

Minutes  
Municipal Courts Task Force  
Tompkins County Legislature Chambers  
March 9, 2016

Present: Ray Schlather, Jason Leifer, Betty Poole, Elizabeth Thomas, Scott Miller, Glenn Galbreath  
Excused: Mark Solomon, Gwen Wilkinson  
Staff: Joe Mareane, Marcia Lynch  
Speaker: William Shaw, Esq., Carol Booth, Susan Crowell

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

He announced that the task force will hear from attorney Bill Shaw about the genesis of the Youth Court in Tompkins County, and from Carol Booth and Susan Cowell, who are members of the Mental Health Community Services Board who will speak about a mental health board. He said there will also be a briefing regarding the Nassau County district court discussion, and a discussion about the next meeting.

There were no comments from the public.

As his Chair's report, Mr. Schlather noted the distribution of notes prepared by Mr. Mareane outlining the very useful discussion with the Nassau County District Court officials on 2/25/16. He asked that the notes be a part of the record..

Mr. Mareane's staff report consisted of a reminder that data regarding DWI arrests had been circulated to all members via email.

The minutes of the 2/24/16 meeting were unanimously approved.

Mr. Schlather introduced William Shaw, who was referenced in recent articles regarding youth court. Mr. Shaw was actively involved in creation and operation of youth court in the 1960's, and has recently written an article published in the NY Bar Association Journal about youth court. Mr. Shaw has also served as a town justice.

Mr. Shaw asked how many of those attending the meeting lived in Ithaca in 1960. (Most indicated they did not.) He said he was the Town of Covert judge for four years, and a practicing attorney his entire life. Criminal and especially juvenile justice, is at the core of his experience and interest, and is why he was eager to accept the opportunity to speak to the task force.

The Tompkins County youth court grew out of a very local event at George Junior, with Malcolm Freeborne being the most important influence. Through his creativeness, initiative, and persistence, and hard work, the youth court came to be in 1960-61. He took the concept of having youngsters 13-16 prosecuting, defending, judging, and serving as jury that had been in place at George Junior long before there was a Tompkins County youth court. He came to the community through youth, rather than as a top down approach. He went to schools, solicited advisory groups, and brought together youth to hear their thoughts and input. He also approached local attorneys, including Dick Thaler (later DA). The young people came up with the idea of a constitution, promoted it, and sponsored a vote on the

constitution that secured approval by 81% of the 4,000 young voters. The constitution set up the structure that includes an advisory board (youth and adults). The court came into being in 1962. There was no reference to consult about how to do this, because it was created out of local leaders. The basics were straightforward and similar to our Alternatives to incarceration—alternative ways of dealing with delinquency that might be fair and more effective and provide opportunities for the young people involved.

The concept was simple. There are a lot of youngsters who violate the law outside of the school's jurisdiction (this was not to deal with things within the school) that need a process; peers to talk to them about how to address their situation. The process follows the traditional path from charge, to pleas, to sentencing. Mr. Shaw said the youth court depended on the cooperation of town judges, and that the lack of support from County Probation contributed to the demise of the program. The youth attended 8-13 week programs to prepare them for the roles they took in the process. There were arraignments, jury trials (with all positions and juror spots filled by young people), outcomes that were both acquittals and convictions, and sentences (including community service, writing a paper, some sort of penance). If the person was under 16, the recommendation went back to Probation to close an "informal intake" and the PO could close the case. If the referral came from a municipal judge, that judge would take the outcome and adopt it. Although not compelled to adopt it, all recommendations were generally accepted. The case would then be dismissed. Proceedings included young people 18 and under.

The approach was peer adjudication, with a fascinating mix of young people with varied background and interests. He acknowledged that there may have been some differential in social strata, but not as much as some critics have suggested.

There was some difficulty in finding an administrative home. The City Youth Bureau initially assisted; later it was housed in the GIAC facility. Funding came in part from the City and County. It was a cheap program—nickels and dimes. The budget was modest—there was a coordinator, usually a college student, with volunteers handling much of the work. However, it needed annual appropriations from the public sector. Shortly after his term as Mayor of Ithaca, the successor Mayor and GIAC agreed that the City could no longer fund the Tompkins County Youth Court. At that time, in 1983, it was not refunded by the City, the County did not assume the cost, and it ended.

In 1964, the program received inquiries from many communities across the country and abroad (Germany) about how the program worked. The Tompkins program proved to be a prototype for programs across the world. He expressed disappointment that others who copied our model have survived, but the local program hasn't.

He said the program was never high volume. Probation was the weak link. Probation had a high volume of informal intakes that would have been excellent source of clients, but the Department was hesitant to relinquish clients to individuals lacking the professional training of Probation Officers. The number of participants varied from year-to-year, ranging from teens to the 50's.

Mr. Shaw said the program was not a "youth jury", which is an advisory group that sits in court and advises the judge but has no other role in the process.

The recidivism rates were hard to study. The answers seemed to be mixed based on how data was collected and read. Since the youth records are sealed, it is hard to track recidivism.

In summary, the age range for the program as 13-18 (he was involved at 13); judges were usually 16-17 and had served in other roles prior to that. Clients were voluntary, and parents had to consent. Clients could withdraw at any time.

The program was well run, and heavily youth-driven. It ended for reasons that had nothing to do with the merits of the program. It just fell in the gaps between the City and County.

Mr. Galbreath asked how much it cost, in terms of full-time salaries, and if he were to fashion a court how, how does he think it should be funded. Mr. Shaw said there was never more than an half time staff person. He said an estimate could be made by looking at the cost of a probation officer, and dividing it in half and perhaps adding a quarter time administrative/support staff person. He said it should be housed in the County Probation Office rather than being tied to a town or village judge, or DA, or a County Court judge. Since Probation provides alternatives to incarceration, youth court fits into its portfolio.

Mr. Schlather asked whether Mr. Shaw could envision law enforcement making the referral directly rather than going through the courts, which would then avoid the young person having a record. Mr. Shaw said the State Assembly approved a bill authorizing youth court as an alternative to probation as an intake, but the Senate failed to pass it. He said he believes the police could make a direct referral for those under 16, and could make a referral if the DA agreed to the alternative diversion. Many officers would gladly recommend that course of action. It would be analogous to the many diversion programs that exist now. Mr. Schlather noted that most diversion programs begin with arrest, which he would hope to avoid in certain types of offenses, where the police officer could have the discretion to call Probation or the receiving entity for youth court. Mr. Shaw agreed, and noted that parental consent would be needed if that kind of referral was made.

Mr. Schlather asked if this would work if the age was extended to 21. Mr. Shaw said "no"; that you would lose the community and that the peer assessment was always strained (were the "good" kinds judging the "bad") and would be worse if the age was increased. Mr. Schlather wondered whether TC3 and the other colleges could be more involved in this kind of programming. Mr. Shaw said that he doesn't think the higher age groups would work. He said at the core, the hope is that the process will instill peer review, empathy, understanding, guidance, and role modeling. By coming before someone who is your age, the process can have more of an effect on a young person than an older, sitting judge.

Mr. Leifer asked about why the program ended. Mr. Shaw said the city was paying the salaries of the youth court, and was having problems sustaining GIAC (where the program was hosted.) The city couldn't afford to keep the program afloat, and the County did not fill the gap.

Ms. Thomas asked about the participation in the program. Mr. Shaw said as few as 10 and as many as 50-60---and could have handled now. She asked whether there's a way to understand how many might be eligible for the program today. Mr. Schlather noted that Probation should have numbers. Mr. Shaw

said that 10-15% of those in the system might fit into the youth court program. He said youth court can't handle the major crimes, like assault.

Ms. Poole asked if Mr. Shaw felt the program could be successful given that the kinds of crimes kids are involved in today may be more serious than in the 1960's. Mr. Shaw said there will always be good kids who do stupid things like vandalism, spray painting, UPM, steal mom and dad's car, hanging with the wrong crowd, etc. who don't need the formalities of the court processes. Mr. Schlather asked if peer fighting would be a covered offense or an excluded offense. Mr. Shaw said it would be covered. If it was a gang assault—no. But if it was two kids fighting, there are often creative solutions that came out of youth court that helped bury the hatchet.

Ms. Poole asked what happened when an individual went through youth court, but then came back in a few months with another problem. Mr. Shaw said they dealt with a few repeat offenders, who were then dealt with more seriously. However, for something more serious, the referral authority would likely chose a different path.

Mr. Schlather thanked Mr. Shaw for his inspiring comments. Mr. Shaw offered his services as a volunteer to assist the task force in moving forward with this.

Mr. Schlather introduced Ms. Booth and Ms. Crowell and noted that they had circulated materials to the task force regarding mental health court.

Ms. Booth said she has been a mental health advocate for 20 years and an advocate for the disabled her whole life. She is a member of the national alliance of mental illness, and is with state and national organizations, and is a member of the County's community services board. She said Ms. Crowell and she have been interested in a mental health court. Last year, as a part of her facilitation of a mental health family forum, Rich Shaw (an employee of the County Mental Health Department) and she approached Judge Miller and Judge Wallace, who spoke to the group in March. A great deal of interest was evidenced at this meeting. Last summer, she and Ms. Crowell visited Auburn's behavioral health court, which has existed for 7 years. They sat in on a court session, met with the treatment team (probation, employment, substance abuse, mental health, housing, etc.), and learned a great deal. They then visited the City of Ithaca drug court in December.

A year ago, the Urban Institute of NYC wrote a report, and an Atlantic article was written about the report, saying that 50% or more of those in jails and prisons are struggling with serious mental illnesses. Our local jail manager, Ray Bunce, said he believes the number is as high as 60% at times, and that he is struggling to give services that are desperately needed. The Atlantic article said that of the 50% or more, 55% is males and 73% females are struggling with mental illnesses; many of them have substance abuse and developmental disability problems. (Depression is 21%, bipolar 12%, schizophrenia is 5%, PTSD 7%, anxiety 8%, personality disorders 6%.) There is little or no treatment available in the County jail, which is not uncommon. Many inmates have co-occurring disorders. The jails are overcrowded with people who are ill, and need treatment rather than incarceration.

She read from a hand-out (attached) from the Cayuga County bar association that defines Auburn's mental health court. Participants are required to follow the judge's direction to follow a treatment plan developed by a counselor/case manager. In Auburn, it is a special part of the City court. It is a court-supervised program for people who face criminal charges and suffer from a persistent mental health condition that contributed to his/her involvement in the system. It is voluntary and includes regular appearances before the mental health court judge. If accepted into the program, a person is expected to follow the treatment plan. A treatment plan begins with a comprehensive psychiatric evaluation by a local mental health facility. If there is a substance abuse problem, it would also be addressed at that time. The Plan could involve individual, group, day treatment, in-patient, residential, medication management, substance abuse treatment, case management, educational/voc training, appropriate housing, helping with benefits, anger-management, family counseling. Following arraignment, a participant may be offered the choice of participating in the court, or remaining in criminal court for prosecution. If someone chooses to participate, he/she is required to plead guilty and is sentenced upon receipt of a pre-sentence investigation. Successful completion may allow the participant to have the sentence converted in accordance with the contract.

Ms. Booth said she spoke to many people affiliated with the court in Auburn, and has compiled information about how to proceed with the development of a court here. Permission must be gained from the District Administrative Judge, who could approve or disapprove. If approved, Carol Fisher is the director of Mental Health Courts in NYS and would come to Ithaca to develop a committee to apply for grants to set up the court. The committee is intended to get the court off the ground, and could include city court judge, ADA, Mental Health director or providers, housing experts, employment counselors, etc.

Ms. Booth said the grant funds for the court come from the federal bureau of justice assistance, a group that administers all mental health courts and provides grant funding to support the courts.

Ms. Crowell said she viewed people appearing before the court from an anthropological approach, and was impressed by how much the clients got out of the court and the outcomes that seem to be achieved. She said the judge has to be a special person, who can listen to the client's stories and make a judgment if he/she has to. Ms. Booth was also impressed by the judge and the resource case manager. The participant has to be in compliance with the treatment plan and also maintain their jobs and families. He was client-centric and looked at the person first. Ms. Crowell said the criminal justice system is sometimes the only open doorway available to these individuals.

Ms. Booth noted the similarities between drug court, which has existed here since the late 1990's, and mental health court. She said there may be overlap in clients. Both involve treatment to help people get back on track, although incarceration could result from non-compliance. There is a focus on incentives. She referred to another hand-out that compares drug courts to mental health court. In Mental Health court there can be a wider array of charges; most common criterion is serious, persistent mental illness; the primary goals mental stability (recognizing long term support needed); monitoring requires engagement with treatment team (not as easy as a drug test); must be ready to adjust plans.

Ms. Booth spoke about the County jail, based on Captain Bunce's report. She said our jail has been overcrowded for many years, and that beds could be freed up if individuals were provided treatment. There is just one forensic social worker who spends 6 hours a week at the jail, and one psychiatrist who comes as needed. She contrasted this with Cortland, where a full time forensic social worker is on staff to assist inmates and staff. She said Captain Bunce is desperate for help at the jail.

She said the bureau of justice assistance assists Auburn with these supportive services, and that there are 300 mental health courts in the nation. She recommended that the Ithaca City Court pick up this function. She said we are behind the ball in some things like this.

Ms. Crowell referred to a hand-out (attached) that provides the pros and cons of mental health courts around the country.

Mr. Galbreath asked why there couldn't be a single drug/mental health court given the similarity of approach. This could avoid the bureaucracy of a separate court and the need to decide whether the individual has a drug problem or mental health problem. Ms. Crowell said there must be a team (which there is in drug court). Monroe County has a single court. The teams need to be different because people with mental health issues have different problems than those dealing with substance abuse. The expectation of a cure that exists in substance abuse matters does not hold in a mental health situation. Mr. Galbreath noted that a judge should be able to make those distinctions. Ms. Booth said access to drug court isn't good enough for those dealing with persistent mental health issues. Mr. Schlather asked about Monroe County's combined court. Ms. Crowell said Monroe County has a single judge who presides over drug, veterans, and mental health courts—but believes they are all separate courts. Ms. Crowell said there isn't a "community" of others in the same situation that provides support in a mental health court such as exists in drug court.

Ms. Thomas asked how the illness is determined, i.e., by the treatment team or in some other way. Ms. Booth said the first step is a comprehensive psych evaluation by a mental health professional. The team then meets to discuss appropriate treatment. Ms. Thomas asked about how the group deals with resistance to complying with the Plan. Ms. Booth said it is a voluntary program, and may lend itself to those who see the benefits of the treatment option. Ms. Crowell said a question that comes up in many courts is whether jail should be the consequence of failure to comply with the plan.

Ms. Booth said Assisted Outpatient Treatment is another form of diversion. It is not voluntary but does not involve criminal behavior.

Mr. Leifer asked whether the clients of the mental health court have pled based on mental deficiencies. Ms. Booth said that at arraignment, there is a choice as to whether to take the treatment path or criminal path. If they pursue the treatment path, they plead guilty to the charge, but like in drug court, treatment is the sentence.

Ms. Crowell raised the question of whether resources are not available to provide the support needed. Ms. Booth said the federal grants are on-going for technical assistance and getting things started. She

said additional grants are then available. She did not know how much it costs to set up a court, but Mr. Crowell said she will be researching this.

Mr. Miller said the numbers at drug treatment court have been lower than in earlier years, with participation now at about 40. The City has also set up a DWI special court. About 50% of the drug court participants are dual-diagnosis. They are mandated by their PO to attend mental health counseling as a part of the drug treatment court program. He asked how many purely mental health defendants there might be. Ms. Booth said the frequency of dual diagnosis is very high. Mr. Miller said he has a sense of the numbers in the City, but not so for the areas outside the City. He estimated that there seem to be about 5 cases now before City court that would fall into that category—not enough to start a court. However, there could be many more than that outside the City that could, in turn, warrant a special court. Mr. Miller asked whether the mental health courts work with staff at the jail to determine whether inmates need these mental health services. Ms. Crowell said 25-30% of the people in jail or prison have a mental illness and probably don't belong there. She said a task force could address this question. She said she cannot understand why the reentry initiatives now underway are so focused on reentry when the real problem is the incarceration of individuals with mental health issues. Mr. Miller said the reentry coordinator should focus on identifying who would benefit by mental health services, or who should be receiving treatment now. Ms. Crowley said the reentry report doesn't look at the continuum of needs.

Ms. Poole noted Captain Bunce's estimate that 60% of the jail inmates are dealing with mental illness, and agreed that our mental health system is abysmal. She said we need facilities to house these individuals. Ms. Crowell said the State has money to support residential treatment.

Mr. Schlather asked whether Ms. Booth or Ms. Crowell have visited other mental health courts. Neither had. He asked whether the hand-out has data about utilization of the other mental health courts, how frequent the clients attend court (twice a month in Auburn), the sizes of the courts, whether they measure recidivism, their success rates, etc. He also asked about the end result of this process, legally. In Auburn, a guilty plea is required that opens up the individual to some serious charges. He's interested in knowing whether other courts have different models and, if so, what they are. Relatedly, if the individual does succeed, do they end with a clean record, or simply avoid jail? He is also interested in knowing the threshold crimes that are covered. Ms. Booth said Auburn is only dealing with misdemeanors and non-violent crimes. Ms. Crowell said that threshold varies across the country.

Judge Chernish said he has a current case that illustrates what is wrong about the system, and the silos that have been created in the County. A client was charged with a misdemeanor and pled to trespass. He made himself difficult to find for the pre-sentence evaluation. The judge threatened the Mental Health Commissioner with contempt of court because the Sheriff couldn't find a psychiatric bed—which the Judge believes should be a function of Mental Health not the Sheriff. He said we need a manager to address the needs of the client navigate through the many silos. Ms. Crowell said that a mental health court should have jurisdiction over mandating agencies provide services that are needed.

Ms. Booth said the question has been raised about two courts versus one. She said in Auburn, nearly all going through the mental health court had substance abuse issues. The issue is which is primary. She suggested Judge McKean in Auburn would be a good person to talk to.

Mr. Schlather noted the importance of the next meeting, as the focus of the group turns to developing findings and recommendations. It will be a substantive discussion, and all should come prepared to identify areas where changes should be made, and how we will go about doing that.

All agreed the meeting added value.

The meeting adjourned at 6:10 p.m.