

# New York police seek new spying powers

Peter Daniels  
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The New York City Police Department has launched court action to remove longstanding limits on its ability to spy on political groups and activists.

The restrictions were first imposed through a 1985 settlement of a class action lawsuit against police spying. The consent decree signed in 1985, named the Handschu Agreement after one of the plaintiffs, established an oversight board to monitor police surveillance and also set certain guidelines for the NYPD, which was no longer allowed to monitor political demonstrations except for purposes of crowd control.

The limits set up by the decree, signed by Federal District Judge Charles S. Haight, were quite modest. The oversight board has nothing in common with “civilian control” of the police. The three-member committee is controlled by the police department itself. It is composed of two top police officials and a civilian appointed by the mayor in consultation with the police commissioner. Spying requests have almost never been denied. Requests not immediately approved can be redrafted by the police and later authorized. The police also have a period 48 hours before and 30 days after filing a request in which they can carry out surveillance without formal permission.

The Handschu Authority did, however, issue periodic reports on NYPD surveillance, and the police were limited in how long they could retain information gathered and in sharing such information with other police agencies. To get approval for surveillance activity, the police also had to show that “specific information has been received ... that a person or group engaged in political activity is engaged in, about to engage in or has threatened to engage in conduct which constitutes a crime.”

This language was designed to prevent or at least discourage spying on political groups on the basis of their views alone, but the composition of the oversight board indicated that the limits could very well be stretched in response to police interpretations of “threatening” language or conduct. In fact, the main civil liberties protection the Handschu Agreement afforded was in

establishing a paper trail that could be produced in answer to a complaint, and perhaps in giving the police pause before putting requests on the record.

Even these limits are now seen as an obstacle by the Bloomberg administration and its police department. Last September the city administration filed papers before the same judge who signed the consent decree 17 years ago, citing the September 11 terrorist attacks and asking that the Handschu Agreement be essentially dismantled. District Judge Charles Haight is expected to rule on the police department’s request sometime in the next month.

According to Police Commissioner Raymond Kelly, “We live in a more dangerous, constantly changing world, one with challenges and threats that were never envisioned when the ... guidelines were written.” David Cohen, the former CIA operations director who was appointed intelligence commissioner for the NYPD soon after Bloomberg took office a year ago, told the court that “it is difficult to imagine a state of affairs more outdated by the events of September 11.”

With the exception of New York’s *Village Voice*, the effort to legitimize police spying has received little attention in the local newspapers and even less in the national media. The Arab American Anti-Discrimination Committee, along with the American Civil Liberties Union, has criticized the effort to scrap the Handschu Agreement. The ACLU pointed out that the elimination of the Handschu guidelines means that the police want “to engage in unlimited political surveillance and to maintain political dossiers even when there is no reason to suspect unlawful activity. In other words, the NYPD wants to be able to spy on and infiltrate any group it chooses for any reason it wants.”

The Handschu Agreement itself was achieved only after 14 years of legal and political effort, arising out of the trial of “Panther 21” in the late 1960s. The Black Panther defendants were charged with a plot to blow up department stores and police stations and jailed for two years before trial, but a jury took only 90 minutes to find them not guilty on all 156 counts. Police agents sent into

the group by the NYPD had played the key role in initiating and developing the “plot,” and exaggerated its nature in reports to police superiors. This was part and parcel of the wave of police spying and terror which included a number of frame-up trials as well as the police shootings of several dozen Black Panthers in this period.

As one of the Panther 21 told the *Village Voice*, “They had agents deep undercover, whom I counted as my closest friends. I was facing 375 consecutive years in prison. But I got nothing. The terrorists and murderers they described didn’t exist.”

As New York Civil Liberties Union executive director Donna Lieberman pointed out, “Prior to the [Handschu] settlement, the government was collecting dossiers, infiltrating organizations without any basis ... and even instigating illegal activities themselves.... And when the government engages in this kind of systematic spying ... it has a chilling effect on people because they are legitimately afraid to say what they think.”

Police spying did not suddenly begin in the 1960s, of course, nor was it confined to the Black Panthers. During the long legal process that ended in the 1985 consent decree the police reported that their intelligence files dated back to 1904 and included about one million records on over 200,000 individuals and groups. In the days of the New York police Red Squad, the information gathered by cops on perfectly legal political activity was used to deny individuals jobs. As Paul Chevigny, an NYU law professor and one of the attorneys who filed the 1971 class-action suit, said: “If the police win, [they] will have the power to infiltrate and monitor groups just because they’re curious. They’ll be able to keep dossiers on people and disseminate the information to anyone they want, whether it hurts somebody or not.”

Nor did the NYPD ever really reconcile itself to the modest restrictions of the Handschu Agreement. Any observant participant in various political protests held in New York since the late 1980s could detect, even without additional information, that “crowd control,” the one loophole left by the consent decree to allow for the monitoring of demonstrations, was being expanded in wholly new directions by the police. As far back as the administration of David Dinkins from 1989 to 1993, the authorities began erecting elaborate police barricades, which often made it next to impossible for passersby to join demonstrations and also made it easier for the police to observe these legal protests.

Now, after the events of September 2001, the police are using fear of terror to begin establishing the machinery of

a police state. The appointment of CIA veteran Cohen to his high New York police post is directly connected to these moves. Cohen has spent virtually his entire professional life with the agency that “is dedicated to collecting intelligence purely for the sake of collecting intelligence,” in the words of Professor Chevigny. This statement is only part of the truth, because the intelligence collected by the CIA has been used to carry out great crimes against humanity, as in Chile, Indonesia and countless other parts of the world.

Now Cohen directly echoes the anticommunist witch-hunt and the threat of a so-called “fifth column” in order to call for the abolition of civil liberties protections. “Terrorists engage in a prolonged period of often lawful activity in preparation for their criminal acts. They escape detection by blending into American society. They may own homes, live in communities with families, belong to religious or social organizations and attend educational institutions,” he argues in the NYPD’s court papers. Identical arguments were advanced in justifying the Operation Phoenix assassination program carried out in South Vietnam. Since “terrorists” have families and belong to organizations, everyone is suspect and civil liberties are to be eliminated.

The moves of the NYPD are only part of a nationwide attack on civil liberties that has received bipartisan backing in the wake of the September 11 terror attacks. The Bush administration, with the USA Patriot Act and the establishment of the Department of Homeland Security, has carried out a sweeping assault on democratic rights, targeting in the first instance immigrants, but aimed at the population as a whole—citizen and non-citizen alike. The effort to lift spying limits on New York police is a further expression of the escalation of this process.



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