

Dear Judge Saris and Members of the United States Sentencing Commission,

I write in response to your request for public comment on the merits of forming a Tribal Issues Advisory Group as stated in 79 Fed. Reg. 49380 (Aug. 20, 2014).

I strongly approve the formation of an Advisory Group. I have spoken and written about the unfairness of applying Guideline sentences to Native Americans, particularly in North and South Dakota. The fact is that crimes committed on reservations by tribal members subject to federal jurisdiction are punished much more severely under federal law than similar crimes committed by non-Indians off the reservation, which are often subject to state law. I refer you to Jones and Ironroad, *Addressing Sentencing Disparities for Tribal Citizens in the Dakotas: A Tribal Sovereignty Approach*, 89 N.D. L. Rev. 53 (2013), which discusses in more detail the problem of disparate sentencing affecting Native Americans.

In order to alleviate this disparity, the Advisory Group should seriously consider alternatives to Guideline sentencing for Native Americans who are subject to federal jurisdiction simply because they committed their crimes in Indian country. My view is embodied in the above-referenced law review article, which recommends that federal courts be granted "the authority, upon the exercise of an opt-in by an Indian tribe which exercises governmental authority over the Indian Country where a particular crime occurs, to depart downward and impose a sentence upon a Native offender comparable to a typical sentence imposed in a state court for a similar offense if the disparity in state and federal law is of a certain significance." *Id.* at 73. The Advisory Group should consider this reform as an effective solution to the sentencing disparity problem.

For a further statement, I attach a letter to me from Chief Judge Ralph R. Erickson on the subject of Indian country sentencing disparity dated January 2, 2014. I also recommend the following persons to serve on a Tribal Issues Advisory Group (their curriculum vitae are attached):

1. Chief Judge Ralph R. Erickson, District of North Dakota. Judge Erickson served on the Tribal Courts Committee of the Eighth Circuit Judicial Council. He is very knowledgeable on tribal issues and spoke with Attorney General Holder on May 17, 2013, about Indian Country sentencing.

2. Chief Judge Jeffrey L. Viken, District of South Dakota. Judge Viken is very knowledgeable on tribal issues. He and his wife were adopted as hunka members of a traditional extended family on the Pine Ridge Reservation in South Dakota and for twenty-five years have shared life's travails with their extended family on the reservation.

3. Judge B.J. Jones, Chief Justice, Turtle Mountain Band of Chippewa Indians and Director of Tribal Judicial Institute at the University of North Dakota School of Law. He is a Native American on the faculty of the University of North Dakota School of Law and co-author of the above-mentioned law review. He is a must for the Advisory Group in my view.

4. Sarah Deer, Professor of Law and co-director of Indian Law Program at William Mitchell College of Law in St. Paul, Minnesota. She is a citizen of the Mvskoke (Creek) Nation of Oklahoma and has written extensively on the topic of criminal justice in Indian country. Professor Deer filed a petition for clemency for a Native American woman, Dana Deegan. *See United States v. Dana Deegan*, 605 F.3d 625, *reh'g denied*, 634 F.3d 428 (8th Cir. 2010), *cert. denied*, 131 S.Ct. 2094 (April 18, 2011). Ms. Deegan's case is a clear example of sentencing disparity between Native Americans prosecuted by the federal government and similarly situated offenders prosecuted under North Dakota state law.

Please acknowledge this letter. I would be happy to provide further information on request.

Thank you.

Myron H. Bright
United States Circuit Judge
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