

OPC MONITORING OF THE “WOMEN’S MARCH” JANUARY 21, 2017



REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD

TO

**MAYOR MURIEL BOWSER,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
INTERIM CHIEF OF POLICE PETER NEWSHAM**

February 27, 2017

POLICE COMPLAINTS BOARD

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I. INTRODUCTION AND OVERVIEW

On Saturday, January 21, 2017, hundreds of thousands of people from across the nation participated in the “Women’s March.”¹ The rally was held on Independence Avenue and 3rd Street SE and the surrounding District streets in the area of the U.S. Capitol and the National Mall. The march that followed the rally went to the general area of the White House.² The rally began at 10:00 a.m. and concluded around 2:00 p.m.; however a large amount of people continued occupying a significant portion of the downtown area streets immediately north of the National Mall from 3rd to 15th Streets N.W. for several more hours.

OPC, pursuant to the agency’s authority under the First Amendment Rights and Police Standards Act,³ deployed nine members of its staff to monitor MPD’s interactions with Women’s March participants throughout the day on Saturday. Because the event took place on both federal and District of Columbia property, a number of federal law enforcement officers, specifically officers from the Secret Service, U.S. Park Police and the National Guard, were present in addition to MPD officers. Because the Act applies only to the District of Columbia’s police officers, OPC staff primarily concentrated on observing the actions of MPD officers. OPC also photographed and video recorded observations of the rally and march.⁴ This report summarizes OPC’s observations and makes recommendations based on those observations.⁵

II. THE ACT AND OPC’S MONITORING EFFORTS

The First Amendment Rights and Police Standards Act of 2004 (“Act”) took effect in the District on April 13, 2005. The Act established and declared the District’s official policy on

¹ No official crowd estimate has been released; this is based on observations and anecdotal evidence.

² The rally area effectively extended from 3rd Street to 14th Street along both the north and south sides of the National Mall, essentially constraining an actual march from proceeding in a concentrated fashion due to the volume of people.

³ See D.C. Code §§ 5-331.01 to -337.01 (2015). 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.

⁴ See Appendix.

⁵ 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, and its authority to monitor and evaluate MPD’s handling of First Amendment assemblies. See D.C. Code § 5-1104(d) (2015). PCB would like to acknowledge the assistance of OPC’s staff in conducting the protest monitoring on January 21, 2017, and with preparing this report and recommendations. The agency’s monitoring work was coordinated and supervised by OPC Executive Director Michael G. Tobin; Deputy Director Rochelle Howard; and Senior Investigators, Anthony Lawrence, Denise Hatchell, and Jessica Rau. In addition, the following OPC staff members served as monitors: Investigations Manager Robert Rowe; Investigators Hansel Aguilar, Victoria Keys, Lindsey Murphy, and Danielle Sutton; Program Analyst Christopher Weber; and Investigative Clerk Chauntini Clark.

First Amendment assemblies. 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.⁶ 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.⁷

OPC focused its monitoring on Title I of the Act. Title I, known as First Amendment Assemblies, 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.⁸

OPC’s overall impression is that MPD performed in a professional 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. MPD officers appeared alert and attentive, yet unimposing and non-confrontational. MPD officers were observed providing help and directions to individuals who requested assistance. MPD officers were also observed providing an escort and traffic control to allow an ambulance movement through the crowds on the National Mall.

Some specific examples of positive police interactions that OPC observed were:

- Motorcycle officers outside of the FBI headquarters building allowing parents to take photos of their small children on a MPD motorcycle.
- At Independence Avenue and 2nd Street S.E., OPC monitors were approached by two women who said they saw a man with some kind of baton. OPC monitors directed them to the MPD officer on the corner who immediately responded and located the individual.
- At 12th Street and Constitution Avenue N.W., OPC observed MPD police officers helping the general public who approached them with questions. Many attendees

⁶ D.C. Code § 5-331.03.

⁷ D.C. Code §§ 5-331.05 to -331.17.

⁸ 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.

shared with OPC monitors that they are grateful for MPD's assistance, such as providing directions, and that the officers were helpful and cordial.

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, around 10:50 a.m. two male officers were observed directing traffic at 6th and D Streets NW, and they had no visible badge number or nameplates.

However, two issues of concern were observed by OPC during the Women's March. Specifically, several uniformed officers assigned to monitor the march were observed wearing pink hats along with the participants in the Women's March. As the pink hats are likely viewed as support for the Women's March and its political message, officers in uniform wearing the hats give the impression to the public of political support while on duty, which is a violation of MPD's guidance on permitted and prohibited political activities.⁹ As evidence that the public did take notice of this, one comment that OPC received from a concerned resident stated "uniformed on-duty officers wearing articles of clothing visible to the public that are social, economic, or political in nature could be considered an advocacy statement or might create a controversy."

Secondly, MPD appeared to have very little presence at points further north and west of the original rally point at Independence Avenue and 3rd Street S.E. As the crowds shifted north from the National Mall, there were multiple traffic intersections that became dangerous for pedestrians very quickly. H Street, N.W. and New York Avenue, N.W. were open to vehicular traffic and large groups of pedestrians crossed against the traffic signals causing traffic jams and vehicles "blocking the box." Many streets immediately north of the National Mall were completely filled with large numbers of pedestrians. With the streets impassable for vehicles, and with little traffic control, the area would have been inaccessible to emergency vehicles and personnel. In addition, there were many points along the march route, and in the downtown area, where it was difficult to find any officers, and when they were seen it was only an officer or two present. These officers were often completely surrounded by very considerable numbers of march participants, making it difficult to see how the officers would have been able to move quickly to respond if an incident had occurred.¹⁰

⁹ Circular 10-01, The Hatch Act (Permitted and Prohibited Political Activities). CIR-10-01 refers to the federal Hatch Act, 5 U.S.C. § 7321. This act was amended by the Hatch Act Modernization Act of 2012, which took effect on January 28, 2013, to remove DC government employees from its purview. However, the provisions discussed are codified in D.C. Code §1-1171 (2011), and thus still apply to members of MPD.

¹⁰ While OPC and the PCB do not have authority to oversee how MPD deploys its officers, and the PCB also recognizes that the Women's March presented an unusual situation, the PCB still finds it useful to point out that MPD should ensure that it can quickly react to changing circumstances. The attendance at the Women's March appeared to greatly exceed planned expectations. The volume of people created issues with crowding and resulted in participants marching in the streets outside of the predetermined route. The MPD presence seemed inadequate in these areas for a period of several hours, which fortunately appears to have only resulted in traffic issues, but which could have developed into more serious problems. MPD should ensure adequate personnel resources and the ability to redeploy even during unusual and unique circumstances such as the Women's March.

III. CONCLUSION AND RECOMMENDATIONS

Based on OPC's observations, PCB commends MPD for the manner in which it worked with Women's March organizers to facilitate their exercise of First Amendment rights. PCB offers the following recommendations based on its observations:¹¹

MPD must ensure all members are fully trained on Circular 10-01, specifically as it relates to D.C. Code §1-1171.03, Political activities on duty; prohibition, which states in part: "An employee shall not engage in political activity: While the employee is on duty...wearing a uniform or official insignia identifying the office or position of the employee." Officers should be reminded of the prohibition with respect to donning articles of clothing that may identify them as proponents or opponents of particular groups participating in an event if they are on duty or in uniform.

¹¹ PCB recognizes and appreciates the cooperation of MPD Interim Police Chief Peter Newsham, and Commander Jeffrey Carroll of MPD's Special Operations Division, in providing assistance to OPC as it planned and carried out its monitoring efforts.

APPENDIX







