



**Testimony of Katurah Topps
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**Before the New York Senate
Standing Committee on Codes**

**Hearing on
the repeal of Civil Rights Law 50-a**

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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 police⁴ misconduct and discipline. Unlike nearly every other state,

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

⁵ See e.g., Kendall Taggart 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.nybar.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

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

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 NYPD'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

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/#.1a45ptpyu>.

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 understand 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.