

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0243
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct (Conduct)
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct (Language)
Complaint Examiner:	Adav Noti
Merits Determination Date:	April 24, 2018

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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

Complainant alleges that SUBJECT OFFICER harassed the Complainant's son, WITNESS, on January 29, 2017, by being physically and verbally aggressive towards him.¹

¹ The Complainant also alleged that on January 29, 2017, (a) an officer used unnecessary or excessive force against WITNESS by lifting and "slamming" him into her home; (b) once inside the house, officers used unnecessary or excessive force by knocking WITNESS into a set of doors and pinning him to the floor; (c) officers used unnecessary or excessive force by preventing WITNESS's feet from touching the ground as they escorted him to a transport vehicle and shoved him into the vehicle; (d) officers harassed her by unlawfully entering her home and unlawfully arresting WITNESS for assault on a police officer; (e) an officer harassed her by fatally shooting her dog; (f) officers used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by being unprofessional and disregarding WITNESS; (g) officers used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by being aggressive and saying "shut up," and after her dog was fatally shot suggesting putting the dog in the trash; (h) a detective used language or engaged in conduct toward her that was insulting, demeaning, or humiliating by being nasty and rude toward her during the investigation into the fatal shooting of her dog. Pursuant to D.C. Code § 5-1108(1) on February 18, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's Executive Director.

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. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, including exhibits, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 29, 2017, the Subject Officer was dispatched to the Complainant's home in response to a domestic violence call.
2. When the Subject Officer arrived at the home, several officers were standing on the porch, talking to the Complainant's son, WITNESS. The Subject Officer walked up and joined the group on the porch.
3. WITNESS stepped towards the Subject Officer, counting the officers on the scene and saying "What's all this for? 1-2-3-4-5 of y'all." WITNESS stopped near the edge of the porch, close to the Subject Officer.
4. The Subject Officer poked his right index and middle fingers into WITNESS's sternum and said "back up."
5. WITNESS swiped his hand downwards to knock the Subject Officer's fingers away.
6. A second officer held out his hand, fingers spread apart, a few inches in from of WITNESS's chest, as other officers told WITNESS to calm down. WITNESS swiped his hand at the second officer's hand.
7. Numerous officers then took WITNESS to the ground, in the process falling as a group from the porch into the front entryway of the home. While the front door was open, the Complainant's dog ran out of the house and was shot to death by an officer.
8. The Subject Officer leaned over WITNESS and yelled "Put your hands behind your back!" WITNESS, who was laying on his back with several officers on top of him, yelled "I can't!" The Subject Officer yelled again, "Put your hands behind your back!" WITNESS again responded "I can't!"
9. The Subject Officer screamed at WITNESS, "Put your fucking hands behind your back!" WITNESS, still on his back with multiple officers holding him down, screamed "How?!"

10. WITNESS was arrested for assault on a police officer. That case was later dismissed.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) 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; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

According to MPD General Order 201.26, Part V, Section C, “All members [of MPD] shall . . . [b]e courteous and orderly in their dealings with the public. Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . [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.”

When the Subject Officer arrived at the complainant's home, WITNESS was visibly agitated, but the other officers on the scene were calmly talking to and reasoning with him, thereby preventing a potentially volatile situation from escalating. Within seconds of arriving, however, the Subject Officer reacted to WITNESS's minor provocation of walking close to the Subject Officer by poking WITNESS in the sternum with two fingers. This was a gratuitous and demeaning gesture, similar to the manner in which one child might poke another to annoy her. And it led to a similar response, with an annoyed WITNESS swatting away the Subject Officer's hand.

In marked contrast to the Subject Officer's insulting jab, a second officer then held his hand out, fingers spread in a “calm down” gesture, without making contact with WITNESS. Although that officer was ultimately unable to defuse the situation that the Subject Officer had created, the second officer's respectful attempt to do so highlights the disrespectful nature of the Subject Officer's jab in WITNESS's chest.

After WITNESS had been tackled and his dog killed, the Subject Officer's screaming at WITNESS to “put your fucking hands behind your back!” was manifestly “harsh, violent, coarse, [and] profane.” This would be true in nearly any circumstance, but particularly so with WITNESS laying on his back, being held down by multiple officers, and having already twice noted to the Subject Officer that it was literally impossible for him to put his hands behind his back. The Complaint Examiner concludes that for the Subject Officer to scream obscene and

impossible commands to WITNESS in such a situation was “derogatory, disrespectful, [and] offensive to [his] dignity.”

The Subject Officer submitted no objections to OPC’s conclusions that his actions constituted misconduct.

For the foregoing reasons, the Complaint Examiner sustains the allegations that the Subject Officer engaged in insulting or demeaning language and conduct towards WITNESS on January 29, 2017, by jabbing him in the sternum, and by screaming at him to “put [his] fucking hands behind [his] back” when it was impossible for WITNESS to do so.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER:

Allegation 1 (Language or Conduct — Conduct):	Sustained
Allegation 2 (Language or Conduct — Language):	Sustained

Submitted on April 24, 2018.

ADAV NOTI
Complaint Examiner