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November 25, 2013

To: Legal Services Corporation
lscrulemaking@lsc.gov

Re: Restrictions on Legal Assistance with Respects to Criminal Proceedings
Proposed Rule by Legal Services Corporation
45 CFR 1613; 78 FR 65933

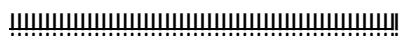
Comment on whether proposals for changes on legal assistance with respect to criminal proceedings in tribal courts should be accepted

Analysis

Legal Services Corporation (LSC) should provide funds to recipients to be used for representation of persons charged with criminal offenses in tribal courts. Chief Justice Marshall once said, [Indian coun try] looks to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their Great Father.”¹⁰ First, as the Chief Justice stated, Indians seek protection from the United States government, and this includes protection in both the federal and tribal legal systems. Second, as a practical and humanitarian matter, American Indians should be afforded an attorney when in court for criminal charges especially when an attorney can easily get licensed to practice in tribal courts. This section will demonstrate why Indians should benefit from the funds to the LSC recipients and how accessible it is for attorneys to become licensed practioners in certain tribal courts.

Benefits from LSC Funds

Indians should be beneficiaries of attorneys who receive LSC funds because the United States has explicitly created a relationship with Indian tribes in which the government has promised to protect them, including involvement in legal matters. Indian defendants should receive attorneys to represent them for all criminal matters regardless of the severity. This argument stems back to the creation of doctrine of trust responsibility. The Indian Tribal Justice Support Act of 1993 was enacted by Congress to reinforce its support for tribal courts.¹¹ This act provided in the findings section that the United States has a trust responsibility to each tribal government....”¹² This responsibility includes abiding by the Constitution and affording its



¹⁰ TheOrigins of Our Trust Responsibility Towards the Tribes
http://fcn1.org/issues/nativeam/the_origins_of_our_trust_responsibility_towards_the_tribes/.

¹¹ STEPHEN L. PEVAR, The Federal Tribal Trust Relationship: Its Origin, Nature, and Scope
http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/v4c19a05_cwp2009.pdf.

¹² 25 U.S.C. § 3601(2) (Westlaw 2013).

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attorneys.¹⁶ Each of the tribes abide by and interpret these considerations set out by the Tribal Court Clearinghouse to meet their individual tribal needs.

For example, Fort McDermitt and Palute and Shoshone Tribe in Nevada demand that an attorney must have graduated from a law school...who has practiced on any Indian reservation

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