

Advisory Memorandum

To: United States Commission on Civil Rights
From: South Dakota Advisory Committee to the U.S. Commission on Civil Rights
Date: June 27, 2019
Subject: Summary of Briefings on Subtle Racism in South Dakota

The South Dakota Advisory Committee to the U.S. Commission on Civil Rights is concerned that subtle forms of racism threaten the lives and liberties of South Dakotans. The Advisory Committee, through deliberation at the beginning of its current term, decided to examine the subtle forms of racism in the state. The Committee held three briefings; the first in Aberdeen, the second on the Pine Ridge Reservation, and the third in Pierre. At each briefing the Committee heard compelling testimony about the barriers faced by communities of color, particularly Native American communities, in South Dakota. As the Advisory Committee ends its appointment term, it submits this memorandum, which summarizes the briefings held during this term.* The Appendix includes the Agendas from the briefings.

I. Background

South Dakota has a history of tumultuous race relations and discrimination. One early example was the federal government's campaign in the late Nineteenth century to push the Sioux out of the Black Hills in South Dakota,¹ a sacred land to many Native American tribes.² This campaign resulted in a treaty that ceded Sioux land in the Black Hills to the federal government.³ The Supreme Court stated about these events that, "a more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history..."⁴

These swelling tensions ultimately gave way to armed conflict between Native American tribes and the federal government. South Dakota particularly saw such aggression result in the death of over 150 Native Americans in the Wounded Knee massacre in 1890.⁵ Overt racism and discrimination continued to impact the indigenous population in South Dakota significantly throughout the twentieth century and some scholars argue that it manifests itself today in

* The Committee expresses its appreciation to Patrick Williamson, the Eastern Regional Office Intern, for preparing this advisory memorandum.

¹ Laughlin McDonald, *The Voting Rights Act in Indian Country: South Dakota, A Case Study*, 29 Am. Indian L. Rev. 43, 49 (2004).

² Rita Lenane, *"It doesn't seem very fair, because we were here first": Resolving the Sioux Nation Black Hills Land Dispute and the Potential for Restorative Justice to Facilitate Government-to-Government Negotiations*, 16 Cardozo J. Conflict Resolution 651, 654 (2015).

³ *Id.* at 656.

⁴ *Id.* at 654.

⁵ "Wounded Knee." History.com. <https://www.history.com/topics/native-american-history/wounded-knee/> (accessed July 10, 2019).

suppressed political participation⁶ and disparities in the criminal justice system.⁷ Further, some scholarship concludes that this has caused, in part, large socio-economic inequalities between Native and non-Native Americans in South Dakota.⁸

Despite gaining full citizenship rights in the early twentieth century, Native Americans in South Dakota were essentially excluded from voting and holding office until the 1940s.⁹ However, systematic discrimination prevented people in counties unorganized under state law, whose residents were overwhelmingly Native American, from voting well into the latter half of the twentieth century in South Dakota.¹⁰

In addition to discrimination in political participation, research has shown that Native Americans have suffered disparities in the criminal justice system.¹¹ For instance, this committee heard testimony during a previous public hearing in which Native Americans voiced feelings that discrimination had led to disproportionately tough sentences.¹² Because Native American tribes are domestic independent nations within the U.S., many crimes that occur within their land are subject to federal jurisdiction rather than that of the state.¹³ Some scholarship has concluded that this has caused Native American “defendants [to] suffer[ing] disproportionately harsher sentences than if they were non-Indian or had committed their crimes off of the reservation.”¹⁴ The fact that in the early 2000s, Native Americans consisted of nearly a third of South Dakota’s incarcerated population supports this conclusion.¹⁵

In 2007, South Dakota contained five of the poorest counties in the United States, all of which consisted of Native American Reservations.¹⁶ Further, according to the 2000 Census, in South Dakota, 23 percent of Native Americans were unemployed and nearly 48 percent lived below the poverty line.¹⁷ In sum, the indigenous population of South Dakota has been subjected to racism and discrimination from the founding of the United States forward, and this continues to impact the Native American community socio-economically, politically, and institutionally.

⁶ See Laughlin, *supra* note 1, at 49.

⁷ See Timothy J. Droske, *Correcting Native American Sentencing Disparity Post-Booker*, 91 Marq. L. Rev. 723, 724 (2008).

⁸ See Patrice H. Kunesh, *A Call for an Assessment of the Welfare of Indian Children in South Dakota*, 52 S.D. L. Rev. 247, 259 (2007).

⁹ Laughlin, *supra* note 1, at 49 (citing *Buckanaga v. Sisseton Indep. Sch. Dist.*, 804 F.2d 469, 474 (8th Cir. 1986)).

¹⁰ *Ibid.*, 49.

¹¹ Droske, *supra* note 7, at 724.

¹² See S.D. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System* (2000), <http://www.usccr.gov/pubs/sac/sd0300/main.htm>.

¹³ Droske, *supra* note 7, at 724.

¹⁴ *Id.*

¹⁵ Kunesh, *supra* note 8, at 272. It is worth nothing that, according to the 2010 Census, Native Americans made up roughly eight percent of the total population of South Dakota. See *Community Facts*, U.S. Census Bureau, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> (accessed June 7, 2019).

¹⁶ *Ibid.*, 260.

¹⁷ *Ibid.*

II. Summary of the Briefings

Aberdeen Briefing Summary

The South Dakota State Advisory Committee to the U.S. Commission on Civil Rights met in Aberdeen, South Dakota on March 24, 2017.¹⁸ The committee heard from fifteen speakers followed by a brief public comment portion. The briefing covered a number of topics including law enforcement procedures, discrimination in the education system, civil rights initiatives, and community policing.

The Committee first heard testimony from the Aberdeen Police Department regarding their training procedures and use of body worn cameras. Police recounted the recent shift in their focus towards a community policing model in order to build rapport with the community and develop trust among immigrant, refugee, Native American, and other communities of color.¹⁹ Further, officers discussed their hiring procedures and steps they take to prevent discrimination. For example, the Aberdeen Police Department rates newly hired officers on how they interact with people of other cultures throughout their training process, and give supervising officers an opportunity to provide feedback on these interactions.²⁰ When asked about diversity in their force, officers stated that they have six female officers and one Native American officer.²¹

Mr. Brandon Sazue testified regarding discrimination suffered by Native Americans, particularly in the education system and with law enforcement. He asserted that in certain portions of the state, Native Americans do not have equal access to an adequate education. As evidence of this, he stated that buses near his tribe had discontinued servicing predominantly Native American communities so their children had limited means of getting to school.²² Mr. Sazue also discussed the impact of law enforcement conduct on his tribe the last several years. He noted that, while his tribe had relatively good relations with the State Highway Patrol at one point, the actions and events that occurred during the protests at Standing Rock led to tensions among both parties and the ultimate decline in their relationship.²³

Next, U.S. Attorney Randolph Seiler and Assistant U.S. Attorney Alison Ramsdell testified before the Committee. Ms. Ramsdell, the Civil Rights officer in the U.S. Attorney's office, discussed several ways her office combats discrimination. She specifically noted a gap in the knowledge of actors in the housing market in South Dakota as to what the Fair Housing Act requires of them.²⁴ Anecdotally, she stated that some landlords simply "aren't aware of the Fair Housing Act."²⁵ Mr. Seiler also discussed several initiatives of his office in addressing discrimination, such as a series of quarterly meetings with the community on various topics like

¹⁸ Meeting Notice, 82 Fed. Reg. 13577 (March 14, 2017).

¹⁹ Sergeant Keith Theroux, testimony, *Briefing Before the S.D. Advisory Commission U.S. Comm. on Civil Rights, Aberdeen, S.D.*, Mar. 24, 2017, transcript, p. 65 (hereafter cited as *Aberdeen Briefing*).

²⁰ Bisbee Testimony, *Aberdeen Briefing*, p. 27.

²¹ *Ibid.*, 46.

²² Sazue Testimony, *Aberdeen Briefing*, p. 75.

²³ Sazue Testimony, *Aberdeen Briefing*, pp. 79-80.

²⁴ Ramsdell Testimony, *Aberdeen Briefing*, pp. 170-71.

²⁵ *Ibid.*

civil rights, officer involved shootings, and immigration.²⁶ He described these events as opportunities to educate and inform the public as well as engage in discourse with citizens from the community about important topics.²⁷

Finally, the Committee heard testimony from Professor Teresa Stallings from Northern State University about a survey she did of policing in Aberdeen. She discussed several ways in which police departments can challenge and prevent discrimination, including confronting officer's preconceived notions and biases during training.²⁸ She further stated that body worn cameras are a useful tool in promoting transparency between the police department and community which creates an environment of trust.²⁹

Pine Ridge Briefing

The South Dakota Advisory Committee subsequently met on the Pine Ridge Reservation on July 24, 2018. The Committee heard from nine speakers across five panels followed by comments from the public. The panels discussed a broad range of topics relating to racism in South Dakota including discrimination in education, economic development, and law enforcement.

The education panel began their discussion about racism by highlighting discrimination in education legislation, specifically the Civilization Act of 1819. While this legislation was enacted in part to provide education for Native Americans, one panelist stated that its focus was to teach indigenous people to “speak English and become Christians.”³⁰ The panel further discussed how education may play a large role in confronting discrimination. They urged the committee that changing racism in South Dakota would partly depend upon the incorporation of cultural education into non-Native school curriculum.³¹

The committee heard discussion from panelists on economic discrimination and development issues that face the Native community. This discussion highlighted many difficulties that Native Americans face, both individually and as a community, in acquiring both loans and government grants.³² They discussed the need for increased access to capital by Native Americans to invest in housing, infrastructure, and businesses.³³ One panelist advocated for an economic “equity agenda,” calling for “just and fair inclusion into a society in which all can participate, prosper, and reach their full potential.”³⁴

One panel discussed discrimination in law enforcement regarding the Native American community. State Attorney Mark Vargo highlighted the disparate impact of the criminal justice

²⁶ Seiler Testimony, *Aberdeen Briefing*, p. 128.

²⁷ See *ibid.*, 128-30.

²⁸ Stallings Testimony, *Aberdeen Briefing*, pp. 175-176.

²⁹ *Ibid.*, 173-74.

³⁰ Cecilia Fire Thunder, testimony, *Briefing Before the S.D. Advisory Comm. U.S. Commission on Civil Rights, Pine Ridge Reservation*, July 24, 2018, transcript, p.47 (hereafter cited as *Pine Ridge Reservation Briefing*).

³¹ *Ibid.*, 51, 59.

³² Tilsen Testimony, *Pine Ridge Reservation Briefing*, p. 93.

³³ *Ibid.*, 97.

³⁴ *Ibid.*, 100.

system on indigenous people. He stated that for everyone, “the same penalty is not the same. A fine of \$110 means one thing to me, and it means another thing to a person who is fighting for a job in Pine Ridge or can’t find a job in Rapid City.”³⁵ He noted one possibility in overcoming this disparity is addressing the systematic issues that give rise to the disparate impact on the front end, such as providing economic opportunity and educational resources.³⁶

At the end of the briefing, the public had an opportunity to voice their concerns about racism in South Dakota. One speaker, a doctor with a forty-year medical career working with Native people, discussed the low life expectancy of the indigenous community and the impact that inadequate health care and insufficient addiction treatment contribute to that.³⁷ Another speaker voiced her concerns about insufficient law enforcement investigations regarding crimes against Native Americans. She stated that there were over eighty-two unsolved disappearances of Lakota people, including her niece who had been missing for two years, which she stated as not being fully investigated by law enforcement.³⁸

This briefing engaged community leaders, activists, and citizens to better and more comprehensively understand the forms of racism experienced by the Native community in South Dakota in health care, education, and the economy. The Committee also heard several suggestions on solutions to address these issues such as integrating cultural education into schools that are predominantly non-Native,³⁹ emphasizing addiction and rehabilitation treatments into Native American medical services,⁴⁰ and promoting access to capital by the Native American community.⁴¹

Pierre Briefing

The South Dakota Advisory Committee, the day after their Aberdeen meeting, met in Pierre, South Dakota on July 25, 2018. The Committee heard from nine speakers across four panels followed by a brief public comment portion. The panels discussed topics concerning the impact of racism on the immigrant and refugee community, housing, education, and tribal policy.

The first panel discussed discrimination facing the immigrant and refugee community in South Dakota. The conversation primarily focused on “top down” racism from the legislature, specifically in the past two years.⁴² One panelist noted several proposed pieces of legislation that specifically discriminated against the immigrant and refugee community, such as one bill focused on the societal impact of accepting people from countries where “females undergo forced female genital mutilation, where ... honor killings ... exist, and where other cultural

³⁵ Vargo Testimony, *Pine Ridge Reservation Briefing*, p. 121.

³⁶ *Ibid.*, 157.

³⁷ Butterbrodt Testimony, *Pine Ridge Reservation Briefing*, pp. 189-192.

³⁸ DeLeon Testimony, *Pine Ridge Reservation Briefing*, pp. 229-230.

³⁹ Fire Thunder Testimony, *Pine Ridge Reservation Briefing*, p. 59.

⁴⁰ Butterbrodt Testimony, *Pine Ridge Reservation Briefing*, pp. 192-193.

⁴¹ Tilsen Testimony, *Pine Ridge Reservation Briefing*, p. 97.

⁴² Taneeza Islam, testimony, *Briefing Before the S.D. Advisory Commission U.S. Comm. on Civil Rights, Fort Pierre, S.D.*, July 25, 2018, transcript, pp.13-14. (hereafter cited as *Fort Pierre Briefing*).

practices antithetical to freedom and liberty are exercised”⁴³ Panelist Taneeza Islam regarded this legislation as one example of “top down” racism stating that it “provid[es] disparaging untruths about the refugee community.”⁴⁴

The Committee heard testimony regarding discrimination in housing in South Dakota. Panelist Roger Jacobs of the Department of Housing and Urban Development discussed discrimination occurs in the rental housing market. He noted several ways in which landlords might discriminate against communities of color, either in screening applications for housing or considering to renew leases.⁴⁵ He proposed that educating landlords on anti-discrimination laws and tenants on their rental rights would be one possible solution to this issue.⁴⁶

One panel discussion was focused on discrimination in education and steps that actors in South Dakota are taking to mitigate it. The Committee heard from the Associate Vice President for Diversity from the University of South Dakota, Lamont Sellers, who discussed similarities between the student body at USD and the population of South Dakota at large regarding attitudes toward communities of color. He stated that on the campus of USD, “epithets [are] hurled at students in residence halls, comments made to faculty of color in course evaluations, social media comments leveled at people of color and the list goes on.”⁴⁷ One program on the University’s campus that Mr. Sellers highlighted was their Multicultural Leadership Institute, which has created a comprehensive leadership development program for campus leaders to promote equitable and inclusive organizations.⁴⁸

The panel portion of the briefing concluded with a discussion on discrimination in policies concerning the Native American community, such as the discrepancy in funding of non-Native and Native schools. One panelist stated that the non-Native school near his tribe receives nearly \$5 million more in funding than the Native American school in the area.⁴⁹ The panel continued their policy discussion by addressing disparities in sentencing in the judicial system because of the jurisdictional rules governing the Native American community. Panelist Harold Frazier noted that some crimes committed by non-Native Americans would result in a misdemeanor charge, while the same crime being committed by a Native American would result in a felony.⁵⁰

This briefing allowed the Committee to better understand the impacts of discrimination in South Dakota on immigrants, refugees, and Native Americans in areas such as housing, education and tribal policy. Further, the Committee was able to hear ideas, proposals, and initiatives that are being or could be implemented to address these issues such as the Multicultural Leadership

⁴³ Ibid., 14.

⁴⁴ Ibid.

⁴⁵ Rogers Testimony, *Fort Pierre Briefing*, p. 51.

⁴⁶ Ibid., 54.

⁴⁷ Sellers Testimony, *Fort Pierre Briefing*, p. 102.

⁴⁸ Ibid., 104.

⁴⁹ Frazier Testimony, *Fort Pierre Briefing*, p. 120.

⁵⁰ Ibid., 130.

Institute,⁵¹ implementing community education on landlord and tenant duties and rights under the Fair Housing Act,⁵² and promoting worker’s rights advocacy groups in the state.⁵³

III. Conclusion

The work of the South Dakota Advisory Committee was used by the Commission in its report, “Broken Promises: Continuing Federal Funding Shortfall for Native Americans,” released in December 2018. The Commission’s report and the briefings of the South Dakota Advisory Committee show that the failures by the federal and state governments to adequately address the wellbeing of the indigenous populations in the United States is a part of the reason South Dakota’s indigenous population ranks near the bottom in health, education, and employment outcomes.

This concludes the work of the South Dakota Advisory Committee.

⁵¹ Sellers Testimony, *Fort Pierre Briefing*, p. 104.

⁵² Jacobs Testimony, *Fort Pierre Briefing*, p. 54.

⁵³ Islam Testimony, *Fort Pierre Briefing*, p. 34.

Appendices/ Agendas



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

Community Room
Aberdeen Public Safety Building
114 2nd Avenue SE, Aberdeen, SD 57401

Friday, March 24, 2017
1:00 p.m.

The Subtle Effects of Racism in South Dakota

AGENDA

- **Welcome, Introductions and Opening Remarks**
 - Rich Braunstein, Chair, South Dakota Advisory Committee
- **Opening Statements**
 - Mike Levsen, Mayor of Aberdeen
 - Charles Abourezk, Member, South Dakota Advisory Committee

- **Briefing**

1:15 p.m. Local Law Enforcement Panel

- Dave McNeil, Chief, Aberdeen Police Department
- Vaughn Vargas, Coordinator, Cultural Advisory Committee, Rapid City Police Dept.
- Keith Theroux, Sergeant, Community Outreach Programs, Aberdeen Police Dept.
- Brandon Sazue, Sr., Chairman, Crow Creek Sioux Tribe

2:00 p.m. Diversity Panel

- Naomi Ludeman Smith, Professor and Dept. Chair, Arts & Sciences, Presentation College and Vice-Chair, Aberdeen Area Diversity Coalition
- Mary McDermott, Director, Aberdeen Head Start

- Lawrence Diggs, Author, Columnist, Public Speaker, Roslyn, SD
- D.J. Mounga, Director, Student Life, Presentation College

2:30 p.m. State Law Enforcement Panel

- Randolph Seiler, U.S. Attorney, District of South Dakota
- Christopher White, States Attorney, Brown County
- Alison J. Ramsdell, Assistant U.S. Attorney, Dist. of SD

3:00 p.m. Community Survey Findings on Use of Body-Worn Cameras

- Teresa Stallings, Associate Professor of Sociology, Northern State University

3:30 p.m. Community Panel

- Sheila Richards, Long-Time Aberdeen Resident
- Marcia Sylvester, Chair, Aberdeen Area Diversity Coalition
- Peni Mounga, Director, TRIO Upward Bound, Northern State University

4:10 p.m. Break: 20 minutes

4:30 p.m. Open Session – Public Testimony

• **Closing Remarks**

- Rich Braunstein, Chair, South Dakota Advisory Committee



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

Peacemaking Room
Oglala Sioux Tribal Court
Justice Center for the People
Pine Ridge, South Dakota

Tuesday, July 24, 2018
10:00 a.m.

**The Subtle and Socioeconomic
Effects of Racism in South Dakota**

AGENDA

10:00 a.m. Briefing

- **Welcome, Introductions and Opening Remarks**
 - Rich Braunstein, Chair, South Dakota Advisory Committee
- **Opening Statement and Panel 1**
 - President Scott Weston, Oglala Sioux Tribe

10:15 a.m. Panel 2: Education, Health & Community

- Dr. Dowell Caselli-Smith, Former Vice-President of Oglala Lakota College and a Sociologist
- Kim Clausen, Former Representative, Oglala Sioux Tribal Council and Domestic Violence Expert
- Cecelia Fire Thunder, Chairperson, Oglala Lakota Nation Education Consortium, Chairperson, Little Wound School, and First Female President, Oglala Sioux Tribe
- Richard Greenwald, Chairperson, Oglala Sioux Tribal Council Health and Human Services Committee

11:30a.m. Panel 3: Impact on Work & Economic Development

- Wzipan Garriott Little Elk, Director, REDCO, Rosebud Sioux Tribe's Economic Development Organization
- Nick Tilsen, NDN Collective, Pine Ridge Indian Reservation

12:15 p.m. LUNCH

1:00 p.m. Panel 4: Law Enforcement and Community

- Judge Rick Bark, Youth & Family Court, Oglala Sioux Tribal Court
- Robert Ecoffey, Chief of Police, Oglala Sioux Tribe
- Stanley Littlewhiteman, Chair, Law & Order Committee, Oglala Sioux Tribe
- Mark Vargo, State's Attorney, Pennington County

2:15 p.m. Panel 5: Other Voices

- Brandon Sazue, Former Chairman, Crow Creek Sioux Tribe
- Other speakers

2:30 p.m. BREAK

2:45 p.m. Open Session – Public Testimony

3:45 p.m. Closing Remarks

- Rich Braunstein, Chair, South Dakota Advisory Committee

NOTICE - Written statements and documents, i.e., articles, reports, and studies related to the impact of subtle racism in South Dakota, may be submitted by mail or email to addresses below.



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

Casey Tibbs Rodeo Center
210 Verendrye Drive, Conference Room
Fort Pierre, SD 57532

Wednesday, July 25, 2018
10:00 a.m.

The Subtle Effects of Racism in South Dakota

AGENDA

10:00 a.m. Briefing

- **Welcome, Introductions and Opening Remarks**
 - Rich Braunstein, Chair, South Dakota Advisory Committee

10:15 a.m. Panel 1: Immigration and Citizenship

- Fathi Halaweish, Professor, South Dakota State University
- Taneeza Islam, Executive Director, South Dakota Voices for Peace
- Mustafa Kalombo, Union Representative, United Food and Commercial Workers Union

11:15 a.m. Panel 2: Housing and Health Care

- Roger Jacobs, Director, U.S. Department of Housing and Urban Development

12:00 p.m. LUNCH

12:45 p.m. Panel 3: Education

- Jane Hannemann, Director, Sioux Falls School Liaison Program
- Lamont Sellers, Associate Vice President for Diversity, University of South Dakota

1:45 p.m. Panel 4: Tribal Policy

- Harold Frazier, Chairman, Cheyenne River Sioux Tribe
- Boyd I. Gourneau, Chairman, Lower Brule Sioux Tribe

2:30 p.m. BREAK

2:45 p.m. Open Session – Public Testimony

3:45 p.m. Closing Remarks

- Rich Braunstein, Chair, South Dakota Advisory Committee

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