

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0191
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER 1 SUBJECT OFFICER 2
Allegation 1 as to SUBJECT OFFICER 1:	Language or Conduct (mocking)
Allegation 2 as to SUBJECT OFFICER 1 and SUBJECT OFFICER 2:	Language or Conduct (rude)
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	September 8, 2017

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

The Complainant filed a complaint with the Office of Police Complaints (OPC) on March 22, 2017. Complainant alleged that on January 22, 2017, Metropolitan Police Department (“MPD”) SUBJECT OFFICER 1, used language and engaged in conduct toward her that was insulting, demeaning, or humiliating when he mocked her for crying, and said that she was lucky she did not get her head busted in. COMPLAINANT further alleged that both SUBJECT OFFICER 1 and SUBJECT OFFICER 2 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by treating her rudely and cruelly.¹

¹ The complainant also alleged that on January 22, 2017, SUBJECT OFFICER 1 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when he laughed and never listed to her complaint before accusing her of not telling the truth. Pursuant to D.C. Code § 5-1108(1) on July 18, 2017, a member of the Police Complaints Board dismissed these allegations, concurring the determination made by OPC’s executive director.

Specifically, Complainant stated that on January 22, 2017, she went to WASHINGTON, DC MPD DISTRICT SUBSTATION to file a police report. She first interacted with SUBJECT OFFICER 2, who refused to take a criminal report in reference to her allegations that she had been threatened and pushed by an unknown man during the presidential inauguration parade two days prior. Complainant asked to speak to a supervisor and SUBJECT OFFICER 2 retrieved SUBJECT OFFICER 1. SUBJECT OFFICER 1 also refused to take a criminal report, and he left the front counter and went into an open room next to the front counter area. SUBJECT OFFICER 2 agreed to take an incident report and as the Complainant provided requested information for the report, she heard SUBJECT OFFICER 1 in the adjacent room mocking her for crying, and saying that she was lucky she did not get her head busted in. Complainant further alleged that SUBJECT OFFICER 1 and SUBJECT OFFICER 2 treated her rudely and cruelly throughout the interaction.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICER 2, dated January 22, 2017, the objections submitted by the Subject officers on August 4, 2017, and OPC's response to the objections dated August 9, 2017, the Complaint Examiner determined that the ROI presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Body Worn Camera Footage recorded by SUBJECT OFFICER 2, dated January 22, 2017, the objections submitted by the Subject Officers on August 4, 2017, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on March 22, 2017.
2. On January 22, 2017, at approximately 1:05 p.m., Complainant went to A WASHINGTON DC, MPD DISTRICT SUBSTATION to file a police report.
3. Complainant first encountered SUBJECT OFFICER 2 and reported to him that an unknown man had threatened her; during this initial encounter Complainant showed SUBJECT OFFICER 2 a video on her phone of the threat.
4. SUBJECT OFFICER 2 informed Complainant that he couldn't tell who the man was threatening because the crowd was too large. For this reason, he told Complainant that he would do an incident report, but not a criminal report. Complainant said she could provide witnesses, but SUBJECT OFFICER 2 did not change his determination.

5. Complainant then asked to speak to a supervisor.
6. SUBJECT OFFICER 2 went in search of SUBJECT OFFICER 1 and turned on his BWC as he did so.
7. When SUBJECT OFFICE 2 found SUBJECT OFFICER 1 he said, referring to Complainant, "This stupid bitch," and went on to state that he'd take an incident report, but not an offense report. SUBJECT OFFICER 2 explained that Complainant "was at the fuckin' inauguration . . . gets a video. She's filmin' some guy and the guy says, 'Get the fuckin' camera out of my face. I'll fuckin' stomp you.'" Finally, SUBJECT OFFICER 2 told SUBJECT OFFICER 1 that Complainant is "MO."
8. Subject Officers proceeded to the front desk where Complainant said "hello" to SUBJECT OFFICER 1, who responded with "what do you need?" SUBJECT OFFICER 1 stood at a counter separated from the public area by plexiglass. Complainant stood facing the front desk on the public side of the plexiglass. SUBJECT OFFICER 2 stood to the right side of SUBJECT OFFICER 1 appearing to be working on paperwork while Complainant and SUBJECT OFFICER 1 interacted.
9. Complainant explained to SUBJECT OFFICER 1 that a man at the inauguration shoved her and took her sign. SUBJECT OFFICER 2 interjected and said that she had not stated that earlier. Complainant apologized and said she had been focused only on showing him the videos in which the man threatened her.
10. SUBJECT OFFICER 1 then watched the video and soon stated that the film was altered because it jumped. Complainant denied that the video had been altered.
11. While SUBJECT OFFICER 1 continued watching the video, SUBJECT OFFICER 2 interjected, "there's so many people around; I'm gonna do an incident report like I said." SUBJECT OFFICER 1 immediately concurred and told Complainant that they are not going to take a criminal report, but would take an incident report."
12. Complainant then asked to show SUBJECT OFFICER 1 a second video, which he proceeded to watch. While SUBJECT OFFICER 1 watched the second video, SUBJECT OFFICER 2 stated that he had also watched the second video and there was nothing in it.
13. While continuing to watch the video, SUBJECT OFFICER 1 told Complainant repeatedly that she was clearly following the guy around in the video and that there was no threat so they were not going to take an offense report. He reiterated that they are not taking an offense report, his decision is final, and he was not going to debate it further.
14. Complainant objected by asking if someone saying they are going to stomp her head is a threat. SUBJECT OFFICER 1 responded that he can't tell if the guy in the video was

talking to her or someone else because they were in the middle of a crowd and it is obvious she was following him.

15. SUBJECT OFFICER 2 verbally agreed with SUBJECT OFFICER 1 regarding her following the man in the video, which Complainant claimed he did not say until SUBJECT OFFICER 1 said it. SUBJECT OFFICER 2 agreed that he didn't say anything about Complainant following the man and Complainant asked why he would say it now.
16. Complainant began to cry and moved away from the window. SUBJECT OFFICER 1 left the front desk. SUBJECT OFFICER 2 moved to the window and asked Complainant for information to complete the incident report. Complainant asked SUBJECT OFFICER 2 to give her a minute. After Complainant finished crying SUBJECT OFFICER 2 asked Complainant for various information to complete the incident report.
17. Some seconds later, SUBJECT OFFICER 1 can be heard in the background making a crying sound and stating in a high-pitched voice, "he said he was gonna stomp my head. Fuck Donald Trump she said" He then continues a whiny fake crying and says loudly, "Honey, look, he's the president, get used to it. There's nothing you can do. Alright."
18. Complainant overheard SUBJECT OFFICER 1's remarks and asked SUBJECT OFFICER 2, "are they talking about me?" To which SUBJECT OFFICER 2 responded, "he's talking to another officer." "About me?" Complainant asked. SUBJECT OFFICER 2 said "no."
19. SUBJECT OFFICER 2 asked Complainant for information about the location of the incident and she told him that she'd text her boyfriend to find out. While she was working on obtaining this information, SUBJECT OFFICER 1 returned to the front desk and conversed with SUBJECT OFFICER 2 about officers checking-off for their tours. Both men spoke in calm tones.
20. Shortly after SUBJECT OFFICER 1 moved out of Complainant's sight, he said, "that crazy ass fuckin' bullshit following that guy around. Sticking her camera . . . Get that camera out of my face. Get the camera out of my face. The guy had like a three or four year old daughter on his shoulders. . . . And she was trying to agitate him."
21. Again, Complainant overheard SUBJECT OFFICER 1's remarks and said in response, "I didn't try to agitate him." Some moments later, SUBJECT OFFICER 1 said something like, "she's lucky she didn't get her fuckin' face stomped on." Complainant looked in the direction of the back room where SUBJECT OFFICER 1 was located and asked, "what did he say?" SUBJECT OFFICER 2 responded that he didn't hear it.
22. Eventually Complainant told SUBJECT OFFICER 2 the location her boyfriend texted her. SUBJECT OFFICER 2 asked for clarification about whether it was in the Northwest or Southeast quadrant. Complainant said she would call her boyfriend to clarify and

SUBJECT OFFICER 2 asked, “Don’t you live in the city?” After Complainant spoke with her boyfriend, she provided the correct information as to the location.

23. SUBJECT OFFICER 2 then called 911 to obtain the number for the incident report and provided it to Complainant on a business card.

IV. DISCUSSION

Complainant alleges that SUBJECT OFFICER 1 used language or conduct toward her that was insulting, demeaning, or humiliating when SUBJECT OFFICER 1 mocked her from a back room of the police station while she was trying to file a police report. She further alleges that both SUBJECT OFFICER 1 and SUBJECT OFFICER 2 were unnecessarily cruel and rude to her in her attempt to file a police report regarding an alleged threat of bodily harm. Complaint Examiner finds that both Subject Officers’ conduct and language was insulting, demeaning, or humiliating to Complainant. Both Subject Officers’ conduct toward Complainant used a dismissive, accusatory, and annoyed tone toward Complainant, they unnecessarily attacked her story, and dismissed any possibility of the use of witnesses to support her story. Their conduct brought Complainant to tears. Not only was their direct conduct with Complainant insulting, demeaning or humiliating, but SUBJECT OFFICER 1 mocked Complainant when out of her sight, loudly enough so that she could overhear him, which was cruel and inappropriate. His behavior is all the more egregious because he is a HIGHER RANKING OFFICER and sets the tone and proper conduct for his subordinates. The type of behavior deemed appropriate by SUBJECT OFFICER 1 is further demonstrated by the offensive way in which SUBJECT OFFICER 2 first brought Complainant’s situation to SUBJECT OFFICER 1 by referring to her as “this bitch” and “MO” and describing her complaint in derogatory terms. His initial explanation set the tone for the interaction with Complainant and, although not within Complainant’s hearing, confirms that Complainant was not imagining the Subject Officers’ demeaning and rude conduct toward her. Thus, as discussed further below, Complaint Examiner determines that Subject Officers’ language and conduct toward Complainant was insulting, demeaning, and humiliating in violation of numerous police policies as listed below.

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: . . . (3) use of language or conduct that is insulting, demeaning, or humiliating”

Numerous policies outline the language and conduct expected of officers:

- “All members shall be courteous and orderly in their dealings with the public. a. Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . b. Members shall be attentive to, and take suitable action on, reports and complaints by a citizen. . . . d. Members shall avoid giving the impression that they are evading the performance of their duty, or that

they are not interested in the problems of persons who are referred elsewhere for service, . . .” MPD General Order, Duties, Responsibility, and Conduct of Members of Department, PER-201.26, Part V, § C.1.

- “[Members] shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties.” *Id.* at § C.2.
- Members shall “[r]efrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.” *Id.* at § C.3.
- “In the performance of their duty, Members should develop a disposition that is pleasant and personable in nonrestrictive situations . . .” *Id.* at § E.3.
- All members shall “[i]n a customer-friendly manner, ensure that the information or service requested is provided or is appropriately referred.” MPD General Order, Customer Service Standards and Testing, Topic/Number GO-PER-201.35, March 25, 2001, Part IV, § A.3.
- “Every member, regardless of rank, grade or assignment, is responsible for providing the highest quality of customer service.” The MPD Standard Operating Procedures, Customer Service Standards and Testing, Topic Customer Service, September 12, 2005, Part III. § A.
- “All Metropolitan Police Department employees shall: c. Maintain a cordial demeanor and tone throughout the in-person interaction.” *Id.* At Part IV. § B.1.
- “The policy of the Metropolitan Police Department is to provide quality police service, and accessibility, where possible, to all persons seeking police assistance. All contacts with the public . . . across a desk . . . shall be guided by professionalism and the basic principles of good manners.” MPD General Order, Station Clerk Duties, PER-201.23, Part II,
- “Members assigned to the station shall: 1. Refrain from activities that bring discredit to the Department (e.g., . . . loud and boisterous conversations, profane language, etc. . .). *Id.* at Part IV. § B.
- “The standard salutation shall be, “Welcome to the (Your element/district), my name is (Officer/Mr./Ms./Mrs.), how may I help you?”. *Id.* at Part V. § D.

- “[Station personnel shall] immediately complete a police report for all crimes reported at the station in accordance with GO-OPS-401.10 (Telephone Reporting United/Walk-in Reporting System). *Id.* at V.E.1.

SUBJECT OFFICER 1

SUBJECT OFFICER 1 initiated his contact with Complainant not with a pleasant and personable, “Hello. How may I help you,” that the non-restrictive situation warranted, but with a curt and gruff, “what do you need?” Exh. 9 at 1, BWC footage at 2:10, GO-PER-201.6 Part V, § E.3. (“In the performance of their duty, Members should develop a disposition that is pleasant and personable in nonrestrictive situations . . .”), GO-PER-201.23 Part V. § D (“The standard salutation shall be, “Welcome to the (Your element/district), my name is (Officer/Mr./Ms./Mrs.), how may I help you?”). His tone and demeanor toward Complainant from the outset suggested she was imposing on his time. He listened patiently to Complainant, albeit with interruption from SUBJECT OFFICER 2, as she explained that she had been at the inauguration and the alleged aggressor had ripped away her sign and shoved her. Exh. 9 at 1, BWC footage at 2:20. She then asked to show SUBJECT OFFICER 1 a video, which he watched, in which the alleged aggressor stated “Get the fuckin’ camera out of my face. I’ll fuckin’ stomp you.” Exh. 9 at 1-2; BWC footage at 1:27 and 2:35. Shortly into watching the video, SUBJECT OFFICER 1 attacked her story in a derogatory tone accusing her of editing the video, of following the alleged aggressor around, and finally concluding that there was no threat in the video. Exh. 9 at 1-2; BWC footage at 2:42, 4:16, 4:51. Each of his remarks suggested that Complainant was either lying or the aggressor in the situation. Complainant explained that she wasn’t following the man but turning around as the man circled her and told him that she could provide witnesses, including her boyfriend outside. Exh. 9 at 2, BWC footage at 4:55. SUBJECT OFFICER 1 dismissed the possibility that witnesses to the event would change his conclusion because it would only be her boyfriend’s opinion. Exh. 9 at 2, BWC footage at 5:56, 6:05 and 6:13. When Complainant pressed him about whether the alleged aggressor’s statement toward her was a threat, “Get the fuckin’ camera out of my face. I’ll fuckin’ stomp you,” SUBJECT OFFICER 1 told her that he couldn’t tell if the statement was directed at her because there were too many people around and that she was following him. Exh. 9 at 2, BWC footage 6:15.

Threats to do bodily harm is a misdemeanor offense under D.C. Code § 22-407 and is defined as “1) the defendant uttered words to another person; 2) . . . of such a nature as to convey fear of bodily harm or injury to the ordinary hearer; and 3) defendant intended to utter the words. . . .” *Joiner-Die v. United States*, 899 A.2d 762, 764 (D.C. 2006).

Thus, the statement made by the man in Complainant’s video and Complainant’s assertions facially fulfill the definition of a criminal threat of assault under the D.C. code. The alleged aggressor stated that he would “fuckin’ stomp you.” Complainant alleged that the statements were made to her and claimed that, in addition to the video, she had witnesses, including her boyfriend outside the police station, that the statement was directed at her. Given

that she also claimed that this man previously ripped the sign out of her hands and shoved her, it suggests that she had reason to believe his statements.

Nonetheless, SUBJECT OFFICER 1 concluded there was no criminal offense because, according to his interview with OPC, she lacked credibility. Exh. 7 at 4:42. His basis for determining that she wasn't credible were that he believed the video had been altered and because she was clearly following the man and denied it. *Id.* He also claimed during his interview with OPC that her tears were false: he described her behavior as "normal . . . until she figured out we weren't playing ball with her story, then she started weeping and crying." Exh. 7 at 10:38.

Although SUBJECT OFFICER 1 explains his conduct toward Complainant as a finding that she was not credible, later statements made by SUBJECT OFFICER 1 when he is out of sight of Complainant, and a later statement in his interview with OPC suggest that, in fact, he understood the threat to be directed at her but that, rather than it not being a crime, he believed her to have deserved such a threat because she was "agitating" the man. Mocking Complainant, he says in a high pitch voice, "he said he was gonna stomp my head. Fuck Donald Trump she said." BWC footage at 7:27. He then continued a whiny fake crying and said loudly, "Honey, look, he's the president, get used to it. There's nothing you can do. Alright." BWC footage at 7:41. Minutes later, SUBJECT OFFICER 1 returned to his mocking of Complainant by referring to "that crazy ass fuckin' bullshit following that guy around. Sticking her camera Get that camera out of my face. Get the camera out of my face. The kid had like a three or four year old daughter on his shoulders. . . . And she was trying to agitate him." BWC footage at 9:34. In his interview with OPC, when asked if he said "she was lucky she didn't get her face stomped in," SUBJECT OFFICER 1 stated that, while it was not something he would have said, "in my personal opinion she probably is, the way she pushed this guy, especially when the guy has, I'm assuming, his kid on his shoulders; there are certain things you do and certain things you don't and that's not one of them." Exh 7 at 14:12.

These out-of-view statements ridiculing Complainant are egregious behavior from any Officer, let alone a HIGHER RANKING OFFICER. That Complainant could hear the statements only makes it worse. SUBJECT OFFICER 1 and his representative contend that Complainant could not possibly have heard SUBJECT OFFICER 1's mocking statements because of the plexiglass between the officers and Complainant. Yet Complainant clearly heard SUBJECT OFFICER 1 making fun of her because she said in her complaint to OPC that she heard him mimicking her crying and telling someone "she was lucky she didn't get her face busted in," Exh. 3 at 4:30, which is similar to what SUBJECT OFFICER 1 can be heard saying in the background of the BWC footage. As she did not view the footage prior to her Complaint and interview, the only way she could know what was said was if she had heard it through the plexiglass. Moreover, at the time she heard his initial disparagement of her, she asked SUBJECT OFFICER 2, "are they talking about me?" BWC footage at 7:45. Similarly, following SUBJECT OFFICER 1's second rant about Complainant, she responds to SUBJECT OFFICER 2 by saying,

“I wasn’t trying to agitate him,” indicating that she heard him say that she was trying to agitate him. BWC footage at 10:00.

SUBJECT OFFICER 1’s representative contends that it can’t be proven that it was SUBJECT OFFICER 1 making the mocking and derogatory sounds and statements heard in the BWC footage because he’s not visible. The voice of the person imitating Complainant is recognizable as that of SUBJECT OFFICER 1, however, as it matches the voice that can be heard while he is conversing with Complainant at the counter and in his interview. Moreover, SUBJECT OFFICER 1 admitted during his interview with OPC to talking about his interaction with Complainant in the backroom. Exh. 7 at 13:15. Rather than denying he made the statements, he said that the statements didn’t sound like something he would say and that he wasn’t sure if he was in the room at the time the crying sounds were made. *Id.* at 14:10. One would have expected SUBJECT OFFICER 1 to condemn the crude statements, but instead, he felt compelled to tell the OPC investigator that Complainant was, in fact, lucky that she didn’t get her face busted in. *Id.* at 14:10. He also argued that, despite the crying sounds being distinctly audible in the BWC video that he reviewed, that her accusation was just one more of her fabrications. *Id.* at 16:28. His lack of denial in making the statements, attempt to blame the Complainant for lying when her allegation is clearly heard in the video, and indication of support for the statement that she was lucky she didn’t get her face smashed in supports that the mocking was, in fact, being done by SUBJECT OFFICER 1. In addition, the statements audible in the BWC footage reflect too closely SUBJECT OFFICER 1’s encounter with Complainant and his beliefs about her report such for it to have been another officer.

Finally, SUBJECT OFFICER 1’s representative argues that Complainant misunderstood what she heard because it is natural that “there might have been colloquial discussion amongst officers about the inauguration” given that it was a popular topic of conversation two days after the inauguration. This objection has no merit. First, SUBJECT OFFICER 1, despite having watched the video, never suggests in his interview that Complainant may have misunderstood what she heard. Moreover, SUBJECT OFFICER 1’s fake whiny crying and high-pitched statement as if speaking in a woman’s voice that “he said he was gonna stomp my head,” imitates his just completed discussion with Complainant too closely to be simply a confusion about colloquial discussion amongst officers about the inauguration. Similarly, his statements about her following a man around with children on his shoulders with her camera and trying to agitate him mirrors his accusations when he spoke to her directly and his statements during his interview with OPC.

Even if SUBJECT OFFICER 1’s conclusion that there was no criminal offense was valid it is unclear why he insisted on arguing with her about it to the point she was brought to tears. The nature of her allegation – which facially meets the elements of threats to do bodily harm - required reporting on form PD 251 by the desk officer who received her allegations whether the officers determined it was criminal or not. MPD General Order, Field Reporting System, Topic/No. GO-SPT-401.01, July 19, 2012, Part IV, § A.; Part III, 6.; and Attachment A. *See also* MPD General Order, Telephone/Walk-in Reporting System, Topic/No. GO-SPT-401.10, July 22,

2002, Part IV, § A.1.(The Procedural Guidelines for reports taken at the police districts provide that district personnel may take reports not requiring on-scene investigation).

The classification of whether it was an offense or merely an incident is not part of the “public” version of the report (*See* Exh. 12, Public Incident Report) and nowhere in police department policy does it state that a person who reports an incident must be informed of the classification. Moreover, the reporting officer could note his reasons for classifying the report as an incident rather than offense in the report as SUBJECT OFFICER 2 did here (albeit without details as to what in the video demonstrated there was no criminal threat). He simply had no reason to engage in this dismissive and attacking argument with Complainant other than to belittle her.

No doubt, resolving a crime of threat of bodily injury that occurred during a huge and emotional event such as the inauguration, with no knowledge of who the alleged perpetrator was, and the likelihood that he didn’t even live in the D.C. area is difficult and unlikely. Complainant was aware of that situation as she expressed that it was the reason she delayed coming to report the incident. But regardless of this difficulty and whether SUBJECT OFFICER 1 believed Complainant deserved the treatment she received by the alleged aggressor, he was required to treat Complainant in this situation respectfully. Instead he treated her rudely and cruelly. His behavior failed to be guided by professionalism and the basic principles of good manners and did nothing to further cordial Police/Citizen relations that are vital to Officers ability to secure and maintain public respect. Such conduct is a violation of numerous police policies noted above

SUBJECT OFFICER 1 is a HIGHER RANKING OFFICER and supervisor who should be modeling the acceptable tone and conduct for his subordinates. That he doesn’t acknowledge any problem with either his or SUBJECT OFFICER 2’s language and conduct, even after viewing the BWC footage, makes one question whether he is suitable for such a role. One can only imagine him speaking as he did to or about a victim of domestic violence who has real fear for her/his life, but with not even the level of evidence that Complainant does here. Would he say to a domestic violence victim that s/he deserved what s/he got? Would he disparage and ridicule her/him behind her/his back? What about people with mental illness?

The allegations of use of language or conduct that is insulting, demeaning, and humiliating by SUBJECT OFFICER 1 toward Complainant for a) mocking and b) for being rude to her is sustained.

SUBJECT OFFICER 2

SUBJECT OFFICER 2’s conduct is no less egregious than SUBJECT OFFICER 1’s. Setting aside for a moment, SUBJECT OFFICER 2’s initial comments to SUBJECT OFFICER 1 out of Complainant’s hearing, his behavior and language with Complainant is demeaning to Complainant.

First, SUBJECT OFFICER 2 interrupts Complainant's conversation with SUBJECT OFFICER 1 several times indicating his irritation with Complainant and annoyance at having to prepare any report relating to her allegations. Rather than allowing SUBJECT OFFICER 1 to reach his own conclusions regarding Complainant's allegations, he interrupted Complainant's story to state that she had not previously told him that the alleged aggressor had shoved her and taken her sign. BWC footage at 2:22. He then interrupted SUBJECT OFFICER 1's watching of the first video to state that "there's so many people around; I'm gonna do an incident report like I said." *Id.* at 3:22. He interrupts again when Complainant asks to show SUBJECT OFFICER 1 the second video to state that he had watched it and there was nothing to it. *Id.* at 3:47. Then, when SUBJECT OFFICER 1 tells Complainant that he thought she was following the alleged aggressor, SUBJECT OFFICER 2 jumps in to concur. *Id.* at 6:35. When Complainant discusses witnesses with SUBJECT OFFICER 1, SUBJECT OFFICER 2 jumps in and says, "we're not playing he said, she said." *Id.* at 6:13.

Second, when SUBJECT OFFICER 2 moves to take Complainant's information for the incident report, his tone throughout the interaction is curt and suggests irritation at his task. A tone picked up on by Complainant when she states in her interview that "they acted like they were doing me a favor," and "it seemed like they didn't want to help me." Exh. 3 at 7:39 and 8:03. In contrast, SUBJECT OFFICER 2's tone when speaking with the 911 operator to obtain the number for the incident report was warm and cordial. *Id.* at 12:30.

The sense of impatience and aggravation is heightened by several comments SUBJECT OFFICER 2 made during the interaction. When a new person entered the office to ask for information, Complainant informed SUBJECT OFFICER 2 that he could help the new person because she was still waiting for information from her boyfriend to complete the report. *Id.* at 9:23. SUBJECT OFFICER 2 responded gruffly, "Nah, I got to finish my report before I can start anything else and I need the location." *Id.* Nothing in MPD policy provides that SUBJECT OFFICER 2 could not have helped the other person before finishing Complainant's report, especially when she has kindly offered it so that she would not be wasting the other person's time. His response, however, indicates a passive aggressive suggestion that she is now not wasting only his time, but the new person's. When Complainant finally obtains the information, but is uncertain which quadrant the violation occurred in, he condescendingly asks, "Don't you live in the city?" *Id.* at 12:00. There was simply no reason for him to ask this question except to disparage her. He had her license and address; he knew she lived in the city. Even if she didn't; her residence was irrelevant. If she was threatened in Washington, D.C. then he would be equally responsible to take a report of the alleged incident regardless of residence.

Moreover, despite SUBJECT OFFICER 1's mocking of Complainant being clearly audible to Complainant, he denies that anyone is talking about her behind her back and says he can't hear it. *Id.* at 7:50. Unless SUBJECT OFFICER 2 is hard of hearing he must have heard it too given how clear it was in the BWC footage so he lied to Complainant and then did nothing to stop SUBJECT OFFICER 1 from continuing with his inappropriate mocking within hearing of Complainant. While SUBJECT OFFICER 1 may be SUBJECT OFFICER 2's superior and he is

in no position to reprimand him, one would at least expect SUBJECT OFFICER 2 to inform SUBJECT OFFICER 1 that his comments are audible to the Complainant so that SUBJECT OFFICER 1 could either stop, quiet down or move elsewhere.

SUBJECT OFFICER 2's representative claims that his language was always courteous because he ended sentences with "ma'am," thanked her when she provided her ID or phone number, and said "whenever you're ready" when Complainant began to cry and asked for a moment to gather herself. But words like "ma'am" and "thank you" in themselves do not convey respect if they are said rotely and without sincerity. They become sarcastic and insolent when used in a tone, and accompanying other statements, as here, that suggested that SUBJECT OFFICER 2 had no choice but to put up with her even though he didn't like it. Moreover, SUBJECT OFFICER 2's statement of "whenever you're ready" did not come off as sympathetic, as stated by the representative, but, rather, was said in a dismissive tone that suggested impatience with her.

Subject Officer's representative also objects to the comparison with SUBJECT OFFICER 2's tone with the 911 dispatcher by attributing the difference solely to the fact that SUBJECT OFFICER 2 didn't have to increase his volume when speaking on the phone as when he had to speak through the plexiglass to Complainant. SUBJECT OFFICER 2's demeanor toward Complainant was not related to volume, however, but to a disrespectful tone directed toward Complainant that disappeared when he spoke in a friendly way to the 911 dispatcher.

Finally, although SUBJECT OFFICER 2's direct conduct toward Complainant was disrespectful and thus insolent and demeaning, his behind the scenes language was even more so. When SUBJECT OFFICER 2 finds SUBJECT OFFICER 1 to ask him to speak with Complainant, at the outset, he refers to Complainant as "this stupid bitch" and in explaining Complainant's allegation he uses derogatory terms, stating that she "was at the fuckin' inauguration . . . She's filmin' some guy and the guy says, 'Get the fuckin' camera out of my face. I'll fuckin' stomp you.'" *Id.* at 1:05. Toward the end of his rant about Complainant, he also tells SUBJECT OFFICER 1 that Complainant is MO, which is understood to technically mean "mental observation," but in this instance is clearly meant to be a derogatory reference to her mental status. *Id.* at 2:27. This language is insulting, demeaning, and humiliating to Complainant. It set the tone for SUBJECT OFFICER 1's attitude as he approached Complainant and reinforces that SUBJECT OFFICER 2's tone of seeming irritation and disrespect during the interaction was not imagined by Complainant nor by this Complaint Examiner.

Moreover, mental illness is not a joke and should not be used as a derogatory reference. If SUBJECT OFFICER 2 genuinely believed Complainant had a mental illness, one would have expected SUBJECT OFFICER 1 and SUBJECT OFFICER 2 to have treated her with extra patience and care to avoid possible escalation of the situation, which they did not. It is disconcerting that the Subject Officers might believe that this is the proper way to behave with a person with mental illness.

SUBJECT OFFICER 2's representative contends that these derogatory statements made in private between the two officers and out of earshot of Complainant are not relevant to this decision. The first argument is that SUBJECT OFFICER 2's out-of-hearing comments, did not impact his behavior in Complainant's presence. As explained above, however, SUBJECT OFFICER 2's attitude, behavior and tone toward Complainant throughout their interaction did not exhibit the courteousness one would expect when someone comes in to report an alleged crime to the police, but rather suggested annoyance with and derision of Complainant. Thus, a decision sustaining SUBJECT OFFICER 2's improper language and conduct toward Complainant is merited without reference to Subject Officer's out-of-hearing offensive comments. These comments simply make his conduct worse and confirm Complainant and this Complaint Examiner's sense regarding his conduct and language during this interaction with Complainant.

Second, his representative contends that Complainant's claim of inappropriate language and conduct by SUBJECT OFFICER 2 is based solely on his decision to prepare an incident report rather than an offense report and OPC is manufacturing a harassment claim based solely on BWC footage. This assertion is incorrect. Complainant states in her complaint, "They were unnecessarily cruel and rude to me." Exh. 1 at 2. During her interview, in addition to referencing the incident report, she stated that SUBJECT OFFICER 2 lied about SUBJECT OFFICER 1 not talking about her when it was clear what he was doing. In addition, she said that it seemed like SUBJECT OFFICER 2 didn't take her seriously when she showed him the video of the man threatening her and said he wasn't sure if it was a threat. Exh. 3 at 15:15. She also states that "they acted like they were doing me a favor," and "it seemed like they didn't want to help me." *Id.* at 7:39 and 8:03. Thus, Complainant felt that SUBJECT OFFICER 2 disrespected her in a number of ways in his attitude, behavior, and tone toward her in their interaction. Her complaint against SUBJECT OFFICER 2 is not "manufactured" solely on BWC footage. Finally, Complainant's allegations are not for harassment, but for use of language or conduct that is insulting, demeaning, or humiliating, which, as already discussed, is found here even without the out-of-hearing language.

Third, his representative contends that SUBJECT OFFICER 2's out-of-hearing language should not be considered as part of this complaint because officers should have confidentiality in their private conversations. However, the representative provides no case law or other basis to support his conjecture. Instead, he contends that if the private conversation recorded here is not prohibited from consideration that it could result in officers in situations such as undercover officers purchasing narcotics, homicide detectives when interrogating murder suspects, and female undercover officers negotiating sex for money being punished for using course language in the course of their duty. Whereas there may be a legitimate basis for officers in those situations to use the type of language used by SUBJECT OFFICER 2 in the course of their duty, these types of activities are worlds away from the interaction with Complainant where SUBJECT OFFICER 2 is asking his supervisor to assist a Citizen who has calmly and respectfully come into the district substation with what she perceived as a criminal complaint. Calling Complainant a bitch and MO in private is horribly insulting, demeaning, and humiliating and set the stage for

both officers to treat her in such a manner. It is impossible to justify such language whether it was heard by her or not.

Moreover, it is impossible to see how SUBJECT OFFICER 2 could have an expected a right of privacy over a conversation that was videotaped with his knowledge and that is available to be seen by the public. SUBJECT OFFICER 2 was aware he was videotaping his conversation because he turned his camera on. That SUBJECT OFFICER 2 chose to speak in such an offensive manner about Complainant despite knowing he was being recorded suggests he doesn't see anything inappropriate about talking in such a manner. That he speaks in such a manner to a HIGHER RANKING OFFICER who doesn't correct him and then later speaks in such a manner himself within earshot of Complainant suggests that SUBJECT OFFICER 1 has created an environment in which it is considered appropriate to disparage and speak offensively about the public the officers have sworn to serve. This kind of behavior can't help but make itself known when these officers are interacting with the public and it hurts the Police/Citizen relations that are so vital to good police work.

Thus, SUBJECT OFFICER 2's language and conduct violated the policies enumerated above. It was insulting, demeaning and humiliating toward Complainant and the allegation against him as to his language and conduct is, therefore, sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER 1

Allegation 1 (Language and Conduct-mocking):	Sustained
Allegation 2 (Language and Conduct-rude):	Sustained

SUBJECT OFFICER 2

Allegation 2 (Language and Conduct-rude):	Sustained
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Submitted on September 8, 2017.

Jennifer A. Fischer, Esq.
Complaint Examiner