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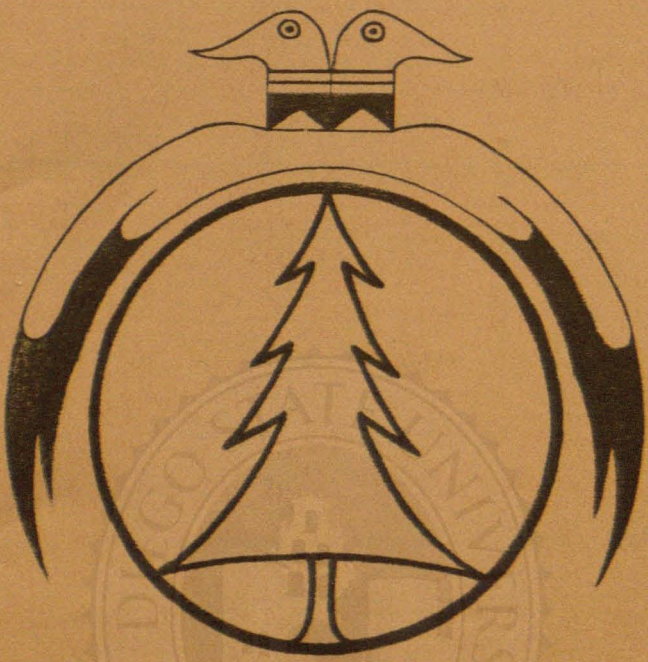

CIVIL RIGHTS OF AMERICAN INDIANS

The United States Commission on Civil Rights

Clearinghouse Publication No. 35 April 1972

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

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This pamphlet, based upon the Commission's publication *American Indian Civil Rights Handbook*, was prepared by California Indian Legal Services.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 —

This booklet explains some of the important civil rights of American Indians. It has been prepared for Indians who live on reservations and for Indians who live off reservations.

Your civil rights are the rights you have as a citizen of the United States, of your State, and of your tribe. To explain all of these rights would take many books. This booklet explains only a few of the more important rights.

All Americans have certain rights under the U.S. Constitution and Federal laws. These rights protect you against unfair acts by government officials and private individuals. In 1968 Congress passed the Indian Bill of Rights, which gives you most of the same rights against your tribal officials. (This 1968 law covers all Native American groups recognized by the Federal Government: tribes, bands, pueblos, communities, villages, rancherias, or colonies.)

Remember: It is up to you to use your rights. If you don't know what your rights are, ask for help from a lawyer. If you cannot pay a lawyer, one will be furnished for you in most criminal cases (except in tribal cases). If you do not have a criminal case, you may be able to get help from a legal assistance program. If you cannot find a legal assistance program by looking in your phone book or by calling the local bar (lawyers') association, contact the National Legal Aid and Defender Association, 1155 East 60th Street, Chicago, Illinois 60637.

1. Freedoms of Speech, Press, and Religion

You have the right to believe what you wish and to say what your beliefs are, in speech or in print. The rights to free speech and press are protected by the first amendment to the United States Constitution and the 1968 Indian Bill of Rights.

No government official—Federal, State, local, or tribal—can punish you for your beliefs or for stating them to others. You have the right to freely join together with others in social, political, or religious organizations such as political parties, committees, churches, or religious groups. The government can make rules about when, where, and how you or your group may speak out in public, but these rules must be reasonable. For example, your tribe could stop your meeting from blocking traffic. But it would be illegal for the tribal government to stop the meeting altogether.

The Federal and State governments cannot favor any one religious group over another. They cannot cut off any government services because of your beliefs or because you say what your beliefs are. In some ways, your tribe may be able to help certain religious groups that have been on your reservation for a long time. But the tribe cannot make you change your personal religious beliefs. You are free to choose your own religion or faith. Or, if you want to, you can decide not to have any religious belief at all. Your tribe cannot make you join any religious group or punish you in any way if you decide not to. In some States, courts have held that freedom of religion protects the rights of members of the Native American Church to use peyote for religious purposes.

An important right is your right to "petition for a redress of grievance." What this means is that you can freely tell your government officials about any problems that bother you. You cannot be stopped from complaining to your tribe's chairman or council members, or joining with others to do so.

2. Right to Vote and Hold Office

Adult citizens have the right to register to vote, join political parties, vote, and run for office in all elections—Federal, State, local, and tribal. No one can charge you a fee, make you pay a poll tax, or make you take a literacy test or speak or read English in order to vote. Elections must be held fairly and all votes must be counted equally. If somebody threatens you or tries to take away your rights to register and vote, report it to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Complaints about unfair tribal elections should be sent to your tribal election committee and the tribal courts.

3. Your Rights If Accused of a Crime

There are many rights to make sure that people will be treated fairly when they are suspected

or accused of a crime. Sometimes these rights are called "due process of law". In using these rights, it is very important to have the help of a lawyer. Here are some of the more important rights of this kind:

(a) Search and Seizure. You have a right against unreasonable searches and seizures. The police generally may not search you or your home, or take your property, without a "warrant". A warrant is a paper describing, very exactly, the place to be searched and the things to be taken. Sometimes, however, the police will not need a warrant to search you or your property. If an officer sees you committing a crime, or if he has a good reason to believe you have committed a serious crime, he may arrest you and search you and the area right around you without a warrant.

If an officer has a warrant, he must be allowed to search the place described in the warrant or he may use force to do so.

If you invite a policeman without a warrant to come into your home and he finds evidence of crime, the evidence may be used against you in court. If you do not want an officer to search you or your property and he does not have a warrant, tell him that you do not give him permission to search. However, if the officer refuses to listen, do not try to stop him. It is dangerous to resist and it may be illegal to do so. Any evidence which a policeman gets during an unlawful search and seizure cannot be used against you.

Police must act reasonably and fairly at all times. They use physical force only when it is necessary to arrest someone or enforce a law. Police may not use physical violence to "teach someone a lesson."

As a citizen, you have the right to police protection. If you have a complaint about police brutality, or other interference with your rights by police officers, or the failure of police to assist, or protect people, write the Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

(b) Right to Counsel. You have the right to get help from a lawyer. In all tribal trials, you have the right to hire a lawyer at your own expense. (Some tribes, however, provide a lawyer without charge.) In all serious criminal cases you will get a lawyer free if you cannot afford one. You should ask for a lawyer as soon as you are arrested and when you are first brought before a judge.

(c) Right Against Self-Incrimination. No person can be forced to be a witness against himself. When in police custody, you do not have to answer questions which might help convict you of a crime. This means you may remain silent. You also may refuse to answer questions unless a lawyer is present. If you give information about a crime or confess to a crime because of force or against your will, the information or confession cannot be used against you in court.

You may voluntarily, of your own free will, answer questions. But remember: When you are questioned about a crime, the policeman may be trying to get evidence to use against you and he is not necessarily your friend.

Whether or not you have been arrested, you cannot be questioned as a suspect unless you are first told of your right to have a lawyer present and of your right to remain silent. If a policeman does not warn you of these rights, any statement you make cannot be used against you in court.

In many cases, the policeman will give you a form to sign which tells you your rights. Do not sign the form until you completely understand your rights (to remain silent and get a lawyer), because if you sign it, the police can later use the form to show that the information or confession was voluntary.

At your trial, you cannot be required to take the witness stand. Your refusal to testify cannot be used to show your guilt. But if you willingly take the stand on your behalf, you lose the right to remain silent and must answer all the questions asked by the prosecutor.

(d) Bail. If you are arrested, you have the right to be released before and during your trial, except in extremely serious cases. Normally you will be entitled to release on your "own recognizance" that is, without having to put up money as security which is called bail. This is especially true

if you are a long-time resident of the area, if you are known to be reliable, and if you are charged with a minor crime.

If bail is required, it must be set at a reasonable amount. If you do put up bail, you will get your money back when your case is over. If you do not appear in court, however, you will lose the money and a warrant will be issued for your arrest.

If you cannot afford bail, you may be able to get the money from a bail bondsman who will pay the bail. Usually he will charge you 10 percent of the amount of the bail.

(e) Excessive Fines or Punishment. Fines or punishment must be reasonable and must fit the crime. Whether or not the sentence is reasonable depends on the case. Some punishment which was common in the past, like torture, is not allowed today. No Indian tribe can set a fine of more than $500 or a sentence greater than 6 months in jail.

(f) Trial and Witnesses. You must be told what the charges are against you within a short time after arrest. Later on, you must be given advance notice of the time and place of your trial.

The trial must be open and public. Your relatives and friends, as well as other people, can attend and watch the trial.

You have the right to a "speedy trial." This means that the government cannot wait a long time before you are brought to trial. You also must be given a reasonable amount of time before the trial to prepare your defense.

You or your lawyer have the right to come face-to-face with all witnesses who testify against you, and you may question witnesses under oath. You also have the right to have witnesses and evidence for your side, and the court will require that they come or be brought to court, if you or your lawyer so request.

(g) Jury Trial. If you are accused of a serious crime, you have a right to trial by jury. However, there is no right to a jury if the offense is minor. The Indian Bill of Rights guarantees a jury trial in tribal courts only where the crime is punishable by imprisonment. In State courts you are entitled to a jury trial if the most time in jail would be more than 6 months if you are convicted.

In Federal courts, the verdict of the jury must be unanimous; that is, all of the jurors must agree that you are guilty. This is true of most State courts and tribal courts, although you can be convicted in some courts by less than a unanimous vote.

Juries must be fair and must not be on either side before the trial begins. You do not have a right to a jury which has Indians on it, but you do have a right to a jury from which Indians are not deliberately kept off. You are entitled to be tried by your "peers"; in other words, a cross-section of the community in which you are being tried.

(g) Double Jeopardy. You cannot be tried for the same crime twice. But if one act is a crime under both tribal and State laws, a person may be tried by both governments separately. If a person appeals a conviction and the conviction is reversed, he may be tried again for the crime.

(h) Habeas Corpus. In addition to regular trials and appeals, the court-issued writ of habeas corpus is a way of testing whether a prisoner is being illegally held in either a tribal or a nontribal jail. This paper requires those holding the prisoner to bring him before the court and to give evidence that he or she is not being held in jail without legal cause. It is important to know that a citizen also can apply for a writ of habeas corpus for a close friend or relative.

An application for a writ of habeas corpus must be in writing and must state the name of the prisoner and where he is being held. It should then state, with as much detail as possible, how the prisoner has been denied his rights. The application should be signed under oath before a notary public and should be sent to the nearest Federal district court judge.

If the judge decides that there may have been a violation of the prisoner's rights, he will order a hearing to see if the facts in the application are true. If the facts stand up, the court will order that the prisoner be released or be given a new trial with his rights protected.

4. Right to be Free from Discrimination

Federal laws make various ways of discriminating illegal:

(a) Welfare and Housing. Government officials—State, Federal, and tribal—must treat you fairly and reasonably. They cannot discriminate against you because of your race.

For example, if you are on welfare, government and tribal officials may not cut off your payments unless they notify you ahead of time and give you a chance for a hearing. Also, they cannot put you out of public housing without a hearing. You have a right to have a lawyer or friend at this hearing, a right to look at government papers, and a right to question government witnesses.

A landlord cannot refuse to rent or sell to you because of your race. Nor can he charge you a higher price because of your race. If you feel you have been discriminated against in housing, you should report it to the Department of Housing and Urban Development, Washington, D.C. 20410.

(b) Employment. Employers, government or private, cannot refuse to hire or promote you because of your race, religion, color, or sex. Nor can they give you bad working conditions because of your race. If you are discriminated against by a private employer, you can complain to the Equal Employment Opportunity Commission, 1800 G Street N.W., Washington, D.C. 20506.

In some cases special employment benefits may be given to Indians. For example, in reservation areas it may be legal and proper for Federal contractors to give special opportunities to Indians.

If you seek a job with the Bureau of Indian Affairs or the Indian Health Service, you are entitled to a preference in hiring over non-Indians. The Bureau of Indian Affairs must hire you for any vacant position for which you are qualified in preference to non-Indians.

(c) Education. Like all children, Indian children have a right to a full and equal public education. They cannot be prevented from attending public schools; be given inferior school facilities, supplies, or teachers because of their race or because of the tax-exempt status of Indian land. Federal programs such as school lunch programs and the Johnson-O'Malley program for Indian children must be operated fairly and the funds must be spent for their intended purpose. Schools that violate any of these rights could have their Federal funds cut off.

If you or your children are being discriminated against in public schools, send a complaint to the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201.

CONCLUSION

This pamphlet has outlined some of the important rights of American citizens. It is true that these rights are not always respected. One important way to improve the situation is to have every citizen know his rights and do his best to protect them. Bringing your complaints to the attention of the agencies mentioned in this pamphlet is one way to do this.

Any written complaint should include:

1. Your name.
2. Your address.
3. The name and address of the person(s) the complaint is against.
4. A description of the discrimination against you; the date or dates; the place or places; and the names of persons who were present and who can help describe or support your complaint.

If you do not know which agency to contact, send your complaint to:

Complaints Division
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

The Commission will forward it to the appropriate agency.

U. S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

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