Engaging the Judiciary to Reduce Impaired Driving Recidivism

JUDGE (RET) PATRICK BOWLER
JUDGE MATTHEW MARTIN
JUDGE PHYLLIS MCMILLEN
CHRISTY SANBORN

LIFESAVERS, 2019
Some Good News

Fewer Fatalities

- From 1982 to 2014, the number of ALCOHOL IMPAIRED fatalities declined from 26,173 in 1982 to 10,076 in 2013.
- However in 2015 ALCOHOL IMPAIRED fatalities INCREASED 3.2% from 2014.
- The Nation lost 35,092 in crashes on U.S. roadways during 2015, an increase from 32,744 in 2014.
- The 7.2% increase is the largest percentage increase in nearly 50 years.
Life Saving Strategies Resulted in Decades of Reduced Fatalities

<table>
<thead>
<tr>
<th>Life Saving Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineered safer roads</td>
</tr>
<tr>
<td>Engineered safer cars</td>
</tr>
<tr>
<td>Reduced speed limits</td>
</tr>
<tr>
<td>Required seat belt usage</td>
</tr>
<tr>
<td>Raised the minimum drinking age</td>
</tr>
<tr>
<td>Lowered BAC limits</td>
</tr>
<tr>
<td>Enhanced law enforcement efforts</td>
</tr>
<tr>
<td>Dramatically increased public awareness, resulting in responsible behavior.</td>
</tr>
<tr>
<td>As a result traffic fatalities have gone down dramatically</td>
</tr>
</tbody>
</table>
The Bad News: We Have Just Picked Off the Low Hanging Fruit

- Impaired driving continues to be the cause of 31% (about 1/3) of fatal crashes.

- Even as the overall number of drivers killed in motor vehicle crashes has declined, the involvement of drugs in fatal crashes has increased.

- Only (about) 35% of DUI offenders will reoffend,
  - but drivers with prior convictions for impaired driving are overrepresented in fatal crashes.

- Those people have been through the criminal justice system.

If we are going to make an impact on repeat offenders, we must use our advantage in the criminal justice system to intervene.
Catch and Release?

We spend a lot of money on law enforcement

We spend a lot of money on prosecution and adjudication

If judges aren’t using evidence based sentencing practices to intervene to stop recidivism...
What are Evidence Based Practices Aimed at Reducing Recidivism?

Target resources at people we can predict will recidivate

- Only 35% of first offenders will re-offend. Who are they?
- Screening and assessment:

  **Risk**
  - How likely a person is to engage in criminal behavior
  - Static factors – e.g., age of onset, # of priors, types of crimes.

  **Need**
  - What areas in a person’s life should be targeted for intervention / supervision in order to decrease their likelihood of future criminal behavior.
  - Dynamic factors – e.g., antisocial personality pattern, lack of impulse control, substance abuse disorder.

  **Responsivity**
  - Individual factors that might influence the effectiveness of treatment services
  - Mental health disorders, homelessness, etc.
“High Risk” refers to the likelihood that an offender will not succeed adequately on standard supervision, and will continue to engage in the same behavior that got him or her into trouble in the first place.
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.
Four Most Influential Criminogenic Needs

- **Antisocial cognition**
  - attitudes, values, beliefs, rationalizations, a personal identity that is favorable to crime - self centered, blaming others

- **Antisocial personality**
  - impulsive, adventurous pleasure-seeking, generalized trouble (multiple persons, multiple settings)
  - weak self-control, weak anger management skills, poor problem solving skills, lack of coping skills, disregard for safety of self and others, failure to consider negative consequences or learn from them, disregard for right and wrong

- **Antisocial associates**
  - both association with pro-criminal others and relative isolation from anticriminal others

- **Family/marital issues**
  - Poor quality relationships in combination with neutral expectations with regard to crime and pro-criminal expectations
Next Four Most Influential Needs

- **Substance abuse**
  - Problems with alcohol and/or drugs

- **Education**
  - Low levels of performance and involvement and low levels of rewards and satisfactions

- **Employment**
  - Low levels of performance and involvement and low levels of rewards and satisfactions

- **Leisure**
  - Low levels of involvement and satisfaction in anticriminal leisure pursuits
Recidivism is Not Just Related to Substance Abuse

- Alcohol and drug misuse alone is not enough to identify the propensity to recidivate.

- Problem drinking (most often binge drinking) and other risky behavioral and personality traits or cognitive impairments interact to lead to high-risk behavior such as impaired driving. (Brown et al. 2009; Nochajski and Stasiewicz 2006; Ouimet et al. 2007; Couture et al. 2010)
New Screening tools are taking into consideration the need not only to assess for substance abuse disorders but other traits we know lead to repeat impaired driving.

- Impaired Driving Assessment (IDA)
- DUI Risk and Needs Triage (DUI-RANT™)
- Computerized Assessment and Referral System (CARS)
Evidence Based Practices for Intervention

**DWI Courts- Combining Intensive Supervision and Treatment**

- The Campbell Collaboration conducted a meta-analysis of 28 evaluations of DWI Courts

**CONCLUSION:**

- DWI Courts reduced both DWI recidivism and general criminal recidivism by an average of more than 12 percent.
- The best DWI Courts reduced recidivism by as much as 50-60 percent.
Ignition Interlock Combined With Treatment

- Research shows that ignition interlocks by themselves, reduce recidivism only for as long as they are installed.
- New research showing that interlocks combined with behavior intervention have longer effect.
  - **Michigan DWI Court Interlock Program**
    - Restricted license granted to persons in good standing in DWI court and with interlock installed
    - Substantial reduction in recidivism 4 years out for the group of DWI Court participants who had interlocks installed.
  - **Florida**
    - Treatment was required when offender accumulated 3 violations.
    - The ignition interlock + treatment group experienced 32% lower recidivism, following removal of the interlock during the 12 to 48 months in which they were compared to the nontreatment group.
    - Researchers estimated that this decline in recidivism would have prevented 41 rearrests, 13 crashes, and almost 9 injuries in crashes involving the 640 treated offenders over the period following interlock removal.
So, What Can be Done by the Judiciary to Support and Improve Public Safety?
Effective in promoting proven and promising practices: the National Highway Traffic Safety Administration (NHTSA) has supported the development of a network of criminal justice professionals who educate peer-to-peer on traffic safety including:

- Regional Judicial Outreach Liaisons (RJOLs)
- State Judicial Outreach Liaisons (SJOLs)
- Judicial Fellows
- Probation Fellows
- Law Enforcement Liaisons (LELs)
- Traffic Safety Resource Prosecutors (TSRPs)
Create a State Judicial Outreach Liaison

A local judge understands:

- The structure of the specific state courts.
- Which court handles which type of charges.
- The authority of the court to impose interventions.
- The state administrative agencies that play a role.
- The statutory schemes that support traffic safety.
- The working relationship with the Administrative Office of the Courts and with the State Judicial Educator.
- What the courts are doing and the venues for judicial education within the state.
SJOL Qualifications

- Juris Doctorate or an equivalent degree from a law school accredited by the American Bar Association or the Supreme Court of the State.

- A sitting or retired member of the State judiciary

- Extensive experience in handling impaired driving or other traffic-related cases

- Knowledge or willingness to learn about DWI courts and alcohol ignition interlock systems

- A strong desire to increase public safety using research-based practices to reduce impaired driving
SJOL Duties

- While remaining independent and impartial, the SJOL serves as a statewide resource for the judiciary and other members of the highway safety community dealing with highway safety related court cases, particularly cases involving impaired driving.

- The following are suggested duties and roles of an SJOL.
  - Not exhaustive – Be creative.
  - Not all SJOLs will perform all of the following duties.
  - Intended to help SHSOs identify the recommended uses of SJOLs and develop individualized work plans in conjunction with the SJOLs.
  - Where appropriate, these duties can be revised to become goals, objectives, or performance measures within grant agreements.
SJOL Duties (continued)
Provide Training and Education

- Develop a network of contacts to promote peer-to-peer judicial education related to:
  - sentencing and supervision of DWI offenders,
  - evidentiary issues,
  - legal updates and
  - alcohol/drug testing and monitoring technology.

- Solicit opportunities to speak at state highway safety conferences and state judicial conferences.

- Identify barriers that hamper effective training, education or outreach to the courts and recommend alternative means to address these issues and concerns.
Promote development and use of DWI Courts. (Regional DWI Courts)

Promote use of ignition interlocks and improvements to alcohol ignition interlock programs.

Promote other evidence-based and promising court, sentencing, and supervision practices. (Rehabilitation: Motivation Interviewing et al)
SJOL Duties (continued)
Share Information and Coordinate with Other Criminal Justice Professionals

- Consult regularly with Judicial Fellows, RJOLs, and other SJOLs regarding outreach efforts and opportunities.

- Remain informed on emerging impaired-driving issues and on possible strategies to address those issues.

- Share information and coordinate with LELs, SHSOs, NHTSA Regional Offices, TSRPs, and Probation Fellows to help identify opportunities for improving the criminal justice system.

- Promote electronic DWI data systems, and assist in linking court data with arrest data and other available data systems.
SJOL Duties (continued)
Liaise Between Courts and Policymakers

- Identify issues of concern to judges and other court officials regarding impaired driving or other traffic safety issues and bring them to the attention of appropriate criminal justice or highway safety officials.
- Identify topics of concern to highway safety officials and work with the judicial community to develop a better understanding of the topics by sharing research and data.
- Upon request, review material developed by others and provide comments and judicial insights.
- When invited, assist legislators and policy makers in crafting public policy regarding impaired driving and other highway safety issues.
- Advise members of the judiciary and criminal justice officials on potential sources of funding and resources.
Other Potential Responsibilities

- Publish a newsletter or a blog on highway safety issues for the judiciary in his or her State.

- Write or share articles for the American Bar Association “Highway to Justice” newsletter on highway safety issues.

- Attend JOL trainings as they become available.

- Promote public understanding of Civics, relationships of branches of government, need to work together.
The conduct of judges both on and off the bench is governed by rules or codes of judicial conduct established by each state.

Intended to ensure a judge’s conduct does not undermine the independence, integrity, and impartiality of the court.

Codes of conduct generally recognize that judges are “uniquely qualified to engage in activities that concern the law, the legal system, and the administration of justice.”
Ethical Considerations (continued)

While judges play an important role in reducing future criminal behavior by holding people accountable after they have been convicted of a crime, they are not part of the prosecution team and SJOLs will not engage in activities that might be viewed as assisting the prosecutor in obtaining a conviction.

Important for SHSOs to understand the perspective and role of judges in matters of traffic safety. The judiciary is a separate, co-equal branch of government, and a fundamental role of the judge is to remain independent and impartial.

Fiscal Considerations for State Highway Safety Offices

- Anticipated that the funding for SJOLs will come from each respective SHSO.
  - Amount needed will vary depending on availability of judge and the amount of work to be performed.
    - SJOLs may be employed part-time, full-time, or as-needed basis.
      - NHTSA Judicial Fellows and Regional JOLs serve part-time basis and are paid a flat, monthly stipend.
      - Research the going rate of pay for judges in the State, desired level of experience and education, and plan for a rate of pay commensurate with the level of effort expected from the SJOL.
  - Second fiscal consideration is travel. A large portion work must be conducted in person at meetings and conferences.
    - Transportation, hotel, and per diem costs need to be adequately budgeted.
    - The travel cost will be easier to estimate when work plan created. Reserving for unplanned trips is highly recommended. Once the SJOL establishes himself/herself in the State, more requests for the SJOL will occur.
Which Funds Can Be Used?

- With a focus on impaired driving, State JOLs, may be funded using highway safety grant funds received from NHTSA.

- 23 CFR Part 1300.23 Impaired driving countermeasures grants
  - SHSO funding through 23 USC 405(d) aka FAST Act 405(d)
    - Court support of:
      - high-visibility enforcement efforts,
      - training and education of criminal justice professionals
        (including law enforcement, prosecutors, judges, and probation officers)
      - to assist such professionals in handling impaired driving cases,
      - hiring traffic safety resource prosecutors,
      - hiring judicial outreach liaisons, and
      - establishing driving while intoxicated courts;
Why Funds Can Be Used?

- Countermeasures that Work
  - Chapter 1: Section 3.1 Deterrence: Prosecution and Adjudication
  - Chapter 1: Section 7.2 Enforcement of Drug-Impaired Driving
  - Chapter 1: Section 7.2 Drug-Impaired Driving Laws

- NHTSA Program Assessment
  - Once every three years
  - Will offer advisement and recommendations

- SHSOs exploring the creation of a SJOL program should consult their NHTSA Regional Office for program and financial guidance and other potential grant resources.
<table>
<thead>
<tr>
<th>Judicial Fellows</th>
<th>Regional Judicial Outreach Liaisons</th>
<th>NHTSA Regional Office Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>JUDICIAL FELLOW</strong></td>
<td><strong>Region 1 (ME, MA, NH, VT, RI)</strong></td>
<td>Gabriel J. Cano</td>
</tr>
<tr>
<td>Hon. Neil Edward Axel</td>
<td>Hon. Brian L. Burgess</td>
<td>Deputy Regional Administrator</td>
</tr>
<tr>
<td>410.530.7877 (cell)</td>
<td>802.279.6407 (cell)</td>
<td>NHTSA Region 1</td>
</tr>
<tr>
<td><a href="mailto:Neilaxel49@gmail.com">Neilaxel49@gmail.com</a></td>
<td><a href="mailto:Brian.Burgess@vermont.gov">Brian.Burgess@vermont.gov</a></td>
<td>55 Broadway, RTV-8E</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cambridge, MA 02142</td>
</tr>
<tr>
<td></td>
<td></td>
<td>617.494.1737 Office</td>
</tr>
<tr>
<td></td>
<td></td>
<td>617.494.3646 Fax</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:Gabriel.Cano@dot.gov">Gabriel.Cano@dot.gov</a></td>
</tr>
<tr>
<td><strong>TRIBAL COURT FELLOW</strong></td>
<td><strong>Region 2 (CT, NJ, NY, PA, PR, Virgin Islands)</strong></td>
<td>Richard F. Simon</td>
</tr>
<tr>
<td>Hon. J. Matthew Martin</td>
<td>Hon. John S. Kennedy</td>
<td>Deputy Regional Administrator</td>
</tr>
<tr>
<td>828.273.8712</td>
<td>717.825.8302</td>
<td>NHTSA Region 2</td>
</tr>
<tr>
<td><a href="mailto:abajudicialfellow@gmail.com">abajudicialfellow@gmail.com</a></td>
<td><a href="mailto:jskennedy17402@gmail.com">jskennedy17402@gmail.com</a></td>
<td>245 Main Street, Suite 210</td>
</tr>
<tr>
<td></td>
<td></td>
<td>White Plains, NY 10601</td>
</tr>
<tr>
<td></td>
<td></td>
<td>914.682.3445 (o)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>914.346.7431 (c)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>914.682.6162 (main)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:Richard.Simon@dot.gov">Richard.Simon@dot.gov</a></td>
</tr>
<tr>
<td><strong>Region 3 (MD, DE, DC, VA, WV, KY, NC)</strong></td>
<td><strong>Region 3 (MD, DE, DC, VA, WV, KY, NC)</strong></td>
<td>Bill Naff</td>
</tr>
<tr>
<td>Hon. A. Robinson Hassell</td>
<td>Hon. A. Robinson Hassell</td>
<td>NHTSA Region 3</td>
</tr>
<tr>
<td>336.412.7900 (c)</td>
<td>336.412.7900 (c)</td>
<td>George H. Fallon Bldg.</td>
</tr>
<tr>
<td><a href="mailto:judgehassell@gmail.com">judgehassell@gmail.com</a></td>
<td><a href="mailto:judgehassell@gmail.com">judgehassell@gmail.com</a></td>
<td>31 Hopkins Plaza, Room 902</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Baltimore, MD 21201-2825</td>
</tr>
<tr>
<td></td>
<td></td>
<td>410.962.0064</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:Meg.miller@dot.gov">Meg.miller@dot.gov</a></td>
</tr>
<tr>
<td>Regional JOLs (continued)</td>
<td>Regional NHTSA Office Contact</td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Region 5 (MN, WI, IL, IN, OH, MI)</strong>&lt;br&gt;Hon. Phyllis McMillen&lt;br&gt;248.568.3083&lt;br&gt;<a href="mailto:Mcmillen008@gmail.com">Mcmillen008@gmail.com</a></td>
<td>Kari Kinnard&lt;br&gt;NHTSA Region 5&lt;br&gt;4749 Lincoln Mall Drive Suite 300B&lt;br&gt;Matteson, IL 60443-3800&lt;br&gt;708.503.8891&lt;br&gt;<a href="mailto:Kari.Kinnard@dot.gov">Kari.Kinnard@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td><strong>Region 7 (NE, KS, IA, MO, AR)</strong>&lt;br&gt;Hon. Chaney Taylor, Jr.&lt;br&gt;501.412.4841&lt;br&gt;<a href="mailto:ctaylorjol@gmail.com">ctaylorjol@gmail.com</a></td>
<td>Robert Eichkorn&lt;br&gt;NHTSA Region 7&lt;br&gt;901 Locust Street, Room 466&lt;br&gt;Kansas City, MO 64106&lt;br&gt;<a href="mailto:Robert.Eichkorn@dot.gov">Robert.Eichkorn@dot.gov</a></td>
<td></td>
</tr>
<tr>
<td><strong>Region 9 (CA, HI, AZ, Pacific Territories)</strong>&lt;br&gt;TBD</td>
<td>Ed Gebing&lt;br&gt;NHTSA Region 9&lt;br&gt;John E. Moss Federal Building&lt;br&gt;650 Capitol Mall, Suite 5-400&lt;br&gt;Sacramento, CA 95814&lt;br&gt;Office: 916-498-5055</td>
<td></td>
</tr>
</tbody>
</table>
# Contact List (continued)

<table>
<thead>
<tr>
<th>Regional JOL</th>
<th>Regional NHTSA Office Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Region 10 (AK, WA, OR, ID, MT) Hon. Mary Jane Knisely 406.698.2659 <a href="mailto:maryjaneknisely@gmail.com">maryjaneknisely@gmail.com</a></td>
<td>Mari V. Hembeck Deputy Regional Administrator NHTSA Region 10 915 2nd Avenue Suite 3140 Seattle, WA 98174-1079 206.220.7646 206.220.7651 <a href="mailto:Mari.hembeck@dot.gov">Mari.hembeck@dot.gov</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NHTSA Program Manager</th>
<th>ABA/NHTSA Program Associate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caroline Cash Highway Safety Specialist NHTSA 1200 New Jersey Ave., SE W44-220 Washington, DC 20590 202-366-9712 <a href="mailto:Caroline.Cash@dot.gov">Caroline.Cash@dot.gov</a></td>
<td>Cheronne M. Mayes American Bar Association/Judicial Division 321 N. Clark Street, 19th Floor Chicago, IL 60654 312.988.6716 <a href="mailto:Cheronne.Mayes@americanbar.org">Cheronne.Mayes@americanbar.org</a></td>
</tr>
<tr>
<td>State</td>
<td>Judicial Outreach Liaisons</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------</td>
</tr>
</tbody>
</table>
| **Indiana:** | Hon. Earl G. Penrod Indiana Senior Judge  
3408 NW 17th Lane  
Cape Coral, FL 33993  
812.457.7371  
Penrodinjol@gmail.com |
| **Michigan:** | Hon. Patrick Bowler  
1715 Meyer Court  
Greenville, MI 48838  
616.644.2178  
pcbowler@gmail.com |
| **Louisiana:** | Hon. Marion E. Edwards  
PO Box 81  
Gretna, LA 70054  
504.239.4437  
judgemarion@aol.com |
| **Oklahoma:** | Hon. Rodney (Rod) Ring  
2505 Halifax Way  
Oklahoma City, OK 73069  
405.246.5023 (c)  
405.325.3702 (o)  
joloklahoma@gmail.com |
| **Maine:** | Hon. David Kennedy  
1424 N. Road  
North Yarmouth, ME 04097  
207.829.5498  
David.Kennedy@DirigoSafety.com |
| **Pennsylvania:** | Hon. Michael J. Barrassse  
Scranton, PA  
570.963.6452  
mbarrassse@gmail.com |
<table>
<thead>
<tr>
<th>State</th>
<th>Name</th>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Dakota</td>
<td>Nancy Allard</td>
<td>SD Department of Public Safety Office of Highway Safety</td>
<td>605.400.3888</td>
<td><a href="mailto:Nancy.Allard@state.sd.us">Nancy.Allard@state.sd.us</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Hon. Leon Burns</td>
<td>228 East Brad Street</td>
<td>804.761.7976</td>
<td><a href="mailto:gordonwilkins16@gmail.com">gordonwilkins16@gmail.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cookeville, TN 38501</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:leoncburns@gmail.com">leoncburns@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Hon. Laura Weiser</td>
<td>1210 San Antonio Street, Suite 800</td>
<td>804.761.7976</td>
<td><a href="mailto:gordonwilkins16@gmail.com">gordonwilkins16@gmail.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Austin, TX 78701</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>512.482.8986</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:lweiser@yourhonor.com">lweiser@yourhonor.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>Hon. Gordon Wilkins</td>
<td>804.761.7976</td>
<td></td>
<td><a href="mailto:gordonwilkins16@gmail.com">gordonwilkins16@gmail.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td>Hon. Scott Bergstedt</td>
<td>12255 15th Avenue SW</td>
<td>509.432.3682</td>
<td><a href="mailto:scott@bergstedtlaw.com">scott@bergstedtlaw.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Burien, WA 98146</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**State Judicial Outreach Liaisons (cont.)**
According to NHTSA, 380 Motor Vehicle Fatalities on Indian Lands in 2016, the Most Recent Year for which we have Data

- MOTOR VEHICLE CRASHES ARE A LEADING CAUSE OF UNINTENTIONAL INJURY FOR NATIVES, AGES 1-44.
- ADULT MOTOR VEHICLE RELATED DEATH RATES FOR NATIVE PEOPLES ARE 1.5 TIMES MORE THAN THAT OF WHITE OR AFRICAN AMERICANS.
- CULTURAL CONSEQUENCES ACCOMPANY EVERY LOSS.
- HOWEVER, THE GOVERNMENT HAS STRUGGLED WITH DEFINING WHAT ENCOMPASSES “INDIAN LANDS.”
The Cherokee Cases

**Cherokee Nation v. Georgia - 1831**

**Worcester v. Georgia - 1832**

- Both John Marshall
- Both cases deal with sovereignty of Indian Tribes in the U.S.
  - Cherokee: Tribes are dependent nations within the U.S. like a "ward to its guardian"
  - Worcester: basis for the Trail of Tears in 1838
  - "John Marshall has made his decision; now let him enforce it!"
  - Alleged words of President Andrew Jackson →
PL. 280

Congress has given California, Minnesota, Nebraska, Oregon, Wisconsin, Alaska, Nevada, South Dakota, Washington, Florida, Idaho, Montana, North Dakota, Arizona, Iowa, and Utah varying degrees of police power over Indian Tribes within those states in an unfunded mandate.

This has led to confusion and a lack of uniformity.
SOLUTIONS?
Joint Conferences---These are increasing across the country. An excellent example is the New York Listening Conference: “On April 26-27, 2006, the First New York Listening Conference convened state and federal judges and court officials in sessions with tribal judges, chiefs, clan mothers, peacemakers and other representatives from the justice systems of New York’s Indian Nations and Tribes, to exchange information and learn about our respective concepts of justice.”

http://www.nyfedstatetribalcourtsforum.org/listeningConference/index.shtml

The Walking on Common Ground project is based on facilitating these types of conversations. https://walkingoncommonground.org/
Tribal/State Partnerships
Legislating

Full Faith and Credit Laws---N.C. Gen. Stat. § 1E-1 and Cherokee Code § 25-5(a) open North Carolina and the EBCI to formal recognition of each sovereign’s orders and judgments.
Tribal/State Partnerships
Working Together

Joint Jurisdiction Courts---The Leech Lake-Cass County Wellness Court is a joint jurisdiction problem solving Court, the first of its kind in the nation. In this Court setting, the Minnesota District Court and the Leech Lake Band of Ojibwe Tribal Court came together in mutual agreement and determined to improve their shared communities. Utilizing the drug court model, this post-sentencing, impaired driving therapeutic court serves both tribal members as well as members of the local communities with two sovereign entities exercising the judicial power concurrently.

Although beyond our scope today, the expansion of Tribal court special domestic violence criminal jurisdiction may be a harbinger of increased Tribal control over Tribal lands. See, e.g. 25 U.S.C. § 1304.
Please evaluate this presentation using the Lifesavers Conference Mobile App.

- **Select Sessions Icon**
- **Select Applicable Track**
- **Select Applicable Workshop**
- **Click Rate Session Button (or) Clipboard Icon**