

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	08-0178
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER VCB
Allegation 1: Allegation 2:	Harassment Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Jeffrey S. Gutman
Merits Determination Date:	June 23, 2009

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), 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. 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 as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

Complainant is an investigator with the District of Columbia Department of Corrections. On January 28, 2008, he was engaged in his government duties when he parked his private vehicle in a parking space in the 300 block of Indiana Avenue, N.W. marked with a sign that said, "No Parking Except for Police Vehicles Only."

COMPLAINANT alleges that, as he was leaving his parked car, SUBJECT OFFICER emerged from an unmarked police car in civilian clothing and approached him. COMPLAINANT alleges that SUBJECT OFFICER asked him several times in a rude manner if he were with the police. COMPLAINANT pointed to a MPD placard in his car, his emergency light and, later, produced identification. SUBJECT OFFICER concluded that COMPLAINANT was not a police officer and asked him to move his car. While COMPLAINANT called to consult with his brother, he alleges that SUBJECT OFFICER used a loud voice to threaten to arrest him for failing to comply with the order of a police officer. COMPLAINANT alleges that SUBJECT OFFICER flagged down a marked police car and asked the officer for his handcuffs. As a crowd gathered, COMPLAINANT alleges that he became embarrassed and drove away from the parking spot.

COMPLAINANT alleges that SUBJECT OFFICER's conduct amounted to harassment and that the language and tone used by the Detective constituted insulting, demeaning or humiliating conduct.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this Complaint on June 4, 2009. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #1 and WITNESS OFFICER #1. SUBJECT OFFICER declined to testify on his own behalf.

The following exhibits were entered into evidence:

Joint Exhibits 1-9, which comprised OPC's administrative record.

Complainant Exhibit 1: General Order Series 303, Number 1 (4/30/1992).

Complainant Exhibit 2: COMPLAINANT's parking placard

Subject Officer Exhibit 1: SUBJECT OFFICER's Objections to the OPC Report of Investigation (2/24/2009)

Subject Officer Exhibit 2: Letter from Chief of Police CHIEF to SHOP STEWARD (1/7/09)

Subject Officer Exhibit 3: Memorandum from DIRECTOR, DMV Interim Director to Persons Issued Tickets While Operating Government Vehicles (4/9/07)

Subject Officer Exhibit 4: MPD Court Parking Permit

Subject Officer Exhibit 5: MPD Court Parking Pass

III. FINDINGS OF FACT

1. Complainant is a criminal investigator with the District of Columbia Department of Corrections, Warrant Squad. His investigations involve individuals who have failed to return to half-way houses or who have escaped from half-way houses, the D.C. Detention Facility or the D.C. Jail.

2. COMPLAINANT's responsibilities include preparing affidavits and securing arrest warrants for prosecutors and judges, locating, arresting and remanding to custody individuals sought and to testify at various court proceedings.

3. COMPLAINANT is a law enforcement officer, but is not a member of or employed by the Metropolitan Police Department (MPD).

4. On Monday, January 28, 2008, at approximately 1:58 p.m., COMPLAINANT parked his private vehicle in a parking space located on the north side of the 300 block of Indiana Avenue, across the street from the MPD headquarters. The parking spot was marked with a sign that read, "No Parking Except for Police Department Vehicles Only."
5. At time he parked his private vehicle, COMPLAINANT was engaged in his official duties. He intended to obtain two arrest warrants from the D.C. Superior Court and to testify before a grand jury in the U.S. Attorney's Office.
6. Prior to leaving his vehicle, COMPLAINANT placed an MPD placard in his car windshield and was wearing a Department of Corrections Criminal Investigator badge around his neck. The MPD placard was purchased at a Fraternal Order of Police retail store.
7. Neither COMPLAINANT's car nor his behavior was causing a threat to himself or to the safety of others.
8. As COMPLAINANT was leaving his vehicle, SUBJECT OFFICER, emerged from an unmarked police car driven by his partner, WITNESS OFFICER #1. SUBJECT OFFICER and WITNESS OFFICER #1 were returning to MPD headquarters and had circled the block several times in search of a parking spot for their vehicle. SUBJECT OFFICER was wearing civilian clothes.
9. Using a loud voice, SUBJECT OFFICER asked COMPLAINANT whether he was a police officer.
10. In response, COMPLAINANT pointed to the MPD placard and his emergency light globe, and later removed his Department of Corrections identification badge from his shirt.
11. SUBJECT OFFICER observed that the identification badge did not contain a blue stripe like MPD badges do. He told COMPLAINANT that he was not a police officer and asked him several times in a raised voice to move his vehicle from the parking spot.
12. COMPLAINANT showed SUBJECT OFFICER his identification card from his wallet. He explained that he was a criminal investigator with the Department of Corrections Warrant Squad engaged in official business.
13. Using a raised and hostile voice, SUBJECT OFFICER stated several times that the parking spot was reserved for official police vehicles and that COMPLAINANT had to move his car.
14. COMPLAINANT used his cellular telephone to call his brother, WITNESS #1. During that phone call, SUBJECT OFFICER was located a number of feet from COMPLAINANT and told him in a loud voice several times that, unless he moved his vehicle, he would be arrested for failing to obey an officer.

15. WITNESS #1 heard SUBJECT OFFICER yelling at COMPLAINANT during the telephone call.

16. SUBJECT OFFICER then flagged down a marked MPD car and asked one of the uniformed officers for a set of handcuffs.

17. SUBJECT OFFICER did not issue COMPLAINANT a Notice of Infraction.

18. COMPLAINANT showed the uniformed officer his identification. As a crowd gathered to witness this encounter, COMPLAINANT felt humiliated and embarrassed. Thereafter, COMPLAINANT moved his vehicle and parked it in another location. WITNESS OFFICER #1 later parked his car in that spot.

IV. DISCUSSION

Legal Standards

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].”

Two of these categories of abuse or misuse of police powers are at issue in this case: harassment and use of language or conduct that is insulting, demeaning, or humiliating. D.C. Code § 5-1107(a)(1), (3); *see also* D.C. Mun. Regs. tit. 6A, § 2104.1(a), (c). The governing statute does not, however, define these terms or more specifically identify the types of conduct contemplated as rising to the level of an “abuse or misuse of police powers.”

The Office of Police Complaints’ (OPC) implementing regulations, however, define “harassment” as follows:

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 . . . 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.

D.C. Mun. Regs. tit. 6A, § 2199. That definition expressly incorporates the internal guidelines of the MPD, which include the MPD's General and Special Orders.¹ The definition further authorizes the OPC to examine the totality of the circumstances, including whether the Officer adhered to applicable "orders, policies, procedures, practices and training" of the MPD. Thus, the regulation imposes a two-part analysis: 1) an assessment of the subject officer's actions and his or her intent in engaging in those actions and 2) the effect of those actions on the complainant.

None of the terms employed in § 2104(c), which prohibit insulting, demeaning or humiliating language or conduct, are defined in the OPC regulations. *See* D.C. Mun. Regs. tit. 6A, § 2199. However, D.C. Mun. Regs. tit. 6A, § 2116.4 permits complaint examiners to consider the definitions in the regulations "as well as any MPD regulation, policy, procedure or order that prescribes standards of conduct for officers." *See also* D.C. Mun. Regs. tit. 6A, § 2120.2(d) (the complaint examiner shall find an officer "exonerated" where the alleged conduct did occur, but did not "violate the policies, procedures, practices, order or training of the MPD").

One such order is relevant here. MPD General Order 201-26, Parts C(1)-(2) (Nov. 10, 1976) [Exhibit 9] imposes affirmative duties on officers. Part C(1) requires officers to be "courteous and orderly in their dealings with the public." Officers must also "fulfill proper requests for information or assistance," Part C(1), and be "courteous, civil and respectful" to persons while they are on or off duty. Part C(2); *see also* Part F(1) (officers shall "be habitually courteous"); D.C. Mun. Regs. tit. 6A, § 202.1(d) (requires officers to be "courteous and considerate under all circumstances").

MPD Special Order Number 01-01 also defines both harassment and insulting, demeaning or humiliating language or conduct and does so somewhat differently than the regulations cited above. [Exhibit 6]. In OPC No. 06-0121, I expressed concern about police officers being subject to varying standards of conduct. Subsequently, in correspondence dated January 7, 2009, Chief of Police CHIEF stated that Special Order 01-01 had expired and that the MPD would not refer to it in administrative matters in the future. [Subject Officer Exhibit 2.] Therefore, although the OPC referred to and relied on it in its Report of Investigation, I conclude that Special Order Number 01-01 is not applicable in this case.

¹ The Chief of Police is authorized to issue "orders, rules and regulations of the Mayor or the Council which pertain to the work of the Metropolitan Police Department, and shall issue those instructions, and promulgate those orders, rules, and regulations, not inconsistent with law or with the overall D.C. Government policy, as he or she may deem proper in the exercise of his or her functions as chief executive of the department." D.C. Mun. Regs. tit. 6A, § 800.3.

Harassment Claim

Given these standards of conduct, to determine whether SUBJECT OFFICER engaged in harassment of COMPLAINANT, it is necessary to examine each of his actions individually. I view SUBJECT OFFICER's conduct during the event in question as involving four principal actions: 1) stopping at the parking spot and asking COMPLAINANT whether he was a police officer; 2) requesting that COMPLAINANT leave the parking spot; 3) threatening to arrest COMPLAINANT if he did not leave and 4) summoning another police car to the scene and asking a uniformed officer for handcuffs. I will discuss each in turn.

To put SUBJECT OFFICER's conduct in proper context, it is first necessary to determine whether COMPLAINANT was legally entitled to park in the parking spot in question. The sign marking the spot clearly reserved it for "Police Department Vehicles" only. *See* D.C. Mun. Regs. tit. 18, § 2406.1 (authorizing the Director of the Department of Motor Vehicles "to have signs prohibiting parking, except for those vehicles indicated by such signs, placed where government parking areas have been provided"). COMPLAINANT did not park a marked or unmarked police car in the parking spot; he parked his private vehicle. I find no exception in the relevant Orders or regulations permitting COMPLAINANT to park his car at that location.

D.C. Mun. Regs. tit. 18, § 2420.1 permits government officials to park in official parking areas if they display an "Official Parking Permit" which is issued by the Director of the Department of Motor Vehicles (DMV). COMPLAINANT's placard that he displayed in his car was not such a permit. [Complainant's Exhibit 2.] SUBJECT OFFICER supplied copies of two types of court parking passes issued by CHIEF #1 and COMMISSIONER, respectively. [Subject Officer Exhibits 4 and 5.] Exhibit 4 permits the holder to park in specified areas which do not include Indiana Ave. Exhibit 5 permits parking in Designated Court Parking Areas which seem also not to include the spot in which COMPLAINANT parked, which was not so designated. Although the source of legal authority for issuing such passes is not obvious, it is clear that COMPLAINANT's placard, [Complainant's Exhibit 2], appears to lack the imprimatur of official authority reflected in Exhibits 4 and 5. Rather, the unsigned and unnumbered placard was purchased at the Fraternal Order of Police store, apparently as a matter of common and informal practice.

It may well have been the custom or habit of COMPLAINANT and his colleagues to park at this location using this sort of placard. Those not driving police vehicles may have found some comfort in General Order Series 303 Number 2 (Dec. 28, 1979) which excuses District employees from "parking infractions committed during the course of urgent government business if no other legal spaces were reasonably available." [Joint Exhibit 7.] That Order, however, does not authorize the use of the space; it merely excuses the penalty for misuse of it. Indeed, a April 9, 2007 Memorandum from the Interim Director of the DMV makes it clear that even District employees with an "Authorized Parking Permit" in vehicles with private license plates may not park in spots reserved for government vehicles only. [Subject Officer Exhibit 3.]

At bottom, COMPLAINANT and SUBJECT OFFICER disagree bitterly over whether COMPLAINANT was entitled to park where he did. Ultimately, I do not have to resolve that dispute. Rather, COMPLAINANT's entitlement to park at the location at issue appears quite doubtful, and makes reasonable SUBJECT OFFICER's belief that COMPLAINANT had parked unlawfully. There was sufficient legal doubt about COMPLAINANT's right to park there to warrant SUBJECT OFFICER's inquiry of COMPLAINANT. Therefore, I find that SUBJECT OFFICER did not harass COMPLAINANT by asking him if he were a police officer and asking for his identification.

SUBJECT OFFICER has suggested, in effect, that if COMPLAINANT were not entitled to park where he did, there could be no subsequent harassment. I reject the notion that a citizen's parking (or other) violation somehow immunizes the officer from a finding of misconduct by the OPC. The OPC regulation regards as harassment conduct in violation of police orders which result in, for example, mistreatment. A police officer can surely mistreat the guilty as easily as the innocent. Assuming, then, that COMPLAINANT was not entitled to park where he did, the analysis of potential misconduct must continue.

The second question is whether, having concluded that COMPLAINANT was neither a member of the MPD nor driving a police vehicle, SUBJECT OFFICER harassed COMPLAINANT by asking him to leave the parking spot. COMPLAINANT argues correctly that General Order Series 303.1, Number 1 prohibits police officers who, like SUBJECT OFFICER, were not in uniform or in an unmarked police car from taking traffic enforcement actions unless they encounter a violation "so grave as to pose an immediate threat to the safety of others." General Order 301.1, Part I, § A(2)(a)(4). No such circumstances were present here.

At this point, however, SUBJECT OFFICER did not take a traffic enforcement action and therefore did not violate the Order. According to the Order, such traffic enforcement actions include issuing a Notice of Infraction, issuing a warning NOI or, in certain circumstances, making a summary arrest. *Id.*, Part I, § A(2)(b), B-D. Here, SUBJECT OFFICER did not take one of these enforcement actions. Rather, he merely asked COMPLAINANT to leave the parking spot. For this reason, OPC 03-0243, cited by COMPLAINANT, is distinguishable. In that case, an off duty officer in civilian clothing driving an unmarked police vehicle issued the Complainant an NOI. That constitutes a traffic enforcement action, as defined by the General Order. In the absence of exigent circumstances, the complaint examiner found that the subject officer violated the General Order. Here, in contrast, the restrictions imposed by the Order were not triggered because SUBJECT OFFICER had not taken an enforcement action. It is very difficult to conclude, as COMPLAINANT does, that it violates the General Order for an officer simply to request a citizen to move a car that he or she reasonably believes is wrongfully parked. Given his good faith belief that COMPLAINANT was not entitled to park in the spot in question, I conclude that asking COMPLAINANT to vacate the spot did not constitute harassment.

Third, when COMPLAINANT did not promptly leave and, instead, called his brother on the telephone, SUBJECT OFFICER threatened COMPLAINANT with arrest. Arrest was threatened not for a parking violation, but for failing to comply with the order of an officer. The difficult question posed is therefore whether an officer may make an arrest for failure to comply under these circumstances. D.C. Mun. Regs. tit. 18 § 2000.2 provides that, “[n]o person shall fail or refuse to comply with any lawful order or direction of any police officer, police cadet, or civilian crossing guard invested by law with authority to direct, control, or regulate traffic. This section shall apply to pedestrians and to the operators of vehicles.” Violation of this provision is a criminal offense. *See Morgan v. District of Columbia*, 730 A.2d 655, 656 (D.C. 1999).

Assuming that SUBJECT OFFICER’s request that COMPLAINANT leave the spot was a lawful order, Special Order Series 96, Number 10 (Jul. 10, 1996)² [Exhibit 8] prohibited SUBJECT OFFICER from threatening arrest. The Special Order provides that an officer may only consider and, by inference, threaten summary arrest when the refusal to comply “creates a flagrant and immediate danger to the violator, other persons or the motoring public, or interference with the ongoing traffic enforcement activities of the police.”

Here, COMPLAINANT’s parking surely presented no danger to anyone. Nor did it interfere with ongoing traffic enforcement activities. Because SUBJECT OFFICER was not in uniform and not in a marked police vehicle, he could not engage in traffic enforcement activities. Even if he could, such activities would not be “ongoing.” This was a specific, particular encounter, not part and parcel of continuing police activities, such as clearing a street for a motorcade and encountering a motorist who did not wish to do so. Faced with the apparent clarity of Special Order 96-10, SUBJECT OFFICER offers three arguments.

First, SUBJECT OFFICER argues that the Special Order provides that the decision to make a summary arrest is being based on the prudent judgment of the police officer whose order was refused. Reading the Special Order with care, however, it is plain that this element of discretion is confined to a decision whether or not to arrest *only* when there is the presence of such danger. That discretion to arrest does not extend to a situation in which there is no such danger.

Second, SUBJECT OFFICER has suggested that Orders are guidelines rather than binding and therefore should not be the basis to sustain an OPC complaint. In OPC 06-0121, I rejected a similar argument and do so again here. OPC 06-0121 at 14 (rejecting Officer’s explanation for choosing not to comply with General Order). I am bound to apply D.C. Mun. Regs. tit. 6A, § 2199, which clearly includes as harassment the violation of an internal guideline of the MPD. The regulation also requires me to consider whether the officer adhered to orders and policies of the MPD. If the police orders do not reflect

² Special Order Series 96 Number 10 specifically provides that it remains in effect until revised, rescinded or incorporated into an appropriate general order. I have found no subsequent order revising, rescinding or incorporating the special order and it, therefore, remains in effect.

prevailing law or practice, then they should be changed to do so. Until they are, these orders govern police conduct and guide the decisions of Complaint Examiners. Little would remain of OPC process if police orders were regarded as merely advisory in nature and could not serve as the basis of a finding that an officer engaged in police misconduct.

For that reason, *Sepulveda-Hambor v. District of Columbia*, 885 A.2d 303 (D.C. 2005), cited by SUBJECT OFFICER, does not support his argument. In *Sepulveda-Hambor*, a motorist arrested for failing to obey a police officer appealed the trial court's denial of her motion to seal records relating to the charge after she was acquitted. To succeed in such a motion, the appellant would have to show, for example, that the arrest was made without probable cause or in violation of her constitutional rights. The appellant argued that the arrest violated her rights because the officer in question had no basis to make it. She asserted that the officer violated Special Order 96-10 because of the absence of flagrant or immediate danger to the violator or others. The Court of Appeals found that the Special Order gave her no rights; such orders are internal mandates enforceable by the police department, not the courts. *Sepulveda-Hambor*, 885 A.2d at 309. While the Special Order may not be enforceable in the judicial context presented in *Sepulveda-Hambor*, it certainly may be in the OPC context established by the City Council.

Third, SUBJECT OFFICER argued that Orders may be superseded by statutes or case law and that an officer's conduct should be evaluated with respect to the superseding law. If an MPD order and other relevant source of conduct conflict or impose different requirements, a legitimate question is raised as to which to follow, as I explained in OPC 06-0121. In such a case, I decided there that the more permissive standard of conduct should apply. Here, a 1998 D.C. Court of Appeals decision, *Karriem v. District of Columbia*, 717 A.2d 317 (D.C. 1998), which post-dates the Special Order, is relevant in this regard.

Karriem involved a street vendor whose over-sized vending stand was placed in restricted locations. On three occasions, police officers asked the vendor to remove his stand. When he refused, the officers arrested Mr. Karriem for violating various vending regulations. The charges were ultimately dismissed and Mr. Karriem sued the District and the officers for false arrest, among other tort theories. A Superior Court jury found in Mr. Karriem's favor on one of the arrests and awarded him damages. On appeal, the D.C. Court of Appeals explained that an arrest without a warrant is presumptively unlawful unless the District can show that the arrest was based on probable cause. Probable cause can be established in one of two ways: an objective assessment of the facts as they occurred or partially subjective analysis which asks whether the officer had a good faith belief in the lawfulness of the arrest and that the belief was reasonable. *Karriem*, 717 A.2d at 320.

Employing the more demanding objective test, the D.C. Court of Appeals reversed the trial court's refusal to set aside the verdict for Mr. Karriem. The Court held that Mr. Karriem's refusal to comply offered an objective basis for the valid arrest and that the arrest would have been equally valid had it been for violating § 2000.2 instead of

for violating the substantive vending regulations. *Id.* at 322-23. Because the undisputed evidence, viewed in the light most favorable to Mr. Karriem, would preclude any reasonable jury from concluding that the police officers lacked probable cause to arrest him on October 22, 1988, the Court held that the trial court should have granted the District's motion for judgment notwithstanding the verdict. *Karriem*, 717 A.2d at 322-23.

To be sure, *Karriem* did not consider Special Order 96-10 and we do not know with certainty how the Court would have approached the case had the Special Order been brought to its attention. Yet, the facts of *Karriem* did not appear to present the sort of “flagrant and immediate danger” contemplated in the Special Order to justify summary arrest. It is therefore quite possible to read *Karriem* as permitting an arrest in the absence of such danger for failing to comply with a lawful order. As the Court of Appeals explained, “According to his own testimony, Karriem knowingly refused to comply with lawful police orders. That refusal provided an objective basis for the police officers' probable cause determination, and thus as a matter of law their arrest of Mr. Karriem was valid.” *Id.* at 322. Presumably, if the arrest were valid, a threat to arrest would not be actionable either.

Because SUBJECT OFFICER chose not to testify on his own behalf at the hearing, we do not have any evidence of his subjective state of mind regarding the lawfulness of making arrests (or threatening to do so) for failure to comply with police orders. Employing the objective test and the apparently more permissive standard of *Karriem*, there was some legal basis for an arrest and, thus, a threat to do so. While the issue presented is, admittedly, a close one, the burden is on the complainant to demonstrate misconduct and, with respect to harassment, that misconduct must be purposeful, knowing or reckless. Given the potential ambiguity with respect to SUBJECT OFFICER's obligations presented in Special Order 96-10 and *Karriem*, I conclude that COMPLAINANT has not shouldered his burden of showing that the threat to arrest was misconduct.

Fourth, after COMPLAINANT failed to vacate the parking spot, SUBJECT OFFICER flagged down a marked police car. That alone does not constitute harassment. As explained, SUBJECT OFFICER could not himself take traffic enforcement action against COMPLAINANT. Requesting assistance from uniformed officers with the authority to do so is a legitimate exercise of authority.

I therefore conclude that SUBJECT OFFICER did not engage in harassment because he did not act purposefully, knowingly or recklessly in violation of the law or internal guidelines of the MPD. Even had I concluded otherwise, the result would be the same. D.C. Mun. Regs. tit. 6A, § 2199 requires that any harassment have at least one of the effects on the complainant listed. COMPLAINANT argued that he was detained. That is not at all clear. Given the circumstances, he was free (indeed, encouraged) to leave without penalty. Because I have concluded that his right to park in that location was very doubtful, I cannot conclude either that he was impeded “in the exercise or enjoyment of any right, privilege, power or immunity.”

Language and Conduct Claim

Having decided that Special Order 01-01 does not apply, the question here is whether SUBJECT OFFICER violated MPD General Order 201-26. [Exhibit 9] Part C(1) requires officers to be “courteous and orderly in their dealings with the public.” Officers must also be “courteous, civil and respectful” to persons while they are on or off duty. Part C(2). *See also* Part F(1) (officers shall “be habitually courteous”). I conclude that SUBJECT OFFICER violated this General Order.

At the outset, it must be acknowledged that determining whether an officer is courteous, orderly, civil or respectful in his or her interaction with a citizen is not a simple matter. Those terms are not self-defining and highly contextual. Rather, applying these terms call for the application of what can only be regarded as sensitivity to the situation and common sense.

Here, WITNESS OFFICER #1 and SUBJECT OFFICER had been engaged in the frustrating enterprise of circulating the block several times looking for a parking space. When they encountered COMPLAINANT, the only driver among the many cars parked in a row of vehicles, COMPLAINANT testified, without contradiction, that SUBJECT OFFICER “screamed” or “hollered” when asking him if he were an MPD officer, asking him to leave the spot and threatening to arrest him. [Tr. 26-28, 30]. WITNESS #1 corroborated his brother’s testimony. [Tr. 74-76].

COMPLAINANT used his cell phone to call WITNESS #1 to ask for advice. Although SUBJECT OFFICER was several feet away from COMPLAINANT, WITNESS #1 testified that the officer threatening his brother with arrest was screaming. *Id.* WITNESS #1, a thirty-eight year veteran of the MPD, can surely be credited with discerning the difference between use of a regular voice and screaming, even over a cell phone.

In his cross-examination, SUBJECT OFFICER questioned WITNESS #1’s familiarity with his voice at length. While I found WITNESS #1’s testimony on this point entirely credible, it does not really matter whether WITNESS #1 recognized the screaming officer as SUBJECT OFFICER or not. There is no question that SUBJECT OFFICER was the speaker. All that matters was the tone and manner of his speech.

WITNESS OFFICER #1 testified that SUBJECT OFFICER customarily used a calm and respectful tone of voice, [Tr. 120], and that he did not observe SUBJECT OFFICER getting agitated in this situation. [Tr. 122]. However, he also testified that for most of the episode, he was either driving around the block or parked at least thirty feet away, possibly with his window closed. [Tr. 124, 128, 129]. WITNESS OFFICER #1 was therefore not in a position to witness the entire event as it unfolded.

Despite a number of explanations from the Complaint Examiner and consultation with an advisor, SUBJECT OFFICER chose not to testify on his own behalf and therefore did not offer a rebuttal to COMPLAINANT’s testimony. In his interview with

the OPC investigator, SUBJECT OFFICER stated that he was “calm: and that “neither of us raised our voices.” These statements were not, however, subject to cross-examination. Because there was a conflict in the record on this point, I determined that a hearing was required. Based on the testimony received at the hearing, I conclude that SUBJECT OFFICER’s tone and manner of speaking were discourteous.

While SUBJECT OFFICER’s repeated threats to arrest COMPLAINANT were not, as explained above, themselves harassment, they do merit consideration in this claim. While SUBJECT OFFICER arguably had the authority to arrest COMPLAINANT under *Karriem*, his repeated and loud threats to do so are hardly consistent with a courteous and respectful demeanor. Regardless of COMPLAINANT’s attitude, SUBJECT OFFICER had a duty to try to prevent the situation from escalating. Threats to arrest a District law enforcement officer on duty over a parking place are an over-reaction to a situation which could have been quickly defused. And, summoning uniformed officers to produce handcuffs seems terribly unnecessary over a matter that simply involved a parking spot.

SUBJECT OFFICER could have directed a uniformed officer to issue an NOI and to guide COMPLAINANT to another location to park. Or, SUBJECT OFFICER could have simply given up and looked for another spot, perhaps with the thought that he would bring this incident to the attention of MPD parking division officers to enforce the parking restrictions more vigorously in the future. Simply because SUBJECT OFFICER could press this authority in this scenario does not mean that it was advisable, warranted, civil or respectful. Instead, unable to find a spot at the end of a shift, SUBJECT OFFICER repeatedly threatened to arrest COMPLAINANT until a crowd gathered to witness the event. Embarrassed, COMPLAINANT left. Given the context, in which COMPLAINANT was a fellow law enforcement officer and alternatives were available to resolve the situation, I conclude that SUBJECT OFFICER’s conduct violated General Order 201-26.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Exonerated
Allegation 2:	Sustained

Submitted on June 23, 2009

Jeffrey S. Gutman
Complaint Examiner