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GENERAL MEMORANDUM 10-110

Conference in Albuquerque on U.S. Agencies' Responsibility to Enforce Indian Civil Rights

On August 10 and 11, 2010, the Department of Education sponsored a major conference in Albuquerque, New Mexico on the various civil rights that Indians have in the areas of education, health, justice, employment, and housing, with presentations by the various federal agencies that are responsible for enforcing those rights.

The keynote speaker was Bill Richardson, current Governor of New Mexico, former U.S. Congressman, former Secretary of the Department of Energy in the Clinton Administration, and a noted supporter of Indian rights. He gave a number of examples of progress in Indian rights in New Mexico, which he considers the most progressive State in the Union. Other keynote speakers were Senator Tom Udall (D-NM), and Dr. Maggie George, Executive Director of the White House Initiative on Tribal Colleges and Universities.

Representatives of various federal agencies responsible for enforcement of Indian civil rights were present to speak and answer questions, including:

- Department of Education, including Office of Civil Rights, Elementary and Secondary Education, and Equity Assistance Centers
- Department of Justice, including Civil Rights Division, and Community Relations Service
- Department of Health and Human Services, including the Indian Health Service
- Department of Housing and Urban Development
- Department of Labor, including the Office of Federal Contract Compliance Programs (OFCCP)
- Department of Agriculture, including the Food and Nutrition Service and the Forest Service
- U.S. Civil Rights Commission, which has state advisory committees
- Equal Employment Opportunity Commission (EEOC)
- Social Security Administration

The general thrust of the presenters at the conference was that Indian civil rights is a matter requiring attention and action by all sectors of the Indian community, and all government agencies providing services to that community. This goal will be enhanced by the interest of the Obama Administration in Indian Affairs, and the new tribal consultation requirement for government agencies.

Jefferson Keel, President of NCAI and Lieutenant Governor of the Chickasaw Nation, spoke on the challenges of educating Indian children. He said we are all responsible for the education of all of our youth. We must provide access to quality education, and encourage our youth to return and help their tribal communities. He cited the Chickasaw Nation's success in its youth education programs. He noted the high unemployment rate on many reservations and its effect on families, including high rates of incarceration, teen pregnancy, and health problems. He explained that NCAI has worked not only on issues of tribal sovereignty, but also on matters relating to the environment, job creation, and sustaining Native cultures and languages.

Charlie Rose, General Counsel of the Department of Education reported that the Department of Education wants to improve communications with and receive input from Indian Country. He spoke strongly in support of native language and culture in the classrooms, and argued that more federal support should be given for such efforts. He favored giving state and local governments the tools to improve Indian communities.

Another speaker was Stephen Pevar, with the American Civil Liberties Union. He said that Native Americans tend to suffer more civil rights violations than any other minority group. He noted that federal agencies are required to provide certain services to Indians because of the federal trust responsibility created by treaties. These services are not gratuitous favors but are obligated in exchange for the tribes' lands. This echoes President Nixon's statement on Indian affairs in July 1970. Mr. Pevar urged federal agencies to tailor their assistance to each community's particular needs, and urged tribes to "be open to" agency efforts.

In the breakout session entitled "Justice in Civil Rights on Tribal Lands" were two FBI agents, a tribal Chief of Police, and an Assistant U.S. Attorney. The FBI agents spoke of some of the problems including too few agents, too much territory to cover, witnesses reluctant to testify against family, concerns about "loss of face", lag time in reporting crime, and interference by tribal officials during agency investigations. They noted that most "justice-type" civil rights cases involve allegations against tribal/BIA law enforcement.

An Equal Employment Opportunity Commission (EEOC) representative cited the large number of laws enforced by the EEOC, including the Civil Rights Acts, the Age Discrimination Act, and the Americans with Disabilities Act. He explained that charges can be filed by individuals or by the EEOC and that the EEOC tries to mediate cases when possible. He said that EEOC has a youth initiative because the youth workforce suffers so many violations.

A representative of the Labor Department spoke on the Department's Office of Federal Contract Compliance Programs, where the agency promotes recruitment, employment and job training for Indians. They enforce the following –Executive Order 11246 (prohibiting government contractors from discriminating in employment and requiring affirmative action to overcome discrimination); The Rehabilitation Act (prohibiting contractors from discriminating based on disability); and The Veteran's Readjustment Act, (prohibiting contractors from discriminating against veterans.) Most cases result in conciliation agreements.

The controversial subject of tribal employment preference was discussed. Many tribes have TERO (Tribal Employment Rights Ordinance) laws requiring preference in employment for their own tribal members. Sometimes the TERO law is phrased as preference for Indians living on or near the reservation regardless of which tribe the person is a member of. The EEOC and Department of Labor's Office of Federal Contract Compliance Programs and presumably other government agencies, currently have a policy that they will not allow the first kind of preference (for members of the local tribe only), but will allow the second kind (for Indians living on or near the reservation no matter to which tribe they belong). This issue is presently in litigation, and the outcome is uncertain. It was noted by one tribal participant that the Indian Self-Determination Act allows the first kind (preference for a particular tribe) at least in the case of any employment funded by a self-determination contract for the benefit of Indians. See 25 U.S.C. § 450e, and see our General Memorandum 10-097 dated July 29, 2010.

This report touches only the highlights of this important conference. If you would like a copy of a more detailed report of the conference which was prepared by Marie Osceola-Branch of this firm (who attended the conference), please contact Bobo Dean.

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