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A REVIEW OF SOUTH DAKOTA CRIMINAL JUSTICE: A STUDY OF RACIAL DISPARITIES BY RICHARD BRAUNSTEIN & STEVE FEIMER

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I. INTRODUCTION AND BACKGROUND

In December 1999, the South Dakota State Advisory Committee to the United States Commission on Civil Rights³ held a fact-finding forum to review the administration of justice in the State judicial system as it applies to Native Americans.⁴ The Committee found that the American Indian community in the State believes that law enforcement and the courts treat non-Indians more fairly than Indians in similar situations, that there are two systems of justice in South Dakota: one for non-Indians and another for Indians. The Committee particularly noted a number of disturbing incidents that occurred during 1999, seemingly supporting the beliefs of the American Indian community.

DEATH OF ROBERT "BOO" MANY HORSES

A well-liked 22-year-old Native American male who suffered from fetal alcohol syndrome was found dead in a garbage can in an alley in Mobridge, South Dakota.⁵ Police arrested four white teens—two 19-year-olds and two juveniles—in connection with his death.⁶ The teens and Mr. Many Horses had been drinking together earlier.⁷ Mr. Many Horses was very intoxicated.⁸ The

1. Enrolled member, Oglala Lakota Tribe, and the Executive Director of First Nations Oweesta Corporation, a national financing intermediary that offers technical assistance and capital to assist Native communities establish community development financial institutions. Appointed to the U.S. Commission on Civil Rights in 1999 and is the first Native American to serve on the Commission. Nominated in 1998 as South Dakota Democratic candidate for lieutenant governor.

2. Member, South Dakota Advisory Committee to the United States Civil Rights Commission. This review is written from the perspective of membership on the Advisory Committee that recommended the Study, not from the perspective of a detached scholar. This disclosure is not to suggest uncritical favor toward the Study, but to provide a necessary context for the discussion in this article.

3. The U.S. Commission on Civil Rights is an independent, bipartisan, fact-finding agency of the federal government. The President and the Congress appoint its members. Civil Rights Act of 1957, 42 U.S.C. § 1975 (2000). The Commission appoints Advisory Committees in the 50 states and District of Columbia to assist it in its efforts. Civil Rights Act of 1957 § 1975a(d) (resulting from the Civil Rights Commission Amendments Act of 1994). Pub. L. No. 103-419, 108 Stat. 4338.

4. SOUTH DAKOTA ADVISORY COMM., UNITED STATES COMM'N ON CIVIL RIGHTS, NATIVE AMS. IN SOUTH DAKOTA: AN EROSION OF CONFIDENCE IN THE JUSTICE SYS. 3 (Mar. 2000) [hereinafter Report].

5. *Mobridge Fears Killing May be Hate Crime*, ARGUS LEADER (Sioux Falls, S.D.), July 4, 1999, at 3B.

6. *Id.*

7. *Trial of Teens Centers on Whether Death Was Crime*, ARGUS LEADER (Sioux Falls, S.D.), Aug. 7, 1999, at 2B.

8. *Official: Alcohol Could Have Killed Mobridge Man*, ARGUS LEADER (Sioux Falls, S.D.), Sept. 2, 1999, at 1B. An autopsy report showed that the victim's blood-alcohol content to be 0.446—four times the then legal limit to drive. *Id.*

teens “thought it would be funny” to place the young male headfirst in the garbage can.⁹ The prosecutor charged the person who actually stuffed the victim in the trash can with second-degree murder and aggravated assault and the other three teenagers with aiding and abetting, accessory to a crime, and not reporting a felony.¹⁰ All were charged as adults.¹¹ The four were released on bond and placed on house arrest.¹²

The prosecutor, after receiving the autopsy report that showed the victim’s cause of death as alcohol poisoning, later amended the complaint to charge the defendants with the lesser crimes of manslaughter and aiding and abetting manslaughter.¹³ It was the prosecution’s contention that providing alcohol to the victim, who was already intoxicated, and placing him in a garbage can “prevented him from getting proper medical care” and was tantamount to manslaughter.¹⁴ The court disagreed and dismissed all the charges. The judge stated that it is not against the law to provide alcohol to a person of legal age.¹⁵ He also relied on expert testimony that the defendants did not know that the victim was so intoxicated as to need medical attention and that putting him in the garbage can had no bearing on his death by alcohol poisoning.¹⁶

From the time the victim’s body was found to when the charges were dismissed, Native Americans voiced the opinion that if the situation had been reversed—had the defendants been American Indians and the victim white—the case would have been handled differently.¹⁷ Many in the Indian community believed the white teens received preferential treatment when they were placed on house arrest instead of being jailed.¹⁸ They also believed a racially-motivated crime had been committed by the white teenagers on the Indian male, and the teens should have been charged with a hate crime.¹⁹ Furthermore, Indians did

9. *Trial of Teens Centers on Whether Death Was Crime*, *supra* note 7.

10. *Mobridge Fears Killing May be Hate Crime*, *supra* note 5.

11. *Id.*

12. *Suspects in Indian Man’s Death Pampered, Critics Say*, ARGUS LEADER (Sioux Falls, S.D.), Sept. 8, 1999, at 3B.

13. *Charges in Mobridge Man’s Death Changed*, ARGUS LEADER (Sioux Falls, S.D.), Aug. 4, 1999, at 5B. The individual that placed the Indian male in the trash can was now charged with first-degree manslaughter, aggravated assault and abuse or neglect of a disabled adult. The three others were charged with aiding and abetting manslaughter. *Id.*

14. *Id.*

15. Steve Young, *Charges Dropped in Death*, ARGUS LEADER (Sioux Falls, S.D.), Sept. 29, 1999, at 1A.

16. *Id.*

17. *Suspects in Indian Man’s Death Pampered, Critics Say*, *supra* note 12 (Indians say the white teen-agers charged in the death of the Indian victim should have remained in jail instead of being placed on house arrest, and that the white teens were being treated better than Indians would be if the roles had been reversed). See also *Indians Schedule Walk in Memory of Victim*, ARGUS LEADER (Sioux Falls, S.D.), July 17, 1999, at 2B (organizer of walk said that marchers are upset that those charged in the death of the victim were able to get out of jail on bond); *Police: Teen Violates House Arrest*, ARGUS LEADER (Sioux Falls, S.D.), Sept. 21, 1999, at 1B (American Indians say that the four teens have been treated better than Indians in the same situation would be); *Charges Dropped in Death*, *supra* note 15 (school board member of nearby Indian reservation school states the dismissal of the charges against the four teens in state court is a case of “white justice”).

18. *Judge Defends Decision to Put Teens on House Arrest*, CAPITAL JOURNAL (Pierre, S.D.), Sept. 7, 1999, at 3.

19. *Indian Activists Seek New Prosecutor in Death Case*, ARGUS LEADER (Sioux Falls, S.D.), Sept. 24, 1999, at 2B.

not believe the prosecutor was aggressively pursuing the case, and they demanded that he be replaced.²⁰ The prosecutor denied all the allegations.²¹ Despite the dismissal of the criminal charges, a wrongful death action has been filed by the family of Mr. Many Horses.²²

DEATH OF JUSTIN REDDAY

On a rural road near Sisseton, South Dakota, a 21-year-old Native American male died after being run over by pickup truck.²³ The driver of the truck, a 17-year-old white male, said that the victim was lying in his lane of traffic and he did not swerve to miss him because, "it is illeg[al] to cross the white line or if it is solid yellow line or even if it wasn't it is illegal to swerve."²⁴ The driver was legally intoxicated at the time of the incident.²⁵ A grand jury indicted him for vehicular homicide.²⁶ The prosecutor did not believe he could get a conviction on the homicide charge, so he had the indictment dismissed and charged the driver with driving under the influence.²⁷ The mother of the victim, upset about this, stated, "If my son had been driving, rather than the victim, he'd already be serving 20 years."²⁸

Many in the Native American community believed that this incident highlighted the dual system of justice in the county. A year earlier an American Indian woman had been driving a vehicle that struck a pickup truck, killing the driver, who was non-Indian.²⁹ The same prosecutor who dismissed the vehicular homicide indictment against the white male in the Redday case charged the Indian woman with vehicular homicide and second-degree murder.³⁰ The woman began serving a fourteen-year sentence, of a possible maximum fifteen years, within a month of the accident.³¹ The county sheriff, who had served in the position since the mid-70s, said the Indian woman's sentence was the longest he had ever seen for that crime.³² The prosecutor stated that the primary reason for the different outcomes in the two cases was that the Indian female was an adult at the time of her crime and the white male was a juvenile.³³

20. *Id.*

21. *Id.*

22. Telephone Interview with Charles Abourezk, Attorney, Abourezk Law Office (Apr. 8, 2003). The action filed by the family of Mr. Many Horses has now been settled. *Id.*

23. Lee Williams, *Penalty in Road Death Sparks Charges of Racial Injustice: Prosecutor Drops Vehicular Homicide Count in Sisseton*, ARGUS LEADER (Sioux Falls, S.D.), Oct. 15, 1999, at 1A.

24. S.D. Highway Patrol Voluntary Statement Form, May 23, 1999 (on file with authors).

25. S.D. Highway Patrol Fatality Report, May 30, 1999, at 5 (on file with authors).

26. Williams, *supra* note 23, at 1A.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *See Report, supra* note 4, at 5.

RAPID CREEK DEATHS

During a thirteen-month period, bodies of eight men were found in a shallow creek running through Rapid City, South Dakota.³⁴ Six of the men were Native American.³⁵ Most were homeless, and all but one had a high blood-alcohol level.³⁶ There were rumors of white supremacists or “skinheads” targeting the men, but there was no proof of such.³⁷ There was no direct evidence of foul play in the creek deaths.³⁸ However, the fact that there were so many drownings in such a short period of time, when normally there is only one accidental drowning per year, had left many people skeptical that they were accidental.³⁹ The chief of police said, “Frankly, we don’t know what caused this (number of deaths), but we believe it’s gone past coincidence.”⁴⁰ A number of law enforcement agencies and a private “information clearinghouse on traveling criminals” have looked at the information, trying to uncover any clues that might provide answers to the suspicious deaths.⁴¹ No answers have been found; no arrests have been made.⁴²

PINE RIDGE MURDERS

Two Native American men were found brutally murdered on the Pine Ridge Indian Reservation near the small town of White Clay.⁴³ White Clay, which is just across the South Dakota border in Nebraska, is home to four stores that exist primarily to sell alcohol to Indians living on the reservation, where alcohol is banned.⁴⁴ Reservation residents accuse the storeowners of exploiting a population devastated by alcoholism and blame the owners for the murders of the two Indian men, who purchased alcohol in White Clay’s stores. “If them [sic] bars weren’t there, a lot of our people, including my cousin and younger brother, would be alive today,” said a relative of the two slain men.⁴⁵ A series of demonstrations took place during the summer of 1999 to protest the alcohol sales and to complain that the investigations into the two deaths were insufficient.⁴⁶

34. Hugh O’Gara, *Creek Deaths Puzzle Police*, RAPID CITY JOURNAL, July 17, 1999, at A1.

35. Report, *supra* note 4, at 4.

36. Hugh O’Gara, *Foul Play?*, RAPID CITY JOURNAL, Aug. 22, 1999, at A2.

37. *Id.*

38. O’Gara, *supra* note 34.

39. *Id.*

40. *Id.*

41. *Id.*

42. Interestingly, there has not been a single death along the creek since the South Dakota Advisory Committee to the U.S. Commission on Civil Rights held its fact-finding forum in December 1999 to bring additional attention to the creek deaths.

43. Carson Walker, *Activists to Protest Speed of Murder Investigation*, ARGUS LEADER (Sioux Falls, S.D.), June 23, 1999, at 6B.

44. Carl Quintanilla, *Message in a Bottle*, WALL STREET JOURNAL, July 7, 1999, at A1. White Clay, population 22, has four stores, all white-owned, that sells approximately \$3 million in beer a year to Indians on the Pine Ridge Indian Reservation. *Id.*

45. *Nebraska Town Evacuated Before Protest*, ARGUS LEADER (Sioux Falls, S.D.), July 3, 1999, at 1A.

46. *175 Protest Peacefully in White Clay March*, ARGUS LEADER (Sioux Falls, S.D.), Aug. 8, 1999, at 6B.

The FBI, which is responsible for investigating major crimes occurring on the reservation, maintained that it aggressively investigated the homicides.⁴⁷ The murders remain unsolved.

The Committee issued a Report of its findings in March 2000⁴⁸ and recommended, among other things, that research be conducted to determine if bias against Native Americans existed in the law enforcement, prosecutorial, and judicial functions in the state. When the Report was first released, it was met with a certain amount of ire and skepticism.⁴⁹ After additional public discussion, the current Study was commissioned through the Governor's Office.⁵⁰

This recently completed Study, written by members of the University of South Dakota's Government Research Bureau, is by its own terms not definitive⁵¹ but nevertheless goes far in the yet uncompleted journey to examine the persistent claim of racial disparities in the South Dakota criminal justice system.⁵² The Study concluded that there are indeed disparities in the treatment of Native Americans within the South Dakota criminal justice system. However, there were two significant caveats to this conclusion: namely that the disparities appear in many, but not all, aspects of the criminal justice system (including a few instances where disparity adversely affects whites) and the potential fact that the disparities weighing against Native Americans may have additional explanations.⁵³

II. STUDY FINDINGS

The starting point, of course, is the fact that Native Americans were "over represented in the South Dakota criminal justice dataset and Whites were under represented. American Indians make up 8.3% of the State's population and 16.7% of the criminal justice dataset."⁵⁴ The point of the Study is to investigate these "problematic" figures.⁵⁵ In tracking criminal defendants moving through the South Dakota criminal justice system, the Study found significant disparities involving Native Americans at the following points: the setting of bond, the

47. Walker, *supra* note 43.

48. *Id.*

49. Terry Woster, *Janklow: Civil Rights Report is "Garbage,"* ARGUS LEADER (Sioux Falls, S.D.), Apr. 5, 2000, at 1A.

50. Richard Braunstein & Steve Feimer, *South Dakota Criminal Justice: A Study of Racial Disparities*, 48 S.D. L. REV. 171 (2003) [hereinafter Study].

51. According to the Study, statistically significant disparities exist in the treatment of Indians and whites in many parts of the South Dakota criminal justice system, but a further study is needed to determine whether such disparities are wholly (or partially) explainable in terms of race or whether other markers such as poverty, education, and employment history are of some or equal significance as race. Note also that the terms "Indian" and "Native American" (as well as the terms "white" and "non-Indian") are used interchangeably throughout this review.

52. As the title of the Study indicates, the research is about disparities in the South Dakota state criminal justice system, not the federal or tribal systems. This does not mean that these other systems are necessarily above reproach in their treatment of Native American defendants. They are simply *not* the subject of this study.

53. Study, *supra* note 50, at 189-90.

54. Study, *supra* note 50, at 176.

55. *Id.*

length of time in the system prior to sentencing, and time imposed and time served in many but not all categories of offenses.

In the context of charging decisions, the Study found that overall there was no disparity. Based on the available data, the Study noted “that the South Dakota criminal justice system is not charging American Indian defendants with more crimes per docket or with, on average, more serious crimes.”⁵⁶ At the bond setting stage, however, significant disparity was found in that American Indians were overrepresented (27%) in the category of cases where bond was denied. The Study found that this was “not wholly unexpected”⁵⁷ largely because, at a judicial focus group meeting, state judges indicated they were concerned about the “flight” risk of Native American defendants, who presumably might flee to the reservation and be outside the jurisdictional reach of the South Dakota justice system.⁵⁸ This perceived problem itself ought to be subject to empirical study (i.e. how many Native American defendants on bail fail to show up and are “lost” to the state). If there is a problem, a study should further explore whether a legislative or cooperative solution is available.⁵⁹

At the case disposition stage, the Study again noticed disparity in the treatment of Native American defendants. While the disparity is sometimes characterized as subtle the Study found that Native American defendants are less likely to go to trial than white defendants (i.e. more likely to plead guilty) and more likely to be convicted (and less likely to be acquitted). The authors suggest potential explanations relevant to factors such as trust in the system, cultural values, and the nature of legal representation.⁶⁰

Again, at the sentencing phase, the Study found disparity involving Native American defendants and, in certain other instances, disparity involving white defendants. Native American defendants were also underrepresented in the category of defendants receiving a “suspended imposition” of sentence. In addition, Native Americans move more quickly than white defendants through the criminal justice system prior to sentencing.⁶¹ Most startling, perhaps, is the finding relative to the mean differences for aggregate and actual sentences for all crimes. Indians receive aggregate sentences 832 days longer, and actual sentences 667 days longer, than non-Indians.⁶²

56. Study, *supra* note 50, at 177. In fact the Study noted that “[t]he opposite condition was present. Whites in the dataset were charged with slightly more crimes on average and the severity of their charges in aggregate was higher.” *Id.*

57. *Id.* The “focus group” process is not described in much detail. See also *infra* at Part IV.

58. Study, *supra* note 50, at 178. Although not articulated in the Study, presumably this concern focuses on potential legal problems related to extradition.

59. See, e.g., the useful discussion of parole *infra* at n.63.

60. Study, *supra* note 50, at 178 n.32. The proffered explanations do not contain citations of authority. See discussion *infra* at Part IV.

61. Study, *supra* note 50, at 178-79. The Study noted that Native American defendants generally received more severe sentences than whites for violent crimes and white defendants received more severe sentences than Native Americans for non-violent (property) offenses. *Id.* at 182.

62. *Id.* at 181. As citizen laypersons, we find these numbers astounding. Yet, the study apparently dismisses them as not statistically significant. See *id.* And yet, one of the Study’s authors, Richard Braunstein, quoted these numbers without equivocation at a public meeting of the Advisory Committee. See, e.g., Jon Walker, *Study Shows Racial Disparity*, ARGUS LEADER (Sioux Falls, S.D.), Feb. 13, 2003, at B1. The significance of these numbers definitely needs clarification.

In the context of alternatives (i.e. probation and parole) to incarceration, oddly there is no discussion or mention of probation but quite a significant discussion and review of parole. In the context of parole, the data indicated that prior to 1996, Native American inmates on average served fifty-four more days than white inmates before being awarded parole. After 1996, this disparity disappeared. Why? The authors concluded that reform legislation set out in S.D.C.L. § 24-15A⁶³ was the driving force in reducing the disparity, because it changed the process for awarding parole from a largely discretionary decision made by the Board of Pardons and Paroles to one that was based on a neutral formula.

These parole findings are not only significant in and of themselves, but provide a revealing and healthy precedent for potential future remedial action. The success of the parole reform legislation demonstrates that important positive change can be effectuated by legislative (and administrative) efforts, and its accomplishment refutes the old cliché that the law cannot affect the way people think and act with respect to other people.

III. STUDY CONCLUSIONS

Despite the disparities found in the Study, the authors are much more modest when it comes to formulating conclusions about their findings. The authors crop and contain what they have described by noting that the “limitations of the current dataset” prevent any assessment of “why these processes show disparities.”⁶⁴ In ordinary language, the authors seem to say that while these disparities look like they stem from the configuration and use of race within the criminal justice system, they cannot be sure of this in a social science research sense. As a result, the authors strongly recommend a Part II study that would use more refined data in order to more adequately plumb the coordinates of race and other variables such as poverty, education, and employment history within the South Dakota criminal justice system.⁶⁵

IV. CRITIQUE OF THE STUDY

While there is no doubt that this Study is pathbreaking in its accomplishment, there are some questions and concerns that remain. They include one element of methodology, the breadth of coverage, the matter of ‘opinion,’ and review of the existing literature. As to methodology,⁶⁶ the Study

63. Study, *supra* note 50, at 185-86. S.D.C.L. § 24-15A-1 (1998) provides:

The provisions of this chapter do not apply to persons sentenced to prison for crimes committed prior to July 1, 1996, except the provisions in §§ 24-15A-18 and 24-15A-19 involving multiple sentences occurring both prior and subsequent to the enactment of this chapter.

Id. See also S.D.C.L. § 24-15A (1998 & Supp. 2002); S.D.C.L. § 24-15A-6; 1996 S.D. Laws Ch. 158 (noting that parole date is calculated mathematically by subtracting jail time credit from total sentence length).

64. Study, *supra* note 50, at 189.

65. *Id.* at 190. In fact this research is “currently underway.” *Id.* at 189 n.81.

66. Since the authors lack Ph.D.’s in statistics, we are not in a position to evaluate the overall research design and the statistical methods employed by the researchers Braunstein and Feimer. We assume they meet the proper professional standards for such research. But see also the concern raised in

does not adequately describe its use of focus groups. The Study refers to focus groups in two contexts: one involving state judges and the other involving the Native American public. Yet, no definition of what a focus group is, or what its social science function is, is provided. In addition, there is no discussion of how these focus groups were selected and what actually took place at the focus group meetings. Surely the public (as well as the professional) readership needs to be better informed by the authors about this aspect of their research.

In the context of the breadth of coverage, there appear to be two areas of omission that are neither noted nor explained. The Study makes no reference to Native American or white women defendants. It goes without saying that potential disparities involving women defendants are just as important as they are for men. If there is a reason (besides unfortunate oversight) for the Study to not include women defendants within its field of subjects, it clearly needs to be expressed.⁶⁷ Certainly, no such limitation was intended in the recommendations of the Advisory Committee report.⁶⁸

In addition, as noted above, there is no discussion in the Study about the award of probation. Since the award of probation is such a pivotal decisional point in the criminal justice system, its omission from the Study is puzzling at best. Decisions by judges to award probation (or not) are significant markers in the system—you go home (with obvious limitations) or you go to prison. Such decisions are so critical that the failure to discuss them requires, at a minimum, an explanation such as limitations in the data, or to be taken up in Part II of the Study. In the absence of explanation, the very comprehensiveness of the Study is called into question.

The next point of concern is related to matters of consistency and ‘opinion’. Although what follows might sound harsh, it is not meant to be. The basic point here is that although the authors—particularly in their conclusion—call for the necessity of additional study and analysis to pinpoint the effect of race and/or other variables such as poverty, education, and employment, the authors themselves often venture ‘explanations’ that focus on race and culture. In addition, these potential ‘explanations’ do not come with any citation to authority. For example, the authors refer to both ‘broken treaties’ and the notion that “American Indian culture prompts American Indian defendants to accept plea offers more readily than Whites”⁶⁹ without any supporting authority. The point is not that such authority does not exist, but it needs to be cited to provide the necessary support to avoid even the appearance of substituting ‘liberal’ bias for analytical rigor.

Finally, the Study fails to provide any review of literature concerning the

footnotes 54-62, *supra*.

67. If women are included in the aggregate data analyzed in the Study, this needed to be made clear to the reader along with an explanation why women were not analyzed separately given the obvious concern for gender bias.

68. See generally Report, *supra* note 4.

69. Study, *supra* note 50, at 178. “An additional matter is the cultural avoidance of confrontation with a system that many do not understand or trust, which may result in a survival strategy rather than adversarial strategy.” *Id.* at 178 n.32.

findings of previous studies of racial disparities in the criminal justice system in South Dakota and other states in order to provide helpful background to the reader. Is what the authors have found typical or atypical with regard to other studies of racial disparity in South Dakota and elsewhere? Regardless of ultimate findings, what has been found before in other studies is a critical dimension for weighing the severity of the problem and any potential remedial direction to pursue. Readers who are not conversant with the existing literature of racial disparity will be somewhat at a loss in locating an adequate frame of reference or point of comparison for the instant study.

V. RECOMMENDATIONS

While the Study and its anticipated follow-up are indeed watershed events in South Dakota, two recommendations are in order. The first is methodological. If the authors are to continue to use focus groups as an element of their research, it makes sense to try to include focus groups of Native American and white defendants. Since the Study is about these individuals and their experience within the South Dakota criminal justice system, they are likely to have important insights about the role of race within that experience.

The second recommendation is grounded in concern for the public policy implications of the Study. Whether or not there is any call for legislative or judicial reform in South Dakota as a result of the Study, there is no doubt that the relationship of Native American people to state institutions and the state political process⁷⁰ will continue to challenge the political, cultural, and legal awareness of the state to respond to concerns of all its citizens. With this in mind, it would seem that a comprehensive review of problems and challenges facing Native Americans, tribes, and the state of South Dakota would demonstrate both the necessary respect and public policy foresight in order to go forward in true partnership for a new beginning.⁷¹ If the Study's content pricks no public conscience about the necessity to be more concerned and responsive to what is happening in the State, it will reveal a public and political intransigence that ill befits a new era in the state of South Dakota.

70. See, e.g., the problems encountered by Native American voters in the recent South Dakota (2002) election as described in a recent newspaper editorial. James Leach, *Journal Ignores Racism*, RAPID CITY JOURNAL, Dec. 21, 2002, at A4. Note too that the increased participation of Native Americans in the state political process has led to five election-related lawsuits filed within the past twelve months by Native Americans against the state of South Dakota and its subdivisions. Yet, there has not been any call for a bipartisan, biracial study of this issue. See, e.g., *Heed Voting-rights Warning*, ARGUS LEADER (Sioux Falls, S.D.), Apr. 3, 2003, at 7B.

71. See, e.g., Frank Pommersheim, *Tribal-State Relations: Hope for the Future?*, 36 S.D. L. REV. 239 (1991) (calling for such a comprehensive report).