IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CORALYN GRUBBS, LEWIS SMITH, AL RIVERA, and SEAN MILLER, individually and on behalf of all other persons similarly situated, Plaintiffs, v. HOWARD SAFIR, in his official capacity as Police Commissioner of the City of New York; NEW YORK CITY POLICE DEPARTMENT; BERNARD KERIK, in his official capacity as Commissioner of Correction of the City of New York; NEW YORK CITY DEPARTMENT OF CORRECTION; RUDOLPH GIULIANI, in his official capacity as Mayor of the City of New York; and THE CITY OF NEW YORK, Defendants.	Case No. 92-cv-2132 (GBD) **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' ORDER TO SHOW CAUSE SEEKING ENFORCEMENT OF THE SETTLEMENT ORDER AND FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

More than 17 years ago, in this case, Judge Chin found that the lack of private rooms for pre-arraignment attorney-client consultation at the Richmond County Criminal Court violated criminal defendants' (the class "Plaintiffs") Sixth Amendment right to counsel: "The assistance of counsel would be rendered meaningless if that counsel's client were to be inhibited from speaking openly and freely." The remedy for this Sixth Amendment violation was resolved through a settlement agreement, which approved and adopted as the judgment of the Court (the "Settlement Order"). The Settlement Order in this case states that: "The City shall use its best efforts to construct or install, by August 31, 1999, an interview booth for pre-arraignment detainees to consult **privately** with counsel in the courthouse at 67 Targee Street, Staten Island, New York." (emphasis added).

Now, 17 years later, the City of New York and the Department of Correction (together, the "City") have used the construction of a new criminal courthouse in Richmond County as an excuse to undermine that critical portion of Settlement Order. Specifically, in the new courthouse, the City has installed cameras in the booths where attorneys consult with clients pre-arraignment. Moreover, the City has informed Plaintiffs' counsel that the cameras will be set to record and that the recordings will be retained by the Department of Correction for 90 days. And while the City has represented that the cameras' audio recording capabilities will be turned off, this does not solve the problem. The video recording alone may capture incriminating gestures and permit lip-reading. Moreover, the criminal defendants' attorneys' likely have an ethical duty to inform their clients that the cameras have audio recording capabilities and that, despite the City's representations, there can be no guarantee that audio recording has actually been disabled.

Indeed, the mere presence of the cameras will inhibit open communication between attorney and client. Criminal defendants in the custody of the Department of Correction prior to arraignment withstand circumstances that, guilty or not, render them unable to make significant choices. In addition to being locked in holding cells, they have extremely limited capacity to make any choices about whether, when or what to eat, use the restroom, contact loved ones, get medical attention or use their agency reliably in any number of ways. They have spent up to 24 hours being forcibly transferred to various buildings and have been subjected to arrest and interrogation. They are often tired, hungry, confused, distrusting and frustrated before the first meetings with publicly provided defense attorneys even begin. To introduce into that initial conversation a surveillance camera would further poison this already fragile first encounter. This climate of distrust is not likely to be cured by a sign, posted by the City (which has just arrested the defendant) representing that the audio is turned off.

Taking these circumstances together, there can be no serious question that the presence of surveillance cameras in the attorney-client interview booths will cause the criminal defendants in Richmond County "to be inhibited from speaking openly and freely" to their attorneys. This inability of a criminal defendant to freely communicate with his or her attorney prior to the arraignment is precisely the situation that led Judge Chin to find a Sixth Amendment violation, resulting in the Settlement Order. Simply, by installing cameras in the interview rooms, the City has violated the portion of the Settlement Order requiring it to provide "an interview booth for pre-arraignment detainees to consult privately with counsel." (emphasis added). Thus, by this Order to Show Cause, Plaintiffs seek a finding that the City is in violation of the Settlement Order and that, as a remedy for such violation, the surveillance cameras be removed (the "Motion to Enforce"). Moreover, while the Motion to Enforce is pending, Plaintiffs respectfully

request that the Court grant a preliminary injunction ordering the immediate removal of all cameras from the attorney-client interview rooms in the Richmond County Criminal Court, and, while the application for a preliminary injunction is pending, an order temporarily restraining the City from operating such cameras.

BACKGROUND

This case was commenced in 1992 as a putative class action to address numerous violations of the constitutional rights of detained criminal defendants in New York City awaiting arraignments or appearances. The case was brought on behalf of "persons who are, or will in the future be, detained by defendants in New York City ("NYC") police precincts, central booking facilities, and criminal court buildings while awaiting their arraignments or appearances in other proceedings in connection with potential criminal prosecutions against them." Grubbs v. Safir, 1999 WL 20855, at *1 (S.D.N.Y. 1999). The Court (Chin, J.) granted class certification on January 19, 1996. Id. at *4.

The Plaintiffs moved for summary judgment. Among the claims on which Plaintiffs sought summary judgment was Plaintiffs' claim that "the denial of private attorney-client interview facilities in Richmond County violates plaintiffs' Sixth Amendment right to counsel." Id. On summary judgment, the Court concluded that there was no factual dispute that "[p]rivate attorney-client consultation facilities are not available in the Richmond County Criminal Court." Id. at *6. The Court concluded that Plaintiffs had a constitutional right to counsel at their arraignments, and that this right included a right to confer with counsel immediately prior to arraignments. Id. at *7. On the question of whether the Sixth Amendment required that such conferences be private, the Court reasoned as follows:

> As to this issue of privacy, I do not accept defendants' argument that speaking to one's attorney in the presence of other detainees as well as court officers (who are

> also in the vicinity) is sufficient for every detainee. The assistance of counsel would be rendered meaningless if that counsel's client were to be inhibited from speaking openly and freely. The existing condition in Richmond County may well prevent a plaintiff from speaking openly and freely to her/his counsel prior to a court appearance.

Id. at *7. The Court thus concluded that Defendants were required to provide access to private attorney client consultations, but deferred a decision on the remedy until after a trial: "Because there are a number of facts and issues that the Court must consider in fashioning a remedy for this claim, however, I do not here decide what defendants must do to provide access for private attorney-client consultations in Richmond County." Id. at *7.

Before a trial occurred, however, the parties reached a settlement. With respect to Judge Chin's findings concerning the lack of private spaces for attorney-client interviews at the Richmond County Criminal Court, the settlement agreement addressed these findings at paragraph 11: "The City shall use its best efforts to construct or install, by August 31, 1999, an interview booth for pre-arraignment detainees to consult privately with counsel in the courthouse at 67 Targee Street, Staten Island, New York." The settlement agreement was approved and adopted by Judge Chin on September 24, 1991[Dkt. No. 61] as the judgment of the Court (the "Settlement Order"). Shortly after the Settlement Order was entered, on September 24, 1999, the case was closed.

On March 26, 2015, this case was re-opened so the parties could file a partial modification to the Settlement Order. The modification related to medical screening and did not relate in any way with private attorney-client consultation at the Richmond County Criminal Court. Thus, the portion of the Settlement Order relating to such private attorney-client consultation remains in effect and continues to bind the City.

Over the last several years, construction has been underway of a new courthouse at 26 Central Avenue, Staten Island, New York. The new courthouse was to replace (and now has replaced), among other courts, the Richmond County Criminal Court building at 67 Targee Street. During a tour of that facility in December 2014, an attorney for the Legal Aid Society ("Legal Aid") noticed that there were surveillance cameras inside the pre-arraignment interview booths. Affidavit of Christopher Pisciotta in Support of Plaintiffs' Application ("Pisciotta Aff.") at ¶ 5. When attorneys from Legal Aid objected to the cameras, they were initially told that the cameras would monitor counsel and were intended to ensure that counsel could not pass contraband to pre-arraignment detainees. Id. at ¶ 7. During subsequent tours, Legal Aid attorneys have confirmed that the cameras will actually monitor the detainees' side of the interview room, not counsel's. Id. at ¶ 14. Indeed, the cameras are pointed at the location where the detainees sit. See id. Legal Aid attorneys were then told by representatives of the City that the purpose of the cameras is detainee security. Id. at ¶ 13. In response, Legal Aid attorneys pointed out that the cameras inside the holding area, cameras in the passageways, the clear visibility lines for officers, and the other options to place cameras, would address security without violating privacy inside the interview booths. City representatives told legal attorneys that they would respond to these concerns. Id. at ¶ 8.

On June 5, 2015, Legal Aid sent a demand letter to the City informing the city that the placement of the cameras inside the interview rooms would, among other things, violate the Sixth Amendment rights of detainees being arraigned at the Richmond County courthouse. Id. at ¶ 10, Ex. A. On September 22, 2015, on a subsequent tour of the new Richmond County courthouse, an attorney for the City informed Legal Aid attorneys that the cameras would not be

removed absent a court order. The Legal Aid attorneys were also informed that the video recordings would be maintained for 90 days and subject to subpoena practice. Id. at ¶ 15.

On September 29, 2015, Legal Aid sent a second demand letter, reiterating Legal Aid's objections to the use of surveillance cameras in the attorney-client interview rooms and further advising that the cameras also violate the September 24, 1999 so-ordered settlement agreement [Dkt No. 61] in this case. Id. at ¶ 29, Ex. B. The cover email attaching the September 29, 2015 demand letter advised the City that Legal Aid anticipated taking legal action to address the violations as soon as October 1, 2015.

Legal Aid objected to the cameras for the obvious reason that they would intrude on the confidential attorney-client relationship and inhibit fee and open communication between client and attorney prior to the clients' arraignments. An arraignment is a critical stage of a criminal case. It is when bail may be set, urgent early investigation opportunities can be initiated, grand jury rights for felonies are discussed, and the beginning of an attorney-client relationship is developed. Id. at ¶ 4. Thus, the interview with the client immediately prior to the arraignment is critical, and any inhibition of a clients' ability to freely and openly communicate has the potential to severely harm a criminal defendant's case. Moreover, the communications at such interviews are not always verbal. Such defendants routinely gesture, emote, demonstrate or show injuries or tattoos during arraignment interviews in order to communicate with their lawyers concerning their case the circumstances leading to their arrest. Id. at ¶ 3.

Legal Aid's original concerns about the surveillance cameras were confirmed on the first day of opening of the new courthouse at 26 Central Avenue, Staten Island, on September 28, 2015. Indeed, the first criminal defendant interviewed by Legal Aid in the new courthouse prior to his arraignment, upon being informed of the cameras, felt that he could not communicate

openly with his attorney. Id. at ¶ 25; Affidavit of F.V. in Support of Plaintiffs' Application ("F.V. Aff.") at ¶ 5, 6, 7. Indeed, there were several times when such defendant used his hands to describe something until his attorney reminded me that he was being recorded. Pisciotta Aff. at ¶ 26; F.V. Aff. at ¶ 6. The cameras made him feel uncomfortable and as if he could not fully explain what he needed to explain about his case. F.V. Aff. at ¶ 6.

As of the date of this filing, the cameras remain in place and continue to monitor and record pre-arraignment interviews between attorneys and detainees at the Richmond County Criminal Court.

ARGUMENT

I. THE COURT SHOULD GRANT PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER

A party is entitled a preliminary injunction if it can "show irreparable harm and either a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." American Civil Liberties Union v. Clapper, 785 F.3d 787, 825 (2d Cir. 2015). The Court may also consider whether balance of equities tips in Plaintiffs' favor and whether a preliminary injunction would be in the public interest. Winter v. NRDC, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).[1] As set forth below, Plaintiffs have made all required showings necessary for a preliminary injunction.

A. Plaintiffs Are Likely To Succeed on The Merits, as the City Has Clearly Violated the Settlement Order

[1] In Clapper, the Second Circuit made clear that the standard for obtaining a preliminary injunction set forth in Winter v. NRDC, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008), which includes "balancing of the equities" and "public interest" prongs, is in the alternative to the standard set forth in Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc., 696 F.3d 206, 215 (2d Cir.2012), under which showings of a likelihood of success and irreparable harm are sufficient to obtain a preliminary injunction. See Clapper, 785 F.3d at 825.

To establish a likelihood of success on the merits "[t]he movant need not show that success is certain, only that the probability of prevailing is "better than fifty percent." BigStar Entm't, Inc. v. Next Big Star, Inc., 105 F. Supp. 2d 185, 191 (S.D.N.Y. 2000) (quoting Wali v. Coughlin, 754 F.2d 1015, 1025 (2d Cir.1985)). Here Plaintiffs can easily show that they are more likely than not to prevail on their Motion to Enforce.

As an initial matter, this Court clearly has authority to enforce the Settlement Order entered in this case and to remedy the City's violation thereof. See Ottley v. City of N.Y., No. 08 Civ. 2994, 2012 WL 4857544, at *1 (S.D.N.Y. 2012) ("Not only does the Court have the power to enforce the settlement agreement entered by the parties and formally approved through court order, it has a duty to do so."); see Kohn Indus. Park Co. v. Rockland Cnty., 710 F.2d 895, 900 (2d Cir. 1983) ("[T]he district court has the power to enforce the settlement agreement entered into by the parties and formally approved through the court order.").

The Settlement Order, attached to this memorandum as Exhibit A,[2] requires that the City provide "an interview booth for pre-arraignment detainees to consult privately with counsel...." Thus, the simple question on the Motion to Enforce is whether the attorney-client interview rooms in the Richmond County Criminal Court, which currently have the City's surveillance cameras pointed at criminal defendants and set to record, allow clients to "consult privately" with their attorneys prior to their arraignment. The question answers itself. By definition, surveillance cameras are incompatible with privacy. The cameras permit the City to monitor every movement and gesture by every criminal defendant who meets with his or her attorney prior to arraignment. The cameras will also permit lip-reading. Moreover, because the cameras are set to record, and because the recordings will be kept for a minimum of 90 days, the City will

[2] The Settlement Order consists of the settlement agreement between the parties, as well as the docket entry [Dkt. No. 61] approving and adopting the settlement agreement as the judgment of the Court.

have the ability to review the footage as they see fit, and potentially to use such footage against the criminal defendants in their criminal proceedings. Thus, under no stretch of the imagination do the attorney-client interview rooms permit clients to "consult privately" with their attorneys.

Moreover, any doubt about whether the cameras violate the "private consultation" requirement of the Settlement Order is eliminated by consideration of Judge Chin's opinion in this case, which gave rise to the Settlement Order. Judge Chin found that criminal defendants had a Sixth Amendment right to the assistance of counsel immediately prior to their arraignment. Grubbs v. Safir, 1999 WL 20855, at *7 (S.D.N.Y. 1999). He further found that "[t]he assistance of counsel would be rendered meaningless if that counsel's client were to be inhibited from speaking openly and freely." Id. Before Judge Chin decided on the exact remedy for the constitutional violation, the parties reached a settlement, which became the Settlement Order. Thus, the "private consultation" requirement, agreed upon by the parties and so-ordered by the Court, was designed to remedy a violation of the Sixth Amendment, which, as Judge Chin found, requires the ability of a criminal defendant to speak "openly and freely" with his or her attorney.

There is no question that the surveillance cameras will inhibit open and free communication between attorney and client. As set forth above, the cameras will capture and record every movement by the criminal defendants, and will permit lip-reading. Those circumstances alone will prevent clients from communicating freely. Moreover, notwithstanding the representation from the City that the audio function of the camera is turned off, the mere presence of the camera will prevent a client from speaking openly and freely. A client who has just been arrested is unlikely to trust the representation of the City that the audio is turned off. Moreover, any such suspicion by a criminal defendant would not be unfounded, in light of

numerous well-documented examples of surreptitious recording of attorney-client conversations by law enforcement agencies.[3]

As Judge Chin found, the inability of criminal defendants to communicate "openly and freely" with their attorneys violated their Sixth Amendment right to counsel. Indeed, the Sixth Amendment's guarantee of right to counsel requires "[f]ree two-way communication between client and attorney." United States v. Levy, 577 F.2d 200, 209 (3d Cir. 1978) (requiring dismissal of indictment when attorney-client privilege has been breached); see also Grubbs, 1999 WL 20855 at *7. Even the fear of the loss of privacy can inhibit attorney-client communication to the point of a loss of the right to counsel. See Weatherford v. Bursey, 429 U.S. 545, 554, n. 4 (1977) (recognizing that "[o]ne threat to the effective assistance of counsel posed by government interception of attorney-client communications lies in the inhibition of free exchanges between defendant and counsel because of the fear of being overheard.").

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[3] For example, recently, the Police Chief in Edison, New Jersey recorded attomey-client conversations through surveillance cameras for 11 months despite promises that the microphones were disabled. Mueller, Mark. "Listening devices in Edison Police Headquarters Secretly Recorded Offices, Attorneys, Civils", New Jersey Advance, December 15, 2013, available at http://www.nj.com/news/index.ssf/2013/12/listening_devices_in_edison_police_headquarters_secretly_recorded_discussions_of_officers_attorneys.html listening devices in Edison police headquarters secretly recorded discussions of officers attorneys.html. A Police Sheriff in Louisiana secretly recorded conversations in the precinct between attorneys and their clients until his actions were revealed by a whistleblower. Linderman, Juliet, "Secret Recordings at St. John's Sheriffs Office not illegal, State Police concluded," Times-Picayune, available at http://www.nola.com/crime/index.ssf/2013/08/allegations_that_st_john_sheri.html. Florida police unlawfully recorded conversations between an attomey and their client in an interview room in the precinct via a closed-circuit camera. McCue, Dan. "Egregious Eavesdropping Wins Police No Favors", CourtHouse News Service, April 10, 2014, available at http://www.courthousenews.com/2014/04/10/66978.htm. And as documented in 2003 in a report by the Office of the Inspector General, (010) of the United States Department of Justice, staff members at the Metropolitan Detention Center (MDC) in Brooklyn not only videotaped detainees' visits with their attorneys, but secretly and unlawfully audiotaped them as well. The OIG found: "On many videotapes, we were able to hear significant portions of what the detainees were telling their attorneys and sometimes what the attorneys were saying as well." U.S. Department of Justice, Office of the Inspector General, Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York, at 31 (Dec. 2003).

Federal courts have recognized "the need for sufficient interview facilities, both as to quantity and privacy." Dreher v. Sielaff, 636 F.2d 1141, 1145 (7th Cir. 1980). "Forcing prisoners to conduct their meetings with their attorneys in the open or to yell over the phone obviously compromises the consultation... The right to an attorney would mean little if it did not effectively attach until the hushed whispers at the defense table the morning of trial...". Johnson-El v. Schoemehl, 878 F.2d 1043, 1052 (8th Cir. 1989). In Johnson-El, the Eighth Circuit ruled that requiring prisoners awaiting trial "to meet with their attorneys in public areas of the jail where their conversations could be overheard by guards and other prisoners" violated their right to counsel. Id. at 1053. Similarly, other courts have found non-confidential interview facilities to be a constitutional violation. See, e.g., Ching v. Lewis, 895 F.2d 608, 609 (9th Cir. 1990) (requiring prisoner to "yell through a hole in the glass" to his attorney abridged his right "to communicate privately with an attorney"); State v. Gibbs, 2012 WL 6845687 (Del. Super. Ct. 2012) (ordering relief for denial of a private attorney-client interview setting by transferring inmate to facilitate private communication); United States v. Elzahabi, No. CRIM.04-282(JRT), 2007 WL 1378415, at *2 (D. Minn. May 7, 2007) ("further [video] monitoring of defendant's communications with counsel, whether inadvertent or deliberate, whether seen or unseen, will be deemed a knowing intrusion on the attorney-client relationship in violation of defendant's Sixth Amendment right to counsel.").

As the cases demonstrate, the Sixth Amendment requires that criminal defendants be able to speak to their attorneys in private. The lack of facilities at the Richmond County Criminal Court for such private consultations was precisely the Sixth Amendment violation that the Settlement Order was designed to remedy. Now, after 17 years of complying with the Settlement Order, the City has undone that remedy, and reinstated the Sixth Amendment

violation, by installing security cameras in the interview rooms. As the Court in Elzahabi recognized, deliberate, or even inadvertent, video monitoring of attorney client meetings, could violate the Sixth Amendment's right to counsel. 2007 WL 1378415, at *2. Here the Defendant has deliberately installed cameras in the dedicated attorney-client interview rooms, despite the Settlement Order, the stated concerns of Plaintiffs' counsel in their criminal proceedings, and Judge Chin's determination, in this very case, that of lack of private attorney-client interview spaces in Richmond County violated the United States Constitution. These facts easily establish a likelihood of success in showing that the City is in violation the Settlement Order.

B. Plaintiffs Will Be Irreparably Harmed by The Continued Violation of the Settlement Order and their Sixth Amendment Right to Counsel

Absent the grant of an immediate temporary restraining order, Plaintiffs will suffer irreparable harm by the continued presence of the cameras in the attorney-client interview rooms. Irreparable harm is an injury that is neither remote nor speculative, but actual and imminent and cannot be remedied by an award of monetary damages. Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 332 (2d Cir. 1995). It is well settled in the Second Circuit that a violation of a constitutional right causes irreparable harm per se, and most courts do not require a further showing of irreparable injury. Mitchell v. Cuomo, 748 F.2d 804, 806 (2nd Cir. 1984) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.") (quoting 11C. Right & Miller, Federal Practice and Procedure, § 2948, at 440 (1973); Santa Fe Natural Tobacco Co., Inc. v. Spitzer, No. 00 CIV 7274 LAP, 2000 WL 1694307, at *1 (S.D.N.Y. 2000) ("in general, deprivation of a constitutional right constitutes irreparable injury.") "[W]here. . . the constitutional deprivation is convincingly shown and that violation carries noncompensable damages, a finding of irreparable harm is warranted." Donohue v. Mangano, 886 F.Supp. 2d 126, 150 (E.D.N.Y.

2012).

Here, because the City's placement of cameras in the attorney-client interview rooms violates Plaintiff's Sixth Amendment right to counsel, as well as the Settlement Order designed to remedy that violation, Plaintiffs need not make a further showing of irreparable injury. See McClendon v. City of Albuquerque, 272 F.Supp. 2d 1250, 1259 (D. N.M. 2003) (holding that Defendants' limitations on counsel's access to detention facility constituted a violation of the class and sub-class member's constitutional right to access to courts, and plaintiffs did not need to make further showing of irreparable harm).

Moreover, even if Plaintiffs did need to make a further showing (and they do not), the facts of this case demonstrate that Plaintiffs will suffer actual and immediate harm that cannot be remedied by the award of monetary damages. Plaintiffs' attempts to communicate openly with counsel during pre-arraignment interviews were, are, and will continue to be frustrated by the surveillance cameras in the pre-arraignment interview room. Upon Plaintiffs' initial meeting with counsel, Plaintiffs are informed of the surveillance cameras, advised that these cameras are recording, and further advised that the video recording may be used against them in the criminal proceedings and the attorney cannot verify the City's representation that the audio capabilities are turned off. This naturally deters Plaintiffs from openly sharing with counsel important information and facts, or otherwise providing their attorneys with critical information necessary for counsel to provide effective assistance at the arraignment. This causes irreparable injury to Plaintiffs, as they are unable to adequately prepare for arraignments, which has far reaching consequences. See Johnson v. Sullivan, No. 1:06-cv-01089, 2008 WL 5396614, at *6 – 7 (E.D. Cal. 2008) (injunctive relief was warranted where Plaintiff was not allowed to confer with counsel and argued he was irreparably harmed as he was unable to prepare his case for trial and

was effectively denied access to the courts).

A criminal defendant only has one shot at an arraignment. Inadequate representation at the arraignment may irreparably harm a criminal defendant in a number of ways. For example, counsel's inability to collect information concerning the nature of the alleged crime, or the defendant's ties to the community, will impede counsel's ability to argue effectively that bail should not be set, or that it should be set low. As a result, criminal defendants may spend weeks or months in jail unnecessarily, because they were prevented from providing critical information to their attorneys that would have been relevant to the bail argument. Similarly, inadequate representation at arraignments may prevent early disposition of some cases, leading to drawn out and unnecessary criminal proceedings against Plaintiffs.

For the reasons set forth above, Plaintiffs will be irreparably harmed by the presence of surveillance cameras in the attorney-client interview rooms at the Staten Island Criminal Court.

C. The Balancing of the Equities Weighs in Favor of the Plaintiffs and a Temporary Restraining Order and Preliminary Injunction Would Not Disserve the Public Interest

The balancing of the equities/hardships also weighs in favor of the Plaintiffs. See R Squared Global, Inc. v. Serendipity 3, Inc., No. 11 Civ. 7155 (PKC), 2011 WL 5244691, at *5 (S.D.N.Y. 2011) ("A court may issue a preliminary injunction only if the movant has demonstrated. . . sufficiently serious question going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff's favor.") (internal quotations omitted). Here, the hardship to Plaintiffs if a temporary restraining order and/or preliminary injunction is not granted is obvious. As set forth above in Sections I.A and I.B, Plaintiffs' constitutional right to counsel will continue to be infringed by the continued presence and use of surveillance cameras in attorney-client interview rooms, with no adequate post hoc

remedy for such infringement. On the other hand, if the court grants a temporary restraining order and/or a preliminary injunction ordering the immediate removal of the surveillance cameras, the City will experience no real hardship. In fact, prior to the construction of the new courthouse in Richmond County, and as recently September 25, there were no cameras recording attorney-client interactions at the Richmond County Criminal Court. Moreover, the City does not use cameras in attorney-client interview rooms in any other borough. Thus, there is no basis for the City to argue that such cameras are necessary. Thus, any hardship the City may articulate cannot outweigh the demonstrated hardship that Plaintiffs will face if the cameras remain in use.

Moreover, a preliminary injunction is clearly in the public interest. "The public has a clear interest in protecting the constitutional rights of all its members." Ligon v. City of New York, 925 F.Supp. 2d 478, 541 (S.D.N.Y. 2013). As set forth above, the surveillance cameras in attorney-client interview booths not only violate the Settlement Order, they also violate criminal defendants' Sixth Amendment rights. Indeed, the Settlement Order was intended to remedy the City's violation of the Sixth Amendment found by Judge Chin. Thus, the public's interest in the preservation of constitutional rights, as well as the City's compliance with court orders, will be served by the immediate removal of the surveillance cameras.

II. THE COURT SHOULD GRANT THE MOTION TO ENFORCE THE SETTLEMENT ORDER

As set forth above in Section I.A, the City has violated the Settlement Order by installing surveillance cameras in the attorney-client interview rooms at the Richmond County Criminal Courts. Therefore, this Court should find the City in violation of the Settlement Order and, as a remedy for such violation, order the permanent removal of such cameras.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court grant an order (1) finding the City of New York and the New York City Department of Corrections in violation of the September 24, 1999 Order Approving Settlement in this action and ordering, as a remedy, the permanent removal of all surveillance cameras from the attorney-client interview rooms the Richmond County Criminal Court; and (2) granting a preliminary injunction, pursuant to Fed. R. Civ. P. 65(a), ordering the City of New York and the New York City Department of Corrections to immediately remove such surveillance cameras while the proceedings to enforce the September 24, 1999 Order Approving Settlement are pending; (3) granting an order, pursuant to Fed. R. Civ. P. 65(b), temporarily restraining the Defendants from operating such cameras while Plaintiffs' application for a preliminary injunction is pending, and (4) granting such other relief as the Court deems just and proper.

Dated: October 1, 2015
New York, New York

Respectfully submitted,

/s/ William Gibney

William Gibney
Cynthia Conti-Cook
THE LEGAL AID SOCIETY
Criminal Defense Practice
Special Litigation Unit
199 Water Street, 6th Floor
New York, New York 10038
(212) 577-3419

Gregory G. Little
Colin T. West
Joshua Elmore
WHITE & CASE LLP
1155 Avenue of the Americas
New York, New York 10036
Telephone: (212) 819-8200

Attorneys for Plaintiffs

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CORALYN GRUBBS, LEWIS SMITH, ALI RIVERA, and SEAN MILLER, individually and on behalf of all other persons similarly situated,

Plaintiffs,

- against -

HOWARD SAFIR, in his official capacity as Police Commissioner of the City of New York; NEW YORK CITY POLICE DEPARTMENT; BERNARD KERIK, in his official capacity as Commissioner of Correction of the City of New York; NEW YORK CITY DEPARTMENT OF CORRECTION; RUDOLPH GIULIANI, in his official capacity as Mayor of the City of New York; and THE CITY OF NEW YORK,

Defendants.

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STIPULATION OF SETTLEMENT

92 Civ. 2132 (DC)

Plaintiffs commenced this action on March 25, 1992, seeking declaratory and equitable relief to change the conditions of confinement to which they were subjected from the time of their arrest until their arraignment, and in some instances, when produced from jail to court for post-arraignment court proceedings in their criminal cases. The complaint alleged that those Plaintiffs who were pre-arraignment detainees were held for as long as three days under unhealthy and unsafe conditions; denied consistent access to necessary food, drink and related services; forced to sit and sleep in dirty cells with inadequate ventilation; held by Defendants under conditions that spread communicable diseases; denied adequate medical care and screening; denied an opportunity to wash; and denied an opportunity to call family, a friend or a lawyer.

The complaint further alleged that those pre-arraignment detainees who were arrested in Queens and Richmond Counties were denied an opportunity to privately consult with counsel and that female pre-arraignment detainees were held in particularly harsh conditions. It also alleged that those Plaintiffs who were committed to jail following arraignment and subsequently produced from jail for court appearances were held in unsafe and dirty cells with inadequate ventilation.

All Defendants answered the complaint and denied the material allegations set forth therein. An Answer was filed on May 28, 1992, by Defendants Matthew T. Crosson, sued in his official capacity as Chief Administrator of the Courts, Milton L. Williams, sued in his official capacity as Deputy Chief Administrative Judge of the New York City Courts, and The Office of Court Administration of the New York State Courts ("the former Court Defendants"). An Answer was filed on June 3, 1992, by Defendants Lee Brown, sued in his official capacity as Police Commissioner of the City of New York, The New York City Police Department ("NYPD"), Gerald Mitchell, sued in his official capacity as Acting Commissioner of Correction, the New York City Department of Correction ("DOC"), David Dinkins, sued in his official capacity as Mayor of the City of New York and the City of New York (the "City Defendants"). On October 15, 1992, the Court (Leisure, J.) entered a protective order to protect the confidentiality of all plans pertaining to holding and/or detention areas in any NYPD, DOC or NYC courthouse facility, including but not limited to floor plans, mechanical drawings, ventilation plans, structural plans, plumbing and electrical plans which have been sought by and disclosed to Plaintiffs in discovery. The parties then agreed before Judge Leisure to postpone motion practice to permit the discussion and investigation of the conditions at issue. Such meetings and investigation were held, and on September 19, 1995, a Stipulation and Order was

entered for settlement as to the Court Defendants. A mutually agreeable resolution of Plaintiffs' claims with regard to the City Defendants could not be reached.

On November 8, 1995, Plaintiffs filed a motion for class certification, pursuant to Federal Rule of Civil Procedure 23(a)(b)(1) and (2). On January 23, 1996, the Court (Chin, J.) certified a class of all persons who are held by the City Defendants in police precincts, central booking facilities and criminal court buildings in New York City while awaiting their arraignment, or who were held by the City Defendants following arraignment in criminal court buildings while appearing for other proceedings in connection with their criminal prosecutions.

The parties then conducted discovery. On September 25, 1997, the Plaintiffs moved for partial summary judgment, and on November 19, 1997, the City Defendants filed their opposition to that motion. On January 15, 1999, the Court denied Plaintiffs' motion for partial summary judgment, ruling that there were issues of fact to be resolved at trial. The Court set a trial date of June 21, 1999. The parties then renewed their efforts to settle the case.

The parties agree that since 1992, the City Defendants have reduced the arrest to arraignment time of Plaintiffs to an average of less than twenty-four (24) hours.

The parties agree that since 1992, the City Defendants have made or begun significant capital improvements in three of the central booking facilities in which those Plaintiffs who are pre-arraignment detainees are held. Between 1992 and 1993, the first floor pre-arraignment detention area for females in the Manhattan courthouse was expanded and remodeled. In 1996, the City Defendants opened a new central booking facility for Queens County ("Queens pre-arraignment court section"), and also a new central booking detention area for men in New York County ("Manhattan pre-arraignment court section"). In 1999, the City Defendants began

a renovation of the central booking facilities for women in Richmond County, which is scheduled for completion in September 1999.

The parties further agree that the City Defendants have made significant improvements to the ventilation systems in several of the central booking facilities in which those Plaintiffs who are pre-arraignment detainees are detained. In the Brooklyn pre-arraignment court section, between 1996-1999, a central air purifying unit ("crab unit") and a new central air conditioning unit with a fresh air hook-up was installed in the intake area; and two stand alone air purifying units ("NQ500") were installed - one in intake and one in the staging area. In the Manhattan pre-arraignment court section, between 1992 and 1993, the female area windows were modified, smoke ejecters and fans were installed, and the wall separating the female area was replaced with perforated sheet metal to allow for greater air circulation. In July 1996, a new independent air exchange system in the men's area was installed. In the Bronx pre-arraignment court section, in 1996, NQ500 units were installed on the second and third floors, and in 1998, a crab unit was installed on first floor. In 1997, at the 120th Precinct in Staten Island, an NQ500 unit was installed in the arrest processing area and an NQPILLAR/HEPA/UV carbon air treatment unit was installed in the male overnight lodging area. When the current renovations at the 120th Precinct are completed, NQ500 units will be installed in both the women's and men's overnight areas. In addition, HEPA filters have been installed in areas where Emergency Medical Services ("EMS") performs the medical screenings. The parties further agree that the City Defendants have instituted a plan for regular cleaning and maintenance of the ventilation systems in the central booking facilities and courthouse detention areas where Plaintiffs are held.

The parties further agree that the City Defendants have instituted a cleaning and maintenance schedule in the pre-arraignment court sections to insure that they are thoroughly

cleaned each day and given a comprehensive cleaning every three months; that the City Defendants have retained the services of qualified professional exterminators to control vermin and insects within the pre-arraignment court sections; and that the City Defendants have implemented procedures for the repair of plumbing and general maintenance for the central booking facilities.

The parties further agree that the City Defendants have made significant improvements to the fire safety systems in the central booking facilities and courthouse detention areas. They have established fire safety procedures, have repaired or where necessary replaced fire safety equipment, have designated and trained fire safety officers, established fire evacuation plans, and have implemented a plan for inspection and maintenance of fire safety equipment.

The parties further agree that the City Defendants have arranged for food service for all of the central booking facilities, including, in the pre-arraignment court sections, sandwiches using Halal products for Muslim pre-arraignment detainees and non-meat sandwiches for pre-arraignment detainees who do not eat meat, have installed refrigerators in all pre-arraignment court sections to store food and drink items for Plaintiffs who are processed for arrest between the established feeding times, have provided all pre-arraignment detainees with access to potable drinking water and sanitary supplies, and have installed telephones in all central booking facilities.

The parties further agree that the City Defendants have made significant efforts to provide medical screening to those Plaintiffs who are pre-arraignment detainees. They have opened Medical Screening Units in the pre-arraignment court sections in New York, Kings, Bronx, and Queens Counties, and have retained the services of emergency medical technicians ("EMTs") from the New York City Fire Department to operate these units. They have also

adopted plans to secure medical screening for those pre-arraignment detainees who are not held in the pre-arraignment court sections because of their designation as "Special Category" prisoners.

The parties agree that the Court has jurisdiction over this action and the parties, and that the Court has the authority to order the relief set forth in this Stipulation. The parties stipulate, based on the entire record, that the remedies set forth in this Stipulation are narrowly drawn, extend no further than necessary to correct violations of federal rights of the Plaintiff class, and are the least intrusive means necessary to accomplish redress.

IT IS HEREBY STIPULATED AND AGREED by the parties that Plaintiffs' claims shall be resolved without further litigation by the entry of a Final Judgment incorporating the terms of this Stipulation, following its approval by the Court after notice of its terms is provided to the class. The parties stipulate as follows:

1. Plaintiffs claims in paragraphs "44" through "47" of their complaint, regarding police vans, are withdrawn without prejudice.

DEFINITIONS:

2. The parties agree that the following words and phrases as used below in this Stipulation shall have the following meaning:

(a) "Pre-arraignment detainee" shall mean an individual who has been taken into police custody and brought to a pre-arraignment detention facility, whether it be a precinct, or a pre-arraignment court section.

(b) "Contact information" shall mean name, address and telephone number.

(c) "Defendants", as used below, shall mean only the City Defendants.

(d) "Precinct/unit level training" shall mean training at the precinct level by precinct training personnel using materials produced by the NYPD Police Academy.

(e) "Pre-arraignment court section" shall mean a borough court section in Manhattan, Bronx, Brooklyn and Queens designed to lodge and process pre-arraignment detainees prior to arraignment.

MEDICAL CARE OF PRE-ARRAIGNMENT DETAINEES:

3. Any pre-arraignment detainee who asks to be seen by a physician shall be transported to a hospital as soon as practicable, in accordance with the severity of the pre-arraignment detainee's medical condition.

4. If, at the time of arrest, a pre-arraignment detainee is taken into custody and has with him or her a pharmacy labeled container that lists the names of the prescription medication and pharmacy, the container with its contents shall be vouchered in accordance with NYPD procedures and a Medical Treatment of Prisoner form shall be completed. The following notations shall be made on the Medical Treatment of Prisoner form:

(a) a check indicating "yes" shall be made in the part of the form asking whether prescription medication was possessed at arrest;

(b) the property voucher number for the contents of the container shall be recorded in the appropriate box; and

(c) in addition, the following information shall be recorded: the contact information for the pharmacy, the prescription number, and when a physician's name appears on the container, the contact information for the physician.

Should a hospital physician treating a pre-arraignment detainee indicate that he needs information about the vouchered contents of the pharmacy container, the physician shall be given the voucher number and be advised on how to contact the desk officer in the NYPD facility where the

vouchered pharmacy container is being held. Desk officers receiving such telephone requests from hospital physicians or the health care personnel assisting the physicians shall be authorized to provide the name of the medication. Should the hospital physician, after learning the name of the medication, advise the desk officer that the medication is not available at the hospital and request that the medication be delivered to the hospital, the desk officer shall arrange for the vouchered pharmacy container to be delivered.

5. If a physician at a hospital provides a pre-arraignment detainee with medication to be taken by the pre-arraignment detainee during the pre-arraignment period, the police officer accompanying the pre-arraignment detainee shall take custody of the medication until the officer reaches the pre-arraignment court section, at which time the medication shall be given to the EMT to hold until the pre-arraignment detainee needs to self-administer the medication. Notwithstanding the above, no EMT shall be allowed to perform any service that is not permitted by the EMTs' scope of practice, as defined by the New York State Department of Health. For example, EMTs shall not hold injectibles, or controlled substances. If a pre-arraignment detainee needs further medication during the period of pre-arraignment detention in any form that is not authorized by the EMTs' scope of practice, he or she will be taken to a hospital for that medication.

6. If an individual identifying him or herself as a relative or a member of the pre-arraignment detainee's household appears at the precinct where the pre-arraignment detainee is located and indicates that the pre-arraignment detainee has a medical condition or needs medication, a "Medical Treatment of Prisoner Form" shall be completed. The "Medical Treatment of Prisoner Form" shall indicate that a self-identified relative or household member presented at the precinct with medical or medication information and shall indicate the contact

information for that relative or household member. Should a self-identifying relative or household member bring to the precinct a pharmacy labeled container that lists the names of the prescription medication and the pharmacy, and lists the name of the pre-arraignment detainee, the contact information for the pharmacy, the prescription number, and where the physician's name appears on the container, the contact information for the physician shall also be recorded on the "Medical Treatment of Prisoner Form." Notwithstanding the above, no police officer will be required to accept medication or pharmacy labeled containers and their contents from relatives or household members for the purpose of providing medication to the pre-arraignment detainee or vouchering the medication.

7. Within 90 days of approval of this Stipulation by the Court, the NYPD will issue an interim order that incorporates the principles in paragraphs "3" through "6." Within 90 days of issuing the order, NYPD shall commence precinct/unit level training or its equivalent to superiors and officers affected by this new order.

PHYSICAL PLANT ISSUES:

8. The City shall use its best efforts to expand capacity for holding pre-arraignment detainees at the Pre-Arraignment Court Section at 120 Schermerhorn Street, Brooklyn, New York, ("Schermerhorn St. facility"), by making the following renovations by the dates indicated:

(a) By November 1, 1999, the larger women's holding cell in the staging area shall be expanded to increase cell space and a stainless steel toilet/sink/fountain fixture ("new toilet fixture") shall be added to this cell;

(b) By November 1, 1999, the smaller women's holding cell in the staging area shall be renovated by replacing the current toilet with a new toilet fixture;

(c) By November 1, 2000, the largest male cell in the staging area shall be renovated by adding a new toilet fixture;

(d) By November 1, 2000, a large new holding cell with a new toilet fixture shall be constructed in the staging area; and

(e) By November 1, 2000, the rear two cells in the Arraignment Part 2 ("AR2") feeder cell area shall be renovated to include, among other things, new toilet fixtures.

9. The City shall promulgate procedures to facilitate the timely repair of cells in the Schermerhorn St. facility. In addition, NYPD shall promulgate guidelines regarding distribution of pre-arraignment detainees who are held overnight at the Schermerhorn St. facility so that such pre-arraignment detainees shall be distributed reasonably among the available cells.

10. The City shall use its best efforts to implement the following ventilation modifications by the dates listed below:

(a) By September 1, 1999, a new ventilation unit for the staging area in Schermerhorn St. facility shall be installed;

(b) By September 1, 1999, the ventilation in the area known as the "Men's Specials" detention area in the pre-arraignment court section at 100 Centre St. in Manhattan shall be renovated; and

(c) By September 1, 1999, the ventilation in the area known as the "Women's area" in the pre-arraignment court section at 100 Centre St. in Manhattan shall be renovated.

11. The City shall use its best efforts to construct or install, by August 31, 1999, an interview booth for pre-arraignment detainees to consult privately with counsel in the courthouse at 67 Targee Street, Staten Island, New York.

MONITORING:

12. The monitoring period shall be limited to two years following the approval of this Stipulation.

13. Defendants shall provide Plaintiffs' counsel with a contact person in the Mayor's Office of the Criminal Justice Coordinator who shall accept and respond to inquiries from Plaintiffs' counsel regarding compliance during the monitoring period.

14. Defendants shall provide prompt notice to Plaintiffs' counsel of any delay in the implementation of their obligations under paragraphs "7", "8" and "10" above.

15. To the extent that Defendants modify any of the forms or documents described herein, Defendants shall provide Plaintiffs' counsel with equivalent information to enable Plaintiffs' counsel to monitor.

A. MEDICAL MONITORING:

16. Documents with confidential medical information shall only be produced in accordance with a confidentiality order issued by this Court.

17. Plaintiffs' counsel shall be provided with the amended version of NYPD's "Medical Treatment of Prisoner" form, and copies of NYPD interim orders or directives and the precinct/unit level training materials reflecting the principles set forth in paragraphs "3" through "6" above, and the schedule for new training on those principles.

18. The Defendants shall provide Plaintiffs' counsel with any "Report of Inmate Death to State Commission of Correction" and supporting documents submitted by either the DOC or the NYPD, concerning the death of a pre-arraignment detainee which occurred during the monitoring period.

19. Plaintiffs' counsel will periodically review the handling of pre-arraignment detainees with medication and medical care issues by reviewing the EMT medication logs for a designated week, and all NYPD "Medical Treatment of Prisoner" forms completed by NYPD officers during the designated week, along with the corresponding EMT medical screening forms and computer generated NYPD "On-line Booking Arrest Processing Worksheets." These documents shall be provided to Plaintiffs' counsel on a quarterly basis during the last three quarters of the first year following the effective date of this Stipulation and at six month intervals during the second year following the effective date of this Stipulation. The parties agree to establish a schedule for these reviews at least two weeks before the week designated for the collection of documents.

20. Upon a specific request by Plaintiffs' counsel, the types of documents listed in paragraph "19" shall be provided to Plaintiffs' counsel for any individual pre-arraignment detainee who is the subject of an inquiry made to the Mayor's Office of the Criminal Justice Coordinator under paragraph "13" above.

B. PHYSICAL PLANT MONITORING:

21. Subject to the terms of the protective order entered in this action on October 14, 1992, Defendants shall provide Plaintiffs' counsel with a schedule, description and diagrams for the physical plant renovations referred to in paragraphs "8" and "10" above.

22. The Defendants agree to:

(a) notify Plaintiffs' counsel of the completion of the cell renovations referred to in paragraph "8" above and the modifications to the ventilation systems described in paragraph "10" above;

(b) provide Plaintiffs' counsel with the results of a test of the modifications to the ventilation systems referred to in paragraph "10" above;

(c) provide Plaintiffs' counsel and their expert with access to these areas after the scheduled work is completed, for the purpose of assessing compliance with the Stipulation;

(d) permit inspection of the pre-arraignment court sections by Plaintiffs' counsel twice each year during the monitoring period;

(e) following the completion of the physical plant renovations at the Schermerhorn St. facility referred to in ¶ 8, and upon request of Plaintiffs' counsel to Defendants' counsel and the Mayor's Office of the Criminal Justice Coordinator, permit overnight inspection on three separate occasions;

(f) upon request of Plaintiffs' counsel to Defendants' counsel and the Mayor's Office of the Criminal Justice Coordinator, provide documents regarding physical plant renovations relevant to a question of failure to comply with ¶ ¶ 8, 10 and 11. Disputes regarding the propriety of such document requests may be referred to the Court for resolution and shall be handled in the same manner as a disagreement over pretrial discovery.

CONCILIATION OF DISPUTES UNDER THIS STIPULATION:

23. In the event that a dispute arises as to whether Defendants are in compliance with the terms of this Stipulation, counsel for the parties shall make a good faith effort to resolve the dispute. Prior to institution of any proceeding before the Court to enforce the terms of this Stipulation, Plaintiffs' counsel shall notify Defendants' counsel and the contact in the Mayor's Office of the Criminal Justice Coordinator in writing of any claim by Plaintiffs that Defendants are not in compliance with identified provisions of this Stipulation and Plaintiffs' counsel shall request in that writing that these conciliation procedures be used. Unless otherwise resolved, the parties' counsel (and such representatives of the City as shall be appropriate) shall meet within ten business days of the receipt of said notice, in an attempt to arrive at an amicable resolution of the claim. If after fifteen business days following the meeting the matter has not been resolved to the Plaintiffs' satisfaction, Defendants shall be so informed in writing by

Plaintiffs' counsel, and Plaintiffs may then apply to the Court for enforcement of the provisions of the Stipulation identified in the above-described notice.

CONTINUING JURISDICTION:

24. The Court shall retain jurisdiction over this action for the purpose of enforcing the provisions of this Stipulation. In the event of any motion for systemic relief based upon Defendants' alleged non-compliance with the substantive requirements of this Stipulation, Defendants shall be considered to be in "compliance" therewith unless Plaintiffs establish that Defendants' failures or omissions to meet the terms of this Stipulation were not minimal or isolated, but were substantial and sufficiently frequent or widespread as to be systemic.

TERMINATION OF PROSPECTIVE RELIEF:

25. The provisions of this Stipulation shall terminate, upon motion of any party or intervenor, two years after this Stipulation is approved by the Court, unless the Court makes written findings, based on the record, that prospective relief: (a) remains necessary to correct a current and ongoing violation of the Plaintiff class' constitutional rights; (b) extends no further than necessary to correct such violation; and (c) is narrowly drawn and the least intrusive means to correct such a violation.

EFFECTIVE DATES:

26. Unless otherwise stated, the terms of this Stipulation shall take effect or apply upon entry of an order of the Court approving the terms of this Stipulation.

Dated: New York, New York
June 17, 1999

THE LEGAL AID SOCIETY
Criminal Defense Division
Special Litigation Unit
Attorney for the Plaintiffs
90 Church Street, 15th Floor
New York, NY 10007
(212) 577-3554

By: _____
Susan L. Hendricks (SH1114)
William Gibney (WG1635)

MICHAEL D. HESS
Corporation Counsel of the
City of New York
Attorney for the City Defendants
100 Church Street, Room 2-111
New York, New York 10007
(212) 788-0960

By: _____
Julie E. O'Neill (JO2395)
Alessandra F. Zorgniotti (AZ6233)
Assistant Corporation Counsel

Lankler Siffert & Wohl, LLP
Attorneys For the Plaintiffs
500 Fifth Avenue, 33rd Floor
New York, NY 10110
(212) 921-8399

By: _____
Roderick C. Lankler (RCL9311)
Lisa A. Baroni (LB6110)

SO ORDERED:

_____
U.S.D.J.

		wishes to speak at the hearing, the request to speak must be included in the letter to the Court (signed by Judge Denny Chin); Copies mailed. (jp) Modified on 07/06/1999 (Entered: 07/02/1999)
09/24/1999	61	ORDER approving Stipulation of Settlement and Final Judgment; that the Settlement is approved and adopted as a judgmment of this court; that plaintiffs' claims against the defendants are dismissed with prejudice; and that the Court will retain jurisdiction over this action in accordance with the terms of the Settlement. (signed by Judge Denny Chin); Mailed copies and notice of right to appeal; Entered on: 9/27/99 (pl) (Entered: 09/27/1999)
09/24/1999		Case closed (pl) (Entered: 09/27/1999)
09/30/1999	62	STIPULATION and ORDER of Settlement, that plaintiffs' claims shall be resolved without further litigation by the entry of a final judgment incorporating the terms of this Stipulation, following its approval by the Court after notice of its terms are provided to the class, as set forth in this Stipulation ; Plaintiffs claims in paragraphs "44" through "47" of their complaint, regarding police vans, are withdrawn without prejudice . (signed by Judge Denny Chin) (ri) (Entered: 10/04/1999)

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PACER Login:	as1929:2903347:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:92-cv-02132-DC
Billable Pages:	7	**Cost:**	0.70

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CORALYN GRUBBS, LEWIS SMITH, AL RIVERA, and SEAN MILLER, individually and on behalf of all other persons similarly situated, Plaintiffs, v. HOWARD SAFIR, in his official capacity as Police Commissioner of the City of New York; NEW YORK CITY POLICE DEPARTMENT; BERNARD KERIK, in his official capacity as Commissioner of Correction of the City of New York; NEW YORK CITY DEPARTMENT OF CORRECTION; RUDOLPH GIULIANI, in his official capacity as Mayor of the City of New York; and THE CITY OF NEW YORK, Defendants.	Affidavit of Christopher Pisciotta in support of Plaintiffs' Application Docket No. 92-cv2132 (GBD)

STATE OF NEW YORK }
COUNTY OF RICHMOND} ss.:

The undersigned, being duly sworn, deposes and says:

1. I am the Attorney-in-Charge of the Richmond County office of the Legal Aid Society, Criminal Defense Practice. The Legal Aid Society is the only institutional public defender for Richmond County and the primary public defender for the City of New York. I submit this declaration in support of the request by the Plaintiffs in the above-captioned action, filed via Order to Show Cause, for (1) and order finding Defendants the Department of Corrections and the City of New York (together, the "City") in violation of the September 24, 1999 So-Ordered Settlement Agreement [Dkt No. 61] (the "Settlement Order") and (2) a temporary restraining order and preliminary injunction ordering the immediate removal of the surveillance cameras from the attorney-client interview rooms at the Richmond County Criminal Court while the proceedings to enforce the Settlement Order are pending.

2. I have been an attorney at the Legal Aid Society for over 15 years, a public defender in New York City for 19 years, and have conducted or supervised hundreds of arraignment interviews. I am unaware, never seen, and informed that there are no cameras in any other arraignment interview booth in any other borough of New York City.

3. In my experience as a public defender, clients routinely gesture, emote, demonstrate or show injuries or tattoos during arraignment interviews in order to communicate with their lawyers concerning their case and the circumstances leading to their arrest. These visual communications are required as part of the communication and trust-building process at this crucial first encounter between attorney and client.

4. Arraignments are the most crucial stage of a criminal case. It is when bail may be set, urgent early investigation opportunities can be initiated, grand jury rights for those charged with felonies are discussed, and the beginning of an attorney-client relationship is developed.

5. As the Attorney-in-Charge of the Staten Island office, I toured the newly constructed $230 million dollar Richmond County Court House in December 2014. During that 2014 tour, for which I was joined by a construction site supervisor from New York State, I first observed the cameras installed in the inside of the pre-arraignment interview booths. I was informed that cameras capable of recording audio and visual were installed for New York City Department of Corrections.

6. I specifically made an objection to the cameras placed inside the attorney-client interview booths to Alexander Crohn, of Mayor's Office of Criminal Justice (MOCJ), in a meeting regarding the new Courthouse in January 2015. In response to my objections, I was told that there would be follow-up.

7. On March 19, 2015, Justine Luongo, William Gibney and I, all of the Legal Aid Society, met with Alexander Crohn and representatives of Department of Corrections to discuss the cameras. We were told that the cameras pointed at counsel to capture counsel passing contraband to those arrested awaiting arraignments. When we contested both the positioning of the cameras and the reason, we were told that we should meet at the site to see the cameras at issue.

8. On April 14, 2015, I toured the construction site of the arraignment interview booths with William Gibney, along with Shawn Waterman of MOCJ, Brenda Cook of Department of Corrections, and Celia Rosen of NYC Corporation Counsel. We again objected to the placement of the cameras that clearly pointed at the client inside the interview booth. We were told the cameras are necessary for security. However, we pointed to the cameras inside the holding area, cameras in the passageways, the clear visibility lines for officers, and the other options to place cameras. All these alternatives would address security without violating privacy inside the interview booths. We were told that the City would get back to us.

9. There are other interview booths in the Department of Corrections area of the new Staten Island courthouse immediately adjacent to the arraignment interview booths and additional interview booths adjacent to courtroom pens in the floors above. Only the arraignment interview booths contain cameras.

10. On June 5, 2015, Justine Luongo and William Gibney sent a letter to Elizabeth Glazer, director of MOCJ, demanding removal of the cameras. A true and correct copy of the June 5, 2015 demand letter is attached hereto as Exhibit 1.

11. In August 2015, I was told that the City was taking possession of the new Staten Island Courthouse and that they planned to open it on September 28, 2015.

12. On September 2, 2015, William Gibney and I met with other parties to plan moving into the new Courthouse. During the meeting, we spoke with Shawn Waterman regarding the cameras. We were told the City would follow up.

13. Between September 2, 2015 and September 22, 2015, there were a series of phone calls between the City, representatives Department of Corrections and the Legal Aid Society discussing the presence of cameras in the interview booths. We discussed other options including a lock system in Kings County Criminal Court to provide security in interview booths without using a camera. We were told that the City would inspect the Kings County courthouse and would follow up. We were also told that the cameras do not capture the client, but rather the area behind the client by the door to the booth. The City invited us to see the camera view.

14. On September 22, 2015, William Gibney, Maquita Moody, and I, all of the Legal Aid Society, and Joshua Elmore from White & Case, LLP, again toured the arraignment interview booth with Janice Birmbaum, Celia Rhoads of the Law Department, and Mickheila Jasmin of the Department of Corrections, along with officers, to examine the camera views. I moved inside the client side of the arraignment booth during mock interviews to be captured by video cameras. The cameras captured images observed by William Gibney and others. The cameras captured my face and my movements depending on my positioning in relation to the camera.

15. On our September 22, 2015 tour of the courthouse, we were advised by Mickheila Jasmin from the Department of Corrections that the cameras would not be removed absent a court order. We were also informed that the video recordings will be maintained for 90 days and subject to subpoena practice.

16. On September 28, 2015, the date that the Courthouse opened, around approximately 10:00 a.m. and before any arraignment interviews had been conducted, I entered a standing objection to the failure of the Courthouse to provide confidential space for our attorneys to interview their clients before arraignments.

17. I made an application, on the record, that Judge Alan Meyer direct the Department of Correction to turn the cameras off before we began conducting interviews for arraignments.

18. The Judge denied that application.

19. We then asked, in the alternative, for the Court to direct the City to escort detainees to the adjacent interview booths where there are no cameras so that we may conduct our arraignment interviews in privacy.

20. The Judge denied that application as well.

21. In response to the judge's denials, I informed the Court that I was entering a standing objection on behalf of all clients being interviewed in those booths due to the constitutional, state statutory and ethical violations it forced us and our clients to involuntarily endure.

22. On September 28, 2015, I interviewed F.V., the first client brought into the interview booth, in order to prepare his arraignment.

23. In the interview booth he entered, there is wire-mesh and bars dividing the space where he and I met. On his side of the divider there was a camera on the left-hand side ceiling, pointing down and apparently able to capture his face. It was enclosed in a metal container with glass.

24. I explained that the camera was recording him and his movements, gestures, facial expressions and anything he did to demonstrate what happened during his arrest or the incident leading up to his arrest. I also advised him that the recording would be kept by the Department of Correction for 90 days and that while the Department of Correction told me that they would not record what we were saying, that the cameras were not in my control and I could not guarantee that.

25. In response to this information F.V. immediately remarked that this was wrong. He moved to stand under the camera and bent his arms over his head. I felt unable to freely communicate with my client about what happened leading up to his arrest and during his arrest.

26. During the interview, there were several times when F.V. automatically used his hands to describe something until I reminded him he was being recorded.

27. At one point, he reacted visibly to something I said. I reminded him again that the camera was recording.

28. I arraigned F.V. shortly after, during which I again invoked my prior standing objection and bail was set. F.V.'s case is currently pending in criminal court. If his case is dismissed, it would be permanently sealed from public record.

29. On September 29, 2015, Justine Luongo of the Legal Aid Society sent an email, on which I was copied, attaching a second demand letter to Elizabeth Glazer of the MOCJ. The September 29, 2015 demand letter reiterated the Legal Aid Society's objections to the use of surveillance cameras in the attorney-client interview rooms and further advised Ms. Glazer that the cameras also violate the September 24, 1999 so-ordered settlement

agreement in Grubbs v. Safir, 92-cv-2132 (S.D.N.Y.) [Dkt. No. 61], which requires that the City provide booths "for pre-arraignment detainees to consult privately with counsel" at the Richmond County Criminal Court. A true and correct copy of the September 29, 2015 demand letter is attached hereto as Exhibit 2.

30. The September 29, 2015 demand letter requests that the City advise the Legal Aid Society immediately if there was any change to the City's position that the cameras would not be removed absent a Court Order. The cover email attaching the September 29, 2015 demand letter advised Ms. Glazer that the Legal Aid Society anticipated taking legal action on October 1, 2015. To date, the Legal Aid Society has received no response from the City to its September 29, 2015 demand letter.

Christopher Pisciotta
Attorney-in-Charge
The Legal Aid Society
Criminal Defense Practice
60 Bay Street, 3rd Floor
Staten Island, NY

STATE OF NEW YORK }
COUNTY OF RICHMOND } ss.:

On this 1st day of October, 2015, before me personally came Christopher Pisciotta to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Saly Guirguis
NOTARY PUBLIC

Saly W Guirguis
Notary Public, State of New York
No. 01GU6294360
Certified in Richmond County
Comm. Exp. December 16, 2017

EXHIBIT 1

THE LEGAL AID SOCIETY

Criminal Practice Special Litigation Unit
199 Water Street
New York, NY 10038
T 212/577-3398
www.legal-aid.org

Direct Dial: (212) 577-3419
Direct Fax: (646) 616-4419
E-mail: WDGibney@legal-aid.org

Blaine (Fin) V. Fogg
President

Seymour W. James, Jr.
Attorney–in–Chief

Justine M. Luongo
Attorney-in-Charge
Criminal Practice

William Gibney
Director
Special Litigation Unit

June 5, 2015

Elizabeth Glazer, Director
Mayor's Office of Criminal Justice
1 Centre Street
Rm 1012N
New York NY 10007

Re: Staten Island Attorney-Client Arraignment Interview Spaces

Dear Ms Glazer:

We write to express our grave concern regarding the Department of Correction's intention to operate cameras in the arraignment interview booths at the Staten Island Criminal Courthouse. As described below this unprecedented action will impact our ethical obligations towards our clients, violate the Sixth Amendment right to counsel and seriously disrupt the operation of arraignments. We insist that the City remove the surveillance cameras currently installed inside the attorney-client interview booths prior to opening of the courthouse.

The Staten Island Courthouse, an ongoing construction project, is a substantial effort and expenditure to address many of the deficiencies in facilities that have burdened Richmond County for years, especially regarding the lack of attorney client privacy. Currently there are no interview booths in the arraignment court at the Criminal Court, a central concern of defense attorneys who have waited to have the problem addressed with the new courthouse. In December 2014, during a tour of the arraignment area at the construction site for the Staten Island Courthouse, we observed newly installed surveillance cameras inside the private interview booths. These cameras are pointed to the area where a defendant would sit while communicating with their newly appointed counsel just prior to the first appearance before the Court for arraignments. We were informed that such surveillance cameras record continuously and are in the control of the Department of Corrections. We raised concerns repeatedly with the Mayor's Office in subsequent meetings (January and March 2015) and a subsequent tour of the area (April 2015) culminated with a refusal to address our concerns. No surveillance cameras exist elsewhere piercing the privacy inside any other interview booth at the Staten Island Courthouse nor in any other such booth in other boroughs.

Defense counsel's ethical obligations under the law require attorneys to inform our clients, whom we would meet in the presence of the surveillance cameras for the first time, about

whether it is reasonable for them to believe our conversation is confidential based on the circumstances. It is then the client's choice, since it is their privilege to waive, whether the surveillance equipment interferes with their ability to communicate candidly about the circumstances surrounding their arrest. As we explain below, this equipment's mere presence will derail the swift confidential communication needed before arraignments.

In addition to our ethical obligations to inform our clients about the security of their privileged communication, this interference with confidential communication immediately prior to arraignments will violate our clients' Sixth Amendment right to effective assistance of counsel under the United States Constitution and their New York State statutory right to privileged communication with attorneys. Given the pivotal nature of the arraignment in the criminal process and the importance of the bail application in determining whether our clients will be able to return home or be sent to jail, interference with the criminal process at this initial appearance will impact the other stages of the criminal process as well. Additionally, such a discussion at the initial introduction of clients to their attorneys (whom for the majority, they do not choose) further impedes the development of a trusting attorney-client relationship throughout the pendency of the case.

1. Our Ethical Obligation to Protect Our Clients' Privileged Communication Would Require Us to Inform Clients About Whether the Circumstances of Our Conversation, Including the Presence of Surveillance Equipment, Make it Reasonably Likely to Be Confidential.

The client is the holder of the privilege and the only one who can decide whether to waive it. The attorney has an ethical obligation to maintain the secrecy of the communication. Marjorie Cohn, *The Evisceration of the Attorney-Client Privilege in the Wake of September 11, 2001*, 71 Fordham L. Rev. 1233, 1239 (2003) *citing* McCormick, supra note 8, § 92; Model Rules of Prof'l Conduct R. 1.6 (2002); Legal Ethics: The Lawyer's Deskbook on Professional Responsibility R. 1.6 (2002-2003 ed.). New York's statutory privilege is codified in CPLR §4503(a). "The scope of the privilege … depends on whether the client had a reasonable expectation of confidentiality under the circumstances. *People v. Osorio*, 75 N.Y.2d 80, 84 (1989)(statements translated to an attorney by a co-defendant with conflicting interests are not privileged) *citing Matter of Jacqueline F.,* 47 N.Y.2d 215, 222 (1979); *Matter of Kaplan [Blumenfeld],* 8 N.Y.2d 214, 219 (1960). That obligation includes advising the client about whether the circumstances reasonably allow them to assume communication is confidential. Due to the presence of surveillance equipment we do not control, we will be ethically obligated to advise a client about whether their communication is likely to be confidential.

In determining how to meet that ethical obligation, we must consider the foreseeable risks and how similar risks have been reviewed by courts. *People v. Osario*, for example, suggests that the client consider who controls the third-party or, in this case, the equipment, that may cause a breach in the privilege. If there was a surveillance camera in the attorney's office, for example, that may not chill one's communication with that attorney because one may assume that the attorney controls the surveillance camera recording. What distinguished the conversation in *Osario*, and what is crucial for the City to consider here,

is that our clients have an ongoing conflict of interest with the very "government, his adversary" (*Weatherford*, *infra*) that confines them in the interview rooms. Similar to a client who should understand communications to an attorney translated by a police officer are not confidential, as the *Osario* court analogized, clients could reasonably assume that communications in front of surveillance cameras in the arraignment interview rooms are not confidential. *See also People v. Harris*, 57 N.Y.2d 335, 343, 442 N.E.2d 1205, 1208 (1982)(privilege waived by client in police custody when officer who overheard client's telephone statement to attorney did nothing to purposely overhear the conversation or conceal his presence).

Even if, upon the first encounter with our clients, we were able to gain their trust enough to convince them that the surveillance equipment in the interview rooms does not record, we could never guarantee that conversations in front of the surveillance equipment are confidential. We could not tell the clients about the capabilities of the equipment, whether it is recorded or merely monitored, how it was installed or how it is operated. There is no apparent difference between surveillance equipment that is audio-enabled versus equipment that is not audio-enabled. Equipment that has had audio disabled can be altered without any apparent changes to people in the interview room. We also have no control over the people or agencies monitoring the equipment. To the contrary, the agencies monitoring the equipment have adversarial interests to our clients.

A concerned attorney must, at the very least, advise a client that their conversation is being visually monitored by people and agencies we have no control over with equipment we do not inspect, control, monitor or own. Even that narrow advisement (from an attorney a client has just met) would likely dissuade them from divulging sensitive material. Based on instances in New York City and other municipalities that similarly falsely promised confidentiality, a more cautious advisement would more properly inform our clients of the realistic risk that law enforcement has promised not to, but has the ability to, eavesdrop on our attorney-client conversations. This risk is neither fanciful nor imaginary; to the contrary, it has been experienced at the MDC in Brooklyn, New York and in New Jersey, Louisiana and Florida. For example, recently, the Police Chief in Edison, New Jersey, recorded attorney-client conversations through surveillance cameras for 11 months despite promises that the microphones were disabled.[1] A Police Sheriff in Louisiana secretly recorded conversations in the precinct between attorneys and their clients until his actions were revealed by a whistleblower.[2] Florida police unlawfully recorded conversations between an attorney and their client in an interview room in the precinct via a closed-circuit camera.[3] And as documented in 2003 in a report by the Office of the Inspector General

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[1] Mueller, Mark. "Listening devices in Edison Police Headquarters Secretly Recorded Discussions of Officers and Attorneys", New Jersey Advance, December 15, 2013, available at http://www.nj.com/news/index.ssf/2013/12/listening_devices_in_edison_police_headquarters_secretly_recorded_discussions_of_officers_attorneys.html

[2]Linderman, Juliet. "Secret Recordings at St. John's Sheriff's Office not illegal, State Police concluded," Times-Picayune, available at http://www.nola.com/crime/index.ssf/2013/08/allegations_that_st_john_sheri.html.

[3]McCue, Dan. "Egregious Eavesdropping Wins Police No Favors", CourtHouse News Service, April 10, 2014, available at http://www.courthousenews.com/2014/04/10/66978.htm.

(OIG) of the United States Department of Justice, staff members at the Metropolitan Detention Center (MDC) in Brooklyn not only videotaped detainees' visits with their attorneys, but secretly and unlawfully audiotaped them as well. The OIG found: "On many videotapes, we were able to hear significant portions of what the detainees were telling their attorneys and sometimes what the attorneys were saying as well."[4] These are just a few examples of law enforcement unlawfully eavesdropping on conversations between criminal suspects and their attorneys.

Whether the warning is conservative or more cautious, the potential for our clients to reasonably decide not to communicate in front of surveillance equipment is extremely likely due to the experiences they have immediately prior to the interview. At a minimum visual communication such as showing a scar or a tattoo or the drawing of a diagram of the scene of events will become impossible out of fear that the client will somehow incriminate himself when a video of the interview surfaces in the courtroom.

Our clients withstand circumstances during the arrest process that, guilty or not, render them unable to make significant choices. In addition to being physically incapacitated by police officers' handcuffs, our clients have extremely limited capacity to make any choices about whether, when or what to eat, use the restroom, contact loved ones, get medical attention or use their agency reliably in any number of ways. They have usually spent the last 24 hours being forcibly transferred to various buildings and have been subjected to arrest and interrogation. They are often tired, hungry, confused, distrusting and frustrated before the first meetings with publicly provided defense attorneys, even begin. To introduce into that initial conversation a surveillance camera, regardless of its alleged disabled audio, would further poison this already fragile first encounter.

It is our duty to inform clients of their right not to waive privileged communication under precarious circumstances. Clients will unlikely be convinced quickly to discuss sensitive material in front of this surveillance camera regardless of the audio capability of the camera equipment. Nothing about the limitations of the equipment or the personnel in control of it puts us in a position of being able to guarantee our clients that the circumstances of an interview booth with surveillance equipment is confidential. It will likely take time and effort by counsel to overcome the poisoned environment leading to distrust by client. Thus, the mere presence of surveillance cameras will impede attorney-client communication to such an extent that it will systematically deprive our clients of the assistance of counsel at a critical point of the criminal process.

2. <u>The Mere Presence of Surveillance Cameras in Interview Rooms Will Violate Our Clients' Sixth Amendment Right to Effective Assistance of Counsel by Inhibiting Candid Communication at a Crucial Point of the Adversarial Process.</u>

The Sixth Amendment's guarantee of effective assistance of counsel requires "[f]ree two-way communication between client and attorney." *United States v. Levy*, 577 F.2d 200, 209

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[4] U.S. Department of Justice, Office of the Inspector General, Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York, at 31 (Dec. 2003).

(3d Cir. 1978)(requiring dismissal of indictment when attorney-client privilege has been breached). "[T]he Sixth Amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant **knows** that his communications with his attorney are private and that his lawful preparations for trial are secure against intrusion by the government, his adversary in the criminal proceeding." *Weatherford v. Bursey*, 429 U.S. 545, 554 n.4 (1977)(distinguishing presence of undercover government agent arrested as co-defendant at initial attorney meetings with electronic surveillance because the former can be prevented by excluding third parties whereas the latter is more difficult to detect and knowingly exclude). It is the **fear** of being eavesdropped on, not the reality of it, that inhibits attorney-client communication to the point of ineffective assistance of counsel. Id.

As attorneys who are meeting our clients for the first time in the presence of surveillance cameras, our initial introduction will have to include legal advice regarding the confidentiality of statements made to us in that environment. As discussed above, it is unlikely that clients will feel free to discuss with us the circumstances of their arrest, the details of the police encounter, immigration status, employment, housing status or community contacts, as required for the first appearance, bail application and early investigation. Whether a client is released or not can have a significant impact on the outcome of their case and sentence. People sent to pre-trial detention are more likely to plead guilty despite the weight of evidence against them and "defendants detained for the entire pretrial period are more likely to be sentenced to jail or prison – and for longer periods of time." [5] Without communicating candidly about the circumstances of the arrest, it may also be likely that clients will not admit guilt to us before arraignment, preventing early disposition of some cases. This could have a detrimental impact on the efficiency of the criminal justice system. "In 2013, there were 182,988 cases disposed of at arraignments throughout all of Criminal Court's five county arraignment parts, about 50% of all arrest cases arraigned."[6] In Richmond County, 3,698 cases, 32.7% of all arrests, were disposed of at arraignments.[7]

At the very least, we must call our clients' attention to the presence of a surveillance camera in the interview room and advise them about the risk of communicating potentially incriminating information in front of it. This will cause delay, inhibit open communication, breed distrust and prevent early disposition of many cases. More significantly, it will systematically violate the residents of Richmond County's Sixth Amendment rights to effective assistance of counsel at a crucial stage of the criminal process. The City has many other options to secure the safety of all arrestees, court staff, corrections staff, police and attorneys working in arraignments that would be less corrosive to our clients' constitutional rights. We would happily help the City brainstorm more ways to secure its interview spaces.

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[5]Lowenkamp, Christopher T., Marie Van Nostrand, and Alexander Holsinger, "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," Arnold Foundation, November 2013, http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF_Report_state-sentencing_FNL.pdf.

[6]Barry, Justin. "Criminal Court of the City of New York Annual Report, 2013" at 19. http://www.courts.state.ny.us/COURTS/nyc/criminal/2013%20Annual%20Report%20FINAL%2072214.pdf

[7] Id. at 28.

We therefore demand that the City remove the surveillance cameras from the interview booths before the courthouse opens. If the City does not remove the cameras, we will seek judicial intervention.

Sincerely yours,

Justine Luongo
Attorney in Charge, Criminal Practice

William D. Gibney
Director, Criminal Practice Special Litigation Unit

EXHIBIT 2

THE LEGAL AID SOCIETY

199 Water St.
New York, NY 10038
T (212) 577-3300
www.legal-aid.org

Direct Dial: (212) 577-3646
Direct Fax: (646) 616-4646
E-mail: SWJames@legal-aid.org

September 29, 2015

Ms. Elizabeth Glazer
Director, New York City Mayor's Office of Criminal Justice
1 Centre Street, Room 1012N
New York, NY 10007

Dear Ms. Glazer:

Our September 22, 2015, tour of the new criminal courthouse at 26 Central Avenue, Staten Island, New York, has confirmed our view that the surveillance cameras in attorney-client interview rooms will violate our clients' Sixth Amendment right to counsel. As expected, the cameras capture a clear view of the detainees in the attorney-client interview rooms. Moreover, we learned that the cameras will record, and that the recordings will be kept for 90 days. And while the security of the detainee in the interview room has been offered as the basis for the cameras, no explanation was provided as to why detainee security could not be achieved by installing locks on the door between the holding cell and the interview room. Thus, for the reasons set forth in our June 5 letter, the surveillance cameras violate our clients' right to counsel.

Moreover, in addition to the constitutional issues we raised in our June 5 letter, the cameras also violate the September 24, 1999, order in Grubbs v. Safir, 92-cv-2132 (S.D.N.Y.) [Dkt. No. 61]. That order, which specifically addresses the Richmond County Criminal Court, requires that the City provide booths, "for pre-arraignment detainees to consult privately with counsel." (emphasis added). The settlement and order were the result of Judge Chin's finding that the lack of private rooms for pre-arraignment attorney-client consultation at the Richmond County criminal courthouse violated criminal defendants' Sixth Amendment right to counsel: "The assistance of counsel would be rendered meaningless if that counsel's client were to be inhibited from speaking openly and freely." Grubbs v. Safir, 1999 WL 20855, at *7 (S.D.N.Y. 1999).

As set forth in our June 5 letter, the surveillance cameras will clearly inhibit our clients' ability to communicate openly and freely with their attorneys. Neither the passage of time since the entry of that order, nor the construction of the new courthouse for Richmond County, provide any basis for violating the order's requirement that the City permit detainees to consult privately with their attorneys.

On our tour of the courthouse, we were advised by an attorney from the Department of Corrections that the cameras would not be removed absent a court order. Please advise us immediately if there is any change in this position.

Sincerely,

Seymour W. James, Jr.
Attorney-in-Chief

Justine M. Luongo
Attorney-in-Charge
Criminal Defense Practice

PRIVILEGED & CONFIDENTIAL
ATTORNEY WORK PRODUCT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CORALYN GRUBBS, LEWIS SMITH, AL RIVERA, and SEAN MILLER, individually and on behalf of all other persons similarly situated, Plaintiffs, v. HOWARD SAFIR, in his official capacity as Police Commissioner of the City of New York; NEW YORK CITY POLICE DEPARTMENT; BERNARD KERIK, in his official capacity as Commissioner of Correction of the City of New York; NEW YORK CITY DEPARTMENT OF CORRECTION; RUDOLPH GIULIANI, in his official capacity as Mayor of the City of New York; and THE CITY OF NEW YORK, Defendants.	Affidavit of F. V. in support of Plaintiffs' Application Docket No. 92-cv2132 (GBD)

STATE OF NEW YORK }
COUNTY OF RICHMOND} ss.:

The undersigned, being duly sworn, deposes and says:

1. I am a long-time Staten Island resident. I was arrested on September 28, 2015 by the NYPD and brought to the Staten Island Courthouse at 26 Central Avenue, Staten Island, New York.

2. On September 28, 2015, around approximately 12:30pm, while in the custody of the New York City Department of Correction, I was interviewed by my Legal Aid Society attorney, Christopher Pisciotta, in the booth to the far right from my view.

3. In the interview booth there was wire-mesh and bars dividing the space where my attorney and I met. The seat was attached to the wall on the far right side of the booth. On my side of the wire-mesh divider there was a camera on the left-hand side ceiling, pointing down and apparently able to capture my face. It was enclosed in a metal container with glass.

4. My attorney explained that the camera was recording me and my movements, my gestures, my facial expressions and anything I did to demonstrate what happened during

my arrest or the incident leading up to my arrest. He also advised me that the recording would be kept by the Department of Correction for 90 days and that while the Department of Correction told them they wouldn't record what we were saying, that the cameras were not in his control and he couldn't guarantee that.

5. In response to this information I immediately remarked "this is wrong" because I felt like our ability to communicate freely was being violated. I moved to stand under the camera and bent my arms over my head to block myself from the camera's view. I felt unable to freely communicate with my lawyer about what happened leading up to my arrest and during my arrest.

6. During the interview, there were several times when I automatically used my hands to describe something until my attorney reminded me I was being recorded, which made me very uncomfortable and I couldn't fully explain what I needed to about my case.

7. At one point, I reacted visibly to something my attorney said. When my attorney reminded me again that the camera was recording, it made me feel even more unable to communicate to my attorney by not being able to express myself emotionally and freely.

8. I was arraigned shortly after and bail was set. My case is currently pending in criminal court. If my case is dismissed, it would be permanently sealed from my record. I would prefer my full name not be used for this reason.

F.V.

F.V., client of the Legal Aid Society

STATE OF NEW YORK }
COUNTY OF RICHMOND } ss.:

On this 30th day of September, 2015, before me personally came F.V. to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Saly Guirguis
NOTARY PUBLIC

Saly W Guirguis
Notary Public, State of New York
No. 01GU6294360
Certified in Richmond County
Comm. Exp. December 16, 2017