I would like to take some time to dispel some rumors relating to how our form of bargaining works.

**Rumor #1**

We can refuse to negotiate and the current contract remains in effect.

This is FALSE! Under the Meet and Confer ordinance we are required to negotiate for a new contract prior to the expiration of the current contract. Furthermore, the City has already sent us a letter indicating that they intend to negotiate a new contract.

**Rumor #2**

If we fail to reach a new contract, the current contract remains in effect past July 1st, 2012.

This is FALSE! Under the Meet and Confer ordinance if no agreement is reached between City Management and PLEA the City Council will impose a new contract on us. The City Council has the authority to impose any terms that they choose. Through the negotiating process we have been able to secure a competitive wage and benefit package and some of the best Officer rights in the State.

**Rumor #3**

Let’s go to arbitration! The City has to do what the arbitrator says.

This is FALSE! The ordinance does provide a provision for us to refer the matter to a fact finder (arbitrator); however, his opinion is advisory only and not binding to either party. There have also been cases where the arbitrator will issue a ruling that is lower than the City’s last offer. After the fact finder renders a decision the City Council can still impose any terms that they desire.

The City of Phoenix’s Meet and Confer Ordinance was passed by the voters in 1975. Since that time PLEA has been the recognized bargaining unit for all Phoenix Police Officers. Under the ordinance all Police Officers under the rank of Sergeant are part of unit 4 or the group that PLEA represents. There are other units that include firefighters, administrative personnel, skill trades, and unskilled trades. There are also two units under another ordinance entitled “Meet and Discuss”; those are PPSLA and a group that represents city civilian supervisors. Both ordinances are similar; however, there are greater protections for units covered under the “Meet and Confer” ordinance.

PLEA is responsible for submitting our proposals to the city no later than December 1st, 2011. The City has to submit their opening contract proposals by January 5th, 2012. After PLEA reviews the City’s proposals both sides will sit down and begin negotiating a new contract. PLEA and the City will meet at least weekly, sometimes more, until March 1st, 2012. At that time either side has the option of declaring impasse. This means that one or both sides can’t agree to the terms of a new contract.

Several things happen over the next six weeks beginning March 1st, 2012. If no agreement has been reached then a federal mediator will try to find common ground and have both sides agree to a reasonable contract. If this is impossible the matter is either referred to an independent fact finder (arbitrator) or directly to City Council. Either party can request the matter be sent to a fact finder. Once a fact finder is selected he/she will listen to testimony from both sides about any areas that are still in dispute. After the hearing he/she is required to submit their findings to both parties within 5 days. Each side can either accept the recommendations or reject them. If one side rejects the recommendations the matter is immediately referred to the full City Council.

The City Council will listen to testimony from the fact finder, City management, and PLEA. With a minimum of 5 votes the majority of the Council will impose a new one year contract that is binding to both us and the City. Under the ordinance the Council can impose any terms that they see fit. They do not have to take our recommendations, the fact finder’s, or City management’s.

*Continued on page 2.*
Prescription Meds, the Department and You

by Ken Crane
PLEA Vice President

Prescription drug abuse, for most of us, conjures up images of people with pain problems who may have gotten hooked on pain meds or involved in prescription drug fraud. Others might think of the Jr. high or high school kid that raids their parents medicine cabinet to get prescription narcotics that they can use or sell to others.

Most of us as police officers don’t envision ourselves as police ever getting caught up in a prescription drug use issue yet it can happen very easily. In the past couple of years PLEA has started to see more and more instances where officers have gotten sideways on this issue.

In one instance, an officer’s wife who happens to also have a medical background, administered cough syrup to her husband in the middle of the night to alleviate a severe coughing fit. Problem #1 was that the cough syrup had codeine in it. Problem #2 is that the cough syrup had been prescribed for the wife and not the husband, and finally, problem #3 was that the officer was selected for a random drug screen two days later which gave a positive reading for opiates. The officer was called to PSB and served with an NOI. The good news is that PSB ultimately saw the situation for what it was and handled it as an inquiry rather than a full blown investigation.

In yet another example that most of us have seen or even done ourselves; a person stricken with pain or muscle spasms checks the household medicine cabinet and takes a pain killer or muscle relaxant prescribed for another family member. Or, in yet another twist on the scenario a well-meaning family member hears of your plight and brings some of their meds over to “help out.”

Most American households have fully stocked medicine cabinets with excess antibiotics and pain meds on hand. People will often be prescribed pain meds by a physician following a diagnosis or medical procedure with the instructions to “take as needed for pain” or “I’ll give you this prescription for pain in case you need it.” Most of us will fill the script to have meds on hand for a “just in case” scenario. Over the course of several years it can be pretty easy to amass a sizeable stockpile of excess antibiotics and pain meds.

Many people reason; why waste time going to an ER or urgent care center, wait for hours on end to be treated and be out of pocket for a co-pay only to be given the same meds we already have on hand? Besides, most of the time, taking the meds you already have at home combined with a little rest clears everything up and the situation is resolved.

Scenarios such as the ones described above wouldn’t ordinarily be a problem. It becomes a problem when you work for any organization that has random drug testing as a part of their employment rules. The good thing is that most instances of officers getting tripped up on random drug screens are fairly innocent in nature and not drug abuse in the traditional sense.

Prescription drug use is covered in PPD operations orders 3.20.2 (B) Substance Abuse. This policy essentially states that employees will not use any type of narcotic or dangerous drugs unless prescribed by a physician. The policy also outlines the elements necessary under PPD policy to establish a legitimate doctor-patient relationship. Certain elements of PPD policy mimic what is in state law, specifically ARS 13-3406 possession, use, administration, acquisition, sale, manufacture, or transportation of prescription only drugs. This statute also states that consumption of prescription drugs is illegal without a script and that it is also illegal to administer prescription only meds to persons that they have not been prescribed for. Violations of this type are a class 1 misdemeanor.

Officers need to keep in mind that we have a policy in effect that allows the department to impose discipline for anything that meets the elements of a felony or a misdemeanor whether prosecuted, convicted or not. Simply stated, the department can still take a bite out of you administratively even though you weren’t charged or prosecuted criminally.

Remember, when it comes to prescription meds, your seemingly innocent actions could get you sideways in a hurry and you could find yourself on the receiving end of a trip to PSB. As Sgt. Phil Esterhaus always used to say at the conclusion of every briefing on Hill Street Blues; “Let’s be careful out there.”
With the end of the year quickly approaching, January 2012 will begin another Arizona legislative session. However, there is no beginning or end to the legislative process. PLEA lobbyist Levi Bolton, along with Arizona Police Association (APA) Executive Director Brian Livingston, and Williams and Associates work year round on behalf of all Arizona police officers.

Of course, the biggest issue last year was pension reform. It was a critical time for all public safety and to everyone’s credit all stakeholders worked very well together. Recognizing the reality of the situation, PLEA, APA, AZCOPS, FOP, PPSLA, PFFAA, and the Association of Retired Phoenix Police Officers Association all attended meetings to determine what was in the best interest of all and to come to a mutual agreement of what would be acceptable and more importantly, reasonable adjustments to the system. If you recall, the pension system was facing difficult funding challenges per the actuarial assessment. Without some modification to pension fund benefits, employer contributions rates were destined to rise to over 50%. As a result, all employees and retirees were expected to share in the burden of sacrifice. This burden affected active employees through increased contributions and a modification to the DROP program. Yet to be hired employees will have even greater reduced pension benefits. Retirees shared in the sacrifices by a change in the cost of living allowance (COLA) calculations.

Much discussion has occurred between ourselves and our attorneys as to whether or not we should seek legal action to challenge the diminishment of pension benefits. There are varying legal opinions as to the success of litigation. For example, there is a concern with regard to officers hired after 1983 as to when they become vested and a question as to the constitutionality of diminished benefits in general.

The question is this: is litigation the smart thing to do? As elected representatives of ALL Phoenix Police Officers at all stages of their careers, we have to do what we see is in the best interest of the whole. For example, if we were to litigate the retiree cola issue and prevail, it would have an immediate impact on the active employees through an increase in employer contribution rates, thereby taking money off the table for current wages and benefits. Conversely, if we sought legal action to stop all the modifications and prevail, the end result would be that you revert back to the original actuarial assessment and you are back to a pension fund that is underfunded and its very solvency in jeopardy. I recently met with United Phoenix Firefighter Association President Pete Gorraiz when the issue of pension litigation came up again. He summed it up best by stating, “The primary objective has to be to protect the (pension) system. It has to be properly funded.” Although we don’t like pension reform, it was not only the right thing to do, but the necessary thing to do under the circumstances. For that reason, we concluded that it was best to not initiate litigation against the recent pension reform.

However, there was one provision in last year’s pension reform that was not part of the original discussion of the stakeholders. That had to do with the continued contribution to the pension system after entering the DROP program. Last year’s bill requires officers to continue their contribution to the pension system once they enter DROP and forfeit that contribution without receiving any additional benefit. That is wrong. As a result, PLEA and the APA will introduce legislation to change this provision of the law to allow those continued contributions to be returned to the officer with interest upon the completion of DROP. Our prospects for success in pursuing this adjustment, as with any other proposed legislation, are better in a legislature which is not on the other end of litigation.

In addition to the DROP revision bill some of the other bills PLEA and the APA are also looking at include legislation that will:

- Require a discovery rule for administrative/disciplinary investigations. (All too often police employers have failed to include exculpatory information in these investigations.)
- Enhance the ability to appeal suspensions/demotions to superior court.
- Create consequences for violation of just cause in discipline cases.

Of course PLEA and the APA will work with the City lobbyist to defend and protect state shared revenues and monitor other helpful/harmful legislative bills. Be assured that PLEA will continue to represent your interests at the State capital in 2012.
For all of us who have spent any time in Patrol, hearing a dispatcher suddenly come across the air broadcasting “998,” (Officer involved shooting) followed by the location, frequency it is being worked on, and that distinctive warble tone, is enough to cause a visceral reaction in even the most seasoned street cop. The first thing is usually an adrenaline jolt coupled with the hairs on the back of your neck standing up as you switch radio channels then activate your lights and sirens in an effort to get to the scene to assist your fellow Officer. As you are rolling that way, thoughts cross your mind such as “Who is it?” “What kind of call were they on?” and “is/are the suspect/s outstanding?” Many times, responding units are told there are enough units at the scene and they can go back into service. However in other instances there may still be an active scene, a large perimeter, streets which need to be shut down, a number of witnesses that need to be separated, and a scene that needs to be secured. By the time most responding units have arrived at staging, the Incident Command System, ICS, has already been implemented and assignments are being given to those units. Eventually, things calm down, MAC vans, command staff, PLEA Reps, CISM teams, and detectives from Homicide and PSB arrive on scene, briefings are held and the investigation starts moving forward.

For the involved officer, the long wait starts for what will literally be a rollercoaster ride due to normal physiological reactions the body goes through as a result of the shooting. Thankfully, while I have never personally been involved in a shooting, as a PLEA Rep and Board Member, I have responded to numerous officer involved shootings, OIS, and am all too familiar with what goes on. Personally I feel there is a need to educate our members about what to expect in the event they are ever involved in a shooting so they can deal with the experience and emotions that go with it.

When people are involved in what is commonly referred to by use of force experts as a “critical incident” the first thing that happens is a major adrenaline dump, which prepares the body for fight or flight. Blood flow increases to large muscle groups for strength to run and fight. Perception of pain diminishes while an overall sense of awareness increases. Due to the increased flow of blood flow to the large muscle groups, fine motor skills often diminish. Perceptual distortions, which can include a sharp focus in vision or diminished hearing, as well as other physiological effects, including nausea, dryness of the mouth, and intense sweating are common reactions during critical incidents.

Based on case studies done by Dr. Alexis Artwohl, author of Surviving Deadly Force Encounters, officers reported phenomena such as:

- Fast/slow motion time
- Diminished/intensified sound
- Tunnel vision/highened visual clarity
- Memory loss/memory distortion
- Automatic pilot
- Dissociation
- Intrusive distracting thoughts

“The barrel of the suspect’s weapon appeared to be the size of a cannon.” is an example of heightened visual clarity. I attended a use of force seminar where Dr. Artwohl told of an officer who recalled “beer cans floating through the air” during a shooting. This officer was second in a stack holding on a door when the officer in front of him reacted to a threat inside the building. Due to this sudden ambush and the split second it took him to comprehend...
what was going on, he realized what he was seeing were the spent shell casings being ejected out of the first officer’s duty weapon. Dr. Artwohl provided an example of memory loss where an officer had a cell phone conversation with his wife during a pursuit after a violent felon shot at him in the initial phase of the incident while the officer was covering an outer perimeter position. The suspect wrecked and a major shootout ensued, with the suspect ultimately taking his own life. When the officer returned home at the end of his shift, his wife teased him about the call, which he had absolutely no recollection of. After checking his cell phone records, he learned he not only called his wife, but his father as well. Because of how the mind works during high stress situations like a shooting, there are often gaps in memory recall. Examples include whether or not officers fired their weapon, the number of rounds they fired, whether or not they did a tactical exchange, what their sight picture was, whether or not they saw their front sight or what their backdrop was.

Many use of force experts, including police psychologists, recommend, depending on circumstances, an option of a 24-72 hour waiting period after a critical incident before giving a statement. Doing this ensures the following:

- **Adrenaline released during the initial phase of the incident flushes out of the system**
- **Blood pressure and other vital signs can return to normal levels**
- **An officer has an opportunity for at least two deep sleep cycles**
- **Memory recall of the incident is usually more thorough accurate**

Two key points come into play during any officer involved shooting investigation. Arizona Revised Statutes, specifically ARS 13-410C justifies the use of deadly force by law enforcement, while Operations Order 1.5.4.H covers when officers may use deadly force. For these reasons, there are two concurrent investigations, a criminal investigation by the Homicide Unit and an administrative investigation by the Professional Standards Bureau. Homicide determines whether or not the officer was justified in using deadly force under the law, while PSB determines whether or not the officer acted within department guidelines. While officers can exercise their Fifth Amendment Right when it comes to speaking with criminal investigators, they are compelled to speak with Professional Standards Bureau investigators as a condition of employment. However, information gathered during an administrative investigation is protected by Gairity Rights and cannot be shared with criminal investigators.

One reason police officers belong to associations is for legal defense coverage in the event they are involved in a serious use of force incident or shooting. Part of their monthly dues goes to pay for that coverage. In PLEA’s case, this coverage is provided through Peace Officers Research Association of California, PORAC, a professional federation of local, state and federal law enforcement associations representing approximately 61,000 police officers.

Unfortunately, there are officers out there with the mindset that they will never be involved in a shooting and if they are, that it will be legally justified and in policy. Therefore they don’t need to belong to PLEA for representation or legal assistance. Under the City’s Meet and Confer ordinance, PLEA, as the certified bargaining unit for all Unit 4 employees, is obligated to provide representation during the administrative portion of the investigation, however, PLEA is under no obligation to provide legal representation for Unit 4 employees who are not PLEA members.

There was a situation not too long ago where an officer filled out a packet to drop PLEA at 10:00 AM and got involved in a shooting two hours later. When reps arrived on scene the officer wisely decided to call the PLEA office to rescind their drop paperwork. Legal representation is costly with most criminal defense attorneys charging a minimum of $5,000 as a retainer. Total expenses to defend an officer in a criminal case that may go to trial can easily top $250,000, especially if the need arises to hire expert witnesses to testify on behalf of the involved officer.

High profile cases that draw national and international media attention can be astronomically expensive. It is estimated by some that the defense costs for the four LAPD officers involved in the Rodney King case was easily in excess of 2 million dollars. This was a case where involved officers reacted exactly the way their agency had trained them to with regard to dealing with violent uncooperative suspects. Although acquitted of criminal wrongdoing, they were all put through the wringer a second time when they were tried and convicted by federal authorities for violating King’s civil rights.

Our current Department protocol is such that a PLEA Representative will respond to a shooting scene to assist the involved officer/s with PSB interviews and establishing lines of communication with a criminal defense attorney. While the involved officer may feel that the shooting was “good” and not have any qualms with doing a criminal interview, PLEA strongly recommends consulting with an attorney in any deadly force situation, especially when you consider:

1. As a dues paying member, having immediate access to that attorney is a benefit
2. Even though you are a sworn police officer employed by the City of Phoenix, you are a Citizen with Constitutional Rights including protection under the Fourth and Fifth Amendments.

**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.

Hester, Heitel & Associates Exclusive group insurance offers to PLEA Members only for homeowners, and auto and liability. Please call Mark or Loretta at 602.230.7726

Tom Jonovich Financial & Retirement Planning Sessions
3rd Thursday each month at PLEA Office
10am - Noon
602.954.5025 or 602.989.3560

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.
In memory of Glendale Officer Brad Jones
A note from Sergeant Phil Roberts, Phoenix PD

Anyone wonder what happens to a police officer “after” he or she is killed in the line duty? Unfortunately, I had the sad opportunity and yet the privilege to find out firsthand. Several days ago, 27 year-old Glendale Police Officer Brad Jones was shot in the line of duty by a suspect who is not worth the dirt we walk on. From the moment his "brothers and sisters" arrived on scene, he was never alone. While the fire department treated him, transported him to the hospital, and during his final moments here on Earth he was surrounded by family and fellow officers as they said their goodbyes.

When he left the hospital, as a matter of reality he had to be transported to the Medical Examiner’s (M.E.) Office. Escorted the entire way by officers from St. Joseph's Hospital to the M.E.’s Office and he was never left alone. Twenty-four hours a day a Glendale Police Officer was posted at the M.E.’s Office. Brad was never alone.

As Brad arrived at the M.E.’s Office every available officer in the area from South Mountain Precinct in Phoenix, where the M.E.’s Office is located, lined the streets with overhead lights flashing, standing outside their cars and rendering a hand salute...at 3:30 AM. Brad was never alone. Glendale Officers stood watch with Phoenix Police Officers constantly checking if they needed anything. Perhaps a sandwich, something to drink or merely a short break. Glendale or Phoenix Police, it did not matter - Brad was never alone.

Finally, after many hours it was time for Brad to be delivered to the funeral home in preparation for us all to say our final goodbye. I was privileged to be part of an estimated twenty police vehicles that came together at an impromptu moment simply from South Mountain Precinct to pay what respect we could to a fallen hero, father, and husband. We lined 7th Avenue from Jefferson Street to Van Buren Street, at the beginning of rush hour traffic, with overhead lights flashing and standing in unison at hand salute. As the procession passed the Phoenix Police Department’s Crime Lab, an estimated twenty lab personnel lined the streets to pay their respects as well. Brad was never alone.

The procession was led by two Glendale Motorcycle Officers, two Glendale Police Cars and two Phoenix Police Cars. Our fallen brother was not going to be left alone, not even for a moment as the procession drove to the city of Surprise, Arizona.

Ever wonder what happens to a police officer after he or she is killed in the line of duty? Respect...total respect is what happens to an officer paying the ultimate sacrifice...as it should be. Tonight a wife, a son, and a daughter go to bed without a husband, father, or daddy to share their lives with. Someday, though, they will all be reunited.

During this time here on Earth, Brad is not alone. He never was and never will be...

Reprinted with the permission of PLEA Associate Member SGT Phil Roberts.
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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