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MODERN-DAY RED SQUADS: POLICE SURVEILLANCE OF FIRST AMENDMENT ACTIVITY

I. INTRODUCTION

In 2002, the American Civil Liberties Union (ACLU) discovered that the Denver Police Department (DPD) had been engaging in surveillance of the First Amendment activities of local citizens. Instead of watching suspected criminals engaged in criminal activity, the DPD was watching and recording the First Amendment activities of local political dissenters. The DPD had created hundreds of files on such "radical" groups and individuals as the American Friends Service Committee and a Franciscan nun.[1]

Such blatant surveillance of First Amendment activities harkens back to days of the first Red Scare, COINTELPRO, and the other political abuses committed by national and local intelligence agencies over the past eighty years. While surveillance of political dissidents is certainly not unique to Denver, the DPD surveillance program was unusual in this day and age. Not since the 1970s and 1980s—when several major cities entered into consent decrees that erected strict limitations on how police conduct surveillance of political activity—has such a program been discovered and successfully challenged in the courts. By building upon those seminal consent decrees from the 1980s, the Denver plaintiffs were able to secure a consent decree of their own that erected strong protections for First Amendment activity. The Denver consent decree serves both as a lesson in how political surveillance cases are litigated today, and as an example of how such cases can be litigated, and won, in the future.

Part II of this essay briefly examines the history of political surveillance at both the national and local levels. Additionally, Part II attempts to use the analytical concept of "mission creep" to examine how national intelligence agencies and local police intelligence squads went

[1] Complaint at 3-4, American Friends Serv. Comm. v. City and County of Denver, No. 02-2993 (Colo. Dist. Ct. filed March 28, 2002).

from conducting lawful investigations to surveilling political dissenters. Parts III and IV examine three important local police consent decrees from the 1970s and 1980s that limited police departments' abilities to conduct political surveillance, as well as how those decrees have been modified to aid police in combating terrorism. By cloaking themselves in the mantle of anti-terrorism, police departments have been able to significantly undermine the effectiveness of those decrees, and ultimately the protections afforded to political dissidents. Part V presents a detailed case study of the only federal police surveillance case of the last fifteen years, *American Friends Service Committee v. City and County of Denver*.[2] Part VI concludes the essay, and draws some parallels between the Denver decree and the decrees of the 1980s. In many of those cases, the plaintiffs were able to use extra-judicial means—notably the media—to obtain a more favorable settlement. This presents a lesson to anyone seeking to litigate such cases in the future: embarrassment in the media is a powerful bargaining chip that can strengthen an otherwise weak legal argument.

II. HISTORY OF POLICE SURVEILLANCE

A. Political Surveillance at the National Level

As former ACLU national staff counsel and CEO of the JFK Library Foundation John H.F. Shattuck has noted, "[p]olitical surveillance . . . has a long and troubled history in the United States."[3] While police tactics aimed at disrupting the lawful gathering of Americans expressing their First Amendment rights can be traced back at least as far as the Haymarket Riot in 1886,[4] the origin of political surveillance on a national level begins with the creation of the Bureau of Investigation—the precursor the FBI—in 1908. Originally charged to investigate

[2] No. 02-740 (D. Colo. filed April 16, 2002).
[3] John H.F. Shattuck, *Tilting at the Surveillance Apparatus*, 1 CIV. LIBERTIES REV. 59, 59 (1974).
[4] For a discussion of how the Haymarket Riot fits into the context of political surveillance, see FRANK DONNER, PROTECTORS OF PRIVILEGE: RED SQUADS AND POLICE REPRESSION IN URBAN AMERICA 7-43 (1990).

violations of federal law, the Bureau's mandate was expanded in 1916 "to allow additional investigations at the behest of the Attorney General."[5] During World War I, the Bureau began conducting domestic political surveillance on dissident groups, including those who criticized the war, opposed the draft, or expressed pro-German sympathies.[6] Domestic surveillance continued after the war, focusing on anarchists and other radical groups.[7]

In 1919, in response to a series of terrorist bombings, a new division was created within the Department of Justice. The new General Intelligence Division (GID), headed by a young J. Edgar Hoover, engaged in intense political surveillance, with serious consequences for the targets of its investigations. The most striking example was the "Palmer Raids" of 1920. Named for Attorney General A. Mitchell Palmer, who ordered the raids, the GID and the Bureau rounded up and detained nearly 10,000 persons who were believed to be Communists, though in reality many had no connection to Communism.[8] According to Professor Robert Preston, the raids involved "indiscriminate arrests of the innocent with the guilty, unlawful seizures by federal detectives, intimidating preliminary interrogations of aliens held incommunicado, high-handed levying of excessive bail, and denial of counsel."[9] Such excesses prompted Attorney General Harlan Fiske Stone to issue new internal guidelines for the Bureau in 1924.[10] The guidelines prohibited the Bureau from "investigating 'political or other opinions,' as opposed to

[5] Linda Fisher, *Guilt by Expressive Association: Political Profiling, Surveillance and the Privacy of Groups*, 46 ARIZ. L. REV. 621, 629 (2004). It should be noted that the Bureau was originally created without congressional approval. *Id.* at 628.
[6] *Id.* at 629, *quoting* Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities Report, S. Rep. No. 94-775, 94th Cong., 2d Sess., Book III, at 382 (1976), available in part at www.cointel.org [hereinafter Church Committee Report].
[7] Fisher, *supra* note 5, at 629.
[8] *Id. See also* Church Committee Report, Book II, part II at fn. 1.
[9] DONNER, *supra* note 4, at 14, *quoting* ROBERT PRESTON, ALIENS AND DISSENTERS 221 (1963).
[10] *Id.* at 14-15.

conduct . . . forbidden by the laws."[11] As these guidelines took effect, domestic surveillance began to decline.[12]

After being renamed the Federal Bureau of Investigations in 1932,[13] the Bureau again stepped up its domestic surveillance programs in 1936 after receiving a number of secret orders from President Roosevelt.[14] During World War II, the FBI infiltrated and investigated purely domestic organizations that were not connected to crime, particularly those associated with Fascism and Communism.[15] These investigations involved more than mere surveillance, and "were built upon a theory of subversive infiltration which remained an essential part of domestic intelligence thereafter."[16]

Following World War II, the FBI continued to conduct domestic surveillance and "compile dossiers on . . . liberal and leftist groups in its search for subversives."[17] Despite the fading fear of Communism that accompanied the 1960s, the FBI hardly cut back on its efforts. Indeed, accounts of FBI excesses and abuses during this time are legion: the surveillance of the NAACP; the infiltration of the Black Panther Party (BPP) and the assassination of BPP leaders Mark Clark and Fred Hampton; the investigation of the women's liberation movement and groups opposed to the Vietnam War; and the harassment of Dr. Martin Luther King, Jr., which included sending him a letter attempting to induce him to commit suicide.[18]

These practices were conducted by the FBI's infamous COINTELPRO (Counterintelligence Program), which flourished between 1956 and 1971 and "was designed to

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[11] Fisher, *supra* note 5, at 629, *quoting* Church Committee Report, Book II, at 3.
[12] *Id.* at 630.
[13] Federal Bureau of Investigation, History of the FBI, http://www.fbi.gov/libref/historic/history/newdeal.htm (last visited Sept. 14, 2008).
[14] DONNER, *supra* note 4, at 15-16; Fisher, *supra* note 5, at 630. For a comprehensive account of the abuses of the FBI from 1936-74, see Church Committee Report, Books II & III.
[15] Fisher, *supra* note 5, at 630.
[16] *Id.* at 630, *quoting* Church Committee Report, Book III, at 412 (internal quotations omitted).
[17] *Id.*
[18] *See generally* Church Committee Report, Book III (cataloging abuses by the FBI and other intelligence agencies).

'disrupt' and 'neutralize' its targets."[19] COINTELPRO's five principal targets were the Communist Party, the Socialist Workers Party, White hate groups, Black nationalist hate groups, and the New Left.[20] Many of the tactics used by COINTELPRO "would be intolerable in a democratic society even if all of the targets had been involved in violent activity," and included "sending anonymous poison-pen letters intended to break up marriages" and "encouraging gang warfare and falsely labeling members of a violent group as police informers."[21]

Such abuses did not go completely unnoticed by those in government. After the revelations of the Watergate scandal, lawmakers were less willing to look the other way following FBI and CIA abuses. Various governmental inquiries culminated in the Final Report of the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities—commonly known as the "Church Committee" after its chair, Idaho Senator Frank Church. The Committee's report, which spanned six volumes, "document[ed] countless examples of abuses . . . by the major intelligence agencies, including the FBI, the CIA, and the National Security Agency, or NSA."[22] Simply put, the Committee found that "too many people have been spied upon by too many Government agencies and to [sic] much information has been collected,"[23] often by illegal means.[24]

After documenting, in great detail, abuses by the government intelligence agencies, the Committee reached a fundamental conclusion: "intelligence activities have undermined the constitutional rights of citizens and . . . they have done so primarily because checks and balances designed by the framers of the Constitution to assure accountability have not been applied."[25]

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[19] Fisher, *supra* note 5, at 631, *quoting* Church Committee Report, Book III, at 3.
[20] Church Committee Report, Book III, at 4.
[21] *Id.* at 3.
[22] FREDERICK A.O. SCHWARZ JR. & AZIZ Z. HUQ, UNCHECKED AND UNBALANCED 23 (2007).
[23] Church Committee Report, Book II, at 5.
[24] *Id.* at 12.
[25] *Id.* at 289.

The Committee's detailed recommendations—which numbered near 200—had a uniform theme: "unchecked power is prone to unwise, inefficient application, and it leads inescapably to abuse."[26] The Committee's recommendations attempted to curb that abuse, and to restore effective checks and balances into the intelligence-gathering apparatus. Some of its recommendations were straight-forward and quickly adopted, such as limiting the tenure of the FBI director to ten years.[27] Others took more time but were also eventually adopted, such as the creation of a permanent Senate Intelligence Committee[28] and a "law strengthening the independence of the CIA inspector general."[29] Still other crucial reforms that would have enacted substantial barriers to future surveillance abuses were never adopted, such as the "enactment of comprehensive statutory charters for all the intelligence agencies."[30] While some of the committee's recommendations did not clear their political hurdles, the publicity of the Committee's report, combined with the fallout from the Watergate scandal contributed to the viability of lawsuits challenging political surveillance on a local level.

B. Local Police Surveillance

Not unlike national political surveillance, local police surveillance of those with dissenting opinions also has a storied past in the United States. Patrick Murphy, a former New York City Police Commissioner, has traced the origins of such local intelligence units in New York to an "Italian Squad" in the NYPD, and "which sought as early as 1904 to curtail the illegal activities of a group of Italian immigrants called the 'Black Hand Society.'"[31] Because many of

[26] SCHWARZ & HUQ, *supra* note 22, at 50.
[27] *Id.* at 54.
[28] *Id.* at 51-56.
[29] *Id.* at 54.
[30] *Id.*
[31] Paul Chevigny, *Politics and Law in the Control of Local Surveillance*, 69 CORNELL L. REV. 735, 735 (1984).

these police agencies were set up during the First Red Scare that followed World War I, they are commonly referred to as "Red Squads."

The history of the Red Squad in Chicago provides a good example of how such units were formed and organized. The Chicago Red Squad was set up no later than the 1920s, though some activists have found evidence of a Chicago Red Squad as early as the 1890s.[32] During the First Red Scare and the height of the Cold War, the Red Squad's investigations focused mostly on anarchists and communists. By the 1960s, however, their investigations had expanded to encompass civil rights and antiwar groups.[33] Between 1920 and 1960, the Chicago Red Squad "gathered information on more than 14,000 organizations and 258,000 individuals, including the United Methodist Church and the League of Women Voters."[34]

Red Squad activities were not just confined to surveillance. According to Rick Gutman, an attorney who litigated the well-known *Alliance* case discussed below,[35] the squads "acted like any other secret police. They'd find out who was dissenting. If a group was considered a threat to the status quo, they'd try to destroy it, directly or indirectly."[36] Red Squads used illegal surveillance techniques "such as break-ins and warrantless electronic surveillance," and Red Squad officers would assume "leadership positions of organizations they infiltrated."[37] Red Squads often used a "vacuum cleaner" approach, taking down as much information as possible at a given function, meeting, or event, and then working backwards to speculate about the beliefs

[32] *See* BUD SCHULTZ & RUTH SCHULTZ, THE PRICE OF DISSENT 408 (2001) (interview with Rick Gutman).
[33] *Id.*
[34] *Red Squads*, Chicago Kent School of Law, http://www.kentlaw.edu/faculty/rstaudt/classes/2007PublicInterestLaw/studentdocs2007/Red%20Squad%20-%20Presentation.ppt (last visited April 25, 2008).
[35] *See infra* Part III(C).
[36] SCHULTZ & SCHULTZ, *supra* note 32, at 408 (interview with Rick Gutman).
[37] Fisher, *supra* note 5, at 633.

and political feelings of those individuals present.[38] Unsurprisingly, this often led to false information being recorded.[39]

C. How did this happen?

While police and FBI practices such as those described above are relatively easy to catalog, they are more difficult to explain. People find this kind of political surveillance unsettling—especially when it is happening to them—and, as we saw with the Church Committee, they rightfully look for answers and explanations as to why this kind of surveillance was allowed to occur.

A useful theoretical model of political surveillance applied by Frederick A.O. Schwarz and Aziz Huq helps answer these questions. They argue that the expansion of political surveillance can be attributed to, among other things, the phenomenon of "mission creep."[40] Mission creep has two principle components: "[t]he absence of initial legal restraints"[41] and the absence of "meaningful oversight."[42] Though Schwarz and Huq's analysis focuses on political surveillance at a national level, their ideas fit easily into an explanation of local political surveillance as well. When an intelligence agency or local police department lacks a clear intent—either legal or legislative—and when there is little oversight over the workings of that agency or department, then legitimate surveillance devolves into illegitimate surveillance. As Schwarz and Huq put it: "The absence of initial legal restraints and subsequent oversight [means] that intelligence agencies extend[] unwarranted powers beyond even initial targets."[43]

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[38] *Id.*
[39] *Id.*
[40] SCHWARZ & HUQ, *supra* note 22, at 6.
[41] *Id.*
[42] *Id.* at 25.
[43] *Id.* at 6.

The FBI's surveillance tactics in the years leading up to the Church Committee investigations provide an historical example of mission creep in action. After being charged by President Roosevelt to combat subversion during World War II, the FBI began targeting domestic groups that had no connection to crime.[44] This legal mandate to fight subversion, which "lacked clear boundaries," was coupled with an incredibly lax policy of oversight by Congress.[45] Together, this permitted the FBI's tactics "to migrate from real suspects to entirely innocent Americans, particularly those who opposed administration policies and who protested racial discrimination or the Vietnam War."[46] Simply put, the scope of FBI surveillance kept expanding because no one told them it shouldn't.

Local police departments are also vulnerable to mission creep. As discussed above, local Red Squads were originally set up during the 1920s to fight Communists and anarchists. However, as the Cold War wore on, the fear of imminent takeover by Communists declined greatly. To fill the gap, Red Squads started focusing on other non-mainstream groups, such as civil rights advocates and antiwar activists. Without someone telling them to confine their investigations to one group or another, Red Squad investigations proliferated.

III. 1970S AND 1980S: ACTIVISTS GO TO COURT

While the abuses of the 1960s and early 1970s were being addressed by those in government, they were also being challenged by activists on the ground. By the mid-1970s, important lawsuits had been filed that challenged local police surveillance. In each of those cases, the plaintiffs were able to secure negotiated settlement agreements that protected core First Amendment activity from unwarranted police surveillance and interference.

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[44] *Id.* at 24
[45] *Id.* at 19.
[46] *Id.* at 25.

These cases are presented here chronologically by date of settlement. The first case, *Kendrick v. Chandler*, challenged the surveillance practices of the Memphis Police Department.[47] Though it was filed after important cases in New York and Chicago, *Kendrick* settled much sooner than those cases and thus represents the first consent decree of its kind, and a decree that was relied on by plaintiffs in subsequent litigation. The second case, *Handschu v. Special Services Division*, sought to curtail the surveillance powers of the NYPD.[48] The consent decree that came out of that case—known as the Handschu Guidelines—has also been a model of police surveillance decrees, and has been one of the most litigated decrees of its kind. The third case, *Alliance to End Repression v. City of Chicago*, challenged the practices of the Chicago Police Department Red Squad, and also has been heavily relied upon by subsequent plaintiffs.[49] Moreover, *Alliance* and *Handschu* represent early examples of a tactic used effectively by the *American Friends* plaintiffs: working the media in order to embarrass the City into negotiating, thereby strengthening a relatively weak legal case.

A. Memphis: Kendrick v. Chandler

In June 1976, political activists in Memphis filed a federal civil rights lawsuit that challenged the surveillance practices of the Memphis Police Department.[50] The case, *Kendrick v. Chandler*,[51] was prompted by newspaper reports stating that the Department was considering destroying its political files.[52] After the mayor and chief of police claimed to have destroyed most of the files, sections of them began surfacing outside the Department.[53] This

[47] Kendrick v. Chandler, No. 76-449 (W.D. Tenn. filed Sept. 1, 1976).
[48] Handschu v. Special Servs. Div., No. 71-2203 (S.D. N.Y. filed May 18, 1971).
[49] Alliance to End Repression v. City of Chicago, No.74-4268 (N.D. Ill. filed Nov. 13, 1974).
[50] Chevigny, *supra* note 31, at 751.
[51] *Kendrick*, No. 76-449 (W.D. Tenn.).
[52] Chevigny, *supra* note 31, at 751-52.
[53] *Id.* at 752.

embarrassment, combined with "the double pressure of bad publicity and the possibility of an adverse court ruling," led the City to enter into a consent decree with the plaintiffs.[54]

The Memphis decree was the first of its kind, and it influenced the more well-known decrees that would come after it. As noted by Paul Chevigny, class counsel in the *Handschu* case discussed below, "the most important feature of the Memphis decree, and others like it, is simply that a decree is an injunction. As such, the decree subjects the police to the continuing jurisdiction and sanctions of a federal court and cannot be changed at the whim of a new police administration."[55] Substantively, the Memphis decree prohibited the police from undertaking surveillance solely for political purposes.[56] By the mid-1970s, the political climate was such that this provision was easily accepted by the police department.[57] The decree also addressed "mixed" investigations: legitimate criminal investigations that also contained political elements.[58] The decree required the Director of Police to certify that any "lawful investigation of criminal conduct which . . . may result in the collection of information about the exercise of First Amendment rights" is unavoidable, that the investigation will employ non-intrusive methods, and that "every reasonable precaution [will be] employed to minimize the collection of information about . . . First Amendment rights."[59]

While some critics—particularly on the left—were unhappy with some provisions of the decree,[60] it represented the first successful injunctive effort to curb illegal surveillance practices by local police. As such, it was influential in future cases challenging similar conduct.

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[54] *Id*.
[55] *Id*. at 753.
[56] *Id*. at 752.
[57] *Id*.
[58] *Id*.
[59] *Id*. at 753, *quoting* Kendrick v. Chandler, No. 76-449, at 3-4, paras. C-F (W.D. Tenn. Sept. 14, 1978) (Order, Judgment and Decree).
[60] *Id*. at 753-54.

B. New York: Handschu v. Special Services Division

On May 18, 1971, the first lawsuit challenging local police surveillance was filed in federal court in the Southern District of New York. The suit was prompted by revelations of the surveillance practices of the Special Services Division of the NYPD during the 1960s.[61] According to Franklin Siegel, who has worked on the case as class counsel since 1974, the suit's sixteen named plaintiffs each represented a different organization or constituency that was the target of police surveillance, "including Black Panthers, teachers, the War Resistors League, early gay activists, and youth activists."[62] The case was filed as a class action, with the original class being defined as people who "object to governmental policies or social conditions."[63] The complaint alleged a chilling effect on their First Amendment rights based on seven categories of police misconduct: "(1) informers; (2) infiltration; (3) interrogation; (4) overt surveillance; (5) summary punishment; (6) intelligence gathering; (7) electronic surveillance."[64]

According to class counsel Paul Chevigny, after losing an initial motion to dismiss, the defendants—the Special Services Division of the NYPD, the NYPD itself, and various NYPD officials—and the City of New York tried "to blunt the effect of the case by internal housecleaning."[65] The defendants purged, but did not destroy, nearly a million documents from their intelligence files.[66] The NYPD also set up internal guidelines for the creation and maintenance of political surveillance files, although they were "entirely internal, contained no sanctions, and could be ignored or changed at any time."[67] The defendants also sought to limit, delay, and hinder discovery in the case, and were largely successful in doing so. It was not until

[61] *Id.* at 747. For a discussion of those practices, see PAUL CHEVIGNY, COPE AND REBELS: A STUDY OF PROVOCATION 252-55 (1972).
[62] Telephone Interview with Franklin Siegel (Feb. 28, 2008).
[63] Chevigny, *supra* note 31, at 747.
[64] Handschu v. Special Servs. Div., 605 F.Supp. 1384, 1388 (S.D. N.Y. 1985).
[65] Chevigny, *supra* note, at 748.
[66] *Id.* at 749.
[67] *Id.*

1979 that the plaintiffs had gotten enough discovery to seek certification of the class, which was eventually defined as

> [a]ll individuals resident in the City of New York, and all other persons who are physically present in the City of New York, and all organizations located or operating in the City of New York, who engage in or have engaged in lawful political, religious, educational or social activities and who, as a result of these activities, have, been, are now or hereafter may be subjected to or threatened by infiltration, physical and verbal coercion, photographic, electronic and physical surveillance, provocation of violence, recruitment to act as police informers and dossier collection and dissemination by defendants and their agents.[68]

This class definition closely tracks the class definitions in the *Alliance* case discussed below, and according to Franklin Siegel, class counsel in *Handschu* "modeled our class definition on [the] *Alliance*" class definitions.[69] By the time the class was established, each side was amenable to settling the case, and the parties entered into a settlement agreement that was approved by District Judge Charles Haight on March 7, 1985.[70]

The agreement, known as the Handschu Guidelines, generally prohibits the investigation of "political activity," which is defined in the Guidelines as "[t]he exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions."[71] In cases of criminal investigations or the planning of a public event, the Public Security Section (PSS) of the Intelligence Division—the successor to the Special Services Division—may conduct such investigation, provided that investigation is approved by an Authority made up of "the First Deputy Commissioner of the Police Department, the Deputy Commissioner for Legal Matters of the Police Department, and a civilian member appointed by the Mayor."[72] The Guidelines authorize the PSS to investigate a person or group that has

[68] *Handschu*, 605 F.Supp. at 1388.
[69] Interview with Franklin Siegel, *supra* note 62.
[70] *Handschu*, 605 F.Supp. at 1384.
[71] *Id.* at 1420.
[72] *Id.*

engaged in political activity only when the NYPD has received "specific information" that the person or group "is engaged in, about to engage in or has threatened to engage in conduct which constitutes a crime."[73] Before such an investigation begins, the PSS must submit a report outlining the factual basis for the investigation to the Authority.[74] The Guidelines also regulate the use of undercover officers and investigators at public activities, with each generally having to be approved by the Authority.[75] Under the Guidelines, persons are allowed to request their individual intelligence files from the PSS, which is forbidden from commencing an investigation into that person based solely on their request.[76] The Guidelines also set up a framework for yearly review of the files by the Intelligence Division Commander, whose report is forwarded to the Authority for review.[77] Generally, Franklin Siegel and the other class counsel were happy with the Guidelines because they "created a paper trail" and set up "more checks and balances into the system."[78]

C. Chicago: Alliance to End Repression v. City of Chicago

In response to perceived police misconduct and constitutional violations by members of the Chicago Police Department in the 1960s, a number of community, civic, and religious groups combined to form the Alliance to End Repression (hereinafter "the Alliance").[79] Specifically, the Alliance was formed following the assassinations of Mark Clark and Fred Hampton by Chicago police and FBI in 1969.[80] This was seen as "the ultimate in repression," and the Alliance formed soon thereafter with a mission "to attack repression wherever it was."[81]

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[73] *Id.* at 1421.
[74] *Id.*
[75] *Id.* at 1391.
[76] *Id.* at 1391-92.
[77] *Id.* at 1392.
[78] Interview with Franklin Siegel, *supra* note 62.
[79] SCHULTZ & SCHULTZ, *supra* note 32, at 403.
[80] *Id.* For a more complete accounting of the assassinations, see SCHWARZ & HUQ, *supra* note 22, at 218-249.
[81] SCHULTZ & SCHULTZ, *supra* note 32, at 403.

From its formation, one of the Alliance's primary goals was the destruction of the Chicago Red Squad, formally known as the Subversive Activities Unit of the Chicago Police Intelligence Division.[82] Because "it was such a blatant violation of the First Amendment to have a unit that did nothing but harass citizens and spy on their political activities," the Alliance decided to file a lawsuit.[83] At first, the Alliance had trouble finding an attorney to work on the case, due to the 1972 Supreme Court decision in *Laird v. Tatum* which held that the mere act of police spying does not allege an injury sufficient to file a suit.[84] Eventually, a young Chicago attorney named Rick Gutman took over the project. Gutman, a political activist and former ACLU staff attorney, explained his involvement this way:

> I'd rather have this than any other kind of case I can think of. I didn't become a lawyer to practice law as an end in itself. I became a lawyer because that was the way I saw myself participating politically. . . . When I learned of this case, I knew how important it was. A unit of government whose purpose is political repression, that does nothing but target lawful political dissent–to me, that's an extremely important type of litigation. It's something that affects all political groups, everyone.[85]

The Alliance filed their class action complaint in November 1974, which was consolidated with a similar complaint brought by the ACLU in 1975.[86] The complaint alleged that the Subversive Activities Unit and the FBI's Chicago office engaged in

> a continuing pattern and practice involving the following activities: (1) surveillance and intelligence-gathering on individuals and organizations engaged in lawful activities; (2) unlawful wire-tapping and other forms of electronic surveillance; (3) unlawful entry and seizure; (4) dissemination of derogatory information concerning plaintiffs; (5) summary punishment and harassment, and (6) infiltration of private meetings and political organizations by informers and provocateurs

[82] *Id.* at 408. For a history of the Chicago Red Squad, see *infra* Part II(B).
[83] SCHULTZ & SCHULTZ, *supra* note 32, at 408.
[84] Laird v. Tatum, 408 U.S. 1 (1972).
[85] SCHULTZ & SCHULTZ, *supra* note 32, at 409.
[86] Chevigny, *supra* note 31, at 750. *See also* Complaint, ACLU v. City of Chicago, No. 75-3295 (N.D. Ill. filed Oct. 3, 1975).

and that those practices had a chilling affect on the plaintiffs' exercise of their First Amendment rights.[87] After successfully defending an initial motion to dismiss—the decision for which relied on Judge Edward Weinfield's 1972 *Handschu* decision denying defendants' motion to dismiss—the plaintiffs forged ahead with discovery.

According to Gutman, the "first major breakthrough" in the case came in the spring of 1976, while discovery was halted pending Judge Lynch's decision on defendant's motion to dismiss.[88] As an attorney on a separate suit involving the Chicago Police Department, Rick Gutman had obtained a payroll list of all Chicago police officers that listed officers "by name, race, sex, disciplinary actions, unit, and assignment."[89] Gutman noticed that eight officers were classified under "Assignment Unknown," which he "thought was a little strange."[90] Upon examining the names, he immediately recognized two of them as activists in Operation PUSH and the Alliance.[91] These purported activists were actually Red Squad police spies. Other spies were found to be operating in the Organization for a Better Austin and the Citizens Action Program, a "mainly white, lower-middle-class group trying to get people involved in issues like housing and Social Security."[92] The infiltration of these groups was a huge tactical mistake by the Red Squad, and it led to front page headlines in many Chicago newspapers.[93] Particularly important was the fact that the Squad had infiltrated mainly "white" groups. According to Gutman: "When radical or Black groups are being spied on, the media really doesn't care too

[87] Alliance to End Repression v. City of Chicago, 561 F.Supp. 537, 540 (N.D. Ill. 1982).
[88] SCHULTZ & SCHULTZ, *supra* note 32, at 410.
[89] *Id.*
[90] *Id.*
[91] *Id.* at 410-11.
[92] *Id.* at 411.
[93] *Id.*

much. They think: 'It's probably good that the government watches them.' But when it's mainly white mainstream-type groups, all hell breaks loose."[94]

After these exposures, the City voluntarily abolished the Red Squad.[95] However, this did not stop the suit from moving forward. After the plaintiffs gained access to nearly all of the files—which included the files of the named plaintiffs *and* all the class members—and the media found out that the Red Squad had sought to infiltrate the plaintiffs' legal team, the City became more amendable to settling the case.[96] Following nearly two years of arduous settlement negotiations, the parties finally entered into an Agreed Order, Judgment and Decree on April 8, 1982. According to Gutman, settling the case "was a no-brainer. The most important factor was that even if we were to win a trial, we would not obtain injunctive relief even one-quarter as strong as the consent decree. It is a basic principal of law that a party can agree to an injunction that goes beyond what is required by law."[97] Thus, by losing the battle of having nearly all of the files exposed to the public, the City effectively lost the war of the case as well. By embarrassing the City with public disclosure of the files, the plaintiffs were able to bring the defendants to the negotiating table.

The Chicago decree states that "[n]o investigation shall be conducted for political, religious or personal reasons. First Amendment information may be gathered only for valid governmental purposes in accordance with this Judgment."[98] The decree applies "only to

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[94] *Id.* at 412.
[95] *Id.*
[96] The classes were defined as all individuals and organizations present or operating in Chicago

> who engage or have engaged in lawful political, religious, educational or social activities and who, as a result of these activities, have been within the last five years, are now, or hereafter may be, subjected to or threatened by alleged infiltration, physical or verbal coercion, photographic, electronic, or physical surveillance, summary punishment, harassment, or dossier collection, maintenance, and dissemination by defendants or their agents.

Alliance to End Repression v. City of Chicago, 561 F.Supp. 537, 541 (N.D. Ill. 1982).
[97] SCHULTZ & SCHULTZ, *supra* note 32, at 412. *See* Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).
[98] *Alliance*, 561 F.Supp. at 560.

investigative activity that is *directed toward First Amendment conduct*," and not to criminal investigations that "merely [include] *incidental references* to [First Amendment] conduct."[99] The decree prohibits the City of Chicago from: (1) investigating a person "solely because of the person's *First Amendment conduct,* or selectively for political, religious, or personal reasons;" (2) from disrupting, interfering with or harassing "any *person* because of the person's *First Amendment conduct*;" (3) from gathering "*First Amendment information* by *intrusive methods* . . . or by illegal methods;" (4) from assisting any person in violating the Order; and (5) from conducting "any investigation, or [maintaining] any file or file system, *directed toward First Amendment conduct*."[100]

While these prohibitions generally track those found in the Memphis decree, the Chicago decree attempts to go further. The decree prohibits police from investigating First Amendment activity in all but four classes of cases: criminal, dignitary protection, public gathering or regulatory investigation.[101] In those types of cases, the police may investigate First Amendment activity to a limited extent, with each category subject to a litany of qualifications and standards intended to ensure that investigation is as limited as possible.[102] The most important such qualification is that investigations must be based upon reasonable suspicion of criminal activity.[103] Such investigations also need the written approval of the Superintendent of Police, setting out the factual basis for the investigation, within thirty days of the beginning of the investigation.[104] The decree also sets up a framework for periodic audits of the files by the Superintendent of Police, the Police Board, and an independent auditing firm.[105]

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[99] *Id.* at 561.
[100] *Id.* at 562-63.
[101] *Id.* at 563.
[102] *See* Chevigny, *supra* note 31, at 755-56.
[103] *Id.*
[104] *Alliance*, 561 F.Supp. at 563.
[105] *Id.* at 568-69.

D. Other Remedies

The consent decrees obtained by the plaintiffs in the foregoing cases were not the only ones of their kind, nor are consent decrees the only avenue available to curb police surveillance practices. Though litigation produced some reform in cities like Los Angeles,[106] Detroit,[107] and Philadelphia,[108] administrative and legislative remedies were also successful in other places, with varying degrees of efficacy.

In New Jersey, plaintiffs had filed suit in state court challenging the New Jersey State Police practices of recording events "such as civil disturbances, riots, rallies, protests, demonstrations, marches, confrontations, etc."[109] In denying the plaintiffs' motion for summary judgment, the New Jersey Supreme Court found that the plaintiffs "had failed to establish any personal injury."[110] However, the Court did not dismiss the case out of hand, and the fear of an adverse court ruling on remand led the State Police to adopt new intelligence gathering policies.[111] The policies, laid out in a new manual for the Central Security Unit (CSU), required the CSU to maintain files only on "individuals and/or groups that pose *an actual threat of inciting violent confrontation*."[112] The manual also "forbids the collection of data about an individual 'merely' because of the individual's race or political affiliation or because the individual supports unpopular causes."[113] Though the Manual is only an administrative remedy with no guarantee that it will not be altered or ignored, it nevertheless imposed constraints on

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[106] *See* Coalition Against Police Abuse v. Board of Police Comm'rs, No. 243-458 (L.A. County Ct. filed Dec. 16, 1982).
[107] *See* Benkert v. Michigan State Police, No. 74-023-934-AZ (Wayne County Ct. filed July 18, 1974).
[108] *See* Philadelphia Yearly Meeting of Religious Soc. of Friends v. Tate, No. 71-849 (E.D. PA) (filing date unknown).
[109] Chevigny, *supra* note 31, at 744 (internal quotations omitted).
[110] *Id.*
[111] *Id*. at 745.
[112] *Id.* at 745-46 (quoting Department of Law and Public Safety Division of New Jersey State Police, New Jersey State Police Central Security Unit Manual Delineating the Scope – Functions and Operations (released Feb. 10, 1976) [hereinafter "New Jersey Manual"]).
[113] *Id.* at 746 (quoting New Jersey Manual).

political surveillance and curbed some of the practices about which the plaintiffs were concerned.[114]

In Seattle, following the destruction of intelligence files in the aftermath of Watergate, activists were able to convince the Seattle City Counsel to pass "an ordinance to control police surveillance."[115] This legislative remedy is unique in political surveillance cases, and may be due to Seattle's relatively small size and cohesive nature.[116] The ordinance prohibits surveillance for purely political reasons, and provides that "[n]o person shall become the subject of the collection of information on the account of a lawful exercise of a constitutional right or civil liberty."[117] The ordinance also sets up an auditing mechanism to review intelligence files, provides for limitations on the transfer of information to other intelligence agencies, and provides a framework for collecting political information during a criminal investigation, all of which mirror provisions found in the *Alliance* decree that became effective only months later.[118] In fact, the ordinance goes one step further than the consent decrees discussed above by holding the City civilly liable for damages based on violations of the ordinance, though it stops short of holding offending officers individually liable.[119]

IV. 1990S AND 2000S: MODIFICATION OF THE CONSENT DECREES

The foregoing consent decrees in Memphis, New York City and Chicago marked a change in how police engaged in political surveillance in those cities. The Handschu Guidelines and the *Alliance* decree imposed significant restraints on local police departments, and forced them to have legitimate reasons—based on imminent criminal activity—before engaging in

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[114] *Id.*
[115] *Id.* at 778.
[116] *Id.*
[117] *Id., quoting* SEATTLE, WASH. MUN. CODE §14.12.020(A) (1980), *available at* http://clerk.ci.seattle.wa.us/~public/code1.htm (last visited April 25, 2008).
[118] *See* Chevigny, *supra* note 31, at 779-81.
[119] *Id*. at 780.

surveillance of political speech. Not surprisingly, police departments largely did not appreciate having their tactics questioned, and the parameters of both decrees were heavily litigated after their promulgation.[120] In the late 1990s and early 2000s, however, defendants in both cases changed tactics. Instead of seeking to define the parameters of the decrees, the defendants began seeking radical changes to the decrees based on changing circumstances. These efforts were ultimately successful in both cases, and they drastically undermined the efficacy of the consent decrees.

A. Alliance

In 1997, the City of Chicago moved to modify the *Alliance* consent decree under Federal Rule of Procedure 60(b).[121] The City argued that the decree, as written, placed "significant burdens . . . on it's [sic] ability to serve and protect Chicago citizens," and that activities prohibited by the decree amounted to bad public policy. [122]

District Judge Ann Williams denied the motion, adopting the recommendation of Magistrate Judge Edward Bobrick.[123] In doing so, Judge Williams found that neither the state of the law nor the factual circumstances surrounding the case had sufficiently changed to justify modifying the decree.[124] Judge Williams also dismissed the City's policy concerns, pointing out "that much of the City's policy argument is based upon a misinterpretation of the consent decree," and that many of the activities the City claimed were prohibited by the decree were actually allowed. [125] Though she denied the motion to modify, Judge Williams allowed each party to submit a motion for interpretation of the decree.[126] However, the court refused to

[120] Interview with Franklin Siegel, *supra* note 62.
[121] Alliance to End Repression v. City of Chicago, 66 F.Supp.2d 899, 903 (N.D. Ill. 1999).
[122] *Id.* at 912.
[123] *Id*. at 899.
[124] *Id.*
[125] *Id*. at 911-12.
[126] *Id.* at 913.

answer the "thirteen interrogatories that call for sweeping interpretations of the consent decree" later submitted by the City, on the ground that they involved hypothetical situations and the court "cannot be in the business of issuing hypothetical answers."[127]

The City appealed the denial of its motion to the Seventh Circuit Court of Appeals. On January 11, 2001, Judge Richard Posner agreed to modify the consent decree by removing the "reasonable suspicion" requirements necessary to begin an investigation that implicates First Amendment activity.[128] The court saw the Red Squad as an historical relic, stating that "[t]he era in which the Red Squad flourished is history, along with the Red Squad itself."[129] The court also doubted whether "[m]ere compliance with a decree over a period of years . . . does not justify the lifting of the decree."[130] Essentially, however, the court's reasoning focused on the fear of terrorism. Unlike the historical Red Squad,

> [t]oday the concern, prudent and not paranoid, is with ideologically motivated terrorism. The City does not want to resurrect the Red Squad. It wants to be able to keep tabs on incipient terrorist groups. New groups of political extremists, believers in and advocates of violence, form daily around the world. If one forms in or migrates to Chicago, the decree renders the police helpless to do anything to protect the public against the day when the group decides to commit a terrorist act. Until the group goes beyond the advocacy of violence and begins preparatory actions that might create reasonable suspicion of imminent criminal activity, the hands of the police are tied.[131]

Contrary to the court's implication that the decree remains effective because it "will leave the Chicago police under considerably greater constraints than the police forces of other cities,"[132] removal of the "reasonable suspicion" standard removes virtually all the teeth from the Chicago decree. Without the "reasonable suspicion" requirement, the police will find it much easier to

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[127] Alliance to End Repression v. City of Chicago, No. 74-3268, 2000 WL 709485, at *1 (N.D. Ill 2000) (not reported in F.Supp.2d).
[128] Alliance to End Repression v. City of Chicago, 237 F.3d 799 (7th Cir. 2001).
[129] *Id.* at 801.
[130] *Id.*
[131] *Id.* at 802.
[132] *Id.*

return to Red Squad-like conduct. There remain precious few legal checks on police surveillance power following this modification.

B. Handschu

On September 11, 2001, New York City and the rest of the country were rocked by unprecedented acts of terrorism. Approximately eighteen months after these events, both parties to the *Handschu* case began thinking "that the unprecedented emergence of terrorism and its attendant dangers might require reconsideration of the Handschu Guidelines."[133] According to Franklin Siegel, plaintiffs' counsel wrote to the City after September 11 to discuss how those events would shape the Handschu Guidelines.[134] One of the class counsel, Jethro Eisenstein, wrote to defendants' counsel—Michael A. Cardozo, the Corporation Counsel of the City of New York—offering to discuss the Guidelines, stating that "terrible things have happened, we believe that Handschu continues to be an important protection of civil liberties, we stand ready to discuss with you the continued viability of the Handschu agreement."[135] But instead of discussing modification with the class counsel, the NYPD moved for an order modifying Guidelines under Federal Rule of Civil Procedure 60(b).[136]

The basis for the NYPD's motion was explained by David Cohen, the NYPD's Deputy Commissioner for Intelligence.[137] Cohen, a career CIA official,[138] testified that "[t]he continued enforcement of the Guidelines is no longer consistent with the public interest because they limit the effective investigation of terrorism and prevent cooperation with federal and state law

[133] Handschu v. Special Servs. Div., 273 F.Supp.2d 327, 333 (S.D.N.Y. 2003).
[134] Interview with Franklin Siegel, *supra* note 62.
[135] *Handschu*, 273 F.Supp.2d at 333. *See also* Interview with Franklin Siegel, *supra* note 62.
[136] *Handschu*, 273 F.Supp.2d at 329.
[137] *Id.* at 333.
[138] *Id.* at 337. Before becoming Deputy Commissioner for Intelligence, Cohen served as Deputy Director for Operations and Deputy Director of the CIA's Directorate of Intelligence. *Id.*

enforcement agencies in the development of intelligence."[139] In order to better combat terrorism, the NYPD proposed modifications to the Handschu Guidelines. Most significantly, the NYPD requested that the "criminal activity requirement" of the Guidelines be completely deleted, making the Authority's sole function to review records and decide if a violation had occurred.[140] Cohen stated that the criminal activity requirement "may effectively shield from discovery the lawful preparatory activities which invariably precede terrorist attacks."[141] The NYPD also proposed drastically altering the Guideline's prohibitions on the dissemination of records and sharing of information by completely deleting sections six through nine of the Guidelines.[142]

Despite plaintiffs' assertions that "[t]he Handschu Guidelines do not restrict the investigation and prevention of terrorism" and that "[t]he Guidelines would not have interfered with investigation of the September 11th hijackers because they were involved in no protected political activity,"[143] District Judge Haight granted all of the NYPD's requested modifications.[144] Judge Haight found significant factual changes since the Guidelines were enacted, noting that "[t]here is no disputing Deputy Commissioner Cohen's assertion that since the formulation of the Handschu Guidelines in 1985, the world has undergone remarkable changes . . . in terms of new threats we face."[145] Based on these new threats, Judge Haight determined that the Guidelines needed modification.[146] Judge Haight's opinion was heavily influenced by Deputy Commissioner Cohen's testimony, and noted that "[c]lass counsel offer no evidence . . . to rebut

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[139] *Id.* at 333.
[140] Jerrold Steigman, Note, *Reversing Reform: The Handschu Settlement in post-September 11 New York City*, 11 J. L. & POL'Y 745, 767 (2003).
[141] *Handschu*, 273 F.Supp.2d at 339.
[142] *Id.* at 335.
[143] *Id.* at 338.
[144] *Id.* at 349.
[145] *Id.* at 337 (internal quotations omitted).
[146] *Id.* at 340.

[Cohen's] testimony that the Handschu Guidelines . . . severely handicap police efforts to gather and utilize information about potential terrorist activity."[147]

After all of the defendants' requested modifications were granted, questions remain about the efficacy of the modified Handschu Guidelines. It is clear that the "criminal activity requirement" was an important legal roadblock that inhibited unwarranted police surveillance. The deletion of this important requirement could be seen as heralding a new era of political surveillance. However, the Guidelines can also be understood as transcending their mere words. Due to revelations about police spying and misconduct in other cities, societal changes in how people believe the police should operate, and the fact that the Handschu Guidelines as so well-known, it is possible that a system offering lower First Amendment protection in theory might offer the same amount of protection in practice. Because the boundaries of the modified Handschu Guidelines are still being tested and litigated by both parties, the lasting effects of the modifications remain to be seen.

V. *AMERICAN FRIENDS SERVICE COMMITTEE V. CITY AND COUNTY OF DENVER*

The foregoing litigation shaped, in many ways, the trajectory of the only new class action lawsuit challenging police surveillance practices in the past fifteen years. Unlike the cases discussed above, all of which were first brought in the 1970s, the City of Denver's police surveillance practices were not challenged until 2003. This case provides an interesting study of current police surveillance practices for a number of reasons. First, this case is unique in its recency. Because it is the only such case brought in recent years, most of the documents produced during the litigation are publicly available, which greatly increases the chances of getting the "entire story." Second, this case's recency makes it the only case that has been influenced not only by the seminal cases discussed above—*Handschu* and *Alliance*—but also

[147] *Id.* at 340.

from their recent modifications. As such, this case presents a more complete picture of what police surveillance cases could look like *today*. Thus, it will be useful to examine how this case came about, how it was resolved, and its overall impact on police surveillance within Colorado and without.

Early in 2002, the ACLU of Colorado received a series of documents in discovery in an unrelated case.[148] According to Mark Silverstein, Legal Director of the ACLU of Colorado and lead counsel on the case, the documents "were disclosed by another party, probably by mistake."[149] Included in these documents were a handful of files purporting to be from the Intelligence Bureau of the DPD.[150] The files showed that the DPD had been monitoring and recording information about the First Amendment practices of individuals and groups in the Denver area. For instance, included in the files was information about individuals' membership in the American Friends Service Committee, participation in protests against the International Monetary Fund and the World Bank in Washington, D.C., membership in End the Politics of Cruelty (a Denver human rights group), and "license numbers and descriptions of vehicles used by individuals identified as participants in peaceful protest activities."[151]

Based on this information, the ACLU held a press conference on March 11, 2002, disclosing the existence of the documents. The ACLU "contended that the Denver Police Department has inappropriately smeared the reputations of peaceful advocates of nonviolent

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[148] Declaration of Mark Silverstein at 5, American Friends Serv. Comm. v. City and County of Denver, No. 02-740 (D. Colo. Sept. 24, 2003).
[149] Telephone Interview with Mark Silverstein, Legal Director, ACLU of Colorado (March 7, 2008).
[150] According to current Denver Mayor John Hickenlooper, the Intelligence Bureau was created "in 1953 to monitor certain activities including organized crime, activity by the criminal element, individuals in groups of special interest regarding the safety of the public, dignitary protection, the background investigation of police applicants, and the arrest of outstanding fugitives." Press Release, Mayor John Hickenlooper, June 17 2004. Unless otherwise noted, all litigation documents are available at http://www.aclu-co.org/spyfiles/chronology.htm (last visited April 25, 2008).
[151] Complaint, American Friends Serv. Comm. v. City and County of Denver, No. 02-2993 (Colo. Dist. Ct. March 28, 2002).

social change" and that the DPD had "branded several local organizations with the label 'criminal extremist,' including the American Friends Service Committee; the Chiapas Coalition, and End the Politics of Cruelty."[152] Additionally, Mark Silverstein sent a letter to Denver Mayor Wellington Webb on behalf of the ACLU, asking him to take steps to immediately halt the "surveillance and monitoring of peaceful protest activity and prohibit police from keeping files on the views and expressive activities of peaceful activist organizations," and to compel the DPD to release all the files to the public.[153]

Mayor Webb responded in a press release two days later, acknowledging that the Intelligence Bureau of the DPD had compiled records on roughly 200 organizations and over 3200 individuals.[154] Mayor Webb recognized that the "the issues that have been raised both by the ACLU as well as others are legitimate," and that some of the files had been improperly collected.[155] Instead of releasing the files to the public, Mayor Webb suggested purging all improperly collected files and simply notifying the subjects of the files that a file had existed on them, and that it had been destroyed.[156] At the press conference, Mayor Webb also handed out copies of the City's then-current written policy on intelligence gathering. The policy stated that the DPD "shall only collect and maintain criminal intelligence information concerning an individual if there is 'reasonable suspicion' that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."[157] Mayor Webb

[152] Press Release, ACLU of Colorado, ACLU Calls for Denver Police to Stop Keeping Files on Peaceful Protesters (March 11, 2002).
[153] Letter from Mark Silverstein, Legal Director, ACLU of Colorado, to Wellington Webb, Mayor, City and County of Denver (March 11, 2002).
[154] Press Release, Mayor Wellington Webb (March 13, 2002).
[155] *Id.* Mayor Webb stated that "No information about political, religious or social views, associations, or activities should be collected unless the information relates to criminal activity and the subject is suspected of criminal activity." *Id.* Mayor Webb also invoked his experiences as a civil rights protestor in the 1970s to empathize with current subjects of police surveillance. *Id.*
[156] *Id.*
[157] Denver Police Department Intelligence Systems Information (date unknown).

blamed the creation and maintenance of the improperly collected files on an overly broad interpretation of that policy.[158]

Worried that the City would begin destroying the "Spy Files," as they came to be known,[159] Mr. Silverstein wrote to Denver Police Chief Gerald Whitman on March 25, 2002, asking him to disclose large amounts of information on the Spy Files under the Colorado Open Records Act and the Colorado Criminal Justice Records Act.[160] Specifically, in addition to requesting the files on all 208 organizations Mayor Webb stated appear in the files, the ACLU requested the files on specific individuals[161] and any files or information regarding how the files were kept and used.[162] Unsurprisingly, the DPD refused to produce any of the documents requested by the ACLU.[163]

While Mark Silverstein was asking Mayor Webb and Police Chief Whitman to disclose the existence of the files, the ACLU was simultaneously preparing to file a lawsuit to stop the police practices that led to the files' creation. Working in close connection with others at the ACLU[164] and Lino Lipinsky, an attorney at the firm of McKenna Long & Aldridge who became the lead private attorney on the case,[165] Mr. Silverstein eventually settled on six named plaintiffs:

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[158] Press Release, Mayor Wellington Webb, *supra* note 154.
[159] According to Mr. Silverstein, the name "Spy Files" was coined "by some editor at the Rocky Mountain News or the Denver Post" and the name just stuck. Interview with Mark Silverstein, *supra* note 149.
[160] Letter from Mark Silverstein, Legal Director, ACLU of Colorado, to Gerald Whitman, Chief of Police, Denver Police Department (March 25, 2002).
[161] Those individuals were Glenn Morris, Mark Cohen, Barbara Cohen and LeRoy Lemos, whose names appeared in the original files disclosed to the ACLU. *Id.*
[162] *Id.*
[163] Letter from Capt. John Weber, Denver Police Department, to Mark Silverstein, Legal Director, ACLU of Colorado (March 29, 2002).
[164] In addition to consulting Vince DeGarlais, the chair of the national ACLU Legal Panel, and David Miller, the former legal director of the ACLU of Colorado, plaintiffs' counsel also consulted Harvey Grossman, Legal Director of the ACLU in Chicago who had litigated *Alliance*, and David Rudovsky, a civil rights attorney who had litigated many of the police surveillance cases in Philadelphia and is the co-author of a treatise, *Police Misconduct Law and Litigation*. Declaration of Mark Silverstein, *supra* note 148, at 8.
[165] Mr. Lipinsky got involved in the case after "Mark Silverstein, the Legal Director of the Colorado ACLU, contacted [him] in [his] capacity as an ACLU volunteer cooperating attorney after obtaining copies of what appeared to be police intelligence files." Telephone Interview with Lino Lipinsky, McKenna Long & Aldridge (March 5, 2008).

three organizations and three individuals. The plaintiffs were chosen based on their appearance in the files which were inadvertently disclosed to the ACLU in 2002. According to Mr. Lipinsky, "Mark Silverstein contacted the individuals and the groups identified in the initial intelligence files Mark had obtained. The named plaintiffs were the individuals and groups that consented to join the lawsuit."[166]

The American Friends Service Committee (AFSC) is a well-known, not-for-profit Quaker organization founded in 1672 that advocates nonviolent social change and won the Nobel Peace Prize in 1947.[167] According to Mr. Lipinsky:

> I thought it was a good idea for the case to be known by the name of a Nobel Peace Prize winner. It is difficult to present any good faith argument that the American Friends Service Committee is a "criminal extremist" group, or that its activities warrant governmental surveillance. Furthermore, the American Friends Service Committee had historically been a target of police surveillance, primarily due to its assistance to individuals who sought to avoid induction into the military.[168]

Another named plaintiff, Sister Antonia Anthony, is a Franciscan nun who has been a member of the Sisters of Saint Francis of Penance and Christian Charity since 1956. She has worked in ministries in the United States and Mexico for the last twenty-five years and is active with another named plaintiff, the Chiapas Coalition.[169] The Chiapas Coalition "is a Denver-based organization that conducts education and advocacy activities in support of the human rights struggle of indigenous persons in the Mexican state of Chiapas."[170] The last organizational plaintiff was End the Politics of Cruelty, a Denver human rights organization. Also named were

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[166] *Id.*
[167] Complaint at 3, American Friends Serv. Comm. v. City and County of Denver, No. 02-2993 (Colo. Dist. Ct. March 28, 2002).
[168] Interview with Lino Lipinsky, *supra* note 165.
[169] Complaint at 3, *American Friends Serv. Comm*, No. 02-2993.
[170] *Id.*

Stephan and Vicki Nash, a Denver couple who "frequently participate in peaceful education and advocacy activities."[171]

On March 28, 2002, the plaintiffs filed their complaint in state court against the City and County of Denver,[172] which was quickly removed to federal court.[173] In their complaint, the plaintiffs alleged that the DPD maintained a custom and practice of "monitoring the peaceful protest activities of Denver-area residents; maintaining files . . . on the expressive activities of law-abiding individuals and advocacy organizations . . . and providing copies of certain Spy Files to third parties."[174] Additionally, the plaintiffs claimed that the files contained false and derogatory information about them.[175] For instance, the AFSC's file labels them as "criminal extremist."[176] The Chiapas Coalition's file also labels them as "criminal extremist," and state that the group conducted demonstrations outside the Mexican Embassy in Denver, when no such Embassy in Denver exists.[177]

The plaintiffs filed their suit as a class action under Rules 23(a) and 23(b)(2) of the Colorado Rules of Civil Procedure, defining the class as "all organizations and all past, current, and future Denver residents and visitors who engage in or have engaged in peaceful political, religious, educational, social or expressive activities, and who, as a result of these activities, have been, are now, or will become, targets of surveillance by the Department or the subjects of the Department's Spy Files."[178] In their complaint, the plaintiffs set out four claims for relief. The first was a civil rights claim under 42 U.S.C. §1983, arguing that the practices of the DPD

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[171] *Id.*
[172] *See id.*
[173] *See* Docket, American Friends Serv. Comm. v. City and County of Denver, No. 02-740 (D. Colo. filed April 16, 2002) (on file with author).
[174] Complaint at 2, *American Friends Serv. Comm*, No. 02-2993.
[175] *Id.* at 5-6.
[176] *Id.*
[177] *Id.*
[178] *Id.* at 10.

infringed and diminished "plaintiffs' ability to enjoy and exercise fully and freely their rights" under the First and Fourteenth Amendments.[179] The plaintiffs asked for declaratory and injunctive relief, including the expungement of the Spy Files.[180] The plaintiffs' second claim for relief was a similar civil rights claim under the Colorado Constitution.[181] Their third claim was another §1983 claim, arguing that the DPD surveillance violated the requirements of 28 C.F.R. Part 23, a federal regulation that allows intelligence databases that operate with federal money to collect information on individuals "only if there is a reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."[182] The plaintiffs' final claim argued that the City was in breach of its written policy on intelligence gathering, and that the breach posed "an imminent threat of infringing, interfering with, and diminishing Plaintiffs' ability to enjoy and to exercise fully and freely their constitutional rights and their privacy."[183] While Mr. Silverstein and Mr. Lipinsky believed they had a triable case, they "were always concerned about the strength of [their] legal claims."[184]

Shortly before the plaintiffs' filed their complaint, Mayor Webb hired three former state judges—Judge Roger Cisneros, Judge Jean Dubofsky, and Judge William Meyer—to review the Spy Files and to make recommendations.[185] After issuing a draft of a proposed revised policy and conducting an open hearing to hear comments from the public, the judges issued their final report in late June 2002.[186] The panel recommended that all information on the 208 groups and

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[179] *Id.*
[180] *Id*.
[181] *Id.* at 11. Specifically, the plaintiffs' alleged violations of Article II, sections 3, 7, 10, 24, and 25 (which protect essentially the same rights as the First Amendment).
[182] *Id*.
[183] *Id.* at 11-12.
[184] Interview with Lino Lipinsky, *supra* note 165.
[185] Judge Roger Cisneros and Judge William Meyer are retired Denver District Court judges; Judge Jean Dubofsky is a retired Colorado Supreme Court Justice.
[186] Roger Cisneros, William Meyer & Jean Dubofsky, Report of Panel Appointed to Review Denver Police Department Policies for Collection and Retention of Criminal Intelligence Information (June 28, 2002).

over 3200 individuals be removed from the files, and that information be re-added to the files only if there existed "a reasonable suspicion of current criminal activity."[187] The panel proposed that the files not be disclosed to the public, but that a sixty-day period be instituted for groups and individuals to examine their files; at the end of the sixty-day period, the files would be destroyed.[188] Mayor Webb adopted all of the recommendations of the three-judge panel, except regarding the destruction of the Spy Files.

In August 2002, the City announced that it would begin limited disclosure of the files for two months, beginning in September.[189] However, instead of notifying groups and individuals that they had been subjects of surveillance, the City required people to come down to the police station in person and find out if a file existed on them. The system was very cumbersome and according to Mr. Lipinsky, "the Denver Police Department was not prepared for the significant number of individuals who appeared at Police Headquarters to review their files. People waited hours to obtain a copy of their file."[190] The ACLU was able to obtain many additional files by asking these people for copies of their files.[191] After discovering more Spy Files in early September, the City extended the time that the files would be available for review, and announced that it would begin to allow individuals to request their files by mail.[192]

While limited disclosure of the Spy Files was going on, the plaintiffs' class action suit continued. In April 2002, the City moved to dismiss the plaintiffs' case, arguing that Mayor

[187] *Id.* at 5.
[188] *Id.* at 6.
[189] American Civil Liberties Union of Colorado, Chronology of Spy Files Controversy, http://www.aclu-co.org/spyfiles/chronology.htm (last visited Sept. 14, 2008).
[190] Interview with Lino Lipinsky, *supra* note 165.
[191] *Id.*
[192] Press Release, Denver Police Department (Sept. 16, 2002). Individuals could only request their files by mail if the requests were accompanied by a notarized affidavit. *Id.*

Webb's March 13 press release completely resolved the plaintiffs' issues.[193] The City also argued, based on *Laird v. Tatum*, that the plaintiffs did not have standing to challenge the creation and maintenance of the Spy Files.[194] Plaintiffs' counsel, in their response to the motion to dismiss, argued that the "[p]laintiffs have standing to seek redress for the practices alleged in the Complaint,"[195] and that "the City's mantra of 'trust us' does not render this case moot."[196] District Judge Edward Nottingham, to whom the case was assigned, denied the motion to dismiss in a one-page order, allowing discovery to continue.[197] However, discovery was somewhat hampered by Magistrate Judge Craig Shaffer's order of July 12, 2002, which allowed either party to categorize virtually any information or file as "Confidential Information."[198] Both parties were forbidden from disclosing such information to the public or members of the media. The City chose to classify all the files that had not been turned over to individuals as confidential.[199]

It was that confidentiality order that prompted the plaintiffs to undertake a strategy that eventually proved successful: they began pressing the issue of the Spy Files in the media. This strategy evolved in discussions with both the named plaintiffs and other members of the class, as well as counsels' own feelings about the strength of their legal claims. In a way, the confidentiality order only catalyzed a strategy that had been with plaintiffs' counsel since the beginning of the case: "We knew that a successful resolution of the 'Spy Files' controversy required a legal, political, and media approach."[200] According to Mr. Lipinsky, using the media

[193] Plaintiffs' Response to Motion to Dismiss at 2, American Friends Serv. Comm. v. City and County of Denver, No. 02-740 (D. Colo. June 11 2002).
[194] *Id.* at 8.
[195] *Id.*
[196] *Id*. at 13.
[197] Order Denying Motion to Dismiss, *American Friends Serv. Comm*., No. 02-740 (Oct. 21, 2002).
[198] Stipulation and Protective Order, *American Friends Serv. Comm*., No. 02-740 (July 12, 2002).
[199] *See* http://www.aclu-co.org/spyfiles/chronology.htm (last visited April 25, 2008).
[200] Interview with Lino Lipinsky, *supra* note 165.

to embarrass the City was part of a strategy "to bring [the City] back to the negotiating table."[201] Additionally, using the media allowed plaintiffs' counsel to strengthen an otherwise weak legal theory.

Plaintiffs and other activists began bringing up the Spy Files issue in city counsel meetings. Others pressed local newspapers to write articles about the Spy Files, which resulted in several high-profile articles appearing in the Denver Post and the Rocky Mountain News in late 2002.[202] Activists also began posing questions about the Spy Files to candidates in the upcoming mayoral election, including Denver Auditor Don Mares, and Ari Zavaras, a former chief of the Denver Police. The Denver Post also moved to intervene as a party in the case for the purpose of challenging the City's designation of many of the Spy Files as confidential.[203] Specifically, the Denver Post asked Judge Shaffer to remove from the confidentiality order (1) all DPD intelligence files, (2) all deposition testimony, (3) all other documents that refer to the intelligence files' contents, and (4) "all other documents that discuss city policies regarding the collection and maintenance of the intelligence files."[204]

The strategy of going to the media proved to be a successful one, and in early 2003 the City began to seriously discuss settling the case. While the public pressure to settle the case was what brought the City back to the negotiation table, Magistrate Judge Craig Shaffer also played a critical role in settling the case. According to Mr. Lipinsky:

> Magistrate Judge Shaffer was instrumental in settling the case. On at least two occasions, the Magistrate Judge adjourned the settlement conference in the United States District Courthouse at 5:00 p.m. to allow the Court's security personnel to go home, and reconvened the mediation session at my office, two

[201] *Id.*
[202] *See* American Civil Liberties Union of Colorado, Chronology of Spy Files Controversy, http://www.aclu-co.org/spyfiles/chronology.htm (last visited Sept. 14, 2008).
[203] Motion to Intervene for the Limited Purpose of Challenging Defendant's Designation of Certain Discovery Materials as "Confidential Information", *American Friends Serv. Comm.*, No. 02-740 (Dec. 24, 2002).
[204] *Id.* at 3.

> blocks away. The Magistrate Judge practiced "shuttle diplomacy" to bring the two sides together. Without the intervention of a dedicated neutral, the chances of settling the case during the Webb administration would undoubtedly have been diminished.[205]

After months of negotiations and late-night sessions with Judge Shaffer, the parties reached a settlement agreement on April 17, 2003. The settlement became effective with Judge Nottingham's approval on May 7, 2003.[206]

The settlement agreement has three critical sections. First, the agreement states that the City agrees to adopt and implement revised Policy 118.03 by adding it to the DPD Operations Manual.[207] Policy 118.03, which was attached as Exhibit 1 to the settlement agreement, is entitled "Criminal Intelligence Information" and governs the collection and maintenance of intelligence.[208] At the heart of the policy is a prohibition on collecting or maintaining intelligence information on an individual or organization, unless "there is reasonable suspicion that the individual or organization is involved in criminal conduct or activity."[209] Reasonable suspicion is further defined as being "present when sufficient facts are established to give a trained law enforcement officer . . . a particularized and objective basis to believe that there is a reasonable possibility than an individual or organization is involved in a definable criminal enterprise or activity."[210]

Policy 118.03 prohibits the DPD from collecting certain types of information, including "information about the political, religious, social views, associations or activities or any individual or any group, . . . unless such information directly relates to criminal conduct or activity and there is a reasonable suspicion that the subject of the information is or may be

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[205] Interview with Lino Lipinsky, *supra* note 165.
[206] Settlement Agreement, *American Friends Serv. Comm.*, No. 02-740 (April 17, 2003).
[207] *Id.* at para. 3.1
[208] Exhibit 1, 118.03 Criminal Intelligence Information, *American Friends Serv. Comm.*, No.02-740 (April 17, 2003).
[209] *Id.* at 5-6 (para. 6(b)(1)).
[210] *Id.* at 5 (para. 5(f)(1)).

involved in that criminal conduct."[211] The Policy also specifically prohibits the DPD from basing intelligence on certain types of information, including because a person supports an "unpopular cause,"[212] because of a person's "personal habits and/or predilections that do not break any criminal laws,"[213] and because "of involvement in expressive activity that takes the form of non-violent civil disobedience that amounts, at most, to a misdemeanor offense."[214] Policy 118.03 also restricts the dissemination of intelligence information to other law enforcement agencies[215] and sets up a framework for independent auditing of the intelligence files.[216]

The second important aspect of the settlement agreement deals with the review and final disposition of the Spy Files. Within 30 days of the effective date of the agreement, the City was required to purge the files to comply with Policy 118.03.[217] For 90 days after the agreement, the City was required to permit individuals and groups to request their files.[218] After dismissal of the suit, the City was left with sole discretion as to how to permanently dispose of the files. It was not until June 2004 that new Denver Mayor John Hickenlooper announced that the Spy Files would be permanently stored at the Denver Public Library.[219] After being archived and indexed, some of the files would be made available to the public, while other files would be closed to the public for fifty years.[220] The agreement sets up a framework to allow the plaintiffs to remove

[211] *Id.* at 6 (para. 6(b)(2)).
[212] *Id*. (para. 6(c)(1)).
[213] *Id*. (para. 6(c)(4)).
[214] *Id*. (para. 6(c)(5)).
[215] *Id.* at 9-10 (para. 7).
[216] *Id.* at 12 (para. 11).
[217] Settlement Agreement at 2, *American Friends Serv. Comm*., No. 02-740 (April 17, 2003).
[218] *Id.*
[219] *See* Press Release, Mayor John Hickenlooper (June 17, 2004).
[220] *Id.*

documents from the July 2002 confidentiality order, thereby making them available to the public and the media.[221]

The third important aspect of the settlement agreement, in conjunction with Policy 118.03, sets up a system of independent, third-party audits of the DPD intelligence files.[222] Policy 118.03 mandates that the files be audited quarterly for the first year, semi-annually for the second and third years, and annually thereafter.[223] The auditor, selected by the Mayor, must be someone who is familiar with the policies and procedures of the auditing framework, and he/she "shall have access to all Intelligence Bureau files and data necessary to perform the audit function."[224] The plaintiffs were given the right to participate in the selection of the auditor for two years following the date of the agreement, but not after.[225]

Overall, both the plaintiffs and plaintiffs' counsel were happy with the settlement.[226] One of the plaintiffs' primary goals during settlement was the preservation of the files themselves. The City, viewing the maintenance of the files as an eyesore, was intent on destroying the files. By preserving the files, Mr. Lipinsky and Mr. Silverstein hoped "to deter similar abuses in the future."[227] This goal to preserve the files was based in part on the *Alliance* case, which "taught [them] that the 'Red Squad' files compiled by the Chicago Police Department had been preserved for the purpose of educating the public and minimizing the likelihood of similar violations of civil liberties and civil rights in the future."[228] Plaintiffs' counsel hoped that the Spy Files could play a similar role in Denver. Though the settlement agreement itself gives the

[221] Settlement Agreement at 3, *American Friends Serv. Comm*., No. 02-740 (April 17, 2003).
[222] *Id.* at 4.
[223] Exhibit 1 at 12, 118.03 Criminal Intelligence Information, *American Friends Serv. Comm*., No.02-740 (April 17, 2003).
[224] *Id.*
[225] Settlement Agreement at 4, *American Friends Serv. Comm*., No. 02-740 (April 17, 2003).
[226] Interview with Lino Lipinsky, *supra* note 165.
[227] *Id.*
[228] *Id.*

City the ultimate authority to decide how to dispose of the files, by the time the agreement came into effect there was immense public pressure on the City not to destroy the files. Additionally, many of the mayoral candidates, including eventual winner John Hickenlooper, had promised to preserve the files.[229]

Though the plaintiffs were generally happy with the agreement, it was not perfect. First, the City was allowed to unilaterally alter or repeal most portions of Policy 118.03, so long as the City gave notice to the plaintiffs if it planned on altering the policy within two years of the settlement.[230] Some of the more important aspects of the policy—mostly provisions prohibiting the collection of information except upon reasonable suspicion of criminal activity—were to remain unchanged for five years after the settlement.[231] Those provisions expired in May 2008, just in time for the Democratic Convention, held in Denver in August 2008.[232] Second, while Policy 118.03 provides a framework for informing individuals or groups if they become the subjects of unauthorized police surveillance in the future, it contains no mechanism for reprimanding officers who conduct such surveillance, or supervisors who approve it. This does not create an incentive not to engage in unauthorized surveillance or much of an incentive not to get caught.

VI. CONCLUSION

Each of the major police surveillance cases discussed above—*Alliance*, *Handschu* and *American Friends Service Committee*—is unique in its own way, and each case was resolved somewhat differently. However, they do share some similarities which are instructive in thinking about political surveillance more generally.

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[229] Interview with Mark Silverstein, *supra* note 149.
[230] Settlement Agreement at 1, *American Friends Serv. Comm*., No. 02-740 (April 17, 2003).
[231] *Id*. at 2.
[232] *See* http://www.denverconvention2008.com/ (last visited Sept. 14, 2008).

First, while each case is different, they all ended negotiated consent decrees. And while the decrees are somewhat differently worded, each contains the same core elements: limitations on the ability of police departments to conduct surveillance of First Amendment activity in the absence of a suspicion of criminal activity, a mechanism for persons to discover if police have been monitoring them, and a framework for reviewing and auditing intelligence files by a neutral third party.

Second, each of these cases highlight an extra-judicial means for strengthening a relatively weak legal argument. By using the media to embarrass local police departments, the plaintiffs in these cases were able both to bring the defendants back to the negotiating table, and ultimately to negotiate settlements that went far beyond the scope of any victory they could have expected at trial. Because the surveillance in these cases went beyond radicals to more mainstream political groups, the public did not appreciate the news that the police had been spying on them. Once the surveillance was made public, citizens groups responded with anger and resentment, so much so that cities and police departments felt pressure to abandon their surveillance programs. Surely the next group of plaintiffs to challenge political surveillance will utilize this tactic as well.

Police surveillance of First Amendment activity will certainly continue into the foreseeable future. The scope of the substantive changes to the Handschu Guidelines and *Alliance* decree is still being litigated, and it will likely be years before we can adequately assess how effective those decrees still are. As portions of the *American Friends* decree expired in August 2008—just in time for the Democratic National Convention—it remains to be seen whether the DPD continued to follow the spirit of the decree, or whether it reverted back to pre-litigation behavior.

Caption	Court	Docket No.	Date	Counsel	Reported Decisions
Abramovitz et al. v. James Ahern et al.	District of CT	77-207	Filed 5/12/1977	John R. Williams, Williams, Wynn & Wise; Melvin L. Wulf, Clark, Wulf & Levine; Michael P. Koskoff; Henry B. Hurvitz; Leon Friedman	96 F.R.D. 208
ACLU v. City of Chicago	Northern District of IL	75-3295	Filed 10/3/1975	unknown	none
Alliance to End Repression v. Chicago	Northern District of IL	74-3268	Filed 11/13/1974	Edward J. Koziboski; Richard Gutman, Lawrence V. Jackowiak, Edward W. Feldman, Miller, Shakman & Hamilton, Harvey M. Grossman, Roger Baldwin Foundation of ACLU, Inc., Roger S. Hutchinson,	407 F.Supp. 115; 75 F.R.D. 430; 75 F.R.D. 428; 75 F.R.D. 435; 75 F.R.D. 438; 75 F.R.D. 431; 75 F.R.D. 441; 565 F.2d 975; 91 F.R.D. 182; 561 F.Supp. 537; 561 F.Supp. 575; 733 F.2d 1187; 742 F.2d 1007; 1985 WL 3300; 627 F.Supp. 1044; 1986 WL 9762; 820 F.2d 873; 1989 WL 88237; 1989 WL 92030; 899 F.2d 582; 1990 WL 115571; 1991 WL 117915; 1991 WL 206056; 1992 WL 80527; 1992 WL 159495; 1992 WL 296388; 1994 WL 86690; 119 F.3d 472; 66 F.Supp.2d 899; 2000 WL 562480; 2000 WL 709485; 2000 WL 709482; 2000 WL 1368004; 2000 WL 1367999; 2000 WL 1947055; 2000 WL 1898594; 237 F.3d 799; 356 F.3d 767
American Friends Service Committee v. City and County of Denver	District of CO	02-0740; 02-2993	Filed 3/28/2002	Gregory Wilson and Sandra Wick, McKenna & Cuneo LLP; Mark Silverstein (ACLU of Colorado)	none
Anderson v. Sills	New Jersey Superior Court	unknown	1969	Morris Stern; L. Walter Finch, Muriel Finch; Frank Askin; Arthur D'Italia; Stephen M. Nagler, Melvin Wulf and Eleanor Norton	106 N.J.Super. 545; 56 N.J. 210; 143 N.J.Super. 432
Aronson v. Giarrusso	Eastern District of LA	29462	unknown	George M. Strickler, Jr., Richard B. Sobol,	436 F.2d 955
Avirgon et al. v. Frank L. Rizzo	Eastern District of PA	70-477	1970	unknown	none
Bach v. Mitchell	Western District of WI	71-22	unknown	unknown	none
Baldwin v. Quinn	Northern District of OH	C70-59	1972	unknown	none
Ball v. Del Bello	Southern District of NY	72-2112	1972	unknown	none
Benkert v. Michigan State Police	Wayne County Court	74-023-934-AZ	unknown	unknown	none
Berlin Democratic Club v. Schlesinger	District of DC	310-74	1974	John H. F. Shattuck, Melvin .I. Wulf, American Civil Liberties Union, David F. Addlestone, Lawyers Military Defense Committee	410 F.Supp. 144 (Berlin Democratic Club v. Rumsfeld)
Cannon, Carter and Jones v. Davis	Cal. Superior Court	978119	unknown	unknown	none
Chicago Lawyers' Committee for Civil Rights Under Law v. Chicago	Northern District of IL	76-1982	1976	unknown	none
Coalition Against Police Abuse v. Board of Police Comm'rs of L.A.	L.A. County Court	C 243-458	Filed 12/16/82	Joseph Lawrence, Paul L. Hoffman, Fred Okrand and Robert Lind	none
Donohoe v. Duling	Eastern District of VA	300-70-R	1970?	Seymour DuBow, Robert Pustilnik and Samuel W. Tucker	330 F.Supp. 308; 465 F.2d 196
Dyketactics et al. v. Fencl	Eastern District of PA	75-3641	1975	unknown	none
Fifth Avenue Peace Parade v. Gray	Southern District of NY	72-1439	1972	Arthur M. Handler; Donald D. Shack, Richard M. Resnik, Barry H. Mandel, New York City, and Burt Neuborne, New York Civil Liberties Union	480 F.2d 326
Fowler v. Mery	District of NM	71-1563	1971	Stephen T. Harvey; Donald Juneau and Spencer Smith; Willard F. Kitts	468 F.2d 242
Free Press et al. v. Frank L. Rizzo et al.	Eastern District of PA	70-3175	1970	unknown	none
Halperin v. Kissinger	District of DC	1187-73	1973	Mark H. Lynch, Susan W. Shaffer, Alan B. Morrison	542 F.Supp.829; 578 F.Supp. 231; 807 F.2d 180; 723 F.Supp. 1535; 1991 WL 120167; 1992 WL 394503
Handschu et al. v. Special Serv. Div. et al.	Southern District of NY	71-2203	Filed 5/18/71	Franklin Siegel (CCR), Chevigny, Stolar	349 F.Supp. 766; 605 F.Supp. 1384; 1985 WL 1366; 1985 WL 3538; 787 F.2d 828; 1989 WL 54153; 737 F.Supp. 1289; 1989 WL 82397; 131 F.R.D. 50; 2002 WL 31619035; 2003 WL 151974; 273 F.Supp.2d 327; 288 F.Supp.2d 404; 288 F.Supp.2d 410; 2003 WL 22019918; 2003 WL 21961367; 288 F.Supp.2d 411; 2003 WL 22245590; 2006 WL 1716919; 475 F.Supp.2d 331; 2007 WL 1711775
Hobson et al. v. Wilson et al.	District of DC	76-1326	10/28/77	J.E. McNeil and Daniel Schember; Anne Pilsbury; Burton D. Weschsler, Urban Law Institute for Antioch School of Law; Herbert Semmel	556 F.Supp. 1157; 737 F.2d 1; 646 F.Supp. 884
Holmes v. Church	Southern District of NY	70-5691	1970	unknown	none
It's About Time v. Seattle Police Dep't	King County Court	830452	Filed 6/27/79	unknown	See Seattle, Wash., Mun. Code ch. 14.12
Jabara v. Kelley	Eastern District of MI	39065	unknown	John Shattuck and Ronald Reosti	62 F.R.D. 424; 75 F.R.D. 475; 476 F.Supp. 561
Kendrick v. Chandler	Western District of TN	76-449	Filed 10/10/76	unknown	none
Kent State Vietnam Veterans Against The War v. Fyke	Northern District of OH	72-1271	1972	unknown	none
Kenyatta v. Kelley	Eastern District of PA	71-2595	1971	David Rudovsky; John H. F. Shattuck, American Civil Liberties Union	430 F.Supp. 1328
Kinoy v. Mitchell	Southern District of NY	70-5698	1970	Melvin Wulf, John Lowenthal, David Scribner, Morton Stavis, Herbert O. Reid, Sr., Arthur Kinoy, Ann Garfinkle, Doris Peterson, James Reif,	331 F.Supp. 379; 67 F.R.D. 1
Kinoy v. Mitchell	Southern District of NY	87-6047, 87-6119, 87-6137	1987	Henry F. Furst, Jeremiah Gutman, Michael Ratner	851 F.2d 591
Libby and Valdes v. Berlin	Cal. Superior Court	unknown	unknown	unknown	none
Martin et al. v. Los Angeles Community College District et al.	Superior Court of L.A.	25402	unknown	unknown	none
Myerson v. City of Los Angeles	Cal. Superior Court	unknown	Filed 6/14/1977	R. Samuel Paz (ACLU)	none
Philadelphia Resistance v. Insurance Co. of North America	Eastern District of PA	unknown	unknown	unknown	none
Philadelphia Resistance v. Mitchell	Eastern District of PA	71-1738	1971	David Rudovsky	63 F.R.D. 125; 58 F.R.D. 139
Philadelphia Yearly Meeting of Religious Soc. of Friends v. Tate	Eastern District of PA	71-849 and 74-2222	1974	David Rudovsky	382 F.Supp. 547; 519 F.2d 1335
Pledge of Resistance v. We the People 200	Eastern District of PA	87-3975	1987	unknown	none
Riggs v. City of Albuquerque	District of NM	89-2006	1989	Philip B. Davis, American Civil Liberties Union of New Mexico	916 F.2d 582
Spanish Action Committee of Chicago v. City of Chicago	Northern District of IL	84-2299; 85-1767	1984	Richard M. Gutman	766 F.2d 315; 811 F.2d 1129
Stern v. Richardson	District of DC	179-73	1973	Ronald L. Plesser	367 F.Supp. 1316
United States v. United States District Court	Eastern District of MI	70-153 (71-1105)	1970	Robert C. Mardian (CCR), William M. Kunstler, Hugh M. Davis, Jr. and Leonard I. Weinglass	444 F.2d 651; 407 US 297
Vietnam Veterans Against the War v. Caso	Eastern District of NY	unknown	unknown	unknown	10 Crim. L. Rep. 2152
White v. Davis	Superior Court of L.A.	L.A. 30348	unknown	A. L. Wirin, Fred Okrand, John D. O'Loughlin and Jill Jakes	533 P.2d 222
Yaffe v. Powers	District of MA	71-1269	1971	Matthew H. Feinberg, John Reinstein, Ronald F. Kehoe, C. Michael Malm, and Hausserman, Davison & Shattuck	454 F.2d 1362