Full Faith and Credit and Cooperation Between State and Tribal Courts: Catching Up to the Law

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Introduction

Over the past two decades, interest has been building in the interaction between American Indian tribal courts and state courts. Specifically, state and tribal judiciaries have devoted attention to promoting cooperation, reducing jurisdictional conflicts, expanding tribal court operations, and granting full faith and credit to each other's judgments and orders.[1] The often unspoken but powerful underlying assumption is a genuine recognition that tribal courts play a vital role in dispensing justice

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1. *See* Nat'l Ctr. for State Courts, Building on Common Ground: A National Agenda to Reduce Jurisdictional Disputes Between Tribal, State, and Federal Courts (1994), http://www.tribal-institute.org/articles/common.htm.

in their communities and that state courts can benefit by working hand-in-hand with them.[2]

Borne of a need to address full faith and credit as well as new challenges and issues, a more comprehensive approach to tribal-state relations has taken shape: the tribal-state judicial forum. Since the first Building on Common Ground conference,[3] which was hosted in 1993 by the Conference of Chief Justices of the State Supreme Courts, many states and tribes have created tribal-state forums or committees that meet regularly and address a wide range of issues.[4] These forums have improved the delivery of justice by dispelling ignorance and fostering relationships between state and tribal judges. The results show that the application and carrying out of the law is not a mechanical procedure, but relies on shared human understanding and trust.

Tribal-state judicial forums are gradually improving the full faith and credit landscape. This is occurring in two ways. First, tribal-state judicial forums often develop and advance proposals for new rules addressing recognition of tribal court judgments.[5] Second, the forums themselves foster the kind of personal connections between judges and government officials that help make the law work after it leaves the courtroom.

This article will look at four jurisdictions and the extent to which they offer full faith and credit to tribal court judgments and what role, if any, their tribal-state judicial forums are playing in the issue.

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2. *See, e.g.*, Teague v. Bad River Band of Lake Superior Chippewa, 665 N.W.2d 899, 917 (Wis. 2003) (Abrahamson, C.J., concurring).

3. The conference's mission statement reads, "Tribal, federal, and state justice communities join together in the spirit of mutual respect and cooperation, to promote and sustain collaboration, education, and sharing of resources for the benefit of all people." *See* Tribal Law & Policy Institute, Tribal Court Clearinghouse, http://www.tribal-institute.org/lists/uset.htm (last visited Jan. 10, 2010).

4. *See, e.g.*, WIS. STAT. ANN. § 13.83(3) (West 2010) (creating a "special committee on state-tribal relations"); N.M. STAT. ANN. § 11-18-3 (West 2010) ("A state agency shall make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives.").

5. *See infra* text accompanying notes 77-101.

What's at Stake

Human activity does not confine itself to imaginary lines on the map. When families, disputes, transactions, and events of the day require or invite intervention from the courts, the resulting orders and judgments are more effective when they can follow the people or events who are the subject of court action. The framers of the Constitution took account of the issue through the Full Faith and Credit Clause.[6] While issues of cross-jurisdiction recognition of judgments between states still persist, the legal foundation for such recognition is enshrined in the Constitution.[7]

Indian tribes don't enjoy such treatment. Only in three specific areas has the federal government seen fit to make full faith and credit requirements explicit in matters involving tribes: domestic violence protection orders,[8] child support orders,[9] and child custody orders in abuse and neglect cases.[10] For all other matters, including divorce, money judgments, employment, guardianship, juvenile delinquency, traffic, commercial disputes, paternity and probate, the issue has been left to each state to work out (or not work out) with the tribes.[11] State courts have to varying degrees been recognizing tribal court judgments either by comity,[12] court rule,[13] or statute[14] for at least

6. U.S. CONST. art. IV, § 1.
7. *Id.*
8. 18 U.S.C. § 2265(a) (2006).
9. 28 U.S.C. § 1738B.
10. 25 U.S.C. § 1911(d).
11. A few states have recognized Indian tribes as territories under 28 U.S.C. § 1738 which contains language similar to the Full Faith and Credit Clause of the U.S. Constitution. *See, e.g.*, Sheppard v. Sheppard, 655 P.2d 895, 901 (Idaho 1982); Jim v. CIT Fin. Servs. Corp., 533 P.2d 751, 752 (N.M. 1975); *In re* Adoption of Buehl, 555 P.2d 1334, 1342 (Wash. 1976). Other states have refused to extend recognition under this statute. *See, e.g.*, Brown v. Babbitt Ford, Inc., 571 P.2d 689, 694 (Ariz. Ct. App. 1977); Red Fox v. Hettich, 494 N.W.2d 638, 647 (S.D. 1993).
12. *See, e.g.*, Mashantucket Pequot Gaming Enter. v. DiMasi, 25 Conn. L. Rptr. 474, 474 (Conn. Super. Ct. 1999) (enforcing a money judgment); Whippert v. Blackfeet Tribe of the Blackfeet Indian Reservation, 859 P.2d 420, 422 (Mont. 1993) (enforcing a declaratory judgment); *In re* Marriage of Red Fox, 542 P.2d 918, 920 (Or. Ct. App. 1975) (recognizing a Warm Springs Tribal Court divorce decree and affirming the trial court's dismissal of the husband's suit).
13. *See, e.g.*, ARIZ. RULES OF PROCEDURE FOR THE RECOGNITION OF TRIBAL COURT JUDGMENTS, *available at* http://www.supreme.state.az.us/stfcf/handouts/rules_recognitn_tribaljudgments.pdf; N.D. R. CT. 7.2; OKLA. STAT. TIT. 12, CH. 2, APP., R. 30; WASH. R. SUP. CT. CIV. C.R. 82.5.
14. *See, e.g.*, S.D. CODIFIED LAWS § 1-1-25 (2010); W. VA. CODE ANN. § 48-2A-1 (LexisNexis 2010); WIS. STAT. ANN. § 806.245 (West 2010).

35 years. The lack of legal certainty with respect to recognition can lead to nightmarish results for parties.[15]

In addition to being in the best interest of their citizens, there are many practical reasons why states and tribes would want to cooperate in recognizing each other's judgments and orders. Nearly all Indian reservations are surrounded by states.[16] Tribal members may live near, but not within, the reservation. Members may travel between jurisdictions frequently, perhaps every day. As a result, tribal court users will sometimes need their judgments enforced off the reservation. Defendant-debtors, for example, may be employed off the reservation. The same is true for state court users: at times there will be a need to enforce a state court judgment on the reservation when assets or defendants are located there.

A Piece of History

The case of Crow Dog, a member of the Brule Sioux tribe in South Dakota, is a critical episode in the evolution of tribal-state relations and American law. Over 125 years after it happened, the case still informs our understanding of modern full faith and credit between tribes and states. Interestingly, the case is not commonly known for dealing with full faith and credit, and that term appears nowhere in the decision. Nonetheless, *Ex parte Crow Dog*[17] has a full faith and credit element, the essence of which carries forward to today. It reminds us of

15. *See, e.g.*, Leon v. Numkena, 689 P.2d 566, 568 (Ariz. Ct. App. 1984) (recounting a "legal tug-of-war" between husband and wife after wife initiated divorce in Hopi tribal court, received an unfavorable result, and then filed a second action for dissolution in Arizona state court); Mexican v. Circle Bear, 370 N.W.2d 737 (S.D. 1985) (After the wife of a deceased tribal member obtained a tribal court ruling regarding disposal of her husband's body, sisters of the deceased obtained a conflicting state court ruling; the ensuing litigation proceeded to the South Dakota Supreme Court, which eventually upheld the original tribal court ruling.), *superseded by statute*, S.D. CODIFIED LAWS § 1-1-25, *as recognized in Red Fox*, 494 N.W.2d at 641 n.2. *See also* Eastern Band of Cherokee Indians v. Larch, 872 F.2d 66, 69 (4th Cir. 1989); *In re* Marriage of Susan C. & Sam E., 60 P.3d 644, 650-51 (Wash. Ct. App. 2002); Teague v. Bad River Band of Lake Superior Chippewa Indians, 665 N.W.2d 899, 914-15 (Wis. 2003).

16. Indian reservations are surrounded by states with a few notable exceptions, such as the Tohono O'odham Nation in Arizona and the St. Regis Mohawk Tribe in New York, which border Mexico and Canada respectively.

17. 109 U.S. 556 (1883).

the difficulty of seeing things from another culture's point of view and the importance of trying to do so.

Crow Dog killed Spotted Tail, a Brule Sioux chief, in 1881.[18] Using its traditional resolution process, the tribe punished Crow Dog by requiring him to support Spotted Tail's family through the provision of horses, blankets, and other supplies.[19] The tribe did not imprison Crow Dog or call for his execution.[20] Local whites were dissatisfied with this result—they felt that a harsher penalty was required to teach the Indians to act in a "civilized" manner.[21] Federal authorities responded by prosecuting Crow Dog for murder under federal law and sentencing him to execution.[22] Crow Dog quickly appealed through the federal courts.[23] The case was argued before the U.S. Supreme Court on November 20, 1883 and decided about a month later.[24]

The issue in the *Ex parte Crow Dog* was whether the federal court had jurisdiction over Crow Dog.[25] The unspoken subtext was whether the Tribe's sanction would be given recognition under 28 U.S.C. §§ 2145-2146. Those sections state:

> Sec. 2145. Except as to crimes, the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.
> Sec. 2146. The preceding section shall not be construed to extend to [crimes committed by one Indian against the person or property of another Indian, nor to] any Indian committing any offense in the Indian country *who has been punished by the local law of the tribe*, or to any case where by treaty stipulations the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.[26]

The court reviewed the statutes and treaties involved and concluded that these sections, particularly Section 2146, de-

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18. *Id.* at 557; Kevin K. Washburn, *Federal Criminal Law and Tribal Self-Determination*, 84 N.C. L. REV. 779, 800 (2006).
19. *See* Hon. Korey Wahwassuck, *The New Face of Justice: Joint Tribal-State Jurisdiction*, 47 WASHBURN L.J. 733, 737 (2008).
20. *Id.*
21. *Id.*
22. *See Crow Dog*, 109 U.S. at 557.
23. *Id.*
24. *Id.* at 556.
25. *Id.* at 562.
26. Codified as amended at 18 U.S.C. § 1152 (2006) (emphasis added). *See also Crow Dog*, 109 U.S. at 558.

prived the federal district court of jurisdiction where one Indian has committed a crime against another Indian within the Indian country.[27] Towards the end of the opinion, the court showed a flair for the dramatic and, in language unfortunately reflective of the time, confronted the difficulty of one culture/jurisdiction imposing its ways on another:

> It is a case of life and death. It is a case where, against an express exception in the law itself, that law, by argument and inference only, is sought to be extended over aliens and strangers; over the members of a community, separated by race, by tradition, by the instincts of a free though savage life, from the authority and power which seeks to impose upon them the restraints of an external and unknown code, and to subject them to the responsibilities of civil conduct, according to rules and penalties of which they could have no previous warning; which judges them by a standard made by others, and not for them, which takes no account of the conditions which should except them from its exactions, and makes no allowance for their inability to understand it. It tries them not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history, to the habits of their lives, to the strongest prejudices of their savage nature; one which measures the red man's revenge by the maxims of the white man's morality.[28]

In reaching its decision, the court relied on the provision in Section 2146 that excludes from federal jurisdiction crimes committed by one Indian against another within the Indian country. However, the case can just as easily be looked at another way. Section 2146 also deprives the federal court of jurisdiction if the Indian offender has been "punished by the local law of the tribe."[29] Without explicitly saying so, the court was confronting whether to give recognition to the Brule Sioux tribe's punishment of Crow Dog.[30] Under this view, the issue in the case was whether the tribe's sanction against Crow Dog counted as

27. *Crow Dog*, 109 U.S. at 571.
28. *Id.* at 571-72.
29. Codified as amended at 18 U.S.C. § 1152 (2006).
30. There was no thought given to the fact that prosecution by the federal government and tribe were separate sovereigns and therefore permissible. Those ideas came later, most notably starting with *Talton v. Mayes*, 163 U.S. 376, 384 (1896) (holding that the U.S. Constitution does not apply to a tribe when dealing with its own members), and culminating in *United States v. Wheeler*, 435 U.S. 313, 328-29 (1978) (holding that the prosecution of an individual by the United States after prosecution by the Navajo Nation for the same conduct did not violate the Fifth Amendment).

"punishment" under the statute. A greater test of full faith and credit there could not be, as a man's life hung in the balance. For a moment, it appeared that the *Crow Dog* Court had given at least implicit recognition to the tribe's judgment.

This resolution, however, quickly gave way under mounting popular pressure. As mentioned, there was great consternation among the surrounding white population that an individual who committed murder would not suffer severe punishment himself, as judged by the dominant society at the time.[31] Shortly after *Crow Dog* was decided, Congress responded by passing the Major Crimes Act,[32] which conferred upon the federal courts jurisdiction over the specific crimes listed in that statute, even when committed by an Indian against an Indian within the Indian country.[33]

With the passing of the Major Crimes Act, federal law shifted from requiring deference toward tribal judgments in internal matters to a policy of federal intervention and imposition of "civilized" values. Whether Indian tribes will ever have exclusive criminal jurisdiction over their members again is doubtful or, at the very least, a question for the distant future. The Major Crimes Act may have signified an irrevocable shift in federal law. In some jurisdictions, however, state and tribal courts are taking a pragmatic look at their respective needs and forging ahead together.

Wisconsin

Wisconsin is one of the few states with a full faith and credit statute addressing recognition of tribal court judgments.[34] Under this statute, a tribal court judgment will receive full faith and credit if the following conditions are met: (1) the tribe is organized under the Indian Reorganization Act;[35] (2) the judgment is authenticated; (3) the tribal court is a court of record; (4) the judgment is a valid judgment; and (5) the tribal court certifies that it grants full faith and credit to the judgments of Wis-

31. *See* Wahwassuck, *supra* note 19, at 737.
32. Major Crimes Act, ch. 341, § 9, 23 Stat. 385 (1885) (current version at 18 U.S.C. § 1153 (2006)).
33. *Id.* The Major Crimes Act was tested and upheld one year later. *See* United States v. Kagama, 118 U.S. 375, 385 (1886).
34. *See* WIS. STAT. ANN. § 806.245 (2010).
35. *See* 25 U.S.C. §§ 461-479 (2006).

consin state courts and to the acts of other Wisconsin government entities.[36]

Wisconsin courts routinely grant full faith and credit to tribal court judgments under this statute.[37] The most common use has been to enforce money judgments through wage garnishments against a defendant working outside the tribal jurisdiction. Once a tribal court judgment is obtained and the defendant debtor is located, the creditor files the underlying enforcement action (usually a wage garnishment) along with an affidavit from the Chief Judge of the tribal court attesting that the elements of the statute have been met.

These garden variety enforcement proceedings were going along fine until around 1995, when Jerry Teague, the casino manager for the Bad River Band of Lake Superior Chippewa, separated from employment with the Bad River Tribe.[38] Eight years of litigation ensued, including two trips to the Wisconsin Supreme Court, the second of which culminated in *Teague v. Bad River Band of Lake Superior Chippewa*.[39] In the end, the case did not turn on the issue of full faith and credit but rather on the allocation of jurisdiction.[40] However, Wisconsin's statute was tested by the litigation, a by-product of which was the re-establishment of the Wisconsin State-Tribal Justice Forum.

The case involved a relatively routine set of facts that spun into competing simultaneous cases in the state and tribal court systems. When Teague separated from employment, he sued the tribe in state court, seeking enforcement of his employment contract.[41] Meanwhile, the tribe sued in tribal court claiming

36. WIS. STAT. ANN. § 806.245.

37. *See, e.g.*, Teague v. Bad River Band of Lake Superior Chippewa, 665 N.W.2d 899, 914 (Wis. 2003). This Article is setting aside the discussion of full faith and credit in specific areas of the law, such as child support, domestic abuse, and the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (2006), where there is a specific directive for full faith and credit to be granted. *See, e.g.*, 25 U.S.C. § 1911(d) (requiring state courts to give full faith and credit to tribal court child custody orders); 28 U.S.C. § 1738B (requiring full faith and credit between states and tribes for child support orders); 18 U.S.C. § 2265 (requiring states and tribes to give full faith and credit to protection orders).

38. *See Teague*, 665 N.W.2d at 904.

39. *Id.* at 904-06.

40. *Id.* at 914.

41. *Id.* at 902.

the employment contract was void.[42] Despite receiving notice, Teague refused to participate in the tribal court proceeding except for purposes of discovery.[43] The tribal court reached a verdict relatively quickly, while the state court proceeding was still pending.[44] The state court refused to recognize the tribal court judgment pursuant to Wisconsin's full faith and credit statute.[45] The state court eventually entered a judgment of $390,000 against the tribe.[46] Teague began an enforcement action seeking to garnish the tribe's bank accounts.[47]

As the state case worked its way up the appellate ladder, it landed in the Wisconsin Supreme Court for the first time in 2000.[48] The Wisconsin Supreme Court ruled that the state and tribal court should confer and attempt to allocate jurisdiction between the two of them.[49] In its analysis, the Court noted that while Section 806.245 guides parties and courts for issues of full faith and credit, there were no similar protocols to apply to jurisdictional conflicts such as exist for child custody disputes in the Uniform Child Custody Jurisdiction Act (UCCJA).[50] The court stated that development of protocols similar to the UCCJA "between state and tribal courts in Wisconsin is a matter of high priority and should be pursued."[51] In a footnote, the court acknowledged the March 1999 meeting of Wisconsin tribal, federal, and state judges and stated this would be the logical forum for such protocol development.[52]

The case was remanded for the jurisdiction allocation conference, but the state and tribal judges could not agree on how to allocate jurisdiction. After failing to reach an agreement, the

42. *Id.* Because Wisconsin is a Public Law 280 state, *see* 28 U.S.C. § 1360, the state court had a basis for asserting jurisdiction thereby creating competing jurisdictional claims in the state and tribal court. The employment contract did not contain a choice of forum clause.

43. *Teague*, 665 N.W.2d at 902.

44. *Id.*

45. *See* WIS. STAT. ANN. § 806.245 (2010).

46. *Teague*, 665 N.W.2d at 923.

47. *Id.* at 902.

48. *See* Teague v. Bad River Band of Lake Superior Chippewa, 612 N.W.2d 709 (Wis. 2000).

49. *Id.* at 719.

50. *Id.* at 718.

51. *Id.*

52. *Id.* at 718 n.11.

case proceeded to appeal once again. In 2003, a plurality[53] of the Wisconsin Supreme Court ruled that the guiding principle of the case was comity and that state courts should be working with their tribal counterparts to determine where a dispute belongs.[54] The court identified 13 factors to be applied[55] and, applying those factors, ruled that jurisdiction should have been allocated to the tribal court in Teague's case.[56]

The high profile nature of the case and its impact on tribal-state jurisprudence caused a renewal of tribal-state collaboration. State judges in the northern part of the state worked with tribal judges to establish a protocol for applying the *Teague* rule. In 2006, the Wisconsin State-Tribal Justice Forum was re-established with five state and five tribal judges and other staff.[57] The forum organized several judicial educational programs where state and tribal judges could meet and confer. Tribal judges presented at the 2007 annual meeting of the Wisconsin Judicial Conference. Looking ahead, the forum is planning a series of "cracker barrel" meetings where, rather than formal lecturing, state and tribal judges will have informal conversations around a few pre-selected topics or issues that may arise spontaneously.[58]

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53. *See* Teague v. Bad River Band of Lake Superior Chippewa, 665 N.W.2d 899, 916-17 (Wis. 2003) (Abrahamson, C.J., concurring) ("Thus, this case must be governed by principles of comity, not WIS. STAT. § 806.245."). The lead opinion had one author (Justice Crooks) and one vote. Justice Crooks' view of the matter was that the tribal court judgment met the requirements of WIS. STAT. § 806.245 and should have been given full faith and credit by the state court. *See Teague*, 665 N.W.2d at 908.

54. *See id.* at 916 (Abrahamson, C.J., concurring).

55. *Id.* at 917-18.

56. *Id.* at 919. As noted above, Justice Crooks wrote separately that under WIS. STAT. § 806.245 the state trial court should have given full faith and credit to the tribal court judgment invalidating the contract and that would have disposed of the case. *Id.* at 908. The plurality noted the difficulty with this as it gives no weight to the state court judgment and could produce a "potentially absurd" situation if the Tribe were to give full faith and credit to the state court judgment. *Id.* at 916 (Abrahamson, C.J., concurring).

57. *See* Wisconsin Court System State-Tribal Justice Forum, http://www.wicourts.gov/about/committees/tribal.htm (last visited Jan. 10, 2010).

58. *See* Shelly Cyrulik, *District 10 holds crack barrel Conversation*, 17 NO. 3 THE THIRD BRANCH 7 (2009), *available at* http://www.wicourts.gov/news/thirdbranch/docs/summer09.pdf. On May 29, 2009, the first cracker barrel forum, a full faith and credit issue received some attention. *Id.* The issue involved how a tribal court could effectively ensure compliance when the tribal court subpoenas a county sheriff's deputy to testify in the tribal court.

Forum Chair, Wisconsin Judge Neal Nielsen, stated the forum has had a positive effect: "Our state-tribal justice forum has been very successful in promoting cooperative and collegial relations between the circuit courts and tribal courts in Wisconsin. The real value of the forum comes from the opportunity to build professional relationships that are based on mutual respect and trust."[59]

New York

New York's Federal-State-Tribal Courts and Indian Nations Justice Forum (Justice Forum) came into existence in 2004: New York has nine state-recognized Indian tribes,[60] seven of which are federally-recognized.[61] Of the nine, only three maintain Western-style court systems: the Oneida Indian Nation, the Seneca Nation, and the St. Regis Mohawk Tribe.[62] The other six tribes operate more traditional justice systems.[63] The more traditional systems do not always issue formal orders or judgments and, therefore, full faith and credit issues have not been as prevalent in the New York case law.[64]

Shortly after its establishment in 2004, the Justice Forum sought ideas about how it could play a positive role in tribal-state judicial relations. The Oneida Nation of New York re-

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59. Interview with Judge Neal A. Nielsen, III, Circuit Court Judge, Vilas County, Wisconsin, Chair of the Wisconsin State-Tribal Forum, by email (Nov. 9, 2009).

60. *See* New York Federal-State-Tribal Courts and Indian Nations Justice Forum, http://www.nyfedstatetribalcourtsforum.org/history.shtml (last visited Jan. 10, 2010).

61. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 72 Fed. Reg. 13,648, 13,649-13,652 (Mar. 22, 2007) (listing the seven federally-recognized tribes).

62. *See* Interview with Joy Beane, Executive Assistant, New York State Judicial Institute, by telephone (June 19, 2009).

63. *Id.*

64. This is not to say state-tribal judicial relations have been uneventful. In *Van Aernam v. Nenno*, No. 06-CV-0053C(F), 2006 WL 1644691 (W.D.N.Y. June 9, 2006), Mr. Van Aernam, a member of the Seneca Nation, obtained a federal court injunction against a New York State Supreme Court preventing it from exercising jurisdiction over a divorce proceeding which had been previously adjudicated in Seneca Nation Peacemakers Court. *Id.* at *1, *10. The *Van Aernam* court applied the factors from *Teague*. *Id.* at *7-8. *See also supra* text accompanying notes 38-56. Just four months later, the same federal district court confronted a similar fact pattern as that of *Van Aernam* and applied the *Teague* factors again. *See* Parry v. Haendiges, 458 F. Supp. 2d 90, 97 (W.D.N.Y. 2006). There were some key differences, however, and the court ruled in favor of state court jurisdiction. *See id.* at 99.

sponded that it would be helpful for its court's judgments to receive recognition from New York state courts.[65] The forum responded positively. Dialogue ensued over development of a protocol which addresses both full faith and credit and transfer of cases from state to tribal court.[66] Interestingly, the Oneida Nation's Western-style adversarial court features two judges who are former justices of New York's highest court, the New York Court of Appeals.[67]

New York's experience is characterized by two unique features. First, the protocol is a non-binding, unsigned document more aptly described as a proposed "guideline."[68] There may be some question whether the state court, in the absence of formal rulemaking, statute, or case law, has the authority to implement such a protocol. Aware the protocol's validity could come before him as part of litigation in his court, the state judge in the tribe's district has not pre-judged the legality of the protocol, but also is respectful of the practical needs of the Oneida tribal court and the forum's desire to do something positive.[69] The Oneida Nation and the state court understand that the first few cases under the pilot protocol will be test cases and that there may be challenges.

The second unique aspect of the pilot protocol is that it was developed specifically for one tribe, the Oneida Indian Nation of New York. This was done consciously and out of respect for the differences between the tribes in New York.[70] It is not a reflection of any disharmony among New York's tribes.[71] Just the opposite—the Oneidas and the State of New York wel-

65. *See* Interview with Pete Carmen, Attorney, Oneida Nation, by telephone (Oct. 21, 2009).

66. New York Federal-State-Tribal Courts Forum, Proposed Pilot Program: Rules on Enforcement of Judgments and Jurisdictional Protocol Between the Courts of the Unified Court System of the State of New York Resident in the Fifth Judicial District and the Tribal Courts of the Oneida Indian Nation (proposed Mar. 19, 2008), *available at* http://www.nyfedstatetribalcourtsforum.org/pdfs/Full%20Faith%20&%20Credit-%20Oneida%20&%205th%20Jud%20Distr.pdf [hereinafter *New York Protocol*].

67. Interview with Pete Carmen, *supra* note 65. Those justices are the Hon. Stewart F. Hancock, Jr., who sits as a trial court judge for the Oneida Nation, and the Hon. Richard D. Simons, who sits as an appellate judge. *Id.*

68. Interview with New York State Supreme Court Justice Samuel Hester, Oneida County Supreme Court, Fifth Judicial District, by telephone (Sept. 3, 2009).

69. *Id.*

70. Interview with Pete Carmen, *supra* note 65.

71. *Id.*

comed input from other tribes while at the same time stressing that such tribes would not be required to be part of the new protocol. The result is a rule designed specifically and exclusively for the Oneida Indian Nation.[72]

The New York protocol assumes full faith and credit will be given unless one of five conditions is present: (1) lack of subject matter jurisdiction; (2) denial of due process under the Indian Civil Rights Act; (3) lack of reciprocal recognition by the tribal court; (4) fraud in procuring of the judgment; or (5) state court recognition of the tribal court judgment would do "violence" to some strong public policy of the state.[73] These exceptions are relatively narrow in scope, perhaps reflecting the fact that the rule applies to only one tribe.

The Oneida Indian Nation attorney who was involved in developing the protocol cited the Justice Forum as helpful, indicating that it provided an opportunity to facilitate discussions and a vehicle that was free from the political baggage that burdens other areas of state-tribal relations in New York.[74] He also stated the discussions were educational and constructive as the tribe heard out the thoughtful and considered issues raised by the state judges.[75]

While the New York protocol has yet to be invoked, there are several commercial cases working their way through the Oneida Tribal Court. When they are completed, perhaps before the end of 2009, the tribe expects to seek enforcement under the protocol in New York state court.[76] This will be the first test of the protocol.

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72. It also should be noted that the Oneida Tribal Court has a rule addressing recognition of judgments from outside jurisdictions. *See* ONEIDA INDIAN NATION (N.Y.) R. CIV. P. 34, *available at* http://www.oincommunications.net/codesandordinances/rulesofcivilprocedure/chapter01.pdf.

73. *See New York Protocol*, *supra* note 66, § 1(a).

74. Interview with Pete Carmen, *supra* note 65. The State of New York and New York Oneidas have had, and continue to have, disputes between them in many areas including: land claims, *see, e.g.*, *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974); gaming, *see, e.g.*, *New York v. Oneida Indian Nation of New York*, 90 F.3d 58 (2d Cir. 1996); and taxation, *see, e.g.*, Glenn Coin, *Oneida Nation, banking on tax-exempt status, buys cigarette factory*, THE POST-STANDARD, Sept. 17, 2009, *available at* http://www.syracuse.com/news/index.ssf/2009/09/oneida_nation_banking_on_taxex.html.

75. Interview with Pete Carmen, *supra* note 65.

76. *Id.*

New Mexico

New Mexico's Tribal-State Judicial Consortium was formed in 1997[77] and designated as an advisory committee by the New Mexico Supreme Court in November 2006.[78] The mission of the forum is to "encourage and facilitate communication and collaboration between State and Tribal Court judges on common issues, focusing on domestic violence, domestic relations, child custody, child support, child abuse and neglect, and juvenile justice, and addressing questions of jurisdiction and sovereignty as they relate to each particular issue."[79] The goals of the consortium include educating and increasing collaboration between state and tribal judges.[80]

Between 2000 and 2003, the consortium held a series of cross-court cultural exchanges. Shortly thereafter, the consortium drafted a rule of civil procedure that, had it been enacted, would have guided New Mexico courts in giving full faith and credit to tribal court orders of protection, which the consortium had identified as a problem.[81]

The proposed rule was referred to the New Mexico Supreme Court Rules Committee.[82] The rules committee concluded that tribal court judgments were already entitled to full faith and credit under New Mexico case law.[83] In 1975, the New Mexico Supreme Court had ruled that judgments of the Navajo Nation Courts were entitled to full faith and credit under 28 U.S.C. § 1738 as a territory of the United States.[84] New Mexico courts have cited this ruling approvingly over the years,[85] including one case where the New Mexico Court of Appeals up-

77. *See* Garcia v. Gutierrez, 217 P.3d 591, 608 (N.M. 2009).

78. *See In re* the Tribal-State Judicial Consortium, No. 8500 (N.M. Nov. 29, 2006), *available at* http://www.nmcourts.gov/tsconsortium/docs/About_Us/Supreme_Court_Order.pdf.

79. The New Mexico Tribal-State Judicial Consortium, http://www.nmcourts.gov/tsconsortium/index.php (last visited Jan. 20, 2010).

80. *Id.*

81. *See* N.M. LEGISLATIVE FIN. COMM., FISCAL IMPACT REPORT, H. 156, at 4 (2004), *available at* http://legis.state.nm.us/Sessions/04%20Regular/firs/hb0156.pdf; Interview with Judge Roman Duran, Co-Chairman, N.M. Tribal-State Judicial Consortium, by telephone (June 24, 2009).

82. Interview with Judge Roman Duran, *supra* note 81.

83. *Id.*

84. *See* Jim v. CIT Fin. Servs. Corp., 533 P.2d 751, 752 (N.M. 1975).

85. *See, e.g.*, Chischilly v. Gen. Motors Acceptance Corp., 629 P.2d 340, 344 (N.M. Ct. App. 1980); Garcia v. Gutierrez, 192 P.3d 275, 284 (N.M. Ct. App. 2008).

held an award of punitive damages issued by a Navajo court after the defendant defaulted.[86]

The consortium responded to the rules committee by pointing out that, despite existing case law, there were still many instances of tribal protection orders not being enforced.[87] The rules committee looked at the matter again. This time they identified an unwieldy 36 rule changes that would be required to comprehensively address all of the different areas in New Mexico's statutes where protection orders were mentioned.[88] The New Mexico Supreme Court did not take action and the effort fizzled.[89]

In the face of the New Mexico Supreme Court's inaction, the consortium took a different approach. It devoted itself to getting state courts and the tribal courts in New Mexico to use a similar cover sheet for domestic abuse protection orders, also known as Project Passport.[90] This effort began after several regional meetings with judges, law enforcement officers, and probation officers from state and tribal jurisdictions.[91] These meetings revealed that state law enforcement officers understood that federal domestic violence laws required full faith and credit for tribal protection orders.[92] However, state law enforcement officials were reluctant at times to enforce the orders because they were unfamiliar with the tribal court formats and were not always sure whether the orders had all of the proper identifying information, were still in effect or were properly issued.[93] When asked whether the uniform cover sheet would answer their concerns, the state officers said it would.[94] The consortium then approached the New Mexico Supreme Court with the proposal for a uniform cover sheet.

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86. *See* Halwood v. Cowboy Auto Sales, Inc., 946 P.2d 1088, 1094 (N.M. Ct. App. 1997).

87. Interview with Judge Roman Duran, *supra* note 81.

88. *Id.*

89. *Id.*

90. Project Passport is a national project to get all jurisdictions across the United States to use a uniform cover sheet on protection orders so they will be more readily enforced by law enforcement officers. *See* National Center for State Courts, http://www.ncsconline.org/D_research/descriptions.html (last visited Jan. 18, 2010).

91. Interview with Judge Roman Duran, *supra* note 81.

92. *See* 18 U.S.C. § 2265(a) (2006).

93. Interview with Judge Roman Duran, *supra* note 81.

94. *Id.*

The New Mexico Supreme Court approved the uniform cover sheet for use on October 29, 2008, and it went into effect on December 15, 2008, a remarkably quick turnaround for such a change.[95] Participants in the effort stated that the New Mexico Supreme Court sometimes takes up to a year to approve such proposals and that a lengthy approval process was expected here as well because the issue involved state-tribal court relationships.[96] The quick approval was attributed to the fact that several New Mexico Supreme Court justices had participated in consortium meetings, with between one and three justices present at each meeting, and thereby gained knowledge about and comfort with the issue.[97] As of March 2009, three tribal courts in New Mexico were using the cover sheet and the other tribal courts were in the process of getting the cover sheet approved.[98]

The New Mexico Tribal-State Consortium has also led to individual success stories because of the relationships formed. A tribal court recently handled a juvenile matter in which a child absconded to Albuquerque, about 170 miles from the reservation.[99] The tribal judge called his state court counterpart from the consortium, who was also a judge in Albuquerque. Within a day, the Albuquerque judge signed an order granting full faith and credit to the tribal court order requiring the juvenile's pick-up and return.[100] Moreover, tribal and state law enforcement officers were already working together. Once the state order was delivered to state police, the youth was picked up and returned to the tribal jurisdiction.[101]

The tribal judge believes that he would have been able to eventually reach the same outcome, but estimates it might have taken a week instead of a day without the relationship with his state counterpart, a significant difference considering that the safety of a juvenile was at issue.[102] This story highlights the crit-

95. *See* The New Mexico Tribal-State Judicial Consortium, Project Passport, http://www.nmcourts.gov/tsconsortium/docs/Initiatives/Project_Passport/Project_Passport_Description.pdf (last visited Jan. 20, 2010).
96. Interview with Judge Roman Duran, *supra* note 81.
97. *Id.*
98. These three tribal courts are those of the Laguna, Santa Clara, and Zuni Pueblos. *See id.*
99. *See id.*
100. *Id.*
101. *Id.*
102. *Id.*

ical importance of relationships and personal knowledge when judges are called upon to apply the law. Even when the law is fixed, and presumably known by everyone involved, personal relationships can act as the variable that determines how quickly courts are able to reach the desired outcome.

Minnesota

Minnesota's Tribal Court/State Court Forum has been in existence since 1997.[103] During early meetings, the forum set out to consider its priorities.[104] The group agreed that full faith and credit issues should be at the top of the list.[105] When deciding whether to approach the legislature or the judiciary about these issues, the forum decided that the legislature would be too political in light of ongoing gaming issues between the state and the tribes.[106] As a result, the Forum developed a proposal for a new rule of civil procedure and circulated the proposed rule to the relevant stakeholders in the state and tribal court systems.[107] In 2002, the Minnesota Tribal Court/State Court Forum formally petitioned the Minnesota Supreme Court for a court rule under which tribal court judgments would be given full faith and credit by Minnesota state courts.[108]

After providing some background information about Indian law and the tribes in Minnesota, the petition sought to bolster the case for a full faith and credit rule.[109] It cited two real-world examples in which full faith and credit had critical practical implications. In the first, a hospital refused to acknowledge a tribal court protective order directing custody of a cocaine-addicted newborn.[110] Without recognition of the order, the

103. Robert A. Blaser & Andrea L. Martin, *Engendering Tribal Court/State Court Cooperation*, 63 BENCH & B. OF MINN. 11 (Dec. 2006), *available at* http://mnbar.org/benchandbar/2006/dec06/tribal_court.htm.

104. *Id.*

105. *See* Interview with Henry Buffalo, Co-Chairman, Minnesota Tribal Court/State Court Forum, by telephone (June 19, 2009).

106. *Id.*

107. *See* MINN. TRIBAL COURT/STATE COURT FORUM, AMENDED PETITION FOR ADOPTION OF A RULE OF PROCEDURE FOR THE RECOGNITION OF TRIBAL COURT ORDERS AND JUDGMENTS, app. A at 1-3 (June 26, 2002), *available at* http://maiba.org/pdf/FullFaithAndCredit102402.pdf.

108. *Id.*

109. *Id.* at 4-6.

110. *Id.* at 6.

child would be released to its addicted mother.[111] In the other case, a hold and protect order from a tribal court for two delinquent runaway teenagers was not enforced by local police because they were instructed that they did not have to recognize a tribal court order.[112] As a result, the teenagers were left unprotected for a month longer than needed.[113] In both cases, Minnesota's Uniform Enforcement of Foreign Judgments Act[114] was a legal obstacle to recognition. The statute, which is a procedural statute, only allows recognition of those orders "entitled to full faith and credit."[115]

The examples went in the other direction as well. A Minnesota tribal court had recently refused to enforce a garnishment request against a tribal employee subject to a state court money judgment.[116] The court relied on tribal law, which required that the issuing jurisdiction grant full faith and credit to tribal court orders.[117] The State of Minnesota did not recognize tribal court judgments, so relief was denied.[118]

The forum's proposed rule had the unanimous support of both the state and tribal court judges at the trial level.[119] In addition, the state appellate judges supported the proposal,[120] as did the Minnesota State Bar.[121] The Minnesota tribes were on board.[122] The Minnesota County Attorney Association was not in support.[123] At the public hearing on October 29, 2002, several individuals from various reservations spoke against the rule.[124]

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111. *Id.*

112. *Id.*

113. *Id.*

114. MINN. STAT. ANN. §§ 548.26-548.33 (West 2009).

115. MINN. STAT. ANN. § 548.26 (West 2009).

116. *See* MINN. TRIBAL COURT/STATE COURT FORUM, *supra* note 107, at 6.

117. *Id.* at 6-7.

118. *Id.* at 7.

119. *See id.* at 7-8 (listing various courts that support the rule).

120. *See* Interview with Henry Buffalo, *supra* note 105.

121. *See* Jon Duckstand, *Full Faith and Credit*, 59 BENCH & B. OF MINN. 9 (Oct. 2002), *available at* http://mnbar.org/benchandbar/2002/oct02/prezpage.htm.

122. *Id.*

123. *See* Clara NiiSka, *Supreme Court hears arguments and testimony: Should there be full faith and credit for tribal courts in Minnesota?*, NATIVE AM. PRESS/OJIBWE PRESS, Nov. 1, 2002, *available at* http://www.maquah.net/clara/Press-ON/02-11-01-testimony.html.

124. *Id.*

The Minnesota Supreme Court denied the petition in a two-page order on March 5, 2003.[125] The order acknowledged the valuable efforts of the forum but stated, without explanation, that "the court is not prepared to adopt the proposed rule at this time."[126] The court acknowledged the "need for a better procedural framework to facilitate the recognition and enforcement of tribal orders and judgments where there is an existing legislative basis for doing so, especially in emergency situations involving such matters as child protection and domestic violence."[127] Looking forward, the court ordered the Supreme Court Advisory Committee on the General Rules of Practice to consider rules to provide a procedural framework for the recognition of tribal court orders and judgments.[128] In addition, the court encouraged the advisory committee to explore with the forum the possibility of a tribal court/state court compact to assure reciprocal commitment to any new rule.[129]

Subsequent to the rejection of the proposed rule, the Minnesota Supreme Court adopted a rule[130] that requires Minnesota state courts to give full faith and credit to tribal court orders where required by law and permits discretionary recognition under the principles of comity in other circumstances.[131] The rule went into effect on January 1, 2004.[132]

The co-chair of the forum from that period expressed disappointment about the Minnesota Supreme Court's decision and uncertainty about why the court ruled the way it did.[133] The forum, nevertheless, has continued to meet and thrive. The experience of proposing the new rule brought the forum members together and, even though the Minnesota rules continue to give state court judges discretion in recognizing tribal court orders, tribal court orders are by and large enforced.[134]

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125. *In re* Hearing on Proposed Amendments to the Minnesota General Rules of Practice for the District Courts, No. CX-89-1863 (Minn. Mar. 5, 2003).
126. *Id.* at 1.
127. *Id.*
128. *Id.*
129. *Id.* at 1-2.
130. *See* MINN. GEN. R. PRAC. 10.01(a) (2003).
131. *See* MINN. GEN. R. PRAC. 10.02(a); *see also* Wahwassuck, *supra* note 19, at 737.
132. *See* MINN. GEN. R. PRAC. 10.01.
133. Interview with Henry Buffalo, *supra* note 105.
134. *Id.*

Beyond Full Faith and Credit

Despite the somewhat bumpy road to Minnesota's comity-based recognition rule, it didn't slow down state-tribal cooperation in the state. A remarkable example of full and mutually-beneficial recognition is taking place between the Leech Lake Band of Ojibwe and Cass and Itasca Counties in northern Minnesota.

The particulars of the program between the Leech Lake Band and Cass County are well documented in a law review article[135] and Center for Court Innovation interview,[136] so only a brief summary will be provided here. In 2006, Cass County District Court Judge John P. Smith realized that defendants repeatedly appeared in his court for alcohol-related crimes and traffic accidents.[137] Judge Smith took a chance and reached out to the Leech Lake Tribe.[138] This despite the fact that, less than 10 years earlier, the two governments were involved in litigation over taxation of tribal fee land that went all the way to the U.S. Supreme Court.[139] Judge Smith states he took the risk out of "necessity."[140] Nonetheless, there are many state court judges who likely face the same issues but don't recognize it or can't bring themselves to seek the tribe's help. Judge Smith says that, in looking back, he may have been naïve but he didn't see a downside.[141]

The gamble paid off. The two courts teamed together to form the nation's first joint tribal-state court, the Leech Lake-Cass County Wellness Court.[142] The Leech Lake-Cass County Wellness Court follows the model of treatment drug courts

135. *See generally* Wahwassuck, *supra* note 19.

136. Interview by Center for Court Innovation with Judges John P. Smith and Korey Wahwassuck, Cass County, Minnesota Driving While Intoxicated Court (May 2007), *available at* http://www.courtinnovation.org/index.cfm?fuseaction=document.viewDocument&documentID=782&documentTopicID=21&documentTypeID=8.

137. *See* Wahwassuck, *supra* note 19, at 747; Interview with Judge John P. Smith, Cass County District Court, by telephone (June 19, 2009).

138. *See* Interview with Judge John P. Smith, *supra* note 137.

139. *See* Cass County v. Leech Lake Band of Chippewa, 524 U.S. 103 (1998).

140. Interview with Judge John P. Smith, *supra* note 137.

141. *Id.*

142. Wahwassuck, *supra* note 19, at 747.

which have bloomed over the last 15 years in the U.S.[143] Non-violent alcohol-related offenders receive intense treatment and supervision, with the judges serving as supporters and cheerleaders as much as enforcers and adjudicators.[144] The tribal and state judges share the bench, collaborate over interactive television, and even occasionally preside in the other's courtroom.

The treatment aspect of the court is not new. What is new is that in a state where its supreme court rejected a proposed rule for full faith and credit for tribal court judgments, a state court and tribal court jointly hold court in unprecedented fashion. Furthermore, during the first year of its existence, the joint tribal-state court existed largely only on a handshake.[145] After people began marveling at the success of the program, the judges realized the need to document their innovative relationship that their courts had built.[146] The one-page Joint Powers agreement is brief and does not cite to any specific authority:

> Be it known that we the undersigned agree to, where possible, jointly exercise the powers and authorities conferred upon us as judges of our respective jurisdictions in furtherance of the following common goals: 1. Improving access to justice; 2. Administering justice for effective results; and 3. Foster public trust, accountability and impartiality.[147]

Fifty-two words in all.

The joint tribal-state court in some ways fully embraces full faith and credit: the judges work collaboratively to arrive at a decision with which they will both be comfortable and which will immediately be valid in both jurisdictions. At the weekly

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143. *See* CASS COUNTY LEECH LAKE BAND OF OJIBWE WELLNESS COURT, PARTICIPANT HANDBOOK (May 1, 2007), *available at* http://www.dcpi.ncjrs.gov/dcpi/pdf/wellness-court-participant-handbook-cass-county-leech-lake.pdf.

144. *See* Tribal Law & Policy Inst., Tribal Healing to Wellness Courts, http://www.tribal-institute.org/lists/drug_court.htm (last visited Jan. 18, 2010).

145. Hon. Korey Wahwassuck et al., Address at Walking on Common Ground II (Dec. 10, 2008) [hereinafter *Common Ground II*]. *See also* Wahwassuck, *supra* note 19.

146. *See* Wahwassuck, *supra* note 19, at 733.

147. *Joint Powers Agreement between Judges of the Leech Lake Tribal Court and the Cass County District Court*, *in* CASS COUNTY LEECH LAKE BAND OF OJIBWE WELLNESS COURT, FROM COMMON GOALS TO COMMON GROUND, 4, 4-5 (2007), *available at* http://www.tribaljusticeandsafety.gov/docs/fv_tjs/session_4/session4_presentations/Sustaining_Wellness_Courts.pdf.

drug court sessions, they make decisions jointly. When one judge is absent, the other takes over without skipping a beat.[148]

In some ways, though, the Cass County-Leech Lake Drug Court moves beyond full faith and credit by merging their respective jurisdictions into a new entity. There is no need for cross-jurisdictional recognition because there is only one court. This deep collaboration has been effective,[149] yet it appears that each court has retained its identity. Perhaps joint-powers courts are the way of the future as tribal and state judges search for ways to effectively serve their constituents. It is worth asking how the *Crow Dog* situation might have been handled differently had the federal government and the tribe had a joint powers court in 1883.

Lessons and Themes

Given the diversity of tribal cultures and the different historical relationships between states and the tribes within their borders, there is no single approach or magic bullet that is likely to work across all jurisdictions. However, in reviewing the four examples discussed above, it is possible to draw certain lessons and themes. One of the most important aspects of tribal-state forums is the building of relationships. These relationships create the space within which creativity can occur. The importance of these relationships exceeds the legal foundation or rules in place. The most striking example is the Cass County-Leech Lake Wellness Court, which began operating on a handshake and the mutual trust of two judges who saw a need to work together to address a common problem. On the other hand, in New Mexico and Minnesota, the Supreme Courts refused to adopt full faith and credit rules proposed by those states' respective forums. Nevertheless, the judges in those states continue to work together to achieve the desired outcomes through second efforts. The New York forum has helped

148. Although one judge may preside in the other's absence, the technical aspect of signing orders or warrants remains within each judge's jurisdiction. However, Judge Smith reported that he has full confidence in Judge Wahwassuck's recommendations. *See* Interview with Judge John P. Smith, *supra* note 137.

149. *See Common Ground II*, *supra* note 145 (The Cass County-Leech Lake Drug Court has achieved over 6,500 days of sobriety among its participants, 20 percent are enrolled in higher education programs, and families are being reunited.)

the state and tribal judiciaries rise above what is otherwise a contentious state-tribal relationship.

Another common theme that emerges from these experiences is that the forums that responded to a specific and pressing need achieved greater success than those that lacked such an animating purpose. The Cass County-Leech Lake Wellness Court, a tremendously successful collaboration, was created in response to a specific and widely-acknowledged problem of alcohol-related crimes and deaths. Likewise, Wisconsin's tribal-state forum produced the groundbreaking *Teague* protocol in the wake of a very specific set of facts from the *Teague* case that demonstrated the need to sort out the problem of concurrent state and tribal jurisdiction.

By contrast, the full faith and credit rule proposed by the Minnesota forum was not anchored around a particularly discreet or urgent issue, and the state supreme court rejected the rule. New Mexico's forum, similarly lacking a pressing issue around which to mobilize support, was unable to gain the state supreme court's approval for a new full faith and credit rule. Clearly, Minnesota and New Mexico's forums have achieved important results in their own right, including Minnesota's comity rule and New Mexico's adoption of Project Passport. Moreover, these forums continue to promote improved communication and collaboration in their states. Nonetheless, they have not yet generated the landmark success that Wisconsin and Leech Lake have been able to achieve by focusing on a specific, pressing issue

The New York experience perhaps offers a middle road. Like the Minnesota and New Mexico forums, the New York forum was convened not in response to a specific issue or crisis, but out of a general desire to improve state-tribal court relationships. However, New York took the unique approach of creating a pilot protocol affecting a single tribe and a single state judicial district that both expressed a desire to develop a more formal jurisdiction-sharing agreement. In taking this measured and cautious approach, the New York forum has been able to focus its efforts in an area where cross-jurisdictional support already exists and early success is possible. This approach, although still in its early stages, may offer a model for other state-tribal forums. In the absence of a specific motivating issue or

challenge, a successful approach may be to develop a pilot project: a carefully-tailored interim step attempted with one tribe before proceeding to a statewide rule.

Finally, the theme of enhanced communication (and perhaps a little risk taking) runs through all of the jurisdictions. The law is a notoriously conservative endeavor and changes slowly. Against this tendency to resist change stands the increasing mobility and transience of society, which continues to move faster than the courts, and demands new thinking and new approaches. The state-tribal forums have demonstrated that, when state and tribal judges gather, even with no agenda other than to listen to each other, progress is possible and the administration of justice for both state and tribal jurisdictions can be improved.