

CHIPPING AWAY WHATEVER DOESN'T LOOK LIKE JUSTICE
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I grew up in a family that hungered for justice. My parents spent their lives loving people who were often shunned and marginalized. They not only took direct action, but they also worked hard to change rules – rules that permitted racial segregation, rules marginalizing women, and policies that kept power in the hands of the powerful. Justice in my family means a bedrock understanding that **EVERYONE** deserves our love – not just the smart, the interesting, the good looking, the clean, the friendly, the rich, the well adjusted, or the healthy. That's a big vision. But I believe it. And I think that's perhaps the only vision worth anything in life.

My dad was a minister, and my parents told me I couldn't be a preacher. So I figured if I wanted to work for justice, I had to be a lawyer. So I did that, and I became a prosecutor. I was a Kent County prosecutor for eight years; I learned a lot during that time, and I worked with good people who care about justice. But I couldn't escape concluding that I was working inside a machine with some deep flaws.

For one thing, it became obvious to me that our criminal justice system does a bad job of empowering victims. Prosecutors all too often are eager to speak for victims, but not to listen to them. Another problem I couldn't help seeing was that while our system spends a lot more time and money on offenders than on victims, the time and expense produce pretty poor outcomes. Our prisons aren't generally part of any coordinated commitment to rehabilitate and improve offenders, or reduce the odds of reoffending. In fact, prison does not tend to make people better; it usually makes them worse. And prisoners aren't just locked up; they are exposed to violence, sexual assault, and incurable diseases like Hep C and AIDS. Moreover, while we don't like to talk about it, locking anyone up punishes those close to them – from children, to spouses, to parents.

For all of these reasons, prison is a terrible thing to have to resort to as a response to crime. But sometimes prison, terrible as it is, is the best – and indeed, most just and conservative – tool we have to provide public safety. And public safety has to be the primary concern of our criminal justice system. Providing a safe community for our fellow citizens is a foundational part of loving our neighbor. We all know that tragically, some people are violent and dangerous and need to be removed from our community to keep our community safe.

But our prisons are filled with other people too. People who pose very little risk to others, and people who could be helped to be part of free society much

more effectively than by locking them up, and then eventually sending them back out into society cold turkey. Somehow, we've multiplied our prison population five-fold since the 70s; have we really become five times as dangerous as a people since my childhood years? The numbers I've seen suggest otherwise. In fact, crime rates have gone down markedly in the last two decades, even though our prison population has not.

Beyond the numbers, it's impossible to ignore what our incarcerated brothers and sisters look like, if you look. Most of the people we lock up are poor. Most of them are non-white, many suffer from mental illness and addictions. If incarceration doesn't make people better, and most prisoners aren't really locked up to keep us safe, then why are we locking up more and more people for longer and longer? And – while our tools for treating behavioral disorders, mental illness, and substance abuse have made huge strides in the past few decades – why does our criminal justice system make virtually no use of these tools, or really acknowledge that anything other than lockup should be our communal response to the brokenness that defines many offenders' lives?

So, having asked myself these questions, in 2000, after 8 years working as a prosecutor, I felt compelled to leave, and work with those accused of crimes. Most of the people I worked with had done what they were accused of doing. But at the same time, most of them knew what they had done was wrong, they were sorry, and said they would undo what they had done if they could. The system I had come to know put little stock in the offenders' remorse, and did little to facilitate their rehabilitation and reintegration into society. So how was I to make sense of that reality? This question spurred me to look in earnest at a movement I had known about for a while – a movement called Restorative Justice. Restorative Justice tries to respond to victims' deep desires to really confront, question, and tell their hurt to the offenders who had hurt them. It taps offenders' frequent desire to apologize and take responsibility for their offenses. It brings victims and offenders together when the two groups want it, which is most of the time, in hopes that victims can start to heal, and that offenders can own the reality of the hurt they caused. Restorative Justice can produce some pretty amazing results. It can help victims begin to heal. It can reduce offenders' chances of reoffending by showing offenders the real harm they inflicted on victims. It can help break through the adversarial, black-and-white, oversimplified narratives of crimes, and reach for restoration.

Because I believe in the Restorative Justice vision, I have worked in my hometown of Grand Rapids to bring Restorative Justice initiatives into local court systems and schools, and I have seen some amazing results. But on the state level, here we are – in 2016 – with the legacy of a mass incarceration movement that has left us with over forty-thousand prison inmates in Michigan, about as many jail inmates, and a two-billion dollar-a-year corrections budget while we

underfund roads and schools. And here I am – a first term state representative – looking at all of this. So what do we do?

There's an old joke. A guy walks into a sculptor's studio, and sees the sculptor putting the finishing touches on a huge marble statue of an elephant. He asks her "how did you do that", and the sculptor says, "It's not hard really. You start with a really big chunk of marble, and you chip away anything that doesn't look like an elephant." I think that here, now, we have to look at our criminal justice system and start chipping away at anything that doesn't look like justice. Some day, I absolutely want to get Michigan using the tools of Restorative Justice. I want us to commit to really listening to victims, engaging offenders and healing brokenness. But right now, before we get to that revolution, there is so much we can fix – so much of what we do now that doesn't look like justice – at least to my eyes.

Now, I don't want to ever forget that when we talk about crime and public safety, we need to push for a broader vision of helping families, providing opportunities for everyone in Michigan, and educating our children to dig out a lot of the root causes of crime, but I've only got one speech – one elephant tonight, not the whole herd. So let me suggest one idea in each area where we have to work – before, during and after incarceration – to chip away at what doesn't look like justice. And before I do THAT, I have to say this:

First, I know who's already been working on reform. CAPPS has been on the forefront of this work to date. CAPPS' working vision for reform, a paper titled *Ten Thousand Fewer*, is filled with great, actionable ideas for reform.

Second, I know, and I hope you all know, that other legislators have been working for reform. Just since I've been in the State House, we've had a number of reform bills voted out, and a number more are pending. Reforming our criminal justice system is a big job, and it's a job that will have to be a team effort. I'm excited that others in Lansing are already being visionary in criminal justice reform. Representative Heise is one. Former Rep. Haveman was another. Senators Proos, Jones and Bieda, and Representatives Chang, Howrylak, Lucido, Neeley, Pagel, and Schor are all excited to do this work. In the last month or so I've been talking with these colleagues in the House and the Senate and I'm excited to announce that we are going to convene a bipartisan, bicameral criminal justice caucus. We are going to talk about any ideas that any of us – or anyone else – has, on ways we can strive for justice in our system. I hope that we can push each other, inspire each other, and work to find common ground for unified action. In fact, I know we will. This is too important an issue to set aside, and the time for action is now.

So let me give you just one idea each phase – before, during and after incarceration. These aren't my only ideas, and my ideas aren't the only good ideas, but here we go.

BEFORE INCARCERATION

In thinking about how we operate before incarceration, there's a huge elephant in the room: for the rich, incarceration starts at conviction; for the poor, it starts at accusation. About half of our current jail population is there because they can't afford bond. Judges are asked to evaluate flight risk and re-offense risk when setting bond; however, as a practical matter, pre-trial liberty comes down to cash, because many defendants cannot afford bond. That is not morally defensible. It leads a lot of poor people to plead out of desperate hopes of earlier release, and it leads to a lot of damage to the most vulnerable – lost jobs, children into foster care, lost housing, and the like. We need to disconnect liberty from liquidity.

DURING INCARCERATION

In looking to change what happens during incarceration, we need to craft better sentencing guidelines. Michigan is an outlier in sentencing. Average length-of-stay in Michigan prisons is around 52 months. In the rest of the Midwest, average length-of-stay is around 30 months. One simple way to change sentencing practices is to allow judges to reward positive behavior by offenders. As they stand, our guidelines count bad characteristics of crimes and offenders, but don't differentiate between offenders who are remorseless and those who are sorry and want to learn from the wrong they did. Currently, we give no credit to offenders for work in counseling, addiction treatment, for acceptance of responsibility for the offense. Similarly, we give no credit to offenders who make restitution, or who look for work, or hold down jobs. We need to incentivize work towards rehabilitation from day one of a criminal case, and that starts with guidelines that reward positive efforts. We need guidelines that guide.

AFTER INCARCERATION

After incarceration, we need to improve things too. People who come out need hope, and they need a path back into society. A huge issue for returning citizens is the criminal record that hangs over their heads, and shuts them out of jobs, housing, and even volunteer work. We need to revisit our expungement statute, which currently stops the expungement of non-violent crimes by people with misdemeanors in their past. We need that to change. Our expungement law should offer a real path to participation.

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I'm not here tonight to tell you I have all the answers. I'm not here to claim I'm the only one who sees these problems. If I was, I'd fail. I'm just here to tell you I'm excited to get to work. I'm excited to have you all in on the work, to have colleagues in the legislature who are engaged in the work, and I'm excited that this issue – the problems of mass incarceration and the need for a better vision for justice and public safety – is finally in the forefront of our attention, here in Michigan, and in our nation. Thanks for your work, and thank you in advance for all we're going to do together in the coming days and years.