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**TESTIMONY OF ANDREA J. RITCHIE
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**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:

The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to testify before you today concerning the CCRB's 2007 Annual Report. In light of the widespread police abuse and misconduct our clients experience on a daily basis, we welcome the Council's renewed attention to the issue of police accountability.

Using human rights and harm reduction approaches, the Sex Workers Project (SWP) works to protect and promote the rights of individuals who by choice, circumstance, or coercion engage in sex work. We provide direct legal services to over a hundred individual clients a year in criminal legal, immigration, and police misconduct matters. We also conduct dozens of "know your rights" trainings for community organizations, outreach programs, and service providers working with sex workers, as well as through the Manhattan Midtown Community Court. Based on the experiences and concerns of our clients and constituents, SWP engages in policy advocacy at the local, state, federal and international level aimed at securing systemic changes which protect and promote human rights, self determination, and increased opportunities. Our direct service and human rights documentation work enables us to provide unique and critical information, analysis, and practical recommendations to policy makers, service providers, and the media concerning the human rights abuses faced by sex workers and trafficked persons, as well as by individuals at risk of being profiled as sex workers.

My testimony today is based not only on the experiences of the Sex Workers Project's clients and constituents, but also on my experience as a research expert and co-author for Amnesty International's report *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.*, my preparation of a report on police misconduct and abuse in the US for the UN Committee Against Torture, the UN Human Rights Committee, and the UN Committee on the Elimination of Racial Discrimination, my own extensive research over the past decade on physical and sexual abuse of women by law enforcement agents, and my experience as a police misconduct attorney in New York City.

The Sex Workers Project shares the concerns of Council members and many of the organizations and individuals you have heard from today with respect to the significant proportion of substantiated CCRB complaints which are going unpunished by the NYPD. Not only does the NYPD's failure to pursue administrative charges or impose meaningful discipline in these cases contribute to creating a climate of impunity with respect to abuses of the rights of New Yorkers by the police, it significantly erodes public confidence in the civilian oversight process.

Of equal concern to us is the fact that countless incidents of police misconduct experienced by women and transgender people – including sexual harassment and misconduct by NYPD officers, unwarranted and often abusive strip searches, false arrests for prostitution, refusal to

investigate complaints of interpersonal violence, and other gender specific forms of police misconduct - are never even reported to the CCRB in the first place. SWP and other community-based organizations hear of such abuses on an almost daily basis – for instance, just this week, we received three separate complaints of police misconduct: the first involving use of excessive force causing serious injury during an arrest for prostitution, the second an unwarranted public strip search in a police precinct in full view of male arrestees and police officers, and the third an inappropriate and abusive police response to a woman attempting to make a police report after she was drugged, tied up, and raped. However, the vast majority of our clients do not see reporting such police misconduct to the CCRB as a viable option.

Sexual harassment and abuse of members of the public by NYPD officers is an alarmingly common, but significantly underreported, form of police misconduct which disproportionately impacts women and transgender people. For instance, according to two studies conducted by The Sex Workers Project, up to 17% of sex workers interviewed reported sexual harassment and abuse by police.ⁱ One of our clients who ran away from an abusive home at 14 reported to us that she was subsequently picked up by a police officer who forced her to have oral sex. Many more have reported police sexually harassment on a daily basis, overly intrusive, abusive and sometimes public searches, extortion of sexual favors in exchange for avoiding arrest or violence at the hands of police officers. As documented in our 2003 report *Revolving Door* and emphasized today by my colleague from the Sylvia Rivera Law Project, in addition to such generalized sexual harassment, transgender women frequently experience unwarranted, unlawful, and abusive searches of their chest and genital areas, often accompanied by homophobic, transphobic, racist, and misogynist verbal abuse.

In addition to a widespread lack of public trust in the civilian oversight process, which is only further fueled by the NYPD's failure to discipline officers against whom complaints are substantiated, additional barriers prevent effective redress for such abuses. As an initial matter, although the types of police misconduct I have described fall well within the the CCRB's mandate, practically speaking, the CCRB is not set up to properly accept, investigate, or track these types of complaints. For instance, CCRB investigators are neither trained to screen for, nor be sensitive to, gender specific forms of police misconduct, nor are they made aware of, or attentive to, patterns of abuse targeting specific populations, including, for instance, transgender women and sex workers. Moreover, the CCRB's current data collection methods and statistical analysis of complaints received does not allow for detecting and tracking such patterns.ⁱⁱ

Additionally, although the type of police misconduct I have described here today represents a clear violation of constitutional rights – and cannot be the subject of a “good faith” defense - it is nevertheless not expressly prohibited by any NYPD policy. While NYPD officers receive training concerning the law and NYPD policies governing sexual harassment of fellow NYPD employees, no such training is provided concerning sexually inappropriate conduct with members of the public. Similarly, the NYPD's strip search policy does not expressly prohibit overly invasive or abusive searches of transgender individuals conducted for the purpose of touching or viewing their chest or genital areas, and no training is provided concerning the appropriate basis and procedures for police searches of transgender people. It therefore stands to reason that people who experience such abuses believe they will obtain no remedy from either the CCRB or the NYPD.

Moreover, many women and transgender people who experience such abuses are wary of reporting them for fear of retaliation by the officers involved. Such fears are often based in experience: for instance, one of our clients reported that she was beaten by police after making a complaint. As a result, she is now afraid to walk down the street for fear of violent reprisal by police. Many more have told us they are afraid of being arrested, beaten, or killed by police officers if they report sexual harassment and abuse. Needless to say, even if an individual officer does not retaliate, many sex workers and women who use controlled substances nevertheless risk arrest by reporting misconduct which occurred in a context in which they were engaging in criminalized conduct.

While sexual harassment and improper searches by NYPD officers have been reported by women and girls from all walks of life in New York City -- including young women in New York City schools and women who experienced such misconduct during routine traffic stops -- officers tend to prey on women and transgender people who face significant risks if they report such abuses, including youth, poor and homeless people, people of color and immigrants, and transgender people, as well as sex workers, people who use controlled substances, and other criminalized populations. Threats of retribution and retaliation against women and transgender people who report sexual harassment or abuse by police officers are commonplace, while prosecutions of law enforcement officers for such acts are rare, creating a strong disincentive to report in light of very real risks of arrest, deportation, further police violence and abuse, or public disclosure of sexual orientation or transgender status. Moreover, it is estimated that overall only a little over a third of all cases of sexual violence are ever reported to the authorities.ⁱⁱⁱ One can only imagine that this rate is far lower among those who are sexually harassed or abused by the very law enforcement agents charged with protecting them from violence. As Penny Harrington, former Portland Chief of Police and founder of the National Center for Women and Policing has pointed out "The women are terrified. Who are they going to call? It's the police who are abusing them."^{iv}

Our clients' experiences also indicate that false arrests for prostitution - and particularly profiling of transgender women as sex workers - are endemic, as is extortion of sexual favors on threat of arrest on prostitution or drug related charges. Many clients report that police simply arrest them because they recognize them, telling them "I haven't arrested you in a while," or "it's your turn," regardless of whether there is probable cause to believe they are engaged in sex work at that time. For instance, one client who was no longer engaged in sex work and was trying to pursue other employment told us that she nevertheless continued to be arrested whenever she was on the street in her neighborhood. Others tell of officers demanding that they provide sexual favors or be arrested - and then arresting them anyway after they have complied with the officer's demands.

Even when women and transgender people come forward to report gender specific police misconduct despite the considerable risks involved, action is rarely taken. Sexual harassment and misconduct, strip searches, extortions of sexual acts, and false arrests for prostitution often take place outside the public view, in private locations, squad cars, or precinct houses. As a result, as is the case with many forms of violence against women, including domestic violence and sexual assault, more often than not there are no third party witnesses to corroborate the complainant's account of the abuse. The CCRB's practice of not substantiating complaints in instances where "it is the word of the complainant against the word of the officer" essentially ensures that the vast majority of such complaints will never see the light of day or lead to further action. And, as we've heard repeatedly today, even if they were to be substantiated,

such complaints would rarely lead to meaningful discipline, allowing officers to engage in such misconduct with impunity.

Recommendations

The Sex Workers Project wholly adopts and endorses the detailed recommendations made by the Sylvia Rivera Law Project, which are reproduced verbatim below.

Additionally, in light of the considerable obstacles preventing women and transgender people from engaging police oversight mechanisms which rely on individuals to come forward and make a complaint, we ask the City Council, in its capacity as the governmental body responsible for overseeing the NYPD, to consider measures aimed at preventing, improving detection of, and developing effective and systemic responses to the types of abuses we have discussed today.

Proactive measures to root out gender specific forms of police violence and misconduct are critical, particularly where sexual harassment or abuse is concerned, in light of the significant barriers to reporting gender-based violence. Targeted exit interviews for individuals released from police custody, free and independent access to police lock-ups and jail facilities for community groups, and careful follow-up with individuals with whom any officer who has been the subject of any complaint of sexual misconduct has had contact appear to increase the likelihood that sexual misconduct will be detected. Allowing for anonymous complaints or amnesty from any criminal charges that may arise from the context in which the sexual harassment or abuse takes place has also proven effective in uncovering cases and patterns of sexual misconduct by law enforcement officers. Stings conducted by internal affairs agencies have also been useful in building evidence against officers alleged to have engaged in sexual abuse – for instance, in 2004, upon receiving complaints that an officer was raping sex workers in South Central Los Angeles, the LAPD internal affairs department set up a sting operation which ultimately led to the officer’s conviction on rape charges. Similarly, at a King County jail in Seattle where guards were found to have reached into a woman’s pants and groped her and forced her to perform oral sex, the woman’s complaint was later corroborated when investigators enabled her to return to the facility wearing a wire.^v

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 taken 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.
- Becomes victims of police misconduct are often arrested and charged criminally as a part of the same incident, it is profoundly unjust that people who have been injured through police misconduct 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 discipline of officers for misconduct and positive incentives 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 or from engaging in any other form of abusive, overly invasive, overly public, unnecessary, or unlawful search;
 - from engaging in sexual harassment of members of the public;

- from engaging in profiling based on any of the characteristics for which discrimination is prohibited in the NYC human rights law;
- from engaging in verbal harassment of transgender people, including referring to them by names and pronouns inconsistent with their expressed gender identity;
- from placing transgender people in cells with non-transgender men against their will;
- from detaining, arresting or charging people solely based on their presence in a particular gender restroom, lawful possession of hormone medications, 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.

Resources

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

Sex Workers Project, BEHIND CLOSED DOORS (2005), available at: <http://www.sexworkersproject.org>

Sex Workers Project, REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY, (2003), available at: <http://www.sexworkersproject.org>

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>.

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

ⁱ Sex Workers Project, *Behind Closed Doors* (New York City: 2005); Sex Workers Project, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, (New York City: 2003).

ⁱⁱ For instance, while the 2007 CCRB Annual Report which is the subject of today's hearing provides statistics concerning complaints based on NYPD officers' use of offensive language relating to the complainant's sex – which, incidentally, reflect that the percentage of such complaints has more than doubled over last year – there is no indication of whether such language was used in a context rising to the level of sexual harassment, or was accompanied by other misconduct such as threat of arrest, unwarranted strip search, sexual assault, or extortion of sexual favors in exchange for leniency, all of which are commonly reported by our clients. Similarly, while the number and percentage of complaints concerning strip searches has risen steadily over the past five years – notwithstanding a 2004 letter from the CCRB to the NYPD raising serious concerns with respect to NYPD officers' use of strip searches in violation of New Yorkers' rights which resulted in additional instruction of all NYPD officers concerning the Department's search policies – there is no indication of the circumstances or targets of such searches. As a result, there is no awareness of or accountability for systemic patterns and practices of gender specific police misconduct.

ⁱⁱⁱ See Bureau of Justice Statistics, *Criminal Victimization, 2004*, US Department of Justice, Office of Justice Programs, NCJ 210674, September 2005; Bureau of Justice Statistics, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, US Department of Justice, Office of Justice Programs, NCJ 194530, August 2002 (74% of completed and attempted sexual assaults against women were not reported to the police)

^{iv} Craig R. McCoy and Nancy Phillips, *Extorting Sex With a Badge*, Philadelphia Inquirer, August 13, 2006 A01.

^v H. Castro, *Jail Sex Abuse Allegations Detailed*, Seattle Post-Intelligencer, May 24, 2005; S. Green, *Two County Jail Guards Charged in Sex Case*, Seattle Times, December 8, 2005. Three other officers were subsequently charged with sexual misconduct at the same facility. S. Green, *Two County Jail Guards Charged in Sex Case*, Seattle Times, December 8, 2005.