

NYCLU

<http://www.nyclu.org/node/1479>

Second-Rate Justice: A Portrait

The following is a snapshot of some of the plaintiffs involved in this case. Their stories are typical of the many criminal defendants who cannot afford a lawyer and as such receive second-rate justice.

Kimberly Hurrell-Harring

Before her arrest on Sept. 29, Rochester resident Kimberly Hurrell-Harring worked two jobs in order to support her stroke victim mother and 4-year-old and 16-year-old daughters.

A registered nurse with no prior criminal record, Mrs. Hurrell-Harring, 31, was accused of bringing less than an ounce of marijuana to her husband in prison for his personal use, an act he later admitted he threatened her into committing. She was charged with one count of promoting prison contraband in the first degree, a felony, and possession of marijuana, a violation.

Mrs. Hurrell-Harring's case is now pending in Washington County Court, where she is represented by the county Public Defender's Office. At her arraignment, Mrs. Hurrell-Harring had no attorney to advocate for her pre-trial release, so a judge set bail at \$10,000 cash or a \$20,000 bond, despite the fact that she had no prior criminal record. She could not afford to post this high bail and was sent to the Washington County Jail, where she languishes today.

She has met with her attorney for only a matter of minutes immediately before or after court appearances. Mrs. Hurrell-Harring has repeatedly called her attorney's office but he has ignored her calls. Her attorney did not move to reduce the charge or negotiate a plea down to a misdemeanor, despite ample case law showing that a lesser charge was more appropriate given the small amount of marijuana involved.

As a result of ineffective representation, Mrs. Hurrell-Harring pleaded guilty to promoting prison contraband in the first degree, a felony. On Nov. 16 she expects to be sentenced to six months in prison and five years of probation. With the felony conviction, she will lose her nursing license, ending a 12-year nursing career and leaving her family without a breadwinner. They have already lost their home.

Lane Loyzelle

Lane Loyzelle has sat in the Ontario County Jail for more than a month for allegedly stealing \$20 from his friends. Loyzelle, a resident of Palmyra, was charged Sept. 27 with petit larceny, a misdemeanor. His case is pending in Canandaigua City.

Mr. Loyzelle did not have an attorney to advocate for his release at his arraignment, where the judge set bail at \$2,500 cash or a \$5,000 bond. His only meeting with his assigned counsel occurred five minutes before a court appearance on Oct. 10 in a holding area outside the courtroom within earshot of other inmates. During this meeting, Mr. Loyzelle asked his assigned counsel to contact him at the jail so they could discuss the case further in private. The assigned counsel has not contacted Mr. Loyzelle in the month since the court appearance. He is still in jail.

Bruce Washington

Bruce Washington, facing a petit larceny charge, was assigned an attorney whose specialty is real estate and tax law to manage his criminal defense. Washington, a Rochester resident, has sat in the Ontario County Jail since being arrested on Aug. 20. His misdemeanor case is pending in the Victor Town Court.

Mr. Washington's first meeting with his assigned counsel occurred in jail several days after his arrest. It lasted about five minutes. After this initial encounter, Mr. Washington only met with his assigned counsel at court appearances. The meetings lasted a few minutes and sometimes happened in open court.

Token legal representation led Mr. Washington to plead guilty without fully understanding the consequences of his plea deal. After making his plea, Mr. Washington learned that a lengthy pre-sentencing investigation would extend the jail sentence in his plea deal by about three weeks. His pre-sentencing hearing is scheduled for Jan. 8, 2008. Mr. Washington's assigned counsel has not prepared him for this hearing or discussed strategies with him to overcome the timing problems posed by the pre-sentencing investigation.

Jacqueline Winbrone

Jacqueline Winbrone, 42, was the sole caregiver for her disabled husband who suffered from congestive heart failure and a kidney disease. The couple moved to Syracuse a year ago so he could receive the medical care he needed, and Ms. Winbrone took her husband to dialysis treatments several times a week.

The Winbrones had a stormy relationship, and on Sept. 12 they had a fight. Her husband called the police and accused her of threatening him with a gun. The police searched her car and found one, though she said her husband planted it there. Ms. Winbrone was arrested, taken to the county jail and charged with criminal possession of a firearm.

Ms. Winbrone has never had any meaningful contact with her assigned counsel. She tried to contact her attorney via the voice mail system set up for Assigned Counsel Program attorneys, but was never able to leave a message because his voice mail box was always full. She tried calling him directly, but inmates in the Onondaga County jail can only make collect calls and her attorney's office will not accept collect calls.

Eight days after her arrest Ms. Winbrone learned that her husband had died. She was distraught, so jail deputies allowed her to make two toll calls, including one to her attorney's office. By chance he was there and agreed to speak with her. She told him about her husband's death and said she wanted to go to the funeral. The attorney replied only that he would "go for a bail reduction," then hung up. Her next call was to her brother-in-law to discuss funeral arrangements.

The bail hearing was not held until two days after the funeral. The attorney was present, but because they had never had a substantive discussion he was not aware that she had a prior conviction or of her financial situation. Her bail was reduced to \$5,000, but she could not afford it. Ms. Winbrone remained in jail through October with no contact from her attorney.

Ms. Winbrone was only brought back into court after she wrote the judge a letter on her own behalf pleading for her release. In early November, she was released under supervision of the courts. She still faces the same charges. She still has the same attorney. However, she received an eviction notice while in the jail, so she has neither her husband nor her home to return to.

Randy Habshi

Randy Habshi, arrested July 26 on a second-degree burglary charge, believes his criminal record contains a key mistake – a past plea to a misdemeanor is currently recorded as a felony. This error could make a substantial difference in sentencing if Mr. Habshi were to plead guilty or be found guilty after trial. But he has been unable to contact his court-appointed attorney to discuss the mistake or any possibility of correcting it.

Habshi, a resident of Hudson Falls, faces a maximum sentence of 15 years in prison and fines of up to \$15,000. His case is pending in the Washington County Court. Though he is represented by an attorney contracted through Washington County to provide public defense services, that attorney was not present when a judge set bail at \$100,000 cash or a \$200,000 bond.

For more than two months, Mr. Habshi had no contact with his attorney outside of court. His attorney ignored Mr. Habshi's repeated attempts to contact him and skipped a court appearance on Oct. 10. A few days later, the attorney visited Mr. Habshi in jail for a few minutes solely to deliver the prosecutor's plea offer.

Mr. Habshi has used his time in jail to fight several drug addictions. He has completed a GED course and is awaiting the results of his examination.

Ricky Lee Glover

Ricky Lee Glover, 44, was homeless when he was arrested in June for entering an abandoned public housing complex in Syracuse. Police said he entered the building to steal copper wire, and he was charged with burglary and petit larceny. The city court judge at his arraignment

questioned the charges, but there was no attorney present to speak on Mr. Glover's behalf. He was denied bail and taken to the county jail.

Mr. Glover tried repeatedly to contact his attorney by phone but could only leave messages on a voice mail box system set up for Assigned Counsel Program attorneys. His first contact with his attorney was nine days later when she arrived unannounced at the jail. The first thing his attorney said to him was "you have a dead case." She told him that he was facing two to four years in state prison and then related the contents of the police report as if they were the facts of his case. Glover tried to explain the circumstances, but she kept cutting him off and then left. He has since left messages for her on the voice mail system. Family members left messages at the attorney's office. A local advocacy group also left messages at her office at his request. But Mr. Glover has never spoken with or seen his lawyer again.

Mr. Glover has been in jail more than 120 days. He has had no direct contact with his lawyer since her one visit to the jail to see him on June 21. He has tried to file his own motion seeking release because he has been incarcerated more than 45 days without indictment, but he does not know which judge to send it to because without an indictment his case has not been assigned to a judge, and he cannot reach his attorney to find out which judge he should send it to.

James Adams

Syracuse resident James Adams was arrested on July 31 and charged with felony robbery and burglary for allegedly stealing a few sticks of deodorant from a Rite Aid drug store. If convicted of those charges, he could face 14 years in prison. Bail was set at \$2,500, which Mr. Adams could not afford. He was remanded to jail, where he remains today, more than three months later.

Mr. Adams has never met his attorney outside of open court. His attorney has never visited him in jail or accepted any of his phone calls or the phone calls of a prisoner advocacy organization who called on Mr. Adams's behalf. At one of Mr. Adams's court appearances, his attorney didn't even show up.

Even though two judges expressed the opinion that Mr. Adams was drastically overcharged for allegedly stealing deodorant from a drug store, Mr. Adams's attorney did not prevent the prosecutor from obtaining a felony indictment and, to date, has not filed a motion to dismiss the indictment.

Mr. Adams has not seen his attorney for more than a month and does not understand what is happening with his case.