

November 16, 2015

Faculty, Staff and Students
c/o Todd Fine
History Program
The CUNY Graduate Center
365 Fifth Avenue, Room 5111
New York, New York 10016

Dear Colleagues,

Chancellor Milliken has received your letter to him dated November 4, 2015 concerning a newspaper report suggesting that the NYPD may have sent an undercover officer to an event at Brooklyn College several years ago. Your letter further states that the same undercover officer was seen more recently at John Jay College. According to other press reports, the activities of that undercover officer led to recent charges against of two persons for conspiring to mount a terrorist attack on American soil. Your letter contends, based on those press reports, that the NYPD apparently violated a 1992 Memorandum of Understanding between the NYPD and CUNY (the "MOU") relating to the circumstances that might require the police to respond to an incident or event on a CUNY campus and the procedures to be followed when such circumstances arise. Accordingly, Chancellor Milliken has asked me to respond.

The MOU is entitled "MEMORANDUM OF UNDERSTANDING REGARDING POLICE RESPONSE TO INCIDENTS AND EVENTS OCCURRING AT THE CITY UNIVERSITY OF NEW YORK." The MOU covers two categories of incidents and events on CUNY campuses: (1) emergencies and (2) non-emergency responses.

With respect to emergencies, the MOU provides that whenever the police receive a report from any person that an emergency involving danger or potential injury exists or may exist on a CUNY campus, the police "may enter CUNY property or facilities for the purpose of investigating the report of the emergency." The MOU goes on to set forth certain procedures that the police will follow in such a circumstance. It states that "before entering the college facilities, the NYPD will, if possible, attempt to contact the college security office to verify the report." It also provides that "[w]henver the NYPD enters CUNY property to respond to an emergency report by any person other than the college president or designated college official, the NYPD personnel will advise the college president or college security office of the nature of the emergency as soon as possible." The MOU defines emergency as including "any circumstances in which there is the potential for injury to any person or substantial damage to or loss of property."

In responding to non-emergency circumstances, the MOU provides that "NYPD personnel shall enter upon CUNY campuses, buildings and other property only upon the request or approval of a CUNY official designated by CUNY as having authority to make such a request." The MOU gives as examples of such non-emergency circumstances, "the report of a past crime (except for the immediate preservation of a crime scene), a peaceful and lawful demonstration, a campus event or the like."

It is apparent from the title, purpose and provisions of the MOU that it is intended to set forth procedures relating to the response by the NYPD to incidents and events on CUNY campuses. It does not deal with, much less impose limitations on the NYPD's authority to enter CUNY property for other purposes, such as investigations (including undercover investigations) of criminal activities that do not involve such incidents or events. Indeed, it would be surprising if the NYPD would ever commit to involve a university in such confidential law enforcement matters.

This is not to say, however, that the NYPD is not bound by rules and regulations regarding such matters found in other sources of law and regulation – most notably, in the case of undercover investigations, in the guidelines contained in the consent decree entered into by the NYPD in the *Handshu* case. CUNY recognizes that the use of undercover officers in the context of political or religious groups can inhibit the free exercise of constitutionally protected rights. It is for that reason that limitations were imposed on that practice in *Handshu*. The Mayor and Police Commission have publicly stated that the NYPD's activities are conducted in compliance with those guidelines. If you know of evidence that the NYPD has violated them, you should bring it to the attention of the attorneys for plaintiffs in that case.

Very truly yours,



Frederick P. Schaffer
General Counsel and Senior Vice
Chancellor for Legal Affairs

C: Chancellor James B. Milliken