

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0373
COMPLAINANT:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Second District
Allegation 1:	Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Turna R. Lewis
Merits Determination Date:	July 14, 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

In a complaint filed with the Office of Police Complaints (OPC) on July 6, 2005, COMPLAINANT alleged that SUBJECT OFFICER used language or engaged in conduct toward him that was insulting, demeaning, or humiliating. Specifically, COMPLAINANT claimed that on May 22, 2005, after finishing brunch with his family to celebrate his daughter's graduation that SUBJECT OFFICER used profanity, shouted at him and humiliated him when she instructed him to move his car in accordance with posted "No parking" signs and shortly thereafter arrested him for failure to obey a police order. COMPLAINANT complains that SUBJECT OFFICER demeaned and humiliated him in front of his family during these two encounters.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on June 8, 2006. The Complaint Examiner heard the testimony of COMPLAINANT, SUBJECT OFFICER, and WITNESSES #1, #2 #3, #4, and #5. The following exhibits were introduced at the hearing:

COMPLAINANT Exhibit 1: Hand-drawn map of intersection of 37th and O Streets NW

Joint Exhibit 1: Report of Investigation

Joint Exhibit 2: Arrest/Prosecution Report (P.D. 163, Rev. 1/2002), dated May 22, 2005

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, Objections to the Report of Investigation filed by SUBJECT OFFICER, dated February 22, 2006, and an evidentiary hearing conducted on June 8, 2006, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 22, 2005, COMPLAINANT and his family attended a brunch at Georgetown University to celebrate the graduation of his eldest daughter, WITNESS #1, who graduated from Georgetown University on May 21, 2005.
2. COMPLAINANT has three children, WITNESSES #1 and #2 who testified at the evidentiary hearing, and a daughter who did not testify. WITNESS #2 and COMPLAINANT'S second daughter were in the car with COMPLAINANT during the first encounter with Georgetown Security Officers, WITNESSES #3 and #4, and SUBJECT OFFICER on O Street NW.
3. WITNESS #1 lived in an apartment on the Georgetown University Campus located at 37th and O Streets NW and COMPLAINANT planned to move her possessions in the family cars after brunch.
4. The family had two cars, one driven by COMPLAINANT and one driven by his wife. After brunch, COMPLAINANT's wife drove a car to WITNESS #1's apartment, located on Georgetown University's campus near the intersection of 37th and O Streets NW.
5. COMPLAINANT was in the second car with his brother and two of his three children driving on O Street NW heading west to make a left onto 37th Street NW.
6. COMPLAINANT planned to park on 37th Street NW to pick up WITNESS #1's possessions from her campus apartment.
7. 37th Street NW, normally a two-way street, was restricted to one-way driving due to the University's law school graduation festivities. Parking was prohibited on 37th Street NW and O Street NW. Emergency "No Parking" signs were posted throughout the area streets. Parking was available at 37th and Prospect Streets NW.
8. Traffic in the area was abnormally heavy due to a law school graduation and other graduation festivities occurring throughout the weekend.
9. As COMPLAINANT drove west on O Street NW and before turning left on 37th Street NW, he stopped the car so that WITNESS #2 and his second daughter could exit to pick

up items from WITNESS #1's apartment. At that time SUBJECT OFFICER and WITNESSES #3 and #4 directed him to keep moving. COMPLAINANT stopped so that his children could exit the car before moving as directed by SUBJECT OFFICER and WITNESSES #3 and #4.

10. COMPLAINANT turned left onto 37th Street NW and stopped a second time to allow his children to load WITNESS #1's belongings in the trunk. At that time SUBJECT OFFICER again approached COMPLAINANT and directed him to move. COMPLAINANT allowed his children to continue to load WITNESS #1's belongings in the trunk.
11. SUBJECT OFFICER ordered COMPLAINANT out of the car and arrested him for failure to obey a police officer's lawful order.
12. An MPD transport vehicle took COMPLAINANT to the Second District police station for processing.
13. At the Second District police station SUBJECT OFFICER completed an Arrest/Prosecution Report (P.D. 163, Rev. 1/2002) and issued COMPLAINANT a traffic citation for "failure to obey" dated May 22, 2005.
14. At the Second District police station another officer issued COMPLAINANT a citation to appear in court on July 14, 2005, and he was released.
15. COMPLAINANT filed a citizen's complaint on July 6, 2005 with the Office of Police Complaints.
16. COMPLAINANT attended a hearing on the charges on July 14, 2005, and was told that the case was "no papered."
17. SUBJECT OFFICER was not notified of the court date and was not at the hearing.

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]."

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.”¹

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 evidence of record gathered during the investigation and presented at the hearing does not support COMPLAINANT’s allegation that SUBJECT OFFICER used demeaning and humiliating language when she instructed him to move his car in accordance with posted “No parking” signs. COMPLAINANT admits that Georgetown Security Officers, WITNESSES #3 and #4, told him that he could not park on O Street NW and that despite that directive he stopped to let WITNESS #2 and his daughter, exit the car so that they could retrieve WITNESS #1’s possessions. (Tr. at p. 15) He admits that he later “parked on the right side” of 37th street to allow his children to load the trunk with Sonia’s possessions despite being told that he could not stop or park. (Tr. at p. 16) He states that the only witness to the entire incident, including the encounters with WITNESSES #3, #4, and SUBJECT OFFICER is his brother who was in the car with him. He admits that none of his children witnessed the entire incident which culminated in his arrest by SUBJECT OFFICER. (Tr. at p. 19) COMPLAINANT’s brother provided a statement for the investigation but did not testify at the evidentiary hearing.

WITNESS #1 testified that stated that the law school commencement was “right outside my apartment located at 37th Street NW and O Street NW” ...and that “there was a lot of pedestrian traffic, but there were also police officers out guiding traffic to make sure that there was a constant flow and so they were not permitting cars to park or stop.” (Tr. at pp. 52-53). WITNESS #1 testified that she told her father that he might not be able to stop or park because of the traffic. WITNESS #1 testified that she observed the first exchange with SUBJECT OFFICER when her father was on O Street NW about to turn left onto 37th Street NW, but could not hear the conversation. She testified that she observed that SUBJECT OFFICER seemed “rather heated.” (Tr. at p. 54)

¹ COMPLAINANT’s complaint alleged that SUBJECT OFFICER harassed him by arresting him and used language or conduct toward him that was insulting, demeaning, or humiliating. The harassment allegation was dismissed based on information gathered and determination during OPC’s investigation that the arrest was legal. The harassment complaint was dismissed prior to the hearing. Accordingly, this issue was not before the Complaint Examiner and no evidence was presented on this issue.

Under cross-examination, WITNESS #1 testified that about 50 people witnessed the arrest of her father, including her room-mate and her family, and an estimated five to ten classmates whom she knew. (Tr. at p. 64) She further testified that she has regular weekly conversations with her room-mate, but did not ask her room-mate, her room-mate's family or any of the witnesses whom she knew to provide testimony.

WITNESS #2, thirteen years old at the time of the incident, testified that he, his sister, and his uncle were in the car with his father when SUBJECT OFFICER told COMPLAINANT that he could not park "on one of the streets." (Tr. at p. 45) WITNESS #2 described SUBJECT OFFICER's demeanor as "aggressive and angry and mean," as he and his sister exited the car. WITNESS #2 stated that as he and his sister began to place WITNESS #1's items in the trunk of the car SUBJECT OFFICER asked about the baggage, told them that they could load the car, and then told COMPLAINANT that he was arrested. WITNESS #2 testified that he and his sister went to his sister's apartment to get a glass of water and then returned to the scene and observed COMPLAINANT's arrest. (Tr. at pp. 45-47) WITNESS #2 testified that his family begged SUBJECT OFFICER not to arrest COMPLAINANT. WITNESS #2 described SUBJECT OFFICER's conduct as intimidating and taunting.

SUBJECT OFFICER, a sixteen-year veteran of MPD, testified that she was assigned to graduation detail at Georgetown University campus in the area of 37th and O Streets NW. She states that she observed COMPLAINANT pull into a parking space on O Street NW and a Georgetown University security officer directed him to move because parking was prohibited that day. (Tr. at p. 76) She states that a Georgetown University Security Officer directed COMPLAINANT to move but that he refused. SUBJECT OFFICER testified that she then approached COMPLAINANT and told him to move and that parking was available at 37th and Prospect Streets NW. (Tr. at p. 76) SUBJECT OFFICER testified that COMPLAINANT refused to move as directed replying that he was waiting for someone, and told SUBJECT OFFICER to: "Stop being provocative." (Tr. at pp. 76-77)

SUBJECT OFFICER noted that after stopping to let his children out of his car, COMPLAINANT turned left onto 37th Street NW, and again stopped on 37th Street NW in the middle of the street to allow his children to place WITNESS #1's belongings in the trunk and reenter the car. SUBJECT OFFICER testified that she told COMPLAINANT and his children that they could not put the items in the car and again directed COMPLAINANT to parking located on 37th Street NW at Prospect Street NW. She states that COMPLAINANT ignored her order at which time she notified him that he would be arrested and transported to Second District. (Tr. at pp. 83-85). SUBJECT OFFICER testified that she called for back-up and that Officer Haskins responded to the scene.

SUBJECT OFFICER denies using profanity at any time during her exchanges with COMPLAINANT and his family despite their yelling and use of obscenities. (Tr. at pp. 91-92, 96). SUBJECT OFFICER described the scene as including approximately 50 people. She described COMPLAINANT's and his family as "angry and upset" over COMPLAINANT's arrest. (Tr. at pp. 97-98)

Georgetown Security Officers WITNESSES #3 and #4 testified they were assigned to direct traffic at the intersection of 37th Street NW and O Street NW near Georgetown University. Each described traffic as extremely heavy due to graduation ceremonies during the weekend. They described “No Parking” signs posted on 37th and O Streets NW. Both confirmed COMPLAINANT’s testimony that he stopped on O Street NW so that his children could exit his car, ignoring a directive to keep moving. (Tr. at pp. 125-126; 194-195) Both confirmed COMPLAINANT’s testimony that he later stopped on 37th Street NW so that his children could load the trunk with WITNESS #1’s belongings and enter the car. (Tr. at pp. 134-135; 196-197) Both confirmed that COMPLAINANT ignored their directives that he could not stop on either 37th Street NW or O Street NW. Both testified that despite the directives he stopped first on O Street NW to allow his daughter and WITNESS #2 to exit the car and then stopped a second time on 37th Street NW to allow his daughter and WITNESS #2 to load the car with WITNESS #1’s possessions.

Both testified that they were not friends of SUBJECT OFFICER and had not previously discussed their statements with her. Both described SUBJECT OFFICER as professional in her conduct and language used with COMPLAINANT and his family. Georgetown Security Officer WITNESS #4 denied hearing SUBJECT OFFICER use profanity and described COMPLAINANT’s demeanor as “agitated” and his tone of language as “disagreeable.” (Tr. at pp. 194-195, 199-200) Georgetown Security Officer WITNESS #3 denied hearing SUBJECT OFFICER use profanity and/or shout at COMPLAINANT and his family. (Tr. at pp. 139-140)

This is a classic case of “he said, she said.” Where credibility of the witnesses is at issue the analysis depends upon a number of factors: Whether the testimony is reasonable? Whether the witness has a bias? Did the witness have to opportunity to hear, see or know the things about which he testified? Is the witness’s statement reliable?

COMPLAINANT admitted that the only witness to the incident from beginning to end is his brother who was in the car with COMPLAINANT. COMPLAINANT’s brother did not provide testimony at the hearing. The familial relationship between COMPLAINANT and his witnesses creates an element of bias. The element of bias is further complicated by the nature of the familial relationship, which is not one of peers, but a superior-subordinate since COMPLAINANT’s two witnesses are his children, one a minor child of thirteen at the time of the incident and the other a young adult of twenty-two at the time of the incident. All parties have testified to the crowds that were present during the incident. In particular, WITNESS #1 noted that she knew a number of the pedestrians who witnessed the incident, included her roommate and her family, as well as five to ten other known classmates. That none of these witnesses were even asked to testify raises questions about the credibility of the testimony proffered by COMPLAINANT’s corroborating witnesses, his children. There was no corroborating testimony by any witnesses who were unrelated to COMPLAINANT. Disinterested witness testimony is generally entitled to greater weight because of the lack of bias. Further, neither WITNESSES #1 nor #2 were able to provide an eyewitness account of the entire incident involving SUBJECT OFFICER because they were not present for the entire incident.

On the other hand, the testimony of Georgetown Security Officers WITNESS #4 and WITNESS #3 were internally consistent on the material facts in this matter—that SUBJECT OFFICER was professional in her dealings with the situation and did not engage in profanity or demeaning language or conduct. Further, Georgetown Security Officers WITNESS #3 and #4 have no personal relationship with SUBJECT OFFICER and no motive to provide an untruthful version of their observations. Their testimony supported SUBJECT OFFICER’s assertion of the facts. All officers testified that had no personal relationship and no contradictory evidence was proffered. No evidence was proffered to suggest that Georgetown Security Officers WITNESSES #3 and #4 had any bias toward COMPLAINANT. Further, there was no evidence of any other allegations against SUBJECT OFFICER for similar or any other misconduct.

Based on the foregoing, I find that the evidence of record does not support COMPLAINANT’s allegation that SUBJECT OFFICER engaged in demeaning or humiliating language or conduct in violation of M.P.D. General Order 201.26, Part I, Section C and MPD Special Order 01-01, Part III, Section H.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Second District

Allegation: Language or Conduct	Unfounded
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Submitted on July 14, 2006.

Turna R. Lewis
Complaint Examiner