

John Caher: Welcome to Amici, news and insight from New York Judiciary and the Unified Court System. I'm John Caher.

Today our guest is the Otsego County judge and acting Supreme Court Justice Brian D. Burns, the supervising judge for the 6th Judicial District.

Judge Burns, who opened one of the first family drug treatment courts in the state in 2001, recently traveled to Dublin, Ireland as a Fulbright Specialist to attend and speak at a seminar entitled, "Social Justice: The Use of Drug Treatment Courts as a Judicial Response to the Opioid Crisis."

Judge, thanks for joining the program. The beginning is always a good place to begin, so tell me a bit about yourself if you would. You were born, and then what happened?

Judge Burns: I was born in Upstate New York, attended Syracuse University for undergrad. My girlfriend at the time was also at Syracuse. She's a nurse and had a job with Mass General in Boston, so I like to say I chased her out to Boston, went to law school at Suffolk University Law School. We got married, and then returned back to Upstate New York to raise our family.

John Caher: So, you became a judge in 2001 and pretty much immediately opened a drug treatment court. What led you to do that?

Judge Burns: An assignment order from a guy named Mike Coccoma. Judge Coccoma had opened up the criminal treatment court in Otsego County and had done all the planning to open up the family treatment court. When I was elected and became his co-judge, he basically said, "We're each going to do one and you're going to do the family treatment court." So, that's how I got involved with the entire movement.

John Caher: So, you didn't have a particular interest in that field when you first started?

Judge Burns: Not at first. Not at all. In fact, I had formerly been a prosecutor and was a fairly concrete, literally black-and-white-type prosecutor. If a judge said, "Don't use drugs," and that was a condition of probation, then don't use drugs, and if you do, you go to jail. And this whole idea of drug courts and relapse as part of recovery and really trying to help these people along was a foreign concept to me from where I came from.

John Caher: And since then, I know you're now on the board of directors of the New York Association of Drug Treatment Core Professionals, and you belong

to the National Association of Drug Courts. What do you find so interesting, and I presume rewarding about this kind of subfield of jurisprudence?

Judge Burns: It's fascinating, to me, how well they work. The underlying goal of the treatment courts is to promote public safety, to reduce recidivism, reduce crime. The means to that end is providing treatment to people and it's much more effective in reducing recidivism than not. It's interesting to me because it works. It certainly is rewarding.

I'm also an acting Supreme Court judge, so I spend a lot of days on the bench doing divorces and mortgage foreclosures and things like that. You do it and at the end of the day, you don't really go home and say, "Boy, that was a rewarding day. I divorced three people and signed four default judgements!" But with the drug courts, you actually see people grow in their personal lives, regaining a sense of dignity and self-worth and self-confidence and make such tremendous positive changes. Doing that, at the end of the day you go home and say, "If I played some small part in that, that was a good day." That's also very rewarding.

John Caher: That's wonderful. One of our former chief judges used to say that judges are janitors that clean up society's debris. And his complaint, of course, was that judges are at the wrong end of the criminal justice system and deal with the affect not the causes. But this changes that a bit, doesn't it? We are dealing with the cause.

Judge Burns: Absolutely.

And the other thing that's unique about drug court that I personally really enjoy is the team approach. My drug court team is a multi-disciplinary group of about eight or ten people and it's a rare opportunity to sit down directly with a treatment provider, the probation officer, maybe the mental health provider, as well as the person's attorney and the district attorney, but the ones doing the actual work on the ground, and get their input directly.

I've learned so much from the people I work with and, as a judge, you generally don't sit around a table with 10 people and make a joint decision. But with treatment court, it's a great opportunity to do that. I've been so lucky. I have a probation officer and a substance treatment provider who are just rock stars in their fields. They're phenomenal, intelligent, extraordinary people. Outside of drug court, I wouldn't have any opportunity to sit down with them on an individual case-by-case

basis. That ability to work with others and learn from others on the team is a very important part of the process for me, one I quite enjoy.

John Caher: Since they started, probably in the early '90s, and were probably were started by then-Chief Judge Judith Kaye, I think we now have upwards of 140 drug courts in the state. What has been the experience? Are they successful? Has this experiment worked?

Judge Burns: In my opinion, absolutely. The state as well as the federal government have done numerous evaluations and studies on the programs. It's hard to evaluate programs on a meta basis, because each one can be so different, but there seems to be some uniformity that the programs are anywhere from 25 to 40 percent more effective in reducing recidivism than people who don't go through the program. That's significant in so many different ways. It saves society huge sums of money in terms of incarceration, but we also have people who go back to work and are now paying taxes and dads who are paying child support or moms paying child support.

The other aspect that is overlooked sometimes is how expensive it is to provide care for the children of addicted parents. Foster care in New York, a foster care facility as opposed to a private foster care home, charges anywhere from \$100,000 to \$150,000 per child per year. If we can keep kids out of foster care because their parents are clean and sober and healthy, it's an enormous cost savings.

John Caher: It sounds like there's a public protection angle to this as well. If you reduce recidivism, you reduce victimization.

Judge Burns: Absolutely. Absolutely. And from my perspective, that's really what it's all about. That is the goal: helping these folks achieve a measure of success in their own lives is how we reach that goal. But at the end of the day, if we're not helping protect society, then we're not really doing our jobs.

John Caher: So, this isn't a soft on crime, hug a thug, program, huh?

Judge Burns: No, certainly not in Otsego County. We tell people upfront, this is going to be hard. To successfully complete this, you can expect there to be bumps along the way. You can expect that if you mess up, you're going to be punished immediately. You can spend a night ... I have one guy who he just won't go to his appointments, so he spends every third weekend in jail. It's like, either go to your appointment or go to jail for the weekend. He'll get there, but right now he would not say this is a "be nice to me" type of a program.

The other thing that we make them do is community service. Everyone has to do a minimum now of community service and if they're unemployed but employable, then they get to do a lot more community service. It's important that we demonstrate to the community that this is not a soft on crime program. It's one that ultimately is going to reduce crime and along the way, the people who have been convicted of crimes who are in the program, are giving back to the community through their efforts.

John Caher: I have heard drug court graduates say that the program is a lot harder than doing time and it's effective.

Judge Burns: That's good news.

John Caher: It is good news. Let's hop across the pond a bit if we could. So, what is the Fulbright Program and how did you get involved?

Judge Burns: The Fulbright Program is run out of the United States State Department, and it exists to promote the exchange of ideas and information across borders. People are probably more familiar with the Fulbright Scholarship Program. Those are students who will be given a scholarship to study abroad. The Fulbright Specialist Program that I participated in allowed me to go to the Dublin City University of Law School and teach a three-week seminar there on this topic.

John Caher: Why Ireland? Why Dublin?

Judge Burns: I give my daughter full credit for this. My daughter graduated from college this year, but two years ago, she told me she wanted to study abroad and she wanted to study in Ireland and she wanted to go to Dublin and specifically Trinity College. I said, "That's fantastic."

And then in some of those sleepless nights when I'm getting ready for court the next day, these thoughts were running through my head, "Okay, if she's going to go, I want to go. How can I get there?" My father-in-law was a college professor and we were chatting about it. He said, "You should check out this Fulbright Program and you should go teach there for a short period of time while she's studying."

That just kind of got the ball rolling. It took probably 18 months of planning and approvals and et cetera, et cetera. It finally came together for me and, of course, she decided that she didn't want to study abroad after all. It didn't work out exactly as planned.

John Caher: So now if she decides she wants to study abroad in Zimbabwe, that's where you've got to go?

Judge Burns: I'm hoping for Barbados, West Indies University, somewhere warm next time!

John Caher: That sounds good. Ireland has a drug court or a version of a drug court, doesn't it?

Judge Burns: It does. There's one drug court in the entire country. It's similar to ours in their approach, that is a multi-disciplinary team bringing the judge, the treatment provider, probation officer, so in many ways it's similar. The biggest difference is they try to get to people earlier when they're committing less serious crimes.

In my county, almost exclusively our participants are convicted of felonies. In Ireland, they only take in the low-level misdemeanors. And that makes a significant difference in the success rate because it is such a hard program a lot of people when they don't have a long prison sentence hanging over their heads, so to speak, they just disengage. The drug court, I visited with their judge and their team, and observed court, and the judge said maybe one out of 10 people graduate from their program, because it is hard and it's easier just to say I'll do my 60 days and go back to using.

John Caher: Is there any thought to broadening it in this state to the lower level crimes in the misdemeanor courts, violations, whatever?

Judge Burns: Some courts are run at the misdemeanor level already. We experimented with that here in Otsego County and we didn't have very good success.

John Caher: For the same reason the Irish didn't have much success?

Judge Burns: Yes, that was exactly our experience.

John Caher: What do you think we can learn, if anything, from the Irish experience?

Judge Burns: The biggest lesson I learned was don't get cocky or arrogant and think that we're enjoying a large measure of success because of all the wonderful things we do. I think it's much more clearly attributed to the fact that we take in people with potentially long prison sentences and their liberty is at stake. For me, it was a humbling experience to go over there and see how hard they're trying in Ireland and really not achieving the same success that we are. The people that I met over there were

certainly capable and competent and good at what they do. It's just that it's very hard to work under their system.

John Caher: Let me take a step back if I could. We all know that we, the state, the country, maybe the world, is dealing with a severe opioid crisis. Is dealing with an opioid addict different from dealing with a cocaine addict from a drug court standpoint, or is it the same thing?

Judge Burns: It's different. The lethality of an overdose is so much more of a significant concern with an opioid addict. Certainly, you can die of cocaine overdose, but you don't read about 60,000 Americans a year dying of cocaine overdoses.

John Caher: Is that what it is?

Judge Burns: It's about that number, yeah.

John Caher: Good Lord.

Judge Burns: The health provider in my community, Bethel Health Care, they cover about a six or seven county area in Upstate New York. They're taking this opioid crisis incredibly seriously and are doing some wonderful things, but one of their doctors told me he thinks that the 60,000 Americans a year number is grossly under reported, that significantly more people are actually dying.

He cited an example which rang true to me, because I have a father with some health problems and he has a prescription for hydrocodone for pain. The doctor was saying as people get older, sometimes they get a little forgetful so they take a couple pills, maybe they have a glass of wine with dinner. They forgot they took their pills or they're not sure, so they take a few more. And when you're older and frail, it's just so easy to accidentally take a few extra. It depresses your heart rate, your respiration, and the doctor was saying when Gramma doesn't wake up in the morning and the coroner says she died of respiratory failure, nobody goes and counts her pills to make sure she didn't actually take a few too many. But he was convinced that that's happening in record numbers.

John Caher: Well, you know, my ancestors came from Ireland as I suspect yours did as well. In fact, I went there on my honeymoon. I know quite well that it is a land of adventures. My guess is you had one or two in the time you were over there, so I'm going to put you on the spot and ask you to reveal one.

Judge Burns: Fair enough.

John Caher: Only one. Only one.

Judge Burns: One of the professors I was working with asked me if I would be interested in attending a reception at the U.S. ambassador's private residence. There's only one answer to that question: "Of course, I would."

So, I went to this reception at the ambassador's residence, and it was an amazing experience. The press officer for the embassy was there and we started chatting. It turns out he's on the Fulbright Commission, which approved part of my project, so he asked would I be willing to do a radio interview about my experience there. I said sure, that's part of the bargain I made, that I would promote this to the degree that I could.

I live in a rural county. Otsego County has a couple of radio stations. Back when I was a prosecutor if they'd interview you, it would be a reporter with a hand-held dictation machine asking a few questions. So, that's kind of what I had in mind when I said I'd be happy to do a radio interview. Turns out it was with the third highest rated news radio program in the entire country. The guy who did the interview was described as Ireland's David Letterman! He had his own late night talk show for 25 years. It was a big deal and I didn't know that at the time. That was an adventure.

If I can just relate one other thing real quick.

John Caher: Certainly.

Judge Burns: I just want to get this in because I'm so grateful for the opportunity.

The Minister of Health to the State Department, who's also a member of Parliament over in Ireland, got wind of what I was doing at the law school and invited me to come to a meeting with her. She's in charge of developing Ireland's national drug policy, and she has a working group with a retired justice from their Court of Appeals. So, she held this meeting and I attended, and I met this retired justice, members of their Department of Justice, organized crime and drugs unit, Department of Health. It was scheduled for an hour and we went for an hour and 40 minutes.

It was fantastic to have that opportunity. I learned a lot from them. I hope they learned something of value from their time with me. But at the end, the retired justice shook my hand and said, "Thank you for acting as an informal advisor to the Irish government on this important issue." I

immediately went home and called my wife and kids and said, "You're never going to believe what your dad just was called." So, that was the biggest adventure of all.

John Caher: Well between that and the appearing on the Amici Podcast, you're going to be a genuine rock star! Judge, thanks so much for your time today. I really appreciate it.

Judge Burns: Thank you, John.

John Caher: Thank for listening to Amici. You will find all of our podcasts, which now number more than 50 on the New York State Court System website at www.NYCourts.gov, and you also find many of them in the iTunes podcast library.

If you have a suggestion for a topic that ought to be covered on Amici, or someone who ought to be interviewed, please give me a call. I'm John Caher, and I'm at 518-453-8669, or send me a note at JCaher@nycourts.gov.

In the meantime, stay tuned.