The New Recap

What you see here may look different on the outside. A slightly different form, a slightly different paper, and maybe a slightly different layout. You are not imagining things. What you’ll be seeing is an exciting opportunity that improves an already quality publication at a savings to your Association.

After nearly fifteen years, PLEA printer Scott Bagger is pursuing different interests and has notified us that he will no longer be printing the RECAP. Scott turned our RECAP into a nationally recognized publication and we thank him for the many great years he was with us. What you see on the inside will also be slightly different. Although the RECAP will continue to inform and update on important issues, our idea is to have more articles that are shorter in length to expand the news we can bring to you.

One of the changes we would like to add is a "History Corner". This will be PLEA history 101. We will reprint articles from early issues of the RECAP and occasionally have interviews with those who lived it as the founders of PLEA. There are just a handful left now that were here when PLEA started. It is very important that we all know what it was like in 1975 and the sacrifices of those who had a vision of real representation.

With this change the Board of Trustees sees an opportunity to move into the new millennium with some significant improvements. Reflective of several noteworthy changes in our department, we too will make some changes.

PLEA will be changing our logo. The primary logo with the "Fireman style" badge surrounded by the "Phoenix Law Enforcement Assoc" circle will become part of our 29 year history. The secondary logo, PLEA with the American flag inside the letters, can be part of the new design or not. It's up to you. With all of that, PLEA is announcing a contest for a new logo. The rules are simple:

- The design must include "Since 1975" somewhere.
- The Board of Trustees will narrow the submitted designs to five.
- The logo design will be selected by a vote of the membership.

Grand Prize will be a $500 gift certificate to any Westcor Mall and a $500 gift certificate to Best Buy or $1000 at either one. The four runner-up designs will each receive $100 gift certificates for Westcor Mall or Best Buy.

The five selected designs will become the property of the Phoenix Law Enforcement Association along with all copyright concerns and acceptance of the prize will constitute payment for the design.

Can't draw a straight line with a ruler? I know the feeling. But you may have a wife, husband, friend or neighbor who can. Got a CAD program in your computer? Draw what you can; if it's selected we can have it professionally 'cleaned up'.

(Continued on page 2)
The President's Message

Designs must be submitted to the PLEA office by close of business Friday, October 1st. The five finalists will be selected and the membership will vote on the new design.

I'm sure you have all seen logos and emblems on shirts, stationery, business cards and buses that made an impression on you. That's what we are looking for, something that will be noticed and remembered. Use "PLEA", or the new department badge, a combination of both, or other design reflective of our 29 year history. This new design will identify us as a union. It will be on letterhead that finds its way from the Council offices to the U.S. Congress and yes, the White House. It will go on our shirts and our envelopes. It will represent who we are.

Chief Selection Process

As you all know, Phoenix recently selected a new Police Chief. Thirty-four people applied to become Chief of the fifth largest city in America. Sixteen were eliminated for a variety of qualification reasons. The remaining eighteen were screened through their resumes to see if they had the background experience in the areas critical to Phoenix. The list was pared down to six. These six were invited to participate in a three step evaluation process. There were three separate panels consisting of eleven or twelve panel members each. Each panel was made up of a cross section of business, community, and union leadership that also showed a social, economic, and ethnic diversity to assure that it reflected the diversity of our city.

After panel "A" and panel "B" had their shot, an informal social gathering was held in the evening. It was an opportunity for some of the panel members to get a more personal insight to the candidates. Friday morning was the last part of the testing process. Panel "C" evaluated the candidates on a table top exercise where all six participated at the same time.

PLEA's involvement in the selection process allowed us to evaluate the talent and invite who we thought were the top three candidates to the PLEA office for our own interview. Jack Harris and Dave Brewster accepted the invitation; John Buchanan had a scheduling conflict. The PLEA Board drafted five questions that pertained to Labor/Management issues. Both received the questions before the interview. The decision wasn't easy. Both candidates have done good things for PLEA. In the end the majority of the PLEA Board selected Jack Harris as the choice. This was conveyed to City Manager Frank Fairbanks.

PLEA looks forward to working with the new Chief to bring about positive change. Some of PLEA's more pressing concerns include; improving or eliminating the Discipline Matrix, the make-up and mission of the DRB, a critical incident response protocol, issues of disparate treatment, and adherence to the MOU by management. ●

From Around the Nation

- The Washington Post says the IRS is too short of auditors to pursue over 2 million known cases of underpaid taxes.
- There are now 150 million cell phones in the United States.
- 48% of Americans think it is likely that terrorists will attack the U.S. before the November elections, according to a Newsweek/Princeton Survey Research poll.
- Due to high rates of re-enlistment, the U.S. Marine Corps had already fulfilled 90 percent of its force retention goal midway through the fiscal year. Re-enlistments are also high for the U.S. Army.
Our Universe
By Joe Clure Treasurer

The Phoenix Law Enforcement Association has seen incredible change, growth and accomplishments over its twenty-nine year history. We have grown to the largest active police officer association in the state. We have grown in political and legal influence with numerous successes such as the meal-time lawsuit, the civic plaza lawsuit, and the current stand-by lawsuit. We have been sought out for support by virtually every candidate and have been successful in our efforts, through the APA and NAPO, on many legislative fronts. For example, DROP, the disabled officers earnings offset bill, Proposition 301, military salary continuance, and the right to carry bill. Member services continue to grow and improve also, not the least of which is the new PLEA building that offers a very convenient location for all members. Our accomplishments in the universe of police unions are encouraging.

Historically, PLEA has done more with less than most police unions. Even though not based upon our merit steps, our dues have consistently been about 1% of merit step 1 whereas most other unions collect much more. We currently pay $39.55 a month or about 1% of merit step 3. In Boston the dues are $85.76 a month and are determined by taking 2% of the average of the highest paid and lowest paid officer. In Seattle, the dues are $53.30 and are calculated by taking .08% of top pay plus $13.00. Dues in Portland Oregon are $77.40 a month which is 1.5% on top pay. In Las Vegas the dues are $72.00 a month. The list goes on and on. If we were to institute the national norm for dues structure (1 to 1.5% of top pay - merit step 9), our dues would be between $57.00 and $71.00 a month. None of this takes into account that most other associations are entitle to "fair share", which means they can, and do, charge non-members about 70% to 80% of dues for contract enforcement and representation.

Please don't panic and think Boston or Portland dues are on the way! But still it's important to know where we are in relation to our universe of police unions. If we are to continue to grow and improve our association, we must maintain quality, competency, and consistency. Your PLEA by-laws allow the board to set dues. The best interests of the membership are the priority of the board. Instead of a $12.00 dues increase, the board thought it was important to increase dues only $6.25 to $45.80 a month effective October 2004 (to co-incide with the 2.5% across the board pay raise). Our dues calculation will now be based upon 1% of merit step 5 plus $4 for our legal defense fund. The new dues of $45.80 are inclusive of this legal defense fund premium. This new calculation will permit us to continue to provide and improve service to the membership.

Dues are a way of life outside of the universe of police unions too. Phoenix fire personnel pay approximately $57.00 a month in dues. An OCB detective recently advised me that the Hells Angels Motorcycle Club expects dues from their "members" to the tune of $320.00 a month. As a result of all the indictments from a recent investigation, they have a legal defense fund as well. All members have a legal assessment fee of $1,000.00 a year for the next two years. Seeing what is available inside and outside of our universe and what we "do" with our "dues" makes it easy to conclude that the advantages and protections afforded to PLEA members are clearly unique.

Historically, PLEA has done more with less than most police unions...our dues have consistently been about 1% of merit step 1 where as most other unions collect much more.

New Members, Welcome to PLEA!


Your Membership is Appreciated!
In Memoriam  John R Davis, #1841

On July 1st, 1982, Officer Davis and his partner, Ignacio Conchos, entered a Phoenix bar in search of a bank robbery suspect. Both officers were mortally wounded when the suspect began shooting inside the bar. Officer Conchos died a short time later. Officer Davis died one month after the shooting. He was a twelve year veteran of the department and a member of the Robbery Detail. Officer Davis was forty-eight years old at the time of his death. He was survived by his wife and two children.

CLEAR HAZARD? - TERMINATE!

By Greg Gibbs

"Out of policy? Why is that out of policy?" I've heard this all too often from members. It has become clear that the interpretation of the clear pursuit policy for the Phoenix Police Department is not so clear after all - or at least the translucence is not getting down to the troops. The interpretation of the policy differs tremendously between the officers on the street and those who sit in judgment of the actions of those officers.

Let me clear up some things so we can avoid further "out of policy" pursuits. I have been acting as the PLEA Representative for the Driving Analysis Committee (DAC) for a bit now. For those of you who don't know what the DAC is, it's a committee composed of four commanders, three lieutenants, four sergeants and an officer. A representative from PPSLA and PLEA are also present which is where I come in. PPSLA's representative and I are allowed to give input during the deliberations, but we do not vote.

It has become clear to me that Section 4.2.1(2)(e) of the Operations Orders has not had its meaning of a "clear hazard" disseminated to the troops. The last sentence of this order is what gets 98% of the officers during what they believe is a righteous pursuit. It reads, ". . .or the driver disregards traffic control devices."

The key is the very last word of our thousand page bible of rules - devices. This means more than one. Let me limit this to the DAC's meaning - two (2). Not three or four or what the officer thinks, but two (2). Getting down to brass tacks, this means if a suspect being pursued (regardless of the crime) runs two stop signs, revert to Operations Order 4.2.1(2) "Pursuit will be immediately terminated."

We are pretty good for the most part about letting that suspicious vehicle go when this happens but you need to understand that the DAC also means that violent felony, the aggravated assault on a police officer, even a homicide suspect that you just witnessed. That's right, you may feel like that there is an immediate need to apprehend the suspect, but you should know that the second the suspect makes a right hand turn on red where it's posted NO TURN on red and then "California rolls" through a stop sign, you're to immediately terminate, or you're out of policy. This is what is defined in Operations Orders as a "clear hazard." Is this clear?

The pursuit policy is designed for one thing -- to limit civil liability on the part of the Department. If you read between the lines of the policy you will see that the policy actually reads, "DO NOT PURSUE." It is difficult for me to find a situation where a pursuit would be in policy.

Just so you know this is only ONE order given in the Operations Orders. There are a slew of other conditions given to terminate the pursuit that each of the officers should take the time to read.

The DAC has "all knowing wisdom" and sees that the officer was actually in pursuit before it was officially declared. The DAC receives the memorandums written by the officer, the departmental report, and the write up provided by the supervisor (not always the monitoring supervisor I might add). The DAC will then tell itself that since the officer is giving location and direction of travel, he/she is obviously in pursuit. Because of this, I'm telling you, fellow members, if you're in doubt, call it a pursuit.

Remember when you're reading the reasons to terminate or consider terminating a pursuit that you will be evaluated and "Monday morning quarterbacked" by the DAC's interpretations - not yours. Until then, just remember one thing: DO NOT PURSUE, if you must TERMINATE IMMEDIATELY!!!

Officers Save Man at Airport

Phoenix police used CPR to help save the life of an 80-year-old man at Phoenix Sky Harbor International Airport. The man stopped breathing while seated in a wheelchair in Terminal 3 on the evening of July 8. Officers Wayne Macklem and Don Dierks, along with Sky Harbor Operations Aide, Mogos Asfaha quickly responded. Officer Macklem checked for a pulse and could not detect one.

The officers laid the man on the floor. Officer Macklem began rescue breathing while Officer Dierks started chest compressions. The officers also connected an Automated External Defibrillator to the man, but the AED advised that no shock was needed. The officers continued CPR until firefighters arrived and took over life saving efforts.

The 80-year-old man had a detectable heartbeat when he was transported to the hospital. He remains under medical care. Firefighters who responded say the officers' actions were instrumental in saving the patient's life.
Part of the history of President Harry Truman was the sign on his desk: THE BUCK STOPS HERE. In other words, "In the end, I'm the responsible person in this organization. Others can 'pass the buck' to me but there isn't anyone for me to pass it to."

This is truly an impressive leadership philosophy that's easy to respect. I felt it important for you to be aware that Truman's sign has been moved from his desk to our dashboards. His philosophy has taken on a different application in the Phoenix Police Department.

I sat in on a level 4 grievance on July 8, 2004 that involved a Rapid Deployment Unit officer found out of policy for a pursuit. I discovered there might be some on the 4th floor who want to move Truman's sign. When it comes to pursuits, they want responsibility moved from the offices of supervisors to the patrol cars of officers - the BUCK is stopping with officers involved in pursuits.

This situation was at least the officer's sixth pursuit. All had been in policy and the last four were similar in nature; as similar as a police pursuit can get. The first five were found to be in policy by the Driving Analysis Committee (DAC) but the sixth was found to be out of policy. It seems that when the DAC chairperson changes so does the interpretation of the Department's pursuit policy. Chief McCort explained to the grievance board that "...the leadership of the DAC changes. Interpretation of policy may be different from different Chairs." Many would call this a "moving target" which can be extremely difficult to hit - it was for this officer who received discipline in the form of a written reprimand as a result of the new interpretation.

The make-up of the DAC consists of four commanders, three lieutenants, four sergeants and an officer. The grievance board was told that during the pursuit two first-line sergeants were monitoring, thought the officer was in policy, and did not terminate it. Two supervisors were actively engaged with their troops and assisted in the decision making process. Yet in spite of the "green light" of supervisory approval, it was only the officer who was held responsible for the newest interpretation of the pursuit policy. Chief Byers-Black said that, "Even though the supervisors knew, the ultimate responsibility lies with the officer. Even though the supervisors were monitoring it doesn't relieve (the officer) from responsibility." The managers make the decisions but the BUCK stops with the worker.

Chief Byers-Black explained that the pursuit had been initiated by the officer based only upon suspicion with no crime or crimes in progress. The grievance board communicated that the Chiefs had implied officers should only pursue for felonies. The board appeared to understand that Department policy doesn't prohibit a pursuit for lack of a felony. In reality, the driver of a suspicious vehicle commits a felony the moment he drives on and fails to stop. The officer shared with the grievance board that the driver he had been pursuing that late night on empty streets was in fact an armed felon with a parole violation warrant who, after he had crashed into a fence, ran onto school grounds to further elude capture.

When asked why the officer received a written reprimand, the BUCK continued to be passed - this time to the matrix. Chief Byers-Black stated, "The unfortunate thing is that the discipline from the matrix is outside of our control." In other words - blame the matrix not me! We are allowing a policy on a piece of paper to dictate what we do even though the same piece of paper allows us to deviate from the discipline it imposes. Many would call this "the tail wagging the dog." If we can't control our own policy what can we control? Perhaps there is a misunderstanding of policy. Perhaps it's easier to discipline than to write a memo. Perhaps we just love to discipline.

It was possible for me to walk away from this forum with a fellow officer intact and alive, with a bad guy in prison, and with some issues worth considering. First, I don't believe you're far off if you think supervisors are receiving "blanket immunity" in pursuits. Sgt. Eric Wyckoff offered credence to this thought process when he wrote in the PPSLA Summer 2004 newsletter, "In my humble opinion, the obvious primary responsibility for adhering to pursuit policy is upon the shoulders of the employee actually involved." Second, I don't know if anyone has ever been disciplined for not pursuing - they are extremely dangerous. Third, the subjective opinion of a rotating DAC chairperson is becoming the basis for pursuit policy decisions. And fourth, I don't feel that pursuits are a high priority to the De-

(Continued on page 6)
Where Does the Buck Stop?

(Continued from page 5)

The conclusion of this level 4 grievance: the written reprimand was upheld and the Department was encouraged to clarify its unclear and inconsistent, even if the end result is outstanding police work and a safe city, and even though we have sergeants involved and monitoring, officers will ultimately be held responsible for pursuits and disciplined. Weigh the desire and need to pursue on one side of the scale against your freedom, family, and finances on the other. Carefully consider if there's room on your dashboard for Truman's sign and carefully consider if it's worth chasing because it's clear where the BUCK stops.

The Defense of Dan Lovelace

By Craig Mehrens - Mehrens & Wilemon, Phoenix AZ

Chandler police officer Dan Lovelace responded to a priority one call, forged prescription in progress, on October 11, 2001 at approximately 3 p.m. in the afternoon. He was the first officer to arrive at the scene on his motorcycle and he parked his bike in front of Ms. Nelson who was in the outside drive-thru bay of a Walgreen's pharmacy (Officer Lovelace could tell that Ms. Nelson was engaged in conversation with the pharmacist and did not feel parking his bike in front and blocking her was unsafe at that moment).

He approached Ms. Nelson and politely asked for identification. She said she had none, although her purse was clearly visible in the seat. He then told her his purpose and said that he thought that this matter would be cleared up shortly, but that he noticed that her license plate was down as he approached her car (clearly giving him more information that she was involved in this crime). He asked that she remove the keys from her car, place them on the dash, which she did. He then went to the back of the car to put her license plate up. As he did so and was calling in the plate number, and began walking back toward the driver's side in the empty bay, Ms. Nelson put the keys in the ignition, and started her car.

Officer Lovelace ran to the front of the median, i.e., the forward left fender of her car and ordered her to cease this activity. She then moved forward and he again continued his police commands. She then ran into his bike and took a sharp left toward Officer Lovelace, leaving approximately 29 feet of rubber. Officer Lovelace believed he was being compressed into the building and the planter and unfortunately decided he had to shoot to stop this lethal threat. He aimed for center mass and fired. Ms. Nelson was killed almost instantly and her car decelerated to a approximately 5 miles an hour where Officer Marty Thompson's vehicle came in contact with it, fully stopping it. Officer Lovelace raced after the car and called in "shot fired, roll medics, one shot to the chest". Then Officer Lovelace opened the door to remove Ms. Nelson to perform CPR, he noticed that his shot had not entered her chest but actually had entered slightly to the rear of her upper left arm.

Maricopa County Attorney, Rick Romley, came to the hasty conclusion that this was a "bad show" and hired an outside ballistics expert. This expert was given misinformation and came to the erroneous conclusion that Officer Lovelace could not have fired the shot as he had relayed it. (Officer Lovelace had given a thorough taped interview on the evening of October 11, 2001 and had conducted a taped walk-through with the other officers.)

Mr. Romley went to the grand jury, obtained an indictment and arrested Officer Lovelace. An hour or so later he held a full press conference telling the public what a fabulous job he had done for this community.

Fortunately for Officer Lovelace, he was a member of the Chandler Law Enforcement Association, which had an agreement with the Legal Defense Fund to defend officers accused of crimes while on duty. LDF retained our office to represent Officer Lovelace. Our first tactic was to point out to the Judge what a slanted/faulty job the prosecution had done in presenting their case to the grand jury. The trial court agreed and remanded the case, ordering that the county attorney hold a second grand jury investigation. The county attorney did so and the second grand jury refused to indict.

Mr. Romley was not satisfied with that conclusion and filed a direct information with the trial court, again charging Officer Lovelace with second-degree murder. A jury trial was commenced in May of 2004 and a verdict was rendered on July 9, 2004 acquitting Officer Lovelace of second-degree murder and the lesser-included offense that the prosecution

(Continued on page 7)
The Defense of Dan Lovelace

had requested of manslaughter. He was also acquitted of endangerment as Ms. Nelson had her 18-month-old son in the backseat of her car. To mount this defense, the Legal Defense Fund authorized our office to hire the necessary experts. Without them a viable defense would have been virtually impossible. We were allowed to hire and have testify at trial the following experts:

Dr. Elizabeth Loftus, a world-renown expert on eye witness testimony and memory. Dr. Loftus has written numerous books and articles for over 30 years on the fallibility of memory.

Dr. Vincent DiMaio, the chief medical examiner of Bexar County, San Antonio, Texas and the author of Gunshot Wounds, the bible in that area.

Dr. William Lewinski, an expert in biomechanics and a behavioral scientist who focuses on police performance in lethal force encounters.

Dr. Paul Michel, a forensic optometrist providing expert opinions and legal testimony regarding human vision.

Tim Pebler, an accident re-constructionist. A former Arizona Highway Patrolman who left the patrol to attend engineering school and then devote the rest of his career to accident re-construction.

Mike Bumcrot, a retired Los Angeles Sheriff’s detective who has investigated over 100 officer involved shootings and has 34 years of police service, 22 in the homicide bureau.

Jan Spaeth, a jury consultant expert who was able to allow us to conduct jury focus groups and to help injury selection.

Atheia Hardt, a media consultant.

The jury deliberated for 2 and 3/4 days before reaching their unanimous verdict. In addition, the two alternate jurors let us know that they also would have voted not guilty.

The atmosphere in police shootings is becoming more and more hostile. Clearly this case had political overtones. The high publicity makes it even more difficult to defend as the media typically takes a slant against the officer. The prosecution tried to take a situation that developed in seconds and analyze in detail why things went "wrong". As U.S. Supreme Court Justice Oliver Wendell Holmes stated 63 years ago: "Detached reflection cannot be demanded in the presence of an uplifted knife." This was a hard fought victory and without the help and support of LDF, the outcome may well have been different.

Your Money: Where Your Federal Tax Dollars Go

President Bush has recommended the Valley’s light rail project receive a full federal funding commitment, including a $75 million payment for the upcoming federal fiscal year. The president has just released his fiscal year 2005 budget, which includes the funding recommendation for the Central Phoenix/East Valley Light Rail Transit Project.

The action officially begins the negotiation process between Valley Metro Rail officials and the Federal Transit Administration (FTA) for a Full Funding Grant Agreement (FFGA), a guarantee from the federal government that it will fund its share of the project. Rail project officials estimate the federal government will fund half of the 20-mile, $1.2 billion project and expect a funding agreement by the end of the year.
Representation Committee

Chairperson: Michelle Monaco
Vice Chairperson: Danny Boyd

Representatives:
Levi Bolton, John Buckner, Bob Furneaux, Josh Champion, Billy Coleman, Ken Crane, Sheldon Czegledi, David Dager, Doug Dillard, Greg Gibbs, Bryan Hanania, Gary Hotchkiss, Barry Jacobs, Dave Kothe, Karen Lewsader, Nick Margiotta, Franklin Marino, Tom Marquez, Brian Miller, Darren Nielsen, Steve Perrotta, Jerry Peterson, Dave Sampson, Toby Sexton, Frank Smith, Norm Smith, Mark Spencer

If You Have A Grievance

First: Attempt to resolve the matter informally with your supervisor.

Second: If you cannot resolve this with your supervisor, contact one of the representatives above.

Remember: There are time limits to initiate a written grievance.

Record: All interviews once you have been given an NOI.

Copy: All memos of paperwork related to the investigation.

If you are called by Professional Standards Bureau or any police supervisor regarding an investigatory interview or interrogation, you may have PLEA representation during that interview.

Call for representation as soon as possible.