



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB04/0226 - June 13, 2005*

#### ***EXECUTIVE OVERVIEW***

The Complainant was arrested in the area of 6<sup>th</sup> and Main for trespassing. In the course of this arrest, two Boise Police Department (BPD) officers used force. The Complainant alleged that the force was unnecessary and excessive, in particular that one officer choked him and stopped him from breathing.

The ombudsman investigated this complaint and found that, while both officers used force, none of the force employed was excessive or unreasonable. The force used was in response to the Complainant's resistance and threatening posture. Both officers used neck restraint holds, but neither officer blocked the Complainant's breathing. As a result, the ombudsman exonerated both officers of any wrong-doing.

#### ***THE SITUATION***

On December 5, 2004, at approximately 2:40 a.m., the security staff at a downtown nightclub denied the Complainant entrance to the club. Nearby, two BPD officers, Officer #1 and Officer #2, heard loud arguing from the top of the stairs leading down to the club. The officers ran over to investigate. By the time the two officers arrived, the Complainant and his wife had descended the stairs and entered the club. The club's staff allowed the Complainant's wife to remain in the club, but the Complainant was removed from the club for trespassing. The Complainant struggled with the club security personnel and was pulled up the stairs by the two BPD officers. One of the officers, Officer #2, applied a "shoulder pin" to the Complainant. This is a "hard, empty-hand control" that involves applying

pressure under one shoulder and across the opposite side of the neck. At the top of the stairs a large crowd formed and the officers took the Complainant into an alley several feet away. The officers took the Complainant to the ground and Officer #1 applied a Lateral Vascular Neck Restraint (LVNR) to the Complainant. The Complainant did not lose consciousness and was eventually handcuffed and taken to jail. He was charged with trespassing and resisting officers.

### ***THE COMPLAINT***

The Complainant alleges that Officer #1 used unnecessary and unreasonable force in applying the LVNR. The Complainant also alleges that both Officer #1 and Officer #2 used unreasonable and unnecessary force as they pulled him up the stairs, took him to the ground, and applied weight to his back as he was prone on the ground.

### ***THE COMPLAINT INVESTIGATION***

The following people were interviewed:

1. The Complainant.
2. The Complainant's wife.
3. The security manager for the club.
4. Officer #1.
5. Officer #2.

The Complainant supplied the names and telephone numbers of two individuals who reportedly witnessed the incident. One phone number was invalid. Messages were left at the other phone number, but they were never returned. The Complainant did not reply to several

requests for updated contact information for the witnesses.

I read all related police reports, dispatch records, and internal BPD documents relating to the officers' use of force. I also looked for any audio recordings made by the officers during the incident. However, I found that neither officer recorded the event. Both officers reported that the incident began so quickly they had no opportunity to turn on their recorders before becoming physically engaged with the Complainant.

The Complainant reported that he saw a doctor within a few hours of his arrest and release from jail. He gave me access to his medical records, which I reviewed.

### ***WHAT THE COMPLAINT INVESTIGATION FOUND***

Based on the preponderance of the evidence available in this investigation, I reached the following findings of fact.

1. Officer #1 and Officer #2 had probable cause to believe that the Complainant had committed a misdemeanor (trespassing and battery) in their presence.
2. Officer #1 and Officer #2 were dressed in clearly recognizable police uniforms.
3. Officer #2 verbally identified himself as a police officer to the Complainant.
4. The Complainant struggled and physically resisted the efforts of both Officer #1 and Officer #2 to take him into custody.
5. Officer #1 and Officer #2 used soft, empty-hand controls on the Complainant in an attempt to remove him from the bottom of the stairway and take him into custody.

6. Officer #2 applied a hard, empty-hand control (“shoulder pin”) to the Complainant in order to subdue him and remove him from the stairs.
7. The Complainant raised his fists and took an aggressive stance face-to-face with Officer #2.
8. Officer #1 applied a lateral vascular neck restraint (LVNR) to the Complainant, took the Complainant to the ground, and applied pressure to the LVNR. This compression on the neck restricted blood flow from the head, but did not impede the Complainant’s ability to breathe.
9. Officer #1 released the LVNR once the Complainant stopped struggling. The Complainant did not lose consciousness.
10. The Complainant’s airway was not blocked by the actions of any officer.

### ***OMBUDSMAN’S ANALYSIS AND FINDINGS***

The BPD Policy and Procedures Manual in effect at the time of this incident (§§ 1.0101 and 1.0102) provides the following restrictions and guidance to officers regarding their use of force:

*An officer shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when necessary to affect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized*

*techniques are not available or practical, officers may also use any other reasonable force to gain control of the situation (§ 1.0101)*

*The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident.*

*The criteria for determining use of force shall include, but not be limited to,:*

- *The severity of the crime*
- *The nature and extent of the threat posed by the suspect*
- *The degree to which the subject resists arrest or detention*
- *Attempts by the subject to evade arrest by flight*
- *Other factors, including*
  - *Nature and quality of intrusion upon the individual*
  - *Duration of that intrusion*
  - *Severity of injuries inflicted, if any*
  - *Officer/subject size and other physical attributes*
  - *Environmental considerations*
  - *Reaction time*
  - *Totality of circumstances (§ 1.0102)*

The evidence clearly supports the finding that both officers had lawful authority to arrest the Complainant. The Complainant was committing two misdemeanors (trespassing and battery) in their presence. Both officers were in uniform and announced their presence as police officers. The Complainant resisted their verbal and physical efforts to take him into custody. Under such circumstances, reasonable force was both authorized and necessary to detain the Complainant and prevent him from harming others.

Given the Complainant's aggressive actions towards the employees of the club and his resistive behavior with the two officers, Officer #1 reasonably interpreted the Complainant's raised fists and "fighting stance" as an immediate threat to Officer #2. Therefore, Officer #1's use of a LVNR to prevent bodily injury to Officer #2 was reasonable and appropriate.

For these reasons, I have issued a finding of exonerated for each officer in connection with the allegations that they used unnecessary and/or unreasonable force on the Complainant.

Officer #1:

P.M. 1.0100 Alleged unnecessary use of force (LVNR) **EXONERATED**

P.M. 1.0100 Alleged unnecessary use of force  
(soft, empty-hand controls) **EXONERATED**

Officer #2

P.M. 1.0100 Alleged unnecessary use of force **EXONERATED**  
(soft, empty-hand controls  
and hard, empty-hand controls – “shoulder pin”)

After reviewing this incident, I am inclined to agree with the assessment of the officers' supervisor that the circumstances were sufficient to explain both officers' failure to audio record their contact with the Complainant. Therefore, I have chosen not to address this potential policy violation in this report and to consider it as previously handled by BPD.

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