SOUTH DAKOTA ADVISORY COMMITTEE

TO THE

U.S. COMMISSION ON CIVIL RIGHTS

OPEN MEETING

CRIMINAL JUSTICE FOR NATIVE AMERICANS IN OFF-RESERVATION AREAS OF SOUTH DAKOTA

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December 7, 1976

8:15 a.m.

THE CHAIR: Good morning, Ladies and Gentlemen. We are about to begin this morning's session.

We are very pleased with our turnout yesterday and we hope that we will have a good day like we did yesterday.

We have one witness here and I would like the panel to take their seats.

First of all, my name is Mario Gonzalez, I'm an Oglala Sioux Indian from the Pine Ridge Indian Reservation and I am serving as chairperson for the South Dakota Advisory Committee to the U.S. Commission on Civil Rights.

There are a few comments I would like to make before we begin with today's session. This meeting is being held pursuant to rules applicable to state advisory committees and other requirements promulgated by the U.S. Commission on Civil Rights, and the commission is an independent bipartisan agency of the U.S. Government, established by the Congress in 1957 and authorized by Civil Rights Acts to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, sex, religion or national origin and to collect and study information concerning legal developments which

constitute a denial of equal protection of the laws under the United States Constitution, and appraise federal laws and policies with respect to denials of equal protection of the laws, to serve as a national clearinghouse for civil rights information and to investigate allegations of voter fraud in federal elections.

The commission has established 51 advisory committees in the 51 states which are very similar to our local advisory committee, to advise the commission on relevant information concerning matters within the jurisdiction of the commission and matters of mutual concern in the preparation of reports of the commission to the President and the Congress.

The advisory committee also receives reports, suggestions and recommendations from individuals, public and private organizations and public officials upon matters pertinent to inquiries conducted by the state committees and attend as observers, any open hearings or conferences which the commission may hold within the state.

The session today is a hearing and not an adversary proceeding as one would expect to find in a court of law.

Individuals have been invited to share with the committee information about the effect of criminal justice for Native Americans in off-reservation areas in South Dakota. Each person who will participate has voluntarily

agreed to meet with the committee. We are very concerned that we bring out all the information relating to the matter under inquiry. We are also concerned, however, that no individual be the victim of slander or libelous statements.

As a precaution against this happening, each person making a statement here today or answering questions, has been interviewed prior to this meeting. However, in the unlikely event that such a situation should develop, it will be necessary for me to call this to the attention of the person making the statement and request that he or she desist in such action.

Any person here in the audience today who wishes to participate in this open meeting on criminal justice for Native Americans, but who has not previously been invited to do so, may testify as time permits, under the following conditions: First, such a person must be interviewed by one of the committee members, and secondly, such person will be limited to five minutes in their presentation.

Other persons who wish to submit comments in writing may do so within 30 days of today.

Thank you.

MS. BUTLER: Good morning.

George Mackey?

MR. MACKEY: Yes.

Q (By Ms. Butler) Would you please state your name, address and occupation?

MR. GEORGE MACKEY

A (By Mr. Mackey) George Mackey, Calico (Phonetic) community, Pine Ridge Reservation, janitorial labor.

Q Would you prefer to be called George?

A Yes, I would.

Q George, could you please tell us what happened during your encounter with the police on September 4, 1976?

A Yes. It was towards morning, about daybreak, I'm still going to court over this, I'll talk about when I first encountered the troubles with the police. I was going down the field, there's a field and there's a railroad track. I was going -- I was running down the field and hit the ground, I got back up, and pretty soon there was two officers come up behind me and one of them hit me in the back of the head. There were two officers, one of them hit me in the back of the head, after that everything got hazy.

I woke up being carried across the field, there was probably three, four, everything was really hazy out there. Then Kathy Randall, she told me she seen three of

them throw me in the back of the van and just threw me in. See, my face was all messed up, my hair was every which way. I woke up in Pennington County Jail and I was on the floor and someone was, you know, hitting me across the head like that. This one guy, he was young, approximately in his 20's, he was an officer, he was -- I remember him kicking me. Everything was still really, really hazy after that.

Then I woke up in the cell and someone was cleaning my face, said I'm trying to be as nice to you as I can. I just lay there, I couldn't move because my head was hurting, my ears were filled with something, I don't know what, but my whole head was hurting really bad.

Next day I talked to the people in the cell next to me and it was a Gary Gibbs, Clement Long (Phonetic)..... and Ambrose Martinez, they had seen me being brought into the jail.

They said Garry Gibbs said they seen me handcuffed on the floor laying down, and there was two officers, one of them was beating me on top of the head with his fist and with his open hand on my ears and the other one was -- had his knee into my back and I don't remember that, I was knocked out. But after that the next day, the afternoon I woke up, I got up off the ground, I laid up on the bunk. I laid there, I asked them to go to the doctor because my

head was really hurting, and they said they didn't say nothing, just I'll see and a PA system in the jail.

Okay. It was eight days before I got to the doctor. I got some papers here. When I was in jail I kept notes of different things that happened to me, and things that -- I've got -- it was eight days that I was not allowed to go to the doctor, it was four days before I was able to make a phone call, I was never told I was under arrest or read my rights during the time everything happened.

Q Did you want to share with us the things that are on your log or in your notes now?

A Yes. I've got -- I could introduce these as evidence, as to -- I was in jail for 21 days, I think, 20-some odd days, but I've got different things that happened while I was in jail to different Indian people besides myself.

What they did to me was really bad because my left ear still gives me trouble now, and it's been several months now since this happened.

Q Do you have a doctor's report on your injuries or the -- a doctor's report about treatment that was administered?

A Not with me, when I went to the doctor they took x-rays of my head, give me -- they flushed my left ear out, I've got this on this paper, I'll read it, he flushed my ear much times, got little particles of sand and gravel

out of my ears, probably from being on the ground, but my ribs hurt, I remember my ribs hurt pretty bad and my head really felt bad.

I'll pick up -- see, I've got here, my lower -- Joe Nellis (Phonetic), public defender's office, had my other papers; he's supposed to be here this morning but he didn't show up so I've got here the ten, on this kind of like -- what do you call it, a -- a record, see ten, one about going to the doctors?

Well, I'll tell. Yesterday we're having trouble getting a ride for you. Okay, I went to court, it was Tuesday, that must have been what, the sixth or seventh? And asked the judge to make a phone call. That was the fourth day, and made a phone call and wasn't able to contact nobody, so wasn't able to contact a lawyer so I had to go back to court again on a Thursday. That was probably the eighth, and I didn't make no appointment for me then and made an appointment, the judge told the jailer to make an appointment for me and to get me to the doctor.

And this was six days, I suppose, yes.

Q Was that the first phone call you had been given permission to make?

A Yes, four days.

Q What -- oh, continue.

A I was supposed to go to a doctor on Friday afternoon,

and let's see, this is -- I've got the 10th here, I wish I had a calendar. Okay, the 10th must have been on a Saturday, 9/10/76, it was approximately 10:00 a.m. after I was trying to get to a doctor.

Q This was September --

A The ninth.

Q -- September, okay, it appears that the 10th was Friday.

A On a Friday? I was talking to the jailer then, what about going to the doctor's? Well, I'll see, yesterday we were having trouble getting a ride, okay, wrote a letter to Sheriff Mel Larsen, telling him I was going to file suit for $500,000.00 unless I received medical treatment in the form of x-rays and ear check immediately.

Gary Gibbs and I've got some -- Mr. Long Soldier, they all read the note, I sent out through the jailer. This is approximately 5:00 p.m. now. Ate supper, cheese sandwiches, chocolate, marshmallow pudding, hallway doors open, read -- jailer was in the hallway number two, so -- oh, I called the PA system read number two, he said, okay, could you deliver this note to Mel Larsen? Okay, he walks over, you better read it, okay. Martinez says, he can't do nothing, that's one of the guys, that's when I sent the letter out it was approximately 5:00 p.m., nothing ever became of that, this was -- this is the tenth now, this

is Friday, this is Friday evening after I tried all day, I was on the PA system trying to get to the doctor's and they told me it was for 2:30, after lunch, this was Friday now, the day before this. I waited and waited and nothing ever came of it, I was supposed to go a bond reduction hearing and go to the doctor's, I went to neither one on Friday. And Saturday I threatened to sue unless I received medical treatment and that was seven days now since this thing happened to me.

This is the 11th, approximately between 12:00 and 1:00 a.m. on the morning, we'd been up playing cards, I guess, could hear a woman screaming, I've got this written down, can hear woman screaming leave me alone, don't hit me, like you hear -- you hear things out in the hallway and you stick your ear out in the hallway and you hear people as they're bringing them in because you're on the first level just by the doors: You can see people as they bring in the prisoners. Leave me alone, don't hit me.

Then upstairs we could hear people, so there -- people upstairs could hear so they're banging on the walls, the people upstairs bang on the walls, they could hear that woman downstairs screaming.

They were saying, leave that woman alone, that's the people upstairs were saying. She's been crying, hollering for about 20 minutes. This -- it was -- it was a deep voice,

it sounded like an Indian woman definitely. They was bringing a lot of Indians in jail, lot of nonsense reasons.

This is -- that's all I have written down on this but I remember that evening, we was hollering, we was banging on the doors and telling them to leave that woman alone and the woman just, don't hit me, don't hit me, she kept saying things like this.

Q. George, could you tell us now about your own situation? What police department was involved in this incident?

A. Rapid City Police Department.

Q. Were charges filed against you?

A. Yes, I'm presently on bond and I'm -- I pled not guilty, I have a jury trial set for the fourth.

Q. Could you tell us what the charges are?

A. Third degree burglary, auto burglary.

Q. And you have described some of the treatment that you received. How long were you in jail before you appeared before a magistrate?

A. Four days.

Q. And I already know that you did request the services of a physician, you were finally granted permission to see a doctor. How much was the bail that was set for you?

A. It was set for $250.00 and I got it -- no, it was

$750.00 and I got a bond reduction hearing --

Q. You were eventually able to raise the amount of bail?

A. Yes, it was 21 days, I was having communications trouble getting the telephone call, is really difficult in the Pennington County Jail.

Q. How were you able to make bail?

A. My wife, she came up or sent the money up and the bondsman finally went the bail. Before that I'd been turned down by the bondsman. And I had $25.00 first week I was in jail a friend came to the cell and loaned me $25.00 to get out but the bondsman wouldn't go that way. I was -- the bondsman -- well, not the bondsman but the jailer said that if you're out of town, from the reservation, it will be really difficult getting bond because lot of people go back to the reservation, but I -- If you got the money, 10%, $25.00, you can't get out of jail sometimes.

And lawyers talked to the bondsman and somehow I got out of jail.

Q. And have you been -- well, the thing I'm interested in knowing is how long were you held before charges were filed? Were they filed immediately?

A. Well, first time I appeared before the judge and they said he was read my charge off and set bond for $750.00, that was four days after I was taken.

MS. BUTLER: Are there other panel members who wish to ask questions?

Q (By Mr. Muldrow) George, you stated that you were in jail four days before you appeared before a magistrate, this was over a week end, is that correct?

A Yes, it was Saturday, Sunday, Monday and it was Tuesday.

Q Why, do you know why you didn't appear before the magistrate on Monday? Was that a holiday?

A Yes, it was, everything was closed down that day.

Q Were you allowed to make any telephone calls during that time or did you --

A No.

Q -- or did you ask to?

A Yes, I asked to, I also asked to go to the doctor and I was refused and I never received no answer.

Q You were not allowed to make a telephone call although you specifically asked to?

A No, I asked the judge to make a phone call when we got back from going to court that first time I appeared in court, he told the jailer and it was several hours after we got back to the jail before I made a phone call.

Q Okay. But the first four days before you saw the judge, did you ask anybody if you could make a phone call?

A Every day. Several times.

Q And you were specifically refused that request?
A Definitely.
Q What bonding company granted you bond?
A It was [redacted] Bonding Company.
Q And you say your bond was reduced from $750.00 to $250.00?
A Yes.
Q Who is your defense attorney?
A Joe Nelis, Pennington County Public Defender's Office.
MR. MULDROW: Okay, thank you.
Q (By Mr. Walsh) I'm sorry, George, I may have missed some of your testimony but you did testify to the fact that you were beaten once on the ground and then you were beaten in jail again?
A Yes.
Q And did anybody witness your beating in the jail?
A Yes, Gary Biggs, Clement Long seen me laying down there, he said he seen one of them with the knee on my leg, they was taking turns looking at what was going out in the hallway so I said before, cell 2 was set where you could look down sideways and see out in the hallway and they seen me laying on the ground like that. And they seen one of them hit me on the ears and hit me with a fist. I don't think they seen him kick me but I remember

seeing a boot. Catching a boot when I woke up on the floor outside.

Q What recourse did you have after that, I mean what did you want to do about that type of beating, how would you report that?

A Well, I woke up and first thing I did, someone was at the door, I threw my -- come up, I was trying to make a phone call, just, I was angry. And I was stuck in a single cell by myself and there was no one else and there was two-bunk cell and there was really nothing I could do.

Q Had you been struggling when they allegedly beat you up?

A Well, as I was getting back up from the railroad track I got hit in the back of the head and after that everything just got hazy. I got hit pretty hard in the back of the head, so --

Q So you don't know whether or not you were struggling and --

A Well, I remember being woke up as they was carrying me, I was just moving around and I was in no condition to do anything because my head felt really bad.

Q How about in the jail, were you struggling then, when they allegedly beat you up?

A Well, when I woke up, everything was really hazy, I was just laying there, I felt I couldn't do nothing. I

tried to move or -- I was -- I was moving around, I remember that, but I was holding my head, trying to keep it on, it felt like it was coming off.

Q (By Ms. Butler) Are you still receiving treatment for the injuries you suffered?

A No, I haven't been back to the doctor, I was -- was planning to go back to a doctor but I haven't got around to it yet. This left ear is still kind of funny.

MS. BUTLER: Thank you.

Q (By Mr. Walsh) To your knowledge, is this a usual thing that happens in the jail, that Native Americans are beaten?

A Yes, it's well known knowledge.

Q By the Native Americans on the reservation as well as the Native Americans here in the community of Rapid City?

A Yes, everybody knows how these police are around here. Like 21 days when I spent in jail during the middle of the week, they would bring older people in for open containers, like there'd be one open container, there'd be three people, Indian people standing around, 40, 50, 60-year old people and they'd run them all in jail, they'd be doing that during the middle of the week and it seems like on week ends they wouldn't be hassling those kinds of pepple but just during the middle of the week they'd be hassling the older people quite a lot.

Q Are there any specific individuals on the police department that are, or sheriff's department, that are known as the toughies, you know, the guys that like to beat on people?

A I don't recall their names, but I seen them.

MS. BUTLER: Thank you, George.

Chris Rogers, please

A Is that it?

MR. WALSH: Yes, George, thank you.

A Should I leave these with you people then? There's more.

MS. BUTLER: Yes, please, it will be Exhibit C.

Good morning.

MR. ROGERS: Good morning.

Q (By Ms. Butler) Chris, would you please state your name, address, occupation?

MR. CHRIS ROGERS

A (By Mr. Rogers) My name is Chris Dale Rogers, and I'm 16 years old and I'm a student at Central High School.

Q And you prefer Chris?

A Yes.

Q. In an interview with a member of our commission, you described an encounter that you had with the police on September 12th of this year, would you please explain to us what happened?

A. Well, it was -- it all started that night when a friend of mine brought a bunch of stuff down to my house and I was on my way to go watch the car races. And he brought this stuff over there and he put it in my Volkswagon, in my brother's Volkswagon, and I really didn't know much about it. But when I came home that night I went directly to bed. And when I got up the next morning there was five or six police cars in my alley and I walked out there and asked what was going on.

And he just, he said what's your name? And I said Chris. And he goes all right, you just stay right over there and I went over to another officer and asked what was going on and he said, I don't know, you'll have to talk to the officer in charge.

And I asked the name of the officer in charge and he didn't give me no name. And I just went and stood around for a while and after while my little brother came over and said that they were looking in the Volkswagon and he said there was a bunch of stolen merchandise in there, Stereo and an eight-track and a few other things.

So I went over to the Volkswagon and I was going to

see what was in there and an officer came over there and told me to move away from it and I said, well, what's going on? And he goes, well, this Volkswagon is considered to be involved with a felony and I go what do you mean, involved with a felony? And he said, well, there's a bunch of stolen stuff inside of the hood of this, and I go, yeah? And I was going to open it up and look and he said, just stay away from that and I go, well, I'd like to know what is going on here, I'd like to know what's in there and what, you know, is going on.

And he still wouldn't tell me nothing. And so I went for the Volkswagon again and he grabbed me and he threw me on the ground and said, he said, well, you're being placed under arrest for obstructing an officer. And resisting arrest.

And I hadn't even done nothing yet to resist arrest or obstruct any officer. And, well, I asked him to explain to me what was going on and another officer came over and grabbed me and threw me down on the hood of the Volkswagon and pulled my arms behind my back and I was still trying to ask him what was going on, and he said just quit struggling and I said, well, I ain't struggling, I just want to know what's going on.

And then I was thrown on the ground and one officer placed his knee in my back and I could hear a bunch of the

bones crackling back there and they didn't -- it hurt for a while and then the other one got hold of my arm and he was twisting it behind my back. And he grabbed it and he pulled it back there and he put handcuffs on it and I was taken over to the car and I was standing outside of the police car and I said, well, will you explain now that you got handcuffs on me and got me under your control, will you explain what's going on?

And another officer came running over there and said get in the car and he goes, well, I'd like to know what I'm being arrested for and he goes, you're being arrested for obstructing an officer and resisting arrest. And I said, well, what do you mean? I didn't obstruct no officer and I definitely didn't resist arrest because with two police officers your size I don't see there's no way that I possibly could. I mean I was thrown on the Volkswagon and thrown on the ground. And I didn't resist in no matter except for to -- well, I did sort of try and put myself in a position where I could, you know, be free from them, but that's not resisting arrest because I just wanted to know what was going on.

And while them two officers were standing there, one of them said get in the car and I said yes, I'll get in the car as soon as you tell me what was going on and another officer came running over there and had a bottle of

Mace in his hand and he sprayed it all over my face and another one grabbed me from my shirt and ripped my shirt and pushed me down in the car.

And he grabbed my legs and just pushed me right inside of the car and locked the door and closed it. And I was taken down to the police department and during this time I was never read my rights or nothing. And when we got down to the police department I still was asking what was going on, he said all that I know is you're being arrested for obstructing an officer and resisting arrest. And you are going to be placed in detention.

I said, well, I kind of knew that, and I just wanted to know what that whole deal was about, and there was five or six people that seen all of this happen. And agreed that I was being treated very brutally, because, you know, I'm not very big compared to a couple of police officers that are six-feet-four and weigh 250 pounds.

Q Chris, did you say that there were several witnesses to this incident?

A Yes.

Q Was the car searched while you were there?

A Well, I was in bed and I didn't know it was searched in the morning, I guess the house that was all this stuff was stolen from was a couple of houses down in our alley. And the lady was walking door to door asking to look inside

of everybody's, you know, their cars and inside of their sheds and their garages, and she came to our house and she knocked on the door and my little sister answered it and, well, the lady said can I look inside of your camper and your Volkswagon? And from what my little sister said she didn't say nothing and the lady just closed the door and went and helped herself.

Q So no one gave permission?

A No.

Q You didn't give permission?

A No, I was in bed, I didn't give no permission at all.

Q Was there a search warrant?

A No.

Q Was one ever shown to you?

A No.

Q What offense, then, were you charged with, obstructing --

A Obstructing an officer and resisting arrest.

Q No question about stolen goods or anything like that?

A No. Well, when I got down to the police department they said, well, they're going to press another charge against you for receiving stolen property. And when I went to court that's what the charges were. I went to court just a couple weeks ago on this, and they was asked, well, the probation officer asked the judge to have me placed in detention, and my father and my lawyer, Ramon Roubideaux, asked

that I may stay at home under my father and mother's, you know, protection and well, the judge let me go and the only reason he let me go is because I am in school and because they wanted to get psychological testing done, and so --

Q Psychological testing?

A Yes. Or -- well, I went to a psychiatrist, in other words.

Q Yes. And this was part of --

A Yes, releasing me, that's what -- he was going to have me placed in detention, my lawyer asked that I be released to my mom and dad so that I could attend school so that I could get this testing done and -- you know.

Q Are charges still pending against you?

A Yes.

Q Have you taken any kind of legal action or filed any complaint as a result of this whole incident?

A Well, my dad just said, told me he advised me not to, you know, press any charges against them because he said if I do, they'd just, you know, be on my back more and more.

And he said, well, if you really wanted to press charges for, you know, whatever charges could be pressed, he said just wait until after your court hearing is over, until after, because, well, there's no way that they can

prove me guilty for this, maybe obstructing and resisting arrest but I had witnesses standing right there, you know, that seen me, no way was I to resist any arrest from them because they had complete control over me.

And one officer on each arm, I couldn't move at all. And --

MS. BUTLER: Are there other -- yes.

Q (By Mr. Walsh) Now, Chris, you testified that really violent things happened to you during that time, first of all you were thrown on the ground, then secondly, you were thrown on the hood of the Volkswagon, then you were thrown on the ground again, and then you were Maced and put in a car, is that correct?

A And during all that time, were you struggling at all?

A No, they was -- well, the only reason I was struggling and I wasn't really struggling, I was just, you know, trying to keep myself in a position where I could see what was going on. In an upright position. But there was no way I could struggle because they had complete control over me, I mean they were just holding me there, had handcuffs on me and there was, you know, two police officers that are as big as they were, you know, I couldn't even move, really. I couldn't struggle at all.

Q So your struggle was really in your questioning --

A Yes.

Q -- constant questioning that you made of the officers in charge as to what was happening and they responded to this questioning by this form of physical violence?

A Yes. They wouldn't tell me what was going on or nothing, they just insisted that I had obstructed an officer and insisted that I was resisting arrest by just asking what was going on, that's what, you know --

Q During this time you sound like you acted rather cool, I mean you kept your head, etcetera. Had you had other dealings with the law enforcement before this so that you knew how to keep your cool or --

A Yes, I have had many encounters with them and, well, a couple of times I was in the wrong, but then again, a couple of times I was in the right and there was nothing I could really do because, you know, they just have more control over a person my size and that's about all there is to it really, I just, you know, had to wait until I could appear before a judge and that's about all I could do.

Q So you have been in the wrong in the past --

A Yes.

Q -- in so far as breaking the law or --

A Yes.

Q But you feel that because of that perhaps there has been some harassment towards you, at least they have you spotted in the community now?

A Yes.

Q And if anything happens, you're an obvious target?

A Yes, that's true.

Q Let me ask you, what's the percentage, do you know the percentage of Native American boys and girls in going to -- are you in high school now?

A Yes.

Q Do you know what the percentage is in town, would you gather a guess?

A No, I -- I'm not really sure.

Q Okay. But you know, when I was in high school, most of us at that time, you know, with regards to law enforcement, we put out our chest and you know, the dirty coppers, you know, the flatfoots, that type of just general belligerent attitude that most of us in high school had towards authority in general, and specifically anyone wearing a badge.

Do you feel that most high school students still have sort of that attitude?

A Yes. Definitely.

Q Is there any steps taken in the high school to improve relationships between the law enforcement and high school students?

A Not really that I know of. No, there isn't.

Q Do the Native American high school students feel more

harassed than perhaps the White students? That's a very general question, but --

A Yes, they do.

Q Is that based on fact?

A Well, there are a few police officers on the force that are Native Americans and they look at those police officers as ones if they ever do get picked up they'd like to get picked up by them, because non-Indian officers on the force, they just, you know, consider these people just to be different from everybody else and a lot lower and they feel that, you know, well, we can do what we want to them because they have no really backing up, you know, no one that will stand up for them. If they ever need somebody to stand up for them, that's how I see the police officers feel about Native American.

Q Is there some communication between the Native American high school students and the two or three Native American law enforcement officers, is there pretty good sensitivity?

A Yes, they -- these officers that are Native Americans can see that this is happening to them and they, you know, they have to do their job even though these, you know, it's just that they are a lot more, you know, I guess you could say they give more of a chance to prove themselves in the right than, you know, a regular police officer, if he even

had any -- any kind of evidence that somebody did something wrong right away he'd just pick him up and take him to jail and let the judge, you know, decide what he wants to do with him. But Native American police officers, they do let them, you know, before they put handcuffs on them and all this stuff, they try and let them prove themselves innocent but they have to do their jobs, you know, if they had to take them to jail they would.

They let them try and prove themselves innocent, that they didn't commit this crime or go against this law in any way.

Q Do other Native American high school students have this sense of fuility about doing anything about the harassment such as your father counseled you in seeking some --

A No, none of them really, they just believe that they haven't got much of a chance, you know. That's about how it is, I mean I'm sure if all of them got up at one time and advised their opinion, then something would get done. But they really feel that they haven't got much of a chance, you know, to do anything about it.

Q (By Ms. Butler) Chris, I'm curious about this business of psychological testing. Is the requirement to undergo psychological testing a condition of your release into the custody of your parents? You must do this if --

A Yes.

Q Is that a standard practice to require psychological testing for -- is it for juveniles or is it a general practice or do you know?

A Well, I think it's just in the matter of how the court feels, I think they just want to see, you know, if I'm crazy or something, you know, and they want to put me in their categories of, you know, if I was crazy then I suppose that if I ever went to court for it I'd, you know, the judge would say you're not guilty because you didn't know what you was doing because you're crazy. And then, on the other hand --

Q If you had refused to undergo or refused to agree to undergo to psychological testing, you would not have been released to your parents?

A No, no.

Q I have strong feelings about psychological testing, I -- I wonder if it's a requirement and why it is, if it is.

A Well, I know that in my case it was a requirement. I wouldn't know if that's their regular procedure to have somebody psychologically tested or something, but in my case the judge said well, you can either have the psychological test or you can sit in detention until your trial, probably sit in detention after your trial until you're

sentenced to whatever you're going to be sentenced to.

Q Is this juvenile court?

A Yes.

Q So the choice was the testing or detention?

A Yes.

MS. BUTLER: Thank you.

Q (By Mr. Volk) Chris, I don't know, I missed part of this, so I'm not sure you've covered it. Has it ever been established who the woman was that came to your door, the White woman?

A No, I --

Q Was she part of the -- she wasn't part of the police department, was she?

A No, she was the lady -- well, see, from what I understood that this lady was watching the house, the parents were on vacation and this was one of their older daughters, she was about in her 20's, and she was just, you know, she'd come by every afternoon and in the evening to check on the house and that morning she had came and well, she was going door to door in our alley asking people if she could look inside of their cars, inside of their garages and things, she came to our house and knocked on the door and my little sister answered and she said can I look in your Volkswagon and you camper? And before my little sister ever said anything she might have said something, but she told me

that she didn't say nothing, the lady just slammed the door and walked out and helped herself.

Q Okay. Is it then your opinion, then, that she was the one that contacted the police?

A Yes, it was her that contacted the police.

Q Prior to coming to your house do you think?

A Well, it was probably after, she had looked inside of the Volkswagon and seen whatever she seen, and --

Q Did you talk to her at all prior to the police coming there?

A No. When I got out of bed I walked outside and there was five police cars out there and -- that's just about how it happened.

Q Well, apparently she felt something was missing and was looking for it somewhere.

A Yes. I think -- well, what I found out is that her house was broken into and that somebody had taken all the stuff out and I -- well, I know who took it out because they're the ones that put it inside of our Volkswagon.

And after she'd seen that her house had been broken into I guess she just must have figured, well, you know, it would be worth a try to look around and see if I could find any of this stuff. And she did look and she did find and then she called the police.

At this time I'd gotten out of bed and walked outside

and they were all out there.

Q (By Ms. Kline) Chris, you mentioned that one of the officers said you would be charged for possession of stolen articles. Are you still facing that charge?

A Yes.

Q You are. Who owns the car that these articles were found in?

A It's my brother's car. My older brother.

Q It isn't your car?

A No.

MS. BUTLER: Thank you, Chris, very much.

Is Theresa Red Cloud here?

MR. WALSH: Okay, we'll ask for Viola Center, Larry Adams, Jeannie White and Cleo Gayton. And Frank, are you going to fill in up here with Mrs. Gangone?

MR. GANGONE: Yes.

MR. WALSH: Are you ready, Frank, ready to go?

Okay, Viola Center, would you please state your name, occupation and address for us, please?

MS. VIOLA CENTER

A (By Ms. Center) Viola Center, 312 North St. Joe's Street.

Q. (By Mr. Walsh) Okay, Viola, let me introduce the members of the panel very quickly. Dorothy Butler on my left and Grace Kline on her left and David Volk on our far left and I'm Bill Walsh and of course you know Mr. Muldrow.

Okay, Viola, you previously talked to our staff about an incident that happened at your house on July 19th involving city police officers and a deputy sheriff. Can you now describe for us what happened at that time?

A. Yes.

Q. And would you go ahead with the description, please?

A. This was on Monday night when this happened at my house. I locked my front door and I always leave the back door open for the kids to come back in through the back door. So that's what I did, and I went down to the Sioux addition, to my aunt's, Mildred Gaudo (Phonetic) place. And then I didn't stay over there very long. I came back and here my -- my door was all kicked in and I couldn't get into that house, that house was full of Mace. And my daughter, Rachel, was laying there crying, so I asked her what happened. She said the policemen and the sheriff's department, they just came and took Gerald and Larry and Lester and Harvey, my -- to the jail, she said. So I went down to the county jail and I asked them why they kicked that door in. And the jailer at the county jail

kind of got smart at me and said, you have to talk to the state's attorney tomorrow about that, he said. So I came back to the house and about 20 minutes later this Dick Davis brought Larry and Lester and Harvey back to my house. And he told me that these boys volunteered to fix the door so he turned them loose.

But I was so mad, I really cried and he told me not to cry and he said, Mrs. Center, he said, I'll even try my best to get your boy out of the service as soon as possible, he said. And then he said he talked to the state's attorney to turn these boys loose. So they wouldn't be involved in that.

And then next morning he brought Gerald back to the house to get his shoes and some clothes, he said he's taking him out to the air base. He said if you want to visit your son you can go out to the air base and visit your son, he said.

I looked at Gerald and here his eyes was just, on his left eye his eyes was just swollen. So I said who done that to you? And he said he did, he said. He's the one that hit me in the eye, he said. So that same afternoon I went down to the air base to visit my son and then, from there they took him back to Aberdeen.

Q So they were looking for your son, Gerald, and was he AWOL from the air base?

A Yes, at that time but he was there just only one day, he came back from Florida and he was there only one day and then somebody told, I guess called in that he was back in town. And described how he dressed, so I guess they was keeping an eye on him, and then, when they came back to the house, I said why don't they come in then -- the police and the deputy know we have two doors, I said why don't they come in the back door, I said. Instead of that they want to -- they want to enter that front door that was locked, how can they open that door when it was locked? I had my skeleton key, I locked the door with my key.

Q So your back door was open and it's usually open and --

A Uh-huh.

Q -- but they had to come in through the front door and break it down?

A Yes, this is Dick Davis, the one that kicked in that door.

Q Davis is a deputy sheriff, is he?

A Yes.

Q Did they have warrants at that time?

A No, they don't have nothing.

Q And who was it that hit your son?

A Dick Davis, the one that hit my son and my daughter, Rachel, said that they handcuffed all these, Lester and Larry

and Harvey and they threw them down and they used billy-club on them. They ain't got no business to do them to these other boys.

Q Did they Mace them too?

A Yes.

Q Did any of them put up any struggle at all?

A No.

Q Why did they Mace them also?

A I don't know.

Q Why did they take all of them down to the jail? If they were only looking for Gerald?

A They were just looking for Gerald and they took -- they took the rest of them boys too.

Q Does this usually happen when they arrest a Native American, that they arrest -- arrest a group of them when they're looking for one?

A I don't know.

Q What restitution was made for your damaged door, Viola?

A Well, Lester had an attorney, his name's John Florshum (Phonetic), he said he was going to take action on this. And he came and he looked at the door and he said, if you give me all your permission, he said, I'll take action on this, he said, whatever, I'll sue the city, he said, I'll get 40% out of it so I said go ahead, I said.

And here there was one of his lawyers was going to take some kind of lawsuit on the sheriff's department, said two of them can't do that, he said, so I'll have to transfer you over to another attorney, he said, go to the legal aid office and they'll give you some list of attorneys, so I went down there and they gave me eight names of attorneys. And John Fitzgerald was in it so I went down to see him and he said that he wanted to talk to Gerald, he said, were you there when this was happening? So I said no, I said, just my -- my son and my daughters and just them kids are there, I said.

Well, he said, it's your son that I have to talk to, he said, is he back now? He said, so I said, yes, he's back, I said, he's discharged so he's back, I said.

So he said he's going to talk to him this morning, he wants Gerald over to his office this morning, he said, he's going to talk to him. I'm going to talk to Gerald and see what I can do about this, he said.

Q Just one last question from my self. The deputy sheriff did, when he brought back the others, he did tell you that he would help you to get Gerald out of the service?

A Uh-huh.

Q (By Ms. Butler) Viola, you indicated that Mace had been sprayed into the windows of your home?

A Through the window so that night we couldn't sleep in that house, and I had seven little children, I had four of my sister's and two of my daughter's and one belongs to Gerald, so I had seven.

Q Was there any reason given to you? Did anyone explain why they found it necessary to do that?

A No, he didn't. That -- that deputy sheriff, that Dick Davis, he brought these boys back and the door, of course, was wide open, it was all broken to pieces, and --

Q And everyone was taken from the house except the daughter who was left?

A Yes.

Q No charges were brought against the people who were taken in, though?

A No, he said all charges will be dropped on these boys, he said. Now, I don't know what charges he meant.

MR. WALSH: Grace or David?

Okay, thank you, Viola.

Let's move on to Mr. Adams.

Larry, can you state your name, address and occupation?

MR. LARRY ADAMS

A (By Mr. Adams) Larry Adams, 514 St. James, and I'm a bookkeeper.

Q (By Mr. Walsh) And were you present at the time of this incident that Viola has just described?

A Yes, I was.

Q Can you add anything to that description?

A About the only thing I can say is the reason why they come busting in there is they took, why they took all of us is because they trying to get us for hibernating a fugitive, you know what I mean by that? That's why.

Q Were you all sleeping at that time?

A Yes. I was asleep.

Q You were sleeping next to a window, somebody Maced you?

A Yes, right next to the window, yes.

Q There was no warning, though?

A No. The only warning I got was the Mace.

Q And then they busted down the door and handcuffed you?

A Uh-huh.

Q Was there any --

A And throwed me on my face right in the mud.

Q Outside?

A Yes. Right in front of the door.

Q They took you outside and threw you in the --

A Yes, when they took me out there and throwed me on my face, the other three were already laying there.

Q Was any search or arrest warrant shown to you?

A Nope, nothing.

Q Were you told for what you were being arrested for?

A No. Yes, hibernating. But I didn't know that, you know, what it mean?

Q Were you charged with this?

A No. They took us to the jail, you know, and kept us there, I think maybe a half-hour or less, then he walked us back, Dick Davis walked us back to the house, and he said we fix the door, you know, and no problem then.

Q He wanted you to fix the door?

A Yes, he asked us, he said if you fix the door, he said, I'll let you go.

Q But you didn't break the door down.

A No.

Q Why should you fix it?

A I don't know. Just to stay out of jail.

Q If you'd fix the door they wouldn't put you -- that was the indication, if you fix the door that they wouldn't keep you in jail?

A Wouldn't bother us then.

Q Were you injured during this time?

A No, I was just throwed on my face is about all.
Q Have you taken any legal action or filed any complaint anywhere?
A No, I haven't.
Q (By Ms. Kline) Larry --
A Yes.
Q -- when the officers arrived, didn't they knock at the door, the front door first before this --
A I was sleeping and all I heard --
Q -- knocking it down?
A -- and all I heard was a big crash, that's all I heard.
Q And then they started spraying you with the Mace?
A Yes, through the window.
Q (By Mr. Volk) Who was left in the home when --
A Rachel Center.
Q And how old is she, Mrs. Center?
A She's 20, I think.
Q Twenty?
A Yes.
Q (By Mr. Walsh) I want to go back to this Macing. Is this a common occurrence, that Native Americans are Maced and --
A Well, I think they do that to about anybody, I don't know.

Q (By Mr. Muldrow) Larry, when I talked with you before I think you indicated that your hand was injured when a policeman hit you with a club, is that correct?

A On the wrist.

Q What's that?

A My wrist?

Q Yes. When did this occur?

A When they put me down.

Q You were hit with a policeman's billy club or --

A Yes. And then he stood on my back. And I didn't even try to put up no fight or nothing.

Q Rachel was also in the house, was she arrested or what did they say to her?

A Well, she told me after we come back that they were going to arrest her but they had them little kids there, so they let her go. She told me that.

Q Mrs. Center, was your door ever fixed?

A (By Ms. Center) No, my ex-husband, he came and we had an old door there so he saw the edge of it and he fixed it for us, but it's not too good.

Q Did the police department or the sheriff's office offer to fix the door or any --

A No.

MR. MULDROW: That's all I have.

MR. WALSH: All right, thank you very much. Let's see --

MR. GANGONE: Bill --

MR. WALSH: Yes, Frank.

MR. GANGONE: Just for the record, shortly after this incident, the deputy sheriff Dick Davis was transferred to Hill City.

Q (By Ms. Butler) Mrs. Center, do you know whether it is customary to have city police search for servicemen who are suspected of being AWOL? Is that a common practice? Would that not be a military police function?

Those aren't even the kinds of questions we need to ask, right? Thank you.

MR. WALSH: Okay. Thank you very much.

Is Jeannie White or Cleo Gayton around?

Rosemary Red Cloud?

Or excuse me, Theresa Red Cloud? Are they here yet?

Okay, we'll take a short break.

Patty Watts I understand is here. Patty, would you come up, please?

Take the microphone right over there.

Patty, could you state your name, occupation and address for us, please?

MOTION FILED

MS. PATTY M. WATTS

A (By Ms. Watts) Yes, my name is Patty M. Watts, I'm

director of West River Alcoholism Services, my home address is 1201 Greenbriar.

Q (By Mr. Walsh) Okay, Patty, and on the panel here is Grace Kline on my left and Stan Adelstein on my far left and Mr. Muldrow and Dr. Witt from the Denver office, okay?

Pat, what do you wish to be called, Patty or Pat or --

A Patty.

Q Patty? Okay. Patty, what special qualifications do you need for your present position?

A As the director of the program?

Q Please.

A The qualifications that are listed in the job description are that we've had some experience in management and supervision, in budgets, program administration, and that preferably be a recovering alcoholic, but that is not necessary.

Q Can you give just a brief description of the nature of your program and what you do?

A Okay. West River Alcoholism Services offers a variety of services, one of which is detoxification and this is probably our major service that we offer.

We do offer individual family counseling, referrals, we have a drinker/driver program, detoxification probably brings us more people than all the other services provided.

What this amounts to is we have created a program

whereby if someone is [illegible] on the streets, they can be picked up by the law enforcement people, they can be brought in by friends, by neighbors or by anyone else. We take these people at the door in the condition that they're in. We provide them with the health maintenance, we do some vital signs on them to see where, in our eyes, they are medically. If the vital signs indicate or other things indicate they need medical attention, we immediately take them to the hospital.

If they do not need medical attention, then we give them a shower, we give them a bed, we provide three meals a day, we provide counseling, hopefully motivating them on to further treatment with their alcohol problems if they are an alcoholic.

Q Okay. What proportion of the people that go through your [illegible] Americans, do you have statistics on that?

A Yes, sir, I do. Approximately 64.5% of the people who have been processed through our facility since it's opened have been Native American pepple. And in the time that we've been open we opened in June of 1975, we've had 3,208 admissions.

Q And what's your relationship with the law enforcement agencies here in town?

A Our relationship with them is in a variety of ways.

One of which is most important to us is that they are the primary source of referral to our agency.

For example, of that 3,208 admissions that we've had, the Rapid City Police Department alone has transported to us 2,189 of our clients. In addition to this we have gotten referrals from like Pennington County Sheriff's Office, we've gotten 39. Now, these are people who like wife calls, the sheriff's department, my husband or my child is intoxicated, I need some help with them, they go out into the county, get the person and bring them in to detox. And when these people are brought in no paper work is completed on them by the RCPD, the only paper work on them is the paper work that we do for our records.

Q Now, is this the alternative now to the jail system, due to the passage of the law two years ago in South Dakota --

A Yes, sir, it is.

Q -- that --

A Yes, sir.

Q -- with regards to public intoxification?

A Right. Now, they are brought to us or taken to one of the hospitals if need be, instead of taken to jail.

Q What do you do with unruly clients when they come in?

A Okay, we spend a great deal of time trying to talk these people down. It's my feeling from my own personal

experience and experience that I've had in the agency and we're probably dealing with some of the most violent, hostile people, most alcoholics are full of hostility for some reason and they carry that with them.

Our experience has been that we can talk most of them down, sometimes it takes us two or three hours, and we can talk them down.

We do have the power of citizen's arrest which everyone has. We have arrested some people, this generally takes a pretty bad violation like if we find we can't talk the client down, and this person, this client then starts to try to beat up on other clients or something like this, we do seek assistance from law enforcement.

Now, this can come in a variety of ways, sometimes we have [redacted] people out there and they have [redacted] person down. Sometimes they've had to [redacted] the third time before [redacted] we do the arresting, the law [redacted] the arresting. And of course we're --

Q How many have you arrested in the past year?

A Since we've been open, of the 3,208 people that we've admitted, we've had 43 arrests.

Q Forty-three arrests?

A And like I said, this generally takes a pretty bad

experience and experience that I've had in the agency and we're probably dealing with some of the most violent, hostile people, most alcoholics are full of hostility for some reason and they carry that with them.

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(15) we have called the LAW ENFORCEMENT people out there AND

(16) they have ASSISTED US IN helping talk this PERSON down.

(17) sometimes they've had to come back LATE ON the third time

(18) before we've ARRESTED them, AND we do the ARRESTING, the

(19) LAW ENFORCEMENT does NOT do the ARRESTING, AND OF

(20) COURSE

violation like hitting a staff member like we had one guy break one of our female caretaker's arm, we've had them, you know, try to hit other clients or maybe two clients would have been fighting down on the street earlier, and both were brought in at a different time and then boom, they both wind up in the detox area and then we have a mess on our hands.

[redacted] had 42 arrests since we've [redacted] place.

Q Patty, how many clients prior to coming to your place, would have been arrested for disorderly conduct rather than put into jail, but were taken to your center?

A That would have been -- that would be hard for me to say, Bill, because the PI law went into effect in 1974, which you know, most of them then were left out on the street.

What Rapid City did to accomodate that was built a city care center. And it served the purpose for which it was built, because of lack of money and the urgency with which it was devised, did not offer near as in-depth services as we provide, but it did provide beds for them. I think it had 12 beds, they had been known to house as many as 25 in one night.

As far as the arrests for disorderly conduct, I don't know.

(8) But we've only had 42 arrests since we've opened that

(9) place

Q Would you say there's still a need for that type of center in town?

A For the city, like the city care center?

Q Yes.

A Okay, that was incorporated into our program.

Q I see.

A We took the alcoholism program that CAP had, the city care center, Pennington County Commissioners were funding an alcohol and drug referral center and we combined all of them into one facility because we felt like instead of having to transport the client all over town to a variety of services we could provide them all right there. So the city care center came into our place.

Q How many are on your staff, Patty?

A We have 18 paid staff people.

Q And how many would be Native Americans?

A We have a -- 12 Native Americans, one Black and the rest are Caucasian.

Q Do you have any statistics on repeaters?

A Yes, we do. Okay, now this just goes -- this goes through the end of October. And the number of clients that we've had readmitted. Okay, this is on the individual count, now we've dealt with, at this particular report, 981 different people, 412 of those people were readmitted one time or more. Now, of that 412, 285 were readmitted

between two and five times.

Then we have what we call our chronic recidivist rate, this group is people who are admitted six times or more. We've had 127 of those people, which we don't think is too bad because we -- we thought there would be a hard core recidivist rate that would probably take us ten years to break, but of that 127, what we consider chronic recidivists, we've motivated 65 of them or 51% of them on into long term treatment to assist with their problems. So I think we've proved there are things you can do with the skid row chronic recidivist.

Q Okay, thank you.

Stan or Grace.

Q (By Ms. Kline) Patty, we've had several people testifying here that when a non-White or an American Indian is arrested, quite often they are beaten by the police. Have you seen any evidence of any of these people being beaten at the time they're brought in?

A No, Ma'am, I've never witnessed anyone being brought in by the police department who has hit a client, either ~~se~~ of either race. Generally what happens is when the police car pulls up out back we can see them from the admitting area there. And usually one of the attendants on duty then will go out to the police car and help with -- to getting the person out. I personally, and as far as I

know, none of my staff has ever reported to me that they have witnessed anyone being hit by a policeman.

Now, we've seen just the opposite on a number of occasions, we've seen a client hit a policeman.

Q And you have never noticed any of the clients coming in showing any evidence of being hit?

A You mean where they've been in a fight? Yes, we've had them brought in where they've been in fights, this sort of thing, only on one or two occasions have we had a client complain to us that the police had hurt them in any way. One of them had said that -- in putting them in the car that they'd closed the car door on their foot, this was a White man, he went to regional east, he was admitted to the hospital, about 12 days after he got out of our place.

When he was in our place he never complained of this foot, but after he left our place went to the Friendship House, then he complained that he had a hurt foot, we had nothing in our records on his foot being hurt at all, no indication of it.

Q (By Mr. Adelstein) I've heard that there was opposition from some Indian groups because of the variety of the treatment centers and the relationship they'd had, clients/counselor relationship that there was some opposition to combining all the alcoholism treatment in one place. Are

you aware of this?

A. Yes, sir, I am. When we first devised the plan for this program, there was opposition in town from a variety of people. We even had opposition from our own AA people. I attribute it to the fact because it was going to be a major change and many people are afraid of change. Since we have opened, and I believe proved that we can help people and that we have been successful, we encounter very little opposition. And I feel have good cooperation among the alcoholism programs that we have in town right now.

Q. What sort of treatment do you receive at the hospital, what is your relationship with them and how would you evaluate the --

A. The regional hospital?

Q. Yes, because Regional East is the only emergency room.

A. Okay. They have never refused to take any of our clients. We have felt uncomfortable with some diagnoses that was made. But prior to the city care center and even after the city care center and before our place was opened, many, many intoxicated people that were picked up were processed through the emergency room at the hospital, with the law enforcement person or someone else staying with them for an hour, maybe two hours, waiting for doctors and x-rays, to have the doctor come in and say there's

nothing wrong with this man except that he's intoxicated and you better take him someplace else, when there really wasn't anyplace else to take him.

We have had no refusals, to my knowledge, from the Regional East emergency room on anyone that we take in. And we are in contact with them all the time, we get a person in whose vital signs is in what we would consider our critical range, we're on the phone to that emergency room right now for advice.

And sometimes they'll tell us to monitor for another half-hour, sometimes they'll tell us to transport and we do the same thing with the Sioux San. Hospital, we have an American Indian who we feel is in need of medical attention, we call the emergency room, they will advise us or we will take them up, I feel we've had excellent cooperation from both hospitals.

Q How do you treat Native American clients different than White - - than non-Indian clients?

A Our clients all get the same treatment regardless of race and regardless of money. Most of our people are low income people, the same requirements are made on all of them. The same rules have to be followed by all of them, we make no distinctions when they come in that door as to what race they are or how much money they may have on them.

Now, we've had -- we've had people come in there with

a $1,000.00 on them, people who've gotten lease checks.

Most of our people, 74.8% of our people, who come in the door at first contact, are unemployed. We provide them with the same type of health care maintenance we provide them with the same types of counseling, we refer them, sometimes to different places because we can refer the Native American to the Sheridan Intertribal Treatment Center and we can't refer the White people there.

We try to make no distinctions except to provide the very possible best care, food and comfort that we can give them.

Q Grace had asked you very correctly about some of the other reports we'd had about the treatment of Indians or Native Americans in terms of beating. Do you feel that your clients who have an alcohol problem are treated by the police, to the best of your knowledge of course, treated differently if they are White or non-White?

A I don't think that that's the case at all because most of the people who have been brought into our place have been American Indian. Now, you know, I can't testify to the treatment that goes on with anybody at the time they're picked up, all I can attest to is after that car arrives at our facility. The kinds of treatment that they've given. What happens down on the streets, I don't know anything about.

MR. ADELSTEIN: Thank you very much.

MR. WALSH: Thank you very much, Patty.

A. Is that it?

MR. WALSH: Yes. And could we have Madonna Gilbert, please?

Is Jeannie White here? Has she arrived yet?

Why don't you grab that mic. Madonna, please.

Madonna, could you state your name, address and occupation for us, please?

MS. MADONNA GILBERT

A. (By Ms. Gilbert) Yes, my name is Madonna Gilbert, and I live here in Rapid City, Post Office Box 2542. I'm the director of Alternative Education Program for Native American students here in Rapid City.

Q. (By Mr. Walsh) Okay, and Madonna, could you describe the nature of the Alternative Education Program that you're running?

A. Yes. We're commonly known as the AIM survival school here in Rapid City. We've been in operation for the past three years, and mainly what we do is we pick up students that have either dropped out or have been pushed out of the local public school district and our students range

from kindergarten to secondary, high school. We do work with students on the academic level and we have, of course, heavy emphasis on Indian awareness.

Q. This is located at the Mother Butler Center?

A. That's right.

Q. Could you briefly describe the nature and purpose of AIM, the American Indian Movement, for us, please?

A. My personal involvement with the American Indian Movement is that we are advocates, an activist organization for Indian issues that are facing Indian people nowadays, social, economic and educational.

Q. Why do you feel that you are closely in touch with the Native Americans here in Rapid City and Pennington County?

A. Because I happen to be a Native American myself and I happen to have three children of school age, and I've been through this school system, the education system in the State of South Dakota on all levels and all types of school.

Q. And what are some of the problems that you see and experience that Native Americans have with law enforcement agencies here in the county and also with the court system?

A. Well, first of all, because I am a member of the American Indian Movement, and I have a telephone, we get many calls from many Native American people. Whether they align themselves with the philosophy of the American Indian

Movement or not, we're usually the last resort and we get many, many calls from people who would, you know, asking us for help, if they're -- if they're busted, want to know if we can help arrange bonds or if we could just show up at the hearing, preliminary hearings. A lot of times the -- I don't know if people have testified to this before, but it's very hard to work with the two bonding companies in Rapid City, they arbitrarily decide who they're going to bond and who they're not, so it takes someone to go in and talk and someone who will do it, you know, at 10:00 o'clock at night, or, you know, after working hours, after 5:00 o'clock.

It takes people that will go out of their way and do it and like I said, we get no salaries but we are AIM and the last resort they come to us. I've had a lot of dealings with the local law enforcement agencies concerning juveniles, because of the type of work I'm involved in. And Rapid City, I believe, is trying fast to catch up to the rest of the country, and they're stumbling quite a bit. Because, first of all, to begin with, there's no way that they're going to work with the American Indian Movement, especially in Rapid City, but there's times they do because they have no choice.

Q Who is they that you're referring to?

A The juvenile, what do they call it, they've got a

new name, juvenile justice department, juvenile --

Q Court Service?

A Court Services, yes, they've got a new building or a building they fixed up here in Rapid and juvenile services, something like that. It used to be, you know, detention and juvy, but it's got a fancy new name now. I can't remember it.

But most of the dealings are, with the local law enforcement are getting to be, after three years, more or less a routine thing. We have the -- because most of our students are dropouts and have had some brush with the law in the past, they're known. And of course, the majority of our students in our program are bilingual, majority of them are full blood. So they stand out like sore thumbs. And the majority of our boys have long hair.

Q What do you mean they stand out like sore thumbs?

A Well, they get -- I mean they can't pass, you know, like a lot of -- some Indian kids do, halfbreeds or the lighter skinned. Although that's, you know, that's not an overall general statement for all, because once -- once you get known by the police department you know, they've got your number.

Q Do you feel that they face some special problems because of the fact that they are full blood or long-haired or --

A Yes, because they can be walking to school or going home from school and they can get stopped and shook down and asked questions and then turned loose. And maybe, you know -- that happens quite a bit, quite frequently.

Q Can you cite any specific situations?

A Yes. Up until November 1st we lived right below the Mother Butler Center, 248 Curtis Street, and we were getting ready to go to school one morning and I looked out the window and the police had stopped Jim McCloskey and Karland Chips (Phonetic), two of our boys, and so I hollered downstairs to Mark Chilton, I said the policemen have got two of our boys out there and they put them, they were walking up on their way to school and they put them inside the police car. So by the time Mark got out there and I got downstairs, they had let them go.

So I said, what's going on? And they said they shook them down and asked them who they knew, if they -- they knew certain people, showed them pictures and things like that.

So that happens quite often. And some, a lot of times too, and I say a lot of times with emphasis, there's no record of these type of things, because they don't keep records like that, but some of our younger boys and girls have gotten stopped. If they're riding bikes and they shake them down and check them out and see if they have any stolen

property on them or whatever. A couple of our boys got -- got busted for attempted burglary, at that time they were, let's see, that was last spring, so they were thrown up against the police car and they were roughed up and the next day you couldn't tell by looking at their face that they had been roughed up but they were -- they had bruises and one of our boys had his arm twisted pretty badly.

But the attitude of people, Native people that I've been on contact with in Rapid City over the years is, yeah, okay, so what, you know? You complain, what's going to happen? Nothing. You go to the -- what do they call the attorney there for the police or for the city or county, whatever, state's attorney?

Q. State's attorney.

A. You know, and he makes the decision whether you can file a complaint or not. So you know, why -- why be -- why, you know, when it happens so often pretty soon nobody listens to you. And a lot of Native American people are used to this treatment so they kind of take it as a matter of course. You -- you really got roughed up the other night. Yeah, the police did this to me and did that to me. Say gees, well, why don't you tell somebody? Yes, you know, well, tell who, what's going to happen, nothing.

And I'm talking about juveniles. So I'm very familiar with the police department.

Every now and then, I don't know if they have a quota of arrests or what their story is, but when things get a little slow they start busting our kids for wearing the American Flag upside down.

Now, we know that that, according to the law, is not defacing the American Flag. That's just wearing it upside down as a sign of protest. It's been proven --

Q How about when things are a little bit hot, like around July 4th when there was a lot of feelings that American Indian Movement was going to take some action or say when Russell Means has been on trial, that type of thing, has there been more harassment of Native Americans?

A Well, speaking for myself and the young people that are with our program, see, we go during the summer time too, and we get to know the policemen very well, you know, they cruise by our house three or four times, you know, or wherever we're -- whatever we're doing, so when you get used to that type of thing I don't know, you know, harassment, I don't know.

Some people will say well, how do you put up with that? That's harassment and I'll say oh, yes, that's right, you know, I forgot because it gets to be an everyday thing.

When we're out of town, you know, when we come back, the police drive by and wave because they know we've been out of town, you know, and they're happy to see us back.

So, you know, it's -- and I'm not trying to be facetious, this is for real, this is how it is.

Q Do you feel that there's a special surveillance --

A You bet.

Q -- for the American Indian Movement?

A That's right. Exactly.

Q What suggestions do you have, Madonna, to alleviate problems faced by Native Americans in the criminal justice system here in Pennington County?

A Well, I don't know, I really don't know, because we get, you know, a token Indian or two on the police force and that doesn't mean anything. They're out patrolling now, the other side of town, you know, where you might see an Indian.

And, of course, they have pressure on them, I imagine, to be the good Indian. I don't know, it's just, I guess it's just going to take a process of educating ignorant people when it comes to racism, you know.

But I think that if we didn't have a dual system of justice that would alleviate a lot. But there is a dual system of justice in the whole State of South Dakota.

Q Would you explain that?

A Well, dual means two, and systems, you know, everybody knows what system means, and you know, I don't know, a lot of Indians in here I don't know if they know what

justice means, I'm still wondering myself.

So Native American people, and non-Indians, you know, there's two separate systems of justice and how people are treated. Even on a local level with busting somebody that's -- that's been intoxicated or whatever, there's a whole different way of treating people.

A couple, let's see, about a year or so ago, I believe, I got a bumper sticker and it says, somebody was selling these, I don't know, it wasn't AIM, believe it or not, but somebody put these out, and it says, I am a prominent citizen. In case of arrest do not handcuff. Because here in Rapid City a city council member got busted for drunken driving and they were going to change the whole laws and everything. Because this man happened to be a prominent citizen. Because he objected to being handcuffed.

Well, you know, all you have to do is look, you know, I don't care what kind of arrest you know, it happens to be Native Americans, you know, the first thing they do is up against the wall, you know. And this prominent citizen was handcuffed.

But any Native American person in and around Rapid City that's ever been busted can -- you know, it was kind of funny, you know, he couldn't believe that it could happen to him, but it did.

MR. WALSH: Thank you, Madonna. Grace or Stan?

Q (By Ms. Kline) Madonna, have you ever witnessed any specific incidents where, you know, that a White person got better treatment than an Indian in the process of arresting them or in any action between the law and the people?

A Well, I know of one specific case that comes to my mind every time somebody asks me this, because we're always asked to justify, you know, what we know happens on a daily basis.

I go down to the juvenile detention quite often in the past, down to the jail, to get young people out, you know, and I was standing in the waiting room there or the lobby or whatever you want to call it, and waiting for them to bring this young person down from upstairs.

And they brought in this White man, in his knit suit and his patent leather shoes and he was drunk and he was raising hell. You know. And he was -- he said he was going to get everyone of those police for bringing him in, why they were trying to arrest him and you know, carrying on and stuff like that.

And they sat him down and gave him coffee and talked to him, you know.

When Indian people get busted, you know what happens, especially if they open their mouth, you know. It's up against the wall, you know. And I don't know, I can't -- I didn't say there long enough to see if they booked him or

not or if they drove him home. Probably that's what they did, they probably drove him home.

But I mean I didn't really stop to think, you know, I should stay here and watch the outcome of this, because I never thought that, you know, I mean it's just -- it's just a common occurrence, you know, the White man always gets off.

So I thought, well, you know, why should I stick around and watch the ending of it because, so what, you know? What's going to be done? Nothing.

MS. KLINE: Thank you, Madonna.

MR. WALSH: Thank you, Madonna.

I would like to follow up on that, could Jeannie White please come up now and Mr. Roubideau, Ramon, and -- and Randal Connelly, please?

Jeannie, do you have another appointment that you would have to leave right after this?

MS. WHITE: No.

MR. WALSH: Jeannie, could you state your name, occupation and address, please?

MS. JEANNIE WHITE

A (By Ms. White) My name is Jeannie White, I'm self-

employed by TP Construction. I live at 1128 Blain, Rapid City.

Q (By Mr. Walsh) Okay. And Jeannie, you belong to various organizations and boards and commission, could you just very briefly describe that in the community?

A Well, I did at one time, I'm -- I was a member of the Sixth District Crime Commission, the Governor's Task Force on Indian-State Relations, the Rapid City Human Relations Commission. I'm with the South Dakota Indian Businessmen's Association, I was a member or I sat on the Board of Directors of the Rapid City Girls Club, that's all I can think of right now.

Q Okay, Jeannie.

You've previously mentioned to our staff an encounter that you had with the law enforcement folks in town on October 6th of this year. Could you briefly describe that incident and what happened, please?

A Yes. Since we are a construction company and we're doing a project on one of the reservations. We had an appointment with an inspector from an architectural firm, so my husband, who is non-Indian, and I invited him out to supper. We met him at 7:30 and had two drinks, then we had dinner, a drink before dinner, a drink after dinner.

We left the first establishment, which we had dinner and went to another which was probably about 11:00 o'clock.

And the place was dirty and noisy and we didn't like -- we didn't like it so we decided to leave. And as we were leaving, I picked up my glass with part of the drink in it. And we got into the car, walked out of the building and got into the car.

My husband was driving, the other gentleman was sitting in the front on the right hand and I was sitting in the back seat of the car. And after we sat down, a man came and opened the passenger's side of the car door and said, you have a glass.

So I said yes. I'll drink it. And he said, well, if you do we'll get you for drinking in public. So I said, well, I'll put it in this other glass.

And he said, no, then he showed me a badge and he said, I'm a cop.

So I said, well, here, take -- take both glasses. By then my husband said, no, we don't want anything to do with you, we want a uniformed cop. So he said, well, we'll call the cops.

So I said to my husband, well, go ahead, we have a CB. I said, call the cops on the CB. And the man said we've already called the cops.

So I got out of the car and so did my husband and the other gentleman and I was leaning on the back of the car. When the police car came down and came into the parking lot

and by then the first man who was -- it turned out he was a police officer but he was off duty, -- grabbed me by my right arm and jerked me off the car and started shaking me and jerking me towards the police car. And just before we got so I could get into the, you know, if they opened the door and he was going to push me into the car. By then I was mad, and considered either kicking or hitting him, but he was pretty big so I decided not to.

And so I said to the other officer, you tell me to get in the car and I'll get in. And so he said, well, will you please get in the car? So then the other officer pushed me into the car. And it -- oh, when he first grabbed me, my husband stepped forward and the cop who didn't have a uniform on said, -- do I have to say what he said? Well, to the effect was stay out of this. If you don't want to get into trouble. And then, when the first cop started taking me towards the car, my husband said, that's my wife, don't jerk her around like that.

And the uniformed officer said, you stay right where you are or we'll get you for obstructing a police officer. So my husband said okay, and returned to the car. The first officer then had a slip of paper and opened the car door and asked me to sign it. And I said, stay away from me. I said, go to hell and stay away from me and I threw the paper on the floor and slammed the door. And then

my husband came up to them and said, do you know who you have locked up back there? That's Jeannie White, she sits on various boards in the city. And so, the first, the non-uniformed officer, I learned afterwards his name is Gilbert, said, well, oh, they first told my husband that they were going to take me down to the police station and he could get me out by paying a $10.00 bond.

And he said, well, do you know who she is? She's Jeannie White, and she sits on various boards in the city. So the first officer then said, well, see if you can get her out and take her home.

So he opened the car door and said get out and I said no. You take me down to the police station and you charge me with something. And so the second -- the uniformed officer said, get the hell out of my car. So I said, bullshit. You stood there and watched that man manhandle me, now you take me down and you charge me with something.

So they then asked my husband if he would get me out of the car. So he opened the door and he got -- he said come on, Jeannie, let's go home. And I said, no, I'm not going to go home. I want them to charge me with something. So my husband called, and I said call Ramon -- call Carol and call Ramon, Carol Swaner (Phonetic) and Ramon, then I closed the door and started to cry and I was

mad at that point, I was screaming because I was frustrated, the only raason --

Q. You sounded very mad.

A. Well, the only reason that happened was because I was Indian, I wasn't loud or obnoxious or anything. And as it turned out, my husband also had a glass and so did the other gentleman, all three of us took our glasses out of -- out of the establishment.

Q. Do you feel because of the fact you were a Native American you were --

A. What I think is they thought these two White men just picked up this squaw and the cops were going to just rough me up a little bit, and so they took us down to the police station and it happened I knew the lieutenant on duty, and it -- when I was in the car, they had four glasses on the hood of the car and I only had two, so the other two glasses must have belonged to my husband and the other gentleman. But when I was in the lieutenant's office they only brought one glass in and they said this is the evidence, which was ice and it had a piece of lime in it.

Well, they didn't, at any time, tell me I was to appear in court, and I refused to sign the slip and threw it down.

Well, the following Monday, which it had on the sheet

it had court appearance required, there were two blocks, one had yes and the other had no and the no block was checked. But at the bottom it had court date, October-- It was October 10th and at 9:30 in the morning. So I called the police station and asked them and they said, well, we don't even have court today, so call tomorrow and find out.

So I assumed that it, you know, there was nothing to it. Well, that Friday they had a bench warrant out for me because I refused -- didn't appear in court. So then I contacted -- and they were going to take me, they came to the house and they were going to take me to jail.

I was charged with open container. So -- I went down afterwards to the police station and talked with the deputy chief of police and read the reports on what happened. Mr. -- Muldrow, you were going to go down, did you finally get to go down and see the reports?

MR. MULDROW: No.

A Well, one of the things that bothered me, and I'm not familiar with the way officers fill out a report, but he said I was wild-eyed, my eyes were wild-eyed and bloodshot.

Now, I'm sitting in the back seat of a dark car and I don't know how he could see that my eyes were wild and bloodshot and they were by the time I got to the police station but I was mad. I had been crying in the car. And that I was highly intoxicated but my appearance, I was clean

neat and clean, which to me doesn't -- I don't know what they, you know, what bearing that had on anything either.

And that my husband was very intoxicated, shuffling around and with mumbled speech and yet this very intoxicated man was going to drive that car. And they didn't arrest him for, you know, anything. So I feel that I was --

Q (By Mr. Walsh) Have you taken any action as a result of this incident?

A I've contacted Mr. Roubideaux and at the time your represenative was there we called down asking for the reports and they told us at that time that the police department was going to take criminal action, didn't they, Ramon?

MR. ROUBIDEAUX: I don't know.

A When I asked for the reports.

MR. ROUBIDEAUX: Oh, yes. Yes.

A That the deputy chief of police had taken the reports down to the city attorney's office.

MR. WALSH: Okay, thank you, Jeannie.

Grace or Stan?

Q (By Mr. Adelstein) Jeannie, have you had any other contacts with the police within the six months or year before that?

A No. I -- in fact I -- I've always had a good feeling about the police department. I had never had any brushes,

you know, the only time that I've ever had any -- anything to do with the police was when I really needed them, so I wasn't afraid of them.

And I -- and I'm feeling guilty because sitting on a lot of those boards I did hear complaints from different people, you know, complaining of police brutality and my feeling always was, well, maybe -- maybe they, you know, instigated it.

Since this incident happened to me I'm wondering how many people I was really, you know, that I might have really hurt by having the attitude that I did have.

That is why I agreed to testify today.

Q For the record, because while it's clear to us that no, you -- for the record, would you state, you mentioned how your husband was treated differently from you and the inspector --

A My husband and the other man weren't bothered at all except to --

Q Were they Native Americans?

A No, they are not.

Q Neither of them?

A Neither of them.

Q Were there -- during your encounter with the police was any reference made at any time to the fact that you were Indian?

A. No. But I think it's obvious and I am Indian.
Q. But there was no verbal abuse on that issue?
A. No.
MR. ADELSTEIN: Okay.
MR. WALSH: Okay, thank you very much, Jeannie.
And Mary Ellen and David Volk, come up to the panel here, please?
Jeannie, you can go, thank you very much.
MS. McELDOWNEY: Good morning. Randy, I think we'll start with you unless Mr. Roubideaux you have some other time commitments -- are both of you, what are your time commitments?
MR. CONNELLY: I don't have any time commitments.
MR. ROUBIDEAUX: I don't have any.
Q. (By Ms. McEldowney) Okay. Then Randy, if you'd state your name and address and occupation, please?

MR. RANDAL CONNELLY

A. (By Mr. Connelly) My name is Randal Connelly, my address is 211 East Fairmont Boulevard, Rapid City. I'm an attorney licensed to practice law in the State of South Dakota.
I am presently employed with the Pennington County

Public Defender's Office as both an attorney and the director of that office.

Q. Would you briefly state the history of the Pennington County Public Defender's Office?

A. The Pennington County Public Defender's Office was established in February of 1973 by virtue of a circuit court order from the Seventh Judicial Circuit by Judge Bottom, the residing judge -- Judge Parker, excuse me, the presiding judge at that time. And it was set up as a pilot project to determine if it was a feasible alternative to the private attorney court appointment arrangement that had existed up to that point.

After several Supreme Court cases which extended the right to counsel for indigent criminal defendants to those cases, to all cases, in fact, where an individual stood to lose property or stood to be incarcerated, the, there was a substantial increase in the number of indigent criminal defendants who would appear before the court, and the public defender system had existed in many other states in the United States, so they decided the county commissioners and Judge Marshall Young, decided to test this kind of arrangement in this country.

It is not set up through any statutory scheme, like I say, it's set up by virtue of a court order. We are appointed to represent indigent criminal defendants in

state cases, city cases, and in juvenile cases.

We also represent mental commitments in some situations where we may represent the individual on a criminal charge as well. That's pretty rare, though.

Q You do not go into federal court then?

A No, we practice strictly in state court and municipal court or the magistrate division of state court.

Q How and at what point in the proceedings do you get your clients?

A Well, normally we have one of the attorneys, by the way, I should have mentioned we have five staff attorneys in the office at this time. Normally one or more of those attorneys are present in the magistrate court in the mornings when initial appearances are held on any criminal charge. Sometimes it's called an arraignment, but actually it's legally it's not an arraignment it's just an initial appearance.

At that time the court informs the individual of his constitutional rights, informs him that he is entitled to court appointed counsel, if he is financially indigent.

If the individual expresses a desire to be represented by an attorney and also indicates that he is financially indigent, an application is provided to him and any assistance that he may need is given by either our office or the employees in the magistrate court. He fills this

application out, submits it to Magistrate Carroll and Magistrate Carroll makes a determination as to his eligibility for court appointed counsel. That is the public defender's office.

Q And what percentage of your clients are Native Americans?

A Well, I can only give you an approximation, and the best approximation I think is based on a study made by a member of our office in recent months for a period of one years. I believe the percentage came out to 48%. I don't have the report with me right now. But I believe the percentage of Native Americans we represented was 48%.

Q [redacted] commonly charged with?

A Well, I can't really say that they are charged with anything commonly. I suppose there is a prevalence of property crimes, for instance shoplifting, petty larceny, grand larceny, burglary-type situations, that and another area that there appears to be more, a greater percentage of Native Americans in than in the group of White or other race individuals that we represent is the area of assault and battery, disorderly conduct, obstructing police officers, disturbing the peace, and I think that's -- that's probably the only area that I could say that there is -- there is a greater number of Native Americans charged in.

13 And what OFFense are these INDIAN Clients commonly

14. charged with?

Q Were you on staff when the public intoxication statute was decriminalized?

A No, I was not.

Q From your knowledge in the office, was there a change after that statute was decriminalized and how did that affect your practice?

A Well, I came into the office about two and a half years ago, and it was just prior to that time that they had abolished or ruled unconstitutional, any public intoxication ordinances, and which meant that the Rapid City Ordinance was abolished at that point.

I can't really speculate from personal experience as to the number of public intoxication cases we represented prior to that time. However, from statements from information and discussions with other individuals in the office who had been on the staff during the time the public intoxication law was in effect, I got the impression that the [redacted] in lieu of the public [redacted] purpose, that [redacted] individual or a rowdy [redacted] street.

Q Such as?

A Well, what was commonly remarked about were the disturbing the peace ordinances, the disorderly conduct ordinances, once -- once in a while I heard it commented

17. toxication law was ~~in~~ effect, I got the impression that

18. the police were possibly using other ~~status~~ statutes in lieu of the

19 Public intoxication statute to obtain the same purpose, that

20. is to get at least allegedly a drunken individual or rowdy

21 individual off the street.

that another statute that was used in place of the public intoxication statute, was obstructing a police officer. And again, I can not compare from personal knowledge the change, the difference in impact after the abolition of that ordinance. I, again, did get the impression that, oh, for example if an individual was drunk and on the street, and was possibly creating some minor disturbance or had contact with a police officer and used any foul language and that sort of thing, that that conduct gave rise to a disorderly conduct charge.

For example whereas before it likely would have resulted in a public intoxication.

Q Would you say, would you estimate the percentage of clients that you represent who were picked up in and around the local bars?

A Well, it --

Q Does it vary by race?

A I would have to say that my impression, without reviewing any statistics on it, is that there would be more Native Americans arrested in the downtown area, in the area of Main Street around the downtown bars.

Q Does your office receive complaints of brutality or harassment by the local police or sheriff's office?

A From Native Americans or from individuals generally?

Q Generally?

A Yes, I would say we have received substantial number of complaints -- not -- I don't want to say not limited to Native Americans. I would say that it's probably even across the board, the complaints that we get as far as [illegible] or unnecessary treatment.

Q When you get such a complaint, what is your procedure in handling it?

A Well, normally we attempt to investigate the matter.

Q We, do you mean the attorney involved?

A Right, normally. We -- if the individual indicates that he has been injured, we attempt to get some kind of evidence of that fact, and of course, try to establish that the injury did not exist prior to the point of his arrest.

We also attempt to get him any medical care that we can, we, after that we attempt to investigate the matter, contact any witnesses other than the police officers themselves to back up or dispute the account given to us by the client.

Q And have you documented specific incidents of brutality against Native Americans?

A Well, the -- let me point out that the biggest problem is finding any witnesses to that fact. If there is another individual who [illegible] at the same time, an alleged codefendant, then we -- we find that it usually their stories do coincide somewhat. But that, I would have

1. yes I would say that we received substantial
2 Number of complaints, however those complaints Are Not
3 Limited to Native Americans. I would say that it probably
4 even across the board, the complaints that we get as far
5. As mistreatment or harassment or unnecessary treatment.

to say, is a pretty rare instance where we can find an independent or objective witness, and of course, a codefendant would, arguably, not be an independent or objective witness in that situation.

Q But have you documented some? I appreciate the difficulty, but have you?

A Yes. I'd say I have. The extent of any that I have are usually, I say usually, [redacted] but a case where [redacted] defendant [redacted] use of Mace, for [redacted] serious would be mistreatment in putting the individual in the [redacted] or taking an individual [redacted] car.

Normally we follow this up with some type of strict cross examination at the time of our court appearance where the officer might testify, and as is usually the case, there is a substantial dispute and conflict or discrepancy in the two accounts of what happened.

Q Do you refer them outside of your office if there is merit to it?

A Well, we have a -- somewhat of a -- we're in a difficult situation there, we don't feel that we can stir up any litigation or prompt these people to file any type of damage suit against anyone, we really, since we do find discrepancies every day in every case we run into in the

8 Are usually, I say usually, there are very
Few instance,

9 but a case where the individual and possibly
A [redacted] Codefendant

10 Felt that there was unnecessary use of mac
For

11. example, or beyond that, the most serious
would be mis-

12 treatment in putting the individuals in
the car or taking [redacted] an

13 individual out of car,

witnesses' testimony we don't, we can't really take any individual action in terms of encouraging them to file a grievance. However, what we do is, what I do, and I can speak from personal knowledge there is suggest to them that there are remedies, there are directions they can take to try to get a redress of their grievance, and one is a -- the grievance procedure at the police department itself.

And we also indicate to them that, and usually we do not bring it up first, if they indicate that they want to sue someone, we just inform them that they should contact an attorney outside our office if they desire to do that.

Q Do you take it through the grievance procedure yourself?

A No, we do not. Normally we suggest to them how they can go about it, and they must take the initiative, however.

Q (By the Chair) We are running a little late, I do have a few questions. And I would appreciate it if you can be concise in your answers.

A Okay.

Q Now, there has been some testimony that Native Americans using public defenders as attorneys are not receiving as good a quality as -- of legal services as they would if they could hire their own attorneys, do you feel that this is true?

A Not at all, I feel that they're getting better service

than they would get without the public defender system and I feel that they're getting equal service to what they would get if, at the present time, with a private attorney representing them under a retainer.

Q I want to ask you a question about plea bargaining. Do you feel that Native Americans are being overcharged by the state's attorney for the purpose of plea bargaining?

A Well, I -- at this time I really can't cite any specific instances of that. And I don't think the state's attorney has any policy of doing that. I think that when we talk about the state's attorney we have to talk about the individuals there. At the present time I don't think that there is any blatant overcharging of Native Americans as opposed to White or other races.

I feel that there -- there may sometimes be overcharging just more subtly of a class of individuals, that is the poor or the uneducated or the -- those who possibly have alcohol problems.

Q Okay, a couple more questions.

When your office represents Native Americans, do they go investigate on the spot where the alleged incidents occur? Do they do this as a matter of policy?

A Well, it's more or less left up to each attorney. We do not try to shuffle the case back and forth between attorneys. Normally we try to keep one attorney on that case

and he's treated just as an attorney would be treated in a private law office, he has his own case if he wants to consult with other attorneys in the office or wants assistance, then he does that.

But speaking for myself, I have in cases where I felt that it was essential or necessary gone to the scene of the crime and I couldn't give you a percentage of the cases I've done that in, and I --

Q You don't do it in every case, though, is that correct?

A Not in every case, no.

Q You mentioned that the greatest number of arrests of Native Americans occur in the downtown area, I believe a little earlier. What is the second greatest area, do you feel?

A Well, I -- it's my impression that there might be more in the area of the La Cota Homes. I can't say definitely.

THE CHAIR: I have no further questions.

Q (By Ms. Butler) Mr. Connelly, yesterday and today there was some question about jury selection procedures and the fact that generally juries are selected on the basis of voter registration, and that many Native Americans do not register to vote for various reasons.

Do you have a suggestion about how the jury selection procedures could be improved?

A Well, I think that -- my personal feeling is that there should be some kind of a campaign to educate people as to how they get on the jury list. I think there are many White individuals or as many who do not realize the manner or the criterion used to determine whether they're on the master jury panel.

And I think just if there was some education to try to encourage Indian people to register to vote, it would allow them to at least get on the master jury panel and to possibly sit on the jury trial itself, which is not the case right now.

Q Could you suggest other kinds of lists that might be used right now?

A I am not -- I'm not familiar with the criterion, other criterion used, that is other than the registered voter list, and I couldn't really suggest any right now off the top of my head.

Q Earlier you mentioned that you did document a couple of cases of police brutality. After you have documented, what is the next step that one might follow?

A Well, let me point out first that that documentation was not -- was not necessarily overwhelming, in other words, there was evidence, documented evidence which conflicted with the evidence that I had as well. I believe your next question was, what do we do in that situation?

Q Yes.

A Well, we -- we normally try to bring that out in court, as far as the grievance itself we provide all the information that we feel is necessary for that individual to get the grievance ruling, and tell him where to go, give him numbers and give him assistance in that respect. But do not file the grievance ourselves, we don't take the initiative in that respect.

MS. BUTLER: Thank you.

MS. McELDOWNEY: Mario, you had another questions?

Q (By the Chair) I had one final question. There was a comment made yesterday that the county will, you know, more or less slap a lien on any income that a person may get in the future for representation by your office, for the services you performed. Is this true?

A Well, there are, first of all the -- I'm not aware of any case where any of the liens have been enforced. And in my experience with public defender's office, although a lien is placed with the registrar's office and with the auditor's office, there, I believe, are still exemptions that -- to what can be imposed upon in terms of the judgment, and we've just never dealt in that area. So I am not personally familiar with what those exemptions are, I could not recite them for you.

Q What do you bill or what's your basis of billing,

you know, a person for the purpose of a lien? Is it like $25.00 an hour, $35.00 an hour?

A Well, it's $20.00 out of court and $30.00 in court.

Q And this is set by the county, is it?

A I believe it's set by the supreme court. Set by the supreme court.

Q And briefly, could you tell me what the exemptions are if you know?

A The statutory exemptions to those things on which a lien can be filed, is --

Q Yes.

A -- like I say, I can not recite them for you right now, things like personal items, their home, that sort of thing, I know just generally, but like I say, we -- to my knowledge there's never been an enforcement of this, of any of our liens, and we would not represent the individual probably if he were contesting it at that point.

So I could not recite them to you from the statute.

THE CHAIR: Thank you.

Q (By Ms. McEldowney) In the past two and a half years, as a staff attorney and now director, how many cases that you've handled have gone to trial?

A How many cases that I personally have had or the office?

Q Well, both if you can give that.

A. Well, the office has probably had -- well, we determine cases on the basis of the charges. In other words, if a case goes to trial on two charges, we put that down in our statistics as two cases since that's the way we bill. And I would say it's probably been eight, nine or ten, somewhere in there.

Q. For the whole office?

A. Right, that's -- that's jury trials. Now, as far as court trials, there may be a half-dozen to ten. In the two and a half years? I'd say there were probably --

Q. I was asking to ask you for what period are you giving?

A. I would say that that, with the court trials, probably another 20 cases.

Q. In two and a half years?

A. Yes.

Q. There was eight to ten jury trials and 20 court trials?

A. Right, there is a -- a great deal of plea bargaining.

MS. McELDOWNEY: I've no further questions, move on to Mr. Roubideaux.

Would you state your name and address, please?

Randy, if you want to stay there might be some questions that come up.

Would you state your name and address and occupation,

please?

MR. RAMON ROUBIDEAUX

A. (By Mr. Roubideaux) Ramon Roubideaux, I'm an attorney, I'm practicing here in Rapid City.

Q. How would you characterize community attitudes towards Indians from your, as you see it from your perspective as an attorney?

A. Immunity attitudes?

Q. Community attitudes?

A. Oh, community attitudes. Well, of course it's -- today we still have a situation where the Indian people have been continually fighting off the stripping of their property, their rights, even their ability to stand up as human beings on an equal basis with other people in the community. I've attended many of these hearings before, throughout the years, I have been in practice for some 26 years, you probably should know a little about my background.

I'm a former assistant attorney general, I was a Stanley County State's Attorney for some 16 years, all the time defending outside of Stanley County, about 50% of my clientel are Indians, and I've found that throughout

the -- my experience, that the Indian people have more or less been the pawns of groups and organizations and individuals that were looking out for themselves, and we have accordingly, suffered to the present day. To the point where I think the United States Government is going to have to take some definitive action to improve the economic status of Indian people.

So that they can avail themselves of the rights enjoyed by other citizens.

I think it's significant that when I was running for attorney general in 1970, I compiled some statistics, in South Dakota, [redacted]

I found that the population of the state penitentiary at Sioux Falls, averaged some 30% to 40% over a period of some 20 years. I think it's a little less than that right now. But it's averaged 30% to 40% Indian over a 20-year period.

I've found that our average per capita income is some $1,200.00. I've found that unemployment on Indian reservations is some 60% to 70% on an average. These economic factors have indicated that the responsibility of the United States Government to provide Indian people with a living to replace the living that was taken away from them

12 in South Dakota, I found that Indian
people were some
13 7% of the population, that over 60% of all
Reported crime
14 in this state was committed by
Indian People.

has failed miserably, and I think that you folks should be commended for looking into the criminal justice aspect, but we get down to a simple truth, and that is that real justice under our system in this country is available only to people who have the money to pay for it.

Q Are you suggesting, then, that the problem, if any there be, with Indians in the criminal justice system, are economic-related rather than racial?

A I'd say it's about 75% economic and 25% pure, outright race discrimination.

Q When you say pawns, do you have some specific examples of how Indian people have been used as pawns by the law enforcement people in the last, limit your examples to the last year?

A By law enforcement in particular?

Q Yes.

A Yes. They secure a great many funds from the government in the law enforcement field allocated primarily to the criminal justice problem as it exists in the state. And of course, by their own records 60% of that problem is Indians, so 60% of those funds ought to go particularly to the Indian aspect of the problem and it doesn't.

In other words, we're used by the schools, we're used by law enforcement, we're used by almost every organization

tion, even the state educational system, as the excuse to get funding, and then we're not allowed to sit on the boards that determine the policies, we're not allowed to sit on any policy-making group that would actually have some benefit to Indian people proportionate to the funds that are allocated to the state for those purposes.

Q Yesterday we heard testimony regarding the quality of services that court-appointed attorneys rendered across the state. Would you comment briefly on what your experience has been with this?

A Well, my experience has been that court-appointed counsel, because of their meager experience in the courtroom, their [illegible] in handling cases, have been unable to provide the quality representation that Indian people or any people ought to get. Many people have the misconception that just because you have a law degree that you're a finished product as an attorney. And that's not so. It takes years and years of experience before you can really secure for your client the best advantageous result in any given case.

Q I'd like to ask you about the specific example that I think you heard Jeannie White testify to. Would you -- are you at liberty to discuss some of that case with us today?

A Well, I think since she did mention it, I think I am

counsel, because of their meager experience in the courtroom,

their meager experince in handling cases, have been unable

to provide the quality representation that Indian people

at liberty to comment on it. If she hadn't of, I certainly would not have because of the attorney-client privilege.

She was present here at the same table that I am and I heard her tell about it. I think this is just another example of excessive brutality towards Indian people in Rapid City. Now don't get me wrong, there are a lot of good policemen in this, in the city, and some very find policemen that are very good friends of Indian people. But I fault them because they do nothing about those among their number who are getting away with excessive brutality, excessive harassment of Indian people, especially if they have long hair like Donny Gilbert said.

I think it's all a result of the recent uprisings we've had in the last two or three years, but nevertheless, it's inexcusable that they treat Indian people the way they do when they arrest them.

Q Are you suggesting that this didn't happen prior to Wounded Knee too?

A Well, let's put it this way. Before Wounded Knee it still happened but we didn't hear about it. But now the Indian people, because of the American Indian Movement, have become more vocal and they're telling about the incidents that have happened. Before that time Indian people were a little afraid to speak up because their experience has been that any Indian who speaks up is punished very

severely, one way or another.

And that if you just kept your mouth shut you stayed out of trouble. But that is passing and more and more they're becoming more vocal and are telling about the numerous instances of injustice that have been happening to them under this system.

MS. McELDOWNEY: I don't have any more questions, does someone else on the panel have questions?

Mario?

Q (By the Chair) I have a few questions here, Ramon.

You mentioned that Indian people are being used as pawns by various individuals, organizations, even the state itself through its education department. Now, there are several reservations within the State of South Dakota, and through each reservation, is channeled millions and millions of dollars every year. Do you feel that -- well, first of all there are organizations such as the Civil Liberties for South Dakota Citizens who wish to abolish Indian reservations and Indian sovereignty and other types of Indian rights. Do you feel that the State of South Dakota can economically survive without the Indian reservations?

A Well, I certainly think the State of South Dakota can survive, but I don't think the Indian people can survive without the government living up to its responsibility to

make them independent and selfsupporting as they promised in treaties.

Q The point I was getting at, Ramon, is that most of these millions and millions of dollars, including Bureau of Indian Affairs money, is used for administration, you know, purposes, I'll say for non-Indian and the remainder is channeled up to Rapid City and other Indian communities. And that's how, you know, where they get their tax revenues and whatever, their sales taxes or whatever.

And I was just wondering if you felt that the state could do without those reservations economically?

A I don't think the state could survive very well, of course they would survive, but the economic benefit to the State of South Dakota, because of the very presence of Indian people between its borders, is enormous. It amounts to hundreds of millions of dollars, I think, when you get right down to the nub of the problem.

And of course, I'm glad you mentioned the administrative expense of the Bureau of Indain Affairs, this, as Senator Abouresk brought out in some hearings a few years back, that over 90% of all money appropriated for the Bureau of Indian Affairs went for administration. Which meant that it went for salaries and that 10% or less, actually got down to the Indian governing bodies and once you got down to the Indian governing bodies there went the

10% and the Indian himself, the large majority of Indian people, especially in the outlying districts, receive nothing.

Q Okay. Another question is, are you aware of any type of race or human relations classes that the police department here in Rapid City are required to attend? Do they have anything like that?

A Well, I'm not aware of any if they do. Now, once in a while I've been called to seminars of police officers to speak with them, and when I bring up many of the complaints of the Indian people, and I think one of the most telling things that I've been able to tell them is that they're outnumbered about 200 or 300 to one, and that if everybody decided they weren't going to obey the law there wouldn't be a darned thing they could do about it.

So that illustrates the factor that you have to have the cooperation of the general public in order to have adequate law enforcement.

And I think the treatment of Indian people in Rapid City by many members of the police force, which is evidently going unchallenged by other members, is leading to a bad situation that could result into a resumption of some of the flareups that occurred in 1973.

Q One final question, you mentioned a defense counsel generally is not qualified and therefore do not do a good

job in representing Native American defendants.

What's your feeling on states' attorneys, do you feel that they are generally qualified?

A. No, I don't feel that states' attorneys are generally qualified, I've been pushing a long time for a district attorney system in which one attorney who is a good trial lawyer would handle maybe three or four counties. The way it stands now, of course there is a disparity there and of course many of the states' attorneys are young and inexperienced, but on the whole, because of the tremendous facilities of the State of South Dakota available to them, they're in a much better position to prosecute than an economically-disadvantaged person is to defend.

Because he can't employ an attorney that has the experience and the ability to properly defend him in many of the cases, and especially on the court-appointment situation, I think the public defender's office is much more capable than the other situation where they usually appoint some young fellow just out of law school on a court-appointed basis to represent someone and he's totally incapable of doing a good job.

I mean he may try his very best, but there are many pitfalls in the courtroom and a lot of them really don't have the experience to do an adequate job.

MS. McELDOWNEY: Thank you. In the interests of

time could I ask you to limit your questions to one apiece? Oh, Dorothy doesn't have one, you can get two then.

Q (By Mr. Adlestein) I'll get two very brief, Ramon, unfortunately we're running so darned late and I've so much respect for your opinion I'd like for it to be more on the record. But first let me ask you in interview with one of our advisory committee members before this hearing, you stated that Indian people are being arrested and being convicted for crimes or for offenses which White people would never have been arrested for in the first place.

Do you have any specific -- any specific types of charges?

A Well, let's put it this way, I think I can explain it a little better. It's an underlying hard feeling against Indian people, like for instance I have, I belong to a bowling league, and after we get done it's quite late at night, around 11:30 or 12:00 and we usually go to a restaurant. I went to a restaurant called the Country Kitchen and we sat down in a booth, my wife and I, and two kids, and in the next booth were four young White people who were obviously intoxicated and who were talking very loudly, and nothing happened to them.

On the other hand I've been in places where an Indian is just barely raised his voice or maybe stumbled a little bit or maybe didn't say please when he asked for his order,

where the police are called and they come and take, get him and they haul him out of there.

Q Are you saying, then, unruly conduct, these kinds of minor offenses, are what you're referring to?

A Yes. Well, I'm particularly -- well, of course I'm referring to some of the more important cases also, like for instance take the incident that happened in '73 here in Rapid City, when a couple of bars were crashed by some people that went through, less than a dozen people.

There were over 40 Indian people arrested for that, required to go bail, required to sit in jail, and the cases pended for some six, eight months and I was finally able to get all of them dismissed when they shouldn't have been arrested in the first place because they didn't have sufficient evidence on which to convict any of them.

In other words, they arrest the Indian first and then they try to see whether or not they can dig up enough evidence to convict him, and I think that example is a perfect example of racial discrimination.

Q One last question. If you're familiar with it, could you tell us what the proposed -- we heard it referred to yesterday as the comprehensive either sentencing or -- what effect the passage of the comprehensive corrections act would have on Native American people?

A Well, I haven't read it, I've heard about it. In

other words, it's an attempt to make the length of sentences or the type of punishment more uniform for all people charged with the same crime, and I -- and I think that's a mistake too, you can't computerize it, because on the one hand you have situations where a particular judge will oversentence and another judge will undersentence, so if you try to make it the same sentence for both sides, you might be giving one a break but you will be overly zealous as far as the other one is concerned.

Q My point is, how would it affect the Indians, do you think, Ramon?

A Well, the way I look at the Indian situation is any improvement will be better than the way it is now. And whether that will improve it or not I don't know. I rather think it would not, because Indian people in particular represent a class of people that have been so misused over a period of some hundred years that I think the federal government has to bend over backwards to try to correct the wrongs that have existed for so long, and I don't mean special treatment. But you see, they -- they like to class Indian people by saying someone who became Vice President of the United States and they try to say why can't the rest of you people be just like him?

Well, he was probably a very competent individual, a very intelligent, very smart person. But they judge the

rest of the Indian people who have been disadvantaged, with no education, with a very poor economic base, they try to judge them on the same basis as they do someone who's in really a different situation.

MR. ADELSTEIN: Thank you.

Q (By the Chair) I have one question, maybe you can give me a brief answer on it.

You mentioned that you were in a debate, I think earlier this year with the attorney general, and that you were not satisfied with the results of the opinion polls which were reported thereafter. Could you comment on that briefly?

A I think that's a perfect example of racial discrimination, that is not conscious, it's kind of unconscious. The white people do it and they don't even know they're doing it.

I had this debate with Janklow over educational television, and I took the proposition that Indians could not get a fair trial before South Dakota juries and he took the proposition that they could get a fair trial before South Dakota juries. And the way they had it set up is they had a studio audience of some 25 people, it was a very small studio, by the way, and at the conclusion of the debate they would take a vote from the audience and then reveal the results of that vote to the listening

or the viewing audience. So we had the debate and they had the vote.

Fourteen of them voted for me, three of them voted for Janklow and the rest of them didn't vote at all, there were six others, I think.

So when they made up the cards, they added the six people who didn't vote to Janklow's total and had me winning 14 to nine. Now, that isn't the end of it. The Rapid City Journal reports it that Janklow won the debate 14 to nine. And the newspaper at Vermillion, the local paper that they have there, had it around the other way.

Now, another thing that they did is they invited the viewing audience to write in and vote for either side. Now, that's been, how long ago? It's been some six to eight months ago, and they've never published the results of the final poll. But I have a feeling that we won overwhelmingly and that's why we never heard any more about it.

MS. McELDOWNEY: Okay, thank you, Mr. Roubideaux, and Mr. Connelly.

Now we have the next panel of Mr. Zakinski and Mr. Larsen.

Is Joe Crawford here yet? Joe Crawford?

MR. ADELSTEIN: I think what we'll do is we'll begin this discussion, this interview so that you know the people that will be sitting on the panel, Mr. Mario Gonzalez,

Mary Ellen McEldowney, David Volk and myself.

I think we have two of each political persuasion, two attorneys and two non-attorneys, so you've got, I don't know what you have. Let us begin with Mr. Zakinski, if we may.

Would you please state your name, address and occupation?

MR. STANLEY ZAKINSKI

A (By Mr. Zakinski) Stanley Zakinski, Deputy Chief of Police, Rapid City Police Department.

Q How long has Ray Neal been chief of police and you his deputy?

A Ray Neal's been chief of police approximately three years and I've been deputy chief of police about a year and a half.

Q How many sworn officers do you have that are Native -- total and how many of those are Native American?

A Total sworn officers, approximately 65, 66.

Q What training do police officers get and do any of the courses contain information on Native American culture, values and the unique characteristics of the Indian population in Rapid City?

A. At the present time most of our officers attend night college courses and we do have an incentive program with the city whereas if they get an AA, associate arts degree in criminology they would get a pay increase.

In these night college courses they do have such courses as Sioux culture and so forth that they've been -- classes they've been taking. We also give an in-service training program, 40 hours, 40-hour a year, right around fall we have the in-service training program.

We do have family crisis intervention classes which also involve the training of Sioux culture and other problems, racial problems.

Q. Is it your impression that there's an adequate amount of training in this field?

A. I would like to answer it this way. I don't think there's ever an adequate amount of training in any field. And in this one I would have to answer that one that way too.

Q. Earlier today we heard some testimony concerning the lack of relationship between police and attitude toward police in the Rapid City Public School, specifically the high school but it could have just as well pertained to junior highs.

Do you have a police liaison relationship with the schools and if so, would you tell us how that program operates?

A. Yes, sir. Out of the Rapid City Police Department, we have two sworn police officers in plain clothes, one works out of North Junior High and one works out of South Junior High. The other junior highs are represented by a deputy sheriff, they have school liaison also.

And what the program consists of is that a law enforcement officer is officed in the school and handles any matters that come up where the child may want to come and talk to a law enforcement officer, trying to keep it at a parent-police level or parent-police-board of education level without the child having to go into juvenile justice system. Court system.

Q. Could you tell us, please, there was also some comments earlier today about how police officers who are not Indian regard Indians. Could you please tell us anything that you have to your knowledge of the relationship between those Native Americans on the police force and those non-Native Americans?

A. You mean the citizens' attitude toward the --

Q. No, the relationship within the police force between Indian policemen and non-Indian policemen?

A. I think it's a very good relationship.

Q. Why do you believe that?

A. We have no problems, in fact we just, the city just went into contract with the United Sioux Tribes, we have two

young Indian gentlemen that we've hired as police officers and we have had Officer Richards, Sonny Larvay (Phonetic) on our police department for a few years. We just don't have any problems between the non-Indian and the Indian officers.

Q We also heard testimony to the fact that the police treat students from the Rapid City Cultural Learning Center differently, maintain a surveillance there, to the best of your knowledge is this true? And if so, why and what is it -- and what is the procedure, please?

A To the best of my knowledge we have not set up surveillance on any particular group, school or organization.

Q Do you find that the police reaction to, quotes, drunks, or the police reaction to people who are intoxicated is different from the policeman's reaction, say to a traffic offender?

A No, I don't think so, sir.

MR. ADELSTEIN: I have other questions but I think we ought to hear from the rest of the panel. Mario?

Q (By the Chair) Yes. What is the extent of your jurisdiction in the city, does it cover, for example, the La Cota Homes project?

A Well, no, that's really the sheriff's office, but we do on occasion give assistance to the sheriff's department when necessary, no matter where the area outside the municipality is.

Q And your commission --

A We do have a jurisdiction of, I believe it's a mile, sir.

Q Outside the boundaries?

A Outside the city limits.

Q I see. And this would be by a city ordinance, is that correct?

A I think it's just policy rather than an ordinance, sir.

Q Does your particular commission, city commissions authorize that?

A The city councilmen do, yes.

Q My question or problem would be that, you know, if you have a city boundary and the area outside has never been annexed, then isn't it kind of questionable whether you do in fact have jurisdiction outside the city limits as established?

A Yes, sir, there is always that question.

Q I see.

A In fact, they're in the process right now of trying to obtain a three-mile limit through the city council.

Q But this, you stated that it's questionable but as a matter of policy you are making arrests outside the city, is that correct?

A We are assisting -- no. We don't just go outside

the city and make arrests, we do go out and assist the sheriff's office and/or the highway patrol if necessary outside the city.

Q But they make the arrests, is that correct?

A Yes, sir.

Q Okay.

Now, there's been some testimony, I believe yesterday, that there's patrol cars, city patrol cars stationed right outside, south of La Cota Homes, which more or less establish a surveillance of Indians coming out of the homes. Is this correct or do you have any knowledge --

A No, sir, I do not have any knowledge that we are having any surveillance on any section of town.

Q How many Native American officers do you have working in your department?

A Presently now we have, I believe three.

Q Three, and two of those are being paid by other sources, is that correct?

A United Sioux Tribes, yes, sir.

Q And so, really, you're only paying out of your department for one Indian police officer?

A At the present time, yes, sir.

Q Do you have any type of a recruitment program for hiring Indian officers?

A Not per se, Indian officers, sir, we do have a

recruitment program. We are -- our law enforcement officers or patrolmen belong to the teamster union, we have a teamster contract. In agreement with the contract, we are obligated to give a test twice a year.

Q So it's really --

A For applicants, so anyone can apply.

Q What you are saying, then, is that it's the union, teamsters union who are supplying you with capable officers?

A No, sir. No, sir, I'm not saying that, I'm saying the reason I mentioned teamster union we're obligated to give a test twice a year whereas we could, years ago we used to give it once a month, once every two months.

Q Thank you.

Now, there's been some testimony that in this immediate area there are approximately 5,000 Indian people, permanently living here, I believe the figure I heard yesterday was that in Rapid City itself there are approximately 3,000 Indians and immediately outside the boundaries of Rapid City, primarily north of town here, there are approximately 2,000 Indians. And that the total population of the city is approximately 49,000, so this would make the Indian population approximately 7% to 10% Indian.

Do you feel that a proportionate amount of persons should be employed in the police department as officers?

A I will answer your question but first of all let me

say this, I've attended several meetings with the minority groups and/or the Indian people pertaining, the mayor and I, pertaining to minority recruitment. And we have encouraged Indian or other minority to apply for positions, but we do not have those applications for positions of police officer.

Q One final question, do you know who has jurisdiction over the Sioux Sanitorium?

A That's been a controversy for some time. There is some law that states we have concurrent jurisdiction on the Sioux San. property such as we would have in the federal building. Let me put it this way. We do not patrol Sioux Sanitorium, but upon request by Mr. Bedseck (Phonetic) or any of his staff, we do come to -- go to calls when they call us.

THE CHAIR: I have no further questions.

Q (By Mr. Volk) Stan --

A Yes, sir.

Q Were you present when Chris Rogers and George Mackey testified earlier this morning?

A I was present when Mr. Rogers was up here, yes, sir.

Q I wonder if you might respond to what your knowledge of the incident described by Chris and how that came about.

A Could you bear with me a minute here?

Q Sure.

A Mr. Rogers, if I might say, came in to me some two or three weeks ago to file a complaint against a police officer which I immediately initiated investigation. Due to the lack of information on Mr. Rogers' part, I requested that he bring his witnesses in so that we may get a statement to finalize this allegation against police officers.

This is the first time I have seen Mr. Rogers since that time. He did not come back in to finish the investigation.

Pertaining to the incident that he talked about, I briefly read the report, and as I read it, I find that we had a citizen who advised police officers that stolen property belonging to him or her was in this particular vehicle that allegedly was owned by Mr. Rogers.

She went to the scene, went on the property, police officers did not at that time, she observed the stolen items in the vehicle.

At this particular time the officers were summoned over to the vehicle and she identified the stolen items as being hers. As the report indicates, as I read it, Mr. Rogers came out of the house and he had a package or a box and he went over to the vehicle and says, this is my vehicle, but I don't know where these things came from, I'm throwing them out of my vehicle. The officer advised him at that time that they were in the process of investigation of a

felony, they were standing by the vehicle until they could get assistance from police headquarters, and they did not let him touch any of the stolen items that were in his, quote, allegedly his vehicle.

At this time he refused to listen to the orders of the police officer and he was consequently arrested for obstructing a police officer in the performance of his duty.

Q Do you know whether or not he was Maced at that time?

A. There is no indication on my officer's report at this time that there was any Mace used.

Q Okay. Do you have any information there with you regarding testimony or the allegations that George Mackey made here this morning that on September 4th, three officers from Rapid City arrested him, that the arresting officer beat him, and that he was taken to the city jail where he was again beaten, in which he claims there are witnesses to the beatings at the city jail, and that while he was in jail and in pain, Mackey was not allowed to see a doctor for nine days, and that he did not appear before a magistrate for four days and that he was refused permission to make a telephone call until such time as he appeared before the magistrate?

Do you have his file there with you?

A. Yes, sir, I do, but I can only answer to some of your

questions, if I may.

Q. All right.

A. Okay, sir. He was arrested for burglary of a vehicle upon information received from a citizen. At the time he was apprehended, he resisted arrest and prepared to run, in fact he did get to a point where he was running. The officers subdued him, handcuffed him and took him to the county jail. And if I may just mention a report pertaining to what took place at the county jail, the individual claimed that he had a head pain and that we did in fact kick him in the head.

The officer who wrote this report, I believe was the arresting officer at the time, and his report indicates that there was not any brutality witnessed whatsoever pertaining to this individual.

There were a couple times where he refused to walk that he had to be carried. He appeared to be injuring himself by thrashing around in the paddy wagon or car 11, which we use for transporting prisoners, but as far as the officers hitting him, no, sir.

Q. And you have no information that he was refused access to a telephone, I believe he said for four days?

A. No, sir, I do not.

MR. VOLK: I don't have any more questions right now.

Q. (By Ms. McEldowney) A procedural question, how much involved do the police get in the actual jailing of people when it's in the Pennington County Jail?

A. My officers, with an agreement with the sheriff, Mel Larsen's office, is that the officer will stay with the prisoner until incarceration.

Q. But you have no further contact as a police department after that time?

A. No, Ma'am, we sure don't.

Q. So about phone calls while in the jail you would have no knowledge of that?

A. That's right. Once our officers leave the cell we probably never see the individual again.

Q. Until trial?

A. Until trial, yes.

Q. I have a question about Jeannie White. Were you -- could you comment, were you here when she testified?

A. I can give some comment on it for this reason. I do not want to go into detail because the entire case is presently sitting in the state's attorney's office, Mr. Janklow.

I, personally, was contacted by Jeannie White, and I believe her mom was with her at the time. I initiated investigation to the allegations, I personally took statement from witnesses at the Embers Nightclub, all of this information

is presently in Mr. Cloud's office.

Q. How long have you been on the force?

A. I'm in my 18th year.

Q. So are you familiar, then, perhaps have personal knowledge with, personally acquainted with Ms. White?

A. Sure, I've talked to Jean several times on the phone and in person.

Q. And you've worked with her over the years, then?

A. I haven't worked with her, I've known -- I've been connected with some organizations that she has worked with, yes.

MS. McELDOWNEY: I want to thank you for your -- Chief, for the information that you have supplied regarding the various statistical data that you have at your, access to, it's been very helpful to us and you know, seeing a clearer, full picture of criminal justice in Rapid City.

Thank you.

A. We were glad to see.

MR. ADELSTEIN: Are there any further questions? Is there any other further comments that you would want to make -- well --

A. I would like to, Stan, if I may.

MR. ADELSTEIN: Okay.

Well, let me have one other thing because there was one other set of -- one other set of statements made this

morning I think in your hearing, Stan, Viola Center talked about her door being, you heard her testimony this morning earlier?

A. Yes, I did.

Q. (By Mr. Adelstein) Do you have any information on that case?

A. The only information I have is somewhat sketchy, although I can briefly say that the officers were in the process of making an apprehension on an AWOL and I believe the other lady on the board at the time thought that it was the government or military that should make these arrests.

They can not within the city limits of Rapid City, they contact the local law enforcement officers, we, in turn, apprehend the AWOL or deserter or whatever the case may be by their -- by their authorization. They don't come into town and make apprehensions.

Q. What would you do if a policeman was guilty of such offenses?

A. Okay, this is what I would like to bring out. I have heard much testimony this morning that we have had so many complaints against police officers. If someone has a complaint against a police officer, we are not a big enough department to have an internal affairs, although Chief of Police Ray Neal assigns me to that particular

allegation. If I can get written statement or dictated statement from the complainant, we will initiate an investigation by taking statements from the officers, from witnesses, to finalize the investigation.

Q Stan, do you think that an individual, an Indian in Rapid City, might have reason to be -- might have reason to be fearful of giving you such a written statement?

A No, sir, I do not.

Q Given the world the way it is really?

A Some -- some of the Indian people that I've talked to prefer that we won't go any further, they just wanted to make the complaint to me and wanted to let it drop and I asked why. Well, they were -- they were afraid that the people they signed the complaint against would either beat them up or catch their kid later at school, I guess I would have to retract somewhat, and say yes, maybe there is some fear there, yes.

MR. ADELSTEIN: Mr. Muldrow, from our Denver staff.

Q (By Mr. Muldrow) Mr. Zakinski, again relating to the Viola Center and Larry Adams case, you stated you had a little knowledge of that, what did you say you knew about that?

A Well, I have a partial report here indicating that our officers assisted a deputy sheriff in the apprehension of an AWOL. And that at the time of this apprehension, that

a door was kicked in to gain entrance to make the apprehension.

Q. And what is your assessment of this act in breaking down the door, is this outside of your standard procedure or do you feel that it was permissible in this case or do you know enough about the facts of the case to comment?

A. I would really -- I don't know enough about the facts of the case.

Q. And why don't you know the facts of the case, sir?

A. Because I -- I wasn't prepared for that particular -- I didn't get all the reports compiled for that one.

Q. Would you be able to provide us at a later date, information that you might gain on that?

A. Sure could, sure.

MR. ADELSTEIN: Bill, in that regard, is it possible that if the Jeannie White investigation is concluded prior to the 30 days, that data could be added into the record?

MR. MULDROW: Certainly, yes, we would be very glad to receive it. Also there has been a lot of comment and complaint by Native American citizens of special kind of harassment on the part of both city police and sheriff's deputies of Native Americans, especially in certain areas of the city.

You stated, I believe, that you have no knowledge of any special surveillance of this nature and I assume that by

this, that it certainly does not reflect your official policy, that no orders of this nature have been issued by you or your administrative staff.

Do you feel that this may possibly take place at the initiative of individual officers or do you have any knowledge of this?

A. If it does I'm not aware of it, sir.

Q. (By Mr. Muldrow) You also stated just for example, that in the police report that was turned in with regard to George Mackey, that there is no mention of -- I believe it was no, excuse me with Chris Rogers, that there was no Mace mentioned as being used in that incident in the report. Does this mean that if it had been used it would have been mentioned in the report?

A. Yes, sir, we require the officer who makes an apprehension, whether he uses his weapon or the Mace gun, that that be indicated in his report.

MR. MULDROW: I think that's all that I have at this time.

MR. ADELSTEIN: Mary Ellen has another question but before she gets to that, the incident referred to about stopping of all vehicles on their way into La Cota Homes last Friday night, do you have any information, there were four police vehicles, police, sheriff or highway patrol vehicles on the highway on Haynes Avenue, do you have any

information on that incident last Friday evening?

A. I have no knowledge that city police officers were stopping any vehicles entering La Cota Homes area.

MR. ADELSTEIN: Maybe when we get to Sheriff Larsen we'll find out there were four police vehicles.

THE CHAIR: I do have a question, sir.

MR. ADELSTEIN: Please go ahead.

Q. (By the Chair) Now, the reports that you are referring to, were they made after these incidents occurred or before the incidents -- excuse me, were they made just prior to your coming here for the purposes of this meeting or are they reports made immediately after the incidents?

A. No, sir, the reports are made immediately after apprehension. These were made on the dates, probably a couple hours after the incidents took place.

Q. So, what you're telling us today are basically what you have read in the reports, you have no first-hand knowledge then, is that correct?

A. No. Just what I've read in our reports.

Q. I see. Is there any indication of how Mr. Mackey was hurting himself inside the van? I think you made a statement to that effect.

A. All the report indicates at this time, sir, is that he was thrashing around in the back of the paddy wagon, that's the wording that's on the report.

THE CHAIR: Thank you.

Q (By Mr. Muldrow) Just one followup question again, Mr. Zakinski. With regard to the Viola Center incident, I'm a little bothered about your response to this in that this incident, from, I gather from the persons that I have talked with, was a matter of major concern in the Native American Community here in Rapid City. And the allegations have, that have been made would appear to be rather severe in nature. And I'm wondering why that this situation has not been brought to your attention and that if you were aware of it, why you did not investigate more thoroughly the facts of the case.

A I would like to advise you at this time that I was not the investigator on it and that our captain of detectives was, and I did not have -- I do not have those reports with me at this time, but he did, there was a full scale investigation pertaining to the Viola Center incident at 312 and a half St. Joe Street and at this particular time I don't have the copies with me.

Q You're the, as I understand, Mr. Zakinski, the second-ranking officer in the police force, is that correct?

A That's right.

Q A matter of this seriousness, would it not or should it not, in your opinion, have been brought to your attention shortly after it was investigated?

A. When it was brought to my attention, Frank Gangone and Mrs. Center and several others came to my office, I, in turn, left a report or had a report dictated immediately to Chief of Police Neal, and he handled it from there.

Whereas he delegated an investigator to investigate this and I have not looked at that particular report at that time.

Q. But Chief Ray Neal would be aware of exactly what was reported there, would he?

A. Sure, yes, sir.

Q. (By Ms. McEldowney) Mr. Zakinski, did you ever see a copy of a letter sent to the chief from our regional attorney in Denver, a Bill Levis, informing him of the specific allegations that were going to be made?

A. Yes, I did.

Q. And still you didn't -- why didn't you bring the materials?

A. I say on my area I have reports pertaining to the Viola Center deal but it's very sketchy in comparison to -- I wasn't aware of the reports that were left by the captain of detectives. And I could -- I could get those up with no problem.

MS. McELDOWNEY: I see.

MR. ADELSTEIN: Would you want to have open discussion on -- Stan, could you arrange, we have an opening at 3:30

where we'll be hearing from the public, would it be possible for you to arrange to make a presentation in that regard to the Viola Center case only at 3:30?

A. Sure.

THE CHAIR: Any other questions to we can --

Q. (By Ms. McEldowney) I've one question about the school system. You talked about the liaison program that you have with the school, and I'm wondering if there are any directives regarding your officers questioning students, you know, of all ages with or without their parents present?

A. Directives, th- 've had a policy, I believe, with the school, our school liaison officers --

Q. This is the police department has a policy?

A. Police department school liaison program that they can talk to the children with the principal or teacher available.

Q. And there was no attempt to notify the parents or no responsibility on your part to notify the parents?

A. In some cases it was necessary to notify the parents, it was of an informative nature, unofficial or informative rather than accusatory. Whereas we would --

Q. Now, what do you mean, in terms of witnesses' examinations, it's your judgment that that's not necessary to notify a parent?

A. Right. We're in the process right now with the

board of education of revising this situation right now.

Q. You don't feel that there would be some or maybe, are you a parent yourself?

A. Yes, I am.

Q. If I were going to send out Stan here to talk with your kids, would you like to be notified that he was coming?

A. Not all the time. Not if it's pertaining to a snowball fight at the school or something like that.

Q. How do you -- how would you know in advance if what we've been hearing today, there's some distrust in the communities between Indian and non-Indian community here in Rapid City, how would you know in advance whether his determination of the seriousness of the matter would meet your standards?

A. This is where -- what we're in the process of revising, it's the school liaison officer and the principal's discretion as to how serious should the case be before the parent is advised.

Q. And is there any distinction as far as age of the children?

A. No, not really.

Q. I mean those under compulsory education versus those secondary students who are older than 16?

A. No.

MR. ADELSTEIN: I think we'll move on now to Sheriff

Mel Larsen.

Sheriff, would you please state your name, address and occupation?

SHERIFF MELVIN LARSEN

A. (By Sheriff Larsen) Melvin Larsen, I live in Rapid City, Sheriff of Pennington County.

Q. (By Mr. Adelstein) What is the jurisdiction of your office and how many of your officers are Native Americans?

A. Jurisdiction is Pennington County, we do not have what you call a full-blooded Native American or Indian, we have personnel that are of Indian ancestry.

Q. What do you mean by that?

A. Partial. Percentage of Indian blood.

Q. What efforts have you made to hire Indian officers and what were the results?

A. We've, the policy of Pennington County is that we have to notify the job services on any hiring of people for Pennington County and this is done each time we have an opening. I have made indications to different groups, some through the church and so forth, encouraging people to apply. We've had a few applicants, I was close to hiring one and they couldn't supply the data for the educational

standards that the state puts out, and I couldn't hire him. And at the present time I have two openings as jailers and we're attempting to hire some type of minority people for that.

Q What do you mean by some type of minority people?

A Well, Indian people, I'd be pleased if we had Indian applicants. I do have some.

Q How are complaints against your office investigated?

A They're investigated by the administrative staff.

Q Have you received any complaints from Native Americans?

A Yes.

Q Do you care to comment on any complaints or what you consider to be the validity or the frequency of complaints or any feelings that you have about complaints toward your office?

A Any complaints that come that probably would justify some type of disciplinary or criminal charges, the initial complaint is made and as Stan has mentioned, we have a hard time getting the followup as far as being able to prove or disprove the allegation.

Q What do you mean by having difficulty getting the followup?

A The witnesses' statements, so forth.

Q Do you have more difficulty getting witnesses'

statements in the case of an alleged complaint than you do, for example in a case of an alleged burglary?

A. Yes, and that's not necessarily Indian people, either.

Q. Say again?

A. That doesn't necessarily mean just Indian people, as far as the followup on complaints. I have one recently of a -- of a jail situation from a White rancher, and I haven't -- he hasn't been in to talk to me yet. I can't -- I can't change or discipline or charge anyone that I don't have the information on or I'm not aware of.

Q. Do you send deputies or officers out to investigate the complaints against your office?

A. Right.

Q. Once a defendant is arrested when are they read their legal rights?

A. Well, it depends on if you want to interrogate him and use the evidence against him.

Q. Would you go a little further into that question?

A. Well, if he's going to be interrogated he's read his rights prior to interrogation.

Q. What percentage of persons arrested are Native American and for what offenses are they arrested?

A. I can't give you that, I do not have the staff to try to complete the form that was sent, and I took the last

two days which is generally, it runs similar, of the jail population, yesterday we had a total of 50 people in the jail, there were 41 men, 21 of these were Caucasian, 19 were Indian and one Negro.

We had five women, there were three Indian women and two Caucasian women.

We had four juvenile boys, three Indian boys and one Caucasian and there were no Indian girls, or no girls, Indian or Caucasian, on the sixth.

Today, just before I come up here, there were 47 people in the jail, there were 17 Caucasian, 21 Indian, one Negro. There were two Caucasian women, two Indian women, three Indian boys, and no Caucasian boys, there was one Caucasian girl.

Now, as far as the percentages, I would venture to say over the years that this would probably be a fair estimate of the percentage of Indian, White, Negro, oh, so on.

Q How many -- how large is your administrative staff or your paper work staff, Sheriff?

A The administrative staff that we have consists of myself and two deputies.

Q How many hours would it have taken to have collected the data that was requested by the regional office of Civil Rights Commission?

A. Well, we would have had to have neglected our other responsibilities. For example, I think a lot of these questions could have been asked to the court people, they are supplied weekly with a list of all inmates of the jail, in attempt to, this was implemented by my office, an attempt to keep these people moving through the process.

Now, after we get them in jail the process is up to the courts to where they're going to, how fast they're going to get out of there. And our policy or my policy is we don't want anyone in jail, and the assistance as far as getting them out is our goal. If it's possible. Because I'd just as soon there wasn't anyone in jail, that increases my problems.

Q. Did you inform the Denver office that some of this data would be available by going to the courts?

A. I don't know if I did or not, I think the courts -- I don't know if they can or not. Some of the questions are very broad, where it would take a lot of time.

Q. Did you request any additional administrative help from the county commission in order to answer these questions?

A. No, I didn't. I can give you some figures of people that we do have. Now, -- now in 1975, now I can also give you a total, I don't have this form, I neglected to keep a copy of it for LEAA, that give a breakdown but it would be

available through them.

Q. We'd appreciate very much, perhaps, at the end of this hearing, we have a 30-day period, if you could submit as much of the data as you have been able to collect together with the --

A. I can give you some figures right now. They're not classified and the one thing about our jail is that they, in this section of the state, they hold all of the prisoners that are arrested under state charges, all the prisoners that are arrested under city charges, incarcerated and all people that are arrested under federal charges and incarcerated so the figures that we would give you would be contradictory as far as each individual jurisdiction goes.

Now, I can give you in 1975, we had, our office arrested 874 people. Now, this is not including traffic. And they were -- there were, of all the jurisdictions placed in our jail, even overnight transit prisoners, so forth, there were 3,591 people committed to the jail.

Now, this doesn't mean there were 3,591 people, there's recidivism involved there. As far as the breakdown of the people and the types of charges, I -- we work at below minimum, we have 23 deputies, we have the jurisdiction of Pennington County, and I feel that response to the citizens are probably a little, take a little more precedence

than the type of charges that are in there, which the courts already have that.

Q Sheriff, would it be fair to say that you welcome this opportunity to aid in the investigation in the treatment of Native Americans in the justice system or you do not welcome this effort?

A No, I welcome it, I think that you people are at a disadvantage though. Through the two days that I've been here, I feel that if -- I don't feel that there's any way that you people are going to be able to identify the problem and I think there are some problems.

But I'm disappointed that we're really going to be able to put our finger on it. I don't know how you can distinguish between the people that are trying to help and the people that are honestly lying to you.

I think that you need subpoena power and I think you also have to have people under oath. I don't believe that you're ever going to come to a solution, and I'd like to have a solution, I'd like to have the commission say this, this and this.

I would be more than happy to cooperate. I am disappointed that you have no more authority than this.

Q Incidentally, for your information, that is greater authority in the Washington office and the very things you've discussed are currently under consideration.

Let me ask one last question in connection with the charges made by Viola Center. You were here when she made them this morning --

A. Yes, sir.

Q. -- do you have any data on the sheriff's participation in that?

A. I do, I have statements from the people involved and of course I can not release them without a written form from them.

Q. What are they, in substance?

A. The deputy sheriff that was involved in this is no longer directly on this staff. Generally of knowing Gerald Center, who has been incarcerated in our facility numerous times, and I think probably 95% of the time he has been a trustee at our facility, I think that maybe it could have been avoided, but I also don't believe that it is as flagrant as maybe, as it puts out to be.

There were -- this is not the policy of our office or the police department, and least of all the police department or myself do not like to get into these type of situations. If they can be avoided, and I wonder sometimes if Stan and I have to be out all the time to avoid these.

Sometimes you have to let the officers think for themselves. And Gerald was generally absent without leave

more than once, the initial call that was given on this come from the -- of the knowledge of him even being back, was from the Center family themselves. Who notified the law enforcement that he was back and he was AWOL again.

The deputy sheriff did not kick the door in, the deputy sheriff was just before that had a back injury and he couldn't raise his leg that high.

The door, as I have been to the house numerous times, was -- was probably in condition where it would not take much to open it. There were conversations between the officers and Gerald that, inviting him, he said you're not going to be able to take me, come in and get me and so forth, and it was generally rhetorics.

I have the statement of the officer, I'd also have to get a written release from him, generally if I would have been in direct involvement with this, of knowing Gerald, I feel that sooner or later he probably would have walked in the office or walked into the jail, because it is in close proximity to their house, it's right across from the courthouse and they frequent this area quite often.

Where it probably could have avoided the problem, Gerald is not an individual that's going to abscond, he's -- I think he's lived here most of his life, it probably could have been done differently.

And of course law enforcement is no different than you people, you know, they're only human beings and human beings are subject to error.

I'm disappointed that something of this nature happens, but I don't think the law enforcement are entirely at fault either, I believe that there was some assault put forth towards the officers. I think that the state's attorney made the decision that didn't think it was that flagrant a violation and he decided from a call from the officers not to prosecute the other individuals and told them to release them.

Gerald, the following day, had no ill feelings towards anyone who was the individual that was directly involved. And I have statements of him if you want a release from him.

We really have nothing to hide on it, I think it was misfortunate that it happened, and I don't appreciate any type of controversy or problems arising from anyone.

Q (By Mr. Volk) Mel, I have a couple of questions regarding the Viola Center incident.

First of all was your deputy, Dick Davis, transferred to Hill City because of this incident?

A No, he was not.

Q He was not, all right.

Viola testified that the back door was open, it

would seem to me that if your police officers, law enforcement people, are going to apprehend somebody, that they perhaps would go to the back door anyway. Is there any reason why -- wouldn't that be standard operating procedure if you're going to go to apprehend somebody and there's a back door in the place, wouldn't you send somebody around to the back door, it would seem they could get away on you very easily, wouldn't that be just standard operating procedure?

A The door of -- let me construct the house a little bit, it's a house that sets on the alley, now I don't know which is the front or the back, there's a door that faces the alley and there's one that faces alongside of the house. You're having -- you people on the board are having me testify, who wasn't there, and you have Viola testify, who wasn't there, and I can't testify for somebody else.

If it was -- I don't know if the door was open or not. I wasn't there.

Q One further question. Is it anywhere in your reports from your deputy that a gentleman was Maced through a window while he was in bed?

A I think there was -- I think there's some indication that there was Mace put into the house, yes.

Q So apparently there was some resistance, you certainly don't use Mace unless there's resistance somewhere, apparently

there was, then, resistance when your officers and the police department's officers entered the house? Do your reports indicate that there was resistance --

A. There was --

Q. -- on the part of Gerald Center and the other individuals in there?

A. Yes.

Q. Do they indicate what kind of -- how this resistance took place or what were the actual --

A. There was verbal threats, there were physical, with a, I believe a two-by-four --

Q. Used against your officers?

A. Well, I don't think it was used, it was attempted.

MR. ADELSTEIN: Mary Ellen?

Q. (By Ms. McEldowney) When you got this request for information from the Denver regional office did you talk with anyone in reference to reply to this?

A. Try it again? You turned your mic. off.

Q. Did you ask anyone for their advice as to what procedure you should follow in reply?

A. It was discussed with the state's attorney's office, first of all it wasn't directed to me, it was -- it was to the sheriff, it wasn't directed to me. I don't disagree with, I think that your only problem that you -- that you requested was that it was too in-depth. We don't try to

classify Indian, Negro, right on down the line, we don't have segregation in the jail, we are in the process of, through forms and so forth, in reporting, that we're not supposed to distinguish sex, I mean race and then we turn around and you want us to distinguish who your -- on your report never indicates Indians either. If you want Indians. I consider myself a Native American, I was born here.

Q. Did you ask anyone their advice as to whether or not you should fill out this form?

A. I get many, many requests and if I filled out every form that I got that's the only thing I would accomplish.

Q. Did you ask anyone for advice?

A. Yes, state's attorney, yes, I said that.

Q. And how were you advised?

A. He said that what is your problem and why you can't fill it out and I said it's because of lack of staff.

Q. Did he ask anyone else or did you talk to anyone else about filling out this reply?

A. I don't know if he did or not.

Q. You have no knowledge of whether any other phone calls were made in reference to this specific request?

A. There could have been some phone calls, I don't know. I left the request with him, the first one.

Q. Did you have any conversations with anyone from the

attorney general's office?
A. I don't, no.
Q. Do you know if Mr. Klauck did?
A. Not to my knowledge, you'd have to ask him.
Q. In reference to -- you've talked about your recruitment practices, and I'm wondering what kind of -- there was some indication at an interview, I guess, previous interview with a staff member you said that there -- no Indians had passed your background check, do you recall that?
A. The standards is what it would be, standards and -- the standards are set by the state.
Q. And what are you referring to specifically?
A. Convicted felons or educational disability.
Q. You have educational requirements for your sheriffs?
A. No, the state standards do.
Q. What state standards are you talking about?
A. The [illegible] by the state standards commission, State of [illegible] Dakota, for the hiring of law enforcement.
Q. The criminal justice section?
A. I don't know what section it is in but there are standards that we have to follow and that is not local.
Q. And those standards have an educational requirement?
A. Yes.
Q. For hiring of sheriffs?
A. Yes.

Q. And what is that?

A. Well, at least a high school education or GED.

Q. Are you aware that far and away the majority of Indians in South Dakota do not have a high school education?

A. Well, the ones that have applied to me have been that problem, and I don't know how to get by with it, you'd have to take that up with the state standards.

Q. Are you aware that most of them do not, the majority --

A. No, I'm not aware of that.

Q. All -- have you had Indian applicants?

A. Not as many as I would like. I think I have about two or three now.

Q. And you say you have some vacancies now?

A. In the jail. I've increased the jail staff by two males.

Q. These are guards then?

A. They are jailers.

Q. What is the distinction with the other, job-wise, how many of your -- was it 23 in all?

A. Twenty-three deputy sheriffs, I could go on here a little bit, I think there was a makeup, they wanted to know the makeup of the defendant, there are four special deputies which are primarily paid by the Cities of Wall and Hill City, three in Wall, one in Hill City, four office --

Q. What is the distinction in numbers and jobs for those

who work outside of the jail?

A. That's -- I haven't quoted who worked in the jail yet.

Q. Okay, so all the 23 work outside the jail?

A. Correct.

Q. And I'm a little bit confused about the overlapping jurisdiction that you have at the police department. How do you work this out?

A. Well, that's somewhat of a problem as far as different distinguishing in the law, we try just to cooperate and coordinate the efforts, we -- Rapid City is in Pennington County, as with all the other cities that are in the county, we take the position of not avoiding or not ignoring within corporate limits.

Q. Now, how would the -- if the complaint comes to you and a complaint also goes to the Rapid City Police Force, what kinds of communication is there to let one hand know what the other one is doing?

A. Well, we talk to each other.

Q. So there are, on every case, I mean is there some sort of check and balance that you would know that the police is investigating a specific complaint?

A. If it was against one of their particular officers, I don't know if we'd know it or not.

Q. No, excuse me, I'm talking about complaints that

you get?

A. On complaints, general complaints?

Q. Yes.

A. On --

Q. Overlapping as far as investigation of alleged criminal activity?

A. Well, you have to, you have to coordinate and converse with the different agencies because the criminal element does not pay any attention to imaginary lines.

Q. Does this cooperation depend upon the individual officers investigating, the detectives?

A. Well, I would hope it would not, I hope it would be through the administration that they would be able to implement something that would be beneficial to the citizen we're paid to protect.

Q. Well, how is that done?

A. Well, there is no format as far as a -- you do this and you have a checklist. Throughout the day there's detectives in our office with our investigators and vice-versa. I would assume every day.

MR. ADELSTEIN: Stan, do you want to --

A. (By Mr. Zakinski) Yes, let me say something, I think I know what Mary Ellen's getting at. Say we get a call out, say we get a call to La Cota Homes, Rapid City Police, okay? We, in turn, immediately call the sheriff's

office and say, hey, there's a problem out at La Cota Homes. They'll send a deputy out. Do you need assistance? There's a constant communication, same as the investigator who is going to work on something that may take him outside the city, he will then, in turn, go over to Mel's office, ask one of Mel's men would you go with me out in this outside the city limits to investigate something and the same respect is given us, same courtesy, if Mel has something going in the city that he thinks maybe one of our investigators or law enforcement officers should be involved in, they would -- we have a --

MS. McELDOWNEY: Thank you, that is what I wanted to know.

Back to the grievance procedure within the department now, Mr. Larsen, as far as -- have you gotten specific complaints of alleged brutality either from your guards, against your guards or against your deputies?

A (By Sheriff Larsen) I would say most of the complaints come from the jail, because no one likes to be incarcerated.

Q Then you have gotten complaints?

A We have. Most of the time we've been able to get the people down and figure the complaint out. It's not the case where people enjoy, you know, beating people up.

Q What is the procedure that, if I were a guard in your jail, I would know what would happen if I got a complaint

filed against me for alleged brutality? What happens next?

A. Okay, well, now, according to statute the first thing that would be presented to the state's attorney for criminal charges. And if in my own mind it was -- it was legitimate, even if there wasn't criminal charges, I do have, by statute, I can summarily dismiss them.

Q. If the complaint comes to you?

A. It's -- it always comes to me.

Q. What procedure do you use in order to summarily dismiss?

A. I haven't had to do that yet but I can just dismiss them, the statute gives me that power.

Q. You haven't used that power?

A. No.

Q. What is your involvement, then, in reviewing complaints that you said you have gotten of alleged brutality?

A. We investigate them in the same nature we investigate any other offense.

Q. What is the role that you play in that investigation?

A. Well, I'm the first administrator.

Q. Well, you said we investigate, I'm wondering if you do the investigation or --

A. Well, no, I consider the department we. I don't necessarily do the investigation, it will either be a chief

deputy or the administrative assistant.

Q What kinds of contact and percentage of time, your official time if you will, do you spend working with the community outside of the jail, are you in the -- are you in your office most of the time?

A I try to be.

Q So you --

A I haven't been there for two days.

Q As opposed to going out into the community and talking with individuals? You don't --

A I hear that most of the time from some of the citizens in the rural areas, that they never see me. But it does devote most of my time, I have to devote most of my time to the office because generally the people want to talk to me, whether the complaint can be handled by even a clerical person.

MR. ADELSTEIN: With time that we have we better move on. Any other questions?

THE CHAIR: Just a couple.

MR. ADELSTEIN: Please, Mario.

Q (By the Chair) Most of the questions I was planning to ask were asked by Mary Ellen.

Now, you state that your jurisdiction is countywide, Pennington County I believe, is that --

A Right.

Q And how many communities are there in Pennington County? I believe there's Wall, Rapid City, Hill City and Hermosa?

A No, Hermosa isn't, depends on how large you want to make them.

Q The Scenic area?

A Scenic area is ours, Wall, Wasta, New Underwood, Box Elder, Box Elder does have a policeman but it's still within us --

Q Okay, of these areas, where -- which city has the greatest problem in dealing with Indian people?

A What city does?

Q Yes, of these named cities?

A Well, I would say that Rapid City probably does because that's where most of the population is.

Q And which would be the second greatest problem area?

A Well, the second largest community in Pennington County is the La Cota Homes area.

Q I see. What about Wall and Scenic, are they problem areas?

A Scenic gets the reputation of being a problem area, they do have probably more problems than they need, but --

Q Now, you stated, I believe, that there are 23 persons working under your authority?

A Twenty-three deputies.

Q And how many of those operate under -- out of Rapid City?

A Of that 23, they all are headquartered out of Rapid City.

Q How many are permanently stationed here?

A Twenty-three.

Q Okay, so do you -- do you send some of these people out of Rapid to these various communities?

A Yes.

Q None of them are stationed in Wall, for example, or Scenic?

A There are three deputies that are in Wall but their primary compensation of wage is by the City of Wall.

Q I see. Now, what about the highway patrol, I believe that they get involved in patrolling the La Cota Homes area sometimes. Are they under your jurisdiction or do they have a separate --

A No.

Q -- authority?

A No, they're not under my jurisdiction.

Q I see. But you do work with them sometimes, is that correct?

A Yes.

Q (By the Chair) Now, getting back to Gerald Center, do you know what his condition was at the time of the arrest?

A. Intoxicated.

THE CHAIR: I have no further questions.

Q. (By Mr. Adelstein) One last question. Do your arrest records indicate race?

A. The records do at this time, but I'm really in kind of a limbo where and how we're supposed to report these things because of the privacy and so forth. I don't know if this is going to be true in the future.

MR. ADELSTEIN: We appreciate you gentlemen appearing, we'd like to have the other data this afternoon, we'll see you again, Mr. Zakinski, any of the data that you can collect, Mr. Larsen, to add to our record.

We are now going to hear a complaint from Theresa -- oh, I'm sorry, Robbi, okay, we're firing five guns today rather than four.

Q. (By Ms. Ferron) Mr. Larsen, on the information you gave us about the Indian people in the jail for the last two days, where did you get that information?

A. I checked it from the commitment cards before I come up here.

Q. Okay, Indian, all people are asked their race or how is that information obtained?

A. It's identification as far as the jail goes of individual people. And where they're at in the facility.

Q. The people are asked, are you Indian or is it that --

that determination made by the people in the jail?

A As a rule the determination is made by the jail.

Q By visual aid then?

A Right, right. Some of that could be in error either way, one or two.

Q Okay. Talking about the testimony given by a person by the name of Center today, you were talking about that situation, you said you were disappointed that that had occurred. What did you do about this disappointment, if anything?

A There was a reprimand as far as my one officer is concerned.

Q You reprimanded the officer?

A For maybe -- of not pursuing another approach. As far as what was done towards the police department, I do not have that knowledge. There was attempt made from the individuals if they wanted to pursue the thing as far as charges, that could be done, and Mr. Center indicated didn't want to pursue charges.

Q Okay. I have just one last question. It deals with the procedure from the time a person files a complaint with one of your sheriffs or the time a person comes in and gives a statement, how long does it take until there is something done by the state's attorney? And do you keep the person that filed the complaint informed?

A. We attempt to keep them informed, this is one of our -- one of our problems as far as communication with the people. I can't answer you how long it takes to process through the state's attorney's office, that's -- that's their job. Maybe I'm not understanding --

Q. Okay, once a complaint, you take the statements from a person that is a victim, what do you do, how long does it take you to take some action? Your department?

A. If we have the elements of the crime we present it to the state's attorney, you know, just as soon as we --

Q. Within 24 hours?

A. As soon as possible.

MS. FERRON: That's all that I have.

MR. ADELSTEIN: We're going to now hear from Theresa Red Cloud on a complaint. Stan, you may want to stay and listen to that and if there's an answer that you want to cover at your 3:30 presentation.

We're nearly an hour behind.

I haven't seen Charles Carrell come in the room, has anyone seen him?

Ray is here, Ray, I'm sorry, we're running late, we're going to take this from this morning and continue.

Theresa Red Cloud please?

Ms. Red Cloud, would you please state your name, occupation and address?

MS. THERESA RED CLOUD

A (By Ms. Red Cloud) Yes, my name is Theresa Red Cloud, I'm a student at NCB and I live at 1204 Mt. Rushmore Road.

Q (By Mr. Adelstein) Would you just --

A In Rapid City.

Q And you're a student at NCB?

A Yes.

Q Would you please describe the October 28th and 29th incidents involving Rapid City police and yourself?

A Okay. It happened around about 7:30 and I was home, I had come back from classes and I'd just had supper and I was at home, and my brother from the reservation had come to visit and he had been there just shortly, so I said to use the car to go down to the store, and have some groceries. I wanted to pick up some groceries at the store so I had left and he lent me the car. And he was with some people that I didn't know who they were, there were just a few that he was with.

And I'd come back and they had gotten into the car and they had left. And they didn't, they didn't inform me of where they were going or -- anything.

And so I was at home and then I heard a knock at the door, and before I could answer it this police officer

just walked in and had a radio in his hand, and he says, where are the boys?

And so I said, well, I don't know what you're talking about, I don't know what you're talking about when you said the boys. And he says, well, we've got a tip that there's a fugitive that you have in this place, and so I said, no, I said there's nobody here. And so he -- without saying a word he just started radioing in, I don't know what he was talking about but he radioed in and he went to the back bedroom and then he was going to go in the bathroom, but there was a broken lock and it was closed and so he -- he hesitated to go in the bathroom door and there was just only two rooms.

And so he -- he went to run out the door and he brought [illegible] and then when the two officers [illegible] and he brought two more officers besides him, they came in, with the knock and they just walked in again and they start looking around. And they -- I told them there was nobody and they could look all they wanted to so they looked and that -- so they had left, that was about an hour later when they came back.

So they had left and about -- so I'd forgotten about the incident but I didn't, you know, I just knew there was no fugitive in the house. So I went to sleep and

I JUST WALKS IN AND he HAd a LITTLE rADIO
IN his hAnd, AND

15 brought two more OFFICERS IN AND them,
WHEN the two

16 OFFICERS, THAT WAS the SECOND time they
CAME BACK AND he

17 brought two more OFFICERS beside him,
they CAME IN, with

it must have been about 8:00 o'clock in the morning, 8:00 a.m. in the morning, and I heard this loud bang at the door and so I thought it was my girlfriend that runs me to school and back.

And I thought she was early because it was dark out yet. And so I went to the door and so I opened it there was [illegible] and that's when I got upset and I got mad and I says, you can't even sleep around here without you police coming knocking on the doors.

I said, once before I told you there's nobody here, and you ain't coming in because I said I'm not -- I'm standing here just with my nightgown on, I said you ain't coming in.

We're sorry, we're sorry, but we have to -- we have to do this by orders. And so I just slammed that door and I said they ain't coming in and my sister was on the bedroom in the front room and they said, well, who is that laying there and I said who do you expect? I said that's my sister and they just left then.

And so I went to the Sioux San. Hospital that afternoon and I guess while I was gone, the two officers came to the phone again [illegible] my sister -- where my place was, the two officers came and then they had a search warrant, but the times that they -- all the rest of the times that they come they never did show me any papers of

6 yet. And so I went to the door and
as I opened it there

7 was two officers standing there again,
and that's when I

any kind, just the fourth time they came back they had a search warrant, and I guess they came inside and looked around again and there was nobody there.

Q Did anyone else witness these events that you've just described?

A Yes, my sister, she's -- she's back on the reservation now, at the time there was just I and her.

Q There were three times that they came, once at 8:00 in the morning, once earlier and the third time the arrest warrant or were there four times?

A Yes, four times, but the last time they came was about 1:00 in the afternoon, prior to that 8:00 o'clock in the morning.

Q Did the police explain what they were looking for?

A Yes, a fugitive they said that they had a tip that he was supposed to have been there.

And I told them there was nobody there and I didn't know neighbors named that person that they had named.

Q Have you had any problems with the police before?

A No, I have never.

Q Was anyone arrested that you know of in connection with this?

A No.

Q Did you report your complaint to the police chief or the city human relations commission?

Mr. G.

A. No, I reported to Mr. Gangone, I contacted him because I didn't know who else to, you know, to tell, so I called my cousin, Shirley, she works for CHR and I called her and I told her what happened and I didn't like the idea of that, the police coming to my house for no, you know, there was nobody there and for no reason at all, they -- they were standing outside, you know, like a surveillance type of thing, they were outside standing.

And which I've never seen before, they've always, you know, I don't know if they're supposed to patrol that area, but they've been standing, you know, on top of the hill and different places that I'd never seen them

A. No.

Q. You did not?

A. No. They had just knocked and entered. Without, before I even said come in or before I even answered the door.

Q. They knocked on the door and entered?

A. Uh-huh.

MR. ADELSTEIN: Theresa, we appreciate your coming, we're going to take a five-minute break for the -- we'll take a five-minute break.

(Short recess)

REV. THORBURN: We're now ready to hear from Charles Carrell?

Ray Woodsen?

Mr. Woodsen, would you state your name, occupation and address?

MR. RAY WOODSEN

A (By Mr. Woodsen) Ray Woodsen, city attorney for the City of Rapid City, business address is 22 Main, Rapid City.

Q (By Rev. Thorburn) We already have some statements and to begin with, what proportion of the cases you prosecute are Native Americans?

A The prosecution is actually done by Mr. Tobin, my review of them would indicate probably somewhere a fourth to a third.

Q What are the most common offenses with which they are charged?

A. Probably the most common city offense now is probably disorderly conduct.

Q. How does this compare with those for the White population or the non-Indian population?

A. Well, if you take into consideration that I believe that roughly 10% of the population of Rapid City is Indian, it is higher than the White population, correspondingly, I guess.

Q. In an interview with members of our staff you stated there was a strong push for police to arrest on state charges rather than city ordinances violations. Why is this so?

A. Primarily because the State of South Dakota, for the new court system, has started taking city fine money for payment for the court system, the costs of jail through the county and the fact that there is fewer charges being taken generally, I think, and many of the things, most predominantly in the past, was your alcohol-related offenses and those of course were, when they did away with public intoxication and away and prohibited cities from having an offense for driving while intoxicated, so that that's only a state charge, the disorderly conduct is taken on a city offense.

Q. What effect do you think that decriminalization of public intoxication has had on the arrest patterns?

A Well, I would believe at least that there are fewer people -- there are definitely fewer people being arrested by the police department, I -- also the number of people that are being taken to the detoxification center, I believe is probably less than what used to be arrested on public intoxication.

Q How would you assess the availability of quality of the defense counsel for Native Americans?

A I believe in Pennington County it's very good. There are probably a few areas that it might improve, but I think the -- not only because we are fortunate in Pennington County to have a public defenders program, the only one truly in the state, and also the local bar association in Rapid City has been a very progressive bar association in helping of indigent people with helping establish the first legal services program in the state and the first public defenders program in the State of South Dakota, and it just reflects their attitude of being assistants to the courts.

Q What are the effects of the bail and bonding procedures on Native American defendants?

A Well, of course it's the same on them as on any other person, I think that where you may have some disparity is in the fact that a greater proportion of the Native Americans are probably of low income, and if you compare those

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to the low income Whites they're probably, you know, very equal as far as the bonding system.

I do believe, personally, and I'd like to state that it's personally and not as city attorney, that there is a problem with the bond system, I believe, in being unfair to the people in South Dakota, not just Native Americans but to all people in South Dakota, in going through generally the formal and private bondsman.

Q What are your suggestions for improving the bonding system?

A I would like very much to see the State of South Dakota adopt a bond system similar to the uniform bond system of the federal courts.

Q Would you enlarge on that for me a little bit?

A Well, basically to give all alternatives for the courts to accept a percentage of the bond as guarantee of appearance rather than requiring that be paid to a private bondsman, and also greater latitude then with what they can accept for surety to appear, how much it will be, what percent they retain and who it goes to.

Q We have heard some evidence of the question about bonds for American Indian population if they are resident on the reservation and not a local. Does that enter into the problem?

A I didn't understand the question.

Q Well, that they're unable to get a bond because they are residents on the reservation rather than --

A I am not aware of that personally, I would probably have to agree with you that there is a problem, because when you have the private bondsman, you know, it's strictly up to them and their business decision as to whether or not to write the bond.

REV. THORBURN: We are running behind so I'll ask, any other questions?

MS. FERRON: No.

MR. VOLK: No.

REV. THORBURN: Is there any further information?

Q (By Mr. Muldrow) Are you -- you can maybe answer this. Are you aware or do you know if there are special requirements placed upon the kind of records that bondsmen must keep in terms of statistics and to whom they grant bonds and to whom they do not?

A I do not believe that's a requirement in South Dakota.

Q I wasn't quite clear, did you indicate that a large proportion of the cases which are prosecuted through your office are -- or come before your office are Native Americans and what was that proportion, approximately?

A I would guess that it's somewhere between 25% and thirty-three and a third, you know. Probably somewhere from

a quarter to a third.

Q This is considerably higher, of course, than the resident Native American population, that proportion. How do you account for this high proportion?

A Well, I maybe should clarify that. First of all that does not take into account traffic violations because I have no way of knowing that. I guess the -- if I had to give any or try to establish one single cause, it would probably be because most of the charges are disorderly conduct, most of the disorderly conduct stems from alcohol-related incidents yet, not that the people are necessarily intoxicated but are at least have some influence of alcohol, stem from the bar atmosphere, and probably if you, I think that not to downgrade and say that Native Americans are -- there is a problem because they're poor, I think, and the drinking as there is with the same population of Whites.

And you know, where to spend their time, what their time to do with, and so that I think that that's primarily the reason that it's higher is because it is alcohol-related.

MR. MULDROW: Thank you very much, Mr. Woodsen, and I would like to express our appreciation also for the documentary information which your office submitted to us and the statistics which you give us.

A. Thank you.

MR. MULDROW: Thank you very much.

REV. THORBURN: Could we please have Mr. Klauck, Honorable Judge Frank Henderson and Mr. Richard Weare, please?

MS. FERRON: I believe we'll take Mr. Weare first if that's all right.

MR. KLAUCK: Fine.

Q. (By Ms. Ferron) Would you please state your name, occupation and address, please?

MR. RICHARD WEARE

A. (By Mr. Weare) My name is Richard Weare, I'm the court administrator for the Seventh Circuit, my address is 715 St. James here in Rapid City.

Q. Could you please explain your job as court administrator and how it relates to Native Americans?

A. I am the administrative officer for the Seventh Circuit Court which comprises the counties of Pennington, Fall River and Custer, and my prime responsibilities are in the area of personnel, budget, case flow management, all the judicial planning for the court, any grants, coordination and liaison with the police and other governmental

A. I am the Admistrative officer for the seventh Circuit Court which comprises the [redacted] Counties of Pennington Fall River and Custer, and my prime Responsibilities are

entities that deal with the circuit court.

Q Do you supervise employees of the, both city and circuit courts?

A Yes, I do.

Q How are persons who serve as jurors selected?

A Well, it's a -- it's a complicated, rather complicated procedure, based on the gubernatorial vote in the last election. I have it if you want me to go through it.

Q Would you please?

A Surely. Because of the size of the Seventh Circuit, by statute you're allowed to choose between 2% and 5% of the -- of the votes, of the number of people that voted in the last election.

In the last election in '76 there were 19,836 total votes cast for the governor. 5% of that total would result in a figure of 991 jurors. Then each election district within the community is counted as a juror district. And based on the total number of registered voters in each precinct and the percentage that votes from that precinct given as a percentage of the 991 that we want as the master list.

A figure is determined, from that percentage. In this instance for the first circuit, first judicial circuit or election circuit would be like 30 people so you would take that 30 number of people within the district.

and multiply it times two and get the total number of prospective jurors that are called from that election district.

And then they are randomly picked, a number is chosen between one and the total maximum number of prospective jurors in that circuit, the random number is chosen between, in that parameter and then it's, you go through the entire list of registered voters choosing, if say the random number is eight, you choose every eighth elector.

Q. Does this process effectively include representatives from the Native American community?

A. Yes, I believe it does. The -- this, of course these names come from the voter registration list so if all election districts, it's -- if those people are registered to vote they are automatically included in the prospective jurors list.

Q. I see. To what extent do Native American persons actually serve on juries?

A. As far as statistically? I could not say. Our elections, our juror statistics do not include race and so it's hard for me to come up with a figure as a percentage of the total.

Q. Would you like to venture just a guess?

A. I wouldn't have any idea, Robbi, I really wouldn't.

Q. Okay. What -- do you see that there might be any need

for improvement made on the jury selection list based upon the possibility that Native Americans may not be voters?

A Across the country in many jurisdictions, courts, and court systems are adding supplemental source lists to voter registration lists, and in many cases this would include driver registration lists of utility lists, any number of additional directories, telephone directories, this is one possibility that's being explored across the country.

The problem with it is that it's a very costly procedure in that you also -- you must almost have to have a computer capability to combine the source lists and then to remove duplicative names in the source list so it is a possibility but it's --

Q Okay. We've been told that there is a percentage of city court cases involving Native American defendants, would you care to give us an estimate of the percentage?

A Of circuit court cases?

Q Yes. City court cases?

A Of city court cases?

Q Yes.

A I wouldn't be prepared to do that, I don't have the statistical information.

Q Circuit court cases then?

A I don't have -- because of the fact that ethnicity

is not indicated on the forms, it's difficult for us to do that at this time. There is a statistical information system that's being developed that will be applied statewide and as a part of that new statistical information system it will have all those kinds of indicators but for the present time, that information is not available and I understand that that statistical information system is to be available after the first of the year.

Q I see. How many and what capacity are Native Americans employed with the court services of this district?

A I -- I do not believe there are any Native Americans that are court service officers in this district, in this circuit.

JUDGE HENDERSON: That isn't true, I'm Judge Henderson, that isn't so.

A (By Mr. Weare) A court service officer?

JUDGE HENDERSON: Why, absolutely, what about Marilyn, Kaiser Ward? (Court Services Worker) She's a Native American.

A (By Mr. Weare) I didn't know that.

MS. FERRON: Excuse me, Judge, I'll finish --

JUDGE HENDERSON: Yes, but I --

MS. FERRON: -- and then I will introduce you and --

JUDGE HENDERSON: Okay.

Q (By Ms. Ferron) What kinds of services could Native Americans -- well, I was going to ask you next why

are they not employed?

A. (By Mr. Weare) Evidently they are.

Q. Why do you think that there are not more employed?

A. Well, we -- there are -- there are only certain numbers of employee positions that we have open and those -- those positions are filled with the most qualified applicants that we receive applications from.

Q. Does the Seventh Judicial Circuit have an affirmative action plan?

A. Well, we're a state agency, if the state judicial department has an affirmative action plan I do not know. I imagine that they would. I --

Q. The hiring is done in Pierre, is that what you indicate by that statement?

A. The positions are advertised statewide, the applications for positions are sent to Pierre and from Pierre they are sent to our office. And then the interviews for those positions are handled at our level.

Q. And you make recommendations to whom? For hiring people?

A. I do --

Q. Or do you actually do the hiring?

A. I do the interviewing and the hiring.

Q. I see. Okay, Bill, do you have any questions?

Q. (By Mr. Muldrow) Mr. Weare, I'd also like to take this

opportunity to thank you for the documentary information that you have supplied to us at our request, we very much appreciate that.

With regard to the employment of Native Americans in the court system, one picture that seems to emerge continually is that a Native American defendant coming before the courts faces an almost entirely White system, this is not, as Judge Henderson has pointed out, there are perhaps exceptions to this, but generally there is a White prosecutor, a White defense attorney, a White judge, a White jury and almost an entirely White administrative staff in the system.

What is your -- how would you assess the situation, do you feel this is healthy and if not, what are you doing or what do you think might be done to change this picture so that it is not so predominantly one-sided in this respect?

A I think the jury selection system and the -- I can't really speak to the public defender or to the state's attorney's office. I can speak to the elements of the system that involve juries and administrative staff.

The administrative staff is very small and myself and three secretaries is all. The jury selection system, I believe, given the way that jurors are selected, I think is representative. We certainly give full consideration to any applicants for positions within our circuit that are

Native American or --

Q I guess the thrust of my question was not why are not there more, but your impression as to whether there should be more and if so, how might this be achieved?

A I guess that would take a very positive effort to recruit members of minorities, be they Native American or otherwise, to come within the administrative staff or --

Q Do you feel that you are making that effort now or are there other things that you feel could and should be done?

A As far as positive efforts? I guess I would have to say probably not because time just does not permit, given the small staff that I have, the active recruitment of individuals.

We, the applications are taken, they're advertised statewide so that everyone has an equal opportunity to apply for the job and we get the job applications at my level and interview all those candidates who we feel are qualified.

Q How many employees are under your direction?

A There are approximately 65, I believe.

Q Do you know how many of these total number are Native American?

A The only one I was -- Marilyn Ward as a court service worker.

Q. This would not seem to be really a small number, this is a considerable body of employees that you supervise, Mr. Weare. Do you feel that that number would warrant some kind of an affirmative action effort, a special effort or -- or do you feel you are making that now?

A. Well, I think since -- in the time that I've been here, which has only been a year and a half, I think we've certainly given full consideration to all applicants for positions, [redacted] an affirmative plan where we go out and actively recruit Native Americans, but [redacted] do [redacted].

MR. MULDROW: Thank you very much, that's all I have.

MS. FERRON: Mr. Weare, I think that comprises all the questions we'd like to ask you and we thank you very much for being here today.

Mr. Jack Klauck, could we talk with you next, please?

MR. KLAUCK: Yes.

Q. (By Ms. Ferron) Would you, Mr. Klauck, please state your name, your address and your occupation, please?

(9) Positions, we do not have, as mentioned, 4/4/
AN Affirmative

(10) PLAN where we go out AND actively recruit
NATIVE AMERICANS,

(11) but time AND the LIMITATIONS ON OUR STAFF
just simply

12 do Not permit it.

MR. JACK KLAUCK

A (By Mr. Klauck) Yes, my name is Jack Klauck, I'm the Pennington County State's Attorney, and my address is 705 West Boulevard.

Q How long have you been state's attorney and what is the jurisdiction of your office, please?

A Well, the jurisdiction of the office encompasses Pennington County, I've be state's attorney since late July of 1969.

Q Who are your assistants presently and are any of them Native Americans, are any of them women?

A Well, do you want me to name the assistants?

Q Would you -- who appoints your assistants?

A I do.

Q Okay.

A [redacted] male assistants, deputy state's attorneys, [redacted] Americans, and I have two secretaries, [redacted] is a Native American.

Q How do you determine whether or not to prosecute a defendant?

A Well, of course we -- our information generally comes from the city police or the Pennington County Sheriff's Office, and we review their investigative reports and then we make a determination based upon the evidence

(17) A. Okay, I have five male assistants, deputy state's

(18) Attorneys, Not any are Native Americans, and I have two

(19) secretaries And Neither is A Native American.

that's available as to whether or not to charge someone.

Now, many times, of course, the arrest has already been made by the time we're made aware of, you know, of the circumstances surrounding the arrest. But I would say generally our information comes from law enforcement, and if we have particular questions or problems we'll ask the investigating law enforcement officer to bring in witnesses, and we'll interview the witnesses. And make our determination based on that.

Q For what offenses are Native Americans most commonly arrested?

A Well, of course our office handles the bulk of all misdemeanor offenses, all felony offenses, we handle all the juvenile crime, we handle, of course, alcoholic situations, mental illnesses. It's difficult for me to give you a figure because we don't keep any statistics as to whether the defendants or the people involved are Native Americans or not. I mean our office doesn't. And I don't know of anyone that does.

Q Do you have a personal opinion?

A Well, if you want to talk about felonies or -- misdemeanors or --

Q Both of them, just generally, do you have a statement to say for which offenses they're most commonly offenses?

A Well, the Native American runs the gamut, I mean

we have a lot of Native Americans we charge with burglary, armed robbery, we've had some murder cases, we've had -- we have many, many assault cases, and I'd have to say maybe 25% to 30%, but I'm just taking that off the top of my head, I really don't know.

Q My question was geared more, of those Native Americans that are arrested, the most common offense?

A I'd probably have to say the most common would be the, in the assault area.

Q Are there alternates provided for handling persons that are publicly intoxicated?

A Well, we don't handle people that are publicly intoxicated, our office doesn't become involved.

Q Are quite a few of the arrests or the crimes that you're involved in alcohol-related?

A [redacted]

Q Has your office ever investigated complaints of police brutality? And if so, what are the results?

A Well, we have investigated complaints over the past six and a half years, but I can't really recall, I can't recall any specifics on any specific cases. I can't recall charging a police officer for police brutality.

Q As a result of your investigations?

(16) A. I think many of our defendants are either intoxi-

(17) cated or have been drinking at time of the commission

(18) of the offense, yes.

A That's right.

Q How do you respond to the accusation that the system for selecting jurors in criminal cases discriminates against Native Americans?

A I don't think it does. I think that under the statute the jury is picked from the jury -- or the voter registration list and the last few cases I've tried, well, I think there have been a fair representation.

I can't recall, I'm thinking about some cases I tried this past year and I think there were five or six Indian people on the panel.

Q The final panel or the panel before --

A No, on the panel before the voir dire selection.

Q Would you say that would be five or six persons in each case or totally in all?

A I -- no, I'm thinking of a particular case now, one specific case.

Q One case?

A Right.

Q I -- [illegible] do we have that many Native Americans represented in the panel that you select the jurors from? That the jurors are selected from?

A Well, of course I'm thinking of a case where there was a large panel.

Q How large was that panel, approximately?

(20) Q. Is that pretty customary, do we have that many

(21) Native Americans represented in the panel that you select

(22) the jurors from? That the jurors are selected from?

A. Oh, I can't recall. 100 -- maybe 200 people. Maybe 200 people.

Q. Okay. Okay, five out of perhaps 200 people?

A. Right.

Q. During your tenure, have you charged -- have charges ever been filed for the rape of a Native American woman? That you're aware of?

A. Oh, yes, yes.

Q. Several?

A. I'd have to say several, yes.

Q. With what results?

A. The two that I recall, they were both acquitted, I believe. And I might add the defendants were Native Americans.

Q. Do you feel the way rape cases are presently handled by law enforcement agencies is satisfactory?

A. Yes.

Q. What suggestions do you have to improve the criminal justice system in Pennington County?

A. I don't have any specific recommendations, I think that law enforcement is doing a very good job in Pennington County. And I think that the state's attorney's office and the city attorney's office are doing good jobs.

MS. FERRON: Okay.

Q. (By Ms. Gunderson) Mr. Klauck, in your view of the

job before you were elected the state's attorney, do you have any recollection or word of mouth information that there have been Native Americans or women on the staff of a man in your position?

A Prior to the time I became --

Q Yes, yes.

A No, I'm not aware of any.

Q I'm certain that during the busy years that you've held this job there has been an increasing number of educated Native Americans and an increasing attention to women as being professionally educated. Would you be hopeful or indeed interested in adding to your staff if the qualifications were what you needed, in either category?

A Certainly, certainly. In fact we're going to have a women intern joining our office next month.

Q I hope very much that she will persuade you that you need even more, if she were an Indian Native American I'd be even -- if she were a woman Native American attorney we'd all be delighted.

A I'm sure.

Q May I ask this question of you, do you find, at any time when you're prosecuting, a feeling that the defendant is somewhat unresponsive, is naturally less forthcoming as a witness and maybe even harms his own status because of the fact that he feels a minority in a White

system?

A Are you talking about the state's witnesses?

Q I'm really thinking of the Native American who is under, he's being at this moment tried in a case. Is there a difference, I recognize that men and women, Native Americans and Whites, are not very comfortable when they're being tried for a case but do you see a difference in attitude and posture?

A Well, now you're talking about the courtroom setting and the trial?

Q Yes, please.

A Well, I think more often than not the defendant, whether he's White or Native American, doesn't testify. And if they do testify, I -- I haven't noted any --

Q Very little difference?

A -- real differences, no, that's right.

MS. GUNDERSON: Thank you.

Q (By Mr. Muldrow) Mr. Klauck, I have just one question. One frustration that we've had in conducting this process is the difficulty we have had obtaining statistical kinds of information from various agencies as well as information about policies and these sorts of thing.

Sheriff Larsen testified this morning that he is very short-handed as far as his staff is concerned, and for this reason was unable to supply us with some of the informa-

tion regarding this project that we've felt would be very useful.

He indicated that he did consult you and -- regarding this, what is your feeling about that? Are there resources which could be made available to him or to your office so that we could be provided with this information?

A. Now, what kind of information do you mean?

Q. It was my understanding that you talked with Mr. Levis of our office about a request which had gone to Mr. Larsen [illegible] and that you had talked to the attorney general's office about this, and it was our understanding that you had encouraged Sheriff Larsen to supply this information as he was able.

He indicates that he does not have the resources to do this. My question is, are there resources that you know of that could provide this information to us?

A. Well, when we file a complaint, we keep a misdemeanor and felony lists of these charges by the charge, the name, the date, and the disposition. Now, I suppose it would be -- now, we've only been doing that the last few years. I imagine I could probably have one of my secretaries go through this and compile some figures, but I don't know that I would be able to tell you how many of these people that have been charged are Native Americans. Do you follow me? The only way we might know is by the name

(9) Levis of our office about a request which had gone to Mr.

(10) Larsen for specific information and that you had talked

(11) to the Attorney general's office about this, and it was

Q Do not the arrest records which are maintained by the sheriff's office include this information?

A The sheriff might have it in his records, I think the police department generally indicate that in their arrest reports and investigation reports. So they might be able to supply that.

Q Well, this is my question, Mr. Larsen asked your advice about whether or not he could and should supply this, what did you ask him to do?

A I [redacted] probably said furnish what [redacted] you can, the information you can gath[redacted]

MR. MULDROW: Thank you very much.

MS. FERRON: Mr. Klauck, we want to express our appreciation to you for spending the time with us, thank you.

A You're welcome.

MS. FERRON: Judge Henderson?

JUDGE HENDERSON: Hi.

Q (By Ms. Ferron) I'll begin, please.

Would you state your name, address and occupation?

JUDGE FRANK HENDERSON

A (By Judge Henderson) My name is Frank Henderson, I'm

(10) A. I don't recall, I think I probably said furnish

(11) whatever information you can, the information you can

12 gather.

a judge of the Seventh Judicial Circuit. My home is Hill City, South Dakota.

Q And how long have you been a circuit judge?

A About two years now.

Q Approximately what proportion of the cases you hear involved Native American defendants?

A Well, first of all I handle principally felonies, some preliminary hearings, and there are very few Native American Indian cases in which I have presided over in Custer even though, as you know, that was -- there was a great deal of litigation over there.

In Fall River County, quite a few Native American Indians over there and the same over here in Pennington County. Oh, roughly I would have to say that probably, maybe one out of every five or six defendants that appear before me are Indian people.

Q Okay, this does include both your preliminary hearing and full trial, this includes everything?

A Yes, Ma'am.

Q Do Native Americans have a problem with communication which makes it more difficult for them to understand the court procedures?

A In my opinion, yes. Very much so. I -- first of all, am I free to go ahead?

Q Yes, please, just --

A. Speak a little bit rather than just --

Q. For a few minutes, please.

A. Rather than just yes or no to everything?

Most people are very frightened when they come into a courtroom. You know? And particularly if they're the defendant. They're mystified by the proceedings, they're afraid of what's going to happen to them, and I think that this is true with all people, whatever color of skin they might have.

With Indian people, I think that they have a difficult time understanding the English language, and quite frankly, I always do everything within my power to explain each and every right to them as we go along and I usually end up by saying, now, do you understand me?

In some cases, you know, I talk to them almost like they're a child to make sure that they understand, but yes, I do think that Indians have a problem with communication just because of the fact that they are not up, so to speak, on the English language like White people.

Q. Thank you. Do you feel the availability and quality of court-appointed counsel for Native Americans is adequate?

A. Not as adequate as I think it could be. And that's because of the fact that most of our Native Americans here in Pennington County are represented by the public defender's

office, and the public defender's office is comprised largely of younger attorneys who are graduates from law school and do not have the knowledge, the wisdom or expertise that some of the older members of the bar do.

Q Statistics show that relatively few cases involving Native Americans come to trial because most are settled through plea bargaining. Would you please state your views regarding plea bargaining and whether or not you feel it works to their advantage or disadvantage?

A Well, sometimes a plea bargain works to the advantage of the defendant and sometimes it does not. It depends upon the facts of each particular case.

But I think my views on plea bargaining are pretty well known. I deplore plea bargaining. I don't like it. And it's simply because of the fact that it deprives the innocent defendant of the forum that he's entitled to have which is, by constitution, a jury.

And oftentimes I think that people are pressured into a plea bargain by their own defense counsel when they shouldn't be. In other words, you're either innocent or you're guilty. And I don't like a system where the people's rights and the defendant's rights are bargained and haggled about like a piece of merchandise in the common mart.

Q Thank you. In an interview with a member of our committee, you stated that the attitude towards American

Indian Movement has done much to raise community feelings against the Indian people.

A I think that's true. I honestly do. It isn't that I'm anti-AIM, I was asked an objective viewpoint as to whether or not I thought that the AIM activities had hurt the image of the majority of the Indian people with the White community, and I was born and raised in this state, we've got four generations now of Henderson men in this state.

Yes, I think it's hurt the image of the Indian people, I honestly do.

Q Do you feel that an AIM member or person of AIM political is at an advantage or disadvantage in receiving a trial, a fair trial?

A I think if -- in all candor, I think that if it were known [redacted] I think that that would work to his disadvantage. Frankly, not with the judge, but I think frankly with the jury.

Q I see. And do you think that being a militant is synonymous with being an AIM member?

A I think that's the general impression of the White community.

Q Are you satisfied with the present jury selection system?

(15) A. I think if -- in all candor, I think that if it

(16) were known that he was a militant within the American

17 Indian Movement, I think that that would work to his dis-

A. Well, I'll surprise you on that. I think there's too many women on the jury. The other day I had a jury, I had 11 women and one man, I think that that's an imbalance. And it's shocking that it is becoming more and more that way.

I asked the clerk of courts not too long ago why it was that we had so many women on the jury and so few men anymore, and she said it was because of the fact that the women are so much more in number, and secondly, that they have such a better voting record.

Q. Okay, would you address yourself to the issue of Native Americans being selected for juries by this, this selection process that is used?

A. I do not get in on drawing the names for jurors, judges don't. That's done by administrative personnel. I [redacted] on juries. I [redacted] Indians on [redacted] honest to God opinion.

Q. Okay, you'd just as soon not comment on the process then?

A. Well --

Q. I'm --

A. -- you mean to take it from the elector, take it from the electors?

Q. Yes.

A. As distinguished from the other? I would like to see

(16) see very few INDIANS ~~on~~ ON JURIES. I see a few INDIANS ON

(17) JURY PANELS. NOW THAT'S my HONEST to GOOD OPINION.

more people on juries that are of Indian extraction.

Q. Do you have any suggestions to offer regarding Native Americans and the judicial process in South Dakota?

A. Well, one thing I think that we need locally is I think that we need an Indian translator or translators, that should be employed possibly through the use of these LEAA funds, and have them available at the lower court level and also at the judiciary so that when you get somebody in there that's having a difficult time understanding what's going on, to have them explain it to them in their native tongue.

MS. FERRON: That's all the questions I have, Judge Henderson.

Barbara?

Q. (By Ms. Gunderson) Yes, may I ask both of you gentlemen a question and get your separate answers to it or perhaps you'll want to collaborate because the judge is an attorney as well as a judge, and because Mr. Klauck is the state's attorney.

Testimony yesterday indicated a viewpoint on the part of one of our witnesses that it was not unusual for a court-appointed attorney representing an Indian American to be taken into chambers whereupon he would be persuaded by the White power structure and the implication was that would be the judge and the opposing attorney, to admit

questionable evidence and to somewhat skew the system of justice. Would you speak to that, you Gentlemen?

A (By Judge Henderson) That's a ridiculous position for anyone to take or a fact to express, Mrs. Gunderson, if somebody indeed did say that, that's not true at all.

There is no one that's a seflrespecting attorney or judge that's going to take advantage of someone like that, bring them into chambers and get them to permit, to have inadmissible evidence come in in evidence. There's no selfrespecting lawyer that believes in the law is going to do anything like that.

That is not a practice. I know that that's not so.

Q And would it be your opinion, Jack, in the same --

A (By Mr. Klauck) I've never known it to happen. Never seen it.

Q It strikes you as, if there's been an isolated case it's a very unusual thing?

A That's right.

Q That one doesn't go into the chambers and suddenly subvert their clients?

A (By Judge Henderson) No.

MS. GUNDERSON: Thank you.

Q (By Mr. Muldrow) Judge Henderson, I have just a couple of followup questions I would like to put to you.

First with regard to communication, you indicated

that -- that this is a problem, and that you make special effort in your court to compensate for this problem. What do you see as the effect of this disadvantage which they are placed upon in terms of communication and the justice process? Do you feel that it --

A. I'll tell you --

Q. -- can be overcome so that they do receive an equality of justice equal to that of persons who are able to better understand the English language and court procedures?

A. The answer is a child-like faith of that defendant in his attorney. That's the -- that's what I see. In other words, here you come in frightened, you come in fearful, you come into the White man's court with all the various things that you see, you have a difficult time understanding the procedures, and the language, and somebody has appointed you an attorney to defend you, what do you do sitting there? You place your faith in that attorney, like a little child.

That's what they do, a lot of them.

Q. What do you think of this necessity, is this faith well placed or are there cases when it is not well placed?

A. I think there's some cases where it's not well placed. I'm going to say that that's certainly a minority, it isn't by a long way the majority. But there are a few instances, yes, where I would say that that's so.

Q Thank you very much. Just one more question.

With regard to the American Indian Movement, you indicated that you felt that being a member or sympathizer or militant person associated with the American Indian Movement definitely placed that person at a disadvantage in terms of the jury in a trial.

Let me ask you categorically, do you feel that there are cases when an American Indian Movement defendant could not receive a fair trial because of his or her association with the movement?

A Yes, I think there are instances, but I would like to point out historically that there have been a great many aquittals of people that are involved in AIM who went to the jury, said that they were not guilty and the people that were on that jury, to include Pennington County, and I particularly, of course, think of that most recent case involving Mr. Means, they said not guilty.

But the point is that I think that there is something to overcome if they are, you know, involved in that particular movement. But it's been overcome and I'd like to add why I think so.

Because some of these people who are the leaders have the finest counsel that money can buy. But what happens to the poor, indigent Indian who's charged with a crime and is given an attorney that comes out of college

and is put on the public defender's staff? And then his rights are plea bargained away so often.

There's far too many plea bargaining going on in Pennington County. There are hundreds, if not thousands, of cases here, and today, just to make sure I knew what I was talking about, if I can find it, I think there's been ten criminal jury trials tried in Pennington County this year. Last year, there were three. Now, somebody's rights are being sacrificed. Sometimes it's the public and sometimes it's the defendant. Okay.

MR. MULDROW: Thank you very much, Judge Henderson, for expressing your feelings on that and for the information you have given us.

MS. FERRON: Thank you both you Gentlemen.

We'll get ready for the next panel now, please.

A. And I want to say one other thing, I thank you for the opportunity to ask me to come.

I read under one of the judicial cannons that expresses that a judge may engage in activities to improve the law, the legal system and the administration of justice and that's why I think that I can come here and speak, you know, with candor.

And another thing, after I was elected judge the people of the State of South Dakota sent me to the National College of the State Judiciary to learn about how to be a

judge, see, and one of the things that we were taught down there was a course in court and community relations. And our professors told us down there, and they were esteemed, distinguished men in the legal field, that a judge just because he's a judge should not divorce himself nor seal himself away from public opinion or people or what's going on in the community.

In other words, he shouldn't just be a judicial ostrich and that's the position that I take, and anything I can do to try to help justice, you know, even if it puts me on the grill and puts me on the pan, I'm willing to do it.

MS. FERRON: We appreciate that, Judge.

(Applause)

MS. FERRON: Is Charles Carrell here, please?

Charles Carrell, could we have you now, hear your testimony, please?

I'm used to calling you Judge Carrell. Judge Carrell, would you please state your name, address and occupation?

JUDGE CHARLES E. CARRELL

A. (By Judge Carrell) My name is Charles E. Carrell, my address is 1119 11th Street in Rapid City, and I'm Law Magistrate for the Seventh Judicial Circuit in Rapid City.

Q. (By Ms. Ferron) What is the jurisdiction of your court, please?

A. I have jurisdiction of all misdemeanors, I can hear preliminary hearings in cases involving felonies, and all misdemeanors are within my jursidiction, that is here in Rapid City.

Q. Okay. What are the most common offenses for which Native Americans and Indians are charged?

A. They would be the low misdemeanors, I -- if I were to name them I'd say assaults, assault and battery, disorderly conduct, those would be the primary ones, and I want [redacted] liquor-rel[redacted]

Q. Okay. I'm just going to go on to another area and we'll come back to the alcohol-related in a moment.

Do you feel that the bail system is equitable?

A. We've made a sincere effort to make it so. We set the bail, we have a pretty uniform figure for felonies, it's 750, $750.00. Now, in many cases where the person can't

(18) WANT to Add also THAT Nine-tenths of THOSE ARE LIQUOR —

IN Related, [redacted] Alcohol-Related.

make that kind of bail, we conduct or have an immediate hearing to determine whether or not they can be released on their personal recognizance, that's just on their own sayso that they will appear when they're supposed to.

And I'd say that, oh, at least half and maybe slightly more, those persons who make such a showing are released on their own recognizance.

Q How many of those people do you feel are Native American people?

A The greater majority.

Q What is your policy with regard to bail for Native Americans who reside on the reservation?

A This is one difficult area because once they're down on the reservation, we have no jurisdiction over them whatsoever, no power whatsoever to bring them back here at the time they're supposed to stand trial on that charge.

Now, it makes it really difficult, because that's their home down there, and I think a person that's charged with an offense, if he's not violent and not inclined to do further violence while he's awaiting his trial, he should be permitted the use of his own home, just like the rest of us.

Q Would you just, please, tell us for the record what the purpose of bail is?

A [illegible]

A. It's to assure that the defendant will appear in court at the time and place that he's required to do so.

Q. Thank you. Do you ever grant personal recognizance to Native Americans that are from the reservation?

A. I have, yes.

Q. Is communication a problem for Native Americans in your court?

A. Repeat that again, please?

Q. Is communication a problem?

A. I haven't found it so, but of course I'm somewhat disadvantaged, if they don't -- if they don't try to speak with me, why I don't know what their problem is, but I have always relied on the -- their attorneys that if they're having a problem communicating with their client in preparing their defense, why certainly we're going to take some steps through interpreter to see that there is a proper line of communication.

Q. How frequently is plea bargaining used in your court?

A. Very often. Very often.

Q. Do you have an opinion about that?

A. Well, you've got somewhat different situations down there in magistrate court. We have a tremendous number of cases moving through our court, and we don't have the facilities to -- well, let's say insist that there be

no plea bargaining for then you'd be going on to jury trials and it would absolutely swamp that court, if you didn't make use of the plea bargaining.

Q Does plea bargaining work at a disadvantage, to a disadvantage for the American Indian defendant?

A I don't feel that it does. I think that the plea bargaining always brings to the accused a much lesser penalty than they might expect without it.

Q (By Ms. Ferron) I have a general question for you. Do you have any suggestions regarding the court procedures that you would like to make?

A Well, I just can't think of any at this time, it's just merely a matter of trying to take care of the terrific load that we've got down there with what available resources we have.

MS. FERRON: I'll ask the other panel members to ask you questions now.

Q (By Ms. Gunderson) Magistrate Carrell, would you tell us if it would seem a practical possibility that a frequently innocent accused submits to plea bargaining and therefore gets a moderate sentence but more than he would if he'd gone to trial and been well represented and his case had stood?

A That could be entirely possible, assuming that the defense counsel is willing to sacrifice his client in that

manner but I don't think I've ever seen any instance of it, Barbara.

Q Thank you. Magistrate, would you say that you are reasonably well impressed or sometimes concerned about the quality of the representation of those Native Americans that come to your court?

A It's been my observation that these younger people who come out of college and go in with the public defender's office are inexperienced, yes, but they're just sharper than hell.

Q They work for their --

A They're vigorous, they really pursue the defense of their clients, that's been my observation.

MS. GUNDERSON: Thank you.

Q (By Ms. McEldowney) How often do you really see -- do you see attorneys in your court? Don't a good deal of the people who are charged appear by themselves?

A In the morning courts they do, that is when you make your first appearance on a charge. If a person is charged he's required to make his first appearance in court on a certain day and that's generally at 9:30 in the morning.

Q What kinds of offenses would be concerned there?

A What's that, Ma'am?

Q What kinds of offenses would be involved in morning

court?

A Those would be all of them, any. The first appearanc
The first appearance is generally made down in magistrate's
court, that doesn't mean that we retain jurisdiction if it's
the felonies, why, it's pretty rapidly moved on to the
higher court.

Q But for traffic offenses and some misdemeanors, a
number of people represent themselves, is that correct?

A Yes, there is quite -- a considerable number of
people who come in representing themselves, but they're
informed there, that's the first thing they're informed
that if they wish time to talk to an attorney before going
any further in this strange surroundings that they're
suddenly placed in, they have that right and they have
only to say so and I'll continue their matter for the
purpose of enabling them to talk to an attorney.

And that's followed up immediately by the statement
that if they can't afford to hire an attorney, one will be
appointed to represent them, if they fall within the
standards set by the, I believe it's the county commissioner
set the minimum.

Q Are those in income and economic standards rather
than the kinds of offense they're charged with?

A Repeat again, please.

Q What kinds -- are you talking about the income

guidelines standards?

A Yes.

Q Are there some other standards that would apply to the type of offense they're charged with?

A No.

Q So for any -- a traffic offense?

A Well --

Q They could get court-appointed counsel --

A For a traffic offense they aren't entitled to an attorney to be appointed for them.

Q For the record, would you say what, you know, what kinds of cases do have the right to appointed counsel?

A Anything that involves a person, could possibly involve a person's being sentenced to any jail time.

Q Okay. Now, if someone pleads not guilty at this morning court and it's a type of offense that would stay within your jurisdiction, how long would that person have to wait for a court trial?

A For a court trial? See, court trial and jury trials, they have their choice of either one. But for a court trial, I think probably we're booking court trials now down into about the 20th of January. And that means we're having, oh, seven or eight a day?

Q For some of these offenses, is bail required?

A Are they what?

Q Is bail required?

A Not for traffic offenses.

Q For assault and battery that you might handle?

A Yes, those misdemeanors, minor misdemeanors and that is where the maximum penalty is $100.00 fine or 30 days in jail or both, there is bail set on those.

Q And what kind of bail might that be?

A One hundred dollars, if -- and they also, it's possible to get personal recognizance there too.

Q Is there a more or less uniform fine that might be imposed for first offense of a misdemeanor, minor misdemeanor?

A Oh, yes.

Q Is that under $100.00?

A Yes.

Q So they would have to post bail of $100.00 and the trial would not be scheduled until what, more than a month away?

A Yes, about six weeks.

Q Versus paying a fine which is going to be less than the bail?

A Uh-huh, that's true.

Q Have you, at any time, questioned whether a person was concerned about having to spend time in jail because he or she couldn't get a PR bond nor could they get a bondsman

to bond them for one reason or another?

A. That's my primary concern and in those instances I'd say, oh, in 90% of those instances, I release them on their personal recognizance. I don't think that that bond or bail should be used for the purpose of punishment, I think its sole purpose is to guarantee the person's appearance in court, and if there's any indication at all that they're going to comply with it, like they live here in town, they've got families here, well, it would be a rare instance indeed when they wouldn't appear.

And in those cases I'm inclined to give them, release them on their personal recognizance.

Q. What kind of information are you interested in in questioning whether, deciding whether or not to grant a PR?

A. If they have a family, if they're working, if they have children, the length of time they've been here, and those are arbitrary, also if they have relatives in the area, in the community. In other words, if they're a part of the community, that's -- that's just about good enough for me to grant them personal recognizance because nobody's going to turn fugitive and leave his own homeland just because of a minor charge like that.

Q. A number of transient people, however, it would be more questionable in their case?

A. Yes, it would.

Q. And then is it just a value determination on your part if that person's going to appear or not?

A. You do the best you can, you can -- you can't be sure they're not going to come back, but the records indicate that there's a good possibility they're just going to move on down the line.

MS. McELDOWNEY: I have no further questions.

Q. (By Ms. Gunderson) Magistrate Carrell, before taking the office you now hold you were a practicing attorney of long standing. Would you give us two opinions as you've observed the general procedures for justice within our county and perhaps throughout the state where you're familiar. Do you think that the present selection system on jurors is a fair way for the Indian on trial?

A. Well, I -- I'm not too sure after Judge Henderson's remark that that selection matter is -- is not part of the court, that's done by administrative --

Q. I do understand that, yes.

A. -- but it does seem -- it does seem a little bit unusual to me that I don't see too many Native American people on those jury panels. Because I don't think I've ever had a Native American on a jury in magistrate court.

Q. That is most significant, than you for that.

One other thing, would you, if you were estimating the cost, would you say that the number of people who go off

and sacrifice the bond money has constituted a real financial drain, has it been a significant amount of money, if you thought about it?

A No, no.

Q It turns out to be a rather insignificant cost?

A Yes, it does.

MS. GUNDERSON: Thank you.

MS. FERRON: Judge Carrell, then I'd like to thank you for being kind enough to appear with us today.

A Thank you, it's a privilege to do so.

MS. FERRON: We'll get ready for our next panel. We'll take a five-minute recess now before our next panel is called.

(Short recess)

MS. FERRON: I think we're ready now. Would you please state your name, your address and your occupation, Mr. Ahl?

MR. DONALD AHL

A (By Mr. Ahl) My name is Don Ahl, my residence is Pierre, South Dakota, and I'm a member of the state highway

patrol.

Q (By Ms. Ferron) What is the jurisdiction of the highway patrol, please?

A The jurisdiction of the highway patrol is statewide.

Q Does cross deputization in South Dakota permit the highway patrol to make arrests on Indian land?

A We are vested with special deputy authorization through the Bureau of Indian Affairs and in answer directly to your question, yes.

Q Is this true of all the reservations or is it just some of them?

A That jurisdiction issue is a very complex issue as I'm sure the commission is well aware of. To the best of my knowledge, there are jurisdictional agreements in effect on all the reservation areas.

Q Currently?

A Yes.

Q To the best of your knowledge?

A Yes.

Q I understand that there's an internal affairs office created, could you please tell us about that?

A To what extent? I understood that based upon my previous contact that my discussion would allude to police training and specifically training for highway patrol officers.

Q. Okay, would you just proceed with that then? Your understanding?

A. My understanding, the office of the office of internal affairs is an internal section of the highway patrol, and the area of responsibility covers the internal affairs of the patrol relating to personnel, both civilian and sworn personnel, it covers several other realted areas but directly responds to the internal affairs of the patrol.

Q. How many Native American officers do you have?

A. There are presently two members of the state highway patrol that are of American Indian extraction.

Q. I see. And is one of these a minority recruiter?

A. Yes, he is.

Q. Okay. Do you have an affirmative action plan within the highway patrol?

A. Yes, we do have and I have a copy available for the commission that I would be glad to submit.

Q. Yes, we would very much appreciate that.

What training do you give to your new officers?

Would you like to speak to the training --

A. I can speak to it in the sake of -- for the sake of time, I have two most recent complete basic training agendas that I would be very pleased to submit to the commission for their review.

Q. Okay. We would appreciate that, also for the sake

of time, if you would like to do that.

A. Fine.

Q. In the amount of training, do you consider it sufficient?

A. Again a very complex question, you know, how much training combined with experience can you -- can you give a man to do the job.

Our training program is an on-going program, it's not such that it is concluded as a result of the basic training. We have on-going training programs in all areas of law enforcement continually.

And directly to answer your question, no, I don't think a policeman as anybody else that's a trained professional can get -- can get too much training.

Q. Okay. When this office of internal affairs is convening, does it handle complaints against the patrol?

A. Yes, it does.

Q. Do you have many of those complaints and are Native Americans involved in it on those complaints?

A. I can speak directly to that and since the 1st of July, 1976, we have had 16 allegations made against members of our department. Of those 16, none of those were a result of Native American input.

Q. They were not, you say?

A. They were not.

(8) OUR TRAINING PROGRAM IS AN ON-going PROGRAM, it's

Q When was the last time that you did have a complaint that was from a Native American?

A I don't -- I'm not knowledgeable of that area, I can't recall.

Q Okay. Does anyone else on the panel have any questions of Mr. Ahl?

Q (By Ms. Gunderson) Mr. Ahl, would you give us just a little idea of sort of the categories of training? Would you kind of run down a study course so that we could quickly get a view of the breadth of your --

A I would be happy to. Our basic training program for members of the highway patrol involves roughly 13 weeks of classroom training and 13 weeks of OJT, or on the job training, riding under the direct supervision of a field training officer where the recruit's actions are continually monitored and evaluated.

Q Will the classroom study include state law?

A It includes all areas of -- that a law enforcement officer might encounter, includes traffic accident investigation, it includes motor carrier investigation, criminal investigation, criminal procedures, the whole gamut that an officer will face.

Q Is it considered that your group of men are largely the first encounter that some visitors to our tourist state are going to meet and is there a sense of courtesy

that is sort of imbued in them through the course of training, they're expected to be gentlemen at all times I'm certain?

A. That's a correct assessment on your part and we're very proud of that fact.

Q. If you were to look back on the 16 cases that came in the internal affairs study, I assume that these are instances of men who have somehow been charged with conduct unbecoming their --

A. No, that's not totally true, because the cases that come to us are all complaints, irregardless of the type of allegation. And there may be questions that are brought to our attention in the form of a complaint alluding to the guilt or innocence of a traffic violation, they make an allegation on that, and of course when they come to us in a complaint nature we respond to them.

Q. In other words, it's sort of an unprofessional conduct and they've done something that causes you to want to hear their side of the story?

A. That -- no, I wouldn't say that, it's a procedure whereby a citizen who feels he may have been unjustly treated has a means of recourse where our office, the office of internal affairs, would review the entire situation and make a -- what I would consider a speedy investigation into the matter.

Q Thank you for making that point clear and I now understand.

Would you tell me out of the 16, would you pick from your memory maybe three examples, did any of them relate to the treatment of, in the sense of either being a -- slow to grant means or an unfeeling reaction to someone who might be in a drunken condition on the highway, or does that fall into a category that you would look into?

A I'm sure if there was any type of allegation made in that category, our office would be directed to immediately investigate it.

Of those 16 that I've mentioned, none of those are involved with alcohol-related cases.

Q Yes, and I hope that I made clear to you that I thought of the officers as encountering someone who was under the influence and that perhaps the treatment thereafter was grounds for a complaint.

A There was one instance where there may have been some alcohol-related, but it wasn't to the extent as it was later determined in the investigation, that the complainant was under the influence.

Q Thank you. One more question. Do you still have a height and weight requirement for those seeking employment?

A No, we do not, and I might also for sake of clarifi-

cation of the commission, the state police civil service commission, a separate body, is the one that establishes the standards and criteria and qualifications for an applicant to become a member of the state patrol.

Q And there is not anything that says you must weigh so much or you must be so tall?

A Not at the present time.

MS. GUNDERSON: Thank you so much.

MS. FERRON: Mr. Ahl, if there are any other comments that you would like to submit in addition to those that you promised that you would give to us, we would appreciate it and we thank you for being with us.

Mr. Seiler, if we could just begin right away with you?

MR. SEILER: Certainly.

Q (By Ms. Ferron) Would you please state your name and your address and your occupation?

MR. RANDOLPH SEILER

A (By Mr. Seiler) Randolph Seiler, I'm the director of the South Dakota Division of Law Enforcement Assistance and I reside in Pierre.

Q What are the responsibilities of the state division

of law enforcement assistance?

A. The state division is responsible for the overall administration of the Federal Law Enforcement Assistance Administration program in South Dakota and as such we provide financial and technical assistance to state agencies, local units of government and tribes to assist them in improving their criminal justice systems and preventing crime.

Q. How much money do you receive annually?

A. It varies based on the congressional appropriation but anywhere from two to four million.

Q. Can you tell us what role the South Dakota Criminal Justice Commission plays with this money?

A. The criminal justice commission has the final authority relating to the approval or disapproval of all grants awarded with LEAA funds.

Q. My next question is too, who appoints the members of the commission, and are there other similar organizations on a district or county level?

A. The governor appoints the state members, there are similar organizations in each of the six planning districts appointed by the govern board of the planning district.

Q. On the state level are there any Native Americans involved on the commission and do you know of any Native Americans involved on the planning district level?

A Yes, there are Native Americans involved on the state commission and also on the district level. I believe one young lady that testified this morning said she was a member of the Sixth District Crime Commission.

Q I see. What programs has the state approved for funding that relate directly to criminal justice and the Native American?

A To give you just a brief example, in calendar year '76 we had 17 grants from tribes. Of this number, 15 were approved, one was rejected and one was withdrawn. Grants that were approved we currently are involved in recodification efforts on Cheyenne River, Lower Brule and Yankton, I believe, we just funded a lay prosecutor or a professional prosecutor for Crow Creek, recently awarded Rosebud roughly $500,000.00 for a juvenile delinquency diversion program, to mention a few. And I'd be happy to enter into the record, I have a categorical list of funds awarded to the reservation by category and by fiscal year that I can enter into the record --

Q Thank you, we'd appreciate having that after the meeting.

Has your office received any complaints by Native Americans about law enforcement agencies in Pennington or Charles Mix Counties?

A No.

Q If they had, would you be involved in any investigation? What would you do, in essence?

A Our involvement would be minimal. Only if the alleged allegation or the allegation was made as it relates to the awarding of federal funds. If it was, for instance, conduct of a law enforcement officer in Pennington County we would not be involved. However, if a civil rights complaint was filed that an agency discriminated against Indians or something like that, we would be involved in investigating it.

Q Would that be such as employment?

A Correct. They must certify before they receive LEAA funds that they have an equal opportunity employment program and that they do not discriminate, all the federal civil rights and EEO requirements.

Q Okay, let me go back just a moment then, which agencies are bound by LEAA equal employment requirements?

A As I recall, it's agencies with over 25 employees or having received $50,000.00 in LEAA funds. And I'm -- I'm not quite sure of that, there is an either/or situation there that I'm not clear on at this point.

Q Do you have any information about how many Native Americans are employed in the -- in the criminal justice system within the state?

A We recently, through the attorney general's office,

and I guess through the University of South Dakota, conducted a survey but I don't -- I don't recall what percentage it would be.

MS. FERRON: Mr. Seiler, I don't, at this time, have any more questions from myself, are there any other panel members that have questions of Mr. Seiler? Bill?

Q (By Mr. Muldrow) Just a couple of questions, Mr. Seiler. Are there any programs, LEAA-funded programs, with which you are involved that require statistical information to be submitted to you with a breakdown regarding ethnic category and sex, those two categories?

A We do conduct annual or we do develop annually, a criminal justice plan for the disbursement of the LEAA funds in the state, and as part of that plan we do collect statistics on crime, crime rates and people involved in the criminal justice system. South Dakota's history of data collection in those areas has been very poor.

We do not have a statewide bureau of criminal statistics in operation at the current time, and as such, our office does not have comprehensive statistics along those lines indicated.

MS. FERRON: I think Barbara changed her mind.

Randy, we'd like to thank you very much and would ask you to submit any additional information that you feel would be pertinent to us, if you would, please. Thank you,

Gentlemen, both of you, for taking the time to appear with us today.

MR. VOLK: We are going to call now some gentlemen from Charles Mix that could not testify yesterday, and I wonder if Ray DeGeest, state's attorney, Dennis Jensen, patrolman, of the South Dakota Highway Patrol and Sheriff Ruben Huber of Charles Mix could please come forward.

We will start with you, Ray, if that's all right.

MR. DeGEEST: Yes.

MR. VOLK: I will introduce the panel who will be asking questions, on my immediate left is Stan Adelstein, to his left is Mary Ellen McEldowney and to her left is Barbara Bates Gunderson.

If you'd state your name and occupation, and place of residence right now?

MR. RAY DeGEEST

A (By Mr. DeGeest) Okay, my name is Ray DeGeest, I'm the Charles Mix County State's Attorney, Lake Andes, South Dakota.

Q (By Mr. Volk) Ray, how long have you been state's attorney in Charles Mix County?

A Approximately one year.

Q What statements do you have on the proportion of cases that you prosecute are of Native American descent?

A Well, I've never actually compiled any statistics on the matter, but I would venture to say that approximately 80%.

Q Eighty percent?

A Would be Native American.

Q What --

A Now that's not including minor traffic violations.

Q Okay. What are the most common charges that you handle there in the office?

A Again are you speaking of felony charges, misdemeanor charges or --

Q I guess I would not be speaking of minor traffic violations or tickets or that sort of thing.

A Well, how about DWI's, are you including that?

Q I'm including that.

A There's a high ratio of driving while under the influence, and in the felonies I would say that the most of the crimes that my office deals with deal in theft, grand larcenies, third degree burglaries.

Q Do you have any idea what percentage of the jurors are in cases in Charles Mix County, what percentage are Native American jurors?

A Now, are you wondering whether those that are

actually empaneled?

Q Right.

A Or those that --

Q No, those that would actually serve on a jury.

A Actually serve? Very few.

Q Is there any particular reason for that, Ray?

A Well, I wouldn't really know any particular reason, I mean many times those are empaneled for some reason or other, the, as you know, the state and the defense both have either preemptory or challenges for bias and I would imagine that this deals with a great, would be the result of a great deal of the problem.

Q How often is plea bargaining used and generally under what circumstances?

A Oh, lot of times under the circumstances where there's more than one count charged, where the defendant's been charged with more than one count. And it is used quite often in my county.

Q In a recent case that you prosecuted a Native American was convicted of breaking and entering and stealing some bread and bologna. He was sentenced to 15 months although this was his first offense. How does this sentence compare with those of whites charged with similar offenses under similar circumstances?

A I would -- I would venture to say it would be the

same under the same circumstances.

We had a man in our circuit that was convicted of receiving stolen property, it was two rolls of barbed wire, he was a farmer with a family, children, no prior conviction, no prior arrest, he got two years.

Q. Is bail a problem in Charles Mix County? For Native Americans?

A. I think bail would be a problem anywhere and not just, it's not just confined to Native Americans, it's any poor person. There are Native Americans that can afford bail and Native Americans that can't.

Q. They're essentially saying that the problem with bail then is not race, it's an economic --

A. Right, right.

Q. -- situation?

A. Right.

Q. Do you feel that American -- Native Americans have any special disadvantages in the judicial system as compared to White defendants?

A. Well, you've asked a lot of questions about the jury being empaneled and so forth and I think that would be one of the major ones.

Q. If you had any suggestions to give this committee today on resolving some of the problems, what would you suggest?

A. Well, my major one would be to alleviate crime.

Q. Well, I'm sure we'd all like to do that.

A. If you could figure out how to do that.

MR. VOLK: Does anybody else have any questions of Mr. DeGeest?

Q. (By Ms. Gunderson) Yes, I'd like to ask. I think that I quite understand what you mean about alleviating crime but suppose that you were going to get to something that would in fact alleviate crime, would it be a matter of economic opportunity, would it be a matter of sobriety or do you have something you would recommend that might change the statistics that you're familiar with in your county?

A. It would take so much, I couldn't give you any one answer. There's so many -- I would think that they're mostly sociological, you know, I think this is --

Q. This is most complex.

A. I just really couldn't pin it down any more narrow than that.

MS. GUNDERSON: Thank you.

Q. (By Mr. Adelstein) We were told in previous testimony by Rosemary Rouse that on August 8th at the Resthaven dance hall, her car was struck by another vehicle, the license number was turned in, and a complaint was filed with you, are you familiar with this incident at all?

A Yes, I am. I talked to Mrs. Rouse, I believe it's Mrs. Rouse, and she came into my office and signed the complaint, and at the time she came in I asked her if whether or not she could identify the person who had been driving the car or whether she could describe him. She indicated that she could not. And at that time I proceeded no further in the prosecution of the case.

Q Did she give you the license number of the vehicle?

A She did.

Q Did you take any action in connection with that license number?

A No, I did not.

Q We've heard --

A Excuse me, I did, I believe either the highway patrol or somebody, I can't remember who it was, traced, you know, found out the owner of the vehicle and that's as far as I went. The damage was very minor, if I recall correctly.

Q Is a complaint to your office from an Indian in your county handled differently than a complaint brought into your office by a non-Indian?

A No, I would say not, unless there's been -- well, there's been several instances and I would limit this to the Native Americans where they've come into my office in an intoxicated condition and when they do that I will not

take a complaint from them, and I've yet to have that happen with a White person.

Q Are you familiar with an organization called Civil Liberties of South Dakota, Incorporated?

A I'm aware of an organization that was formed, South Dakota [redacted] for Civil Liberties, I think that's the term that I understood.

Q Okay, you are familiar. Do they have a particularly strong and active chapter in your county?

A No. They-- I was present at the meeting, the first meeting that they were organized under, and I would say there were approximately 50 people present, maybe more, and there was a substantial membership came out of that group and that was two years ago, and since that time they've yet to hold another meeting, as far as I understand.

I don't know -- I have no personal dealings with the -- go ahead.

Q Ray, are you familiar, then, with [redacted] another group per[redacted] overlapping [redacted] membership, [redacted] the Civil Defense?

A The Civil Defense is no overlapping -- well, there would be, I imagine, people on the Civil Defense and on that organization, yes. But I'm not sure what the membership overlapment would be. Civil Defense is statewide, it's an organization that goes out in national disasters and so forth and aids or in case of emergencies, aids law

(6) DATA citizens for civic liberties, I think that's the

(7) term that I understood.

(14) perhaps overlapping membership, called the civic Defense ---

enforcement officials.

Q One last question in connection with the Civil Liberties of South Dakota, you say you attended one meeting, do you give the members of that organization any special recognition or seek their assistance in law enforcement or in -- in any such manner in your county?

A No, they've never been involved in any -- in any way in law enforcement in our county.

Q (By Ms. McEldowney) Would you estimate how many people were at this first meeting that you attended?

A I believe I did, I think I said around 50 or more, I'm not sure.

Q What was the race of those people, as far as you could tell?

A They were probably, I would estimate that there were 20% Native American there.

Q There were, we had testimony of Indian membership in such a group yesterday also. Were they all from your area, were they people that you recognized primarily?

A The people that were forming the association were not local.

Q The 50 in attendance?

A Most of them, yes, I think they were all local, if I remember right. I hate to say that because I can't remember exactly everybody that was there.

Q (By Mr. Volk) Just one, maybe, final question on this civil liberties group. A couple of times yesterday during the testimony they were described as kind of the South Dakota answer to the Klu Klux Klan, that was said a couple of times. Do you know if this group has any basis on racial prejudices or is it based on some sort of racial prejudices or discrimination against Native Americans, to your knowledge?

A I don't know if you would associate it with the Klu Klux Klan, I think the major purpose for which they were organized was to combat the jurisdictional arguments throughout the state that are presently being presented to the Supreme Court of the United States. Mainly regarding lands jurisdiction and the extension of reservation boundaries.

MR. VOLK: Okay.

Q (By Ms. McEldowney) Were you around at either of the Pork Plants, were you in Lake Andes?

A I lived in Lake Andes, I was not state's attorney at the time, but I did live there.

Q For both incidents?

A Right.

Q At what time -- what were you aware of in the way of actions by deputization of local citizens?

A I have no knowledge as to that. I had nothing to do

with law enforcement at that time, I have no connection with the Pork Plant cases.

Q You testified that you saw no or you stated that there was no major difference in Indians' and non-Indians' access to bail. Do you mean that there's no problem with the jurisdictional questions as far as, you know, getting an Indian back from the reservation? That doesn't present particular problems in bail?

A I'm sorry, I don't understand, I don't understand the connection between bail and jurisdiction. Would you clarify the question?

Q An Indian person from Rosebud Reservation, living on Rosebud, arrested under your jurisdiction, you think that in your experience he has as much access to bail --

A You mean a person from Rosebud coming over to Lake Andes, for instance?

Q Yes.

A Or are you talking about Yankton Sioux Reservation?

Q I'm talking about a person from a reservation.

A Okay, coming into Lake Andes and committing a crime or being charged with having committed a crime --

Q Charged.

A -- making bail?

Q Yes.

A Depending on his financial status. There are people --

there are members of the Indian reservation that can make bail that have the finances and the land, the resources to do so.

Q And the bondsmen in your area take trust land?

A They will not take trust land because there's no way that we can take trust land away from them, you know, to secure the bail.

Q So there is a particular problem --

A I see what you mean, certainly there is with a landholder, right, if those are his only assets, real estate we can't --

Q Wouldn't there also be some problem in going after someone who was on the reservation? We are hearing that out here that that's a problem with bondsmen and I --

A Well, I don't know, you'd have to talk to a bondsman about that, there's some bondsmen that won't have any reluctance to go anywhere, you know, if somebody skipped bond or something.

Q So, in your experience, that's not a problem?

A I don't think so. It's not a problem that I would say is indigenous to only Indian people, there are a lot of poor White people too that can't make bail.

Q (By Ms. Gunderson) Coming back to your answer to a previous question about the percentage of crimes and trials that you're associated with and the high percentage

of Native Americans, what kind of a verdict do you get, usually?

A. Do I usually get?

Q. Yes. Are you, in prosecuting a Native American, are you frequently successful as --

A. Not always. No, I lose a few cases.

Q. And in fact, would you say that it is a 50-50 matter or a --

A. Well, when you ask about prosecuting now, are you talking, I mean I prosecute a lot of people that plead guilty, now are you including those people?

Q. No, I'm really thinking of the ones where they are pleading not guilty.

A. Well, first of all I don't convict them, it's the juries that convict them.

Q. I understand.

A. And you're wondering how many convictions I have on a ratio basis?

Q. Yes.

A. I would presume 50-50, maybe a little higher than that, I haven't had that many jury trials in a period of a year, you've heard that in Pennington County where the population is much higher, I think they have seven or eight jury trials last year? I've had five or six in one year and our population is a lot less.

Q That's very significant.

A I'd say about 50%.

Q Now, coming back to the remarks you made about those people in an intoxicated condition, who come up wanting to place charges against someone else, do you advise them that you will respond to them when they're in a sober condition and does this often happen?

A I certainly do, and normally they don't come back.

Q They don't come back after that?

A Right.

Q Thank you.

A And it's usually for petty offenses and -- very minor.

MR. VOLK: Bill Muldrow of the Denver office has a few questions.

Q (By Mr. Muldrow) Mr. DeGeest, with reference to this case involving a theft of the bread and bologna --

A I might correct you, there was no bread, there was just bologna.

Q No bread, just bologna. I'm wondering just what kind of procedure operates in a case like this, do you determine whether or not this kind of alleged offense would be prosecuted? Do you make that determination yourself?

A Certainly it's my determination whether or not to prosecute, if I feel that the law has been violated, I

prosecute on it. Now, our situation in Lake Andes and Charles Mix County, we've had a high degree of breakins and burglaries and under the law when you break into a building and steal something out of it, it doesn't matter whether it's two rings of bologna or a $1,000.00, I mean it's the crime of third degree burglary and we've had such a high offense of that, there's just no -- no other alternative I have but to prosecute it.

Q Did this person have any previous criminal record, to your knowledge?

A If I remember correctly, it was just minor scrapes with the law, it was nothing, no felony convictions.

Q I mean just as an individual perhaps stepping out of your role as a prosecuting attorney for a minute, in my own mind this, I was a little, and when you described this case to me a little appalled, really, at the size of the sentence in view of the fact that this person had no previous record and that he did allegedly take a very minor thing in terms of cost.

Is this kind of sentence, is this a regular occurrence or is this customary or were there special circumstances in this case which resulted in this 15-month sentence?

A The only special circumstance was that he was convicted of third degree burglary and that's a typical sentence

in our town, in our circuit, seven-county area.

Q One other question in regard to the Rouse complaint. When I was there talking with people, this was throughout the Native American community, widely talked about, a matter of considerable concern. I did look at the car, the front door was smashed in, it was a fair amount of damage. And people were rather upset about this.

I'm a little surprised, Mr. DeGeest, that this wasn't followed up on more extensively in view of the fact that you had the license number of the vehicle that allegedly struck the car. I'm wondering why this was not followed up more aggressively?

A I can't answer that except for the reason when I asked the people, like I explained before, whether or not they could identify the driver, if they can't identify a driver there's no way I'm going to get a conviction anyway.

Q It would not be customary to trace down the owner of the vehicle and ask them who was driving the car?

A It normally would be and I thought I had done that, and what happened, it was quite a while back and what happened I'm not actually sure of, it was probably neglect on my part, that's the only reasonable explanation I can give you.

Q Is it possible to still take action on that complaint?

A Certainly it is.

MR. MULDROW: Thank you.

MR. VOLK: We will go on now to Dennis Jensen.

Dennis, if you would state your name, your occupation and your address?

MR. DENNIS JENSEN

A (By Mr. Jensen) Well, if the panel will bear with me, I have a bad case of laryngitis and I'll try to stay with you.

My name is Dennis Jensen, I'm a state trooper wtih the South Dakota Highway Patrol, and I live in Pickstown.

Q (By Mr. Volk) How long have you been with the highway patrol, stationed in Charles Mix County?

A Approximately, Charles Mix County it would be going on four years, I guess.

Q Going on four years. Dennis, I'm going to relay some testimony that we had yesterday, some incidents that were referred to and I would like to then have you respond to these incidents and to your best recollection, relate to us what, you know, what happened.

We had testimony yesterday that, in a highspeed chase with a Donald Cournoyer, that you stopped him, that there were two shots fired, and that after Donald was

stopped, that you, the patrolman, made a derogatory remark that we've got that black son of a bitch, break the window and get him out of there. And that the window was then broken and that Donald was Maced and that he was beat on the arms with clubs and then fled the scene and was later arrested.

Could you perhaps relay to us how you recollect that particular incident?

A. I'd be more than happy to. Approximately 7:00 o'clock in the evening or 7:30 that evening, I received a call on my police radio, I was in my patrol car east of Lake Andes a few miles, and this call came from the --

MR. ADELSTEIN: Excuse me, I'd like to interrupt for just a minute, we had an understanding with any witness that agreed to appear here today that they would neither be taped nor photographed without their consent.

I see that someone in the room would like to tape you, is that permissible to you?

A. I don't care, just a second please. Fine. Fine.

MR. ADELSTEIN: Okay.

A. It was approximately 7:30 or 8:00 o'clock in the evening, a call came over the police radio and it initiated from a BIA unit. That's the Bureau of Indian Affairs. And he was requesting assistance to stop a car that was leaving at a high speed that would not stop for him.

He said it was trying to outrun him and he wanted that vehicle stopped and he advised that the probable driver of that vehicle was Donald Cournoyer, that would be probable driver, he wasn't sure. So I turned my car around and I started heading down that way, in the event he came I could intercept him.

It wasn't only a minute later the BIA unit radioed and adivsed he lost the car, taillights went out of sight, he outrun him. So then I completely forgot about the matter and I went about my normal patrol duties.

And it was approximately, I would say 11:00 o'clock, maybe 11:30, 172A, which is call letters that's the city police at Lake Andes, called me by police radio, and he wanted to know my 1020, which is location.

I advised him I was approximately four or five miles east of Lake Andes on highway 50. He said I am in pursuit of that car. Now, I want to remind you also, I probably forgot, the BIA unit gave us a description of the car and the license number of the car that he was in pursuit of before he lost it.

And approximately 11:00 o'clock that night the city policemen of Lake Andes called me and wanted my assistance on again stopping this same car, same license number, with possibly Donny Cournoyer driving it, he advised possibly. And they were en route east on highway 50, which

is exactly where I was. So I then pulled my car off of the road onto an intersecting gravel road and I waited. And all of a sudden I heard the roar of the engine coming and here comes the car at a terrific high speed. And then I noted the red light behind it, approximately, I would say two, 300 yards. When this car that was fleeing was approximately 150 yards still west of my position, I turned on my red light. And it made no apparent difference at all, the car just blew right by me at a very high rate of speed. I would guess, I guessed then at in excess of 100 miles an hour.

At approximately the Ravinia Junction, I was on this car's, what I would say position where I would maintain following distance. And the speed he was driving was 117 miles an hour. This car went through the City of Ravinia at excess of 80 miles an hour. And if those of you that are not familiar with Ravinia, I would like to remind you that there are numerous children there, the streets are poorly, inadequately lighted, and I only thank God that I was as close to him as I was for siren and my red lights, noticeable, so we went through Ravinia at 80 miles an hour, or there abouts.

As soon as we got through Ravinia, up went the speed again to 117 miles an hour. Which apparently was top speed on this particular vehicle. We then crossed the junction

of Highway 46, and there I want to remind you also that there is a stop sign guarding the junction where this car just completely ignored the stop sign, went through the stop sign, crossed Highway 46 at 117 miles an hour.

As we crossed the junction there, I radioed the BIA unit that initiated the traffic on this vehicle hours earlier. And I advised him that the possibilities were very good we would be entering reservation. Did he request my assistance and did he want me to maintain the pursuit? He advised 1004, catch him if you can, stop him. And he also advised earlier the way this guy was driving he was going to kill somebody. Somebody was going to get killed.

So I maintained pursuit. The vehicle entered Marty Mission and it drove through a stop sign at Marty Mission, turned west at the stop sign and stopped there.

Now, my reason in thinking that possibly I knew Donny Cournoyer was in the vehicle then. I knew it was Donny Cournoyer, he has in the past, before, proved his willingness and readiness to bear firearms. Via the Pork Plant incident, I'm well aware of it. I knew that he wasn't above using a firearm, he had access to them, and at the same time I would like to remind the panel we had one party by the name of James Wettle who's still an escapee from justice, he was loose then also, and I would think that

it would have been foolish for me to completely disregard the possibility that he was also in this car.

I was trying to think of a reason why they would want to run, why wouldn't this car stop? It's just a -- a stop sign, city police had him on a stop sign. Why would this car want to run on a stop sign violation?

Well, I assumed it was logical for me to, that assume that Jimmy Wettle was possibly in there, so I pulled up and I stopped behind this car where it stopped, and I was just proceeding to get out of my car when it took off spinning his wheels, throwing gravel on my patrol car.

And their speed increased and they were out west again on gravel.

Now, when the first car first left it threw up so much dust I had to back off, I just couldn't see anything. And I would like to remind the panel that all the time this was going on I had red light and siren on. I think I might have possibly turned the siren off when we went through Marty Mix, I'm not sure, I can't say. Sometimes I do if there's no traffic to lessen the amount of interest that people following on and etcetera and etcetera.

Well, then we were en route west again at high speed, I was losing distance due to the dust and as we got a few miles west and I would like to remind the panel

this is a gravel road, it's a winding road, it's hilly road, it's actually a dangerous road for speed, it's -- it's a road that should be driven with complete caution. Our speed was about, well, so far down the road we run onto some snow. The road became more firmly packed, and I was able, then, to regain some distance on this fleeing car.

Now, I was watching this car that was running while it was ahead and I radioed behind the city policeman, I would like to remind you, was still maintaining the pursuit, however he was completely out of sight.

His car was not capable of maintaining the speed that we were going. I radioed the policeman and I advised him to maintain, to keep following because the way this guy was driving he wasn't going to be on the road very long, he's doing a bad job of driving, he's going to ditch it pretty quick.

And it just wasn't even a half-mile down the road that I told him this, that I seen the car making revolutions on the road, and it came to rest in the east ditch. That would be on the opposite side of the road from which he was traveling. And it was facing, the headlights were on and it was facing directly at me as I rounded the curve there. So I stopped my patrol car and I would guess, this is complete approximation, I would say a 100 feet from this

car as it was sitting there. And right away, this car was sitting there approximately, maybe 15 seconds before I stopped my vehicle and at the time I didn't know if any of them exited that vehicle or not.

So I got out of my car, I pulled my car sort of broadside in the road to offer some protection in case I would receive fire, I opened the rear door, I took out, from a case, an AR15 rifle which is a semiautomatic. It's no way an automatic rifle. I would like to remind the panel that two or three days earlier, prior to this incident, the deputy sheriff and I were hunting coyotes and I had occasion to use this same rifle and at this time the rifle did malfunction, it would not load properly.

And I would like to remind the panel I'm in a situation here where I know there's three subjects in a vehicle, I don't know who they are except for one, Donny Cournoyer. I think possibly Jimmy Wettle could possibly be in there. He would not be above using a firearm as he's well-demonstrated the fact that he is -- that he has.

I wanted to make certain that my rifle was operable. So I brought the hammer back without any benefit of light, it was completely dark, and I'd like to remind the panel that my car was running, and my radio was on, police radio, and it was fairly busy, and as far as I knew all the subjects were in that car. I seen no one moving, so I pointed the

rifle directly down to the ditch and I pulled two shots, real fast through it to make sure it was in operable condition. Now, when I did that I assumed they wouldn't even hear the shots. So then I get up and I'm watching, trying to catch movement or if they exited the vehicle, I put the spotlight in the windshield of the car as it was sitting in the ditch. I recognized Donny Cournoyer behind the wheel and I still didn't recognize anyone else.

And all their heads were visibly, purely visible in the windshield, which would seem funny to me if they thought they were getting shot at, they would certainly be smart enough to duck. But they weren't, they were completely looking out that windshield so I said, Donny, all of you get out of your car, hands up in the air.

And here I would like to remind the panel that what I got as a greeting was, -- may I use foul language? Do you want to hear it the way it was?

MS BUTLER: Whatever way it was.

A. Fuck you, you white son of a bitch, what are you doing down here anyway? I said, Donny, no more, come on, out. He give me the finger and he reached up on the dash and I was watching with the headlight and I didn't know what he was reaching for and I thought possibly a weapon.

It was a can of beer, he took a drink of beer and at this time I decided to just wait for the policeman to come,

he was still following to give me the help and we'd approach the car. Which we did. Verlin Ebrite, a policeman at Lake Andes, pulled up approximately two minutes later, one to two minutes, somewhere in that area.

So I said Verlin, let's go up and get him out of the car, keep your eyes open, make sure no weapons come up, because I think primarily where an officer gets blown right out of his boots is approaching a car. And when a car has led you, at 117 miles an hour, down through the darkest country and there you are, and -- I would like to remind the panel you would be cautious, believe me.

We went up to the car and I says, put your hands up where we can watch them, keep your hands where we can see them.

I'd like to remind the panel I was carrying this rifle and Verlin Ebrite was carrying nothing but a night stick, along with his revolver which was in the holster. And the idea was that I would give Verlin the cover while he cleaned the car, exited the people from the car. So Donny Cournoyer then rolled his window up and I seen him lock all the doors so I said, Donny, come on, get out.

He says, fuck you, you ain't got no business down here, I ain't going nowhere. I said, Donny, I'm only going to tell you one more time, open the door. Fuck you, I ain't going nowhere. So I advised Verlin, the city policeman,

I said, break the window and which he did, he put the night stick through the window right by the door lock to where we could get the door open and clear the car of its occupants because I think in police work, good police work, that's the first thing you want to do is clear the car of its occupants.

Okay, we then got the door open. Donny Cournoyer then, the other two people in the car, there was a young boy and young girl they got out the right side of the car, then, and walked up to the road. But Donny held onto the steering wheel and he had a death grip on it and he would not let go of it. And I was standing back about three feet and Verlin, the city policeman, had hold of his arm and he was trying to pull him out of the -- of the car.

And at no time, at no time did I see that night stick raised and hit this Donny -- hit Donny Cournoyer, all it was was a tugging match. So I told Don -- Verlin, he was having trouble with it and Verlin was considerably smaller than I am, I told him, Verlin, I said, here, hold his gear and I'll try and get him out and as I said this Donny then let go, slid out the passenger's side of the car, and across the fence and out into some brush. I, meantime, took off after him, fell over a barbed wire fence, tearing my pants and ended up getting a tetanus shot for my reward.

And I, right here and now, deny ever calling him a black son of a bitch, but I can readily see why they would think I could because I got called a white son of a bitch quite a few times.

That's all I have on that.

Q (By Ms. McEldowney) What was Donny charged with?

A With eluding a police vehicle, and reckless driving.

Q And was he convicted?

A And a stop sign, I mean by me you're talking about?

Q Yes.

A I don't know what the other agencies charged him with. Pardon?

Q And did that go to trial or what was the final disposition?

A I believe he pled guilty, maybe the sheriff can answer that better than I can, I believe he pled guilty and was given ten days in jail on both counts.

Q You say early on that you recognized Donny, prior to stopping the car, you testified --

A Yes.

Q -- you testified that you were concerned about this Wittle being in the car --

A Yes.

Q -- and you had recognized Donny by this time?

A Yes.

Q According to your statement.

At what point did you recognize Donny, since the reports say probable driver?

A I can't really be certain, however when I was driving I had the spotlight and I have a very brilliant beam in my car in the spotlight right in the car, and the reason for this is to make certain that some big shotgun with a barrel this big don't come sticking out the window at you, and then that is when I recognized him.

Now, I don't know if it was when we made the turn through Ravinia, I just can't be certain, or if it was at Marty Mission, I just can't be certain there.

Q Where were the other two people in the car? Were they front seat, back seat, could you tell?

A No, I'm not certain on that. I believe -- I just, I believe one was in the back looking back at me quite often and then one was in the front, I believe.

Q But you couldn't recognize or even identify the sex of that person?

A No, sir -- no, Ma'am, boys and girls look an awful lot alike nowadays and I can't tell the difference by the hair, I tell you.

Q This Wettle, are you familiar with his --

A Jerry -- Jimmy Wettle --

Q Wettle?

A Oh, yes, I certainly am..... but I never got a view of him that close, that good.

Q At least for the person in the back seat who, as you said, was turning around looking at you?

A Yes, Ma'am.

Q (By Ms. Gunderson) May I ask if it's customary for the Bureau of Indian Affairs' announcement to identify the driver instead of the license plate or the type of car?

A Well, I went back and covered that, I believe he gave us the possible on the driver, and a very good description of the car.

Q And it's customary, was his reason because of speeding?

A Well, he was getting complaints from the people at the Marty housing according to what he put on police radio that this car was seen driving wildly through the housing and was, quote, going to kill somebody if it wasn't stopped, and I believe this is where his chase originated with the vehicle when he lost it initially.

Q (By Ms. McEldowney) To your point about your firing some shots, now where were you exactly when you fired those shots?

A I was behind my car, in fact the muzzle blast or nothing should have been in view of that car.

Q Nothing should have been --

A But apparently they heard it and I didn't think they would, it's a relatively small caliber and they don't make no big gigantic noise, but like I say, it's big country down there and it's awfully quiet.

Q When was the first time you were aware that they heard those shots?

A Just recently, on this, I believe when I received this letter here from your commission.

Q Nobody said anything to you when you did take in a couple of the people that night?

A Not that I remember, not about shots, no.

MR. VOLK: If there's no other questions regarding that incident --

Q (By Ms. Gunderson) May I ask one more, please, Mr. Chairman?

Would it have been possible for you to radio someone beyond Ravinia, you recognize, I'm sure, and it's one of your problems in your job, to estimate whether or not you had the kind of a driver where you're stimulating the speed by your hot pursuit? Could you have, is it a normal thing sometimes to radio ahead and say I have a speed demon coming along, can you cut him off in a certain locality as the BIA man did to you?

A Oh, yes, Ma'am, if that would have been possible it certainly would have been done, but in our area down there,

we are better off now than we were at that time, we were very short on officers, I was the only patrolman in the county at that time. We had one BIA policeman working that night, and that was the extent of the traffic on the road, if we didn't call the sheriff's unit out. There might have been a sheriff's unit out in the area somewhere but on that particular occasion there wasn't, and in fact, when I called the BIA unit that I was in pursuit of the vehicle, he started following my direction and he arrived there maybe five minutes after the vehicle was stopped.

Q Who else was in the car and were they charged with anything?

A I'm not sure of the names, but it was Donny's younger brother and I believe his wife. They were not charged.

MR. VOLK: Thank you, Dennis.

I think we'll go on to the other incidents then, and then perhaps ask some questions also of Sheriff Huber regarding this other incident.

The other incident involves Lol Tiget. I'm going to give you just kind of sketches of her testimony and then I mainly want you to respond as to how, again, you recollect the incident.

It was testified here yesterday that in March, three American -- she and four other women, two were juveniles and one man, were stopped by a group of some 20 men

armed with rifles and pistols, these included city police from Wagner, including the chief, several state highway patrolmen [redacted] and a number of White citizens from a local civil defense organization.

She testified that Sheriff Huber arrived shortly thereafter. There was testimony that when the car was stopped, her car was rammed by an auto driven by the chief of Wagner, it was also testified that she was hit on the arm, causing a large bruise with an M16 rifle.

She and her occupants were ordered out of the car and the car was searched, they were also ordered to open the trunk of the car for inspection, although no search warrant was shown them. Their rights were read and then they were taken to the Wagner Police Station. The center -- and then to the law enforcement center in Lake Andes. They were denied permission to make phone calls, no one informed them of their charges until 5:00 a.m. Monday when they were told that they were charged with conspiracy to kidnap.

I believe it was testified yesterday that they really had no idea of how a charge of kidnapping could be brought against them, they were totally unaware of how this kidnapping charge was lodged.

It also involved a charge of a .38 revolver taken away from Mrs. Tiger, although she had a permit to carry it, bail was set at $15,000.00 each, and that was essentially the --

(3) patrolmen, including yourself, Dennis, and a number of

and then they were kept in jail, except for the juveniles, for ten days. They were informed that charges were dismissed and then they were released. And if I'm not mistaken I believe also that there was a charge made that while they were denied visitors, that an open house was held at this particular jail whereby the public could come by and view them. I believe that was also part of the testimony.

Sheriff, I might want you to respond to that, but Dennis, if you would respond to that incident and that night in early March, which I've just related to you?

A. Well, what you related to and all I'm going to give you the answer on is what I was involved in.

Q. (By Mr. Volk) Okay.

A. And what I was involved in was, if they said -- they said that I was there when they were arrested and run off the road and --

Q. Let's see.

A. That would be false, that's nothing --

Q. Well, when the car was first stopped, there was a, stopped by a group of some 20 men armed with rifles and pistols, they were policemen, the people from the civil defense group and they were, you were named at that time of being at this place where they were initially stopped and their car was searched and they were forced to leave the

vehicle.

A Well, there again it's a complete misstatement of facts, there's no merit there at all. When I became involved with the suspects or subjects, initially, was when they were all incarcerated. They were being brought from Wagner to the county jail at Lake Andes. And all the arrests had been made and I wasn't involved in the arrests of the subjects at all.

Q Let me make sure I understand this, Dennis, are you saying that when Lois Tiger, in her car, was stopped on the road outside of -- outside, I believe, of Wagner, that you were [redacted] when these people were stopped and searched [redacted] were made to get out of their car?

A That would be correct, I was not at the scene there.

Q Would you then give the background on how you understood this whole thing to take place, what were the events leading up to this and how kidnapping charges happened to be lodged against these people and -- well --

A Mr. Volk, I think I would be encroaching on the sheriff's -- better he could do it to do a lot better than I could.

Q Sure, that's fine with me, Dennis, really, if you were not at this place on the road --

A Yes, I -- if I talked there I think I would be talking more in stupidity of it than what Ruben would be.

(5) When they were all INCARCERATED. They were being brought

(6) From WAGNER to the county jail at LAKE ANDES. And all the

(12) you were not at the [redacted] scene when these people were stopped.

(13) And searched and let -- were made to get out of their car?

Q. All right, Sheriff Huber, would you state your name, your occupation and your address and would you then respond to the charges and the testimony that I just referred to?

SHERIFF RUBEN HUBER.

A. (By Sheriff Huber) Yes, sir, first of all I'd like to apologize for --

Q. Ruben, could I, our -- we want to know who's testifying, if you don't say, give your name, your position and your --

A. Okay, I'm Ruben Huber, Sheriff of Charles Mix County and I live at Lake Andes, South Dakota.

Q. Thank you.

A. And first of all I'd like to apologize for not being here yesterday. But we did have an incident down there last Saturday night and it involved a police unit down there being shot up at the Greenwood area and took us until 5:00 o'clock Sunday afternoon to get that cleared up and at that time the weather was bad and I decided I wasn't going to take off that time of the night to come out here, so we left yesterday afternoon.

Q. We do appreciate your coming anyway.

A. But this incident that happened last spring was -- I got involved in [redacted] called down to the law enforcement center sometime [redacted] block, I can't be sure just exactly what [redacted] was.

But they brought a young White boy into the sheriff's office that had been beaten up quite severely, and I talked to him, he gave me the incident that took place. He was walking by an alley in Lake Andes, this was on a Saturday night. [redacted] black over brown or [redacted], he noticed that car, and about that time he got hit over the head. He says that he come to out at the housing and there was quite a -- quite a group of people in this house.

Q. By the housing you mean what?

A. That's the Lake Andes housing.

Q. Okay.

A. It ended up to where he told me that he come to out there, they threatened him, they made him kneel down, several individuals kicked him, and Jimmy Wettle, whom was a fugitive at that time, [redacted] standing over him with a [redacted] says to him when these guys get all done kicking you and beating you, he says, I'm going to kill you with this .45. And what had happened, some lady in the next house heard a commotion, she called the sheriff's office, and we have a 24-hour dispatcher and anyway

(2) -- I got involved in it when I got called down to the law

(3) enforcement center sometimes after 1:00 o'clock, I can't

(4) be sure just exactly what time it was.

(9) Saturday night. And he recognized this black over brown

(10) or tan Cadillac, he noticed that car, and about that time

(20) was a fugitive at that time, was standing over him with

(21) a .45 pistol. And he says to him when these guys get all

he got a hold of the police force and he happened to get a hold of one of the bureau policemen, he was the first officer that arrived there.

He called for some assistance. The city police went out there, and by the time they got out there everybody was going down in the basement or out the back door of the house, and they found this young lad in the house, all beaten up.

They brought him in to the sheriff's office, and at that time my deputy and the city police had stopped that car just on the edge of Lake Andes or right out of the housing there. And my deputy flashed his flashlight in the back seat and there was quite a few people in the car, he couldn't tell how many were, there was a lot of them in there.

He noticed Jimmy Wettle in there. The police officer said he seen the gun in Jimmy Wettle's belt. So my deputy went around the front of the car and tried to get the key out of that Cadillac. And that's when the -- Jimmy Wettle, the city police officer said Jimmy Wettle went for his gun and he says, told the driver, get out of here. There was a young lady driving the car.

They throwed the car in gear and took off. And they went east on Highway 50 to Ravinia. I got that message over the radio then and I contacted Trooper Jensen

on the radio, he was on Highway 46 at Pickstown. When my deputy and the policeman at Lake Andes were in high pursuit of this car, they sent a message back to me, saying that the car had turned south through Ravinia.

At that time I give Trooper Jenson the order to try and stop that car on junction 46 and the Marty Mission Road. I also told him that Jimmy Wettle was in the car. Who is a fugitive, still is.

Trooper Jenson then set up a road block there and I think from there on, I'll let him tell what he -- what took place in his part.

Q Please do.

A (By Mr. Jenson) Well, after Sheriff Huber gave me the call and advised me that Jimmy Wettle was in the black over gold Cadillac and they were en route east. And I was at my residence at Picktown and I got the message by a telephone and I immediately just left the house, went out to the car and headed east on Highway 46.

Now, my going, my reason for going east on 46 was as I assumed they would go to Marty Mission. That seems to be a recluse, once they get there it seemed like hide and seek, you know, you get down there and ha ha, I'm free, you know. So I thought I'd catch them before they got down there. So I pulled -- on the way to the junction I was in radio communication with the city policeman and the

deputy sheriff, which was in high pursuit, hot pursuit of this car, fleeing Cadillac.

The deputy sheriff advised me that there was one headlight out of the Cadillac. I asked him for some reason, way I could identify it, what their 1020 was, what his -- where he was in relation to the car and so I could see it.

I got to the junction and I called the deputy sheriff and I said, are you -- is it a certain on Jimmy Wettle there? 1004, Jimmy Wettle's in that car. I said, any confirmation on weapons? 1004, they got a .45 automatic for sure. Others we don't know, but positive on a .45. What appeared to be a .45 automatic in his belt.

So here I sat at the junction and I was looking up north, and this is about, no traffic on the road at all, I was hoping there would be a lot of traffic so I could just stop about five cars, and just run headlights all over the place where they just flatly couldn't get through there. No traffic, here comes this Cadillac with one headlight. I was advised earlier there are seven, or eight possibly, people in this Cadillac, Jimmy Wettle's in there and they've got a confirmation on firearms.

So what do I do? I set up, these are the possibilities that went through my mind. Now, this car was approximately four miles up the road and here I am sitting there with my lights out and I'm watching it come towards me.

And knowing it's going to come to this junction where I'm now sitting, I thought, well, I could turn on all my lights on, put my car parallel in the road, whereas they would have to slow down, go in the ditch to get around, possibly shoot a tire and stop the car.

Then I decided against that for the reason that I don't think I want to stop that car right by me because there's eight of them, I know there's weapons in there, I'm by myself and my mama didn't drop me on my head when I was a baby and I don't want eight people out there with guns with me by myself, so I sort of scrapped that idea.

And in addition to that you refer to the road block law and they're quite specific on how to set up a proper and adequate, safe road block. And at the same time I assume that there would be innocent parties in the car, if the driver was crazy enough, possibly intoxicated enough, to ram my patrol car, people would get killed. So I scrapped the idea, I was going to leave the highway open.

I then observed my second choice, was a tractor-truck, truck-tractor and a flatbed trailer with a loaded irrigation pipe on the trailer. This was sitting in the northwest ditch. So then I assumed, well, this is what I thought to myself, I could pull my car directly into the ditch adjacent to this tractor and trailer and I could be completely obscured and this would afford protection in case

I received fire as they drove by. Because I had no doubts at all that if I would have left my car in plain visible sight of that intersection, with Jimmy Wettle in there with weapons it would have received fire. I wouldn't have wanted to have been around it. This was my assumption.

So I pulled my car in the northwest ditch adjacent to the truck-tractor and trailer loaded with irrigation pipe completely hidden from view of the oncoming car from the north. I took my shotgun from its case, I ejected one round into the chamber of the shotgun. My assumption would be I was going to shoot the right rear tire as it drove by.

The Cadillac came, and recognized it right away, black over gold Cadillac belonging to the, it was the Tiger vehicle. I aimed the shotgun at the left or right rear tire and pulled the trigger, and boom, the car was gone and I was going to get into my patrol car and maintain pursuit.

Now, as soon as I got in the patrol car, I put the -- into drive, and there was a little dew or mud, it was a little muddy or something, it was just wet, and this ditch was a pretty good inclination there, and as I put it in drive I probably stepped on it too hard and I slid right down the inclination and I lodged my car directly against the dual wheels of the tractor. And any further attempt

for me to extricate my car from that ditch would have meant damage to the car and as I looked to the south, the Cadillac in question was completely over the hill, which would give him a two-mile lead, approximately, and I had no reason to think I could catch him anyway.

MR. ADELSTEIN: Patrolman Jensen, I hate to interrupt you, we have a kind of a problem, the attorney general has to catch a plane, we're really, I think, the panel generally agrees we're mostly interested in what happened to the people and Mr. Tilt was apprehended and the [illegible] the sheriff could go ahead and [illegible]

A There again I'll turn the mic. over to the sheriff.

MR. ADELSTEIN: Rather than --

Q (By Ms. McEldowney) You had no other involvement with that car that night, is that correct, Patrolman Jensen?

A [illegible] no further involvement. I [illegible] sitting at the Wagner Police Station.

MR. ADELSTEIN: We've got to deal with the incident when the car was stopped and the people were taken out because you've given us good background now and what happened in the jail, those would be the two things please?

A (By Sheriff Bieber) Well, I can tell you that I got called sometime later on, in fact it was daybreak when I

(9) PANEL generally Agrees we're mostly interested in what

(10) happened ONCE the people, ONCE Ms. TigeR WAS [redacted] Apprehended

(11) AND the people were there, MAybe the sheriFF could go ahead

12. AND give THAT.

17 A. THAT would be correct, I MADE NO FUTHER INVOLVEMENT.

18 I SEEN it, I MEAN I SEEN it sitting at the WAGNER Police STATION

20 Mr. ADELSTEIN:

got down and they were already incarcerated in the Wagner Jail. And then we took them from the Wagner Jail to the [illegible] at Lake Andes.

Q (By Mr. Adelstein) Just a moment, you were not at the scene of the car when it was stopped?

A No, sir. No, sir, I wasn't.

Q (By Ms. McEldowney) Well, who was there?

A There was [illegible] City Police of Wagner and I can't tell you who all the fellows were that were involved in that.

Q (By Mr. Volk) Do you know whether or not the car was rammed by the --

A Well, the story that I got, the information I got, the car was [illegible] to pull in to the -- they ordered [illegible] drive it on to the police station, and they were -- had one car behind it and one car beside it, I think one car leading it, and as they went by the Wagner housing the one car tried to pull on -- their car tried to pull in there and then Lucky Drapple (Phonetic), chief of police down there, pulled ahead so she couldn't pull in and he kind of rammed her a little, yes.

Q (By Ms. McEldowney) So who was at the station when you got down there?

A How's that?

Q Who was at the station out of this car when you

got down there?

A Lois Tiger, some of her daughters, and another -- another gentleman by the name of Provos, I believe. I can't name all her daughters that were there.

Q (By Mr. Volk) Sheriff --

A But I think there was five of them incarcerated.

Q -- again we have again the time problem. I wonder if you might just respond to the one other incident or the one other thing that was mentioned, regarding the lack of visitors for Lois Tiger and the other people in jail and then comment on the open house?

A Okay. Prior to this we have -- we built a new law enforcement center there, and we had scheduled this grand opening. And of course these people were incarcerated. And they were behind locked doors. And if they made the statement that they were behind bars and everybody could see them, that's a false statement.

Q They could not be seen by the general public?

A There's just a little -- there's just a little window in there that's this wide and this tall, that's up high enough that you'd have to stretch your neck to look in there, and I'm sure that we -- I was giving these tours, we didn't allow anybody to spend any time there and look in there.

At the same time they were cussing and hollering

in there and making it really known that they were in there, see. But we had this thing scheduled, and we did have something like 450 people go through there that afternoon but they didn't get a chance to observe and I'm sure they didn't know who was in them cells at that time.

Q (By Mr. Adelstein) Could I ask another quick question, I know -- do you have any M16 rifles in your sheriff's office?

A No, sir, we don't. I don't own a rifle -- none of my deputies own an M16.

Q [redacted] defense organization have any M16 rifles?

A Not to [redacted]

Q (By Ms. McEldowney) What happened to this Wettle that was supposed to have been in that car?

A Well, that's something we don't know, we wish we knew, he disappeared after -- he lost contact with him until they made contact with them over in Wagner, he was gone.

Q (By Mr. Adelstein) What time are you gentlemen leaving Rapid City?

A Well, just as soon as possible, I mean we'd like to get out of here as soon as possible. Whenever we can. I'll put it that way.

(12) Q. Does your civil defense organization have any MIG

(14) A. Not to my knowledge

Q (By Ms. Gunderson) Do I understand that the gun that had a permit was the gun being -- you were being warned about?

A The gun -- Mrs. Tiger had a pistol in her purse while she was incarcerated in the jail.

Q But this was not the firearm that you were warned about or that the patrolman was warned about?

A No, no, no, it wasn't.

Q And did you in fact find that gun?

A No, we didn't.

MR. ADELSTEIN: For the record, then, we just have to get the attorney general, [redacted] or trooper [redacted] been told?

A Not at the scene when they stopped the car at south of Wagner there.

Q (By Mr. Adelstein) Did you come to the car?

A No, sir, I never got there, I was till after they had them in the police station.

Q [redacted] of the [redacted]

A No; I didn't.

MR. VOLK: Well, thank you very much for coming up and answering these questions.

A Are we excused?

to get the Attorney general, Neither you NOR the patrolman,

or trooper. Neither one of you were at the scene as we've

Q. You did Not read Mrs. Tiger her Rights at the scene

of the incident?

MS. McELDOWNEY: No, we'd like for you to come back in about --

MR. VOLK: The attorney general has got to leave at 4:00 so you'd only have to wait 30 minutes, if we could --

MR. JENSEN: All of us or --

SHERIFF HUBER: Yes.

MR. VOLK: The attorney general, please?

MS. BUTLER: Good afternoon.

I'd like to have the record show that on this panel on the extreme left is Barbara Bates Gunderson, Stan Adelstein, I'm Dorothy Butler, Mario Gonzales, Mary Ellen McEldowney and Dr. Shirley Witt of the Denver office.

Would you please state your name, address and occupation?

MR. WILLIAM JANKLOW,

A. (By Mr. Janklow) My name is Bill Janklow, my address is Pierre, South Dakota, my occupation is the Attorney General of the State of South Dakota.

Q. (By Ms. Butler) Mr. Janklow, since we've begun we've aked each witness -- or each person who's been kind enough to appear before us, if they would prefer to be addressed by first name or last name?

A. First name's fine with me and it's Bill.
Q. Thank you, Bill.
How long have you been attorney general?
A. Since January 5, 1975.
Q. What is the function of your office and what is the extent of your jurisdiction?
A. The jurisdiction of the attorney general is statewide in South Dakota with respect to all people except Indian people who are on reservations or Indian trust land in the state. And the duties of the office are the chief legal adviser and law enforcement officer of the State of South Dakota.
Q. Does your office supply any or employ any Native Americans or any American Indians?
A. Yes, Ma'am.
Q. What role does your office --
A. Do you want to know -- are we going to leave all that --
Q. Oh, no, elaborate.
A. I want to brag about my record if I can.
Q. Elaborate, please, Bill.
A. All right. We, at the current time we employed 11 Native Americans.
Q. Thank you. Do you want to say more?
A. No. I thought you were going to get the women next so -- I sat in the back of the room making all those figures

up today so I've got to use them.

Q Well, then, I think that that's a fair question, what's the ratio of male and female employees?

A Of the 30 attorneys that we have on the attorney general's staff, five of them are females and one of them, another female will join our staff in January at the -- after the graduation exercises at the law school, so it will be six out of 31.

Q What role does your office play in the training and certification of local police officers?

A That's the attorney general's function through the law enforcement training center, it's basically provided by a law enforcement training commission which is made up of appointees who are appointed by the attorney general but the criminal justice training center is under the jurisdiction of the attorney general's office.

And by the way, for your information, of the -- we have approximately 35 in every class that attend the law enforcement training center, since I became attorney general we've expanded the minimum training requirements from three weeks to five weeks, which is now 200 hours. And after I became attorney general I also gave orders that five of those slots of every training class will be re-served exclusively for Indian people from the reservation who are from the tribal law enforcement agencies. They are

entitled to attend without fee and so five of the 35 positions every five weeks session is reserved exclusively for tribal law enforcement officers.

Q And how that we know that you've expanded the training period, do you feel now that the training is adequate for the functions and needs?

A No, Ma'am, I don't. I don't think that 200 hours is anywhere near enough to provide adequate training for law enforcement officers who have to be everything from psychologists to marriage counselors to policemen to investigators to, you name it, I think it takes much more detailed training than that but unfortunately that's all our legislature, at this particular point, has seen fit to fund.

Q If you could recommend more and have any chance of getting it, what kinds of things would you recommend?

A I would double the training session from five weeks to ten weeks and at the same time, I would provide for on-going, in-service training in the field on a year-round basis to law enforcement officers throughout the state and it's something we can't afford the luxury of now because they won't fund the money.

Q Presently does any of the training focus on the Native American culture and history and do officers from the reservation participate?

A. The answer is yes to both questions. There are special sessions that deal with race relations with respect to all law enforcement officers in the law enforcement training sessions and at the same time, law enforcement officers, not only from the reservation but also state law enforcement officers who are of Indian descent, also participate in these programs.

As a matter of fact, we've had a, in the last training class, we conducted a special course that was put on by the education department, I can't think of what it's called, but --

Q. Is this the department of elementary and secondary education?

A. Yes, Ma'am, and I can't think of what that program's called, but Ann Floden (Phonetic) and somebody else came and conducted it out there.

Q. When is there cross deputization between reservation, city and county police officials and how does this work?

A. All right, there's -- there are two kinds of cross deputization going on in the State of South Dakota at the present time, the first one is the South Dakota Highway Patrol has been cross deputized by the Bureau of Indian Affairs a couple of years ago and those commissions continue.

A previous witness that testified wasn't sure if it involved all the reservations, well, the answer is it does,

it involves the entire State of South Dakota from the four borders.

The other cross deputization and the procedures take place are of a localized nature only and by that I mean there has to be complete agreement between the municipality involved, the state official involved, the county officials involved and the tribal officials involved. And obviously when you're dealing with four governmental agencies that's more difficult but there are areas of the state where there is cross deputization going on now.

Q And is that whole process coordinated by and through your office?

A We provide the legal assistance and advice to the government -- the state political subdivisions for those type of negotiations. The tribal people deal with their own attorneys.

Q As a member of the state criminal justice commission, how do you think it can assist in improving the criminal justice system in our state, in South Dakota?

A What's your question? As a member of the criminal justice --

Q Yes, well, of course you are the leading law enforcement officer, as I understand the position. What else do you think could be done to improve the criminal

justice system in South Dakota?

A. Oh, I think there's a lot of things. I think the first thing, one of the things is law enforcement training. I think another thing is a complete re-looking at the entire justice process. And by that I mean it's incredible how slow the whole judicial process functions. We can put a person on the moon in a couple of days but we haven't figured out yet how to get them to trial from the point of arrest until many months transpire and from that particular point on, the average time in South Dakota from the time that an individual has been convicted or pled to an offense until their appeal has been decided by the South Dakota Supreme Court, is approximately 15 months.

And that's absolutely ridiculous. If you assume that, and I do, I should put it that way, I assume that there are three factors involved in the sentencing process, only one of which is rehabilitation. The other two are punishment or deterrent to the individual or I should say to the community. And at the same time, protection of the civilized community that's not breaking the laws, I think all too often emphasis is given to one at the expense of the other two and it's ludicrous to me to be telling somebody look, you're so dangerous that we're going to lock you up in jail for a year or two to protect other people but we're going to allow you around 15 months, walking around

until you do it.

At the same time to tell somebody that's a deterrent that they get to, allowed to walk around free for 15 months and this is from conviction, there's no deterrent value in that. And the third one, rehabilitation, you don't start the rehabilitation process two years after somebody's broken the rules, that doesn't make any sense to me either.

So I think an entire reexamination of the whole criminal justice process in terms of speeding it up, consistent with the safeguards of the constitution of the state and the federal government as well as the statutes can only bring about a significant improvement.

MS. BUTLER: I have no further questions, do other members of the panel?

Q (By the Chair) Mr. Roubideaux claims, he testified this morning --

A Which Roubideaux, there's a lot of them.

Q Ramon. Claims that he won a debate with you on educational TV on the question, can an Indian receive a fair jury in South Dakota, do you agree with that?

A Do I agree that he won the debate?

Q Yes.

A If he wants to brag that he won the debate I couldn't care less. I thought our function was to inform and educate the public and frankly, if he thinks he won the

debate, more power to him. I couldn't care less how the outcome came, I think everybody that watched it makes their own decision.

Q How many of the 11 Native Americans working in your office are state's attorneys?

A None of them, because as you know, or should know, as an attorney in South Dakota, no state's attorney works for me, they're elected locally by the people in the counties where they live. The state's attorneys are not employed by me, you know that.

Q Well, the 11 Native Americans, what positions do they hold within your office?

A They hold positions all the way from informants to investigators.

Q Okay. Now, during the Oglala incident in which two FBI agents were shot, I believe it was last year --

A I believe they were murdered.

Q Well, they were murdered then. You were, or your office was personally involved on the reservation. Were you invited on the reservation to participate in that investigation or incident?

A I went to the reservation on my own volition. If that's what you want to know. I will go anyplace, anytime, anywhere in the State of South Dakota where there's shooting going on and citizens can be hurt. I don't know who's doing

the shooting until such point in time as it's been subsided or there's been an arrest or apprehension that takes place. Until that particular point in time I work under the assumption that it's a non-Indian doing the shooting over whom I do have jurisdiction.

Q Okay, you just stated a few minutes ago that you didn't have jurisdiction on Indian reservations?

A I did not, I say I have jurisdiction on the Indian reservations over everybody except Indian citizens who are on reservations or on Indian trust lands, that's what I said. And when I found out that they were all Indians involved, we left the same day, at approximately dark. I did not stick around although I was requested to by the Bureau of Indian Affairs and the Federal Bureau of Investigation to further continue the assistance in the operation.

But once the shooting was over and there was no longer an immediate danger of life to any human being, I decided to take the state officials and remove them from the reservation, which is what I did.

Q Did the tribal president invite you at that time also?

A I believe I answered that question when I said I went on my own volition. I ordered the state officials onto the reservation --

Q You did state that shortly thereafter you were invited

by the BIA and other officials, was the president of the -- were the tribal officials among those who invited you after you were on the reservation?

A That's the first question you asked, I can't answer. I don't know. There were a large number of people in the room making the request and I can specifically remember the FBI and BIA policemen but I don't know if tribal officials did or not. I can't answer that.

Q Okay. In your training you claim that you have a race relations aspect of your training. Are any of the persons who conduct the training in race relations Indian people?

A Yes, they all are, except with the one exception of the last class that we had, which was a special experimental program conducted by the department of elementar and secondary education, I believe those -- no, they were -- there was one Indian, Lucky Drapple, who's a South Dakota Highway Patrolman that assisted them, I believe in putting on that particular exercise.

All the rest of them are conducted by Indian people. I think it would be nonsense to have a White man standing up explaining to other White people what race relation problems are like.

Q Okay. One last question. I think you heard the previous testimony of David Jensen from the Lake Andes area -

A. You mean Dennis Jensen?

Q. Excuse me, Dennis Jensen. And he's described a situation involving checkerboard jurisdiction, where -- one statement he made was that whenever Indians are being apprehended they head for Marty Mission, which is a recluse, and I would like to know if you feel that the law enforcement would be better if that area was placed -- if jurisdiction over Indians in that area was placed under the Bureau of Indian Affairs?

A. I can't respond, I think that's a question the Indian people themselves have to decide, I don't think I have any place even suggesting a solution of that particular type of problem, and I don't see that cross, that checkerboard jurisdiction as any significant problem, frankly.

I don't see it as a major problem. Most of the tribes in this state take the same position the state does, they don't want people on the reservation who have outstanding warrants and are law breakers and as a result there's usually a way figured out to facilitate the removal of those people back to the requesting authority.

Q. (By Ms. Butler) Bill, I'm well aware of the flight time and so forth --

A. Go ahead, I'll just answer all the questions you have. One of the things in the letter they sent me was this Pork Plant. Which I assume, since you're all shaking

your heads, you're concerned about.

Q Well, before we get to that, could I just ask a couple of general questions, please?

A Yes, Ma'am, anything you want.

Q How do you account for the extremely high proportion of Native Americans in South Dakota prisons?

A There's only one prison, and notwithstanding all the figures that have been thrown around, since I've been attorney general, you might as well have the accurate ones, since I've been attorney general there's been a daily head count conducted at the state penitentiary, never the -- never has it been less than 21% nor more than 24% on any of those days, I don't have the figures for the last week.

But it's fluctuated between 21% and 24% throughout that period of time. I think if you'll look at the population of the state penitentiary, without any question you'll see that the -- most of the individuals who go there are people from the lower economic strata, that not only just includes the Indians, it includes the vast, vast majority of the other 80% that are in there that are non-Indian, so I think what we're really talking about is if we looked at a representation of people in the lower economic strata who are represented in the state penitentiary, I don't know that they would really be out of line in terms

of numbers.

Now, I'm not trying to justify what goes on with poor people, I'm just saying that I think that's the statistic that everybody overlooks when they talk color all the time and that is that the other 80% happen to be there also, or 75 or 70 or 60 or whatever it is.

But what percentage of those people come from the poor area of the non-Indian community and then the final statistics that you'd want to examine to make it all make sense, is what percentage of the state population of South Dakota Indian and non-Indian consists of poor people or the lower economic strata?

Then you'd have a valid base with which to draw criticisms and make comparisons.

Q. Well, then you're saying that if one is in the lower economic strata, then the chances are more likely that that person will be serving time in prison?

A. There's no question about it and it absolutely outrages me but there's nothing I can do about it, it's my job to prosecute, I don't sentence and I've been the loudest, most vocal critic in the State of South Dakota that people who have means don't end up behind bars. I think this punishment should be the same for everybody on identical offenses.

Q. Bill, you also sit on committees to draft state

rules of criminal procedure, and I understand that new rules are being formulated --

A. Yes, Ma'am.

Q. -- what effect will these rules have on the administration of justice in the state as you perceive it?

A. I think that the changes in the rules of procedure will bring about a benefit and an improvement and the reason that I say that is because the whole major thrust of that has been for the first time to put down in writing what the rules are. At the present time, under our rules of procedure in South Dakota, we have very, very little in statutes, we probably have 30 statutes total dealing with rules of procedure.

The rest of it either comes from supreme court decisions or, as in most cases, how the individual judge practiced law or believes the law to be or thought it was, at the time that judge assumed the bench. And so, as a result, what you end up with is you never know what the rules are.

I can go before one judge in this circuit, for example let's just take discovery and that particular judge may say, look, you give everything to the defense, open your files. You may go before another judge in South Dakota who is of equal position on an equal offense and that judge will say the defense gets nothing. They have

to, under the adversary system, they have to seek out and investigate and work up their own cases. It's impossible to play the game under those kinds of rules so what I'm looking for is consistency by a set of rules and from that, once we're all operating under the same set of rules from border to border in this state, then we can figure out what has to be improved to bring about a better quality in that aspect of the criminal justice system.

Q [redacted] of the conduct of state and local officials in the Pork Plant incident in Wagner in May, [redacted] could you describe your role in that incident?

A I was the chief law enforcement official on the scene at that particular role, at Lake Andes, and the arrangements that were made were not only made in my presence but with my concurrence and under some of my supervision and direction. And the operation or removal of those people from the Pork Plant was also conducted under my supervision and control. There's been a lot of rhetoric thrown around about jurisdiction and everything else, frankly, the bullets may have been starting out on federal or tribal jurisdiction but they were ending up in my jurisdiction. I was left with two alternatives. One, I could do nothing and allow those people to continue

(9) Q. The question I think you've probably been waiting

(10) for, Steve Cournoyer was critical of the conduct of State

(11) and local officials in Pork processing Plant incidents

(12) in Wagner in May 1975. Could you explain your role in that

13 incident?

shooting out sporadically outside the building. Now, I'm not sure that they wanted to hit anybody because nobody was hit and there were a lot of them in there and apparently some of them were good shots, but the important thing is it's adjacent to a town in this state, that Pork Plant doesn't set out like a missile silo someplace out north of Philip, it happens to set right adjacent to a community where a lot of people live. A couple of thousand people live in and around the Wagner area, and the decision was made we were going to get them out of there before dark.

The first thrust was to keep people from coming in there and then later on, in a rather hasty moment, we made the decision to remove them.

For all the criticism and all the rhetoric that's been thrown around about that Pork Plant, I think it's important you people should know that no law enforcement officer in the employ under the direction or under the control of any official of the State of South Dakota, that includes municipal, county and state law enforcement officers, none of them ever fired a shot that day at anybody at any time, which includes the individuals in the Pork Plant. Were we ready to do it? The answer is yes. Did we? No. We tried the most humane means first and in the event that was not successful, we were then prepared to do whatever additional steps we had to do to safeguard the

community. As far as, and the only thing I know about what Mr. Cournoyer said I read in the newspaper. Mr. Cournoyer, I believe, and in the letter you people sent me, I believe he stated an agreement had been reached whereby he would try and negotiate, is that correct? Did he state that? I don't know who he reached the agreement with, I've talked to Sheriff Huber, it wasn't with him, it wasn't with the highway, South Dakota Highway Patrol, and it clearly wasn't with myself, I never even met him that day, so I have no idea where those kinds of arrangements were made.

Q (By Ms. McEldowney) [redacted] orientati[redacted] the Pork Plant were [redacted]

A I'm talking about Pork Plant two, Pork Plant one the removal was not brought about by any state law enforcement officers that was basically a federal operation.

Q (By Ms. Butler) What types of information does the division of criminal investigation collect and may we be supplied with such information if we request it?

A No, Ma'am. To your second question. The bureau of -- the division of criminal investigation conducts all the -- conducts investigations of all alleged offenses committed against the laws of the State of South Dakota. They don't get involved in every crime, basically it's

(12) (By Ms. McEldowney) Excuse me, Bill just for

(13) orientation, when you were talking about the Port Plant

(14) were you talking about one or two?

those where they're requested by local law enforcement or they're requested by my office or one of the members of the staff. Those are the particular cases that they get involved in, basically it deals with felonies. In only minor instances have they gotten involved in misdemeanors and frankly, those have been areas of a racial nature which have taken place since I've been attorney general, when I've received complaints that Indian people have either been harassed or abused or threatened or something else, when I receive that kind of allegation, I don't care, frankly, whether it's a misdemeanor or a felony.

Two DCI agents, who don't live in that area, have been transported across the state on every occasion to conduct an investigation into those instances, in several of those instances charges have been filed, either by my office or by a state's attorney at my personal direction.

You want to know which ones?

Q Well, I think Ms. Gunderson would like to ask a question.

Q (By Ms. Gunderson) Yes, Mr. Attorney General, do you, on occasion, decide that the pressures on one of your -- your highway patrolmen are so great because of community tensions and because of the nature of his business as being a law upholder, when there is perhaps trouble, do you regularly rotate their service and do you sometimes

think it's a good idea to give a man a little more tranquil assignment and send someone in whom you have confidence to take over?

A. I think the answer is yes but understand one thing, the South Dakota Highway Patrol does not work for me, and it's only very, very limited circumstances am I involved in giving any direction at all to them. We work closely but they happen to be under the direction and control and supervision of the secretary of public safety and the [illegible] superintendent of the highway patrol, Col. Esnick (Phonetic), who are both appointees of the governor.

Q. Thank you, I'm glad to have that cleared up, I hadn't understood it.

A. It's awfully fractionalized law enforcement is in this state, believe me.

Q. (By Mr. Adelstein) Could you please tell me if you would have it available any statistics on the number of prosecutions that your office has conducted in the last year and what number, what percentage of these prosecutions have been American Indians?

A. Yes, sir, I've gone through the files and dug that particular matter up and by the way, I received a request from this commission for a large number of statistics, virtually all of which I just plain didn't have. I didn't have it available to me and I frankly just didn't want to

take the time to assign somebody to take the amount of time that would be necessary to go through all the files in the various counties to dig that information up.

But with respect to the office of attorney general since January 5, 1975, we've been involved in the prosecution of 241 individuals, now that's the statistics as of today. Of those 241 individuals, 21 of them have been Indian people. Of those 21 Indian people, seven of them arose out of the one occasion, the Wagner Pork Plant. Two of them arose out of the problem that took place in the state capitol earlier this year, that's nine, another one took place in Charles Mix County, I believe it was a Mr. Doran, who by the way was acquitted by the jury down there, and he was -- he was prosecuted because the state's attorney quit his job and they didn't have a state's attorney at that particular time, so somebody had to do it. Four of those cases involved Custer cases and by that I mean cases that drug over into my term as attorney general.

Mr. Banks, Mr. Means, Mr. Rubio, Mr. David Hill were the four that have -- oh, there's one more. Mrs. Means, Delilah Means were the five individuals. But that's the Indian-White breakdown since the time I've been attorney general.

Which is less than the percentage population of the state.

Q Bill, I have a set of questions. Yesterday Russell Means felt that Mr. Richard Marshall was convicted of murder as he said, quotes, because of his relationship with me, end of quotes. You personally prosecuted that case, is that correct?

A No, that was prosecuted by the Pennington County State's Attorney, Jack Clout.

Q Do you believe that there's any validity to that statement?

A Look, over and over and over I hear these criticisms about convictions, I think sometimes society's going to have to stand up and accept the fact that some people break the law. And those people that break the law under our system, assuming the system properly works and all the evidence is put forth, as it's supposed to be under our system, they're supposed to be found guilty if it's proven beyond a shadow of a doubt.

And over and over and over we criticize all the time the fact that people are found guilty. I've got a suggestion if people didn't do things wrong, and then they were charged, then we'd have a whole different ballgame to play with but specifically to allude to this I think it's easy for Mr. Means to stand up and say that.

But on the other hand, he was acquitted by a jury drawn from the same county, and I don't know how you can,

you know, I don't know in what respect he's criticizing, he thinks Marshall was convicted, if what you're saying is correct, because he was a friend of Means, which would be nonsense, assuming Means was acquitted.

Q Mr. Means also brought up the case of Mr. Curtis Bald Eagle, who had been involved in an altercation while in the state penitentiary --

A I'm familiar with that.

Q He mentioned two cases --

A I've handled the prosecution.

Q -- he said there would have been no action until you personally intervened to have him prosecuted, to have him brought to trial for felonious assault, that the decision of the prison officials were not to take any action.

A Well, I'm glad he's such an expert on that because he doesn't know what he's talking about. I was contacted by the warden of the state penitentiary and he asked me if there was something my office could do to assist them in preventing the large number of assaults that were taking place in the institution against guards, the guards in that institution are all unarmed, that move around the inmate population. None of them carry any weapons and as a result of an incident in the mess hall involving two of the inmates, one of the guards was assaulted by, allegedly

assaulted because Mr. Bald Eagle's not yet gone to trial, one of them was allegedly assaulted by Mr. Bald Eagle. This guard happens to be 60-some years of age, and out of that the warden said that he's tired of his guards being assaulted continuously, being charged with misdemeanor charges, and in the event that they pled guilty or are found guilty, getting 30 days or 60 days tacked onto the end of their stence. He wanted something done about these kinds of charges.

Q So you're saying prison officials did want something done?

A This particular officer happened to -- prison official, happened to have had his lip split open to the point where it was cut from just below his nose all the way down through the lip and separated, maybe the civil rights commission would like to look into the violation of his civil rights, which I think took place at the time that he was assaulted.

But anyhow, the grand jury in Minnehaha County, at Mr. Bald Eagle's request, he appeared before the grand jury in secret session with his attorney, and gave his side of the story and his testimony and I did a very unusual thing there, we asked him for the names of his witnesses and his witnesses came in before the grand jury. I subpoenaed them at his request. So basically, he had his own little

trial in there, and we were not in there when the jury deliberated and they voted to charge him with a felony.

Q You've been --

A He's not yet stood trial.

Q And we had another case because of the time, I wanted to go into Mr. Kenneth Kain but --

A I don't know anything about Kenneth Kain.

Q All of these, all of these lead to the question, and frankly we'd like to have you tell us, if you would, please, a two-part question. You've been accused of conducting a vendetta against members of the American Indian Movement, I'd like to first of all know how you would respond to that allegation, and secondly, do you think that members of the organization known as the American Indian Movement could get a free trial in either Pennington or Charles Mix County?

A All right, first of all with respect to my -- the accusations of me having --

Q A fair trial, I'm sorry.

A -- a [redacted] members of the American Indian Movement, I hate to keep using the word nonsense, but please let the facts speak for themselves. I've arrested at least 20 times as many people involved in drug violations since I've been attorney general as I have individuals involved with American Indian Movement type

activity. They all complain that I happen to be carrying out a vendetta against chemical drugs that, for some reason I'm picking on them. I've shut down the slot machines basically in South Dakota that have operated with impunity since time immemorial in this state and everybody that operates slot machines thinks that I'm carrying out a vendetta against them.

I prosecuted an individual who was involved in giving a girl an operation which brought about her death, which I'm currently involved in the prosecution of and I've received over 500 letters from individuals in this state who feel that I'm carrying out a vendetta against somebody who's involved in abortion.

My last example, I've prosecuted a great number of people that have been involved or excuse me, I brought an injunction against the National Farmers Organization, the NFO, for some collecting activities that they were doing in the State of South Dakota, I've received over 1,500 methods of correspondence, either through the telephone or letters, feeling that I've got a vendetta to carry out against the NFO.

I'll say it clear and unequivocally, two things people don't have to do in this state, if you leave your neighbors alone and you leave your neighbors' property alone, there's no way they can get in trouble with my office or me. If we

go after somebody it's because we charge that they have either, in some way, bothered their neighbors or in some way bothered their neighbor's property.

Now, the second part of the question, can an Indian receive a fair trial or an AIM member?

Q AIM member. AIM member.

A The best thing I can do is again point you to statistics, there were several individuals that were convicted in Minnehaha County as a result of the destruction of the Minnehaha County Courthouse, one of those individuals that stood trial down there, who was at least a professed member of the American Indian Movement, was acquitted by the jury. Mr. Means stood trial in this particular community and was acquitted. Mr. Ramon Roubideaux represented an individual in the federal court here last fall, and I use these same statistics on the debate that Mario Gonzales says Ramon won, the -- he took these -- he represented an individual in federal court, two individuals in a row, as a matter of fact, matter of fact Mario represented one of them and that individual was acquitted and shortly thereafter Ramon Roubideaux represented an individual and that individual was acquitted.

And the best example I can give anybody is an Indian individual stood trial in Fall River County before a White judge and an all White jury, that individual chose to defend

himself, an Indian who was not trained in the law. The jury found him not guilty of the offense with which he was charged.

The best other thing I can give you about Indians, there's a lot of talk about Indians on juries. That law was changed in South Dakota as a result of a case I took to the supreme court as a legal services attorney. The name of it was state versus Plenty Horse and in it we alleged that Indians were systematically excluded from juries, jury participation in this state.

The supreme court agreed with us and they threw out the conviction. And out of that they changed the law to the new method.

Now, there's been some suggestion of new ways to pick juries. I would strongly object to ever using driver's licenses when someone goes down to try and get a driver's license in South Dakota, it's insane to think they're privy would be invaded to the point that they would be selected from that to go on jury lists or utility payers, it's nobody's business what utilities -- what your utility bill happens to be and -- there'd be no way that you wouldn't have access to that information if you go about getting those other things.

The last thing is I prosecuted an individual myself who was charged, he happened to be a non-Indian who was

charged with a violation that took place at Crow Dog's place, which I'm sure you've all heard about, that had to do with an Indian fellow by the way, who was from New York who was assaulted with a chain saw and a tomahawk and some other things, out at Crow Dog's. The defense demanded that the trial jury come from Todd County, which is an unorganized county in this state, never in the history of South Dakota has a jury, previous to that, been drawn from Todd County. It always came from Tripp County under the statutes to which they're judicially attached.

I told the judge that I agreed with the defense, I thought the jury should come from Todd County where the offense took place. Eight of the 12 people who sat on that jury happened to be Indian citizens who were registered to vote. They found the non-Indian individual guilty of both particular charges, that individual's also doing time in the state penitentiary.

Q (By Mr. Adelstein) In connection with the Pork Plant takeover, there was a statement that the seven people who were arrested were moved without reason to jails and the number of times they mentioned, Lake Andes, Tyndall, I don't know whether Bucwanna (P) was thrown in. Why were those prisoners moved and made inaccessible?

A They were not made inaccessible, the prisoners were moved from the jail at Lake Andes because of the fact that

there was a concentration there of individuals and they spread them out to different institutions around the area. We could have transported them all to the state penitentiary in Sioux Falls.

Q. Eventually you did, apparently?

A. Pardon?

Q. Eventually you did, apparently?

A. That was much later, though, but we could have transported them immediately, as a matter of fact in a recent incident in Sisseton that's where all those individuals are and on several occasions non-Indians have also been transported to the state penitentiary prior to trial. Not only to protect them but also to protect society from a breakout from additional problems but in the desire to make sure that these individuals, one, would have access with their counsel, and two, would be near their families where they could have visitors.

The decision was made not to move them to the state penitentiary but in fact to spread them out because these are not big county jails that we have in this state. But the decision was made to keep them in the local area. I didn't notice any of them complaining at that particular time and by the way, in those cases their bonds were also lowered also, when you speak a lot of bonds you should understand that all but one or two of those individuals were

released on bail prior to trial.

Q. What was your occupation prior to becoming attorney general?

A. Prior to attorney general I was director of South Dakota Legal Services. Prior to going to work in the attorney general's office.

Q. (By Ms. McEldowney) Are you familiar with, and if so what association have you had with an organization called Variously [redacted] Citizens for Civil [redacted]

A. I am aware of that organization, on two occasions I have taken on my own volition I have attended their meetings. One meeting I attended was to make it very, I heard the same rumors you people have heard, I was very concerned about it. I attended the meeting to let them know that under no circumstances should anybody but a government official in this state be involved in any manner by taking the law into their own hands, apprehending individuals, conducting investigations or anyone else.

That meeting happened to have taken place in Kadoka. I attended another meeting with a larger group of individuals from a different area, basically for the same purposes.

Q. What time period?

A. All I can tell you is the first one in Kadoka was in,

(9) called variously by South Dakota citizens for civil

(10) Liberties?

(15) concerned about it. I attended their meeting to let them

(16) know that under no circumstance would anybody but a

(17) governmental official in this state be involved in any

18 manner in taking the law into their own hands, apprehending

19 individuals, conducting investigations or anyone else.

Jesus, I don't remember, '75, both of them took place in '75. And I don't -- I just remember at Kadoka I wore a coat, I can't even remember outside of that what time. Year it was, there's an awful bt of rhetoric going on around these people about firearms and everything else, frankly we have conducted a very extensive investigation into the activities of all alleged groups that could bring about violence in this state, including that particular group. We've also had the federal government involved in it through the alcohol, tobacco and firearms branch. Treasury department, which has jurisdiction over automatic weapons which M16's one, and we've been unable to find any violations of the law.

Q Are you familiar with the Department of Justice program called Law Enforcement Intelligence Unit?

A Yes, Ma'am.

Q And are there -- have you taken advantage of that program?

A No, Ma'am, I stay as far away from the Justice Department as I can get.

Q There's another group that we have heard about, your so-called SWAT team or TAC squad.

A I've got both so we can discuss either one.

Q You have both?

A Yes, Ma'am.

Q Would you just explain, oh, their differences and their uses?

A There's a state tactical team that consists of approximately 105 individuals who are law enforcement officers from throughout the state, who are specially trained in mass group demonstrations and civil disorder. Their basic weapon is the riot baton firearms, and side arms, I should say, and gas. They have other weapons but that's basically it.

There is a small SWAT group within that group consisting of five people. The other ones are the SWAT teams, there are 20 SWAT teams at the present time in the State of South Dakota, several of those are under my jurisdiction, all of them have had very extensive training. They deal with automatic weapons very significant firarms, gas, and things of that nature.

They're used for very serious tactical situations only. There's a great difference between the role of the tactical teams and the SWAT teams.

Q Are both of these groups, whose control are they under?

A Well, the tactical teams are generally law enforcement officers from everyplace, but when they're operating as a tactical team they're under the control and supervision of the attorney general. The same thing is true with respect

to the SWAT teams. Some of those SWAT teams consist of units of local law enforcement officers. For example, Pennington County has some, which are a full unit from the PD or a full unit from the sheriff's office and that kind of thing, but when they're called in under the umbrella of the state tactical organization they would be under the jurisdiction and control of the attorney general.

Q Were one or both of these groups used at Pork Plant one and two, and/or two?

A There was a SWAT team made up of members of the department of criminal investigation that was used, which is one SWAT team of six individuals, the rest of the people that were there were not SWAT team people.

Q And these people are on call rather than existing now, is that true?

A Kind of. They exist, that's not their full time job. They have other full time jobs, but within our department of criminal investigation we have full -- SWAT teams that can be activated virtually instantaneously and so do other units.

The Sioux Falls Police Department, for example, has a couple, they live and operate in Sioux Falls and they can be called up just like being called to work.

Q Are there SWAT members in Charles Mix County?

A I choose not to answer that at this time, for reasons of law enforcement safety, frankly. I'll be happy to discuss it with you privately but I just don't think that it's fair that I answer.

Q You said that there were in Pennington County and so I wondered if there were down there?

A I'll -- Mary, I'll answer your questions privately on that and I'll give you the straight answers.

Q Another question, general question, on districtwide prosecutions and publid defenders, your feelings, please?

A I'm a strong believer in the concept of both. I don't know that district prosecutors will necessarily work in a state that's a remotely rural as South Dakota is, I think what you'll end up with are assistant full time prosecutors in those counties that don't have the full time guy living there.

I do think that has to be examined but I've been very strongly an advocate and pushed before the crime commission for experimental funding on a pilot basis, a couple of different areas of the state, to see if it would work.

At the same time, I feel the same thing about defense, I'm one of the guys that happens to believe the best way to reduce some of the problems in the criminal justice system is to provide a damned good defense.

Q Does that exist now for American Indians?

A I think, see again, I won't just confine it to Indians. There's, like 80% of those people in the institution and the pen. don't think they got a fair trial either and they're not Indians. What I'm saying is that you can't confine that just to Indians. I think any time you deal with the appointed lawyer system you're going to inherently have some problems.

If you can go around and you can afford to shop for your lawyer, you get to buy the best, it isn't everybody like Patty Hearst that gets F. Lee Bailey to come out and take care of them.

The comment that was made by Mel Larsen or Judge Henderson, was very significant today, I've been very critical of that, that if you're a leader in some of these problems you can get William Kuntzler (Phonetic) and the best and they're good, but if you're not, then you get the second or third or fourth flight and they're not that good and plus once the publicity of the cause wears off, everybody goes home and there's still 15 people left to stand trial and nobody ever gives a damn about them. Nobody could care less about them, at all.

For all the criticism I take every individual except one that went to the penitentiary, as a result of the Custer disturbance, I personally appeared before the parole

board and asked the parole board to release them. I felt strongly for several reasons on that and one of them was the fact that they were the little people involved in the big fight.

And that the big people they never even had to stand trial, much less once they were convicted and you talk about bail, I'm familiar with the leader of the whole group who after he was convicted of two felony charges at Custer, his bail was reduced by the judge.

Q So I guess your answer is that it's not that good right now across the state?

A I think it can certainly be improved.

Q (By Mr. Adelstein) How many individuals were there that you appeared to ask from the Custer conviction you just now made a statement --

A Sarah Badharbo (Phonetic), Kenny Dow, Robert Hyagle (Phonetic), are the three that I appeared for.

Q You appeared in their behalf?

A Yes, sir.

Q Were they indeed released?

A Yes, sir.

Q (By Ms. Gunderson) Mr. Janklow, will you tell us your own estimate of the BIA police?

A Wow.

Q Are they effective, do they compound the problem, do

they make it more difficult?

A. Let me -- this is the first time I want to be diplomatic. Let's say things are improving. It's getting better. I don't know that I should be in the position of criticizing or picking apart law enforcement agencies over which I don't have jurisdiction. I'll be glad to do that to the federal government but I really hate to do it to, you know, those agencies that are operating in the state.

I think that could be better put by people that live and work within those jurisdictions.

Q. Thank you. We are attempting very much to ventilate the conditions that make for a situation calling for attention in criminal justice and I thought it was an appropriate question but I yield to your views on it.

Q. (By Mr. Adelstein) Could you tell us, you know, you mentioned that you were unable to supply some of the statistical data that we would like to have had to include in our report. Will you supply us with such information as you now have that we have requested that is available in order that we might have a thorough picture? For example the statistic that you gave us earlier today on the number of prosecutions itself?

A. Yes, sir, I'll give you that which I have, but I can't take the time to go through two years of work and dig all this stuff up, that's just too much work. I don't

have all these resources the federal government has.

Q. Can we set some priorities and get attached to the record those items that we consider very vital after a discussion between you and Dr. Witt?

A. Yes, sir.

MR. ADELSTEIN: Thank you.

Q. (By Ms. McEldowney) There's one point that was mentioned yesterday that you might like to respond to, the uniform, something called a uniform or comprehensive corrections act?

A. The -- yes, Ma'am.

Q. What does that do as far as paroles and good time?

A. Nothing. What they're trying to do, there's a fight going on between the governor's philosophy and I'll call it the other side's philosophy. The governor believes in the department of corrections' philosophy where everything post trial and diversionary is under one department, the corrections department, i.e. diversionary screening, alternatives, probation and parole.

Q. Okay, that apparently is a mistitle itself.

A. You talking about determinate sentences?

Q. It has to do with determinate sentences, we were told that something called uniform corrections was going to do something with parole?

A. No, whoever said that didn't know what they were

talking about. There's a determinate sentencing bill that's being considered by the interim judiciary procedure study committee, and there's, frankly, a wide basis of disagreement among the members of the committee as to what form it should take. Some of the hard liners like myself, frankly believe that the determinate sentencing should take place with respect to the act. In other words, everybody who steals bologna gets the same thing, everybody that steals a car gets the same thing, everybody that shoots at somebody with a gun gets the same thing.

The others believe that the judges should continue to be allowed to exercise their discretion as to the sentence but whatever the sentence the judge says in terms of years or time or whatever, then it's determinate from that point that there's no changing of that particular decision. I would like to back it up farther than that.

Q (By Mr. Adelstein) What would the effect be on Native Americans of a successful passage of the bill that you're advocating?

A. It wouldn't -- somebody said that's one of the speakers said that it would affect the Native American. It wouldn't affect them any more than it would affect, again the other 80% that are in that institution. It would certainly affect them, yes, if they're convicted or

if they plead guilty to a felony, if that didn't happen to them it couldn't affect them.

Once that was triggered it would be equal treatment for everybody as a matter of fact, for the first time in the history of any judicial experience; we would totally eliminate the subjective determinations that everybody complains are inherently involved in the racial discriminatory process because it would make no difference what the color of your skin was. If you stole a cup you'd get the same sentence whether you're rich or poor, Black, White, Red, Yellow or whatever it is, and then you wouldn't get any parole.

So if you're striving for equality you may not like the harshness of what I'm proposing but if you want true equality you're going to get it under determinate sentencing because everybody's going to be treated the same.

Q That is quite different than what one of our speakers said yesterday.

Any other questions?

Q (By Ms. Gunderson) Is there any information on recidivism, the tendency of people, once incarcerated, to repeat? Are we seeing it more and more or is there some improvement there?

A I think there's some improvement and I don't base that on anything other than a grab out of the sky. We --

the statistics we have in South Dakota are such a joke nobody really knows, in the last months I've seen two sets of statistics, one of them say it goes from four to 6% and the other one's up around 40 to 50% and so I -- and I've not conducted a study so I have no way of giving you any kind of even a guesstimate. But my personal feeling is that recidivism, we have not been caught up with the historical types of stuff that have gone on elsewhere outside the midwest, and it's only now beginning to reach us, but recidivism has not been a great problem in South Dakota. We have a lot of people who picked up recidivist convictions but they were really for what most people would consider of no, a non-felonious nature, checks, fourth offense DWI, burglary of something while you were drinking, where not a lot of stuff was taken, those kinds of things.

MR. ADELSTEIN: Thank you very much, I think you probably want to leave for your plane.

MS. McELDOWNEY: If Sheriff Huber and Patrolman Jensen, is Mr. DeGeest available?

[illegible]

(Short recess)

MS. McELDOWNEY: If you two will come up and if someone else would look for Ray?

Mr. Huber, I believe we were talking about after you had gotten to your jail, your office too, I understand, and there were Lois Tiger, Provos and a couple of her daughters, two or three of her daughers?

A. (By Sheriff Huber) Yes, Ma'am.

Q. So there were about five people?

A. Yes, Ma'am.

Q. Okay, would you start from that point and tell us what else happened, if anything, that night? Or morning?

A. Well, they were incarcerated and they were run through court on, I believe it was on Monday. And they were charged --

Q. They've testified, I think that something happened on Tuesday, are you saying that that's incorrect?

A. Well, you mean that they -- it's possible that they could have been, it was Tuesday that they were run through Court. I can't be sure on that particular item.

Q. Okay.

A. But that's the extent of it, I mean they were held there and then, of course, they were later released and the charges were dropped.

Q. They testified about being denied medicine.

A. Well, I tell you what --

Q. Do you have any knowledge of this?

A. We -- we didn't, I don't, to my recollection, never

refused them any medicine. They did give us a bad time, they wouldn't tell us their age, that's one of the reasons why the juveniles were held in there, they wouldn't give us their names nor their ages at that time, they didn't cooperate with us one bit.

Q. Who decided the charge?

A. State's attorney.

Q. And when was this charge, you know, harboring a fugitive is what we've heard about, that was used by Mr. Jensen or Mr. Huber.

A. (By Mr. DeGeest) I don't believe anybody was ever charged with that, I'm not sure. The only formal complaint I ever made out were for conspiracy to kidnap and that was my decision and that was made.

Q. What point did you first become involved?

A. Sunday at 11:00 o'clock I was in Sioux Falls, I was contacted by Mr. Huber and he explained to me what had happened. I immediately drove back, I talked to this Audy (Phonetic) boy, I don't know what Ruben has told you up to this point.

Q. We just started, basically.

A. Okay, I talked to the Audy boy, I investigated --

Q. You talked with whom?

A. The Audy boy, this boy that was being threatened and beaten up.

Q. Okay.

A. All right? And he, the whole story behind it was that this kid had been helping us in other prosecutions, he had aided in the prosecutions of two other Native American people, he himself had been convicted, and this, this is what I would believe that the incident stemmed out of, his cooperation with the law enforcement officials. The incident of him being nabbed or whatever.

And it was my decision that that Cadillac, from the information that I got involved, that I received, was involved both at the time that he was abducted from the city limits of Lake Andes and later on in that course of that, during the course of those events, those particular people that were arrested were in that Cadillac.

So I charged them with conspiracy to kidnap. At a later date, approximately, I don't remember how many days, there was a writ of habeus corpus hearing, and the defense won out on the hearing, and at that time I recontacted Mr. Audy, and in his own welfare he decided he didn't want to testify.

Now, I had the choice of whether to go ahead with the prosecution, it was his decision that he didn't want to and I wasn't going to force him, because I felt he'd already been through enough. That's why the charges were dropped.

Q What evidence, other than what we've heard today, did you have that there was, you know, this, you talked about a lot of assumptions from him being an informer, perhaps, and things --

A Right.

Q -- what other evidence besides what we've heard today did you have of that?

A Well, the fact that he was found in the house, the fact that he named 30 people that were in the house, and the fact that --

Q And the people, those --

A He couldn't identify who had taken him, you know, who had abducted him, that's why the conspiracy rather than the --

Q But the 30 people were among them the five people that ultimately ended up in jail?

A A few of them. Jimmy Wattle was in there, he was in the car.

Q Was Lois Tiger?

A He didn't identify --

Q Or Provos? This Mr. Provos that's been mentioned?

A Pardon me?

Q Did he mention Provos?

A He didn't know a lot of these people by name, I mean there was a few of them, there was a Jimmy -- Jimmy

Wettle he knew, Mark Winkler, O'Connor boy, there's a young O'Connor boy in there and there was, I think two or three other names, the sheriff's got a list of those names that were given to us, but I don't recall.

Q But they weren't the names of the five people that ended up in jail?

A Yes, I believe two of them were identified as being in the house at that time.

Q Oh, okay. But you don't know which, recall which two?

A No. Except for her being in the car at the time it was stopped and it was all in one chase --

Q (By Ms. Gunderson) Your informant, however, didn't put her in the house with the 30 people?

A I don't -- I believe that he did, I believe that he said she was in the house.

Q (By Ms. McEldowney) You just testified, or stated --

A I can't recall, I told you the sheriff has the information on what names were given, I didn't ever write those down.

Q Could we get those names?

A (By Sheriff Huber) I think we can, yes.

Q We'd appreciate if you would supply those to us, Mr. Huber.

Does anybody else have some questions?

Q. (By Ms. McEldowney) You were contacted on the telephone at 11:00 o'clock Sunday morning?

A. (By Mr. DeGeest) I believe that was approximately the time, yes.

Q. Did you ever advise or ask any questions about them having counsel?

A. Did I?

Q. Yes, did you ask any questions about who was representing them?

A. I don't believe I did at that time, no, it was on a Sunday and I was in the process of making up a complaint, they appeared in front of a magistrate immediately thereafter, if I recall correctly, on Monday I think.

Q. And did they have counsel when they appeared?

A. They said they would get their own counsel, if I recall correctly, Lois Tiger said that John Keller would be representing her, she'd already been in contact with him, she was, and I think she told me that and I believe I got, she'd also told that to the sheriff and he'd told me that also, so --

Q. At the time of the arraignment, then, she was along as were the others, but that she advised you that there would be someone --

A. Right, Keller was supposed to have been on the way, I don't remember the time sequence, I didn't make notes of

it all so I can't recall exactly. But she did make several indications that Keller would be representing her, she was in the process of getting a hold of him and hadn't, or something like that.

She didn't want court-appointed attorney, let's put it that way.

Q. Do you, as state's attorney, have any involvement in the on-going relationships of a prisoner in the jail, like the medicine or access to phone calls, things like that?

A. I did at that time, yes.

Q. Would you --

A. Well, there was an instance where I had advised one of the deputies at that time, who's no longer a deputy, to take these people and transport them to the PHS hospital in Wagner, there was a -- there was a disobeyance of the order is what occurred, and he's no longer a deputy.

Q. At what time did you advise him of this?

A. I don't recall.

Q. Before or after the arraignment?

A. Pardon me?

Q. Before or after the arraignment?

A. Oh, it would have been after the arraignment.

Q. After?

A. Yes. I don't remember what their physical problems were, I can't remember off-hand, I was just advised of them and I instructed the deputy to --

Q. Someone other than Sheriff Huber?

A. Right, he was out of town for some -- at that time, at that time occurred, he wasn't around.

Q. Would you like to comment further on this particular incident, Sheriff Huber?

A. (By Sheriff Huber) On what incident are you talking about?

Q. Are you aware of the fact that the state's attorney directed a deputy to transport one of the prisoners to a hospital and he did not do so?

A. No, I'm not --

A. (By Mr. DeGeest) Yes, I told you about that.

A. (By Sheriff Huber) Well, I must have forgot about it, I'm not -- at the present time I can't comment on it.

Q. (By Ms. Gunderson) Would any of you, perhaps the state's attorney or the sheriff, help me with the time sequence here? I understand that all of these difficulties occurred on Sunday, Monday --

A. Early Sunday morning.

Q. Early Sunday morning, then was Monday open house?

A. No, Sunday.

Q. It was Sunday, all right. Now, we had testimony that

Mr. Keller was not able or had no idea that his client was in need of his services until Tuesday, does that link with your own recollection?

A. I can't answer that, I'm not sure.

MS. GUNDERSON: I think perhaps the attorney will be

A. (By Mr. DeGeest) Just to the best of my knowledge, I -- if I recall correctly, I think I talked to Lois and -- that day, Sunday, I'm not sure, I can't remember whether it was that day or the next -- Monday. It must have been Monday at the arraignment when I talked to her, it wasn't Sunday and at that time she had indicated that, she was going to get her own counsel, I don't know if she'd contacted him yet or not, but she said she was going to get her own counsel.

Q. (By Ms. Gunderson) So you didn't really say, have you talked to him, is his schedule free, I want to know, it was just that you knew --

A. She has a right to be arraigned.

Q. She had the preference for an attorney and was even whether or not she had telephone privileges, you assumed that somehow they'd get together in time for the trial?

A. Oh, yes. No, we were going to have a trial without her being represented.

Q. I see.

Q (By Ms. McEldowney) Sheriff Huber, we heard a statement that Lois had to go to small claims court to get this pistol that she had in her purse returned from your custody, is this correct, and if so, would you explain why?

A She, I don't think she went to small claims court. She, I got an order, I told her attorney to get an order from the judge and I would give her her money back, it was confiscated. I mean her gun back, it was confiscated.

And I, at that time she didn't have a pistol permit, her pistol permit had run out. And it was illegal for her to carry the car -- the gun in the car. I told her I wouldn't give her her pistol permit back until she got an order from the judge.

Her attorney finally got an order from the judge, didn't even mention the pistol. Just personal property, see? And of course we did take -- we did deliver the gun to her house later on. But she didn't go through claims, small claims court.

Q Sheriff Huber, you've described a rather volatile situation, there was a very easily identified car with one headlight out, a specific make of car with unusual color and all, in view of what followed, weren't you a little concerned about the extension of this pistol permit?

Do you ever say to yourself, I shall personally, and

in the interest of law and order, use my influence so that there isn't an extension of your permit? Is it just pro forma that no matter who comes into the jail, if they have a pistol permit it should be always extended? I'm curious about how does one get these permits and how long are they extended?

A. I never issued her a permit.

Q. No. Someone had?

A. Not in our county.

Q. It was in another county?

A. It was in another county.

Q. Had you been very concerned about her in view of the donneybrook I believe --

A. I was real concerned, she had the pistol in jail with her in Wagner, I asked the city police over in Wagner whether they checked everything, they said they had. She -- we brought them into our jail, put her bag in the cell, taking her word for it she still had that pistol in there.

Q. It seems to me that --

A. I'm really ashamed of myself and a real disappointed in myself for not handling that. And it was loaded at the time she was in the Wagner jail. She threatened the police officer, she said I'm going to get you and he don't know how lucky he was, he was sitting, she was sitting right behind him all the way, he drove her to Lake Andes.

With a gun in her purse.

MS. GUNDERSON: Thank you.

Q. (By Ms. McEldowney) I'd like to ask someone about this eluding charge that Ms. Tiger tells us that she was charged with, after the conspiracy one was dismissed.

A. (By Mr. DeGeest) I don't really recall whether she was ever charged with eluding, I remember thinking about it but I never charged her with it, I don't believe.

Q. She told us that she put down bail for $500.00 and soon after she was out on the conspiracy thing that she was, didn't get to go outside as I understood it, and went, was taken immediately back. For this other charge. You don't deny it you just don't recall it, is that correct?

A. I don't recall what transpired, these aren't the only cases I handle and it's kind of difficult for me to remember exactly what happened.

Q. Well, you did get the letter mentioning these --

A. The court files would be the best evidence on these.

Q. You did get the letter mentioning these two incidents?

A. No, the only one I was aware of was that deal with the car, Rouse, the Rouse vehicle was the only thing I was notified by letter.

MS. McELDOWNEY: Okay. Does anybody else have anything

further?

That's all, thank you, Gentlemen, for coming.

THE CHAIR: Are the Sisseton people still here? I guess they are. We'll be with you in a few minutes, we'd like to get one more witness on the stand and then we'll start in with the open session, and call you at that time.

MS. McELDOWNEY: Mr. Zakinski?

I believe the questions ended concerning the Center, is that correct?

A. (By Mr. Stanley Zakinski) Yes.

Q. Incident? Okay.

A. Yes. Number one, I apologize to Mr. Muldrow for not having all of the files at my disposal, there were some I wasn't aware of and I do have them now, so you want to ask the questions on the Centers?

Q. (By Mr. Muldrow) We'd just like you, Mr. Zakinski, to brief us on the facts of the Center incident as you -- as you have received them, when you spoke before I believe you were not fully briefed on what happened there, would you --

A. That's correct, Bill.

Q. -- care to amplify that, please?

A. Yes, sir. Okay. We received a call, our department received a call, several of our men, from one of the members of the Center family that Gerald was in 312-and-a-half

St. Joe's Street and that in fact he was AWOL from the military service.

At that time, two of our young officers went to the location, they could see within the house, they did not know what Gerald Center looked like. They, in turn, contacted Deputy Sheriff Dick Davis, who at that time was fully aware of the AWOL that was against Gerald.

They did then go to the house and from what I gather from the reports, Mr. David did the talking with Mr. Gerald Center through the window. Mr. Center, at that time, was in bed with another individual, and requested a few minutes to get himself dressed and so forth.

And Dick Davis, unknown, I can't speak for Mr. Davis, requested one of our police officers to hand him their Mace gun; one of our officers did.

Mr. Davis shot the Mace through the window at the individual. At this time, Mr. Davis asked him to come out again, the replies were, you're going to pay hell trying to get us out of here, you're not going to get Gerald Center because we've got access and we've got weapons in the house.

At this time, Mr. Davis went to one door, one of our police officers went to the other door and our police officer is the one who broke in the door. When they entered the dwelling, I believe one of the individuals, I'm

not sure, I think it was Mr. Center at first, had a two-by-four in his hand. He then placed it down along the wall, which -- at which time Mr. Harry Adams picked up the two-by-four and made mention that he would indeed start using it if the officers try and -- try to take Gerald Center out of the house.

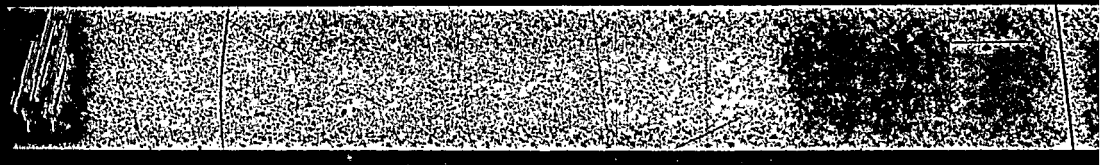
And I understand Mr. Adams was here testifying. In Mr. Adams' own admission in his statement which I have, and of course we have to have permission to give this out, or copies of it, Mr. Adams stated that, I guess we did resist and we refused to go with the police officers, that's why we were taken outside and put on the ground and handcuffed.

Q. Was there a search warrant or an arrest warrant involved for searching the house or for arresting any of the four persons?

A. No, sir, Bill, but if I may stretch it a little further, when an AWOL is wanted by military authorities, we have access to a 553, form 553, which indicates that this individual is in fact wanted by military authorities, and apparently Deputy Sheriff Dick Davis did have knowledge of this 553. It's not a warrant, it's similar to a warrant but the government doesn't call it a warrant.

Q. (By Ms. Gunderson) And it serves the same purpose?

A. It serves the same purpose, we work on the basis of a 553 when we do apprehend AWOL's or deserters.



Q (By Mr. Muldrow) Are you talking about a search warrant or an arrest warrant?

A An arrest warrant, Bill, not a search warrant.

Q What was the justification, then, for entering the house, was there a search warrant for that purpose?

A As far as I can determine in these -- in the reports that I've read, there was no search warrant, they were merely basing the information received from Deputy Sheriff Dick Davis that an AWOL was in the house, and that they were being threatened by the occupants of the house, that they weren't going to let the AWOL or the AWOL wouldn't come out.

Q I'm not an attorney myself, but is that proper procedure to enter a house under those circumstances, without a warrant?

A Let me concur with Deputy Sheriff, or I'm sorry, with Sheriff Mel Larsen, who advised this is not always the best police procedure and measures have been taken to correct that situation as it did take place.

Q (By Ms. McEldowney) What kinds of measures within the police department?

A We had a real involved investigation when the Centers and Frank Gangone came to my office, as I said, I did not take part in it, we turned it over to our captain of detectives, and his recommendation and we've got a five-page

report on it on his recommendation alone, that the officers be orally reprimanded and we're talking about two young officers for the situation as it was handled.

Q. Thank you very much, Mr. Zakinski.

A. I think you wanted me to testify on one other thing.

Q. Would you refresh our memories?

A. Theresa Red Cloud.

Q. Correct, I'm sorry.

A. Okay, if I may, I've had this well prepared, Bill.

On the Theresa Red Cloud incident, we received information as we always do from other law enforcement agencies that they do have felony warrants for certain individuals. We received this information from Butte County, that they did have a warrant for grand larceny on a Mr. Floyd Melvin Running Hawk, alias Melvin Long Break. The information advising us of what they wanted him for came along with, that he would -- he is probably in unit 301 of the Sands Motel. At approximately 0700 hours or 7:00 o'clock in the morning, two of our officers went up to that location, knocked on the door, and were advised by who we think was Theresa Red Cloud, that he was not there, that she has not seen him.

The officers asked her again if they could look around, she says no, you can't come in. She was upset, very much on

the offensive because they woke her at that time of the morning. The officers then apologized for the inconvenience and went away.

At approximately 1:00 o'clock or 1300 hours that same day, a couple of officers again went back to the Sands Motel, where they knocked on the door and a young lady answered the door and they advised her of the situation pertaining to Mr. Running Hawk, and she says come on in and take a look around if you wish.

One officer stood by the door, they advised, in the report, there were two young children there along with this elderly woman -- not elderly, but older woman, and she allowed them to take a look in the bathroom, as you well know motel unit has one room and the bathroom and that's it, and the officers could not find anything, they thanked her very much and they left.

At approximately 20 minutes after 8:00 that same evening, an officer along with a deputy sheriff still had the information believing that Mr. Running Hawk was at 301 Sands Motel, went to that particular address, they asked for entrance, to gain entrance in there, and they were refused and they walked away.

So the time the officers, our officers did go in they were given permission by the adult person who was there, I believe she advised that she was the babysitter, the first

incident and I believe the last incident they did not -- they asked her several times could we come in and look, they were refused entrance, they did not go into the motel unit.

Q. (By Ms. McEldowney) What were the officers' names?

A. Officer Robert Moore -- or I'm sorry, Rob Moore, Officer Tom Perry and Officer Mike Jacobs.

Q. And they are still on the force, are they?

A. Yes, Ma'am, they sure are.

Q. (By Mr. Muldrow) Just to clarify, then, according to the reports you have received, at no time during the first visit they did not enter the apartment when they were refused permission to do so?

A. May I read a part of the report, Bill?

Q. Yes.

A. At approximately 0722 hours, which is 22 minutes after 7:00 in the morning, a.m., that same morning Officer Perry and myself went to apartment 301 of Sands Motel to attempt to locate Mr. Running Hawk. We both went to the only door and knocked several times before an Indian female adult, who identified herself as Theresa Red Cloud, opened the door.

These officers explained to Ms. Red Cloud that we had information that Mr. Running Hawk was staying at the apartment, and that we wished to talk with him.

Ms. Red Cloud was very upset that we woke her, she stated that no one by that name lived here and that she wanted to get some sleep, as she was a student at the National College of Business.

These officers apologized for waking her and asked if we could at least check the apartment, to satisfy themselves that Mr. Running Hawk was not there. Ms. Red Cloud refused our entry, as we stood at the doorway this officer could see one more female adult sleeping on the bed in the front room.

No other people or rooms were visible, again we asked if we could please check to see Mr. Running Hawk, if he was in the apartment, and again we were refused entry.

These officers again apologized and left the motel complex.

Q. They entered when they weren't invited, Mr. Zakinski, did they have a search warrant, would they have entered by means of a search warrant if they had one?

A. No, it wouldn't have been necessary if they were given permission, Bill.

Q. I just wondered if they had one in their possession when they came and asked --

A. No, sir, we did not have a search warrant.

MR. MULDROW: Thank you.

MS. McELDOWNEY: Thank you very much for coming back.

THE CHAIR: We are now ready to begin the open portion of our hearing. Persons I have listed here are, that will testify, are Evelyn Brewer, Norman Red Wing, Fern Eastman Mathias, Mr. Eastman, and Gerald Center.

If there's anybody else whose name I didn't announce here, please come up and let us know.

Will Gerald Center identify himself, please?

Fern Eastman, please take the stand?

And her father, Mr. Eastman?

Fern, would you like Norman Red Wing to testify at the same time?

Okay, Norman, would you please take the stand at the same time also?

We'll begin with you, Fern. You have an incident, I believe, occurring at Sieche Hollow on the Sisseton Reservation. Will you please relate what occurred at that incident?

MS. EASTMAN: I really would like Norman to relate that because he was personally involved.

THE CHAIR: Okay.

MR. NORMAN RED WING

A. (By Mr. Red Wing) My name is Norman Red Wing, I'm a member of the Sisseton Wahpeton Sioux Tribe.

First of all, rather than wasting anybody's, more of anybody's time, I, no matter how many people get up here with their statistics and all their other numbers, attorney general or whatever, there is still exists here in South Dakota a dual system of justice, no matter what anybody says about their numbers and how many people are in jail or for what.

I only want to say that in Sisseton, where we -- you know, we're all -- we come all the way from across the state and we're still going to testify that even here in Rapid City we can agree with everything that people got up here and testified to, that there is a dual system of justice in South Dakota here. And it exists in Sisseton.

I'm not going to give you any -- the only thing I'm going to give this commission is that testimony written here on paper by myself. How it exists, who it exists with, what they're doing, where it's coming from, I don't -- I don't think that we have to come up here with a bunch of numbers and facts on who's going to jail, why they're in jail, all I got here is what has happened to me and it's written on two pieces of paper, and what I say is that there is --

MS. GUNDERSON: Would he read it, please?

THE CHAIR: We could use that as an exhibit if you

care to introduce it as such.

A. I'd want to put this in on an exhibit then.

Q. Will you please read it aloud first?

A. Okay. It's a fact sheet that I presented to, in my defense based on what has happened on say September 17, 1976, about 1:00 a.m. on September, 1976, at Sieche Hollow State Park which is located on the Sisseton Wahpeton Sioux Reservation. Several young Indian people, members of the tribe, were sitting around talking at a get together at around 4:00 a.m. Three cars approached us, two state troopers in two separate cars, one Roberts County Sheriff, more or less pushed their way into our group.

The people that were in the group asked what they wanted and they said that they wanted to look at a fire which was supposedly illegal in a state park, an open fire. And they asked questions if we were raising -- raising hell in a -- at an entrance to the park. And they also asked us if we chased a camper out of the area, out of the park.

And after these questions were asked, the state troopers, I won't name the state trooper but one of them who is particularly aggressive towards -- he's known to be aggressive towards Indian people on the reservation, he more or less pushed his way into our group and began snooping around, looking into cars, as if he was looking for something.

And nothing was ever mentioned up to this point about the fire, or after he started snooping around. And I objected to the fact that he was doing this. And to my way of thinking that he was, he wasn't looking around, you know, really looking at the fire, he was just snooping around to see what was going on there.

And so I asked him to leave. And without any further -- without any further incidents of any kind, him and the sheriff, which was in Roberts County, there's a county line that divides the state park, the east entrance to the state park is in Roberts County, and the part that we were in was in Marshall County.

And jurisdiction-wise, the Roberts County Sheriff had no business, you know, he had no jurisdiction there, but there was -- there was no Marshall County Sheriff or anybody that represented Marshall County there at the time that they were supposedly supposed to be looking at the fire, just the state troopers and so I asked them to leave and they left.

And after they left, two or three of us went down and went about 200 yards down from us, there was a group of -- another group of people that had the same -- same kind of fire that was open, that was supposedly supposed to be illegal, and what was the main purpose for them coming up there.

And without asking any questions from them, and they were non-Indian, they were White people, now they never asked any questions about what -- about what they were doing, they had beer cans strewn all over the place, around their fire, and it took about, after that, after they left, and I think it was six days later, this happened on the 17th of September, on the 23rd of September, about 4:00 p.m., I think it was the city police, the state highway patrol, the Roberts County Sheriff, two tribal police cars surrounded the car which I was riding in, I thought it was dangerous at that point, being surrounded by that many, that many officials from the state, the county, the tribal police.

They presented me with a warrant from Marshall County dated September 21st, which was about four days after what took place up in what we call Sieche Hollow, and the warrant charged me with obstruction of a police officer in the performance of his duty.

One thing that rose to my mind at that time was, I asked them why, why four days or almost six days later they present me with a warrant that's dated the 21st of September. Why wasn't I arrested on the spot if I was obstructing, you know, obstructing an officer in the performance of his duties?

And the excuse that was given to me at that time was

that they couldn't get a warrant because it happened on a week end, it was on a Friday that this happened and they couldn't get a warrant.

So they waited four days and then decided that maybe they had probable cause or whatever term that they use to issue a warrant. And so I was taken up to the Roberts County Jail, and in the meantime, while I was in the Roberts County Jail, I was waiting to be moved to Marshall County, the Roberts County Sheriff came to me and presented to me another, a second warrant, charging me with littering, which was dated September 23rd, which was the same day that I was picked up.

He handed that same warrant through the bars and later we find out that the littering warrant or littering charge was totally based on hearsay from a person that they picked up that was intoxicated. They gave him a breathalizer test and he tested out at .21, I think, I don't know what that means, but from information that I've found now he's supposed -- he's supposed to be drunk, drunk enough to be for two people. And he wasn't even supposed to be walking and this is what they based their warrant on.

And I've been -- I've been labeled as a troublemaker, an agitator, since then there has arisen out of all those labels from White people on the reservation, physical violence towards myself, towards people that I associate with.

The real reason that I believe that, you know, six days later police officials come through with a warrant, I don't think it was -- I don't really believe that it was the police agencies that were in charge at that time, it took them so long to get a warrant, to start thinking about it, I think they were pressured into it by Civil Liberties of South Dakota, Civil Liberties for South Dakota Citizens, Incorporated, who I think racial attitudes, their attitudes are equal, are equal to that of the, you know, Klu Klux Klan, KKK, whatever you want to call it.

Their main purpose is to see that all Indian tribes lose jurisdiction in South Dakota, in fact this, this same group was instrumental in taking away the jurisdiction from the Sisseton Wahpeton Sioux Tribe on the Sisseton Reservation. This is politically powerful, it includes majority of the business people in Sisseton, which includes a banker, an editor of the newspaper, a weekly newspaper, a group that includes all the farming people in that area that are on the reservation, and our reservation is open, and it includes ranchers, and within that group there exists, to my knowledge, what I've been told why certain people who I think that are reliable sources, that say that there's a group within that group that is extremist.

Who are bent on physical violence that want to provoke certain people into taking action, you know, they themselves

are armed, and they are not ready to hesitate in any way to pull a rifle out and start shooting.

Here is -- here is, I believe, all afternoon, all these people that have come up here and stated all their facts and -- all I got is this right here. There's -- there's a dual system of justice in South Dakota, and we've heard people talk about injustice done here in Rapid City. We come all the way across from northeast part of South Dakota, the same thing exists.

Q. (By Ms. Gunderson) Mr. Red Wing, how do you identify membership in this group, do they wear a button on their lapel or are that -- is there a membership book that you've seen? You've made the suggestion that every business person and most of the farmers are involved, how do you identify, we were told that they use obscure registration and that they call themselves John and Jane Doe. Is it different in Sisseton?

A. The same, the same description that we've gotten from people that I consider reliable, because the person that I get my information from is -- was on the police force and he knows who they are.

And the majority of their membership is like you say, John Doe, John Doe, but as far as knowing who the extremists are, which they call themselves the White Knights.

Q. This is this inner group?

A. Right. And on this, on this particular night that this happened, the Sheriff of Roberts County picked up two days later, three days later, a person that was in our group, picked him up for parole violation, and he told this person that we were lucky, we were lucky because he didn't let this group come in and they were supposedly supposed to take care of us.

Now, I don't -- I don't -- I'm not going to sit up here and justify my actions, I think these people ought to justify their actions in this dual system of justice right here.

Q. They didn't come in this instance, their actions didn't cause you any pain, have you got anything that links the conspiracy that you were victimized by these actions if as you tell them, were extremely minor, and not actual at all, and do you have anything to link a conspiracy on the part of this group with the trouble you had following the Sunday in the park?

A. Would you ask that again?

Q. Do you think that you could connect this action against you with this group of White Knights in any way, you evidently have a strong feeling they were behind these arrests, these charges?

A. The only feeling that I got based behind all this is that it took so long and they were so feeble in

performing it.

Q. Right, but can you now think of a way that they got the sheriffs to do this? Is there -- has it happened often with your Indian friends that this kind of trumped up charge happens?

A. Yes. I could tell you of several reasons, but those things have to go into court yet, and --

Q. And you link them with this group, do you?

A. I personally do.

Q. Not -- it's just a feeling you have?

A. Yes.

MS. GUNDERSON: Thank you.

THE CHAIR: Okay. Will you please bring the exhibit?

A. Incidentally, this state park, I think if you look at that exhibit, the second part exists part of -- it shows part of the state park used to be trust land and one time, since -- well, since this has taken place --

THE CHAIR: Was it trust land at the time of the incident?

A. It wasn't trust land at the time of the incident, but in going to court and, see, they're talking about five years, this is what they tell me, five years and a possible of $1,000.00 fine, this is the maximum, that's what they told me.

Q. (By the Chair) I have another question here.

You mentioned that the Civil Liberties For South Dakota Citizens, Inc., had a lot to do with the taking away of jurisdiction from your reservation. I thought that was by a court case, the Koto (Phonetic) case?

A. I think Fred could probably answer more on that than I could.

THE CHAIR: Okay. Are there any more questions of this particular witness?

Before I go on to Fern, I forgot to ask you your address, will you please state it?

A. It's Sisseton, South Dakota.

THE CHAIR: Thank you.

Fern, please state your name and address?

MS. FERN MATHIAS

A. (By Ms. Mathias) My name's Fern Mathias and my address is Box 291, Sisseton, South Dakota.

Q. (By the Chair) And what is your occupation?

A. I work for the Johnson Malley program on my reservation.

Q. Norman, will you please state what your occupation is? I forgot to ask you.

A. (By Mr. Red Wing) I am currently a student at the University of Minnesota, majoring in political science and sociology.

Q. Thank you.

Now, Fern, could you please state how the civil liberties organization took away jurisdiction on your reservation?

A. (By Ms. Mathias) It was pressed, it should never have gone to the supreme court. But it was pressed by our tribal execs. with our tribal lawyer at that time. And it involved two cases, State of South Dakota Supreme Court which ruled in October or November of 1973 that the state had jurisdiction to take children away, and this was known as the Dakota case.

The second one was in the Sixth Circuit Court of Appeals case which ruled in December, 1973, that the tribe had jurisdiction in Indian country. And this is known as the Feather case.

And after the Feather case was decided in December, 1973, Judge Hall wrote to Burt Hirsh, who was -- maybe I better not mention names, strike that. Wrote to the tribal lawyer and said if he could come back into court on the basis of the Feather case, he would grant the writ of habeus corpus in the Dakota case.

Q. Which judge did you state wrote that letter?

A. Judge Hall, he was with the, what circuit is that? The circuit of the northeast section of South Dakota.

Q. I see. Okay, continue.

A. Anyway, Burt Hirsh turned down Judge Hall's offer, because he wanted a decision from the supreme court. And when Burt Hirsh requested a hearing before the supreme court, the Attorney General of the State of South Dakota petitioned for a hearing before the supreme court in the Feather case. Both cases were to be heard together.

Q. You're talking about the South Dakota Supreme Court or the U.S. Supreme Court?

A. U.S. Supreme Court, and then had this tribal lawyer not appealed the Dakota case the state could not have gotten a hearing before the supreme court in the Feather case. And the tribe would still have their reservation but because it was pushed by the tribal lawyer, it was pushed really by the tribal execs.

Q. Are you suggesting that behind all this is this organization?

A. And this organization, the civil liberties had -- got a petition together and they got 4,000 signatures, and also the local newspaper through, you know, brash headlines about Indians taking over and Indian jurisdiction and so forth, got the community all riled up, and that's why the civil liberties grew very strong, in fact, they had meetings

where a lot of the people who didn't want to belong to the civil liberties were forced to belong, and we can't divulge any names, you know, being --

Q. What is the connection, though, between this organization and the fact that the attorney took the action you stated he did? I mean what's the connection, how are they behind it?

A. Well, they pressured, they pressured the judge in the supreme court ruling, they wrote letters and petitioned and so the judge brought a ruling towards, I mean losing the jurisdiction for the Sisseton-Wahpeton Sioux Tribe. Because of the pressure.

Q. (By Ms. McEldowney) Wasn't there something that the tribe also hoped to gain and that is jurisdiction over White people?

A. Yes. At the tribal execs. at that time.

Q. So if you were of the philosophy that supporting more tribal sovereignty and more, you know, extending the jurisdiction of the tribe you might have a valid reason for asserting, you know, pushing that case, wouldn't you agree?

A. At that time they talked a lot -- if it was just let alone, right now it's causing a lot of other reservations to lose --

Q. I realize that, but anytime an attorney takes an

appeal he or she runs the risk of losing and you know, getting bad precedent as far as my particular position is concerned.

A. And he did run that risk but he was so confident that he just --

Q. But I'm suggesting that the -- that there were some other reasons that might also have come out of that case, that is broader tribal sovereignty, tribal jurisdiction, right?

MS GUNDERSON: Had you been successful?

Q. (By Ms. McEldowney) Had it gone the way that you hoped and wanted it to go?

A. I don't -- at that time I don't think they were ready for it, I mean no one was prepared for it. The tribal lawyer was not prepared, the execs. were not prepared, they were just not prepared to go to court.

Q. (By the Chair) Did I understand you correctly to state that the tribal executives were also pressured to pursue this?

A. Well, they were the ones who were pressuring.

Q. Was the civil liberties organization pressuring them, though?

A. But they weren't prepared, see, they were pressuring I guess they were on an ego trip or something and they weren't really prepared so they weren't -- they didn't really

inform the people on our reservation of the facts, and they went ahead and did this without the knowledge of the people.

Q. (By Ms. Gunderson) I'm getting an impression and I hope you'll correct it if it's the wrong one, did you mean to imply that there might even have been some skulduggery on the part of the tribe's own attorney? Or did you? Do you mean to suggest that?

A. Do you want to talk about that?

THE CHAIR: Please state your name and address before you begin.

MR. OLIVER EASTMAN

A. (By Mr. Eastman) Well, I'm Oliver Eastman and I'm a councilman of the Sisseton Sioux Tribe. Of course I'm a lame duck, I'm going to get out of office after January because I'm not going to run anymore. Because of the stand of the tribal execs. So --

Q. (By the Chair) Will you please answer the question that was posed, just stick to that?

A. The question on -- well, the way they got that was the council or the people didn't know that this thing was going on, it was all within the tribal execs. They took a

word out of -- out of the jurisdiction and the word was, let's see, what was that one word there?

Q. (By Ms. Gunderson) Might it have been the word complete or sovereign or --

A. No, it was consent, see they wanted to take the White, you know, violators of, the law breakers or whatever you want to call them on the tribal land, you know, in the tribal takeover.

Q. (By the Chair) Are you saying that they also asserted jurisdiction over White people? Is that what you're saying?

A. Yes, when a crime is done on tribal land, that's the -- they took that word out, consent. And that's what started this civil liberties people.

Q. Well, they took that out of the tribal code, is that correct?

A. Yes.

MS. GUNDERSON: Excuse me, Mr. Chairman, I just don't understand how it changed things.

THE CHAIR: What he's stating is that once the Eighth Circuit ruled that the tribe, that the whole reservation, original boundaries were Indian country, then the tribal officials amended their tribal code which had previously stated that non-Indians could not be arrested or tried in tribal court unless they consented. And that

the executives amended that so it took out the word consent.

A. And that's where the biggest trouble started. Now, like he -- he was mentioning about these civil liberties people, now I've had a group of legal aid people to try to advise us on legal things to do at my house, and the whole house was surrounded on the -- on the west side of the section line there, there was, I don't know how many cars, it was all surrounded and I wasn't home, but these people were there, the -- they were looking at a certain case they wanted to form a defense for them, and these people got scared when they seen all the cars parked all around my place there.

So one of them ran out and started his CB going and they were talking to each other over the CB's and they said if you're going into that home, rush in here, take it, don't go in there because we don't know what them damned Indians will do.

So, you know, I can't even have a visitor in my house. When I got five or six cars around my house, why then these civil liberties people are all around my house. Because I was branded as the main person, and so civil liberties are very strong.

And we can, they don't have to carry a button, all we know they've got racks, with about three guns in them, each one of their pickups and they surround my place

with them. So I don't have to see a button, I see their guns.

And I see it every day, anytime a bunch of cars stand at my place, why, they're present.

THE CHAIR: Are there any further questions for this particular witness? Do you have a question?

Q (By Dr. Witt) Mr. Eastman, do I understand correctly that you were recently a victim of a beating?

A Yes, I was.

Q Would you care to tell us about that today?

A Well, I took a group of young people back to their home, and they didn't have no ride they said, so I took them back. And they invited me to the house so I went into the house and somebody hit me from behind. I turned around and I grabbed him by the hair, and that's about all I could remember, I was all beaten up. And I was placed within my home, when I came to, I was parked at the house. And the car was all blood in the back, they must have had me in the back.

They tore off my antenna and they -- well, I got laid up for about two weeks, I couldn't hardly move, I didn't report it or anything, until I was able to move around, went to the doctor.

Q Do you have any idea who was the person or people who did this to you?

A. Well, we know who they are, but we don't know exactly what person done it. It was a whole bunch of them in there.

Q. Can you make a -- can you give us an idea why this happened, what was in their minds, why this act was done?

A. Well, it's lots over the election. You see, the election of our chairman was kind of -- we were contesting it and we figured it wasn't run right because we fought it once before, tried to get it into court but we couldn't get it into court. And on that basis there was two boys that was drinking and they bragged about not voting for the chairman and the next day they were fired off from the, you know, the tribal, you know, tribal employment there.

Q. And is there any connection that you can see between the Civil Liberties for South Dakotans and what happened to you?

A. No, I can't see any connection there. No.

Q. (By Ms. Gunderson) May I ask the question of Mrs. Eastland, you made a reference to taking the children, I don't know that I understand, did the court result, did the court decision which you've been describing result in a change in the status of the American Indian child?

A. (By Ms. Mathias) They don't now, but at that time --

THE CHAIR: I think the issue in Dakota as she stated, was whether the state had jurisdiction over proceedings involving children, custody over children, is that --

A. Yes.

Q (By Ms. Gunderson) And at the present time this has been changed --

A. Yes.

Q -- and it now does?

THE CHAIR: I think the supreme court ruled on this matter, see there was two cases as she stated, Feather and Dakota and they heard both of them together, consolidated, and the supreme court held against the tribe, that the tribe did not have jurisdiction over the Sisseton Reservation except for trust lands within the reservation, and on that deeded lands within the reservation is now under state jurisdiction to it is now a checkerboarded reservation.

Mr. Eastman, how old are you?

A. (By Mr. Eastman) I'm 72, I'll be 73 in April. I'm an old bugger.

Q (By Ms. Gunderson) You must be a tough one after that blow. It's marvelous to see you looking so well.

A. Well, see, they broke my glasses, I got a cut here and down here. But they hit me with my glasses on.

Q. Were these White people?

A. No, they're Indian.

Q. (By the Chair) Okay, I have one last question for Fern. And try to make your answer as brief as possible?

A. (By Ms. Mathias) Okay.

Q. You mentioned that the Sieche Hollow land was one tribal land and that it is no longer tribal land. How did it come about that the land is now under state jurisdiction?

A. Sieche Hollow has always been sacred land to the Sisseton Wahpeton Sioux, and about 15 years ago the state, with the help of the BIA, bought the land from 13 families, for, I don't know, something like $6,000.00, was it the total? It wasn't very much anyway, and without the consent of most, I mean the majority consent. They only had like 51% and that was it. And lot of --

Q. Were the occupants of the land literally moved off? Evicted? Or did they consent to the sale?

A. They consented to the sale.

Q. All of them?

A. Not all of them, oh, no, just a few of them, they just took a few who did consent and then they took the whole, how many acres is there? 320 acres.

Q. Those that did not consent, were they evicted?

A. This one that -- so far I've only gotten two pieces --

two people who gotten a hold of and one lives in North Dakota, so they're not living on the lands. I don't know, were they evicted at that time? No.

Q. Now, you mention that this is sacred land, and I think you mentioned at another time that Indians go there for certain herbs, medicines and --

A. Yes.

Q. -- they are being charged to go on the land now?

A. One of the reasons, one of the stipulations when they took over -- when the state took over the land was that they would take care of the cemetery, adjacent to the land, it's an Indian cemetery, and also that the Indian people can go there. You know, to get their medicine, so forth. But now they're not -- this past year, some people wanted to get some medicines and went there and they were going to be charged $4.00 to -- even Indian people have to pay to get in.

Q. And what about the cemeteries, are they being kept up?

A. No, they're not. They haven't come through with their agreement.

THE CHAIR: I have no further questions, do any of the other panelists?

A. I did want to say something, I'm also working for the Wounded Knee legal defense offense committee, and the thing that happened with the Sisseton six, there are six

Indian members of our tribe who call themselves the Sisseton Warriors Society, because they have long hair, are not, you know, are not treated right, and they're -- and any -- any Indian person who has long hair, especially male, they are treated with a double standard of justice, with the judge, Mildred Remikey (Phonetic) in the area, the magistrate, the city police, the highway patrol, the FBI, the BIA, and the deputies who are the civil liberties group, you know, the majority.

I can cite you cases, you know, just specific cases which I don't know whether we have time, but there are, like Judge Remikey, she's the circuit judge in our area and she just, was just promoted to the supreme court, but she's written articles in the local paper in regard to AIM people, and like she didn't like what Judge Nichol came, the Judge Nichol who was the judge in the Wounded Knee case in St. Paul, she didn't like what happened in the case, she thought those people should have been, you know, guilty, you know, proven guilty and gone to jail.

She wrote articles about that, she wrote articles about long-haired Indians --

Q. She is a judge, though, is that right?

A. She's a circuit judge.

Q. A circuit judge?

A. She's a circuit judge and now she's in supreme court,

state supreme court judge temporarily. I have articles here on that, too.

Q. Where did she write these articles at?

A. She wrote one in the Watertown Opinion and another one in the Sisseton Courier. And like she -- double standard, like DWI, there's one Indian guy who had DWI'd three times, went to prison. A White guy had DWI'd three times and he was only charged $150.00. I mean he had $30.00 in his pocket so they took that $30.00 and he could pay the rest in installments but he wasn't sent to jail or prison or anything.

Q. (By the Chair) Do you have a public defender system in Sisseton? Or is it court appointment?

A. Court appointed. And then, when they give, like what happened to the Sisseton six, they, the six, the court appointed lawyers were like they just graduated last June, last May, people like that. And they're not very good lawyers.

Q. Fern, I believe you may request an investigation by this South Dakota Advisory Committee into the treatment of the Warrior Society you described?

A. Yes.

Q. If you'd like to make such a request?

A. Yes, I would like, I would like to have a subpoena-powered commission investigate Sisseton, you know, the

double standards that are happening there just because of long hair. Like our -- like my father, he wears long hair and he is discriminated against, even our own tribal execs. They work in cahoots with the bcal police, they even bring the FBI in, you know, and give them jobs, they're secret, you know, they're -- everybody else doesn't know them as FBI, but they're given jobs.

Like one was given a job of, in alcohol program, and in the end, people get arrested, people go to prison because of the FBI involvement. And then another one was, was hired as a school bus driver and as a result of that, people were picked up for dope and things like that.

So I mean -- and they're brought in by the -- you know, together with the BIA, special investigator, the school superintendent had some part in it, the local editor of the paper, and people like that, and the tribal chairman.

You know, they're all in cahoots to get rid of long-haired Indians.

THE CHAIR: Well, I think our time is running on so we would like to thank --

A. (By Mr. Eastman) Can I say one thing?

THE CHAIR: Yes.

A. He made a remark on bail, you know. One of the boys that was with him was arrested a few days after he was

and I got a call and he was to get bail. He could get out on a $50.00 bail, so they called me and I went down there, I went right down, and I stood there for about an hour before I was -- they got to me because they were calling the tribal police and this was on a Sunday, they were calling the tribal police to bring over a warrant so they could pick these guys up and they had them, they had them cornered someplace, you know, the county police, so as far as getting warrants, they can get them out at any time, they got CB's, they call the tribal police no matter where they are, they bring a warrant, no matter what it is the tribal police goes along with.

THE CHAIR: Thank you very much.

We do have a statement, a resolution to be passed which we will make a statement on at the end of this meeting which may be of some help, hopefully, to your situation. Thank you very much.

A. Yes, well, another thing there too, is I'd like to see the same kind of action that we have here for your panel brought onto the reservation so we have civil rights on the reservations too, that are denied us, by not only White people but our own -- our own people. That are in power. And I think to serve us as people, our full civil rights, something like this should be brought on the reservation. And hit both sides, you know.

Why protect, say the Indian himself when he's working against his own people? If we're going to confront the White person, let's confront the Indian too. And that's a request or something I pray for could be done.

THE CHAIR: Thank you, Mr. Eastman. We do have a couple more witnesses.

Evelyn Bordeaux, do you want to testify? Okay. We'll now hear from Evelyn Bordeaux.

Evelyn, we have to limit your testimony to five minutes and thereafter we will each ask you questions, if you can be brief in your statements, we will appreciate it.

Q (By Ms. McEldowney) First begin by stating your name and address and occupation and then proceed to your statement.

MS. EVELYN BORDEAUX

A (By Ms. Bordeaux) Okay, my name is Evelyn Bordeaux, I live at 913 Blain here in Rapid City and I'm a student at Black Hills State. And on November 24, 1975, Rapid City Police officer came to my door, he was inquiring about my daughter who had received some injuries on Saturday night. This was on a Monday morning. He stated that the state's attorney wanted to know what to do about signing

a complaint. He was informed that my daughter was not there, it was noticed that he was not wearing his name tag, and I'm not sure even if he had a badge on.

He left and within five minutes, I called the state's attorney's office to inquire about what kinds of charges could be pressed against my daughter, I mean -- you know, against the person who did that to my daughter, the state's attorney acted like he didn't know what was going on, hung up the phone.

Five minutes later four federal agents came to the door, they inquired about my daughter, they said they had been watching the house all night long, they knew she was there, they pushed their way in. They harassed the people in the house, they served a subpoena on my young son, they quarreled with my youngest daughter, they threatened to arrest several people in the house.

I got in touch with Ted Means, Ted Means came up to the house, he informed -- he asked to see the warrant. He was informed that they didn't have no warrant and that they didn't need a warrant, they arrested my daughter.

They took her to the federal holding cells in the federal building, they denied her medical attention until the judge signed an order supposedly, is what they told us, they took her to the doctor, they took both my kids to the -- in front of a grand jury, they refused to let my

daughter consult with her attorney. She was in front of the grand jury for an hour and a half, and the attorney who flew in from Minneapolis at that time, Ken Tilson, checked to see if there was a warrant issued for her arrest, and there was no such warrant that was in the records.

Q. (By Ms. McEldowney) Okay, what's your daugher's name and age at that time?

A. Her name is Jean Bordeaux, she was 15 years old at the time.

Q. Was there any charge ever brought against her for that incident?

A. Well, they said that the judge would set bail at $15,000.00 but they said that she was a witness and that they could hold her as - - as I don't know, hostile witness or whatever you call it.

Q. There was no criminal charge --

A. No criminal charge.

Q. -- it was simply a matter of getting her before the grand jury, is that right?

A. Right, they had no reason not to just believe that she would appear before that grand jury.

Q. (By Ms. Gunderson) These were four FBI men?

A. Yes, special agents or I don't know exactly what their title is.

Q. (By Ms. McEldowney) Did you get the names of either the Rapid City Policeman or the federal agents?

A. He never returned after he left.

Q. And the FBI agents?

A. No, I don't -- well, Ken Tilson probably has them, but --

Q. I was going to ask you, Ken Tilson is the attorney that flew?

A. Yes, he is.

Q. And did he talk with your daughter at all?

A. No, he got in there too late, seen her for a few minutes downstairs, but they didn't even let her talk to him, talk to him while she was before the grand jury.

Q. And they didn't allow her time to consult with him before they took her into the grand jury, is that --

A. No.

Q. -- is that correct?

A. He did get to tell her that, you know, any question, anytime they asked her a question to ask to speak to her attorney and that he would be out there, you know, supportin her and that he could -- that she could come out and confer with him on the nature of the questions.

And they would decide what answer she would put forth

Q. What time of the day was it when the Rapid City Polic first came to your house?

A. It was between 7:00 and 8:00 o'clock in the morning.
Q. And did you say you didn't let him in?
A. No. We didn't let him in.
Q. (By Ms. Gunderson) What federal crime was she supposed to be a witness of?
A. The June 26th.
THE CHAIR: Are you referring to the shooting of the two FBI agents?
A. In Oglala, yes.
Q. (By Ms. McEldowney) Okay, you said that they subpoenaed your young son as well?
A. Yes, they did.
Q. His name and age?
A. His name is James Zimmerman, he was 12 years old at the time.
Q. And what time of the day was it that the FBI agents came back to the house?
A. It was just about --
Q. To your house?
A. It was just within the same time limit as the Rapid City Police Officer. They came approximately ten, 15 minutes after he had left. It wasn't too long after I got through talking to the state's attorney.
Q. Okay, so would you estimate how long this whole transaction took, half an hour, three-quarters of an hour?

A. It took roughly an hour because I had to, I stalled them off until Ted Means got there because none of the attorneys from the legal office were in, they were all out of town and there was no attorneys available.

Q. When did they put her on the stand to testify?

A. In the afternoon.

Q. And then what happened?

A. Well, they -- she was in there for an hour and a half and they refused to let her consult with an attorney and then they released her later on after her testimony.

Q. She actually asked to go outside of the room to talk with her attorney and they refused her?

A. Yes, she did.

Q. What about the -- your son, was he ever -- did he ever testify?

A. Yes, he, I brought him back, I sent him -- I sent him to the AIM house after all that happened and told them to keep him there until Ken Tilson flew in and when Ken came in then I brought him back up and he was only in there for about five, ten minutes. And they let him consult with an attorney -- with Ken.

Q. (By the Chair) This is a federal grand jury you're talking about?

A. Yes.

Q. (By Ms. McEldowney) Did you have any other contact

with Rapid City Policemen or Pennington County Sheriff's department?

A. You mean concerning that incident?

Q. Yes.

A. No.

Q. I will just repeat for the record what I told you outside, that the scope of this particular study is limited to state and local law enforcement efforts, and so your other comments about the federal agents will be noted and perhaps we, as individuals, can, you know, assist you with that concern, but the issue now as far as this is concerned, would be as it involves the Rapid City Police Department.

A. Okay.

MS. McELDOWNEY: Any other questions? No questions?

Q. (By Ms. Gunderson) What are you studying at Black Hills State?

A. I'm just getting my general requirements out of the way now.

MS. GUNDERSON: Great.

Thank you very much for coming down.

Gerald Center?

Hi. You have heard that we're limiting the statements to five minutes and then after --

MR. CENTER: Yes.

Q -- after, if your story takes five minutes to tell, we may ask additional questions, and that can go on for however long we, you know, can.

MR. CENTER: I'd like to talk for five hours.

Q I'm not sure that I could listen for five more hours.

Will you state your name and address and occupation, please?

MR. GERALD WAYNE CENTER

A. (By Mr. Center) Gerald Wayne Center, 312-and-a-half St. Joe, and I'm not employed at the time.

Q. Okay. Your name has come up earlier today in testimony about an incident that occurred, I believe it was in October, is that correct?

Andyway, describe, tell us what you participated in?

A. It was July.

Q. July, okay, tell us what you participated in and what you recall of that incident?

A. Well, I was laying in bed and they Maced me through the window, and the officer said, he said I had a two-by-four, which I can't, I can't see to grab that two-by-four, I was already Maced.

And they broke in the door, took me outside, put

two handcuffs on me, and worked me over while I was on my knees.

That was that Dick Davis. While I was handcuffed he beat me up. Then, after he done that, then he un-handcuffed me and went inside the house and got a washrag and wiped my eyes and walked me over to jail.

Q. He washed your eyes you said?

A. Yes.

Q. Why was this necessary?

A. So I could see.

Q. Was there blood or something? Your face was beaten, is that what you're saying?

A. Yes, I couldn't see out of one eye, I was Maced too.

Q. Oh, yes, the Mace, okay. Now, you say you were in bed and that the Mace came through the window, the bedroom window would this be?

A. Yes. On the front door side, see my bed's right beside a window and I had the window open, he Maced me right through the screen.

Q. How many other people were in the house?

A. There was my sister, Rachel Center, and Larry Adams and my brother, Lester Center and Harvey Peerberg (Phonetic) and Mary Louise Black Bear. She goes by Little Dog.

Q. At any time did any -- how did these officers announce themselves when they first came to the door?

A. Well, it was four police cars pulled in, and they called on Officer Davis, so Officer Davis came over to the window and I talked with him. I said give me a chance to put on my shoes, get dressed. I'll be right out.

Q. You could see him from your bedroom window?

A. Yes.

Q. Or from where you were?

A. Yes. And I think he borrowed one of those Mace from those police officers, that's -- he shot that Mace through the window, got a hold of me, and I don't know how I'm supposed to have that two-by-four, I couldn't see nothing.

Q. Was there a two-by-four there, can you recall?

A. That was off the -- the door when they kicked it in. The front door was locked. My mother had the key. The back door is always open, they could have came in through the back door.

Q. You say that you actually told Davis through the window that you were going to come out?

A. Yes, yes.

Q. What did the policemen do while Davis was either Mace -- Macing you and beating you up outside?

A. Well, first they Maced me and I couldn't see nothing, couldn't go anywhere, and they busted in the door and they came in, they had me by my back of the pants and back of

the neck and threw me out on the ground and those police officers and that Dick Davis worked me over while they was handcuffing me.

Q. Now, we heard earlier that there -- that Larry Adams was there, is that right?

A. Yes.

Q. That he, Mr. Zakinski read a statement wherein he had, Adams admitted to resisting the officers when they came to the house. Is this true or false?

A. I wouldn't know, I was the first one taken outside. And they was beating me up outside so I don't, can't say what he says.

Q. Prior to your being taken outside, were there any shouts or threats of retaliation or resistance from people inside the house? That you heard?

A. My little brother said he wasn't going to let them take me unless they had a warrant.

Q. How old is your little brother?

A. He just turned 18.

Q. Where was he in relation to the officers? Could he see them?

A. He was in the kitchen part.

Q. Could he see them out the window also?

A. Yes. They said if anybody came out the back door they was going to shoot him. They had the whole place

surrounded. So that's what I told that Dick Davis, I'll come out as soon as I put on my shoes.

Q. So your brother said this before you got Maced then?

A. No, that was after I got Maced.

MS. McELDOWNEY: Does anybody have any further questions?

Q. (By Ms. Gunderson) I wonder if you'd help me with the time sequence, were you up offering to dress and in the kitchen, I believe, briefly?

A. No.

Q. Very good, you were up and offering to dress or you were in bed receiving Mace, how does that go in sequence?

A. I was in bed receiving Mace.

Q. Then you made the statement that if you'll give me a moment I'll get dressed and come out?

A. No, that was before I got Maced. I told him I said, give me a chance to get up, put on my shoes and get my coat and I'll be right out.

Q. But you really were in bed as you spoke those words?

A. Yes.

MS. GUNDERSON: I understand.

A. And then they Maced me through the window.

MS. McELDOWNEY: Questions?

THE CHAIR: I have no questions.

MS. McELDOWNEY: If we have no further questions, if you have any additional comments or documentary evidence of any sort that you'd like us to review, you can certainly submit that within the next 30 days.

A. Yes, I'd like you to review it.

MS. McELDOWNEY: Sure.

A. And talk to Mr. Muldrow here, you can set the time. See if I could get copies of all the statements, if I can, from the police officer.

MS. McELDOWNEY: Well, you can talk to Bill about that. Thank you very much for coming.

THE CHAIR: Is there anybody else that we missed? If not, I'd like to mention, as Mary Ellen just did, that anybody wishing to submit a written statement may do so within the next 30 days and it can be made a part of the record.

I would like to thank, on behalf of the committee members, all those who participated in this hearing, we appreciate their efforts in coming from such far away places as Sisseton, South Dakota, and other places, and we'd like to thank those others who attended.

And we feel that this has been a very beneficial hearing.

Before I close, I would like to read a resolution

which the committee passed today. And it states as follows: Whereas the South Dakota Advisory Committee held hearings at Rapid City, South Dakota, on December 6 and 7, 1976, on the administration of justice to Native Americans in off-reservation areas, and whereas during the course of the hearings, cases involving flagrant abuse of police powers and the administration of justice to Native Americans were alleged, and whereas the South Dakota Advisory Committee is of a concensus that the U.S. Commission on Civil Rights should conduct hearings itself, using it's subpoena powers to look into such cases, now therefore be it resolved that the South Dakota Advisory Committee recommends to the U.S. Commission on Civil Rights that the commission itself hold hearings during the summer of 1977, at Pierre, South Dakota, to look into the administration of justice to Native Americans.

And be it further resolved that such hearings include the administration of justice to Native Americans by local, state, tribal and federal governments.

Thank you very much. The meeting stands adjourned.

(Hearing adjourned)

STATE OF ARIZONA)
) SS
COUNTY OF PIMA)

I, JAMES E. BOULEY, do hereby certify that I am an Official Shorthand Reporter; that I was present at the hearing of the foregoing matter; that I took down in short hand all proceedings had and testimony adduced at said hea that the same was thereafter transcribed under my super-vision, and the foregoing 632 pages represent a complete and accurate transcription of my shorthand notes sc taken.

WITNESS MY HAND this 12th day of January, 1977.

James E. Bouley
Official Shorthand Reporter