

March 2019 – Collaboration Shows Change is Possible

This month's highlights focus on one email that aptly captures the impact of Hurrell-Harring Settlement implementation.

The genesis of Mr. Russo's email was a February 13, 2019 email Bill Leahy sent to all New York providers of mandated representation. In his email, Bill acknowledged a February 3, 2019 *New York Times* article entitled "One Lawyer, 194 Felony Cases, and No Time" that compellingly describes the crisis of high caseloads for public defense providers. But this article fails to acknowledge the *Hurrell-Harring* Settlement and the extension of its caseload reduction and quality improvement initiatives to all the counties in New York. Bill sent the *New York Times* a brief letter to the editor summarizing the bold steps being taken in New York to emphasize that the public defense caseload crisis is not intractable. Unfortunately, the *New York Times* declined to publish Bill's letter. Bill's email to all providers was an opportunity to share the letter he had written.

Bill's email prompted Dan Russo to respond with the following:

Dear Bill:

Just wanted to provide a simple instance where *Hurrell-Harring* funding is paying dividends, regardless of what the NYT says.

One of our attorneys is assigned a murder case that is scheduled for trial in the Suffolk County Court in a few weeks. The murder occurred in 2011 and the defendant was not indicted until 2018. In 2011 the police had a DNA hit on a beer can found in the victim's house that matched the defendant on trial. Since 2011 there was very little in terms of investigation completed. Other than some new DNA testing that has recently occurred very little additional evidence linking the defendant to the murder has been provided.

The assigned attorney is someone who is well regarded in this County and has defended other murder cases. The attorney reached out to my office and requested a meeting to discuss evidence and strategy. The attorney then asked if anyone else that I recommend could be present. I was able to ask our Mentor Attorney to participate. Since that time, we have had several brainstorming sessions and today we asked Martin Efman, former Judge and now one of our Quality Attorneys to participate. Through these sessions, we were able to review the evidence all together and propose a strategy. Part of that strategy was to consult various experts. In the past few weeks I have hired two defense experts for further assistance. One of the experts is a former Suffolk County Crime Lab DNA Analyst who was able to review the DNA files and give all of us a better understanding of the value of the DNA evidence in this particular case as well as pointing out several things that raise doubt as to the validity and or value of the evidence. We have also consulted with a Forensic Pathologist who is reviewing the autopsy report and we expect to meet with the expert in the near future and go over his thoughts on the evidence. The prosecution has hired a private DNA lab to do further testing and we fully expect the

prosecution to call an expert in this particular case. The assistance provided by our experts are going to enable our attorney to handle a cross examination that most certainly will neutralize any damage by this evidence.

In years past lawyers such as myself handling assigned cases would be left alone to investigate and prepare for issues such as these. If you were lucky enough to get experienced colleagues to be able to conference with you, those meetings were usually brief as counsel certainly were too busy to provide any real assistance. In the *Hurrell-Harring* world, we are able to provide the defense attorney with two attorneys who together probably have 80 years of experience handling these cases. These attorneys are always available and have shown great eagerness to prepare this case for trial. I also have had the pleasure of participating in these sessions. The insight from colleagues and the assistance of the experts has certainly made a great difference in the level of representation that is expected. It gives me great pleasure to know that if this is the future of indigent representation then we are certainly on good footing to provide justice for all clients.

Thanks is owed to Indigent Legal Services and your team for making this kind of collaboration possible. I can attest that here in Suffolk County it certainly feels like a cultural change in the way in which we handle assigned cases. Attorneys are taking advantage of HH resources and our clients are in good hands. I am proud to be a small part of the movement.

Thank you,
Dan

Bryan Stevenson has famously said: “We have a system of justice that treats you much better if you’re rich and guilty than if you’re poor and innocent.”¹ Dan Russo’s email shows that this unfair system is not inevitable, and that quality representation for all accused people – regardless of whether they are rich or poor – is becoming a reality in New York State.

¹ Mr. Stevenson is author of the book, *Just Mercy* and Executive Director of Equal Justice Initiative. This quote can be found at: <https://www.quotetab.com/quotes/by-bryan-stevenson#LP13LDm2kTP6K1ej.97>.