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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Wendy Olson Talks Twin Falls, Tribes, Private Practice

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Wendy J. Olson is a partner in Stoel Rives LLP's litigation practice and the former U.S. Attorney for the District of Idaho. She previously worked as a trial attorney in the U.S. Department of Justice's Civil Rights Division. Olson has over two decades of experience prosecuting white collar crime cases along with criminal civil rights violations, child sexual exploitation cases and Idaho's only federal death penalty case



Wendy Olson

Q: During your 20 years at the Office of the U.S. Attorney for the District of Idaho, what do you feel was the most significant case or issue you worked on? Why?

A: I think that a prosecutor has an obligation to treat every matter and every case as the most significant case the prosecutor has worked on. Federal prosecutors are vested with tremendous discretion and tremendous responsibility. Every decision a prosecutor makes has an impact on other people's lives. Prosecutors are in a unique position to ensure that defendants' constitutional rights are observed, that the public is kept safe and that the criminal justice system works.

Having said that, I think it's hard not to see *United States v. Duncan*, the District of Idaho's only federal capital case, as the most significant one I worked on. In May of 2005, Joseph Duncan killed three people at a home outside of Coeur d'Alene, and kidnapped the two youngest children. He took them to the Lolo National Forest in Montana where he sexually abused and tortured them for weeks before he killed the little boy. During the course of the children's captivity, he told the surviving child that he had murdered three other children, one in California and two outside of Seattle. Working with an incredible and dedicated team of investigators, support staff and lawyers, we were able to secure guilty pleas to all federal charges and, following a capital sentencing hearing in which Duncan represented himself, three death sentences. The case involved very difficult evidence of Duncan's horrendous acts, delicate victim issues with the surviving child and her family, and challenging legal issues, including challenges by standby counsel to Duncan's competency. I participated in the prosecution from the charging process through the plea, capital sentencing hearing, and two appeals to the Ninth Circuit. Duncan's defense counsel's filed a petition for post-conviction relief the week after I left the U.S. Attorney's Office. I think the subject matter, and the evidence, haunts everyone who participated, but of course it is nothing compared to the impact on the surviving victim and her family.

Q: While you were at the U.S. Attorney's Office, you participated in consultations with tribal governments in Idaho. Can you speak on these experiences? How do you feel about the current relationship between the U.S. and Idaho tribes?

A: Tribal government consultations were some of the most rewarding meetings I participated in as U.S. Attorney. As an assistant United States attorney, I had prosecuted a couple of civil rights cases arising on Indian reservations, but the bulk of our Indian Country work was done by two outstanding tribal liaison AUSAs, Traci Whelan and Jack Haycock. The work they had been doing in Indian Country established a strong foundation for my relationship with tribal governments as U.S. Attorney. The thing I most appreciated about the tribal consultations was the direct feedback I received about the federal government's public safety role in Indian Country, and the need to be a true partner. Although every tribe and every tribal government is different, there are some consistent issues: significantly higher rates of violence against Native American women than against non-Native women, jurisdictional issues created both by federal statute and by land held by nontribal members within reservation boundaries, a lack of law enforcement resources and disproportionate sentences imposed on Indian defendants in federal court compared with Indian defendants convicted of similar crimes in state court for offenses occurring outside of reservation boundaries. While we made progress on some of these issues, much remains to be done. For example, during the last months of my term as U.S. Attorney, our office hired an Indian Country victim assistance coordinator, but two years later she is leaving the office, and we will have to see if she is replaced.

Q: In 2016, you were criticized for saying spreading false information or threatening statements about the perpetrators of a crime may violate federal law. Can you speak as to what dealing with the media attention after your statement on the 2016 Twin Falls incident was like?

A: Well, that's not what I said. Feel free to run the whole quote, in context. It is fair to say that my high school journalism teacher would have suggested some edits for clarity. Threatening statements may violate federal law, regardless of whom they are made about. More fundamentally, however, my statement was aimed at calming the atmosphere around an incident that occurred in Twin Falls, Idaho, and the response, mostly of people from outside Idaho, to public officials in Twin Falls. The response to the incident, to the public officials in Twin Falls, and to my statement, was fueled by anti-Muslim and anti-refugee sentiment. The multitude of emails and phone calls public officials were receiving did nothing to help the victim or to ensure that the perpetrators, who were all juveniles, received justice. People were upset that I had said anything that could remotely be perceived as supporting refugees or Muslims, regardless of the facts. Unsurprisingly, my office received many, many calls about the incident and my statement. Almost all of them came from out of state. I called back anyone who left a number. All of the people who I spoke to were critical of my statement because they perceived it as supporting refugees or Muslims, with the exception of one woman who disclosed to me that she had been victimized as a child by male juveniles. A New York Times report about the Twin Falls incident and subsequent media coverage described in detail how far right media and social media distorted the facts, sometimes intentionally, to portray refugees and Muslims, and anyone who supported them, in a negative light.

For me, personally, the media attention blew over pretty quickly. I had a long career as a fair prosecutor, and I think people who were trying to see the actual facts recognized that. Since leaving the U.S. Attorney's Office, I do occasionally still get emails and phone calls from people who refer to the Twin Falls incident and are angry that I supported refugees or Muslims. Go figure.

Q: What kind of work did you do while you were at the Civil Rights Division?

A: The best work a lawyer could ever get to do. I investigated and prosecuted hate crimes, police officer misconduct (color of law) cases and human trafficking cases (though we called them involuntary servitude cases at the time because the 2000 Trafficking Victims Protection Act hadn't

been passed yet) in federal judicial districts all over the country. I saw first-hand how hate crimes impact victims and can terrorize entire neighborhoods. I saw firsthand how perpetrators of these crimes choose actions and symbols of racial hatred to instill fear in their victims. I saw firsthand how important a community's view of policing is to public safety in a community. A community that fears but doesn't trust the police is not a safe community. I think (I hope) it instilled in me a sense of humility as a lawyer. The interactions I had at the Civil Rights Division with victims, subjects of investigation, and various witnesses shaped me as a lawyer. And, finally, I had just a tremendous opportunity to work with other dedicated, committed public servants, some of whom ended up being my U.S. Attorney colleagues, or held significant Department of Justice positions, during the Obama administration: Steve Dettelbach, Tom Perez, Roy Austin, Leon Rodriguez, Bobbi Bernstein, just to name a few. Great lawyers and great people.

Q: What factors influenced your decision to move to private practice?

A: The November 2016 presidential election. Presidentially appointed U.S. Attorneys can't go back to being line AUSAs. It is typical when there is a change in administrations, and particularly a change in party, for all U.S. Attorneys to be replaced. Allowing a U.S. Attorney to stay is the exception, though President Barack Obama kept a couple of folks on who served under President George W. Bush. Idaho has lots of Republican lawyers, so I knew it was only a matter of time until I would be replaced. I needed a job, and I was very fortunate to land at Stoel Rives.

Q: How would you compare your current work to the work you did for the U.S. Attorney's Office?

A: Right now I am doing a fair amount of commercial litigation, some government investigation work and a little bit of white collar criminal defense. Litigation is litigation, so that part of it is a fair amount like the work I did as an AUSA. The government investigation work often brings me into contact with regulators, so that part is at least familiar, and the white collar criminal defense work addresses many of the same issues I addressed from the other side while an AUSA. I think there are two big differences, or three, if you include keeping track of your time in six minute increments. The first big difference is that I am now appearing in state court at times and in administrative hearings at times — all much less formal than federal court. The second difference is that now I have lots of clients, who are the ultimate decision maker, instead of a single client, the United States. Working with clients is both rewarding and challenging, and it's definitely reinvigorating my sense of humility as a lawyer.

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