



**Center for Law and Social Justice,
Medgar Evers College, CUNY, Est. 1986**

1150 Carroll Street

718 804 8893

Brooklyn NY 11225

www.clsj.org

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**



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

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. Garner’s 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 records⁹ 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

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 against fellow members and recruit other supremacists."¹⁴ The FBI Bulletin noted concerns that

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>.

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 communities¹⁶ 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.

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.

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).