

University of St. Thomas Law Journal

Volume 18

Issue 1 *Protests and Reform: How Lawmakers and the Legal Community are Responding to the Killing of George Floyd*

Article 2

April 2022

Digging Out From Under Section 50-a: The Initial Impact of Public Access to Police Misconduct Records in New York State

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Recommended Citation

Cynthia Conti-Cook, *Digging Out From Under Section 50-a: The Initial Impact of Public Access to Police Misconduct Records in New York State*, 18 U. ST. THOMAS L.J. 43 (2022).

Available at: <https://ir.stthomas.edu/ustlj/vol18/iss1/2>

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ARTICLE

DIGGING OUT FROM UNDER SECTION 50-A: THE INITIAL IMPACT OF PUBLIC ACCESS TO POLICE MISCONDUCT RECORDS IN NEW YORK STATE

CYNTHIA CONTI-COOK*

ABSTRACT

In the three-week period following May 25, 2020, the day Officer Derek Chauvin killed George Floyd in south Minneapolis, a 44-year-old piece of New York State legislation—whose repeal languished in both Democrat-controlled state houses for years—went from being a long-shot to signed law. The courage and leadership of families who lost loved ones to police violence, the focused momentum built by organizers for years, and the unrelenting energy of protesters responding to George Floyd’s murder pressured New York legislators to finally repeal section 50-a on June 12, 2020. The impact of that sudden victory—implementation delays and failures aside—has been significant, even less than one year later. It does not mean that transparency automatically ended police violence and other abuses. But it has given people the power to demand information that police have aggressively hidden for decades.¹ That includes people who have experienced police violence or tragically lost their loved ones to it. It also includes communities who witness routine police violence and want, for example, to hold the officers, commanding officers, and elected officials accountable for not preventing it. Community-based organizations, lawyers, journalists, historians, academic researchers, and policymakers can all serve the public better with access to data about police violence and other abuses.

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1. Many family members who lost loved ones to police violence were involved in the fight against 50-a. Some publicly and others more behind the scenes. I want to acknowledge early that while I quote below from the public testimonies and interviews with some family members, many others contributed.

Responding to public pressure following repeal, even the New York Police Department (NYPD) released its own police officer database,² as did the N.Y.C. Civilian Complaint Review Board (CCRB), the local police oversight agency.³

It may appear at quick glance as if transparency won and the 50-a repeal can be celebrated as a historic transformation following George Floyd’s death. But transparency is only the first step towards accountability and a far journey from fully transforming public safety and ending police violence. Transparency is also not guaranteed going forward—only robust efforts to obtain and demonstrate the value of this information will protect against future attempts to introduce new obstructions to public access. This includes obstructions like the NYPD’s database, for example, which purports to embrace transparency but so narrowly defines the scope of what “applicable” disciplinary information gets included on an officer’s profile that officers with significant misconduct histories appear suddenly spotless.⁴

To realize the potential that transparency makes possible, independent databases that obtain, organize, and open police misconduct information must be supported. These databases must also work in partnership with community-based organizations to develop analyses that push beyond officer discipline.

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2. *Officer Profile*, NYPD ONLINE, <https://nypdonline.org/link/2> (last visited Apr. 3, 2021).

3. *NY Member of Service Records*, CIVILIAN COMPLAINT REV. BD. N.Y.C., <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page> (last visited Apr. 3, 2021). Both databases are only searchable by officer name.

4. Ashley Southall, *N.Y.P.D. Release Secret Misconduct Records After Repeal of Shield Law*, N.Y. TIMES (Mar. 8, 2021), <https://www.nytimes.com/2021/03/08/nyregion/nypd-discipline-records.html> (“But police reform advocates criticized the administration on Monday for continuing to withhold information about misconduct cases that did not result in a finding or admission of guilt by the officer – the vast majority of the records – even after a federal appeals court made it clear that the city could release them.”); Chris Glorioso & Kristina Pavlovic, *I-Team: New Discipline Data Reveals NYPD Cops Rarely Penalized for Expensive Lawsuits*, NBC N.Y. (Apr. 24, 2021), <https://www.nbcnewyork.com/investigations/i-team-new-discipline-data-reveals-nypd-cops-rarely-penalized-for-expensive-lawsuits/2999713/> (“A new database of NYPD disciplinary records shows scores of cops have eluded workplace penalties despite being defendants in brutal-ity cases that have cost New York City taxpayers millions of dollars.”).

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INTRODUCTION

Raucous protests were the catalyst for the full repeal of 50-a, the New York State law that hid police misconduct from the public for decades. It was signed into law on June 12, 2020, only because of a coordinated years-long campaign.⁵

This article follows that victory to examine how the conversation about police violence, policing, and public safety pivoted because of access to even a fraction of reported police misconduct information. A wide range of stakeholders have all analyzed and relied upon disciplinary records in the past year, despite the many hurdles to implementation police departments and unions have used to thwart access. It is undoubtedly crucial information that broadens public conversations about incidents of police violence beyond the right or wrong of what actions the people involved in any given incident took. These broader conversations also go beyond individual officer accountability to include accountability for the police institutions and elected officials who fail to end the police violence that harms communities’ sense of safety.

Part I is an autopsy of the original legislation of 50-a and the history of how it swelled to bury critical information about policing before spectacularly imploding. Part II presents the past year as a proof of concept; it re-

5. Luis Ferré-Sadurní & Jesse McKinley, *N.Y. Bans Chokeholds and Approves Other Measures to Restrict Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/nyregion/50a-repeal-police-floyd.html> (“Gov. Andrew M. Cuomo signed the expansive package of bills less than three weeks after Mr. Floyd’s death at the hands of the police in Minneapolis, which has since sparked widespread civil unrest and demonstrations against police brutality and racism.”); Tom Robbins, *How a Coalition of New York Activists Revealed Police-Department Secrets*, THE NEW YORKER (July 17, 2020), <https://www.newyorker.com/news/our-local-correspondents/how-a-coalition-of-new-york-activists-revealed-police-department-secrets>; Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, VOX (June 16, 2020), <https://www.vox.com/2020/6/16/21291595/new-york-section-50-a-police-misconduct>. A Wikipedia entry for 50-a claims that mass emails from college students influenced the government as well. *50-a*, WIKIPEDIA, <https://en.wikipedia.org/wiki/50-a> (last visited Sept. 12, 2021).

views how the impact of public access to police misconduct information following repeal has already given important texture and specificity to conversations about police violence, policing, and public safety, despite obstructive police union lawsuits and implementation failures by departments statewide. Part III argues that, despite some departments' embrace of transparency rhetoric and construction of "official" databases of police misconduct, it is important for independent organizations to still obtain, organize, and open public databases to stress test the government's transparency claims, to analyze information beyond whether any individual officer has the propensity to harm people, and to pursue accountability up the chain of command to elected officials.

SCOPE OF ANALYSIS

New York is the focal point of this story, but it is not the only jurisdiction battling over police misconduct information. California passed a law in 2018 that opened up a limited number of police misconduct complaints if they included allegations of use of force, perjury, or sexual misconduct.⁶ Connecticut passed legislation in July 2020 that prohibited collective bargaining agreements from blocking disclosure of certain misconduct files.⁷ New Orleans City Council adopted a resolution calling for a public police misconduct database, as did Oregon and Colorado.⁸ Legislation similar to 50-a is also pending in New Jersey, and the New Jersey Attorney General released a limited officer use of force database.⁹ Maryland repealed its ver-

6. Liam Dillon, *California Legislature Passes Major Police Transparency Measures on Internal Investigations and Body Cameras*, THE L.A. TIMES (Sept. 21, 2018), <https://www.latimes.com/politics/la-pol-ca-police-transparency-bill-passes-20180831-story.html>. As in New York, efforts are underway for this information to be collected. *The California Reporting Project*, THE CAL. REPORTING PROJECT, <https://projects.scpr.org/california-reporting-project/> (last visited Sept. 12, 2021) (The California Reporting Project "is a statewide coalition of 40 newsrooms committed to working together to obtain and report on police records newly available to the public.").

7. OLR BILL ANALYSIS HB 6004 EMERGENCY CERTIFICATION §§ 8, 9 (2020). The Connecticut State Police Union sued the state to block disclosures through an injunction. Kelan Lyons, *State Police Union Sues Connecticut Over Police Accountability Bill*, THE CT MIRROR (Aug. 12, 2020), <https://ctmirror.org/2020/08/12/state-police-union-sues-connecticut-over-police-accountability-bill/>. A federal judge dismissed that lawsuit in October 2020. *Conn. State Police Union v. Rovella*, 494 F. Supp. 3d 210, 210 (D. Conn. 2020). The police union plans to appeal that decision. Cassandra Bassler, *Conn. State Police Union To Challenge Officer Complaint Disclosures*, WSHU PUBLIC RADIO (Oct. 15, 2020), <https://www.wshu.org/post/conn-state-police-union-challenge-officer-complaint-disclosures#stream/0>.

8. Jason Rogers Williams & Helena Moreno, *New Orleans City Council Calls for New Public Database on Police Misconduct*, NEW ORLEANS CITY COUNCIL (June 18, 2020), <https://council.nola.gov/news/june-2020/new-orleans-city-council-calls-for-new-public-data/>; Andrew Selsky, *Oregon Releases Police Misconduct Records, Others to Follow Suit*, THE CHRISTIAN SCI. MONITOR (July 14, 2020), <https://www.csmonitor.com/USA/Justice/2020/0714/Oregon-releases-police-misconduct-records-others-to-follow-suit>.

9. *SASLogon*, SAS® LOGON MANAGER, <https://sva.lps.nj.gov/SASLogon/login> (last visited Sept. 11, 2021).

sion of 50-a, originally signed into law in 1972.¹⁰ Campaigns in Michigan, Ohio, Oregon, and Delaware are also underway to lift legal barriers to obtaining police misconduct data.¹¹ Regardless of what state transparency laws get passed nationwide, the lessons learned following the implementation of 50-a's repeal still apply. Databases run independently from the government are still needed to obtain, organize, and open police misconduct data to manifest the intent of the transparency reforms.¹²

DEFINITIONS OF TERMS

“Police misconduct information or data,” used interchangeably in this article, refers to any act that would qualify as a “prior bad act” for the purposes of impeachment of any witness in a courtroom.¹³ A “prior bad act” demonstrates “an untruthful bent or significantly reveals a willingness or disposition . . . voluntarily to place the advancement of his individual self-interest ahead of principle or the interests of society.”¹⁴ That definition includes conduct that is and is not violent and is and is not criminal, such as lying or abusive language. It includes conduct that is documented in lawsuits, criminal court suppression decisions, and recordings by neighborhood CopWatchers as well as Internal Affairs and CCRB records. In other words, the way this article uses police misconduct information contemplates information known to police departments beyond complaints investigated by government agencies. “Disciplinary outcomes or data,” on the other hand, refers exclusively to the official report of misconduct to a government agency and the administrative disciplinary outcome and penalty, if any, by that agency.

“Public access” is used throughout this article to refer to information that is in theory legally accessible. But what is legally accessible public

10. Michael Levenson & Bryan Pietsch, *Maryland Passes Sweeping Police Reform Legislation*, N.Y. TIMES (Apr. 10, 2021), <https://www.nytimes.com/2021/04/10/us/maryland-police-reform.html>; Ovetta Wiggins & Erin Cox, *Maryland Repeals Police Bill of Rights, Enacts Historic Accountability Measures*, THE WASH. POST (Apr. 10, 2021), https://www.washingtonpost.com/local/md-politics/hogan-vetoes-police-accountability/2021/04/09/c0ac4096-9967-11eb-962b-78c1d8228819_story.html (“open some allegations of police wrongdoing for public review”).

11. Selsky, *supra* note 8; *Repeal LEOBR*, ACLU MD., <https://action.aclu.org/send-message/repeal-leobr> (last visited Sept. 11, 2021); Tyrone Carter, *Opinion: Make Police Misconduct Complaints Public for Transparency*, THE DETROIT NEWS (Sept. 26, 2020), <https://www.detroitnews.com/story/opinion/2020/09/26/opinion-make-police-misconduct-complaints-public-transparency/3530268001/>; Brandon Simmons & Hope Sloop, *Gov. Mike DeWine Announces New Bill to Help With ‘Accountability and Transparency’ in Policing*, 3 WKYC STUDIOS (Apr. 21, 2021), <https://www.wkyc.com/article/news/local/ohio/governor-dewine-police-transparency-bill/95-2e7f654b-126a-432a-b646-455fc0a74183>.

12. Cynthia H. Conti-Cook, *Open Data Policing*, 106 GEO. L. REV. ONLINE 1, 16 (2017) (generally discussing how misconduct data should not be limited to data collected by government agencies and reviewing all the various sources of misconduct data beyond government information).

13. *People v. Walker*, 633 N.E.2d 472, 474 (N.Y. 1994).

14. *Id.*

information versus what information the public can reasonably and regularly access to form opinions, organize others, and launch campaigns for policy change are two entirely different matters. Tactics to deter the public from seeking information, like the upstate New York police department that charged thousands of dollars for records, should be anticipated amongst other obstructions.¹⁵ Generally, individuals and organizations without access to lawyers willing to bring these cases are not going to pursue legal recourse when their requests for information are denied, and many wrongfully denied requests for “public access” to misconduct information will never be reviewed.

Even when an organization is successful in obtaining a large volume of police misconduct information, it is almost never delivered in a format that easily translates to “public access” in any meaningful way. This data is often delivered in hard copy or Portable Document Format (PDF) with thousands of pages of unsorted information. Organizations like Human Rights Data Analysis Group (HRDAG)¹⁶ and Public Data Works (PDW)¹⁷ have cultivated an expertise in deploying various data processing tools, for example, using Optical Character Recognition (OCR) to make PDFs scannable, using Natural Language Processing (NLP) to identify recurring terms in complaint narratives, and then deploying Machine Learning (ML) to categorize complaints according to determined tags with filters, and these steps are on top of already onerous general data cleaning tasks that still come when data is delivered in comma-separated-values files (for example, Excel spreadsheets). Even with these tools, this is laborious work that requires unique and expensive expertise. This technical assistance allows organizations to publish databases that function for multiple stakeholders from the public for multiple purposes.

Data released this past year because 50-a was repealed is discussed at length and will be referred to throughout various sections of this article in a few different ways. We have barely scratched the surface of the existing

15. Jon Campbell & Beryl Lipton, *New York 50-a Repeal: Six Months Later, Police Find Ways to Shield Disciplinary Records*, DEMOCRAT & CHRON. (Dec. 22, 2020), <https://www.democratandchronicle.com/story/news/politics/albany/2020/12/22/new-york-state-50-a-repeal-six-months-later-police-shielding-public-records/3964062001/> (“In June, the Manlius Police Department received an open-records request from *MuckRock*, a nonprofit news site. The request sought documents detailing any allegations of misconduct against current or former officers and any discipline the department imposed. The department replied with a bill. For \$47,505.”).

16. USA, HUM. RTS. DATA ANALYSIS GRP., <https://hrdag.org/usa/> (last visited Sept. 11, 2021) (“Current work includes ongoing collaboration with several US-based partners. We are working with the Invisible Institute’s Citizens Police Data Project to design and maintain a data pipeline, to systematically process large quantities of documents describing potential police misconduct in Chicago.”).

17. *Public Data Works*, PUB. DATA WORKS, <https://publicdata.works/> (last visited Sept. 11, 2021) (“Public Data Works is a data+design workshop. We build tools that help make data useful to the public, using transparency to transfer power and radically rethink the dynamics of accountability.”).

data. The NYPD is taking an average of six months to respond to open records requests, although it has already denied at least one request for a “downloadable copy of misconduct records” dataset (on March 24, 2021, after the litigation ended).¹⁸ The dataset referred to throughout this article as “limited dataset” or the “ProPublica data” is based on a subset of CCRB data, released by ProPublica last summer.¹⁹ Other examples of misconduct data used in reports discussed may have been obtained directly by a reporter, whether through records requests or inquiries to the Deputy Commissioner of Public Information (DCPI) of the NYPD.

RESPONSE TO POLICE PRIVACY CLAIMS

Police claims to privacy rights in their misconduct records is the most commonly named opposition against transparency reforms. Police claims to privacy for their misconduct are about power, not privacy. Legal scholar Anita L. Allen, an expert in the history of privacy law in the United States, writes about how racial and gender social power dynamics impact the legal analysis of privacy law. Her scholarship recounts a criminal court decision from 1829 dismissing charges against a “prominent slave-holding Confederate family” based on “[the] ideal of privacy . . . to help rationalize the court’s unwillingness to punish a white man for whipping and shooting a slave.”²⁰ Much like police violence in Black communities in the United States, “[b]loody vengeance [was] heaped upon defiant slaves ‘with impunity, by reason of its privacy.’”²¹ Police, prosecutors, and courts have too often echoed similar justifications for withholding information about police misconduct as, in the words of Justice Cobb in 1829, “[the] power of the master must be absolute, to render the submission of the slave perfect.”²² Sergeant Benevolent Association President Edward Mullins’s op-ed opposing 50-a repeal in 2019 shadowed this rationale in describing NYPD’s need for absolute power over the communities they police. He claimed 50-a was required due to “the unique nature of the work of law enforcement professionals and first responders, who daily risk their lives for the common good and who can’t do their jobs without the community’s support.”²³ Support

18. *Explore OpenRecords Requests*, OPENRECORDS, https://a860-openrecords.nyc.gov/request/view_all (last visited Sept. 11, 2021). Query for records requests from June 2020 until the present, April 30, 2020, from the NYPD for “misconduct” resulted in a request for “downloadable copy of misconduct records” being denied (FOIL-2021-056-04395). The basis for the denial was inaccessible online. Not all records requests are made through this portal, but it provides a decent sampling of how the NYPD is responding to these requests.

19. *See infra* p. 63 and note 82.

20. Anita Allen, *Natural Law, Slavery, and the Right to Privacy Tort*, 81 *FORDHAM L. REV.* 1187, 1204 (2012) (discussing *State v. Mann*, 13 N.C. 263 (1829)).

21. *Id.*

22. *Id.*

23. Ed Mullins, *Don’t Let Activists and Lawyers Weaponize Police-Discipline Records*, *THE N.Y. POST* (Apr. 14, 2019), <https://nypost.com/2019/04/14/dont-let-activists-and-lawyers-weaponize-police-discipline-records/>.

meaning unquestioning subservience achieved through fear rather than public trust. Yet when tested by courts this past year in police union lawsuits, officers' claims to legal protections for privacy interests fell apart without 50-a's fabricated "privacy" protection.²⁴

Police officers' claims to privacy were also shot down substantively by many department administrators. A recent research survey by Professors Rachel Moran and Jessica Hodge of 344 law enforcement administrators in twelve states with open records laws "about the benefits and harms of making law enforcement misconduct records accessible to the public"²⁵ found that "[m]ore administrators than not said they support laws requiring public access to misconduct records."²⁶ This support is attributed to meaningful benefits of transparency, including improved community relations and public trust.²⁷ The main harm some administrators identified were reputational—there was "even slighter evidence of physical harm."²⁸ As District Court Judge Katherine Failla put it simply in her decision dismissing the Police Benevolent Association's (PBA) petition for an injunction preventing the New York City's databases from disclosure, there is just not "a generalized privacy right inherent in the disciplinary records of public employees."²⁹ That this is not true for the work-related misconduct of all citizens does not matter. "Government, public officials, and large commercial institutions are accountable to the general public in respects that are not strictly reciprocal. Subject to important exceptions, the secrecy preferences of these actors *easily* yield to the public's demand for accountability."³⁰ These italics are mine—this basic privacy principle exposes the past years' struggle to repeal 50-a that much more clearly as one about power.

ACCOUNTABILITY BEYOND INDIVIDUAL OFFICERS

Accountability should not only be understood as a mechanism targeting individual officers for their actions, but as a mechanism through which elected officials are held accountable for the actions of police officers. This also extends to supervisors and other police officials pressuring officers to take action in violation of people's rights or who look the other way when

24. Cynthia H. Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Disciplinary Records from the Public*, 22 CUNY L. REV. 148, 175–180 (2019) (for more in-depth discussion of privacy law as it applies to police misconduct information).

25. Rachel Moran & Jessica Hodge, *Law Enforcement Perspectives on Public Access to Misconduct Records*, 42 CARDOZO L. REV. 1237, 1240 (2021) (available at *Law Enforcement Perspectives on Public Access to Misconduct Records*, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3552012 (last revised Nov. 4, 2021)).

26. *Id.* at 1241.

27. *Id.* at 1268.

28. *Id.* at 1280.

29. *Uniformed Fire Officers Ass'n v. DeBlasio*, No. 20 CIV. 5441 (KPF), 2020 WL 5640063 (S.D.N.Y. Aug. 21, 2020).

30. ANITA ALLEN, *WHY PRIVACY ISN'T EVERYTHING: FEMINIST REFLECTIONS ON PERSONAL ACCOUNTABILITY* 31 (2003).

they witness it routinely happen. These officials, including elected officials, often even more so than the individual officers themselves, should be held accountable for police violence and other abuses. NYPD and CCRB's databases both only facilitate searches for information in relation to the officer accused, and not in relation to supervisors, to chain of command, or to recurring types of misconduct that may pervade the entire department. Accountability, as conceived of for the purposes of this article, is for everyone, including the concept of policing itself.³¹

To achieve accountability beyond individual officers, there must be transparency beyond individual officers' profiles. In the first-year post-50-a repeal, let us think expansively about what a new potential expectation for government transparency could be, especially around policing and public safety. We have already witnessed the harm secrecy caused—to families fighting for information about the cause of their loved one's death and anyone relying on the legal system to deliver justice. Secrecy also prevents members of the public from engaging in democratic debate about a tragic and recurring type of government misconduct with information that may reveal how often people in government actively participate in obstructing accountability efforts.³²

Hiding evidence of police violence in Black communities specifically also protects officers who intentionally veil their biases with their badges.³³ Now that 50-a is repealed, we have the opportunity to build on Ida B. Wells' faith in the power of publicity—to publish the details of every lynching so

31. Many people have written persuasive arguments for rethinking the role of policing in community safety. See ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>; ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); ALEX S. VITALE, *THE END OF POLICING* (2017); The Graduate Center, CUNY, *A World Without Prisons: Ruth Wilson Gilmore in Conversation with Mariame Kaba*, FACEBOOK (Sept. 16, 2020), https://www.facebook.com/watch/live/?v=1031007084026178&ref=watch_permalink; and many more publications available on *Interrupting Criminalization*, INTERRUPTING CRIMINALIZATION, <https://www.interruptingcriminalization.com/> (last visited Sept. 11, 2021).

32. Conti-Cook, *supra* note 24, at 148, 159, 164, 167, 191 (discussing the harms of police secrecy to various constituencies); Robbins, *supra* note 5.

33. Peter Bouisseau, *Anti-Black Police Violence Rooted in the Slave Trade: Harvard Researcher*, UNIV. OF TORONTO (Feb. 29, 2021), <https://www.utoronto.ca/news/anti-black-police-violence-rooted-slave-trade-harvard-researcher> ("Police violence against Black people can be traced to the brutal slave trade led by Europe's great powers centuries ago, says award-winning author and historian Professor Vincent Brown of Harvard University. . . 'The relative obscurity of these events is also due to the reluctance to acknowledge slavery as an act of war,' said Brown, adding that the social antagonisms established by slavery persist to this day as the descendants of slaves fight for the space to develop their own notions of belonging, status and fairness. 'Few things terrify the wealthy and powerful more than the prospect of losses to the poor and the weak, which would signify dishonour and a world turned upside down.'").

the public could know that an influential body of citizens has made it a duty to give the widest publicity to the facts in each case; that it will make an effort to secure expressions of opinion all over the country against lynching for the sake of the country's fair name; and lastly, but by no means least, to try to influence the daily papers of the country to refuse to become accessory to mobs either before or after the fact.³⁴

Younger generations will hopefully also learn from these database archives to structure crisis intervention and imagine community safety in new and less militarized ways. Unlike the official databases that, so far, only connect misconduct to officers involved in any incident, these independent databases have the capacity to connect misconduct from multiple sources to command structures, groupings of officers, and types of misconduct, including misconduct reported in lawsuits and criminal legal decisions. Deeper connections in this data will surface a new type of transparency and new opportunities for understanding police departments' ability (and *inability*) to prevent violence, even by their own members.

PART I - AN AUTOPSY OF NEW YORK'S SECRECY LAW

Before counting the many ways access to data post-repeal has changed the conversation about policing, justice, and safety in New York, it is worth retracing our steps historically to recall how police in New York were able to bury their crimes for decades. Following the civil rights movement and significant expansions to the constitutional rights of people accused of crimes by the United States Supreme Court in the 1960s, namely to have free access to assigned counsel and to hold hearings about how officers obtained evidence and confessions, police officers' conduct was under scrutiny from official actors outside of the police department for the first time.³⁵ Co-opting many of the strategies, slogans, and spiritual themes of the civil and labor rights movements, police started organizing their unionizing campaigns around the idea that police officers had their own "sacred" civil rights that buried their misconduct information and made holding officers individually accountable for misconduct more difficult.³⁶ When Freedom of

34. (1909) *Ida B. Wells*, "Lynching Our National Crime", BLACK PAST (Sept. 22, 2008), <https://www.blackpast.org/african-american-history/1909-ida-b-wells-awful-slaughter/>.

35. Nick Pinto, *How New York's Law Shielding Cops From Scrutiny Became One Of The Toughest In The Country*, GOTHAMIST (Mar. 10, 2020), <https://gothamist.com/news/ny-police-nypd-50a-cops-crime> (citing *Mapp v. Ohio*, 367 U.S. 643 (1961); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Miranda v. Arizona*, 384 U.S. 436 (1966)).

36. *Id.* (not unlike how modern police unions co-opted the modern call for racial justice "Black Lives Matter" into "Blue Lives Matter"); Rebecca Brown & Cynthia Conti-Cook, *Crime Without Punishment*, AM. BAR ASS'N (Jan. 12, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/crime-without-punishment/ (identifying additional protections under expansive "Law Enforcement Officer Bill of Rights" (LOBR) provisions); Rebecca Tan, *There's a Reason It's Hard to Discipline Police. It Started With a Bill of Rights 47 Years Ago.*, THE WASH. POST (Aug. 29, 2020) <https://>

Information laws started to pass across the country in the 1970s, unions started to push for exceptions for their records based on their claims to uniquely needed sacred “privacy” rights, capitalizing off of how newly exposed officers felt in the courtroom.³⁷

A. *The Origins and Judicial Expansion of Section 50-a*

While 50-a’s original sponsor³⁸ and many contemporary reporters framed the 1976 legislators’ oversight of 50-a’s expansive interpretation as an unintended consequence, Nick Pinto’s research brought him to the opposite conclusion: “[i]t’s true that courts have greatly increased the scope of 50-A’s application over the years. But legislators in 1976 had ample warning that this law could play havoc with police accountability.”³⁹ Pinto quotes multiple legislators from the debate floor who predicted that 50-a would obstruct efforts to hold police accountable and deliver due process through the criminal justice system.⁴⁰

www.washingtonpost.com/history/2020/08/29/police-bill-of-rights-officers-discipline-maryland/ (“For more than four decades, critics say, the Law Enforcement Officers’ Bill of Rights has been one of the biggest obstructions to police accountability, hindering investigations and shielding misconduct from public scrutiny. Fifteen other states followed Maryland in adopting a police bill of rights. . .”).

37. This copy-cat strategy is demonstrated today by the police-led campaigns to define “police-occupation” as a category protected by human rights laws. Candice Ferrette, *Nassau Lawmakers Pass Bill Targeting Bias Against First Responders*, NEWSDAY (Aug. 2, 2021, 10:45 PM), <https://www.newsday.com/long-island/politics/nassau-police-discrimination-human-rights-law-1.50323459>.

38. Brendan J. Lyons, *Court Rulings Shroud Records*, TIMES UNION (Dec. 15, 2016, 4:32 PM), <https://www.timesunion.com/tuplus-local/article/Court-rulings-shroud-records-10788517.php> (“Frank V. Padavan, a former state senator from Queens who was the chief sponsor of the legislation 40 years ago, confirmed that the sole intention of the statute, which is part of the state Civil Rights Law, was to stop private attorneys from using subpoenas to gain unfettered access to the personnel records of police officers. ‘That was the intent,’ said Padavan, 82, who was a Republican member of the Senate from 1973 to 2010. ‘If the law is being misused, then obviously an amendment might be in order.’”).

39. Pinto, *supra* note 35.

40. Pinto, *supra* note 35 (“On the Senate floor, Padavan seemed unequipped to explain exactly why his bill was necessary, or even what the current procedure for accessing police records was. ‘Don’t you think it might be important for you to know what the present procedures are in order to be able to justify the need for this bill?’ Senator Karen Burstein of Nassau County asked Padavan, according to a Senate transcript, after he was unable to answer her questions about how records were made public at the time. ‘No,’ Padavan answered. ‘Well, can you tell me what in fact is the justification of the bill?’ Burstein pressed. ‘I think the bill stands on its own merits,’ Padavan answered. Burstein cut to the chase: Nobody wants to encourage harassment, she said. ‘What this piece of legislation really intends to do is make it so burdensome for anybody with legitimate interests to get a performance record that, in fact, it will kill such efforts. I suggest in one particular area that this is important, and that is if you have a charge, and you may have a number of them, of brutality. It becomes essential to be able to look at somebody’s performance record.’ . . . ‘Enactment into law of this bill would be counterproductive to the Governor’s vow to stamp out corruption in the process of law enforcement, which the Governor characterized as an intolerable cancer,’ Deputy Attorney General Maurice Nadjari wrote, urging the governor to again kill the bill. ‘I feel very strongly about this.’”).

Over the next four decades, legislators expanded 50-a to apply to firefighters, probation officers, and correction officers.⁴¹ At the same time, prosecutors, police departments, and municipal attorneys successfully urged courts to expand 50-a to set higher standards for what defenders must show to access records. This included also applying broader definitions of what information was covered—for example, extending it to cover agency summaries of records as well as the records themselves.⁴² Finally in 2016, the New York Court of Appeals closed off any avenue for accessing police records (or information about those records) through courts in a case brought by the New York Civil Liberties Union (NYCLU) seeking the trial memoranda of NYPD’s administrative law judges.⁴³ Based on all these judicial decisions, during the de Blasio administration, the NYPD, municipal attorneys, and oversight agencies increasingly interpreted 50-a as restricting access to more and more information.⁴⁴ During that period of time, the vast information that the NYPD claimed it was prohibited from disclosing under 50-a also included the names of plainclothes officers who shot a man in broad daylight, aggregated use of force data, and decades of disciplinary summaries published by the Deputy Commissioner of Public Information

41. Cynthia H. Conti-Cook, *Defending the Public: Police Accountability in the Courtroom*, 46 SETON HALL L. REV. 1063, 1068–1070 (2016) (for an in-depth discussion of legislative history of 50-a).

42. *Id.* at 1074–75 (“*See* *People v. Cook*, 27 N.Y.S.3d 329 (N.Y. Sup. Ct. 2015) (denying defense application for CCRB and NYPD records predicated upon civil litigation against subject officers); *People v. Zagaja*, No. 227/2015 (N.Y. Crim. Ct. Sept. 17, 2015) (denying *Gissendanner* application predicated upon prior civil litigation involving named police officer); *People v. Barrie*, No. 2014KN003219 (N.Y. Crim. Ct. July 10, 2015) (denying defense application for CCRB and NYPD records of principal witness); *People v. James*, 46 Misc. 3d 1219(A) (N.Y. Sup. Ct. 2015) (denying defense application for CCRB records); *People v. Hernandez*, No. 2013KN086748 (N.Y. Crim. Ct. Oct. 22, 2014) (quashing defendant’s subpoena seeking CCRB and any disciplinary records pertaining to named officer under section 50-a); *People v. Rodriguez*, 46 Misc. 3d 1220(A) (N.Y. Sup. Ct. 2014) (“The fact that federal lawsuits were filed against the officers here is not a factual predicate warranting review of their personnel files.”); Letter from Brian Krist, Assistant Deputy Exec. Dir. Of Investigations, CCRB, to Hon. Jaqueline Williams, J. of N.Y. Fam. Ct. (Jan. 29, 2016) (urging the court to issue a written decision reflecting the court’s decision from the bench in *In re Monge*, No. D64/15 (N.Y. Fam. Ct. Sept. 29, 2015), wherein the court denied a motion seeking disclosure of CCRB records). *But see* *People v. Oriol*, No. 2744-14 (N.Y. Crim. Ct. 2015) (ordering in camera inspection based upon evidence of settled prior civil litigation.”) (discussing cases listed in this footnote).

43. N.Y. Civ. Liberties v. N.Y. City Police Dep’t, 118 N.E.3d 847, 855 (N.Y. 2018) (Wilson, J., dissenting) (“By opening the Trial Room proceedings to the public, the City has chosen to disclose information relevant to that proceeding. In doing so, the City has determined that the confidentiality of an officer’s identity, the nature of the charged offense, or the evidence supporting that charge—otherwise protected by section 50-a—is of insubstantial weight compared to the countervailing interest in public disclosure.”) (The Court of Appeals decision did not address whether NYCLU had a right to access the administrative law decisions under the First Amendment because it was not argued. Judge Wilson’s dissent, while not citing the First Amendment analysis, argued along similar lines that because the proceedings were public, related documents used in the proceedings should presumptively be public, as well); Conti-Cook, *supra* note 24, at 162 (discussing tensions between First Amendment right of access arguments and 50-a).

44. Brad Aaron, *De Blasio Gives NYPD an “F” on Transparency*, STREETS BLOG NYC (Apr. 23, 2013), <https://nyc.streetsblog.org/2013/04/23/de-blasio-gives-nypd-an-f-on-transparency/>.

(DCPI) held in the City archives.⁴⁵ It was even cited by a NYPD administrative law judge (ALJ) as the basis for closing a courtroom during a disciplinary trial because the administrative prosecutor intended to question the expert witness, a former officer, about his prior discipline.⁴⁶ That is how broadly the NYPD considered 50-a's scope, above all considerations, police officers' (and former officers') claims to privacy won over accountability for people's lives every time, reflecting the type of power Justice Cobb wrote about in his 1829 decision, "the power of the master must be absolute."⁴⁷

B. *The Rise of the 50-a Repeal Coalition*

It was also during this time that 50-a's expansive and prohibitive impact was identified as a significant disruption to families' ability to hold police accountable for the loss of their loved ones⁴⁸ and the public's ability to hold individual and institutional actors accountable for the harm they caused. A broad coalition of community-based organizations, led by the families who lost loved ones to police violence and organized by the fierce and strategic vision of the Communities United for Police Reform organizers, knitted organizing, legal, media, and political strategies together for several years to fight hard for full repeal.⁴⁹ This required endless strategy sessions, multiple lawsuits, countless City Hall press conferences, many day-long bus trips to Albany, interviews with reporters, and, of course, a blunt hashtag. The wonky "#Repeal50a" was the awkward hashtag that hundreds of tweets, including those from celebrities like Rihanna, Ariana Grande, and Mariah Carey, used to call upon New York lawmakers in the days leading up to the law's repeal.⁵⁰

45. See Ashley Southall, *At James Blake Trial, Judge Invokes Law Shielding Police Records*, N.Y. TIMES (Sept. 20, 2017), <https://perma.cc/8NKZ-BZPR>; *Luongo v. Recs. Access Officer*, 51 N.Y.S.3d 46, 50 (N.Y. App. Div. 2017) (admitting history of public availability at NYPD headquarters and City Hall library); *Luongo v. Recs. Access Appeals Officer*, 90 N.Y.S.3d 514 (N.Y. App. Div. 2019) (affirming denial of author's demand for release of records); Kendall Taggart & Mike Hayes, *Here's Why BuzzFeed News is Publishing Thousands of Secret NYPD Documents*, BUZZFEED NEWS (Apr. 16, 2018, 5:33 AM), <https://perma.cc/7S6W-H37U>, for a set of these records that has since been published. These were not the original records of discipline for individual officers, but summaries of police discipline distributed quarterly, including a summary of the facts, outcome, and penalty. See Rocco Parascandola & Thomas Tracy, *Cops Who Killed Saheed Vassell Identified*, N.Y. DAILY NEWS (July 27, 2018, 6:00 PM), <https://perma.cc/BDA4-4RY6>; Jake Offenhartz, *'Appalling' Video Shows NYPD Officers Ripping Infant from Brooklyn Mother's Arms*, GOTHAMIST (Dec. 10, 2018, 8:52 AM), <https://perma.cc/TBK9-4B5V>; Conti-Cook, *supra* note 24, at 150 (discussing the multiple ways 50-a harmed society).

46. See Southall, *supra* note 45.

47. Allen, *supra* note 20, (discussing *State v. Mann*).

48. Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold is Finally Released*, CNN (June 23, 2020, 11:01 PM), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html>.

49. Robbins, *supra* note 5; Wykstra, *supra* note 5.

50. According to the Social Media Analysis Tool, there were 424 tweets from verified accounts continuing the hashtag between May and June 2020, not including unverified accounts and

Not long before that imperfect hashtag went viral, legislators were so cynical about the political viability of a full repeal of 50-a, despite recognizing it was the right thing to do, that its original assembly sponsor did not introduce it alone but alongside a bill that merely added one word to amend the original 50-a language—a meaningless amendment in practice, but a more politically expedient alternative.⁵¹ Even after the Democrats took the State Senate in 2018, repealing 50-a was considered a heavy lift for legislators, and Mayor de Blasio repeatedly undermined advocates' efforts and deterred support for full repeal by lobbying for a different amendment to 50-a.⁵² State Senator Kevin S. Parker, a Brooklyn Democrat, sponsored a bill in 2017 supported by the mayor and the police department that would

retweets. *SMAT Tool*, SMAT, <https://www.smat-app.com/timeline?searchTerm=repeal50a&startDate=2014-01-01&endDate=2021-04-07&websites=twitter&aggRedditBy=author&numberOf=10&interval=day&limit=1000&changePoint=false> (last visited Sept. 14, 2021); Jameelah Nasheed, *Celebs Like Rihanna and Ariana Grande are Pushing for Repealing 50-a as Part of N.Y. Police Reform*, TEENVOGUE (June 9, 2020), <https://www.teenvogue.com/story/celebs-rihanna-ariana-grande-repeal-50-a-new-york-police-reform>; Jose Martinez, *Rihanna, Meek Mill, and More Sign Letter to Repeal Statute that Blocks Police Misconduct Records in N.Y.*, COMPLEX (June 8, 2020), <https://www.complex.com/life/2020/06/rihanna-meek-mill-migos-more-sign-letter-to-repeal-new-york-state-statute-50-a>.

51. Jeff Coltin & Amanda Luz Henning Santiago, *A Guide to 50-a, the Most Contentious State Law on the Books*, CITY AND STATE N.Y. (Oct. 18, 2019), <https://www.cityandstateny.com/policy/2019/10/a-guide-to-50-a-the-most-contentious-state-law-on-the-books/177365/> (based on a recommendation by the Committee on Open Government's December 2014 Annual Report which opened with a strong call to repeal 50-a but implicitly acknowledged the political lift that presented by offering an alternative amendment that added the word "solely" as a qualifier to narrow the types of records inaccessible to records only used "to evaluate performance toward continued employment"); For the 2014 Annual Report, see Comm. on Open Gov't, *Annual Report to the Governor and State Legislature*, N.Y. DEP'T OF STATE 2-6 (Dec. 2014), <https://perma.cc/DP9U-WKPN>.

52. Coltin & Santiago, *supra* note 51 ("But advocates like Joo-Hyun Kang, director of Communities United for Police Reform, aren't convinced that the NYPD wants to see change. The city has defended the law in court, and Kang hasn't seen de Blasio or NYPD Commissioner James O'Neill make a strong lobbying push. The PBA, Kang told City & State, is 'being aided and abetted by an administration that's not interested in transparency but is trying to project an image that they are.'"); Jake Bittle, *The Law that Shields Police Records, Explained*, BROOKLYN DAILY EAGLE (Apr. 23, 2019), <https://brooklyneagle.com/articles/2019/04/23/50-a-explained/> ("The success or failure of 50-a reform may hinge on the debate between amending the statute and wiping it from the state code altogether. One bill introduced in the Senate by the Bronx's Sen. Jamaal Bailey and in the Assembly by Manhattan's Assembly member Danny O'Donnell would repeal 50-a outright. State lawmakers said last week that they had made progress toward passing the bill. Another bill, introduced by Brooklyn Sen. Kevin Parker, would narrow the 50-a exemption to cover only records relating to officer performance evaluations and promotions, while a third bill would keep the law as-is but add a provision allowing civilian review boards to seek the release of specific records."); Erin Durkin, *De Blasio Does Not Support Full Repeal of Police Secrecy Law*, POLITICO (Oct. 17, 2019, 2:01 PM), <https://www.politico.com/states/new-york/albany/story/2019/10/17/de-blasio-does-not-support-full-repeal-of-police-secrecy-law-1225652> ("The NYPD has used the law to withhold information about complaints against and disciplinary history of police officers, including Daniel Pantaleo, the officer fired for the death of Eric Garner. De Blasio and Police Commissioner James O'Neill have called for an overhaul of 50-a to allow the NYPD to release more information about disciplinary cases. But the mayor does not support the repeal legislation, a spokeswoman told POLITICO.").

have kept 50-a and its fundamental codification of officers' "right" to privacy for misconduct records intact but "allow[ed] some records to be disclosed once disciplinary proceedings have concluded" in a department's discretion, not as an obligation.⁵³ This proposed "discretionary disclosure" exception to a "privacy" exception to the public access law failed to fundamentally dislodge 50-a as a fabricated privacy protection for police and was roundly rejected by repeal advocates.⁵⁴

Reforming, but not repealing, 50-a was the official position of the mayor and the NYPD, but not everyone in City government. At a Senate Codes committee hearing in October 2019, CCRB's Chairman Fred Davie and Deputy Chief Benjamin Tucker of the NYPD were both scheduled to testify until Davie revealed he intended to support full repeal of 50-a in a tweet the weekend prior.⁵⁵ De Blasio barred officials from both NYPD and CCRB from testifying "so they wouldn't clash in public."⁵⁶ Davie presented his testimony with the NYPD one week later, clarifying that he was testifying about his "personal belief" and not the city agency he was chair of the board for.⁵⁷ In addition to Davie, other government officials' statements supporting full repeal were included as testimony during the October 2019 hearings, including the City of Kingston's mayor. He wrote,

[t]he City of Kingston has been working to improve police/community relations for well over a decade and we have taken new steps to establish and strengthen open and transparent policies and procedures. In this work, I have experienced the barriers to making information related to members of our police department available to the public.⁵⁸

In addition to the families and organizations in the CPR coalition, groups that submitted testimony in support of full repeal in October 2019 included the Reporters' Committee for Freedom of the Press, New York News Publishers Association, and good government groups like Common

53. Ashley Southall, *4 Years After Eric Garner's Death, Secrecy Law on Police Discipline Remains Unchanged*, N.Y. TIMES (June 3, 2018), <https://www.nytimes.com/2018/06/03/nyregion/police-discipline-records-garner.html>.

54. MARIA CILENTI & ELIZABETH KOCIENDA, REPORT ON LEGIS. BY THE CIVIL RIGHTS COMM.; CRIM. COURTS COMM.; COMMUNICATIONS & MEDIA LAW COMM. (note, author was one of the original drafters of this report).

55. Craig McCarthy, *CCRB Chair Publicly Voices Support for Full Repeal of NYPD Personnel Files Law*, N.Y. POST (Oct. 19, 2019, 9:45 PM), <https://nypost.com/2019/10/19/ccrb-chair-publicly-voices-support-for-full-repeal-of-nypd-personnel-files-law/>.

56. Craig McCarthy, Bernadette Hogan & Bruce Golding, *De Blasio Muzzled NYPD, CCRB from Testifying on Planned Repeal of Records Law*, N.Y. POST (Oct. 17, 2019, 9:42 PM), <https://nypost.com/2019/10/17/de-blasio-muzzled-nypd-ccrb-from-testifying-on-planned-repeal-of-records-law/>.

57. Fred Davie (@RevFredDavie), TWITTER (Oct. 19, 2019, 8:11 AM), <https://twitter.com/RevFredDavie/status/1185543980991287297>; McCarthy, *supra* note 55.

58. Steven Noble, *Letter from Steven T. Noble, Mayor of the City of Kingston, to Assem. Cahill and Sen. Amedore*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50-A 12 (2019).

Cause.⁵⁹ NYPD's testimony at that hearing continued to oppose full repeal.⁶⁰

C. *“Protest Works”: #Repeal50-a and the Protests Following George Floyd’s Murder*

Up until days before protesters’ demands fueled 50-a to rocket towards repeal, de Blasio continued to push for “reform” and not repeal of 50-a.⁶¹ He only “joined the anti-50-a bandwagon” days before lawmakers repealed it.⁶² “Protest works,” wrote Mara Gay in the *New York Times* Opinion column. Counting the number of places she saw “Repeal 50-a” written and chanted in late May, and early June: “[I]t was startling in the past week to see “Repeal 50-a” signs pop up across New York State, at the protests and elsewhere.” She recalled, “one car emblazoned with the phrase in electrical tape” and “Repeal 50-a!” posted in the upscale Cobble Hill, Brooklyn storefront of a local doctor’s office and in brownstone windows. “What changed is that people took to the streets in peaceful protest, a movement led by Black New Yorkers and others who have fought for reforms for years.”⁶³ What was clear to New Yorkers following George Floyd’s death at the hands of Derek Chauvin, whose record of twenty-two prior complaints was reported on immediately following Floyd’s death, was that if the same thing happened in New York, that history would have hidden behind 50-a.⁶⁴ A lead organizer with the advocacy group Make the Road New

59. Coltin & Santiago, *supra* note 51; Katie Townsend, *Letter from Katie Townsend to Jamaal T. Bailey*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50-A 31 (2019); Diane Kennedy, *Testimony of Diane Kennedy*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50-A 59 (2019); COMMON CAUSE/NY, *Testimony of COMMONCAUSE/NY*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50-A 76 (2019).

60. Oleg Chernyavsky, *Statement of Oleg Chernyavsky*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50 42 (2019).

61. Shant Shahrigan, *Mayor De Blasio Hops on Anti-‘50-a’ Bandwagon Following Repeal in Albany*, N.Y. DAILY NEWS (June 10, 2020, 7:16 PM), <https://www.nydailynews.com/news/politics/ny-nypd-50a-bill-de-blasio-20200610-45cfj4m6sfgzov5y5dsutkffe-story.html> (“As recently as Sunday, he called for ‘reforming’ 50-a instead of repealing it outright. And in 2017, his administration successfully blocked lawsuits demanding the release of police disciplinary records, on grounds they were protected under the 50-a law.”).

62. *Id.*

63. Mara Gay, *Good Riddance to One of America’s Strongest Police Secrecy Laws*, N.Y. TIMES (June 9, 2020), <https://www.nytimes.com/2020/06/09/opinion/repeal-50a-ny-police.html>.

64. Olivia Rubin & Luke Barr, *Amid Protests, Effort to Repeal Controversial Police Law Makes Headway*, ABC NEWS (June 5, 2020, 1:15 PM), <https://abcnews.go.com/US/amid-protests-effort-repeal-controversial-police-law-makes/story?id=71089266> (“‘[50-a] is an iron curtain in front of police that are abusive,’ said Monifa Bandeled, a spokesperson for Communities United for Police Reform (CUPR), an organization that has been working to repeal 50-a in New York for four years. She pointed out that Derek Chauvin, the police officer accused of murdering George Floyd in Minneapolis, had 17 prior complaints in his record—a critical piece of information that she said would not have been publicly available in New York.”); Paul Wolf, *Time to Repeal 50-a*, THE RIVERDALE PRESS (June 14, 2020), <https://riverdalepress.com/stories/time-to-repeal-50-a,72023> (“In Minnesota — unlike New York — police disciplinary records are accessible to the public. And through this transparency, the public was able to learn that the officer responsible for

York, Adilka Pimental, described Black and brown New Yorkers' groundswell of support for 50-a repeal coming from the knowledge that communities in New York City were also witnessing frequent police violence. Unlike the community that watched Derek Chauvin kill George Floyd, New Yorkers "[were] unable to look at patterns of officers who are continuously beating people up in the community."⁶⁵

It is not radical to expect public access to information about government misconduct in a democracy; it should "*easily yield*" to the public's right to know, and yet, looking at what it took for New Yorkers to repeal 50-a, one might actually believe it was radical.⁶⁶ Police unions, police departments, municipal lawyers, prosecutors, and courts all believed in, advocated for, and expanded secrecy for police misconduct in the four decades 50-a was law. The law did not change during that time because many elected officials feared the police unions' coffers and bullying more than the public's demand for transparency. No one thought a concept like transparency, labeled "obscure" by some, would electrify public protest.⁶⁷ What New Yorkers achieved in repealing 50-a was taking a first step towards rebalancing the power between police and communities through their own kind of collective bargaining—enduring, energetic, and democratic protest.

Mr. Floyd's death was the subject of 18 police conduct complaints."); Rebecca Brown & Cynthia Conti-Cook, *Crime Without Punishment*, 46 HUM. RTS. MAG. (Jan. 11, 2020); Jamiles Lartey & Abbie Vansickle, 'Don't Kill Me': Others Tell of Abuse by Officer Who Knelt on George Floyd, N.Y. TIMES (Feb. 2, 2021), <https://www.nytimes.com/2021/02/02/us/derek-chauvin-george-floyd-past-cases.html> (noting Chauvin had a previous 22 complaints).

65. Wykstra, *supra* note 5; Gina Bellafante, *Why Secrecy Laws Protecting Bad Officers Are Falling*, N.Y. TIMES (June 5, 2020), <https://www.nytimes.com/2020/06/05/nyregion/police-records-50a.html>; Jason Newman, *N.Y. S. Votes to Overturn 44-Year-Old Law Shielding Police Disciplinary Records*, ROLLING STONE (June 9, 2020, 4:47 PM), <https://www.rollingstone.com/politics/politics-news/new-york-senate-50-a-police-misconduct-1012357/>; Robbins, *supra* note 5; Theo Wilson, *New York's Courts Have Broken 50-a, Now the Legislature Must Immediately Repeal It*, JURIST (June 6, 2020, 8:50 PM), <https://www.jurist.org/commentary/2020/06/theo-wilson-section50a-officer-misconduct/> ("But had Mr. Floyd's murder been committed by law enforcement officers in New York State, not only would those officers' disciplinary record have been withheld, but the police department would have had legal justification to withhold other crucial details about the incident, thanks to Section 50-A of New York State's Civil Rights Law. In fact, in New York State, a police department could even legally withhold the officers' names.")

66. Allen, *supra* note 20 (emphasis added).

67. Jon Campbell & Beryl Lipton, *N.Y. 50-a repeal: Six Months Later, Police Find Ways to Shield Disciplinary Records*, DEMOCRAT & CHRON. (Dec. 22, 2020, 5:00 AM), <https://www.democratandchronicle.com/story/news/politics/albany/2020/12/22/new-york-state-50-a-repeal-six-months-later-police-shielding-public-records/3964062001/> (calling 50-a "once obscure"); Peterson DelleCave LLP, *NYPD Police Disciplinary Records Remain Confidential Due to Little Known Statute – Section 50-a N.Y. State Civil Rights Law*, PETERSON DELLECAVE LLP, <https://www.nycpolicemisconductlawyers.com/nypd-police-disciplinary-records-remain-confidential-due-to-litt.html> (last visited Sept. 14, 2021) (calling 50-a "little known").

PART II - THE INITIAL IMPACT OF 50-A'S REPEAL

In the year following 50-a's repeal, its impact, and the value of public access to police misconduct information has been undeniable.⁶⁸ And only a very limited amount of data has been made available—one very limited dataset last summer (ProPublica dataset) and the information available from CCRB and NYPD databases (official databases), plus whatever information reporters have received directly in response to their open records requests. While this does not mean that transparency has cured police violence, this section will present a proof of concept for the project of fighting for robust public access to police misconduct records. By counting the many ways different stakeholders have already used police misconduct data since its release (despite implementation failures at various departments and delays caused by unions' lawsuits), this section explores how the data has impacted conversations about police violence, police accountability, justice, and public safety.⁶⁹

The discussion of impact is organized according to the proximity of the humans most effected by the availability of the data. First, this section will discuss how families directly impacted by police violence and the communities historically oppressed by police violence have explored and used the data. Next, this section contemplates how police officers themselves have used databases to protect themselves and fight discrimination in disciplinary systems.⁷⁰ Then, this section moves into the stakeholders in the criminal legal system to understand how access to police misconduct data

68. To the contrary of some skeptics' positions. Wykstra, *supra* note 5 (“[Prof. Kate Levine] is skeptical about the degree to which public disclosure of the misconduct records will help bring accountability. ‘I have not seen any evidence that having these records be public leads to a less brutal police force,’ Levine said. While it’s possible that the public records would allow people to hold officers accountable, she says there isn’t a clear reason to think that making the records public would make much of a difference.”).

69. It is worth a deeper dive and a separate article about all the attempts at obstructing access to records, even after 50-a's repeal, i.e., charging thousands of dollars, claiming repeal only applies retroactively, claiming repeal only applies going forward, claiming the scope of disclosure is narrowly limited to substantiated records, etc., so that future legislators can make their new law clear about the expectations of transparency, codify what is not going to be an excuse, and set sanctions and scrutiny for departments that fail to comply and unnecessarily force litigation. In addition, legislators could require departments to make electronic versions of data available that are complete, uniform, and downloadable. See Craig Campbell, *N.Y. City Open Data: A Brief History*, DATA-SMART CITY SOLUTIONS (Mar. 8, 2017), <https://datasmart.ash.harvard.edu/news/article/new-york-city-open-data-a-brief-history-991> (for the history of the open data law in New York City, which has thus far not included police misconduct data beyond aggregate numbers); CITY OF N.Y. DEP'T OF INFO. TECH. AND TELECOMM., OPEN DATA POLICY AND TECHNICAL STANDARD MANUAL (2018) (how NYC sets standards for other agencies' datasets).

70. Sheryl L. Walter, Erik Gonzalez-Mul'e, Cristiano L. Guarana, Ernest H. O'Boyle Jr., Christopher M. Berry & Timothy T. Baldwin, *The Race Discipline Gap: A Cautionary Note on Archival Measures of Behavioral Misconduct*, 1 ORGANIZATIONAL BEHAV. AND HUM. DECISION PROCESSES 1–13 (2020) (finding Black officers were more likely to receive formal discipline during their tenure) (h/t Rajiv & Sukari) (contrast with Kate Levine's conclusions that the public would not be able to decipher discriminatory impact on disciplinary data).

has facilitated some prosecutors' and defense attorneys' understanding of the legitimacy of allegations an officer has accused someone of, and in some cases, also facilitated a retroactive review of an officer's history of convictions and, in other states, even a few mass exonerations.⁷¹ The next section moves to a review of the investigative journalism that has arisen from access to this data to demonstrate the depth of reporting now happening around particular types of police misconduct, certain squads, and systemic reforms focused on the ultimate power of the NYPD commissioner to issue discipline. Finally, we consider the potential contributions this data will have towards informing historical review of policing in New York and an emerging debate about the future role of policing in community safety.

A. *Impact of 50-a Repeal on People Harmed by Police and Their Families and Communities*

Secrecy from 50-a has had the additional effect of traumatizing families who lost loved ones by concealing information about the involved officers. Constance Malcolm, mother of Ramarley Graham, killed by police in 2012, described that experience as common for family members:

When [she] spoke to other relatives of victims of police violence, she learned that they, too, had been blocked from seeing officer records because of 50-A. "All the mothers and families I met afterward, they hit the same brick wall," Malcolm said. "It was the same thing over and over, the same stumbling block, this 50-A. We couldn't get information unless it was leaked."⁷²

Gwen Carr, the mother of Eric Garner, said following the repeal of 50-a, "I'm so glad for the transparency,' . . . 'I just think going forward we shouldn't have to fight and wait five years to get the disciplinary records of the police officers who recklessly kill.'"⁷³ Families may hit new brick walls, certainly, but a statutory privacy law that prioritizes police officers' reputations will not be one of them. They will not be told police privacy outweighs their right to know what contributed to their loved ones' deaths.

The communities where these incidents occur will also no longer be fearful of not knowing, for example, the names of police who shot a man in

71. Ronald Watts, *Mass Exoneration Milestone: Judge Tosses More Convictions in Chi. Cop Scandal*, NBC CHI. (Dec. 15, 2020, 7:33 PM), <https://www.nbcchicago.com/news/local/mass-exoneration-milestone-for-cook-county/2395486/>; Sophia Chang, *Brooklyn DA Seeks to Vacate 90 Convictions Based on Work of NYPD Detective Accused of Perjury*, GOTHAMIST (Apr. 7, 2021, 4:43 PM), <https://gothamist.com/news/brooklyn-da-seeks-vacate-90-convictions-based-work-nypd-detective-accused-perjury>; Chris Palmer, *Philly Man on Death Row 23 Years for Killing 4-year-old Northeast Girl is 'Likely Innocent,' DA Larry Krasner Says*, THE PHILA. INQUIRER (Mar. 3, 2020), <https://www.inquirer.com/news/walter-ogrod-death-row-larry-krasner-philadelphia-dal-likely-innocent-exoneration-20200303.html>.

72. Robbins, *supra* note 5.

73. Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold is Finally Released*, CNN (June 23, 2020, 11:01 PM), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html>.

broad daylight and how the department responded (or failed to respond).⁷⁴ In the few months that the NYPD and CCRB's databases have been live, it is hard to know exactly how many people in the city and around the world have accessed the data or what they have used it for. Maybe they got pulled over and suspected being racially profiled. Maybe they want to know who they are assigned to work with that night. Maybe they witnessed or experienced brutality and are trying to figure out what remedies they want to seek on behalf of themselves and their community. We do know that people are accessing this data, for whatever reason. As of April 29, 2021, a little more than a month after it went live on March 4, CCRB reports that there have been 86,878 page visits and 141,698 views of its database.⁷⁵ Their Freedom of Information Law (FOIL) requests since June 2020 have also steadily increased.⁷⁶ In addition to accessing the databases to do quick name searches, the public is also engaged in working with the data and building tools to understand it.

An inspired software engineer⁷⁷ released a searchable database in August 2020 using the data obtained from the CCRB by ProPublica.⁷⁸ Unlike the CCRB or NYPD databases, this website presents a visualization of the complaints mapped onto New York City for a small universe of complaints, as specified on the website: "ProPublica obtained these records from the Civilian Complaint Review Board (CCRB). It's important to note that this data only includes closed cases of officers that are still on the force, and had at least one substantiated allegation against them." Nonetheless, it is a model for the potential that this data holds.

Other community-based groups are also curating and presenting this data. CopWatch.Media "is a community-based project that publishes articles and videos about law enforcement's effects on hyper-policed Black, Latinx and non-white communities. [It also] will host a database that catalogues police and police misconduct."⁷⁹ Brooklyn-based organization El Grito, with help from Witness, also compiled Officer Profiles to address repeated aggressions by specific officers in their neighborhood of Sunset Park. "In the absence of a comprehensive database about NYPD police mis-

74. Nayaba Arinde, *Saheed Vassell Shooting: Name Killer Cops*, N.Y. AMSTERDAM NEWS (Apr. 19, 2018, 12:00 AM), <http://amsterdamnews.com/news/2018/apr/19/saheed-vassell-shoot-ing-cops/>.

75. James D. Walsh, *The City Just Released a Massive NYPD-Misconduct Database*, INTELLIGENCER (Mar. 4, 2021), <https://nymag.com/intelligencer/2021/03/the-city-just-published-a-massive-nypd-misconduct-database.html>.

76. Email response on file with the author. A user can visit the page once but view it multiple times. If someone navigates to the page, leaves it, then comes back, that is one visit and two views.

77. SUNNY NG, <https://sunny.ng/> (last visited Oct. 2, 2021).

78. Sunny Ng, *Visualizing the ProPublica NYPD Files*, MEDIUM (Aug. 11, 2020), https://medium.com/@_blablablah/visualizing-the-propublica-nypd-files-41c0ccc8a156. The database is available at Sunny Ng, NYPD COMPLAINTS, <https://www.nypdcomplaints.com/>.

79. COPWATCH.MEDIA, <https://copwatch.media/about/> (last visited Oct. 2, 2021).

conduct, this project explores how civic video and open-source data can corroborate incidents of abuse and develop narratives that go beyond a single video.”⁸⁰ El Grito notes that their Officer Profiles have “played an important role in investigations, media reports and getting wrongful charges dropped for some victims.”⁸¹

In addition to a blossoming of community-led databases, organizations that work on police reform have been able to analyze the data to substantiate advocacy campaigns previously driven by anecdotes and aggregate data. Policy advocacy organization Girls for Gender Equity (GGE), for example, using the first round of data released by the CCRB last summer, issued a report called *Overlooked in Plain Sight: Documenting Police Violence Against Girls of Color*.⁸² Again, their analysis was based on the limited ProPublica dataset confined to “closed cases of every active-duty NYPD police officer who has at least one substantiated misconduct allegation against them,” but they nevertheless found “1,083 cases where the complainant was a girl or young woman aged 24 and under, spanning from 1999 to 2019.”⁸³ GGE used the data “to shift the public consciousness around the everyday violence of policing, particularly framing policing as a kind of concentrated gender-based violence.”⁸⁴ They highlighted serious disparities across race and age, analyzed the complaints based on type of misconduct, and were able to target at least one incident which, if treated more seriously initially, may have prevented harm to another woman.

In one substantiated case of a 14-year-old Black girl in Canarsie reporting offensive language by gender, the outcome for the 42-year-old officer, who at that time had thirteen years on the job, was “formalized training.” The incident also included a complaint of physical force that was closed as unsubstantiated. One year after the case was closed, the officer was named in the Daily News following his own arrest for assaulting a woman identified as his girlfriend.⁸⁵ *Overlooked in Plain Sight* is a stellar demonstration of an organization using police misconduct data to support what its members have been telling the public for years.

B. Impact of 50-a Repeal on Police Officers

Contrary to public perception, police have also used independent misconduct databases to access data about their peers, armed with guns and badges, with whom they work closely but do not always know well. Exper-

80. *Recording Abuses: Officer Profiles*, EL GRITO, <https://elgrito.witness.org/officer-profiles/> (last visited Oct. 2, 2021).

81. *Id.*

82. GIRLS FOR GENDER EQUITY, *OVERLOOKED IN PLAIN SIGHT: DOCUMENTING POLICE VIOLENCE AGAINST GIRLS OF COLOR 1* (July 2020), https://www.ggenyc.org/wp-content/uploads/2020/07/Overlooked-in-Plain-Sight_A-GGE-Report.pdf.

83. *Id.*

84. *Id.*

85. *Id.* at 2.

encing police violence can also traumatize some police officers, although in significantly different ways.⁸⁶

An anonymous officer, “Officer A. Cab,” blogged about their experiences of misconduct as a police officer, generally without any discipline or repercussions, ranging from brutality to lying to abuse of authority.⁸⁷ This officer described writing up fellow officers as a rookie until “the academy staff read my complaints to [my fellow officers] out loud and outed me to them and never punished them, causing me to get harassed for the rest of my academy class. That’s how I learned that even police leadership hates rats.”⁸⁸ Police officers are often aware that their departments have intentionally ignored reports of violence, crime, and corruption by the officers they may be partnering with on any given shift. Access to disciplinary information also gives officers insight into decisions that impact them.

Likewise, many officers do not trust the internal disciplinary system not to repeat the same patterns of discrimination as the criminal legal system. Research based on the data obtained in Chicago found racial discrimination against Black officers in the police disciplinary system, demonstrating its value not just for protecting the rights and safety of members of the public, but for substantiating experiences of injustice police officers experience too.⁸⁹

C. *Impact of 50-a Repeal on Actors in the Legal System*

Police are not the only unlikely actors to benefit from access to police misconduct data; prosecutors have also been able to investigate the credibility of the officers from the moment they walk a person accused of a crime into court, exonerate people whose accusers were later found to commit perjury, and verify the accuracy of officers’ claims of having clean records in job applications to new departments.⁹⁰ The repeal of 50-a was cited as

86. TERNARIAN A. WARREN, THE EFFECTS OF FREQUENT EXPOSURE TO VIOLENCE AND TRAUMA ON POLICE OFFICERS 102 (Walden Univ. 2015).

87. Officer A. Cab, *Confessions of a Former Bastard Cop*, MEDIUM (June 6, 2020), <https://medium.com/@OfcrACab/confessions-of-a-former-bastard-cop-bb14d17bc759>.

88. *Id.*

89. Walter, Gonzalez-Mul’e, Guarana, O’Boyle Jr., Berry & Baldwin, *supra* note 70 (finding Black officers were more likely to receive formal discipline during their tenure) (h/t Rajiv and Sukari). *Contra* Wykstra, *supra* note 5 (Kate Levine concluding that the public would not be able to decipher discriminatory impact on disciplinary data).

90. Peter Crowley, *Cop Charged With False Info on Job Application; 50-A Repeal Let DA Get Disciplinary Records*, OBSERVER-DISPATCH (Nov. 20, 2020, 8:52 AM), <https://www.uticaod.com/story/news/2020/11/20/cop-charged-false-info-job-application-50-repeal-let-da-get-disciplinary-records/6353969002/> (“The alleged deception might never have been found if the state Legislature had not repealed a section of civil law known as 50-a, which shielded police officers’ personnel records from public view”); *see also* Peter Crowley, *SL Cop Charged With False Job Application: 50-a Repeal Let DA Get Disciplinary Records From Massena*, ADIRONDACK DAILY ENTER. (Nov. 20, 2020), <https://www.adirondackdailyenterprise.com/news/local-news/2020/11/sl-cop-charged-with-false-job-application/>. While it is not clearly reported on, these reports imply that the significance of this officer’s misconduct being unearthed is not for the

the reason one upstate New York prosecutor was able to discover an officer's prior history of misconduct at another police department that he failed to report in his job application at his current department and end his petition for a potentially violent canine unit.⁹¹ Prior to 50-a's repeal, New York City prosecutors lamented their reliance on the NYPD to access misconduct records and openly demanded more streamlined access.⁹² In an open letter to the NYPD in 2018, Cy Vance's office explained that the misconduct information was needed "to make early assessments of witness credibility, explore weaknesses in a potential case and exonerate individuals who may have been mistakenly accused."⁹³ Now prosecutors do not have any justification to not access information about police misconduct and build reviews of officer credibility into their early case assessments or to initiate mass exonerations of people when pervasive police misconduct may have contributed to their wrongful convictions.⁹⁴ In addition, New York City prosecutors have, in response to open records requests by *Gothamist*/WNYC reporter George Joseph, disclosed additional police misconduct that their offices have documented during the course of criminal case investigations.⁹⁵ These disclosures, while certainly not volunteered by prosecutors, open opportunities for deeper engagement about fairness, justice, public safety, and policing between the people and the district attorneys.⁹⁶

Public defenders and criminal defense attorneys in general will be able to more effectively protect their clients from the brutality of imprisonment and other carceral punishments. Defenders will be able to better develop

sake of his veracity alone but because the consequence of not investigating his past may have allowed him to persuade his current police department to let him build a canine unit with a dog that had previously harmed someone at a prior department.

91. Crowley, *Cop Charged With False Info on Job Application*, *supra* note 90; Crowley, *SL Cop Charged With False Job Application*, *supra* note 90.

92. James C. McKinley Jr., *Manhattan District Attorney Demands Access to Police Records*, N.Y. TIMES (July 8, 2018), <https://www.nytimes.com/2018/07/08/nyregion/manhattan-district-attorney-police-records.html> ("Not only has Mr. Vance asked the New York Police Department to give his office electronic access to officers' disciplinary records, but he has also demanded a searchable database of investigative reports for Manhattan crimes, including detectives' memos on evidence and statements by witnesses and victims.")

93. *Id.* (quoting Mike Hayes & Kendall Taggart, *The District Attorney Says The NYPD Isn't Telling Prosecutors Which Cops Have A History Of Lying*, BUZZFEED NEWS (June 2, 2018), <https://www.buzzfeednews.com/article/mikehayes/nypd-cops-lying-discipline-district-attorneys-prosecutors#.wszRzyGnq>).

94. See Kristine Phillips, *Police Misconduct, Such as Falsifying Evidence, is a Leading Cause of Wrongful Convictions, Study Finds*, USA TODAY (Sept. 15, 2020) <https://www.usatoday.com/story/news/politics/2020/09/15/police-misconduct-among-leading-causes-false-convictions/5795715002/>.

95. George Joseph & Sydney Pereira, *Staten Island DA Releases Thousands of Records Documenting NYPD Misconduct and Dishonesty*, GOTHAMIST (Aug. 24, 2020, 6:36 PM), <https://gothamist.com/news/staten-island-da-releases-thousands-records-documenting-nypd-misconduct-and-dishonesty>.

96. See MEASURES FOR JUSTICE, <https://measuresforjustice.org/> (last visited Oct. 2, 2021) (seeking to use data to facilitate conversations about policing and public safety between members of the public and their local District Attorneys).

their investigation, counsel clients, and prepare for trial.⁹⁷ They will not be subject to prosecutors gatekeeping information about impeachment evidence⁹⁸ and can build their own databases of misconduct information that include both publicly reported misconduct (news articles, criminal court decisions, federal lawsuits, notices of claim, etc.) and government misconduct records (from NYPD and oversight agencies).⁹⁹ The National Association of Criminal Defense Lawyers started the Full Disclosure Project, led by Julie Ciccolini, the creator and technical lead of The Legal Aid Society of New York City's Cop Accountability Project database for defenders, to help defenders do exactly that.¹⁰⁰ Defenders will also be able to help push prosecutors and courts for mass exonerations in cases where officers were found to have perjured themselves,¹⁰¹ as well as use this data to develop factual support for courts employing the exclusionary rule as a remedy for suppression.¹⁰² Civil rights lawyers and impact litigation organizations will also rely on this data to factually develop allegations of municipal liability that, for example, the departments' disciplinary system caused a recurring pattern of constitutional violations by failing to discipline officers for chokeholds.¹⁰³

D. *Impact of 50-a Repeal on the Media*

Access to police misconduct data over the past year has deepened the investigative journalism and reporting into police misconduct, policing, police accountability, and public safety since the repeal of 50-a. Weeks after the repeal of 50-a, the *New York Times* reported on a NYPD officer, David Afanador, who was the first officer to be criminally accused of using a chokehold under new city and state laws.¹⁰⁴ For the first time since 50-a's repeal, the article included not only data about the officer's history of misconduct and the outcomes of prior complaints (including a prior

97. Cynthia H. Conti-Cook, *Defending the Public Police Accountability in the Courtroom*, 46 SETON HALL L. REV. 1063, 1085 (2016); see also Beryl Lipton, *The Repeal of New York's 50-a Could be a Boon to Defense Attorneys*, MUCKROCK (Dec. 15, 2020), <https://www.muckrock.com/news/archives/2020/dec/15/50-a-repeal-a-boon-to-defense-attorneys/>.

98. Jonathan Abel, *Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 STAN. L. REV. 743, 743 (2015).

99. Alice Speri, *Open Data Projects Are Fueling the Fight Against Police Misconduct*, THE INTERCEPT (Oct. 25, 2016, 7:31 AM), <https://theintercept.com/2016/10/25/open-data-projects-are-fueling-the-fight-against-police-misconduct/>.

100. *The Full Disclosure Project*, NAT'L ASS'N OF CRIM. DEF. LAW., <https://www.nacdl.org/Landing/FullDisclosureProject> (last visited Oct. 2, 2021).

101. Phillips, *supra* note 94.

102. Andrew Guthrie Ferguson, *The Exclusionary Rule in the Age of Blue Data*, 72 VAND. L. REV. 561, 576–80 (2019).

103. Complaint at ¶ 31, *Medina v. City of N.Y.*, 19 Civ. 9412 (2019).

104. Ashley Southall, *N.Y.P.D. Officer Charged with Using Illegal Chokehold*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/nyregion/nypd-officer-chokeholdarrest.html> (first article putting officer's current misconduct in context with other internal records following 50-a repeal).

chokehold), it also included data about the outcomes and penalties of similar cases.¹⁰⁵ Imagine a story about an officer's arrest for a use of force not having the context of either the officer's history or the department's track record of discipline for chokeholds. The story would perhaps only be about whether it happened or not, possibly an interview with a witness or a lawyer or the PBA, or nothing would be published at all. The inclusion of the prior misconduct information makes the story about something more than "a bad apple" or a rogue officer; it asks a much deeper question about whether the NYPD's failures contributed to causing harm, rather than a rogue officer. It asks whether there will be accountability beyond that officer's criminal charges for the department's multiple failures that contributed to the harm caused by an officer.

It is worth digging a little deeper into just how institutionally responsible the NYPD is for officers' continued uses of chokeholds to underscore the relevance of Afanador's history of misconduct information—particularly the prior chokehold complaint.¹⁰⁶ The NYPD has historically failed to discipline officers for chokeholds specifically. In a lawsuit the Legal Aid Society filed against the NYPD, NYPD Detective Fabio Nunez, and several others in 2019, allegations included a claim that the NYPD was responsible for Nunez's use of a chokehold because he had previously used one without disciplinary consequence, as had Afanador and many other officers, despite a Patrol Guide rule from 1985 that prohibited it.¹⁰⁷ The lawsuit documented the many ways that the department's failure to discipline sent officers like Afanador and Nunez the message that there would not be consequences for using it. Pointing to a CCRB report, "A Mutated Rule: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City," the lawsuit could even allege that the NYPD knew the role their disciplinary system played in their failure to enforce the Patrol Guide's prohibition on chokeholds in 2014 and failed to take remedial action then, despite all the rhetoric about learning from Eric Garner's tragic chokehold death that same year.

The problem the CCRB identified with chokeholds is worth explaining because it also implicates 50-a's harm on the public's ability to hold the government accountable: the 2014 report identified a series of decisions by NYPD administrative trial judges—unavailable under 50-a and not discussed in detail by the CCRB in its report for that reason—that were interpreting the prohibition on chokeholds not as a blanket prohibition but as a

105. *Id.*

106. To the author's knowledge, the NYPD has not made any changes that would impact how this definition of chokehold is interpreted. See Topher Sanders & Yoav Gonen, *Still Can't Breathe*, PROPUBLICA (Jan. 21, 2021, 5:00 AM), <https://www.propublica.org/article/chokeholds-nypd-videos> (providing the latest in-depth coverage of how chokeholds are punished by the NYPD).

107. Complaint, *supra* note 103, at 7–11 (settling in 2021 for money and Nunez resigning) (author was lead counsel on the drafting of the complaint).

narrower regulation that only prohibited “actual and sustained interference with breathing.”¹⁰⁸ These decisions effectively acted like common law for the NYPD’s trial department, meaning that judges used them to interpret Patrol Guide rules and prosecutors would decline to bring charges if the restriction to breathing was not “actual” or “sustained” interference. Even NYPD Internal Affairs may have followed this narrower rule set by administrative judges when exonerating officers accused of using chokeholds.¹⁰⁹ Meaning that over the decades that chokeholds were prohibited, officers were using them against New Yorkers if no one could prove that they caused “actual and sustained interference with breathing,” and complaints about them were not substantiated.

As a result of decades of NYPD administrative trial judges, administrators, and City investigators eroding the prohibition on chokeholds, “NYPD officers, across all five boroughs and from a range of ranks and commands, have been accused of using chokeholds in at least forty federal civil rights lawsuits filed between January 2015 and June 2018. The City settled at least thirty of these lawsuits involving the use of chokeholds by NYPD officers for at least \$1,236,502.”¹¹⁰ Citing the CCRB’s Data Transparency Initiative, the lawsuit alleged that “the agency received 1,811 chokehold allegations from January 2009 to December 2018. From these public reports, the NYPD is on notice that an average of 181 chokeholds have been reported per year—an average of 15 chokehold allegations per month, or one chokehold allegation every two days—over the past ten years.” Much more so than any individual officer, Mayor de Blasio, NYPD leadership, risk management, legal, policy, and supervisory staff are all guilty of every chokehold an officer has used since 2014.

So when the *New York Times* includes past information that contextualizes a specific officer’s current allegation of a chokehold with data from a prior allegation for a chokehold, the value of that data is not just for its “propensity” evidence—that if he did it before, he would do it again.¹¹¹ It is valuable because it reveals how the city department’s failure to hold officers accountable for misconduct encourages future misconduct by those officers and those surrounding them.¹¹² An in-depth review of Chauvin’s prior misconduct also revealed multiple chokeholds and the Minneapolis

108. NYC CIVILIAN COMPLAINT REVIEW BOARD, A MUTATED RULE: LACK OF ENFORCEMENT IN THE FACE OF PERSISTENT CHOKEHOLD COMPLAINTS IN NEW YORK CITY viii (2014).

109. *See id.*

110. Complaint, *supra* note 103, at ¶ 31.

111. FED. R. EVID. 404(a).

112. *See* KYLE ROZEMA & MAX SCHANZENBACH, DOES DISCIPLINE DECREASE POLICE MISCONDUCT? EVIDENCE FROM CHICAGO CIVILIAN ALLEGATIONS (2021) (“We assess police officer response to administrative determinations of misconduct. Using Chicago data, we find strong evidence that a sustained allegation reduces that officer’s future misconduct. We find no evidence that this effect is driven by incapacitation, such as assignment to desk duty, or by officer disengagement [with policing]. We conclude that our findings are . . . consistent with improved officer conduct, in part [due to] . . . officer concerns over promotion, salary, and desirable assignments”).

Police Department's failure to hold him accountable.¹¹³ It justifies serious scrutiny into whether the NYPD is capable of policing itself and protecting New Yorkers from violence at the hands of its own members, let alone other people. It also begs the question to what extent police contribute to New Yorkers' feeling unsafe in the presence of police rather than protected. It facilitates a framing of the problem at hand to be not one of a single individual's brutality about which we can collectively do nothing but punish that person, as opposed to a common problem that might have a solution if we contribute our perspectives and experiences to collectively inform it through a public education, debate, and voting. To quote the visionary Ida B. Wells again, "[i]n a multitude of counsel there is wisdom."¹¹⁴

The NYPD therefore played a significant role in causing Afanador and Nunez, and probably many other officers, to believe that using this type of force would not be punished. Their prior experience going through the disciplinary system unscathed confirmed this. The message to police was that if you used a chokehold, there might be an investigation, but it would not be substantiated and therefore would not be on your record. And as long as 50-a was the law, no one, including the defense counsel of people you accuse of crimes in the future, would ever know. Your future supervisors, employers, and partners would all never know—not to mention the people in officers' private lives that hold them accountable to morals and values more demanding than their police peers or even the law.¹¹⁵

The message was that the officer would not be held accountable, and neither would the NYPD for failing to hold the officer accountable. Without misconduct data to identify patterns with, the message from the NYPD to officers like Afanador and Nunez could be that high profile incidents happen, but they would be aggressively defended with a weaponized counter narrative of law and order, an attack on the reputation of the person they harmed, and a burial of similar past misconduct with 50-a to mollify any calls for reform.¹¹⁶ Transparency is the shovel we dig this information up with to reveal the potential for official—not just individual—accountability.¹¹⁷

113. Jamiles Lartey & Abbie VanSickle, 'Don't Kill Me': Others Tell of Abuse by Officer Who Knelt on George Floyd, N.Y. TIMES (Apr. 22, 2021), <https://www.nytimes.com/2021/02/02/us/derek-chauvin-george-floyd-past-cases.html>.

114. Wells, *supra* note 34.

115. Allen, *supra* note 30.

116. Joe Borelli, Chaim Deutsch & Paul Vallone, 'Right to Know' Will Handcuff Our Cops, N. Y. DAILY NEWS (Dec. 17, 2017), <https://www.nydailynews.com/opinion/handcuff-cops-article-1.3702077>.

117. Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 WASH. L. REV. 997, 1056–1057 (2021). See Conclusion, *infra* for how this common problem-solving system should be adopted to a public safety system generally to reduce the reliance and over expenditure of public funding on police as the only publicly funded solution to crime and the conditions that cause it.

Another significant example of how local reporting on police improved as a result of 50-a's repeal was the reporting about a warrant squad filmed grabbing a protester during the summer of 2020.¹¹⁸ The squad's prior misconduct available at that time—the same limited dataset ProPublica published from the CCRB in the summer of 2020—showed that its misconduct history was second only to the largest precinct in Brooklyn in the number of allegations investigated against them in the last five years.¹¹⁹ Again, the reporting did not dwell in the culpability of any individual officer in the warrant squad but grew into the question of whether the legal tactics afforded the warrant squad and police to surveil, use violence against, and detain people should be limited—whether there was a common problem for the public to collectively solve.¹²⁰ The reporter, George Joseph, contextualized an incident that observers likened to a violent kidnapping and by analyzing the exoneration rates for similar past complaints, surfaced the seed that caused the misconduct. It was not uniquely violent officers, but an unrestrained power to use whatever tactics the squad felt were needed—a thing we can collectively do something about, at least in theory. In this way, having access to exonerated misconduct data—considered a controversial aspect of repeal for some—was even more informative; and an opportunity would have been missed had it been carved out of 50-a's repeal, because the real culprit is not just a person but a law.¹²¹ Research has already demonstrated that police violence—like gun violence—spreads like contagion.¹²² The availability of this data following 50-a's repeal creates the possibility for the public to surgically track misconduct across groupings of officers in order to identify disproportionately harmful tactics,

118. George Joseph, *Warrant Squad in Protest Video Has History of Aggressive Tactics, Previously Secret Data Shows*, GOTHAMIST (Aug. 1, 2020, 12:00 PM), <https://gothamist.com/news/warrant-squad-protest-video-has-history-aggressive-tactics-previously-secret-data-shows>.

119. *Id.* (“The ProPublica data does not include all civilian complaints. But it does include every complaint filed against an active duty police officer with at least one substantiated complaint. That’s 12,000 complaints against 4,000 officers. And those records show that in the last five years, the CCRB investigated more misconduct allegations against members of the Warrant Section than any other unit except for Brooklyn’s 75th Precinct in East New York. There were 263 allegations against the Warrant Section during that period, ranging from whipping guns out on the street to property damage to using foul language.”).

120. *Id.* (“Giacolone, the former detective sergeant, said the public does not understand that many of these aggressive tactics are legal, and are carried out to apprehend suspects wherever they happen to be. But Wong, the Legal Aid lawyer, says the high number of complaints shows that the NYPD needs to change its tactics.”).

121. Oleg Chernyavsky, *Statement of Oleg Chernyavsky*, in N.Y.S. STANDING COMM. ON CODES HEARING ON CRL §50-A 44 (2019); see also Kate Levine, *Discipline and Policing*, 68 Duke L. Rev. 839 (2019).

122. Katherine J. Wu, *Study Finds Misconduct Spreads Among Police Officers Like Contagion*, PBS (May 27, 2019), <https://www.pbs.org/wgbh/nova/article/police-misconduct-peer-effects/>.

uses of violence, and other abuses of discretion and target campaigns to end that recurring harm.¹²³

The availability of misconduct data also created the potential for ProPublica to review systemic accountability issues caused by the police commissioner's absolute authority over police disciplinary decisions and to criticize the competency of the police commissioner to equitably and fairly punish his own members.¹²⁴ This reporting included two stories about officers pleading guilty to serious misconduct but having their pleas vacated by the commissioner, supported by data from similar cases: “[b]etween 2014 and 2018, just over 60 of the most serious cases brought by the CCRB ended up [like those examples].”¹²⁵ The investigative report does not challenge the morality of any individual officer but rather the absolute discretion of the police commissioner to reject holding officers accountable based on vague reasons like punishment being “detrimental” to the department.¹²⁶ In what other context do judges decide not to convict and sentence someone for a crime they have committed, absent jury nullification, because it would be “detrimental” to society? Again, this reporting identifies something that we can do something about and identifies a tension, namely between what the police commissioner believes to be justice versus how the public defines justice. It invites a discussion about how to better align those current extremely discordant definitions of justice and safety in a way that protects everyone.

Each of these examples is meant to demonstrate this data's potential impact on the public conversation.¹²⁷ There are many more examples as news outlets dedicate entire sections of their websites to NYPD misconduct reporting, delve into the data and focus on patterns of misconduct, follow groupings of officers like the warrant squad, and identify problems with the accountability system, all newly possible through the information we have barely scratched the surface of.¹²⁸

123. Jeffrey A. Butts, Caterina Gouvis Roman, Lindsay Bostwick & Jeremy R. Porte, *Cure Violence: A Public Health Model to Reduce Gun Violence*, ANNU. REV. PUBLIC HEALTH 39 (2015).

124. Mollie Simon, Lena V. Groeger, Eric Umansky & Adriana Gallardo, *What It Looks Like When the New York City Police Commissioner Has “Unchecked Power”*, PROPUBLICA (Dec. 11, 2020), <https://projects.propublica.org/nypd-unchecked-power/>.

125. *Id.*

126. *Id.*

127. *See generally*, INVISIBLE INST., <https://invisible.institute/jamie-kalven> (Jamie Kalven, investigative reporter and founder of the invisible institute, has written a series of articles based on this data, in addition to many more articles by other journalists); *Investigations*, Invisible Inst., (Repeal of 50-a also improved reporting on violence in jails in New York); Jan Ransom, *In N.Y.C. Jail System, Guards Often Lie About Excessive Force*, N.Y. TIMES (Apr. 24, 2021), <https://www.nytimes.com/2021/04/24/nyregion/rikers-guards-lie-nyc-jails.html>.

128. *The NYPD Files: Investigating America's Largest Police Force*, PROPUBLICA (2021), <https://www.propublica.org/series/the-nypd-files>; *see also* articles by George Joseph, investigations reporter for Gothamist, *George Joseph*, MUCK RACK (last visited Oct. 28, 2021), <https://muckrack.com/george-joseph/articles>.

Access to data and its impact on what information is made available, whether through the courts or media, does not automatically translate into effective policy reforms. Without support for community organizers to be involved in and build on these efforts to push for policy change, it may do nothing beyond document a problem for posterity.

E. The Impact of 50-a's Repeal on Posterity

Our ability to tell the stories of our lives beyond our graves and share past experiences, mistakes, and unintended consequences with future generations gives us the responsibility to tell them truthfully. Our responsibility to document the lived experience of communities subjected to violent militarized police security forces is not just for the sake of telling the stories, but to document an accurate narrative of the significant public health threat that policing presents to an unignorable number of people in America, especially Black people.¹²⁹ People and communities can tell their own stories and find data to support or mollify questions about the commonness of a problem. Academic researchers and historians will also document how policing, as a strategy of addressing public safety, was experienced by people subjected to it. It is still early to survey academic research and historical reviews of the decades of data previously shrouded by 50-a in New York State, but academic researchers have used similar misconduct information from Chicago to study racial disparities in police-civilian interactions,¹³⁰ the spread of misconduct amongst groupings of officers,¹³¹ patterns of violent incidents between police and people with disabilities,¹³² and racial dis-

129. Len Strazewski, *Why Police Brutality is a Matter of Public Health*, AM. MED. ASS'N (June 8, 2020), <https://www.ama-assn.org/delivering-care/health-equity/why-police-brutality-matter-public-health>.

130. The following articles were based, at least partially, on data obtained and organized by the Citizens Police Data Project in Chicago, IL and this list contains selections from articles compiled by Public Data Works researchers Rajiv Sinclair and Sukari Stone. Bocar A. Ba, Dean Knox, Jonathan Mummolo, & Roman Rivera, *The Role of Officer Race and Gender in Police-Civilian Interactions in Chicago*, 371 *Sci.*, 696, 696–702 (Feb. 12, 2021) (“Diversification is a widely proposed policing reform, but its impact is difficult to assess. We used records of millions of daily patrol assignments, determined through fixed rules and preassigned rotations that mitigate self-selection, to compare the average behavior of officers of different demographic profiles working in comparable conditions.”); Andrea Marie Headley, Stewart J. D’Alessio, & Lisa Stolzenberg, *The Effect of a Complainant’s Race and Ethnicity on Dispositional Outcome in Police Misconduct Cases in Chicago*, 10 *RACE AND JUS.*, 43–61 (Jan. 1, 2020).

131. George Wood, Daria Roithmayr, & Andrew V. Papachristos, *The Network Structure of Police Misconduct*, 5 *SOCIUS* 1, 2 (2019) (“Conventional explanations of police misconduct generally adopt a micro-level focus on deviant officers or a macro-level focus on the top-down organization of police departments. Between these levels are social networks of misconduct. This study recreates these networks using data on 16,503 complaints and 15,811 police officers over a six-year period in Chicago.”).

132. Harold A. Pollack & Keith Humphreys, *Reducing Violent Incidents between Police Officers and People with Psychiatric or Substance use Disorders*, *THE ANNALS AM. ACAD. POL. AND SOC. SCI.* 166 (2020) (“This article describes evidence-based strategies designed to reduce the

parities across complainants in the investigative outcomes.¹³³ Misconduct data is vital to archive and preserve for future generations to learn from. The data can be used, for example, as evidence of harm caused by the role of policing in public safety.¹³⁴

The above benefits of access to police misconduct information to the public barely scratches the surface of what is possible with this data, given the multiple implementation failures and delays presented by police, police unions' lawsuits, and city attorneys. It has not been a year since both the CCRB and the NYPD, withholding their databases while police union's petitions for injunctions were rejected on appeal, released public databases of various degrees of information.¹³⁵ "The CCRB's database includes information on 34,811 active NYPD officers and 48,218 inactive officers, with complaints dating back to 2000. Details about each complaint are limited to the incident date, the type of complaint (force, abuse of authority, discourtesy, or offensive language), a one-or-two-word description of the allegation, and whether the complaint was substantiated."¹³⁶ The NYCLU released a database on May 3, 2021, that

prevalence of police encounters with people in behavioral crisis (PBCs) and to make such encounters less dangerous for all parties when they do occur.").

133. Sheryl Walter, Erik Gonzalez-Mulé, Cristiano L Guarana & Ernest O'Boyle, *The Race Discipline Gap: A Cautionary Tale on Archival Measures of Behavioral Misconduct*, ELSEVIER: ORGANIZATIONAL BEHAV. AND HUM. DECISION PROCESSES (2020), <https://doi.org/10.1016/j.obhdp.2020.03.010> ("Drawing from social psychological theories of social identity and aversive racism, we examined the extent to which Black employees (in contrast to White employees) are more likely to have formal incidences of misconduct documented in their employment records, even when there are no racial differences in the number of allegations of misconduct.").

134. Connor Perrett, *The National Archives Can't Allow ICE to Destroy Records About Sexual Assault and Detainee Deaths, a Federal Judge Ruled*, INSIDER (Mar. 13, 2021, 2:00 PM), <https://www.businessinsider.com/ice-nara-cant-destroy-sexual-assault-death-records-2021-3> ("A federal judge . . . ruled that Immigration and Customs Enforcement (ICE) and the National Archives and Records Administration must preserve records relating to sexual assault, abuse, and detainee deaths because of their 'research' value.").

135. Caitlyn Jordan, *After Section 50-a Repeal, New York Police Unions are Fighting in Court to Keep Misconduct Records Secret. So Far, They're Losing.*, REPS. COMM. FOR FREEDOM PRESS (Nov. 5, 2020), <https://www.rcfp.org/50-a-repeal-police-misconduct/>; Benjamin Weiser, *Police Unions Lose Bid to Keep Disciplinary Records a Secret*, N.Y. TIMES (Jul. 28, 2021), <https://www.nytimes.com/2021/02/16/nyregion/nypd-discipline-records-ruling.html>; Beryl Lipton, *Buffalo Judge Denies Police Union Attempt to Block Police Disciplinary Records*, MUCKROCK (Oct. 8, 2020), <https://www.muckrock.com/news/archives/2020/oct/08/buffalo-judges-denies-police-union-attempt-to-block/>; Jon Campbell & Beryl Lipton, *New York 50-a Repeal: Six Months Later, Police Find Ways to Shield Disciplinary Records*, DEMOCRAT & CHRON. (Dec. 22, 2020, 10:19 AM), <https://www.democratandchronicle.com/story/news/politics/albany/2020/12/22/new-york-state-50-a-repeal-six-months-later-police-shielding-public-records/3964062001/>; Will Cleveland & Sean Lahman, *NYCLU Seeks to Intervene in Locust Club Suit Over Release of Disciplinary Records*, DEMOCRAT & CHRON. (Dec. 16, 2020, 5:01 AM), <https://www.democratandchronicle.com/story/news/2020/12/16/nyclu-files-suit-against-rochester-ny-police-department-over-records/3904340001/>.

136. James D. Walsh, *The City Just Released a Massive NYPD-Misconduct Database*, INTELLIGENCER (Mar. 4, 2021), <https://nymag.com/intelligencer/2021/03/the-city-just-published-a-massive-nypd-misconduct-database.html>.

is a repository of complaints made by the public on record at the CCRB. These complaints span two distinct periods: the time since the CCRB started operating as an independent city agency outside the NYPD in 1994 and the prior period when the CCRB operated within the NYPD. The database includes 279,644 unique complaint records involving 102,121 incidents and 48,757 active or former NYPD officers. The database does not include pending complaints for which the CCRB has not completed an investigation as of April 2021.¹³⁷

NYCLU's database also adds a layer of filtering to its search queries for more nuanced searches. The NYPD's database, in contrast, is only searchable and viewable by officer name and contains only "partial disciplinary records dating back to 2014 in an online dashboard containing profiles of all 35,000 active police officers. Separately, officials posted redacted copies of more than 200 decisions by judges in administrative trials, going back to 2017."¹³⁸

Reporters across the state are struggling to get responsive data for smaller cities and towns upstate. In-depth investigative reports and academic research about the NYPD that relies on their responding with data requested post-repeal may still be in the works. New York City lawyers are still trying to make civil rights attorneys agree to protective order stipulations for police misconduct information.¹³⁹ Smaller police departments are taking even more defiant positions regarding releasing records. In response to an open records request from *MuckRock* for "allegations of misconduct against current or former officers and any discipline the department imposed," Manlius Police Department replied with a bill for \$47,504.¹⁴⁰ Other departments are claiming that repeal of 50-a only impacts records created following repeal and not to past records.¹⁴¹ In other words, we know that we still do not have all the information available to hold police accountable, but what we have has already proven powerful.

137. *NYPD Misconduct Complaint Database*, NYCLU: ACLU OF N.Y. (Apr. 2021), <https://www.nyclu.org/en/campaigns/nypd-misconduct-database>.

138. Southall, *supra* note 4.

139. Graham Rayman, *NYC Still Fighting Release of Cops' Disciplinary Records in Federal Lawsuits Against NYPD*, N.Y. DAILY NEWS (Feb. 7, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-nyc-fighting-release-nypd-discipline-records-20210208-wem3zbxh5jdpmtmnjnirckae3bi-story.html>.

140. Campbell and Lipton, *supra* note 135 ("In June, the Manlius Police Department received an open-records request from MuckRock, a nonprofit news site. The request sought documents detailing any allegations of misconduct against current or former officers and any discipline the department imposed. The department replied with a bill. For \$47,504.").

141. Campbell and Lipton, *supra* note 135.

PART III - THE POTENTIAL ROLE OF INDEPENDENT POLICE MISCONDUCT DATABASES

The introduction of official police misconduct databases made public by government agencies like the NYPD and the CCRB do not fill the shoes of an independent misconduct database that can challenge the government to broaden the scope of data they make available and analyze the data through collaborative partnerships. This includes partnerships with communities impacted by police violence, police reform organizations, local journalists, academic researchers, lawyers, courts, policymakers, and other stakeholders. Partnerships with a variety of stakeholders can identify patterns of conduct that both impact communities and may have a policy solution. Independent databases define the scope and presentation of misconduct made public.¹⁴² For example, when NYPD released its database of police misconduct, Julie Ciccolini tweeted entries to the Legal Aid Society's website, CAPstat.org, and compared them to entries on NYPD's database that presented officers with long histories of misconduct as having no "applicable" misconduct for the website.¹⁴³ Independent databases are

142. *An Introduction to the Citizens Data Project*, INVISIBLE INST., <https://invisible.institute/police-data> (last visited Oct. 2, 2021). The Citizen Police Data Project has processed over thirty years of internal misconduct records. This website allows the public viewer to engage with the data at multiple levels with options to analyze data by individual police officer, by neighborhood, by ward, and by district. It also provides the demographics of the complainants or officers and the category of misconduct (Chicago); CAPSTAT: NYC FED. CIV. RIGHTS LAWSUIT DATA, 2015 TO JUNE 2018, <https://www.capstat.nyc/> (last visited Sept. 6, 2021) (NYC); *ACLU Unveils Interactive Map Showing Alleged Police Misconduct in Massachusetts*, ACLU MASS., <https://www.aclum.org/en/news/aclu-unveils-interactive-map-showing-alleged-police-misconduct-massachusetts> (last visited Sept. 6, 2021); OPEN DATA POLICING, <https://opendatapolicing.com/> (last visited Sept. 6, 2021) (North Carolina, Maryland, Illinois); ACCOUNTABLE NOW, <https://www.accountable-now.com/> (last visited Sept. 6, 2021) (National); COPMONITOR, <https://sfpublicdefender.org/copmonitor/> (last visited Sept. 6, 2021) (San Francisco); COP CRISIS, <http://copcrisis.com/> (last visited Sept. 6, 2021) (National); DOCUMENTING FERGUSON, <http://digital.wustl.edu/ferguson/> (last visited Sept. 6, 2021) (Missouri); FATAL ENCOUNTERS, <https://fatalencounters.org/> (last visited Sept. 6, 2021) (National); *Police Shootings 2016 Database*, THE WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2016/> (last visited Sept. 6, 2021) (National); *Fatal State Violence*, ARCHCITY DEFENDERS, <https://www.archcitydefenders.org/fatalstateviolence> (last visited Sept. 6, 2021) (National); POLICE SHOOTING DATABASE (2020), <https://robarguns.com/kbp2020> (last visited Sept. 6, 2021) (National); MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited Sept. 6, 2021) (National); OPENOVERSIGHT, <https://openoversight.lucyparsonslabs.com/> (last visited Sept. 6, 2021) (National); OPEN POLICE, <https://openpolice.org/> (last visited Sept. 6, 2021) (National); THE STANFORD OPEN POLICING PROJECT, <https://openpolicing.stanford.edu/> (last visited Sept. 6, 2021) (National); TEXAS JUSTICE INITIATIVE, <https://texasjusticeinitiative.org/> (last visited Sept. 6, 2021) (Texas); *The Force Report*, NJ.COM PROJECTS & INVESTIGATIONS, <https://force.nj.com/> (last visited Sept. 6, 2021) (New Jersey); *Reducing Use of Force by Law Enforcement*, STATE OF N. J.: DEPT. OF L. & PUBLIC SAFETY, <https://www.njoag.gov/force/> (last visited Sept. 6, 2021) (New Jersey); THE PROBLEMATIC, <http://theproblematic.org/> (last visited Sept. 6, 2021) (Los Angeles, CA). Jackie Zummatto generously shared this list with the author.

143. Julie Ciccolini (@ciccolinijulie), TWITTER (Mar. 10, 2021, 9:40 AM), <https://twitter.com/ciccolinijulie/status/1369674551051902978>; see also Nick Muscavage, *NJ's Police Use-Of-Force*

needed to test the validity of the department's claims in serving transparency values.

Government does not have the exclusive monopoly on creating or collecting misconduct data, and its "official" databases should not be viewed as containing the universe of police misconduct information worth capturing for the purposes of informing policy change.¹⁴⁴ Many people do not trust the government to police the government, and they seek redress through other options, for example, going to the media, to a lawyer, or to a community-based organization.

Independent databases also encourage more interactive analysis with the data beyond individual officer name searches and organize a rich set of data that can challenge departments' claims to transparency, their role in promoting public safety, and their capacity to hold their officers accountable for misconduct. In addition to the information released by government databases, independent databases can compile a broader universe of information from federal and state lawsuits, news articles, notices of claim, criminal court decisions, etc.¹⁴⁵

Using open records requests, independent databases have the potential to score large datasets of officers' pedestrian and vehicle stop data, arrest history data, misconduct data, and data about their training, overtime, salary, and rank to understand how officer conduct impacts their career success at the NYPD.¹⁴⁶ At the same time, independent databases for oversight data can support communities' fights to maintain and gain access to this data so that its value is not discredited or undermined in foreseeable future fights to make it secret again, or make portions of it secret again.¹⁴⁷ Already, police unions have tried to modernize their attacks on transparency of misconduct records by claiming it is "doxxing" and "data-dumping."¹⁴⁸

The public should expect to fight to maintain its ability to access these records. Independent databases will help them anchor that fight by being dedicated to demonstrating that value through community, journalist, academic, and policy partnerships.

Database Falls Short, Experts Say, LAW360 (Apr. 18, 2021, 8:02 PM), <https://www.law360.com/articles/1375959>.

144. Glorioso & Pavlovic, *supra* note 4. NYC's law department responded that they refused to "conflate" lawsuit outcomes with their internal disciplinary data because it was unreliable, even when a civil jury verdict found misconduct. See also *I-Team: New Discipline Data Reveals NYPD Cops Rarely Penalized for Expensive Lawsuits*, NBC N.Y. (Apr. 14, 2021, 9:11 PM), <https://www.nbcnewyork.com/investigations/i-team-new-discipline-data-reveals-nypd-cops-rarely-penalized-for-expensive-lawsuits/2999713/>.

145. Conti-Cook, *supra* note 12.

146. Conti-Cook, *supra* note 12.

147. Levine, *supra* note 121, at 844.

148. Sergio Olmos, Mike Baker & Zolan Kanno-Youngs, *Federal Agents Unleash Militarized Crackdown on Portland*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/07/17/us/portland-protests.html>.

CONCLUSION

Defending public access to police misconduct information is vital for not just holding police officers accountable in all the ways described above but also for holding police departments, elected officials, and the very idea of policing accountable. That does not mean transparency should be equated with victory; it is not the end of police violence. Transparency is, however, an important tool for movements fighting for accountability and transformation of public safety. Based on how police have historically tightly controlled access to that information, it may even hold the potential for deep transformation. To fully explore that potential, independent databases that obtain, organize, and open police misconduct information must be supported.

That said—not all independent databases will be able to fully explore that potential equally. Partnerships with community-based organizers that inform the database design, set guardrails for how the data is used, and most importantly, dictate what policy reforms the data is used to support, are key for the organizations building independent databases. Only by working in partnership with community organizers can transparency advocates and database builders ensure their efforts are supporting community empowerment and not the status quo.