

AS NYPD ENGAGES IN NEW CIVIL LIBERTIES VIOLATIONS, PAST VIOLATIONS UNDER NEW SCRUTINY

While supervisors from the NYPD are pepper-spraying peaceful political protestors, the Department is also coming under scrutiny for its past (and presumably ongoing) civil liberties abuse, the profiling of Muslim and Arab residents of NY.

As the original AP story on the NYPD's profiling program described, in the 1980s, the city was put under court orders limiting the kind of intelligence-gathering programs it could conduct.

Since 1985, the NYPD had operated under a federal court order limiting the tactics it could use to gather intelligence. During the 1960s and 1970s, the department had used informants and undercover officers to infiltrate anti-war protest groups and other activists without any reason to suspect criminal behavior.

To settle a lawsuit, the department agreed to follow guidelines that required "specific information" of criminal activity before police could monitor political activity.

In September 2002, [NYPD Intelligence Unit Head David] Cohen told a federal judge that those guidelines made it "virtually impossible" to detect terrorist plots. The FBI was changing its rules to respond to 9/11, and Cohen argued that the NYPD must do so, too.

"In the case of terrorism, to wait for

an indication of crime before investigating is to wait far too long," Cohen wrote.

U.S. District Judge Charles S. Haight Jr. agreed, saying the old guidelines "addressed different perils in a different time." He scrapped the old rules and replaced them with more lenient ones.

As the AP has been exposing the NYPD profiling program, it has never been entirely clear how this agreement simply got put aside, not least because the intelligence department was also involved in the 2004 RNC abuses.

And the question is more pressing given that Anthony Bologna, the pepper sprayer, is part of the NYPD's counterterrorism group. I

It's bad enough, after all, that the NYPD is profiling the city's Moroccan restaurants, but it seems to be abusing the kind of political persecution the court order—*Handschu v. Special Services Division*—was supposed to prevent.

Today, the NYCLU is asking more questions about what is going on.

The New York Civil Liberties Union and partnering civil rights attorneys today filed papers in federal court seeking information on the NYPD's surveillance of Muslims in New York City to determine whether the spying operation violates an existing court order. The filing is part of the *Handschu v. Special Services Division* proceedings, a decades-old federal case that has produced a series of court orders regulating NYPD surveillance of political and religious activity.

The filing asks the court to initiate a discovery process pertaining to the NYPD's surveillance of Muslims to determine whether those efforts have

violated a 1985 consent decree in the *Handschu* case that restricts the Police Department's ability to conduct surveillance targeting political and religious activity. The filing also asks the court to order the NYPD to preserve any records relating to its surveillance of Muslims while the discovery process takes place.

"The NYPD's reported surveillance of local Muslim communities raises serious questions concerning whether the Police Department has violated court-ordered restrictions on its ability to spy on and keep dossiers on individuals," said NYCLU Legal Director Arthur Eisenberg. "In order to know whether the NYPD is violating the court order, we need a more complete explanation of the NYPD's surveillance practices."

To be clear, this is a response to the ethnic profiling, not the crack-down on #OccupyWallStreet.

But if the NYCLU effort succeeds, it may succeed in exposing a lot more about how the NYPD became the CIA-on-the-Hudson. Anthony Bologna's aggression is already being investigated by the NYPD itself and the DA. But with this NYCLU action, other activities of the NYPD may get scrutinized by the courts, too.