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Sutherland Lawyer Wants D.C. to Pay Up After Arrest

When Washington attorney Hamilton "Phil" Fox III was arrested in late 2008 on a charge of disorderly conduct after challenging a police order to move his car, he paid \$35 and was released from a police station.

Fox, a white-collar criminal defense partner in the Washington office of Sutherland Asbill & Brennan, said in a suit this week against the District of Columbia and two police officers that the authorities considered the payment the end of the case.

There was no prosecutorial review, no judicial oversight and no refund.

Fox's suit in Washington's federal trial court challenges the lawfulness of his arrest and the constitutionality of the police department's "post and forfeit" policy. That program, Fox said, allows a person to pay between \$25 and \$1,000 to secure release from custody on petty offenses without having to appear before a D.C. Superior Court judge.

He said he was not given an option to be released on a citation with a promise to appear in court later. The program, Fox said, "uses the coercive power of the criminal justice system to exact money from arrestees in exchange for release from incarceration and conditional termination of the prosecution of any arrest charges." A copy of the suit is [here](#).

Fox said in the suit that "post and forfeit" revenue is not accounted for by city police. The suit, which Fox wants to become a class action, examines the extent to which the program is constitutional. He was not immediately reached today by phone or e-mail.

A lawyer for Fox, Washington solo practitioner William Claiborne, called the "post and forfeit" money a "bribe sanctioned by the government of the District of Columbia."

A spokeswoman for the police department, Gwendolyn Crump, did not immediately comment on Fox's suit.

In the complaint, which demands \$1.2 million in compensatory and punitive damages, Fox claimed the authorities had no probable cause to arrest him. The events underlying the suit happened the evening of Dec. 20, 2008, near a CVS store on Capitol Hill.

More on the case after the jump.

According to Fox, he drove his wife to a CVS store in the 600 block of Pennsylvania Avenue in Southeast Washington, where she was picking up medication for herself and father. Fox said he was waiting in his car, running with the lights on, for his wife to return, when an officer pulled up behind him.

The officer told Fox he was not allowed to park in that spot. "Gotta move your car, sir," the officer said, according to Fox. Fox, who maintained he was legally "standing" and not parked, demanded to speak with a supervisor.

While he was waiting for a supervisor, his wife emerged from the CVS. The couple got in their car and tried to leave. The officer blared a siren and stopped Fox, telling him that since he wanted to speak with a superior, he'd have to wait for one to arrive.

"At that time, numerous MPD police officers swarmed the scene, including officers on Segways and in vehicles," Fox recounted in his suit.

Fox then admits that he said something "derogatory" about the officer's "intelligence and competence." His suit does not indicate what he uttered.

A police sergeant arrested Fox. His wife was crying. Fox said in the suit that police arrested him in retaliation for objecting to moving his car and for his disparaging remark about the officer's intelligence. Back at a police station, Fox said he was presented a "post and forfeit" form, which indicated he was being charged with "disorderly conduct—loud and boisterous." Fox said he was never presented the option of a citation.

He signed the form and paid \$35. Fox said he did not admit guilt in signing the form. He said he feared he would have taken to the city's central cellblock if he did not pay the \$35.

Police released Fox about 3 a.m. the morning of Dec. 21. The police, according to Fox, abandoned the arrest, never sending it to the D.C. Office of the Attorney General for prosecution.

The money Fox paid had “none of the characteristics of bail paid upon detention to secure release to appear at a hearing.”

Fox said in the suit he wants an independent monitor set up to supervise the police department’s release program to make sure officers present arrestees with release options.

The exact size of the potential class isn’t known, Fox said in court papers. Police figures, he said, indicate the class could be in the tens of thousands based on arrests over the past five years.

The suit also demands \$700,000 in compensatory and punitive damages for Fox's wife.

Claiborne said the record of Fox's arrest has been expunged and that a Superior Court judge found, in October, that Fox did not commit the offense of disorderly conduct.

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