

NATIVE LIVES MATTER

Cover art adapted from art by Greg Deal for the "Honor the Treaties" campaign

Preface

In light of the debate surrounding police violence against minority populations in the United States, one group that is consistently affected, yet continuously excluded from broad public discourse, is Native Americans. Much of the rhetoric has been justifiably dedicated to African Americans in urban areas, who certainly suffer from disproportionate criminal justice outcomes. However, statistics uncovered and compiled by the Lakota People's Law Project demonstrate that American Indians, in fact, suffer the most adverse effects of a criminal justice system which consistently reifies itself as structurally unjust.

Despite gaining citizenship rights in 1924, Native Americans have yet to see the day that they enjoy benefits of a nation which boasts "liberty and justice for all." Graduation rates are sub-par, nutrition is poor, and overall, the outcome measures for Native youth in South Dakota have been found to be the lowest for any group in any state.¹ Unsettling reports of unfair treatment towards Native peoples by law enforcement are not isolated incidents—rather they are endemic of a deeply discriminatory justice system. Native American men are admitted to prison at four times the rate of white men and Native women at six-fold the rate of white women.² Additionally, Native Americans are the racial group most likely to be killed by law enforcement.

The following report, composed by the Lakota People's Law Project, will delve deeper into what it means to seek justice for Native peoples, including but also moving beyond anecdotal evidence of police violence by presenting empirical data that demonstrates how the justice system disproportionately and cruelly punishes American Indians.

¹ The Annie E. Casey Foundation, "Race for Results: Building A Path to Opportunity for All Children," pg. 14, www.aecf.org/m/resourcedoc/AECF-RaceforResults-2014.pdf, accessed February 1, 2015

² Hartney, Christopher and Vuong, Linh, "Created Equal: Racial and Ethnic Disparities in the US Criminal Justice System," National Council on Crime and Delinquency, March 2009, pg. 3, www.nccdglobal.org/sites/default/files/publication_pdf/created-equal.pdf

I: Instances of Abuse

Allen Locke killed by police one day after participating in “Native Lives Matter” rally

Tensions between the Native population in Rapid City and the local police has been strained due to the recent spike in the number of isolated incidents of police misconduct. The current situation calls for an introspective analysis of justice for American Indians. One day after a Native Lives Matter rally held in downtown Rapid City on December 19th, 2014, 30-year-old Allen Locke was shot multiple times by RCPD Officer Anthony Meirose and was subsequently pronounced dead on the scene.³ This tragedy transpired after Rapid City Police were dispatched to his residence in Lakota Community Homes, a neighborhood in Rapid City which almost exclusively serves a Lakota population.

“ The racial group most likely to be killed by law enforcement is **Native Americans**, followed by African Americans, Latinos, Whites, and Asian Americans. ”

—Center on Juvenile and Criminal Justice

data from Center for Disease Control & Prevention, 1999-2011

The official explanation offered to the public by RCPD is that Officer Anthony Meirose discharged his weapon only after Locke charged at him with a knife. The department claims that there was no opportunity to use a Taser in lieu of resorting to deadly force. An investigation into the shooting was headed up by the South Dakota Division of Criminal Investigation, the same division which “investigated” the issues surrounding the case of Richard Mette, who had

fostered Lakota children so that he could molest them whilst collecting payments as a foster father for over a decade. This department has once again exhibited an unwillingness to indict or prosecute in the case of Officer Meirose. That investigation has

³ Moya-Smith, Simon, “Native American Man Who Attended Anti-Police Brutality Rally Is Killed By Police Next Day,” Indian Country Today Media Network, 22 December 2014, available from <http://indiancountrytodaymedianetwork.com/2014/12/22/native-american-man-who-attended-anti-police-brutality-rally-killed-police-next-day>

since officially released him from any liability for the death of Locke, thus solidifying the suspicion that there has been no critical inquiry into Locke's death or into the continual police misconduct when interacting with the local Native community.

Most troubling are the striking examples of leadership failure at the highest levels of law enforcement. In Pierre, South Dakota, members of the city's police department were called to a residential home by a babysitter who called to report that an eight-year-old girl was wielding a knife in October of 2013. Those facts are not in dispute. What is in dispute was the necessity for a Pierre Police Officer to Taser the eight-year-old, thrusting her back into a wall as a means of subduing her. In spite of this excessive use of force, Police Chief Bob Grandpre did not condemn, suspend, or investigate the officers for their actions. Instead, he defended their actions, claiming that they, "quite possibly saved the juvenile's life that night" by using a Taser on a 70-pound girl, adding that it was the "least forceful way" to get a small paring knife out of her hand.⁴ The officers responding to the call included a hostage negotiator, Taser instructor, and two additional officers. Needless to say, the girl's parents disagreed and filed suit against the city, the police department, and the officers involved. "I don't think eight-year-olds should be Tased anywhere in the world," the girl's father told the media.

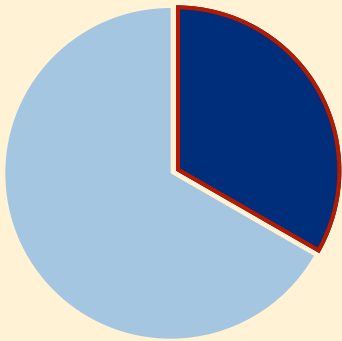
Once again, the South Dakota Department of Criminal Investigations (DCI) cleared all officers of any wrongdoing in regards to the incident, further asserting that the officers responded appropriately, which was aptly summarized as "bullshit" by the girl's family Attorney Dana Hanna.

⁴ Hult, John, "Taser use on 8-year-old justified, police in S.D. say," USA Today 9 October 2013, accessed Feb 1, 2015, available from <http://www.usatoday.com/story/news/nation/2013/10/09/taser-of-8-year-old-girl/2951083/>

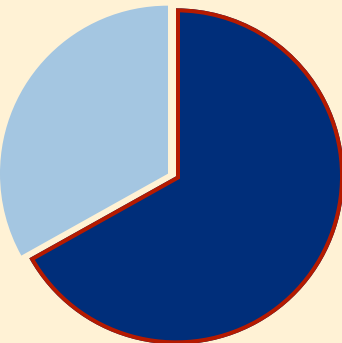
II: Native Youth

Native American youth are found to disproportionately suffer adverse effects at the stages of arrest, diversion, detention, petition, adjudication, probation, and secure placement in the juvenile justice system

*African American, Hispanic, Asian, Pacific Islander, and Native American children comprise a combined **one-third** of the nation's youth population...*



*...yet they account for over **two-thirds** of the youth in secure juvenile facilities.*



General wellness and performance outcomes on paper seem incredibly bleak for Native American populations and especially for Native youth populations. Considering that 44 percent of American Indians are under the age of 25,⁵ we cannot begin discussing justice for Native peoples without first talking about justice for Native youth.

Native youth are disproportionately affected throughout the juvenile justice system. More commonly than any other ethnic group, Native Americans suffer the two most severe punishments that juvenile justice can offer, out-of-home placements and a transfer to the adult system.⁶ The Center for Disease Control has found that children who are transferred to the adult criminal justice system have a 39 percent higher recidivism rate to violent crime,⁷ which is a contributing factor towards the higher arrest and incarceration rate for Native adults.

⁵ "A Tangled Web of Justice," Campaign for Youth Justice. http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf

⁶ "Key Facts: Youth in the Justice System," Campaign for Youth Justice, April 2012 <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>

⁷ "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," November 2007. <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>

Although Native youth are only 1 percent of the national youth population, 70 percent of youth committed to the Federal Bureau of Prisons (BOP) as delinquents are Native American, as are 31 percent of youth committed to the BOP as adults.⁸

In 2003, litigation over conditions in a South Dakota state training school revealed horrible abuses in the use of restraints and isolation, yet little in the way of education or mental health services. Findings also showed that Native youth were significantly over-represented in the lockdown unit and were thus subject to the worst abuses. For example, one young girl from the Pine Ridge Reservation had been held in a secure unit within the facility for almost two years, during which she was placed in four-point restraints and made to “spread eagle” on a cement slab for hours at a time.⁹ She was also kept in isolation for days and even weeks and pepper-sprayed numerous times. In addition the facility also instituted a rule that penalized Native youth for speaking in their Native language — several were placed on lockdown status for speaking Lakota to each other.

It was also found that youth were sometimes held in makeshift quarters within adult facilities or kept with the adult population. For example, a 13-year-old victim was being held in the jail for social services because there was no other place to hold him.

Cruel and sadistic forms of punishment are not constructive to human development; statistics demonstrate that it significantly contributes to recidivism of violent crime in the prison system.

⁸ “A Tangled Web of Justice,” Campaign for Youth Justice. http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf

⁹ “Native Americans and Juvenile Justice: A Hidden Tragedy,” Cross, Terry L. November 2008, www.prrac.org

III: Incarceration

The types of unsettling reports of unfair treatment towards Native peoples by law enforcement are not isolated incidents—rather they are endemic of a justice system which discriminates against the Native American population

Considering that many crimes committed by Native youth are low-level offenses, it is strange that though only composing 1 percent of the national youth population, they represent 70 percent of children admitted to the Federal Bureau of Prisons.¹⁰ Additionally, Native American youth represent 1 percent of the U.S. population, yet they constitute 2 – 3 percent of the youth arrested for larceny, theft, and liquor law violations.¹¹ In fact, most delinquent acts committed by Native American youth are low-level offenses, many of them involving alcohol.

From 2006 to 2008, 85 percent of tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons (BOP) were from these five federal judicial districts: Arizona, Montana, New Mexico, North Dakota, and South Dakota. In 2008, tribal youth served an average of 26 months under federal jurisdiction, which was more than double the tribal justice system maximum sentence of 12 months.¹²

*Native men are
admitted to prison at*

4
times

*the rate of **white men***

&

*Native women are
admitted to prison at*

6
times

*the rate of
white women*

¹⁰ "A Tangled Web of Justice," Campaign for Youth Justice. http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf

¹¹ "Native Americans and Juvenile Justice: A Hidden Tragedy," Cross, Terry L. November 2008, www.prrac.org

¹² "Summary: Tribal Youth in the Federal Justice System," US Department of Justice, June 2011. <http://www.bjs.gov/content/pub/pdf/tyfjs.pdf>

Furthermore, in 26 states, Native youth are disproportionately placed in secure confinement in comparison to their population. More specifically, in four states (South Dakota, Alaska, North Dakota, and Montana), Native youth account for anywhere from 29 to 42 percent of youth in secure confinement. Of all youth in the nation who are prosecuted federally, 32 percent are placed in a secure facility for juvenile offenders and 74 percent of these are Native American.¹³ Lastly, from 2004 to 2008, the average conviction rate for tribal youth (92 percent) was higher than for non-tribal youth (87 percent).¹⁴

The national average for new commitments to adult state prisons by Native American youth is almost twice (1.84 times) that for white youth. In the states with enough Native Americans to facilitate comparisons, Native American youth were committed to adult prison from 1.3 to 18.1 times the rate of white youth.¹⁵

In total, the number of Native Americans per capita confined in state and federal prisons is approximately 38 percent above the national average. The rate of confinement in local jails has been estimated to be nearly four times the national average.¹⁶ For some of these reasons, a commission in 2014 recommended that tribes be given full jurisdiction over Indian children and be released from “dysfunctional federal and state controls.”

¹³ "Native Americans and Juvenile Justice: A Hidden Tragedy," Cross, Terry L. November 2008, www.prrac.org

¹⁴ "Summary: Tribal Youth in the Federal Justice System," US Department of Justice, June 2011. <http://www.bjs.gov/content/pub/pdf/tyfjs.pdf>

¹⁵ "Native Americans and Juvenile Justice: A Hidden Tragedy," Terry L. Cross, November 2008, www.prrac.org

¹⁶ "The Unique Circumstances of Native American Juveniles Under Federal Supervision," Donelan, Brenda. http://www.njcn.org/uploads/digital-library/resource_249.pdf

IV: Statistical Measurements of Discriminatory Practices

On a given day, 1 in 25 American Indians age 18 or older is under the jurisdiction of the criminal justice system¹⁷.

According to the latest Bureau of Justice Statistics iteration on the topic, Native Americans are the victims of violent crimes at more than twice the rate of all United States residents—the Bureau of Justice Statistics reported that 88 percent of violent crime committed against Native women is done so by non-Native perpetrators.¹⁸ From 1992 to 1996 the average annual rate of violent victimizations among Native Americans (including Alaska Natives and Aleuts) was 124 per 1,000 residents ages 12 years and older, compared to 61 violent victimizations per 1,000 blacks, 49 per 1,000 whites, and 29 per 1,000 Asians (Bureau of Justice Statistics, 1999).¹⁹ Ninety-six percent of those survey respondents reported alcohol abuse as a significant problem, followed by drug abuse (88 percent), and domestic violence (80 percent).²⁰ Of the eight social problems respondents were asked to rate, youth gangs ranked second to last as a serious problem (by 52 percent of communities) and violent juvenile crime ranked last (42 percent).²¹

The assault of Native peoples by non-Native perpetrators has a long history in South Dakota, notably in the case of former Governor Janklow who was once employed as the Rosebud tribal court attorney, but upon facing rape charges levied by his babysitter

¹⁷ Note; that represents 4 percent of the adult population, whereas the national average is roughly 0.94 percent

¹⁸ U.S. Department of Justice Office of Justice Programs, “American Indians and Crime, 1999-2002,”

¹⁹ “The Unique Circumstances of Native American Juveniles Under Federal Supervision,” Donelan, Brenda. http://www.njln.org/uploads/digital-library/resource_249.pdf

²⁰ “Youth Gangs in Indian Country.” Office of Juvenile Justice and Delinquency Prevention. March 2004. https://www.ncjrs.gov/html/ojjdp/jjbul2004_3_1/contents.html

²¹ Ibid.

Jacinta Eagle Deer he refused to return to the tribe and was subsequently disbarred for that reason. Jacinta was later found dead on the side of a road after an apparent hit-and-run, and her killer was never found.²²

V: Examples in Leadership

Unconscionable examples set by state leaders have become a model for state employees to follow.

Recently it has been exposed that the current Attorney General Marty Jackley initiated an effort to stifle the investigation of a Brown County State's Attorney and a Court Appointed Special Advocates (CASA) worker who attempted to assist the foster children under the "care" of Richard and Gwendelyn Mette. The Department of Social Services claimed that the ten years of sexual abuse in the Mette household was fabricated by the children and the state workers. The police, however, found extensive evidence confirming the children's allegations, including video tape recordings. After the foster father Richard was sent to prison, the DSS put those same children back into the home with the foster mother Wendy who was present and complicit throughout the years of sexual abuse. At the behest of Attorney General Jackley, the State Attorney and CASA worker were both indicted on witness tampering charges, which were summarily dismissed due to a complete lack of evidence. Those actions ultimately cost the two state workers \$160,000 in legal fees associated with their defense, and this example is one instance among many in an ugly pattern of thought and behavior toward the Native population, as well as toward those who support Native people in South Dakota.

Another shocking example in the pattern of state leadership's acquiescence to violence

²² McCarthy, Jack, "Who Killed Jacinta Eagle Deer?" 23 August 2003, Counterpunch Press, available from <http://www.counterpunch.org/2003/08/23/who-killed-jancita-eagle-deer/> accessed 1 February 2015

against Natives in South Dakota involves a different State Attorney's office. In 1999, State Attorney Dan Todd was unwilling to compose a case to seek justice for Robert Many Horses, who was killed by four teenagers in Mobridge, SD. In that instance, Attorney Todd had the information regarding exactly who it was that stuffed a mentally disabled Lakota child into a trash can in a Mobridge alley and closed the lid, which ended up killing that child. Attorney Todd considered the act a "prank" and thus did not meaningfully prosecute any of the four individuals responsible (three of whom were eighteen years or older at the time). A few years later, Todd was appointed to serve as the Attorney for the Department of Social Services; he served there during the years in which the Mette household travesty transpired, again failing to seek prosecution to protect children under State supervision.

VI: Additional Problems in Addressing Justice for Natives

The roots of these problems lay within the nexus of money and racism.

The roots of these problems are money and racism. South Dakota has a financial incentive to take Indian children into the state foster care system because it receives upwards of \$79,000 per child per year from the Federal government to provide foster care. If and when the State transfers those children into juvenile detention centers, there is additional Federal funding available, as is the case with transfers to state prison. Indian children, the most vulnerable in the country, bring in approximately \$65 million in Federal funding to South Dakota each year. This provides a financial incentive to continue removals from tribe and family, favoring placement in the foster care and juvenile justice systems.

On the other hand, finances are in short supply for the Indian community. The average Indian family in South Dakota ranks among the poorest in the country, and typically do not

have the means to hire a private attorney to defend their families and represent their children in court. Instead they are dependent on public defenders who manage hundreds of cases each year. Until there is an improved educational capacity for Native youth to gain college and legal educations, it will be nearly impossible for Indian individuals to access culturally proponent representation in court.

The proper solution to address these issues is for the Federal government to begin reallocating resources directly to the tribes. The tribes must begin to manage their own child and family service programs, their own juvenile detention facilities, and also healing programs. The continual support of Tribal Title IV-E programs and court training will provide an opportunity for this type of development to occur, and should be encouraged by all necessary Federal agencies, including the Department of Justice and Health and Human Services, as well as support for an expanded educational capacity in Native colleges.

VII: What We Can Do to Move Forward

Local organizing must continue in our community. If Rapid City and the rest of South Dakota are to understand our position, we must speak in unison, explicitly to these issues.

The Department of Justice has already recommended that the court system ease the stress on those who are struggling financially, which is entirely applicable to South Dakota's Native populations, who rank among the highest in nationwide poverty indices. In order to transcend the paradox of increasing incarceration expenditures, the federal government must begin empowering Indian tribes by funding tribal child and family service

programs and tribal juvenile detention and drug rehabilitation centers. Alcoholism continues to pose a problem on reservations. Seventy percent of jailed Native Americans convicted of violent crimes reported that they had been drinking at the time of the offense. If a reallocation of resources towards drug rehabilitation, housing services, transportation, and cultural healing programs addressing intergenerational trauma begins to transpire, it will reduce the burden on governmental expenditures overall as well as reduce tensions between the Native population and South Dakota police. These components can then become the basis for a positive relationship, and ultimately contribute to forming a partnership with tribes who are in the process of developing child and family service programs and preventative initiatives.

Lastly, despite the best of intentions bolstering "cultural awareness" initiatives, South Dakota cannot remedy the current situation without hiring a police force which more accurately reflects its' service population. As FBI Director James Comey recently remarked, "It's hard to hate up close." Until a tightly knit relationship is forged between local police and Native communities across the state by means of community policing and a shift in hiring practices, South Dakota will continue struggling with attempts to address racial issues involving the Native population and state police.