

Indian Civil Rights Issues in Montana, North Dakota, and South Dakota

A report of the Montana-North
Dakota-South Dakota Joint Advisory
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
Montana-North Dakota-South Dakota
Joint Advisory Committee.

August 1974

INDIAN CIVIL RIGHTS ISSUES IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

A report prepared by a Joint Committee
with participants from the Montana, North
Dakota, and South Dakota Advisory Committees
to the United States Commission on Civil
Rights.

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The findings and recommendations contained
in this report are those of this Joint
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 Joint
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Commission, and will be considered by the
Commission in formulating its recommenda-
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LETTER OF TRANSMITTAL

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August 1974

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Sirs and Madam:

Because of the similarity of conditions under which American Indians live in Montana, North Dakota, and South Dakota, representatives from Commission Advisory Committees in these three States joined together in this regional study. We took stock of the civil rights status of the American Indian here, and examined issues relating to education, employment, health and welfare services, housing, and the administration of justice.

With Commission staff assistance, we collected substantial amounts of information on problems affecting urban as well as rural and reservation Indians.

That we found poverty and injustice and systematic neglect did not startle us. Nor do we expect it to startle you. Your own hearings on reservations and in cities of the Southwest brought out stories and statistics that undoubtedly are carbons of those we have collected. And the drama of Wounded Knee has helped to let the Nation know that Native Americans are hurting.

What did jolt us is the degree to which they are hurting. For Indians in our States, substandard housing is the rule, not the exception. Documented in our study are unemployment rates ranging as high as 69 percent, widespread and blatant misuse of Federal funds intended for Indian school children, and statistics showing white men's towns with jails full of Indians.

In our report, we chose to deal with numbers and facts instead of emotions. It gave us a stronger base from which to draw conclusions and to make recommendations.

We are offering many recommendations. They are directed locally, to individual States, and to the national bureaucracy.

We are confident that when you have completed reading this report, you will use your national prestige to help us make inroads into problems which are the shame of our Nation.

Thank you. I am, respectfully,

/s/

Oliver E. Laymon
Co-Chairman

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Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D. C., by editor Laura Chin, with assistance from Mary F. Newman, under direction of Charles Ericksen, chief editor. Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

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: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the 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 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 the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

You will forgive me if I tell you that my people were Americans for thousands of years before your people were. The question is not how you can Americanize us but how we can Americanize you.... [The] first thing we want to teach you is that, in the American way of life, each man has respect for his brother's vision. Because each of us respected his brother's dream, we enjoyed freedom here while you people were busy killing and enslaving one another across the water.... We have a hard trail ahead of us but we are not afraid of hard trails.

--An American Indian,
from The Legal Conscience:
Selected Papers of Felix Cohen

CONTENTS

PROLOGUE	viii
CHAPTER ONE	
Indian Education	1
CHAPTER TWO	
The Employment Patterns of American Indians in Montana, North Dakota, and South Dakota	12
CHAPTER THREE	
The Provision of Health and Welfare Services to Indians in Montana, North Dakota, and South Dakota	25
CHAPTER FOUR	
Indian Housing--An Overview of Indian Housing Conditions in Montana, North Dakota, and South Dakota	34
CHAPTER FIVE	
The Administration of Justice and the American Indian in Montana, North Dakota, and South Dakota	41
FINDINGS AND RECOMMENDATIONS	48
APPENDIX A	57

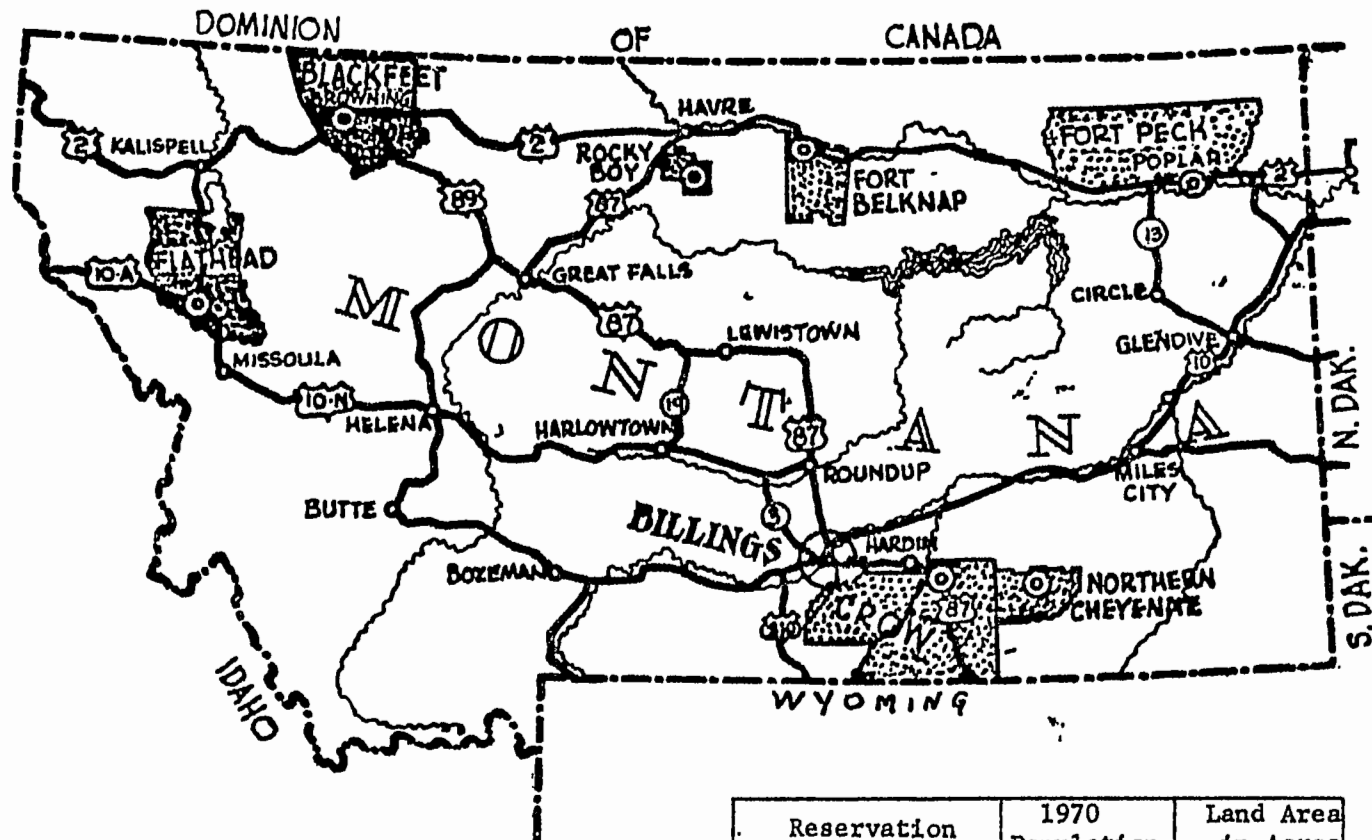
PROLOGUE

According to the 1970 population census, the total resident population in Montana, North Dakota, and South Dakota is 1,977,677. There are 73,864 American Indians in the three States: 27,130 in Montana; 14,369 in North Dakota; and 32,365 in South Dakota. Estimates from the Bureau of Indian Affairs indicate that the majority live on or adjacent to the 20 Federal reservations in the area. Those Indians living off the reservations are mainly concentrated in the cities of Great Falls and Billings, Mont.; Bismarck, Dunseith, Grand Forks, and Minot, N. Dak.; and Rapid City, S. Dak.

In Montana, the Indian population on the seven reservations includes members of the Blackfeet, Crow, Salish, Kootenai, Gros Ventre, Assiniboine, Sioux, Northern Cheyenne, and Chippewa Cree Tribes. The Blackfeet, Crow, Sioux, and Assiniboine Tribes (Fort Peck Reservation) are the largest in the State. (See Fig. 1). In North and South Dakota, the Sioux or Dakotas (Santee, Wieiyela, and Teton Divisions) predominate, with North Dakota also being the home of the Turtle Mountain Band of Chippewas, and the Three Affiliated Tribes (Mandran, Arikara, and Hidatsa). (See Fig. 2). All seven tribes of the Teton Sioux Division are represented on the reservations in South Dakota. The Oglala Sioux are the most numerous. They settled on the Pine Ridge Reservation, the largest reservation in South Dakota, after the Massacre at Wounded Knee in 1890.

The Indian population in Montana, North Dakota, and South Dakota suffer from more injustices and indignities than other minority groups in the area. They live in the most deplorable housing; their children

ix



Reservation	1970 Population	Land Area in Acres
Blackfeet	6,160	906,441
Crow	4,100	1,566,980
Flathead	2,830	616,816
Fort Belknap	1,780	616,047
Fort Peck	3,990	964,804
Northern Cheyenne	2,490	433,594
Rocky Boy's	1,180	107,612

NORTH DAKOTA

Reservation	1970 Population	Land Area in Acres
Fort Berthold	2,720	418,002
Fort Totten	1,990	50,154
Turtle Mountain	7,380	70,240

SOUTH DAKOTA

Reservation	1970 Population	Land Area in Acres
Cheyenne River	4,230	1,419,499
Crow Creek	1,180	123,531
Flandreau	270	2,356
Lower Brule	620	114,219
Pine Ridge	11,500	2,778,000
Rosebud	7,400	978,230
Sisseton	2,120	106,932
Standing Rock	4,890 ¹	847,799
Yankton	930	34,932

¹ 47 percent in N. Dak.

Sources:

Bureau of Indian Affairs. Estimates of Indian Population on or Adjacent to Federal Reservations, by State and Area: March 1972.

U.S. Department of Commerce. Economic Development Administration. Federal and State Indian Reservations: An EDA Handbook.



Fig. 2

attend overcrowded and shabby schools; their unemployment rate is high; they suffer from incredible poverty; and their basic civil rights are often denied. They have seen their cultures eroded and their lands taken away.

A special Joint Committee of members from the Montana, North Dakota, and South Dakota Advisory Committees conducted three days of open hearings, Sept. 23-25, 1971, in Rapid City, S. Dak., to examine the civil rights concerns of American Indians living in the three States. Because of the large number of reservations and the significant percentage of reservation Indians in the total population of the three States, the hearings were oriented toward reservation and rural Indians.

Testimony was presented by Federal, State and local officials, in addition to representatives from the many tribes and communities. The Joint Committee reviewed the education of Indian children, focusing on public education, the employment of Indians both on and off the reservations, the provisions of health and welfare services to the Indians, housing problems on reservations and in Rapid City, and the administration of justice.

This report details the findings of the investigation. They are based upon information received during the open hearings, from Commission staff and Advisory Committee interviews prior to the hearings, and from followup staff research. The Joint Committee hopes this report will increase public awareness and understanding of the critical problems facing American Indians in Montana, North Dakota, and South Dakota.

CHAPTER ONE

INDIAN EDUCATION

By every standard, Indians receive the worst education of any children in the country. They attend shabby, overcrowded public schools which lack even basic resources. They are taught by teachers untrained, unprepared, and sometimes unwilling to meet their needs. They enter school late and leave early. The percentage of Indians who drop out of school is twice that for all other children. Among the Indian population, fully two-thirds of the adults have not gone beyond elementary school, and one-quarter of Indian adults are functionally illiterate--they can't read street signs or newspapers. The educational system has failed Indians. The Federal government's obligation to support Indian education has not been fulfilled.¹

The issues involved in the education of Indian children are complex. At stake is the whole question of the ability of public schools to meet the needs of Indian students. According to testimony received by the Montana, North Dakota, and South Dakota Joint Advisory Committee in Rapid City, S. Dak., September 23-25, 1971, and additional data collected by the Advisory Committee since that date, public schools in those States have not been successful in meeting the needs of Indian children. Witnesses at the open meetings said that the quality of the teaching personnel was generally poor, that Indians have been discriminated against in applying for teaching and administrative positions in the various school districts, and that Indian participation in school policy or curriculum development was often nonexistent.

A major allegation made during the Rapid City informal hearing was that white educators and administrators forcefully inculcate values

1.. NAACP Legal Defense and Educational Fund, Inc. An Even Chance (New York, New York, 1971), p. 2.

alien to local Indian cultures. The Indian tribal culture is all-encompassing. The youth who grows up in a traditional Indian community, with respect for the traditional religious and ceremonial values, is likely to be well adjusted to tribal life, but may need special help from his teachers to adjust to a different environment. According to statements by witnesses, however, this help is not always provided; in fact, in many cases, outright coercion is applied to force conformity.

The Advisory Committee was told that Indian parents are increasingly outraged over the public schools' failure to meet the needs of their children; that they want a voice in the educational decisions affecting their children and they want to know how Federal money in the local districts is being spent.

During fiscal year 1972, the Bureau of Indian Affairs (BIA) estimated that approximately 35,100 Indian children between the ages of 5 to 18 were attending public, Federal, private, and church-related schools in Montana, North Dakota, and South Dakota. More than 20,000 (55 percent) of these children were in public schools.

During the 1971-72 school year, the Bureau of Indian Affairs operated seven boarding schools, 24 day schools, and one hospital school in the region. Nearly 5,000 Indian children were enrolled in these Federal schools, with approximately 2,200 in boarding schools and the rest in day schools.

2. U. S. Department of the Interior. Bureau of Indian Affairs. Fiscal Year 1972: Statistics Concerning Indian Education. Data are extracted from tables 1, 4, and 5.

Federal responsibility for Indian education is based on treaties signed by Indian Nations and the United States Government and on laws passed by Congress which provide funds specifically for educating Indian children.

In the past 10 to 15 years, the Federal Government has assumed much of the financial responsibility for educating Indian children enrolled in public schools. Almost all of the money made available to local school districts to educate Indian children is channeled through three major programs--Impact Aid, Title I of the Elementary and Secondary Education Act of 1965 (ESEA),⁴ and the Johnson-O'Malley Program (JOM).⁵ In general, Impact Aid is designed for overall operating and construction needs of eligible school districts; Title I is designated for all economically and educationally disadvantaged children; and JOM funds are allocated specifically for special and supplemental programs for Indian children. According to one study, the Federal Government allocated more than \$66 million or approximately \$350 per pupil to local school districts for educating Indian students during the fiscal year 1969.⁶

Impact Aid, administered through the Department of Health, Education, and Welfare (DHEW), was originally designed to provide Federal funds where Federal activities created a financial burden on local school

3. 20 U.S.C. § 236-241 (1950).

4. 20 U.S.C. § 241a (1965).

5. 25 U.S.C. § 452 (1934).

6. Center for Law and Education. Harvard University. Inequality in Education: Indian Education. No. 7. February 1971.

districts. Although the law was intended to relieve the burden of tax-free military installations, it was amended on August 12, 1958, to include⁷ assistance for educating Indian children.

Title I funds under ESEA are used mainly to upgrade the educational opportunities of economically and educationally deprived children. Both BIA schools and public schools receive funds from this program based on⁸ their Indian enrollments. Virtually all Indian children qualify for Title I assistance. The Title I allocation to each school district is based on the number of children residing in a district who are from families receiving Aid for Families with Dependent Children payments or those having an income of less than \$2,000 a year. All students who attend schools with high concentrations of low-income students and who are below grade level in achievement are eligible to receive Title I services. National statistics indicate that Indian children often fall below these minimum definitions of educational and economic deprivation.

The Johnson-O'Malley Act of 1934 is the only Federal education program which uniquely benefits Indians. It authorizes the spending of Federal funds to "accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxible Indian-owned

7. Pub. L. 85-620 (1958) amending 20 U.S.C. § 238 (1950).

8. During fiscal year 1972, 24 separate projects in the Aberdeen and Billings areas were funded under Title I. Typical projects for Indian students funded under Title I include special remedial classes in English Language Arts, Reading, Bilingualism, Mathematics/Science, Behavior, Attendance, General Academic/Basic Skills, Physical Education, Special Education, and Self-Image/Experimental Deficiencies.

property in the district, and relatively large numbers of Indian children⁹ which create situations which local funds are inadequate to meet."

The Johnson-O'Malley funds are made available to public schools either through contracts with State departments of education or through tribal groups functioning as program administrators. State plans, developed cooperatively with the Bureau of Indian Affairs, take into consideration the ratio of Indian children involved, the extent of local tax efforts, other sources of income (including Federal program assistance), and the special needs of Indian children. In 1972, Indian enrollment in public schools receiving JOM monies increased to 86,765; expenditure for public schools under this program was approximately \$22,600,000.¹⁰ Approximately \$3,057,250 was allocated to the three-State area under the Johnson-O'Malley program in 1972. Montana received \$909,250;¹¹ North Dakota, \$618,000; and South Dakota, \$1,530,000.

9. U. S. Department of the Interior. Bureau of Indian Affairs. Johnson-O'Malley Annual Report, Fiscal Year 1972. (Albuquerque, 1973), p. 7.

10. Ibid., p. 72.

11. Id.

To become eligible for the JOM program, a State Department of Education or contracting tribal organization must first formulate a plan for the distribution of JOM funds to local school districts within the State. This plan must be acceptable to the Commissioner of Indian Affairs (BIA) or his authorized representative before funds are allocated to the State.

The most significant Federal requirements in the Johnson-O'Malley regulations are those that pertain to the provisions of equal educational standards for Indian children attending public schools. There are three separate provisions:

1. Equal Education Opportunities. Contracts shall specify that education for Indian children in public schools within the State shall be provided upon the same terms and under the same conditions that apply to all citizens of the State.
2. Uniform Application of State Law. States entering into a contract . . . shall agree that schools receiving Indian children, including those coming from Indian reservations, shall receive all aid from the State and other proper sources which similar schools of the State are entitled to receive. In no instance shall there be discrimination by the State or subdivision thereof against Indians or in the support of schools receiving such Indians; and such schools shall receive State and other non-Indian Bureau funds or aid to which schools are entitled.

3. Educational Standards. The State shall provide in all schools that have Indian pupils adequate standards of educational service, such standards to be equal to those required by the State in respect of (sic) professional preparation of teachers, school equipment and supplies, text and library books, and construction; and sanitation
12
of buildings.

These equal education provisions confer broad authority upon the Bureau of Indian Affairs to require States and school districts to upgrade Indian education and remedy the substantial disparities in education received by Indians compared to non-Indians as a condition of Federal assistance.

All schools receiving Johnson-O'Malley assistance are also required to establish an Indian education committee to assess the needs of Indian children, develop and implement any necessary programs, and to be responsive to the educational problems of the Indian community. This would allow Indian parents to participate in and evaluate their educational systems.

In 1973, approximately 13,700 Indian pupils were enrolled in public schools receiving JOM assistance in Montana, North Dakota, and South Dakota. In Montana, 6,482 Indian children attended public schools in 46 school districts receiving funds under the JOM program. Overall,

12. 25 C.F.R. § 33.5 (c-e). See also Correspondence from Don Barnhart, State Superintendent, Department of Public Instruction, State of South Dakota, to the Honorable Rogers Morton, Secretary of Interior, November 11, 1971.

Indians constituted about 22.6 percent of the total enrollment in these districts. In North Dakota, 13 school districts enrolling a total of 2,097 Indian students received JOM aid. South Dakota reportedly had 22 districts receiving JOM funds with a total Indian enrollment of ¹³ 5,188.

In Montana, Johnson-O'Malley funds are made available to eligible school districts under contract with the State Department of Public Instruction. In North and South Dakota, the Bureau of Indian Affairs contracts directly with Indian organizations to administer the JOM program in their respective States. The United Tribes of North Dakota administer the Johnson-O'Malley program in that State. In South Dakota, the program is administered by the United Sioux Tribes Development ¹⁴ Corporation.

Allegations were made at the 1971 Advisory Committee meeting that local school districts misused these funds. Shirley Provost, a former research assistant for the NAACP Legal Defense and Educational Fund, Inc., asserted, "There was a misuse of (JOM) funds in almost every school that we visited." One school district she visited had received about \$8,000 in JOM monies to provide bus transportation for 29 Indian students. It was later discovered that only two Indian students were riding on the bus, and that there were not even 29 Indian students enrolled in the school.

13. U. S. Department of the Interior. Bureau of Indian Affairs. Directory of Public Schools Served by Johnson-O'Malley Funds: Fiscal Year 1973.

14. Johnson-O'Malley Annual Report, Fiscal Year 1972.

When asked if there was a conscious disregard for the law regarding the misuse of Federal funds or ignorance of Federal guidelines, Mrs. Provost replied:

...I think it was both, because we found some superintendents who didn't have any idea what Johnson-O'Malley or Title I was. In some cases the secretary had to answer all of the questions. Then there were others who outright lied to us about what these funds were being used for.

Carol Rogers, an employee at Black Hills State College in South Dakota, charged that there was very little supervision over the expenditure of Title I and JOM monies by the school districts. Even when records were kept and there was some supervision, school officials were
15
not using these funds the way they were intended.

Robert Robillard, tribal council member from the Turtle Mountain Reservation in North Dakota, commented that:

The Indians are not getting any full benefit out of it [JOM funds]. They write in the program for the girls to get materials for home economics. The girls end up paying for the material. They write up programs for boys to get their gym clothes. They [the school officials], expect general assistance for BIA welfare to come in and buy this, but this is all in the JOM funds....

Witnesses also stressed a lack of involvement on the part of Indian parents in local school affairs. In some instances, local school officials had not sought out the participation of Indian parents. For the most part, however, Indian parents were not even aware that they could participate in school affairs. One witness commented:

15. Both Shirley Provost and Carol Rogers participated in a study on the utilization of Federal funds for Indian children in public school districts sponsored by the NAACP Legal Defense and Educational Fund, Inc., with the cooperation of the Center for Law and Education, Harvard University.

...We were asking why the Indian people didn't run the school board. Well, they were shocked. They didn't realize that they could. They didn't even know they could run for the school board....

When Indian parents did attempt to form a Parent-Teacher Association in one community, school officials refused to work with them. Jim Knife, leader of the local American Indian Movement in White River, S. Dak., stated, "The school officials told us there wasn't any future in it and they would handle everything that occurred in the school."

While Indian children do receive JOM assistance, often their educational achievements do not reflect this expenditure. Witnesses pointed out that Indian children not only come from a totally different cultural milieu, but are also enrolled in separate schools. ¹⁶ Too often these schools have inadequate facilities, poorly qualified teachers, and few course offerings.

Philomene One Feather, a teacher at the BIA school located on Standing Rock Reservation in South Dakota, reported inadequate and often obsolete educational facilities and instructional materials available to Indian children. She charged that:

We don't have the equipment to work with our children. The things that we work with are old.... The Indian children cannot handle the material or equipment there. They are backwards. As a result, many of them drop out....

Indian children are too poor to buy any materials and the books are so old that they are not up with

16. For an elaboration of this point and a more detailed look into Federal programs see Big Brothers Indian Program With Reservation by Sar A. Levitan and Barbara Hetrick, and The Education of Indian Children and Youth, Summary Report and Recommendation, Series IV, No. 6. December 1970, prepared by Robert J. Havighurst, Director, National Study of American Indian Education, University of Chicago.

those used by the McLaughlin public school students ...the BIA school is always behind.... We have to take it, because people are afraid to speak up. They are afraid that they might get fired or that they might get cut off from welfare.

Tom McKeon, Superintendent of Schools for District Number 9 in Browning, Mont., stated that in 1971 his district had 2,400 students enrolled in a plant that was originally designed for 1,000 students. Of the three rural schools, only two were operating; and in the high school designed for 300 students, about 575 were enrolled.

In many of the school districts very few Indians were employed. It was reported that no Indian teachers were employed in Sisseton, S. Dak., even though there were approximately 500 Indian children enrolled there in 1971. Dr. Charles Lindley, Superintendent of Schools in Rapid City, S. Dak., noted that of approximately 565 teachers employed in the district in 1971, only two were Indian. Of the 46 aides hired by the district under Title I programs, only 14 were Indian. Phillip Ross from the Fort Berthold Reservation in North Dakota remarked that only three Indian teachers had been employed by the district in the last 17 years. In the McLaughlin school District there were no Indians employed despite the fact it is located on the Standing Rock Reservation.

Thus, the inadequacies of Indian education have become commonplace. The suppression of Indian culture and language, the unfulfilled promises of Federal legislation, and the discrimination in the allocation of resources are all a familiar part of the lives of Indian parents and students. Neither the Federal Government nor the States have fulfilled their obligations to the Indian community.

CHAPTER TWO

THE EMPLOYMENT PATTERNS OF AMERICAN INDIANS IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

In March 1972, the Bureau of Indian Affairs estimated that the unemployment rate among Indians in its Aberdeen and Billings Areas was approximately 40 percent. These are the two Area Offices which service the States of Montana, South Dakota, and North Dakota. The Aberdeen Area Office services North Dakota, South Dakota, and Nebraska. The Billings Area Office services Montana and Wyoming.

In Montana, the unemployment rate among Indians was 38 percent. In North Dakota and South Dakota, Indians recorded unemployment rates of 43 and 37 percent, respectively. The average unemployment rates for Indians living on reservations in South Dakota in 1972 ranged from a low of 23 percent on the Lower Brule Reservation to a high of 69 percent on the Crow Creek Reservation.¹⁷

There were comparable unemployment rates for Indians living off the reservation and in urban areas. In Billings, Mont., Indians recorded a 23 percent unemployment rate in 1972, in contrast with the overall unemployment rate for this area of six percent. According to figures issued by the U. S. Department of Labor in 1972, the average unemployment rate in Great Falls, Mont., was approximately six percent. Of those unemployed about 11 percent were black, 6 percent were Spanish surnamed, and about 50 percent were Indian.

17. U. S. Department of the Interior. Bureau of Indian Affairs. Resident Indian Population, Labor Force, Unemployment and Underemployment; Summary by Area: March 1972.

On both the Federal and State levels in the three-State area, the employment problems of American Indians followed similar patterns. In November 1972, there were approximately 26,000 people employed by the Federal Government in Montana, North Dakota, and South Dakota. Of this total, 14,757 were classified as General Schedule (GS) employees; 4,362 were employed in the wage board system; and nearly 7,000 were working for the Post Office. Slightly over 2,300, or about seven percent of the total Federal work force in these States, were Indians.

The U. S. Civil Service Commission reported that Indians occupied 7.7 percent of all the Federal jobs in Montana.¹⁸ Classified by pay system, Indians comprised about eight percent of all the GS employees and approximately 14 percent of all the wage board workers. The majority of these Indian employees, however, were located in the lower grade and wage board levels, with over 80 percent of all the Indian GS employees at or below the GS-8 grade level. Similarly, while Indians constituted nearly 15 percent of all the regular nonsupervisory workers, over 50 percent were in wage grades 1 through 6. In contrast, only 31 percent of all the white regular nonsupervisory employees were at these wage grades.

In North Dakota, Indians made up 6.9 percent of all the Federal employees in that State in 1972. When classified by pay systems, Indians comprised 7.5 percent of all the GS employees and 14.2 percent of all the wage board workers. Again, the majority of these Indian employees

18. The following data are based upon U. S. Civil Service Commission, Minority Group Employment in the Federal Government, SM 70-72B, November 30, 1972. According to the 1970 census, Indians comprised 4 percent of the population of Montana; 2.3 percent in North Dakota; and 4.9 percent in South Dakota.

were located in the lower grade and wage board levels. Nearly 55 percent of all the Indians employed in the GS pay system were in grades 1 through 4 and slightly over 80 percent were at or below the GS-8 level. In comparison, only 20 percent of all the white GS employees were in grades 1 through 4 and slightly over 50 percent were employed at or below the GS-8 grade level.

Indians also made up over 14 percent of all the employees in the wage board system and approximately 16 percent of all the regular non-supervisory personnel in 1972. Nearly 50 percent of the Indian non-supervisory workers were in wage grades 1 through 6, while only 31 percent of all the white employees were in these grades.

In South Dakota, Indians were 12.9 percent of the total Federal work force. Overall, they comprised about 16 percent of all the Federal employees in the GS pay system and over 23 percent of all the wage board workers. Approximately 53 percent of all the Indian GS employees were in grades 1 through 4, and over 80 percent were employed at or below the GS-8 level. In contrast, only about 20 percent of all the white employees were in grades 1 through 4, with about 50 percent employed at or below the GS-8 level.

Indians also comprised about 28 percent of all the regular non-supervisory workers in the State. Nearly 50 percent of these wage board employees were in wage grades 1 through 6. In comparison, about 40 percent of all the white wage board employees were in these grades.

The largest Federal employer of Indians in the region is the Bureau
of Indian Affairs within the Department of the Interior.¹⁹ In 1972,
the BIA employed a total of 1,994 persons in the GS pay system and 826
in the wage board system. Overall, Indians constituted about 50 percent
of all the GS employees and nearly 78 percent of all the wage board
workers.²⁰

In the two area offices, Aberdeen and Billings, Indians again held
the lower grade and wage board positions. In the Aberdeen Area Office,
Indians comprised almost 48 percent of all the GS employees, yet nearly
80 percent were in grades 1 through 8. In contrast, only 31 percent of
all the non-Indian employees were in these grades. Nearly 13 percent of
all the Indian employees were in grades 9 through 11, with only about 6
percent in grades 12 through 15. In comparison, nearly 57 percent of all
non-Indian employees were in grades 9 through 11, and almost 12 percent
were employed in grades 12 through 15. (See Table 1.)

The same grade distribution exists for the Billings Area Office.
In 1972, Indians constituted approximately 57 percent of the total GS
employment in the Area Office. Approximately 50 percent of all Indian
employees were in grades 1 through 4; whereas, about seven percent of all
the non-Indian GS employees were in these grades. Of all the Indians
employed in the GS system, 13 percent were in grades 9 through 11, while

19. The BIA provides services for Indians through three administrative levels: BIA headquarters in Washington, D.C.; 12 Area Offices; and numerous agencies. The Aberdeen Area Office and the Billings Area Office are in the three-State region studied by the Advisory Committee.
20. Bureau of Indian Affairs. Personnel Division, Washington, D.C. (Tables indicated show detailed information.)

TABLE 1

GRADE LEVEL DISTRIBUTION OF GS EMPLOYEES BY RACE - BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA

GRADE LEVEL	TOTAL		BLACK		SPANISH SURNAMED		ASIAN AMERICAN		AMERICAN INDIAN		ALL OTHERS	
	M	F	M	F	M	F	M	F	M	F	M	F
1	4	3	-	-	-	-	-	-	3	3	1	-
2	10	29	-	-	-	-	-	-	8	26	2	3
3	90	120	-	-	-	-	-	-	44	103	46	17
4	59	157	-	-	-	-	-	-	52	124	7	33
5	57	83	-	-	-	-	-	-	45	50	12	33
6	26	12	-	-	-	-	-	-	19	10	7	2
7	48	39	-	-	-	-	-	-	22	7	26	32
8	5	1	-	-	-	-	-	-	4	-	1	1
9	193	169	3	5	1	-	-	-	37	29	152	135
10	7	1	-	-	-	-	-	-	1	-	6	1
11	118	28	2	-	1	-	-	-	20	11	95	17
12	79	4	-	-	-	-	-	-	27	2	52	2
13	26	-	-	-	-	-	-	-	7	1	19	-
14	19	-	-	-	-	-	-	-	7	-	12	-
15	2	-	-	-	-	-	-	-	1	-	1	-
16	-	-	-	-	-	-	-	-	-	-	-	-
17	-	-	-	-	-	-	-	-	-	-	-	-
18	-	-	-	-	-	-	-	-	-	-	-	-
<hr/>												
TOTAL	743	646	5	5	2	-	-	-	297	366	439	276
Avg GS Grade	8	5	9	9	10	-	-	-	6	4	9	7
No. of Supv	198	47	2	-	1	-	-	-	72	26	123	21

SOURCE: U. S. Department of the Interior, Bureau of Indian Affairs.
Personnel Department, USDI Output Format 03. Grade Level Distribution by
Minority and Sex. Aberdeen Area 12/31/72

nearly 44 percent of all the non-Indian GS employees were in these grades.. (See Table 2.)

In the wage board category, Indians comprised over 90 percent of all the wage level employees in the Aberdeen Area Office. Nearly 70 percent of these Indian wage level employees were making less than \$8,000 annually. Of the non-Indian employees, 64 percent were making less than \$8,000 a year.

BIA figures show a similar wage level distribution among Indian employees in the Billings Area Office. Indians comprised over 80 percent of the wage board employees in the Area Office. Slightly over 60 percent of the non-Indians were earning more than \$8,000 a year.

Indian employment in other Federal agencies in these three States follow similar patterns. (A brief analysis of selected Federal agencies appears in Appendix A to the report.) The employment of Indians in these agencies is almost nonexistent. Of the total Federal employment in the region, Indian employees are mainly concentrated in two agencies: The Bureau of Indian Affairs and the Indian Health Service (IHS).

One important factor contributing to the high Indian employment in these two agencies is the existence of the Indian Preference Clause. According to Congressional mandate: "An Indian has preference by law on initial appointment provided the candidate has established proof that he is one-fourth or more Indian and meets the minimum qualifications for the position to be filled."²¹ The Act of June 30, 1834 states:

21. Pipestem, F. Browning, Indian Preference: A Preference to Conduct Self-Government (monograph prepared for Bureau of Indian Affairs, undated), p. 8. See also U. S. Commission on Civil Rights Staff Memorandum, "Federal Policy of Indian Preference in Employment," November 1972.

INDIAN AFFAIRS

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TABLE 2

GRADE LEVEL DISTRIBUTION OF GS EMPLOYEES BY RACE- BUREAU OF INDIAN AFFAIRS -
BILLINGS AREA

GRADE LEVEL	TOTAL		BLACK		SPANISH SURNAMED		ASIAN AMERICAN		AMERICAN INDIAN		ALL OTHERS	
	M	F	M	F	M	F	M	F	M	F	M	F
1	1	6	-	-	-	-	-	-	1	6	-	-
2	4	13	-	-	-	-	-	-	4	11	-	2
3	17	43	-	-	-	-	-	-	16	38	1	5
4	31	79	-	-	-	-	-	-	31	68	-	11
5	37	54	-	-	1	-	-	-	25	34	11	20
6	11	9	-	-	-	-	-	-	3	5	8	4
7	30	12	-	-	-	-	-	-	22	8	8	4
8	4	2	-	-	-	-	-	-	2	-	2	2
9	56	16	1	-	2	-	-	1	19	6	34	9
10	3	-	-	-	-	-	-	-	-	-	3	-
11	82	4	-	-	1	-	-	-	19	1	62	3
12	53	2	-	-	-	-	-	-	13	-	40	2
13	24	-	-	-	-	-	-	-	6	-	18	-
14	10	-	-	-	-	-	-	-	4	-	6	-
15	1	-	-	-	-	-	-	-	-	-	1	-
16	-	-	-	-	-	-	-	-	-	-	-	-
17	-	-	-	-	-	-	-	-	-	-	-	-
18	-	-	-	-	-	-	-	-	-	-	-	-
Total	364	240	1	-	4	-	-	1	165	177	194	62
Avg GS Grade	8	4	9	-	8	-	-	9	7	4	10	5
No. of Supv	128	10	-	-	2	-	-	-	48	4	128	10

SOURCE: U. S. Department of the Interior, Bureau of Indian Affairs,
Personnel Department, USDI Output Format 03. Grade Level Distribution By
Minority and Sex. Billings Area 12/31/72

IRS -

In all cases of the appointments of Interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties.²²

Almost one hundred years later the Wheeler Howard Act of June 18, 1934, directed the Secretary of the Interior to:

...establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.²³

Indian preference applies not only to initial employment, but also to re-employment, reduction-in-force, and promotions. Although the Indian Health Service extended preference to cover promotions and other personnel matters in 1970, the BIA did not interpret preference to cover promotions until June 1972. At the present time, Indian preference is limited to the BIA and the IHS. Thus, no more than one-half of one percent of all Federal jobs are subject to Indian preference.

While Indians are represented overall in Federal employment in the three-State area, their employment in State government is minimal. According to a recent report prepared jointly by Public Service Careers and the South Dakota Human Rights Division (formerly Human Relations

24

22. 25 U.S.C. § 45.

23. 25 U.S.C. § 461-479 (1964).

24. The employment data in this section applies mainly to the South Dakota State government. On the basis of numerous inquiries to various State agencies and departments in Montana and North Dakota, it was discovered that no comprehensive reports or statistics existed with regard to State employment patterns, nor with the racial, ethnic and sex composition of various agencies in these States.

Commission), Indians comprised only 1.5 percent of the State government work force, with all other minorities (blacks, Spanish surnamed, and Asian Americans) constituting less than one percent of State government employees. The report also noted:

The underemployment of American Indians becomes more obvious when one compares the 1.85 percent of Indians in the State's employ to the near 5 percent of Indians in the State's population.... This is a particularly distressing figure when viewed in terms of the extremely high unemployment rate among American Indians in South Dakota. While the total unemployment rate in South Dakota is only 3.7 percent, the figures for Indian males reveal an astounding 25.3 percent unemployment; unemployment for Indian females is 12.5 percent...[t]hese figures are only a glimpse of the truth in unemployment...[and] include only those persons actively seeking employment.²⁵

Despite the presence of State laws and other safeguards designed to make the State unconscious of race or ethnic background, Indians and other minorities are underemployed in State government. In South Dakota, they are concentrated in certain departments and excluded from others. Two agencies, the Department of Social Services and the Department of Transportation, contain more than 50 percent of all the Indians employed by the State.

In a survey conducted by the Equal Employment Opportunity Commission (EEOC), in 1972, 1,980 Indians out of a surveyed work force of 116,766 were employed in 865 separate businesses throughout Montana, North Dakota, and South Dakota during that year. Overall, Indians made up about 2 percent of the surveyed labor force in these three States.

25. Public Service Careers. Report on the Status of Women and Minorities in South Dakota State Government (June 30, 1973), p. 3. This report was issued by Public Service Careers and the South Dakota Human Rights Division, with assistance from the South Dakota Economic Opportunity Office.

A large segment of the Indian labor force was employed in blue-collar occupations. Of the 1,980 Indian workers surveyed by EEOC, 1,353 or about 68 percent were classified as blue-collar workers. In contrast, 42 percent of the non-Indian labor force in this region were in this category. Over 95 percent of the Indian workers were identified as operatives, unskilled laborers, and service workers; only 4 percent²⁶ were employed as craftsmen.

In Montana, the EEOC survey covered 336 business units which had a total labor force of 48,417. Of the surveyed labor force, 1,203 were Indian. Approximately 75 percent of these Indian workers were in blue-collar occupations. In contrast, 52 percent of the non-Indian work²⁷ force were in blue-collar jobs.

The same employment patterns appear to be true for Indians in North Dakota. In 1972, EEOC surveyed 248 business units in the State. These businesses employed a total of 32,817 persons. Only 230 or less than 1 percent of those surveyed were Indian. Over 60 percent of these Indians were employed as operatives or unskilled laborers. In comparison, 31 percent of the total non-Indian labor force were employed as²⁸ blue-collar workers.

In South Dakota, Indians constituted only 1.5 percent of the total surveyed labor force in 1972. Of the 35,539 persons surveyed in 281

26. Statistics were compiled from State summaries of EEO-1 forms submitted to the EEOC from business units in Montana, North Dakota, and South Dakota.

27. Equal Employment Opportunity Commission. 1972 EEO-1 Report. State Summary: Montana 1972.

28. Equal Employment Opportunity Commission. 1972 EEO-1 Report. State Summary: North Dakota 1972.

businesses throughout the State, 546 were identified as being Indian. Nearly 80 percent of these Indian workers were employed as operatives or unskilled workers. In contrast, 40 percent of the non-Indian workers surveyed were blue-collar workers.

In attempting to explain the high underemployment and unemployment rates among Indians, witnesses at the hearing charged that discrimination by private businesses and industries was one of the major factors. In a prepared statement, Mark Atchinson, Executive Director of the Western South Dakota Community Action Agency in Rapid City, noted four factors underlying employment problems of Indians in the area:

1. Ignorance on the part of the vast majority of the white population as to the existence and nature of the problem;
2. The lack of affirmative action by the majority of the community to deal with the problem;
3. The presence of a negative stereotype of the Indian people held by a large part of the white community; (and)
4. The existence of a hard-core racist white minority who...hold positions of authority within the social, political and economic institutions of this community.

He added that in Rapid City:

...the word 'Indian' evokes a mental picture of a drunk on Main Street, a lazy welfare mother in North Rapid, a militant with a gun occupying Mount Rushmore.... [The] existence of these stereotypes in Rapid City...are responsible for much of the hate and fear that exists between the races....

Several witnesses asserted that negative stereotypes of Indians were a major problem. When Indians apply for employment they were

29. Equal Employment Opportunity Commission. 1972 EEO-1 Report. State Summary: South Dakota 1972.

usually told that the job had been filled. The excuse usually given by private employers for not hiring Indians was that they were "social misfits" or drunkards.

Moses Gill, Chairman of the Sisseton-Wahpeton Tribe, maintained that employment discrimination against Indians in that area was rampant but subtle. He pointed out that no Indians were employed in the downtown business district in Sisseton, although this community is located on the reservation.

Mr. Conrad Red Willow, employment supervisor for the United Sioux Tribes Development Corporation, said that he had had very little success in finding employment for Indians with the municipal government in Rapid City. He noted that:

We haven't been very fortunate in securing jobs for Indians within the city governments in Rapid City. There have been numerous openings available but they fall back on the old standby of you don't have enough experience.

He also alleged that many companies doing business with the Federal Government were not in compliance with their contracts concerning equal employment requirements. Mr. Red Willow asserted that there were about 38 employers in the Rapid City area alone who had Federal contracts of one kind or another. Many of these employers, he said, were not in compliance in relation to their minority employment patterns.

Tribal governments and federally funded Community Action Programs were not beyond criticism. Some witnesses maintained that nepotism pervaded tribal government employment practices. Community Action Programs were accused of hiring white people for key positions while

employing Indians only as stenographers and teacher aides even though the majority of the recipient population was Indian.

In the public and private sectors of employment, Indians have not been able to obtain entry into jobs nor move upward on equal terms with white employees. The State governments in the region have not been sufficiently aggressive in carrying out their equal employment opportunity programs. Except for the BIA and the IHS, which have specific statutory obligations to hire Indians, Federal employers have not hired Indians in any appreciable numbers. Discriminatory practices in the region have served to create a dismal employment picture for the American Indian.

CHAPTER THREE

THE PROVISION OF HEALTH AND WELFARE SERVICES TO INDIANS IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

Traditionally, the Bureau of Indian Affairs has been the major Federal agency to carry out social services for Indians. In the 1920's and 1930's other agencies entered the picture when the Public Health Service began assigning medical personnel to work in the Bureau of Indian Affairs Health Services Division. In 1955, the Indian Health Care program was transferred to the Public Health Service of the Department of Health, Education, and Welfare, and the Indian Health Service (IHS) was created.

Since the inception of the Indian Health Service, health levels of the American Indian have improved considerably. For example, from 1955 to 1968, infant death rates for Indians have declined from 62.5 to 30.9 per 1,000 births, and tuberculosis' death rates have fallen 75 per-
30 cent. Progress has been made in improving the provision of health services for Indians, but they still do not enjoy the same standards of health care afforded to non-Indians.

The Indian Health Service maintains hospitals, health centers, and health stations, augmented by services provided under contract by private medical personnel and facilities. Although an Indian can seek medical attention from private vendors, he must first receive an authorization from the Indian Health Service before he is eligible to

30. U. S. Department of Health, Education, and Welfare--Public Health Service/Indian Health Service. Indian Health Trends and Services: 1970 Edition (Washington, D.C., January 1973), p. 53.

receive contractual services. However, every effort is made to utilize existing Indian Health facilities. This means that if a specific service is not available within a particular geographical area, an Indian may be referred to another area where he can receive Indian Health Service treatment.

To determine eligibility for health service, the Indian Health Service identifies Indian beneficiaries as persons of Indian descent belonging to the Indian community served by the program. A person may be considered eligible if he is regarded as an Indian on the basis of blood, tribal membership, tribal enrollment, and/or relevant factors in keeping with general BIA practices in the jurisdiction in which the Indian community is located.

The provision of health services to Indians is not an exclusive responsibility of the Federal Government. When the Indian leaves the reservation, responsibility for providing health services is assumed by the State and local communities through public and private vendors, and he is entitled to services as any other citizen. In 1971, the IHS noted:

There currently are about 790,000 citizens who identify themselves as Indians, Eskimos and Aleuts according to the 1970 Census. Of these approximately 460,000 reside on or adjacent to Federal Indian reservations and in identifiable Indian communities in Oklahoma and Alaska. It is this group who fall under the aforementioned Federal relationship and participate in a variety of special Federal Indian programs, including the program of the Indian Health Service. The remaining 300,000 Indians live on State reservations, mainly along the eastern seaboard, and in towns and cities throughout the Nation and do not maintain a special

relationship with the Federal Government. When their social service and other needs are met, they are through the normal channels serving all other citizens.³¹

In many respects, the relationship between the Indian Health Service and the Indian community has been wrought by bureaucratic intransigence, ignorance, and anxiety. Language barriers, ignorance in seeking medical assistance, physical isolation, and cultural diversity have increased the difficulty of providing adequate health services. There are also inadequate health facilities maintained by Indian Health Service and a shortage of trained medical personnel. In this respect, the IHS has failed the Indian community. According to Dr. Herbert Wilson, a private physician from New Town, N. Dak., a grave injustice is being perpetrated against the Indians because they are forced to accept essential medical services only at IHS hospitals. Since doctors at the IHS are assigned on a rotating basis, they lack the time to build a good relationship with their Indian patients, thus adversely affecting the quality of health care.

Several witnesses testified that Indians living off the reservation are at a disadvantage in receiving health care. When Indians leave the reservation, they lose the services of the Bureau of Indian Affairs.

31. U. S. Department of Health, Education, and Welfare. Indian Health Programs 1955-1972. Publication No. 72-502. See also U. S. Commission on Civil Rights Staff Report, "Federal Policies and Programs for American Indians," November 1972, pp. 40-46.

Although they can receive services from private hospitals and physicians under contract with the IHS, they must receive prior approval from the IHS. Any services, of course, can be secured from the private sector, provided that the patient can afford it. But given the high unemployment rate and the prevalence of low wages, very few can afford private care. Under such conditions, the only option open is to return to the reservation.

Bureaucratic intransigence and the absence of clear guidelines for seeking medical aid in the private sector have hampered attempts by Indians to seek medical assistance. Kathryn Turcotte of Havre, Mont., testified that Indians living off the reservation are often refused help at the local hospital. When they turn to the reservation for medical assistance, they are told to go elsewhere. In one case related by Evadine Gilette, a student at Minot State College in North Dakota, a young pregnant Indian woman was refused admittance by two hospitals because she lacked insurance. The Air Force hospital finally accepted her even though she had no authorization from the Indian Health Service. Another witness, Wanda Medicine Horse, from the Crow Reservation in Montana, recounted an incident in which a seven-year-old boy was refused admittance by the hospital, even though he was running a fever. She says:

...they refused to help him, so the parents took him home. The second time he had a real high temperature, so they took him again to the hospital and they just gave him some cough syrup and aspirins and...sent him

home. The third time they took him to a hospital in Wyoming...the doctor looked at him and said that the boy needed medical attention real bad but that the hospital could not admit any Indian patients. So the parents decided to return...home, and on the way back the boy had convulsions. They had to take him back to the same hospital again, where he died about 2 hours later.

Welfare assistance problems are just as critical as that of inadequate health care to Indians both on the reservation and in urban areas. The Bureau of Indian Affairs and the various State welfare systems are the major agencies that distribute welfare on Indian reservations. To procure welfare assistance, Indians must first apply for State assistance. If not qualified for State aid, Indians can resort either to the BIA for general assistance or to food assistance programs operated by various community agencies.

State and local government officials have usually viewed welfare assistance for Indians as a Federal responsibility. Despite full
32
Federal and State citizenship rights decreed by law in 1924, many State and local officials still rely on the traditional "guardian-ward" relationship of the Federal Government. James F. Canan, Director of the BIA's Billings Area Office, stated:

It always has been the position of the Bureau and the Indian tribes that Indian citizens living off the reservation are entitled to the same services from the State that are extended to other citizens; and that Indian citizens

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32. By virtue of the Indian Citizenship Act of June 2, 1924, all Indians born in the United States are citizens of the United States. As such, they are also citizens of the State in which they live, even though they may reside on a reservation. See U. S. Commission on Civil Rights "Staff Memorandum: Constitutional Status of American Indians," March 1973.

living on reservations also are entitled to most of those services. However, there traditionally has been a reluctance on the part of State agencies, including social service agencies and some courts, to supply services to Indian citizens either because of uncertainty on jurisdiction or in the mistaken belief that Indians were "wards" of the Federal Government and that all Indian matters are within the Federal responsibility.³³

He noted that much progress had been made in overcoming this attitude and that welfare departments had increased their services.

Recognizing that the tax exempt status of reservation lands creates a financial burden for State welfare agencies, the Bureau of Indian Affairs provides funds for subsistence, called general assistance, to Indians through existing State programs. In recent years, States have assumed greater responsibility for providing general assistance and other subsistence funds to Indians. The Social Security Act of 1935, as amended, serves as the major instrument for increasing State assistance in this function.

At present, the Bureau of Indian Affairs provides general assistance to Indians in 13 States: Alaska, Arizona, Idaho, Minnesota (only on the Red Lake Reservation), Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, and South Dakota. In other States, Indians on reservations are supposed to receive assistance from State and local governments on the same basis as non-Indians. During

33. Correspondence from James F. Canan, Area Director, Bureau of Indian Affairs, U. S. Department of the Interior, Billings Area Office to Michael R. Smith, U. S. Commission on Civil Rights, Washington, D. C., September 23, 1971.

fiscal year 1971, a monthly average of over 57,500 Indians in the
 34
 above States received assistance from the BIA.

The categorical aid programs under Social Security--Aid to Families with Dependent Children (AFDC); Old Age Assistance (OAA); Aid to the Permanently and Totally Disabled (APTD); and Aid to the Blind (AB)--are administered through the States for all of their citizens, including American Indians both on and off Federal reservations. In Montana, the monthly statewide average of Indian recipients was 5,347 in 1972. In North Dakota, the monthly average of Indian recipients on reservations during fiscal year 1972-1973 was 2,908. In South Dakota, the average number
 35
 of Indian recipients statewide for the month of October 1972 was 10,580.

Several other programs such as unemployment compensation and veterans benefits also provide Indians with basic subsistence funds. However, the degree to which Indians take advantage of these programs is not precisely known. For many Indians, employment is largely seasonal, thereby precluding eligibility in some assistance programs, and many are just
 36
 not knowledgeable about benefits or how to apply for them.

34. Taylor, Theodore. The States and Their Indian Citizens (Washington, D. C., 1972), p. 31. Prepared for the Bureau of Indian Affairs, U. S. Department of the Interior.

35. These figures were provided by the Aberdeen and Billings Area Offices of the BIA. The Aberdeen Office covers North Dakota, South Dakota, and Nebraska; the Billings Office covers Montana and Wyoming. The figures reflect the differences in State laws and the varying standards of data collection by the State public welfare departments. It should also be noted that the Social Security Administration, by an Act of Congress, took over most of the categorical aid programs, except AFDC, in 1974. This was done in order to administer a more uniform policy of determining eligibility and granting assistance.

36. See U. S. Commission on Civil Rights Staff Report, "Federal Programs and Policies," November 1972.

Welfare departments in the region are hesitant to qualify Indians for welfare if any excuse can be invoked to disqualify them. This attitude is attributable to the often-held belief that since Indians pay no taxes on trust lands, they are not entitled to State welfare. Witnesses at the open hearings testified that in some cases the amount of welfare received by an Indian is reduced in relation to the amount of emergency food supplies or BIA welfare received.

There are also jurisdictional questions involved in the distribution of welfare and other social services to Indians. The Indian policy position of the Federal Government since the 1950's has been that State and local governments are responsible for all of their citizens, including Indian citizens. This is not always the case, however, since some State district court judges have taken the position that they have no jurisdiction in civil matters involving Indians, including property disputes and child custody actions.

Attempts to exclude Indian citizens from State and local programs raise definite constitutional questions concerning equal protection of the law. The Chief Counsel of the Bureau of Indian Affairs pointed out, in a memorandum dated July 8, 1953, that the refusal of the State of North Dakota to admit and care for retarded Indian children in State schools under the same rules and conditions applicable to admission and care of non-Indians would appear to deprive the Indians of equal protection of the law guaranteed by the Fourteenth Amendment to
37
the Federal Constitution.

37. See also U. S. Commission on Civil Rights, "Staff Memorandum: Constitutional Status of American Indians," March 1973.

Thus, while progress has been made in improving the health status of Indians living in Montana, North and South Dakota, Indians do not enjoy the same level of health attained by non-Indians. There are complex jurisdictional problems involved in providing health and medical care to Indians. The provision of health services to Indians is not an exclusive responsibility of the Federal Government but one that is shared with the respective State and local governments.

As with education and health services, the Federal Government has taken the position that Indian citizens are entitled to the same welfare services from the State that are extended to other citizens. But there has been a reluctance on the part of many State welfare agencies to supply services to Indian citizens either because of jurisdictional questions, or in the mistaken belief that Indians are "wards" of the Federal Government and are, therefore, solely their responsibility.

CHAPTER FOUR

INDIAN HOUSING--AN OVERVIEW OF INDIAN HOUSING CONDITIONS IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

Data from the Aberdeen and Billings Area offices of the BIA indicate that there are approximately 14,350 housing units presently owned by Indians living on reservations in their States. This would include the States of Montana, North Dakota, South Dakota, Wyoming, and Nebraska. An additional 888 new homes were constructed on reservations in these States during fiscal year 1972. The BIA estimates that slightly more than half of all Indian housing in the Aberdeen and Billings Areas are in substandard condition, and nearly 70 percent of these substandard dwellings need to be replaced.³⁸ The BIA also reported that over 2,000 Indian families need basic housing and that approximately 7,000 new housing units are required just to replace existing substandard units and to meet present demands.

A number of agencies are involved in Indian housing. The Indian Health Service, the Bureau of Indian Affairs, and the Department of Housing and Urban Development coordinate their activities, with no Federal agency working independently of the other. For example, while the Department of Housing and Urban Development is responsible for the financing of low-cost housing, the Indian Health Service is involved in the acquisition of adequate sources of water and sewage disposal systems.

38. U. S. Department of the Interior. Bureau of Indian Affairs. Consolidated Area Housing Inventory: Fiscal Year 1972 (Washington, D. C.).

The Indian Health Service operates two basic housing programs. In areas where a number of new homes are established, the IHS has the responsibility for constructing the community's water and sewage system. This program is administered by the IHS' Office of Environmental Health. In other programs, such as the Department of Housing and Urban Development's Mutual Help Housing Program, the IHS provides technical assistance. This assistance is usually related to site evaluation, construction inspection, and construction of water and sewer facilities.

The IHS also works in conjunction with the Bureau of Indian Affairs in providing home sanitation facilities. If the BIA's Home Improvement Program requires renovation of the water and sewage system, the IHS assumes the responsibility for this work.

The BIA, through its Home Improvement Program, assists Indian families in improving their homes and bringing them up to standard conditions. This program deals mainly with renovation work on bathroom facilities, water and sewage systems. The IHS has the responsibility for the actual construction and adequacy of these facilities, with the BIA assuming the role of an intermediary between the applicants and the IHS.

The Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA) also provide housing assistance to Indian families. The FmHA makes loans to Indians living in rural areas to finance new homes or to renovate existing homes. The Department of Housing and Urban Development through its Section 203(b),

221(d), and 235 programs insures mortgages for new homes. In each of these programs applicants must meet certain income requirements for their locality.

Despite the above programs, the conditions of housing for Indians living both on reservations and in non-reservation areas are deplorable. Mark Babbe, employed with the Bureau of Indian Affairs Welfare Division in the Billings Area, noted that as of June 1971 there were 4,653 housing units on seven reservations in Montana. Approximately 1,800 or 39 percent of these units were in substandard condition. On the Blackfeet and Fort Peck Reservations nearly half of all the housing was in substandard condition. Over 200 housing units needed to be replaced. A total of 267 new housing units were constructed or improved during fiscal year 1971 on reservations in Montana. About 40 percent of this housing was in the low-rent category; the rest was in mutual help and housing improvement categories.

Allegations were made that disorganization and lack of coordination between the BIA and the tribal housing authorities, and between Federal agencies, were major factors for much of the inadequate housing on the reservation. An example of this lack of coordination was described by Phillip Ross from the White Shield district in North Dakota. He said that many Indians living in the White Shield area were forced to go without water and sewers for nearly six months even though they were living in newly built homes. He alleged that:

The contractor had built these houses and when the Public Health Service was supposed to come into the picture to do the sanitation part of it, no funding was available and so there was delay. This meant that another department in public health--that was supposed to drill the wells and put in the waterworks--was also delayed. As a result, when the homes were done, there were no facilities. However, the housing authority had no choice but to put these people into the houses because they were desperate.

Housing conditions for Indians living in non-reservation areas are reportedly just as bad. Thomas De Grazia, an attorney from Rapid City, said that out of a possible 1,400 homes in the North Rapid City area--a predominantly Indian residential area--over 200, or approximately 14 percent were so bad that they had to be torn down by the city because they could not meet minimum code standards. In many instances, these homes were not replaced. Even those homes that were judged to be livable were usually in bad condition. In fact, only 41 percent of all the homes in this area met city building code standards.

Kathryn Turcotte, Vice Chairman of the Montana United Indian Association, Havre, Mont., pointed out very clearly the housing problems that Indians face:

Practically every Indian family lives in an old shack or an old run-down apartment. This is the only thing they can get and some pay as high as \$95.00 for these old run-down apartments. The plumbing is usually out of order, the plaster is falling from the ceiling--I have been in almost every home in our area and I have witnessed this at first hand--and the landlords generally say. . . 'There's no use fixing it up, because we just rent to Indians.'

It was also reported that landlords in such towns as Sisseton, Vermillion, and Spearfish are reluctant to rent to Indian families.

The reasons usually cited were that Indians do not take care of their homes or that their relatives usually lived with them thereby causing overcrowded conditions. When landlords do rent to Indians, they often charge exorbitant rents for substandard houses.

Thomas De Grazia noted that the landlord is able to take full advantage of the very tight housing market in the city. For instance, one of the first questions the landlord asks when an Indian attempts to rent an apartment is whether or not he or she is on welfare. If the person says yes, the rent goes up to a minimum of \$100 a month. Mr. De Grazia said that the number of landlords engaged in these practices in Rapid City is very small.

Another practice reportedly used by some realtors in the Rapid City area is to buy out smaller landlords who already rent to Indians. Once these realtors buy the property, they can require the tenant to sign a lease. If the tenant refuses, he can be evicted. If the landlord evicts the tenant, he can then increase the rent for the next tenant. As a result, a limited number of landlords control much of the housing in Rapid City, particularly in the Indian communities.

According to Mr. De Grazia, it would be very difficult for a tenant to submit a complaint against these landlords. In many instances, he said, leases carry a provision which states, in effect, that if anyone signs a complaint against the tenant at police headquarters, the landlord has the right to evict the tenant, who would then forfeit all rent and security.

The availability of credit for Indians was also discussed during the Rapid City meeting. It was pointed out by many of the witnesses that credit is usually not available for Indians who wish to purchase their own homes because of their poor credit ratings. For example, it was reported that the FmHA will seldom make loans to Indian applicants because they are considered bad risks. Mr. Jerry Nagel, a housing specialist with the North Dakota Office of Economic Opportunity, described the FmHA program in that State as being totally inadequate in terms of providing home loans to Indians.

One reason for this lack of responsiveness to Indian housing needs can be attributed to the way the FmHA has structured its review system. Each State is broken up into subregions and a selection committee is designated to review loan applications from each of the regions. It was discovered, through staff investigations, that white ranchers tended to dominate these boards. A number of witnesses alleged that it was usually against the interest of white ranchers to give loans to Indians who would then be in a better position to use the land that was leased mainly to other white ranchers.

During the 1971 fiscal year, the FmHA reported that 403 applications from Indians for initial loans were submitted for consideration in Montana, North Dakota, and South Dakota. Slightly over 200 or approximately 53 percent of these applications were for rural housing loans. Only 71 or about 33 percent were approved. In contrast, 1,900 or approximately 50 percent of all the initial applications for rural

housing loans submitted by whites in the above States were
39
approved.

Despite the building programs and the efforts of many public and private agencies, serious housing shortages continue to exist on many Indian reservations in the three-State area. Federal agencies have been unable to resolve problems of substandard housing. Subtle discrimination discourages Indians from securing a home in certain areas. As a result, they are usually forced to live in ghettos bordering the towns and cities with very little hope of betterment.

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39. During the FY 1971 American Indians in the region received a total of 217 loans worth approximately \$2.5 million. Whites, on the other hand, received a total of 8,009 FHA loans valued at over \$89 million. What is more significant is that while 54 percent of all the loan applications submitted by Indians were approved, over 80 percent of all the loan applications submitted by whites were approved. Source: Farmers Home Administration, Statistical Division, Washington, D. C.

CHAPTER FIVE

THE ADMINISTRATION OF JUSTICE AND THE AMERICAN INDIAN IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

The American Indian probably has more "justice" administered on him than any other citizen of the United States. Reservation Indians are subject to the jurisdiction of the Federal Government, tribal governments, and to State, county, and local authorities. Jurisdictional lines often conflict and generally work to the disadvantage of the Indian community.⁴⁰ Compounding this conflict is the belief by many Indians that law enforcement officers are discriminating and oppressive.

At the time of the open meeting in Rapid City, the municipal police force there consisted of 69 officers, two of whom were Indian. One Indian officer served as director of the Community Relations Department. The absence of Indian police officers has aggravated the problems between police and the Indian community, according to witnesses.

According to the 1970 census, Rapid City had 43,836 inhabitants; 2,112 were Indian. Ronald Messer, who was the Rapid City police chief at that time, stated that approximately 3,900 arrests were made by the police in 1970. Slightly more than 60 percent of all those arrested were Indian. There were 2,313 arrests for public intoxication alone in 1970--77 percent involved Indians. Witnesses at the hearings believed that a double standard of justice was imposed upon the Indian people. They

40. See U. S. Commission on Civil Rights "Staff Memorandum: Constitutional Status of American Indians," March 1973.

pointed to the alleged indiscriminate and widespread arrest of Indians for public intoxication in the downtown bars. Witnesses asserted that when Indians attempted to protest to the arresting officers, they were often roughed up, put in jail, and additionally charged with resisting arrest.

Allegations were also made that law enforcement officers harrassed and intimidated Indians. There were instances where police, together with the sheriff and State Highway Patrol, had followed Indians home, broken in, and destroyed property. Several Indians have reportedly⁴¹ been severely beaten by police officers and hospitalized. Ruth A. Hunsinger, an employee with the Western South Dakota Community Action Program and responsible for processing citizen complaints against law enforcement officers, asserted that the Indians did not want to lodge⁴² a complaint against an arresting officer for fear of reprisals.

At the Fort Belknap and Rocky Boy's Reservation in Montana, the Commission staff heard allegations of widespread police brutality against Indians in towns bordering the reservations. Witnesses charged that Indians were subject to cruel and inhuman treatment while incarcerated. It was reported that Indian prisoners were not given

41. See U. S. Commission on Civil Rights. Field Trip Summary: Rapid City, South Dakota, Field Trip--July 20-29, 1971. Report available in Commission files.

42. Ms. Hunsinger is also a member of the South Dakota State Advisory Committee to the U. S. Commission on Civil Rights. At the time of the open meeting, Ms. Hunsinger testified in her capacity as a private citizen and not as a member of the State Advisory Committee.

blankets in the winter, that some were forced to eat their meals on the floor with no utensils, and that others were denied medical services.

Allegations were made that the police in Rapid City seldom responded to calls from the Indian community. Major complaints from Indians living in the Sioux Addition, an Indian community about four miles outside the city limits, focused on the lack of police protection. Witnesses charged that too often the county sheriff refused to answer calls for police assistance from outlying districts by claiming that they had no jurisdiction, yet the city police would frequently enter the area in search of a suspect. Similar complaints were also registered concerning the Sisseton Reservation in South Dakota. In many cases, the police insisted that they could not intervene in matters because it was an "intra-family" or "intra-tribal" affair.

Many witnesses believed that a double standard of justice was being administered upon the Indian people. They pointed to the treatment by police of Indians, the excessive arrest and conviction of Indians for public intoxication, inadequate police protection, and the fear of reprisals. To many, this double standard was most apparent in the courtroom.

43. See U. S. Commission on Civil Rights. Field Trip Summary: Rocky Boy's and Fort Belknap Reservations, August 9-11, 1971. Report is available in Commission files.

44. Field Trip Summary: Rapid City, South Dakota.

45. Staff interviews with residents of the Sisseton Indian Reservation, South Dakota. Interviews available in Commission files.

A fair trial for an Indian is dependent upon the availability of free legal assistance. It was reported that many Indian defendants do not receive any legal assistance prior to the trial. Indian defendants often feel that court-appointed attorneys do not adequately represent them. One legal aid attorney asserted that professional attorneys have a propensity to plead Indians guilty. Witnesses said that many Indians preferred to plead guilty in order to receive shorter sentences. They stated that bonds were more difficult to get and were usually set higher for Indians than for whites. Judges in towns near reservations were alleged to fine Indians the exact amount of money they had in their pockets. One judge allegedly set high fines for Indians in order to finance garbage haulers and street cleaners for the town. Indians convicted of crimes in this town were given the "opportunity" to work the fine off. Not uncommon, according to witnesses, is the practice of suspending sentences for Indians convicted on misdemeanor charges on the condition that they leave town.

46

The administration of tribal justice has afforded Indians little relief. Tribal judges are normally appointed or confirmed by the tribal councils. Witnesses charged that tribal judges could not be objective in dispensing justice because they owed their loyalties to the tribal councils.

46. Field Trip Summary: Rapid City, S.D. See also "Prisoners in South Dakota Jail Work on Farms, Workdays Don't Count on Sentences." Minneapolis Tribune, September 26, 1971, p. 18.

John De Sersa, publisher of the Shannon News on the Pine Ridge Reservation in South Dakota, asserted:

...tribal judges are so wrapped up in any tribal policy that they could not run the court right to begin with because every movement has to coincide with the people in power...because if they didn't, then their job would be in jeopardy. So how can you go ahead and make decisions against the people in power?

Reportedly, Indians on the reservations have been jailed without being informed of their alleged crime, and restraining and child support orders have been issued in disregard of judicial procedures. In one case on the Pine Ridge Reservation, a man and his wife were reportedly arrested by tribal police, neither advised of their alleged crime nor informed of their rights, and not notified that their children had been taken away.

Federal law limits the criminal jurisdiction of tribal courts to crimes which are punishable by no more than six months in prison and a \$500 fine. All felony jurisdiction for crimes committed on reservations, either by Indians or non-Indians, is the responsibility of the Federal Government (under the Ten Major Crimes Act 18 U.S.C. 1153). This responsibility is exercised on reservations through the BIA special officer assigned to the reservation and local FBI agents. Louis Goodhouse, Chairman of the Devils Lake Sioux at Fort Totten in North Dakota, and other tribal officials have complained about the exercise of this function. According to Chairman Goodhouse:

47. Staff interview with Jane Bickford, VISTA volunteer, Pine Ridge Reservation, Pine Ridge, S. Dak., July 1971. Staff interview is available in Commission files.

Every time we go in and ask for an investigation on the reservation, BIA personnel just come out and look at the place where the crime was committed, and say, 'We'll see what we can do about it.' More often than not, little is done and the incident is quickly forgotten.

He alleged that the BIA and the FBI have not taken seriously their responsibility to investigate such crimes as murder, aggravated assault, and rape.

Jim Knife, from White River, S. Dak., said that the FBI usually did not make a serious effort to investigate crimes on the reservation, but relied on the BIA police. However, instead of actively participating in an investigation, BIA officers assume the responsibility to maintain and preserve the scene of the crime until the FBI arrives. According to Chairman Goodhouse, this may take days and, therefore, the role of the BIA is relatively useless.

Complaints were heard about the quality of the administration of justice provided by the BIA on reservations. ⁴⁸ Witnesses said that BIA law enforcement officers seldom work closely with the tribe. Their response to emergencies was often ineffective and did not provide adequate protection to tribal members, especially in the more isolated areas of the reservations.

In conclusion, testimony indicated that two distinct standards of justice seem to be operating in the three States--one for Indians and the other for non-Indians. This double standard is reflected in the disproportionate number of Indians arrested for public intoxication;

48. See summary report on field trips to Rapid City, S. Dak. and Rocky Boy's and Fort Belknap Reservations in Montana.

in the harsh treatment Indians receive from local law enforcement agencies, especially in towns bordering the reservation; and in the way Indians perceive the administration of justice in these States. The maze of legal codes and jurisdictions facing Indians increases both the magnitude and complexity of their problems. In many instances, larger appropriations of government funds or more active and equitable enforcement of State and Federal laws could resolve much of the conflict. But the issue inherent in Indian civil rights lies in the deep distrust which has characterized the relationship between the Indian community and law enforcement officials.

FINDINGS AND RECOMMENDATIONS

From the information obtained during the three days of open meetings held in Rapid City, S. Dak., and from prior and subsequent investigations by Committee members and Commission staff, the Montana, North Dakota, and South Dakota Joint State Advisory Committee to the U. S. Commission on Civil Rights submits the following findings and recommendations:

EDUCATION

Finding 1: The Joint State Advisory Committee found disturbing indications that some public school systems in Montana, North Dakota, and South Dakota discriminate against Indian children by denying them equal educational opportunities. Clearly, Indian children do not attain the same level of education as non-Indian children and are often in an environment controlled and dominated by non-Indians.

RECOMMENDATION: The Joint State Advisory Committee recommends that the Office of Civil Rights of the Department of Health, Education, and Welfare immediately investigate the various school systems in the three-State area receiving Federal funds and take appropriate measures to correct violations of the laws. The Joint State Advisory Committee further recommends that the various State departments of education immediately undertake a major effort to (a) develop culturally sensitive curriculum materials for Indians, (b) train Indian teachers, and (c) promote teaching as a career among Indians.

Finding 2: Indian participation in school policy and curriculum development even in schools having a large Indian student enrollment is almost nonexistent.

RECOMMENDATION: The various school districts in the States of Montana, North Dakota and South Dakota should maximize the participation of Indian parents in the education of their children and vest them with more direct control over educational policies and school administration in areas with significant Indian enrollment. The Advisory Committee also recommends that the various local school

districts and State departments of education substantially increase the number of Indian personnel at all levels, especially in those school systems with substantial Indian enrollment.

Finding 3: The Advisory Committee found indications that there has been a general misuse of Johnson-O'Malley funds by local school districts in Montana, North Dakota, and South Dakota and that there has been a lack of information afforded to the Indian people about the use and availability of such funds.

RECOMMENDATION: The Bureau of Indian Affairs should implement Johnson-O'Malley regulations to ensure that funds provided by this program will be used solely for programs to meet special education needs of Indian children. In addition the BIA should immediately:

(a) Provide competent administration and management of the JOM program by improving reporting requirements and implementing a regular system of monitoring and auditing;

(b) Require actual Indian involvement in the program by increasing the role of the various Indian advisory committees authorized under the program; and,

(c) Undertake an immediate program of information to Indian communities to advise Indians of their rights under all Federal education programs and of the possible sources of funding for various programs designed to meet the needs of their children.

EMPLOYMENT

Finding 1: The employment problems of Indians in Montana, North Dakota and South Dakota are deplorable. Neither the Federal nor the State governments have taken an effective leadership role in this area. Except for the BIA and the IHS, which have specific statutory obligations to hire Indians, Federal employers have not hired Indians in any appreciable numbers.

RECOMMENDATION: The Civil Service Commission should adopt and maintain a program adequate to fulfill its obligation to assure that Indians receive an equal opportunity in securing Federal employment in Montana, North Dakota, and South Dakota. It should immediately:

(a) Monitor affirmative action programs of all Federal agencies within the States of Montana, North Dakota, and South Dakota to insure that each agency has specific plans to increase Indian employment.

Finding 2: Even though the Bureau of Indian Affairs and the Indian Health Service have employed a significant number of Indians, the Advisory Committee found strong evidence that Indian employees in these agencies are being underutilized in upper level job categories. The Advisory Committee noted the disproportionate concentration of Indian employees in lower GS and wageboard categories.

RECOMMENDATION: The Bureau of Indian Affairs and the Indian Health Service should:

(a) Evaluate their present promotion practices and employment data on job levels of Indian employees to assess existing barriers to equal employment opportunity for Indians at all levels;

(b) Develop an affirmative action program with goals and timetables to upgrade Indian employees;

(c) Make initial placements of Indian employees in positions with low Indian representation; and,

(d) Implement the Indian Preference Clause.

Finding 3: The Advisory Committee found evidence that State agencies in Montana, North Dakota, and South Dakota have been deficient in their employment of Indians.

RECOMMENDATION: Each of the three State governments should evaluate their present merit systems and job levels to assess present barriers preventing equal employment opportunity for Indians. The Committee further recommends that each State take affirmative action to recruit more Indians for employment in State agencies and establish an upward mobility program for present Indian employees.

The Advisory Committee also recommends that the Equal Employment Opportunity Commission review the employment practices of the above State governments to see if they are in compliance with Title VII of the Civil Rights Act of 1964, as amended in 1972, and require each to formulate an affirmative action program.

Finding 4: The Advisory Committee found evidence that private companies have equally dismal employment records. Several witnesses testified that part of the failure to hire Indians can be attributed to widely held negative stereotypes of Indian workers.

RECOMMENDATION: The Equal Employment Opportunity Commission (EEOC) -- in lieu of actions by various State Civil Rights and Human Rights Commissions--should initiate an investigation of employers in each of the States in order to determine if a pattern or practice of discrimination exists as the Advisory Committee believes. If such a finding is made, it is recommended that EEOC take appropriate action to see that those employers discriminating against Indians comply with Title VII.

HEALTH AND WELFARE SERVICES

Finding 1: The Advisory Committee received evidence indicating that Indians in Montana, North Dakota, and South Dakota receive inadequate medical care and treatment. Testimony also pointed out that the relationship between the Indian Health Service and the Indian community is often strained.

RECOMMENDATION: The President should seek and Congress should enact legislation substantially increasing funding to the Indian Health Service in order to upgrade and expand present IHS facilities, construct new facilities especially in urban areas, and increase the size of IHS staff commensurate with the needs of reservation and urban Indians.

The Indian Health Service should also examine its relationships with the various Indian communities and expand its orientation programs to acquaint non-Indian professionals with Indian culture, customs and beliefs in close collaboration with the various Indian tribes in the region.

Finding 2: The Advisory Committee found that private and public facilities have been reluctant to extend medical care and services to Indians living in off-reservation areas.

RECOMMENDATION: The U. S. Commission on Civil Rights should recommend to Congress that it enact legislation giving the IHS a clear mandate to seek ways to extend medical care to non-reservation Indians regardless of

where they live. The various public and private institutions in the three States should also assume more responsibility for the provision of medical and health care to American Indians. The Office of Civil Rights for the Department of Health, Education, and Welfare should investigate possible patterns of discrimination in communities with large Indian populations.

Finding 3: The Advisory Committee found that many of the problems associated with the delivery of health services to Indians have their counterpart in the delivery of welfare services. There is a reluctance to extend State welfare services to Indian residents. In many instances, State agencies still perceive Indians as being "wards" of the Federal Government. There are also other jurisdictional issues involved that need to be resolved, such as the actual dispersion of services to Indians living off the reservation and in urban areas.

RECOMMENDATION: The various State welfare agencies should carefully review their policies regarding welfare assistance to American Indians living on the reservation and in urban areas. It is also recommended that the State Attorney Generals in Montana, North Dakota, and South Dakota clarify questions concerning jurisdiction as they relate to State and county welfare assistance to Indians living on reservations.

These agencies should make a positive effort to inform all Indian welfare recipients of rules and regulations which affect them.

More Indians should be employed by the respective State welfare agencies and those non-Indians presently employed should be sensitized to the needs and cultural differences of Indians. The U. S. Commission on Civil Rights should recommend that the President seek and Congress enact legislation substantially increasing funding to the Bureau of Indian Affairs in order to expand the General Assistance Program.

HOUSING

Finding 1: The Advisory Committee heard testimony alleging a lack of coordination between Federal agencies and tribal housing authorities in constructing Indian housing.

RECOMMENDATION: The BIA should take the initiative to develop a mechanism to enhance coordination between the various Federal agencies involved in constructing new housing for Indians living on reservations.

The BIA and HUD should establish a mechanism to coordinate the various housing programs on the reservation. The BIA and tribal officials should also take advantage of existing housing programs to alleviate housing shortages on the reservations.

Finding 2: Housing conditions for Indians on reservations are deplorable, with nearly half of all housing in substandard condition.

RECOMMENDATION: The U. S. Commission on Civil Rights should recommend that the President seek and Congress enact legislation substantially increasing funding to the Bureau of Indian Affairs, Indian Health Service and the Department of Housing and Urban Development in order to expand the housing programs on Indian reservations in Montana, North Dakota, and South Dakota.

Finding 3: The Advisory Committee found indications that the Indians are discriminated against in the purchase and rental of housing in off-reservation areas. Indians are often charged very high rents for inferior housing. In some instances, lease agreements are used to intimidate Indians and prevent them from making complaints against their landlords. Evidence was also presented that Indians are restricted to certain areas.

RECOMMENDATION: The State legislatures of Montana, North Dakota, and South Dakota should enact laws requiring open housing for all minorities including American Indians. State and local governments in the three-State area should investigate allegations that landlords are discriminating against Indians regarding rent payments, lease agreements and location of housing. Both the Civil Rights Division of the U. S. Department of Justice and the Department of Housing and Urban Development should investigate allegations concerning housing discrimination against Indians living in off-reservation areas.

Finding 4: The Advisory Committee heard testimony pointing out that credit is usually not made available for Indians who want to purchase homes because they are considered to be bad credit risks. The Farmers Home Administration has also been lax in providing loans to Indians. Many loan review boards of the FHA are dominated by white ranchers who are sometimes in direct competition with Indian applicants.

RECOMMENDATION: The Farmers Home Administration and other Federal loan programs should be made more responsive to the credit needs of Indians living in the three-State area. The Farmers Home Administration should immediately allow more Indians to sit on its

local loan review boards, and the various State and private credit institutions in Montana, North Dakota, and South Dakota should liberalize credit for Indians to allow them to seek better housing.

ADMINISTRATION OF JUSTICE

Finding 1: The Advisory Committee found evidence that American Indians in Montana, North Dakota, and South Dakota suffer from unequal protection and enforcement of the laws.

RECOMMENDATION: The Governor's Office and the Attorney General's Office in each of the three States should review its court system and judicial processes to see if Indians are, in fact, receiving due process. In order to carry out this inquiry, the Advisory Committee suggests that a special board of inquiry consisting of private citizens and State officials be created in each of the above States to look into bonding and bail procedures, the provision of legal aid for Indians, the treatment of Indians while incarcerated in local jails, and the entire criminal justice system as it relates to Indians in these States.

Finding 2: Based upon staff investigations and testimony received at Rapid City, the Advisory Committee finds that police harassment and brutality against Indians in Montana, North Dakota, and South Dakota is a common occurrence.

RECOMMENDATION: In relation to police brutality and harassment, the Advisory Committee recommends that the Department of Justice have the major responsibility for investigating cases of alleged police brutality. Efforts should be made by State and local law enforcement agencies to begin an intensive sensitivity training program from police officers to acquaint them with the needs of Indians. Local and State law enforcement agencies in Montana, North Dakota, and South Dakota should also begin an intensive recruitment program to attract qualified Indians into law enforcement.

Finding 3: The Advisory Committee found indications that Indian prisoners suffer harsh and inhumane treatment while incarcerated in local jails; and that in some instances, Indian prisoners are being used for public labor in a manner which violates Federal peonage laws.

RECOMMENDATION: The Civil Rights Division of the Department of Justice should conduct an investigation into the treatment of Indian prisoners by local law enforcement agencies in the three States to determine to what extent Indian prisoners are being used for public labor or whether they are in any other manner mistreated in violation of Federal civil rights legislation.

Finding 4: In many instances, Indians are not always aware of their civil rights in relation to the courts and due process. As a result, they are often faced with situations over which they have little or no understanding or control.

RECOMMENDATION: The Attorney General's Office in each of the three States should study the possibility of increasing legal assistance to American Indians.

Finding 5: The Advisory Committee found that Indians living in off-reservation areas are not afforded the same level of police services as non-Indians.

RECOMMENDATION: The Governor's Office of Montana, North Dakota, and South Dakota, and the Attorney General's Office in each of these States should review questions regarding jurisdiction and the role of local law enforcement agencies concerning police services to Indians living in off-reservation areas. They should also issue a statement clarifying jurisdiction and guidelines for serving all citizens in their respective States. The various State legislatures, along with the Bureau of Indian Affairs, should clearly define the jurisdictional boundaries of each governmental entity having responsibilities for providing services to Indians living on and off the reservations.

Finding 6: The Advisory Committee found that Federal enforcement of the laws on the reservation through the BIA and the Justice Department was not effective.

RECOMMENDATION: Both the Bureau of Indian Affairs and the Department of Justice should increase the staff assigned to investigate and prosecute violations of Federal crimes on reservations. The BIA should also establish a clear line of responsibility for investigating Federal crimes on the reservation.

Finally, where tribal justice systems are consistent with constitutional safeguards, consideration should be given to permit Indian tribes authority to exercise criminal jurisdiction over both Indians and non-Indians for misdemeanor violations of tribal law.

Finding 7: The Advisory Committee heard testimony alleging that inequities exist on the various reservations in the three-State area regarding the administration of justice through the tribal courts.

RECOMMENDATION: Tribal leadership in each of the Indian tribes in Montana, North Dakota, and South Dakota should carefully review and assess its own judicial system.

The Law Enforcement Assistant Administration of the Department of Justice should take appropriate steps to provide additional funding and technical assistance to the various tribes in this region to upgrade tribal judicial systems and tribal police.

Furthermore, the Bureau of Indian Affairs, through its Aberdeen Billings Area Offices, should increase funding and technical assistance to the various tribes in the region in the area of criminal justice.

APPENDIX A

EMPLOYMENT DATA OF SEVEN SELECTED FEDERAL
AGENCIES IN MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA

The following data analyzes the employment patterns in seven selected Federal agencies having staff in Montana, North Dakota, and South Dakota. The data are derived from two sources: U. S. Civil Service Commission, 1972 Minority Group Study: Agency Within State, showing full-time employment as of November 1971; and Indian Health Services, Department of Health, Education, and Welfare, Overall Summary, as of September 30, 1972.

Department of the Air Force

The Air Force employed 3,150 civilians in Montana, North Dakota, and South Dakota during 1971. Of this total, only 33 or about one percent were Indian. Only nine were employed in the GS pay system. More than half of the Indian GS employees were at or below the GS-4 grade level.

Department of Agriculture

The Department of Agriculture employed 3,883 persons in the three-State area during 1971. Of this total only 53 were Indians. Fifty-one were employed in the wage board category. Of the 51 Indian GS employees, 33 or approximately 65 percent were employed at or below the GS-4 level. Thirteen or approximately 26 percent were employed in grades 5 through 8, and only five or about 10 percent were in grades GS-9 through 11.

Department of Justice

In 1971, the Department of Justice employed a total of 254 persons in Montana, North Dakota, and South Dakota. Only one was Indian.

Department of Health, Education, and Welfare (DHEW)

This agency employed a total of 1,585 persons in the three-State area during 1971. Six hundred and thirty-three, or approximately 40 percent of the work force were Indians. Nearly 50 percent of these Indians were employed by the Indian Health Service. Over 450 or about 71 percent of the Indians employed by DHEW were in the GS pay system. Almost 64 percent of these Indian GS employees were at or below the GS-4 grade level. Twenty-seven percent were grades 9 through 16. In contrast, only 15 percent of all the non-Indian employees were at or below the GS-4 level. Approximately 42 percent

were in grades 5 through 8, 28 percent in grades 9 through 11, and nearly 16 percent were employed in grades 11 and above.

One-hundred sixty-two Indians were employed as regular non-supervisory wage grade employees. Approximately 60 percent were employed in grades WG-1 through 6; 31 percent were in grades WG-7 through 9, and only two percent were employed above grade 10. In comparison, there were 53 non-Indians employed by DHEW in this wage system. Nearly 70 percent of these non-Indian employees were in grades WG-1 through 6, and 15 percent were in grades 7 through 9. Slightly over 15 percent of all the non-Indian wage board employees were above WG-10.⁴⁹

The largest number of Indians working for this agency in the region are employed with the Indian Health Service (IHS). The IHS is a component of the U. S. Public Health Service, U. S. Department of Health, Education, and Welfare. Basically, the IHS has the responsibility for providing comprehensive health services to American Indians.

As of September 1972, a total of 507 Indians were employed by the Aberdeen Area Office of the IHS and 200 Indians were working in the Billings Area Office. Overall, Indians made up approximately 56 percent of all the GS employees in the Aberdeen Area, and about 49 percent of all the GS employees in the Billings Area. In the wage board systems, Indians constituted over 90 percent of all the employees in this pay system. (See tables on pp. 60 and 61.)

Although the IHS employs many Indians in the region, the majority of these employees are in the lower grade and wage board levels. For example, nearly 56 percent of all the Indian GS employees in the Aberdeen Area Office and approximately 59 percent of the Indian employees in the Billings Area Office were at or below the GS-4 grade level. In contrast, only eight percent of the non-Indian employees in the Billings Area Office were in these grades.⁵⁰

Department of the Interior

The Department of the Interior employed a total of 4,295 persons in Montana, North Dakota, and South Dakota during 1971. Of this total, 1,319 or approximately 31 percent were

49. U. S. Civil Service Commission. 1971 Minority Group Study: Agency Within State. Full-Time Employment as of November 30, 1971.

50. Indian Health Services, DHEW. IHS Overall Summary as of 9-30-72.

GRADE LEVEL DISTRIBUTION OF GS EMPLOYEES BY RACE - INDIAN HEALTH SERVICE -
ABERDEEN AREA OFFICE

GRADE LEVEL	TOTAL	BLACK		SPANISH SURNAMED		ASIAN AMERICAN		AMERICAN INDIAN		ALL OTHERS		NOT * CODED BOTH
		M	F	M	F	M	F	M	F	M	F	M/F
GS 1- 4	234	-	1	-	-	-	-	11	192	2	21	7
5- 8	260	-	-	-	-	-	1	38	76	14	120	11
9-11	108	-	1	-	-	-	-	16	20	19	49	3
12-13	37	-	-	-	-	-	-	7	-	23	7	-
14-15	6	-	-	-	-	-	-	2	-	4	-	-
SUBTOTAL	645	-	2	-	-	-	1	74	288	62	197	21
Comm Officers	151	1	-	-	-	1	-	-	-	105	3	41
Wageboard	157	-	-	-	-	-	-	77	68	11	-	1
Other Pay Plans	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	953	1	2	-	-	1	1	151	356	178	200	63

SOURCE: Indian Health Service/Public Health Service: Department of Health, Education and Welfare. IHS Overall Summary, Aberdeen Area Office as of 9/30/72

NOTE: Table includes only full time personnel in permanent positions, except PRS which may not be in permanent positions.

*Race/Ethnic designation of employee not defined.

GRADE LEVEL DISTRIBUTION OF GS EMPLOYEES BY RACE - INDIAN HEALTH SERVICE -
BILLINGS AREA OFFICE

GRADE LEVEL	TOTAL	BLACK		SPANISH SURNAMED		ASIAN AMERICAN		AMERICAN INDIAN		ALL OTHERS		NOT * CODED BOTH
		M	F	M	F	M	F	M	F	M	F	M/F
GS 1- 4	105	-	-	-	-	-	-	8	79	2	9	7
5- 8	119	-	-	-	-	-	-	16	31	10	62	-
9-11	48	-	-	-	-	-	-	6	6	11	25	-
12-13	36	-	1	-	-	-	-	2	-	27	5	1
14-15	1	-	-	-	-	-	-	-	-	1	-	-
SUBTOTAL	309	-	1	-	-	-	-	32	116	51	101	8
COMM OFFICERS	69	-	-	-	-	-	-	1	-	51	-	17
WAGEBOARD	56	-	-	1	-	-	-	26	24	3	1	1
OTHER PAY PLANS	1	-	-	-	-	-	-	1	-	-	-	-
TOTAL	435	-	1	1	-	-	-	60	140	105	102	36

SOURCE: Indian Health Service/Public Health Service: Department of Health, Education and Welfare. IHS Overall Summary Billings Area Office. As of 9/30/72.

NOTE: Table includes only full time personnel in permanent positions, except PRS which may not be in permanent positions.

*Race/Ethnic designation of employee not defined.

American Indians. However, slightly over 1,000 or about 76 percent were employed with the Bureau of Indian Affairs in the Aberdeen and Billings Area Offices. Overall, they make up about 26 percent of the GS employees and nearly 48 percent of all the wage board employees.

Although Indians represent a fairly large segment of the work force, they tend to be concentrated in the lower grade and wage levels. For example, nearly 50 percent of all the Indian GS employees were at or below the GS-4 grade level. In contrast, only about 12 percent of all the non-Indian GS employees working for the Department of the Interior in these three States were in these grades. At the other end of the scale, only eight percent of all Indian GS employees were in grades 12 through 16; whereas over 20 percent of the non-Indian employees were in these grades. Almost 70 percent of all Indians employed in the GS system were at or below the GS-8 grade level. Only 36 percent of the non-Indian GS employees were below the GS-8 level.

In the wage board system, Indians constituted about 48 percent of all the wage board employees, and about 66 percent of all the regular non-supervisory employees in 1971. Of the 394 Indians employed as non-supervisory personnel, 38 percent were in wage grades 1 through 6, 52 percent were in grades 7 through 9, and almost 10 percent were in grades 10 through 12. This distribution compares favorably with the distribution for non-Indian employees, except for the higher wage levels where non-Indians have a decided advantage.

Department of Transportation (DOT)

The employment of Indians by this agency in Montana, North Dakota, and South Dakota was minimal. In 1971, DOT employed a total of 636 persons in all pay systems. Only two were Indians.

Veterans Administration (VA)

During 1971, the Veterans Administration employed 2,227 persons in the three-State area. Only 23 were Indians.