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AN INTERVIEW WITH JEREMIAH "JAY" NIXON, MISSOURI ATTORNEY GENERAL

by ANTHONY P. FARRELL and TOM RAY

What is your enforcement philosophy?

First of all, this is a law enforcement agency and I'm the chief law enforcement officer for the state. It is our job when we get referrals from the DNR and see problems in the environment, to go out and enforce them. So it is law enforcement. Although we try to mediate some claims and try to work things out in a rational way, we are a law enforcement agency. That being said I think it is important that we prioritize and focus on the most important cases and that we not be nit pickers, that we try to use the limited resources that we have effectively. In that sense we try to focus our attention on the most important cases. We try to get back penalties for violations of the environmental laws. We try to focus on the danger to the environment a particular chemical or the particular problem presents so that we're aggressively realistic and try not to waste people's time with litigation that's not necessary.

Is the new Environmental Protection Division a reflection of that philosophy?

I made some relatively large changes when I came in. We've raised the environmental section to a division from just a unit. We've now added three and a half positions in there (to 4). We've upped the prosecutorial arm. We have two more people now who are cross-jurisdictionally U.S. Attorneys. They're working with the Eastern District and the Federal Environmental Crimes Task Force. Our focus there obviously is on the criminal end where we're dovetailing with the EPA, FBI and federal authorities on the environment. We'd like to focus a little bit more of our effort on criminal prosecutions.

A lot of local prosecutors just haven't had the resources in the past to go after the big criminal cases in this area and we look forward to doing more of that. We're also trying to get rid of some of the backlog of cases and instituting some different management techniques to try to get that done. But generally I think that adding some stronger people, going on a prosecutorial bent and being aggressive will make a difference.

How are you working with the federal authorities to enforce environmental laws?

We are very active in the Eastern District of Missouri which is one of the best in the country. We have an Environmental Crimes Task Force that meets, we share information, we have people who are cross jurisdictionally into the federal system and can present cases to the federal grand jury. They have all the information that is available in those grand juries. We also use the EPA and the IRS. We work with a number of federal agencies to work with us in cooperation on the Eastern side of Missouri which is as good as anywhere in the country. We're hoping that with the new U.S. Attorney in the Western District we'll also be able to establish that level of relationship so that Missouri can be a leader. I've noticed by meeting with other Attorneys General around the country that Missouri really is on the forefront of cooperation on any environmental area more so than just about any other state in the country.

How is your office handling furnish attorneys for the DNR?

We represent DNR in court actions when there are environmental concerns and this last year the legislature also gave us

appropriations to do the day-to-day legal work for DNR. We have a couple of our experienced people over there to do that.

Since you started your campaign in 1992 on a canoe have you met or realized all of your goals in the environmental area yet?

We've been successful in lengthening the barge season this year. It got well into December before we shut down the river this year. I did begin my campaign with an environmental event and it is something that I've been personally interested in and involved in. It is fun to enforce the laws that I helped to write. Things like the midnight dumping, like the criminal prosecutions that we've gone after and been successful at with the first prosecutions under our state criminal laws in the state. I'll let you know because as I said before, we work every day to try to make sure that we can eat the fish in every stream, breathe the air in every city and drink the water out of every well, and you can't do that in Missouri yet. It is going to require some continued, aggressive enforcement and making sure that the penalties that are garnered are put where they should be, which is back to cleaning up the environment.

What do you feel are your goals or changes to be made in the next three years?

I hope that people who have intentionally violated the laws in the state of Missouri and spoiled the environment merely for economic benefit would feel the full power of the law both criminally and civilly. I would like to think that our enforcement focus in the environmental area is on people who meant to do what they did. On negligent acts, we require a commitment to clean up, fix the problems, and pay the expenses. The Shell Oil pipeline for example, I don't think that Shell intentionally wanted to put that gasoline in the Gasconade River. So they do what they should, which is pay for the cleanup and pay for the state to turn that back into a valued ecosystem. But the people out there who are intentionally violating the law and making economic choices to do that, those are the kind of people that we need to hit with a much stronger, aggressive effort, and that's what we're going to do. That means we have to empower people to make the choice to prioritize the environment in their work. That means each and every week when we

have chief counsels' meetings and unit meetings each month with the environmental people. The thing we're doing the most is prioritizing and saying "What is the most important thing you can do to protect the environment, to show an aggressive effort out there, to make law, and to enforce the laws in a correct fashion." I think those are the kinds of things that we're trying to get out and get after—those are our changes in philosophy. I'd like to focus our attention on this area to have practical prioritization.

With the reauthorized Clean Air Act on line and the Clean Water Act and CERCLA looking for reauthorization in the next year or two, do you see Missouri as being at a saturation point in terms of being able to accept EPA delegated programs or is Missouri in the position to continue to expand?

I think that DNR Director David Shorr would probably have a better sense in that level of the enforcement. David has been asked to do a lot and in many instances has not been given the resources to get things done. I focus mainly on the law enforcement end and on the total philosophy of how we're going to coordinate all the environmental protection acts.

Let me give you a scenario, then could you tell me how the attorney general's office would handle the situation. Mom and Pop own an abandoned gasoline station with leaking underground storage tanks in excess of the allowable amount. They have no state or private insurance and they don't have any money to clean up the site. How would your office respond?

I think first and foremost you've got to control the site. You'd want to get a lien on the property so that if the property was transferred later, the subsequent owners would not be free of the obligation to clean up the property. You want to lock off the end of the cycle so they can't just run away from their environmental obligations. We're spending a lot more time in our bankruptcy unit, so if they look at avoiding the obligation through

bankruptcy or something of that nature, we would be very aggressive to make sure our claims were secure. It is not a site that would be first on the Superfund list. I think the EPA is more interested in the Weldon Springs type sites, so you're not going to be able to get much federal help in that regard. I think what you do is you to begin negotiating with these people. You see what resources they have and try to get the best out of them and begin remediation of the site. We would see if they've been insured under the underground storage tank insurance fund or if there's extra money in that particular fund. The state of Missouri set up an underground storage tank and insurance system with some provisions which allow money to be paid out on sites where there isn't adequate insurance. We would look at that and try to work with the people if at all possible to get them to invest some of their own time, money and effort. You might also look at the companies that delivered the gas, operated the station, or leased the shop at some period of time to trace the title back for the entire period of time for which it may have been leaking. There are a number of options along that line. The key is an aggressive investigation and an aggressive effort to try to reach the finish line by getting the site cleaned up. The goal is not to run people out of business, run them out of the state, or embarrass them. But the goal is to clean up the environment.

How do education and economic considerations fit in your enforcement philosophy?

Obviously I spend a great deal of my time educating people. I do a lot of speeches and talk to many groups. Education in the environmental area is very important. It has been proven that we can cut down the necessity for expanding our landfill base if we have greater resource recovery - recycling and things of that nature. When I was in the legislature, I was one of the co-sponsors of the solid waste laws which in essence started recycling in Missouri by giving grants, so I think that the education end is very important.

You've got to realize that businesses and small businesses are the engine of our economy. Wiping them out for the benefit of

a headline isn't exactly how one really wants to govern these days. The other side of the coin is that if people are polluting the environment and treating it as a depreciable asset, saying that this is just a business decision, we will enforce the laws against them. They often think that the state will do nothing when they wipe out this little creek, which gets back to what I said early on. If people make a decision that they are going to trade the environment for business, for dollars, then they're going to have to pay, and they're going to have to pay hard, because the effects of 2,000 killed fish for 10 or 15 years in a small stream may dramatically affect the entire ecosystem of that particular area. If people act intentionally then I don't care whether it's business-wise or not; and that's one of the values of being the state. Sometimes you can make examples of people who intentionally do things which I think paints a very clear message. Economics is important and I would like to see the monies that come in from fines and penalties be used to clean up those sites. Polluting should not just be a business choice, it shouldn't be a cost option, and we shouldn't use our earth as a depreciable asset because very soon it would depreciate. That said, I think you have to take the economics and reality into consideration. If somebody has \$1000 and that's all they've got, it's ridiculous to sue them for \$50,000 and waste the state's time for the next two to three years if you're not going to get it.

How has your office responded to Montgomery Country trying to tax the Katy Trail?

First of all they don't have the right to do it, so obviously we've attempted to stop that. In no time since 1821 have these taxes been collected, so when you walk past the faces of 39 of my predecessors out there, I feel somewhat obligated by both the law as well as by the positions my 39 predecessors took that we should own our state parks and they shouldn't be taxed. It obviously is a little bit political that some people got involved, as they don't particularly like the Katy Trail, but they probably wouldn't have that same intent if state highways had run through that particular area. They didn't feel it was necessary

to tax them, nor schools or the other things that are around there, so I think that there are some philosophical leanings as to what they are doing. At this point, this is a situation in which a collector attempted to collect the tax. He then issued an order to sell the property. Six days before that sale I filed a petition to the Supreme Court, which I argued myself. I feel very strongly that you shouldn't be able to tax state property from the legal perspective, and neither one of the parties asked whether the tax is actually owed in this court action. This is an action of the state of Missouri against the collector. The proper parties to determine whether a tax is due and owing would obviously be the DNR and the Montgomery County Levy District, neither of which are parties here. So the sole issue we have in the Appellate Court is the remedy, the sale of the Katy Trail, and obviously I don't think that state parks should be able to be sold to satisfy judgments. The state pays a lot of people a lot of money, and we get sued a lot. There are other ways to collect money from the state other than selling our state parks. And if we ever get into a situation where our state parks can be sold for debts then probably Judge Clark over in Kansas City will sell Ha Ha Tonka State Park to build a new magnet school and I don't think we should allow that. Politics has gotten involved and people can play around with it all they want, but the bottom line is that as Attorney General I'll use my power to solve this and make sure our state parks aren't sold to pay debts. If we have to litigate the issue of the underlying debt then we'll do so. It should be noted that the legislature put on the ballot for next year a payment in lieu of taxes measure for parks that addresses this very issue and would set up a system where entities such as the conservation districts pay a payment in lieu of tax. The voters will have an opportunity in November of 1994 to decide whether they want to take their tax dollars and use those tax dollars to pay other taxes. I prefer to think it would be much a more efficient governmental system if we didn't do that, but if people want to do that, that's their right and we'll enforce that law if they vote for it. But until then we're going to protect the park from being sold.

What other Appellate Court actions is the Attorney General's Office involved in currently?

In the environmental area we have what they call the .055 litigation concerning the law that says that no air law can be stricter than the federal laws—a very serious piece of litigation and one that in essence has thrown most of the state air program out the window. We're lucky the Clean Air Act has passed, which, especially in the air toxins area, has gotten much stronger than it was. Prior to the passage of the Federal Clean Air Act, there were only 7 chemicals which were illegal to release into the air in the state of Missouri. In Missouri, the release of the chemical that was released in Bhopal, India would not have been illegal. If it was inside buildings, OSHA would handle it, but that's how weak the law was in the state. The .055 exemption was passed prior to the time I was in the legislature. I attempted to get rid of that. I think it is bad policy to say that the only way we can control Missouri's environment is to go to Washington, D.C. and try to get a law passed through both houses and signed by the President.

How has Governor Carnahan assisted you in meeting your goals as Attorney General?

He has been supportive of us in our addition of new assistant attorneys general to work with the DNR. He also has helped foster more state-federal cooperation, which I think is going to do a lot in the Eastern District Environmental Crimes Task Force. I think he brings a little more of a pro-environmental bent to the executive branch than we've seen there in the past. I think that generally makes for a little more open environment in which to operate.

How has your office responded to allegations of scams from the flood, including food stamp fraud in Kansas City?

We instituted a state-wide investigation of food stamps last summer. It is kind of a sad situation when people try to rip off the system, especially in Jackson County where 75 families were displaced because of the flood but 7,560 people applied for food

stamps, including over 100 state employees statewide. That investigation led to at least 16 criminal cases and a number of state employees being dismissed. We will continue to be aggressive. I led the way for the amnesty program in the Eastern side while the Jackson County prosecutor did an excellent job too. We've recovered over \$340,000 for the state of Missouri from people who just marched in and gave back the food stamps. Soon we hope to recover other amounts from people who have violated the law.

We continue to monitor other flood scams also, including construction problems, people selling used cars and mobile homes that were flooded, and false charities. We've been very aggressive with a number of those people trying to charge for inspections, saying they're state government officials. Last fall we received over 10,000 calls on the Consumer Protection Hotline.

Fortunately, there were fewer than 20 cases of reported looting in the state of Missouri which is really an excellent record both for the citizens as well as law enforcement. Those of us in the prosecutorial end have tried to use that as our record, to try and beat that record. To do so I have traveled the state to meet with prosecutors and police chiefs, which is part of a continuing effort with attorneys general from around the Midwest. We've worked with Florida Attorney General Bob Butterworth, we've been sending out thousands of education packets, and we've been following up immediately on each and every call. We prioritize all the flood stuff and so far I think Missouri has done an excellent job relative to our neighbors for beating down some of the fraud. We've not seen the level of fraud in Missouri that we've seen in other states.