

February 2018 – Using Resources to Transform Practice

1) The Suffolk Legal Aid Society is using the addition of staff not just to reduce caseloads but to transform its practice.

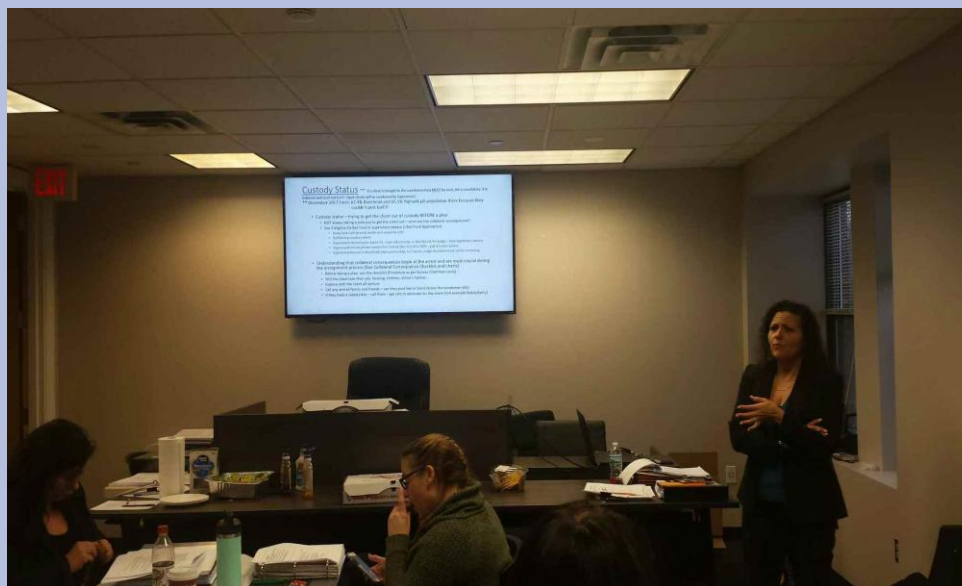
Liz Justesen, Suffolk County Legal Aid Society's (SCLAS') Outreach Director, has prepared and is delivering to SCLAS staff a comprehensive training program on holistic, client-centered representation. The program begins with the following quote from Arthur von Briesen, a founding president of the Legal Aid Society:

No one will dare trample the rights of the poor and helpless underfoot, as long as the appearance of the Society's attorney in court demands respect and careful consideration of the rights of its clients.

This training program builds on the SCLAS' transition to a team approach of representation. Under this team approach, every attorney is part of a team that includes a supervising attorney, a paralegal, a social worker, and an investigator. The team approach is being implemented initially in District Court.

Ms. Justesen's holistic representation program includes: an overview of what holistic representation is and its four pillars; a description of how holistic representation fits within the SCLAS' team approach; and information about community-based resources that are available to SCLAS clients and SCLAS' role in some of these community-based programs. Every SCLAS staff person (attorney and non-attorney) is required to attend this program. To facilitate discussion and accommodate everyone's schedule, the training is occurring in small groups of about 18 participants from SCLAS' different bureaus.

Below is a photograph from one of these trainings in SCLAS' new training room:



2) Onondaga County Assigned Counsel Program mobilizes its mentors and arraignment attorneys to address systemic unfairness in judicial and prosecutorial arraignment practices.

In early-February 2018, Laura Fiorenza mobilized the Assigned Counsel Program (ACP) mentors and panel attorneys to respond to two arraignment related issues. The first issue arose from a memo a judge emailed to all the 5th Judicial District magistrates. This memo states that while magistrates can *sua sponte* dismiss a case when the accusatory instrument is facially insufficient, there is “no ability for the defendant or defense counsel to raise the same [issue] orally at the time of arraignment.” Mr. Gideon stated that this notice was necessitated by the fact that there have been “many oral motions made for insufficiency during the arraignment process of the Centralized Arraignment Part.”

Ms. Fiorenza sent this memo to the ACP mentors for their input and advice. They uniformly responded that if a local criminal court accusatory instrument is not sufficient as prescribed by the law, and if the court is satisfied that based on the available facts it would be impossible to file an accusatory instrument which is sufficient, the court must dismiss the case. Or as one mentor stated: “A jurisdictionally defective accusatory deprives the court of...well...jurisdiction.” Using this input from the mentors and the caselaw they sent her, Ms. Fiorenza emailed arraignment attorneys practice tips and advisories and ultimately a memorandum detailing, with case law support, why arraignment judges should entertain motions for insufficiency at arraignment, even when made orally.

The second issue arose in response to a February 1, 2018 *Syracuse Post-Standard* editorial published by District Attorney (DA) William Fitzpatrick. In this editorial, Mr. Fitzpatrick said that his office has long had progressive bail practices and does not request bail in most misdemeanor cases. Ms. Fiorenza, however, noticed that at arraignments, Assistant District Attorneys (ADAs) are regularly asking the court to set cash bail in misdemeanor cases. She emailed Mr. Fitzpatrick’s editorial to arraignment attorneys and advised that they should alert the judge and arraignment ADAs of the District Attorney’s policy and ask that the ADAs be held to it. Additionally, Ms. Fiorenza reached out to arraignment attorneys and obtained information about specific cases in which the arraignment ADA had not complied with the District Attorney’s policy. Armed with this information, she requested a meeting with the leadership in the District Attorney’s Office to put them on notice that there is a gap between the practice of arraignment ADAs and the District Attorney’s publicly-stated policy.

Alan Rosenthal, an ACP mentor and criminal defense attorney who has practiced in Onondaga County for 30 years, told the *Hurrell-Harring* Team that this is the first time he has seen ACP panel attorneys mobilized in this fashion. He noted that Ms. Fiorenza’s leadership on these issues, and her effective use of mentors to help address them, has instilled a sense of renewed energy among many of the panel attorneys.

3) Enhanced use of investigators in Washington County leads to good outcomes for some clients.

Hurrell-Harring Team members interviewed Alyson Clark, an Assistant Public Defender in Washington County. Ms. Clark reported that prior to *Hurrell-Harring* implementation, the Public Defender Office attorneys had to obtain court authorization every time they needed an investigator in a case. This created a barrier to using these services, which in some cases, proved

to be insurmountable. It also made it impossible to retain an investigator quickly prior to evidence disappearing. Since *Hurrell-Harring* implementation, attorneys no longer need to seek court authorization and, as a result, attorneys are using this resource more often. She gave a case example to highlight this change. Her client was charged with stealing from a store. She quickly retained an investigator to obtain the store's time stamped video tape. The video tape proved that Ms. Clark's client was not present when the crime occurred. She successfully used this evidence to have the charges against her client dismissed.