July 2019 - Pushing Past the Plea: Trial Success Stories

Below, we describe some of the *Hurrell-Harring* providers' recent positive trial outcomes. We do so not only because *Hurrell-Harring* providers have had several trial successes thus far this year, but also because well-litigated trials are not possible without manageable caseloads and sufficient resources. These positive trial outcomes highlight the improvements in the quality of representation in the *Hurrell-Harring* counties.

Onondaga ACP attorneys have a series of positive trial outcomes.

The Onondaga County Assigned Counsel Program (ACP) emails a weekly newsletter called the *ACPDefender* to panel attorneys with a variety of updates, including information about panel attorney trial outcomes. Below are just some of the trial successes included in the *ACPDefender* over the past few months:

- In late April 2019, ACP attorney Lance Cimino achieved a not guilty verdict after a bench trial for his client, who was charged with a violation level disorderly conduct offense after he and another man had a physical scuffle. Though offered an adjournment in contemplation of dismissal if he completed 30 hours of community service, the client rejected this offer asserting that he had acted in self-defense. Given this, and the fact that the client had no prior record, Mr. Cimino and his client decided that the prosecution's offer was unreasonable. The prosecution refused to extend a better offer, so the client decided to go to trial. At trial, after the client and other witnesses testified, the judge credited the client's claim of self-defense and found the client not guilty.

- In early May 2019, co-counsels Ed Klein and Brendan Rigby succeeded in achieving a not guilty verdict at trial on the top count of Assault in the first degree, a class B felony with a possible sentence of 25 years in prison. There was no denying that their client, a cook, had used his chef's knife to stab the complainant in the stomach severely enough to cause his intestines to spill out. At issue was whether the stabbing was intentional or reckless. Despite the gruesome trial testimony and photographs, Mr. Klein and Mr. Rigby were able to convince the jury that there was insufficient evidence of intent, and their client was convicted of a less serious charge. Key to the success at trial was the testimony of the defense's forensic expert, who effectively testified that the nature of the knife wound did not indicate intent but instead recklessness.

- A week later, ACP attorney Ann Meadvin worked with two investigators to achieve a not guilty verdict after trial on the top count of Strangulation in the second degree, a class D felony. The client was found guilty of a lesser misdemeanor charge. Ms. Meadvin utilized the assistance of Ed Klein as a Resource Attorney, who guided her and the investigators in their investigation and litigation strategy.

- In early June, ACP panel attorney Wordy Samson led his client to a not guilty verdict on a charge of Criminal Obstruction of Breathing. Mr. Samson, who had been practicing criminal law for less than a year, had been working hard to prepare himself for his first jury trial. He attended ACP's Nuts and Bolts trainer and numerous other trainings sponsored by the ACP and other providers to shore up areas in which he lacked experience. Additionally, this past spring, Mr. Samson completed a week-long trial trainer. He stated that the assistance of his mentor, Erik Teifke, who helped him

prepare for trial, and the experience he gained at the week-long trial trainer were essential to this trial success.

- In late June, ACP attorneys Nick DeMartino and Melissa Schwartz successfully defended their client at trial from an Assault in the first degree conviction. The complainant was stabbed several times during a multi-person fight outside a pizza parlor near Syracuse University. The evidence against their client, which included a video of the fight, medical testimony, and the complainant's testimony, seemed overwhelming. But Mr. DeMartino and Ms. Schwartz reviewed the video and broke it down into 1900 slides. They effectively used these slides to show the jurors that though the client and the complainant both had knives, there were several other people also with knives involved in the melee, and the video did not conclusively show that it was the defendant who inflicted the knife wounds. The jurors acquitted the defendant of the top charge, instead finding him guilty of Assault in the second degree, which significantly reduced the maximum prison sentence he faces.

Ontario Conflict Defenders achieve not guilty verdict in a serious rape case.

First Assistant Conflict Defender Carrie Bleakley and Assistant Conflict Defender Benjamin Gilmour served as co-counsel for their client who was charged with Criminal Sexual Act in the first degree and Rape in the first degree, both class B felonies. The incident was alleged to have occurred in 2008, and originally the Ontario County District Attorney's Office declined to pursue an indictment in the case. But after the client was found not guilty at trial in another unrelated case, the newly-elected District Attorney re-opened the matter and successfully indicted the client.

This was Mr. Gilmour's first serious trial, and he worked effectively with Ms. Bleakley to prepare witness cross-examinations; he also delivered a compelling closing statement for his client. The jurors deliberated for a while before declaring themselves deadlocked. The judge instructed the jurors to continue deliberations to see if they could reach a verdict without compromising their well-founded conclusions about the case. Upon further deliberations that went into another day, the jurors returned a not guilty verdict.[1]

Two trial victories for the Schuyler Public Defender Office

The Schuyler Public Defender Office's first trial victory occurred earlier this year. Assistant Public Defender Mark Raniewicz represented a gentleman charged with Promoting Prison Contraband in the first degree (PCC 1st, a felony), Criminal Possession of a Controlled Substance in the seventh degree (CPCS 7th, a misdemeanor); and Perjury (a misdemeanor). His client went to the Sheriff's Department to turn in his pistol permit. While there, the Sherriff deputies noted he had a warrant on a pending misdemeanor case for failure to appear. They arrested him and brought him for arraignment before a local justice who ordered his pre-trial detention. While at the jail processing him after the arraignment, the deputies found drugs in his shoe. Mr. Raniewicz's client was subsequently charged with PCC 1st and CPCS 7th. He testified before the grand jury that he did not know the drugs were in his shoe. The grand jurors found his testimony not to be credible, and he was not only indicted for the PCC 1st and CPCS 7th charges, but also for perjury. In pretrial motions, Mr. Raniewicz argued that there was insufficient evidence to support the prison contraband charge. After all, his client did not originally go to the Sherriff's Department with the intent of entering the jail (hence he did not "knowingly

[1] An article about the case can be found here: https://www.mpnnow.com/news/20190524/orbino-found-not-guilty-in-rape-trial.

introduce" drugs into the facility); moreover, the drugs were recovered before he was processed into the facility (thus he was not yet a person "confined in a detention facility"). The judge, after reviewing the grand jury minutes, releasing portions of them to the defense, and entertaining written and oral arguments, dismissed the felony PCC 1st charge. The prosecution appealed the dismissal; the judge stayed the dismissal pending the outcome of the appeal and scheduled the case for trial. Mr. Raniewicz objected to the stay and the case proceeding to trial, preserving what may well be judicial error, and asked for a bench trial.

While working with Mr. Raniewicz to prepare for trial, his client insisted that he should testify. Mr. Raniewicz knew this was not a wise decision and spent many hours listening to him and explaining why his testimony was not necessary and why it likely would harm him. His client ultimately agreed with this assessment and decided to follow Mr. Raniewicz's advice. At trial, the judge found him not guilty of the perjury conviction and not guilty of the felony PCC 1st charge, though he did convict on the lesser included charge of PCC 2nd (a misdemeanor), and the CPCS 7th charge. An appeal of the court's decision to stay his original dismissal order, an issue Mr. Raniewicz preserved, could result in dismissal of the misdemeanor PCC 2nd charge.

This was Mr. Raniewicz's first felony trial. He noted that, prior to caseload standards implementation, he likely would not have been able to spend as much time researching and litigating the factually and legally complex issues the case posed; nor would he have had the time needed to convince his client not to testify.[2] He also commented on having invaluable assistance from his colleagues, Public Defender Wes Roe and Assistant Public Defender Valerie Gardner, who had the time to consult with him every step of the way throughout the case.

The Schuyler Public Defender Office's second success occurred more recently when Assistant Public Defender Valerie Gardner achieved a not guilty verdict on all counts for her client after a week-long trial. Charged with Criminal Sex Act in the first degree (a B felony) and Sex Abuse in the first degree (a D felony), Ms. Gardner was able to convince the jury that there was insufficient evidence showing that the sexual contact between her client and the complainant was not consensual. Indeed, her defense was so compelling that, despite the serious nature of the charges, the jury returned a not guilty verdict after deliberating for only 1 ½ hours. As in Mr. Raniewicz's case, Ms. Gardner relied on the advice of her colleagues in determining the best strategies for the case.

In one case, the Suffolk County Legal Aid Society achieved a positive outcome at trial, while in another, thorough trial preparation resulted in compelling evidence of innocence and a pre-trial dismissal.

The Suffolk County Legal Aid Society (SCLAS) represented a non-citizen client charged with Driving While Intoxicated (DWI), a misdemeanor. The client was initially referred to a diversion program but was denied participation. The SCLAS attorney consulted extensively with SCLAS's immigration attorneys and realized that the client could not plead guilty to the DWI misdemeanor charge without facing significant immigration consequences. Based on this information and the advice of counsel, the client decided to take his chances at trial. It was the first trial for the assigned SCLAS attorney, but with the training, supervision, and investigative services that caseload relief has made available to the SCLAS, she was well supported. The client was found not guilty of the misdemeanor DWI charge, and

[2] In the April 2019 report, *Hurrell-Harring Provider Caseload Assessment 2018*, at page 36, we reference this case and how Mr. Raniewicz had the time needed to convince his client to make a wise decision about testifying. We note that after the trial, his client contacted Mr. Raniewicz to thank him for "saving him from himself."

instead guilty of a violation level Driving While Impaired charge, which has less significant immigration consequences.

In another case, the SCLAS team working on the case investigated the charges in preparation for trial because the client was insistent that he was not guilty of the charges. The investigation yielded compelling evidence of innocence and a dismissal. SCLAS' client was charged with Criminal Mischief, a misdemeanor, for allegedly keying the car of a household member. He was adamant that he did not commit this offense and, in fact, that he was not even home at the time of the alleged offense. With the assistance of a cell phone technology expert, SCLAS investigators created a cell phone site map that depicted their client's cell phone use and what towers the cell phone "pinged." The cell phone site map provided compelling visual evidence that he was not at the incident location at the time the complainant said he was. In fact, he was in a different county.

The investigators also interviewed alibi witnesses to create a timeline of events, which along with the cell phone site map showed that the complainant's version of events was not accurate. They further investigated the complainant's insurance records and discovered that the complainant's vehicle had been keyed prior to the date of the alleged incident. Defense counsel presented all this information to the Assistant District Attorney prosecuting the case, who decided to dismiss the charge in the interest of justice. This case reveals that preparing a case for trial may, in fact, be the best means of avoiding it.

****

Not every case should be resolved by trial. Indeed, case investigation often reveals that the best outcome can come from thoughtful plea negotiations and effective sentencing advocacy.

Nonetheless, trials are necessary. But if attorney caseloads are too high and resources limited, there may be undue pressure on attorneys to plead their clients, even in cases that should be tried. As Gerry Spence famously said:

> I have a great respect for public defenders. But what if the public defender has 100 cases? What if the public defender is only a public defender in name? You've heard talk about my record as a criminal defense attorney. Let me tell you something: if I had 100 cases, I'd have to plead 'em all guilty.[3]

Prior to the *Hurrell-Harring* Settlement implementation, public defense attorneys in the five Settlement counties all too often faced the pressure of high caseloads and limited resources in deciding, with their clients, on whether to accept a plea offer or go to trial. With more resources and more manageable caseloads, the *Hurrell-Harring* providers now have the time and resources needed to listen to their clients' versions of events, to fully investigate the allegations, to research and litigate legal issues, to determine whether trial or a plea is in the best interest of their clients, and to advise their clients of the best course of action.

[3] Gerry Spence, *The Plight of the Public Defender*, Address to the Trial Lawyers College, Dubois, Wyoming (2014).