



Professor Henry Gates and the First Amendment

by John D. Whitaker

The President characterized the recent flap between Harvard Professor Henry Gates and Sergeant James Crowley of the Cambridge Police Department as a “teachable moment.” Professor Gates was arrested on his front porch by Officer Crowley after a spirited verbal exchange between the two. Gates was actually arrested for breach of the peace allegedly because he was yelling at Officer Gates. I think the President was thinking in terms of using this incident to talk about race. However, this flap made me think about what happens when a citizen’s right to free speech under the First Amendment meets a police officer’s right to be free from interference with the lawful performance of his job.

Let’s start with the law. Both the United States and Wyoming State Constitutions provide that citizens have a right of free speech. But, Wyoming Statute § 6-5-204(a) prohibits a citizen from knowingly obstructing, impeding or interfering with a police officer while he is engaged in the lawful performance of his duties. A violation is a misdemeanor punishable by up to a thousand dollar fine and/or a year in the county jail. There is a felony level violation for more serious conduct. In proving a violation of this statute the State must prove two things. First, that the citizen knowingly interfered with the police officer; and second that the officer was engaged in the lawful performance of his duties.

So what conduct constitutes interference? The most obvious case is where someone is physically interfering with a police officer. But what about a citizen who is just verbally criticizing the officer? Our Supreme Court has indicated that mere remonstrances or criticism is ordinarily not sufficient to sustain a charge of interference, but they also said that verbal abuse alone could become an interference depending upon its intensity, or the totality of several acts taken together. In Professor Gate’s case he was allegedly yelling at the officer and attempting to incite onlookers to help keep him from being arrested. The key words in our statute include obstructing,



impeding, or interfering with the officer. So, for example when a police officer tells a motorist to get back in his car during a traffic stop and the citizen refuses he is interfering with the officer doing his duty to protect the citizen and the public at large from people standing on a roadway. Providing false information to a police officer can constitute an obstruction within the meaning of the statute because the false information could cause the officer to take an unnecessary detour in his investigation based upon the false information.

Most people don’t like being told to do something they don’t want to do. Most police officers do not like it when people don’t do what they tell them to do. The potential for conflict is always present when the police interact with citizens. Usually when the police are involved emotions are already running high. This is one of the reasons why the training of police officers is so important. If a confrontation develops and it begins to escalate, a well-trained police officer can usually keep the situation from getting out of hand. It is important to remember that police officers are human beings just like we are. They can have bad days, they are always under great stress and they can get scared. Citizens are also entitled to respect and they don’t respond well to bullies.

The Casper Police Department has recently started a program where the mobile command center goes into local neighborhoods to meet the people and conduct foot patrols. I think this is a great idea for members of law enforcement to meet and talk to people on the streets in far lower stressful situations than when answering a police call. It gives both sides the opportunity to see that we are all human beings. That being said, it is important to pick your battles and sometimes discretion is the better part of valor. If a police officer tells you to do something you should do it. If you have a beef with the system, an emergency situation is not the place to voice your objections. My legal advice is to zip the lip and give the officer a break. If you don’t like the system you can always run for Congress.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer’s credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at Wyoinjury.com