

Recalibrating the Scales of Municipal Court Justice in Missouri: A Dissenter's View

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*The municipal court in this state is today too much an anomaly, too backward in its procedures, too arbitrary in its administration, to gain for it the respect by the public which a court must have. The attitudes of many of our citizens toward the courts and the law are shaped by unhappy experience in these courts. But more important still, we cannot tolerate a court system which is anything less than the finest which man can devise. For it is through these courts that the ideal of justice under the law must be sought.*¹

The above quote is taken from an eerily applicable law review article published in 1966—fifty years ago. The municipal courts in Missouri have gotten worse. Recalibration of the scales of municipal court justice in Missouri is long overdue.

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1. T. E. Lauer, *Prolegomenon to Municipal Court Reform in Missouri*, 31 MO. L. REV. 69, 97 (1966).

In May of 2015, I was appointed by Missouri Supreme Court Chief Judge Mary R. Russell to join what became a nine member Missouri Supreme Court Municipal Division Work Group.² The group came to be as a result of the events surrounding the killing of Michael Brown by Ferguson Police Officer Darren Wilson on August 9, 2014. The protests, visual militarization of the police, tear gassing, arrests, and looting caused a ripple effect around the country. In calling for justice in the killing of unarmed black males Ferguson became a household word, not only throughout the United States, but around the world.³

At the time of Michael Brown's death, ArchCity Defenders, a small St Louis law nonprofit organization that represents the indigent and working poor in the St. Louis region, published the results of years-long research on the operation of municipal courts in their "Municipal Courts White Paper" (the ArchCity White Paper).⁴ This paper addressed the aggressive, unjust, and even unconstitutional policing practices of various municipalities to generate revenue to keep municipalities in business.⁵ Afterwards, the ArchCity White Paper became a national story—not only as a result of Brown's death, which occurred shortly before publication, but because the ArchCity White Paper was picked up and expanded in the *Washington Post*, which detailed the municipal court system's alleged abuses of black and poor residents.⁶ These stories increased the attention on Michael Brown's death, the protests, and what was happening in Ferguson.

2. See Missouri Supreme Court Order, attached hereto as Exhibit 1.

3. KIMBERLY NORWOOD, *FERGUSON FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION 1* (2016). In telling the story of the killing of Michael Brown, the book details many of the surrounding and related events that fueled anger, hurt, exhaustion and protests. This includes not only the failure of the Grand Jury to indict the officer who killed Michael Brown, but also many other issues that plagued this community over the years including segregated housing, challenged school districts, public health inadequacies, police and municipalities preying on the poor population to generate fees to continued its municipal government operations and the like.

4. See ARCHCITY WHITE PAPER, *infra* note 73.

5. See *Mission Statement*, ARCHCITY DEFENDERS, <http://www.archcitydefenders.org/who-we-are/our-mission-story/> (last visited Mar. 20, 2016); see also ARCHCITY WHITE PAPER, *infra* note 73.

6. Radley Balko, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, WASH. POST (Sept. 3, 2014), https://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/?tid=a_inl; See also Radley Balko, *New Report Details the Disastrous Municipal Court System in St. Louis County*, WASH. POST (Oct.

Under increasing pressure to appoint a commission to study the issues underlying the policing of residents in Ferguson, the Governor of Missouri announced that he would indeed create one.⁷ The sixteen-member Ferguson Commission (the Commission) was sworn in on November 18, 2014. It was charged with holding public hearings (approximately twenty such hearings were held) and gathering data for “a report with policy recommendations in the following areas: citizen-law enforcement interaction and relations; racial and ethnic relations; municipal government organization and the municipal court system; and disparities in areas including education, economic opportunity, housing, transportation, health care, child care, business ownership, and family and community stability.”⁸ Specifically, it was called to focus on “the underlying root causes that led to the unrest in the wake of Michael Brown’s death and to publish an unflinching report with transformative policy recommendations for making the region stronger and a better place for everyone to live and to guide the community in charting a new path toward healing and positive change for the residents of the St. Louis region.”⁹ The report, *Forward Through Ferguson: A Path Toward Racial Equity*, was issued in September of 2015, less than a year after the Commission was created—an astounding feat by any account—and it was the most detailed report by any commission of its kind.¹⁰ The written report, over 204 pages long with over 200 different calls for action,

28, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/10/28/new-report-details-the-disastrous-municipal-court-system-in-st-louis-county/> (following up a month later on the prior article).

7. Ben Kesling, *Missouri Governor Announces Creation of ‘Ferguson Commission’ Body to Examine Underlying, Systemic Inequality in Wake of Michael Brown Shooting*, WALL ST. J. (Oct. 21, 2014), <http://www.wsj.com/articles/missouri-governor-announces-creation-of-ferguson-commission-1413914495>.

8. See *Gov. Nixon Announces Members of the Ferguson Commission*, OFF. MO. GOVERNOR JAY NIXON (Nov. 18, 2014), <https://governor.mo.gov/news/archive/gov-nixon-announces-members-ferguson-commission>.

9. See *Building the Report*, STL POSITIVE CHANGE, <http://stlpositivechange.org/commission-work> (last visited Mar. 20, 2016).

10. See THE FERGUSON COMMISSION, STL POSITIVE CHANGE, *FORWARD THROUGH FERGUSON: A PATH TOWARD RACIAL EQUITY* (2015), available at http://3680or2khmk3bzpkp33juiea1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf [hereinafter FERGUSON COMMISSION REPORT] (summarizing a larger pool of data, research and conclusions available on the Commission’s website); see also STL POSITIVE CHANGE, <http://stlpositivechange.org/about-us> (last visited Mar. 20, 2016).

was a comprehensive summary of the Commission's work; so comprehensive in fact that a website was created to house the information underlying the report.¹¹

While the Commission was in the throes of its work, the Department of Justice (DOJ) was busy with two of its own investigations as a result of the Brown killing. One investigation focused on Darren Wilson, the Ferguson police officer who shot and killed Michael Brown. The second report focused on the Ferguson Police Department. While the DOJ found no reason to pursue civil rights violations charges against Officer Wilson,¹² it issued a blistering report regarding the Ferguson Police Department.¹³ That report included details of the overzealous and even unconstitutional policing of black and poor residents in Ferguson, aggressive ticketing for municipal code violations, and racism and bias by both law enforcement and court personnel evidenced by hundreds of emails and other data collected by the DOJ.¹⁴ These two reports were issued in March of 2015, shortly before the Missouri Supreme Court Municipal Division Work Group was created.¹⁵ The DOJ report on the Ferguson Police Department was so damning that the DOJ threatened to sue Ferguson unless changes were instituted.¹⁶ The Ferguson City Council initially rejected the DOJ's negotiated consent decree and the DOJ filed a lawsuit against the city the very day of the

11. See FERGUSON COMMISSION REPORT, *supra* note 10.

12. DEP'T OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON (2015), available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown.pdf.

13. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter DOJ FERGUSON REPORT].

14. *Id.*

15. See *supra* notes 9, 12.

16. Eyder Peralta, *Ferguson, Justice Unveil Draft Of Negotiated Consent Decree*, NPR (Jan. 27, 2016), <http://www.npr.org/sections/thetwo-way/2016/01/27/464610005/ferguson-justice-unveil-draft-of-negotiated-consent-decree>.

rejection.¹⁷ Ferguson wisely capitulated and ultimately accepted the terms of the consent decree.¹⁸

Various nonprofit organizations, the media, the Governor of Missouri, the DOJ, other court-related organizations,¹⁹ and even the Missouri Legislature weighed in, just a few months after the Brown killing, on municipal court reforms.²⁰ This created pressure on the

17. Carimah Townes, *Ferguson Refuses to Make Police Reforms Proposed by the DOJ*, THINK PROGRESS (Feb. 10, 2016), <http://thinkprogress.org/justice/2016/02/10/3748090/ferguson-rejects-doj-decree/>; Jason Rosenbaum, *DOJ Sues Ferguson After Mo. City Rejects Police Overhaul Deal*, NPR (Feb. 11, 2016), <http://www.npr.org/2016/02/11/466376943/doj-sues-ferguson-after-city-rejects-police-overhaul-deal>.

18. See Willis Ryder Arnold, *Ferguson City Council Accepts Department of Justice Consent Decree*, NPR (Mar. 16, 2016), <http://news.stlpublicradio.org/post/ferguson-city-council-accepts-department-justice-consent-decree> (illustrating that Ferguson finally came to its senses). The consent decree was executed on March 17, 2016. The Decree requires a Monitor to ensure that the terms of the Decree are implemented. I was appointed as part of the Monitoring Team to help enforce the Decree. See *Department of Justice Appoints Squire Patton Boggs as Independent Monitor for the City of Ferguson*, SQUIRE PATTON BOGGS (July 25, 2016), <http://www.squirepattonboggs.com/news/2016/07/department-of-justice-appoints-squire-patton-boggs-as-independent-monitor-for-the-city-of-ferguson>.

19. See, e.g., NAT'L CENT. FOR STATE COURTS, MISSOURI MUNICIPAL COURTS: BEST PRACTICE RECOMMENDATIONS (2015), available at <http://www.sji.gov/wp/wp-content/uploads/Missouri-Municipal-Court-Best-Practices-Recommendations-Final-Report-2015.pdf>.

20. See S.B. 5, 2015 Legis. Sess. (Mo. 2015), available at http://www.senate.mo.gov/15info/BTS_Web/Bill.aspx?SessionType=R&BillID=160. Senate Bill 5 (SB 5) was signed into law by the Governor of Missouri on July 9, 2015. This law was passed with overwhelming bipartisan support and in record speed. See also *Gov. Nixon Signs Landmark Municipal Court Reform Legislation*, OFF. MO. GOVERNOR JAY NIXON (July 9, 2015), <https://governor.mo.gov/news/archive/gov-nixon-signs-landmark-municipal-court-reform-legislation>. The bill most notably capped the ability of most municipalities to keep the revenue from traffic violations to 20 percent of their general operating revenue; St. Louis County was capped at a much lower rate of 12.5 percent. It also capped fines and court costs for minor traffic offenses at \$300, and it precluded the ability to sentence people to jail for inability to pay a fine; see also Marshall Griffin, *Missouri Legislature Sends Municipal Court Changes to the Governor*, ST. LOUIS PUB. RADIO (May 7, 2015), <http://news.stlpublicradio.org/post/missouri-legislature-sends-municipal-court-changes-governor>. A judge overturned major portions of SB 5 on March 28, 2016. See *Judgment and Permanent Injunction, City of Normandy v. Nixon*, Case No. 15AC-CC00531 (Mar. 28, 2016), https://www.courts.mo.gov/fv/c//Judgment+and+ Permanent+Injunction_FINAL.pdf?l=OSCDB0024_CT19&di=771741. In a 3¼ page decision, Circuit Judge Jon Beetem granted the permanent injunction request of the twelve municipalities (municipal plaintiffs) within the 21st Judicial Circuit who alleged that the provisions of the law that limited the amount of revenue they could collect from minor traffic violations to 12.5 percent, while allowing the rest of the county a higher limit of 20 percent, were unconstitutional. The court so found, ruling that singling out municipalities in the 21st Judicial District for such treatment—the law applies only to “any city, town, or village located in any country with a charter form of government and with more than nine hundred fifty thousand inhabitants”—was “a special law as to which defendants offered no evidence of substantial justification in violation of Article III

Missouri Supreme Court to weigh in.²¹ The court responded with the creation of the Municipal Division Work Group in May of 2015. By the time the work group was created, a voluminous amount of material had already been compiled. In addition to receiving letters from the public, lawyers, judges, national organizations, and various local groups including the Commission, the group held three of its own public hearings. The group met on numerous occasions and ultimately issued its final report to the court on March 1, 2016.²²

That report, including my separate opinion and dissent, is 140 pages.²³ I will not summarize that majority report here. It is available online.²⁴ This Article both shares and expands on my dissenting opinion to that Final Report. My Dissent followed virtually all of the recommendations we read, heard, and otherwise received from the DOJ, the Ferguson Commission, Better Together, the National Center for State Courts, ArchCity Defenders, various media outlets and the overwhelming majority of the testimony our work group heard at all three public hearings about the kinds of changes the Missouri Supreme Court should make to restore justice and faith in its judicial system. The overwhelming calls for justice centered on two key

Section 40 of the Missouri Constitution.” The judge also found that the law included unfunded mandates in violation of Missouri’s Constitution. *Id.* The judge did not elaborate. Jennifer S. Mann & Jeremy Kohler, *Judge Sides with St. Louis County Cities that Claimed Municipal Court Reform Law Is Unfair*, ST. LOUIS POST DISPATCH (Mar. 30, 2016), http://www.stltoday.com/news/local/crime-and-courts/judge-sides-with-st-louis-county-cities-that-claimed-municipal/article_b1b75039-4dd9-5325-890f-35535561cafa.html. I noted this issue of differing limits on the last page of my Dissent and suggested that the Missouri Supreme Court recommend to the legislature that it change the revenue limit to either 12.5 percent for all or 20 percent for all. *See infra* note 125. The State Attorney General has appealed this ruling directly to the Missouri Supreme Court. Given that there are literally hundreds of so called special laws on the books in the state, upholding this ruling will have far reaching consequences on laws already on the books throughout the state of Missouri. Jeremy Kohler, *Ruling on Municipal Court Reform Law Puts Focus on ‘Special Laws’*, ST. LOUIS POST DISPATCH (Mar. 30, 2016), http://www.stltoday.com/news/local/crime-and-courts/ruling-on-municipal-court-reform-law-puts-focus-on-special/article_6b552c24-9ab6-5101-bedd-b4e8e23cfe3f.html.

21. Members of the public, the Commission, local newspapers like the *St. Louis Post Dispatch* and the *St. Louis American*, organizations like the NCSC and even the Missouri legislature looked to the Missouri Supreme Court for reforms. *See, e.g.*, NAT’L CENT. FOR STATE COURTS, *supra* note 19 and *infra* notes 64–69 and accompanying text.

22. MUNICIPAL DIVISION WORK GROUP, REPORT OF THE MUNICIPAL DIVISION WORK GROUP TO THE SUPREME COURT OF MISSOURI (2016), *available at* <https://www.courts.mo.gov/page.jsp?id=98094>.

23. *Id.*

24. *Id.*

issues: (1) the consolidation of municipal courts, and (2) resolving the appearance of impropriety that exists when lawyers preside as municipal court judges in some municipalities some days (or nights) and appear as prosecutors in other municipalities in the same county on other days (or nights).²⁵ There were other concerns raised; my Dissent addressed and incorporated all.

The most impactful part of my thirty-two page Dissent was my belief that the Missouri Supreme Court has the power to and should consolidate *some* of the municipal courts into larger, more functionally-efficient and just courts. Although I was the sole member of the group to voice aloud this conclusion, my recommendation was founded on the undisputed fact that nothing in the Missouri Constitution forbids the court from consolidating inferior courts under its jurisdiction (*i.e.*, all courts under the Missouri Supreme Court, including municipal courts). The Missouri Supreme Court is *superior* to all courts in the state and has the constitutional power to create rules and enact procedures to supervise and govern *all* inferior courts in the state.²⁶ Consolidation does not mean abolish but it certainly means reduce, *where necessary*, to make more efficient and in the interests of justice.

My Dissent referenced some of the costs involved to maintain these courts.²⁷ Many of these municipalities are quite small, but the yearly costs of their municipal court judge and municipal prosecutor alone can be high.²⁸ Consider Berkeley, a municipality of

25. See, e.g., NAT'L CENT. FOR STATE COURTS, *supra* note 19 and *infra* notes 64–69 and accompanying text; Peter Joy, *Lawyers Serving as Judges, Prosecutors, and Defense Lawyers at the Same Time: Legal Ethics and Municipal Court*, 51 WASH. U. J.L. & POL'Y 23 (2016).

26. See *infra* note 108 and accompanying text.

27. See *infra* note 112 and accompanying text.

28. See "Municipalities with Courts in the 21st Judicial District, State of Missouri & the Salaries Paid to its Judges and Prosecutors," Exhibit 2 hereto. The figures represented in this chart are just a portion of the municipal court related expenses. I compiled this chart after sending Sunshine Act requests to the appropriate municipal government employees. Under the Missouri Sunshine Act, upon receipt of such a request, the government has three days to respond. MO. REV. STAT. § 610.023.3 (2015). Not all responded as required under law within the three days, nor by the time this Article went to print. This failure to respond, or to give the public the "run-around," or to charge exorbitant fees to "research" for the requested information, is another travesty of justice. State governments and legislatures should consider putting real "teeth" into violations and abuses concerning information that the public has a right to know.

approximately nine thousand people. It pays *over \$100,000 a year* to its municipal court judge and prosecutor; the court itself operates twice a month!²⁹ These figures put tremendous pressure on small municipalities to somehow raise the revenue. It begs the question: should such a small municipality really have its own court?

As power and politics go, many lawyers and judges are not in favor of consolidation. If a particular court is folded into another, that means a prosecutor and a judge, and likely others affiliated with the consolidated court, will lose their jobs. I understand that. Yet, the question remains how small is too small? At what point is a court too small to effectively dispense justice? There certainly are strong arguments, and indeed the record before the Municipal Court Working Group was filled with arguments, that courts operating once or twice a month for a few hours an evening coupled with substantial salaries paid to the judges and prosecutors in these courts are too heavy a load on the communities bearing the burden to maintain these courts. *Not one* municipal court in the 21st Judicial District operates anything near a full-time court. These courts operate a few hours a day for typically only one or two days per month.³⁰ The lawyers working as prosecutors and judges in these courts are not full time. These municipal court jobs are not only part time jobs, but they are often supplemental to some other “real” job the lawyer or judge has.

No one wants to lose income but if you read this Article and its accompanying footnotes carefully, you will see that some of these municipalities are simply too small to justify their existence and indeed, are unsustainable if the cost of operation means overly aggressive ticketing, dehumanization, and constitutional violations of the community where the court sits.

29. Exhibit 2. Kinloch has approximately two hundred residents. It cannot afford car insurance for the police cars driven by its police officers. *See* Editorial, *Kinloch Residents Should Vote to Dissolve the Municipality*, ST. LOUIS POST DISPATCH (July 7, 2016), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-kinloch-residents-should-vote-to-dissolve-the-municipality/article_f7f0607b-fc6b-5e15-b710-c66b226caa2.html. Despite inability to pay for car insurance (and allowing its officers to drive around in uninsured cars in violation of Missouri state law), the municipality pays approximately \$15,000 per year for one court session a month for the salaries of just two people. *Id.*

30. *See* Exhibit 2. Approximately twelve of the seventy-six or so courts operate three to four sessions per month. One municipality advised that it operates seven sessions per month. *Id.*

I have been told by many lawyers—black and white alike—that blacks who comprise a majority in some of the municipalities in the 21st Judicial District of Missouri will suffer under consolidation. The theory is that if courts consolidate, blacks will lose power, and maybe jobs. To be clear, I have not argued that the Missouri Supreme Court can, should or even has the power to consolidate *municipalities*.³¹ Nothing I have recommended concerns the Court's power over municipalities or how those municipalities elect their mayor, appoint their police chief or otherwise run their cities. Indeed, my argument is that the Missouri Supreme Court can consolidate municipal courts without having *any effect* on the mayor or police chief or their staff. Additionally, let's be clear: the municipal court judges and lawyers in the predominately Black municipalities that bear the brunt of many of these costs are *overwhelmingly White and male—not bastions of black power by any stretch of the imagination*.³² Rather, the resounding demands the work group heard and read of many *black* residents in the majority *black* municipalities demanded abolition of municipal courts, or alternatively, consolidation. The people in these communities want justice and fairness in the courts, not injustice and unfairness for the sake of retaining *an illusion* of black power.

Virtually all of the data presented to the work group on municipal court (*in*)justice in the 21st Judicial District evidenced thousands and thousands of poor and black people suffering under a broken and very unfair court system. If the price of justice for thousands means that a few dozen people will lose their jobs—supplemental five- and six-figure jobs in the case of the judges and lawyers—then many have weighed in and have concluded that this is a price is worth paying. No longer should thousands continue to suffer to maintain the status quo of a few.

My Dissent also speaks to the practice in Missouri that not only allows municipal court judges to practice law but also allows them to

31. MO. CONST. art. V, §§ 4, 5. *See infra* note 108.

32. For the racial and gender breakdown of municipal court judges and prosecutors in the St. Louis region, see BETTER TOGETHER STL, PUBLIC SAFETY, MUNICIPAL COURTS, JUDGES AND PROSECUTORS ADDENDUM (Oct. 2014), *available at* <http://www.bettertogetherstl.com/wp-content/uploads/2014/11/BT-Judges-and-Prosecutors-Report-FINAL1.pdf> [hereinafter BETTER TOGETHER JUDGES AND PROSECUTORS]. The racial and gender breakdowns for 2016 are virtually unchanged.

prosecute cases. As detailed *infra*, there are eighty-one municipal courts in the 21st Judicial District of Missouri.³³ One person can be a municipal court judge in multiple municipalities in the same circuit.³⁴ That same person can *also prosecute cases* and even *also* be the city attorney in other municipalities in the *same* judicial circuit. A defense lawyer facing a prosecutor s/he knows is his or her judge the next night in a different municipality might be more deferential to the prosecutor than zealous advocacy requires. Yes, ethical standards govern how judges are to decide cases but let us not forget that these judges are people and egos can sometimes cloud the best of efforts. The contentious aftereffects of battle between a prosecutor and defense attorney can linger in the air when that prosecutor is later sitting as a judge, on a different case, on a different day but with the same defense attorney from the day before.³⁵ Imagine, too, the appearance of impropriety to the many residents who, because they are ticketed in multiple jurisdictions, see a person acting as a

33. The next highest number is twenty-five. *See infra* note 62.

34. *See infra* notes 86, 88.

35. Missouri Supreme Court Rule 2 contains the Code of Judicial Conduct. Among other things, the rule requires judges to be fair, impartial and to avoid bias. *See* MO. SUP. CT. R. 2 (2012), available at <https://www.courts.mo.gov/page.jsp?id=667>. It also provides that judges “shall” recuse “himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to . . . (1) the judge has a personal bias or prejudice concerning a . . . party’s lawyer.” *Id.* at R. 2-2.11 (Recusal). Recusals in municipal courts are so rare that they are unheard of. This, in my view, has a lot to do with the fact that the rule relies on the judge to make the determination about recusal. It is not uncommon for people to *honestly* deny partiality or bias. An entire science on implicit (*i.e.*, unconscious), bias, not only exists, but affects judges. *See, e.g.*, The Hon. Dana Leigh Marks, *Who, Me? Am I Guilty of Implicit Bias?*, 54 NO. 4 JUDGES’ J. 20 (2015); Michael B. Hyman, *Implicit Bias in the Courts*, 102 ILL. BAR J. 40 (Jan. 2014); Jeffrey Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195 (2009); Jeffrey J. Rachlinski et al., *Blinking on a Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007). I co-chaired the Implicit Bias subcommittee of the American Bar Association 360 Commission on Diversity and Inclusion. This Commission created by American Bar Association President Paulette Brown, produced substantial materials dealing with diversity and inclusion. The Implicit Bias committee of the Commission produced materials for judges, prosecutors and public defenders, to help these lawyers become more alert about the presence of unconscious bias and to help provide tools to disrupt unintentional biases that can lead to injustice. For more on the work on this Commission, see *Diversity & Inclusion 360 Commission*, ABA, www.ambar.org/360commission (last accessed Sept. 14, 2016).

prosecutor in one court but as the judge in another.³⁶ Consider a third conflict: like private prisons with incentives to make sure the prisons are full, municipal court judges are pressured to keep revenues to the municipality flowing in. Consider this observation made fifty years ago and still a real issue today:

Fines collected from municipal ordinance violators . . . are paid into the treasury of the city or town. In addition, costs collected from such municipal violations are paid in to municipal coffers.

That the municipal judge is subjected to a conflict of interest between his duties to the municipality and to the system of law, under these circumstances has long been recognized. At common law, according to Dillion, it was settled as to municipal courts “that the municipal corporation could bring no action therein against a stranger where the effect would be to benefit the corporate or increase its funds, for that would be to make the corporation itself both judge and party.” This doctrine has long since been abandoned, but the conflict which created it remains.³⁷

There is also the matter of adequate facilities. Many of the municipal court buildings are too small to allow the *hundreds of people* called before the court on limited court days inside.³⁸ The conditions in the holding cells are horrific and likely unconstitutional.³⁹ And yes, there is also the matter of jailing of people who cannot afford to pay their fines, fees and bail, a *clear* violation of the law.⁴⁰ On multiple levels,

36. This practice also allows a single law firm to have multiple lawyers wearing all of these hats (prosecutor, city attorney and judge) all in the same judicial circuit. *See infra* note 88 and accompanying text.

37. *See* Lauer, *supra* note 1, at 89–90 (citations omitted) (emphasis added). Not only is there a clear conflict here (see, e.g., DOJ FERGUSON REPORT, *supra* note 13, on the pressure to raise revenue to pay the judges and other staff), but as I state in my Dissent, *infra*, it is unconstitutional for a municipality to keep fines and penalties in its coffers. I rely on Missouri Supreme Court precedent for this conclusion. *See infra* note 105 and accompanying text.

38. *See infra* notes 106, 107.

39. *See infra* note 107.

40. *See, e.g.*, J. Weston Phippen, *The U.S. Government's Warning to Courts That Jail The Poor*, THE ATLANTIC (Mar. 15, 2016), <http://www.theatlantic.com/national/archive/2016/03/departement-of-justice-open-letter/473742/>. Given the frequency within which people are

the system as it currently exists in the 21st Judicial District of Missouri is inefficient, unfair, and unjust.⁴¹

Thousands of people have lost their jobs, homes, children, and are humiliated under the current system of municipal court justice as it exists in some judicial districts in the state of Missouri. Self-regulation has not worked; therefore telling the judges to simply

jailed around the country, including in Missouri, Phippen's article is worth quoting here at some length:

The U.S. Department of Justice has sent a rare open letter to state judges asking them to stop practices that threaten jail time for people who cannot afford to pay fines.

The letter, sent Monday, is signed by Vanita Gupta, the top prosecutor for the Justice Department, and Lisa Foster, who runs a division focused on helping poor people gain access to legal aid. At issue in the letter is a system in which courts threaten people who haven't paid their fines—sometimes for traffic tickets, misdemeanors, or civil offenses—with jail time. Such practices, the letter said, makes courts seem as if they're not concerned with "addressing public safety, but rather toward raising revenue." In many cases those practices can be unlawful, the letter said, and in jurisdictions that take federal money, they may also violate the Civil Rights Act when courts "unnecessarily impose disparate harm on the basis of race or national origin."

The letter listed several practices that may violate a person's due process, like jailing people because they can't pay fines; making fines a prerequisite for a judicial hearing; and using bail or bond practices that leave poor people in jail only because they can't afford to pay for their release.

The letter noted that these policies can force people into debt, land them in jail despite posing no risk to the community, and capture them "in cycles of poverty that can be nearly impossible to escape."

In 1983, the Supreme Court ruled that if someone is too poor to pay a fine, jailing them violates federal law. But Monday's letter hinted that not all courts are following that ruling.

Such a recommendation to courts from the Justice Department is rare. The last the department wrote a similar letter was in 2010, when it reminded state courts they were required, and legally obligated, to provide court interpreters to non-English speakers (that concern led to investigations in Colorado and North Carolina).

Id.

41. See Matt Apuzzo, *Justice Dept. Condemns Profit-Minded Court Policies Targeting the Poor*, N. Y. TIMES (Mar. 14, 2016), http://www.nytimes.com/2016/03/15/us/politics/justice-dept-condemns-profit-minded-court-policies-targeting-the-poor.html?_r=0. In an unusual move, the DOJ sent a letter across the nation to all chief judges of state courts and court administrators calling on them "to root out unconstitutional policies that have locked poor people in a cycle of fines, debt and jail. It was the Obama administration's latest effort to take its civil rights agenda to the states, which have become a frontier in the fight over the rights of the poor and the disabled, the transgender and the homeless." *Id.*

follow the law, as the Work Group report does, falls well short of what was and is needed.

The Missouri Supreme Court has the constitutional power to control all courts in its jurisdiction—this includes all inferior courts and thus all municipal courts. If it cannot control its own courts, who can? Who will?⁴²

POSTSCRIPT: EVENTS POST MARCH 1, 2016:

Since the Report of the Work Group and my separate Dissent was submitted to the Missouri Supreme Court on March 1, 2016, several relevant things have happened that must be noted here: First, a Missouri judge virtually gutted much of the widely hailed SB 5 law that reduced the revenue that a municipality can receive from traffic violations.⁴³ As outlined *infra*, municipalities were originally obligated to limit their revenue from minor traffic violations to 30 percent of their budget per year. That was changed under Senate Bill 5. Among other things, SB 5 limited said revenue to 20 percent in St. Louis County generally but 12.5 percent in the eighty-odd municipalities located within St. Louis County.⁴⁴ The judge took issue, as I do in my Dissent,⁴⁵ with different limits being applied (20 percent in some areas as compared to a 12.5 percent limit in other

42. See, e.g., *Statement from Commission Co-Chairs Rev Starsky Wilson and Rich McClure*, FORWARD THROUGH FERGUSON (Mar. 22, 2016), forwardthroughferguson.org/get-involved/statement-scomo-action. Although their duties as co-chairs of the Ferguson Commission ended in December of 2016, the co-chairs, felt the need to respond to the Municipal Division Work Group Report of March 1, 2016 by urging, again, the Court to adopt its recommendations for change by the Court. See also Dave Leipholz, Op-Ed, *Reforming the Broken Municipal Court System*, ST. LOUIS POST DISPATCH (Apr 7, 2016), http://m.stltoday.com/news/opinion/reforming-the-broken-municipal-court-system/article_103b4205-ec23-5393-a8f4-40280c4588b5.html; Tony Messenger, *Note to Supreme Court—There Is a Name Behind Every Ticket*, ST. LOUIS POST DISPATCH (Mar. 26, 2016), http://www.stltoday.com/news/local/columns/tony-messenger/messenger-note-to-supreme-court-there-is-a-name-behind/article_257d57f6-f93e-5bb6-b2d4-a676219159ee.html. Editorial, *Missouri Supreme Court Must Reject Half-Way Reforms of Municipal Courts*, ST. LOUIS POST DISPATCH (Mar. 3, 2016), http://www.stltoday.com/news/opinion/columns/the-platform/editorial-missouri-supreme-court-must-reject-half-way-reforms-of/article_d830e082-6867-59e2-84e0-b11b16b59a00.html; Editorial, *Court Should Heed Norwood's Dissenting Opinion*, ST. LOUIS AMERICAN (Mar. 3, 2016), http://www.stlamerican.com/news/editorials/article_ee6b060-e0d8-11e5-9fd3-2bd5a86dab99.html.

43. See, e.g., Mann & Kohler, *supra* note 20.

44. See *supra* note 20 and accompanying text.

45. *Id.*

areas). That decision is still making its way through the court system. Second, the Missouri legislature, with the passage of SB 572, widened the scope of SB 5 to include revenue limitations on *all* municipal ordinance violations (e.g., grass too high, manner of walking) and not just minor traffic violations.⁴⁶ Third, I attended an Annual Meeting of the Missouri Municipal and Associate Circuit Judges Association in May of 2016. Attorney Timothy R. Schnacke has written two reports published by the National Institute of Corrections and these reports conclusively establish that bail was a remedy instituted to bail people out of jail of and not keep people in jail.⁴⁷ The current use of the bail/bond system works to create more harm to families, communities and society and has actually no relationship to safety. Indeed, the person who is able to post bail or bond and get out of jail presents whatever danger that person presented before they posted the money and has zero relationship to the threat to public safety. Moreover, these reports establish that there is no relationship to the posting of money and whether the person is more likely to return to court. Rather, the report establishes other more trusted *and proven* measures to increase the likelihood of courtroom attendance; measures that are totally divorced from how much money a person (or that person's family and/or friends) has/have and is/are able to post.⁴⁸

The Missouri Supreme Court also took action on the conflicts of interest issue. As laid out in my Dissent, *infra*, there was tremendous concern by virtually all who testified before our Committee and indeed, by a clear majority of the committee itself, that not only the appearance of impropriety suffers when a judge one night is allowed to be a prosecutor in the same county another night and also even a defense lawyer in the same county on yet another night, it just is

46. See SB 572, Open:States, <http://openstates.org/mo/bills/2016/SB572/> (last accessed Sept. 10, 2016).

47. See NAT'L INST. OF CORRS., MONEY AS A CRIMINAL JUSTICE STAKEHOLDER: THE JUDGE'S DECISION TO RELEASE OR DETAIN A DEFENDANT PRETRIAL (Sept. 2014), available at <https://www.pretrial.org/download/research/Money%20as%20a%20Criminal%20Justice%20Stakeholder.pdf>; NAT'L INST. OF CORRS., FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM (Aug. 2014), available at http://www.clebp.org/images/2014-11-05_final_bail_fundamentals_september_8_2014.pdf.

48. See *supra* note 47.

simply ineffectual (as evidenced by the fact that none ever do in these situations) to rely on the municipal court judge to recuse himself when he is facing either a judge he will appear before as prosecutor or when he is facing a defense lawyer he engaged in a heated debate with in his role as prosecutor.⁴⁹ The new conflicts rule adopted by the Missouri Supreme Court on June 27, 2016 still falls short.⁵⁰

It places no restriction on the ability of a lawyer to be both a prosecutor and a defense attorney in different municipalities in the same county; it places no limit on the ability of a lawyer to be both a prosecutor and the city attorney in the same municipality; and with respect to the limit it places on the ability of a lawyer to be a prosecutor in one municipality in a county and a judge in another municipality in the same county, it contains unclear language about the circumstances under which any recusal shall occur.⁵¹

49. See *infra* notes 80–107 and accompanying text.

50. Order of June 27, 2016, MO. SUP. CT. R. 37.53(b) (2016), <http://www.courts.mo.gov/sup/index.nsf/d45a7635d4b8f8625662000632638/dd4f5c13d39fd00686257fe20066c497?OpenDocument> (emphasis added).

51. The full text of the new rule provides as follows:

In re:

Repeal of subdivision 37.53(b), entitled “Without Application,” of Rule 37, entitled “Statutory and Ordinance Violations and Violation Bureaus,” and in lieu thereof adoption of a new subdivision 37.53(b), entitled “Without Application.”

ORDER

It is ordered that effective January 1, 2017, subdivision 37.53(b) of Rule 37 be and the same is hereby repealed and a new subdivision 37.53(b) adopted in lieu thereof to read as follows:

37.53 Ordinance Violation Cases Not Heard on the Record - Disqualification and Change of Judge

* * *

(b)Without Application. *The judge shall recuse:*

(1) When the judge is related to any defendant, when the judge has an interest in the case, or when the judge previously has been counsel in the case; or

(2) *When the attorney representing the prosecuting county or municipality in the case regularly serves as a judge in another municipal division located within the same county before whom the judge regularly represents a prosecuting county or municipality.*

Finally, the Missouri Supreme Court revised the Rule governing municipal court practice on September 20, 2016.⁵² It lists a series of what are identified therein as “minimum standards.” This language is helpful. It is good to have a floor. The revision does speak to separation of court clerk staff from police staff; it provides that courts should be open to the public and adequately spaced and staffed for the job they are supposed to do; it provides that people should not be jailed for inability to pay and that ability to pay determination be made. It limits the amount of time a person can be held in jail on minor traffic offenses. It requires clerks to be open thirty hours per week.

Indeed, the sixteen page order is detailed but it still falls far short. Its’ biggest flaw is its failure to consolidate any of the eighty-odd municipal courts. The Order not only does not go into effect until the middle of 2017, leaving long months of continued harassment and pain, but it also has no teeth. It provides nothing in the way of remedy or protocol should a court or judge or prosecutor violate its provisions. Moreover, and quite ironically, it simply restates existing law! It was already illegal to jail people for inability to pay; it was already required that the courts be open to the public; it was already required that ability to pay inquiries be had. Presiding judges are given a few monitors. There are over eighty municipal courts in the 21st judicial district. The presiding judge there needs a lot more help than the presiding judge of next largest area of twenty municipal courts. And indeed, as Brendan Roediger, associate law professor at St. Louis University Law School recently noted: “The presiding judge and the Supreme Court don’t have the inclination or the time to supervise these courts What we need are rules that can be enforced in an individual case.”⁵³ The Court’s Order does not provide for that.

52. See Order Dated September 20, 2016, re: Rule 37.04, MO. SUP. CT. R. 37.04 (2016), <http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfd8f8625662000632638/c908dc0681884e13862580340051c22b?OpenDocument>.

53. Jeremy Kohler, *Missouri Supreme Court Issues New Rules for Municipal Courts*, ST. LOUIS POST DISPATCH (Sept. 22, 2016), http://www.stltoday.com/news/local/crime-and-courts/missouri-supreme-court-issues-new-rules-for-municipal-courts/article_eadba97f-c1c2-5e22-a34a-29278ee631f4.html.

There is not much of anything actually new in this order. Indeed, one comment is quite telling: “I don’t see any problem with these,” said Bryan Dunlop, a lawyer who works as a municipal judge in Maplewood and Beverly Hills. “We’ve been operating with these for a long time.”⁵⁴ Read the DOJ report on the Ferguson Police Department; those from Better Together, the National Center for State Courts, and The Ferguson Commission; my Dissent. Many of the courts have, indeed, been operating under those rules for a long time. The problem is many of those municipal courts are not following those rules.⁵⁵

My Dissent—still relevant, unfortunately—is reproduced below.⁵⁶

54. *Id.*

55. *See, e.g., supra* notes 19–22. Indeed, the Chief justice of the Missouri Supreme Court shared her own experiences how those court “operate” as lawyer/municipal court judge Brian Dunlop puts it. Consider the following:

- In a speech Thursday to members of the Missouri Bar Association, Chief Justice Patricia Breckenridge said she had showed up unannounced at several municipal courts and found problems.
- A recorded greeting for one court said it was open until 4 p.m., but a sign on the door said it was closed at 1. Some courts said children were not welcome “despite the Constitution and a not-so-gentle reminder from the presiding judge that courts are to be open to the public,” she said.
- At one court, court clerks wore jackets with police logos, “visually illustrating the lack of separation of the executive branch police from the judicial branch court.”
- At another court, she said, the prosecutor was seated behind the bench with the judge during court proceedings. (Through a spokeswoman, Breckenridge said she would not identify the courts she had visited.)

“I experienced firsthand what citizens in our state must encounter every day,” she said. “I felt frustrated and angry.” Kohler, *supra* note 53. So much for rules with no teeth. Before long we will be back to business as usual and that is very sad for the St. Louis metropolitan community.

56. My Dissent is reproduced below as it was submitted to the Missouri Supreme Court on March 1, 2016 with two exceptions. Because I have added two exhibits to this Article, the exhibit numbers in the Dissent have changed slightly to reflect the additions. Additionally, because the Dissent is reproduced after my Introduction, all footnote numbers are changed.

SEPARATE OPINION AND RECOMMENDATIONS OF
MISSOURI SUPREME COURT MUNICIPAL DIVISION
WORKING GROUP MEMBER KIMBERLY NORWOOD

INTRODUCTION

I both concur with and dissent from the Missouri Supreme Court Municipal Working Group Final Report (hereinafter “Final Report”). I believe there are underlying systemic problems in the Missouri municipal justice system, which hears and decides virtually two-thirds of all cases in the state. In my view, the Final Report falls short of making the type and number of recommendations needed to adequately address the problems and begin the process of restoring faith in and bringing integrity back to our municipal courts.

Under the Constitution of Missouri, all of the municipal courts (including those of St. Louis County) are divisions of the circuit courts and under the administration of the presiding circuit judge and the supervisory and superintending authority of the Supreme Court of Missouri. Many of Missouri residents who find themselves in court are likely to be in a municipal court. Municipal courts in Missouri resolve approximately 65% of all cases in the state.⁵⁷ In 2014, these divisions disposed of more than 1.4 million cases—twice as many as in all other circuit divisions.⁵⁸ For most people who interact with the Missouri judicial system, the municipal courts are the face of the system.

The state has a whopping 595 municipal courts (with a whopping 955 municipalities).⁵⁹ These courts are spread across 45 judicial

57. ARTHUR W. PEPIN, FOUR ESSENTIAL ELEMENTS REQUIRED TO DELIVER JUSTICE IN LIMITED JURISDICTION COURTS IN THE 21ST CENTURY 2 (2014), available at <http://cosca.nesc.org/~media/Microsites/Files/COSCA/Policy%20Papers/2013-2014-Policy-Paper-Limited-Jurisdiction-Courts-in-the-21st-Century.ashx> [hereinafter COSCA 2013–14 LIMITED JURISDICTION REPORT] (“Across the country, limited jurisdiction courts resolve 66 percent of all cases in all state courts, or about 70 million of 106 million cases that enter the state court system annually.”).

58. Patricia Breckenridge, *Missouri’s Chief Justice Delivers 2016 State of the Judiciary Address*, JUD. BRANCH OF ST. GOV’T (Jan. 27, 2016), <https://www.courts.mo.gov/page.jsp?id=96693> [hereinafter Breckenridge 2016 State of the Judiciary Address].

59. When one considers the ratio of number of governments/ per capita, Missouri is quite fragmented. See, e.g., Mike Maciag, Which States Have Most Fragmented Local Governments?, GOVERNING THE STATES AND LOCALITIES (Aug. 30, 2012), <http://www>.

circuits. Of the 595 municipal courts, 427 are independently operated by their respective municipalities and 168 are conducted via circuit courts by associate circuit judges.⁶⁰ A small number operate on a full time basis; the vast majority operates on a part time basis.⁶¹ The 45 judicial circuits have vastly different numbers of municipal divisions.

The problems in the state's municipal justice system are most visible in (but, not limited to) the 21st Judicial Circuit, which includes about 90 different municipalities—some taking up less than a square mile radius—and contains 81 municipal divisions. This number, 81, is three to sixteen times more than any of the other judicial circuits in the state.⁶² And, in this lone judicial district of 81 municipalities, the municipal court problems are most acute.⁶³ In these 81 courts, prosecutorial and judicial behavior ranges from good to abysmal. Moreover, when we examine the record developed in various reports of this system of “justice” in St. Louis County, one thing is clear, unmistakable, and disgraceful: There are two systems of justice in the county—one for White and middle class residents and the other for poor and mostly Black residents.⁶⁴

governing.com/blogs/by-the-numbers/local-government-consolidation-fragmentation.html#data. For a picture of Missouri's fragmented governments see Maciag, *supra*. See also Colin Gordon, *Patchwork Metropolis: Fragmented Governance and Urban Decline in Greater St. Louis*, 34 ST. LOUIS U. PUB. L. REV 51 (2014).

60. NATIONAL CENTER FOR STATE COURTS, MISSOURI MUNICIPAL COURTS: BEST PRACTICE RECOMMENDATIONS (2015), available at <http://www.sji.gov/wp/wp-content/uploads/Missouri-Municipal-Court-Best-Practices-Recommendations-Final-Report-2015.pdf> [hereinafter NCSC MO MUNICIPAL COURTS] at 9–10 n.11.

61. Columbia, Kansas City, St. Louis City and Springfield operate full time municipal courts.

62. The 4th Judicial Circuit has the next highest amount with twenty-five municipal courts; the 32nd and 36th Judicial Circuits have five municipal courts each; and the 22nd Judicial Circuit has just one municipal division. See *Your Missouri Courts*, JUD. BRANCH OF ST. GOV'T, <https://www.courts.mo.gov/page.jsp?id=1880> (last visited Mar. 11, 2016).

63. The problems with municipal court efficiency, justice and fairness extend beyond the 21st Judicial Circuit however. See, e.g., ARCHCITY DEFENDERS, IT'S NOT JUST FERGUSON: MISSOURI SUPREME COURT SHOULD CONSOLIDATE THE MUNICIPAL COURT SYSTEM (2014), available at <http://www.scribd.com/doc/274501398/It-s-Not-Just-Ferguson-Consolidate-the-Municipal-Courts-1#scribd> [hereinafter NOT JUST FERGUSON]. See also Jennifer S. Mann, *Audits Show That Municipal Court Problems Extend Beyond St. Louis County*, ST. LOUIS POST-DISPATCH (Feb. 14, 2016), http://m.stltoday.com/news/local/crime-and-courts/audits-show-municipal-court-problems-extend-beyond-st-louis-county/article_6d3bea5b-42ae-556f-b819-ea52237a4626.html?mobile_touch=true [hereinafter *Audits Show*].

64. See, e.g., Radley Balko, *How Municipalities in St. Louis County Mo., Profit from Poverty*, Sept. 3, 2014 WASH. POST (Sept. 3, 2014), <https://www.washingtonpost.com/news/the->

Race and, to a lesser extent, economic status fuel the dysfunction of municipal court divisions in St. Louis County.⁶⁵ While some want to think that this problem just arose in August of 2014 with the killing of unarmed teenager Michael Brown, the reality is that lawyers, particularly lawyers in the St. Louis region, have known about the various abuses in the municipal system for *more than half a century*, especially the disparate treatment of people of color and the poor; the use of tickets to raise money for tax-poor communities; the misuse of warrants, bail, and failure-to-appear charges; and the

watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/. See also Whitney Bennis & Black Strobe, *Debtors' Prison in 21st-Century America*, THE ATLANTIC (Feb. 23, 2016), <http://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/>:

Walk into one of these courts on any given day—in Ferguson, Pagedale, Pine Lawn, Hazelwood, St. Ann, or easily 40 other municipalities across St. Louis County—and there will be row after row of poor black residents who have been called in to pay penitence for their wrongdoing. Some who are unable to pay are taken straight to the local jail. More often, when people fail to appear because they know that they cannot pay, arrest warrants are issued. Days, weeks, months, or even years later (often times during a routine traffic stop), they will be arrested and taken to jail on this warrant, with the threat of continued confinement serving as a new incentive for immediate payment, no matter the resultant hardships of securing such funds. Detentions stemming from unpaid municipal fines can last anywhere from minutes to weeks or, in extreme cases, even months. This is the reality of the local justice system for some of the most vulnerable residents of Greater St. Louis.

Id.

65. What brought race to the forefront were the well-documented reports of the Justice Department, Better Together, the ArchCity Defenders, the National Center for State Courts, and the exhaustive work of the Ferguson Commission following the shooting death of Michael Brown in August 2014. It must be noted, however, that the race connection here is not and was not limited to municipalities where Blacks and poor people comprise a majority:

One of the wealthiest cities in the entire country, Ladue is less than 1 percent black. Yet, in 2014 a black driver was 18.5 times more likely to be pulled over than a white driver. Following a stop, a black driver was 2.4 times more likely to be searched and 2.7 times more likely to be arrested. In a disturbing admission in May of last year, the city's former police chief described a conversation with the former mayor in which she directed him to target black drivers so that "those people" can see what happens to blacks and that we don't want them here." (The city has denied the former chief's allegations.). What could possibly explain such use of local police and courts? While a city like Ladue does not face the same budgetary demands as many of the revenue-challenged cities in North County, it is still the product of a broader regional structure designed to exclude and oppress.

Bennis & Strobe, *supra* note 8; see also KMOV.com Staff, *Former Ladue Police Chief Alleges He Was Ordered to Profile Black Motorists*, KMOV ST. LOUIS (May 4, 2015), <http://www.kmov.com/story/28975097/former-ladue-police-chief-alleges-he-was-ordered-to-profile-Black-motorists>.

jailing of unrepresented defendants to collect fines and fees.⁶⁶ I started working at Washington University in 1990. All throughout the 1990s and thereafter, I learned from my own experience, and from the experience of Washington University law students who represented clients in municipal courts, of the abuses on defendants in those courts. This pattern has persisted (and has been documented) in cases handled by St. Louis University clinical law students and the ArchCity Defenders in more recent years. Although for decades, lawyers have treated these cases as individual matters, it is hard to ignore the outcomes determined by race and economic class that occur on a widespread basis in many municipal courts.⁶⁷

Now that the two faces of justice have been undisputedly displayed for all to see, it is the duty of this working group to

66. See Lauer, *supra* note 1. In this document, Professor Lauer suggests, among other things, that all judges, including municipal court judges be actual lawyers (still not currently true), be full time; and be employed by the state to avoid revenue generation concerns. *Id.* at 96. He also suggests because violations of municipal court ordinances are treated as criminal matters, although they should not be, public defenders must be appointed for the indigent before a person can be incarcerated. *Id.* at 85, 96

67. Interestingly, there are people, including lawyers and municipal court judges, who do not acknowledge this. Rather, their response is simply to say to defendants, “Just don’t violate the law, and you won’t get in trouble.” Indeed, consider this comment by a municipal judge:

“There is a segment of society that has decided now they are not going to be responsible, and the law doesn’t apply to them,” said Brian Dunlop, a Clayton-based lawyer who serves as the Beverly Hills municipal court judge. “That it’s OK to speed, OK to drive without license plates and insurance, and why am I being put upon because I can’t afford to do those things?”

Jeremy Kohler, Jennifer Mann & Walker Moskop, *For People Living Under Threat of Arrest Around St. Louis, A Constant Stress*, ST. LOUIS POST-DISPATCH (Sept. 21, 2014), http://www.stltoday.com/news/local/crime-and-courts/for-people-living-under-threat-of-arrest-around-st-louis/article_5135fe78-02f4-5ff2-8283-3b7c0b178afc.html. I often wonder who, exactly this lawyer/part time municipal court judge has in mind when he refers to that “segment of society.” It likely does not include the judges who call prosecutors who help them make their tickets disappear. Or people who also break the law but can afford to hire lawyers and simply get their tickets fixed. See, e.g., ‘Karr-ruption’ Comes Under Fire in Ferguson, ST. LOUIS AMERICAN (Feb. 4, 2016), http://www.stlamerican.com/news/political_eye/article_19f6039c-caee-11e5-a476-bfc3e37c27ee.html. Or, is it just the poor who do not have those options?

Additionally, we cannot ignore the fact that aggressive ticketing for speeding or other municipal ordinance violations vary significantly depending on the needs of the municipality. Indeed, “violations are not as widely and strictly enforced in towns that receive plenty of revenue from other sources (and whose residents wield sufficient political power to halt such a practice in its tracks), and, for another, because the threat of detention does not exist for those who can afford to pay the fines associated with minor municipal citations.” Bennis & Strode, *supra* note 8.

recommend that the Missouri Supreme Court—which has broad powers to direct the organization and operations of our unified court system—do all it can to correct this horrific system of injustice.⁶⁸ Now is the time. The Supreme Court should not allow this critical juncture simply to fade from public view with the passage of time; at least until the next Michael Brown.

OUR WORK GROUP CHARGE AND THE CALLS FOR REFORM:

Pursuant to Missouri Supreme Court order dated May 14, 2015, I was appointed to a “Supreme Court Municipal Division Work Group.”⁶⁹ The work group was charged by then Chief Justice Mary Russell with:

. . . reviewing all matters relevant to practice in the municipal divisions of the circuit court and making recommendations concerning any appropriate changes to court rules or practices that can be implemented by the Court as well as any suggestions that may require legislation or action by other entities.

We received further instruction on September 22, 2015, from subsequently appointed Chief Justice Patricia Breckenridge. Her letter added to the May 14, 2015, order by asking us to make sure to consider four (4) areas in particular:

- A. Propriety of judges, prosecutors and staff service in different capacity in multiple municipal divisions.
- B. Consolidation of municipal divisions, including any authority of the Supreme Court to mandate consolidation.
- C. Use of warrants, process for setting bonds, and time of incarceration.

68. See Bennis & Strode, *supra* note 8 and DOJ FERGUSON REPORT, *supra* note 13 for examples of actual horror stories.

69. Exhibit 1.

D. Enforceability of judgments and remedies for nonpayment.⁷⁰

Additionally, Chief Justice Breckenridge, in her State of the Judiciary Address to the Joint Session of the Missouri General Assembly in January 2016, stated:

We all need to do everything we can to ensure that every individual in every case in our system of justice is treated with respect and his or her case adjudicated fairly and impartially according to the law. Until that is true in 100 percent of our courts, we cannot rest. Even a perception of justice denied anywhere should concern us all, no matter who or where we are.⁷¹

Missouri citizens must have faith and trust—that in our courts they will be treated respectfully and fairly, and that their cases will be decided impartially according to the law. . . . To the people involved, their cases are the most important thing in their lives. They remind us that the judicial system's purpose is the fair and impartial resolution of *every* case.⁷²

Because the Supreme Court has commissioned this working group to examine the many flaws of municipal justice throughout the state, I firmly believe that nothing less than bold, assertive, aggressive and immediate corrections to this flawed system of justice are imperative and critical to restoring the public faith and reestablishing the integrity of the municipal court system.

Calls for the reform of the Missouri municipal court system have come from many voices, including *but not limited* to the following:

—the ArchCity Defenders' "Municipal Courts White Paper," (Aug 2014),⁷³

70. Letter from Patricia Breckenridge, Chief Justice, Missouri Supreme Court, to Municipal Division Work Group (Sept. 22, 2015) (on file with author).

71. Breckenridge 2016 State of the Judiciary Address, *supra* note 58.

72. *Id.*

73. THOMAS HARVEY ET AL., ARCHCITY DEFENDERS, MUNICIPAL COURTS WHITEPAPER (2014), available at <http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [hereinafter ARCHCITY WHITE PAPER].

—the St. Louis Better Together (“BT”) Report, “Public Safety-Municipal Courts,” (Oct 2014),⁷⁴

—the U.S. Department of Justice report on the Ferguson Police Department (March 2015),⁷⁵

—the Ferguson Commission Report, “Forward Through Ferguson: A Path Toward Racial Equality,” (Sept 2015),⁷⁶

—the National Center for State Courts (NCSC) report (Nov 2015),⁷⁷ and

—the overwhelming testimony at our public hearings.⁷⁸

Ironically, many of the calls for reform are near identical to those made half a century ago, and are still relevant, necessary, and indeed vital today. Although it is clear (and undisputed) that there are problems in the 21st Judicial Circuit, it can no longer be credibly maintained that the problems in Missouri’s municipal courts only exist in the 21st Judicial Circuit.⁷⁹ In order to follow the mandate of our Chief Justice, “to ensure that every individual in every case in our system of justice is treated with respect and his or her case adjudicated fairly and impartially according to the law,” and because I do not believe the Final Report does all that it can and should in its’ recommendations to the Missouri Supreme Court. I therefore submit

74. MISSOURI COUNCIL FOR A BETTER ECONOMY, PUBLIC SAFETY—MUNICIPAL COURTS (2014), *available at* <http://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf> [hereinafter BETTER TOGETHER MUNICIPAL REPORT].

75. DOJ FERGUSON REPORT, *supra* note 13, at 42–62, 68–70, 97–102.

76. FERGUSON COMMISSION REPORT, *supra* note 10, at 45.

77. NCSC MO MUNICIPAL COURTS, *supra* note 60. *See also* Carl Reynolds & Jeff Hall, 2011–2012 POLICY PAPER COURTS ARE NOT REVENUE CENTERS (2012), *available at* <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx>; COSCA 2013-14 LIMITED JURISDICTION REPORT, *supra* note 57. These reports, among other things, also address the importance of prohibiting the practice of allowing courts to be revenue centers.

78. Our work group held three (3) public hearings: one in Springfield, MO on September 27, 2015; one in St. Louis on November 12, 2015, and one in Kansas City on December 5, 2015.

79. *See Audits Show*, *supra* note 63, IT’S NOT JUST FERGUSON, *supra* note 63; Lauer, *supra* note 1.

this separate opinion with what I believe to be crucial recommendations.

MY RECOMMENDATIONS

There are, in fact, several of the 35 or so recommendations contained in the Final Report that I agree with. My recommendations below both highlight recommendations I believe are crucial and add recommendations not covered in the Final Report.

A) Propriety of judges, prosecutors and staff service in different capacity in multiple municipal divisions

I concur with Section B of the Final Report on Conflicts of Interest (identified as “A) Propriety of judges, prosecutors and staff service in different capacity in multiple municipal divisions” by Chief Justice Breckenridge in her September 22, 2016 communication to us. I also add hereunder my additional recommendations with respect to law firms and court personnel.

Judges:

I agree with the Final Report recommendation:

RECOMMENDATION: That the Supreme Court of Missouri, pursuant to its inherent authority to define the practice of law and the authority of Article V, § 4, of the Missouri Constitution, amend the Code of Judicial Conduct, “Application,” Part III, “Part-Time Municipal Judge, “to create a new subsection (B)(4), to read: “practice law in any municipal division of the circuit court located within the same county or city not within a county as the municipal division of the circuit court in which that individual serves as a municipal court judge. Further, this prohibition cannot be waived by any party to the proceeding.”

The Advisory Committee of the Missouri Supreme Court's Subcommittee on Municipal Courts concluded that no conflicts of laws exist under the current Rules of Professional Conduct, perhaps, because conflicts of interest are usually thought of in connection with

representing clients or personal interests in matters. However, when the public talks about (and experiences) conflicts of interest, they are not using the definition/interpretation as proscribed under the Rules of Ethics. They are speaking, rather, to the appearance of impropriety. That perception is real and has the appearance of a “good old boys club”⁸⁰ that reeks of favoritism special and deals for those with special connections and the stench permeates the entire system. As my colleague, Peter Joy, notes in his forthcoming article⁸¹:

A recent news report on municipal courts in St. Louis County, Missouri, illustrates multiple role interconnections with a diagram consisting of approximately fifty gray lines connecting eighteen “lawyers serving as prosecutor or judge in the same court or where one of the lawyers was a defense attorney in a court where the other was a judge or prosecutor.”⁸² The diagram also includes an additional thirteen red lines connecting fourteen of the lawyers to indicate that “they each took a turn as defense attorney in the court where the other lawyer served as a prosecutor or judge or they serve together as prosecutor and judge in one court and in another court one was defense attorney and the other was judge or prosecutor.”⁸³ Another news report found that thirteen of these lawyers held positions as a part-time prosecutor or part-time judge in three or more municipalities and twenty lawyers held such positions in two municipalities.⁸⁴ Of the eighty-three municipalities examined in the latter news report, sixty-nine municipalities had at least one “connection” to another municipality either through “sharing a judge or prosecutor . . . or having a judge or prosecutor who works for the same law

80. Durrie Bouscaren et al., *Overlapping Judges, Prosecutors Weave Tangled Web in St. Louis County Municipal Courts*, ST. LOUIS PUBLIC RADIO, Mar. 22, 2015, <http://news.stlpublicradio.org/post/overlapping-judges-prosecutors-weave-tangled-web-st-louis-county-municipal-courts>.

81. Joy, *supra* note 21.

82. Bouscaren, *supra* note 80.

83. *Id.*

84. *Id.*

firm as a judge or prosecutor in another municipality.”⁸⁵ The lawyers holding these multiple roles apparently see nothing wrong about taking on what appear to be conflicting roles.⁸⁶

Better Together has published reports detailing the very entangled relations when one person is allowed to be a municipal court judge in multiple counties, and also a city attorney and/or prosecutor in those and other courts, and then also occasionally to represent defendants all in courts in the same judicial circuit.⁸⁷ Indeed, if one were to look at just one law firm for a one-month calendar, the ways in which multiple lawyers in this one law firm appear in multiple municipalities wearing multiple hats is startling.⁸⁸ This clearly gives the appearance, if not the reality, of partiality and unfairness. It reeks of the appearance of impropriety and embodies inherent potential for conflicts of interest. The NSCS also has recommended that there be “strong formal conflict of interest rules for municipal judges.”⁸⁹ The Ferguson Commission Report is in accord.⁹⁰ Indeed, virtually every individual and entity, with few exceptions has asked the court to stop this revolving door municipal practice.⁹¹

Prosecutors:

I agree with the Final Report recommendation:

RECOMMENDATION: That the Supreme Court of Missouri, pursuant to its inherent authority to define the practice of law and the authority of Article V, § 4, of the Missouri Constitution, create a new rule within Supreme Court Rule 4,

85. *Id.*

86. *See, e.g.,* Jennifer S. Mann et al., *A Web of Lawyers Play Different Roles in Different Courts*, ST. LOUIS POST-DISPATCH (Mar. 29, 2015), available at http://www.stltoday.com/news/local/crime-and-courts/a-web-of-lawyers-play-different-roles-in-different-courts/article_b61728d1-09b0-567f-9ff4-919cf4e34649.html (discussing how lawyers holding multiple roles do not see any problems with what they are doing); Bouscaren, *supra* note 81 (providing examples of lawyers serving multiple roles who say there is nothing wrong with doing so).

87. BETTER TOGETHER JUDGES AND PROSECUTORS, *supra* note 32.

88. *See infra* Exhibit 3.

89. NCSC MO MUNICIPAL COURTS, *supra* note 4, at 70.

90. FERGUSON COMMISSION REPORT, *supra* note 10, at 32, 83.

91. The exceptions are the input we received from former and current municipal court judges, some lawyers and the Advisory Committee to the Supreme Court of Missouri.

to read: “An attorney shall not serve in more than one of the following capacities within the municipal divisions of the circuit court located within the same county or city not within a county: municipal prosecuting attorney or defense attorney. Further, this prohibition cannot be waived by any party to the proceeding.”

For many of the same reasons dealing with the appearance of impropriety discussed in report after report after report, and based on the same supervisory authority that the Supreme Court has over courts, the Court can and should disallow the practice of municipal court prosecutors being able to also represent defendants in the same county. In both Springfield and in Kansas City, the Missouri Association of Prosecuting Attorneys [MAPA] sent representatives who testified that municipal court prosecutors should be prohibited from also representing defendants. As Eric Zahnd, Platte County Prosecuting Attorney and MAPA Board of Director President testified in Kansas City:

[N]o municipal prosecutor or assistant municipal prosecutor should represent any party other than the state or a political subdivision in any criminal or municipal ordinance proceeding anywhere in the state of Missouri. Put simply, we believe that we should end the game of musical chairs where attorneys service in one city as a prosecutor and show up something the next night in a neighboring city as a defense attorney. In the past we lawyers have found a way to justify that conduct. It's conduct that would be a crime if it was a state prosecutor or a state assistant prosecutor who performed the same duties. In this working group and the Supreme Court, could certainly fashion a way to continue to justify that conduct, but, of course, that's exactly why you all are here tonight and why you are holding this hearing because the public no longer accepts those lawyerly mental gymnastics. Instead the spotlight is now on Municipal Courts as a result of the tragic events of Ferguson and we, as members of the bar, are being forced to confront the often forgotten stepchildren of courts, those Municipal Courts.

For too long I would submit we have accepted a lesser standard of due process in those courts than we have deemed acceptable in our state courts.⁹²

While MAPA would prohibit a municipal court prosecutor from being a defense attorney anywhere in the state, I agree with the Final Report that the prohibition be limited to *the same county or city not within a county*.⁹³

Law Firms:

Exhibit 3 represents the various roles lawyers in one law firm can play in St. Louis County municipal court practice. This exhibit is startlingly and requires mechanisms in place and monitoring to guard against the appearance of impropriety. I therefore recommend that the Supreme Court require the Office of Chief Disciplinary Counsel and the Commission on Retirement, Removal and Discipline of Judges to review the ethics of law firms with multiple lawyers serving as judges and playing multiple roles in multiple municipalities in one county or city not within a county.⁹⁴

Court Personnel:

The Final Report, in my view, does not delve into other conflicting roles of various court personnel. I would recommend all of the following:

92. Eric Zahnd, Platte County Prosecuting Attorney and MAPA Board of Director President, Testimony at the Kansas City Hearing for the Missouri Supreme Court Municipal Division Work Group at 4-5 (Dec. 5, 2015) (transcript on file with author); Amy Fete, Christian County Springfield Prosecuting Attorney, Testimony at Springfield, Springfield Hearing for the Missouri Supreme Court Municipal Division Work Group (Sept. 25, 2015).

93. Some might argue that the limit to same county is artificial (and thus ineffective) given that adjoining counties are often treated as one; invisible lines are just that, invisible. Yet, we know all too well in Missouri that invisible or not, boundary lines matter. One need only look at the St. Louis City v. St. Louis County line debates or debates involving the alleged importance of maintaining school district boundary lines. The solution in this conflicts context (for both judge and prosecutor) is not to do nothing, but (1) at a minimum embrace the same county limit and (2) actually even consider *expanding the prohibition on* multiple hat wearing to the same *or adjoining county*.

94. See *infra* Exhibit 3.

1) That the Supreme Court take appropriate steps to create judicial independence, as well as independence for court staff in the municipal divisions from the municipalities, their police, and their city officials. MO Bar Rule 2, Preamble, states “[a]n independent, fair and impartial judiciary is indispensable to our system of justice.” Steps to be taken include:

i—Disallow or severely restrict the ability for judicial employees to split employment or take on tasks for the municipal government.⁹⁵

ii—Educate judges, municipal officials, and municipal court employees on the importance of judicial and court employee independence.⁹⁶

iii—Prevent targeting and collusion in the municipal governance system by requiring principal actors to sign annual codes of ethics.⁹⁷

iv—Physically and functionally separate court operations and staffing from day-to-day interaction with police, prosecution, and other city agencies, other than as required; eliminate sharing of municipal files and prosecution files.⁹⁸

v—Distance judges and prosecutors from any incentives to generate revenue (such as creating a shared fine pool for all municipal courts).⁹⁹

2) That the Supreme Court accept the recommendation of the Ferguson Commission, Better Together, and the NCSC that some independent commission or other Court appointed organization be put in place for the appointment and retention of municipal court judges.¹⁰⁰

95. See, e.g., NCSC MO MUNICIPAL COURTS, *supra* note 60, at 18–19.

96. NCSC MO MUNICIPAL COURTS, *supra* note 60, at 5–8.

97. See, e.g., FERGUSON COMMISSION REPORT, *supra* note 10 at 32, 83.

98. NCSC MO MUNICIPAL COURTS, *supra* note 60, at 17–18; FERGUSON COMMISSION REPORT, *supra* note 10, at 70.

99. BETTER TOGETHER JUDGES AND PROSECUTORS, *supra* note 32, at 1.

100. NCSC MO MUNICIPAL COURTS, *supra* note 60, at 5; FERGUSON COMMISSION REPORT, *supra* note 10, at 32, 71; BETTER TOGETHER MUNICIPAL REPORT, *supra* note 74, at 5, 10.

- 3) That the Supreme Court require *yearly* implicit bias training for all judges *and court personnel* and create a mechanism for monitoring.¹⁰¹
- 4) That the Supreme Court implement a statewide judicial code of conduct for municipal court administrative and clerical employees and create a mechanism for monitoring.¹⁰²

101. Chief Justice Breckenridge recently stated that “judges of Missouri’s court system will receive implicit bias training as part of this year’s judicial education programs. Breckenridge 2016 State of the Judiciary Address, *supra* note 58. My recommendation would (1) require yearly training and (2) include court personnel. It should be undisputed that there is a need for implicit bias training not just of judges but of court personnel as well. I quote from the DOJ FERGUSON REPORT, *supra* note 13, at 72:

We have discovered evidence of racial bias in emails sent by Ferguson officials, all of whom are current employees, almost without exception through their official City of Ferguson email accounts, and apparently sent during work hours. These email exchanges involved several police and court supervisors, including FPD supervisors and commanders. The following emails are illustrative:

- A November 2008 email stated that President Barack Obama would not be President for very long because “what black man holds a steady job for four years.”
- A March 2010 email mocked African Americans through speech and familial stereotypes, using a story involving child support. One line from the email read: “I be so glad that dis be my last child support payment! Month after month, year after year, all dose payments!”
- An April 2011 email depicted President Barack Obama as a chimpanzee.
- A May 2011 email stated: “An African-American woman in New Orleans was admitted into the hospital for a pregnancy termination. Two weeks later she received a check for \$5,000. She phoned the hospital to ask who it was from. The hospital said, ‘Crimestoppers.’”
- A June 2011 email described a man seeking to obtain “welfare” for his dogs because they are “mixed in color, unemployed, lazy, can’t speak English and have no frigging clue who their Daddies are.”
- An October 2011 email included a photo of a bare-chested group of dancing women, apparently in Africa, with the caption, “Michelle Obama’s High School Reunion.”
- A December 2011 email included jokes that are based on offensive stereotypes about Muslims.

DOJ FERGUSON REPORT, *supra* note 13, at 72 (footnotes omitted). Of course, I have only cited a small portion of the type of bias that implicit bias training for judges and court personnel should address. There is no reason to believe these incidents are limited to Ferguson. Indeed, over the past two years we have seen, on the news and in social media, example after example, of similar emails from police departments and court personnel *throughout the nation*.

102. NCSC MO MUNICIPAL COURTS, *supra* note 60, at 14–15.

5) That the Supreme Court require training of all court personnel in the constitutional rights of the people who use the courts and education on the fundamental purposes of the courts and create a mechanism for monitoring.¹⁰³

6) That the Supreme Court require municipal judges to have and use uniform bench cards. The “*Draft Bench Card for Missouri Municipal Courts: Collection of Fines and Costs, Ability to Pay, and Alternatives to Fines and Costs*,” submitted by a witness at the public hearing in St. Louis on November 12, 2015, is a template the Court might adopt. Another template are the bench cards promulgated by the Ohio Supreme Court for municipal courts.¹⁰⁴

7) That the Supreme Court require substantial and increased guidance and oversight by the presiding circuit judges of the municipal courts, as required by statute and court rule, to assure that the presiding circuit judges adequately monitor and supervise all municipal divisions under their jurisdiction on these and all other statutory and rule requirements.

8) That the Supreme Court require municipal courts to operate “open courts” and *dignified* courtrooms and provide adequate notice to defendants and the public of their rights and responsibilities. The requirement of “open courts” should be construed not only to mandate that the courts are open to the public (including children and caretakers), but it should also be construed to include the elimination of secrecy as to policies and practices and to require that the courts be accessible, dignified, and suited to adequately and fairly handle the matters brought forth. This should require mandating that these part-time municipal courts be open at least twice a week and limiting the number of matters set and/or called for a particular

103. DOJ FERGUSON REPORT, *supra* note 13, at 72; FERGUSON COMMISSION REPORT, *supra* note 10 at 33, 89; NCSC MO MUNICIPAL COURTS, *supra* note 60, at 10–11.

104. *See, e.g.*, OFFICE OF JUDICIAL SERVICES, COLLECTION OF FINES AND COURT COSTS IN ADULT TRAIL COURTS (2015), available at <http://www.supremecourt.ohio.gov/Publications/JCS/finesCourtCosts.pdf>; *see also* Bret Crow, *Bench Card Offers Guidance on Collection of Court Fines, Costs*, COURT NEWS OHIO (Feb. 4, 2014), http://www.courtnewsOhio.gov/happening/2014/benchCards_020414.asp#.VtMatY-cGzc.

one court session. In addition, this would also require municipal courts to maintain fully functioning websites with correct information posted thereon; provide public defenders to people who are facing possible incarceration;¹⁰⁵ implement procedures and provide platforms that inform defendants of their rights (especially, but not limited to ability to pay guidelines), what legal procedures to expect, what the fine is, how to pay, where to pay, community service alternatives, and a place to call to get answers; and advise people of such information at court via on the record statements, pamphlets, courtroom postings, and online.¹⁰⁶

9) That the Supreme Court should, under its supervisory power, define constitutionally acceptable detention standards and mandate that all municipal court holding cells meet such minimum standards.¹⁰⁷

105. Missouri Supreme Court Rule 31.02 provides the law of who is entitled to a court appointed attorney:

(a) In all criminal cases the defendant shall have the right to appear and defend in person and by counsel. If any person charged with an offense, the conviction of which would **probably result in confinement**, shall be without counsel upon his first appearance before a judge, it shall be the duty of the court to advise him of his right to counsel, and of the willingness of the court to appoint counsel to represent him if he is unable to employ counsel. Upon a showing of indigency, it shall be the duty of the court to appoint counsel to represent him. If after being informed as to his rights, the defendant requests to proceed without the benefit of counsel, and the court finds that he has intelligently waived his right to have counsel, the court shall have no duty to appoint counsel. If at any stage of the proceedings it appears to the court in which the matter is then pending that because of the gravity of the offense charged and other circumstances affecting the defendant, the failure to appoint counsel may result in injustice to the defendant, the court shall then appoint counsel. Appointed counsel shall be allowed a reasonable time in which to prepare the defense.

This language is sufficient to cover the appointment of counsel to defendants in municipal courts who are at risk of confinement. If this is not true, the Court can simply amend the language of the Rule to include *persons charged with an offense, the conviction of which may result in confinement*.

106. See also FERGUSON COMMISSION REPORT, *supra* note 10, at 8, 82–83; see also NCSC MO MUNICIPAL COURTS, *supra* note 60, at 17–23.

107. The Ferguson Commission also recommended that:

Municipal courts shall provide all inmates held in any municipal jail with a toothbrush, toothpaste, hand soap, shower access, reasonably sanitary surroundings, exercise, reading materials, adequate medical care, and nutritious meals. Feminine hygiene

10) That the Supreme Court require presiding circuit judges to monitor all municipal divisions within their circuit on each of these important issues.

B) Consolidation of municipal divisions, including any authority of the Supreme Court to mandate consolidation:

The Final Report provides, after reviewing the various sections of Article V of the Constitution and “reading them in light of the overarching principle of separation of powers as declared in Article II, § 1, it is not plausible to conclude that the Supreme Court possesses the constitutional authority to order consolidation of the municipal divisions.” I disagree.

The Constitution does not specifically state that the Court can mandate consolidation. It similarly does not state that the Court *cannot* mandate consolidation. This is a matter of interpretation. I trust the Court would not have asked us to spend precious time thinking about this issue if it had the answer. I believe the plain meaning of the words supervise and superintending encompass the ability of the supervisor to condense and make more efficient, *i.e.*, to consolidate.

products shall be provided to inmates upon request. No person shall be charged any money for anytime spent in jail or for the provision of basic needs while in jail.

FERGUSON COMMISSION REPORT, *supra* note 10. This issue has also been raised as a constitutional violation in federal court. Specifically, in *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1036 (E.D. Mo. 2015), plaintiffs alleged:

They were forced to sleep on the floor in overcrowded cells smeared with feces, blood, and mucus; denied toothbrushes, toothpaste, soap, and feminine hygiene products; kept in the same clothes for days without access to a shower, laundry, or clean undergarments; kept in cold temperatures and forced to share thin blankets; routinely denied medical care and prescription medication; provided only honeybuns and potpies to eat; provided only a single source of water connected to the top of the toilet, which produced warm water with an “unpalatable stench”; and deprived of books, legal materials, exercise, television, internet, and natural light.

The trial court found these allegations “sufficient to state a plausible Fourth Amendment claim against the City.” *Fant v. City of Ferguson*, No. 4:15-CV-00253-AGF, 2015 WL 4232917, at *4 (E.D. Mo. July 13, 2015). The parts of the complaint relating to the cruel and unusual allegations survived the motion to dismiss, while other matters were dismissed. *Id.* Under the Court’s supervisory powers, it can set minimum constitutional standards for courts and holding cells.

The two provisions of the Missouri Constitution that are decisive on the issue are as follows.

Article V, § 4 of the Missouri Constitution states:

The Supreme Court shall ***have general superintending control over all courts*** and tribunals. Each district of the court of appeals shall have general superintending control over all courts and tribunals in its jurisdiction. The Supreme Court and districts of the court of appeals may issue and determine original remedial writs. ***Supervisory authority over all courts is vested in the Supreme Court which may make appropriate delegations of this power.***

Article V, § 5 of the Missouri Constitution provides:

The Supreme Court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended in whole or in part by a law limited to the purpose.

There is no separation of powers issue. I am not proposing that the Supreme Court ***abolish*** municipal courts. I am suggesting that, like any other “supervisor” or “superintendent,” the Court require consolidation of courtrooms, court services, court judges, court staff, and court records to make them more efficient and more just. Consolidation does not mean abolition. The Court can clearly implement rules that govern how the courts operate, where, how often, and under what procedural rules. Many other lawyers and commentators have similarly concluded.¹⁰⁸

108. See, e.g., NCSC MO MUNICIPAL COURTS, *supra* note 60, at 9–10; FERGUSON COMMISSION REPORT, *supra* note 10, at 33; POLICE EXECUTIVE RESEARCH FORUM, OVERCOMING THE CHALLENGES AND CREATING A REGIONAL APPROACH TO POLICING IN ST. LOUIS CITY AND COUNTY 10–14 (2015), available at <http://www.policeforum.org/>

Moreover, not all municipal courts would even be eligible for consolidation. By exercising its supervisory power, the Supreme Court could decide which districts would be eligible. So, for example, the Supreme Court could assert that the maximum number of municipal divisions in any circuit that can effectively be administered by one presiding circuit judge is 10, 15, 20, or 25 divisions. As noted earlier, in the 21st Judicial Circuit, there are 81 municipal courts; some are a square mile or less. Many, if not most, depend on revenue generated from the courts to fund their municipal operations.¹⁰⁹ The aggregate cost of these municipal courts totals nearly 16 million dollars.¹¹⁰ And, despite this exorbitant amount, they cannot even afford to operate the courts more than once or twice a month and usually not even for a full day! Moreover, many of these judges (some of whom are not even lawyers) are disposing of literally hundreds and sometimes over a thousand cases in a single half-day session. This is absolutely outrageous. One cannot even pretend that justice is being served under such circumstances. The municipal courts in this circuit would be a prime candidate for consolidation of courtrooms, court services, court staff, court recordkeeping, and court judges.¹¹¹

I recommend that the Court exercise its constitutional supervisory power over all courts and consolidate the municipal courts in the 21st Judicial Circuit. This can be accomplished in several ways:

- 1) The Supreme Court institute a consolidated regional court system for the 21st Judicial Circuit, where all of the

assets/stlouis.pdf (recommending three police districts in St. Louis County); Editorial, *For Real Court Reform, Look to Jennings, not Ferguson*, ST. LOUIS POST-DISPATCH (Aug. 28, 2015), available at http://www.stltoday.com/news/opinion/columns/the-platform/editorial-for-real-court-reform-look-to-jennings-not-ferguson/article_3644e988-5892-5af3-8aa8-86d1fed7e047.html; ARCHCITY WHITE PAPER, *supra* note 73, at 5; St. Louis Transcript of the Public Hearing.

109. *Circuit Courts of Missouri*, JUD. BRANCH OF ST. GOV'T, <https://www.courts.mo.gov/page.jsp?id=321> (last visited Mar. 12, 2016).

110. BETTER TOGETHER MUNICIPAL REPORT, *supra* note 74, app. 27 tbl.6. The total aggregate of St. Louis County Courts comes to \$15,843,552. *Id.* app. 29 tbl.6. This number underrepresents the total cost because *ten municipalities did not report court costs*. *Id.* app. 27–29 tbl.6.

111. Tony Messenger, *Missouri Supreme Court Faces Its Reputation-Defining Moment*, ST. LOUIS POST-DISPATCH (Feb. 19, 2016), http://www.stltoday.com/news/local/columns/tony-messenger/messenger-missouri-supreme-court-faces-its-reputation-defining-moment/article_0a26f1a9-f1d7-505b-90d2-0aff4c642644.html.

municipalities within the circuit share three or four full-time professional courts, geographically dispersed throughout St. Louis County, with three or four full-time judges, and the necessary full-time staff. The total cost of such a regional court system would amount to between \$6,000,000 and \$8,000,000. See attached Exhibit 4 from Better Together which provides the layout, operation and costs of this consolidated and more efficient system.¹¹²

2) Another alternative is for the Missouri Supreme Court to create a rule requiring that municipal judges in a first class county of over 900,000 “shall” be associate circuit judges. This will effectively reduce the number of municipal court judges, eliminate part-time judges, subject these new associate circuit judges to the same rules that other judges in the state have to abide by (full time; no practice of law), and allow more effective control and supervision over the courts by the presiding circuit judges. The work of the part-time judges in incorporated (and unincorporated) St. Louis County could be accomplished by three or four full-time associate circuit judges, at a cost far, far, far below the total aggregate costs of the 81 in the incorporated areas and the few in the unincorporated area of St. Louis County. If desired, these full-time associate circuit judges could “ride circuit,” among the municipalities that have appropriate and adequate facilities and staff, as is true for many of the 168 associate circuit judges who currently service municipal courts across the state.

3) A third alternative is for the Missouri Supreme Court to narrow the jurisdiction of the municipal courts and assign classes of case matters to a particular (set) of courts

112. *See infra* Exhibit 4. This document was prepared by Better Together and contains an example of how this can be done: 4 satellite courts with 3–4 courtrooms, operating full time, 5 days a week, at a fraction of the cost of the current fragmented system in the incorporated areas of St. Louis County, along the lines of what is currently in place for the unincorporated area of St. Louis County. Additionally, in April of 2015, a team of Washington University MBA and business students proposed a regional court system at the Olin School of Business's annual Taylor Community Consulting Program. The results are available at www.archcitydefenders.org. The Court can adopt these models or hire experts to study this matter and propose solutions.

(determining what courts will adjudicate particular matters involves court procedure, not substance); *i.e.*, assign cases initiated by a municipal government to be transferred to associate court divisions. Mo. Rev. State § 479.040 is not inconsistent.¹¹³

A) Use of Warrants/process for setting bonds & time of incarceration

“[W]hen we’re talking about warrants, we’re very often talking about someone who was simply unable to pay a traffic fine or a citation for a code violation and missed a court date. . . . Warrants are so prolific that 27 municipalities in St. Louis County have accrued more outstanding warrants than they have residents.”¹¹⁴

In this area, I recommend the following:

1) That the Supreme Court require municipal prosecutors to review open cases and dismiss those founded on failure to appear and once dismissed, the warrants be recalled and canceled. Indeed, whenever a case is dismissed, and the review of cases that should be dismissed must occur regularly (*i.e.*, at

113. Missouri Revised Statute section 479.040 provides:

Nothing in this subsection shall preclude the transfer or assignment of another judge to hear and determine a case or class of cases when otherwise authorized by provisions of the constitution, law, or court rule.

MO. REV. STAT. § 479.040 (2015). Additionally, Missouri Revised Statute section 478.230, provides that cases may be transferred away from the jurisdiction of municipal judges:

A municipal judge may hear and determine municipal ordinance violation cases of the municipality or municipalities making provision for the particular municipal judge. *The provisions of this section authorizing the hearing and determination of particular cases or classes of cases by municipal judges shall be subject to the transfer, assignment, and disqualification provisions contained in article V of the constitution, in provisions of law, or in court rules which are authorized by the constitution or by law.* (Emphasis added).

MO. REV. STAT. § 478.230 (2015).

114. *Sew Better Together Study Links Fragmentation to Citizen Disengagement*, BETTER TOGETHER (Jan. 27, 2016), http://www.bettertogetherstl.com/genadmin4_pressrelease?utm_content=buffer8f3a8&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

least once a year), the warrants must be recalled and canceled accordingly.

2) That the Supreme Court adopt uniform procedures for ability to pay determinations and institute strong incentives for municipal court judges to conduct meaningful ability to pay hearings.

3) I incorporate herein by this reference the recommendations contained in the Ferguson Commission Report on these issues.¹¹⁵

4) That the Supreme Court eliminate arrest warrants and cash bonds. Confinement should only be an option for violence or public safety related matters, repeated failures to appear and failures to pay after meaningful determination that the person is not indigent only in case of *absolute last resort*.¹¹⁶

5) That the Supreme Court require presiding circuit judges to monitor all municipal divisions within their circuit on these matters.

B) Enforceability of judgments and remedies for nonpayment:

1) As per Article IX, § 7 of the Missouri Constitution, municipal fines must be deposited into state treasury school funds and cannot be retained by municipalities. Article IX, § 7 of the Missouri Constitution provides:

All interest accruing from investment of the county school fund, the clear *proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state*, the net proceeds from the sale of estrays and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law.

I believe fines collected by municipal courts are collected for breaches of state penal laws. If such fines are penal in nature, then the Missouri Supreme Court has already spoken. In *Missouri Gaming*

115. See FERGUSON COMMISSION REPORT, *supra* note 10, at 30, 79.

116. See *id.* at 31, 71; DOJ FERGUSON REPORT, *supra* note 13 at 99.

Comm'n v. Missouri Veteran's Comm'n, 951 S.W.2d 611 (Mo. banc 1997), the Court stated:

[W]here fines and penalties are prescribed as a punishment for a violation of public rights, i.e., crimes, and such penalties or fines are to be recovered by public authority, the disposition of such recovered fines or penalties comes within the constitutional provision [article IX, section 7] . . . and they may not be turned [sic] away from the prescribed constitutional course.¹¹⁷

Double jeopardy attaches for fines levied in municipal courts; therefore they are penal laws.¹¹⁸ Thus, the statute allowing municipal courts to retain said funds is unconstitutional. The municipal courts should be ordered to turn over money they receive from fines to the school fund.

Of course, the Constitution does allow municipalities to keep fines under certain circumstances. Specifically:

A municipal corporation with a population of under four hundred thousand shall have the right to enforce its ordinances and to conduct prosecutions before an associate circuit judge in the absence of a municipal judge and in appellate courts under the process authorized or provided by this article *and shall receive and retain any fines to which it may be entitled*. All court costs shall be paid to and deposited monthly in the state treasury. No filing fees shall be charged in such prosecutions unless and until provided for by a law enacted after the adoption of this article.¹¹⁹

None of those circumstances apply here. Thus, I recommend that the Supreme Court order municipalities to turn over all such fines to the school fund.

117. *Mo. Gaming Comm'n v. Mo. Veterans' Comm'n*, 951 S.W.2d 611, 613 (Mo. 1997) (quoting *State ex rel. Rodes v. Warner*, 94 S.W. 962, 966 (Mo. 1906)).

118. *Weaver v. Schaaf*, 520 S.W.2d 58, 62 (Mo. 1975); *see also Kansas City v. Bott*, 509 S.W.2d 42, 47 (Mo. 1974); *State v. Clark*, 263 S.W.3d 666, 674 (Mo. Ct. App. 2008).

119. MO. CONST. art. V, § 27(16) (2015) (emphasis added).

1) If the Missouri Supreme Court believes that the fines are constitutional, then:

a. Debts in municipal courts should be converted to civil debts and paid via civil debt collection mechanisms (tax refund intercepts; garnishments, etc.).¹²⁰

b. The Supreme Court put procedures in place that will require municipal courts to consider community service and other alternative payment vehicles.¹²¹

c. That the Supreme Court consider doing everything and anything in its power to repair community relations, rebuild public trust, and restore integrity in the courts as centers of justice rather than revenue collection centers. The Court might consider the creation of community justice centers as recommended by the Ferguson Commission, incorporated herein by this reference¹²²

d. The Supreme Court eliminate the suspension of drivers' licenses for minor traffic offenses. A driver's license is not a privilege for most adults in this state. It is virtually a required (and for most adults the *only*) means of transportation. We are kidding ourselves if we think we live in a place with anything close to adequate public transportation.¹²³ The pictures in Exhibit 5 are of bus stops on Lindbergh Blvd near the Dorsett exit. I took these pictures between February 18 and 24 of 2016. You are looking at bus stops on what is, in effect, a highway. It is a potential death trap. There are no sidewalks. People literally have to walk through hills, grass, and mud in rain, snow and ice in winter, climb over rails, to then stand on a highway, uncovered as they wait for a bus. God forbid one has

120. FERGUSON COMMISSION REPORT, *supra* note 10, at 31.

121. *Id.* at 31, 86; BETTER TOGETHER MUNICIPAL REPORT, *supra* note 74, at 5, 15; DOJ FERGUSON REPORT, *supra* note 13, at 99.

122. Compare FERGUSON COMMISSION REPORT, *supra* note 10, at 32, with Karen Tokarz & Sam Stragand, *Community Justice Courts Can Be an Innovative Reform*, ST. LOUIS POST-DISPATCH (May 5, 2016), http://m.stltoday.com/news/opinion/community-justice-courts-can-be-an-innovative-reform/article_96a59f74-f1cd-5aff-802e-014955831e69.html?mobile_touch=true.

123. See *infra* Exhibit 5.

a disability; or multiple packages to carry or children to manage. Immediate relief must be provided for people to obtain hardship licenses to get to work, pick up children, cash/deposit checks. And yes, this practice affects Blacks and the poor in our state at disproportionate rates. The practice should be prohibited.¹²⁴ There are mechanisms in place under Missouri law for a person to apply for and obtain a hardship license. That process can take at least 20 days. That is about 19 days after the person may have already lost their job. The Court needs to assure a more immediate option.

e. The Supreme Court require presiding circuit judges to monitor all municipal divisions within their circuit on these matters.

LEGISLATIVE ACTION:

In addition to the Recommendations of the Working Group for the Court, I would also ask the Court to consider the following recommendations to the Legislature:

- a) Consolidate the municipal courts in the 21st Judicial Circuit (or require municipal judges in St. Louis County to be associate circuit judges), if the Supreme Court does not believe it has the power to do so;
- b) Institute one cap on revenue retention for all of Missouri municipalities (not 12.5% in some places and 20% in St. Louis County); and
- c) Apply the cap apply to all municipal code violations not just minor traffic violations.¹²⁵

124. See *Not Just Ferguson—How Traffic Courts Drive Inequality in California*, LAW COMMITTEE FOR C.R. OF SAN FRANCISCO BAY AREA, <http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/> (last visited Mar. 12, 2016). See also Lee Romney, *Driver's License Suspensions Push Poor Deeper into Poverty, Report Says*, L.A. TIMES (Apr. 8, 2015, 4:00 AM), <http://www.latimes.com/local/california/la-me-license-suspensions-20150408-story.html>.

125. I understand that this has been proposed in recent legislation.

EXHIBIT 1

**SUPREME COURT OF MISSOURI****en banc**

May 14, 2015

In re: Supreme Court Municipal Division Work Group

ORDER

There is hereby established a "Supreme Court Municipal Division Work Group." The work group will assist the Court by reviewing all matters relevant to practice in the municipal divisions of the circuit court and making recommendations concerning any appropriate changes to court rules or practices that can be implemented by the Court as well as any suggestions that may require legislation or action by other entities.

The work group will review the applicable constitutional provisions; statutes; ethical, procedural and operating court rules; recently passed legislation; and such other materials as the work group believes would be helpful to its study.

The Court also will furnish the work group with reports from the United States Department of Justice, the current judge assigned to the Ferguson municipal division and the office of state courts administrator, all comments received pursuant to the Court's invitation to make comments on municipal divisions, as well as other reports and suggestions received by the Court.

The work group also is requested to hold one or more public hearings and to consult with interested parties.

The work group shall be composed of the following:

Kathryn P. Banks, St. Louis, Missouri;
Ann K. Covington, Columbia, Missouri;
The Honorable Karl DeMarce, Judge, First Judicial Circuit;
The Honorable Sly James, Mayor, Kansas City, Missouri;
Professor Kimberly Norwood, Washington University, St. Louis, Missouri;
Edward D. Robertson, Jr., Jefferson City, Missouri;
Booker T. Shaw, St. Louis, Missouri;
Rueben Shelton, St. Louis, Missouri;
The Honorable Todd Thornhill, Chief Judge, Springfield Municipal
Division.

Edward D. Robertson, Jr., Ann K. Covington, and Booker T. Shaw are appointed chairs of the work group.

The committee shall file an interim report to this Court on or before September 1, 2015, and, if possible, a final report on or before December 1, 2015.

The committee shall meet at such times and places as determined by the chairs, and members will be reimbursed actual expenses as authorized for state employees.

Day – to – Day

MARY R. RUSSELL
Chief Justice

EXHIBIT 2

MUNICIPALITIES WITH COURTS IN THE 21ST JUDICIAL DISTRICT,
STATE OF MISSOURI & THE
SALARIES PAID TO THEIR MUNICIPAL COURT JUDGES &
PROSECUTORS¹²⁶

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY ¹²⁷	PROSECUTOR SALARY ¹²⁸	TIMES COURT MEETS/ MONTH
Ballwin	30,498	2.46%	\$1,130 per month (13,560 per year)	\$1,190 per court session	2
Bella Villa	726	1.51%	\$500 per month (6,000 per year)	\$780 per month (9,360 per year)	1
Bellefontaine	13,193	72.67%	\$500 per session	\$850 per session	2
Bellerive	189	43.09%	No data provided	\$300 per session	1
Bel-Nor	1,490	46.43%	No data provided	No data provided	1
Bel-Ridge	2,726	83.12%	\$1,550 per month (18,600 per year)	\$1,550 per month (18,600 per year)	3
Berkeley	9,099	81.82%	\$36,000 per year	\$70,000 per year	2
Beverly Hills	570	92.68%	No data provided	No data provided	1
Black Jack	6,933	81.21%	\$375 per session	\$400 per session	2

126. Not all municipalities responded to my Sunshine request for salary information and in a majority of cases it took a great deal of effort to obtain responses. There is another article that must be written dealing with the public's right to documents under established laws and how the public can obtain compliance without obstreperousness at every level imaginable. This chart is the author's best attempt to record the information the author was able to collect. All submissions are on file with author.

127. Does not include fees paid to provisional judges.

128. Figures below, with rare exceptions, will not include preparation time, xerox & other costs or per hour charges to litigate cases in Circuit Court; with few exceptions, there is also a separate salary for the city attorney. In some cases the prosecutor & city attorney are 1 in the same.

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY ¹²⁷	PROSECUTOR SALARY ¹²⁸	TIMES COURT MEETS/MONTH
Breckenridge Hills	4,648	32.70%	Unexplained variance of \$700 per month for some months and \$1,050 per month for other months	\$325 per session although city attorney also indicated that the \$2014 records were lost in a basement flood.	2
Brentwood	8,032	3.10%	\$1,250 per month (\$15,000 per year)	\$20,000 per year	2
Bridgeton	11,686	18.72%	\$24,000 per year	\$1,000 per year	2
Calverton Park	1,291	42.23%	\$663.11 per month (\$7,957.32 per year)	\$663.11 per month (\$7,957.32 per year)	2
Charlack	1,366	35.44%	Two judges at \$750 per month (\$9,000 per year)	\$1,100 per month (\$13,200 per year)	2
Chesterfield	47,749	2.65%	\$33,750 per year	\$40,500 per year \$6,000 per year (asst.)	3
Clarkson Valley	2,645	1.48%	\$800 per month (\$9,600 per year)	\$750 per month (\$9,000 per year)	1
Clayton	15,884	8.19%	\$600 per session	\$29,000 per year	3
Cool Valley	1,193	84.54%	No data provided	No data provided	1
Country Club Hills	2,486	87.13%	\$12,000 per year	\$9,600 per year	2
Crestwood	11,942	1.60%	\$1,000 per month (\$12,000 per year)	\$770 per month (\$9,240 per year)	3
Creve Coeur	17,865	7.17%	\$20,000 per year	\$38,000 per year	4
Dellwood	5,004	79.16%	\$650 per month (\$7,800 per year)	\$650 per month (\$7,800 per year)	1

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY¹²⁷	PROSECUTOR SALARY¹²⁸	TIMES COURT MEETS/MONTH
Des Peres	8,466	0.94%	\$14,400 per year	\$14,400 per year	1
Edmundson	837	26.38%	\$350 per session	\$800 per month (\$9,600 per year)	2
Ellisville	9,173	1.89%	\$1,365 per month (\$16,380 per year)	\$180 per hr/partner \$150 per hr/associate \$95 per hr/paralegal	1
Eureka	10,467	0.81%	\$350 per case session	\$90 per hour	2
Fenton	4,045	0.37%	\$1,000 per month (\$12,000 per year)	\$1,000 per month (\$12,000 per year)	1
Ferguson	21,111	67.43%			3
Flordell Hills	819	90.75%	\$550 per month (\$6,600 per year)	\$500 per month (\$6,000 per year)	1
Florissant	52,363	26.76%	\$55,000 per year	\$551 per court session	7
Frontenac	3,518	2.64%	\$1,000 per month (\$12,000 per year)	\$1,500 per month (\$18,000 per year)	1
Glendale	5,921	0.74%	\$600 per month (\$7,200 per year)	\$600 per month (\$7,200 per year)	1
Grantwood Village	866	0.58%	No data provided	No data provided	Every other month (6 times per year)
Greendale	654	68.51%	\$275 per month (\$3,300 per year)	\$450 per month (\$5,400 per year)	
Hanley Hills	2,103	85.29%	No data provided	No data provided	2
Hazelwood	25,668	30.48%	No data provided	No data provided	4

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY¹²⁷	PROSECUTOR SALARY¹²⁸	TIMES COURT MEETS/MONTH
Hillsdale	1,518	95.94%	\$10,400 per year	\$9,000 per year	2
Jennings	14,756	89.79%	\$14,700 per year	\$11,785.44 per year	1
Kinloch	299	94.63%	\$500 per session	\$500 per month (\$6,000 per year) w/ add'l \$250 per night prosecutor attends a session	1
Kirkwood	27,596	7.00%	\$400 per session	\$4,250 per month (\$51,000 per year)	4
Ladue	8,560	0.99%	\$9,000 per year	\$12,000 per year	1
Lakeshire	1,427	2.86%	No data provided	No data provided	
Manchester	18,186	3.12%	\$12,000 per month (\$14,400 per year)	\$1,300 per month (\$15,600 per year)	2
Maplewood	7,968	17.20%	\$15,998 per year	\$21,907 per year	3
Marlborough	2,188	1.51%	\$556.50 per month (\$6,678 per year)	\$916.60 per month (\$10,999.20 per year)	1
Maryland Heights	27,436	11.87%	\$32,000 per year	\$537 per court docket; \$658 per trial docket; \$146 per hr prep & special appearances	4
Moline Acres	2,439	92.10%	\$13,200 per year	\$13,800 per year	2
Normandy	4,987	69.75%	\$1,800 per month (\$21,600 per year)	\$1,500 per month (\$18,000 per year)	2
Northwoods	4,207	93.94%	No data provided	No data provided	2

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY¹²⁷	PROSECUTOR SALARY¹²⁸	TIMES COURT MEETS/MONTH
Oakland	1,381	2.17%	\$3,700 per year	\$10,000 per year	1
Olivette	7,823	23.89%	\$800 per month (\$9,600 per year)	\$850 per month (\$10,200 year)	2
Overland	16,008	16.36%	\$21,600 per year	\$16,500 per year	3
Pacific	7,077	8.43%	\$6,755 per year	\$110 per hour	
Pagedale	3,307	93.43%	\$400 per session	\$400 per session	2
Pine Lawn	3,425	96.40%	\$1,900 per month	\$1,200 per month	2
Richmond Heights	8,508	11.65%	\$25,000 per year	\$30,000 per year	2
Riverview	2,840	69.89%	No data provided	No data provided	1
Rock Hill	4,639	22.96%	\$11,740 per year	\$11,740 per year	2
Shrewsbury	6,219	3.61%	\$15,510 per year	\$18,912 per year	2
St. Ann	12,971	22.11%	\$2,000 per month (\$24,000 per year)	\$1,500 per month (\$18,000 per year)	4
St. John	6,486	24.29%	\$1,807 per month (\$21,684 per year)	\$1,700 per month (\$20,400 per year)	2
Sunset Hills	8,522	1.51%	\$1,200 per month (\$14,400 per year)	\$1,200 per month (\$14,400 per year)	3
Sycamore Hills	664	12.28%	No courts; contracts w/ City of St. John at \$4,068.88 per month for all court services (\$48,826.56 per year)	N/A	N/A
Town & Country	10,922	2.59%	\$1,500 per month (\$18,000 per year)	\$3,000 per month (\$36,000 per year)	2

MUNICIPALITIES WITH COURTS	POPULATION (2013)	PERCENTAGE BLACK	JUDGE SALARY ¹²⁷	PROSECUTOR SALARY ¹²⁸	TIMES COURT MEETS/MONTH
University City	35,148	41.09%	\$500 per session (\$17,500 per year)	\$30,000 per year	2
Uplands Park	447	96.40%	\$375 per quarter	Services volunteered	1
Valley Park	6,986	3.96%	\$8,400 per year	\$9,600 per year	1
Velda City	1,410	95.42%	No data provided	No data provided	3
Velda Village Hills [†]	1,052	98.48%	\$5,500 per year	\$11,873.51 per year	1
Vinita Park	1,881	64.89%	\$1,100 per month (\$13,200 per year)	\$600 per session	2
Vinita Terrace	278	72.92%	\$500 per month (\$6,000 per year)	\$500 per month (\$6,000 per year)	1
Warson Woods	1,955	0.46%	\$250 per month (\$3,000 per year)	\$200 per month (\$2,400 per year)	1
Webster Groves	23,203	6.62%	\$1,384 per month (\$16,608 per year (\$692 biweekly)	\$3,000 per month (\$36,000 per year)	2
Wellston	2,331	95.42%	\$1,000 per month (\$12,000 per year)	\$1,200 per month (\$14,400 per year)	3
Wildwood	35,787	1.66%	\$1,500 per month (\$18,000 per year)	\$1,600 per month (\$19,200 per year)	2
Winchester	1,546	1.23%	\$607 per month (\$7,284 per year)	\$1,734 per month (\$20,808 per year)	1
Woodson Terrace	4,065	20.77%	\$18,520 per year	\$17,656 per year	1

[†] Velda Village Hills submitted Form 1099s for 2014 and 2015. These figures are from the 2014 Form 1099s.

EXHIBIT 3

THE POTENTIAL FOR CONFLICTS OF INTEREST WITHIN
ST. LOUIS COUNTY MUNICIPAL COURTS
(INCORPORATED AREAS)¹²⁹

In order to illustrate the potential for conflicts in the St. Louis County Municipal Court system, see the following February calendar for just one law firm, the Clayton, Missouri law firm of Curtis, Heinz, Garrett, and O'Keefe, which provides multiple judges, city attorneys, and prosecutors for multiple municipalities in the incorporated areas of St. Louis County. City council meetings reflect meetings that the firm would attend as city attorney for that municipality. Also reflected are municipal court sessions where the firm serves as judge or prosecutor. What this calendar demonstrates is the impossibility, under the current system, of this firm avoiding conflicts of interest.

Monday, Feb. 1, 2016

7 pm	Brentwood—City Council Meeting
7:30 pm	Hazelwood—City Council Meeting
7:30 pm	Richmond Heights—City Council Meeting
7:30 pm	St. Ann—City Council Meeting

Tuesday, Feb. 2, 2016

6 pm	Bel-Ridge—City Council Meeting
6:30 pm	Hazelwood—Municipal Court
6:30 pm	Webster Groves—City Council Meeting
6:30 pm	St. Ann—Municipal Court
7 pm	Charlack—City Council Meeting
7 pm	Creve Coeur—City Council Meeting

129. E-mail from David Leipholtz, Dir. of Community Based Studies, Better Together, to Kimberly Norwood, Professor Washington University School of Law (Feb. 24, 2016, 9:02 AM) (on file with author).

Wednesday, Feb. 3, 2016

5 pm Velda City—Municipal Court
6 pm Bel-Nor—Municipal Court
6 pm Normandy—Municipal Court

Thursday, Feb. 4, 2016

7 pm Normandy—City Council
7 pm Sunset Hills—Municipal Court
7:30 pm Bellefontaine Neighbors—City Council
Meeting

Friday, Feb. 5, 2016

12 pm St. Ann—Municipal Court

Monday, Feb. 8, 2016

6 pm Oakland—Municipal Court
7 pm Ballwin—City Council Meeting
7 pm Des Peres—City Council Meeting
7 pm Lakeshire—City Council Meeting
7 pm Oakland—City Council Meeting
7 pm Town & Country—City Council Meeting

Tuesday, Feb. 9, 2016

6:30 pm Hazelwood—Municipal Court
6:30 pm St. Ann—Municipal Court
7 pm Clayton—City Council Meeting
7 pm Edmundson—City Council Meeting
7 pm Sunset Hills—City Council Meeting
7:30 pm Northwoods—City Council Meeting

Wednesday, Feb. 10, 2016

9 am Ferguson—Municipal Court
9 am Velda City—Municipal Court
5:30 pm Webster Groves—Municipal Court
6 pm Ladue—Municipal Court
6:30 pm Country Club Hills—City Council Meeting
6:30 pm St. John—Municipal Court
7:30 pm Velda City—City Council Meeting

Thursday, Feb. 11, 2016

12 pm St. Ann—Municipal Court
7 pm Sunset Hills—Municipal Court

Monday, Feb. 15, 2016

6 pm Ferguson—Municipal Court
7 pm Brentwood—City Council Meeting
7:30 pm Bel-Nor—City Council Meeting
7:30 pm Hazelwood—City Council
7:30 pm Richmond Heights—City Council Meeting

Tuesday, Feb. 16, 2016

9 am Ferguson—Municipal Court
6:30 pm Hazelwood—Municipal Court
6:30 pm Webster Groves—City Council Meeting
6:30 pm St. Ann—Municipal Court
7 pm Frontenac—City Council Meeting

Wednesday, Feb. 17, 2016

5:30 pm Frontenac—Municipal Court
6 pm Normandy—Municipal Court

Thursday, Feb. 18, 2016

6:30 pm Lakeshire—Municipal Court
6:30 pm St. Ann—Municipal Court
7 pm Normandy—City Council Meeting
7 pm Sunset Hills—Municipal Court
7:30 pm Bellefontaine Neighbors—City Council Meeting

Monday, Feb. 22, 2016

6 pm Ferguson—Municipal Court
7 pm Ballwin—City Council Meeting
7 pm Calverton Park—City Council Meeting
7 pm Creve Coeur—City Council Meeting
7 pm Des Peres—City Council Meeting
7 pm Town & Country—City Council Meeting

7:30 pm Bellerive Acres—City Council Meeting
7:30 pm Richmond Heights—City Council Meeting

Tuesday, Feb. 23, 2016

9 am Ferguson—Municipal Court
6:30 pm Hazelwood—Municipal Court
6:30 pm St. Ann—Municipal Court
7 pm Clayton—City Council Meeting
7 pm Ferguson—City Council Meeting
7:30 pm Northwood—City Council Meeting

Wednesday, Feb. 24, 2016

5 pm Velda City—Municipal Court
6 pm Webster Groves—Municipal Court
6:30 pm St. John—Municipal Court
7:30 pm Cool Valley—City Council Meeting

Saturday, Feb. 27, 2016

8:30 am St. Ann—Municipal Court

EXHIBIT 4

**ST. LOUIS COUNTY MUNICIPAL COURTS
DRAFT PLAN FOR CONSOLIDATION¹³⁰**INTRODUCTION

For over a year, numerous studies and reports have shed light on the dysfunction present throughout the municipal courts in St. Louis County. Conflicts of interests among attorneys acting in the capacity of judge, prosecutor, and private attorneys within this system are abundant, as are numerous reports of lines wrapped around court houses that attempt to clear hundreds of cases in one evening. While the passage of Senate Bill 5 provides important reforms to the current system, such critical reforms require meaningful oversight to ensure proper implementation—an impossibility in the current system of 81 courts.

Over the course of time, municipal courts in St. Louis County have come to be viewed by many as flawed if not completely illegitimate. The establishment of a system of fulltime, professional courts is an important step in reestablishing the faith of the citizens the courts are meant to serve. Doing so requires a visible shift in structure and function. What follows is a condensed overview of reforms that can achieve that necessary shift through professional, fulltime staff, improved facilities, and a new focus on restoring the faith of the citizenry in municipal courts throughout St. Louis County.

130. *Id.*

ISSUES WITH THE CURRENT SYSTEM

Oversight

Missouri's framework for municipal-court oversight provides administrative power to a presiding judge in each of the forty-five circuit courts of Missouri. While this mechanism for oversight appears sound, in a highly fragmented region such as St. Louis County, it becomes completely untenable due to the sheer number of courts. To put this in perspective: A judicial circuit in Missouri contains 8.6 municipal court divisions on average. St. Louis County's circuit contains 81 municipal court divisions. So, the presiding judge of St. Louis County's circuit courts must oversee nearly ten times the number of courts and judges as an average presiding judge in Missouri. This flaw in the oversight structure manifested itself in a number of problems. These problems did not manifest themselves for a lack of competence at the circuit level, but rather stemmed from a flawed structure of oversight. While numerous reforms have been made to the courts both within and at the legislative level, the flawed structure that enabled these issues remains in place and with it a likelihood that issues, new and old, will emerge.

POTENTIAL TO TURN A WEAKNESS INTO A STRENGTH

The municipal court system in St. Louis County has come to serve as a symbol of division and mistrust in many communities. By consolidating the courts, proper supervision will finally be possible. It will also provide over \$8 million in savings and with that savings the opportunity to improve and modernize the current system. Just as importantly the focus of the system could shift from generating revenue to serving as a point of intervention as in King County Washington,¹³¹ which embodies specialized "problem solving courts," as well as technological improvements.

Often, an appearance in court can reflect a larger issue that must be addressed to prevent further violations. King County employs

131. *Information About King County District Court*, KING COUNTY (July 24, 2015), <http://www.kingcounty.gov/courts/district-court/about.aspx>.

specialty veteran's courts, mental health courts, and domestic violence courts with this in mind. These specialty courts permit intervention in complex cases involving some of the most vulnerable members of the population. Through the consolidation and reform of municipal courts in St. Louis County, an extensive system of specialty courts could be established with the goal of addressing certain cases at their root and preventing a cycle of noncompliance and debt.

Additionally, a mere fraction of the savings from the new consolidated system would allow for technological improvements similar to those in King County: automated payment, online mitigation, rescheduling of a court date and location, online court information, and e-forms. Currently, throughout the St. Louis County Circuit, there are entire municipalities that do not have a website let alone municipal court sites with information or automation. In fact, the system is so archaic in some municipalities that reporters and defendants have shown up to court only to find it had been cancelled.¹³²

Budget and Savings

Better Together's 2014 report on municipal courts found that municipal courts in St. Louis County operated at a cost of \$13,616,552.¹³³ Consolidating the courts into 4 divisions, with 4 full-time courtrooms staffed by full-time judges, prosecutors, and public defenders in each division along with 2 social workers and support staff in each division would operate at less than half the current cost. What follows is a breakdown of the staff and salaries in a consolidated system.

132. *Small Town Sued by Mo. Attorney General No-Shows for Traffic Court*, CBS RADIO INC. (Dec. 19, 2014, 12:15 PM), <http://stlouis.cbslocal.com/2014/12/19/small-town-sued-by-mo-attorney-general-no-shows-for-traffic-court/>.

133. In the BETTER TOGETHER MUNICIPAL REPORT, *supra* note 74, the \$15,843.552 figure includes the operating cost for the City of St. Louis at \$2,227,000. Once this amount is subtracted, the cost for the operation of the St. Louis county municipal courts of \$13,616.552 remains. See E-mail from Dave Leipholtz, Dir. of Community Based Studies, Better Together, to Kimberly Norwood, Professor at Washington University School of Law (Apr. 25, 2016, 10:30 AM) (on file with author).

DIVISION STAFFING

Position	Salary	# of Positions Per Division	Total Salary
Judge	\$80,000	4	\$320,000
Prosecutor	\$50,000	4	\$200,000
Public Defender	\$50,000	4	\$200,000
Bailiff	\$40,000	4	\$160,000
Clerk	\$45,000	4	\$180,000
Social Worker	\$50,000	2	\$100,000
Social Work Admin.	\$40,000	1	\$40,000
TOTAL COST PER DIVISION			\$1,200,000

Two positions likely stand out in the above table: public defender and social worker. Those positions serve two purposes. First, the public defender will give citizens an advocate and someone who at the very least can explain their options. While for some, municipal court fines are an inconvenience, for others they can lead to a life altering financial spiral. A public defender will serve as a much needed safeguard in a system that has lost the faith of many citizens. Social workers can implement public service options in lieu of fines, and more importantly, work with individuals whose lack of compliance is a symptom of a much larger issue. These positions cannot be dismissed as unnecessary. In St. Louis County 21 municipalities received 20% or more of their general revenue from fines and fees. The populations of those municipalities were on average 62% African-American and 22% below the poverty line. That is more than double the percentages for St. Louis County as a whole. The current system disproportionately impacts poor, black communities. Consolidation shifts the focus from extracting revenue from citizens to bringing them into compliance and getting them back

on their feet, an initial benefit for them and a long-term benefit for the region.

With a total of four divisions, the consolidated system would operate at \$4.8 million of salaries and benefits with a facility operation cost of \$815,000 for a total cost of \$5,615,000 annually, an annual savings of \$8,001,552. The result of this consolidated system would be the return to a focus on justice and compliance, as well as an overall financial savings for citizens across the region.

Caseload

Under the current part-time municipal court system many municipalities have court once or twice a month and force over 400 cases into one evening session. This leads to lines wrapped outside of facilities and an experience that further disenfranchises citizens. What follows is the current schedule and average caseload in municipalities across St. Louis County.¹³⁴

MUNICIPAL COURT	NUMBER OF SESSIONS PER MONTH	TOTAL CASES FILED	AVERAGE NUMBER OF CASES PER DOCKET
BALLWIN	2	9,006	375
BELLA VILLA	1	7,053	588
BELLEFONTAINE NEIGHBORS	2	7,981	333
BEL-NOR	1	1,613	134
BEL-RIDGE		7,937	
BERKELEY	2	11,767	490
BEVERLY HILLS	1	4,343	362
BLACK JACK	2	1,063	44
BRECKENRIDGE HILLS	2	6,468	270
BRENTWOOD	2	7,161	298
BRIDGETON	2	4,423	184
CALVERTON PARK	2	7,493	312

134. BETTER TOGETHER MUNICIPAL REPORT, *supra* note 74, app. 33-34 tbl.8.

MUNICIPAL COURT	NUMBER OF SESSIONS PER MONTH	TOTAL CASES FILED	AVERAGE NUMBER OF CASES PER DOCKET
CHARLACK	2	3,751	156
CHESTERFIELD	3	13,866	385
CLARKSON VALLEY	1	1,500	125
CLAYTON	2	7,884	329
COOL VALLEY	1	9,276	773
COUNTRY CLUB HILLS	2	9,113	380
CRESTWOOD	3	2,297	64
CREVE COEUR	4	20,003	417
DELLWOOD	1	4,127	344
DES PERES	1	4,171	348
EDMUNDSON	2	5,888	245
ELLISVILLE	1	6,866	572
EUREKA	2	1,192	50
FENTON	1	4,997	416
FERGUSON	3	23,794	661
FLORDELL HILLS	1	3,474	290
FLORISSANT			
FRONTENAC	1	4,225	352
GLENDALE	1	1,682	140
HANLEY HILLS	2	1,340	56
HAZELWOOD	4	17,597	367
HILLSDALE	2	3,750	156
JENNINGS	1	6,745	562
KINLOCH	1	109	9
KIRKWOOD	4	4,503	94
LADUE	1	3,589	299
MANCHESTER	2	4,779	199
MAPLEWOOD	3	11,915	331
MARLBOROUGH	1	920	77
MARYLAND HEIGHTS	4	16,809	350

MUNICIPAL COURT	NUMBER OF SESSIONS PER MONTH	TOTAL CASES FILED	AVERAGE NUMBER OF CASES PER DOCKET
MOLINE ACRES	2	694	29
NORMANDY	2	10,401	433
NORTHWOODS	2	5,990	250
OAKLAND	1	583	49
OLIVETTE	2	3,597	150
OVERLAND	3	6,528	181
PAGEDALE	2	5,781	241
PINE LAWN	2	23,037	960
RICHMOND HEIGHTS	2	8,549	356
RIVERVIEW	1	2,972	248
ROCK HILL	2	6,159	257
SHREWSBURY	2	4,572	191
SAINT ANN		28,071	
SAINT JOHN	2	13,663	569
SUNSET HILLS	3	3,609	100
TOWN & COUNTRY	2	7,941	331
UNIVERSITY CITY	2	6,200	258
UPLANDS PARK	1	1,991	166
VALLEY PARK	1	2,375	198
VELDA CITY	3	5,509	153
VELDA VILLAGE HILLS	1	564	47
VINITA PARK	2	3,490	145
VINITA TERRACE	1	812	68
WARSON WOODS	1	450	38
WEBSTER GROVES	2	8,386	349
WELLSTON	3	5,854	163
WILDWOOD	2	6,030	251
WINCHESTER	1	622	52
WOODSON TERRACE	1	2,920	243

Based on the current municipal caseload in St. Louis County (roughly 483,000 annually), a consolidated system of 16 full-time courts would be able to process roughly ten cases an hour in front of a judge, rather than over 100 cases an hour as in some current municipal courts, many of which employ clerks to handle the bulk of the court duties rather than the judge.

Elimination of Conflicts

In addition to providing cost savings and restoring professionalism in many municipal courts, a consolidated system with full-time staffs would eliminate the conflicts that plague the current system. It is simply impossible for one presiding judge or the Supreme Court of Missouri to monitor the thousands of cases that flow through municipal courts each night in St. Louis County. Implementing a system of full-time judges and prosecutors would eliminate the need to monitor for conflicts on a case by case basis and instead implement a systemic solution to the issue.

CONCLUSION

The current system, outside of its ability to generate revenue for individual municipalities, has no discernible advantages to a consolidated system of full-time professional courts. A full-time system will result in cost savings, the elimination of conflicts, technological modernization, and most importantly, it will serve to restore the faith of citizens in the one place they should always trust they will find justice—the courts.

EXHIBIT 5

The following shots were taken by the author on Lindbergh Boulevard near the Page Avenue and Dorsett Avenue exits. If you are ever in this area, it is worth your time to drive by these bus stops. It is impossible to imagine what it takes to reach these bus stops, which are located—in the most literal sense—on the shoulder of a highway. There is no safe way to get to and from the stops, and they are extremely dangerous during evening hours, particularly for young women.









