



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

**U.S. DISTRICT COURT GRANTS CITY'S REQUEST
TO MODIFY THE HANDSCHU DECREE GRANTING NYPD
MUCH-NEEDED LATITUDE IN THE FIGHT AGAINST TERRORISM**

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New York, February 11, 2003 -- Senior United States District Judge Charles S. Haight, Jr. of the United States District Court for the Southern District of New York today granted the City's motion to modify the Handschu consent decree to allow greater investigative freedom to the New York City Police Department in its fight against terrorism.

"This case is a critical victory for the City, because it allows the Police Department to investigate the full range of activities that terrorists can -- and do -- engage in here in New York City. Having its power to investigate returned to it, the Police Department will be better equipped to prevent further attacks," said Jeffrey D. Friedlander, the City's First Assistant Corporation Counsel.

Police Commissioner Raymond W. Kelly said, "We're pleased with the court's decision in this case. As the judge pointed out in his opinion, the nature of public peril can change with dramatic speed, as recent events show. We live in a different, more dangerous time than when the consent decree was approved in 1985. This ruling removes restrictions from a bygone era and will allow us to more effectively carry out counter-terrorism investigations."

Stemming from a lawsuit filed in 1971, the Handschu decree, entered by the Court in 1985, restricted the NYPD's ability to investigate where political activity is involved. In addition, the decree seriously precluded information sharing between the NYPD and other law enforcement agencies at the federal, state and local level, each of which is now required to bind themselves to Handschu's many restrictions before they can access NYPD's data.

On September 25, 2002, the City moved for modification of the decades-old decree, on the grounds that its provisions prevent the NYPD from investigating the seemingly lawful and independently innocuous activities that precede terrorist attacks. Specifically, the decree was centered around the requirement that police have "specific information...that a person or group engaged in political activity is engaged in, about to engage in, or has threatened to engage in conduct which constitutes a crime," a threshold which bars investigation of activities that are suspicious or deserving of scrutiny, but still lawful on the surface.

Supported by the sworn declarations of David Cohen, a 35-year-veteran of the Central Intelligence Agency, now the NYPD's Deputy Commissioner for Intelligence, the City argued that unprecedented security concerns, specifically those raised by the September 11, 2001 attacks, required removal of the Handschu restrictions, and the restoration of NYPD's ability to investigate within constitutional bounds.

The City's legal team on the case included Gail Donoghue, Special Assistant to the Corporation Counsel, and Zachary A. Cunha, an Assistant Corporation Counsel in the Special Federal Litigation Division. "The Police Department has the enormous responsibility to combat terrorism," Donoghue said. "We are very grateful that the judge has granted the police the ability to investigate terrorism more effectively and better protect New York City."

Under the City's proposed modification, the Handschu Authority, a three-person board comprised of the Deputy Commissioner for Legal Matters, the head of the Internal Affairs Bureau and a Mayoral appointee, would remain in place to address civilian complaints and ensure that all NYPD investigations observe constitutional standards and protect guaranteed rights. In addition, in a supplemental submission to the Court on January 27, Deputy Commissioner Cohen signaled the NYPD's willingness to adopt internal procedures, modeled on the FBI's guidelines on terrorist investigations, to provide guidance to individual officers in the conduct of investigations.

"The plaintiff in this case took the position that the FBI guidelines were good and effective in protecting individual liberties. Since the NYPD is going to enact guidelines which incorporate the substance of the FBI guidelines, this decision reflects the concern with balancing the interests of everyone in our society," Donoghue noted.

The revised decree would also leave in place a pledged commitment by the NYPD to constitutional standards in investigation and the availability of contempt proceedings before Judge Haight in the event of any violation.

Today's decision, recognizing "the crucial importance of preserving both individual freedoms and public safety, and balancing the legitimate demands of those two goals," found modification of the decree to be necessary and consistent with the needs of liberty and security. In granting the City's request, Judge Haight first looked to the question of whether the changed circumstances wrought by Sept. 11 warranted revision of the current guidelines and "conclude[d] without difficulty that the answer to that question must be in the affirmative." Having found that the City met the first prong of a two-part test for consent decree modification, the Court went on to address whether or not the NYPD's proposal for change was "suitably tailored to the changed circumstances," as required by the Supreme Court.

Concluding that it was, the Court specifically noted the availability of the Handschu Authority to investigate a citizen's complaint was a "substantial enhancement" beyond the remedies ordinarily available to an individual who believes their rights have been violated. This, combined with the NYPD's offer to promulgate internal guidelines modeled on those of the FBI, were protective of the public interest and, in the Court's view, sufficiently tailored to justify granting the City's request.

Under the Court's Order, the requirement that the NYPD maintain such internal guidelines would also be part of the modified decree. Today's decision has granted the NYPD until February 21, 2002, to produce internal guidelines and submit them to the Court for review. Should the Court deem them satisfactory, the guidelines will be put into effect within the NYPD, and the Court will formally grant the modification.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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