



TESTIMONY

The Senate of the State of New York

In Support of Senate Bill 3695 to Repeal 50-A

The Legal Aid Society
199 Water Street
New York, NY 10038
By: Molly Griffard
(212) 298-3242
MGriffard@legal-aid.org

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Good afternoon. I am Molly Griffard, a staff attorney at The Legal Aid Society testifying on behalf of the Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing systemic problems created by the criminal justice system. We thank Senator Bailey for the opportunity to provide testimony on repealing 50-a.

ORGANIZATIONAL INFORMATION

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as counsel in several Freedom of Information Law cases as well, the Society is in a unique position to testify about the importance of repealing 50-a in New York.

Civil Rights Law § 50-a prevents the public from receiving critical information about the police officers who serve in their communities, officers entrusted with an immense amount of power. In recent years, 50-a has been invoked to remove NYPD disciplinary summaries, including those stemming from CCRB prosecutions, that had been publicly available in City Hall for decades, to close a public courtroom to mask an officer's disciplinary history, and to refuse to answer community members' and reporters' many calls to identify officers who have committed acts of brutality.¹

¹ See, e.g., Samar Khushid, *Headley Case Again Raises Questions About NYPD Accountability Under De Blasio*, GOTHAM GAZETTE (Dec. 18, 2018), <http://www.gothamgazette.com/city/8150-headley-case-again-raises-questions-about-nypd-accountability-under-de-blasio>.

Blocking from public view the disciplinary histories of officers entrusted with the power to use lethal force to protect and serve communities has a multitude of harmful effects. Shielding the identities of officers who have killed civilians amplifies their families' and communities' trauma, and sows distrust in police.² This secrecy especially deprecates trust in the police where, as is often the case, information about the victim's history such as sealed arrest records are leaked.³ Courts have historically recognized that instead transparency can have a "community therapeutic value"⁴ that provides an "outlet[] for 'community concern, hostility, and emotions.'"⁵

50a also undermines the public's ability collectively analyze, understand and participate in reform of CCRB accountability measures. When no outcomes of CCRB investigations or prosecutions are made public, the police department can claim that a fully functional police accountability system exists— whether true or not—without presenting any contradictory evidence to the public.⁶ Members of over-policed communities are in turn left without recourse to understand whether police or other oversight accountability systems have made any efforts to eradicate systemic abuses, resulting in the belief that the police cannot police themselves.

Reporting on aggregated data about types of complaints and allegations as well as demographics

² Ciara McCarthy, *Saheed Vassell's Family Demand Answers After Police Shooting*, PROSPECT HEIGHTS PATCH (May 2, 2018, 5:58 PM), <https://perma.cc/WZ3R-RJ8N> (quoting Lorna and Eric Vassell, Saheed Vassell's parents, as saying "[t]hese are not the actions of a city government committed to the truth – instead it seems like public officials and the NYPD trying to hide something.").

³ See, e.g., See Tina Moore & Bruce Golding, *Man Killed by NYPD Had Bizarre Run-in with Cops in 2008*, N.Y. POST (Apr. 5, 2018 10:40 PM), <https://perma.cc/94PV-M973>.

⁴ David S. Ardia, *Court Transparency and the First Amendment*, 38 CARDOZO L. REV. 835, 895 (2017) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570-71 (1980) (plurality opinion)).

⁵ *Id.* at 868 (quoting *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 704 (6th Cir. 2002)).

⁶ See Jillian Jorgensen et al., *De Blasio, NYPD Big See No Problem with How Cops Address Police Misconduct*, N.Y. DAILY NEWS (Mar. 15, 2018, 10:06 PM)

of complainants and officers are available and is a great first step.⁷ But we could go much further, like in Chicago with the Citizens Police Data Project⁸ or New Jersey with the Force Report⁹, to “operationalize transparency” and make misconduct histories available.

This past December, the Court of Appeals gave 50a its broadest ever interpretation, reframing it from an exemption to FOIL weighed against the public interest in access to information about government, to a blanket protection for police officer’s privacy that far exceeds the those of all other state employees.¹⁰ This decision cemented the NYPD’s recent strict fidelity to making virtually all information about the prior misconduct of police officers, whether substantiated by a CCRB investigation and prosecuted by an APU prosecutor, caught on video, violent, criminal, or otherwise squarely in the public interest, unattainable for members of the public—even where officers’ names have been redacted and the information could only be used to assess disciplinary systems rather than individual officers. It is now clear that the only way for New Yorkers to gain insight into police departments’ disciplinary systems is through legislative repeal of 50-a.

Counter to claims that 50a repeal will compromise generalized “privacy rights” and safety of officers, the repeal of 50a will *not* allow the public to access personal information of officers. FOIL exemptions already prevent officers’ residential, social security, and medical

⁷ Civilian Complaint Review Board, “Data Transparency Initiative,” available at <https://www1.nyc.gov/site/ccrb/policy/data-transparency-initiative.page>.

⁸ Citizens Police Data Project, available at <https://cpdp.co/> (publicizing, among other things, individual officers’ complaint histories).

⁹ “The Force Report,” N.J.com, available at <https://force.nj.com/> (database of five years of documents relating to police uses of force, covering every local police department in New Jersey).

¹⁰ New York Civil Liberties Union v. New York City Police Department, No. 133, 2018 WL 6492733 (N.Y., Dec. 11, 2018).

information from being released.¹¹ Repealing 50a would only place the police on equal footing with other working professionals, such as doctors and lawyers, who are subject to discipline that is reported online.¹² Repeal would facilitate accountability systems similar to these other professions and allow for public trust in the ability of state police agencies to oversee their officers.

CONCLUSION

We thank you for hearing our testimony today.

¹¹ *See, e.g.*, *Matter of Obiajulu v. City of Rochester*, 213 A.D.2d 1055, 1056 (4th Dep't 1995) ("personal and intimate details of an employee's personal life are exempt") (internal quotation omitted); *Lyon v. Dunne*, 180 A.D.2d 922, 924-25 (3d Dep't 1992) (ordering redaction of addresses, phone numbers, and dates of birth from otherwise disclosable investigation records).

¹² *E.g.* James Kelly, *New York Courts Put Attorney Discipline Records Online*, N.Y. L. INSTITUTE, (Feb. 24, 2015), <http://www.nyli.org/new-york-courts-put-attorney-discipline-records-online>.