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June 8, 2020

Via email and First Class Mail

Peter Farrell, Esq.
New York City Law Department
100 Church St., 6th Fl.
New York, NY 10007

Re: Handschu v. Special Services Division
United States District Court
Southern District of New York
71 Civ. 2203 (CSH)

Dear Mr. Farrell:

Individuals engaged in peaceful protest over the last week and charged with nothing more serious than curfew violations report that they were questioned about their political associations and activities by NYPD officials and FBI agents.

We have been here before. In 2003, the NYPD engaged in custodial interrogations of anti-war protestors, asking about their political activities. In response, Hon. Charles S. Haight, Jr., U.S.D.J., in his supervision of the Handschu decree, criticized the practice as “resonant with constitutional overtones” and condemned the process by which it was implemented, observing that the NYPD was “in some need of discipline.” Handschu v. Special Services Division, (Handschu III) 288 F.Supp.2d 411, 417-8 (S.D.N.Y. 2003).

In 2014, as a result of protest activities arising out of the killing of Eric Garner, arrestees were again questioned with respect to their political and associational activities. On that occasion, the NYPD Deputy Commissioner for Legal Matters informed Handschu counsel and the Court that the NYPD Legal Bureau had directed that post-arrest questioning during protests

“...may not be conducted absent explicit advanced authorization by the Legal Bureau on a case by case basis. This is intended to ensure that the Handschu Guidelines are either not applicable to such questioning or are fully complied with if applicable. As an added precaution, Handschu training that is provided to members of the Intelligence Bureau will also be given to members of the Detective Bureau so that they will be

informed of the Handschu Guidelines and made aware of those situations that raise potential Handschu issues.”

A copy of Commissioner Byrne’s letter is attached. His promise was a positive step.

In light of this history and the promises made by the NYPD to the Court, the most recent reports of the NYPD’s interrogation practices raise profound concerns under the Handschu decree. As class counsel in that matter, the undersigned ask that you provide an explanation as to the scope of such interrogations during the past two weeks.

Here is what we believe to be the case. Many individuals arrested in recent days at demonstrations protesting the killing of George Floyd report being questioned by New York City Police Department officials and FBI agents about lawful political activity. They report they were questioned by NYPD personnel and FBI agents, notwithstanding that each was arrested on relatively minor charges. The questions put to these individuals, as reported to us¹ included the following:

- What social media accounts do you follow?
- What do you know about antifa?
- Why did you come to New York City?
- Are you in antifa?
- Are you with anarchist groups?
- What do you do to organize protests?
- How did you hear about the protest?
- Who told you about the protest?
- Who on social media is the best way to find out about protests?
- Do you use social media?
- Do you follow protest related accounts?
- Did you get information from Instagram?
- Who is in charge of the protests?
- What are you protesting about?

Our history with the NYPD teaches us that these questions are being asked in order to generate records like the “demonstration debriefing form” used by the NYPD in similar circumstances in 2003. See Handschu III, 288 F.Supp.2d at 413. As you are aware the Revised Handschu Guidelines² prohibit the NYPD from maintaining records about class members

¹ See also media reports: Univision broadcast, Friday, June 5, 2020 <https://www.univision.com/local/nueva-york-wxtv/protesters-are-being-interrogated-by-fbi-agents-about-their-political-views-video> and The Intercept <https://theintercept.com/2020/06/04/fbi-nypd-political-spying-antifa-protests/>

² Pursuant to paragraph 4 of the stipulation of settlement, so ordered on March 17, 2017, Docket No. 472, the Revised Handschu Guidelines consist of Appendix A to Handschu IV [273 F.Supp.2d at 349-351] and Exhibit A to 241 F.Supp.3d at 443-460. The Guidelines define an Investigation as a police activity to obtain information, and Political Activity as the exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions. 273 F.Supp.2d at 350.

concerning purely political activity. Here, as in 2003, class members have been detained on minor charges and subjected to continued questioning about their political activity. Such questioning, which can only be for the purpose of generating records, is prohibited.

We ask that you inquire as to whether there is current compliance with the Legal Bureau's 2015 directive.

We also have the following additional questions regarding this matter:

- How many arrested individuals were interrogated over that past two weeks regarding their political activities?
- As to each individual interrogated, which NYPD bureaus were involved in the interrogations?
- Was the FBI involved in the interrogations?
- How, if at all, were these interrogations authorized?
- What, if any, legal justification supported these interrogations?
- Where are the notes or recordings of these interrogations being maintained?

Your prompt inquiry into these matters is important because these demonstrations are expected to continue. We appreciate your assistance in this matter.

Very truly yours,



Paul G. Chevigny
Jethro M. Eisenstein
Martin R. Stolar
Franklin Siegel
Arthur Eisenberg, New York
Civil Liberties Union

cc: Stephen C. Robinson, Esq., Civilian Representative
via email only

Encls.



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July 22, 2015

Regular Mail

Honorable Charles S. Haight
United States District Judge

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

Dear Judge Haight:

Enclosed please find a courtesy copy of Defendants' Letter to Class Counsel dated July 21, 2015. Defendants' letter responds to Class Counsel's letter to Defendants dated May 11, 2015 regarding certain post-arrest interviews. We are sending you this response letter in light of the fact that you were copied on Class Counsels' initial letter of May 11, 2015. Defendants are not requesting any action by Your Honor and are sending this to you purely as an FYI.

Respectfully submitted,

, Peter G. Farrell

cc. Jethro M. Eisenstein, Esq. (via e-mail)



POLICE DEPARTMENT

NEW YORK, N.Y. 10038

LAWRENCE BYRNE
DEPUTY COMMISSIONER, LEGAL MATTERS

Frank Siegel
Attorney At Law
President Street
Brooklyn, NY 11231

Dear Counsel,

Commissioner Bratton has received your letter dated May 11, 2015, addressed to the Commissioner and Corporation Counsel Zachary W. Carter. As you know, representatives of the NYPD and the Law Department met with some of you on April 30, 2015, and gave you an oral briefing on some of the issues subsequently raised in your May 11 letter. This letter further responds to your May 11 letter.

The NYPD first learned in April 2015 that there were concerns about certain post-arrest interviews that took place in December 2014 and subsequently when we received an inquiry from a New York Times reporter. In response to The New York Times inquiry, the NYPD looked into the matter. As result of an internal review, which was overseen by the NYPD Legal Bureau, we advise you of its findings and conclusions.

On the evening of November 24, 2014, immediately following the announcement that a Missouri grand jury had decided not to bring an indictment in connection with the death of Michael Brown, Commissioner Bratton and members of his security detail were splattered with fake blood by protesters who had assembled in Times Square. That incident marked the beginning of a series of physical attacks on police officers, acts of vandalism against NYPD vehicles and facilities, and a proliferation of threats communicated over social media and by other means calling for police officers to be murdered and assaulted. On December 20, 2014, NYPD Detectives Rafael Ramos and Wen Jian Liu were assassinated as they sat on duty in their marked patrol car. Threats of violence against police officers communicated over various forms of electronic media continued unabated for several months.

In response to the foregoing incidents and threats, NYPD utilized traditional, lawful investigative techniques in an effort to investigate both individual incidents of assaults against its officers and threats against officers that were continuously communicated. Toward that end, beginning with the November 24th incident, members of the NYPD Detective Bureau began questioning persons arrested for a variety of criminal offenses, including offenses committed during the course of demonstrations, about their knowledge of actual, planned or threatened acts of violence against police officers. This questioning, along with other well-established, lawful investigative techniques, led to the arrests and criminal prosecution of several individuals for assaulting or threatening police officers.

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Website: <http://nyc.gov/nypd>

As noted, among those arrested who were subject to the above-described questioning were persons arrested in the course of various large scale protests that occurred from November 2014 to April 2015. To the extent that the matters under investigation were actual and/or threatened acts of violence against police officers, ordinarily it would be appropriate that such investigations be conducted by members of the Detective Bureau. That said, it is understood that the fact that the questioning at issue arose in the context of protests which were, at least in part, protected by the First Amendment raises concerns about the applicability of the Handschu Guidelines.

The NYPD takes seriously its obligation to adhere to the letter and spirit of the Handschu Guidelines. We recognize that when individuals are subject to post-arrest questioning about criminal activities where their arrests arose out of protests, extra caution must be exercised to ensure that any questions about political activity are asked with a proper basis and with appropriate authorization, even where the ultimate purpose of such questioning is not to investigate political activity. Consequently, in April of this year, the Legal Bureau directed that post-arrest questioning by members of the Detective Bureau of persons arrested during protests may not be conducted absent explicit advanced authorization by the Legal Bureau on a case by case basis. This is intended to ensure that the Handschu Guidelines are either not applicable to such questioning or are fully complied with if applicable. As an added precaution, Handschu training that is provided to members of the Intelligence Bureau will also be given to members of the Detective Bureau so that they will be informed of the Handschu Guidelines and made aware of those situations that raise potential Handschu issues.

We hope that this letter and our prior meeting with some of you address your concerns.

Sincerely yours,

**Deputy Commissioner,
Legal Matters**

cc: Honorable William J. Bratton
Honorable Zachary Carter
Paul G. Chevigny
Jethro M. Eisenstein
Martin R. Stolar
Franklin Siegel
Arthur Eisenberg, NY Civil Liberties Union
Peter Farrell, Esq.