

Criminal Justice Collaborative Council

**Meeting Minutes
November 17, 2006
200 North Main Lower Level Conference Room
Ann Arbor, MI
7:30am – 9:00am**

Members Present: Dan Dwyer (Trial Court Administrator), Wesley Prater (Board of Commissioners, Chair), Patrick Hughes (Department of Corrections Probation), Brian Mackie (County Prosecutor), Barbara Levin Bergman (Community Corrections Advisory Chair), Lloyd Powell (Public Defender/Defense Attorney), Kathy Reynolds (Executive Director, WCHO), Archie Brown (Circuit Court Chief Judge), Bob Guenzel (County Administrator), Mike Moran (Ann Arbor Township Supervisor) Ann Mattson (15th District Court Chief Judge), Barbara Ryan Fuller (Public Representative), J. Cedric Simpson (14A District Court Chief Judge), Paul Bunten (Chief of Police, City of Saline), Charlie Pope (Magistrate-14B District Court)

Members Absent: Lawrence Kestenbaum (Clerk/Register), John Shea (Attorney, Bar Association Representative), Dan Minzey (County Sheriff)

Others Present: Delphia Simpson (Public Defender Manager), Chuck Ream (Public Representative), Kenita Montgomery (CJCC Intern), Kerry Sheldon (Management Analyst), Steve Hiller (Prosecutor's Office), Don Shelton (Circuit Court Judge)

Call to Order

In the absence of CJCC Chair Archie Brown, Commissioner Wes Prater called the meeting to order at 7:40am.

I. Approval of Minutes

Ann Mattson indicated that she was not present during the 9/15/06 meeting, so this needed to be corrected in the minutes. The motion to approve the minutes of the September 15, 2006, CJCC Full Council meeting was made by Wesley Prater, seconded by Bob Guenzel; approved by CJCC members.

II. Public Participation

None.

III. Approval of 2007 Calendar

The approval of the 2007 calendar was postponed until the December 15th CJCC meeting.

IV. Jury Analysis-The "CSI" Effect

Don Shelton briefed the group on the findings from a study regarding the effect of television on juror behavior. Don Shelton expressed that this was an interesting issue that goes beyond the court. Don Shelton stated that many criminal justice participants have asserted that the television shows has had ill effects of jury trials, and has lead to acquittals because lack of scientific evidence. Don Shelton stated that some scientist question whether jurors are finding people wrongfully not guilty and decided to investigate the issue.

Don Shelton presented some Background on the issue. Don Shelton indicated that justice system has long used film as fodder for various criminal cases, but recently, the use has taken a change. Shelton reported that Court TV, instead of focusing on drama, now uses actual cases. This has had the effect of blurring criminal justice reality with fiction.

Criminal Justice Collaborative Council

Don Shelton explained that it is TV shows have compromised that integrity of jury trials by blurring the lines of fiction and reality in two phases.

- First, shows like “48 Hours Mystery” take actual cases, and only show them after they have been edited.
- Next Level-take the plot from an actual case and totally fictionalize it.

Shows like “CSI” represent the next level. “CSI” has been heralded as the most popular shows in the world, having 33 subsidiaries of the show and over 30 viewers.

Don Sheldon stated that the study sought to answer several questions:

- Do jurors expect prosecutors to present scientific evidence?
- Do they demand it?
- Are those demands related to watching shows like CSI?
- What do expect to see in various types of cases?
- What types of evidence do they expect to see?
- Will jurors demand scientific evidence to find a defendant guilty or not guilty?

Don Shelton explained that the study was a confidential, random trial control administered to 10278 prior to jury selection or any preliminary instruction. A survey was given about television watching habits, and participants were given 13 scenarios to respond too.

Don Shelton also presented the demographics of a Washtenaw County jury over a three month period. Some facts include:

- 55% female,
- mean age 44.8
- 82% white
- 76% indicated that they had some type of college education.
- Political view came off as a bell curve.
- 46% victims of a property crime.
- They were asked to describe the severity of the crime problem in their neighborhood. 61% indicated that they didn’t think the crime problem as not serious at all.

Findings from the Study:

- Television shows such as “Law and Order” and “CSI” are the most frequently watched shows, well over 40% for both. The more frequently participants watch a program, the more accurate they think it is.
- Roughly 46% of jurors expect prosecutors to present scientific evidence in every case?
- (However, the survey suggested that the demand for scientific evidence was actually relevant to the specific types of case.)
- In all categories, the evidentiary expectations of “CSI” watchers were higher than the non-watchers.
- Jurors were more likely to find a defendant guilty even without scientific evidence if they heard the testimony of the victim.
- If the prosecutor relies on circumstantial evidence, they jurors will more likely demand scientific evidence in this case.

Overall, however, the finding was that watching “CSI” did not have any significant impact on whether a defendant would be found guilty.

Don Shelton reported that instead of a CSI effect, the survey is suggesting that there is really a “tech effect.” Shelton explained that dramatic changes in information technology and science over the years had changed popular culture, allowing people to know more about science and technology from the media than they ever learned in school. Consequently, jurors believe it to be reasonable to expect the government to produce more than 10 years ago because they know scientific processes are available.

Criminal Justice Collaborative Council

Don Shelton offered several recommendations on how the criminal justice system can adapt to these to the ubiquity of science and technology. Shelton stated that it would take a major commitment of additional law enforcement resources (i.e. forensic personnel).

Shelton also offered that there could be better trial preparation and trial advocacy by the prosecutors. Prosecutors should tell the jurors when scientific evidence is relevant or not.

Discussion ensued about the presentation, and the group raised several questions/points.

Mike Moran offered that in the past jurors thought the higher quality of evidence was eye-witness evidence. However, jurors now know that eye-witness testimony is anything but infallible and reliable. Yet the survey shows that jurors still believe it's reliable.

Brian Mackie inquired as to what effect taking this survey had on jurors. Don Shelton replied that he believed that effect was negligible.

Charlie Pope inquired if scientific evidence meant medical testimony? Don Shelton indicated that they define it for the jurors.

Archie Brown reported that the study would be published in the Vanderbilt Law Journal next month.

V. Jail Overcrowding

Discussion ensued about the current jail overcrowding situation. The group raised several questions and concerns.

Archie Brown indicated that there still has not received a response to his inquiry to the Sheriff about the situation.

Dan Dwyer inquired as to whether the jail is still technically in overcrowding, and if anyone knew that the sheriff's position on the matter. Dan Dwyer stated that the County is far past the length that the statute allows for being in overcrowding.

J. Cedric Simpson reported that Sheriff is currently not accepting new offenders.

Bob Guenzel reported that the last communication with Kirk Filsinger declared overcrowding to be over, however, there were various objections because of the Sheriff's failure to implement the statute correctly. Bob Guenzel reported that as of September 3rd (according to Rick Visel's document) the jail is operating under a closed door policy. Bob Guenzel stated that this situation is not affecting the judges as much as the various police agencies are being affected (the Sheriff is not accepting their new arrests, and will not book them either).

Bob Guenzel stated that the action the BOC took on Wednesday night was an attempt to take care of the situation for a long term basis. Bob Guenzel reported that the BOC has a lack of confidence on in the management of the jail. For this reason, the discussion of reinstating boarding out has arisen.

Bob Guenzel expressed that the County agreed to allocate \$80,000 annually for a Jail Population Manager; however, the sheriff now refuses to participate (after agreeing initially). Therefore, the position is put on hold. Bob Guenzel also stated that during the retreat, the Sheriff agreed to provide a new policy on the Sheriff Good Time program, but that has yet to be completely implemented. These past occurrences have caused the Board to be hesitant about recommending boarding out, because they have no confidence in the management of the jail. Bob Guenzel offered that the County is facing a crisis when the police chiefs come to the BOC and say they need help. Bob Guenzel also stated that he believed this situation to not be a reflection of the Courts. Bob Guenzel offered that even if there was a solution to alleviate the situation, there is no confidence that it will be managed well, in light of the current management of the jail. Bob Guenzel stated that he would express the same sentiments if the Sheriff had been present for the meeting.

Criminal Justice Collaborative Council

Wes Prater echoed Bob Guenzel's sentiment and expressed that this situation really is a crisis. Wes Prater stated that the County has been unable to get the sheriff to talk to us, and that he and his staff will not communicate or cooperate. Wes Prater stated that until the Sheriff begins to exercise his authority under section seven, there will be no boarding out.

J. Cedric Simpson reported that when there was boarding out, individuals were sent to locations with very little tracking. Consequently, they missed their hearings and this lengthened their time in the jail system. J. Cedric Simpson offered that if there is boarding out is reinstated; it has to be employed in a way that allows offenders to get their due process.

Paul Bunten reported that the police chiefs had a meeting yesterday, and the chiefs are extremely upset with the jail overcrowding situation and the fact that the sheriff is not exercising his Constitutional authority to alleviate it.

Bob Guenzel stated that the intermediate solution is to try to get 96 more beds for the current jail facility and that the BOC passed the space plan and the bond issue to complete this task. Bob Guenzel reported that the first bond issue that the BOC approve is for the jail only, although it was misrepresented in the Ann Arbor news by the Sheriff. Bob Guenzel offered that it is unfair to blame the BOC for the current state of affairs and that many things are being misrepresented to the community by the sheriff.

Paul Bunten indicated that the police chiefs supported the bond; however the Sheriff has presented the most opposition by leading the "No Giant Jail" petition.

Wes Prater expressed that there needs to be a court order to preempt the Sheriff's authority, so that he will properly enforce the law. Wes Prater offered that the one of the chief law enforcement officers in the County is breaking the law himself, and that a lawsuit may be the only way to rectify the situation.

Archie Brown stated that a lot of what's been said is of interest to this CJCC, but this body has no authority to rectify the situation. Archie Brown reported that there has been a letter drafted to the Sheriff in reminding him of his obligation to the CJCC and informing him that he has been shirking his responsibility. Archie Brown stated that the Sheriff has not appeared or participated in quite some time, and he is not doing any service to the people of this County by not participating.

Mike Moran inquired as to whether it would be helpful that everybody in this group signed the letter, given that there is a consensus that it's inappropriate for the Sheriff to not be here.

J. Cedric Simpson offered that in spite of the Sheriff's behavior, the CJCC still has to work to find options to alleviate jail overcrowding.

Barbara Levin Bergman stated that if the letter is sent to the sheriff, it should be sent to the news paper, as well.

VI. Administrator's Update

Bob Guenzel reported that the BOC approved the County Space Plan that was brought he presented to the CJCC during the November 3rd meeting. Bob Guenzel reported that the BOC approved a bond issue 21 million dollars to complete phase 1 of the space plan, and that those funds were earmarked to do the jail only. Bob Guenzel stated that he would try to get that correction in the Ann Arbor News. Bob Guenzel stated that project will likely come to fruition, unless the citizens of the County petition (getting at least 15,000 signatures in 45 days) for this to go on the ballot. Bob Guenzel stated that he will do everything he can to expedite this project. Bob Guenzel expressed that this may not be a long term solution, but it will help for the time being. Furthermore, debating about how many more beds the jail needs will only delay the problem. Bob Guenzel stated that most agree that doing the infrastructure first is the right way to do things, and the BOC feels very strongly about moving ahead with the Space Plan recommendations.

Criminal Justice Collaborative Council

Barbara Fuller inquired as to whether the one dissenting Commissioner vote offered an alternative to the current plan?

Bob Guenzel stated that Commissioner Quinette agreed with the jail expansion, but did not agree with the source of funding for the project. Also, he believed that matte should be discussed for the newly elected BOC. Bob Guenzel expressed, however, the current board has worked very hard on this project and wanted to see action.

Paul Bunten inquired as to whether past administrations have had the budgetary problems that the current one is experiencing.

Bob Guenzel replied there was not a precedence of similar issues.

VII. Jail Diversion and Alternative Sanction Summary

Kerry Sheldon stated that Scott Patton circulated via e-mail the Jail Diversion and Alternative Sanction Summary that was presented to the BOC in early September. Kerry reported that Scott was asking for feedback from the committee, and that the group should feel free to send comments to Scott. (The group will discuss the document further during the next meeting.)

VIII. Old Business

None

IX. New Business

Mike Moran moved that the CJCC directs the chair of the body to compose a letter to the sheriff indicating that the group believes it is important that he (the Sheriff) participates in the CJCC. The body, as a whole, expressed its displeasure with his failure to attend and participate, and requests that he continue participate in all aspects of the CJCC.

The motion was seconded by Barbara Fuller, and unanimously approved by CJCC members.

Brian Mackie expressed his appreciate for the continued contributions of various CJCC members. Brian Mackie offered that J. Cedric Simpson has not gotten enough credit. He does a tremendous amount of work and has surpassed the call of duty. Brian Mackie also recognized that Scott Patton has done a tremendous job for the CJCC and Washtenaw County, on the whole.

J. Cedric Simpson replied to he doesn't deserve any special recognition because he is simply his obligation to the County.

X. Adjournment

Archie Brown moved for adjournment at 8:53 am.

Next meeting

The next CJCC Full Council meeting is scheduled for Friday, December 15, 2006, 7:30am at the LLRC, Room A.