

IS THERE A COURT THAT CAN MAKE A DIFFERENCE?

What is Justice, anyway, but The Golden Rule implemented in a Court of law.

--Judge K. Michael Mayes

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JUDGE K. MICHAEL MAYES
410th JUDICIAL DISTRICT COURT
MONTGOMERY COUNTY, TEXAS
CONROE, TEXAS
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SCENE: CRIMINAL COURTROOM, 2004
(THIS IS A FICTIONAL SCENE TO EMPHASIZE A POINT)

“Are you John Cummings?” asks the crusty Judge, robed and long faced.

“Yes sir,” replies the Defendant. He is cuffed and shackled, unshaven and dirty.

“Do you have counsel with you today?”

“Yes, Your Honor.”

“Have you had an opportunity to discuss with your attorney what you are charged with and what all this means?”

“Yes, Your Honor.”

“You are charged with possession of a controlled substance, a 3rd degree felony, and your history reflects that this is your 5th time to be arrested and charged for a drug offense....is that correct?”

“Well, I don’t recall, Judge, but I’ve been there.”

“Been where?”

“Using drugs and all that.”

The scene is familiar to both of them as well as the rest of the Courtroom. The court staff have seen it many times, a drug case and a defendant meeting face to face with the Judge, and the defendant without answers to the most basic of questions. The Defendant has little hope, and even less reason to believe that there is any reason to expect any.

The Judge looks out over his gold rimmed reading glasses and sees the face of defeat, a face of agony that blankets the entire expression of the man before him. This is a man beaten at his own game, lost in a world of poor choices, a world of submission to bad habits that ultimately ended with crimes that were more than simply minor offenses. This was the same face the Judge had seen before, so many times, and the frequency of it all made him ill. But his role as Judge precludes any overt reactions, and necessitates his remaining calm, patient and even fair.

“So what are we gonna do about you?” The Judge sounds exasperated. He is exasperated. He continues.

“ You use drugs and commit crimes. You use drugs and get arrested You use drugs and your family leaves you. You use drugs and you lose. So here you are. What are we gonna do?”

“I don’t know,” says the pitiful man.

“You don’t know?” Pause. “Do you plead guilty to this charge?”

“Sure.”

“You have the right to a jury trial....”

“Yea, right.”

“Are you giving up that right?”

“Sure.”

“And you have the right to confront all the State’s witnesses, and have your attorney cross examine them.”

"Right. Sure."

"You wanna give up all these constitutional rights?"

"I have to I suppose."

"What?"

"I have to, Judge. I got no choice."

"You have a choice, Mr Cummings."

"No I don't."

Silence....the Judge continues the protocol.

"Well, what? You did this? You admit you possessed these drugs? You plead guilty?"

"Sure I do."

"Tell me, do you plead guilty or not guilty?"

"I give up, Judge.....I guess I just give up."

"Give up...give up what?"

"There is nothing else, Judge."

"Nothing else?" Pause. Silence.

"Did you sign this stipulation admitting to all the facts of this offense?"

"Sure."

"And you want to accept this plea bargain and go to prison?"

"I have no choice."

"Then I find you guilty, and I assess your punishment at 10 years in the Texas Department of Criminal Justice, to be served from this date and with credit for all the days you have already spent in jail for this crime."

Silence.

"Have you understood all that we have done? Do you have anything to say?"

"I have nothing. There is nothing else, Your Honor."

IS THERE A CHOICE?

Is there anything else for John Cummings? Is there another answer for John Cummings? Does John Cummings have another choice?

And, more to the point, do we as Judges have a choice? Do we have to live with this scenario, day in and day out, as it plays out every day in our courtrooms? Must we simply accept all this destruction and misery as our only alternative? Is that where we are as Judges? And is this who we are as a society?

These are not just rhetorical questions . These are questions that burn at the very heart of our judicial system and the very soul of our society. We can ignore them or we can address them. We can ignore them or we can challenge them. If we ignore them, then we will continue as we have, on the merry go round of arrests, convictions, probations, violations, prison, release and then start all over again.

MY HUMBLE THESIS

I would humbly suggest that we, as Judges, need not act as if we have no other choice. We need not accept as an unchangeable fact the erosion of individuals that we see in our courts due to the abuse of drugs and alcohol, an erosion that destroys a part of all of us. We are in a unique position to provide a positive alternative in our courts. It is a bold step, but one that we must take. By doing so, we can challenge the commonly held beliefs that people on drugs are not salvageable and that this segment of our society is hopeless.

In the past, we have told the drug and alcohol users that it is their problem; we have been wrong. We have told them to do it alone; again, we have been wrong. The numbers tell us so. The costs we incur every year tell us we have been wrong. The misery we witness tells us we have been wrong.

These are not just rhetorical thoughts. They are not political ones either. Rather, they are real issues that we must deal with. The choice is ours as Judges. It is yours. It is mine. It is not the choice of the drug users, the criminals or the defendants. It is ours.

And our only real choice is to address in our courtrooms the epidemic of alcohol and drug addiction. To not do so is to admit we as a judiciary are weak and have no answers. To not do so is to admit we are a failure as a judicial system and ultimately as a society. To not do so is not only wrong, it is the very antithesis of what we call justice.

DRUG AND ALCOHOL COURT/PROGRAM AN ALTERNATIVE

There are choices and one is the new phenomenon of Drug And Alcohol Court, or as call our adult drug court, the SAP Adult Recovery Court.¹ This new type of Court has emerged as a radical but effective alternative to traditional courts. It offers a “positive” and “encouraging” approach to the age old problem of drug and alcohol abuse. It deals with offenders as addicts and alcoholics that need an alternative way to view themselves, their life and their addiction. It says that given the right training, the right support and the right incentives, drug and alcohol addictions are manageable. In this Court the participants cheer for each other, the participants are given “kudos” for their incremental successes and the graduates are given parties. This alternative Court says that the traditional approach of “lock em up” is passe and outdated for several reasons. This Court says that the amount of money that we have spent on jails and prisons far outweighs the minimal benefits that we have seen in our traditional approach to individuals that abuse drugs and alcohol.

I created a Drug and Alcohol “Program” in the 410th District Court. It is called the SAP Program. Our SAP Program was based in part on the format of the “original” Drug Court in our County, but more so on what I observed about drug and alcohol defendants in court for 6 years as a Presiding Judge. Bottom line, jail time was good to

¹ <http://www.co.montgomery.tx.us/410dc/sap.shtml>

wake them up and get their attention over the short haul, but it was utterly useless in stopping their use and changing them into productive members of our society.

There were, of course, some drug and alcohol offenders that did not fit this mold, like those that sold drugs for profit and those that injured others when using. But the vast majority of drug and alcohol users were simply people hurting themselves, and totally lacking in “knowledge” about their addiction and the skills necessary to overcome its stronghold over them.

Unlike our County’s original Drug Court, I did not want to limit our Program participants to 1st time offenders or non DWI cases. I had seen many defendants that were not “qualified” for the original Drug Court due to their criminal histories, and I believed some of those were good candidates given the right program, structure and incentives.

The most important incentive was sobriety. Another was having the participant “invested” in his recovery – no free handouts. Not expensive, but not free. Our psychologist and counselor advise me that this “investment” approach is a significant and positive departure from many Drug Courts as it creates an atmosphere of ownership by the participant that they may not feel otherwise.

Lastly, many of these defendants wanted some type of hope for their criminal record; thus, most of our cases are deferred adjudications. Interestingly, however, we have learned that some defendants want sobriety so strongly that the carrot of no conviction is superfluous to them - they just want in the Program.

We created our SAP Recovery Court Program without any money from any source. We simply relied upon our courtroom staff, the probation officers that handled the caseloads anyway, a PhD psychologist that already worked with our Probation Department and a licensed counselor that was affiliated with the psychologist. In close conjunction with the psychologist and counselor, we drafted our treatment program. In conjunction with the probation officer and prosecutor, we drafted the overall requirements of the Program.

Next, to start the Program, we selected 2 or 3 defendants that “qualified” as candidates. Generally speaking, those accepted were (and continue to be) offenders that do not have too long a history, but we intentionally did not limit our selections to 1st time offenders or non-DWI cases. I set aside some time on our regular docket to talk to these defendants one on one and formally accept them into the Program. I have done this with all new participants. This is done in open court so that all other Defendants and their attorneys can see. This only takes a few minutes of Court time, but it is most worthwhile.

REQUIREMENTS OF THE PROGRAM

If accepted into the Sap Recovery Court Program, a defendant is required to comply with all conditions and requirements of the SAP Phase Program. There are 5 phases or stages in the Program that, in total, last approximately one year.² Each phase

² <http://www.co.montgomery.tx.us/410dc/SAPREQUIREMENTS.PDF>

has a different level of supervision and treatment. The requirements of these five phases are outlined on the “STABILITY –ACHIEVEMENT – PROGRESS” information sheet that is given and explained to them. These include intensive treatment group meetings, random and frequent UA’s, attendance to NA or AA and all other probation conditions.

As a defendant successfully completes each phase, they move up and into the next phase. A participant has to prove their continued sobriety to move to the next phase. If they fall short, they start over at best and spend significant time in jail at worst. As they move up the phases, the “formal” treatment and “hands on” supervision decreases; however, their responsibility to continue with what they have learned and to remain clean and sober increases.

Part of the Program protocol requires the defendant to “come see the Judge” in open court at certain intervals. This is not weekly, but varies depending on which phase the participant is in. This usually occurs when a defendant is moving up the phase ladder to a new level, which is a good and positive hearing. Unfortunately, a “meeting” also occurs after a participant has been arrested for a positive UA or other violation and after they have sat in jail anywhere from a few days to 30 days (more on this later). At the hearings where a participant is moving up, I congratulate them, again in open court, and make a scene to be quite honest, for all to see – a scene of pride as I shake the defendant’s hand and ask her what I can do to help her do even better – one wanted help finding a job, another wanted his occupational license, and another just wanted recognition for all their hard work. Each of these got what they wanted.

CONSEQUENCES OF A VIOLATION ?

When a participant violates with a positive UA or admitted relapse, I make a few judgment calls, but there is one consequence that happens to all participants. This consequence occurs whether the Defendant admits to using, tests positive for use or submits a diluted sample, and it occurs no matter what the excuse. They are arrested immediately. All our probation officers know I want the defendant arrested immediately if they have used.

Immediate sanctions are critical for several reasons. One, it gets them off the streets if they are using so they will not use or get arrested for some new offense. Two, it gets them away from the friends or places they have frequented and that contributed to their relapse. Third, it is a consequence for their violation, as a sanction. Fourth, it tells them you mean business. Fifth, it gives them time away from their environment to think about how serious they are about sobriety.

The most important judgment call for me is when do I let them out of jail? A few get released after the weekend, some after a week and many more after 20-30 days. Remember, they volunteered for the program and sobriety is the paramount goal – nothing more, nothing less. I always bring them before me before they are released and talk to them. I have their counselor and probation officer there. The prosecutor is there too. Many times the Courtroom is full.

I judge their attitude, whether they are remorseful and whether they are serious about being sober. I decide then whether I will even allow them to remain in the Program. I tell them all of this. I give them time in Court to tell me what they are thinking, what they have learned, what they want out of all this. I ask their Probation officer for her opinion. I ask the counselor for his. Many times I send the participant back to jail and tell them to write a letter to their Probation officer, or their spouse, or their kids, or me. In short, I simply listen and decide what is best for them and their sobriety.

The impact of these “Court meetings” cannot be overstated. They are powerful tools on the road to recovery for a defendant that has tried but relapsed. It is the trying that is so hard for addicts, especially out in the real world. These meetings are necessary to a successful recovery, in large part because the participant sees that you care, that you have acted immediately to stop their relapse, that their “relapse” does not equate to “failure,” and that you want to know what the SAP Team can do to help them prevent this from occurring again. They learn coping skills in the mere act of being called on the carpet and walking through “what they learned” with the Judge, the prosecutor, the counselor and the probation officer. What they have never done on their own, and what they are learning to do in their treatment and counseling, they now experience by walking through a “debriefing” with their Judge and the SAP Team.

GRADUATION PARTY

When a SAP recovery Court Program participant successfully completes the Program, they will be clean and sober. That alone is the most important “happening” and is a tremendous accomplishment. It is not a guarantee that they will always be sober, but that they are at that moment and that they can stay sober if they use the skills they have learned and practiced while in the Program.

When we have a graduation, we have a graduation party at the 410th Courtroom with the Judge. I convinced our Commissioners to budget money for graduation cakes, and we decorate each cake with whatever the graduate wants – a horse, a fish, a guitar, a 1957 chevy. The graduation ceremony tracks the American Native Indian ritual of standing in a circle, facing the graduate, and taking turns telling them what we think of their achievement.

The regular Court staff, the counselor, the probation officer, one or more deputies, one or more prosecutors, the participant’s family and others attend the graduation ceremony to honor and congratulate the graduate. We present the graduate with a Certificate signed by the Judge, the prosecutor, the counselor and probation officer. It is a scene that brings tears to most eyes, including yours truly.

SO FAR SO GOOD

In the last few years, we have accelerated our intake numbers as the prosecutors, defense attorneys and defendants realize the benefits of the Program and see the successes of its graduates. The numbers are very exciting. To date, we have accepted

129 defendants into the SAP Program and we have had 65 graduations. While most of our graduates were charged with drug possession offenses, we have also graduated 24 felony DWI defendants, 2 Intoxication Assault Defendants, and other participants with charges such as Robbery, Burglary, Assault and Evading Arrest. We have had only one graduate convicted for a new offense.

The overall savings in money, time and lives in the Sap Program has been overwhelming and the success of SAP has been accomplished with "post conviction" Defendants, not Defendants that have entered into a pre trial, pre plea deal. These successes have been attained without any monies from taxpayers or the public except for graduation cakes and BBQ that are bought by our County Commissioners (approximately \$500-750 per year). The entire expense of the SAP program is otherwise covered by the Defendants themselves, including all costs relating to counseling, community service, conditions of probation, substance abuse treatment, court appearances, transportation to court, treatment, groups and meetings, UA test costs, readings and writings by the participants, etc.

This SAP Recovery Program maintains an unmatched 1.5% recidivism rate. We believe this is primarily due to the "defendant investment" approach, which is also the answer to the question "what is the most successful way to help a defendant engage and continue in a successful recovery?" We all intuitively know that earning and paying your own way is what works in the real world; I believe that judges, court staffs, defendants and the public must learn that the same "pay and earn your way" approach works in the recovery world. To expect less feeds lower expectations.

I have no dreams that we will save the world with our SAP Adult Recovery Court Program, but if we help one defendant find their way to sobriety I am convinced that my time on the bench will be well served, not only for that individual but also for his or her family and friends, and society as a whole. And I believe that our judicial system will have done its part in bringing justice to one.