

March 26, 2008

Michael Manning
Leslie O' Hara
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1850 N. Central Avenue
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Re: Response to Gotbaum Notice of Claim

Dear Michael and Leslie:

As the death of Carol Gotbaum became more and more of a media event, the police officers extracted from the City of Phoenix a promise – if the Gotbaum family publicly accused the officers of being responsible for Carol's death, then the City would publicly defend the officers. This is the beginning of that defense. Circumstances do not allow the City to discuss, in this writing, all of the factual evidence and legal arguments that justify the City's rejection of the Gotbaum claim, but the claim is rejected, and rejected at least in part based on the justification below.

Carol Was Traveling Alone and Unescorted

The thrust of the Gotbaum family claim is that the City of Phoenix police officers should have been more supportive than Carol's own husband, more knowledgeable than her own family, and should somehow have known that she suffered from a private condition that she deliberately hid from the public.

As the Gotbaums' attorney, you have reportedly suggested that the police officers should have recognized that Carol was physically or mentally ill.¹ But the Gotbaum family has publicly admitted, not only that Carol hid her medical and mental condition, but that the officers responded to Carol *exactly* the way her husband knew they would respond because they *did not have* critical information known only to the Gotbaum family.

It is undisputed that at the time of her arrest Carol was not self-destructive. Angry because she missed her flight? Obviously. Intoxicated at a 0.24% BAC? Probably. But the *only* ones who knew that Carol was depressed, suicidal, and alcohol-abusive were members of her own family. This incontrovertible fact comes to us, not from lawyers, advocates, or hired public relations specialists, but

from the mouth of her husband, Noah Gotbaum, who is now accusing the officers for doing exactly what he *knew* they would do without the missing information.

Consider if you would, Noah's calls to the airlines after his wife had already passed away. In his own words, Noah Gotbaum warns that his wife is sick and that without the critical information he has, the officers will think they are dealing with "some lout who's just drank too much on an airplane." Summarized below is what Noah did *not* communicate to aviation, airline, or law enforcement personnel until well after his wife passed away at 3:29 P.M.

To US Airways:

- 16:13 we have a pretty serious situation ... the last I heard she was screaming, crying, and she is really in a very, very sad mental state ... she's there by herself, in the airport ... and I don't think anyone really understands what kind of condition she's in.
- 16:50 do you understand how serious the situation is . . . you know, this is very, she is very "at risk" Okay? people at the airport and U.S. Airways don't understand that ... if she didn't [get the flight] then they're gonna have to do something because she cannot be sitting there at the airport on her own . . .

To City of Phoenix:

- 16:39:17 well, my wife is at the airport and she is in a very, very fragile mental state. ... the last thing I heard she was screaming over the telephone
- 16:41:02 this is an emergency ... she got bumped off a flight to Tucson and then she just, from what it sounds like she was in the middle of a nervous breakdown ... she's on her way to Tucson to go to a clinic there
- 17:29:13 [my wife's] in a really, really sensitive medical state and [the police] don't know that ... and they don't know the background ... this is a dangerous situation we're in right now ... she is in a medical emergency ... I need to discuss that with [the police] because they're playing with dual fires right now ... it's important that [the police] call me because they're not dealing with ... just a normal situation ... this is someone who's, who is suicidal ... you're dealing with a medical emergency ... [the police] don't know that and they don't understand the background ... it could make matters much worse ...
- 18:01:57 I'm trying to find out about my wife ... she's been pulled in by the police

18:03:00 she was on her way to rehabilitation in Tucson ... the police don't really understand what they're dealing with right now; she is suicidal ... she is alcohol abusive ... she is also in deep depression and the police have to understand that they're not dealing with someone who has been drinking on flight and acting rowdy; it concerns me ...that she is all alone ... because she should not be; this is a medical emergency; they're not dealing with some lout who's just drank too much on an airplane; [my wife] is suicidal and they need to deal with very kid gloves ... they don't know what they're dealing with ...

One is left to wonder why, armed with this knowledge, Noah allowed Carol to fly, alone and unescorted, on a one-way trip to an addiction treatment clinic in Tucson. The Gotbaum family knew that Carol was hiding her condition from the public, that she “was ashamed of her problems and put on a mask for the world.”² The Gotbaum family knew that Carol “had a drinking problem for about three years;”³ that in November of 2006 Noah is reported to have found Carol drunk and passed out in their home; and, that Noah Gotbaum described Carol as previously having a “breakdown,” although other family members characterized it as a possible suicide attempt.⁴ Unlike the police officers, Noah knew that Carol was in a really, really sensitive medical state, that she was suicidal, alcohol abusive and in deep depression.

Noah has admitted that Carol was in deep depression and should not be alone. Michael, I believe even you are quoted as saying that, “You don’t leave someone that you know is sick.”⁵ Well, who left Carol alone *knowing* she was sick? Noah did. And he now criticizes the police officers for dealing with a situation that he, as her husband, could have prevented.

Even more telling, the Gotbaum family criticizes the officers because the officers did not “put an arm around [Carol’s] shoulders, sit her down and give her some attention.”⁶ So, with Carol reportedly screaming her hatred of “American cops,”⁷ the Gotbaum family believes that these same hated officers should have put their arms around her shoulders, sat her down, and given her some attention. One would ordinarily expect that role to fall to a spouse. But, Carol was alone.

With a lawsuit contemplated, we are now told that Carol was “so happy.”⁸ However, she was observed on the flight to be crying,⁹ sad, and breaking into tears.¹⁰ It fell to the flight attendant and other passengers to try and comfort Carol. Why? Because Carol was alone.

And why did it take Noah so long to check on Carol's welfare? The flight that Carol missed departed at about 1:13 p.m., and Carol was on the phone immediately to Noah. You undoubtedly have reviewed the following from Carol's cell phone.

1:13 p.m.	Carol Gotbaum placed call to Noah Gotbaum's cell phone, call duration 1:09.
1:15 p.m.	Carol Gotbaum placed call to Noah Gotbaum's cell phone, call duration 3:34.
1:32 p.m.	Carol Gotbaum received call from Noah Gotbaum's cell phone, call duration 4:24.
2:10 p.m.	Carol Gotbaum placed call to Noah Gotbaum's cell phone, call duration 2:25.
2:13 p.m.	Carol Gotbaum placed call to Gotbaum home phone, call duration 1:44.
2:35 p.m.	Carol Gotbaum placed call to Gotbaum home phone, call was "aborted."
2:35 p.m.	Carol Gotbaum placed call to Noah Gotbaum's cell phone, call duration 1:21.

Whether they actually talked to each other and what they had to say we will likely discover in due course. But, in his first recorded call to US Airways Noah reports that, *the last he heard*, Carol is screaming, crying, and in a very, very sad mental state, that she's by herself in the airport and that no one really understands what kind of condition she's in. US Airways received Noah's call at 4:13 p.m., *1½ hours after Carol's last call*. Giving Noah the benefit of every doubt, where was he between 2:35 p.m., when Carol last placed a call to his cell phone, and when he called US Airways 1½ hours later?

And now maybe we know. In the recent *Phoenix Magazine* article by Jana Bommersbach, Noah admitted that at 2:47 he received a phone call from Carol during which she was "very, very upset – crying, almost screaming". She shrieked that they would not let her on the plane and "[t]hen the phone goes dead and that was it."¹¹ Knowing that Carol was in a really, really sensitive medical state, that she was suicidal, alcohol abusive and in deep depression, and hearing her scream for help, Noah did what? . . . Well, we know what he did not do – he did not call the airlines until 4:13 p.m. more than an hour after the phone went dead.

The City of Phoenix Officers Acted Appropriately

Under A.R.S. § 13-2904(A) a person commits disorderly conduct by being seriously disruptive. The crime of "disturbing the peace" embraces a wide variety of conduct that disrupts public order and tranquility. *State ex rel. Williams v.*

Superior Court in and For Pima County, 20 Ariz.App. 282, 512 P.2d 45 (App. 1973).

Carol Gotbaum was appropriately detained for disorderly conduct. Michael, as the Gotbaum's attorney, you are reported as having acknowledged that "it was appropriate for police to detain Gotbaum based on her behavior." You then apparently went on to concede that the Gotbaum family had "no quarrel whatsoever with police intervening."¹²

The police intervention took the form of the officers taking physical control of Carol and placing her in a holding cell. In Phoenix, the supervision of prisoners in holding rooms is regulated by Operations Order 7.3(2)(F). Generally, officers will "check the welfare of their detainees at least once every 15 minutes."¹³ We know that the officers complied with this regulation. The last time stamp on the CCTV monitor for the airport concourse shows Carol in the custody of the police at 2:54; the first AED was pulled from its wall socket at 3:14; consequently, the absolute maximum time that Carol was not under direct observation can be no more than twenty minutes. When one takes into consideration the time it would have taken the officers to walk Carol to the elevator, take the elevator from the 3rd floor of Terminal 4 to the 2nd floor police office in Terminal 4, walk her from the elevator to the police office, process her, maneuver her into the cell, handcuff her¹⁴ and then to later retrieve the AED, the amount of time Carol was left alone was certainly less than the fifteen minutes called for in the regulation.

The irony of this claim is inescapable. The Gotbaum family is criticizing police officers, who are unaware of Carol's condition, over a 15-minute policy, while the family, fully aware of her condition, left her alone and unescorted on a cross-country flight through one of the busiest airports in the country.

In making this claim, the Gotbaum family is apparently assisted by their "celebrity pathologist," Cyril Wecht. Can you confirm whether he is still a defendant in a 41-count fraud indictment alleging that he used county resources in his private business; defrauded private clients with bogus travel invoices; and submitted falsified mileage receipts to surrounding counties?¹⁵

In 2007 the Phoenix Police Department received over 33,000 calls for service and made almost 4,500 adult bookings involving Disorderly Conduct/Loud Noise and Drinking. Is there anyone seriously suggesting that the officers should place a 24-hour suicide watch on each "drunk and disorderly" suspect they arrest? That they should put their arms around their shoulders, sit them down, and give them some attention? Or is this treatment only for the wealthy and politically influential?

The City of Phoenix police officers responded with professionalism and restraint to a situation not of their making. The claim by the Gotbaum family is denied. It is denied by the City of Phoenix. It is denied by the individual officers.

¹ Khan, Chris, The 'crude, rude, brutal' death of Carol Gotbaum, AP, 13 November 2007 12:35.

² Lee, Trymaine, *Gotbaum Mourners Recall Compassion and Distress*, New York Times, October 8, 2007 (Mr. Gotbaum said his wife was ashamed of her problems and put on a mask for the world.)

³ Sexton, Connie Cone, *Stress may have fueled airport outburst*, The Arizona Republic Oct. 7, 2007 (A family spokesman said Gotbaum had a drinking problem for about three years ...)

⁴ Eligon, John, *Life of Comfort and Pain Ends in an Airport Cell*, New York Times, October 6, 2007 ("Last Nov. 1, Noah Gotbaum phoned his father and stepmother to say that he had just discovered his wife, Carol, drunk and passed out in their town house on West 95th Street"; After the episode on Nov. 1 last year — which Noah Gotbaum described to others as a "breakdown" and family members later came to refer to as a possible suicide attempt").

⁵ Eligon, John, *Autopsy Finds That Death of Gotbaum Was Accident*, New York Times, November 10, 2007 ("You don't leave someone that you know is sick," Mr. Manning said. "She died because she was put in that room with a 20-inch shackle and left there by herself, ignored and unobserved until it was too late to save her life.")

⁶ Einhorn, E., *Tears & rage at Carol Anne Gotbaum's funeral*, Daily News, Monday, October 8th 2007, 2:51 PM ("If the airline or the police authorities had treated Carol with some modicum of dignity and grace ... or if one single person at that airport had put an arm around her shoulders, sat her down and given her some attention, she might still be with us today.")

⁷ Eligon, John, *Life of Comfort and Pain Ends in an Airport Cell*, New York Times, October 6, 2007 (A security guard said he heard her [Carol] yelling her hatred of "American cops").

⁸ Hampson, Rick, *Family of woman who died hires high-power team*, USA TODAY

⁹ Statement of Pamela Jackson.

¹⁰ PPD DR, Supp. 53 p. 2 (Jodi Hall)

¹¹ Bommersbach, Jana, *Carol's Broken Dreams*, Phoenix Magazine, April 2008. p. 189.

¹² Hampson, Rick, *Family of woman who died hires high-power team*, USA TODAY

¹³ Operations Order 7.3(2)(F)(1)

¹⁴ Officers are permitted to use "restraining devices when necessary to control a detainee". Operations. Order 7.3(3). No one disputes that Carol was out of control.

¹⁵ Mandak, Joe, *Jury to hear opening statements in celebrity pathologist case*, AP Sun, Jan. 27, 2008.