

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**DECLARATION OF  
BRIAN MICHAEL  
JENKINS**

**71 Civ. 2203 (CSH)**

Plaintiffs,

- versus -

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

Defendants.

-----X  
**DECLARATION OF BRIAN MICHAEL JENKINS:  
UNDERSTANDING THE NYPD'S INTELLIGENCE PROGRAM**

BRIAN MICHAEL JENKINS, declares under penalty of perjury and pursuant to 28  
U.S.C. §1746 that the following statements are true and correct:

1. There is considerable misunderstanding concerning the New York Police  
Department's intelligence effort, as well as some misleading portrayals. These brief comments  
are intended to address some of the misperceptions.

2. My observations are based upon more than forty years of experience in the analysis of  
terrorism. In 1972, at the RAND Corporation, I initiated the nation's first organized research  
effort on contemporary terrorism and led this program until 1989, when I left RAND to become

the Deputy Chairman of Kroll Associates. While at Kroll, I continued to deal with terrorist threats, kidnappings, and related security matters, including working with the World Trade Center following the 1993 bombing. In 1996, I was appointed by President Clinton to serve on the White House Commission on Aviation Safety and Security. I returned to RAND in 1998 as Senior Advisor to the President, the position I currently hold. During this period, I have also served as an advisor to the National Commission on Terrorism.

3. I have been an informal advisor to the NYPD's Intelligence and Counterterrorism divisions since their creation in 2003, in which capacity I periodically discuss terrorist trends with the Police Commissioner and the Deputy Commissioners for these Divisions and offer advice on various initiatives.

#### **A personal view**

4. The observations I present here are personal. The opinions expressed are entirely my own and I do not speak on behalf of the NYPD, the RAND Corporation or any of its research sponsors.

5. The United States continues to face a serious and complex terrorist threat from individuals inspired by al Qaeda's ideology as well as other extremist beliefs, foreign and domestic, which exhort followers to violence. Terrorists make no distinction between front lines and home fronts, or between legally recognized combatants and civilians. Long before September 11, 2001, and since the 9/11 attacks, New York has experienced more terrorist activity than any other venue in the country. The city's concerns about terrorism and the security of its inhabitants are therefore amply justified.

6. Intelligence is a vital component of our national security, and local police should play an important role in its collection and analysis. In some respects, local police are better positioned than federal authorities to do this. The expanded intelligence effort initiated by the

NYPD in New York following 9/11 mirrored intensified efforts at the federal level. Both have achieved a remarkable degree of success in uncovering and thwarting terrorist plots. This has not only saved lives and prevented destruction, it has assured the city's economic future and the well-being that comes with it. Even more important, in my view, preventing terrorist attacks reduces suspicions and tensions among communities, factors that can easily lead to isolation and overreaction.

7. The written record of my work will show a long-standing and continuing concern about civil liberties. I have publicly condemned attempts to bypass rules governing intelligence collection, the employment of torture during interrogation, attempts to import battlefield rules into the homeland, and assertions of authority to hold terrorist suspects indefinitely without access to courts or attorneys. In the darkest moments of terrorist-caused tragedies, I have never doubted that the republic would survive. The greater danger posed by terrorism, in my view, has always been that the fear and alarm terrorists create would corrode our democracy and persuade us to abandon fundamental American values, which are an important part of our national arsenal.

8. Present at the creation of the NYPD's intelligence effort and privy to candid discussions with top officials as well as those directly involved in managing the effort, I have the strong impression that all of them understood the sensitivity of the mission from the outset. All are well aware of past abuses that discredited intelligence efforts and institutions. For pragmatic reasons of protecting the intelligence effort as well as obeying the law, they could not risk the repetition of such scandals. Nor could the effort depend on secrecy. Ignoring rules might work in the short run, but from the outset, all shared the view that this was going to be a long-term effort. Rules would be followed. Creative ways of gathering information were encouraged but subjected to cautious reflection and continuing review. Bad judgment can never be abolished,

but close management would aim to prevent the missteps that sometimes come with investigative urgency.

### **The terrorist threat is real**

9. The terrorist threat is real. Counterterrorist efforts worldwide have degraded the operational capabilities of al Qaeda's central command but have not dented its determination to continue its terrorist campaign against the United States. Today's al Qaeda is more decentralized, more dependent on its affiliates and allies to radicalize and on its ability to recruit homegrown terrorists to carry out do-it-yourself attacks.

10. Thus far, al Qaeda's sales campaign has produced meager results. America's Muslim communities have rejected its violent ideology. The turnout of self-proclaimed jihadists is tiny, but as we have seen recently in Boston, it is still dangerous.

11. Iranian and Hezbollah operatives have recently carried out attacks aimed at Israeli, American, and British targets in Asia, Africa, and Eastern Europe. U.S. authorities uncovered an Iranian-connected plot to assassinate the Saudi ambassador in Washington. Domestic political extremists on both the far left and far right, as well as issue-oriented fanatics, have been responsible for a number of terrorist attacks and plots.

### **New York is the leading venue for terrorist attacks**

12. Since the 1960s, New York's financial institutions and corporate headquarters have offered attractive venues for terrorist bombings carried out by left-wing extremists, while its diverse ethnic communities and the diplomatic missions assigned to the United Nations have made New York a battleground for foreign quarrels.

13. Eight years before suicide bombers killed 52 people in London's subways, New York police uncovered a plot to carry out suicide bombings on New York's subways. In 1973, forty years before terrorists detonated pressure-cooker bombs at the finish line of the Boston

Marathon, a pressure-cooker bomb was planted at the New York Port Authority office building, and in 1976, another pressure-cooker bomb exploded at New York's Grand Central Station, killing a police officer. Had they escaped, the Boston bombers were planning to carry out their next attack in New York.

14. Since 9/11, the FBI and NYPD have foiled 17 terrorist plots intended for New York. Only Faisal Shahzad's plans to detonate a car bomb in Times Square eluded discovery. Fortunately, his infernal device did not work. In all, these plots represent more than a quarter of all of the jihadist terrorist plots and attacks in the United States since 9/11.

### **Escalating violence has pushed authorities toward prevention**

15. Much of the terrorist violence in the 1960s and 1970s was symbolic, intended to attract attention to a cause rather than to kill. Subsequent generations of terrorists have been dedicated to slaughter, killing and wounding as many as possible, as evidenced in the 1998 bombing of the American embassy in Nairobi (212 dead), the 2002 bombings in Bali (202 dead), the 2004 terrorist bombings of commuter trains in Madrid (191 dead), the 2005 attacks on London's subways (52 dead), the 2007 bombing of a commuter train in Mumbai (207 dead), the 2008 attack in Mumbai (162 dead), and, of course, the 9/11 attacks (2,977 dead).

16. This escalation of terrorism has pushed federal investigators and local police toward prevention. People want police to intervene before the terrorist bombs go off, rather than investigate attacks after they occur. To do so requires intelligence. As the Boston bombing demonstrates, intelligence failures can be deadly.

### **Preventing terrorist attacks depends on intelligence**

17. Unlike soldiers, terrorists are not concerned with the military utility of their attacks. They can attack anything, anywhere, at any time. With finite resources, those charged with security cannot protect everything, everywhere, all the time. While security against terrorism has

increased, intelligence is the primary line of defense. As indicated previously, the record has been remarkable. Of 42 jihadist terrorist plots in the United States since 9/11, only four, including Boston, got as far as an actual attempt. Three of these resulted in fatalities. All of the others were interrupted by arrests. This is not to assert that every single plot, if not interrupted, would have led to deadly terrorist attacks, but some would have.

18. A 1981 analysis of techniques employed in domestic intelligence collection about terrorists in the United States indicated that confidential informants and undercover agents were considered the most valuable resources.<sup>1</sup> Although technology has come a long way in the past three decades, gathering intelligence about terrorism still depends on human activities. It requires setting up tripwires for those whom terrorist plotters may approach to acquire weapons or explosives, and infiltrating clusters where young men may be turning toward violence.<sup>2</sup>

19. Not everything leads to a criminal prosecution, nor does the mere collection of information itself suggest suspicion. Preventing terrorist attacks is one goal, but so is being able to dismiss certain terrorist threats. If the threat can be reduced by means other than arrests—for example, by identifying communities or individuals at risk and discouraging self-recruitment, or even by letting those contemplating violence know that authorities are aware of their activities—then that too may be acceptable.

### **Today's terrorists pose new challenges for intelligence**

20. America's contemporary terrorist plots often are carried out by autonomous individuals or through one-off conspiracies, complicating efforts at infiltration. Terrorist plotters may regard themselves as participants in a broader cause, but the concept of formal membership

---

<sup>1</sup> Brian Michael Jenkins, Sorrel Wildhorn, and Marvin Lavin, *Intelligence Constraints of the 1970s and Domestic Terrorism* Santa Monica, CA: The RAND Corporation, 1982.

<sup>2</sup> Whenever I refer to a law enforcement method or intelligence gathering technique, it should be clear that any such method or technique must be carried out consistent with applicable constitutional provisions and any other applicable existing guidelines or rules.

need not exist. More than two-thirds of the interrupted terrorist plots involved a single individual. This can confound law enforcement intervention and requires more and better intelligence to be gathered.

21. Intelligence operations must operate in the murky space between radical expression, which is protected, and imminent violent action, which must be prevented. One can readily see the challenges this poses for intelligence. There are no bright shining lines that define an intelligence target. Inquiries are not made on the basis of what people think or believe. The concern is not with subversion, but with the likelihood of violent action. The propensity for violence is fluid, not fixed. Some innocent individuals will inevitably be looked at, judgments made about the danger they pose, which at the time may be right, but which later turn out to be wrong. We have no x-ray for a person's soul.

#### **New York obliged to create its own intelligence capability**

22. Some have questioned why the NYPD must have its own ambitious intelligence and counterterrorist programs. Should this not be the exclusive domain of the federal government? Certainly, some in the federal government think so. But to answer this question, it is necessary to go back to the situation in the immediate shadow of 9/11.

23. Intelligence had clearly failed. Before September 11, 2001, collection efforts abroad, the domain of the CIA, had anticipated further attacks by al Qaeda, but they failed to identify the 9/11 plot. Inside the United States, the FBI had picked up the pieces of the plot but failed to connect them.

24. The United States subsequently embarked upon the most fundamental reorganization of the national intelligence effort since 1947. For a while, the future of the FBI itself was in doubt. In the eyes of many, the FBI had not responded to the new threat posed by terrorism. Some viewed the FBI as broken and demanded that it be divested of its intelligence

responsibilities. The FBI was seen as overly timid, stuck in its old investigative habits, and lacking analytical capacity. Some in Congress contemplated the creation of a separate domestic intelligence agency patterned on Great Britain's MI5. Ultimately, this did not occur.

25. Although confidence in the organization was at a historic low, the FBI would retain its criminal investigative and intelligence collection responsibilities; however, it would be augmented by the creation of the National Counterterrorism Center, a Department of Homeland Security with its own role in intelligence threat analysis and information, and a new Office of the Director of National Intelligence—all part of a sweeping reorganization to ensure that next time, the dots would be connected.

26. Staffing and bringing these organizations up to speed while figuring out how they would ultimately work together would take months—even years. Meanwhile, authorities anticipated further terrorist attacks. On the basis of intelligence believed to be credible, the national terrorist threat level was raised to “High” on five occasions between 2002 and 2003. There were twenty official terrorist threat warnings between 2002 and 2011, when the advisory system was phased out. Local authorities complained that the information provided in the warnings was too vague to inform local security decisions.

27. Clearly a favored target of terrorists, New York could not wait for federal agencies to sort themselves out. An independent intelligence and counterterrorism effort was necessary to ensure the safety of the city, to make more-informed security decisions, and also to discourage major employers from pulling out of New York, threatening its future as a world economic center. As the country's largest police department, the NYPD had the necessary resources and the support of the community. It also had a number of advantages.

**Local police have advantages over federal authorities**



28. Unlike federal investigators, who are periodically rotated, local police spend the majority of their careers in one place. They are recruited from the local community and should reflect its ethnic composition, which is especially important in an ethnically diverse city like New York. They know the territory. They know the people. Indeed, owing to its own diverse recruiting, the NYPD had greater foreign language capabilities than the FBI.

29. The NYPD was not alone in setting up its own intelligence and counterterrorist efforts. According to a 2004 RAND report, sixteen percent of the nation's local police departments, mainly in the larger metropolitan areas, had specialized counterterrorist units.<sup>3</sup>

30. In the aftermath of 9/11, New York faced three types of terrorist threats: The first were like the 9/11 attacks, that is, terrorist operations planned and mounted from abroad. For knowledge of these, the city would depend on federal intelligence agencies although, as in the case of 9/11, there might a period of local preparation that local intelligence sources might reveal. The second type of threats were like the 1993 World Trade Center bombing, where a local conspiracy has the assistance of more-experienced foreign terrorists. The third category comprises local terrorist plots, although these may draw inspiration from foreign groups and in some cases may benefit from training abroad. Included in this category would be the 2009 plot to carry out suicide bombings on New York's subways and the 2010 plot to detonate a car bomb in Times Square. For these latter categories, the city would depend on both federal and state resources.

#### **Muslim communities are not being persecuted by the NYPD**

31. The NYPD, along with federal investigators, has been accused of focusing its intelligence activities on the Muslim community. One can readily understand the sensitivity of

---

<sup>3</sup> Lois M. Davis, *et.al. When Terrorism Hits Home; How Prepared Are State and Local Law Enforcement in the War on Terrorism*, Santa Monica, CA: The RAND Corporation, 2004.

Muslim Americans, who resent close scrutiny by authorities, arguing that their religion or ethnicity ought not to make them targets of intelligence or greater scrutiny for security.

32. While discrimination is contrary to American values and law, the nature of the threat dictates the social geography of intelligence collection. Religion alone cannot make any community a target of the intelligence inquiries. However, neither does it provide immunity from legitimate leads generated intelligence and law enforcement investigations. Thus, when the threat of terrorism came from Ku Klux Klan members and other racists responsible for bombing black churches and killing civil rights workers, intelligence efforts focused on white Southerners. When anti-Castro Cubans carried on a bombing campaign in Florida, intelligence efforts focused on the Cuban community. The same was true when the authorities were dealing with Puerto Rican, Armenian, and Jewish terrorists. If the country were threatened by Viking terrorism today, intelligence would have a different focus.

#### **Rules are respected for pragmatic reasons**

33. Domestic intelligence collection in a democracy is delicate task. Americans demand security, but remain suspicious of government authority. Past examples of abuses support this concern. NYPD officials have demonstrated great sensitivity to this issue. Since 1971, the department has operated under the Handschu guidelines, imposed as a consequence of revelations that the NYPD during the 1960s infiltrated an array of activist groups and civic organizations that posed no threat to public safety. It is well understood that to violate the law or the guidelines would be to put the entire intelligence program at peril. Pragmatism, if not love of liberty alone, dictates that rules be obeyed.

34. Abuses occur when those in charge of intelligence activities become zealots, but also when unreasonable constraints are imposed. The result can be either passivity leading to intelligence failure or rogue operations that follow their own trajectory. Most abuses occur,

however, not as a result of malevolent intentions but as a consequence of inadequate management.

35. These problems were apparent in the late 1970s and early 1980s when the revelations of abuses exemplified by the FBI's COINTELPRO projects caused public scandal. Police intelligence operations were shut down or sharply curtailed, critical collection techniques were essentially eliminated, and ambitious officers aiming for career advancement avoided any connection with the dirty business of intelligence, leaving collection poorly supervised.

36. To guard against this possibility, the NYPD has in place a careful review process that examines virtually every new intelligence initiative. Top management exercises hands-on supervision. There is healthy internal debate. Although the NYPD intelligence effort has prompted criticism in some quarters, there have been no demonstrable instances of laws being broken or guidelines being ignored, nor have there been any revelations of police misconduct in the prosecutions of terrorist cases since the current intelligence program began.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2013

  
BRIAN MICHAEL JENKINS