

Lance N. Salisbury

Attorney and Counselor at Law
408 N. Tioga Street
P.O. Box 7075, Ithaca, New York USA 14851
Phone: (607)272-7669 Fax: (607) 272-9877
lancesalisbury@pixly.net
(Service by fax not accepted)

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Tompkins County Municipal Courts Task Force
Tompkins County Administrator
121 E. Court Street
Ithaca, New York 14850

Re: Review of Criminal Case processes in Local Courts

Dear Members of the Task Force:

I am submitting this letter to accompany my testimony before the task force regarding the issue of potential consolidation of local courts and/or local court functions in Tompkins County. My remarks and concerns are directed to the issue of criminal cases in the local justice courts. In order for the task force to understand my interest and concern over the issues before the task force let me provide a little of my professional history. My interests and concerns in this area are a result of my professional activities over the past twenty years. I currently have a private law practice in Ithaca that focuses on criminal and education law since 2001. I am and have been an adjunct professor of law teaching a clinical class in the Cornell Legal Aid Clinic at Cornell Law School. In addition, after graduating from law school in 1996, I spent a number of years overseas working on rule of law and human rights issues in conflict and post conflict environments, including in Somalia, Liberia, Bosnia & Herzegovina and Kosovo. In those arenas I worked extensively on representing parties and leading efforts to reestablish legal systems and provide access to an equitable legal process for citizens of those countries. It is from this base of interest and experience that I address the current status of the criminal justice system in local courts in Tompkins County.

Initially let me make two points. The first is that the use of local or town courts with non lawyer judges to handle misdemeanor and criminal violations, as well as preliminary matters with felony cases, is a somewhat anachronistic and unique structure in the United States. New York may be the only state in the country that I am aware of that allows non lawyer judges to preside over misdemeanor and felony matters and to conduct jury trials, as

well as to have the ability to sentence individuals to local jail for up to one year. In addition, New York is one of only two states in the United States that automatically treats sixteen and seventeen year olds as adults in the criminal justice system. The result is the ability to have a non lawyer judge with limited legal training having the power to incarcerate a sixteen year old or seventeen year old for up to one year of jail time.

The second is that in my experience the vast majority of judges in town courts in Tompkins County are dedicated, decent individuals who seek to perform their duties as well as they can and strive to be as fair as they can be. For most of these judges, they have a different primary job and occupation, and sitting as a judge is a second and increasingly time consuming demand on these individuals. These are becoming increasingly demanding positions, however, as the criminal law in New York has become more increasingly more complex in recent years. This is particularly true in certain areas of the law such as DWI matters. I have come to the conclusion that no longer can the old system of non lawyer judges sitting in town courts effectively provide the justice required for defendants in our system. In many cases the law and legal mandates are contrary to what people term their common sense. In many cases, a judge following and relying upon the statutory and case law is mandated to make rulings that are contrary to both public inclination and what they may feel is common sense. This is particularly true given the issue of who increasingly appears before local town courts in criminal matters. There has been discussion before the task force that having a local court allows the court to deal with its local community who is appearing before it on criminal matters. In my experience in appearing in local courts in Tompkins County since 2001, this is an overstatement and a misleading simplification of who appears in these local courts. A substantial portion of those charged with criminal acts in local courts are neither members of the local community in which the court is located nor are they connected to the local community. Increasingly as judges seek to deal with more complex legal requirements they are applying their decisions to individuals who are not "local" as it has been discussed in terms of a "local community."

The most important requirement of a criminal justice system is that it provide equitable and fair treatment to all those charged and involved in the system. The most important part of the justice system must be that it respect and preserve the due process rights to a defendant and protect the right to a fair and equitable system throughout the process. This is not mandating any certain result. It is mandating that the process itself be fair and equitable. When this occurs most parties can accept the result, no matter how harsh or moderate it may be.

Unfortunately, there is great disparity and inequity across the local courts in this county in terms of the legal process and handling of criminal cases in this county. While we have some good judge who work at their craft and can produce the desired equitable process, in too many cases across the county the process is uneven and lacks the equity and due process mandates that we seek. This results in unfair and imperfect justice for many criminal defendants that ultimately reflects poorly on the county and our community.

The issues with local justice courts begin at the initial stages and can be found through the entire process beginning with the first appearances and establishment of the release status of the defendant (i.e. bail) and ending with sentencing and payment of fines and surcharges.

Equity and due process issues begin with the initial application of how defendants are released and if bail is set for these individuals. The purpose of bail and the rationale behind setting bail as opposed to a release on recognizance or under supervision of probation is primarily for one purpose. That is to ensure that the individual will reappear in court during the handling and processing of their case. In too many local courts there is a practice and history of using bail as a detentive and punitive measure prior to any determination of the guilt or innocence on the charges an individual faces or any determination of what an appropriate sanction would be in any individual case. This is seen perhaps most clearly in many cases that I and other attorneys have experienced where the Tompkins County Department of Probation has done a pre arraignment interview and review of the defendant and their personal history and criminal history and has recommended a release on recognizance or supervision and the court will instead set bail that is beyond the reach of most indigent defendants. In other cases bail is set in situations which are counter to the process that the court is aware that the District Attorney's office and defense attorneys will use to resolve a matter, such as in AUO3d cases. These situations in addition to resulting in incarceration of an individual where it may not be warranted add additional costs to the county taxpayers as costs increase to the Sheriff's department and often to the assigned counsel program as well.

Another problem area is in the issuance of search warrants. Local courts can and do issue search warrants under the law. The problem is that many of the courts do not have the ability to appropriate review and critique search warrant applications to see if the applications meet the legal requirements. I have had personal experience where several town court justices have told me that they are often unsure if a warrant application meets the required legal standards when they review these applications. They have stated that they tend to approve these applications and leave it to the attorneys down the road to determine if they were wrong and if the warrant application was legally lacking. The problem here is that once a search warrant is approved and signed by a local town court judge, there is a legal presumption created as to its legality. Thus, when a defendant through his attorney seeks to challenge such a warrant in a superior court, there now exists a presumption of legality that raises the bar for the defendant and makes such a legal challenge more difficult to sustain. This example I believe from my experience is typical of the challenges that face non lawyer judges in dealing with the complex legal issues involved in motions and hearings and applications of the law for relief and granting of such documents as search warrants. While in my experience most local judges seek to do a good job and try to make the best decisions they can, their lack of legal experience and training and the increasingly complex nature of many areas of the law makes it increasingly difficult for these judges to make really informed decisions based on the law. They instead rely on what they think or feel may be the right thing to do. The result is great inconsistency and a lack of transparency over how these issues are resolved. This creates a lack of confidence in the process and courts among both attorneys and defendants.

Motion and hearing practice. This is another area where there is great inconsistency among local courts and where many are deficient in providing the due process protections mandated in the criminal justice system. The lack of trials and hearings in local courts is an indicator of the issues in this area of the law. It is my professional opinion based upon practice and discussion with many attorneys that a contributing factor to the low number of trials and suppression hearings that occur in local town courts is related to a fear or perception that the process will be lacking for clients in terms of fairness and the ability of the local court to provide the due process required by law. This is reflected in the lack of written opinions

that are generated in local courts. With the exceptions of a few local courts such as Cayuga Heights, Ithaca Town Court and a few other examples, there is a complete lack of written opinions generated in dealing with motions in local courts. In most cases all that transpired is an oral decision rejecting or denying the motions. The lack of written decisions creates issues for cases when and if they are appealed to a superior court. The result is that there is a lack of a record to determine on what basis and why the local town court made a particular ruling. This inhibits the ability of both the superior court to review the case and for the defendant to receive the due process they are entitled to in a review and appeal of a lower court ruling.

It is in dealing with motion and hearing and trial practice that the differences between non lawyer and lawyer judges often is most stark. I have done trials and a number of hearings with both non lawyer and lawyer judges. I have had non lawyer judges who have worked very hard and diligently at seeking to understand and rule on evidentiary issues and penultimate legal issues in these settings. However, there is great inconsistency among judges in their ability to review and apply the law to evidentiary and other legal issues in this forum. This is due in part to the nature of training for lawyers. The first year and to a great extent the second year of law school as well are really spent training law students in how to read the law, and to interpret and apply case law, and to understand what the court is saying in those cases. For lay judges they must seek to read and interpret this case law without the benefit of the training and experience that comes with years of such work. The fact is some of our local judges are able to perform this task admirably, but unfortunately many are unable to do so and again there is a great disparity in local courts in the county in how this plays out, resulting in a denial of due process for many defendants.

Sentencing. There are two major issues with sentencing in local courts. First, the unfortunate reality is that this is one area where improper legal practices occur in some of our local justice courts. This is an issue seen most dramatically in DWI cases, where some courts have preset sentences for defendants who receive certain predetermined sentences for certain cases or for defendants who receive certain types of sentences.

The second problem is the issue of fines and surcharges and the inability of most local courts to effectively handle payments from sentenced criminal defendants. In most cases local justice courts cannot handle partial payments of fines. This is due in many cases to the part time hours of the clerks and the limited ability of these courts to handle and process these monies. The result is a process where many indigent defendants struggle to meet their payments and we end up with a process where this inability can result in criminal liability. If a defendant cannot pay their fine on time typically a local court will have that person's driver's license suspended. For many of these indigent defendants, they are the working poor. The all too predictable result occurs – they drive on a license that is suspended and they end up getting a misdemeanor charge for doing so. My experience with most individuals who are charged in this fashion is that they have accumulated traffic violations with fines they cannot pay in part due to the need to accumulate and make one substantial payment to a court. The nature of how this process occurs is recognized by most district attorney offices in upstate New York who have a standard approach to address the issue – adjourn the criminal matter to allow the person to begin to address the underlying suspensions and they then receive a reduced sanction. The role of the courts in this is that unfortunately, the mandate to pay fines in their entirety at one time contributes to the process of creating criminal violations for individuals who are caught in a financial trap.

Regardless of the issue of consolidation of courts overall, there is a particular and critical need for consolidation of criminal cases in two areas. The type of consolidation I speak of is not new in the criminal justice system. In Tompkins County we already engage in consolidation of cases and what I am advocating for in these two categories of cases is similar to that which already occurs with domestic violence cases that move into Integrated Domestic Violence or IDV court and the consolidation of drug and alcohol cases into the two county wide drug treatment courts (these are the Ithaca City Court Treatment Court and the Tompkins County Drug Treatment Court) The two areas that need consolidation are cases involving veterans and DWI cases.

I have had experience representing veterans, both recent and older in terms of their service in local town courts. With the notable exception of Judge Phoenix in Caroline Town Court, there has been in my experience (limited so some local courts) a failure and lack of understanding on the part of the judges I have dealt with as to the particular nature of the issues many returning veterans have and deal with. Perhaps most extreme in this regard was a local court judge explaining a skepticism towards the existence of or the issues for veterans related to the issues of post traumatic stress and traumatic head injuries or TBIs. The nature of the stresses and experiences of veterans and how this manifests is somewhat unique compared to other criminal defendants in many cases. In addition, there are a number of services and processes that veterans can access to address their underlying issues that are not widely known to most judges or attorneys for that matter. Consolidation of these cases would allow for better tracking and provision of treatment to address what are often underlying issues that impact veterans.

While the number of veterans in town courts at any one time may be relatively small in number they form a significant group that is in need of consolidated handling by the courts that recognizes and can address the specialized needs of this group of defendants. Veterans in the criminal justice system are somewhat unique in terms of the challenges they present to the system and in terms of the services needed to effectively deal with their underlying issues.

As a group these individuals in particular have earned the right for society to recognize that they are deserving of courts that can address their specific needs. This is particularly true when you realize that in many cases the stressors and conditions of their service has directly contributed to the behavior that has landed them in the criminal justice system.

The smaller number of these defendants would allow for consolidation relatively simply into a misdemeanor veterans part, similar to what is now done with domestic violence cases in IDV or integrated domestic violence courts. While the number of veterans in the criminal justice system in Tompkins County may be smaller than elsewhere there are in need of specialized services and present unique challenges that are best handled in a consolidated unit. This would allow for better handling and processing of these cases, and would make for more effective and equitable handling of these individuals and their cases.

DWI law is also a particular area of the criminal law that most town courts are ill-equipped to deal with as this area of the law has perhaps undergone the greatest change in recent years. DWI law has grown increasingly more complex and involved over the years, and particularly in recent years, a trend that is most likely to continue. This is one area of the law where you are seeing multiple changes to the law and the processes involved in application of mandates tied to DWI cases changing multiple times per year. These mandates

come with increasingly more voluminous amounts of paperwork and tracking related to these cases. Most town judges simply are not equipped with the time, training and legal knowledge to deal with the issues being created in this area of the law.

As I discussed earlier, most town courts do not handle or process partial payments of fines and surcharges. This problem is most egregious in DWI cases, where the minimum fine and surcharge will approach five hundred dollars and range up to over one thousand dollars. For most defendants and particularly for indigent defendants, this is an astronomical amount to have to pay in a relatively short period of time in one lump sum. There is a critical need for a DWI court that can accept and implement programs of ongoing partial payments by defendants.

DWI cases are also where you run into the problem of improper sentencing occurring on an ongoing basis in some town courts in Tompkins County. In these courts judges have pre-set or pre determined sentences for all defendants who fall into certain categories. This is in violation of the law which requires that sentences in criminal matters be individual and particularized to the facts and circumstances of each case. (such sentencing practices also impose greater costs on the Sheriff's Department and the county taxpayer who bear the costs of incarceration of defendants under such sentencing regimes) DWI cases in local courts in Tompkins County is also an area of the criminal law where you find great disparity and inequity in the handling and resolution of these cases depending upon what court a defendant is in. Such differences should not exist and depend upon the geographic location of the offense in the county.

The remedy for the problems and issues created by DWI cases is fortunately relatively easy to address and solve in Tompkins County. This solution would comply with the mandate already put in place by Judge Lippman of the Court of Appeals. Judge Lippman has ordered the creation of separate DWI parts across the state in city and county courts. Such a DWI part already exists in Ithaca City Court. To some degree this DWI part is now being held in Tompkins County through drug court – it does not exist I do not believe as a completely separate part.

The solution to addressing the procedural and other issues that exist in DWI cases is to follow the model of Kings County. In Kings County, all misdemeanor and felony DWI cases are heard in a separate DWI part in county court. Here in Tompkins County, the judge who presides over the DWI part in Ithaca City Court is already an acting county court judge. He has the ability to hear and preside over felony DWI cases. He has the ability and experience to preside over such a DWI part. It would make the most sense and would be most efficient to consolidate all DWI cases in the county into one DWI part.

The creation of such a DWI part meets and complies with the goals and objectives of Judge Lippman's mandate. It would eliminate the improper sentencing that occurs with DWIs in some town courts, it would allow for a fairer and more equitable and efficient system to handle the payment of fines and surcharges by defendants, and it would result in a legal system better equipped to handle the complex legal issues that develop in this area of the law. Indeed, to consolidate all DWI cases in Ithaca City Court and Tompkins County Court per the mandate of Judge Lippman, but to leave the town court DWI cases dispersed throughout the county reinforces a system of vastly disparate treatment of individuals which is precisely

against both the mandate of Judge Lippman and is contrary to the protections contained within the New York State Constitution and the United States Constitution.

Let me address a few of the other questions sent out by the task force. One of these issues is a centralized location for arraignment in after hours situations. This is an important issue and need as other speakers have discussed with the task force. This is a needed change and one that should and can be implemented relatively simply and quickly. The location for such a centralized location should be in the City of Ithaca. During the day the locality for after hours arraignments should be Ithaca City Court. This court is in operation from eight to four and routinely handles arraignments during other normal court proceedings. At least initially, Ithaca City Court should also be used for arraignments after hours for that court. It is the most central and structured location for these arraignments. One of the key issues for these arraignments is the travel time and wait time for police officers and lawyers. In my experience the courts who have the greatest delays are those located in the most distant locations from the center of the county – Trumansburg and Groton. In these locations there can be greater travel time for after hours arraignments due to the location of the on call attorney and the police. While the location of a centralized processing and court location at the public safety building may be a possible long term solution, practically speaking, given the costs and lack of existing space at that location, that solution would be a longer term solution to any issues arising with after hours arraignment.

There is also a potential of savings with any type of consolidation. While the costs, comparatively speaking may not be great for the current system, there are a number of “hidden” costs that occur with the current inefficient system of town courts. These savings, as noted by the Sheriff’s Department does exist for them in their transport and labor costs to meet the current system. In addition, there are ongoing hidden costs with the assigned counsel program. The costs of travel and court time for attorneys would be reduced with a model of consolidation. While not perhaps a large number, the savings I believe would be significant over time.

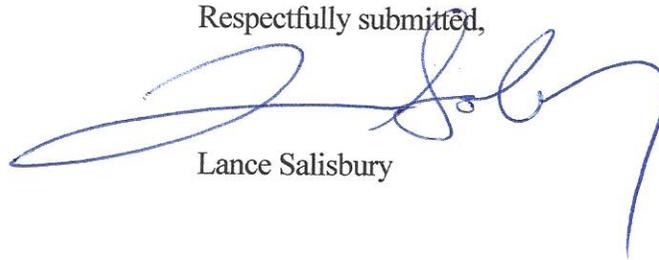
In the end, to answer your question, would the community and Tompkins County and the justice system be improved if there was a transition of shift to a district court or a consolidated town court. The answer is yes. While a District Court may be the most ideal or preferable solution due to some of the requirements that come with such a court – the requirement of a lawyer judge, the experience requirement that exists with such a court and so forth the second alternative is certainly preferable to the status quo. While not as preferable to the District Court model, and essentially a second best solution, a consolidated town court or a consolidation into a couple of town courts would allow the potential to also address the current deficiencies. In either scenario, the needs are the same – lawyer judges¹, and second, a court office that can accept and process partial or ongoing payments of fines and surcharges as occurs in Ithaca City Court and similar institutions. I am aware that a number of individuals have pointed out that there is a long history of local courts operating in the State of New York and that while there may be some issues with the system they should not be dismantled given

¹ One issue with town courts if consolidation occurs and the mandate for lawyer judges does not occur is again a second best solution. One issue or limitation with current town court judges is for many this is a second job they handle in addition to their primary full time occupation. The pay they receive for these positions is limited and they are in reality underpaid in many circumstances. With consolidation of the town courts, and financial contributions by the towns in the counties, the judges in this court could receive a significantly higher salary that would allow them the time and energy to focus on the additional training and work that is required to be an effective and fair jurist in today’s world.

the desires of locals in the community and the history of these courts. Unfortunately, the lack of an equitable and fair process that exists due to the inconsistency in legal process that occurs in local courts mandates such a change. One cannot seek to hold onto to old existing patterns of practice when the cost is the failure to provide the due process to criminal defendants that we aspire to as a society and to which our state and federal constitutions mandate.

Thank you for your time and attention in this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Lance Salisbury', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke and a large loop at the end.

Lance Salisbury