

January 2019 – Clients are Benefiting From Caseload Relief

The most recent ILS caseload report detailed the changes providers have made to their staffing patterns and the infrastructures of their organizations. Below, we share some of the stories providers have told us about how caseload standard implementation has impacted the clients they serve.

In Washington County, caseload relief funding allows defense attorneys to fully investigate and litigate their cases, with concrete benefits for their clients.

Alyson Clark, Washington County Assistant Public Defender, represented a client charged with Grand Larceny in the Fourth Degree and Criminal Possession of Stolen Property in the Fourth Degree, both felonies. The defendant has prior felony convictions, so if convicted he would be sentenced as a predicate offender and could arguably face a life sentence as a persistent felony offender. The pre-indictment offer by the District Attorney was an indeterminate prison sentence of 1 2/3 to 3 1/3 years and restitution. The client rejected this plea offer, and the case was indicted. During the arraignment on the indictment, the prosecution presented an affidavit by the complainant regarding the value of the property allegedly stolen. Ms. Clark retained an investigator who discovered that 1) the value of the property stated in the affidavit was incorrect and likely under the \$1,000 threshold for this charge, and 2) the complainant was not the proper owner of the property and therefore had no basis for his assertions in the affidavit about the property's value. Using this information, and after conducting legal research and consulting with her supervisor, Ms. Clark filed a comprehensive and detailed motion requesting dismissal of the indictment. Following a conference with the judge and District Attorney about this motion, the District Attorney withdrew the grand larceny charge and offered a plea to the criminal possession of a stolen property charge in exchange for a definite sentence of 1 year local jail time. Although Ms. Clark was prepared to take this matter to trial, upon presenting the offer, her client decided to accept it. He was released about 2 ½ months later.

Ms. Clark also knew that her client was represented by the Saratoga County Public Defender Office on an unrelated misdemeanor charge in that county. She coordinated with the court and Saratoga Public Defender Office on that charge, ensuring that the matter could be resolved with a concurrent sentence of 90 days so her client would not have to spend any extra time in jail. If Ms. Clark had not made sure that the Saratoga County matter was addressed immediately, the client likely would have served out his Washington County sentence and thus would have been required to serve additional time in Saratoga County on that charge.

Ms. Clark credits the *Hurrell-Harring* funding for the results in this case. This funding has allowed the Public Defender Office to use investigators more often and has resulted in reduced caseloads so attorneys have the time needed to fully investigate and research their cases and engage in effective motion practice.

Suffolk County Legal Aid Society's use of a team approach ensured a client's timely release from custody.

Suffolk County Legal Aid Society (SCLAS) has used caseload relief funding to transform the traditional practice in its District Court Bureau to a team approach. Each District Court team includes not only attorneys, but also an investigator, a paralegal, and a social worker. Kate Lovly, SCLAS' District Court Bureau Chief, emailed Laurette Mulry with information about a

recent District Court case that illustrates the effectiveness of this team approach. The SCLAS client had pleaded guilty and was sentenced to time served. She was to be released from jail that day. But at 6:00 p.m., Ms. Lovly received a text from the SCLAS attorney who represented the client. The attorney said that the SCLAS social worker who had been working with the client was at the jail to make sure the client was released and had a place to go. But she found out that the client had a warrant from one of the West End village courts and was not being released as expected. Though it was after hours, the attorney called the West End court and drove directly there to take care of the client's warrant so she could be released.

In her email to Ms. Mulry, Ms. Lovly reflected: "That story made me happy and proud so just wanted to share and tell you that your vision for the district court and the team structure is really working and it is wonderful. When people tell me they are so much happier and they question whether they want to go to county court that makes me know that district court has really come a long way." Notably, both the attorney and social worker representing the client were hired with caseload relief funding.

Caseload relief allowed the Suffolk County Assigned Counsel Program to surround a less-experienced attorney with supports and expertise for her first trial.

Suffolk County Assigned Counsel Program (SCACP) Administrator Dan Russo wrote to ILS to convey the following story about the benefits of the supports made possible by caseload relief funding:

"We recently had a DWI trial with an inexperienced attorney. The attorney has been eager to become a better trial lawyer. She attended the lengthy trial practicum. She regularly attends CLEs. During the prep of the trial she worked extensively with [mentor attorney] Paul Gianelli. The sessions (including weekends) instilled a ton of confidence in the attorney. During the prep our investigator did an extensive amount of work and was ultimately prepared for testimony. His testimony included video and diagrams. Many hours were spent between the attorney and the investigator. The investigator was ultimately not used but his work provided for cross examination of the police officers. I had a number of meetings with the attorney discussing strategy. On the eve of trial, we had one of our more experienced felony assigned counsel agree to participate as the second chair. That provided the inexperienced attorney with even more confidence. Unfortunately, this did not result in a defense verdict. However, it was a particularly good case for the prosecution and one in which there was no reduced offer. The work put in by all the people outlined above led to a defense on par with any that could be bought privately. Of course, this could not have been possible without the resources HH has provided."

As Mr. Russo states in his email, although he was found guilty, the SCACP client received a high-quality and well-resourced defense. And this attorney's future clients will benefit from the experience and hands-on training she received before and during this trial.

Onondaga County Correctional Facility administrator comments on the positive impact Hiscock Legal Aid Society's new social worker has had on parole revocation cases.

During a telephone call with ILS on an unrelated matter, an administrator from the Onondaga County Correctional Facility started talking about the positive impact Amanda Higuchi, Hiscock

Legal Aid Society's (Hiscock's) new social worker, is having on parole revocation cases. Ms. Higuchi's position is funded through *Hurrell-Harring* caseload relief to improve case outcomes for the parole revocation unit clients. The administrator noted that Ms. Higuchi is frequently at the correctional facility meeting with clients and that she has been effective at identifying therapeutic programs for them. He further noted that he often is called upon to facilitate phone calls between people incarcerated for alleged parole violations and treatment providers so the treatment provider can conduct a phone interview and intake. As a result, an increasing number of Hiscock clients found guilty of parole violations are having their parole status restored so they can attend a community-based treatment program or DOCCS Parole Diversion Program at Hale Creek (a 30-day treatment program). These programs are an alternative to being sent back to prison for a time assessment. The jail administrator reflected that Ms. Higuchi is "making a huge difference" for people found guilty of a parole violation.

In Schuyler County, an Assistant Public Defender reflects that with a more manageable caseload, he has more time for creative and zealous motion practice.

Schuyler County Assistant Public Defender Mark Raniewicz has told ILS that caseload relief means that, unlike before, he now has the time he needs to thoroughly investigate, research, and litigate possible legal and fact issues in his cases. A recent DWI case illustrates this. The client was asleep in his car, located in a public parking lot, with the engine running and lights on. A Police Officer (Officer A) was "made aware" of the client's condition and location but was unable to report to the scene so he asked another officer ("Officer B") to investigate. Officer B's police narrative noted that the client was "incoherent" when awoken but did not provide any additional indication of intoxication. Officer B summoned EMS to the scene. He also claimed that the client consented to a search of his car, which revealed a small amount of marijuana. A field sobriety test indicated that the client was intoxicated, and a subsequent breathalyzer test conducted at the police station showed the client's blood alcohol to be .11. The client was arrested for DWI and marijuana possession.

Though he initially thought there was no basis to challenge the arrest or the search, Mr. Raniewicz researched the facts and law to be sure. Having a manageable caseload meant that he had the time and resources to conduct this research, despite his initial assessment that there were no viable issues. He ultimately spent several hours researching various issues and discovered two viable issues - albeit factually and legally complex ones - worth litigating. He drafted and filed a motion to suppress the results of the breathalyzer test and the evidence seized as a result of the search of his client's vehicle. The court granted the request for a suppression hearing. Though the hearing has not yet been held, Mr. Raniewicz anticipates that even if the judge denies suppression, there are several possible benefits to having the hearing, including the ability to cross-examine the officers involved, the development of facts that assist in defending the client, and more leverage for a favorable disposition for the client.

Two of the *Hurrell-Harring* Team members were fortunate enough to have worked with Dennis R. Murphy, Director of the Criminal Practice Training at New York City Legal Aid Society from 2007 until his premature death from ALS in 2016. During his 44-year career as a criminal defense attorney, Dennis worked tirelessly for client-centered advocacy, championed criminal justice reforms, and trained and mentored hundreds of lawyers, students, and friends. Steve

Bright, Director of the Southern Center for Human Rights, said of Mr. Murphy that “[h]is life was spent in the pursuit of real justice for the poor and powerless people who most needed it.” A fearless advocate and occasional bear-wrestler, Dennis’ last message to his current and former colleagues was this simple but pointed reminder:

It’s all about the clients, isn’t it?

Over the past year, caseload standard compliance has required the *Hurrell-Harring* providers to devote a considerable amount of time and energy to the administrative tasks associated with re-examining and reorganizing their infrastructure; obtaining county approval to hire new staff; and recruiting, interviewing, hiring, and training new staff. In so doing, they have maintained a clear-eyed focus on the end-goal: improving the quality of representation their clients receive so that every client is treated fairly, justly, and with dignity. As the above narratives reveal, the *Hurrell-Harring* providers have remembered that caseload relief is, at the end of the day, all about the clients.