

Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
December 2, 2015

Present: Ray Schlather, Jason Leifer, Betty Poole, Mark Solomon, Glenn Galbreath, Gwen, Liz Thomas
Excused: Mary Ann Sumner, Scott Miller (Mr. Miller attempted to attend, but arrived slightly late and was locked-out of the building)
Presenters: Julia Hughes and James Baker, Assigned Counsel Office
Lance Salisbury, Esq.
Staff Joe Mareane, Marcia Lynch

Mr. Schlather opened the meeting at 4:30 p.m. He introduced members of the task force and presenters.

The minutes of the November 18 meeting were reviewed, corrected, and unanimously approved.

There was no public comment.

Mr. Schlather reported that he and Mr. Mareane met last Wednesday, via conference call, with Cornell Law students Peter Li and Rafi Stern. Both were asked to familiarize themselves with the materials that have been presented to the task force, including the Dunne Report. The task force will have a discussion on December 16 and at that time will focus on issues that need further research or data collection, and from there instruct the law students accordingly. Both are eager and anxious and willing to provide 5-10 hours a week to assist.

A letter from attorney Liam Murphy was received and will be posted on the Task Force web site, as will Mr. Salisbury's testimony.

There was no staff report.

Mr. Schlather introduced Ms. Hughes (Program Coordinator) and Mr. Baker (Interim Supervising Attorney) of the Assigned Counsel Office. Mr. Baker yielded to Ms. Hughes who presented the attached testimony and PowerPoint.

Ms. Hughes prefaced her prepared remarks by noting her 32 years of experience in the municipal court system including time spent as a clerk to a village justice, town justice, and coordinator of the Assigned Counsel program.

She has attended all of the task force meetings and has been pained to hear some of the stories that have been presented to the task force. She respects most town judges and is aware of the obstacles they face and their dedication and fairness. However, she finds the comments hurtful, but accurate.

Ms. Hughes noted the direct and collateral impact caused by jailing an individual, including the loss of housing, employment, Social Security benefits, family, pets, and dignity. This is a powerful tool that should not be taken lightly, and that must change.

She advocated creating a dedicated court that will cover all jail-able and bail-able offenses.

Responding to comments about local courts being the courts of the people in the community, she indicated that most people are not familiar with their local courts and what the judge is doing. She said that the long history of local courts is not a reason to keep the status quo.

Ms. Hughes responded to the task force's discussions regarding the consistency of justice by saying that in her view, consistency means courts should be asking for reasonable bails and that sentences should be consistent with the crime. That is currently not the case. Some of the inconsistency has to do with the District Attorney's Office, but in the end, the decisions lie with the justices. In some courts, a DWIP results in probation, in others all DWI offenses must spend some time in jail. She said this is a policy, not justice. She said our county is innovative, with leaders not afraid to implement new initiatives, and would be a place where a dedicated court could work.

Ms. Hughes referred to her PowerPoint presentation (attached) to review data her office has compiled, including:

- The weekly court schedule, showing Monday and Wednesday nights to be a problem. On Mondays, there are generally 15-20 assigned attorneys in court. On Wednesdays, two of the largest justice courts meet. This presents a hardship for attorneys and clients (who face transportation hurdles due to a limited bus schedule that doesn't conform to the court schedules.)
- A map showing directions attorneys are going on a Monday night, which is particularly difficult for attorneys representing clients in more than one court. Some judges are more flexible than others in accommodating lawyer's schedules.
- The assigned costs associated with justice courts, based on payment for mileage, travel time, appearance time, and waiting times. On pretrial nights, wait times range from 1-3 hours for the 15-20 attorneys present.
- A breakdown of costs for time and travel on Monday nights.
- A "snapshot" of costs for Monday night. Ms. Hughes estimated that travel and mileage costs for Monday nights are almost \$50,000 per year. She suggested those costs, plus some of the costs paid to lawyers waiting for their case to be heard, could be saved by a centrally located court within the City.
- A tally of after-hour arraignments in the County from the "counsel at first appearance" directive in May 2014 through August 2015, broken down by crime and result of the arraignment. She believes, but cannot yet confirm, that having attorneys present at arraignment is reducing jail cases, that bail levels are lower, and that more people are being released rather than jailed. There have been problems getting justices to come in for after-hours arraignments, including one reported situation when six judges had to be called before one was found for a felony

arraignment. Some judges rarely come out for arraignments, some have never had a felony preliminary hearing, and some have never had jury trials. As these procedures are the backbone of the justice system, they are not things that should be done once in a while, but on a regular basis.

Ms. Hughes said laws are too complex to be learned in a short period of time or with the help of a resource center. A dedicated court open 24 hours/day with a scheduled judge would cut down on costs for defense attorneys and help police be out on the road more quickly.

- The breakdown of arraignments by court, showing most after-hours arraignments are done in City court. There, the City has a holding cell, so arraignments occur in the morning when arrests are made after midnight. Ms. Hughes said that type of system would be helpful in Dryden, the next largest court.
- The breakdown of crimes and percent of people who went to jail. The slide showed some courts having far fewer arraignments than others.

Ms. Hughes suggested improvements that should be considered if the task force decides not to recommend a district court, including:

- Increased oversight of justice courts by a higher authority
- A local procedure for the review of complaints
- Consolidation two or more town courts, or to reduce the number of judges in some towns. If a town has one judge, conflicts can be referred to another town court.

Ms. Hughes also noted that some courts send a higher percentage of people to jail than others at arraignment, which may be another indicator of inconsistency.

Ms. Hughes thanked the task force and offered to provide additional data as requested by the task force.

Mr. Schlather asked about the final slide regarding the “in jail vs. out of jail”. Ms. Hughes clarified that this relates only to first arraignment that breaks down date from previous slides.

Mr. Solomon asked what happens when the Assigned Counsel program gets a call from a police agency that has a person needing arraignment, and whether the first course for the police is to go to the court in which the charge was laid. Ms. Hughes confirmed that point. He asked for confirmation that before someone is assigned to another court, the home court is unavailable. Ms. Hughes agreed, and noted that the ACP is contacted by a judge or clerk rather than the police agency. Mr. Solomon referred to the final slide, which is a compilation of two prior slides, and the 17 after-hour arraignments in Caroline. He said some of those may have been charges from Caroline, but that others were from outside that jurisdiction. He would like to know the breakdown, by court, of how many arraignments were tied to charges within, versus outside, that jurisdiction. Ms. Hughes said that ACP has only recently begun to keep that data, but that she would forward the data to the task force.

Ms. Thomas referred to the data regarding mileage, noting that the costs for the lawyer weren't included. Ms. Hughes explained that lawyers are paid by the hour. She didn't include the expense for their time because she doesn't have data about specific wait times. She noted that on Mondays, there may be 15-20 attorneys in court, with all of their time charged to taxpayers. Ms. Thomas asked if there is an estimate of that cost. Ms. Hughes estimated that the wait times could add \$50,000 per year.

Mr. Galbreath asked if there has been thought given to assigning particular attorneys to a particular court rather than having them travel to different courts. Ms. Hughes said there has been discussion, but that there aren't attorneys within a short drive to Groton, for example, and that this way of allocating work would not be fair to all attorneys. She also said that when a permanent Supervising Attorney is appointed, he or she would be looking at the way the counsel at first appearance program is organized.

Ms. Poole asked about the ACP working on holidays, and how the attorneys are paid. Ms. Hughes said that if an attorney is on call on a County holiday, they are paid \$250/day, with the cost paid by a State grant. The \$250 is in addition to their hourly rate.

Mr. Schlather asked how the assignment of attorneys on a holiday is determined. Ms. Hughes said an attorney is assigned each day per month for after hours work, and that the assignment is rotated based on (generally) alphabetical order. The "on call" premium of \$250 is paid only for the 11 holidays per year; it does not apply to weekends.

Mr. Schlather asked how travel time is calculated. For the purpose of the presentation, Ms. Hughes said they used Google to compute the distance between downtown and the courts. Ms. Poole noted that distance could be less if there is an attorney that lives in Groton, for example, who has an appearance in Dryden and Ulysses. In that case, mileage would not be measured from Groton to each of the courts, but from Groton, to Dryden, to Ulysses, to Groton. Mr. Schlather asked if there was a better, more coordinated schedule, would that save travel costs. Ms. Hughes has not made this calculation, but believes that better coordination on Mondays and Wednesdays would help. Mr. Schlather noted that even if there was a streamlined schedule, it would not necessarily represent a savings as compared to a centralized court. Mr. Galbreath said there is a cost of having attorneys waiting while 15-20 other cases are heard, but that mileage costs will be incurred as long as cases are heard in town courts.

Mr. Schlather introduced Lance Salisbury, a long-time practicing local attorney.

Mr. Salisbury prefaced his comments by following up on questions raised earlier. In response to Ms. Thomas's question about how long attorneys sit, say, in Dryden. He said on a typical DAs night, each attorney sits for at least an hour and bills for that. It can vary, but in his experience, it is at least an hour and typically longer. In Judge Poole's court, he's in and out relatively quickly. For the big courts, there is significant waiting time.

Regarding the question on how long it takes to be released on bail, as attorney's they don't always see how long it takes clients to be released on bail. If there is a family member, it can be faster. However, if they are waiting for OAR or for family to try to get released, it is typically a couple of days. Since OAR is

only at the jail for certain hours, it depends on schedule. If you come in on a Friday night, you're not going to see OAR until Monday or Tuesday.

Regarding travel time, most attorneys bill based on their actual travel time.

He said his comments are intended to be an addendum to the letter he submitted (attached). He noted that the letter is his work alone. He also said that under some circumstances, it is possible that a 16 or 17 year old can be sentenced by a non-lawyer judge to two years in jail. He said his interest is based on his professional experience both within and outside Tompkins County.

Mr. Salisbury said his view of the town courts is that the vast majority of the judges tend to be decent, hardworking people who have taken on, essentially, a second occupation. He recognizes there are some judges who are very good, but that by itself isn't sufficient. In his letter, he concludes that there is a need for consolidation of some type based on his belief that the key requirement of a criminal justice system is the need to have a fair and equitable process. It is the process that is the key. The mandate of the criminal justice system has to be that the process protects the due process in the rights of individuals to be treated fairly and equitably. He said there is great disparity, and inequity, between the courts in Tompkins County. There are some people doing good work and working hard, but the overall picture is one of disparity in treatment of individuals, and that undermines the system as a whole. This is one of the reasons he has advocated some level of consolidation. You can't have a system that treats people within the County with vast differences based on the geographic location of where they get charged. A hundred feet can make a difference. That is a tremendous problem for the system, and while results can't be mandated, you can mandate the process be fair and equitable and uniform. That is how equity and due process is achieved. If that is achieved, then everyone can live with the results. Even defendants who believe they've been treated fairly by the system are more accepting of the outcomes.

Mr. Salisbury said the inequities also impact the County in terms of cost and policies, and can work counter to the process. For example, he discussed a charge of AUO 3rd, which usually means someone driving on a suspended license. These are usually people who have had traffic tickets and may not have paid the fine, or failed to appear. The indigent and working people are often unable to pay these fines, but have had to drive and are ticketed for driving without a license. He said that within the town courts, some judges see bail as a punitive measure and use it inappropriately. In AUO's, the policy of the District Attorney, rightfully so, is to adjourn the matter for a few months in order to provide time to rectify the situation. The goal of the DA and the court, generally, is to see people get a valid license. He has had cases in which bail is set at \$5-\$6,000 on someone who is working poor and cannot make bail, which then works against the policy goal of having the person rectify their situation and get a valid license. Ms. Poole asked whether there was an attorney present in this matter. Mr. Salisbury was the attorney and worked to lower the bail.

One of the problems that needs to be addressed is the issue of fines and surcharges—payments of fees that come with courts. The problem in town courts is that the courts generally do not accept partial payments because of limitations on their ability to handle them. As a result, people may owe several

hundred dollars or more and cannot make a lump sum payment, even if some time is given to pay. As a result, they continue to drive without a license, and continue the cycle of criminal conduct. If people can't pay in lump sum, some clients are afraid to return to court. He has multiple clients who say that they were saving money to pay the fine, but then an illness or circumstance arose that required funding, so the money for the fine was spent. It is easier for these clients to make regular partial payments. He believes consolidation can help with this problem, by having the sophistication or systems to develop and manage a partial payment system.

Mr. Salisbury suggested two other areas for consolidation: Veterans and DWI. Veterans have earned the right to have their special needs considered by the courts. Unfortunately, the courts have not recognized those needs. By consolidating veteran's cases in a veteran's part of County Court, the needs can be identified and processed.

Mr. Salisbury said there is also a need to consolidate DWIs, where the greatest inequity in process, sentencing, and treatment exists. In some places, illegal sentencing is occurring. This is an area where 100 feet can dramatically change the type of treatment and sanction you received. There should not be a pre-set sentence, but should instead be based on the facts of the case. The increasing complexity of the law makes a consolidated DWI part is particularly important. The amount of paperwork on DWI cases is increasingly onerous, particularly for small, part-time courts. Consolidation does not mean more lax treatment, but would result in a more consistent, fair, and equitable process.

Mr. Galbreath referred to Mr. Salisbury's comment about the complexity of some jail-able offenses argues for a lawyer-trained judge, and noted that the CPL allows a defense attorney to ask the court to have the case transferred to a lawyer-trained judge. He asked whether the problem could be solved if judges agreed in advance that if a request for a transfer was made, a lawyer-judge would be assigned by County Court. Mr. Salisbury said he believes few transfer requests are now made because of a fear of judicial retribution in future cases. He said there has also been concern about overloading courts with lawyer-trained judges. Mr. Galbreath said the case could be transferred to a County Court judge. Mr. Salisbury has also heard that things like bail review cannot always be brought to County Court because of the burden that would be placed on the Court. He agreed this is something that could be reexamined.

Ms. Thomas asked if Mr. Salisbury is advocating a full-time court. He said that if the courts were consolidated into a couple of town courts, money could then be pooled so that salaries for the judge and clerk are increased, which would then affect the pool of interested candidates for the job and also expand the time the court is in operation. Ms. Thomas asked whether the courts that are in session one night per week are more congested than others. Mr. Salisbury said that the volume of cases in Dryden and Ithaca means that they are the most congested. The smaller courts are less congested because of a lower volume of cases.

Mr. Schlather referred to a comment in Mr. Salisbury's letter indicating that there are not many trials or hearings in local courts because of the concern for inconsistent or less-than-legally-learned results. He asked whether we have statistics regarding how many hearings (suppression, geographical jurisdictional,

felony hearings, trials) are actually conducted in local courts. Ms. Hughes said she can provide data regarding trials. Mr. Schlather is interested in how many misdemeanor-level or above hearings happened in the local courts, and if there is a distinction in the saturation rate between those in front of lawyer-trained and non-lawyer trained judges. Mr. Salisbury said his perception is that there is a far higher number (total and percent) of suppression hearings in City Court cases compared to town courts. He attributed that to attorney decisions. Decisions to proceed to trial in a town is based, in part, on the attorney's sense of whether the processes will allow the client a fair shake and the prospect of a draconian outcome.

Mr. Schlather noted that a fair comparison could be made if one could figure out the percentage of cases in which there was some kind of fact finding hearing in the local courts presided over by non-lawyer judge vs. such hearings presided over by lawyer-trained judges in town or City court.

Mr. Leifer asked Mr. Salisbury if he's familiar with situations in which an individual was incarcerated because of a failure to pay a fine. Ms. Hughes said she has clients picked up on warrants because they did not pay a fine, and have gone to jail. She referred to testimony provided by OAR that characterized these matters as debtor's prison, and instances in which bail money was taken to apply to a fine. Mr. Salisbury noted the differences between town courts. Some try to work with individuals who haven't paid their fines; others do not. Mr. Leifer said in City Courts, there is frequent use of a confession of judgment to allow wages to be garnished. Mr. Salisbury said most town courts will not consider that approach. Mr. Leifer asked if there are hearings conducted to determine if failure to pay is willful. Mr. Salisbury said he has not seen that course of action and does not believe that such a hearing focused on ability to pay does not happen. In response to Mr. Leifer's question about the length of sentences for failure to pay, Mr. Salisbury referred to violations of a conditional discharge that can result in a sentence of several months. Ms. Poole asked whether that can happen without a trial. Mr. Salisbury said that there is wide variation between courts on the way this issue is handled. Mr. Schlather said that if a person cannot pay, it would be unconstitutional for the court to resentence the person to incarceration and if the court did do that without allowing a proper record, it would be reversed on appeal, and if it did have a proper record, the County Court judge would reverse the decision. Mr. Schlather said it was important for local attorneys to follow that course. Mr. Leifer noted that by the end of that process, the damage would have already been done to the individual, and costs often in excess of the fine itself would have been incurred. Mr. Schlather noted that these inequities occur in courts led by both lawyer-trained, and non-lawyer trained judges.

Mr. Schlather referred to Mr. Salisbury's comment about illegal DWI sentences. Mr. Salisbury said that there are typically two results: a conditional discharge or probation for 2-3 years. There are some town courts where, by policy, a reduction in charge comes with a set number of days in jail. That pre-set sentence is not legal. In City Court, in the DWI part, a conditional discharge does not include an automatic jail sentence. If the BAC is between a 1.2-1.8, a reduction can be negotiated that often comes with a requirement of a 5-15 day jail sentence left to the discretion of the court. That is different than a pre-set policy of having a set number of days in jail for all conditional discharges.

Ms. Poole Ms. Hughes whether a district court would create more congestion if it met at the same time as the several other courts that operate during the weekday. Ms. Hughes said she would expect a central court to have a more structured schedule of appearances. Ms. Hughes also said that the full time clerks are crucial to the operation of the system. A central court would have the benefit of full time clerks. She noted City Court has six full time clerks.

Ms. Poole referred to Mr. Salisbury's concern regarding partial payments, noting the bookkeeping dilemma that would accompany a partial payment program. She said she extends the payment period to 3-4 months to make payment. Mr. Salisbury said many courts will not extend the time to pay. He said the practical problem relates to the life circumstances of the indigent or working poor who find it easier to make periodic payments rather than a lump sum. Ms. Poole noted that she has extended payments to a year, and reiterated the difficulties in tracking down individuals to collect installment payments.

Ms. Poole noted the recurring theme of inconsistent or illegal sentencing, and asked Mr. Salisbury about the responsibility of the defense attorney to refer these matters to the appropriate authorities. Mr. Salisbury agreed, but noted that many defendants are reluctant to pursue that course.

Mr. Solomon noted that a lawyer does not have an ethical obligation to report a bad act by a judge. The decision should be based on what is best for the client. As often as not, it is advantageous to the client. Just as a lawyer might be afraid to challenge a town court judge, so too a client may not wish to suggest that the judge is incompetent. Mr. Schlather said the counterpoint about the propriety of a sentence isn't a matter for the judicial commission on misconduct, but instead goes to an appellate court—and that is a client's call.

Mr. Schlather thanked the presenters.

He asked the task force members if the meeting added value. All agreed that it had.

The meeting adjourned at 6:10 p.m.