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Testimony of the New York Civil Liberties Union

before

**The New York City Council
Committee on Public Safety**

regarding

**Proposed Int. 516-A, a bill to require the New York City Police
Department to report certain information about police shootings**

Presented by NYCLU Associate Legal Director Christopher Dunn

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The New York Civil Liberties Union submits this testimony about Proposed Int. 516-A, which would amend the Police Reporting Law (now section 14-150 of the Administrative Code) to require the New York City Police Department to provide additional information about NYPD shooting incidents, including information about the race of civilians shot at by police officers. The NYCLU believes the bill is an important step towards reducing the secrecy that shrouds NYPD shootings, and we therefore fully support the amendments proposed by Int. 516-A.

Today's hearing is particularly timely, given the ongoing public controversy about the role of race in NYPD practices in the aftermath of the Sean Bell verdict. Much of the anger

triggered by the Bell shooting is rooted in a widespread belief that blacks are a target for the police and that the Department's leadership is insensitive to the concerns of the black community in New York. In conjunction with this testimony, the NYCLU is releasing NYPD documents it has obtained that raise serious questions about police shootings and about the lack of racial diversity in the Department's leadership. The information from these documents provides strong support for Int 561-A and also justifies the City Council requiring even broader disclosures by the NYPD.

The Need to Expand the Police Reporting Law and the Lack of NYPD Transparency

Given the legitimate public interest in police shootings and the important role of the City Council in overseeing the NYPD, there should be regular and full reporting to the Council about police shootings. Moreover, the Bell shooting has highlighted the need for full disclosure about racial aspects of the NYPD.

Ever since the February 1999 incident in which four white NYPD officers shot and killed Amadou Diallo in a hail of 41 bullets, there has been a renewed and vigorous public debate about NYPD racial profiling and a perceived lack of racial sensitivity within the NYPD. Adding fuel to that controversy was a December 1999 report -- prompted by the Diallo shooting -- from the New York State Attorney General, who found a pattern of police officers targeting blacks for unlawful stops and frisks.

Recognizing the widespread public concern about racial profiling by NYPD officers, the City Council in November 2001 adopted the Police Reporting Law that Int. 516-A would amend. Among other things, that law requires the NYPD to provide to the Council with quarterly reports

about its stopping and frisking of New Yorkers, including the race of those being stopped.

The Department initially complied with the law but then did not produce any reports for several years. On November 30, 2006, the NYCLU wrote to Commissioner Kelly and demanded that the Department comply with the law and produce the required stop-and-frisk reports to the Council. After several months of the NYCLU and this Committee pressing the NYPD, the Department in February 2007 finally produced the mandated stop-and-frisk reports for 2006. Those reports revealed a massive increase in stop-and-frisk activity and revealed that nearly 90% of those being stopped by the police were black or Hispanic.

After examining the printed reports, the Council and the NYCLU quickly realized that a sophisticated analysis of the NYPD stop-and-frisk practices required access to the computerized database that contained the information from which the reports were produced. The Department rejected the City Council's request for the database, and it denied a FOIL request filed by the NYCLU for the database. In November 2007 the NYCLU sued the NYPD to obtain the database, and the Department is vigorously fighting the case.

In addition to refusing to provide information about its stop-and-frisk practices, the NYPD has refused to disclose information about the race of persons being shot by the NYPD. In October 2007 the NYCLU served a FOIL request seeking this information, and on April 10 the NYPD denied that request. The NYCLU has filed an appeal and will sue the Department if it does not produce the reports.

Meanwhile, because of other FOIL requests, the NYCLU has obtained other NYPD documents that highlight the need for the Council to expand the reporting required by the Police Reporting Law.

The NYCLU Supports Int. 561-A and Supports Additional Reporting Obligations.

The Council Should Require the NYPD to Disclose Information about the Race of Civilians Involved in NYPD Shootings- Proposed Int. 561-A would require the NYPD to produce information identifying the race of civilians who are the intended targets of police shootings. Particularly in light of the Sean Bell and Amadou Diallo shootings, the NYCLU thinks it important that there be full disclosure of this information. And NYPD documents obtained by the NYCLU suggest that race may be playing an improper role in police shootings such that full disclosure becomes all the more important

The NYCLU has obtained copies of annual NYPD shooting reports for the last ten years that provide specific information about NYPD shootings. In 1996 and 1997 the NYPD's annual Firearms Discharge Reports included tables about the race of every person the police had shot at. According to our analysis of those tables, of the 730 people who were intended police targets and whose race was known, nearly 90% were black or Hispanic, while only 8% were white (with the remaining 2% being "other").

RACE OF CIVILIANS SHOT AT BY NYPD OFFICERS*

<u>Year</u>	<u>Ttl Known Race</u>	<u>Black</u>	<u>Hispanic</u>	<u>White</u>
1996	413	239	134	32
1997	317	181	99	26
Totals	730	420 (57.5%)	233 (31.9%)	58 (7.9%)

*Source: 1996 NYPD Firearms Discharge Assault Report at 9; 1997 NYPD Firearms Discharge Assault Report at 9.

Unfortunately, more recent figures are not available. Starting in 1998, the NYPD stopped reporting in its Firearms Discharge Reports the race of people who were intended targets. At the same time, it started to report information about the specific breeds of dogs that officers were shooting at. That the Department is providing more information about the dogs it is shooting at than about people who are its intended targets is deeply disturbing and must be corrected.

We fully support amending the Police Reporting Law to require the NYPD to report about the race, gender, and age of any civilian who is the intended target in an NYPD shooting incident. The one suggestion we have is that the bill's use of "each subject and/or civilian involved in any firearms incident" be clarified, as that description is vague. For example, it could read, "2. The age, race, and gender of each person who is the intended target in any firearms incident" We also believe that, rather than requiring the Department to produce this information only going forward that the Council should seek this information for every year since 1997 so it has a fuller picture of this demographic information.

The Council Should Require the NYPD to Disclose the Annual Firearms Discharge Reports- Proposed Int. 516-A would also require the Department to produce to the Council copies of its annual Firearms Discharge Reports. That the Department does not voluntarily make these reports available to the public and to the Council is a telling sign of the lack of transparency at the NYPD. Perversely, the City Council finds itself in the position of considering legislation to compel the production of NYPD reports that the NYCLU has obtained. And the NYCLU's analysis of the Firearms Discharge reports for the last ten years reveals a number of things that reinforce the need and importance for the Council to be obtaining these reports on a regular basis.

One of the most striking facts to emerge from the reports is the high proportion of shooting incidents in which police officers are the only ones firing weapons. For the last eight years, the annual reports have separated incidents in which officers and suspects both fired and incidents where only officers fired. According to our analysis of the reports, in the 572 reported incidents involving civilians,¹ officers were the only ones shooting 77% of the time (441 of the incidents, with there being 131 incidents with an exchange of gun fire).

POLICE SHOOTINGS WITH EXCHANGE OF GUNFIRE AND
WHERE ONLY POLICE SHOOT*

<u>Year</u>	<u>Total Shootings at Civilians</u>	<u>Number Incidents With Exchange of Shots</u>	<u>No. Incidents Where Only Police Shoot</u>
1998	105	26	79
1999	61	20	41
2000	63	11	52
2001	57	16	41
2002	55	12	43
2003	61	6	55
2004	51	11	40
2005	59	16	43
2006	60	13	47
Totals	572	131 (23%)	441 (77%)

*Source: NYPD Firearms Discharge Reports (1998-2006)

The large percentage of cases in which only officers are firing weapons – as in the Bell and Diallo cases – raises important questions about the extent to which officers may be firing excessively and warrants examination by this Committee.

Another important set of information disclosed by the Firearms Discharge Reports

¹This figure exclude shootings where dogs were the intended targets, accidental discharges, and suicides.

concerns the number of shots fired per incident and per officer when only officers are firing at civilians. Thus, the Firearms Discharge Report covering 2006 -- the most recent year for which a report has been prepared -- discloses that in incidents in which police officers are the only ones shooting -- which, as noted above, are the vast majority of incidents -- officers fired nearly five shots per incident, with each officer involved firing an average of 3.5 times.² Both figures are the highest for the entire eight years that Department reports include this data and raise concerns about the number of shots being fired at people who are not firing weapons and -- like both Mr. Bell and Mr. Diallo -- are not even armed.

Finally, the early versions of the reports obtained by the NYCLU suggest that the Department's shift to semi-automatic weapons for patrol officers has contributed to an increase in the number of shots being fired by officers at civilians. In 1996 and 1997, the Department reported the number of shots by type of weapon. In 1996 officers using 9mm guns fired 57% more shots per use than did officers using the revolvers that the 9mm's replaced (1037 shots in 310 incidents as compared to 200 shots in 94 incidents). In 1997 those using the semi-automatic guns fired 59% more shots per use (899 shots in 256 incidents as compared to 124 shots in 56 incidents). Though the Department removed this information from its reports starting in 1998, these figures suggest that the choice of weapons may be increasing the number of shots officers are firing at civilians.

These are just three important areas illuminated by the Firearms Discharge Reports. The NYCLU fully supports amending the Police Reporting Law to require the Department to produce

²In incidents where officers exchanged shots with a suspect, the police fired an average of 11.1 shots per incident, with each officer involved firing an average of 7.6 times. Of the 144 shots fired in these exchanges, the police missed their target 70% of the time.

these reports to the City Council. We believe it important, however, that the reporting requirement not be written to only require a report in name but instead should be clear that the Department must produce the specific information now contained in the Firearms Discharge Reports. Thus, we propose that the bill be amended to assure that the Council receive all the information currently contained in the reports and further that, should the Department cease reporting certain information in these specific reports, the NYPD provide that omitted information in a separate format.

Finally, given our analysis of the discharge reports of the last ten years, we believe the Council should require the NYPD to produce the following additional information (either as part of a revised Firearms Discharge Report or as supplemental information): (1) for every incident in which an officer or officers fire at a civilian or civilians and the officers are the only ones who shoot, the age, race, and gender of the civilian; (2) for every incident in which an officer or officers fire at a civilian or civilians and the civilians also fire, the age, race, and gender of the civilian; (3) for every incident in which an officer or officers fire at a civilian or civilians, a breakdown of the number of shots fired by the race of the civilian(s); (4) for every year since 1997, the number of uses of 9mm semi-automatics and the number of shots fired for all those uses; and (5) for every year since 1997, the number of uses of revolvers and the number of shots fired for all those uses.

The Council Should Require the NYPD to Disclose Its Electronic Stop-and-Frisk Database- In addition to requiring the Department to report about the race of civilians who are targets and to provide copies of the Firearms Discharge Reports, the Council should require the

NYPD to produce electronic copies of its stop-and-frisk database. Police shootings raise serious issues, but, fortunately, the numbers of police shootings are relatively small. By contrast, hundreds of thousands of New Yorkers are the subject of stops and frisks each year, with the Department having conducted nearly 1.7 million stops in the last two years alone.

There is no valid reason for the Department to refuse to provide the Council and the public with access to its stop-and-frisk database. The NYCLU urges the Committee to further amend Int. 516-A to require the Department to provide an electronic copy of the database with each set of quarterly stop-and-frisk reports that the NYPD already is required to produce (going forward and back to January 1, 2003). The bill should also mandate that the database be posted on a publicly accessible website.

The Council Should Require the NYPD to Produce Reports about the Race and Gender of its Command Structure- To be most successful, a police department in a diverse place like New York City must have leadership that reflects the diversity of the community it serves. By all accounts, the NYPD patrol force has become increasingly diverse in recent years. Unfortunately, the same cannot be said of the Department's leadership.

Through a FOIL request, the NYCLU recently obtained copies of Department documents identifying the race and gender of every member of the Department of the rank of captain and above for the six years from 2002 until 2007. At the end of 2002, 85.3% of the Department's command structure was comprised of white males (627 out of 735 total supervisors). Despite a reportedly large number of retirements by supervisory officers since then and therefore a large number of openings in the Department's leadership, at the end of 2007 white males made up

84.3% of the supervisory ranks (640 out of 759 total supervisors). And during that time the percentage of black commanders actually decreased from a paltry 3.9% to 3.7% (with 28 total black supervisors at the end of each year). The figures for the last six years are as follows:

RACE PROFILE OF NYPD LEADERSHIP*
(rank of captain and above)

<u>Year</u>	<u>Total Supervisors</u>	<u>Percent White/Male</u>	<u>Percent Black</u>
2002	735	85.3	3.9
2003	752	85.2	3.6
2004	740	85.4	3.5
2005	782	85.4	3.6
2006	770	84.7	3.6
2007	759	84.3	3.7

*Source: NYPD EEO Summary Tables (2002-2007)

Though mandating public reporting about the racial composition of the NYPD will not change that composition, it is an important steps towards starting a process that will lead to greater diversity. The NYCLU therefore strongly encourages the City Council to further amend 561-A to require the NYPD to produce on a regular basis reports identifying the race and gender of all members of the Department, including all supervisors of the rank of captain and above.

Summary

The NYCLU thanks the Public Safety for considering an expansion of the NYPD's reporting responsibilities, and we support amending the Police Reporting Law as follows:

- * The NYPD should be required to disclose the race, gender, and age of every civilian who is the target of a police shooting.
- * The NYPD should be required to produce the annual Firearms Discharge Report. To the extent the Department removes information from the current version of the report, it should also be required to produce that information in a separate report;
- * Either in the Firearms Discharge Reports or some other format, the Department should be required to report: (1) for every incident in which an officer or officers fire at a civilian or civilians and the officers are the only ones who shoot, the age, race, and gender of the civilian; (2) for every incident in which an officer or officers fire at a civilian or civilians and the civilians also fire, the age, race, and gender of the civilian; (3) for every incident in which an officer or officers fire at a civilian or civilians, a breakdown of the number of shots fired by the race of the civilians; (3) for every year since 1997, the number of uses of 9mm semi-automatic and the number of shots fired for all those uses; and (4) for every year since 1997, the number of uses of revolvers and the number of shots fired for all those uses.
- * The NYPD should be required to produce copies of its electronic stop-and-frisk database (going forward and back to January 1, 2003), and the database should be posted on a publicly accessible website; and;
- * The NYPD should be required to produce year-end reports about the race and gender of all members of the Department, including members of the Department with the rank of captain and above.

**STATEMENT OF
DEPUTY CHIEF JOHN P. GERRISH
COMMANDING OFFICER
OFFICE OF MANAGEMENT ANALYSIS AND PLANNING
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
PUBLIC SAFETY COMMITTEE
MAY 5, 2008**

Good morning, Mr. Chairman and members of the Council. On behalf of Police Commissioner Raymond W. Kelly, I am pleased to be here today to offer our comments on four bills before you, Intro. Nos. 317, 492-A, 516-A and 528-A.

All four bills amend Administrative Code Section 14-150, which mandates extensive and regular reporting by the Police Department to the City Council, covering a wide variety of data and requiring the devotion of significant police resources to its collection, compilation and verification on a quarterly basis. The intent and purpose of Administrative Code Section 14-150 is to provide relevant information to the City Council to assist the members of the Council in their oversight capacity. However, we have serious concerns about the expansion of Administrative Code Section 14-150 as both a general matter and with specific reference to the bills before you today.

We acknowledge and welcome the Council's interest in and support of the work of the Police Department. We respond to requests for information from the Council both at an executive level and at the local precinct level, on a routine basis. However, every piece of information which is requested, and every data item which is collected, not for law enforcement purposes but for the purpose of responding to an external request, represents a cost. Therefore, at a time when we are asked to fulfill our public safety and counter terrorism responsibilities with 5,000 fewer police officers, we must look carefully at the purpose to be served by enacting into law a new set of mandates requiring the expenditure of police resources.

We respectfully submit that the data already provided to the Council on a quarterly basis, augmented by the data included in the Mayor's Management Report and provided in response to individual Council requests, provides a wealth of information which is used by the Council to fulfill its responsibility for oversight of City agencies. Between the Mayor's Management Report and the Police Department quarterly report, our agency provides tens of thousands of data points, on everything from crime rates to agency performance.

For example, Intro. 516-A would require the Police Department to submit a report of the age, race and gender of each subject and/or civilian involved in any firearms incident on an annual basis. However, the intent behind acquiring that data is unclear. No meaningful conclusions may be drawn from such information, since every firearms discharge must be judged in light of the unique circumstances in which it occurs, and any conclusion drawn from the purely demographic data involved is fatally flawed. Evaluating the circumstances of a shooting and determining whether it is within the law and Police

Department guidelines is the job of the executive staff of the Police Department, and potentially the District Attorney, after a thorough and painstaking investigation.

Intro. 516-A further mandates that the Police Department forward to the City Council the Firearms Discharge Reports from 1998 through 2007. With all due respect, we are unaware of the Council having requested such reports, and we believe that enacting a law to this effect is unnecessary and inappropriate. In fact, we have brought the reports for 1998 through 2006 with us today, and will share them with you now. When the 2007 report is completed, we will gladly provide it to you as well.

The provisions of Intro. 516-A illustrate the limits of acquiring statistical data, and drawing conclusions from such data without knowing and communicating the complete context in which the underlying facts were generated. As another example, Intro. 528-A requires quarterly production of a report of the number of vehicles towed or booted by the Police Department, including the date, time, location and circumstances of the towing or booting. Without any legislative findings or intent provided in the bill, the implication is that there is a problem associated with these activities, for which the Council needs to conduct oversight. However, we would again point out that every vehicle tow or booting is different, depending on the circumstances, and if an error is made, the vehicle owner has recourse through contesting the parking summons associated with the tow. We would also note that generating this report would require an inordinate expenditure of additional police resources, for an unknown benefit.

A similar concern is noted with respect to the provisions of Intro. 492-A, which also does not contain legislative findings or intent. The number of guns seized by arrest is routinely reported in the Mayor's Management Report; beyond that summary number, it is unclear why the Council would require a detailed, precinct-based report of firearms seizures from the Department, every quarter, in perpetuity. It is the responsibility and mission of the Police Department to analyze patterns associated with the presence of firearms in New York City. We will be please to share any particular data with you that we are able to share, in response to your specific requests, but we need to spend our resources on getting the guns off the street rather than compiling reports about our activity in doing so.

Finally, Intro. 317 would require the disaggregation of housing crime statistics by housing development, and the posting of this data on the City's website. We note the fact that the Council already receives significant information regarding housing crime statistics, through the quarterly report and the Mayor's Management Report, which we believe amply satisfies the Council's need for information to fulfill its oversight responsibility. Analysis of crime patterns as they affect individual developments is the job of the Police Department. Precinct and police service area commanders work in partnership with their local Council Members, who are intimately familiar with the crime picture in the housing developments in their districts. However, we submit that it is unreasonable and unduly burdensome to build an additional, structural requirement into the quarterly report, for data samples which would invariably be too limited to draw meaningful conclusions from.

The Police Department understands and appreciates the authority of the City Council to oversee the operations of City agencies. We remain committed to providing the

Council with the information it routinely requests, but strongly oppose expansion of Administrative Code Section 14-150 in the manner contemplated by the four bills before you. Thank you for allowing us the opportunity to speak about these proposals, and we will be pleased to answer any questions you may have.