

Testimony For "Dunne Commission"
September 25, 2007
Rochester, NY

Submitted by Hon. David M. Brockway

Before offering my opinion on justice court reform proposals, allow me to provide some background to provide context. I served as Chemung County's first full-time assistant public defender, from 1975 to 1980. I was also honored to serve as a part-time village justice in Horseheads for 20 years (1980-2000). I served as town and village attorney for a number of municipalities in both Chemung and Schuyler Counties. As an attorney in private practice I enjoyed further opportunities to appear in dozens of justice courts. For the past four years, I have been an adjunct SUNY faculty member at Corning Community College. I am in the eighth year of serving as the full-time state Family Court Judge in Chemung County. I have served as vice-president of the New York State Magistrates Association and am currently president-elect of the Association of Judges of the Family Court of the State of New York. Additionally, I have taught town and village justices, both locally and regionally, for some 20 years. For ten years, I was the Editor of *The Magistrate*, a publication of the State Magistrates Association. In other words, I have some familiarity with both the local and state court systems, those who appear in front of them, and with those working in the trenches of each.

Let me say this, unequivocally: contrary to recent cries for wholesale reform, New York's local justice system is not broken. It need not be abolished. And, with all due regard to members of my profession, it should not be restricted only to attorneys serving as justices. For more than 200 years, our local court system of city, town and village courts has functioned well, and has done so relatively inexpensively and with fairness. While there have recently been a number of "horror stories" publicized regarding a few non-lawyer justices of the town and village courts, one unfortunately need only turn a page or two in any of the annual reports on judicial misconduct to find equally inappropriate conduct, in proportion to their numbers, on the part of the so-called "learned" bench - those with legal training.

Our town and village judges- lawyers and non-lawyers alike- are among the most dedicated group of people I have ever had the privilege to meet. In large measure, they assume their roles as a matter of civic pride and duty, not to further their careers or accumulate wealth. These judges are the ones who are available at all hours of the day, night and weekend to ensure that the accused is brought before an impartial magistrate before further proceedings. You do not have this availability with County, Supreme and City court lawyer-judges; and you will surely not have it with state-run, centralized District Court lawyer-judges. Those charged in the latter lawyer-judge courts are simply jailed until the evening or long weekend is over. The town and village judges are also the judges who are held accountable for their actions by the electorate, in their very own communities, every four years. I might also add that as an attorney, I often preferred to practice before a non-lawyer justice. They were frequently the ones most current on the latest law; the ones who more likely were attentive at the seminars I taught or attended; and the ones who oftentimes had a better grasp of common sense and of their communities than their colleagues with law degrees.

One need not throw the proverbial baby out with the bath water to answer the concerns of the critics of these courts. I laud the proposals of the Office of Court Administration in providing more training, more technical aid and more auditing assistance, as set forth in its Action Plan. These measures will have a significant impact on improving both the quality and the perception of justice meted out by these courts closest to the people.

District Court advocates need to appreciate the difficulty which would likely be created for upstate citizenry in perhaps having to travel many dozens of miles to their county's "local" district court. These district courts, by the way, would be courts over which the people would have far less control, and the judges less accountability, as they would only be elected every ten years instead of every four years as is now the case with town and village justices. Additionally, fiscal conservatives need only study the huge bureaucracy and tax burden created by the state's takeover of the county, family, surrogate and city courts some 30 years ago and what it has wrought in the ensuing years. Elimination of the town and village courts would repeat the same mistakes of the past.

231 years ago, following close to one hundred years of ever-decreasing local control, our forefathers declared independence from an autocratic, centralized government, administered by elitists and monarchists. It was a government which had grown unresponsive and unaccountable to the people and their local needs and concerns. That is why our State Constitution requires a referendum of the townspeople before a Town Court can be eliminated.

Bit by bit, one could argue that we are reconstructing that which the patriots so nobly fought against those many years ago. To deny the people local control over their own courts and judges is far more abhorrent to our democracy than are isolated instances of misjudgment. Those misjudgments, like those of their legally-trained counterparts, are appropriately handled by way of the Judicial Conduct Commission, the appellate process, and by the electorate itself. Power rightly belongs to the People, not to lawyers and not to centralized, "consolidated" governments and their courts. As a whole, our town and village courts are a fine, efficient and economical part of the third branch of government. Except for the provision of some further assistance, they should stay that way.

Respectfully submitted,
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