

March 2, 2006

Andy Anderson, Assistant Police Chief  
Phoenix Police Department  
620 W. Washington St.  
Phoenix, AZ 85003

Dear Andy:

The Phoenix Law Enforcement Association (*PLEA*) and the Phoenix Police Sergeants and Lieutenants Association (*PPSLA*) provided legal representation to Officer Mark Wilcox and Sergeant Brian Carmichael at a Civil Service Board hearing on Thursday, February 23, 2006. While at this hearing, subpoenaed witnesses were sworn in by the hearing officer (*Judge Cecil Patterson*) and responded to various questions asked of them by both Jim Sampanes (*City's attorney*) and Janet Feltz (*PLEA/PPSLA*).

At this hearing, Sgt. Kathy Johnson, the lead investigator in the administrative investigation focusing on Carmichael and Wilcox, was asked by Janet Feltz why she did not interview a witness (*Jesse Perez*) who spoke to Detective Kunst in a criminal report Kunst had authored (*DR 2004 42145534A*). Sgt. Johnson's response was two-fold: 1.) she already knew what happened and 2.) Det. Kunst told her the witness was unreliable. From the recordings of the CSB she stated, "...we already knew what they had done so we did not investigate that..." She also said "...Det. Kunst told me, I have it written down somewhere, that he did not believe Jesse was a credible witness, that he was a gang banger, and he really didn't believe what he said."

This answer seemed odd to me and the affected employees. In a document I authored and provided to PSB in May 2005 (*entitled Concerns with PSB 04-69- this was an attachment to the aforementioned administrative investigation*) the same witness was addressed. PSB did not provide the explanation that Sgt. Johnson did at the CSB – a lack of confidence in the witness by the criminal investigator. Also, at Carmichael's and Wilcox's DRB on September 21, 2005, I presented a PowerPoint slide in which the criminal witness Jesse stated that he had heard an officer at the scene say to a narcotic suspect, "Suck my dick." The DRB Chair, Assistant Chief Don Swanson, provided PSB investigators (*Sgt. K. Johnson, Lt. L. Johnson, and Commander S. Campbell*) a chance to rebut this slide. The issue of Det. Kunst stating Jesse was an unreliable witness was not mentioned at the DRB. The explanation offered at the CSB board hearing was not offered at the DRB, in fact there was no response to this slide.

On the same day (*Feb. 23*) at approximately 1620 hours I spoke with Det. Kunst about Sgt. Johnson's statement. His reply was, "I never told her that. I know that I did not tell her that." He explained that he never had a conversation with Sgt. Johnson about Jesse and did not sit down with her in a face-to-face forum to discuss his criminal investigation. Det. Kunst told me that he had a conversation on the phone with Sgt. Johnson and told her that the victim did not want to prosecute and that there was insufficient evidence to support any criminal damage charge against the involved officers. He stated that Sgt. Johnson's response was, "We both know something took place" but beyond that he never spoke to her about the witness (*Jesse*). Det. Kunst informed me that if the witness had been unreliable he would have documented it in a memo for his chain of command. This information from Det. Kunst directly contradicts the sworn statement of Sgt. Johnson and calls into question the veracity of her testimony.

The Association believes that an administrative investigation into the testimony of Sgt. Johnson at the aforementioned CSB hearing is warranted. False testimony under oath is a serious allegation and this conduct contains the elements of a felony. An employee who is the focus of this type of serious allegation should have the benefit of an administrative investigation for exoneration if possible. The Department should have the benefit of an administrative investigation to uphold the standards of veracity that it expects of all its employees.

**Ops Order 3.19.1** states, "To ensure the integrity of the Police Department, all alleged or suspected personnel misconduct observed or suspected by supervisor, department employees, or citizens will be thoroughly investigated."

PLEA is hopeful that the Department will comply with a signed agreement dated April 14, 2004 in reference to reviewing misconduct allegations in accordance with established department policy and providing a written response as to what actions will be taken (*see attached*).

Included with this letter is a CD recording of the CSB hearing and a transcript of the aforementioned testimony from Sgt. Johnson. In reference to this issue, your response and input is of great value to the Association.

Sincerely,

MARK SPENCER  
PLEA Secretary/Grievance Chair

c: Jake Jacobsen, PLEA President  
Jack Harris, Police Chief