

Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
November 4, 2015

Present: Ray Schlather, Jason Leifer, Scott Miller, Betty Poole, Mark Solomon, Glenn Galbreath, Gwen Wilkinson, Liz Thomas
Excused: Mary Ann Sumner
Presenters: Deborah Dietrich, Executive Director, Opportunities, Alternatives, Resources (OAR) and Dr. Luvelle Brown, Superintendent, Ithaca City School District
Staff Joe Mareane, Marcia Lynch

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

Members of the task force and staff were introduced by Mr. Schlather.

There were no changes to the agenda.

The minutes of the October 28 meeting were moved by Mr. Solomon, seconded by Ms. Poole, and unanimously approved.

There were no comments from the public.

As his chair's report, Mr. Schlather reported that two Cornell law school students have agreed to assist the task force, and one other is engaged in a 30-40 hour research project for the group (as discussed at the last meeting) that will be completed prior to his departure at the end of the year. Ms. Wilkinson asked about the work that will be done by the two interns. Mr. Schlather advised that specific tasks haven't been identified yet, but that data that's been provided to the task force needs to be organized. He hopes to discuss ideas for assignments further with the board.

As his staff report, Mr. Mareane circulated several documents relating to youth court, as had been requested at the last task force meeting. The packet included articles from an issue of the Journal of the ABA that was devoted to youth courts.

Mr. Schlather introduced presenters Deborah Dietrich, executive director of Opportunities, Alternatives, and Resources (OAR), and Dr. Luvelle Brown, Superintendent of the Ithaca City School District.

Ms. Dietrich began by thanking the elected magistrates for their service. She said she is not advocating specific changes to the system, but instead to report observations on the system gleaned from years of experience in dealing with those involved in the criminal justice system.

She shared data regarding amounts of bail intakes conducted and bails actually posted in the first 6 months of 2015, organized by amount, the court, and the charge. OAR has traditionally had a bail limit of \$2,500, but last year the State passed legislation affecting "charitable bail" organizations that lowered the maximum bail to \$2,000 (although OAR bails up to \$2,500 if the defendant has a \$500 co pay) and

prohibits bail for felonies. While felony bails had been rare, it is now prohibited. The law restricts bail to misdemeanors, but OAR also supports bail for violations in the belief that the law sets the maximum charge as a misdemeanor, thereby allowing violations to be covered.

The sheet does not reflect that in July 2015, there was a \$10,000 bail in Lansing set on a petit larceny charge; a \$4,000 bail was set in Dryden for an unauthorized use of a vehicle; and a \$75,000 bail was set in Dryden for a burglary 2nd charge. While the courts are tired of seeing the same individuals time and again, and 2nd and 3rd generation offenders, the purpose of bail is to ensure that an individual returns to court, and not to punish an individual or force repayment of court imposed fines (OAR has had some bails forfeited to pay court fines), and is not preventive detention. Money bail discriminates against the poor. She said there have been more ROR's since the counsel at first appearance arrangement was implemented, which she described as a great step forward for justice.

Ms. Dietrich said excessive bail, which is more prevalent in town and village courts, discriminates even more against the poor. The majority of inmates in jail have not been convicted of a crime, but are awaiting trial. Those who are awaiting trial in jail are more likely to be sentenced to incarceration than those who remain free during trial. Putting individuals in jail for not paying fines is occurring too often. Many are indigent and lack money to pay fines. By jailing them, an individual lacks the ability to earn money to pay the fine, costs the taxpayers \$100 a day, and punishes the person twice for the same offense. One speaker described this as the re-emergence of debtor's prison.

She said suggestions regarding streamlining the system could improve efficiency and reduce costs, but won't change the fact that justice varies among the courts. The system of local courts with lay judges is rooted in the belief that justice closer to the people is better justice. Justice is not blind. In a small town where everyone knows everyone else, assumptions about individuals and families can perpetuate for years, often in spite of the truth of the matter. Individuals deserve justice dispensed by someone who knows and respects the law. She urged the task force to look at a wide range of solutions to the reality of unequal justice within the community.

She cited a Martin Luther King quote –justice denied anywhere diminishes justice everywhere—which is what we are looking at in our current system.

Mr. Schlather thanked Ms. Dietrich for her remarks and asked Dr. Brown to offer his comments.

Dr. Brown said he has spent the last week with teachers, principals, executive team members, and board members regarding their involvement with the courts. Like himself, most know little about what happens within the court system. Most cited the lack of information, the need to collaborate, the need for the schools to be involved in pre-intervention services. He said there are times when a student is involved in the court system, but the schools can't get information about the situation except for word-of-mouth. Having been in Ithaca for five years, the Superintendent said the community looks for as little police and court presence in the schools as possible, including things like a SRO and familiarization tours of courts. He said the local media, and the most recent media stories, aren't helping.

He said he is here hoping to talk about what's possible.

Mr. Schlather thanked Dr. Brown for his comments.

Ms. Wilkinson asked Ms. Dietrich to clarify her comments about centralization not being the solution to the problem of uneven justice. Ms. Dietrich said just having a central booking or arraignment place will solve the issues, but was unsure about who would preside over those processes. She said her question was the degree of legal knowledge of the person presiding, whether it is a centralized or decentralized approach.

Ms. Wilkinson asked Dr. Brown how we can help forge connections. She noted her involvement during Mr. Powers' tenure with criminal justice issues that impacted students. Her sense at that time was that there was a great chasm of mistrust. She said her office, court system, police and others need to open up conversations and asked Dr. Brown for suggestions. Dr. Brown said that things are starting with the Police Department already. It begins with conversations, bringing in others, talking about different perspectives and the systems that are and are not in place. He said people in leadership positions want that to happen, and to build trust rather than barriers. Ms. Wilkinson and Dr. Brown agreed to talk further.

Ms. Thomas asked Ms. Dietrich for her thoughts of the Sheriff's suggestion that we not have five courts all meeting on a Monday night, or other improvements that could be made in the rural courts to help without consolidation. Ms. Dietrich said those improvements would help with the cost of transport and Assigned Counsel and appreciates that as a Town Supervisor, Ms. Thomas had the discussion about changes with her town judges. However, she isn't sure it will improve the quality of justice.

Ms. Poole asked Ms. Dietrich to define the quality of justice. Ms. Dietrich envisioned telling a person that they were stupid to steal a toothbrush in Dryden, where they could serve a year in jail for the offense, versus stealing a toothbrush in Ithaca, where they would suffer a lesser punishment. She said punishment, bail, and charges are different depending on where a person is arraigned. The quality of justice in her mind relates to whether the same general range of bail regardless of where the crime is committed. She said it's not limited to judges, but that the quality of justice is impacted by a series of things, but that bail is the point of entry. Whether you're ROR'd or have a \$10,000 bail for a petit larceny will have an impact on how your case resolves itself.

Ms. Poole said she does not know the background on the \$10,000 bail cited by Ms. Dietrich. She said when an arraignment is done; a judge is responsible for letting the defendant know what the possible punishments are for the crime they are alleged to committed. Most misdemeanors are for up to two years in jail. In downstate, there may be a different type of justice, so variations are not unique to Tompkins County. Ms. Dietrich agreed that Tompkins is better than other rural upstate counties, but said that should not stop us from trying to do better.

Ms. Poole responded to Dr. Brown's reference to the schools being unaware when a student is in trouble, noting that there are strict statutory limitations on information-sharing about youthful offenders. She would like to discuss with Dr. Brown some possible solutions to get the schools more involved. Ms. Wilkinson agreed with Ms. Poole, noting that youthful offenders (16-19 years old) have youthful offender treatment that allows the matter to be adjudicated without creating a criminal

conviction. Later in their life, the youth can say that he/she has never been convicted of a crime. However, the process also requires a high level of confidentiality that prohibits the courts from sharing information with the schools, even for felonies. Juvenile offenders (15 and under) are subject to proceedings in family court, where strict confidentiality also applies. Dr. Brown understands the rules of confidentiality, and thinks we should collaborate on how we navigate through that. Mr. Schlather said that Judge Peacock had planned to sponsor court visits that are positive and informative collaborations that could help. He also noted the use of Youth Courts to avoid any stigma of criminal prosecution, and asked if the District would be amenable to being the venue for the youth courts. Dr. Brown said the District would want to be involved, and that such involvement aligns with the District's mission and vision.

Mr. Schlather asked whether OAR has a limit on the amount of money it can use for bail in a given year or given time? Ms. Dietrich said the only limit is what's in their fund. OAR has a \$10,000 line of credit. Every few years, she asks the County to replenish the fund because lengthy cases can delay the return of bail and sometimes a flurry of bails can deplete the fund. When the fund is low, she tries first to get exoneration orders from judges to make sure anything due back is returned. She is currently planning to come to the Legislature for additional funds. There is approximately \$62,000 in circulation right now. The County's appropriation is usually \$15,000 when needed. She was last at the legislature 2 ½ years ago. Ms. Dietrich said that the largest default rate over her 9 years of service was 10%, and the normal default rate is 4% of total bail posted. She said there some leniency from judges, who give OAR time to locate clients to get them to court, and has even visited clients in the jungle to remind them of a court appointment.

Mr. Schlather asked about the difference between a bail that is posted and a "bail loan", given that all must be paid back. Ms. Dietrich said OAR has never been to court to enforce payment of a default. She said that those who have fully defaulted had no money to pay it back.

Mr. Schlather asked if OAR is permitted to loan money to pay court fines. Ms. Dietrich said she doesn't know if they can, but they don't. She OAR does post odd-dollar bails, which usually include amounts for fines. He also asked if the bail maximums are well known to the courts. Ms. Dietrich said that when the maximum was \$1,500, bail was often set at \$2,000 by the courts, which she believes was done intentionally by some courts to exceed the maximum. Mr. Schlather asked if she could identify the courts where that has happened. Ms. Dietrich said she could, but not tonight. She noted that with bail maximums now at \$2,000-\$2,500, she is seeing more \$3,000 bails. Previously, the \$3,000 bail was often for drug court bail. Now the \$3,000 is being seen in other courts. Ms. Dietrich agreed that this is true for lawyer and lay judges. Mr. Miller explained why drug court bail is set at \$3,000 for a sanctioned (vs. re-sentence) and that it was not a way to get around the OAR bail maximum.

Mr. Schlather asked whether there is a way to determine court-by-court the bail requested for a particular offense, say petit larceny, and determine average bail by court. Ms. Dietrich said she tried to do that today, but wasn't able to break the information down by jurisdiction. However, she knows that this is available from the Sheriff's Department. She also said some of the data given today is from the assigned counsel intakes. Mr. Mareane said the County should be able to generate that kind of

information, but that the data is keyed on the highest charge so that you may find a \$10,000 bail for a petit larceny and find that there are many other charges attached to that case.

Mr. Schlather asked if a person is charged with petit larceny in Judge Poole's court and doesn't have the money to cover bail, can that person get immediate help from OAR to avoid jail or will he/she have to go to jail while things are sorted out. Ms. Dietrich said the person would go to jail, but the longest wait would be from Friday to Monday. OAR does not work evenings or weekends, except for special occasions such as Grassroots. OAR is available Monday, Wednesday, Thursday, and Friday. She said the jail has been helpful in enabling video conferencing for intake meetings, allowing bail to be posted on Tuesday even though they're otherwise not on site. Mr. Schlather asked if we had an electronic system existed to immediately allow OAR to know when bail has been sent, could OAR respond immediately and electronically post bail. Ms. Dietrich said it was possible, but that OAR doesn't have the technical capacity to do that now.

Mr. Galbreath asked for clarification of the data presented by Ms. Dietrich regarding bail intakes. He asked whether the data was regarding those for whom bail was set at \$2,500 or less during the first 6 months of 2015 (yes), and does not include those interviewed whose bail was higher than \$2,500. The table showed 31 intakes, and on the 2nd chart about 27 "bail loans" were shown. Ms. Dietrich explained the 27 are those for whom bail was actually posted. Mr. Galbreath was trying to match the entries on the two charts and couldn't find the match. Ms. Dietrich said she will clarify whether one chart shows those who did receive bail and the other shows those who didn't.

Mr. Galbreath asked if bail is set on a Monday night, what does OAR do beyond what the judge has done when bail is set. Ms. Dietrich said OAR looks at the charges; who the defendant is; if they are in jail or not; whether there has been a prior bail loan default; the status of the bail fund (which may lead to waiting to see if bail is reduced); the results of a video conference or one-on-one interview regarding the circumstances of the incident; their ties to the community; the likelihood of showing up; and the amount of bail. The biggest reservation is if there is a criminal contempt charge, where there must be a review of whether there was an order of protection, in which case they review the matter with the advocacy center and others.

Mr. Galbreath asked whether there is a way to develop data to show how many people have had their bail set too high for OAR to help, when those same people are highly likely to reappear in court. He clarified that he's asking about the conclusions of OAR's investigations that suggest a person is a low flight risk. Ms. Dietrich said it would be a difficult, tedious task. She said that OAR is confident that those who receive bail support will appear in court. Mr. Galbreath said when OAR bails out an individual, they are essentially saying that the individual should have been ROR'd—because, in effect, OAR is RORing them by using County money to bail them out. However, there are times when arraignment occurs in the middle of the night and not much is known about the individual and the available facts suggest that there is a risk the individual won't appear. In those cases, the judge may set bail within the OAR limit with the express purpose that the OAR will investigate more thoroughly than the judge can in the middle of the night. If that person is bailed by OAR and returns to court, it is more likely that the person will then be ROR'd. Ms. Poole noted that OAR does not have access to the

individual's criminal record, which is key to the bail consideration. Ms. Dietrich said that OAR has institutional knowledge of many of their clients.

Mr. Solomon noted that OAR conducts assigned counsel eligibility work in the jail for the County. Ms. Dietrich said that the County has been generous in its support for OAR based, in part, on that work. When she began with OAR, she quantified the value of OAR services, including the eligibility work and follow-up, which has helped establish the County's support for OAR.

Mr. Solomon asked whether forfeiture patterns over the past three years could be developed, including the reason for forfeiture. Ms. Dietrich said she wasn't sure she could determine the reason for forfeiture.

Mr. Solomon asked how OAR addresses situations in which a court uses bail to pay a fine. Ms. Dietrich said that she has referred this to the County Attorney, and that it is considered a theft of county funds to the benefit of a town or village. Mr. Schlather said bail can be forfeited for non-appearance, which would be the rubric followed. Mr. Poole said that a judge is required to have the person who posted the bail bring in the bail receipt, which indicates that bail is to be used for the fine, and to sign that in the presence of the judge. If OAR is on the bail receipt, she would like to see how that was handled. Ms. Dietrich confirmed that this has happened three times that she can recall, and that the money has been recouped after letters were sent by either her or the County Attorney. Mr. Galbreath noted the difference between this happening out of sloppiness vs. deliberately.

Mr. Galbreath asked about the comment that individuals are being put in jail who can't afford to pay their fine, and whether this is anecdotal? Ms. Dietrich said almost all of the people OAR deals with are indigent; that those who aren't indigent can make their bail. Mr. Schlather asked whether there is a mechanism for the attorney to ask for relief based on the client's inability to pay a fine, and if so, whether that's pursued. Ms. Dietrich said OAR does not pursue that. Ms. Wilkinson noted that if payment is a term of a conditional release, a defense attorney can request resentencing and that can lead to jail, but the judges don't put people in jail if they can't afford to pay. When it comes up as a resentencing, it's not a debtor's prison. Mr. Schlather said it's not constitutionally permissible to put a person in jail for the sole reason of the inability to pay a fine or restitution. If a court has determined that the appropriate punishment is not jail, but a fine, the court can impose whatever fine it wants, but cannot put a person in jail because the person doesn't pay the fine, if the reason is the inability to pay. Ms. Wilkinson said that restitution turns on a different principle; although she agrees that people shouldn't be put in jail for the inability to pay. A confession of judgment establishing the amount owed seems to be an appropriate remedy.

Mr. Miller noted that in City Court, there is a procedure under the CPL that has fines, fees, surcharges and restitutions converted to judgments after a certain period of time.

Mr. Miller asked Ms. Dietrich whether she has data regarding judicial orders pertaining to the forfeiture of OAR bail for missed court appearances. Ms. Dietrich said she does not have data and that the forfeiture rate is low. She said local judges have been indulgent toward OAR when requests are made for time to round a person up; that forfeited bail is not a common occurrence.

Mr. Miller then described situations encountered in City Court in which individuals that would otherwise be considered a low flight risk are so intoxicated or impaired by alcohol or drugs that they are temporarily a flight risk. Because City Court meets daily, those individuals can be held for a relatively brief time until they can better understand the circumstances and process, are therefore a lower flight risk, and can be granted bail. He asked whether a similar opportunity exists in the towns and villages, where courts meet less often. Ms. Dietrich noted the low number of approximately 25 individuals who are OAR's most frequent clients and are frequent arrest risks, but not flight risks and who are therefore eligible for OAR assistance. She agreed that the town and village court schedule may result in a week of jail time in the kind of situation described by Mr. Miller.

(Tape player ran out of batteries at this point.)

Mr. Miller asked Dr. Brown whether there is value in the courts and schools working together to further the educational process and improve the outcomes for youth involved in the of the criminal justice system. Dr. Brown said the District always wants to help by staying a part of student's lives, and that the District is accustomed to putting together structures and dealing with issues. When the District doesn't hear about what's happening with a student, they aren't able to support that young person.

Mr. Schlather asked Dr. Brown about records that are released to colleges, the military, or employers regarding graduates when the student agrees to release his or her records. Dr. Brown said ICSD does not release disciplinary records to anyone, other than when those records are subpoenaed. Mr. Solomon asked whether records of arrests on school grounds are released. Dr. Brown said they are not, that only the academic transcript is released.

Mr. Schlather asked Ms. Dietrich about the data she had submitted, and whether there were 31 total intakes, including 27 where bail was actually posted; or 31 intakes that did not result in bail and 27 that did. Ms. Dietrich said she needs to clarify that, but that the annual range for bails posted by OAR is from 46 to 77.

Mr. Schlather thanked Dr. Brown and Ms. Dietrich for their insights.

Mr. Schlather asked the task force members if value had been added by today's meeting. All agreed that value had been added.

The meeting was adjourned at 5:55 p.m.