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**REPORT ON LEGISLATION
BY THE CIVIL RIGHTS COMMITTEE
AND THE CRIMINAL COURTS COMMITTEE**

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M. of A. O'Donnell

AN ACT to repeal Civil Rights Law 50-a to allow for the public disclosure of police records relating to police misconduct.

THIS BILL IS APPROVED

OVERVIEW

Transparency is vital to regulating police powers in a democracy. According to the U.S. Supreme Court, when police departments are “under the eyes of an alert public opinion,” they will deter police misconduct with effective internal policies and discipline.¹ In New York State, however, no matter how “alert” the public is, Civil Rights Law 50-a (CRL 50-a) shrouds certain types of evidence from the public—i.e., “personnel records,” even if such records reflect police misconduct. Indeed, a New York State appellate court recently held that CRL 50-a prevents the disclosure of Civilian Complaint Review Board (CCRB) records regarding whether police officers have been accused of misconduct, whether those accusations have been substantiated, and even whether officers have been penalized for substantiated misconduct.²

Because of overbroad interpretations of CRL 50-a, public awareness of police misconduct is stymied. And without transparency, officers may be less accountable to the communities they serve. The Civil Rights Committee and Criminal Courts Committee of the New York City Bar Association issue this report in support of pending legislation to repeal CRL 50-a.³

THE HISTORY OF CRL 50-A

In the 1970s, a national movement for open government gained momentum.⁴ New York’s first Freedom of Information Law (FOIL) was passed in 1974, and in 1977 it was expanded to

¹ *Wolf v. Colorado*, 338 US 25, 31 (1949) (holding that the exclusionary rule did not need to be extended to the states)(overruled by *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)).

² *Luongo v. CCRB Records Officers and Daniel Pantaleo*, 150 A.D.3d 13 (1st Dep’t 2017) (reversing order granting access to Daniel Pantaleo’s substantiated CCRB history).

³ Debevoise & Plimpton LLP is currently handling a matter on behalf of Prisoners Legal Services involving the scope of CRL 50-a. The City Bar President, John Kiernan, a partner at Debevoise, has recused himself from the review and approval of City Bar reports with any potential bearing on this case or any related litigation or legislation.

⁴ *History of FOIA*, ELECTRONIC FRONTIER FOUND., <https://www.eff.org/issues/transparency/history-of-foia> (all sites last visited Jan. 10, 2018).

include access to all public records. The 1977 FOIL expansion sought to “achieve the greatest magnitude of openness in government without sacrificing personal and privileged information” to “help instill in the citizens of the state greater trust and confidence in the governmental institutions which are playing an increasingly important role in our daily lives.”⁵

Despite this movement for open government, the New York legislature in 1976 passed CRL 50-a to, among other things, prevent “harassment” by criminal defense attorneys who sought to impeach officers with unsubstantiated prior bad acts.⁶ CRL 50-a provides that “all personnel records used to evaluate continued employment or promotion, under the control of any police agency . . . shall be considered confidential and not subject to inspection or review without the express written consent of such police officer . . . except as may be mandated by lawful court order.”⁷ By providing blanket protection of police officers from impeachment on cross examination, however, CRL 50-a undermines what New York’s Court of Appeals recently called the “unremarkable proposition that law enforcement witnesses should be treated in the same manner as any other prosecution witness for purposes of cross-examination.”⁸

Only two other states have laws like CRL 50-a that restrict the scope of law enforcement information available to the public.⁹ According to former Senator Frank Padavan, the chief sponsor

⁵ “Letter from Sen. Marino,” Bill Jacket L 1977, ch 933.

⁶ Bill Jacket L 1977, ch. 933 at 6 (“This bill would afford some protection to police officers who must testify in criminal proceedings.”); *Id.* at 20 (“It has been brought to my attention that, often simply as a harassment tactic, defense attorneys in criminal cases have been making an unrealistically high number of requests for personnel files of police officers.”); *Id.* at 23 (“The purpose of this bill is to insulate policemen from meaningful cross-examination in cases in which they are witnesses.”); *Id.* at 29 (“The purpose of the Act is to restrict a defendant’s ability to subpoena the personnel files of prospective police officer/witnesses.”). Prior bad acts are those that courts have said generally demonstrate “an untruthful bent or significantly reveal[] a willingness or disposition . . . voluntarily to place the advancement of [a witness’s] individual self-interest ahead of principle or of the interests of society.” *People v. Walker*, 633 N.E.2d 472, 461 (N.Y. 1994). *See, e.g.*, Letter from William G. Connelie, NYPD Superintendent, to unknown recipient (June 8, 1976); Letter from Sanford D. Garelik, Chief of NYC Police for the Transit Auth., to Frank Padavan, N.Y. Sen. (Apr. 20, 1976); Letter from John Maye, Chairman of Patrolmen’s Benevolent Ass’n, NYC Transit Auth. Police Dep’t, to Hugh L. Carey, N.Y. Governor (June 18, 1976); Letter from Mario Merola, Dist. Att’y of Bronx Cty., to Judah Gribetz, Counsel to N.Y. Governor (June 7, 1976); Memorandum from Al Sgaglione, President of Police Conference, to unknown recipient (June 14, 1976); Letter from Thomas R. Sullivan, Dist. Att’y of Richmond Cty., to Judah Gribetz, Counsel to N.Y. Governor (June 9, 1976). All sources in this footnote are included in the 1976 N.Y. Governor’s Bill Jacket, available from the Legislative Secretary to the New York Governor’s Counsel.

⁷ N.Y. CIV. RIGHTS LAW § 50-a.

⁸ *People v. Charles Smith*, 27 N.Y.3d 652, 659 (2016).

⁹ *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/>. Note that only two other states, California and Delaware, have laws that specifically make police personnel records “confidential.” Similar to New York, California requires civil and criminal litigants to make *Pitchess* motions to gain access to police disciplinary records. *See Pitchess v. Super. Ct.*, 522 P.2d 305 (Cal. 1974). The standard for New York under section 50-a is higher than California, which only requires “good cause” to obtain in camera review. New York litigants, in contrast, must present a good faith factual predicate to warrant judicial review for information that is “relevant and material” to the case. *Compare* N.Y. CIV. RIGHTS LAW § 50-a(2) & (3) *and* *Dunnigan v. Waverly Police Dep’t*, 719 N.Y.S.2d 399, 400 (App. Div. 2001), *with* CAL. EVID. CODE § 1043(b)(3) (West 2016). For decades prior to 2006, California police oversight agencies, including San Francisco, Los Angeles, and Oakland, voluntarily made their police disciplinary records public. *See Frequently Asked Questions about Copley Press and SB 1019*, AM. CIV. LIBERTIES UNION N. Cal. (June 15, 2007), <https://www.aclunc.org/blog/frequently-asked-questions-about-copley-press-and-sb-1019> (discussing the case of *Copley Press, Inc. v. Superior Court* 141 P.3d 288 (Cal. 2006), which extended confidentiality to records of police oversight agencies). Delaware’s exemption for

of the law, CRL 50-a was never intended to block disclosure of police misconduct from the public.¹⁰ Its original purpose was to prevent disclosure of “unverified and unsubstantiated” civilian complaints—not to prevent disclosure of substantiated civilian complaints.¹¹ Indeed, CRL 50-a was, until four years ago, not widely known. It was not even a part of the public’s broader police reform agenda. Instead, CRL 50-a mainly preoccupied lawyers who had to meet its high standard to obtain a subpoena for an officer’s “personnel records” for litigation.¹²

In 2014, however, the death of Eric Garner led to renewed focus on CRL 50-a and how its broadened interpretation has shielded officers from public accountability and impedes racial justice. As the Garner case exemplifies, policies and practices that appear to prioritize protecting officer misdeeds over strengthening community trust divide communities of color from the police departments that are meant to protect them. Since Garner’s death, several legal organizations, including the New York Civil Liberties Union and The Legal Aid Society, have been fighting to remove the 50-a cloak on police misconduct.

JUDICIAL INTERPRETATION OF 50-A

The last time the Court of Appeals reviewed public access to police disciplinary records under FOIL was in 1999 in *In re Daily Gazette Co. v. City of Schenectady*.¹³ In that case, the local daily paper in Schenectady, New York, sought the identities of eighteen officers involved in off-duty misconduct and the full files pertaining to their discipline following a drunken off-duty brawl during a bachelor party.¹⁴ The court in *Daily Gazette* held that police officer off-duty misconduct was not discoverable by FOIL. Notably, it expressly left room for the discovery of on-duty misconduct.¹⁵

But recent appellate court decisions have broadened the protections of CRL 50-a to shield even on-duty misconduct from disclosure. For example, in *Matter of New York Civil Liberties*

personnel records is limited to disclosures that would constitute an “invasion of privacy” under state and federal law, which is arguably narrower than New York’s unrestricted “personnel records used to evaluate performance,” yet has followed New York law in requiring a factual predicate that records are relevant prior to judicial inspection. *Snowden v. State*, 672 A.2d 1017, 1024 (Del. 1996) (quoting *People v. Gissendanner*, 399 N.E.2d 924, 928 (N.Y. 1979)).

¹⁰ Brendan Lyons, *Court rulings shroud records*, Times Union (Dec. 10, 2016), <http://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php>.

¹¹ Mem. of Senator Padavan and Assemblyman DeSalvio, Bill Jacket, L. 1977, ch 413.

¹² The New York State Committee on Open Government’s Annual Report did, however, make 50-a its central recommendation in a report published in December 2014. See Brendan Lyons, *State committee urges Cuomo, legislators to open police files*, Times Union (Dec. 19, 2014), <http://www.timesunion.com/local/article/Report-says-police-files-should-be-open-to-public-5967527.php>. For a discussion of 50-a statutory language, legislative history and cases interpreting it as an exemption to public disclosure laws, see Cynthia Conti-Cook “Defending the Public: Police Accountability in the Courtroom,” Seton Hall Law Review: Vol. 46 : Iss. 4 , Article 3, available at <http://scholarship.shu.edu/shlr/vol46/iss4/3/>, pgs 1067-1070 (2016).

¹³ *In re Daily Gazette Co. v. City of Schenectady*, 688 N.Y.S.2d 472 (1999).

¹⁴ *Id.*

¹⁵ *Id.* at 1078; see also *In re Capital Newspapers Division of the Hearst Corp. v. Burns*, 496 N.E.2d 665, 669–70 (N.Y. 1986) (holding that agency was required to disclose the material requested by reporter who sought a one-month record of sick leave requests from named officer); cf. *In re Fink v. Lefkowitz*, 393 N.E.2d 463, 471–72 (N.Y. 1979) (holding that agency was not required to produce specialized investigative techniques of nursing home industry that would potentially compromise pending investigations).

Union v. New York City Police Department, the First Department held that CRL 50-a prevented disclosure of decisions made by the NYPD commissioner in cases of police misconduct initiated by the Civil Complaint Review Board.¹⁶ Similarly, in *Luongo v. CCRB Records Officers and Daniel Pantaleo*, the First Department reversed a decision by the lower court to release a summary of NYPD Officer Daniel Pantaleo’s substantiated civilian complaints.¹⁷

In addition to public disclosure being stymied by the courts, litigants have struggled to discover police misconduct even with a judicial subpoena. CRL 50-a puts the burden on lawyers to demonstrate how material they cannot access is relevant to their case. Furthermore, police disciplinary records fall into a “doctrinal crack” insofar as such records may not be related to any specific case and, therefore, may elude discovery by the defense, even though such information should, under *Brady v. Maryland*, be subject to disclosure by prosecutors.¹⁸ Given the inherent conflict of interest in prosecutors investigating the misconduct of the officers they rely on, along with a growing body of jurisprudence that casts an increasingly wide net over the types of records that are exempt from disclosure, substantiated evidence of misconduct by police officers must be available to defense attorneys and the public by means other than relying solely on private investigation and disclosure by prosecutor’s offices.¹⁹

HOW CRL 50-A PREVENTS ACCOUNTABILITY FOR POLICE MISCONDUCT

More than any other government official, police officers interact with the public every day in life-changing ways. They patrol the streets, initiate contact with members of the public, and conduct frisks, searches, and arrests. As the New York Times Editorial Board explained, it is a “distressing fact that New York’s disclosure law gives the public far less access to information about police officers than workers in virtually any other public agency.”²⁰ In twelve states, the public has the right to fully access officers’ on-duty misconduct records.²¹ There is no evidence that officers in those states are any less safe or any less capable of testifying in court to defend their conduct than officers in New York.

¹⁶ 148 A.D.3d 642 (1st Dep’t 2017).

¹⁷ 50 A.D.3d 13 (1st Dep’t, 2017).

¹⁸ *Brady v. Maryland*, 373 U.S. 83 (1963) (seminal Supreme Court case requiring prosecutors to disclose exculpatory evidence in criminal cases). See Jonathan Abel, *Brady’s Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 STAN. L. REV. 743, 778 (2015) (discussing the reversal of burdens for disclosing police records) and 754 (discussing ambiguity in prosecutor’s obligation under *Brady* to be familiar with evidence of police misconduct in police officer witness’s personnel file even if such misconduct is unrelated to specific case); note 48, at 754; see also *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (announcing prosecutor’s duty to learn); *United States v. Bagley*, 473 U.S. 667, 682 (1985) (plurality opinion) (eliminating requirement for defense to request impeachment material); *Giglio v. United States*, 405 U.S. 150, 154–55 (1972) (expanding *Brady* to impeachment material).

¹⁹ *Id.*

²⁰ The Editorial Board, *Stop Hiding Police Misconduct in New York*, New York Times (July 29, 2015), https://www.nytimes.com/2015/07/29/opinion/stop-hiding-police-misconduct-in-new-york.html?_r=0.

²¹ For a discussion about national public access laws as they pertain to police disciplinary records (and bodyworn camera footage), see Cynthia Conti-Cook, *Open Data Policing*, 106 GEO. L.J. Online (2017) available at <https://georgetownlawjournal.org/articles/243/open-data-policing>.

WNYC reporter Robert Lewis described CRL 50-a as “a huge obstacle” in reporting stories about police misconduct.²² Lewis explained,

After the death of Eric Garner a lot of people, including me, wanted to know about the officer involved in the incident[, Daniel Pantaleo]. Did he have a history of using excessive force? Had he been disciplined before? Should he have been on the street? But those questions were virtually impossible to answer in large part because of that law...Aggregate data is helpful. But a deeper analysis and examination of a system is often only possible if the public can examine the disciplinary history of specific officers.²³

In 2017, a CCRB²⁴ staff member leaked Officer Pantaleo’s complaint history to the press. It showed that Pantaleo had four prior substantiated complaints for abusive stops and searches. The leak further showed that “the CCRB pushed for the harshest penalties it has the authority to recommend for all four substantiated allegations” but that “the NYPD, which is not required to heed the CCRB’s recommendations, imposed the weakest disciplinary action” for two violations, and modified penalties for the other two violations.²⁵ This was not an anomaly: according to an analysis by the Office of the Inspector General for the NYPD, of 104 excessive force complaints substantiated by the CCRB, the NYPD imposed no discipline in 36% of those cases.²⁶

Interpretations of CRL 50-a have become increasingly broad and go far beyond the statute’s initial purpose of protecting police officers from harassment and undue invasions of their privacy; this, in turn, fuels the mistrust between communities and the NYPD officers pledged to protect them. Transparency is necessary to ensure the NYPD is held publicly accountable for whether and to what extent it disciplines officers found to have committed serious misconduct, and to prevent officers like Daniel Pantaleo from repeatedly engaging in serious misconduct. Federal authorities have recognized the importance of transparency as a pillar of the criminal justice system: President Obama’s Task Force on 21st Century Policing encouraged police departments to “embrace a culture of transparency” and to “regularly post on the department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.”²⁷ CRL 50-a, as interpreted by the First Department, is contrary to all of these efforts.

²² Daniel Denvir, *New York’s public secrecy law: de Blasio fights to keep NYPD abuse records from the public*, Salon (June 6, 2016), https://www.salon.com/2016/06/29/new_yorks_police_secretary_law_de_blasio_backs_nypd_to_keep_misconduct_records_from_the_public/.

²³ *Id.*

²⁴ The CCRB is an independent city agency tasked with investigating complaints of police misconduct. See <http://www1.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>.

²⁵ Jack Jenkins, Carimah Townes, *The disturbing secret history of the NYPD officer who killed Eric Garner*, ThinkProgress (Mar. 21, 2017), available at <https://thinkprogress.org/daniel-pantaleo-records-75833e6168f3/>.

²⁶ Police Use of Force in New York City, NYC Dept. of Investigation Office of the Inspector General for the NYPD 47 (Oct. 2015), http://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf.

²⁷ U.S. Dep’t of Justice, Final Report of The President’s Task Force on 21st Century Policing iii (2015) at 13 (on file at the New York City Bar Association).

In addition, CRL 50-a jeopardizes recent police reform measures, like body cameras, aimed at ensuring public accountability for the on-duty conduct of police officers. In its 2016 Annual Report, the New York State Committee on Open Government warned that “under current application of §50-a, many law enforcement agencies would surely contend that a recording can, in the words of §50-a, be ‘used to evaluate performance toward continued employment or promotion’ and, therefore, is exempt from disclosure. If the video can only be seen by the internal affairs unit within a police department, and there is no public disclosure, a primary purpose of the body camera would be defeated. The trust in law enforcement officers would be diminished and mistrust would grow.”²⁸

Indeed, the argument that video recordings of use of force incidents fall within the scope of CRL 50-a has already been made in the corrections context.²⁹ Earlier this year, an inmate at Green Haven Correctional Facility sought a video recording of an altercation with a corrections officer. The state Department of Corrections and Community Supervision denied his request on grounds that the video was a document “used to evaluate the performance of an officer.”³⁰ Although the video was later ordered to be released,³¹ this example demonstrates the extent to which CRL 50-a can be used to avoid public disclosure and accountability.

THE CITY BAR URGES REPEAL OF CRL 50-A

As “the only one of its kind in the nation,”³² CRL 50-a has been interpreted so broadly that police misconduct in New York State is more secretive than any other state in the nation.³³ “The people,” wrote one editorial board, “have a right to know when officers are accused of transgressions, and what investigations find . . . A law that keeps such information from the public is

²⁸ Committee on Open Government, 2016 Annual Report, at 5, <https://www.dos.ny.gov/coog/pdfs/2016%20Annual%20Report.pdf>.

²⁹ Joseph Velasquez and B. Colby Hamilton, *New York’s Top Court’s Big Test: Law Shielding Police Personnel Records*, *New York Law Journal* (Oct. 4, 2017), <https://www.law.com/newyorklawjournal/almID/1202799657207/>.

³⁰ *Id.*

³¹ *Id.*

³² Editorial Board, *Let the Public See Police Officers’ Records*, *N.Y. TIMES* (Nov. 3, 2016), https://www.nytimes.com/2016/11/03/opinion/let-the-public-see-police-officers-records.html?_r=1/.

³³ COMM. ON OPEN GOV’T, STATE OF N.Y. DEP’T OF STATE, ANNUAL REPORT TO THE GOVERNOR AND STATE LEGISLATURE 3–5 (Dec. 2014), <http://www.dos.ny.gov/coog/pdfs/2014AnnualReport.pdf> [hereinafter N.Y. ANNUAL REPORT]; Robert Lewis, Xander Landen & Noah Veltman, *New York Leads in Shielding Police Misconduct*, *WNYC* (Oct. 15, 2015), <http://www.wnyc.org/story/new-york-leads-shielding-police-misconduct/>. Police internal affairs records and citizen complaints are “mostly unavailable” from FOIL disclosure in twenty-three states, but only considered “confidential” by statute in two other states (California and Delaware). Records are more accessible in fifteen states depending on whether severe discipline resulted from the misconduct. *Id.*; see also ME. REV. STAT. ANN. tit. 30-a, § 503 (2015); OKLA. STAT. ANN. tit. 51, § 24A.7(B)(4) (West 2016); UTAH CODE ANN. § 63G-2-301(3)(o)(i) (West 2007) (exempting formal charges of misconduct until and unless the charges are sustained and the action is complete). Texas’s statute makes internal affairs documents relating to deadly force public. It exempts internal affairs documents that determine the officer did not engage in misconduct, and it makes public the documents where disciplinary action is decided. TEX. LOC. GOV’T CODE ANN. §§ 143.1214, 143.089 (West 2015). In twelve states, these documents are public record in most circumstances. Many state statutes are vague. See Jenny Rachel Macht, *Should Police Misconduct Files Be Public Record? Why Internal Affairs Investigations and Citizen Complaints Should Be Open to Public Scrutiny*, 45 CRIM. L. BULL. 1006 (2009).

a travesty, and must be changed.”³⁴ The City Bar agrees, and we urge the Legislature to repeal CRL 50-a for the following reasons.

First, New York is one of three states in the nation that gives specific protection to officers’ records.³⁵ Among those three states, New York’s CRL 50-a has the highest standard of scrutiny. By repealing CRL 50-a, New York would join Maine, Washington, Minnesota, Wisconsin, Ohio, Alabama, Georgia, Connecticut, Utah, Arizona and Florida in promoting transparency of police disciplinary systems. There is no evidence that this transparency endangers officers in those states or inhibits the administration of justice.

Second, CRL 50-a should be repealed because the concerns of the law’s original sponsors over the privacy of police officers are adequately addressed through the privacy protections of FOIL.³⁶ For example, New York’s Public Officers Law already prevents records from being disclosed when they would constitute an unwarranted invasion of personal privacy, are compiled for law enforcement purposes or endanger the life or safety of any person, in addition to other circumstances. Public Officers Law 87(2)(b), (e), (f).³⁷

Third, judges are already charged with restraining lawyers from asking irrelevant, immaterial and abusive cross examination questions. The Court of Appeals recently laid out a clear framework for attorneys to follow when cross-examining officers about prior misconduct.³⁸ The first step is demonstrating a “good faith basis” for the questions. Attorneys may not rely in good faith on allegations that have been disproven. Attorneys must then demonstrate that the specific allegation is relevant to the witness’s credibility. Even then, the Court ruled that judges still have discretion in most cases to determine whether the inquiry will “confuse or mislead the jury”.³⁹

Fourth, CRL 50-a should be repealed because simply revising its language will not address concerns that police departments will continue to seek, and courts will grant, broad interpretation of what types of records qualify as “personnel records” that can be protected from disclosure.⁴⁰ Merely tweaking the definition of “personnel records,” as one bill proposes,⁴¹ would not prevent widespread categorizing of information, like body camera footage, as “personnel” files. Members of the public

³⁴ Editorial Board, *Cop misconduct shouldn’t be kept a secret*, Newsday (Sept. 9, 2015), <https://www.newsday.com/opinion/editorial/cop-misconduct-shouldn-t-be-kept-secret-1.10825198>.

³⁵ Robert Lewis, Noah Veltman, Xander Landen, *Is Police Misconduct a Secret in Your State?*, WNYC (Oct. 15, 2015), <https://www.wnyc.org/story/police-misconduct-records/>

³⁶ *People v. Smith*, 27 N.Y.3d 652, 662 (2016).

³⁷ See also *Malcolm v. NYPD*, Index No. 100466/2017, N.Y. Sup. Ct. (Dec. 22, 2017) at 7 (detailing the sufficient existing protections in Public Officers Law 87).

³⁸ *People v. Smith*, 27 N.Y.3d 652, 662 (2016).

³⁹ *Id.* at 663.

⁴⁰ *Luongo v. CCRB and Pantaleo (Luongo I)*, 49 Misc. 3d 708 (2015) reversed by 150 A.D.3d 13 (N.Y.A.D. 1st 2017) and *Luongo v. CCRB and Maccaron (Luongo II)* Docket No. 2016-02102 (Queens Cty. Ct. 2016) (pending appeal) courts below found that whether CCRB records are covered under section 50-a is an open question.

⁴¹ See A.3335/S.2850, 2017-2018 Leg. Sess. (N.Y. 2017), http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03335&term=2017&Summary=Y&Memo=Y&Text=Y. This recommendation to the Legislature was first made by the Committee on Open Government Annual Report, December 2014. N.Y. Annual Report, supra note 33.

or media may not have the resources to litigate FOIL cases in the courts and challenge these interpretations.

Fifth, without the repeal of CRL 50-a, recent police reform efforts, such as police body cameras, will be rendered wholly ineffective.⁴² The New York State Committee on Open Government recently warned that, under a broad interpretation, CRL 50-a may prevent public disclosure of footage from body cameras used to monitor their interactions with the public.⁴³

For all of these reasons, the City Bar urges the Legislature to repeal CRL 50-a. As the bill's sponsors memo states, "the evolution of § 50-a has defeated [FOIL's] goal of accountability and transparency."⁴⁴ New York should join other states and prioritize public transparency of police misconduct.

Civil Rights Committee*
Philip Desgranges, Chair
Cynthia Conti-Cook, Member

Criminal Courts Committee
Kerry Ward, Chair

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⁴² See *Wolf v. Colorado*, 338 U.S. 25, 31 (1949) (describing administrative and political alternatives to routine judicial review of police misconduct that could be effective if functional accountability systems and transparency were in place), *overruled by* *Mapp v. Ohio*, 367 U.S. 643 (1961). See also *supra* notes 2–5 regarding recent reforms. The City Bar has provided comments on the NYPD's body-worn camera policies, including that recordings of police-civilian encounters should be made available promptly to the civilian who was recorded, subject to relevant safety and privacy limitations in the Freedom of Information Law, see http://s3.amazonaws.com/documents.nycbar.org/files/2017126-BodyCamerasNYPD_FINAL_8.16.17.pdf.

⁴³ *Stop Hiding*, *supra* note 19.

⁴⁴ See Memorandum from N.Y. State Assemb. in Support of Assemb. B. A.3333, 2017-2018 Leg. Sess. (N.Y. 2017), http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03333&term=2017&Summary=Y&Memo=Y.

* This report is the product of an intensive drafting and review process by the membership of the two identified sponsoring Association committees, the Civil Rights Committee and the Criminal Courts Committee, consisting of a combined 65 members, plus inputs from multiple other committees. It was reviewed by City Bar policy staff, and upon President Kiernan's recusal noted in footnote 3 above, reviewed and approved by a Vice President of the Association. Philip Desgranges (who chairs the Civil Rights Committee and was named in that capacity) and Cynthia Conti-Cook (who participated significantly in drafting the report) respectively are employed at the New York Civil Liberties Union and the Legal Aid Society, both of which have been engaged in litigation over the appropriate interpretation of the scope of section 50-a. Like the New York City Police Department, which has advocated for broadening legislative revisions to section 50-a but has also advocated in court for a narrow interpretation of the language of the statute as it currently exists, the report and the committees that approved it expressly treat the issue of whether section 50-a should be repealed by the legislature – the subject of this report – as different from the issues being litigated in court about proper interpretation of the current language of the statute. Mr. Desgranges and Ms. Conti-Cook disclosed their affiliations to members of the relevant committees during deliberations, and Ms. Conti-Cook's publications on section 50-a are cited several times in the report. They did not dictate the outcome of the multiple discussions and sets of commentary on the report as it was being drafted. In the interests of enhanced transparency, though, the City Bar is amending its report to add this footnote so that their affiliations are fully presented to readers.