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NYSACDL Testimony Senate Standing Committee on Codes Public Hearing – October 17, 2019

Good afternoon Senator and Chairman Bailey and all the other senators present at this hearing. Thank you with providing me with an opportunity to testify on this important issue.

My name is Karen Thompson, and I am a member of the Board of The New York State Association of Criminal Defense Lawyers (NYSACDL) and a co-chair of NASACDL's Legislative Committee. NYSACDL was formed in 1986 by a group of defense attorneys who felt it was time to speak in a unified voice about criminal defense issues in New York State. We are a statewide organization with over 1000 members, responsive to the needs of both private practitioners and public defenders, and dedicated to assuring the protection of individual rights and liberties for all.

NYSACDL's guiding principle is that vigorous defense is the strongest bulwark against error and injustice in the criminal justice system. In an era when the United States has the highest incarceration rate in the world, we expand on the question most often posed to our members and ask "how can we defend our clients most effectively?"

Today, as part of that mission, I am here to urge for the repeal of 50-a, and support of S3695. Such a repeal would provide much needed transparency on police misconduct and discipline in New York State, and help address the systemic lack of accountability for officers who engaged (or engaged) in misconduct.

I urge for the repeal of 50-a not only as a board member of NYSACDL, but also as a former Senior Staff Attorney at the Innocence Project and a current Senior Staff Attorney at the ACLU. Both of these professional experiences have made it amply clear that a lack of transparency with regard to police misconduct leads to terrible outcomes, including, but not limited to, the wrongful incarceration of innocent people. While all public servants are entitled to confidentiality, they are not entitled to hide behind Civil Rights Laws to obscure histories of forced confessions and shoddy policy work, and to avoid public accountability. Such a systemic, fundamental, and pervasive lack of transparency leads to horrific outcomes that could be easily avoided.

By way of example, the committee may be familiar with the case of Huwe (HUGH) Burton, who was exonerated in January of this year of the murder of his mother after an exhaustive, collaborative two-year investigation between the Innocence Project and the Bronx DA's Conviction Integrity Unit. Mr. Burton was convicted largely on a confession he made to three detectives from the 47th Precinct —Frank Viggiano, Stanley Schiffman

and Sevelie Jones—who used several psychologically coercive techniques, from threatening additional criminal charges, to sleep deprivation, to obtain that confession. Burton was eventually convicted and spent 19 years in prison. Mr. Burton’s conviction was also based on false statements from a man named Emanuel Green, who had rented an apartment downstairs from the Burton family. Five days after Mr. Burton confessed, those same police detectives stopped Green driving Mr. Burton’s mother’s car. While police secured written and videotaped statements from Green claiming that Burton asked him for help in the murder, it was eventually revealed that it was Mr. Green, who had a long history of violence, that killed Mr. Burton’s mother. During the course of the re-investigation, it was also revealed that these same officers had exacted false confessions from two other individuals in an unrelated case three months before Burton was arrested. It is unknown how many false confessions these three men extracted, how many wrongful convictions they secured, but these histories should not be hidden behind some idea of confidentiality that ignores the necessity of public accountability, and leaves actual perpetrators on the street and innocent people in prison.

Similarly, Louis Scarcella, a former homicide detective in Brooklyn had a reputation for being able to persuade the most hardened suspects to confess. In 2013, evidence emerged that a man accused of killing a rabbi had been framed, leading to his release after serving 23 years for a crime he did not commit. Since then, the Kings County DA’s office has asked judges eight times, to reverse guilty verdicts that Scarcella helped obtain. The Kings County DA’s office is currently leading an inquiry into more than 70 homicides Scarcella helped investigate. In some of these cases, judges noted that Scarcella had not been truthful in his testimony, yet he has never been charged with official misconduct or breaking the law.

While this may be a case of a few bad apples, we can’t ignore the second half of that proverb, which is that a few bad apples can spoil the bunch. Repealing 50-a would help ensure that nothing spoils at all. Indeed, expanding public access to these kinds of records is critical to keeping good cops employed and bad ones unemployed.

We have an obligation, as pursuers of justice, to reveal and understand a police officer’s prior histories of misconduct. Police officers cannot be shielded from public scrutiny at the expense of accountability and safety. This is particularly true when the same police officers who hide behind their blanket right to privacy engage in misconduct that irreversibly damages the lives of citizens caught up in their deceit. Indeed, in the case of Daniel Panteleo, this lack of transparency withheld from public view the fact that Panteleo had accrued more civilian complaints than 95% of NYPD officers prior to killing Eric Garner.

Who watches the watchmen? And who pays with their lives, with the destruction of their families, with the fracturing of communities, when the watchmen are allowed to indulge in the most dishonest behaviors without sanction or repercussion? A recent national effort by USA TODAY reviewing the records of 85,000 police officers nationwide found individuals who had beaten members of the public, planted evidence, used their badges to harass women, lied, stolen,

dealt drugs, driven drunk and abused their spouses. 2,500 had been investigated on 10 or more charges, 20 faced 100 or more. 5,000 had their credibility as witnesses called into question. These same officers' records were rarely seen by anyone outside of their departments.

A record number of exonerations in 2018 involved misconduct by police or prosecutors, and a record number of exonerees had wrongful convictions stemming from perjured testimony, including from officers. Wrongful convictions are particularly tragic because they are preventable. A history of misconduct is clear in what it tells us: dishonest actors are more likely to make a wrongful conviction occur. It is within the public's interest to prevent such results from occurring. The repeal of 50-a could make it harder to shield dishonest actors behind the shield. We can do better. We must do better. I respectfully and sincerely urge for the repeal of 50-a. Thank you.