

Oregon Department of Justice Annual Government to Government Report 2006
Pursuant to ORS 182.166(3)

Tribal Key Contact: Stephanie Striffler
Special Counsel to the Attorney General
1162 Court St. NE
Salem, OR 97301

I. Introduction

The Department of Justice is unusual among state agencies in that it functions in two capacities. The Department administers programs pursuant to the Attorney General's independent statutory authority. However, much of the Department's work involves providing advice and representation to other state agencies in the pursuit of the programs and policies of those agencies. The Department of Justice does not set policy for those agencies.

As before, the Department's tribal relations policy, as well as this report, reflects the Department's role as advisor to other agencies, as well as its role in administering its own independent programs.

II. Tribal Relations Policy

A. Policy

In 2002 the Department of Justice Executive Staff and Attorney General adopted the attached Tribal Relations Policy. The policy has been incorporated into the Department's Policy Manual.

B. Dissemination of Policy

As noted above, the Policy has been incorporated into the Department's Policy Manual, which is presented to new employees. In addition, pursuant to the policy, the Tribal Key Contact annually sends out by email a reminder regarding the policy. The Tribal Key Contact also reminded Division Administrators of the policy, and has attended various staff meetings in the Department to discuss the policy. Discussion of the policy has been incorporated into the Orientation program for new employees.

III. Updated List of Department of Justice Programs that Affect Tribes

Below is an updated list of Department of Justice programs compiled pursuant to the Tribal Relations policy. It is noted where the programs are known to affect tribes. We will continue our process of conferring regarding DOJ programs pursuant to the policy to determine where we may learn of further potential impacts on tribes.

A. Advice and Representation of State Agencies

As noted above, much of DOJ's work is to advise state agencies as to their legal options in the course of pursuing the program of those agencies, and to represent state agencies in litigation, including appeals. Many of our efforts involve working to build good relationships with tribal attorneys, including in situations in which we are adverse to tribes in litigation.

In addition, in connection with advising state agencies, the DOJ pursues some specific programs. (Don Arnold, General Counsel Division Administrator)

Client Legal Training. Historically, every two years the Department has put on a seminar for state agencies about various areas of public law. We have included Indian law in the program in the past. The Public Law Conference format has now been changed to a series of small seminars, rather than a multiple –day seminar. We hope to include an Indian law seminar.

Legal Sufficiency Review. Pursuant to statute, the Department is required to review certain kinds of contracts for "legal sufficiency." This responsibility affects tribal-state agreements.

B. Ballot Titles (Appellate Division, Mary Williams, Solicitor General)

DOJ drafts ballot titles for initiatives and litigates challenges to ballot titles. On more than one occasion in the past, the subject matter of the initiative (lottery authority, private casino) affected tribes.

C. Criminal Appeals (Appellate Division, Mary Williams, Solicitor General)

From time to time DOJ handles appeals of criminal cases involving tribes or questions of criminal jurisdiction relating to tribes.

D. Law Enforcement Programs of the Criminal Justice Division (Steve Briggs, Division Administrator)

The Criminal Justice Division engages in a variety of law enforcement programs: Election Law Investigation and prosecution, Official Corruption, Organized Crime (investigation and information collection and dissemination); Criminal Intelligence Unit (criminal intelligence), High Intensity Drug Trafficking Areas (law enforcement support), Tobacco Tax compliance, Internet Crimes Against Children, the Terrorism Intelligence and Threat Assessment Network, District Attorney Assistance, Annual Institute for Prosecutors (training program) and Crime Victims Assistance.

Through the **District Attorney Assistance Program**, from time to time DOJ assists in prosecutions involving tribes or questions of criminal jurisdiction relating to tribes.

The **Crime Victims Assistance Program** from time to time provides grants to tribes or tribal members. (Cynthia Stinson). CVAS has the following new programs:

The **Address Confidentiality Program** for victims of domestic violence, sexual assault and stalking will be operational January 1, 2007.

A federal grant program, the **Violence Against Women Act** grant, has been administered for several years by the Oregon State Police. Due to reorganization of several of their units, this grant is administered by CVAS, effective November 2006.

E. Financial Fraud/Consumer Protection (Drew Lianopoulos, Attorney in Charge)

The Department engages in a variety of consumer protection programs: responses to consumer complaints; Trade Practices Act enforcement, antitrust enforcement, and consumer education.

The consumer education program has included work with tribes. (Jan Margosian)

F. Medicaid Fraud (Ellyn Sternfield, Attorney in Charge)

This section investigates and prosecutes fraud by Medicaid providers.

G. Charitable Activities (Elizabeth Grant, Attorney in Charge)

A number of tribally affiliated charities register as Oregon charitable corporations.

H. Public Records Laws (Pete Shepherd, Deputy Attorney General)

The Attorney General issues orders on petitions under the public records law.

I. Appropriate Dispute Resolution (Mike Niemeyer, ADR Coordinator)

The Department of Justice promotes and provides training with respect to appropriate dispute resolution, which would include disputes involving tribes.

J. Task Forces

The Department of Justice has initiated various task forces.

Attorney General's Underage Drinking Task Force. The goal of this task force is improving the enforcement and adjudication of liquor laws with respect to underage drinking. The Task Force met numerous times during 2006 and has developed a set of legislative proposals for submission in the legislative session. The Task Force sought tribal representation and its membership included Carney Pearson and Jackie Mercer of the Native American Rehabilitation Association.

Attorney General's Sexual Assault Task Force. (Phyllis Barkhurst, Executive Director) is a non-profit facilitated by the Attorney General to advise on and provide

services related to sexual assault, including victims assistance, training, public awareness, and prevention.

Last year the **Sexual Assault Task Force** started the **Indian Country Work Group**, a subcommittee formed to initiate efforts to address issues regarding sexual assault response in Indian Country. The Indian Country Work Group includes tribal members. In 2006 the Attorney General sought appointment of tribal liaisons from each of the nine Oregon tribes and several were appointed.

Elder Abuse Task Force - task force to identify needed improvements in systems for dealing with abuse of elderly Oregonians. The Elder Abuse task force includes representation from the Confederated Tribes of the Grand Ronde and representation from the Confederated Tribes of the Warm Springs Reservation.

Restitution Reform Task Force – to identify strategies for improving payment of restitution in all crimes in which there is pecuniary loss.

K. Child Support (Teresa Wilson, DCS tribal key contact)

The Division of Child Support (DCS) interacts with tribes on enforcement of child support.

IV. Training

Members of DOJ have participated in a variety of seminars and Continuing Legal Education programs relating to Indian law and culture.

A. Training pursuant to ORS 182.166(1)

Members of DOJ attended the training sessions (both East side and West side) at Tribal Information Day on May 19th, including members of the Appellate Division who work on Indian law related cases, the Attorney-in-Charge of the Commercial, Condemnation and Environmental Section of the Trial Division, the Attorney-in-Charge of the Special Litigation Unit of the Trial Division, members of the Natural Resources section, and representatives of the Division of Child Support and Crime Victims Assistance Program.

We keep the tapes of most of the trainings from prior years available in DOJ's Continuing Legal Education library.

B. Other Training

DOJ members attended the following programs during the year:

Tribal Information Day at the Capitol May 19, 2006. In addition to those attending the training, many other DOJ members participated in learning about Oregon tribes on Tribal Information Day.

Conference of Western Attorneys General. The annual Conference of Western Attorneys General meeting attended by the Attorney General and tribal key contact included presentations on Indian gaming, and teen suicide issues involving tribal youth.

Crime Victims Assistance Program staff attended a tribal relations and Indian law training with the tribal key contact, which included law regarding the legal status of Indian tribes, viewing the “Building Bridges” video and discussion of possible future training.

Northwest Gaming Summit. December, 2006. The tribal key contact attended a two day seminar on gaming issues, which included panels regarding Indian gaming issues.

During the seminar, the tribal contact participated on a panel with Siletz Tribal Chair Delores Pigsley on tribal, state and federal perspectives on gaming.

“Indian Law 2006: Solutions for the Generations” October 20, 2006. DOJ attorneys attended this Oregon State Bar Indian Law Section day-long continuing legal education program.

The tribal key contact presented on Law Enforcement Cooperation with Dan Hester, attorney for Confederated Tribes of the Umatilla Indian Reservation.

Oregon Water Law Conference. November, 2006. Members of DOJ attended this conference, which included panels relating to tribal water rights.

Orientation for new family law attorneys included training on the **Indian Child Welfare Act.**

DOJ attorneys attended the **United District Court Historical Society CLE** presentation in October on *Boennichsen v. United States*, which included a presentation by a Yakama tribal attorney.

Warm Springs Methamphetamine Conference. (see Law Enforcement Coordination, below)

Oregon District Attorneys Association. Several DOJ attorneys who handle criminal cases attended the ODAA session on criminal jurisdiction in Indian country.

Child Support Training. (see VL below)

DOJ maintains a library of Continuing Legal Education videotapes audiotapes and materials, including Indian law presentations.

Due to budget restrictions on out of state travel, this year we were again unable to attend the annual **Federal Bar Association Indian Law Section Conference** in Albuquerque, as we had in the past.

V. Efforts to Promote Good Government to Government Relations

A. Annual Summit

The following DOJ representatives attended the annual summit:

Attorney General Hardy Myers

Special Counsel Stephanie Striffler

Division of Child Support contact Teressa Wilson

B. Cluster Participation

DOJ representatives participate in four of the Government to Government clusters:

Natural Resources, Public Safety, Human Services, and Cultural Resources.

Public Safety. The Tribal key contact, Stephanie Striffler, and Deputy Attorney General Pete Shepherd participate.

Natural Resources. Stephanie Striffler participates.

Human Services. Division of Child Support representatives attend the meetings along with the local tribal liaison serving the area in which the meeting is held.

Cultural Resources. Stephanie Striffler participates.

C. Special Activities

In 2006, the Attorney General and tribal key contact visited the Cow Creek Band of Umpqua Tribe of Indians.

The tribal key contact visited the Coquille reservation.

The tribal key contact met regularly with the Governor's office and the Board of Trustees of the Umatilla Indian Reservation, including meeting on the reservation.

The Attorney General spoke at Tribal Information Day.

D. Efforts during Representation of State Agencies

As noted above, much of what DOJ does involves the representation of the State or state agencies, including interactions of those agencies with tribes. We work to develop and maintain respectful and productive relationships with tribes and tribal attorneys.

It is not possible to detail all of these efforts, some of which are confidential. Some examples of efforts in the course of representing the State or other state agencies follow:

Columbia River Litigation

United States v. Oregon (ongoing Columbia River treaty rights case). Issues regarding the 2006 fishing seasons were resolved without litigation.

In 2006 DOJ has continued to represent the state in matters in which the state has cooperated with Columbia River Tribes in challenges to federal activities affecting Columbia River salmon:

National Wildlife Federation v. NMFS. DOJ has continued to participate on behalf of Oregon in the judicial process on remand, following a successful challenge to NMFS' 2000 biological opinion regarding operation of the Columbia River hydrosystem. DOJ represented the state in intervening to successfully challenge the validity of NMFS new methodology in its 2004 biological opinion.

Hanford Litigation. *Yakama Nation v. the State of Oregon.* The State of Oregon coordinated with Columbia River tribes in intervening in a case brought by the Yakama nation to recover costs for assessing natural resource damages at Hanford.

Professional licensing case. DOJ coordinated closely with a tribe in a contested case proceeding to revoke the license of a professional practicing at a tribal clinic.

Marr Ranch. DOJ attorneys have worked with the Governor's office and Parks and Recreation in consulting with tribes regarding issues relating to tribal desire to protect private property near the Chief Joseph Cemetery in Wallowa County. In 2006, the property owner sued OPRD and three tribes, including the Confederated Tribes of the Umatilla Indian Reservation. DOJ has continued to consult with the tribes regarding the defense of the case and possible resolution.

Economic Development. DOJ attorneys worked with Water Resources Department, the Economic and Community Development Department and the Governor's office to reach a cooperative resolution of issues related to an economic development project on the Umatilla Indian Reservation.

Lottery contract. DOJ attorneys worked with Siletz tribal attorneys on issues relating to a lottery retailer contract.

E. Gaming

The tribal key contact serves on the Governor's negotiating team for tribal gaming compacts, which has been involved in various tribal negotiations in 2006.

In 2006, new gaming compacts were concluded with the Confederated Tribes of the Grand Ronde Community and with the Cow Creek Band of Umpqua Tribe of Indians.

Challenge to validity of gaming compacts.

Ongoing litigation challenging the Governor's authority to enter into tribal gaming compacts continued into 2006. In late December 2005, the federal district court issued a decision in favor of the state and tribes. The plaintiffs then revived an appeal of an earlier state court case. Department of Justice attorneys have worked closely with tribal attorneys in briefing that appeal.

Public records request.

We consulted with tribes regarding our response to two public records requests regarding regulation of tribal gaming facilities, and discussed with tribes ways to work together to best give reporters accurate information regarding tribal gaming in Oregon.

G. Amicus curiae brief decision making

We have continued to use an email list that was set up in 2003 to alert tribal attorneys when we become aware of cases in which the Attorney General is called upon by other states or associations to participate in appellate court briefing in an *amicus curiae* role by joining briefs that have been drafted by other states. This process has resulted in meaningful input from tribal representatives in the state's decision-making process.

H. Criminal Appeals/Criminal prosecutions

The Department continued to consult with an interested tribe regarding a potential criminal prosecution where the crime involved harm to interests of the tribe.

I. Law Enforcement Coordination

Internet Crimes Against Children (ICAC)

The Criminal Justice Division has continued to work to initiate programs to affiliate tribes with the ICAC program. Following other agreements in 2005, in 2006 the program entered into an MOU with the Burns Paiute Tribe. The Burns Paiute Tribal police have been very active in making presentations in their community.

Confederated Tribes of the Umatilla Indian Reservation coordination and law enforcement reception.

Following on efforts begun in 2003 to develop agreements and protocols regarding law enforcement coordination with the Umatilla Tribes, the tribal key contact attended the law enforcement reception for tribal, local, state and federal law enforcement officials hosted by the Umatilla Tribes.

Warm Springs Methamphetamine Conference. The tribal contact attended a methamphetamine conference organized by the Confederated Tribes of the Warm Springs Reservation. She spoke on a panel with federal and tribal representatives regarding jurisdictional issues related to methamphetamine.

Oregon District Attorneys Association presentation July, 2006 (see Sexual Assault Task Force below)

J. Crime Victim's Assistance (CVAS)

The Crime Victims Assistance program has continued to try to publicize availability of grants to tribes.

The program presented a training on crime victims' assistance at the Warm Springs Victims of Crime services office in February.

In May 2006, the Assistant Director of CVAS attended the first national Tribal VOCA conference in Washington, D.C.

There, he worked with the other Oregon attendee, the Director of the Victim Assistance Program of the Confederated Tribes of Warm Springs, to draft an action plan to identify strategies designed to develop and improve communications between the state VOCA administrators and all nine tribes in order to help victims better access crime victims benefits. CVAS staff changes have caused implementation of the plan to be somewhat slower than anticipated, but CVAS is currently working on plans for implementation.

(See also training above, Sec. IV B)

Sexual Assault Task Force

The tribal contact and Nancy Greenman from the Crime Victims Assistance Program participated in the Sexual Assault Task Force Indian Country Work Group, the goal of which is to improve response to sexual assault involving Indian victims. Liaisons from almost all Oregon tribes joined the Work Group in 2006.

In response to concerns heard in the Work Group regarding possible law enforcement confusion about jurisdiction with respect to sexual assault crimes involving Indian victims, Stephanie Striffler and Bill Williams, who is responsible for Indian country prosecutions in the US Attorneys office, arranged to make a presentation to the **Oregon District Attorneys' Association Summer Conference** regarding jurisdictional issues relating to Indians. (A tribal prosecutor was scheduled to participate also, but was unable to attend because of a family obligation). Also present during the presentation were district attorney's-office-based crime victim advocates, who will use the knowledge in the course of providing local county victims' services.

Stephanie Striffler and Bill Williams also made a presentation at the annual Sexual Assault Task Force **Sexual Assault Response Team conference**.

K. Consumer Protection/Education

The Department's Financial Fraud/Consumer Protection continued in its initiative to work with Oregon tribes on consumer education projects and to explore ways in which tribal members are targets of scams. As a result of these efforts, the program has received more requests from tribes for information. The program is changing its data tracking to better evaluate the effectiveness of outreach to tribes.

Native Caring Conference. The Attorney General and Jan Margosian spoke on financial fraud directed at elders at the Native Caring Conference in February of 2006, a conference for Native American caregivers hosted by the Cow Creek Tribe. Stephanie Striffler also attended.

L. Child Support

General:

- There are currently two Oregon Tribes that have applied for and received start-up funding from the U.S. Department of Health and Human Services to establish Tribal IV-D Child Support Programs. These tribes are the Confederated Tribes of the Umatilla Indian Reservation and the Klamath Tribes. We are working with these Tribes for necessary agreements, technical consultation, and information as requested.
- DCS continues to respond to Oregon Tribes as they request information as to implementing their own Tribal Child Support Programs.
- We continue to work with Tribal TANF and NAFA Programs with our existing agreements and processes.
- The Division of Child Support recently restructured the management of the Division to focus on program improvement. One of the areas addressed, and assigned to a Performance Analysis Manager is Tribal Relations. This assignment is intended to give a consistent point of contact for Tribes to work with the Division, and to accommodate the level of service and assistance needed for cooperative and proactive relations with the Tribes.
- DCS representatives in Medford were invited to and attended the dedication ceremony for the Klamath Tribes new court facility on 12/20/05, held in Chiloquin, OR, at the Tribal offices.

Policy and Contracts:

The Department of Justice, Division of Child Support is making a concerted effort to include Oregon Tribes in contracts that assist in providing Child Support services. An example of this in 2006 is our genetic testing contract. A provision was added that Tribes may be included in the price agreement for genetic testing to establish paternity for child support cases. Tribes are able to initiate this testing on their own or in coordination with the Division of Child Support.

Branch Tribal Liaison Trainings and Tribal Visits:

The Tribal Liaisons in the DCS branches have provided training and/or visits to the Oregon Tribes.

Training:

5/16-5/17 2006- Growing Successful Partnerships Conference, Pendleton Oregon

This conference was sponsored by ACF, Region X (ten) and hosted by the Confederated Tribe of the Umatilla Indian Reservation, in Pendleton Oregon. The DOJ/DCS Pendleton staff team was instrumental in assisting Region X and the Umatilla Tribe in the

set up and implementation of this conference. There were 23 staff members from the Oregon Child Support Program including the Director, and 10 Oregon Tribal members registered.

5/20/06 Tribal Information Day, State Capitol

The Division of Child Support Director, Tribal liaison, and approximately 10 staff members attended the Tribal Information Day at the Capitol.

10/4-10/5 2006- Child Support Conference, Albany Oregon

The Annual Child Support Conference was held on October 4th and 5th in Albany, Oregon. One of the conference break-out sessions was “Partnership Opportunities” presented by the IV-Planning Tribal Child Support Program Manager of the Confederated Tribes of the Umatilla Indian Reservation.

In total 4 Tribal members attended the Child Support Training Conference.

10/26 2006- Child Support Program Tribal Liaisons Training and Information Day

This was a training and information day for all DCS Tribal Liaisons. The Operations Tribal coordinator and the DOJ Tribal key contact met with DCS Branch Tribal Liaisons to provide a day of training including a review of the Executive Order, Tribal Specific information, Tribal Child Support and other issues relevant in Child Support delivery and partnerships with the Oregon Tribes.

Government to Government Activities:

- DCS staff attended the Summit in 2006.
- DCS State Tribal Contact and Branch Tribal Liaisons attended 3 teleconference meetings with HHS Region X Tribal which includes Oregon, Washington, Idaho and Alaska.
- Human Services Cluster Meetings, State Tribal Contact and branch liaison near where the Cluster meetings are held attend.

Policy 2-95 Tribal Relations Policy

Applicability: All full and part time employees, temporary employees and volunteers

References:

(1) Purpose

This tribal relations policy is adopted pursuant to ORS 182.162 – 182.168, which requires state agencies to develop and implement tribal relations policies.

(2) General Policies and Principles

It is DOJ's policy to promote the principle stated in Executive Order No.96-30 that "[a]s sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties." DOJ interacts with tribes in differing roles: in its role as legal advisor to and representative of other state agencies; and in its role as independent administrator of certain DOJ programs. In all of its roles, it is DOJ's policy to promote positive government to government relations with the federally recognized tribes in Oregon ("tribes") by

- (a) Facilitating communication and understanding and appropriate dispute resolution among DOJ, other state agencies and those tribes;
- (b) Striving to prevent unnecessary conflict with tribes;
- (c) Interacting with tribes in a spirit of mutual respect;
- (d) Involving tribal representatives in the development and implementation of programs that affect them; and
- (e) Seeking to understand the varying tribal perspectives.

(3) Native American Affairs Coordinator

- (a) The state is best served through a coordinated approach to tribal issues. The Attorney General has designated one of the Special Counsels to the Attorney General as the Department's Native American Affairs Coordinator, who serves as the Department's key contact with tribal representatives.
- (b) Individuals in the Department who are working on a significant matter involving or affecting a tribe shall notify the Native American Affairs Coordinator.
- (c) The Native American Affairs Coordinator will develop with each Division Administrator an appropriate means for that Division to keep the Native American Affairs Coordinator regularly informed of the status of significant matters involving or affecting tribes.

(4) Dissemination of tribal relations policy

- (a) Upon adoption, this policy shall be disseminated to members of the Department, and shall be incorporated into the DOJ Policy Manual. In addition, this policy and information regarding ORS 182.162 – 168 shall be included in new employee orientation, and on the Department's intranet.
- (b) The Native American Affairs Coordinator will distribute an annual reminder regarding the policy.

(5) Training

- (a) The DOJ CLE Committee and Diversity Committees shall strive to incorporate topics regarding Indian law and culture in their agency training and CLE programs.
- (b) The Native American Affairs Coordinator will assist Divisions and sections in arranging training on specific topics relevant to the work of that particular division or section.
- (c) Appropriate DOJ representatives will attend annual training provided by the Department of Administrative Services pursuant to ORS 182.166(1).
- (d) DOJ attorneys who come into significant contact with tribes are encouraged to consider taking advantage of outside CLE opportunities on Indian law and culture.

(6) Guidelines for Advising and Representing other State Agencies

The Department of Justice is uniquely situated to aid implementation of ORS 182.162 – 182.168 through its contact with and advice to various state agencies. DOJ attorneys should promote other agencies' compliance with ORS 182.162 to 182.168 by means including:

- (a) Considering the represented agency's obligations under the statute in the course of advice and representation and
- (b) Striving to ensure involvement of the agency's tribal key contact in significant matters affecting or involving tribes.

(7) Identification of DOJ Programs Affecting Tribes.

The Native American Affairs Coordinator will compile a list of DOJ programs that affect tribes, as well as the DOJ individuals responsible for implementing them, through the following process:

- (a) Division Administrators will provide to the Native American Affairs Coordinator a list of Division programs, noting those they believe affect tribes. The entire list will be shared with tribal representatives identified through Government to Government cluster groups, tribal attorneys known to the Department, the Indian Law Section of the Bar, the Native American Program of Oregon Legal Services, and tribal chairs.
- (b) Annually, the Native American Affairs Coordinator will update the list of DOJ programs that affect tribes, in consultation with Executive staff and tribal representatives

(8) Guidelines for Independent DOJ Programs

- (a) Managers of programs identified as potentially affecting tribes shall adopt guidelines for cooperating with tribes in the development and implementation of those programs in consultation with the Native American Affairs Coordinator.
- (b) DOJ will invite tribal participation on Task Forces of interest to tribes.