

October 20, 2014

United States Sentencing Commission  
One Columbus Circle NE  
Suite 2-500 South Lobby  
Washington, D.C.  
20002-8002  
Attention: Public Affairs – Tribal Issues Comment

Dear Commissioners:

The undersigned are members of the faculty at the University of Montana School of Law. We supervise, respectively, the Indian Law Clinic and the Prosecution Clinics at the University of Montana. In addition, we both teach law school courses, provide training, and engage in scholarship covering the topics of Criminal Law in Indian Country and/or Federal Criminal Law and Procedure. We write to urge the Commission to create a standing Native American Advisory Group (NAAG) to provide input to the Commission.

Review and revision of the U.S. Sentencing Guidelines applicable to crime in Indian Country is long overdue. Many changes have occurred in both statutory and case law since the NAAG appointed in 2002 issued its Final Report and recommendations in 2003 that warrant appointment of a new Advisory Group. Most significant among those developments are the Supreme Court's 2005 opinion in *United States v. Booker*, the passage of the Tribal Law and Order Act of 2010, and an emerging circuit split regarding the use of uncounseled prior tribal court convictions as predicate offenses for federal crimes. See *United States v. Bryant*, No. 12-30177 (9<sup>th</sup> Cir. 2014), *United States v. Shavanaux*, 647 F.3d 993 (10<sup>th</sup> Cir. 2011), and *United States v. Cavanaugh*, 643 F.3d 592 (8<sup>th</sup> Cir. 2011). Because of the dynamic nature of the U.S. Supreme Court's sentencing law jurisprudence and the ongoing development of these and other issues, we urge the Commission to appoint a standing, rather than an ad-hoc, Advisory Group.

Seven federally-recognized tribes have reservations within the geographic borders of the State of Montana: the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; the Blackfeet Tribe of the Blackfeet Indian Reservation; the Chippewa-Cree Indians of the Rocky Boy's Reservation; the Confederated Salish & Kootenai Tribes of the Flathead Reservation; the Crow Tribe; the Fort Belknap Indian Community of the Fort Belknap Reservation; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation. With the exception of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, the reservations within Montana's geographic borders fall outside PL 280 and are subject to the Major Crimes Act and the Tribal Law and Order Act. According to the 2010 U.S. Census,

Native Americans make up 6.5% of the population in Montana, as compared to 1.2% of the population of the United States. The application of federal sentencing guidelines in cases prosecuted federally in Indian Country, therefore, has a significant and pronounced impact on the Native American communities within the geographic boundaries of Montana.

Given the importance of these issues to the Native American communities within the geographic boundaries of Montana, we respectfully recommend the Commission consider appointing at least one law-trained tribal member from a non-PL 280 Montana reservation to the Advisory Group, in addition to someone with experience regarding how federal sentences impact Indian families. We submit the following names for the Commission's consideration:

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Blackfeet Tribal Member  
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Sincerely,



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