



PHOENIX LAW ENFORCEMENT ASSOCIATION

RECAP

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Goldwater Institute Attacks Police Officers

by Joe Clure
PLEA President

On June 6, 2012, as a result of a lawsuit filed by the Goldwater Institute, Maricopa County Superior Court Judge, the Honorable Katherine Cooper, issued a temporary injunction to stop the use of release time for PLEA officials to assist in the representation of Phoenix Police Officers. The argument is that the value of release time to PLEA (a corporation) violates the gift clause of the Arizona State Constitution in that it does not provide a tangible return to the City. The court seems unwilling to recognize the fact that release time is a contractually negotiated benefit paid for by Phoenix Police Officers since 1977. In addition to the fact that the elimination of release time will make it difficult on the department and PLEA to provide consistent and timely representation as required under the City's Meet and Confer ordinance, the MOU, and laws.

As a result of the Court's ruling, the full time PLEA Board Members will be reassigned to patrol on June 18th. However, on July 1st we begin a new two year contract with new release time language and at that time we will return to the PLEA Office. We expect the Goldwater Institute to attempt to amend their lawsuit to incorporate the new MOU language and ask for a new injunction. There will then likely be another hearing on their request for injunctive relief and it will be up to the court to decide to grant it or not. You can be assured that if such an injunction issues on our new contract, that we will take the matter to higher courts.

If the injunction is granted and we return to an assignment out of the office, ***you need to remember YOUR RIGHTS under the MOU, the Meet and Confer ordinance, the law (A.R.S. 38-1101), and the U.S. Constitution.*** If you are going to be interviewed by PSB, or have a DRB, UOF Board, IRP, PMG appeal, or other administrative process in which representation is needed and we are unable to immediately assist due to being tied up with other duties, we will insist the process be rescheduled. There will still be a PLEA Board Member and Representative on stand-by to respond to spontaneous events.

Make no mistake about it, what we are seeing is an attack on labor and the Goldwater Institute chose to make police officers their FIRST target. Even in Wisconsin, police officers were, by and large, exempt from the bills that eliminated collective bargaining. Wisconsin apparently recognizes the unique occupational hazards police officers face performing a job that is fraught not only with personal risk, but legal and administrative risks as well.

The Goldwater Institute's message of protecting the taxpayer from government waste and fraud is nothing more than a thinly veiled union busting tactic, that if successful in Arizona, would soon be applied to labor groups nationwide.



You need to remember YOUR RIGHTS under the MOU, the Meet and Confer ordinance, the law (A.R.S. 38-1101), and the U.S. Constitution.



Another One For

by Tom Tardy
PLEA Trustee, Desert Horizon Precinct

“You really can’t make this stuff up,” seems to be the phrase coined by PLEA with how often things are not done right around here. We have, again, another example of fine leadership out of the Desert Horizon Precinct. If you have heard rumors about Desert Horizon, sad to say, they seem to be more often true than not! This time, we have an officer respond to an emergency call of a burglary where the victim is following. The officer arrives on scene, is pointed in the direction of the suspect by the victim, and the officer goes to make the arrest. The officer saw the suspect, who was apparently on some type of drugs and alcohol and his hands were already bloody from broken glass. As the suspect is sitting in the back of a pickup truck (apparently he was taking a break or falling asleep in the middle of breaking into another vehicle) the officer gloves up and decides to cuff the suspect before he gets up and runs off. The officer identifies himself, gets the suspect on his stomach with one hand cuffed and goes to cuff the second hand when the subject begins to resist, scream, and turn onto his back. The bloody cuff slips out of the officer’s gloved hand, and now becomes a weapon since it’s still attached to the suspect’s wrist. In the bed of the truck, the suspect turns to face the officer on his back, holds both fists by his face, and threatens to f***ing kill the officer. The responding officer decides not to wrestle with the suspect, and deploys his Taser, gaining compliance and control of the now completely handcuffed suspect.

Now, remember that policy (Operations Order 1.5.4.E) says we can only use the Taser against an act of aggression, which was clearly displayed to the officer, placing him in fear for his safety and physical injury. There is no problem with the officer’s use of a Taser (yet). The fine leadership (the same one that forces officers to flex out OT, different article to come) responded to the scene. They were given a walk through by the officer and said, “the actions of the officer were good,” and agreed to book the suspect for burglary, aggravated assault, and resisting arrest.

Later, the officer learned his Sergeant and Lieutenant did not feel an aggravated assault took place, since the officer was not injured and the subject did not take a swing at him. Excuse me? How many times do we use force against people or even shoot people when we are not injured ourselves? Using that logic, we can have a gun pointed at us or a bat, but cannot be a victim of a crime. What if the subject did swing at the officer and the cuff hit him in the head? Or worse, what if the officer was placed in a situation where he had to shoot an “unarmed man”? Do the names Dan Lovelace or Rich Chrisman come to mind? If the officer would have used anything above a Taser, he very well could be sitting at home on admin leave pending indictment and internal investigation. This is crazy talk! The on scene supervisors, who were not there for the fight in the bed of a pickup truck, decided in their infinite wisdom that only a good ol’ resisting arrest took place and the officer couldn’t have possibly been in fear of any harm. This is a very dangerous and fine line that needs to be drawn, which is why I am bringing this incident to light.

What’s more is the officer did the professional thing and went to his supervisor and told him he disagreed, presented his case, and asked that the subject be booked for the aggravated assault. He was given a resounding, “No.” Other officers on his squad even



believed an aggravated assault took place. Is it the worst aggravated assault in Phoenix PD history - not by a long shot, but the response from the command staff is the worst type of response given in a use of force situation.

The officer was told “No,” despite getting stuck in his hand with a bloody Taser probe after the prongs were removed, and the subject wanted to fight more while he was in the truck. The Sergeant completed the exposure related paperwork, however, still held that the officer sustained no injury. Fancy that. The officer could contract HIV, Hepatitis B or C, and have a life altering incident, yet is still not a victim of a crime? Let me ask this question, “If there was no sustained injury, then why complete the exposure paperwork for a Taser probe going through the officer’s glove?”

The following week, the officer learned the suspect was being held on a probation violation and asked his Sergeant if he could Page Two (book on a new charge while in custody) him with an aggravated assault charge. “No,” was the answer. In a last attempt, the officer, who was the victim of a crime, asked to at least have someone submit a report for the charge. He was told, “No.”

Since when does a Sergeant have the right or power to tell an officer he or she is not a victim of a crime? If that were a citizen that was the victim of an assault, and an officer failed to investigate it, he or she would be whisked away to PSB for a little sit down chat over a hot cup of NOI a-la-mode, possibly facing a written reprimand or suspension. What’s worse is the Sergeant told the officer he consulted with two other Lieutenants and a Sergeant, who all said it was simply resisting. One of the esteemed Lieutenants questioned was/is apparently a subject matter expert in defensive tactics. Now, if you can’t convince a subject matter expert, one who wears bars no less, that an open and shut case of aggravated assault took place, there is something seriously wrong. Whose side are they on anyhow? From the way I see it, they took the side of the probationary repeat-offender suspect.

I decided to speak to the Commander about this incident.

the Files

After hearing the story, the Commander did the right thing and went to find out what happened. The Commander spoke to two of his Lieutenants to see if they knew anything about this incident. One Lieutenant stated that he had no knowledge of it. The other Lieutenant, a subject matter expert, was mentioned by name by this Sergeant. This Lieutenant reviewed the Use of Force Report and highlighted that the subject the officer was trying to arrest was *displaying Active Aggression*, unlike what the Sergeant originally reported.

Now I am not expecting anything to be done to this Sergeant. I just think it is sad that we don't always get the support of the people we deal with on the street. One would/should expect support from our own chain of command, especially their own Sergeant.

Do you want to know how this story ends? A person from the County Attorney's Office contacted the officer and advised him he was in fact, a victim of an aggravated assault and the suspect was also charged along with resisting arrest. The County Attorney's Office said all the reports submitted *clearly had enough evidence to warrant such a charge, and he could have been booked that night for it*. Here's kudos for the MCAO for reading a report, seeing a crime took place, and pursuing charges despite resistance from a certain supervisor.

The Commander has a saying, "Expect Change." Well that usually means a bad thing to cops, in this case the right thing was done, and hopefully all parties involved will do the right thing next time.

Thankfully he was held on a probation violation, or else he might of been released on his own recognizance, free to commit more crimes and put other officer's safety in jeopardy.

In closing, here is the list of charges from MCAO:

Count 1 **Violation Date 4/24/2012**
Original Charge **BURGLARY 3RD DEGREE - Felony 4**

Count 2 **Violation Date 4/24/2012**
Original Charge **AGGRAVATED**
ASSAULT - Felony 5

Count 3 **Violation Date 4/24/2012**
Original Charge **RESISTING**
ARREST - Felony 6

Fallen Heroes

Phoenix Police Officers



Gilbert Chavez
June 16, 1975



Pat Briggs
June 20, 1990

Membership meetings are the last Tuesday of each month at 7:30, 12:30, and 5:30.

Board meeting is held the 3rd Tuesday each month and members can attend at 8:30 am.

BENEFITS TO MEMBERS

Aflac Rep, Debby Tornberg,
is available to meet
with members at a place and time
convenient to them.

She can be reached at 602.214.4686.

Nationwide Retirement Solutions Representative

Jared Williams will be at the PLEA Office on the 4th Thursday of every month from 9:00 AM until 3:00 PM to assist members with their accounts. Jared can also be reached at 602-266-2733, extension 1168.

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Please call Mark or Pat at 602.230.7726

Do You Have a Dr

by Jerry Gannon
PLEA Trustee

As I sit here preparing for a DRB on a DUI case, I cannot help but wonder; how many of you are out there?

I am representing a member that I consider a personal friend. He is an outstanding police Officer, and a retired veteran who made sacrifices in defending America as a member of the United States Marine Corps. To me, personally, that makes him a hero. I have never met a man so honest in my life. At the interview process at PSB he was asked if the information on the Alcohol Influence Report was correct. He said, "No sir, it says here I was drinking beer and whiskey. That's not true, we were out of beer, and I only drank whiskey." Now that's honesty.

After the interview, I sat down with my friend; he was humble and embarrassed beyond words. Without hesitation I said, "You are an alcoholic and it's time you do something about it before you get yourself or someone else killed. I have been representing you for over 15 years and each time it involves an off duty alcohol related incident. It's time to 'Marine up' and regain control of your life." He agreed, and to his credit, which I never doubted, he did it. He is at the time of this article, 6 months clean and sober and voluntarily going to Alcoholics Anonymous meetings. It took courage to admit it and it took determination to address it. The issue is that it took years to realize the problem. I was very blunt in telling him he had a problem but I can't take credit for the solution, only he could do that. The question is: why did it take having to almost hit rock bottom?

Each and every day we come to work, we witness the devastating effects that alcohol can wreak on people as individuals and families. Family fight nights, disorderly conduct, DUI and death, after death, after death, to name a few, all involving alcohol. Some nights in patrol I could have sworn that 80% of the calls I responded to involved alcohol in some way shape or form. Yet, what do many of us routinely do after our shift is over? We go home and self-medicate ourselves. I am not trying to paint with a broad brush or insinuate that all cops have drinking problems. Alcohol use and abuse runs the whole gamut from those who never touch the stuff to those who may only have a drink on social occasions.

Each and every day we come to work, we witness the devastating effects that alcohol can wreak on people as individuals and families.

Others may hit a club with friends and drink a little too much a little too often. Some drink as a means of stress relief to forget the horrors of the job, or to forget the horrors of war and others; to escape problems on the home front. As we all know, alcohol doesn't cure problems, it enhances existing problems or creates new ones. More and more we hear news accounts of our fellow Officers in Arizona being arrested for DUI. This makes us part of the problem rather than part of the solution. I'm sure many might be thinking; that's easy for you to say you probably don't drink. That is far from the truth. I openly embrace my Irish/German heritage. For the Irish we have a saying, "It's not Guinness its Genius, cause the more you drink the smarter you get." I am asking you, before you

pour that next drink or order that next drink to ask your-self; do I have a drinking problem?

Cops, just like members of any other career field, have consumed alcohol since the inception of the profession. The difference for us is that we are uniquely positioned by virtue of the fact that we routinely arrest people when they cross the line on their alcohol use. Knowing this; I feel that any one of us would be hard pressed to try to make a case for why a cop should get special treatment if involved in an alcohol related incident that results in criminal conduct.

A month or so ago, one of our board members, out of curiosity, began compiling a list of persons on the department known to have been arrested for DUI. Several of us in the office began throwing out names of officers AND supervisors, that we knew fit into this category, over the last several years. We were able to compile a list of 25 names in short order. Truth be known, the real number is probably higher than 25 since we were only going off of our own independent recollections and I'm sure we probably missed a few.

In the last couple of years, it seems accounts of DUI's involving police officers from around the valley have reached a crescendo. As recently as May 22, 2012, the news carried a story of a Tucson Police Officer that was reportedly DUI while on duty with a PBT reading of .23. The involved officer wasn't actually driving in a patrol car at the time but was running late for work in her personal vehicle. She was impaired to the point of being afraid that she might hit someone while driving on the freeway and called a supervisor for assistance. After being safely directed off of the freeway, she was met by on duty units from Tucson PD and DPS and ultimately arrested and processed for DUI. The on-duty part comes in because even though running late in her personal vehicle, she was operating within the time constraints of her normal work shift when the incident occurred. The fact that this particular officer was apparently operating under what we commonly refer to as a "last chance" agreement for prior misconduct involving alcohol is not going to bode well for her as her department has already served her with a notice of intent to terminate. By the time you read this article she will have already been terminated. She will most certainly have her AZPOST certification revoked, will never be employable as a law enforcement officer in the future and will then have to contend with the issue of massive legal fees and possible jail time while being unemployed. This officer is well on her way to hitting rock bottom.

What follows is not all inclusive by any means, but could be indicative of a possible drinking problem. ***If you find yourself regularly getting behind the wheel after having a few drinks, you have a problem! If you find that you have a tendency to get belligerent, argumentative, or get into bar fights after a few, you have a problem! If you find that you are frequently involved in arguments***



Drinking Problem?



or domestic violence after a few drinks, you have a problem! If you find that you need to “have a few to unwind” after every single shift, you have a problem! If it seems like your drinking is controlling you rather than you controlling your drinking, you have a problem! If you routinely worry about whether or not you will still have the odor of alcohol on your breath when your next shift starts, you really have a problem!

So what's the solution? It's hard to say since all of us are different and have different situations. One question you could ask

yourself is; do you need to be arrested for a DUI or other alcohol related offense before the message sinks in? Do you need to get fired over a bar fight? Do you need to have the police called to your house over an alcohol fueled DV incident? Do you need to risk having your AZPOST certification suspended or revoked which could permanently bar you from any future employment in the law enforcement field? Do you need to harm the ones you love

If you see any of these symptoms in yourself then seek help in the form of professional counseling or free substance abuse therapy programs such as AA.

or the ones you swore an oath to protect and to serve or do you, “Marine up”, as I told my good friend, and address the problem? It can be a real crapshoot when you hit rock bottom. Some get lucky, bounce off the rocks, and salvage their career while those not so lucky, crash and burn. It's up to you. If you're going to drink, then drink responsibly. Tomorrow is the big day for my veteran friend. The question is will he still have a job?

If you see any of these symptoms in yourself then seek help in the form of professional counseling or free substance abuse therapy programs such as AA. If you see the symptoms in your friends or co-workers, pull them aside and talk to them. Let them know you are concerned for them and are willing to help; GENTLY encourage them to seek help. Lecturing and being accusatory simply causes people to withdraw, become angry, go into denial, and shut down. Everyone can use a friend but no one wants or needs another parent.

Old school cop thinking was that the way to help our fellow officers out was to cut them a break by not arresting them if they were stopped and found to be DUI. We called them a cab, called a friend to pick them up or even drove them home ourselves. While this is indeed a noble gesture and is certainly the call of the officer on the scene, perhaps we've been addressing the problem the wrong way for decades. Maybe the real solution is to look out for

one another on the front end, identify problems early, and get people the help they need before it gets to the point of playing Russian roulette with your career when you hope the officer pulling you over will give you a free pass because you've had a few too many. Many of us who have been around for any length of time have probably known someone on the department with a drinking problem. The old school method for dealing with this was to excuse, ignore and maybe even cover for them which served to do nothing more than enable the behavior. It makes you wonder how many of these folks might have got on a better path if they had been approached by a friend who cared enough to have the courage to tell them they had a problem and should seek help.

Currently, Phoenix is one of the few valley agencies that doesn't automatically terminate an officer for a DUI...or now. The question is, “how long will the current policy last?” Many other Valley agencies including Glendale, Peoria, Goodyear, Avondale, Buckeye, Chandler, Glendale and DPS all have policies mandating termination for a first time DUI offense. I just got off the phone with the DRB chair Chief Montgomery. The DRB for the DUI has been cancelled until Chief Garcia reviews the DUI policy. I guess that answers that question.

I called the officer that I am representing on this DUI to inform him of the cancellation. I also asked him to review this article prior to publishing. The only comment he made was, “I wish I read this six months ago.”

Don't wait until you hit rock bottom. Be a part of the solution not part of the problem.



While PLEA diligently protects the private information of its members, when it comes to cell phone service, those who are placed on the account may receive cell phone records. If you desire to be the only person on the account to have access to the cell phone records, you must notify PLEA.

In no event will PLEA be liable for any incidental, indirect, consequential, punitive or special damages of any kind, or any other damages whatsoever, including, without limitation, those resulting from loss of profit, loss of contracts, loss of reputation, goodwill, data, information, income, anticipated savings or business relationships, whether or not PLEA has been advised of the possibility of such damage, arising out of or in connection with the release of cell records to persons named on the account. ***If you have any questions or concerns, please contact the PLEA office.***



2012 ANNUAL TAPS MEMORIAL GOLF TOURNAMENT

Saturday April 28, 2012 was a tremendous success for the TAPS (Tuition Assistance for Police Survivors) Golf Tournament. Rough numbers from the fairway say 235 golfers raised \$25,000 for this 22nd annual outing. Special thanks go out to Scott and Melissa Sayban as well as Dennis Nebrich for once again stepping up to the tee and facilitating another fantastic event.

PLEA would like to extend a special thanks to the following event sponsors as well as the many individuals and organizations who contributed raffle prizes. Their generosity allowed us to put on an event of such high quality.

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LAW OFFICES OF MICHAEL NAPIER, P.C.

MICHAEL NAPIER has been representing Phoenix officers for over 36 years. Mr. Napier is one of the most experienced labor and personal injury attorneys in Arizona. Mr. Napier has represented hundreds of officers before administrative bodies throughout Arizona, and has assisted critically injured officers and the survivors of the officers in obtaining compensation for their injuries and losses.

ANTHONY COURY has focused his 9 years of practice primarily on personal injury and wrongful death lawsuits in which he has served as plaintiffs' counsel. He has experience in cases dealing with dram shop liability, negligence, governmental claims and products liability including service as counsel on the litigation team for Phoenix Police Officer Jason Schechterle.

KATHRYN BAILLIE was born and reared in Phoenix, Arizona, completing her undergraduate degree at Arizona State University. She served as a J.A. for the Third Circuit Court and then worked as a Public Defender in the Commonwealth of Kentucky before joining the Law Office of Michael Napier, P.C. She has worked with Michael Napier on personal injury and wrongful death cases, dram shop liability, negligence, administrative, disciplinary, and other employment matters.

JAMES P. ABDO was born in Omaha, Nebraska. He earned his undergraduate degree from the University of Rochester in 1984 and his Juris Doctorate from the College of Law at Arizona State University in 1991. Mr. Abdo served as an Assistant Attorney General for Arizona before entering private practice as a partner at two major Phoenix law firms, where his practice focused on commercial litigation of all types. He has extensive experience both representing government bodies appearing before numerous state, county and city agencies in numerous licensing, procurement and labor/employment matters. His practice also includes the formation, counseling and representation of business entities, the drafting of a wide variety of real estate and other contract documents in addition to litigating disputes arising out of contracts.

In addition to the full services provided to PLEA members to protect their careers, the Law Offices of Michael Napier P.C. provide the following:

Personal injury recovery (on or off duty); experienced representation at a reduced fee;

Reduced fees for matters not covered by the PLEA legal plan;

Free probate of officer's estate for line-of-duty death; Free consultations to members on any matter, and

Referrals to attorneys or specialists for matters not handled by the firm.

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If You Have A Grievance

FIRST: Attempt to resolve the matter informally with your supervisor.

SECOND: If you cannot resolve this with your supervisor, contact one of the representatives above.

REMEMBER: There are time limits to initiate a written grievance.

If You Are Being Investigated

RECORD: All interviews once you have been given an NOI.

COPY: All memos or paperwork related to the investigation.

TRUTHFULLY: Answer all questions related to the investigation.

If you are called by Professional Standards Bureau or any police supervisor regarding an investigatory interview or interrogation, you may have PLEA representation during that interview.

Call for representation as soon as possible. For your convenience, a PLEA board member and representative are available 24/7.

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