

April 17, 2006

Mike Frazier, Executive Assistant Police Chief
Phoenix Police Department
620 W. Washington St.
Phoenix, AZ 85003

Dear Mike:

Officer Mark Wilcox is the subject of an administrative investigation authored by Sgt. Kathy Johnson involving an incident that occurred on October 18, 2004 (*PSB 05-16*). A blue colored summary of this investigation is being provided. The investigation was initiated with an employee witness interview on December 11, 2004. On February 2, 2006 a public records request was made for the results/scores and STIM graphs of polygraph examinations that were part of this investigation. The draft of the investigation was provided to Wilcox on March 7, 2006. The draft investigation was 35 pages long and with attachments the entire notebook was roughly 2 inches thick with hundreds of pages of transcripts, attachments, and memos. On March 28, 2006 PLEA received the STIM graphs but not the results/scores of the polygraphs.

On Tuesday, April 4, 2006 Wilcox, Det. Terry Yaweh, and I participated in an IRP at PSB with Commanders Campbell and Hynes, along with Lt. Linda Johnson and Sgt. Kathy Johnson. At the onset of the IRP, PSB investigators provided a transcript of an SID interview that they said was part of the investigation but was not included with the draft. This transcript was not made available to Wilcox or me until this time. During the 2-hour IRP, information and concerns about the administrative investigation were presented both verbally and with handouts. At one point in the IRP, Commander Campbell allowed Wilcox to draw the layout of events that had occurred on a dry-erase board in the office. He advised Wilcox that anything Wilcox said or drew could be used in furtherance of the pending investigation. At approximately 10:00 a.m. the meeting was adjourned. We had discussed issues that had taken us up to page 16 of the 35 page investigation (*roughly halfway through*). Approximately 18 changes or issues were made or considered by Commander Campbell. Another IRP was scheduled for Tuesday, April 11, 2006.

On April 11 at approximately 10:00 a.m. Commander Campbell told me in the PSB hallway that he was limiting the IRP to just one hour. I was told to cover the "highlights"

and our important points and any issues that were not discussed would be put in the back of the investigation as an attachment. I advised Commander Campbell that the length of time it took to complete the investigation, the decade of tenure of the involved employee, and past practice compelled no imposition of time limits for the IRP. He believed that an additional hour was a reasonable amount of time to invest in Wilcox's IRP. I explained that several months ago Commander Dave Thomas and I conducted an 8-hour IRP over two days and the final result was an investigation that started as a termination ended as a training issue. I asked if it was possible for me to at least meet with him and address the remaining concerns that PLEA had with the Wilcox investigation. We ended the conversation agreeing that I could call him and see if a meeting was possible.

The IRP continued and several of PLEA's remaining 59 issues were addressed. Several points of PSB's investigative philosophy were communicated during this IRP that generate great concern for PLEA.

- Allegations of misconduct are being sustained based upon investigators' assumptions when they should be unresolved due to a lack of facts.
- No new information (*see attached A*) concerning polygraph deficiencies would be addressed seeing that the investigation was "complete." Commander Campbell's previous statement that the investigation was still "pending" in addition to Chief Harris' position that the IRP is a continuation of the investigation brings a contradiction to the forefront.
- No reason was given as to why employee eyewitnesses at the scene were never interviewed, specifically Officer Jin and Lt. Kurtenbach.
- PSB investigators are not clear on the legal principle of reasonable suspicion (*see attached B*).
- Investigators are imposing their "meaning" upon statements found in interview transcripts (*see attached C*) – "I know that's what he said but this is what he meant" is the explanation offered by Sgt. Johnson when clear statements in transcripts are in conflict with the investigation. The suspect (*Moore*) states in his transcript interview that Wilcox and Priniski took him into custody (*i.e. "caught" him*). PSB investigators are dismissing the context of this transcript to sustain a terminable offense.
- Investigators are claiming mistakes were made in interviews and then do not document what these mistakes are in the investigation.
- Leading questions are utilized in interviews. Some leading questions are then presented in the investigation as original statements (*see attached D*).

Commander Campbell's position is not in keeping with Department IRP policy (*Ops Order 3.19*) to seek an agreement between the employee and management regarding specific allegations and findings in investigations. His position is not consistent with past practice. His position infringes upon due process and the common goal of fair treatment.

On Friday April 14, 2006 PSB investigators interviewed Officer Quan Jin. This interview took place over a year and a half after the incident in question occurred and lasted approximately 5 minutes. Jin was one of two eyewitnesses to the incident. These

on-going interviews make it appear that the investigation is not complete as presented by Commander Campbell on April 11. A grievance is being filed (*see attached E*) in reference to Commander Campbell's denial of Wilcox's due process rights as afforded to him in Ops order 3.19 and by past practice.

Several additional points are provided for consideration.

1. Officer Wilcox was placed on administrative leave in December 2005. Since that time, the draft of his investigation was provided to the Arizona Attorney General's office. After a review of this investigation, which has sustained allegations of untruthfulness and civil rights violations, Wilcox has since been utilized several times as a police witness in criminal court cases. This information is not included in the ongoing investigation.
2. After interviewing involved police employees, Phoenix PD SID detectives generated a memo (*see attached F*), signed off by the chain of command, which includes, "Officer Wilcox made no incriminating statements to me during my conversation with him on the phone" and concludes with, "At this time there is no evidence of a false report involving this case." This was not included in the pending investigation. After all polygraphs were completed, SID generated a 2nd memo (*see attached G*) which stated that the complainant "*(Moore)* was uncooperative and refused to speak with criminal investigators." This was not included in the draft investigation. SID communicated that the elements of a felony were not present. Knowing SID's position and approval by the chain of command, Wilcox was still found to be in violation of ARS 13-2809.A.2 (*tampering with evidence*) and 13-2904.A.2 (*unsworn falsification*).
3. The PSB investigator found Wilcox to be in violation of a federal statute (*United States Federal Code 18 USC 242 Deprivations of rights under color of law*). It is not explained as to if this situation was presented to the Department of Justice (DOJ) for investigation and/or if DOJ provided a response. It is also not explained why Wilcox, who did not take the suspect into custody and arrest him, is found responsible for this charge and not the arresting officer(s).

Many times IRPs take place through brief phone conversations or not at all. Most investigations are reasonable and accurate. But investigations such as PSB 05-16 are replete with errors, omissions, and inconsistencies and require a serious effort and investment beyond a three hour IRP and an attachment. A police officer's integrity and career are at stake, due process is being affronted, and PSB's work product and philosophy are being undermined. PLEA believes that none of the allegations sustained against Wilcox can bear up under reasonable scrutiny with the facts provided in the investigation. This entire investigation is in dispute and there are approximately 59 points of contention and concern left to be discussed.

Mike, your belief and support for officer rights was clearly seen at the negotiation table this year. The Association is hopeful that you would assist in helping rectify this

situation. As a result of this investigation and decision, great doubts about the PSB work product are fueling an already growing lack of confidence in the accountability process. PLEA is requesting that Wilcox's IRP be reinstated outside of PSB and with/by Wilcox's current chain of command at Central City Precinct.

Your input and comments are greatly appreciated.

Sincerely,

MARK SPENCER
Grievance Chair/Secretary

c: Jake Jacobsen, PLEA President
Alton Washington, Assistant City Manager
Jack Harris, Police Chief
Jeff Hynes, Commander Central City Precinct