

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Consolidated Complaint Nos.:</b>	<b>05-0091/05-0092</b>
<b>Complainants:</b>	COMPLAINANT #1, COMPLAINANT #2
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, First District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Allegation 3:</b>	Use of Excessive or Unnecessary Force
<b>Complaint Examiner:</b>	Amy E. Wind
<b>Merits Determination Date:</b>	October 10, 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**

COMPLAINANTS filed separate complaints with the Office of Police Complaints on January 14, 2005, against SUBJECT OFFICER.<sup>1</sup> Both complaints arose out of the same incident occurring on December 13, 2004, and were consolidated for purposes of investigation.

COMPLAINANT #1 alleged that SUBJECT OFFICER harassed her in connection with giving her a ticket for double-parking her car in front of her house. She alleged that SUBJECT OFFICER's harassing conduct included taking an excessively long time to issue the ticket, repeating to her neighbors comments she had made, and arresting her for disorderly conduct. Ex. 1. COMPLAINANT #2 alleged that SUBJECT OFFICER harassed her during the same incident by ordering her to return to her house, and that he used unnecessary or excessive force when he grabbed her by the arm as she was attempting to climb steps leading into her house. Ex. 2. Both

---

<sup>1</sup> COMPLAINANT #1 signed her complaint on January 11, 2005, and COMPLAINANT #2 signed hers on January 10, 2005, but they apparently were received by OPC on January 14, 2005. See Exs. 1, 2.

complainants alleged that SUBJECT OFFICER used language toward them that was insulting, demeaning, or humiliating. Exs. 1, 2.

## **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.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, and the objections thereto submitted by SUBJECT OFFICER on August 28, 2006, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 13, 2004, at approximately 6:40 p.m., COMPLAINANT #1 double-parked her car directly in front of her home located at LOCATION #1, N.E. Although vacant parking spots were available or opened up soon after she arrived, she double-parked the car on the residential street so she could bring groceries directly into her house. Exs. 1, 3.
2. Metropolitan Police Officers SUBJECT OFFICER and WITNESS OFFICER #1 drove down Tennessee Avenue, N.E. shortly after COMPLAINANT #1 parked her car and had begun unloading her groceries. Ex. 12. WITNESS OFFICER #1 initially asked a neighbor walking by if the car belonged to her, intending to direct her to move the car to a parking spot along the curb. Exs. 7, 12. He then asked COMPLAINANT #1, who was standing in front of her house holding grocery bags, if it was her car, and she responded that he was "harassing" her. Exs. 3, 12, p.1.
3. SUBJECT OFFICER exited the police cruiser and began to issue COMPLAINANT #1 a Notice of Infraction for "parking abreast." Ex. 15. COMPLAINANT #1 objected to the ticket, announcing that she would contest it and would complain about it to the mayor and chief of police. Exs. 3; 15. She told SUBJECT OFFICER that the reason he was "doing this was because of all the white people that have moved into the neighborhood." Exs. 2, p.1; Ex. 15.
4. SUBJECT OFFICER asked COMPLAINANT #1 for her driver's license to complete the ticket, and when she responded she did not have it, began to arrest her for failing to exhibit her license. Ex. 14, p. 1. WITNESS OFFICER #1, however, asked her where her license was, and upon determining that it was in her purse on the porch, the officers allowed COMPLAINANT #1 to retrieve it. Ex. 12, p. 2.

5. While in the house, COMPLAINANT #1 alerted her mother, COMPLAINANT #2, and her sister, WITNESS #1,<sup>2</sup> that she was being given a ticket for “bringing in her groceries.” Exs. 4, 6. All three women exited the house, and began to challenge SUBJECT OFFICER’s ticketing as “harassment.” Ex. 14, p. 1. WITNESS OFFICER #1 explained that double-parking was an offense warranting a ticket, COMPLAINANT #1 again asserted that SUBJECT OFFICER was harassing her “due to these white people around here now.” Ex. 2; 13.
6. As SUBJECT OFFICER was attempting to complete the citation, a white couple who lived next door to COMPLAINANT #2 arrived, and asked the COMPLAINANTS and WITNESS #1 what was happening. Exs. 8, 10. COMPLAINANT #1 explained that she was being ticketed for double parking. Ex. 8. SUBJECT OFFICER demanded that COMPLAINANT #1 repeat to her neighbors her earlier comments about the reasons the ticket being issued. Exs. 8, 10, 15. COMPLAINANT #1 refused to repeat it, and all three women asked SUBJECT OFFICER simply to issue the ticket. Ex. 2.
7. SUBJECT OFFICER, however, insisted that COMPLAINANT #1 repeat her statement, saying twice “tell them what you said earlier.” Ex. 8. When she did not, SUBJECT OFFICER told the neighbors. Ex. 15. As observed by the neighbors, SUBJECT OFFICER’s demeanor was “antagonistic,” and he was “yelling;” in contrast, according to the neighbors who were present, the three women were calm though critical of the officer’s actions. Exs. 8, 10. One of the neighbors, WITNESS #2, remained at the scene and attempted to persuade SUBJECT OFFICER to complete the ticket and end the incident. Ex. 10.
8. The three women continued to ask that SUBJECT OFFICER to complete the ticket and return COMPLAINANT #1’s driver’s license, and to complain that he was harassing her. Exs. 3, 4, 12. SUBJECT OFFICER told them several times to “shut up and go into the house.” Exs. 3, 4, 6, 10. SUBJECT OFFICER stated that if they did not desist complaining, he would arrest them for disorderly conduct. Exs. 4, p. 1; 6, p. 2; 12, p. 2; 14, p. 1.
9. COMPLAINANT #2 initially refused to go into her house, stating she was a taxpayer and homeowner and did not need to do that. Ex. 3. However, she soon realized that SUBJECT OFFICER was serious about arresting someone, and moved to comply with his order to return to her house. Ex. 4, p. 1. SUBJECT OFFICER entered her yard from the sidewalk below and moved to stop her, grabbing her shoulder in the effort to keep her from moving up the house stairs from the landing in her yard. Exs. 3, 10. According to COMPLAINANT #2, he injured her chest and shoulder by grabbing her. Exs. 4, p. 2; 5. SUBJECT OFFICER released COMPLAINANT #2 just as WITNESS #1, who had telephoned the police to complain about SUBJECT OFFICER, was asking for his name and badge number. Exs. 4, 6.

---

<sup>2</sup> For clarity, and WITNESS #1 will be referred to as “WITNESS #1.”

10. Upon releasing COMPLAINANT #2, SUBJECT OFFICER descended the steps where COMPLAINANT #1 was standing with WITNESS OFFICER #1, and arrested her for disorderly conduct. Ex. 15. COMPLAINANT #1 was taken to the 5<sup>th</sup> District Police Station, where she was later released after paying a \$25 fine. Ex. 16.

#### **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) 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].”

As noted above, both COMPLAINANT #1 and COMPLAINANT #2 alleged that SUBJECT OFFICER harassed them and used insulting, demeaning or humiliating language toward them. COMPLAINANT #2 also alleged that SUBJECT OFFICER used excessive or unnecessary force toward her during the incident. The allegations contained in these consolidated complaints are discussed below.<sup>3</sup>

##### **A. Harassment**

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.”

---

<sup>3</sup> 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....” Although COMPLAINANT #1 told SUBJECT OFFICER that he was harassing her because of the “white people in the neighborhood,” neither complainant alleged that SUBJECT OFFICER discriminated against them. See Exs. 1, 2. SUBJECT OFFICER apparently concluded that complainants had accused him of racial “bigotry” (Ex. 14, p.2), it appears from both party and witness statements, however, that COMPLAINANTS were complaining that SUBJECT OFFICER was issuing a citation for double-parking because there were now “white people in the neighborhood,” not because COMPLAINANT #1 was African-American. Exs. 3, 4, 15. Therefore, these Findings of Fact and Determination do not address any claim of discrimination by SUBJECT OFFICER.

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.

While both complainants alleged that SUBJECT OFFICER harassed them, their claims were based on different aspects of his conduct during the events of December 13, 2004. COMPLAINANT #1 alleged that SUBJECT OFFICER harassed her by (a) issuing her a ticket for double-parking, (b) taking too long in issuing the ticket, and (c) arresting her for disorderly conduct. COMPLAINANT #2 alleged that SUBJECT OFFICER harassed her by entering her yard and preventing her from entering her house.

## **1. COMPLAINANT #1**

### **a. Ticket for double-parking**

On December 13, 2004, COMPLAINANT #1 repeatedly insisted to SUBJECT OFFICER that he was “harassing” her by giving her ticket for “bringing in her groceries.” Exs. 2, p. 2; 4, p. 1. However, there is no dispute that she had double-parked her car in the street in order to bring in those groceries, and that this was a minor traffic offense that could result in a ticket. See Exs. 1, p. 1; 4, p. 1; 12, p. 2. Although witnesses asserted that double-parking in the residential neighborhood where the incident occurred was commonplace (Exs. 9; 10, p. 1), it was undisputed that giving a ticket for improper double parking, or “parking abreast,” was a specific and legitimate law enforcement purpose, and thus did not constitute harassment.<sup>4</sup>

### **b. Length of time involved in issuing ticket**

COMPLAINANTS and WITNESS #1, as well as their neighbor WITNESS #2, repeatedly asked SUBJECT OFFICER to complete the ticketing so the incident could end. Exs. 3, 4, 6, 10. According to witnesses, however, the incident took place over a period of at least 30 minutes (Ex. 8), notwithstanding that the arrest report (Ex. 16) indicates the incident began at

---

<sup>4</sup> Some question remains as to why SUBJECT OFFICER issued the ticket instead of giving COMPLAINANT #1 a warning or simply asking her to move her car. WITNESS OFFICER #1 noted that he had previously asked a neighbor walking by if it were her car, with the intent of asking her to move it, and that he intended to ask COMPLAINANT #1 to do the same if the car belonged to her. Ex. 13, pp. 1, 2. WITNESS OFFICER #1 explained that because COMPLAINANT #1 immediately asserted that the officers were harassing her, he did not have a chance to ask her to move the car before SUBJECT OFFICER exited their police cruiser and began to write a ticket. Ex. 13, p. 2-3; Ex. 15, p. 3.

6:40 p.m. and the arrest took place at 7:00 p.m. COMPLAINANT #1 asserts that SUBJECT OFFICER's refusal to return her license and issue the ticket was further harassment. However, an eyewitness, WITNESS #2, reported that SUBJECT OFFICER told him at the time that the situation had escalated from a simple traffic violation to an incident, which required preparation of a report. Ex. 10. This was confirmed by WITNESS OFFICER #1, who stated that SUBJECT OFFICER radioed in a request for information necessary to complete an incident report. Ex. 13. In light of this specific law enforcement purpose, and the lack of evidence of an intentional delay in processing the ticket that might have led to interference with a citizen's ability to go about lawful business, it must be found that the length of time it took to issue the ticket was not harassment.

**c. Arrest for disorderly conduct**

COMPLAINANT #1 alleged that SUBJECT OFFICER subjected her to harassment by arresting her for disorderly conduct. The District of Columbia's disorderly conduct statute provides:

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 a person or unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbag; or (5) causes 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.

D.C. Official Code § 22-1321. Thus, to violate the disorderly conduct statute, a person must (a) intend to provoke a breach of the peace (or engage in acts under circumstances that may give rise to a breach of the peace), and (b) engage in one of five explicitly proscribed activities.

In the Arrest Report (Ex. 16), SUBJECT OFFICER described the circumstances that led to his arrest of COMPLAINANT #1. He stated that she was (a) yelling at him, and (b) "inciting" the other women from her house (COMPLAINANT #2 and WITNESS #1) to yell at him. He also stated that this caused a neighbor to have "to get involved," as well as drawing "three people from ... inside their homes." Ex. 16. While "police need not await an outbreak of violence before attempting to control the situation by making a disorderly conduct arrest" (*Chemalali v. District of*

*Columbia*, 655 A.2d 1226, 1227 [D.C. 1995]), there is no evidence that COMPLAINANT #1 intended to encourage violence or any other breach of the peace, or that her behavior might have engendered violence or other such breaches. Her comments were directed at SUBJECT OFFICER, and there is no indication that the officers or anyone else felt at risk by the presence of one or two neighbors and the observation from their porches of several more.<sup>5</sup>

Not only was there no risk of breach of the peace, there was no evidence that COMPLAINANT #1's conduct took place under any of the five situations enumerated in the disorderly conduct statute: (1) she did not annoy, disturb, interfere with, obstruct, or become offensive to others; (2) she was not congregating with other people or refusing to move on a public street; (3) she was not making noise in the nighttime to the annoyance or disturbance of any considerable number of persons;<sup>6</sup> (4) she was not involved in jostling or unnecessarily crowding anyone or placing her hand near anyone's purse or handbag; and (5) there were no disturbances in any public conveyance.

A citizen may be arrested for conduct carried out under circumstances whereby a breach of the peace is intended or might be occasioned, but not for conduct that is merely "annoying or disturbing to the policemen present." *Rodgers v. U.S.*, 290 A.2d 395, 397 (D.C. 1972). It is well-accepted in the District of Columbia that police are trained to be more tolerant than the average person in the face of hostile words (see *In re W.H.L.*, 743 A.2d 1226, 1228 [D.C. 2000]), and are expected not to allow themselves to be provoked (MPD General Order 201.26, Part I, Section C). However, it appears from the evidence in this matter that SUBJECT OFFICER arrested COMPLAINANT #1 for conduct that he personally found offensive, but which did not risk creating a breach of the peace. SUBJECT OFFICER noted that he made "several repeated attempts to advise COMPLAINANT #1 and her mother that they were in violation of the disorderly statute," based on the following conduct: they were (a) yelling at him, (b) saying that he was giving COMPLAINANT #1 the ticket because of "all these white people," and (c) saying that he was harassing them. Ex. 14, p. 1.

---

<sup>5</sup> One of the complainants' neighbors stated that two teenagers, apparently unnoticed by the officers, walked by during the incident and called the police "racist." Ex. 9. However, there is no evidence that this created any risk of violence or breach of the peace.

<sup>6</sup> There were contradicting statements with regard to who was yelling at whom during the incident. COMPLAINANTS and WITNESS #1, as well as their neighbors, WITNESS #3 and WITNESS #2, stated that COMPLAINANT #1 was anxious and angry, but she was calm and not yelling -- and that it was SUBJECT OFFICER who was yelling, antagonistic and unprofessional. Exs. 3, 4, 5, 8, 9, 10. In contrast, SUBJECT OFFICER and WITNESS OFFICER #1 repeatedly described the three COMPLAINANTS and WITNESS #1 as "yelling," and characterized SUBJECT OFFICER'S statements as "requests." Exs. 12-16. This contradiction need not be resolved for purposes of determining whether the disorderly conduct arrest was legitimate, since it is clear that there were no "considerable number of persons" who were annoyed or disturbed by noise involved in the incident.

When questioned about the incident by a supervisor, SUBJECT OFFICER specifically mentioned that the woman arrested had “yelled that he was giving her a ticket because it was a black neighborhood and he was white.” Ex. 11, p. 2. He also made a point of telling the COMPLAINANTS and their neighbor, WITNESS #2, that he did not view himself as “white.” Exs. 3, p. 2; 10.

Even assuming COMPLAINANT #1’s conduct occurred as described by SUBJECT OFFICER, it did not meet the statutory requirements for arrest for “disorderly conduct.” It seems clear that the arrest was carried out because SUBJECT OFFICER was personally offended by the statements she made, and her refusal to desist in making them. As SUBJECT OFFICER noted in his statement, “I told the [neighbor] that no officer should have to tolerate the behavior exhibited by the three women, simply to issue a ticket.” Ex. 15, p. 3. Arrest of a citizen, resulting in confinement for a period or hours and payment of a fine, without a law enforcement purpose is a severe form of harassment, even if it occurred only once. Since the arrest interfered with COMPLAINANT’s “ability to go about lawful business normally,” and it was done “in the absence of a specific law enforcement purpose,” (MPD Special Order 01-01, Part III, Section G), SUBJECT OFFICER must be found to have harassed COMPLAINANT #1 by improperly arresting her for disorderly conduct.

## **2. COMPLAINANT #2**

COMPLAINANT #2’s complaint of harassment focused on her allegation that SUBJECT OFFICER entered her yard and physically prevented her from re-entering her house. Exs. 2, 4. According to COMPLAINANT #2, SUBJECT OFFICER instructed her to “shut up and go inside before he locked up” the COMPLAINANTS and WITNESS #1. Ex. 4, p. 1. Although she initially refused on the ground that she was standing in her own yard, when she “realized the officer meant what he said” she turned to go up the stairs to her house. Ex. 4, p. 1. SUBJECT OFFICER entered her yard and grabbed her by the shoulder to prevent her from entering her house. Exs. 2, 4, 6, 10. However, he soon let her go, just after WITNESS #1 had called the police department and asked for his badge number. Ex. 6, p. 2. SUBJECT OFFICER explained that he intended to arrest COMPLAINANT #2 for her refusal to desist yelling at him, but let her go when she stopped. Ex. 15, p. 4.

As noted above, improper police harassment entails “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.” Ex. 18, p. 3. As was discussed in connection with the arrest of COMPLAINANT #1, above, the evidence establishes SUBJECT OFFICER was acting out of personal annoyance with COMPLAINANT #2’s conduct and statements, and lacked a law enforcement purpose for entering her yard and briefly detaining her. Additionally, he physically endangered her by grabbing<sup>7</sup> her at the bottom of stairs, causing her daughters

---

<sup>7</sup> SUBJECT OFFICER stated that he attempted to block COMPLAINANT #2’S path up the stairs by placing his body in her way and placing his hand on her back (Ex. 15, p. 4), the other witnesses confirmed that he grabbed her by the shoulder. See Exs. 3; 4; 6, p. 2; 10, p. 2.



sufficient concern that COMPLAINANT #1 warned him “if you knock my mother down the staircase you are going to have to shoot one of us.” Ex. 3, p. 2.

By entering COMPLAINANT #2’s yard and impeding her ascent into her house, after he had repeatedly ordered her to “shut up and go inside,” SUBJECT OFFICER subjected COMPLAINANT #2 to a brief detention and infringement of her right to enjoyment of her property. See D.C. Mun. Regs., title 6A, § 2199.1. He also endangered her to the extent that others feared that she, an older woman, risked falling down the stairs. SUBJECT OFFICER’s conduct also allegedly aggravated a medical condition she had (arthritis). Ex. 5. On the other hand, the incident was very brief, and SUBJECT OFFICER swiftly loosened his grip and returned to the street. Ex. 4, p. 1. Taking into account the totality of the circumstances surrounding SUBJECT OFFICER’s conduct, it must be concluded that the conduct was not only unjustified, but also of a severity sufficient to support a finding of harassment. D.C. Mun. Regs., title 6A, § 2199.1. Therefore, SUBJECT OFFICER’s conduct in entering COMPLAINANT #2’s yard and grabbing her by the shoulder constituted harassment.

### **B. Insulting, humiliating, or demeaning language or conduct**

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.” COMPLAINANT #1 and COMPLAINANT #2 allege that SUBJECT OFFICER engaged in humiliating, demeaning and insulting language and conduct when he (a) repeated to their (white) neighbors a comment COMPLAINANT #1 had made about “white people in the neighborhood,” and (b) told both complainants to “shut up and go inside” or “shut up and go into the house.” Exs. 1, 2.

#### **1. Repeating racial comment**

SUBJECT OFFICER conceded that he related to COMPLAINANT #1’s neighbor her comment that he was giving her the ticket because of all the white people that have moved into the neighborhood (Ex. 3, p. 2), saying that “after drawing the man’s attention to their accusation of bigotry I explained to him my actions were not racially motivated...” Ex. 15, p. 2. In fact, both complainants and witnesses describe the event as SUBJECT OFFICER essentially taunting COMPLAINANT #1, saying, “Why don’t you tell him what you told me about why you are getting a ticket?” Exs. 3; 4; 6; 9; 10. As one neighbor described it, “He kept repeating like a child and very antagonistically ‘tell them what you told me, tell them what you told me!’” Ex. 10, pp. 1, 2. COMPLAINANT #1 and COMPLAINANT #2 themselves refused to repeat the comment to their neighbor, asking SUBJECT OFFICER to “just write the ticket.” Ex. 4, p. 1.

MPD General Order 201.26 provides: “Members shall avoid engaging in idle conversations on racial, religious, political, or other controversial subjects.” In this situation, no purpose was served by SUBJECT OFFICER’s insistence on repeating the comment, other than

to alienate the COMPLAINANTS' neighbors and potentially cause problems in their neighborhood. Again, it appears SUBJECT OFFICER was motivated by his conclusion that he had been unjustly accused of bigotry. While COMPLAINANT #1's comment may have indeed been offensive, MPD General Order 201.26, Part I, Section C, requires officers to maintain control and not to allow themselves to be provoked.

Since the language repeated by SUBJECT OFFICER came from at least one of the complainants themselves, it is questionable whether repetition of their own words could be found to "humiliate" them. However, MPD Special Order 01-01, Part III, Section H specifies that humiliating, demeaning and insulting language and conduct "includes, but is not limited to acts, words, phrases, ...[and] other language which would be likely to ... offend a citizen overhearing the language." In this case, SUBJECT OFFICER very likely knew that COMPLAINANT #1's comment would offend her white neighbors, and that appears to be the very reason he insisted on repeating it. This served no law enforcement purpose, and violated the MPD Special Order against using such language. SUBJECT OFFICER must be found to have engaged in language or conduct that is insulting, humiliating, or demeaning because of his gratuitous relating of the racial comment to the COMPLAINANTS' neighbors.

## **2. Insulting language**

MPD General Order 201.26, Part I, Section C, Nos. 1 and 3 requires that "[a]ll 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.... Members shall refrain 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." Exhibit 21.

Complainants alleged that SUBJECT OFFICER repeatedly told them to "shut up and go inside" and "shut up or I'm going to take you all to the police station." Exs. 3; 4. While SUBJECT OFFICER denied making such comments, they were confirmed by witnesses. Exs. 6; 9; 10. Their neighbors also noted that SUBJECT OFFICER yelled at the COMPLAINANTS and was antagonistic in his demeanor toward them. One of the neighbors described SUBJECT OFFICER's behavior as "startling," "aggressive" and "unprofessional" and noted that she quickly took her three-year-old son inside because she did not want him to think that SUBJECT OFFICER's behavior reflected how police officers were supposed to act. Ex. 9.

It may well be the SUBJECT OFFICER's language and demeanor was provoked by the COMPLAINANTS' behavior. Nevertheless, police officers are expected to be more patient than the average person in the face of such conduct. "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 M.W.G.*, 427 A.2d 440, 442 (D.C. 1981). On this basis SUBJECT OFFICER must also be found to have engaged in discourteous and insulting language.

### **C. Excessive or unnecessary force**

Use of excessive or unnecessary force, as defined by MPD Special Order 01-01, Part III, Section N, includes “the use of force that is improper in the context of the incident giving rise to the use of force.”<sup>8</sup> Excessive or unnecessary force is defined as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, “officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” MPD General Order 901.07, Part II.

The MPD guidance also states, “When the use of force becomes necessary, members will comply with the use-of-force model, which ranges from cooperative controls to lethal force. The officer’s response to a subject’s action must be based on the totality of [the] circumstances, which an officer reasonable believes to exist at the time of the confrontation.” Ex. 20.

COMPLAINANT #2 alleged that SUBJECT OFFICER used excessive or unnecessary force when he grabbed her by the shoulder as she was about to go up the steps and return to her house. SUBJECT OFFICER asserted that he placed his open hand on her upper back to prevent her from going inside her house and thereby avoid arrest. Exs. 14, pp. 1-2; 15, p. 4. However, COMPLAINANT #2 alleged that SUBJECT OFFICER came up behind her and forcefully pulled her arm and shoulder. This was corroborated by the statements of witnesses who reported that SUBJECT OFFICER grabbed her by the arm or shoulder. Exs. 6, 10.

It was concluded in connection with the discussion of harassment, above, that SUBJECT OFFICER improperly sought to arrest COMPLAINANT #2 and COMPLAINANT #1 on the basis of disorderly conduct. The issue here is whether the level of force he utilized, given COMPLAINANT #2’s conduct and the totality of the circumstances, was appropriate. COMPLAINANT #2 conceded that once she realized SUBJECT OFFICER “meant what he said,” she sought to return to the house to avoid arrest. Ex. 4, p. 1. Putting aside the question of whether that arrest (presumably, for disorderly conduct) would have been valid, SUBJECT OFFICER was required to use the “minimum level of force that is necessary to accomplish a police mission.” MPD 901.07, Part V. In this situation, COMPLAINANT #2 was seeking to avoid arrest, and had not previously been receptive to verbal instructions. In these circumstances, SUBJECT OFFICER could reasonably have thought that the lowest level of force, cooperative controls such as verbal persuasion, would have been ineffective. Therefore, his use of the next level of force, contact controls such as hand control procedures (including a

---

<sup>8</sup> MPD General Order 901.07, Part III, Section D (see Ex. 20, p. 3) specifies that the term “use of force” does not encompass “unresisted handcuffing or hand control procedures that do not result in injury.” Although the matter at hand involves unresisted hand control procedures, COMPLAINANT #2 alleged injuries resulting from SUBJECT OFFICER’S conduct, and it will be assumed for the purposes of this discussion that use of force regulations are applicable.

firm grip), cannot be said to have been unreasonable. In these circumstances, it cannot be concluded that SUBJECT OFFICER used unnecessary or excessive force when he briefly grabbed COMPLAINANT #2's arm.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER  
First District

<p><b>Allegation 1:</b>  <b>Harassment</b></p>	<p><u>Allegations of COMPLAINANT #1:</u> a. Ticket for double-parking: Exonerated b. Delay in issuing ticket: Exonerated c. Arrest for disorderly conduct: Sustained</p> <p><u>Allegations of COMPLAINANT #2:</u> Entry in yard and detention: Sustained</p>
<p><b>Allegation 2:</b>  <b>Insulting, Demeaning or Humiliating Language</b></p>	<p>Repeating racial comment: Sustained Use of insulting language: Sustained</p>
<p><b>Allegation 3:</b>  <b>Use of Excessive or Unnecessary Force</b></p>	<p>Exonerated</p>

Submitted on October 10, 2006.

---

Amy E. Wind  
Complaint Examiner