

## Enhancing Traffic Safety: Engaging and Educating the Judiciary

LIFESAVERS CONFERENCE 2016

Long Beach, California  
Judge Earl G. Penrod (Indiana)  
Judge Phyllis McMillen (Michigan)  
Moderator: Caroline Cash (NHTSA)

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As a result of this session, participants will be able to:

- Understand the perspective and role of the judiciary in matters of traffic safety.
- Explain the importance of educating judges about effective, evidence based approaches in handling traffic cases.
- Identify and foster opportunities to engage the judicial branch in ethical collaboration.

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### Different Role... Common Goal!

- Separate, co-equal branch of government.
- Administration of justice.
- Criminal justice system promotes public safety but judges are NOT part of prosecution team.

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### Third Branch of Government

- Legislative Branch (Congress, State Legislatures) enact laws.
- Executive Branch (Prosecution, Police) execute duly enacted laws.
- Judicial Branch interprets the Law and is a check and balance on other two branches.

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### Prosecuting Wrongdoers

- Criminal justice system where government protects public by holding individuals accountable for conduct.
- Crimes are wrongs against society as a whole and are prosecuted in the name of government.
- Prosecuting/punishing wrongdoers protects society by promoting lawful, positive conduct.

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### What Judges Do...

- Insure constitutional protections for all individuals.
- Balance individual freedoms with social values and objectives, guaranteeing individuals protection from overzealous (even if well intentioned) government.
- Impose sanctions only if guilty regardless of seriousness of social problem.

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### Getting off on a technicality?

- Shame on judges who allow the guilty to go free because the constable has blundered...
- Shame on judges who fail to uphold the law, even when decision unpopular or controversial.

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### Criminal Sentencing

- Retribution (getting what one deserves, eye for eye).
- Incapacitation (remove offender's capacity to offend).
- Rehabilitation (mandate/foster reformation).
- Specific Deterrence (punishment teaches/motivates offender NOT to re-offend).
- General Deterrence (punishment teaches/motivates others not to offend).

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### Judiciary Promoting the General Welfare (and Traffic Safety) By:

- Ensuring a fair and just forum.
- Respecting and following rule of law.
- NOT promoting/favoring prosecution.
- Remaining neutral and independent.

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### BUT....

- Judges NOT precluded from engagement with community and other stakeholders.
- Ethical communication and cooperation with others can ENHANCE the judge's role.
- Other stakeholders more effective through ethical interaction with the judiciary.

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### Further...

- Judges often unaware of opportunities and advantages of ethical cooperation and community outreach.
- Ethical constraints of judicial involvement may not be understood (by judges and others).
- Judicial branch resources are limited and cases such as traffic not sufficiently respected (in and out of the system).

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### Essentials for Traffic Court Judges

- Understand, apply law specific to traffic/impaired driving cases.
- Assess admissibility of scientific and cutting edge/emerging technological evidence: Breath/blood testing, Event Data Recorder, etc.)

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### Essentials for Traffic Court Judges

- Keep current on pharmacological, medical, mental health issues.
- Be familiar with and properly utilize evidence based practices in sentencing: employ what works: technology, assessment and treatment.
- Engage...

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### Engaging Judges in Traffic Safety

- Initiate communications on intersecting issues.
- Apprise courts of available resources/services.
- Invite judicial involvement in public outreach.
- Support judicial education programs (judges respond better to peer to peer education).
- Understand ethical limitations and respect decision NOT to engage.

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### A Promising Program Through NHTSA

- Judicial Fellows and Judicial Outreach Liaisons
  - Serve as active liaisons and provide mutually beneficial relationship between NHTSA and judges handling traffic matters.
  - Improve the delivery of justice in traffic matters and thereby enhance traffic safety.

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### Fellows and JOLs

- Through teaching, writing, consulting, advocating and speaking, serve as resource to and on behalf of traffic court judges.
- No particular agenda/program/initiative; improve system of justice in traffic litigation through education, communication, outreach.

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### National, Regional and State

- NHTSA and the American Bar Association (Judicial Division) Cooperative Agreement.
- Nationally based research and resources.
- Regional focus to allow for geographical differences and needs.
- State and local perspectives: the limitations of top down solutions.

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### ABA/NHTSA Cooperative Agreement

- NHTSA Program Manager: Caroline Cash (DOT-NHTSA Building, Washington D.C.)
- ABA/NHTSA Program Associate: Cheronne M. Mayes (ABA Headquarters Chicago, Illinois)
- Judicial Fellow: Judge Earl G. Penrod (Indiana)
- Tribal Court Fellow: Judge J. Matthew Martin (North Carolina)

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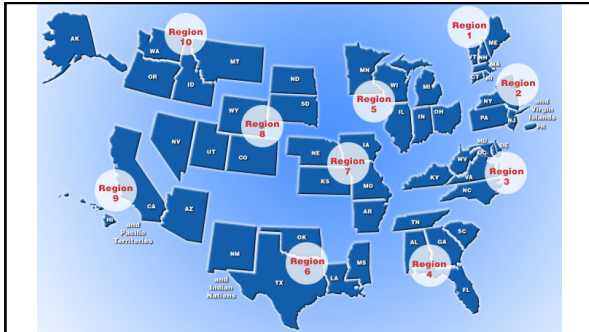
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### Regional Judicial Outreach Liaisons

- Region 1: Hon. Brian L. Burgess (Vermont)
- Region 2: Hon. John S. Kennedy (Pennsylvania)
- Region 5: Hon. Phyllis McMillen (Michigan)
- Region 7: Hon. Chaney Taylor, Jr. (Arkansas)
- Region 9: Hon. Robert L. Broughton (California)
- Region 10: Hon. Mary Jane Knisely (Montana)

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### State Judicial Outreach Liaisons

- Delaware: Hon. Richard Gebelein
- Indiana: Hon. Tim Oakes
- Michigan: Hon. Patrick Bowler
- Oklahoma: Hon. Carol Hubbard
- Pennsylvania: Hon. Michael J. Barrasse
- South Carolina (volunteer basis): Hon. J. Mark Hayes II

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### State Judicial Outreach Liaisons (continued)

- Tennessee: Hon. Leon Burns
- Texas: Hon. Laura Weiser
- Vermont: Hon. Ben W. Joseph
- Virginia: Hon. Gordon Wilkins
- Washington: Hon. Scott Bergstedt
- States with SJOLs in past but position presently vacant: Georgia, Mississippi, Montana

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### Some specifics

- Fostering Collaboration with other stakeholders (TSRPs, LELs, etc.).
  - Example: Responding to Drug Impaired Driving
    - Don't have a BAC to fall back on.
    - Increased reliance on officer observations.
    - Law enforcement, prosecutors, defense attorneys and judges need to understand DRE and ARIDE tests, observations and procedures.

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### Specifics (continued)

- Identifying topics/issues of concern of highway safety personnel.
- Identifying systemic barriers and fostering legitimate solutions. (MI Sobriety Court interlock program)
- Communicating about traffic safety.(Consulting on media campaigns)

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**Specifics (Continued)**

- Being a resource to judges.
- Training and educating judges.
- Promoting evidence based practices that are shown to reduce recidivism.

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**Examples of Evidence Based Practices**

Risk Assessment and Treatment

- Research now shows that assessing offenders for risks and needs and matching them with appropriate interventions can accomplish a reduction in recidivism and increase public safety

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**Risk/Needs Assessment**

- The engine that drives evidence-based recidivism reduction strategies
- Much more accurate in predicting recidivism
- Intended to inform not replace professional judgment

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### Static vs Dynamic Risk Factors

- Risk factors can be either static or dynamic.
  - Static factors are those factors that can't be changed, such as the number of prior arrests, age at first offense, etc.
  - Dynamic factors are those that can change over time such as substance use, impulse control, or antisocial thinking.
- Targeting those factors that can be changed can allow an intervention that will mitigate the prediction of recidivism.

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### Criminogenic Needs

- Criminogenic Need: An attribute of an individual or an individual's environment that contributes to criminal/delinquent behavior that can be changed during the process of offender supervision and/or treatment
- These are the factors to target by incorporating an intervention into the judgment of sentence.

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### Four Most Influential Needs Factors

- Antisocial cognition (thoughts & beliefs)
- Antisocial personality (coping, self-control skills)
- Antisocial associates (peers)
- Family/marital issues
- *\*Reverse order for juveniles*

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The Next Four

- Substance abuse
- Employment
- Education
- Leisure

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Non-Criminogenic – But Responsivity Factors

- Health issues
- Mental health
- Intelligence
- Self esteem
- Personal distress

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Judges Have to Be Educated to Reduce Recidivism

- The example of Impaired driving shows why it is necessary for judges to be educated on evidence based practices.
- The past several decades has brought about:
  - Safer Roads
  - Safer Cars
  - Seat Belt/Restraint Enforcement
  - Raising Minimum Drinking Age
  - Lowering BAC Limits to .08
  - Law Enforcement Efforts
  - Public Awareness
  - Large reduction in impaired driving fatalities

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**The Bad News**

- In 2013, 31% of those killed in traffic crashes died in an ALCOHOL-IMPAIRED CRASH – We haven't eliminated the problem.
- Drivers with prior convictions for impaired driving are overrepresented in fatal crashes.
- We have picked off the low hanging fruit and are left with those hard core impaired drivers who have not been affected by existing court interventions and normal societal pressure to not drive while impaired.
- Unless we target this population with interventions that have been proven to reduce recidivism, we won't bring these figures down.

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**How Do You Educate Judges?**

- Administrative office of the courts
  - annual educational conferences for all of the judges in the state
  - other specialty conferences.
    - e.g. IL DUI forum every year.
    - IN & MI specialty court conferences
- State Judges organizations.
- State highway safety office annual traffic safety conference.

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**National Organizations**

- National Judicial College
- National Center for State Courts
- Center for Court Innovations
- National Drug Court Association
  - National Center for DUI Courts

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**Role as Regional JOL**

- Identify the avenues for judicial education within each state
  - Work with state agencies and organizations to get traffic safety topics on the agenda of conferences.
    - For example, in Illinois -working with the AIOC to create the agenda for their annual DUI conference.
    - Because the Regional JOLs are constantly reviewing the latest research, they are in a position to identify topics and engaging presenters to bring that research to the judges.
- Provide transfer of information on latest research from the national to the state level.

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**Coordinate with National Organizations to Provide Educational Opportunities for Judges**

- Examples:
  - NCDC training
    - National Center for DUI Courts (NCDC) receives NHTSA funding to do judicial education on how to implement a DUI court.
    - This means NCDC provides the training *at no cost to the state*.
    - NHTSA funding can be used by SHSOs to pay for the logistics of travel, lodging and meals to get the Judges and support staff to the training.
  - National Judicial Conference
  - National Center for State Courts
  - National Drug Court Institute
  - Center for Court Innovations
    - All of the above provide technical support and presenters for state conferences

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**Make Presentations**

- ABA contract with NHTSA has an allowance for travel, allowing the JOLs to go to states to do presentations and provide technical support.
  - Common presentations:
    - Screening tools available for predicting the hard core impaired driver
    - Drug impaired driving
    - DUI/Sobriety Courts – proven effective in reducing recidivism
    - Effective use of court ordered ignition interlocks
    - Drug Recognition Experts

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**Why You Need a State JOL**

- Understanding the structure of the specific state courts
  - Which court handles which type of charges?
  - What authority does the court have to impose interventions?
  - Are there state administrative agencies that play a role in traffic safety issues?
- Understanding the statutory schemes that support traffic safety.
- Knowing the venues for judicial education within the state.
- A local judge has inherent knowledge.

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**The Pay-off**

- The pay-off for getting on board with the JOL program is that you have a better educated judiciary.
- Stop the catch and release.
- Instead you have a catch and do something that will reduce recidivism.
- Makes our roads safer.

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**“Guidelines for Creating State Judicial Outreach Liaisons”**

- Getting Started: State Highway Safety Office
- Convincing Judiciary of value of SJOL program.
- Convincing Other Stakeholders of value of SJOL program.
- FUNDING!?!?

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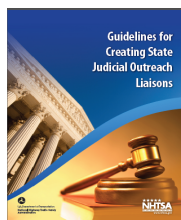
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## “Guidelines for Creating State Judicial Outreach Liaisons”



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## SUMMARY

- Judicial Branch: separate co-equal branch of government with independent, impartial judges.
- Promoting public welfare/traffic safety by administering justice pursuant to law and Code of Judicial Conduct.
- Ethical engagement with other stakeholders and community beneficial and essential.
- Engaging and educating judges is imperative.
- Judicial Fellows/Judicial Outreach Liaison Program an effective initiative developed by NHTSA.

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## Contact Information

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- Caroline Cash, NHTSA Highway Safety Specialist  
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