

August 2017 – Breaking Down Barriers: Access to Resources and Counsel Makes a Difference

1) Access to time and resources is making a noticeable difference in Onondaga County courts.

Doug Dowty, the courts and legal affairs reporter for the *Syracuse Post-Standard*, called ILS to discuss the noticeable difference he is observing in criminal defense practice in Onondaga County. Mr. Dowty explained that for the past few months, he has seen more second-chair attorneys involved in cases and more non-attorney supports being used by the defense.

Mr. Dowty went on to explain that the recent trial of a 17-year old client fully illuminates the change he is observing, as well as the importance of a well-resourced defense. The client was charged with second-degree murder and burglary for allegedly killing an 18-year old female acquaintance and then stealing her television. He was represented by Chuck Keller as lead attorney and Todd Smith as second-chair attorney. Mr. Dowty observed most of the trial, and in his opinion having a second-chair attorney was critical because of the many complex legal and forensic issues involved.

He also noted that a key trial issue was the time of death. The defense's original forensic pathologist became unavailable at the last minute because of a scheduling conflict. The ACP worked with Mr. Keller to ensure that he could retain an experienced and credentialed forensic pathologist, who effectively rebutted the prosecution's forensic pathologist about the time of death. Consistent with the defense's theory, their teenage client was found not guilty of second-degree murder, but guilty of the burglary charge. Mr. Dowty remarked that though Mr. Keller is a quality defense attorney, this outcome likely would not have been possible without Mr. Smith's involvement as a second-chair attorney and without resources, including the last-minute access to a high-quality forensic pathologist. He further remarked that the trial outcome did not represent "defense trickery" but instead the system working as it should. In his view, because of an adequately-resourced defense, a young man was found not guilty of a murder that he probably did not commit.

As it happened, ILS was meeting with Laura Fiorenza, the ACP's Quality Enhancement Director, the morning after the verdict in the case. She had been texting back and forth with Chuck Keller throughout the trial. That morning, he texted to say he had just realized that because the client was found not guilty of the murder charge, he is eligible for youthful offender adjudication on the burglary charge. Ms. Fiorenza immediately called Mr. Keller to urge him to retain a sentencing advocate to enhance the chances of the client being adjudicated a youthful offender.

This was not the only recent success in which an Onondaga County ACP panel attorney had effectively utilized a second-chair attorney and non-attorney supports. On June 6, 2017, Mr. Keller and his second-chair attorney, Steven Heath, achieved an acquittal after trial for their client, who was charged with first and second-degree manslaughter for the stabbing death of her abusive boyfriend. On June 21, 2017, panel attorney Susan Carey and her second-chair attorney, Patrick Hennessey, achieved an acquittal after trial for their client, who was charged with second-degree murder for a shooting death. Ms. Carey and Mr. Hennessey

made a compelling case that their client had acted in self-defense. On July 18, 2017, panel attorneys Ben Coffin and Lou Manner, had murder charges against their client, dismissed after evidence was revealed showing that he likely acted in self-defense at the time of the killing. In all these cases, the ACP panel attorneys had obtained and effectively used investigators with the assistance of the ACP. Some of the lawyers involved, including Susan Carey, Ben Coffin, and Chuck Keller, had also participated in the April 2017 trial trainer that the ACP co-sponsored with the New York State Defender Association and the New York State Association of Criminal Defense Lawyers.

2) Every penny counts - having even a small fund for experts has provided Suffolk County Legal Aid Society attorneys with a critical advocacy tool.

The *Hurrell-Harring* Quality Improvement Plan has made \$50,000 available to the Suffolk County Legal Aid Society (SCLAS) for experts. Previously, SCLAS had no money available for experts, and had to apply to the court for expert services. SCLAS' Sabato Caponi recently told ILS that the funding available for experts is making a significant difference in cases. SCLAS attorneys have used the funds to pay for substance abuse evaluations by credentialed evaluators, which are often a precondition for a favorable plea offer from the prosecution. They have also used the funds for experts in more serious cases. For example, in one case, the SCLAS used the funding to retain a neuropsychologist, who discovered that their client has a serious brain injury from childhood which likely was a contributing factor to the charged crime. The SCLAS will use this information to advocate for a less punitive disposition for the client.

The foregoing are just some illustrations of the progress that is being made in the *Hurrell-Harring* counties toward meaningful reform. For the clients involved, this progress is significant. A seventeen-year old is not facing a life sentence and Suffolk County defendants who have substance abuse issue or mental health problems are finally accessing the expert services they need to accurately diagnose these problems, thereby enhancing their chances for a less punitive case disposition.