

# 20-2789-cv

---

IN THE  
**United States Court of Appeals for the Second Circuit**

---

UNIFORMED FIRE OFFICERS ASSOCIATION, et al.,  
*Plaintiffs-Appellants,*  
*v.*

BILL DE BLASIO, in his official capacity as Mayor  
of the City of New York, et al.,  
*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE REFORM,  
*Intervenor-Defendant-Appellee.*  
(full caption on inside cover)

---

On Appeal from the United States District Court  
for the Southern District of New York  
No. 20-cv-05441-KPF,  
Hon. Katherine Polk Failla

---

**INTERVENOR-DEFENDANT-APPELLEE COMMUNITIES  
UNITED FOR POLICE REFORM'S RESPONSE TO  
PLAINTIFFS-APPELLANTS' MOTION FOR A STAY  
PENDING APPEAL**

---

Baher Azmy  
Darius Charney  
Guadalupe V. Aguirre  
CENTER FOR  
CONSTITUTIONAL RIGHTS  
666 Broadway  
New York, NY 10012  
(212) 614-6464

Alex V. Chachkes  
Rene Kathawala  
Christopher J. Cariello  
Tiffany R. Wright  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5100

*Counsel for Intervenor-Defendant-Appellee*

UNIFORMED FIRE OFFICERS ASSOCIATION,  
UNIFORMED FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK, CORRECTION OFFICERS'  
BENEVOLENT ASSOCIATION OF THE CITY OF NEW  
YORK, POLICE BENEVOLENT ASSOCIATION OF THE  
CITY OF NEW YORK, INC., SERGEANTS BENEVOLENT  
ASSOCIATION, LIEUTENANTS BENEVOLENT  
ASSOCIATION INC., CAPTAINS ENDOWMENT  
ASSOCIATION, and DETECTIVES' ENDOWMENT  
ASSOCIATION,  
*Plaintiffs-Appellants,*

*v.*

BILL DE BLASIO, in his official capacity as Mayor  
of the City of New York, CITY OF NEW YORK, FIRE  
DEPARTMENT OF THE CITY OF NEW YORK, DANIEL  
A. NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the City  
of New York, NEW YORK CITY DEPARTMENT OF  
CORRECTIONS, CYNTHIA BRANN, in her official  
capacity as the Commissioner of the New York  
City Department of Correction, DERMOT F. SHEA,  
in his official capacity as the Commissioner of the  
New York City Police Department, NEW YORK  
CITY POLICE DEPARTMENT, FREDERICK DAVIE, in  
his official capacity as the Chair of the Civilian  
Complaint Review Board, and CIVILIAN  
COMPLAINT REVIEW BOARD,  
*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE REFORM,  
*Intervenor-Defendant-Appellee.*

**STATEMENT PURSUANT TO RULE 26.1**

Intervenor-Defendant-Appellee Communities United for Police Reform (CPR) states that it is a non-profit organization fiscally sponsored by the North Star Fund, a § 501(c)(3) non-profit registered in the State of New York. Neither entity has a parent corporation and no publicly-held corporation owns 10% or more of its stock.

## TABLE OF CONTENTS

	<b>Page</b>
STATEMENT PURSUANT TO RULE 26.1 .....	i
TABLE OF AUTHORITIES .....	iii
INTRODUCTION .....	1
BACKGROUND .....	3
ARGUMENT .....	8
I.    The district court properly rejected Plaintiffs’ speculative claims of irreparable harm.....	9
II.   The district court properly found that Plaintiffs have no likelihood of success on the merits. ....	16
III.  The district court properly found that the public interest and balance of hardships weighs decidedly against injunctive relief. ....	23
CONCLUSION .....	26
CERTIFICATE OF COMPLIANCE	



## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Bennett v. Lucier</i> , 239 F. App'x 639 (2d Cir. 2007) .....	8
<i>City of Newark v. Law Dep't of N.Y.</i> , 305 A.D.2d 28 (1st Dep't 2003) .....	19
<i>Espiritu Santo Holdings, LP v. L1bero Partners, LP</i> , No. 19 Civ. 3930 (CM), 2019 WL 2240204 (S.D.N.Y. May 14, 2019) .....	17
<i>Freedom Holdings, Inc. v. Spitzer</i> , 408 F.3d 112 (2d Cir. 2005) .....	9
<i>Gould v. N.Y.C. Police Dep't</i> , 89 N.Y.2d 267 (1996) .....	12
<i>Grand River Enter. Six Nations, Ltd. v. Pryor</i> , 481 F.3d 60 (2d Cir. 2007) .....	8, 9
<i>Larocca v. Bd. of Educ. of Jericho Union Free School Dist.</i> , 220 A.D.2d 424 (2d Dep't 1995) .....	19
<i>Nken v. Holder</i> , 556 U.S. 418 (2009) .....	8, 24
<i>Roso-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y., Inc.</i> , 749 F.2d 124 (2d Cir. 1994) .....	16, 17
<i>Seabury Constr. Corp. v. Jeffrey Chain Corp.</i> , 289 F.3d 63 (2d Cir. 2002) .....	18
<i>SG Cowen Sec. Corp. v. Messih</i> , 224 F.3d 79 (2d Cir. 2000) .....	16, 17, 18

*Slamow v. Del Col*,  
79 N.Y.2d 1016 (1992)..... 18

*Stewart v. U.S. I.N.S.*,  
762 F.2d 193 (2d Cir. 1985) ..... 11

*United States v. Grote*,  
961 F.3d 105 (2d Cir. 2020) ..... 8

*Valmonte v. Bane*,  
18 F.3d 992 (2d Cir. 1994) ..... 23

*Velez v. Levy*,  
401 F.3d 75 (2d Cir. 2005) ..... 22

*Washington Post Co. v. N.Y.S. State Ins. Dep’t*,  
61 N.Y.2d 557 (1984)..... 19

*Washington Post Co. v. U.S. Dep’t of Health and Human  
Servs.*,  
690 F.2d 252 (D.C. Cir. 1982) ..... 19

*Winter v. Nat. Res. Def. Council, Inc.*,  
555 U.S. 7 (2008) ..... 8, 23

**Statutes**

N.Y. Civil Rights Law § 50-a..... *passim*

N.Y. Public Officers Law § 87 *et seq.* ..... 12

N.Y. Public Officers Law § 89(2-b)(a)-(d)..... 5

N.Y. Civil Practice Law & Rules § 7502..... 17

N.Y. Civil Practice Law & Rules § 7801 *et seq.* ..... 20

**Rules**

Fed. R. Civ. P. 24(b)..... 7

**Other Authorities**

State of N.Y., Dep't of State Comm. on Open Gov't, *Annual Report to the Governor and State Legislature* (Dec. 2014), <https://on.ny.gov/3fbCxGO>..... 4

## INTRODUCTION

This is not a close case. Three months ago, the New York state legislature decided that officer misconduct and disciplinary records are presumptively public under New York's Freedom of Information Law (FOIL). Plaintiffs, the major unions representing officers employed by the City of New York, vigorously contested that legislation. Now, having lost in the legislative arena, Plaintiffs seek a sweeping injunction that would permanently bar public access to the vast majority of misconduct and disciplinary records in New York City. This lawsuit—and the preliminary injunction request underlying this appeal—is as dubious as it sounds.

So it is little surprise that the district court, in a careful 40-page ruling, rejected Plaintiffs' request on every ground. Plaintiffs lost on each of the traditional preliminary injunction requirements. They lost because the factual record undermined any notion of irreparable harm. They lost because settled law foreclosed their legal claims. They lost on the equities. And they lost for the simple reason that Defendants' public disclosure of presumptively public records is entirely lawful, imposes no legally cognizable harms on officers, and serves a host of

urgent public interests in transparency and accountability. These interests were plainly recognized by the legislature, documented in great detail in connection with Intervenor Communities United for Police Reform's (CPR) opposition to Plaintiffs' preliminary injunction request, and highlighted by a host of amici curiae.

Plaintiffs' motion for a stay (actually an injunction) pending appeal is equally meritless. To prevail, Plaintiffs would need to show that the district court erred on each preliminary injunction factor and ultimately abused its discretion in balancing those factors. Plaintiffs scarcely even attempt the feat. Instead, they front an argument based on their collective bargaining agreements (CBAs) with Defendants and their right to arbitrate disputes under those agreements, seeking to mire that issue in enough complexity to obtain a stay. But as the district court held, the argument fails for the utterly basic reason—unaddressed by Plaintiffs—that the plain language of the CBAs cannot possibly support the sweeping relief Plaintiffs seek. The rest of Plaintiffs' motion consists of thumbnail versions of the same arguments the district court meticulously rejected, without any attempt to confront the district court's express findings.

Ultimately, Plaintiffs offer no basis for upsetting the considered judgment of the legislature or of the district court. Nor do they justify sacrificing the urgent public interest in transparency for a lengthy injunction pending their baseless appeal.<sup>1</sup> The motion should be denied.

## **BACKGROUND<sup>2</sup>**

1. Enacted in 1976, N.Y. Civil Rights Law § 50-a generally excluded from disclosure “records used to evaluate performance toward continued employment or promotion.” Although initially focused on preventing certain cross-examination tactics in criminal trials, the provision “expanded ... to allow police departments to withhold from the public virtually any record that contains any information that could conceivably be used to evaluate the performance of a police officer.”

---

<sup>1</sup> Instead of requesting expedited briefing—as one might expect from a party asking this Court to enjoin an adverse party’s action—Plaintiffs have proposed a due date for their Opening Brief of November 10, 2020. Dkt. 20.

<sup>2</sup> We cite Plaintiffs’ motion “Mot.”; exhibits appended to the Declaration in support of that motion “Mot. Exh.”; the district court’s oral ruling of August 21, 2020, Mot. Exh. D, “Order”; and exhibits appended to this response, “CPR Resp. Exh.” We cite docket entries in this appeal “Dkt.” and docket entries before the district court “Dist. Ct. Dkt.”

State of N.Y., Dep't of State Comm. on Open Gov't, *Annual Report to the Governor and State Legislature* 3 (Dec. 2014),

<https://on.ny.gov/3fbCxGO>.

The secrecy of the § 50-a regime wrought extraordinary injustice. It destroyed community trust in law enforcement and government, thwarting attempts at accountability and police reform, and denying victims of police violence (or their families) even the most basic information on misconduct complaints. *See generally* CPR Resp. Exhs. A-L (declarations submitted in connection with CPR's opposition documenting effects of § 50-a and lack of transparency in misconduct and disciplinary records). That injustice has always been acutest in the most heavily policed communities in New York City. Yet those communities' pleas for repeal of § 50-a always faced a daunting obstacle: The officers' "unions and departments stonewall[ed] all attempts at reform." Declaration of Assemblyman Michael Blake, CPR Resp. Exh. B, at 4.

2. The years-long legislative push that finally yielded repeal ended on June 12, 2020 when Governor Cuomo signed a bill erasing the law from the books. *See* N.Y. Senate Bill S8946, <https://bit.ly/2DPyLGn>.

As the district court found, § 50-a's repeal "was the product of extensive debates." Order 4. Central to those debates was a full airing of the precise records and interests at issue in this litigation. Order 4, 16. (CPR was a vital participant in the legislative process, one of several independent bases for its intervention in this action. *See* Dist. Ct. Dkts. 42, 44, 45.)

Both the Senate and Assembly overwhelmingly voted in favor of full repeal of § 50-a. To address certain privacy or safety interests of officers, the legislature also mandated redaction of specific and narrow personal information like "home addresses, personal telephone numbers, personal cell phone numbers, personal email addresses," and other personal information concerning topics like "mental health" and "substance abuse assistance." N.Y. Public Officers Law § 89(2-b)(a)-(d).

**3.** A month later, Plaintiffs filed this suit seeking to enjoin Defendants from disclosing the very misconduct and disciplinary records that the legislature had just made presumptively public. Plaintiffs have never defined their requested relief with any precision, but it is quite plainly sweeping. As the district court explained, Plaintiffs appear to seek to "enjoin defendants from producing reports



and records of allegations that were determined to be unsubstantiated, unfounded, truncated, or exonerated; those matters that are non-final; and those allegations that were addressed by settlement agreements between law enforcement officers and agencies entered into before the repeal of Section 50-a.” Order 6. All told, the categories likely contain over 90% of the misconduct and disciplinary records in Defendants’ possession. *See* Mot. 16 (claiming that 92% of Civilian Complaint Review Board (CCRB) records should be enjoined).

Plaintiffs elected to leave these broad categories entirely undifferentiated from each other, drawing no distinctions based on the type of record. Nor have Plaintiffs ever drawn any distinctions based on the underlying misconduct at issue. Instead, they argue that every record is uniformly barred from disclosure by several disparate legal theories, including their CBAs; the Due Process and Equal Protection Clauses of the United States and New York State Constitutions; past settlement agreements; and Article 78 of New York state law. Compl., Exh. F, at 2.

4. On July 22, 2020, the district court granted Plaintiffs a temporary restraining order and set a preliminary injunction hearing

for August 18, 2020. Tr. of July 22, 2020 Hearing, Mot. Exh. N, at 78-86. The court extended the usual 14-day period for holding a preliminary injunction hearing in order to allow Plaintiffs to take discovery from Defendants. *Id.* at 84-85. Plaintiffs did so and the parties (including CPR<sup>3</sup>), as well as various amici, filed extensive briefing.

On August 21, the district court denied Plaintiffs' sweeping request for preliminary relief nearly in full. In an oral ruling spanning 40 pages, the district court found that Plaintiffs had failed to establish irreparable harm, Order 10-18; failed to establish either a likelihood of success on the merits or serious questions going to the merits on any claim, Order 18-39; *see* Order 7-10 (discussing applicable standard); and failed to show that the public interest and balance of hardships tips in their favor, Order 39-42. *See* Order of Aug. 21, 2020, Mot. Exh. B. This appeal and motion followed.

---

<sup>3</sup> The district court permitted CPR to oppose Plaintiffs' request for a preliminary injunction subject to the court's ruling on CPR's motion to intervene. Dist. Ct. Dkt. 97. The district court ultimately granted CPR permissive intervention pursuant to Fed. R. Civ. P. 24(b). Dist. Ct. Dkt. 206.

## ARGUMENT

Plaintiffs carry an enormous burden. Although they style their motion as seeking a stay, in actuality what they seek is “judicial intervention that has been withheld by [the] lower court[]”—that is, they seek an injunction pending appeal. *Nken v. Holder*, 556 U.S. 418, 429 (2009). A preliminary injunction, here as in the district court, is “an extraordinary remedy that may only be awarded upon a clear showing” that (1) the movant is likely to suffer irreparable harm absent relief; (2) the movant is likely to succeed on the merits; (3) the balance of equities tips in the movant’s favor; and (4) injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21-22 (2008); *see Nken*, 556 U.S. at 433-36 (discussing stay and injunctive relief standards).

Plaintiffs also must contend with the standard of review. This Court reviews a district court’s evaluation of the above factors only for abuse of discretion. *United States v. Grote*, 961 F.3d 105, 122-23 (2d Cir. 2020) (abuse of discretion review of denial of stay pending appeal); *Bennett v. Lucier*, 239 F. App’x 639, 640 (2d Cir. 2007) (summary order) (same for denial of injunction pending appeal); *Grand River Enter. Six*

*Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (same for review of denial of preliminary injunction). Underlying factual findings are reviewed only for clear error. *Grand River*, 481 F.3d at 66.

So, having lost on every requirement for a preliminary injunction, Plaintiffs must now show that the district court committed a bevy of errors—including clear error on issues of fact—and ultimately abused its discretion in denying injunctive relief. They cannot come close to meeting that challenge.

**I. The district court properly rejected Plaintiffs’ speculative claims of irreparable harm.**

To demonstrate a likelihood of irreparable harm, the movant must show that “they will suffer an injury that is neither remote nor speculative, but actual and imminent.” *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (internal quotation marks omitted). Such injury must be impossible to remedy by money damages. *Id.* All of Plaintiffs’ asserted injuries are speculative, attenuated, and unsupported by any creditable evidence.

***Reputation and employment.*** Plaintiffs claim that disclosure of the misconduct and disciplinary records at issue would have “a devastating impact on the reputations ... of the identified officers.”

Mot. 2; *id.* 12-14. Before the district court, Plaintiffs also asserted that disclosure would irreparably harm officers' employment prospects. The district court thoroughly evaluated and properly rejected both contentions on the factual record and the law.

Plaintiffs' entire showing on harm to reputation and employment prospects was a report by Dr. Jon Shane, which Plaintiffs mention only in passing here. *See* Mot. 13. For good reason. As the district court explained, "Dr. Shane presents no empirical evidence to support his findings and no anecdotal evidence. His opinion at base is rumination." Order 12. The court further noted that Plaintiffs offered "not one law enforcement officer's statement to substantiate [Shane's] claim." Order 13.

Plaintiffs also offer lawyer argument that "[m]any of the[] allegations" underlying the records at issue "are completely baseless and defamatory." Mot. 2. None of this is supported by any actual evidence. That is why the district court rejected this contention, too. It found that "plaintiffs misstate the nature of the records at issue here," because in every instance, the "actual record being released ... states the outcome of [the] investigation into th[e] complaint." Order 28. So

“any stigma or falsity is addressed by the record.” *Id.* Plaintiffs do not attempt to refute any of these factual findings here.

Nor do Plaintiffs contest the district court’s legal analysis, which correctly explained that generally “any reputation harm can be remedied by money damages.” Order 14-15 (citing, e.g., *Sampson v. Murray*, 415 U.S. 61, 89-92 (1974); *Savage v. Gorski*, 850 F.2d 64, 67-68 (2d Cir. 1988)); *see also Stewart v. U.S. I.N.S.*, 762 F.2d 193, 200 (2d Cir. 1985) (claims of abstract reputational harm “fall[] far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction”).

**Privacy.** Plaintiffs also repeatedly invoke alleged harm to officer “privacy” interests. But they do not explain what legally cognizable privacy interests the officers have. Instead they baldly state that the district court “fail[ed] to account for the confidentiality of the disciplinary records under state law,” citing an inapposite case about user data held by a website. Mot. 12 (citing *Airbnb, Inc v. City of N.Y.*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019)).

Plaintiffs have it backwards. Now that § 50-a has been repealed, misconduct and disciplinary records are “presumptively open for public

inspection and copying” under FOIL, *Gould v. N.Y.C. Police Dep’t*, 89 N.Y.2d 267, 274-75 (1996). *See* N.Y. Public Officers Law § 87 *et seq.* And as the district court noted, the legislature specifically addressed any privacy concerns by “requir[ing] redaction of certain information in law enforcement disciplinary histories, including ... medical history, home address, personal telephone number, personal email address, and mental health service.” Order 37. So at bottom, Plaintiffs are claiming nothing more than abstract, subjective interests in non-disclosure, not cognizable expectations of privacy flowing from an established source of law.

***Officer safety.*** Plaintiffs also raise the specter of a “rising tide of threats and violence,” claiming that “threats against officers ... are likely to increase with dissemination of records that identify officers by name.” Mot. 3, 12. The district court fully rejected this contention and the thin affidavit of Joseph Alejandro that Plaintiffs offered in support, Mot. Exh. O. The problem, the district court explained, is that Plaintiffs failed to show that any violence against officers—actual or predicted—could “fairly be tied to the disclosure or the potential for disclosure of these materials.” Order 15. Alejandro’s speculation of

increased violence was thus not “link[ed] ... to the agency’s new positions regarding FOIL request responses.” Order 16.

Plaintiffs also could offer no explanation for why previous disclosures of records in New York and elsewhere caused no documented harm to officer safety. Order 17; *see* Declaration of Jamie Kalven, CPR Resp. Exh. G, at 1-7 (explaining that following disclosure of misconduct and disciplinary records in Chicago, “the parade of horrors that the unions predicted would harm police officers did not materialize”); Br. of Amici Curiae NAACP Legal Defense and Educational Fund, Inc., et al., Dist. Ct. Dkt. 131, at 15-18, 23 (comparing jurisdictions and noting absence of evidence that transparency has harmed officer safety).

As for Plaintiffs’ invocation of the “chilling[]” prospect that someone could use the internet to find out personal information about officers (known as “doxing”), Mot. 3, the district court again noted that “the legislature took this into account in enacting the new FOIL provision requiring redactions ... for identifying information.” Order 17. In any event, Plaintiffs could not “point[] to an example of” this actually happening anywhere, let alone show an actual and imminent



risk of its occurrence as a result of disclosure of records at issue here.

Order 18. The district court did not clearly err in rejecting Plaintiffs' speculative suggestion of harm to officer safety.

***Loss of CBA rights.*** Perhaps recognizing their failures of proof on the harms they emphasized before the district court, Plaintiffs here focus on claimed rights against disclosure in their CBAs. Mot. 7-8. This argument is predicated on § 7(c) of the relevant CBAs, which appears in the section pertaining to an officer's "Personal Folder." *E.g.*, Mot. Exh. I, at 19. The provision states that "[t]he Department will upon written request to the Chief of Personnel by the individual employee, remove from the Personal Folder investigative reports which, upon completion of the investigation are classified 'exonerated' and/or 'unfounded.'" *Id.* Plaintiffs argue that public disclosure of records will irreparably deny Plaintiffs "their right to meaningful arbitration" and also "render the bargained-for § 7(c) rights meaningless." Mot. 8.

As the district court properly found, and as further discussed below on the merits (at 17-20), the problem with Plaintiffs' argument is that § 7(c) says nothing at all about public disclosure of records. On its face, it provides only a right to have a "personnel" officer remove certain

records—falling into only two of the categories at issue here—from a “Personal Folder.” As the district court explained, “it remains the case that officers can and will be able to exercise their rights under this provision to have specified investigative reports removed from their personnel or personal folder, and it remains the case that the NYPD can remove such reports.” Order 20. Officers will still enjoy the personnel-based benefits of such removal—for example, the removed records would not influence future personnel decisions that are based on the contents of the Personal Folder. There is thus no risk of irreparable loss of the rights conferred in § 7(c).

Plaintiffs do not actually address the plain meaning of § 7(c). Instead, they point out that in their demand for arbitration they alleged that § 7(c) *does* bar public disclosure of *every* record at issue in this case, despite no contractual language pertaining to public disclosure or confidentiality, and despite the clause’s limitation to only two categories of records. Mot. 7. So what Plaintiffs appear to be arguing is that merely by conceiving of the argument and asking to arbitrate it—no matter how baseless and untethered to the plain language of the contract the argument is—Plaintiffs can claim that loss of the

opportunity to arbitrate that argument is sufficient to gain the extraordinary remedy of preliminary relief.

The law is plainly otherwise. This Court has made clear that under both New York and federal law, a preliminary injunction in aid of arbitration can be granted only upon satisfaction of the traditional, rigorous requirements for that relief—which of necessity entails evaluation of the merits of the movant’s arguments. *SG Cowen Sec. Corp. v. Messih*, 224 F.3d 79, 84 (2d Cir. 2000) (state law); *Roso-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y., Inc.*, 749 F.2d 124, 125-26 (2d Cir. 1994) (federal law). The district court carefully considered the text of § 7(c) and correctly concluded that public disclosure of records would cause no harm, irreparable or otherwise, to any rights officers have under that provision.

**II. The district court properly found that Plaintiffs have no likelihood of success on the merits.**

The motion should be denied for the independent reason that Plaintiffs have not shown a likelihood of success on the merits.<sup>4</sup>

---

<sup>4</sup> We address here only those claims raised in Plaintiffs’ motion and reserve the ability to make further points in response to arguments Plaintiffs make in their merits briefing. *See* Mot. 12 n.6 (reserving rights to advance additional arguments).

***Collective Bargaining Agreement.*** Returning first to § 7(c) of the CBAs, what is most notable is that Plaintiffs do not even make a straight-faced argument that they are likely to succeed on the merits of a breach-of-contract claim. They argue instead that under New York state law, N.Y. Civil Practice Law & Rules § 7502, all they need to show to gain injunctive relief is that *the arbitration clauses* in the CBAs require arbitration of their § 7(c) argument, not that their § 7(c) argument is likely to succeed. Mot. 9.

This argument is foreclosed by circuit precedent. In *SG Cowen*, this Court held that when evaluating a request for injunctive relief in aid of arbitration, a court must “consider[] the traditional standards governing preliminary injunctive relief.” 224 F.3d at 84. The Court thus went on to consider the “likelihood of success” of the underlying claim in arbitration. *Id.*; accord *Roso-Lino*, 749 F.2d at 126 (same under federal law); *Espiritu Santo Holdings, LP v. L1bero Partners, LP*, No. 19 Civ. 3930 (CM), 2019 WL 2240204, \*17-18 (S.D.N.Y. May 14, 2019) (collecting cases). The district court did just that and concluded Plaintiffs’ § 7(c) claim was not likely to succeed based on the

unambiguous language of that provision, a conclusion Plaintiffs do not even address head on.

To be sure, as Plaintiffs note, *SG Cowen* suggests that an assessment of the likelihood of success in arbitration may carry “reduced influence” because of “great flexibility in procedure, choice of law, legal and equitable analysis, evidence, and remedy” in the arbitral process. 224 F.3d at 84. But that does not relieve Plaintiffs of the burden of showing *any* likelihood of success. They still need to affirmatively demonstrate that, under whatever arbitration-specific procedures they think may be relevant here, they are likely to prevail. They cannot simply assert it and expect an injunction to follow.

For two separate reasons, Plaintiffs have no chance of success on the merits. First, the unambiguous contractual language forecloses their argument. “The best evidence of what parties to a written agreement intend is what they say in their writing.” *Slamow v. Del Col*, 79 N.Y.2d 1016, 1018 (1992). “Where the contract is unambiguous, courts must effectuate its plain language.” *Seabury Constr. Corp. v. Jeffrey Chain Corp.*, 289 F.3d 63, 68 (2d Cir. 2002). The words “remove from the Personal Folder” mean exactly what they say. And what they

do not say is anything about confidentiality, non-disclosure, restrictions on otherwise lawful public access, or anything remotely to that effect.

The parties knew those words. They did not use them because § 7(c) is about internal personnel files, not public disclosure of records.

Second, even if the parties *had wanted* to include a right against disclosure of records, that would have been unlawful. It is black-letter law that an agency “cannot bargain away the public’s right to access ... public records” under FOIL. *Larocca v. Bd. of Educ. of Jericho Union Free School Dist.*, 220 A.D.2d 424, 427 (2d Dep’t 1995); *accord Washington Post Co. v. N.Y.S. State Ins. Dep’t*, 61 N.Y.2d 557, 566-67 (1984); *City of Newark v. Law Dep’t of N.Y.*, 305 A.D.2d 28, 32-33 (1st Dep’t 2003); *see also Washington Post Co. v. U.S. Dep’t of Health and Human Servs.*, 690 F.2d 252, 263 (D.C. Cir. 1982) (same under FOIA).

Plaintiffs make no argument about § 7(c)’s plain language or the prohibition on contracting around FOIL. Instead they suggest that the district court “f[ound] the language ambiguous” and then “speculated ... on the intent of the parties.” Mot. 11. That is wrong. The district court found an *adjacent* provision, § 8—which speaks of “expunging” records—to be “not entirely clear,” and so granted a narrow injunction

based on that provision. Order 21. On § 7(c), the district court found, “I completely disagree with plaintiffs’ broad interpretation of this provision, and in no way do I believe that it can stretch so far as to prevent the disclosure of this information.” Order 19. It thus held that “[t]his is not a situation ... where the Court would be nullifying relief an arbitrator might be able to provide because the relief sought is simply nowhere to be found in the CBA.” Order 20. The district court did not abuse its discretion in ruling that Plaintiffs are unlikely to succeed on the merits of their § 7(c) claim.

**Article 78.** The district court also properly rejected Plaintiffs’ Article 78 claim that Defendants’ decision to release records was arbitrary and capricious. *See* N.Y. Civil Practice Law & Rules § 7801 *et seq.* Plaintiffs begin by arguing that the district court “fundamentally misunderstood the Unions’ argument” by “characterizing [it] as a kind of challenge to the legislature’s repeal of § 50-a itself.” Mot. 14. But the ruling makes clear that the district court merely considered and rejected that argument *in addition* to other Article 78-based arguments, Order 37—that shows care, not misunderstanding.

Indeed, the only fundamental misunderstanding here lies in Plaintiffs' attempt to treat an Article 78 claim concerning the basic rationality of agency procedures into a repository for stray bits of old § 50-a law, assorted policy arguments, snippets of deposition testimony, and rhetoric. Plaintiffs try to weave together a narrative that the "City abruptly changed" disclosure practices after the repeal of § 50-a. Mot. 14-17. But the district court found as a matter of fact that the only change after § 50-a's repeal is "that the agencies have merely removed Section 50-a from their list of exemptions or considerations in responding to FOIL requests," and it found that any "FOIL exemptions [that] remain to protect officers' privacy and safety rights ... still exist." Order 38-39. Plaintiffs do not argue that this factual finding is clear error. And as the district court found, Defendants' approach is supported by an eminently "rational basis"—Defendants "were merely reacting to a change in law." Order 38-39 (citing *Gilman v. N.Y.S. Div. of Housing & Cmty. Renewal*, 99 N.Y.2d 144 (2002)).

Similarly meritless is Plaintiffs' critique (at 15-16) that the CCRB, in response to a FOIL request, did not conduct "individualized determinations" for records of complaints pertaining to 81,000 officers.



Plaintiffs do not show how these records—which all disclose the same basic categories of information—are somehow materially different from one another for purposes of assessing relevant FOIL exemptions from disclosure. There is nothing irrational about treating like records alike.

***Due process.*** The district court properly rejected Plaintiffs’ stigma-plus claim, which requires a plaintiff to show “(1) the utterance of a statement about her that is injurious to her reputation, ‘that is capable of being proved false, and that he or she claims is false,’ and (2) ‘some tangible and material state-imposed burden ... in addition to the stigmatizing statement.’” *Velez v. Levy*, 401 F.3d 75, 87 (2d Cir. 2005). Plaintiffs failed to show stigma or plus.

As to stigma, the court explained that “Plaintiffs have made no showing that any record that would be released by the City would inaccurately reflect the disciplinary or investigative process.” Order 29. “[N]or have they offered any evidence to support the assertion that the release of these records will lead to widespread dissemination of false statements.” Order 30. The district court did not abuse its discretion in finding that Plaintiffs’ failure to adduce a shred of evidence of

inaccuracy—let alone defamatory effect—foreclosed likelihood of success on the stigma requirement.

As to the plus requirement, Plaintiffs lose on the facts and law. They claim that “interfer[ence] with officers’ future employment prospects” qualifies. Mot. 18-19. But the only evidence they offered for such an effect was Dr. Shane’s report, which the district court rejected as “rumination” unsupported by “empirical” or even “anecdotal” evidence. Order 12. And in any event, as the district court also found, Order 32-33, this Court has held that “the impact [any] defamation might have on job prospects” does not satisfy the plus requirement. *Valmonte v. Bane*, 18 F.3d 992, 1001 (2d Cir. 1994). Plaintiffs’ due process claim is thus wholly meritless.

**III. The district court properly found that the public interest and balance of hardships weigh decidedly against injunctive relief.**

Finally, Plaintiffs’ motion also fails for the independent reason that the public interest in full and prompt disclosure of misconduct and disciplinary records following § 50-a’s repeal vastly outweighs any speculative harms Plaintiffs assert, tipping the balance of equities decidedly against injunctive relief. *See Winter*, 555 U.S. at 22

(injunctive relief inappropriate where public interest outweighs claimed harms); *Nken*, 556 U.S. at 435 (noting that public interest and hardships inquiries merge in cases involving the government).

The district court made specific factual findings as to the public interests at play and carefully weighed those interests in the equitable balance. Specifically, the court found that if Defendants were enjoined, “they would be stymied and improperly so, in their efforts to comply with recent legislative developments”—that is, repeal of § 50-a. Order 41-42. That repeal “was designed to promote transparency and accountability, to improve relations between New York’s law enforcement communities and their first-responders and the actual communities of people that they serve, to aid law makers in arriving at policy-making decisions, to aid underserved elements of New York’s population and ultimately, to better protect the officers themselves.” Order 42.

The district court’s findings were based on extensive evidence—evidence that overwhelmed in both quantity and quality Plaintiffs’ showing. Declarant after declarant, including elected officials, experts in police policy and reform, a former police chief, and families of the

victims of police violence, all attested to a host of urgent public interests in transparency and accountability. *See* CPR Resp. Exhs. A-L. Most pressingly, they explained in concrete detail how the absence of full transparency and accountability presently results in increased police misconduct and violence, particularly in the state’s most heavily policed communities (including many in New York City).<sup>5</sup>

The populations most often subjected to this misconduct and violence—including people of color, women, and LGBTQ people—have an immediate interest in the effectuation of long-overdue reforms adopted specifically to address these very ills. *Supra* 25 n.5; Declaration of Andrea J. Ritchie, CPR Resp. Exh. A, at 4-8.

Plaintiffs do not challenge a single word of these declarations, nor the district court’s findings crediting them. They simply assert that an injunction “would do nothing to hurt the public.” Mot. 21. But Plaintiffs bear the burden here of showing not only that the public interest is not disserved by an injunction, but that the district court

---

<sup>5</sup> *See* Declaration of New York City Public Advocate Jumaane D. Williams, CPR Resp. Exh. J., at 2-4; Declaration of Assemblyman Michael Blake, CPR Resp. Exh. B., at 2-6; Declaration of Councilman Donovan Richards, CPR Resp. Exh. D, at 4-5; Declaration of New York State Senator Julia Salazar, CPR Resp. Exh. K, at 6-7.

abused its discretion in finding otherwise. Bare assertion is insufficient. And the fact that Plaintiffs cannot even bring themselves to mention the deep public interest in full and immediate transparency—plainly recognized by the legislature, Defendants, numerous declarants, and ultimately the district court—speaks volumes. The district court did not abuse its discretion in ruling that these interests outweigh Plaintiffs’ speculative claims of harm.

### CONCLUSION

The Court should deny Plaintiffs’ motion for relief pending appeal.

September 4, 2020

Respectfully submitted,

Baher Azmy  
Darius Charney  
Guadalupe V. Aguirre  
CENTER FOR  
CONSTITUTIONAL RIGHTS  
666 Broadway  
New York, NY 10012  
(212) 614-6464

/s/ Alex V. Chachkes  
Alex V. Chachkes  
Rene Kathawala  
Christopher J. Cariello  
Tiffany R. Wright  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5100

*Counsel for Intervenor-Defendant-Appellee*

## CERTIFICATE OF COMPLIANCE

Pursuant to Second Circuit Local Rule 27.1 and Fed. R. App. P. 27(d)(2), this response complies with the type-volume limitation because this response contains 4989 words.

This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this response has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

ORRICK, HERRINGTON & SUTCLIFFE LLP

*/s/ Alex V. Chachkes*

Alex V. Chachkes

*Counsel for Intervenor-Defendant-Appellee.*

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNIFORMED FIRE OFFICERS  
ASSOCIATION, et al.,

*Plaintiffs-Appellants,*

*v.*

BILL DE BLASIO, in his capacity as  
Mayor of the City of New York, et  
al.,

*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE  
REFORM,

*Intervenor-Defendant-Appellee.*

No. 20-2789

On Appeal from the United  
States District Court for the  
Southern District of New York,  
No. 20-cv-05441-KPF, Hon.  
Katherine Polk Failla

**DECLARATION OF ALEX V. CHACHKES IN SUPPORT OF  
INTERVENOR-DEFENDANT-APPELLEE COMMUNITIES  
UNITED FOR POLICE REFORM'S RESPONSE TO PLAINTIFFS-  
APPELLEE'S MOTION FOR A STAY PENDING APPEAL**

I, Alex V. Chachkes, declare under penalty of perjury, pursuant to  
28 U.S.C. § 1746, that the following is true and correct.

1. I am counsel for Intervenor-Defendant-Appellee, Communities  
United for Police Reform (CPR). I submit this Declaration in support of  
CPR's Opposition to Plaintiffs-Appellants' motion for a stay of the  
District Court's August 21, 2020 denial of the Unions' request for a  
preliminary injunction.

2. The following documents are attached as exhibits to this declaration:

- **Exhibit A:** Declaration of Andrea Ritchie in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 136);
- **Exhibit B:** Declaration of Assemblyman Michael Blake in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 137);
- **Exhibit C:** Declaration of Brendan Cox in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 138);
- **Exhibit D:** Declaration of Councilman Donovan Richards in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 140);
- **Exhibit E:** Declaration of Dr. Delores Jones-Brown in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 142);
- **Exhibit F:** Declaration of Dr. Samuel Walker in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 143);
- **Exhibit G:** Declaration of Jamie Kalven in Support of Communities United for Police Reform's Opposition to Plaintiffs' Request for a Preliminary Injunction (Dist. Ct. Dkt. 144);



- **Exhibit H:** Declaration of Kadiatou Diallo in Support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for a Preliminary Injunction (Dist. Ct. Dkt. 145);
- **Exhibit I:** Declaration of Michael J. Gennaco in Support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for a Preliminary Injunction (Dist. Ct. Dkt. 146);
- **Exhibit J:** Declaration of Jumaane D. Willaims in Support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for a Preliminary Injunction (Dist. Ct. Dkt. 147);
- **Exhibit K:** Declaration of Senator Julia Salazar in Support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for a Preliminary Injunction (Dist. Ct. Dkt. 148);
- **Exhibit L:** Declaration of Susan Lerner in Support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for a Preliminary Injunction (Dist. Ct. Dkt. 149).

September 4, 2020

/s/ Alex V. Chachkes

Alex V. Chachkes  
ORRICK, HERRINGTON &  
SUTCLIFFE LLP  
51 West 52nd Street  
New York, NY 10019  
(212) 506-5100

# EXHIBIT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF ANDREA  
RITCHIE IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Andrea J. Ritchie declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I have worked as a police misconduct attorney for 16 years. I am also a researcher, academic lecturer, policy expert and author. Currently, I am Researcher in Residence on Race, Gender, Sexuality and Criminalization at the Barnard Center for Research on Women, a role I have held since 2016. Prior to that, from 2014-2016, I served as a Soros Justice Fellow, where I conducted research on policies governing law enforcement interactions with women and LGBT people by surveying and reviewing the policies of 36 of the largest law enforcement agencies across the country and publishing the results in the peer reviewed journal *Women and Criminal Justice*.

3. As a Soros Justice fellow, I provided policy expertise to the White House Office of Public Engagement, White House Counsel on Women and Girls of Color, U.S. Department of Justice, and law enforcement agencies and associations across the country on an ongoing basis regarding issues including profiling and police violence, and supported the Department of Justice Community Oriented Policing Services department in the development of a publication entitled *Gender, Sexuality, and 21<sup>st</sup> Century Policing*. I provided expert testimony before President Obama's Task Force on 21<sup>st</sup> Century Policing based on submissions outlining an agenda for police reform rooted in the experiences of women and LGBT people of color, which were endorsed by over 75 organizations and individuals. The Task Force quoted my testimony and

submissions, and adopted several key recommendations. I also played a leadership role in ongoing advocacy regarding the implementation of those recommendations.

4. During my Soros Justice Fellowship, my work specific to New York included co-chairing the Anti-Violence & Criminal Justice Committee of New York City Council Young Women's Initiative, and researching and developed policy recommendations adopted in the Young Women's Initiative's final reports, including a recommendation that the NYPD develop and effectively enforce policy on police sexual misconduct against members of the public in concert with community based organizations, which was never implemented by the NYPD.

5. I am the author of *Invisible No More: Police Violence Against Black Women and Women of Color* (Beacon Press 2017), the first full-length publication on gender-based violence by law enforcement agents, including a chapter summarizing existing research on police sexual violence. More recently, I wrote an opinion piece for the Washington Post on police sexual violence entitled "How Some Cops Use the Badge to Commit Sex Crimes."

6. My work (both advocacy and research) focuses heavily on issues relating to sexual or gender-based violence perpetrated by the police. The above are only recent examples of my long career in this arena. I began this work in the mid-1990s while living in Toronto as a member of an advisory committee to the City Auditor on an audit of the Toronto Police Services' practices with respect to sexual assault, and continued and expanded my work in this field throughout my life and work in the U.S. From 2003-2004 I worked as an expert consultant for Amnesty International USA. Among the projects I undertook there, I worked on an initiative documenting police misconduct against the LGBTQ community in four major U.S. Cities (NY, Chicago, LA, San Antonio). I presented to UN on Committee Against Torture, Committee on Human Rights in 2006, and to the UN Committee on the Eradication of Racial Discrimination in

2008. While violence by law enforcement officers amounts to torture under international human rights law, we know that police violence and police sexual violence occur in the United States, including in New York, often in secrecy and with impunity. There have been high profile examples of such cases.

7. I submit this declaration in particular to testify to the need for the release of records of complaints of gender-based violence by law enforcement that are “unfounded,” “unsubstantiated,” “exonerated,” “truncated,” or otherwise non-final and/or not substantiated—categories of records I understand the police, corrections and fire organizations oppose disclosing. As a scholar, survivor, a woman walking the streets of New York, and as an advocate for women and LGBTQ people, I believe that disclosing records of alleged non-adjudicated sexual or gender based violence by law enforcement is crucial to identifying systemic problems, common contexts and forms of police gender-based violence, and removing individuals responsible for perpetrating or condoning sexual and gender-based violence against members of the public from the police force. In connection with sexual violence in particular, the need to disclose and examine complaints that are not formally substantiated is especially crucial because of the nature of sexual assault and the barriers to reporting and low substantiation rates.

8. Sexual violence by law enforcement is the second most frequently reported form of police misconduct, and one study found that an officer was caught in an act of sexual violence every five (5) days on average over a decade-long period. Researchers—including former law enforcement officers—agree that documented cases of police sexual violence represent only the tip of the iceberg, and that unreported cases no doubt far exceed those which are reported. Federal Bureau of Justice statistics data shows that only about a third of sex assaults are reported

to anyone. It stands to reason that even fewer would be reported when the assault is committed by a law enforcement officer. When the individuals investigating an alleged sexual assault are the same individuals who are friends and colleagues of the assailant, a true and unbiased investigation is much less likely.

9. Throughout my work and research, I have seen that there are significant barriers to victims of police sexual violence (or any sexual violence) coming forward. Police officers who commit sexual violence deliberately target vulnerable women and LGBTQ people who are least likely to feel comfortable coming forward, least likely to be believed if they do, and most vulnerable to retaliation—including young people, particularly those engaged in “Explorer” and other police engagement programs, survivors of domestic and sexual violence seeking assistance, migrants, homeless and low-income people, disabled people, trafficking survivors and women who are or are believed to be involved in the sex trades, and people who are criminalized due to drug use. In addition, because of the private nature of sexual violence—which often takes place in isolated areas, in police vehicles and facilities, and behind closed doors, often without third party witnesses, and often without corroborating physical evidence—allegations of those claims are less likely to be deemed “substantiated.” Unlike other forms of police violence, sexual violence by law enforcement officers is less likely to be recorded by a bystander. As a result, many complaints are dismissed or unsubstantiated because the evidence boils down to the officer’s word against that of the survivor, with the officer’s credibility almost always assumed. Additionally, many survivors of police sexual violence elect not to pursue their complaint in the face of potential retaliation, lack of support, and trauma due to the assault, resulting in the majority of being deemed “unsubstantiated” or otherwise not substantiated.

10. As with any individual who commits sexual violence, reported incidents often represent a gross underestimation of the number of acts that the individual has committed. Research on police sexual violence suggests that officers responsible are often in serial offenders.

11. In the context of the NYPD, and of my representation of individuals who have experienced sexual assault by law enforcement, I am familiar with the investigatory and disciplinary process. I have been invited to meet with and present to New York City's Civilian Complaint Review Board ("CCRB") on why the agency should exercise its jurisdiction to investigate and adjudicate complaints of sexual misconduct. Generally speaking, complaints of police sexual violence are referred to the Internal Affairs Bureau ("IAB") of the New York City Police Department. Allegations of sexual misconduct by police officers are investigated by other police officers, often using tactics of interrogation and intimidation against survivors who come forward. There is no external oversight. In 2018, the CCRB asserted its jurisdiction over cases related to sexual harassment and assault, but its ability to investigate and adjudicate such cases was challenged in a lawsuit filed by the police organizations.

12. Survivors of police sexual violence who do come forward are subject to victim-blaming and shaming that is common to rape culture. For example, when Anna Chambers alleged that two NYPD detectives raped her after arresting her in a park, the ensuing investigation and eventual trial against the officers focused more on Chambers' credibility, rather than on the two officers whose DNA was found on a teenager under arrest. As I wrote in the New York Daily News, "[t]he message to survivors Chambers' treatment in the media and courts sends is clear: If you come forward, you will be the one under the microscope, not the officers who violated you. Your every prior call to police will be scrutinized, every statement dissected



for inconsistencies, every Facebook picture held up as evidence of promiscuity.”<sup>1</sup> This was also true of a survivor whose sexual assault by two NYPD officers was discredited because she was intoxicated at the time—in fact, the officers first came into contact with her ostensibly to assist her in returning home, and later returned to her apartment to engage in sex with her.<sup>2</sup>

13. However, generally speaking, when one survivor of police sexual or gender-based assault does come forward and their experience becomes public, often more survivors feel empowered to do the same. This is not unique to cases of police sexual violence. It permeates every level of society—as shown by recent high-profile examples of entertainment performers and executives who had benefited from their victims’ silence for years, only to later be met by a floodgate of credible, similar accusations after the first victim came forward.

14. Transparency and a sense that complaints of police sexual violence will be taken seriously, survivors will receive support, and that officers responsible will be held accountable and removed from positions where they are likely to be able to continue to engage in sexual violence is essential for creating a safe space for survivors to come forward. Transparency requires listening to victims and bringing their experiences to light rather than silencing them, and making public information that might protect future potential victims.

15. My research has found that transparency around sexual assault complaints is important to identify officers who are likely to engage in future acts of police violence—including deadly violence. Sexual harassment and assault of members of the public is often an

---

<sup>1</sup> *The Trial of Anna Chambers: Police Departments Haven’t Done Nearly Enough to Protect People from Sexual Exploitation at the Hands of Cops*, NEW YORK DAILY NEWS (May 14, 2019, 10:30 AM), <https://www.nydailynews.com/opinion/ny-oped-the-trials-of-anna-chambers-20190514-4hump2keozawdc66pfhgmdvn3a-story.html>.

<sup>2</sup> *See Two New York City Police Officers Acquitted of Rape*, NEW YORK TIMES, (May 26, 2011), <https://www.nytimes.com/2011/05/27/nyregion/two-new-york-city-police-officers-acquitted-of-rape.html>.

early warning sign that officers are likely to abuse their power in many situations. If the behavior remains unchecked these serial offenders may escalate their violence. This can lead to more serious assaults, and even lethal uses of force. For instance, the officer responsible for killing Breonna Taylor had several prior complaints of sexual misconduct, as did the officer who killed Loreal Tsingine.

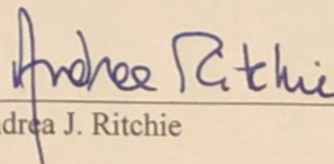
16. Finally, monitoring patterns of complaints of sexual misconduct allows for identification of problem officers, units, and policing practices. For instance, in several police departments across the country, awareness of complaints of sexual misconduct enabled individual officers to be caught and held accountable through sting operations, units such as the LAPD's infamous Rampart Division to be dismantled, and problematic practices in the enforcement of drug and prostitution laws to be addressed through oversight and ideally intervention.

17. For these reasons, I submit this declaration in strong opposition to the Plaintiffs' attempt to keep these records secret.

Executed on this 13th day of August, 2020, in Toronto, Ontario, Canada.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



---

Andrea J. Ritchie

# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF ASSEMBLYMAN  
MICHAEL BLAKE IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Michael Blake declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform’s (“CPR”) Opposition to Plaintiff’s Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

### **My Work as Assemblyman**

1. I currently serve as the New York State Assemblyman from the 79<sup>th</sup> District in the Bronx. This is a position I have held since November 17, 2014, when after a career in national politics—including serving in the Obama Administration as the Associate Director of Public Engagement and the Deputy Associate Director of the Office of Intergovernmental Affairs—I transitioned to local politics to represent the community where I grew up.

2. In my role as Assemblyman, I was involved in the efforts to repeal § 50-a. I was a lead speaker on the importance of repealing § 50-a, and ultimately co-sponsored A02513, the bill sixty-three assembly members co-sponsored during the 2019-2020 General Assembly to repeal § 50-a. Additionally, I was a co-sponsor and voted for A10611, the bill that ultimately repealed § 50-a. I have also been very active within the Black, Puerto Rican, Hispanic, and Asian Caucus.

3. My advocacy for repealing § 50-a was motivated by concerns voiced by my constituents—but further fueled when I myself experienced NYPD misconduct.

### **My Personal Experience with Police Misconduct**

4. In 2016, in my official capacity as Assemblyman, I attended a family day event at Morris Houses, a public housing project located in my district. In speaking to residents there, I

heard that many residents were having issues with the officers who had been assigned to the housing project. I left the family day event for several hours to attend other events within my district, but later returned to the family day event. When I returned, multiple officers had several of the housing's residents in handcuffs. Aware of the policing issues in this community, I approached to see what was happening. A commotion broke out and I attempted to intervene to deescalate the situation. At that moment, I was grabbed by an NYPD officer and thrown against the wall. Despite pleading with the officer to let me go, he continued to hold me against the wall. Only when a second officer recognized me as an Assemblyman did he instruct the first officer to let me go.

5. Immediately after, I asked both officers for their name and badge number. Both of the officers refused—even though officers are required to give this information. I was able to look at one officer's uniform and see his name and badge number. The other officer, however, turned away from me, refusing to let me see the front of his uniform. Immediately, the officers began claiming that their training teaches them to treat everyone as a threat initially, and that they tackled me for that reason: I was a perceived threat.

6. Following this incident, I organized a press conference, where I detailed my experience and my inability to get information from the offices involved. I recognize that the only reason the officer stopped assaulting me was my name and title—factors which I strongly believe should not dictate whether a citizen is violently detained.

7. After the press conference, I had a meeting with then Police Commissioner Bratton. I received no additional information from the Commissioner. I had to find out from media coverage of an event the Commissioner went to after our meeting that he had no intention of apologizing. I complained to CCRB, who investigated the case. It was only because of my



attorney's continual pressure that I received justice. The entire process was a black box, where apart from my interview with the CCRB investigator, I had no idea what was happening on the other side.

8. This incident spurred my commitment police accountability efforts, including the repeal of § 50-a and open discovery laws. It showed me firsthand (although not for the first time in my life) that the system of secrecy within the NYPD and disciplinary bodies allowed officers to act violently against innocent citizens, and to do so with impunity when they should be held to a higher standard. It is not a coincidence that the officers released me only when they realized my position within the city.

**The Unions' Arguments Were Already Rejected by the Legislature – And They Do Not Hold Water**

9. What became increasingly clear during my work on repeal efforts was that for both the unions and the statewide law enforcement departments, the repeal of § 50-a and open discovery were nonstarters. They simply would not agree to this. But despite the unions and departments stonewalling all attempts at reform, those of us who fought relentlessly for its repeal secured a significant victory in June 2020 with the repeal of § 50-a. Now, the unions seek to rollback this victory, by making the same arguments that they made in opposition to repeal.

**Any Concerns Regarding Police Safety are Just Speculation**

10. But concealing records of misconduct does harm the community's safety. In no other profession do we expect society to be comfortable interacting with an individual who has multiple complaints of professional misconduct; for example, I would not feel comfortable interacting with a doctor with numerous malpractice claims. But, when it comes to law enforcement, the public is expected to interact willingly with armed officers who may have numerous complaints that the department actively shields from disclosure.

11. It is impossible for the community to feel safe if we do not know, and are in fact, prevent from knowing, if we are in an environment in which law enforcement engages in a pattern or form of behavior against the community's safety. This is especially true when the department spends considerable time and resources to specifically hide previous behaviors. This raises the questions of who the department is trying to protect: themselves or the community? That fosters distrust, and leaves citizens feeling unsure and unsafe.

12. It is crucially important that all records are publicly available. For unfounded or unsubstantiated complaints, just because the conduct was not proven does not mean it did not happen. Because police misconduct is often only revealed if citizens come forward to complain about officers who abuse their station, there is a very real fear of retaliation amongst community members. In these cases the person coming forward to file a complaint faces more risk than the officers and the department involved in covering up the information.

13. This fear is not speculative. During June 2020, I was on the streets during the early days of the protests that stemmed from George Floyd's murder. I observed that whenever an officer was interacting with a community member, a line of citizens would form—so there would be witnesses. But on the other side of the interaction stood members of the police's Strategic Response Group, wearing full military equipment, staring down these would-be witnesses, likely intimidating them. That a citizen would still file a complaint in the face of this intimidation and the other forms of police intimidation and retaliation is itself telling.

14. Additionally, the release of all records is critical to identifying patterns of behavior. Whereas something happening once or twice may be characterized as a mistake, it is less likely that the conduct be a random occurrence if there are multiple complaints involving the same type of conduct, regardless of the ultimate outcome. Because officers are public servants,



the public should be aware of instances of both perceived and actual misconduct, because any misconduct leads to mistrust.

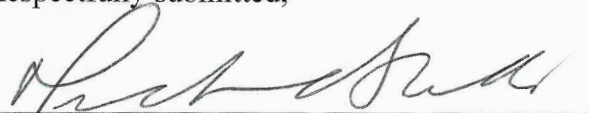
15. Finally allowing the release of all information regarding *officer* conduct is consistent with the police's expectation of disclosure from *citizens*. That is, if an individual is a witness to a crime, the police expect that individual to prove a full and truthful account of events. Failure to do so when asked could be viewed as obstruction. Yet when it comes to investigating bad actors within the police, the police department's status quo is to hide everything. It is entirely inconsistent to promote "see something, say something" in the community but then aggressively fight for silence regarding a "something" possibly done by officers.

16. When the unions and the department fight adamantly for silence, they make the community continually fearful, because any interaction with law enforcement could be with an officer whose long history of misconduct complaints has been adamantly protected for years. This raises questions of what the department is so afraid of the public knowing. At the core, concealing misconduct investigations and complaints covers furthers the violence the community experiences. Only in making all the records publicly available can community members feel safe walking the streets, and safe walking into the precinct to report or help solve crimes.

Executed on this 13<sup>th</sup> day of August, 2020, in The Bronx, New York

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
\_\_\_\_\_  
Michael Blake

# EXHIBIT C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF BRENDAN COX**  
**IN SUPPORT OF COMMUNITIES**  
**UNITED FOR POLICE REFORM'S**  
**OPPOSITION TO PLAINTIFF'S**  
**REQUEST FOR PRELIMINARY**  
**INJUNCTION**

Brendan Cox declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform’s (“CPR”) Oppositions to Plaintiff’s Request for Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

### **Summary of Opinions**

2. I am the retired Police Chief of the Albany Police Department, where I began my 23-year career in law enforcement as a rank-and-file officer. Like so many young officers, I first joined the police force because I wanted to be out in my community, helping people and making a positive difference. After many years with the Albany Police Department, I was promoted to Police Chief, a position I held until 2017, when I retired from law enforcement.

3. I am currently the Director of Policing Strategy for Law Enforcement Assisted Diversion’s National Support Bureau and a Speaker with Law Enforcement Action Partnership (“LEAP”). LEAP is a nonprofit group of police, prosecutors, judges, and other law enforcement officials working to improve the criminal justice system. My work focuses on police transparency and accountability issues, including advocating for the repeal of § 50-a.

4. In January 2020, I authored an op-ed, published in *The Times Union*, titled “Commentary: Open Misconduct Records to Improve Public Trust in Police.”<sup>1</sup> In the op-ed I detail how transparency plays a vital role in building community trust and safety. I called for § 50-a to be repealed because I think that the law serves to lump honest, hard-working police

---

<sup>1</sup> Available at <https://www.timesunion.com/opinion/article/Commentary-Open-misconduct-records-to-improve-14948648.php>.



officers in with officers who have betrayed the public trust by allowing their misconduct to be shielded by outdated legislation.

5. Throughout my career, and in particular during my work to advocate for the repeal of § 50-a, I encountered many of the same arguments that the unions raise in this litigation. Based on my experience, these arguments regarding officer safety, officer reputation, and the ability of upstanding officers to secure future employment do not ring true. Specifically, the arguments that releasing records will jeopardize officer safety, reputation, and employment are not true. In fact, the opposite is true: the transparency that comes from releasing misconduct records increase officer safety by increasing public trust in the police generally; officers already have a reputation in the community based on how they treat community members; and honest officers who uphold their responsibilities and are able to acknowledge when they have made mistakes will almost always be able to secure future employment.

#### **My Observations During My Career in Law Enforcement**

6. In the early years of my career, when an officer in the Albany Police Department received a complaint, the officer was required to submit an incident memo to Internal Affairs. During those mid-1990 years, it was customary amongst the rank-and-file to write “I didn’t do it” in every incident memo—even if that was not the truth. This created a culture where individual officers were not held accountable for their actions, and it allowed the department to ignore system-wide problems.

7. I also observed inconsistent disciplinary procedure based more on an officer’s popularity within the department than on the severity of misconduct. Often, a well-liked officer or one who had a connection to leadership would not be disciplined to the same extent as officers without those connections. This led to distrust within the department. I myself did not trust the

brass and their ability to discipline fairly, so I became involved in the police union. This is where I formed my first opinions about § 50-a.

8. Initially I believed that § 50-a was beneficial to the officers, protecting them from having their misconduct records used to attack their credibility when they testified in connection with cases in which they had been an investigating or arresting officer.

9. But my opinions about § 50-a shifted dramatically over time. Most officers had not had significant misconduct complaints or investigations—and so I learned that the risk that misconduct records could discredit otherwise credible officers' testimony is not as grave as I once thought. To the contrary: when an officer is able to admit that a minor disciplinary infraction shows an incident in which they—like all humans—made a mistake, and when that officer acknowledges it and take steps to behave better in the future, that bolsters that officer's credibility (both in and out of court). By comparison, when misconduct records show a pattern of similar complaints or extensive misconduct complaints, this raises legitimate concerns about the officer's credibility—and that information should be available for the court to consider.

10. As I advanced within the leadership of the Albany Police Department, I saw firsthand the harms that a lack of transparency and accountability cause. Secrecy around police misconduct and any resulting discipline gives the impression that there is a lack of oversight and accountability within the department. Community members believe that problems are being ignored or not taken seriously. Internally, the secrecy fosters mistrust within the department; officers do not feel supported. And, working in a community that does not trust police officers leads to morale issues.

**My Efforts to Increase Transparency, and the Results I Saw, While Police Chief**

11. When I became Chief, I made it my mission to focus on building both trust and transparency. The two go hand-in-hand: the more transparent a department can be, the more trust the community will have.

12. For police to effectively prevent and solve crime, officers need the community members to come forward and provide information regarding crimes they have witnessed. The community will only do that when they have trust in the police department. This trust comes in large part from the community seeing that, if they make complaints about officers who abuse their position, those complaints are taken seriously, investigated, and that the officers are corrected and disciplined. When an officer engages in misconduct and the discipline process is kept secret, the community has no way of knowing if the misconduct was properly addressed. And, when the community believes that police departments are withholding information regarding police misconduct, the community will not report crimes or come forward as witnesses in open investigations. If members of the community feel that the police are not being open and transparent, those citizens themselves are less likely to be open and transparent.

13. I saw proof of this during my tenure as chief. During my second day as acting chief in Albany, an individual died while in our custody. Instead of retreating behind § 50-a, we openly shared information with both the victim's family and directly with the community. It was important for me and my department to show our commitment to improving public trust. Most importantly it was critical to show that we were committed to thoroughly investigating the incident and holding officers accountable.

14. Once the community saw that we were open about investigating complaints of all scale and that we were not trying to hide misconduct, the community became more receptive to



forging relations with the department. Members of the community more readily came forward to report crime or to provide witness information, because the trust with the community had been repaired. And citizens were less apprehensive about being associated with the police department.

15. One vivid example of how increased transparency built trust and improved the relationship between the community and the department is illustrated by the simple example of a t-shirt: Every year the Albany Police Department runs a Summer Cadet program for youth ages 13-18 to participate in a junior police academy. The participants would receive a t-shirt with the department's logo. When the program started, it was common for the students to walk to the program in their normal attire, change into the shirt and wear it during the program, and remove the shirt before leaving for the day. They did not want to be seen walking the streets in a shirt showing their affiliation with the police. But by 2016, the last year that I ran the program before I retired, I noticed that the students were now wearing the shirt *outside* the program. As the community became more trusting of the police, the youth became more comfortable being associated with the department.

**Advocacy Efforts and Work Surrounding the Repeal of § 50-a**

16. Following my retirement from the police force, I became involved in LEAP, where I have focused my attention on reform related to police transparency and accountability. As part of my advocacy efforts, I supported the repeal of § 50-a because I do not think that § 50-a allowed law enforcement to be held accountable to the public; and that in turn prevented addressing systemic issues within the police system.

17. A majority of officers go to work each day and serve their communities with honor and do not abuse their authority. For these officers, the repeal of § 50-a has a positive



effect, not a negative one. However, there *are* officers who disrespect the community, abuse their authority, and engage in misconduct. It is important to protect the majority of officers who are upstanding public servants that the law enforcement system is transparent about those officers who are not—and allow the public to understand the degrees and nuances of accused misconduct.

18. Repealing § 50-a removed a key barrier to transparency, which now the unions are fighting in this litigation. Many of the arguments that the unions made during the repeal § 50-a process are the same that they are making now. But these arguments do not ring true, based on my experience.

**Transparency Promotes Officer Safety by Increasing Public Trust in the Police**

19. As a member of law enforcement for 23 years, officer safety has always been a priority for me. I simply do not believe that releasing the misconduct histories of police officers will put them at risk. To the contrary: increased transparency directly leads to increased officer safety. The release of misconduct records would make policing safer, because officers are always safer when community members trust us and have our backs. And when the disciplinary process is transparent, the public has increased confidence in the results of the disciplinary process. By comparison, an officer is most at risk when the community believes that the police department is shrouded in secrecy and working to hide misconduct. It is when misconduct goes unchecked that the community becomes frustrated and distrusting. That is when officers and the department face the most risk.

**Transparency is Crucial for Future Employers and Will Not Ruin the Employment Prospects of Good Officers**

20. The Unions' argument that making misconduct records public will prevent officers from obtaining future employment is also misplaced. During my time as Chief, I was

directly involved in the hiring process of both new recruits and laterals from other departments. I know from that experience that good officers who wish to lateral departments will almost always be able to obtain employment. Officers with minor disciplinary records will also be able to move to a new department, so long as the record shows that the issue was dealt with and corrected.

21. When considering a potential lateral hire, it is critical to have records of all complaints regardless of disposition. Of course, I would never reflexively assume that a complaint that was unsubstantiated, unfounded, or exonerated was actually valid. But I might nevertheless ask an officer about it. If a prospective lateral had, for example, numerous complaints, but all were unsubstantiated, I would still view those complaints as significant in the mix of things I might ask the officer about and ultimately consider. And indeed, a pattern of numerous, similar complaints could raise important questions about fitness regardless of the disposition. As someone charged with protecting both the citizens in my community and the officers working alongside any new hire, I strove to get the fullest picture I could of an officer's past performance, including misconduct and disciplinary history.

22. Of course, during my own tenure, when it came to lateral officer hiring, I found that § 50-a blocked my access to candidates' personnel records. I often was able to find more information about a prospective candidate through Google than through their official records. I would also have the Office of Professional Standards directly ask candidates about complaints against them and the outcomes of the complaints. I had to trust that they were being forthcoming with the process. I would like to think that job candidates are honest with prospective employers—so I do not see why the unions believe the continued secrecy around this

information is necessary. If anything, full and ready access to misconduct and disciplinary history will simply provide a fuller and more accurate assessment of all relevant factors.

23. As Chief, I would not have been doing my job—to protect the community and department—if I did not further investigate misconduct and disciplinary histories that raised red flags before making my ultimate decision. There are simply circumstances in which an officer should not be hired by a new department because of that officer’s record. And if that officer is hired, the department may be held accountable for hiring someone that endangers the many interests a police department must protect. If my department hired an officer that had a pattern of abusing authority, that could jeopardize the safety of the officers who will be working side-by-side with that individual, the safety of the community, and the trust and collaboration between the community and my department.

**Officers’ Reputations are Dictated by Their Interactions with the Community – Not their Misconduct Records**

24. I am highly skeptical of the idea that releasing misconduct records will impact an officer’s reputation. The community is already aware of an officer’s reputation based on how that officer interacts with the community. While I was Chief, community members could easily identify officers with a good reputation and those with a bad reputation. An officer who treats the community fairly, who respects citizens’ rights, and who is a good officer will have a good reputation, regardless of minor misconduct records. But, for an officer who already has a bad reputation in the community, releasing the lengthy misconduct records will not change people’s viewpoint. Providing outcomes to the community to show corrective actions can also show the community that officers are willing to own up to their actions, learn from them, and improve.


**Releasing All Records of Police Misconduct Protects both the Police and the Public**

25. Finally, I believe the public, the department, and the officers benefit when all misconduct records are released. Complaints that have not been resolved are important because that may point to failures within a department's disciplinary and investigative process. Where a complaint is adjudicated, it is important for the public to know the final result, regardless of outcome. Where a complaint is substantiated, the public will see that complaints are taken seriously and that bad behaviors will be addressed. If the claim is unfounded, then the officer can say that a thorough investigation occurred, and it was found that the officer did not engage in the conduct.

Executed on this 11<sup>th</sup> day of August, 2020, in Saratoga Springs, New York.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



---

Brendan Cox



# EXHIBIT D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF COUNCILMAN  
DONOVAN RICHARDS IN SUPPORT  
OF COMMUNITIES UNITED FOR  
POLICE REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Donovan Richards declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform’s (“CPR”) Opposition to Plaintiff’s Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I am a Councilmember on the New York City Council and Chair of the Committee on Public Safety, which has jurisdiction over New York City’s Civilian Complaint Review Board and the Police Department. In this declaration I explain why, in light of my experience and expertise in the area, I have come to the opinion that the culture of police secrecy perpetuated by § 50-a has damaged community safety and public trust, because without full transparency about police misconduct complaints and discipline, the police department can hide officer misconduct and can avoid meaningful discipline of its officers.

**Advocacy for Police Reform as NYC Councilmember**

3. I currently serve on the New York City Council as Councilmember representing the 31<sup>st</sup> District in Southeast Queens, where I have been a longtime resident. I have held this position since March 2013.

4. During my second term in office, I was named Chair of the Public Safety Committee. In that role, I have worked to press the mayor and NYPD to address issues within the police disciplinary process. In particular, I have advocated and pushed various resolutions related to police transparency. That advocacy led to former police Commissioner O’Neil to implement a Blue-Ribbon Panel, which looked at the internal disciplinary process and proposed recommendations regarding what the police department could be doing better.

5. Based on the findings of the Blue-Ribbon Panel, I introduced a bill focusing on a disciplinary matrix, which mandates the Commissioner to create disciplinary guidelines on punishment that the department implements consistently when an officer engages in certain misconduct. The disciplinary matrix successfully passed in June 2020 after about a year and a half of advocacy.

6. A disciplinary matrix and the repeal of § 50-a go hand-in-hand because releasing records would allow citizens and elected officials to see that the matrix is working, and that discipline is being applied consistently. For example, I think that it is important to track the disciplinary process to determine if discipline given matches the misconduct at issue. Such tracking would require publicly available records regarding discipline and misconduct.

#### **The Importance of Transparency in Promoting Community Trust**

7. Throughout my time in office, I have been a big supporter of efforts to repeal § 50-a, including participating in many press conferences.

8. The culture of police secrecy perpetuated by § 50-a has damaged community safety and public trust. A lack of transparency means that the department can avoid meaningfully disciplining its officers, because the public has no way of knowing if an officer was appropriately disciplined or if the department simply handed down minor punishment such as the forfeiture of a few vacation days for acts of serious misconduct.

9. Releasing all the records regarding police misconduct and how the internal workings of the city responds to misconduct—a goal the repeal of § 50-a accomplished—is necessary to build public trust, ensure that the officers practice the tenets of courtesy, professionalism, and respect, and hold the department accountable for the conduct of its officers. Without transparency, the police is tasked with policing itself. This means that institutional



problems go unchecked and become part of the unofficial culture of the department, undercutting official training new recruits receive. That the police Commissioner has the ability to downgrade CCRB charges to further avoid disciplining officers only worsens this lack of transparency.

10. Officers are public servants whose salaries are paid by the citizens. Of course, the members of the community have a right to know who is policing their communities and who the department shields from the consequences of bad acts. And of course, the police should not be held to a lower standard of accountability than other public servants; in fact it should be higher. If a councilmember is accused of violating public trust, the violation is not kept secret from the public. The same should be true about officers.

11. I have seen firsthand how a lack of transparency harms the community and makes citizens less likely to come to the police about crime in their neighborhoods. When I was a city council staffer, there was a shooting in the 101<sup>st</sup> Precinct. Rather than come forward to the police, witnesses approached me to provide information about the shooter, which I then relayed to the police. Although the community members did not want the shooter to be free, they were also scared of the police because of a lack of transparency and a resulting lack of trust. This was not a one-time occurrence; I played the role of intermediary on many occasions when citizens wanted to report crimes but did not want to be in direct contact with police officers.

Transparency is key to building trust so that, one day, we may reach a point where more members of the community may one day feel safe reporting crime directly to the police.

12. Releasing records is key to having conversations about reform efforts because everyone has access to the same underlying data. Personally, I have found § 50-a has impeded my ability to do my job, because I have been denied access to certain records. Lack of access to

data makes it more difficult for me—the Chair of New York City’s Public Safety Committee—to have necessary conversations about public safety.

13. The need for transparency extends to *all* police misconduct and disciplinary records. Only a view of the full picture can reveal patterns of behavior and make way for systemic change. Otherwise, elected officials and the public are unable to discern if and how NYPD tracks the data; there is no way of knowing if NYPD is meaningfully monitoring officers who have numerous complaints above a critical threshold.

### **Transparency Does Not Jeopardize Officer Safety**

14. As Chair of the Public Safety Committee, I view police officers as part of the population that I am tasked with protecting. And as the Chair of the Public Safety Committee I do not believe the unions’ claims that the release of misconduct records jeopardizes officer safety.

15. First, those who led the effort to repeal § 50-a made it abundantly clear that there was never any intention of releasing officers’ personal contact information. That protection was included in the repeal itself. And during the legislative process, officer safety concerns were addressed at every juncture. Those with a seat at the table have consistently made clear that officer safety is valued. But simply releasing an officer’s name and precinct in connection to misconduct records will not jeopardize officers. I am not aware of any threat to officer safety—and I believe that legitimate threats would have been brought to my attentions given my committee role.

16. Second, NYPD has a very active social media presence, where the department routinely publicizes officer names, their pictures, and their precincts in connection with the departments’ successes. The NYPD cannot claim that their continual social media presence is

unproblematic, but that releasing the same information—name and precinct—in connection with misconduct is harmful. This is hard to reconcile.

17. Additionally, the unions' claim that the release of records will cause reputational harm. Not true. Officers already have reputations in the community based on their interactions with community members. Officers who use abusive language or force already have that reputation. For example, once a grandmother called me with concern because her grandson wanted to walk to the grocery store, and she was worried about a particular officer who was on the street at the time, and who had a reputation in the community for targeting Black, male youth. This reputation was not a result of records being released, but rather because of how this officer routinely interacted with the community. This example is not an anomaly. Like my role as intermediary between community and police, community members within my district routinely shared their concerns about an officer with a bad reputation to me.

18. For those officers with a bad reputation, the release of records will only show the patterns of behavior that led to that reputation. And reputations exist regardless of the outcome of the disciplinary process. For example, even if a complaint is unsubstantiated, the community will already be aware of the "problem officers." But being able to assess these patterns of behavior is crucial to identify, diagnose, and fix internal problems within the police department.

### **My Own Experience with Police Misconduct**

19. Community mistrust due to a lack of transparency results in the community failing to come forward to report instances of police misconduct. On multiple occasions, as a Black man living in the city, I have been subject to police abuse. In my early experiences, when I was not yet an elected official, I did not come forward because I did not (and do not) trust the investigative process fully. But even as an elected official, I have faced mistreatment by the

police—who later changed their attitude only upon learning who I was. And even then, I was not allowed to find out the outcome of any investigation into the incident.

20. While I was working as a City Council staffer, I was walking to a store, which unbeknownst to me, had a fire inside. As I approached the store, an individual grabbed my arm and aggressively knocked me out of the way. It was only after I was knocked aside did I realize that the man who pushed me was a police officer. He informed me that there was a fire in the store. I was startled and shaken, and believed grabbing my arm in such an aggressive manner was an unnecessary way for the officer to warn a citizen of a fire. I told the officer as such and suggested that next time he should identify himself as an officer and give some warning. I then asked for the officer's name and badge number, which he refused. I reminded the officers that they are obligated to provide this information, and once again he refused. At that point, I pulled out my city council ID card. Immediately, the officer changed his attitude and provided his name and badge number. I later found out that that officer has a reputation for hassling members of the community.

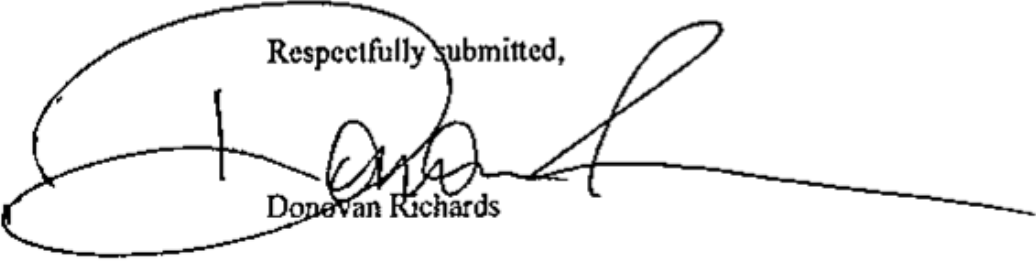
21. I contacted the inspector located at the officer's precinct about the incident, which simply caused to be moved to a neighboring precinct. He never apologized and I do not know if he was disciplined. That as a city council staffer, I was only able to get an officer to comply with his legal duty to give me his name and badge because of my role; and was later unable to find out about any discipline that officer received for needlessly using force in tackling me shows the huge lack of transparency. That officers act without regard to citizens' rights until they know they are dealing with an elected official points to a systemic problem. The release of misconduct records—for all types of misconduct allegations, regardless of their status—would allow me, my

Case 20-cv-05401-KPF Document 1-1 Filed 08/14/20 Page 8 of 8  
colleagues, the public, and the police department to better assess that problem and help remedy it.

Executed on this 13<sup>th</sup> day of August, 2020, in Queens, New York.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
Donovan Richards

# EXHIBIT E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF DR. DELORES  
JONES-BROWN IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Delores Jones-Brown declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I am an academic with decades of experience and research related to police practices. In this declaration, I explain that it is readily apparent that: increased transparency and accountability only makes a police department and the community it serves healthier, for *many* specific reasons I detail below; that § 50-a has stood in the way of these goals; and that police unions have opposed the release of misconduct, investigatory and disciplinary records for reasons that lack any evidentiary support.

### **My Career Related to Policing Practices**

3. I am currently a Practitioner in Residence at the University of New Haven's Department of Criminal Justice and affiliated with the university's Center for Advanced Policing. I am also a Professor Emeritus at the CUNY Graduate Center for the Doctoral Program in Criminal Justice. Previously I was employed by the Department of Law, Police Science and Criminal Justice Administration at John Jay College of Criminal Justice. While at John Jay, I founded the College's Center on Race, Crime, and Justice, which I ran for ten years. Based on my decades of experience related to police practices, and my experience as an assistant prosecutor, I submit this declaration opposing the law enforcement unions' attempt to continue a practice of shielding police officer misconduct despite the harms that a lack of transparency causes.



4. I received my master's degree from Rutgers University, School of Criminal Justice concurrent with my J.D. from the Rutgers University School of Law-Newark. I subsequently received my Ph.D. in Criminal Justice, from the Rutgers University Graduate School-Newark. Early in my career as a criminal justice practitioner, I served as an assistant prosecutor and certified police academy instructor, working closely with police. I have focused my academic career on issues relating to police practices and police accountability. My experience includes: testifying before President Obama's Task Force on 21<sup>st</sup> Century Policing in 2015, serving on consent decree monitoring teams in Ferguson, Missouri and Newark, New Jersey addressing issues of police accountability and community engagement in those jurisdictions, and authoring two often-cited reports on NYPD's stop and frisk practices. I was also previously involved in CPR's steering committee and was a founding executive board member of the Consortium for Police Leadership in Equity now the Center for Policing Equity, an unprecedented partnership between academic researchers and police departments aimed at improving police accountability, community engagement, and public safety through evidence-based practices. My current work focuses on officers' duty to intervene in excessive force incidents.

5. During my time at John Jay, for ten consecutive years I taught classes to NYPD sworn officers that focused on constitutional policing, implicit racial bias, police accountability and transparency, use of force, criminal and civil liability, and improving police-community relations based on ethical, constitutional and humanitarian police practices. The program was hosted at John Jay College and funded by the State and City of New York with an aim towards producing police leaders who fairly and effectively police a multi-cultural city.

**Lack of Transparency Jeopardizes the Health of the Community and the Department**

6. Policing is a public service profession, and as public servants, the police department and its officers must always be accountable to the public. They are paid with taxpayer dollars. Because of the police role in protecting public safety, a lack of accountability harms the health of the police department and the health of the community. Transparency is necessary to improve department and community health and to ensure that officers continue to see policing as a responsibility not an entitlement.

7. For years, § 50-a stood in the way of achieving accountability. It was immensely problematic to have any procedure or practice that keeps records about misconduct, misconduct investigations and discipline private. The lack of transparency hurts civilians, non-offending officers, and the reputation of and public trust in the police as a department. By keeping disciplinary and misconduct records secret, many officers with lengthy records can simply move between police departments and then reengage in the same behavior. This is true of the officers involved in the shootings of Tamir Rice—a 12-year-old killed in Cleveland, Ohio in 2014—and Michael Brown—a 18-year-old killed in Ferguson, Missouri. The officers responsible had a history of problematic behavior, yet were hired by a new department. Had these records been disclosed, the departments would have been on notice not to hire these individuals and the shootings could have been avoided.

8. Releasing officer names in conjunction with records of misconduct complaints is instrumental in tracking officers and identifying warning signs that an officer is a risk to the public. The research of Dr. Samuel Walker traced the path between multiple misconduct complaints and use of deadly force. Walker's studies examine officers' history of misconduct to discern the pattern of escalation that leads to the unwarranted use of deadly force. His research

demonstrates the need for monitoring repeat offenders, by flagging and taking into account, the early warning signs. But all too often, police departments do not adequately conduct this monitoring, and conceal rather than expose unlawful behavior; consequently, officers continue to engage in misconduct leaving their non-offending fellow officers to be judged by their peers' excessive behavior. Having individualized information protects non-offending officers from being judged unfairly by the public when their own personal histories do not create cause for concern. For example, in 1994, NYPD officer Frances Livoti killed Anthony Baez using a banned chokehold. Following his conviction under federal authority—he was not convicted in New York State court—his reputation amongst his peer officers based on previous misconduct suggested that this fatal outcome was predictable and avoidable.

9. Finally, the lack of transparency makes it harder for the police to solve crime. In urban communities where police officers have the reputation of being aggressive or abusive toward the community, the officers face greater difficulty in solving violent crime, because the public is apprehensive about cooperating with the same officers who abuse them. When the police are seen as being above the law and free from repercussions for their unlawful and abusive conduct, the community will not trust law enforcement to keep them safe from criminals or abusive officers. Only when the department is transparent and allows public access to these records will the community begin to believe that the NYPD cares enough to weed out officers who violate the law and department guidelines. The residents of New York have a right to be protected from this minority of officers.

10. Public access to all records, regardless of investigatory or disciplinary outcome, is crucial. This includes records where the determination was that the complaint was unfounded, unsubstantiated, exonerated, truncated or otherwise non-final. This is because there are many

obstacles in the investigative process that may lead to non-substantiated outcomes. For example, significant research has demonstrated that when an officer is accused of misconduct, cultural forces within the police department will create a “blue wall of silence,” in which officers who witnessed the misconduct will not come forward, even in cases where the officers are aware of unlawful conduct. In these situations, of course the outcome is “unfounded” or “unsubstantiated,” because witnesses to the misconduct are unwilling to come forward. Similarly, it is not uncommon for the police department to use intimidation tactics to scare away potential civilian complainants or witnesses through fear of retaliation. This is what happened when Kalief Browder, a teenager who was held at Rikers for three years, without trial, and spent two of those years in solitary confinement all for allegedly stealing a backpack, attempted to contest his unlawful treatment. The police harassed his family and friends who tried to come forward with evidence of prosecutorial and police misconduct. The charges against him were eventually dropped, but Kalief Browder committed suicide two years after his release from Rikers.

11. In these circumstances, an unfounded, exonerated, unsubstantiated determination or investigations that are not completed does not mean that the misconduct did not occur. And, the public should not be saddled with the task of trying to discern which unfounded or non-substantiated complaints are the result of a legitimate investigative process and which are the product of the police providing false evidence, withholding evidence, or intimidating witnesses. Releasing all records means that this information will be public.

### **The Release of Records Do Not Harm Officers**

12. It is important that the names of offending officers are released. Concealing names of officers is unwarranted and simply allows bad officers to stay in their jobs. This sets

up circumstances in which the same community may be repeatedly victimized. The public is more at risk from a consistently problematic officer than the officer would be from having their misconduct records publicized.

13. Despite these realities, the unions devote significant energy to making claims that releasing disciplinary records will harm officer safety. In my years of researching and teaching police practices, I have found that despite these claims, officers are generally hard pressed to establish with any level of certainty that the release of records will harm officers. Usually, officers can only point to random acts of violence against officers with no causal connection to the release of records.

14. The failure of the NYPD to support their claims with evidence is something that I am particularly familiar with as a result of my considerable research regarding NYPD's stop and frisk practices. NYPD defended stop and frisk based on claims that criminal activity would skyrocket without stop and frisk. In the process of their adamant defense, the department refused to listen to any of the complaints about this practice. In the aftermath of the federal court decision in *Floyd v. City Of New York*, the number of reported stop and frisk cases decreased from the hundreds of thousands to about 15,000. The catastrophic crime increase that NYPD predicted did not materialize. Similarly, it is not enough for the unions to make unsupported claims about the safety and reputation of officers, when there is ample proof that New York residents are being seriously injured and sometimes killed by officers with prior complaints about their conduct. Speculation about what might happen if their information is made public does not override the reality of the injury being suffered by an unsuspecting public because of the protection that 50-a has provided in the past.

15. The unions' claims that the release of records will sully officers' reputations is indicative of how the police have for so long operated above the law. It assumes that an abusive officer can and should have a sterling reputation, regardless of misconduct (either memorialized in a written personnel file or merely known through the experiences of the citizens they police). For ordinary citizens, encounters with law enforcement, arrests, and exonerations are all a matter of public record and discoverable through a background check. Yet, police officers, when they are accused of misconduct, believe that the public should not be made aware and cannot reasonably interpret the records associated with that complaint. In my opinion, officers' concerns about reputational issues ignores the countervailing problem, which is that non-disclosure hurts the public trust in police generally and has contributed to members of the public being hurt physically.

16. As it relates to an officer's reputation, it is insulting that the unions believe that the general public cannot make the distinction between a good officer with a good reputation in the community and a few non-serious complaints and an officer who has many use-of-force complaints. Of course, where an officer has non-serious complaints, the public will not vilify the officer based on those complaints alone. But to protect the reputation of reoffending, abusive officers, the police department has adopted an all or nothing approach, where they will give the public nothing so that all officers, regardless of their demonstrated character and actions, are shielded.

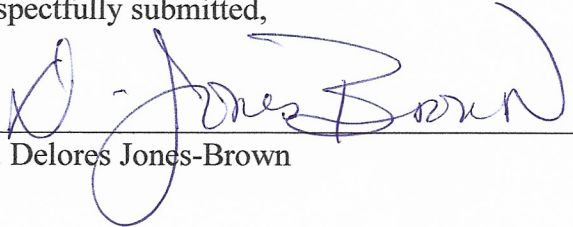
17. Finally, police officers are entrusted with tremendous responsibility; as a result, the job is a demanding one. Not all officers are cut out for this profession—certainly not the ones who accrue misconduct complaint after misconduct complaint. No one benefits—neither community nor officers—when the system is designed to protect the bad officers and allow them

to stay employed until their pension vests, turning a blind eye to the harm they cause to the public and the reputation of the department.

Executed on this 14th day of August, 2020, in Richmond, Virginia.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
\_\_\_\_\_  
Dr. Delores Jones-Brown

# EXHIBIT F



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF DR. SAMUEL  
WALKER IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Samuel Walker declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I am Professor Emeritus of Criminal Justice at the University of Nebraska at Omaha. My area of expertise is police accountability, broadly defined as the study of policies and procedures designed to hold individual police officers accountable for their actions in contacts with members of the public. Citizen complaints against officers for perceived misconduct is one of the important subjects in the field of police accountability.

3. I am the author of 14 books, which have been published in 39 separate editions, on policing in America, crime policy, and civil liberties. For the purpose of this Declaration, the relevant works are *A Critical History of Police Reform* (1977), *Popular Justice: A History of American Criminal Justice* (2<sup>nd</sup> ed., 1998), *The Police in America: An Introduction* (with Charles Katz, 10<sup>th</sup> edition, forthcoming 2021), *Police Accountability: The Role of Citizen Oversight* (2001), *The Color of Justice: Race, Ethnicity, and Crime in America*, (with Cassia Spohn and Miriam De Lone, 6<sup>th</sup> ed., 2018). and *The New World of Police Accountability* (with Carol Archbold, 3<sup>rd</sup> ed., 2020).

4. My book *Police Accountability: The Role of Citizen Oversight* (2001) remains the only scholarly study of citizen oversight of the police, providing a comprehensive picture and analysis of the history of police oversight, the different models of oversight, the different

organizational structures, procedures and authority, and both the positive achievements and limitations of each model.

5. I am also the author of numerous articles and reports on various aspects of policing. For the U.S. Department of Justice, I am the author of *Early Intervention Systems for Law Enforcement Agencies* (2003) and *Mediating Citizen Complaints Against Police Officers* (2002).

6. I have served as a consultant to the U.S. Department of Justice's Civil Rights Division in its pattern or practice police reform work; the attorney general of New Jersey; and the cities of Austin, TX, Chicago, Kansas City, Los Angeles, Minneapolis, San Francisco, and others. I have also spoken widely around the country to community groups and civil rights organizations on police issues in the cities or counties of Boston, New York City, Chicago, Pittsburgh, Seattle, Houston, and others. I also served as a consultant to the Royal Canadian Mounted Police (RCMP) on police early intervention systems in 2015-2016.

7. A copy of my curriculum vitae is attached as Exhibit A to this Declaration.

**The Importance of Publicly Available Civilian Complaint Data**

8. Making publicly available detailed data about civilian<sup>1</sup> complaints against police officers is a vital element of establishing and maintaining police departments that are professional in their relations with the public they serve, respectful to the individuals they

---

<sup>1</sup> The term "citizen" complaints has been widely used for over fifty years. Some experts in the field prefer the term "public" complaints because not all of the people whom police officers encounters are formally citizens of the United States.



encounter in their day-to-day work, lawful in their conduct, and fully accountable to the public and elected officials for their actions in all aspects of policing.<sup>2</sup>

9. Making publicly available detailed data about civilian complaints is especially important in the new paradigm regarding policing that has emerged in the past decade. While the elements of the new paradigm were building for many years, the *Final Report* of the President's Task Force on 21<sup>st</sup> Century Policing 2015 crystallized this new thinking, gave it conceptual coherence, and made a comprehensive series of recommendations for police departments on how they can achieve compliance with the new paradigm.<sup>3</sup>

10. The core principle of the new paradigm is the legitimacy of the police in the minds of the public they serve. Legitimacy is defined as the freely given belief by members of the public that the police serve their interests in maintaining a good society, listen to their views on what good policing consists of, and takes into account those views in taking the steps necessary to improve the quality of police services and build legitimacy.<sup>4</sup>

11. A key element in legitimacy is trust, the freely given trust on the part of members of the public that their local police department can be trusted to be professional, respectful, lawful, and accountable.

12. Achieving legitimacy, in turn, requires openness on the part of the police; openness about its policies, procedures, and strategies for responding to crime and disorder; openness about demographic composition of the department; openness to criticisms and

---

<sup>2</sup> Overview of police accountability: Samuel Walker and Carole A. Archbold, *The New World of Police Accountability*, 3<sup>rd</sup> ed. (2020).

<sup>3</sup> President's Task Force on 21<sup>st</sup> Century Policing, *Final Report* (2015).

<sup>4</sup> Tom R. Tyler, *Why People Obey the Law*, Rev. ed. (2006).

suggestions for changes in policies and practices; and openness to active public participation in the change process.

13. The President's Task Force on 21<sup>st</sup> Century Policing regarded openness on the part of the police as so important to achieving trust and legitimacy that its *Final Report* included over 25 specific recommendations on how police departments can achieve greater openness, including Recommendations 1.3: "establish a culture of transparency and accountability to build public trust and legitimacy" and 1.3.2: "When serious incidents occur, including those involving *alleged* police misconduct, agencies should communicate with citizens and the media swiftly, openly, and neutrally, respecting areas where the law requires confidentiality

14. For the last six years (beginning roughly with the tragic events in Ferguson, Missouri in August 2014) the U.S. has been embroiled in a National Police Crisis regarding the conduct of the police, primarily with regard to the African American community.<sup>5</sup> Many reforms have been implemented in departments across the country since then. But as the events in Minneapolis, Minnesota, in May 2020, and the wave protests across the country have made clear, much remains to be done to make American policing fully professional, respectful, lawful, and accountable. With this in mind, the issues of openness addressed in this Declaration have special relevance to the problem of police relations with the African American community.

### **The Origins of the Historic Secrecy Surrounding American Police Departments**

15. When they were first established beginning roughly in the 1830s, American police departments immediately became overtaken by local political influence. In the American system

---

<sup>5</sup> Samuel Walker, *Not Dead Yet: The National Police Crisis, The New Conversation About Policing, And the Prospects for Accountability-related Police Reform*, 5 U. ILL. L. REV. 1777-1841 (2018).

of federalism and constitutional democracy, police departments (and public schools) were controlled by local police authorities. There were no national or even state-level controls over basic police issues. The result was virtually no standards for officer recruitment and training; no written guidelines for officer conduct; rampant corruption; widespread brutality; no serious crime-fighting capacity; and a lack of professional standards for policing. This condition was finally challenged by the professionalization movement, beginning roughly around 1900. Over the decades, the professionalization movement introduced basic professional standards, but much remains to be done in that regard.<sup>6</sup>

16. One of the unfortunate byproducts of the professionalism movement was the American police departments became highly insular bureaucracies in which police chiefs valued their autonomy from external influence and rejected public scrutiny and meaningful public participation shaping policies and practices. Public input was defined as “political influence” and rejected out of hand.<sup>7</sup>

17. As a result of the insular bureaucratic culture, a veil or wall of secrecy enveloped important police operations.<sup>8</sup> Secrecy was a component of an “us vs. them” attitude toward the public.<sup>9</sup> This Declaration specifically addresses the impact of this culture of secrecy on civilian complaints.

---

<sup>6</sup> Samuel Walker, *A Critical History of Police Reform* (1977); Robert Fogelson, *Big City Police* (1977).

<sup>7</sup> Walker, *supra* note 6, at 171-174. Herman Goldstein, *Policing a Free Society* (1977) at 136 (arguing that the leaders of the police professionalization movement had placed a high value on police autonomy from political influences and as an unfortunate consequence isolated the police from potentially valuable sources of information and support in the community).

<sup>8</sup> Police secrecy is variously referred to as “the code of silence” or the “blue wall.” Goldstein, *supra* note 7, at 165-167 (the blue curtain”).

<sup>9</sup> William A. Westly, *Violence and the Police: A Sociological Study of Law, Custom and Morality* (1970; the study was conducted in 1950 but not published for twenty years); Paul



### The Culture of Secrecy and Civilian Complaints About Police Conduct

18. When the civil rights movement escalated in the 1960s, police misconduct (generally labelled “police brutality” in the public arena) became one of the major issues for civil rights activists.<sup>10</sup> National surveys of public opinion found that African Americans were twice as likely as whites to have negative assessments of the police, and that gulf has remained almost constant over the intervening decades.<sup>11</sup>

19. Criticisms by civil rights activists focused on several points:

- (a) that police office use of excessive force was widespread;
- (b) that it was used primarily against African Americans;
- (c) that many police departments had no procedure or special unit for receiving and investigating civilian complaints;<sup>12</sup>
- (d) that complaint investigations were biased against complainants, and particularly so against African Americans, on the grounds that all civilian complaints were invalid;<sup>13</sup>
- (e) that the serious underrepresentation of African American officers in police departments contributed to the bias against complainants;<sup>14</sup>

---

Chevigny, *Police Power: Police Abuses in New York City* (1969), at 141 (“There can be no doubt that policy lying is the most pervasive of all [police] abuses”).

<sup>10</sup> David H. Bayley and Harold Mendelsohn, *Minorities and the Police* (1968).

<sup>11</sup> President’s Commission on Law Enforcement and the Administration of Justice, *Task Force Report: The Police* (1967) at 145-149; Pew Research Center, “On Views of Race and Inequality, Blacks and Whites are Worlds Apart (June 27, 2016).

<sup>12</sup> President’s Commission on Law Enforcement and the Administration of Justice, *supra* note 11, at 195-196 (with 37 percent of departments reporting in 1967 they had no special unit to handle civilian complaints).

<sup>13</sup> National Advisory Commission on Civil Disorders, *Report*, at 310 (noting “the almost total lack of effective channels for redress for complaints against police conduct”).

<sup>14</sup> *Id.*, at 321-322.

- (f) that a code of secrecy regarding complaints about police misconduct, and other important police operations, became an important part of the police officer subculture.<sup>15</sup>
- (g) that incidents of police misconduct were consistently rarely punished or not punished at all;<sup>16</sup> that internal police complaint procedures were opaque and shrouded in secrecy. This problem continues today. The 2016 report of the Chicago Police Accountability Task Force concluded that “Chicago’s police oversight system is essentially structured to prevent [discipline] from happening in a meaningful way.”<sup>17</sup> The San Francisco Blue Ribbon Commission on the city police department found the internal affairs process to be “opaque” with little publicly available information.<sup>18</sup>

20. The complaints voiced by members of the African American community in the 1960s were confirmed by the investigations of two national agencies. The police report of the President’s Commission on Law Enforcement and Administration of Justice (1967) found that many police departments did even not have formal complaint review procedures.<sup>19</sup> The National Advisory Commission on Civil Disorders (the “Kerner Commission”) meanwhile, found that in many cases police departments routinely refused to accept complaints from members of the public.<sup>20</sup>

---

<sup>15</sup> Westley, *supra* note 9; Chevigny, *supra* note 9.

<sup>16</sup> The pattern of a lack of discipline for the more serious forms of misconduct persists today; see New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City, 1994-2006* (2006).

<sup>17</sup> Chicago, Police Accountability Task Force, *Recommendations for Reform* (2016), at 84.

<sup>18</sup> *San Francisco Blue Ribbon Commission on Transparency, Accountability, and Fairness in Law Enforcement* (2016), at 89.

<sup>19</sup> President’s Commission on Law Enforcement and Administration of Justice, *supra* note 11 at 194-204 (with 37 percent of departments reporting in 1967 they had no special unit to handle civilian complaints).

<sup>20</sup> National Advisory Commission on Civil Disorders, *Report* (1968), at 310 (noting that “In Milwaukee, Wisconsin and Plainfield, New Jersey, for example, ghetto residents complained that police chiefs reject all complaints out of hand”).



21. The circumstances cited in ¶ 19, fueled powerful distrust of the police, particularly among African Americans, as indicated by virtually all public opinion surveys.<sup>21</sup> In today's terminology, the lack of trust undermined the legitimacy of local police departments

22. The circumstances in ¶ 19, particularly the culture of secrecy in law enforcement, also fueled demands for the creation of external and independent (i.e. independent of the police department) public complaint review procedures (as in the New York City Citizen Complaint Review Board).<sup>22</sup> After several decades of political activism, there are now an estimated 144 local civilian police oversight agencies in the United States.<sup>23</sup>

23. The growth of external and independent civilian complaint procedures, however, has not alleviated the widespread distrust among African Americans about civilian complaint procedures. Many of these agencies are underfunded and understaffed. Most lack the power to interview police officers (because they lack subpoena power) or to obtain police documents they feel need to be reviewed.<sup>24</sup>

#### **The Public Value of Disclosing Unsubstantiated Civilian Complaints**

24. For public complaint data to serve as a useful police accountability tool, it is important to include and to make public *all* complaints that are received and recorded by a police department and/or an oversight agency, regardless of whether they are ultimately substantiated.

25. Even complaints that have not reached "final disposition" should be publicly released, on the grounds that an officer's record should not reflect a complaint that has not yet

---

<sup>21</sup> Pew Research Center, *supra* note 11.

<sup>22</sup> Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (2001), at 119-145.

<sup>23</sup> Joseph de Angelis, Richard Rosenthal, Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2016).

<sup>24</sup> Walker, *supra* note 22 at 123-145.

reached final disposition because there has not been a final determination that the officer did in fact commit the conduct in question.

26. Inclusion of all complaints that are officially filed and investigated has been accepted by the law enforcement profession and the Civil Rights Division of the United States Department of Justice for over thirty years.

27. Early intervention systems (EIS) emerged about thirty years ago as a powerful management tool for holding police officers accountable for their conduct. In brief, an EIS is a computerized data base of officer performance which includes department data on anywhere from five to twenty-five different police actions. These actions include officer uses of force (including the results of investigations of force incidents), citizen complaints (including both public complaints and internally generated complaints), officer discipline histories, commendations, vehicle pursuits, failure to appear in court, and others. Analysis of the data in EIS systems almost universally finds that a small percentage of officers with complaints have higher rates of problematic behavior than the average rate of their peer officers without complaints. Officers identified as “problem officers” are then subject to non-disciplinary corrective action, which might include counseling by a command officer, retraining on the officers conduct that is problematic, or referral to professional counseling for substance abuse problems, family problems, anger management, or other issues. Subject officers are then monitored for a specific period of time to determine whether or not their performance has improved.

28. The official data on both public and internally generated complaints in EIS systems include the nature of the complaint (e.g., use of force, abusive language) and the disposition of the complaint (sustained, not sustained, exonerated, and unfounded). It is the

consensus of opinion in the law enforcement profession that it is critically important to have a comprehensive picture of an officer's performance, notwithstanding the disposition. The reason for this is based on the nature of complaint investigations. Civilian misconduct complaints are inherently difficult to sustain for the simple reason that objective evidence, in the form of independent witnesses or forensic evidence (particularly injury or medical attention) is commonly very rare. A low rate of substantiated complaints may also reflect a lack of professionalism and effective leadership on the part of a particular police department (e.g., lack of training for investigator, lack of an investigative protocol, etc.). Thus, the investigation of complaints often becomes a matter of the word of the officer versus the word of the complainant, a situation in which police department investigators have long favored the word of the officer. Nationally, the percentage of complaints that are sustained falls somewhere between 5 and 15 percent. Excluding the remaining 85 to 95 percent of all complaints would leave only a small percentage of all complaints, which would violate the standard of including all complaints as is accepted by the leaders of the law enforcement profession and the U.S. Civil Rights Division (as discussed above in ¶ 27).<sup>25</sup>

29. There is also a consensus of opinion among experts on EIS that the vast number of complaints that are not sustained represent an important part of the overall picture of a police officer's performance. For example, an officer with a sustained complaint and two non-sustained in a two-year period represents a very different situation than a peer officer with two sustained complaints and eight non-sustained complaints in the same two-year period. There are reasonable grounds to suggest that the latter officer has performance problems that the department has a responsibility to address and attempt to correct.

---

<sup>25</sup> Walker, *supra* note 22, at 120-122, 134-135.



30. The Civil Rights Division of the U.S. Department of Justice is authorized under 34 Sec. 12601 (originally 42 Sec. 14141, which is the cite used in earlier publications) to investigate and bring civil suits against police departments where an investigation has found a “pattern or practice” of violations of constitutional rights. Since 1997 the Civil Rights Division has reached 40 settlements with local or state law enforcement agencies which involve a judicially enforced consent decree.<sup>26</sup> Virtually all of those 40 settlements mandate the development of an EIS or major reforms of an existing but dysfunctional EIS.<sup>27</sup>

#### **The Positive Contributions of the Public Release Civilian Compliant Data**

31. The public release of data on civilian complaints, whether substantiated or not, has the potential for greatly increasing public knowledge about the civilian complaint process, identifying possible problems in police training and supervision and also in the complaint review process, and thereby providing the basis for informed public discussions about necessary reforms designed to improve the quality of policing. The end result of such reforms would be greater trust in and legitimacy of the police. Greater trust in the police and stronger feelings that the police are legitimate on the part of members of the public will, in turn, lead to greater public cooperation with the police in terms of reporting crimes, cooperating with investigations, and willingness to testify at trial – all of which will help to improve public safety.

32. The potential positive contributions of public release of civilian complaint data extend to all the different “publics” involving police departments.<sup>28</sup> Each of these publics plays

---

<sup>26</sup> U.S. Department of Justice, *Civil Rights Division, The Civil Rights Division’s Pattern of Practice Police Reform Work: 1994- Present* (2017).

<sup>27</sup> *Id.*, at 31; Walker, “Not Dead Yet,” *supra* note 5, at 1799-1836.

<sup>28</sup> The argument that the police deal with several different “publics” is described in Samuel Walker and Charles M. Katz, *The Police in America: An Introduction*, 10<sup>th</sup> ed. at Ch. 12 (forthcoming 2021).

some role in enhancing the accountability of the police, and by improving the overall quality of police services delivered to the public enhances public trust in the police and the development of legitimacy. These publics include:

- (a) elected public officials, who will gain expert knowledge and perspective on a major government institution. As discussed above, in the decentralized structure of American law enforcement, the 15,322 local agencies (12,261 municipal police departments and 3,012 country sheriff's departments), elected mayors and city councils have the primary responsibility for the control of police departments.<sup>29</sup> Consequently, it is essential that these elected officials have access to all information that would help them make informed decisions about the law enforcement agency for which they are responsible. Informed decisions would help lead to improving police professionalism, respectfulness, lawful conduct, and accountability.<sup>30</sup>
- (b) the news media, who will also gain expert knowledge and perspective on a major government institution, about which they routinely report;<sup>31</sup>
- (c) non-elected community leaders, who play important roles as people of influence in the community and who in some cases play leadership roles in local private foundations;
- (d) community activist, civil rights, and civil liberties groups, who are involved in issues of policing, the criminal justice system, and racial and ethnic tensions;<sup>32</sup>
- (e) academic researchers who will gain access to a rich body of data that can yield invaluable empirical findings on the various questions that surround civilian complaint data.
- (f) members of the community who, as discussed above, will have greater trust in the police and as a consequence be more willing to cooperate with

---

<sup>29</sup> Bureau of Justice Statistics, *Local Police Departments, 2016: Personnel* (2019), at Table 2.

<sup>30</sup> Samuel Walker, "Governing the American Police: Wrestling with the Problems of Democracy," *Chicago Legal Forum* 2018: 615-660.

<sup>31</sup> On the news media as an instrument of police accountability, see Walker and Katz, *The Police in America: An Introduction*, 9<sup>th</sup> ed (2018), at 531.

<sup>32</sup> On the role of civil rights and civil liberties groups as police accountability instruments, see Charles R. Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State* (2010), at 60-72.

police in terms of reporting crime, cooperating with interviews with officers, and testifying in court—all of which will enhance public safety.

33. In short, ¶ 32 indicates that the public release of civilian complaint data will enrich the knowledge, understanding and perspective of six different “publics” with an interest in American policing.<sup>33</sup> The resulting “knowledge explosion” can help lead to evidence-based reforms that can improve complaint review procedures and by extension lead to greater community trust in the police and feelings of police legitimacy.

34. The public release of civilian complaint data can provide data and perspective on several different questions that surround the complaint process and about which we today have precious little systematic data. These issues include but are not limited to:

- (a) providing a reliable overall picture of civilian complaints for each police department;
- (b) permitting an analysis of the prevalence of civilian complaints about particular issues (e.g., excessive force, racial or ethnic bias in stops arrests or other actions; offensive language, particularly racial, ethnic or gender slurs), relative to other categories of complaints;<sup>34</sup>
- (c) permitting an analysis of whether there is an identifiable group of “problem” officers who receive significantly more complaints than their peer officers, the relative size of that group among officers who receive complaints;<sup>35</sup>
- (d) permitting an analysis of the level of seriousness of the misconduct among the worst of the “problem” officers (for example, are there some officers who have records of particularly egregious excessive force complaints);

---

<sup>33</sup> “Publics” and the police: Walker and Katz, *supra* note 31.

<sup>34</sup> New York Civil Liberties Union, *supra* note 16, at 4 (“CCRB complaint data indicate that the more serious forms of police misconduct occur with significant frequency”).

<sup>35</sup> “Problem officers:” Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide* (2003); Goldstein, *supra* note 7, at 171 (“Such officers are well-known to their supervisors, to the top administrators, to their peers, and to the residents of the areas in which they work”).



- (e) permitting an analysis of the patterns of discipline, or lack thereof, among officers with sustained complaints (in particular, is there a pattern in which serious misconduct rarely results in meaningful discipline);<sup>36</sup>
- (f) are there patterns or racial, ethnic or gender disparities among officers who do experience various categories of discipline;
- (g) and other possible issues.

### Conclusion

35. The public release of data on civilian complaints against police officers, including officers' names, will serve to promote several developments related to making police departments more professional, respectful, lawful and accountable, to increase trust in the police in the eyes of the community, and to enhance their legitimacy in the eyes of the community. These outcomes are central to the new paradigm about policing in America as defined by the President's Task Force on 21<sup>st</sup> Century Policing in 2015.

36. Increasing trust in and the legitimacy of the police is especially important with respect to the African American community and also the Latinx community. In the last six years, the U.S. has been engulfed in a National Police Crisis related to unjustified police shootings of people and other forms of misconduct. Thus, full transparency around public complaints, investigations, and discipline against police officers will address in a positive way the nation's serious racial crisis.

37. The public release of data on civilian complaints against the police will go a long way toward ending the secrecy about the complaint investigation process that has done so much to undermine community trust in the police.

---

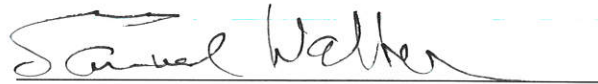
<sup>36</sup> Chicago Police Accountability Task Force, *supra* note 17; New York Civil Liberties Union, *supra* note 16, at 4. ("Complaints that accuse police officers of using excessive force rarely result in discipline").

38. The public release of data on civilian complaints against police officers will make available a wealth of data that will be of use to all of the “publics” who have an interest in and in some cases a direct responsibility for shaping police policy and improving the quality of police services.

Executed on this 13<sup>th</sup> day of August, 2020, in Omaha, Nebraska.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink that reads "Samuel Walker". The signature is written in a cursive style and is positioned above a solid horizontal line.

Dr. Samuel Walker



# Exhibit A

## VITA

**Samuel Walker**

**2018**

School of Criminology and Criminal Justice  
University of Nebraska at Omaha  
60th and Dodge Street  
Omaha, NE 68182-0149  
(402) 554-3590 FAX: (402) 554-2326  
[samwalker@unomaha.edu](mailto:samwalker@unomaha.edu)

121 South 50th Avenue  
Omaha, NE 68132-3515  
(402) 556-4674

### **WEB SITES**

<http://samuelwalker.net>

Personal web site with research and commentary on policing and civil liberties.

<http://todayinlh.com>

*Today in Civil Liberties History*. A web-based calendar of civil liberties events for each day of the year.

<https://www.theserights.org> This web site contains alternative lyrics for Woody Guthrie's classic song, "This Land is Your Land," which are "These Rights Are Our Rights," an anthem for the Bill of Rights.

### **EDUCATION**

Ph.D., Ohio State University, December 1973, Department of History  
M.A., University of Nebraska at Omaha, August 1970, Department of History  
B.A., University of Michigan, May 1965, American Culture Program

### **EXPERIENCE**

Department of Criminal Justice, University of Nebraska at Omaha

Professor Emeritus, 2005 -  
Coordinator, Police Professionalism Initiative, 2002 -  
Isaacson Professor, 1999-2005  
Kiewit Professor, 1993 -1999

Professor, 1984-1993  
Associate Professor, 1978-1983  
Assistant Professor, 1974-1977  
Research Director, Educational Development Consortium, 1974-1976

## **BOOKS**

A Critical History of Police Reform: The Emergence of Professionalism. Lexington, Massachusetts: Lexington Books, 1977.

Popular Justice: A History of American Criminal Justice. New York: Oxford University Press, 1980.

Second edition, revised; 1998.

Japanese Translation. Institute of Comparative Law. Chuo University. Tokyo, Japan. 1999.

The Police in America: An Introduction. New York: McGraw-Hill, 1983.

2nd. ed., revised, 1991.

3rd. ed., revised, 1999

4<sup>th</sup> ed., revised, 2002, with Charles M. Katz

5<sup>th</sup> ed., revised, 2005, With Charles M. Katz

6<sup>th</sup> ed., revised, 2007, with Charles M. Katz

7<sup>th</sup> ed., revised, 2011, with Charles M. Katz

8<sup>th</sup> ed., revised, 2013, with Charles M. Katz

9<sup>th</sup> ed., revised, 2018, with Charles M. Katz

Unauthorized Chinese Translation. Circa. 2003. Publication information unknown.

Sense and Nonsense About Crime: A Guide to Policy. Monterey, CA: Brooks/Cole, 1985.

2nd ed., revised, 1989.

3rd ed., revised, Sense and Nonsense About Crime and Drugs, 1994.

4<sup>th</sup> ed., revised, 1998.

5<sup>th</sup> ed., revised, 2001.

6<sup>th</sup> ed., revised, 2006.

7<sup>th</sup> ed., revised, 2011

8<sup>th</sup> ed., revised, 2014

In Defense of American Liberties: A History of the American Civil Liberties Union. New York: Oxford University Press, 1990.

2<sup>nd</sup> ed., Revised. Southern Illinois University Press, 2000.

American Civil Liberties Union: An Annotated Bibliography. New York: Garland, 1992.

Taming the System: The Control of Discretion in Criminal Justice, 1950-1990. New York: Oxford University Press, 1993.

"Hate Speech": The History of and American Controversy. Lincoln, NE: University of Nebraska Press, 1994.

The Color of Justice: Race and Ethnicity in American Criminal Justice. [With Cassia Spohn and Miriam DeLone]. Belmont, CA: Wadsworth, 1996.

2<sup>nd</sup> edition, revised, 2000

3<sup>rd</sup> edition, revised, 2004.

4<sup>th</sup> edition, revised, 2011.

5<sup>th</sup> edition, revised, 2012.

6<sup>th</sup> edition, revised, 2018.

The Rights Revolution: Rights and Community in Modern America. New York: Oxford University Press, 1998.

Police Accountability: The Role of Citizen Oversight. Belmont: Wadsworth, 2001.

Civil Liberties in America: A Reference Handbook. Santa Barbara: ABC-CLIO, 2004.

The New World of Police Accountability. Newbury Park: Sage Publications, 2005.

2<sup>nd</sup> ed., Revised, with Carol Archbold, 2014

3<sup>rd</sup> ed., Revised, with Carol Archbold, 2020

Presidents and Civil Liberties, From Woodrow Wilson to Barack Obama: A Story of Poor Custodians. New York: Cambridge University Press, 2012.

### **GRANTS, FELLOWSHIPS, CONTRACTS**

Developing and Early Intervention System. Contract, Royal Canadian Mounted Police, Ottawa, Canada. July 2015-2016. \$25,000.

Police Professionalism Initiative. U.S. Congress. \$1,000,000. July 1, 2002 - June 30, 2005.

Promoting Police Accountability: Technical Assistance to Law Enforcement Agencies for Developing Early Warning Systems. Office of Community Oriented Policing Services. October 1, 2000 - September 30, 2000. \$240,929.

Program Development in Mediation of Citizen Complaints. Office of Community Oriented Policing Services. Fall 1999 - December 2000. \$148,000.

Grant-in-Aid. University Committee on Research, UNO. Summer, 1999. "A Study of Police Interactions with Hispanic Citizens.

Analysis of the QSA Survey Forms. Minneapolis Civilian Review Authority. \$500. February - March 1999.

Follow-up Analysis and Report, January 2001. \$250.

Quality Service Audit Development. Minneapolis Civilian Review Authority. \$2,500. May-August, 1998

A National Evaluation of Early Warning Systems. Grant. National Institute of Justice. \$174,643. January, 1998 - June, 1999.

Fellowship. Center on Crime and Communities, Open Society Institute. \$49,000. Fall, 1997-August 1998. Renewed, 1998-1999. \$49,000.

Sub-contract. Buffalo (NY) Police Department. A Study of Stress Among Minority and Female Police Officers. \$25,000. December, 1996-December 1998.

Consultant. City Council, Albuquerque, New Mexico. Evaluation of the Oversight for the Albuquerque Police Department. \$15,000. October, 1996-February, 1997.

Consultant. KPMG Peat Marwick. Evaluation of the Charlotte, North Carolina Police Department. March, 1997-1998.

A Survey of Public Perceptions of Racial and Ethnic Minority Employment in the Chicago Police Department. Contract. \$15,000. City of Chicago. 1996.

Summer Grant-in-Aid, UNO University Committee on Research. "An Evaluation of the Police Review Function of Citizen Review. Summer 1996. \$5090.00.

Ford Foundation Fellowship, History and Analysis of the Survey of the Administration of Criminal Justice, September, 1987-December, 1988.

Summer Research Fellowship, University of Nebraska at Omaha, University Committee on Research, 1979, 1985.

Summer Research Travel Grant, University of Nebraska at Omaha, University Committee on Research, 1983.

## **COMMISSIONS, TASK FORCES**

Member, American Law Institute (ALI), Advisory Committee, *Principles of Law: Police Investigations*, 2015-.

Consultant, National Academy of Sciences, Project of Proactive Policing, 2015-2016.

Testimony, U.S. Commission on Civil Rights, Hearings on Police-Community Relations, New York City, April 20, 2015.

Testimony, Ohio Governor's Task Force on Police-Community Relations, Toledo, OH, March 17, 2015.

Testimony, President's Task Force on 21<sup>st</sup> Century Policing, Hearings, Washington, DC, January 13, 2015.

Member, National Academy of Sciences, Panel on *Fairness and Effectiveness in Policing: The Evidence*, 2001-2004.

## **HONORS, AWARDS**

Lifetime Achievement Award. Division on Policing. American Society of Criminology (ASC), November 15, 2018

Academic Freedom Award. Academic Freedom Coalition of Nebraska (AFCON), October 13, 2018.

Langum Prize for Best Book in American Legal History 2012, for *Presidents and Civil Liberties From Wilson to Obama* (2012).

W. E. B. DuBois Award for contributions to the field of Criminal Justice on race and ethnicity. Western Society of Criminology, February 5, 2011.

*Sense and Nonsense About Crime* named one of the "Great Books" in Criminal Justice. The rating is in a survey by Gennare F. Vito and Richard Tewksbury published in the *Journal of Criminal Justice Education*, (V. 19, November 2008).

Tribute to Civil Libertarians Award. ACLU Membership Meeting. Washington, DC. October 16, 2006.

Outstanding Achievement Award. National Association for Citizen Oversight of Law Enforcement (NACOLE). December, 2005.

Academic Freedom Award, 2005. Academic Freedom Coalition of Nebraska. November, 2005.

Graduate Student Mentor Award. University of Nebraska at Omaha. April, 2002.

Faculty Member of the Year. Department of Criminal Justice. UNO. 2002.

Distinguished Alumni Award. College of Humanities. Ohio State University. June 2001.

Isaacson Professorship. University of Nebraska at Omaha. Fall 1999-present.

Bruce Smith Award. Academy of Criminal Justice Sciences (ACJS). 1998

MCB Publishing Award for Best Article Published in the American Journal of Police, 1996, for "Varieties of Citizen Review" (with Betsy Kreisel).

Gustavus Myers Award for the Outstanding Books on Human Rights, 1995.  
For Hate Speech (University of Nebraska Press).

Fellow, Center For Great Plains Studies. University of Nebraska. Lincoln, NE

Peter T. Kiewit Professor, University of Nebraska at Omaha, 1993-96  
Renewed for 2nd term, 1996-1999

Finalist, 1994-95 Outstanding Book Award, for Hate Speech, Society of Midland Authors.

American Library Association, Citation for "Best Bibliographies in History - 1994," for The American Civil Liberties Union: An Annotated Bibliography (1992)

Gustavus Myers Award For the Outstanding Books on Prejudice Published in 1990, Awarded in 1992 for In Defense of American Liberties, by the Gustavus Myers Center.

"You Made A Difference" Award, Nebraska Pro-Choice Coalition, 1992.

"Civil Libertarian of the Year," 1991. Nebraska Civil Liberties Union.

Award for Distinguished Research and Creative Activity, University of Nebraska at Omaha, 1989

Honorary Fellow, Institute for Legal Studies, University of Wisconsin Law School, 1987-1988.

Visiting Scholar, Woodrow Wilson School, Princeton University, May-November, 1985.

Frederick H. Kayser Professorship, University of Nebraska at Omaha, 1985-1991.

### **ARTICLES, BOOK CHAPTERS, and REPORTS**

“Not Dead Yet:” The National Police Crisis, A New Conversation About Policing, and the Prospects for Accountability-related Police Reform,” *Illinois Law Review*, V. 5 (2018).

“Governing the American Police: Wrestling with the Problems of Democracy,” *University of Chicago Legal Forum* (2016): 615-660.

“The History of Proactive Policing.” Commissioned Paper, National Academy of Sciences, Panel on Proactive Policing. Presented at Panel Meeting, Washington, DC, April 4, 2016.

“The Community Voice in Policing: Old Issues, New Evidence,” *Criminal Justice Policy Review* 10 (2015): 1-16.

“The Engineer as Progressive: The Wickersham Commission in The Arc of Herbert Hoover’s Life and Work,” *Marquette Law Review* 96 (Summer 2013): 1165-1197.

“Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure,” *St. Louis University Public Law Review*, XXXII (No. 1, 2012): 57-92.

“Civil Liberties.” Michael Kazin, ed., *The Concise Princeton Encyclopedia of American Political History*. Princeton: Princeton University Press, 2011. Pp. 79-82.

“Policing the Police: Citizens Encourage Ethical Policing.” With Andrea Lorenz. U.S. State Department, *E-Journal USA*, 15 (April 2011): 22-23.

*Making Police Reforms Endure: The Keys For Success*. Trent Ikerd and Samuel Walker. Washington, DC: Department of Justice, April 2010.

“Not Just Police Use of Deadly Force: The Larger Contributions of Jim Fyfe to American Criminal Justice,” in Candace McCoy and Samuel Walker, eds., *Holding Police Accountable*. Washington, DC: Urban Institute Press, 2010.

“An Alternative Remedy for Police Misconduct: A Model State Pattern or Practice Statute” [with Morgan MacDonald], *George Mason Civil Rights Law Journal*, 19 (Summer 2009): 479-552.



“The Impact of Traffic Stops on Calling the Police,” Chris Gibson, Samuel Walker, Wesley G. Jennings, J. Mitchell Miller, *Criminal Justice Policy Review* 21 (June 2010): 139-159.

“The Neglect of Police Unions: Exploring one of the most Important Areas of Policing,” *Police Practice and Research*, 9 (May 2008), No. 2): 95-111.

Reprinted in Monique Marks and David Sklansky, eds. *Police Reform from the Bottom Up: Officers and their Unions as Agents of Change* (New York: Taylor and Francis, 2012).

“Police Accountability: Current Issues and Research Needs” National Institute of Justice, U.S. Department of Justice, May, 2007. [www.ncjrs.gov](http://www.ncjrs.gov).

“Too Many Sticks, Not Enough Carrots: Limits and New Opportunities in American Crime Policy,” *University of St. Thomas Law Journal* 3 (Spring 2006): 430-461.

“History of the Civilian Oversight Movement,” (Chapter 1) and “Models of Civilian Oversight Agencies” (Chapter 2), *Civilian Oversight of Law Enforcement: Legal Issues and Policy Considerations* (Chicago: American Bar Association Section of State and Local Government Law, 2006).

“Education: The Key to Civil Liberties.” In Woody Klein, ed., *Liberties Lost*. Westport, CT: Greenwood Press, 2006.

*Strategies for Intervention with Officers Through Early Intervention Systems: A Guide for Front-line Supervisors*. Washington, DC: Department of Justice, 2006.

*Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. Washington, DC: Department of Justice, 2005.

“Race and Criminal Justice,” “American Civil Liberties Union,” “Nat Hentoff,” “Police Investigation Commissions,” *Encyclopedia of Civil Liberties* (New York: Routledge, forthcoming).

“An Impediment of Police Accountability?: An Analysis of Statutory Law Enforcement Officers’ Bills of Rights,” [with Kevin M. Keenan], *Boston University Public Interest Law Journal*, 14 (2005): 185-243.

“American Civil Liberties Union.” *Encyclopedia of the Supreme Court*. New York: Oxford University Press, 2005.

“American Civil Liberties Union.” *Governments of the World* (New York: Macmillan Reference, forthcoming).

“Science and Politics in Police Research: Reflections on Their Tangled Relationship,” *Annals of the American Academy of Political and Social Science*, V. 593 (May 2004): 137-155.

“Citizen Oversight, 2003: Developments and Prospects,” New York State Bar Association, Government, Law and Policy Journal, 5 (Fall 2003): 5-10

Fairness and Effectiveness in Policing: The Evidence. Washington, DC: National Academy of Sciences, 2003. [Member of the Committee; principal author of Chapter Three].

Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide. Washington, DC: U.S. Department of Justice, 2003.

“Police Sexual Abuse of Teenage Girls: A 2003 Update of ‘Driving While Female.’” With Dawn Irlbeck. Police Professionalism Initiative. June 2003. [www.policeaccountability.org](http://www.policeaccountability.org).

“The New Paradigm of Police Accountability: The U.S. Justice Department ‘Pattern or Practice Suits in Context.’” St. Louis University Public Law Review, XXII (No. 1, 2003): 3-52.

Internal Benchmarking for Traffic Stop Data: An Early Intervention System Approach. Discussion Paper. Police Professionalism Initiative. April 2003. [www.policeaccountability.org](http://www.policeaccountability.org).

White Papers. Frequently Asked Questions About Citizen Oversight of Police.  
Frequently Asked Questions About Early Warning Systems.  
Frequently Asked Questions About Mediating Citizen Complaints.  
Cultural Diversity and the Police Project. Bureau of Justice Assistance. 2003. [www.policylab.org/cdap.html](http://www.policylab.org/cdap.html)

Police Outreach to the Hispanic/Latino Community: A Survey of Programs and Activities [With Leigh Herbst and Dawn Irlbeck. Report. November, 2002.

Driving While Female. [with Dawn Irlbeck]. Police Professionalism Initiative Report. May, 2002

Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders. Washington, DC: Government Printing Office, 2002.

Early Warning Systems: Responding to the Problem Police Officer. [With Alpert and Kenney]. National Institute of Justice. Research in Brief (Washington, DC, June 2001).

“‘Searching for the Denominator’: Problems with Police Traffic Stop Data and an Early Warning System Solution,” Justice Research and Policy, 3 (May 2001): 1-33

“Early Warning Systems as Risk Management for Police” [with Geoffrey Alpert]. In Kim Michelle Lersch, eds., Policing and Misconduct (Upper Saddle River: Prentice-Hall, 2002), pp. 219-230.

“Mediating Citizen Complaints Against the Police: An Exploratory Study,” Journal of Dispute

Resolution, V. 2001 (No. 2, 2001): 231-244 [With Carol Archbold].

“Language Barriers in the Delivery of Police Services: A Study of Police and Hispanic Interactions in a Midwestern City” [with Leigh Herbst], *Journal of Criminal Justice* 29 (July/August 2001): 1-12.

“Police Accountability and Early Warning Systems: Developing Policies and Programs,” *Justice Research and Policy*, 2 (Fall 2000): 59-72.

“Police Accountability: Establishing an Early Warning System,” *International City Management Association, IQ Service Report*, 32 (No. 8, August 2000).

“Early Warning Systems for Police: Concept, History, and Issues” [with Geoffrey P. Alpert and Dennis J. Kenney], *Police Quarterly*, 3 (No. 2, June 2000): 132-151.

*Police Interactions with Racial and Ethnic Minorities: Reconciling the Contradictions Between Allegations and Evidence*. Washington: Police Executive Research Forum, 2000

“Institutional Structure vs. Political Will: Albuquerque as a Case Study in the Effectiveness of Citizen Oversight of the Police” [with Eileen Luna]. A. Goldsmith and C. Lewis, ed., *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Oxford: Hart Publishing, 2000. Pp. 83-104.

“Arthur Garfield Hays.” *American Lawyer* (December 1999). Pp. 75, 153

“New Directions in Citizen Oversight: The Auditor Approach to Handling Citizen Complaints,” in T.O. Shelley and A. Grant, eds., *Problem-Oriented Policing*. Washington, DC: Police Executive Research Forum, 1998. Pp. 161-178.

*Policing in Indian Country: A National Survey of Tribal Law Enforcement Agencies* [With Eileen Luna]. Washington: Police Executive Research Forum, 1998.

“Citizen Complaints in Response to Police Misconduct: The Results of a Victimization Survey,” *Police Quarterly*, I (No 1, 1998): 65-89 [with Nanette Graham].

*Achieving Police Accountability: New Directions in Citizen Review of Complaints* (New York: Open Society Institute, 1998).

*Citizen Review of the Police – 1998 Update*. Omaha: University of Nebraska at Omaha, 1998.

“Ideology as an Intervening Variable in Affirmative Action.” *Subject to Debate*, 12 (May 1998): 1, 4.

“Complaints Against the Police: A Focus Group Study of Citizen Perceptions, Goals, and Expectations,” *Criminal Justice Review*, 22 (Autumn 1997): 207-226.

“A Primer on Police Complaint Data,” *Subject to Debate*, (March 1998).

- A Report on the Oversight Mechanisms of the Albuquerque Police Department (With Eileen Luna). February, 1997.
- Declaration. Affirmative Action in American Policing. Appendix to Brief Filed in Opposition to State of California Proposition 209. November 1996.
- Perceptions of Racial and Ethnic Minority Employment in the Chicago Police Department. (With Vincent J. Webb). June, 1996.
- "Wars on Crime - Struggles For Justice: Conflicting Trends in American Criminal Justice, 1970-1995." Lawrence W. Friedman and George Fisher, eds., *The Crime Conundrum: Essays on Criminal Justice* (Boulder: Westview Press, 1997), pp. 191-210.
- "The State of the Police." (Contributor, with Fyfe, Greene, McMurray, Skolnick, and Weisheit). *American Society of Criminology, Critical Criminal Justice Issues* (Columbus: ASC, March 1996).
- "Varieties of Citizen Review: The Implications of Structure, Mission, and Policies for Police Accountability," *American Journal of Police*, XV (1996, No. 3): 65-88. [with Betsy Kreisel].
- "Introduction and Reader's Guide." *Records of the National Commission on Law Observance and Enforcement, 1929-1931 [Wickersham Commission]*. Washington, DC: National Archives/University Publications of America, forthcoming.
- Citizen Review Resource Manual*. Washington, DC: Police Executive Research Forum, 1995.
- "American Civil Liberties Union." *Collier's Encyclopedia*. New York: Collier's, 1996. Pp. 31- 32.
- "Less Than Meets the Eye: Police Department Bias Crimes Units," *American Journal of Police*, XIV (No. 1 1995): 29-48. [with Charles M. Katz].
- "A Pale Reflection of Reality: The Neglect of Racial and Ethnic Minorities in Introductory Criminal Justice Textbooks." *Journal of Criminal Justice Education*, 6 (Spring 1995): 61-83. [With Molly Brown].
- Citizen Review of the Police 1994: A National Survey*. [With Betsy Wright]. Washington, DC: Police Executive Research Forum, 1995.
- "American Civil Liberties Union." *Oxford Companion to American Military History*. New York: Oxford University Press, forthcoming.
- "A Strange Atmosphere of Consistent Illegality: Myrdal on 'The Police and Other Contacts,'" *Challenge*, 5 (July 1994): 38-57.

Also published in Obie Clayton, Jr., ed., *An American Dilemma Revisited: Race Relations in a Changing World*. New York: Russell Sage Foundation, 1996. 226-246.

"Guide to the Papers of the American Civil Liberties Union," *The Papers of the American Civil Liberties Union, 1920-1989: Microfilm Edition* (Ann Arbor, MI: University Microfilms Incorporated, 1994).

"Involving Citizens in Violence Prevention," *American Journal of Police*, XII (1993, No. 3): 59-64.

"The Communitarian Cop-Out," *National Civic Review*, 82 (Summer 1993): 246-254.

"Hijacked!: How the War on Drugs Stole Community Policing." *The Faces of Change: Seventh International Conference on Drug Policy Reform*. Washington, DC: Drug Policy Foundation, 1993. Pp. M/1-7.

"Historical Roots of the Legal Control of Police Behavior," in D. Weisburd and C. Uchida, eds., *Police Innovation and the Rule of Law*. New York: Springer - Verlag, 1993. Pp. 32-55.

"Roger Baldwin." *American Reform and Reformers: A Biographical Dictionary*. R. M. Miller and P. A. Cimballa, eds. Westport, CT: Greenwood Press, 1996. Pp. 26-36.

"Law Enforcement," *Encyclopedia of the American Presidency*, V. 3. New York: Simon & Schuster, 1994. Pp. 942-944.

"Between Two Worlds: The President's Crime Commission and the Police, 1967-1992," in *The 1967 President's Crime Commission Report: Its Impact 25 Years Later*. John Conley, ed. Cincinnati: Anderson, 1994. Pp. 21-35.

"Putting Justice Back Into Criminal Justice: Notes For a Liberal Criminal Justice Policy," *Criminal Justice: Law and Politics*, 6th ed., George Cole, ed. Belmont, CA: Wadsworth, 1993. Pp. 503-516.

Reprinted, 7<sup>th</sup> ed., 1998.

"Does Anyone Remember Team Policing?: Lessons of the Team Policing Experience for Community Policing." *American Journal of Police*, XII (No. 1 1993): 33-55.

"The Effectiveness of Civilian Review: Observations on Recent Trends and New Issues Regarding Civilian Review of the Police." *American Journal of Police*, XI (No. 4, 1992): 1-26. With Vic Bumphus; 80% authorship.

"A Decade of Modest Progress: Black and Hispanic Police Employment in the 50 Largest Cities, 1983-1992" (with K. B. Turner). Omaha: University of Nebraska at Omaha, 1992.

ACLU, *Fighting Police Abuse: A Community Action Manual*. (New York: ACLU, 1992). 80% authorship.

Spanish language edition: *La Lucha Contra Los Abusos De La Policia: Manual De Accion Comunitaria* (1993)

Second edition, revised, 1997.

"Answers to 10 Key Questions About Civilian Review," *Law Enforcement News* (March 31, 1992).

"Getting From Here to There: A Reply to George Kelling," *Issues in Community Policing*, William A. Geller, ed. Washington: Police Executive Research Forum, forthcoming.

"The Creation of the Contemporary Criminal Justice Paradigm: The American Bar Foundation Survey of Criminal Justice, 1956-1969," *Justice Quarterly*, 9 (March, 1992): 201-230.

"The American Civil Liberties Union," in Kermit L. Hall, ed., *The Oxford Companion to the Supreme Court* (New York: Oxford University Press, 1992), pp. 29-30.

"The American Civil Liberties Union." *Encyclopedia of African American Culture*. New York: Macmillan, forthcoming.

"Special Report: Police Misconduct." *The Americana Annual 1992*. New York: Grolier, 1992. p. 205.

"Morris Ernst," "Osmond K. Fraenkel," "Walter Pollak," in John A. Garraty, Ed., *American National Biography*. New York: Oxford University Press, Forthcoming.

"Forces of Change in Police Policy: The Impact of *Tennessee v. Garner*," *American Journal of Police*, XI (1992, No. 3): 97-112. (50% contribution).

"Urban Crime Policy," (with J. Greene, D. Gordon, D. Steelman). *Journal of Urban Affairs*, 14 (No. 3/4, 1992): 359-375. 25% Contribution.

"American Civil Liberties Union," "Roger Baldwin," "Crystal Eastman," *Encyclopedia of New York City*, New Haven: Yale University Press, 1996.

"Civilian Review of the Police in Los Angeles: What, Why, and How," *Open Forum*, 67 (May/June 1991): 4.

"Civilian Review: Facing the New Reality," *Police Union News*, II (December, 1991): 1-3, 7.

*Civilian Review of the Police: A National Survey*. Omaha: UNO. 1991 (with Vic Bumphus). 50% contribution.

- "The ACLU and Economic Rights," in Symposium on Economic Rights, Society, 28 (January/February 1991): 14-16.
- "Forward," to Geoffrey Alpert and Lorie Fridell, *Police Vehicles and Firearms: Instruments of Deadly Force*. Prospect Hts., IL: Waveland Press, 1991.
- "The Growth of Civil Liberties, 1890-1945: Reflections in the Magic Mirror of American Life," in Ray Arseneault, ed., *Crucible of Liberty: 200 Years of the Bill of Rights*. New York: The Free Press, 1991: 36-51.
- "Rights Before Trial," in Kermit Hall, ed., *By and For the People: Constitutional Rights in American History*. Arlington Hts., IL: Harlan Davidson, 1991. Pp. 78-88.
- "Douglas as Civil Libertarian: Criminal Law and Privacy," in Stephen L. Wasby, ed., *"He Shall Not Pass This Way Again": The Legacy of William O. Douglas*. Pittsburgh: University of Pittsburgh Press, 1990. Pp 129-131.
- "Beyond the Supreme Court: Alternative Paths to the Control of Police Behavior," *American Journal of Criminal Justice*, 14 (1990): 189-204.
- "Paths to Police Reform: Reflections on 25 Years of Change," in Dennis Jay Kenney, ed., *Police and Policing* (New York: Praeger, 1989), pp. 271-284.
- Employment of Black and Hispanic Police Officers, 1983-1988: A Follow-up Study (Omaha: UNO Center For Applied Urban Research, 1988). Reprinted in *Sourcebook of Criminal Justice Statistics*, 1988 (Washington: Department of Justice, 1989), pp. 89-90.
- "Penal Reform," "Police Reform," *Historical Dictionary of the Progressive Era*, John D. Buenker and Edward R. Kantowicz, eds., Westport: Greenwood Press, 1988, pp. 360-361, 372-373.
- The Rule Revolution: Reflections on the Transformation of American Criminal Justice, 1950-1988* (Madison: Institute for Legal Studies, 1988).
- "Sixties Civil Rights Gave Momentum to Prisoners' Rights," " *Prison Journal*, No. 13, (Fall, 1987).
- "Sooner or Later We All Need Our Civil Liberties (Ask Ollie North)," *The World and I* (June 1987), pp. 633-640; reprinted in *The New York City Tribune*, June 26, 1987.
- "Official Crime Reports Conflict," *Prison Journal* (No. 9, Fall 1986), 6, 11-12.
- "Controlling the Cops: A Legislative Approach to Police Rulemaking," *University of Detroit Law Review*, 63 (Spring 1986), 361-391.



"The Insider as Outsider: Patrick V. Murphy and the Dilemmas of Police Reform," in Hubert G. Locke, ed., *Essays in Honor of Patrick V. Murphy* (forthcoming).

"The Dynamics of Change in American Criminal Justice: Towards an Understanding of 'Reform'," in Kerner, Galway, Janssen, eds., *European and North-American Juvenile Justice Systems--Aspects and Tendencies* (Munich, 1986), pp. 155-177.

"Racial Minority and Female Employment in Policing: The Implications of 'Glacial' Change," *Crime and Delinquency*, 31 (October 1985), pp. 555-572.

"The Limits of Segregation in Prisons: A Reply to Jacobs," *Criminal Law Bulletin*, 21 (November/December 1985), pp. 485-494.

"The Politics of Police Accountability: The Seattle Police Spying Ordinance as a Case Study," in E. Fairchild and V. Webb, eds. *The Politics of Criminal Justice*. Beverly Hills: Sage Publications, 1985. Pp. 144-157.

"DICTA: Decisions Threaten Future of Police Reform," *Virginia Law Weekly*, V. 37 (March 1, 1985).

"Historians on the Case: Contemporary Crime Policy and the Uses of History," *Organization of American Historians, Newsletter*, V. 13 (February 1985), pp. 13-15.

"Setting the Standards: The Impact of 'Blue-Ribbon' Commissions on the Police," in W. Geller, ed., *Police Leadership in America: Crisis and Opportunity* New York: Praeger, 1985. Pp. 354-370

"Police Forces," in C. R. Wilson and W. Ferris, eds., *Encyclopedia of Southern Culture*. Charlotte: University of North Carolina Press, 1989. Pp. 814-815.

"Broken Windows and Fractured History: The Use and Misuse of History in Recent Police Policy Analysis," *Justice Quarterly*, I (March 1984), pp. 75-90.

Reprinted in S. G. Brandl and D. E. Barlow, eds., *Classics in Policing*. Cincinnati: Anderson Publishing, 1996.

"The Future of Policing." Background paper in *The Future of Policing*. Seattle: William O. Douglas Institute, 1984.

"The Employment of Black and Hispanic Police Officers: Trends in the 50 Largest Cities," University of Nebraska at Omaha, *Review of Applied Urban Research*, XI (October 1983).

\*\*Reprinted in U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics - 1984* (Washington: Government Printing Office, 1985), p. 64.



\*\*Reprinted in Annual Editions, Criminal Justice: 84/85 (Guilford, CT: Dushkin Publishing, 1984).

"What Have Civil Liberties Ever Done for Crime Victims? Plenty!" Academy of Criminal Justice Sciences, ACJS Today (October 1982), pp. 4-5.

"The Origins of the American Police-Community Relations Movement: The 1940's," Criminal Justice History - An International Annual I (1980), pp. 225-246.

Co-Editor, with Hubert G. Locke, Special Issue of Social Development Issues, Spring, 1980, "Law Enforcement and Institutional Racism in American Society."

"Police Professionalism at the Crossroads: Police Administration in the 1980's," in Iacovetta and Chang, eds., Critical Issues in Criminal Justice (Durham: Carolina Academic Press, 1979), pp. 161-173.

"The Rise and Fall of the Policewomen's Movement, 1905-1975," in J. Hawes, ed., Law and Order in American History (Port Washington: Kennikat Press, 1979), pp. 101-111.

"Reexamining the President's Crime Commission: 'The Challenge of Crime in a Free Society' After Ten Years," Crime and Delinquency, 24 (January 1978), pp. 1-12.

"Law and Order in Scranton: The Role of the Police in an Industrial Community, 1866-1884," American Studies, XIX (Spring 1978), pp. 79-90.

"The Urban Police in American History: A Review of the Literature," Journal of Police Science and Administration, IV (September 1976), pp. 252-260.

\*\*Reprinted in Cromwell and Keefer, eds., Police-Community Relations 2nd ed. (St. Paul: West, 1978).

"Police Professionalism: Another Look at the Issues," Journal of Sociology and Social Welfare, III (July 1976), pp. 701-711.

"Varieties of Workingclass Experience: The Workingmen of Scranton, Pennsylvania, 1955-1885," in M. Cantor, ed., Nineteenth Century Workingclass Culture (Westport, CT: Greenwood Press, 1979), pp. 361-376.

"Terence V. Powderly - Machinist, 1866-1873," Labor History, 19 (Spring 1978), pp. 165-184.

"Documentary Photography in America: the Political Dimensions of an Art Form," Radical America, II (Jan-Feb 1977), pp. 53-66.

"Powderly, the Knights of Labor, and Temperance Reform," *Societas: A Review of Social History*, V (Autumn 1975), pp. 279-293.

"George Howard Gibson: Christian Socialist Among the Populists," *Nebraska History*, 55 (Winter 1974), pp. 553-572.

## PRESENTATIONS

"Not Dead Yet: The National Police Crisis, the Legacy of the Justice Department 'Pattern or Practice' Program, and the Prospects for Police Reform." Presentation, Symposium on Federal Responses to Police Misconduct. University of Illinois Law School, Champaign, IL. April 4, 2018

"Not Muted Voices at All: The Long-Term Contributions of the Voices of World War I Conscientious Objectors and Dissenters Against the War." Presentation, Conference, Remembering Muted Voices: Conscience, Dissent, Resistance, and Civil Liberties in World War I through Today. Kansas City, MO, October 20, 2017.

"The Future of Race and Policing in the Trump Era." Presentation, Wisconsin Bar Association, Annual Meeting, Wisconsin Dells, June 15, 2017.

Panelist. Symposium on Community Oversight of the Police. Chicago, IL, May 18, 2017.

Panelist. Symposium for Texas Journalists on "Cops, Reform, and Justice." University of Texas, School of Journalism. Austin, TX, April 14, 2017.

"Actually, Effective Strategies Do Exist: Police and Community Violence." Presentation, Symposium on Addressing Violence as a Public Health Issue." College of Public Health, University of Nebraska Medical Center, Omaha, NE, April 21, 2017.

Discussant. Panel on Police Community Relations, following screening of *Do Not Resist*. February 7, 2017.

"'The Heart of the Matter: Officer Use of Force Reports as the Core of Police Accountability.' Presentation, University of California, Irvine Law School. Irvine, CA, October 7, 2016."

"The National Police Crisis: What Can We Do." Presentation, Jewish Community Center, Omaha, NE, July 20, 2016.

"Policing – and Governing—the Police: Wrestling with the Problem of Democracy." University of Chicago Law Forum, Chicago, IL, November 6, 2015.

"Police Auditors." Presentation, Community Renewal Society, Chicago, IL, November 5, 2015.

- “Police Union Contract Provisions: Impediments to Police Accountability.” Presentation. NAACP Legal Defense and Education Fund (LDF), Annual Conference, Warrenton, VA, October 23, 2015
- “An Independent Police Auditor: An Effective form of Citizen Oversight of the Police.” Presentation. Coalition for Increased Civilian Oversight of the Pasadena Police.” Community Conference, Pasadena, CA, October 6, 2015.
- “Ferguson, Baltimore, and the Challenges for Citizen Oversight of the Police.” Presentation, Community Conference for Just and Dignified Policing, Riverside, CA, October 5, 2015.
- “Police Response to the Mentally Ill: Lessons from Recent U.S. Experience.” Presentation, XXXIX International Conference on Law and Mental Health, Vienna, Austria, July 17, 2015.
- “Achieving Respectful Policing.” Testimony. United States Commission on Civil Rights. Hearings. New York City, April 20, 2015.
- “Getting Serious About Day-to-Day Police Misconduct. Keynote Address. April Symposium on Racial Justice. Arizona State University. Phoenix, AZ, April 10, 2015.
- “Statement on Respectful Policing.” Ohio Task Force on Police-Community Relations. Written Submission. March 17, 2015.
- “After Ferguson: Lessons from a Tragedy.” Presentation. Conference on Race, Justice and Community: Can We All Get Along? John Jay College. New York City. February 9, 2015.
- “Citizen Voice in Police Policy Making: Old Issues, New Evidence” Presentation. Conference on Moving Beyond Discipline: The Role of Civilians in Policing. National Association for Citizen Oversight of Law Enforcement and Seattle University. Seattle, WA, February 6, 2015.
- “A Respectful Policing Initiative.” Presentation. President’s Task Force on 21<sup>st</sup> Century Policing. Washington, DC. January 13, 2015.
- “The Most Important Police Research Needs.” Presentation. Police Section Meeting, American Society of Criminology. San Francisco. November 20, 2014.
- “Police-Community Relations Today.” Presentation and discussion. Reason/Omaha, Monthly meeting. Omaha, NE. December 10, 2014.
- “Militarization of the Police,” Panelist. Public Forum. Nebraskans for Peace. Lincoln, NE. November 17, 2014.

“Police Officer Body Cameras: Their Place in the Larger Police Accountability Picture. Presentation. Conference on Police Officer Body Cameras, Seattle University, Seattle, WA, October 10, 2014.

“Community vs. Chaos: Community Dialogue; What Would We Do if Ferguson Happened in Omaha?” Panelist. Community Forum. Omaha, NE. September 8, 2014.

“The PTSR Framework: A Systematic Approach to Police Accountability.” Presentation. Phoenix, AZ Metropolitan Area Police Chiefs Groups. Phoenix, AZ. April 21, 2014.

“An Unprecedented Situation for Police Reform.” Community Forum on the NYPD. Cardozo Law School. New York City. January 27, 2014.

“Finding the Right Balance.” Presentation. Annual Meeting, National Association for Citizen Oversight of Law Enforcement,” September 23, 2013. Salt Lake City, Utah.

“On the Stand: What I Learned as an Expert Witness in the NYPD Stop and Frisk Trial.” University of Nebraska at Omaha. Constitution Day Talk. September 17, 2013.

“Presidents and Civil Liberties: What History Tells Us About Obama and Romney.” Presentation, Colorado State University, October 22, 2012.

“Pattern or Practice Litigation and Police Accountability.” Presentation. Annual Meeting, National Association for Citizen Oversight of Accountability. San Diego, October 17, 2012.

“The Engineer as Progressive: The Wickersham Commission in the Arc of Herbert Hoover’s Life and Work. Presentation. Conference on America’s First National Crime Commission And the Federalization of Law Enforcement.” Marquette University Law School. October 4, 2012.

“Police Accountability – Lawfulness and Legitimacy.” Seminar. Center for Public Safety, Northwestern University. September 12, 2012.

“Presidents and Civil Liberties: Scenes from the White House.” Presentation, Binghamton University, March 21, 2012.

“Police Accountability.” Workshop, Safe Communities, Fair Sentences Conference. Omaha, Nebraska, March 10, 2012.

“Police Practices that Contribute to the Prison Pipeline – And How to End Them.” Presentation, Malcolm X Conference, University of Nebraska at Omaha, March 7, 2012.

“Institutionalizing Accountability Reforms.” Presentation, Conference on Control of Police

Misconduct in a Post-Exclusionary Rule World: Can it be Done? St. Louis University Law School. February 24, 2012.

Commentator. Panel on “Job Commitment, Satisfaction, and Corruption: Papers from the National Police Platform. American Society of Criminology Annual Meeting, November 18, 2011. Washington, DC.

“Making Police Reforms Endure: The Keys for Success.” Presentation. Annual Meeting. National Association for Civilian Oversight of Law Enforcement. October 18, 2011. New Orleans, LA.

“Rethinking Police Litigation Strategies,” Presentation, Center for Constitutional Rights, New York City, August 17, 2001.

“Citizen Oversight of the Police: Why it is Needed, What is the Best Model? Presentation, African American Studies Department, Ohio State University, Columbus, OH, March 1, 2011.

“Two Steps Forward, One Step Backwards: Forty Years of Police Reform.” George Beto Lecture, Sam Houston State University, Huntsville, TX, February 15, 2011.

“Race and Justice in America: A 40 Year Perspective. Keynote Address, Western Society of Criminology Annual Meeting, Vancouver, CA, February 5, 2011.

“Linking Policy Change, Officer Response, and Organizational Transformation: A Theoretical Perspective,” with Dennis Rosenbaum. Presentation. American Society of Criminology, Annual Meeting, San Francisco, CA, November 18, 2010.

“Roundtable Discussion: The Auditor Model of Citizen Oversight. Roundtable Leader. National Association for Citizen Oversight of the Police, Annual Meeting, Seattle, WA, September 21, 2010.

“Alternative Strategies for Dealing with Police Misconduct.” Presentation. Rights Working Group. Washington, DC, May 11, 2010.

“Rethinking Packer’s ‘The Two Models of the Criminal Process’.” Presentation. American Society of Criminology. Annual Meeting. Philadelphia, PA. November 6, 2009.

“Renewing Research on Police Accountability.” Moderator and Presenter. American Society of Criminology. Annual Meeting. Philadelphia, PA. November 5, 2009.

“Models of Oversight: The Auditor Model.” Roundtable Discussion Moderator. National Association for Citizen Oversight of Law Enforcement. Annual Meeting, Austin, TX. October 31, 2009.

“Problem-Solving Approaches to Reducing Violence.” Forum: From Awareness to Action: A Community Approach to Youth Violence. League of Women Voters, Omaha, NE. November 17, 2008.

“Current Directions in Police Accountability.” Community Forum. St. Louis, MO. November 13, 2008.

Commentary. Author Meets Critics: Richard Leo on Police Interrogations. Annual Meeting, American Society of Criminology, November 12, 2008.

“The Auditor Model of Citizen Oversight.” Roundtable Discussion Leader. NACOLE Annual Meeting, Cincinnati, OH. October 27, 2008.

“Can We Reform the Police Through Pattern or Practice Litigation?” University of Cincinnati. Cincinnati, OH. October 27, 2008.

“Core Principles for Effective Violence Reduction Strategies.” Presentation. Judiciary Committee, Nebraska Unicameral. Omaha, NE. September 12, 2008.

“Building Trust in Police– Needed for Effective Crime Fighting.” Presentation. Stop the Violence Conference. Omaha, NE. April 25, 2008.

“Omaha’s Police Problems in National Perspective.” Presentation. League of Women Voters of Omaha. Annual Meeting. April 19, 2008.

“Alternatives for Citizen Oversight of the Police.” Presentation to the Commission on the Creation of a Civilian Review Board, San Juan, Puerto Rico, March 6, 2008.

“Presidents and Civil Liberties.” ACLU Washington Legislative Office. Washington, DC. December 14, 2007.

“The Abuse of Presidential Power: Wilson, FDR, Nixon, and Bush.” Presentation. Brownville Lyceum. Brownville, NE. October 7, 2007.

“The Survival of Citizen Oversight Agencies.” Presentation. Annual Meeting, National Association for Citizen Oversight of Law Enforcement. San Jose, CA. September 25, 2007.

“Not the Same Old Police-Community Relations Issue.” Presentation. Conference on Immigration. Arizona State University. Phoenix, AZ. April 5, 2007.

“Lessons of the Scopes Case: Strategies for Responding to the Religious Right.” C. E. Sorensen Memorial Lecture. Unitarian Church of Lincoln, Nebraska. April 1, 2007.

“Police Accountability: Issues and Research Needs.” National Institute of Justice, Police Planning Research Workshop. Washington, DC. November 28, 2006

- “Lessons of the Scopes Case: Strategies for Responding to the Religious Right.” Americans United for Separation of Church and State. Nebraska Chapter Meeting. Omaha, NE. November 8, 2006.
- “The Impact of Consent Decrees on Policing.” Presentation. Annual Meeting, American Society of Criminology. Los Angeles, November 2, 2006.
- “The New World of Police Accountability.” Presentation. Americans for Effective Law Enforcement (AELE). Las Vegas, NV, October 30, 2006.
- “Why the Neglect of Police Unions? Exploring One of the Most Important Areas of American Policing.” Presentation. Conference on Police Reform from the Bottom Up. The Law School. University of California, Berkeley. October 12-13, 2006.
- “The Larger Legacy of Jim Fyfe: The Control of Discretion in Criminal Justice.” Presentation. Memorial Conference on The Legacy of James Fyfe. John Jay College. New York City. October 5, 2006.
- “An Uncertain Defense: Presidents and Civil Liberties, From Woodrow Wilson to George W. Bush.” Constitution Day Address. University of Nebraska at Omaha. September 18, 2006.
- “DNA Dragnets: Use and Experience.” Presentation. Conference on DNA Fingerprinting and Civil Liberties. American Society of Law, Medicine and Ethics. Boston, MA. May 12, 2006.
- “Too Many Sticks, Not Enough Carrots.” Presentation. University of St. Thomas Law School. Minneapolis, MN. March 30, 2006.
- “National Trends in Early Intervention Systems.” EIS Best Practices Conference. Phoenix Police Department. Phoenix, AZ. March 27, 2006.
- “Diversity in Law Enforcement Employment: Values, Goals, Results.” Presentation. Performance Institute. Washington, DC. February 16, 2006.
- “Innovations in Police Accountability: Opportunities and Challenges.” Conference on Innovations in Police Accountability. Upper Midwest Regional Community Policing Institute. Minneapolis, MN. January 17, 2006.
- “Models of Citizen Oversight: The Auditor Model.” Workshop. National Association for Citizen Oversight of Law Enforcement. Miami, Florida. December 13, 2005.
- “What Real Police Accountability Looks Like.” Presentation. National Association for Citizen Oversight of Law Enforcement. Annual Meeting. Miami, FL. December 12, 2005.



“The Worst President Ever on Civil Liberties?” History News Network. On line edition.  
<http://hnn.us>. December 5, 2005.

“Evidence-Based Police Accountability: What We Know, What We Need to Know.”  
Presentation. American Society of Criminology, Annual Meeting. Toronto, Canada.  
November 17, 2005.

“Race, Incarceration and Social Policy.” Presentation. Dana College. October 17, 2005.

“DNA Sweeps by Police: An Ineffectual Investigative Tactic.” Presentation. Police Executive  
Research Forum, Annual Meeting. New York City. April 24, 2005.

“The New World of Police Accountability.” Presentation. Crime, Law and Public Policy Lecture  
Series. University of Arizona Law School. Tucson, AZ. March 9, 2005.

“Issues in Criminal Justice.” Omaha Public Schools, Improving Teaching Workshop. February  
22, 2005. Omaha, NE.

“Racial Profiling.” University of Nebraska - Lincoln, Martin Luther King Week Program.  
January 18, 2005.

“Citizen Complaints as a Performance Measure for the Police,” American Society of  
Criminology, Annual Meeting. November 17, 2004. Nashville. TN

Keynote Address, “The New World of Police Accountability.” Toronto Police Service, 4<sup>th</sup>  
Annual Professional Standards Conference. October 27, 2004. Toronto, Canada.

Keynote Address: “Only One Part of the Picture: Traffic Stop Data Collection in Perspective.”  
Police Executive Research Forum By the Numbers Conference, August 24, 2004. Kansas  
City, MO.

“Best Practices: Early Intervention Systems in Policing” (with Geoffrey P. Alpert). National  
Institute of Justice Annual Research and Evaluation Conference. July 17, 2004.  
Washington, DC.

“Whistle Blower Protection for Police Officers: The Need and the Obstacles.” Presentation.  
Rutgers-Camden Law School. April 2, 2004. Camden, NJ.

“The New World of Police Accountability.” Presentation. University of Houston Law Center.  
March 25, 2004. Houston, TX.

“A Closer Look at the History of Policing in the U.S.” Workshop. Annual Meeting. Academy of  
Criminal Justice Sciences. March 10, 2004. Las Vegas.

- “Police Auditors in the United States: An Emerging Model of Oversight.” Conference, Comparative Perspectives on Police Accountability.” United Nations. New York, NY. December 3-4, 2003.
- “The Auditor Model of Citizen Oversight of the Police.” American Society of Criminology. Denver, CO. November 13, 2003.
- “Alternative Strategies for Citizen Oversight of the Police.” Citizens Investigative Panel. Miami, Florida. November 6, 2003.
- “The Hispanic Community and the Police: Research Opportunities.” National Latino Peace Officers Association Annual Meeting. Washington, DC. October 23, 3003.
- “New Directions in Police Accountability.” Police Executive Research Forum. Washington, DC. September 12, 2003.
- “Internal Benchmarking for Traffic Stop Data.” New Jersey Attorney General’s Stop Data Committee. Police Institute. Rutgers University. April 9, 2003.
- “Internal Benchmarking for Traffic Stop Data.” Dean’s Forum. School of Criminal Justice. Rutgers University. April 9, 2003.
- “Internal Benchmarking for Traffic Stop Data.” Racial Profiling Conference. Northeastern University. Boston, MA. March 8, 2003.
- “Best Practices in Early Intervention Systems.” Teleconference. U.S. Justice Department. February 13, 2003.
- “Is There Still No Justice?: Race and Criminal Justice 35 Years After the Kerner Commission.” On-line Teleconference. Wadsworth Publishing. January 24, 2003.
- “Is There Still No Justice?: Reflections on 40 Years of Struggle for Racial Justice.” Keynote Address. Texas Philosophical Society. Fort Worth, TX. December 7, 2002.
- “Early Intervention Systems for Police.” PATC Conference. Las Vegas, NV. December 3, 2002.
- “Models of Civilian Oversight.” Discussant. Annual Meeting, National Association for Citizen Oversight of Law Enforcement. Boston, MA. November 1, 2002.
- “Accountability and Police Ethics.” Presentation. Annual Meeting, International Association of Chiefs of Police. Minneapolis, MN. October 9, 2002.
- “Innovations in Handling Citizen Complaints.” Presentation, Conference on Community Policing Keeps America Safe.” Washington, DC. July 16, 2002.

- “Planning and Implementing Early Warning Systems.” Presentation, Conference on Community Policing Keeps America Safe.” Washington, DC. July 16, 2002.
- “Race, Ethnicity, and Police Accountability. Old Problems, New Approaches.” Presentation. California State University at Northridge. April 16, 2002.
- “The New World of Police Accountability.” Keynote Address. Conference on Police Accountability. St. Louis University Law School. April 5, 2002.
- “Strategies for Combating Racism in Criminal Justice.” Nebraskans for Peace, Annual Conference. Omaha, NE. February 16, 2002.
- “Covering the Police: Criteria for News Media.” Annenberg School. University of Southern California. Los Angeles, CA. December 5, 2001.
- “New Directions in Police Accountability.” Police Training Seminar. Las Vegas, NV. December 4, 2001.
- “Implementing Citizen Oversight.” Presentation. Annual Meeting, National Association of Civilian Oversight of Law Enforcement (NACOLE). Denver, CO. October 11, 2001.
- “Early Warning Systems and Racial Profiling.” Racial Profiling Report Implementation Conference. Police Executive Research Forum. August 6, 2001.
- “The New World of Police Accountability.” Presentation. Lawyers Committee for Human Rights. New York, NY. June 27, 2001.
- “Linking Internal and External Accountability Mechanisms.” Presentation. Performance and Accountability Summit for Law Enforcement. February 27, 2001. Washington, DC.
- “What Are Police Doing to Police Themselves?” Presentation. University of Illinois - Chicago. February 20, 2001. Chicago, Illinois.
- “Understanding Complaints Against the Police: A Theoretical Perspective.” Presentation. Center for the Study of Law and Society. University of California - Berkeley. January 25, 2001.
- “Early Warning Systems as a Best Practice.” Conference. U.S. Department of Justice, Washington, DC. November 29, 2000.
- “Citizen and Police Satisfaction with Civilian Review.” Presentation [with Leigh Herbst]. American Society of Criminology. Annual Meeting. San Francisco. November 17, 2000.
- “Early Warning Systems as an Accountability Mechanism.” Presentation. American Society of Criminology. Annual Meeting. San Francisco. November 15, 2000

“Best Practices in Police Accountability.” Presentation. Justice Coalition of Greater Chicago. Chicago, IL. October 25, 2000.

“The Auditor Model of Oversight as a Means of Promoting Police Accountability.” Seminar. New York University Law School. New York, NY. October 2, 2000.

“Mediating Citizen Complaints Against the Police: A New Form of Community Justice?” Presentation. John Jay College of Criminal Justice. New York, NY. October 2, 2000.

“Technology is NOT the Issue.” Presentation. American Bar Association. Council on Racial and Ethnic Justice. ABA Annual Meeting. New York City. July 8, 2000.

“Citizen Oversight Procedures.” Presentation. Mayor’s Working Group. Portland, OR. June 8, 2000.

“Mediating Citizen Complaints Against the Police.” Presentation. American Bar Association. Section on Dispute Resolution. Annual Conference. San Francisco. April 8, 2000.

Workshop. Police Accountability. Academy of Criminal Justice Science. Annual Meeting. New Orleans. March 24, 2000.

Chair. Panel on Police Misconduct. Academy of Criminal Justice Sciences. Annual Meeting. New Orleans. March 23, 2000.

“A Historical Perspective on Police Accountability.” Hearings. Public Advocate of New York. New York City. November 15, 1999.

“Early Warning Systems: An Overview.” Conference, “Building Accountability into Police Operations.” U.S. Department of Justice. Washington, DC. November 12, 1999.

“Early Warning Systems.” Workshop. Kansas City Police Department. Kansas City. September 28, 1999.

“Citizen Oversight of the Police.” Workshop. Mayor’s Police Oversight Task Force. Austin, TX. August 31, 1999.

“The False Dichotomy Between Individual Rights and Community.” Presentation. Communitarian Summit. Washington, DC. February 28, 1999.

“The Police and Race.” Panel Discussion. American Society of Criminology Annual Meeting. Washington, DC. November 11, 1998.

“Citizens in the POP Process: Ethical considerations.” Presentation. Problem-Oriented Policing Conference. San Diego, CA. November 1-3, 1998.

“Louisville’s War on Crime.” Panel Discussion. Louisville, KY. October 12, 1998

- “External Oversight of Federal Law Enforcement Agencies: A Proposal.” Presentation. Commission on the Advancement of Federal Law Enforcement. Washington, DC. August 24, 1998.
- “Zero-Tolerance Policing: Unanswered Accountability Issues.” Conference. Albany, NY. April 24, 1998.
- “Policing the Police: Who, How, and Why?” Public Forum. Albuquerque Law School. Albuquerque, NM. March 12, 1998.
- “Are the Police Changing?” Academy of Criminal Justice Sciences, Annual Meeting, Albuquerque, NW. March 12, 1998
- "Public Perceptions of Racial Minority Employment and its Perceived Impact on Police Service" (with Vincent J. Webb). Presentation. Annual Meeting, ASC. San Diego. November 19, 1997.
- Panelist. "Author Meets Critics: James B. Jacobs, 'The Pursuit of Absolute Integrity'." San Diego. Annual Meeting, ASC. November 21, 1997.
- "New Developments in Citizen Oversight of the Police." Presentation. Sand Diego County Citizens Law Enforcement Review Board. San Diego. November 17, 1997.
- "New Developments in Citizen Oversight of Police." Presentation. Problem-Oriented Policing Conference. San Diego, CA. November 16, 1997.
- "Best Practices in Citizen Oversight." Presentation. External Review Advisory Commission. Eugene, Oregon. October 31, 1997.
- "Future Directions in Citizen Oversight of Police." Presentation. National Association for Civilian Oversight of Law Enforcement (NACOLE). Annual Meeting. Oakland, CA. October 16, 1997.
- "Revitalizing the New York CCRB: A Proposal for Change," Presentation, Open Society Institute, New York City, September 26, 1997.
- "Strategies for Combating Police Misconduct," Presentation, ACLU Biennial Conference, Santa Fe, New Mexico, June 7, 1997.
- "Citizen Review of the Police." Community Forum. Des Moines, IA. May 15, 1997.
- "Hate Speech in America." Arizona State West University. Phoenix, AZ. April 23, 1997.
- "Responding to Racist Incidents on Campus: Hate Crimes and Hate Speech. April 2 1997. University of Nebraska at Omaha.

"Best Practices in Citizen Review of the Police." City Manager's Task Force. Charlotte, North Carolina. February 5, 1997.

"Police Reform and Human Rights," Keynote Address, Human Rights Day Observance, University of Nebraska - Lincoln. December 10, 1996

"Police Misconduct and Citizen Complaints: The Results of a Victimization Survey." (with Nanette Graham). American Society of Criminology. Annual Meeting. Chicago, IL. November 1996.

"Roundtable Discussion: The Future of Citizen Review." American Society of Criminology. Annual Meeting. Chicago, IL. November, 1996.

"The Heart of Darkness: Crime and Social Control in Contemporary America." Organizer and Presenter. Lay School of Theology. Augustana Lutheran Church. Omaha, NE. October 7, 14, 21, 28, and November 4, 1996.

"Comparative Studies of Citizen Review." Presentation. International Association for Citizen Review of Law Enforcement. Annual Meeting. Washington, DC. September 27, 1996.

"The Impact of External Forces on Police Integrity." Presentation. National Symposium on Police Integrity. National Institute of Justice. Washington, DC. July 16, 1996.

"Sense and Nonsense About the Administration of Justice." Iowa Western Community College. Council Bluffs, Iowa. March 25, 1996.

"Curbing Police Misconduct." Presentation. Criminal Law and Individual Rights Section of the District of Columbia Bar Association. Washington, DC. February 28, 1996.

"The Constitution and First Amendment Rights." Nebraska LEAD Program. Nebraska Agricultural Leadership Council, Inc. Lincoln, NE. February 10, 1996/

"The Police and the Race Crisis." Kennedy School of Government, Harvard University. November 16, 1995.

"Citizen Review of the Police: Alternative Strategies." Boston, MA. November 15, 1995.

"Rethinking the Sustain Rate: New Perspectives on Evaluating the Success of Police Complaint Procedures. American Society of Criminology. Annual Meeting. Boston, MA. November 15, 1995.

"Racial Justice and Policing: Where Do We Stand." Presentation. Police Executive Research Forum. Semiannual Meeting. Miami, Florida. October 14, 1995.

"Wars on Crime/Struggles for Justice: Conflicting Trends in American Criminal Justice, 1965-1995." Conference on Crime and Criminal Justice. Stanford University. October 7, 1995.

- "The Differences Among Citizen Oversight Agencies -- And the Difference it Makes." Presentation. International Association for Civilian Oversight of Law Enforcement. Annual Meeting, Vancouver, Canada. September 27, 1995.
- Workshop on "Hate Crime Legislation." Omaha Public Schools Curriculum Day. September 5, 1995. Omaha, NE.
- "The Police and the Community: New Approaches." Presentation. Des Moines League of Women Voters. March 16, 1995. Des Moines, Iowa.
- "Citizen Review of the Police- 1994: The Findings of a National Survey." Academy of Criminal Justice Sciences. March 1995. Boston, MA.
- "The Treatment of Women in Introductory Criminal Justice Textbooks." [With Molly Brown]. Academy of Criminal Justice Sciences. March 1995. Boston, MA.
- "A Theory of Criminal Justice." Presentation. Academy of Criminal Justice Sciences. March, 1995. Boston, MA.
- Discussant. Session on "Twentieth Century Civil Rights Struggles." Conference on African Americans and the Great Plains. Center For Great Plains Studies. Lincoln, NE. February 24, 1995.
- "A Classic Revisited: Justice Without Trial in History." Presentation. American Society of Criminology. November 11, 1994. Miami, Florida.
- "Through the Looking Glass Ceiling: Gender and Race in Police Promotions." [With Susan E. Martin. American Society of Criminology. November 11, 1994. Miami, Florida.
- "Crime and Community." Presentation. Omaha League of Women Voters. October 13, 1994. Omaha, NE
- "Hate Speech: Historical Perspective on a Current Problem." Presentation. Author's Lecture Series. Prairie Lights Book Store and Iowa Public Radio. September 29, 1994. Iowa City, IA.
- "Crime, Race, and Community." Presentation. Iowa Attorney General's Conference. July 28, 1994. Des Moines, Iowa.
- "Hate Speech: American Policy and the Holocaust Connection." Presentation. The National Archives. July 19, 1994. Washington, DC.
- "Law Enforcement." Paper. Conference on the 50th Anniversary of Gunnar Myrdal's An American Dilemma. Atlanta, GA. April, 1994.



- "Communitarianism and Organ Donations," Presentation. Nebraska-Dartmouth Project Colloquium. February 18, 1994. Omaha, NE,
- "Less Than Meets the Eye: Police Bias Crimes Units: An Exploratory Survey" (with Charles M. Katz). Academy of Criminal Justice Sciences. Annual Meeting. Chicago, IL. March 1994.
- "Hijacked!: How the War on Drugs Co-opted the Idea of Community Policing." Presentation. Seventh International Conference on Drug Policy Reform. November 17-20, 1993. Washington, DC.
- "Progress in Racial Minority and Female Employment in Policing: Thoughts on What Works and What Doesn't," Presentation, American Society of Criminology, Phoenix, AZ. October 1993.
- Panelist, Authors Meet Critics: Skolnick and Fyfe: Above the Law. American Society of Criminology, Phoenix, AZ, October 1993.
- "Trends in the Employment of African-American and Hispanic Police Officers, 1983-1992." Presentation, Police Executive Research Forum, Annual Meeting, Washington DC, May 5, 1993.
- "The American Bar Foundation Survey of Criminal Justice: Origins and Impact." Presentation, American Bar Association, Annual Midwinter Meeting, Boston, MA, February 6, 1993.
- "Between Two Worlds: The President's Crime Commission and the Police." Presentation, American Society of Criminology, New Orleans, November, 1992.
- "Civilian Review of the Police: Recent Trends and New Questions." Presentation. American Society of Criminology, New Orleans, November, 1992.
- "Are Civilian Review Boards the Answer?" Presentation. Southwestern Law Enforcement Institute, 13th Annual Contemporary Issues in Police Administration Conference, Dallas, TX, March 20, 1992.
- "Revisionism and the First Amendment." Presentation. Conference on Revisionism and the Holocaust, Millersville University, Millersville, PA, April 5, 1992.
- "History." Panel on Criminology: A Multi-Disciplinary Focus. American Society of Criminology, Annual Meeting, San Francisco, CA, November 21, 1991.
- "Stress and the Hispanic Police Office." Presentation. Hispanic Institute of Law Enforcement. National Convention. Chicago, IL, July 3, 1991.
- "Private Realms and Public Issues: Civil Liberties and the Changing American Legal Culture." Conference in Honor of Paul L. Murphy, University of Minnesota, May 5-7, 1991

"The Growth of Civil Liberties, 1890-1945." University of South Florida, St. Petersburg, Florida, February 4, 1991.

"The Drug War and Civil Liberties." Conference on Police and Community Responses to Drugs, Chicago, Illinois, December 7, 1990.

"Community Policing: Philosophy and Promise," Administration forum, John Jay College, New York City, September 25, 1990.

"Alternatives to Incarceration: The Good News and the Bad News." Iowa Correctional Association Annual meeting, October 18, 1990.

"Community Policing." Panel Discussion, Academy of Criminal Justice Sciences, Annual Meeting, April, 1990.

"Reflections on the History of Punishment," Nebraska Conference on Alternatives to Incarceration. Lincoln, Nebraska, October 20, 1991.

"Human Rights: America and the World," US West, Human Rights Month Seminar, Omaha, NE, January 30, 1990.

"The History of Police Corruption," FBI Public Corruption Conference, Tampa, Florida, November 14, 1989.

Presentation, Community Policing: Prospects and Problems, Washington Council on Crime and Delinquency, Seattle, WA, April 18, 1989.

Chair, Session on Douglas as Civil Libertarian, William O. Douglas Commemorative Symposium, Seattle, WA, April 15-17, 1989

Chair and Commentator, Session on Knowledge Utilization: The Use and Misuse of Academic Research by Criminal Justice Policymakers, Annual Meeting, Academy of Criminal Justice Science, March 29, 1989.

Presentation: "Paths to Police Reform." Annual Meeting, Academy of Criminal Justice Sciences, San Francisco, April, 1988.

Participant, Roundtable Discussion, "Controlling the Cops: Alternative Strategies," ACJS Annual Meeting, San Francisco, April, 1988.

Participant, Symposium on Miranda, Creighton University Law School, August 31, 1987.

"Responding to Hysteria: The Lessons From ACLU History," ACLU Biennial Conference, Philadelphia, June 18, 1987.

"The Library Bill of Rights, 1938, and the Des Moines Public Library," Presentation to the Des Moines Public Library, May 14, 1987.

"The ABA Committee on the Bill of Rights and the 150th Anniversary of the Constitution and the Bill of Rights, 1937-1941," Missouri Valley History Conference, Omaha, NE, March, 1987.

"The Police and Domestic Violence: Unanswered Questions," Austin, Texas, May, 1986.

"The President's Crime Commission" A Twenty-Year Perspective on Police Reform," Marquette University, April, 1986.

"Private Realms and Public Events: Towards a Reconstruction of American Social History," Ohio State University, April, 1986.

"The Historian's Perspective," Conference on Redefining the Crime Debate," Atlanta, GA, March 6-8, 1986.

"New Directions in Police Reform," Rutgers-Newark, February, 1986.

"Searching for a Middle Ground: Quantitative and Qualitative methodologies in Criminal Justice History," American Society of Criminology, Annual Meeting, Cincinnati, 1984.

"Controlling Police Misconduct: The Seattle Police Intelligence as a Model," Academy of Criminal Justice Sciences, Annual Meeting, Chicago, March, 1984.

"Achieving Affirmative Action: Observations on Black and Hispanic Police Officer Recruitment in the 50 Largest American Cities," Academy of Criminal Justice Sciences, Annual Meeting, Chicago, March, 1984.

"Broken Windows and Fractured History: The Use and Misuse of History in Recent Police Patrol Analysis," American Society of Criminology, November, 1983.

"Reform as History: The Dynamics of Change in American Criminal Justice," Conference on The Impact of Reform in Criminal Justice, sponsored by NCCD, November, 1983.

"The Varieties of Police History: Recent Work and Future Needs," Academy of Criminal Justice Sciences, forthcoming, March, 1983, San Antonio, Texas.

"Police-Community Relations, Social Science, and the Responsibility of Scholars." Paper, Conference on Moral Issues in Policing, November 19-21, 1981, Boston, Mass.

Commentator, Session on Criminal Justice History, Social Science History Association Meeting, October, 1980, Rochester, NY.

"Popular Justice: A Theoretical Framework for the History of American Criminal Justice." Paper, Academy of Criminal Justice Sciences, March, 1978.

"Research Opportunities in the Comparative Study of the American Police." Paper, Organization of American Historians, April, 1978.

"Neo-Conservatism and Criminal Justice Policy: Thinking About James Q. Wilson." Co-Author with Vincent J. Webb. Paper, Western Social Science Association Meeting, April 30, 1976, Tempe, Arizona.

"The Rise of Women Police in the Progressive Era." Paper, Missouri Valley History Conference, March 13, 1976, Omaha, Nebraska.

"Powderly, The Knights of Labor, and Temperance Reform." Paper, Ohio Academy of History, April 28, 1973, Dayton, Ohio.

"Terence V. Powderly and the Social Contest of the Early American Labor Movement." Paper, Missouri Valley History Conference, March 8, 1973, Omaha, Nebraska.

"Abolish the Waste System: The Rhetoric of Labor Reform,," Centennial Conference on the Knights of Labor, May, 1979, Chicago, Illinois.

Moderator. Session on "America in the Late 19th Century." Missouri Valley Historical Conference, March 10-12, 1977, Omaha, Nebraska.

Commentator. Session on "Law Enforcement: A Look into the Future." Academy of Criminal Justice Sciences,, March 25, 1976, Dallas, Texas.

# EXHIBIT G

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF JAMIE KALVEN  
IN SUPPORT OF COMMUNITIES  
UNITED FOR POLICE REFORM'S  
OPPOSITION TO PLAINTIFF'S  
REQUEST FOR A PRELIMINARY  
INJUNCTION**

Jamie Kalven declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I submit this declaration based on my experience as Executive Director of Invisible Institute, which publishes and manages a public-facing database documenting police abuse and misconduct related to the Chicago Police Department. I have seen firsthand the public good that comes from releasing police misconduct and disciplinary records. It is critically important that the public have access to this information, and the law enforcement unions' unsupported safety arguments should be rejected.

**My Experience as a Journalist and Human Rights Activist Document Police Abuse**

3. I am the Executive Director of Invisible Institute, a Chicago-based organization that arose out of my work with public housing as the last of the high-rise public housing complexes in Chicago were being demolished. My work focused on the Stateway Gardens Public Housing Development, which based on the 1990 census, was the single poorest community in the nation. Until its demolition in 2007, I served as a consultant to the Stateway Gardens Local Advisory Council—the resident council elected by residents. During this time, as both a writer and human rights activist, I focused extensively on patterns of police abuse and the subsequent impunity in Chicago.

4. As part of my advocacy, I was involved in the creation of a loose network of collaborators, which became the Invisible Institute. As the Invisible Institute evolved, we



partnered with civil rights attorneys and law students at the Mandel Legal Aid Clinic of the University of Chicago Law School. Through this partnership we have filed or otherwise have been involved with many civil rights cases on behalf of residents who have suffered repeat abuse by the police.

5. One such case was *Bond v. Chicago Police Officer Utreras*, in which Diane Bond alleged that multiple officers invaded her home at the Stateway Gardens public housing development, forced her to strip naked and destroyed some of her possessions. During the course of the litigation, Ms. Bond's attorney received data regarding police records for any officers with 10 or more complaints. However, the Court issued a protective order that sealed those records. Given my involvement with Stateway Gardens' Resident Council, which focused on advocacy on behalf of residents who suffered police abuse, I sought to intervene in the case to challenge the protective order, arguing that under Illinois' Freedom of Information Act ("FOIA"), these records were public information and disclosure was in the public interest. Although United States District Court Judge Joan Lefkow agreed with my arguments and ruled in favor of disclosure—finding that the public has “a significant interest in monitoring the conduct of its police officers and a right to know how allegations of misconduct are being investigated and handled”—the United States Court of Appeals for the Seventh Circuit overturned the result, because the case had settled, ending any live controversy. However, the Seventh Circuit made clear that nothing in its opinion would preclude my ability to request these records under the Illinois Freedom of Information Act.

**My Involvement in Litigation Relating to Seeking Police Disciplinary and Misconduct Records and the Creation of the Citizens Police Data Project**

6. So, I did. In 2009 I filed a FOIA lawsuit seeking an order compelling the City of Chicago to turn the records over to me. After years of litigation, in which the City offered

myriad reasons for refusing to disclose the police records, the Illinois State Appellate Court found that neither the repeat offender list nor the Complaint Register files (the record cataloging the complaint against the officer, the investigation, and any disposition) were exempt from disclosure under FOIA, subject to redaction of personal information.

7. Following this significant legal victory, the Invisible Institute evolved from a loose collaborative to a formal organization to advocate for transparency of police records. Rather than simply keeping the released records for our own organization's use, we sought to curate the records in a way that would allow the public to effectively utilize the data. This became the Citizens Police Data Project (available at, <https://cpdp.co/>), which is a database that organizes law enforcement records and is an effective tool for holding the police accountable to the public they serve.

8. Initially, the database only included records from the previous four years. The reason for this limitation was that soon after the database was launched, the law enforcement unions launched a counterattack against the City of Chicago, arguing that their collective bargaining agreement included a provision that police misconduct records would be destroyed after five years. Finally, however, in June 2020, the Illinois State Supreme Court found that destroying the documents would violate the state's public records law, expressly rejecting the unions' claim that their CBA required the documents to be destroyed. After over a decade of litigation, the Invisible Institute finally had access to all existing police misconduct and disciplinary records, and we were therefore able to create a robust database for the public.

9. As a result of my experience in successfully litigating the release of police misconduct and disciplinary records, I am intimately familiar with, and have successfully opposed the very arguments that the law enforcement unions are presently making in this case in

the wake of the repeal of § 50-a. Against this background, I believe I am qualified to explain why the unions' arguments in this case lack merit and how the public good is advanced through full disclosure of all disciplinary records.

10. The most common argument I faced during the Illinois litigation and in public discourse since the initial database release in 2014 is that release of misconduct and disciplinary records harms officer safety. However, the officers and the law enforcement unions have never pointed to concrete examples in support of their raw conclusions. If they had *even a single instance* where they could connect violence against an officer to the release of records, the union would have vigorously used that single instance to fight against disclosure. The first iteration of the database coincided with the release of the video footage of Laquan McDonald's murder. (On October 20, 2014 Laquan McDonald was fatally shot by Chicago Police Officer Jason Van Dyke. The Chicago Police initially claimed that McDonald was wielding a knife towards Officer Van Dyke; thirteen months later, the dash cam footage was released, showing, in fact, that McDonald had been walking away from the police when he was shot 16 times.) As a result, the media provided extensive coverage of the database. Even still, officers could only point to general feelings of distrust by the community against the police when arguing against disclosure instead of offering concrete examples of police officers being harmed by disclosure. The union in Chicago never provided any factual support for their claim that release of disciplinary records would compromise officer safety.

**Releasing All Records of Police Misconduct and Discipline is in the Public Good**

11. The public nature of police records allows the public to ensure that the oversight agencies tasked with law enforcement reform are actually doing their job. In discussions concerning reform, the public availability of misconduct and discipline records is powerful



because it allows for a common evidentiary basis for public debate—compared to pre-release discussion when only the police department would have data about the records.

12. When records are released, civil rights attorneys and public defenders can, for the first time, use the records to track patterns of behavior similar to the conduct that is presently complained about. Journalists who seek to report on Chicago’s policing practices now have a body of evidence directly from law enforcement. Similarly, researchers can now rely on a sample size of thousands of complaints. Local government has used this data when addressing police accountability efforts, including use of the records by the Police Accountability Task Force, the Citizens’ Office of Police Accountability, and the Officer of the Inspector General. Finally, the map function in the database allows citizens to find out about the officers who patrol their neighborhoods, allowing for increased community trust and safety.

13. Additionally, the utility of the database for police officers in Chicago hinges on the fact that we include the entire universe of records, regardless of disciplinary outcome. It is incredibly important that all records are publicly available both to diagnose institutional level problems and to also identify repeat offenders. Having access to the full scope of disciplinary records provides useful and comprehensive data, in comparison to the small number of sustained complaints if that is all that is available to the public.

14. For example, many times “non-substantiated” complaints simply mean that the internal investigators found an officer to be more credible than the citizen complainant. Of course, this outcome is often not surprising because the investigations are not subject to independent review. Or, in cases of an “exonerated” complaint, an officer may have done everything the complainant said, but the conduct is sanctioned as a matter of law. Knowledge of exonerated outcomes is key for identifying problematic department policies. Only releasing

sustained complaints (complaints that are both factually true and in violation of police rules of conduct) presumes that the accountability system is high functioning and beyond reproach. But, if the system tasked with accountability is not robust, or worse, has its own institutional failures, then a determination of “sustained” does not result in accountability because this finding has no objective meaning.

15. As it relates to individual officers, it is critical that all officer misconduct and disciplinary records are made available to identify and track officers who repeatedly commit misconduct. From an oversight perspective, there is an interest in cataloguing the early warning signs. In my review of the Chicago Police Department records, I have found that those officers who engage in unlawful and thus criminal acts resemble the trajectory of other criminals. For example, an officer may first engage in minor violations of the law that are unchecked, and over time the behavior escalates. In the cases where police officers have criminal charges brought against them, the escalation of unlawful behavior is often quite stark and clear.

16. In summary, the experience of the Invisible Institute in Chicago successfully advocating for the release of police records has taught us three lessons: there is a social good to have the records disclosed publicly; assessing police accountability demands the entire records of complaints, regardless of investigation or disciplinary outcome; and the parade of horrors that the unions predicted would harm police officers did not materialize.

Executed on this 13<sup>TH</sup> day of August, 2020, in Underhill Center, Vermont,

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
\_\_\_\_\_  
Jamie Kalven

# EXHIBIT H



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF KADIATOU  
DIALLO IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Kadiatou Diallo declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Oppositions to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. My son, Amadou Diallo, was killed by New York City Police Officers Sean Carroll, Richard Murphy, Edward McMellon, and Kenneth Boss in 1999.

3. I have spent the last 20 years fighting for justice for Amadou and for future generations. Access to misconduct and disciplinary records is a very personal issue for me. And one that I will continue to advocate for. While nothing will fully bring justice to my son, the repeal of § 50-a at least gave me some sense of empowerment, after years of feeling like I had no power to obtain information that police shielded. Allowing the law enforcement unions to now seek to keep their black box would be a devastating blow to myself and the many other families who are denied not only justice, but basic information about the deaths of their loved ones at the hands of police.

#### **My Son's Death and the Resulting Trial**

4. On February 4, 1999, my son Amadou was standing in the vestibule outside his Bronx apartment when four plainclothes officers drove by. Based on the officer statements used to justify the shooting, one of the officers "believed" that Amadou fit the "general description" of a rapist and therefore approached him. It is my understanding that on February 4th there was no 911 call or report that suggested that the serial rapist was in the general vicinity of my son's

apartment, and that the last rape committed by the individual in question had occurred a year prior.

5. The officers also claimed that they believed that Amadou reached for a gun. After firing 41 shots and killing my son, no gun was ever found. Instead the officers only found my son's wallet in the hand that supposedly held the "gun."

6. After killing my son, the officers brought his roommate in for questioning and for hours tried to get information about whether Amadou had enemies (none that his roommate or anyone else knew of) or possessed a gun (he didn't). Without a warrant, officers ransacked his apartment, trying to find anything they could use to paint Amadou as the villain. Even though my son was the victim of police's violence, the police tried after the fact to dig up dirt on him to make their actions seem ok. Most traumatizing was their argument that what happened was his fault, that his movements when approached by the plain clothes officers and reaching for his wallet caused his own death.

7. My son's murder caused a media frenzy. Yet despite the very public nature of my son's killing, I was unable to get information from any official source. The Assistant District Attorney tasked with investigating the shooting was not transparent with me about the status of the investigation. I was unable to obtain any information from the NYPD directly. Any information that I did receive came from news reporting. For example, I learned that Officer Boss had been involved in a fatal shooting only two years before killing my son. Through the media, I also found out that none of the four officers had ever worked together before the night they killed Amadou. When one of the officers was subsequently promoted, I found out that information from the media too. Learning facts about my son's murder through the media

instead of being told directly through official channels was incredibly painful. However, if the newspapers had not written these articles, I might never have learned much that information.

8. A grand jury in the Bronx indicted the four involved officers on charges of second-degree murder and reckless endangerment. But my son never received justice and the officers were not ultimately held accountable. Before the trial, the court ordered a change of venue from the Bronx to Albany, New York. I came to learn that the residents of Albany have very different experiences in interacting with law enforcement than those living in the Bronx. After I relived the trauma of my son's murder during the trial, all four officers were acquitted. As I later learned, this should not have come as a surprise, because no Albany jury had ever convicted an officer who was involved in a fatal shooting. It is my understanding that all four officers remained employed by the NYPD until their voluntary retirement, where they retired with full benefits, and that some of the officers were even promoted at some point after the acquittal.

9. Following the trial, I travelled to Washington D.C. to testify in support of my request that the Department of Justice launch a federal investigation into the shooting. I was hopeful that a federal investigation would result in Federal charges against the officers involved. After my request was denied, I filed a civil suit with the City of New York, which subsequently settled. I used the money from the settlement to start a school in Africa and to start the Amadou Diallo Foundation.<sup>1</sup>

### **My Advocacy for Police Transparency**

10. The struggle I faced in trying to obtain justice for my son traumatized me. But it also motivated my advocacy efforts. Seeing NYPD's response to my son's murder showed me the many ways the police officers protect themselves to avoid being accountable to the public.

---

<sup>1</sup> This declaration is submitted only on my own behalf in my personal capacity, and I do not speak for the Amadou Diallo Foundation.

Officers can rely on qualified immunity to protect themselves. When my son was killed, the “48-hour rule” prevented speaking to any officer involved in the shooting until 48 hours later. And, until only recently § 50-a allowed the department to protect any information about an officer’s misconduct or disciplinary records, including the most basic of information. These laws all hindered my ability to seek justice for Amadou and they continue to harm the families of other victims of NYPD violence. Early into my advocacy, I was involved in supporting legislation to eliminate the 48-hour rule.

11. My advocacy led me to become involve with Justice Committee. Through Justice Committee, I became connected with Communities United for Police Reform and many families who have lost their loved ones due to police violence, including the families of Ramarley Graham, Eric Garner, and Mohamed Bah. The complete lack of transparency from the NYPD and our inability to obtain any information about our sons’ murders was a common thread in all of our shared trauma. We began to organize our advocacy efforts, committed to fighting against the injustice and seeking reform. Recently our efforts have focused on repealing § 50-a and advocating for a special prosecutor to independently investigate police killings.

12. We have spent years fighting for reform. We have lobbied elected officials, spoken at public events, and travelled to Albany, New York—the place where the officers who killed my son were exonerated—to provide testimony to the Legislature.

### **The Importance of § 50-a’s Repeal to Victims’ Families**

13. After years of organizing and lobbying, § 50-a was finally repealed in June 2020. The repeal gave me and other families whose children have died at the hands of the police some sense of empowerment, even if it didn’t give us a full sense of justice. After years of fighting against an unfair, imbalanced system that protects officers at all cost, the repeal meant that we

would finally have clarity about so many things that had been kept in the dark about our most personal losses. At the hands of police, our children have been denied the right to live.

Although having this information will not bring our children back, having the clarity and all the information is important for us to be able to seek justice. There is a sense of fairness that came from finally having access to the information that was withheld from us for so very long.

14. After years of advocacy, it is crushing that the law enforcement unions are trying to obtain a ruling that would have the same effect of reinstating § 50-a. We (myself, my family, the families of other victims, and our advocates) would have to start our advocacy all over from the beginning, and the work that we have already put in would feel meaningless. Unless someone has experienced the agony of a family member dying and not having any ability to obtain information or seek justice, they simply cannot understand how important the repeal of § 50-a is to these families.

15. The pattern of unfairness and the pattern of allowing officers who commit misconduct to continue to hurt our community must end. The officers have been shielded for too long.

Executed on this 14<sup>th</sup> day of August, 2020, in Germantown, Maryland.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink that reads "Kadiatou Diallo". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Kadiatou Diallo

# EXHIBIT I



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF MICHAEL J.  
GENNACO IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Michael J. Gennaco declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

**My Professional Police Oversight Experience**

2. I have worked in the field of independent police oversight for almost twenty years. As a result of my work, I have reviewed hundreds of internal affairs investigations involving numerous law enforcement agencies. I have also examined the internal affairs systems of numerous police agencies and assessed the effectiveness of misconduct investigations and disciplinary processes for those agencies. That work includes NYPD and other large police agencies, including the Los Angeles Sheriff's Department, and the Chicago Police Department. I have written numerous public reports on my findings and recommendations for improvement and publicly presented those findings to decision-makers.

3. As a result of my experience, I have been designated by a federal court and an administrative law judge as an expert on internal investigations and discipline. I have provided training on internal investigations and discipline to internal affairs investigators from multiple agencies, some of it ordered by the court as part of a remedial plan. I worked as a party expert in the New York City "stop and frisk" litigation, *Floyd v. City of New York*, 08 Civ. 1034 (AT) (S.D.N.Y.) during implementation of the remedial plan and became familiar with NYPD's internal investigation and disciplinary system. A copy of my bio/resume detailing my relevant experience is attached as Exhibit A to this Declaration.

### **The Importance of Public Disclosure of Officer Misconduct and Disciplinary Records**

4. I have worked extensively with state law provisions that preclude public disclosure of law enforcement misconduct and disciplinary records and have recognized the negative implications of such systems for transparency and accountability.

5. One of those implications is the way that secrecy intensifies the skepticism that many members of the public already possess about law enforcement's ability and willingness to hold itself accountable. Lacking confidence that a given department will "police itself" appropriately, and prevented from knowing the outcomes of misconduct investigations, aggrieved individuals sometimes decline to file complaints in the first place. This perception of illegitimacy, then, undermines an important check on problematic conduct: even well-intentioned police leadership cannot address violations that it is not aware of. Indeed, the Court-appointed facilitator who oversaw the several-year-long Court-ordered community-input portion of the remedial phase of the *Floyd* litigation identified this very problem with respect to the NYPD. See Hon. Ariel Belen, *New York City Joint Remedial Process: Final Report and Recommendations*, 08 Civ. 1034, Dkt # 597 at 8 (S.D.N.Y. May 15, 2018), available at <https://ccrjustice.org/sites/default/files/attach/2019/12/Joint-Remedial-Process-Final-Report.pdf> ("There exists deep levels of mistrust of the NYPD, and great skepticism remains about the NYPD's willingness to be transparent and to hold its officers and managers accountable, especially around the discipline of police officers engaging in misconduct.").

6. For this reason, transparency has benefits that extend beyond added accountability for agencies and individual officers. It increases public trust in ways that reinforce individual participation and strengthen feedback loops. And the achievement of these benefits depends in part on the full and timely nature of the disclosures for which law enforcement is responsible.

Limiting disclosure of disciplinary records to substantiated and completed investigations would interfere with these potential improvements.

7. Such an approach seriously hampers full knowledge of officers' conduct and the effectiveness of an agency's disciplinary system. One problem with a "completed" disclosure requirement, for example, is that disciplinary proceedings can and often do take years to complete, even when an officer does not exercise all levels of appeal. I am aware that this has been a documented problem in New York City. *See e.g.*, <https://www.propublica.org/article/the-nypd-isnt-giving-critical-bodycam-footage-to-officials-investigating-alleged-abuse> (discussion re how NYPD's delays in providing BWC footage to CCRB investigators has caused long delays in the completing of CCRB misconduct investigations. *See also* <https://www.nytimes.com/2017/07/19/nyregion/new-york-police-challenging-more-of-review-boards-findings-study-shows.html> (discussing how the NYPD's requests to CCRB to reconsider its substantiated findings are often months late, thus delaying final investigatory determinations for many months.) The inability of the public—or other justice system participants—to know of the allegations and state of the evidence prior to a final determination could therefore undermine one of the key objectives of a disclosure requirement: fair warning about conduct issues of personnel entrusted with significant authority by the state.

8. With regard to non-substantiated cases, knowledge of an officers' full misconduct complaint and disciplinary history is critical for purposes of non-disciplinary remediation and intervention. For example, if an officer receives numerous complaints of discourtesy while other officers assigned to the same precinct do not, the number of complaints provide an important data set in and of themselves. Even if the individual cases are not sustained, the pattern suggests a need to further consider remedial non-disciplinary intervention. Making such complaint

history publicly available not only provides insight about the officers, but also could improve the rigor with which the relevant hiring authorities are addressing such patterns.

9. In the same way, the performance history of officers who have numerous use of force incidents provides a potential source of insight, even if each force usage was found to be within policy, as may be the case with allegations that are deemed “exonerated.” Again, officers who use force frequently may need additional non-disciplinary guidance and/or training on de-escalation, tactical decision-making, and/or communication skills in an effort to reduce future instances. Making use of force history by officer, the results of investigations, and any information about non-disciplinary remedial measures public will help the City’s public better understand how effectively (or not) NYPD is addressing officers who have an outsized number of such incidents.

10. In my police oversight work, I have studied and reviewed processes of decision making by police officials. It is my professional opinion that, if those decision makers recognize that founded decisions will be publicized while non-founded determinations will not, then “close cases” will be more likely to result in a non-founded determination so that the records will not be available to the public. This would obviously constitute an unintended but potentially real consequence of a partial move toward transparency and I have seen that dynamic occur in other jurisdictions.

11. While these potential pitfalls all deserve consideration, another important factor in public trust is the perceived legitimacy of cases in which allegations are not sustained. I know from direct experience that agencies can conduct thorough, fair, and effective investigations that either refute charges or reach valid conclusions about insufficiency of evidence—only to have that diligence disregarded or otherwise rejected by people who do not have access to the case.

The chance to “show their work” could therefore actually redound to the advantage of law enforcement’s public reputation, even as it puts heightened pressure on NYPD decision-makers to perform their roles appropriately. And if non-founded determinations are not made public, there will be no opportunity for the public to adjudge, consider, and critique those results.

12. I am aware of concerns that have been raised about reprisals, threats, and even harm being directed at officers whose disciplinary records are made public. While I am also aware that NYPD officers have been lost to acts of violence, the targeting of officers in those fortunately rare and isolated incidents appear to be unconnected to specific performance history or officer identity. I am aware of no case in which an officer has been subjected to actual harm as a result of the officer’s discipline records being disclosed. Moreover, to the degree that the public has expressed anger at NYPD officer conduct in communications that could be interpreted as threatening, it is my experience that those instances of inappropriate verbal aggression have been connected to high-profile events—such as in-custody deaths or shootings that have been otherwise highly publicized.

13. And significantly, since it is anticipated that the initial disclosure would result in numerous records being disseminated including founded and unfounded determinations, to the degree that there would be public reaction, any such public response would more likely be directed to officers with founded complaints of a serious nature.

14. I am aware of other state laws relating to disclosure of officer disciplinary records. For example, Florida’s Statute, Chapter 119 *et al*, provides public access to complaint investigations whether founded or non-founded. Even with such public access to records, I have not been advised of any serious impediment to policing in Florida or an inability as a result of the statute to attract suitable candidates to the police profession.

15. If the release of disciplinary records was limited to substantiated investigations, it would provide a skewed public accounting of NYPD's disciplinary system. I am aware that NYPD has a long and documented history of issues with failure to discipline officers for misconduct and failure to conduct thorough misconduct investigations, but that information about these problems has been limited given the overall lack of NYPD transparency. *See, e.g.*, [https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt\\_62619.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf); (OIG report on problems with NYPD investigations of biased policing complaints. <https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database-explainer#.w19BNr996Q>; <https://www.wnyc.org/story/can-the-nypd-spot-the-abusive-cop/>). It is critical for public trust in that process to be able to learn more about how that system is working and what aspects of that system are not working. A complete data set would provide an opportunity for public analysis, further examination of why so high a percentage of disciplinary determinations by NYPD result in non-founded dispositions, and whether disposition decisions on non-founded cases are supported by the evidence (or not). Whether it is an examination of a single non-founded case or a series of non-founded cases (or all non-founded cases), academics, statistical experts, public policy officials, and the general public would all benefit from access to those records for further consideration, analysis, criticism and recommendations for reform.

Executed on this 12<sup>th</sup> day of August, 2020, in Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

  
Michael J. Gennaco, Declarant



# Exhibit A

**MICHAEL J. GENNACO**

**7142 Trask Avenue**

**Playa Del Rey, CA 90293**

323-821-0586

*Principal: OIR Group ([www.oirgroup.com](http://www.oirgroup.com))*

[Michael.Gennaco@oirgroup.com](mailto:Michael.Gennaco@oirgroup.com)

I have worked for nineteen years as a police practices professional, focusing on police oversight: reviewing, assessing, providing recommendations for reform, and monitoring numerous law enforcement agencies by promoting progressive police practices focusing particularly on accountability and use of force. One key focus has been reviewing internal affairs investigations and disciplinary practices for numerous agencies, including the Los Angeles Sheriff's and Chicago Police Departments. I have provided training to internal investigators assigned to investigate and review allegations of misconduct for those agencies, as well as the San Francisco Police Department and the Portland Police Bureau.

I have reviewed scores of officer-involved shootings and developed recommendations designed to improve policy, training, and internal review processes. I have also conducted high profile internal affairs investigations and conducted qualitative audits of internal affairs, uses of force reviews, and other accountability functions, offering systemic recommendations for improvement. I have conducted qualitative reviews of other critical police functions such as officer performance, recruiting and hiring, community policing programs, background investigations, policies and training. Copies of our public reports can be found at our website: [www.oirgroup.com](http://www.oirgroup.com).

OIR Group regularly conducts policy reviews of use of force and other critical components of police departments. In conjunction with those reviews, OIR Group strives to solicit and facilitate public and community input and stakeholder buy in for meaningful reform. Combining a community component with those who have expertise in progressive police practices creates a symbiotic relationship and more responsive outcomes.

I have provided training to police and civilian investigators and to civilian review boards on internal investigations, risk management, civil litigation, and other police practices. I have designed oversight mechanisms and offered recommendations intended to strengthen and improve current models. I speak regularly to oversight groups, police executives, and elected officials. I present regularly to elected bodies on the finding of our public reports.

I have served as an independent police auditor for a number of law enforcement agencies including the Anaheim, Burbank, Palo Alto, Davis, and Los Angeles County Sheriff's Department.

I have been qualified and designated as an expert on use of force and internal investigative practices by federal judges and administrative law judges. I have testified as an expert in several administrative hearings.

I am currently the monitor for the stipulated judgment entered into by the California Department of Justice and the Stockton Unified School District, reporting on the progress of reforms agreed to and involving the Stockton Unified School District Police Department. I have been involved in conducting systemic reviews for a number of college campus police departments including San Jose State University, Cal State University Bakersfield and Humboldt State University.

Prior to my current work, I also served as a federal prosecutor for fifteen years investigating and prosecuting criminal allegations of civil rights offenses for the United States Department of Justice, Civil Rights Division and United States Attorney, Central District of California. As a result, I conducted federal grand jury investigations in numerous states investigating allegations of excessive force and other Fourth Amendment violations by police officers, federal agents, and judges. I led prosecutions of numerous police officers and other public officials stemming from those investigations.

## **Experience**

- 2020        **Skelly Officer for City of Oakland**  
Assigned as Skelly Officer for review of officer-involved shooting.
  
- 2020        **Monitor: Santa Clara County Sheriff's Office**  
Continual monitoring of law enforcement in Santa Clara County.
  
- 2019        **King County Sheriff's Office, Seattle, Washington**  
Systemic review of officer-involved shooting.
  
- 2019-20     **Internal Investigations for Cal State University San Marcos, Cal State University Stanislaus, and Humboldt State University**  
Conducted internal investigations of misconduct, including allegations raised against the Chiefs of Police.
  
- 2019        **Internal Review of the California State University Police Department**  
Conducted internal review of concerns about leadership.
  
- 2019        **Court Monitor, Stockton Unified School District Police Department, Stockton, California**  
Monitor for compliance with settlement agreement regarding use of force and other reforms regarding Police Department

- 2019      **Use of Deadly Force Investigation, Portland State University Police Department, Portland Oregon**  
Conducted investigation of deadly force incident involving PSU police officers
- 2018-      **Use of Force Expert Review, Office of Public Accountability, San Francisco, California**  
Performing use of force expert reviews for the Office of Public Accountability relating to Uses of Deadly Force by personnel of the San Francisco Police Department.
- 2018      **Independent Review, San Jose State University Police Department, San Jose, California**  
Performed independent review of the San Jose State University Police Department focusing on use of force and other high risk and accountability functions.
- 7/2018      **Internal Affairs Investigation, Merced County Sheriff's Office, Merced, California**  
Conducted Internal Affairs investigation into allegations of misconduct involving correctional officers in the Merced County jail.
- 6/2018      **Independent Police Auditor, Davis Police Department, Davis, California**  
Currently serving as independent police auditor for the City of Davis, reviewing and auditing complaints and internal investigations.
- 6/2018      **Review of Clackamas County Sheriff's Office, Oregon City, Oregon**  
Conducted independent review of Sheriff's Office detective unit and provided recommendations for systemic change focusing on accountability.
- 5/2018      **Expert Witness and Independent Review of Officer Involved Shootings, Chicago Police Department, Chicago, Illinois**  
Serve as expert witness in administrative hearing and conducted independent review and analysis of officer-involved shootings.
- 4/2018      **Independent Review, Lompoc Police Department, Lompoc, California**  
Conducted independent review of the Lompoc Police Department.
- 3/2018      **Training for Civilian Review Board, Newark, New Jersey**  
Provided training to a newly formed civilian review board on how to review complaints, investigations, and policies.

- 2/2018 **Training for Internal Affairs and Civilian Investigators, Portland, Oregon**  
Provided training on best practices in internal investigations to investigators from Portland Police Bureau and Independent Police Monitor.
- 2016-17 **Review of Madison Police Department, Madison, Wisconsin**  
Conducted 360-degree review of numerous practices of Department, including use of force, internal investigations, community policing programs, training, hiring, and performance evaluations.
- 2017 **Review of BART Oversight Program, Oakland, California**  
Studied and developed public report designed to improve police oversight over the BART Police Department.
- 2017 **Review of Officer-Involved Shooting: Oxnard Police Department**  
Conducted an independent review of a controversial officer-involved shooting and developed systemic recommendations designed to improve Department's response, training and internal review processes.
- 2017 **Use of Force Expert: California Department of Justice: Investigation into Stockton Unified School Police Department**  
Assisted Cal DOJ with investigation into use of force and internal investigations processes of SUSPD.
- 2017 **Internal Affairs Investigation: Ventura County Sheriff's Office.**  
Conducted internal affairs investigation involving allegations of misconduct of Captain of VCSO.
- 2016 **Review of In-Custody Death: Oxnard Police Department**  
Following a controversial in-custody death, reviewed internal practices and provided systemic recommendations designed to improve Department's response, training, and internal review processes.
- 2016 **Review of King County Sheriff's Department (OIM)**  
Conducted review of processes of oversight entity for King County Washington.
- 2015- 2016 **Independent Review of Use of Force and Internal Affairs Functions Denver Sheriff's Department**  
Six-month review of Denver's Sheriff Department focusing on force in the jails and developing recommendations for systemic reform.
- 2015 **Training to Investigators: San Francisco Office of Civilian Complaints**  
Provided training on effective internal investigations of police officers.

- 2015 **Systemic Review Relating to Deadly Force Incidents: Alhambra Police Department**  
Conducted systemic review of a series of officer-involved shootings – provided recommendations for systemic improvements on policy, training, and internal review processes.
- 2015- **Consultant: NYPD Stop and Frisk Remedial Plan**  
Served as expert to Center for Constitutional Rights by reviewing draft policies and training designed to remediate practices consistent with Court’s order.
- 2015 - 2016 **Special Counsel: Orange County Board of Supervisors**  
Evaluated oversight entity and recommended improvements designed to strengthen and broaden independent oversight in the County.
- 2014 **Expert Witness: California State Attorney General**  
Expert witness in an administrative hearing relating to use of force and use of force investigations in a custodial setting.
- 2014 – 2016 **Instructor: Peace Officer Standards and Training**  
Regular instructor to police supervisors on Civil Liability and Risk Management issues.
- 2001 - 2014 **Chief Attorney, LA County Office of Independent Review**  
Continual oversight and monitoring of LA Sheriff’s Department internal affairs functions, including deputy-involved shootings, force, and misconduct allegations. Recommended changes in policy, protocols, and training. Also requested by Board of Supervisors to design oversight mechanism for County Probation Department and Department of Child Family Services.
- 2014 **Systemic Review of Westminster Police Department**  
Following a large adverse verdict against City, performed systemic review of Westminster Police Department’s force, performance evaluations, internal investigations, policies, early intervention system, and selection and promotion practices.
- 2014- 2015 **Systemic Review of Santa Maria Police Department**  
Following several controversial shootings, performed systemic review of Santa Maria Police Department’s investigation and review of shootings, force, misconduct allegations, force training, and related matters. After initial report, prepared follow up report on implementation and presented to City Council
- 2013, 2017 **Audit: Hermosa Beach Police Department**  
Conducted audit of complaint, internal affairs investigations, and force incidents and offered recommendations designed to improve policies, training, and accountability. In 2017, at request of City revisited processes to gauge the degree

of implementation of the recommendations.

- 2012 **Auditor for City of Spokane Use of Force Committee**  
Conducted independent review of Spokane Police Department's use of force investigations and review process.
- 2012 **Glendale Police Department**  
Provided independent review of remedial measures by Glendale Police Department to ensure compliance with terms of settlement.
- 2010 - **In Custody Death Review: Fullerton Police Department**  
Systemic review of the Fullerton Police Department following the in-custody death of a homeless man, conducted an internal affairs investigation, and continual monitoring of implementation of systemic reforms stemming from systemic review.
- 2010- 2012 **California Department of Juvenile Justice**  
Worked with Special Master to audit and develop recommendations for improvement of force policies and review of force incidents in juvenile facilities.
- 2011 **Review of Criminal and Internal Investigation: Santa Monica Police Department**  
Conducted review and critique of high-profile criminal and internal investigations against a member of the School Board.
- 2009 - **Force and Misconduct Audits: Burbank Police Department**  
Regular and ongoing monitoring of the quality of investigations and appropriateness of outcomes with respect to force, bias based-policing, misconduct investigations, and vehicle pursuits.
- 2009 - **Officer Involved Shooting Reviews: Portland Police Bureau**  
Regular and ongoing analysis of the investigation and internal review processes of officer-involved shootings for the City Auditor's Office.
- 2006/14 **Use of Force Audit for San Diego Sheriff's Department**  
In depth analysis of deputy-involved shootings and jail uses of force resulting in numerous systemic recommendations. Follow up report identifying degree to which recommendations were implemented. Subsequent audit of jail policies relating to force, suicide prevention, and medical delivery.
- 2006 - **Independent Police Auditor for Palo Alto Police Department**  
Review and monitor all complaints, including bias-based policing complaints, misconduct allegations, and use of Tasers. Prepared special reports on quality of high profile criminal investigation and concerns about bias-based policing. Chaired Taser Task Force convened to determine whether to implement use of Tasers by Department.



- 2008-09 **Force Evaluation and Review for Torrance Police Department**  
Review of officer-involved shootings and other uses of force relating to appropriateness of investigation and robustness of review process.
- 2008 - **Independent Auditor for Anaheim Police Department**  
Ongoing review of officer-involved shootings, other uses of force, citizen complaints, and internal affairs cases. Liaison to City of Anaheim's Public Safety Board.
- 2006 **Review of Officer Involved Shootings: Inglewood Police Department**  
Conducted review of a series of officer-involved shootings with recommendations designed to improve investigative and review process.
- 2009/14 **Officer Involved Shooting Reviews for Pasadena Police Department**  
Reviews of two officer-involved shootings focusing on internal protocols, investigation, and review processes.
- 2005- 08 **City of Oakland**  
Conducted internal misconduct investigations relating to allegations involving Oakland Police Department supervisors and command staff, including Chief of Police. Evaluated quality and appropriateness of criminal sexual misconduct investigation.
- 2003 - 05 **City of Oakland**  
At request of Independent Monitoring Team, reviewed delinquent Internal Affairs cases and made recommendations on how to address them.
- 2003 - 2010 **Court Expert in Madrid v. Gomez**  
Appointed by Judge Thelton Henderson to develop an oversight body for the California Department of Corrections and Rehabilitation as part of the Court's remedial plan. At request of Court and Special Master, worked with parties to completely revise and reform use of force policy. Provided Code of Silence Training at the CDCR Academy.
- 1986- 2001 **Federal Civil Rights Prosecutor, U.S. Department of Justice, Civil Rights Division and Office of United States Attorney, Central District of California**  
Prosecuted police officer misconduct, hate crimes, and human trafficking cases, first as a Trial Attorney with the Criminal Section of the Civil Rights Division and then as Chief of the Civil Rights Section of the United States Attorney's Office, Central District of California. Prosecuted and oversaw numerous investigations and prosecutions of police officers and law enforcement officials throughout the country. Also prosecuted hate crimes murder of postal carrier and shooting of children at North Valley Jewish Community Center, first federal hate crime prosecution over the Internet, and a modern day slavery case involving over seventy Thai garment workers.

1984- 1986    **Trial Attorney, U.S. Department of Justice, Civil Rights Division, Voting Section**  
Conducted voting discrimination investigations and involved in voting rights litigation.

**Expert Testimonial Experience:**

2019            Testified before Administrative Hearing Officer in case involving use of deadly Force by Chicago Police Officer

2018            Testified before Administrative Hearing Officer in case involving use of deadly force by Chicago Police Officer

2016            Testified before Arbitrator in case involving use of deadly force relating to Kelly Thomas in custody death: Fullerton, California

2014            Testified before Administrative Law Judge involving Internal Affairs investigators of the California Department of Corrections and Rehabilitation: Sacramento, California

2006            Testified before Personnel Board in termination case in Springfield, Missouri involving Springfield Police Officer

**Education:**                            **Stanford Law School, J.D. 1983**  
   **Dartmouth College, B.A. 1975**

**Other Professional Experience:**

1976-1980    Elementary and high school teacher, Glendale, Arizona

1992-2001    Adjunct Law School Professor Loyola Law School, Chapman Law School, American University School of Law, George Washington School of Law: Civil Rights and Oral Advocacy

# EXHIBIT J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF JUMAANE D.  
WILLIAMS IN SUPPORT OF  
COMMUNITIES UNITED FOR  
POLICE REFORM'S OPPOSITION TO  
PLAINTIFFS' REQUEST FOR  
PRELIMINARY INJUNCTION**

Jumaane D. Williams declares under penalty of perjury as follows:

1. I submit this sworn statement in support of Communities United for Police Reform’s Opposition to Plaintiffs’ Request for Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I am the Public Advocate for the City of New York, a role in which I am a non-voting member of the New York City Council (“City Council”) with the right to introduce and co-sponsor bills. Previously, I served as member of the City Council, representing Brooklyn’s 45th District. I was first elected to the City Council in 2009 and was re-elected in 2013 and 2017.

**My Efforts to Improve Policing and Increase Transparency and Accountability**

3. I have worked for better policing and fought to improve transparency and accountability throughout my time in public office. I believe that law enforcement has an important role to play in ensuring public safety, but that law enforcement is not the only role needed to ensure public safety.

4. As a Black man in New York City, I have personally witnessed and experienced police misconduct, most recently during the Black Lives Matters protests that took place this year. I understand that the public’s trust in the police suffers when misconduct is handled behind closed doors or, even worse, goes unpunished.

5. The police best protect the public when they work with other stakeholders, including community groups, city agencies responsible for public health, and anti-violence organizations. I expect law enforcement to do their job with equity, transparency, and accountability.

6. During my first term on the City Council, I worked closely with Communities United for Police Reform (“CPR”) on Local Laws 70 and 71 of 2013 (“the Community Safety Act”), which sought to end the New York City Police Department’s (“NYPD”) abusive use of stop, question, and frisk. The Act, which passed despite a veto from then-Mayor Michael Bloomberg, mandated an end to unconstitutional policing practices typically used in communities of more color. The Act also created the first Inspector General for the NYPD, who is charged with investigating unlawful or unethical practices within the NYPD.

7. As Public Advocate, I am responsible for appointing a member of the New York City Civilian Complaint Review Board (“CCRB”), the nation’s largest independent police oversight entity. The authority to appoint a member of the CCRB was granted to me by the citizens of New York City who, in 2019, voted overwhelmingly to amend the City Charter to add two members to the CCRB—one appointed by the Public Advocate and one jointly appointed by the Mayor and the Speaker of the City Council.

8. I have long supported victims of police violence and their families. I have stood with the families of Eric Garner, Ramarley Graham, Mohamed Bah, Delrawn Small, Valerie Bell, Anthony Baez and Shantel Davis to call for the public release of police officer records. Families whose loved ones have been injured or killed by police are left to wonder why their government cares more about shielding a police officer’s personnel record from the public than being as transparent and forthcoming as possible to try and fix grievous wrongs.

9. I have also worked with representatives of police organizations to address police officer mental health. In August 2019, I held a roundtable discussion with a coalition of NYPD fraternal organizations to address a recent increase in NYPD officer suicide. The discussion

identified several ways to address police officer mental health, and I announced my support for legislation that would enable officers to seek mental health support anonymously.

**Releasing All Records of Police Misconduct is in the Public Interest**

10. For the past several years, I worked to repeal N.Y. Civil Rights Law § 50-a. With CPR input, I drafted and introduced City Council Res. 750-2019, a resolution calling on the New York state legislature to repeal § 50-a.

11. My extensive experience working closely with law enforcement and New York City communities at large has informed my belief that greater transparency and accountability will improve the relationship between the community and the police. Citizens will have more trust in the police if they believe wrong doers will be punished appropriately.

12. In my view, various constituents among the named Defendants in this lawsuit have over time failed to protect the interests of the communities most affected by police misconduct and by the absence of transparency and accountability – communities of more color. The interpretation and application of § 50-a deprived the public of information fundamental to oversight and lent 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 New York City citizens. Section 50-a increased the harm caused to New Yorkers who experienced police abuse by denying them and their loved ones access to information about the police officers who engaged in unlawful actions and as to whether the police department took disciplinary action against officers who violated the law.

13. This harm cannot be remedied without prompt and full effectuation of the § 50-a repeal. Thus, dismantling the structures and policies that served to expand § 50-a's coverage and replacing them with ready and full public access is in the public interest.



14. The NYPD's ability to operate, pursuant to § 50-a, with almost zero public consequences in cases of misconduct and abuse is a clear example of power exercised in secret - it is corrupt and could not continue. The public interest requires transparency and accountability at all levels of government, and that includes ensuring that those in charge of protecting the public are also answerable to the public.

15. It is critically important that all misconduct and disciplinary records be publicly accessible. Excluding categories of records from disclosure would undermine the very public interests that animated the repeal of § 50-a. Full transparency is absolutely critical to further organizing, policymaking, and reform efforts. The public, through their elected officials, can propose and garner support for policy changes only if full, real time facts concerning past and present NYPD conduct is available. Shrouding large swathes of misconduct and disciplinary records from scrutiny renders it impossible to hold the NYPD accountable.

16. The repeal of § 50-a does not mean that New Yorkers are anti-police or that we do not support our men and women in blue, who are tasked with protecting the public every single day. To the contrary, it is because of public support for them and better policing that the repeal of § 50-a was necessary. Section 50-a prevented us all from creating a true system to identify officers who perpetuate abusive practices and target communities of colors. Further, by shielding the nature and extent of ongoing misconduct, § 50-a made it difficult to develop a proper training program to deter misconduct. It also eroded public trust in law enforcement.

**Plaintiffs' Concerns About Officer Safety Were Heard and Addressed by the Legislature**

17. I understand that Plaintiffs assert that the public release of misconduct and disciplinary records threatens the safety of police officers, among others. This same concern was raised by the NYPD during the legislative process to repeal § 50-a. For example, representatives

of the NYPD stated their support for greater transparency, but also expressed concerns about the release of personally identifiable information (“PII”) during the February 7, 2019 joint hearing of the New York City Council’s Committee on Public Safety and Committee on Justice System. The hearing concerned the resolution I sponsored – City Council Res. 750-2019 – and I was in attendance. The concerns regarding the release of PII were heard and addressed by both city council members and representatives of other organizations. Council Member Donovan Richards, chair of the Public Safety Committee, stated that “we want to be 100% supportive of protecting our police officers, but we also want to be 100% positive in protecting the public as well.” Representatives of public advocacy groups explained that New York’s FOIL laws already provided more protection against the release of PII than § 50-a.

18. The New York State Legislature also heard and considered concerns about the release of PII. On October 17, 2019, I testified at a public hearing held by the New York Senate Standing Committee on Codes regarding the repeal of § 50-a. Representatives from the New York Police Benevolent Association and the New York Correctional Officers’ Benevolent Association also testified at the hearing about the need to protect police officer’s PII. Representatives of the NYPD, the New York Police Benevolent Association, the New York State Association of Police Benevolent Associations, the Police Conference of New York, the New York State Troopers Benevolent Association, and the New York State Police Investigators Association offered similar testimony at a hearing held by the Senate’s Standing Committee on Codes on October 24, 2019.

19. It is my understanding that the legislature heard the concerns of law enforcement and incorporated privacy protections into the bill that repealed § 50-a. The legislation enacted by the legislature and signed by Governor Cuomo included enhanced protections that shield PII

from public release. Indeed, when Senator Jamaal T. Bailey introduced the #Repeal50a Bill on the Senate floor, he specifically explained that the bill added privacy protections for PII because the legislature had heard the concerns of law enforcement.

Executed on this 14<sup>th</sup> day of August 2020, in New York, New York.

Respectfully submitted,



---

Jumaane D. Williams

# EXHIBIT K

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF SENATOR JULIA  
SALAZAR IN SUPPORT OF  
COMMUNITIES UNITED FOR POLICE  
REFORM'S OPPOSITION TO  
PLAINTIFF'S REQUEST FOR A  
PRELIMINARY INJUNCTION**

Julia Salazar declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform’s (“CPR”) Opposition to Plaintiff’s Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

2. I currently serve as New York State Senator from the 18<sup>th</sup> District, which covers a majority of North Brooklyn, a position I have held since 2018. Prior, I was staff organizer for Jews for Racial and Economic Justice (“JFREJ”), a partner organization in CPR’s community organizing coalition. Most of my work with JFREJ focused on advocating for greater police accountability and transparency, including specifically advocating for the repeal of § 50-a and urging the Mayor and Police Commissioner to support the release of police misconduct and disciplinary records. My work in community organizing further motivated my commitment to repealing § 50-a—a commitment I brought to my seat in the New York State Senate.

3. I submit this declaration to describe my own community advocacy; my participation in public senate hearings where opponents to repeal efforts were given the explicit opportunity to provide the factual bases for their claims that a repeal would harm police officers yet chose not to provide such evidence (or more likely were simply unable to); and the reasons why the public benefits from the repeal of § 50-a.

**My Support for the Repeal of § 50-a Began While Community Organizing, a Commitment I Made a Top Priority During My First Senate Term**

4. Throughout my community advocacy work, which began during my time with JFREJ, I saw firsthand the harm that § 50-a was causing. My work with CPR and JFREJ included advocating alongside the families of citizens NYPD officers had killed. The struggle

those families faced when trying to obtain even very basic information like the names of the officers who were involved in the killing—information that was routinely withheld on the basis of § 50-a—drove my support for the repeal of § 50-a.

5. In my capacity at JFREJ, I attended the disciplinary hearings or criminal trials of officers who had killed or brutalized New Yorkers. One such hearing was the hearing of Officer Richard Haste, who killed Ramarley Graham. Although Officer Haste's conduct resulted in a disciplinary hearing, for years after Ramarley was killed the NYPD still withheld the names of the other officers who were directly involved. I was troubled by the fact that this information was withheld from the public and the family. The public should know if the officers patrolling their neighborhoods have been involved in killing citizens. And I found it particularly disturbing that even Ramarley's own family was prevented from obtaining this most basic information about the individuals who stood by while their colleague shot Ramarley.

6. In another instance, after Mohamed Bah was killed by NYPD officers in his apartment, I provided support to his mother as she tried to get the same sorts of basic information about her son's murder. Seeing her attempts rejected by the Mayor and the Police Commissioner further fueled my support for the repeal of § 50-a.

7. Even when the public knew about officer misconduct—for example, when video of Officer Daniel Pantaleo using an illegal, ultimately fatal chokehold on Eric Garner was widely released—NYPD still used § 50-a as an excuse to protect officers (both by shielding Officer Pantaleo's records from disclosure and by withholding the names of the other officers present) and to ultimately deny accountability. And in all of the cases I can think of, the fact that families could not obtain the full misconduct records of officers was always something that added to their pain, and increased public mistrust of the government and police.



8. So, when I was elected to New York State Senate, it was a key priority for me to co-sponsor Senator Jamaal Bailey’s bill to repeal § 50-a. In addition to Senator Bailey’s bill which supported a full repeal, there was also a second bill introduced, which was simply a modification of § 50-a that would keep the vast majority of misconduct records secret for an extended period time—achieving essentially what the law enforcement unions are currently seeking. I made very clear, both in my public statements and in conversation with my colleagues, that my support was for a full-scale repeal of §50-a. I believed, as I still do, that anything less than a full repeal would allow law enforcement to continue to hide officers’ disciplinary and misconduct records. As a related part of my advocacy for police accountability, I also announced my support for the #SaferNYAct, a package of bills in the New York State Legislature aimed at increasing police transparency and accountability.

**During Public Hearings on Repeal § 50-a, Law Enforcement Had Opportunity to Support Claims of Officer Harm, But Failed to Do So**

9. The arguments that the Unions are raising in this litigation are the same arguments they raised during public hearings related to § 50-a, and the same positions I refuted while community organizing with JFREJ. And, in each instance, the Unions have advanced these arguments without any data to support them.

10. During the 2019-2020 legislative session, the Senate held multiple public hearings regarding § 50-a. Both the police and other law enforcement unions, as well as the police departments participated in these hearings and provided sworn testimony in opposition to the repeal. During these hearings my colleagues and I *directly* asked for examples to support the claims that repealing § 50-a would jeopardize officer safety. Even in response to the direct invitation to provide even a single example to support these claims, they had no incident to point to—from New York or from any other jurisdiction—where the release of misconduct and

discipline records had been linked to jeopardizing officer safety. Not only could they not provide such examples; they *admitted* to not having any. The purpose of these hearings was to create the public record – for both sides to present their case in favor of or in opposition to the repeal. In such a context, if the opponents of repeal did have any non-speculative evidence showing that it would lead to officer harm, they would have presented it.

11. But information from other jurisdictions shows what the repeal’s opposition did not want to admit. When it comes to concealment of police misconduct and disciplinary records, New York has been the most restrictive; yet even in jurisdictions that broadly release records, I do not know of any reported incidents where the release of records caused threats to officer safety. Nor do I know of any reason why New York would be any different than those other jurisdictions—and the opponents of § 50-a were unable to offer any reasons.

12. The legislature was in no way indifferent to *legitimate* concerns regarding officer safety. During the repeal process, many discussions within the Senate and the Democratic Conference regarding Senator Bailey’s bill focused on officer safety concerns stemming from the release of an officer’s personal contact information. There was a clear consensus that the intent of repealing § 50-a was not to provide officers’ personal contact information or addresses to the public. Providing such information is not in the public interest and doing so would cause legitimate concerns. Supporters of repealing § 50-a, including myself, made clear that the final version of legislation would continue to protect personal contact information—of officers, complainants, and family members of those killed by the police— from disclosure. Senate Bill S8496, the final repeal § 50-a bill that the Senate passed and Governor Cuomo signed into law explicitly ensures that personal contact information such as an officer’s address when

misconduct records are released. In the minds of the prevailing legislature, this accounted for any countervailing concerns about officer safety.

**It is in the Public Interest to Have All Records Released to Assess the Efficacy of the Investigative Process**

13. The release of *all* police misconduct and discipline records, regardless of ultimate disciplinary outcome, is important because the taxpaying public has a right to examine the effectiveness of law enforcement's internal investigative process. The current process inherently favors the officer over the complainant: we know that despite the volume of complaints related to police conduct, the number of instances where the investigative process validates the complaint is exceptionally low – and this is true even when there is public knowledge of the egregious conduct. This indicates that an unsubstantiated, truncated, or otherwise non-substantiated or non-final complaint outcome is likely to evidence failures within the investigative process. Even more so when there are thousands of non-substantiated complaints, or non-final complaint outcomes, which indicates a pattern within the department.

14. These internal failures, where an officer who commits misconduct gets away with it because the complaint is never formally substantiated or does not result in disciplinary charges, pose a threat to the public. Failure to reprimand, correct, and if necessary, take further disciplinary action is a warning sign that the officer will commit similar misconduct in the future. There is little incentive to change behavior that is not punished or corrected. And when the public does not know about the misconduct *and* there was no discipline for the misconduct, there is no accountability mechanism to drive changes in officer behavior and there is no effective tracking of the early warning signs of an officer who may repeat such behavior.

15. Additionally, because police officers are public servants, they should be held to a high standard—especially because they are tasked with carrying a deadly weapon and protecting

the public and are authorized to use deadly force in those endeavors. For years, § 50-a effectively held police officers who engage in misconduct to a *lower* standard than other public servants. There is no logical reason to do that. Section 50-a allowed police officers' misconduct to be shielded. But when there is an allegation of misconduct against a legislator, no section of the law prevents those allegations from being made public—nor do I believe there should be. Repealing § 50-a finally subjects police officers to a standard no lower than that which applies to other public servants who are accused of misconduct.

16. Similarly, the argument that disclosing misconduct and discipline records would harm officers' reputations does not hold up. The reputation of ordinary citizens is impacted whenever they have an encounter with law enforcement, regardless of ultimate outcome. Arrest records, mug shots, and indictments that never result in guilty verdicts are all publicly accessible. But officers argue that their reputation should be shielded at all costs, including by allowing those who continually violate public trust to be protected.

17. Officers chose a career in which they directly interact with members of the public. So of course they will have a reputation among the public. It is the same for me. As an elected official, I do not have the right to control my reputation. I can impact public perception based on my own actions, but I cannot ultimately dictate what the public will think of me—and withholding certain information is not a magic trick that will meaningfully shape my reputation.

18. When it comes to police officers, the public interest in obtaining information about the officers' misconduct supersedes any desire to keep their reputation clean. A public-facing reputation comes with the territory when you select a career in public service. Officers are entrusted with a lot of power and influence. It is reasonable to expect that they also be subject to scrutiny, and that they assume that risk when they take the job.

Executed on this 13<sup>th</sup> day of August, 2020, in Brooklyn, New York.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Julia Salazar". The signature is written in a cursive style with a long horizontal flourish extending to the right.

---

Senator Julia Salazar

# EXHIBIT L

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIFORMED FIRE OFFICERS  
ASSOCIATION; UNIFORMED  
FIREFIGHTERS ASSOCIATION OF  
GREATER NEW YORK; CORRECTION  
OFFICERS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.;  
POLICE BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK, INC.;  
SERGEANTS BENEVOLENT  
ASSOCIATION; LIEUTENANTS  
BENEVOLENT ASSOCIATION; CAPTAINS  
ENDOWMENT ASSOCIATION; and  
DETECTIVES' ENDOWMENT  
ASSOCIATION,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as  
Mayor of the City of New York; THE CITY  
OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; DANIEL A.  
NIGRO, in his official capacity as the  
Commissioner of the Fire Department of the  
City of New York; NEW YORK CITY  
DEPARTMENT OF CORRECTION;  
CYNTHIA BRANN, in her official capacity as  
the Commissioner of the New York City  
Department of Correction; DERMOT F.  
SHEA, in his official capacity as the  
Commissioner of the New York City Police  
Department; THE NEW YORK CITY  
POLICE DEPARTMENT; FREDERICK  
DAVIE, in his official capacity as the Chair of  
the Civilian Complaint Review Board; and  
THE CIVILIAN COMPLAINT REVIEW  
BOARD,

Defendants.

Case No. 1:20-CV-05441-KPF

**DECLARATION OF SUSAN LERNER**  
**IN SUPPORT OF COMMUNITIES**  
**UNITED FOR POLICE REFORM'S**  
**OPPOSITION TO PLAINTIFF'S**  
**REQUEST FOR A PRELIMINARY**  
**INJUNCTION**



Susan Lerner declares under penalty of perjury as follows.

1. I submit this sworn statement in support of Communities United for Police Reform's ("CPR") Opposition to Plaintiff's Request for a Preliminary Injunction. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, am competent to testify to those facts, except as to matters expressly stated to be upon opinion and belief. As to those, I believe them to be true.

**Common Cause's Longstanding Commitment to Transparency and Accountability Across All Government**

2. I am the current Executive Director of Common Cause New York, which I joined in 2007. Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy and ensuring a healthy and vibrant democracy that functions effectively. Common Cause is an open government group that advocates for transparency amongst all government entities. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Common Cause was founded in 1970. After Watergate, Common Cause was instrumental in federal and statewide transparency reform efforts. Common Cause was an original supporter and drafter of New York's Freedom of Information Law and others across the country.

3. As part of my work with Common Cause, I am frequently asked to provide commentary on the scope of disclosure of government records and analysis on ethical versus unethical conduct by government employees. My work also focuses on efforts to increase transparency across all levels of government. Based on my experience related to advocating for open government, government transparency, and government accountability, I submit this declaration in opposition to the law enforcement unions' attempt to roll back the repeal of § 50-a

because §50-a stands as an antithesis to five decades of work that Common Cause has done in the arena of government accountability.

4. More transparency is always good, but not simply for transparency's sake. Transparency is not only an end; it is also a means. Holding governments accountable is the ultimate goal of transparency. When the government hides misconduct, it is impossible for citizens to seek accountability. This is true at all levels of government, and of course applies when police departments actively conceal the disciplinary and misconduct records of its officers from the public.

**The Law Enforcement Unions' Attack on the Repeal of § 50-a Leads to a Lack of Transparency and an Inability to Seek Accountability**

5. Although Common Cause was not always directly involved in repeal § 50-a efforts (mostly because organizations like CPR had the nuanced expertise to lead efforts), we supported the effort to repeal 50-a and the successful repeal of § 50-a directly aligns with Common Cause's organization goals. Key to Common Cause's mission is oversight and reform of government entities that seek to gain special treatment. For example, Common Cause has routinely criticized the Legislature for exempting itself from transparency rules. By the same token, the police are not entitled to special treatment when it comes to disclosure. Law enforcement's current attempt to curtail the repeal of § 50-a seeks just that: maintaining the special treatment that they have afforded themselves since the enactment of § 50-a.

6. When it comes to oversight and transparency, knowing the total quantum of complaints against any given officer, and within any given precinct and department is crucial. Knowing how many total complaints, how many were resolved, how many were not resolved, and why the complaints were not resolved is necessary for diagnosis of internal issues within a police system and to assess whether oversight and disciplinary efforts are effective or need

improvement. In assessing the functioning of government, having unsubstantiated or unfounded complaints may even be more important, because these highlight where more information is needed. It can help determine how to improve departmental processes. Additionally, the very nature of the police investigative process—that the police’s misconduct is investigated and adjudicated internally—may prevent additional evidence being produced to substantiate claims. More claims may remain unsubstantiated—but that does not mean those claims should not be made known.

7. The fact that there is a substantial number of complaints within a department or about a specific officer indicates issues with accountability and the effectiveness of internal controls. While an occasional complaint against a single officer may not be persuasive evidence of accountability problems, in cases where there are precincts that have received numerous complaints against multiple officers, all involving similar conduct indicates the need for internal reform, even—or especially—when the complaints are internally determined to be unfounded, unsubstantiated, exonerated, truncated, where misconduct is not fully investigated, or where a complaint is pending for an extended period of time.

8. The quantum of complaints demonstrates the need for oversight. It also places the police department on notice that there are issues that need to be corrected internally. When an officer has a lengthy disciplinary record, the department should be tracking and monitoring that officer to ensure that it is able to detect the warning signs of escalating behavior and to assure the public that improper conduct does not continue. It is for these same reasons that a civilian’s accumulation of traffic violations is tracked under the points system, or doctors with multiple complaints are more closely monitored by hospitals and licensing bodies. Police should be similarly monitored for patterns of problematic behavior.

9. From a basic management perspective, if a private company the size of NYPD—with 30,000 officers—had the same quantum of complaints about its employees as the NYPD has about its officers, management experts would call for external audits and investigations, because that number of complaints indicate a problem on an organizational level. For the same reason, the high number of complaints against an NYPD officer is indicative of the need for independent investigation. Internal investigations are virtually impossible to conduct effectively—and in the context of a public entity, even more so when the process is secretive and public is kept in the dark. For example, when the NYPD does not discipline an officer with numerous complaints, and in fact, continues to promote this officer, this demonstrates the lack of oversight, and the need for external controls on police accountability.

**Public Perception Regarding Lack of Transparency Damages Institutional Credibility**

10. A lack of transparency damages the credibility of law enforcement as an institution. Where a government entity is completely opaque, this leads to citizens becoming cynical towards the entire system. We are currently suffering from this right now—particularly in Black and Brown communities, where citizens' complaints (if citizens even come forward) go into a black hole and do not result in meaningful changes.

11. Past history shows that when an officer does engage in serious misconduct, they have often been able to shield their misconduct using § 50-a. It is alarming that officers who should be subject to discipline instead are able to simply escape their bad reputations and move to a different police department. But research also shows that almost inevitably that officer will engage in similar conduct in the new jurisdiction, and accumulate similar complaints. This pattern of behavior has been allowed to continue because § 50-a has been used to block even inter-department access to records.

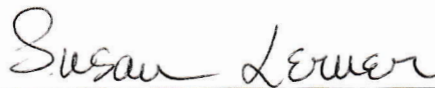
12. Police officers are public servants and the complaints reflect how the officers interact with members of the public. The public—which pays these officers’ salaries—has an interest and right in knowing who is policing their community and what interests the department is spending its resources to protect. Where the complaints indicate a lack of service to the public, the public should have access to this information.

13. Demanding that public servants be accountable to the public is not a unique attack on police officers. Common Cause vigorously advocates for systems of disclosure that allow the public to hold all public servants to an appropriately high standard of conduct. We do not hesitate to bring questionable conduct to the attention of oversight bodies, such as New York City’s Conflict of Interest Review Board, and to release the details of the conduct we find objectionable. Police officers should not be held to a lower standard and not be permitted to hide behind § 50-a or argue for a roll back of its repeal, which was a significant victory for supporters of open government and advocates of transparency and accountability.

Executed on this 13th day of August, 2020, in Brooklyn, NY.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



---

Susan Lerner