

INTERVIEW

The Prosecution of Environmental Crimes in Oregon: An Interview with Attorney General John Kroger

In an effort to learn more about Oregon's prosecution of environmental crimes, *Journal of Environmental Law and Litigation* (JELL) articles editor Geoffrey Long sat down with Attorney General John Kroger. AG Kroger has made protection of the environment one of the Department of Justice's (DOJ) primary goals.¹ The DOJ investigates and prosecutes environmental crimes, ensures the proper cleanup and containment of hazardous and nuclear waste, protects roadless wilderness areas, and fights to protect endangered species and important waterways.² The following is a transcript of the interview from June 30, 2011.

JELL (J): [What inspired you to prioritize putting together the environmental enforcement unit?]

Attorney General Kroger (AGK): To go back to some basic foundational stuff, if you're trying to have a responsible system of environmental protection, there is a clear need for enforcement. The reality is most citizens and most companies play by the rules, but if you have no method of holding people accountable for breaking the rules, the environment is degraded and it costs you more. If you're trying to have a regulatory system, but you've got lots of people breaking the rules, your enforcement costs are going to go up. So making sure that there's a real system of enforcement in place is very important.

¹ OREGON DEP'T OF JUSTICE, *Our Goals*, <http://www.doj.state.or.us/> (last visited Nov. 27, 2011).

² OREGON DEP'T OF JUSTICE, *Protecting the Environment*, <http://www.doj.state.or.us/goals/environment.shtml> (last visited Nov. 27, 2011).

The problem that existed in Oregon before I took office is very simple to describe: The U.S. attorney's office did a small number of criminal cases, but did not have a full-time environmental crimes prosecutor, and they were only prosecuting very large cases or cases where there is a clear federal interest. Then the Department of Environmental Quality was doing administrative enforcement, which tends to be cases with relatively small fines. There was this huge gap. That gap was supposed to be addressed with state environmental crimes rules. In fact, polluting has been a crime in Oregon since the 1990s, so we have the laws on the books. The problem is, in all of the thirty-six district attorney's offices and then in the Oregon department of justice there was not a single full-time environmental crimes prosecutor. So you have statutes on the books but no one prosecuting offenders. You've got the feds working on the very largest cases; you have the Department of Environmental Quality doing administrative cases, but there was no one taking on those cases in the middle. That left an enforcement gap for us to fill.

J: To your knowledge, were any of the local D.A.s taking on this challenge, or was it pretty uniform that things were out of control?

AGK: On occasion an office would do it. The problem was that environmental crimes cases are very resource intensive, so a lot of D.A. offices simply did not have the resources to litigate them. And then they take a lot of expertise because usually there is a very complex technical basis to the prosecution. So a lot of offices would just do no cases whatsoever. Some would do them on occasion. What we were getting was basically a checkerboard effect: what was a crime in one county, and was prosecuted as such, would not be prosecuted in another county just because of technical or resource issues. Generally, I would say, there was pretty dramatic under enforcement because no one was really prepared to step up and do these cases on a consistent basis.

In a lot of different areas of Oregon enforcement, we've viewed our job as to help fill that gap. We've done that in other areas as well, mortgage fraud for example. The district attorneys are not really prepared to do those cases, the feds are only doing the biggest cases, and that leaves a lot of cases not being worked on. Just like in the area of mortgage fraud, in the area of environmental crimes, we decided to step up into the breach.

In terms of my motivation, in part I'm an outdoorsman and I care a lot about the environment and part of it is a feeling as a professional prosecutor. I'm highly aware of where these gaps are in enforcement,

and I know what happens if cases don't get done, which is people growing more comfortable and emboldened in violating the law when there are no consequences. It was really a combination of both feeling that we need to do more to protect Oregon's environment and worrying about that enforcement gap that we have.

J: Do you see any parallels between the way that environmental enforcement is handled and other types of prosecutions like white-collar crime prosecutions or large-scale racketeering prosecutions?

AGK: You know, regulatory crimes like environmental crimes are a little bit unique in terms of the technical expertise needed, but they're really similar in feel to white-collar cases. They tend to attract top-flight defense attorneys; they tend to be very hard fought, and as a result, they're fairly costly. They are more expensive prosecutions than street crimes.

J: In terms of resources and expertise, how much do you rely on the DEQ to assist the DOJ in prosecuting? Or do you bring in your own outside experts? Where does the state's technical expertise come from for the criminal prosecutions? As part of a bigger question: how do the different agencies work together? Do you get help from the feds when it starts crossing over into other jurisdictions?

AGK: The simple answer is that it's really fact specific and it depends on the case. Some of our cases are joint cases with the federal government where we typically are working with the U.S. attorney's office and the EPA. They have designated Patrick Flanagan, who's our lead environmental crimes prosecutor, a special assistant U.S. attorney. So Patrick can appear in federal court. In some of our cases we later realized they were best handled in federal court, and so we charged them as federal crimes. Patrick is prosecuting them with the U.S. attorney.

Some of the cases come out of the regulatory agencies, and it's not just the DEQ. For instance, the department of agriculture has sent us cases involving, for instance, dairies that are dumping. In those cases we work very closely with [the Department of Agriculture]. It's a conversation with the agency at two different levels. One is, very often their testing or their evidence gathering is the basis of at least some of the charges. Very often the case will start with an Ag investigator or a DEQ investigator who found the violations. Then we have a very intensive conversation with the regulatory agency about how is this case best handled. Should this be an administrative matter or a criminal matter? If it's going to be a criminal matter, do we think

it's a state matter or should we bring it to the federal government? That's an ongoing conversation in a lot of cases.

J: Who is that conversation usually with? What level of agency personnel does that interaction happen with?

AGK: For our department, Patrick Flanagan is typically our point person on almost all of these cases. Patrick is having that conversation with the enforcement people at the agency. On occasion, particularly when we were just getting the program started, it would involve me. For instance, I would meet with senior folks at the Department of Agriculture. [We would] talk about what our capabilities were, what kind of cases we thought were appropriate for us to bring, and what kind of cases we thought were inappropriate. On occasion the U.S. attorney and I will speak in person about a particular case, but generally that's done at Patrick's level. If a case has a particularly complex issue of some sort, where it's not clear how we should handle it, it might come up to my level. Typically, the enforcement chief of the individual agency and Patrick are having those conversations.

J: So [the interaction] is with [the agency's] enforcement chiefs?

AGK: Yes.

J: Are most [of the cases] from the agency investigations? Is the public very active in sending in tips? [What about] nonprofit watchdog organizations?

AGK: We get cases from a variety of places. I wouldn't be able to break them down off the top of my head. Some come from the federal government. They [will] have a case that they think for a variety of reasons is something serious we need to be concerned about but isn't a federal crime. [That would be one] example [where] they might send us a case. The majority come from the regulatory agencies in the state government. We also set up an environmental crimes hotline for citizens to report things. We've gotten some referrals through there. [Also] district attorneys will call us. They'll say "look, we've got something in our county you should take a look at."

J: [Going] back to the discussion about district attorney resources and the lack of reinforcement before this unit was established, do you think that was because most of the local D.A.s lacked resources instead of will?

AGK: It's all resources. They're happy to have us either do a case with them or take over the case completely if they want to proceed that way. There are still a couple of D.A.s who have the resources. In Lincoln County, for example, and in Crook County, the

district attorneys feel like they have enough resources to do some cases there. It's almost entirely a resource issue.

Generally, what's happened in Oregon—this is part of what creates these enforcement gaps—is budgets over the last thirty years at district attorneys' offices have shrunk. Their ability to do white-collar and regulatory cases has declined. They're having a hard enough time keeping up with street crime and violent crime. They really look to the state Department of Justice to help on white collar and regulatory crime. That's an accepted part of what we do. We get referrals from them all the time.

J: In terms of going forward and keeping resources for the department, what's that scenario looking like? I know the DOJ has had some budget cuts recently. Do you think you'll be able to preserve the integrity of the unit and what it's able to do?

AGK: Yes. I don't have any concerns about [budget]. We have an enforcement fund that we built that we basically use to pay for these investigations, and it's in fine shape. Right now I think we've got six cases that are charged and in court, and I think we've got thirteen under investigation. We're probably at close to capacity now, so if the pipeline of cases increases dramatically we'd either have to decline some cases or expand the unit. For now, we've got adequate staff and we're doing [well].

J: What kind of a push back have you been getting, if any, from business leaders or people who would rather see the previous status quo stay in place?

AGK: You know, it's really interesting. I think it's a misnomer. I think the conventional wisdom would be "Oh, the business community wouldn't like this." The fact of the matter is, when we proposed this in 2009, the business lobby in Oregon did not oppose it. There are a couple of [reasons why]. One, I think they trusted us to handle this authority responsibly. [Two], it's a misnomer to believe that the business community doesn't like environmental enforcement. What [it] really [doesn't] like is uneven enforcement. If you're not enforcing the law properly, then the companies who break the rules and get away with it have a competitive advantage. If you can pollute it's generally cheaper than if you are handling your waste properly. Companies that can cheat and break the rules and get away with it, they have a competitive advantage, and the honest companies that play by the rules will have to lay off their staff or go bankrupt or lose market share. Most of what the businesses want is even enforcement

where everyone's playing by the rules. The business community knows that some of these cases are really all about [even enforcement].

When we charged a couple dairy operations with violating environmental laws, we did not get opposition from dairy farmers for that. What they are worried about is that if one dairy operation is not handling [its] waste properly and there's an E. coli breakout, that's going to affect the national reputation and the profitability of the dairy industry throughout the state. What they want us to do is make sure that we're helping to police the marketplace.

I had a meeting with a business leader yesterday who said [that] when I was elected people were kind of worried about it because I helped prosecute Enron and I come from a prosecutorial background. He said he did not think there was really any concern in the business community about the way we were handling our responsibilities.

I've always told people the proof will be in the pudding. [People] can look at these cases [we've done] and [they] can decide for themselves. One of the environmental crimes cases involved a construction company dumping a huge number of truckloads of construction debris on land they didn't own and then backhoeing it into a ravine. I don't know what to say other than that's a crime. The bank that owned the land had a huge amount of cleanup costs that they should not have to pay. People look at the cases we are doing and they are very comfortable with [them].

J: Would you say that, in general, the business community here has a pretty good community spirit about looking at the bigger picture?

AGK: I think it's safe to say the overwhelming majority of Oregon's business community plays by the rules and follows the law. They have no objection whatsoever [to us] aggressively pursuing the small number of people who break the rules.

Part of the reason I think this unit has got legitimacy is we focus on intentional wrongdoing, not on accidents. We tend to focus on cases with a repeat pattern of violating the law. In a lot of the cases, the companies or individuals have already been fined in the administrative process repeatedly. If a series of administrative fines don't work, then we go to the next level. The business community knows that. We're not playing gotcha.

J: People feel like it's fair.

AGK: Yes. Most of these companies either are on notice they've been violating the law because of prior administrative fines or what

they did—like the case with the dumping—is just so egregious that it's obvious a criminal response is appropriate.

J: I'm curious about the environmental audit procedure that's in the statutory scheme. Businesses can come in and get an audit on what they're doing. It seems like it's got pretty good protections for civil and administrative liability, but there are exceptions for criminal liability. Do businesses use [the audit procedure] very often? Are leaders leery about [it]?

AGK: In the federal sense?

J: In the state.

AGK: In the cases we've charged, none of them have involved someone coming in for an environmental audit. I'd have to go back and look before I could give you an answer. I don't know how many companies are availing themselves of that. We can follow up on that. I'd have to go back and look at some numbers before I gave you an answer.

J: In terms of the crimes that are charged, do you notice any overarching patterns? Do you see patterns of similar crimes coming together or across different regions or with the same people?

AGK: The unit's still relatively new, I'm not sure we have enough data. I would say that the majority of the cases we have are water pollution cases. That reflects two things: (1) water quality is a real issue in Oregon, [and (2)] it's also easier to catch and charge water pollution than air pollution. Air pollution cases are harder to test and [it's] harder to catch people. That's something in the environmental community in general across the country we're sort of struggling with. Which is, the technology for catching a water pollution violation is relatively simple: you pull a test tube and you analyze it. Air pollution, you pull an air sample and it's a lot trickier.

Some of our cases are fact patterns I didn't imagine. [For example,] illegal water impoundments where people are taking water that isn't theirs or drilling wells without a permit. There [are] some criminal cases that were not what I imagined when we created the unit. It wasn't clear to me that we were going to be doing some of those kind of things as well.

But I would say the majority of the cases we're doing are water pollution.

J: Are most of [the cases] coming out of agricultural interests? It seems like most of what I've been able to dig up is about dairy.

AGK: No. One of [the cases] involves waste disposal at a resort. We've got an asbestos case going on. We've got a couple of dairy cases, but we've also done cases that are manufacturing cases. I wouldn't say it's primarily agricultural. But again, we're talking about four cases that are completed and six that are charged, so, we don't have a huge sample yet. [In] general, the majority of cases involve water pollution, but they're coming from a variety of sources.

J: So far, only a quarter of the investigations have lead to actual charges?

AGK: It's hard to say because I don't know the total number we've investigated so far. Patrick has those numbers, so he could tell you. A fair number we investigated, and it turned out there was no crime. I would hate to put a number on it. I don't know if it's that we've charged a quarter or we've charged a half. There are a significant number of cases that, at the start, you think there's enough facts to warrant a criminal investigation, and then after you investigate you find that, no, this should be handled as an administrative manner. In some cases there is nothing wrong here, nothing illegal whatsoever. It is certainly the case that there are a significant number of cases where we find things are fine.

J: What's your assessment of how the statutory scheme is working currently? Would you change anything to improve it? Would you cut out part of it as being not worth the trouble?

AGK: I would say generally it's not bad. The environmental crimes statutes in Oregon are not what I would write. If I were sitting down and writing an environmental crimes scheme, this is probably not the way I would design it. But, to be honest, it's fine.

Part of our concern [was that] if we were trying to start a new unit and change the law, I thought people would worry more about it. I think part of what's given people the comfort level [with this unit] is we've said, from the very outset, our goal is not to change the law. What we want to do is enforce the laws that have already been on the books since the 1990s. I think part of the reason we were able to get the unit created is because we made that commitment at the beginning. We weren't trying to move the yardstick; we were simply trying to enforce the laws that the legislature had on the books for a couple decades. Those laws are not perfect, but they're adequate. In cases where we think that the state laws are not adequate, there's often a possibility of taking the case federally where the laws are a little bit stronger.

Most of these cases are going to result in a fine and probation. They're not going to wind up with jail time. If we're hoping to get jail time out of a case, we're really going to have to take it federally at this point because, under the guidelines that exist now in Oregon, it's very unlikely that we'll be able to get jail time for a defendant in an environmental crimes case, even a serious one.

J: Do you think [jail time] is possible at all [under Oregon law] or is it hard to imagine?

AGK: I don't know. So far in every one of our cases, the defendant has pled guilty. We have a couple of cases that may go to trial this fall, and, obviously, judges are more likely to give jail time in a case where a defendant has been convicted at a trial than if they plead guilty. We'll have to see, but the bottom line is, in most state environmental crimes there's really not a threat of jail time.

J: Have you talked to other state attorney generals about trends in environmental law or where you'd like to see environmental law go?

AGK: Before I was attorney general, but after it was clear I was going to get elected, I spent time with EPA folks talking to them about what state cases they thought were not being done. Then we took a look at environmental crimes units in California, in Alaska, and in Idaho looking for inspiration. One of the things that is kind of ironic is Oregon has a reputation for being very committed to environmental protection, and states like Alaska and Idaho are generally viewed as being more protective of resource extraction, yet those states had environmental crimes units and we didn't. That was part of why this is not some kooky environmentalist idea. This is a very normal bread-and-butter part of your regulatory enforcement plan—to have a criminal option for the most egregious cases. We looked at Alaska, California, and Idaho when we were designing our environmental crimes unit.

Most of my conversations with fellow Attorneys General on environmental cases tend not to be about local enforcement, which is the kind of thing the environmental crimes unit is really focused on, but on some of the larger national litigation issues. For example, we tend to partner with, particularly, California, Maryland, Massachusetts, [and] Washington on bigger, large-scale civil litigation to protect the environment. We spend more time talking about those kinds of cases than we do about local criminal enforcement matters.

J: So the local scheme doesn't have much influence from. . . .

AGK: Well, it doesn't have national implications in the same way. For example, the climate litigation that we're involved in has national implications, whereas local dumping by an Oregon company is really a local matter. It's something that we deal with here at home, but it doesn't have implications for other states. The one big exception is, obviously, anything that happens on the Columbia because, by definition, the State of Washington, the State of Oregon, and the sovereign Indian tribes are all deeply concerned about that. We have not had big dumping cases on the Columbia. We have been in litigation to help clean up the Hanford Nuclear Reservation; we cooperate with Washington on that.

J: Do you see much more litigation coming out of Hanford? At least for Oregon to get involved with?

AGK: We sued the United States along with the State of Washington to get an accelerated cleanup and a new cleanup agreement. What's unique about that is Oregon is a signatory to the cleanup agreement for the first time. We'll be monitoring that as will the tribes and the State of Washington. If the federal government doesn't keep its commitment, then yes, [we] could be back in the courtroom.

J: But so far, it's been at least satisfactory?

AGK: Yes. Oregon had never been involved prior to my administration; it's always been Washington, the tribes, and the U.S. government without Oregon being a participant. I thought it was important for us to participate because there is radioactivity entering the Columbia now and it's our river too, even if Hanford is geographically located in Washington. That problem is going to be with us for forty years. It's something we're all going to have to monitor.

J: Why do you think Oregon wasn't part of [the Hanford suit] before?

AGK: Historically, the State of Washington did not want us involved because the Hanford facility was located in their state. Rob McKenna, the Republican attorney general in Washington, invited Oregon to participate in the lawsuit. Attorneys General, though we are members of particular political parties, we tend to work with each other across party lines. It's not a highly partisan job. Rob and I have cooperated on a number of things. We joined with them on the Hanford suit; the State of Washington joined Oregon to on litigation involving liquefied natural gas terminals on the West Coast. We have a good working relationship with the Washington A.G.'s office.

J: Do you think there will be more suits coming out of the LNG terminals from the state?

AGK: It's hard to say. Legally, we were concerned that FERC, the Federal Energy Regulatory Commission, was not properly following the law. If we reach that conclusion again, we will, without hesitation, sue FERC.

I think the simple thing to say is that the market for natural gas has changed so dramatically in the last three or four years that there's not really much of a market for liquefied natural gas. The interest is really disappearing. What originally drove LNG was a belief that U.S. demand would far outstrip domestic supply of natural gas. The development of huge gas reserves in Wyoming and Pennsylvania has utterly changed the basic market equation. There is, if not a glut, at least a very robust domestic supply of natural gas. There's just not a market demand for more expensive imports. I think the number of companies interested in developing LNG is rapidly dwindling and will disappear in the next couple of years.

J: Natural gas plants seem to be a popular choice for new plants, especially for utilities trying to meet state RPS standards. You don't think that will take up some of the slack?

AGK: No. We're seeing this in Oregon. We're going to be shutting down Oregon's one big coal-fired power plant out at Boardman. We're going to need more natural gas-fired capacity, though, hopefully, conservation will make up for some of that lost capacity. The domestic supply of natural gas is so robust now that I'm just not seeing any responsible energy analyst who thinks there's going to be a huge demand for imported natural gas.

J: Would you like to talk about the climate change litigation that's going on and where that's going?

AGK: Sure. I'll stay with [the] big picture because these cases are ongoing and I don't like to comment that much about litigation that's ongoing. Historically, Oregon was involved as a partner with Massachusetts in the original lawsuit against the federal government asking that carbon dioxide be treated as a pollutant. As you're probably aware, that litigation was successful. The EPA has decided that carbon dioxide is a pollutant, and now they're trying to figure out what to do about that.

We are involved in a couple of different major efforts now. One of them is to defend [the] EPA. [The] EPA is now being challenged for that decision to regulate carbon dioxide as a pollutant. Now that the

federal government has changed its position, we're now partnering with them to defend that position. We're working, particularly with the State of California, on protecting the states' ability to have corporate average fuel economy standards higher than the national standard. Oregon and California have opted to have higher standards, and that's been challenged. We're defending that decision as well.

Obviously, it's an important fight to have in court, but, ultimately, I think the future of carbon regulation is going to depend very dramatically on the political views of the American people. They're going to have to decide whether they're worried about climate change or not, and if they are worried about it, whether they are willing to take some steps to actually do something about it. We're obviously not there as a country yet. We're inching in that direction, but we're not there yet. Some of this litigation will help, but, ultimately, this is a question that's going to be decided as a broad cultural matter, not as a purely legal matter.

J: Do you think litigation efforts sometimes delay political movements that would change things?

AGK: No. This goes to the core of my values as an attorney. The reality is that litigation plays a very important role in educating people and in bringing about cultural and economic change. You look at something like *Brown v. Board of Education*,³ which really forced a more mature and sophisticated conversation in the United States about race. That's a conversation that would not have happened if it weren't for some very brave plaintiffs and some very brave attorneys to force those cases and to bring that issue to bear in the courts.

If you look at the history of the environmental movement, litigation has been a critical part of bringing greater awareness of the problems of pollution and how we should responsibly deal with it. I hardly believe litigation is the solution to everything, but going and fighting to protect people's rights in courts is a critical tool for bringing about positive change.

J: Can I quote you on that? "I think litigation is important to bring about cultural and economic change?"

AGK: All of this is quotable. I'd love you to cite *Brown v. Board of Education* as an example. If it weren't for environmental litigators going into court, a lot of the destruction of the environment that was prevalent in the 1960s and the early 1970s would've continued.

³ 347 U.S. 483 (1954).

J: Are these bigger picture suits being handled by the environmental crimes unit or the attorneys in it?

AGK: No, we have really kept the environmental crimes unit separate. The environmental crimes unit works on criminal cases. We have a special litigation unit[(SLU)], and [it] handles a lot of our most important environmental litigation. Then we have an environmental and natural resources unit that works very closely with state agencies. The Portland superfund case [and] the climate change cases are run in that unit.

J: They're part of SLU?

AGK: No. SLU is in the trial division and deals with most of the stuff that is actually being litigated in a court, and the environment and natural resources division is in general counsel. That's where the main lawyers who work with [the] DEQ, and the Department of Agriculture, and Fish and Wildlife are housed.

J: You mentioned earlier that most defendants plead guilty, but they also tend to fight it hard. Are they not taking advantage of the guidelines that have been written that would allow them to "fess up" and mitigate their situation? Do they tend to fight hard until the very end and then cop a plea?

AGK: We've not done enough cases to be able to generalize, but I would say that, in the cases we have had to date, they have been hard fought up until the moment of the plea. I can't say that's been true of every case, [but] these have been, generally, very hard fought cases.

J: Are there any other major issues that you're seeing that the DOJ is considering getting involved in? Can you comment on that?

AGK: Environmental?

J: Yes, environmental issues.

AGK: We have litigation that we've already completed or that is underway that addresses a lot of the main challenges of the state: endangered species on the Columbia river, the Hanford cleanup, liquefied natural gas, climate change, and all of our environmental crimes cases. I think we're doing a good job of fulfilling our mandate of defending Oregon's environment. Going forward, I think what you're going to see is a steady diet of cases similar to the ones we've been bringing. I don't think there's a major area where there's a huge problem we're not addressing. I feel like we've done a good job of filling that gap that I was worried about when I got elected. You can already see some deterrent value going on. Anecdotally, members of

the environmental bar in Oregon have told me that companies have called them and said look, we understand the AG's out there, and they're looking for cases, and we want you to come in and just make sure we're doing everything fine. In one case, just the mere fact that we were investigating a case [motivated] a company [to take] a bunch of their employees and send them to environmental school for a week. Then got them back on the job so that they do a better job of making sure they're playing by the rules. I think we're having a good deterrent effect out there already. I'm very comfortable with the direction we're going.

J: Does DOJ have any metrics or ways of measuring its deterrent effect outside of anecdotes or a general feeling?

AGK: It's hard to do that. We keep an eye on general environmental quality metrics, particularly indicia of clean water and clean air standards around the state. We keep an eye on those. We don't have a quota of cases that we think we need to bring; we're making case-by-case assessments when conduct is brought to our attention.

J: Eventually, you will leave office. Are you at all worried about the provisions in the statutory scheme requiring either the local D.A. or the attorney general to personally approve each felony prosecution? Are you worried that someone could get in office who would not be eager to enforce [causing the] deterrent effect [to] rapidly vanish and [making] it hard to rebuild?

AGK: No, not really. I would say two things. One is, I think the environmental crimes unit is already proving its value. The environmental crimes unit is already becoming an integral part of the DOJ. For example, there was no effort in this last legislative session to eliminate the unit or cut the funding. Both Democrats and Republicans in the legislature understand that this is a necessary and responsible part of environmental enforcement. If we had been doing irresponsible cases, we would have heard about it from the legislature, but we're not.

You might get an attorney general in the future who probably cares less about the environment than I do, but I don't think any responsible AG will decline to do these cases. Politics is politics. You could imagine someone who is not an environmentalist winning this office and then bringing this work to a halt. For the time being, I don't worry about that much; Oregon has a bipartisan tradition of protecting the environment.

J: It sounds like, generally, the agency is getting a good reputation and the business community sounds like it's on board.

AGK: Yeah, obviously, individual businesses that get charged with crimes really don't like it. [As for] the business community as a whole, the overwhelming majority of them play by the rules. When they look at the facts of these cases, they don't have much sympathy for the defendants.

J: Have you had any cases that jump out to you so far as being particularly interesting or instructive or just off-the-wall bizarre? The dumping [case] you talked about earlier came to mind.

AGK: These are bread-and-butter criminal cases. [There's a] lack of anything unique [in these cases]. These are the kinds of cases that exist in every state, and it's important that someone be there to prosecute them. These are bread-and-butter things: asbestos dumping, dumping pollutants in rivers. These things happen everywhere. There's nothing really unique or egregious. It's a standard caseload of cases I knew were out there when I got elected and that I'm glad we're prosecuting.

The bigger risk to me probably is less that you get an AG in the future who doesn't want to do things, [when] there's more of a likelihood that you would get an United States attorney who was less interested. Our current U.S. attorney is Dwight Holton. Dwight has been an environmental crimes prosecutor in the past, so he's very familiar with this. His office and my office have a very close working relationship on these cases. The thing that's more likely to change is if we get a U.S. attorney who is not interested in environmental protection. Our ability to take some of our cases to federal court would disappear.¹ I see that as a more likely possibility than that we would be limited in our ability to bring state cases. Our federal option might disappear.

J: How much do you think that would affect the department's deterrent power?

AGK: I think it would be fairly significant. There are some cases where, if we bring them in federal court, we'll have the possibility of a prison sentence. That does bring a heavier deterrent effect. Our goal is to have a seamless enforcement effort between state regulators, state prosecutors, and federal prosecutors. We all work together to determine the appropriate level of enforcement, and if you strip out one of those levels, then you're not going to have as good of an enforcement system.

J: Thank you.