

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA HANDSCHU, RALPH DiGIA, ALEX
McKEIVER, SHABA OM, CURTIS M. POWELL,
ABBIE HOFFMAN, MARK A. SEGAL, MICHAEL
ZUMOFF, KENNETH THOMAS, ROBERT RUSCH,
ANNETTE T. RUBENSTEIN, MICKEY SHERIDAN,
JOE SUCHER, STEVEN FISCHLER, HOWARD
BLATT, ELLIE BENZONI, on behalf of
themselves and all others similarly
situated,

71 Civ. 2203 (CSH)

DECLARATION OF
PAUL G. CHEVIGNY

Plaintiffs,

-against-

SPECIAL SERVICES DIVISION, a/k/a
Bureau of Special Services; WILLIAM
H.T. SMITH; ARTHUR GRUBERT; MICHAEL
WILLIS; WILLIAM KNAPP; PATRICK
MURPHY; POLICE DEPARTMENT OF THE
CITY OF NEW YORK; JOHN V. LINDSAY;
and various unknown employees of the
Police Department acting as
undercover operators and informers,

Defendants.

PAUL G. CHEVIGNY, for his declaration pursuant to 28
U.S.C. 1746, states as follows:

1. I am one of the attorneys for the plaintiff class in
this action, hereinafter referred to as "Class Counsel". I
make this declaration in support of the motion of the
plaintiff class for the relief described below in paragraph 8.

Introduction

2. The prior decisions of the Court in this case, summarized in *Handschu X*, 679 F.Supp.2d 488 (2010), resolved

"a core question in the case, determin[ing] a crucial relationship between Class Counsel and the NYPD under the Guidelines, namely, Class Counsel's ability to inquire into and challenge NYPD policies and the NYPD's obligation to respond to such inquiries and challenges, rather than simply ignoring them."

3. The Guidelines "empower[] Class Counsel to challenge NYPD policies resulting in non-constitutional violations of the Guidelines", and "subject[] the NYPD to Class Counsel's inquiries into police surveillance policies and potential injunctive relief for the class and against the NYPD where NYPD policies or practices violates the Guidelines." 679 F.Supp.2d at 496-7.

4. Class counsel have reason to believe that in its surveillance and investigations of the Muslim communities that form a part of the plaintiff class, the NYPD is violating the Guidelines systematically and has been doing so at least since 2006. The violations fall broadly into two categories:

a. As a matter of policy, the NYPD visits and has been visiting public places associated with Muslims, recording information about political and religious activities, and keeping records of such visits even though the records do not

relate to potential unlawful or terrorist activity. This policy violates Sec.VIII(A)(2) of the Guidelines.

b. As a matter of policy, the NYPD infiltrates, conducts undercover activities and secretly investigates institutions and individuals associated with the Muslim community, in the absence of "reasonable indications" of unlawful or terrorist activity. This policy violates Sec. V(D) of the Guidelines, which permits an investigation where there is a "reasonable indication" of terrorism, and it violates Sec. V(C), which permits a criminal investigation where there is a "reasonable indication" of unlawful activity, as well as Sec. V(B) concerning preliminary inquiries.

5. Beginning in the summer of 2011, a series of articles by investigative journalists described pervasive violations of the Handschu Guidelines, targeting the Muslim communities in the New York Metropolitan Area. One of the first of the stories¹ summarized the NYPD activities that violated the Guidelines. According to this account, the Intelligence Division of the NYPD assigned undercover officers in a unit variously called the Demographics or Zone Assessment Unit, to blend into ethnic neighborhoods and report on local meeting places (Exhibit 1, pp.3-5). David Cohen, chief of the Intelligence Division, is said to have "wanted the squad to

1 "With CIA help, NYPD built secret effort to monitor mosques, daily life of Muslim neighborhoods," Associated Press, August 24, 2011(Ex.1).

'rake the coals, looking for hot spots"(Id. p.3); the officers assigned to the unit became known as "rakers." Records were maintained based on the work of these officers. Furthermore, the story reports that the NYPD organized a Terrorism Interdiction Unit which recruited informers from mosques and other institutions (Id. pp.5-6). Reports from informants and officers were sent to a team of analysts in the Intelligence Division.

6. Although the documents upon which the journalists drew in Ex. 1 and other stories relate to conduct by the NYPD in the past, the evidence described below in this declaration will show that these practices continue. The breadth of the operations described makes it apparent that these operations have been undertaken as a matter of NYPD policy, and are not isolated instances of abuse.

7. Invoking the authority established in *Handschu X*, counsel for the plaintiff class sought discovery concerning NYPD practices under the Guidelines. The NYPD agreed to provide limited discovery on a voluntary basis, consisting of a sampling of documents and a deposition of Assistant Chief Inspector Thomas Galati, the head of the Intelligence Division. This discovery was completed in the fall of 2012.

Relief Sought

8. The voluntary discovery provided by the NYPD, the revelations made in articles published by the investigative journalists, which continued during the discovery process, and NYPD documents that have been made available to Class Counsel, taken together, show that in relation to the Muslim communities in New York, the NYPD is violating the Guidelines as a matter of policy. Accordingly, on the basis of the facts detailed below, the plaintiff class moves for the relief summarized here:

a. An injunction against continuing the practice of retaining records concerning visits to public places for purposes of intelligence through the Zone Assessment Unit, the Demographics Unit or any other unit of the NYPD where no information has been obtained that relates to potential unlawful or terrorist activity. Section VIII A (2) of the Guidelines specifically provides that "[n]o information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity." The sampling of documents produced by the NYPD in voluntary discovery contained numerous accounts of conversations unrelated to unlawful activity or terrorism, and Chief Galati acknowledged that as a matter of policy, these entries are never excised.

b. An injunction against continuing the practice of surreptitiously joining, visiting and infiltrating

organizations or institutions including organizations associated with Islam, and keeping records of such investigative activities, in the absence of "reasonable indications" of terrorist or unlawful activity. The declaration of Shamiur Rahman, Ex.2, recent statements by Commissioner Kelly and others representatives of defendants, together with the materials collected in paragraphs 19-26 and 43 of this declaration, show that the policy and practice continues in violation of Sec. V(B), Sec. V(C) and V(D) of the Guidelines.

c. An order appointing an independent auditor or monitor to monitor NYPD obedience to the injunction and compliance with Sec. V(B), Sec. V(C), V(D) and VIII (A)(2) of the Guidelines. The auditor or monitor appointed under the order must have access to all relevant data in the possession of the NYPD, and make a periodic written report of its findings to the court. The NYPD has deceived this Court and counsel, as well as the public, concerning the character and scope of its activities in violation of the Guidelines. In light of this and other past conduct by the NYPD, such oversight by the court becomes essential to the continuing enforcement of the guidelines.

NYPD Retention of records concerning visits to public places

9. The NYPD has been and is systematically retaining reports on visits to public places under circumstances where the information does not relate "to potential unlawful or terrorist activity," in violation of section VIII (A)(2) of the Guidelines. This conclusion emerges from the voluntarily-produced NYPD documents examined by Class Counsel, from the deposition of Assistant Chief Inspector Galati, and from an undated NYPD document (Ex. 3) titled "The Demographics Unit". This document noted the personnel assigned to the unit and language capabilities possessed by them and described their task: to "gather intelligence and report activity of individual visits on a daily activity report focusing on key indicators."

10. Class Counsel were permitted to examine but not to copy daily activity reports from days chosen at random in 2006, 2010 and 2011, comprising some 1260 pages, all from the Zone Assessment Unit (ZAU), the current name for the Demographics Unit. The reports covered visits to 212 separate places of business, mostly retail stores, restaurants and cafes, many of which were visited repeatedly.

11. In the sample Class Counsel were permitted to examine, officers assigned to the ZAU had recorded 31 conversations, mostly of a religious-political character,

concerning news items and matters of U.S. foreign relations that were of interest to patrons of the establishments. These reports were made by undercover officers on ZAU forms. In addition to recording the conversations, the officers filled out the form to record the ethnicity of visited establishments' owners and patrons, the presence of hookahs and prayer areas, whether the establishment was frequented by cab drivers, whether the owner and customers were Shia or Sunni, the proximity of the establishment to other Muslim institutions and "level of rhetoric".

12. The conversations that the NYPD overheard and recorded, some in Bengali or Urdu, included

a. a discussion between two men about a news article reporting that a public service employee, who had been fired for burning a copy of the Koran, was reinstated with backpay. The men agreed that this result was unfair. One asked the other rhetorically what would have happened to the employee if he had burned a copy of the Bible;

b. a discussion between two men concerning a news report that Imams in traditional garb had been barred by the pilot from an airline flight, even though the Imams had been carefully searched and cleared. The two men agreed that the Imams would hardly have worn traditional Islamic garb if they intended any improper action; one of the men was reported to have said that "Americans are clueless".

13. Since the sample of reports that we were permitted to examine was small, yet yielded written reports about 31 such conversations having nothing to do with illegal activity or terrorism, the thousands of daily ZAU reports we were not permitted to see are likely to record similar information that has nothing to do with illegal activity or terrorism.

14. On June 28, 2012, Class Counsel took the deposition of Thomas Galati, an Assistant Chief Inspector in the NYPD and Commanding Officer of the Intelligence Division; the questions to him were limited to matters relating to compliance with section VIII (A) (2) of the Guidelines. A copy of the transcript is attached hereto as Exhibit 4.² Chief Galati described the responsibilities of the unit:

"The Demographic unit's responsibilities were to collect information on areas so that we can identify countries of concern, where there were people that were being radicalized towards violence, Islamists radicalized towards violence."

Galati p. 29.

15. He explained why the reports were and are being retained:

"The information in the Demographic reports does have value. So, yes, it is retained because the report itself contains a lot of bits and pieces of value, of intelligence value."

² References in the form "Galati p.____" are to pages in the deposition transcript. Pursuant to the agreement under which the depositions was taken, and at the request of the NYPD, certain of Chief Galati's answers have been redacted in the transcript attached hereto. An unredacted transcript is being supplied to the Court under separate cover.

Galati, pp.98-99.

16. During the course of the deposition, Chief Galati was questioned about conversations overheard by officers in business establishments, and was asked what would justify keeping the records in light of Section VIII (A)(2) of the Guidelines. In particular, he was questioned about a report from early 2006 from a particular grocery store, where officers overheard a discussion in the Bengali language concerning the U.S. President's State of the Union speech, in which one of the speakers defended the U.S. government (Galati pp.88-94). In response to a question whether the report "related to potential unlawful or terrorist activity," Chief Galati responded:

"I am taking the conversation as a whole and I'm reading about two [REDACTED] people that are speaking in [REDACTED] in a meat store. I find value in that for several reasons. This information is solely used for the purpose of being able to identify a location where I should face a threat, where I'm facing a threat of terrorist and that terrorist is [REDACTED].

"This piece of information would be valuable to me. I take it as a whole. I take it as the conversation. I take it as [REDACTED] and that's what I feel is of value. The sole purpose is for identifying a location where I would find somebody that was hiding who is a terrorist from [REDACTED]" [sic].

(Galati pp.94-95; redacted per NYPD. See footnote 2).

17. There is nothing in this conversation or in the conversations recounted in paragraph 12 that "relates to terrorist or unlawful activity" so as to justify keeping a record. This answer by Chief Galati says in effect that the grocery is suspect as a haven for terrorists, and subject to record retention, simply because the Bengali language is spoken there.

18. Chief Galati testified that during his tenure as Commanding Officer, since 2006, none of the information from the Demographics Unit has been sufficient to trigger an investigation (Galati p.97); that is to say, none of it was viewed as having given rise to an indication of unlawful or terrorist activity. Chief Galati also acknowledged that information like the examples given above is retained as a matter of policy. The reports of the ZAU officers are never edited to excise information that does not relate to illegal activity or terrorism. (Galati p. 129).

19. It was clear from Chief Galati's testimony, as well as from Class Counsel's examination of ZAU reports from 2010 and 2011, that the policy of keeping written reports continues, in violation of Sec. VIII (A)(2) of the Guidelines. Moreover, the NYPD has misrepresented to the public its ongoing intelligence collection activities. On March 3, 2012, Police Commissioner Ray Kelly gave a speech to Fordham Law School alumni (Ex. 5), seeking to explain the NYPD's policies

of surveillance, which had come under criticism after the news reports. The Commissioner discussed the Handschu Guidelines, justifying the oversight of public places with these words: "This is what Handschu says about the broadest form of intelligence gathering: 'The NYPD is authorized to visit any place and attend any event that is open to the public.'" Commissioner Kelly did not even mention the restriction on keeping records of information obtained in such visits, the purpose of which is to prevent the maintenance of records regarding class members' expression of political and social views.

Infiltration and Investigation of Organizations
and Institutions

20. In his speech of March 3, 2012 (Ex. 5), commenting on criticisms of the NYPD for infiltrating mosques and student groups, Commissioner Kelly assured his listeners that,

"Undercover investigations begin with leads, and we go where the leads take us. As a matter of Police Department policy, undercover officers and confidential informants do not enter a mosque unless they are following up on a lead vetted under Handschu . . . Likewise, when we have attended a private event organized by a student group, we have done so on the basis of a lead or investigation reviewed and authorized in writing at the highest levels of the department . . ."

21. The evidence shows that this assurance is untrue. Muslim student associations and mosques are infiltrated without "leads" or "indications of crime", as shown in the attached declaration of Shamiur Rahman, executed on October 28, 2012 (Exhibit 2). Mr. Rahman was a confidential informant for the NYPD between January and September, 2012.³ In his declaration he recounts being instructed to infiltrate mosques and the John Jay College Muslim Student Association without any indication of illegal activity. In fact his NYPD handler specifically told him the NYPD had no reason to suspect illegality at the John Jay College Muslim Student Association. Mr. Rahman reports that the members of the association were religious Muslims. According to his NYPD handler, "the NYPD considers being a religious Muslim a terrorism indicator."

22. Mr. Rahman was instructed to use what his NYPD handler called a "create and capture" strategy, "starting an inflammatory conversation about jihad or terrorism and captur[ing] the response to send to the NYPD." There was no mention of following leads or guidance concerning indications of crime.

23. The work of the informant Shamiur Rahman is no isolated incident. It grows out of and continues a long-term approach to policing adopted by the NYPD in connection with

³ Mr. Rahman's activities were first reported by the investigative team from the AP, and NYPD Deputy Commissioner Paul Browne acknowledged in an interview on WINS News Radio that Rahman was an NYPD confidential informant.

investigations involving Muslims. That approach is based on a model of pure intelligence-gathering concerning organizations, places and persons connected to Islam, and not on a model of investigations triggered by an "indication" or "reasonable indication" of unlawful activity. This philosophy was articulated in 2007 in the testimony of NYPD Assistant Commissioner Larry Sanchez, formerly of the CIA and one of the architects of the new approach at the NYPD, before the U.S. Senate Homeland Security Committee⁴:

"The key to it was . . . to start appreciating what most people would say would be non-criminal would be innocuous looking behaviors that could easily be argued in a Western Democracy especially in the United States to be protected by First and Fourth Amendment rights but not to look at them in the vacuum but to look across to them as potential precursors to terrorism"

24. The NYPD elaborated on the same approach in a 2007 document, "Radicalization in the West: the Homegrown Threat"⁵. In this document, the NYPD asserts that it need not look for any criminal predicate before initiating investigations:

"There is no useful profile to assist law enforcement or intelligence to predict who will follow this trajectory of radicalization. Rather, the individuals who take this course begin as 'unremarkable' from various walks of life," (Radicalization, pp.8 and 82)

⁴ Available online at http://hsgac.Senate.gov/public/audio_video/103007video.ram

⁵ Available online at www.nypdshield.org/public/SiteFiles/documents/NYPD_Report-Radicalization_in_the_West.pdf. Hereinafter "Radicalization"

* * *

"the subtle and non-criminal nature of behaviors involved in the process of radicalization makes it difficult to identify or even monitor from a law enforcement standpoint. Taken in isolation, individual behaviors can be seen as innocuous; however, when seen as part of the continuum of the radicalization process, their significance becomes more important. Considering the sequencing of these behaviors and the need to identify those entering this process at the earliest possible stage makes intelligence the critical tool in helping to thwart an attack or even prevent the planning of future plots." (Radicalization, p.10)

25. In Radicalization, the NYPD treats mere association with many Muslim groups as itself an indication of terrorism and therefore a basis for investigation under the guidelines. The document purports to describe a process of "radicalization," particularly through association with Salafi Muslims, that it claims leads to terrorism. The NYPD is thus asserting that adherence to a school of theology and religious observance itself gives cause for investigation; in the last analysis, as the passages quoted above in the preceding paragraph show, the NYPD seeks intelligence about

those who associate with Salafi groups or institutions regardless of indications of crime.⁶

26. As Radicalization acknowledges, however, "Salafi is a generic term, depicting a Sunni revivalist school of thought that takes the pious ancestors of the early period of early Islam as exemplary models . . . [and] seek[s] to purge Islam of outside influences . . . The Salafi interpretation of Islam seeks a 'pure' society that applies the Quran literally . . ." (Radicalization, p.86). While some Salafis strive to achieve this goal by violent means, the report recognizes that "other Salafi currents encourage non-violent missionary or political activities to achieve these religious/political goals . . ." (Radicalization, p.17). Bernard Haykel, an expert on Islamic law, Islamic political movements and the modern politics of the Middle East, makes the same point in paragraph 3 of his declaration, which is attached hereto as Exhibit 6.

27. The approach taken by the NYPD is confirmed in police documents that were made public with the news reports during 2011 and 2012. Also revealed was a document entitled "NYPD Intelligence Division Strategic Posture 2006." (Ex. 7, hereinafter "SP"). Class counsel understand the authenticity

⁶ The "Radicalization" document came under criticism from Muslims and others who did not fail to see that the text tried to imply a strong connection between Islam and terrorism. The criticism is reviewed in Patel, "Rethinking Radicalization"(Brennan Center for Justice, 2011) (available at www.brennancenter.org/content/resource/rethinking-radicalization) which shows that many students of terrorism did not share the views in the NYPD report.

of this document is not disputed. This 112-page document⁷ summarizes infiltration and oversight of several categories of Muslim-oriented organizations, including "extremist groups," Muslim Student Associations, NGO's, mosques and "hot spots."

28. The approach for each of these categories is all-encompassing; the surveillance does take in some Muslim groups associated with violence, but it includes others known to be peaceable. The character of some of the organizations is clear from the police documents themselves; as far as possible, we make use of the police descriptions. More complete descriptions for some organizations are set forth in the accompanying declaration of Bernard Haykel (Ex.6).

Extremist Groups

29. The SP brands twenty-one organizations as Extremist Groups (SP pp. 63-74). The list includes groups identified with violence, such as Lashkar-e-Toiba, Hezbollah and Hamas, but peaceable organizations have been chosen for investigation and infiltration as well:

a. The first organization in the list of "extremist groups" is Tabligh-i-Jamaat (the name means "society for the faith"), which is a large, transnational conservative Muslim group based in South Asia (Haykel dec.,

⁷ The copy of the SP annexed hereto as Exhibit 7 has been redacted to remove the names of individuals. An unredacted copy is being supplied to the Court under separate cover.

Ex. 6, para. 15). Even the description in the SP (SP p.66) does not substantially differ; the SP does not make the organization sound "extremist" except for saying darkly that "terrorist organizations have viewed it as fertile ground for recruitment."

b. The list also includes the Muslim Brotherhood (SP p.68), described by the NYPD as a source for "radical jihadist ideology." (SP p.69). It is in fact a large international political and social organization committed to Islam, and it has renounced violence (Haykel dec., Ex. 6 para.8).

c. Jamaat-e-Islami, listed below the Muslim Brotherhood (SP p.68), is a large, conservative Islamic political party in South Asia (Haykel dec., Ex. 6 para.24);

d. Muttahid Majlis-e-amal (the name means "united council of action") is described in the SP itself, (SP pp. 73-74), as a Pakistani umbrella organization of four "religious extremist parties," whose goal is an Islamic State in Pakistan. A conversation in a restaurant between adherents is reported in which the speakers criticize the actions of one of the parties.

30. Huge Islamic organizations with conservative political and theological aims are listed under the rubric "extremist". Their American affiliates were infiltrated by undercovers or informants for the NYPD (SP pp. 97-99). In

some cases, unspecified association with the alleged extremist organization is given as excuse for infiltrating other institutions such as mosques or NGO's, as described below in paragraphs 32 and 34. Plaintiffs submit that this is surveillance based on status and association with no "indication" of unlawful activity, much less terrorism, to justify it.

Student Associations

31. Seven Muslim Student Associations are listed as "of concern" (SP, pp. 16-18), at Brooklyn College, Baruch College, Hunter, City College, Queens, La Guardia and St. Johns. In every case there was a police informant or undercover at work in the organizations (SP p. 89). Here again the surveillance is based on status and association. In the case of Brooklyn and Baruch Colleges, the alleged presence of "Salafi speakers" was given as an excuse; in the case of Baruch and Hunter, "radicalization" was given as an excuse; at City College it was a "Salafi website" and at St. Johns "fund raising and speeches." At Queens College there is claimed to be a trace of an association with a radical Muslim organization, Al Muhajiroun (Haykel dec., Ex. 6, para.19). In almost all of the cases then, the student associations were surveilled and infiltrated just because of their interest in islamic

theological concerns or because of something vague like "radicalization" or even "fundraising."

NGO's

32. The seven organizations listed as "influence proliferators" in the SP (SP p.60) are for the most part conservative Islamic organizations. To choose some examples:

a. One for which SP gives a purported description, the Islamic Circle of North America (SP p.61), is identified as "ideologically aligned with Jamaat-i-Islami," which is to say that it is aligned with a conservative party in Pakistan (described above under "extremist groups" in paragraph 29). Thus a conservative Muslim organization is made to appear radical to the casual reader because the organization is connected to another, classed as "extremist," when it seems that neither one is extremist. (See also Haykel dec., Ex. 6 para. 6). The "Salafi literature" listed on p.61 are writings by well-known conservative Muslim leaders.

b. The World Association of Muslim Youth (SP p.60) is a Saudi-funded group similar to the YMCA, according to the declaration of Bernard Haykel, Ex 6, para.11.

c. The Muslim World League (SP p.60) is also funded by the Saudis to advance Islamic values (Haykel dec., Ex. 6, para 12).

33. The organizations described in paragraph 32 do not sponsor unlawful or terrorist acts nor are they claimed to have contributed to them. They were all under investigation by undercovers or other infiltrators (SP p.96) based on their theological views, status and association.

Mosques

34. The Strategic Posture document identifies fifty-three mosques as "of concern," (SP pp.6-13) adding that twenty-four have a "Salafi influence", which says no more than that they are influenced by a conservative theology. Several are identified with phrases that purport to link them to terrorism, such as the words "Blind Sheik." Yet others are identified with peaceable Muslim organizations, for example:

a. Masjid Al-Falah is described, SP p.8, as "National HQ for Tablighi-Jamaat" which means that it is associated with a large international South Asian-based religious group, as described in paragraph 29 above. As in the previous paragraph, combining the name of one group with another under some rubric such as "extremist" does not serve to establish that the mosque is anything other than a religious organization.

b. At least five mosques are described as "TJ [tabligh-i-jamaat] feeders." (SP pp.10, 12). Again, this merely associates them with the same religious group.

c. Two mosques are simply linked to Al Azhar University in Egypt (SP p.12). This does no more than identify them with an ancient and distinguished Muslim educational institution. (Haykel dec., Ex. 6, para. 27)

35. Here again, on the basis of adherence to a conservative theology, there was intense surveillance of all the mosques listed, through undercovers, informers and the Demographics Unit (SP pp.85-87).

Hot Spots

36. Places of business, primarily restaurants, are designated in SP as "hot spots," and the character of six of them is outlined in the SP (SP pp. 35-41). Class Counsel are acquainted with the surveillance of some of these through the examination of Demographics Unit/ZAU documents in discovery:

a. One of the "Pakistani hot spots" named in SP at p.37 was the Bukhari Restaurant. The ZAU reports chosen at random and read by Class Counsel yielded three visits to this place in 2006, and a fourth in 2010. Nothing of note was reported, except that a conversation was overheard on one occasion.

b. A second "Pakistani hot spot" was Chandni Restaurant, also described in SP at p.37. The reports read by Class Counsel yielded three police visits to this place

between 2006 and 2011, and again nothing of note was reported except that a conversation was overheard.

c. Among the "Egyptian hot spots" was the Arabesque Café, SP at p. 41. About this place, Class Counsel read two reports and saw a third visit noted between 2007 and 2010, all reporting nothing of significance.

37. Since the reports Class Counsel read were chosen at random, there may be many other reports about the places named; but the reports over several years, yielding so little result, point strongly to a conclusion that the police canvass of these "hot spots" has not led to an indication of crime. In his deposition, in fact, Chief Galati said that the repeated visits to such places had not led to an "investigation" under the Guidelines. Galati p. 97.

38. The documents show that officers of the Intelligence Division hoped that they would find the places visited to be "Radicalization Incubators," a phrase used in the paper "Radicalization in the West" (see paragraph 24 above) in 2007:

"Generally these locations, which together comprise the radical subculture of a community, are rife with extremist rhetoric. Though the locations can be mosques, more likely incubators include cafés, cab driver hangouts, flophouses, prisons, student associations, non-governmental organizations, hookah (water pipe) bars, butcher shops and bookstores. While it is difficult to predict who will radicalize, these nodes are likely places where like-minded individuals will congregate

as they move through the radicalization process."

Radicalization, p.20.

39. Judging by the Galati deposition and the reports examined by Class Counsel, investigators never found such "Radicalization Incubators" through the Demographics Unit. Nevertheless, sometimes pressure was applied to officers to fulfill the hopes of superiors. Ex. 8 is an NYPD document from 2006 in which commanding officers in the Demographics Unit report criticizing the "unsatisfactory work level" of a detective who had submitted "negative reports of rhetoric heard in cafes and hotspot locations " as well as negative reports of "community events."

40. NYPD documents show that the same sort of infiltration and reporting without any indication of illegal activity has been endemic at Muslim institutions for years. One example is the document entitled "Intelligence Division, Central Research Analysis Unit, Intelligence Note, 06 February 2006" (Ex. 9). The subject is "NYC Mosque Statements on Danish Cartoon Controversy." This document collects information from sources reporting on meetings at mosques and other Muslim organizations on twenty occasions between January 31 and February 8, 2006. All the underlying reports came from undercover officers or informants. The summary report shows intense and widespread intrusion into religious and political life, and yet there is not so much as a piece of rhetoric that

would point toward an unlawful act; on the contrary, the rhetoric is cautious and pacific. This exhibit is evidence of the character of the surveillance of mosques and other religious organizations, showing that the informers persistently reported conversations and advocacy they overheard, even though they found nothing indicating unlawful activity. These persons, institution and organizations are subject to surveillance not because of what they do or even say, but because of who they are: religious Muslims.

41. A second example of this kind of wholesale infiltration of Muslim institutions is the document entitled "Intelligence Division, Intelligence Analysis Unit, October 16, 2006" (Ex. 10). The subject is "DD5's referencing 10/11/06 plane crash into building at 524 E. 72 Street." Like Ex. 9, this is an intelligence analysis that collects information from field reports (DD5's) of confidential informants (CI's) and undercover agents. This exhibit illustrates the constant infiltration of religious organizations and meetings. Here the NYPD is monitoring reaction to a plane crash already known not to involve terrorism or crime. The exhibit well-characterizes the information collected as nothing but "general chatter, statements of regret and expressions of relief." For one member of a mosque, who "appears agitated" the informant went so far as to promise a follow-up and a

"phone dump," apparently an intrusion into the list of numbers called by the member.

42. The pattern is followed in the document attached as Ex. 11, "Intelligence Division, Intelligence Collection Coordinator, Deputy Commissioner's Briefing, 25 April 2008." This document collects then-current intelligence information concerning a variety of topics, some of which show intrusions into the business of people other than Muslims. At the top is information apparently from the Terrorism Interdiction Unit (TIU), relating that the TIU has instructed all their sources to watch for Muslim reactions to the verdict acquitting police officers in the homicide of Sean Bell. The last item, about participation in a whitewater rafting trip by the Muslim Student Organization of City College, is an example of infiltration of a student organization, in which the names of the participants are recorded.

43. Exhibits 9 through 11 record the surveillance of mosques and other religious organizations, showing that the informers persistently reported conversations and advocacy at the organizations, but found nothing indicating unlawful activity; although the exhibits are reports that were generated some years ago, it is apparent that NYPD policy has not changed. The news stories from 2012, saying, for example, that NYPD "informants reported on what they heard inside mosques, including the sermons," and also infiltrated student

groups, provoked public controversy and protest, with demands to stop the surveillance. Associated Press, "NY mayor defends intelligence-gathering on Muslims" February 24, 2012 (Ex. 12). If the police had ceased these practices, it would have been simple enough for the defendants to say that the information in the stories was out of date. On the contrary, the mayor said that the police practices would continue, with the words, "We just cannot let our guard down again." The speech of Commissioner Kelly in March, 2012 (Exhibit 3), referred to above in paragraphs 19-20, is to the same effect. The defendants mean to continue their practice of infiltrating Muslim organizations. Shamiur Rahman, who was sent by the NYPD into the John Jay College Muslim Student Association, was just one of an army of spies.

44. Class Counsel submit that it is apparent from the facts set forth in the paragraphs above, that the NYPD has not made any serious effort to comply with the Handschu Guidelines, either to restrict the retention of records to instances of "potential unlawful or terrorist activity" or to restrict investigations and infiltrations to cases where there are "reasonable indications" of unlawful or terrorist activity.

45. Moreover, as explained in paragraphs 19-26 and 43 above, the aims of intelligence collection by the NYPD have remained the same over time. It is notable that two of the

organizations that the informant Shamiur Rahman was assigned to infiltrate in 2012 (see his declaration, Exhibit 2), the Islamic Center of North America and the Muslim American Society, were listed in the Strategic Posture of 2006 (Ex. 7, p.60) as NGO's that the NYPD had infiltrated. Both are peaceable Muslim organizations (Haykel dec., Ex.6, para. 6, 13).

46. The NYPD is continuing a massive, all encompassing dragnet for intelligence concerning anything connected with Muslim activity through intrusive infiltration and record-keeping about all aspects of life, politics and worship. The NYPD operates on a theory that conservative Muslim beliefs and participation in Muslim organizations are themselves bases for investigation. But the character and history of those beliefs and organizations do not support the theory that such beliefs are precursors to terrorist activity, and the guidelines do not permit investigation based on beliefs. The result has been and remains a huge, unjustified intrusion on the privacy of persons associated with Islam.

47. The practices of the Intelligence Division of the NYPD in surreptitiously joining, visiting and infiltrating mosques and other organizations associated with Islam, and keeping records of such activities, simply ignore the requirement contained in the current Guidelines of a criminal predicate for such investigations. The NYPD has shown itself

to be unwilling or unable to adhere to the rules that require, for example a "reasonable indication" of unlawful activity based on "specific facts or circumstances", Guidelines Section IV(C)(1), before such an investigation is initiated.

Injuries from NYPD Intelligence Practices and Policies

48. The Handschu Guidelines at issue in this motion are not mere technical regulations; there are good reasons of policy for their existence. Keeping records about visits to public places is restricted to cases of "potential unlawful or terrorist activity" because the constant record-keeping brands places as potential havens for radicals and even terrorists when they are demonstrably not.

49. In addition, as the news stories indicate, NYPD files are inevitably subject to leaks and disclosure and the attendant public embarrassment and stigma associated with being identified in a police department dossier. Investigations and infiltrations are restricted by the Guidelines to cases where there is reason to suspect crime because investigations and infiltrations are dangerous to the institutions that are infiltrated and their participants. Recruiting informers, for example, is injurious to the community. In Ex. 1 the Associated Press reporters recounted how the NYPD sought to recruit informers for intelligence work, and put pressure on people to inform. Those who are

pressured are frightened and intimidated, and those who know them share their fears; moreover, those who are recruited are degraded by the sense of having informed on the community.

50. Informers try to find or generate sensational information that they can take back to their handlers; the presence of informers distorts the discourse and the life of those who are infiltrated. The experience of Shamiur Rahman (Ex.2) is a superb example. He was recruited and paid as an informer, and he was encouraged to find something incriminating in the organizations he visited or joined. As a result, he sought to engender inflammatory rhetoric. At present he has withdrawn as an informer, but the awareness of his work is intimidating to the people upon whom he informed. The president of John Jay College, Jeremy Travis, has expressed his dismay at the presence of an informer in the student association (Ex. 13).

51. The poisonous effects of police surveillance thus continue to spread. Informers regret their role and reveal their work, people disaffected from the NYPD (apparently) reveal documents to reporters, and the pervasive presence of the oversight becomes known to the community. College presidents as well as Muslim leaders try to reassure their communities in vain, because the surveillance is known to continue even though the identity of other informers is unknown.

52. The declarations of Linda Sarsour (Ex. 14) and Faiza Ali (Ex. 15) relate concrete examples of the injuries that flow from the NYPD's practices. Leaders of organizations become suspicious of people who offer to help; worshipers suspect that others at the mosque are infiltrators; people feel they are being watched, and fear and resent the presence of informers. Students are afraid to participate in Muslim or political activities, and parents are fearful that their children will get into trouble with the police. A sense of fear and resentment is widespread in the community.

53. Intrusions by keeping records and investigation and infiltration may be thought acceptable where there is a genuine reason to suspect crime. As part of a general policy of "intelligence," however, we submit that they are worse than onerous, and they are appropriately forbidden by the Handschu Guidelines. Pres. Travis of John Jay College put the arguments in a nutshell in his statement to his community: "I trust you would agree that, in certain limited circumstances it is appropriate for law enforcement agencies to use informants to uncover criminal activity. There is no evidence, however, that this is the case at John Jay and we have not been advised otherwise." (Ex. 13).

54. A principal injury flowing from the policy of police surveillance for intelligence, rather than based upon indications of crime, is that the program becomes

interminable. When surveillance is conducted in search of crime, there is hope that it will end when the crime is detected or is found not to exist. In the case of the NYPD policy, the surveillance goes on indefinitely, because there is no logical end to the need for intelligence. The intrusion on the Muslim community has gone on for at least seven years, and probably longer. As time goes on, participants in the program have become critical, and some have revealed some of the facts, and yet the program goes on while the sense of being watched, the fear of police infiltration grows in the community. There must be an end to this illegal program of oversight.

55. There is another injury, we submit. That is the injury to this Court and to the confidence of the community in the powers of the legal system to protect them. The NYPD has misrepresented its intelligence program as complying with the Handschu Guidelines when in fact it has been conducting a program of intelligence surveillance over the Muslim community. The misrepresentation by the police increases the injuries due to the NYPD program itself. We submit that it is time to put an end to the NYPD's limitless program of intrusion.

The Need for Continuing Oversight by the Court

56. The history of the conduct of the NYPD under the current Guidelines, which were adopted at their own suggestion, shows the many ways that the NYPD has not been truthful either to the public or to the court about their surveillance of political activities.

57. As this court noted in its latest opinion in this case, 2012 WL 5939058 (Nov. 26, 2012), the defendants allowed counsel and this Court to litigate a motion concerning the validity of an internal police order (IO 47) for months after the NYPD had rescinded the order. That was only one sign of the persistent attitude of the NYPD, which follows or refuses to follow the Guidelines and the directions of this Court as it pleases. The defendants have repeatedly taken the position that Class Counsel should have no power to question the NYPD's administration of surveillance under the Guidelines; it is their position that oversight of all such secret police work is their exclusive prerogative. They have shown that, in practice, they recognize no duty to obey any authority outside the NYPD.

58. The surveillance of institutions and organizations connected with Islam, as described above in this declaration, presents a further example of the disdain of the NYPD for the truth and for the strictures of the law. As noted above, the

NYPD claimed to be complying with the current Guidelines, both in visiting public meeting places, and in infiltrating mosques and other institutions through informants. In all these instances, however, the NYPD misrepresented its surveillance work. The NYPD secretly conducted a long-term program of infiltration for purposes of general intelligence, while claiming to adhere to the requirements of the Guidelines for a "reasonable indication" of crime as a predicate to investigation.

59. If this court grants the injunctive relief against the violation of the Guidelines requested in this motion, the court and counsel will not know whether the defendants are complying with the court's orders unless the court has a system of oversight. It is for this reason that plaintiffs move the court for the appointment of an auditor or monitor to ensure, over a period of time, that the NYPD is complying with the orders. In the absence of such an order, the past behavior of the NYPD indicates that the police will flout the court's orders and fail to inform anyone outside the NYPD.


PAUL G. CHEVIGNY

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 22, 2013.

INDEX OF EXHIBITS TO
DECLARATION OF PAUL G. CHEVIGNY
DATED JANUARY 22, 2013

EXHIBIT NO.	DESCRIPTION
1	Article Entitled "With CIA Help, NYPD built secret effort to monitor mosques, daily life of Muslim neighborhoods" (Associated Press, August 24, 2011.
2	Declaration of Shamiur Rahman executed on October 28, 2012.
3	NYPD Intelligence Division powerpoint regarding Demographics Unit marked as Exhibit 1 at deposition of Thomas Galati, June 28, 2012.
4	Transcript of deposition of Thomas Galati taken on June 28, 2012.
5	Comments of Police Commissioner Raymond W. Kelly, Fordham Law School Alumni Luncheon, Cipriani Wall Street, Saturday, March 3, 2012.
6	Declaration of Bernard Haykel executed on December 7, 2012.
7	NYPD Intelligence Division Strategic Posture 2006 -- powerpoint presentation marked as Exhibit 3 at deposition of Thomas Galati on June 28, 2012.
8	NYPD memo dated January 26, 2006 from Supervisor, Demographics Unit to Commanding Officer, C.A.R.U. re supervisors conferral with detective.
9	NYPD Intelligence Division Central Analysis Research Unit Intelligence note dated 9 Feb. 2006 re NYC mosque statements on Danish cartoon controversy.

10	NYPD Intelligence Division, Intelligence Analysis Unit, Intelligence Note dated October 16, 2006 re DD5's referencing 10/16/06 plane crash into building at 524 East 72 nd Street.
11	NYPD Intelligence Division, Intelligence Collection Coordinator, Deputy Commissioner's briefing dated Friday, 25 April, 2008 marked as Exhibit 7 at the deposition of Thomas Galati conducted on June 28, 2012.
12	Article entitled "Mayor Bloomberg defends NYPD intelligence gathering on Muslim communities across northeast" by David B. Caruso, Associated Press, 2/24/12.
13	Statements of Jeremy Travis, President of John Jay College dated October 23, 2012 and October 25, 2012.
14	Declaration of Linda Sarsour executed on January 18, 2013.
15	Declaration of Faiza Ali executed on January 18, 2013.