

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of :

PATROLMEN’S BENEVOLENT ASSOCIATION :
OF THE CITY OF NEW YORK, INC., :

Petitioner :

for a Judgment Pursuant to Article 78 of the :
Civil Practice Law and Rules :

- against - :

BILL DE BLASIO, IN HIS OFFICIAL :
CAPACITY AS MAYOR OF THE CITY OF :
NEW YORK, CITY OF NEW YORK, JAMES :
P. O’NEILL, IN HIS OFFICIAL CAPACITY AS :
COMMISSIONER OF THE NEW YORK CITY :
POLICE DEPARTMENT, and NEW YORK :
CITY POLICE DEPARTMENT, :

Respondents. :

Index No. 150181/2018

Hon. Shlomo S. Hagler

Mot. Seq. No. 004

AFFIRMATION OF THOMAS B. SULLIVAN
IN SUPPORT OF MOTION TO INTERVENE

THOMAS B. SULLIVAN, an attorney admitted to practice law before the courts of the State of New York, and not a party to the above-titled cause, affirms the following to be true under penalty of perjury pursuant to CPLR 2106:

1. I am an attorney duly admitted to the bar of the State of New York and associated with the law firm Ballard Spahr LLP, counsel to News Media Intervenors Reporters Committee for Freedom of the Press, Hearst Corporation, The Associated Press, BuzzFeed, Cable News Network, Inc., The Center for Investigative Reporting, Daily News, LP, Dow Jones & Company, Inc., Gannett Co., Inc., Gizmodo Media Group, LLC, New York Public Radio, The New York

Times Company, NYP Holdings, Inc., and Spectrum News NY1 (“News Media Intervenors”). I submit this affirmation in support of News Media Intervenors’ motion to intervene in this matter.

2. On or about January 9, 2018, Petitioner Patrolmen’s Benevolent Association of the City of New York, Inc. (“Petitioner”) commenced this case by filing a Verified Petition/Complaint in the Supreme Court for the State of New York, County of New York. A true and correct copy of the Verified Petition/Complaint is annexed hereto as Exhibit A.

3. News Media Intervenors are members and representatives of the press that gather information for publication in newspapers, magazines, television, radio and via the Internet. They regularly report on the actions of government, including law enforcement in New York City and throughout the nation.

4. They require access to records of law enforcement, including body-worn camera (“BWC”) footage, to fully and accurately report on public safety and criminal justice issues that are of central concern to the citizens of this State. News Media Intervenors have obtained access to BWC footage for newsgathering purposes in the past, and intend to seek such access in the future, including pursuant to New York’s Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90 (“FOIL”).

5. Reporters working for News Media Intervenors have reported extensively on the three police-involved shootings specifically addressed in the PBA’s Petition, which are unquestionably matters of legitimate public interest and concern, as *See, e.g.*, Colleen Long, *Video Is Released of 1st Fatal NYPD Shooting Since Bodycams*, Associated Press (Sept. 14, 2017), <https://perma.cc/ABC2-K2C8>; Mary Ann Georgantopoulos, *New York Police Released Their First Bodycam Video Of An Officer Fatally Shooting Someone*, BuzzFeed News, (Sept. 14, 2017), <http://bzfd.it/2x3q7fy>; Ashley Southall & Joseph Goldstein, *Police Release*

Body Camera Footage of Shooting Death in Bronx, N.Y. Times (Sept. 14, 2017), <https://nyti.ms/2eYIxWG>; *The First Fatal NYPD Encounter Caught on a Body Camera*, The Brian Lehrer Show (WNYC) (Sept. 15, 2017), <https://www.wnyc.org/story/first-fatal-nypd-encounter-caught-body-camera>; Tina Moore & Chris Perez, *Dramatic Bodycam Footage Shows NYPD Cops Shooting Suicidal Man*, N.Y. Post (Nov. 27, 2017), <https://perma.cc/9XDU-52Y8>; Rocco Parascandola & Graham Rayman, *SEE IT: Bodycam Footage Shows Bronx Cops Fatally Shooting Suspect at Center for Mentally Ill*, N.Y. Daily News (Nov. 29, 2017), <http://nydn.us/2j3Lgka>.

6. News Media Intervenors seek leave to intervene in this matter for the purpose of enforcing the public's rights of access to BWC footage. While Respondents now appear to agree that BWC footage is not a personnel record subject to Section 50-a of the Civil Rights Law, Respondents have taken positions inconsistent with that argument in the past. The News Media Intervenors' position, on the other hand, has never wavered: Section 50-a has no application to BWC footage. The News Media Intervenors, who will vigorously defend their and the public's rights of access to BWC footage under New York law, including FOIL, should be permitted to intervene in this proceeding.

7. Counsel for News Media Intervenors contacted counsel for both Petitioner and Respondents before making this motion. Counsel for Petitioner asked to first see a copy of the papers. Counsel for Respondents stated that they took no position on this motion.

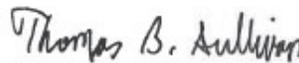
8. A true and accurate copy of News Media Intervenors' Proposed Verified Answer is attached as Exhibit B.

9. A true and accurate copy of News Media Intervenors' Proposed Memorandum of Law in Opposition to the Petition and to Petitioner's Motion for a Temporary Restraining Order is attached as Exhibit C.

10. A true and accurate copy of News Media Intervenors' Proposed Affirmation of Thomas B. Sullivan in support of their opposition memorandum is attached as Exhibit D.

Dated: March 1, 2018

New York, NY



THOMAS B. SULLIVAN