

[Letter of public comment received via email]

Subject: Re: Sentencing Commission Tribal Issues Advisory Group

I write in response to the Sentencing Commission's request for public comment on the possible formation of a Tribal Issues Advisory Group. Before stating my comments, a disclaimer is necessary: Although I am the Tribal Court Judge for the Dry Creek Rancheria Band of Pomo Indians in Geysersville, California, my comments reflect my personal views and should not be attributable to the Tribe.

I strongly believe that a Tribal Issues Advisory Group should be formed and encouraged to investigate and recommend changes to those Sentencing Guidelines that effect Indians (and non-Indians where appropriate) in Indian Country. In addition to my judicial duties, I maintain an active federal criminal defense practice and teach federal Indian Law as an adjunct law professor. Consequently, I have a intimate understanding of both the Guidelines and federal Indian law.

Should an Advisory Group be established, it should be charged with confirming or debunking the anecdotal evidence that Indian defendants indeed suffer harsher sentences in federal court under the Major Crimes Act ("MCA") than if they were prosecuted in state court. Since non-Indian defendants usually face a harsher sentence in federal court than in state court for similar crimes (at least in California), I suspect the same is true for Indian defendants prosecuted under the MCA.

An Advisory Group should investigate and make recommendations concerning how tribal court convictions and other tribal court decrees should be considered under the Sentencing Guidelines, especially since several tribes intend to expand their criminal jurisdiction under the Tribal Law and Order Act of 2010 and the VAWA Reauthorization Act of 2013. Moreover, tribal courts around the country are expanding their use of restraining orders in domestic violence cases in order to stem the obscene rate of such violence in Indian Country. The Sentencing Commission should be advised on how tribal court dispositions should be taken into consideration in federal sentencing, especially in light of the court's power to vary from the recommended Sentencing Guideline in non-mandatory minimum cases.

Finally, I believe that any Advisory Group should consist of federal criminal practitioners, U.S. Attorneys, federal court and tribal court judges, and academics in the relevant fields; be adequately funded to fulfill its mandate; and have a term of at least five years, with an option to renew its mandate for an additional five-year term.

Please feel free to contact me if you have any questions or comments.

Respectfully submitted,

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