

3-26-15 Testimony of Victor Fitz

My name is Victor Fitz. As a 31 year prosecution veteran, the current elected Prosecutor for Cass County Michigan and the President of the Prosecuting Attorneys Association of Michigan (PAAM) it is an honor to appear before the Energy and Commerce Commission Chaired by Congressman Fred Upton, and more particularly, its Subcommittee on Oversight and Investigations chaired by Congressman Tim Murphy---as well as the other distinguished members of this Subcommittee. I know that your presence in Congress as well as on this committee is a strong reflection on your commitment to our jurisdiction and our nation we humbly and proudly call the United States of America.

It is my understanding that I have been called to provide information and insight regarding the scourge of illicit prescription drug abuse and heroin abuse at the state and local level in Michigan. I am honored to have this opportunity.

Some brief background.

During my 30 plus years dedicated to public safety and prosecution I have had a significant focus as a drug prosecutor in both small and medium sized jurisdictions of St. Clair, Tuscola, Muskegon and Cass Counties.

In particular I spent 8 years as a full time narcotics prosecutor in Muskegon Michigan, an ethnically diverse community with major drug challenges in the way of prescription drug abuse, powder and crack cocaine, heroin and marijuana. Many of our investigations "took us" to places such as Orange County California for large scale multi-kilo cocaine operation, Wall Street New York for a multi-state heroin distribution racket, Kansas City, Missouri regarding a multi-kilo drug network, Romania for the extradition of a drug conspirator, Florida, the Caribbean and elsewhere. Our investigations also routinely touched other parts of the Michigan and the mid-west including Flint, Detroit, Saginaw, Chicago, Minneapolis and Des Moines.

For the past decade I have been an elected prosecutor in a small, primarily rural community on the Indiana border north of South Bend and Elkhart Indiana---Cass County Mi. The county has particular pride in having been a pivotal stop on the Underground Railroad during the pre-civil war era. The community has provided Michigan with notables including "America's No. 1 Spaceman"—Ivan Kincheloe, former Mayor of Detroit Dennis Archer and Bronze Medal Olympic Wrestler Chris Taylor.

Our major drug problem in Cass County is methamphetamine and marijuana, but we have also seen evidence of other drug activity including heroin and prescription drug abuse. This has included multiple overdose deaths involving heroin in the past 2-3 years.

In Cass County we have engaged in aggressive prosecution and have motivated Judges who have brought specialty courts including Family Treatment Court, Adult Treatment Court, Sobriety Court, Mental Health Court, Veterans Court and "Swift and Sure" Intensive Probation.

As a long-time prosecutor and the current President of PAAM, I have had many discussions with my colleagues regarding our drug challenges in Michigan. In preparation for the Subcommittee testimony I have also reached out in recent days to my fellow elected prosecutors regarding Prescription Drug Abuse and the Heroin challenge in Michigan and beyond. A summary of their response is provided in the attachments to this testimony.

I draw upon the above insight, materials and information for my comments below.

As prosecutors, we remaining zealous in commitment to the statutory and constitutional responsibilities of seeking justice and protecting the public. In that light, we also recognize that like crime in general, we will never be able to eliminate illegal drug activity. Like so many other crimes, our job is, through education, prevention, prosecution, programming, collaboration, probation, punishment, incarceration and other available tools, to constantly work to minimize the scourge that illicit drug activity brings to our communities, our state and our nation.

As an extreme example let me analogize to the crime of murder. Law enforcement and prosecution consider the investigation and prosecution of these cases to be of highest priority. We solve many such cases, but we are not always successful. In Michigan alone, for example, FBI statistics indicate that there are over 11,000 unsolved Michigan murders since 1980. Statistics in other states are quite similar. We would like to solve all of these crimes. We don't. But our lack of perfection in this area of law enforcement does not deter our efforts to continue to try and solve as many murder cases as possible. Such actions support justice for victims and defendants, deter others from committing murder and provide appropriate punishment for wrongdoing. We will never win a war on murder. The inability to eliminate murder as a crime in our Country does not cause us to give up on solving as many as possible. But it is the desire of Prosecutors and Law Enforcement to provide justice in as many murder cases as possible.

Similarly, Prosecutors recognize that we will never "win the war" on drugs. But we also realize that illegal drug activity has a terrible impact on our society and it IS our job to use all tools available to minimize the terrible societal impact that illegal drug activity has on our communities.

So what is the impact of illegal drug activity?

Drug activity, including dealing, possession and use have an immense and long term negative impact on the quality of life in our community. More so than practically any other crime, drug activity compromises the long-term safety of entire neighborhoods. When drug dealing becomes commonplace in a community, it can take years to reverse the negative impact on safety, property values and the like. Children cannot go out and play in their yards. Elderly citizens are prisoners in their own homes. Importantly, significant drug activity creates a generation of addicts who in turn sell drugs, steal property, rob and----as a result of drug altered states, assault and kill ----other citizens as part of a vicious cycle.

Tragically, when our youth become immersed in drug activity and use, we endanger large swaths of an entire generation. Lives can be wasted and we even compromise national security when we fall behind other nations educationally and economically in our global world due to drug use. Local industries cannot keep qualified workers due to failures on drug tests.

Upper, middle and street level drug dealing is indeed a challenge and a danger. Sadly, drug users all too often fall into this category as well. They create dangers such as

- Child abuse
- General Assaults
- Domestic Assaults
- Felony Assaults
- Murders
- Vehicular Homicide
- Sexual assaults
- Property Crimes
- Financial/economic Crimes

As Prosecutor Bob Cooney from Traverse City Michigan states:

What so many people miss about this problem is that heroin and prescription drug abuse is NOT a victimless crime. The victims are the people whose homes, cars and businesses are broken into in the search for drugs, or property to pawn in the pursuit of drugs, the children who are abused physically and sometimes sexually by the abusers, the domestic violence victims who suffer at the hands of the addict, the persons who are killed or seriously injured by persons like Vince Eaton who was loaded up with cocaine, methadone, etc. and seriously injured – lifelong injuries – 2 people last fall in our county. Or the drug dealer who was stabbed and left to die last year on our community college campus by three individuals wielding knives in an attempt to steal drugs. I would estimate that 80% of the crime in Grand Traverse County can be linked to illegal drugs.

The problem of drug abuse will always be with us. Heroin and prescription drugs are the latest concern, following the epidemics of marijuana, powder cocaine, crack cocaine, methamphetamine and others. The key is to minimize use and its impact.

Illegal drug activity is a problem that will not disappear

Illegal drug activity is a problem that will not go away

Illegal drug activity is a problem that will never be eradicated

Illegal drug activity is a problem we need to be vigilant on

Illegal drug activity is a problem that we will always have to work on.

Illegal drug activity is a problem that we can have an impact on.

But we cannot put our heads in the sand.

As stated above drug abusers cause enormous problems for our communities in the way of damaged lives, crime and economic loss.

There is no one cure.

There is no one solution.

Different things work for different drugs and different persons. Prosecutors see a multi-faceted approach as critical to our efforts to MINIMIZE drug activity, including the prescription drug and heroin problem.

This multi-faceted approach includes many options including:

- Education
- Prevention
- Preparation
- Strengthening families
- Involvement of mothers and fathers in the lives of their kids

- Enforcement
- Prosecution
- Treatment
- Diversion
- Public Protection
- Incarceration

So what is the specific problem in Michigan regarding prescription drugs and heroin?

We clearly have challenges.

Michigan has significant problems with both issues.

Prescription Drug Abuse

Our nation is quite indulgent when it comes to drug use. We consume large percentages of the drugs available around the world. Some examples:

- Global Consumption of hydrocodone was 43 ton in 2011, with the U.S. accounting for more than 99 percent of the world total. *(2012 International Narcotics Control Board Reported Statistics On Narcotic Drugs)*
- Global Consumption of oxycodone was 81.6 tons in 2011, with the U.S. accounting for 81 percent of the world total. *(2012 International Narcotics Control Board Reported Statistics On Narcotic Drugs)*

Michigan---like most if not all states in the Union---has a significant prescription drug abuse appetite and problem.

- Michigan generated more painkiller prescriptions than it had citizens in 2012. Specifically, there were 107 prescriptions for every 100 persons. *(12 SOURCE: CDC Vital Signs: Opioid Painkiller Prescribing; July 2014).*
- 4th highest retail prescription rate in the United States for hydrocodone in 2013 *(Source: Drug Enforcement Administration, Office of Diversion Control, Pharmaceutical Investigations Section, Targeting and Analysis Unit)*
- 3rd highest retail prescription rate in the United States for hydrocodone in 2014 *(Source: Drug Enforcement Administration, Office of Diversion Control, Pharmaceutical Investigations Section, Targeting and Analysis Unit)*
- 10th highest practitioner prescription rate in the United States for hydrocodone in 2013 *(Source: Drug Enforcement Administration, Office of Diversion Control, Pharmaceutical Investigations Section, Targeting and Analysis Unit)*

- 10th highest practitioner prescription rate in the United States for hydrocodone in 2014 (Source: Drug Enforcement Administration, Office of Diversion Control, Pharmaceutical Investigations Section, Targeting and Analysis Unit)
- 17th highest Practitioner and 20th highest Retail prescription rates in the United States for oxycodone in 2014 (Source: Drug Enforcement Administration, Office of Diversion Control, Pharmaceutical Investigations Section, Targeting and Analysis Unit)

Specific examples include:

- A Detroit area doctor (Dearborn Heights) who would see over 100 patients a day in Hamtramck. 1.5 million Transferred to bank in Amman Jordan. Convicted of 34 counts in 2014. (Detroit Free Press April 17th, 2014)
- Monroe County Doctor (Oscar Linares) near Toledo, Ohio, operated a large-scale prescription mill prescribing OxyContin and other painkillers to up to 250 patients a day, and fraudulently billed Medicare for more than \$57 million. Read more at <http://www.toledoblade.com/Police-Fire/2011/03/25/Alleged-pill-mill-raided-in-Monroe-County.html#qY3zOx5qdZjsqcLO.99>

Reference to the attached Drug Enforcement Administration Power Point provides significant additional information regarding the influx of prescription drug abuse and heroin activity in Michigan.

Monroe County has a population of 150,376. It's Prosecutor, Bill Nichols advises that Dr. Linares was at one time the #1 dispenser of oxycodone in North America. Further, that his parking lot was like an airport landing strip, with employees directing vehicle to open parking spots. License plates from multiple states, including West Virginia, Florida and other states were not unusual.

Prosecutor Dale Hilson indicates:

"In Muskegon County, [population 171,008] our prescription drug problem is out of control. In reviewing police activity over the last couple of years, our county-wide drug team finds illegally possessed prescription pills on just about every search warrant. In 2014, based on two search warrants at separate times, our team took from the same defendant over 20,000 pills, a majority of which were scheduled drugs and over \$100,000 in money. This particular defendant was an illegal pharmacy. It tells us in law enforcement that our illegal possession and use of pills is voluminous and almost impossible to accurately account for."

In Michigan's rural counties the problem is similar. Gladwin County has a population of ___ and is located in the middle of the Lower Peninsula. It's Prosecutor, Aaron Miller indicates:

"The number of prescription drug arrests (possession, use, or delivery) has quadrupled since 1994. This is in spite of the fact that our State Police Post was eliminated and we have almost insignificant coverage from MSP. And that we've lost 15% of our Sheriff Deputies to lay-offs."

Michigan Automated Prescription System data for Gladwin County indicates that in 2010 there were 2,789,361 Schedule 2 & 3 pills prescribed. By 2013 this number increased by 20% to 3,459,498. For a population of 25,000 people these numbers are obscene and indefensible."

Iron County Prosecutor Melissa Powell, from the western Upper Peninsula bordering Wisconsin estimates that 25% of their criminal drug activity is prescription drug and 70% is heroin.

In Cheboygan County, immediately south of Michigan's historic and famed Mackinaw Island, it is even higher. Prosecutor Darryl Vizina indicates

*"Approximately 80% of our felony caseload is directly or indirectly alcohol/drug related. My yearly statistics indicate that **60.2% of our felony drug charges involved prescription drugs**. It is a huge problem. I am continually stunned when I look at MAPS reports that doctors continue writing opiate scripts for individuals who have so many other opiates prescribed."*

Soberly, with this prescription abuse comes loss of life. This includes, overdoses, drug related robberies and drug-induced killings. Michigan _____ in prescription drug deaths.

At the county level Gladwin County Prosecutor Aaron Miller again weighs in:

"Between 6-9 deaths per year directly attributed to prescription drug abuse with no other contributing factors. For a county of approximately 25,000 this is significant. This does not account for related (i.e. suicide) that are prescription drug related. Prescription drug overdose calls to 911 are a regular occurrence at our Central Dispatch."

And from Cheboygan Prosecutor Vizina:

"Two summers ago we had 3 overdose death in a 4 day window. That gives a sample of the problem. That is concerning for a county of only 26,000 people. We successfully tried an Overdose Causing Death case in 2012."

Clearly, Michigan has a significant prescription drug abuse problem throughout the state.

Heroin

Michigan also has a growing and dangerous heroin problem. As prosecutors from around the state indicate, when prescription drugs become unavailable or too expensive, heroin has become the default option. It is particularly challenging and troublesome amongst our youth.

Muskegon County Prosecutor Hilson reports:

"We have seen a large increase over the last five years of heroin cases in our county. In 2009 there were four cases. Within five years that increased to 48 cases in 2014. Sadly, 12 of those cases were heroin overdoses. This trend is continuing in 2015. We are starting to see our pill abuses switching to heroin as it is cheaper and easier to get."

Berrien County Prosecutor Mike Sepic indicates:

Leelanau County Prosecutor Joe Hubbell, in a county of 21,747 on the western shores of the Lower Peninsula, advises that:

"As a result of the crack down prescription drugs, and the increased availability of cheap heroin, the usage in this county has increased. In addition the prescription drug and heroin

abuse problems have increased cases involving theft from family and employers as well as breaking into cars and homes.”

His neighbor, Prosecutor Cooney from Grand Traverse County advises:

“We experienced a significant increase in the number of heroin cases beginning about 2012. We almost never had heroin cases prior to 2012. Heroin has been linked to at least one stabbing/assault with intent to murder case involving three suspects. I see at least one or more cases involving heroin per week.”

With the increased heroin use, deaths are related to the drug are becoming far too common. Situated near less than 2 hours from Chicago and with a population of 155,252, Berrien County Prosecutor Mike Sepic indicates:

“Peaking, during 2013 and 2014 we had approximately 1 heroin overdose death every 1 - 2 months. Several we were able to work as Delivery Causing Death. We are aware of a number of overdose situations in which Narcan is used to reverse heroin effects, subject lives. Parents now have access to Narcan and while that saves a life it doesn't always cure the problem.”

In neighboring Cass County, we have had several heroin overdoses causing death in the past 2-3 years... In a particular instance an offender delivered heroin to two different persons in Southwest Michigan, both of them dying from a drug overdose shortly thereafter. In a separate investigation involving a different suspect, we are awaiting an April 10th, 2015 jury trial for delivery of heroin causing death. The penalty for this crime is life or any term of years. At least two other criminal investigations for heroin deaths remain active.

Across Lake Michigan from Milwaukee, Oceana County (population 26,245), known as a Michigan vacation venue, has this report from Prosecutor Joe Bizon:

“In the last 6 years, I have prosecuted 2 cases of delivery of heroin causing death. We have had 6 deaths at the semi-famous Electric Forrest Festival, 5 of which were attributed to controlled substances. 2 of those were heroin. They were not able to be prosecuted due to lacking evidence as to who provided the drugs.”

Treatment

In dealing with prescription drug abuse and heroin, the common refrain amongst prosecutors is “Not enough options”.

Prosecutors, as indicated above recognize the need to hold persons accountable for the wide variety of crimes they commit while using these drugs. An addiction is not an excuse for criminal behavior. Incarceration is often appropriate. Dealing with a criminal case involves far more than the individual defendant. It also includes public safety, sending a message of deterrence to other offenders and the benefit that punishment also provides to a wrongdoer, including but not limited to drug addicts. However, prosecutors also recognize that if treatment can also be incorporated, the chance of recidivism may well be reduced.

Surprising to some, rehabilitative and treatment providers often also see the merit to the use of criminal prosecution to teach accountability and the threat of incarceration as a real life, practical tool to get addicts to embrace treatment, rehabilitation, etc.

Prosecutors, Defense attorneys and again, treatment providers also see the benefit of periods of incarceration to bring sobriety and a “drying out” period and a clear mind to drug offenders, including prescription and heroin offenders. In Cass County, defense attorneys have repeatedly commented that drug users staying in jail often helps achieves these important things.

*“We have had mixed success. **Putting them in jail for a period of time to clean them up (between 30-120 days) before putting them in treatment has helped increase our success rate.** Employment is a huge factor in their success. They are more likely to be successful in specialty court, no matter what their drug of choice is, if they are employed.”*
- Iron County Prosecutor Melissa Powell

But the follow-up treatment is often not available:

“We work closely with our treatment providers, but we need more money for treatment as the working poor cannot afford treatment and often their insurance doesn’t cover enough of the treatment leaving them to have to come up with thousands of dollars out of their own pocket which they do not have.”
- Iron County Prosecutor Melissa Powell

“Few programs. Inpatient programs are in other counties.”
- Houghton County Prosecutor Mike Mekanien
(Population 36,225)

“We have one local treatment provider who handles rather small scale outpatient treatment for drug abuse...Community Mental Health (CMH) ... continually under-diagnoses patients to keep them with CMH when they [actually] need inpatient treatment, or just refuses to treat harder cases such as co-occurring disorders.”
- Oceana County Prosecutor Joe Bizon

“We have very limited options in regards to treatment programs. This is certainly true as it relates to programs that service the under privileged. This population is the one abusing both prescription pills and heroin the most.”

Specialty/Treatment Courts

Interwoven with treatment and rehabilitation are Specialty/Treatment Courts. Prosecutors consider these programs to have some promise, but also are cautious about the high cost and the straining of already sorely pressed resources. As a specific example, in Cass County, the existence of specialty courts has increased the entire attorney workload for the office by approximately 10%. This is a significant challenge when dealing with attorneys who are already working long hours to deal with traditional caseloads.

Many prosecutors also believe that an independent analysis of the cost and the success of specialty courts is merited.

Other general elected Prosecutor comments include:

“Treatment is a great idea, but this has to be balanced. Abusers who engage in violent crimes or property theft crimes cannot be excused from crime because they are addicts. A balanced punishment component needs to remain in place.”

- Oceana County Prosecutor Joe Bizon

“A common occurrence is for a heroin user going through rehab through drug court programming, getting clean for some months, relapsing to the previous level of usage and overdosing because the body cannot take that dose anymore.”

- Berrien County Prosecutor Mike Sepic

We have treatment programs, but not the sort of long term treatment that truly works for addicts.

- Grand Traverse County Prosecutor Bob Cooney

“We are working closely with treatment providers to identify gaps in treatment. We need better treatment programs for younger people for all substance abuse, but in particular, for heroin since they appear to be the primary users. Funding for treatment remains a continuing problem.”

- Leelanau Prosecutor Joe Hubbell

Suboxone

Prosecutors do not see suboxone as a “miracle drug to cure all woes of heroin use. Like methadone and other medications, it has its areas of success and abuse. It is sold on the streets like other drugs. Rather, from their experiences in the trenches, some, but not all prosecutors see it as another tool that may be useful under proper circumstances.

“Too new to know its value for treatment. It is becoming a street drug presumably to ward off withdrawal and presumably is available on the street when patients find their preferred drug and sell the suboxone.”

- Houghton County Prosecutor Mike Makinen

“Suboxone can be a disaster. We prosecute a large number of suboxone deliveries. I’ve been to multiple conferences where I hear suboxone is a miracle drug that helps opiate addicts and cannot be abused. I always ask why drug seekers are buying it on the street. We do NOT prohibit suboxone in our drug court. I think it is a problem.”

- Cheboygan County Prosecutor Darryl Vizina

“Suboxone is not allowed as a treatment directive in our drug court. It has been repeatedly abused and sold by drug court members and by our average population so we do not utilize it. We do not permit the use of any scheduled controlled substances, nuerontin, ultram, or the like while participating in drug court. Drug Court members view suboxone as the new methadone (methadone is still sold and abused on the street). The preference in our treatment court at this time is to address the underlying reasons for the addiction through therapy. One of our treatment providers has also had a pilot project using nutritional supplements for opiate addicts and it has been somewhat successful. The use of suboxone seems to be a gateway for our participants to continue or relapse into criminal behavior. If it’s viewed as a “miracle” pill to block the cravings, then they tend to not address the underlying issues that led them to use drugs. Alcoholics and other drug addicts must deal with “cravings” without the use of a “blocker.”

- Iron County Prosecutor

“We had an involuntary manslaughter case in 2013 which a man who was taking suboxone to overcome heroin addiction shot and killed his girlfriend. He is serving 11-19 years.”

-Grand Traverse County Prosecutor Bob Cooney

We have seen the negative side to suboxone. Our drug team has been seeing this drug being sold on the street and they have recently been able to purchase on the street in undercover capacity.

-Muskegon Prosecutor Dale Hilson

“It [suboxone] is abused every bit as much as any other prescription drug. Though I am sure they may exist, I have yet to see anyone make legitimate use of it.”

- Gladwin County Prosecutor Aaron Miller

As discussed below, Monroe County, near south of Detroit and near Toledo, has taken a number of substantive steps to address their prescription drug and heroin issues. Their Prosecutor, Bill Nichols is an active participant and integral player in the Monroe County Substance Abuse Coalition. Ms. April Demers, representing the Monroe County Substance Abuse Coalition offers the following regarding suboxone:

“Medication-assisted recovery using Suboxone has been both successful and challenging in treating opiate/opioid addiction in our State. As an opiate/opioid antagonist, Suboxone blocks the effects of heroin and prescription pain pills to the brain and also helps to eliminate cravings. When combined with cognitive behavioral therapy and other recovery supports, Suboxone treatment has proven to be effective.

Suboxone has the potential for abuse and diversion when used outside of these treatment guidelines because it can be used to mask withdrawal symptoms between fixes for someone currently abusing.

Both Suboxone (opiate/opioid antagonist) and Methadone (opioid medication that is gradually titrated) are useful in medication assisted treatment of opiate/opioid addiction. While sometimes viewed as controversial, if used within the treatment guidelines, it has proven to be a successful treatment modality and it also provides a significant reduction in harm for a patient that suffers from withdrawal and relapse tendencies.

Suboxone is especially helpful in treating opiate/opioid addiction in the prenatal population, which is on the rise in Michigan.”

As indicated above, Michigan Prosecutors, drawing from their “in the trenches” experience” have varying opinions regarding suboxone, with some willing to consider it as a tool in the heroin recovery effort, and many expressing concern over its abuse and it being portrayed as a miracle drug.

Response/Solutions/Substantive Steps

Michigan has taken a number of substantive steps to address the prescription drug and heroin concerns in the state. This has included the following. See also attachments related to these steps:

--Statewide Prescription Drug and Heroin Summit 2013

--Comprehensive State of Michigan Website dealing with Prescription and Over-The-Counter Drug Abuse http://www.michigan.gov/mdch/0,4612,7-132-2941_4871_29888_48562-149065--,00.html

--Treatment/Specialty Courts

--Michigan Automated Prescription System (MAPS)

Monroe County Michigan has been impacted particularly hard by prescription abuse and heroin issues. Accordingly, they began in 2012 to address this challenge. Their Prosecutor Bill Nichols took a central role in the effort. In particular, meetings with the following stakeholders have occurred repeatedly and formal organization has occurred.

- Medical
- Treatment and Recovery
- Prevention and Awareness
- Impacted Families
- Law Enforcement/Government

A number of impressive documents related to their efforts are attached. The subcommittee is encouraged to consider closely their efforts as well as direct contact with their Prosecutor Bill Nichols.

Other Needs/Considerations

Recognize there is more than one solution. Can vary from person to person. Not a one-solution fits all problem

More resources for Law enforcement, Treatment, Specialty Courts

Increased Narcan availability

Establish Michigan Law Enforcement protocols on prescription drug and heroin death cases

More upfront incarceration for detox (30-120 days)

Reach out to Faith Based Community

- Hope's Door
- Teen Challenge
- Community

Employment

INDEPENDENT ANALYSIS of success of treatment programs