

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint Nos.:</b>	08-0043 and 08-0044
<b>Complainants:</b>	COMPLAINANT #1 and COMPLAINANT #2
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 Seventh District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Language or Conduct
<b>Allegation 3:</b>	Use of Excessive or Unnecessary Force
<b>Complaint Examiner:</b>	Eleanor Nace
<b>Merits Determination Date:</b>	September 17, 2009

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. These complaints were timely filed in the proper form as required by § 5-1107, and the complaints have been referred to this Complaint Examiner to determine the merits of the complaints as provided by § 5-1111(e).

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

The two complainants, COMPLAINANT #1 and his mother, COMPLAINANT #2, each filed a complaint with the Office of Police Complaints (OPC) on November 5, 2007. In their consolidated complaints, COMPLAINANT #1 and COMPLAINANT #2 alleged that on October 19, 2007, the subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, Seventh District; SUBJECT OFFICER #2, Seventh District; and SUBJECT OFFICER #3, Seventh District, harassed them by detaining at gunpoint or causing the detention of complainant #1, his cousin WITNESS #1, and family friend WITNESS #2, without adequate justification. The complainants also alleged that SUBJECT OFFICERS #1 and #2 used unnecessary or excessive force against COMPLAINANT #1, WITNESS #1, and WITNESS #2, by drawing their guns as they approached and stopped the men and by pushing and handcuffing WITNESS #1. The complainants further alleged that SUBJECT OFFICERS #1 and #2 used language or

engaged in conduct toward them and their relatives that was insulting, demeaning, or humiliating by repeatedly using profanity in addressing them.<sup>1</sup>

Specifically, COMPLAINANT #2 and her then- 29-year-old son COMPLAINANT #1 alleged that on October 19, 2007, at approximately 11 p.m., during the course of a large family birthday party held at the Congress Street, SE home of WITNESS #3(COMPLAINANT #2's mother and COMPLAINANT #1's grandmother), complainant #1, along with his cousin WITNESS #1 and their friend WITNESS #2, decided to stand outside and talk while others remained inside.<sup>2</sup> As the men chatted about sports while leaning on WITNESS #3's car, two separate MPD cars arrived within minutes of each other. SUBJECT OFFICER #1 arrived first, followed by SUBJECT OFFICER #2. SUBJECT OFFICER #1 allegedly jumped out of his car, removed his gun from its holster, and shouted, "Put your motherfucking hands in the air!"

COMPLAINANT #1 asked why they were being detained, and SUBJECT OFFICER #1 allegedly barked, "Shut the fuck up!" Similarly, SUBJECT OFFICER #2 allegedly jumped out of his car, drew his gun, and immediately began cursing at the men. SUBJECT OFFICER #2 allegedly shouted, "Put your motherfucking hands on the car!" COMPLAINANT #1 alleged that out of fear of being shot, he did as ordered and placed his hands on his grandmother's car.

When the men tried to ask why the officers had stopped them, SUBJECT OFFICERS #1 and #2 both allegedly responded with remarks such as, "Shut the fuck up!" and "Shut the fuck up before we fuck ya'll up." Additionally, after COMPLAINANT #1's cousin, WITNESS #1, had asked several times what they had done wrong, SUBJECT OFFICER #2 allegedly pushed WITNESS #1 against the car and handcuffed him.

Additional police officers arrived, and COMPLAINANT #1's family members, including his mother, COMPLAINANT #2, came outside to find out what was happening. SUBJECT OFFICERS #1 and #2 allegedly yelled at the family members, "Get the fuck back in the house!" and "Get your asses back in the house!" SUBJECT OFFICER #1 also allegedly yelled, "I'll lock all your asses up!" Additionally, one of the subject officers allegedly shouted, "These are our fucking streets!"

---

<sup>1</sup> The complainants may allege police misconduct against persons other than themselves pursuant to D.C. Code § 5-1107(c), which provides, "Any individual having personal knowledge of alleged police misconduct may file a complaint with [OPC] on behalf of a victim."

<sup>2</sup> Complainants #1 and #2 refer at times to WITNESS #2 as their brother and son, respectively. WITNESS #3 also referred to WITNESS #2 as her grandson. However, other statements in the record reveal that WITNESS #2 was a close friend whom the FAMILY treated as a brother, son, and grandson.

COMPLAINANT #1, WITNESS #1, and WITNESS #2 eventually were released. Thereafter, WITNESS #2 attempted to obtain the names and badge numbers of the officers present.<sup>3</sup> COMPLAINANT #2 alleged that SUBJECT OFFICER #1 “snapped” at WITNESS #2 and while pointing to his badge stated, “This is my damn badge number right here!”

Although SUBJECT OFFICERS #1 and #2 allegedly never revealed the reason for stopping and detaining COMPLAINANT #1 and the other men, the complainants surmised that the stop had been initiated by SUBJECT OFFICER #3, who lived directly across the street from WITNESS #3 but who failed to come outside or communicate with the officers conducting the stop at any point during the incident. The complainants assumed that SUBJECT OFFICER #3 had called the police based on the mistaken belief that COMPLAINANT #1, WITNESS #1, or WITNESS #2 were actually WITNESS #4 and WITNESS #5, other members of the FAMILY who recently had been convicted of threatening to harm SUBJECT OFFICER #3 and who had been released from incarceration shortly before the events at issue.

The complainants alleged that SUBJECT OFFICER #3’s actions on the evening of October 19, 2007, amounted to harassment because although WITNESS #4 attended the birthday dinner, he was not outside with the group that was stopped and detained, and WITNESS #5 was not present at all that evening. They further contend that the three men who were stopped and detained had not engaged in any illegal activity before being detained and had not been involved in any way in the prior threats case. The complainants also alleged that SUBJECT OFFICER #3’s behavior amounted to harassment because she refused to assist or communicate with the officers who responded to her call, and if she had, she would have realized her mistake and could have stopped the detention before guns were drawn and profanity was used or, at a minimum, could have reduced the tenor and duration of the encounter. A copy of both complaints, which were submitted timely and in the proper form, are attached to the Report of Investigation as **Exhibit 1 and Exhibit 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. Rags. title 6A, § 2116.3.

SUBJECT OFFICER #3 refused to sign her OPC statement, in violation of her legal obligation to participate fully in OPC’s investigative process, *see* D.C. Code Sec. 5-1111(d) (2001 ed.) and D.C. Mun. Regs. tit. 6A, sec. 2114.5 (2002). Thus she refused to certify that the

---

<sup>3</sup> COMPLAINANT #1 also alleged that when WITNESS #2 asked for names and badge numbers, several unidentified officers put their hands over their badges saying, “You can see it,” while other unidentified officers asked, “What you need that for?” OPC was unable to determine the identity of those officers; accordingly, the allegations against them are not addressed in this report.

information she provided was true and correct to the best of her knowledge and recollection. The complaint examiner has drawn adverse inferences against SUBJECT OFFICER #3's credibility based on her refusal to sign her statement.

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

Based on a thorough review of OPC's Report of Investigation and its thirty-nine (39) Exhibits, the objections submitted by SUBJECT OFFICERS #1, #2, and #3 on August 10, 2009, and a Memorandum to Complaint Examiner from Ivelisse Cruz, Deputy Director of the Office of Police Complaints, dated August 11, 2009, the Complaint Examiner finds the material facts regarding this complaint to be:

1. WITNESS #3 has a home at LOCATION.
2. SUBJECT OFFICER #3 lives directly across the street from LOCATION.
3. On October 19, 2007, WITNESS #3 was hosting a large family birthday party.
4. Both complainants were at the birthday party.
5. Complainants are grandson and daughter of WITNESS #3. COMPLAINANT #2 is COMPLAINANT #1's mother.
6. Also present that evening were COMPLAINANT #1's cousin WITNESS #1, and family friend WITNESS #2, who is sometimes referred to by the complainants as their brother and son respectively, and sometimes referred to by WITNESS #3 as her grandson.
7. WITNESS #4, another grandson of WITNESS #3, attended the party as well.
8. On October 2, 2007, just seventeen days prior to the events at issue, WITNESS #4 had entered a plea of guilty to a misdemeanor count of threats to do bodily harm. He was given a sentence of 180 days, with credit for time served. The complainant in the case was SUBJECT OFFICER #3.
9. SUBJECT OFFICER #3 was off-duty and arrived at her home at approximately 10:40-10:45 pm on October 19, 2007.
10. WITNESS #4 had just arrived at the party in the company of WITNESS #2 when SUBJECT OFFICER #3 arrived at her home and he was on the porch of his grandmother's house. He stopped to talk with his cousins, complainant #1, WITNESS #1, Witness #6 and WITNESS #7, standing on the front steps.

11. After greeting his cousins, WITNESS #4 entered the house and went to the dining room to get something to eat. COMPLAINANT #1, WITNESS #1, and WITNESS #2 walked down to the street and stood next to WITNESS #3's Volvo.
12. SUBJECT OFFICER #3 saw WITNESS #4 on the porch as she arrived home.
13. After she entered her home, SUBJECT OFFICER #3 saw the men next to the Volvo.
14. At approximately 10:45 p.m. on October 19, 2009, SUBJECT OFFICER #3 called the dispatcher from her police radio and asked the dispatcher to have a unit come through the 700 block of congress Street to "clear the disorderly." She provided a description of five black males standing around a yellow Volvo. She said the call had "special attention" and was in reference "to the subject officer that got threatened, myself ma'am."
15. The dispatcher described the assignment as "several subjects loitering" and also as "a disorderly assignment." She asked if any other units could assist because the initiating officer "advised me that she was threatened by the subjects."
16. Several minutes after SUBJECT OFFICERS #1 and #2 arrived on the scene, an unidentified officer who was quite agitated requested more units for the 700 block of Congress Street S.E.
17. At approximately 11:06 p.m. SUBJECT OFFICER #2 asked the dispatcher to run a check on WITNESS #1. The dispatcher reported that he had no record and no NCIC.
18. At 11:16 pm, the dispatcher reported that WITNESS #2 had no record and no NCIC.
19. SUBJECT OFFICER #1 and WITNESS OFFICER #1 cleared themselves from the scene at 11:23 p.m.
20. Throughout the intervening time there were repeated attempts to reach and requests to speak with SUBJECT OFFICER #3.
21. After placing the call to dispatch, SUBJECT OFFICER #3 turned off her police radio, and could not be contacted. She had not left a phone number.
22. SUBJECT OFFICER #3 watched the incident from her home, and spoke several times with an officer who was on the scene, WITNESS OFFICER #2, but neither of them informed the officers in charge of SUBJECT OFFICER #3's location or phone number.
23. None of the men seen by SUBJECT OFFICER #3 in front of WITNESS #3's home on October 19, 2007, was behaving in a loud or disruptive way. None made any threats

to her or even spoke to her. None had any open containers of alcohol. None was in possession of illegal drugs or weapons.

SUBJECT OFFICER #3 was interviewed by OPC on April 24, 2008, and OPC assisted her in preparing a statement of her account of the events of October 19, 2007. She subsequently refused to sign her statement or attest to its truth and accuracy.

24. SUBJECT OFFICERS #1 and #2 arrived at the scene at approximately the same time.
25. SUBJECT OFFICER #1 saw three men standing in the street next to a parked car, with their hands in their pockets. The men were told to take their hands out of their pockets, turn around and face the car behind them. The officers conducted pat-down searches.
26. SUBJECT OFFICERS #1 and #2 stopped the three men in the 700 block of Congress Street S.E. based on the police radio bulletin broadcast in response to SUBJECT OFFICER #3's call. The dispatcher believed either that SUBJECT OFFICER #3 was being threatened again or that the persons who had previously threatened her were present on that block.
27. SUBJECT OFFICERS #1 and #2 believed that the group they came upon was the group to which the dispatcher referred.
28. SUBJECT OFFICERS #1 and #2 used profanity when they initiated the stop and conducted their preliminary investigation of the men, and toward members of the FAMILY who came outside to investigate.
29. SUBJECT OFFICER #1 jumped out of his police car and shouted, "Put your motherfucking hands up!" When he was asked by COMPLAINANT #1 or one of the other men why he was being stopped, SUBJECT OFFICER #1 responded, "Shut the fuck up!" and "Say something so we can fuck you up."
30. SUBJECT OFFICER #2 jumped out of his car and shouted, "Put your motherfucking hands on the car!"
31. Lights on the police cars alerted WITNESS #3 and her guests to the action outside. SUBJECT OFFICER #1 shouted, "Get the fuck back in the house!" and "Get your fucking asses back in the house!" and "I'll lock your asses up!" when FAMILY members came outside to investigate.
32. SUBJECT OFFICER #2 reacted to the stream of curious FAMILY members questioning his and his colleague's actions by yelling, "Get the fuck back in the house!" and "These are our motherfucking streets!" One of the subject officers

(SUBJECT OFFICER #2 or #1) shouted “Get back in the goddamned home!” to the crowd of birthday-party-goers.

33. WITNESS #1 was squirming, uncooperative, and seemed to SUBJECT OFFICER #2 to have been drinking, so he was handcuffed by SUBJECT OFFICER #2 and placed in one of the police cars, with the door open.
34. In order to cuff WITNESS #1, SUBJECT OFFICER #2 had to return his gun to its holster.
35. Numerous backup officers arrived on the scene and assisted in calming the crowd of relatives and friends from the birthday party.
36. Despite repeated efforts, OPC was not able to interview WITNESS #1.
37. Neither the complainants, the detainees, or the family members ever received a satisfactory explanation for the police action, which contributed to their agitation.
38. Neither subject officer pointed his weapon at anyone but both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had his gun in his hand when he alighted from his vehicle and accosted the group of three men.
39. COMPLAINANT #2 was unsuccessful in obtaining an explanation for her son’s detention.
40. The entire incident lasted about thirty minutes.

#### **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].”

This Complaint includes allegations of harassment, use of unnecessary or excessive force, and 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 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.

### ***SUBJECT OFFICER #3***

Harassment is defined in MPD Special Order 01-01 (effective Jan. 5, 2001), Part III, Section G: “Harassment - includes, but is not limited to 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.” *See Exhibit 34.* (Exhibits are those attached to the Report of Investigation).

Harassment is also defined in OPC’s regulations as:

Words, 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 or the covered law enforcement agency, 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, the Office 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 or the covered law enforcement agency, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.

D.C. Mun. Regs. tit. 6A, § 2199.1 (2002). *See Exhibit 35.*



The COMPLAINANT #1 and COMPLAINANT #2 have alleged that SUBJECT OFFICER #3 engaged in harassment by causing MPD officers to stop and detain, initially at gunpoint, COMPLAINANT #1, his cousin WITNESS #1, and friend WITNESS #2. The complainants contend that the detention was unlawful because the three men who were detained were merely standing outside talking, were not engaged in disorderly conduct or any other illegal activity, and had no involvement in a December 2006 incident in which FAMILY members WITNESS #4 and WITNESS #5 allegedly threatened SUBJECT OFFICER #3. The complainants contend that SUBJECT OFFICER #3 abused her police powers by placing a call to the MPD dispatcher indicating that she was in distress from persons who previously had threatened her when in fact those individuals either were not outside or were not present at all that evening.

The transcript of the police radio communications made in connection with this incident shows that SUBJECT OFFICER #3 called the MPD dispatcher and requested that MPD officers be sent to the 700 block of Congress Street, SE to “clear [a] disorderly.” See **Exhibit 28**. The dispatcher ascertained that SUBJECT OFFICER #3 was off-duty at the time and asked whether the suspects were loitering. SUBJECT OFFICER #3 replied, “affirm ma’am.” SUBJECT OFFICER #3 described the suspects as “five black males outside in the street . . . around a yellow Volvo,” and she described the colors of the shirts and pants worn by each of the men. *Id.*

SUBJECT OFFICER #3 also requested that the dispatcher give the call “special attention” and implied that the incident was related to the prior threats case by stating that the call was “in reference to the officer that got threatened, myself ma’am.” *Id.* The dispatcher apparently interpreted this remark to mean that the persons who previously had threatened SUBJECT OFFICER #3 were among the alleged disorderly group. The dispatcher stated, “Do we have any other midnight units . . . to assist with this disorderly at the 700 block of Congress? . . . [I]f they’re threatening one officer, I don’t want you to be threatened also, so stand by . . .” *Id.* The dispatcher subsequently announced, “I also have another assignment, disorderly assignment. I’ve got an off-duty that came across the air in reference to the 700 block of Congress. . . . She advised me that she was threatened by the subjects. Seven hundred block of Congress.” *Id.*

SUBJECT OFFICER #3 stated during her OPC interview that on October 19, 2007, at approximately 11:00 p.m., she arrived home from work and saw a group of loud, disorderly men standing in the street directly across from her house consuming alcoholic beverages. At the same time, she saw WITNESS #4 on the porch of the FAMILY home. SUBJECT OFFICER #3 stated that seeing WITNESS #4 made her fear for her safety because he was one of two individuals who had threatened to “blow [her] head off” in December 2006. She stated that she also feared for her safety because when she arrived in front of her house, the group of men in the street “began to “whisper and mumble among [themselves] and give [her] hard, intimidating stares.”

Evidence in the case suggests that SUBJECT OFFICER #3 arrived home on the night of October 19, 2007, just as WITNESS #2 and WITNESS #4 were arriving at WITNESS #3’s home

where a family birthday celebration was taking place. WITNESS #4 told OPC that when he and WITNESS #2 walked into his grandmother's front yard, he saw his cousins COMPLAINANT #1, WITNESS #1, WITNESS #6, and WITNESS #7 standing on the steps of the front porch. WITNESS #4 recalled greeting his cousins and then going inside and sitting down at the dining room table to eat. WITNESS #4 noted that WITNESS #2 remained outside with his cousins. COMPLAINANT #1 and WITNESS #2 confirmed this account, indicating that after WITNESS #4 went inside, three members of the group of cousins that had just greeted one another on WITNESS #3's porch – COMPLAINANT #1, WITNESS #1, and WITNESS #2 -- walked down to the street and stood next to WITNESS #3's Volvo, where they began talking about sports. These were the three subjects of the police action.

These statements, taken together, explain how it is that SUBJECT OFFICER #3 described in her call to the MPD dispatcher, seeing five individuals, while COMPLAINANT #1, WITNESS #2, and SUBJECT OFFICERS #1 and #2 describe a smaller group of individuals standing next to WITNESS #2's car. SUBJECT OFFICER #3 apparently called the dispatcher after seeing the larger group that had greeted one another when WITNESS #4 and WITNESS #2 first arrived. The statements of WITNESS #4, WITNESS #2, and COMPLAINANT #1 also confirm SUBJECT OFFICER #3's admission that when she saw WITNESS #4 he was standing on WITNESS #3's porch, not in the street next to WITNESS #3's Volvo where the three men who were detained ended up. The statements provided by SUBJECT OFFICER #3 and the other witnesses also show that WITNESS #4 was on WITNESS #3's porch only fleetingly, *i.e.*, long enough to greet his cousins before going inside to eat.

The issue to be determined is whether SUBJECT OFFICER #3 observed conduct on the part of FAMILY members/friends that justified calling the police. Upon review of the evidence, it is clear that SUBJECT OFFICER #3 did not have a legitimate reason to call the police on the night of October 19, 2007. Although SUBJECT OFFICER #3 alleged that the group of men in the street standing near the Volvo were "loud and disorderly," even by her own account, the men were disorderly exceedingly briefly, since they had switched to "whisper[ing] and mumb[ing] among [themselves]" by the time she had parked and began to enter her home. As for the group's alleged hard and intimidating stares, again, by SUBJECT OFFICER #3's own account, this too lasted a matter of seconds and was not accompanied by any noises, words, gestures, or other actions that could be interpreted as a threat to harm her. Furthermore, it is significant that the officers who conducted the stop, SUBJECT OFFICER #1 and SUBJECT OFFICER #2, did not report observing any loud, disorderly conduct as they drove up.

The District of Columbia's disorderly conduct statute, D.C. Code § 22-1321, proscribes making noise outside at night only where it disturbs a considerable number of people and where it is intended to or likely to cause a breach of the peace, which D.C. courts construing the statute have defined as likely to provoke violence on the part of other members of the public.<sup>4</sup>

---

<sup>4</sup> See, e.g., *Washington Mobilization Committee v. Cull inane*, 566 F.2d 107, 116 (D.C. Cir. 1977); *In re WHL*, 743 A.2d 1226, 1226 (D.C. 2000).

SUBJECT OFFICER #3's description of what she observed contained no evidence that the men were disturbing a considerable number of people or that they were doing anything that was likely to provoke violence on the part of others. Accordingly, she had no basis to accuse them of disorderly conduct and to call police to the scene to investigate such an offense.

There also was no basis for SUBJECT OFFICER #3 to subject the group to police detention for alleged loitering. The dispatcher asked SUBJECT OFFICER #3 whether the group was loitering and she answered yes. However, the group would have been subject to the District's Anti-Loitering/Drug Free Zone Act of 1996 as amended, DC Code § 1004, only if two or more of them were congregating in a drug-free zone established by the MPD Chief and had refused an order to disperse given by an MPD officer who reasonably believed they were congregating for the purpose of using, purchasing, or selling illegal drugs. SUBJECT OFFICER #3 offered no evidence suggesting that the group was in the process of using, buying, or selling illegal narcotics. Accordingly, it would not have been proper to call the police for the purpose of enforcing D.C.'s anti-loitering law.

SUBJECT OFFICER #3 did allege in her OPC statement, however, that members of the group were consuming alcohol from open containers, a violation of DC Code § 25-1001. The Complaint Examiner does not credit this assertion for several reasons. First, SUBJECT OFFICER #3 mentioned nothing about public drinking or open containers of alcohol in her call to the dispatcher on the night of the incident. Second, none of the officers who responded to the scene reported seeing any of the men consuming alcohol or holding or standing near containers that appeared to have held alcohol. Indeed, SUBJECT OFFICER #1, the first officer on the scene, noted that the men were standing with their hands in their pockets when he arrived. Although SUBJECT OFFICERS #1 and #2 mentioned detecting the smell of alcohol on the men, particularly WITNESS #1, as they conducted pat-downs at the start of the detention, the statements of numerous witnesses confirm that the men were attending an indoor birthday celebration at which alcohol presumably was served. Thus, the fact that one or more of the men may have smelled as if he recently had consumed alcohol did not constitute evidence of public drinking. Moreover, the complaint examiner cannot credit SUBJECT OFFICER #3's assertion that the men were consuming alcohol from open containers because she refused to sign her OPC statement, in violation of her legal obligation to participate fully in OPC's investigative process, *see* D.C. Code § 5- 1111(d) (2001) and D.C. Mun. Regs. tit. 6A, § 2114.5 (2002), and she thereby refused to certify that the information she provided is true and correct to the best of her knowledge and recollection. OPC complaint examiners have routinely drawn adverse inferences against witnesses who refuse to sign their statements, concluding that deliberate failure to sign an OPC statement makes it reasonable to infer that the witness did not furnish truthful information.<sup>5</sup>

---

<sup>5</sup> *See, e.g.*, OPC Case No. 05-0274 2007 DC POLICE LEXIS 17 (D.C. Office of Police Complaints June 17, 2007) (in assessing credibility of witnesses, OPC Complaint Examiner drew adverse inference from police officer's refusal to sign his OPC statement); OPC Case No. 03-0313, 2006 DC POLICE LEXIS 5 (D.C. Office of Police Complaints May 5, 2006) (same); OPC Case No. 05-0110, 2005 DC POLICE LEXIS 9 (D.C. Office of Police Complaints Nov. 4, 2005) (same).

Notwithstanding SUBJECT OFFICER #3's failure to cooperate fully, her assertion that seeing WITNESS #4 on WITNESS #3's porch made her feel fearful is plausible and understandable. As a result of SUBJECT OFFICER #3's willingness to hold WITNESS #4 accountable for his act of threatening to blow her head off when she rebuffed his romantic advances, WITNESS #4 had been convicted, and he had been incarcerated for many months before entering his guilty plea. He had recently been released, and SUBJECT OFFICER #3 did not know how he would behave toward her. Accordingly, she was appropriately apprehensive. Even so, because neither WITNESS #4 nor any member of his family had done anything to SUBJECT OFFICER #3 the night of October 19, 2007, her understandable fear did not constitute a legitimate basis for her to call the police. The evidence shows that WITNESS #4 was on the porch of LOCATION, and then entered the house. He was not with the group in the street who allegedly whispered and stared at SUBJECT OFFICER #3. In the absence of any evidence that WITNESS #4 did anything to SUBJECT OFFICER #3 that evening, the subject officer's fear did not constitute a legitimate basis to call the police.

SUBJECT OFFICER #3's actions after she called police are inconsistent with an officer acting with a legitimate law enforcement purpose. The officers who went to the 700 block of Congress Street, S.E., in response to the dispatcher's broadcast made multiple attempts to identify and contact the officer who had made the initial call so they could confirm whether any of the persons stopped had engaged in disorderly conduct or had threatened SUBJECT OFFICER #3. However, SUBJECT OFFICER #3 prevented the officers from reaching her and made no effort to communicate with them, even though they were outside her house and she was watching.

General Order 302.02, Radio Broadcasts and Look-Outs, effective June 15, 2004, states that when communicating with the dispatcher, "members in an off-duty status shall use the prefix "off- duty" followed by their CAD [Computer Aided Dispatch] ID number (*i.e.*, off duty ID 1234)." See **Exhibit 36**. SUBJECT OFFICER #3 did not identify herself to the dispatcher by her CAD identification number. SUBJECT OFFICER #3 then turned off her radio and did not provide a call-back phone number, making her unreachable. SUBJECT OFFICER #3 acknowledged, however, that she watched the investigation take place from inside her home, which was directly across the street from where COMPLAINANT #1 and the other two men were stopped and detained. At the point SUBJECT OFFICER #3 observed a stop taking place, she should have made herself available to the investigating officers.

SUBJECT OFFICER #3's failure to make herself available to the officers who conducted the stop is even more egregious in light of the fact that as she watched the incident unfold from inside her home, she was communicating on her cell phone with one of the officers on the scene, WITNESS OFFICER #2. WITNESS OFFICER #3 reported that WITNESS OFFICER #2 and SUBJECT OFFICER #3 were talking to each other by phone throughout the incident. Phone records for SUBJECT OFFICER #3 and WITNESS OFFICER #2 show that they called each other five times during the incident. See **Exhibit 31**. Neither SUBJECT OFFICER #3 nor

WITNESS OFFICER #2 acknowledged to OPC that the conversations took place. But certainly WITNESS OFFICER #2 relayed to SUBJECT OFFICER #3 the confusion on the scene and the investigating officers' need for her assistance, even if it was not fully obvious to her from her vantage point. SUBJECT OFFICER #3 purposely, knowingly or recklessly concealed information from officers on the scene that was necessary for their investigation.

Based on the foregoing, the Complaint Examiner concludes that SUBJECT OFFICER #3 did not have a legitimate law enforcement purpose in requesting that officers be sent to the 700 block of Congress Street, S.E. She nevertheless caused the detention of three men who were not engaged in illegal conduct and who, significantly, had no involvement in the threats case to which she referred in placing the call. Moreover, in light of SUBJECT OFFICER #3's deliberate failure to assist the officers who conducted the investigation, the Complaint Examiner finds that SUBJECT OFFICER #3 abused her police powers and in so doing subjected COMPLAINANT #1, WITNESS #2, and WITNESS #1 to detention, seizure and verbal mistreatment, and prevented them from going about their lawful business normally, in violation of MPD Special Order 01-01 and D.C. Mun. Regs. tit. 6A, § 2199.1 (2002).

### ***SUBJECT OFFICER #1 and SUBJECT OFFICER #2***

In addition to their harassment allegation against SUBJECT OFFICER #3, the complainants have alleged that SUBJECT OFFICERS #1 and #2 also engaged in harassment by stopping and detaining a group of men who were not engaged in any unlawful activity at the time the officers arrived and who had not engaged in any unlawful activity before the officers' arrival.

MPD General Order 304.10 governs police-citizen contacts, stops, and frisks. *See Exhibit 37*. The order defines a stop as the temporary detention of a person for the purpose of determining whether probable cause exists to arrest the person. Consistent with well-established Fourth Amendment law, *see, e.g., Terry v. Ohio*, 392 U.S. 1 (1968), General Order 304.10 authorizes an officer to stop a citizen only if the officer "reasonably suspects that a person has committed, is committing, or is about to commit any crime." General Order 304.10 requires that all officers must document, on a PD 251 (Incident Report) or PD 76 (Contact or Stop Report), the particular factors relied upon in making a stop.

SUBJECT OFFICER #1 failed to comply with his duty to prepare a PD 251 or PD 76 documenting the information he relied on in stopping and detaining complainant #1, WITNESS #1 and WITNESS #2. Nevertheless, he told OPC that he stopped the group because they were standing outside in the 700 block of Congress Street, S.E., and he had just received a police radio assignment for an officer being threatened in the 700 block of Congress Street, S.E. SUBJECT OFFICER #1 claimed that he heard the officer who made the initial call over his police radio, and the person sounded upset. He therefore believed that an officer was in distress and that the situation was potentially dangerous.

SUBJECT OFFICER #2 told OPC that when he arrived in the 700 block of Congress Street, S.E., SUBJECT OFFICER #1 already was present and had already stopped the group. SUBJECT OFFICER #2 stated that he joined in because he had heard a police radio broadcast for disorderly subjects in the 700 block of Congress Street, SE, who had made threats to an officer who lived in the block. SUBJECT OFFICER #2 ultimately assumed responsibility for handling WITNESS #1 during the detention, and he filled out a PD 251 Stop and Frisk Report and a PD 252 Supplemental Report. The reports indicate that SUBJECT OFFICER #2 participated in stopping and detaining the men based on a police radio dispatch for disorderly subjects who also allegedly had threatened an MPD Seventh District officer.

SUBJECT OFFICERS #1 and #2 were required by General Order 304.10 and *Terry v. Ohio*, 392 U.S. 1 (1968) to have reasonable, articulable suspicion for stopping and detaining COMPLAINANT #1, WITNESS #1, and WITNESS #2. Nevertheless, it is well established that reasonable cause for a stop and frisk need not be based on an officer's personal observation; police action may be based on facts known to officers other than those who effectuate the seizure. *See, e.g., Whiteley v. Warden*, 401 U.S. 560, 568 (1971) (officer may act on an official communication directing that an arrest be made, even if that officer lacks personal knowledge of basis for the arrest); *United States v. Hensley*, 469 U.S. 221, 232-33 (1985) (upholding validity of investigatory stop made in reliance upon a wanted flyer from another police department); *Dorsey v. Barber*, 517 F.3d 389 (6<sup>th</sup> Cir. 2008) (officer was entitled to rely on radioed bulletin to conduct *Terry* stop, even though description of suspects had little detail and detainees were not engaged in suspicious behavior at the time officer encountered them; detainees presence in location contained in the broadcast was sufficient ).

SUBJECT OFFICERS #1 and #2 stopped the three men they came upon in the 700 block of Congress Street, S.E. based on the police radio bulletin broadcast by the dispatcher in response to SUBJECT OFFICER #3's call. The transcript of the police radio communications indicates that on the basis of SUBJECT OFFICER #3's statements to the dispatcher, the dispatcher believed either that SUBJECT OFFICER #3 was being threatened again at that time or that the persons who had previously threatened her were in the 700 block of Congress Street, S.E. engaging in disorderly conduct. The transcript further reveals that the dispatcher was worried that responding officers might themselves be in danger because of the suspects' alleged threats against SUBJECT OFFICER #3, and she conveyed an urgency and a seriousness that resulted in many officers eventually going to the location in question. It further appears that the voice SUBJECT OFFICER #1 heard over the police radio that sounded upset was that of the dispatcher, not SUBJECT OFFICER #3. Nevertheless, the substance and tenor of the police radio broadcast were such that it was reasonable and legally justifiable for subject officers SUBJECT OFFICERS #1 and #2 to have believed that the group they came upon in the 700 block of Congress Street, S.E. was the group to which the dispatcher referred and further that it was proper to conduct an investigatory stop of them.

Even though police officers may lawfully undertake a stop or arrest based on information supplied by other officers, including through dispatch bulletins, such a seizure is valid for purposes of criminal proceedings only if the source of the information possessed reasonable suspicion or probable cause. *See United States v. Hensley*, 469 U.S. at 232-33. Thus, since SUBJECT OFFICER #3 lacked reasonable suspicion to believe that the FAMILY members and friends she encountered were engaged in criminal activity, then the stop and frisk of COMPLAINANT #1, WITNESS #1, and WITNESS #2 were not legally valid. *Id.* It does not follow, however, that a stop or an arrest found constitutionally invalid for purposes of criminal proceedings subjects the officer who conducted the stop or arrest to civil or administrative liability. If the officer who conducted the stop relied in good faith upon dispatch information that was based on another officer's observations, then that officer would be entitled to qualified immunity in a civil proceeding. *Id.* at 233 (Supreme Court noted that where a stop violates the Fourth amendment because the source of a police bulletin lacks reasonable suspicion, officers who conduct the stop are entitled to good-faith immunity against civil suit).

OPC and this complaint examiner think the same principle should apply in its proceedings. Accordingly, because this complaint examiner finds that subject officers SUBJECT OFFICERS #1 and #2 acted reasonably in relying on an MPD dispatch that was based on an off-duty officer's call, she concludes that SUBJECT OFFICERS #1 and #2 did not engage in harassment in stopping and detaining COMPLAINANT #1 and his two companions.

### **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."

***SUBJECT OFFICER #1 and SUBJECT OFFICER #2***

MPD General Order 201.26 (effective Nov. 10, 1976), Part I, Section C, Nos. 1-3 states:

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. . . . 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.

**See Exhibit 38.**

COMPLAINANT #1 and COMPLAINANT #2 have alleged that SUBJECT OFFICERS #1 and #2 used unprofessional language toward them, their family members, and their friends. First, COMPLAINANT #1 alleged that SUBJECT OFFICERS #1 and #2 used profanity when they initiated the stop of him, WITNESS #2 and WITNESS #1. Specifically, COMPLAINANT #1 stated that when SUBJECT OFFICER #1 arrived he jumped out of his police car and shouted, "Put your motherfucking hands up!" When COMPLAINANT #1 questioned why he was being accosted, SUBJECT OFFICER #1 allegedly yelled, "Put your motherfucking hands up and turn around!" According to COMPLAINANT #1, subject OFFICER #2 then arrived and he too jumped out of his police car and shouted, "Put your motherfucking hands on the car!" COMPLAINANT #1 stated that although he and the other men complied, in part out of fear because both SUBJECT OFFICERS #1 and #2 were holding their guns in their hands, the men nevertheless continued to try to question the officers about why they had been stopped and detained. However, each time one of the men tried to explain that they had done nothing wrong or ask what in the officers' view they had done wrong, the subject officers responded with profanity. Specifically, SUBJECT OFFICER #1 allegedly stated, "Shut the fuck up!" and "Say something so we can fuck you up." SUBJECT OFFICER #2 allegedly followed suit, stating, "Shut the fuck up before we fuck y'all up!" According to COMPLAINANT #1, the specific instances he cited in his complaint form and OPC statement were not the only profane statements made. COMPLAINANT #1 alleged that as officers SUBJECT OFFICERS #1 and #2 initiated the stop and conducted their preliminary investigation of the men, they repeatedly used profanity.

Second, the complainants have alleged that SUBJECT OFFICERS #1 and #2 used profanity toward members of the FAMILY who came outside. COMPLAINANT #1 alleged that when his family members noticed flashing lights on the police cars and began coming outside to determine what was happening, SUBJECT OFFICERS #1 and #2 cursed at them.



COMPLAINANT #1 alleged that SUBJECT OFFICER #2 reacted to FAMILY members flooding outside to question the police by yelling, "Get the fuck back in the house!" and "These are our motherfucking streets!" COMPLAINANT #2 stated that as she walked out of the yard and toward the street where the officers were holding her son COMPLAINANT #1, SUBJECT OFFICER #1 bellowed in an angry tone, "Get your ass back in the house! I'll lock your asses up!" COMPLAINANT #2 stated that she ignored SUBJECT OFFICER #1's threat and continued coming forward because she was determined to find out why her son was in police custody. WITNESS #2, one of the three men who was detained, said in his OPC statement that SUBJECT OFFICERS #1 and #2 "disrespected" FAMILY members by telling them, "Get back in the goddamned home."

In addition to the aforementioned instances of profanity, COMPLAINANT #2 alleged that when WITNESS #2 sought to obtain the names and badge numbers of the officers present, SUBJECT OFFICER #1 responded rudely by stating, while pointing to his badge, "This is my damn badge number right here." According to COMPLAINANT #2, SUBJECT OFFICER #1 also snatched from WITNESS #2's hands the paper on which WITNESS #2 was writing and wrote down his name and badge number.

SUBJECT OFFICERS #1 and #2 both denied using any profanity or making any of the alleged comments. Generally, the witness officers supported the subject officers, stating that they did not hear any officer use profanity. The only exception was witness officer Starling who stated that he heard "quite a bit" of profanity but did not know whom the profanity came from.

OPC and the complaint examiner find credible COMPLAINANT #1's allegation that SUBJECT OFFICERS #1 and #2 used profanity in effecting the stop and in ordering FAMILY members to go back inside. There are no reports from the subject officers that he was behaving in a disorderly manner when they arrived, and he complied fully with the officers throughout the stop and detention. COMPLAINANT #1 even implored his mother, COMPLAINANT #2, to heed the officers' order to go back inside the house rather than come forward and ask questions. COMPLAINANT #1 also made a point of contrasting the behavior of the backup officers with that of the subject officers, noting that whereas the subject officers cursed at and threatened the detainees and FAMILY members, the backup officers were respectful and took steps to calm rather than incite the crowd.

The backup officers' assertion that they never heard SUBJECT OFFICERS #1 and #2 use any profanity has little weight. There was a period at the start of the detention during which subject officers SUBJECT OFFICERS #1 and #2 were the only officers present, and the family members also exited the house before the backup officers arrived. Indeed, it was the influx of party-goers that prompted the panicked call for back-up.

COMPLAINANT #2's assertion that SUBJECT OFFICER #1 cursed at her in urging her to go back inside and threatened to arrest her is credible. The complainant described that she was alarmed upon seeing her son against her mother's car with his legs spread and under police

custody, and as a result she focused almost exclusively on her son and the officer who was handling him. As she walked toward her son she focused intently on SUBJECT OFFICER #1 and therefore would have heard the words he used in ordering her to get back in the house. Indeed, COMPLAINANT #2 was so determined to get to her son that she did not fear SUBJECT OFFICER #1's profanity laced warning and kept moving forward toward her son. Detainee WITNESS #2's statement that the subject officers cursed at FAMILY members in urging them to go back into the house also is credible because he provided an evenhanded, non-exaggerated account of the incident and of the subject officers' behavior.

There is insufficient evidence to support the claim that that SUBJECT OFFICER #1 was rude to WITNESS #2 when providing his name and badge number.

The complaint examiner finds that these statements did constitute use of language or conduct that was insulting, demeaning, or humiliating. It is a fact that the subject officers were sent to investigate a group of men who allegedly had been threatening a police officer and that as a result of the late hour and the unknown nature of the circumstance they were confronting, it was important for them to establish command and control of the detainees as quickly as possible and fend off interference from any onlookers. Nevertheless, SUBJECT OFFICERS #1 and #2 could have effected the stop and gained the compliance of the men they were sent to investigate without cursing at them. They had their guns out, which COMPLAINANT #1 reported was sufficient to compel their compliance, and they were shortly joined by numerous backup officers. It therefore was not necessary for them to demean the detainees by cursing repeatedly.

Similarly, although the subject officers were right to discourage the FAMILY members from becoming involved, within minutes numerous backup officers arrived, and they assisted to corral and calm the family. It therefore was not necessary to demean FAMILY members by cursing at them, particularly in light of the fact that it appears the primary source of the family's ire was the failure to provide them with truthful information regarding what was happening. Moreover, in not telling the detainees or their family why they were being investigated, the subject officers failed to comply with MPD General Order 304.10 which states that whenever an MPD officer conducts an investigatory stop/detention, "the officer shall, in every case, give the person an explanation of the purpose of the stop and the record of the stop [PD 251 or PD 76] shall briefly note the fact that the officer gave the person an explanation for the stop, and the nature of that explanation.

SUBJECT OFFICERS #1 and #2 had a difficult task, which was caused by SUBJECT OFFICER #3. That circumstance should be taken into account in the next stage of this proceeding. Nonetheless, police officers are law enforcement professionals who are sworn to uphold a high standard of ethical conduct and to refrain from engaging in actions, including using disrespectful, profane, and offensive language, that may engender disrespect for and noncompliance with law enforcement. Indeed, the D.C. Court of Appeals has recognized that police officers are required to remain professional in spite of provocation to do otherwise

because they receive professional training that equips them to handle difficult situations. *See In re W.H.L.*, 743 A.2d 1226, 1228 (D.C 2000).

### **UNNECESSARY OR EXCESSIVE FORCE**

Use of unnecessary or excessive 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.”

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs., title 6A, § 2199.1.

### ***SUBJECT OFFICER #1 and SUBJECT OFFICER #2***

MPD General Order 901.07, Part II states, “[T]he 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.” *See Exhibit 39.*

COMPLAINANT #1 alleged that SUBJECT OFFICERS #1 and #2 drew their guns as they initiated the stop. WITNESS #2 corroborated this account. COMPLAINANT #2 did not witness how the stop was initiated, but said that she saw SUBJECT OFFICER #1 with his gun drawn as she was going outside. However, the complainants and WITNESS #2 acknowledged that the subject officers did not point their guns at anyone.

SUBJECT OFFICER #1 acknowledged that when he arrived on the scene he removed his gun from its holster. He explained that he held the gun at his side for safety. SUBJECT OFFICER #1 stated that he believed based on the dispatcher’s broadcast that the assignment was to investigate an officer being threatened. Additionally, SUBJECT OFFICER #1 noted that the men he found standing at the location broadcast over the police radio had their hands in their pockets and could have been armed. SUBJECT OFFICER #1 recalled that he ordered COMPLAINANT #1, WITNESS #1, and WITNESS #2 to turn around and face the car behind

them, and when the men complied, he returned his firearm to its holster. SUBJECT OFFICER #2 denied removing his firearm from its holster.

MPD General Order 304.10, September 24, 1985, outlines the amount of physical force that officers are authorized to use during stops. See **Exhibit 37**. It states:

- A. An officer may use only such force as is reasonably necessary to carry out the authority granted in this order.
- B. The amount of force shall not be such that it could cause death or serious bodily harm to the person stopped. This means that an officer may not use his/her service revolver or other service weapons to effect a stop and detention; this does not preclude a member from holding a service weapon at the time of the detention when circumstances dictate a need for such safety precautions.

Thus, an MPD officer is authorized to hold his or her service weapon for safety. There are no general orders or policies prohibiting MPD officers from holding their weapons, as long as the gun is not pointed at or in the direction of anyone. Hearing examiner finds that SUBJECT OFFICER #1's action of holding his gun at his side for safety was not a violation of MPD guidelines.

The hearing examiner does not credit SUBJECT OFFICER #2's assertion that he did not have his gun out at any point during the incident. Rather, she credits COMPLAINANT #1 and WITNESS #2's accounts in which they describe seeing SUBJECT OFFICER #2 with his gun out. Indeed COMPLAINANT #1 noticed that SUBJECT OFFICER #2 re-holstered his gun in order to be able to handcuff WITNESS #1. Moreover, their accounts are not undermined by the statements of backup officers who asserted that they did not see the subject officers holding unholstered guns. Given that SUBJECT OFFICER #2 put away his gun at the beginning of the detention before the backup officers arrived, the backup officers would not have had occasion to see his gun out. In any event, for the same reasons that SUBJECT OFFICER #1's act of holding but not pointing his gun was permissible, the hearing examiner also finds that SUBJECT OFFICER #2 did not, in holding his gun at his side, use unnecessary or excessive force.

COMPLAINANT #1 also alleged that SUBJECT OFFICER #2 used unnecessary or excessive force by pushing WITNESS #1 against WITNESS #3's car and later by pushing WITNESS #1 against the hood of a police car. SUBJECT OFFICER #2 denied these allegations. SUBJECT OFFICER #1 acknowledged that SUBJECT OFFICER #2 placed WITNESS #1 against a car to stabilize him as SUBJECT OFFICER #2 applied handcuffs. However, SUBJECT OFFICER #1 did not support COMPLAINANT #1's suggestion that SUBJECT OFFICER #2 pushed WITNESS #1 or was otherwise unnecessarily forceful. WITNESS #2 did not report seeing SUBJECT OFFICER #2 push or use force against WITNESS #1. Most importantly, WITNESS #1 failed to participate in OPC's investigation. Therefore, the hearing examiner concludes that this allegation is unfounded.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1: harassment</b>	Exonerated
<b>Allegation 2: language or conduct</b>	Sustained
<b>Allegation 3: force</b>	Unfounded

SUBJECT OFFICER #2

<b>Allegation 1: harassment</b>	Exonerated
<b>Allegation 2: language or conduct</b>	Sustained
<b>Allegation 3: force</b>	Unfounded

SUBJECT OFFICER #3

<b>Allegation 1: harassment</b>	Sustained

Submitted on September 17, 2009.

---

Eleanor Nace  
Complaint Examiner