

Oberlin Municipal Court
OBERLIN, OHIO
ANNUAL REPORT



(For the period January 1, 2009 through December 31, 2009)

“To us this may be just another day at the office. For the participants it is perhaps the single most important event in their life. Endeavor to treat every case with the utmost care and attention whether a simple traffic violation or a serious allegation of wrongdoing, whether a small claim or a claim for the maximum monetary jurisdiction of this Court.”

Thomas A. Januzzi,
Judge Oberlin Municipal
Court

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JUDGE'S COMMENTS-2009

It continues to be an honor and privilege to serve as Judge of the Oberlin Municipal Court.

The court was established in 1958. The court was a part-time court until 1990 when the court became a full time court. There have been 3 Judges of the Oberlin Municipal Court. Judge David Goldthorpe served from 1958 to 1975. Judge Martin Heberling served from 1975 to 2001. Judge Thomas Januzzi was elected in 2001 and has served since January 1, 2002 to present.

The court had a part-time Magistrate to hear Small Claim cases for approximately 14 years until 2004. The Magistrate was phased out and eliminated in 2005 due to space issues and to help fund the probation department.¹

The court operated without a probation department [community control department] during the first 43 years. A part-time probation officer was hired in 2002 and over the past 8 years the department has expanded. Beginning in 2009 there are 3 full time probation officers employed by the court.

The court has jurisdiction in the following territories located in Lorain County, Ohio: City of Amherst, City of Oberlin, Village of Wellington, Village of South Amherst, Village of Kipton, Village of Rochester and the Townships of Amherst, Brighton, Camden, Henrietta, Huntington, New Russia, Penfield, Pittsfield, Rochester and Wellington.²

¹ Prior to 2002 the part time Magistrate worked ½ day per week and was compensated the sum of \$24,000.00. The duties of the Magistrate position consisted mainly of hearing small claims cases. Immediately upon taking office in 2002 a decision was made to cut the Magistrate's salary in half to \$12,000.00 per year allowing the additional funds to be used toward establishing a probation department. Effective January 2004 the position of Magistrate was totally eliminated for reasons including that there is not a proper hearing room for a Magistrate in the court facility. The court facility only has one hearing room. This is the courtroom that is shared with City Council that uses the room as its council chambers. The room is also used by the Oberlin School Board for monthly meetings. The room is also used for other city meetings including the zoning board meetings. The Judge has assumed all duties previously handled by the Magistrate. Pursuant to the Ohio Revised Code 40% of the Magistrate's position is paid by the County. The County realized an immediate savings of \$4,800.00 per year for calendar years 2002 and 2003 and a savings of \$9,600.00 per year for the calendar years 2004, 2005, 2006, 2007, 2008 and 2009 for a total savings of \$67,200.00 since January 2002 not including increases in the Magistrate's salary. The City has not had a Magistrate expense for the past six years (\$14,400.00 per year for six years or \$86,400.00) and \$7,200.00 per year for 2002 and 2003 for a total of \$100,800.00. The grand total savings to County and City from 2001 Magistrate expense for the past 8 years is \$168,000.00.

² The total population in these territories is 45,469 [2000 Census]. The populations for the territories are:

City of Amherst	11,797
City of Oberlin	8,195
Village of Wellington	4,511
Village of South Amherst	1,863
Village of Rochester	190
Village of Kipton	265
Amherst Township	6,174
Brighton Township	942
Camden Township	1,265
Henrietta Township	1,873
Huntington Township	1,282
New Russia Township	1,918
Penfield Township	1,690
Pittsfield Township	1,549
Rochester Township	562
Wellington Township	1,393

The court has jurisdiction of civil cases that do not exceed claims in excess of \$15,000.00. Small Claims jurisdiction is cases that do not exceed claims in excess of \$3,000.00. Legislation has been proposed to raise the monetary limits of Municipal Courts.

The court has jurisdiction over misdemeanor cases from filing to conclusion. The court has jurisdiction over felony cases for purposes of affording an accused a preliminary hearing to determine if probable cause exists that a felony was committed and that the accused committed the felony. In cases where probable cause is established the case is bound over [transferred] to the felony court – Lorain County Court of Common Pleas for consideration by the Grand Jury. There are also a significant number of felony cases that are charged as a felony and the Prosecutor amends the charge to a misdemeanor. The case is then finished at the Municipal Court as a misdemeanor even though law enforcement determined that it was appropriate to charge the person with a felony offense.

The Clerk of Court is an appointed position. In Court's with territorial population of less than 100,000 [with a few statutory exceptions, e.g. City of Lorain] the law provides that the Clerk is to be appointed by the Judge of the Court.³ The Clerk of Court is Sandra L. Kohart. Sandra was elevated to Clerk from Deputy Clerk when the former Clerk retired. She was appointed based upon merit, not political affiliation, just as all employees of the court. Unlike an elected Clerk whose salary is set by statute [an elected Clerk receives 90% of the salary of the Judge of the Court], the Clerk's salary is set by the Judge. In years when the court's expenditures exceed the revenue of the court City Council must approve the salary of the Clerk for the ensuing year. While an elected Clerk is paid over \$90,000.00 per year⁴ the Clerk of the Oberlin Municipal Court presently is paid less than \$60,000.00 per year.

The attached report contains information required by law to be reported to Oberlin City Council and to the Lorain County Commissioners.

Summary of Caseload

Overall Caseload- 2009

Overall case filings in 2009 decreased to 7,921 from 8,820 in 2008. The court remains very current with its docket. At year's end the court was in compliance with the Ohio Supreme Court Rules of Superintendence with regard to the docket.⁵ Case load continues to be managed effectively.⁶

³ RC 1901.31

⁴ The law provides that in cases of most elected Clerk's of Court that the Clerk receives an amount equal to 85% of the salary of the Judge of the Court.

⁵ There are two reports to the Supreme Court of Ohio, an administrative report and an individual Judge report. 100% of cases pending at the end of the year assigned to the individual Judge were within the time allotted by the Supreme Court Rules of Superintendence. There were 3 felony cases that were less than 30 days over time. These cases were

Criminal and Traffic

Overall Criminal and Traffic case filings decreased for the sixth year in a row to 6844 compared to 7320 in 2008 and down 30% from 9782 filings in the peak year of 2003. Although the case load continues a steady decrease the drop in the caseload is due to the drop in low maintenance cases such as speeding tickets written by the State Highway Patrol, which has had a negative impact on revenue and required an increase in court costs to pay for the operations of the court. On the other hand the drop in low maintenance cases has had minimal positive impact on the court's resources of staff and time. Due to the trend in the reduction in overall filings, especially the trend in the reduction of simple traffic filings, and the recent increase in high maintenance case filings, significant challenges exist to provide resources of time, staff and funds to service the trend. Cases can be placed into two categories, low maintenance or high maintenance. An example of a low maintenance case is a speeding ticket in which the person charged with the offense has little or no contact with the court. The person is given a speeding ticket and told the amount of a waiver and that the waiver can be mailed to the court. The person mails the waiver to the court. A clerk receipts the waiver and has not personal contact with the offender. Very few additional resources of staff and time are needed to handle a modest increase in these low maintenance cases. The waiver amount includes basic court costs which are similar to the court cost of a high maintenance case. An example of a high maintenance case is an OVI case. Functions performed by the staff and appearances by the offender include:

1. Initial appearance at arraignment – Clerk inputs a not guilty plea; case is scheduled for a pretrial; bond issues are discussed in open court; if a person is a repeat or habitual offender the community control department may request pre-conviction conditions of bond and the person will meet with a probation officer; Clerk inputs the bond entry; if the person cannot afford counsel a discussion is had on the record regarding their qualification for court appointed counsel and if the judge pre-qualifies them in the courtroom the person then fills out a form required to be completed on a form provided by the Ohio Public Defender's office to confirm their qualification for court appointed counsel – a staff member assists them with the form and then the form is presented to the Judge for final approval.

held over at the request of the Prosecutors assigned to these cases. Many times a person is charged with a felony offense by law enforcement and then a decision is made by law enforcement and/or the prosecutor that a felony is not the proper charge. While this decision is being made the case remains on the administrative docket writing to be transferred to the common pleas court or assigned to individual Judge status as a misdemeanor.

⁶ At the end of 2001 there were 1920 cases pending in the court. Prior to 2002 the Supreme Court reports were not completed correctly and it is difficult to tell how many cases were over time and in violation of the Supreme Court Rules of Superintendence. As of December 31, 2009 there were only 889 cases pending representing a 54% drop in pending cases compared to year end 2001. See page _____ of this report for the history of cases filed and disposed of by the court since 1997

2. In most OVI cases a person receives an administrative license suspension⁷ and will apply for limited driving privileges. The person must file a petition – the petition is received by the Clerk and entered into the docket. The petition is then presented to the Judge who reviews the petition. If the privileges are granted a staff member then types a limited driving privilege order. Depending on the number of prior offense the privileges may require either special license plates and/or ignition interlock. If either of these is required additional forms must be processed. If ignition interlock is ordered then the Community Control Department must be involved to monitor the connection of the ignition interlock and whether there are any violations. The clerk must enter the limited driving privilege order in the docket.
3. In cases where a person is charged with a multiple OVI offense the vehicle is typically seized by law enforcement. The person may petition the court to release the vehicle from the impound lot. The petition must be docketed by the Clerk. The petition or request is reviewed by the Judge. Many times, because the person does not have valid driving privileges the vehicle will be permitted to be released but only subject to immobilization. Immobilization consists of having the vehicle towed to a residence and placing a disabling club on the steering wheel to ensure compliance with the court order of immobilization. The entry of immobilization is completed by the Judge. The entry must be docketed by a Clerk. A court bailiff effectuates the clubbing of the vehicle and documents the immobilization in a file opened by the bailiff. At the conclusion of the case – if the person is convicted of the charge that requires immobilization – then the club is removed from the vehicle which is monitored by the bailiff. A form is required to be sent to the Bureau of Motor Vehicles (BMV). This form is completed by the bailiff and sent to the BMV.
4. Court hearings for OVI typically include at least 3 and sometimes 5 or 6. Rarely, is an OVI completed at the first hearing. At arraignment the case is set for an initial pretrial. If the person has an attorney at the first pretrial, the attorney meets with the Prosecutor and exchanges information in a process called discovery. The attorney obtains specific information regarding the case from the Prosecutor (e.g. police report, witness statements, breath reading and calibration reports). At the conclusion of the first pretrial, if all information requested by the defense attorney has been provided the defense attorney is then given the opportunity to file motions. Typically, a motion to suppress evidence seized as a result of an alleged improper stop, detention, arrest or failure to follow proper procedure to obtain an alcohol sample is filed. If additional information is requested (e.g. sometimes there is a video

⁷ The law provides that if a person is charged with OVI and they either test over the legal limit or refuse to submit to an alcohol test that their operator's license is immediately suspended. The person is permitted to apply for limited driving privileges after a waiting period of 15, 30, 45, 90 or 180 days or 1 year depending on whether the person has any prior refusals or positive tests.

or the stop or the booking room etc.) then the case is scheduled for another pretrial to allow the Prosecutor time to obtain or the defense attorney time to retrieve the additional information. Once the motion is filed it is either scheduled immediately for a hearing or the issues raised in the motion are discussed at the next pretrial. If after the pretrial(s) the case has not been resolved then an evidentiary hearing is held so that the judge can decide the disputed issues in the motion. Motion hearings usually last between ½ hour and 2 hours depending on the complexity of the issues. During the past approximately 6 months motion hearings have been scheduled at 7:30 A.M. due to the volume of OVI cases. After the hearing, the matter is typically submitted for ruling – sometimes to allow the parties to supplement or submit written arguments regarding the issues at the hearing. After the Judge rules on the motion a final pretrial is scheduled to see if the case can be resolved before a trial. If the case is not resolved the case is set for trial.

5. Once the case is resolved the law requires that the plea be made in open court and that a Judge have a meaningful dialogue with the accused to make sure the person understands the plea and the consequences of having the plea on his/her record. The Judge's explanation includes the consequences of subsequent convictions and the effect of the various pleas that can be made. An entry is typed by the Judge or the Judge's staff as is a waiver of rights form and a dialogue form. Once the plea is completed the person is escorted to the Clerk's office to calculate the financial obligations owed and then escorted to the Community Control Department to discuss what obligations the person has with regard to programs, assessments and/or probation depending on the orders of the court. Persons charged with repeat offenses are mandated by law to obtain an assessment and follow through with the Community Control Department with treatment and/or programs.
6. If there was not a pre-conviction immobilization – on certain repeat OVI offenses there is either a mandatory immobilization period or a forfeiture of the vehicle if titled in the name of the offender at the time of the offense. A mandatory immobilization must be effectuated by the bailiff with similar steps as the pre-conviction immobilization. If there is the possibility of forfeiture then a separate hearing must be scheduled. With a mandatory immobilization the law now provides that if a household or family member relies on the vehicle to be immobilized that the household or family member may petition the court for a waiver of the immobilization. If the person files a petition another hearing is scheduled on that request.
7. The Community Control Department then follows the person through their treatment course and/or required programming and also monitors the persons' compliance with probation and monitors them for repeat offenses. If there is a violation, then proceedings are initiated for the alleged violation. If the person does not pay their fine and costs at the time of the plea then the Community Control Department monitors compliance.

Another example of a high maintenance case includes domestic violence cases. In many domestic violence cases the person is held – by law – without bond until the person is brought before a Judge. In a great percentage of cases there is a request made for a protection order (an order prohibiting the accused from having contact with the alleged victim and/or family members of the alleged victim.) Before the issuance of a Protection Order information from the Prosecutor and sometimes the Community Control Department and from other sources is required to be reviewed by the Judge and/or a hearing is held to determine whether to issue a protection order. This information and hearing usually take a minimum of 15 minutes up to 45 minutes. If an order is issued there are several forms that need to be prepared by the court and processed. The Clerk must docket the information and notify law enforcement of the issuance of the order. Rarely, is a domestic violence case completed until at least 2-4 additional hearings are held. Other examples of high maintenance cases are felony cases and charges of driving under suspension and related charges. The categories of cases filed in the court are:

Felony Cases

In 2009 there were 204 felony offenses filed compared to 207 in 2008. Felony cases can either be initiated in a Municipal Court or the Common Pleas Court. Felony cases filed in the Common Pleas Court are typically a result of an indictment issued by the county grand jury and are not included in this number. Also not included are filings against juveniles. Cases initiated in the Municipal Court are usually a result of a person being charged and/or arrested at or near the time of the alleged incident without further need for investigation. When a person is arrested the person is entitled to a speedy hearing⁸ to determine if there is probable cause that a felony has been committed and probable cause that the person accused committed the felony. If probable cause is found the case is “bound over” (transferred) to the Lorain County Court of Common Pleas Grand Jury for consideration of whether an indictment will be issued.

Felony offenses can include OVI⁹ offenses and Domestic Violence offenses. With regard to felony OVI the law was amended effective September 23, 2004 to provide that a person who has three prior OVI offenses within the past 6 years or 5 prior OVI offenses within the past 20 years who is again charged with OVI can be charged with a felony offense. The possible penalties for a felony OVI include a maximum fine of \$10,000.00, 5 years in prison, possible lifetime suspension of driving privileges and a forfeiture of the vehicle driven if registered in the offender’s name.

With regard to felony Domestic Violence a person charged with causing or attempting to cause actual physical harm to a household or family member with one prior conviction for Domestic Violence is charged as a 4th degree felony [up to

⁸ Within 10 days if incarcerated and within 15 days if not incarcerated.

⁹ OVI stands for Operating a Vehicle while under the Influence of Alcohol or Drugs. The terminology has changed over the years. The offense is still commonly referred to as DUI.

a \$5,000.00 fine and 18 months in prison] and a person charged with causing actual physical harm to a household or family member with two or more prior convictions for Domestic Violence is charged with a 3rd degree felony [up to a \$10,000.00 fine and 5 years in prison]. Also, if a person has a prior conviction of certain other crimes, involving a household or family member, subsequent charges can also be charged as a felony. These crimes include: Negligent Assault, Criminal Damaging and Criminal Mischief.

OVI Cases

OVI case filings decreased from record filings in 2008 [350] to 2009 [314]. The City of Amherst Police Department had the largest decrease from 159 (2008 was a record year for filings by the City of Amherst Police) to 110. The other agencies in the territory of the court had varied changes from 2008: Ohio State Highway Patrol OVI case filings were up 14.5 % from 2008 [107] to 2009 [125], City of Oberlin OVI cases were up 30.5% from 2008 [25] to 2009[36], Village of Wellington decreased 41% from 2008 [41] to 2009 [29]. Lorain County Sheriff OVI decreased from 12 to 4, and South Amherst increased from 3 to 9.

Misdemeanor Cases

Criminal misdemeanor case filings increased 4.7 % from 2008 [1110] to 2009 [1139]. The largest percentage increase was the Ohio State Highway Patrol – 43.6 %. The largest decrease was the Lorain County Sheriff – 26.4%. Criminal misdemeanor cases include misdemeanor assault and domestic violence cases, criminal trespass, disorderly conduct, misdemeanor drug offenses, obstructing official business, criminal damaging, petty theft [where the amount is \$500.00 or less] and passing bad checks.

Traffic Cases

Traffic cases (excluding OVI) decreased (7.6%) from 2008 [5528] to 2009 [5108]. This is the lowest number of traffic cases filed during the period [1997-2009] and represents a 38% decrease from the peak year of 2003 when 8208 traffic filings were made. The largest percentage increase was the City of Amherst – 36%. All other agencies combined experienced a 16 % decrease including: State Highway Patrol - 17% decrease, City of Oberlin 4.7% decrease, and Village of Wellington 27%. Included in this category are speeding offenses and other minor misdemeanor offenses such as assured clear distance ahead, stop sign, red light, improper turn signal, and equipment violations such as a missing or burned out license plate light. Also included in this category are crimes involving operating a motor vehicle without a valid license, with no license or while under suspension. Cases involving operating a motor vehicle without a valid license, with no license or while under suspension represented approximately 20% of the traffic cases filed in 2009 by the cities and villages. Only 1.7% of traffic cases filed by the Ohio State Highway Patrol fell into this category.

Civil Cases

After experiencing a record number of Civil filings in 2008 [1242], there was a decrease in civil cases filed for 2009 [1077]. The number of filings for civil cases in 2009 still ranks as the 4th highest of filings in the 51 year history of the court. The top 5 years for filings of Civil Cases are: 2008[1242], 1977 [1,126], 2007 [1082], 2009 [1077] and 2004 [1047].

124 of these cases were Eviction filings compared to 131 in 2008, 131 were Small Claims filings compared to 137 in 2008, 764 were filings for the collection of money compared to 907 in 2008, 20 were filings for accidents compared to 22 in 2008 and 38 were miscellaneous filings compared to 45 in 2008.

2010 caseload

While no one can predict the 2010 caseload, January 2010 high maintenance filings¹⁰ were unusually high. Historically, January and the cold winter months are slower than the summer months. But January 2010 was not a normal January. A significant number of cases were filed in January especially in the City of Amherst. A comparison of January 2010 with the past 9 January filings of high maintenance cases for the City of Amherst is noteworthy [*denotes high for the period]:

Year	Felony	Misdemeanor	OVI	Total
2010	15*	70*	9	94*
2009	6	33	2	41
2008	8	40	8	56
2007	9	48	13	70
2006	8	64	9	81
2005	7	70	7	84
2004	3	26	6	35
2003	7	49	5	61
2002	5	26	5	36
2001	7	16	2	25

A comparison of January 2010 with the past 9 January filings of high maintenance cases for all agencies is also noteworthy [*denotes high for the period]:

Year	Felony	Misdemeanor	OVI	Total
2010	27*	113*	32*	172*
2009	20	72	16	106
2008	12	89	23	134
2007	21	82	29	134
2006	18	112	25	155
2005	14	98	22	134

¹⁰ For purposes of this analysis the totals used are total felony, criminal and OVI cases filed. Typically, most of these are high maintenance cases. DUS filings, which are also high maintenance cases, are not included but DUS filings were a significant percentage of the traffic cases filed in January. For example, almost 65% of the traffic cases filed by the Oberlin Police Department were DUS or DUS related charges.

2004	13	61	14	88
2003	17	88	24	129
2002	10	61	26	97
2001	14	73	26	113

This unusually high number of filings in January has created significant scheduling, resource and staffing challenges for the court. Cases have been scheduled as early as 7:00 A.M. in order to timely schedule preliminary hearings while still reserving time for pretrial hearings, motion hearings and trials. Civil cases are being scheduled after normal court hours. Thursday January 28, 2010 began at 7:00 A.M. with preliminary hearings and ended after 6:00 P.M. with preliminary hearings. No breaks were taken by the Judge or the Amherst Prosecutor the entire day and the Chief Bailiff and Clerk worked an 11 hour day.

Jury Trials

In order to keep a current docket and for the efficient operation of the court it is necessary to have jurors available and jury trials scheduled on a regular basis. When a person is charged with a crime that has a possible penalty of a jail sentence or a fine in excess of \$1,000.00 the person is entitled to a jury trial. Also, a person is entitled to a jury trial in any civil case that can result in a money judgment or in certain other cases including an eviction. The court schedules jury trials on most Mondays unless it is a legal holiday.

Jurors are randomly chosen from voting lists. It has been the experience of this Court that the jurors who have served jury duty using this method of selection have taken their duty very seriously and served the community well. Since serving jury duty is an inconvenience for many citizens the court has attempted to minimize this inconvenience. As required by the Ohio Supreme Court the Court has adopted a Jury Management Plan. The Jury Management Plan limits jury duty to a selected juror to no more than four trial dates usually in a one (1) month period that typically consists of initially being called for four consecutive Mondays and serving on no more than two of those dates. The court has implemented a juror information line that informs jurors of the status of upcoming jury trials. We take this opportunity to thank the many citizens who were called for jury duty this past year for their service to this court and to the community.

Thus far, in 2010 3 jury trials have been held out of a possible 4 jury trial dates.

Diana Bizorik, Deputy Clerk, serves as the Jury Commissioner.

Community Control Department (Probation Department)

Alcohol and/or drug abuse are typically contributing factors for the underlying offense that results in a person being placed on probation. Individuals charged with these offenses are often required to obtain evaluations or assessments and the Community Control Department monitors compliance with the assessment for the benefit of the community at large, the person charged and their families.

The Community Control Department provides seven basic categories of service to the court.¹¹ At the end of 2009 the Community Control Department

¹¹ Intensive Supervised Probation – **When a convicted person is placed on Intensive Probation Supervision she/he is required to maintain frequent contact with the Community Control Department and follow the Standard Conditions of Probation and any other conditions imposed by the court or the Community Control Officer assigned to Defendant’s case.**

Basic Probation Supervision – **When a convicted person is placed on Basic Probation Supervision she/he is required to maintain contact with the Community Control Department in order to comply with any sanctions imposed by the court (e.g. attendance at AA meetings, community service, restitution etc.)**

Basic Probation Supervision Payment of Fine and Costs – **Many persons charged with crimes have significant financial problems. Examples include persons charged with petty theft, persons charged with driving without a valid driver’s license and persons charged with alcohol related offenses and other offenses in general. Most persons that have legal problems do not have a steady income and/or cannot hold a steady job. They often commit crimes because of their poor financial condition. While not a justification, this creates significant problems for the court in enforcing the collection of fines and court costs. The law was recently changed to allow a court to charge a fee for placing a person on a payment plan. The court now charges a \$50.00 collection fee for most persons placed on a payment plan. Payment plans are administered by the Community Control Department and the charge for the payment plan is considered a court supervision fee for a person placed on the payment plan.**

Monitored Time – **When a convicted person is placed on Monitored Time (prior to 1-1-04 the term used was “good behavior”) she/he is required to lead a law abiding life for a stated period of time. This includes but is not limited to not committing any similar offense, any offense of violence or any alcohol related offense if alcohol was a contributing factor to the offense(s) that gave rise to the filing of the charges in the case.**

Diversion Cases – **In certain types of cases (e.g. Underage Consumption) the law permits the court to place an offender into a diversion program with the opportunity to complete a program and have the charges filed dismissed. The Community Control Department monitors compliance with the terms and conditions of the diversion programs. The Community Control Department also screens candidates and makes recommendations to the court regarding whether an offender qualifies for diversion.**

Court Supervised Release – **In any pending charge where jail is a possible penalty the court may set conditions on the bond of an accused. The court may pursuant to Criminal Rule 46: (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;(3) Place the person under a house arrest or work release program;(4) Regulate or prohibit the person’s contact with the victim;(5) Regulate the person’s contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;(6) Require a person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail;(7) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety. In certain cases the court evaluates a person’s record when they appear for arraignment on an alcohol related offense and if the court determines that it is necessary for public safety and/or a person appears to need treatment the court places conditions on the person’s bond including obtaining an alcohol assessment and reporting to the Community Control Department.**

Basic Probation Supervision – DUS record check – **A new category of probation has been added for selected persons convicted of driving under suspension. House Bill 490 – Misdemeanor Sentencing – effective 1-1-04**

consisted of three full time probation officers. The position of Court Secretary was eliminated. The court also continued to utilize interns¹² to assist in the department.

The Community Control Department has experienced growth and change since its inception in 2002. Due to the increase in cases being serviced by the Community Control Department, including the increase in high maintenance cases, a third probation officer was added in November 2008. Many of the functions performed by the Community Control Department are mandated by the law especially in the area of OVI law. Changes in the OVI law are constantly being made. The OVI law changed effective June 24, 2008 and again effective September 30, 2008. With those changes, almost all OVI offenders must be placed on some form of probation. 1st offenders are required to either serve 3 days in jail or in the alternative to attend a 3 day Driver Intervention Program. Very seldom does a first offender serve jail. Instead they are urged to attend the 3 day program. At the program an assessment is made for any alcohol issue and the 1st offender then follows through with any recommendations through the Community Control Department. For second and third offenders the law mandates an assessment and treatment as follows:

[2nd Offense OVI] The offender is placed on Intensive Probation Supervision. The offender is required to maintain frequent contact with the Community Control Department and follow the Standard Conditions of Probation and any other conditions imposed by the court or the Community Control Officer assigned to offender's case. Under the law the offender must be assessed by an alcohol and drug treatment program that is authorized by section 3793.02 of the Revised Code and must follow the treatment recommendations of the program. The purpose of the assessment is to determine the degree of the offender's alcohol usage and to determine whether or not treatment is warranted. The program is required to submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

[3rd Offense OVI] The offender is placed on Intensive Probation Supervision for an initial period of 12 months. The offender is

includes a provision that the court is to consider the community resources when imposing a sentence. In the past, jail sentences were commonly given to a multiple DUS offender. But due to the population at the Lorain County Jail and the need for jail space for more serious offenders the court is attempting to find alternate ways to curb the incidence of repeat DUS offenders. In these cases the person is typically given a fine, community service and a suspended jail sentence. The jail sentence is suspended conditioned on no further violations for a stated period of time. In order to monitor compliance the Community Control Department runs periodic records checks using public record searches. The offender pays a supervision fee and is warned that if there is a repeat offense within the monitoring period that they will have to serve their suspended sentence.

¹² The court has utilized interns from Tiffin University, Miami of Ohio University, Lorain County Community College and Ashland University.

required to maintain frequent contact with the Community Control Department and follow the Standard Conditions of Probation and any other conditions imposed by the court or the Community Control Officer assigned to offender's case. Under the law the offender must participate in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code and shall follow the treatment recommendations of the program. The operator of the program must determine and assess the degree of the offender's alcohol dependency and make recommendations for treatment. The program must submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use.

The law also requires that certain repeat offenders be monitored using electronic monitoring devices as a condition of probation and/or have an ignition interlock device installed as a condition of obtaining driving privileges. The court also requires monitoring of other offenders who have a significant and/or history of alcohol related offenses that appear to create a safety risk to the community and/or themselves.

The Community Control Department also administers payment plans for offenders who cannot immediately pay their fine and costs. Due to the state of the local economy more offenders are unable to pay fine and costs. Those that can pay are given a payment plan. Many of those that cannot are given an opportunity to perform community service. The Community Control Department monitors compliance with these orders.

The Community Control Department also handles investigations for and administers Diversion programs. For certain offenses 1st time offenders are offered an opportunity to complete a diversion program in lieu of conviction of a crime. Typically, a 1st offender for Underage Consumption of alcohol and some 1st offenders for Petty Theft and a few other miscellaneous non-violent offenders are offered this opportunity. The diversion programs usually include the performance of community service, writing a paper, attending an awareness program related to the offense and leading a law abiding life during the period of the program.

The Community Control Department also has the duty of presenting most probation violations in open court and making recommendations with regard to probation violations. For contested probation violations the Community Control Department may request the assistance of the prosecutor's office for the agency that charged the underlying offense.

For the period January 1, 2009 to December 31, 2009 1,786 persons were either subject to supervision or monitoring including:

- 109 on Intensive Supervised Probation
- 392 on Basic Probation Supervision
- 309 on Basic Probation Supervision Money Review only
- 370 on DUS Probation
- 42 on Court Supervised Release awaiting trial
- 45 on Diversion programs
- 2 on Intervention in Lieu of Conviction
- 38 on Monthly Record Checks other than DUS
- 17 with pending Monitored Time violations
- 10 on probation with the Lorain County Adult Probation Department. The Community Control Department also continues to utilize the services of the Lorain County Adult Probation Department for conflict cases and a few serious offenders.
- 149 warrants outstanding for various reasons including 46 for failure to pay fines and costs, 53 for failure to comply with Basic Probation Supervision, 10 for failure to comply with Intensive Probation Supervision, 23 for failure to appear for DUS probation violations, 9 for failure to appear for Diversion or Diversion Compliance Hearings, 1 for failure to appear for sentencing and 4 for failure to comply with CSR requirements

During 2009 208 persons were successfully terminated from probation and 53 successfully completed diversion programs.

Efforts have been made to fund the department so that it does not become a burden on the general operating fund of the court.¹³ As the department continues to expand there is need for quality space. There is no dedicated space in the building for a probation department. Finding space for the probation department has been a challenge. Although this remains an obstacle to the expansion and proper operation of the department the court remains committed to the continued growth and improvement of this most valuable part of the administration of justice in the Oberlin Municipal Court.

Budget Issues

Revenue

Revenue dropped by \$55,487.20 from \$802,634.99 in 2008 to \$747,147.79 in 2009. The drop in revenue is not surprising based upon the decrease in the filing of low maintenance traffic cases, especially by the State Highway Patrol, and the

¹³ The Community Control Department is funded in part through the collection of Supervision Fees that are permitted by law. In 2009 the sum of \$135,822.54 was collected. In addition, as of 2002 the Magistrate's salary was cut from \$24,000.00 to \$12,000.00 to provide room in the Court's budget for the probation department.

decrease in payments for cost apportionment by the cities and villages in the territory of the court.

Decrease in Low Maintenance Cases

In 2008 the city's portion of fines from State Highway Patrol cases was \$95,484.75 compared to \$76,982.52 in 2009 – an \$18,502.23 difference, a direct correlation in the drop in cases filed by the State Highway Patrol from 2008 to 2009. Not only are the fines less because of the drop in cases but the court costs collected decreases. For example in 2008, 3961 traffic cases were filed by the Ohio State Highway Patrol compared only 3294 in 2009 – a 667 case decrease. The court realizes \$44.00 per case filed in local court costs.¹⁴ 667 cases at \$44.00 per case = \$29,348.00¹⁵. Approximately \$48,000.00 in lower revenues can be attributed to filings by one agency alone- State Highway Patrol- for loss of revenue for fines and court costs. While filing less traffic offenses, the Ohio State Highway Patrol increased its high maintenance case filings from 83 to 142 – a 71% increase. These types of cases tend to generate little revenue but require more of the court's resources of staff and time.¹⁶ The trend has continued into 2010. In January 2010 the State Highway Patrol filed 28 high maintenance cases (a pace that would see 336 high maintenance cases from OSP for 2010) and only 250 low maintenance cases (a pace that would result in only 3,000 low maintenance cases for 2010).

Cost Apportionment Issues

The other cities and villages in the territory share in the cost of the operation of the court. The Finance Directors of the cities and villages meet twice per year to determine the cost apportionment. The cost apportionment is determined by the fiscal officers.¹⁷ The cost apportionment determined by the fiscal officers was

¹⁴ \$37.00 for local costs, \$3.00 for probation cost, \$4.00 security cost.

¹⁵ Of course, all tickets that are written do not result in an immediate payment of fine and costs. But the effect of the consistent decline in the filing of low maintenance cases by the Ohio State Highway Patrol traffic cases from peak filings of 5,836 in 2002 to 3,294 in 2009 has had a significant impact on the revenue of the court. The revenue loss to the court between loss of court costs and fines is easy to understand.

¹⁶ For example, 25 of the cases filed were felony cases. Most felony cases require a preliminary hearing and the appointment of counsel. Sometimes the cases are resolved at the first hearing. Others need more than one hearing. On occasion the Prosecutor will ask the charge to be reduced which necessitates additional court time and resources.

¹⁷ RC 1901.026 provided in part: (A) The current operating costs of a municipal court ... shall be apportioned pursuant to this section among all of the municipal corporations and townships that are within the territory of the court. Each municipal corporation and each township within the territory of the municipal court shall be assigned a proportionate share of the current operating costs of the municipal court that is equal to the percentage of the total criminal and civil caseload of the municipal court that arose in that municipal corporation or township. Each municipal corporation and each township then shall be liable for its assigned proportionate share of the current operating costs of the court, subject to division (B) of this section....

(B) A municipal corporation or township within the territory of a municipal court is not required to pay that part of its proportionate share of the current operating costs of the court, as determined in accordance with division (A) of this section, that exceeds the total amount of costs, fees, fines, bail, or other moneys that was disbursed by the clerk of the court under division (F) of section 1901.31 of the Revised Code, to the municipal corporation or township during the period for which its proportionate share of the current operating costs was determined. The municipal corporation in which the court is located is liable, in addition to its proportionate share, for any part of the proportionate share of a municipal corporation or township that the municipal corporation or township is not required to pay under this division.

significantly less in 2009 (\$11,505.75) than in 2008 (\$46,204.35) for a net negative difference of \$34,698.60.

City or Village	2008 Amount	2009 Amount
Amherst	\$30,857.79	\$7,415.40
Wellington	\$9,929.16	\$2,682.92
Kipton	\$82.33	\$30.79
South Amherst	\$5,335.07	\$1,376.64

It is not surprising then that the revenues of the court are much less than 2008 when the decrease in State Highway Patrol fines was \$18,502.23 less, the potential impact of less Ohio State Highway Patrol traffic filings on local court costs was \$29,348.00 less and the cost apportionment was \$34,698.60 less than in 2008. A decrease in revenue just from these 3 sources total \$82,548.83.

Budget

The court has always operated within its budget using a conservative budget philosophy and has operated under budget since at least 2002. In 2009 the projected budget for the court was \$894,582.17. The budget is always based upon “worst case scenario” situations. It is difficult to predict the number and types of filings and whether trials will go forward. For example, Jury trials are scheduled every Monday and the budget includes staff in anticipation that a trial will go forward every Monday. Already in 2010 jury trials have gone forward on 3 of the 4 available jury trial dates. If trials do not go forward, some of the staff is not required and are sent home or called off. The budget is set and then the goal is to live within the budget and/or manage the cases during the year to minimize costs in each area of the budget. This was effectively accomplished in 2009 as it has been since at least 2002. Actual expenditures for 2009 were \$790,118.51 – 11.67% under budget.

Due to the increase in the civil docket and the increase in high maintenance cases over the past several years the court proposed a preliminary budget for 2010 that included expenses for “worst case scenarios” with regard to a continued increase in civil filings and steady filings of high maintenance cases. Over the past couple of years the court has scheduled cases as early as 7:15 A.M.¹⁸ and also

(C) The auditors or chief fiscal officers of each of the municipal corporations and townships within the territory of a municipal court for which the current operating costs are apportioned under this section shall meet not less than once each six months at the office of the auditor or chief fiscal officer of the municipal corporation in which the court is located to determine the proportionate share due from each municipal corporation and each township, to determine whether any municipal corporation or township is not required to pay any part of its proportionate share under division (B) of this section, and to adjust accounts. The meetings shall be held at the direction of the auditor or chief fiscal officer of the municipal corporation in which the court is located, and the auditor or chief fiscal officer shall preside at the meetings. The proportionate share of each of the municipal corporations and townships, as reduced or increased in accordance with division (B) of this section, is payable from the general fund of the municipal corporation or township or from any other fund designated or funds appropriated for the purpose of paying the particular municipal corporation's or township's proportionate share of the current operating costs of the court....

¹⁸ The pace has not slowed. Case filings of criminal and traffic cases for January 2010 were unusually high creating yet another scheduling challenge for the court. Preliminary Hearings were scheduled for 7:00 A.M. on January 28, 2010 to accommodate the high level of early January filings.

scheduled cases during lunch hour in order to comply with Supreme Court rules to maintain a current docket. It has been well documented in prior years' Annual Reports that the court should reinstate the position of Magistrate and expand hours to accommodate the caseload. The "tentative expenses" contemplated reinstating the position of Magistrate and adding a position of Court/Clerk Assistant to aid both the Court and the Clerk and to allow security officers in the main lobby to concentrate on security issues and expanding court hours to accommodate civil litigants. When the budget with these "tentative expenses" was initially submitted the Court was advised by the City that the City was requesting that all departments in the City, including the court, make cuts. The reason given for the request in cuts is that the City is estimating a potential loss of revenue in the coming years as a result of the local economy and is attempting to avoid using its cash reserves.

The Court considered the City's position. The Court has confidence in the city leaders that the City must control costs in order to avoid financial problems experienced by other cities in this County and around the State of Ohio. The Court also recognizes that friends and neighbors in both the public and private sector have experienced either loss of employment or reduction in hours and wages. Many persons have lost or are losing their homes and their accustomed way of living. Due to these circumstances the court has determined that the following action has been or will be taken for the budget year 2010 in response to the City's concerns:

1. Salaries of employees directly employed by the Judge [security and bailiffs, the Chief Probation officer, and Judicial/Legal Assistants], with the exception of the Clerk of Court, have been frozen. The Judge's salary is also frozen by action taken by the State Legislature. No Judge in the State of Ohio has received a pay increase in the last two years. Some of the employees, including the Chief Probation Officer, volunteered to not receive a wage increase. The court publically thanks them. The only positions receiving wage increases will be employees in the Clerk of Court's office and the two assistant probation officers.
2. The position of Court Secretary has been eliminated and the proposed position of Court/Clerk Assistant has been abandoned.
3. An additional security officer was included in the 2010 budget in response to the recommendation by the Court Security Committee to alter the configuration of the entrance to the court. The court has balanced the need for the additional position with the needs and wants of the City and has determined that other positions in the court will be rearranged and an attempt made to postpone the hiring of the additional security officer.

4. Reinstating the position of a Magistrate will again be foregone for the budget year 2010. The Judge will continue to hear all cases, criminal, civil, and small claims.

The freezing of the salaries and elimination and/or abandonment of positions will allow the court to expand hours of the court to hear Small Claim and other civil cases, sans a Magistrate.¹⁹ The funds will be used for staff to stay when necessary for early morning and late afternoon/early evening hearings. At a minimum, a security officer and clerk must be present for the extended hours. There is no additional cost for a hearing officer because the Judge will hear the cases. Typically the Judge of the Oberlin Municipal Court works between 55-60 hours per week. During 2009 some weeks the Judge worked in excess of 65 hours. Some weeks the Judge only had one lunch break for the entire week and no other break during sometimes a 12 hour plus day. These hours are the normal hours kept by the Judge without the expanded hours of the court that are anticipated. It is necessary to keep these hours in order to properly operate the court with the staff and resources provided. The Magistrate was eliminated several years ago in order to fund the Community Control Department. The Magistrate was earning \$24,000.00 per year.²⁰ The Community Control Department is now mainly funded by fees paid by persons being supervised.²¹ This year was a logical time to request that the Magistrate position be re-instated. But the Court accepts the economic times and the needs, wants and concerns of the City. The Clerk also typically arrives at 7:00 A.M. or earlier and stays until the docket is concluded which sometimes extends past 6:00 P.M. This information is being provided to document the need for additional resources if there comes a time when the Judge of the Court and/or the Clerk of Court is unable or unwilling to devote these extraordinary hours or if and when the City's financial condition is in a state to support the additional resources needed by the court.

These decisions were not made lightly. The Judge of the court is not only responsible to the good citizens of the territories of the Oberlin Municipal Court but is also responsible for all persons who are visitors and participants in cases filed in the Oberlin Municipal Court. The court must be respectful of all persons' time and schedules. Lack of court time and resources directly affects the users of the court. Persons using the court should not have to wait to have their cases heard. Cases should be heard timely. The Judge is also accountable to the Ohio Supreme Court and must comply with the Ohio Code of Judicial Conduct. On March 1, 2009 the rules that a Judge must follow were amended by the Ohio Supreme Court –Ohio Code of Judicial Conduct. Rule 2.5 titled “Competence, Diligence, and

¹⁹ Of course, since the Court shares the Courtroom with the City the Court will still be limited to the days and times that the room is available for court hearings. But the court will work with the City on a weekly basis so as to not interfere with the important business of the City and other entities that are permitted to use the room (e.g. the Oberlin School Board uses the room for school board meetings)

²⁰ See footnote 1

²¹ See footnote 10

Cooperation” provides in part that “A judge shall perform judicial and administrative duties competently and diligently and shall comply with guidelines set forth in the Rules of Superintendence for the Courts of Ohio.” A Judge must also follow the law. An example of one of the Rules of Superintendence is that the Judge must complete criminal and traffic cases within 6 months. An example of one of the laws that must be followed is that Small Claim Hearings must be scheduled within 40 days of the filing of the case. One of the comments to the Ohio Code of Judicial Conduct Rule 2.5 reads “A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.” The court complied with its obligations and sought the necessary docket time, court staff and resources. The court has balanced the City’s needs and wants with the Judge’s obligations under the law and will endeavor to continue to seek a balance that satisfies these interests.

Elimination of Position and New Position

The court has eliminated the position of court secretary and added the position of Judicial/Legal Assistant. The reasons for the re-organization include:

1. In 2009 the court purchased a new software program that has the capability of generating “word” documents in place of the “character based” documents in the former system. This has allowed a more efficient system of the creation of documents and facilitating the efficient and accurate transfer of documents to the probation module and to the court docket.
2. A 3rd probation officer was added in 2009. As a result of the addition of the 3rd probation officer and the new software program a large percentage of the job duties of the Court Secretary have become obsolete as the probation officers are able to use the new technology to efficiently and accurately enter their own documents in the system. The small percentage of time devoted to the Court Secretary position can be divided among other positions in the court including the Judicial/Legal Assistant.
3. The addition of the new software has also created other opportunities for the court to create and facilitate the efficient and accurate transfer of entries from preparation and finalization by the Judge to the Clerk for transfer to the docket.
4. Due to the increase in the filing of “high maintenance” cases over the past several years and the additional forms that need to be processed to accommodate changes in the law especially in the area of OVI law, an employee with a legal background and/or who is studying in the legal field is needed to assist the Judge in the preparation and processing of these forms. Because these are legal forms a person with a legal background or studying

law is best suited for the task. The Judicial/Legal assistant will assist the Judge with forms, limited legal research, and communicating with participants in cases including attorneys and others inquiring about pending cases. A person with a legal background or who is studying law is motivated and keenly interested in the proper and ethical role of the Judge in the justice system.

5. The security officers were primarily in charge of check-in procedures and facilitating the flow of hearings. In order to permit the security officers to primarily devote their attention to security matters assigning the task of check-in and monitoring the flow of hearings to someone other than the security staff will promote and enhance the security in the court. The re-assignment of these tasks is especially needed in the summer months. For example, in 2009 55% of the criminal/traffic cases filed in 2009 through August 31, 2009 was filed from the period June 1 – August 31. This concentration of filings creates a heavy flow of cases through the end of the year until filings historically slow down when the days become shorter and colder.²²

The position of Court Secretary was paid a salary of approximately \$30,394.00 per year. The position of Judicial/Legal Assistant will cost the court approximately \$18,200.00 in salaries per year.

Security

A Court Security Committee was established in 2008 in anticipation of a pending Supreme Court rule that would require every court in the State to form such a Committee. The Rule became effective March 1, 2009 requiring every court in the State to form a security committee. Matters that come before the committee are confidential.

The committee includes representatives from the city including city council so that the city is aware of security issues affecting the court facility. Membership at the end of 2009 included: Chief Tom Miller – Oberlin Police Chief; Captain Dennis Seger – Amherst Police; Eric Severs – Oberlin City Law Director; Frank Carlson – Amherst City Prosecutor; James McManus – Kipton Police Chief; Captain Richard Resendez – Lorain County Sheriff’s Department; Lieutenant Glen Peterson – Post 90 Ohio State Highway Patrol; Lieutenant Travis Hughes – Post 47 Ohio State Highway Patrol; Brian Holmes – Lorain County Metroparks; Stephen Bond – Village of Wellington Law Director; Margaret O’Bryon – Village of Kipton Prosecutor; Jeff Baumann – City of Oberlin; Jack Baumann – City of Oberlin – representative of City Council; Barbara Butler – representative of the Lorain County Bar Association; Martin Mahony – Chief of Security; Randall

²² History does not always repeat itself. Filings in January 2009 have been unusually high.

Widener – Chief Bailiff; Beth Cwalina – Chief Probation Officer; Sandra Kohart – Clerk of Court; Tom Kelley – Lorain County Emergency Management.

A metal detection device was installed and placed into operation in July 2004. The device was installed very economically. The device was placed in a location that avoided any major modification to the structure of the building so that the costs of installation of the device were limited to the cost of the device itself, labor to install the device and signage. These costs were paid out of the Court Improvement Fund and did not interfere with the general operating costs of the court.

The device is presently staffed by three retired police officers working on a rotating basis.²³ They are also available to provide additional security on heavy court days and to substitute for the regular bailiffs in their absence due to vacation or illness. In addition to court personnel the Oberlin Police Department, located adjacent to the court in the same building, continues to supply additional security when needed. The court thanks Chief Tom Miller and the entire Oberlin Police Department for its courteous and efficient response during the past year to the needs of the court.

In 2007 additional security cameras were installed. The cameras are monitored by the Oberlin Police Department.

Changes are presently being made in response to recommendations by the Court Security Committee. The changes include the acquisition of additional security buttons for individual offices and other areas in the court facility and the relocation of the metal detector.

Changes in the Law

HB 1 effective 10-16-09 Driving Without a Valid License

On October 16, 2009 there was a major revision in the law regarding driving without a valid license. Prior to October 16, 2009 all Driving Under Suspension charges were 1st degree misdemeanors carrying a possible \$1,000.00 fine and 180 days jail along with mandatory license suspensions and vehicle immobilization and vehicle forfeiture sanctions depending on the number of prior offenses.

The subject of persons driving without a valid license has caused great concern and many opinions around the State of Ohio with regard to how this issue should be addressed. The State Legislature's response was HB 1 effective October 16, 2009. The legislature reduced the penalties for many 1st and 2nd time offenders (during a 3 year period) and created a new class of misdemeanor called an

²³ The court has chosen to employ the security staff rather than impose this burden on the Oberlin Police Department. The Ohio Revised Code permits the court to order the police to provide security. However, the court has chosen to carry this economic burden and assesses a court cost of \$4.00 per criminal and traffic case filed to defray the cost of providing security. In 2009 court costs in the amount of \$22,630.00 was collected to defer the costs of providing additional security.

“unclassified misdemeanor.” The penalty for an unclassified misdemeanor carries no jail penalty.

Some of the issues involved in these types of cases that affect Municipal Courts and in general the resources of this court and its ability to continue to efficiently and justly resolve cases include:

1. Both the United States Supreme Court and the Supreme Court of Ohio have in recent years provided law enforcement with tools to enforce traffic laws including the laws addressing driving without a valid license. Both Courts permit “random license checks.” Essentially, the Courts have held that information on a license plate is not subject to the 4th Amendment right to privacy and therefore any law enforcement officer may observe and check to see if a person who is the owner of a vehicle has a valid driver’s license. The 9th District Court of Appeals has held that if the owner of the vehicle does not have a valid driver’s license then the law enforcement officer is permitted to stop the driver – whether the owner or not – and inquire regarding the driver’s identity and whether the driver has valid license. Most law enforcement agencies in the territory of the Oberlin Municipal Court utilize this tool and method of stopping vehicles with the exception of the Ohio State Highway Patrol which rarely if ever uses this tool to stop vehicles.
2. The court is limited to the types of penalties that it may impose to effectively deter multiple repeat offenders. This is true in all cases but especially with the offenses of Driving Under Suspension. With repeat offenders sometimes the only meaningful penalty is a jail sentence or threat of a jail sentence. The only jail facility available to the Oberlin Municipal Court is the Lorain County Jail. The Lorain County Jail is over populated on a regular basis. The Sheriff has hired a Jail Assessor to evaluate cases periodically and has recently made a request that the court grant an early release to some violent offenders. If the jail cannot house violent offenders for the term of their sentence it is impractical and arguably not a wise use of resources to incarcerate offenders for driving without a valid license.²⁴ The situation is that law enforcement continues to aggressively enforce the laws for driving without a valid license²⁵ which has consequences of (a) increasing high maintenance cases in the court [many of these cases take significant court time either at arraignment or while the accused attempts to “fix” their

²⁴ In fact the law instructs the Judge that one of the sentencing factors in a misdemeanor case is the resources available in the community. See RC 2929.22 that provides in part: “The court shall not impose a sentence that imposes an unnecessary burden on local government resources.”

²⁵ Of the 5108 traffic cases filed in the court in 2009 414 of these cases fell under the category of driving without a valid license. For all agencies, other than the State Highway Patrol, the number is 355 or almost 20% of the traffic docket. Although statistics are not available as to how many of these charges resulted from “random license checks” the court is confident that a great percentage of the charges were the result of random license checks. Even the Lorain County Sheriff has been utilizing the random license check tool in the jurisdiction of the City of Amherst.

driving record. It is not unusual for a Prosecutor to amend or reduce or dismiss the charge if the accused satisfies all BMV requirements and shows a “valid” status on their license after the fact]; and (b) the court is limited in its resources to effectively deter repeat offenders. As noted above – with the exception of the Ohio State Highway Patrol – most law enforcement agencies aggressively use “random license checks.” There are a substantial percentage of Driving Under Suspension charges that are reduced, amended or dismissed by the local Prosecutors or the Court for various reasons. Many times a person’s license is found to have been improperly suspended either for lack notice, or error by an insurance company, the bureau of motor vehicles or a court. A typical scenario is that a person is driving – otherwise obeying the traffic laws (i.e. not speeding, weaving, or running stop signs or red lights) – and a law enforcement officer utilizes the random license check tool and discovers that the vehicle owner’s license is not valid. Sometimes the officer knows before the person knows that the license is not valid because law enforcement has access to “real time” records and the driver has yet to be notified of the action taken by the bureau of motor vehicles. The driver is then detained for a period of time, often their vehicle is towed – causing time and expense to the driver [even if the driver is later found not guilty or the charges dismissed there is no provision in the law to compensate them for the tow bill or storage fees or loss of use of their vehicle] and the time of the stop to the officer.

3. The new law has created confusion with many involved in the process. When a ticket is written and a person appears in court it is the Judge’s responsibility to inform the person of the consequences of a conviction of an offense. The court’s experience is that, since the change in the law, most tickets for offenses of driving without a license either do not specify the degree of crime (e.g. 1st Degree Misdemeanor, Unclassified Misdemeanor etc.) or if the degree of crime is noted it is many times incorrect. Knowing the degree of crime is necessary not only for advising the accused of the possible penalties but also to determine if the offense is the type of offense that requires the appointment of an attorney. Most persons charged with driving without a valid license qualify for a court appointed attorney under the guidelines set forth by the Ohio Public Defender’s office because most persons’ licenses are suspended because they either cannot (do not) pay insurance or state imposed license reinstatement fees or outstanding court fines or some other obligation impeding their ability to maintain valid driving privileges.
4. In order to determine the appropriate charge the arraignment Prosecutor is asked to review the public record and the ticket and the police report to determine the appropriate charge. This is a time consuming task and extends the time for the individual arraignment and the time set aside for arraignment sessions in general causing a burden on the resources of the

court. If this task is not performed at the arraignment there can be an unnecessary cost to taxpayers. For example, it is not unusual to find a ticket that is marked as a 1st degree misdemeanor that should be marked as an unclassified misdemeanor. If the error is not identified at the arraignment a court appointed attorney may be appointed at taxpayer's expense based upon the misinformation on the ticket.

5. Nearly all persons charged with these types of offenses are those least able to pay fine and court costs and the other financial obligations incurred in these types of cases. Those that cannot pay immediately are placed on payment plans or given time to pay which causes additional time and resources of the court staff. Those that do not pay, by law, have yet another hold or suspension placed on their license for failure to pay prohibiting them from having a valid license.

Court Costs

There are several different components in the costs charged by the court as court costs. One of the components is "local court costs." These local court costs are intended to fund the operation of the court. There are also court costs that are required by the State of Ohio and court costs for special projects (e.g. Court Improvement Fund, Computerization Fund, Indigent Alcohol Fund). These costs are not used to fund the basic operations of the court.

Due to a change in the State law effective October 16, 2009 court costs were increased as follows:

Local Court Costs	\$37.00
Probation Costs	\$ 3.00
Computer Costs – Clerk	\$ 5.00
Computer Costs – Legal Research and Court Computerization	\$ 2.00
Court Security Costs	\$ 4.00
Section #169 SVCF	\$ 9.00
Court Improvement Costs	\$15.00
Indigent Defense Support Fund [all cases other than seat belt, pedestrian and parking violations]	\$20.00*
Indigent Defense Support Fund [seat belt and pedestrian violations]	\$10.00*
Moving Violations	\$10.00*
[State costs -\$3.50 to criminal justice services \$1.50 to indigent alcohol treatment fund and \$5.00 to indigent defense support fund]	
Continuance Fee	\$15.00

Witness Fee (1/2)	\$ 6.00	
Juror Fee (1/2 day)	\$12.50	
Ohio Cancellation Fee	\$50.00	
NRVC Cancellation Fee	\$50.00	
Bench Warrant Fee	\$50.00	
Photo Copy Fee	\$.10 page	.25 page (green bar)
Motion filed in closed case	\$50.00	
Certified Mail	\$ 6.00	
Motion for Driving Privileges	\$50.00	
Motion – Pending Case (other)	\$25.00	
Payment Plan Fee	\$50.00	
Bail Surcharge	\$25.00*	
Cost of DVD/CD court recording	\$10.00*	

*indicates change

Basic court costs in a Civil Case were last amended to \$110.00 per civil filing effective January 1, 2008.

Application Fee for Court Appointed Counsel

Effective October 16, 2009 the state also imposed a \$25.00 application fee for persons applying for court appointed counsel. The state determined that most persons, although they may not be able to afford an attorney can afford at least \$25.00. The Clerk is required to collect this fee and forward it to the state to defray the operation of the State of Ohio Public Defender’s office. A person can apply for a hardship and waiver of the fee. An additional duty assigned to the Clerk of Court without additional resources.

Bond Surcharge

Effective October 16, 2009 the state now imposes a \$25.00 bond surcharge on the posting of cash or surety bonds. The Clerk is required to collect this fee and forward it to the state to defray the operation of the State of Ohio Public Defender’s office. An additional duty assigned to the Clerk of Court without additional resources.

Magistrate

The Court operated without a Magistrate for the sixth year in a row. Prior to 2004 the court had a Magistrate for approximately 15 years. The Magistrate position was eliminated at the end of 2003 due to cost and space issues. In past years the Magistrate handled the small claims docket. In 2001 the Magistrate was being paid the sum of \$24,000.00 per year to hear Small Claim cases one half day per week. In 2002 the salary was decreased to \$12,000.00. The decreased salary allowed the Court to partially fund and create a probation department.

There is a need for a Magistrate based on the volume of cases in this Court. Civil cases in 2008 totaled 1242 the highest number of filings in the history of the

court.²⁶ Since there is not a separate hearing room with proper recording facilities it is impossible to have a Magistrate on staff during normal court hours. But because of the need for a magistrate the position was included in the budget for 2009 and again in the tentative budget for 2010. Even though the position was in the budget the court operated again without the Magistrate in 2009 mainly because there was no room for a Magistrate to hear cases during normal court hours.

As stated above, in the first budget proposal for 2010 by the court the Magistrate was to be reinstated and the hours of the court expanded to create a room for the Magistrate to hear cases, but because of the City’s financial concerns the position was eliminated from the budget. The proposal was to have the Magistrate hear cases after the normal hours of the court to accommodate Small Claim filings. The Court will still schedule some Small Claim cases after normal court hours but the Judge will hear the cases.

Prosecutor Offices

There are several prosecutors that serve the different law enforcement agencies that make arrests in the Oberlin Municipal Court jurisdiction. At present the Prosecutors in the court are:

Jurisdiction	Prosecutor
City of Amherst	Frank Carlson ²⁷
City of Oberlin	Michelle Nedwick ²⁸
Townships of Amherst, Brighton, Camden, Henrietta, Huntington, New Russia, Penfield, Pittsfield, Rochester and Wellington.	Michelle Nedwick ²⁹
Village of South Amherst	Michelle Nedwick ³⁰
Village of Wellington	Donald Zaleski ³¹
Village of Kipton	Margaret O’Bryon

Significant changes have been made in the operation of the Prosecutor offices since January 2002. Shortly after taking the bench in January 2002 Judge Januzzi had immediate concerns regarding the staffing and operation of the prosecutor’s offices. Other than the City of Oberlin, none of the other prosecutors

²⁶ In the years that the court had a Magistrate the civil docket was much less than the filings since the Magistrate position was eliminated. Filings when the court had a Magistrate were as low as 532 in 1994, 506 in 1995, 561 in 1996 and 613 in 2000. Now that the court has doubled or more filings in the past several years the reinstatement of the position of Magistrate is justified.

²⁷ Prosecutor Carlson is appointed by the Amherst City Law Director – Anthony Pecora.

²⁸ Prosecutor Nedwick is appointed by the Oberlin City Law Director Eric Severs.

²⁹ Pursuant to law the Prosecutor for the home city of the court prosecutes all cases filed in the unincorporated areas of the jurisdiction of the court.

³⁰ Prosecutor Nedwick is appointed by the South Amherst Law Director – Quentin Nolan

³¹ Prosecutor Zaleski is appointed by the Mayor of the Village of Wellington.

maintained their own files nor did they use the services of a secretary. The clerk of court office was handling many of the duties that would ordinarily and properly be handled by a staff member of the prosecutor office. In March 2002 the Court issued a Memorandum to each prosecutor recommending and requesting that the prosecutors maintain separate files and utilize a secretary to perform basic duties including having contact with victims and prosecution witnesses, maintaining separate files and requesting subpoenas be issued.

The court also requested a prosecutor be present at each arraignment session. State law requires a prosecution representative to provide a statement of facts whenever a no contest plea or guilty plea is entered. Previously a deputy clerk or a bailiff was reading the statement of facts. A prosecutor is also needed at the arraignment session to represent the rights of victims in domestic violence and other crimes including requests for protection orders and to represent the State's interest in setting an appropriate bond for an accused being held in jail pending disposition of the case.

There is now a prosecutor in the courtroom at the arraignment session and now all of the prosecutor's offices have an on site secretary or administrative assistant and maintain separate files. The Court is very pleased with these changes. These changes have provided for a more efficient and effective handling of cases. Most importantly, the utilization of a secretary and the presence of the prosecutor in the courtroom allow the Judge to maintain impartiality and independence.

Video Hearings

Video Hearings continue to be utilized by the court whenever possible. Thanks to cooperation between the court and the various law enforcement agencies that serve the Oberlin Municipal Court jurisdiction a countless number of hours and a significant undetermined amount of money has been saved for the relatively small cost of the operation of the video system. The Court utilizes the system for most arraignments when a person has not posted bond and for certain probation hearings and sentence reviews. The court does have a local rule that allows any person or his/her attorney to request a live appearance instead of a video appearance. The rule is rarely invoked.

Effective July 1, 2008, the Ohio Supreme Court adopted a Rule change affecting video hearings. As a result of the rule change a telephone was made available in the hallway adjacent to the video room at the Lorain County Correctional Facility to permit an accused to have a confidential conversation with his/her counsel. Because a person appearing for arraignment who is incarcerated typically has not retained counsel the phone is rarely used.

Night Court

"Night Court" continues to not be a realistic possibility in the near future. Several issues, both economic and practical, pose significant barriers to the implementation of "night court". While "night court" may not be possible, "late

afternoon” court (beginning at 4:00 P.M. after the “regular hours” of the court) will be implemented. The court needs additional hours to hear civil cases to comply with the statutory mandate of hearing and completion of cases. Up to this point the court has scheduled cases during lunch hour. Scheduling of “late afternoon” court is not without significant challenges. The courtroom is shared with City Council meetings, zoning board meetings and school board meetings. The availability of the courtroom after hours is limited. Also, on the rare occasion when the sitting Judge is not available a visiting judge may not be willing or capable of putting in a 10 hour or more day. The visiting judge pool consists of retired judges. Visiting judges are assigned by the Ohio Supreme Court. The court will attempt to not schedule these cases for days when a visiting judge is assigned. If a visiting judge is assigned on an “extended hour” day an additional staff member needs to be present. The court recorder must be operated by trained personnel. The visiting judge cannot be expected to operate and take down the court recorder. The sitting judge knows how to operate the system and routinely operates the system if other staff is not available. These are some of the challenges in scheduling extended hours.³²

Website

Effective October 2004 Oberlin Municipal Court has a Website. Public access to court records was added to the Website in December 2004. The address of the Website is Oberlinmunicipalcourt.org. The Website contains information about the daily operations of the court and general information about the office of the Clerk of Court, the office of the Judge, and the Community Control Department. The website also provides other information for those involved in a court proceeding as a party, a witness, a juror or attorney.

The website has three informational power point presentations. One presentation addressed roles in the justice system and underage drinking. This is a presentation that Judge Januzzi makes to local high schools. Persons charged with Underage Consumption in this court are often referred to this power point in conjunction with a paper that they are required to write regarding the effects of

³² Space, security, court staffing, clerk staffing and Prosecutor staffing are included among the issues. The courtroom is shared with Oberlin City Council. Council meets on Monday evening and sometimes has public hearings on other evenings. As a practical matter there are many Tuesday and Wednesday afternoons that the regular court docket is not completed until after 5:00 P.M. so that the late afternoon or early evening arraignments might conflict with use of the courtroom. Security personnel, at least one bailiff, and at least two employees in the Clerk of Court’s office would have to be present. Although there may be options for re-arranging the hours of the deputy clerks the cost of the bailiff and security personnel would be an added expense.

A prosecutor would need to be present. Even if the Night Court were limited to minor misdemeanor traffic arraignments a prosecutor would need to be present to read reports and represent the interests of the State. If anything other than simple traffic arraignments were scheduled the various jurisdictions would have to provide a prosecutor for hearings. As set forth above under “Prosecutor Offices” because there are so many different jurisdictions there would have to be cooperation with all of the various jurisdictions to provide a Prosecutor for the “night court” and compensation for that person. The Court will continue to monitor this situation.

alcohol. There is also a presentation that addressed misdemeanor sentencing. Judge Januzzi has made presentations on misdemeanor sentencing to the Lorain County Bar Association and to the Ohio Community Corrections Association. There is also a presentation that addressed the issue of Judicial Independence.

The Oberlin Municipal Court website has been recognized as one of the best websites in the United States by at least one independent agency.³³

Technology

The software program was changed from a character based program to a windows word based program in 2008. This has created many opportunities to improve the efficient input and processing of cases.

A work station was added to the courtroom in 2008 permitting the efficient transfer of court entries directly from the court to the Clerk's office and permitting the Judge to create and/or modify court entries in the courtroom.

Another workstation is planned for the communications point in the lobby in conjunction with the relocation of metal detector so that the Judicial/legal assistant can be productive at all times at this location.

A new court recording system was purchased in 2008 to capture video as well as audio for court proceedings.

Community Outreach

Judge Januzzi continues to make him self available for presentations to local schools. In the past Judge Januzzi has given presentations at Wellington High School, Amherst High School and Oberlin High School and also presided over Mock Trials with Oberlin High School students. This past year Judge Januzzi presided over a mock trial presented by the Oberlin Street Law class.

Conclusion

Thank you for the opportunity to allow me to serve as Judge of the Oberlin Municipal Court. It is a position that I truly enjoy and consider it an honor and a privilege to serve. We will continue to work toward improving the operation of the court to better serve both the community and the participants in the proceedings.

³³ This according to SpinJ Corporation, a company providing a traffic court directory on the internet.

CIVIL BRANCH

Civil Case Load

After a record number of civil case filings in 2008 the civil case filings for 2009 declined to 1,077.

Year	Cases Filed
2001	732
2002	818
2003	1,042
2004	1,047
2005	994
2006	932
2007	1,082
2008	1,242
2009	1,077

Receipts of Civil Division

Receipts increased substantially beginning in 2008 as a result of the increase in civil filing fees as of January 1, 2008.

Year	Amount
2001	\$52,239.45
2002	\$53,262.86
2003	\$74,023.46
2004	\$84,301.37
2005	\$78,545.54
2006	\$71,591.23
2007	\$80,315.22
2008	\$130,112.39*
2009	\$140,291.47**

*Does not include \$16,225.00 in receipts for Court Improvement Fund or \$6,086.00 in receipts for Clerk's Computer Fund.

** Does not include

CRIMINAL AND TRAFFIC BRANCH

Criminal Case Load [Felony and Misdemeanor filings – excluding OVI and Traffic cases]

The breakdown in criminal filings for the major police agencies in the jurisdiction of the court for the past nine years is:

Agency	2001	2002	2003	2004	2005	2006	2007	2008	2009
Amherst	285	341	458	760	763	657	627	589	606
Oberlin	299	253	276	203	219	164	246	203	206
Wellington	132	122	117	97	97	149	122	115	123
Sheriff	205	190	238	197	152	174	149	166	136
South Amherst	37	59	12	41	10	28	43	83	70
Ohio State Patrol	74	93	87	168	141	107	78	93	142

OVI Case Load [Operating a Motor Vehicle Under the Influence]

The breakdown in OVI filings for the major police agencies in the jurisdiction of the court for the past nine years is:

Agency	2001	2002	2003	2004	2005	2006	2007	2008	2009
Amherst	34	67	102	121	86	117	116	159	110
Oberlin	31	17	14	22	28	32	38	25	36
Wellington	35	37	31	37	44	45	35	41	29
Sheriff	25	22	9	13	8	10	7	12	4
South Amherst	15	16	8	14	7	7	10	3	9
Ohio State Patrol	123	115	106	108	113	97	121	107	125

Traffic Case Load – excluding OVI filings

The breakdown in Traffic filings for the major police agencies in the jurisdiction of the court for the past nine years is:

Agency	2001	2002	2003	2004	2005	2006	2007	2008	2009
Amherst	905	1145	1636	1411	927	971	850	617	985
Oberlin	868	425	360	446	370	338	293	297	283
Wellington	267	333	197	209	272	399	239	244	177
Sheriff	275	271	263	323	160	137	129	185	91
South Amherst	108	193	309	334	302	362	248	198	271
Ohio State Patrol	4630	5836	5360	3880	3726	3719	3920	3961	3294

COMPUTER GENERATED STATISTICAL ANALYSIS

The following is a list of number of cases filed for various cases of interest from the criminal and traffic division in 1997- 2009.

<u>Type of Case</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
OVI	247	278	320	296	268	279	270	317	292	311	329	350	314
Felony	187	157	143	137	166	176	197	255	249	239	206	207	204
Misdemeanor	731	798	948	927	1,024	1,031	1,107	1,398	1,364	1,112	1,148	1,110	1,139
Traffic	6,700	5,622	7,819	6,753	7,119	8,208	8,208	6,887	5,967	6,040	5,726	5,528	5,108

The following is a list of total cases filed, terminated and pending in the court in 1997-2008.

<u>Year</u>	<u>New cases filed/transferred</u>	<u>Terminations</u>	<u>Pending 12/31</u>
1997	8,599	8,920	2,328
1998	7,585	7,738	2,175
1999	9,948	9,959	2,164
2000	8,730	8,872	2,022
2001	9,351	9,453	1,920
2002	10,765	11,396	1,289
2003	11,124	11,212	1,206
2004	10,530	10,642	1,103
2005	9,541	9,758	888
2006	9,013	9,068	833
2007	9,193	9,024	918
2008	8,820	8,860	878
2009	8,521	8,510	889