

EYE ON THE COURTS

A periodic report from the Geneva Court Watch Coordinating Committee

A project of the League of Women Voters of Geneva, a non-partisan organization

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Step in the right direction

Temperatures hovered near zero one morning last February when three indigent individuals appeared in an Ontario County town court. There was:

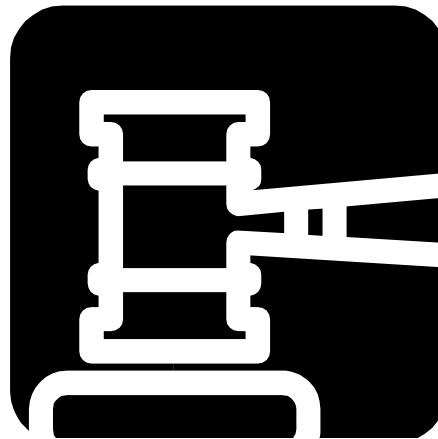
- A frail elderly woman charged with misdemeanor theft;
- A young woman, wearing green jail garb and chained handcuffs, ineligible for bail because of a violation of probation charge against her; and
- A similarly attired father, unable to raise \$2,500 bail on charges of criminal contempt and harassment (for allegedly violating a court order not to contact his child's mother).

Each defendant needed -- and was entitled to -- representation by a qualified attorney from the Public Defender's Office. But, in a patient and apologetic tone, the town justice explained to each that the attorney from the Public Defender's Office was needed for higher-priority cases elsewhere in the county. Regretfully, he said, his only option was to adjourn their cases until March.

The young woman's parole officer told the judge that she was prepared to plead guilty to the parole violation, which involved drug use, and the young woman wanted to go into a drug rehabilitation program for at least the unserved portion of her prison sentence. Without explaining why, the parole officer said she opposed rehab before the woman's term was completed.

The man charged with criminal contempt and harassment will also be waiting in jail until the new court date, although he may be given credit for time served if he's convicted and sentenced.

The court watcher was unable to determine how



the elderly woman got to Town Court, but there seemed to be at least one person with her, similarly inconvenienced by the lack of a Public Defender.

Had a Public Defender been available, it is possible that the young woman would have had a better chance at Drug Court, the father might have faced a lower bail (one he might have been able to meet), and the elderly woman's case might have been resolved on that day.

In Ontario County, and elsewhere in New York state, such instances of judicial delay are not unusual. While they do not rise to the level of wrongful convictions, such postponements can nonetheless have serious consequences, such as job loss and divorce. Prompted by concern about the toll that inadequate representation takes on indigent defendants, the New York Civil Liberties Union (NYCLU) and the law firm Schulte Roth & Zabel filed a class-action lawsuit in 2007 calling for reform in at least five counties — Onondaga, Ontario,

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Right direction ...

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Schuyler, Suffolk and Washington.

On June 26 of this year, NYCLU issued a press release indicating that it had reached an agreement with Ontario County. (The lawsuit against the other counties will go to trial this fall.) This agreement recognizes the strides that Ontario County has made since the lawsuit was filed and the additional steps it has committed to taking in the future.

According to the NYCLU press release (available at <http://www.nyclu.org/news/nyclu-reaches-settlement-with-ontario-county-part-of-landmark-public-defense-suit-against-new-york>): "Prior to the lawsuit, Ontario County's public defense system consisted solely of a program to contract with private attorneys to represent indigent defendants on a case-by-case basis. Since then, Ontario County created a Public Defender's Office to improve the quality of public defense. Today's settlement locks in this service, creates caseload limits for overworked attorneys and requires monitoring and reporting on the public defense system. Moreover, should New York State provide the necessary funding, Ontario County agrees to ensure that lawyers are available to represent defendants at arraignments and investigators and experts can be hired when required for adequate representation."

It is clear from the cases mentioned at the beginning of this piece that such steps are indeed necessary. We are particularly concerned about the need for greater funding, since absent that, "reasonable caseloads" and adequate representation for indigent defendants cannot be guaranteed.

Page 17 of the final report of the Commission on the Future of Indigent Defense Service, dated June 18, 2006, and made to then-Chief Judge Judith S. Kaye, contained an observation that remains relevant today:

"The amount of monies currently allocated within the State of New York for the provision of constitutionally mandated indigent criminal defense is grossly inadequate."

As Ontario County works to meet the terms of its agreement with the NYCLU, we hope that this description will no longer be apt and that the state will assist the county in its efforts to provide equal access to legal counsel to all defendants. The Court Watch program will continue to monitor those efforts.

— FRED SONNENFELD

Mission Statement

Court Watchers provide an impartial assessment of local courts' operation and advocate for a fair and equitable justice system.

Volunteer Meeting Summaries

Court Watch meetings are open to the public and run from 1:15 to 2:15 p.m. the second Wednesday of the month in the south parlor at The Presbyterian Church in Geneva.

April

The featured speaker was Bill Fox, director of treatment services at Finger Lakes Addictions Counseling and Referral Agency (FLACRA).

He said that most referrals come from the criminal justice system (probation, parole, attorneys, and drug courts) and from the Department of Social Services. There are about 600 people in treatment at any one time; most receive services at one of six outpatient clinics, located throughout a five-county area. Residential facilities and supportive living are available for about 100 clients. FLACRA is a non-profit and receives funding from clients' insurance, contracts, self-pay, Medicaid, and grants for housing subsidies.

Success rates, as measured by completion of the program, are high. Clients who are mandated to get services usually have a greater completion rate than self-referrals, because completion is usually tied to getting services or some aspect of their legal situation.

Mr. Fox said that in his experience and research, substance abuse is usually a response to trauma that led to depression and anxiety.

"Self-medication" with alcohol, opiates, etc. reduces psychological discomfort. Alcohol is relatively cheap and it's legal. However, relief is short-lived and doesn't resolve the trauma. In addition, substance abuse is caustic and causes many health problems. Treatment consists of individual counseling and group therapy and attempts to deal with the roots of trauma. Substance abuse counseling as a legitimate treatment started in the early 1960s when it was recognized that "just saying no" was ineffective. He noted that one barrier to seeking treatment is a sense of shame because of negative cultural

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Summaries

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views about substance abuse disorders.

Heroin use by inhalation and injection is on the upswing. However, the biggest addiction problem is from nicotine, he said. The effect of nicotine lasts only two hours. Nicotine abuse causes more deaths than all other forms of substance abuse put together. Deaths from COPD, cancer, heart disease, etc., are directly linked to nicotine use, and Fox said society is failing to deal with it.

— Molly Chapin

May

Len De Francesco encouraged volunteers to continue to share relevant articles about the courts and/or indigent individuals in court. He handed out copies of an article about Bryan Stevenson and his non-profit law firm, the Equal Justice Initiative. The firm is dedicated to fighting the death penalty and life sentences for minors, both of which disproportionately affect black males (“New Life,” Smithsonian.com, December 2012).

Len also reported on his experience in Hopewell on May 13. He and Pat Heieck observed an evening court session. The court had a different format, a different docket layout, different ADA and different APD from those in Geneva. He then provided a handout with the regular court session times in a number of neighboring locations (Hopewell, Victor, Manchester, Gorham, Phelps, Farmington, Canandaigua) and encouraged each of us to take advantage of the summer to attend at least a couple of these sessions.

The guest speaker was Kristin Splain, court attorney referee in the Seventh Judicial District. Ms. Splain spoke about her background — including a private law practice, several years in the Monroe County District Attorney’s office and a couple of years running the Conflict Defender’s office in Monroe County — and about the position she’s held for about 2½ years.

She serves as law clerk for seven judges in the district — the three Geneva city judges, two judges in Hornell and two in Corning. Because all of these judges are in part-time positions they do not employ their own individual law clerks and instead rely on her work. As law clerk she researches points of law for the judges, drafts decisions, and summarizes relevant changes in current law.

Ms. Splain also serves as referee in matrimonial and domestic violence cases in Monroe County, and she will soon be hearing matrimonial cases in Steuben County. In response to questions, she shared some of the differences she has observed in various courts’ caseloads, explained the importance of plea bargaining to avoid enormous backlogs of cases awaiting trial, and indicated that mandatory state surcharges have been increased since the state needs revenue.

— Judith McKinney

Court Observations

The comments printed here are the personal observations of individual court watchers and do not necessarily reflect the views of the Court Watch committee or of its sponsor, the League of Women Voters. Except with written permission of the League, there shall be no republishing, excerpting or other use in any manner of the material here published, including, but not limited to, campaign literature to promote a particular policy or to elect a particular person.

Court Watchers observed 20 courts sessions in April; 20 in May and 17 in June.

Geneva City Court

Judge (7130) can be a **little condescending**: "Do you know what 'admit' means?" Students from FLCC are here today observing with their class. I can never hear / understand much of what ADA (2748) says.

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Observations

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While judge (1586) was 20 minutes late, **all the traffic cases were handled efficiently by 9 a.m.** The judge gave one defendant one week to get his affairs in order before being sentenced to jail.

Judge (7130) **took great care to explain the ramifications of probation**, including commenting that "probation is a serious situation; also your attitude is considered by the probation department personnel." The judge denied a request for a bail reduction because of the defendant's long history of illegal activity.

The ADA (2748) **is a tribute to the DA's office**; never fails to clarify points of law and other factors relative to the cases.

Judge (1586) informed a woman that her presence in court constituted a violation of a defendant's order of protection to stay away from her, so the woman couldn't be there while he was. **The judge indicated willingness to consider a modification in the near future.**

Judge (1586) and ADA (2748) **tried to explain various consequences of two options.** One would keep defendant eligible for financial aid and the other would result in worse consequences if he doesn't comply with all conditions for a full year (which defendant chose).

APD (3640) **successfully argued for pre-trial release for a defendant** who could not make bail and would have been incarcerated three to four months awaiting toxicology reports. The defendant is employed.

Judge (3489) and the court officer **showed great poise during a traffic case in which the accused seemed mentally incapacitated.** The judge remained calm, explaining why the court couldn't accept the man's plea, and the court officer tactfully stepped between the man and ADA (2748) to maintain order and safety.

Judge (1586)'s court personnel were especially helpful today. The bailiff asked a woman to quiet her child in an appropriate manner; **the court clerk helped cases move along and clarified points** relative to the court calendar.

ADA (2748) **can only be heard occasionally.** APD (3640), attorneys (5575), (2469), and (2621) could be heard most of the time, but all were well prepared, courteous and respectful.

Judge (1586) was excellent, very well spoken **and treated each defendant with respect**, giving everyone a chance to speak. Judge was well versed in each case. The APD (2748) was also well prepared, could answer the judge instantly and was very patient.

The case against a 26-year-old sex offender with two prior felony convictions was adjourned for six weeks. The charge was "failure to register as a sex offender";

because of the prior convictions, bail could only be set at the discretion of a county court judge, not the presiding judge (7138).

Judge (7138) appeared unhappy about a defendant not appearing about a housing violation. The court clerk was instructed to draft a letter, telling the defendant to make a mandatory appearance at a later date.

The judge (3489) let everyone know their rights at the very beginning, asked defendants to stand closer to the microphone, and talked slowly and respectfully for the interpreter. I can never hear ADA (2748). It's very frustrating because of the ADA's integral role in the proceedings.

Judge (7138) addressed younger men/women about posture/attitude, told them in a somewhat sarcastic and patronizing tone to speak up, took longer than the five to 10 minutes indicated for a break, and sometimes got upset when people didn't answer quickly enough.

APD (5724) seemed overwhelmed, trying to handle a large number of cases, including one about which a colleague had not provided information. However, the ADA was always polite, pleasant and respectful. The ADA (2748) quietly and discreetly explained to the defendant what the judge (7138) had mumbled.

Judge (1586) has begun the practice of writing down the date of the next appearance and handing that to the defendant. Great idea!

Geneva Town Court

I like how the judge (1771) started to speak into the microphone so we can hear better. I think that the judge moved through the cases on the docket very swiftly.

Youth Court was present during town court proceedings and was a distraction. The bailiff didn't ask people to be quiet. The ADA (2748) was sometimes hard to hear, but was respectful and appeared well prepared.

A defendant in judge (1771)'s court had two prior DWI arrests; **the ADA (2748) suggested alcohol is an issue** and that the defendant should not work as a bartender.

The judge (1771) is too soft-spoken, but polite, smiles and says "good evening," repeats the defendant's name as they appear.

U.S. Immigration officers were in Judge (1771)'s court with a defendant here legally. The judge called an interpreter in NYC and put her on speaker phone, so the case could be heard.

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Observations

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Court clerk in Judge (1771)'s court is always polite, helpful and efficient.

A female defendant in judge (7185)'s court was kicked out of rehab though she said she was "discharged." The judge told her she used up all her chances and ordered her into custody without bail. Her husband and young son were there, and **I don't think the judge or the sheriff wanted to put handcuffs on her since they didn't want to traumatize the child.**

There were two confusing cases in Judge (7185)'s court due to multiple charges in overlapping jurisdictions. **The judge was very careful to evaluate actions**, and with the help of the ADA (2748) was able to sort through the issues. Both cases involved jailed defendants.

A defendant became irate about having received many speeding tickets at the same location. Defendant feels sheriff is harassing him on his way home from his night job. **The judge (7185) was patient, but firm**; gave defendant information on his right to pursue a harassment claim.

The ADA (2748) and APD (5724) were hard to hear tonight but APD (2583) was audible. **All were prepared and competent.** There were many adjournments today. Judge (7185) is a good listener. This was a brief session; gave extra time to a Spanish-speaking defendant attempting to clear up license issues.

The police officer in Judge (7158)'s court could have quieted someone in the courtroom with noisy children. **The ADA (2748) always presents background information on the defendant and is helpful to the court.** Attorney (4393) seems more confident with time. Attorney (5575) is always prepared.

The judge (1771) adjourned one case to research use of email for notifying a tenant of eviction, **noted courts have not kept up with modern technology.**

Ontario County Family Court

Judge (8082) tries hard for a settlement in court; also offers mediation, but when parties disagree, he advises attorneys to assist them.

I'm impressed with the role of attorney for the child. All are well prepared and make good recommendations in child's interest. **Judge (8082) takes recommendations to heart in his rulings.** Attorney (8387) has a strong voice and there's no audibility problem. I also had no problem hearing (5540), (8361), (4091), (2469), (7273), and APD (5724). Attorney (9425) mumbles and (4393) seems unsure at times.

Ontario County Court

The judge (0741) was hard to hear sometimes but very fair.

Hopewell Town Court

The judge (1139) spoke too softly, most likely because of the proximity of the ADA and defense attorney tables. If they were moved farther from the bench, all parties would have to speak up, and everyone in the courtroom could hear. The bailiff assisted the judge and was responsible for the security check and seeing that all who entered signed in. The sign-in table is at the far end of the room, meaning that each person who enters has to walk past the judge and attorneys to sign, contributing to the audibility problem. If that desk were moved to the security check, there would be less activity.

The **judge (1139) was polite and welcomed defendants.** ADA (2473) was very well prepared. APD (2260) was inaudible.

Victor Town Court

Noise from the outer hall near the security checkpoint filtered into the courtroom and was a distraction. In one instance a person who accompanied a defendant was asked if he could interpret for the defendant. The judge (2765) said yes and the person was sworn in. What assurance do we have that he interpreted properly?

APD (4326) is **very soft spoken.** I heard nothing that he said in eight or more cases.

Canandaigua City Court

Judge (8082) asked if any defendant had to report for work that day and dealt with those cases immediately. A case for which a translator was necessary was also moved up so the translator didn't have to spend unnecessary time in the courtroom. The court clerk was very accommodating, quick and efficient. I was unable to hear any of the six attorneys in court.

Would you like to help us save some money – and spare a few trees? To sign up to receive The Eye by email instead of the postal service, contact Len DeFrancesco at 789-3579.

THIS PROJECT ...

The **Court Watch Coordinating Committee** acknowledges the Presbytery of Geneva, The Presbyterian Church in Geneva, Finger Lakes Community Endowments and the many local friends of the League of Women Voters, who financially support this project.

Anyone interested in making a donation can write a check to: League of Women Voters Court Watch c/o Len DeFrancesco, 94 High Street, Geneva, NY 14456

“Eye on the Courts” is edited by Anne Schuhle and compiled by members of the coordinating committee: Len DeFrancesco, Phyllis DeVito, Nancy Garver, Judith McKinney, Mary Lou Presutti and Fred Sonnenfeld. Additional Court Watch volunteers include: Kim Aliperti, Carl and Heather Aten, Osbaldo Arce, Bunny Bell, Ann Burt, Bobbi Calabrese, Elizabeth Chace, Molly Chapin, Bernadette Foley, Gretchen Fox, Henry Givelber, Susan Givelber, Claire Kremer, Kevin Milcarek, Melissa Nault, Ellen Reynolds, Margaret Thomas and Mike Venturino.

Come join the League!

The local League chapter has a history of civic involvement that includes sponsoring the Court Watch program, candidate debates, research projects and luncheons, where we're able to hear from local and state leaders on issues that matter. Make joining us your first step in becoming a participating member of your community.

Call: **Beth Reiners at 789-3761** for more information, or send her the information below at: **719 White Springs Drive, Geneva, 14456**

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