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Honorable Diana E. Murphy, Chairperson
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, D.C. 20002-8002

VIA FACSIMILE: 202-502-4699

Re: Amendment V

Dear Madam:

Thank you for the opportunity to address the Commission regarding proposed Amendment V and issues in the Sexual Predator Act of 1998. As recited in Mr. McGrath's letter, dated March 23, the District of South Dakota is an Indian Country jurisdiction which, indeed, will be most affected by guideline amendments under the Act.

Roughly, 90 percent of this Office's clientele is Native American. The Office defends a significant portion of the sexual abuse offenses which are prosecuted in federal court. Most of these Native American offenders are charged pursuant to the Major Crimes Act. Accordingly, the proposed guideline amendments would directly and heavily impact our clientele.

South Dakota has a large Native American population (U.S. Census: 62,000; B.I.A. Census: 90,000). The Native Americans, primarily, are Sioux who are divided into nine recognized tribes. The reservations are rural, isolated and far from the judicial and small urban centers in this State. The reservations include Pine Ridge, Rosebud, Lower Brule, Crow Creek, Cheyenne River, Standing Rock, Lake Traverse, Yankton, and Flandreau.

The Sioux are a proud people with strong traditions. However, it is clear that the dominant American society has failed, dismally, in its relations with and social obligations toward the Sioux. This failure is reflected, not only by history, but also by stark current facts. For example, the two poorest counties in the United States are Jackson County and Shannon County which

Honorable Diana E. Murphy

April 4, 2001 - - Page 2

Re: Amendment V

comprise much of the Pine Ridge Indian Reservation. Unemployment is 80-90%. Substance abuse, including alcoholism, and depression, with alarming rates of suicide, are epidemics.

Moreover, crime among and against Native Americans has some startling facts. The report, entitled "American Indians and Crime," Bureau of Justice Statistics, U.S. Department of Justice (Feb. 1999), contains the following data:

1. The annual rate (1992-96) of violent victimizations for Native Americans (124 violent crimes per 1,000 Native Americans) was more than twice the rate for the Nation (50 per 1,000 persons).
2. In 1997 U.S. Attorneys filed cases in federal district courts against 1,126 Native Americans, nearly half of which involved violent crime. The majority of these cases were filed in federal courts in South Dakota, Arizona, New Mexico, and Montana.
3. In 1996 U.S. Attorneys investigated 1,927 suspects for offenses committed in Indian Country. By far the greatest number of suspects -- 479 -- were in South Dakota, 25 percent of the total. (There were 355 suspects in Arizona; 333 in New Mexico; and, 115 in Montana.)
4. Sixty-seven percent (67%) of the violent victimizations involved alcohol. Forty-nine percent (49%) of all crimes by Native American offenders in 1996 involved alcohol use.
5. The rural crime rate for Native Americans from 1992-96 was more than double that found among rural blacks and rural whites.
6. From 1992 through 1996, the number of sexual assault victimizations among Native Americans was seven per 1,000 (that is, six percent of all violent crimes reported by Native Americans), as contrasted with two per 1,000 for the Nation. Native American victims of sexual assaults most often reported that the victimizations involved an offender of a different race, that is, in 9 of 10 instances.

The latter point highlights a significant consideration: The proposed guidelines in Amendment V will drastically impact Native Americans because over 60 percent of the sex offenders in federal court are Native Americans. Many of those offenders themselves were sexually victimized. Many of them offend under the influence of alcohol. Yet, most of the sex offenders against Native Americans nationwide are of other races. Most of the sex offenders against Native Americans, if caught and prosecuted, are sentenced in state courts which, oftentimes, less harshly penalize these non-Indian offenders. Certainly, that appears to be the case in South Dakota State courts in which I have extensively practiced for twenty of the past twenty-three years.

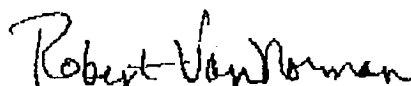
Honorable Diana E. Murphy
April 4, 2001 - - Page 3
Re: Amendment V

My further concern is that the spokespersons for the Native American communities and others among these peoples in this Indian Country District have not had the opportunity to address the Commission in a way meaningful to them. Specifically, they need the opportunity to address the Commission in their communities, that is, in this District. In my view it would be a critical opportunity foregone if the Commission were to adopt any of the proposed Amendments without first hearing from the spokespersons from this most affected and afflicted population.

I understand that the Commission is planning a public hearing in Rapid City, South Dakota on June 19, 2001, to address the impact of the federal sentencing guidelines on Native Americans in South Dakota. Delaying action on the amendments until after that hearing would aid the Commission in fully responding to the criticisms about disparate sentencing of Native Americans which are contained in the recent report by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, entitled "Native Americans in South Dakota: An Erosion of Confidence in the Justice System" (March 2000).

I strongly urge the Commission to delay any action on the proposals until after the June 19 hearing in Rapid City. I, further, wish for the Commission to know that I subscribe to the comments by Federal Defenders Stephen McCue and Fred Kay in their letter of April 2 to the Commission. Please do not hesitate to contact me if you have any questions.

Sincerely,



Robert Van Norman

RVN/jjb

cc: Timothy McGrath
Susan Hayes
Pamela Montgomery