

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	05-0334
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, SOD Canine District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Richard Jerome
<b>Merits Determination Date:</b>	March 31, 2008

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 June 7, 2005. COMPLAINANT alleged that on May 30, 2005, Metropolitan Police Department (MPD) SUBJECT OFFICER, Special Operation Division (SOD) Canine, harassed her when he arrested her for disorderly conduct.

COMPLAINANT alleged that on May 30, 2005, at approximately 10:00 am, she and her fiancé, WITNESS #1, were unloading their car in front of their apartment building, located at LOCATION #1. She states that her dog, COMPLAINANT'S DOG, was lying in front of the entrance to the apartment building, unleashed, when SUBJECT OFFICER, who also lived in the apartment building, came outside with his dog. SUBJECT OFFICER's dog was on a leash, and, according to the complainant, the dogs got into an altercation. SUBJECT OFFICER subdued his dog, and COMPLAINANT also brought hers under control. According to the complainant, SUBJECT OFFICER told her that it was against the law to have her dog off the leash. After a short conversation between the two, COMPLAINANT told SUBJECT OFFICER that she would put her dog inside her apartment, and SUBJECT OFFICER told COMPLAINANT to bring her identification, which she did not have with her.

COMPLAINANT went into her apartment and returned with her ID. According to the complainant, when she returned, SUBJECT OFFICER "confronted" her and continued to talk to her about how her dog needed to be on a leash. COMPLAINANT acknowledged she spoke to

SUBJECT OFFICER “firmly” during the incident, but stated that she never yelled at the officer or spoke to him in a loud voice. Shortly thereafter, SUBJECT OFFICER ordered the complainant to sit on the steps of the building entrance. When COMPLAINANT refused to sit down, SUBJECT OFFICER arrested her for disorderly conduct and cited her for having her dog unleashed. COMPLAINANT alleges that SUBJECT OFFICER’s actions during the incident and her arrest for disorderly conduct constituted harassment.

## **II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint because, based on a review of OPC’s Report of Investigation, the Complaint Examiner determined that there were genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3. The hearing was conducted on January 8, 2008. The parties filed their post hearing briefs on February 8, 2008.

The Complaint Examiner heard the testimony of the following witnesses:

WITNESS OFFICER #1  
SUBJECT OFFICER  
COMPLAINANT  
WITNESS #1  
WITNESS OFFICER #2  
WITNESS OFFICER #3

The following exhibits were introduced at the hearing by the Complainant:

- No. 1 Superior Court of the District of Columbia Motion to Seal Court Records, Criminal Division Proceedings Branch - Judge Richard H. Ringall, CASE NO. 1
- No. 2 PD-163
- No. 3 PD-67 Collateral Bond Receipt
- No. 4 D.C. Code Title 22 - 1307
- No. 5 D.C. Code Title 22 - 1321
- No. 6 Metropolitan Police Department Training Division D.C. Criminal Code – Disorderly Code Handbook
- No. 7 Motion to Set Aside Forfeiture

The respondent, SUBJECT OFFICER, did not introduce exhibits at the hearing. The Report of Investigation exhibits were incorporated into the hearing record by the Complaint Examiner.

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, the objections by SUBJECT OFFICER dated August 30, 2007, an evidentiary hearing conducted on January 8, 2008, and the exhibits introduced during that hearing, the Complaint Examiner finds the following material facts:

1. May 30, 2005, was the Monday of Memorial Day weekend, 2005.
2. Shortly before 10:00 am, on May 30, 2005, COMPLAINANT and her fiancé (now husband) WITNESS #1, were returning to their apartment building at LOCATION #1, Washington DC.
3. COMPLAINANT was a nurse practitioner at the LOCATION #2 at the time of the incident in question.
4. COMPLAINANT and WITNESS #1 parked their car across the street from LOCATION #1, on the north side of the street.
5. At approximately 10:00 am, COMPLAINANT's dog was in the area right outside the front door of the apartment building. COMPLAINANT states that her dog was sitting obediently in the entranceway area, although this is not certain.
6. COMPLAINANT was unpacking the car from a trip.
7. SUBJECT OFFICER is a canine officer (or canine handler) for the MPD's Canine Unit. His dog, SUBJECT OFFICER'S DOG, is a German Shepard. SUBJECT OFFICER had been temporarily living at LOCATION #1. for approximately 30 days while repairs were being made on his house.
8. At approximately 10:00 am, SUBJECT OFFICER exited the apartment building at LOCATION #1 with his canine, on a canine lead (leash). He was in uniform and on duty at that time. At that point, COMPLAINANT's dog approached SUBJECT OFFICER's dog, and the two dogs snarled and growled at each other. The dogs did not engage in a physical dog fight. SUBJECT OFFICER used his foot to keep COMPLAINANT's dog at a short distance from his canine, and kept control of his canine.
9. After hearing her dog and SUBJECT OFFICER's dog snapping at each other, COMPLAINANT ran across R Street to the apartment building's entrance and got control of her dog. There is dispute between the parties as to whether WITNESS #1 was

also on the north side of R Street unpacking the car at the time, or whether he had gone into the apartment building before SUBJECT OFFICER came out of the apartment building.

10. SUBJECT OFFICER put his dog in his police scout car.
11. SUBJECT OFFICER told COMPLAINANT that it was against the law to have her dog unleashed. SUBJECT OFFICER asked COMPLAINANT for her identification, and COMPLAINANT told him that it was inside her apartment. SUBJECT OFFICER asked or told her to get her ID.
12. COMPLAINANT took her dog inside and left the dog in her apartment, and returned outside the apartment building with her identification.
13. After some verbal interaction between COMPLAINANT and SUBJECT OFFICER, the level, content and extent of which is disputed, SUBJECT OFFICER told COMPLAINANT to sit down, on the steps at the entranceway to the apartment building. COMPLAINANT refused to do so.
14. SUBJECT OFFICER told COMPLAINANT that she would be arrested if she did not comply with his commands. COMPLAINANT did not do so, and SUBJECT OFFICER handcuffed COMPLAINANT and then escorted her to the curb, where he had her sit down.
15. Both parties agree that during the verbal encounter, COMPLAINANT stated to SUBJECT OFFICER that he was intimidating her, although the context of this statement is in dispute.
16. WITNESS #1 was outside the apartment building after COMPLAINANT returned with her identification and during the verbal interaction between COMPLAINANT and SUBJECT OFFICER. WITNESS #1 testified that he had been outside the building the entire time, while SUBJECT OFFICER testified that WITNESS #1 came out of the building after COMPLAINANT came back with her ID; this is a matter of dispute.
17. Both parties agree that there was no physical force used by either COMPLAINANT against SUBJECT OFFICER, or by SUBJECT OFFICER against COMPLAINANT, during their verbal interaction and before SUBJECT OFFICER placed COMPLAINANT in handcuffs.
18. Both parties also agree that there were no other citizens outside the apartment building at LOCATION #1, other than SUBJECT OFFICER, COMPLAINANT and WITNESS #1 during the verbal interactions between SUBJECT OFFICER and COMPLAINANT, and before COMPLAINANT was handcuffed.

19. Both parties agree that at some point in the incident, COMPLAINANT said to SUBJECT OFFICER something to the effect of “I hope one day I see you in my emergency room.”
20. SUBJECT OFFICER radioed in to MPD Dispatch and requested that a supervisor respond to the scene. SUBJECT OFFICER also radioed for a transport vehicle to transport COMPLAINANT to the police district. COMPLAINANT remained on the curb while SUBJECT OFFICER waited for other MPD officers to arrive.
21. A female officer arrived on the scene and conducted a frisk and a search incident to arrest of COMPLAINANT.
22. WITNESS OFFICER #1 then arrived on the scene, in response to SUBJECT OFFICER’s request for a transport vehicle. COMPLAINANT was then placed in the rear seat of WITNESS OFFICER #1’s police car.
23. WITNESS OFFICER #2 and WITNESS OFFICER #4 arrived on the scene after COMPLAINANT was in the back seat of the police car.
24. SUBJECT OFFICER told the sergeants about the incident and discussed what charges to bring against COMPLAINANT. SUBJECT OFFICER then called WITNESS OFFICER #3, a supervisor in the Canine Unit. At least one of the issues discussed in that call was whether a 61D should be issued for an unleashed dog, and included on the arrest form.
25. WITNESS OFFICER #3 spoke to WITNESS #1 during the time that COMPLAINANT was in the police car, and asked him questions about COMPLAINANT.
26. COMPLAINANT was arrested for disorderly conduct and taken to the Third District police station. She was also cited for having a dog unleashed. COMPLAINANT was released after elected to “post and forfeit” the \$50 collateral amount for the disorderly conduct and unleashed dog charges. Accordingly, the disorderly conduct charge against her was not prosecuted.<sup>1</sup> WITNESS #1 paid the \$50 forfeiture amount. COMPLAINANT signed the PD 67 Collateral/Bond form.
27. Within the time period allowed, COMPLAINANT filed a motion to set aside the forfeiture. She subsequently appeared in court for a hearing on the charges and both charges were dismissed.

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<sup>1</sup> With the “post and forfeit” collateral procedure, a misdemeanor arrestee pays, or “posts,” a pre-determined amount (usually \$25 or \$50), and, in return for the collateral, the District agrees not to press charges against the arrestee. The collateral is then forfeited by the arrestee. The arrest remains on the arrestee’s record, but no conviction is entered.

## **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) 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; or (5) retaliation against a person for filing a complaint pursuant to [the Act].”

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes “acts that are intended to bother, annoy, or otherwise interfere with a citizen’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs., title 6A, § 2199.1

In this case, the complainant alleges that SUBJECT OFFICER’s actions during his encounter with COMPLAINANT, and her handcuffing, detention, and arrest for disorderly conduct constituted harassment, as they certainly did interfere with her “ability to go about lawful business normally.” SUBJECT OFFICER’s actions would constitute harassment under the regulations if they were done “in the absence of a specific law enforcement purpose,” or if his actions were “purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD.” As noted above, the determination regarding whether SUBJECT OFFICER’s actions constituted harassment should assess the “totality of the circumstances surrounding the alleged incident.”

What makes this complaint and incident difficult to determine is that there are two very different versions of the interaction between COMPLAINANT and SUBJECT OFFICER, and the extent of corroborating evidence is limited, and to some extent is arrayed on both sides of the dispute.

According to both parties, COMPLAINANT and SUBJECT OFFICER, the encounter started with the altercation between the two dogs. In COMPLAINANT's description of the events, after both dogs were restrained, SUBJECT OFFICER told her that it was unlawful to have her dog unleashed. After COMPLAINANT put her dog inside her apartment and came back out with her ID, SUBJECT OFFICER reiterated that having an unleashed dog was unlawful and he stated that his dog "could have killed" COMPLAINANT's dog. Tr. 114. COMPLAINANT also states that she told SUBJECT OFFICER that they should try to resolve the situation as dog owners and neighbors, and that they should have a "dialogue." Tr. 115; ROI Ex. 2.

According to COMPLAINANT, SUBJECT OFFICER's response was that he was a police officer and that he should not be talked to that way. He was "authoritarian" and intimidating, and he also stepped towards COMPLAINANT. Tr. 117-118. WITNESS #1's recollection of the verbal encounter was similar. Tr. 161.<sup>2</sup>

It was at this point, according to COMPLAINANT, that SUBJECT OFFICER ordered COMPLAINANT to sit down on the steps outside the building's entrance. COMPLAINANT refused to sit down, and SUBJECT OFFICER stated that if she didn't sit down, she would be arrested. COMPLAINANT then stated something along the lines of "do what you have to do" or "I guess you're going to have to arrest me." Tr. 117, ROI Ex. 2. SUBJECT OFFICER then handcuffed her and escorted her to the street curb and had her sit down. Both COMPLAINANT and WITNESS #1 agree that SUBJECT OFFICER told COMPLAINANT to calm down, but they both also state that COMPLAINANT was not yelling or out of control. In his statement to OPC, WITNESS #1 states that "COMPLAINANT was not necessarily calm, but she remained in control." ROI Ex. 3; see also Tr. 161, 163.

Although there are some aspects of the encounter on which the parties agree, SUBJECT OFFICER's description of incident is very different. According to SUBJECT OFFICER, COMPLAINANT "stepped into me" and stated "I was intimidating her and how dare I." Tr. 34-35. When COMPLAINANT came back outside the building with her ID, SUBJECT OFFICER states that she threw her passport on the ground "and was absolutely enraged, screaming and yelling I was harassing her, my dog was mean." Tr. 35. SUBJECT OFFICER also states that WITNESS #1 then came out of building and tried to calm COMPLAINANT down, and stated "Officer, my girlfriend is on anger management medication; she suffers from anger management. COMPLAINANT, COMPLAINANT, knock it off." T. 35. SUBJECT OFFICER alleges that

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<sup>2</sup> "SUBJECT OFFICER was telling COMPLAINANT that there was a danger that his dog could have hurt COMPLAINANT'S DOG or even have killed COMPLAINANT'S DOG and COMPLAINANT was telling SUBJECT OFFICER that, you know, as a resident of the building, you know, he should abide by, you know, conventions and courtesies of dog owners and, you know, SUBJECT OFFICER was saying that he was a police officer and should not be treated as a resident of the building. So this -- basically, they went back and forth a few times reiterating those things and not really getting anywhere."

COMPLAINANT stepped into him during the verbal exchange, and that he told her that she needed to step away from him, or she would be placed under arrest. She then stepped into him a second time, and according to SUBJECT OFFICER, "I advised COMPLAINANT to take a seat on the step to try to calm her down. It did not work. She became further enraged screaming." Tr. 36. He states that WITNESS #1 again tried to calm COMPLAINANT down. He also states that COMPLAINANT said "I am a nurse. You better never end up in my hospital. I'll take care of you if you ever show up in my hospital." Tr. 37.

There is also some dispute over when SUBJECT OFFICER decided to arrest COMPLAINANT for disorderly conduct. There is some evidence that SUBJECT OFFICER first asked WITNESS OFFICER #2 and WITNESS OFFICER #4 if COMPLAINANT could be arrested for the charge of an unleashed dog. WITNESS OFFICER #2, in completing a Complainant/Suspect Statement Form, PD 199 on July 6, 2005, stated "SUBJECT OFFICER was asking questions could a person be arrested for an unleashed dog. He was told a 61D is normally issued. We then talked about other charges that could be placed against the woman." ROI Ex. 13. A 61D is an MPD form generally used as a citation rather than for a custodial arrest. SUBJECT OFFICER then called WITNESS OFFICER #3 about the charges as well. To the extent that SUBJECT OFFICER determined to charge COMPLAINANT for disorderly conduct only after realizing that an arrest for an unleashed would be inappropriate, and the disorderly conduct charge was used to justify a situation after COMPLAINANT had already been handcuffed, searched and placed in the backseat of the police car, this would support a harassment complaint.

SUBJECT OFFICER, however, asserts that he handcuffed COMPLAINANT not because she refused to sit down on the steps, but because she was acting irrationally and would not step back from him. Tr. 75.<sup>3</sup> He stated that an individual cannot be arrested for failing to comply with an officer's demand to sit down, but that COMPLAINANT was handcuffed for his safety and hers, and the safety of other individuals who might be coming into that area. Tr. 38. SUBJECT OFFICER states that he arrested COMPLAINANT for disorderly conduct and that he considered charges for threatening a police officer, based on COMPLAINANT's statement regarding the LOCATION #2. He also states that having an unleashed dog is an arrestable offense, and that a 61D form does constitute an arrest. He asserts he contacted WITNESS OFFICER #3 to ensure that the charges listed on the arrest form were correct, that it was WITNESS OFFICER #3 who suggested not including a charge of assault on a police officer, as that would look vindictive, and that WITNESS OFFICER #3 did confirm that the unleashed dog charge should be part of the charges on the arrest form and documented with a CCN number. Tr. 62.

Another area of dispute is whether there were any statements made by WITNESS #1 during the incident relating to "anger management" or medication relating to anger management.

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<sup>3</sup> "She was not arrested for disorderly conduct because she refused to take a seat. She was arrested because she was disorderly." Tr. 78.



In his testimony, SUBJECT OFFICER states that WITNESS #1 was apologetic, asked that she not be arrested, and told SUBJECT OFFICER that COMPLAINANT suffered from anger management problems. Tr. 71. In his interview with OPC, SUBJECT OFFICER stated that “WITNESS #1 informed me that COMPLAINANT was taking medication for anger management and that he did not think that she was taking her medication.” ROI Ex. 5. In their interviews with OPC, both WITNESS OFFICER #2 and WITNESS OFFICER #4 stated that WITNESS #1 told them that COMPLAINANT had anger management issues or had been on medication for those problems. ROI Exs. 6, 7. At the complaint hearing, COMPLAINANT stated that she has never been treated for anger management, and that she has never taken any medication for anger management. Tr. 107. She has been on an anti-depression medication called Wellbutrin. Tr. 107-108. Also at the hearing, WITNESS #1 stated that he did not tell SUBJECT OFFICER that COMPLAINANT had anger management issues or that she was on medication for anger management. He did state, however, that he “had a conversation with two officers, including a somewhat older officer in which he asked me questions about her mental status. He asked me whether or not she was in a particularly bad mood or having a particularly bad day. He asked me whether or not she was on any medication, to which I said, yes. He asked me about anger. I said sometimes she gets angry, but I thought she handled herself very well in this situation.” Tr. 167.<sup>4</sup>

Legal Issues and Complaint Determination:

The key issues in this complaint determination are:

1. Did SUBJECT OFFICER, in handcuffing and arresting COMPLAINANT, act without a “specific law enforcement purpose?”
2. If SUBJECT OFFICER’s law enforcement purpose was to arrest COMPLAINANT for disorderly conduct, did he have sufficient probable cause for making that arrest?
3. Even if SUBJECT OFFICER did not have probable cause for making the arrest, was he acting “purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD?”

The District of Columbia’s disorderly conduct statute, D.C. Code § 22-1321, provides, in pertinent part:

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<sup>4</sup> In his OPC statement, WITNESS #1 states that an “unidentified officer approached me and asked if COMPLAINANT had any anger problems or if she was medicated. I said “Yes”, but I thought that she did well.” ROI Ex. 3. The OPC statement also has a bracketed sentence in bold: “Note: COMPLAINANT has been treated for depression and anger related issues in the past but is not currently being treated for these issues because the treatment has been successful.” It is not clear whether this bracketed language was written to reflect WITNESS #1’s statements, or the OPC investigator’s notation.

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons; (4) interferes with any person in any place by jostling against such person or unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbag; or (5) cause a disturbance in any streetcar, railroad car, omnibus, or other public conveyance, by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than \$250 or imprisoned not more than 90 days, or both.

Under the D.C. Code, to constitute disorderly conduct, COMPLAINANT's actions must have been taken with intent to provoke a breach of the peace, or under circumstances where a breach of the peace "may be occasioned." In addition, only the first clause – "acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others" – appears to apply to this situation, as COMPLAINANT did not congregate with others, the encounter did not occur at night, and the circumstances of clauses 4 and 5 do not apply.

While it appears clear that both SUBJECT OFFICER and COMPLAINANT got into a heated exchange after their dogs had an altercation, a heated exchange, or even yelling and screaming at a police officer, by itself, would not be sufficient to justify an arrest of disorderly conduct. SUBJECT OFFICER noted in his testimony and in the charging documents that the reason for the arrest and the charge against COMPLAINANT was Disorderly Conduct: Loud and Boisterous. Tr. 26; ROI Ex.14. In addition, at the bottom of the Arrest/Prosecution Report, PD163, SUBJECT OFFICER notes in box 52, "Disorderly Towards Police." ROI Ex. 14.

In *Shepherd v. District of Columbia*, No. 06-CT-807, 2007 WL 2001642 (D.C. July 12, 2007), the D.C. Court of Appeals determined that words and actions could create a "breach of the peace" when such language and actions were likely to produce violence by others. *Id.* at \*1. In *Shepherd*, however, the court found that the defendant's actions in yelling and swearing at a Metro officer were insufficient to support a disorderly conduct conviction where there was no evidence that the defendant intended to incite the small crowd that gathered to violence and there was no evidence of a hostile reaction by the crowd. *Id.* at \*2. Similarly, in *In re W.H.L.*, 743 A.2d 1126 (D.C. 2000), the D.C. Superior Court overturned a disorderly conduct conviction where a juvenile defendant swore at officers and a crowd formed, finding that the defendant's swearing at officers was not likely to "breach the peace" by inciting violence on the part of the crowd. While an officer does not have to wait for a breach of the peace to occur before making an arrest for disorderly conduct, the circumstances do require that a breach of the peace may be provoked by the citizen's conduct. *Chemalali v. District of Columbia*, 655 A. 2<sup>nd</sup> 1226 (D.C. 1995).

Case law is clear that the disorderly conduct statute applies to breaches of the public peace, not a breach of the officer's peace. As the court noted in *In re W.H.L.*:

Police officers are trained to deal with unruly and uncooperative members of the public. A police officer is expected to have a greater tolerance for verbal assaults . . . and because the police are especially trained to resist provocation, we expect them to remain peaceful in the face of verbal abuse that might provoke or offend the ordinary citizen.

*In re W.H.L.*, 743 A.2d at 1228 (quoting *In re M.W.G.*, 427 A.2d 440, 442 (D.C. 1981)). Several OPC determinations by other complain examiners also have noted that a disorderly conduct arrest must be based on more than just a verbal exchange, even a heated one, between an officer and a citizen. *See, e.g.*, Complaint No. 02-0041 (July 9, 2003); Complaint No. 02-0336 (July 6, 2004); and Complaint No. 05-0091 and 05-0092 (October 10, 2006). In this case, it appears that COMPLAINANT did not violate the disorderly conduct statute and, in fact, the charges were dismissed when COMPLAINANT moved to set aside her forfeiture.

There is, however, still the issue of whether SUBJECT OFFICER's actions were intentional – e.g., making a disorderly conduct arrest knowing that the charge was not founded -- or were reckless in light of DC law and MPD regulations, general orders and training. The MPD distributed a DC Criminal Code Handout printed in October 2005 that includes a significant section on disorderly conduct. The handbook notes that “unless there is some breach of the peace, there can be no arrest for disorderly conduct.” (p. 36). In addition, in discussing D.C. Code § 22-1321, the handbook provides examples of circumstances when “loud and boisterous conduct” might occasion a breach of the peace based on the “time, place and circumstances” of the conduct. (p. 44). “When preparing an arrest report narrative for a ‘Loud and Boisterous’ charge, it is imperative that the officer articulate precisely HOW the conduct disturbed a ‘considerable number’ of citizens.” (*Id.*, *emphasis in original*). The handbook also notes: “It is important to remember that a police officer CANNOT be the subject of the disorderly conduct, except in unusual circumstances.” (p. 50, *emphasis in original*). The materials and examples in the 2005 handbook are quite similar to the MPD Training Division's January 1998 D.C. Criminal Code Disorderly Conduct Handout, (Complaint Hearing Ex. 6) which SUBJECT OFFICER reviewed at the hearing in response to questions from COMPLAINANT's representative (Tr. 41-49).

SUBJECT OFFICER agreed that a breach of the peace or a likely breach of the peace would be required for a disorderly conduct arrest. Tr. 31, 42. He also stated that the time, place and circumstances of the incident are critical in justifying an arrest for disorderly conduct. Tr. 31. However, he noted that there could be a breach of the peace by a citizen involving only a police officer if “the circumstances could lead to the annoyance, offense or breach of the peace of other citizens who may be present; an example being I'm on the front doorstep of a six-story building in the summertime, it is a.m., the windows are open, people are trying to sleep and we

have someone outside who is, I don't know, disorderly, loud and boisterous, using profanity, those things and, yes, that would be an example.” Tr. 43. SUBJECT OFFICER argues that COMPLAINANT’s behavior was loud and boisterous, that she was behaving irrationally and was enraged, (Tr. 66, 74-75) , and that it could have disturbed the peace of the residents of the building at 10:00 am of Memorial Day (Tr. 78-79).<sup>5</sup>

In this Complaint Examiner’s view, this is a very close case. Reviewing the evidence and listening to the testimony, the incident might have been handled in a different way by SUBJECT OFFICER that could have resulted in a better outcome. Perhaps the officer should not have ordered COMPLAINANT to sit on the steps, and then handcuffed her, unless it was clear that COMPLAINANT posed a threat to the officer. Similarly, once COMPLAINANT was restrained and in police custody, she could have been given a citation for having an unleashed dog and sent on her way. However, I find insufficient evidence that SUBJECT OFFICER’s arrest was made without a specific law enforcement purpose, or was done recklessly in violation of the law or internal guidelines of the MPD. Decisions to sustain a complaint must be made by a preponderance of the evidence, which can be as close as 51% of the weight of the evidence. In this case, however, the Complaint Examiner’s determination is that there are Insufficient Facts to sustain a complaint of Harassment.

**IV. SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER**

<b>Allegation 1:</b>	Insufficient Facts
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Submitted on March 31, 2008

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Richard Jerome  
Complaint Examiner

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<sup>5</sup> SUBJECT OFFICER also states that he considered transporting COMPLAINANT to EPRD for a psychiatric evaluation, and would not have considered simply citing COMPLAINANT with an unleashed dog citation, after COMPLAINANT was handcuffed and seated on the curb and then the in the police car. Tr. 65, 97.