

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK; STATE OF NEW YORK**

-----X  
In the matter of THE LEGAL AID SOCIETY  
OF SUFFOLK COUNTY, on behalf of itself  
and NASEEM MALAK, JOSEPH KRUSINSKI,  
MICHAEL MONCADA, GENARO CANEL,  
JEFFREY MULLER, REBECCA RADIN, as  
well as others similarly situated and unnamed  
future indigent defendants

Petitioners.

**ORDER TO SHOW CAUSE**

Index #:

vs.

THE TOWN OF SOUTHAMPTON NY,  
THE SOUTHAMPTON TOWN POLICE  
DEPARTMENT, THE TOWN OF SOUTHOLD  
NY, THE SOUTHOLD TOWN POLICE  
DEPARTMENT, THE VILLAGE OF  
SOUTHAMPTON NY, THE SOUTHAMPTON  
VILLAGE POLICE DEPARTMENT, THE  
VILLAGE OF SAG HARBOR NY, THE SAG  
HARBOR VILLAGE POLICE DEPARTMENT,  
THE TOWN OF RIVERHEAD NY, THE  
RIVERHEAD TOWN POLICE DEPARTMENT,  
THE COUNTY OF SUFFOLK NY, AND THE  
STATE OF NEW YORK OFFICE OF COURT  
ADMINISTRATION.

Respondents

-----X  
ATTORNEY'S FOR PETITIONERS:

**ROBERT C. MITCHELL, ESQ., Attorney in Charge**  
**SABATO CAPONI, ESQ.**  
**LEGAL AID SOCIETY OF SUFFOLK COUNTY, INC.**  
**EAST END BUREAU**  
**Arthur M. Cromarty Court Complex**  
**300 Center Drive**  
**Riverhead, New York 11901**  
**Tel. (631) 852-1650**

Part II

At a Special Term of the Supreme Court held in and for the County of Suffolk at 1 Court Street, Riverhead, NY on the 5<sup>th</sup> day of February, 2015

PRESENT:

Honorable DENISE F. MOLLA  
Justice of the Supreme Court  
County of Suffolk, State of New York

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK; STATE OF NEW YORK

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NY, THE SOUTHDOLD TOWN POLICE  
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SOUTHAMPTON NY, THE SOUTHAMPTON  
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THE COUNTY OF SUFFOLK NY, AND THE  
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ADMINISTRATION.

Respondents

ORDER TO SHOW CAUSE

Index #:

01784/15  
MOTION/CROSS/OSC  
FEE PAID  
Judith A. Pascale  
Suffolk County Clerk



-----X

Upon the reading and filing of the annexed Petition of Sabato Caponi, Esq., attorney for  
petitioners, verified on the 4<sup>th</sup> day of February 2015, as well as the Exhibits annexed thereto  
and upon all prior proceedings had herein, it is hereby:

**ORDERED** that the above-named Respondents appear before and SHOW CAUSE at a  
Term of the Supreme Court, located at 1 Court Street, Riverhead, New York on the 19<sup>th</sup> day of  
February 2015 at 9:00 in the forenoon, or as soon thereafter as counsel may be heard,  
why an **ORDER** should not be issued and entered herein,

1. Mandating, pursuant to Civil Practice Laws and Rules sections 7801 and 7806, that  
within a time certain as fixed by this Court, the respondents provide the attorneys from the Legal  
Aid Society of Suffolk County representing indigent defendants before the Justice Courts of their  
respective jurisdictions with access to confidential meeting space in which to communicate with  
their clients in compliance with the rights afforded by the Sixth Amendment to the United States  
Constitution;

AND

2.(A). Prohibiting, pursuant to Civil Practice Laws and Rules sections 7801 and 7806,  
the Justice Courts of the Town of Southampton, Town of Southold, Town of Riverhead, Village  
of Southampton and Village of Sag Harbor from conducting arraignments of individuals arrested  
and held in police custody pending arraignments unless and until such time as those courts are  
capable of providing a secure and private facility where the arrested individuals may speak  
privately to their attorneys outside the presence of law enforcement personnel; and

2.(B). Directing, pursuant to Civil Practice Laws and Rules sections 7801 and 7806, the  
police departments for the Towns of Southampton, Southold and Riverhead, and for the Villages  
of Southampton and Sag Harbor to transport individuals arrested and held in police custody

pending arraignments to the First District Court of Suffolk County, located in the John P. Cohalan Jr. Court Complex in Central Islip, New York, to be arraigned by that Court and to continue this procedure until such time as their respective Town or Village Courts are capable of providing a secure and private facility where the arrested individuals may speak privately to their attorneys outside the presence of law enforcement personnel; and

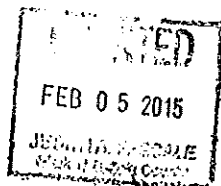
2.(C). Directing, pursuant to Civil Practice Laws and Rules sections 7801 and 7806, the First District Court of Suffolk County, located in the John P. Cohalan Jr. Court Complex in Central Islip, New York, to conduct the arraignments of individuals arrested and held in police custody pending arraignments by the police departments for the Towns of Southampton, Southold and Riverhead, and for the Villages of Southampton and Sag Harbor and to continue this procedure until such time as the Justice Courts of the Town of Southampton, and/or the Town of Southold, and/or the Village of Southampton and and/or the Village of Sag Harbor are capable of providing a secure and private facility where the arrested individuals may speak privately to their attorneys outside the presence of law enforcement personnel; and

3. Granting such additional relief as to this Court seems just and proper or necessary to facilitate compliance with the relief requested herein.

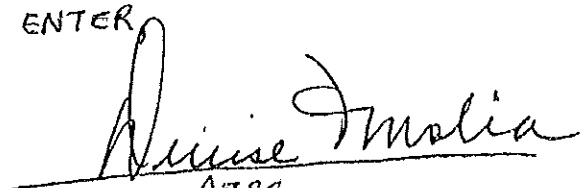
Let service by personal service upon the Town Attorneys for the Towns of Southampton, Southold and Riverhead, the Village Attorneys for the Villages of Southampton and Sag Harbor, the County Attorney for the County of Suffolk, and the Attorney General for the State of New York, on or before the 11<sup>th</sup> day of February 2015 be deemed good and sufficient service.

  
AJSC

Dated: 2-5-15



ENTER

  
AJSC  
DENISE R. MOLIA

Dated:

Riverhead, NY

**ENTER,**

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**Justice of the Supreme Court**

**To:**

Town Attorney  
Town of Southampton  
Town Hall  
116 Hampton Road  
Southampton, NY 11968

Town Attorney  
Town of Southold  
Town Hall Annex  
54375 Route 25  
Southold, NY 11971

Town Attorney  
Town of Riverhead  
200 Howell Road  
Riverhead, NY 11901

Village Attorney  
Village of Southampton  
21 South Main Street  
Southampton, NY 11968

Village Attorney  
Village of Sag Harbor  
55 Main Street  
Sag Harbor, NY 11963

County Attorney  
Suffolk County

**From:**

Sabato Caponi, Esq.  
Legal Aid Society of Suffolk County  
Criminal Courts Building  
300 Center Drive  
Riverhead, NY 11901  
Phone: (631) 852-1650  
FAX: (631) 852-1655

100 Veteran's Memorial Highway  
Hauppauge, NY 11788

Office of the Attorney General  
State of New York  
300 Motor Parkway  
Suite 205  
Hauppauge, NY 11788

The Supreme Court of Suffolk County  
1 Court Street  
Riverhead, NY 11901

SUPREME COURT OF THE STATE OF NEW YORK  
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VERIFIED PETITION

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RIVERHEAD TOWN POLICE DEPARTMENT,  
THE COUNTY OF SUFFOLK NY, AND THE  
STATE OF NEW YORK OFFICE OF COURT  
ADMINISTRATION.

Respondents

**FILED**  
FEB 05 2015  
Judith A. Paecale  
CLERK SUFFOLK COUNTY

- x
1. Deponent Sabato Caponi, Esq., an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms under the penalties of perjury:
  2. Petitioners, by their attorney, hereby complain of respondents:
  3. Deponent is associated with and employed by Robert C. Mitchell, Attorney-in-Charge of the Legal Aid Society of Suffolk County.

4. Unless otherwise specified, deponents knowledge of the representations asserted in the instant Petition are based upon the personal knowledge of your deponent as of the date signed or, where indicated, upon information and belief.

5. To deponent's knowledge no previous application for the relief sought herein has been made to any court.

#### THE PARTIES

6. Petitioner The Legal Aid Society of Suffolk County is a non-profit corporation which contracts with the County of Suffolk to provide legal representation to indigent criminal defendants with matters pending before the various courts of Suffolk County.

7. Robert C. Mitchell is the Attorney-in-Charge of the Legal Aid Society of Suffolk County and as such is the attorney of record for all named petitioners.

8. The Legal Aid Society of Suffolk County maintains offices in Central Islip, New York and Riverhead, New York. Its main administrative offices are located in the John P. Cohalan Jr. Court Complex, 400 Carleton Avenue, Central Islip, New York, 11722.

9. Petitioner Nascem Malak resides at 16 Redwood Road, Sag Harbor, New York, 11963. Nascem Malak presently has a criminal case pending before the Justice Court of the Village of Sag Harbor.

10. Petitioner Joseph Krusinski resides at 4515 Sheppard Road, Stockbridge, Michigan, 49285 and presently has a criminal case pending before the Town of Southampton Justice Court.



11. Petitioner Michael Moncada resides at 33 West Tiana Road, #21, Southampton, New York, 11968 and presently has a criminal case pending before the Town of Southampton Justice Court.

12. Petitioner Genaro Canel resides at 924 East main Street, Riverhead, New York, 11901 and had a criminal case pending before the Town of Southampton Justice Court.

13. Petitioner Jeffrey Muller resides at 10 Bayview Road, Southampton, New York, 11968 and presently has a criminal case pending before the Town of Southampton Justice Court.

14. Petitioner Rebecca Radin resides at 13 Alanson Lane, Hampton Bays, New York, 11946 and presently has a criminal case pending before the Town of Southampton Justice Court.

15. Respondent Town of Southampton is a township in Suffolk County, New York.

16. Respondent Southampton Town Police Department is the principle law enforcement agent of the Town of Southampton with headquarters at 110 Old Riverhead Road, Hampton Bays, New York, 11946.

17. Respondent Town of Southold is a township in Suffolk County, New York.

18. Respondent Southold Town Police Department is the principle law enforcement agent of the Town of Southold with headquarters at 41405 Route 25, Peconic, New York, 11958.

19. Respondent Village of Southampton is an incorporated village in Suffolk County, New York.

20. Respondent Southampton Village Police Department is the principle law enforcement agent of the Village of Southampton with headquarters at 151 Windmill Lane, Southampton, New York, 11968.

21. Respondent Village of Sag Harbor is an incorporated village in the County of Suffolk, State of New York.

22. Respondent Sag Harbor Village Police Department is the principle law enforcement agent of the Village of Sag Harbor with headquarters at 70 Division Street, Sag Harbor, New York, 11963.

23. Respondent Town of Riverhead is a township in Suffolk County, New York.

24. Respondent Riverhead Town Police Department is the principle law enforcement agent of the Town of Riverhead with headquarters at 210 Howell Avenue, Riverhead, New York 11901.

25. Respondent County of Suffolk is a county in the State of New York.

26. Respondent State of New York Office of Court Administration is a New York State agency responsible for the administration of the various courts throughout the State of New York, including those situated within the County of Suffolk.

#### VENUE

27. Pursuant to Civil Practice Laws and Rules §506(b) venue is set in the County of Suffolk as that is the site where the actions complained of are taking place.

THE JUSTICE COURTS FOR THE TOWNS OF SOUTHAMPTON,  
SOUTHOLD AND RIVERHEAD, AND THOSE OF THE VILLAGES  
OF SOUTHAMPTON AND SAG HARBOR ARE ENGAGED IN THE  
SYSTEMIC AND CONTINUOUS VIOLATION OF THE CONSTITUTIONAL  
RIGHTS OF INDIGENT INDIVIDUALS WHO ARE BROUGHT BEFORE  
THEM FOR ARRAIGNMENT WHILE IN POLICE CUSTODY AND  
MUST BE PROHIBITED FROM CONDUCTING SUCH ARRAIGNMENTS  
UNTIL SUCH TIME AS THEY ARE CAPABLE OF COMPLYING WITH  
THE MANDATES OF THE FIFTH AND SIXTH AMENDMENTS TO  
THE UNITED STATES CONSTITUTION

28. The right of an accused in a criminal case to have the assistance of counsel is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution.

*Gideon v. Wainwright*, 372 U.S. 335; 83 S.Ct. 792; 9 L. Ed.2d 799(1963).

29. The right to counsel is further embodied in the due process provisions of Article I Section 6 of the New York State Constitution.

30. A person accused of a federal or state crime has the right to have counsel appointed if retained counsel cannot be obtained. *Strickland. Superintendent, Florida State Prison, Et Al v. Washington*, 466 U.S. 668; 104 S.Ct. 2052; L. Ed.2d 674 (1984); *Gideon v. Wainwright*, 372 U.S. 335; 83 S.Ct. 792; 9 L. Ed.2d 799(1963).

31. “The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results.” *Strickland, supra* at 692. For that reason, the Court has recognized that the right to counsel is the right to effective assistance of counsel. *Strickland, supra* at 686 citing *McMann v. Richardson*, 397 U.S. 759 (1970).

32. “It is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with him.” *People v. Squitieri*, 49 A.D.2d 374; 375 N.Y.S.2d 124 (App. Div. First Dept., 1975) citing *Coplon v. United States*, 191 F.2d 749 (District of Columbia, 1951).

33. “Intrusion upon a client-lawyer conference, whether in the privacy of an office or at the counsel table in court, contravenes our sense of traditional fair play and due process.” *Squitieri, supra* at 378 citing *People v. Cooper*, 307 N.Y. 253 (1954).

34. The foregoing fundamental principles are so well established in State and Federal jurisprudence as to defy legitimate challenge.

35. It has become equally well recognized that the arraignment of a criminal defendant is a critical stage in the proceedings implicating the Sixth Amendment right to counsel. “The vast majority of states and the federal government have long recognized the critical need to have counsel present at arraignment – generally the first court appearance for a defendant accused by the state of committing a crime.” *The Legacy of John Adams: A Challenge for New York*, Chief Justice Jonathan Lippman, Law Day Address, May 2, 2011.

36. In almost all instances in Suffolk County the arraignment is the stage wherein a defendant’s pretrial liberty is adjudicated. That adjudication can and often does result in the

direst of consequences, such as pretrial incarceration, the loss of employment, housing, property and custody of children. Extended pretrial incarceration during the pendency of a criminal case also diminishes a defendant's ability to effectively assist in his own defense and places severe limitations on a defendant's access to his or her attorney.

37. Consequently the Court of Appeals has recognized "There is no question that a bail hearing is a critical stage of the State's criminal process." *Hurrell-Harring, et al. v. State of New York et al.*, 15 N.Y.3d 8; 930 N.E. 217; 904 N.Y.S.2d 296 (2010).

38. Despite the existence of these immutable rights, indigent criminal defendants being arraigned before the Justice Courts of the Towns of Southampton, Southold and Riverhead, and the Villages of Sag Harbor and Southampton are subjected to a routine and systemic deprivation of their right to effective assistance of counsel by these very courts themselves

39. Legal Aid Society attorneys who are assigned by these courts to represent indigent defendants at their arraignment are being compelled to converse with the defendants in the presence of law enforcement personnel, thereby waiving the protections of confidentiality and risking that the attorney-client conversation will be used against the defendant in the criminal case.

40. The risk that the substance of attorney-client conversations will be used against the defendant is neither a speculative nor a conjectural concern – it is a real and present evil.

41. The case of *People v. Naseem Malak* currently pending before the Sag Harbor Justice Court is a case in point. After being arrested the defendant was produced in the custody of the Sag Harbor Village Police before the Sag Harbor Justice Court for arraignment. Because the defendant could not afford to retain counsel the Court appointed a Legal Aid Society attorney to

represent him. An attorney from the Legal Aid Society spoke with the defendant prior to the arraignment. The Legal Aid attorney had to converse with the defendant in the courtroom in the presence of the Sag Harbor Village Police Officer since the court had no appropriate area available where the attorney and client could speak in privacy. The officer documented the attorney-client conversation in an "Oral Admission Report" (Annexed hereto as Exhibit A) and the people indicated their intent to use the conversation against the defendant at any subsequent trial of the matter in a Criminal Procedure Law 710.30 Notice served upon the Court (Annexed hereto as Exhibit B).

42. Consequently the rights afforded individuals by the Fifth Amendment to the United States Constitution are also implicated.

43. The Fifth Amendment to the United States Constitution provides that no person shall be compelled in a criminal case to be a witness against himself. *Fifth Amendment to the Constitution of the United States of America.*

44. This same protection against self-incrimination is echoed in Article I, section 6 of the New York State Constitution.

45. By compelling defendants to discuss their cases with their attorneys in the presence of law enforcement personnel the justice courts of the five named jurisdictions are effectively stripping these individuals of their constitutionally guaranteed protections against self-incrimination.

46. Cognizant of the risk involved in speaking to clients in the presence of law enforcement, the attorneys of the Legal Aid Society have routinely and repeatedly requested that

they be afforded a confidential meeting place in which to conduct attorney-client conversations with newly assigned clients who are being held in police custody pending arraignment.

47. Such a request was made at the arraignment of each of named Petitioners Joseph Krusinski, Michael Moncada, Genaro Canel, Jeffrey Muller and Rebecca Radin (See Exhibits C through G – Transcribed minutes of the arraignments of the referenced Petitioners).

48. In each case the attorney's request to speak to the defendant in a private area outside the presence of law enforcement was denied.

49. The specific cases of the six named Petitioners represent merely a sample of the constitutional violations occurring before the justice courts of Respondent jurisdictions.

50. The deprivation of the right to effective assistance of counsel and the threat to the right against compulsory self-incrimination is happening at the arraignment of every indigent person brought before these courts in the custody of law enforcement.

51. The Justice Courts of the Towns of Southampton, Southold and Riverhead and the Villages of Sag Harbor and Southampton have demonstrated an inability and/or an unwillingness to grant the requests of counsel for an opportunity to speak privately with clients.

52. The requests by Legal Aid Society attorneys to be afforded the opportunity to have a private conversation with newly assigned clients have been routinely denied by the courts of these five jurisdictions – the responses from the courts running the gambit from sympathetic inaction to the extreme of proposing to hold the defendant in custody without bail and adjourn the arraignment possibly for days until the attorney has had an opportunity to speak with the defendant in the Suffolk County Correctional Center.

53. One such court, the Town of Riverhead Justice Court, initially acknowledged a responsibility to act to protect the defendants' Sixth Amendment rights. However, after taking some preliminary steps towards the relatively simple conversion of a storage room into an attorney conference room, the court abandoned the effort, abdicating any responsibility for the problem to the Town.

54. Another court, the Village of Sag Harbor Justice Court, has alerted the Village officials of the problem but to date there has been no action taken to redress the problem nor is any action likely in the foreseeable future.

55. The inaction and complacency on the part these courts are arguably demonstrative of an inability to appreciate the gravity of the constitutional deprivation being inflicted upon indigent defendants and/or a callous indifference for the situation.

56. Consequently, Legal Aid Society attorneys representing indigent defendants at their first appearance before these courts are forced into making a *Hobson's Choice* - to either converse with the defendants in the presence of law enforcement personnel thereby waiving confidentiality and assuming the very real risk that the conversation will be used as evidence against the defendant, or to not speak to the defendant at all prior to undertaking representation of the client thereby forfeiting the possibility of meaningful or effective representation.

57. Another violation of the Sixth Amendment right to counsel occurs with each new arraignment of an indigent individual being held in police custody by any of the courts of these five jurisdictions.



58. The problem is persistent and continuous. The number of individuals who have been denied their constitutional right to counsel continues to grow and will continue to grow unabated until the situation is decisively addressed.

59. The only feasible way to immediately put a stop to the escalating number of Sixth Amendment violations is to mandate the Justice Courts of these five jurisdictions to provide appropriate private areas for confidential client conferences and, until such time as they are able to do so, prohibit them from conducting the arraignments of individuals being held in police custody.

60. The prohibition on conducting arraignments must remain in place until such time as these jurisdictions can demonstrate the capability of ensuring the right of defendants to private consultation with their assigned attorneys.

61. There is no way to predict how quickly the five jurisdictions will become capable of complying with the mandates of the Sixth Amendment. Therefore, until such time as they are capable of doing so, the respective police departments of these jurisdictions must be ordered to transport those individuals who are in their custody awaiting arraignment to the First District Court of Suffolk County located in the John P. Cohalan Jr. Court Complex, 400 Carleton Avenue, Central Islip, New York.

62. The First District Court has sufficient resources to handle the volume of individuals awaiting arraignment originating from arrests in the five offending jurisdictions.

63. The First District Court also has adequate facilities to provide defendants with the opportunity to have private consultation with their assigned attorneys.

64. Finally, this Court should issue an Order directing the First District Court of Suffolk County to assume responsibility for conducting the arraignments previously handled by the justice courts of the five offending jurisdictions.

65. This course of action will immediately bring a halt to the ongoing Sixth Amendment deprivations occurring in the justice courts of the five respondent jurisdictions, provide for the expeditious arraignment of individuals in the custody of the police forces of the five respondent jurisdictions, allow the individuals in custody to exercise their right to effective assistance of counsel, and preserve the integrity of the individual's Fifth Amendment right against compulsory self-incrimination.

66. Absent swift and decisive action by this Court, the violation of the Sixth Amendment rights of indigent defendants will continue unchecked in these five jurisdictions and an ever increasing number of individuals will be harmed.

**PROCEEDING BY ORDER TO SHOW CAUSE IS APPROPRIATE**  
**AND NECESSARY GIVEN THE GRAVITY AND CONTINUING**  
**NATURE OF THE HARM COMPLAINED OF**

67. The gravity of the harm being caused by the Respondent Towns and Villages is of constitutional magnitude and is ongoing in nature.

68. The deprivation by the offending jurisdictions of the Sixth Amendment rights of indigent defendants does not represent an isolated or single instance of wrongdoing.

The harm complained of does not amount to a single act or series of actions that have since come to an end.

69. The denial of the constitutional rights of indigent defendants by the named jurisdictions is constant and continuous.

70. The harm is not being inflicted upon a single individual but upon multiple individuals on an almost daily basis and it is occurring in multiple jurisdictions.

71. Each time an indigent individual in police custody is brought before the one of the courts of the offending jurisdictions for an arraignment the number of victims the Sixth Amendment deprivations increases.

72. Unless and until the Court provides relief the denial of constitutional rights will continue and the number of persons adversely impacted by the conduct of the respondents will continue to grow.

73. Consequently the matter being brought before the Court by Petitioners is one of extreme urgency and demands expeditious remedial action making it appropriate and necessary to proceed by Order to Show Cause.

**A PROCEEDING UNDER ARTICLE 78 OF THE CIVIL PRACTICE  
LAW AND RULES IS THE PROPER AND APPROPRIATE MECHANISM  
FOR OBTAINING THE RELIEF SOUGHT BY PETITIONERS**

74. "Traditionally, the writ of mandamus is the relief invoked when a party seeks to compel performance by a governmental agency of a duty enjoined by law" *Matter of County of*

*Fulton v. State of New York, et al.*, 76 N.Y.2d 675; 564 N.E.2d 643; 563 N.Y.S.2d 33 (1990), citing *Matter of Hamptons Hospital & Medical Center v. Moore*, 52 N.Y.2d 88; 417 N.E.2d 533; 436 N.Y.S.2d 239 (1981).

75. An Article 78 proceeding may lie where the relief sought is by way of prohibition or by way of mandamus to compel performance of a duty enjoined by law. *Matter of Hamptons Hospital & Medical Center v. Moore, supra*.

76. An Article 78 proceeding may only lie where the right to relief is clear and the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion. *Matter of County of Fulton v. State of New York, et al., supra*; *Matter of Hamptons Hospital & Medical Center v. Moore, supra*.

77. The legal duty sought to be enjoined may be imposed by statute or by common law. *Matter of Steinway*, 159 N.Y. 250; 53 N.E. 1103 (1899).

78. "The common law and the statutory law of this State impose upon Trial Judges the duty to scrupulously safeguard the right of all defendants to the effective assistance of counsel at every stage of a criminal proceeding," *People v. Ross*, 67 N.Y.2d 321; 493 N.E.2d 917; 502 N.Y.S.2d 693 (1986).

79. The critical importance of the right to private consultation between attorney and client and the court's affirmative obligation to make adequate provision for the exercise of this right is further recognized in *22 New York Code, Rules and Regulations §34.0*.

80. *22 New York Code, Rules and Regulations §34.0 I. 1: Adequate Facilities and Areas* provides that court facilities should provide attorney/client conference rooms.

81. Further, *22 New York Code, Rules and Regulations §34.0 III. 9: Confidentiality*: provides that “Functions which require a considerable degree of confidentiality – such as jury deliberation; **attorney/client conferences; attorney/defendant interviews**; conferences with judges, clerks and probation officers; and adoption proceedings – should be housed in private rooms (emphasis added).”

82. *22 New York Code, Rules and Regulations §34.0 VIII. 3: Attorney/Client Conference Room, Witness Waiting Room, Alternate Juror Waiting Room*: requires that an adequate number of rooms for these purposes be provided.

83. Again in *22 New York Code, Rules and Regulations §34.0 VIII. 5: Secure Attorney/Prisoner Interview Room*: it is provided that “Prisoner holding facilities next to the courtrooms as well as any court supervised central holding facility (if any) in the courthouse should provide secure interview rooms for attorneys to confer with their clients.”

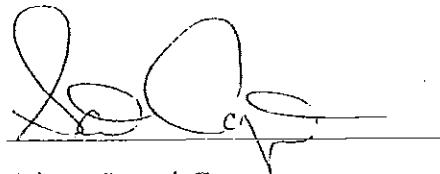
84. Both New York State and Suffolk County reaffirmed their statutory and common law obligation to facilitate compliance with the Sixth Amendment rights of defendants in the “*Stipulation and Order of Settlement*” (a copy of which is annexed hereto as Exhibit H)- negotiated as a resolution to the class action lawsuit *Hurrell-Harring, et al. v. The State of New York, et al.*, New York Supreme Court, Albany County, Index Number 8866-07. Section V.(A)(3) of the settlement agreement, which has been agreed to by the parties and is awaiting judicial approval, requires the defendants to that action to take affirmative measures to ensure that attorneys providing mandated representation in criminal cases have access to confidential meetings spaces for communicating with their clients.

85. Clearly it is a matter beyond dispute that the courts, and those charged with administering them, have a common law and statutory duty to safeguard and facilitate the Sixth Amendment right of indigent defendants to the effective assistance of counsel.

86. Therefore, Article 78 relief is appropriate and proper for a failure on the part of Respondents to do so or to take the simple but necessary actions to ensure the fulfillment of their duties in this regard.

**WHEREFORE** affiant hereby requests that the Article 78 relief sought herein be granted along with such additional and further relief as to this Court may seem just and proper or necessary to facilitate implementation of the relief sought.

Dated: February 4, 2015  
Riverhead, New York

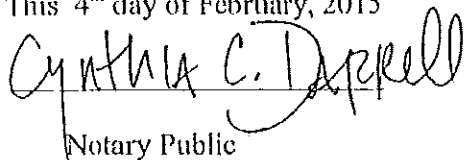


Sabato Caponi, Esq.

Legal Aid Society of Suffolk County  
Attorney for Petitioners  
Criminal Courts Building  
300 Center Drive  
Riverhead, NY 11901  
(631)852-1650

Sworn to before me

This 4<sup>th</sup> day of February, 2015



Notary Public

**CYNTHIA CAREW DARRELL**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. Q2DA6161989  
Qualified in Suffolk County  
My Commission Expires February 26, 2019