

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0361
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 2:	Discriminatory Treatment
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	March 2, 2006

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, COMPLAINANT, filed a complaint with the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), on June 25, 2002. COMPLAINANT alleged that on June 19, 2002, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Third District, used language or engaged in conduct toward him that was insulting, demeaning or humiliating, and discriminated against him on the basis of his race and homeless status.

Specifically, the complainant alleged that on June 19, 2002, at approximately 1 p.m., while he was waiting at a bus stop on 3rd Street and New Jersey Avenue, N.W., a man assaulted him by hitting him with a leash attached to a piece of metal and by punching him in the face and head. The assailant also allegedly broke the complainant's cell phone by throwing it to the ground. The complainant ran to 6th Street and New York Avenue, N.W., where he flagged down WITNESS OFFICER #1, First District. WITNESS OFFICER #1 drove the complainant back to the scene, where they were joined by SUBJECT OFFICER and WITNESS OFFICER #2, Third District. The complainant's alleged assailant was still there, and the complainant pointed him out to the police officers. SUBJECT OFFICER interviewed the assailant, checked his identification, and allowed him to leave the scene without arresting him. The complainant asked

the subject officer why she had allowed the assailant to leave, and she allegedly replied, "Before you start talking to me, you better wipe your mouth." According to the complainant, SUBJECT OFFICER then stated that the complainant's alleged attacker had told her the complainant had called him names. When the complainant insisted that he had been assaulted and had been injured, the subject officer laughed at him. The complainant began crying out of frustration, and, as he turned to walk away, he heard the subject officer laugh and say to her fellow officers, "This white motherfucker is trying me."

In addition to laughing at and calling the complainant a derogatory name, the subject officer also allegedly discriminated against the complainant based on his race, white, and his status as a homeless person, by failing to take seriously and investigate thoroughly his claim that he had been assaulted.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3. Any material factual disputes turn on credibility, and the Complaint Examiner credits the complainant's version of events, given the subsequent arrest, indictment and conviction of the individual he identified on the scene as his assailant, and whom SUBJECT OFFICER released.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on January 19, 2006, and the entire record herein, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 1 p.m. on June 19, 2002, COMPLAINANT, who is white, was standing at a bus stop on 3rd Street and New Jersey Avenue, N.W.
2. COMPLAINANT was at that time employed as a nurse's aid at Home Care Partners, and was en route to a review course in cardiopulmonary resuscitation at the University of the District of Columbia. Although employed, the Complainant was living at a nearby homeless shelter.
3. While COMPLAINANT waited for the bus, he was approached by a man who became angry, yelling, "You faggot, don't mess with me, don't fuck with me." He also started swinging a leash attached to a piece of metal near COMPLAINANT's face and head.
4. The Complainant ran across the street to evade his assailant and he called the police on his cell phone. After 15 minutes there was no response. When he saw a bus approaching, he went back to the bus stop.

5. Before COMPLAINANT could board the bus, the assailant pounced on him.
6. COMPLAINANT ran to the corner. He saw several Hispanic men involved in construction work.
7. The man with the leash ran after COMPLAINANT and hit him with the leash and the metal and punched him repeatedly. He also snatched COMPLAINANT's cell phone and threw it to the ground, breaking it.
8. COMPLAINANT ran to the MPD substation at 6th Street and New York Avenue, N.W., for help. An Officer later identified as WITNESS OFFICER #1 drove COMPLAINANT back to the scene, where they were met by other MPD officers, including SUBJECT OFFICER, the subject of this Complaint.
9. COMPLAINANT pointed out his assailant, who was still on the scene.
10. SUBJECT OFFICER interviewed the assailant and told him he was free to go.
11. COMPLAINANT was extremely agitated.
12. In response to COMPLAINANT's shock and disbelief that she had released his assailant, SUBJECT OFFICER told COMPLAINANT he'd better "wipe his mouth" before he spoke to her.
13. COMPLAINANT told SUBJECT OFFICER that the assailant had called him derogatory and discriminatory names; that he had hit him and hurt him; and that he had broken his cell phone. SUBJECT OFFICER laughed.
14. COMPLAINANT cried out of frustration. COMPLAINANT referred to him as a "white motherfucker."
15. After walking away, COMPLAINANT returned to obtain SUBJECT OFFICER's identification and to tell her that he had heard the derogatory name that she had called him. The officer refused to provide the information requested, but COMPLAINANT was able to see the Badge number. When COMPLAINANT told SUBJECT OFFICER he would file a complaint against her, she waved her hand, saying, "Yeah, yeah, yeah."
16. SUBJECT OFFICER asked COMPLAINANT for his identification, which he provided. She recognized the address as that of a homeless shelter. Her attitude toward COMPLAINANT became even more dismissive than it had been. She asked COMPLAINANT if he was on medication and if he was mentally ill.
17. WITNESS OFFICER #3, the head of MPD's Gay & Lesbian Liaison Unit, subsequently was contacted by COMPLAINANT, and he investigated the assault, photographed the

crime scene and COMPLAINANT's injuries, and interviewed several Hispanic men who had witnessed the attack.

18. The assailant identified by COMPLAINANT on the scene, whom SUBJECT OFFICER permitted to leave, was indicted and convicted.

IV. DISCUSSION

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: (1) use of language or conduct that is insulting, demeaning, or humiliating; and (2) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business. "

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H "includes, but is not limited to acts, words, phrases, slang, slurs, epithets, 'street' talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual."

MPD General Order 201.26, Part I, Section C provides that "All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise."

The COMPLAINANT, alleged that the SUBJECT OFFICER, insulted, demeaned, and humiliated him by telling him, "Before you start talking to me, you better wipe your mouth;" by laughing at him when he became upset that the subject officer permitted the alleged assailant to leave without arresting him; and by stating to her fellow officers, "This white motherfucker is trying me."

The subject officer denied that she laughed at the complainant, denied that she told the complainant to wipe his mouth before talking to her, and denied calling the complainant a "white motherfucker." WITNESS OFFICER #2 stated that he did not hear SUBJECT OFFICER call the complainant a white motherfucker, and WITNESS OFFICER #1's statement contains no reference to remarks by WITNESS OFFICER #2. The Complaint Examiner nevertheless finds that the complainant's account of the subject officer's words and demeanor is credible. This credibility determination is based on the fact that the complainant's other allegations about what happened to him that afternoon – namely, the assault – were ultimately determined to be credible, resulting in the indictment, arrest, and conviction of the same man whom the complainant identified as his attacker to the subject officer.

Although the evidence shows that the complainant was highly agitated at the time the subject officer arrived on the scene, the subject officer was required by her professional training and MPD General Order 201.26 to respond to the complainant calmly and respectfully. Telling the complainant that he could not talk to her without first wiping his mouth in a manner that conveyed ridicule rather than concern was inappropriate, particularly considering that the statement was made at a point when the complainant was upset because his attacker had just been allowed to leave. Further support for determining that the subject officer spoke mockingly to the complainant in telling him to wipe his mouth is found in the evidence that the subject officer laughed at the complainant when he tried to explain that he really had been assaulted and was physically hurt, and that she responded to the complainant's act of breaking down into tears by laughing and telling her fellow officers, "This white motherfucker is trying me." The subject officer's actions and words were insensitive and unprofessional. The Complaint Examiner finds that SUBJECT OFFICER used language or engaged in conduct toward COMPLAINANT that was insulting, demeaning, or humiliating, in violation of MPD General Order 201.26.

Discrimination, as defined by MPD Special Order 01-01, Part III, Section D includes "failure to provide proper police service, either in the enforcement of the law or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business."¹

MPD General Order 201.26, Part I, Section A provides that "In accordance with the District of Columbia Human Rights Law, members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business...."

MPD General Order 201.26 Part I, Section A, Paragraph 2 states: "In accordance with the District of Columbia Human Rights Law,² members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business, except as required by specific statute."

¹ The Police Complaints Board, which is OPC's governing body, promulgated regulations regarding OPC on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of "discriminatory treatment" contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

² The D.C. Human Rights Law to which MPD General Order 201.26 refers is The District of Columbia Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*

MPD Special Order 01-01, III.D., defines discrimination as “failure to provide proper police service, either in the enforcement of the law or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business.”

The complainant alleges that SUBJECT OFFICER failed to provide him with proper police service, by acting unprofessionally toward him and by failing to investigate properly his assault allegation, and that the subject officer discriminatorily afforded him substandard police service because of his race (white) and his place of residence (homeless).³

Because MPD General Order 201.26 is based on and incorporates by reference the D.C. Human Rights Act (DCHRA), OPC, in assessing claims of disparate treatment in the provision of police service,⁴ relies upon the McDonnell Douglas burden-shifting scheme, which is applied to all disparate treatment claims in administrative hearings held pursuant to the DCHRA.⁵ D.C. Mun. Regs., tit. 4, § 425 provides:

[T]he initial burden of production of evidence shall rest with the ... complainant to establish a prima facie case of an unlawful discriminatory act or practice. Upon the satisfaction of the ... complainant’s burden of production, the burden shall shift to the respondent to articulate a legitimate, nondiscriminatory explanation for the alleged act or practice. Upon satisfaction of the respondent’s burden of production, the complainant shall be afforded an opportunity to demonstrate that the respondent’s explanation is a pretext or is otherwise invalid.

³ Although the evidence compiled by OPC suggests that the man who assaulted the complainant, and possibly the witness officers, may have harbored homophobic animus, COMPLAINANT did not allege in his complaint form or in his statement to OPC that SUBJECT OFFICER discriminated against him on the basis of his sexual orientation. Moreover, OPC has determined that there is insufficient evidence from which to infer that SUBJECT OFFICER discriminated against the complainant based on his sexual orientation. Accordingly, the complaint has not been construed to include a claim of discrimination based on sexual orientation.

⁴ A disparate treatment claim is one which alleges less favorable treatment than others similarly situated based on race, religion, sex, national origin, etc. Such claims are different from disparate impact claims which allege that a policy or practice neutral on its face nevertheless has a disproportionately negative effect on members of a protected class. The methods and standards of proof applicable to disparate treatment and disparate impact claims differ. The proof structure referenced herein relates to claims of disparate treatment.

⁵ The McDonnell Douglas burden-shifting framework initially was developed for, and is most frequently applied to, claims of disparate treatment in employment. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). However, the McDonnell Douglas analysis is now widely applied to claims of disparate treatment in contexts other than employment. *See, e.g.*, D.C. Mun. Regs., tit. 4, § 425 (applying the McDonnell Douglas analysis to claims of discrimination in housing, public accommodations, education, and employment).

To establish a prima facie case of unlawful discrimination, a complainant generally must show: (1) the complainant is a member of a protected class (2) the complainant applied for or requested a service or benefit for which he was eligible, (3) the complainant was denied the benefit or service, and (4) the adverse action or decision was made under circumstances which give rise to the inference that it was based on unlawful discrimination. See *Futrell v. Department of Labor Federal Credit Union*, 816 A.2d 793,803 (D.C. 2003) (reciting elements of prima facie case for claims brought pursuant to the DCHRA); accord *McManus v. MCI Communications Corp.*, 748 A2d 949, 954 (D.C. 2000), cert denied, 531 U.S. 1183 (2001); *Hollins v. Federal National Mortgage Association*, 760 A.2d 563, 571 (D.C. 2000); see also *George v. Leavitt* 407 F.3d at 405, 412 (D.C. Cir. 2005) (combining second and third elements of a prima facie case into one but affirming that the final element is circumstances that gives rise to an inference of unlawful discrimination); accord *Stella v. Mineta*, 284 F.3d 135, 145 (D.C. Cir. 2002).

“The burden of establishing a prima facie case of disparate treatment is not onerous,” *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981), and the method of demonstrating a prima facie case is “[not] intended to be rigid, mechanized, or ritualistic.” *U.S. Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983) (quoting *Furnco Construction Corp. v. Green*, 438 U.S. 567, 577 (1978)). Accordingly, the requirements necessary to establish a prima facie case vary depending upon the circumstances of the case. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802. n.13 (1973). Although complainants may offer evidence that similarly situated persons not in the protected class were treated more favorably in attempting to establish a prima facie case, such evidence is not required. See, e.g., *Stella v. Mineta*, 284 F.3d 135, 144-146 (D.C. Cir 2002) (plaintiff in a disparate treatment case need not demonstrate that similarly situated persons not in the protected class were treated more favorably in order to carry burden of establishing a prima facie case) accord *George v. Leavitt*, 407 F.3d 405, 412 (D.C. Cir 2005) (it is an error of law to require a plaintiff to present evidence that similarly situated persons not in the protected class were treated more favorably in order to establish a prima facie case of disparate treatment discrimination); cf. *O’Connor v. Consolidated Caterers Corp.*, 517 U.S. 308, 313 (1996) (proof that persons outside the protected class were treated more favorably is neither a required nor a proper element of a prima facie case under the McDonnell Douglas framework in the age discrimination context). The ultimate purpose of the prima facie case is to proffer sufficient evidence to show that the challenged action occurred under circumstances which give rise to an inference of unlawful discrimination. *Burdine*, 450 U.S. at 253.

Furthermore, the Supreme Court has instructed that where a trier of fact has before it the alleged nondiscriminatory reasons for the challenged action as well as the complainant’s evidence of pretext, the trier of fact should decide the ultimate issue -- *i.e.* whether or not the challenged action was motivated by unlawful discrimination -- even if the complainant fails to establish a prima facie case by a preponderance of the evidence. See *U.S. Postal Service. Board of Governors v. Aikens*, 460 U.S. at 714-715. Both the D.C. Circuit Court of Appeals and the District of Columbia Court of Appeals have adopted this rule. See, e.g., *Dunaway v.*

International Brotherhood of Teamsters, 310 F.3d 758, 762-63 (D.C. Cir 2002); *Hollins v. Federal National Mortgage Association*, 760 A.2d 563, 572 (D.C. 2000).

COMPLAINANT alleges that SUBJECT OFFICER discriminatorily denied him professional police service based both on his race, white, and the fact that he was homeless. The complainant's prima facie case consists of evidence that: (1) he is a white man who was homeless at the time of the incident; (2) he requested the subject officer's assistance in investigating an assault to which he had been subjected; (3) the subject officer failed to provide him with professional police service by conducting only a cursory investigation during which she failed to arrest the assailant and failed to document the matter, by laughing at and using racially derogatory profanity about the complainant, and by treating the complainant dismissively upon realizing that he was homeless; (4) the subject officer's treatment of the complainant gives rise to an inference that her actions were motivated by unlawful discrimination based on the complainant's race and status as a homeless person.

The subject officer's legitimate non-discriminatory reasons for her treatment of the complainant are: (1) She conducted a brief investigation but no one with whom she spoke admitted witnessing the assault; (2) She had no basis to arrest the complainant's attacker because he stated that he knew nothing about the incident, and her computer check of the alleged assailant's identification turned up nothing; (3) The complainant provided more information to WITNESS OFFICER #3, whose investigation led to the attacker's arrest and conviction, than he did to her, and (4) She did not laugh at the complainant, call him a racially derogatory name, or treat him dismissively because he is white and was homeless.

The issue to be determined is whether the subject officer's stated reasons for her treatment of the complainant are merely a pretext for intentional discrimination based on the complainant's race and status as a homeless person. The complainant bears the burden of proving by a preponderance of the evidence that SUBJECT OFFICER's stated reasons for her treatment of him are false " 'either directly by [proving] that a discriminatory reason more likely motivated [her action] or indirectly by showing that the [subject officer's] proffered explanation is unworthy of credence.' " See *Hollins v. Federal National Mortgage Association*, 760 A.2d at 573 (quoting *Burdine*, 450 U.S. at 256); see also *Dunaway v. International Brotherhood of Teamsters*, 310 F.3d at 762-63. Moreover, the complainant's evidence of pretext may include the evidence used to establish the prima facie case as well as any other evidence that undermines the subject officer's proffered reasons for her actions. *Dunaway*, 310 F.3d at 763. Discriminatory intent may be inferred from various sources of evidence, including statements uttered by the subject officer that reflect a discriminatory attitude as well as departures from standard procedures. See *Village of Arlington Heights v. Metropolitan Housing Development*, 429 U.S. 252, 266-68. (1977).

The subject officer's statements,⁶ actions, and demeanor during her entire encounter with the complainant show that her actions were likely motivated by discrimination against the complainant based on the fact that he was white and homeless. The subject officer displayed an attitude of disrespect from the outset by telling the complainant, "Before you start talking to me, you [had] better wipe your mouth," in a manner that made COMPLAINANT feel demeaned. COMPLAINANT was agitated and upset because he had just been assaulted, and he should have been allowed to tell what happened without being humiliated. This was followed by the subject officer's mocking laughter and refusal to believe the complainant when he insisted that he had been attacked and expressed disbelief that the subject officer had allowed the assailant to leave the scene. The subject officer's curious actions are explained by her most telling comment, "This white motherfucker is trying me."

The subject officer's use of a derogatory name, coupled with reference to the complainant's race, at the same time she decided definitively not to treat the complainant's assault allegation as a serious matter gives rise to an inference that she did not deem the complainant worthy of her attention in part because of his race. *See, e.g., Hollins v. Federal National Mortgage Association*, 760 A.2d at 574-75 (noting that remarks offered to show discriminatory attitude must have been made by the decision maker at or near the time the challenged action or decision took place); *accord Jung v. George Washington University*, 875 A.2d 95, 112 (D.C. 2005).

The subject officer's racially derogatory comment was followed by a visible change in her demeanor to greater dismissiveness after she determined that the complainant was homeless. The subject officer's discovery that the complainant was homeless led her to question whether the complainant was mentally ill. Moreover, because the witness officers both indicated that it was their understanding, at the start of their encounter with the complainant, that both the complainant and the assailant were homeless, it is possible the subject officer also suspected the complainant was homeless even before she verified this information from his ID. When the racially derogatory comment is considered together with the subject officer's reaction to the complainant's homelessness, it appears the subject officer determined the complainant did not warrant professional police service both because of his race and his status as a homeless person.

Further evidence of the subject officer's discriminatory motive is seen in the fact that she departed from standard MPD procedure in her handling of the complainant's case. Even if the subject officer personally doubted the complainant's allegations, SUBJECT OFFICER was

⁶ As stated in the analysis of the complainant's language or conduct allegation, although the subject officer denied making derogatory statements to the complainant and the witness officers either made no reference to the subject officer's alleged statements or denied hearing them, OPC credits the complainant's account of statements made to him by the subject officer, based on the fact that his allegations concerning the assault were ultimately verified in the criminal proceedings that led to the conviction of his attacker.

obligated to take notes of her investigation in her notebook (MPD General Order 401.01 V.I.2),⁷ fill out a PD 251 Incident Report (MPD General Order 304 Part I.A.4 and MPD General Order 401.01 IV.B.),⁸ fill out a PD 252 Supplement Report (MPD General Order 304 Part I.A.4 and MPD General Order 401.01 V.D.),⁹ obtain the CCN number generated by the MPD Communications Division so it could be included on all required reports and given to the complainant (MPD General Order 401.01 V.B., 401.01 V.I.3., and 401.01 V.I.9.c.),¹⁰ leave PD 374 Witness Canvass Cards in a place that would allow potential witnesses who were unavailable initially to contact MPD with information about the assault (MPD General Order 304 Part I.A.4),¹¹ and turn over the results of her preliminary investigation to her supervisory officers. (MPD General Order 304 Part I.A.7).¹² SUBJECT OFFICER did none of this.¹³

The subject officer's failure to follow standard MPD procedure stands in stark contrast to WITNESS OFFICER #3, who, in accordance with MPD's General Orders, located and interviewed witnesses on the scene, photographed the complainant's injuries, took handwritten notes, obtained a CCN number, prepared PD 251 and PD 252 forms, and conducted follow-up investigation.

Evidence in the record, generated primarily by WITNESS OFFICER #3, showing that: the complainant was physically injured during the assault, eyewitnesses were present in the vicinity, and the assailant was ultimately indicted, arrested, and convicted, demonstrates that SUBJECT OFFICER made, at best, a half-hearted effort to assist COMPLAINANT. Her derogatory comments, inappropriate laughter, and dismissive attitude permit the inference that she held back in providing police service to COMPLAINANT because he was white and homeless. Accordingly, the Complaint Examiner sustains the finding that there is reasonable cause to believe that SUBJECT OFFICER discriminated against COMPLAINANT on the basis of his race and place of residence, in violation of MPD General Order 201.26.

⁷ See **Exhibit 14**.

⁸ See **Exhibit 14 and Exhibit 15**.

⁹ See **Exhibit 14 and Exhibit 15**.

¹⁰ See **Exhibit 14**.

¹¹ See **Exhibit 15**.

¹² See **Exhibit 15**.

¹³ Although SUBJECT OFFICER was not the first officer on the scene, she indicated that she assumed the role of lead investigator because the incident occurred within the boundaries of the Third District. WITNESS OFFICER #2 recalled that WITNESS OFFICER #1 of the First District, who was the first officer on the scene, left the scene while the investigation was still underway. Moreover, WITNESS OFFICER #2 stated that SUBJECT OFFICER conducted most of the initial investigation and appeared to have everything under control. SUBJECT OFFICER therefore was responsible for documenting the incident.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on March 2, 2006.

ELEANOR NACE
Complaint Examiner