

Addressing Root Causes: Drug, Mental Health and Re-entry Courts

Remarks by Hon. Patrick C. Bowler

Judge Bowler was elected to the 61st District Court in Grand Rapids in 1984 and served as Chief Judge for ten years. Before that he was the Director of the Kent County Office of the Defender. Judge Bowler became the Drug Court Judge in Kent County in 1999 and is president of the Michigan Association of Drug Court Professionals. Among his numerous other professional and volunteer activities, Judge Bowler serves on the board of directors of Project Rehab, a substance abuse treatment organization in Grand Rapids, and is the current president of the Grand Rapids Bar Association. Judge Bowler is a faculty member of the Michigan Judicial Institute and an adjunct professor of law at the Detroit College of Law at Michigan State University.

Good morning everybody. Thanks Barb, for inviting me to this conference on doom and gloom. Let's see if we can't change the style of this conference and get a little more upbeat, okay? I'm addressing root causes. Most of you have heard insanity described as doing the same thing over and over again and expecting different results. Well that's exactly what we've been doing in the criminal justice system for years and years and years now.

You all know the statistics, but let's set the table here. Fifty percent of all prison and jail inmates are directly incarcerated because of substance abuse crimes. More than 80 percent of all inmates have substance abuse problems. Drug testing of arrestees at numerous jails across the nation establishes that 66 percent of all arrestees test positive for illegal drugs. Drug offenders accounted for 72 percent of the overall increase in the federal prison population between 1990 and 1996. From 1988 to 1997, the number of juvenile drug offenders increased by 125 percent. In the last 20 years, the prison populations have tripled to over two million.

Now here is one of my favorite statistics and this will be the last one I throw at you. A Brown University study did the exponential math, and I think I remember what that means. By the year 2053, there will be more U.S. citizens in prison than out. So, I don't know how many of you will be around in that year. A couple back there.

The really sad part of all of this is that inmates in the United States are parents of 2.4 million children, all of whom are disproportionately likely to follow their parents in a life of substance abuse and jail. We have to break the cycle.

The criminal justice system has failed to respond effectively to the substance abuse problem in our society. Traditional processes for addressing the problem are impotent. Well, today I bring at least a partial answer to the problem that plagues our communities. Drug treatment courts.

Let me try to explain this by a real case example. Now bear with me. I'm reading a real Grand Rapids police incident report, and their writing is terrible.

The reporting officer was wearing plain clothes and driving an unmarked, undercover police vehicle working prostitution assignment on South Division. The reporting officer observed the suspect walking to the rear of (and I won't give the name of the establishment and the address). As the reporting officer drove by the suspect, she waved at the reporting officer. He drove around the building and he stopped and, of course, the suspect approached. The reporting officer opened the passenger door, the suspect got inside and at this time the following conversation took place.

Reporting officer: "What's up?"

Suspect: "What's up with you?"

Reporting officer: "You got a place where we can go?"

Suspect: "Yeah."

Reporting officer: "Where? Back to the motel?"

Suspect: "Yup."

Reporting officer: "Who else is going to be there?"

Suspect: "Just my mom and my dad."

Reporting officer: "They don't care?"

Suspect: "No, they are my adoptive parents."

Reporting officer: "What are you good at?"

Suspect: "I'm good at it all. I do a lot of " –

At this point, I'm going to spare you some details rather than exploit your personal value system. But this part I have to tell you. There is a transaction, \$40. They leave for the room, and, of course, the other policeman stop the car and they arrest her. She would not open her right hand, and they force her to open the hand because they want to handcuff her and out, of course, falls a crack pipe with a visible white residue that tests positive for cocaine.

We're going to call this person Mary. Mary has a long criminal record: drunk driving, soliciting for prostitution, trespass, false information, possession of marijuana, possession of cocaine, soliciting for prostitution-previous, bond violation, probation violations. This is a typical example of the type of folks who are out there committing crimes. It's also a typical example of the degradation and the hopelessness of many of the drug addicts and the alcoholics that fill our jails and prisons.

Now let's look at Mary's case for a minute. Let's look at a traditional process through the court system. It's a felony. She's arrested; she'll be arraigned, I hope, within 24 hours, 48 hours. At her arraignment, she'll be set over for preliminary examination and that's, by law,

within 14 days. At the preliminary examination, this lady will be bound over to circuit court. Typically from preliminary examination to the first pre-trial conference, 60 days. From the pre-trial conference, if she's going to be set up for a guilty plea, 60 more days. If it's going to go to trial, 60 or perhaps 120 days. If she pleads guilty, which she probably will, it will go to pre-sentence, another 60 days, perhaps 30 days. When she comes to sentence, we've had a delay between the incident and the sentence of approximately 8-1/2 months, one year maybe.

Non-traditional approach. She goes to the jail upon arrest. Court Services Department in Kent County immediately monitors who this person is and determines that she is an addict. It does not take a professional person to figure out some of these things. My theme here is, a lot of this is simple. She goes to arraignment and at arraignment, the judge immediately orders that a drug treatment court person interview her. When she gets to preliminary examination, the dye is set. She is going into drug treatment court. We are now at 14 days. At that time, the person will come before me, the drug court judge. At the 14 to 17 day mark, she is already being placed in a treatment program. She is being ordered to drop a minimum of three times a week. She is being ordered to attend a 12-step program -- a minimum of three perhaps seven times per week. She is ordered to immediately involve herself in counseling -- individual counseling, group counseling, intensive out-patient, all determined on an individual basis. Thus, the delay between the incident and the sanctions -- two weeks.

Court intervention: she will now see me every week. She'll appear in a group session on either Wednesday morning or Wednesday afternoon. I will have her approach the podium with every other person in that drug treatment court, and we will talk about how she is doing and what she is doing. If she is not doing what she is supposed to do, the sanction is immediate. I very rarely send them to jail directly from the podium, but she will do the sanction on the following weekend. I'll get into that in just a minute. She will be required to work, go to school, take care of her children, pay taxes, whatever else is expected of her.

Now, what have we done here, what have we suddenly done with the criminal justice system? We have created judicial-initiated treatment solutions for alcoholics and for addicts. What drug treatment courts do is transform the roles of both the criminal justice practitioners and the alcohol and the drug treatment providers. The judge is the essential figure in a team, but it is a team approach that focuses on sobriety and it focuses on accountability of these individuals. Because the judge takes on a role of trying to keep participants engaged in treatment, providers can now effectively focus on developing a therapeutic relationship with their clients. In turn, the treatment providers keep the court informed of what each participant is doing and what their progress is. The judge can follow through with rewards and sanctions, as appropriate.

Now, again, I think this is very simple. As a matter of fact, my favorite book, and I would suggest you all go back and read this, is "*Everything I Ever Needed to Know I Learned in Kindergarten.*" We have complex processes and we have tons of government. I've been hearing about government statistics all morning, but this is about people. The justice system is about people, and this is addressing individuals on an individual basis based on their particular circumstances. Drug courts create an environment with clear and certain rules. The rules are definite, they are easy to understand and most important, compliance is within the individual's control. Not at first, but it becomes within their control and they learn this. For example, the participant either appears in court or they do not. They either attend treatment or they do not. They either test positive or they do not. If you don't go to a drop, that's positive. You do two days in jail -- Saturday morning at 8:00 to Sunday at 5:00

The judge orders a sanction immediately and directly and penalizes non-compliance. Many of you are parents out there. This sort of goes back to kids. If your kids do something wrong, how many of you wait 8-1/2 to 12 months before you address it? When they do something wrong, is there an immediate response? Is it a positive? We'll get to that, there being rewards in this system. Is there a sanction? Is the sanction appropriate to what the problem was? Clear choices are presented to these folks and they are encouraged to take control of their own recovery. Getting them to take control is the test for the judge and the rest of the team. But, the message to these folks is, "Hey, we're all on the same team. We are on the same team here and what's our goal? Our goal is that you get control of your life, that you recover." The message is also very simple, again. "We care about you. We care about your life." I have people in my drug treatment court who cannot believe the system can care about them. They have been to prison; they have been in jail; they have been through many, many processes earlier in their career. They've never had a system that they felt cared for them.

Hey, what's happened to Mary? She went into drug residential treatment. She spent several months in in-patient care. She was living with her mother at the time. She truly was living with her mother and father in a motel. She had no job. Her daughters were in foster care, two daughters. Her son was with his father. When she graduated, it was a very proud moment. The family was there. We invited prior graduates back and we celebrated Mary. We celebrated the fact that she now has a full-time job, that she has been moved up to a foreman position at a local factory, that she has her own apartment. You know what we do when someone says they have their own apartment? [applause] Both of her daughters are back, out of foster care and living with her. She now attends counseling at the YWCA with her daughters. It's a family approach. She has visitation from her son. She attends and continues to attend the 12-step program regularly, and I must argue with the last speaker. Yes, judges force them into 12-step programs. And as Father Quinn used to say at Sacred Heart in Detroit, "You keep sending them until they get it." If you wait for someone to find it in their heart that treatment is the right option, they are going to be out there forever. You force them into it and they come around. They get around the corner.

We are very proud of Mary and there are hundreds of other Marys out there. People who have been to prison, jail, who are now making it. What's the carrot on the stick? Originally, we offer charges will be dismissed. Now these are felony charges. They are brought into my court because a prosecutor agreed that we arraign them on some made-up charge because the circuit court judges thought this is too non-traditional session, that's a glorified social worker. That's what I am, a glorified social worker. But it works. If they fail the program, they go back to the felony. Nobody loses anything. If they make it, the prosecutors agree to dismiss the charges. That's the original carrot on a stick.

They figure, "Wow, I'm going to spare myself some jail. I get rid of the criminal charges." For most of these people -- what's another conviction? They already have ten. The carrot on the stick becomes recovery. No one wants to be an addict. They like having control of their life. They like having a life back and they adopt this program.

What's a typical drug court session? Well, again, we all meet in group session and one by one they approach the podium. When I take the plea, I use a little theater. It's kind of a ceremony, because I go through the plea but then I go through a personal agreement. How many of you have entered into a contract in your life? You buy a car, you don't make payments, what happens? They take your car. This is a personal agreement between you and me. We sign it in court. What happens if you don't live up to the agreement? *You take*

me. Yes! You go to jail. You get a sanction. *What's my job?* To see that you make it through your recovery. *What's your job?* To recover. It's a personal agreement and we emphasize that throughout. As they approach the podium, I talk about their recovery. A missed drop is a positive. If you don't do your 12-step programs, you don't go to your sessions, you get immediate sanctions. Sanctions vary. The worst being a jail sentence.

Now folks, especially you in the corrections system, you might not believe this, but I've spent 30 years in the criminal justice system talking with everybody who has done all kinds of time. Federal prison, prison, jail, whatever. The sentence that I give is Saturday morning 8:00 to Sunday at 5:00. They hate it. It's the worst sentence they ever got. They hate that weekend sentence. Now, first of all, the thing that amazes me, 99 percent of them do show up. Anticipating it. It's their weekend. They go in at 8, they have to test first by the way, between 6 and 7 in the morning. They show up at the jail at 8:00. They get out Sunday at 5:00. Now I have people who do that ten times, 15 times. At some point, they get it. They get it. "Judge, I'm not going back to that damn jail, I don't care." They do not want to go back to jail on the weekend.

They will go through phase one, phase two, phase three and phase four of our program, and as they move through the phases, the requirements of the program lessen. They are rewarded in that way. Now, they are rewarded in other ways, too. We spend a lot of time on emotional highs and emotional lows in a typical drug court session. The lows, I do at the beginning, I have to do my sanctions right at the top. So if you're at the top of my pile, you know where you are going. Then I get to do the ones where we simply monitor what they are doing. And, then you get to the rewards at the end. We give certificates every time you move into a new phase. We give them books that address problems on substance abuse as they move through the phases. When they move into phase two, I'll give them the book, *NA: It Works, How and Why,* and I write a personal message inside the cover. It's individualized to the person who we now know. As a judge for 19 years, I only got to see these people again after sentencing when I resentenced them on a probation violation. But now I see them once a week. I know where they live and how many kids they got. I know where they work. I know what their problem is, and I know what to write in the book to get them to keep going in recovery.

Graduations are a very special event, again, and they are done at the end. Those people who receive sanctions are still in the room and they see what success is. And they come up afterwards, and they'll say, "Judge, this is the last time you send me to jail."

This whole system is based on honesty. When we changed chief judges in the circuit court, I got the new chief judge to come down and sit through a session, and he was astounded. He couldn't believe it. He came up afterwards and he said, "This is quite a program." While he was talking to me, the back door of the courtroom opened and a man walked in and walked right up to us and he said, "Judge Bowler, I'm very sorry. I apologize for interrupting you but I have to go to jail." And I said, "Okay Joe, have a seat in the jury box." And the chief judge looked at me. He says, "What was that all about?" And I said "He's dirty."

That's the honor system. When they step up to that podium, I expect them to tell me. Don't ever try to fool me. You can't fool us. Addicts and alcoholics, they think they can fool us but with the monitoring we've got, they're not going to fool us. If they get us once, they won't get us many more times after that.

I, as a judge, have learned a lot, because I share decision-making with these drug treatment specialists, with my caseworkers. They'll tell me in a meeting we have before we go in the

courtroom, "Judge Bowler, you've got to send them to jail this weekend." I'm going "Oh, come on. For that? No, I don't think so." And they said, "No, he's got to go," and when I get in that courtroom, what do I do? I send him to jail for the weekend. Because the drug treatment specialists, the people who are out there doing the counseling and working with these folks, now have a velvet hammer to back up the treatment that has to be done.

We are now moving into other specialty courts. One of the two major projects going on right now in Michigan are parole violators who will be sent into a drug treatment court-like setting and monitored just as closely. I'm working with the Kent County Circuit Court on bringing probation violators in. With all due respect, and I hope there is not any circuit court probation officers here, but testing once a month to see if they are using drugs? Boy, you don't know the same addicts and the same alcoholics that I work with. They like the monitoring that we do.

We're working in the 61st District Court in Grand Rapids, commonly known as the fighting 61st. We're now working on a mental health court where, again, the experts, you folks, many of you out there, come in and you assist us in working with folks who are simply thrown in jail or prison because of their mental health problems. We're working on a domestic violence specialty court where again we focus on the particular problems of that particular violator. So there are a lot of other expansions of this idea, this new thinking across the board in other ways

We always talk about the addict once they start to get a handle on life and start to take control of their life developing that new thinking and they do. They will go through a new thinking process. They're happier and they're more honest and they're able to take on the challenges of life.

When is the criminal justice system going to do its new thinking about the way we do handle these problems? California drug courts save millions. There's flyers on the table out there. They've done two very, very scientific studies and they show that they are literally saving their state millions of dollars. We have done our statistics and the repeat offenders from graduates of drug court are about 8 percent as compared to 40-60 percent of your normal probationers getting back in trouble with the law. We save monies in ways that are those "intangibles" -- people are now working, they are paying taxes, mothers are getting their kids back out of foster care; we're saving money; dads are paying their child support. It's a requirement. "Did you pay your child support?" "No." Saturday 8 o'clock to Sunday at 5. You do those things or you get a sanction. Slowly, but surely -- just like your children that you've brought up -- they start to get it. They start to learn that there are ways in this society that we expect people to live.

I have a couple of quotes for you. General McCaffrey. You all know who he is now after this last war. He's the former national drug czar. He said, "The drug war can't be abandoned. Too many lives are destroyed by drugs. But it can be fought without savage inequities and mindless human warehousing."

President Bush states, "Drug courts are an effective and cost-efficient way to keep non-violent drug offenders; commit them to a rigorous drug treatment program in lieu of prison. By leveraging the coercive power of the criminal justice system, drug courts can alter the behavior of non-violent, low-level drug offenders a combination of judicial supervision, case management, and mandatory drug testing and treatment, to insure abstinence from drugs."

I would be happy to answer any questions. You probably can tell that I could stand up here and talk about this subject for an hour.

Thank you very much.