

Minutes  
Municipal Courts Task Force  
Tompkins County Legislature Chambers  
November 18, 2015

Present: Ray Schlather, Jason Leifer, Scott Miller, Betty Poole, Mark Solomon, Glenn Galbreath,  
Liz Thomas  
Excused: Gwen Wilkinson, Mary Ann Sumner  
Presenters: Hon. Harold Bauman, Hon. Sherry Davenport, Hon. David Brockway  
Staff Joe Mareane, Marcia Lynch

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Mr. Schlather opened the meeting at 4:30 p.m.

Members of the task force were introduced.

There was no public comment.

Minutes of the November 4<sup>th</sup> meeting were moved by Mr. Solomon, seconded by Ms. Poole, and approved unanimously.

As his chairs report, Mr. Schlather noted that we will be meeting with the two intern candidates next week.

Newfield Town Court Judge Chernish introduced the speakers, noting that the State Magistrates association has taken an interest in the work of the task force. Judge Harold Bauman is the current president of the State Magistrates Association and the Liberty town justice in Sullivan County; Judge Sherry Davenport is the president elect and a town justice in Summerhill in Cayuga County. Judge David Brockway is a former State Supreme Court judge a former family court judge, and is currently a town justice in Horseheads in Chemung County. Judge Brockway has been active in judicial training and education.

Judge Bauman began the presentations. Judge Bauman has practiced law for 45 years and has been on the bench for 15 years. He recently assumed the presidency of the Magistrates Association and has been a member for 10 years. Before becoming a lawyer, he was a rocket scientist, so understands the issue from many points of view. He has practiced before almost every level of court in New York State. During the course of his career, he has seen all types of judges, excellent and less-than-excellent, at all levels. He has practiced before lay- and lawyer-judges in the justice courts.

Mr. Bauman referenced a position paper by Judge Brockway that was presented to the Dunne Commission (attached to minutes). The paper discussed justice courts, noting good elements and items that may be remedied.

Judge Bauman referenced the district court alternative, noting that he's practiced in front of the district court in Nassau. He said district court judges work 9-5, 5 days a week. In Nassau, District Courts handle misdemeanors, but not Vehicle and Traffic or arraignments. There, both District and Town and Village

courts exist. There is not a cost savings associated with having both, and that they found that both District and town courts are needed. He said Suffolk has a similar system. These are the only two examples of district court systems, and both have town and village courts and, in his opinion, money is not saved.

Judge Bauman cited the complaint volume against judges. There were 332 complaints against 2,300 town and village judges (14% complaint rate). At supreme court level, there are 337 judges and 302 complaints (89% rate). At the appellate level, there are 64 judges and 33 complaints (51%). County court had 165 complaints against 127 judges (133%). When viewed from that perspective, town and village judges do quite well.

Judge Bauman taught in Cambridge for a year, and learned of the beginnings of our legal system in England. They still have justice courts in England. There are three judges, all of whom are lay judges, who decide misdemeanors and lowers. There is a DA and a defense attorney. It is the district attorney's job to tell the judge what the law is and what the precedents are. This is cited to show how long New York has had town and village judges. The magistrates association has existed for 106 years, and town and village courts have existed since revolutionary times. When things were found to be remiss, the system wasn't discarded, but was instead tweaked and improved. He suggested that if the task force finds things that should be improved, then it should seek to improve them rather than getting rid of the town and village courts, which are closest to the people and the court people most identify with. He said people find the courts convenient and their performance satisfactory.

Judge Davenport, town justice in Summerhill, is the president elect of the SMA. She also works in the Cortland County attorney's office and has much interaction with the County Legislature, so has familiarity with county governments and can therefore offer a different perspective on the topics under review.

Summerhill shares a border with Tompkins County. She has worked in that court for 20 years, so is familiar with Tompkins' attorneys and defendants. She is quite familiar with Ithaca, and is here as an advocate of the County's town and village courts. She has been saddened and angered by some of the comments made by some of the speakers who have come previously, and hopes the task force doesn't take seriously some of the anecdotes that have been made. Judge Davenport said good news doesn't seem to be covered as much by the media as the more negative stories.

Judge Davenport said she has met with judges from Tompkins County—a group she said was more than willing to work with the county to find efficiencies within the current structure of the system. Some of the improvements can be implemented immediately. Judge Davenport suggested a collaborative approach would be more constructive than calling for the system's demise.

Citing the task force's charge, she asked why the task force would focus on the structural realignment of the court rather than starting with County departments that work with the courts. Restructuring the courts on a single county basis is the antithesis of efficiency, due to the creation of a larger bureaucracy that wouldn't serve the litigants. A review of efficiency with all of the involved agencies such as police, DA, assigned counsel and others—including all the groups that interact with the court—would be a

better course of action. Changing one piece of a complex system won't make the other pieces more efficient.

A few of the suggestions she's heard include:

- The coordination of court schedules, which would ease the burden of conflicting appearance times;
- Having one judge from one area preside in another area within the County (JCA 106) for the limited purpose of arraignment or bench warrants (as is done in Onondaga, Rockland, and Jefferson, where it's used to allow a justice to preside anywhere in the county for arraignment or appearance for bench warrants. This could be used in conjunction with a central booking or holding facility;
- Many things can be done with calendar appearances, working with police agencies, the DA, and local bar;
- Better use of technology to deal with complaints about limited access to the courts, who are working with limited resources.

Judge Davenport referenced to Mr. Mareane's estimate that the local courts cost \$800,000 to operate, and said that like many other local government services, courts serve a greater societal purpose and should not have to be self-supporting. The revenue generated should not be a consideration for the continued existence of the local courts. She said local courts return \$1.48 million to the state, county, and local communities in Tompkins County.

Judge Davenport said our system has the courts stand as a separate branch of government, and that this check and balance maintains the balance of power and protects the citizens. No one branch should attempt to exert influence over another. She said that elected local judges take seriously their accountability to their communities, and always work to make the most effective use of limited resources. When you give up on a town and village court, local accountability is sacrificed, as is the right to vote people from one's own community. When going down that road, more is given up than can be recovered.

Judge Brockway said he has been involved in the law for 40 years, including time as an assistant public defender in Chemung County. After becoming a judge in 1980, he frequently (as he still does) taught town and village judges and family court judges. He said that in spite of what is often said about non-lawyer judges being less-intelligent, educated or able than others, he has found non-lawyer judges to be highly dedicated, receptive to training and education, and do the best they can—they are often more on the cusp of what is really going in latest cases and changes in statute than lawyer-judges.

Judge Brockway cited his testimony to the Dunne Commission, saying he's not seen anything that has gone from local control to a higher level and then become cheaper or easier to run or more accountable. Instead, control of the people gets filtered out and instead of being a voice of one of 6,000, now it is one voice in 80,000, with a resulting loss of control. Instead of being able to judge a judge every four years, elections are every 10 years. If a judge is not doing his/her job, there are appeals and a judicial conduct commission.

Judge Brockway said decentralized government is a founding American principle that rejected a centralized King of England in favor of decentralized government so that the people could be heard and control their governments. In the court system, when there was a transition from City, County, and family court judges that were all county funded and elected, costs rose significantly. The bureaucracy has blossomed into a multi-million dollar business. That is not efficient. Being able to go to a local board, with fewer layers of bureaucracy, is much more efficient. When there was a change from using deputies as court security officers to state-paid officers, there was a sudden increase in salaries and benefits and decrease in responsiveness as the bureaucracy mushroomed and decision-making grew more distant. He emphasized his belief in local control of governments.

Mr. Schlather invited task force members to ask questions of the speakers.

Mr. Leifer asked Judge Brockway to clarify how a town board can affect how the town court actually operates, such as setting the court's hours. Judge Brockway said that court hours are set by the courts themselves, but could make a state legislative change to do that. He also suggested sitting down with the court to discuss issues such as scheduling. He also noted that citizens are often inconvenienced when they attend city court and have to take time off of work to sit for what may be many hours to wait for the case to be heard. The evening hours are more conducive to an individual's family life. Judge Bauman said it's not just the judge who sets the parameters of the court; that when times are set it is for the convenience of the DA, defense bar, and police agencies as well as the courts. He said the courts also take account the needs of litigants, many of whom are working.

Mr. Leifer asked who pays for district courts in Nassau and Long Island. Judge Bauman said they are paid by the State. District courts handle serious crimes including all misdemeanors. The justice courts handle V&T matters, local matters such as parking tickets, violations, dogs, ordinances, evictions, and also arraignments. The justice courts serve as a liaison with the community, who is more familiar to community members.

Mr. Solomon asked about someone charged with a misdemeanor. Judge Bauman said the arraignment is handled by the town and village court. If the charge is later reduced to a violation, the adjudication stays with the District Court.

Mr. Leifer referenced the 2014 justice court fund report from the Comptroller's Office, saying the money that stays with the towns and villages is only \$385,000. The rest goes to the County (\$110,000) and the State (\$991,000). As supervisor of the town of Dryden, he is looking at an \$85,000 hole in the court budget (cost versus fine revenue.) Judge Davenport compared that local contribution to the local highway or police department. Mr. Leifer spoke of the limitations of the property tax cap, and asked whether the Magistrates Association would advocate towns and villages keeping enough to pay for its own costs before it is shared with others. Judge Brockway said it may not be appropriate for a judge to advocate for more money, but Judge Brockway said the group can advocate on behalf of the administration of justice. He suggested the association of towns, conference of towns, and magistrates association, could collectively advocate for a greater share of the collected revenue. In 1980, when he started on the bench, there were no surcharges and fines covered the cost of the local courts.

Surcharges came into effect in 1983 or so, and the towns and villages kept \$5 of the \$17 charged. It's now up to \$95, and the towns and villages still only get \$5. He said this is coercion from the State to get rid of its own governments.

Judge Bauman suggested the task force write down what it believes is fair legislation regarding sharing fees. He will take this to the legislative committee of the Magistrates Association and make sure that it gets proposed in the group's legislative package.

Judge Bauman said the Dean Emeritus of the Syracuse Law School (Robert Miller) wrote an article about the justice courts that he wished to share with the task force. Dean Miller wrote that the justice courts are accountable, inexpensive, lack calendar congestion, and are accessible to all who seek services. He said they provide the arrestee the quickest way to place a magistrate between him and the arresting officer, and having his rights explained to him. Miller added that the arresting officer doesn't have to drive to a county seat, thereby cutting down on travel distance and time. To the lay justice, the position is prestigious and important and deserving of his best efforts. The justices are familiar with local citizenry and their needs, and are in a better position to be responsive. Finally, with mandated training and retraining of lay judges, as required by the judicial conference, a trained lay justice is capable of discharging the duties of the office and the courts closest to the people will be improved. The country court is also available for correction under appeal.

Judge Galbreath asked for examples of where a centralized after-hours arraignment system has been used, where judges and assigned counsel people rotate through. Judge Bauman said he's heard talk of that, but isn't aware of any place where that is being done now. He said he has concerns with that approach. The current system works well. Judge Galbreath said there are times when a judge doesn't take the call, requiring officers to attempt to locate another judge. Some judges do not get called often; some do. There may be judge shopping occurring by law enforcement. If a judge knew he/she must cover two nights per month, he/she would be ready to go on those nights and that he/she wouldn't have to deal with calls on other nights. This may promote both efficiency and an equitable allocation of burden.

Judge Brockway noted the responsibility of the law enforcement officer to come to the town or adjacent town where the crime was committed. Judge Galbreath said the presiding judge has had moderate success in dealing with the problem, and that he doesn't personally get called often and should be carrying more of the load. Judge Poole said this is a statewide phenomenon.

Judge Davenport said Onondaga County secured a legislative change that allowed a consolidation of jurisdiction for arraignment; that a judge could sit in any town in the County for arraignment. There is not a centralized booking location, however.

Judge Bauman said he is meeting with Judge Coccoma and will discuss this with him. Judge Brockway said this may work in a smaller county, but not in many of the very large counties elsewhere in the State.

Judge Galbreath referred to the concrete suggestions that were made earlier, and asked for additional suggestions to save money or improve justice courts. Judge Bauman described a program in the Town of Liberty that has the Town Attorney conduct the first interview with the defendant in a V&T case. If there is a plea bargain to be had, it would be structured in that meeting and then taken to the judge for approval. The charge is reduced to a level where the municipality gets 100% of the money. For example, a speeding charge could be reduced to a non-moving violation. Everyone walks out happy because there are no points, their insurance company doesn't find out about it, and the town makes 100% of the money. There was discussion about the approach. Judge Galbreath said he has concerns, and that safety is paramount in his jurisdiction and that he is not inclined to entertain plea bargains. Judge Poole cited this ability to reflect the preferences of the community as a reason for town and village courts. Judge Brockway concurred.

Judge Davenport said that in Cayuga County, there are travelling difficulties for defendants that are compounded by the lack of a transit system. There, the magistrates association has moved its meetings to different locations within the County and invites stakeholders to attend to identify problems that can then be worked out. Calls are now made the day of, or the day before, a court is in session to confirm the necessity of a transport. Court schedules have been coordinated between neighboring towns.

Mr. Schlather asked whether the speakers are familiar with the Seneca County District Attorney's publication of the parameters of plea bargaining for DWIs and speeding and other V&T offenses. Judge Davenport learned of this from a defendant that the Cayuga County DA does this for V&T offenses. The web offers advice on how to contact the office by mail to talk about a plea bargain. Judge Bauman noted that this is not binding on the court. Mr. Schlather said it would promote efficiency and assist those who cannot afford counsel. For example, an individual could see the parameters of a plea, which would make justice more uniform and make everything more efficient, especially if the courts bought into it. Judge Bauman has heard about it, and that the commission on judicial conduct has said this is not proper; that it is the judge's responsibility to hear the case and set the parameters of guilt and innocence and set the fine or surcharge. Mr. Solomon asked about why this is improper. Judge Brockway said it would be OK if it is simply a statement of the DA's policy and what will be recommended to the court. Judge Bauman disagreed that such a policy should be public. There was an agreement that more research is needed.

Mr. Solomon asked Judge Bauman about the Town of Liberty practice of having the County attorney meet with a defendant first. Judge Bauman said that all V&T cases other than alcohol cases were routed this way. If a defendant does not plead guilty on the mailer, he is notified to come into court, with the understanding that this is not the trial but to instead speak with the town prosecutor. The DA has abdicated his rights to prosecute these V&T cases, and has appointed the town attorneys as prosecutors. There was a discussion about the organization of the police agencies and courts in the town of Sullivan, including the background on the dissolution of the village court.

Mr. Schlather asked Judge Davenport to elaborate on her suggestion to find efficiencies in other County government operations. Based on her experience in Cayuga, she said there is one ADA who handles DWIs throughout the County, resulting in consistent dispositions. She found this very helpful. One or

two ADAs cover domestic violence cases, resulting in consistent dispositions. While another ADA may appear in court, they are in close contact with the person who is in charge of these types of cases. With respect to Assigned Counsel, Cayuga County is a very large county. Attorneys cover various parts of the County. This helps ensure the availability of attorneys. With respect to probation, there is a new initiative that has pre-sentence reports emailed to probation to avoid a three day delay in transmitting documents. She finds police agencies work well together. She said improvements have resulted by having the transport units call the court in advance to make sure a transport is necessary. Judge Davenport said the state has been moving the courts in the direction of electronic documents, including tickets, monthly reports to the Comptroller are now electronic (now, town keeps its share of revenue and sends the State its share when the Comptroller's report is filed electronically.) Judge Bauman would like all interrogations to be videotaped to make sure a defendant is not being coerced or denied counsel. This would also help the DA and law enforcement address claims of abuse. Judge Davenport noted that all proceedings are now recorded. She also has spoken to a judge who is now using electronic records. Judge Brockway said the courts are moving to electronic records. Mr. Schlather asked whether this would allow individuals to access the court records via a password system. Judge Brockway wasn't sure if that is possible yet. Judge Bauman said he will advise magistrates to replace the recording disc every six months.

Judge Poole asked for the speaker's opinion of a judge being able to access the court records from their home computers, which would enable attorneys, probation departments, and other agencies to call the judge at home. Many court clerks are part-time and are therefore not often able to correspond with these agencies in the evenings. It would be helpful for the judge to have the attorneys be able to call with things like requests for adjournment, recognizing the ex parte issues that may arise. Judge Davenport said she keeps a computer at home, in part because the town lacked high speed internet, allowing her to download tickets electronically and send monthly report information. However, she didn't have attorneys call her at home. Judge Poole said on the day before or day of court date, she could run a calendar and call transport to confirm transport for a specific inmate. If an attorney notified her of the need for postponement, she could then call off the transport. Judge Bauman said this is a good idea, as long as OCA was assured of the security of the system. Judge Churnish said the capability now exists, and that he is himself setting up a remote system. He said this may help with after-hours arraignment, allowing the judge to pull down rap sheets and other documents to help prepare for the arraignment. Judge Brockway suggested Judge Poole check with the OCA about specific questions.

Ms. Thomas said the separation of the courts and the rest of government works well in her town. She hears very few complaints and believes the court operates well. She said that members of the task force came in without a predetermined outcome, and that it seems that there is no consensus about attorney vs. non-attorney judges, so she doesn't expect anything coming out of the group on this question. Also, members didn't expect cost savings, but to instead make sure there is equity and efficiency in the system. She liked the specific solutions offered by Judge Davenport, and believes the outcome of the process will be better communication and a sense of what can be done to improve.

Ms. Thomas cited the argument that local courts are closest to the people, but noted that many who come before the courts are not from the town. She asked the speakers for their perspective on that question. Judge Bauman said there are 4,000 residents of Liberty, and have 10 miles of Route 17 running through it. Many coming before the court are therefore not from the town. Frequently, the speeders will also be found to have a weapon or be under the influence, resulting in arrest for a criminal matter. He estimated half of the litigants in the Liberty court are local. Evictions, village ordinance, and matters between residents are almost always local. He said about 75% of those going through the system will have their first experience in the town and village courts. Judge Brockway said that accountability is better in the town and village courts—will the citizens of the community have a greater ability to hold town or village judges accountable (by election) than a county or district court? Judge Davenport said a town and village judge is more attuned to disputes that are unique to a local community, such as zoning issues, dog control, etc. She also cited grant opportunities that are of primary benefit to the court, but also help the local municipality and community (e.g., facility improvements from JCAT). A town and village judge is more acutely aware of those opportunities than others.

Ms. Thomas also noted that even with the 4-year election cycle for town and village judges, many voters don't know the candidates or his/her capabilities. She said it is difficult for voters to judge the judge. Ms. Poole asked how a town supervisor is judged. Ms. Thomas noted that municipal officials can talk about what they do and their performance, while the judges cannot. Mr. Leifer, who ran for town justice in Dryden, concurred with the limitations on what can be said in a judicial election. He also noted the fact that most judicial elections are uncontested.

Mr. Thomas said she worries about issues about access to court staff and limited court hours that have been raised, especially in the smaller courts. She asked whether those issues would be addressed in a district court. Judge Bauman said he tries to be flexible and responsive in his own schedule. Judge Brockway said it varies by locality, but that issues can be worked out court-by-court without adding bureaucracy.

Judge Brockway raised the issue of the cost of a district court. He said he had heard that the cost was \$1 million per judge, including staffing and facilities.

Mr. Schlather asked whether the Magistrates Association takes a position on the idea of consolidating the prosecution of misdemeanor level of offenses or DWI type offenses, or doing all evictions—a centralized, countywide part that could be housed in an available city court or part of County court. He asked whether there's been any research or analysis on this. Judge Brockway said there is no problem with the current system. The courts can handle whatever comes before them.

Mr. Schlather asked whether the Association has issued any reports or position papers that speak to the re-alignment of the system. Judge Davenport is not aware of any such studies, noting that the Association advocates for the system the way it is. She is not aware of any opposition to consolidations that have occurred under existing law. Judge Brockway said that when he was on the supreme court.



he ran the integrated domestic violence court that centralized all such cases. As an association, the SMA has not adopted a position on whether they favored that centralization or not.

Mr. Solomon asked their position on spinning off a function, like domestic violence. Judge Brockway said it depends on the demographics of the county, the stakeholders, and a host of other things. He said it's worth talking about the specifics, but after running IDV, he's not sold on it as a former Supreme Court judge or now a town judge. Mr. Schlather asked about a DWI court. Judge Brockway said in some communities it could work and be the most efficient model for all stakeholders, but that he could see circumstances where it would not work.

Mr. Schlather asked about whether evictions are complex cases that might be centralized. None of the speakers indicated a particular level of complexity or that there should be a change in the way they are handled.

County Legislature Chair Michael Lane asked about reference to district courts on Long Island, which are in very large counties, and specifically to the fact that the town and village courts still handle the lower level cases. He asked whether the district court could handle all cases. Judge Bauman said the judges work 9-5, 5-days a week. The town and village courts fill in for the hours when the district court judges don't work. If someone is arrested on a Friday night, without a town or village court, a person would stay in jail the entire weekend. Mr. Lane asked if this is what happens in City court. Judge Bauman said city courts are an extension of town and village courts, with greater jurisdiction.

Judge Churnish asked to be recognized. He said his court will go paperless next year, and that the OCA was very helpful in providing the necessary equipment. He also said that he is chairing a local county magistrates association committee to develop positive ideas to make the town and village courts more effective and efficient that can be presented to the task force. He requested an opportunity to make a presentation at an appropriate time early next year. He said Judge Davenport met with several members of the County magistrates association two weeks ago to talk about constructive responses, and that some changes were already being implemented. Mr. Schlather welcomed the opportunity.

Judge Bauman said that over the years, lawyers and judges don't think about judges being lawyer-judges or lay-judges because all do a good job and seek justice, and do justice.

There being no further questions, Mr. Schlather thanked the speakers for their presentations.

Task force members were asked if value was added by tonight's meeting. All agreed that value was added. Mr. Galbreath said he's looking forward to beginning to focus on the topic that will result in decisions on recommendations.

The meeting was adjourned at 6:05 p.m.