

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

Our guest today is the Honorable Salvatore R. Martoche, a retired justice of the Appellate Division, Fourth Department. Judge Martoche is here today to share with us a profoundly personal story—the story of the loss of his daughter to an opiate addiction and mental illness. It is his hope and ours that Claire's story will help warn other parents of the dangers of opiates and perhaps inspire those in the legal community to use their special skills and powers of persuasion to help combat this national epidemic.

Judge, I know this is a difficult topic and I appreciate you talking to me about it, but if you could, if you would, please tell me about Claire, and what happened to her, and how she became addicted.

Judge Martoche: Well, first of all John, let me thank you for this opportunity. I think it's something that Claire would've wanted me to do, because as difficult as it is for me, and you correctly point out that it's not an easy subject to talk about, she was somebody who was always trying to help people and was at her best when she could do that.

She was born on June 20th, 1973 in Geneva, New York and she died on either January 19th or January 20th, 2017 in Lockport, New York. We're not exactly sure of the date because she was not found until the early morning hours of the 21st of January in her apartment. She was exactly 43-and-a-half years of age.

I'm doing this for Claire. In our own lives, we must really strive to get beyond the stigma and inertia that we're all affected by when we talk about this subject. Her life is a book for all of us to read and learn from when it comes to the dual demons of mental illness and addiction. Each of us has our own journey in life, and Claire's was a difficult one.

John Caher: How did she happen to get addicted? How did that happen?

Judge Martoche: Well, she was a terrific athlete and a very, very gifted young woman. She was very bright, and a gymnast, and a swimmer, and a runner. Early in her life she hurt her knees running, and at the same time she had TMJ.

In different visits to hospitals and doctors, in an effort to help her, the doctors would prescribe narcotic drugs. Claire's chemistry was such that it really became addictive, although we didn't know this at the time. When you couple this with a mental illness that we were really too naïve to see—we didn't see it as that, we saw her as a rebellious child, sort of a hippie, sort of a free spirit.

I'm telling you, John, if you could've seen her when she was in elementary school, the clothes she picked out, and she insisted on picking out her own clothes every day. People would say, "How could this family let her out of the house looking like that?" Checks, and stripes, and different colored shoes. She was always somebody who marched to a slightly different drummer. I can tell you that she was the brightest of my three children, very gifted in science and math. I think about what could've been for her, and the tragedy is even greater than you would initially think because I think she could've done great things to be helpful to humanity.

I know she shared my belief that one of our responsibilities was to one another, and that she knew that she had to use her gifts to help others. Fate just didn't provide her with that opportunity.

I want to say, right off the bat, that this is an illness, a sickness. It's a disease. It's not a moral failing. It's not a weakness of will. It's a disease. If we understand that, and judges and lawyers need to understand it in their hearts. Even when their heads understand it, sometimes their hearts don't. They really think

it is a weakness. If they change that opinion, I believe they can be much more helpful as they do their jobs.

John Caher: Now, you mentioned that you were a little naïve. That surprised me a little bit because you had a lengthy career as a judge, you regularly dealt with drug issues, you've been United States Attorney for the Western District for, I don't know, four or five years. You probably had hundreds, if not thousands of drug cases, you had a big job with the Department of Labor, you were a public defender, a private practitioner. My point is, you were hardly sheltered. How does something like this catch even someone like you and your wife off-guard?

Judge Martoche: Well, I think a couple of things. We were really unsophisticated at seeing the signs, and we were comforted by information and diagnosis of doctors who said she would be all right, and gave her prescriptions to help her, that frankly, if I look back, I wonder if they were more harm than help. Although they were well-meaning, I wonder if that wasn't part of something that allowed Claire to camouflage some of the things that were happening in her mind at that time. You're right, I should have known and sometimes I think-

John Caher: No, I'm not saying you should have known. I don't mean that at all.

Judge Martoche: I know, I know, John. I know that you're not, but I'm saying that I feel that way. But I worked on the side of the equation which dealt with enforcement and conviction and punishment. We got ahead of the curve, we started to do a much better job than the people on the front end of the curve were doing, the people who really needed to improve public awareness of this problem, and education. Not education simply through the schools for the students, but education for all of us. For the parents, for the teachers, for the counselors. How ignorant we have been on this subject is amazing. Doctors, doctors making prescriptions, hospitals using these things often given false and faulty information from big Pharma about the value of this,

about the risk-reward factors of drugs, and yet, they were fooled.

Then of course, it became easier because big Pharma offered incentives, offered trips, offered a lot of things to doctors who use their scripts. At the same time, because hospitals and the medical community in general were finding that the competitive environment required that they not have patients complaining about too much pain. So, there was encouragement for doctors and medical professionals to use narcotics to assist these people and not really evaluating the long-term, ill effects of the drugs. I concentrated on drug dealers, and I thought I was doing the right thing. I knew that the low-level pusher was usually a drug addict himself or herself.

So, I tried to go up the line, I tried to follow the money trail when I was a prosecutor. When I was at the Treasury Department—I was the assistant secretary of enforcement there—I tried very hard to get to the sources of the problem as I saw it. But I neglected, as most people, as all people did in my era, a whole group of people, I didn't realize that there was another group of pushers, and they were legitimized by our society—the drug companies, the pharmaceutical companies, the drug stores, the doctors, the hospitals, all of whom wittingly or unwittingly gave these drugs away. Some did it for profit, as you know. As a matter of fact, in Florida right now, the Attorney General here has recently decided to go after drug companies, I mean, drug *stores*, not just drug companies.

The AG of Florida has gone after Purdue Pharma, a big drug manufacturer, recently and is having some success there, but now she is attempting to make some corrections with the Walgreens and CVS. The fact that there were some apparent abuses with the scripting and distribution of legal narcotic pills through their stores.

John Caher: Let's go back to the beginning. You mentioned that Claire was an athlete and had been injured and got opiates. It sounds like we know now that there are some people who should never, ever get opiates. I mean, others of us, we'll get an injury, we'll take an opiate for a week and that's the end of it. But it seems like there are some people who, physiologically, chemically, should never take an opiate because as soon as they take it they are in trouble. Is that correct?

Judge Martoche: You know, John, we're all different, our chemical makeup is different, and we are all subject to not only physical disabilities and illnesses, but mental disabilities and illnesses. All of us is mentally ill to one extent or the other, and all of us has different tolerance for drugs and things like that. I know this, I know that narcotic drugs attack the limbic system, and they provide an illegitimate source of dopamine to the brain that just allows people to make awful judgments because it clouds what really is important, what ought to be important. Things like health, and safety, and love, and all those things, which are supposed to be the things that release dopamine into the system.

They get covered up by the need for this demon, which really tricks the system. The cortex of the brain is affected. It can be reversed in some instances, but the harsh reality is that we have done an abysmal job on the front-end of all of this. In the courts, and I say this sincerely, we have learned recently, and I credit Judge Kaye, that there really is value to these specialty courts where they provide assistance for people, and where they really do view this as an illness, as a disease, rather than as a crime. One of the things though that judges have to get, and lawyers have to get, is that you can't take the position that "I've given them their break, if they don't take it, if they foul up again, I'm gonna lock them up and throw the key away." That just isn't going to work.

John Caher: Sure. I know the attitude now, or the thought now, is that relapse is a part of recovery. And you're in Buffalo, and I

believe Buffalo was the site of the nation's first opioid treatment court just a year ago, in 2017.

Judge Martoche: That's right. You know they had the first veteran's court, which provided unique opportunities. They've got a leader, Tom Amodeo, the Chief City Court Judge there, who has really bought into all of this. In fact, my daughter Amy is a Buffalo City Court Judge, and she runs the Human Trafficking Court in Buffalo City Court.

John Caher: Yes, I know her well and am well aware of the great work she does. But turning back to Claire, when they first prescribed opiates for her athletic injury, knee injury, they probably had no reason to know that what they were doing then was going to be a problem. But what happened then? They prescribed opiates, she takes them legitimately, legally. Then what happens? How does it fall from there?

Judge Martoche: Well, let me back-up and say that as I look back at Claire, it was not just the drugs, it was the mental health issues. Claire suffered from anxieties, and she was a very hyper person, so that she was always trying to find ways to calm down.

When she'd mess up as a kid, she'd throw temper tantrums, we simply thought that it was a stage that she was going through and that she would get over it. She didn't, and I think that she found herself attracted to other people who had similar problems, and similar outlooks. She was a hippy and a risk-taker, a person who was not afraid of anything, so that she would go into situations ... She was also so smart that she was able to camouflage this. We tried very hard to keep very close tabs on her, and we were not neglectful at all.

John Caher: I'm sure.

Judge Martoche: As I look back, she was just smarter than us, able to fool us. She graduated, she went from these drugs to, frankly, for one reason, I think cost. The cost of getting narcotics illegally, particularly heroin on the streets of New York State, is less

expensive than getting pills, so that more and more people turn to them as an alternative. Now, with the natural opioids being replaced by the synthetic drugs like fentanyl ... Fentanyl is 100 times more potent than opium. I mean, it's just an atomic explosion so that one false step, one bad dose, and that's the end of their lives.

John Caher: Claire got involved in this early on, and then it progressed from there. What was the progression?

Judge Martoche: Well, Claire went to the best schools in Buffalo, she really did, and then she went to college and graduated from college. I think during her college years she progressed at least to using marijuana, and I think frankly, that coupled with the pills that she was taking ... I can't tell you all of the different kinds, but oxy was certainly among them ... those were the chief drugs that she abused in college, but she did so, still with some restraint. It was after college and the progression got worse and worse. I think that, as I recall it, Claire was both isolated by her own desire to take drugs, and yet uncomfortable and angry that she was isolated. It became a vicious circle for her.

Since she was so secretive, and since she would blow up so much, and since she was now an adult, and the HIPAA laws prevented us from talking to her doctors the way we were able to when she was a little bit younger. Frankly, the medicine has improved a great deal in this area, they know a lot more than they used to know.

John Caher: But still she was able to keep it secret.

Judge Martoche: Yes, she was able to keep it secret. She was so smart about it and so conniving. She needed money for books, or she needed money to take this trip, or that trip. John, we were not people who were naïve, but sometimes in our desire to love her and be loved by her, we may have done things that in retrospect were not the smartest things to do. But as they say-

John Caher: Oh, I think every parent says that.

Judge Martoche: Yeah, yeah. But as they say, everywhere you look, John, there's regret from every parent that's been through anything like this because you can't help but self-analyze after a tragedy that takes away somebody with so much promise for the world. Claire was beautiful, sensitive ... just a gift. A gift. I feel like the loss is not just mine, but it's ours as a society, because I think that she was a special person.

But what are you gonna do? It happened, and now we have to go on and we have to try and learn from Claire's mistakes, and from our mistakes. We have to do our best to help other young people, other people. I shouldn't make that mistake of saying young people because it's not just young people, it's people from everywhere.

When I started out as a public defender, it was mostly inner-city people, and most of my clients who were involved with drugs were either African Americans, the overwhelming numbers of them, usually people without much hope and much opportunity, and musicians and actors and creative people. I guess, people who were suffering from anxieties themselves. Then I saw it grow to an urban problem, and even in private practice, I represented more and more people, but that was an urban problem. Not a suburban problem, not a rural problem. Now it has grown beyond anything we ever could've expected. It's everywhere; it's in every community, places that you don't think of as drugs being able to get a foothold and they have more than a foothold now, economically high-end suburbs where you say, "Oh gee, these kids have everything." Well, we've learned that having a lot of material things, and even having a lot of love, are not necessarily enough to protect us. That's why I'm so angered by the lack of response from the state and the federal governments. They are really good at triage. They give a little money here, and a little money there. They support bundles of beginnings, but we never get beyond the beginning stage, we never get to where we need to get, which is to have real research and development of new and non-narcotic

alternative drugs for people. Although, they're finally working on that, we don't have enough . . .

John Caher: What should we do though? What can the government do? It seems obvious, as we learned rather painfully with a quarter century misguided experiment with the Rockefeller Drug Laws, that this is not a problem we can arrest our way out of. That's not going to do the trick. So, what should the government be doing that it's not doing? What can it do?

Judge Martoche: Well, first of all, it has to fund — and it's not just the government, philanthropies and foundations need to be part of the solution too. They're sitting on their hands. We need to have more research, more in-depth research about what causes this problem and what protocols will work, because not all the same protocols are going to work for different people.

We need more beds, many more beds. We need to fund longer stays. The insurance providers have to step up to the plate and provide for more time for these people to be treated. As I said, the state and federal governments have to provide more funding to keep these people in the hospitals for a longer stay. You know John, we have to incentivize the very best doctors and scientists to get involved in this.

The way we do that is to pay them well. This is not friendly work, this is difficult, heart-rendering work for all of them, but we have to make them want to do this work and incentivize them in any way we can. If we do that, we might have a fighting chance.

I have a friend who pointed out to me something that exists in Toronto, Canada. It's a hospital for mental illness and addiction. Up in lights for the world to see, it proclaims that, "This is an illness, a disease," and you'd be surprised at the difference it makes in the public reaction to this.

Also, they fund this thing so well and they're really doing important research. We have this new medical corridor in

Buffalo, New York, that's probably the finest thing that resulted from the Buffalo Billion, and yet, there's no hospital that stands there to make that same proclamation. And it should.

John Caher: Now, when Claire was first prescribed the opiates after her knee injury, her mental illness was undiagnosed, wasn't it?

Judge Martoche: Well, yes, we had taken her to psychiatrists and psychologists, a number of them, because we were looking for answers. There were two things at play. Number one, Claire did not want to go and Claire was a very willful child. She was very smart, so she could be very deceptive, so that the reports that we got did not alarm us to the point, I think, that the illness demanded, frankly.

John Caher: So, the doctor would not have been in the position to say, "Okay, I've got a kid here with a busted knee who also has mental health issues. Do I prescribe opiates?" That question probably never came to him, right?

Judge Martoche: That's right, but we brought her to psychologists and psychiatrists as well, and because we knew she had anger issues, and we knew that she had some issues with her ability to cope with day-to-day living. We knew this. We knew this, and we tried, but she was too clever for her own good.

John Caher: Sure, sure. Now, didn't she come out of it for a while? Didn't she get clean for a while?

Judge Martoche: Oh, a number of times, but the last time, she was clean for over two years and making real progress. She had moved out of Buffalo and into Lockport because she did not want to be around the scene, the lifestyle that could be so tempting to her and getting her back into drug abuse. Now, she was doing well and had made tremendous strides, but then she had a gallbladder problem, and she went to her doctor. The doctor said that she needed an operation. It was the same group that had been treating her right along, and Claire made a point, and

I know this for a fact, of telling the doctors that she was not allowed to take any opiate drugs because of her addiction problems. They noted her charts to that effect.

However, apparently the doctors and other medical professionals who were going to perform the operation were either too busy or neglectful and didn't read the charts or didn't read them appropriately. They put IVs into this kid that contained those very drugs that she should not have been taking.

John Caher: Oh, Lord.

Judge Martoche: They're giving her these drugs, and then in the hospital when she wakes up, they're giving her more of these. Now, maybe you could say to yourself she should have told them at that point that she shouldn't be taking these drugs. But remember that she's a sick person and now she's been given ... you might correlate this to a drink, she's an alcoholic who's been given a drink. Now it's awakened all of those demons in her again.

Then they gave her a damn boatload of this crap when she left the hospital. Now, this is currency to a person who has a drug problem, and they can trade this, they can use them or they can trade it for far more heroin and fentanyl. Do you understand the risks that they put these people at, when they over-prescribe these drugs? I mean, it is just criminal-

John Caher: I certainly understand the risks and I'm stunned that they didn't.

Judge Martoche: I know, John, it is stunning. I know that they're busy, that they have a lot to do, but John, this is their profession, this is their job, this is life and death. They need to be better at what they do than they are now. They need to be less concerned about people complaining about a little bit of pain, or more honest at least, and do more monitoring if they're going to feel that they need to prescribe more opiates for people. Then, by God, you better check them regularly, and you better keep them on a

short leash, so they have to keep coming back for the product that they can't simply sell it or get overdosed on it on their own, because there's no oversight.

John Caher: Yeah, that's a clear issue in the medical community. But let's go back to the legal community. With what you know now, would you have been any different as a judge?

Judge Martoche: I would've been a lot different.

John Caher: How so?

Judge Martoche: First of all, I would've looked at this and I would've been much more able to understand it as an illness, and not as a weakness, not as a crime. I would have understood the likelihood of relapse. I wouldn't have pontificated so much — "I'm gonna give you this chance and if you don't take it, you have only yourself to blame." That's born out of ignorance, and we need to educate ourselves better, and we need to spend more time at this. All of the courts of New York State, particularly the city courts and the family courts, are facing this problem regularly.

I think the courts are learning now, something that I never knew, that there is professional assistance and they need to bring these people into their court room and use them, not just as window dressing, but actually use them and benefit from their knowledge base and from the tremendous assistance that they can be to people. In Buffalo we have not only a drug court, but an opiate court as well, because we recognize that with opiate usage, they need constant monitoring. They provide daily monitoring for these people through various programs. My God, we have come a long way.

I was one of those Neanderthals who thought that this was not the job of the courts, that this was the job of social workers, and social agencies. Well, John, I was dead wrong, because you have to catch people where they intersect with you. The courts are a perfect place to intersect because you have a bit of a

hammer there. You have the ability to offer treatment or jail time.

John Caher: I understand. You've got a carrot and a stick, and the addicted individual's first encounter with a government institution may be a court.

Judge Martoche: That's exactly right, John. That's exactly right. We have to use courts more as an opportunity for making some kind of a dent in this overwhelming problem.

I don't know how to put it, except to say that this disease is, in my honest opinion, more of a threat than terrorism. I know that terrorism is a huge threat, but we've faced up to that and we're doing what we can to protect our borders and to protect us from the influx of terrorism and terrible disasters. But I look at the two biggest problems, one specific to the United States and one worldwide. The one specific to the United States is this narcotic problem. The one worldwide is global warming.

I mean, if we don't do something about these things, they're going to spell disaster. Frankly, the drug problem for the United States is going to be much more immediate. Experts have told us that there's more than two million Americans who become dependent on pain pills and street drugs — two million Americans! Over 63,000 people overdosed and died in the United States, and two-thirds of them were due to opioids.

John Caher: So, many, many, many more New Yorkers, many, many more Americans, are gonna die from an opioid overdose than are gonna die from a terrorist attack?

Judge Martoche: Yes. Yes.

And you know, it's not just the deaths, it's the cost. Now, we have spent more money to keep people in penitentiaries than ... We could treat them in hospitals for less. We could send them to college for less. I remember years ago, I tried to influence a group of legislators when I was assistant counselor

to the majority leader in the New York State Senate. I tried to get some people interested in using this opportunity to understand the difference between bad people and good people who do something bad, and trying to rehabilitate, because it was better for the country as a whole.

There was the old Eisenhower College, you may remember that it was in the Finger Lakes. I looked at their facility and I said, "Why can't this be a minimum security, honor security, institution, where people can go to get significant help?" Frankly, it would've been far cheaper but it was rejected, even though it was such a good idea and offered such hope to so many people, based on really faulty information and fear—fear that we'd make a mistake, that somebody was going to die, that somebody in the academy was going to be killed, or raped, or something terrible was going to happen.

You can't prevent against all alternatives, all opportunities, for something like that to occur, but it was a far cry, and it was far better than what could happen by not doing anything. We missed an opportunity there, and over and over again, that's the story of our society. We put Band-Aids on this problem. We don't look at it as something that needs to be treated holistically.

John Caher: At this time when socially we're finally having this overdue discussion on opiates, several states have legalized marijuana, and I think it's probably just a matter of time before New York follows their lead, if for no better reason than to generate tax revenue. There continues to be a debate over whether marijuana is a gateway drug. I just wondered what your thoughts are on that?

Judge Martoche: Well, first of all, let me say it depends on your definition of "gateway." If it means that you're automatically going to turn to another drug, I'm not sure. But it's certainly a gateway to a lifestyle. It's certainly a gateway to a group of people who are risk takers, and who are thrill seekers in a much larger sense

than the general public. I'll say this, we should have learned from the experience with prohibition, that once you legalize something, there is no turning back. I'm not going to say that marijuana in the long run is not a better alternative, although it's still always going to be the lesser of two evils, because it is not healthy for you and that is a proven medical fact.

But, John, when you look at marijuana, and you look at the additional accidents that are now being reported on the roads of Colorado, when you know that you can't turn back if you made a mistake, when you know that not enough research has been done into the potential risk versus reward here, you can't help but conclude that we need to proceed with caution. The only reason we're not is because of the money, because this is an income stream, one of the few that's left for government to tap into. They'll say things like, "Well, it's already being distributed out there. Even though it's not a good thing, it's illegal and people are making profits on it. Why shouldn't we make the profits?"

Well, in Canada and in the United States in those places that it's legal, they're finding out that people who make it illegally can undercut them. So, you're never going to completely do away with the illegal markets. So, my advice is that a thoughtful enlightened society ought to go slow, because there will be no turning back.

With alcohol, we know it's a terrible problem. With cigarettes, we know it's a terrible problem. But we can't stop those things because not only would the public not stand for it, but we're addicted as a state, as a country, to the money that flows from those things. Let's not become addicted, as a state, to this problem, before we know what we're buying, if you know what I mean.

John Caher:

I do, I know what you mean. Judge, there's somebody listening to this podcast right now, who is a parent and has a daughter like Claire. What would Claire want them to know?

Judge Martoche: Well, I think from my point of view, you have to love them. You have to never give up on them if you're a parent. You have to never stop loving them, you have to never quit on them. They're sick. They're sick and you have to accept this as if they have cancer or heart disease, even though you can't see it and maybe you can't see the effects of it, you have to accept this as an illness. Claire would have said, "Smarten up, look at this and look at all that you're losing. Look at a whole nation of entrepreneurs and scientists and leaders that are being devastated."

I would like to leave you with a poem that my wife pointed out was on Facebook. It came from Claire's biological mother. Claire was adopted. My wife took her home when she was three days old, I saw her when she was four days old. I was out of town when she was born. In any event, the poem is this:

Grief never ends, but it changes.

It's a passage, not a place to stay.

Grief is not a sign of weakness, nor a lack of faith.

It is the price of love . . . (and I have that every day).

Grief will stay with me until I join Claire. And I'll be happy to see her, and maybe she's looking down on me right now, and saying a word or two about how this maybe will influence one or two people to a better life.

John Caher: Judge, as both a citizen and a parent, thank you for sharing what I know is a very, very difficult story. I'm thinking and hoping that maybe you're saving some lives today.

Judge Martoche: Thank you very much, John. I want the judges to know, I want your public servants to know in the court system, that if there is ever anything in the way of information, or a talk, or anything I could do, I consider this my new vocation in life to

try and be of assistance to prevent this tragedy from re-occurring over and over again, as it is in our society today.

John Caher: Thank you so much, Judge.

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If you have a suggestion for Amici Podcast, please let me know. I'm John Caher, and I can be reached at 518-453-8669, or JCaher@NYcourts.gov. In the meantime, stay tuned.