

The reasons why—

Traffic Code Revised

"Did you know you ran a stop sign," the uniformed police officer asked the driver of the red foreign-made automobile. The driver responded with a nervous "Yes" and sharply added, "It isn't a crime is it?"

Up until October 9 it was a criminal offense to run a stop sign or to violate any of the Warm Springs traffic ordinances. The most minor offense was treated as a criminal case requiring much paperwork as well as court appearances by police officers plus the option of a jury trial if the offender desired.

Approximately 15 percent of the 3700 jury trials during 1980 in Warm Springs were for traffic offenses. Anywhere else most of these traffic offenses would have been considered only traffic infractions not warranting a jury trial.

A comprehensive Law and Order Code revision was authorized after a study conducted in 1980 revealed a need for such a revision in all tribal ordinances. Justice administrator Richard Burton said, "Over the years ordinances were passed a piece at a time...and some things in the code were lacking." The entire code is being updated. The traffic code revision has been completed and approved by Tribal Council.

The Warm Springs tribal code, which has been used for years, grew out of the old code of Indian Offenses instigated prior to 1936. At that time the federal government was doing away with self-rule and created the code of Indian Offenses under the supervision of the superintendent. Every offense committed was an offense against the tribe and thus a crime.

The 1968 Indian Civil Rights Act then required that a jury trial must be provided when an individual accused of a crime requested it. The workload was increasing and it was realized that a revision was necessary.

As part of the revision the traffic code received a thorough going over. Tribal Attorney Jim Noteboom

commented at a recent meeting with law and order personnel on what Tribal Council had in mind when they drafted the new traffic code. There were four major areas in which they felt revisions were necessary.

Traffic Infractions

The fact that all traffic offenses were treated as crimes needed to be changed. The new traffic code makes most traffic offenses infractions, that is, minor offenses classified as A, B, C, and D. Class A traffic infractions carry a fine not exceeding \$500; class B, a fine not exceeding \$250; class C, a fine not exceeding \$100; and a class D traffic infraction carries a fine not to exceed \$50.

A jury trial is no longer offered the offender for traffic infractions. Bail is set for each violation. The offender can go to trial before a judge if he feels he is not guilty or he may mail bail to the court if he is guilty. There is no longer any need for the offender to miss work to go through the court process or for policemen to appear for trials as the result of issuing citations for traffic offenses. The expense of a jury trial is eliminated for these infractions.

However, some traffic offenses are still deemed crimes carrying very severe penalties. These major crimes include: Reckless driving; Driving under the influence of intoxicants; Failure to perform the duties of a driver involved in an accident; Fleeing or attempting to elude a police officer; and, Driving with a suspended or revoked license.

Non-Indian Violators

A second reason for revision of the Warm Springs traffic code was because of the lack in the old code for jurisdiction over non-Indian Traffic violators. Tribal Council felt that the extensive use of both state and tribal highways by non-Indians, many of whom were reservation residents and tribal employees, called for some jurisdiction over them for minor traffic offenses. Council provided that such jurisdiction



DISCUSSION OF NEW CODE—Judge Dave Harding and tribal fish and game officer Oliver Kirk discuss the revised traffic code which both must be familiar with in performing their jobs. Spilyay Tymoo photo by Shewczyk

would be concurrent (in unison with) state jurisdiction in that "any non-Indian should have unfettered option to ask to be cited into state court rather than tribal court."

At this point no agreement has been reached with the state Department of Motor Vehicles as to the recording of offenses committed by non-Indians on the Warm Springs reservation, according to Noteboom. Now a citation issued in Warm Springs and dealt with by tribal court would not be recorded at the DMV.

If an agreement is reached as has been done at Umatilla and Burns a citation issued in Warm Springs would be recorded with the state.

Non-Indians choosing to go to state court would have their citation recorded on their driving record automatically.

Previously all citations issued to non-Indians went to state court with revenue going to the state. With bail money now being sent to tribal court and cases being tried in tribal court, revenue for the tribe will increase.

Tribal court still does not have the authority to try non-Indians for major traffic crimes. Warm Springs police officers, however, do have the authority to arrest traffic

offenders for any of the major crimes.

So far there has been nothing worked out with the state as to the treatment of non-Indian traffic offenders who do not pay bail or do not show up for court. It is only after the state recognizes the citation issued in Warm Springs that a follow-up can occur.

Attorney Noteboom pointed out that there was a plan in-the-making to introduce a bill into the Oregon legislature in 1983 calling for recognition of traffic citations issued to non-Indians going to tribal court in Warm Springs. Also a fine-splitting bill for criminal offenses may be introduced. Warm Springs would receive part of the revenue for fines related to crimes committed on the reservation, although tried in state courts.

Noteboom commented on the newness of the traffic code saying, "We'll have to gain some experience as we go. This is a new program and we'll have to see how it works out. There'll be a lot of bugs to work out."

No Loopholes

Complexity in the old code and procedures used to enforce it is a third reason for Tribal Council's requesting a revision

in the traffic code. Tribal Council wanted tribal members to understand the traffic laws and to be able to represent themselves without having to involve legal aide from the tribal court. This would free some of the time involved in many cases.

"Loopholes" in the law will not prevent justice from being done. A written introduction to the traffic code states, "Provision was made that failure to follow procedures contained in the tribal code would only defeat an action where it could be shown that the failure substantially prejudiced the defendant." No longer would a case be thrown out just because a birthdate was not recorded correctly.

Tribal Council does not want a carbon copy of state and federal court, according to a statement made by Noteboom. The complexity of these courts have a lot of shortcomings. "We want to see justice."

Uniform Traffic Code

The definitions of traffic offenses were brought more into accord with the laws of Oregon and other states with the revision of the Warm Springs traffic code. The Uniform Traffic Code was adopted so tribal members and other persons on the reservation are not subjected to different definitions of the same offense.

Concisely, revision of the traffic code as authorized by Tribal Council has the purpose of expanding tribal court jurisdiction and protecting the people of the Warm Springs reservation. The purpose as cited in the traffic code introductory statement reads: It was not the object of the Tribal Council to cede any jurisdiction over traffic matters to the state of Oregon, but was rather the object of the Tribal Council to expand tribal court jurisdiction and to protect tribal court jurisdiction so as to enhance the safety and welfare of all persons on the reservation."

Discovery Club members win marching trophy

The Simnasho School 4-H Discovery Club came back from the 30th Anniversary Veterans Day Parade, held in Albany, Oregon on November 11, with a first-place trophy and ribbon. Rewarded for their marching abilities, the troupe from Simnasho took first place over 24 other youth marching groups.

The students marched two miles, sporadically performing practiced routines while the valley rain soaked their capes, shoes and hair. The rain didn't prevent the 200 entrants from trudging on through mud puddles and wet streets to entertain the 20,000 also-soaked spectators.

Simnasho teacher and 4-H leader Rich Little marched with the students carrying the glittering trophy to the marcher's delight. He said the students represented Warm Springs well. "They were proud

of who they are and where they are from." 4-H leader Nancy Tailfeathers also marched with the 4-H club.

The marchers' abilities were enhanced with purple and gold capes lent to the group by teacher Patricia Little of Lebanon where the students spent the previous night. Each marcher also wore a bell on his right foot to intensify their marching sound. Starla Greene and Rena Suppah wore regalia and carried the Simnasho School 4-H "Discovery" Club banner.

This is the second year the Simnasho marchers participated in the Albany parade. They placed tenth in the youth marchers division last year. Since then they have marched at community and school events. Their next scheduled appearance is in the December 5 Christmas parade in Bend, Oregon.



FIRST RATE MARCHERS—Simnasho School students shout "Simnasho" to the question "Who's number one?"

Spilyay Tymoo photo by Shewczyk