

Court sanctions expanded political surveillance by New York City police

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A federal judge Wednesday handed the New York City Police Department (NYPD) expanded powers to carry out spying on political organizations. US District Court Judge Charles Haight sided with the NYPD and the city in their bid to overturn an 18-year-old court order that placed limited restrictions on such surveillance.

The order, known as the Handschu agreement, stemmed from a lawsuit brought in 1971 over the infiltration of the Black Panther Party by agents provocateurs from the NYPD's Red Squad. This infiltration was part of a nationwide drive to frame up, imprison and assassinate members of the Black Panthers carried out under the federal government's COINTELPRO program. It was accompanied by widespread use of the Red Squad to infiltrate and spy on other political organizations and collect dossiers on large numbers of people perceived as political dissidents.

In his decision, Haight wrote, "The Constitution's protections are unchanging, but the nature of public peril can change with dramatic speed, as recent events show." The restrictions placed upon the NYPD as a result of the spying and intimidation of the 1960s, he continued, "addressed different perils in a different time."

Police Commissioner Ray Kelly echoed the judge's decision, declaring, "We live in a different, more dangerous time than when the consent decree was approved in 1985. This ruling removes restrictions from a bygone era, and will allow us to more effectively carry out counterterrorism investigations."

The fundamental restriction imposed under Handschu was a requirement that the police present evidence of criminal activity before sending agents into a political organization or initiating surveillance against

individuals involved in political activity. With Haight's ruling, that requirement has been scrapped. Also overturned was the requirement that the police provide a written explanation of their reasons for investigating people involved in political activity and maintain a clear record of their surveillance.

The judge left in place a three-member panel that is supposed to consider complaints from individuals who charge that police spying has violated their constitutional rights. This body, however, has long functioned as an adjunct of the NYPD itself. He also called for the NYPD to adopt a version of the FBI's guidelines on surveillance.

The push for abrogating the Handschu restrictions came in large part from David Cohen, the NYPD's deputy commissioner for intelligence and a former senior CIA official who was recruited to the NYPD last year after 35 years at the CIA. Cohen provoked outrage among Muslim-Americans by arguing that the dropping of limits on police spying was justified at least in part by the "radicalization" of American Mosques and other Islamic institutions, which he said "shield the work of terrorists from law enforcement scrutiny by taking advantage of restrictions of the investigation of First Amendment activity."

Given the size of the NYPD—more than 37,000 cops, three times the number of the FBI's non-civilian agents—the court's decision has far-reaching implications.

Kelly's claims that the issues of police intimidation and suppression of political activity were from a "bygone era" were belied this week by the NYPD's barring of a march by opponents of a war on Iraq. The refusal of the department and the city to grant the demonstrators a march permit was a clear demonstration of the way in which the alleged threat of

terrorism is being invoked to attack basic democratic rights. A federal appeals panel Wednesday upheld a US District Court's decision defending the NYPD ban.

Meanwhile, the New York State Senate on Tuesday rammed through a sweeping "anti-terrorism" bill backed by Republican Governor George Pataki. The legislation was approved without the normally required hearings and discussion after Pataki issued a "message of necessity," overriding the requirement for a three-day wait before a new bill is brought to a vote.

The measure includes provisions that would allow the admission of evidence obtained through illegal searches and seizures as well as third-degree interrogations, as long as the state and city police declare that they were acting "in good faith." It also creates several new felony crimes, including "conspiracy to commit terrorism" and "criminal facilitation of terrorism."

Under the legislation, prosecutors would be able to convict an alleged terrorist based solely on the testimony of those claiming to have been his accomplices. Such convictions are currently barred under New York state law.

Pataki, who is positioning himself for a future run for national office, including a possible nomination to serve as Bush's vice presidential running mate in 2004, was joined by Republican lawmakers in denouncing any opposition to the legislation as "anti-American" and conciliation with terrorism. The measure cleared the Republican-controlled Senate by a vote of 52 to 8.



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