

**OPC MONITORING OF THE NATIONAL ACTION
NETWORK'S "JUSTICE FOR ALL" MARCH
DECEMBER 13, 2014**



REPORT AND RECOMMENDATIONS OF THE

POLICE COMPLAINTS BOARD

TO

**MAYOR VINCENT C. GRAY,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

December 19, 2014

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

The Police Complaints Board (PCB), the governing body of the Office of Police Complaints (OPC), submits this report and recommendations pursuant to its statutory authority to make recommendations to the Mayor, the Council of the District of Columbia, and the Chief of the Metropolitan Police Department (MPD) that, if implemented, may lower the occurrence of police misconduct,¹ and its authority to monitor and evaluate MPD's handling of First Amendment assemblies.² The District of Columbia added the authority to monitor and evaluate MPD's handling of First Amendment assemblies to PCB's jurisdiction through the First Amendment Rights and Police Standards Act of 2004 (the Act).

The Act articulates the District of Columbia's official policy on First Amendment assemblies and, among other things, establishes specific standards of police conduct when handling protests or demonstrations. These standards prohibit MPD from employing crowd control tactics during protests that have the potential to deprive demonstrators of the right to assemble peaceably and express their views.

On Saturday, December 13, 2014, thousands of people from across the nation participated in the National Action Network's "Justice for All" protest march, an event organized by the Reverend Al Sharpton to call Congressional attention to policing issues across the country. Around 10:30 that morning, individuals participating in the protest march began assembling at Freedom Plaza, located at Pennsylvania Avenue and 14th Street, NW. At approximately 12:00 p.m., the demonstrators began marching down Pennsylvania Avenue. The march ended at Pennsylvania Avenue and 3rd Street, NW, near the U.S. Capitol. A rally featuring several speakers was then held.

OPC, pursuant to the agency's authority, deployed six members of its staff to monitor MPD's interactions with protesters throughout the day on Saturday.³ Because the demonstrations held that day took place on both federal and District of Columbia property, a number of federal law enforcement officers, including officers from the U.S. Park Police and the U.S. Department of Homeland Security, were present in addition to MPD officers. Since the Act

¹ PCB "shall, where appropriate, make recommendations to [The Mayor, the Council, and the Chief of Police] concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." D.C. Code § 5-1104(d) (2014).

² PCB "may, where appropriate, monitor and evaluate MPD's handling of, and response to, First Amendment assemblies ... held on District streets, sidewalks, or other public ways, or in District parks." D.C. Code § 5-1104(d-1).

³ PCB would like to acknowledge the assistance of OPC's staff in conducting the protest monitoring on December 13, 2014, and with preparing this report and recommendations. The agency's monitoring work was coordinated and supervised by OPC's executive director, Michael G. Tobin; special assistant, Nicole Porter; senior investigator, Anthony Lawrence; and investigator, Jessica Rau. In addition, the following OPC staff members served as monitors: Deputy Director Christian Klossner, Investigator Sergio Ledezma, and Investigator Stephen Fox.

applies only to the District of Columbia's police officers, OPC concentrated on observing the actions of MPD officers. This report summarizes OPC's observations and makes recommendations based on those observations.

II. THE ACT AND OPC'S MONITORING EFFORTS

The First Amendment Rights and Police Standards Act of 2004 took effect in the District on April 13, 2005. The Act established and declared the District's official policy on First Amendment protests. In the District, persons and groups have a right to engage in peaceful First Amendment demonstrations in or on public space controlled by the District – particularly places near the object of the demonstrators' protest so they can be seen and heard – subject solely to reasonable restrictions designed to protect public safety and to accommodate competing rights of non-demonstrators.⁴ The Act requires MPD to recognize and implement this official policy by adhering to specific standards of conduct in interacting with persons and organizations engaged in exercising First Amendment rights.⁵

OPC focused its monitoring on Title I of the Act. Title I, known as the First Amendment Assemblies Act of 2004, requires MPD to: 1) permit persons to engage in First Amendment demonstrations even if they have not given notice or obtained approval; 2) seek voluntary compliance with reasonable time, place, and manner restrictions; 3) limit arrest and citation to specific non-compliant demonstrators for whom there is probable cause; 4) refrain from dispersing demonstrators unless there is widespread unlawful conduct; 5) provide multiple audible warnings, a clear dispersal route, and sufficient time to disperse, when dispersal is deemed necessary; 6) refrain from using police lines to surround demonstrators unless there is widespread unlawful conduct; 7) enhance the visibility of officers' names and badge numbers; 8) refrain from using riot gear unless there is a danger of violence; 9) refrain from using chemical irritants to disperse demonstrators unless demonstrators are endangering public safety; and 10) grant the media full access to areas where demonstrations take place.⁶

OPC's overall impression is that MPD performed in a professional and commendable manner and effectively balanced the interests of public safety with the right to free expression. MPD's general interaction with the public appeared cordial, helpful, and respectful. During the march, MPD officers were alert and attentive, yet unimposing, unobtrusive, and non-confrontational. There was minimal MPD presence on the streets and sidewalks during the march, which contributed to the peaceful and cooperative nature of the event. MPD officers assisted protest organizers with major logistics and provided help to individuals with smaller issues. MPD officers also provided escorts and traffic control to demonstrators. Journalists appeared to have unfettered access to the protest activities, and OPC staff did not observe any instances of MPD officers barring members of the press from any areas in which protest activities were taking place.

⁴ D.C. Code § 5-331.01, *et seq.*

⁵ D.C. Code §§ 5-331.05 through 5-331.17.

⁶ OPC staff was prepared to monitor provisions governing MPD orders to disperse, police lines, mass and individualized arrests, and the use of riot gear and chemical irritants. OPC, however, did not witness any MPD officers engage in these activities. Therefore, those provisions are not the subject of this report.

Nearly all MPD officers whom OPC staff observed displayed their nameplates and badge numbers. There were some singular instances in which MPD officers' nameplates and badges were not noticeable, despite the Act's requirement that identification be more visible. Specifically, the nameplates and badges of three MPD officers who wore yellow-green mesh vests were obscured by the vests. All other officers who were observed wearing MPD uniforms, however, had their names and badge numbers clearly visible.

Several factors appear to have contributed to the peaceful character of the demonstrations that took place on Saturday, December 13, 2014: 1) the vast majority of the demonstrators were nonviolent, peaceful protesters; 2) demonstrators were permitted to parade close to the object of their protest, in this case the U.S. Capitol; and 3) MPD's thoughtful and concerted effort to comply with the provisions of the Act.⁷

III. CONCLUSION AND RECOMMENDATIONS

Based on OPC's observations, PCB commends MPD for the manner in which it worked with groups and individuals to facilitate their exercise of First Amendment rights. PCB offers the following recommendations based on its observations:

(1) MPD should continue to emphasize compliance with the First Amendment Rights and Police Standards Act of 2004 among its officers, and ensure that officers are continuing to allow demonstrators to peacefully engage in First Amendment activities with minimal interference from police officers or other protesters. MPD's efforts resulted in a positive experience for both protesters and the police, and should serve as a model for those federal agencies in the District that routinely handle First Amendment assemblies and police departments nationwide. Such an effective approach should be continued indefinitely.

(2) MPD should remind all Department officers handling First Amendment assemblies to make sure that their names and badge numbers are visible, particularly those officers required to wear mesh vests or any other coverings.

⁷ PCB recognizes and acknowledges the assistance and cooperation of MPD Police Chief Cathy Lanier and Commander Steven Sund of MPD's Special Operations Division, for providing crucial information and assistance to OPC as it planned and carried out its monitoring effort.