



CAN JUDGES BECOME HELPERS?

In search of better results, some judges are embracing new roles as captains of teams aiming to lead people to more stable lives.

By Alan J. Borsuk

Judge Carl Ashley, L'83, of the Milwaukee County Circuit Court, said that when he became a judge 21 years ago, he was told that the judicial system is a funnel and judges are the tip. Or, it was said to him, “We call balls and strikes, and that’s all.”

“That’s too myopic a view,” Ashley recently said. The results of that approach were not good enough when it came to getting people off the paths that brought them to court repeatedly and that led to high recidivism rates. This was true also when it came to improving community safety. So Ashley changed the way he approaches his work as a judge to give greater attention to alleviating problems and helping people. “Outcomes,” he said. “We need to incorporate outcomes with holding people responsible in an appropriate dynamic.”

Mary Triggiano, the chief judge of the Milwaukee County Circuit Court, has been on the bench for 17 years. She also changed her approach to her work when her dissatisfaction grew with the results of conventional sentencing and related work. That was especially the case when she was serving in children’s court. She recalls the case of a young man who came into court repeatedly but who seemed to be making progress. Then he committed a heinous murder. It was an “aha” moment for the judge, telling her that more needed to be done to understand the people who come before judges.

“You don’t practice the same way as a judge once you understand that the person in front of you has a story and factors in their life,” Triggiano said.

Ashley and Triggiano are part of a trend in Milwaukee County and, to a notable but lesser degree, across Wisconsin, which is expanding the roles of judges and courts. The traditional work of presiding over cases and issuing judgments continues. But often now, the goal of those who work in the justice system, including judges, is to keep people from needing to be brought to court in the future.



Judge Carl Ashley

That has particular impact in criminal courts, where there has been increasing use of diversion programs or deferred-prosecution plans to see if defendants can get on better paths, frequently with the help of trained professionals. Perhaps most notably, in some criminal cases and similar proceedings such as children’s court matters involving children in need of protective services, the changing role of judges and courts has led to “problem-solving” courts. These courts connect people facing problems such as addiction, mental illness, or post-traumatic stress disorder with teams trained to work with them on plans to stabilize their lives—and to oversee their compliance with those plans. The work puts a big emphasis on encouragement and positive reinforcement and less emphasis on stern sanctions.

In short, the role played by many judges is changing. Black robes and formal proceedings are yielding in some courts to judges joining defendants and an array of others at a table (or in the pandemic world, in a Zoom session) to discuss how things are going. Sometimes the defendant ends up regarding a judge as an ally. It’s an approach that aims to turn courts, as Milwaukee County Circuit Court Judge Jane Carroll put it, into “a tremendous resource” to people who generally are facing lower-bracket charges while leading lives shaped by toxic personal issues.

“We are creating a new wave of judges,” Triggiano said. “We’ve made some profound changes in the way we judge.” She said that a traditional judge presiding over civil litigation doesn’t necessarily have a problem-solving hat on. But in the circuit court more generally? “We know people are coming into our courts with histories of being traumatized by things that are guiding their actions,” she said. Having a positive impact on outcomes is much easier in a problem-solving court.

Milwaukee County Circuit Court Judge Laura Crivello, L’93, currently the presiding judge for children’s court, leads a family drug treatment court, which focuses generally on cases where parents (almost all women) are trying to regain custody of their children by taking part in treatment.

What goes on in a treatment court is “completely different in the aesthetics and the incidentals, but also sometimes how we judge,” Crivello said. “We are changing, based on an understanding of the human being in front of us, because we have a better understanding of human nature. It’s not a matter of sitting on the bench in a black robe. It’s ‘how can we help you; how can we develop a relationship?’”

Shifting from Adjudication to Seeking Good Outcomes

Tom Reed, regional attorney manager of the State Public Defender’s Milwaukee Trial Office and an adjunct law professor at Marquette, said in an email, “There is a significant change in what we expect from our criminal justice system and how we imagine it operating. Although sweeping historical statements run the risk of error, it would be fair to say that, in the last several generations of American criminal justice, the focus has been on the adjudication of cases involving criminal charges and the meting out of punishment when guilt has been established. Commentators have noted a steady retreat from a commitment to rehabilitation and a greater focus on punishment of increasing severity as the proper way to hold accountable people who have been proven to have violated the criminal law. . . .

“The system created by these trends is under intense scrutiny because of its cost in human and economic terms, its inefficient and disorganized ability to protect public safety, its unfairness and arbitrary operation, and its perpetuation of racial disparity and overinclusion of those of lower socioeconomic status. . . .

“The important shift is away from a sole or exclusive focus on adjudicative measures to a commitment to improving system outcomes,” Reed said. “People who enter the criminal justice system should, in most cases, be made better by the experience—at least ideally—whether they are victims or accused of crimes. To improve community well-being, the criminal justice system must work to prevent crime and remediate known offenders to reduce the likelihood of reoffending.”

To be clear, the overall picture of the work of judges and the court system remains largely consistent with the past, and judges who advocate problem-solving approaches aren’t trying to overturn the system. The law is the law, and there are big limitations on what judges can do. But a lot of room remains for discretion, particularly when it is exercised in conjunction with others in the system, from the district attorney’s office to social services agencies.

As Maxine White, L’85, then chief judge of the Milwaukee County Circuit Court and now a state appeals court judge, said in a November 2015 “On the Issues with Mike Gousha” program at Marquette Law School, judges need to stay in their lanes.

Asked by an audience member what judges can do to reduce violent crime, White said, “A lot of people want to push the judges into other lanes. . . . As long as we are your judges making decisions about the outcomes of disputes, we have to be careful about crossing the lines and waving and marching with you about everything.” She emphasized things judges were not—including that “we are not the social service agencies.”

But, she said, there have been changes to what judges do—within limits. “We are marrying our lanes with other lanes, where it is appropriate,” White said. She referred to the involvement at that time by judges, including herself, in efforts for Milwaukee County to win a large grant from the John D. and Catherine T. MacArthur Foundation to improve ways of helping people with mental illnesses who were coming into the justice system often. Milwaukee won the grant, and there is general agreement that mental health issues in the county are being better handled currently. White also has been a long-time advocate of drug treatment courts and other problem-solving courts.

Triggiano said that the problem-solving approach can be seen not only in treatment courts and criminal proceedings but throughout the court system. “Problem solving right now is really an important skill for judges to have,” Triggiano said.

Criticism of treatment courts and, more generally, the changing role of judges was substantial when the courts were initiated 10 to 15 years ago around Wisconsin. A popular phrase among some judges was that they were judges, not social workers, and that the shifting priority amounted to taking a softer approach to crime. Some opinions from politicians and talk show hosts put such views in inflamed terms.

Limited Treatment Options amid Giant Crime Problems

The criticism has been less vocal in recent years, but it has not disappeared.

Judge David Borowski, L’91, of the Milwaukee County Circuit Court, is among those who are cautious about the changing approach to the duties of a judge. Treatment courts have roles for certain types of cases, he said, and the recidivism rates among those who have gone through such programs have been better than among those not given such help. Borowski praised current and past judges who have been involved and emphasized that he did not want to be labeled an opponent of treatment courts.

But, Borowski said, “I get concerned that at times we are moving too far in that direction . . . , and the courts are being asked to do things we weren’t designed to do originally. Courts are there to resolve disputes. I tend to agree with [U.S. Supreme Court] Chief Justice [John] Roberts’s philosophy: Judges are there to call balls and strikes. We aren’t there to solve every problem.”



Judge Jane Carroll



Judge Maxine White



Judge David Borowski

Borowski questioned how much difference treatment courts are making. “Due to the natural limitations of the court system and the limitations of resources, they affect the minority of cases, the cases on the margins,” he said.

That leads to a second level of questioning the impact of treatment courts: How much impact are they having on the overall picture of the places where they are operating? The fairest answer seems to be that they have successes, especially on an individual level, but problems remain huge.

In the big picture, Borowski said, the trends in Milwaukee are worrisome: violence is at historic levels, with the number of murders in 2020, the epidemic of deaths from overdoses of opioids and other drugs, and the large number of nonfatal shootings and other major crimes. Borowski serves currently in a court dealing with major crimes, and the number of cases he sees related to reckless driving, often with fatal consequences, is shocking.

The number of people in treatment courts or involved in efforts such as diversion programs doesn’t match the dimension of problems on the streets, Borowski said.

“I don’t really see the courts as ‘a resource’ in most cases,” Borowski said. “Resources need to be developed at the community level.” Social workers, people working for the state bureau of child welfare, people who work in treatment programs—they are resources, he said. “There is only so much that courts can do. By the time people end up in court, they often have moved a long way down the path of the criminal justice system.”

Reggie Moore, who stepped down in April as director of the City of Milwaukee Health Department’s Office of Violence Prevention to take a position at the Medical College of Wisconsin, is an advocate of treatment courts and other efforts to shift from punishment-oriented approaches to problem-solving approaches. He said the “classic western system” of dealing with people convicted of crimes is “an industry of punishment” focused on incarceration and confinement. It is not a system of compassion, he said. “If we are not intentional around reimagining an entire system that looks at issues from the standpoint of restoration and repairing harm, then people will be returned to their communities more frayed, more likely to engage in harm.”

But, Moore said, the changing approach to judging may not be making much of a dent on the streets or on how people in general look at judges and courts. In the court of public opinion, he said, attitudes toward the legal system are not good in some communities—and you don’t hear often from people who say the court system helped them.

Trauma Doesn’t Explain Everything, but It Often Explains a Lot

A central word in understanding the changes in the work of judges is *trauma*. It’s a term that advocates say is important but needs to be used carefully. Not everything bad that happens to people creates a lasting trauma, and the impact of trauma should not be used as an excuse for criminal behavior or other wrongdoing, advocates say.

But understanding what negative events or forces have shaped a person’s life can be a key to unlocking change. In short, the thinking is that a lot of the people who come into the court system have serious problems that often are not directly part of the reason they got into trouble. But if those problems were addressed successfully, the people would be much less likely to come back into court.

Tim Grove, senior leader of trauma-informed care initiatives for SaintA, a social services agency serving Milwaukee, has been closely involved in helping judges and other staff members in court systems across Wisconsin understand trauma and developing responses to it.

“It’s important to define trauma,” he said. “Not all acute events are trauma.” The vast majority of people who have traumatic events are not struggling with the impact six months later. “We’re worried more about prolonged exposure, intensive events, things that overwhelm the immune system,” Grove said. For people in such circumstances, a trauma-sensitive approach to judging them can be particularly beneficial.

Milwaukee County Circuit Court Judge Cynthia Davis, L’06, said that she would define trauma as “any experience that has had a significant mental, emotional, or physical impact on a person.”

One widely used gauge of trauma is a simple questionnaire that asks people about “adverse childhood experiences” (or ACEs) they may have had. People with high “ACEs scores” are more likely than others to have troubled lives as adults and to end up in front of judges such as Davis. Trauma, she said, doesn’t excuse behavior, but it can help explain it, and knowing about it can help the court respond in an appropriate way to address rehabilitative needs of a defendant. She tries to impress on people before her that they’re not responsible for the trauma that impacted them, but they are responsible for stopping the cycle of trauma.

Benjamin S. Wagner, an attorney with Habush Habush & Rottier in Milwaukee, is president of the community board of the Neuroscience Research Center at the Medical College of Wisconsin and a strong advocate of expanding trauma awareness in legal proceedings. Traumas such as homelessness, food insecurity, or being abused as a child are important to how a person acts in the long run—and, he said, the impact of the COVID-19 pandemic “has poured gasoline on all of these traumas.”

Wagner said that treating people with sensitivity can be helpful in bringing constructive outcomes for defendants—or, as he put it, “It’s easier to accept responsibility if you’ve been treated well.” ▶▶

MOVING FROM CONVICTING TO CONNECTING

Two tough prosecutors become two judges offering positive support to those trying to find ways out of trouble.

Laura Crivello, L'93, was a prosecutor for 24 years, focusing her work mostly on members of drug organizations and gangs—“the worst of the worst,” as she put it. Her goals were all about incarceration. There would be a trial and then a sentence, often a long one.

Cynthia Davis, L'06, was a prosecutor for almost six years. She handled cases that involved neglect and physical abuse of children and sexual assaults and trafficking of children and adults. It, too, was a heavy scene.

Now, the two of them are leaders in a different direction, not focused so much on what to do about bad actors but, rather, on how to bring out “the better angels” in people who have ended up in the legal system because of troubles in their lives. Crivello and Davis are now Milwaukee County circuit judges who preside regularly in treatment courts where you hear a lot of encouragement and support and not much prosecutorial sternness, where the goal is to help people get to better places in their lives and not to places behind bars, and where Crivello and Davis's roles are to lead treatment teams and not be the one making all the decisions.

Crivello, appointed as a judge by then-governor Scott Walker in 2018, is the presiding judge in children's court, a role that includes handling a calendar in what is called a family drug treatment court. Every day, she said, she goes to work thinking, “What can I do to help this kid and his life; what can I do to make [these kids] see the role they can play in the community?” She added, “It's all about ‘How do we reach out and connect with kids to make a difference?’” Frequently, it's also about how to get the adults in a child's life to come through for the child in the healthy and stable ways that have previously eluded those adults.

Davis, appointed by Walker in 2016, is assigned to a drug treatment court and also presides in a treatment program for veterans. In both situations, the emphasis is on collaboration with professionals involved in treating people's addictions and other problems, working together with individuals often for more than a year. “It's definitely a different role for a judge because you try to reach consensus,” Davis said. “You're trying to involve everyone sitting around the table. It's collaboration versus the traditional court system” with its adversarial structures.

Both Crivello and Davis are advocates for the treatment approach where it is appropriate.

Davis has been deeply involved for years in yoga as a source of relaxation and wellness. (A profile story of her in the Summer 2014 issue of *Marquette Lawyer* focused on her work as a yoga teacher and practitioner.) Her involvement in treatment

courts “really provides a unique intersection of the law and my interest in . . . wellness and healing,” she said. “It's been a neat way for me to combine all of those interests.”

The treatment approach, with its emphasis on helping people deal with traumatic factors in their lives, is particularly valuable in children's court, Crivello said. She said that the trauma a child sustains from birth to five years of age impacts the development of the brain; that, in turn, affects behavior later in life. Almost all of the juvenile offenders she sees have histories of being involved at early ages in “child in need of protection or services” (CHIPS) proceedings. She said that 80 to 85 percent of the youths in court for criminal matters have mental health problems.

Are the juvenile courts there to provide help? “Yes, without a doubt,” Crivello said. “Children's court provides amazing resources. . . . Our goal is to wrap around [the kids] and to help meet their needs.” But even when youths are in secure detention, Crivello said that she and others have been involved in relationship building through such things as book clubs and bake-offs.

Crivello said, “People want to feel the judge made eye contact with them, listened to them, made them feel like their voice was heard. They want to feel they had some modicum of control of the hearing. . . . We want them to know that they matter. The more that they feel that, the less they are going to want to do any harm.”

Davis said if a central goal of the justice system is rehabilitation, treatment courts are a good way to accomplish that. Understanding trauma in people's lives, she said, doesn't mean you excuse bad behavior, but it helps explain that behavior, and it helps a judge—and the treatment team working with a judge—address a person's rehabilitative needs.

“I like to approach addressing trauma from a self-empowerment standpoint,” she said. In short, the goal is to give people the tools to lead stable and productive lives.

It's not easy work. Davis said that determining people's honesty and sincerity in treatment is “definitely an art, not a science,” although in this context it's generally assisted by frequent drug tests. And bringing people to productive consensus on how to proceed when dealing with someone involved in treatment can be challenging.

For Crivello, the circumstances are not as violent or severe as those she dealt with as a prosecutor. But she said that judges, including her, feel the weight of trying to reunite families or help troubled kids. “There are some days when I sit up there and I'm sweating through the robe” because the decisions are so hard and affect the rest of a kid's life, she said. ■



Judge Laura Crivello

Judge Cynthia Davis

Terri Strodtzoff, founder and CEO of the Alma Center in Milwaukee, which works on trauma-oriented treatment largely with men who were involved in domestic abuse, also has been closely involved with programs for defendants in legal proceedings. “We try to move from punitive accountability to compassionate accountability,” she said. Counselors tell people, “You are 100 percent responsible—all of us are 100 percent responsible—for the choices you are making right now.”

But in moving forward from the past, Strodtzoff said, “We don’t have to shame you, punish you, undermine your humanity, but we can try to restore you to your original self. It’s not like a free pass. There are consequences of behavior, but we believe passionately in the capacity to change.” By contrast, if society expects to lock people up, she said, that expectation will be fulfilled by finding reasons to lock people up. And small things can matter, Strodtzoff observed: “Just the language judges use can have a lot of impact.”

Treatment Court Glimpses: Positivity and Oversight

What goes on in a treatment court is definitely different from what many people envision when they think of court proceedings, with a judge always on a bench and two parties at tables before the judge. Treatment programs are team efforts, with the judge as leader.

The recipe for making the treatment court process work includes strong doses of encouragement and support, but also a firm flavoring of enforcement and standards for what is required of a defendant or respondent. (For simplicity, we’ll use just the word *defendant*.) And many cooks are in this kitchen—the judge, court staff, prosecutors, defense attorneys, case managers, social workers, therapists, psychologists, law enforcement officers, probation officers, and sometimes other people. The goal is for all of these people to work together in ways that move defendants toward long-term stability in their lives.

There are two steps to each session of Milwaukee County treatment courts. The first is a “staffing” meeting—an opportunity for team members to pool information on the status of each defendant and discuss what should happen next. Then comes a hearing with the defendant.

In normal times, both the staffing meeting and the subsequent court hearing are held in person, sometimes with everyone, including the judge, at the table. The talk is more informal and more participatory than in a regular court proceeding. Since the COVID-19 pandemic began, these proceedings have been virtual. So everyone appears on a computer screen. But the processes of a staffing session and then a court hearing, both with a team-oriented tone, remain the same.

As a side matter, what will happen when life, including within the legal system, returns to normal remains to be seen. Virtual proceedings have advantages, including ease of access, increased participation, and, for some participants, more openness to talk while in the comforts of home or at work or wherever the person might be. But they have disadvantages, too, such as missed signals from a person’s body language or other nonverbal communication and, in general, more trouble communicating at times, as well as occasional technical difficulties. It appears likely that what emerges will be a mix, with both in-person and distance options put to use.

A few vignettes from sessions of the Milwaukee County drug court, veterans court, and family drug court show how different the proceedings of such treatment courts are in tone and content from the traditional approach. We agreed to respect the confidentiality of participants, so names and some details are omitted.

DRUG COURT, with Judge Cynthia Davis Presiding

CASE 1: At the staffing session, there was agreement that the man was doing well overall, with a few glitches. Davis said, “I’ll emphasize to him that he’s doing a great job, but he has to do his recovery hours on time.” He was far along in the program, nearing “graduation,” when he would be released from a variety of restrictions and required activities.

At the court session, the man reflected on his progress. “I’m a person who acts in the moment,” he said, describing his past. “It’s no way to live your life. I’m getting too old for that.” He said nine months in jail had given him time to think about who he wanted to be, and the treatment programs he was part of helped him. He’s sober now, and he has seen the benefits of that, especially the fact that his family is back in his life. He has also been working every day. He said he promised his grandmother on her deathbed that he would never be an addict again. Davis asked what his goal was now. “To maintain my sobriety—that’s my main goal in life,” the man answered. Several participants in the session commended him on how he was doing. And Davis announced that he earned five more points on the drug court’s scoring system. That made him “fishbowl eligible,” meaning he could draw an incentive prize out of a fishbowl. The prizes, worth up to \$50, are funded by program fees in this particular court.

CASE 2: This situation is more complicated. During the pre-hearing staffing session, people working with this woman said that her compliance had had its ups and downs. She hadn’t taken part in some classes and medical appointments. Her story about what was going on didn’t add up, one person said. “She’s not in a place to make smart choices.” Davis said that it appeared that the woman was not being completely honest with the team. One participant suggested that the woman had given up on treatment. She might have a serious



medical problem, a therapist said. And she might be having thoughts of suicide. After a half hour of discussion, there was a silence, and Davis said, “Well.” She paused before adding, “She’s not working the program like we want.” But she hadn’t dropped out either. “It’s a difficult place to be in,” Davis said. One of her counselors added, “I really want to advocate for her, but I’m more concerned for her own safety and life at the moment.” Davis decided to go ahead with the woman’s hearing to find out what she had to say and then to wait a week before deciding how to proceed, while more was being learned about her medical situation, and this was then agreed to in the court hearing.

CASE 3: This man was doing well in treatment until he had a lapse over the weekend before his hearing. He told a counselor that he had seen an old friend who had some cocaine, and they used it. He said it was an impulse, and he was sorry, and that he was planning to change treatment programs. The team agreed that maybe a change in programs would help him. At the court session, the man said he needed help from a psychiatrist. He said he thought he could get back on track. Davis told him that he needed to do better—and to come back in a week.

CASE 4: After several consecutive cases involving people who were not doing well in their programs, Davis was pleased to hear a good report on this man. “Knock on wood, guys, knock on wood,” Davis said. “I need this one.” In court, the man told Davis and the team that he was taking care of his daughter and staying sober. “I like my life now,” he said. Davis said, “Just all praise for you.” But he needed to take care of restitution that he still owed, she pointed out. See you in two weeks.

CASE 5: This man “continues to do stellar,” a case worker told Davis. In court, Davis told him, “Keep up the great work. We’re rooting for you.” The man said, “Thank you, guys, for the opportunity. I really do appreciate it.”

CASE 6: The report on this woman was that she was doing well in treatment. When the woman appeared on the computer screen, Davis welcomed her warmly and complimented her on how she looked—she had color in her cheeks and looked healthier. “I feel better, too,” the woman said. Davis said, “We are very, very impressed, very proud of you.” The woman told Davis she was trying to spend time only around “positive people.” Davis told her she had earned another point on the scoring system.

**MILWAUKEE COUNTY FAMILY DRUG TREATMENT COURT,
with Judge Laura Crivello Presiding**

Crivello said that people who appear before her sometimes tell her the worst day in their life was the day their children were taken away. The second-worst day was going into court. Her goal is to turn around those perceptions and make the process in this court helpful. In general, the people coming into this court are women who have been given conditions that they need to meet to get their children back. Regular drug testing, participation in treatment programs, and commitment to stable living are keys.

CASE 1: Because of her drug use and behavior, the woman on the computer screen had had her children put in the care of another family member. The woman was working on stabilizing her life but had been having disagreements with the other family member. “Try to say four to seven positive things before you slip in a negative,” Crivello advised her. “People respond better to positive things.” Crivello and more than a half dozen people who were part of the conference were practicing what they preached—praise, encouragement, and positive reactions were abundant.

CASE 2: “I’m proud of you that you’re in residential treatment,” Crivello told the woman, who had previously resisted that step. Crivello said, “The fact that you’re making a commitment to yourself and finding your own value is making a huge difference—so, way to go.”

CASE 3: The woman told Crivello, “I’m trying really hard; I’m not losing focus.” Crivello asked what had made things better. “I can see the future now. I’m more positive.” The woman said she is intending to go back to school. Crivello said, “It’s nice that you see your future. What a difference.” She added, “I think everything is pretty much stacked in your favor if things keep going well for you.”

CASE 4: This woman was moving forward, except for when she was going backward. “I am improving,” she told Crivello, but admitted to missing some scheduled visits with her baby and some drug tests. “When I get so overwhelmed, I give up,” she said.

Crivello encouraged her, telling her that she sounded “much more grounded and sure of” herself when she wasn’t with her boyfriend and giving him the opportunity to yell at her. “Think about how important it is to the kids to see you move forward,” Crivello said.

The woman responded: “You guys are worried about me because I’m an addict, but I would never hurt my child.” She added, “Now I just have to be more responsible, and I’ll be fine. It’s harder than I thought it would be, but I have to keep pushing.”

The woman’s thoughts then took a startling jump. If they take her child away from her, she told them, she would just have another child. Crivello responded, “Let’s not talk about having another baby now.”

The woman answered, “I know I screwed up in my life, and I have to pay a price for that.” She added, “I’m really improving myself . . . I can do it.” She told Crivello she will not use drugs again. “That’s how I feel today, at least.”

CASE 5: The woman cried hard through much of the court session. She had violated some of the rules, and monitored visits with her baby had been halted. “How are you holding up?” Crivello asked. The woman answered, “How am I supposed to be holding up when your baby is taken away?”

One of her therapists responded that the woman had not followed the rules and then denied what she did. A second team member told her, “Honesty is not happening right now.”

Still sobbing, the woman responded, “I’m having more problems being sober than I was when I was high.” She said she just wanted her son back. “I’m just shattered, you guys. What do you want me to do?”

Crivello answered that they wanted her to comply with the plan that had been set up. But, even amid this, Crivello offered the woman encouragement. “Let’s look at the positives we have today,” the judge said. “You’re sober; you’re stronger than at some times in the past.”

The woman agreed she had been supported by the treatment team. “All of you guys have been here for me. . . . I’m just hurt right now,” she said. Members of the team offered her advice on how to get through each day. A follow-up was scheduled. Crivello ended by saying, “Keep working on this. You take care.”

**MILWAUKEE COUNTY VETERANS TREATMENT COURT,
with Judge Cynthia Davis Presiding**

This program deals with veterans facing a range of criminal issues, generally not the most serious ones. The mission statement for the court says it aims “to successfully habilitate Veterans in recognition of their service to our country and the challenges it may present to them and their families by diverting them from the traditional criminal justice system by using evidence based practices and providing them with the tools and resources they will need to lead a productive and law-abiding life.”

Davis said the percentage of people in veterans court who complete the program successfully and are released from supervision is around 80 percent. In drug court, it is around 50 percent, she said.

CASE 1: During the staffing discussion, a counselor said the man was adjusting to sobriety well and seemed excited about it. He wants to have a sober birthday party, the counselor said, but he doesn’t know what that would involve. When the man came before Davis later, he was positive and grateful. “I’m so ▶▶

Across Wisconsin, an Openness to Trying a Different Approach to Addressing Some Crimes

James Morrison is a circuit judge in Marinette County, 55 miles north of Green Bay and bordered by Lake Michigan and the upper peninsula of Michigan. It's a pretty conservative area politically, "a pretty stern place," as Morrison put it. And this chief judge of the state's Eighth Judicial District is a pretty conservative, even stern, guy.

"I was appointed by Scott Walker," Morrison said. "I'm not a loose liberal here, by any means."

There's a "but" coming: "But if you're a conservative . . . , you want government to do what it can do effectively." In many cases, Morrison realized a few years ago, sending people to prison didn't score well by that standard. A huge percentage of people were committing more crimes after they were released. Morrison concluded that "we couldn't do much worse" when it came to the constructive impact of prison time.

So about eight years ago, Morrison became a leader in efforts to launch a drug treatment court in Marinette County. Those efforts met with substantial opposition. Morrison said he heard from others in the criminal justice system that "if we wanted to be social workers, we'd be social workers."

Yet the effort, overall, has been a success, Morrison said, so much so that he has gone around Wisconsin encouraging creation of treatment courts. He is a prominent figure among Wisconsin judges. He is a former "chief of the chiefs," as it is sometimes called, referring to the statewide organization of chief judges of the nine administrative districts of the state's trial courts.

Treatment courts, as well as diversion programs that give defendants routes to treatment and to avoid conviction, have grown significantly in Wisconsin since the state legislature first opened the door to funding for "treatment alternatives and diversion," also known as TAD programs, in 2005.

Katy Burke, who recently stepped down as statewide coordinator for such programs through the Office of the Director of State Courts, said that Wisconsin currently has 101 problem-solving courts, operating in more than two-thirds of the counties. The number of such courts has been steadily increasing. In 2016, she said, the total was 84. This number includes drug courts, drunken-driving courts, mental health courts, and veterans treatment courts. Each program has its distinctive elements, she said. Most of the courts deal with people after they have been convicted of a crime, but some involve people prior to conviction.

J. C. Moore, a Milwaukee County court commissioner, is finishing a five-year term as president of the Wisconsin Association of Treatment Court Professionals. He said that diversion programs and treatment court programs aim to get lower-risk and lower-urgency cases out of the court system. They are "focused on having the person who is involved in the criminal justice system go through treatment and have the matter reviewed by a judicial officer, with a view toward something good happening."

"Thirty years ago, people figured out that what we were doing, quite frankly, didn't make sense," he said. That led to the launch of court programs aimed at treating people and not just punishing them. The first courts were in Florida.

Moore said that, in broad terms, treatment courts have two main advantages: they're smart, and they're humane. He said that studies of Wisconsin programs generally show recidivism rates among those who go through such courts to be 10 to 20 percentage points lower than among those who go through conventional sentencing.

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Judge James Morrison

He pointed to a report from the Bureau of Justice Information and Analysis within the Wisconsin Department of Justice. The report found that, from 2014 to 2018, people who completed diversion programs had lower recidivism rates than people who completed treatment court programs, and both groups had lower rates than those who did not succeed in such programs.

For example, within three years of discharge, treatment court graduates had a 43.2 percent recidivism rate, compared to 61.4 percent for those who were terminated from treatment programs. For diversion programs, the recidivism figures within three years of discharge were 29.4 percent for those who completed a program and 62.4 percent for those who were terminated from a program.

The report said that, from 2014 to 2018, TAD programs statewide had 6,125 admissions. The report calculated that, for every dollar spent on treatment courts, the state realized a \$4.17 benefit in terms of reduced public spending on the criminal justice system. For diversion programs, the figure was \$8.68 of benefit for every dollar spent. Treatment court programs cost \$7,530 per discharge, the report said, while diversion programs cost \$2,347 per discharge.

Burke, the state coordinator, said that she expects continued growth in treatment courts statewide. She noted that there is a lot of interest in expanding family treatment courts because people around the state are seeing more families affected by addiction and mental health problems. When Burke took the job in 2016, the state had four family treatment courts; now that number has doubled.

Moore said that the Wisconsin organization he heads was founded in 2002 and focuses on setting operating standards for treatment and diversion programs and providing training for people involved in such efforts. The organization has a membership of 600 to 700, Moore said.

Attorney Robert "Rock" Pledl has practiced in courts across Wisconsin for about 40 years, often representing people with disabilities or mental issues or "children in need of protection or services" (CHIPS), as the law puts it.

Pledl said that the same kinds of cases show up in counties with small populations as in counties such as Milwaukee. But differences exist. Obviously, frequency is one of them—a court deals differently with a CHIPS case if it sees many of them every day rather than only several in a month. The breadth of social services that are available is also different.

When it comes to judicial responses to people who need help, "you have to divide the question into the places where an intentional decision has been made to have a judge do a little different job versus places where a human services system isn't robust enough and judges are being forced to do a job," Pledl said. Judges in more rural counties sometimes have to come up with "a ridiculous work-around" to find ways to help people.

There are also differences in how judges do their jobs. On the one hand, in large court systems, judges develop specialties and are well versed in the issues that come before them, including what social service agencies can or should provide. In rural counties, a judge may not have that same expertise. On the other hand, individual cases may get much more attention in a court in a small county than in an urban court.

"The assembly line moves faster if you have hundreds of the same cases," Pledl said. "Occasionally, you run into a specialist judge who, because of their specialty, doesn't slow down to get everybody's point of view the way a judge in a small county who rarely sees some kinds of cases would do."

Is there a trend in the way judges' roles are changing? "Yes, absolutely," Pledl said, and it goes beyond treatment courts to courts that deal with civil issues such as the well-being of children, eviction, family matters, and mental treatment. "It would be a shame if judges over time hadn't become more sensitive to the types of issues those litigants are facing, besides what they're doing there in that court."

How has the Marinette County treatment court turned out? "Quite well," Morrison said. People have learned a lot about how to run such a program, and they've taken on higher-risk, higher-need defendants than they were willing to deal with initially. When it comes to individuals, "we've had some tremendous successes, and we've had some very frustrating failures," Morrison said.

He mentioned a young woman, "an utter screwup," who went through treatment court and is now a successful businesswoman. Morrison said he knows babies who were born drug free in cases where that would not have happened without the treatment court. And he said there are statistics to support saying that Marinette County is safer now, including a comparison with data for its Michigan neighbor, Menominee County, which does not have a treatment court and has experienced crime increases.

Morrison said that he has struggled with how to balance the roles of being a stern judge for people who have committed crimes and being a supportive presider for people who need treatment. "Am I a judge, or am I social worker?" he has asked himself. "Do these people become my friends? Of course not." There's a tension in the roles he plays—"it's a tightrope, and it's tough work."

In the big picture, Morrison said, "I think judges are more and more coming to realize that part of justice is to be effective, to do what works. It is unjust to do what clearly does not work. And that's what we've done with addiction for a long time. So our role is changing. Judges are expected to be more conscious of the impact of what we are doing."

"The state of treatment courts is strong and evolving, as it ought to be," he said. "I hope we will continue figuring out processes that actually work. Warehousing people is not a very satisfactory thing to do." He added, "There's always going to be a place for prisons; there's no choice." But, for some defendants, there is also a place for options that are a lot more helpful. ■

glad to be sober,” he told Davis. “I’m kind of glad I got in trouble. . . . This is saving my life.”

Davis responded, “I love your enthusiasm and your positive attitude.” The man said, “This is the happiest I’ve been in years . . . because I’m not using alcohol and I’m not smoking any drugs, thank God.” He had reconnected with family members. Davis praised him further: “If I were grading you, you’d get an A-plus-plus.” The man said, “I’m just doing something that I should have been doing a long time ago, and that’s being responsible.”

CASE 2: The man is making good progress in treatment but will stay in the veterans court program until he makes more progress. Davis went over the different required treatments for him, including substance abuse therapies and post-traumatic stress disorder (PTSD) therapy. But he had a job, had contact with his family, and was in a positive frame of mind. Davis told him that he did not need to come back before her for two months. “You have a good couple months,” she said. He answered, “Roger that, ma’am.”

CASE 3: The tone of this session was not so positive. The man was making progress on some fronts. But his living situation and his personal relationships were undergoing changes, and he was unhappy about how he was being treated by therapists and counselors.

Davis laid it out to him, including that he needed to complete a therapy program called “Thinking for a Change.” The man responded, “I do not see it that way, but if that’s what you say, that’s what it is. I find no value in it.” He said the sessions “bore me to tears.”

Davis made clear what he would gain by taking part—and what he could lose. “You face the potential of revocation,” she said. “At this point, it is not a negotiation.”

CASE 4: The treatment team, including Davis, had urged the man to end a major personal relationship that they concluded was hindering his progress. Davis told him, “I know I’m requiring a significant life change from you. . . . I commend you for working on it.” He answered, “Yes, ma’am.” Davis said he needed more structure in his life. She asked him if he could see the value of that. “Yes, ma’am,” he answered again.

The man said he realized his prior life “was burned out” and he needed to change. He added, “If I’d done things right 30 years ago, I’d be working for you and not appearing before you.”

A Valuable Tool, Supported by Too Few Resources

Milwaukee County Circuit Court Judge Ellen R. Brostrom presided over the county’s drug treatment court and veterans court from 2013 to 2015. “These programs have added a valuable tool in the fight against drug addiction and its attendant antisocial consequences,” she wrote in a 2019 article for the *Wisconsin Lawyer* magazine, a publication of the State Bar of Wisconsin.

Brostrom said the course of a conventional criminal proceeding and of one that ends



Judge Ellen R. Brostrom



up in a treatment court is generally the same until the point where there is an adjudication of guilt. In a conventional case, that leads to a sentence of probation or incarceration. The alternative route means that the next step is “stay of entry of judgment of conviction and [instead] diversion into the treatment court program.”

Referrals to treatment courts are generally limited to nonviolent, addicted offenders at risk of continuing to offend, Brostrom wrote. The treatment court process can last as long as 18 months, and, if the person is successful, the original charges are dismissed. And if not, the process returns to conventional sentencing.

Treatment often begins with residential placements and, if things go well, proceeds step by step to less restrictive plans, including day programs, work or education placements, and oftentimes mental health treatment. Frequent drugs tests are a big part of the program, and missing or failing them can be a major setback. Participants generally appear before the judge and treatment team weekly at first and then less often if they are progressing.

“The greatest impediment to the overall success of the program is the limitation of resources: treatment, housing, and adequate mental health services exist at levels far below what is needed in Milwaukee County,” Brostrom wrote. “It is an incredible thing to see an individual go from dysfunctional and desperate to functional and recovering,” she said in the 2019 article. “It is a privilege to walk with participants on the journey.” When successful, treatment reduces incarceration and likely future criminal justice system involvement and leads to stable lives that help families and communities.

Daniel Blinka, a Marquette Law School professor with extensive experience involving criminal courts and proceedings, said that in the 1960s it was understood that juvenile courts needed to have a “therapeutic” aspect because a goal was to get troubled youths on paths to being productive adults. But in criminal courts, the focus was on adjudicating a case. If there was going to be any treatment, it wouldn’t be discussed until sentencing, and it would generally be left to the prison system, Blinka recalled. People pretended that prison could help prepare incarcerated people to do well when they returned to the community, Blinka said, even though everyone knew that wasn’t really happening.

People in the legal system and in the political world have often been of several minds about judges and courts offering the kind of programs associated with treatment courts. Helping people is popular, but so is being tough on crime. And many fear the impact of one “bad” case in which someone in a treatment or diversion program commits a major crime while not incarcerated. One result is that “worthy” people are picked for treatment programs while the bulk of people in the system get conventional sentences, Blinka said.

At times the approach in different places is chaotic, Blinka said, with the decisions on defendants depending on who the judge is, the circumstances of their cases, and other factors. External factors also shape what is offered to people. One general incentive for putting people into programs that avoid incarceration: the cost. A year in a Wisconsin prison involves large public expense. In 2019–2020, it was \$36,643 per inmate in a minimum-security facility and \$44,716 in maximum security, according to the Wisconsin Department of Corrections. ▶▶



Building a Better Framework

Chief Judge Mary Triggiano wants judges to make good use of “breathtaking tools” for helping troubled people.

Mary Triggiano became chief judge of the Milwaukee County Circuit Court in February 2020—which is to say that her time as administrative leader of 47 branches or courts has been dominated by the COVID-19 pandemic that started a month later. How to keep the court system operating, much of it in virtual mode and some of it cautiously in person, has dominated her work in the last year-plus.

Maybe that is why she compares discovering the importance of understanding how trauma affects the people who come before a judge to getting vaccinated against the coronavirus after months of quarantine. At last, something, in some sense, positive!

Trauma and responding constructively to those whose lives are shaped by it form Triggiano’s signature issue as a judge. Some might dismiss her advocacy by labeling her “chief social worker” as much as chief judge. But Triggiano is convinced that she is onto something that makes a difference in how effective the justice system can be, and she is doing all she can to promote it.

What led Triggiano, a longtime judge, to focus on trauma-related issues?

“The word *outcome* comes to mind,” she said. When she was a judge in children’s court, “we consistently had bad outcomes.” (She initially used an earthier adjective.) She began learning about trauma-informed ways of helping people deal with the problems in their lives beyond the specific incidents that brought them to court. The approach, using a team of professionals as allies, became a big part of her work. “Having those tools was so breathtaking,” she said.

Triggiano, a Racine native who was managing attorney for Legal Action of Wisconsin before being appointed a judge by then-governor James Doyle in 2004, speaks in a matter-of-fact fashion and is decidedly unflashy in her personality. But there is no mistaking her commitment to promoting change in how judges do their work in the pursuit of better results. “I’d like to bring some legitimacy back to our justice system,” she said.

“Trauma is not a natural fit for the justice system and how we deal with things,” Triggiano said. “Five or 10 years ago, we wouldn’t be having these conversations. . . . And we weren’t grappling then with how to respond to give people a better experience in court. In problem-solving courts, you can really roll up your sleeves. It’s easier than in conventional courts.”

What is the role of judges in helping people deal with the trauma behind many of their problems? Triggiano answered, “Judges have the ability to bring people together to have these conversations about trauma and trauma-informed care. . . . We need to be part of changing the trajectory and not just pronouncing judgments and following the statutes.”

Triggiano continued, “We’ve made some profound changes in the way we judge.” It shows up in “what we say, how we say it, and how we interact with people.”

No one has thrown the law out the door, she said. People are still being convicted, sentenced, and held accountable. “But we have another framework now as well.”

Trauma awareness has become a regular part of training for court personnel, including judges.

Laura Crivello, the presiding judge in Milwaukee County children’s court, said that all judges go through trauma training. She said that Triggiano starts every meeting talking about trauma sensitivity and emphasizing that the people who come before

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Chief Judge Mary Triggiano



the judges need to be treated with kindness and dignity. “That leadership has funneled down dramatically through the court system,” Crivello said.

How is the system doing in helping people? “We’re not there yet,” Triggiano answered. “We’re still learning.” She added, “I think we have been leading the charge as judges for years and years and years” with the goal of creating a court system “that looks at data and evidence and outcomes to try to do better in terms of families that come into our system.”

Triggiano and some other judges have taken things beyond the court system, becoming involved with increasing the capacity and effectiveness of social service systems and helping with initiatives to improve what is available to troubled people. “That’s a significant difference from 20 years ago,” Triggiano said.

That broadened field of vision means that she spends substantial portions of her time on matters that were once not viewed as part of a chief judge’s job, such as helping obtain grants from large foundations. Such grants have boosted some of Milwaukee County’s treatment court programs. But they require judicial buy-in and collaboration with community organizations.

Two recent sessions involving Triggiano illustrate that kind of collaboration. In one, Triggiano met virtually with members of the Milwaukee Community Justice Council, which was created a little more than a decade ago with a goal of making the legal system fairer and more effective, and with other engaged leaders. Among those participating in this meeting were Milwaukee County District Attorney John Chisholm; Carmen Pitre, who heads the Sojourner Family Peace Center, a large organization focused on helping victims of domestic violence and stemming such violence; and Tom Reed, who leads the state public defender’s office in Milwaukee. The goal of the meeting was to develop a proposal for a grant from a national foundation looking for “bold ideas” on improving racial equity. Triggiano’s other consultants on the proposal included Reggie Moore, then director of the City of Milwaukee Health Department’s Office of Violence Prevention and now in a position with the Medical College of Wisconsin also involving anti-violence efforts.

In the other session, convened by Triggiano, 15 people on a Zoom call discussed how the legal system could better handle eviction-related problems. The participants ranged from public defenders to landlords to leaders of mediation programs to representatives of philanthropists to other judges. Triggiano told the group that she wanted to find a way to build more of “a prevention model” to help people stay on in the places where they live, without penalizing landlords—and without bringing so many cases into court.

Participants described what they were doing in pursuit of those goals and what they would like to see happen. After an hour, Triggiano said, “All beautiful thoughts.” But how could they be turned into action? There was agreement to continue the conversation in further meetings.

Triggiano said that she believes the level of collaboration in Milwaukee on issues such as these may be unparalleled in the country. On the other hand, Triggiano acknowledged there is more demand for programs to help people than there are actual programs. She said, “There is a lack of resources, treatment resources, in our community to handle what our truths are about.”

Is the legal system’s attention to trauma a fad that will pass? “I don’t think it’s a fad because people realize it’s endemic to our community,” she said. Trauma often has impact on the lives even of judges, she said, which is one reason many have been receptive to approaches that respond to people’s needs.

Triggiano said that when she and Tim Grove, a senior treatment leader at SaintA, a social service program, were co-teaching a course at Marquette Law School a couple of years ago, they asked students what they would do if they were creating a justice system from scratch. The students responded that they all wanted the system to help people solve problems and show compassion, she said.

“I’d like to see their dreams come true,” Triggiano said. ■



That makes spending money on treatment programs more appealing, Blinka said. But, he said, “where are the resources” to handle the treatment needs of a large number of offenders?

Is the role of judges changing when it comes to keeping people out of prison and putting them in treatment? Blinka said, “Formally no, but more judges are receptive to the idea that their role doesn’t start or end with adjudicating a case.”

People involved in treatment courts and trauma-sensitive responses to defendants are generally supportive of the trend. Several were interviewed at the end of a drug court staffing session in which they participated.

The Resiliency That Comes from Positive Relationships

Dawn Rablin, a supervising attorney in the state public defender’s office in Milwaukee, pointed to the success rate of diversion programs (about 80 percent of participants complete treatment) and treatment courts (about 60 percent complete treatment) as evidence that the efforts work. What are the keys to successful outcomes? “A large part of it is about resiliency,” Rablin said. “It’s about building positive relationships.” Many of these people have never had positive relationships with anyone, especially people in the justice system, she said. It can make a big impression on them when a judge says, “I want to have an honest relationship with you,” and that can create a foundation that the treatment court team can build on.

Brad Vorpahl, an assistant district attorney for Milwaukee County who was part of the drug court session, said that, anecdotally, the treatment court seems to be a program that is well worth it. “It’s nice providing the appropriate individual this opportunity to get the treatment, to get their lives in order, to avoid prison time.” Even for those who don’t succeed in the program, it often is beneficial, he said.

David Malone, also an assistant district attorney who took part in the drug court session, said he has been skeptical of a lot of people in the program—and he’s been proven wrong many times. They are different people at the end of the program from at the start. “It comes down to whether the person wants to do it,” he said.

In an interview, Grove, the SaintA’s counselor, said that when judges are kind to someone, even in a 10-minute interaction, “it has the potential to be a reparative moment.” People who come into court are often thinking, “My brain and body are geared to expect you to mistreat me,” Grove said. When there is a stressful moment and the judge doesn’t act harshly, “it’s awfully unfamiliar to people.” He said he hears story after story from kids and parents who talk about the kindness of judicial officers in a way that was transformative.

“Objectivity is a gift to people in the midst of a traumatic incident,” Grove said. “The ability of the system to objectively unpack what has happened and render a fair verdict is another reparative opportunity.” He added, “I keep reminding the people in the courts all the time how darn important they are.”

James P. Peterson, an attorney with Foley & Lardner in Milwaukee who has worked closely with SaintA, said trauma “is front and center in every case you see” in children’s courts and family courts. As a result, the proceedings are “all about problem-solving” and not really about issuing judgments. Judges turn to agencies such as SaintA to find tools that work because tools within the conventional system don’t work.

Peterson was asked if the emphasis on trauma and problem-solving in judicial work is a fad that will pass. “I would put it in the fad category if there was something else better to replace it,” he said. “I don’t think there’s a new thing that people have latched on to that helps you communicate with people and helps you solve issues as well as dealing with people’s trauma, and trauma-informed care does.” ■

A Judge's Journey in Search of Positive Results

As a young judge, Joe Donald thought that courts were going through the motions. So he sought ways to move people forward.

Joe Donald, L'88, since 2019 a state appeals court judge for Milwaukee County, said that as long as 20 years ago, as a circuit judge, he was frustrated by the results of the justice system. He said that there were huge disparities in how different people were treated and there were high levels of recidivism. He had a sense that courts were "just sort of going through the motions" and not accomplishing much.

Donald said that one eye-opening moment, a number of years later, was when he observed a "healthy infant court" over which Judge Mary Triggiano was presiding. "I realized, wow, we can really make a difference."

Donald, who was appointed as a judge by then-Governor Tommy Thompson in 1996, had some experience with experiments. He was a leading advocate for launching a drug treatment court in Milwaukee and, beginning in 2009, served as the first judge in the court. "There was so much pushback," he recalled. A substantial number of judges said, "Look, I'm a judge, not a social worker." He said some people called it the "hug-a-thug court" or the "kumbaya court."

The drug court was started with little in the way of resources to help people, Donald said. "You can't have a treatment court if you don't have treatment." Over time, the resource picture improved, including major improvements in Milwaukee County's ways of dealing with people experiencing mental illness, although it is widely acknowledged that the needs overall still greatly exceed resources.

Donald subsequently was assigned to children's court and became involved in efforts there to increase treatment approaches to children and adults involved in proceedings. He said that he was impressed with how much could be accomplished when the right things were done to get people on solid paths in life.

He originally was more inclined to use the threat of confinement on people who didn't comply with treatment programs. "What I've come to realize is that I don't think the sanction of confinement and locking them up is beneficial," Donald said. "In many respects, it has more of a negative impact on progress. I'm at the point now where I don't think you need that stick, that club to beat people over the head. There are other ways to address noncompliance as opposed to just locking people up."

He said that, overall, the treatment courts are succeeding. "It is amazing when you see someone who successfully completes the drug treatment or the family treatment programs or the healthy infant court," he said. "It is one of those things that, as a judge, you finally feel a sense of connection with the individual, and you get a sense that you've really made a difference."

Is the role of judges, overall, changing from 30 years ago? "The role of the judge in my estimation really hasn't changed. The judge represents this figure, the authority figure, who is presiding, who sits above everyone else and supposedly should see everything. What has changed is the offender's relationship with that judge, where the offender gets to the point that they don't want to disappoint the judge who has invested so much time and energy in making sure they're successful. . . . You're more closely connected with the participants."

Donald said, "If we really want more from our criminal justice system, we need to develop more of these types of courts to separate people who need help and treatment, as opposed to retribution and just locking them up, because that doesn't really work in terms of changing people's lives."

"The real test," Donald concluded, "whatever it is you are doing, is to ask, 'Is it changing their lives?'" ■



Judge Joe Donald



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