

The Voice of Arizona Law Enforcement

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Judge Orders Pima County Sheriff to Reinstate Deputy Joe Harvey to Duty With Full Back Pay

After more than two years of fighting his unjustified firing, Deputy Joe Harvey, a founding member of the Pima County Deputy Sheriffs Association, has been ordered returned to duty with full back pay.

The ruling came Nov. 5 from Pima County Superior Court Judge Leslie Miller, who noted that Sheriff Clarence Dupnik refused to reinstate the AZCOPS member in March in defiance of a ruling by the county Merit Board following an appeal hearing.

Harvey was suspended Aug. 29, 2001, then fired Sept. 25, 2001, for allegedly using excessive force on a subject who had attempted to run down one deputy, taken other deputies on a 14-mile chase, then refused to comply with officers' directions to place his hands in plain view. The suspect was ultimately subdued after a hard struggle. When the prisoner started to pass out, Harvey had to slap him to obtain basic information and to determine whether he had taken any drugs, a recognized technique in this situation.

The Merit Board ruled that there was no cause for Harvey's termination and ordered his reinstatement with back pay. Dupnik refused, forcing Harvey to file a law suit. Harvey has been on paid administrative leave since March.

"I am so grateful for all the support given to me by (AZCOPS attorney) Mike Storie, AZCOPS, the Tucson Police Officers Association and our depu-



Deputy Sheriff Joe Harvey
Photo courtesy of the Arizona Daily Star

ties association. It's a great feeling to know that your labor organization will back you up when things get tough," Harvey said after winning his appeal hearing in March.

Following the judge's ruling Harvey again thanked his union and its members for "unwavering support" throughout his two-year ordeal. "I just want to get back into a patrol car and go to work again," he added.

While attorney Storie declared the court decision a victory, he said any celebration should wait until the Pima County Sheriff's Department decides to accept the court's order and the earlier ruling by the Merit Board.

"They're fighting tooth and nail and they can't seem to accept the fact that

an independent hearing officer and a whole commission said Joe didn't do anything wrong," Storie told the *Arizona Daily Star* in an interview following the court ruling.

"We'll see if they finally get it now. This should be the end of this ordeal," Storie told the newspaper.

Harvey, too, welcomes an end to the fight to save his job and reputation. He said that the firing and the negative publicity that resulted created a nightmare for him personally and an atmosphere that left him untouchable by any other law enforcement agency.

AZCOPS President Jim Parks heralded the court decision as "a triumph by one law enforcement officer and his union over those forces who choose to ignore impartial inquiries into the behavior of an officer who, after 14 years, has more decorations than any other active deputy in his department." ■

Our Newly Elected Officers

The ballots have been tabulated in the election of officers for 2004. Jim Parks was re-elected President without opposition. Chuck Foy, the union's founding president, was elected Vice President. Joe Harvey was elected Secretary Treasurer. They take office January 1.

The position of Vice President was added for the next year, and the jobs of Secretary and Treasurer were combined into one office.

President's Message *by Jim Parks*

A New Year Offers New Challenges, Opportunities

With 2003 coming to a close I would like to touch on the success we have had this past year and what the coming year has in store for AZCOPS.

First, I would like to take this opportunity to thank everyone for his and her efforts over the past year. I know all of you have given up quality times with your families and friends in order to make your associations and AZCOPS the successful organizations they have become. Thank you! We would not be successful without your support.

Now is the time that we must continue the push for a Meet and Confer ordinance at all local levels as well as a strong push at the legislative level. If we continue to succeed at the local level it will make it that much easier at the state level. We have had several associations that have won that battle.

However, there is still a lot of unfinished business to attend to. I urge all of you to continue this push and, as always, do not hesitate to contact AZCOPS for assistance.

Speaking of legislation, the need to continue to build a strong statewide legislative program is paramount. AZCOPS must increase its presence at the local level and at the state capitol as well. Matt Knowles of the Phoenix Police Sergeants and Lieutenants Association did a commendable job as our Legislative Director.

But, with Matt's departure as our director, we will need to search for a replacement quickly, whether it is a full time or part time lobbying position. We want to hear from any of you who are interested in becoming our Legislative Director.

We will not take a back seat to anyone in aggressively presenting our legisla



JIM PARKS, PRESIDENT

tive program to the 90 elected state senators and representatives in Phoenix. It will be a top AZCOPS priority next year and in the years to come.

We must continue to improve upon our Legal Plan. As the needs of our membership evolve so must our Legal Plan. Not only do we have the best Legal Plan in the state, we have the best attorneys available assisting our members with their needs and concerns. Martin Bihn, our General Counsel, has done an outstanding job putting together a great legal team consisting of over 30 attorneys throughout the state to assist us.

While other Arizona law enforcement organizations crow about how great their respective plans are, they are not telling officers that they require copays and formal votes of approval before their benefits are available to any of their members. That has never been the case with the AZCOPS Legal Plan.

Probably one of the most important jobs in AZCOPS is that of our organizer, and his ability to reach out to prospective affiliates. Without growth we

become stagnant and ineffective. We, as members, must continue to organize our fellow employees. As we have been told in the past, we must organize from within if we wish to survive and strengthen our cause. There is strength in numbers, and we will continue to expand our membership base through aggressive recruitment. Again, if you need help with this, we will be there for you.

With all of the accomplishments over the past year, our future requires that you, our membership, make this the organization that it can become. I commend you for all the hard you have done in the past to bring AZCOPS the successes that we have enjoyed thus far. This union cannot — and will not — succeed without your continued support and involvement. The Union is YOU.

Again, if you have any concerns about anything dealing with AZCOPS, I invite you to bring them to our attention.

I look forward to working with all of you in the new year. Be safe, and take care of one another. ■

AZCOPS Speaks is the official publication of the Arizona Conference of Police and Sheriffs, Local 7077, which determines its entire content, and is published quarterly. Comments or correspondence should be addressed to AZCOPS, Local 7077, 606 South Plumer Avenue, Tucson, AZ 85719. Stories submitted for publication become the property of AZCOPS Local 7077, and may be edited for clarity and content. Stories and/or photos may be submitted for publication to the above address. Photos submitted will be kept by AZCOPS, Local 7077, unless their return is requested in writing at the time of submission.

Know Your Legal Rights



Fireman's Rule Also Applies to Law Enforcement Injuries

The AZCOPS Legal team recently filed an amicus brief on behalf of POSA member Darius Taylor in his civil lawsuit arising out of an injury he sustained while on duty. The important issue at stake was the application of the "Fireman's Rule."

Most officers have not heard of this rule, but it applies to both firefighters and law enforcement officers.

Basically, this rule bars public safety employees from suing for injuries received on duty as a result of a third person's negligence. It is this rule that has caused me to consistently counsel police officers who are injured on duty that: although they have a worker's compensation claim, they are barred from filing negligence claims against the perpetrator.

I also want to make clear that I believe officers can file claims based on the *intentional* conduct of the perpetrators, i.e. assaults, etc., but the problem in those cases is that insurance does not cover intentional acts. It is the negligent act of these perpetrators for which insurance money is available.

AZCOPS Legal's intent in Taylor's case was to roll back or eliminate the application of the Fireman's Rule for law enforcement. While we obtained a victory for Taylor, the Court of Appeals did not publish the opinion so there is no widespread application for other law enforcement officers.

The facts in Taylor are as follows: Officer Taylor was off duty and driving home from work in a marked cruiser when he came upon a DUI stop in progress on a busy Scottsdale highway. Taylor pulled over to offer assistance. Taylor exited his vehicle and took up a position to observe the passengers in the suspect vehicle. One of the passengers, a physician, became verbally and



General Counsel Martin Bihn

physically combative. He exited the vehicle and proceeded to attack Officer Taylor. Officer Taylor was able to subdue the intoxicated physician, but in the process of doing so, the physician severely injured Taylor's shoulder.

The physician subsequently faced criminal charges and was also sued, personally, by Officer Taylor.

The trial court initially dismissed Taylor's case on the basis of the Fireman's Rule. On appeal, the Court of Appeals recognized that, "the Fireman's Rule does not apply to conduct other than that which necessitated calling the firefighter or police officer and does not apply to independent acts of misconduct committed after the firefighter or police officers has arrived at the scene."

The Court of Appeals then specifically recognized that Officer Taylor was called to the scene to assist in the stop of the driver suspected of DUI, not to stop the independent conduct of the passenger. Accordingly, the Court of Appeals reversed and remanded the case to lower court for further proceedings.

Please understand that the application of the Fireman's Rule is very fact specific and will most often preclude claims filed by others against perpetrators. ■

What The State Court of Appeals Said...

"Under the fireman's rule, a person who negligently causes or contributes to a fire that causes the injury or death of a responding firefighter cannot be held liable for that injury. The public owes no duty to the firefighter to exercise care so as to not require the services for which the firefighter is trained and paid. The fireman's rule applies to police officers as well.

"Whether the fireman's rule applies in a given situation depends on whether the negligently created risk which resulted in plaintiff's injury was the reason for (the firefighter's or police officer's) being at the scene in his professional capacity.

"The fireman's rule does not apply to conduct other than that which necessi-

tated call the firefighter or police officer and does not apply to independent acts of misconduct committed after the firefighter or police officer has arrived at the scene.

"However, it does apply to events that constitute the reason for his presence at the scene. Consequently, courts have held that the fireman's rule bars negligence actions by a police officer struck by a negligent driver while directing traffic at an accident scene...by a police officer bitten by a dog while responding to a burglary alarm where the owner failed to warn about the dogs on the premises...or by a police officer injured when a motorist he stopped for speeding negligently rear-ended his vehicle." ■



AZCOPS Second Annual

Leadership Training, Nomination of 2004 Officers, Awards Ceremony Are Featured Conference Events

More than 100 AZCOPS leaders from throughout the state were welcomed May 4 by President Jim Parks at the opening of the union's Second Annual State Convention at the Gold Canyon Resort near Apache Junction.

"I want to thank everyone for his or her efforts over the past year. I know all of you have given up quality time with your families and friends in order to make your associations and AZCOPS the successful organizations they have become," Parks said in opening the two-day annual meeting.

Parks thanked the Apache Junction POA and its members for the hard work necessary to host the conference, singling out President Bill Virtue and Treasurer Candi Nilles for their efforts.

The activity-packed weekend featured four seminars designed to provide leaders with training in critical situations faced daily by line officers.

Nominations for 2004 officers were, President; Jim Parks, Tucson POA, (unopposed); Vice President: Chuck Foy, Peoria POA; Joe Masella, Arizona Correctional POA; John Stair, Arizona Probation OA; and Bill Virtue, Apache Junction POA; Treasurer: Joe Harvey and Floyd Wilkes, both Pima County DSA. The election process is under way as *AZCOPS Speaks* goes to press.

The session on Weingarten vs. Garrity vs. Miranda: Know Your Rights, conducted by AZCOPS General Counsel Martin Bihn, focused on protecting your rights when faced with possible discipline.

Weingarten, now a law in Arizona (ARS 38-1101), permits an employee facing discipline to have a personal



AZCOPS CONFERENCE DELEGATES are welcomed to the Gold Canyon Resort in Apache Junction by President Jim Parks. More than 100 union leaders from throughout Arizona attended the two-day annual weekend meeting.

representative present during any meetings with supervisors or other employer representatives, Bihn said. However, he cautioned, a personal representative can only observe and cannot be an attorney unless agreed to by the employer. Further, the law does not cover probation officers, he said.

"That makes it important to have a Meet and Confer agreement to define your rights to a union representative or



APACHE JUNCTION POA hosted the conference at the Gold Canyon Resort. Shown above are (L. to R.) AJPOA President Bill Virtue, Apache Junction City Councilman Dave Waldron, a former police officer, and AJPOA Treasurer Candi Nilles.

lawyer in disciplinary hearings," Bihn said.

Gerrity, Bihn said, can be invoked if you are ordered to answer questions during a meeting with a supervisor or employer representative. He strongly suggested if being questioned to asked if you are being ordered to answer, If so, invoke Gerrity, which prevents any of your statements from being used against you in a criminal proceeding.

Miranda, a warning against self-incrimination and your right to have an attorney present during any questioning, also applies to law enforcement officers, Bihn said. "If you are given a Miranda warning, invoke your rights, end the interview and leave," he said.

"If you invoke Miranda in the context of a criminal investigation, your employer cannot charge you with insubordination." And, he added, "You union representatives must stop all testimony if it gets into any area of possible criminal liability."

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State Convention Convenes



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Sgt. Burt Robinson of the Chandler Police Intelligence Unit, a 19-year veteran in the department, conducted the session on Probation Officers: Lethal Force—What is Next?.

“You are responsible for justifying your own actions,” Robinson warned. That said, he defined guidelines to govern the activities of probation officers as well as protect them in the event they are involved in a “critical incident.”

The seminar was heavily attended by AZCOPS members who are probation officers following a shooting involving an off-duty Maricopa County probation officer only weeks before (see separate story on Page 7).

First and foremost, Robinson said, is compliance with your department’s policies and procedures regarding deadly force. Next, familiarize yourself with ARS 13-404 and ARS 13-405 covering your reason to believe it is necessary to protect yourself against **unlawful force** and **deadly force**, respectively. Finally, fully understand the elements of deadly force — intent, capability and opportunity (are you in jeopardy) — he said.

Cautioning not to force a deadly force situation, Robinson listed guidelines to remember following a “critical Incident”:

1. The evidence must corroborate your statements and visa ersa.
2. Ask for an attorney before making any statements prior to questioning. Consider taking 24 to 48 hours before making any statement.
3. All statements you make will be used in all three investigative processes as well as media reporting.
4. If you are given your Fifth Amendment rights, invoke your right to silence.
5. Expect to deal with the emotional



AWARDS CEREMONY recognized leaders who helped form and build AZCOPS. From the left are: John Burpo, Director, National Coalition of Public Safety Officers; Alex Droban, President, Sahuarita POA; Mike Thomas, President, Nogales POA; Henry Rios, AZCOPS Administrative Division Director; James Baribault, AZCOPS Secretary; Tim Clark, AZCOPS Staff Representative; Bill Virtue, Apache Junction POA; Rich Anemone, founding member of the Tucson POA; and Candi Nilles, Apache Junction POA. Receiving awards but not shown were Chuck Foy, Peoria POA and AZCOPS founding President; Jeff Dartt and Earl Huff, President and Vice President respectively, Camp Verde PSA; and Ed Skinner, founder and editor of *AZCOPS Speaks*.

problems that occur from such an unnatural situation.

Rich Anemone, a founding member of the Tucson Police Officers Association and AZCOPS, lead the seminar on How To Run a Successful Union. “Know your group, know how to organize and develop strong leaders who are motivated,” he said, adding that organizing help is available from the AZCOPS staff and its other affiliates.

“You need to be a player in political action. Contracts are won in the political arena, and politicians who want to be elected or re-elected will listen to you. Help get the right people elected, then help them stay in office, Anemone said.

He also urged activity in the community. “Develop community programs, get your association recognized in the community,” Anemone said. He cited the Shop With A Cop program at Christmas and the Kid Care program

that fingerprints and photographs youths as examples of community activities that have become popular. “You will be surprised how strong community identity and support will help you,” he said. ■



KEY SPEAKERS included (L. to R.): John R. Thompson, II, Vice President District 7, Communication Workers of America; John Burpo, Director, National Coalition of Public Safety Officers; and Martin Bihn, AZCOPS General Counsel.



AZCOPS Stands Up for You

Members Laud Union for Quick Response Time to “Critical Incidents” in Four Areas

Several AZCOPS members caught up in four officer-involved shootings since August put the union’s Legal Team through its paces in responding to these crises.

“Based on the feedback from officers and association leaders, members throughout the state can feel confident that quick, supportive assistance is also available to them should they need it,” AZCOPS President Jim Parks said.

On August 2, 2003, at approximately 2105 hours, Globe Police Officer Officers Association member Andrew Chaidez and his partner, together with a Gila County deputy, were involved in an officer-related shooting during a felony stop in Globe.

AZCOPS attorney Jerry DeRose was dispatched by GPOA leadership, arriving at the scene of the shooting some 10 minutes later to assist the officer. “Mr. DeRose’s professional compe-

tence provides the perfect incentive for non-members to come on board and join AZCOPS,” GPOA President Kelly Angel said.

“Please pass on our thanks to AZCOPS Legal for the outstanding job (it did) during our most recent officer-involved shooting” said Pima County Deputy Sheriff’s Assn. Chairman Mike Powell.

The incident took place about 0130 on August 18, and within five minutes of leaving a message with the AZCOPS answering service the deputy involved was speaking with PCDSA’s local attorney, Mike Storie. He arrived ahead of the department’s shooting investigation team, spoke to the deputies involved and greatly reduced their stress.

“Mike’s dedication was, once again, a credit to the AZCOPS Legal Team. On behalf of all our members please accept our gratitude,” Powell wrote later.

On Aug. 31, 2003, a Quartzite police officer who received a La Paz County Sheriff’s Department alert on an armed robbery in nearby Ehrenberg, spotted the suspect vehicle on Interstate 10. He radioed for backup and was quickly joined by two other Quartzite PD units. They initiated a stop of the vehicle, which was carrying two men. The suspects ignored officer commands and jumped from their vehicle, with one subject firing at officers. The officers returned fire, killing one perpetrator. The other then surrendered.

Officer Candi Conley, who was involved in the incident, notified Quartzite Chief Ed Jaakola, who responded to the scene. Lake Havasu POA Business Manager Gary Dull also was contacted (Quartzite officers are members of the LHPOA), who in turn called AZ-

COPS attorney Martin Brannan in Parker. Both responded to support the officers involved, who also included Sgt. Jason Perkinson and Officer Steve Frakes. None of the officers were injured in the firefight.

Even Chief Jaakola, who previously was confronted by the AZCOPS Legal regarding pay and overtime issues, said he was grateful to AZCOPS for the handling and support for his officers.

Thankfully, our members got through this incident unscathed. AZCOPS General Counsel Martin Bihn thanked Chief Jaakola for his work at the scene, including the backing he gave to the officer involved. “Chief Jaakola could certainly show Maricopa Probation management a thing or two about support and human compassion for officers doing very dangerous jobs,” Bihn said.

The fourth critical incident in as many counties occurred during the evening hours of October 22, 2003. Three Yavapai County Sheriff’s Office deputies were involved in a shooting incident in the Black Canyon City area.

Yavapai Public Safety Association Vice President Chip Cain was telephoned by one of the deputies shortly after the incident. With the assistance of General Counsel Bihn, attorney Tom Baker was contacted and arrived in the remote area about 40 minutes later, again prior to the arrival of the DPS Shoot Team.

“I spoke to all the deputies involved, and they all are very pleased with the response time of Tom Baker, his knowledge, his supportive and comforting behavior, and the follow-up he has done. We thank Tom for his support,” Cain said. ■

El Mirage Dispatcher Discipline Is Reversed

Discipline against an El Mirage police dispatcher for purported excessive absenteeism and failure to perform her job adequately was reversed after the union’s legal team contested the action.

El Mirage had placed the AZCOPS member on probation, even though she had been employed by the department for several years. Under city personnel rules, she could have been fired from probation for any or no reason without the right to appeal that action.

During a hearing, El Mirage supervisors conceded that absenteeism was not an issue, and that job performance should be handled by more training. ■



More News Around Arizona

Maricopa Probation Threatens Discipline For PO Who Shot Carjack, Attempted Murder Suspect

A Maricopa County probation officer who shot and help capture an attempted murder suspect who was preparing to kill the officer has been told he may face discipline from his department.

“If the probation department makes any effort to discipline our member, AZCOPS will put out the call to all of our members statewide. AZCOPS will not only make this a very public issue in the media, but will ask all members to express their outrage directly to Maricopa County Chief Probation Officer Barbara Broderick, her supervisor the Presiding Judge Colin Campbell, the Administrative Office of the Courts (AOC), the Governor and Legislature,” warned AZCOPS General Counsel Martin Bihn.

The nearly fatal incident for our member, who is in his 60s, occurred on

Sept. 9 while he was making late night contacts with probationers on his caseload in one of the worst neighborhoods in the county.

While filling out paperwork in his vehicle after a contact, the officer had a 357 magnum put to his head and was jerked out of the vehicle by a man fleeing the scene of an attempted murder. Failing to start he vehicle, the perpetrator tried to force the officer into the driver’s seat, but our member, at least 30 years older and 50 pounds lighter than his assailant, resisted and fought back.

Fearing he would be shot, the officer offered the perpetrator his wallet, who took the wallet and our member’s cell phone, then pushed him to the ground and started to walk away. But 50 feet away he stopped, turned around, raising his weapon and began advancing rapidly toward the officer.

At that point, knowing his assailant was preparing to shoot him, the officer unzipped his fanny pack and retrieved his weapon just as a shot whizzed past his head. Firing four rounds, the officer caught the perpetrator squarely in the leg, who then ran away.

The officer jumped into his vehicle and chased the perpetrator, trying to utilize the emergency button on his radio. The attempts failed due to the area’s “dead spot” where no radio contact exists. Within a block, he was joined by Phoenix police vehicles and a helicopter, which, unaware of the attack on the PO, was responding to a call on the initial attempted murder, flooded the area. Police hounds were able to track the blood trail of the perpetrator, and he was apprehended.

Our member called his supervisor from the scene, who arrived with a department deputy director. After giving his statement, the officer felt ill and was taken to a hospital, accompanied by his supervisors. Unfortunately, neither the officer nor his supervisors contacted AZCOPS, which knew nothing of the critical incident until after the officer returned to his home.

Subsequently, the officer was first threatened with firing, then served with a notice of paid administrative suspension and notice of investigation for carrying his own weapon.

Ordered two years ago by the Arizona Supreme Court to create a weapons policy, train its officers and arm them, the Maricopa County Probation Department thus far has refused to comply with that order. That mandated officer safety program came after AZCOPS led a year-long, intensive effort to have probation department officers armed. ■



DOC TACTICAL SUPPORT UNIT displays its “tools of the trade” at the AZCOPA Christian Law Enforcement Convention held Nov. 22, 2003, in Casa Grande. Shown above (L. to R.) are Tactical Support Unit members CO II Edward Cooper, CO II Robert Gonzalez, CO II Fred Caruso, and CO II Anthony Young. Conclave co-sponsors included Phoenix Suns, Pinal County Fairgrounds and Warriors of God. The one-day event featured law enforcement displays, craft vendors, stage entertainment and demonstrations, and a variety of ethnic and cultural foods.

Arizona Conference of Police and Sheriffs, Local 7077



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 - Tucson Police Officers Association
 - Winslow Police Officers Association
 - Yavapai County Probation Association
 - Yavapai Public Safety Association
 - Yuma County Deputy Sheriffs Association
 - Yuma County Probation Association
 - Yuma Police Officers Association

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