

2003 WL 22019918

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United States District Court,  
S.D. New York.

Barbara HANDSCHU, Ralph Digia, Alex McKeiver, Shaba OM, Curtis M. Powell, Abbie Hoffman, Mark A. Segal, Michael Zumoff, Kenneth Thomas, Robert Rusch, Anette T. Rubenstein, Michey Sheridan, Joe Sucher, Steven Fischler, Howard Blatt and Ellie Benzzone, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

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 under-cover operators and informers, Defendants.

No. 71 Civ. 2203(CSH). | April 7, 2003.

## Opinion

### **MEMORANDUM AND ORDER**

HAIGHT, Senior J.

\*1 Having considered the most recent correspondence of counsel, I agree with Corporation Counsel that the Court's Order and Judgment dated March 20, 2003 (the "March 20 Judgment and Order") must be revised. I will adopt the draft submitted by Corporation Counsel as an enclosure to Ms. Donoghue's letter dated March 31, 2003.

The principal need for revision arises from the fact that while I said in the Court's opinion dated February 13, 2003 that the NYPD's compliance with the two conditions therein specified would result in the entry of an Order which, *inter alia*, "will provide that the text contemplated by Condition 1 will remain in the NYPD patrol guides unless otherwise directed by the Court," 2003 WL 302258, at \*21, the March 20 Judgment and Order inadvertently contained no such provision. Corporation Counsel's draft remedies that omission in the third decretal paragraph. Presumably this is a correction which finds favor with class counsel.

I am also satisfied that Corporation Counsel's draft remedies a possible (although by no means obvious) ambiguity in the first and second decretal paragraphs of the March 20 Judgment and Order, without altering the substance of the Court's resolution of the NYPD's motion to modify the consent decree and the accompanying Handschu Guidelines. That resolution, fully expressed in the February 13, 2003 opinion, allowed the NYPD to replace the original Handschu Guidelines with the modified Guidelines adopting the FBI Guidelines, if the Modified Handschu Guidelines were included *and maintained* in the Patrol Guide. I emphasize that phrase because its purpose is insured by the requirement that the text remain in the Patrol Guide unless otherwise directed by the Court: the provision omitted from the March 20 Judgment and Order but included in Corporation Counsel's draft.

Corporation Counsel say that "[w]e interpret this second paragraph [of the March 20 Judgment and Order] to provide for the replacement of the old guidelines which were contained in the consent decree of 1985 with the new guidelines which are to be included solely in the Patrol Guide, but not be incorporated as part of the modified consent decree." March 31, 2003 letter at 2. That is a correct interpretation. If the March 20 Judgment and Order was ambiguous on the point, the revised Order and Judgment clears up the ambiguity. This interpretation is consistent with the Court's discussion of the "reservations" provision in the Guidelines and the relevance of the Guidelines to issues of liability notwithstanding those reservations; *see* 2003 WL 302258, at \*19. If class counsel's undated letter received April 1, 2003 is an invitation for me to revisit that question, I decline to do so.

Corporation Counsel's draft, which the Court is adopting, provides in the last decretal paragraph that "the Judgment and Order entered on March 20, 2003, is hereby wholly vacated, replaced, and superceded by the instant Order." That is the appropriate procedure, but it has the effect of reinstating the ten-day stay, as reflected by the fourth and fifth decretal paragraphs of the Revised Order and Judgment. Accordingly, by this Order I direct that the Court's Order dated March 25, 2003, be, and the same hereby is, vacated.

\*2 SO ORDERED.