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By Craig T. Kojima, Star-Bulletin
From left, lawyer Richard Fried, Susan and Rod Ambrose, and their son Nik hold a press conference on the Arakawa case at Fried's office.

Cop roamed about after accident but DUI suspects

usually restrained

A lawyer says if officers had 'reasonable suspicion' and didn't act, then more than a 'courtesy' was given

By Rod Ohira
and Jaymes K. Song
Star-Bulletin

Officer Clyde Arakawa was allowed to roam around while police union officials were getting an attorney to the scene of a fatal collision in which he is a suspect, said Chief Lee Donohue.

"We don't normally allow that," Donohue said yesterday about "courtesies" extended to Arakawa, who was arrested for negligent homicide and driving under the influence in last Saturday's collision on Pali Highway that killed 19-year-old Dana Ambrose.

In a written statement issued by Donohue on Wednesday, the chief said the "courtesies" had no impact on the investigation.

But one noted defense attorney, who requested anonymity, said a key issue is any officer at the scene had "reasonable suspicion" that Arakawa was driving under the influence of alcohol.

It is at that moment that "a policeman becomes no different than anyone else" in a similar DUI situation, the attorney said.

If there was "reasonable suspicion" not acted upon during the nearly 90-minute period from when police first arrived at the scene to 1:20 a.m. -- when Arakawa was asked to take a field sobriety test and refused on the advice of union attorney David Gierlach -- then Arakawa was extended more than a courtesy, the attorney added.

The Ambrose family, meanwhile, made a public appeal yesterday for anyone who witnessed the 11:50 p.m. collision at the Pali-School Street intersection to contact their attorney Rick Fried at 524-1433.

Fried said his preliminary investigation clearly indicates there is "significant physical evidence" that Arakawa did not have the green light at the intersection when the off-duty officer's car broadsided Ambrose's Honda.

"It appears as if he was speeding and ran the red light," Fried said. "He was not following the rules of the road and was heavily intoxicated."

Fried stressed that the private investigation is in its beginning stages and that his information comes from a "variety of secondhand sources."

City Prosecutor Peter Carlisle declined to speculate on the "courtesies" issue until he has a chance to review the negligent-homicide case, which is still being investigated by police.

Michael Ostendorp, Arakawa's attorney, did not return calls for comment.

At his quarterly meeting with news media editors yesterday, Donohue identified the "courtesies" extended to Arakawa and acknowledged that the department could have done a better job of keeping the public informed about the case.

There was a problem with releasing information that normally is not given out, and it "affected the perception" of how the case was being handled, Donohue said.

"I think what the public really wants is what is fair," he said.

Donohue is investigating what happened and will make necessary corrections.

In addressing the "courtesies" issue, the chief said an officer at the scene notified a State of Hawaii Organization of Police Officers official about Arakawa's involvement in the collision.

The union official then contacted attorney David Gierlach, who advised officers at the scene that Arakawa should not make any statements until he had a chance to consult with him.

People can call their attorneys following an accident, Donohue said. But he acknowledged that notification through a police officer is not something that is normally done by the department.

There is an agreement -- though it is not in writing -- with the union that in "critical situations," such as shootings involving police officers, an attorney should be notified to "make sure the rights of the officer won't be violated," Donohue said.

Donohue said Arakawa should have been secured away from the crime scene by officers and not permitted to roam freely. His movements were videotaped by KHON-TV.

There was also a problem with the Traffic Division's code-a-phone, which is used to brief the media on major traffic incidents. No recording of the Arakawa incident was made, and reporters had a difficult time tracking down traffic investigators for information.

Maj. Jeffrey Owens, who recently took over command of the Traffic Division, said investigators were busy with the case and that the recording was "overlooked."

The chief also clarified the sobriety testing procedures.

There is only a three-hour window for officers to ask a DUI suspect to take a sobriety test. After that, "we can't ask anymore," the chief said.

Arakawa was later given a breath test to determine if he was sober enough to give a

statement to officers. Arakawa reportedly blew a 0.06 blood alcohol level, which is below the legal limit of 0.08.

Drivers can be forced to take DUI blood test

**Arakawa wasn't forced to
take the test, but that's standard
police practice on Maui**

By Debra Barayuga
Star-Bulletin

Police should have administered a blood and breath test to an off-duty police officer involved in a fatal car crash at Pali Highway and School Street last Saturday, a former state deputy attorney general said.

That's even though officer Clyde Arakawa refused to take the tests to determine blood-alcohol content, said Ted Baker, also a former deputy prosecutor now in private practice.

In emergency cases where someone is seriously injured or killed, police may obtain a breath or blood sample without a search warrant, Baker said.

"Use of that exception to obtain blood-alcohol samples has been approved by the U.S. Supreme Court and the Hawaii Supreme Court," he said.

The arrest of Arakawa for suspicion of driving under the influence and refusal to submit to a breath or blood test has raised questions about the effectiveness of the law requiring blood-testing and whether police are enforcing it.

Dana Ambrose, 19, was killed when her Honda was struck by Arakawa's Thunderbird.

Recent comments from police about their inability under the law to force DUI suspects to submit to blood-testing in cases that involve serious injury or death concerns Baker, who feels Honolulu police are incorrectly applying the law.

"Either they don't understand the law, which is an indictment in itself, or they don't choose to apply it to one of their own, which is worse."

Prosecutor reviews policy

If police had probable cause to arrest Arakawa for suspicion of driving under the influence

and there was a death involved, police should have obtained a warrant or used reasonable force to obtain a blood sample before it dissipated from his system, Baker said.

City Prosecutor Peter Carlisle and Police Chief Lee Donohue both said yesterday they will be reviewing their policies and whether any need changing.

"We're looking at what the law means and how it's being used," Carlisle.

Motorists suspected only of driving under the influence are routinely asked to submit to blood or breath testing.

A driver can refuse, and police then inform him that he can lose his driver's license for a year, said attorney Keith Shigetomi, who represented Bucky Lake in a DUI collision near Sandy Beach that killed five people in 1988.

But under a law passed in 1981 requiring blood tests from motorists suspected of driving under the influence and where someone is seriously injured or dies, "nothing shall prevent (police) from getting it," Shigetomi said.

The law was revised in 1991, requiring medical personnel at a treatment facility to notify police if someone involved in a motor vehicle accident in which a person has been seriously injured or killed meets or exceeds the legal blood-alcohol limit.

But the law has been subject to discussion as to when and where it applies, Maj. Jeffrey Owens, head of the Traffic Division, said at a news conference earlier this week.

"It would seem the person must be under treatment at a medical facility before we can bring that particular statute into play," he said.

Past practice for Honolulu police is not to transport a person they suspect is under the influence to a medical facility for the purpose of drawing blood or urine samples, he said.

"Only if they're transported to a treatment facility (for injuries sustained in the crash) we ask personnel to take a sample," Owens said. Clarification of the law would have to come from the Legislature, he said.

Maui police take samples

On Maui, blood is automatically drawn from motorists involved in all motor vehicle incidents, fatal or not, where police have probable cause to believe the driver is under the influence of alcohol or drugs, said traffic Sgt. Victor Ramos. If there is probable cause and suspects refuse, a sample is taken anyway, he said.

Officers transport the suspect to the police station, where an on-call nurse extracts blood, which is then taken to a lab for testing. If the suspect is injured and taken to a hospital, certified medical personnel will draw the blood, Ramos said.

Even if the motorist is not suspected of causing the collision or driving under the influence, he is still asked to provide a blood sample to rule out any questions that may arise later, Ramos said. In 99.9 percent of the time, motorists comply, especially if they have nothing

to hide, he said.

Carlisle, who also suggested that there ought to be a way to take DUI suspects elsewhere besides a hospital for blood-testing, said Maui's practice "sounds like a system that maybe would make sense."

Sen. Matt Matsunaga, co-chairman of the Senate Judiciary Committee, believes police are correct in saying the law doesn't require a person to be taken to a hospital to be tested. But if suspects refuse to be tested, "the punishment will be pretty severe."

If a driver refuses to take the test, administrative penalties are yanking the suspect's driver's license or, in repeat offender cases, the car's license plates.

"The whole theory is because of constitutional rights, if you refuse to submit to testing, we're going to enforce these laws because it's an implied consent thing when you apply for a driver's license," Matsunaga said.

Police can still prosecute a person based on other evidence, he said. "The question is whether an individual has the constitutional right against self-incrimination."

The U.S. Supreme Court has ruled that a defendant's rights against self-incrimination applies only to testimonials or statements, Shigetomi said. Hawaii's appellate courts in August also concluded in State vs. Ferm that forcing someone to take a field sobriety test does not violate their right against self-incrimination.

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