



TESTIMONY PREPARED FOR:

NEW YORK CITY COUNCIL

PUBLIC SAFETY COMMITTEE

SUBJECT: Police Reform

**New York City**

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City Hall Council Chambers

City Hall

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The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is an indispensable component of the legal, social and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal, Civil and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Practice is the primary public defender in the City of New York. During the last year, our Criminal Practice represented over 230,000 indigent New Yorkers accused of unlawful or criminal conduct on trial, appellate, and post-conviction matters. In the context of this practice the Society represents people accused of crimes from their initial arrest through the post-conviction process.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and

economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law; consumer law; education law; community development opportunities to help clients move out of poverty; prisoners' rights, and reentry and reintegration matters for clients returning to the community from correctional facilities.

The Legal Aid Society's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were arrested by the NYPD and charged in Family Court with juvenile delinquency. In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of our clients.

The breadth of The Legal Aid Society's representation places us in a unique position to address the issue before you today. Our perspective comes from our daily contact with people who experience illegal and disrespectful behavior by the New York Police Department.

## TESTIMONY

### *THE LEGAL AID SOCIETY SUPPORTS THE RIGHT TO KNOW ACT*

**SUPPORT Proposed Int. 182A** - in relation to requiring law enforcement officers to identify themselves to the public.

**SUPPORT Int. 541** – in relation to requiring law enforcement officers to provide notice and obtain proof of consent to search individuals.

We support the Right to Know Act and encourage the Council to pass this legislation which would take an important step in securing our communities' ability to invoke their right to refuse a search and establish a right to know the name of the officer the people of our City encounter. We support this legislation because we see the kind of improper policing that occurs when law enforcement officers are allowed to remain anonymous.

As an example, The Legal Aid Society, with Shearman & Sterling, LLP, recently filed a case in which two plainclothes officers have been able to escape accountability for an unlawful stop and search because they were never been identified. On July 9, 2013, between approximately 12:00 p.m. and 1:00 p.m., a young Black man in his twenties brought his Associates Degree to show his mentor and elder, a retired professional Black man in his sixties. They were directly in front of the elder man's home at the corner of West 142<sup>nd</sup> Street and Riverside Drive. During that conversation, the young man reached into his backpack and presented a copy of his diploma to his elder. He then put the diploma back into his bag.

Shortly after police officers John Doe #1 and #2 approached the men in a vehicle and confronted them aggressively. John Doe #1 approached the elder man and separated him from the young man. During the incident, John Doe #1 shouted at the elder man, ordering him, among other things, to produce identification and to position himself against the wall. During the

incident John Doe #1 also ordered the elder man to show him what he was carrying. He complied with this demand and showed John Doe #1 a grocery bag containing a number of sodas. John Doe #1 also referred to the elder man as a “n-word” during the course of the encounter.

At the same time that John Doe #1 was interacting with the elder man, John Doe #2 confronted the younger man. During his encounter with John Doe #2, the younger man attempted to explain to the officer that he was merely sharing his recent diploma. During the encounter, John Doe #2 was in extremely close physical proximity to the young man and made a number of threatening statements, often with his hand on his firearm. Among other things, John Doe #2 threatened to “escalate” the encounter and John Doe #2 also repeatedly asked the younger man if he was “disrespecting” him and threatened to “disrespect” him.

John Doe #2 also expressly stated that the two men appeared “suspicious” referring to Plaintiffs as “two black guys.” John Doe #2 made statements to the effect that it was “suspicious” for the younger man to have shown the elder man an item produced from his backpack. During their encounter, and without the younger man’s consent, John Doe #2 seized and opened the backpack and searched its contents. After John Doe #2 confirmed that he was carrying only a diploma in his backpack, John Does #1 and #2 left the scene.

Neither officer identified themselves. At 1:00 p.m. the following day, July 10, 2013, both men went to the 30<sup>th</sup> precinct together to file complaints. They specifically described the officers’ physical appearance and the car they drove, including a partial license plate number. In cases where officers are unidentified, the Patrol Guide requires an “Investigating Supervisor” to follow up on a complaint to ascertain the identity of the officers involved. If the “Investigating

Supervisor” is unable to ascertain the identities, the Patrol Guide requires the commanding officer or duty captain to be notified. This apparently never happened here and neither officer was ever identified through the course of the investigation. Neither officer has ever been held accountable for the unlawful stop and search of these two gentlemen.

Both of the men who were stopped had a legal knowledge of their rights; yet neither man could have safely asserted their rights in this situation. The two bills before you, however, could have helped to protect these two men – a young college graduate and his mentor, a retired professional – from being accosted with such aggressive impunity by these plainclothes officers. Passing these bills will not handcuff police officers from performing searches the law allows – it only codifies what the constitution already guarantees: the right to refuse a search and walk away when the law doesn’t allow a search, a right that John Doe #1 violated when he made the older gentleman show him his grocery bag and that John Doe #2 violated when he made the young man open his book bag.

We ask that you protect our communities from these violations by choosing to enforce the right to refuse a search – which requires that police inform people of that right rather than hope they are either ignorant of it or too intimidated to invoke it.

We also ask that you further protect our communities by shifting the burden to the police officers to identify themselves rather than dare the people they’re aggressively confronting to ask them anything. Voting for the Right to Know Act is not a vote against effective policing; it is a vote against systemic violations of people’s constitutional rights and officer impunity.

***THE LEGAL AID SOCIETY SUPPORTS CLARIFICATION AND ENFORCEMENT  
OF CONSTITUTIONAL EXCESSIVE FORCE STANDARDS.***

**SUPPORT Int. 538** – in relation to use of injurious physical force by law enforcement officers.

**SUPPORT Proposed Int. 540A** – in relation to chokeholds.

**SUPPORT Int. 539** - in relation to requiring the police department to publish annual reports relating to use of force.

**SUPPORT Proposed Int. 606A** – in relation to requiring the New York Police Department to issue quarterly reports on the use of force and its relationship to quality of life offenses.

We support the Council's efforts to track, codify and clarify the constitutional excessive force standard that these bills propose. Countless New Yorkers have been subjected to force far beyond what is required to prevent harm to themselves or others, including chokeholds and head/face trauma. Legislating the ban on chokeholds and providing the Council and the public with information about the use of force can only benefit our City. As a further suggestion, we believe that the reporting bills would have greater impact if the demographic information about the person subjected to force was also included.

***THE LEGAL AID SOCIETY SUPPORTS TRACKING OF CIVIL RIGHTS VIOLATIONS  
THROUGH BOTH CIVILIAN COMPLAINTS AND CIVIL RIGHTS LAWSUITS***

**SUPPORT Int. 824** – in relation to requiring the police department to report in relation to deployment.

Tracking civilian complaints and civil rights lawsuits that describe misconduct will help the City to identify the precise sources of poor training, supervision, discipline and oversight that lead to systemic civil rights violations that impede the effectiveness of the Police Department and cost the city millions of dollars each year. We emphasize that civilian complaints alone do

not reflect the entire record of excessive force complaints to which the City should have access. The requirement of reporting on civil rights lawsuits is the only way that the Council will have a full picture of New Yorkers' complaints about the NYPD. The Council could further enhance its picture of civil rights violations by also requiring reporting on criminal court suppression and incredibility findings and declined prosecutions. This in-depth reporting would give the Council a well-informed multi-sourced landscape of how police are actually acting during street encounters.

**SUPPORT Int. 607** - in relation to the creation of a police officer body-worn camera task force.

We support this initiative because we are already seeing evidentiary and privacy issues develop in criminal court regarding body cameras. These important issues deserve thoughtful review and reflection by a dedicated body. We would support including the institutional defender community as a permanent member of such a task force.

**SUPPORT Int. 809** - in relation to the coordination and targeted delivery of social services in high crime areas.

We support the study of social services delivery in high crime areas. Often high crime areas could benefit more from additional social services rather than more police. To the extent we believe the Council will learn this through this reporting bill, we believe it will be worthy of the Council's time.

We thank the Council, as always, for the opportunity to testify.