

# FEDERAL PUBLIC DEFENDER

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October 20, 2014

United States Sentencing Commission  
via e-mail to: [pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov)

Re: Possible Formation of Tribal Issues Advisory Group

To Whom It May Concern:

I have received the request for public comments on the possible formation of a Tribal Issues Advisory Group within the Sentencing Commission. I am writing to express my opinion that such a group would be vital to the application of the Sentencing Guidelines to Tribal areas, particularly in light of the increase in criminal law jurisdiction occasioned by the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013. I also wrote to urge that this group include individuals have been practitioners of federal criminal defense work and are also of Native heritage, such as Professor Barbara Creel of the University of New Mexico law school, who also instructs in the Indian Law Clinical program at that institution.

I am an Assistant Federal Public Defender in the Portland, Oregon office of the Federal Public Defender. Our office frequently defends individuals of Native American descent accused of criminal conduct. These individuals, and these cases in general, come with

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numerous concerns, issues and challenges that are unique.<sup>1</sup> Many of the problems faced by our clients are caused by the historical treatment of the Native Americans by our government, and the continuing impact of such treatment on virtually all aspects of Tribal life. I believe that we have an obligation to recognize these issues, and that this obligation is wholly unmet in our current United States Sentencing Guideline scheme.

I therefore believe that a Tribal Issues Advisory Group would be an important addition to the Sentencing Commission. I am concerned, however, that there would not be enough representation by individuals who can speak from both a Native background and from a criminal defense background. There are just not that many Native American individuals who have practiced in the criminal defense arena, including both federal criminal and Tribal courts. Such individuals have critical perspectives that are not shared by others, because they understand the position of both the defendants who are accused of having engaged in crimes on Indian land, and the other Tribal members who have to live with pervasive impact of such criminal conduct on their communities. Therefore, I urge that any such Advisory Group – whether permanent or Ad Hoc – seek out such individuals and include them in its membership.

I can recommend one such individual, Professor Barbara Creel. Again, Professor Creel is with the University of New Mexico law school and the Indian Law Clinical program at that institution. Professor Creel is a member of the Pueblo of Jemez and also a former Assistant Federal Public Defender who has actively defended Native Americans prosecuted under the Major Crimes Act in federal court, at both the district court and appellate levels. I also know that Professor Creel has extensive experience in numerous Tribal courts arising from her clinical work. As such, Professor Creel has a depth of knowledge and experience that would be critical to any advisory or practice group considering the question of how the Sentencing Guidelines might be revised to better serve our Tribal and Native populations. I know that Professor Creel is passionate about the welfare of Natives and their treatment in the criminal courts and works with dedication on these issues. There is no question that Professor Creel would be an asset to any Sentencing Commission Group on the subject of Tribal Issues.

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<sup>1</sup> Many of the challenges are well known and include systemic problems of drug and alcohol abuse, poverty, unemployment, and an astonishing lack of opportunities in most Tribal areas. Other challenges are not as well known, such as the fact that many such clients may be perpetrators in one case, while a victim in another matter.

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I sincerely hope that the Commission forms a Tribal Issues Advisory Group, and that this Group includes in its membership individuals such as Professor Creel.

Respectfully,



C. Renée Manes

Assistant Federal Public Defender