"EVERYONE FEELS IT" WHEN THE PUBLIC DEFENDER SYSTEM STRUGGLES

As chief judge of the Milwaukee County Circuit Court, Mary Triggiano faces a lot of challenges in leading the operation of all 47 judges and 23 court commissioners. This is not to mention that, especially since the COVID pandemic began, her title might equally well be “chief coordinator of everything that needs to be done to keep the judicial system going.”

Restrictions on access to courts because of pandemic rules, implementation of major changes in technology (many of them on a rushed basis), ballooning backlogs of cases, controversies over issues such as bail policies, and staff shortages in many parts of the system—Triggiano deals with all of them.

And the shortage of public defenders and private attorneys willing to represent criminal defendants who can’t afford lawyers? This is among her biggest concerns.

“We’re this one big ecosystem,” Triggiano says. “When one part of the system is down or struggling, everyone else feels it. And that is really true when it comes to the public defender’s office.”

From the start of any case, someone facing criminal charges is entitled to an attorney. This means that all such defendants need a public defender if, like thousands of people each year, they can’t afford to hire their own attorney. “If you don’t have that [representation] at the start, it certainly has led to significant delays in moving a case forward to completion,” Triggiano says. “Part of our backlog right now is because of the inability to timely appoint counsel in these criminal matters.”

That is especially true in complex cases, where more challenging and extensive legal work is required, she says. That’s one reason there have recently been about 170 people incarcerated in Milwaukee County while awaiting proceedings related to homicide charges.

Milwaukee County has received $16 million in federal pandemic relief money to increase efforts to reduce backlogs of cases. Triggiano says that much of it is going to the district attorney’s office and to the Wisconsin State Public Defender’s Office to hire additional lawyers and support staff. But, she says, it is one thing to have funding for additional positions, and it is another thing to find people to fill them.

Overall, though, some positions have been filled, the system is working better, and the backlog of cases is declining from high levels at the start of 2022. “We’ve made incremental progress, though not the progress we wanted,” she says.

The district attorney’s staff has had high turnover and shortages, Triggiano says, but the situation with public defenders is more challenging. In both situations, principal factors are pay that is low compared to other available positions for lawyers and workloads that are large and increasing.

Particularly comparing public defender caseloads to several years ago, Triggiano says, “You’re doing a lot more work for the same pay. On some level, that’s more crushing.”

And, she says, private bar lawyers who take appointments from the public defender’s office are paid $70 an hour, which in many instances is not enough to cover the lawyer’s overhead. Triggiano says that if a judge makes the appointment, the lawyers get $100 an hour—and if they take a case in federal court, it is higher. It will take legislative action to change factors such as these, Triggiano says.

There are still lawyers who want the jobs, in large part because of their desire to serve people who truly need help and because of their overall sense of serving justice in the system. “You’ve got to want to do public defender work,” Triggiano says.
Why is the word *justice* repeated? Among interpretations by Biblical scholars, two stand out: The word is repeated to teach that not only should a person pursue justice, but the pursuit itself needs to be done in just ways.

“I’d like to go out of business,” Reed says. He grants that this sounds “naïve and almost ridiculous,” but he is driven by the goal of using criminal proceedings less and solution-oriented programs more. When he started as a public defender, there were no treatment courts or diversion programs. Many people were just cycling through the system repeatedly, he says. Now there are such programs, which means there has been some progress, in Reed’s estimation. But heavy caseloads, the great stresses on the justice system, and broad public fears about crime and safety show there is a long way to go.

“We’re not just about doing cases,” Reed says. “We have to be a voice for a more rational criminal justice system.”

Reed says there is an intersection between public safety issues and public health issues. Better public health, including wide availability of mental treatment, would reduce crime, he says. He has been deeply involved in efforts to make changes in the system, including work in Milwaukee County supported by major foundations such as the John D. and Catherine T. MacArthur Foundation.

The stresses on the public defender’s office—and on the lawyers themselves—have increased in recent years. “The job has become more difficult for staff, for a variety of reasons,” Reed says. One reason that many people might not realize is how time consuming it is to conduct “electronic discovery” involving surveillance videos. And, Reed says, the criminal justice system as a whole has unstable staffing and also staff shortages. There are a lot of prosecutors and judges with limited experience, and staff shortages in multiple facets of the system (among court reporters, for example) can slow up work. “It’s just harder to get to the bottom” of what a case involves, Reed says.

Compared to the past, there are more turnover among public defenders and fewer applicants for jobs. And there are 35 percent fewer private lawyers than several years ago who are willing to take public defender cases. Overall, Reed says, “it’s just a math problem”—more cases, fewer lawyers to take them.

The impact of the COVID pandemic has intensified the issues, including the impact of working conditions in the Milwaukee County Courthouse and case backlogs that boomed during the height of the pandemic and have not returned to the preceding levels, let alone diminished.

A longtime and important part of Reed’s efforts to encourage lawyers to join in the work is his service as an adjunct professor at Marquette Law School, where he oversees the public defender clinic that gives students work experience in the field. But, in line with other trends related to staffing, student interest in the clinic has declined in recent years. Reed and others involved in the program hope to be able to reverse that trend.

Reed remains eager to promote the value and satisfactions of work as a public defender. He talks up the reasons to consider taking these jobs. And he does what he can to maintain the morale of those who already do the work, including everything from efforts to reduce work-related stress to encouraging birthday parties for staff members. He is concerned that, with limited resources, too often those doing the work get “a half a loaf” when it comes to what they really need. But dedication and commitment still run strong. Reed says there is an old saying that “nothing great is accomplished without high spirits.”

**“Justice, justice shalt thou pursue”**

When Howard B. Eisenberg was dean of Marquette Law School from 1995 until his death in 2002, a poster hung in his office with the Biblical verse, “Justice, justice shalt thou pursue.” It comes from the book of Deuteronomy.

Eisenberg was dedicated to the work of public defenders in Wisconsin and nationwide. He was a public defender, he led public defenders, and he was one of the key figures in creating the public defender system Wisconsin uses to this day. He was, in many ways, a public defender all his life.

What does it mean to live by the words that Eisenberg kept so nearby? Why is the word *justice* repeated? Among interpretations by Biblical scholars, two stand out: The word is repeated to emphasize the importance of justice. And the word is repeated to teach that not only should a person pursue justice, but the pursuit itself needs to be done in just ways.

Eisenberg surely knew—and lived according to—both interpretations. Neither he, nor the five public defenders profiled here, nor their colleagues, past, present, and future, are perfect in their embrace of these words. But for all the challenges, stresses, and ups and downs, they know the ideals and why they themselves are doing this work.