

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBARA HANDSCHU, RALPH DiGIA, ALEX
McKEIVER, SHABA OM, CURTIS M. POWELL,
ABBIE HOFFMAN, MARK A. SAGAL, 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)

NOTICE OF MOTION
FOR INJUNCTIVE
RELIEF

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.

PLEASE TAKE NOTICE that, upon the annexed the
declarations of Jethro M. Eisenstein, Esq. made the day
of November, 2005 and Franklin Siegel, Esq., made the
day of November, 2005 the exhibits annexed thereto and the
accompanying memorandum of law, the undersigned will move
this Court, before the Honorable Charles S. Haight,
U.S.D.J., at the United States Courthouse, 500 Pearl
Street, New York, New York on December , 2005, at 9:30
a.m. or as soon thereafter as counsel may be heard, for an

order pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining enforcement of New York Police Department Interim Order 47, on the grounds that it violates the Second Amended Order and Judgment in this case as well as the First Amendment to the United States Constitution; and granting such other and further relief as to the court may seem just and proper.

Dated: New York, New York
November , 2005

Yours etc.,

PROFETA & EISENSTEIN

Jethro M. Eisenstein (JE 6848)
14 Wall Street, 22nd Floor
New York, NY 10005
(212) 577-6500

Paul G. Chevigny (PC 3569)
NYU School of Law
40 Washington Square Park
New York, NY 10012
(212) 998-6249

Martin R. Stolar (MS 2576)
351 Broadway, 4th Floor
New York, NY 10013
(212) 219-1919

Franklin Siegel (FS 4952)
666 Broadway, 7th Floor
New York, NY 10012
(212) 406-0700

Counsel for Plaintiffs

Arthur N. Eisenberg (AE 2012)
New York Civil Liberties
Union Foundation
125 Broad Street, 17th Floor
New York, NY 10004
Of Counsel

TO:

CORPORATION COUNSEL
City of New York
100 Church Street
New York, New York 10007-2601

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DECLARATION

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and various unknown employees of the
Police Department acting as
undercover operators and informers,

Defendants.

JETHRO M. EISENSTEIN, 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 the above-captioned action and I make this affidavit in
support of the motion of the plaintiff class, pursuant to
Rule 65, FRCP, to enjoin implementation by the New York
City Police Department ("NYPD") of Interim Order 47 dated
September 10, 2004, because it violates the Second Revised

Order and Judgment in this case dated August 6, 2003 and the First Amendment to the United States Constitution. A copy of Interim Order 47 is attached hereto as Exhibit 1.

2. Interim Order 47 addresses the circumstances under which the NYPD claims authority to videotape class members engaged in political activity. Interim Order 47 also sets forth rules for retention of the videotapes taken by the NYPD of class members engaged in political activity. The plaintiff class moves to enjoin enforcement of this Interim Order because it violates Modified Handschu and the NYPD Guidelines¹ both with respect to when videotapes may be taken and with respect to when they may be retained. Relief is appropriate because the NYPD Guidelines as incorporated in the NYPD Patrol Guide "...reflect the standards' of the Constitution." Handschu v. Special Services Division, 273 F.Supp.2d 327, 348 n.11 (S.D.N.Y. 2/11/03).

3. As detailed below, the dispute which has culminated in this motion has been the subject of extensive discussion between the parties in an effort to reach common ground. These efforts have failed. The core of the dispute relates

¹ For clarity we adopt the terms used by the Court. "Modified Handschu" was used to refer to what is left of the original Handschu guidelines. See 273 F.Supp.2d 327 at 334. "NYPD Guidelines" was used to refer to the Guidelines for Investigations Involving Political Activity, 288 F.Supp.2d 411, 412, set forth as Appendix A to the Second Revised Order and Judgment, 288 F.Supp.2d at 420.

to Section VIII(A)(2) of the NYPD Guidelines which reads in its entirety as follows:

"For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity."

Under this paragraph, the NYPD asserts the right to videotape any and all political demonstrations and has been using this claimed authority to videotape entirely peaceful political gatherings of all kinds. Notwithstanding the explicit prohibition on retention unless the information "relates to potential unlawful or terrorist activity", the NYPD asserts the right to retain all the videotapes it has made for an indefinite period (at least one year) and to summarize and index the tapes so that they can be retrieved. These interpretations, taken together, permit what was intended as an exception to the NYPD guidelines to wipe out the rules limiting NYPD investigation of political activity. Current NYPD practices under Interim Order 47 threaten irreparable harm to the First Amendment rights of the plaintiff class and warrant injunctive relief.

Standing

4. Counsel for the plaintiff class have standing to apply to the Court for relief in these circumstances. The new Interim Order 47 reflects a fundamental change in the NYPD rules on videotaping of political activity. See the accompanying Declaration of Franklin Siegel at paragraphs 7-10. Class counsel have a duty to bring to the attention of the Court such a change, implemented unilaterally by the NYPD.

5. Under the Second Revised Order and Judgment dated August 6, 2003, this Court incorporated the NYPD Guidelines into and made them a part of the Court's Order and Judgment precisely "in order to clarify and enhance the standing and authority of counsel for the plaintiff class" to seek relief when Constitutional violations are threatened. 288 F.Supp.2d 411 at 420.

Nature of violation threatened

6. The claim of the plaintiff class that the NYPD engaged in the gathering and retention of information about political activity, for the purpose and with the effect of deterring members of the class from engaging in political activity, has been central to this case since it was

commenced in 1971. This constitutional claim, sustained against the defendants' motion to dismiss in 1972 (see 349 F.Supp. 766, 770), led to the Handschu Guidelines in the original consent decree, and shaped the dialogue that led to this Court's modification of the decree. As discussed below, this constitutional claim has arisen again in connection with defendants' videotaping of political activity by members of the plaintiff class.

7. Under the original Handschu guidelines, the plaintiff class was protected from unconstitutional intrusion on its members' right to engage in political activity by the requirement, embodied in this Court's order, that an NYPD investigation of a person or group engaged in political activity could only be undertaken upon receipt of specific information of criminal activity. As shown in the accompanying declaration of Franklin Siegel, videotaping of demonstrations was always understood to be an investigation of political activity, and as such was regulated by the Handschu Guidelines.

8. This Court approved Modified Handschu after the NYPD agreed to include the NYPD Guidelines in the NYPD patrol guide. As this Court said, "a salient feature of the [NYPD] Guidelines is that they do not do away entirely with the 'criminal activity requirement'". 273 F.Supp.2d

327, 346. In the NYPD Guidelines there are three graduated levels of investigative activity, each of which requires some factual predicate for the initiation of an investigation of political activity.² The standard for a full investigation requires "specific facts or circumstances indicating a past, current, or future violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient." 273 F.Supp.2d 327 at 346, quoting from what became NYPD Guidelines Section V(C) (1).

9. Section VIII of the NYPD Guidelines authorizes certain "counterterrorism activities, including "visiting public places and events" which "can be carried out even in the absence of a checking of leads, preliminary inquiry, or full investigation as described in parts I-III of these guidelines" As this Court pointed out, these "counterterrorism activities" stand outside the general rules governing investigation of political activities: "[t]here is no reasonable indication standard that must be met before engaging in the activities authorized by [NYPD Guidelines Section VIII]." 273 F.Supp.2d 327 at 346.

² Even for checking of leads, the lowest level of investigative activity, there must be information received "of such a nature that some follow-up as to the possibility of unlawful activity is warranted." NYPD Guidelines Section V(A), 288 F.Supp.2d 411 at 422.

10. The counterterrorism provision in the NYPD Guidelines about visiting public places and events, set forth at length in Paragraph 3 above, says that "[f]or the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally." (VIII(A)(2)). Based on this language, the NYPD has repeatedly asserted in discussions with class counsel that just as members of the public are free to record any demonstration with a video camera, the police may do this as well.

11. Implementing that view, Interim Order 47 provides that the use of video equipment is appropriate as long as a "permissible operational objective" exists. Permissible operational objectives "include accurately documenting events, actions, conditions, or statements made . . . during . . . public assemblages . . . in which accurate documentation is deemed potentially beneficial or useful." (emphasis added). The Interim Order lists, as a separate permissible operational objective, circumstances when "a reasonable belief exists that unlawful activity, terrorist activity or arrest activity will occur". Thus "potentially

beneficially or useful" to videotape constitutes a distinct and much broader category.

12. In an exchange of letters between counsel for the parties dated January 20, 2005, February 17, 2005, March 10, 2005 and March 31, 2005 (see Exhibits 2 through 5), the NYPD offered to consider eliminating the phrase "potentially beneficial or useful" but persisted in the broader view that the police can videotape whenever they want. This position is based on the incomplete sentence . . . "the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions of the members of the public generally," and ignores the initial limiting phrase "[F]or the purpose of detecting or preventing terrorist activities . . .".

13. In essence, the NYPD says that it may ignore the initial limiting phrase because whatever it does is for the purpose of preventing terrorist activities. As stated by Gail Donoghue, Esq. on behalf of the NYPD in her letter of March 31, 2005 (Exhibit 5):

"We seem to have a fundamental difference of opinion about what section VIII of the guidelines allows. As stated in your letter [of March 10, 2005] at page 3, you believe that 'Section VIII (A)(2) means that 'terrorist threats' but only terrorist threats, trump the rules for investigation in the guidelines.'

This, in essence says that there must be a terrorist threat before we can proactively draw on available sources of information to identify or prevent terrorist threats and activities. This interpretation totally undermines the authority given to the NYPD to gather information for the purpose of preventing or detecting terrorism when there is not yet a basis for an investigation."

The NYPD's position as expressed above is of great concern to the plaintiff class. If the view Ms. Donoghue has expressed is sustained, the NYPD will simply declare that everything it does is terrorism-related, and what was placed in the NYPD Guidelines as an exception to the rules will effectively swallow the rules.

14. In addition to the broad authority it claims to videotape, the NYPD asserts the right to retain indefinitely the videotapes its personnel have recorded. There is surely no authorization in Section VIII (A)(2) of the NYPD Guidelines for the routine retention of videotapes taken at a demonstration or other political activity.³ To the contrary, the provision itself states that "no information obtained from such visits shall be retained

³ The NYPD has acknowledged that it has no explicit authority under the NYPD Guidelines to retain the videotapes as prescribed in Interim Order 47. See letter of Gail Donoghue, Esq. dated July 20, 2004, attached as Exhibit 6.

unless it relates to potential unlawful or terrorist activity."

15. Despite this clear language in the NYPD Guidelines, Interim Order 47 provides in Section 7 that all videotapes are to be maintained for a minimum of one year from the date the images are recorded. It provides further in paragraph 8 that the NYPD is to prepare a written summary describing the event and activity preserved in each recording, to assist in indexing and retrieval. This process, applied to videotapes whose retention is prohibited by Section VIII (A)(2) of the NYPD Guidelines, has all the earmarks of 21st Century dossier creation.

16. The NYPD suggests that it needs to retain the tapes because of the possibility that they will be useful evidence in criminal or civil litigation. Class counsel have pointed out that it does not require an unlimited period (minimum of one year) to determine whether the videotape of an event has evidentiary value. In the vast majority of circumstances, the videographer knows within a short time whether he or she has recorded something that warrants retention as evidence. And if the recording does or may have such value, the proper custodian for the videotape is the district attorney, if the evidence is relevant to criminal proceedings, and the corporation

counsel, if the evidence is relevant to civil actions. These tapes do not belong in the intelligence division of the police department; yet the efforts of class counsel to persuade the NYPD to agree to an alternative custodian have been rebuffed.

16. As noted above, the constitutional claim against the NYPD for gathering and retention of information about political activity, for the purpose and with the effect of deterring members of the class from engaging in political activity, was sustained as viable in this case by Judge Weinfeld thirty-three years ago. Purpose must always be proven inferentially, but we suggest that the elements of such proof are present here.

17. The defendants have promulgated a procedure under which videotapes of completely peaceful and uneventful political activity will be retained indefinitely, and will be indexed by a description of the event to facilitate retrieval. Despite the absence of a law enforcement purpose, defendants insist that the NYPD intelligence division must be the repository of these records of political activity by members of the plaintiff class. On the basis of these facts, along with the recent history of intimidatory "debriefing" of demonstrators by NYPD Intelligence Division Personnel, see 288 F. Supp. 2d 411 at

414, a reasonable factfinder could conclude that the videotapes are being taken and retained in the NYPD intelligence division for the purpose and with the effect of deterring members of the plaintiff class from engaging in political activity.

18. Routine videotaping of people involved in political activity, followed by retention of the video even where it has no evidentiary value, serves no legitimate law enforcement function and compromises the constitutional rights of members of the plaintiff class. For all the above stated reasons, class counsel pray that their motion to enjoin enforcement of Interim Order 47, which purports to legitimate these practices, be granted.

JETHRO M. EISENSTEIN

I declare under penalty of perjury that the foregoing is true and correct. Executed on November , 2005.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DECLARATION

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and various unknown employees of the
Police Department acting as
undercover operators and informers,

Defendants.

FRANKLIN SIEGEL, for his declaration pursuant to 28 U.S.C.
1746, states as follows under penalty of perjury:

1. I am one of the attorneys for the plaintiff class in
this action. I make this declaration in support of the motion of
the plaintiff class, pursuant to Rule 65 of the Federal Rules of
Civil Procedure, to enjoin implementation by the New York City
Police Department ("NYPD") of Interim Order 47 dated September
10, 2004. Interim Order 47 sets forth the circumstances under
which the NYPD claims authority to videotape class members at
demonstrations or otherwise engaging in political activity and to

retain the videotape images thus acquired. The plaintiff class moves to enjoin implementation of Interim Order 47 because it violates the Guidelines for Investigations Involving Political Activity ("NYPD Guidelines") that were incorporated by reference in the August 6, 2003 Second Revised Order and Judgment in the case, Handschu v. Special Services Division, 288 F. Supp.2d 411 at 419 and the First Amendment to the United States Constitution.

2. For the sake of clarity I adopt the usage employed by the Court. The "Handschu Guidelines" are the rules that were in effect until this Court granted the NYPD motion for a modification of the consent decree. "Modified Handschu" refers to what is left of the Handschu guidelines after the modification.¹ "NYPD Guidelines" refers to the Guidelines for Investigations Involving Political Activity, incorporated by reference in, and set forth as Appendix A to, the Second Revised Order and Judgment, 288 F.Supp.2d at 419.

3. As noted in the accompanying declaration of Jethro M. Eisenstein, there has been extensive correspondence between counsel for the plaintiff class and the NYPD about the authority of the NYPD to videotape political activity under the Handschu Guidelines and under the NYPD Guidelines. In a letter to class

¹ See 273 F.Supp.2d 327 at 334. This is the document that comprises "just over two double-spaced typed pages, the most prominent word being "DELETED". Id. at 335.

counsel dated February 17, 2005, Gail Donoghue, Esq., counsel for the NYPD, asserted that:

"[t]he practice of videotaping at demonstrations was not covered under the old Handschu Guidelines. Rather, a policy was established at the suggestion of the Handschu Authority. The policy permitted taping at demonstrations under circumstances where illegal activity was taking place. Videotaping could begin when illegal activity seemed about to occur, or had occurred, and there was no limitation on the period for which tapes could be retained..."

Exhibit 3.

4. In the Handschu Guidelines, an investigation was defined as activity "undertaken to obtain information or evidence." See 605 F.Supp.1384 at 1421. Political activity was defined as "the exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions." 605 F.Supp. at 1420. The same definitions have been carried forward unchanged in Modified Handschu, see 273 F.Supp.2d at 350 and 288 F.Supp.2d at 420.

5. Ms. Donoghue is demonstrably incorrect in her assertion that videotaping at demonstrations was not "covered" under the Handschu guidelines. Videotaping was "covered" under the rules in effect before this Court's modification of the consent decree. It is also "covered" under the NYPD Guidelines in effect now. Videotaping was "covered", then as now, because the definitions of an "investigation" and of "political activity" have not changed, and videotaping a demonstration is unquestionably an investigation of political activity.

6. On February 4, 1991, in connection with a complaint about videotaping and photographing of a demonstration, the Handschu Authority reported to then Police Commissioner Lee Brown that the Handschu Guidelines governed these police activities:

"The Handschu guidelines permit photographing and videotaping when 1) it is pursuant to an authorized investigation under (IV) (c), which generally requires that prior to an initiating an investigation the Department submit to the Handschu authority an Investigation Statement (IS) which specifies the basis for the investigation, or 2) it is not otherwise proscribed by the Guidelines, as, for example, if it is being used for training purposes or other non-prohibited use, such as filming a crime in progress or arrest activity."

Report to the Commissioner from the Handschu Authority, February 4, 1991, attached as Exhibit 7, at page 6. This report was signed by the members of the Authority, including NYPD Commissioner Raymond W. Kelly, who was then First Deputy Commissioner.

7. Pursuant to the recommendations in the February 4, 1991 report by Commissioner Kelly and the other members of the Handschu Authority, the NYPD promulgated Interim Order 6 dated February 8, 1991 setting forth "guidelines for the use of photographic/video equipment by operational personnel at political demonstrations". A copy of Interim Order 6 is attached as Exhibit 8.

8. Interim Order 6 stated that

"The Handschu Authority has determined that the use of photographic or video equipment by operational personnel at

political demonstrations is appropriate only if a permissible objective exists. The following constitute permissible operational objectives:

a. A bona-fide need exists to prepare training materials on proper crowd control techniques, or

b. A reasonable belief exists that criminal activity and/or arrest activity will occur during the demonstration. "

9. Under Interim Order 6, all photos or videotapes taken were to be forwarded forthwith to the Office of the Chief of Department. The retention period was sixty days. If the videotape had been made for training purposes, it was to be forwarded to the Police Academy. If it related to criminal activity, it would be treated as evidence. Otherwise, destruction was mandatory unless the Chief of Department believed that the material should be retained for some other operational purpose. In that event, the material and a written request for retention were to be forwarded to the Handschu Authority.

10. The NYPD functioned under these rules for ten years. Effective January 1, 2000, permissible operational objectives were expanded to include a live video transmission to assess crowd conditions, with the understanding that no recording would be made of the video transmission. See Procedure number 212-71, copy attached as Exhibit 9. Ms. Donoghue's assertion that the practice of videotaping demonstrations was not covered by the Handschu Guidelines is thus contradicted by the NYPD's own documents.

11. Ms. Donoghue is equally incorrect when she asserts that the NYPD guidelines do not govern videotaping. As noted above, Modified Handschu left intact the definitions of investigation and political activity, and the NYPD Guidelines provide that they "are binding on all members of the service who are engaged in the investigation of political activity." 288 F.Supp.2d at 421.

12. Under the NYPD Guidelines, videotaping, like any other investigation of political activity, is subject to the requirement that there be some factual predicate for the investigation. The provision of the NYPD Guidelines which the NYPD asserts as authority for Interim Order 47 is, by its own terms, limited to activities undertaken "for the purpose of detecting or preventing terrorist activities." As discussed at length in the Declaration of Jethro M. Eisenstein, this provision was intended as an exception to the general rule requiring a factual predicate for the initiation of an investigation. If the Interim Order 47 is sustained, the exception will have obliterated the rule.

13. For the reasons stated above, as well as in the accompanying Declaration of Jethro M. Eisenstein and Memorandum of Law, counsel for the plaintiff class pray that the relief sought herein be granted.

FRANKLIN SIEGEL (FS-4952)

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 2005.

EXHIBIT 1



INTERIM ORDER

SUBJECT. REVISION TO PATROL GUIDE 212-71, "GUIDELINES FOR THE USE OF PHOTOGRAPHIC/VIDEO EQUIPMENT BY OPERATIONAL PERSONNEL AT DEMONSTRATIONS"		
DATE ISSUED:	REFERENCE:	NUMBER:
09-10-04	*PG 212-71	47

1. Recent modifications to the *Handschu* Consent Decree, along with advancements in and the availability of technology to aid in police operations, necessitates that procedures governing the use of video and photography by members of the service be updated.

2. Accordingly, this procedure establishes permissible operational objectives that authorize and apply generally to the use of video and photography, except in situations involving ongoing criminal or internal investigations, standard evidence collection, or arrest processing procedures. These revised procedures apply to the use of video and photography by members of the service to accurately record police operations and other public activity. Examples of such authorized uses include preparing training materials and monitoring and/or assessing: emergency incidents, traffic control, crowd control (parades, demonstrations, etc.), counter-terrorism, public safety, crime, or disorder conditions, deployment of police resources, etc. Moreover, the revised procedures permit the use of video and photography equipment by members of the service assigned to units other than Technical Assistance and Response Unit (TARU) and the Police Academy, Video Production Unit, and for approval of the use of these methods at the Patrol Borough/Bureau level.

3. Therefore, Interim Order 47 series 2001, "Revision to Patrol Guide Procedure 212-71, Guidelines for the Use of Photographic/Video Equipment by Operational Personnel at Demonstrations," is **REVOKED** and the following retitled procedure, "Guidelines for the Use of Photographic/Video Equipment to Record Police Operations and Public Activities," will be complied with:

PURPOSE To set forth the permissible operational objectives for which members of the service may use photographic/video equipment to record images in situations outside of ongoing criminal or internal investigations, standard evidence collection or arrest processing procedures; to establish procedures for the approval and use of such equipment; and to establish responsibility for the maintenance, review, storage and disposition of such images.

SCOPE This procedure establishes permissible operational objectives that authorize and apply generally to the use of video and photography, except in situations involving ongoing criminal or internal investigations, standard evidence collection, or arrest processing procedures. This procedure applies to the use of video and photography by members of the service to accurately record police operations and other public activity. Examples of such uses include preparing training materials and monitoring and/or assessing: emergency incidents, traffic control, crowd control (parades, demonstrations, etc.), counter-terrorism, public safety, crime, or disorder conditions, deployment of police resources, etc. Moreover, this procedure permits the use of video and photography equipment by members assigned to units other than Technical Assistance and Response Unit (TARU) and the Police Academy, Video Production Unit, and for approval of the use of these methods at the Patrol Borough/Bureau level.

SCOPE
(continued)

The use of photographic or video equipment by operational personnel to accurately record police operations and other public activity is appropriate if a permissible operational objective exists. Permissible operational objectives include accurately documenting events, actions, conditions, or statements made:

- a. during special events, disorder events, arrests, public assemblages or any other critical incident in which such accurate documentation is deemed potentially beneficial or useful; or
- b. to prepare training materials; or
- c. when a reasonable belief exists that unlawful activity, terrorist activity or arrest activity will occur; or
- d. to make assessments and prepare after action reports concerning the proper deployment of police resources and/or use of tactics during any police operations; or
- e. to monitor public areas for crime control purposes.

NOTE

Pursuant to Modified Handschu Guidelines, the investigation of political activity may only be initiated by and conducted under the supervision of the Intelligence Division. Therefore, members of the service not assigned to the Intelligence Division may not use video recording or photography for the purpose of investigating political activity, without the express written approval of the Deputy Commissioner, Intelligence. However, any member of the service may and should report his or her observations of suspicious conduct which involves political activity to his or her commanding officer or to the Intelligence Division, Operations Desk, (646) 805-6400, 24 hours a day, 7 days a week.

Members of the service are also reminded that the particular use of the equipment under the circumstances contemplated may require the prior issuance of a court order. For example, an eavesdropping warrant is required to use a camera with audio recording capability to intentionally overhear or record a conversation without the consent of at least one party thereto while not present thereat and a video surveillance warrant is required if images of a person are transmitted without the consent of that person or another person thereat under circumstances in which such observation in the absence of a video surveillance warrant infringes upon such person's reasonable expectation of privacy. Questions concerning these issues should be directed to the Legal Bureau at (646) 610-5400.

PROCEDURE

When ranking personnel of this Department contemplate the use of photographic or video recording equipment for a permissible operational objective:

RANKING OFFICER

1. Submit a report, on **Typed Letterhead**, to Patrol Borough/Bureau Commander concerned, requesting the deployment of equipment and properly trained personnel.

NOTE

In emergency situations, requests may be made by telephone, and equipment and personnel may be deployed. However, the report must be subsequently submitted in writing in accordance with this procedure.

**RANKING
OFFICER
(continued)**

2. Include the following information in the request:
 - a. Date, time and location of incident or event to be recorded, and
 - b. Identity of the individuals or groups involved (if known), and
 - c. Specific permissible operational objective(s) to be achieved.

NOTE

Every request for the use of photographic/video equipment will be entered into a serially numbered log, maintained solely for this purpose, at the office of the Patrol Borough/Bureau Commander. In addition, the office of the Patrol Borough/Bureau Commander will maintain copies of all written requests.

**PATROL
BOROUGH/
BUREAU
COMMANDER
CONCERNED**

3. Direct that appropriate entries in log be made upon receipt of request.
 - a. Include determination as to whether request is approved/disapproved and reason therefore.
4. Return approved/disapproved request to ranking officer concerned. Include:
 - a. Explanation for approval/disapproval.
 - b. Unit designated to operate photographic/video equipment, if approved.
5. Forward copy of approved request to
 - a. Office of the Chief of Department (for information), through channels.
 - b. Commanding Officer, Technical Assistance Response Unit (TARU), or other unit, as appropriate, to assign members to operate photographic/video equipment.

NOTE

The Office of the Chief of Department will maintain a centralized file of all approved requests.

*The Patrol Borough/Bureau Commander concerned shall have the option of assigning and deploying another appropriate unit, rather than engaging the services of TARU or the Police Academy, Video Production Unit. If this option is chosen, the Commanding Officer of the unit (borough, precinct, housing, transportation, task force personnel etc.) designated by the Patrol Borough/Bureau Commander concerned shall be responsible for the security, maintenance, chain of custody, review, storage, and disposition of the original media source, in the manner prescribed below. Receipts for the original media source should be prepared with captions noting who the operator of the equipment is, and who is receiving/accepting the recorded videotape or photograph. At future dates, should copies or transference of the original media be required, TARU can assist the requesting unit with processing. Any unit or persons requesting assistance in duplication of an original media **MUST** make such request in writing to the Commanding Officer of the Technical Assistance Response Unit. Once processing is completed, the requesting unit will resume the responsibility of securing the original media(s).*

INTERIM ORDER NO. 47

NOTE
(continued)

Photographs/video taken for training purposes should be consistent with the permissible operational objective. For example, photographs/video taken for training purposes should generally not contain close-ups of members of the public, but should focus on police tactics and behavior.

COMMANDING OFFICER, TARU/OTHER DESIGNATED UNIT

6. Assign appropriately trained personnel to the approved request.

NOTE

Training of selected personnel assigned to use the photographic or video equipment will be conducted by Technical Assistance and Response Unit (TARU). In addition, all photographic or video equipment that is needed will be obtained through TARU.

UPON COMPLETION OF PHOTOGRAPHING/VIDEOTAPING:**COMMANDING OFFICER, TARU/OTHER DESIGNATED UNIT**

7. Maintain all photographs/video recordings prepared in connection with this procedure for a minimum of one (1) year from the date the images were recorded.
8. Prepare and maintain a written summary describing the event and activities preserved in each recording, to assist in indexing and retrieval.
9. Facilitate review of the recorded materials by the ranking officer who initiated the request to determine whether they have value either as evidence of criminal activity or as documentation under a permissible operational objective.
 - a. If the materials contain evidence of criminal activity, they will be considered evidence, and handled accordingly.
 - b. If the materials are deemed valuable for other purposes, for example, litigation, training, after action reports, etc., they will be similarly preserved in connection with that purpose.
 - c. After one (1) year, materials not meeting the criteria in (a.) or (b.) above may be destroyed. In determining whether materials have such value or may be destroyed (video recordings, discs, etc. may be reused), the Commanding Officer, TARU/Other Designated Unit shall confer with the ranking officer who authorized or requested the taking of video/photographs.

NOTE

The foregoing video recording maintenance, review, storage and disposition procedures shall not apply with respect to any closed circuit television patrol or other similar surveillance camera system for which separate procedures may be established, including those set forth in, but not limited to, Interim Order 11-1 series 2000, "Housing Bureau Closed Circuit Television Patrol."

**ADDITIONAL
DATA**

Personnel assigned to operate photographic/video equipment pursuant to this procedure will strictly adhere to the following guidelines:

- a. Determine from the ranking officer in charge who is to be photographed/video recorded and/or what type(s) of activity or conduct is to be photographed/video recorded. Technicians will not engage in unauthorized photographing/video recording.
- b. Supervisors will monitor their subordinates' activity to ensure that there is no unauthorized photographing/video recording.
- c. All photographs taken and video recordings made are the property of the Department and shall not be released to entities outside the Department, except in accordance with existing law or by the direction of competent authority.

The ranking officer in charge will be held strictly accountable for all photographs and video recordings prepared.

**RELATED
PROCEDURES**

Guidelines for Uniformed Members of the Service Conducting Investigations Involving Political Activity (P.G 212-72)

**FORMS AND
REPORTS**

Typed Letterhead

4. Interim Order 47, series 2001, is hereby **REVOKED**.

5. Any provisions of the Department Manual or any other Department directives in conflict with the contents of this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

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All Commands

INTERIM ORDER NO. 47

EXHIBIT 2

PROFETA & EISENSTEIN

14 WALL STREET
22ND FLOOR
NEW YORK, NEW YORK 10005-2101
(212) 577-6500
TELECOPIER
(212) 577-6702
E-MAIL: PEI616@AOL.COM

JETHRO M. EISENSTEIN
FRED R. PROFETA, JR.

OF COUNSEL
BERNARD A. HELFAT†
CONSTANCE M. BURKE
MICHAEL J. ORLOFSKY†*
†ALSO A MEMBER OF THE
DISTRICT OF COLUMBIA BAR
*ALSO A MEMBER OF NEW JERSEY BAR

January 20, 2005

Gail Donoghue, Esq.
Special Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 6-110
New York, NY 10007-2601

Re: Barbara Handschu, et. al v.
Special Services Div., et al.
71 Civ. 2203 (CSH)

Dear Ms. Donoghue:

I am writing to continue our discussion of NYPD retention of photographs and videotapes taken at demonstrations. I will start by reviewing the discussion to date.

The current retention policy is set forth in NYPD Interim Order 47 issued on September 10, 2004, revising Patrol Guide 212-71. My letter to you of October 25, 2004 expressed our objection to that retention policy, and to the underlying assertion of power to take photographs and videotapes at demonstrations whenever the NYPD deems it "potentially beneficial or useful."

At our meeting on December 7, 2004, we focused on the language of Section VIII (A)(2) of the new Handschu Guidelines:

"For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to

the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity."

You pointed to the first sentence as authority to photograph or videotape at demonstrations whenever the NYPD deems it "potentially beneficial or useful." Plaintiff's counsel pointed to the second sentence as barring the retention of images thus acquired unless they relate to potential unlawful or terrorist activity.

You acknowledged at our meeting that there is now no authority for routine retention under Section VIII (A)(2). You advised us that the NYPD is prepared to go back to court to seek an amendment of the guidelines to provide such authority. You asked plaintiffs' counsel whether there was a retention protocol to which we could agree. We proposed that any retained images be kept at the office of Corporation Counsel. This proposal was rejected. You asked us to make a proposal for a retention protocol under which the images would remain in the custody of the NYPD.

Before I describe our proposal, I want to make it clear that plaintiffs' counsel do not concede the authority of the NYPD to videotape or photograph under Section VIII(A)(2) whenever it is deemed "potentially beneficial or useful." The introductory phrase of the first sentence of Section VIII(A)(2) gives the NYPD the authority you claim only "for the purpose of detecting or preventing terrorist activities. . ." (emphasis added). The preamble to Section VIII notes that the NYPD "must proactively draw on available sources of information to identify terrorist threats and activities. . ." and that the Section therefore "identifies a number of authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, preliminary inquiry or full investigation as described in these guidelines. . ." (emphasis added).

This Section says that terrorist threats, but only terrorist threats, trump the rules for investigations in

PROFETA & EISENSTEIN

Gail Donoghue, Esq.

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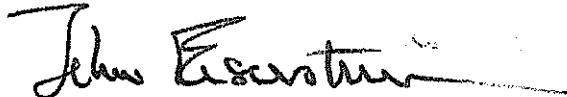
January 20, 2005

the guidelines. The new Interim order 47, which permits videotaping at demonstrations whenever the NYPD deems it "potentially beneficial or useful," effectively reads that introductory limiting phrase out of the provision. The Interim Order must be modified to limit photographing and videotaping at demonstrations to circumstances where the activity is part of an investigation as that term is defined in the guidelines or is for the purpose of detecting or preventing terrorist activities.

If the NYPD will agree to modify the Interim Order as set forth above, we will agree that images created under such a revised standard can be retained for a reasonable period if they are maintained in or under the control of the Legal Bureau of the NYPD and if access to the images is recorded in a log containing the following information: (1) who got access; (2) to what images; (3) for what purpose. The "purpose" entry would be limited to information (e.g., "Investigation # ___") that would not compromise any NYPD activity. Under our proposal, this log is to be a public record, available on request. This proposal serves the purposes of getting these materials out the hands of the Intelligence Division, of requiring Intelligence Division personnel to identify themselves if they seek access to the material, and of requiring Intelligence Division personnel to provide some explanation of the need for access.

Please let us know within the next ten days whether you will agree to the changes we have proposed.

Sincerely,



Jethro M. Eisenstein

JME/s

cc: Hon. Charles S. Haight
Paul G. Chevigny, Esq.
Arthur Eisenberg, Esq.

Martin R. Stolar, Esq.
Franklin Siegel, Esq.

EXHIBIT 3



Gail Donoghue
Special Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

(212) 788-0500
FAX (212) 442-8602
gdonoghue@law.nyc.gov

February 17, 2005

Jethro M. Eisenstein
Profeta & Eisenstein
14 Wall Street - 22nd Floor
New York, NY 10005-2101

Re: Handschu v. Special Services Division, 71 Civ. 2203 (CSH)

Dear Jethro,

I write to respond to the proposals contained in your January 20, 2005 letter concerning the use of videotape by the NYPD. Each of your two proposals are addressed below.

1. Deletion of "potentially beneficial or useful" from paragraph 3.a. of the Interim Order.

The practice of videotaping at demonstrations was not covered under the old Handschu Guidelines. Rather, a policy was established at the suggestion of the Handschu Authority. That policy permitted taping at demonstrations under circumstances where illegal activity was taking place. Videotaping could begin when illegal activity seemed about to occur, or had occurred, and there was no limitation on the period for which the tapes could be retained. In addition, it was permissible to create videotapes for the purpose of training and tactical development.

The modified guidelines do not address videotaping. Consequently, there is no restriction on the use of videotape or cameras at public events. Nor is there such a restriction under the Constitution. Moreover, because under the modified guidelines the police can attend public events on the same terms and conditions as the public generally, they may now record events at demonstrations without regard for whether or not there is criminal activity, although they may not retain the tapes unless they are related to criminal or terrorist activities. This provision was added to the modified guidelines to allow the police to be more proactive in detecting and preventing terrorist activities. It is fairly obvious that the use of such equipment at public events

can serve as a deterrent as well as a means of preserving evidence in the event there is an act of terror. Inasmuch as the tapes produced relate to criminal activity, or are useful in the deterrence of terrorism, there is no limitation on their retention.

To the extent that the words "potentially beneficial or useful" convey to you that the authorization to use photographic equipment goes beyond the circumstances described above, the Department is willing to consider modifying that provision to include the more specific circumstances under which taping would be permitted including, for example, the preparation of training materials, monitoring or assessing emergency incidents, traffic and crowd control, disorder conditions and detection, prevention and recording of crimes and acts of terrorism.

2. Retention of Tapes Under the Control of the Legal Bureau and the Maintenance of a Log.

While it is impractical to store tapes at the Legal Bureau, the NYPD is willing to consider the inclusion of language addressing your concern about the general availability of the tapes. The Interim order already contains a note requiring that all requests for tapes will be in writing and that a log will be kept. The Department is willing to include in the log, the identity of the requester, and the purpose of the request (limited description which does not compromise any ongoing investigation). In addition to the log requirements, the Department is willing to require that requests for tapes from entities outside of the Department, (other than the District Attorney, the CCRB and the Law Department) will require the approval of the Legal Bureau.

We believe these suggestions address your concerns about possible unauthorized use of videotapes. If you agree, we will prepare a new draft of the interim order. I look forward to hearing from you.

Yours truly,



Gail Donoghue

cc: Thomas Doepfner

EXHIBIT 4

PROFETA & EISENSTEIN

22ND FLOOR

14 WALL STREET

NEW YORK, NEW YORK 10005

(212) 577-6500

TELECOPIER

(212) 577-6702

E-MAIL: pe1616@aol.com

JETHRO M. EISENSTEIN

FRED R. PROFETA, JR.

OF COUNSEL

BERNARD A. HELFAT†

CONSTANCE M. BURK

MICHAEL J. ORLOFSKY†*

†ALSO A MEMBER OF THE
DISTRICT OF COLUMBIA BAR

*ALSO A MEMBER OF NEW JERSEY BAR

March 10, 2005

Gail Donoghue, Esq.
Special Assistant Corporation Counsel
New York City Law Department
100 Church Street, Room 6-110
New York, NY 10007-2601

Re: Barbara Handschu, et. al v.
Special Services Div., et al.
71 Civ. 2203 (CSH)

Dear Gail:

I am writing on behalf of counsel for the plaintiff class in this case to respond to your letter of February 17, 2005. For the reasons set forth below, your proposal to delete the words "potentially beneficial or useful" from paragraph 3a of Interim Order 47 (9/10/04) will not address our concerns.

It is simply incorrect to state as you do that the practice of videotaping at demonstrations was not "covered" under the old Handschu guidelines. The old Handschu guidelines governed the investigation of political activity. Investigation was defined as "a police activity undertaken to obtain information or evidence" (IIC). Political activity was defined as "the exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions." (IIA). Thus police videotaping at political demonstrations was an activity squarely within the ambit of the guidelines, and the rules proposed by the Handschu Authority and adopted by the Police Department were an acknowledgement of this plain fact.

These rules recognized that pursuant to the Handschu guidelines, videotapes for investigatory purposes were only to be taken by the Public Security Section of the Intelligence Division during the course of an authorized investigation, a view which Judge Haight endorsed. See 737 F.Supp. at 1303. In their various iterations, the rules recommended by the Handschu authority described the circumstances when operational (as opposed to Intelligence Division) personnel could videotape political activity:

a. When a bona-fide need existed to prepare training materials on proper crowd control techniques, or

b. When a reasonable belief existed that criminal activity and/or arrest activity will occur during the demonstration. (See Interim Order 6 dated 2/8/91)

A provision was later added for a live video feed to a remote command post for the purpose of assessing crowd conditions for proper deployment of police resources with the understanding that there would be no recording of this video transmission. (See Procedure No. 212-71, effective 1/1/00, paragraph 10.)

Under the rules that implemented the old Handschu guidelines, there was a strict limitation on the period during which videotapes could be retained. Interim Order 6, Procedure 212-71 and Interim Order 47, issued 12/10/01, envisioned action within 60-90 days after the videotapes had been taken. If the videotapes had been made for training purposes, they went directly to the Commanding Officer of the Police Academy. If the tapes had been made in connection with criminal activity, they would be handled as evidence if they contained images of such activity and would otherwise be destroyed.

The modified Handschu guidelines also address videotaping. The definitions of investigation and political activity have not changed. See 273 F.Supp.2d 349. The new Guidelines for Investigations Involving Political Activity, which are incorporated by reference into the Second Revised Handschu Order and Judgment, list video surveillance as one of the investigative techniques that may be used when the NYPD has initiated an "inquiry".

PROFETA & EISENSTEIN

Gail Donoghue, Esq.

3

March 10, 2005

While the guidelines state that video surveillance may be employed without any prior authorization from a supervisor, (V(B)(6)(g)), the listed investigative techniques may only be undertaken in relation to political activity if there was a basis to initiate an "inquiry" to begin with (V(B)(1)). If no inquiry has been initiated, videotaping a demonstration is not authorized. As you know, the Guidelines for Investigations Involving Political Activity are binding on the Police Department and counsel for the plaintiff class have standing and authority to apply to the Court for relief when they are being violated.

The Police Department position on videotaping can only be arrived at by reading paragraph VIII(A)(2) to contradict, negate and essentially eradicate the provisions of the Guidelines just described above. The introductory phrase of that provision gives the NYPD the authority "to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally" only "for the purpose of detecting or preventing terrorist activities . . ." The preamble to Section VIII notes that the NYPD "must proactively draw on available sources of information to identify terrorist threats and activities . . ." and that the Section therefore "identifies a number of authorized activities which further this end and which can be carried out even in the absence of a checking of leads, preliminary inquiry or full investigation as described in these guidelines . . ."

As I pointed out in our letter of January 20, 2005, Section VIII(A)(2) means that "terrorist threats, but only terrorist threats, trump the rules for investigations in the guidelines." Apparently in response to this, you say that "it is fairly obvious that the use of [video] equipment at public events can serve as a deterrent as well as a means of preserving evidence in the event there is an act of terror. Inasmuch as the tapes produced relate to criminal activity, or are useful in the deterrence of terrorism, there is no limitation on their retention." (letter of February 17, 2005).

We do not agree with or even understand these assertions. It is not at all obvious to us that videotaping public events can serve as a deterrent to

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Gail Donoghue, Esq.

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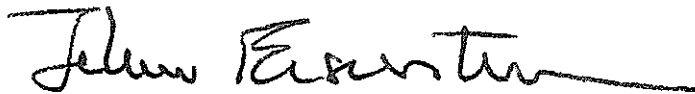
March 10, 2005

terrorism. Beyond this, your argument proves too much. According to this argument, keeping a permanent record of all participants in peaceful demonstrations would be a deterrent to terrorism and therefore is permissible under the court's order, which would mean that the controls that are in the guidelines are of no effect at all.

The text of the new interim Order 47 issued on September 10, 2004 only heightens our concern that what is contemplated is a digital dossier on demonstrators. Retention periods that were 60-90 days in the old rules have increased to at least a year, and the NYPD unit with possession of the video material is directed to "prepare and maintain a written summary describing the event and activities preserved in each recording to assist in indexing and retrieval" before there has even been a determination whether the tape has value as documentation under a permissible operational objective.

Maintaining digital video recordings of participants in peaceful demonstrations in the Police Department is the 21st Century version of one of the practices that led us to bring this case 34 years ago. The new guidelines clearly address and limit when a video record of political activity can be acquired and retained. The new version of interim order 47 arrogates power to the Police Department well beyond what is authorized by the guidelines approved by the Court. Unless the Police Department is prepared to revise the interim order to bring it into compliance with those rules, we will seek relief on this issue from Judge Haight.

Sincerely,



Jethro M. Eisenstein

JME/s

cc: Hon. Charles S. Haight
Paul G. Chevigny, Esq.
Arthur Eisenberg, Esq.

Martin R. Stolar, Esq.
Franklin Siegel, Esq.

TRANSACTION REPORT

P. 01

MAR-10-2005 THU 11:54 AM

BROADCAST

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
MAR-10	11:43 AM	GAIL DONOGHUE	1' 35"	5	SEND	OK	468	
	11:45 AM	MARTIN STOLAR	2' 01"	5	SEND	OK	468	
	11:48 AM	FRANKLIN SIEGEL	2' 23"	5	SEND	OK	468	
	11:50 AM	ARTHUR EISENBERG	1' 36"	5	SEND	OK	468	
	11:53 AM	PAUL CHEVIGNY	1' 33"	5	SEND	OK	468	

TOTAL : 9M 8S PAGES: 25

14 Wall Street
 New York, NY 10005
 Phone: (212) 577-6500
 Fax: (212) 577-6702

Profeta & Eisenstein

Fax

To: Gail Donoghue, Esq. **From:** Jethro M. Eisenstein

Fax: (212) 442-8602 **Date:** March 10, 2005

Re: Handschu v. Special Services **Pages:** 5 pages including cover sheet

CC: Paul G. Chevigny, Esq. (212) 995-4590 Martin R. Stolar, Esq. (212) 941-0980
 Franklin Siegel, Esq. (718) 340-4430 Arthur Eisenberg (212) 344-3318

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•Comments:

EXHIBIT 5



Gail Donoghue
Special Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

(212) 788-0500
FAX (212) 442-8602
gdonoghue@law.nyc.gov

March 31, 2005

BY FAX TRANSMISSION (212-577-6702)

Jethro M. Eisenstein
Profeta & Eisenstein
14 Wall Street – 22nd Floor
New York, NY 10005-2101

Re: Handschu v. Special Services Division, 71 Civ. 2203 (CSH)

Dear Jethro,

I write to address your letter to me dated March 10, 2005 in which you respond to my letter of February 17, 2005.

As you are aware, my February 17, 2005 letter was part of an ongoing discussion in which we have been engaged to address the objections of class counsel to a draft interim order prepared by the NYPD concerning electronic videotaping at demonstrations. That discussion included other letters as well as a face-to-face meeting at our offices at which Assistant Deputy Commissioner Thomas Doepfner and Captain Kerry Sweet of the NYPD were present. At that meeting we explained some of the practical problems that would result from your proposed changes to the interim order as well as realistic ways we might address your concern about potential unauthorized use of the tapes.

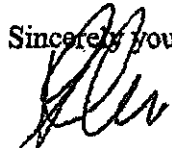
We read your March 10th letter as declaring an end to further discussion of the issues. We find this puzzling for two reasons. First, my February 17th letter contained specific proposals in response to your January 20th letter and second, the demand that we bring the interim order into compliance with the Handschu Guidelines if we are to avoid further litigation throws us back to where we were when we initiated our discussions.

We seem to have a fundamental difference of opinion about what Section VIII of the Guidelines allows. As stated in your letter at page 3, you believe that "Section VIII(A)(2) means that 'terrorist threats' but only terrorist threats, trump the rules for investigations in the Guidelines." This, in essence says that there must be a terrorist threat before we can proactively draw on available sources of information to identify or prevent terrorist threats and activities. This interpretation totally undermines the authority given to the NYPD to gather information for the purpose of preventing or detecting terrorism when there is not yet a basis for an investigation.

We continue to believe that the evil to be guarded against is the unauthorized use of videotapes with the potential to injure individual persons, and that this issue is addressed by the interim order.

If you have any questions, or would like to discuss this further, including how the issue might best be presented to Judge Haight, please feel free to call.

Sincerely yours,



Gail Donoghue
Special Counsel to the
Corporation Counsel

cc: Thomas P. Doepfner

EXHIBIT 6



Gail Donoghue
Special Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

(212) 788-0500
FAX (212) 442-8602
gdonoghue@law.nyc.gov

July 20, 2004

VIA FAX NO. 718-340-4275

Franklin Siegel, Esq.
Attorney-at-Law
666 Broadway – 7th Floor
New York, NY 10012

Re: Handschu v. Special Services Division 71 Civ. 2203 (CSH)

Dear Mr. Siegel:

We write in response to your letter dated April 16, 2004 in which you request that the Police Department cure two practices: (1) the videotaping of demonstrations as reflected in the taping of the March 20, 2004 peace march and (2) undercover surveillance of lawful political meetings. The NYPD has considered the claims made in your letter. Its conclusions are set forth below.

Videotaping of the March 20, 2004 March and Rally

Section VIII (a)(2) provides that the Police Department may, for the purpose of detecting or preventing terrorist activities, attend any event that is open to the public on the same terms and conditions as members of the public generally. This same provision does, however, limit the retention of information gathered at such events to that which relates to potential unlawful or terrorist activity.

Because any member of the public is free to make a photographic record of any political event, Section VIII (a)(2) permits the NYPD to do the same. Thus, based on this provision in the Guidelines, the only question to be decided is whether the NYPD has complied with so much of Section VIII(a)(2) as relates to the retention of the tapes of the March 20, 2004 demonstration.

Implicit in the authority of the NYPD to retain information gathered at public events, is that such information may be retained for a reasonable period to allow for an assessment about what information, if any, relates to potential unlawful or terrorist activity.

At the time of the March 20, 2004 event there was litigation pending against the NYPD seeking equitable relief for alleged policies with respect to the policing of political demonstrations. The policing methods employed by the NYPD at the March 20, 2004 event were subjects about which the plaintiffs sought discovery. For that reason, the NYPD determined it would be inappropriate to destroy any of the tapes. Under these circumstances, the NYPD believes retention of the tapes did not violate the Handschu Guidelines.

Alleged Undercover Surveillance of Political Meetings

The purpose of the Handschu Guidelines is to protect individual rights while at the same time permitting the NYPD to develop intelligence. The confidentiality of intelligence collected is assured by the requirement that an individual believing him or herself to be aggrieved brings his or her complaint to the Handschu Authority.

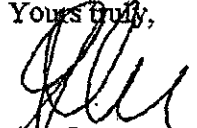
Section V of the Guidelines states that "[A]ny time a person or member of a group or organization, having reason to believe that such person, group or organization has been the subject of investigation of political activity which violates constitutionally guaranteed rights and privileges, may request in writing which sufficiently identifies the requesting party that the Authority make inquiry of the appropriate investigative officer of the NYPD."

The role of the Handschu Authority is to review records to determine if the constitutional rights of a particular person were violated by virtue of an investigation conducted by the NYPD. The scope of its review under Article V is limited to an "inquiry into the circumstances of such investigation with respect to the requesting party." Section V.B.1,2, 3.

We note that your letter relies on press reports claiming that the NYPD infiltrated a group. Although an advisor to the group was identified in the article, neither that person nor any other person or member of the group has presented a claim in writing that his or her constitutional rights were violated. It has been the consistent position of the Authority that its power of inquiry is not triggered by press reports. In the event the Authority receives a request in writing identifying a person who claims that his or her rights were violated by virtue of infiltration by the NYPD of a group or organization, the Handschu Authority will conduct the appropriate investigation.

If you have any questions, or would like to discuss these issues further, please do not hesitate to call.

Yours truly,


Gail Donoghue
Special Counsel

cc: Thomas Doepfner

EXHIBIT 7

The
City
of
New York



LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, N. Y. 10007

6-D-8

THOMAS W. BERGDALL

Senior Litigator

(212) 788-1111
FAX (212) 788-0367

February 7, 1991

Paul Chevigny, Esq.
40 Washington Square South
New York, New York 10012

Jethro M. Eisenstein, Esq.
100 Maiden Lane, Suite 1616
New York, New York 10013

Martin Stolar, Esq.
351 Broadway
4th Floor
New York, New York 10013

Franklin Siegel, Esq.
666 Broadway
7th Floor
New York, New York 10012

BY HAND

Re: Handschu v. Special Services Division

Dear Counsel:

Please find enclosed a report of the Handschu Authority, dated February 4, 1991, which was prepared in response to your letter of inquiry of last April. I believe that this report substantively addresses each of the concerns expressed in your prior correspondence.

Sincerely,

Thomas W. Bergdall

TWB/cb
Enclosure

THE HANDSCHU AUTHORITY

One Police Plaza
New York, N.Y. 10038

February 4, 1991

Lee P. Brown
Police Commissioner
1 Police Plaza
New York, New York 10038

Dear Commissioner Brown:

On April 11, 1990, Corporation Counsel Victor Kovner and you received a letter from Paul Chevigny, Jethro Eisenstein, Martin Stolar, and Franklin Siegel, counsel to plaintiffs in Handschu v. Special Services Division, 605 F.Supp. 1384 (S.D.N.Y. 1985), and Arthur Eisenberg, on behalf of the New York Civil Liberties Union, complaining of activities in the form of videotaping and photographing at a march and rally of pro and anti-Castro groups on April 7, 1990. In their letter, counsel contend that these actions violated the Guidelines created pursuant to the Handschu Stipulation of Settlement (the "Handschu Guidelines").

Pursuant to the Handschu Guidelines, the Authority initiated an investigation of the allegations. The investigation confirmed that videotaping and photographing did take place and that some of it did not comply with certain departmental procedures implemented pursuant to the Handschu Guidelines. The following is a summary of our investigation and recommendations.

I. ALLEGATIONS

In their April 11th letter, plaintiffs' counsel contend that photographic surveillance at lawful demonstrations of faces or gatherings of class members, absent activity which would constitute a crime, is prohibited by the Handschu Guidelines. The letter cites six specific incidents during the demonstration when photographing and videotaping were conducted and suggests that such activity constitutes a violation of the Guidelines.

Plaintiffs' counsel ask that pursuant to paragraph six of the Stipulation of Settlement and Consent Decree, the Police Department cure the claimed violations. They also request that all photographs and videotapes taken during the Cuba Day

Demonstration be centrally collected to allow some participants to view them, and to collect and dispose of these materials in accordance with Section 1133 of the New York City Charter.

II. RESULTS OF INVESTIGATION

After receiving the April 11th letter, we initiated an investigation into the allegations using primarily the resources of the Department's Internal Affairs Division (IAD).

In conducting this investigation, IAD interviewed the ranking officers in command of the demonstration, and officers who took photographs and videotapes. The photographing and videotaping complained of arose out of a march and rally on April 7, 1990 of pro and anti-Castro groups ("Hands Off Cuba Coalition" and "USSR Hands Off Coalition"). In planning for the Cuba Day demonstration, and in accordance with previously established procedures, the Commanding Officer, Patrol Borough, Manhattan South (PBMS) requested approval from the Chief of Department to take photographs and videotapes at the demonstration of "criminal activity only." The Chief of Department approved that request. Pursuant to that approval, the Tactical Assistance Response Unit (TARU, which has as one of its primary duties the taking of photographs for investigative purposes), was present at the demonstration. In addition, the Commanding Officer, PBMS, ordered two officers assigned to his command to also take photographs and videotapes.

A total of 309 photographs and 3 videotapes were taken by members of TARU and PBMS. TARU took 189 35 mm photographs and 3 videotapes containing 157 minutes of tape. Of the 189 photographs, three were photos of specific individuals. The remaining 186 photographs depicted police formations and barrier placements with no closeups or readily discernible faces of demonstrators. The investigation revealed that one photograph was of an unidentified individual demonstrator, one photograph was of a mounted police formation with an individual in the foreground, and one photograph was of a police officer.

In addition to these photographs, TARU filmed 3 videotapes of the demonstration. These tapes primarily contain footage of uniformed officers, motorcycle police and barriers. Some traffic movement and stray pedestrians are depicted. The videotape depicts shoving by demonstrators at Broadway and 44th Street. An unidentified demonstrator is depicted removing a barrier in a portion of the tape lasting approximately 20 seconds. There is additional footage of mounted officers, RMPs and vans, and footage of Fire Department vehicles arriving in response to an alarm. In the majority of footage taken of demonstrators, faces can be discerned in only a few instances. However, one seven minute segment depicts demonstrators walking through the intersection of 38th Street and Sixth Avenue. The detective who filmed the tape stated that he was attempting to

show a "serpentine" tactic whereby officers move from the front of the line of marchers to the rear. He also said he had the videocamera on "wide angle" in order to avoid taking close up pictures of demonstrators. Overall, it appears that the primary purpose was to depict officers, barriers, and departmental vehicles and how they were used to police the demonstration.

When interviewed, the members of TARU indicated they were familiar with the Handschu Guidelines and that it was their standard operating procedure to take photographs only of demonstrators involved in criminal activity or being placed under arrest, or of police formations and barriers. They also stated that the requirements of the July 11, 1988 Detective Bureau memorandum on Handschu procedures are always followed. Additionally, TARU members stated they always wear clearly marked windbreakers which denote they are members of the service.

Two officers from PBMS were assigned to photograph the demonstration, one to take still photographs and one to take videotape. One officer took 120 35mm still pictures, while the other made a videotape. On April 18, 1990, Assistant Chief Thomas Walsh and other ranking members of the PBMS command reviewed this tape as part of a routine follow-up critique conducted after all significant demonstrations. Consistent with Chief Walsh's usual practice, this tape was erased by PBMS on April 19, 1990 (for eventual reuse at other events) and was not available for review as part of the investigation.

A review of the 120 pictures indicated that 32 appear to be pointedly focused on demonstrators. The remaining 88 PBMS photographs depict police formations, barriers and shots of groups demonstrating. Many of the photographs of demonstrators were taken from a significant distance. However, faces of demonstrators can clearly be seen in many of these photos.

When interviewed, the PBMS officer who took the still photographs stated he was not ordinarily assigned as a photographer and was not aware of the specific Handschu Guidelines until a member of TARU approached him at the demonstration and so advised him. He stated he received no instructions that day from ranking officers and was not under any direct supervisor during the course of his photography activity. He was not in uniform, but stated he had his shield displayed on a chain around his neck. The PBMS officer who used the videocamera stated that Chief Walsh instructed him generally to film police personnel deployment and tactics, and that he was unfamiliar with the Handschu Guidelines or any restrictions they might impose on photographing. At the demonstration, he was dressed in civilian clothes with his shield on a chain around his neck.

Although counsels' letter asserts police officers in civilian clothes with no identification displayed were

involved, our investigation found no direct support for this allegation. However, the PBMS officer who shot the videotape stated that at one point he and his partner (the PBMS officer who took the photographs), assisted by three Anti-Crime officers, climbed onto a theater marquee to obtain a better vantage point from which to film. The PBMS officer did not know the names of the Anti-Crime officers, nor did he recall whether they wore or displayed any police identification. However, the two PBMS officers did wear their shields as identification, and the members of TARU present at the demonstration wore windbreakers or caps denoting that they were members of the service. It should also be noted that photographs were also taken by demonstrators, and by other members of the public who were present or observing this demonstration.

In evaluating the conduct in question, we considered and reviewed our previous recommendations on the use of photographic and video equipment as well as various departmental memoranda, implemented pursuant to our recommendations, which set forth procedures to be followed whenever the use of photographic or video equipment is contemplated.

On June 24, 1988, the Handschu Authority issued a report to then Commissioner Benjamin Ward on the propriety of the use of photographic and video equipment at demonstrations by operational personnel. In brief, the Authority concluded that 1) the use of such equipment must be consistent with a permissible operational objective; 2) any such photographs and videotapes should be maintained by appropriate personnel for no longer than is necessary; and 3) when such use is contemplated, a request must be submitted to the Chief of Department for approval, a post-event review should be conducted, and a follow-up report forwarded to the Chief of Department on the content, location, and disposition of the material.

Commissioner Ward adopted the Authority's recommendations and forwarded them to his executive staff for implementation.

On July 11, 1988, the Commanding Officer, Central Investigation and Resource Division, a unit within the Detective Bureau, issued a memorandum to the Commanding Officer of the Photo Unit and Special Projects Unit, setting forth guidelines for the Detective Bureau's use of photographic and video equipment at demonstrations. In summary, this memorandum stated:

- 1) if no investigative statement has been filed, photographic and video equipment may not be turned on until criminal activity has occurred.

- 2) absent exigent circumstances, members of the service may only photograph or videotape "spontaneous criminal conduct, assaults, etc."

3) at the conclusion of a detail, all film or tape is to be turned over by the Detective supervisor to the ranking officer. A receipt will be retained by the Commanding Officer, Special Projects Unit.

The memorandum further provides that a supervisor is at all times to direct and sanction any taking of photographs and videotapes.

The Chief of Patrol also disseminated the Authority's recommendations to all Patrol Boroughs, to the Special Operations Division, and to the Traffic Division.

Thereafter, on September 29, 1988, the Chief of Department sent a memorandum to the Handschu Authority describing procedures to be established in cases where events are filmed for "tactical purposes." In summary, the memorandum stated:

1) all tapes shall not be duplicated and shall be delivered to the Chief of Department's office for review and storage.

2) all tapes shall be documented in a log book and stored in a locked cabinet with access limited to the Chief of Department and the Commanding Officer, Chief of Department.

3) tapes shall not be made available for intelligence purposes without prior approval of the Authority.

- 4) a. peaceful demonstrations shall not be recorded.
b. close-up shots shall not be taken.
c. filming is for the sole purpose of monitoring police behavior and tactics.

That same day, the Chief of Department disseminated this information at a Borough Commander's Conference together with the Handschu Authority's June 24th report.

III. FINDINGS AND RECOMMENDATIONS

A. FINDINGS

FINDING 1:

The nature of the photographs and videotapes taken by members of TARU and the PBMS officers did not conform to the approval given by the Chief of Department to take photographs and videotapes of "criminal activity" at the Cuba Day demonstration.

DISCUSSION:

Previously, the Authority recommended that whenever the operational use of photographic or video equipment is

contemplated at a political demonstration, a request for approval should be submitted to the Chief of Department, setting forth the specific operational objective. Although procedure was followed in this instance, approval was given for photographing and videotaping "criminal activity."

However, the bulk of the photographic activity at the Cuba Day demonstration consisted of shots of barriers and crowd formations. Although this is consistent with a legitimate operational objective, i.e. training, that is not the stated basis upon which approval purportedly was sought and received.

The Handschu Log maintained by the Chief of Department indicates that of the 136 requests filed since the inception of the approval process, all of them were for the purpose of photographing "criminal activity". It is inappropriate to use this reason as a catch-all phrase warranting blanket approval for all photographing activity. We believe that the authorized objective must be specifically stated, and the post-event review (see Finding 3) should determine whether the content of the photographs and videotapes is consistent with the stated objective.

FINDING 2:

With some minor exceptions, the photographs and videotapes are consistent with prior Handschu Authority recommendations allowing photographing and videotaping for legitimate operational needs.

DISCUSSION:

The Handschu Guidelines permit photographing and videotaping when 1) it is pursuant to an authorized investigation under (IV) (C), which generally requires that prior to initiating an investigation the Department submit to the Handschu Authority an Investigation Statement (I.S.) which specifies the basis for the investigation, or 2) it is not otherwise proscribed by the Guidelines, as, for example, if it is being used for training purposes or other non-prohibited use, such as filming a crime in progress or arrest activity.

This latter instance is applicable here. In this case, as discussed above, permission was sought to photograph and videotape criminal activity, but the objective here was training as evidenced by the content of the tapes and photographs, which show barriers, crowd movement, police formations and the like.

Notwithstanding a legitimate operational objective, 3 of the 189 photographs taken by TARU are of specific persons. However, we conclude that they are not inconsistent with our prior recommendations, since they are incidental in nature.

With respect to the TARU videotapes, we believe that the 7 minute segment of footage which depicts demonstrators violates the departmental guidelines. However, given the relatively brief amount of tape at issue, and the stated intent of the detective who filmed it, which was to depict a specific police operational tactic, we conclude that this violation was not wilful.

Of the 120 photographs taken by PBMS, 32 are of demonstrators. These photographs are not consistent with either the Authority's prior recommendations or current departmental guidelines. Because the PBMS videotape was erased on April 19, 1990, it was not reviewed pursuant to this investigation.

FINDING 3:

The manner in which the Authority's June 24, 1988 recommendations were implemented was confusing, conflicting in some respects and redundant in others. This confusion was clearly demonstrated by the events which transpired at the Cuba Day demonstration.

DISCUSSION:

The procedures set forth in the various internal departmental memoranda were followed in some respects and not followed in others. For example, to the extent that photographs and videotapes were taken at the Cuba Day demonstration before any criminal activity occurred, the Commanding Officer, Central Investigation and Resources Division July 11, 1988 memorandum, which proscribes such photographing and videotaping, was not followed. However, the photographs and videotapes are generally consistent with the September 29, 1988 Chief of Department memorandum on Handschu which states that peaceful demonstrations shall not be recorded, close-up shots shall not be taken, and filming shall be for the sole purpose of monitoring police behavior and tactics. Yet the post-event procedures contained in the same Chief of Department memorandum were not followed, in that the photographs and videotapes were not delivered to the Chief of Department's Office for review and storage and were not documented in a log book and stored in a locked cabinet with access limited. Finally, the post-event review of the photographs and videotape was not consistent with prior Handschu Authority recommendations that the material be reviewed by a ranking officer to determine if the content is consistent with the authorized operational objective and a follow-up report be forwarded to the Chief of Department indicating the content of the material and its disposition and/or location.

It is clear from the foregoing that there is a need for the Department to promulgate one uniform set of internal procedures, consistent with the Handschu Guidelines and

Authority recommendations, which govern the use of photographic and video equipment at demonstrations and post-event review.

B. RECOMMENDATIONS

1. Generally, photographic surveillance of lawful demonstrations, especially videotaping and photographing faces, is inconsistent with the intent of the Handschu Guidelines and should be permissible only in carefully defined, limited circumstances.

We recommend that the Police Department promulgate, on a Department-wide basis, a concise set of procedures setting forth when, apart from a (IV) (C) investigation, photographing and videotaping are permitted. These procedures should be consistent with the Guidelines and the Authority's recommendations of June 24, 1988. In addition, we recommend that criteria and procedures be established to govern post-event review. All members of the Department should be made familiar with these procedures.

Nothing in this report should be construed as a limitation on the Department's inherent right to photograph or videotape a crime in progress or arrest activity. However, we recommend that whenever such photographing and videotaping occurs, it should only be done by personnel specifically trained in the restrictions imposed by Handschu Guidelines.

We recognize that it is virtually impossible to define with specificity at what point such equipment may be used. However, the following examples are useful. In the case of an altercation, it is not necessary that authorized personnel wait for the altercation to ensue to begin photographing. It would be far more reasonable in such a situation for filming to commence when the TARU officer (who will have received Handschu training) reasonably believes that an incident is about to occur, in order to show more accurately the context in which it takes place. Similarly, at the conclusion of an incident, photographing and videotaping may continue for a reasonable time thereafter, in order, for example, to better identify witnesses. Both the Department and the public have an interest in ensuring that a complete and accurate record of such incidents be preserved, to be used in consideration of criminal charges, civil suits, disciplinary proceedings and Civilian Complaint Review Board inquiries. We recognize that in these situations, it may not always be possible to avoid all closeups of demonstrators. However, to the extent circumstances permit, if demonstrators are filmed who are not themselves involved in criminal activity, their presence is to be incidental to the primary focus of the cameras or video recorder.

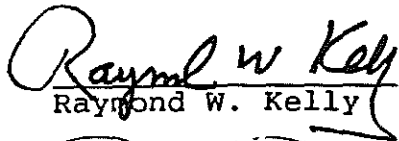
2. We recommend that only certain designated units within the Department be permitted to use photographic and videotape equipment for demonstrations. We further recommend that all officers who are assigned to take photographs or videotapes at

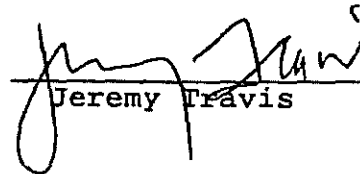
political demonstrations be clearly identifiable as members of the service.

3. We recommend that the Chief of Department be responsible for authorizing all photographing and videotaping at political demonstrations. A post-event review of all photographs and videotapes should be conducted by the Chief of Department to ensure that there was compliance with the Handschu Guidelines. All photographs and videotapes should be retained by the Chief of Department for a period of not less than 60 days after they are taken, to provide for review by the Authority when circumstances warrant, including inquiries made pursuant to the Handschu Guidelines.

4. If the Chief of Department believes there has been a violation of the Handschu Guidelines, he should immediately notify the Handschu Authority, which will cause a full investigation to be conducted. Finally, the Chief of Department should submit to the Handschu Authority an annual report enumerating all authorized photographing and videotaping as well as the results of all post-event reviews.

5. With respect to the photographs and videotapes at issue here, we recommend that they be made available for inspection in accordance with Section V (B) (4) of the Handschu Guidelines, and that thereafter, the material be destroyed.


Raymond W. Kelly


Jeremy Travis


Peggy C. Davis

cc: Victor Kovner
Corporation Counsel

ATTACHMENTS

- A. July 11, 1988 Detective Bureau memorandum.
- B. June 24, 1988 Handschu Authority report.
- C. September 27, 1988 Chief of Department memorandum

POLICE DEPARTMENT
CITY OF NEW YORK

July 11, 1988

From: Commanding Officer, Central Investigation and
Resource Division

To: Commanding Officer, Photo Unit
Special Projects Unit

Subject: "HANDSCHU" GUIDELINES RE THE USE OF PHOTOGRAPHIC
AND VIDEO EQUIPMENT AT PARADES AND DEMONSTRATIONS
BY DETECTIVE BUREAU PERSONNEL

Pursuant to a stipulated settlement in a 1971 federal lawsuit, Handschu V. Special Services Division, the department agreed to comply with certain guidelines regarding investigations involving political activity, ~~and other first amendment activity~~. These guidelines govern the use of photographic and video equipment at demonstrations, parades, etc. If no "Investigative Statement" has been filed in conformance with "Handschu" photographic and video equipment may not be turned on until criminal activity has occurred. If an "Investigative Statement" has been filed, a demonstration, parade, etc. may be photographed/videotaped from start to finish and the Department need not wait until the "first punch is thrown" before photographing and videotaping commences. The Ranking Officer in charge of the Detail will determine when and how video/photographic equipment will be used.

Whenever Detective Bureau personnel are assigned to take photographs or to videotape parades, demonstrations, protest marches, sit-ins, or other political ~~or~~ ~~Accident~~ activity, they will comply with the following directives:

- (1) Report immediately to ranking officer in charge for instructions.
- (2) Have Photographic and Video equipment available for use at the direction of the ranking officer in charge.
- (3) Ascertain from ranking officer in charge whether Video and Photographic equipment should immediately be set up or set up at a later time. Do not set up Video equipment until specifically instructed to do so by the ranking officer in charge.

EXHIBIT "A"

- (4) Determine from the ranking officer in charge who is to be photographed/videotaped and/or what type of activity or conduct is to be photographed/videotaped. Additionally, the ranking officer in charge will instruct the technicians when to commence and to terminate photographing and/or videotaping. Only specifically targeted persons or conduct will be photographed/videotaped. Technicians will not engage in unauthorized photographing/videotaping.
- (5) Absent exigent circumstances e.g. spontaneous criminal conduct, assaults, etc., no member of the service will photograph or videotape any persons, conduct, or activity without express authority from the ranking officer in charge. Under no circumstances will any person or conduct or activity be photographed/videotaped solely because the technician finds it to be unusual, funny, strange or out of the ordinary.
- (6) Detective supervisors will monitor their subordinates activity to ensure that there is no unauthorized photographing or videotaping.
- (7) Detective supervisors will ensure that specific instructions are received from the ranking officer in charge of the detail and that any questions or ambiguities are resolved prior to the commencement of any photographing or videotaping.
- (8) At the conclusion of the detail all film and/or tapes that were taken will be turned over by the Detective supervisor to the ranking officer in charge. A receipt will be obtained and it will be filed with the Commanding Officer, Special Projects Unit.

For your information.

James Wryn
James Wryn
Deputy Inspector

PTP/es

POLICE DEPARTMENT
CITY OF NEW YORK

August 10, 1988

From: Commanding Officer
Central Investigation and Resource Division

To: Commanding Officer, Photo Unit

Subject: REVISION TO JULY 11, 1988 MEMO CONCERNING
"HANDSCHU" GUIDELINES RE THE USE OF PHOTOGRAPHIC
AND VIDEO EQUIPMENT AT PARADES AND DEMONSTRATIONS
BY DETECTIVE BUREAU PERSONNEL

Please make the following changes to the memo dated July 11, 1988, concerning the "Handschu" guidelines regarding the use of photographic and video equipment at parades and demonstrations by Detective Bureau Personnel.

1. On page 1, in paragraph 1, starting on line 4 and continuing onto line 5, delete the words "and other First Amendment activity."

2. On page 1, in paragraph 2, starting on line 3 and continuing onto line 4, delete the words, "or First Amendment."

Ensure that all copies of the July 11, 1988 memo, whether in file or distributed to field personnel, are changed in accordance with the contents of this communication.

For your information and necessary attention.

James Wrynn
James Wrynn
Deputy Inspector

PTP/aa

THE HANDSCHU AUTHORITY

One Police Plaza
New York, N.Y. 10038

June 24, 1988

Honorable Benjamin Ward
Police Commissioner
City of New York
One Police Plaza
New York, NY 10038

Re: Handschu v. Special Services Division, 71 Civ. 2203 (CSH)

Dear Commissioner Ward:

In a report dated October 8, 1987 (the "Authority's Report"), this body presented to the Honorable Charles S. Haight, Jr., the results of a broad inquiry which was conducted to determine whether the Police Department was acting in conformity with the Guidelines created pursuant to the Stipulation of Settlement and Order (the "Stipulation") in the above referenced matter. The Authority's Report concluded that the Department was in general compliance with the Guidelines.

In the course of our inquiry, we addressed and resolved those issues which had been raised by counsel for class plaintiffs as well as certain ambiguities contained within the Guidelines themselves. The Report attempted to provide an interpretation of the Guidelines for the first time.

The Report did raise two issues which were left outstanding and unresolved. (See, the Authority's Report, pp 41-43). The first matter involved the propriety of the use of photographic or video equipment at demonstrations by operational personnel. The second matter involved a personal file, maintained by a Bronx detective, which contained information, "... concerning a particular religious sect which has sometimes engaged in acts of violence." Authority's Report, p. 42. We advised Judge Haight that, upon completion of our inquiry into these two matters, we would report our findings and recommendations to you. We have since completed our inquiry and

EXHIBIT "B"

are writing now to advise you of our findings. Because the matter of the detective's personal file is more easily disposed of, we shall address it first.

I. Maintenance of a Personal File by a Precinct Detective

During the summer of 1987, in connection with our inquiry, the Inspections Division conducted an inspection of all commands within the Patrol Services and Detective Bureaus to determine " ... whether they improperly maintain documents or other information implicated by the Guidelines." Authority's Report, p. 30. In the course of this inspection, a detective in the 48th Precinct voluntarily produced a personal file that he was maintaining which contained information relating to the "Shower Posse", a Jamaican gang whose members have been known to engage in numerous violent crimes. This file contained only two documents. The first was a memo which had been prepared in connection with a homicide investigation involving members of the gang. Essentially, the memo described the criminal activity engaged in by the Shower Posse and listed the known members of the gang. The second document was a letter to the Commanding Officer of the Intelligence Division thanking him for allowing the detective to speak at a law enforcement conference.

The file contains no evidence that any investigation was conducted into the political activities of either the Shower Posse or any of its members. The material compiled by the detective was used in furtherance of the investigation of violent criminal activity. Accordingly, we find that maintenance of this file did not constitute a violation of the Guidelines. If we had found it to involve the investigation of political activity, it would have violated the Guidelines since it was not conducted by an officer from the Public Service Section of the Intelligence Division.

II. The Use of Photographic and Video Equipment at Demonstrations by Operational Personnel

In the course of our inquiry last summer, we were also informed that photographs and video tapes of certain subjects of an authorized investigation were taken at a demonstration by operational personnel. In our Report, we stated our belief that photographs or video tapes of political activity, which are taken for investigatory purposes, should be taken only by PSS personnel during the course of an authorized investigation. Authority's Report, p. 42. However, we also stated our belief that there is a host of reasons why photographs or video tapes may be necessary to achieve legitimate operational objectives, including crowd control and training. We believe that, subject to the following recommendations, the use of photographs or video-tapes at political demonstrations for non-investigatory operational purposes is not in violation of the Guidelines.

Conduct must be Consistent with Permissible Objectives

It should be stressed that any use of photographic or video equipment by operational personnel at political demonstrations must be in conjunction with a permissible, operational objective and the actions of operational personnel must be strictly consistent with such objective. In the Authority's Report we suggested crowd control and training as examples of legitimate operational objectives which may justify the use of video equipment.

Accordingly, where the objective is to prepare a training videotape on proper crowd control tactics, the conduct of operational personnel must be consistent with this objective. Thus, it would seem natural to expect that any video footage taken for this purpose would be reviewed and edited by training personnel, maintained in a training facility and utilized for crowd control training sessions. Additionally, any indexing or referencing to this training material would be under a training topic, i.e. "Crowd Control/Mass Arrest Procedures," and not under the name of any political group or person.

Similarly, where non recording video equipment is being used to monitor pedestrian or vehicular traffic at demonstration locations, the actions of the operational personnel would be consistent with that specific and limited objective. Thus, ranking officers viewing crowd conditions on TV monitors in a temporary headquarters truck, particularly where the video is "live" (i.e. no tape recording) would not be a violation of the Guidelines.

Additionally, at the scene of a political demonstration, the Guidelines do not prohibit having photographic or video equipment available for use should criminal arrest activity occur. Such equipment may be utilized to record criminal actions, police response and arrest activity in order to assist in the evidentiary prosecution of the arrests, as well as to document the event as evidence in a civilian complaint investigation, or a civil law suit against the Department. Thus, it would be expected that such video-tapes or photos would be held or vouchered as evidence and be filed or maintained only by the operational unit concerned with the prosecution of the criminal case, or a civilian complaint review and investigation.

Maintenance and Disposition of Photographs and Videotapes By Operational Personnel

Photographs and videotapes prepared for operational purposes should be maintained, as indicated above, only by appropriate operational personnel, and only for as long as is necessary or useful to achieve the specified permissible operational or evidentiary objective. Photographs which are not relevant, or which are no longer useful or necessary to achieve a permissible objective should not be retained. Videotape by its nature is reusable and may be erased and reused where it has been determined not to be covered by the Guidelines.

Documentation of Operational Objective

To ensure that police conduct is consistent with an operational objective, it is recommended that whenever the use of photographic or videotape equipment is contemplated at a political demonstration, a request indicating the reasons therefore be submitted to the Chief of the Department for approval.

Where permission to use video equipment has been granted by the Chief of Department, a review of any tapes or photos taken should be subsequently conducted by a ranking officer. This review should determine whether the content of such tapes or photos is in fact consistent with the authorized operational objective. A follow-up report would be forwarded to the office of the Chief of Department and should contain sufficient information with respect to the review of the contents of the tapes and the disposition or file location of the material. We recommend further that these follow-up reports be maintained at the Chief of Department's office, and be available for review by the Authority.

Non-Political Criminal Investigations

The Authority wishes to stress that the Guidelines do not relate to, or in anyway prohibit or restrict the traditional use of photographic or video equipment in connection with the investigation of criminal conduct not involving political activity. Surveillance of criminals, premises or public areas of criminal activity (drug sales, pedophile investigations, etc.), or of large public gatherings of a non-political nature (i.e. parades, crowds along a motorcade route etc., for security purposes), does not implicate the Guidelines.

Finally, at a meeting held on April 21, 1988, the Chief of Inspectional Services submitted to the Authority a memorandum containing recommendations regarding the use of photographs and videotapes by PSS personnel for investigatory purposes. We have reviewed these recommendations and find them to be consistent with, if not more stringent than the Guidelines. Attached is a copy of this memorandum for your consideration.

Respectfully yours,

The Handschu Authority



Richard J. Condon
First Deputy Commissioner



Robert Goldman
Deputy Commissioner,
Legal Matters



Harold R. Tyler, Jr.

cc. Daniel Turbow, Esq.
Attachment

POLICE DEPARTMENT
CITY OF NEW YORK

April 18, 1988

From: Commanding Officer, Intelligence Division
To: Chief of Inspectional Services
Subject: RECOMMENDATION REGARDING USE OF PHOTOGRAPHS OR
VIDEO TAPES BY PUBLIC SECURITY SECTION PERSONNEL
FOR INVESTIGATORY PURPOSES

1. The following recommendations are offered regarding the use of photographs or videotapes by Public Security Section personnel for investigatory purposes.

A. Such surveillance will be made only under the authority of an approved investigation statement and with the personal approval of the Commanding Officer, Intelligence Division.

B. Such approval shall be given by Commanding Officer, Intelligence Division, on a case by case basis, consistent with the objectives of the investigation.

C. Use of photographic surveillance must be consistent with the previously established three principles indicated in Operational Guidelines for Public Security Section personnel established by Chief of Inspectional Services on December 23, 1987 and incorporated into Patrol Guide Revision 88-1, P.G. 117-17.

I. Minimization of Intrusion

Approved investigations of unlawful political activity must be focused upon underlying criminal conduct and conducted so as to minimize contact with constitutionally protected speech.

II. Relevance of Individuals or Groups to the Investigation


No information regarding non-subjects of an investigation should be maintained in any permanent Public Security Section record, unless, in the judgement of the Commanding Officer, Intelligence Division, the information is relevant to the underlying criminal activity which is the predicate for the Investigation Statement.

III. Investigation Tactics Must Be Appropriately Limited

As is the case in any police investigation, the resources and techniques employed in all investigations of unlawful political activity must be consistent with the seriousness of the predicate underlying criminal activity.

D. Any photographs or videotapes taken pursuant to an authorized investigation will be reviewed, retained, filed or disposed of after final determination by Commanding Officer, Intelligence Division.

2. It is the recommendation of the undersigned that the use of photographs or videotapes be considered an approved investigative technique by Public Security Section personnel under an approved investigative statement, unless a limitation had been previously indicated in the statement under which the surveillance is being conducted.


William J. O'Sullivan
Deputy Chief

WJO:dm

1ST ENDORSEMENT

Chief of Inspectional Services to Handschu Authority, April 20, 1988.
I have reviewed the proposed guidelines for the use of photographs/video tapes in an investigation for which an investigative statement has been submitted and find them in conformance with the spirit of the Handschu stipulation.


Daniel F. Sullivan
CHIEF OF INSPECTIONAL SERVICES

DFS:awb

File CAD

POLICE DEPARTMENT
CITY OF NEW YORK

September 29, 1988

From: Chief of Department
To: HANDSCHU Authority
Subject: VIDEO AND AUDIO RECORDING OF
CRIMINAL ACTIVITY.

1. On September 29, 1988, at about 1600 hours, the Rev. Al Sharpton will conduct a "Day of Outrage" civil disobedience in the vicinity of Borough Hall in Brooklyn.

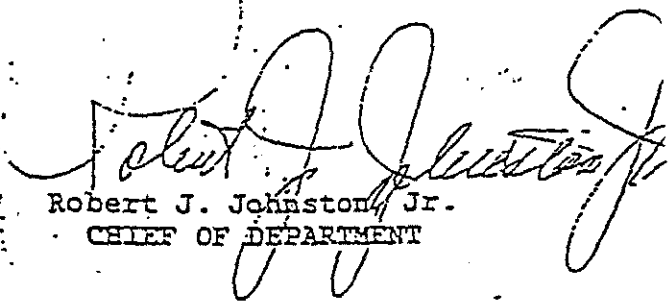
2. In an effort to establish viable criminal cases for presentation to the Kings County District Attorney, I have directed Assistant Chief Thomas Gallagher, Commanding Officer, Patrol Borough Brooklyn North, to videotape and audio record acts which constitute criminal offenses under the laws of the City and State of New York. Upon completion of this videotaping and recording, the tapes will be vouchered as "evidence" and presented to the District Attorney for her use in subsequent prosecutions. These tapes will, at all times, be stored with the Property Clerk or the District Attorney and will be solely used for criminal prosecutions.

3. In addition to the above, I have directed that the following procedures be established in cases in which events are filmed or recorded, or both, for tactical purposes (as per the Handschu Authority letter dated June 24, 1988, page 4, paragraph entitled "Documentation of Operational Objective"):

- A) All such tapes shall not be duplicated and shall be delivered to the office of the Chief of Department for review and storage;
- B) All such tapes shall be documented in a log book and stored in a locked cabinet, access to which is limited to the undersigned and the Commanding Officer, Chief of Department.

- C) Under no circumstances will such tapes be made available to any Department Unit or member for intelligence purposes without the prior approval of the Authority;
- D) Under no circumstances will members of this Department record peaceful demonstrations, speeches, rallies, marches, etc..., nor shall any close-up shots be taken of demonstration participants which would result in an identification of such participants. The sole purpose of any such filming shall be to monitor police behavior and tactics.

4. For your information.



Robert J. Johnston, Jr.
CHIEF OF DEPARTMENT

/ba

EXHIBIT 8



INTERIM ORDER

NUMBER	REF. P. G.
6	** 117 SERIES
DATE	
2-8-91	

Misc. 1953-C (12-85)14

TO ALL COMMANDS

Subject: GUIDELINES FOR THE USE OF PHOTOGRAPHIC/VIDEO EQUIPMENT BY OPERATIONAL PERSONNEL AT POLITICAL DEMONSTRATIONS

PURPOSE To describe those limited circumstances when operational personnel may use photographic/video equipment at political demonstrations and to establish procedures for the use of such equipment, when permitted.

SCOPE The Handschu Authority has determined that the use of photographic or video equipment by operational personnel at political demonstrations is appropriate only if a permissible objective exists. The following constitute permissible operational objectives:

- A bona-fide need exists to prepare training materials on proper crowd control techniques, or
- A reasonable belief exists that criminal activity and/or arrest activity will occur during the demonstration.

PROCEDURE When ranking personnel of this Department contemplate the use of photographic or videotape equipment at a political demonstration for a permissible operational objective:

RANKING OFFICER

1. Submit a report, on Typed Letterhead, to the Chief of Department, requesting the deployment of equipment and properly trained personnel.

NOTE In emergency situations, requests may be made by telephone. However, all such requests must be subsequently submitted in writing in accordance with this procedure.

2. Include in the request the following information:
 - a. Date, time and location of demonstration (if known)
 - b. Identity of the sponsors and purpose for the demonstration (if known)
 - c. Specific permissible operational objective to be achieved.

NOTE If the objective is to record criminal activity and/or arrest activity, the basis for the reasonable belief that such activity will occur must be included in the request.

3. Forward request to patrol borough commander for review.

PATROL
COMMANDER

4. Review and endorse request to the Chief of Department, DIRECT.

NOTE

Every request for the use of photographic/video equipment will be entered into a serially numbered log, maintained solely for this purpose, at the Office of the Chief of Department. In addition, copies of all written requests will be maintained by the Office of the Chief of Department.

OFFICE OF
THE CHIEF OF
DEPARTMENT

5. Make appropriate entries in log upon receipt of request.
 - a. Include determination as to whether request approved/disapproved and reason therefore.
6. Forward approved/disapproved request to borough commander concerned.
 - a. Include explanation for approval/disapproval.
7. Forward copy of each request to Handschu Authority for review.

UPON APPROVAL OF REQUEST BY THE CHIEF OF DEPARTMENT

8. Direct Commanding Officer, Police Academy to assign members of the Video Unit to the demonstration to operate photographic/video equipment, if the permissible objective is the preparation of training materials.

NOTE

When the permissible objective is the preparation of training materials, equipment will be operated by Video Unit personnel only.

Photographs/video taken by Video Unit personnel should be consistent with the permissible operational objective. For example, photographs/video should generally not contain close-ups of participants in the demonstration, but should focus on police tactics and behavior.

9. Direct the Office of the Chief of Detectives to assign members of the Technical Assistance Response Unit (T.A.R.U.) to the demonstration to operate photographic/video equipment, if the permissible objective is to record criminal activity and/or arrest activity.

NOTE

When the permissible objective is to record criminal activity and/or arrest activity, equipment will be operated by T.A.R.U. personnel only.

Under no circumstances will photographic/video equipment be operated at political demonstrations except by personnel who are assigned to T.A.R.U. or the Police Academy, Video Unit, and who are specifically authorized to do so pursuant to the contents of this procedure.

UPON COMPLETION OF PHOTOGRAPHING/VIDEOTAPING

RANKING
OFFICER

10. Forward all photographs and/or videotapes to the Office of the Chief of Department, forthwith, regardless of the permissible objective.

OFFICE OF
THE CHIEF
DEPARTMENT

11. Maintain all photographs/videotapes prepared in connection with this procedure for a period of not less than sixty (60) days.
12. Review materials to determine whether they conform to the requirements of the Handschu Guidelines.
13. Dispose of material deemed to conform to Handschu Guidelines as follows:
 - a. If the permissible operational objective was training, all materials will be forwarded to the Commanding Officer, Police Academy, for use as a training vehicle.
 - b. If the permissible operational objective was to record criminal activity, the materials will be considered as evidence, and handled accordingly, if they contain criminal activity. If the materials contain no useful evidence of criminal activity, they will be destroyed.

NOTE

If the Chief of Department believes that the materials should be retained because they are consistent with an operational objective, other than the two outlined in this procedure, then the materials and a written request for retention, stating the basis upon which retention is sought, shall be forwarded to the Handschu Authority.

14. Forward materials, which are deemed to violate the Handschu Guidelines, to the Handschu Authority for review and recommendation.

ADDITIONAL
DATA

At the end of each year, the Chief of Department shall submit a report to the Handschu Authority summarizing all photographic/video activity conducted during the previous year. Such report shall include:

- a. A summary of each request to use photographic/video equipment and the response thereto, and
- b. A summary of the results of all post event reviews.

All personnel who operate photographic/video equipment pursuant to this procedure, must be clearly identifiable as police personnel. They must wear either a police uniform or a jacket that is clearly marked "POLICE". Displaying a shield on a chain is not sufficient identification.

Personnel assigned to operate photographic/video equipment pursuant to this procedure will strictly adhere to the following guidelines:

- a. Report immediately to ranking officer in charge for instructions.
- b. Have photographic/video equipment available for use at the direction of the ranking officer in charge.
- c. Ascertain from ranking officer in charge whether video and photographic equipment should immediately be set up or set up at a later time. Do not set up video equipment until specifically instructed to do so by the ranking officer in charge.

INTERIM ORDER NO. 6

ADDITIONAL
DATA
(continued)

- d. Determine from the ranking officer in charge who is to be photographed/videotaped and/or what type of activity or conduct is to be photographed/videotaped. Additionally, the ranking officer in charge will instruct the technicians when to commence and to terminate photographing and/or videotaping. Only specifically authorized persons or conduct will be photographed/videotaped. Technicians will not engage in unauthorized photographing/videotaping.
- e. Absent exigent circumstances, e.g., spontaneous criminal conduct, assaults, etc., no member of the service will photograph or videotape any persons, conduct, or activity without express authority from the ranking officer in charge.
- f. Supervisors will monitor their subordinates' activity to ensure that there is no unauthorized photographing or videotaping.
- g. Supervisors will ensure that specific instructions are received from the ranking officer in charge of the detail and that any questions or ambiguities are resolved prior to the commencement of any photographing or videotaping.
- h. At the conclusion of the detail, all film and/or tapes that were taken will be turned over to the ranking officer in charge. A receipt will be obtained and it will be filed with the Commanding Officer, Central Investigation and Resource Division, or the Commanding Officer, Police Academy, as appropriate.

The ranking officer in charge of the detail will be held strictly accountable for all photographs and videotapes prepared.

RELATED
PROCEDURE

Guidelines for Uniformed Members of the Service Conducting Investigations of Unlawful Political Activities (P.G. 117-17)

Any provisions of the Department Manual or other Department directives in conflict with this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands

INTERIM ORDER NO. 6

EXHIBIT 9

GUIDELINES FOR THE USE OF PHOTOGRAPHIC/VIDEO EQUIPMENT BY OPERATIONAL PERSONNEL AT DEMONSTRATIONS

PURPOSE

To describe those limited circumstances when operational personnel may use photographic/video equipment at political demonstrations and to establish procedures for the use of such equipment, when permitted.

SCOPE

The Handschu Authority has determined that the use of photographic or video equipment by operational personnel at political demonstrations is appropriate only if a permissible objective exists. The following constitute permissible operational objectives:

- a. A bonafide need exists to prepare training materials on proper crowd control techniques, or
- b. A reasonable belief exists that criminal activity and/or arrest activity will occur during the demonstration
- c. A bona fide need exists to continuously assess crowd conditions, through the use of live video transmissions, for the proper deployment of police resources, during large scale police events.

PROCEDURE

When ranking personnel of this Department contemplate the use of photographic or videotape equipment at a political demonstration for a permissible operational objective:

RANKING OFFICER

1. Submit a report, on **Typed Letterhead**, to the Chief of Department, requesting the deployment of equipment and properly trained personnel.

NOTE *In emergency situations, requests may be made by telephone. However, all such requests must be subsequently submitted in writing in accordance with this procedure.*

2. Include in the request the following information:
 - a. Date, time and location of demonstration (if known)
 - b. Identity of the sponsors and purpose for the demonstration (if known)
 - c. Specific permissible operational objective to be achieved.

NOTE *If the objective is to record criminal activity and/or arrest activity, the basis for the reasonable belief that such activity will occur must be included in the request.*

3. Forward request to patrol borough commander for review.

PATROL BOROUGH COMMANDER

4. Review and endorse request to the Chief of Department, DIRECT.

NOTE *Every request for the use of photographic/video equipment will be entered into a serially numbered log, maintained solely for this purpose, at the Office of the Chief of Department. In addition, copies of all written requests will be maintained by the Office of the Chief of Department.*

Procedure No: 212-71

OFFICE OF THE CHIEF OF DEPARTMENT

5. Make appropriate entries in log upon receipt of request.
 - a. Include determination as to whether request approved/disapproved and reason therefore.
6. Forward approved/disapproved request to borough commander concerned.
 - a. Include explanation for approval/disapproval.
7. Forward copy of each request to Handschu Authority for review.

UPON APPROVAL OF REQUEST BY THE CHIEF OF DEPARTMENT:

8. Direct Commanding Officer, Police Academy to assign members of the Video Unit to the demonstration to operate photographic/video equipment, if the permissible objective is the preparation of training materials.

NOTE *When the permissible objective is the preparation of training materials, equipment will be operated by Video Unit personnel only.*

Photographs/video taken by Video Unit personnel should be consistent with the permissible operational objective. For example, photographs/video should generally not contain close-ups of participants in the demonstration, but should focus on police tactics and behavior.

9. Request the Deputy Commissioner, Operations to assign members of the Technical Assistance Response Unit (TARU) to the demonstration to operate photographic/video equipment, if the permissible objective is to record criminal activity and/or arrest activity.

NOTE *When the permissible objective is to record criminal activity and/or arrest activity, equipment will be operated by TARU personnel only.*

Under no circumstances will photographic/video equipment be operated at political demonstrations except by personnel who are assigned to TARU or the Police Academy, Video Unit, and who are specifically authorized to do so pursuant to the contents of this procedure.

10. Direct the Office of the Chief of Organized Crime Control to assign members of the Investigative Support Division to the demonstration to set up and operate the appropriate equipment.

NOTE *When the permissible objective is to assess crowd conditions, equipment will only be installed by the Investigative Support Division personnel and NO recording will be made of the video transmission.*

RANKING OFFICER

11. Forward all photographs and/or videotapes to the Office of the Chief of Department, forthwith, regardless of the permissible objective.

Procedure No: 212-71

UPON COMPLETION OF PHOTOGRAPHING/VIDEOTAPING:

OFFICE OF CHIEF OF DEPARTMENT

12. Maintain all photographs/videotapes prepared in connection with this procedure for a period of not less than sixty (60) days.
13. Review materials to determine whether they conform to the requirements of the Handschu Guidelines.
14. Dispose of material deemed to conform to Handschu Guidelines as follows:
 - a. If the permissible operational objective was training, all materials will be forwarded to the Commanding Officer, Police Academy, for use as a training vehicle.
 - b. If the permissible operational objective was to record criminal activity, the materials will be considered as evidence, and handled accordingly, if they contain criminal activity. If the materials contain no useful evidence of criminal activity, they will be destroyed.

NOTE *If the Chief of Department believes that the materials should be retained because they are consistent with an operational objective, other than the two outlined in this procedure, then the materials and a written request for retention, stating the basis upon which retention is sought, shall be forwarded to the Handschu Authority.*

15. Forward materials, which are deemed to violate the Handschu Guidelines, to the Handschu Authority for review and recommendation.

ADDITIONAL DATA

At the end of each year, the Chief of Department shall submit a report to the Handschu Authority summarizing all photographic/video activity conducted during the previous year. Such report shall include:

- a. *A summary of each request to use photographic/video equipment and the response thereto, and*
- b. *A summary of the results of all post event reviews.*

All personnel who operate photographic/video equipment pursuant to this procedure, must be clearly identifiable as police personnel. They must wear either a police uniform or a jacket that is clearly marked "POLICE".

Displaying a shield on a chain is not sufficient identification.

Procedure No: 212-71

ADDITIONAL DATA (continued)

Personnel assigned to operate photographic/video equipment pursuant to this procedure will strictly adhere to the following guidelines:

- a. Report immediately to ranking officer in charge for instructions*
- b. Have photographic/video equipment available for use at the direction of the ranking officer in charge*
- c. Ascertain from ranking officer in charge whether video and photographic equipment should immediately be set up or set up at a later time. Do not set up video equipment until specifically instructed to do so by the ranking officer in charge.*
- d. Determine from the ranking officer in charge who is to be photographed/videotaped and/or what type of activity or conduct is to be photographed/videotaped. Additionally, the ranking officer in charge will instruct the technicians when to commence and to terminate photographing and/or videotaping. Only specifically authorized persons or conduct will be photographed/videotaped. Technicians will not engage in unauthorized photographing/videotaping.*
- e. Absent exigent circumstances, e.g., spontaneous criminal conduct, assaults, etc., no member of the service will photograph or videotape any persons, conduct, or activity without express authority from the ranking officer in charge.*
- f. Supervisors will monitor their subordinates' activity to ensure that there is no unauthorized photographing or videotaping.*
- g. Supervisors will ensure that specific instructions are received from the ranking officer in charge of the detail and that any questions or ambiguities are resolved prior to the commencement of any photographing or videotaping.*
- h. At the conclusion of the detail, all film and/or tapes that were taken will be turned over to the ranking officer in charge. A receipt will be obtained and it will be filed with the Deputy Commissioner-Operations, or the Commanding Officer, Police Academy, as appropriate.*

The ranking officer in charge of the detail will be held strictly accountable for all photographs and videotapes prepared.

RELATED PROCEDURES

Guidelines For Uniformed Members Of The Service Conducting Investigations Of Unlawful Political Activities (P.G. 212-72)