

KEVIN S. PARKER
SENATOR, 21ST DISTRICT
RANKING MINORITY MEMBER
ENERGY & TELECOMMUNICATIONS

COMMITTEES

CODES

COMMERCE, ECONOMIC DEVELOPMENT
& SMALL BUSINESS

FINANCE

HIGHER EDUCATION

INSURANCE

RULES

NEW AMERICAN TASK FORCE



THE SENATE
STATE OF NEW YORK

ALBANY OFFICE
ROOM 604
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
PHONE: 518-455-2580
FAX: 518-426-6843

DISTRICT OFFICE
1300 FLATBUSH AVENUE
BROOKLYN, NEW YORK 11210
PHONE 718-629-6401
FAX 718-629-6420

e-mail:
parker@nysenate.gov

October 05, 2011

The Honorable Eric Schneiderman
Attorney General
The Capitol
Albany, NY 12224

Dear Attorney General Schneiderman:

We write to you regarding recent press reports that expose potentially unconstitutional and illegal tactics employed by the New York Police Department as it relates to the wholesale surveillance of the Muslim community in New York City and other jurisdictions. We recognize the need to maintain the safety and security of our citizens. As elected officials that is our primary obligation. However, this must be accomplished within the framework of our state and federal constitutions. Thus we request that you investigate and prosecute any civil or criminal wrongdoing as it relates to this matter.

According to an eight month investigative report by Adam Goldman and Matt Apuzzo of the Associated Press the "NYPD operates far outside its border and targets ethnic communities in ways that would run afoul of civil liberties if practiced by the federal government."¹ Based upon police documents from 2006, the NYPD conducted surveillance operations of 250 mosques, 12 Islamic schools, 31 Muslim student organizations, 10 non-profit organizations, 138 "persons of interest," and 256 "ethnic hotspots."² The Department also sent detectives to at least four states outside New York to conduct undercover operations without informing local authorities or federal law enforcement.³

The NYPD's Deputy Commissioner for Intelligence David Cohen compares the operations of his division to "starting the CIA over in the post 9-11 world."⁴ The impetus for such an intrusive operation can also be explained by Cohen's view on intelligence sharing with other agencies, he told a reporter "there's no such thing as information sharing, there is only information trading."⁵ Cohen dispatched

1 Matt Apuzzo & Adam Goldman, *With CIA help, NYPD moves covertly in Muslim areas*, SALON.COM, Aug. 24, 2011, http://www.salon.com/news/feature/2011/08/24/us_sept_11_nypd_intelligence/index.html; Azmat Khan, *Are We Safer: AP Documents Expansion of NYPD into "Domestic CIA"*, PBS FRONTLINE, Aug. 24, 2011, <http://www.pbs.org/wgbh/pages/frontline/foreign-affairs-defense/ap-documents-expansion-of-nypd-into-domestic-cia/>

2 Samantha Gross, *NYC Mayor: NYPD not unfair in surveillance*, FORBES.COM, Sept. 8, 2011, http://www.forbes.com/feeds/ap/2011/09/08/general-us-nypd-bloomberg_8664502.html; Len Levitt, *The NYPD: Spies, Spooks and Lies*, THE HUFFINGTON POST, Sept. 7, 2011, http://www.huffingtonpost.com/len-levitt/the-nypd-spies-spooks-and_b_950448.html.

3 Apuzzo & Goldman, *supra* note 1.

4 *New York City – The Spymaster of New York David Cohen, the NYPD Pioneering a New Way of fighting Terrorism*, VOZ IZ NEIAS? Feb. 3, 2009, <http://www.vosizneias.com/26844/2009/02/03/new-york-city-the-spymaster-of-new-york-david-cohen-the-nypd-pioneering-a-new-way-of-fighting-terrorism/>.

5 *Id.*

officers known as “rakers” to “rake the coals, looking for hot spots.”⁶ Those who conducted surveillance of mosques trolling for potential leads and recorded sermons were called “mosque crawlers.”⁷ The Demographics Unit also conducted operations on Muslim student organizations at City University campuses across the five boroughs.⁸ Muslim businesses including barbershops, gyms, and restaurants were targeted without evidence of criminality or wrongdoing.⁹ These activities were not limited to New York City. The Department engaged in operations in other jurisdictions across state lines including New Jersey, Connecticut, Pennsylvania, and Massachusetts without coordinating let alone notifying local or federal authorities.¹⁰ Additionally it is unclear as to the extent of information collected or who the Department maintained files on because according to press reports, many of these files have been destroyed.¹¹

Not surprisingly, the former Chief of Counter-Terror Operations, John Cutter, objects to this characterization as profiling. Rather he contends, “[i]t’s like, after a shooting, do you go 20 blocks away and interview guys or do you go the neighborhood where it happened.”¹² Commissioner Cohen and Chief Cutter’s statements are telling and reveal the dangerous premise that casts permanent suspicion on a community based solely upon faith and ethnicity. Not only are these characterizations offensive, they reflect an utter disregard of the law.

Although the protections enshrined in the *Handschu* decree were weakened in 2003,¹³ neither the state nor federal constitutions permit the wholesale surveillance of religious or ethnic communities. As you are aware, our state courts have a long history of affording greater rights in multitude of constitutionally protected areas. In *People v. Torres*, the Court of Appeals declared that “this court has demonstrated its willingness to adopt more protective standards under the State Constitution [as compared to the Federal Constitution] when doing so best promotes ‘predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens’.”¹⁴ Consequently, an officer may adhere to the U.S. Constitution’s Fourth Amendment but may violate Art. I Section 12 of New York’s Constitution.

6 Apuzzo & Goldman, *supra* note 1.

7 *Id.*

8 Levitt, *supra* note 2.

9 Resolution of the Faculty at City University of New York School of Law, Oct. 3, 2011.

10 Apuzzo & Goldman, *supra* note 1.

11 *Id.*

12 *Id.*

13 *Handschu v. Special Services Div.*, 273 F. Supp. 2d 327 (S.D.N.Y. 2003).

14 74 N.Y.2d 224, 228 The Court describes in detail the cases distinguishing New York. “Accordingly, we have in recent years carved out an independent body of principles to govern citizen-police encounters in a number of specific areas (see, e.g., *People v P. J. Video*, *supra* [warrant application requirements in obscenity cases]; *People v Bigelow*, 66 N.Y.2d 417 [declining to follow “good faith” test outlined in *United States v Leon* (468 US 897) and *Massachusetts v Sheppard* (468 US 981)]; *People v Johnson*, 66 N.Y.2d 398, *supra* [declining to apply “totality of circumstances” test outlined in *Illinois v Gates* (462 US 213) to warrantless arrests]; *People v Class*, 67 N.Y.2d 431 [on remand] [search for vehicle identification number in connection with traffic stop]; *People v Gokey*, 60 N.Y.2d 309 [warrantless search incident to arrest]; *People v Belton*, 55 N.Y.2d 49, *supra* [search of personal effects within automobile]; *People v Landy*, 59 N.Y.2d 369 [reiterating *Elwell* rule]; *People v Elwell*, 50 N.Y.2d 231, *supra* [probable cause predicated on informant’s tip]; see also, *People v Stith*, 69 N.Y.2d 313, 316, n. 514 N.Y.S.2d 201, 506 N.E.2d 911, [exclusionary rule as it pertains to inevitable discovery doctrine].”

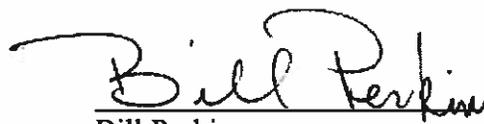
Furthermore, due to the potentially illegal and unconstitutional methods of the New York Police Department, the Federal Bureau of Investigation regularly does not cooperate, nor accept information prepared by “mosque crawlers” and other sources. The FBI’s General Counsel, Valerie Caproni explained the agency’s concern; “if you’re sending an informant into a mosque when there is no evidence of wrongdoing, that is a very high risk thing to do. You’re running right up against core constitutional rights. You’re talking about freedom of religion.”¹⁵ This is especially troubling due to Commissioner Cohen’s insistence to modify the *Handschu* decree in part, to ensure greater cooperation with other law enforcement agencies.¹⁶

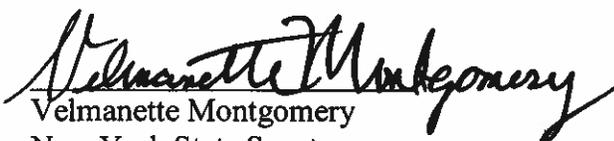
Any church, synagogue, or temple may be subjected to surveillance by the New York Police Department. There need not be any evidence of criminality or wrongdoing nor any jurisdictional limit. This dangerous precedent undermines one of the most basic tenets of our nation, religious liberty. In the past America made the mistake of castigating entire ethnic or religious groups. Questioning their loyalty, President Roosevelt authorized the detention of 120,000 Japanese Americans following the attack on Pearl Harbor. In 1983, the federal Commission on Wartime Relocation and Internment of Civilians determined that the decision to incarcerate Japanese Americans was based on “race prejudice, war hysteria, and a failure of political leadership.”¹⁷ Five years later, President Reagan signed into law H.R. 442, to compensate the survivors and their families.

Rather than dispatching “rakers” and “mosque crawlers” to spy on every New Yorker who worships at a mosque or frequents a Muslim business, the New York Police Department should pursue legitimate leads and protect us from those who seek to do us harm. We request an investigation to ensure that all surveillance and operations were conducted within the framework of the Constitution and laws of our state. We also ask that any violations, criminal or otherwise be prosecuted to the fullest extent of the law. We thank you in advance for considering this urgent request.

Sincerely,


Kevin Parker
New York State Senator


Bill Perkins
New York State Senator


Velmanette Montgomery
New York State Senator


Gustavo Rivera
New York State Senator

¹⁵ Apuzzo & Goldman, *supra* note 1.

¹⁶ *Handschu*, 273 F. Supp. 2d at 341.

¹⁷ H.R.Res. 56 108th Cong. (2004) (enacted).

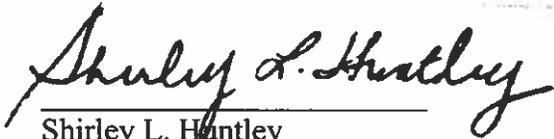
Schneiderman

10/05/11

Page 4 of 4



Liz Krueger
New York State Senator


Ruth Hassell-Thompson
New York State Senator

Shirley L. Hantley
New York State Senator