

# HIGHWAY TO JUSTICE

March/April 2015

From The ABA and The National Highway Traffic Safety Administration

## A CONVERSATION WITH CHIEF JUSTICE KEVIN BRISCOE

*J. Matthew Martin*  
*ABA Tribal Courts Fellow*

With this issue, we begin a new feature, consisting of conversations with leading American jurists regarding traffic safety issues in their jurisdictions. In this inaugural interview, we are proud to interview Chief Justice Kevin Briscoe of the Mississippi Band of Choctaw Indians.

### What is your jurisdiction?

I serve the Mississippi Band of Choctaw Indians (MBCI) Reservation. The Reservation is situated in east central Mississippi, near the Alabama border. This Reservation is a “checkerboard” of Indian Country lands, consisting of 8 separate communities spread over 10 Mississippi counties and consisting of approximately 35,000 acres, and including Dekalb and Jackson industrial parks which are all owned by the United States and held in trust for the Tribe.

### How long have you been on the bench?

I began as a Youth Court Judge. After 11 years, I was appointed Chief Justice of the MBCI Supreme Court, where I have served for the past year and a half.

### What are the major traffic safety issues in your jurisdiction?

1. Failure to use safety belts and child restraints;
2. Impaired driving, which we call DUI, and distracted driving, such as texting while driving;
3. No driver’s license;
4. Disregard for safety, by which I mean aggressive driving and failing to operate under the rules of the road.

### How does your Court address these issues?

In traffic citations, the typical judgment is a fine (e.g. cases of failure to use safety belts and child restraints and no driver’s licenses). In other cases, including DUI, the traffic court can order an evaluation with Choctaw Behavioral Health and direct the offender to comply with assessment. Additionally, our law enforcement officers are very good

about warning violators, which would include non-Indians, who we do not have criminal jurisdiction over. We do have avenues for non-Indian violators on the Reservation such as issuing federal magistrate tickets. A few of our criminal investigators are cross deputized with Neshoba County and can arrest non-Indians on tribal lands and transport them to the county jail. Our wildlife and parks officers can issue civil tickets to non-Indians if traffic violations occurred in hunting areas.

### Do you believe that you have any traffic safety issues that are unique to your jurisdiction?

Certain rules of the road are disregarded because the Reservation is kind of like a safe haven for drivers. A lot of our tribal members like trucks, and kids like to ride in the beds of the trucks. We see that a lot on the Reservation. We see the same thing with children, even babies, riding on the lap while the parent is driving.

### How does your Court address these issues?

Safety comes first. Your child is supposed to be restrained. If something happens, it is too late. We have Community Law Day workshops on safety. In these events, law enforcement officers go out into the community and educate the tribal members on safety whether it be a bicycle, motorcycle, school bus, etc . . . Our officers do a good job educating the public on the “what ifs.” We do have an officer that goes into the schools, development clubs, and other organizations, etc . . . to present safety programs and concerns.

### What is or are the best traffic safety resource(s) you currently have in your jurisdiction?

We have a great judicial system and law enforcement training.

### What traffic safety resources that you do not already have would you wish or envision for your jurisdiction?

More safety check-points. Grants are the primary source of funds for the check-points. These are usually done on holidays due to the lack of funding.



*continued, page 2*

*Highway to Justice* is a publication of the American Bar Association (“ABA”) and the National Highway Traffic Safety Administration (“NHTSA”). The views expressed in *Highway to Justice* are those of the author(s) only and not necessarily those of the ABA, the NHTSA, or the government agencies, courts, universities or law firms with whom the members are affiliated.

We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod [penrod26d01@msn.com](mailto:penrod26d01@msn.com) with a copy to the staff liaison, [Denise Jimenez@americanbar.org](mailto:Denise.Jimenez@americanbar.org). Please contact Ms. Jimenez for editorial guidelines.

The deadline for submission of articles for the Summer issue is May 27.

## A CONVERSATION WITH CHIEF JUSTICE KEVIN BRISCOE *continued from page 1*

**If you could ask the Judicial Division of the American Bar Association for one traffic safety resource, what would it be?**

We could use help in staffing two new traffic safety positions. First we need a DUI Safety Officer, who can focus entirely on impaired driving. Secondly, we have to rely on the state of Mississippi for accident reconstruction services. While we are happy to partner with our friends in Mississippi, not having training for our officers to conduct their own accident reconstruction creates delays in traffic enforcement. We would be more efficient if our own officers were certified to do it themselves.

**If you could ask the National Highway Traffic Safety Administration for one traffic safety resource, what would it be?**

We need a Traffic Safety Officer dedicated solely to traffic safety and would appreciate some assistance from NHTSA in creating and staffing such a position. We continue to send officers for updated traffic training techniques and trends. Enforcement is not an issue but I believe more aggressive aftercare is needed, as we deal a lot with recidivism. We could also use more up to date equipment such as radar and portable breath testing devices.

## THE CHANGING FACE OF THE IMPAIRED DRIVER

*Hon. Neil Edward Axel (retired)*

*Judicial Outreach Liaison—Region 3, Columbia, Maryland*

Earlier this year, the National Highway Traffic Safety Administration (NHTSA) released the latest two studies on impaired driving providing increasing evidence that fewer Americans are driving impaired by alcohol, but that an increasing number are driving under the influence of marijuana and other drugs.

The *2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers*<sup>1</sup> is the fifth iteration of surveys of night time weekend drivers conducted voluntarily and anonymously. This latest study surveyed a nationally representative sample of approximately 10,000 drivers in 300 locations around the country. What is significant about this survey is that when compared to earlier studies, trends in the use of alcohol and drugs by drivers become clear. By way of example, the use of alcohol by drivers continues to decline, decreasing by 30% since the 2007 survey, and by 80% since the 1973 survey. Specifically, alcohol use was evident in the following percentages of those surveyed:

<b>1973 survey:</b>	<b>35.9%</b>
<b>2007 survey:</b>	<b>12.4%</b>
<b>2013/2014 survey:</b>	<b>8.3%</b>

Over the same periods of time, when looking only at breath alcohol concentrations of 0.08 or higher, we can see the same general downward trend:

<b>1973 survey:</b>	<b>7.5%</b>
<b>2007 survey:</b>	<b>2.2%</b>
<b>2013/2014 survey:</b>	<b>1.5%</b>

Although there are still approximately 10,000 alcohol-impaired fatalities annually, it appears that the broad range of impaired driving policies and programs implemented by all branches of government and numerous other non-governmental organizations are working. Drug use, however, is increasing. Based upon this most recent survey, illegal drug use is up more than 20% since the 2007 survey, and the use of marijuana is up by 47% since the 2007 survey. In the 2013/2014 survey 22.5% of all weekend nighttime drivers were found to have drugs (marijuana, illicit, prescription and over the counter drugs) in

# THE CHANGING FACE OF THE IMPAIRED DRIVER

continued from page 2

their system. The increase in marijuana use is seen when comparing the 2007 and 2013/2014 surveys which found THC present in those surveyed in the following percentages:

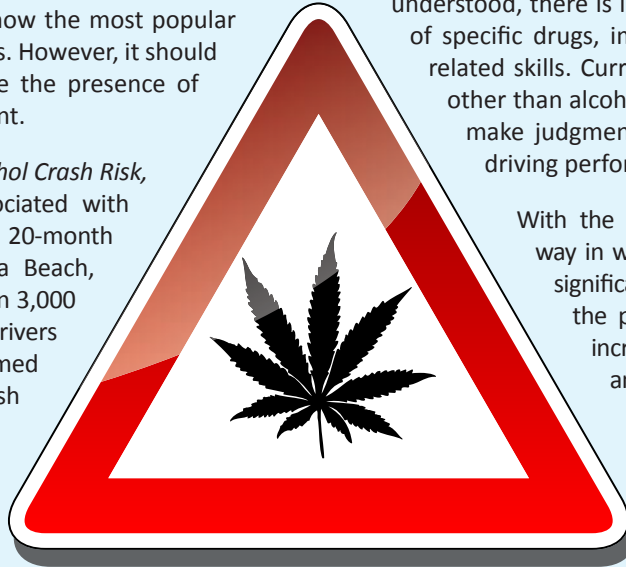
**2007 marijuana use (THC): 8.6%**  
**2013/2014 marijuana use (THC): 12.6%**

These results suggest that marijuana is now the most popular intoxicant used by drivers on our highways. However, it should be noted that the surveys only measure the presence of drugs and not whether there is impairment.

The second study released, *Drug and Alcohol Crash Risk*, was designed to estimate the risk associated with alcohol- and drug-positive driving. Over a 20-month period of time in 2010-2011 in Virginia Beach, Virginia data was collected from more than 3,000 crash-involved drivers and 6,000 control drivers (not involved in crashes). This study confirmed earlier studies of the relative risk of crash involvement associated with alcohol use. Specifically, with a 0.08 BAC, there was 4 times the risk or probability of a crash, and with a 0.15 BAC, there was 12 times the risk or probability of a crash compared to alcohol-free drivers. Drivers testing positive for THC were overrepresented in the crash-involved (case) population. However, when demographic factors (age and gender) and alcohol use were controlled, the study did not find an increase in population-based crash risk associated with THC use.

Clearly prior studies have shown that drugs (including marijuana) may impair psychomotor tasks, reaction times, divided attention tasks, as well as cognitive and executive functions, all of which impact one's ability to safely operate a motor vehicle. However, the role that drugs play in contributing to crashes is less clear.<sup>2</sup> "Understanding the effects of other drugs on driving is considerably more complicated than is the case for alcohol impairment. This stems from the fact that there are many potentially impairing drugs and the relationship between dosage levels and driving impairment is complex and uncertain in many cases."<sup>3</sup>

Although a number of states have enacted *per se* laws that set statutory limits for the presence of drugs in one's system, one challenge that lies ahead is for researchers to be able to definitively assess the relationship between drug concentrations in the body and specific degrees of driver impairment. Currently more research is needed in that "while the impairing effects of alcohol are well-understood, there is limited research and data on the crash risk of specific drugs, impairment, and how drugs affect driving-related skills. Current knowledge about the effects of drugs other than alcohol on driving performance is insufficient to make judgments about connections between drug use, driving performance, and crash risk."<sup>4</sup>



With the changing face of the impaired driver, the way in which these cases impact our courts may be significant. Reliance upon drug testing as part of the prosecution case may lead to longer trials, increased demands for drug recognition experts and State chemists. Further, the trial judge will inevitably continue to face evidentiary challenges based on search and seizure, chain of custody, confrontation and related issues.

One can reasonably expect that in the years ahead, research will address improved and more efficient forms of testing for drugs, the relationship between drug levels and impairment, and even standardized field sobriety tests specific to drugged driving cases. In the meantime, these new studies help us see what may lie ahead.

1. For more information, see generally, NHTSA Press Release Feb. 6, 2015 and links to Research Notes, Fact Sheets, and Executive Summaries found at: <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-releases-2-impaired-driving-studies-02-2015>
2. *Drug and Alcohol Crash Risk*, NHTSA Traffic Safety Facts Research Note, DOT HS 812 117 (February 2015) (citations omitted).
3. *Drug and Alcohol Crash Risk*, NHTSA Traffic Safety Facts Research Note, DOT HS 812 117 (February 2015).
4. Berning & Smither, *Understanding the Limitations of Drug Test Information, Reporting, and Testing Practices in Fatal Crashes*, NHTSA Traffic Safety Facts, Research Note, DOT HS 812 072 (November 2014).

## DON'T FORGET:

Valuable resources can be found at



**National Center for State Courts**  
<http://www.ncsc.org/>



**THE NATIONAL JUDICIAL COLLEGE**

**National Judicial College**  
<http://www.judges.org/index.html>

## CONTACT INFO

To learn more about programs offered by NHTSA, please contact one of the following:

### Judicial Fellow:

Hon. Earl Penrod: [Penrod26d01@msn.com](mailto:Penrod26d01@msn.com)

### Tribal Courts Fellow:

Hon. J. Matthew Martin:  
[abajudicialfellow@gmail.com](mailto:abajudicialfellow@gmail.com)

### Judicial Outreach Liaisons:

Hon. Neil Edward Axel, Judicial Outreach Liaison, Region 3 (North Carolina, Virginia, Kentucky, West Virginia, Maryland, Delaware, District of Columbia):  
[NeilAxel49@gmail.com](mailto:NeilAxel49@gmail.com)

Hon. Phyllis McMillen, Judicial Outreach Liaison, Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):  
[mcmillen008@gmail.com](mailto:mcmillen008@gmail.com)

Hon. Chaney W. Taylor, Jr., Judicial Outreach Liaison, Region 7 (Iowa, Missouri, Arkansas, Kansas, Nebraska): [ctaylorjol@gmail.com](mailto:ctaylorjol@gmail.com)

Hon. Mary Jane Knisely, Judicial Outreach Liaison, Region 10 (Montana, Idaho, Oregon, Washington, Alaska):  
[maryjaneknisely@gmail.com](mailto:maryjaneknisely@gmail.com)

## OVERCOMING OBSTACLES TO STARTING A SPECIALTY COURT

*By Hon. Chaney Taylor*

*Judicial Outreach Liaison NHTSA Region 7, Batesville, AR*

Drug Courts began in Miami-Dade County, Florida in 1989. Seeing the same “frequent flyers” appear in the criminal justice system, a visionary group of justice professionals there decided the system as it existed was broken and there had to be a better way.<sup>1</sup> Their idea was that simply incarcerating non-violent offenders with drug addictions did little or nothing to address the underlying problem of the addiction. Working from a team approach (judges, prosecutors, defense attorneys, treatment professionals, probation, law enforcement, case managers, et al), they found that getting people into addiction treatment, changing lifestyles and accountability was far more effective than incarceration. After initial success of the Miami-Dade program, the idea spread and drug courts became a new paradigm of non-violent criminal justice. This idea was extended to other areas of criminal justice, sparking the growth of programs like DWI courts, veterans courts, the 24/7 program, tribal healing courts, juvenile drug courts and more. These programs are keeping offenders clean and sober, employed, out of jail and prison, and thus, making our highways and communities safer.

Recognizing the success of drug courts, Congress and state legislatures subsequently began funding drug court programs as an alternative to incarceration, particularly in light of skyrocketing jail and prison budgets. Some jurisdictions, however, have been reluctant to implement other new programs that are based on the drug court model, despite their success, due to perceived obstacles. These obstacles can be overcome with creativity, innovation and determination.

### Funding Obstacles.

Lack of funding is often cited as an obstacle to beginning a new court program. With drug courts now having been in place for close to 26 years, there are a number of sources available for funding and scores of programs have begun using existing resources. Many, if not most, jurisdictions already have probation officers, addiction treatment resources and all jurisdictions have law enforcement of some kind. Starting small with existing resources and growing incrementally is one way to establish a new program. Specialty dockets with a small number of repeat, hardcore offenders can be an effective method of resolving addictions and their accompanying social problems.

In addition, a number of government agencies offer grants to implement and operate drug and DWI courts. NHTSA provides grant funds to each State Highway Safety Office and in turn, Highway Safety Offices determine how to best use the funding and many states have supported the establishment and implementation of DWI Courts. Further, NHTSA directly supports the training and assistance provided by NCDJ to jurisdictions establishing DWI Courts or working to improve existing DWI Courts. Also the Bureau of Justice Assistance has a number of grants available for Drug and DWI Court programs, and while these grants are competitive, the amount of funds available is growing and with many of these programs being relatively new, the competition may not be as great as perceived.

The Substance Abuse and Mental Health Services Administration (SAMHSA) is another source of federal government grants. Many local and state governments also may fund programs with existing budgets, public safety funds and alcohol taxes. Furthermore, there are a multitude of private foundations that offer grants and businesses that will offer financial support for programs that enhance public safety, improve employee productivity and alleviate jail and prison overcrowding. Finally, participant fees can also contribute to the funding of a program. Seeking and receiving funding from a variety of sources can allow jurisdictions to pool sufficient resources together for implementation and operation of these programs.

*continued, page 5*

## Team and Communication Obstacles.

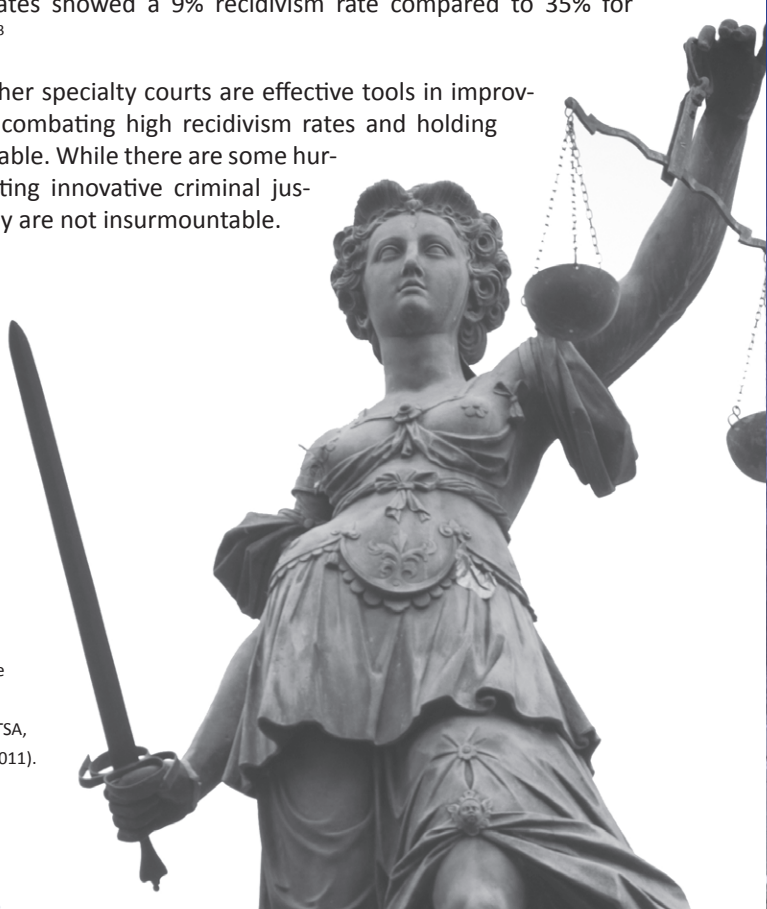
Programs such as drug and DWI courts usually require a number of people to be 'on board' and coordinate in order to get started and judges are most often the driving force behind implementing criminal justice system innovations. However, other professionals may have more influence in starting new programs than they realize. Prosecutors as 'gatekeepers' decide which cases get filed and then oversee them as they proceed through the system. If a prosecutor decides a repeat offender needs treatment and intensive supervision, those can be requested in a plea bargain or at sentencing. Probation officers may request treatment, frequent reporting, full-time employment and drug/alcohol testing as part of probation conditions. Arresting officers can likewise offer their input in sentencing recommendations. Court clerks can also be instrumental in communicating information and educating others about new and innovative criminal justice programs. Before long, using existing resources, a program may be up and running, perhaps small and informal, but nonetheless in place and operating. So even if there are perceived obstacles to a new idea by one or more parties in a particular jurisdiction, persistence and team work can overcome them to get a new program established.

Moreover, the team approach of specialty courts requires people of differing personalities to interact among themselves and with program participants. This can lead to great outcomes but it can also sometimes lead to conflict. Team member conflicts can usually be resolved by improving communication and/or team leader intervention. Obviously, positive outcomes are the goal of any specialty court program, but perceived potential conflicts should not stand in the way of establishing a program that improves outcomes.

DWI Courts are an effective approach to improving public safety, alleviating stressed government budgets and turning lives around for the better. A Michigan study showed DWI Court graduates were up to 19 times less likely to be re-arrested for another DWI than a DWI offender in a traditional court.<sup>2</sup> In a Georgia Study of three DWI Courts, DWI Court graduates showed a 9% recidivism rate compared to 35% for traditional courts.<sup>3</sup>

DWI Court and other specialty courts are effective tools in improving public safety, combating high recidivism rates and holding offenders accountable. While there are some hurdles in implementing innovative criminal justice programs, they are not insurmountable.

1. National Association of Drug Court Professionals, [www.nadcp.org](http://www.nadcp.org).
2. Michigan DUI Courts Outcome Evaluation, Final Report, NPC Research, (2007).
3. An Evaluation of the Three Georgia DUI Courts, USDOT, NHTSA, DOT HS 811 450, (2011).



## State Judicial Outreach Liaisons:

**Delaware:** Hon. Richard Gebelein:  
[Richard.Gebelein@state.de.us](mailto:Richard.Gebelein@state.de.us)

**Georgia:** Hon. Kent Lawrence:  
[klawrence@gohs.ga.gov](mailto:klawrence@gohs.ga.gov)

**Indiana:** Hon. Tim Oakes:  
[in.jol.tim@gmail.com](mailto:in.jol.tim@gmail.com)

**Michigan:** Hon. Patrick Bowler:  
[pcbowler@gmail.com](mailto:pcbowler@gmail.com)

**Mississippi:** Hon. Samac S. Richardson:  
[smcrson@gmail.com](mailto:smcrson@gmail.com)

**Montana:** Hon. Audrey Barger:  
[Audrey@audreybarger.com](mailto:Audrey@audreybarger.com)

**Oklahoma:** Hon. Carol Hubbard:  
[hubbardranch@msn.com](mailto:hubbardranch@msn.com)

**Pennsylvania:** Hon. Michael Barrasse:  
[mbarrasse@gmail.com](mailto:mbarrasse@gmail.com)

**South Carolina:** Hon. J. Mark Hayes, II:  
[mhayesj@sccourts.org](mailto:mhayesj@sccourts.org)

**Tennessee:** Hon. Leon Burns:  
[leonburns@gmail.com](mailto:leonburns@gmail.com)

**Texas:** Hon. Laura Weiser:  
[lweiser@yourhonor.com](mailto:lweiser@yourhonor.com)

**Vermont:** Ben W. Joseph:  
[bwjdisputes@hotmail.com](mailto:bwjdisputes@hotmail.com)

**Washington:** Hon. Scott Bergstedt:  
[scott@bergstedtlaw.com](mailto:scott@bergstedtlaw.com)

