



TRIBAL LAW AND POLICY INSTITUTE

8235 SANTA MONICA BLVD., SUITE 211
WEST HOLLYWOOD, CA 90046
(323) 650-5467 ~ FAX: (323) 650-8149
WEB SITE: www.tlpi.org

Overview of Some Possible Issues for Department of Justice Transition Team Meeting on Monday December 8, 2008

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(Cherokee)

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PROGRAM ASSISTANT
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I. General Criminal Justice in Indian Country Policy Matters

- (1) Ensure that the Department of Justice makes Indian Country issues a very high Justice Department priority as was the case when Janet Reno was Attorney General (for example, see - [A Federal Commitment to Tribal Justice Systems](#), by Janet Reno).
- (2) Adopt overall federal government policy such as Clinton Administration ([Government-to-Government Relations with Native American Tribal Governments](#) [PDF](#)).
- (3) Adopt specific [Department of Justice Sovereignty Policy](#).
- (4) Ensure that the Justice Department recognizes and takes advantage of the benefit of incorporating Native viewpoints into federal planning through ongoing effective tribal consultation processes.
- (5) Have Indian Country Justice Department staff and/or Tribal Technical Assistance providers provide a briefing for the transition team.
- (6) Provide serious consideration to the implementation of recommendations from the Amnesty International report entitled "[Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA](#)" [PDF](#).
- (7) Ensure a de-politization of Justice Department hiring practices, especially since there is a perception in Indian country that both U.S. Attorneys and Justice Department employees involved in Indian Country were disproportionately targeted for termination.

II. Increase Funding for Indian Tribes and Tribal Justice Systems

- (1) Ensure adequate funding for American Indian/Alaska Native Tribes and Tribal Justice Systems – see August 12, 2008 American Bar Association (ABA) resolution in which “the American Bar Association urges Congress to support quality and accessible justice by ensuring adequate, stable, long-term funding for tribal justice systems.” [View Report >>>](#) [PDF](#)
- (2) Consider more stable funding for tribes and tribal justice systems by providing tribal percentage set asides in mainstream funding legislation such as the funding mechanism successfully set out in the Violence against Women Act (see footnote 16 in ABA Resolution).

III. Improve Tribal Grantee Process

- (1) Provide tribal specific RFPs and grants.
- (2) Provide tribal specific performance evaluations
- (3) Ensure maximum possible flexibility for tribal grant objectives so that these objectives can be established by tribes/tribal programs themselves (which is more in keeping with tribal sovereignty) than by federal grant managers.
- (4) Provide capacity building technical assistance (TA) for tribal applicants in order to improve the ability of the poorest and most needy tribes to effectively compete.



- (5) Reduce the substantial delays in grant awards caused by an inordinately long federal grant review/award process (usually grant proposals are due in January each year with peer review in February, but the grant awards are not issued until late September by which time all the planning that went into grant application is lost)
- (6) Ensure tribal specific peer review of tribal grant applications
- (7) Establish tribal specific teams in each bureau and ensure adequate background and education for the grant managers handling tribal grants.
- (8) Ensure that tribal grantees have ongoing training and technical assistance (T/TA) from the date of grant award throughout the entire grant process from tribal T/TA providers so that tribal grantees know where to find culturally competent assistance.

IV. Fund Effective Tribal Training and Technical Assistance (T/TA) Providers

- (1) It is hard to overstate the vital need to fund tribal specific TA providers and the need to have a tribally appropriate [Approach to Training and Technical Assistance](#).
- (2) Develop and widely disseminate tribal specific T/TA resources – see [Publications](#).
- (3) Ensure that the Justice Department makes it a priority to fund tribal specific T/TA providers since it would be more effective TA and it is more in keeping with tribal sovereignty – there has been a disturbing perception that DOJ has been increasingly funding non-Native T/TA providers (with which agency staff is already familiar) to provide tribal T/TA and then expect these organizations to develop Indian country expertise rather than funding tribal organizations with Indian country expertise.
- (4) Ensure transparency in TA provider grant review process – again, there has been an increasing tendency to provide non-tribal organizations with sole source tribal TA grants and a perception that non-tribal organizations have been selected by agency staff despite substantially higher peer review rating for tribal TA provider.
- (5) Once tribal TA provider is selected – utilize their expertise instead of substituting agency judgment (for example - we have actually had grant manager tell us to change to the word “atmosphere” to “setting” under the mistaken impression that tribal people cannot understand “atmosphere” despite “a setting of trust” sounding like forks and knives are involved) and reduce unduly long agency review process.
- (6) Reduce unnecessary restrictions and outright censorship of resource products.
- (7) Provide more effective coordination between tribal TA providers across agencies.

V. Revise Restrictive Interpretation of Federal “Lobbying” Restrictions as Applied to Indian Tribes, Tribal Grantees, and Tribal T/TA Providers

The U.S. Justice Department’s Office of General Counsel (especially with regard to OVW – see official OVW PowerPoints) has been interpreting the federal lobbying restrictions to increasingly restrict the ability of tribal grantees to effectively meet grant objectives and the ability of tribal TA providers to provide effective training and technical assistance services for American Indian/Alaska Native governments and programs. The Office of General Counsel have indicated that we cannot use OVW TA funds to do tribal code training since they have determined that it would be “an unsatisfying experience for all” based on their interpretation that we would violate the lobbying restrictions if we told participants that a tribal sexual assault code that criminalizes marital rape is better than one that does not even though this is simple best practices generally.