

Vermont Bar Association Town Hall Meeting
Friday, September 25, 2009
before the
Vermont Commission on Judicial Operation

Facilitator: John Douglas
Note Taker: Mary C. Ashcroft

Chief Justice Paul Reiber

Chief Justice Paul Reiber opened the session by thanking Speaker of the Vermont House Shapleigh Smith for his remarks to the VBA and for his leadership in the legislature. The Chief commented on the importance of having a lawyer as Speaker, particularly one who was thoughtful and caring, in this juncture of history.

The Chief reviewed the healthy dialog that had been continuing in Vermont among the bar and the judicial branch over court operations. Since March the commission has listened to recommendations for court reform from 43 focus groups (the VBA makes the 44th), has received input from over 600 people through surveys and in focus groups. Notes were kept at all sessions and the information preserved and posted on the Judiciary website.

At the end of October, the Commission will make its final recommendations.

The Chief said the purpose of today's session was to gather information from the VBA, which will be done without attribution. He was impressed with the willingness of the bar to engage in the dialogue about the importance of the courts. Without courts, democracy is in peril.

Justice Reiber acknowledged that decreases in state revenues have resulted in cuts in budgets, but noted that across the board cuts had no place in the judiciary. He reminded the bar of its responsibility to defend and protect the rule of law, which is at risk these days. The public at large has no real appreciation of what courts do. He noted that we in the bar are the custodians of the court system.

Chief Justice Reiber introduced the members of the Commission who were present: Secretary of State Deb Markowitz, Judges Brian Grearson and Kathleen Manley, and newly installed VBA President Eileen Blackwood. The Chief thanked Bob Paolini and the VBA staff for their assistance and the quality of the work.

The Chief introduced John Douglas, facilitator for the meeting, who is with the National Center for State Courts.

John Douglas

Mr. Douglas noted that this is his 8th trip to Vermont in a series of visits which began in April. The National Center for State Courts is a non-profit organization, originally the idea of Chief Justice Warren Burger, which was established to assist state courts in improving their administrative processes.

Mr. Douglas noted that all but two states in the country struggle with the same issues, and are facing budgetary crises which require re-engineering the court process and making long term changes.

The Commission report is not yet out, but some ideas have been consistently raised. The VBA would like to provide input to the Commission on five main themes that have been addressed in work group reports:

- 1) That all clerks of court be state employees.
- 2) That there be one manager per court, and that the courts be organized within the Superior Court, with Criminal, Family, Probate and Civil Divisions in each.
- 3) That Essex and Grand Isle courts be collapsed into adjacent counties.
- 4) That Assistant Judges will have no judicial function.
- 5) That the Probate Courts be consolidated into 5 districts statewide.

Mr. Douglas then opened the meeting for comments, reminding the gathering that the Commission would only participate to the extent needed to correct misinformation.

Proposal 1: That all clerks of court be state employees.

There were no comments.

Proposal 2: 2) That there be one manager per court, and that the courts be organized within the Superior Court, with Criminal, Family, Probate and Civil Divisions in each.

There were no comments.

Proposal 3: That Essex and Grand Isle courts be collapsed into adjacent counties.

Comment: A resolution was presented from the Franklin-Grand Isle Bar Association calling for the continuation of the separate Probate, Family, District and Superior Courts in each of the two counties as they exist at present. The presenter of the resolution noted that several years ago, the unified Grand Isle court was singled out as an example of a court system which is efficiently run. He said that this is an access to justice issue, and questioned the purpose of collapsing the Grand Isle and Essex courts into those in adjoining counties.

Comment: An attorney who practices in Grand Isle County questioned why this court, as efficient and inexpensive as it is, is proposed to be collapsed into Franklin County court. He felt the proposal should be taken off the table.

Comment: An attorney who does not practice in Grand Isle spoke in favor of maintaining separate courts in Grand Isle and Essex Counties. He practices in New Hampshire, and saw that the consolidation of courts in that state increased the costs for citizens, public defenders and others. He noted that the bar has the responsibility to keep the courts local so people can get to them.

Comment: A judge noted that the proposal was not to close the courts completely, as Essex and Grand Isle will each keep a full time person to accept filings and answer questions. The judge personally likes to sit in Grand Isle, but opined that it is not less expensive to run, given the lower volume of cases it handles. She said that in Essex County, there are many people who live closer to Newport or St. Johnsbury than to Guildhall. She hopes that technology will allow flexibility as to where cases are heard and make the court more accessible. She encouraged the membership to be flexible so that courts are less expensive to run.

Comment: An attorney with many years in practice was appalled with the proposal to close the Essex and Grand Isle courts. He felt that justice would be denied to people in those areas. He noted that Grand Isle already has an integrated court. He opposed making attorneys and litigants travel to Chittenden or St. Albans, and gave as an example a battered woman without transportation facing the difficulty of getting herself and her witnesses to court. He also noted that when deputy sheriffs are out of county testifying in another court, the area is left unprotected until their return. He said that the Vermont Department of Education had found a majority of Vermonters to be functionally illiterate, so many won't be able to use the information kiosks being proposed for pro se litigants.

Comment: An attorney found it ironic that the Franklin/Grand Isle bar opposed closing the courts and taking cases into adjoining counties, while often sending their children to Chittenden County schools. He said that we live in a world with finite resources, and noted that in the educational system, administrations are being pooled to produce efficiencies. We need to infuse idealism with realism—it does cost more to deliver justice in Grand Isle and Essex counties.

Comment: An advocate for battered women said that if Essex court is closed, the cases should be divided between St. Johnsbury and Newport, so that litigants would be assigned courts closer to where they live. We need to be aware of where the roads are and how best to get people to court. With respect to technology, many people, and her organization, are still on dial up internet access in parts of the state.

Comment: An attorney suggested that this is an access to justice issue, especially for pro se litigants. The money would be better used for pro se service centers. Keeping court houses open uses a disproportionate amount of resources.

Comment: To more clearly understand the problem, we need to know how much time litigants are spending in court. This attorney would support consolidation if cases actually got through the process sooner.

Comment: An attorney noted that the Grand Isle court had been around for over 200 years. It had not been closed during the Great Depression, nor during the economic downturn of the 1980's. Did the budget in Grand Isle court grow so much that it had to be closed now?

At this point a member of the Commission suggested that attorneys review the tables of cost of cases per court to better understand the financial pressures in the courts.

Comment: A judge noted that he had been in all courts in the state, including Grand Isle and Essex. There are realities to remember: there are inefficiencies in the way courts function now, and the judiciary is not in control of the whole court system. In this fiscal environment, we must use fewer funds—we can't say no to all changes. As attorneys we need to continue to participate in the discussion, because the end result will be poorer if we do not. The speaker noted that the Environmental Court operates efficiently on two judges who hear cases statewide, traveling to the counties where the cases are sited.

Comment: An attorney requested that before Grand Isle and Essex courts be collapsed into adjoining counties, consideration be given to the existence of public transportation and the practicalities of travel in the areas.

Comment: An attorney suggested that the issue be rephrased: How do we maintain access to justice, rather than do we close Essex and Grand Isle courts. He was familiar with USAID rule of law projects in other countries, where new technologies are used to good effect. We need to think of the goal, not get hung up on the means.

Comment: In Grand Isle, transportation is key. All studies so far are about costs per case. The studies have not addressed the aging population. Statistics at present indicate that Vermont ranks 26th among states in its population over 65, at about 12.7 % of our population. By the year 2030, the number of Vermonters over 65 will increase to 24.5%. AARP projects that Vermont will be among the top three states in the percentage of population over 65. We need to carefully study the proposal to consolidate the probate court system, and be aware that those courts will be handling more cases in the future. If we take cases out of Probate court and send them to Family Court, will that make Family Court less efficient? If mental health cases go to Probate Court out of Family Court, what will that do to Probate court efficiencies? Not many Probate cases are complex at present, but with our aging population, we will encounter more complex probate cases. There is a coming tsunami of epic proportions: the legal issues of elders and their need to access nearby home and care facilities, and courts. For these reasons, the attorney disagreed with regionalizing the Probate Courts.

Comment: An attorney noted that there is already unequal access to justice in Essex County as the magistrate for child support is a side judge, and the family judge is the child support magistrate. Special legislation was passed to allow this odd patchwork resulting in different treatment for Essex County. This should be reviewed.

In response to a question, Moderator John Douglas confirmed that the only two states not facing a financial crisis in state courts were Wyoming and Montana.

Comment: One attorney suggested the need to revise Act 60 and its incentives for spending on education at the expense of other parts of the state budget. He noted that 50% of the households in Vermont were eligible for income sensitivity adjustment payments. He opined that high marginal tax rates were driving down the incentives for people to earn more. We need to think more about where revenues are coming from.

Proposal 4: That Assistant Judges will have no judicial function.

Comment: An attorney questioned the extent to which the state bears the cost of the side judges. Assistant judges appoint clerks who are paid by the state but serve at the pleasure of the assistant judges, a bizarre arrangement.

Chief Justice Reiber answered that the state pays side judges \$411,000 per year for their work in court. The side judges self-select the cases they hear. They also get additional money from the county. The Chief suggested that the counties could keep assistant judges for administrative jobs but they would not be paid by the state nor sit on cases.

Comment: An attorney with 32 years in practice favors side judges, and pointed out that some states have a jury in family issues. In Vermont, we use side judges so at least 2 and possibly three decision makers are involved on these issues. She opined that having three minds rather than one on family issues was important. If side judges don't sit on cases, she would then recommend that we have jury trials in family cases.

Chief Justice Reiber noted that part of the issues is the quality, not just the cost, of justice. He acknowledged that many people can have lives changed in small claims and traffic court, and that these cases can be of great consequence.

Comment: One attorney said that in most counties, lawyers serve as acting judges in small claims matters. When lawyers sit, they receive only \$75 per day, while side judges are paid \$150 per day for their work.

Comment: A lawyer noted that side judges are paid for a 4 hour minimum even if they only put in ½ hour of work.

Comment: An attorney commented that side judges sit only as fact finders. There is no way a litigant is guaranteed that he or she will have one, or two, or any side judge hearing his or her case.

Comment: A practicing attorney in Windham County noted that he and other attorneys for many years have sat as acting judges on a pro bono basis, without cost to the state.

Proposal 5: That the Probate Courts be consolidated into 5 districts statewide.

Comment: An attorney suggested that Grand Isle-Franklin County Bar revisit their opposition to the consolidation, and suggest changes that they may favor. Don't just say no to change. He noted that terminals in each court can only access one county. Many efficiencies could occur. He suggested that counties can raise money with less than one cent on the grand list dollar which would generate ample money for the courts. The side judges should be asked to do this, as they have the power to do so. Look at other efficiencies that could occur and avoid closing courts.

Comment: One attorney noted that probate courts are the most efficient and user-friendly of the court system. Pro se litigants don't need an attorney in these courts. Probate judges and staff are experts in their field, and they now have more jurisdiction under the new trust code. If probate cases are moved into other courts, that expertise will be lost. The attorney suggested that hearings in probate court be made final, without de novo appeal to Superior Court.

Comment: A Bennington Attorney who practices in probate and family court affirmed that all courts should be state courts and that all judges, including probate judges, should be lawyers. The quality of justice requires it. She noted that Bennington County is surviving consolidation of its two probate courts—the single judge travels with staff, eliminating the need for lawyers and litigants to travel. The probate section of the Bennington Bar was revived to assist with the transition. If the judges and staff travel to courts, the consolidation into five probate districts could work.

Comment: An Essex County attorney questioned whether the remaining site in Essex County would be an administrative site or a fixed site. He noted that there was a former plan several years ago to create a single court district for the northern part of the state, with all cases being heard in Morrisville. He reminded the Commission that there are other costs outside the court system that need to be studied—especially the cost of travel to and from court by citizens and attorneys. He suggested that definition of cost be broadened to include such costs.

Chief Justice Reiber confirmed that the Commission had only looked at travel by judges, not by litigants or lawyers. The Commission takes the issue of access to justice seriously, and seeks to improve it in this process.

Comment: A long-time Windham County attorney who practices in probate court agreed that while it was important to consolidate the courts in many areas, we must remember that courts are to serve the public, and so must be available. He would find it inconvenient to have one court serve two counties. He suggested that there be a probate court in each county, but that the judges ride circuit. Just as zoning cases go to

Environmental Court to enjoy the expertise of the E-Court judges, probate cases should remain within the expertise of the probate and not shifted to judges who are not familiar with probate law.

Secretary of State Deb Markowitz, a Commission member, confirmed that the Commission is reading reports from all committees that have had input. She said that there would need to be a change of venue rules, especially in Essex County, to allow travel to Caledonia courts. She affirmed that access to justice is the Commission's first goal, and urged attorneys to go home, read the reports on the website, and give the Commission more suggestions. She also noted that the Commission had envisioned that the county probate courts would continue to allow folks to stop by and do accountings as they do now.

Comment: A probate judge suggested that the probate courts are working well as presently structured. He urged caution when examining figures, noting that some figures might be misleading, and that some have yet to be presented in final form to the Commission. He expressed concern that the Commission might be headed for its October 20th deadline to make decisions without the ability to challenge and adjust erroneous figures.

John Douglas concluded the town hall meeting by congratulating Vermont for its inclusive approach to court restructuring. Other states have not had law partners participating to the extent that Vermont has. He hopes to use Vermont as a national model.