

HIGHWAY TO JUSTICE

FALL 2020

From The ABA with support from the National Highway Traffic Safety Administration

THE AMERICAN BAR ASSOCIATION WELCOMES 10 NEW STATE JUDICIAL OUTREACH LIAISONS

This Summer, as a result of a cooperative agreement between the American Bar Association (ABA) and the National Highway Traffic Safety Administration (NHTSA) 10 new State Judicial Outreach Liaisons (JOLs) have joined the current group of 9 Regional and 11 State JOLs who engage in peer-to-peer judicial education around the country on highway safety issues. These JOLs are active and retired judges who bring years of experience to the JOL program and are all subject matter experts in traffic matters in general, and impaired driving issues in particular. With the addition of these new JOLs, there are now JOLs providing outreach and education in 47 of the 50 States.

While remaining independent and impartial, Judicial Outreach Liaisons serve as resources for the judiciary and other members of the highway safety community dealing with highway safety related court cases, particularly those involving impaired driving. In particular, JOLs provide and 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. Because of their background and experience, many JOLs also assist their States and Regions in implementing and expanding DWI Courts to address the high-risk high-need offender.

We welcome our new State JOLs who include:

Judge Eric Bergstrom (Oregon): Judge Bergstrom has served as a Circuit Court judge in Multnomah County, Oregon for the past 15 years. He has presided over the County's DUI Intensive Supervision Program and its Veteran's Court program. In addition to his judicial responsibilities, he has extensive experience as an educator providing peer-to-peer judicial education on a variety of issues.

Commissioner Casey L. Clevenger (Missouri): Commissioner Clevenger presides over eight Treatment Courts in the 13th Judicial Circuit in Missouri. Prior to her appointment she served for 9 years in the Callaway County Prosecuting Attorney's Office where she was actively involved in managing a caseload specializing in alcohol and drug related offenses.

She has attended and presented at numerous trainings and conferences around the country on issues relating to treatment courts.

Judge Jules David Edwards (Louisiana): For the past 26 years, Judge Edwards has served as a judge of the 15th Judicial District Court in Lafayette, Louisiana. He pioneered treatment and re-entry courts in Louisiana and has presided over adult drug, mental health and reentry court dockets. He regularly instructs judges, serves as a judicial mentor, and is a member of the Advisory Council on Heroin and Opioid Prevention and Education. Previously he served in the Louisiana National Guard and rose from the rank of Private First Class to Colonel, having served in the Infantry and Artillery branches and the Judge Advocate General's Corps.

Judge Kevin L. Fitzwater (New Mexico): Judge Fitzwater brings more than 20 years of judicial experience to the position of State Judicial Outreach Liaison for New Mexico. He served as Chief Judge of the Bernalillo County Metropolitan Court during which time he established and presided over New Mexico's first Mental Health Court and oversaw the implementation of the Nation's first DWI Drug Court. He is a retired U.S. Marine Colonel, and although retired from active service on the bench, he continues to serve as a Judge Pro Tempore.

Judge Shaun Floerke (Minnesota): Judge Floerke is well known to the Treatment Court community because of his extensive work with the National Association of Drug Court Professionals and the countless presentations he makes nationally and internationally on many subjects including DUI Courts and other evidence-based sentencing practices. He has served on the Sixth Judicial District Court in Duluth, Minnesota since 2004. Currently he chairs the Minnesota Treatment Court Initiative which oversees all treatment courts in the State, and serves on the National Judicial Opioid Task Force, as well as the Foundation for Advancing Alcohol Responsibility's Judicial Advisory Board.

Judge Rogelio R. Flores (California): Prior to his retirement from the Santa Barbara Superior Court bench in 2018, Judge Flores served his community for 31 years during which time he presided over a Veteran's

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Highway to Justice is a publication of the American Bar Association (ABA) supported by a grant from 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. Neil E. Axel at neilaxel49@gmail.com with a copy to the staff liaison, kennedy.green@americanbar.org. Please contact Ms. Green for editorial guidelines.

The deadline for submission of articles for the Winter issue is November 18, 2020.

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Treatment Court, a Mental Health Court, a High Risk DUI Court and a Co-Occurring Disorders Court. He is a former member of the Board of Directors of NACDP and has a distinguished history of judicial outreach and public speaking both nationally and internationally. Locally, he's been involved with various civic organizations including the YMCA, Boys and Girls Club and is a former choir director of the Spanish Choir at St. Joseph's Catholic Church in Nipomo, California.

Judge Mattison Gamble (South Carolina): Judge Gamble currently serves as a Summary Court Judge and Magistrate for Sumter County and Municipal Judge for the City of Sumter. He is a graduate of USC and Florida Coastal School of Law. After serving as an assistant solicitor for three years, he was South Carolina's Traffic Safety Resource Prosecutor for nearly a decade. During that time he was based in Columbia where he was known to be a trusted colleague and educator for all levels of participants and stakeholders in South Carolina's court systems. He lives in Sumter and is looking forward to his new role and to working with his new JOL peers and colleagues.

Justice Laurie McKinnon (Montana): Justice McKinnon brings her vast experience as a prosecutor, defense attorney, trial judge and Justice of the Montana Supreme Court to the State JOL program. While serving as a trial judge, she established the Ninth Judicial District's first problem solving court for drug and alcohol offenders. She obtained a Masters of Judicial Studies in 2016 and is working toward her Doctorate of Judicial Studies, both from the National Judicial College. She is the recipient of the 2019 Montana State Bar Karla M. Gray Equal Justice Award that honors a judge for their dedication and significant efforts to improving access to the Montana Justice System.

Judge Bryan J. Memmott (Utah): Even before beginning his legal and judicial career, Judge Memmott became involved in bringing drug treatment courts to the State of Utah. He now serves as a Justice Court Judge in Second Judicial District in Utah, a position that he aspired to after observing his father serve as a judge on the District Court for the Second District. Upon appointment to the bench, he actively sought and was given the opportunity to serve on one of the two Justice Court DUI/Drug Courts in the State. Prior to practicing law and his appointment to the bench, he served in the United States Air Force as an officer and in the Judge Advocate General's Corps.

Judge Marc Rasinsky (Maryland): Judge Rasinsky served for many years as a District Court Judge in his home community of Westminster, Maryland. Prior to becoming a Judge, he served as a Legal Aid attorney, a Public Defender and was in the general practice of law engaged extensively in the area of family law. During his judicial tenure, he also served both as a long-time member and Chairperson of the Mental Health and Alcoholism/Addiction Services Committee in the Maryland Court System. Judge Rasinsky has a passion for teaching and still teaches philosophy part-time at McDaniel College. He continues to serve the Maryland judiciary as a Senior Judge.

Judicial Outreach Liaisons serve as resources and judicial educators around the country and help to bring current and up-to-date information to the judges who serve their communities. Contact information for all the current Judicial Fellows, and Regional and State JOLs is found elsewhere in this issue. For more information about implementing a State JOL program, NHTSA's 2019 publication, *Best Practices for Implementing a Judicial Outreach Liaison Program*, provides valuable information and can be found at:

https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/14161-bestpractices_forsjols_032519_v10-withblanks-tag.pdf.

IMPLIED CONSENT & WARRANTLESS BLOOD DRAWS: SO WHERE ARE WE NOW?

Honorable Neil Edward Axel
Senior Judge, District Court of Maryland
ABA Judicial Fellow
Columbia, Maryland

On January 11, 2019, the United States Supreme Court granted *certiorari* in the case of *State of Wisconsin v. Mitchell*¹ and agreed to answer the question of whether Wisconsin's implied consent statute that authorized a blood draw from an unconscious motorist provided an exception to the warrant requirement of the 4th Amendment. Earlier Supreme Court decisions addressed blood draws in the context of exigent circumstances² and searches incident to arrest³ but none had addressed the issue of consent. Notwithstanding the issue presented, the Court resolved the case by applying the exigent circumstances exception to the warrant requirement and held that the warrantless seizure of Mitchell's blood for evidentiary purposes was reasonable.⁴ In doing so, the Court looked at its earlier decisions in *Schmerber v. California*⁵ and *Missouri v. McNeely*.⁶ In *Schmerber*, the Court ruled that a police officer properly compelled a DUI subject to provide a warrantless blood sample because the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'"⁷ In doing so, the Court recognized in *Schmerber* the presence of exigent circumstances, since "the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system."⁸

Forty-seven years later in *Missouri v. McNeely*, however, the Court held that the natural dissipation of alcohol in one's blood did not create a *per se* exception to the 4th Amendment's warrant requirement based on exigent circumstances. Instead, the Court left it to the trial courts to determine on a case-by-case basis when exigent circumstances exist.

In *Mitchell*, the Court in a plurality decision held that when a driver is unconscious and cannot be given a breath test, the exigent circumstances doctrine permits a warrantless blood test to prevent the imminent destruction of evidence caused by the rapidly dissipating blood-alcohol evidence.⁹ The Court noted that Mitchell's medical condition created the same type of urgency that the automobile accident created in *Schmerber*, and redefined exigency in impaired driving cases to exist

when (1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application. Both conditions are met when a drunk-driving suspect is unconscious, so *Schmerber* controls: With such suspects, too, a warrantless blood draw is lawful.¹⁰

Left unresolved by the Court's decision is whether implied consent laws meet the requirements of consent under conventional 4th Amendment's jurisprudence.

Generally, implied consent laws around the country provide that a motorist agrees to submit to a blood or breath test as a condition of licensure and/or driving on the state's roadways. If a motorist, for example, elects to withdraw his or her consent and not agree to a blood test, there may be administrative penalties and evidentiary implications, but whether the results of a warrantless blood draw would be admissible based upon one's prior implied consent has not been resolved by the U.S. Supreme Court. Stated another way, as a matter of constitutional law, can a driver withdraw his consent to testing under a State's implied consent law? At this point, we know only the view of three of the Court's nine justices. Writing for Justices Ginsburg and Kagan, Justice Sotomayor dissented from the plurality decision, and noted that Wisconsin's implied consent law, "cannot itself create the actual and informed consent that the 4th Amendment requires."¹¹

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Dates to Remember

October
Pedestrian Safety Month

October 5 – 12
U Drive. U Text. U Pay
DISTRACTED DRIVING



October 18 – 24
National Teen Driver Safety Week

October 19 – 23
National School Bus Safety Week

November 9 – 29
Click It or Ticket
OCCUPANT PROTECTION



November 30 – January 1
IMPAIRED DRIVING; DRUG-IMPAIRED
DRIVING



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As more and more alcohol and drug impaired driving cases rely upon blood draws in lieu of breath machines, the use of implied consent laws to justify warrantless blood draws continues to be addressed in State courts even in the absence of guidance from the Supreme Court, and State courts have addressed the issue in a number of ways:

- Arizona’s Supreme Court, for example, held that the “unconscious” clause of its implied consent statute can only be constitutionally applied when case-specific exigent circumstances prevent law enforcement officers from obtaining a warrant.¹²
- In Colorado, the warrantless draw of an unconscious defendant’s blood at a hospital, absent exigent circumstances violated the 4th amendment.¹³
- Wisconsin’s intermediate Court of Appeals held that the incapacitated driver provision of its implied consent law

“is unconstitutional because the implied consent that incapacitated drivers are deemed to have given and presumed not to have withdrawn does not satisfy any exception to the Fourth Amendment’s warrant requirement.”¹⁴ Interestingly, three weeks later in an unrelated case, the Court of Appeals found exigent circumstances and upheld the warrantless blood draw where the driver was unconscious and about to be taken by helicopter to a hospital 50 miles away.¹⁵

- Under Pennsylvania’s implied consent law, if a motorist refuses to submit to a chemical test, the testing shall not be conducted. Since the statute gives an explicit right to refuse, and since the defendant was unconscious and unable to consent or refuse, the warrantless blood draw was held to violate the statute, and absent a warrant or exigent circumstances, violated the 4th amendment.¹⁶

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DON'T FORGET

Resources for responding to the COVID-19 pandemic:

- **Sample set of Frequently Asked Questions (FAQs) guidance by Substance Abuse and Mental Health Services Administration (SAMHSA) on COVID-19 and Opioid treatment Programs**
<https://www.samhsa.gov/sites/default/files/sample-otp-covid-19-faqs.pdf>
- **SAMHSA’s COVID-9 Guidance for Opioid Treatment Programs**
<https://www.samhsa.gov/medication-assisted-treatment>
- **Drug Enforcement Administration’s Guideline on Use of Telemedicine While Providing Medication Assisted Treatment (MAT)**
<https://www.samhsa.gov/sites/default/files/sample-otp-covid-19-faqs.pdf>
- **Up-to-Date Information for the Substance Use Disorder Treatment field from SAMHSA**
<https://www.samhsa.gov/>
- **Center for Disease Control**
<https://www.cdc.gov/>

Valuable resources for traffic court judges can be found at:

- **National Highway Traffic Safety Administration**
www.nhtsa.gov/risky-driving
- **American Bar Association/Judicial Division/NCSCJ**
www.americanbar.org/groups/judicial/conferences/specialized_court_judges/NHTSA.html
- **Highway to Justice - Archives**
www.americanbar.org/groups/judicial/publications/judicial_division_record_home/highway-to-justice/
- **National Judicial College**
www.judges.org
- **Governors Highway Safety Association: Alcohol Impaired Driving**
www.ghsa.org/issues/alcohol-impaired-driving
- **AAA Foundation for Traffic Safety**
www.aaafoundation.org/
- **National Center for State Courts**
home.trafficresourcecenter.org/

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- In a case where a driver with limited English proficiency was advised of his rights under Maryland's implied consent law in English, Maryland's highest court held that the advice of rights was insufficient for the driver to validly consent to the test. The Court held that law enforcement officers must use methods that reasonably convey the warnings and rights required by the implied consent law.¹⁷

Earlier this Summer the Oregon Court of Appeals addressed a very interesting factual scenario when it posed the question of whether exigent circumstances existed for police to obtain a blood sample after the hospital had already drawn and analyzed a blood sample as part of the defendant's treatment for injuries sustained in an alcohol-related crash. Although the case was decided based solely upon Oregon's State Constitution and not the 4th Amendment, the Court found that the State had failed to prove exigent circumstances to justify a warrantless blood test obtained at the direction of the investigating officer upon his arrival at the hospital.¹⁸

Conclusion

Based on the trio of cases - *McNeely*, *Birchfield* and *Mitchell* - the drawing of blood for evidence in impaired driving cases is a search that is subject to 4th amendment jurisprudence, including the 4th amendment's long-established caselaw creating exceptions to the requirement for a search warrant. Although consent is an exception to the warrant requirement under the 4th amendment, "consent" in the constitutional sense may be different than "implied consent" under State law. Generally, consent under the 4th amendment must be freely and voluntarily given and may be withdrawn. Whether one must be afforded the opportunity to withdraw their implied consent, or whether they forfeit that right by drinking to the point of unconsciousness, is at best an open question. States that have addressed this issue seem to side with the need for express consent or exigent circumstances as defined in *Mitchell* and *Schmerber* in lieu of a search warrant in order to justify the warrantless taking of blood samples from impaired driving suspects.

1. 383 Wis.2d 192 (2018).
2. *Missouri v. McNeely*, 569 U.S. 141 (2013).
3. *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016). In *Birchfield*, the Court distinguished between breath and blood tests and held that warrantless breath tests were reasonable as incident to arrest, but because blood tests are more intrusive, it was unreasonable to seize one's blood for testing incident to an impaired driving arrest.
4. *Mitchell v. Wisconsin*, 139 S.Ct. 2525 (2019).
5. 384 U.S. 757 (1966).
6. 569 U.S. 141 (2013).
7. 384 U.S. at 770.
8. *Id.*
9. 139 S.Ct. 2525 (2019).
10. *Id.* at 2537.
11. *Id.* at 2546. See also *State v. Edgar*, 296 Kan. 513 (2013) which held that a motorist may always withdraw their implied consent to testing since consent to searches under the 4th Amendment may be withdrawn at any time prior to the search.
12. *State v. Havatone*, 241 Ariz. 506 (Arizona, 2017).
13. *People v. Schaufele*, 325 P.3d 1060 (Colorado, 2014).
14. *State v. Prado*, 393 Wis.2d 526 (Wisc.Ct.App. 2020).
15. *State v. Richards*, ___ N.W.2d ___, 2020 WL 4045400 (Wisc.Ct.App. July 16, 2020).
16. *Commonwealth v. Myers*, 640 Pa. 653(2017).
17. *State v. Funes*, 469 Md. 438 (2020).
18. *State v. Kelly*, 305 Or.App. 493 (Oregon 2020).

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USING TREATMENT COURT MODELS TO ADDRESS THE NEEDS OF THE PUEBLO COMMUNITY

*Judge Robert S. Anchondo
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El Paso, Texas*

The Ysleta del Sur Pueblo (“YDSP” or “the Pueblo”) is a sovereign tribal government that is situated within the County of El Paso, Texas. YDSP, a traditional Pueblo indigenous community, is working to address alcohol and drug use that triggers compounded social, legal, and family problems amongst its tribal citizens. Contributing to their addiction struggles are historical events, current socio-economic factors, and risk factors such as family history, violence, discrimination, and poverty.

To address these issues, I and others are working together with the Pueblo to develop the YDSP P’e K’unkeuwa (Wellness Path) Court based on the evidence-based treatment court model. Through this effort, the Pueblo seeks to resolve addiction and addiction-related problems through court intervention and treatment. Planning and implementing court intervention and treatment during the COVID-19 pandemic requires additional considerations and precautions for the Wellness Path Court Team. These additional measures will allow the Wellness Path Court to promote the wellbeing of the Pueblo while still implementing methods that mitigate the spread of the virus. In this article, I outline the Pueblo’s history, and the path taken to use the court system to address the addiction and community problems that have adversely impacted the tribal community.

The History

As a people, Ysletans are known as the Tigua, whose ancestors originated from Quarai Pueblo and Isleta Pueblo in central New Mexico. The Spanish forced the Tigua to move to the Paso del Norte area during the 1680 Pueblo Revolt. The forced relocation was the beginning of the many infringements on Tigua sovereignty, nationhood, and culture. Upon settling in the area, determined to preserve the Pueblo’s way of life, the Tigua reestablished its traditional government and reassembled as a thriving Pueblo community.

The displaced Tigua forebears were resolute in maintaining the Pueblo’s lifeways by applying ancestral agricultural and land resource practices. With time, the Tigua were once again a self-sustaining nation. In 1751, the King of Spain recognized Tigua sovereignty with the Ysleta del Sur Pueblo Land Grant. Despite this recognition, the constant pressures of Spanish colonization and later the United States expansion policies toward Native Americans took its toll on the Pueblo’s ability to sustain its traditional economy and traditions.

By the mid-1800s, settlers began to move into the area. Seeking fertile farmlands and land for development, they dispossessed the Tigua of their land. Loss of farmland, hunting grounds, water resources, and indigenous rights abruptly thrust the Tigua into a life of poverty and oppression. The land loss interrupted YDSP’s traditional economy, numerous land-based cultural and ceremonial practices, and disrupted the YDSP social order.

Many families were forced to live in unacceptable conditions and went hungry. The disconnect of cultural lifeway food systems, land resources, Pueblo occupations, and traditional wellness practices severely impacted the mind, body, spirit, and community. For example, without organic food sources such as produce and animal hunts, YDSP, like many other native nations, was forced to eat processed and commodity-based foods that caused lingering health effects such as obesity and diabetes.

The deprivation of land and homes forced some people to leave the Pueblo and separated families. The eradication of traditional jobs resulted in devastating unemployment and deep poverty. Many children were removed to boarding schools or were forcibly adopted. Boarding school children were abused and forbidden to speak the native language and

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USING TREATMENT COURT MODELS TO ADDRESS THE NEEDS OF THE PUEBLO COMMUNITY

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practice their culture. Until the late 1960s, most of the Tigua remaining at Ysleta lived without running water and utilities. The systematic historical trauma to citizens, kinship ties, and culture led to long-lasting mental distress on Tigua citizens resulting in alcohol and chemical dependency for some.¹ Evidence-based research has revealed that the trauma of native ancestors is lived and experienced by subsequent generations. Many feelings, such as sadness, anger, anxiety, and stress about losing yet more culture and nationhood persist.

Today, the YDSP population is just above 4,000. In 2016 the YDSP Socio-Economic Profile revealed that in 2016, approximately 22% lived on reservation lands, 27% lived in the service area, but off the reservation, and 50% of YDSP citizens lived throughout the U.S. The YDSP agencies attend to citizen social concerns of those living within the reservation and the service area.

In the last few decades, YDSP citizens have seen measurable success in socio-economic areas such as high school graduation, college attainment, employment, housing, income, cultural preservation, and economic revitalization. To emphasize, in the 1960s, the average YDSP citizen had a 5th-grade education, and unemployment was upwards of 75%. Presently 84% of adult citizens have at least a high school diploma with 15% having a bachelor's degree or higher. Unemployment stands at 14.3%.

The Pueblo has enhanced its institutions of governance, education, health, behavioral services, housing, community and economic development, justice, and law enforcement. YDSP has also diversified its economic and business development activities. This resulted in revenues being injected into the Pueblo economy which supported the perpetuation of governance and YDSP citizens' advancement. However, the scarcity of funding makes it difficult to adequately address all the Pueblo's needs.

Despite socio-economic advances, many Tigua citizens and families are afflicted by addiction, behavioral health concerns, psychological disease, child neglect and abuse, domestic violence, and criminal activity. At the same time, current limitations on the Court, law enforcement, and behavioral health departments hinder the Pueblo's ability to address citizen healing and wellness fully, and adequately address the unhealthy behaviors and guide citizens to lead crime-free and drug-free productive lives. Further hindering the situation is that the Pueblo rests on the border between Mexico and the United States, known as a drug trade route. Drugs such as marijuana, cocaine, heroin, and methamphetamine are easily accessible.

The Pueblo is seeking to close the gap in its justice systems and behavioral support services to produce better community and citizen outcomes. YDSP departments have unresolved and revolving cases because YDSP systems are not fully equipped to address behavioral interventions for crimes committed on the reservation. Insufficient funding is a primary factor contributing to negative capacity to address criminal, justice, and behavioral concerns.

Seeking Solutions

According to the 2018 Report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*,² although tribes are sovereign nations with a "special government-to-government" relationship with the U.S., they lack full recognition by the U.S. and states and whose policies degrade self-governance and self-determination and "negatively impact" criminal justice systems. As a result, YDSP justice systems operate under a civil infraction code, entitled the "Peace Code", which is a hybrid of a criminal code with civil penalties rendering enforcement difficult because the code does not address authority to incarcerate.

In 2019, the Tribal Police confiscated 5,375 grams of illegal drugs comprised 1,605 grams of marijuana, 1,345 grams of methamphetamine, 63 grams of ecstasy, 2303 grams of heroin, and 59 grams of cocaine. There were 29 disorderly citations issued, 22 assault citations,

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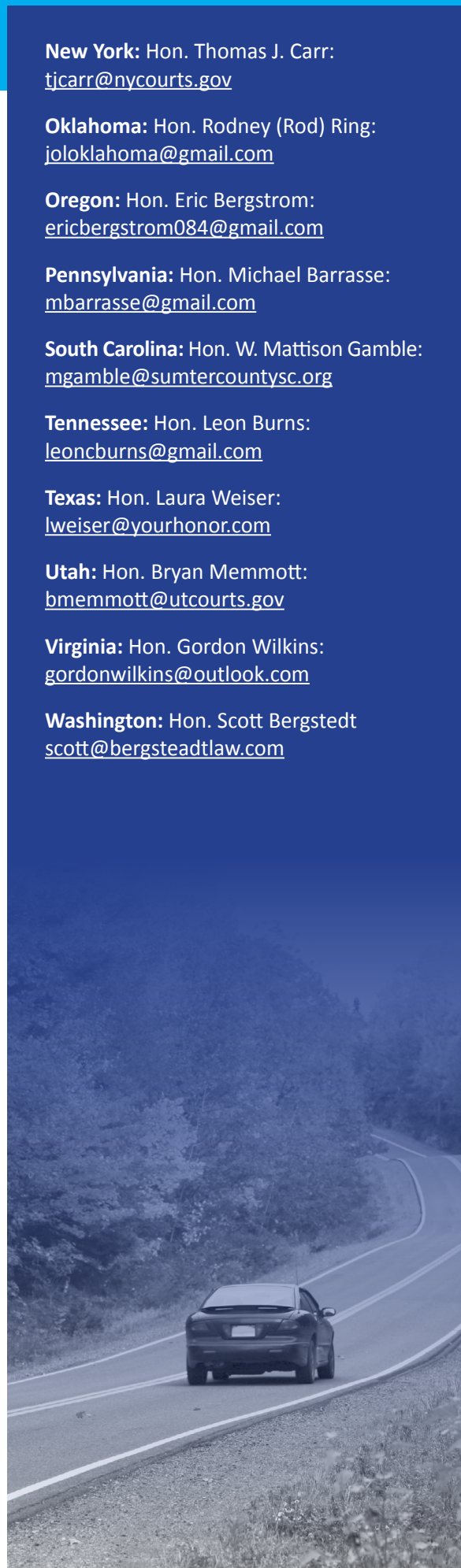
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USING TREATMENT COURT MODELS TO ADDRESS THE NEEDS OF THE PUEBLO COMMUNITY continued from page 7

13 theft citations, 5 domestic violence citations, and one assault on an officer. Of the above-reported infractions, 13 were tribal citizens. Domestic violence is problematic because some cases involve nontribal members or are difficult to prosecute. Most concerning is the transfer of a murder case that took place on the reservation to the El Paso County District Attorney for prosecution. The lack of detention facilities results in constraints to appropriately address offenders, which adds to the Police Department's challenges. Further concerning is that many of these crimes are committed by non-Tigua citizens, threatening welfare and safety of the Pueblo. A treatment court can increase the Court's capacity to try a case, enhance the administration of justice, and provide Court-ordered intervention and probation of YDSP citizens. Consequently, a Wellness Court can lessen recidivism resulting in a reduction in overall crime.

In 2019 the YDSP Tribal Court presided over six illegal drug hearings, two driving while intoxicated (DWI) hearings and three public intoxication-related cases. All eleven cases were adult YDSP citizens whose final court dispositions included a fine. Currently, the Court lacks a structured treatment referral program for Court-involved participants. The structured referral program can support the Court's efforts to address negative behaviors associated with drug and alcohol use and other risk factors by ordering Treatment and ancillary services. The Court promotes the implementation of intervention courts such as an adult treatment court and family court systems.

The Pueblo is currently assessing possible solutions to address drug-related criminal activity and enhance behavioral interventions and impacts. Several solutions are being discussed, such as alternative dispute mechanisms, a healing to wellness court, and treatment court. The Pueblo also needs to address the feasibility of converting its current civil infraction code into criminal law, amend its Tribal Court ordinance and policies, ensure that the codes and incarceration procedures abide by the Tribal Law and Order Act sentencing guidelines, amend YDSP's sentencing guidelines, and ensure the rights of participants are protected.

Currently, the YDSP Tribal Council has authorized a Treatment Court Planning Team to identify the structural barriers to sufficiently address drug-related crime and behavioral induced dysfunction on the reservation that adversely impacts citizens, families, and children. Team members represent diverse backgrounds and experiences in areas such as justice, Indian law, behavioral health, law enforcement, contemporary native issues, alcohol substance abuse, and program assessment that complement the intervention services. The Team's task is to identify strategic alternatives to address critical YDSP concerns. One such alternative is the Drug Court model, otherwise known as the Treatment or Healing to Wellness Courts. As a result of the early work of the Planning Team, the Pueblo plans to establish the P'e K'unkeuwa (Wellness Path) Court.

Because of my 16 years of experience with the El Paso County DUI Drug Intervention and Treatment Program, I have partnered with the Pueblo to help bring the treatment court to fruition. The El Paso DUI Court collaborates with a capable multi-disciplinary team to monitor compliance, provide evidence-based treatment, and support clients. Programming is intended to redirect offenders to

treatment rather than incarceration. The Court has demonstrated that offenders in the program have lower recidivism rates than those in the conventional criminal system and save the county and state criminal justice system money.

The Team is currently learning about the Drug Court model through their Healing to Wellness Court Model, which was modified from the National Association of Drug Court Professionals (NADCP) model. The Healing to Wellness model utilizes ten culturally-based key intervention components and National Drug Court Standards. The concern for YDSP is to develop a system that addresses YDSP concerns, including limitations in funding, incarceration, tribal vs. non-tribal jurisdiction, on and off-reservation arrests of YDSP citizens, and other jurisdictional and legal matters characteristic in Indian Country. Moreover, the Team is also considering how it can integrate culture, language, and traditions into program incentives and sanctions, optimize case management, tailor treatment curriculums, and incorporate supplementary support services. The Team provides programmatic input from YDSP partners to identify potential obstacles early and develop culturally appropriate ways to overcome challenges, address other needs such as probation services with arresting powers, write the treatment court policy, and design a culturally relevant assessment tool. The efficacy of court intervention requires engaging the community, building the community's trust, demonstrating citizen success, and addressing the needs of families and children involved in the court system.

The Team's goal is to promote the health and well-being of Tigua citizens by developing a practical framework that recognizes the unique cultural needs and contexts of the Ysleta del Sur Pueblo. By forming collaborative Pueblo-wide and external relationships, a supportive menu of services is provided to YDSP P'e K'unkeuwa (Wellness Path) Court participants to aid them and their families in addressing addiction-related issues, building healthier and culturally fulfilled lives and building a better Tigua tomorrow.

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1. Historical trauma is defined as the "cumulative emotional and psychological wounding over one's lifetime from generation to generation following the loss of lives, land, and vital aspects of culture."
 2. U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, December 2018, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.