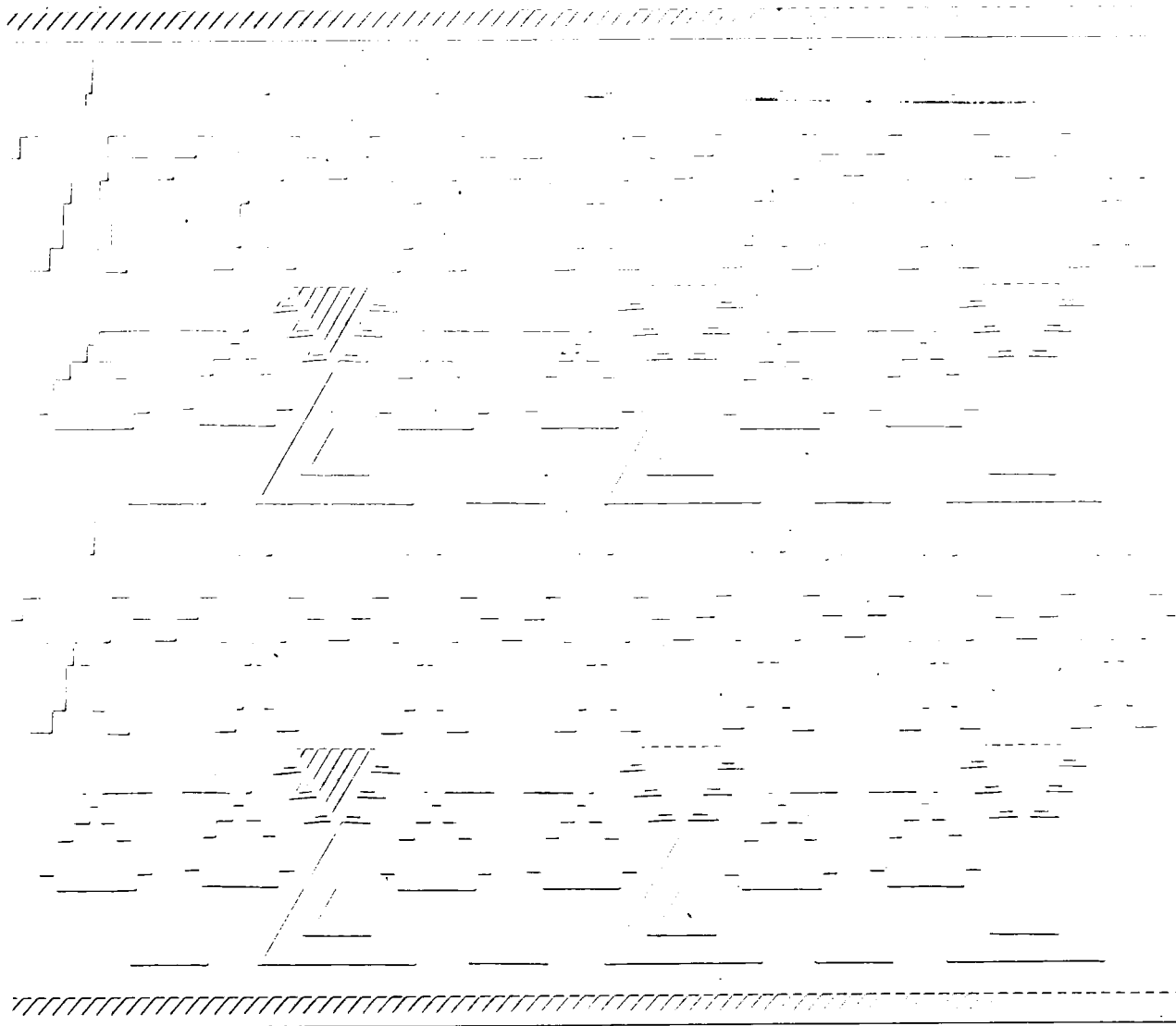


Native American Justice Issues in North Dakota

August 1978



A report of the North Dakota Advisor, Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission but only to the North Dakota Advisor, Committee.

Native American Justice Issues in North Dakota

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

ATTRIBUTION:

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

RIGHT OF RESPONSE:

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

The North Dakota Advisory Committee
to the United States
Commission on Civil Rights
August 1978

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie Freeman

Manuel Ruiz, Jr.

Murray Saltzman

Louis Nuñez, *Acting Staff Director*

Dear People:

The North Dakota Advisory Committee, pursuant to its responsibility to advise the Commission on civil rights problems in the State, submits this report on criminal justice for Native Americans. Through its investigation, the Advisory Committee concludes that, even though there has been progress in the quality of justice for all persons in the State, Indian people face problems which place them at a severe disadvantage in the criminal justice system.

The study assesses the quality of justice available to Native Americans in Burleigh County, North Dakota. Issues investigated were confined to criminal justice involving State, county, and municipal law agencies and courts. Members of the North Dakota Advisory Committee and staff of the Commission's Rocky Mountain Regional Office conducted investigations from June 1976 through April 1978, interviewing approximately 85 persons in Burleigh County and throughout the State. Those persons included State officials, law enforcement officers, defense and prosecuting attorneys, court administrators, community organization representatives, and other interested persons. On December 9, 1976, the North Dakota Advisory Committee conducted an informal factfinding meeting in Bismarck at which 18 persons testified and were questioned by Advisory Committee members and Rocky Mountain Regional Office staff.

The study found evidence of underrepresentation of American Indians on the staffs of both the Burleigh County Sheriff's Office and the Bismarck City Police Department. The North Dakota Combined Law Enforcement Council fails to comply with the Law Enforcement Assistance Administration guidelines stating the agency's responsibility for monitoring equal employment opportunity programs in grant-receiving agencies.

The Advisory Committee found that there are no statewide uniform standards for entrance into police employment in North Dakota. The problem of communication between Native Americans and North Dakota law enforcement officers, attorneys, and court officials, which places Indians at a disadvantage in obtaining justice, is largely due to a lack of cultural understanding between white and Indian people.

It was further found by the Committee that the court-appointed defense attorney system in North Dakota places indigent defendants at a serious disadvantage. The extremely high number of guilty pleas involving indigent defendants, a large proportion of whom are Native Americans, raises serious question about adequate protection of indigent defendants.

The bail system also works to the disadvantage of indigent defendants; cash bail and the requirement of property for surety often work special hardships on Native Americans who may

be poor and without property. Finally, prevailing community attitudes and the fact that it is extremely rare for a Native American to serve on a jury in North Dakota make it difficult for Native Americans in the State to obtain a fair trial.

The North Dakota Advisory Committee made a total of 14 recommendations that are addressed to the courts, the legislature, and State and local agencies requesting actions necessary to alleviate disparities in the criminal justice system.

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

Respectfully,

Harriett Skye
Chairperson

**MEMBERSHIP
NORTH DAKOTA ADVISORY
COMMITTEE TO THE UNITED STATES
COMMISSION ON CIVIL RIGHTS**

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THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. 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 as amended. 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 State 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 the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

ACKNOWLEDGMENTS

The North Dakota Advisory Committee wishes to thank the staff of the Commission's Rocky Mountain Regional Office, Denver, Colorado, for its help in the preparation of this report. The investigation and report were the principal staff assignment of William F. Muldrow, with assistance from William Levis, Rebecca Marrujo, Cal E. Rollins, and Thelma J. Stiffarm; and support from Esther Johnson, Cathie Davis, and Linda Stahnke. The project was undertaken under the overall supervision of Dr. Shirley Hill Witt, director, Rocky Mountain Regional Office.

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Those of us who are privileged to represent the citizens of North Dakota also assume a deep responsibility to administer the laws, the rules and regulations that are set down by an organized society, and in the truest traditions of this country of ours, [to] administer those rules and regulations with fairness [and] equity to the advantage of all of our citizens.

Arthur Link, Governor of North Dakota, at the North Dakota Advisory Committee public factfinding meeting in Bismarck, North Dakota, December 9, 1976

Preface

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

This concern that led the Committees to undertake the present study arose from a variety of sources. Several Native American members of the Committees related personal experiences with law enforcement agencies and courts in which they felt that they had been treated unjustly. Statistical information and findings of recent reports issued by public and private agencies point up special problems faced by Native Americans in the criminal justice systems of both Dakotas.¹ Reports by other State Advisory Committees to the U.S. Commission on Civil Rights have also documented problems of prejudice and unequal treatment encountered by Native Americans in the criminal justice system in other parts of the country.² The Congressional Liaison Unit of the Commission has received more inquiries from across the Nation about alleged mistreatment of Native Americans by law enforcement agencies and judicial and correctional systems than about any other single issue.

In North Dakota there is neither a State civil rights statute nor a State civil rights agency to investigate citizens' complaints of the denial of equal protection under the law in the administration of justice. That discrimination against Indian persons exists in the Bismarck-Mandan community, western North Dakota's largest urban area, in the judicial system, as well as in the areas of housing and employment, has been attested by citizens of that area.³

The present study assesses the quality of justice available to Native Americans in Burleigh County, North Dakota. This county is adjacent to the Standing Rock Sioux Indian Reservation and con-

tains Bismarck, the State capital. Issues investigated were confined to criminal justice involving State, county, and municipal law enforcement agencies and courts. Cases and incidents under Federal and tribal jurisdiction were not included because they were outside the scope of the project.

Members of the North Dakota Advisory Committee and staff of the Commission's Rocky Mountain Regional Office conducted investigations from June 1976 through April 1978, interviewing approximately 85 persons in Burleigh County and throughout the State. Those persons included State officials, law enforcement officers, defense and prosecuting attorneys, court administrators, community organization representatives, and other interested persons.

Statistical data and other pertinent information were gathered as background material for the study and have been updated for the present report. On December 9, 1976, the North Dakota Advisory Committee conducted an informal fact-finding meeting in Bismarck at which 18 persons testified and were questioned by Advisory Committee members and Rocky Mountain Regional Office staff.

Notes to Preface

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

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

3. "Discrimination: Affidavits Force to Light Bismarck's Dark Side," *United Tribes News*, Oct. 31, 1975, p. 1.

1. Introduction

Legal Considerations

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

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

North Dakota has drafted rules of criminal procedure to protect these rights.¹ These rules apply to all criminal proceedings and have the force and effect of law.²

A person who is arrested by a peace officer, with or without a warrant, must be brought before a magistrate "without unnecessary delay" or be released from custody.³ At the time of arrest suspects must be informed of their rights by the arresting officer as well as by the magistrate at the

initial appearance.⁴ A defendant must be released on personal recognizance on execution of an unsecured appearance bond pending trial, unless the magistrate determines at the initial appearance that release without bail will not reasonably ensure the presence of the defendant at further proceedings.⁵

Vital Statistics and Socioeconomic Characteristics

Native Americans living in North Dakota are by far the largest minority group in the State. The 1970 census showed a Native American population of 14,369 (7,054 male and 7,315 female), comprising 2.3 percent of the State's total population (617,761).⁶ The same census showed Native Americans numbering 428 in Burleigh County, comprising 1 percent of the total county population (40,714).⁷ These statistics for Indians in North Dakota are undoubtedly low. Art Raymond, a Native American and director of the Indian studies program at the University of North Dakota in Grand Forks, estimates that 30,000, nearly twice the Bureau of Census count, would be a much more accurate figure for the number of Indians in the State.⁸ Conservatively, 7,000 Native Americans reside off the reservation.⁹

A census conducted by the Dakota Association of Native Americans (DANA) in 1976 found 4,090 Indians living in the State's five largest cities (Bismarck, Grand Forks, Fargo, Minot, and Williston), while the 1970 national census counted only 1,159.¹⁰ In the Bismarck area, off-reservation Indians numbered 1,058.¹¹ This amounts to 2.5 percent of the county population. The high percentage of Native Americans in the Bismarck area may be attributed to the fact that the United Tribes Educational Technical Center (a vocational school for Native Americans) is located there.

In 1975, 6,383 or 7 percent of the State's poverty population was Native American. These figures considered the poverty level for a one-person household to be \$1,840 per year, \$2,364 for a

TABLE 1
Burleigh County Sheriff's Office Arrest Statistics for 1977

Crimes and Arrests	Non-Indian	Indian	Total
Murder	1 (100%)	0 (0.0%)	1 (100%)
Rape	0	0	0
Robbery	3 (42.9)	4 (57.1)	7 (100)
Assault	11 (57.9)	8 (42.1)	19 (100)
Burglary	18 (81.8)	4 (18.2)	22 (100)
Larceny	25 (61.0)	16 (39.0)	41 (100)
Theft	44 (73.3)	16 (26.7)	60 (100)
Auto theft	8 (66.7)	4 (33.3)	12 (100)
Totals	109	53	162

Source: Information provided by Burleigh County Sheriff Bob Harvey to Rocky Mountain Regional Office staff, Dec. 16, 1977.

TABLE 2
Bismarck City Police Department Arrest Statistics for 1975

Crimes and Arrests	Non-Indian	Indian	Total
Burglary	32 (82.0%)	7 (18.0%)	39 (100%)
Larceny	373 (86.7)	52 (12.1)	425 (100)
Other assaults	17 (77.3)	5 (22.7)	22 (100)
Vandalism	35 (94.6)	2 (5.4)	37 (100)
Narcotic drug laws	103 (100.0)	0 (0.0)	103 (100)
Driving under the influence	215 (93.5)	15 (6.5)	230 (100)
Liquor laws	252 (85.7)	42 (14.3)	294 (100)
Disorderly conduct	58 (61.7)	35 (37.3)	93 (100)
Totals	1,085	158	1,243

Source: Information provided by Erwin Weisenburger, Personnel Department, City of Bismarck, North Dakota, to Rocky Mountain Regional Office staff, Oct. 13, 1976.

two-person household, and \$3,721 for an average family of four.¹² At the Advisory Committee's fact-finding meeting in Bismarck, Art Raymond testified that, in 1970, 49 percent of the Native American families in North Dakota had an income below the national poverty level and that the median income of Indian families in the State was \$2,827. (p.16)¹³

Incarceration and Arrest Statistics

Governor Arthur Link testified to the Advisory Committee that, although the Native American population of North Dakota is less than 3 percent of the entire State, the inmate structure of the North Dakota State Penitentiary includes 25 to 30 percent Indian persons on a continuing basis—nearly 10 times their proportion in the general population. (p. 10) On December 20, 1977, the total inmate population of the North Dakota State Penitentiary was 275 of whom 49, or 17 percent, were Indians.¹⁴ The Governor commented:

When we look at the State's population and compare the [total] prison population of Indian people with [their proportion in] the total State population of less than 3 percent, it is apparent that something is wrong and that constructive action is needed. (p. 10)

Available statistics also show that in Burleigh County the number of arrests of Native Americans far exceeds their proportion in the population. Table 1 shows that in fiscal year 1977, 32.7 percent of the arrests made by the sheriff's office for the eight most common offenses (excluding persons taken into protective custody under the North Dakota detoxification law) were Indians. As indicated in table 2, 12.6 percent of the arrests made by the Bismarck city police department in 1975 for the eight most common offenses were of Native Americans. Comparative statistics from the North Dakota Highway Patrol were unavailable because the patrol does not classify arrests according to race.

This study does not purport to identify all the possible factors that result in the disproportionate number of Native Americans who are arrested and incarcerated in North Dakota. Instead, it reviews factors operating in society and in the criminal justice system of the State that the North Dakota

Advisory Committee feels adversely affect Indian people.

Community Attitudes

Community attitudes toward Native Americans may very well underlie many of the problems Indians face in the criminal justice system. Law enforcement officers, court officials, defense and prosecuting attorneys, as well as jury panels, are members of the community and are usually selected to serve by the community. Doubtless many persons who serve in these official capacities are able to divorce themselves from prevailing feelings and attitudes that are detrimental to the objective performance of their duties. However, they are nonetheless subject to political and social pressures arising from the environment in which they find themselves.

A number of persons who were interviewed during the Advisory Committee's public meeting in Bismarck and during the field investigation expressed opinions about the degree of prejudice against Indian persons in North Dakota. Allen Olson, State attorney general, stated that some persons have strong prejudice and that the term "drunken Indian" was an all too often used generalization.¹⁵ Ralph LePera, legal counsel for the United Tribes Educational Technical Center, feels that prejudice in the State is a subtle thing, with indirect manifestations resulting from lack of understanding of Indian culture or any desire to understand it.¹⁶

Louis Plante, a Native American and project director for the Indian Center in Bismarck, was emphatic that the general attitude of the Bismarck community toward Native Americans is: "not only one of prejudice, it's outright discrimination in many cases, and I personally have experienced discrimination ... outright discrimination, even in housing." (p.24)

Alfred A. Thompson, judge of the Fourth Judicial District, stated that his experience leads him to believe that community attitudes have improved considerably over the years, though a hard core of prejudice remains. He testified at the Advisory Committee's public meeting:

...[T]here was a time when a person of American Indian blood would find it very difficult to get bail under any circumstances. I saw the day with my own two eyes, saw a law enforce-

TABLE 3
Employment by North Dakota State Agencies
as of June 30, 1977

Salary range	Total	Native American		White		Other nonwhite	
		No.	% of total	No.	% of total	No.	% of total
\$1,000- 3,900	75	1	1.3	74	98.7	0	0.0
4,000- 5,900	881	9	1.0	865	98.2	7	0.8
6,000- 7,900	2,002	113	5.6	1,880	93.9	9	0.4
8,000- 9,900	1,338	26	1.9	1,304	97.5	8	0.6
10,000-12,900	1,566	16	1.0	1,547	98.8	3	0.2
13,000-15,900	942	7	0.7	929	98.6	6	0.6
16,000-24,000	1,054	7	0.7	1,040	98.7	7	0.7
25,000 and over	160	1	0.6	144	90.0	15	9.4
Totals	8,018	180	2.2	7,783	97.1	55	0.7

Source: North Dakota Indian Affairs Commission, *Survey of State Agency Employment*. Employment data as of June 30, 1977. In a letter to Dr. Shirley Hill Witt dated May 9, 1978, Juanita Helphrey explained that this survey included only 76 out of almost 200 State agencies. Most of those contacted were in Bismarck.

ment officer run a man out of town with a .45 caliber weapon, shooting it in the air and at the ground.

Now, those days have passed,...we've come a long way. [But] I think there are people in the community and there are classes in the community who feel that nonwhites are no good.... That's disappearing to a certain extent, but there's also a hard core. As I have observed in my experience here,...[there are those in] this community who feel that we're wasting time with some people who come before the courts, some nonwhites. (pp. 202-03)

Indian employment conditions in North Dakota also may reflect underlying attitudes of the general population. A regional manpower survey in 1976 showed that, statewide, Indians are the group with the highest rate of unemployment, exceeding 35 percent in many cases.¹⁷ Juanita Helphrey, executive director of the North Dakota Indian Affairs Commission, stated that research done by that organization in 1971 shows that out of approximately 8,000 State employees less than 100 were Indians and there were fewer than 10 employed in the State Capitol itself. (pp. 35-36) In 1977, as shown in table 3, the number of Indians working for the State had increased to 180 (2.2 percent) out of a total of 8,018 employees. However, 82.8 percent of the Indians employed were in positions paying less than \$9,900 per year. This compared with 53.0 percent of the total whites employed by the

State within those same pay scale categories.

Gary Cardiff, civil rights officer for the State department of social services, pointed out that North Dakota is one of two States (the other is Alabama) that do not have some form of human or civil rights statute. A human rights bill, similar to SB 2424 which was debated in the State Senate in 1977, is currently before the Joint Study Resolution Committee on Social Welfare. If passed, this would prohibit discrimination on the basis of race, color, national origin, age, religion, sex, handicap, or marital status. Cardiff is less than optimistic about chances for its enactment during the 1979 legislative session.¹⁸

Notes to Chapter 1

1. North Dakota Century Code (N.D. Cent. Code) §27-02-08.
2. Rule 1, North Dakota Rules of Criminal Procedures (N.D.R.Crim.P.).
3. Rule 5a, N.D.R.Crim.P.
4. Rule 5b, N.D.R.Crim.P.
5. Rule 46(a)(1), N.D.R.Crim.P.
6. U.S., Department of Commerce, Bureau of the Census, 1970 Census of the Population, *General Population Characteristics*, North Dakota, PC(1)-B36 (1971), table 17 (hereafter cited as *General Population Characteristics*).
7. Ibid.
8. Interview with RMRO staff at the Rocky Mountain Regional Advisory Committee Conference in Estes Park, Colo., Mar. 21, 1978.

9. Dakota Association of Native Americans, "North Dakota Off-Reservation Indian Legal Services Project," Jan. 21, 1976 (an unpublished project proposal).
10. "Indian Census Ends," *Bismarck Tribune*, July 3, 1976.
11. Dakota Association of Native Americans, *North Dakota Off-Reservation Indian Census* (1976), p. 11.
12. Information supplied to Rocky Mountain Regional Office staff by David Waldron, director, Area Low Income Council (Ramsey County Community Action Program), May 26, 1976.
13. Page numbers in parentheses cited here and hereafter in the text refer to statements made to the North Dakota Advisory Committee at its factfinding meeting in Bismarck, North Dakota, on Dec. 9, 1976.
14. Cathy Jensen, legal records clerk, North Dakota Penitentiary, letter to Thelma Stiffarm, RMRO, Dec. 20, 1977.
15. Rocky Mountain Regional Office staff interview in Bismarck, July 14, 1976.
16. Rocky Mountain Regional Office staff interviews in Bismarck, May 24, and Oct. 26, 1976.
17. "Survey Finds High Indian Unemployment," *United Tribes News*, May-June 1976, p. 1.
18. Telephone interview with Rocky Mountain Regional Office staff, Mar. 29, 1978. See also Gary Cardiff, letter to Dr. Shirley Hill Witt, Apr. 28, 1978.