

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

71 Civ. 2203 (CSH)

SUPPLEMENTAL
NOTICE OF MOTION

Plaintiffs,

-against-

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.

PLEASE TAKE NOTICE that, upon the orders of this Court dated June 13, 2007 (*Handschu VIII*) and February 27, 2008 (*Handschu IX*), the annexed declaration of Jethro M. Eisenstein, Esq., made the 7th day of November, 2008, the exhibits annexed thereto and the accompanying memorandum of law, the undersigned will move this Court before the Honorable Charles S. Haight, at the United States Courthouse, 500 Pearl Street, New York, New York, on a date to be designated by the Court, for an order

(a) Directing defendants to give notice to plaintiff class counsel and to the Court of any decision to withdraw Interim Order 22 or to substitute a new policy concerning the videotaping or photographing of political activity for that set forth in Interim Order 22; and

(b) Declaring that the plaintiff class is the prevailing party on its motion for injunctive relief, filed November 28, 2005; and

(c) Pursuant to FRCP Rule 54(d)(2)(B), designating a time within which plaintiff class counsel may submit their application pursuant to 42 USCA 1988 for attorney's fees in connection with the motion filed November 28, 2005; and

(d) Granting such other and further relief as the Court may seem just and proper.

Dated: New York, New York
November 7, 2008

Yours etc.,

PROFETA & EISENSTEIN



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Of Counsel

TO:

CORPORATION COUNSEL
City of New York
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New York, New York 10007-2601

UNITED STATES DISTRICT COURT
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BARBARA HANDSCHU, RALPH DiGIA, ALEX
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JOE SUCHER, STEVEN FISCHLER, HOWARD
BLATT, ELLIE BENZONI, on behalf of
themselves and all others similarly
situated,

71 Civ. 2203 (CSH)

DECLARATION OF
JETHRO M.
EISENSTEIN

Plaintiffs,

-against-

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.

JETHRO M. EISENSTEIN, for his declaration pursuant to
28 U.S.C. 1746, states as follows:

1. In November 2005, plaintiffs moved for equitable
relief to enjoin defendants (hereinafter "NYPD") from
continuing to implement Interim Order 47 regarding the
videotaping of political activity, upon the ground that the
policies set forth in that Interim Order violated the terms
of the modified Guidelines in this case as well as the

First Amendment. After years of litigation with respect to those claims, the NYPD has revealed that it withdrew Interim Order 47 in April, 2007 and adopted in its stead Interim Order 22, which comports with the modified Handschu Guidelines.

2. Accordingly, as one of the attorneys for the plaintiff class in the above-captioned action, I submit this declaration in support of the motion of the plaintiff class for an order (a) directing defendants to give notice to plaintiff class counsel and to the Court of any decision to withdraw Interim Order 22 or to substitute a new policy concerning the filming or photographing of political activity for that set forth in Interim Order 22, and (b) declaring that the plaintiff class is the prevailing party on its motion for injunctive relief ("the Motion"), filed November 28, 2005, and (c) pursuant to FRCP Rule 54(d)(2)(B), designating a time within which plaintiff class counsel may submit their application pursuant to 42 U.S.C.A. 1988 for attorneys' fees in connection with the Motion.

3. As shown in detail below, this Court's orders on the Motion have established that plaintiff class counsel have standing to invoke the Court's equitable power regarding policies or practices of the NYPD that violate

the modified Handschu guidelines (*Handschu VIII* and *IX*). This Court's orders on the Motion have also established that the modified Handschu Guidelines govern the conduct of the NYPD wherever there is a purpose to investigate political activity, even if the police activity also has a permissible operational objective (*Handschu VIII*).

4. As noted above, Class counsel have recently learned that on April 13, 2007, prior to the decisions in *Handschu VIII* and *Handschu IX*, and without notice to the Court or counsel, the NYPD revoked Interim Order 47, which was the subject of the Motion, and substituted a new Interim Order 22. This new Interim Order, implemented almost eighteen months ago, restricts videotaping at demonstrations to the permissible operational objectives that have always been conceded by the plaintiff class: crowd control, training and threatened illegal activity.

5. The principles established in *Handschu VIII*, and reaffirmed in *Handschu IX*, represent judicially sanctioned changes in the legal relationship of the parties. As shown in the accompanying memorandum of law, this satisfies the "prevailing party" requirement for a fee award under 42 U.S.C.A. 1988. Taken together with the changes effected by the new Interim Order 22, the plaintiff class has achieved the substance of the relief it sought in the Motion.

6. The failure of the NYPD to reveal the revocation of Interim Order of 47, and the implementation of Interim Order 22, prevented class counsel from making this application at an earlier time. The plaintiffs' original motion has not been rendered moot by the actions of the NYPD, because in the absence of an order by this court requiring the NYPD to notify the parties and the court of any future changes, the NYPD is at liberty to adopt a new order without warning, which might well reintroduce the terms of old IO 47. In the absence of notice to the court, the plaintiffs would be unaware of any such changes made by the NYPD, as they have been unaware of this new Interim Order 22 for the past eighteen months.

Interim Order 22 compared to Interim Order 47

7. A copy of new Interim Order 22, issued on April 13, 2007, is attached as Exhibit A. The restrictions on videotaping at political demonstrations imposed by Interim Order 22 are clearly stated in the first four paragraphs of the Order which are quoted below:

"1. In order to comply with a recent decision of the federal court in *Handschu v. Special Services Division* a new procedure is being implemented temporarily to insure that members of the service understand the limited

circumstances under which operational personnel may use video and/or photographic equipment at demonstrations.

2. Therefore, effective immediately Interim Order 47, series 2004, "Revision to Patrol Guide 212-71, 'guidelines for the use of photographic/video equipment by operational personnel at demonstrations' is **REVOKED** and the following revised procedure entitled, 'guidelines for the use of video/photographic equipment by operational personnel at demonstrations' will be complied with:

PURPOSE To describe those limited circumstances when operational personnel may use video and/or photographic equipment at demonstrations and to establish procedures for the use of such equipment, when permitted.

SCOPE Use of video and/or photographic equipment by operational personnel at demonstrations is appropriate only if a permissible operational objective exists. The following constitute permissible operational objectives:

- a. A bona fide need exists to prepare training materials on proper crowd control techniques; or
- b. When it reasonably appears that unlawful conduct is about to occur, is occurring or has occurred during a demonstration; or

- c. A bona fide need exists to continuously assess crown conditions, through the use of live video transmissions, for the proper deployment of police resources."

8. The permissible operational objectives listed in Interim Order 22 are the same as those that were contained in Interim Order 6 dated February 8, 1991 and procedure number 212-71 effective January 1, 2000. See Declaration of Franklin Siegel dated November 16, 2005, and Exhibits 8 and 9 annexed thereto. The plaintiff class has always accepted the legitimacy of these operational objectives for videotaping at demonstrations.

9. In the course of ruling on the Motion, this Court clarified the scope of the Modified Handschu Guidelines and the range of situations in which they apply. First, the Court made clear that when the NYPD is videotaping at a demonstration with the purpose of investigating political activity, the guidelines always apply (*Handschu VIII*, 2007 WL 1711775 at *15).

10. At the same time, the Court made clear that even if the purpose of investigating political activity is present in conjunction with a permissible operational objective, the Modified Handschu Guidelines are triggered and must be followed. (*Handschu VIII*, 2007 WL 1711775 at

*19, n.19). This clarification, read together with Interim Order 22, covers the universe of situations where videotaping might occur: operational personnel may only video at demonstrations for the concededly legitimate purposes of crowd control, training and documentation of illegal activity. Whenever a purpose to investigate political activity is present, even in conjunction with a permissible operational objective, the Guidelines apply and their procedures must be followed. This is substantially the result the plaintiff class sought to achieve in the Motion.

Standing

11. One of the objectives of the Motion was to make clear that counsel for the plaintiff class have standing to apply to the Court for relief when the NYPD violates the guidelines. See Declaration of Jethro M. Eisenstein, November 16, 2005, at paragraphs 4 and 5. This position was strenuously opposed by the NYPD, which contended that there was no obligation, under the modified Handschu Guidelines, "that investigations of political activity conducted by the NYPD meet any additional requirements other than what is required by the Constitution." (NYPD

Memorandum of Law January 20, 2006 at p.4), and that class counsel had no standing to raise anything but a Constitutional objection (*id.* at p.5).

12. As this Court noted in *Handschu VIII*, the NYPD contended throughout the extensive submissions in connection with the motion that:

"Because the NYPD guidelines are for internal Department guidance only, sole power to insure compliance with them is vested in the Police Commissioner. In the case of non-Constitutional violations, class counsel are powerless to complain and the court powerless to provide a remedy."

Handschu VIII, 2007 WL 1711775 at *7.

13. This Court rejected the NYPD position, and ruled that class counsel have standing to seek relief where NYPD policies and practices violate the guidelines:

"In Corporation Counsel's view, so long as police conduct does not violate a class member's Constitutional rights, the Commissioner may turn a blind eye and a deaf ear to a violation or disregard of the procedures required by the NYPD Guidelines, whether that violation or disregard is an isolated incident or an established practice. The careful reader will understand that I am not saying Commissioner Kelly has behaved in this fashion or is likely to do so. But the logical conclusion of Corporation Counsel's argument poses the question whether the Commissioner could behave that way if he chose, with class counsel and the court powerless to take any action. Upon careful

consideration, I answer this question in the negative."

Handschu VIII, 2007 WL 1711755 at *10.

14. These rulings by the Court changed the legal relationship between the plaintiff class and the NYPD, at the instance of class counsel, in a way that enhances the ability of plaintiff class counsel to enforce compliance with the modified *Handschu* guidelines.

Why is this application made now?

15. If the NYPD had revealed in June of 2007, following the decision in *Handschu VIII*, that Interim Order 47 had been revoked, and that a new procedure governing the permissible operational objectives for videotaping at demonstrations had been put in place, this application could have been made eighteen months ago. Instead, the NYPD repeatedly failed to reveal this change and affirmatively argued as if Interim Order 47 was still the operative procedure, as the following chronology shows.

16. On February 15, 2007, this Court issued its Order (*Handschu VII*) enjoining the implementation of Interim Order 47 to the extent that it was inconsistent with the modified *Handschu* guidelines. On March 5, 2007, the NYPD moved to vacate the February 15, 2007 order, and also moved

for approval of a draft Interim Order 47 that was submitted with the motion and also dated March 5, 2007. See Exhibit B.

17. On April 13, 2007, while the motion described in the preceding paragraph was pending, the NYPD promulgated new Interim Order 22. Interim Order 22 is totally different from the draft Interim Order 47 that was submitted with the NYPD motion to vacate on March 5, 2007. As described in detail above, Interim Order 22 revokes Interim Order 47, and limits videotaping at demonstrations to training, crowd control and documentation of unlawful activity. No notice was given to the Court or to counsel of this revocation of the NYPD order that was the subject of the Motion.

18. On April 26, 2007, counsel appeared before the Court for oral argument on the NYPD motion to vacate the February 15, 2007 order. Throughout this oral argument, there was no mention of the fact that Interim Order 47 had already been revoked.

19. On May 4, 2007, Gail Donoghue, Esq. wrote to the Court on behalf of the NYPD, reiterating the NYPD request that the March 5, 2007 proposed draft revision of Interim Order 47 be approved.

20. On June 13, 2007 this Court issued its order (*Handschu VIII*) vacating *Handschu VII* in part. The Court concluded that Interim Order 47, which by this time had already been revoked, did not violate the modified Handschu Guidelines on its face. The Court left open the question whether the Guidelines were being violated in the application of Interim Order 47, and invited further briefing concerning the propriety of the March 5, 2007 proposed draft Interim Order 47.

21. On June 27, 2007, the NYPD made yet another motion, this time for reconsideration of the June 13, 2007 order (*Handschu VIII*). Once again, there was no notice to Court or to counsel that Interim Order 47, the subject of all these orders, had already been revoked.

22. On July 2, 2007, class counsel asked for discovery to pursue the question whether Interim Order 47 as applied violated the modified Handschu guidelines. Class counsel also objected to the March 5 proposed Interim Order 47. The NYPD responded on July 13, 2007 objecting to the requested discovery and defending the March 5 proposed Interim Order 47. In this letter, as in all previous and subsequent communications until September 18, 2008, the NYPD did not reveal that Interim Order 47 had already been revoked and replaced by Interim Order 22.

23. On July 18, 2007, class counsel defended its right to take discovery and objected to the March 5 proposed Interim Order. On July 23, 2007, the NYPD further objected to discovery and defended the March 5 proposed interim order. Throughout this back and forth, there was no notice to the Court or counsel that Interim Order 47, the subject of the Motion, had already been revoked.

24. Class counsel continued to make submissions to the Court through the fall of 2007, predicated on an understanding that Interim Order 47 was still in effect. On February 27, 2008, this Court issued its ruling (*Handschu IX*) permitting the plaintiff class to conduct discovery regarding the application of Interim Order 47. Discovery requests were served on March 4, 2008, and on May 5, 2008, Peter Farrell, Esq. on behalf of the NYPD provided documents responsive to the discovery request.

25. On August 11, 2008, Mr. Farrell produced 83 NYPD videotapes, which he said had been "taken during the effective period of Interim Order 47". The last of these videotapes was recorded on April 8, 2007.

26. On August 19, 2008, class counsel wrote to Mr. Farrell as follows: "the wording of your letter suggests to us that Interim Order 47 is no longer in effect. Please advise whether this is correct and if it is, please provide

us with a copy of the policy or procedure that has replaced Interim Order 47." See Exhibit B. On September 18, 2008, Mr. Farrell responded, providing for the very first time Interim Order 22, which by its terms was effective April 13, 2007, nearly a year and a half earlier. See Exhibit C.

27. Upon receipt of Interim Order 22, which is described in detail above, it became clear that there was no point in continuing to pursue discovery about whether Interim Order 47, revoked a year and a half earlier, was being violated in practice.¹ We have learned, belatedly, that we have prevailed on the Motion.

28. Interim Order 22, by its terms, indicates that the new procedures are "being implemented temporarily." In light of this indefinite commitment, and our most recent

¹ In discovery the NYPD produced the videotapes made at the demonstration in front of Mayor Bloomberg's townhouse on East 79th Street on December 4, 2005. As the Court will recall, following the decision in *Handschu VII*, the NYPD submitted an affidavit dated March 5, 2007 from NYPD attorney Mary C. Kilker, purporting to describe the demonstration and particularly the videotape taken by the NYPD on that occasion. As summarized by the Court in *Handschu VIII*, the belated "affidavit of Mary C. Kilker transforms the participants from a group of citizens walking peacefully and in good order on the sidewalk into an unruly and disobedient crowd, illegally blocking pedestrian and vehicular traffic, and even forcing a mother and her child in a baby carriage off the sidewalk and into the street." *Handschu VIII*, 2007 WL 1711775 at *5. The NYPD videotapes of this demonstration show nothing like what is described by NYPD Attorney Mary C. Kilker. There is no unruly or disobedient crowd, no blocking of traffic and no mother and child forced off the sidewalk. While these facts no longer have significance for the 2005 motion for injunctive relief, the affidavit of NYPD attorney Kilker was, in part, the cause of this Court's decision to withdraw *Handschu VII*. Accordingly, we think it is appropriate to bring to the Court's attention the disparity between what NYPD attorney Kilker described to the Court in her affidavit, and what the videotapes show.

experience of having the NYPD change the policy without informing either plaintiffs' counsel or the Court, plaintiffs seek an order directing the NYPD to provide notice to counsel and to the Court of any decision to withdraw Interim Order 22 or to otherwise change its policy with respect to the videotaping or photographing of public political protest activity.

29. Under Rule 54 F.R.C.P., a motion for counsel fees is appropriately made fourteen days after the entry of judgment, or as such other time as the Court may direct. The inexplicable behavior of the NYPD in withholding from the Court and counsel the fact that Interim Order 47 was long ago revoked, and replaced with an order that was exactly what the plaintiff class sought, has delayed the closure of this chapter in the Handschu litigation, and necessitated the present application to mark and acknowledge the fact that the plaintiff class is the prevailing party on this motion for injunctive relief and that an application for counsel fees may now be made.

A handwritten signature in black ink, appearing to read "Jethro M. Eisenstein", written over a horizontal line.

JETHRO M. EISENSTEIN

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 7, 2008.

EXHIBIT A



INTERIM ORDER

SUBJECT: REVISION TO PATROL GUIDE PROCEDURE 212-71, "GUIDELINES FOR THE USE OF PHOTOGRAPHIC/VIDEO EQUIPMENT TO RECORD POLICE OPERATIONS AND PUBLIC ACTIVITIES"		
DATE ISSUED:	REFERENCE:	NUMBER:
04-13-07	*PG 212-71	22

1. In order to comply with a recent decision of the federal court in *Handschu v. Special Services Division* a new procedure is being implemented temporarily to insure that members of the service understand the limited circumstances under which operational personnel may use video and/or photographic equipment at demonstrations.

2. Therefore, effective immediately, Interim Order 47, Series 2004, "Revision to Patrol Guide 212-71, 'Guidelines for the Use of Photographic/Video Equipment by Operational Personnel at Demonstrations' " is **REVOKED** and the following revised procedure entitled, "Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations" will be complied with:

PURPOSE To describe those limited circumstances when operational personnel may use video and/or photographic equipment at demonstrations and to establish procedures for the use of such equipment, when permitted.

SCOPE Use of video and/or photographic equipment by operational personnel at demonstrations is appropriate only if a permissible operational objective exists. The following constitute permissible operational objectives:

- A bona fide need exists to prepare training materials on proper crowd control techniques; or
- When it reasonably appears that unlawful conduct is about to occur, is occurring or has occurred during the demonstration; or
- A bona fide need exists to continuously assess crowd conditions, through the use of live video transmissions, for the proper deployment of police resources.

PROCEDURE When ranking personnel of this Department contemplate the use of video and/or photographic equipment at a demonstration for a permissible operational objective:

RANKING OFFICER

1. Submit a report, on **Typed Letterhead**, to the Deputy Commissioner, Legal Matters, through channels
2. Include in the request the following information:
 - a. Date, time and location of demonstration (if known)
 - b. Specific permissible operational objective to be achieved

DEPUTY COMMISSIONER LEGAL MATTERS

3. Review request for use of video and/or photographic equipment to determine whether videorecording/photography is for a permissible purpose and should be approved.

**DEPUTY
COMMISSIONER
LEGAL
MATTERS
(continued)**

4. If approved, forward copy of approved request to Chief of Department, Bureau or Borough Commander of Ranking Officer making request and Commanding Officer, Technical Assistance Response Unit.

NOTE

Every approved request for the use of video/photographic equipment will be entered into a serially numbered log, maintained solely for this purpose, at the Technical Assistance Response Unit.

**COMMANDING
OFFICER,
TECHNICAL
ASSISTANCE
RESPONSE
UNIT**

5. Ensure that appropriate entries are made in log upon receipt of request.
6. Assign members of TARU to the demonstration to operate video/photographic equipment.

UPON COMPLETION OF VIDEORECORDING/PHOTOGRAPHING:

**COMMANDING
OFFICER,
TECHNICAL
ASSISTANCE
RESPONSE
UNIT**

7. Ensure that all videorecordings/photographs prepared in connection with this procedure are maintained for a minimum of one (1) year from the date the images were recorded.

**DEPUTY
COMMISSIONER
LEGAL
MATTERS**

8. Review recorded materials to determine whether they should continue to be preserved:
 - a. If the materials contain evidence of unlawful activity, they will be considered evidence, and handled accordingly.
 - b. If the materials are deemed valuable for civil litigation, training, or any other specific purpose, they will be similarly preserved in connection with that purpose.
 - c. After three (3) years, materials not meeting the criteria in (a) or (b) above shall be destroyed.

**ADDITIONAL
DATA**

Videorecordings/photographs should be consistent with the permissible operational objective. For example, videorecordings/photographs taken for training purposes or to assess crowd conditions should generally not contain close-ups of participants in the demonstration, but should focus on crowd size, police tactics and/or behavior. When the permissible objective is to record unlawful activity and/or arrest activity, videorecording /photography should commence only when there is a reasonable belief that criminal or unlawful activity is about to occur or when spontaneous criminal or unlawful activity actually occurs or has occurred.

**ADDITIONAL
DATA
(continued)**

Video and/or photographic equipment authorized to be used pursuant to this procedure may only be operated by TARU personnel. Personnel assigned to other commands, e.g., Borough Task Forces, the Disorder Control Unit, shall not utilize video or photographic equipment at demonstrations pursuant to this procedure.

With the exception of members of the service assigned to or working under the supervision of the Intelligence Division, all personnel who operate video and/or photographic equipment pursuant to this procedure must be clearly identifiable as police personnel. They must wear either a police uniform or a jacket that is clearly marked "POLICE." Displaying a shield on a chain is not sufficient identification.

All videorecordings and photographs pertaining to this procedure, except materials invoiced as evidence, or used in connection with the preparation of training materials, will be stored at TARU. All requests to obtain or view such videorecordings or photographs will be made in writing to the Deputy Commissioner, Legal Matters, detailing the reason for the request. Commanding Officer, TARU shall maintain a record of all such requests and whether any copies were provided.

3. **REVISE** all references to P.G. procedure 212-71, "Guidelines for the Use of Photographic/Video Equipment to Record Police Operations and Public Activities" wherever they appear in the Department Manual to read:

"Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations"

4. Interim Order 47, Series 2004, is **REVOKED**.

5. Any provisions of the Department Manual or any other Department directives in conflict with the contents of this order are suspended.

BY DIRECTION OF THE POLICE COMMISSIONER

**DISTRIBUTION
All Commands**

INTERIM ORDER NO. 22

EXHIBIT B

PROFETA & EISENSTEIN

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JETHRO M. EISENSTEIN
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DISTRICT OF COLUMBIA BAR
*ALSO A MEMBER OF NEW JERSEY BAR

August 19, 2008

Peter G. Farrell, Esq.
Senior Counsel
Law Department, City of New York
100 Church Street
New York, New York 10007-2601

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

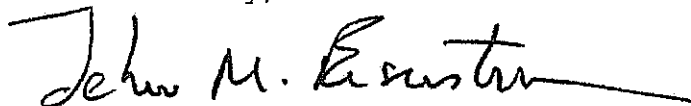
Dear Mr. Farrell:

I acknowledge receipt of 83 videotapes and DVDs, which you have produced in response to the request of the plaintiff class for production of documents dated March 4, 2008.

I note in your cover letter dated August 11, 2006 [should be 2008] that the videotapes you have produced were "taken during the effective period of Interim Order 47." Since the most recent videotape you have produced is dated April 8, 2007, the wording of your letter suggests to us that Interim Order 47 is no longer in effect. Please advise whether this is correct and if it is, provide us with a copy of the policy or procedure that has replaced Interim Order 47.

Thank you for your cooperation.

Sincerely,



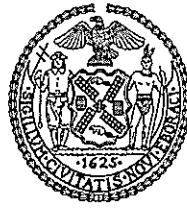
Jethro M. Eisenstein

JME/s

cc: Hon. Charles S. Haight
Paul G. Chevigny, Esq.
Arthur Eisenberg, Esq.

Martin R. Stolar, Esq.
Franklin Siegel, Esq.

EXHIBIT C



MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
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Senior Counsel
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September 18, 2008

Via Email and Regular Mail

Jethro M. Eisenstein, Esq.
Profeta & Eisenstein
14 Wall Street, 22nd Floor
New York, NY 10005

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

Dear Mr. Eisenstein:

We write in response to plaintiffs' letter dated August 19, 2008, wherein plaintiffs request "a copy of the policy or procedure that has replaced Interim Order 47." As we discussed, we agreed to treat your letter as a document request and are timely responding herein. Likewise, we are responding in letter form and hereby incorporate all of the objections set forth in Defendants' Response to Plaintiffs' Request for Production of Documents dated May 5, 2008. In response, Defendants enclose Interim Order 22, dated April 13, 2007, consisting of pages 1 through 3.

Sincerely,

Peter G. Farrell
Senior Counsel