACIAL BIAS IN THE
CRIMINAL SYSTEM
IN SOUTH DAKOTA***

A Report
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RACIAL BIAS IN THE CRIMINAL SYSTEM IN SOUTH DAKOTA

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | Introduction | 2 |
| II. | General Demographics | 3 |
| | A. Race/Poverty/Health | 3 |
| | B. Imprisonment Statistics | 5 |
| III. | The Criminal Process | 7 |
| | A. Arrest | 7 |
| | B. Formal Criminal Charging | 11 |
| | C. Bail and Pre-Trial Release | 12 |
| | D. Plea Negotiations | 14 |
| | E. Trials | 15 |
| | F. Pre-Sentence Investigation Reports | 17 |
| | G. Sentencing | 18 |
| | 1. Drug Offenses and Sentencing Policy | 18 |
| | 2. Conviction/Prison Sentence Comparisons | 19 |
| | 3. Intermediate Sanctions | 20 |
| | 4. Sentencing as Habitual Offenders | 22 |
| | H. Imprisonment-Disciplinary Segregation | 25 |
| | I. Parole Decisions | 25 |
| | J. Returning to Prison-Revocation | 26 |
| IV. | Conclusion | 27 |
| V. | 2001 Addendum | |
| | A. Recent Incarceration Statistics | 28 |
| | B. Changes in Incarceration Practices | 32 |
| | C. Victimization of Indians | 35 |
| | D. Juvenile Injustice | 38 |
| | E. Racial Profiling | 41 |
| | F. Jail Overcrowding | 43 |
| | G. Returning Home | 46 |
| | H. Imprisonment for Drugs | 47 |
| | H. Conclusion | 49 |

RACIAL BIAS IN THE CRIMINAL SYSTEM IN SOUTH DAKOTA

BY HAZEL BONNER, JD

PRELIMINARY REPORT, SECOND DRAFT

MAY, 1995

I. INTRODUCTION

In 1987 Professor Frank Pommersheim of the University of South Dakota School of Law completed, with the assistance of a graduate assistant, a study entitled *Going to the Penitentiary*. The study evaluated disparity in sentences for Native Americans sentenced to the South Dakota State Penitentiary. Surprisingly, the study found no significant disparity in sentences for specific crimes between those received by Native Americans and whites to the South Dakota State Penitentiary. The study concluded, however, that that did not mean that discrimination does not exist within the criminal justice system in the state.

This preliminary report looks at discretionary decisions made within the system from initial arrest through discharge from sentence and finds many areas where further research, surveys, record searches and other methods are necessary to document disparity in the Criminal justice system. This report is based on readily available statistics, personal knowledge and observation of the author, review of news stories and interviews and information provided by defendants and inmates. The author has read studies done by judicial systems in several other states, most notably a study entitled *Racial Bias in the Judicial System*, which was commissioned by the Supreme Court of Minnesota and reported in **16 Hamline Law Review, Spring 1993**.

The task force that completed that extensive study looked at policies and practices of the court system, both criminal and civil, which impede the dispensation of justice to people of color. Regardless of motivation, even if well intended, if they result from naïve efforts to demonstrate that the system is "color blind", from indifference or outright malevolence, problem areas were identified which lead to the consistent denial of equal justice to communities of color.

It is my belief that the same problems identified in that study affect our criminal justice system in South Dakota. While the findings of the Pommersheim study on sentencing were undoubtedly valid, it is what happens prior to sentencing for a particular charge, what happens after sentencing to prison and after discharge from prison on some form of supervised release, before fully being discharged from a sentence, that can and does have an impact in impeding justice for people of color.

The Pommersheim report has been used by the State to defend itself against discrimination claims and in equal protection cases. It was used in 1994 to discredit the claim by

Phillip Steele that he should not be extradited to the jurisdiction of the State of south Dakota courts and prisons. That report was well publicized in the news media during those hearings. No media reported, however, that once Phillip Steele was recaptured and returned to South Dakota, staff at the South Dakota State Penitentiary were forced to do target practice shooting at posters with blown up photos of Phillip Steele on them. Many staff members found that entertaining. I received calls from several staff members who found no humor in it.

A white Minneapolis area Public Defender is quoted in the Minnesota task force report as stating:

Minority defendants, particularly black seem to be treated more harshly at every stage—arrest, bail setting, pre-sentence investigation, sentencing—and seems more severely charged for the same conduct than whites. Poor minority representation among police, jurors, probation officers, seems to contribute.¹

The entire criminal process in this nation, and in this state is riddled with racial bias. From an initial stop based on profiling through the final discharge from a sentence, the bias is evident. While it may be subtle, its ultimate effects are devastating. The disparity begins in the general demographics for Native Americans in South Dakota and follows through the entire Criminal Court and Corrections systems.

II. GENERAL DEMOGRAPHICS

A. RACE/POVERTY/HEALTH

Native American indigenous groups are the most impoverished ethnic groups in the United States. Blacks are also disproportionately represented in every negative measure of family/economic security. These demographics affect much more than just how comfortably the family lives. They affect the quality of health care, education, housing and other areas of their lives.

1. RACE

In South Dakota in 1992 there were 708,411 residents of which 7.3% were American Indian and 0.4% were black. There were Reservation Counties in the state where a majority of the population was American Indian. Those counties included Buffalo, Dewey, Shannon, Todd and Ziebach.

2. POVERTY

State wide 11.6% of all families had incomes below the poverty level and 38.7% of all female headed households had below poverty level incomes. In 7 Reservation counties over 30% of all families were poor and more than 50% of female headed households were poor. Shannon County had 56.7% of all families with below poverty level income and 68.4% of female headed

households. Bennett county had 76.6% of female householders below poverty level while Buffalo had 66.1%; Charles Mix, 59.7%; Corson 61.3; Dewey, 63.8% and Todd at 68.8%. Several reservation Counties in the United States rank among the 10 poorest counties in the United States.²

3. PER-CAPITA INCOME

The median income in South Dakota was \$22,503 and the per-capita income in the state was \$10,661. 32.1% of households in the state had incomes of less than \$15,000 in 1989. 55% of families had incomes of less than \$25,000. Eight Reservation counties showed the following median, per-capita and % of households below \$25,000 and \$25,000 income:

| County/Reservation | Median Income | Per-Capita Income | %<\$15,000 | %<\$25,000 |
|----------------------|---------------|-------------------|------------|------------|
| Bennet-Crow Creek | 16,864 | 7,841 | 42.1 | 66.8 |
| Buffalo-Ft. Thompson | 14,566 | 5,067 | 51.9 | 74.2 |
| Charles Mix-Yankton | 16,541 | 7,475 | 45.7 | 70.2 |
| Corson-Standing Rock | 17,442 | 6,299 | 51.5 | 69.6 |
| Dewey-Cheyenne River | 14,599 | 6,515 | 51.0 | 70.2 |
| Shannon-Pine Ridge | 11,105 | 3,417 | 61.5 | 82.0 |
| Todd-Rosebud | 13,327 | 5,043 | 55.5 | 74.3 |
| Ziebach-Cheyenne R. | 14,129 | 6,132 | 51.8 | 72.8 |

4. HEALTH/VITAL STATISTICS³

In 1992 white residents had a birth rate of 14.3 per 1,000 population while Native Americans had a rate of 34.4. The infant death rate for whites in 1992 was 7.6 while for Native Americans it was 18.4. On the following page is a chart showing the median age at death for whites and Native Americans for a number of causes. Native Americans have a life span that is over-all 21 years less than that for whites in South Dakota.

¹ Minnesota Task Force Report at 590. (Hereinafter Task Force Report).

² County and City Data Book, U.S. Department of Commerce, Bureau of Census, 1993

³ South Dakota Vital Statistics and Health Status: 1992, South Dakota Department of Health, Office of Health Data and Evaluation.

| CAUSE OF DEATH | MEDIAN AGE/WHITE | MEDIAN AGE/INDIAN |
|-------------------------|------------------|-------------------|
| All deaths | 79 | 58 |
| Heart | 81 | 71 |
| Malignant Neoplasm | 73 | 69 |
| Cerebrovascular Disease | 84 | 72 |
| Pulmonary Disease | 77 | 74 |
| Accidents | 52 | 34 |
| Pneumonia and Flu | 87 | 70 |
| Diabetes | 79 | 65 |
| Aortic Aneurysm | 80 | -- |
| Suicide | 41 | 21 |
| Nephritis | 83 | -- |
| Liver/Cirrhosis | -- | 48 |
| Alcohol Dependence | -- | 45 |
| All Other Causes | 80 | 44 |

Tuberculosis continues to be a major problem among the American Indian population. Nationwide the case rate for TN is 10.5 per 100,000. In south Dakota among the white population it is 1.4 while for American Indians it is 37.9.

B. IMPRISONMENT STATISTICS

Ultimately, we must look at who ends up in prison for crimes in order to view with clarity how our society views the perpetrators of those crimes. Loss of liberty is one of the ultimate punishments inflicted on those persons who have committed crimes. Only certain perpetrators of crimes are viewed by society as having lost their right to live in society. Nationwide, a very small proportion of person committing crimes actually go to prison for those crimes. Who those persons are is reflective of how our society views the perpetrator, the victim, and the seriousness of the crime. Unfortunately, the system is one in which discretionary decisions control from the initial contact with police to the final discharge from a sentence.

The American Bar Association reported that while about 12% of the people in the United States are Black, almost half of prisoners are black.⁴ When these figures are translated into incarceration rates, the contrast between the extent to which blacks and whites are incarcerated becomes even more apparent. About 164 of every 100,000 white residents were in prison in

⁴ Lynn S. Branham, *The Use of Incarceration in the United States: A Look at the Present and the Future*, April, 1992, American Bar Association, Criminal Justice Section.

1989. Over six times that many blacks—1088 of every 100,000 blacks in the population—were confined that year.⁵

Many systems people simply state that minorities commit more crimes which lead to their being incarcerated more frequently. However, at least one sociologist succinctly described the incarceration of persons of color as the effect of labeling that occurred when they were juveniles. William J. Chambliss compared two delinquent youth gangs which he labeled the “Saints” and the “Roughnecks” for identification Purposes. The Saints were a higher income white gang and the Roughnecks were a lower income minority gang in Saint Lewis. Both gangs engaged in a variety of delinquent behavior, but only the Roughnecks were labeled as delinquent. In the two years during which Chambliss observed the gang behavior not one Saint was arrested in spite of the fact that this group engaged in a number of dangerous and destructive activities, including vandalism, drunken driving and removing barricades from street repair sites. Although the Saints actually caused more damage and endangered more people than the Roughnecks, only the Roughnecks were labeled as deviant and arrested for their behavior.⁶ The Saints went on to college to become professionals, doctors, lawyers and such. The Roughnecks went on to jail and prison where they obtained their higher education.

In fact the activities of low income and/or minority youth is often labeled as gang related while that of higher income white youth is considered as “boys will be boys” or “sowing their wild oats.” And that practice follows through to adulthood.

What most Americans regard as crime by minorities, especially blacks has become a preoccupation of public and private life. Minority men and the offenses they commit are viewed differently from other felons and felonies. Andrew Hacker states:

Black men and women account for 47.0 percent of the individuals awaiting trial in local jails or serving short terms there. They also comprise 40.1 percent of the prisoners currently under sentence of death. And they make up 45.3 percent of the inmates in state and federal prisons. Overall more than a million black Americans are currently behind bars or could be returned there for violating probation or parole.⁷

The Minnesota Task Force Report stated that while people of color comprise 6% of the state’s population, they comprise 45% of the prison population.⁸ In South Dakota Native Americans comprised approximately 7.5% (.075) of the state’s population but 23% of inmates in

⁵ *Id.* at 4.

⁶ Chambliss, William J. 1984, “The Saints and the Roughnecks,” In William J. Chambliss (ed.), *Criminal Law in Action*, New York: John Wiley and Sons.

⁷ Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal*, Ballantine Books, March 1993, at 180

⁸ Task Force Report at 491.

South Dakota Prisons during FY 1994.⁹ Blacks comprised only 0.4% (.004) of the population but 3.0% (.030) of the prison population.¹⁰

How such a disproportionate number of minorities end up behind bars is what this report looks at. This author believes based on studies done by Chambliss and others, that it is not because they commit such a disproportionate amount of the crimes or because the crimes they commit are so much more serious. As the Minnesota Task Force Report so aptly details, it is because their acts are more often considered criminal, and they are treated differently once they are charged with a crime. If there is little disparity in the actual sentence they receive for the charged crime, the disparity must result from events before and after sentencing. I now turn to the Criminal process and examine disparities from arrest to discharge from supervision.

III. THE CRIMINAL PROCESS

A. ARREST

1. Minority Defendants

In 1990 more than 10 million crimes were logged by the FBI. Suspects were identified by race. Persons arrested on those charges were disproportionately minority. Nationally blacks were arrested at a rate 5.1 times their share of the population for robbery, 4.5 times for murder and manslaughter, 3.6 times for rape, 3.4 times for receiving stolen property, vagrancy, and drug violations and 3.3 times for weapons possession.¹¹

The Minnesota Task Force Report found that in Hennepin County, people of color are arrested and charged at levels far in excess of their percentage of the population.¹² Since 1975 the percentage of people of color arrested in Hennepin County has steadily increased. People of color accounted for 18% of all Part II crime arrests in 1975 and 36% of Part II crime arrests in 1991.¹³ This is an arrest ratio over 3 times their percentage of the population. During a focus group meeting of Minnesota public defenders some stated that they believe that nuisance and trivial misdemeanor crimes are only enforced against people of color: that people of color are charged with more serious offenses than similarly situated white defendants, or are charged in situations in which white defendants would not have been charged at all.¹⁴ A significant proportion of public defense attorneys and metropolitan area judges under 50 years of age

⁹ South Dakota Department of Corrections, Annual Report, July 1, 1993-June 30, 1994, at 14. Adult Racial Breakdown.

¹⁰ *Id.*

¹¹ Hacker, at 181.

¹² Task Force Report at 545.

¹³ *Id.*

¹⁴ Public Defense Providers Focus Group, St. Paul, (Aug 14, 1991).

believed that the filing of criminal charges is more likely when the defendant is minority, all other factors such as present offense and criminal record being equal.¹⁵

In South Dakota the Office of Attorney General, Criminal Statistics Analysis Center reported for 1993 the number of arrests for Native Americans and blacks in South Dakota. Keep in mind that Native Americans make up 7.3% of the population and blacks 0.4%. The arrests are listed below by percentage of all arrests for Native American suspects and black suspects. The middle column shows the overrepresentation multiple of Native American arrests compared to their proportion of the population.

| CRIME | NA ARREST % | MULTIPLE | BLACK ARREST % |
|------------------------------|-------------|-------------|----------------|
| Murder | 50 | 6.8 | 0 |
| Rape | 15 | 2.0 | 5 |
| Robbery | 17 | 2.3 | 10 |
| Ag. Assault | 25 | 3.4 | 9 |
| Burglary | 26 | 3.6 | 2 |
| Larceny | 27 | 3.5 | 2 |
| SUBTOTAL-PART I | 26 | 3.5 | 3 |
| Other Assault | 24 | 3.3 | 5 |
| Forgery/Counterfeiting | 11 | 1.5 | 1 |
| Fraud | 8 | 1.1 | 2 |
| Embezzlement | 11 | 1.5 | 0 |
| Stolen Property | 32 | 4.4 | 2 |
| Vandalism | 19 | 2.6 | 2 |
| Weapons | 18 | 2.5 | 4 |
| Prostitution | 0 | 0 | 25 |
| Sex Offenses | 9 | 1.2 | 1 |
| Drug Sales | 10 | 1.4 | 6 |
| Drug Possession | 10 | 1.4 | 2 |
| Off. Against family/children | 23 | 3.2 | 3 |
| DUI | 19 | 2.6 | 1 |
| Liquor laws | 20 | 2.6 | 1 |
| Drunkenness | 76 | 10.4 | 0 |
| Disorderly Conduct | 48 | 6.6 | 2 |
| Vagrancy | 100 | 13.7 | 0 |
| SUBTOTAL-PART II | 25 | 3.4 | 2.2 |
| GRAND TOTAL | 25 | 3.4 | 2.3 |

While the rate of DUI arrests for Native Americans is at a rate less than three times their proportion in the population, over 40% of person incarcerated for DUI are Native American.

¹⁵ Task Force Report at 546.

Thus Indians are imprisoned at a rate nearly 6 times their proportion in the population. Note that Blacks are charged at a rate 10 or more times their proportion of the population for Rape, robbery, aggravated assault, other assault, prostitution, and drug sales. While blacks are charged with 2% and 3% of burglary and larceny crimes, they make up 12% of inmates incarcerated on those charges. Note additionally that Native Americans are charged at a rate three or more times their proportion of the population for murder, aggravated assault, burglary larceny, other assault, stolen property, and offenses against family and children.

National statistics show similar disparities. While a disproportionate number of arrests are of people of color, that disproportion becomes more stark at the point where persons are sentenced to prison. In 1991 29.2% of all arrests for crimes were black, while 54.1% of new commitments to prison were black.¹⁶ 26.9% of arrests for property crimes were black while 46.1% of new commitments to prison for property crimes were black. 49.4 percent of arrests for drug crimes were black while 66.1% of new commitments to prison for drug crimes were black.¹⁷

2. Minority Victims

Not only the race of the defendant, but the race of the victim plays a role in what happens in the criminal court system. The Minnesota Task Force reported that surveys of judges and public defenders believed that prosecutors are more likely to file charges when the victim is white; they are more likely to perceive their cases are strong when the victim was white. People of color were less likely than white victims to receive reparations or more likely to receive a reduced reparation amount based on police reports of the victims contributory conduct.¹⁸ In 1990 27% of African American victims seeking reparations in Hennepin County received reduced awards based on contributory conduct compared to 7% of white victims,¹⁹ Minority victims of crimes are more likely to be viewed as having "asked for it." This is particularly true for rape.

Many victim service providers in Minnesota expressed beliefs that prosecutors are more likely to recommend intermediate sanctions in lieu of prison when defendants are white and victims are minority. Much of the time, the death of a minority by homicide, does not lead to the perpetrator going to prison. While 50.8% of the victims of murder, 31.3% of victims of robberies and 33.2% of victims of rapes are black, only 27.3% percent of victims of inmates in state prison are black.²⁰

¹⁶ United States Department of Justice; Bureau of Criminal Justice Statistics, *Sourcebook of Criminal Justice Statistics*, (Hereinafter, Sourcebook), Table 4.13.

¹⁷ Id.

¹⁸ Task Force Report at 495.

¹⁹ Id.

²⁰ Id.

The statistics for blacks are even more stark for Native American victims of white defendants. In Rapid City a few years ago a beautiful Native American College cheerleader charged a white on duty police officer with having raped her. The Women Against Violence Inc. (WAVI) program refused to assist her, because in their view, they couldn't risk losing the support of the police department. Thus, even an organization established and funded to assist victims of violence, chose a white defendant over an Indian victim. The trial was moved to Mitchell making it difficult for her family and friends to be with her. The officer was acquitted. Several years later the young woman died in a suspicious car accident.

Andrew Hacker states it so well:

Indeed, when black citizens become victims of crimes, they tend to find scant attention from the police for their plight. Underlying this official unconcern seems to be the notion that if you are a black person in the United States, you should not be surprised if you happen to be robbed or raped or even lose your life. Hence, too, the greater solicitude by the police for white victims, who are seen as more shaken when violence intrudes on their lives. Indeed, white citizens complain more stridently about crime, even though their likelihood of becoming victims is far lower than for blacks. From this race-based reasoning flows the corollary that less is lost when black persons die, whether they are slain by the police or a criminal. And since black lives are viewed as having lesser value, the act of taking them warrants a lighter censure.²¹

While victimization may be as related to income as race, the overrepresentation of people of color among families with poverty level income increases their likelihood of becoming victims. Recall the demographic data presented earlier. The victimization rate of families with incomes under \$25,000 in 1992 was 403.1 per 100,000 while the victimization rate of families with incomes over \$50,000 was 268.9.²²

Native American homicide victims in South Dakota are numerous. Many homicides of Native Americans are never solved. When there is a clear perpetrator and that person is white, they often do not go to prison, or if so, for less than two years. The Custer Courthouse incident in 1972 was precipitated by the release of a white man charged in the death of an Indian. In Hot Springs in the late 1970's, a young Indian male (Morrison) was shot to death. The white perpetrator served less than two years in prison. In Meade County a few years ago, an Indian man was run down on the highway by two white males. They opened a pickup door as they sped past him (Red Elk) killing him. They each served short prison sentences.

²¹ Hacker at 191. A study prepared in 1987 for a Supreme Court appeal found that murderers who killed white people faced a ten times greater chance of a death sentence compared with murderers who had black victims. When circumstances such as the ferocity of the crime and the social status of the victim were held constant, the prospect for the death penalty was still four times higher when the victim was white.

²² Sourcebook

In Rapid City in early 1992 a young Indian man (Brave) was killed by several Indian males in a grisly, torture slaying. A few weeks later a young white man was stabbed to death. The investigator for the Rapid City Police Department made a public statement that that young white man's death would have an impact in the community because he was a "good kid", not like other recent homicide victims. They had been Indian. The killer of the young white man is serving a death sentence for that death. No person has ever been charged with capital murder in South Dakota for killing an Indian.

The Minnesota Task Force Report showed that in Hennepin County according to 1990 census information, blacks constituted 5.82% of the population but accounted for 35.8% of the homicide victims and 47.5% of the offenders. The same disproportion existed for Native Americans. While the percentage of Native American residents in Hennepin County was 1.44 percent, 13.4 percent of the homicide victims and 13.9 percent of homicide offenders were Native Americans. Of all the homicide cases presented to the grand jury by the Hennepin County Attorney since January 1, 1990, 65 percent of the victims and 77 percent of the suspects have been persons of color.²³

B. FORMAL CRIMINAL CHARGING

Once an arrest occurs, it is up to the government prosecutor to determine what charges, if any are brought against the suspect. Charges are much more likely to be brought against a minority defendant, especially if the victim is white. Formal charging occurs in two possible ways in state court—either through a grand jury indictment or the filing of an information by the prosecutor. Charging in federal court must be done by grand jury indictment.

The role of the prosecutor in objectively presenting evidence to the grand jury is suspect. In Minnehaha County, SD, the normal procedure is to charge a defendant with a crime and schedule him or her for a preliminary hearing (PH) and then indict prior to the PH. Often the defendant or his attorney is not notified of the indictment and show up for the now unnecessary PH. Minnehaha County relies on the grand jury to a very great extent. In 1994 only 74 preliminary hearings were held out of 1,536 felony filings. That means that 95.2% of charges were brought by a grand jury indictment. A preliminary hearing is required for all felony defendants, unless a grand jury indictment occurs. Since the prosecutor is totally in control of the presentation to the grand jury, without cross examination of witness by defense, it is much easier to obtain an indictment from a grand jury than it is to charge with an information and present evidence to a judge at a PH with cross examination by a defense attorney.

²³ Task Force Report at 899.

In Minnesota the Racial Bias Task Force reported that a disproportionate grand jury indictment dismissal rate for people of color may lend credence to the argument that minorities are more often arrested for insufficient cause than whites.²⁴ In Hennepin County, of the 4,149 total dispositions in 1991, 424 or 10.2% led to outright dismissals. These cases were dismissed due to lack of evidence, witness problems and constitutional issues. Of those 424 outright dismissals, 279 or 66% applied to people of color. For all cases that reached disposition, or trial, 13% of people of color had their cases dismissed at that point compared to only 7% of whites. A study that controlled for current offense and prior conviction of over 19,000 defendants from January 1989 through April 1992 found that people of color were significantly more likely to have their cases dismissed for assault and theft offenses.²⁵

In South Dakota a large proportion of cases are dismissed as well. In Minnehaha County, the great reliance on grand jury indictments leads to a very high rate of dismissals. During 1994 641 of the felony filings were dismissed. That represented 43% of all filings.²⁶ No breakdown is given of dismissals by race. In Minnesota the high rate of dismissals is attributed to the higher rate of charging of minorities by arrest warrants, while whites are more often charged by summons and complaints. Because of the ease of obtaining an indictment before the always all white grand jury, it has become more than jest that a prosecutor in South Dakota can indict a ham sandwich.

C. BAIL AND PRE-TRIAL RELEASE

Minorities are significantly less likely to be released with no bail required. South Dakota uses no objective criteria for release on bail pending court action on a charge. It is totally at the discretion of the judge. Even in Minnesota where a rating system has been used, it has not led to equality in decisions to release without surety pending court action. Of course, whether a suspect is detained pre-trial has a major impact on conviction and imprisonment. Persons detained pending trial have a three times greater probability of being convicted and sentenced to prison.²⁷

In Minnesota, even with standards for determining bail and conditional release, studies have shown significant differences in the scores of defendants from different racial groups on the following six items:

- Native Americans and Hispanics are less likely to get residence points than African American or whites;

²⁴ Task Force Report at 546.

²⁵ Task Force Report at 547.

²⁶ 1994 Annual Report

²⁷ United States Department of Justice, *Pre-Trial detention of Felony Defendants*, 1992.

- Native Americans are more likely to score zero points on the employment item than Hispanics, African Americans, or whites;
- Whites are less likely to lose points for being charged with a person offense than people of color;
- About one-third of the whites received two points for voluntary surrender. This is true for 14% of African Americans, 11% of Hispanics and 5% of Native Americans;
- People of color, especially Native Americans, are more likely to lose points for prior bench warrants; and
- Native Americans are significantly more likely to lose points on the chemical dependency item than Hispanics, African Americans or whites.²⁸

These differences produce sizable differences in total scale scores. Whites have a significantly higher average score than all other races. The average score for African Americans is significantly higher than that of Native Americans, but not significantly higher than that of Hispanics.

When release recommendations based upon points and the subjective judgment of the evaluator are analyzed by race, there is a highly significant difference. No bail required (NBR) status is recommended for nearly 33% of the whites and 21% of African Americans, but only 8% of Native Americans and 13% of Hispanics.

In the experience of many people working within the system, if the defendant is minority and the victim is white, this results in harsher treatment for the minority defendant in the setting of bail. While there appears to be little disparity in the amount of actual bail set, there is a great disparity in the decision to release a person without surety. When bail is set, whites are more than twice as likely to be able to post that bail and be free pending hearings and trial.

In South Dakota I have sat in court for initial appearances in the two largest counties- Pennington and Minnehaha. In Pennington County about 60% of persons detained pending that first appearance are Indian, black or Hispanic based on visual identification only. Another 10% have Indian or Hispanic surnames who are not obviously Indian or Hispanic. In Pennington County in 1990 5,385 residents were Native American. That represented 7.2% of the population. 1,288 residents were black representing 1.5% of the population. Minorities are detained at a rate about 9 times their proportion of the population.

In Minnehaha county, at least 25% of the persons detained pending initial appearance are people of color. That county had 1,680 Native American residents representing 1.4% of the

²⁸ Task Force Report at 561-2.

population. There were 754 black residents representing 0.6% of the population. Thus minorities are detained at a rate more than 12 times their proportion of the population.²⁹

D. PLEA NEGOTIATIONS

Because of the high level of prosecutorial discretion in plea negotiations, it is often hard to monitor those decisions. However, national studies have found that the race of the defendant and the race of the victim can both influence the exercise of this discretion.³⁰ Since a large proportion of criminal cases are disposed of through pleas, this becomes very important in the dispensation of justice.

The Minnesota task force reported that some attorneys and many public defenders believe that prosecutors are more likely to make favorable plea offers when defendants are white. Additionally they are more likely to make favorable offers where the victim is minority. They believe that one reason for this is the small representation of minorities on the professional staffs of our judicial system.

A white Minnesota public defender was quoted as stating:

Black defendant's on violent crimes generally experience a much more difficult time getting prosecution to reduce charges or to recommend dispositional departures. This is especially true if the victim is white. It in part may be the attitude of a white victim against a black perpetrator that results in the unwillingness of a prosecutor to recommend a more lenient sentence in crimes of violence. No, it's not overert. It's not expressed. It's just reflected at times in the way a case is charged, the type of plea negotiations you receive, the recommendation of probation...³¹

Of course, the greatest influence in sentencing is the actual charge for which a defendant ends up being sentenced. Plea bargaining controls this to a great extent. It is the plea bargain which influences the final charge for which a defendant is sentenced, more than any other factor.

In the Minnesota report judges and attorneys believed that "prosecutors are more likely to make favorable plea offers when defendants are white."³² If a defendant is minority and the victim is white, prosecutors believe they have a better shot at a jury conviction.³³

The practice of seeking cooperation of one defendant against other defendants leads to inequities. That is especially true where race of defendants is not all the same. It is often the most culpable defendant who knows the case against them is particularly strong who is most likely to plead and turn states evidence. This leads, in a surprising number of cases to that person receiving a significantly shorter sentences because he (she) pleads to a lesser crime and receives a

²⁹ *Id.*

³⁰ Note, Developments-Race and the Criminal Process, 101 Harv. L. Rev. 1472, 1525-32 (1988)

³¹ Task Force Report, at 563.

³² Task Force Report at 565.

recommendation for a much shorter sentence from the prosecution for her cooperation. It also leads, all too often, to the conviction of actually innocent defendants. This is most often true where the prosecution witness is white and the non-pleading defendant is minority.³⁴ Because of prosecutorial discretion, especially in homicide cases, similar crimes can be treated in shockingly dissimilar ways, with the race of the victim often being a deciding factor.³⁵

E. TRIALS

Most professionals responding to the Minnesota survey believed that judges display culturally-insensitive behavior and sometimes make demeaning remarks toward minority defendants. Court personnel also always, often or sometimes make remarks or jokes demeaning to people of color in court or in chambers.

Most criminal charges do not make it to trial. Those that do have conviction rates which vary based on the race of the defendant and the race of the victim. This is far too often the result of all white juries at both the grand jury and Petit jury level.³⁶ Juries are nearly always white. White juries often view evidence differently if a defendant is minority, especially if a victim is white or if a confidential informant is white.

In a 1992 conviction in Rapid City, a 14 year old Native American youth was charged as an adult in the stabbing death of a 34 year old white man. The youth was attacked by the man, an alcoholic with a history of violence. The youth was carrying a knife in a sheath which the man attempted to kick out of his hand. He only succeeded in kicking the sheath off the knife, breaking the boy's thumb in the process. The man had the youth in a choke-hold from behind with his t-shirt pulled up over his head. The youth, while flailing with the knife, hit the man under his arm and in his side. The wounds were not deep and medical testimony stated that they were not, of themselves, fatal. The man continued struggling and attacking, however, and ruptured some major vessels and bled to death. The youth was charged with murder. He was convicted of 1st degree manslaughter. I have been unable to find anyone who believes that had the youth been white and the attacker drunk and Indian, under exactly the same circumstances, that the youth would have (or should have) even been charged, let alone convicted by an all-white jury.

In a 1993 conviction in Rapid City, a 19 year old black man was riding with other minority friends when they were taunted by a car load of white youth and young adults. The cars

³³ *Id.*

³⁴ Sheri Lynn Johnson, *Black Innocence and the White Jury*, 83 Mich. L. Rev. 1611, 1635 (1985).

³⁵ Radelet and Pierce, *Race and Prosecutorial Discretion in Homicide cases*, 19 L. Soc'y Rev. 587 (1985); Baldus, et al *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. of Crim. L. and Criminology 6661-703 (1983).

³⁶ Kenneth C. Vert, *A Grand Jury of Someone Else's Peers: the Unconstitutionality of the Key-Man System*, 57 UMKC L.R. 505 (1989); Note: *The Case for black Juries*, 79 Yale L.J. 541, 532 (1970).

stopped and a mutual fight occurred. None of the whites were arrested as they were viewed as the victims while the minorities were viewed as the perpetrators. One of the black defendants was charged with Aggravated assault. One of the white young people was the son of a Pennington County prosecutor. At the young black man's sentencing the judge told him that he couldn't go around beating up everyone who called him a nigger and sentenced him to 10 years in prison.

In a 1993 trial of four black defendants on drug charges in Sioux Falls there were eleven indictment counts on 4 different charges, some against some defendants and some against others. The case involved over 40 jury instructions and widely varying evidence against defendants, the jury deliberated less than two hours before convicting the defendants. They came back in with only one question for the judge during deliberations. That question did not relate to the instructions or the evidence, but was to ask whether the bailiff could read the verdict. In interviewing the jurors for a habeas application for one of the defendants, their concern was fear of retaliation by the defendants. None of these defendants had ever been convicted of a crime of violence. That particular case was initiated by the prosecution through a notoriously unreliable white Confidential Informant (CI). The case involved only a \$50 piece of crack, that was at least as likely to have come from the CI as from any of the four black defendants. This was a case where, had the race been reversed, with a black CI and white defendants, there never would have been a case initiated or prosecuted and certainly no conviction.

In addition, prosecutors often over-zealously prosecute minority defendants for high level crimes, especially if the defendants have had some petty crimes on their record. In an effort to rid the community of a petty thief, or a person with several DUI's a prosecutor over charges on another crime and use any method to obtain a conviction. In a book entitled *In Spite of Innocence* Radelet described over 400 wrongful convictions for capital crimes. He showed that these convictions were over 40% of the time the result of over-zealous prosecution which included the use of knowingly perjured testimony.³⁷

I have documented two cases where alibi witnesses for black defendants in Sioux Falls have been arrested to prevent them from testifying. In the first case, in 1989, a black defendant with only burglary crimes on his record was charged in a rape. There was clear evidence that the crime was actually committed by a white codefendant. A witness to a phone conversation that occurred involving the black defendant upstairs, while the woman was having sex downstairs, could have proven been an alibi for the black defendant. Body hairs and semen on the victim did not belong to the black defendant but to a codefendant, who testified against a defendant and

³⁷ Radelet, *In Spite of Innocence*

ended up not being charged. The alibi witness was arrested as he waited outside the courtroom waiting to testify. That young black man is still in prison in South Dakota.

In the 1993 drug case in Sioux Falls mentioned above, an alibi witness for one of the black defendants was arrested while she waited outside the courtroom pursuant to a sequestration order. She was arrested on a minor misdemeanor charge, which should have been handled by a summons and complaint, not an arrest. She could have testified to a phone conversation she had with the defendant on a cell phone outside in a car, while the controlled buy went on inside the house. Because of her inability to testify, the testimony of a state investigator with her about the phone conversation was struck as hearsay, because she was not available to corroborate it. That actually innocent young man is still in prison, having received a 25 year sentence.

F. PRE-SENTENCE INVESTIGATION REPORTS

Pre-sentence investigation (PSI) reports are routinely ordered by judges in felony cases when defendants plead guilty or are convicted by a judge or jury. They are poorly investigated, especially regarding prior criminal history. They most often give only the most negative nuances about the subject and given no positive history, family background, employment or other indications of stability, especially if the defendant is minority. Where a judge accepts statements in a PSI as fact and defense counsel doesn't correct false or misleading information, the judge sentences based on a false impression of the history of the defendant. In virtually every case, defense counsel does not go over the PSI with the defendant and seek any evidence or witness to counter false statements in the report. In most instances the PSI report is shown to the defendant at the sentencing hearing. Pre-sentence investigation reports are most often done by probation officers, an arm of the prosecution, to aid judges in formulating appropriate sentences.

In the 1993 drug conviction in Sioux Falls, the PSI mentioned criminal history which included four prior felonies from other states. The felonies were in some cases mislabeled or were later proved to be misdemeanors under South Dakota law. The defense counsel did not challenge the report nor share it with the defendant. The report was received later as part of discovery for a habeas application. The judge relied on the report to enhance the sentence for the underlying crime two levels in sentencing the defendant as a habitual. It took little investigation by this author to discover the discrepancy. That sentence is currently being challenged based on a materially false Part II (habitual) information.

Because of general misunderstanding, or outright ignorance regarding minority life styles, the statements in PSI reports are more often negative regarding minorities. Such statements are usually not corrected prior to sentencing. PSI reports are much more likely to

recommend stays of imposition or execution of sentence or probation where a defendant is white. A large majority of the staff's preparing such reports are white.

Minnesota found corroborating evidence of this perception in a report on intermediate sanctions imposed on felons who were sentenced in 1987. Although the study did not control for type of offense, it found whites were twice as likely to be recommended by probation officers for stays of imposition of sentence than people of color.³⁸

G. SENTENCING

1. DRUG OFFENSES AND SENTENCING POLICY

The most contentious criminal justice policy affecting the minority community in recent years has been the arrest and sentencing practices of states and the federal government regarding drug offenses. One of the major problems in federal sentencing was the disparity of sentencing for crack cocaine (a drug of the streets) compare with powder cocaine (a drug of the boardroom). A mandatory minimum sentence is required for the possession of 5 grams of crack, while a mandatory minimum is not required unless a defendant possesses 500 grams of powder cocaine. There is approximately 28 grams to an ounce. Five grams equals about the weight of 5 paperclips-1/6 of an ounce. Five hundred grams equals more than a pound (about 18 ounces) of powder cocaine. That's a lot of powder.

These sentencing guidelines were base on what was claimed to be disproportionate chemical composition of the two forms of cocaine and on disparate effects of use and trafficking in the two types. Most of the chemical arguments have been successfully dispelled. These sentencing guidelines are not being reviewed based on research that has proven that there was never clear evidence that there is a significant or appreciable difference between crack cocaine and powder cocaine.³⁹

Between 1987 and 1990 alone, the percentage of African Americans among all drug offenders sentenced in Minnesota rose from 10% to 26%. The proportion of whites sentenced dropped from 84% to 67%. From 1989-1990, the number of narcotics arrests involving whites decreased by 13%, while the number of African American arrests increased by 99%.

In the summer of 1990, Judge Pamela Alexander, a Minnesota State Court judge, in a trial of several black defendants for crack offenses, ruled that the state's third degree controlled substance possession statute violated the constitutional guarantee of equal protection under the law. Minnesota and some other states along with the federal government use sentencing

³⁸ Task Force Report at 507.

³⁹ Minnesota Sentencing guidelines Commission, Report to the Legislature on Controlled Substance Offenses, (Feb. 1992); David Peterson, State Agency Reports Increase in Number of Black Drug Arrests, *Minneapolis Star Tribune*, July 9, 1992 at pp. 1A and 6A.

guidelines for sentencing The law in Minnesota, like federal law, imposed a harsher penalty for the possession of certain amounts of crack cocaine than for the same amounts of powder cocaine. The judge noted that this had a disproportional impact on African Americans because a very high proportion of convicted crack offenders were African Americans and a high proportion of convicted powder cocaine offenders were white. The Minnesota Supreme Court upheld that decision.⁴⁰ The Minnesota Sentencing Guidelines Commission reported that the findings were accurate and began revising the sentencing guidelines.

National statistics reflect similar disparities in arrests for drug offenses. In 1992 29.2% of all persons arrested in major cities were black. However 49.4% of all arrests for drug offenses were black.⁴¹ The arrest rates for blacks for violent crimes has not increased at the same proportion as that of whites. Arrest rates for blacks for violent crimes was 10.29 times the arrest rate of whites in 1965. By 1992 the arrest rate for violent crimes for blacks had decreased to 6.3 times the arrest rate for whites.⁴²

The arrest rate for blacks for property crimes remained at the same multiple compared to whites in 1992 as it was in 1965. The rate was 4.5 times for blacks in 1965 and remained at that level in 1992.⁴³ The arrest rate for drug violations for blacks was 2.3 times the white arrest rate in 1965 but had gone up to 4.5 times the white arrest rate in 1992.⁴⁴

2. CONVICTION/ PRISON SENTENCING COMPARISONS

In 1982 20 percent of all defendants were convicted of drug offenses (6979/34193). By 1992 that percentage had increased to 36 percent. (18698/51,936).⁴⁵ The percentage of defendants convicted of violent offenses decreased from 6.9% to 5.6%. those convicted of property offenses decreased from 37.4% to 27.4%. As noted before the percentage of arrests for weapons offenses is disproportionate for minorities. That is another category of crime where convictions rates rose. The percent of black defendants convicted for weapons offenses in creased from 4.7% in 1982 to 7.6% in 1992.⁴⁶

Once convicted, the percent of offenders sentenced to incarceration in United States District Courts showed a disparity for black and white convicted felons. Charts follow showing the percent of convicted felons sentenced to prison and the average sentence lengths by type of conviction.

⁴⁰ State v. Russell, 477 NW.2d 866 (Minn. 1991).

⁴¹ Sourcebook of Criminal Justice Statistics, 1993, Table 4.13.

⁴² Id., Table 4.16.

⁴³ Id., Table 4.21.

⁴⁴ Id.

⁴⁵ Id., Table 5.18

⁴⁶ Id., Table 5.18

| PERCENT SENTENCED TO PRISON | | |
|-----------------------------|-----------------|--------------------|
| OFFENSE | BLACK OFFENDERS | WHITE OFFENDERS |
| ALL | 79.3 | 60.4 |
| VIOLENT | 97.2 | 87.2 |
| PROPERTY | 49.1 | 41.0 |
| DRUGS | 94.1 | 86.4 |
| PUBLIC ORDER | 85.4 | 44.3 ⁴⁷ |

Thus black and white convicted felons receive different treatment once convicted. The Pommersheim report found that the actual sentence length of Indians compared to whites was not significantly disproportionate. State statistics do not break down sentences by race of the felon. National statistics, however show a disparity in sentence length for black and white felons.

| SENTENCE LENGTH BY RACE, 1990, IN MONTHS | | |
|--|--------------|--------------------|
| OFFENSE | BLACK FELONS | WHITE FELONS |
| ALL | 77.4 | 53.9 |
| VIOLENT | 115.4 | 84.9 |
| DRUG | 98.2 | 73.7 |
| PUBLIC ORDER | 48.0 | 26.3 ⁴⁸ |

But what about change in sentence length for all offenders based on crime. Certainly the length of sentences for violent offenses have increased while those for non-violent offenses have decreased? That must be the reason for the huge growth in incarceration in this nation. WRONG! The following chart shows average sentence length for all felons in 1982 and 1992.

| SENTENCE LENGTH, 1982 AND 1992, IN MONTHS | | |
|---|-----------|--------------------|
| OFFENSE | AVG. 1982 | AVG. 1992 |
| VIOLENT | 133.3 | 85.5 |
| PROPERTY | 31.1 | 19.9 |
| DRUGS | 54.6 | 82.2 |
| PUBLIC ORDER | 25.6 | 47.6 ⁴⁹ |

Thus the increase in incarceration has not been because of an increase in sending all offenders to prison, only minority. And the prison boom has not been the result of increasing sentences for violent offenses, but for drug and public order offenses. Do we really want to spend so much money to send primarily minority juveniles and adults to prison for longer sentences for

⁴⁷ *Id.*, Table 5.21

⁴⁸ *Id.*, Table 4.24

non-violent crimes while shortening sentences for violent crimes? If the imprisonment sentences continue rising for non-violent crimes, we will have more than one million persons, mainly minority behind bars for non-violent offenses by the year 2,000.

In South Dakota 25.5% of the prisoners under state and federal correctional authorities on December 31, 1991 were American Indian. Only Alaska had a higher proportion of inmates that were Native American at 31.1%. However Alaska had a population that is 15.6% Native American while South Dakota was only 7.3%. Thus Alaskan natives were imprisoned at a rate only twice their proportion in the population while in South Dakota the multiple is 3.5 times. In Oklahoma 8.0% of the population were American Indian while 5.7% of the inmates were. Montana had a population that was 6.0% American Indian while 18% of the of the prison population was. New Mexico had a population that was 8.9% American Indian, but its prison population was only 3.1% Indian.⁵⁰

3. INTERMEDIATE SANCTIONS

Between conviction and prison there are several intermediate sanctions including probation, fines and shorter sentences served in jail. Sentences to local jails in South Dakota can generally be no longer than 12 months. The longest sentence for a first class misdemeanor conviction is 12 months. However persons convicted of felonies with maximum sentences of 2 or more years, may be sentenced to jail for not longer than 12 months.

A large proportion of all convicted defendants are placed on probation or receive a suspended sentence. This does not seem to be based on race to a significant degree. However the Minnesota Task Force found that for offenders with prior convictions, whites are more likely to get probation for prostitution. (97% v. 87%)⁵¹ The other offense categories did not vary significantly by race for either first time felons or for those with prior convictions.⁵²

The next sanction is the imposition of a fine only without jail. Whites are more likely to receive a fine than minorities in all categories analyzed. The largest discrepancy occurs in prostitution/no priors category where 23% of whites are fined in comparison to only 8% of minorities. For assault with priors, 16% of whites received fines and 8% of minorities. For theft with priors, 23% of whites received a fine and 14% of minorities.⁵³

While whites are more likely to receive a fine only, minorities are more likely to receive a jail sentence in all conviction categories. For assault/no priors minorities were sentenced to jail

⁴⁹ Id. Table 5.23

⁵⁰ Id. Table 6.34

⁵¹ Task Force Report at 849

⁵² Task Force Report, Table 13

⁵³ Task Force Report, Table 14

27% of the time while whites were sentenced to jail only 18% of the time. For assault with priors minorities were sentenced to jail 52% of the time while whites were sentenced 42% of the time. The largest discrepancy was for theft/no priors where minorities received jail sentences at twice the rate of whites. (24%/12%). For theft with priors minorities received jail sentences 68% compared to 48% for whites.⁵⁴

Comparing fines and jail sentences, looking at first-time offenders, whites are fined at a higher rate than they are jailed for prostitution and assault. The opposite is true for minorities; jail rates are higher than fine rates in two offense categories.⁵⁵

Next, the length of a jail sentence was analyzed by the Minnesota Task Force. Like the Pommersheim study on prison sentences in South Dakota, the Minnesota Task Force found little variation in the length of a jail sentence in Minnesota.⁵⁶ Thus, the discrepancies occur prior to the actual sentence length, at the stage of receiving probation or fines in lieu of a jail sentence and in being actually sentenced to jail. Whites were more likely than minorities to receive fines and/or probation instead of going to jail at all. The opposite was true for minorities. Once sentenced to jail the sentences did not vary considerably.

Another area that needs study is the imposition of restitution in property crimes. The Minnesota study did not look at that. From my own observations, where all property is recovered without being damaged restitution is generally not sought if the defendant is white, but is still sought if the defendant is minority. I am familiar with about a dozen cases in Pennington County where that was the case. I am aware of a 1992 case where a young black man pleaded guilty to one vehicle burglary and the home made audio tapes taken from the unlocked car were all recovered, but the young man still had to pay \$250 restitution. If the tapes and the restitution were both received by the victim, he made money from the theft. I am not aware of one case in which the defendant was white where this has occurred.* This is certainly an area for further study.

4, SENTENCING AS HABITUAL OFFENDERS

A prosecutor in South Dakota is required to file a habitual information once he (she) is aware of a prior felony. However, prosecutors use the charge at their discretion. Habitual informations are almost exclusively used against minority defendants.

The Minnesota task force reported the same discrepancy. They found that criminal history didn't seem to matter much for white felons (59.2% imprisonment rate if no history compared to 65.5% rate with a history). However criminal history made a big difference for

⁵⁴ Id. Table 15

⁵⁵ Task Force Report at 850

minority offenders. Their imprisonment rate increased from 52.2% with no history to 82.9% with a history. These were for crimes with a presumptive prison sentence.⁵⁷ Indeed for dangerous weapons offenses the imprisonment rate for white felons with a history ((80.8) was lower than the rate for minority felons with no previous criminal history. (81.3). Lack of a criminal history was much more beneficial for white offenders in avoiding prison than it was for minority offenders. Thus the disproportion of minority prisoners cannot be explained away by their more extensive prior criminal histories.

In South Dakota, as elsewhere, being charged as a habitual offender affects your initial sentence. You may be sentenced with a one level enhancement with one or two prior felonies, none violent. You may receive a two level enhancement with three or more prior felonies, none violent. In criminal vernacular this is known as the “little bitch.” You may have your sentence enhanced to life in prison without parole for three or more prior felonies, at least one of which is violent. This is known as the “big bitch.” Thus a person sentenced for a class 4 felony could have received a maximum 15 year sentence but with three prior non-violent felonies, that sentence can become 25 years. With three priors, at least one violent, that sentence can become life. While some other states have gone to a three strikes, you’re out policy which sends people to prison for life with three prior felonies, South Dakota continues to use habitual enhancement, with much the same result. The difference is, in South Dakota one of the priors must have been violent to get life. Other states don’t require that.

At last, an area where South Dakota uses restraint in sentencing. However, South Dakota considers first and second degree burglary as violent offenses. Few other states do. A large proportion of minority felons in South Dakota are sentenced for those crimes. South Dakota’s life sentence became a life without Parole sentence in 1972 when the State did away with any possibility of parole on life sentences.

A large proportion of minorities sentenced in South Dakota are also residents of other states who are arrested while travelling through South Dakota-especially for drug offenses. Thus in looking at prior criminal history, a prosecutor has to compare charges in other states with crimes in South Dakota. A sentence cannot be enhanced if the prior, even if called a felony in another state, does not qualify as a felony in South Dakota. This is where poorly done PSI reports and habitual informations can mislead a judge to sentence on priors from other states that do not qualify as felonies under South Dakota law. In many states what is labeled second degree burglary is like petty theft in South Dakota, a misdemeanor. When out of state convictions are

⁵⁶ Task Force Report at 851-852

⁵⁷ Task Force Report at 864

used for enhancement, a comparison of elements and/or maximum sentences is required, but is rarely done. Thus minority defendants are more likely to have a sentence enhanced based on a prior not meeting the requirements for enhancement, if that prior is from out of state.

In a 1994 conviction of a young black man in Rapid City for statutory rape, he received a 15 year sentence based on a PSI which identified him as having a prior felony in another state. The prior felony turned out to not be a felony even in that state. While investigating for a habeas action I discovered that. The mistake was not corrected prior to sentencing, indeed the defendant was not provided the PSI until just prior to sentencing. His attorney refused to appeal based on the false information in the PSI. He sent me his paperwork and I worked with his court appointed attorney to investigate the case.

One of the defendants in the 1993 drug case in Sioux Falls had four out of state priors listed for enhancement on a Part II habitual information. One was a second degree burglary conviction in California, like petty theft in South Dakota, a misdemeanor. One was labeled as an altered weapon charge in New Jersey, but was found to actually be a concealed weapon charge-misdemeanors in both states. Now, 26 months after he was sentenced to 25 years because of a two level enhancement of a maximum 15 year sentence, it has been proven that two of the priors were misdemeanors and none were proven to be felonies in South Dakota. He has filed a habeas action challenging his conviction and sentence.

While this young black defendant was attempting to get back into court to correct this matter, I attended a sentencing for a white defendant charged with powder cocaine possession and distribution in Sioux Falls. That defendant had been arrested for powder cocaine possession and had been released on his own recognizance. He was arrested within 48 hours in possession of large amounts of both powder cocaine and cash. He was not charged with a new crime. He had two prior felonies for drug crimes and one prior violent felony, an assault. No Part II habitual information was filed against him. The PSI painted a rosy picture of this young man and his possibilities for rehabilitation, quite a different picture from the one for the above black defendant. He was sentenced to four years in prison.

Being sentenced as a habitual offender affects parole eligibility as well as the length of the original sentence. If an inmate has no priors, he serves 1/4 of a sentence less statutory good time before parole eligibility. With one prior he serves 1/3 and with 2 or more he serves 1/2. The black defendant would have to serve 12.5 years before first eligibility for parole while the white defendant would have to serve 1 year.

H. IMPRISONMENT-DISCIPLINARY SEGREGATION/LOSS OF GOOD TIME

Once imprisoned, minority inmates are much more likely to lose good time due to disciplinary writ-ups. In 1978 the South Dakota State Penitentiary lost its Department of Justice funds because of gross inequities based on race in the disciplinary actions against inmates. Those gross inequities have not improved.

For every day of good time lost the inmate must spend another day in prison, unless their sentence is long enough that they can receive good time back. Since the large majority of disciplinary write-ups are of minority inmates with shorter sentences, many must serve additional prison time because of the loss of good time.

In 1989 a Department of Justice report on disciplinary write ups of state prison inmates confirmed the SD experience. Younger inmates with shorter sentences were more likely to lose good time due to write-ups. Those prisoners were disproportionately minority.

The Jamieson Unit, a new facility next to the Sioux Falls Penitentiary was opened in 1992. It was to be a minimum security facility for work release and pre-release inmates. However only one small building was used as such. The large majority of the beds were in what was to become a segregation unit following the prison disturbance in May, 1993. Following that disturbance both the young Indian boy sentenced at 14 in Rapid City as an adult and the young black man sentenced in Rapid City for theft of tapes from a car, were placed on administrative segregation in the Jamieson unit. Neither were charged with new crimes. The young Indian youth remains in segregation at this time. The young black man, whose sentence ended in August, 1993 was held beyond his sentence end due to loss of good time. A habeas led to his release in November, 1993.

The labeling as administrative segregation rather than disciplinary segregation allows the prison to ignore disciplinary due process requirements. Inmates in the disturbance hearings were not allowed to present witnesses. Hearings were not held for weeks after being placed in segregation.

I. PAROLE DECISIONS

In South Dakota, the paroling authority, the South Dakota Board of Pardons and Paroles operates without any objective criteria as to when a person should be ready for parole. There is no pre-release program which sets criteria for things an inmate must do to obtain parole. It is purely a "fly by the seat of the pants" procedure based on the gut reactions of the board members.

Statistics on the percent of persons who are released by the Parole Board by race are recorded annually. In 1994 32% of whites seeking parole received it, 29% of Native Americans and only 6% of blacks received parole. During FY 1990 the percentages were 44% for whites

and 38% for both Native Americans and blacks. Thus a white or Native American inmate would on the average receive parole the third time they appear. However a black inmate would have to appear, on the average 6 times before receiving parole. A black inmate would have to serve an additional 24 months on a sentence on the average before being paroled. A person denied parole must serve an additional eight months before the next hearing date.⁵⁸

J. RETURNING TO PRISON-REVOKING SUPERVISED RELEASE

Nationwide, over 1.4 of new prison commitments each year are for revocation of conditional release. Most of these are not for new law violations, but for technical violations of terms of release. In South Dakota in 1994, only 3 revocations resulted in new criminal charges.

I have documented revocations for the following:

- ① Failure to notify of change of address over a weekend. Defendant had no phone and notified PO on Monday. Parole revoked.
- ① Getting behind in rent: parolees in Rapid City are sometimes placed at the Friendship House. A charge for staying there begins accumulating immediately. If it takes time to locate employment, the parolee may have trouble catching up on the rent. Parole has been revoked when an inmate obtained the back rent from a girlfriend, rather than paying it himself.
- ① Opening a checking account without permission. This was a parolee who did not have a financial/check related conviction, but it is routinely included as a condition of parole for all inmates.
- ① Smoking. A condition of parole for a Sioux Falls inmate was to stop smoking to be better able to pay restitution. When caught smoking parole was revoked.
- ① Starting college on federal student loans without advance permission. Again a general condition for all parolees is not to incur any financial obligations without prior permission, including student loans where the repayment is deferred until 6 months after leaving school.

In each of the above cases the parolee was minority. Filing a petition to revoke parole is discretionary. I have known white parolees who have had 4 or more violations and not been revoked. On the other hand I have known minority parolees or probationers revoked on their first or second violation. I have yet to encounter a white probationer or parolee whose release was revoked the first time they committed a technical violation.

The parole or probation officer controls the released inmate's life. They may misuse that power and are more likely to do so, if they are of another race. Probation and parole officers

⁵⁸ SD Department of Corrections, FY 1994 annual report

should exist to aid the offender in staying out of or not returning to prison. They rarely seem to function in that capacity. Instead they seem to exist to attempt to catch the offender doing something wrong, especially if that offender is minority. Actions of white offenders are more often viewed as acceptable, just as the actions of white persons committing crimes are viewed as acceptable while the same actions by minorities are considered criminal.

IV. CONCLUSION

Going to prison in South Dakota involves a process in a system that is controlled in most instances by white persons. The view of minority crime is that crime committed by those persons is more serious than the same crime committed by white persons. The minority person is more likely to receive a jail sentence for a misdemeanor and a prison sentence for a felony.

While the length of the actual sentence imposed may not vary greatly, whether that person gets charged or release; case prosecuted or dismissed; sentenced to prison or placed on probation, conditions of imprisonment, the length of actual time served and the release from incarceration can be quite disparate. The return to prison following revocation of supervised release is also more likely to happen if the subject is minority.

Fear of being victimized by a minority consumes many white people, even though they are more likely to be victimized by a member of their own race. Fear of being victimized by street crimes consumes many women in America, while the most dangerous place for a woman is in her own home. Until the media coverage of crime and the real truth about crime and imprisonment becomes widely known, we will continue to hold beliefs about crime, criminals and imprisonment that are not based on reality.

2001 REPORT ADDENDUM

When I pulled out this report my intentions were to rewrite it using more recent data. After reading it again, I decided that I would not rewrite the report, but leave it as it was and add an addendum to it to provide more recent information. I scanned the 1995 report into my current computer and did some formatting adjustments. Topics covered in this addendum are:

- ❖ Recent incarceration statistics
- ❖ Changes in Imprisonment Practices
- ❖ Victimization of Indians
- ❖ Juvenile Injustice
- ❖ Racial Profiling
- ❖ Jail Overcrowding
- ❖ Imprisonment for Drugs

RECENT INCARCERATION STATISTICS

At midyear 2000, 2,007,869 persons were held in prisons and jails in the United States. Two thirds of the incarcerated population (1,310,710) were held in state and federal prisons. About one-third were held in local jails (621,149) and 76,010 inmates were held in privately operated facilities.⁵⁹ There were less than 1,000,000 persons incarcerated in 1990. The rate of incarceration in prison and jail increased from 1 in every 218 U.S. residents to 1 in every 142 during the same period.⁶⁰ Estimates of future numbers show a likelihood that 2,237,400 inmates will be in custody in local jails and prisons by the year 2005 if the numerical increases continue.⁶¹ Since the growth from midyear 1999 to 2000 was the smallest annual growth rate since 1971, this estimate is a distinct likelihood.

Over the past two decades, no area of state government expenditures has increased as rapidly as costs for prisons and jails. Justice Department data released on March 15, 1999 show that the number of prisoners has quadrupled over the last two decades, from 500,000 to 2,000,000. What is most disturbing about this explosion in incarceration is that the people being sent to prison are not the violent killers and rapists that the public imagines them to be. Most are defendants who have been found guilty of non-violent and not particularly serious crimes that do not involve any features that agitate high levels of concern for safety in the minds of the public. Most of the growth in America's prisons since 1978 is accounted for by

⁵⁹ Department of Justice, BJS Bulletin, *Prison and Jail Inmates, Midyear 1000*, March 2001, NCJ 185989

⁶⁰ *Id.*

nonviolent offenders and 1998 was the first year in which America's prisons and jails incarcerated more than 1 million nonviolent offenders.⁶²

The percentage of violent offenders⁶³ held in the state prison system has actually declined from 57% in 1978⁶⁴ to 47% in 1997.⁶⁵ The number of violent offenders entering our nation's prisons doubled from 1978 to 1998; the number of nonviolent offenders tripled; and the number of drug offenders increased sevenfold. Thus 77% of the growth in intake to state and federal prisons has been accounted for by nonviolent offenders.⁶⁶

Following are some amazing facts about America's prison population:

- States around the country are now spending more to build prisons than colleges, and the combined prison and jail budgets for 1.2 million nonviolent prisoners exceeded the entire federal welfare budget for 8.5 million poor people in 1999.⁶⁷
- Per resident spending for State prisons increased each year an average of 7.3% from 1985-1996—about twice the 3.6% annual average rise in spending for state education, and more than twice the increase for State natural resources (2.9%)⁶⁸
- The European Union, a political entity of 370 million, had a prison population of roughly 300,000. This is one third the number of prisoners which America, a country of 274 million, has chosen to incarcerate for just nonviolent offenses.⁶⁹
- The 1,185,458 nonviolent offenders in prison at mid year 1999 represents five times the number of people held in India's entire prison system, even though it is a country with roughly four times our population.⁷⁰
- The percentage of minorities behind bars increased as a percentage of the total population In the 1930s, 75% of the people entering state and federal prisons were

⁶¹ *Id.* at 2

⁶² Vincent Schiraldi, Jason Ziedenberg and John Irwin, Justice Policy Institute, *America's One Million Nonviolent Prisoners*, hereinafter *One Million* <http://www.cjci.org/jpi/onemillion.html>

⁶³ For purposes of this report, a violent offender is defined as a person whose current offense involves a threat of or actual harm to a victim. These offenses generally include homicide, sexual assault, robbery or assault. Nonviolent offenses include property offenses (burglary, larceny, fraud, etc) drug offenses or public order offenses.

⁶⁴ Sourcebook, 1980. P. 577, 1981.

⁶⁵ Darrell K. Gilliard and Allen J. Beck, *Prisoners in 1997*, U.S. Department of Justice, Bureau of Justice Statistics, 1998, p. 11.

⁶⁶ From several publications of the United States Department of Justice, cited in *One Million*

⁶⁷ *One Million*, p. 2

⁶⁸ Stephan, James J. *State Prison Expenditures, 1996*, U.S. Department of Justice, August, 1999, NCJ 172211.

⁶⁹ Population statistics from United Nations 1998 Revision of the world Population Estimates and Projections; European Union incarceration data from Mauer, Marc, *Americans Behind Bars: U.S. and International Use of Incarceration*, Washington, DC: The Sentencing Project, 1997

⁷⁰ *One Million*, p. 3

white, roughly proportionate to the population. Today, minority communities represent 70% of all new admissions, and more than half of all Americans behind bars.⁷¹ Blacks now comprise more than 4 times the rate of whites who are imprisoned. (Blacks, 9,863 and whites 2,036 per 100,000). American Indians were incarcerated at a rate of 4,194 per 100,000 nationally in 1997.⁷²

- American Indians have a rate of arrest for alcohol violations (DUI, liquor law violations and public drunkenness) more than double the national Rate. Arrests of American Indians under age 18 for alcohol-related violations are also twice the national average.⁷³ American Indians comprise about one-half of one percent of the total population but make up 1.1% of the corrections population.
- American Indians, who comprise just over 0.5% of the population in this country accounted for 2.5% of those detained in local jails who had not been convicted and 3% of convicted detainees. American Indian unconvicted detainees were less likely to have been arrested for a violent crime than whites (26.6/36.7). They were somewhat more likely to have been convicted of property crimes than whites (27.4/25.6). They were a great deal more likely to have been charged with a public-order offense than whites (39.5/17.4).
- In 1998 South Dakota expanded its definition of child abuse to include drinking while pregnant. Since that time, at least in Pennington County, only Indians have been charged. I was in court one day when two obviously pregnant women, one Indian and one white, were charged with a DUI. Only the Indian woman was also charged with child abuse and sent to jail. The white woman paid a fine and walked out.
- On September 30, 1999, 57% of inmates in Federal prison were incarcerated for a drug offense, and only 11% for a violent offense, 7% for a property offense, 8% for an immigration offense and 9% for all other offenses. There were 119,185 persons in Federal prison on that date and an additional 96,502 on supervised release, probation or parole.⁷⁴

⁷¹ *One Million*, p. 3

⁷² Greenfield, Lawrence A and Smith, Steven K. United States Department of Justice, *American Indians and Crime*, (Hereinafter *Indians*) February, 1999, NCJ 173386 See the Office of Justice Programs Worldwide Web Homepage for department of Justice publications cited in this report: <http://www.ojp.usdoj.gov.html>

⁷³ *Id.* Table 31, p. 25.

⁷⁴ *Federal Criminal Case Processing, 1999, with trends 1982-99*, Bureau of Justice Statistics, Reconciled Data, February 2001, NCJ 186180

In South Dakota 2,506 persons were behind bars at midyear 2000 for an incarceration rate of 347 per 100,000.⁷⁵ Almost half of those were American Indian—43 percent. The incarceration rate for American Indians stood at approximately 8,300 per 100,000 in the state population.

Does our incarceration rate make South Dakota safer, compared to our twin state North Dakota? Demographically, the two states are as close as they can be. South Dakota incarcerates persons at a rate nearly 3 times that of North Dakota and spends more than 3 times the amount North Dakota does for prisons. Lets look at some data:

| State | Incarceration Rate/number | Cost Per Resident | Prison Costs |
|--------------|---------------------------|-------------------|--------------|
| North Dakota | 146/1004 | \$162.21 | \$10,749,000 |
| South Dakota | 347/2571 | \$204.28 | \$34,152,000 |

⁷⁶

With those disparities in the number and costs of keeping people behind bars, South Dakota must be a much safer place to live, right? WRONG! South Dakota does not just incarcerate at a much higher rate, but South Dakota has the death penalty and a life without parole sentence, North Dakota has neither. Lets look at some crime rate figures for the two states:

| State | Violent Crime Rate/Rank | Aggravated Assault Rate/Rank | Robbery Rate/Rank |
|--------------|-------------------------|------------------------------|-------------------|
| North Dakota | 89.3/51 | 44.8/51 | 10.2/50 |
| South Dakota | 154.3/46 | 97.8/46 | 20.2/47 |

⁷⁷

Thus South Dakota and North Dakota, states with similar populations, have had quite different experiences with criminal injustice. South Dakota is definitely a tough on crime state and has incarcerated its citizens at a rate almost three times that of North Dakota. We spend almost three times as much on prisons and jails as North Dakota does. But isn't that the reason our crime rates have been decreasing? South Dakota has the death penalty, North Dakota does

⁷⁵ Beck, Allen, Karberg, Jennifer; *Prison and Jail Inmates at Midyear 2000*, March 2001.

⁷⁶ Incarceration rate, *Id.*; Expenditures, US Department of Justice, *State Prison Expenditures, 1996*, August, 1999, NCJ 17221. The prison cost data was the most recent I could find. The total cost is much greater today as well as the costs per resident in the two states.

⁷⁷ Sourcebook, 1999, Table 3.118 Rank Order of States according to rates of violent crimes, 1995

not. South Dakota sentences persons to life in prison without parole. The connection between increased incarceration and lower crime rates is dubious at best.

In order to reasonably conclude that increased incarceration promotes decreased crime, one would need to show that a jurisdiction with a higher growth in its incarceration rate does better from a crime-control standpoint than jurisdictions with a lower growth in incarceration rates. The data comparing South Dakota and North Dakota shows just the opposite experience.

The United States has the highest incarceration rate in the developed world. Yet it also suffers much higher crime rates than most other countries in virtually every category. In the ten year period from 1980 to 1991, a period during which the nation's prison population increased the most, there appeared to be little connection between the increase in incarceration and reduces in crime in the states, when comparing crime rate decreases with incarceration rate increases. One of the authors of *America's One Million Non-Violent Offenders* had done a regression analysis comparing increases in imprisonment with changes in crime in every state in the country and found **no relationship** between increases in imprisonment and reduction in crime.⁷⁸

One final comparison before I move on. Canada is a country with about as many people as the state of California, but has one quarter as many people behind bars, and provides a good contrast for judging the crime control value of mass incarceration. Today with 4.3 times as many prisoners, California has 4.6 times the homicide rate of Canada.⁷⁹ Between 1992 and 1996, Canada increased its prison population by a modest 2,370 inmates (7%) while California increased its prison population by 36,069 inmates (25%). Surprisingly, during that same period, both the Canadian and Californian homicide rate dropped by 24%. California still has five times as many murders every year as Canada. (2,916/581).⁸⁰ The Canadian murder rate has now reached its lowest level since 1969. So for all the billions of dollars California has outspent Canada on keeping people behind bars, Canada is still many times safer than California and Canada is actually decreasing the rate at which it incarcerates its citizens.

CHANGES IN INCARCERATION PRACTICES

An area which I did not deal with in my 1995 report is the fact that more and more juveniles are being tried as adults, and more and more mentally ill people are being housed in prisons and jails. While this is not a trend that began after 1995, it has been heightened by recent actions of state governments.

A. JUVENILES IN ADULT JAILS AND PRISONS

⁷⁸ Irwin, John and James Austin, *It's About Crime*, Belmont, CA, 1987, pp. 147-148.

⁷⁹ *Inmates in Provincial Custody, Canada The Province and Territories*, Ottawa: Statistics Canada, 1999; *Crime in the United States*, (1997)

⁸⁰ *Id.*

The number of offenders under age 18 admitted to State prison has more than doubled from 3,400 in 1985 to 7,400 in 1997, consistently representing about 2% of new admissions in each of the 13 years.⁸¹ Over 90% of State prisoners under age 18 were minority youth with 60% being black, 13% Hispanic and 8% other.⁸² About 6% of the other were American Indian. Black youth were incarcerated at a rate 6 times their proportion of the population while Indian youth were incarcerated at a rate in excess of 6 times their proportion of the population.

This trend is the result of state legislative changes which have made it easier to try juveniles as adults. In the past it was presumed that juveniles should be charged as juveniles. Thus, in order to try a juvenile as an adult, the prosecution had the burden of proof to show that the juvenile could not be handled by the juvenile system. Many states, including South Dakota, have changed that presumption to assume that juveniles who commit certain crimes should be tried as adults. That shifts the burden to the juvenile to prove that they should not be tried as adults. Since 1992, 47 states have made their juvenile justice systems more punitive by eroding confidentiality protections or making it easier to try juveniles as adults.⁸³

A section of this update deals with criminal injustice for juveniles. That section will analyze the growth in the numbers of juveniles tried as adults, especially in South Dakota and how that has impacted youth of color.

B. MENTALLY ILL IN PRISON

Two hundred years ago, American jails were commonly used to house seriously mentally ill citizens. The inhumanity of that system led advocates in the 1800's to undertake reforms in the care of the mentally ill. Modern mental hospitals run by State governments evolved in the mid-20th century with the promise of professional medical treatment and rehabilitation. In the 1990's, it has become common once again to find the mentally ill in jails and prisons due primarily to litigation over poor conditions and abuses in mental hospitals. This paved the way for states to "de-institutionalize" large numbers of patients. They were released with few or no provisions to deal with their mental illnesses.⁸⁴ While large amounts of funding was available to state hospitals for treatment of the mentally ill, the funding has not flowed from mental hospitals to jails.

⁸¹ Strom, Kevin J., *Profile of State Prisoners under age 18, 1985-97*, Bureau of Justice Statistics Special Report, February, 2000, NCJ 176989

⁸² *Id.* at 3.

⁸³ Dorfman, Lori, and Shiraldi, Vincent, *Off Balance: Youth, Race & Crime in the News Building Blocks for Youth*, April 2001 (Hereinafter, Building Blocks)

⁸⁴ *From Prisons to Hospitals-And Back: the Criminalization of Mental Illness*, <http://www.crimepolicy.org/menbrief.html>

According to the Bazelon Center for Mental Health Law, total state spending for treatment of the seriously mentally ill is one third less now than in the 1950's.⁸⁵

The nations' prisons and jails are becoming dumping grounds for the mentally ill. In a report issued in July, 1999 the Justice Department's Bureau of Justice Statistics reported that about 16 percent of the inmates held in the nation's prisons and jails are mentally ill.⁸⁶ The BJS report found that mentally ill offenders in State prison had experienced an array of serious problems in the year prior to their arrest:

- Mentally ill offenders were twice as likely as other inmates to have been homeless in the year prior to their arrest
- Forty percent had been unemployed
- More than a third showed signs of alcohol dependence-nearly half said they were binge drinkers and 17% had lost a job due to drinking
- Approximately 6 in 10 mentally ill offenders reported they were under the influence of drugs or alcohol at the time of their offense.

The so-called "dual diagnosis" population with substance abuse problems and mental illness is considered hard to serve and is chronically under served in most communities. This population is considered to be more at risk of violent behavior than mentally ill individuals who are not substance abusers.⁸⁷

Overall criminal justice resources are strained when police, courts, probation and correctional staff are poorly equipped to deal with issues presented by mentally ill offenders. One of the reasons costs for prisons has risen so dramatically is because of the added costs for warehousing the mentally ill. Sentencing reforms such as mandatory minimum sentences, confinement to prison for life without parole, enhancement of sentences for non-violent prior crimes, and other legislative acts which remove discretion from judges. By eliminating consideration of factors contributing to crime and by limiting the range of community-based sentencing options, these policies may inhibit a judicial problem-solving approach that could lead to more appropriate dispositions. The sentencing process should aim to reduce unnecessary incarceration, reserving costly prison space for those who endanger the community. Many mentally ill persons currently housed in prisons could be safely handled in community treatment centers and half-way houses, if beds were available.

⁸⁵ The Bazelon Center for Mental Health Law, 1999.

⁸⁶ *Mental Health and Treatment of Inmates and Probationers*, Bureau of Justice Statistics, Department of Justice, July 1999.

⁸⁷ Lamb, H. Richard, M.D. and Linda E. Weinberger, Ph.D., *Persons with Severe Mental Illness in Jails and Prisons: A Review*, *Psychiatric Services*, April 1998, Vol 49, No. 4.

The classic purpose of incarceration are punishment, deterrence and rehabilitation. Incarceration is intrinsically punishing. It exacerbates symptoms and distress for most mentally ill inmates. In particular the practice of locking up more and more people in security housing units where they are in total isolation for 12 or more hours per day for months and even years on end, greatly increases the likelihood that an inmate not suffering from mental illness when entering prison, will become mentally ill while in prison. Most of these inmates will be released from prison without having received proper treatment, and in much worse shape than when they entered prison.

One of the obvious results of warehousing mentally ill in prison and jail is a high rate of suicide among inmates. South Dakota has one of the highest rates of suicides in prison in the nation. Thirteen inmates have taken their own lives in prison in the past few years. The majority of these were in segregated housing at the time. Three Inmates at the South Dakota State penitentiary have committed suicide in the past six months. The most recent was an Indian man who was mentally ill. His family, and other inmates begged the prison to get him help. They did not. They assured the family that he was all right. But he was found hanging in his cell. A young Indian man hung himself in the Pennington County Jail last May. Both these young men were in modern housing facilities with around the clock surveillance by camera. How can it be that in a cell that has visual monitoring at all times, that an inmate can accomplish a suicide?

VICTIMIZATION OF INDIANS

White Americans are more likely to exaggerate the threat of victimization by minorities. Twice as many white Americans believe they are more likely to be victimized by a minority than a white, despite the fact that whites are actually three times more likely to be victimized by whites than by minorities.⁸⁸ In fact, it is fairly well documented that the large majority of crimes are intraracial not interracial. That is, unless you happen to be Indian

For the first time the Depart of Justice looked at Indians and Crime in a study released in February, 1999. That study looked at violent victimization of Indians as well as other crime data for American Indians. It found that from 1992 to 1996 American Indians experienced about one violent crime for every eight residents age 12 or older compared to one violent victimization for every 16 black residents, 1 for every 20 white residents and one for every 34 Asian residents.⁸⁹ Those figures mean there is a violent victimization rate of 124 per 1000, for Indians, 49 per 1000 for whites, 61 per 1000 for blacks and 29 per 1000 for Asians.

⁸⁸ Updegrave, Walter L., "You're Safer Than You Think," *Money Magazine*, June, 1994.

⁸⁹ *Indians*, p. 3.

For all races, except Indian and Asians, violent crimes against a racial group were largely perpetrated by members of their own race. Among white victims of violence, 69% of offenders were white; likewise among black victims of violence, 81% of offenders were black. For Indians, 70% of the offenders were non-Indian, with 60% being identified as white and 10% being identified as black. For Asian victims 39% reported the offender was white and 29% reported they were victimized by a black offender.⁹⁰

Again, the Department of Justice specifically looked at violent victimization of persons by race and included a category for American Indians in a report released in March 2001. In that report it was found that the rate of violent victimization of both black and white residents fell from 1993 to 1998, by 38% and 29%, respectively with the violent victimization rate for both races being very similar by 1998.⁹¹

American Indians suffered a violent victimization rates of 118.8 per 1000 for all person 12 and older on the average from 1993-98. That compared to a violent victimization rate of 45.4 per 1,000 for whites. American Indians experienced overall violence, aggravated assault, and serious violent crimes at rates higher than those for whites, blacks and Asians. While violent victimization rates for whites fell from 18.5 per 1,000 to 11.9 per 1,000 from 1993 to 1998, rates for American Indians increased from 104.7 to 116.1 per 1,000 person 12 or older.⁹²

When comparing victimization rates by income levels, Indians with less than \$7,500 annual income had a violent victimization rate of 169.2 per 1000, and those earning between \$7,500 and \$14,999, a rate of 172.9. Those two categories had a combined rate of 332.1 per 1,000 residents. That means one in every 3 American Indians suffered violent victimization in those two income categories on the average from 1993-1998. Add the 75.5 per 100 in the category from \$5,000-\$24,999 and the total rate for those groups is 407.6 per 1,000, or nearly one out of two. Among the Indian population over 65% of households were in those categories, especially in South Dakota.

The fact that American Indians suffer victimization at the hands of whites an astounding 60% of the time, tells us clearly that Indians who are victimized by whites, receive little assistance from the Criminal justice system in this nation, and especially in this state. As pointed out in the report completed in 1995, the rates of arrest, prosecution and incarceration of whites accused of assaulting and even murdering Indians is very low.

⁹⁰ *Id.* Table 9, p. 7.

⁹¹ Rennison, Callie, Ph.D., *Violent Victimization and Race, 1993-98*, Bureau of Justice Statistics, Special Report, March 2001.

⁹² *Id.* page 5 and 6.

A disturbing policy of the Rapid City police has been observed by this author. That policy is to virtually always consider Whites as victims and Indians as perpetrators in instances where an altercation occurs between several members of the two races or where blacks and whites are involved in altercations. That is true, even when it is painfully obvious that the white persons started the altercation. That has led the Rapid City Police to not complete information about the suspect on police reports where the victim is an Indian and the suspect(s) are one or more unidentified white persons. I have seen at least six such reports in the past year.

In one incident about 11 months ago, a young Indian male (charmingly handsome) and three friends, 1 white and 2 Indian, went to a local tavern after work. They had ordered their first beers when the young Indian man asked a white girl, who appeared to be unaccompanied, to dance. They were on the dance floor when two white men approached. One white man asked him what he was doing, to which he replied "dancing." When he turned to set his beer glass down he was punched in the nose with a fist, perhaps clenching something, and dropped to the floor, his nose obviously broken. Security allowed the two white perpetrators to escape out the back door. They then physically threw the Indian man, bleeding profusely, out of the club, further injuring him. He was thrown right into the arms of two uniformed Rapid City Police Officers at the front door. The officers offered no assistance to him but asked him where he was going in such a hurry. He had to be taken to the hospital by his friends.

At the hospital, he asked the emergency room staff to call the police. A seasoned officer came to interview him and told him there was nothing they could do—it was between him and the bar. Apparently a white man assaulting an Indian is not a crime. No information was placed on the police report about the suspects in this case. Case closed. The young man had a crushed septum and required surgery as a result of the assault. His doctor did not believe that that much damage could be done by a fist alone. He has some permanent impairment of his breathing and disfigurement even following the surgery. Can you imagine what would have happened under exactly the same circumstances, except with the races reversed? This young man's only crime was being Indian and having the audacity to ask a white girl to dance.

A second incident involved a 16 year old Indian male residing in a motel on East North Street. They had just come here from the Cheyenne River Reservation. The young man was walking to his cousin's in a trailer park west of K-Mart, a few blocks from where he stayed about 9:00 at night. A black recreational vehicle containing 4 white boys approached. The white boys got out and beat him with baseball bats. He lost consciousness briefly and then stumbled to his cousin's trailer a short distance away. His cousin walked him back to his mother at the motel because she did not have a car. His mother called the police and then called me. I was in bed and

had to get up and get dressed before going to her room. I arrived more than 10 minutes before the police.

The young man had a goose egg on his forehead, and was dizzy and unstable from the attack. The police officer questioned him as though he was the perpetrator. Have you been drinking? No. What did you do to make them do that? Nothing. Had you had confrontations with them before? No, I didn't even know them. Are you in a gang? No. I finally asked if he shouldn't be more concerned about the young man's injuries. The police officer drove the mother and the boy to the hospital. I drove the cousin home, seeing the black RV sitting in the same spot waiting for its next victim. I pulled up behind it to get a license number and it screeched off. I then went to the hospital and informed the police officer that the vehicle was sitting there. No call to the station to send someone to look for the vehicle.

After questioning the boy extensively, the officer called the mother out to the entryway and told her he thought her son was lying. He told her there was nothing the police could do and did not take any pictures of the wounds, or offer any assistance. The copy of the incident report had no description of the suspects, the number, the race, what they were wearing or anything describing the vehicle. Obviously this case wasn't going to go any farther. How can a crime be investigated with no identifying characteristics of the perpetrators? Just another Indian whose only crime was being Indian and out alone on a warm summer night!

JUVENILE INJUSTICE

American Indian Youth were arrested for property crimes at a rate of 3,026 per 100,00 while all races combined had a rate of 2,783 per 100,000. (Note: Strangely in these tables the rate of whites is not separated out from that of blacks and others-perhaps the difference would have been too dramatic). Indian youth were arrested for violent crimes at a rate of 294 compared to 445 for all races combined. Indian youth were arrested for alcohol violations at a rate of 2,341 while all other youth had a rate of 649.⁹³ Thus the incarceration rate of Indian youth is not so disproportionate to white youth because they commit more violent crimes. What is considered petty crime, or not even criminal for white youth is considered deserving of being locked away from society for an Indian youth.

The racial composition of the juvenile population in 1997 was approximately 89% white, 15% black and 5% other. (Juveniles of Hispanic ethnicity are classified as white). In contrast to

⁹³ *Indians*, p. 25, table 31.

their proportion in the population, 53% of arrests of juveniles for violent crime involved whites, 44% involved blacks and 13% other (a large part of whom were American Indian).⁹⁴

South Dakota ranked third in the custody rate of juveniles in public facilities and also third in the custody rate of juveniles in private facilities in 1997. South Dakota had a custody rate of 416 while California at number 1 had a rate of 498 in public facilities.⁹⁵ South Dakota increased the number of beds in lock down facilities after 1997 with expansions in detention facilities in Rapid City and Sioux falls, as well as expansions at the state juvenile prison and boot camps. South Dakota may have ranked 1 by 1999.

However in 1999, a 14-year-old juvenile died at the state boot camp for girls following a forced run on her third day at the camp. Abuses in the juvenile system became public and the state was sued over the death as well as over many other abuses. South Dakota had the 4th highest percentage of its youth incarcerated for status offenses in 1997. South Dakota was featured in national news at least three times since that time. The incarceration rate may have gone down in South Dakota as judges appear less likely to place children in the custody of the South Dakota Department of Corrections. The girls' boot camp has closed.

In a study required by OJJDP in 1995, the state was proven to have major racial disparity in its juvenile incarceration statistics. Those disparities continue and have worsened since then. There is evidence that stereotyping is affecting the treatment young people experience at the hands of the juvenile justice system. According to a 1998 analysis by University of Washington researchers, court reports prepared prior to sentencing by probation officer consistently give more negative portrayals of Black youth even when controlling for offense behavior and prior record, thus leading to harsher sentencing recommendations for Blacks.⁹⁶ Professor George Bridges concluded that "The children would be charged with the same crime, be the same age and have the same criminal history, but the different ways they were described was just shocking."⁹⁷ An astounding 60% of youth incarcerated in federal prison in September 1994 were Indian-75 of 124.

In an analysis conducted by researchers Carl Pope and Richard Feyerherm, two-thirds of the carefully constructed studies of state and local juvenile justice systems they analyzed found that there was a "race effect" at some stage of the juvenile justice process that affected

⁹⁴ *Juvenile Arrests 1997*, United States Department of Justice, December 1998. Even though the data must be available, it appears the DOJ continues not separating out American Indians as a racial group. Most professional reports also only make comparisons of black youth and white youth.

⁹⁵ Stickmund, Melissa, *State Custody Rates, 1997*, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, December, 2000

⁹⁶ Bridges, G.S. and Steen, S. *Racial Disparities in Official Assessment of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, *American Sociological Review*, Vol. 63: 554-570 (August, 1998).

⁹⁷ *Building Blocks*, at 1.

outcomes for minorities for the worse.⁹⁸ Their research suggested that “the effects of race may be felt at various decision points, they may be direct or indirect, and they may accumulate as youth continue through the system.”⁹⁹ They suggest that the race effect in the juvenile justice system may be more common than in the adult system.

Nearly three-fourths of offenders admitted to State prison under age 18 were black or Hispanic in 1997. From 1985 to 1990 the percentage of black admissions increased from 53% to 62% and the percentage of white youths admitted to prison fell from 32% to 21%.¹⁰⁰ Sixty percent of juveniles in Federal prison in 1997 were Indian.¹⁰¹

One would think that trying a juvenile as an adult and sending them to an adult prison would be reserved for only the most violent juveniles. The percent of juvenile inmates in State prisons sentenced for violent crimes did increase from 1985 to 1997 from 52% to 61%. However nearly 4 in 10 juveniles in state prison were sentenced for property offenses (22%) drug offenses (11%) and public order offenses (5%). The Percent sentenced for drug offenses more than quadrupled between 1985 to 1997 from 2% to 11%. Approximately 4 times the proportion of black youth convicted of violent crimes were sent to prison as compare to white youth.¹⁰²

When youth are labeled as delinquent and pulled into the juvenile injustice system, they are likely to continue there and move on into the adult injustice system. This is particularly true when they are considered adults at ages as young as 12. South Dakota has no minimum age at which a juvenile can be transferred to adult court. As the study mentioned in the 1995 report showed, much juvenile crime does not lead to being labeled as a delinquent, if the perpetrator is white and higher income. Self-report surveys of juvenile crime indicate that over 90% of all Americans have committed crimes for which they could be incarcerated before the age of 18.¹⁰³ A survey was administered to students at two undergraduate colleges in the Southwest in 1993 . The results showed that one-third of the respondents had shoplifted, over one-fourth had damaged property and inflicted physical harm to others, and more than 80% had had purchased and/or consumed alcoholic beverages. Over 14 % had taken an automobile without the owner’s permission. In spite of this only about 4 percent of the subjects had ever been arrested for any

⁹⁸ Pope, Carl E., & Feyerherm, W. (1995). *Minorities and the Juvenile Justice System: Research Summary*, (Second Printing), Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, Washington DC, 1995

⁹⁹ *Id.* cited in Building Blocks.

¹⁰⁰ Strom, Kevin, *Profile of State Prisoners under Age 18, 1985-97*, Bureau of Justice Statistics, Special Report, February 2000

¹⁰¹ *Indians and Crime*

¹⁰² *Id.* at 4

¹⁰³ Bynum, Jack E. and Thompson, William E., *Juvenile Delinquency a Sociological Approach*, Ch. 3, The Dimensions of the Delinquency Problem, p. 73, Allyn and Bacon, Boston, 1996.

reason while under the age of 18.¹⁰⁴ The fact that the percentages at the two colleges are very similar lends credibility to the validity of the study.

When I was in law school, I heard young college students, including law students describing behavior that would have landed a minority or poor white person in prison. These were young people of influence and affluence. Governor Janklow's son got in trouble in Sioux Falls with a member of the class a year below me. Drinking violations were common, but never a night in jail. Use of the rape drug and forced sex were discussed as though they were normal. The use of powder cocaine and pot were widely known. These young men and women have gone on to become lawyers, judges and members of other professions. While youth of color and poverty, who in many cases had not committed as violent, or damaging, acts, were educated in detention centers and prisons.

RACIAL PROFILING

Racial profiling has been in the news a lot in the last few years. One definition of racial profiling is using race as a key factor in deciding whether to stop a vehicle or a person for interrogation. Another definition is using race as a key factor in deciding whether to search the person or their vehicle once they have been stopped.¹⁰⁵ Law enforcement in several states have admitted to being given a profile of drivers likely to have committed certain crimes.

In Rapid City, a former minority male police officer, quit the Rapid City Police Force after being instructed by the officer in charge on his shift, to find a reason to stop cars with certain number prefixes on their plates because they were from the Reservation. This student was in one of my classes at Oglala Lakota College. Drivers from the Reservation are likely to not have insurance and may not have licenses. They are likely to have unpaid fines, as well. That is blatant racial profiling. The pretense used for stopping cars coming into town from Pine Ridge is that a car matching the description of theirs left a convenience store without paying.

I was returning to town from a meeting on the Reservation a couple years ago. I saw an Indian I recognized as a student at OLC stopped on the edge of town. I stopped, and the student told me he was stopped because a car matching the description of his had left the nearby convenience store without paying. He said he had not even stopped there. I suggested we go over to the store and ask if this was the person. At that point the police officer decided not to pursue the matter and sent the gentleman on his way and left himself. I did go over to the store and ask and was informed that she had not called in a drive-off all afternoon. She further told me that the police stop Indians there all the time and she believes they use that as the reason.

¹⁰⁴ *Id.* at 73-74

I personally reported this to the department and basically was told that unless the person harmed by it filed a grievance, the matter could not be looked into based on my concern, since I had not been affected by the action.

A bill was introduced in the State Legislature in 2001 that would have required law enforcement officers to document every stop, the race of the driver and the reason for the stop. It was, of course, defeated. Currently South Dakota is not one of 9 states which record such data for all persons stopped. South Dakota is reported to be one of 39 states which collects specific racial or ethnic data on drivers who receive written warnings, traffic citations or are arrested. They do not, however record such data about searches or use of force, unless it leads to one of the other things. South Dakota is not one of 23 states that stores the data they collect electronically.¹⁰⁶

Blacks are more than twice as likely to be stopped by law enforcement. Once stopped they are twice as likely to be arrested than whites (5.2/2.6). Blacks are more than twice as likely to be handcuffed. (6.4/2.5); more than twice as likely to be searched (8.0/3.5); about twice as likely to have their vehicle searched (8.5/4.3) and are nearly 3 times as likely to have force used against them (1.5/0.6). Put another way, blacks were 11.6% of drivers stopped by police but 18.7% of drivers whose vehicle was searched; while whites were 77% of stopped drivers but 62.8% of those whose vehicle was searched. In spite of the greater likelihood of a search of black drivers, searches of white drivers were more than twice as likely to find criminal evidence than searches of blacks. (17/8).¹⁰⁷

I have talked with about a dozen black and Indian men who have told me that they have never been stopped either as a driver or passenger in a car that they are not searched, with or without consent. In some instances a white driver who has been drinking, is not searched while a minority passenger is. My son has never been stopped in a vehicle that he has not been searched and had the car he is in searched. I do not know one white person where this has been true. If evidence is found only 8 times out of 100 in searches of black drivers or their cars, a lot of time and money is wasted in the process.

Store security guards profile shoplifters as young and minority. In 1995 my son and two young black friends went to Sears in the Mall in Rapid City. As they entered they heard the security guard tell surveillance to keep an eye on them. Fortunately, the camera was on them the entire time they were in the store. Richard picked out four pair of jeans but then put one back and

¹⁰⁵ *Contacts between Police and the Public*, Bureau of Justice Statistics, February, 2001, NCJ 184957 (Hereinafter, *Police Contact*).

¹⁰⁶ Strom, Kenin, and Matthew R. Durose, *Traffic Stop Data Collection Policies for State Police, 1999*, BJS Fact Sheet, February 2000, NCJ 189776.

¹⁰⁷ *Police Contact*, p. 16-21.

went to try on three. The camera operator must have looked away when he put the fourth back on the rack because when he returned three pair of jeans to the clerk at the dressing room, he was stopped for shoplifting. He was arrested and taken to jail while insisting that that is what had happened. When security reviewed the tape they had him released. Recently he was detained by security at another store because a white clerk said he had stuck something in his pocket without paying. He had a only a pack of cigarettes, change from a \$5 bill and a receipt in his pocket. Nonetheless he was held in the security guard office while video tapes were reviewed. Again the camera had been on him the whole time. I wonder how much stuff white people walk out of stores with while cameras are watching young minorities? I know Rapid City Police did an exercise at the Rushmore Mall where they had white police officer's wives enter stores and steal thousands of dollars worth of merchandise. The merchandise was returned the following day at an assembly during which facts about shoplifters were shared with the managers. It didn't teach them anything.

My oldest daughter was stopped for shoplifting leaving Lewis Drug in the Mall because she put her hand in her pocket as she went out the door. I walked up and asked the security guard why he wasn't stopping all the white kids and adults who had their hands in their pockets as they walked out the door. Later she was employed by Lewis Drug and quit because of racial jokes made in her presence and being told in front of customers to watch "those Indian kids in the candy aisle."

Another practice of police is to tow the cars of minority owners for driving without insurance or no drivers license, while they get numbers and make calls for someone to pick up the cars of white drivers. In one instance an occupant in a vehicle was not even asked for an ID or drivers license and was allowed to drive an unlicensed car being driven by a white driver with a suspended license home.

JAIL OVERCROWDING

While crime rates have been dropping, America continues to add beds in prisons and jails and to build new facilities. Nationwide the occupancy of all jails was at 92% at mid-year 2000 down from 97% from 1997 to 1999. The decrease in occupancy was not because fewer inmates were held in jail but because more beds were added than inmates.¹⁰⁸ The nationwide statistics result primarily from the under occupancy of jails with fewer than 99 inmates.

Jails with 100-249 inmates operate at 100% of capacity and those with 250-499 which includes both Pennington and Minnehaha Counties, operate at 101% capacity.¹⁰⁹

¹⁰⁸ *Midyear 2000*, Table 11, p. 9.

¹⁰⁹ Id.

Pennington County has approved the building of a fourth floor on that facility adding about 100 beds. When the Commission considered the addition, they refused to look at who was being held in jail. They only considered the fact that the jail was overcrowded and they had to increase the number of beds so more people could be housed there. The County Commission takes the attitude that they have to provide beds for every person who gets sent to jail. So their response to incarcerating more and more non-violent inmates, those jailed for non-payment of fines, and other petty offenders, is that they have no control over it. Thus their response to law enforcement and the courts is "if you send them we will provide space."

Pennington County continues to hold people, perhaps as many as 12 at one time, who are in jail simply because they don't have money. When only a fine is provided under law for an offense, and a person is indigent, they may not be held in jail in lieu of payment of a fine. State law clearly requires a show cause hearing prior to arresting a person for non-payment of a fine. I have never seen it happen. If the person can show that they have not had the ability to pay a fine or have made a bona fide effort to pay that has been refused (reasonable payment arrangements) they may not be placed in jail. State law clearly provides for community service for payment of fines. I have been in court when a homeless man, charged repeatedly with inhalant abuse has been fined. He has no ability to pay a fine. He has been arrested for non-payment several times. It's a revolving door. When Charles Mix County got jurisdiction of the Yankton Sioux Reservation, hundreds of people were arrested for unpaid fines. Not one show cause hearing was held and few people had had money to pay the fines, so they sat in jail.

If the County, instead of building a fourth floor, said that they would not provide more beds, then law enforcement and the courts would have to look at alternative sentencing. The Department of Justice has suggested a number of ways to divert certain groups of persons arrested from spending a night in jail. These include citation and station-house release procedures. A person stopped on an offense that permits only a fine, or a person arrested for failure to pay a fine, would be cited with a date for an initial appearance or a show cause hearing in the case of non-payment of a fine. Other programs divert persons with substance abuse problems (like the huffer) or with mental health problems. They may be booked and then referred out. Better yet they can be diverted prior to booking, as happens in Fairfax, County Virginia.¹¹⁰

Prosecutors can play a major role in alleviating jail overcrowding. Following arrest, the prosecutor is the key figure in deciding who might be directed away from adjudication. A

¹¹⁰ *A Second Look at Jail Crowding, A Systems Perspective*, Bureau of Justice Assistance Monograph, NCJ 182507, October 2,000

prosecutors' decisions at the intake, trial preparation, and sentencing stages bear directly on jail population levels and length of incarceration. Very early in the life of a case, prosecutors have the opportunity to decline prosecution, reduce charges as necessary, and identify cases eligible for diversion. It's not happening here. In some Counties, prosecutors screen cases of all defendants held in jail, to determine the validity of an arrest and to make charging decisions within one day of arrest, even over weekends. Often prosecutors here haven't even read the police report by the time of a court hearing. In Lucas County Ohio, prosecutors have created a unit that screens warrantless arrests (at least 50% of felony charges). They review the case with arresting officers and drop 20% of cases or reduce to misdemeanors and release within hours.¹¹¹

One of the major problems in Pennington County is the number of federal inmates being held under contract to the U.S. Marshal's Service. A large majority of these are Indian, having been charged with a crime on a Reservation. These cases can drag on for months, and on occasion for several years before trial. At the present time there are 4 black defendants being held on a federal indictment for a bank robbery that occurred in December, 1998. Fingerprints and hair samples taken at the scene do not match any of the four. There is no hard evidence of their guilt and only some coerced statements by some co-defendants of one of the defendants in a prior case. The wife of that defendant was arrested and held in jail. She was three months pregnant and was told that she would not be released unless she told them what they wanted to hear. Because of a misdiagnosis by jail medical staff, she feared she was going to lose the baby and finally caved in and was released after three months, after she caved in and told them what they wanted to hear. She has recanted her statement. Those young men have been in jail here for more than seven months, with a trial not even scheduled. Two of them have never been in Rapid City until now and the four have never been in Rapid City at the same time, yet they are accused of committing a bank robbery? Give me a break!

A number of federal cases rest solely on the coerced statements of co-defendants. A young Indian man was arrested and held on federal drug distribution and conspiracy charges based solely on the statement that drugs found in a home in another county belonged to him. In cases like these, the defense counsel, who is bound by law to zealously advocate for their client, is key to enforcement of their client's rights. Unfortunately, few truly zealously advocate. They often seem more interested in keeping the prosecutors happy and comfortable. They work with them.

¹¹¹ Id.

RETURNING HOME

An estimated 97% of adult felony inmates are eventually discharged from confinement and released into the community.¹¹² State prisons admitted about 591,000 people in 1999 and released almost the same number. If Federal prisoner and young people release from secure juvenile facilities are added to that number, nearly 600,000 inmates arrive yearly on the doorsteps of communities nationwide.¹¹³

Not only are we locking up more non-violent young men and women, especially drug possessors, we are keeping those of color there longer. They are serving their sentences in many cases without any attempt being made at rehabilitation, which requires treatment for substance abuse and mental health problems, and education. Instead programs that are accused of coddling inmates are being cut back and ended. In our rush to punish, we are turning more and more young adults back onto the streets less prepared to cope than they were when they entered prison.

As we rush to show how tough we are on these disposable people, we are also locking up more and more in security housing units, (S.H.U. or in prison vernacular, The Shoe) like at the Jamieson unit in Sioux Falls. They will remain locked down 23 ½ hours a day seven days a week, rarely getting outside, and with virtually no human contact, even with guards. Such conditions bring on mental illness or developmental disabilities where there was none and exacerbate conditions for persons with problems when they entered prison. In many cases these will be non-violent first time offenders, as my son was.

The majority of inmates leave prison with no savings, no immediate entitlement to unemployment benefits, and few job prospects. One year after release, as many as 60 % of former inmates are not employed in the legitimate labor market.¹¹⁴ Increased dollars have funded more prisons, but not more rehabilitation. Fewer programs, and lack of incentives to participate, mean fewer inmates leave prison, having addressed their work, education and substance abuse problems. Yet sentences for drug offenses are the major reason for increases in prison admissions since 1980. The office of National Drug Control policy reported that 70 to 85 % of State prisoners need treatment; however just 13 % receive it while incarcerated.¹¹⁵

In response to the American public's growing fear of crime and the call for more punitive measures to combat such fear, many legislators and policy makers have promoted building more

¹¹² Boyce, C.J., *For those Behind bars, Education is Rehabilitation*, Minneapolis Star Tribune, July 15, 1994.

¹¹³ Calculations based on data provided by the Bureau of Justice Statistics, US Department of Justice.

¹¹⁴ Petersilia, Joan, *When Prisoners Return to the Community: Political, Economic and Social Consequences*, US Department of corrections, Sentencing and Corrections Issues for the 21st Century, November, 2000, Papers from the Executive Sessions on Sentencing and corrections, No. 9. (Hereinafter *Coming Home*).

prisons, enacting harsher sentencing legislation, and eliminating various programs inside prisons and jails. With re-arrest rates averaging about 60%, it is clear that incarceration alone is not working. In fact the drive to incarcerate, punish, and limit the activities of prisoners has too often resulted in the elimination of strategies and programs that seek to prevent or reduce crime.¹¹⁶

In spite of the fact that studies done that evaluated the success of higher education in prison were overwhelming positive, in the early 1990's legislation was introduced to prohibit federal tuition assistance to inmates. Such legislation passed in 1994,¹¹⁷ though South Dakota eliminated such assistance about ten years earlier. Despite the tremendous evidence supporting the connection between higher education and lower recidivism, the US congress included a provision in the Violent Crime Control and Law Enforcement Act of 1994 which denied all prisoners access to federal Pell Grants.

Another change in many states is that indeterminate sentences where inmates served a portion of the sentence and then were released on parole, are being changed to determinate sentences where a person serves their sentence (known as flat-time) and is released without supervision. That has led to more people leaving prison without even a parole officer to assist them.

IMPRISONMENT FOR DRUGS

While I discussed this matter in the 1995 paper, I need to add some additional information. The 100 to 1 penalty for crack cocaine compare to powder cocaine continues today. Since 1993, the year of the statistics used in the 1995 paper, the use of imprisonment for drug offenders has increased more sharply than imprisonment for violent offenses.

Most of those sentences are not for trafficking or distribution of drugs. In 1999 the Sentencing Project reported that between 1980 and 1997, drug arrests tripled in the United States. In 1997, four out of five drug arrests (79.5%) were for possession, with 44% of those arrests for marijuana offenses. Between 1980 and 1997, while the number of drug offenders entering prisons skyrocketed, the proportion of state prison space housing violent offenders declined from 55% to 47%. Young African American men suffered unprecedented rates of incarceration for drug offenses. A recent study by the Building Blocks for Youth Initiative found that black youth were admitted to state public facilities for drug offenses at 48 times the rate of white youth.¹¹⁸

¹¹⁵ *Id.*

¹¹⁶ *Education as Crime Prevention, Providing Education to Prisoners*, The Center on Crime, Communities and Culture, Research Brief, Occasional Paper Series-No. 2-September, 1997.

¹¹⁷ *Id.*

It is not because they use drugs at such a disproportionate rate. Human rights Watch released a report showing the extent to which African Americans have been burdened with imprisonment because of nonviolent drug offenses. The findings were:

- While blacks make up about 13% of regular drug users in the US, they make up 62.7% of drug users admitted to prison.
- While there are 5 times as many white drug users as black drug users, black men are admitted to state prison for drug offenses at a rate that is 13.4 times greater than that of white men. This drives an overall black incarceration rate that is 8.2 times higher than the white incarceration rate.
- In seven states, blacks constitute 80 to 90% of all drug offenders sent to prison. In 15 states, black men are admitted to state prison for drug charges at a rate that is 20 to 57 times the white rate.

By mid-year 2000 increases in imprisonment for drug offenses resulted in 458,131 drug offenders incarcerated in America's prisons and jails. That means that more than 1 in 4 (23.7) prisoners is incarcerated for a non-violent drug offense. Using federal state and local average costs for warehousing inmates, the price tag for incarcerating 458,131 nonviolent drug offenders comes to \$9.4 billion annually.

Seven states reduced the drug incarceration rates for whites from 1986 to 1996 while blacks in those states saw a dramatic increase. The incarceration of youths for drug offenses has also increased. In 1996, 122 youth per 100,000 were admitted to prisons on drug convictions. This was a 291% increase in the rate for juveniles. From 1986 to 1996, there was a 539% increase in prison sentences for young blacks compared to 90% for young whites. In six states the incarceration rate for whites decreased while the rate for blacks increased as much as 706.12% (North Carolina). Remember that 60% of the youth in federal prison are Indian. A number of those must be incarcerated for drug offenses.

In South Dakota, the figures are typical. State drug admission rates went from 8.96 per 100,00 in 1986 to 27.64 in 1996, an increase of 167.25. In 1986 5.26% of drug admits were Black though blacks comprised 0.5% of the population. By 1996 that had raised to 23.08%, an increase of 483.84 %. That translates into a drug admission rate of 204/50 per 100,000 compared to an admission rate of 26.77 for whites. In 1986 South Dakota showed a 0 rate of black youth drug imprisonment. By 1996 that had increased to 436.41 rate for black youth.¹¹⁹

¹¹⁸ Justice Policy Institute, *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States*,

Thus, the war on drugs has really become a war on people of color. Like so many other crimes, use of drugs by whites is considered recreation, whereas use by people of color is considered criminal. White youth and adults are more likely to be sent to treatment or placed on probation, while people of color stand a great chance of going to prison for drugs. With the cut-back in prison treatment programs fewer will receive any treatment while incarcerated. Will we release these many young men back to the streets worse off for their prison experience?

CONCLUSION

While American Indians may not receive significantly longer sentences when actually sentenced to prison, disparities exist. Those disparities start in who is arrested with arrests too often occurring as a result of stops and interrogations based on racial profiling. Disparities then continue throughout the system. The decision to send a person to prison or place on community supervision weighs against Indians. These reports have shown that this has continued to be a problem and has gotten worse.

The American public is so misinformed about our sentencing and corrections policy in this nation. They believe that the increases in incarceration has been the primary cause of recent dips in crime rates. As studies have shown, there is little connection between our incarceration policies and crime rates. If there were, South Dakota would have a much lower crime rate than North Dakota. California would have a much lower crime rate than Canada.

The American public is misinformed about who is being sent to prison. They are always skeptical when I inform them that we are locking up a much smaller proportion of violent offenders and a much larger proportion of non-violent first time offenders than we did two decades ago.

America can and must do better. Our criminal injustice system is broken and must be repaired. When prison industry becomes the largest growth industry in our nation, dwarfing education and other positive growth industries, we have a problem. America, we have a problem!

¹¹⁹ National Corrections Reporting Program, 1986 and 1996 data.

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June 26, 2000

To: Commissioner John Steer
Tim McGrath, Staff Director

From: Lou Reedt 
Christine Kitchens 

Re: Request for information regarding federal sentencing of Native Americans

Attached is a preliminary analysis, in response to Commissioner Steer's request, of sentencing trends imposed under the guidelines on Native American offenders. The analysis used the Commission's monitoring datafile to review sentencing practices from 1995 through 1999, the last year for which data is available.

The results support previous Commission findings that most Native American cases are sentenced in a very small number of judicial districts and that the distribution of offenses for which Native Americans are sentenced differ from those of non Native Americans. The analysis also briefly compares rates of departure, the proportion of offenders sentenced to a period of confinement, and the median duration of that confinement for selected guidelines in which there were sufficient numbers of cases for analysis.

If you have any questions or would like additional analysis, please let me know.

Table 1

GUIDELINE OFFENDERS IN EACH CIRCUIT AND DISTRICT BY NATIVE AMERICAN STATUS¹
Fiscal Year 1999

| CIRCUIT District | Native Americans | | Non-Native Americans | | CIRCUIT District | Native Americans | | Non-Native Americans | |
|-----------------------|------------------|------------|----------------------|--------------|------------------------|------------------|------------|----------------------|--------------|
| | N | % | N | % | | N | % | N | % |
| TOTAL | 854 | 1.6 | 53,579 | 98.43 | | | | | |
| D.C. CIRCUIT | 2 | 0.4 | 454 | 99.56 | FIFTH CIRCUIT | 10 | 0.1 | 10,052 | 99.90 |
| District of Columbia | 2 | 0.4 | 454 | 99.56 | Louisiana | | | | |
| | | | | | Eastern | 1 | 0.3 | 388 | 99.74 |
| | | | | | Middle | 0 | 0.0 | 140 | 100.00 |
| FIRST CIRCUIT | 1 | 0.1 | 1,324 | 99.92 | Western | 0 | 0.0 | 256 | 100.00 |
| Maine | 0 | 0.0 | 124 | 100.00 | Mississippi | | | | |
| Massachusetts | 1 | 0.2 | 447 | 99.78 | Northern | 0 | 0.0 | 161 | 100.00 |
| New Hampshire | 0 | 0.0 | 142 | 100.00 | Southern | 6 | 2.1 | 274 | 97.86 |
| Puerto Rico | 0 | 0.0 | 499 | 100.00 | Texas | | | | |
| Rhode Island | 0 | 0.0 | 112 | 100.00 | Eastern | 0 | 0.0 | 598 | 100.00 |
| | | | | | Northern | 0 | 0.0 | 1,164 | 100.00 |
| SECOND CIRCUIT | 15 | 0.4 | 4,243 | 99.65 | Southern | 1 | 0.0 | 3,026 | 99.97 |
| Connecticut | 0 | 0.0 | 267 | 100.00 | Western | 2 | 0.0 | 4,045 | 99.95 |
| New York | | | | | SIXTH CIRCUIT | 21 | 0.5 | 4,006 | 99.48 |
| Eastern | 2 | 0.1 | 1,441 | 99.86 | Kentucky | | | | |
| Northern | 11 | 4.1 | 259 | 95.93 | Eastern | 0 | 0.0 | 421 | 100.00 |
| Southern | 2 | 0.1 | 1,780 | 99.89 | Western | 1 | 0.3 | 399 | 99.75 |
| Western | 0 | 0.0 | 339 | 100.00 | Michigan | | | | |
| Vermont | 0 | 0.0 | 157 | 100.00 | Eastern | 1 | 0.1 | 696 | 99.86 |
| THIRD CIRCUIT | 5 | 0.2 | 2,465 | 99.80 | Western | 9 | 3.0 | 291 | 97.00 |
| Delaware | 0 | 0.0 | 86 | 100.00 | Ohio | | | | |
| New Jersey | 2 | 0.2 | 861 | 99.77 | Northern | 6 | 0.9 | 637 | 99.07 |
| Pennsylvania | | | | | Southern | 1 | 0.2 | 579 | 99.83 |
| Eastern | 0 | 0.0 | 830 | 100.00 | Tennessee | | | | |
| Middle | 0 | 0.0 | 317 | 100.00 | Eastern | 0 | 0.0 | 414 | 100.00 |
| Western | 3 | 1.1 | 279 | 98.94 | Middle | 1 | 0.5 | 198 | 99.50 |
| Virgin Islands | 0 | 0.0 | 92 | 100.00 | Western | 2 | 0.5 | 371 | 99.46 |
| FOURTH CIRCUIT | 28 | 0.6 | 4,779 | 99.42 | SEVENTH CIRCUIT | 29 | 1.3 | 2,206 | 98.70 |
| Maryland | 3 | 0.7 | 455 | 99.35 | Illinois | | | | |
| North Carolina | | | | | Central | 1 | 0.3 | 297 | 99.66 |
| Eastern | 11 | 2.2 | 496 | 97.83 | Northern | 0 | 0.0 | 614 | 100.00 |
| Middle | 0 | 0.0 | 428 | 100.00 | Southern | 0 | 0.0 | 358 | 100.00 |
| Western | 8 | 1.2 | 635 | 98.76 | Indiana | | | | |
| South Carolina | 3 | 0.4 | 836 | 99.64 | Northern | 1 | 0.3 | 332 | 99.70 |
| Virginia | | | | | Southern | 1 | 0.4 | 228 | 99.56 |
| Eastern | 2 | 0.2 | 1,197 | 99.83 | Wisconsin | | | | |
| Western | 1 | 0.3 | 344 | 99.71 | Eastern | 25 | 9.1 | 251 | 90.94 |
| West Virginia | | | | | Western | 1 | 0.8 | 126 | 99.21 |
| Northern | 0 | 0.0 | 153 | 100.00 | | | | | |
| Southern | 0 | 0.0 | 235 | 100.00 | | | | | |

Table 1 (Cont.)

| CIRCUIT District | Native Americans | | Non-Native Americans | | CIRCUIT District | Native Americans | | Non-Native Americans | |
|--------------------------|---------------------|------------|-------------------------|--------------|-------------------------|---------------------|------------|-------------------------|--------------|
| | N | % | N | % | | N | % | N | % |
| EIGHTH CIRCUIT | 280 | 8.2 | 3,122 | 91.77 | TENTH CIRCUIT | 112 | 3.6 | 2,999 | 96.40 |
| Arkansas | | | | | Colorado | 6 | 1.5 | 405 | 98.54 |
| Eastern | 0 | 0.0 | 264 | 100.00 | Kansas | 2 | 0.5 | 391 | 99.49 |
| Western | 0 | 0.0 | 127 | 100.00 | New Mexico | 57 | 5.1 | 1,070 | 94.94 |
| Iowa | | | | | Oklahoma | | | | |
| Northern | 2 | 1.0 | 196 | 98.99 | Eastern | 4 | 4.8 | 79 | 95.18 |
| Southern | 1 | 0.3 | 370 | 99.73 | Northern | 10 | 5.2 | 181 | 94.76 |
| Minnesota | 27 | 6.0 | 423 | 94.00 | Western | 8 | 3.7 | 208 | 96.30 |
| Missouri | | | | | Utah | 11 | 2.1 | 510 | 97.89 |
| Eastern | 0 | 0.0 | 597 | 100.00 | Wyoming | 14 | 8.3 | 155 | 91.72 |
| Western | 1 | 0.2 | 458 | 99.78 | ELEVENTH CIRCUIT | 9 | 0.2 | 5,945 | 99.85 |
| Nebraska | 9 | 2.2 | 395 | 97.77 | Alabama | | | | |
| North Dakota | 58 | 37.7 | 96 | 62.34 | Middle | 1 | 0.5 | 214 | 99.53 |
| South Dakota | 182 | 48.1 | 196 | 51.85 | Northern | 0 | 0.0 | 315 | 100.00 |
| NINTH CIRCUIT | 342 | 2.8 | 11,984 | 97.23 | Southern | 2 | 0.7 | 291 | 99.32 |
| Alaska | 15 | 9.7 | 140 | 90.32 | Florida | | | | |
| Arizona | 187 | 6.7 | 2,612 | 93.32 | Middle | 3 | 0.2 | 1,464 | 99.80 |
| California | | | | | Northern | 0 | 0.0 | 398 | 100.00 |
| Central | 5 | 0.4 | 1,354 | 99.63 | Southern | 2 | 0.1 | 1,990 | 99.90 |
| Eastern | 2 | 0.3 | 752 | 99.73 | Georgia | | | | |
| Northern | 3 | 0.6 | 506 | 99.41 | Middle | 0 | 0.0 | 370 | 100.00 |
| Southern | 11 | 0.3 | 3,962 | 99.72 | Northern | 1 | 0.1 | 686 | 99.85 |
| Guam | 1 | 1.1 | 89 | 98.89 | Southern | 0 | 0.0 | 217 | 100.00 |
| Hawaii | 11 | 3.2 | 332 | 96.79 | | | | | |
| Idaho | 20 | 15.7 | 107 | 84.25 | | | | | |
| Montana | 56 | 20.0 | 224 | 80.00 | | | | | |
| Nevada | 3 | 0.7 | 446 | 99.33 | | | | | |
| Northern Mariana Islands | 0 | 0.0 | 14 | 100.00 | | | | | |
| Oregon | 5 | 0.8 | 630 | 99.21 | | | | | |
| Washington | | | | | | | | | |
| Eastern | 12 | 4.2 | 276 | 95.83 | | | | | |
| Western | 11 | 2.0 | 540 | 98.00 | | | | | |

¹Of the 55,557 cases, 1,124 were removed from this table due to missing information on race of the offender.

SOURCE: U.S. Sentencing Commission, 1999 Datafile, USSCFY99.

Table 2

**COMPARISON BETWEEN NATIVE AMERICAN AND ALL OTHER FEDERAL OFFENDERS
BY SELECTED GUIDELINES¹
Fiscal Year 1999**

| Guideline | Racial Category | Total Cases | Departure Status | | | | Percent Receiving Confinement ² | Median Prison Sentence ³ |
|--------------------|-----------------|-------------|-------------------|------------------|--------------------|------------------------|--|-------------------------------------|
| | | | Within Guidelines | Upward Departure | Downward Departure | Substantial Assistance | | |
| TOTAL ³ | Native American | 827 | 68.1 | 3.2 | 19.0 | 9.7 | 77.7 | 30 |
| | All Others | 49,314 | 64.1 | 0.6 | 16.1 | 19.2 | 84.4 | 33 |
| §2A1.2 | Native American | 37 | 64.9 | 21.6 | 13.5 | 0.0 | 100.0 | 121 |
| | All Others | 12 | 83.3 | 0.0 | 0.0 | 16.7 | 100.0 | 250 |
| §2A1.4 | Native American | 24 | 83.3 | 0.0 | 12.5 | 4.2 | 91.7 | 16 |
| | All Others | 11 | 81.8 | 9.1 | 0.0 | 9.1 | 90.9 | 14 |
| §2A2.2 | Native American | 120 | 65.8 | 4.2 | 27.5 | 2.5 | 93.4 | 33 |
| | All Others | 137 | 78.1 | 2.9 | 12.4 | 6.6 | 93.7 | 42 |
| §2A3.1 | Native American | 82 | 65.9 | 4.9 | 26.8 | 2.4 | 97.6 | 95 |
| | All Others | 39 | 74.4 | 15.4 | 7.7 | 2.6 | 97.5 | 180 |
| §2A3.2 | Native American | 30 | 80.0 | 13.3 | 6.7 | 0.0 | 90.0 | 18 |
| | All Others | 44 | 61.4 | 9.1 | 27.3 | 2.3 | 79.5 | 18 |
| §2A3.4 | Native American | 51 | 84.3 | 0.0 | 15.7 | 0.0 | 88.2 | 21 |
| | All Others | 13 | 76.9 | 7.7 | 15.4 | 0.0 | 76.9 | 16 |
| §2B1.1 | Native American | 69 | 85.5 | 0.0 | 7.3 | 7.3 | 23.9 | 14 |
| | All Others | 3,065 | 83.8 | 0.5 | 8.0 | 7.6 | 45.3 | 9 |
| §2B2.1 | Native American | 35 | 80.0 | 2.9 | 8.6 | 8.6 | 82.9 | 16 |
| | All Others | 60 | 78.3 | 0.0 | 10.0 | 11.7 | 91.8 | 21 |
| §2B3.1 | Native American | 31 | 51.6 | 6.5 | 16.1 | 25.8 | 96.9 | 60 |
| | All Others | 1,886 | 69.1 | 1.9 | 12.9 | 16.1 | 99.0 | 78 |
| §2D1.1 | Native American | 130 | 51.5 | 0.0 | 18.5 | 30.0 | 74.6 | 27 |
| | All Others | 20,948 | 55.2 | 0.2 | 15.7 | 28.9 | 95.9 | 51 |
| §2F1.1 | Native American | 41 | 85.4 | 0.0 | 12.2 | 2.4 | 55.8 | 12 |
| | All Others | 5,749 | 72.2 | 0.9 | 9.6 | 17.4 | 65.7 | 12 |
| §2K2.1 | Native American | 27 | 55.6 | 0.0 | 18.5 | 25.9 | 96.4 | 27 |
| | All Others | 2,325 | 77.3 | 1.1 | 10.6 | 11.0 | 93.1 | 41 |
| §2L1.1 | Native American | 34 | 41.2 | 0.0 | 50.0 | 8.8 | 66.7 | 11 |
| | All Others | 1,685 | 55.3 | 0.8 | 31.9 | 12.1 | 87.3 | 12 |

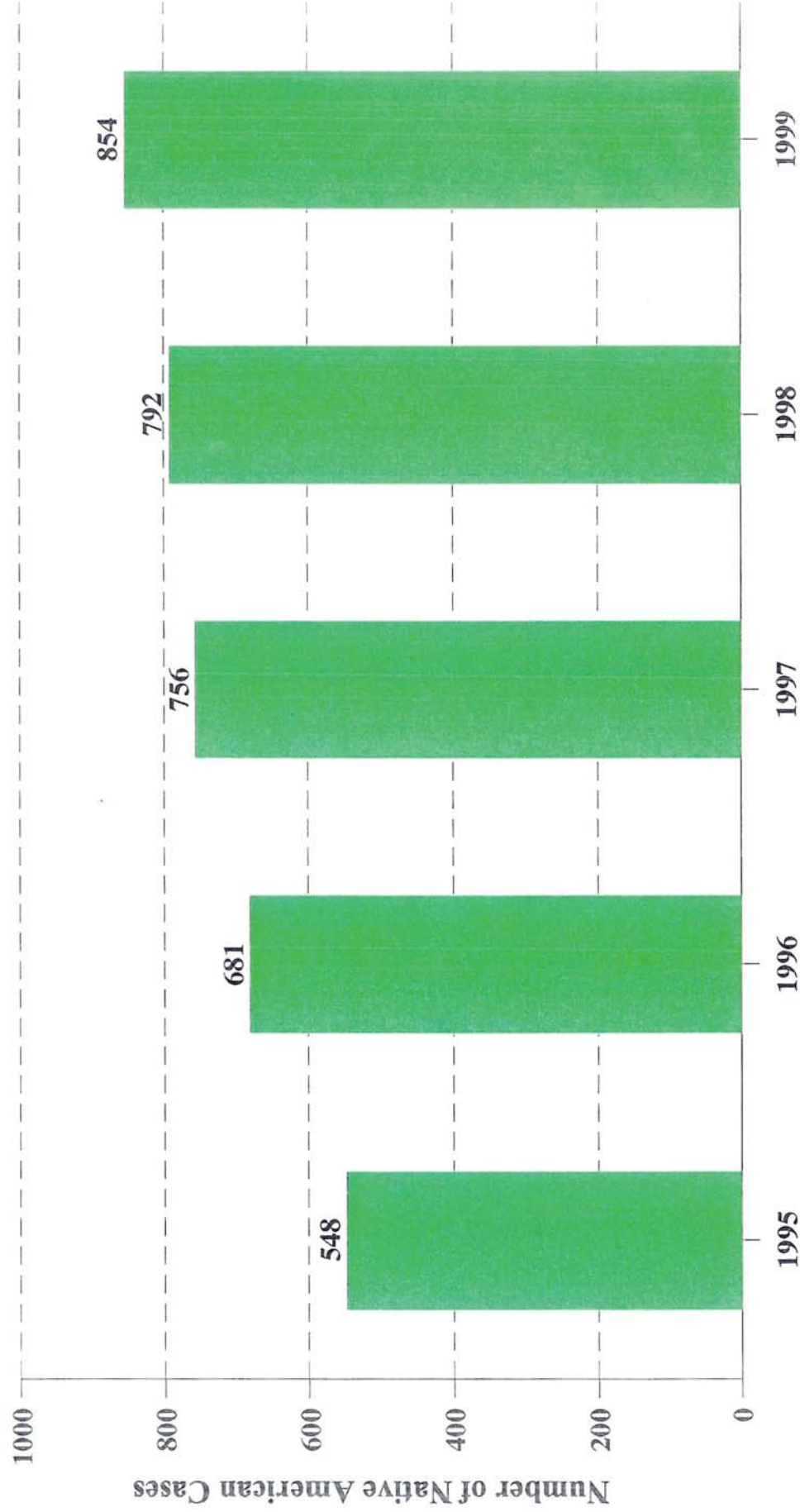
¹Of the 55,557 cases, 5,416 cases were excluded due to missing information on race, highest guideline applied, or departure status. Additionally, cases missing information about the type or length of sentence were excluded from the last two columns in the table.

²Includes all cases in which offenders received prison and conditions of confinement as defined in USSG §5C1.1.

³All cases included in the total are not presented in this table.

SOURCE: U.S. Sentencing Commission, 1999 Datafile, USSCFY99.

Figure 1:
Increase in Native American Cases Over Time
Number of Cases Increases 56% from FY95 to FY99¹

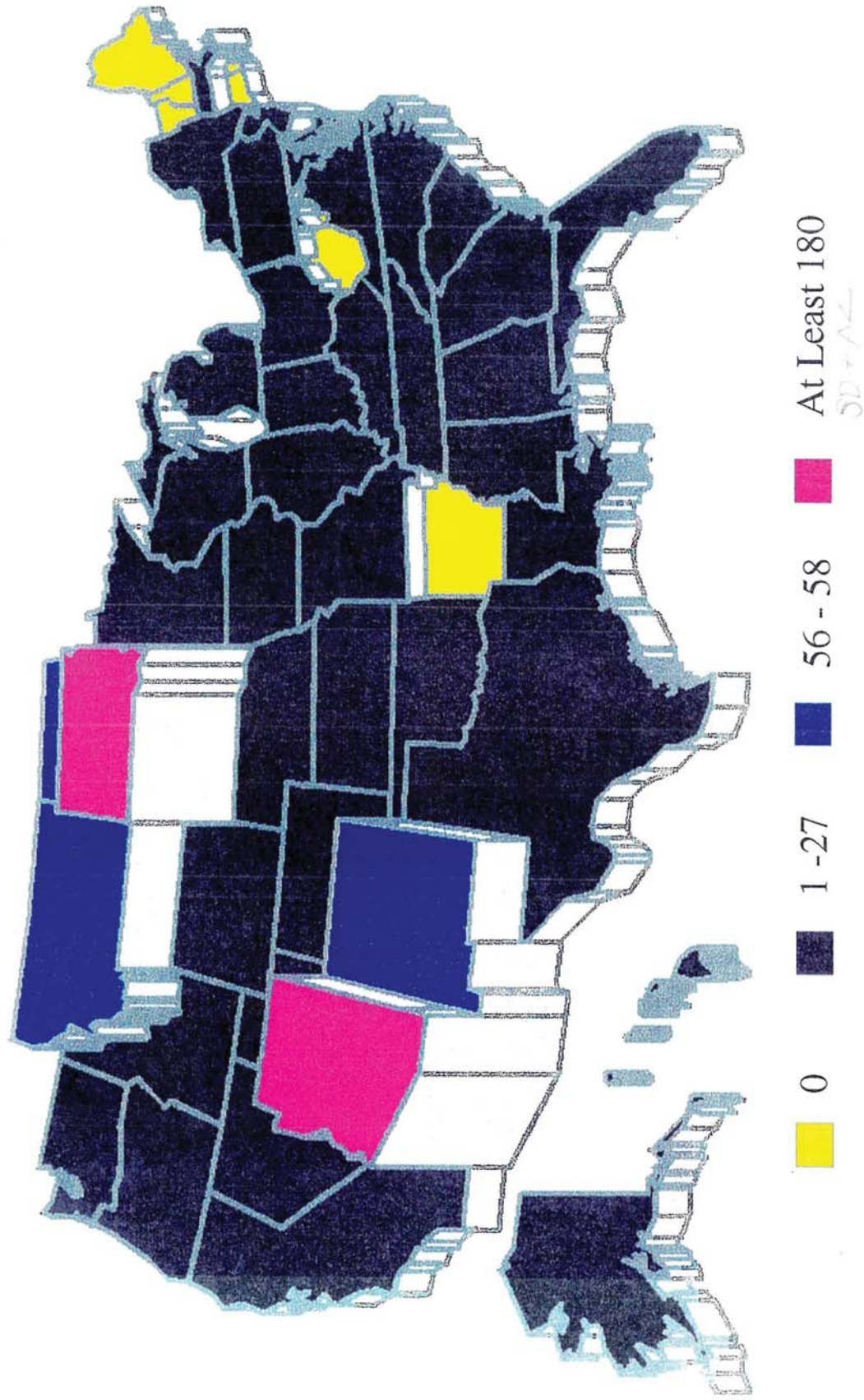


¹ Federal cases overall increased 44%.
SOURCE: U.S. Sentencing Commission, 1995-1999 Datafiles, USSCFY95-USSCFY99.



Figure 2: Geographic Distribution of Native American Cases

5 Districts Account for Over 60% Of Native American Cases



SOURCE: U.S. Sentencing Commission, 1999 Datafile, USSCFY99.

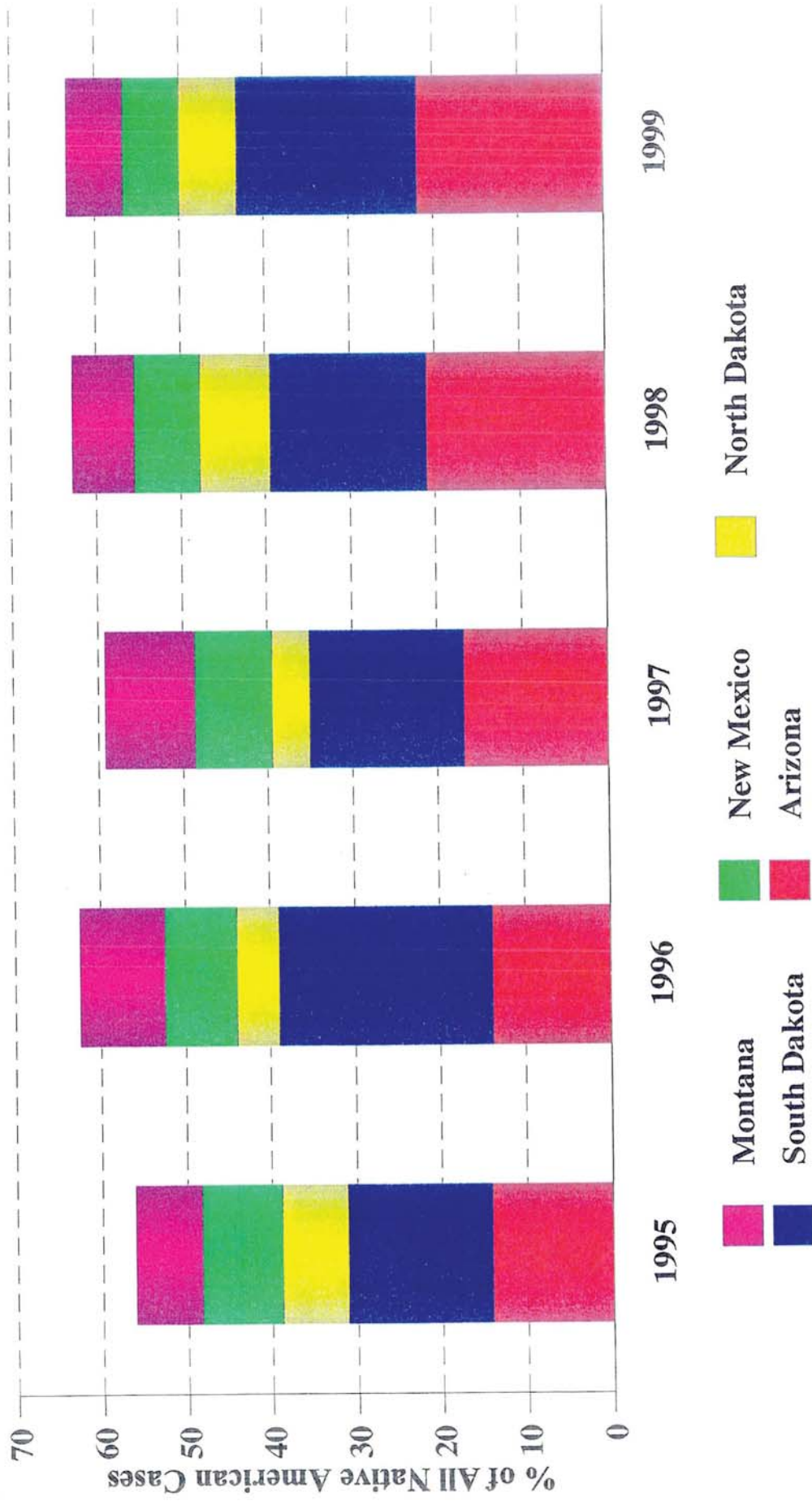


Figure 3:



Five Districts Contain Majority of Native American Cases

Fiscal Year 1995 - Fiscal Year 1999



SOURCE: U.S. Sentencing Commission, 1995-1999 Datafiles, USSCFY95-USSCFY99.

DRAFT FOOT NOTE

By operation of the General Crimes Act of 1817, 18 U.S.C. § 1152, and the Major Crimes Act of 1855, 18 U.S.C. § 1153, offenses committed in Indian country are punishable under federal criminal law. The federal sentencing guidelines are expressly made applicable to persons convicted under the Major Crimes Act. See 18 U.S.C. § 3551.

CRIMINAL JURISDICTION IN INDIAN COUNTRY

- I. **Federal Crimes of Nationwide Applicability**
 - A. Irrespective of location, e.g., treason, theft of U.S. Mail
- II. **Specific Federal Criminal Statutes (e.g., Title 18, U.S.C.)**
- III. **General Crimes Act (1817) (also known as Indian Country Crimes Act)**
 - A. 18 U.S.C. § 1152
 - B. Prosecute and punish
 - (1) in any place within sole and exclusive federal jurisdiction (except District of Columbia)
 - (a) by non-Indians against Indians
 - (b) by Indians against non-Indians/non-major crimes
 - C. Effect: import into Indian country entire body of federal criminal law applicable in areas of exclusive federal jurisdiction
 - D. Exceptions: crimes by Indians in federal jurisdiction:
 - (1) against Indians
 - (2) already punished by tribe
 - (3) over which treaty gives tribe exclusive jurisdiction
- IV. **Assimilative Crimes Act (1825)**
 - A. 18 U.S.C. § 13
 - B. Effect: borrow state criminal law and apply it through federal law to areas under federal jurisdiction

- (1) crime defined and sentence prescribed by state law
- (2) charged with federal offense and tried in federal court
- C. Extends to Indian country
 - (1) operation of General Crimes Act, 18 U.S.C. § 1152. See Williams v. United States, 327 U.S. 711 (1946)
 - (2) applies to non-Indians only for crimes against Indians or Indian interests
 - (3) applies to Indians except crimes
 - (a) by Indians against Indians
 - (b) by Indians that have been punished by tribe
 - (c) over which treaty gives tribe exclusive jurisdiction

V. **Major Crimes Act (1855)**

- A. 18 U.S.C. § 1153
- B. Punish major crimes by Indians
 - (1) murder, manslaughter, kidnaping, maiming
 - (2) assault; with intent to commit murder, with dangerous weapon, resulting in serious bodily injury, against individual under 16 years of age
 - (3) 18 U.S.C. § 109A felony (sexual abuse crimes)
 - (4) arson, burglary, robbery, 18 U.S.C. § 661 felony (theft crimes)

Note: burglary and incest undefined by federal law thus, state law incorporated into federal act
- C. Irrespective of whether victim is Indian or non-Indian

D. Supplemented by 18 U.S.C. § 3242

- (1) Provides for trial of Indians in same court and same manner as all other persons (non-Indians) committing such offenses within exclusive jurisdiction of United States

VI. Federal Sentencing Guidelines

A. 18 U.S.C. § 3551 amended 1990

B. expressly allows guidelines to apply to persons convicted under Major Crimes Act

VII. Tribal Courts

A. Criminal jurisdiction originally extended to

- (1) non major crimes
- (2) by Indians in Indian country

B. Amended by Civil Rights Act of 1968, 25 U.S.C. § 1302(7)

- (1) limited to crimes punishable by
 - (a) 1-year imprisonment or less and/or
 - (b) \$5,000 fine

VIII. Public Law 280, 67 Stat. 588 (1953)

A. 18 U.S.C. § 1162(a)

B. "Mandatory" states

- (1) Effect: 6 states given extensive criminal and civil jurisdiction over Indian country

- Alaska
- California
- Minnesota
- Nebraska
- Oregon
- Wisconsin

- (2) tribal consent not required
- (3) grant power to named states to enforce state criminal law inside Indian country
- (4) General Crimes Act and Major Crimes Act no longer applicable

C. "Optional" other states

- (1) acquisition of jurisdiction over Indian country possible
- (2) tribal consent not required

D. Amendment by Indian Civil Rights Act of 1968

- (1) permits retrocession of jurisdiction to federal government
- (2) requires tribal consent for additional jurisdiction
- (3) jurisdiction may be partial

United
States
Sentencing
Commission



District of South Dakota

June 2001

TABLE OF CONTENTS

Figure A - Guideline Defendants Sentenced by Primary Offense 1

Table 1 - Distribution of Guideline Defendants Sentenced by Primary Offense Category 2

Table 2 - Mode of Conviction by Circuit and District 3

Table 3 - Mode of Conviction by Primary Offense Category 6

**Table 4 - Type of Sentence Imposed by Primary Offense Category
(National)** 7

**Table 5 - Type of Sentence Imposed by Primary Offense Category
(District)** 8

**Table 6 - Incarceration Rate of Defendants Eligible for Non-Prison Sentences by Primary
Offense Category** 9

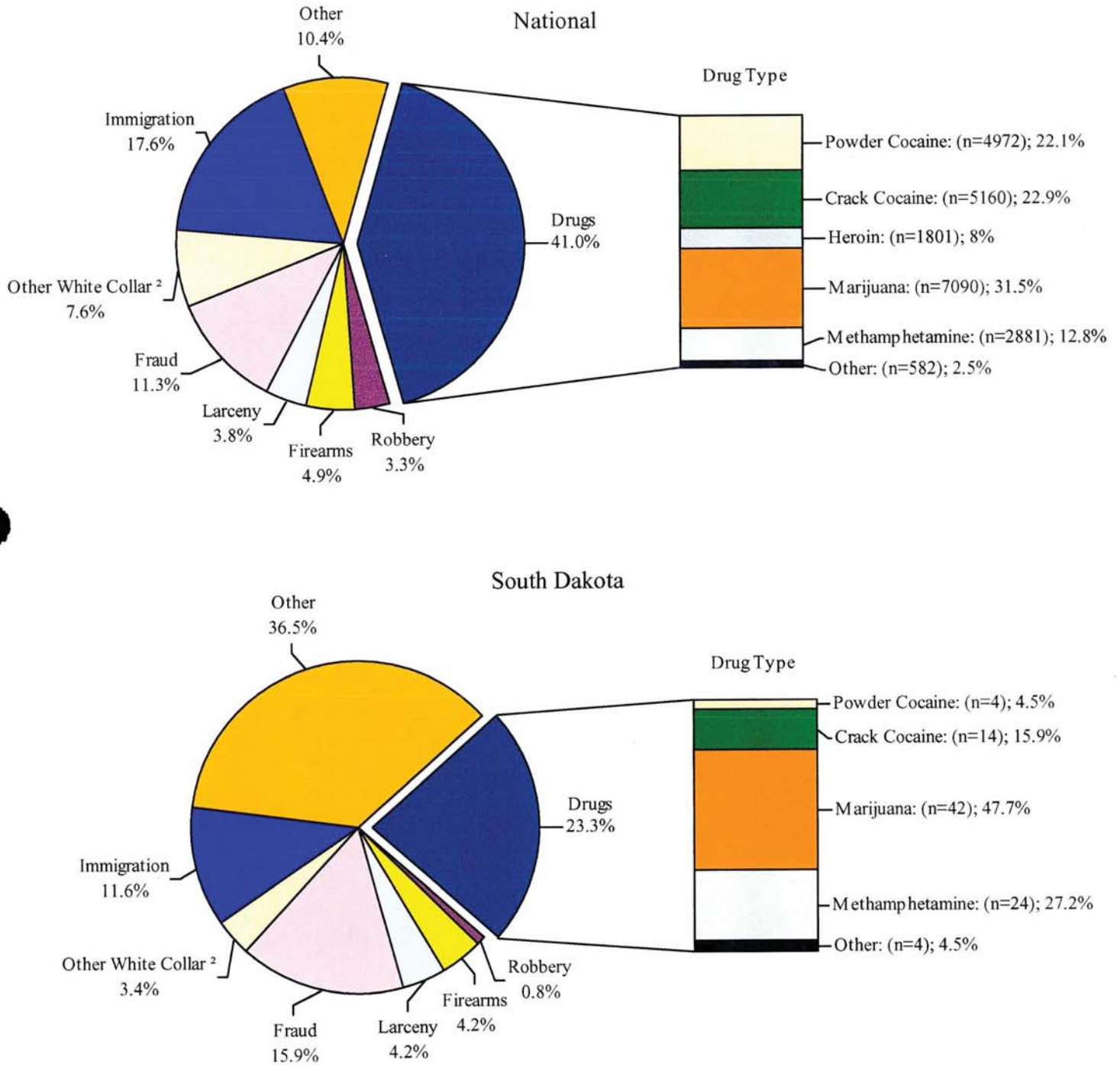
Table 7 - Average Length of Imprisonment by Primary Offense 10

Table 8 - Guideline Departure Rate by Circuit and District 11

Table 9 - Guideline Departure Rate by Primary Offense Category 14

Figure A

DISTRIBUTION OF SENTENCED GUIDELINE OFFENDERS BY SELECT
PRIMARY OFFENSE CATEGORY¹
FISCAL YEAR 1999



¹Of the 55,557 guideline cases, 745 cases were excluded due to one of the following reasons: missing primary offense category (149) or missing drug type (596).

²The Other White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering and Tax.

Table 1

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 1999**

| PRIMARY OFFENSE | National | | South Dakota | |
|------------------------------------|---------------|--------------|--------------|--------------|
| | Number | Percent | Number | Percent |
| TOTAL | 55,408 | 100.0 | 379 | 100.0 |
| Murder | 108 | 0.2 | 3 | 0.8 |
| Manslaughter | 57 | 0.1 | 6 | 1.6 |
| Kidnapping/Hostage Taking | 81 | 0.1 | 1 | 0.3 |
| Sexual Abuse | 230 | 0.4 | 37 | 9.8 |
| Assault | 455 | 0.8 | 45 | 11.9 |
| Robbery | 1,790 | 3.2 | 3 | 0.8 |
| Arson | 82 | 0.1 | 0 | 0.0 |
| Drugs - Trafficking | 21,995 | 39.7 | 84 | 22.2 |
| Drugs - Communication Facility | 397 | 0.7 | 2 | 0.5 |
| Drugs - Simple Possession | 690 | 1.2 | 3 | 0.8 |
| Firearms | 2,679 | 4.8 | 16 | 4.2 |
| Burglary/B&E | 54 | 0.1 | 13 | 3.4 |
| Auto Theft | 189 | 0.3 | 2 | 0.5 |
| Larceny | 2,084 | 3.8 | 16 | 4.2 |
| Fraud | 6,199 | 11.2 | 60 | 15.8 |
| Embezzlement | 959 | 1.7 | 12 | 3.2 |
| Forgery/Counterfeiting | 1,295 | 2.3 | 0 | 0.0 |
| Bribery | 196 | 0.4 | 0 | 0.0 |
| Tax | 728 | 1.3 | 0 | 0.0 |
| Money Laundering | 1,001 | 1.8 | 1 | 0.3 |
| Racketeering/Extortion | 978 | 1.8 | 3 | 0.8 |
| Gambling/Lottery | 136 | 0.2 | 0 | 0.0 |
| Civil Rights | 81 | 0.1 | 0 | 0.0 |
| Immigration | 9,669 | 17.5 | 44 | 11.6 |
| Pornography/Prostitution | 414 | 0.7 | 2 | 0.5 |
| Prison Offenses | 299 | 0.5 | 2 | 0.5 |
| Administration of Justice Offenses | 867 | 1.6 | 4 | 1.1 |
| Environmental/Wildlife | 211 | 0.4 | 12 | 3.2 |
| National Defense | 20 | 0.0 | 0 | 0.0 |
| Antitrust | 44 | 0.1 | 0 | 0.0 |
| Food & Drug | 78 | 0.1 | 0 | 0.0 |
| Other Miscellaneous Offenses | 1,342 | 2.4 | 8 | 2.1 |

Of the 55,557 guideline cases, 149 cases were excluded due to missing information on primary offense category.

Of the 380 guideline cases from the State of South Dakota, one case was excluded due to missing information on primary offense category.

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 2
MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 1999

| CIRCUIT District | TOTAL | PLEA | | TRIAL | |
|-----------------------|---------------|---------------|-------------|--------------|------------|
| | | Number | Percent | Number | Percent |
| TOTAL | 54,920 | 51,962 | 94.6 | 2,958 | 5.4 |
| D.C. CIRCUIT | 455 | 433 | 95.2 | 22 | 4.8 |
| District of Columbia | 455 | 433 | 95.2 | 22 | 4.8 |
| FIRST CIRCUIT | 1,357 | 1,269 | 93.5 | 88 | 6.5 |
| Maine | 123 | 119 | 96.7 | 4 | 3.3 |
| Massachusetts | 461 | 434 | 94.1 | 27 | 5.9 |
| New Hampshire | 142 | 138 | 97.2 | 4 | 2.8 |
| Puerto Rico | 518 | 474 | 91.5 | 44 | 8.5 |
| Rhode Island | 113 | 104 | 92.0 | 9 | 8.0 |
| SECOND CIRCUIT | 4,347 | 4,138 | 95.2 | 209 | 4.8 |
| Connecticut | 263 | 245 | 93.2 | 18 | 6.8 |
| New York | | | | | |
| Eastern | 1,431 | 1,369 | 95.7 | 62 | 4.3 |
| Northern | 358 | 352 | 98.3 | 6 | 1.7 |
| Southern | 1,793 | 1,692 | 94.4 | 101 | 5.6 |
| Western | 344 | 334 | 97.1 | 10 | 2.9 |
| Vermont | 158 | 146 | 92.4 | 12 | 7.6 |
| THIRD CIRCUIT | 2,485 | 2,356 | 94.8 | 129 | 5.2 |
| Delaware | 86 | 82 | 95.3 | 4 | 4.7 |
| New Jersey | 856 | 818 | 95.6 | 38 | 4.4 |
| Pennsylvania | | | | | |
| Eastern | 842 | 792 | 94.1 | 50 | 5.9 |
| Middle | 321 | 303 | 94.4 | 18 | 5.6 |
| Western | 287 | 277 | 96.5 | 10 | 3.5 |
| Virgin Islands | 93 | 84 | 90.3 | 9 | 9.7 |
| FOURTH CIRCUIT | 4,879 | 4,481 | 91.8 | 398 | 8.2 |
| Maryland | 459 | 397 | 86.5 | 62 | 13.5 |
| North Carolina | | | | | |
| Eastern | 511 | 479 | 93.7 | 32 | 6.3 |
| Middle | 425 | 391 | 92.0 | 34 | 8.0 |
| Western | 650 | 618 | 95.1 | 32 | 4.9 |
| South Carolina | 835 | 798 | 95.6 | 37 | 4.4 |
| Virginia | | | | | |
| Eastern | 1,267 | 1,118 | 88.2 | 149 | 11.8 |
| Western | 344 | 313 | 91.0 | 31 | 9.0 |
| West Virginia | | | | | |
| Northern | 156 | 147 | 94.2 | 9 | 5.8 |
| Southern | 232 | 220 | 94.8 | 12 | 5.2 |

| CIRCUIT District | TOTAL | PLEA | | TRIAL | |
|------------------------|--------|--------|---------|--------|---------|
| | | Number | Percent | Number | Percent |
| FIFTH CIRCUIT | 10,167 | 9,788 | 96.3 | 379 | 3.7 |
| Louisiana | | | | | |
| Eastern | 386 | 382 | 99.0 | 4 | 1.0 |
| Middle | 139 | 136 | 97.8 | 3 | 2.2 |
| Western | 256 | 230 | 89.8 | 26 | 10.2 |
| Mississippi | | | | | |
| Northern | 161 | 153 | 95.0 | 8 | 5.0 |
| Southern | 280 | 257 | 91.8 | 23 | 8.2 |
| Texas | | | | | |
| Eastern | 599 | 564 | 94.2 | 35 | 5.8 |
| Northern | 1,172 | 1,134 | 96.8 | 38 | 3.2 |
| Southern | 3,086 | 2,966 | 96.1 | 120 | 3.9 |
| Western | 4,088 | 3,966 | 97.0 | 122 | 3.0 |
| SIXTH CIRCUIT | 4,042 | 3,780 | 93.5 | 262 | 6.5 |
| Kentucky | | | | | |
| Eastern | 422 | 397 | 94.1 | 25 | 5.9 |
| Western | 407 | 370 | 90.9 | 37 | 9.1 |
| Michigan | | | | | |
| Eastern | 700 | 644 | 92.0 | 56 | 8.0 |
| Western | 300 | 288 | 96.0 | 12 | 4.0 |
| Ohio | | | | | |
| Northern | 648 | 615 | 94.9 | 33 | 5.1 |
| Southern | 574 | 554 | 96.5 | 20 | 3.5 |
| Tennessee | | | | | |
| Eastern | 413 | 380 | 92.0 | 33 | 8.0 |
| Middle | 197 | 178 | 90.4 | 19 | 9.6 |
| Western | 381 | 354 | 92.9 | 27 | 7.1 |
| SEVENTH CIRCUIT | 2,262 | 2,079 | 91.9 | 183 | 8.1 |
| Illinois | | | | | |
| Central | 311 | 296 | 95.2 | 15 | 4.8 |
| Northern | 623 | 543 | 87.2 | 80 | 12.8 |
| Southern | 361 | 340 | 94.2 | 21 | 5.8 |
| Indiana | | | | | |
| Northern | 332 | 300 | 90.4 | 32 | 9.6 |
| Southern | 230 | 216 | 93.9 | 14 | 6.1 |
| Wisconsin | | | | | |
| Eastern | 276 | 263 | 95.3 | 13 | 4.7 |
| Western | 129 | 121 | 93.8 | 8 | 6.2 |
| EIGHTH CIRCUIT | 3,410 | 3,186 | 93.4 | 224 | 6.6 |
| Arkansas | | | | | |
| Eastern | 266 | 245 | 92.1 | 21 | 7.9 |
| Western | 124 | 119 | 96.0 | 5 | 4.0 |
| Iowa | | | | | |
| Northern | 201 | 184 | 91.5 | 17 | 8.5 |
| Southern | 366 | 343 | 93.7 | 23 | 6.3 |
| Minnesota | 448 | 408 | 91.1 | 40 | 8.9 |
| Missouri | | | | | |
| Eastern | 594 | 561 | 94.4 | 33 | 5.6 |
| Western | 467 | 441 | 94.4 | 26 | 5.6 |
| Nebraska | 404 | 383 | 94.8 | 21 | 5.2 |
| North Dakota | 161 | 156 | 96.9 | 5 | 3.1 |
| South Dakota | 379 | 346 | 91.3 | 33 | 8.7 |

| CIRCUIT District | TOTAL | PLEA | | TRIAL | |
|--------------------------|--------|--------|---------|--------|---------|
| | | Number | Percent | Number | Percent |
| NINTH CIRCUIT | 12,428 | 12,041 | 96.9 | 387 | 3.1 |
| Alaska | 158 | 149 | 94.3 | 9 | 5.7 |
| Arizona | 2,804 | 2,781 | 99.2 | 23 | 0.8 |
| California | | | | | |
| Central | 1,358 | 1,303 | 95.9 | 55 | 4.1 |
| Eastern | 758 | 721 | 95.1 | 37 | 4.9 |
| Northern | 507 | 464 | 91.5 | 43 | 8.5 |
| Southern | 3,940 | 3,857 | 97.9 | 83 | 2.1 |
| Guam | 91 | 87 | 95.6 | 4 | 4.4 |
| Hawaii | 352 | 332 | 94.3 | 20 | 5.7 |
| Idaho | 126 | 115 | 91.3 | 11 | 8.7 |
| Montana | 278 | 248 | 89.2 | 30 | 10.8 |
| Nevada | 454 | 425 | 93.6 | 29 | 6.4 |
| Northern Mariana Islands | 14 | 12 | 85.7 | 2 | 14.3 |
| Oregon | 640 | 630 | 98.4 | 10 | 1.6 |
| Washington | | | | | |
| Eastern | 289 | 277 | 95.8 | 12 | 4.2 |
| Western | 659 | 640 | 97.1 | 19 | 2.9 |
| TENTH CIRCUIT | 3,136 | 2,982 | 95.1 | 154 | 4.9 |
| Colorado | 422 | 406 | 96.2 | 16 | 3.8 |
| Kansas | 396 | 359 | 90.7 | 37 | 9.3 |
| New Mexico | 1,130 | 1,104 | 97.7 | 26 | 2.3 |
| Oklahoma | | | | | |
| Eastern | 87 | 81 | 93.1 | 6 | 6.9 |
| Northern | 190 | 171 | 90.0 | 19 | 10.0 |
| Western | 218 | 197 | 90.4 | 21 | 9.6 |
| Utah | 524 | 508 | 96.9 | 16 | 3.1 |
| Wyoming | 169 | 156 | 92.3 | 13 | 7.7 |
| ELEVENTH CIRCUIT | 5,952 | 5,429 | 91.2 | 523 | 8.8 |
| Alabama | | | | | |
| Middle | 218 | 201 | 92.2 | 17 | 7.8 |
| Northern | 318 | 293 | 92.1 | 25 | 7.9 |
| Southern | 296 | 262 | 88.5 | 34 | 11.5 |
| Florida | | | | | |
| Middle | 1,459 | 1,354 | 92.8 | 105 | 7.2 |
| Northern | 390 | 331 | 84.9 | 59 | 15.1 |
| Southern | 1,987 | 1,795 | 90.3 | 192 | 9.7 |
| Georgia | | | | | |
| Middle | 361 | 337 | 93.4 | 24 | 6.6 |
| Northern | 691 | 647 | 93.6 | 44 | 6.4 |
| Southern | 232 | 209 | 90.1 | 23 | 9.9 |

Of the 55,557 guideline cases, 637 cases were excluded due to missing information on mode of conviction.

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 3

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 1999**

| PRIMARY OFFENSE | TOTAL | National | | | | South Dakota | | | |
|------------------------------------|--------|----------|------|-------|------|--------------|-------|-------|-------|
| | | PLEA | | TRIAL | | PLEA | | TRIAL | |
| | | n | % | n | % | n | % | n | % |
| TOTAL | 54,903 | 51,945 | 94.6 | 2,958 | 5.4 | 346 | 91.3 | 33 | 8.7 |
| Murder | 96 | 77 | 80.2 | 19 | 19.8 | 2 | 66.7 | 1 | 33.3 |
| Manslaughter | 55 | 53 | 96.4 | 2 | 3.6 | 6 | 100.0 | 0 | 0.0 |
| Kidnapping/Hostage Taking | 80 | 65 | 81.3 | 15 | 18.8 | 1 | 100.0 | 0 | 0.0 |
| Sexual Abuse | 229 | 202 | 88.2 | 27 | 11.8 | 29 | 78.4 | 8 | 21.6 |
| Assault | 449 | 409 | 91.1 | 40 | 8.9 | 43 | 95.6 | 2 | 4.4 |
| Robbery | 1,771 | 1,616 | 91.2 | 155 | 8.8 | 3 | 100.0 | 0 | 0.0 |
| Arson | 80 | 64 | 80.0 | 16 | 20.0 | 0 | -- | 0 | -- |
| Drugs - Trafficking | 21,840 | 20,481 | 93.8 | 1,359 | 6.2 | 75 | 89.3 | 9 | 10.7 |
| Drugs - Communication Facility | 396 | 393 | 99.2 | 3 | 0.8 | 2 | 100.0 | 0 | 0.0 |
| Drugs - Simple Possession | 674 | 645 | 95.7 | 29 | 4.3 | 2 | 66.7 | 1 | 33.3 |
| Firearms | 2,645 | 2,394 | 90.5 | 251 | 9.5 | 14 | 87.5 | 2 | 12.5 |
| Burglary/B&E | 53 | 49 | 92.5 | 4 | 7.5 | 12 | 92.3 | 1 | 7.7 |
| Auto Theft | 187 | 172 | 92.0 | 15 | 8.0 | 2 | 100.0 | 0 | 0.0 |
| Larceny | 2,067 | 1,981 | 95.8 | 86 | 4.2 | 13 | 81.3 | 3 | 18.8 |
| Fraud | 6,144 | 5,846 | 95.1 | 298 | 4.9 | 59 | 98.3 | 1 | 1.7 |
| Embezzlement | 949 | 932 | 98.2 | 17 | 1.8 | 12 | 100.0 | 0 | 0.0 |
| Forgery/Counterfeiting | 1,281 | 1,255 | 98.0 | 26 | 2.0 | 0 | -- | 0 | -- |
| Bribery | 195 | 181 | 92.8 | 14 | 7.2 | 0 | -- | 0 | -- |
| Tax | 722 | 670 | 92.8 | 52 | 7.2 | 0 | -- | 0 | -- |
| Money Laundering | 993 | 887 | 89.3 | 106 | 10.7 | 0 | 0.0 | 1 | 100.0 |
| Racketeering/Extortion | 966 | 856 | 88.6 | 110 | 11.4 | 3 | 100.0 | 0 | 0.0 |
| Gambling/Lottery | 135 | 133 | 98.5 | 2 | 1.5 | 0 | -- | 0 | -- |
| Civil Rights | 78 | 66 | 84.6 | 12 | 15.4 | 0 | -- | 0 | -- |
| Immigration | 9,591 | 9,440 | 98.4 | 151 | 1.6 | 42 | 95.5 | 2 | 4.5 |
| Pornography/Prostitution | 411 | 389 | 94.6 | 22 | 5.4 | 1 | 50.0 | 1 | 50.0 |
| Prison Offenses | 297 | 291 | 98.0 | 6 | 2.0 | 2 | 100.0 | 0 | 0.0 |
| Administration of Justice Offenses | 860 | 827 | 96.2 | 33 | 3.8 | 3 | 75.0 | 1 | 25.0 |
| Environmental/Wildlife | 206 | 198 | 96.1 | 8 | 3.9 | 12 | 100.0 | 0 | 0.0 |
| National Defense | 20 | 14 | 70.0 | 6 | 30.0 | 0 | -- | 0 | -- |
| Antitrust | 44 | 37 | 84.1 | 7 | 15.9 | 0 | -- | 0 | -- |
| Food & Drug | 78 | 77 | 98.7 | 1 | 1.3 | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 1,311 | 1,245 | 95.0 | 66 | 5.0 | 8 | 100.0 | 0 | 0.0 |

Of the 55,557 guideline cases, 654 cases were excluded due to one or both of the following reasons: missing primary offense category (149) or missing mode of conviction (637). Of the 380 guideline cases from the State of South Dakota, one case was excluded due to one or both of the following reasons: missing primary offense category (1) or missing mode of conviction (!)

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 4
 TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
 Fiscal Year 1999

| PRIMARY OFFENSE | National | | | | | | | | | | | | | | |
|------------------------------------|----------|---------|---------|--------|---------|---------|---------------------------------|---------|---------|---------------------------|---------|---------|----------------|---------|--|
| | TOTAL | | | Prison | | | Prison/Community Split Sentence | | | Probation and Confinement | | | Probation Only | | |
| | Number | Percent | Percent | Number | Percent | Percent | Number | Percent | Percent | Number | Percent | Percent | Number | Percent | |
| TOTAL | 54,790 | 43,536 | 79.5 | 2,292 | 4.2 | 3,274 | 6.0 | 5,688 | 10.4 | | | | | | |
| Murder | 102 | 99 | 97.1 | 0 | 0.0 | 1 | 1.0 | 2 | 2.0 | | | | | | |
| Manslaughter | 55 | 43 | 78.2 | 6 | 10.9 | 2 | 3.6 | 4 | 7.3 | | | | | | |
| Kidnapping/Hostage Taking | 80 | 79 | 98.8 | 1 | 1.3 | 0 | 0.0 | 0 | 0.0 | | | | | | |
| Sexual Abuse | 230 | 199 | 86.5 | 4 | 1.7 | 14 | 6.1 | 13 | 5.7 | | | | | | |
| Assault | 452 | 341 | 75.4 | 21 | 4.6 | 30 | 6.6 | 60 | 13.3 | | | | | | |
| Robbery | 1,777 | 1,711 | 96.3 | 32 | 1.8 | 18 | 1.0 | 16 | 0.9 | | | | | | |
| Arson | 81 | 78 | 96.3 | 0 | 0.0 | 3 | 3.7 | 0 | 0.0 | | | | | | |
| Drugs - Trafficking | 21,862 | 20,482 | 93.7 | 493 | 2.3 | 412 | 1.9 | 475 | 2.2 | | | | | | |
| Drugs - Communication Facility | 395 | 341 | 86.3 | 13 | 3.3 | 18 | 4.6 | 23 | 5.8 | | | | | | |
| Drugs - Simple Possession | 671 | 258 | 38.5 | 9 | 1.3 | 43 | 6.4 | 361 | 53.8 | | | | | | |
| Firearms | 2,660 | 2,379 | 89.4 | 92 | 3.5 | 102 | 3.8 | 87 | 3.3 | | | | | | |
| Burglary/B&E | 51 | 40 | 78.4 | 4 | 7.8 | 6 | 11.8 | 1 | 2.0 | | | | | | |
| Auto Theft | 187 | 130 | 69.5 | 12 | 6.4 | 21 | 11.2 | 24 | 12.8 | | | | | | |
| Larceny | 2,025 | 695 | 34.3 | 124 | 6.1 | 388 | 19.2 | 818 | 40.4 | | | | | | |
| Fraud | 6,118 | 3,242 | 53.0 | 698 | 11.4 | 916 | 15.0 | 1,262 | 20.6 | | | | | | |
| Embezzlement | 942 | 319 | 33.9 | 191 | 20.3 | 135 | 14.3 | 297 | 31.5 | | | | | | |
| Forgery/Counterfeiting | 1,275 | 708 | 55.5 | 94 | 7.4 | 207 | 16.2 | 266 | 20.9 | | | | | | |
| Bribery | 195 | 88 | 45.1 | 12 | 6.2 | 48 | 24.6 | 47 | 24.1 | | | | | | |
| Tax | 717 | 235 | 32.8 | 95 | 13.2 | 199 | 27.8 | 188 | 26.2 | | | | | | |
| Money Laundering | 998 | 734 | 73.5 | 52 | 5.2 | 87 | 8.7 | 125 | 12.5 | | | | | | |
| Racketeering/Extortion | 968 | 871 | 90.0 | 28 | 2.9 | 36 | 3.7 | 33 | 3.4 | | | | | | |
| Gambling/Lottery | 136 | 28 | 20.6 | 9 | 6.6 | 41 | 30.1 | 58 | 42.6 | | | | | | |
| Civil Rights | 80 | 43 | 53.8 | 5 | 6.3 | 11 | 13.8 | 21 | 26.3 | | | | | | |
| Immigration | 9,554 | 8,762 | 91.7 | 120 | 1.3 | 134 | 1.4 | 538 | 5.6 | | | | | | |
| Pornography/Prostitution | 411 | 349 | 84.9 | 18 | 4.4 | 24 | 5.8 | 20 | 4.9 | | | | | | |
| Prison Offenses | 294 | 262 | 89.1 | 7 | 2.4 | 7 | 2.4 | 18 | 6.1 | | | | | | |
| Administration of Justice Offenses | 855 | 492 | 57.5 | 51 | 6.0 | 122 | 14.3 | 190 | 22.2 | | | | | | |
| Environmental/Wildlife | 200 | 38 | 19.0 | 13 | 6.5 | 59 | 29.5 | 90 | 45.0 | | | | | | |
| National Defense | 18 | 12 | 66.7 | 4 | 22.2 | 0 | 0.0 | 2 | 11.1 | | | | | | |
| Antitrust | 44 | 14 | 31.8 | 12 | 27.3 | 5 | 11.4 | 13 | 29.5 | | | | | | |
| Food & Drug | 75 | 17 | 22.7 | 6 | 8.0 | 17 | 22.7 | 35 | 46.7 | | | | | | |
| Other Miscellaneous Offenses | 1,282 | 447 | 34.9 | 66 | 5.1 | 168 | 13.1 | 601 | 46.9 | | | | | | |

Of the 55,557 guideline cases, 767 cases were excluded due to one or more of the following reasons: missing sentencing information (412), missing primary offense category (149) or cases in which defendant received no imprisonment or probation (285).

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 5
 TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
 Fiscal Year 1999

South Dakota

| PRIMARY OFFENSE | TOTAL | | Prison | | Prison/Community Split Sentence | | Probation and Confinement | | Probation Only | |
|------------------------------------|--------|---------|--------|---------|---------------------------------|---------|---------------------------|---------|----------------|---------|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| TOTAL | 375 | 72.5 | 272 | 72.5 | 19 | 5.1 | 34 | 9.1 | 50 | 13.3 |
| Murder | 3 | 100.0 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Manslaughter | 6 | 100.0 | 6 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Kidnapping/Hostage Taking | 1 | 100.0 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Sexual Abuse | 37 | 89.2 | 33 | 89.2 | 0 | 0.0 | 2 | 5.4 | 2 | 5.4 |
| Assault | 45 | 75.6 | 34 | 75.6 | 1 | 2.2 | 4 | 8.9 | 6 | 13.3 |
| Robbery | 3 | 100.0 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Arson | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Drugs - Trafficking | 83 | 79.5 | 66 | 79.5 | 3 | 3.6 | 3 | 3.6 | 11 | 13.3 |
| Drugs - Communication Facility | 2 | 100.0 | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Drugs - Simple Possession | 3 | 33.3 | 1 | 33.3 | 0 | 0.0 | 0 | 0.0 | 2 | 66.7 |
| Firearms | 16 | 81.3 | 13 | 81.3 | 1 | 6.3 | 1 | 6.3 | 1 | 6.3 |
| Burglary/B&E | 13 | 69.2 | 9 | 69.2 | 3 | 23.1 | 0 | 0.0 | 1 | 7.7 |
| Auto Theft | 2 | 50.0 | 1 | 50.0 | 0 | 0.0 | 1 | 50.0 | 0 | 0.0 |
| Larceny | 15 | 26.7 | 4 | 26.7 | 1 | 6.7 | 3 | 20.0 | 7 | 46.7 |
| Fraud | 59 | 59.3 | 35 | 59.3 | 7 | 11.9 | 8 | 13.6 | 9 | 15.3 |
| Embezzlement | 12 | 25.0 | 3 | 25.0 | 3 | 25.0 | 3 | 25.0 | 3 | 25.0 |
| Forgery/Counterfeiting | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Bribery | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Tax | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Money Laundering | 1 | 100.0 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Racketeering/Extortion | 3 | 100.0 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Gambling/Lottery | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Civil Rights | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Immigration | 44 | 100.0 | 44 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Pornography/Prostitution | 1 | 100.0 | 1 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Prison Offenses | 2 | 100.0 | 2 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Administration of Justice Offenses | 4 | 100.0 | 4 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Environmental/Wildlife | 12 | 0.0 | 0 | 0.0 | 0 | 0.0 | 9 | 75.0 | 3 | 25.0 |
| National Defense | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Antitrust | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Food & Drug | 0 | -- | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 8 | 37.5 | 3 | 37.5 | 0 | 0.0 | 0 | 0.0 | 5 | 62.5 |

Of the 380 guideline cases from the State of South Dakota, 5 cases were excluded due to one or more of the following reasons: missing sentencing information (2), missing primary offense category (1) or cases in which the defendant received no imprisonment or probation (3).

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 6

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 1999**

| PRIMARY OFFENSE | National | | | | South Dakota | | | |
|------------------------------|-----------------|-------------|---------------------|-------------|-----------------|-------------|---------------------|-------------|
| | Prison Sentence | | Non-Prison Sentence | | Prison Sentence | | Non-Prison Sentence | |
| | n | % | n | % | n | % | n | % |
| TOTAL | 3,839 | 38.4 | 6,147 | 61.6 | 77 | 49.7 | 78 | 50.3 |
| Fraud | 726 | 32.4 | 1,514 | 67.6 | 24 | 60.0 | 16 | 40.0 |
| Larceny | 224 | 17.7 | 1,041 | 82.3 | 2 | 15.4 | 11 | 84.6 |
| Immigration | 1,636 | 76.2 | 510 | 23.8 | 33 | 100.0 | 0 | 0.0 |
| Embezzlement | 247 | 39.2 | 383 | 60.8 | 2 | 25.0 | 6 | 75.0 |
| Drugs - Trafficking | 167 | 42.8 | 223 | 57.2 | 10 | 41.7 | 14 | 58.3 |
| Drugs - Simple Possession | 170 | 32.6 | 352 | 67.4 | 1 | 33.3 | 2 | 66.7 |
| Firearms | 31 | 29.2 | 75 | 70.8 | 0 | 0.0 | 2 | 100.0 |
| Forgery/Counterfeiting | 187 | 32.0 | 397 | 68.0 | 0 | -- | 0 | -- |
| Other Miscellaneous Offenses | 451 | 21.4 | 1,652 | 78.6 | 5 | 15.6 | 27 | 84.4 |

Of the 55,557 guideline cases, 45,571 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (45,548), missing sentencing information (412) or missing primary offense category (149).

Of the 380 guideline cases from the State of South Dakota, 225 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (225), missing primary offense category (1) or missing sentencing information (2).

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 7

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 1999**

| PRIMARY OFFENSE | National | | | South Dakota | | |
|---|----------------|------------------|---------------|----------------|------------------|------------|
| | Mean Months | Median Months | Number | Mean Months | Median Months | Number |
| TOTAL | 56.9 | 33.0 | 45,379 | 45.1 | 24.0 | 285 |
| Murder | 204.7 | 132.0 | 99 | 71.3 | 87.0 | 3 |
| Manslaughter | 34.1 | 16.0 | 49 | 28.3 | 21.5 | 6 |
| Kidnapping/Hostage Taking | 147.8 | 98.5 | 80 | 100.0 | -- | 1 |
| Sexual Abuse | 71.8 | 36.0 | 203 | 79.8 | 70.0 | 33 |
| Assault | 41.3 | 30.0 | 357 | 47.5 | 41.0 | 35 |
| Robbery | 106.8 | 72.0 | 1,739 | 40.0 | 30.0 | 3 |
| Arson | 78.9 | 60.0 | 78 | -- | -- | 0 |
| Drugs - Trafficking | 76.4 | 51.0 | 20,849 | 77.5 | 46.0 | 67 |
| Drugs - Communication Facility | 45.7 | 48.0 | 351 | 48.0 | -- | 2 |
| Drugs - Simple Possession | 16.4 | 6.0 | 255 | 6.0 | -- | 1 |
| Firearms | 70.5 | 46.0 | 2,460 | 48.2 | 46.0 | 13 |
| Burglary/B&E | 25.5 | 18.0 | 44 | 28.0 | 15.0 | 12 |
| Auto Theft | 71.4 | 24.0 | 140 | 8.0 | -- | 1 |
| Larceny | 15.7 | 12.0 | 817 | 13.2 | 6.0 | 5 |
| Fraud | 18.7 | 12.0 | 3,871 | 9.3 | 6.0 | 41 |
| Embezzlement | 9.1 | 4.0 | 497 | 3.8 | 3.0 | 6 |
| Forgery/Counterfeiting | 15.8 | 12.0 | 793 | -- | -- | 0 |
| Bribery | 19.9 | 15.0 | 99 | -- | -- | 0 |
| Tax | 18.0 | 12.0 | 329 | -- | -- | 0 |
| Money Laundering | 44.6 | 33.0 | 780 | 151.0 | -- | 1 |
| Racketeering/Extortion | 99.0 | 60.0 | 896 | 43.7 | 38.0 | 3 |
| Gambling/Lottery | 11.2 | 10.0 | 37 | -- | -- | 0 |
| Civil Rights | 44.1 | 30.0 | 47 | -- | -- | 0 |
| Immigration | 28.0 | 24.0 | 8,724 | 15.7 | 2.5 | 42 |
| Pornography/Prostitution | 46.1 | 30.0 | 365 | 27.0 | -- | 1 |
| Prison Offenses | 18.1 | 15.0 | 269 | 10.0 | -- | 2 |
| Administration of Justice Offenses | 25.9 | 18.0 | 534 | 31.8 | 27.5 | 4 |
| Environmental/Wildlife | 12.5 | 8.0 | 51 | -- | -- | 0 |
| National Defense | 71.6 | 27.0 | 16 | -- | -- | 0 |
| Antitrust | 9.2 | 4.0 | 25 | -- | -- | 0 |
| Food & Drug | 7.7 | 4.0 | 23 | -- | -- | 0 |
| Other Miscellaneous Offenses | 24.5 | 12.0 | 502 | 33.3 | 46.0 | 3 |

Of the 55,557 guideline cases, 9,215 cases with zero months prison ordered were excluded. In addition, 963 cases were excluded due to one or both of the following reasons: missing primary offense category (149) or missing or indeterminable sentencing information (906).

Of the 380 guideline cases from the State of South Dakota, 95 cases were excluded due to one or more of the following reasons: zero prison months ordered (87), missing primary offense category (1) or missing or indeterminable sentencing information (8).

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 8

GUIDELINE DEPARTURE RATE BY CIRCUIT AND DISTRICT
Fiscal Year 1999

| CIRCUIT | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|-----------------------|---------------|----------------------------------|-------------|----------------------------------|-------------|--------------------------|-------------|------------------|------------|
| | | n | % | n | % | n | % | n | % |
| TOTAL | 52,425 | 34,020 | 64.9 | 9,788 | 18.7 | 8,304 | 15.8 | 313 | 0.6 |
| D.C. CIRCUIT | 453 | 315 | 69.5 | 89 | 19.6 | 41 | 9.1 | 8 | 1.8 |
| District of Columbia | 453 | 315 | 69.5 | 89 | 19.6 | 41 | 9.1 | 8 | 1.8 |
| FIRST CIRCUIT | 1,337 | 963 | 72.0 | 207 | 15.5 | 160 | 12.0 | 7 | 0.5 |
| Maine | 122 | 90 | 73.8 | 27 | 22.1 | 4 | 3.3 | 1 | 0.8 |
| Massachusetts | 443 | 257 | 58.0 | 83 | 18.7 | 100 | 22.6 | 3 | 0.7 |
| New Hampshire | 142 | 84 | 59.2 | 49 | 34.5 | 8 | 5.6 | 1 | 0.7 |
| Puerto Rico | 516 | 443 | 85.9 | 40 | 7.8 | 32 | 6.2 | 1 | 0.2 |
| Rhode Island | 114 | 89 | 78.1 | 8 | 7.0 | 16 | 14.0 | 1 | 0.9 |
| SECOND CIRCUIT | 4,119 | 2,338 | 56.8 | 953 | 23.1 | 802 | 19.5 | 26 | 0.6 |
| Connecticut | 249 | 132 | 53.0 | 35 | 14.1 | 79 | 31.7 | 3 | 1.2 |
| New York | | | | | | | | | |
| Eastern | 1,341 | 589 | 43.9 | 331 | 24.7 | 410 | 30.6 | 11 | 0.8 |
| Northern | 348 | 156 | 44.8 | 150 | 43.1 | 41 | 11.8 | 1 | 0.3 |
| Southern | 1,680 | 1,160 | 69.0 | 318 | 18.9 | 197 | 11.7 | 5 | 0.3 |
| Western | 342 | 226 | 66.1 | 83 | 24.3 | 30 | 8.8 | 3 | 0.9 |
| Vermont | 159 | 75 | 47.2 | 36 | 22.6 | 45 | 28.3 | 3 | 1.9 |
| THIRD CIRCUIT | 2,466 | 1,453 | 58.9 | 794 | 32.2 | 206 | 8.4 | 13 | 0.5 |
| Delaware | 87 | 64 | 73.6 | 19 | 21.8 | 4 | 4.6 | 0 | 0.0 |
| New Jersey | 858 | 545 | 63.5 | 238 | 27.7 | 67 | 7.8 | 8 | 0.9 |
| Pennsylvania | | | | | | | | | |
| Eastern | 839 | 412 | 49.1 | 362 | 43.1 | 64 | 7.6 | 1 | 0.1 |
| Middle | 315 | 180 | 57.1 | 100 | 31.7 | 33 | 10.5 | 2 | 0.6 |
| Western | 278 | 172 | 61.9 | 69 | 24.8 | 36 | 12.9 | 1 | 0.4 |
| Virgin Islands | 89 | 80 | 89.9 | 6 | 6.7 | 2 | 2.2 | 1 | 1.1 |
| FOURTH CIRCUIT | 4,493 | 3,228 | 71.8 | 1,021 | 22.7 | 208 | 4.6 | 36 | 0.8 |
| Maryland | 446 | 282 | 63.2 | 85 | 19.1 | 77 | 17.3 | 2 | 0.4 |
| North Carolina | | | | | | | | | |
| Eastern | 496 | 345 | 69.6 | 128 | 25.8 | 18 | 3.6 | 5 | 1.0 |
| Middle | 427 | 281 | 65.8 | 121 | 28.3 | 14 | 3.3 | 11 | 2.6 |
| Western | 640 | 274 | 42.8 | 335 | 52.3 | 31 | 4.8 | 0 | 0.0 |
| South Carolina | 795 | 608 | 76.5 | 156 | 19.6 | 26 | 3.3 | 5 | 0.6 |
| Virginia | | | | | | | | | |
| Eastern | 960 | 873 | 90.9 | 67 | 7.0 | 17 | 1.8 | 3 | 0.3 |
| Western | 345 | 235 | 68.1 | 93 | 27.0 | 12 | 3.5 | 5 | 1.4 |
| West Virginia | | | | | | | | | |
| Northern | 155 | 140 | 90.3 | 10 | 6.5 | 3 | 1.9 | 2 | 1.3 |
| Southern | 229 | 190 | 83.0 | 26 | 11.4 | 10 | 4.4 | 3 | 1.3 |

| CIRCUIT | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|------------------------|--------|----------------------------------|------|----------------------------------|------|--------------------------|------|------------------|-----|
| | | n | % | n | % | n | % | n | % |
| FIFTH CIRCUIT | 10,012 | 7,220 | 72.1 | 1,542 | 15.4 | 1,205 | 12.0 | 45 | 0.4 |
| Louisiana | | | | | | | | | |
| Eastern | 387 | 308 | 79.6 | 48 | 12.4 | 31 | 8.0 | 0 | 0.0 |
| Middle | 138 | 102 | 73.9 | 25 | 18.1 | 5 | 3.6 | 6 | 4.3 |
| Western | 256 | 201 | 78.5 | 44 | 17.2 | 9 | 3.5 | 2 | 0.8 |
| Mississippi | | | | | | | | | |
| Northern | 164 | 86 | 52.4 | 65 | 39.6 | 13 | 7.9 | 0 | 0.0 |
| Southern | 275 | 177 | 64.4 | 85 | 30.9 | 11 | 4.0 | 2 | 0.7 |
| Texas | | | | | | | | | |
| Eastern | 592 | 513 | 86.7 | 58 | 9.8 | 20 | 3.4 | 1 | 0.2 |
| Northern | 1,160 | 864 | 74.5 | 214 | 18.4 | 74 | 6.4 | 8 | 0.7 |
| Southern | 3,011 | 1,905 | 63.3 | 688 | 22.8 | 411 | 13.6 | 7 | 0.2 |
| Western | 4,029 | 3,064 | 76.0 | 315 | 7.8 | 631 | 15.7 | 19 | 0.5 |
| SIXTH CIRCUIT | 3,991 | 2,691 | 67.4 | 1,021 | 25.6 | 266 | 6.7 | 13 | 0.3 |
| Kentucky | | | | | | | | | |
| Eastern | 427 | 293 | 68.6 | 115 | 26.9 | 18 | 4.2 | 1 | 0.2 |
| Western | 397 | 362 | 91.2 | 25 | 6.3 | 9 | 2.3 | 1 | 0.3 |
| Michigan | | | | | | | | | |
| Eastern | 695 | 440 | 63.3 | 186 | 26.8 | 66 | 9.5 | 3 | 0.4 |
| Western | 298 | 196 | 65.8 | 79 | 26.5 | 21 | 7.0 | 2 | 0.7 |
| Ohio | | | | | | | | | |
| Northern | 645 | 444 | 68.8 | 146 | 22.6 | 55 | 8.5 | 0 | 0.0 |
| Southern | 567 | 310 | 54.7 | 216 | 38.1 | 41 | 7.2 | 0 | 0.0 |
| Tennessee | | | | | | | | | |
| Eastern | 417 | 265 | 63.5 | 131 | 31.4 | 18 | 4.3 | 3 | 0.7 |
| Middle | 173 | 132 | 76.3 | 26 | 15.0 | 15 | 8.7 | 0 | 0.0 |
| Western | 372 | 249 | 66.9 | 97 | 26.1 | 23 | 6.2 | 3 | 0.8 |
| SEVENTH CIRCUIT | 2,178 | 1,556 | 71.4 | 445 | 20.4 | 155 | 7.1 | 22 | 1.0 |
| Illinois | | | | | | | | | |
| Central | 300 | 172 | 57.3 | 101 | 33.7 | 24 | 8.0 | 3 | 1.0 |
| Northern | 584 | 417 | 71.4 | 107 | 18.3 | 56 | 9.6 | 4 | 0.7 |
| Southern | 354 | 308 | 87.0 | 31 | 8.8 | 15 | 4.2 | 0 | 0.0 |
| Indiana | | | | | | | | | |
| Northern | 311 | 245 | 78.8 | 45 | 14.5 | 18 | 5.8 | 3 | 1.0 |
| Southern | 225 | 116 | 51.6 | 86 | 38.2 | 18 | 8.0 | 5 | 2.2 |
| Wisconsin | | | | | | | | | |
| Eastern | 278 | 198 | 71.2 | 59 | 21.2 | 20 | 7.2 | 1 | 0.4 |
| Western | 126 | 100 | 79.4 | 16 | 12.7 | 4 | 3.2 | 6 | 4.8 |
| EIGHTH CIRCUIT | 3,390 | 2,169 | 64.0 | 880 | 26.0 | 317 | 9.4 | 24 | 0.7 |
| Arkansas | | | | | | | | | |
| Eastern | 263 | 212 | 80.6 | 45 | 17.1 | 6 | 2.3 | 0 | 0.0 |
| Western | 126 | 99 | 78.6 | 20 | 15.9 | 7 | 5.6 | 0 | 0.0 |
| Iowa | | | | | | | | | |
| Northern | 191 | 116 | 60.7 | 58 | 30.4 | 12 | 6.3 | 5 | 2.6 |
| Southern | 369 | 193 | 52.3 | 130 | 35.2 | 46 | 12.5 | 0 | 0.0 |
| Minnesota | 447 | 278 | 62.2 | 90 | 20.1 | 76 | 17.0 | 3 | 0.7 |
| Missouri | | | | | | | | | |
| Eastern | 588 | 362 | 61.6 | 182 | 31.0 | 44 | 7.5 | 0 | 0.0 |
| Western | 466 | 242 | 51.9 | 193 | 41.4 | 26 | 5.6 | 5 | 1.1 |
| Nebraska | 402 | 236 | 58.7 | 120 | 29.9 | 46 | 11.4 | 0 | 0.0 |
| North Dakota | 162 | 125 | 77.2 | 22 | 13.6 | 15 | 9.3 | 0 | 0.0 |
| South Dakota | 376 | 306 | 81.4 | 20 | 5.3 | 39 | 10.4 | 11 | 2.9 |

| CIRCUIT | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|--------------------------|--------|----------------------------------|------|----------------------------------|------|--------------------------|------|------------------|-----|
| | | n | % | n | % | n | % | n | % |
| NINTH CIRCUIT | 11,061 | 5,827 | 52.7 | 1,145 | 10.4 | 4,029 | 36.4 | 60 | 0.5 |
| Alaska | 152 | 112 | 73.7 | 9 | 5.9 | 31 | 20.4 | 0 | 0.0 |
| Arizona | 2,641 | 899 | 34.0 | 194 | 7.3 | 1,529 | 57.9 | 19 | 0.7 |
| California | | | | | | | | | |
| Central | 798 | 649 | 81.3 | 67 | 8.4 | 77 | 9.6 | 5 | 0.6 |
| Eastern | 748 | 580 | 77.5 | 99 | 13.2 | 67 | 9.0 | 2 | 0.3 |
| Northern | 488 | 341 | 69.9 | 40 | 8.2 | 103 | 21.1 | 4 | 0.8 |
| Southern | 3,578 | 1,513 | 42.3 | 298 | 8.3 | 1,755 | 49.0 | 12 | 0.3 |
| Guam | 85 | 61 | 71.8 | 19 | 22.4 | 5 | 5.9 | 0 | 0.0 |
| Hawaii | 347 | 234 | 67.4 | 89 | 25.6 | 24 | 6.9 | 0 | 0.0 |
| Idaho | 128 | 76 | 59.4 | 31 | 24.2 | 16 | 12.5 | 5 | 3.9 |
| Montana | 278 | 193 | 69.4 | 48 | 17.3 | 36 | 12.9 | 1 | 0.4 |
| Nevada | 450 | 338 | 75.1 | 59 | 13.1 | 50 | 11.1 | 3 | 0.7 |
| Northern Mariana Islands | 14 | 7 | 50.0 | 7 | 50.0 | 0 | 0.0 | 0 | 0.0 |
| Oregon | 560 | 377 | 67.3 | 93 | 16.6 | 86 | 15.4 | 4 | 0.7 |
| Washington | | | | | | | | | |
| Eastern | 284 | 147 | 51.8 | 19 | 6.7 | 116 | 40.8 | 2 | 0.7 |
| Western | 510 | 300 | 58.8 | 73 | 14.3 | 134 | 26.3 | 3 | 0.6 |
| TENTH CIRCUIT | 3,060 | 2,118 | 69.2 | 393 | 12.8 | 531 | 17.4 | 18 | 0.6 |
| Colorado | 392 | 238 | 60.7 | 110 | 28.1 | 43 | 11.0 | 1 | 0.3 |
| Kansas | 376 | 271 | 72.1 | 72 | 19.1 | 30 | 8.0 | 3 | 0.8 |
| New Mexico | 1,124 | 737 | 65.6 | 91 | 8.1 | 291 | 25.9 | 5 | 0.4 |
| Oklahoma | | | | | | | | | |
| Eastern | 84 | 55 | 65.5 | 8 | 9.5 | 21 | 25.0 | 0 | 0.0 |
| Northern | 191 | 141 | 73.8 | 23 | 12.0 | 23 | 12.0 | 4 | 2.1 |
| Western | 216 | 177 | 81.9 | 23 | 10.6 | 15 | 6.9 | 1 | 0.5 |
| Utah | 509 | 392 | 77.0 | 30 | 5.9 | 84 | 16.5 | 3 | 0.6 |
| Wyoming | 168 | 107 | 63.7 | 36 | 21.4 | 24 | 14.3 | 1 | 0.6 |
| ELEVENTH CIRCUIT | 5,865 | 4,142 | 70.6 | 1,298 | 22.1 | 384 | 6.5 | 41 | 0.7 |
| Alabama | | | | | | | | | |
| Middle | 197 | 121 | 61.4 | 68 | 34.5 | 8 | 4.1 | 0 | 0.0 |
| Northern | 316 | 212 | 67.1 | 96 | 30.4 | 6 | 1.9 | 2 | 0.6 |
| Southern | 294 | 178 | 60.5 | 99 | 33.7 | 15 | 5.1 | 2 | 0.7 |
| Florida | | | | | | | | | |
| Middle | 1,459 | 947 | 64.9 | 405 | 27.8 | 103 | 7.1 | 4 | 0.3 |
| Northern | 386 | 276 | 71.5 | 91 | 23.6 | 13 | 3.4 | 6 | 1.6 |
| Southern | 1,956 | 1,538 | 78.6 | 260 | 13.3 | 142 | 7.3 | 16 | 0.8 |
| Georgia | | | | | | | | | |
| Middle | 349 | 244 | 69.9 | 84 | 24.1 | 16 | 4.6 | 5 | 1.4 |
| Northern | 675 | 456 | 67.6 | 144 | 21.3 | 70 | 10.4 | 5 | 0.7 |
| Southern | 233 | 170 | 73.0 | 51 | 21.9 | 11 | 4.7 | 1 | 0.4 |

Of the 55,557 guideline cases, 322 cases with no analogous guidelines were excluded from the table. Of the remaining 55,235 cases, 2,810 cases were excluded due to missing departure information. Districts for which departure information is missing in five percent or more of the cases received included: Central California (41.5%), Eastern Virginia (23.4%), Western Washington (22.3%), Oregon (11.2%), Southern California (10.5%), Eastern New York (8.3%), Guam (7.6%), Connecticut (7.8%), Northern New York (7.5%), Southern New York (6.9%), Middle Georgia (6.7%), Arizona (6.6%), Northern Illinois (6.3%), Northern Indiana (6.3%), Colorado (5.8%), Western Pennsylvania (5.8%), South Carolina (5.5%), Northern Iowa (5.5%), and Central Illinois (5.4%). Descriptions of variables used in this table are provided in Appendix A of the 1999 U.S. Sentencing Commission Annual Report.

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

Table 9

GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 1999

National

| PRIMARY OFFENSE | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|------------------------------|--------|----------------------------------|---------------|----------------------------------|-------------|--------------------------|-------------|------------------|-------------|
| | | n | % | n | % | n | % | n | % |
| | | TOTAL | 52,369 | 33,988 | 64.9 | 9,780 | 18.7 | 8,288 | 15.8 |
| Robbery | 1,724 | 1,191 | 69.1 | 264 | 15.3 | 236 | 13.7 | 33 | 1.9 |
| Drugs - Trafficking | 21,414 | 11,756 | 54.9 | 6,276 | 29.3 | 3,347 | 15.6 | 35 | 0.2 |
| Drugs - Simple Possession | 566 | 531 | 93.8 | 25 | 4.4 | 6 | 1.1 | 4 | 0.7 |
| Firearms | 2,518 | 1,922 | 76.3 | 289 | 11.5 | 276 | 11.0 | 31 | 1.2 |
| Larceny | 1,942 | 1,646 | 84.8 | 154 | 7.9 | 136 | 7.0 | 6 | 0.3 |
| Fraud | 5,842 | 4,224 | 72.3 | 1,008 | 17.3 | 567 | 9.7 | 43 | 0.7 |
| Embezzlement | 908 | 763 | 84.0 | 41 | 4.5 | 101 | 11.1 | 3 | 0.3 |
| Forgery/Counterfeiting | 1,230 | 988 | 80.3 | 153 | 12.4 | 79 | 6.4 | 10 | 0.8 |
| Immigration | 8,880 | 5,862 | 66.0 | 367 | 4.1 | 2,614 | 29.4 | 37 | 0.4 |
| Other Miscellaneous Offenses | 7,345 | 5,105 | 69.5 | 1,203 | 16.4 | 926 | 12.6 | 111 | 1.5 |

South Dakota

| PRIMARY OFFENSE | TOTAL | SENTENCED WITHIN GUIDELINE RANGE | | SUBSTANTIAL ASSISTANCE DEPARTURE | | OTHER DOWNWARD DEPARTURE | | UPWARD DEPARTURE | |
|------------------------------|-------|----------------------------------|------------|----------------------------------|-------------|--------------------------|------------|------------------|-------------|
| | | n | % | n | % | n | % | n | % |
| | | TOTAL | 376 | 306 | 81.4 | 20 | 5.3 | 39 | 10.4 |
| Robbery | 3 | 2 | 66.7 | 1 | 33.3 | 0 | 0.0 | 0 | 0.0 |
| Drugs - Trafficking | 84 | 58 | 69.0 | 17 | 20.2 | 8 | 9.5 | 1 | 1.2 |
| Drugs - Simple Possession | 3 | 3 | 100.0 | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Firearms | 15 | 14 | 93.3 | 0 | 0.0 | 1 | 6.7 | 0 | 0.0 |
| Larceny | 16 | 14 | 87.5 | 1 | 6.3 | 1 | 6.3 | 0 | 0.0 |
| Fraud | 59 | 51 | 86.4 | 0 | 0.0 | 7 | 11.9 | 1 | 1.7 |
| Embezzlement | 12 | 10 | 83.3 | 0 | 0.0 | 2 | 16.7 | 0 | 0.0 |
| Forgery/Counterfeiting | 0 | 0 | -- | 0 | -- | 0 | -- | 0 | -- |
| Immigration | 44 | 42 | 95.5 | 0 | 0.0 | 0 | 0.0 | 2 | 4.5 |
| Other Miscellaneous Offenses | 140 | 112 | 80.0 | 1 | 0.7 | 20 | 14.3 | 7 | 5.0 |

Of the 55,557 guideline cases, 3,188 cases were excluded due to one or more of the following reasons: missing or indeterminable departure information (2,810), missing primary offense category (149), or no analogous guideline (322).

Of the 380 guideline cases from the State of South Dakota, 4 cases were excluded due to one or more of the following reasons: missing or indeterminable departure information (4), missing primary offense category (1), or no analogous guideline (0).

SOURCE: U.S. Sentencing Commission, 1999 Datafile, OPAFY99.

IMPORTANT NOTES

what did the Civil Ats Com. do, if anything as a result of this report?
Rept suggests fed Task Force?

p15 - not Indian crime vs. Indian - Feds prosecute - even if it occurred off res?
p19 - whatever happened to the Robert M. Byrnes investigation?