

Allegation: During a hearing Commander William Louis, while under oath, testified that he created notes contemporaneous with certain described events. In fact, the notes, as the exhibits and the testimony reveal, were neither entirely his nor contemporaneous.

Background: In early February 2005 Officers approached PLEA Secretary about concerns reference Commander Glen Gardner's testimony in a DUI trial. Officers had two issues with the testimony 1) Did Gardner perjure himself and 2) An issue with the "unwritten" policy of not sitting on bars to stop DUI suspects.

The concern of perjury was conveyed to the Phoenix Police Department Professional Standards Bureau by Sgt. Niles and Commander Parra from the police academy and an investigation was begun. In the course of the investigation PSB believed that they needed to interrogate PLEA Secretary Mark Spencer in order to ascertain if he had any information pertinent to the investigation and to obtain the name of the unit member who had reported the concerns to Spencer. PLEA took exception to the need to interrogate Spencer and viewed it as interference with concerted labor activity. This investigation started on February 24, 2005 and culminated with a compelled interrogation of PLEA Secretary Spencer on May 5, 2005. On May 11, 2005 PLEA filed an Unfair Labor Practice charge with the Phoenix Employment Relations Board over the matter. It is at this ULP hearing that the alleged misconduct occurred.

On the same day (May 11, 2005) Lt. Johnson created a timeline at the request of Cmdr. Louis. Louis stated under oath that he was keeping personal contemporaneous notes dating from Feb. 24, 2005 to May 5, 2005 pertaining to the Gardner investigation. These notes were neither entirely his nor contemporaneous.

As a witness for the City, Commander Louis presented to the hearing officer documents which he described as his notes of events which he claimed were "contemporaneous." He defined "contemporaneous" as being within a day or two of events. With these notes, the timeline of the Gardner investigation which Louis requested from Lt. Johnson became the crux of the misconduct.

Plagiarized statements and direct quotes from Johnson's timeline are found in Louis' "contemporaneous" notes. One must examine each entry and notice some odd coincidences such as:

Johnson timeline (see below):

Here are the dates I have for your timeline

✓ 2-24-05 0900 Commander Louis speaks with Commander Parra who says she has an employee with information. Met with Sgt. Niles. Meeting was not tape recorded---I have notes.

Louis notes (see below):

Commander Bill Louis
Professional Standards Bureau
Inquiry on Commander Gardner

February 24, 2005 I spoke with Commander Parra who said she has an employee with information. Sgt. Niles came to Professional Standards Bureau and said he heard that officers were upset and had gone to PLEA about what they perceived was serious misconduct and possibly perjury on the part of Commander Glenn Gardner's at a City Court DUI trial. Niles said he was not there personally, however, he said that he talked to Mike Rogers about it. He said that the officers also said that the prosecutor on the case had serious concerns about Gardner conduct. I briefed Chief Anderson.

Johnson timeline (see below):

2-24-05 1700 Interview with Officer Mike Rogers. Interview was taped, not transcribed pending further info

Louis notes (see below):

February 24, 2005 Called Michelle and asked her if she knew of officers coming to PLEA about this possible perjury issue. She said that she was aware of it and that Mark Spencer had already gotten a copy of the City Court tape. She indicated that Mark had been working on it for a while "and it looks pretty serious." I asked her if I could get a copy of the tape in order to expedite Professional Standards Bureau looking into. She agreed to do so and had a copy (CD's) delivered to the bureau within a day or so.

Officer Mike Rogers was brought in for an interview by Lieutenant Linda Johnson. Due to serious nature of this allegation, I authorized for Rogers to be brought in late in the afternoon on overtime as opposed to waiting until the next day. This interview was taped, not transcribed pending further info. The conclusion of Roger's interview, Rogers does not believe there is misconduct or perjury; he is upset at Gardner reference his testifying for the defense and other management issues, but no misconduct or criminal matters.

In addition to the duplicate wording, the phrase "and it looks pretty serious" was bolded to bring attention to the subject. That phrase is related to the subsequent ULP and ordering Spencer down. Why highlight it at this point in time, two months prior to the May 5 interview of Spencer. There appears to be no reason to highlight this phrase in a contemporaneous setting.

Johnson timeline (see below):

✓ 3-15-05 Spoke to Denton Casey (Diana Hinz' supervisor) as courtesy to let know we were speaking to one of his prosecutors.

Louis notes (see below):

March 15, 2005 Linda spoke to Denton Casey (Diana Hinz' supervisor) as courtesy to let him know we were speaking to one of his prosecutors.

Johnson timeline (see below):

✓ 3-16-05

Began attempts to talk to prosecutor Diana Hinz. Spoke to her this day or the day after— not tape recorded.

Louis notes (see below):

March 16, 2005

Began attempts to talk to prosecutor Diana Hinz. Linda spoke to her this day or the day after not tape recorded. Hinz is not aware of any misconduct on the part of Commander Gardner. Said she knew the officers were upset with their commander, but she did not observe any inappropriate conduct on Gardner's part during the trial, and certainly nothing that would rise to false swearing or perjury.

Johnson timeline(see below):

✓ Unknown date

Began attempts to interview Mark Spencer. Probably in early April. Objections by PLEA.

✓ Unknown date

Saw Eric Edwards outside Chief Harris' office before meeting re: Karen Crawford. Per Eric, no privilege exists and nothing submitted by Dale Norris.

Louis notes (see below):

Unknown date Linda began attempts to interview Mark Spencer. Probably in early April. Objections by PLEA.

Agreed to postpone so that Dale Norris could submit something in writing the following Monday. No response.

Unknown date Linda

May 1, 2005 (Approximately) We read the PLEA web site posting that indicated that PLEA had concerns over the Gardner's testimony. The site indicated that the department's management and PLEA were looking into the matter. Again, no indication that there was "nothing to it" but still inferring that this was a serious matter.

In addition to the parroted statements, these three words are the only entry. It appears that the above entry was edited into the entry above and when Louis copied and pasted he forgot to erase the proceeding "Unknown date" entry.

Johnson timeline(see below):

5-5-05

Interview with Mark Spencer (given direct order the previous day). Probable lapse of one – three weeks from Eric giving the go-ahead

Louis notes (see below):

May 5, 2005 Interview with Mark Spencer (given direct order the previous day).

It should be noted that the only difference between Louis' note and Johnson's timeline is that Louis added "Linda" to his notes. It appears he converts Johnson's first person notes

to a proper name (“Linda”) which makes it look as if the thought and note belong to him. Louis does add some comment about Dale Norris submitting something in writing. Consider closely the very next entry.

In the April 4, 2005 note referencing a breakfast meeting, observe the bolding, highlighting an issue relating to a ULP that had yet to be filed. The note reads (*copy below*):

April 4, 2005 – breakfast meeting at First Watch with Chief Anderson, Jake, Michelle to discuss various issues. The Commander Gardner case was discussed. Both Jake and Michelle participated in the conversation. Jake brought up the matter and said that Michelle had told him that I told her that we may want to interview Mark pursuant to the Gardner case. I explained to Jake and Michelle (again) that we had interviewed everyone including the prosecutor and had listened to the tapes from the court trial and we could find nothing. Michelle was still insistent that they (PLEA) still believed that the incident was very serious. Michelle said, “I don’t know, but Mark believes he has something and it is serious.” I explained to Jake that this is a serious allegation against a commander with criminal (felony) overtones and a serious Brady issue. I described this as a “career ending or career altering” allegation against a commander and we needed to get to the bottom of it. Because PLEA still insisted that they “had something” but were not willing to share it with us, I told Jake that Mark is the “tie breaker.” At no time did Jake or Michelle ever tell me or even infer that they too discovered there was nothing to the allegation against Commander Gardner. They continued to lead us to believe that they had some evidence to sustain this “perjury” by Gardner. Jake said they may take issue with us interviewing Mark on this case. I told him I am open to suggestions to help us resolve the allegation, but at this point, Mark is my last witness in the case. I also mentioned that we had interviewed PLEA reps in the past without incident.

“At no time did Jake or Michelle ever tell me or even infer that they too discovered there was nothing to the allegation against Commander Gardner. They continued to lead us to believe that they had some evidence to sustain this “perjury” by Gardner.” (bolding his)

At the time of this breakfast, this position [*the fact that Spencer did not believe Gardner was involved in perjury*] was unknown to Louis. Louis testified that the reason for the need to interrogate Spencer was that they thought Spencer had “something.” It was not until Spencer’s interview by Johnson on May 5, 2005 that Louis and Anderson discovered Spencer did not see perjury as an issue. Why and how would Louis know to highlight Spencer’s position on April 4 if he hadn’t found out about it until one month later on May 5? It appears Louis not only used Johnson’s statements to build his notes around but highlighted issues for evidentiary enhancement in addressing the ULP. Doing this detracts from the veracity of Louis’ testimony that his notes were contemporaneous. It is also interesting to note that Assistant Chief Anderson did not testify as to the April 4 breakfast meeting. His lack of testimony also draws away from the veracity of Louis’ notes.

Bolding so-called contemporaneous notes relating to an issue at the core of the ULP certainly suggests that the notes were an after-the-fact (not contemporaneous) justification for actions taken which became an issue only later.

Louis notes (see below):

April 4, 2005 – breakfast meeting at First Watch with Chief Anderson, Jake, Michelle to discuss various issues. The Commander Gardner case was discussed; Both Jake and Michelle participated in the conversation. Jake brought up the matter and said that Michelle had told him that I told her that we may want to interview Mark pursuant to the Gardner case. I explained to Jake and Michelle (again) that we had interviewed everyone including the prosecutor and had listened to the tapes from the court trial and we could find nothing. Michelle was still insistent that they (PLEA) still believed that the incident was very serious. Michelle said, "I don't know, but Mark believes he has something and it is serious." I explained to Jake that this is a serious allegation against a commander with criminal (felony) overtones and a serious Brady issue. I described this as a "career ending or career altering" allegation against a commander and we needed to get to the bottom of it. Because PLEA still insisted that they "had something" but were not willing to share it with us, I told Jake that Mark is the "tie breaker." **At no time did Jake or Michelle ever tell me or even infer that they too discovered there was nothing to the allegation against Commander Gardner. They continued to lead us to believe that they had some evidence to sustain this "perjury" by Gardner.** Jake said they may take issue with us interviewing Mark on this case. I told him I am open to suggestions to help us resolve the allegation, but at this point, Mark is my last witness in the case. I also mentioned that we had interviewed PLEA reps in the past without incident.

May 5, 2005 Linda scheduled Spencer's Professional Standards Bureau interview. I received several phone calls from Jake whereby he was trying to persuade me not to interview Spencer. (I also spoke to Dale Norris.) **AGAIN** explained to Jake that this was a very serious matter and I had an obligation to get to the bottom of it for the good of the Police Department as well as for Commander Gardner. I also reiterated that we could not find any substance to the allegations, yet they believe that it was serious. I again told him that we had taken the inquiry as far as we could and found nothing to substantiate what PLEA was telling us that Spencer found and we had no other leads at this point. I again told Jake that Mark is the "tie breaker." **AT NO TIME DID JAKE EVER TELL ME OR EVEN INFER THAT THEY TOO DISCOVERED THERE WAS NOTHING TO THE ALLEGATION AGAINST COMMANDER GARDNER. HE CONTINUED TO LEAD ME TO BELIEVE THAT THEY HAD SOME EVIDENCE TO SUSTAIN THIS "PERJURY" BY GARDNER.** He just felt that it was inappropriate for Professional Standards Bureau to interview Spencer as a witness to an internal investigation on information he obtained information in his role as a rep.

PLEA believes there are more examples that illustrate that Louis' notes were not contemporaneous. Here are excerpts of the relevant testimony from the ULP Hearing transcript. A header with a brief synopsis precedes some of the pages of testimony.

On October 26, 2005 Lt. Linda Johnson was sworn in and testified that she had prepared a timeline at Commander Louis' request upon receipt of the ULP charge. She testifies that she sent the timeline via e-mail to Cmdr. Louis.

A I have a very informal timeline. I believe it is one of yours. If I could refer to that I could give you some dates.

Q Sure, sure. This is what you produced for us.
HEARING OFFICER: Do you own a copy of that?

MS. CUMMINGS: I do. Thank you. It is nice to have the exhibit identified though just for purposes - -

HEARING OFFICER: He'll get that.

BY MR. NAPIER:

Q You have a document in front of you. Could you identify that for us, please.

A I do. It is a document that I have in my folder. It is an informal timeline of events. It is from an e-mail.

MR. NAPIER: All right. Could we label this Exhibit - -

HEARING OFFICER: Mark it for identification as Union Exhibit 1.

MR. NAPIER: Move into evidence.

Page 82 (*highlights mine*)

MS. CUMMINGS: I have no objection.

HEARING OFFICER: Okay, received.
(Union Exhibit 1 received)

MR. NAPIER: Thank you.

HEARING OFFICER: Now it's my turn to have a copy.

BY MR. NAPIER:

Q You prepared this; is that correct?

A I did.

Q When did you prepare this?

A I believe it was upon receipt of the unfair labor practice.

On October 27, 2005 Commander Louis is sworn in and testifies under oath and introduces a copy of his notes which he testifies are “contemporaneous” with the events as they happened.

Page 281 (*highlights mine*)

Q All right. And in this particular situation, did you begin taking notes about what .was going on?

A Yes, I did.

Q And did you begin taking notes at that time?

A Yes, I did.

Q Okay. I'm going to show you what we've already been having some reference to in testimony, I'm going to mark it as City's 2.

A Thank you.

Q Thank you. Do you recognize City's Exhibit 2?

A Yes, I do.

Q What is it?

A That is a copy of my notes.

Q Okay. Were these the notes that you made contemporaneously with the events that happened in this investigation?

A Yes, they are.

PLEA Attorney Norris questions Commander Louis on his notes, Louis states he has never obtained the timeline from Lt. Johnson – Louis only discussed their notes. Louis also says he does not remember ever seeing e-mail of timeline from Lt. Johnson.

Page 282 (*Highlights mine*)

MS. CUMMINGS: I'd like to move for admission of City's 2.

BY MR. NORRIS:

Q Commander Louis, you just stated that you took these notes contemporaneously?

A Yes.

Q Did you ever obtain from Linda Johnson her timeline of

events?

A I think we discussed her notes with my notes at one time. I never obtained them.

Q I'll show you what's been marked as Union's Exhibit 1 and ask if you've ever seen that before?

A No, I've never seen this.

Q You've never seen this before?

A No, I've never seen this before.

Q If I told you that this was, according to Linda Johnson, part of an email that was sent to you?

A I tell you I don't remember seeing this before.

Q Well, let's just take a look. I want to look at your - - want to compare her dates in here with what you have in your notes and we'll see if - -

A Okay.

Louis is asked if the notes are "original" and he offers that they are edited for spelling. There is no offer by Louis of any after-the- fact-substance editing.

Page 283 (*Highlight mine*)

HEARING OFFICER: Well, is this - - are we doing cross-examination - -

MR. NORRIS: No.

HEARING OFFICER: - - here - -

MR. NORRIS: But I - -

HEARING OFFICER: - - or we trying to find out what this piece - -

MR. NORRIS: - - I want to find out if this - -

HEARING OFFICER: - - paper is?

MR. NORRIS: - - is best evidence. I want to really find out if these were contemporaneous.

MS. CUMMINGS: This - - we have his testimony that

they were. You can certainly cross-examine later.

HEARING OFFICER: Well I - - if you have a voir dire kind of thing, is this a legitimate piece of paper?

MR. NORRIS: *Okay.

HEARING OFFICER: Is this what he says it is, is it accurate - - go ahead - -

MR. NORRIS: Are these - -

HEARING OFFICER: - - but if you're gonna - -

MR. NORRIS: I'll - -

HEARING OFFICER: - - okay. You get my point.
BY MR. NORRIS:

Q Is the original notes that you kept?

A They're edited. I mean every time I was - - I would add to

Louis gives his definition of contemporaneous and defends his notes as contemporaneous to within a day or two of the event.

Page 284 (*Highlight mine*)

them. The last time that I edited these was when Ms. Cummings asked for them and said that they're gonna be submitted, I went through and spell-checked, did those sorts of things. Typically, my notes are not - - they're more phrases than sentences.

Q Then let me ask you a question, if I could on page 3 of the notes. When you were contemporaneously writing these notes, why did you put unknown date?

A Because I couldn't figure out - - couldn't remember exactly which dates some of these things happened - -

Q You could have done, when you were contemporaneously taking a note - -

A Uh-huh.

Q - - you didn't know what day it was?

A Not knowing exactly what the dates were, right.

Q Well, what does 'contemporaneous mean to you?

A Well, I usually write my notes the day that the incident happens - -

Q Yes.

A - - and if I run out of time, I'll do it when I catch my breath and catch up my notes as I typically say - -

Q So not all of these notes may be kept contemporaneously?

A Yes, they're contemporaneous to within a day or two.

Q So within a day or two, you didn't know what date something-occurred?

Louis admits that it is not coincidence that notes/timeline are identical, says as a result of "sitting down" with Johnson.

Page 285 (*Highlight mine*)

A Well, if you're referring specifically to the stuff on page 3 - -

Q Yeah.

A - - I didn't have that information about when she was specifically doing it, when she was specifically trying to interview Mark and so I couldn't put the exact dates on that. I know there was a whole series of things happening where I spoke with you and I spoke with Jake and I spoke with the police chief and they were all sequential, but I don't remember the exact dates.

Q Well, let's look what she wrote and what you wrote and I want to see if you used anything else to prepare these notes. In what she has identified as her email to you, it writes - - it says, unknown date.

A Okay.

Q Began attempts to, interview Mark Spencer.

A Right.

Q And you write, Linda began attempts to interview Mark Spencer period. Probably in early April. Probably in early April, objections by PLEA, objections by PLEA.

A Right.

Q Is that a coincidence that you two would write identically the - -

A No.

Q - - same things?

Louis still defending notes as “contemporaneous”. He even testifies that, “On the unknown dates where Linda attempts to interview Mark Spencer, I cant’ tell you what the exact dates were, but it was during the same time period, where I was keeping my notes. I would write—type in Linda’s attempting to do—to get him, I talked to Dale Norris, whatever it was, I would put in my notes.”

Page 286 (*Highlight mine*)

A That would have been a result of what I said earlier of when we sat down to discuss the timeline.

Q Okay. So this is not contemporaneous?

A Yes, it is contemporaneous.

Q Within a couple of days of when - - of this unknown date; is that correct?

A On the unknown dates where Linda attempts to interview Mark Spencer, I can't tell you what the exact dates were, but it was during that same time period, where I was keeping my notes. I would write - - type in Linda's attempting to do - - to get him, I talked to Dale Norris, whatever it was, I would put my notes in.

HEARING OFFICER: But you're saying that you wrote them down at the time they happened but you just didn't date them, is that what you're saying?

THE WITNESS: Sometimes, sometimes I would put a note in there, we made an attempt to do an interview, weren't able to do it. Contacted Eric Edwards, those sorts of things. I would make my entries and if there dates that I was - - some of them I specifically can remember sitting down at my computer and typing them in there, 'cause they had just occurred and some of them weren't. Some of them there was a lot of activity going on, this being one of a hundred cases that I was managing at the time and I'd try to catch them up. That's about the best I can answer.

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MR. NORRIS: Well, I'm just gonna - -

THE WITNESS: - - that particular one.

MR. NORRIS: This is not best evidence. If you look at Union's Exhibit 1, what the note says is, here are the dates I have for your timeline. Then if you read this timeline and you read this document, clearly this was used to prepare this.

HEARING OFFICER: Well, that's argument - -

MR. NORRIS: And - -

HEARING OFFICER: - - and you can make your argument at brief, you can your argument through a form of cross-examination when your time comes. As far as best evidence or not best evidence, it is evidence and it can come in as evidence whether it's the best stuff in the world or not the best stuff in the world. So it can come in. If you want to ask him full questions about, well, was this all on one piece of paper that you kept chronologically one step after another or was it stuck in your computer or where, go ahead and ask that. I don't care. I mean that's up to you to put it that way. Do you have any further questions?

MR. NORRIS: I have no further questions.

HEARING OFFICER: Okay.

MS. CUMMINGS: All right.

HEARING OFFICER: Are there not - - okay. Go ahead.

Note how the Hearing Officer re-directs the testimony to the "contemporaneous notes." Louis still defends notes as "contemporaneous." Louis again identifies the four pages of "notes" as ones that he began taking as events happened.

Page 288 (*Highlight mine*)

MS. CUMMINGS: Okay.

DIRECT EXAMINATION (Resumed)

BY MS. CUMMINGS:

Q And Commander, on the 24th of February then, after the initial intake was done with Sergeant Niles, what did you do? Did you brief anyone else?

HEARING OFFICER: Well, wait. Let's back - - let's

finish up with this point. What -- this is a piece of paper that's printed out, typed out. Tell -- have the witness say, well this -- I keep chronological records on my computer and this is an exact print out except that made myself look a little more intelligent at various points by making corrections or is this something that was on little pieces of paper and at some point it all got put together or what.

MS. CUMMINGS: Okay.

BY MS. CUMMINGS :

Q Commander, we have in front of us four pages of typewritten notes and you've indicated that you began taking these notes as the events occurred?

A Correct.

Q And where did you take the notes?

A I can tell you specifically on a few of these dates, 'cause I remember exactly where I was when I wrote the notes.

Q Okay.

A SO --

Page 289 (*Highlight mine*)

Q And when you wrote them, were you using a computer --

A I --

Q -- or were you writing them out by hand?

A A combination of both --

Q Okay.

A -- perhaps, a lot of my notes are put in the file jacket, if there's a date of an interview, those sort of things. Sometimes I'll keep one of their notes and then transfer them into this. This particular document as in other cases that I knew was a very serious investigation, I keep on a floppy disc and I'll either do them at work or do them at home. This particular one, these first couple of dates I can remember, I can tell you I did them at Sunday at my home on my computer on a floppy disc, the first ones. So the other ones, I can tell you they were done on the weekends or the following Monday. As this thing

progressed, after the April 24th one, I made specific entries contemporaneous to that date, the April 15 ~ ~ one, I did contemporaneous to that date, the ones that have the specific information. As these issues started snowballing and we were having a lot of things going on with this particular case, I didn't necessarily put the exacts dates down that we were making attempts to do things, trying to get a hold of Mark - -

Louis still defends notes as genuine "building block approach" as things happened or a few days later. Note Hearing Officer wants to be real clear on his entry timeline.

Page 290 (*Highlight mine*)

they weren't really relevant information, they were, as it says in here, we were talking to people trying to figure out whether we're going to actually be able to interview Mark. And so I didn't put -- you know, later on, I went back in, try to catch up my notes, but what dates, I couldn't remember. I'm not gonna put a date in there I don't remember, so --

HEARING OFFICER: What I'm asking you is you're telling me that you -- us, that you basically had a file, a computer file and you, as things happened, you were adding them --

THE WITNESS: Yes.

HEARING OFFICER: -- to your computer file --

THE WITNESS: Yes, correct.

HEARING OFFICER: Okay.

THE WITNESS': It was a building block approach --

HEARING OFFICER: Okay.

THE WITNESS: -- as I got down to it.

HEARING OFFICER: Okay.

THE WITNESS: And sometimes I would do them a few days later on, and if I couldn't remember the dates, I would put unknown date on there. But I put what I remembered as being, the information.

BY MS. CUMMINGS:

Q At --was your note keeping habit unique to this

Page 291 (*Highlight mine*)

particular case or is that something you --

A No, no I do --

Q --did --

A No, I do that a lot of times.

Louis says notes about the April 4, 2005 breakfast are "contemporaneous." No offer of how he made the note: "At no time did Jake or Michelle ever tell me or even infer that they too discovered there was nothing to the allegation against Commander Gardener. They continued to lead us to believe that they had some evidence to sustain this "perjury" by Gardner." This is an indication that Louis' notes were not contemporaneous because, per his testimony, he did not learn this information until Spencer was interviewed by Lt. Johnson on May 5, 2005 (*one month later*).

Page 304 (*Highlight mine*)

Q Okay. Did you take that note and write that quote contemporaneous with the breakfast meeting?

A Yes, I did.

HEARING OFFICER: Did you write one consolidated note of all the things that had come up at that breakfast meeting or did you go back and stick something here in one file and something there in another file or what?

THE WITNESS: No, all in this right here. All in this one place right here, 'cause typically when I do that is when I get done with a meeting or if there's an issue, I'll go I back and either handwrite or type in whichever type of notes I'm keeping and write my notes to myself. Again, like I said sometimes they're just phrases, that sort of thing, not whole sentences --

HEARING OFFICER: SO -- but --

-THE WITNESS: -- but --

Page 305 (*Highlight mine*)

HEARING OFFICER: --this note that you have here about the meeting, the April 4th meeting are your full and complete notes of anything that was brought up at that meeting?

THE WITNESS: Yes, it is.

HEARING OFFICER: Okay.

THE WITNESS: And I knew at that point, sir, that this was gonna be a serious issue because we had talked about getting the lawyers - -

HEARING OFFICER: All right.

THE WITNESS: --involved and I wanted to have the best recollection I could.

HEARING OFFICER: Go ahead.

MS. CUMMINGS: Okay.

Dale Norris walks Louis through the verbatim timeline/notes comparison.

Page 329 (*Highlight mine*)

Q This has been marked as City's Exhibit 2, it's your notes.

A Uh-huh.

Q Can you take a look at those? And also if you could, please take a look at Union 1, which is the email from Linda Johnson?

A Right.

Q Looking at Linda Johnson's very first entry for February 24 - -

A Uh-huh.

Q - - and looking at your very first sentence on February 24, other than converting it from third person to first person, is there any difference between what those two say?

A No, they basically say the same thing.

Q Basically or actually say the same thing, using the same words?

A Basically.

Q Basically. Okay. Commander Louis speaks with Commander Parra who says she has an employee with information. That was - - that's Lieutenant Johnson's note, correct?

A What you just read?

Q Uh-huh.

A Yes.

Q Your note is I spoke with Commander Parra who says she has an employee with information.

More verbatim comparisons.

Page 330 (*Highlight mine*)

A Uh-huh.

Q So, basically you just converted from her third person to your first person?

A Basically.

Q Uh-huh. Go down to - - well, you have an entry for February 24th - 25th.

A Uh-huh.

Q She has this as an unknown date.

A Okay.

Q And it says received CDs from PLEA and you say received CDs from PLEA?

A Right.

Q Okay. March 15'~~ right below that. Here we went the other way. Linda Johnson is speaking in the first person, she says, spoke to Dentie Cason, (phonetic) start of parens - -

A Uh-huh.

Q - - Diana Hines' supervisor, end of parens, has courtesy to let know we are - - we were speaking to one of his

prosecutors. Your note is Linda spoke to Denton Casey, start of parens, Diana Hine's supervisor - - yeah, Diana Hines' supervisor, end of parens - -

A Uh-huh.

Q - - as a courtesy to let him know we were speaking to one of his prosecutors, right? Would you say other than adding the word Linda on the front it's identical to - -

More verbatim comparison.

Page 331 (*Highlight mine*)

A It's very similar, yeah.

Q March 16th, Linda Johnson writes, began attempts to talk to prosecutor Diana Hinds, spoke to her this day or at - - or the day after not tape-recorded. You write, began attempts to talk to prosecutor Diana Hinds, no difference, identical, correct?

A Uh-huh, yes.

Q Linda spoke to her this day or the day after, not tape-recorded. Other than adding the word Linda on the front, it's identical, correct?

A Okay. Yes.

Q Go to the third page. You both put down unknown date.

A Uh-huh.

Q In here Linda Johnson writes, began attempts to interview Spencer, probably in early April, objections by PLEA. You write, Linda began attempts to interview Spencer, Mark Spencer, probably in early April, objections by PLEA. Other than adding the word Linda on the front, is there any differences between what you write and what she writes?

A No, it's basically the same.

Q Go to May 5th, the second page. Interview with Mark Spencer given direct order on the previous day.

A Uh-huh.

Q Don't have to read it twice, it's identical.

A Right.

Q Your testimony earlier was that you'd never seen this,

Louis finally reveals that when it “got to the point where it was going to go down the road that it was going down, (*is he referring to the ULP?*) we said we needed to get together and make sure that we have all of our information correct, and we did sit down and talk about the information that we have, so it was consistent.” He also admits that it’s not just a coincidence that the notes match the timeline but “probably a result of sitting down and editing out notes.” It should be noted that Johnson testifies that they never sat down with any timeline; she claims she only e-mailed it to him. Louis testifies that there are no other reports from the collaborated notes sessions.

Page 332 (*Highlight mine*)

correct?

A I didn't recall seeing it, that's correct.

Q You don't recall or you didn't - - you haven't seen it?

A I don't recall seeing it.

Q If you were keeping contemporaneous notes, can you explain to me why Linda Johnson would be providing you with timeline?

A I know that when this got to the point where it was going to go down the road that it is going down, we had said we needed to get together and make sure that we have all of our information correct, and we did sit down and talk about the information that we have, so it was consistent.

Q Okay. So if you already had all this information, why would she have to give it back to you?

A I'm not saying that she did give it back to me, I know I was saying I didn't have it, 'cause I did have most of this information.

Q How - - was it just coincidence that you guys used the exact same language?

A Probably not, probably a result of our sitting down - -

Q Okay.

A - - that with - - edited out my notes, or she edited her notes, I don't know.

Q Were there any other reports created from your meeting to get your notes together?

A I don't recall if there were or not. I don't have anything else.

Page 333 (*Highlight mine*)

Q When did this meeting take place, when you two got your notes together?

A I don't know exactly.

Q Was it before or after you interviewed Mark Spencer?

A I don't know.

Lt. Johnson testifies that Louis asked for her timeline for his "timeline"/notes and that he wanted to add to them. Johnson testifies that she did NOT sit down with Louis just provided timeline via e-mail. Johnson acknowledges that her timeline statements are found verbatim in Louis' notes.

Page 440 (*Highlight mine*)

Q I'd like to ask you about the - - if you recall when Commander Louis testified, 'cause you were here in the room, about the comparison between your timeline and his, what he's characterized as his contemporaneous notes?

A Yes.

Q I'm interested in is is where they're identical, right? They are in some respects, correct?

A There are portions of this document that were very similar to portions in his notes, yes.

Q And the document you pointed to is your chronolog?

Page 441 (*Highlight mine*)

A No, it's a portion of an email.

Q It sets out dates, timeline?

A Yes.

Q That's what I meant to suggest with other words.

A Sorry.

Q Chronolog. That's all right. In any event, he's been

subject to a withering cross-examination by my colleague here and with regard to the identical characteristics of those documents, he said as I recall that you sat down and you went through this together; is that correct?

A This particular information?

Q Yeah, that's right. I'm trying to find out how your words got into his notes.

A When the unfair labor practice charge came, which would have been, I'm gonna say very shortly after the May 5th interview, but I don't know the exact date.

Q Right.

A When we received that, Commander Louis did ask me to put together some information that I had because he said he had a timeline that he had going, that he had notes - -

Q Right.

A - - and that he wished to add this information to that.

Q Okay. And did you sit down and do that or did you just provide that timeline to him?

A No, I sent it to him by email.

Page 442 (*Highlight mine*)

Q Okay: And I think we'll all agree that other than the long-shot coincidence of all times, that he incorporated your timeline into his notes; would you agree with that?

A I don't know how that happened.

Q Does that square with your idea of contemporaneous, by the way?

A The notes that were about his conversations and things that he did?

Q No, where he took your words, put them into his - -

A I'm not privy to - -

Q - - notes after - -

A - - it.

Q - - the fact?

A Put the - - does that square with that?

Q Yeah.

A I guess it would be a question of what notes were contemporaneous.

Q They weren't all contemporaneous, because apparently some of them, that is your words at least, that got into his notes occurred after the charge was filed.

A That's not a question I can answer.

Q I think you told me that he asked for the timeline after you were served with the charge - - charging document?

A He asked me to provide some dates.

Q Okay. And you gave him that timeline?

The hearing officer wants to make sure he understands whose words are on the timeline.

Page 443 (*Highlight mine*)

A I did.

HEARING OFFICER: You gave him this Union 1 Exhibit, this timeline --

THE WITNESS: Yes, sir.

HEARING OFFICER: So you made up -- you created the words that are on this paper?

THE WITNESS: Yes, sir.

MR. NAPIER: Thank you.

Motive: Contemporaneous notes enhance the value of the evidence. The fact that the notes were offered as “contemporaneous” served to underscore Louis’ testimony that at the time the events were unfolding he perceived an urgent need to interrogate Spencer.

Conclusion: The appearance of exact quotes from Johnson’s timeline and the “cut-and-paste” appearance of the notes support that allegation that Louis’ notes were non-contemporaneous. Why the “need to get together” and to make sure the information was “consistent?” It’s our belief that the answer is “the road that it was going down.” This road was an Unfair Labor Practice charge that PLEA had filed against the Police Department and several of its managers, including Commander Louis. It appears that it

was crucial to Louis to maintain that PLEA insisted the conduct was serious. By maintaining this position justification would be provided in interrogating Spencer, a PLEA board member and non-witness to any of the events. “Contemporaneous” notes would bolster and support Louis’ reason for the action taken with Spencer and would validate the decision to order him to talk to PSB investigators. It seems Louis needed a current on-going timeline to validate the reason for his decision to bring Spencer down.