

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF CITIZEN COMPLAINT REVIEW**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint Nos.:</b>	03-0181, 03-0182, 03-0188, 03-0199, and 03-0200
<b>Complainant(s):</b>	COMPLAINANT #1, COMPLAINANT #2, COMPLAINANT #3, COMPLAINANT #4, and COMPLAINANT #5
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1, Third District SUBJECT OFFICER #2, Third District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Allegation 3:</b>	Use of Unnecessary or Excessive Force
<b>Complaint Examiner:</b>	Linda Reese Davidson
<b>Merits Determination Date:</b>	October 6, 2004

Pursuant to D.C. Official Code § 5-1107(a), 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**

Five related citizen complaints have been consolidated into this Findings of Fact and Merits Determination. The five complaints are factually related and arise out of the same and connected set of facts. They involve two separate incidents that occurred close in time and location and involve the same two Metropolitan Police Department (MPD) members, SUBJECT OFFICER #1 and SUBJECT OFFICER #2. Each incident revolves around the primary allegation that the subject officers observed COMPLAINANT #3 and COMPLAINANT #5 urinate in public. COMPLAINANT #3 and COMPLAINANT #5 allege that the subject officers forced them to take off their coats and sweaters, use the garments to wipe up urine, and then made to put the wet urine stained garments back on. COMPLAINANT #1 (COMPLAINANT #3's friend), COMPLAINANT #4 (COMPLAINANT #5's friend) and COMPLAINANT #2 all observed the incident described above. COMPLAINANT #4 and COMPLAINANT #5 allege that during the incident, SUBJECT OFFICER #1 used unnecessary and excessive force against them. COMPLAINANT #2 has no known relationship to any of the other complainants and no known relationship with any of the other witnesses. WITNESS #1, WITNESS #2, and WITNESS #3 are all witnesses for COMPLAINANT #5. None of the

witnesses have first hand knowledge as to the circumstances surrounding the allegation that COMPLAINANT #5 was forced to clean up urine with his own garment. However, WITNESS #3 stated that he observed SUBJECT OFFICER #1 curse at and shove his brother, COMPLAINANT #4.

## **II. EVIDENTIARY HEARING**

There was no evidentiary hearing conducted regarding the allegations in the complaint because the Report of Investigation presented no genuine issue of material fact that was in dispute. The subject officers filed no objections to any of the allegations cited in the Report of Investigation. Therefore, the Complaint Examiner has concluded that the documentary evidence is complete and reflects an accurate and true disclosure of the facts. See D.C. Mun. Regs., Title 6A, § 2116.3.

## **III. FINDINGS OF FACT**

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

1. Five related complaints have been consolidated into this Findings of Fact and Merits Determination. The five complaints involve two separate, factually-related incidents arising out of the same or connected set of facts. They occurred close in time and location and involve the same two Metropolitan Police Department (MPD) officers, SUBJECT OFFICER #1 and SUBJECT OFFICER #2.
2. There are five (5) complainants.
3. SUBJECT OFFICER #1 ordered COMPLAINANT #3 and COMPLAINANT #5 to take off articles of their own clothing, use them to wipe up urine, and then forced them to put back on the wet urine stained garments.
4. The other three complainants, COMPLAINANT #1 (COMPLAINANT #3's friend), COMPLAINANT #4 (COMPLAINANT #5's friend) and COMPLAINANT #2, observed the incident between the subject officers and the two complainants, COMPLAINANT #3 and COMPLAINANT #5. There is no evidence that indicates that COMPLAINANT #2 had a relationship with any of the other complainants. There is no evidence that COMPLAINANT #2 had a relationship with any of the witnesses.
5. There are three non-complaining witnesses, WITNESS #1, WITNESS #2 and WITNESS #3. WITNESS #1 and WITNESS #2 did not have firsthand knowledge of the incident between SUBJECT OFFICER #1 and COMPLAINANT #5. WITNESS #1 and WITNESS #2 state that when COMPLAINANT #4 and COMPLAINANT #5 got into a waiting cab, the details surrounding the incident were discussed.

6. WITNESS #3 observed SUBJECT OFFICER #1 push and shove his brother, COMPLAINANT #4.
7. WITNESS #3 heard SUBJECT OFFICER #1 say to COMPLAINANT #4, "Are you trying to tell me how to do my fucking job? I'll beat your fucking ass."
8. On January 26, 2003, COMPLAINANT #3 had been out drinking with a friend, COMPLAINANT #1.
9. COMPLAINANT #3 admitted that he consumed a large amount of alcohol.
10. COMPLAINANT #1 does not drink.
11. At approximately 3:00 a.m. COMPLAINANT #3 and his friend, COMPLAINANT #1, were walking in the 1700 Block of Columbia Road, N.W.
12. COMPLAINANT #3 felt the immediate need to relieve himself. He saw an opening between two buildings (sometimes described as an alleyway). Exhibit #34. COMPLAINANT #3 relieved himself.
13. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 observed COMPLAINANT #3. The officers approached him.
14. SUBJECT OFFICER #1 had his handcuffs out.
15. SUBJECT OFFICER #1 asked COMPLAINANT #3, "How the fuck do you do something like that?"
16. SUBJECT OFFICER #1 ordered COMPLAINANT #3 to take off his jacket and sweater; SUBJECT OFFICER #1 then told COMPLAINANT #3 to "Dip it [the sweater] where he peed at and clean up the whole area."
17. SUBJECT OFFICER #1 ordered COMPLAINANT #3 to, "Jump on the sweater" in order "to get [the urine] more thick."
18. COMPLAINANT #3 was standing in the cold wearing only a white tee shirt.
19. SUBJECT OFFICER #1 ordered COMPLAINANT #3 to put back on the wet urine stained sweater.
20. COMPLAINANT #3 attempted to look at SUBJECT OFFICER #1's badge number. SUBJECT OFFICER #1 stated, "I don't care if you take my badge number."
21. During the incident, SUBJECT OFFICER #1 was the principal actor.

22. SUBJECT OFFICER #2 was present but his participation was negligible.
23. COMPLAINANT #3 filed a complaint with OCCR January 28, 2003.
24. COMPLAINANT #1 observed the entire incident.
25. COMPLAINANT #1 called 911. He was told that no officer could be sent to the scene.
26. COMPLAINANT #1 and COMPLAINANT #3 left the scene and went home. They reside at LOCATION #1, N.W.
27. COMPLAINANT #1 filed a complaint with OCCR on January 28, 2003.
28. The second complainant, COMPLAINANT #5, filed a similar complaint on February 6, 2003.
29. COMPLAINANT #5 had been out drinking with a group of friends. COMPLAINANT #5 admitted that he consumed a large amount of alcohol.
30. The group left the establishment at approximately 3:00 a.m. They had decided to catch cabs to their next destination.
31. While walking in the 1700 Block of Columbia Road, N.W., COMPLAINANT #5 felt an immediate urge to relieve himself.
32. He saw an area between two buildings (sometimes described as an alleyway), Exhibit #34), and urinated in the space.
33. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 approached him. SUBJECT OFFICER #1 told COMPLAINANT #5 to “ Get against the wall” and “Take your off your coat.”
34. COMPLAINANT #5 took off his coat and held it in his hand.
35. SUBJECT OFFICER #1 ordered COMPLAINANT #5 to wipe up the urine.
36. COMPLAINANT #5 refused to wipe up the urine with his coat.
37. SUBJECT OFFICER #1 placed a handcuff on COMPLAINANT #5’s wrist. SUBJECT OFFICER #1 threatened to arrest COMPLAINANT #5, if he did not use his coat to wipe up the urine.
38. COMPLAINANT #5 cleaned up the urine with his coat.

39. SUBJECT OFFICER #1 then ordered COMPLAINANT #5 to put on the wet urine stained coat.
40. COMPLAINANT #5 filed a complaint with OCCR February 6, 2003.
41. COMPLAINANT #4, COMPLAINANT #5's friend, observed the entire incident.
42. COMPLAINANT #4 approached SUBJECT OFFICER #1 and asked for his name and badge number.
43. SUBJECT OFFICER #1 replied, "Get the fuck out of here," and "Mind your own business."
44. SUBJECT OFFICER #1 grabbed COMPLAINANT #4's jacket and pushed him.
45. COMPLAINANT #4 filed a complaint with OCCR on February 4, 2003.
46. On January 26, 2003, COMPLAINANT #2 was walking in the 1700 Block of Columbia Road, N.W.
47. He observed an unidentified black male (COMPLAINANT #3 is black), "Dragging an article of clothing in liquid on the ground."
48. COMPLAINANT #2 approached SUBJECT OFFICER #2 and told him that what he was doing was inhumane.
49. SUBJECT OFFICER #2 asked COMPLAINANT #2, "Do you have an issue here, sir?"
50. COMPLAINANT #2 moved east of the alley. He observed another police officer with two white males, later identified as COMPLAINANT #5 and COMPLAINANT #4.
51. COMPLAINANT #2 observed COMPLAINANT #5 holding an article of clothing and moving it, "over another pool of liquid."
52. COMPLAINANT #2 observed COMPLAINANT #5 and COMPLAINANT #4 walk towards Columbia Road, N.W.
53. COMPLAINANT #2 observed SUBJECT OFFICER #1 follow and bump into COMPLAINANT #5 and COMPLAINANT #4.
54. COMPLAINANT #2 approached SUBJECT OFFICER #1 and asked, "Are you ok?"
55. SUBJECT OFFICER #1 ignored him.

56. COMPLAINANT #2 approached SUBJECT OFFICER #2 and said, "I'd like to talk to you."
57. SUBJECT OFFICER #2 responded, "Take another step and I'll arrest you."
58. COMPLAINANT #2 observed two other police officers, later identified as WITNESS OFFICER #1 and WITNESS OFFICER #2, arrive at the scene. He asked the officers did they intend to report what COMPLAINANT #2 had just observed.
59. WITNESS OFFICER #2 shrugged.
60. All of the officers entered their vehicles and left the scene.
61. COMPLAINANT #2 attempted to file a report at the substation, but when he arrived, he discovered that it was closed.
62. COMPLAINANT #2 saw the first set of officers involved in the incident he earlier observed (Later identified as SUBJECT OFFICER #1 and SUBJECT OFFICER #2 ) inside their scout car.
63. COMPLAINANT #2 approached the car and asked the officer seated in the front passenger side (later identified as SUBJECT OFFICER #2) for his name and badge number.
64. SUBJECT OFFICER #2 did not provide the requested information. SUBJECT OFFICER #2 said, "See you at the station."
65. COMPLAINANT #2 wrote down the license plate number, GT 4354, on a ticket from the Washington Wizards game. (Exhibit 15)
66. COMPLAINANT #2 walked to the Third District Station. He observed an empty scout car with the engine running. It displayed tag number, GT 4354.
67. COMPLAINANT #2 walked into the station and saw SUBJECT OFFICER #1, SUBJECT OFFICER #2, and WITNESS OFFICER #2.
68. COMPLAINANT #2 approached the counter and was approached by an unidentified female officer, later identified as WITNESS OFFICER #3.
69. SUBJECT OFFICER #1 stated, "Yeah, make your fucking complaint."
70. COMPLAINANT #2 asked WITNESS OFFICER #3, "Are you going to take any of this down?"
71. WITNESS OFFICER #3 picked up a pen but no paper.

72. COMPLAINANT #2 left the station.
73. COMPLAINANT #2 filed a report with OCCR on January 27, 2003.
74. COMPLAINANT #2 described all of the officers that he came into contact with during the January 26, 2003, incident to the OCCR investigator.
75. As part of the investigation, on February 26, 2003, an OCCR employee interviewed SUBJECT OFFICER #1 and SUBJECT OFFICER #2.
76. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 denied that they ordered COMPLAINANT #3 and COMPLAINANT #5 to clean up urine with their own garments.
77. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 denied using foul language during the incident.
78. On August 18 2004, OCCR notified both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 that the investigation of these complaints was completed and that the matter was being referred to an independent examiner.
79. Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were informed that they should review the Report of Investigation and submit any written objections regarding the report. A copy of the Report Of Investigation was included with the August 18, 2004 letter.
80. The letters of August 18, 2004 informed SUBJECT OFFICER #1 and SUBJECT OFFICER #2 that they could file any objections to any part of the allegations they disputed. The objections had to be filed by September 2, 2004.
81. The subject officers were given the opportunity to review the total and complete record of complaints against them; neither SUBJECT OFFICER #2 nor SUBJECT OFFICER #1 filed objections to any of the information cited in the Report of Investigation.
82. SUBJECT OFFICER #2 asserted no other denials.
83. SUBJECT OFFICER #1 asserted no other denials.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Citizen Complaint Review] 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.”

### ***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.”

The regulations governing OCCR 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, [OCCR] 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

The question presented is whether the conduct of SUBJECT OFFICER #1 and SUBJECT OFFICER #2 abused their police powers and HARASSED COMPLAINANT #3 and COMPLAINANT #5 during their January 26, 2003 encounter?

When deciding, the Complaint Examiner looks at the matter in its entirety and views it from the perspective of whether it is a question of law and from the perspective of whether it is a question of fact or both. In addition, the Complaint Examiner reviews all of the documentary evidence to assure that it reflects the true and accurate disclosure of the facts. The subject officers exercised their right and elected not to file objections regarding the allegations against them, and thus had no dispute of any fact, whether material or otherwise. The subject officers are given an opportunity to review the completed Report of Investigation. In doing so, they can review their own statements previously made to the OCCR investigator; refresh their recollection of the facts surrounding the circumstances of the incident; read the statements of the complainants and witnesses; and make changes to information previously submitted by filing objections to disputed facts and responding to derogatory allegations. Therefore, the Complaint Examiner concludes that the findings of fact are supported by substantial documentary evidence without having to question witnesses.

Both COMPLAINANT #3 and COMPLAINANT #5 admitted that they had been out with friends and that they had consumed several drinks. Both complainants had just left drinking establishments in the Adams-Morgan area. Both complainants had the immediate urge to relieve themselves. Both complainants urinated between two buildings located in the 1700 Block of Columbia Road, N.W., at approximately 3:00 a.m. on January 26, 2003. The Complaint Examiner does not condone urinating in public. However, the incident occurred in an alley at



approximately 3:00 a.m. in late January. Pedestrian and vehicular traffic was, more than likely, light. If a citizen had hypothetically urinated directly in front of an open establishment, or in the middle of the street, or if it was 3:00 pm, the police would have made an immediate arrest. It is unlikely that COMPLAINANT #3 and COMPLAINANT #5 would have urinated at 3:00 p.m. Also, it is unlikely that, at 3:00 p.m. in the same location, the police officer would have a citizen disrobe, clean up urine with his own article of clothing, and then, put back on the wet and urine stained garment.

It is a violation to urinate in public and the violator is subject to arrest. Whether the officer exercises the authority to initiate an arrest for such an offense is within his or her discretion. However, SUBJECT OFFICER #1's conduct regarding his encounter with COMPLAINANT #3 and COMPLAINANT #5 was outside the boundaries of MPD policies and procedures. SUBJECT OFFICER #1 detained the complainants with the intent to humiliate and ridicule them. SUBJECT OFFICER #1 subjected the complainants to the physical winter elements by ordering them to remove their coats and sweaters, leaving them standing in the cold winter air wearing only tee shirts. SUBJECT OFFICER #1 ordered the complainants to clean up the urine with an article of their own clothing and then, put back on the wet urine stained garment. If they refused, which both COMPLAINANT #3 and COMPLAINANT #5 initially did, he would then threaten them with the prospect of arrest.

In the OCCR Memorandum of Interview, SUBJECT OFFICER #1, referring to COMPLAINANT #3 cleaning up urine with an article of clothing stated, "I was content" after COMPLAINANT #3 cleaned up the urine.

Both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 denied only two facts. First, they denied that they ordered the complainants to clean up the urine. Both officers stated that the complainants cleaned up the urine on their own initiative. There is no evidence of any relationship between COMPLAINANT #3 and COMPLAINANT #5. The only connection between the two complainants is that both met with similar experiences in separate encounters with the same subject officers. The subject officers would have the Complaint Examiner believe that both complainants, detained in separate incidents, voluntarily took off their coats and sweaters, stood in the winter cold in only tee shirts, used their own articles of clothing to wipe up urine and then put back on the wet and urine stained garments, all done on a voluntary basis. The Complaint Examiner finds the claim of SUBJECT OFFICER #1 and SUBJECT OFFICER #2 to be incredulous. The second denial made by the officers' was that they did not use any foul language during the incident. The Complaint Examiner finds this claim to be doubtful.

Looking at the totality of the circumstances, SUBJECT OFFICER #1 detained, mistreated, and infringed on the personal and property rights of the complainants, COMPLAINANT #3 and COMPLAINANT #5. SUBJECT OFFICER #1 abused his police power and his conduct towards both complainants, COMPLAINANT #3 and COMPLAINANT #5 is Harassment.

SUBJECT OFFICER #1 violated MPD General Order 201.26, Part I, Sec. A.1, which provides that “It is the duty and the responsibility of each member of the police force to preserve the peace, protect life and property ... and enforce all laws and ordinances of the District of Columbia and the United States in a fair and impartial manner.”

By subjecting the complainants to the humiliation of using their own articles of clothing to wipe up urine is an impudent method of enforcing the law that prohibits urinating in public.

“In accomplishing their mission, Members shall recognize that ... To secure and maintain public respect and approval means also obtaining public willingness to cooperate in the task of securing observance of the law.” MPD General Order 201.26, Part I, Sec. A.3.b.

“Members shall be courteous, civil and respectful.... To other persons whether on or off duty ... They shall exercise patience and discretion in the performance of their duties. When requested to do so, they shall give their names and badge numbers in a respectful, polite manner.” MPD General Order 201.26, Part I, Sec. C.2.

In the Code of Ethics, it reads, “Members shall ... Be habitually courteous ... [and] regard their office as a public trust....” MPD General Order 201.26, Part I, Sec. F.1 & 3.

“Members shall conduct their personal and private lives so that the public regards them as examples of stability, fidelity and morality.” MPD General Order 201.26, Part I, Sec. F.8.

SUBJECT OFFICER #1’s conduct in his encounter with COMPLAINANT #3 (03-0188) and COMPLAINANT #5 (03-0200) violated all of the above-cited MPD General Orders. SUBJECT OFFICER #1’s conduct contradicts the qualities that a public servant should present when dealing with the public. SUBJECT OFFICER #1 failed in the exercise of carrying out his duties in a professional and respectful manner. SUBJECT OFFICER #1 failed in his duty to treat the complainants with respect and dignity. SUBJECT OFFICER #1’s conduct did not adhere to applicable orders, policies, procedures, practices and training of the MPD.

The allegation of HARASSMENT filed by COMPLAINANT #3 (03-0188) and COMPLAINANT #5 (03-0200) against SUBJECT OFFICER #1 is SUSTAINED.

Although SUBJECT OFFICER #2 was present during the incident with COMPLAINANT #3 (03-0188), his participation was negligible. SUBJECT OFFICER #1 was the principal actor. Therefore, SUBJECT OFFICER #2 is EXONERATED of the allegation of HARASSMENT.

Did SUBJECT OFFICER #1 and SUBJECT OFFICER #2 abuse their police powers and HARASS Complainant, COMPLAINANT #1?

COMPLAINANT #1 observed the January 26, 2003 incident between his friend, COMPLAINANT #3, SUBJECT OFFICER #1, and SUBJECT OFFICER #2. During the

incident, COMPLAINANT #1 attempted to intervene on behalf of COMPLAINANT #3. But when he stepped toward the officers, the officers told him to stand back.

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.”

COMPLAINANT #1 observed the incident, and it is safe to say that, he was even offended by it. However, the conduct of SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not intend to bother or annoy COMPLAINANT #1. The incident between COMPLAINANT #3, SUBJECT OFFICER #1, and SUBJECT OFFICER #2 was not conducted with the intent to interfere with COMPLAINANT #1’s activities. The contact between the subject officers and COMPLAINANT #1 was limited to the officers ordering him to stand back.

SUBJECT OFFICER #1 is EXONERATED of the allegation of HARASSMENT filed by COMPLAINANT #1 (03-0181).

SUBJECT OFFICER #2 is EXONERATED of the allegation of HARASSMENT filed by COMPLAINANT #1 (03-0181).

COMPLAINANT #2 observed the incident between the subject officers, COMPLAINANT #3, and COMPLAINANT #5. There is no known relationship between COMPLAINANT #2 and either complainant, COMPLAINANT #3 or COMPLAINANT #5. Upon observing the incident in the alley, COMPLAINANT #2 confronted SUBJECT OFFICER #2. In an effort to speak to SUBJECT OFFICER #2, COMPLAINANT #2 moved toward him. SUBJECT OFFICER #2 warned COMPLAINANT #2 to keep his distance. He threatened to arrest COMPLAINANT #2 if COMPLAINANT #2 came any closer. COMPLAINANT #2 requested SUBJECT OFFICER #2’s name and badge number. SUBJECT OFFICER #2 did not provide him with the information. SUBJECT OFFICER #1 told COMPLAINANT #2 to, “File your fucking report.” COMPLAINANT #2 did not learn the identity of the subject officers until after the incident. Immediately after the incident, COMPLAINANT #2 went to the Third District Station to file a complaint. When he arrived, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were inside. COMPLAINANT #2 alleged that when he attempted to file a complaint, he encountered resistance from the officer at the counter. The incident at the Third District Station is a separate matter not formally before the Complaint Examiner.

The allegation of HARASSMENT filed by COMPLAINANT #2 (03-0182) against SUBJECT OFFICER #1 is SUSTAINED.

SUBJECT OFFICER #2 is EXONERATED of the allegation of HARASSMENT filed by COMPLAINANT #2 (03-0182).

COMPLAINANT #4 (03-0199) filed a claim against SUBJECT OFFICER #1 for HARASSMENT. COMPLAINANT #4 stated that SUBJECT OFFICER #1 cursed at him and shoved him. COMPLAINANT #4 stated that SUBJECT OFFICER #1 told him that [SUBJECT OFFICER #1] was going to “Beat his fucking ass.” COMPLAINANT #2 and WITNESS #3 witnessed the event.

The allegation of HARASSMENT filed by COMPLAINANT #4 against SUBJECT OFFICER #1 is SUSTAINED.

***Insulting, Demeaning, or Humiliating 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.”

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 allegation of Language or Conduct that is Insulting, Demeaning, or Humiliating is fully encompassed in the Harassment Section of the decision. The identical discussion is being applied. *See* Harassment section.

During the January 26, 2003, incident, SUBJECT OFFICER #1 asked COMPLAINANT #3, “How the fuck do you do something like that?” SUBJECT OFFICER #1 then ordered COMPLAINANT #3 to take off his coat and sweater and wipe up urine with his sweater; then, SUBJECT OFFICER #1 ordered COMPLAINANT #3 to put back on the wet urine stained sweater.

SUBJECT OFFICER #1 ordered COMPLAINANT #5 to take off his coat, wipe up urine with it, and then put the wet, urine stained coat back on. SUBJECT OFFICER #1 then told COMPLAINANT #5 to, “ Get the fuck out of here.”

COMPLAINANT #1 (COMPLAINANT #3’s friend), COMPLAINANT #4 (COMPLAINANT #5’s friend), and COMPLAINANT #2, who has no connection with any of the complainants and witnesses, all overheard the officers order COMPLAINANT #3 and COMPLAINANT #5 to take off articles of clothing, clean up urine with the garments, and then force COMPLAINANT #3 and COMPLAINANT #5 to put the wet urine stained clothing back on.

COMPLAINANT #1, COMPLAINANT #2, and COMPLAINANT #4 overheard SUBJECT OFFICER #1 use foul language.

COMPLAINANT #2 observed SUBJECT OFFICER #1 curse at and shove COMPLAINANT #4. COMPLAINANT #4 confronted SUBJECT OFFICER #1 regarding the incident he had just witnessed between his friend, COMPLAINANT #5 and SUBJECT OFFICER #1. During the brief confrontation, SUBJECT OFFICER #1 shoved COMPLAINANT #4 and said, "I'll fuck you up. I will beat the shit out of you." The language directed to COMPLAINANT #3, COMPLAINANT #5, and COMPLAINANT #4, and the language overheard by COMPLAINANT #1, is offensive and against MPD policies and procedures.

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...."

The allegation of LANGUAGE or CONDUCT against SUBJECT OFFICER #1 filed by COMPLAINANT #1 (03-0181), COMPLAINANT #2 (03-0182), COMPLAINANT #3 (03-0188), COMPLAINANT #4 (03-0199), and COMPLAINANT #5 (03-0200) is SUSTAINED.

SUBJECT OFFICER #2 is EXONERATED of the allegation of LANGUAGE or CONDUCT filed by COMPLAINANT #1 (03-0181) and COMPLAINANT #3 (03-0188).

#### ***Use of Unnecessary or Excessive Force***

MPD General Order 901.07, Part V, Section B.1 states that "The Department recognizes and employs a Use of Force Continuum." Part II of the same order states that "The policy of the Metropolitan Police Department is to value 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 members of the force."

MPD General Order 901.07, Part IV states, "Members in response to resistant or dangerous individuals may apply escalating options of force.... The options include:"  
(a) cooperative controls, (b) contact controls, (c) compliance techniques, (d) defensive tactics, and (e) deadly force.

Application of the Use of Force Continuum for the Metropolitan Police Department provides additional written guidance on the appropriate use of force by MPD officers, and correlates levels of action and alertness to five colors – blue, green, yellow, orange and red. According to policy, striking and blocking techniques correspond to the color orange. The policy states, "At this level of the model, there is an assessment of imminent bodily harm to the

officer or others. There is an actual or attempted assault on the officer at this level. The officer may direct energy and tactics toward self-defense.”

COMPLAINANT #2 observed the subject officers, COMPLAINANT #5, and COMPLAINANT #4 in the alley. COMPLAINANT #2 indicated that he saw a black male “dragging” articles of clothing in “liquid on the ground.” COMPLAINANT #2 approached SUBJECT OFFICER #2 and asked, “What are you doing?” SUBJECT OFFICER #2 responded, “Do you have an issue here sir?” COMPLAINANT #2 responded, “Yeah. I have an issue. You’re making [the unidentified black] put [his] clothes in urine.” COMPLAINANT #2 observed the male citizen put on the clothes he had “drag[ged]” in “urine.” COMPLAINANT #3 is black. COMPLAINANT #2 stated that further in the alley, he observed another officer, later identified as SUBJECT OFFICER #1 speaking with two white males, later identified as COMPLAINANT #4 and COMPLAINANT #5. COMPLAINANT #2 said that he observed, COMPLAINANT #5 holding an article of clothing. COMPLAINANT #2 stated that he heard SUBJECT OFFICER #1 say, “No. Put it there. Put the whole thing in there.”

COMPLAINANT #2 said that as COMPLAINANT #4 and COMPLAINANT #5 were walking away, he observed SUBJECT OFFICER #1, “following” and “bumping into [COMPLAINANT #5 and COMPLAINANT #4]” COMPLAINANT #2 approached SUBJECT OFFICER #2 and asked, “Excuse me, can I talk to you?” SUBJECT OFFICER #2 responded, “If you take another step, I’ll arrest you.” According to COMPLAINANT #2, SUBJECT OFFICER #2 stated, [to SUBJECT OFFICER #1] “I’ve warned COMPLAINANT #2] several times.” It is dangerous for a citizen who observes what he or she considers to be misconduct on the part of an officer to attempt to intervene. COMPLAINANT #2 responded appropriately by following the directive of the officer, and filing a formal complaint against the subject officers.

MPD General Order 901.07, Part III, governs the use of both authorized and unauthorized force. The Use of Force is defined “as any physical contact used to effect, influence or persuade an individual to comply with an order from an officer. The term shall not include un-resisted handcuffing or hand control procedures that do not result in injury.”

COMPLAINANT #2 was not the subject of arrest by either SUBJECT OFFICER #2 or SUBJECT OFFICER #1. SUBJECT OFFICER #1 neither spoke to nor touched COMPLAINANT #2. COMPLAINANT #2 indicated that he made an attempt to approach SUBJECT OFFICER #2. He stated that SUBJECT OFFICER #2 said, “If you take another step, I’ll arrest you.” The Use of Force Continuum does not apply here. SUBJECT OFFICER #2 gave COMPLAINANT #2 a verbal order to stand back so as to avoid an arrest. The verbal order was not given during an ongoing situation where there was a possibility of violence or resistance to a lawful arrest. The conduct of the subject officers regarding the allegation of Use of Unnecessary or Excessive Force alleged by COMPLAINANT #2 is not violative of the regulations.

SUBJECT OFFICER #2 is EXONERATED of the allegation of USE OF UNNECESSARY OR EXCESSIVE FORCE filed by COMPLAINANT #2 (03-0182).

SUBJECT OFFICER #1 is EXONERATED of the allegation of USE OF UNNECESSARY OR EXCESSIVE FORCE filed by COMPLAINANT #2 (03-0182).

According to COMPLAINANT #2, SUBJECT OFFICER #1 pushed both COMPLAINANT #4 and COMPLAINANT #5. WITNESS #3 stated that he observed SUBJECT OFFICER #1 push his brother, COMPLAINANT #4. COMPLAINANT #4 confronted SUBJECT OFFICER #1 and asked for his name and badge number. According to COMPLAINANT #4, SUBJECT OFFICER #1 pointed to his badge. SUBJECT OFFICER #1 then pushed COMPLAINANT #4 and said to him, "What are you going to do? I'll whip your ass." SUBJECT OFFICER #1 stated and would have the Complaint Examiner to believe that he tripped and that "[He] caught [Himself] with COMPLAINANT #4." However, COMPLAINANT #5, WITNESS #3 and COMPLAINANT #2 all witnessed SUBJECT OFFICER #1 curse at and push COMPLAINANT #4. COMPLAINANT #4 sustained no physical injury as a result of being pushed by SUBJECT OFFICER #1.

COMPLAINANT #5 said that immediately after urinating, he saw SUBJECT OFFICER #1. He stated that SUBJECT OFFICER #1 "put his hands on [COMPLAINANT #5's] chest" and "grab[bed his] shirt" SUBJECT OFFICER #1 ordered COMPLAINANT #5 to remove his coat, and to use it to wipe up the urine. Again, the Use of Force Continuum does not apply here.

Was the physical contact between SUBJECT OFFICER #1 and the complainants, COMPLAINANT #4 and COMPLAINANT #5, the result of a situation where there was a possibility of "violence" or resistance to lawful arrest?

It is a violation to urinate in public. COMPLAINANT #5 stated that SUBJECT OFFICER #1 placed a handcuff on his wrist. He stated that after he agreed to clean up the urine with his coat, SUBJECT OFFICER #1 then removed the handcuff. SUBJECT OFFICER #1 "put his hands on [COMPLAINANT #5's] chest" and "grab[bed his] shirt" before he placed the handcuff on COMPLAINANT #5's wrist. Placing handcuffs on a citizen is a hand control procedure routinely used to keep a situation in control. However, there is no information in the record that suggests that COMPLAINANT #5 either resisted arrest or was a threat to the officer or others. However, the regulations do not consider the term 'use of force' to include a situation where there is an un-resisted handcuffing or hand procedures that do not result in injury. SUBJECT OFFICER #1 was in violation when he touched COMPLAINANT #5's chest and grabbed his shirt.

The allegation of USE OF UNNECESSARY OR EXCESSIVE FORCE against SUBJECT OFFICER #1 by COMPLAINANT #4 (03-0199) is SUSTAINED.

The allegation of USE OF UNNECESSARY OR EXCESSIVE FORCE against SUBJECT OFFICER #1 by COMPLAINANT #5 (03-0200) is SUSTAINED.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:</b>	03-0181, Exonerated. 03-0182, Sustained. 0188, Sustained. 03-0199, Sustained. 03-0200, Sustained
<b>Allegation 2:</b>	03-0181, 03-0182, 03-0188, 03-0199, 03-0200 – All Sustained
<b>Allegation 3:</b>	03-0182, Exonerated. 03-0199, Sustained. 03-0200,Sustained

SUBJECT OFFICER #2

<b>Allegation 1:</b>	03-0181, 03-0182, 03-0188, 03-0199 - All Exonerated.
<b>Allegation 2:</b>	03-0181, 03-0188 - All Exonerated.
<b>Allegation 3:</b>	03-0182 – Exonerated.

Submitted on October 6, 2004

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LINDA REESE DAVIDSON  
Complaint Examiner