

**Testimony of Gabriel Arkles, Sylvia Rivera Law Project
Before the Committee on Public Safety of the Council of the City of New York
January 29, 2009**

Dear Members of the Council of the City of New York:

Thank you for the opportunity to address you today. I am pleased that the Council is holding a hearing that touches on the important subject of police accountability in our City.

I am a Staff Attorney for the Sylvia Rivera Law Project. The Sylvia Rivera Law Project is a community based organization that provides free legal services to low-income people and people of color who are transgender, intersex, or gender nonconforming. We also engage in public education, leadership development, support of community organizing, policy change, and impact litigation strategies to advance gender, racial, and economic justice in New York City and beyond. We have developed considerable expertise in criminal justice issues as they impact our communities over the years and as such have become aware of a deep lack of oversight of and accountability within the NYPD.

Police misconduct against transgender and gender nonconforming people

The impact of police misconduct on low-income transgender and gender nonconforming communities of color in this City cannot be understated. A conversation I had with Joanna,* an African American transgender woman in her 50s, struck me with particular force. Joanna lives a quiet life, caring for an ill family member in their apartment in the Bronx. When we met, she told me that harassment from the NYPD had been such a constant over the past few decades of her life that she is afraid to leave her home. While she has no criminal history and has never been arrested—which is something of a miracle given the pervasiveness of false arrest in transgender communities of color—she mentioned dozens of instances of police demanding to see her breasts when she was walking down the street, stopping and searching her for no reason, calling her a “faggot” and a “whore,” and threatening to beat, rape, or arrest her. She stays inside after dark and tries to limit the times she leaves her home even in daylight as much as possible, in order to try to avoid police violence.

Joanna’s experience is actually one of the more mild examples of the severe and persistent NYPD misconduct targeted at transgender and gender nonconforming people, particularly those who are also people of color, youth, homeless, or people with disabilities. Transgender people are disproportionately poor and homeless because of loss of family support, discrimination in housing, school, work, families, and healthcare, and lack of access to ID. They experience the heightened police surveillance, profiling, and

* I have changed her name in order to protect her identity.

arrests for “quality of life” crimes that all poor and homeless people do in this City. However, they are also especially singled out because of stereotypes that all trans and gender nonconforming people are prostitutes, deceptive, and/or violent.

Many transgender women of color are arrested simply for walking down the street and charged with loitering with intent to solicit. A cross-dresser client of mine was arrested for prostitution and told by the arresting officer that the only reason he arrested him was that he was wearing a dress.

Often transgender and gender nonconforming people are arrested when they themselves are the victims of hate violence or domestic violence. One of our clients, a Native American transgender woman in her seventies with disabilities, was arrested and charged with assault after throwing a drink at a man who gay bashed her in a bar.

Police frequently order trans and queer youth of color to “move on” in the Christopher Street pier area for no reason aside from their perceived gender identity, sexual orientation, age, and race.

Police harass and at times falsely arrest trans and gender nonconforming people for no more than using a restroom that the police think they do not look “right” for.

Trans and gender nonconforming people can also face harassment and/or arrest if they do not have ID or if they only have ID that does not match an officer’s perception of their gender. An NYPD officer demanded ID from a Latino trans man in the West Village. After he produced ID, the officer said that it was not “valid” and cited him for disorderly conduct.

Besides false arrest and profiling, other flagrant forms of police misconduct targeted at trans and gender nonconforming people are also common. Transgender, intersex, and gender nonconforming people frequently report experiencing unlawful and abusive searches from the police. These abusive searches take several forms. For example, many transgender people report officers inappropriately groping their breasts, buttocks, or genitals during pat downs and other searches. Multiple transgender people and people with intersex conditions have reported to me that they were repeatedly, unnecessarily strip searched after their arrest, sometimes several times within only a few hours, by officers who gawked at their genitals and humiliated them. Sometimes these searches are explicitly done not for any legitimate, contraband-related purpose, but for the stated purpose of “determining the gender” of the individual—a humiliating, abusive, unconstitutional, and counterproductive practice. They also often seem to be done in order to amuse, sexually gratify, or satisfy the curiosity of the officers. At times the person’s body is exhibited to multiple officers, who will engage in conduct such as

laughing, pointing, and making demeaning comments related to the person's body and/or gender.

Police brutality and beatings, which at times lead to serious injury, are another major area of concern. I saw one of my clients, a Latina transgender woman, just before and shortly after her arrest. Before her arrest, she appeared to be in good health. After her arrest, she walked with a limp, had an arm in a sling, and had visible swelling of the face and blood in her eye. She reported that police inflicted all of these injuries.

Verbal harassment is also extremely widespread. This harassment includes officers using epithets such as "dyke," "faggot," "homo," "it," or "freak;" threatening to rape or allow others to rape the person; asking invasive questions about the persons' body or sex life; mocking and ridiculing the person's gender identity; and/or referring to people with names, pronouns, and other gendered language that is inconsistent with their gender identity.

Detention practices are also highly problematic. Many trans, intersex, and gender nonconforming people are denied medical treatment they need. Trans men are often left cuffed to rails for extended periods of time rather than being placed in cells. Trans women are almost always placed in cells with non-transgender men, no matter how dangerous, unhealthy, inappropriate, and disrespectful that placement may be for them.

Many community members I have worked with see the NYPD, at every level in the chain of command, to be a danger to their dignity, their safety, their feeling of welcome in their own neighborhoods, and even their lives. Many advocates agree and fear for the physical safety of our clients any time they interact with the NYPD, even if they are reporting a crime.

Lack of accountability for police misconduct

It is well-known among low-income transgender and gender nonconforming communities of color that police officers are not held accountable for any of these or other abusive actions against them. Despite the great need for trans and gender nonconforming community members to have access to a reliable system for holding police accountable for misconduct, many community members do not know that the Civilian Complaint Review Board (CCRB) exists. Those that do know generally have such a low opinion of it that they will not consider filing a complaint. Frankly, when I talk to clients about filing complaints with the CCRB, many tell me that the CCRB is "bullshit." They explain that nothing ever happens with complaints that are filed and that nothing ever happens to the officers who are complained about.

Unfortunately, I cannot disagree with them. Those few of my clients who have filed CCRB complaints typically find the investigation process hostile, alienating, or

completely inaccessible. Many of my clients are homeless or marginally housed and often do not have any consistent phone access, much less internet access or car fare to travel around the city, making the types of follow up demanded in the current structure of CCRB investigations difficult or impossible. Because many of the assaults and other mistreatment my clients experience happen away from witnesses other than members of the NYPD, “corroborating evidence” other than my client’s testimony is often not available.

Ultimately, many transgender and gender nonconforming people who file complaints with the CCRB never learn what happened to their complaints at all. Most CCRB complaints are “truncated” and thus are never fully investigated. Most of those that are fully investigated are not substantiated. While the CCRB does not track any data related to complaints based on gender identity, I believe these statistics would likely be considerably higher for complaints filed by trans and gender nonconforming community members, despite the merit the vast majority of these complaints have. Given the fact that over a third of substantiated complaints still result in no discipline for the officers involved, my clients’ perception of the uselessness of the CCRB process is particularly well founded.

Based on my experience, I believe that transgender and gender nonconforming people of color overwhelmingly do not see the CCRB as an independent body that furthers police accountability for them or their communities. Rather, if they know of it at all, they see it as a body that has more in common with the NYPD than with people who are harmed by police misconduct; as just another hostile, transphobic government agency; and/or as a body that has neither the power nor the will to create any true accountability for police. In a survey conducted by FIERCE! of low-income lesbian, gay, bisexual, transgender, and questioning youth of color in the West Village, 62% of participants had experience police harassment, violence, or misconduct. Zero percent had reported that misconduct to the CCRB or any other official body.

Recommendations

The Sylvia Rivera Law Project makes the following recommendations for action to begin addressing some of the problems just described.

With regard to CCRB

- The CCRB must become truly independent of the NYPD. The Police Commissioner should not have the power to appoint any members of the CCRB. CCRB board and staff should include survivors of police misconduct and should reflect the diversity of communities most targeted for police misconduct, including transgender and gender nonconforming communities of color.
- The NYPD cannot be trusted to hold itself accountable. As a small measure to begin building genuine civilian oversight, the power to prosecute disciplinary

actions against NYPD officers should be removed from the NYPD and instead entrusted to the CCRB.

- The problems with police misconduct are systemic, not the result of a “few bad apples.” CCRB cannot effectively address systemic problems with an exclusively individualized approach to complaints. CCRB should have the resources and responsibility to analyze trends in police misconduct and recommend institutional changes to eliminate that misconduct. CCRB, NYPD, and when needed other parts of City government must take action to respond to the trends and recommendations so identified. Because policing without systemic accountability does more harm than good, any additional CCRB resources necessary to do this work should be taken from the current budget for the NYPD.
- The CCRB should begin tracking data about complaints in terms of gender identity and sexual orientation as well as other factors. Aggregate statistics about complaints from transgender and gender nonconforming people should be made available to the public.
- If transgender and gender nonconforming people experience some of the same transphobic attitudes and biases at the CCRB that they do from the NYPD, the CCRB will never be an avenue for redress that is genuinely available to these communities. The CCRB must contract with qualified, community-based providers to train CCRB staff and board on topics including transgender awareness and techniques for working with survivors of sexual and other violence with sensitivity.
- Because many members of communities particularly impacted by police misconduct do not know about the CCRB, the CCRB must do greater outreach to diverse communities including trans and gender nonconforming communities of color. CCRB complaint and investigation procedures must be made more easily accessible and flexible, so that even the most marginalized residents of New York City, including youth, people with disabilities, and people without permanent or stable housing, have a reasonable chance of receiving a meaningful response to their complaints. Investigators should be able and willing to travel to meet with complainants where they are whenever necessary. Investigations should continue to the utmost extent possible even when the complainant cannot be reached.
- Because victims of police misconduct are often arrested and charged criminally as a part of the same incident as the misconduct, it is profoundly unjust that people who have been harmed may have no opportunity to complain about that misconduct for fear that they could have their statements used against them in a criminal proceeding. Complainant’s statements to CCRB should not be permitted to be used against them in criminal proceedings. A grace period following the disposition of a criminal case should allow people to file complaints with CCRB even if the statute of limitations would normally have passed.

With regard to NYPD

- The NYPD must change its culture, from the top down, to one of genuine accountability to the people and communities it polices. Responding meaningfully to CCRB complaints is absolutely necessary, but is also no more than the tip of the iceberg in terms of the needed changes. The NYPD must engage meaningfully with marginalized communities, in ways determined by those communities, to address systemic problems. The NYPD must also improve its policies and practices in terms of both disciplining officers for misconduct and rewarding officers for excellence in working with communities in non-violent and respectful ways.
- The NYPD must put clearly defined policies into place protecting the rights of transgender people. While by no means an exhaustive list of the areas these policies should cover, at a minimum such policies should prohibit members of the force from:
 - engaging in searches solely to identify genitals
 - engaging in any other form of abusive, overly invasive, overly public, unnecessary, or unlawful search;
 - sexually harassing of members of the public;
 - verbally harassing transgender people, including referring to them by names and pronouns inconsistent with their expressed gender identity;
 - profiling based on any of the characteristics for which discrimination is prohibited in the NYC human rights law;
 - placing transgender people in cells with non-transgender men against their will;
 - detaining, arresting or charging people solely based on their presence in a particular gender restroom, lawful possession of hormone medications, or failing to present ID or presenting a name or ID that the officer perceives as inconsistent with the person's gender.
- The NYPD must conduct solid training of all members of the department on the above policies and on how to work in a positive way with transgender and gender nonconforming community members, as well as members of other marginalized communities including youth, people with disabilities including psychiatric disabilities, low-income people, homeless people, people of color, immigrants, people with limited or no English proficiency, and members of religious minorities.

With regard to the City

- Overall, in order to create true public safety in all of our communities, and particularly in low-income transgender and gender nonconforming communities of color, our City must put less resources into policing our communities and more resources into supporting and strengthening them. Resources for voluntary, quality, trans-friendly, safe, affordable, and accessible services and opportunities such as drug treatment; health care; education; jobs; housing; community-based

social and legal services; public transit; and leadership development must be prioritized over resources for policing, prosecution, and punishment.

Thank you again for this opportunity. Should the Council be interested in learning more about many of the issues I have discussed, I suggest the reports and articles I list at the end of this testimony.

Respectfully submitted,

Gabriel Arkles
Staff Attorney
Sylvia Rivera Law Project
322 8th Ave. 3rd Floor
New York, NY 10001

Resources

Sylvia Rivera Law Project, IT'S WAR IN HERE: A REPORT ON THE TREATMENT OF TRANSGENDER AND INTERSEX PEOPLE IN NYS MEN'S PRISONS (2007) *available at* <http://www.srlp.org/files/warinhere.pdf>.

Amnesty International, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE IN THE US (2005) <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>.

INCITE! Women of Color Against Violence, POLICING GENDER (2008) *available at* http://www.incite-national.org/media/docs/3515_toolkitrev-policinggender.pdf.

New York Civil Liberties Union, MISSION FAILURE: CIVILIAN REVIEW OF POLICING IN NEW YORK CITY (2006), *available at* http://www.nyclu.org/files/ccrb_failing_report_090507.pdf