

Members of the Subcommittee.

Thank you for the opportunity to comment on the matter of tenure for municipal court judges. So that your efforts here do not seem entirely thankless, let me thank you now for the time and energy you spend representing the interest of justice. I am certain that many of our colleagues join me in this.

I am a Morristown solo, a legal ethics attorney. My practice consists of matters involving bar admission, attorney ethics & discipline and judicial misconduct. I was admitted in Calif. in 1978 and have been practicing in NJ since 1982. I have been an Adjunct Professor of Persuasion and Advocacy at Seton Hall Law since 2007.

Before embracing the ethics specialty exclusively, I had been a civil and criminal trial lawyer. By rough estimate, I have handled over two thousand municipal court matters, even excluding those in Livingston Twp., where I have been P.D. for the past ten years. By what may also be an inaccurate count, I have appeared in municipal court in all but one of our counties.

I have heard that at some point this Subcommittee may consider the idea of establishing a tenure system for municipal court judges as a means to enhance judicial independence from the bodies that appoint those judges. One catalyst for change has been the recent revelation of appointments to the bench that were based on the judge's success in generating revenue for the town. Revenue is a good thing, and during the course of the triennial appointment or reappointment of their judges, some town mothers and fathers gave preference to jurists who were proven performers.

I acknowledge the problem, and I am pleased that it is not my burden to resolve it, but I also believe and would like you to believe that granting tenure to municipal court judges will not enhancing judicial independence. In fact, it may result in other abuses. The granting of tenure to Superior Court judges upon appointment to a second seven-year term was different.

At the heart of the issue is not only the different relationships that local courts have with local governance, the real issue as I see it is the great diversity among the courts and the differences between them. Municipal courts are as varied as the fifty states. Finding common ground can be just a difficult.

While we need strict compliance with law, we need to respect each municipality's autonomy and look to find solutions that may be more target-specific. You need not resort to legislation to resolve issues that are already addressed in the Code of Judicial Conduct, the state Code of Ethics, the Attorneys' Rules of Professional Conduct. I cannot offer a solution, but I think that yours, whatever it will be, should respect the diversity of the courts.

Please allow me to offer a case in point.

In Livingston, when a dozen or so high school kids were recently busted for underage drinking at someone's parents' home, all the cases were resolved with pleas to a township ordinance. An East Orange police officer sitting in Court later commented to me that he was shocked that, "not even one of them had to eat a 2C" referring to the state criminal code. I told him that the differences between our jurisdictions explains, and in my mind justifies, the inconsistent handling of the matter. Livingston's prosecutor was not looking to divert legitimate state revenue into local coffers as some prosecutors might. This is never even a consideration on our court.

Without knowing more about the bust, I told the officer he could bet that none of the kids at that party had either a weapon or a juvenile record. I told him that all of them were probably planning to go to college, and that some may already have been accepted. A criminal record might hurt their futures. Finally I told him that if the Livingston police had reason to believe that some kids might have been smoking pot on the back deck, the police probably would have taken their time going through the house. In some other places, rounding up the group on the deck might have closed a dozen open warrants.

We have towns where the residents like judges who are tough on defendants whose dogs run loose. We have towns that applaud when their judge finds any lame excuse to keep someone out of jail, and towns who reappoint so-called "hanging judges."

We have towns where the residents like courts that enforce the laws which proscribe parking trucks on front driveways and towns where no one cares.

Tenure will change none of that.

There are towns where defendants with counsel do better than those without.  
There are towns where defendants with local counsel do even better.

There are towns where you can downgrade a 39:6B-2 no insurance into a failure to exhibit, and towns where that can't happen. There are towns where that can happen, but only if the defendant purchased insurance on the same calendar day and towns that will allow even a few more days slack, if counsel knows how to ask.

Many times, a defendant originally charged with a 6B-2 is actually only guilty of failure to exhibit. In some of these jurisdictions, proof of insurance will earn the defendant the downgrade. In others, it will earn him a dismissal.

There are places where the prosecutor and public defender are often at loggerheads and courts where the hardly ever happens at all.

There are towns where the judge will approve almost any deal worked out between the state and defense counsel, and courts where such deals often don't survive the court's scrutiny.

There are towns where the judge explains to *pro se* shoplifting defendants that if they show up in court the next time, and the store's witnesses do not, the Court might dismiss the complaint. There are courts where only defendants with counsel might know that.

In some municipalities, the arresting officer is present when the prosecutor is making deals, in others a Sergeant or Lieutenant or Captain may be there. In other towns, the police are out of the picture unless there is a trial.

My point is that the problem may be localized, or that perhaps localized remedies should be tried first. The many municipal jurisdictions vary, but consistency between jurisdictions is not nearly so important as consistency within a given jurisdiction.

Breaking the link between the appointer and the appointee is a good thing. Offering tenure to municipal court judges as a tonic for the sick state of judicial independence in New Jersey is not. Thank you for allowing me to be heard.

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