

## So, What Happens When You Say '#@!!\*!' to a Cop?

**Shira Abilevitz**

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"It's a crosswalk, asshole."

With that remark, Pennsylvania college student Amy Johnston got herself arrested, and touched off a legal battle over free speech, unlawful arrest and the right to curse out a cop.

Johnston is one plaintiff in a pair of lawsuits filed this month by the American Civil Liberties Foundation of Pennsylvania on behalf of people who were arrested for swearing at a police officer. The plaintiffs claim the arrests violate their free speech rights. They are asking for unspecified damages. Johnston and Lagrossa v. Homestead Boro, No. CA-02-1170, and Upshaw v. North Braddock Police Department, No. CA-02-1171 (W.D. Pa.).

### PITTSBURGH'S PROBLEM

The ACLU gets about six complaints a year from people who have been arrested for foul language, and the problem is acute in Pittsburgh, according to Witold Walczak, director of the ACLU's Western Pennsylvania division.

"These are all cases where the police have taken some kind of action against an individual out of anger and frustration," said Walczak, who represents the plaintiffs in the two suits.

For Johnston, 27, the trouble began two years ago in the parking lot of a grocery store in Homestead, Pa. She and co-plaintiff Gregory Lagrosa, 29, were crossing the lot when a police officer, Frances Keyes, allegedly sped through a pedestrian crosswalk.

Johnston called the officer an "asshole," and a confrontation erupted. Keyes arrested Johnston for disorderly conduct and Lagrosa for harassment. A judge later threw out the charges.

Bernie Schneider of Pittsburgh's Brucker, Schneider & Porter, who represents the Homestead Borough Police Department in the case, could not be reached for comment.

Under Pennsylvania's disorderly conduct statute, police can punish people for obscene language or gestures. But the plaintiffs claim the statute covers only language that fits the U.S. Supreme Court's definition of obscenity, which, according to Walczak, "really only applies to hardcore pornography.

"We're trying to send a message to police departments that you need to recognize the limits of your authority, and that does not include playing Miss Manners and arresting people for naughty language," Walczak said.

In the case of Erica Upshaw, 29, the off-color language slipped out in the course of a traffic stop. When she was pulled over for running a stop sign, she said, "I am having a bull---t day." The police officer placed her under arrest for disorderly conduct, but an appeals judge later found her not guilty. Upshaw, a bus driver, claims her First and 14th Amendment rights were violated by the arrest.

Defense attorney John Bacharach of Pittsburgh's Bacharach and Klein, who represents the police department in the case, said it was premature to comment.

This is not the first time Pennsylvania courts have examined a foul-language arrest. A federal court found Pennsylvania's disorderly conduct law vague in 1985, in the case of a teen-age girl arrested for calling a group of cops "god---n f--king pigs." Pringle v. Court of Common Pleas, Cumberland Cty., No. 85-5249 (3d Cir.). That case was decided on due process grounds and did not reach the First Amendment issue.

According to Walczak, the disorderly conduct statute may in fact be constitutional. "It's just being applied in an unconstitutional fashion," he said.

"The ACLU's goal and plaintiffs' goal is that other people will not have to suffer the humiliation that our folks went through. The three folks we have -- these are not your usual suspects. These are upstanding people," Walczak asserted, adding that a disorderly conduct charge can lead to 90 days in jail.