

Minutes
Municipal Court Task Force
September 16, 2015
Legislative Chambers, Governor Daniel D. Tompkins County Building

Members present: Ray Schlather, Betty Poole, Jason Leifer, Scott Miller, Mark Solomon, Gwen Wilkinson, Elizabeth Thomas, Glenn Galbreath, Mary Ann Sumner

Staff present: Joe Mareane, Marcia Lynch

Guests: Hon. John Rowley, Tompkins County Court Judge; Jonathan Gradess, Executive Director, NYS Defenders Association, Kevin Kelly, LAWNY (Legal Assistance of Western NY)

The meeting began at 4:35 PM and adjourned at 6:20 PM

Mr. Schlather called the meeting to order at 4:35 p.m.

He announced that tonight's meeting begins the public input into the task force's work, with three prominent and talented speakers: Hon. John Rowley (TC County Judge), Jonathan Gradess (Director of NYS Defenders Association), and Kevin Kelly with NHLS (now LAW NY).

Task Force members and staff were introduced.

Minutes of the past meeting were not available.

Members of the public were invited to speak.

Mr. Peter Hoyt from the Town of Caroline addressed the task force. He asked that his perspective as a consumer of the criminal justice system be recognized. He discussed attending a meeting in the County Courthouse ten years ago regarding a statewide review that would have reorganized the town and village courts throughout the state, noting that the concept failed to be accepted in Albany. He spoke in opposition to a proposal of changing the current system of town and village courts and said the courts do very well. He spoke favorably of Caroline Judge Harold Phoenix who has been on the bench in Caroline for 42 years, and is arguably the most well-thought of person in the Town. He questioned the reason the study is occurring given that cost savings are not present. He said he didn't understand the reference to the quality of justice, and how it would be improved by a plan for centralization. He also questioned references to increased convenience. He asked to come back at a later meeting with additional comments. Mr. Schlather said that there will be later meetings at which the public will have additional opportunities to speak.

Ms. Julia Hughes, of the Assigned Counsel Program, addressed the task force to advise of the appointment of James Baker as the interim supervising attorney of the ACP program, and that Mr. Baker

would not be able to attend tonight's meeting. She indicated Mr. Baker will be interim attorney for the next 2-3 months, and that he will be the ACP's representative in providing testimony to the task force.

Mr. Schlather then turned to the tentative schedule of the upcoming presentations, subject to change as individual schedules become more clear. He cited 3-4 comments that have been received and provided to the Committee. Mr. Mareane said the comments will soon be posted on the task force web page. Mr. Schlather also noted the loss of the OCA representative Lisa Smith; that Judge Mulvey had written to advise that OCA's assistance had been characterized as advocacy and that the court system takes no position regarding the consolidation of the local courts. In his response to Judge Mulvey, Mr. Schlather assured him that the task force does not have any preconceived agenda with respect to any of the issues that are currently under discussion.

Mr. Schlather advised the task force that Mr. Gradess has provided digital and hard copies of the full reports that had earlier been provided in excerpted form. These will be posted on the website and available to everyone.

Mr. Mareane updated the task force about the potential of interns from the Cornell Law School. Four students have expressed interest. He suggested that he and Mr. Schlather talk to them before the next meeting.

Mr. Schlather suggested to each of the speakers that they make a 10 minute statement, at which point the meeting can be opened to questions of the task force and, if time permits, other members of the public. The goal is to get as much information on the record as possible to assist the group in coming to decisions.

Judge John Rowley was introduced by Mr. Schlather.

Judge Rowley noted that he presented testimony ten years ago on the statewide issue, and that his position is a matter of record. He said a discussion about the issue feels like a family feud; that the county courts work with the town and village courts, and that he personally does training of town and village judges. He suggested taking a broader perspective as far as the rights of citizenry and also looking long-term at the continuation of the justice system, long after the personalities now in office are gone. He said we do not have what we need, especially with respect to lawyer-trained judges.

Judge Rowley said it's long past time—and should be happening statewide. The town and village court system creates unnecessary and unfair fragmentation of justice—across the board (civil and criminal). He said a fundamental flaw is a failure to require that a lawyer serve in the judicial capacity. Ten years ago, he had a hybrid proposal for the town and village courts to continue to exist in some diminished capacity, but that he has now moved beyond and that he no longer thinks such a system makes sense.

He cited the model of the Integrated Domestic Violence Court as something for the task force to think about. He said the IDV is considered "backdoor court consolidation". The integrated court consolidated elements of a single case of a family involved in a domestic violence charge and disintegration of the family that would otherwise involve county, family, supreme, town and village courts. The Chief Judge

implemented a system whereby certain cases, if they have the correct overlap, go to the IDV. The local courts have been very helpful in identifying cases that lend themselves to the integrated process, and bring them to a single judge. A single judge decides the family court custody case, the criminal case, the matrimonial, etc—applying the appropriate rules and laws to each.

Judge Rowley said that one of the benefits seen from the integrated court is a consistency in the judicial approach to domestic violence. 250 cases have been transferred to IDV court this year. The cases are handled by one prosecutor, one judge, one court session, again producing the unanticipated advantage of a consistent approach.

Judge Rowley offered that a district court model with a small number of judges handling all similar cases would result in similar consistency. The IDV model also shows that training and support is vital to quality judicial oversight in the handling of cases. It is much easier to mandate specific and appropriate training to an IDV judge. The model has raised the quality of the judge's judicial IQ regarding issues that don't necessarily come automatically. He noted that the OCA has done a horrific job in supporting town and village judges. Although the NYTimes splashes do create some level of activity, and some improvement has happened, what won't happen is the education or resources or the kinds of support that consolidation offers for efficiency and a lot of other purposes. He said the bottom line is that the town and village courts vary in their quality from OK to excellent; they vary based on personality and the unevenness of training. Overall, it is simply unfair and inappropriate to have a non-lawyer judge presiding over any criminal proceeding. He handled many cases before town and village judges as a defense attorney, and experienced the deficiencies directly. The opportunity to have more consistent, better trained, and better staffed court system leads him to support a model of a district court that would consolidate cases into a logical, rational system similar to Nassau and Suffolk counties.

Mr. Schlather introduced Mr. Gradess.

Mr. Gradess said he has some strong opinions on the subject, but wants to put them in context. NYSJDC was formed in 1967, the same year as the uniform justice court act and the President's commission on law enforcement and administration of justice which found widespread conditions of inequity, indignity, and ineffectiveness in the nation's lower courts, and that they had to be completely overhauled.

He and his staff have reviewed what has happened in NYS over the past 40 years. He said there is an eruption of some kind (e.g., a judge is sanctioned and removed), then a reaction, then a news story, then legislative reaction, then hiding, then it's over and goes away.

His perspective is from an inadequate public defense system. He said there is also an inadequate justice court system. He said no one wants to insult their friends; they want to talk about what's right, not wrong. As a result, there are references to court being closest to people, that judges know their communities; and then the politics are based on the power of the magistrates, the revenue raised by the courts. The response is generally to call for more training. He said you can't try a criminal case if you're not a lawyer—regardless of the training received.

Mr. Gradess said there are characteristics of justice courts everywhere (including the east end of Suffolk county, where the district court doesn't reach). In the 80's, defenders liked the justice courts based on the feeling that the defenders had a good, helpful relationship with the judges. He said there are similar problems with lawyer-judges, with arrogance often present that doesn't exist with non-lawyer judges. He said it's not as easy as it looks.

He said we ought to have a district court; to consolidate to get early representation, uniform oversight (to be part of the unified court system). He said the savings associated with the state paying for the district courts would far exceed losses in town and village court revenue.

Mr. Gradess characterized Tompkins County as an avant guard community where something experimental and exciting could happen. He said the capacity of local judges to know their communities is true. He envisions a system where cops take kids home in less serious offenses; a DA that diverts cases; a judge who mediates. But he doesn't want justice courts with non-lawyer judges to handle cases involving jail and bail. He proposes sending cases that need lawyers to lawyer-judge courts (District courts presided over by a lawyer-judge) and have the justice courts, with judges who need not be attorneys, serve a restorative justice part of the district court. The justice courts would do community conferences, community circles—establishing Tompkins County at the vanguard of restorative justice.

He agrees that there are people who are genuinely interested in serving, but that there are also judges who are not qualified (citing several situations in other counties). Poor quality can't be ignored. We could restructure so that what is actually good is retained and what is illicit is removed. Illicit is a person not trained in the law deciding on the liberty of those that come before them.

He believes a district court is a part of the solution, but acknowledges there are problems in all courts (more judges are charged in justice courts, but more egregious cases are often in higher courts.)

Opportunity exists here to do something avant guard, innovative, and in the tradition of Tompkins County, in a way that retains the value of justice courts, but does justice with it; it allows lawyers to deal with the legal issues; it permits centralization; it takes it all together and fixes it.

Mr Schlather introduced Kevin Kelly.

Mr. Kelly works with LAWNY, a not-for-profit agency serving the civil legal needs of people in 14 counties. He has also practiced in the southern tier for 10 years.

He explained that his presence is not to advocate or lobby, but to report on experiences the agency has had with local justice courts.

He said the agency would like to see improvement. In the town courts, LAWNY does evictions, foreclosures, public benefits, barriers to employment, sealing criminal records. and a number of civil things. Clients are at 125% of federal poverty guidelines or less. Eviction is a particularly important issue—the stakes are very high. A judge not knowledgeable about the eviction law can result in homelessness and public expenditure.

Mr. Kelly reported that progress has been made in Tompkins County (and that things in Tompkins are better than Tioga County). He noted a good relationship with Judge Poole and her clerk in getting papers. He said eviction process moves rapidly-- only 5-12 days before a trial—making it difficult for the attorney. He said client transportation to a consolidated court might be more difficult than getting to the local courthouse. He also said the agency has developed good relationships with court clerks who are helpful.

He said the agency could handle more cases in a consolidated system, citing larger cities where a “attorney for the day” handles all the cases that come in on that day. Staff is spread thin attending trials. He also said the legal sophistication of attorneys is a lot easier to trust, when a discussion about a legal argument is heard and understood. In a lot of town courts, a judge isn’t listening to the legal arguments, so time is spent getting things on the record for an appeal or to seek a stay.

Mr. Kelly also said that accessing paperwork is sometimes difficult, which impairs the lawyer’s ability to prepare for trial. He cited Caroline’s limited hours.

He said if you had a loved one facing eviction, you would want the consistency that some of the improvements on the table would offer.

Mr. Schlather then offered each member of the task force an opportunity to ask questions of the panelists, beginning with Judge Galbreath.

Judge Galbreath asked the panelists if what is now the town and village courts were changed to one configuration, what would that configuration look like, what would be good and what would some of the disadvantages be?

Mr. Gradess suggested creating a district court with restorative justice parts of that court. He noted that his office provides a great deal of restorative justice training to a range of practitioners, and that the training could be extended to local court judges. Lay judges would be retained as restorative judges, with lawyer judges going to District/criminal district court.

Judge Rowley said we have fallen woefully short on the restorative justice end of things. A variety of things have been tried, but there has been no consistent comprehensive approach with any creativity. He said it is an interesting idea to partner the change with the restorative justice element. With regard to the proposal, create a district court (may make sense to pull the City Court into the District) with four district court judges (including 2 city court) handling all aspects currently handled by city, town, and village courts.

Mr. Kelly said some way of centralizing access to court papers would help. Legal sophistication and consistency, including ability to bring up precedence and nuance, to judges would help---noting that he has had good experience with local judges. In response to a follow-up question by Mr. Schlather, Mr. Kelly said it would be easier with a single system.

Ms. Wilkinson asked a follow-up to Mr. Gradess regarding which cases would go to the “criminal” part (vs. restorative part) of the District Court.

Mr. Gradess noted earlier examples of police agencies making similar determinations in a different model. He elaborated, saying that in some cases police could make determinations and that police can also be given more latitude to not make arrests in minor matters. There are other “pre-determination” approaches that have been applied elsewhere. He said the key to the restorative process is the question, presented by the judge, about what good can come of this—and proceeding from there.

Mr. Schlather asked a follow-up to Ms. Wilkinson's question regarding a bright line that distinguishes a case that would not be appropriate for referral to the restorative court. Mr. Gradess said he would leave it to circumstance. Judge Rowley said he felt there would be some areas, like domestic violence, that should not be left to discretion. However, there could be restorative elements of any case. Opportunities are missed every day when we don't give victim and offender a chance to talk things out. He spoke of the negative outcomes of arrest vs. progressive levels of intervention.

Ms. Thomas raised the financial implications of the various options, noting that the same is a question that she hopes we will get to in a future meeting.

Ms. Wilkinson noted that Mr. Gradess and Judge Rowley support the proposition that only a lawyer should oversee a case in which legal issues are before them, and asked that after 80 years of experience in NYS with justice courts is it reasonable to think about making a change that flies in the face of a lot of State tradition but seems like such a common sense choice to make. She asked whether there is something in the local court system that would be lost or sacrificed under a consolidated system or a system with only lawyer-trained judges.

Judge Rowley said he likes the notion of a court in your community, but noted that we view communities in a lot of different ways. It cuts both ways—it's nice to know that there is a town court; but that is offset if there's not confidence in the person who is presiding. Overall, the advantages of keeping town and village courts are outweighed by the disadvantages.

Mr. Gradess said he isn't of the opinion that common sense or home-spun judgment works so well. He noted that a person from outside of the area who goes to a local court is not a part of that community. It is important to know your community, but also to have even-handed justice for those who don't come from the community. He also said that over time, Tompkins County has had five cases before the judicial commission, four of which were from the justice courts. He has heard that justice courts are close to the people, but not all the people. He also said that while common sense is valued, the law isn't always based on common sense. Thus his proposal is to have justice courts focus on areas that don't involve jail or bail, where common sense and home-spun justice should apply. He also said that among other advantages, if District Courts were created, the state would fund them.

Mr. Kelly responded that the positive would be the proximity of the town or village courthouse, but that advantage would be offset if the quality of justice was not good.

Judge Poole raised a question about the phrase “equal handed justice” and “lawyer vs. non-lawyer judge” and asked whether unequal justice has been experienced with a lawyer-judge. She said when she became a judge, she attended trials and observed lawyer-judges who were not familiar with criminal law

and who had to look to their clerks to assist with criminal law and V&T law. She said the DWI laws are unbelievable. She got the feeling when observing the lawyer-judges, they forgot which side of the bench they were on.

Mr. Gradess said it's not lawyer vs. non-lawyer that's the problem; the structure of the court system supports all nature of abuses, and some lawyers are worse than non-lawyers. He said there should be a structured system where lawyers are trained in justice courts. He said the structural system of the justice courts is the problem. If the local courts are retained, there should be lawyer-judges to make sure that aspect of the problem is addressed.

Mr. Schlather asked Judge Rowley to comment on issues that have been presented on appeals and if there is a distinction between matters involving lawyer-trained judges and matters involving non-lawyer-trained judges. Judge Rowley said that not many cases are heard, but it is sometime shocking what is handled. Most commonly, the problem is the failure to make a record, which makes it impossible to figure out how the trial court went from here to there. There is a fairly high percentage of reversals, but not a high level of appeals. Mr. Rowley said that part-time things are always problematic, noting that in a medical procedure it's best to go to a doctor who does a large number of procedures. A full time judge cannot be a practicing attorney, is subject to education and training requirements, and oversight. We're entitled to know that judges know what they're doing, are trained, are conversant in the ethical standards, etc. We now have 22 local judges. If that was replaced by an appropriate number of full time people, we'd no longer be talking about part-time real estate lawyers dabbling in criminal law.

Judge Galbreath asked whether it's clear whether the state would pay for a district court, and what the state's reaction would be given the risk of every county turning over its courts to the State.

Mr. Gradess said there was precursor work by the OCA that looked at consolidation of the justice courts. He said there are two approaches: a district court, and changes to the town and village courts. He said the state may have started on track A and ended up on track B. He also said the State now spends \$20 million to support district courts on Long Island. He suggested that if we followed the avant guard approach, the County would have a lot of allies in the effort to secure State approval.

Mr. Leifer asked about State funding and whether State would provide resources beyond what the towns and villages can afford, and the advantages that might result.

Judge Rowley said there is excellent technical and legal support, personnel, facilities, training, technology, paperless systems provided through the State Office of Court Administration. That is much different than in justice courts that receive very limited, and uneven support from the State. The contrast is stark.

Mr. Solomon thanked the speakers and appreciated their comments. He spoke of the history of the system and how it evolved. He said that all three have indicated that something would be lost if the local court system were eliminated and asked for confirmation.

Mr. Gradess agreed that something would be lost.

Judge Rowley said that over time, whatever is lost will be forgotten, but it will be a blow.

Mr. Solomon said that there are values in small systems, but that there may be some benefits in larger systems.

Mr. Gradess said he understands the appreciation for the local courts, but it's best if you can have your cake and eat it too.

Judge Miller asked Mr. Gradess if he were arguing before the Supreme Court on the basis of the 5th Amendment and 14th Amendment with respect to due process of law in a system of non-lawyer judges, what would be the argument.

Mr. Gradess said that it's unconstitutional unless there's access to an automatic opportunity for a de novo trial before a lawyer judge. New York State made an error in interpreting the CPL that provides for a discretionary versus an automatic review. He said the question is being looked at now, and believes it is ripe for challenge.

Mr. Schlather said the rest of the story was written by Judge Charles Swartwood in Supreme Court in Chemung County when it was litigated years ago. He determined, based on North v. Russell and two New York Court of Appeals cases, that the discretion must be exercised in favor of the removal. The problem in Tompkins County at the time was that the only lawyer trained judge on base was Judge Tucker Dean, who was quite difficult to practice in front of, so the issue died on the vine. Mr. Schlather noted that his former law partner, Mike LoPinto, was very much involved in pushing the issue (and – for the record – it should not be forgotten that Mr. LoPinto died 28 years ago today).

Ms. Sumner asked about data beyond anecdotal evidence that will help make a decision. She also asked about opinions regarding elected versus appointed judges.

Mr. Gradess indicated a paucity of data maintained by the local courts. Mr. Kelly said there would be advantages to an appointed judge. Mr. Schlather noted the statutory and constitutional limitations on appointments.

Mr. Schlather asked Judge Rowley whether data exists regarding the efficiencies of the Integrated Domestic Violence model that would show how that model has worked versus other models. Judge Rowley said there is a volume of information about the number, disposition, and duration of cases but none that he's aware of that would calculate benefits. Ms. Wilkinson indicated that her data base may allow a comparison of comparable cases. Mr. Schlather said he would like to have that kind of data and analysis in the task force's record.

Mr. Schlather also advised of the County Clerk's initiative to put all court records into electronic form, and asked Mr. Kelly if that would impact the problems he mentioned regarding access to records.

Mr. Kelly said that this will help streamline the process and address the problem of being unable to receive and file papers, so long as everyone has access to those records.

When asked by Mr. Schlather, both Judge Rowley and Mr. Gradess agreed that the digital records would have a favorable impact on the quality of work and issues they have raised.

Mr. Schlather thanked the panel members for their informative presentations.

Mr. Schlather asked the task force members if today's meeting added value. All task force members answered in the affirmative.

The meeting was adjourned at 6:20.