

December 6, 2006

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

Dear Andy:

On or around August 15, 2006 I spoke with County Attorney Mitch Rand reference Sergeants Smelter and Riggan. He communicated to me that he was the County Attorney in charge of an aggravated assault case in which Anthony Carrington tried to run over Phoenix Police Officer Mike Chase during a pursuit. Mitch told me that from jail tapes he discovered that two officers came in and talked to the suspect – Carrington. Because he was alarmed that this contact took place between the police and an in-custody suspect without notice to him, in disbelief he stated to me, “There is no way this happened.” He stated that he had a problem with this interview. He told me that he spoke with their supervisor, Lt. Joe Knott, 5-6 hours later and gave the jail tapes to PSB. The next day Smelter and Riggan came and spoke to him and he instructed them that “you can’t do that” because Carrington was represented by defense counsel. He stated that Commander Eric Edwards was notified of the interview, that the interview jeopardized the criminal case, that he notified Carrington’s defense attorney of the interview, and that Carrington plead out to a lesser charge (*felony flight*) offered to him because of the interview.

During the week of November 12, I spoke in person to defense attorney Cliff Gerard reference sworn testimony given in Division 702 by Sergeants Smelter and Riggan. While obtaining information on behalf of a current client of his, Cliff spoke to these sergeants in reference to the administrative investigation of Officer Chase and their interview with Carrington. Cliff was alarmed that sworn personnel had spoken to an in-custody felony suspect without contacting his defense counsel or the County Attorney. He believed that Carrington’s rights had been violated by the sergeants and that the criminal case against Carrington was in jeopardy because of their interview of him. He stated that this amounted to interfering in a criminal investigation. We spoke of a concern that if PSB investigators who are supervisors treat suspects this way, what message is that sending or treatment is that promoting to officers in their contact with citizens. I provided him with my PLEA business card and on November 16, 2006 he called me and provided me with the date (11-01-06), time (11:25/2:00), court (702), and defendant (*Schulendorf*) in which the PSB sergeants had given testimony about the Carrington interview.

On November 28, 2006 I received an audio copy of the court recording that took place on November 1, 2006 in Division 702. In this recording, defense attorney Cliff Gerard interviewed the two PSB investigators: Sgt. Smelter and Sgt. Riggin. Both interviews were in the presence of a judge, a city prosecutor, and were given under oath.

Sgt. Smelter stated in his testimony that he and Sgt. Riggin interviewed an aggravated assault suspect (*Carrington*) at the Lower Buckeye Jail on June 28, 2006. Smelter informed the court that he had been the supervisor of a detective squad prior to coming to PSB. Smelter said the interview took place without the county attorney (*Mitch Rand*) being notified as well as Carrington's own legal counsel. Smelter said that he was not aware whether Carrington had legal counsel and made no effort to contact legal counsel. Smelter stated that he contacted the county attorney about this contact with Carrington after he had interviewed Officer Chase (*07-12-06*). Smelter was aware, based upon the police report, that Carrington was being prosecuted as a suspect for an aggravated assault against a police officer. Smelter told Mr. Gerard that he was aware that the aggravated assault charges against Carrington had been dropped. Smelter said that he and Riggin had nothing to do with the criminal investigation involving Carrington.

While under oath Sgt. Riggin also testified that he and Sgt. Smelter had interviewed an aggravated assault suspect (*Carrington*). Riggin stated that he understood there were serious criminal allegations pending against Carrington. He said that he understood that Carrington was being prosecuted by the County Attorney's office and that he did not make any effort to contact the County Attorney's office or defense counsel. Riggin explained that they interviewed Carrington because they wanted to get as many of the interviews involving the Chase investigation as they could. In doing this any discrepancies could be found that might impact the criminal case against Carrington. Riggin explained that he and Smelter had subsequently informed Mitch Rand of their interview with the suspect and in this subsequent discussion Rand spoke to them about talking to Carrington without counsel and that he had concerns about the case with Carrington. Riggin communicated that a different version of events were obtained from Carrington as a result of their interview with him. He stated that Carrington was not considered more credible than Officer Chase and that his story was not complete. But the overall picture obtained from the Carrington interview fit the radio transmission audio tape evidence involved in the criminal investigation. Riggin was asked what the rush to interview Carrington was without consulting the County Attorney or defense counsel considering that it could jeopardize the criminal case against Carrington. Riggin's response was that he was the 2nd on the interview and deferred to the case agent (*Smelter*) and his chain of command as to the decision for interviewing Carrington. He stated that he just went along "more or less." Riggin stated that he did not believe that they advised Carrington of his Miranda rights.

After listening to the court recordings I recontacted Mitch Rand. Mitch identified the combination of the allegations against Officer Chase and the interview of Carrington by Smelter and Riggin as the factors which caused him to drop the aggravated assault charges down to the lesser felony flight.

The aforementioned interview with Carrington was conducted by sworn police officers about his involvement in a felony. Ops Order 4.19.3.C states an "interrogation, within the meaning of Miranda, is defined as whether, under all of the circumstances involved in a given case, the questions are reasonably likely to elicit an incriminating response from the suspect." Smelter's and Riggin's interview of Carrington's specific involvement as a suspect in a specific felony aggravated assault and flight case would be reasonably likely to elicit an incriminating response. He should have been advised of Miranda. Because he was not, he was not notified that he had the right to legal counsel. The criminal prosecution and investigation was compromised as a result of the conduct of the two PSB sergeants. The County Attorney dismissed the felony aggravated assault charge. Officer Chase, the victim in this crime, had his rights compromised. Because of the two PSB sergeants' interview of the suspect who attempted to drive him down with a car, Officer Chase's rights as a victim were needlessly forfeited when the criminal charges were dropped.

To assist with a parity issue, Officer ██████████ has a sustained allegation of significantly and negatively impacting a criminal investigation. On ██████████, 2006 ██████████ was a monitor on a DEB wire and "tickled" (*called*) a drug-dealer's girlfriend's line in an attempt to decrease personal calls and increase narcotic calls on monitored phone lines. The suspect dropped the line. Constitutional rights were not violated nor were charges reduced or dropped. Even though this investigation highlighted the good intentions of Officer ██████████, the sustained allegation still carries a suspension penalty and his chain of command is unwilling to address it as a training issue.

Ops Order 3.13.T.2 says, "Employees will notify their supervisor when there is any neglect of duty or misconduct, either on or off duty, on the part of any other employee of this department." In complying with this order, PLEA is bringing forth an allegation of misconduct in regards to Sgts. Smelter and Riggin. There is an expectation from the Association for the Department to investigate this matter based upon the mandatory nature of Ops Order 3.19.1.A which 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 (*emphasis mine*) be thoroughly investigated." In conjunction with the two stated policies, PLEA is looking forward to a timely written response (*see attached signed agreement dated 4/14/04*) concerning the Department's action reference the submitted allegation of misconduct.

In closing, this conduct appears to be a consistent pattern and matches the observations of the Department as provided by the hearing officer in CA – 254. He said, "[The] Department had a certain arrogance about it during the whole process. It was nearly totally insensitive, if not clueless, to the dilemma it might, and was creating for PLEA's members.... It is not sufficient to simply say 'This is how we always do it' – 'always' does not allow for the balancing required by the law. Something more sophisticated is called for. The Department projected that it could do nearly anything it wanted, ask just about anything that came to mind or satisfied its curiosity about nearly anything, just because it could." (*page 20*)

Sincerely,

MARK SPENCER
PLEA Secretary/Grievance Chair

C: Jake Jacobsen, PLEA President
Jack Harris, Police Chief
Alton Washington, Deputy City Manager