

HAND DELIVERED

May 27, 2014

Complaint to the Inspector General of the New York Police Department for the City of New York Regarding the Spying on and Subversion of Political Activists Through Infiltration of Organizations and Other Disruption of their Work *

HAND DELIVERED May 27th, 2014, under Local Law No. 70

Local Law No. 70 (hereafter "the IG Bill") was passed last year over the veto of Mayor Bloomberg and took effect January 1st of this year. It requires the new Inspector General of Police, under the Commissioner of the Department of Investigation, to take complaints from the public about the New York Police Department's "operations, policies, programs and practices, including ongoing partnerships with other law enforcement agencies".

Complainants are environmental, human rights, housing rights, animal rights, good government activists (hereafter "political activists") who have reasons to believe that we are or have been targets of unlawful police operations by the New York Police Department, practices encouraged or at least tolerated by previous civil administrations, City Council committees - tasked with oversight of the police and protection of the public's civil rights and liberties - and various other government parties. Under Section 803 of chapter 34 of the New York City Charter, revised by the IG Bill, Complainants request that the Inspector General "investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices, including ongoing partnerships with other law enforcement agencies, of the New York City Police Department" that have and continue to impact adversely their enjoyment of their First Amendment rights to petition their government for redress of grievances, and other fundamental rights guaranteed by the United States and New York State Constitution.(1)

We understand significant safety and security concerns attend the important work of police departments in our city and across the country to keep us secure in our persons and effects. And it is in furtherance of that important goal - and not contrary to it - that we point out the immense waste, corruption and abuse of power which police surveillance, infiltration and subversion of political activists by the Intelligence Division and other parts of the NYPD have caused our city. Even if the Inspector General were to ignore the waste of millions of taxpayer dollars in payments for such police operations, such as the over-policing of public gatherings (like rallies against violence and war or bike rides promoted by the Complainant environmental organization, Times Up!), the loss of public confidence in the entire police department because of the excesses of the Intelligence Division et al tarnishes the department and harms its ability to carry out its legitimate goal of protecting the public.

Complainants understand that hiding the waste and injustice attendant the multi-decade practices of spying on activists might seem a tempting response to their complaint. We also understand that ignoring the years of infiltration and subversion of political activists, which has not resulted in any important advancement of legitimate police goals, or launching an indefinite 'study' of the issues of 'safety' vs. 'security' may be easier than fully exposing and transforming the NYPD's excesses. We recognize that the IG Bill might seem to offer a means for engaging in just such prevarication.(2)

Complainants agree, however, with broad police reform political advocacy coalitions such as Communities United for Police Reform that the promise of the IG bill was "independent oversight and transparency for the NYPD, two key attributes of any law enforcement agency to be effective and

accountable to those it works to protect and (that) it would help restore trust necessary in communities for a good working relationship with the police.” As Rabbi Rachel Kahn-Troster of Rabbis for Human Rights North America so succinctly put it, "Keeping us safe, however, means that the NYPD should target suspects based on actionable evidence, not their race, religion, place of birth, race or ethnicity.”(3) Complainants agree and add that the surveillance of political activists - let alone the launching of more destructive police operations against us - must not be tolerated and that reasonable and individualized suspicion that a crime has been committed must be a necessary predicate for any police surveillance or investigation.

This bedrock standard has been dramatically eroded in recent years to no appreciable benefit to public safety and to great harm to our democratic way of life.

We join these leaders of police reform organizations in demanding an end to secrecy of the New York Police Department operations as necessary to "foster and ensure a culture of accountability and transparency, that supports public access to data, policies and activities of the NYPD". (4) Complainants believe that this is especially true of police operations that have targeted First Amendment protected activities like political advocacy which advocacy provides vital nourishment to our democratic system of government and prevents its corruption and atrophy.

There is no place for police surveillance of political activity let alone police operations to subvert it in New York City’s thriving democracy.

The expenditure of a \$5 million annual budget for a staff of about 50 to look broadly at NYPD policies and practices with the goals of increasing public safety, protecting citizens' civil liberties, and improving police-community relations, will be well spent if the Inspector General can review and publicize copious documentation, including intra and intergovernmental memos and videos collected within and outside of the NYPD of spying on activists; expose publicly the flaws in training, operations manuals, protocols, guidelines, and directives which have allowed this to take place; and move expeditiously to end spying and subversion of First Amendment protected organizations, the over-policing of demonstrations, and the intimidation of political activists through these operations, the maintenance of lists/databases of names, and custodial detentions, which waste millions in taxpayer dollars while robbing New Yorkers of effective avenues to which the Constitution entitles us of changing government practices.

We are confident that Mayor De Blasio and the new Inspector General Eure will recognize the current sea-change in public attitudes towards intrusiveness and overstepping Constitutional privacy protections, and will thoughtfully consider the examples of abuses listed below. We trust that appropriate and effective measures will be undertaken to adopt and expand on the recommendations offered here to serve and protect public safety and civil liberties.

History of Abuses

Recent revelations of abuses by the New York Police Department in which investigations were opened and kept active for years on environmental and human rights organizations reflect a larger, persistent pattern of abuses which has preceded the decade-old pretext of terrorism used to target dissent and bloat police budgets after 9/11:

i. Lack of respect for the democratic nature of our system of government reflected in dishonest and

opaque response to FOIA is long-standing.

- ii. Targeting groups for stop-and-frisk because of their race and socio-economic status has been a practice for well over a decade, since Commissioner Bratton was the Commissioner of Police in the 1990s.
- iii. The use of public gatherings by political activists as pretexts for fear-mongering, over-policing, and garnering of overtime pay has been NYPD practice for decades.
- iv. The waste of millions in taxpayer dollars for these forms of 'police work' without judicial oversight.

And new abuses became the norm after 9/11:

- i. Targeting groups with surveillance, infiltration and other unconstitutional police operations based on their religion.
- ii. The on-going and unaddressed conflict of interest reflected in the fact that New York City police officers, trained at public expense and indemnified by taxpayers, moonlight for corporations that have frequently been protested by political activists. The response by NYPD to Occupy Wall Street demonstrations against major banks have been particularly violent. And these banks are significant employers of public safety officers. (5)
- iii. Custodial detention of people with "Muslim" names, as highlighted in the May 10th, 2014 New York Times cover story and the May 25, 2014 NY Times editorial remains unaddressed. (6)

Specific Cases of Unwarranted Targeting of Political Activists

1. Friends of Brad Will, Human Rights and Anti-militarization Organization, Targeted

Complainant human rights organization Friends of Brad Will, has been frustrated in its advocacy efforts to obtain accountability for the murder of US journalist Brad Will by Mexican government paramilitaries in front of witnesses. (7) The group's efforts have been undermined by aggressive police monitoring of supporters who have used research, advocacy, public forums, meeting with elected officials and traditional civil disobedience tactics to draw attention to the impunity Brad Will's murderers enjoy and to the general silence with which the US government has responded to a citizen's murder.

How much more would the public have been served had the NYPD and the administrations funding and supporting its useless and unconstitutional police operations decided instead to devote those resources to investigating and facilitating the prosecution of the brazen murderers, in broad daylight, of a New Yorker and American? Instead the very group that has been advocating for an end to impunity for this crime has become subject of surveillance by the department. (8)

Complainants urge Inspector General to obtain a full accounting of the wasted law enforcement resources used to target this human rights network.

The group experienced targeting by the NYPD-Intel Division similar to that of members of the Muslim community, which undermined its ability to organize for justice in this case and against a military and police aid package known as Plan Mexico (or the Merida Initiative). Supporters, such as long-time educator/activist Adam Weisman, NYU Professor Mark Read, and writer and NYTimes contributor Tim Doody, were specifically named as targets for operations of the NYPD Intelligence Division in papers leaked and published in the *Enemies Within*. (9)

The use, for over a decade, of psychological operations by law enforcement against various political activists, especially ones using civil disobedience, which included their being listed as a 'terrorist'

organization, led about a dozen political activists, including members of Friends of Brad Will, to file FOIA requests against the NYPD. These requests were ignored or were answered with constructive denials of the request for documents claiming that these were overbroad (even though the request listed particular sorts of documents). Such denials indicated that the NYPD was a) either lying, because the documents existed (10) or b) that, even after years of costly operations by the Intel Division, which turned up no useful leads and were based on the most tenuous links (11), the investigation of Friends of Brad Will, NYU Professor Mark Read, and others remained active and complainant remained a target of police operations!

None of the conclusions that might be drawn from the Department's response to the FOIL of Complainants' lawyers reflects well on its commitment to lawfulness or transparency.

The unlawful, coercive practices that have been used to target police detainees with "Muslim sounding names" (6) have also been used to target political activists in detention. This shows that there exists lists of activists kept by the Department. In 2003 when activists were interrogated while being detained, City lawyers defended the practice. Yet, despite the Judge hearing the case chastising the NYPD/City's position, these practices continued for years with detained Friends of Brad Will activists targeted at least as recently as 2010 with coercive interrogation.

2. Time's Up!, Environmental Advocacy organization, Targeted

Complainant Time's Up! has in existence as a vital part of the New York City advocacy community for 25 years, and has organized hundreds of sustainable and empowering campaigns, events, and workshops. (12) While most of their success stories are local, they also have a global impact. The primary mission of Time's Up! is environmental education. Time's Up! focuses on bike rides and community garden cleanups. All of their actions and campaigns are positive examples of the change they would like to see.

Time's Up! has been a significant catalyst of public education and mobilization for the biking infrastructure our City currently enjoys and embraces. It has been the target of merciless, repeated and arguably unlawful police operations and harassment for well over a decade. Such incidents have been documented by the press, the NYC legal community, and several independent media collectives. (13) The harassment of Time's Up! has had a significantly negative impact on this all-volunteer nonprofit organization and its events, campaigns, and outreach methods. It has led to decreases in participation and has had a negative impact on fundraising.

An audit of the amount of public moneys spent on these useless operations will not capture the lost opportunity costs to our City had the good works of Times Up! received support and encouragement from the City instead of the punitive NYPD Intelligence Division et al. resources it was subject to.

3. Reclaim the Streets, Good Government Group, Targeted

In the lead-up to Mayday 2001, Reclaim the Streets NYC was part of a coalition of groups which were organizing various activities, including cleaning up a vacant lot, marching with puppets, and supporting the large immigrant rights march that would take place late in the afternoon. On Mayday a puppet march and vacant lot clean up actions took place but was heavily policed and harassed by the Department. Although no-one was arrested, it was difficult for participants even to walk in the street as a group let alone share information with curious pedestrians, cowed by the overwhelming police presence. Later in the day, political activist and NYU Professor Mark Read witnessed a man who had been posing as an interested activist with the coalition of good government and environmental

organizations accidentally get outed as an undercover by a uniformed police officer who blew his cover in his excitement to see a fellow graduate from the Police Academy again. This volunteer was never heard from again.

What are the full costs of these police operations?

4. Housing and Garden Activists Targeted

During the night of a 1997 political benefit party, activist Matt Metzgar learned about the direct infiltration of Det. Jaime Hernandez into his home, an East Village building which was hosting the party for environmental group Times Up! When jokingly inquiring whether Det. Hernandez, out of his uniform, was a "navy seal", Hernandez replied that he was "police anti-terrorist." Metzgar asked Hernandez to leave the premises and Hernandez complied. The following week, Metzgar was visited by a stranger who claimed to be working with Times Up! Metzgar subsequently and willingly invited the stranger into his community. A year later, the stranger - then a friend - made a willing disclosure of being a police informant. Metzgar's activities up until then had included organizing for housing justice and promoting and defending at-risk community gardens, sometimes with civil-disobedience actions. After his experience with Det. Hernandez, Metzgar experienced a deep apprehension about continuing his civic work and a reluctance to expose his friends and new family to the wiles of the New York Police Department targeting of people like himself.

As some call for thousand more police it would be timely to investigate the abuse of resources for violating First Amendment rights and instead deploy them for popular causes.

Complainants are aware that the intrusive law enforcement practices reported above are not limited to New York City. The costly (financial and otherwise) expansion of domestic police operations under the guise of counter-terrorism in Fusion Centers and Joint Terrorism Task Forces (JITFs) across the country has involved operations targeting political activists. The participation in those taskforces of recidivist violators of the civil rights of political activists should concern New York City Mayor, police and City Council officials and also be the subject of the investigation by the Inspector General. (14)

Recommendations Complainants request be issued by the Inspector General to the Mayor, Commissioner and the City Council

To show a clean break from the past we need to expose fully policies and practices that have not worked, have harmed civil liberties, have undermined fundamental rights, and have damaged communities of people committed to improving our country and its governance. As the New York Times editorial page recently declared on the heels of the City's announcement that it had disbanded the Demographic's Unit which was spying on Muslims: "Having dispensed with the unit, Mr. Bratton as well as Mayor Bill de Blasio must now deal with the underlying problem: the Police Department's longstanding tendency to trample on people's rights during investigations of groups engaged in political activities." (15)

We recognize that the many of the same unlawful and abusive tactics that have been used by the FBI and the NYPD., including invasive surveillance, infiltration, and sting operations using agents provocateur, to target the Arab, Middle-Eastern, Muslim, and South Asian communities in the US have been used by the NYPD in targeting political activists. Complainants request that the Inspector General investigate the NYPD, its Intelligence Division, and their partnerships with other law enforcement

agencies and groups and make recommendations to Mayor and the City Council as follows:

A full audit of NYPD programs, practices, and policies which have targeted dissenters, political advocates, environmentalists and human rights activists for the last two decades must be conducted and the public provided with a full accounting of their scope, their targets, their costs (in regular police hours and overtime pay), and their origins and claims for lawful mandate. Included in the disclosure sought must be a full description of the training which officers undergo before being tasked with targeting political activists, including any and all characterization of political activists in documents or other training materials used. The audit must include itemization of costs of policing demonstrations, what formulas, if any, inform deployment of police, what precautions, if any, are taken as a matter of policy or custom, to ensure that the ability of political activists gathered in public to reach out to and inform the general public are not frustrated by unnecessary deployment of police, police horses, police cars, pens or other materials or personnel that restrict movement.

A full investigation of the Intelligence Division of the New York Police Department and other Divisions or groups within the Department (Intelligence Division et al) **whose purpose is to surveil, infiltrate, record the meetings of political activists or otherwise disrupt their unencumbered enjoyment of free association by political activists.** The investigation must obtain and publicize the following information about the Intelligence Division et al: when it was formed; whether it inherited files from any predecessor divisions within the NYPD or other government bodies and what files and from whom; a full disclosure of all statutory and policy guidance used to guide and shape its practices; how materials it collected have been stored and on which activist groups; with which other local, state, federal and foreign police or other government agencies, if any, it shared this information; what safeguards it took to ensure that investigations were not opened on less than particularized suspicion that a crime was committed and, if it did not take such precautions, what laws, legal guidance, statutes, and/or other legal authorities it considered a limit to its investigations; what its procedure is for closing such investigations; how the information collected about political activists is stored, shared, distributed and what procedures exist to expunge those accumulated datum or otherwise to allow activists, whose names or organizations might exist in such files to contest the contents of those materials informing police work against them. It is clear that the Department maintains lists of political activists and the Inspector General should require the Department to inform the public how political activists get on and off such lists and what portion of the police budget funds the maintenance of these lists. He should recommend that there be an expungement of all police records collected by the unconstitutional surveillance of religious and political activities, and a transparent process of engagement with the affected communities on reforming these policies and repairing negative consequences of such surveillance should be initiated. Expungements of records, including a legally binding and privately enforceable commitment to securing the expungement of records provided to the FBI, DHS, CIA or any other Federal agency, foreign government or private sector party should be recommended.

The new Inspector General **should be closely examined the practices and legal restraints applicable to multi-agency taskforces with which the NYPD works (JTTFs/Fusion Centers) and should report in details on their policies and practices in relation to political activists.** The report should include a full and public account of the specific law enforcement purposes and goals served by NYPD participation in any such taskforces; the effectiveness of participation in furtherance of those purposes and goals; the training provided to the taskforce members as a group addressing the rights of political activists and the limits on taskforce members authority to surveil, infiltrate, disrupt, or otherwise interfere with those rights.

The current domestic security landscape encourages the sharing of practices between local, state and federal law enforcement agencies. Complainants believe that, absent clear and consistent laws, guidelines or training, instructing these taskforces about the critical importance to our democracy of political activists, such as Complainants, and about their rights from intrusion or police harassment, that the transmission of worst practices between the NYPD and these other members will likely be the norm. The Inspector General should end NYPD law enforcement participation from any taskforce whose members continue to show an abiding disregard for the rights of political activists. (16)

Furthermore, **the Inspector General should fully investigate the media strategies of the NYPD and other members of these taskforces** as these shape public perception of political activists. The investigation should result in **a full report to the public** on how strategies were developed; what they cost to develop and which parties helped form them; how they characterize political activists targets of police actions; and what law enforcement purpose is served through the deployment of such strategies. They often precede large protests, "justifying" over-policing, overtime, and creating an atmosphere of fear and paranoia, warning curious but apprehensive would-be participants away from the public gatherings. The damaging impacts on the work of political activists of psychological operations by law enforcement is clear. Recommendations should be made to end such misuse of taxpayer monies to spread fear and disinformation through the media while collecting overtime for police forces.

Effective penalties must be established in law, significant enough to discourage repetition of offenses must be consistently applied to Department officials who break laws protecting political activists from unlawful investigation, harassment, infiltration and the collection and/or retention of information about them or their organizations. Where such laws do not yet exist or do not provide necessary clarity about red lines, Complainants request that the Inspector General make clear the need for penalties and/or private rights of action against the officers, the department or relevant policymakers to serve as a suitable deterrent for what appears to be recidivist lawlessness on the part of the New York Police Department and its facilitators/supporters in this behavior.

Given the recidivist scofflaw behavior by the Department, the history of targeting political activists, infiltrating their meetings and assemblies, and over-policing their public gatherings, **existing authorized practices should be restricted**, including the authorization the police currently enjoys to be authorized to go anywhere the public may go. It is clear that the police are currently trained in a manner that does not allow them to properly assess the civil rights of political activists. As a result, the attendance of officers at meetings of political activists must only be allowed when there is a reasonable suspicion that a crime might be, or is in the process of being committed and that such suspicions should be articulated in writing, where possible, to a commanding officer who will provide written authorization for such attendance as allows the officer to respond to the (threat of) criminal activity. The Inspector General should also recommend that the numbers of police officers authorized to attend public gatherings balance the likelihood that their presence will deter law abiding participants and must be proportional to the realistic and articulated threat of disturbances of a serious criminal nature at such gatherings.

Furthermore, the Inspector General should promptly **evaluate whether the Handschu Settlement**, which was operative while these clearly abusive practices took place, **must be strengthened, supplemented or replaced** with stronger and more enforceable legal protections, guidance and laws to protect political activists.

Complainants agree with Commissioner of Investigations Mark Peters when he declared "Modern

policing is strengthened, not hindered, by independent review". (17)

We believe there is substantial evidence that the NYPD has seriously misused its authorities and capabilities since 9/11. We need tangible, serious proposals of how we can ensure the NYPD does not target an entire group, set of groups, or political activists in general based on their participation in political advocacy. The new Mayor and Inspector General should conduct a comprehensive examination of the NYPD's policies and practices to identify and curtail any activities that are illegal, unconstitutional, discriminatory, ineffective, or easily misused. Violation of new restrictions meant to address a history of unconstitutional or counterproductive policing should be significant enough to serve a deterrent function.

FOOTNOTES:

(1) The relevant sections of Local Law No. 70 states: "Section 1. **Section 803 of chapter 34** of the New York city charter is amended by adding a new subdivision c, relettering current subdivisions c through e as new subdivisions d through f, and amending relettered subdivision d to read as follows:

c. 1. The commissioner shall, on an ongoing basis, investigate, review, study, audit and make recommendations relating to the operations, policies, programs and practices, including ongoing partnerships with other law enforcement agencies, of the new york city police department with the goal of enhancing the effectiveness of the department, increasing public safety, protecting civil liberties and civil and

§ 2. Section 804 of chapter 34 of the New York City charter is amended to read as follows:

§ 804. Complaint bureau. There shall be a complaint bureau in the department which shall receive complaints from the public, *including, but not limited to, complaints about any problems and deficiencies relating to the new york city police department's operations, policies, programs and practices.*

(2) The relevant section of the Inspector General Law states: "*3. The Mayor, in consultation with the department and the new york city police department, shall have the discretion to determine how sensitive information provided to the department in connection with any investigation, review, study, or audit undertaken pursuant to this section shall be treated. The Mayor shall provide the Council with any guidelines, procedures, protocols or similar measures related to the treatment of sensitive information that he or she puts in place. Sensitive information shall mean information concerning (a) ongoing civil or criminal investigations or proceedings; (b) undercover operations; (c) the identity of confidential sources, including protected witnesses; (d) intelligence or counterintelligence matters; or (e) other matters the disclosure of which would constitute a serious threat to national security or to the safety of the people of the city of New York. "*

(3) See the NYCLU post entitled *NYPD Inspector General Bill Introduced in City Council*, June 12, 2012 posted here <http://www.nyclu.org/news/nypd-inspector-general-bill-introduced-city-council>

(4) See Communities United for Police Reform monograph entitled: "Safety and Civil Rights for All New Yorkers - Fulfilling Pledges on Policing & Community Safety for the Mayor's First 100 Days".

(5) See *Who Really Owns The NYPD? Turns Out It's Not Such A Rhetorical Question* by Susie Madrak, October 11, 2011, Crooks and Liars.

(6) *New York Police Recruit Muslims to Be Informers* by Joseph Goldstein (May 10, 2014, New York Times) and *Muslims and the N.Y.P.D.* The Opinion Pages by the Editorial page (May 25, 2014, New York Times) respectively.

(7) See Nobel Prize-winning forensic and human rights organization, Physicians for Human Rights, and their report about the murder of Brad Will and other innocents by armed paramilitaries cited here: <http://physiciansforhumanrights.org/press/press-releases/news-2008-05-23.html>

(8) See *Enemies Within* by Matt Apuzzo and Adam Goldman, two Pulitzer Prize-winning journalists, Document cache #6, <http://enemieswithinbook.com/map.html#> (September, 2013; Simon & Schuster).

(9) *ibid*

(10) *ibid*

(11) See *On Reed-Thin Evidence, a Very Wide Net of Police Surveillance*, New York Times Metro Section, September 9, 2013 by Michael Powell at http://www.nytimes.com/2013/09/10/nyregion/on-reed-thin-evidence-a-very-wide-net-of-police-surveillance.html?_r=0

(12) The organization's history can be viewed here: <http://times-up.org/about/times-25th-anniversary-timeline>

(13) The Brian Lehrer Show discusses Time's Up! and anti-terrorism efforts that are taken too far and cross the line into spying and manipulation. (see <http://www.wnyc.org/story/inside-nypds-counterterrorism-unit/>); Police Infiltrate Protests, Videotapes Show by Jim Dwyer, December 22, 2005, New York Times (http://www.nytimes.com/2005/12/22/nyregion/22police.html?_r=1&pagewanted=print&)

(14) *Unleashed and Unaccountable - The FBI's Unchecked Abuse of Authority*, ACLU monograph, September, 2013. Pgs. 10-11.

(15) *Spying at the N.Y.P.D.* by the Editorial Board (APRIL 16, 2014, The Opinion Pages|Editorial, New York Times)

(16) *opcit* footnote (14), pg. 11.

(17) See *The NYPD IG will improve policing* by New York City Commissioner of Investigations, Mark Peters (April 18, 2014; New York Daily News) at <https://www.nydailynews.com/opinion/nypd-ig-improve-policing-article-1.1760428>

* We will be amending this the first complaint to be filed with your offices in the following weeks but urge you to begin issuing the relevant subpoenas and tasking your investigators with the goal of ending the NYPD's targeting of political activists.