

Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
April 13, 2016

Present: Ray Schlather, Jason Leifer, Betty Poole, Elizabeth Thomas, Glenn Galbreath, Mark Solomon, Gwen Wilkinson, Scott Miller
Staff: Joe Mareane, Marcia Lynch

Mr. Schlather called the meeting to order at 4:30 p.m.

Call for agenda changes: none.

Call for an approval of the March 30th minutes will be deferred as those are still being prepared.

Public Comment: There were no comments from the public.

Chair's Report: Nothing more to report on the Chair's report but wanted to thank all who are in attendance.

Staff Report: Reminder to please use your microphones.

Discussion:

Mr. Galbreath's summary is a good starting point. This meeting will focus on the core part of the charge which is the question of whether or not we should be recommending a district court, a DWI court, or a misdemeanor part. If it is not possible under the existing law, then what laws would have to be changed in order to make the recommendations happen. It would be nice to have a majority agree on what those recommendations would be. Opened the floor to anyone who would like to address the group.

Mr. Solomon stated that there was a clear consensus three months ago that they add to the list of recommendations that the laws be complied with in every court in the County with respect to the provision to defense counsel of the criminal records of the persons appearing before those courts with counsel. Mr. Solomon thinks we should add that to the list of things we will discuss and recommend.

Mr. Schlather agreed that yes, that should be added and will discuss later. Mr. Galbreath will add. Mr. Schlather opened the floor for discussion.

Ms. Wilkinson began with her viewpoint regarding the four bullet points on the agenda. With respect to the district court she believes we still lack fundamental information as to whether or not we recommend. She pointed out that there has been at least one if not two law students who would do the research about what needs to be done to make recommendations. We don't have any of that research to this point. Ms. Wilkinson's sense is that we are not in a position to make a recommendation for a district court because we do not know what it will take for us to get there. With respect to the diversion of misdemeanors we have a provision in the CPL where a defense attorney can make a motion to have a case moved from a non-lawyer presided court to a court where there is a law-trained judge. Many defense attorneys know of this provision. That should be sufficient as it will allow cases to proceed

smoothly without being changed to a whole new forum. Ms. Wilkinson does support the diversion of DWI's to a centralized court. At the county and city level things are moving swiftly and consistently through the system due to having dedicated court parts. With respect to the intermunicipal consolidations she does not have an opinion on that.

Mr. Schlather suggested that we take each of those four points and weigh in on them one at a time. Starting with the DWI part first. But first one comment about the district court issue. The only pathway to get to a District Court would be through legislation. Unfortunately the student research did not happen, but from the presentations by Nassau and Suffolk we understand that it would require legislation.

Mr. Miller was able to do a fair amount of research regarding the DWI part. Mr. Miller was responsible for the first DWI part in the City of Ithaca. Although initially opposed to the DWI part, he is a convert and would not want to see that broken up and DWI's go back to the regular criminal docket section. DWI's have such diversity in defendants, it is the one crime in which defendants can all be so different, but the crime is the same. It is important for defendants to see all the different types of defendants. They can see what happens to other defendants as well. The deterrent effect is very powerful to have that done in a DWI part, and there is a low rate of re-arrests. Mr. Miller now definitely supports a DWI part after hearing from all of the parties that have spoken. A DWI part is absolutely necessary, and also consistent with Former Chief Judge Lippman's mandate. How can it be done? The answer is fairly simple. Which is why I can finish speaking on the other points, I am not a favor of a district court, I am not in favor of a misdemeanor part or inter-municipal consolidation. If this committee comes out with a recommendation it should not only be something we "should do" but also one we "can do". Of the four topics I believe that recommendation should be a DWI part. Like IDV Court a DWI part can certainly be done.

Mr. Schlather posed the question: if you can do that for a DWI part, why can't you do that for all misdemeanors?

Mr. Miller said when Lippman created a DWI in city and county courts, there was a rationale why the cases should be heard by the same judge and the same court session. There is not a rationale that a misdemeanor should be heard by the same judge. If we are going to recommend something that should be done we have to recommend something that CAN be done.

Mr. Galbreath said the volume of misdemeanor cases would be massive. There is a difference between DWI and the run of the mill misdemeanors. Misdemeanors are all over the board. Town and village justices are capable of dealing with misdemeanors. DWI's are kind of like treatment court cases. Mr. Galbreath would not want to see the misdemeanors moved out and thinks there would be a big push back on that.

Ms. Wilkinson agrees with the point of view, but wants it marked that her agreement is in concurrence because it is not for the same reasons that she agrees a DWI part should be done.

Mr. Solomon had a practical question as to where is the line that separates the courts? For example, initial charge may have been a DWAI, but then turns into a DWI. How is the line defined?

Mr. Miller stated that there is not much procedural difference in the two and that DWAI would be included.

Mr. Schlather said that if we are going in this direction then we need to scope out the costs and mechanics for paying for this. It cannot be ignored, and it should be part of the argument. There doesn't appear to be any opposition to this recommendation, and we should work on the details. Let's move to the more contentious issues of District Court and Misdemeanor Court and get the opinions out there.

Mr. Schlather went first. He explained his deep respect for the justice system that we have. However, there is unevenness in the town court system arising out of some serious deficiencies on the part of some justices in understanding core principles of the criminal justice system. He believes we ought to have a system where misdemeanors are handled in a misdemeanor part, whether it is one or two courts. Mr. Schlather thinks that should be an aspiration if not a recommendation. There is a place for village or town courts at the civil dispute level; but when it comes to putting people in jail for a year, or punishing them for not being able to pay a fine, that is beyond the level of expertise that we have in some courts but upon which we must be able to rely.

Mr. Miller's concern is on the recommendation of a Misdemeanor part. He agrees with Mr. Schlather's position and that if the committee is seeing this problem as uneven justice, then part of the recommendation could be that it violates due process and should be pursued from that angle.

Mr. Schlather asked if that means the recommendation is to start a lawsuit?

Mr. Miller said that he and Mr. Solomon had discussed putting the notion on the record.

Mr. Solomon said the notion that fundamental deprivation of due process in criminal cases is ripe for adjudication.

Mr. Schlather noted that the answer to that has been posed by Ms. Wilkinson, in that North v. Russell allows for the removal of a non-lawyer to a lawyer trained judge which then passes constitutional muster. A lawsuit would be costly and it is kicking the can into the courts. Instead, we should make recommendations on how the process should be reordered legislatively.

Mr. Leifer agrees with Mr. Schlather but notes that those motions that defense counsel make can also be denied. There is pressure to make a change. How many specialized courts are we going to set up? If we are going to continue down this path then what we are talking about is creating a single criminal part eventually.

Ms. Thomas agrees with Mr. Leifer that a more unified court is the way to go. The report coming out of here will stand for years to come; whether or not there is opposition, if we feel like this is the best thing. I don't think we should not be afraid to stand up and say that.

Mr. Galbreath-This committee was put together in the first place in order to provide some savings. The district court idea sounded more uniform and systematic, until we had a meeting with Nassau County. Now it looks like it costs a lot more money. I am adamantly opposed to that now.

Mr. Schlather- We were all surprised at those revelations. The fact is that system was set up as a child of the 30's and it brought with it the baggage that was present in the system of that time. I would imagine what we would do, would be more clean and smarter. There are other ways to make this more efficient and less costly. There is an expectation where minor offenses could be handled in a way that is more consistent with the technology of today. A person should be able to go online and plead guilty online and then pay a fine with a credit card; when we are dealing with the lowest level of offenses, these are the kinds of conveniences we need to build into our system.

Ms. Poole - This task force was set up to see if there was a way to save money for the municipalities. According to the charge the number one issue was economy - the town and village courts are a minor part of the town and village budgets. It was determined at the first meeting that it would not save that much money. Our charge was to assess the costs and reduce costs through structural realignment, provided that such realignments do not diminish the quality of justice. That was the charge and now we are sitting here possibly talking about spending millions of dollars. Our charge is to determine whether specific changes would be likely to improve the quality of justice in Tompkins County. Now we are sitting here talking about spending more money than I think this county would be willing to spend.

Mr. Schlather-Points well made. This discussion should talk about cost issue. Mr. Galbreath was right, keeping operational costs in mind. The question is: if that works financially, cost-wise, it could be sufficient justification to go to a more centralized criminal system. Would you support that?

Ms. Poole-No, I would not. You want to tear the whole thing down and build a new one as opposed to trying to repair the current one. Maybe defendants would prefer to be in front of a lay judge. I am adamantly opposed to a District Court.

Ms. Thomas – Regarding the charge, there is more than just cost at hand. Qualitative improvements are within our charge.

Mr. Schlather – There is a pretty even split within the group. There are three or four people who would look at a District Court-then three people who are opposed to that, another few people are in the middle. If the recommendation is 5-4 vote or a split vote that will not have any practical effect in terms of getting something done. I am more interested in getting something done if it is conceivable. Let's talk about that which is doable and that which is attainable. The DWI part seems to be unanimous. I think that from last week's discussion there are many issues where there seems to be consensus in terms of operational issues. It seems to me that we could just put aside the political "can we do it" for a moment, and find out if there is an interest in including it as an "aspiration." Ms. Poole would never agree that the local courts should give up misdemeanors. I wonder about the rest of us....down the road could you imagine 10 years from now a more centralized delivery of justice?

Ms. Wilkinson-Is your question a centralized criminal court? Or "law-trained" justices?

Mr. Schlather-We were clear that at some level there is a place for non-lawyer trained judges. My view is that the level is for non-misdemeanor matters.

Ms. Wilkinson-That is agreeable in principle. The arguments in favor of law trained judges are strong. What will it take to create another court part, can we have a misdemeanor court part that is separate? You need someone who is trained in the law to make the decisions for more serious crimes and law trained judges are necessary. Ms. Wilkinson is not going to be able to decide until more information is available.

Mr. Schlather-We have reached the end of today's session. All are in agreement in a DWI part. We clearly are in discussion mode about a difference in opinion on setting up something more than that. Each of us should think about this and agree on the language for misdemeanors part or centralized district court. Quickly, I would like to go to the status of the writing assignments to figure who is doing what. Ms. Wilkinson has circulated some work she has been working on.

Ms. Thomas - Charge

Ms. Wilkinson- Preface and introduction

Ms. Wilkinson and Ms. Thomas will exchange and compare notes.

Mr. Miller-DWI part-recommendation piece in regards to the DWI part.

Mr. Galbreath-History

Mr. Mareane-Appendix and is compiling all the materials which includes a lot of the executive summaries, it's done to date.

Mr. Schlather will knit it all together in the end.

Did today's meeting add value? -Overall-Yes all knew today would be a difficult discussion, but it was good.

The meeting adjourned at 6:00 p.m.