



“injustice anywhere is a threat
to justice everywhere”

METROPOLITAN BLACK BAR ASSOCIATION

Board of Directors Officers 2018-2019

Jason M. Clark
President

Anta Cisse-Green
President-Elect

Conway Ekpo
Luwick Francois
Justina Rivera
Vice-Presidents

Paula T. Edgar
Treasurer

Malikah Fulton
Secretary

Areal Allen-Stewart
General Counsel

Class of 2020

Carolyn Edgar
Carl Forbes, Jr.
Zalika Pierre

Class of 2021

Jomaire Crawford
Nicole Arrindell
Barbara Graves-Poller

Class of 2022

Christopher Binns
Eric Cottle
Asha Smith
Phillip Hamilton
Kevin Jordan
Wayne S. McKenzie
Jenesha Tai
Calvin Wingfield

Honorary Board Members

Hon. Cheryl J. Gonzales
Hon. L. Priscilla Hall
Hon. Yvonne Lewis
Cornett Lewers
Hon. Robert L. Reed
Hon. Verna Saunders
Hon. Wavny Toussaint
Hon. Carolyn E. Wade

June 4, 2020

It's Time For Accountability, Transparency and the Repeal of Civil Rights Law 50-a

For far too long, black men and women have been treated differently by our criminal justice system. There has been no better example than the injustices we have witnessed over the last few months. In Minneapolis, Minnesota, an officer used his knee to immobilize and choke George Floyd despite pleas that he could not breathe. In Louisville, Kentucky, Breonna Taylor was shot and killed by police while residing in her home.

While this most recent string of police involved fatalities of Black men and women occurred outside New York, we have our own sordid history of racially motivated fatalities. Amadou Diallo, Sean Bell, Eric Garner, Patrick Dorismond, Akai Gurley, and Ramarley Graham are just a few of the names that come to mind. Moreover, the instances of racially disparate police misconduct that do not end in death is even more prevalent. There have been more recent instances of likely misconduct. For example, on Saturday, during an anti-police brutality rally, a New York Police Department vehicle accelerated into a crowd of protesters. Data has also shown that the NYPD issued significantly more summons and arrests to Black individuals for COVID-19 related violations than to White individuals, notwithstanding the lower percentage of Black people in the NYC population. These tragedies and travesties have brought much needed attention to reforms that must be made to our city's policing practices. The Metropolitan Black Bar Association (MBBA), as the largest association of Black attorneys and legal professionals in New York state, is advocating for the repeal of Civil Rights Law 50-a.

Civil Rights Law 50-a prohibits the disclosure of “personnel records,” including police performance and disciplinary records. It uniquely applies to police officers, correction officers, and firefighters.¹ It renders “all personnel records used to evaluate performance toward continued employment or promotion...confidential and not subject to inspection or review” except by court order.² The law was originally introduced by former New York State Senator Frank Padavan in 1976. According to Senator Padavan, the purpose of the bill was to protect police officers from “harassment,” and impeachment by unsubstantiated civilian complaints.³ It was never intended to block the disclosure of substantiated findings of police misconduct. However, caselaw has expanded protection to include such records.

¹ See New York Civ. Rights Law § 50-a.

² *Id.*

³ See Mem. of Senator Frank Padavan, Bill Jacket, L. 1977, Ch 413.



“injustice anywhere is a threat
to justice everywhere”

METROPOLITAN BLACK BAR ASSOCIATION

Repealing this law is a necessary first step toward restoring trust in our communities. Over the last four years, the MBBA has organized several community town hall events on the topic of police brutality. Too often, victims of police brutality are unwilling to file a complaint or commence legal action because they are unconvinced the offending officer will be held accountable. Eliminating Civil Rights Law 50-a, or at the very least amending the law to permit the disclosure of performance and discipline related information, would help reduce these concerns and be a welcomed move toward greater transparency.

As it stands, there is no way to know if an officer you encounter has a record of police misconduct. For example, after the death of Eric Garner, several reporters requested the disciplinary record of Officer Daniel Pantaleo, the officer responsible for Mr. Garner’s death. Authorities refused to produce this information citing Civil Rights Law 50-a. It was only after Officer Pantaleo’s disciplinary record was leaked that the public was made aware that he had four substantiated allegations of abuse by New York City Civilian Complaint Review Board.

Constance Malcolm experienced similar obstacles when she attempted to acquire the disciplinary history of Officer Richard Haste. In 2012, her son, Ramarley Graham, was shot in his own home by Officer Haste. The New York Times reported that Malcolm only learned of the officer’s extensive misconduct record after a whistleblower exposed his disciplinary record.⁴ She told The New York Times, “Haste had racked up more complaints and allegations in 13 months than 91 percent of officers accrue in their entire career.”⁵ Perhaps if Officer Haste’s disciplinary record had been made available, or he was properly held accountable for previous infractions, he never would have been in a position to shoot Ramarley Graham. Stories such as these exacerbate tensions and erode trust in our police force.

Despite the aforementioned benefits, supporters of Civil Rights Law 50-a argue that repealing the law would lead to the improper disclosure of personal information and put officers’ lives in danger. However, these concerns are unfounded. New York is one of just a handful of states that restrict misconduct records in this manner.⁶ In fact, there are 12 states where the public has full access to on-duty officers misconduct reports and there is no evidence that the heightened transparency has endangered the lives of their officers.⁷

Likewise, New York’s Public Officer Law sufficiently protects all public employees, including police officers, from the release of home addresses, phone numbers and other information that constitutes an unlawful invasion of privacy.⁸ The MBBA recognizes and appreciates that every day members of the NYPD and other police departments throughout the State risk life and limb to protect New Yorkers. We also strongly

⁴ See New York Times Editorial Board, To Honor Eric Garner’s Life, Reform the Police, N.Y. Times, May 15, 2018, <https://www.nytimes.com/2018/05/15/opinion/eric-garner-nypd-de-blasio.html?module=inline>

⁵ Id.

⁶ New York City Bar Association, Report on Legislation by The Civil Rights Committee and The Criminal Courts Committee, p. 3, <https://s3.amazonaws.com/documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency.pdf>

⁷ See id.

⁸ See New York Public Official Law, § 87(2)(b),(e), (f).



"injustice anywhere is a threat
to justice everywhere"

METROPOLITAN BLACK BAR ASSOCIATION

believe in accountability and transparency; and that an equitable balance that supports all of these goals can be achieved with the repeal of Civil Rights Law 50-a.

There are currently identical bills in the New York State Legislature that would repeal Civil Rights Law 50-a. Assembly Bill A.2513 is sponsored by Assembly Member Daniel J. O'Donnell⁹ and Senate Bill S.3695¹⁰ was introduced by State Senator Jamaal T. Bailey.

The Metropolitan Black Bar Association believes that repealing Civil Rights Law 50-a is an essential first step toward creating a fairer, more transparent, and equitable criminal justice system.

Sincerely,

Jason Clark
President, Metropolitan Black Bar Association

⁹ See A.2513, 2019-2020 Leg. Sess. (N.Y. 2019-20), <https://www.nysenate.gov/legislation/bills/2019/a2513>

¹⁰ See S.3695, 2019-2020 Leg. Sess. (N.Y. 2019-20), <https://www.nysenate.gov/legislation/bills/2019/s3695>