



## **CLOSED CASE SUMMARY**

ISSUED DATE: JULY 12, 2018

CASE NUMBER: 2018OPA-0059

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

**Imposed Discipline**

Written Reprimand
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***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainants alleged that the Named Employee was unprofessional towards the male and female subjects. It was further alleged that the Named Employee may have engaged in biased policing towards the subjects.

### **STATEMENT OF FACTS:**

On the date in question, Named Employee #1 (NE#1) was driving his patrol vehicle when he was flagged down by the male and female subjects. He had been dispatched to a non-emergency call. He stopped his vehicle and the male subject informed him of a loose paving stone that was on the route for a demonstration planned for Martin Luther King, Jr. Day. The male subject expressed his concern that this could harm people taking part in the demonstration. NE#1 told the male subject that he should address this issue with the park rangers.

The next part of the interaction between the subjects and NE#1 is disputed by the parties. Moreover, due to the one minute video buffering that occurred upon activation of NE#1’s Body-Worn Video (BWV) and In-Car Video (ICV), this aspect of the interaction was not recorded.

During its investigation, OPA interviewed both the male and female subjects. The male subject told OPA that he viewed the loose paving stones as a potential threat of harm to demonstrators based both on his observations at the scene and his past experience as a combat veteran. He told OPA that when he flagged down NE#1 and raised these concerns to him, NE#1 told him to report the paving issue to another governmental entity. The male subject stated that when he reiterated his concerns to NE#1, NE#1’s attitude began to “shift.” He reported that NE#1 began to “demean” him and his military service. The male subject said that tried to joke with NE#1 to lighten the mood but, as a result, NE#1 pulled his patrol vehicle over and got out. The male subject told OPA that he approached NE#1 in a “non-threatening manner,” but that NE#1 started “yelling” at him. The male subject indicated to OPA his belief that NE#1 was “belittling” him and trying to “push” his buttons. The male subject stated to OPA that, at this point, he either called NE#1 an



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“asshole” or told NE#1 that he was acting like an “asshole.” The female subject’s statement to OPA was consistent to that given by the male subject.

NE#1 recalled that after he told the subjects to seek out a park ranger based on their original complaint concerning the loose paving stone, they then stated to him that the paving stone could constitute a “booby trap.” NE#1 told OPA that the situation then became more than a social contact based on the allegation of a “booby trap,” and it took precedence over his response to the “cold” assault call. NE#1 stated that he parked his patrol vehicle, got outside, and activated his BWV. He then heard someone say: “fucking asshole.” NE#1 indicated that he asked the male subject what he said and the male subject responded that he did not say anything. NE#1 recalled that the male subject informed NE#1 that he was a veteran. NE#1 did not remember whether the male subject said that he was a combat veteran. NE#1 told OPA that he did not demean the male subject’s military service.

The remainder of the interaction was recorded on NE#1’s BWV. The video captured NE#1 approach the male subject and begin to discuss the profanity with him. NE#1 asked the male subject to repeat what he previously said. The male subject did not do so and tried to bring NE#1’s attention to the loose paving stone. NE#1 responded by again bringing up the profanity and stating that BWV keeps people accountable. NE#1 and the male subject continued with this back and forth exchange for another minute, until the female subject stepped in-between them and attempted to create distance between the two. In response to the male subject’s statement that NE#1 worked for him, NE#1 stated that he did not do so and, instead, worked for the public as a whole. NE#1 reiterated that the BWV kept people accountable and asked the male subject if he wanted to be on YouTube. The male subject responded: “You think I give a fuck about being on YouTube.” NE#1 also used military terminology throughout his interaction with the male subject, at one point referencing NE#1’s knowledge and understanding of “blast radius.”

Approximately three minutes into the interaction, NE#1 stated to the male subject: “and if you want to call me a name again, I’ll be back and we’ll revisit it.” The male subject responded: “what will you do?” NE#1 said: “What will I do? It will be documented...” NE#1 then stated to the male subject: “are you that guy?”; “are you challenging me?”; and “Was that a physical challenge?” At this time, the female subject again placed herself between NE#1 and the male subject. NE#1 told the subjects that he “loves” his BWV because it records all of the “ignorance” he has to deal with, including, in his opinion, the male subject’s behavior in this instance. He then walked away to check the loose paving stone.

When NE#1 returned to where the subjects were, the female subject asserted that he had escalated the situation. NE#1 stated that he did not as he was not the person who used profanity. NE#1 told the female subject that when someone uses profanity, it is an attack on the other person. He further stated that the male subject “crossed the line.” The female subject remarked on what she perceived to be NE#1’s sarcastic tone.

The male subject approached NE#1 and asked him for his name. In response, NE#1 asked for the male subject’s name and stated that accountability was a “one sided thing.” They discussed the male subject filing a complaint and how the incident was recorded on BWV. NE#1 then asked the male subject if there was anything else that he wanted to tell NE#1 to do and stated: “I bet the military is proud...real proud.” After engaging in a further discussion with the female subject, NE#1 brought up the fact that only he was expected to be an “adult” and community members did not have those same requirements. He then stated, with regard to this incident happening on Martin Luther King, Jr. Day: “on this day, on this day and this march, it’s ironic how its only one sided in regards to how humans are supposed to get along.” The female subject attempted to respond and NE#1 concluded: “it’s a dishonor to the day.”



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The female subject told NE#1 that she had taken a course to teach her how to interact with law enforcement. NE#1 responded that nothing about his employment as police officer required him to abandon his constitutional rights or forced him to be a verbal or physical punching bag. The female subject asserted to NE#1 that the incident had grown “hostile” and referenced both NE#1’s and the male subject’s tones of voice. NE#1 again brought up the profanity and asserted to the female subject that he was the “adult” in the situation.

NE#1 then called the male subject a “big, rude jerk,” which the female subject heard as “bigotry.” She raised that term with NE#1 and he corrected her. NE#1 then stated: “Obviously, you have a different mentality...you’re hooked on something here.” He then stated: “I’m going to drop this now.” After another exchange between NE#1 and the male subject, both subjects left the vicinity. NE#1 remained and was recorded talking to himself concerning being verbally abused and the behavior of the male subject.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.) The policy further states that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

My review of the evidence in this case – most notably, NE#1’s BWV – yields the conclusion that NE#1’s conduct towards the subjects violated the Department’s professionalism policy. I reach this finding for two main reasons. First, a number of NE#1’s statements were improper and unnecessary. Second, NE#1’s demeanor and behavior towards the subjects, and particularly towards the male subject, served to inappropriately escalate an already heightened emotional situation.

With regard to the first finding, I find that when NE#1 stated “I bet the military is proud...real proud” to the male subject, that statement was, in and of itself, unprofessional. A number of NE#1’s other statements were unprofessional when combined with his demeanor towards the subjects, his tone of voice, and his dismissiveness of their concerns and of the female subject’s respectful and calm attempts to engage him in dialogue. Included among these statements were when NE#1 raised Martin Luther King, Jr. Day and stated that the subjects’ behavior was a “dishonor to the day,” his assertions that only officers were held accountable for their actions, his refusal to provide his name when asked by the male subject, his repeated references to military terminology in a sarcastic manner, when he called the male subject a “big, rude jerk,” his aggressive statements to the male subject, and his overall contentious attitude.

With regard to the second finding, I find that NE#1’s statements to the male subject served to improperly escalate the situation. Even if the male subject called NE#1 an “asshole,” NE#1 should have concluded his activities and walked away. It was unnecessary and counterproductive to engage in an ongoing back and forth with both subjects, and particularly the male subject. For example, asking the male subject if he was “that guy” and whether he was “challenging” NE#1 was simply pointless. It served absolutely no law enforcement interest to do so. What was the



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desired result? That the male subject would further challenge NE#1 and they would engage in a physical fight? Certainly, that was the way NE#1's statements were perceived by both subjects.

NE#1 is right that, by a function of his role as a police officer and the fact that he is paid to serve the community, he is held to a higher standard than those he interacts with. When situations become negative and even when community members are rude and insulting, officers are required to be the adults in the room. This includes biting their tongues when necessary and not engaging in an insulting, aggressive, demeaning, and dismissive back and forth. This is not unique to police officers, but it is a requirement of all government employees. Simply stated, NE#1 cannot behave in such a manner while he is serving as a Seattle Police Officer. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

***5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on my review of the record, which included the Department video of this incident, I find no evidence supporting the allegation that NE#1 engaged in biased policing towards the subjects. While, as discussed above, NE#1 engaged in unprofessional behavior towards the subjects, this does not establish bias. Moreover, there is no basis to find that this lack of professionalism was based on the subjects' race, as opposed to being a result of the negative interaction that transpired between them.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**