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Background On Walking on Common Ground

Walking on Common Ground is an on-going initiative to promote and facilitate tribal, state, and federal collaboration. The initial effort focused upon tribal, state, and federal court or justice system collaborations, but it now also includes tribal, state, and federal collaborations on a broader range of issues. The official statement of the Walking on Common Ground initiative (adopted by the 2005 Walking on Common Ground planning committee) is as follows:

Tribal, federal, and state justice communities join together, in the spirit of mutual respect and cooperation, to promote and sustain collaboration, education, and a level of support to ensure equal access to justice.

The Walking on Common Ground initiative has had two distinct phases:

1. Building on Common Ground (1988 – 1993)
2. Walking on Common Ground (2005 – present)

The first phase – entitled ***Building on Common Ground*** – included the development of a series of tribal court-state court forums, the provision of two national conferences, and the development of a national agenda. This initial Building on Common Ground initiative culminated in a national leadership conference held September 1993 in Santa Fe, New Mexico which developed a detailed report entitled [Building on Common Ground: A National Agenda to Reduce Jurisdictional Disputes Between Tribal, State, and Federal Courts](#). The Tribal Relations Committee of the [Conference of Chief Justices](#) adopted a resolution in August 2002 entitled [Resolution 27: To Continue the Improved Operating Relations Among Tribal, State, and Federal Judicial Systems](#) which endorsed continued efforts to implement the Building on Common Ground national agenda.

The second phase – entitled ***Walking on Common Ground*** – began in 2005 as an effort to “walk the talk” of the earlier Building on Common Ground initiative. Walking on Common Ground has included a series of national conferences in 2005, a follow-up national conference in 2008, and a series of smaller regional symposiums. Moreover, Walking on Common Ground has included the development and wider dissemination of a series of tribal, state, and federal collaboration resources including this website and the resources included on this website.

Detailed Background - Building on Common Ground (1988-1993)

In 1988, the [Conference of Chief Justices of the State Supreme Courts](#) convened a [Committee on Jurisdiction in Indian Country](#) and directed it to conduct a study of civil jurisdictional conflicts between tribal and state courts. As a first step, the Committee endorsed a project, designed by the [National Center for State Courts](#) and later funded by the [State Justice Institute](#), to conduct a national survey of tribal and state court judges and personnel, Indian law attorneys, and other interested parties. The Committee then surveyed six states in more detail in the civil law area, and convened tribal-state court forums in Arizona, Oklahoma, and Washington to investigate and report on jurisdictional problems and potential solutions specific to these states. In each state, the Chief Justice appointed tribal-state court forum members, including tribal and state court judges and officials.

In 1991, the Conference of Chief Justices hosted a national conference in Seattle (June 30-July 2, 1991) entitled [Civil Jurisdiction of Tribal and State Courts: From Conflict to Common Ground](#). Attended by tribal and state court judges, attorneys general, and court administrators from around the country, the 1991 Seattle Conference continued the mission of educating target audiences about the nature of jurisdictional conflicts, and promoting discussion and mediation designed to find common ground for resolution of these conflicts. Tribal and state representatives from 22 states developed action plans directed toward reducing conflicts in their individual states. The 1991 [Seattle Conference Proceedings Report](#) includes texts of the three conferences addresses, conference session summaries, state action plan summaries and recommendations along with conference agenda and participants.

Following the 1991 Seattle conference, the Chief Justices of Michigan, North Dakota, and South Dakota implemented tribal-state court forums. In 1992, the Building on Common Ground initiative expanded its mission to begin addressing criminal jurisdictional conflicts. There was also recognition of the need to engage federal courts and justice systems in the Building on Common Ground effort to increase the clarity of jurisdictional lines and reduce jurisdictional disputes.

The Building on Common Ground initiative culminated in a national leadership conference held September 18-22, 1993 in Santa Fe, New Mexico in which tribal, state, and federal leaders from throughout the United States met to develop a national agenda for improvement of working relations between tribal, state, and federal judicial systems. The [resource binder](#) developed for this 1993 Santa Fe conference includes extensive resource materials provided to the 1993 Santa Fe conference participants.

Following the September 1993 Santa Fe conference, a detailed report was issued entitled [Building on Common Ground: A National Agenda to Reduce Jurisdictional Disputes Between Tribal, State, and Federal Courts](#). This report presents the national agenda resulting from the Santa Fe conference. The four major Building on Common Ground recommendations are set forth below. The report presents specific suggestions for implementation of each of these four major Building on Common Ground recommendations:

1. *Tribal, state, and federal courts should continue cooperative efforts to resolve and reduce jurisdictional disputes.*
2. *Congress should provide resources to enhance and expand tribal court operations concomitant with their increased authority.*
3. *Appropriate action should be taken to assure cross-recognition of judgments, final orders, laws and public acts between tribal, state, and federal courts.*
4. *It should be a goal of all concerned for Indian tribes to have some jurisdiction, at their option and as their resources permit, over conduct in Indian country, whether by Indian tribal members, non-members, or non-Indians.*

As set forth in the 1993 Santa Fe Building on Common Ground report:

The recommendations reflect the unanimous consensus of leadership conference participants and a philosophy which is twofold. First, the leadership conference participants believe that education must be a key component of solutions to jurisdictional conflicts. As the role, legal authority, and necessity of tribal courts becomes better understood, conflicts will give way to mutual recognition that all courts, tribal, state or federal, have a legitimate place in the American system of governance. To this end, many proposals emphasize development and dissemination of information about Indian tribes, governments, and laws. Second, full development of tribal court jurisdiction and competence in matters affecting tribal governance and Indian country is a positive step for all parties, including affected

non-Indians and adjacent states. To this end, the leadership conference participants recommend increased delegation and confirmation of jurisdiction and resources by Congress to tribal courts. This report is offered with the hope that it will result in significant action and to greater understanding and harmony between tribes, states, and federal court and justice systems, and will lead the way in building on common ground.

The Tribal Relations Committee of the Conference of Chief Justices adopted a resolution in August 2002 entitled Resolution 27: To Continue the Improved Operating Relations Among Tribal, State, and Federal Judicial Systems which endorsed continued efforts to implement the Building on Common Ground national agenda including the endorsement of the following three principles:

- First, tribal, state, and federal courts should continue cooperative efforts to enhance relations and resolve jurisdictional issues.
- Second, Congress should provide resources to tribal courts consistent with their current and increasing responsibilities.
- Third, tribal, state, and federal authorities should take steps to include cross-recognition of judgments, final orders, laws, and public acts of the three jurisdictions.

Resources Developed in conjunction with Building on Common Ground

There were a series of helpful resources developed in conjunction with the Building on Common Ground initiative including the following articles and How-To Guides:

1. Tribal Courts and State Courts: Disputed Civil Jurisdiction Concerns and Steps Toward Resolution by H. Ted Rubin – State Court Journal, Volume 14, No. 2 (1990), pages 9-15.
2. Tribal Courts and State Courts: Working Together to Resolve Jurisdictional Conflicts by H. Ted Rubin - State Court Journal, Volume 15, No. 2 (1991), pages 36-40.
3. Tribal Courts and State Courts: From Conflicts to Common Ground by H. Ted Rubin - State Court Journal, Winter 1992, pages 17-20.
4. The Tribal Courts and State Courts Project: A Four Year Report by H. Ted Rubin (included as appendix 6 in the 1993 meeting binder for the Santa Fe Building on Common Ground event)
5. An Assessment of the Problems Confronting Tribal and State Courts in the Quest for Improved Relationships by William A. Thorne (included in the 1993 meeting binder for the Santa Fe Building on Common Ground event).
6. Partnership: Bringing Together Tribal and State Court Jurisdictions by Hon. William Thorne (The Tribal Court Record, Volume 9, Number 1, Spring/Summer 1996, pages 21-24).
7. Tribal Court-State Court Forums. A How-To-Do-It Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts by H. Clifton Grandy and H. Ted Rubin (National Center for State Courts, 1993). (An online version is also available.)
8. Practical Tips based upon the Successful Efforts of the Tribal/State/Federal Court Forums by Jerry Gardner from Improving the Relationship Between Indian Nations, the Federal Government, and State Governments.
9. Tribal/State Court Forum Dos and Don'ts (Based on the experience of the members of the Arizona Court Forum as reported in Tribal Courts and State Courts: From Conflicts to Common Ground by H. Ted Rubin - State Court Journal, Winter 1992, page 20).

[Please note that many of these resources - including all excerpts from the State Court Journal - were published by the National Center for State Courts (NCSC). NCSC publishes information related to the improvement of court administration. This published information is copyrighted property of NCSC, unless otherwise noted. The National Center for State Courts allows reproduction of published materials for use in the courts and for educational purposes. NCSC resources are posted on this web site with permission. All rights are reserved.]

Detailed Background - Walking on Common Ground (2005 - present)

The second phase – entitled Walking on Common Ground – began in 2005 as an effort to “walk the talk” of the earlier Building on Common Ground initiative. Walking on Common Ground began with a series of three national gatherings held in April, May, and July 2005. These 2005 events – entitled “Pathways to Justice” - were supported by the Bureau of Justice Assistance (BJA), Office of Justice Programs, of the U.S. Department of Justice.

These events were dedicated to giving participants a full opportunity to speak, interact, and generate a record of the discussions that would provide insight on critical needs of the justice system. Held in Anchorage, Alaska; Washington, DC; and Green Bay, Wisconsin, These gatherings brought together individuals from a cross-section of justice systems. It drew on their experiences to develop strategies for improving communication and understanding among tribal, federal, and state courts; law enforcement personnel; and service agencies. The Gatherings also sought to promote workable solutions in response to system challenges that would foster respect and comity, mitigate intersystem conflicts, and reduce or forestall divisive litigation.

The first two 2005 gatherings were dedicated to giving tribal leaders a significant voice, while federal representatives and others were observers and listeners. A separate Alaska Gathering of Tribal Justice Leaders was held April 12-13, 2005 in Anchorage, Alaska because the social, geographic, and political landscape of Alaska creates unique challenges and opportunities. A second National Gathering of Tribal Justice Leaders was held in Washington, D.C. May 22-24, 2005. A separate report – entitled Pathways to Justice: Building and Sustaining Tribal Justice Systems in Contemporary America - was developed identifying the key findings and provides policy guidance from the first two 2005 Gatherings.

The Third Gathering - held July 27-29, 2005 in Green Bay, Wisconsin - directly fulfilled a primary recommendation from the previous gatherings and brought together tribal, federal, and state judges to share equally in the discussion of challenges and the development of mutually agreeable solutions. Participants in the Green Bay Gathering were clear in their recommendations. Their efforts should open the path for further discussion and work. To create a stronger, more cohesive and ultimately a more equal justice system will require ongoing collaboration between tribal, federal, and state judicial systems. The report from this July 2005 Green Bay Gathering – entitled Walking on Common Ground: Pathways to Equal Justice describes the event, the process, and the insightful problem solving discussions that took place in Green Bay focused on the four following key issues:

- Choice of Forum and Federal Review;
- Recognition of Judgments and Orders;
- Judicial Independence; and
- Indian Child Welfare Act (ICWA)

A follow-up Walking on Common Ground II National Gathering was held December 9-10, 2008 on the Agua Caliente Reservation in Palm Springs, California. Walking on Common Ground II provided a continuing opportunity for tribal, state, and federal justice communities to join together to promote and sustain collaborations and share resources and educational materials. Attention was focused on reviewing ongoing efforts to collaborate and to renew the commitment to share best practices. Participants discussed the challenges in their communities, shared information concerning relationships between justice systems and what was working with collaborative programs, and examined a long term vision of working together. Highlights of the December 2008 Walking on Common Ground II National Gathering were compiled in a report entitled Walking on Common Ground: Tribal-State-Federal Justice Relationships.

While there have not yet been any further national Walking on Common Ground Gatherings since 2008, there have been an ongoing series of regional Walking on Common Ground Regional Tribal/State/Federal Judicial Symposiums.

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