



PHOENIX LAW ENFORCEMENT ASSOCIATION

The Professional Association of Phoenix Police Officers Since 1975

August 9, 2010

Jeffery Hynes, Commander
Professional Standards Bureau
111 W. Monroe St.
Phoenix AZ, 85003

Dear Jeff:

The purpose of this letter is to seek your assistance with a matter of disparate treatment that has concerned PLEA for some time. I am communicating this concern to you in the hopes that the new chain of command in place at PSB can take a fresh look at the situation that I will lay out in the paragraphs to follow and get back to us on what PSB has done or will do to remedy the situation.

In August of 2007, a citizen of the City of Phoenix by the name of Mr. Jeff Pataky filed a complaint with the PPD Professional Standards Bureau. The complaint was lodged against Commander Louis Tovar for inappropriate language used by Tovar when describing Mr. Pataky to other co-workers while speaking over an open phone line. Mr. Pataky had recorded the phone call when speaking to Commander Tovar and heard the offensive comments made against him when Tovar thought he had hung up the phone.

The following excerpts are taken from Mr. Pataky's website "Bad Phoenix Cops" which was started after the PPD failed to take action on his citizens complaint:

"A complaint against Louie Tovar and FIB was filed with the Phoenix Police Professional Standards Bureau (FIB - their Internal Affairs) in August of 2007, mentioning these recordings and threatening comments made by Louie Tovar. Two months later received back was a letter stating that a "thorough investigation was conducted" and they found nothing wrong, or any wrong doing by Louie, Anthony Brokaw or Brandon Huntley.

We are unaware how they can conduct an investigation without ever reaching out to the opposing party, requesting these recordings or ever interviewing the persons making the complaint. Frankly, we know an investigation was not done because subsequent requests for transcripts, notes, recordings or any documentation related to an investigation have gone unanswered by chief Jack Harris, Professional Standards Bureau, mayor Phil Gordon or the City Manager's office. One would think there would be some evidence of this "thorough investigation"

The documentation that was forwarded to us on this supposed investigation was an email from Stan Hoover and George Richards, and consisted of a 2 page print out of an email, dated August 2nd on an unrelated matter. We still don't comprehend how an investigation is conducted by the police, by only speaking with the police, when the complaint is against the police."

In order to provide insight into some of the factors that might have contributed to why the PPD refused to investigate Pataky's complaint some historical perspective is in order.

In October of 2005, Chief Jack Harris had a conversation with then PLEA president Jake Jacobsen and PLEA Chairman Danny Boyd regarding the issue of disparate treatment. Harris' statement at that time was: ***"I'm not going to allow PLEA and citizens say when and how investigations are to be done. Based on what you've shown here the issue of disparate treatment is over."***

In March of 2006, PLEA President Jake Jacobsen and PLEA Secretary Mark Spencer met with Chief Jack Harris. One of the topics again discussed, was concerns of disparate treatment between rank and file and management. Chief Harris again re-iterated that he would not allow PLEA or citizens to dictate how and when he did investigations. Harris went on to state that as far as he was concerned, ***"The issue of disparate treatment is over. If you don't like the way we do investigations then promote."*** When reminded by Mark Spencer that PPD policy mandates that investigations will be done when complaints are received, Chief Harris' reply was, ***"That's not true."***

Comments such as these from the top administrator in the organization are alarming in that they set the trend and tone for how the organization as a whole will operate. His comments, in essence, give subordinate supervisors, especially PSB investigators, a green light to violate policy at will. After all, if the Chief thinks it's ok, then it's ok for us too.

PLEA witnessed this phenomenon firsthand almost two years ago at a meeting between PLEA and PSB personnel when now retired Commander George Richards was in charge. George disagreed with a certain point in the MOU which requires investigators to share all evidence up front prior to interviewing officers. At one point George tossed the MOU on the table, sat back and said "Well, I didn't sign it." The unspoken message was obvious; "If I don't agree with the MOU or any particular part of it then I just won't follow it."

The opening paragraph of PPD Operations Order 3.19 states:
"To ensure the integrity of the Police Department, all alleged or suspected personnel misconduct observed or suspected by supervisors, department employees, or citizens will be thoroughly investigated."

It has always been of great concern to PLEA when any manager, let alone the Chief, is allowed to violate the internal policies of the organization at will by picking and choosing the instances in which internal investigations will be done.

The prior comments made by Harris speak of an organization where the investigative process can be twisted for vindictive purposes and where those who curry favor with the ones in power are often granted immunity from intrusive investigations which can result in suspension, demotion or termination not to mention unfavorable documentation which is discoverable via public records request.

Comments such as these convey that the rules will be followed when it is convenient. Knowing this, it is amazing that subordinate leaders, rank and file officers, and the citizens of Phoenix have any confidence at all in the police department's ability to do fair and impartial investigations.

The fact that Mr. Pataky's complaint was never formally investigated tends to bear this out. As I am sure you are well aware, PLEA has kept record of numerous incidents from years past where police management has failed or refused to investigate supervisory misconduct. While the department can show some instances where supervisors have been investigated and disciplined, this type of action seems to be reserved for some Sgt's, and selected Lt's. Conversely, there are just as many instances where it can be shown that the department has failed, refused or only offered token efforts at investigating police managers.

The failure of the PPD to investigate Mr. Pataky's complaint raises other questions. How can management investigate any allegation of unprofessional conduct on a rank and file officer with any degree of seriousness when we refuse to investigate a police commander who during a recorded phone call states: **"Ya know it's a game. It's the fucking nature of the game with these dickweeds...ya know?"** as he refers to the citizen he thought he'd just hung up on? For any investigator, having a recording of such commentary is tantamount to catching a suspect standing over a dead body while still holding the smoking gun. What kind of example is set and how is confidence instilled in the integrity of the system for the subordinates in the organization let alone the citizens we serve when misconduct that appears this blatant and clear cut is not investigated? Doesn't leadership start at the top? Aren't we supposed to lead by example? Isn't leadership demonstrated when a leader takes responsibility for their actions? Most importantly, shouldn't the rules that an organization operates under be followed consistently rather than being applied in an arbitrary and capricious manner?

In February of 2008, I along with PLEA Trustee Will Buividas represented two officers regarding an allegation of unprofessional conduct when one of the two referred to a third officer in a derogatory manner. This was a minor policy violation that could have been handled within the workplace since it was an employee vs. employee situation. The decision was made to launch an immediate PSB investigation on both officers. Both officers were ultimately sustained on an allegation of unprofessional conduct and both received written reprimands even though only one of them actually made the comment.

In addition Years ago I had a conversation with a Lt. in my precinct over whether or not a complaint that was clearly without basis should be investigated. While the Lt. happened to agree with me in this particular instance they went on to state; "Sometimes we need to do investigations just to prove to the citizens that we have nothing to hide." Maybe it would be appropriate to apply this same advice to Mr. Pataky's situation. That is, unless there is a separate investigative standard for Commanders and above.

It is entirely possible that if the PPD had handled Mr. Pataky's citizen complaint just like any other, with a complete investigation being done, that the bad phoenix cops website might never have been started.

PLEA is requesting a PSB investigation on Commander Louie Tovar for the alleged unprofessional comments made during a recorded phone conversation with Mr. Pataky during the June 2007 time frame. PLEA is aware that many on the department check the Bad Phoenix Cops website regularly for updates and therefore are also aware that there are archived recordings of the offensive comments on the "BPC" website under the tab labeled "Louie Tovar – Bad PHX PD".

If this incident has already been formally investigated please advise us of the investigation number so that we can make a public records request to obtain a copy of the report.

PLEA is requesting a written response regarding your intended course of action on this matter.

Sincerely,



KEN CRANE
PLEA Secretary/Vice Grievance Chair

cc:
Assistant Chief Blake McClelland