New York Senate Standing Committee on Codes Hearing on CRL §50-a
Testimony of Diego Ibargüen
Counsel, Office of General Counsel, Hearst Corporation
October 24, 2019

I am newsroom counsel to Hearst's dozens of newspapers and television stations across the country, including the hometown Albany *Times Union*. In that role, I provide legal support to our reporters in their efforts to get access to the government records and information that form the basis of their reporting on matters of public concern.

The people's confidence and trust in their government and its officers depends on being fully and accurately informed about the actions of their public servants. And our communities depend on the press to collect and analyze information about government – from the mundane to the extraordinary – to share that information with them, to increase awareness of issues that affect them, and to maintain public accountability at all levels of government and public service.

At a time when transparency of government actions is widely viewed as a high priority, Section 50-a is an anomaly. When it was originally enacted, the statute had a narrow purpose and intent: to prevent the use of past disciplinary records contained in a police officer's personnel file to impeach the officer when testifying in their law enforcement capacity in another case. But the reality of the law has been something wholly different. Today, Section 50-a stands as a barrier to transparency, expanded by courts to apply to virtually any employment records that touch on disciplinary issues related to police officers, firefighters and correction officers, and applied so broadly and aggressively by police departments and other agencies, that it often leaves no recourse for the requester but to go to court, a process that, even if successful, can involve years of costly litigation.

One example of such costly legal battles involved the *Times Union*'s efforts in 2006 to obtain records related to the purchase of assault rifles and other weapons by Albany police

officers through police department channels for their own personal, non-official purposes.[1] Included in the responsive documents were so-called "gun tags" (or evidence tags) – containing only a police officer's name and two serial numbers – which were affixed to guns that were retrieved from the officers by the department during an internal investigation into the gun purchases. The Albany Police Department asserted the records were exempt as personnel records under Section 50-a, and the matter was litigated – over the course of four years – all the way to the Court of Appeals, which eventually ruled that the gun tags were not personnel records within the meaning of 50-a.

In another example, the *Times Union* litigated – again for four years, and twice to the Appellate Division for the Third Department – over access to records of a New York State Police internal investigation of a then off-duty state trooper who was involved in alleged hit-and-run incident. No criminal charges were filed against the trooper, and he resigned from the State Police before the internal investigation was complete. Ultimately, the Appellate Division held that records created *after* the trooper resigned were not covered by 50-a because they were, by definition, not personnel records. But the Court also held that records created *before* the trooper resigned were protected by 50-a, even in the absence of evidence that the records were "used to evaluate performance toward continued employment or promotion," 50-a's definition of a personal record.[2] Even when courts find 50-a does not apply, it is difficult to see such protracted legal fights as being consistent with the spirit of transparency embodied in New York's Freedom of Information Law. This puts the law at odds with the public's right to know.

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[1] *Capital Newspapers Div. of the Hearst Corp., et al., v. City of Albany, et al.*, 63 A.D.3d 1336 (3d Dep't 2009), *modified and vacated*, 15 N.Y.3d 759 (2010).

[2] *Hearst Corp. et al. v. New York State Police et al.*, 132 A.D.3d 1128 (3d Dep't 2015)

reliance on 50-a in that context, is hardly unique in a time when so many agencies across the state seem to automatically default to using 50-a to deny access to *any* records about officers.

The common thread through these examples is that in situations where there is a significant question about the conduct of public safety officers, at times when there are serious allegations that an officer has abused the public trust, and at times when the public's interest in being fully informed is at its peak, Section 50-a actually works *against* the public interest by creating a blackout of information. As former Senator Frank Padavan, an original sponsor of Section 50-a, noted in 2016, that was not how the law was intended to be used.[6]

Though some have argued that the repeal of Section 50-a would suddenly expose public safety officers personal information, these fears are unfounded. The FOIL contains specific protections against the disclosure of truly personal information. And Courts are empowered – and have the responsibility – to keep truly irrelevant disciplinary records or other records from being used in court proceedings.

But repeal of Section 50-a would dramatically enhance transparency, and would allow for the press to better inform the people on the conduct of public servants.

In closing, I thank you for the opportunity to talk about this issue, and I encourage you to repeal Section 50-a.

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[6] "Court rulings shroud records," https://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php.

And the reality is that 50-a is more often used to succcessfully shield records from public view. Sometimes, this happens in court, such as when an Albany court interpreted 50-a as a blanket restriction on all public disclosure of records reflecting grievances related to physical abuse or assaults in correctional facilities and records from arbitrations related to disciplinary cases filed against state corrections officers – even though the state Department of Corrections had previously provided records with identifying information about officers redacted, demonstrating that it viewed some of that information as being disclosable.[3]

These examples only scratch the surface of the broad ways 50-a has been deployed by law enforcement to shield records from public scrutiny. It was one of the bases relied on by the State Police in its efforts to withhold an Internal Affairs Quality Control Audit that examined an evidence-handling scandal at Troop K, a state police barracks in Westchester.[4] In another recent case in federal court, the City of Troy sought – unsuccessfully – to use 50-a to block the release of a previously secret internal affairs report into the 2016 fatal shooting of Edson Thevenin during a traffic stop. The federal court hearing the civil rights case brought by Thevenin's widow, rejected Troy's effort, finding that 50-a did not apply in federal court.[5] But the City's

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[3] *Hearst Corp. et al. v. New York State Dept. of Corr. and Comm. Supv.*, Albany Co. Index No. 88-16 (J. McNally, Sept. 19, 2016)

[4] "State Police scandal buried," https://www.timesunion.com/local/article/State-Police-scandal-buried-5415538.php; "Ex-trooper arrested as question linger about missing evidence," https://www.timesunion.com/local/article/Former-trooper-facing-charges-10810009.php.

[5] "Judge orders Troy to disclose internal report on fatal police shooting," https://www.timesunion.com/news/article/Judge-orders-Troy-to-disclose-internal-report-on-14066914.php; "Troy police never disclosed internal report on fatal shooting," https://www.timesunion.com/news/article/Troy-police-never-disclosed-internal-report-on-14059056.php; 'Internal probe concluded Troy police sergeant lied about fatal shooting," https://www.timesunion.com/news/article/Internal-probe-concluded-Troy-police-sergeant-14298246.php; "Troy seeks 'mole' who disclosed internal report on fatal shooting," https://www.timesunion.com/news/article/Troy-seeks-mole-who-disclosed-internal-report-14091486.php.

My name is Callie Jayne. I'm the Executive Director of Rise Up Kingston.

We are a grassroots organization based out of Ulster County that was formed out of the need for Police Reform in Upstate New York. Upstate is often left out of the conversation when we speak about issues of Police Brutality.

I speak to you today on behalf of many members who were unable to attend this hearing today, and wanted to ensure that you heard Upstate Voices on the important issue of repealing 50-a.

We sit with families and have been pushing for accountability in many police brutality cases.

In one case where a young man was tasered and pepper-sprayed for carrying a concealed can. The commission voted unanimously to recommend that an officer involved in the incident receive "command discipline." We were never told which officer or officers, nor were we told what discipline or training would be happening to ensure this doesn't happen again. This was because of 50a.

Another person we assisted was 16 year old Aleesa Jordan who was physically & sexually assaulted by a Kingston Police Officer, who works as a Student Resource Officer at Kingston Highschool.

Her mother, Lisa Royer is a Rise Up Kingston Community Organizer, who unfortunately was not able to be here today. I want to share with you her words.

"Do you know what it feels like to be tagged over and over again in Facebook Live Video of 10 cop cars surrounding your daughter and her being slammed against a police car? Slammed so hard it caused chest wall contusions, facial contusions and a sprained wrist. Slammed so hard it caused her to go into an Asthma Attack. I listened to her scream I can't breathe, before being put into the back of a police car, and touched inappropriately by the officer. She didn't receive her inhaler til he decided she deserved to breathe down at the station. Gwen Carr reminded me how lucky we were, because 'I can't breathe' were her son's last words"

We were certain that we could push for accountability. We knew that the school district would not allow this behavior to happen. We were told by the school district that unless the Police Commission says an officer did something wrong, they can't request the removal of an officer from the High School. So much information was withheld from the public, videos were never released, and we were told we needed to find our own evidence. This was because of 50-a.

In November of 2017, Mayor Steve Noble introduced a policy to monitor and address the issue of police brutality stating that:

RISE UP KINGSTON
ORGANIZING COLLECTIVELY FOR ETHICAL LIBERATION

In all instances in which force is used the Police Commission will review all uses of force, regardless of whether or not a formal complaint has been submitted, at every meeting. And, a written decision will be issued by the Police Commission. Each written decision will include a summary of the complaint and the factors considered amongst the Commissioners.

In January of 2018, before implementation, the policy was quickly walked back. This was because of 50-a.

In March of 2018, Rise Up Kingston was formed.

CRL 50a has been interpreted so broadly that New York State's Committee on Open Government, in its annual report, stated that police misconduct in New York State is more secretive than in any other state in the nation. Without transparency, officers are less accountable to the communities they serve.

In May of 2018, Rise Up Kingston, along with End The New Jim Crow Action Network, New York Civil Liberties Union, SURJ Ulster County, Unitarian Universalist Congregation of The Catskills, Black LIves Matter Hudson Valley, Citizen Action of New York, and Blackline signed onto a letter supporting the repeal of 50-a and asking our elected officials to support this.

Two years in a row - Mayor Steve Noble has written letters of support to our Senator George Amedore, and Assemblyman Kevin Cahill to encourage the repeal of 50-a. I have attached his most recent letter to my testimony.

With the support and guidance of the community that he represents, our Mayor, and any elected officials across the state should be able to present solutions to concerns in their communities.

As we continue to push for Transparency in Policing, and Accountability for when officers step over the line, we are horrified that current state law prevents the community from knowing the facts about complaints against police officers, and the outcomes of those complaints.

We are horrified that parents can't know what an officer who works at their child's school did.

If a nurse, or a teacher were to go abuse their power or not follow procedures & policies, we wouldn't keep this private. This is about accountability, this is about public safety, this is about transparency.

New York is one of three states that protects officer's record. We should do better. We can do better. New York should join Maine, Washington, Minnesota, Wisconsin, Ohio, Alabama, Georgia, Connecticut, Utah, Arizona and Florida in promoting transparency of our police departments. New York state should repeal CRL 50-a.

TESTIMONY OF:

Clyanna Lightbourn, Statewide Civil Rights Organizer, Citizen Action of New York

PRESENTED BEFORE:

The New York State Senate Standing Committee on Codes
Hearing on the Repeal of Civil Rights Law 50-a
October 24, 2019

Good afternoon. My name is Clyanna Lightbourn and I am the Statewide Civil Rights Organizer at Citizen Action of New York, a member of Communities United for Police Reform, and a person whose community has been directly harmed by police violence and misconduct. I would like to thank Senator Bailey and all of the elected officials who have joined today for this critical conversation about the repeal of section 50-a of Civil Rights Law.

Citizen Action is a grassroots organization with eight chapters and affiliates across New York State. We advocate for racial, social and economic justice and are dedicated to ending mass incarceration and state violence. Our membership includes many low-income, Black, Brown and immigrant New Yorkers - people disproportionately targeted by discriminatory and violent policing. Citizen Action strongly supports the *full repeal* of 50-a, a widely criticized state statute that creates a special and unnecessary exemption from public disclosure for the personnel records of police officers.

New York is arguably the worst state in the entire nation in terms of hiding police misconduct and violence. Section 50-a is routinely used to shield abusive police behavior and failed disciplinary processes from public view. Officers with personnel records showing histories of misconduct or violence are allowed to continue in their daily work – which is supposed to be in the interest of creating safe communities – without any meaningful accountability. This puts the public, particularly Black and Brown New Yorkers who are disproportionately targeted by law enforcement – in positions of serious danger. We have seen the devastating impact of police violence across this state – including right here in the Capital Region – with the deaths/assaults by police against Dontay Ivy; Edson Thevenin; and Ellazar Williams and many more.

Police officers are empowered to issue summonses, make arrests, and use lethal force. Because of 50-a, it is *much* more difficult for the public -- including elected officials -- to play a crucial oversight role in these functions. Repeal of 50-a would create necessary transparency about police misconduct and discipline in New York State, and help address the systemic lack of accountability for officers who engage in misconduct. There are already robust privacy

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protections built into the existing state Freedom of Information Law, which will continue to protect individual officer privacy once 50-a is repealed. Without a full repeal of section 50-a, survivors of police brutality and families impacted by police violence will continue to be denied full access to knowledge of whether the officer in question has faced a disciplinary process, and the outcome.It blocks them from the system accountability and justice that they deserve - that *all* New Yorkers deserve. That is why Citizen Action, along with our members, partners and allies, calls on New York State to prioritize immediate passage of legislation to fully repeal 50a. Thank you.

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HEARING ON 50-a REPEAL

WRITTEN SUMMARY

Victor M Herrera DBA Gaps Solutions Minority owned Small Business
JUSTLEADERSHIPUSA ▸ 10/24/2019

We are the directly and indirectly impacted whose trauma and experience has transformed our struggles into advocating and lobbying campaigns for sensible policies, Equal Rights and humanity for all communities of color, poverty stricken and the persecuted. We seek to be treated fairly and humanely and promote better community relations in all affairs of society that governs the State and Quality of life of all black and brown communities of the United States of America

HEARING ON 50-a REPEAL

WRITTEN SUMMARY

Section 50-a is an unnecessary Barrier to transparency and Accountability where it allows for the lack of adequate supervision of **Bad Cops** to roam in the community at whim, leaving the unsuspecting citizen or community member with the fears attendant to this lack of access to information that would address the problem of community based relations with the NYPD. By supporting a release of **Bad Cops list** it would promote public confidence in accountability and enhance community relations with those Police Officers who have been supervised and trained on CPR (Courtesy, Professionalism, and Respect), their own NYPD Motto that should be at the core reason for transparency and accountability where **Bad Cops** are concerned.
https://www.independentpanelreportnypd.net/assets/report.pdf

The report as cited above demonstrate that access to the records would promote greater relations within the community, promote confidence in the community policing enforcement practices and contribute to building more just communications amongst law enforcement and the community, removing many of the **bad cop** concerns from the community with more transparency. Page 44 "Recommendations" Part 1(A) Releasing the list of bad cops should in no way infringe on the provisions of 50a so long as the community is permitted to know whom the City of New York is assigning into the community, the impact of their involvement in community policing and relations and the overall criminal justice fairness as enforced and implemented by the New York City Police Department.

The most supportive reason for repealing 50-a list the recent accounts of Police misconduct so pervasive to justify exposure to the community:

DA Cyrus Vance Press Release of April 24, 2019 in charging an NYPD Detective of the Manhattan South Narcotics with Perjury, Official Misconduct that related to the unlawful arrest of innocent people wrongfully convicted. Joseph Franco I am sure from experience is not the only Police Officer involved in perjurious actions against constituents. My own brother was the target of an NYPD Manhattan South Narcotics Team from which he was wrongfully charged with having participated in a sale of a controlled substance which fortunately resulted in his acquittal March 29, 2018. The Jury actually saw through the testilying and found the evidence incredible. Below are other NYPD Officers prosecuted for similar conduct:

August 29, 2019 NYPD Officer Elijah Saladeen was charged with Offering a False Instrument for Filing First Degree, Assault Third Degree and other charges for his crimes against a 19-year-old and offering false statements about the incident.

August 14, 2018 former NYPD Officer Johnny Diaz pleaded guilty to Criminal Possession Controlled Substance Second Degree and other related charges in the transport of drugs in exchange for money.

On **June 27, 2018** former NYPD Officers Sasha Cordoba and Kevin Desormeau pleaded guilty to Official Misconduct and other charges for making false statements in Court Documents and proceedings related to a Washington Heights arrest.

May 25, 2018 former Human Resource Administration Peace Officer John Lugo pleaded guilty to Criminal Sexual Act in the First Degree placing a woman under arrest at an HRA facility and forcing her to perform a sex act.

On May 17, 2018, former NYPD Officer Nysia Stroud was convicted of Criminal Possession of a Controlled Substance in the First Degree and Official Misconduct transporting marijuana and cocaine in exchange for money.

On March 9th, 2017 former NYPD officer Jonathan Munoz was convicted of Offering a False Instrument for filing in the first degree and other charges for an unlawful arrest and an illegal search in Washington Heights. https://www.manhattanda.org/d-a-vance-

nypd-detective-charged-with-perjury-official-misconduct-relating-to-unlawful-narcotics-arrests/

Most recent is my own sister, Peggy A Herrera's arrest, a mother seeking medical assistance (EDP) for her son, whose Sergeant on scene abused his discretion on the basis of someone never before arrested subjected to the process of an unwarranted forceful arrest, seizure and prosecution. https://queenseagle.com/all/jamaica-moms-arrest-highlights-problems-with-city-response-to-mental-health-crises The significance in transparency is that such enforcement(s) by crude and deliberate agents of the NYPD to target the community solely on account of their ideology of authoritative community policing is a practice that needs more visibility to the community.

Release of Bad dishonest Cops name(s) is tantamount to assuring that the citizen, its members and the community are receiving the most in the NYPD own mission, vision and values. Fostering a safer and more just City as pledged to partnership with the community, 50a repeal would promote a strong more urgent community relations more in place with permitting the appropriate community to police their own by transparency and accountability. There is of course more tragic incidents in which transparency and accountability are necessary. Many of my own concerns addressed by NYPD Internal Affairs Bureau have gone unnoticed and not followed through as necessary, and to expect the NYPD IAB to effectively police their own is just too high of a realistic expectation that is the exception. Even in the face of video footage, 50a keeps the transparency from the community and the accountability to be presently realistic toward the community policing the conduct of those Bad Cops that have no place in our communities.

CITY OF KINGSTON
Office of the Mayor
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Steven T. Noble
Mayor

June 5, 2019

Dear Assemblyman Cahill and Senator Amedore,

Currently, the NYS Assembly is discussing Bill A2513 and the NYS Senate is discussing Bill S3695, which aims to repeal article 50-a of the Civil Rights Law relating to personnel records of police officers, firefighters and corrections officers. The City of Kingston has been working to improve police/community relations for well over a decade and we have taken new steps to establish and strengthen open and transparent policies and procedures. In this work, I have experienced the barriers to making information related to members of our police department available to the public. Robert Freeman, Chair of the Committee on Open Government, indicated in his 2017 Annual Report to the Legislature that the repeal of 50-a should be a priority. I have included an excerpt of his report below:

LEGISLATIVE PRIORITY A. Section 50-a of the Civil Rights Law: A Growing Problem

For the past several years, the Committee has called for repeal or amendment of Civil Rights Law § 50-a as its highest legislative priority. A review of its legislative history indicates that the law was enacted in 1976 with a narrow purpose—to protect police officers from harassing cross-examination by defense counsel in criminal prosecutions based on unproven or irrelevant material contained in their personnel files. But its interpretation and application in the courts over the past 40 years has turned a narrow FOIL exception into a virtually impenetrable statutory bar to the disclosure of information about the conduct of law enforcement officers. Today, the courts' broad reading of §50-a deprives the public of information essential to democratic oversight, and lends a shield of opacity to the very public State and local police agencies that have perhaps the greatest day-to-day impact over the lives of citizens—our State and local police.

Courts have permitted police departments to withhold virtually any information that could conceivably reflect upon a future decision to promote or retain an officer.1 Our last four Annual Reports have each highlighted the alarming lack of public information about law enforcement agencies that these rulings have engendered, including:

- *The withholding of records of an officer's involvement in a hit and run accident while off-duty*
- *The withholding of basic information about police accrual and leave practices*
- *The withholding of information even in cases where departments have determined that their officers broke the law*
- *The withholding of a report about the failings of a police department that led to the death of a woman the*

police had a duty to protect, and a $7.7 million payout of taxpayer funds to settle a wrongful death action

The imposition of such secrecy under §50-a was never intended. It is unwarranted as a matter of sound policy, and is affirmatively unhelpful in the current toxic environment of mistrust of law enforcement in many communities. This conclusion has been widely embraced by editorial writers across the State, as our past reports have also documented.

The situation is only growing worse. Consider for example developments this year in New York City. The NYPD had a long history of publicly posting the basic outcome of disciplinary cases, an important disclosure for public trust and confidence in the police. But in May, even that basic disclosure stopped—NYPD brass now claims that §50-a precludes release of the information. Upon hearing of this change, an incredulous Manhattan Supreme Court judge asked NYPD lawyers: You mean "'oops, we've been doing this for 40 years and maybe we've been messing this up, we don't have to give this info out? Nobody ever complained about it before." Nonetheless, the courts have upheld the new refusal to disclose. An appeal by the New York Civil Liberties Union from a holding that the NYPD is not required to release even redacted summaries of its disciplinary actions with officers' names removed is currently pending before the Court of Appeals.

The situation has deteriorated so dramatically that in some instances, citizens are relegated to reliance on the occasional leak by a whistleblower to receive any important negative information concerning the performance of a police officer. For example, since July 2014 the public has struggled to learn basic facts about NYPD Officer Daniel Pantaleo, who was filmed causing the death of Eric Garner by keeping him in a chokehold even as he pleaded, "I can't breathe." The NYPD has consistently refused to provide any information about past discipline of Officer Pantaleo, citing §50-a. Garner's family finally sued under FOIL for information about whether the officer had faced previous misconduct charges, but the courts found that NYPD properly withheld the information under §50-a. It was only through an anonymous leak of records to a news site just last March that the public learned there had been 14 prior allegations of misconduct by the officer, four of which the Civilian Complaint Review Board ("CCRB") had found to be "substantiated." And then, the leaker of that information was fired.

Even the CCRB is caught up in the demands for secrecy. It has long been recognized that discipline handed out by the NYPD must be accepted as fair "from the perspective of both the public and members of the department." But while the CCRB's hearings on allegations of misconduct today are open to the public, its determinations of wrongdoing and its recommendations to the NYPD Commissioner for disciplinary action are now considered confidential under §50-a. So too is any discipline the Commissioner may ultimately choose to impose. Again, it is only due to another leak that the public recently learned that the CCRB had found Officer Pantaleo used a chokehold in violation of NYPD policy and proposed stiff disciplinary penalties. Due to §50-a, the public may never know what discipline is actually imposed. Such secrecy only breeds contempt, and there is no justification for refusing to disclose basic information about the discipline of police officers.

No other State prohibits public oversight of its police in this manner. As noted, §50-a was never intended to impose such a broad blanket of secrecy, and its current prohibition against disclosure of basic information about the discipline of police is terrible policy—fueling public mistrust, resentment and anger. Both New York City Mayor Bill DeBlasio and New York City Police Commissioner James O'Neill have publicly labeled this situation unacceptable and asked the Legislature to change the law. Commissioner O'Neill has stressed his desire for "the department To become more transparent" in order to "build trust around the city," but reportedly believes this cannot happen without a change to §50-a.

It is long past time to correct this regrettable situation and require the same level of public disclosure for police departments as is required from other public agencies. FOIL provides all public employees with the protections necessary to guard against unwarranted invasions of privacy and from disclosures that could jeopardize their security or safety. While police officers have a particular need for such protections, the general FOIL exemptions are already sufficient to safeguard their legitimate privacy and safety concerns. Moreover, the courts are already adequately equipped to protect against improper cross-

examination and determine when records regarding a police officer's behavior are admissible in a trial. The blanket denial of public access to information about police activity that §50-a imposes is unnecessary.

The corrosive absence of transparency undermines accountability, increases public skepticism and foments distrust. All members of this Committee have long agreed that §50-a is ripe for reconsideration by the Governor and the State Legislature. It is long past time to act.

Outright repeal would serve as a positive step toward increasing transparency in law enforcement. At the very least, §50-a should be amended to make clear its narrower intent, such as with the insertion of the word "solely," as follows:

"All personnel records used solely to evaluate performance toward continued employment or promotion, ..."

The Legislature should wait no longer.

As you can see, I am not alone in my desire to see changes to this law. I urge you and other Assembly and Senate Members to take up this important issue and to support the efforts for increased transparency in government.

Thank you for your consideration.

Respectfully Submitted,

Steven T. Noble
Mayor

Justice Committee

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TESTIMONY
Loyda Colon, Co-Director

Albany Senate Hearing on the Need to Repeal CRL Section 50-a
Oct. 24, 2019

My name is Loyda Colon. I'm a Nuyorican, born and raised in the projects of the Lower East Side. I have been an organizer and activist for over two decades and am currently the Co-Director of the Justice Committee.

The Justice Committee is a grassroots organization dedicated to ending police violence and systemic racism in New York City. For over three decades, the heart of our work has been to support and organize family members of New Yorkers killed by the police and empower them as advocates for social change. We also conduct know your rights trainings and other public education activities throughout New York City, build neighborhood capacity to monitor and document police activity and increase safety, and organize to change policy in order to decrease police violence and misconduct.

As an organization with over three decades of history fighting for police accountability and transparency and one that looks to the leadership of families who've lost loved ones to the police, ensuring that 50-a is fully repealed is an urgent, top priority. Any Albany legislators that are truly serious about police reform must commit to passing a full repeal of 50-a in the 2020 session.

New York often prides itself on being a leader in progressive policy, but New York is one of only two states in the country with a state law that specifically restricts public access to information on police officer misconduct and discipline. As a result, NY is arguably the worst in the country when it comes to police transparency.

The families the Justice Committee works with, especially families who have lost loved ones to police violence since 2012 -- including the mothers of Eric Garner, Ramarley Graham, the sister of Delrawn Small, the parents of Saheed Vassell, and many others – know first hand that 50-a is used as a shield to protect abusive officers and officers who kill. In fact, what these families are experiencing in terms of police secrecy and not being able to access basic information about officers who kill their loved ones is worse now than it was when Rudolph Giuliani and Michael Bloomberg were NYC's Mayor. This is because in 2016, Mayor Bill de Blasio allowed the NYPD to stop releasing information about the outcomes of disciplinary proceedings, by using 50-a as an excuse.[1] And since that time, the City of New York has helped to usher in a much worse era of police secrecy across NYS by challenging court rulings and claiming vast new areas of information to be 50-a protected.

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[1] https://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145

It's important that you understand what's at stake. 50-a serves no purpose, other than as a tool for obstructing police accountability and transparency and hiding the fact that departments are not disciplining officers for abuse and misconduct. When there is no transparency and no accountability, you get repeat offenders and that means more people get harassed, threatened, brutalized, and killed.

To name just a few examples:

- (Now former) NYPD Officer Richard Haste, who killed unarmed Ramarley Graham in front of his grandmother and six-year old brother, had past misconduct complaints – which we only know about because they were leaked to the media.
- (Now former) NYPD Officer Daniel Pantaleo, who used a prohibited chokehold to kill Eric Garner had past substantiated complaints – which we only know about because they were leaked to the media. The City of New York went to court to block this information from being made public.
- NYPD Officer Philip Atkins – who killed Shantel Davis in Brooklyn – was referred to as "Bad Boy" Atkins in Flatbush because he was notoriously abusive and had been previously named in seven federal lawsuits. However, 7 years after Shantel was killed, her family is still not able to get information on Atkins' misconduct and disciplinary history. He is still and NYPD officer.
- NYPD Officer James Connolly, who killed John Collado, had previously killed someone. New Yorkers don't have other information about his misconduct and disciplinary history.
- NYPD Officer Miguel Gonzalez, who killed Dwayne Jeune, had shot and almost killed Devonte Pressley, another Brooklyn resident, just months before killing Dwayne Jeune. Gonzalez is still an NYPD officer and New Yorkers don't have any information about his official misconduct and disciplinary history.

Thanks to the leadership of the families and citywide organizing, we've gotten Haste and Pantaleo out of the NYPD, but the others are still police officers and, at least Connolly has even been promoted.

Let's imagine a world in which there was transparency around these officers' past abuses and there had been meaningful discipline for their violence and misconduct. Perhaps the family members of Eric, Ramarley and all the others would be at home with their loved ones, rather than fighting day in and out for answers and justice. This is what's at stake – the lives of our children and loved ones.

Police killings are just the tip of the iceberg. We know from a March 2018 BuzzFeed expose that NYPD officers too often keep their jobs even after the NYPD has found them guilty of serious abuses like lying under oath, excessive force and sexual harassment. The reality is, police departments are not holding their officers accountable and 50-a is what they use to hide their dirty laundry from the public. These are the exact conditions that encourages police violence against communities of color to continue.

I want to end by pointing out that it's very telling that media reports that Mayor de Blasio told the NYPD & CCRB to pull out of the first 50-a hearing in New York City. Mayor de Blasio has been saying for 2 years that he was in favor of changing 50-a. Not only did he not use any political influence to fix the problems that his administration created, he's let the NYPD and police unions use the courts to expand 50-a so that there is no longer an acceptable option besides full repeal of 50a.

There are already adequate measures in FOIL law to protect officers' privacy, meaning the only purpose 50-a serves is to put a smoke screen up so that police departments can do whatever they want away from the public's view. Maybe they also didn't want to hear what you're hearing today from the mothers of Sean Bell, Eric Garner and Ramarley Graham: that the role of 50-a is to protect abusive officers and to hide how widespread police violence is and the systemic lack of discipline by police departments.

It should be an embarrassment for progressive New York lawmakers that 50-a is still on the books. For our communities, it's terrifying. This is about the safety of our communities. It's a matter of life and death.

The Justice Committee is here today to stand with the mothers of Eric Garner, Sean Bell and Ramarley Graham, all the families who could not make the trip to Albany, and our allies across the state to demand that 50-a be fully repealed in the 2020 session.

NAACP

Brooklyn Branch

TESTIMONY TO THE SENATE STANDING COMMITTEE ON CODES REGARDING REPEAL OF SECTION 50-A OF THE NEW YORK STATE CIVIL RIGHTS LAW

Thursday, October 24, 2019

Good afternoon Chairman Bailey and members of the committee. My name is L. Joy Williams and I am President of Brooklyn NAACP and the Legislative Coordinator for the New York State Conference of Branches which represents over 50 branches and thousands of members across the state of New York. Thank you for the invitation and the opportunity to testify before you today on what we believe to be a very important issue in our ongoing fight for equity, fairness and justice in this country.

As you know, the mission of the National Association for the Advancement of Colored People is to ensure the political educational, social and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. To that end, the NAACP supports an increase in trust and public safety by advancing effective law enforcement practices which include strong measures of police oversight and accountability. The NAACP New York State Conference of Branches strongly support the repeal of section 50-A of the New York State Civil Rights Law and urge the New York State Legislature to take on this matter in the 2020 legislative session.

Comprehensive change is required to create the climate of trust that is needed for the community and police officers to be safe. The NAACP's police reform agenda focuses on three key areas of reform that have the potential to make this fundamental change. Our communities need police forces that are held accountable for misconduct, that have strong policies and relevant training, and in which the community plays an active role. We believe the repeal of section 50-a is crucial in holding law enforcement accountable. It would empower communities with information about any and all available misconduct and disciplinary information about the officers who are tasked with keeping them safe.

We cede an immense amount of power to police officers. They have the power to make arrests, use measures of force, up to and including the use of deadly force. Most who have been granted that power understand that it is not given without also accepting the immense responsibility that power holds. The NAACP recognizes that every day, law enforcement officers face danger, sometimes life threatening, while carrying out their responsibilities. However, if and when one of their colleagues engages in biased behavior and that behavior goes unchecked, it results in the further deterioration of police and community relations and a lack of trust in the system overall.

We have a right to know of any misconduct and disciplinary information about the police officers who patrol the streets of our neighborhoods and our government should not continue to be complicit in shielding this information from the public. Just as we have access to the misconduct and disciplinary information of teachers, lawyers, nurses and doctors, law enforcement (who are public servants with salaries and benefits paid by our tax dollars) should not be exempt. We deserve to know if there are any police officers in our community who have unjustly killed someone, sexually assaulted someone, lied in their official capacity in court or has repeatedly been disciplined for the use of excessive force.

In addition to ensuring officers who are repeat bad actors or who unjustly kill civilians are successfully prosecuted, reforms need to hold officers and police departments accountable for their misconduct short of using deadly force. These reforms include intervening early for problem officers and increasing the oversight provided by licensing police officers. When used consistently, early intervention can identify officers who are exhibiting problem behavior and allow supervisors to intervene before there are instances of serious misconduct.

Police misconduct, the lack of law enforcement accountability to the communities they serve and the seemingly unwillingness for those with the power of oversight to pursue and enact policy and laws to address these issues, sends a message to New Yorkers that our demands, our rights and our lives are not respected or valued.

We want our communities to be safe from those individuals who commit acts of violence, theft and abuse but we also want our communities to be shielded from individual officers who have unknown acts of misconduct and abuse.

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TESTIMONY OF

THE CENTER FOR LAW AND SOCIAL JUSTICE

Before

New York State Senate Standing Committee on Codes

In Support of S.3695, Repealing Civil Rights Law Section 50-a

October 24, 2019

Prepared by:

Lurie Daniel Favors, Esq., General Counsel
Center for Law and Social Justice at
Medgar Evers College, CUNY

MEDGAR EVERS COLLEGE
THE CITY UNIVERSITY OF NEW YORK

My name is Lurie Daniel Favors and I serve as General Counsel of the Center for Law and Social Justice ("CLSJ"). I am a civil rights attorney with 15 years of experience advocating for the protection of the civil and racial justice rights of Black New Yorkers. We thank Senator Bailey for the opportunity to testify before this body today, in support of S.3695, which calls for the repeal of New York Civil Rights Law § 50-a ("CLR 50-a").

Organizational Information

CLSJ is a unit of Medgar Evers College of The City University of New York. Founded in 1986 by means of a New York State legislative grant, the mission of CLSJ is to provide quality advocacy, conduct research, and advocacy training services to people of African descent and the disenfranchised. CLSJ was founded as a direct response to the highly publicized incidents of police brutality committed against New Yorkers of African descent in the mid 1980s and systemic racial disenfranchisement. CLSJ seeks to accomplish its mission by conducting research, and initiating public policy advocacy projects and litigation on behalf of community organizations and groups of people of African descent and the disenfranchised, which promote civil and human rights, and national and international understanding. Because of its unique combination of advocacy services from a community-based perspective, CLSJ is a focal point for progressive activity.

The Expansion of CLR 50-a Into a Cloak of Secrecy

In the Legislative Declaration of New York State's Freedom of Information Law ("FOIL"), the Legislature explicitly stated: "a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions."[1] As a result, the statute continues,

> "it is incumbent upon the state and its localities to extend public accountability wherever and whenever feasible. The **people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the**

[1] N.Y. Pub. Off. Law § 84.

cloak of secrecy or confidentiality. The legislature therefore declares that **government is the public's business** and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article,"[2] (emphasis added).

Under the current judicial interpretations of CLR 50-a, interpretations which stretched the meaning of the law far beyond its original intent, the Legislative Declaration of New York's FOIL regime is rendered meaningless.

CLR 50-a was initially designed to prevent defense attorneys from having "...unfettered access to the personnel records of police officers"— it was "not intended to prohibit the public release of records related to police misconduct."[3] (In addition to police officers, the law is also applicable to records regarding corrections officers and firefighters, however, its use is typically most controversially abused in cases involving access to police disciplinary records.) The law states:

"All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof...shall be considered confidential and not subject to inspection or review without the express written consent of such [officer]...except as may be mandated by lawful court order."[4]

In the time since CLR 50-a was passed into law, multiple court decisions have essentially transformed it into a shield that protects abusive police officers from any meaningful measure of accountability. To wit, in 1986, the Court of Appeals affirmed that CLR 50-a was only designed "to prevent a litigant in a civil or criminal action from obtaining documents in a police officer's file that are not directly related to that action."[5] Several years later, the Court

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[2] *Id.*
[3] Brendan J. Lyons, "Court Rulings Shroud Records," Times Union, Dec. 15, 2016. https://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php
[4] N.Y. Civil Rights Law § 50-a(1).
[5] *Capital Newspapers Div. of Hearst Corp. v Burns* 67 N.Y.2d 562, 565; 496 N.E.2d 665, 667 (1986)

expanded that interpretation to prevent the release of records if there is merely a possibility that the records could be used in subsequent litigation.[6]

Soon after Eric Garner was murdered on camera by New York Police Department ("NYPD") officer, Daniel Pantaleo, however, the NYPD and the de Blasio administration elected to further expand the scope of CLR 50-a to provide even more protection for police records.[7] It is notable that this appalling decision was made *while the eyes of the nation* were firmly fixed on New York and the story of Mr. Garners' highly publicized execution. Whereas previous administrations released some information regarding police disciplinary history, in 2016, the de Blasio administration shamelessly "...claimed that the law had been misinterpreted for decades and changed its policy."[8] In 2018, the Court of Appeals continued this expansion and interpreted CLR 50-a such that it now essentially bans the disclosure of police personnel records[9] effectively revoking the "...people's right to know the process of governmental decision-making and to review the documents and statistics leading to determinations."[10]

The Broader Context: Police Misconduct & the Legacy of Race

Curiously, this expansion of CLR 50-a police protections comes at the same time as increasing public demand for more transparency in community-police relations. This public demand is partially due to: 1) increased publicity surrounding reports of police murders of and abuses against Black people and people of color;[11] 2) growing frustration with the subsequent

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[6] *Prisoners Legal Servs. Of new York v New York State Dep't of Corr. Servs.*, 73 N.Y. 2d, 26, 32-33; 535 N.E.2d 243, 246 (1988).

[7] Rocco Parascandola and Graham Rayman, *Exclusive: NYPD Suddenly Stops Sharing Records on Cop Discipline in Move Watchdogs Slam as Anti-Transparency*, N.Y. Daily News, Aug. 24, 2016, https://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145

[8] Samar Khushid, *Headly Case Again Raises Questions About NYPD Accountability Under de Blasio*, Gotham Gazette (Dec. 18, 2018), https://www.gothamgazette.com/city/8150-headley-case-again-raises-questions-about-nypd-accountability-under-de-blasio.

[9] *New York Civil Liberties Union v New York City Police Dep't*, 32 N.Y.3d 556; 118 N.E.3d 847 (2018).

[10] Lyons (2016).

[11] *See, e.g.* Kendall Taggart & Mike Hayes, *Here's Why BuzzFeed News is Publishing Thousands of Secret NYPD Documents*, BuzzFeed News, Apr. 16, 2018, https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer; Kendall Taggart & Mike Hayes, Secret NYPD Files: Officers Who Lie and Brutally Beat People Can Keep Their Jobs, BuzzFeed News, Mar. 5, 2018, https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious.

lack of police accountability; and 3) an explosion in the growth of white nationalism in local police departments and law enforcement agencies.

Names like Eric Garner, Deborah Danner, Eleanor Bumpers, Saheed Vassel, Ramarley Graham, and Akai Gurley are just a few examples of rampant police brutality committed against Black New Yorkers. These names also serve as a constant reminder that rarely are officers held accountable for wrongfully ending Black lives.

CLR 50-a is used to protect and shield disciplinary records for officers like the ones involved in these shootings. It is a powerful tool that prevents victims of police violence and brutality from receiving any meaningful form of justice. It serves to elevate the needs of officers, who are hired to serve, over the needs of the communities to whom their service is due. CLR 50-a ensures that accused officers' backgrounds remain shrouded in state sanctioned secrecy. Meanwhile, the backgrounds of their victims are often negatively framed and details regarding any prior infraction the victim may have ever been involved in, *at any point in their life*, are released in smear campaigns to the public.[12] This further elevates community distrust in the criminal justice system and serves to deteriorate the collaborative relationships upon which healthy community policing relationships rely.[13]

Incredulously, the expanse of CLR 50-a as a shield to hide police misconduct, is also happening at the same time as increased awareness of the growing presence of white supremacist ideology in police departments and law enforcement agencies across the country.

In 2006, the FBI released a bulletin ("FBI Bulletin") that outlined its concerns about white nationalism and skinheads who are "...infiltrating police in order to disrupt investigations

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[12] *See, e.g.* Corky Siemaszko, *Troubled Bronx Woman Deborah Danner Was Battling Own Family When She Was Killed by Cop*, NBC News (October 21, 2016), https://www.nbcnews.com/news/us-news/troubled-bronx-woman-deborah-danner-was-battling-own-family-when-n670826; *see also* Bob McManus, *Blame Only The Man Who Tragically Decided to Resist*, N.Y. Post (Dec. 4, 2014), https://nypost.com/2014/12/04/eric-garner-was-a-victim-of-himself-for-deciding-to-resist

[13] *See*, Eric Vassell, *I demand Justice for Saheed: Vassell's Father Says the NYPD Is Protecting the Officers Responsible for His Son's Death*, N.Y. Daily News, (Nov. 7, 2018), https://www.nydailynews.com/opinion/ny-oped-i-demand-justice-for-saheed-20181106-story.html.

against fellow members and recruit other supremacists."[14] The FBI Bulletin noted concerns that white nationalist police officers also had access to people who could be seen as "potential targets for violence" and warned of "ghost skins," officers who conceal their white nationalist beliefs so that they can "blend into society and covertly advance white supremacist causes."[15]

The FBI Bulletin further notes that white supremacist leadership encourages followers to infiltrate law enforcement communities[16] and points to the historical connection between law enforcement and white nationalist groups, stating: "The Ku Klux Klan (KKK) is notable among white supremacist groups for historically having found support in many communities, which often translated into ties to local law enforcement."[17]

This history is particularly salient for Black New Yorkers as the first police departments in our nation's history were slave patrols: law enforcement networks that were "organized to control slaves activities."[18]

A subsequent FBI report ("FBI Report") from 2015 noted that "domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers."[19] There is nothing in either the FBI Bulletin, the FBI Report, nor in the lived experiences of the millions of New Yorkers of African descent, who for decades have been subject to police terrorism in the form of policies like stop and frisk and broken windows policing,[20] to suggest that New York law enforcement agencies are not susceptible to white supremacist infiltration.

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[14] Kenya Downs, *FBI Warned of White Supremacists in Law Enforcement 10 Years Ago. Has Anything Changed?*, PBS, (October 21, 2016); https://www.pbs.org/newshour/nation/fbi-white-supremacists-in-law-enforcement.
[15] *Id.*
[16] *Id.*
[17] Federal Bureau of Investigation, Intelligence Assessment: (U) White Supremacist Infiltration of Law Enforcement, October 17, 2006.
[18] Spruill, Larry H. "Slave Patrols, 'Packs of Negro Dogs' and Policing Black Communities." *Phylon*, vol. 53, no. 1, 2016, pp. 42–66. *JSTOR*, www.jstor.org/stable/phylon1960.53.1.42.

[19] Alice Speri, *The FBI has Quietly Investigated White Supremacist Infiltration of Law Enforcement,* The Intercept (January 31, 2017), https://theintercept.com/2017/01/31/the-fbi-has-quietly-investigated-white-supremacist-infiltration-of-law-enforcement/
[20] Christopher Dunn & Michelle Shames, Stop and Frisk in the de Blasio Era, 2-3 (Diana Lee, ed.), New York NY: New York Civil Liberties Union (2019)

Under these current political winds, the trends underlying the expansive transformation of CLR 50-a into a protective cloak for bad police officers are ominous. They come at a time when pivotal relations between communities of color and the police are deteriorating and when white nationalist terrorism is on the rise, both across the country and in law enforcement agencies. Black New Yorkers and New Yorkers of color need this body to repeal CLR 50-a, otherwise, we risk seeing the law continue to evolve from a sheet of secrecy into a hood of protection for bad actors hiding behind it like a badge.

Conclusion

New Yorkers of African descent continue to bear the burden of racially motivated policing.[21] When it comes to the intersection of race and the criminal justice system, secrecy and hidden decision making processes, like the ones afforded by CLR 50-a, play a key role in perpetuating and protecting systemic racism in policing services. When applied to police disciplinary records, laws like CLR 50-a effectively serve as a powerful Klan hood – one that hides the identity of bad actors like Officer Pantaleo, protects them from accountability and ultimately allows them to harm again.

While some may claim that repealing CLR 50-a would deteriorate the law enforcement community's right to privacy, upon closer inspection such claims do not bear out. Myriad FOIL exemptions already exist to protect officers from the disclosure of information like their social security number, home address and medical records.[22]

Such a law cannot stand during such a time as this.

A bedrock principle of our democracy is that no one, neither the president of the United States, nor the police who serve in our communities, is above the law. It is time to repeal CLR 50-a so that our state laws align with this principle.

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[21] Christopher Dunn & Michelle Shames, Stop and Frisk in the de Blasio Era, 2-3 (Diana Lee, ed.), New York NY: New York Civil Liberties Union (2019)

[22] *Lyon V. Dunne*, 180 A.D.2d 922, 924-25 (3rd Dep't 1992).

Testimony Submitted By Constance Malcolm, Mother of Ramarley Graham

Submitted to New York State Senate Committee on Codes
In Support of S.3695-Bailey/A. 2513-O'Donnell, Repealing NYS CRL Section 50-a

October 24, 2019

My name is Constance Malcolm and I am the mother of Ramarley Graham, who was killed by NYPD Officer Richard Haste in 2012.

Thank you Senator Bailey for holding this hearing on the need to repeal 50-a and for having me and other families whose loved ones have been killed by police speak today.

I testified last week. I'm back today because of how important repealing 50-a is.

As you know, my son Ramarley was killed in our home, in front of his grandmother and his 6 year old brother. Richard Haste and other officers broke down the door to our home, without a warrant, without warning and without cause.

These officers murdered Ramarley in my home on February 2, 2012.

And then the NYPD murdered Ramarley again in the media by lying about the killing, falsely criminalizing my son in the media and then trying to cover-up the whole thing.

There was so much misconduct surrounding the murder of my son that I don't even know where to start. My son's body was lost for 4 days by the police – we had to ask Carl Heastie to help us find his body so we could bury him. My mother – Ramarley's grandmother -- was interrogated for over 7 hours by police and she wasn't even allowed to talk to her lawyer. They were trying to get my mother to lie about Ramarley.

There's more, but I'm going to stop there for now because **the reason I'm here today is to tell you that we need you to repeal 50-a as soon as the legislative session starts in January 2020.** Not in February or in March or in another year.

50-a needs to be repealed now because it hurts families like mine, like Ms. Carr's, like Delrawn Small's family, like Saheed Vassell, Mohamed Bah, and so many others.

50-a is dangerous for all New Yorkers because it protects officers who kill, officers who rape and sexually assault, officers who disrespect and brutalize us. It lets them hide behind secrecy that the government shouldn't allow.

When my son Ramarley was murdered, it took us 3 years to find out the misconduct history of Richard Haste, the officer who shot and killed him – and that was **only because a whistleblower leaked it to the media.**

We found out Haste had 6 CCRB complaints & 10 allegations in just 13 months – less than 9% of the NYPD had that many complaints in their entire career[1] – and almost none of them have so many complaints in such a short time-frame.

Ramarley was killed just 15 months after the last complaint that we know about from the leak.

The only reason we found out that there had been prior CCRB complaints against Haste is because the information was leaked in 2017 – 3 years after my son was murdered.

Families like mine shouldn't have to rely on leaks to the media to get this kind of basic information.

It took me almost 6 years to get Haste and Sgt Scott Morris off the force. Other officers who also should be gone are still there – some of them, like whoever in the NYPD illegally leaked Ramarley's sealed records -- I don't even know their names because of 50-a.

Because of 50-a I still don't know the misconduct history of Morris or Officer John McLoughlin – one of the officers involved who is still on the force.

McLoughlin was put on a 1 year dismissal probation. **Because of 50-a I don't even know if he did other misconduct during that year of probation and whether he had a long history of past misconduct like Haste.**

While Haste & Morris are not NYPD anymore, I need you to understand that I had to fight every day for almost 6 years to organize political pressure to force them out of the NYPD.

I lost pay from my job because I had to do rallies and press conferences. I had sleepless nights.

I still worry every day about my other son who was only 6 years old when he watched his brother murdered by police in what should have been the safety of our home.

Families shouldn't have to be going through this – and not every family can do what I was able to do.

50-a makes it harder for all of us families – in some ways <u>it makes it impossible for us to really fight for justice</u> because so much information stays hidden from us.

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[1] According to 2016-2017 Civilian Complaint Review Board data https://thinkprogress.org/richard-haste-disciplinary-record-474f77eb8d19/

This is not fair.

50-a is dangerous for everyone because there's no transparency so these officers who are dangerous and who abuse their authority are allowed to continue to patrol our neighborhoods – and we don't even know who they are.

We know that the police departments in New York state don't discipline officers who kill and brutalize us unless we organize and build major campaigns.

Even in the case of Ramarley, Haste & Morris weren't fired – they resigned.

50-a is a horrible law that is dangerous for New Yorkers.

It took me over 6 years to get additional information about the killing of my son – and that was only because I filed a FOIL with Communities United for Police Reform (CPR) and Justice Committee (JC). And we didn't get all the information we asked for.

The City tried to argue that I couldn't get information about the killing of my son because of 50-a – this is ridiculous and painful.

1 of the many 50-a arguments the City tried to use was that <u>because I had called for the firing of Haste</u> and other officers who were part of the cover-up, the City tried to say that releasing information about the incident and officers would lead to safety concerns for the officers.

This is garbage. Transparency is not a safety risk. We all know it's lies.

And it's dangerous because they are basically telling mothers like me that if we call for the firing of officers who murder our children – that the City will lie and say that we are putting officers at risk.

50-a needs to be fully repealed.

The only purpose it serves is to protect abusive cops and cover-ups.

I am asking you today to think about my son Ramarley. I need you to think about Ms. Carr's son Eric. To think about Valerie's son Sean. To think about Delrawn Small and Kawaski Trawick and Saheed Vassell and so many others who have been killed unjustly by the police.

I need you to think about us and our loved ones and I need you to repeal 50-a for us as soon as possible.

I need you and the other Senators and Assemblymembers to repeal 50-a in January.

We can not keep waiting for the "right" political moment. I need you to be Ramarley's voice, and Sean's voice and Delrawn's voice and Eric's voice.

There's not much more that can happen related to Ramarley right now so I am fighting to prevent future killings by police and I am fighting to support other families.

50-a must be repealed.

Thank you for listening and having me testify.

REPORTERS COMMITTEE
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BY EMAIL

October 21, 2019

Honorable Jamaal T. Bailey, Chairman
New York Senate Standing Committee on Codes
Van Buren Hearing Room A
Legislative Office Building, 2nd Floor
Albany, NY 12247

Dear Chairman Bailey,

The Reporters Committee for Freedom of the Press (the "Reporters Committee") respectfully submits the following testimony to the Senate Standing Committee on Codes regarding "Policing (S3695)" to "repeal[] provisions relating to personnel records of police officers, firefighters, and correctional officers," which is scheduled for a hearing before the Committee today. We thank the Committee for its efforts to increase transparency in New York and to address the problematic Civil Rights Law Section 50-a ("Section 50-a").

The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. The Reporters Committee strongly supports proposals, like Senate Bill S3695, that increase transparency of government agencies and officials, including law enforcement, and enable the news media to fulfill its constitutionally recognized role to gather and report newsworthy information about the activities of government.

Access to government records about law enforcement personnel is necessary for journalists to inform the public. The public depends on the press to keep a watchful eye on, and keep the public informed about, the actions of their government and its officials. As New York's Freedom of Information Law, N.Y. Pub. Off. Law §§ 84 *et seq.* ("FOIL") states, "government is the public's business" and "the public, individually and collectively and represented by a free press, should have access to the records of government." The vital newsgathering and dissemination role played by the press is especially important when it comes to information about law enforcement personnel, who are sworn to protect and serve the public. In New York, members of the media routinely bring important information about law enforcement to light, including information about use of force and misconduct, that increases accountability in communities across the state.

To take just one recent example, last year BuzzFeed News published and analyzed a collection of disciplinary findings for approximately 1,800 New York Police Department ("NYPD") employees between 2011 and 2015.[1] That unprecedented reporting showed that NYPD policy is not equally applied to all officers,[2] and that three-quarters of officers accused of conducting illegal searches were given only a verbal reprimand. BuzzFeed News' reporting eventually led to the release of an independent panel report[3] that found that the NYPD's disciplinary process was plagued by "a fundamental and pervasive lack of transparency."[4]

When police misconduct and discipline is able to be analyzed and reported on by the press, members of the public gain a better understanding of how law enforcement agency policies are applied and enforced, and how that, in turn, affects their community.[5] More information about allegations, complaints, and lawsuits against the police can reveal patterns of misconduct and help place individual incidents of officer misconduct in context. Access to this information is necessary for journalists to be able to do their jobs effectively on behalf of the public.

Section 50-a stymies press and public access to law enforcement records of crucial importance. For the past four decades, Section 50-a has been repeatedly invoked to override the presumption of government transparency that is fundamental to New York's democratic system of government. The provision exempts personnel records used to evaluate police officers' performance from being public disclosure pursuant to FOIL. While Section 50-a was enacted to protect public employees from unwarranted harassment, it has increasingly been used to obstruct transparency—and thus accountability—to the public about law enforcement misconduct, going far beyond its original purpose.

For example, in recent years Section 50-a has been cited as the reason the NYPD stopped releasing to the public summaries of internal officer disciplinary proceedings and outcomes of administrative trials, even with individual officers' names redacted. Section 50-a was also used to withhold the information that formed the basis of BuzzFeed News' groundbreaking reporting on the NYPD. And, in 2017, the New York Court of Appeals, citing Section 50-a, ruled that the disciplinary history of Daniel Pantaleo could not be disclosed in response to a FOIL request. In

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[1] Kendall Taggart and Mike Hayes, *Here's Why BuzzFeed News Is Publishing Thousands Of Secret NYPD Documents*, BuzzFeed News (Apr. 16, 2018, 5:33 AM), https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer.

[2] For example, 250 employees reportedly faced accusations of excessive force, threatening someone, fighting with another person, or firing their gun unnecessarily. School safety agents lost five vacation days for using excessive force. In contrast, a detective lost twenty vacation days after striking someone on the head and threatening to kill two people. *Id.* The NYPD also has a rule requiring that officers who lie about a "material matter" lose their jobs. However, BuzzFeed News reported that more than 100 employees accused of lying on official reports, lying under oath, or lying during an internal affairs investigation, but only a few were fired.

[3] Hon. Mary Jo White, Hon. Robert L. Capers and Hon. Barbara S. Jones, *The Report of the Independent Panel on the Disciplinary System of the New York City* (Jan. 25, 2019), https://www.independentpanelreportnypd.net/.

[4] Kendall Taggart, *NYPD Discipline Needs More Transparency, A Panel of Experts Said*, BuzzFeed News (Feb. 1, 2019, 3:53 PM), https://www.buzzfeednews.com/article/kendalltaggart/nypd-discipline-independent-panel-report.

[5] Ali Winston, *Looking for Details on Rogue N.Y. Police Officers? This Database Might Help*, N.Y. Times (Mar. 6, 2019), https://www.nytimes.com/2019/03/06/nyregion/nypd-capstat-legal-aid-society.html; *see also* Jake Bittle, *The law that shields police records, explained*, Brooklyn Daily Eagle (Apr. 23, 2019), https://brooklyneagle.com/articles/2019/04/23/50-a-explained/.

2014, then-NYPD officer Pantaleo placed Eric Garner in a fatal chokehold, ending Mr. Garner's life, and sparking calls for greater police accountability in New York City and across the state.

Records like these—currently blocked from disclosure by Section 50-a—are precisely the information that it is crucial for the public to have. Access to more information about prior claims of police misconduct not only increases law enforcement accountability, it increases public trust in law enforcement.

Section 50-a is unnecessary and an outlier. New York is one of only two states that specifically shield police officers' records from public disclosure under the state's open records law.[5] Unless Section 50-a is repealed or substantially transformed, New York will continue to lag behind other jurisdictions that make records reflecting police use of force and possible (or actual) misconduct publicly available.

California recently reformed its law to increase public access to police disciplinary records. In California, there is now a general requirement of disclosure in response to a public records request for records and information relating to "critical incidents." Cal. Penal Code § 832.7 (2019). These incidents include officers discharging their firearms at a person; the use of force by an officer causing death or great bodily injury; incidents where law enforcement or oversight agencies find that officers committed a sexual assault; and incidents where officers were dishonest in their reporting. *Id.* California law also now requires agencies to produce both video and audio recordings of critical incidents in response to a public records request.

In other jurisdictions like Chicago, individuals can submit public records requests to the Chicago Police Board to receive records of proceedings in disciplinary cases before the board, including the board's findings and decisions.[6] The Chicago Reporter publishes a database—"Settling for Misconduct"—that uses publicly available information about police officers and civil lawsuits that the Chicago Police Department has paid to settle.[7]

In addition to being an outlier, Section 50-a is wholly unnecessary. FOIL already has a privacy exemption that incorporates a balancing test; it requires that the privacy interest of an individual be weighed against the public's interest in access to the information requested.[8] Under that test, information can be withheld if its release would constitute a clearly unwarranted invasion of the individual's privacy. This flexible, case-specific standard not only adequately protects legitimate privacy interests but also ensures that information that is in the public interest is not shielded from disclosure.

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[5] Robert Lewis, Noah Veltman and Xander Landen, *Is Police Misconduct a Secret in Your State?*, WNYC News (Oct. 15, 2015), https://www.wnyc.org/story/police-misconduct-records/.

[6] These findings have been used to impact local journalism in Chicago. *See* Elly Rivera, *Chicago police officers fired over Laquan McDonald testimony were accused of another 'cover up,'* The Chicago Reporter (Aug. 9, 2019), https://www.chicagoreporter.com/chicago-police-officers-fired-over-laquan-mcdonald-testimony-were-accused-of-another-cover-up/. *See also* Matt Kiefer, *How the Chicago Police Department fought — and ultimately lost — its FOIA battle to keep cop names from the public*, The Chicago Reporter (Aug. 29, 2019), https://www.chicagoreporter.com/how-the-chicago-police-department-fought-and-ultimately-lost-its-foia-battle-to-keep-cop-names-from-the-public/.

[7] The Chicago Reporter, *Settling for Misconduct*, http://projects.chicagoreporter.com/settlements.

[8] N.Y. Pub. Off. Law § 87(2)(b).

Section 50-a should be repealed or substantially reformed to make New York a leader in government transparency. New York has a long history of open and transparent government. It can and should continue that tradition by becoming a national leader in law enforcement transparency and accountability. Repealing or fundamentally changing Section 50-a is necessary to ensure that the public and the press have access to law enforcement records that are of fundamental importance to citizens across the state, and critical to ensuring trust between law enforcement and the communities that they serve. The Reporters Committee supports Senate Bill S3695 because it would improve transparency and accountability with respect to an issue of paramount public concern.

Sincerely,

Katie Townsend, Legal Director

cc: Senator Fred Akshar
Senator Brian A. Benjamin
Senator Alessandra Biaggi
Senator Phil Boyle
Senator Patrick M. Gallivan
Senator Andrew Gounardes
Senator Todd Kaminsky
Senator Brian Kavanagh
Senator Andrew J. Lanza
Senator Zellnor Myrie
Senator Thomas F. O'Mara
Senator Diane J. Savino

Testimony Submitted By Gwen Carr, Mother of Eric Garner

Submitted to New York State Senate Committee on Codes
In Support of S.3695-Bailey/A. 2513-O'Donnell, Repealing CRL Section 50-a

October 24, 2019

My name is Gwen Carr, and I am the mother of Eric Garner.

I'd like to start by thanking Senator Bailey for convening this second hearing and for sponsoring the bill to repeal the police secrecy law, 50-a.

I testified last week, and I came back today because of how important it is to repeal 50-a.

As you know, the whole world saw my son Eric Garner murdered 5 years ago on video, by Officer Daniel Pantaleo, who used a chokehold that the NYPD had banned for over 20 years.

We saw multiple officers use force and pounce on Eric – as Eric pleaded "I can't breathe" 11 times.

It's been over 5 years since my son Eric was murdered and there has been a widespread cover-up related to the scope of misconduct in my son's murder. Pantaleo is the only officer who has been fired from the NYPD – and that was only because I kept fighting for 5 years along with others to make sure he was fired – it was not because the system worked.

I was able to organize worldwide and national support for my son and Pantaleo was fired ***in spite*** of 50-a, in spite of the NYPD being more and more secretive every year.

But not every family is as fortunate as me to be able to get worldwide support and awareness about how my son was killed.

I am here today because the New York state police secrecy law – "50-a" – is still harming me, my family, hurting other families and endangering New Yorkers.

We need you and your colleagues in the state legislature to make sure 50-a is repealed in January 2020, not in February, not in March. This needs to be done immediately.

Last night, I found out that Pantaleo filed a lawsuit to get his job back as an NYPD officer.

This is ridiculous but it didn't surprise me. We knew he would try.

What hurts me though is that **Pantaleo is able to manipulate the law** – more than 5 years later – **in ways that give him an advantage and protection, and some of that is because of 50-a.**

Before Pantaleo's discipline trial earlier this year, he tried to get the CCRB case against him thrown out. The NYPD administrative judge, Rosemarie Maldonado, correctly ruled against him. But I am not allowed to see that report, nobody in the public is allowed to see her report – because of 50-a.

Pantaleo's lawsuit yesterday cited that report that I'm not allowed to see because of 50-a. **I need you to understand that 50-a is harming me and my family still, every day.**

Pantaleo is suing to get his job back, and I'm not allowed to have the full information to organize against this because of 50-a.

This is outrageous but remember, **because of 50-a, I was not even technically going to be allowed to know what Commissioner O'Neill's discipine of Pantaleo would be, if any. Can you believe that?**

The only reason we all found out Pantaleo was fired was because I led a campaign with groups supporting me to make sure that there so much political pressur that there was **no way the discipline decision could be kept secret,** the way so many other discipline decisions are being kept secret now because of 50-a.

Because of Pantaleo's discipline trial and media reports, we know that multiple officers lied in official statements related to Eric's killing, including Officer Justin D'Amico who claimed there was no force used in his official report. D'Amico also filed false felony charges on my son – after he knew he was already dead.

D'Amico – who has already been caught in major lies that constitute misconduct – is also the only person who has ever claimed to have seen Eric allegedly selling cigarettes before Eric was killed. Multiple witnesses testified to different courts that not only was Eric not selling cigarettes, but that Eric had just broken up a fight before Pantaleo and D'Amico approached him.

In other words, D'Amico lied about the reason he stopped Eric in the first place, and my son should be alive and D'Amico should be fired.

D'Amico is still being paid by your and my family's taxpayer dollars. He is still NYPD – and **I'm not allowed to know what other kind of wrongdoing D'Amico has done because of 50-a.**

D'Amico isn't the only one that should be fired for their misconduct related to Eric's murder.

All of the other officers who engaged in misconduct are still NYPD, they're being paid by your and my family's tax payer monies – and **we don't even know the names of some of them or the extent of misconduct because of 50-a.** The only reason we know some of what D'Amico's wrongdoing was is because he testified in the Pantaleo hearing and because the administrative judge's report was leaked to the press.

Because of 50-a, if the judge's report hadn't been leaked, we wouldn't even know that D'Amico had lied in his official report about whether force was used in killing Eric.

Over 5 years later, because of 50a – I still don't have full information about the role, misconduct or names of many of the other officers involved.

50-a makes it close to impossible for me to truly fight for justice for Eric.

It makes it harder for other families to fight for justice for their loved ones.

50-a is dangerous for all New Yorkers because people like Justin D'Amico should not be carrying a gun and should not be in our communities as police. But **Damico is still NYPD, Pantaleo is appealing to return as NYPD and both of Pantaleo and Damico are protected because of 50-a.**

Because of 50a, I can't even get the full transcript to the Pantaleo discipline trial – even though the trial was open to the public.

Because of 50a, I can't find out the misconduct or discipline histories of other officers involved in killing Eric and covering it up – including Sgt. Adonis who stood by and did nothing while Eric was being choked – all she got was some vacation days taken away --- or **Lt. Christopher Bannon**, who texted "Not a big deal" to another officer after hearing that Eric might be DOA.

Because of 50-a, the public was not aware that before Pantaleo killed my son, he was already the subject of 7 disciplinary complaints and 14 allegations made against him to the Civilian Complaint Review Board – "amongst the worst on the force".

4 of those allegations were substantiated and the CCRB had recommended the most serious charges be brought against Pantaleo but the NYPD refused to follow those recommendations so Pantaleo got a slap on the wrist.

If Pantaleo had been disciplined the right way earlier, maybe he would not have still been NYPD and maybe my son would be alive today. 50-a prevented my family and New Yorkers from even knowing about Pantaleo.

We didn't even find out this information about Pantaleo's discipline history until 3 years after my son was killed – and that is only because a whistleblower leaked it to the press.

We need you to repeal 50-a because mothers like me shouldn't have to rely on whistleblowers risking their job to find out about the misconduct record of a public employee – a police officer -- who killed our children.

I have 2 filings going through the legal processes right now to demand transparency that **50-a may block unless you repeal 50-a in January** – and all I'm trying to do is to make sure that other officers who did wrong related to my son and who are a danger to New Yorkers are fired from their positions.

Families like mine – and New Yorkers -- shouldn't have to rely on media leaks, or international political pressure, and have to organize for over half a decade to get crumbs of information about the killings of our loved ones.

Many people want me to move on and congratulate me on achieving justice for the killing of my son.

Let me be clear – we have not achieved full justice. Eric is still gone. And NYPD officers who helped to kill Eric and helped to cover it up are still being paid with my taxpayer monies – and yours.

Senator – I am saying to you and everyone -- **anyone who has stood with me to fight for my son, must continue to stand with me** and all families whose loved ones have been killed by police to **make sure that this police secrecy law, 50a, be repealed as soon as the 2020 state legislative session starts.**

I am calling on all state legislators to prioritize repeal of 50-a in January 2020. We are not waiting anymore.

As my son said in his last words: "This stops today".

I need you to repeal 50-a and end this policy that protects officers who murder our childen, and we need you to bring transparency to the system.

Thank you for listening – I hope you really take in my words and that you take action to repeal 50-a as soon as the session begins in January.

INNOCENCE PROJECT

Testimony of Rebecca Brown, Director of Policy
Innocence Project
Before the Senate Standing Committee on Codes
Relating to the Repeal of Section 50-a of the Civil Rights Law
October 24, 2019

The Innocence Project writes in support of the repeal of Civil Rights Law § 50-a, which shields the personnel records of police officers – even when those records reveal police misconduct – from public view without judicial approval.

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each exoneration as an opportunity to review where the system fell short and identify ways to prevent further injustice in the future. To date, more than 365 DNA-exonerations have been revealed in the United States, and of them, 30 were exposed in New York State. The National Registry of Exonerations, which tracks exonerations based on both DNA and non-DNA evidence, indicates a total of 250 New York State wrongful convictions and attributes 158 of those cases, at least in part, to official misconduct, whereby police, prosecutors, or other government officials significantly abused their authority or the judicial process in a manner that contributed to the exonerated person's conviction.

In many instances, official misconduct can be attributed to *Brady* violations, whereby exculpatory information that was never revealed to the defense could have enabled the innocent to prove he did not commit the crime for which he was initially charged. The absence of that information stymies or prohibits an authentic fact-finding process, often allowing the convicted innocent to languish behind bars while the perpetrators of those crimes to remain undetected. Of the 367 exonerations based on DNA evidence nationally, the true perpetrators of those crimes were subsequently detected in 50% of the cases. While the wrongfully convicted were incarcerated for crimes they did not commit, these 162 real perpetrators connected to wrongful conviction cases – who remained at liberty – committed an additional 150 crimes: 35 murders; 82 rapes; and 35 other violent crimes that could have been prevented if the actual perpetrator had been identified.[1] Therefore, addressing the causes of wrongful convictions not only prevents massive miscarriages of justice affecting the innocent; it also holds the promise of preventing serious, violent crime and protecting public safety.

The extent to which *Brady* violations occur in our criminal justice system is virtually impossible to quantify with precision because, by definition, such violations tend to stay hidden. In practice, uncovering a *Brady* violation often requires finding exculpatory documents in old, undisclosed law enforcement files (which requires that defendants are given access to those files, and that the information was preserved by those who initially concealed it). Of course, when prosecutors do not possess information about a member of law enforcement's past misconduct, prosecutors

[1] See https://www.innocenceproject.org/dna-exonerations-in-the-united-states

cannot fulfill their legal and ethical obligations to provide *Brady* evidence that could otherwise lead to the wrongful prosecution or conviction of an innocent person.

Indeed, in a letter dated May 18, 2018 to the NYPD from the general counsel for the New York County District Attorney's Office, Carey Dunne, voiced exactly this concern and noted this position was not limited to his office but also extends to the four other District Attorneys in the city, along with the Special Narcotics Prosecutor: "I'm writing in connection with our ongoing dialogue about how our office can get better access to information we require to properly assess, prepare and try criminal cases initiated by NYPD. This includes not only records of police officer discipline, but other evidence that is essential to our ability to meet our professional obligations and ensure fairness in every case."[2]

It must be the goal of all members of the criminal justice community to avoid not only wrongful convictions obtained after a trial, but also wrongful prosecutions that result in a guilty plea; indeed, the overwhelming majority of criminal convictions are obtained through plea agreements. In New York State, fewer than 2% of people arrested for felonies get convicted through a trial.[3] It should be noted, too, that people facing even the most serious, violent felony charges have been shown to plead guilty to crimes they did not commit – more than 10% of the more than 360 people across the nation whose innocence has been proven through post-conviction DNA testing pleaded guilty to crimes of which they were innocent. When one considers the incredible pressure facing a defendant to plead guilty when the stakes are even lower and the defendant is facing less serious charges, we should be incredibly concerned about the number of actually innocent people ensnared in the plea system.

Given this backdrop, it is simply reckless to allow for a system that permits prosecutors to elicit and finalize plea agreements without ensuring their receipt of the vital information that may otherwise lead them to drop or reduce charges in many cases. Prosecutors, after all, base their charging decisions on the uncorroborated accounts given by law enforcement in many instances, and it is unfair to expect them to make robust assessments of whether to move forward with criminal charges in the absence of records that can bear on the credibility of the main source of the complaint or identify other weaknesses in the case. This point, too, is echoed by Mr. Dunne on behalf of the New York County District Attorney's Office: "It should go without saying that information relating to prior false testimony or other categories of misconduct by officers is essential to our assessment and preparation of cases, and may, depending on the facts, be information we are required to disclose."[4] Indeed chief assistant Karen Friedman Agnifilo indicated that this year alone, the Office uncovered more than 40 cases in which the police arrested the wrong person.[5] Whether those wrongful arrests were due to intentionally false statements by officers or inadvertent errors in the field (and the pool surely includes both), it underscores the need for prosecutors to have all information necessary to assess the officers' reliability when making such enormously consequential decisions involving citizens' liberty.

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[2] See https://www.buzzfeednews.com/article/mikehayes/nypd-cops-lying-discipline-disrict-attorneys-prosecutors
[3] Ibid
[4] Ibid.
[5] See https://www.nytimes.com/2018/07/08/nyregion/manhattan-district-attorney-police-records.html

One can only imagine the scope of wrongful arrests that hinge on the credibility of the arresting officers that would have otherwise been uncovered earlier in criminal proceedings if the prosecution had access to the disciplinary records of officers and attendant investigative reports. Those belatedly-corrected injustices have both human costs and fiscal ones. In January of 2017, for instance, New York City agreed to pay $75 million to settle a federal class-action lawsuit based on the issuance of hundreds of thousands of criminal summonses that were subsequently dismissed on the grounds of legal insufficiency.[6] The lawsuit covered a seven-year period (2007-2015) and alleged that police officers had been told – based on a minimum quota requirement - to issue summonses "regardless of whether any crime or violation had occurred."[7] One of the young victims, Pedro Hernandez, was found to have been falsely arrested 7 times, including for more than one murder charge, and he spent two years abused and beaten at Rikers Island before his innocence was revealed. Home at long last, his mother describes a young man who held so much promise that he was offered a full scholarship to college and who now can hardly leave his room. Had prosecutors had access to the disciplinary records of the arresting officers in his and many of these cases, the legal ordeals suffered by these New Yorkers likely could have been avoided.

Given the liberty interests at stake, the Innocence Project strongly supports the repeal of Civil Rights Law §50-a. Repeal of this law promises the kind of transparency in government that earns the public trust and will reduce the prevalence of wrongful prosecutions and wrongful convictions.

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[6] See https://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html?login=email&auth=login-email.

[7] Ibid.

NYPD

Thursday, October 24, 2019

STATEMENT OF OLEG CHERNYAVSKY
ASSISTANT DEPUTY COMMISSIONER, LEGAL MATTERS
NEW YORK CITY POLICE DEPARTMENT

NEW YORK STATE SENATE
STANDING COMMITTEE ON CODES
VAN BUREN HEARING ROOM A
LEGISLATIVE OFFICE BUILDING, 2nd FLOOR
ALBANY, NEW YORK
OCTOBER 24, 2019

Good morning Chair Bailey and members of the Senate. I am Oleg Chernyavsky, Assistance Deputy Commissioner of Legal Matters for the New York City Police Department (NYPD). On behalf of Police Commissioner James P. O'Neill, I am pleased to testify today regarding civil rights law provisions relating to personnel records of police officers.

The New York City Police Department's mission is to protect the health, safety and welfare of those who live in, work in, and visit our city. Vital to this mission is a well-trained, focused, and disciplined team of police officers. In recent years, the NYPD has worked tirelessly to strengthen our connection with the communities we serve. We have become more service oriented, better trained at diffusing challenging situations and utilizing alternatives to force. We have become sharply focused on the real drivers of violence in our city. The numbers bear this out. We have driven crime to historic lows while at the same time nearly eliminating the use of stop and frisk and drastically reducing the number of individuals we arrest and summons.

These are all achievements that we take pride in, and we attribute much of our success to our Neighborhood Policing philosophy. Our Neighborhood Policing strategy is a comprehensive crime-fighting strategy built on promoting communication and collaboration between police officers and the people we serve. Our goal is to connect and protect while simultaneously cultivating stronger relationships and building trust with the community. We have conformed our sectors in each precinct to the boundaries of actual established neighborhoods and have sought to inspire a shared responsibility with our local residents in order to fight crime at a more local level and find solutions to community issues. Neighborhood Policing encourages officers to spend time interacting with the communities they serve – to engage with neighborhood residents, identify problems, and work toward positive resolutions. We build trust by working in partnership with a variety of stakeholders – our fellow law enforcement and city agencies, service providers, and advocacy organizations to help the Department become more knowledgeable and responsive to the unique needs of diverse communities and victims of crime. We also build trust by collaborating with our elected, community and faith leaders to improve public safety and security for all New Yorkers.

We recognize, however, that *lasting* trust cannot be achieved without the application of a fair and transparent police discipline process. With more than 36,000 uniformed officers, the NYPD is by far, the largest police force in the nation. Each day, the men and women of the NYPD engage in one of the most complex, but also rewarding, jobs and do so upholding the oath they took and the honor their badge demands. This is what our Department expects. Yet, we know that officers are

human beings. Like any other profession, sometimes our officers make mistakes during trying situations; and troublingly, a few betray the public trust which blemishes the Department, their fellow officers and the badge that they wear.

Yet, when officers are disciplined for substantiated misconduct, the public is often left uninformed. Since 1976, Civil Rights Law 50-a has prohibited the public disclosure of police records relating to misconduct, absent a court order or express consent of the police officer who is the subject of such discipline. As currently constituted, the stringent requirements of Civil Rights Law 50-a breeds mistrust and a belief that the few officers who betray the public trust are never held accountable by the Police Department.

The NYPD does not fear scrutiny; we welcome that discussion. Recognizing that a disciplinary system that is unbiased, clear, and consistent is essential to the Department and the public alike, the NYPD took the initiative to appoint a three-person panel of highly-respected experts to perform an independent and exhaustive review of the Department's disciplinary system. This blue-ribbon panel was specifically tasked with identifying areas where the Department could be more transparent and recommending areas of improvement. These independent experts issued a comprehensive report in January and subsequently, the Department agreed to adopt all 14 of their recommendations to improve the NYPD's disciplinary system, including supporting an amendment to section 50-a of the Civil Rights Law, which is among the reasons we are here today.

Section 50-a was enacted to protect police officers and prevent them being harassed in the courtroom based upon unsubstantiated, unverified or immaterial allegations of misconduct that are irrelevant to the subject of their testimony. Section 50-a requires a court to examine an officer's personnel records in-camera and make a determination as to whether the allegations of misconduct are material and relevant before permitting defense counsel access to such records. The law requires that each party be afforded an opportunity to be heard during this process, including the officer. The safeguards imposed by section 50-a promote the fair administration of justice. A repeal of the law would extinguish the officer's voice in a process centered on disclosure of their own personnel records and provide defense counsel access to records irrelevant to the case before the court. Moreover, it would make publically available records of administrative violations. This could include violations of even the lowest level of Department rules such as misplacing an identification card or failing to shine his or her shoes. Disclosure of such information, without safeguards or an officer having the ability to contest its release, serves only to embarrass police officers and muddying the waters, turning trials into accusations about an officer, and unnecessarily derailing criminal prosecutions.

Harassment on the stand or in the street is not the only risk our officers would face. Law enforcement encounters are understandably unpleasant experiences for those that are the subject of such action. One unfortunate development is that perpetrators who victimize the public seek to retaliate and threaten police officers. Officers have seen protests at their homes and death threats to themselves – and their families – even before the facts of an incident are fully known. Just last year, there were 154 direct threats made against individual NYPD officers, up from 151 such threats in 2017. This total does not include the additional 150 general threats made against police in New York City in each of those years. In the internet age, where personal information may be a Google search away, releasing personnel records in cases where there are allegations but the

facts are not fully known, cases stemming from administrative violations that have never been the focus of public scrutiny, or in cases where there is a clear and explicit threat, is a risk to officer safety.

The Department has attempted to make available some disciplinary information publicly. Attempts to release anonymized summaries of disciplinary proceedings have been blocked by the courts as violating 50-a. A number of courts have revisited the scope of protections afforded by section 50-a and have further considered the heighted dangers faced by police officers. The courts have affirmed that the scope of section 50-a protects against all these risks.

Transparency, of course, need not come at the cost of officer safety, and officer safety need not come at the cost of transparency. For this reason, the NYPD unequivocally supports an amendment to Civil Rights Law 50-a. We support a careful balance between protection for our officers and the need for transparency. An amended 50-a should allow the release of the complaint, allegations or charges, the transcript of the hearing, any written opinion, and final disposition and penalty at the conclusion of a discipline process for serious police misconduct. All this information has been previously shielded by 50-a. In serious discipline cases, this reformed approach would allow for the disclosure of cases after they have been adjudicated – providing the public greater transparency than before. Minor misconduct, such as uniform infraction or lateness, should continue to maintain their 50-a protections.

By amending, rather than repealing the law, we can create a balance between officer safety, accountability and transparency. This past year, the Department has taken many steps towards finding that balance. We have narrowed our interpretation of the scope of 50-a through changes in our Department policies. For example, when a Freedom of Information Law (FOIL) request is made for body-camera footage, arrest reports, and other routine police reports completed in connection with an arrest, the NYPD Legal Bureau is no longer asserting 50-a as a basis for non-disclosure. We have also begun to publish annual reports on our website, dating back to 2016, that provide aggregate discipline information including the disciplinary charge and the penalty received. To promote open disciplinary proceedings, an updated trial calendar can now be found on our website as well. Most recently, the Department has issued presumptive discipline protocols for members of the service determined to have committed domestic violence acts. The Department is dedicated to creating a disciplinary system that is equitable, fair and transparent.

Our officers are engaged in rewarding, but dangerous work. They accept these dangers because they have chosen a selfless profession devoted to making the lives of the people of New York City safer. It is our collective responsibility to find a meaningful and more balanced way to address calls for greater transparency and accountability while promoting the fair administration of justice and ensuring a safe work environment for our officers. A complete repeal of Civil Rights Law 50-a would pose a formidable challenge to these goals. We welcome the opportunity to work with you to amend the portions of 50-a that restrict transparency, but preserve those sections of the law that protect the brave men and women who protect us all.

Thank you for the opportunity to testify, I am happy to answer any questions you may have.

CENTER FOR CONSTITUTIONAL RIGHTS
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TESTIMONY OF GUADALUPE VICTORIA AGUIRRE, BERTHA JUSTICE FELLOW
ON BEHALF OF THE CENTER FOR CONSTITUTIONAL RIGHTS
BEFORE THE NEW YORK STATE SENATE COMMITTEE ON CODES
IN SUPPORT OF S.3695, REPEALING CIVIL RIGHTS LAW SECTION 50-A

OCTOBER 24, 2019

The Center for Constitutional Rights ("CCR") respectfully submits this testimony in support of S.3695, an act to repeal Section 50-a of the New York Civil Rights Law. CCR is dedicated to supporting social justice movements in their fight for liberation and the defense of their civil and human rights. Through litigation, advocacy, and strategic communications, CCR works to challenge and dismantle systems of oppression and build power in communities under threat. We also employ Freedom of Information Act requests and state open records laws to support social justice movements and to uncover potentially abusive and discriminatory government policies and practices, including those of law enforcement agencies. As part of this work, CCR successfully challenged the New York City Police Department's discriminatory and abusive policing practices in *Floyd et al. v. City of New York*. In a groundbreaking decision, a federal judge found the NYPD liable for a pattern and practice of racial profiling and unconstitutional stops. As a result, the NYPD is currently under a federal monitorship to oversee court-ordered reforms to address its biased and unlawful policing.

I. REPEALING 50-A AFFIRMS NEW YORK'S LONG-STANDING POLICY OF OPEN GOVERNMENT AND COMMITMENT TO THE PROTECTION OF MARGINALIZED COMMUNITIES.

New York has long committed to a policy of open government and "maximum access" of information to the public in order to foster a freer and more democratic society.[1] It is the public's "right to know the process of governmental decision making," and to "expose abuses" that enables us to hold our governments accountable.[2] When it comes to government misconduct, especially that of the police, these foundational principles ring especially true. Yet, Civil Rights Law 50-a ("50-a"), stands in unwavering opposition to New York's commitment to these principles by creating a nearly impenetrable black box that enables "official secrecy."[3]

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[1] *See Capital Newspapers v. Whalen*, 69 N.Y.2d 246, 252 (1987); *Friedman v. Rice*, 30 N.Y.3d 461, 475–78 (2017); N.Y. Pub. Off. L. § 84 (1977).
[2] *See Capital* Newspapers, 69 N.Y.2d at 252; *Friedman*, 30 N.Y.3d at 475–78 (2017); N.Y. Pub. Off. L. § 84 (1977).
[3] *See Friedman*, 30 N.Y.3d at 475 ("[FOIL's] premise [is] that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government.") (quoting *Matter of Fink v. Lefkowitz*, 47 N.Y.2d, 567, 571 (1979)).

The immense power that police officers hold over the public is indisputable. Police, unlike most other public servants, "have the power to terminate constitutional protected liberty," most importantly, the state sanctioned authority to take a life; "with this power comes great responsibility, as well as the need for appropriate oversight."[4] Because police officers can and do wield this power, the public has an equally immense, if not exceeding, need for transparency and information to ensure police departments behave in ways that are lawful and consistent with democratic and community values.

These principles and commitments are shared nationwide. Conversations about and movements for police accountability are demanding, and achieving, increased transparency and access to information. New York, which has prided itself on leading the nation with progressive principles and efforts to protect historically vulnerable and marginalized communities, lags far behind by having 50-a, the most draconian secrecy law in the nation, on its books. Moreover, police departments like the New York Police Department ("NYPD") and New York courts have increasingly broadened the scope of 50-a, distorting the law's original narrow intent.[5] As it stands, interpretations of 50-a have severely restricted the public's access to *redacted* records,[6] *substantiated* civilian complaint histories,[7] and even *summaries* of officer discipline.[8] This stands in sharp contrasts to the laws in at least twelve states that permit disclosure of information relating to officer misconduct and discipline.[9]

Locally, numerous stakeholders have recognized the urgent need to uphold our commitment to meaningful transparency, including members of the media, the NYC Bar Association, and family members of people who have been killed by police officers.[10]

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[4] *See Cordero v. City of New York*, 282 F. Supp. 3d 549, 555 (E.D.N.Y. 2017) (Weinstein, J.).

[5] *See* Brendan J. Lyon, *Court Rulings Shroud Records*, ALBANY TIMES UNION, Dec. 15, 2016 ("State Senator Frank Padavan . . . said a 1976 amendment to state law was not intended to prohibit the public release of records related to police misconduct."), https://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php.

[6] *New York Civil Liberties Union v. New York Police Dep't.*, 32 N.Y.3d 556 (2018).

[7] *Luongo v. CCRB Records Officers & Daniel Pantaleo*, 150 A.D.3d 13 (1st Dep't. 2017).

[8] Thomas Tracy, *Judge Stops NYPD from Putting Police Disciplinary Summaries Online*, N.Y. DAILY NEWS, Mar. 12, 2019, https://www.nydailynews.com/new-york/nyc-crime/ny-metro-injunction-barring-pba-summaries-20190312-story.html.

[9] *See* NEW YORK CITY BAR CIVIL RIGHTS & CRIM. CT. COMM., COMM. REPORT: ALLOW FOR PUB. DISCLOSURE OF POLICE RECORDS RELATING TO MISCONDUCT: REPEAL CRL 50-A 4–5 (2018), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/allow-for-public-disclosure-of-police-records-relating-to-misconduct-repeal-crl-50-a; Cynthia H. Conti-Cook, *Open Data Policing*, 106 GEO. L.J. (2017), https://georgetownlawjournal.org/articles/243/open-data-policing/pdf.

[10] *See, e.g., id;* Council of the City of N.Y., Res. 0750-2019, *available at* https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3842679&GUID=A628B57F-C90C-4DA0-976A-CBD8B2D83DDA&Options=&Search=; Rachel Silberstein, *Advocates Push for Repeal of 50-a Ahead of Session*, ALBANY TIMES UNION, Dec. 24, 2018, https://www.timesunion.com/news/article/NYS-50-a-13488713.php; Editorial Bd., *Chokeholds & Police Abuse, Kept from the Public*, N.Y. TIMES, June 12, 2019, https://www.nytimes.com/2019/06/12/opinion/police-brutality-discipline-eric-garner.html.

Repealing 50-a is a critical and necessary step towards affirming New York's commitment to those communities who experience abusive and discriminatory policing, by removing a harmful barrier to transparency, accountability, and justice.[11]

II. REPEALING 50-A IS A MATTER OF PUBLIC SAFETY, PARTICULARLY FOR HISTORICALLY VULNERABLE AND MARGINALIZED COMMUNITIES.

The importance of the legitimacy of our government institutions and the need for the public's trust in them cannot be overstated. Legitimacy and trust are particularly important in the law enforcement context because of the impact on the public's daily lives and safety. Time and again, communities, especially those most directly impacted by officer misconduct, have called for greater access to information about the public employees meant to protect them. Without this information, the public cannot meaningfully engage in discourse over how to address the government abuses that harm them, their families, and communities. Moreover, lack of transparency around conduct that undermines public confidence in its institutions can discourage the filing of complaints.[12] **Instead of promoting public safety, 50-a turns it on its head by providing abusive and potentially dangerous officers—and the institutions that do not adequately remediate them—the benefit of hiding behind 50-a's cloak of secrecy.**[13]

The Center for Constitutional Rights and the class of plaintiffs in *Floyd v. City of New York*, know first hand about the detrimental effects unlawful and abusive policing has on the lives of New Yorkers. *Floyd* exposed the NYPD's institutional practice of racial profiling and unlawful stop, question, and frisks of Black and Latinx New Yorkers.[14] Importantly, the case also exposed NYPD's "deliberate indifference" to its officers' abuses: "when confronted with evidence of unconstitutional stops, the NYPD routinely denies the accuracy of the evidence, *refuses to impose meaningful discipline*, and fails to effectively monitor the responsible officers for future misconduct."[15] *Floyd* exemplifies the potential for police to abuse their power and cause real and lasting harm to historically marginalized communities on a grand scale. For example, the case proved that the NYPD failed to adequately investigate and impose discipline in response to allegations of racial profiling.[16] A recent report by New York City's Office of the Inspector General reveals disturbing and continuing problems with regards to addressing racial profiling allegations in the NYPD—not one of nearly 2,500 complaints of racial profiling or biased policing

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[11] *Mayer v. City of Chicago*, 404 U.S. 189, 197 (1971) ("In the main it is the police and the lower court Bench that convey the essence of our democracy to the people . . . Justice, if it can be measured, must be measured by the experiences the average citizen has with the police. . .").

[12] *See Floyd v. City of New York*, No. 08-cv-1034, Dkt. # 373, at 109–10 (hereinafter "*Floyd* Liability Op.").

[13] Contrary to some contentions, the repeal of 50-a does not implicate officer privacy and safety. Existing Freedom of Information Law provides robust protections for important officer information, including, addresses, and social security and medical information. *See* N.Y. Pub. Offs. L. § 87(2); *Matter of Obiajulu v. City of Rochester*, 213 A.D.2d 1055 (4th Dep't 1995) (exempting from disclosure under FOIL employees' personal information); *Lyon v. Dunne*, 180 A.D.2d 922 (3d Dep't 1992) (holding that addresses, phone number, and birth dates must be redacted in records).

[14] *See Floyd v. City of New York*, No. 08-cv-1034, Dkt. # 373 (hereinafter "*Floyd* Liability Op.").

[15] *Floyd* Liability Op. at 104–05 (emphasis added).

[16] *See id.* at 110.

between 2014 and 2017 has been substantiated by the department.[17] Consequently, this implies that not one of those complaints resulted in adequate discipline. Even if this is not the case, the public cannot know for certain due to the severe restrictions of 50-a. In addition, *Floyd* revealed that the NYPD has historically failed to pursue any meaningful discipline against officers with *substantiated* complaints by the Civilian Complaint Review Board ("CCRB") and historically downgraded the CCRB's recommended discipline.[18]

Similar to the issues with biased policing within the NYPD, we can glean from leaks of information to the media and independent reporting (notwithstanding the substantial barriers to information erected by 50-a) that issues around lack of effective or meaning discipline are on-going.[19] Even for serious misconduct, officers continue to be given mere oral reprimands, "Instructions" or sent to training (the predominant disciplinary penalties), if disciplined at all.[20] Perhaps most striking, reporting in 2018 revealed that the NYPD had failed to discipline or fire officers who engaged in misconduct ranging from sexual assault, stomping on someone's head, falsifying documents, conducting illegal searches, and more.[21] These are disturbing trends to say the least, and 50-a stands as a barrier to the public's understanding of why these trends have occurred and perhaps more importantly, why they endure.

As a result of the court's findings and rulings in *Floyd*, the NYPD is currently under a federal monitorship that is overseeing and implementing court ordered reforms to remediate the issues that came to light during trial. Furthermore, a court-ordered Facilitator, Honorable Judge Ariel Belen, oversaw a consultative process with communities most impacted by the NYPD's abusive and discriminatory practices to assess and develop additional and necessary reforms that would begin to remediate these issues. Judge Belen tackled, amongst others, issues of discipline and noted the importance of transparency and accountability, and centering the experiences of directly-impacted community members.[22] Unsurprisingly, Judge Belen recommended critical disciplinary reforms, including timely disciplinary actions, publication of monthly discipline reports, progressive discipline, and most importantly, increased attention to the public understanding of disciplinary standards.[23] As a barrier to public information about law enforcements disciplinary

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[17] NYC DEP'T OF INVESTIGATION, OFF. OF THE INSPECTOR GEN., COMPLAINTS OF BIASED POLICING IN NEW YORK CITY: AN ASSESSMENT OF NYPD'S INVESTIGATION, POLICIES, AND TRAINING 2 (2019), https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf.

[18] *See Floyd* Liability Op. at 108–10.

[19] *See, e.g.*, MARY JO WHITE ET AL., REPORT OF THE INDEPENDENT PANEL ON THE DISCIPLINARY SYSTEM OF THE NEW YORK CITY POLICE DEP'T (2019); NYC CIVILIAN COMPLAINT REV. BD., ANNUAL REPORT 34 (2017) (noting that NYPD pursued no disciplinary action in 28% of civilian complaints before the Board in 2017) (hereinafter "CCRB 2017 Annual Report"), https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf; Kendall Taggart & Mike Hayes, *Secret NYPD Files: Officers Who Lie & Brutally Beat People Can Keep their Jobs*, BUZZFEED, Mar. 5, 2018, https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious.

[20] *See* CCRB 2017 Annual Report, *supra* note 19; Ninth Report of the Independent Monitor, *Floyd v. City of New York*, No. 1:08-cv-01034-AT, Dkt # 680-1 (Jan. 11, 2019), at 57–60 (noting 'Instructions' and/or 'Trainings' represented approximately 39 percent of cases in 2014; 45 percent in 2015; 53 percent in 2016; and 56 percent in 2017).

[21] Kendall Taggart & Mike Hayes, *The NYPD's Secret Files*, BUZZFEED, April 16, 2018, https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer.

[22] *See* HON. ARIEL E. BELEN, NEW YORK CITY JOINT REMEDIAL PROCESS FINAL REPORT & RECOMMENDATIONS iv, 218–299 (2018).

[23] *Id.* at 222–25.

systems and officer misconduct, 50-a severely undermines the public's ability to ensure these important recommendations are implemented in any meaningful way.

The *Floyd* case, and indicia of outstanding problems, underscores the crucial need for the public to understand the disciplinary systems of their police departments in order to provide oversight and remedial efforts, including meaningful and effective discipline, none of which can happen without true transparency.[24] In light of these systemic issues, New York should not continue to protect potentially violent and dangerous officials, and the departments that fail to adequately discipline them, at the expense of vulnerable and directly-impacted communities.

III. CONCLUSION

The time to repeal 50-a is now and the reasons are plentiful. 50-a undermines important and long-lasting policies of open government, government accountability, and the commitment to protecting the rights of vulnerable and marginalized communities. It is no secret that the crucial need for police accountability remains in New York and nationally. By repealing 50-a, New York will take in important step toward increasing police accountability, public safety, and justice.

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MAYOR

FREDERICK DAVIE
CHAIR

Testimony of Rev. Frederick Davie, Chair of the Civilian Complaint Review Board before the State Senate Committee on Codes
October 24, 2019

Chair Bailey and members of the State Senate's Committee on Codes, thank you for the opportunity to testify on this important issue. I am Rev. Frederick Davie, Chair of the Civilian Complaint Review Board ("CCRB").

The CCRB is the largest civilian police oversight agency in the nation. The City Charter empowers our Agency to receive, investigate, prosecute, mediate, hear, make findings, and recommend action in civilian complaints against uniformed members of the New York City Police Department ("NYPD"). Our jurisdiction includes allegations of excessive force, abuse of authority, discourtesy, and offensive language, often referred to as "FADO."

The Agency's staff is comprised entirely of members of the public—civilians, rather than law enforcement. The CCRB's independence from the NYPD is a key component in bolstering the public's confidence. It reinforces that when a complaint is filed with our Agency it will be thoroughly and impartially investigated and that officers will be held accountable for misconduct. That confidence is undermined when information about the disciplinary process is shrouded in secrecy.

At our monthly board meetings and numerous community outreach events, we often hear from members of the public that they believe that filing a complaint with the CCRB is not worthwhile. They fear that nothing will happen to officers against whom allegations of misconduct have been substantiated. Another common concern is that City residents are unaware when an officer who has multiple disciplinary infractions is deployed in their community. Because of the constraints of Civil Rights Law § 50-a, the CCRB is not permitted to inform the public of the outcome of its investigations or about an officer's CCRB history. The Agency is even limited in the information that it can provide to civilians about the complaints they have filed with the CCRB.

CCRB has made great progress in increasing the public trust in the agency. Where we are limited in feeling public confidence is our inability to share important information about our investigations because of 50-a. We are thwarted in our efforts to provide increased transparency in the disciplinary process. Let's be clear: that transparency does not have to come at the expense

of privacy, safety, or other public interests. While I personally support a full repeal of Civil Rights Law § 50-a, I cannot speak on behalf of the CCRB's Board as we have not yet had public discussion on that topic. At our next Board meeting, we hope to hear from advocates and other stakeholders. My quarterly meeting with the Police Commissioner is scheduled just prior to the next Board Meeting, and I am certain that this will be one of the topics we will discuss. In having these discussions over the next month, I look forward to hearing different views and am open to understanding other perspectives on issues of security and privacy related to the repeal of 50-a.

Thank you again for giving me the opportunity to weigh in on this important issue.

New York State Police

Investigators Association

I.U.P.A.-Local 4 AFL-CIO

"The voice of the NY State Police BCI since 1994"

The New York State Police Investigators Association (NYSPIA) represents over 1200 Investigators and Senior Investigators across this state. Their primary task to accurately and effectively investigate the most serious criminal offenses committed in society. We are here to express our concerns regarding the potential repeal of, or significant modifications to, NYS Civil Rights Law 50-a in the coming 2020 NYS Legislative session under S3695/A2513 and/or other similar legislation.

In 1976 the NYS Legislature passed CRL 50-a in an effort to provide a few necessary protections for police officers in regard to their personnel record. One of the outcomes of that law would be to protect police officers from unwarranted attacks and harassment of themselves and their families. Additionally, it would limit the ability of defense counsel to call into question the integrity of the arresting officer(s) from prior unsubstantiated investigations.

The obvious concerns leading up to the passage of CRL 50-a was whether these protections were necessary and, if so, how/when the information contained in these protected files could be accessed. The final version of the legislation provided adequate access for agencies and/or proceedings which have proper and legitimate need for such information. For example, the law allows for all of the following to access the personnel record: a grand jury, district attorney, attorney general, county attorneys, town and village attorneys, and corporation counsel attorneys. In short, governmental attorneys with legitimate need for such information are not prevented from obtaining it. Additionally, a judge may release the personnel record if he feels that it is pertinent to the case at hand. The ability to have the records released currently exists in the statute as written.

Evidence that the need for the legislation was necessary at the time can be found in documents created in 1976. On June 9th of that year, the Richmond County District Attorney, Mr. Thomas Sullivan, wrote to Mr. Judah Grivetz, Counsel to the Governor, that "In the past, counsel has sought the personnel records off police officers for unwarranted fishing expeditions." The efforts of some defense counsel to find and cast light on unrelated personnel issues in an attempt to besmirch an officer's integrity is not a new concept. It was a concern over 40 years ago and remains true today. In fact, with the amazing technological advancements of the past decade, the ability to influence opinions beyond a jury is easy due to social media. A skilled attorney could deflect from the actual facts of the case before ever setting foot in the courtroom by accessing and distributing information on that officer in a negative light, regardless of whether or not that portrayal is completely accurate.

In cases such as described, it is the officer's past unrelated conduct which will become the focus of the criminal case rather than the defendant's actions. This distraction tips the balance of justice against the victims who need our assistance and in turn favors those accused of the criminal behavior.

While it has been said that a repeal of CRL 50-a is not based in an anti-police sentiment, the outcome of such a change could inadvertently cause that impact in society. Almost everyone knows a police officer to some degree and, therefore, feel that they can understand our job responsibilities. However, it is virtually impossible to comprehend the speed at which decisions are made when high stress situations occur without experiencing our training. Although the vast

majority of real life police encounters result in the proper outcome, there are mistakes made for a variety of reasons. We do not believe that the actors in these situations should be excused for bad decision making or poor execution. Rather, we feel that they should be held accountable by the agency. It is the desire to have these mistakes readily available to the public for the rest of their professional career, regardless of the severity, which creates great concern.

Contrary to what proponents of this bill would have you believe, our membership is not asking to be treated differently than most police in the country, nor even many other public employees within this state. Across the country, approximately 2/3 of the states have restricted access to police disciplinary records. Even within the State of New York, many employees such as teachers are afforded the comfort of knowing that unsubstantiated claims are shielded from public scrutiny. Police officers should at least receive the same protections considering that they are, by the nature of their job responsibilities, routinely placed in confrontational situations in order to investigate criminal behavior.

The government of NY State has long recognized that public trust is a necessity while balancing the need for public employee protections and civil rights. That is why there are numerous levels of police oversight currently in existence including Internal Affairs, District Attorneys, the Attorney General office, the Inspector General office, Special Prosecutors as appointed, as well as federal authorities which may also investigate criminal and civil rights violations. It is the protections of 50-a that allow a police officer to know that they must answer for their actions (sometime to multiple groups listed above) but that the results of that investigation will allow them, and their family, to safely continue their lives in society when the investigation is concluded. We do not condone the retention of "bad apples" in our ranks. That is why these oversight groups have the ability to fine, terminate, and even criminally prosecute those within our agencies when warranted.

Lastly, it is important to recognize that the outcome of simply repealing CRL 50-a will result in lesser protections afforded to police officers than those actually CONVICTED of criminal actions. A defendant in criminal proceeding may not have his prior arrest record used against him in most cases, and in all cases in which he was arrested but not convicted. Conversely, the police officer's professional record would be completely admissible even if there is not a single confirmed act of misconduct. That is clearly an imbalance of justice.

The concept of an evolving criminal justice system which properly balances the protection of those that need it with the rights of those accused is an immense challenge. We recognize the desire to revisit procedural issues to ensure that they remain applicable to current society. We urge the legislature to reject changes to CRL 50-a.

COMMUNITIES
UNITED FOR
POLICE REFORM

Testimony of Communities United for Police Reform (CPR)

Submitted to the New York State Senate
By Carolyn Martinez-Class
For October 24th Senate Codes Hearing on Repealing 50-a (S3695-Bailey)

Communities United for Police Reform ('CPR') respectfully submits these comments to the New York State Senate Codes Committee concerning S3695 – the bill to repeal 50-a. We believe this hearing provides a key opportunity to uplift the need to repeal 50-a early in the 2020 session. Passing S3695 and fully repealing 50-a will help make New York's police departments more transparent and accountable to the communities they serve.

I. About Communities United for Police Reform (CPR)

CPR is an unprecedented campaign working to end discriminatory policing practices in New York State. As part of our work, we have organized coalitions of over 200 local and national organizations to win police accountability legislation and policy change in New York City and in Albany; our members have trained thousands of New Yorkers on their rights in interactions with police; and we engage in community education, civic engagement, community organizing, litigation and other activities to promote greater transparency and accountability from government – particularly police departments – to build a safer New York that is respectful of the rights of all New Yorkers.

CPR is a multi-sector campaign working to end discriminatory and abusive policing practices in New York. Through community organizing, policy advocacy, public education, litigation, civic engagement and other strategies, CPR seeks to build a broad-based movement to promote community safety and respect for the rights and dignity of all New Yorkers. Our members and partners include over 200 local and national organizations, many of whom are based in and led by those most directly impacted by abusive policing. Our member organizations include grassroots community organizing groups, policy and legal advocacy organizations, research projects and more.

Through this campaign, we have helped to change the local conversation on public safety, increased the knowledge and practice of New Yorkers in observing and documenting police misconduct, and have won key policy victories including passage of the Community Safety Act (which established the first Inspector General of the NYPD and an enforceable ban on bias-based policing) and Right To Know Act in the New York City Council; and organized the campaign to secure an executive order establishing a special prosecutor for police killings from Governor Cuomo.

II. Comments regarding Support for the Full Repeal of 50-a (Passage of S3695-Bailey)

Communities United for Police Reform respectfully urges the New York State Legislature to pass S3695/A2513 and repeal 50-a early in the 2020 session. Repealing 50-a is a critical first step toward securing police transparency and accountability throughout New York State. CPR supports the passage of S3695/A2513 for the following reason:

- **50-a is an outdated and misguided police secrecy law that makes New York an outlier in the country.** New York should be a national leader on police accountability and transparency, but NY is arguably the worst in the country when it comes to police transparency. NY is one of only two states with a law that specifically restricts public access to information on police officer misconduct and discipline.

- **50-a is unecessary -** New York's Freedom of Information Law (FOIL) already protects personal information of public employees. In spite of propaganda by police departments and police unions in NYS, repealing 50-a will not hurt the personal privacy or security of officers. NYS's FOIL framework protects personal information of public employees such as home addresses and social security numbers, for example.

- **50-a harms and re-traumatizes those most impacted by police violence**, including people throughout the state who have had direct experiences of brutality, sexual harm, and abuse by police officers & those who have lost loved ones due to police violence. 50-a allows the withholding of critical information related to cases of police misconduct and discipline, including officer misconduct histories and outcomes of disciplinary processes (if there are any) – and more recently has been used as an excuse to not release the names of officers who kill civilians.

- **Police secrecy and 50-a hurts trust in government by the public,** especially as related to police departments. Because of 50-a, the public is deprived information necessary to play a critical oversight role in terms of the accountability processes of police departments throughout NYS. This is dangerous for public safety.

For these reasons, Communities United for Police Reform and over a hundred organizations in the **Safer NY Act Coalition** are calling on the New York State Legislature to pass Senator Bailey and Assemblyman O'Donnell's bill to repeal 50-a (S3695/A2513) in the 2020 legislative session.

1. 50-a is an outdated, unecessary statute -- and provides New York police officers with dangerous and unecesssary special privacy rights compared to police in other jurisdictions throughout the country and compared to other professionals in New York State.

New York State is arguably the least transparent state in the country when it comes to police misconduct in large part because of the police secrecy law, 50-a – and the expansion of 50-a in recent years, particularly with negative court rulings. New York is one of only two states in the country that specifically restricts public access to information on police officer misconduct and discipline. The other state is Delaware. Throughout the country, there are examples of significantly more transparent practices surrounding police disciplinary records – states like Utah, Florida, Georgia and Connecticut make records generally accessibly to the public.[1] In Chicago, over thirty (30) years of police disciplinary information has been published under the banner of the Citizens Police Data Project. This searchable database includes the names of officers involved, the status of pending complaints, and the outcome of the complaint (including

[1] *See* Robert Lewis, Noah Veltman & Xander Landen, Is Police Misconduct a Secret in Your State?, WNYC (Oct. 15, 2015), http://www.wnyc.org/story/police-misconduct-records/

whether it was substantiated and whether a penalty was imposed).[2] Despite having the largest police department in the country,[3] New York is a backwards outlier compared to other states and jurisdictions when it comes to police transparency.

Even within New York, police are the exception to the rule when it comes to accessing information concerning professional misconduct. Unlike any other profession, police officers are empowered to issue summonses, make arrests and use force, including lethal force. Police officers are afforded an immense amount of power and yet, police departments are permitted to hide misconduct and disciplinary information from the public view due to 50-a. In New York State, one can search online databases to find misconduct records pertaining to teachers, lawyers, nurses, architects and even massage therapists.[4] Doctors, like police officers, are entrusted to make life-altering decisions for those under their purview – unlike police officers, the misconduct records of doctors - including information concerning pending investigations – are on a searchable database online.[5] These are just a handful of examples of easily accessible information pertaining to other professions throughout the state of New York – it is alarming that police officers, who are afforded such broad powers and discretion, are protected by a broad shroud of secrecy because of 50-a.

Due to overly broad applications of 50-a by police departments over the years, what was once a fairly narrow statute has been warped to operate as a far-reaching blanket secrecy protection for police and police departments. 50-a has gone far beyond its proposed purpose and therefore should be repealed.

While police departments may claim that 50-a is necessary toward the protection of officer's personal records – that is simply untrue. New York State's Freedom of Information Law (FOIL) has robust built in protections concerning the private information of public servants. FOIL

Second, while police departments and unions may falsely insist that 50-a is necessary to protect officer's personal information like home addresses or financial documents, that is simply not true. New York's Freedom of Information Law (FOIL) has protections in place that bar the disclosure of any items that may constitute an 'invasion of privacy' and FOIL explicitly allows the redaction of information where the release would endanger the life or safety of any person. These protections already exist in FOIL – and these protections are currently used for records requests for other public servants whose records are available under FOIL in the state of New York.[6] 50-a therefore has no legitimate policy purpose beyond shielding misconduct records of abusive officers and the failed disciplinary processes of police departments.

3. 50-a harms those most impacted – victims of police misconduct and families who have lost loved ones due to police violence.

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[2] *See* Citizens Police Data Project https://cpdp.co/

[3] New York City Police Department, About NYPD https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page

[4] See *NYSED, Enforcement Actions* http://www.op.nysed.gov/opd/rasearch.htm

[5] See NYS Department of Health - Office of Professional Medical Conduct database – searchable here: https://apps.health.ny.gov/pubdoh/professionals/doctors/conduct/factions/Home.action

[6] Section 89.7 of NYS FOIL explicitly permits the home addresses of present or former public employees to be withheld. FOIL's existing provisions already allow for the withholding or redaction of personal information in documents (i.e. information where the release of such information would credibly endanger the life or safety of any person, or be an "unwarranted invasion of personal privacy").

50-a must be repealed because it harms the most vulnerable New Yorkers. It is no secret that there is a crisis in meaningful, timely and transparent police accountability. There are people throughout the state who have had direct experiences of brutality, sexual harm, and abuse by police officers & those whose loved ones have been killed by police – and there is little public information concerning the misconduct history of officer's who engage in wrongdoing. Departments across the state have cited 50-a when refusing to turn over basic information about police misconduct, even the names of officers who brutalize and kill. Police departments have been empowered to withhold virtually any information related to officers who harm civilians. T

In March of 2018, Buzzfeed News obtained and reported on records that included hundreds of cases where officers engaged in serious, fireable offenses, like lying under oath, using excessive force and sexual misconduct – none of the officers part of that leak were fired despite being found to be guilty of egregious misconduct.[7] This information only became available to the public because it was leaked to the press.

According to NYC's Civilian Complaint Review Board's (CCRB) 2018 Annual Report, in a 15-month period the CCRB received 117 complaints of sexual misconduct by officers. This included catcalls, sexual propositions, unwanted touching and sexual assault. Because of the expanded application of 50-a, the public has no access to records regarding whether individual police officers have been accused of misconduct – including sexual violence, whether those accusations have been substantiated and even whether officers have been disciplined for misconduct.[8]

In 2014, Eric Garner, was killed by NYPD in Staten Island. In the wake of Garner's death, 50-a was used as an excuse not to disclose disciplinary records and information about CCRB complaints against Daniel Pantaleo, the NYPD officer who put Eric in a NYPD-banned chokehold. Eric Garner's family only knows about some of Pantaleo's substantiated misconduct and the inadequate discipline for that misconduct because the information was leaked to media by a whistleblower. If Pantaleo's past misconduct had been dealt with seriously, it's possible Eric Garner would still be alive today. During the NYPD disciplinary trial of Officer Pantaleo, Officer Pantaleo did not testify on the stand. Instead, he was allowed to submit the interview he gave the department's Internal Affairs Bureau in December 2014 as testimony. Because of 50-a, the Garner family is not able to view the submitted interview or other evidence in the trial of Officer Pantaleo – even though the trial itself was public.

In 2012, Ramarley Graham, an unarmed 18-year-old Black youth was killed by the NYPD in his own home in front of his grandmother and 6-year-old brother. The officer who killed Ramarley had a history of past misconduct that was hidden from public view and that got only a slap on the wrist instead of serious discipline. We only know about that misconduct because a whistleblower leaked the information to press. If the public had known about this misconduct, and if the NYPD had taken discipline of Richard Haste more seriously with early violations, it is possible that Ramarley would still be alive today.

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[7] Kendall Tagar and Michael Hayes, Secret NYPD Files: Officers Who Lie And Brutally Beat People Can Keep Their Jobs, Buzzfeed News - published March 5th, 2018 https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious

[8] Civilian Complaint Review Board, 2018 Annual Report https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018CCRB_AnnualReport.pdf

These are just a few examples of how the culture of police secrecy enabled by 50-a allows departments to shield failed disciplinary processes from public view – and how this has had a tangible, negative impact in the lives of countless of New Yorkers.

4. Police secrecy hurts public trust in government, especially as related to police departments.

Repealing 50-a isn't just a policing issue, it is fundamentally an issue of good government and fairness. The public should have the right to have access information concerning the operations of police departments – especially as related to misconduct histories and discipline. Police secrecy makes it difficult for the public to hold police departments and officers accountable for misconduct. This undermines faith in government generally - and is especially dangerous because police are the one profession permitted to use deadly force.

Police misconduct should never be hidden from public view. Without access to misconduct and disciplinary information, the public is unable to assess whether police departments are accountable to the public they serve. This erodes public trust. Lack of meaningful public oversight of police misconduct erodes public confidence in the Department and is incredibly expensive for taxpayers. In 2018 for example, the NYC Police Department paid out over 230 million dollars to settle over 6,000 lawsuits against the NYPD.[9] The crisis in police accountability is systemic and it thrives because misconduct is shrouded in secrecy at great cost to the public.

The repeal of 50-a is good common-sense policy – police transparency is critical for the safety of all New Yorkers. Communities need to know that the officers who patrol their streets do not have histories of harming others and the departments who hire these officers are not hiding misconduct and brutality. This is impossible without taking a critical first step: the full repeal of 50-a. 50-a is outdated, unnecessary and ultimately incredibly harmful to all of us. **We urge members of the New York State legislature to pass S3695/A2513 and repeal 50-a in January of the 2020 session.**

III. Full repeal is necessary

Communities United for Police Reform opposes efforts to modify or amend 50-a and are calling on the legislature to pass a full repeal of the law (S3695/A2513).

[9]Graham Rayman and Clayton Guise, NYC spent $230M on NYPD settlements last year: report, New York Daily News – published on April 15th, 2019 https://www.nydailynews.com/new-york/ny-stringer-report-nypd-payout-settlement-lawsuits-20190415-2zzm2zkhpna63dtlcr2zks6eoq-story.html

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Testimony of the New York News Publishers Association

Senate Committee on Codes

Civil Rights Law 50-a

October 24, 2019

Albany, New York

Senate Committee on Codes
October 24, 2019
S.3695

The New York News Publishers Association appreciates the opportunity to express our views regarding Civil Rights Law Section 50-a. This law was originally intended to protect courtroom testimony of police officers from being unfairly impugned by defense attorneys searching for examples of unrelated past disciplinary issues. Over the years, expansive interpretations of its scope have hindered news reporting on law enforcement misconduct and thus inhibited public accountability for officials in the most sensitive taxpayer-supported positions.

New York is among only three states which provide such extensive secrecy for the personnel records of law enforcement officers. Its expansion has drawn an opaque curtain over a category of records which are of vital public interest. Trust in law enforcement is eroded when the law serves as a closed door behind which government agencies secretly handle allegations of abuse of authority.

Although there are many high-profile cases exemplifying the effect of law enforcement personnel record secrecy in the New York City metropolitan area, those are well-documented elsewhere.[1]

NYNPA's member newspapers cover communities throughout the state, from its largest cities to its most rural communities. They report on big-city police departments, rural sheriffs departments, local fire departments, county jails and maximum security prisons.

Smaller towns and cities often feature compact municipal governments in which "everybody knows everybody" and there can be an inclination to protect colleagues. Lack of independent scrutiny of components of the justice system fosters an environment in which misconduct can thrive.

Newspapers throughout upstate New York report on wrongful behavior by law enforcement officials despite the vacuum in public accountability created by 50-a of Civil Rights Law.

Complaints of misconduct by police or correction officers to internal affairs units or civilian complaint review boards remain secret except, sometimes, when an investigation results in

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[1] Report on Legislation by The Civil Rights Committee and the Criminal Courts Committee of the New York City Bar, regarding A.3333, January 2018.
2016 and 2017 Reports to the Governor and the Legislature, New York State Committee on Open Government.

litigation, criminal charges or dismissal from employment and documents no longer fall under the shield of 50-a.

The *Times Union* of Albany reported on alleged brutality by a group of rogue correction officers at the Greene Correctional Facility. For more than a year, the state Department of Corrections and Community Supervision refused to release records about the claims, citing 50-a. The identities of some accused correction officers were publicly revealed only by litigation, or conviction following a state Inspector General's investigation, or as a result of DOCCS arbitration hearings.[2]

The *Times Union* also waged a successful four-year battle for records of machine gun purchases by Albany police officers. Records provided after a unanimous ruling by the New York State Court of Appeals in 2010 revealed the officers purchased the guns as "souvenirs," which they later sold or traded. The disposition of some of the guns remains a mystery. [3]

More recently, the *Times Union* published a news story and an editorial following the arrest of an off-duty Troy Police Officer, whose past on-duty behavior has resulted in the city paying out tens of thousands of dollars to settle at least four lawsuits relating to excessive use of force. As the newspaper pointed out in a September 12, 2018 editorial, "This is what the public has been able to find out about. Whatever other problems this officer may have in his file would typically be shielded from disclosure under Section 50-a of the state's civil rights law..." [4]

Sometimes, the application of 50-a results in the public gaining an incomplete picture of possible political corruption when only some types of documents are withheld. The *East Hampton Star* detailed a lawsuit by a former village police chief, who accused village officials of interfering with his private security business in order to protect their own competing business. The village withheld documents relating to outside employment of village police officers from a related FOIL request, citing 50-a. [5]

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[2] "Beaten ... to the ground"
https://www.timesunion.com/tuplus-local/article/Beaten-to-the-ground-6748288.php

[3] "Top court: give up names of officers"
https://www.timesunion.com/news/article/Top-court-Give-up-names-of-officers-562976.php

[4] "How many strikes, Troy?"
https://www.timesunion.com/opinion/article/Editorial-How-many-strikes-Troy-13222273.php

[5] "Setback for Ex-Chief's Suit Against East Hampton Village"
http://easthamptonstar.com/Lead-article/2018508/Setback-Ex-Chiefs-Suit-Against-East-Hampton-Village

I. Public Actions, Secret Consequences

Public trust in the fairness of the justice system is eroded when investigation of misconduct that takes place in public is shrouded in secrecy. [6]

A 2013 incident in which Rochester police officers tipped a disabled man out of his wheelchair and began kicking him was witnessed by bystanders, and video of the incident was posted to YouTube. However, when the Rochester *Democrat and Chronicle* followed up multiple times over the ensuing two years, the newspaper learned very little. As it happens, the city's Civilian Review Board of the Center for Dispute Settlement "is not allowed to release details on the cases it handles. The city does not even allow CDS to release data on how many complaints of police misconduct are found to be substantiated or unsubstantiated every year."[7]

The *Daily Gazette* of Schenectady has reported on (and challenged in court) multiple incidents involving off-duty misbehavior by police. [8]

Additionally, there is concern that video captured on police body-worn cameras will be kept secret, even when the events captured on video were witnessed or recorded by witnesses in public.

II. Allegations of Racial Bias

Discipline relating to behavior that involves allegations of racial bias among law enforcement officers can be kept secret, fueling mistrust among members of the community.

The *Daily Freeman* of Kingston documented two incidents in 2017 involving allegations of use of excessive force by white police officers against black individuals. Although the city's Board of Police Commissioners told the newspaper they were reviewing one complaint, and had

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[6] "Ulster County won't divulge result of investigation into officer's seemingly racist Facebook post"
http://daily freeman.com/article/DF/20180116/NEWS/180119743

[7] "Erica Bryant: Whatever happened to Benny Warr?"
https://www.democratandchronicle.com/story/news/local/2013/12/06/erica-bryant-what-ever-happened-to-benny-warr-/3895715/

[8] "Foss: Too much secrecy on police discipline"
https://dailygazette.com/article/2018/07/04/foss-too-much-secrecy-on-police-discipline

recommended discipline against officers in another case, the city's attorney and police chief both declined not only to name the officers, but to disclose the nature of the discipline. [9]

III. Secrecy Protects a Culture of Misconduct

Beyond isolated incidents of misconduct, there are indications that more widespread misbehavior is condoned. The *Syracuse Post-Standard* revealed that 11 of the city's 400 police officers were behind nearly a quarter of complaints of misconduct, according to a report by the city's Citizen Review Board. The city refused the newspaper's request for information about the identities of the officers and any disciplinary action taken, even though the law does not cover records maintained by civilian review boards. Buffalo lacks even a formal civilian oversight board, and reporting by the Investigative Post indicates the police department's on Internal Affairs Division rarely finds evidence of misconduct. Even when discipline is administered, the details nearly always remain secret. [10]

IV. Secret Investigations Behind Prison Walls

New York's prisons are overwhelmingly located in rural areas, and the scope of secrecy provided by the expansion of 50-a interferes with journalists' ability to uncover and disclose misconduct by correction officers. Even larger news organizations which are able to devote staff and legal work to efforts to report on misconduct inside the prison system encounter significant challenges. [11]

Journalists sometimes report on misconduct in response to complaints by inmates, but face challenges in adequately corroborating those stories in order to ensure accuracy. News stories reveal that very few complaints filed within internal affairs or other oversight agencies result in official action.[12]

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[9] "Names of Kingston police officers facing discipline likely to remain under wraps" http://www.dailyfreeman.com/article/DF/20171221/NEWS/171229939

[10] " 11 Syracuse police officers behind nearly a quarter of complaints, board finds" https://www.syracuse.com/crime/index.ssf/2016/04/eleven_syracuse_police_officers_behind_nearly_a_quarter_of_citizen_complaints_bo.html
"Scant oversight of Buffalo police"
http://www.investigativepost.org/2017/02/15/scant-oversight-of-buffalo-police/

[11] "The Scourge of Racial Bias in New York State's Prisons"
https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html

[12] "State pays $450,000 to beaten inmate, one of 24 payouts"
https://www.poughkeepsiejournal.com/story/news/local/2015/09/12/prisons-brutality-fishkill-correctional-downstate-green-haven-lawsuits-settlements-beatings-union-grievance/72159070/

Even when misconduct results in disciplinary action against law enforcement officers, the identity of the officers can be kept secret. [13]

V. Public Employees, Private Consequences

The law also, inexplicably, covers paid firefighters. Allegations of sexual harassment involving the Interim Fire Chief of the Utica Fire Department were made public by the alleged victim's father and, although the city "administered discipline against one unnamed member of the fire department," the identity of the person disciplined or the manner of the discipline were kept secret. The Mayor's office released a statement referencing 50-a of Civil Rights Law as the reason the city would not disclose the results of its investigation. [14]

VI. Restoring Transparency and Trust

We applaud Senator Bailey and Assemblyman O'Donnell's sponsorship of legislation to repeal Sec. 50-a, and urge the Legislature to reopen a window into the investigation and resolution of allegations of misconduct by public employees whose positions grant them tremendous power over average citizens.

Respectfully submitted,

Diane Kennedy
President
October 24, 2019

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[13] "Deputy resigns, 3 other officers suspended after Wayne Co. Jail escape" https://13wham.com/news/local/deputy-resigns-3-other-officers-suspended-after-wayne-co-jail-escape

[14] "Utica interim fire chief resigns amid controversy" http://www.uticaod.com/news/20180618/utica-interim-fire-chief-resigns-amid-controversy

LDF

DEFEND EDUCATE EMPOWER

Testimony of Katurah Topps
Policy Counsel
NAACP Legal Defense and Educational Fund, Inc.

Before the New York Senate
Standing Committee on Codes

Hearing on
the repeal of Civil Rights Law 50-a

October 24, 2019

Good morning Chairman Bailey and members of the Committee; my name is Katurah Topps and I am Policy Counsel at the NAACP Legal Defense and Educational Fund ("LDF"). I thank you for the opportunity to testify this morning concerning Civil Rights Law 50-a ("50-a") and the urgent need for its complete repeal.

Since its founding in 1940, LDF has served as the foremost civil rights organization advocating for the rights of Black people across this country. In doing so, LDF has witnessed first-hand the importance of challenging laws and policies that support systematic discrimination. This is why, for nearly 80 years, we have litigated cases, advanced policies, and organized community members to combat America's policing crisis at the national, state, and local level. Specifically, our Policing Reform Campaign work,[1] advocating for police accountability and transparency in cities like Ferguson, Baltimore, North Charleston, Tulsa, and New York,[2] gives us a unique perspective into the undeniable ills that come from laws like 50-a.

I. Repealing CRL 50-a Will Eliminate its Overly Broad Application While Simultaneously Protecting Officer and Public Safety

New York's current use of 50-a makes it the *worst*[3] state in the country for transparency of police[4] misconduct and discipline. Unlike nearly every other state,

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[1] *See e.g.*, LDF joins letter to Attorney General Sessions, *et. al.*, urging the U.S. Department of Justice to meet its obligations under the Death in Custody Reporting Act to collect "an accurate and complete set of data documenting the number, circumstances, and characteristics of police involved killings," August 7, 2018, http://civilrightsdocs.info/pdf/criminal-justice/Letter-to-DOJ-DCRA-Guidance-August-2018.pdf; *It Matters if You're Black or White: Racial Disparities of Complaints Against North Charleston Officers* (finding that Black residents were more likely to file complaints against officers than their White counterparts, and complaints filed by Black residents were sustained at a much lower rate), available at https://www.naacpldf.org/files/about-us/NAACP%20LDF%20report%20on%20North%20Charleston%20Police%20Dept%20FINAL%20July%202017.pdf.

[2] *See* LDF and the Center for Constitutional Rights Joint *Letter of Support for Repeal of CRL 50-a, Allowing Public Disclosure of Police Records Relating to Officer Misconduct, A2513-O'Donnell / S3695-Bailey,* available at https://www.naacpldf.org/press-release/ldf-and-center-for-constitutional-rights-send-letter-to-new-york-legislators-urging-repeal-of-crl-50-a-allowing-public-disclosure-of-police-records-relating-to-officer-misconduct/.

[3] 50-a is the most secretive law on police misconduct because it blankly labels police "personnel records" confidential despite FOIL's explicit exemptions that serve as privacy protections for law enforcement; *see* Communities United for Police Reform press release noting "New York's [secrecy law] is the most restrictive . . . , https://www.changethenypd.org/releases/state-legislators-advocates-call-repeal-new-york%E2%80%99s-police-secrecy-law-among-worst-nation; *see also* NYC Bar Association Report On Legislation By The Civil Rights Committee and the Criminal Courts Committee at 2-3, (noting that 50-a's restriction on the broad category of "personnel records used to evaluate performance" restricts more police misconduct than Delaware's—the second most restrictive state regarding police misconduct—narrower restriction against viewing personnel records that would constitute an "invasion of privacy" under state and federal law), available at https://s3.amazonaws.com/documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency.pdf.

[4] Though 50-a addresses police officers, correctional officers, and firefighters alike, this testimony focuses on the particularly alarming consequences of police use of 50-a.

New York allows its police departments to deliberately conceal misconduct and disciplinary results from public view. In practice, this means New York officers can—and have—terrorized, sexually assaulted, lied under oath, falsified official reports, beaten, and even unconstitutionally killed residents of New York, while receiving insufficient discipline and public accountability.[5] Instead, these officers walk right back into our communities, leaving the public they are supposed to protect and serve are unaware of their actions. As home to the largest police department in the country, this powerful veil of secrecy over officer misconduct is both dangerous and unacceptable.

In response to the growing outcry for 50-a repeal,[6] those that benefit from 50-a have begun to spread false narratives around its current use and purpose. At last week's hearing, the New York State Police Benevolent Association ("PBA"), the Lieutenants Benevolent Association, and the Correction Officers' Benevolent Association painted 50-a as simply a measure to protect officers' personal information from public exposure. This could not be further from the truth. New York's Freedom of Information Law ("FOIL") requires personal information like home addresses and social security numbers be redacted on any document available to the public.[7] Additionally, FOIL adds an extra layer of protection for police officers by allowing an agency to withhold records where disclosure would constitute an unwarranted invasion of personal privacy,[8] endanger the life or safety of any person,[9] or reveal the home address of a present or former public employee.[10] Because proper agency use of these FOIL exemptions are more than sufficient to safeguard legitimate officer privacy and safety concerns, the legislature can repeal 50-a immediately and not jeopardize the safety of *any* police officer, correctional officer, or fireman in this state.

Moreover, New Yorkers are not pushing for the repeal of 50-a because they want officers' home addresses, social security numbers, or other personal

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[5] *See e.g.*, Kendall Taggert and Mike Hayes, *Secret NYPD Files: Officers Who Lie And Brutally Beat People Can Keep Their Jobs*, Mar. 5, 2018, BuzzFeed, https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious (explaining that at least 300 NYPD officers were allowed to keep their jobs despite conducting clear fireable offenses); Marc Santia and Checkey Beckford, *2 NYPD Detectives Indicted for Allegedly Raping Young Woman After Putting Her in Handcuffs*, Oct. 30, 2017, NBC New York, https://www.nbcnewyork.com/news/local/NYPD-Officers-Rape-Sex-Attack-Arrest-Eddie-Martins-Richard-Hall-454046173.html; Rocco Parascandola and Tina Moore, *EXCLUSIVE: Two NYPD cops admit to wrongdoing, but will keep their jobs after booze-filled night with rape victim in Seattle, Mar. 10, 2015, New York Daily News*, https://www.nydailynews.com/new-york/nypd-cops-admit-wrongdoing-jobs-article-1.2143564.

[6] Thirty-two organizations across the state of New York understood the urgency to repeal 50-a and, led by the New York City Bar Association, publicly called for immediate repeal of 50-a in April 2018, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/allow-for-public-disclosure-of-police-records-relating-to-misconduct-repeal-crl-50-a.

[7] Pub. Off. L. §§ 87(2)(a) and 87(7).

[8] *Id.* at § 87(2)(b).

[9] *Id.* at § 87(2)(f).

[10] *Id.* at § 89(7).

information.[11] They simply want to be informed about the armed officers policing their homes and neighborhoods and hold them to the same standard that New York State applies to other public servants like doctors, lawyers, teachers, and even massage therapists.[12]

Rather than adhere to this common-sense level of transparency, however, the PBA argues that the current use of 50-a is proper, given the law's origins.[13] This legislature enacted 50-a in 1976 to serve a narrow purpose—preventing defense attorneys from using unsupported allegations in an officer's disciplinary file to undermine their credibility during cross-examination. Today, however, the New York City Police Department ("NYPD") broadly interprets 50-a as preventing the public, defense attorneys, and the media from accessing *any* information, about any police officer, that could even remotely be deemed to affect police personnel decisions, including department-wide use of force reporting, aggregate details about the Department's stops, searches, arrests, and even body camera footage.[14] Most commonly, however, the NYPD uses 50-a to keep victims of police misconduct in the dark, refusing to release even the most basic details about the officers involved, such as their names and actions. For example, when an NYPD officer followed 18-year-old, unarmed Ramarley Graham home from a bodega, kicked in his apartment door, and killed him in front of his grandmother and younger brother, the NYPD refused to disclose key details about the killing officer, Richard Haste. Shielded

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[11] Philadelphia, Los Angeles, and Chicago police departments all have officer disciplinary records available to the public yet cite no consequential increased threats or retaliatory harm to officers due to these publications. Specifically, in Chicago, a group posted over 240,000 allegations of police misconduct involving more than 22,000 Chicago police officers' disciplinary records without jeopardizing officer safety; *see* Jamie Kalven, *Invisible Institute Relaunches the Citizens Police Data Project*, The Intercept, (Aug. 16, 2018), https://theintercept.com/2018/08/16/invisible-institute-chicago-police-data/, ("For decades, the city of Chicago, the police department, and the police unions argued that various horrible consequences would ensue if officer names were made public—officers would be targeted, their families harassed, the security of police operations undermined, etc. In the three years since we made the first limited release of police disciplinary information, nothing of that nature has been reported,").

[12] *See* http://www.op.nysed.gov/opd/rasearch.htm#name and https://apps.health.ny.gov/pubdoh/professionals/doctors/conduct/factions/Home.action, publicly available databases that show disciplinary history.

[13] *See* Statement of NYC PBA President Patrick J. Lynch regarding repeal of 50-a, Oct. 17, 2019, available at http://nycpba.org/media/35716/191017.pdf.

[14] Ashley Southhall, *4 Years After Eric Garner's Death, Secrecy Law on Police Discipline Remains Unchanged, June 3, 2018,* NEW YORK TIMES, https://www.nytimes.com/2018/06/03/nyregion/police-discipline-records-garner.html; Gloria Pazmino, *Police Union Sues De Blasio Administration, NYPD Over Release of Body Cam Footage*, Jan. 1, 2018, POLITICO, https://www.politico.com/states/new-york/city-hall/story/2018/01/09/police-union-sues-de-blasio-administration-over-release-of-body-worn-camera-footage-177414; Graham Rayman, *NYPD Refuses to Reveal Precinct Use-Of-Force Data, Citing State Law*, May 10, 2018, NEW YORK DAILY NEWS, https://www.nydailynews.com/new-york/nypd-refuses-reveal-use-of-force-data-citing-state-law-article-1.3981630; Tina Moore and Shawn Cohen, *NYPD to Post Discipline Records Online, Won't Reveal Names*, Mar. 27, 2018, NEW YORK POST, https://nypost.com/2018/03/27/nypd-to-post-discipline-records-online-wont-reveal-names/.

by secrecy and protection, Haste continued to work on the force for nearly five years after killing Ramarley, until Ramarley's family successfully sued for information, and Haste decided to resign. [15] In the seven years since Ramarley's untimely death, the only thing that has changed is that his grieving mother is now joined by multiple other families experiencing the same pain.

This is so far from 50-a's original narrow purpose that the New York Department of State Committee on Open Government's last five annual Reports to the Governor and State Legislature "have each highlighted the alarming lack of public information about law enforcement agencies that these [50-a] rulings have engendered."[16] The December 2018 Report even noted that courts have broadly used 50-a to withhold information from the public even in cases *where the police departments themselves have determined that their officers broke the law* and departmental failings have led to a citizen's deaths and payouts of millions of dollars in tax payer funds.[17] The Report concluded that "a repeal of 50-a is long overdue."[18]

II. CRL 50-a is Particularly Harmful to New York's Black and Brown Communities

50-a's almost-impenetrable veil of secrecy is particularly alarming here because, for decades, New York City police officers have repeatedly abused their authority with unconstitutional policing practices that target and discriminate against communities of color, especially Black and Latinx New Yorkers. In *Floyd v. City of New York,*[19] a federal court found that that the NYPD engaged in a pattern and practice of racial profiling and unconstitutional stops under the Fourth and Fourteenth Amendments to the U.S. Constitution. [20]

In 2010, LDF, with co-counsel the Legal Aid Society and Paul, Weiss, Rifkind, Wharton & Garrison, LLP, filed *Davis, et al. v. City of New York, et al.* on behalf of plaintiffs challenging the NYPD's policy and practice of unlawfully stopping and arresting New York City Housing Authority ("NYCHA") residents and their visitors for "criminal trespass" without sufficient evidence; again, those targeted were overwhelmingly Black and Latinx,.[21] In 2015, the *Davis* plaintiffs reached a settlement with the City that required the NYPD's full participation in

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[15] Noah Manskar, *Ramarley Graham Records Could Reveal More About 2012 Killing, Apr. 8, 2018,* https://patch.com/new-york/new-york-city/ramarley-graham-records-could-reveal-more-2012-killing.
[16] Comm. on Open Gov't, NY Dep't of State, 2018 Report at 4, (Dec. 2018), available at https://www.dos.ny.gov/coog/pdfs/2018%20Annual%20Report.pdf.
[17] *Id.* at 4-5.
[18] *Id. at 4.*
[19] *Floyd v. City of New York*, 959 F.Supp.2d 540, 660-665 (S.D.N.Y. 2013).
[20] *Racial Discrimination in Stop-and-Frisk*, N.Y. TIMES, (Aug. 12, 2013), https://www.nytimes.com/2013/08/13/opinion/racial-discrimination-in-stop-and-frisk.html; *see also* https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al.
[21] *Id.*

the same federal court monitoring that the court had previously ordered for NPYD's discriminatory practices in *Floyd*.[22]

In response to these rulings, the NYPD ramped up its gang enforcement practices under the guise of "precision policing" and a secret gang database. But the NYPD's gang enforcement is the functional equivalent of the Department's unconstitutional stop-and-frisk policing tactics: nearly 99 percent of the people in the database are people of color and nearly 88 percent are Black or Latinx, and the NYPD uses the database to justify the Department's presumption of criminality, without due process.[23]

This culture of systemic racial discrimination still permeates the NYPD today. Despite this, NYPD's leadership has failed to adequately discipline, terminate, or otherwise hold officers accountable for misconduct by justifying the behavior or giving the officer a slap on the wrist.[24] This, coupled with officers' implicit and/or explicit biases and 50-a's guarantee of secrecy, is the very combination of factors that allowed NYPD officer Daniel Pantaleo ("Pantaleo") to remain on the force for so long. Before he killed Eric Garner, Pantaleo had four substantiated complaints of abusive stops and excessive force,[25] three additional disciplinary complaints, fourteen allegations, and had been sued three times for falsely arresting Black men.[26] Nevertheless, he was repeatedly allowed to return to his duties, with 50-a shielding him—and those

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[22] Complaint, *Davis v. City of New York*, 2010 WL 9937605 (S.D.N.Y. 2011) (No. 1), https://dev.naacpldf.org/wpcontent/uploads/Complaint1.pdf?_ga=2.49083558.141431006.1559743995-2134253651.1504725451.

[23] THE APPEAL, *Spotlight: The Dangers Of Gang Databases And Gang Policing, available at* https://Theappeal.Org/Spotlight-The-Dangers-Of-Gang-Databases-And-Gang-Policing/; *see also* https://Nypost.Com/2019/06/27/Nypd-Blasts-Proposal-To-Warn-Kids-On-Gang-Database/ (showing that NYPD continues to defend its gang database).

[24] *See for example*, NYPD Officer James Frascatore, who, in plain clothes and without announcing himself as police, forcefully tackled an unarmed black man, retired tennis star James Blake, while Blake stood outside of his hotel. Frascatore's discipline was a mere loss of 5 vacation days, *3 years later*; NYPD concealed the entire encounter and discipline—until someone leaked it, https://www.nydailynews.com/new-york/ny-metro-nypd-frascatore-james-blake-tackled-penalty-20180607-story.html, exposing Frascatore's violent history towards citizens, multiple citizen complaints, and NYPD's failure to remove him from the force. *See* Benjamin Mueller and Nate Schweber, *Officer Who Arrested James Blake Has History of Force Complaints*, The New York Times, Sept. 2015, available at https://www.nytimes.com/2015/09/12/nyregion/video-captures-new-york-officer-manhandling-tennis-star-during-arrest.html?module=inline (listing at least 5 separate accounts of Frascatore's unprovoked violence and noting "[i]n 2012, a Queens man said, Officer James Frascatore pulled him over for a broken taillight, opened his car door and punched him three times in the mouth, unprovoked . . . [t]he following year, another Queens resident claimed, Officer Frascatore punched him in the stomach several times outside a bodega and called him a racial epithet.").

[25] Carimah Townes and Jack Jenkins, *EXCLUSIVE DOCUMENTS: The Disturbing Secret History of the NYPD Officer Who Killed Eric Garner*, (Mar. 21, 2017), https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3/#.la45ptpyu.

[26] Michael Harriot, *Leaked Documents Reveal How the NYPD Ignored Abusive History of the Cop Who Killed Eric Garner*, Mar. 23, 2017, THE ROOT, https://www.theroot.com/leaked-documents-reveal-how-the-nypd-ignored-abusive-hi-1793551515.

who failed to properly discipline him—from public scrutiny. Even after Pantaleo killed Garner, the NYPD still tried to cover up the details surrounding Pantaleo's background and Garner's untimely death. Only after Pantaleo's disciplinary files were leaked to the media did the public truly understood the type of officer—and police department—they were dealing with. Examples like this make clear that a failure to repeal 50-a is either blatant denial of the facts or a complete disregard for the safety and security of all New Yorkers.

III. CONCLUSION

Repealing 50-a is an urgent matter. Police, correction officers, and firefighters are public servants, sworn to protect and serve all New Yorkers. When they fail to measure up to this oath, the public deserves to know. And when those charged with disciplining and removing these officers from service fail to do so, the public must also know. As history has clearly shown, the New York State Legislature should not allow the NYPD to police itself.

This request for the most basic allowance of accountability and transparency, from a Department riddled with misconduct and disciplinary failures, is the bare minimum to ensure the safety and security of all New Yorkers—particularly communities of color. For these reasons, I urge you to prioritize a complete repeal of 50-a.

~ Joint Testimony ~

New York State Association of PBAs, Inc.
(NYSAP)
Michael O'Meara, President

&

Police Conference of New York, Inc.
(PCNY)
Richard Wells, President

&

New York State Troopers PBA, Inc.
(NYSTPBA)
Thomas H. Mungeer, President

Senate Codes Committee
Senator Jamaal Bailey, Chair

Thursday, October 24, 2019

Testimony of Michael O'Meara, President,
New York State Association of PBAs, Inc. (NYSAP)

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Testimony of Richard Wells, President,
Police Conference of New York, Inc. (PCNY)

~~~

Testimony of Thomas H. Mungeer, President,
New York State Troopers PBA, Inc. (NYSTPBA)

In Opposition to
S3695 (Senator Bailey) – *"Repeals section 50-a of the civil rights law."*

Section 50-a of the Civil Rights Law currently provides that all personnel records used to evaluate performance toward continued employment or promotion under the control of any police agency are considered confidential and not subject to inspection or review without the consent of the officer they relate to or on court order.

Subpart 2 thereof provides that a Judge reviewing such a request must review the entire file and may only order disclosure upon a clear showing of facts sufficient to warrant the request. Subpart 4 thereof provides that the information is available without court order to any appropriate government agency such as any district attorney or his assistants, the attorney general, county attorneys or any agency of government which requires the records in furtherance of their official functions.

NYSAP, PCNY, and NYSTPA oppose any modifications to Section 50-a because it serves the important function it was intended to serve when it was passed in 1976 very well and accommodates all legitimate needs for the subject information in its current form

The reasons underlying the initial passage of Section 50-a still exist and are stronger than ever. In Prisoners Legal Services of New York v. New York State Department of Corrections, 73 NY2d 26 (1988), the Court of Appeals held that the purpose of Section 50-a was to protect the officers from the use of records – including unsubstantiated and irrelevant complaints of misconduct – as a means for harassment and reprisals and for purposes of cross examination by plaintiff's counsel during litigation, citing legislative bill jacket materials. Those purposes have not gone away, and in fact they have become even more important. Over the 43 year span since 50-a was initially passed, our nation's propensity to police bashing, second guessing and retaliation has increased dramatically, substantially increasing the danger of retaliation and reprisal to police officers and their families for doing their jobs. Focus on the police community, predominantly negative in fashion, by the media has also increased dramatically. Our police officers need the protection of Section 50-a now more than they ever have.

The existing Section 50-a does the job it was intended to do and allows everyone with a

legitimate interest in relevant information from a police officer's file the opportunity to obtain it. Section 4 of Section 50-a makes its confidentiality inapplicable to any district attorney or his assistants, the attorney general or his deputies or assistants, a county attorney or his deputies or assistants, a corporation counsel or his deputies or assistants, a town attorney or his deputy or his assistants, a village attorney or his deputy or assistants, a grand jury or any agency of government which requires the police officer's personnel file in the furtherance of their official functions. Prosecutors are not hindered or limited in fulfilling their obligations to disclose adverse information about their witnesses under Brady, Giglio and other Supreme Court authorities. No criminal prosecution or disciplinary proceeding is hindered by Section 50-a. Subparts 1 and 2 of Section 50-a make relevant portions of a police officer's file available to any person who can demonstrate a legitimate need for the information to a judge. The routine procedure is that anyone who files a civil rights, excessive force, or other legal action against a police officer or a police department makes a request during the discovery phase of the case for the personnel records of all involved officers. The records are turned over in bulk to the judge presiding over the case. The judge reviews the records in camera, provides copies of materials relevant to the claim in question to the plaintiff and returns the rest to the police department undisclosed. This process accommodates the needs of everyone with a legitimate interest in the information while protecting the officers and the officer's family's rights to privacy.

Personnel files contain a lot more than relevant information. While practices vary from department to department, it is common that police officers' personnel files contain records of the department's background investigation before the officer is even hired and virtually everything else that applies to the officer's employment, including unsubstantiated letters of complaint, records of internal disputes with other officers, sick leave use, etc. There is also invariably reference to the officer's home address and contact information. None of those things are relevant to any legitimate purpose that anyone would have in seeking an officer's personnel file. If his personnel file were not protected, that information would be subject to release at the whimsy of the municipality's freedom of information officer, who is frequently an existing municipal employee who had the designation as freedom of information officer heaped on top of his or her existing duties and responsibilities. That is not sufficient protection for such vital information. Section 50-a serves admirably to allow those who need it to obtain the relevant information while protecting the personal and/or irrelevant information in the officer's personnel file.

Other citizens of this state enjoy far greater protection of their personal information for less reason. Sections 2805-m and 3616-a of the Public Health Law, Section 29.29 of the Mental Hygiene Law and Section 6527 of the Education Law combine to impose a cloak of confidentiality on all complaints against essentially all participants in the health care industry, from doctors and nurses to mental hygiene workers and even to home health aides and all records, reports, investigations and disciplinary actions resulting therefrom. That protection is far greater than the protection afforded to police officers under Section 50-a because it extends even to the litigation process, barring any discovery of the matters at hand even if they relate directly to the matters involved in pending litigation. That means that even a victim of blatant medical

malpractice cannot under any circumstances obtain the same sort of relevant information that a plaintiff pursuing a claim against a police officer is routinely given access to under Section 50-a.

The offered justification for this draconian blanket of secrecy for health care providers is that it promotes the quality of care through self review without fear of legal reprisals, enhances the objectivity of the review process, assures that medical review committees may frankly and objectively analyze the quality of health services rendered by hospitals and enables a psychiatric hospital to ameliorate the causes of untoward incidents through unfettered investigations. Katherine F. v. State of New York, 94 NY2d 200 (1999). Those same observations could be made in the context of police personnel records. However, those arguments do not even arise under Section 50-a because anyone seeking legal relief against a police officer is entitled to all records that a court determines to be relevant to his or her case. The protections provided by Section 50-a are minor in comparison to the total blackout provided by the medical review confidentiality provisions.

In 2017, this legislature adopted §160.50 of the Criminal Procedure Law which substantially increased criminal's rights to have their criminal records sealed. It would be highly inappropriate to take away the limited confidentiality now afforded to police officer's personnel files after increasing criminals' rights to have their convictions sealed. Criminals are not more important than police.

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WRITTEN TESTIMONY FROM COMMON CAUSE/NY TO THE SENATE STANDING COMMITTEE ON CODES

Public Hearing- October 24th, 2019

Thank you for the opportunity to submit this testimony. Common Cause is a national nonpartisan, nonprofit public advocacy organization founded in New York in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. With more than 1 million members and supporters and 30 state organizations, Common Cause is committed to honest, open and accountable government and to encourage citizen participation in democracy. Since its inception, the New York chapter has always been and continues to be one of the most active state organizations in the country, representing over 60,000 New Yorkers throughout the state.

Recognizing that transparency and public accountability is the bulwark of a healthy and functioning democracy, Common Cause/NY has fought vigorously at both the state and municipal level to bring about an honest and open government. **It has long been Common Cause/NY's position that** governments should conform to the highest standards of transparency and make a concerted effort to provide as much information possible for public review. When New Yorkers are left in the dark about the actions of public officials, the implications are vast and often times irreparable. All New Yorkers suffer when critical decisions are made behind closed doors without opportunity for public scrutiny or oversight.

New York's Freedom of Information Law (FOIL) aims to remedy that problem by providing New Yorkers access to official documents and insight into the government's decision making process, promoting a greater sense of trust in our institutions and public officials. Common Cause/NY helped to pass FOIL and has been a long time supporter, seeking to strengthen and improve it. In 1976 however, the state legislature carved out a small exemption from the statute known as Civil Rights Law 50-A. The law restricts public access to personnel records of law enforcement officers in order to protect them from being used during cross examinations. By virtue of its exemption though, Section 50-A is largely antithetical to FOIL's main goals of transparency and accountability. As a result, 50-A has contributed to a precipitous decline in trust between New Yorkers and the public officials tasked with protecting them.

We strongly support repealing Section 50-A, a statute that is deeply flawed from both a criminal justice and government accountability standpoint. Over the past 40 years, the statute has been interpreted so broadly by the Courts, that it has become nothing more than a deliberate effort to provide blanket protection for police misconduct and prevent the public from conducting necessary oversight. Those who oppose repealing Section 50-A, argue that it would provide for unbridled access

to personnel files, paving the way for harassment and jeopardizing the safety of law enforcement officers. While officer privacy and safety is a legitimate concern, it must also be weighed against the **public's interest in monitoring the actions of all public officials, especially those who are most likely to come into contact with New Yorkers on a regular basis. As noted in the Department of State's** Committee on Open Gover**nment 2018 Report, "it is ironic that public employees having the most authority over peoples' lives are the least accountable relative to disclosure of government records."**

CONCLUSION

Transparency rests at the heart of a healthy and robust democracy. The more the public is aware of the **government's actions and decision**-making process, the more they trust that public officials are acting in their best interest. By stripping the public of crucial oversight powers, Section 50-A impedes on **New Yorkers' abil**ity to actively partake in our democracy and hold law enforcement officials accountable. Repealing 50-A will make our government more accountable, our democracy stronger, and is a necessary step towards restoring public faith in the institutions tasked with protecting them.

Police Benevolent Association
Of The City Of New York, Inc.

NEW YORK STATE SENATE STANDING COMMITTEE ON CODES
Public Hearing: Policing (S3695), repeals provisions relating to personnel records of police officers, firefighters, and correctional officers
October 24, 2019
Van Buren Hearing Room A, Legislative Office Building, 2nd Floor, Albany, New York

SUPPLEMENTAL STATEMENT OF NYC PBA PRESIDENT PATRICK J. LYNCH

The Police Benevolent Association of the City of New York, Inc. ("NYC PBA") and its over 24,000 members, who patrol New York City's streets and do the difficult and dangerous work of protecting every resident, every visitor and every business operating within the five boroughs, submits this supplemental statement in further opposition to Senate Bill S.3695, the enactment of which would repeal Civil Rights Law § 50-a ("CRL § 50-a"). In advance of the Committee's October 17 hearing on this issue, the NYC PBA submitted a statement sharing our strong concerns regarding that bill and general efforts to repeal CRL § 50-a ("Oct. 17 Statement"). At the October 17 hearing, various stakeholders provided oral testimony, much of which was imprecise, inaccurate, or both. It is vital that the discussion of legislation that will have such a drastic impact on the lives of hundreds of thousands of hard-working New Yorkers be based on facts, not falsehoods. The NYC PBA therefore submits this supplemental statement to clarify the record.[1] The first portion of this statement addresses the scope of documents subject to CRL § 50-a and whether public release would achieve the goals articulated by repeal advocates. The second portion refutes specific inaccuracies cited in the oral testimony.

Activists Vocally Demand Access to Substantiated Misconduct Findings (2% of CCRB Cases), Yet Also Quietly Seek Access to Unsubstantiated Allegations via Repeal (98% of CCRB Cases)

As an initial matter, it is important to clarify the scope of the disciplinary documents that will be subject to unfettered access if CRL § 50-a is repealed, and whether the release of those documents would further the advocates' stated purpose for repeal. Advocates have long argued that the purpose of CRL § 50-a is to "protect and hide bad conduct" committed by law enforcement.[2] This was the key point at the October 17 hearing, where panelist after panelist

[1] This supplemental statement should be considered with the previously submitted Oct. 17 Statement.

[2] One panelist went so far as to state that CRL § 50-a's "*only* purpose is to protect and hide police violence."

asserted the need for "transparency" to identify so-called "dangerous officers" based on prior findings of misconduct in order to prevent recurrence of such behavior. But the vast majority of discipline records do not reflect any misconduct committed by police officers. Indeed, last year, the New York City Civilian Complaint Review Board ("CCRB") ***did not find misconduct in 98% of complaints received.*** Repeal advocates consistently conflate ***complaints***, which are ***allegations*** of misconduct, with substantiated findings of wrongdoing. But the difference is vast and important. There simply is no basis to rely on unsubstantiated allegations of misconduct—including false and fraudulent claims—as a means of promoting accountability.

The advocates also rely broadly on the term "misconduct," which encompasses any act for which a police officer can be disciplined. For NYPD officers, this includes, among many other things, failure to maintain a neat and clean personal appearance, unnecessary conversation, and failure to notify a commanding officer when address, telephone number, or social conditions change.[3] It stretches credulity to assert that unfettered access to such information is necessary to achieve the advocates' stated goal. Yet it is plain that release of such information will embarrass police officers, decrease morale, and foster unjustified disrespect for law enforcement.

The Liberties Proponents of Repeal Have Taken With The Facts

The day after the October 17 hearing, New York City Mayor Bill de Blasio delivered a damning assessment of the conduct of those campaigning for the repeal of CRL § 50-a. Specifically, Mayor de Blasio correctly noted that repeal advocates "***are being immature about their facts***" and "***need to start talking about the issues in an honest, intelligent, and fact-based way***." This stunning rebuke should set off alarm bells within the Codes Committee about the information they are receiving from repeal advocates and, by way of example only, some of the advocates' mischaracterizations are discussed below.

Advocate assertion: New York is one of only two states that limit public access to police disciplinary records.

Reality: Police disciplinary records are "pretty much always confidential" in 23+ states and virtually all states limit public access to such records.

Incredibly, panelists continued to regurgitate the completely debunked assertion that New York is one of only two states that restricts access to police disciplinary records.[4] If the Codes

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[3] NYPD Patrol Guide Proc. No. 206-03 (Disciplinary Matters).

[4] *See* Robert Lewis *et al.*, *Is Police Misconduct a Secret in Your State?*, WNYC News (Oct. 15, 2015) (finding that there are "23 states plus the District of Columbia where police disciplinary records are pretty much always confidential," 15 states where such records have "limited availability," and even in the very small minority of states where police records are sometimes public, "many of these states still make records of unsubstantiated complaints or active investigations confidential," which would not be the case in New York absent CRL § 50-a).

Committee nevertheless credits demonstrably false statements like this and pursues a repeal of CRL § 50-a, it will be sending a clear message that facts no longer matter in New York State.

Tellingly, some advocates apparently realized the impact that this "two states" falsehood would have on their credibility, but their response was to be even more misleading. Rather than just admit the truth—that in 23+ states police disciplinary records are "pretty much always confidential"—they have simply added the word "specifically" to their argument and now claim that New York is one of two states that "specifically" restricts access to police records. In fact, and as the advocates conveniently failed to mention, many states have ***far broader*** statutes that make the disciplinary records of police officers ***and*** other public employees confidential.[5] The advocates' goal is clear—that the Codes Committee not notice or appreciate this single word revision and incorrectly believe that 48 other states publish police disciplinary records. Frankly, we should be outraged by this transparent attempt to mislead our elected officials.[6]

Advocate assertion: Repeal would pose zero risk to police officer safety because home addresses might still be protected.

Reality: The internet exists and information such as the names of police officers can easily be used to locate their homes.

Advocates repeatedly made the point that they do not want—and FOIL would protect—addresses and social security numbers, so the repeal of CRL § 50-a would not pose any safety risks to police officers. But, to accept this argument would require the Codes Committee to simply pretend that the internet does not exist. In this day and age, everyone—the repeal advocates, criminals, elected officials, law enforcement—understands and can agree on the fact that a person's name can easily be used to locate their home address. This should not be controversial.

Moreover, that individuals would use such information in an attempt to murder police officers is not "bad faith fearmongering," as the advocates claim.[7] ***Indeed, it recently happened, in New York City, and resulted in the death of an innocent New Yorker.*** Specifically:

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[5] *See id.* (concluding that police disciplinary records are confidential in Alaska, California, Colorado, Delaware, the District of Columbia, Idaho, Iowa, Kansas, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Virginia, and Wyoming).

[6] In one exchange, it was suggested that it would be unacceptable for NYPD police officers to have stronger privacy protections than LAPD police officers. But, if CRL § 50-a is repealed, LAPD police officers would have ***far stronger*** privacy protections than NYPD police officers. There was no explanation of why that would be acceptable.

[7] In light of the assassinations of New York City Police Officers Ramos, Liu, and Familia, and countless other recent attacks on first responders, the accusation levied by repeal advocates that law enforcement is engaging in "fearmongering" here—much less "bad faith fearmongering"—is exceedingly offensive and plainly wrong. How many more police officers need to be assaulted or murdered because of their uniforms before their safety concerns will be heard and not thoughtlessly—and condescendingly—dismissed?

> Kingsley built the explosive device used in the July 28, 2017 murder as part of his broader effort to retaliate violently against several police officers who were part of an NYPD unit that had arrested him in January 2014 . . [He] methodically sought revenge against the officers. He conducted internet searches and made telephone calls to determine the locations of the officers' residences. . . Ultimately, he arranged for the explosive device to be placed outside of [a] Queens residence . . . The building owner inadvertently detonated the device when he tried to open it, and he died as a result of his injuries.[8]

Accordingly, the fact that home addresses may not be released is—as the advocates know—entirely beside the point. Stating the obvious, the publication of information like names, precincts, and incident details can easily be used in a matter of minutes to identify where police officers and their families reside. To suggest that police officers will be safe so long as their addresses are kept confidential is both naïve and irresponsible.

Advocate Assertion: The ONLY RISK to protect against is attacks directed at police officers who commit misconduct.

Reality: A MAJOR RISK to protect against is general attacks against police officers who have committed no misconduct.

One of the main risks of a CRL § 50-a repeal is blatantly obvious, yet not a single panelist bothered to even mention it, let alone explain why it is not a valid concern. If CRL § 50-a is repealed, allegations of misconduct will constantly be sensationalized by the media and advocacy groups, in a cynical effort to generate revenue (tabloids) and demonize police officers (advocates). In the current climate, the publication of outrageous false accusations will only embolden those who believe it is acceptable to assault and even murder police officers.

One line in the October 17, 2019 hearing got a big reaction from repeal advocates—"feelings aren't facts." But, that statement only strongly confirms the need for CRL § 50-a. Here are the facts:

- **Rafael Ramos** was a beloved husband and father of two boys. He lived in Queens and worked in Brooklyn. He was a New York City Police Officer and he was murdered because of his uniform, purportedly as "revenge" for the alleged misconduct of others.

- **Wenjian Liu** was a beloved husband, son, and father to a baby girl he never got to meet. He was a New York City Police Officer and he was murdered because of his uniform, purportedly as "revenge" for the alleged misconduct of others.

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[8] Press Release, *Brooklyn Man Arrested for Using a Weapon of Mass Destruction*, United States Department of Justice (Feb. 28, 2018).

- **Miosotis Familia** was a beloved single mother who also cared for an elderly parent. She lived and worked in the Bronx. She was a New York City Police Officer and she was murdered because of her uniform, purportedly as "revenge" for the alleged misconduct of others.

The recent assassinations of these three hero police officers are "facts," not mere "feelings." That they were murdered in "retaliation" for actions that had absolutely nothing to do with them is a "fact," not a "feeling." And it is a matter of basic common sense that the release of unsubstantiated misconduct allegations—which is exactly what the repeal of CRL § 50-a would do—will unfairly villainize ***all*** police officers (not just those accused of misconduct) and exponentially increase the risk of random "revenge" or "retaliatory" attacks against them.

By contrast, advocates ***are*** seeking to repeal CRL § 50-a based on "feelings"—for example, a "feeling" that New York State can roll the dice and take its chances with police officer safety and nothing will happen; a "feeling" that repeal might not result in the many harms highlighted by progressive commentators; a "feeling" that public safety will somehow not be impacted when guilty individuals are set free after false allegations of police misconduct derail criminal trials; and a "feeling" that it is acceptable to provide police officers with fewer privacy protections than countless other far less dangerous professions.

Finally, New York criminal justice reform advocates spent a considerable amount of time discussing the self-serving assertion of a Chicago criminal justice reform advocate who published police records that he was unaware of any "reports" of any individuals saying that they attacked police officers after reviewing the records. Again, this completely misses the point: the mere fact that the advocates claim to be unaware of safety impacts does not disprove their existence, and this narrow focus completely ignores the general deterioration of the safety environment in which police officers work every day. Moreover, it would be patently irresponsible to repeal a law that has kept New York union workers safe for 43 years based on the alleged experience of a single reform advocate in a single city over a short period of time.

Advocate Assertion: FOIL provides sufficient protections for officer safety and privacy so 50a is not needed.

Reality: FOIL provides no such protection.

Advocates repeatedly suggested that existing privacy exemptions under FOIL render CRL § 50-a unnecessary, but one crucial word was largely absent from their testimony—"discretion." They consciously avoided that word because it completely puts the lie to the assertion that FOIL safeguards police information. For the avoidance of any doubt, the FOIL statute states that an "agency ***may*** deny access to records . . . that if disclosed would constitute an unwarranted invasion of personal privacy." Put differently, absent CRL § 50-a FOIL would ***expressly permit*** government agencies to release confidential police officer records, ***even where it would be an unwarranted privacy invasion***. Accordingly, and contrary to the claims of numerous proponents of repeal, FOIL in fact provides zero protection to police officers.[9]

[9] Indeed, CRL § 50-a was passed two years after FOIL, precisely because the FOIL exemptions now championed by repeal advocates were not adequately protecting police officers.

Advocate assertion: Repealing CRL § 50-a would level the discipline records playing field for police officers and all other public employees.

Reality: Absent CRL § 50-a, police officers would have *far less* protection than other licensed-professionals, public employees, and elected officials throughout New York State.

Repealing CRL § 50-a would make available unsubstantiated allegations leveled against police officers.[10] Yet, various statutes and practices ensure that pending, unproven, and disproven allegations are kept confidential for millions of employees across New York State. For example:

- Education Law §3020-A. When a teacher is acquitted of misconduct claims the "***charges must be expunged from the employment record***" in order "***to preclude unsubstantiated charges from being used unfairly against or in relation to a tenured teacher.***"

- Education Law § 6510(8). "***Files ... relating to the investigation of possible instances of professional misconduct ... shall be confidential and not subject to disclosure*** at the request of any person, except upon the order of a court in a pending action or proceeding."

- Public Health Law § 230. "Administrative warnings and consultations [regarding licensed physicians] shall be confidential and shall not constitute an adjudication of guilt or be used as evidence that the licensee is guilty of the alleged misconduct." Reports to the Office of Professional Misconduct "shall remain confidential."

- The New York State Education Department investigates misconduct of virtually all licensed professions and keeps confidential unsubstantiated claims and many substantiated claims. "***Complaints are accusations of professional misconduct; those that do not result in disciplinary action are confidential.***"[11]

- Executive Law § 94. Joint Commission on Public Ethics ("JCOPE")[12] ***proceedings are confidential, and complainants may not be notified of any JCOPE action regarding***

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[10] Police officers are uniquely susceptible to civilian complaints. In the ordinary course of carrying out their responsibilities officers necessarily engage in tense and antagonistic scenarios with civilians.

[11] http://www.op.nysed.gov/opd/opdfaq.htm (FAQ, "How can I find out if there have been any disciplinary actions against a licensee?").

[12] JCOPE has jurisdiction over violation of the state's ethics laws (Public Officers Law §§73, 73-a, and 74), the "Little Hatch Act" (Civil Service Law §107), and the Lobbying Act (Legislative Law Article 1-A) as they apply to State legislators, candidates for the Legislature and legislative employees, the four statewide elected officials, candidates for those offices, executive branch employees, political party chairs, and lobbyists and their clients.

their complaint unless and until there is final action that can be publicly disclosed pursuant to the statute.[13]

The panelists repeatedly noted that police officers wield great power over the public and they deserve less protection, not more. While there is no doubt that police officers hold a unique position in the community, it is baseless to suggest that they are the only employees wielding significant power over people's lives and safety such that they should stand alone as the only group not entitled to basic privacy protections. For example, children are left alone in the care of educators, and patients rely upon medical professionals to administer medication and perform operations. It would be patently inequitable to protect the privacy rights and unsubstantiated allegations of state-licensed professionals, while not protecting the privacy rights and unsubstantiated allegations of police officers.

Advocate Assertion: CRL § 50-a protects police officers and harms the public.

Reality: CRL § 50-a protects communities by focusing criminal trials on the merits of the case and not on irrelevant and immaterial "fishing expeditions" into police officer records.

Advocates boldly asserted that CRL § 50-a "harms New Yorkers." But this conclusory assertion lacks nuance and overlooks the very premise behind the statute's creation—and the careful statutory scheme designed to balance police officers' rights with the public's right of access. The impetus for enacting this statute in 1976 was the practice by defense attorneys of "fishing" through police files for information to embarrass and harass police officer witnesses in criminal trials. Putting aside any concern for the reputations and careers of the police officers, which the advocates clearly do not value, this practice puts New Yorkers at risk. The effect is the creation of a sideshow that distracts from the merits of the defendant's case. The police officer is suddenly on trial and the inquiry into the defendant's guilt is subordinated. Law enforcement throughout New York State, including District Attorneys, are well aware that if CRL § 50-a is repealed, dangerous defendants will benefit from this strategy, escaping accountability, and walking back into our communities. CRL § 50-a expressly permits the release of relevant and material police discipline records for use in a criminal trial so that exculpatory information may be admitted while harassing material is weeded out. This carefully crafted safeguard protects police officers and all New Yorkers.

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In light of all of the foregoing, the NYC PBA strongly opposes any efforts to repeal Civil Rights Law § 50-a.

[13] https://jcope.ny.gov/jcope-investigative-process (JCOPE Investigative Process).

Testimony of Jon McFarlane submitted before the New York State Senate Committee on Codes
Re: In support of Senate Bill 3695
October 24, 2019

*"When my son was murdered it took us 3 years to find out the misconduct history of Richard Haste… three years. And that was only because the informatino was leaked by a whistleblower to the media." – Constance Malcolm, mother of Ramarley Graham (testifying in front of the Senate Committee on Codes (October 17, 2019)**

My name is Jon McFarlane. I am 51 years old and I am a life-long resident of Queens County, located in New York City, and a community leader at VOCAL-NY. As a resident of the State of New York, I have a huge stake in seeing that 50-a, the law that unnecessarily restricts access to police misconduct records and files, is fully repealed.

Police misconduct files and reports, to the extent that certain sensitive information is redacted, should not be hidden from public scrutiny simply to save the NYPD or other law enforcement agencies from any embarrassment. In a similar vein, these documents should not be concealed in an attempt to cloak officers whose credibility should be questioned when circumstances arise that tend to create such an inquiry. Shielding law enforcement files in such a way is akin to shielding employee files from the employer. After all, NYPD and correction officers are public servants… employed by the public. Why would we not want to see how our employees conduct themselves while on the job?

Lou Matarazzo, representative for the Detectives, Lieutenants, Captains and PBA state association testified before this very panel on October 17th that "when you repeal 50-a, you will be victimizing the victims of crimes. That's what you will be doing. Victimizing the victims of crimes." Nothing could be further from the truth. Gwen Carr, the mother of NYPD murder victim Eric Garner; Valerie Bell, the mother of NYPD murder victim Sean Bell; and Constance Malcolm, the mother of NYPD murder victim Ramarley Graham, made clear in their testimony at this same hearing that repealing 50-a will benefit all victims of NYPD violence in the future and may well provide answers to the many questions surrounding the death of their loved ones.

Valerie Bell stated: "The part that was terrible was not getting the answers on who killed my son. That's why I'm here [testifying] today and why I have been fighting to repeal 50-a. People of color continue to be killed by the police and I understand what it's like for the families who have fought tooth and nail for transparency."

Gwen Carr stated: "Over five years later because of 50-a, I don't have full information about the roles, the misconduct or the names of many of the officers involved, 50-a makes it close to impossible for me to truly fight for justice for Eric."

Constance Malcolm: "50-a is hard for all of us families. In some ways, it makes it impossible for us to really fight for justice because so much information stays hidden from us. This is not fair. It's not fair at all."

According to Mr. Matarazzo's testimony, disclosure of police misconduct files should be left to the discretion of judges presiding over trials. "You should not be able to speak about some disciplinary record of a police officer unless a judge says you have to do so," he said. Matarazzo's mindset illustrates the very limited and quite narrow path for disclosure that so many law enforcement officials have enjoyed traveling down in response to the increased level of scrutiny coming from advocates calling for the repeal of 50-a. Even his description of a police misconduct paper trail as "some disciplinary record" speaks to his out-of-hand dismissal of what proponents of S3695 view as direct access to life-saving information about individuals employed by the NYPD.

Moreover, Matarazzo's posturing regarding a judge's discretion concerning the release of certain misconduct information at trial does nothing to cure the deficiencies that have emerged at the CCRB and at the precinct level where complaints against officers sit unresolved without timely access to misconduct information which could ultimately satisfy the credibility question in favor of or against an officer named in a complaint. It is also misleading because even defense attorneys are routinely unable to secure officer misconduct histories in a timely way (if at all) when defending their clients.

In an attempt to illustrate the type of morbid consequence that releasing police misconduct files could unleash, Paul DiGiacomo, VP of the Detective Endowment Association, during his testimony at the same hearing, referenced the case of police officer Innis who was killed in 1967 by an individual he had locked up at the time. While the incident is a tragic one, I can discern no connection between releasing an NYPD officer's record of misconduct, with all personnel info (where personal address would be redacted based on existing FOIL statutes), and an alleged stalker taking action as revenge for his incarceration.

More importantly, Mr. DiGiacomo failed to present any connection in his testimony before the NY Senate Codes Committee that includes, but is not limited to, how the individual supposedly obtained the officer's personal information. Without this vital information, and with the reality that personal information in general for all New Yorkers is often available through internet searches, I respectfully opine that his reliance on law enforcement misconduct files appears to be misplaced at this time.

Assembly member Daniel J. O'Donnell presented the best case for repealing 50-a by referring back to a statement made by the experts in government accountability and transparency: "The Committee on Open Government came to a hearing seven years ago in Albany and said if you want to increase transparency in the government, the first thing you have to do is repeal 50-a."

The Assembly member then delved in to a brief history of 50-a, its intent at the time it was written and concluded with an excellent follow-up question posed directly to the law enforcement panel testifying before him: "The reality is that through the court process, courts have over broadly interpreted what we wrote. In fact, the Republican senator (Frank Padavan)

who wrote 50-a, before he passed away, said we never intended it to be like this.' He said that the courts are reading this wrong. So, if we're in a situation where courts are reading the law we wrote in a way we didn't mean, isn't it [the legislature's] obligation to correct it?" This question is paramount to the current debate surrounding the repeal of 50-a. The response by Lou Matarazzo cemented the ignorance exhibited by law enforcement officials on this very issue: "I don't believe the law, as written, was intended to do anything other than what it does right now." I implore all stakeholders, especially the Senate and all NYS legislators, to properly analyze the preceding comment premised on the realization that the original sponsor and drafter of the 50-legislation expressed his utter dissatisfaction with the current interpretation of the law shortly before his death.

To combat deplorable officer misconduct such as committing perjury on the stand as well as in police reports, fabricating evidence in lockstep with prosecutors, planting evidence, searching and seizing without probable cause (or even a reasonable articulable suspicion), unlawfully detaining individuals at will, trespassing in our homes without cause and other unconstitutional behavior, we must pass senate bill 3695 (S3695) that repeals the provision which shields police misconduct files.

Opponents of repealing 50-a have taken the law out of context and weaponized 50-a as a shield to prohibit disclosure of any and all police personnel records, including complaints of misconduct and any resolution stemming from such complaints. Proponents of repealing 50-a aim to counter that misuse of law by explaining that we are only attempting to gain access to police misconduct and discipline files… and ONLY misconduct and discipline files. To that end, those seeking repeal of 50-a have no interest in viewing or accessing personal information such as where a police officer lives or where their kids go to school.

Success at this venture means that law enforcement must be willing to shed its cloak of resistance and realize that transparency and accountability are quickly becoming the norm in a progressive state like New York. Senator Jessica Ramos said it best when she confronted Lou Matarazzo after he could not recall the names of the last three people killed by NYPD officers – after he had falsely claimed that Senators could not name the last three NYPD officers killed -- "That's the thing about pointing fingers and being sincere to having an open conversation about what repealing 50-a really means for communities of color, particularly, but everyone in general as well." We, as a people, cannot have accountability without transparency. 50-a must be repealed. Please pass (Senate Bill) S3695 now.

* Reference to oral testimony is derived from a hearing convened by the Senate Standing Committee on Codes chaired by Honorable Senator Jamal Bailey (October 17, 2019).

Thank you very much for considering my testimony in this important matter,

Jon McFarlane
Vocal-NY Leader