

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: William Gerard Montgomery
2. Have you ever used or been known by any other name? Yes If so, state name:

Bill Montgomery
3. Office Address: 301 W. Jefferson, Ste. 800, Phoenix, AZ 85003
4. How long have you lived in Arizona? What is your home zip code?

I have lived in Arizona for almost twenty-one years, since June of 1998. My home zip code is 85249.
5. Identify the county you reside in and the years of your residency.

I have resided in Maricopa County for almost twenty-one years, since June of 1998.
6. If nominated, will you be 30 years old before taking office? ☒ yes ☐ no

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? ☒ yes ☐ no

7. List your present and any former political party registrations and approximate dates of each:

Republican, March 2, 1985 to present

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: Male

Race/Ethnicity: Caucasian

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

United States Military Academy (USMA), West Point, NY, Bachelor of Science

Arizona State University Sandra Day O'Connor College of Law (ASU), Tempe, AZ, Juris Doctorate

10. List major and minor fields of study and extracurricular activities.

USMA: Field of Study – National Security/Public Affairs Studies

Extracurricular Activities: Cadet Academic Council, 1985 – 89, President 1988-1989; Intramural Sports – boxing, football, softball; West Point Representative to Student Conference on United States Affairs, 1988.

ASU: Field of Study – Law with elective emphasis in criminal law

Extracurricular Activities: Law Journal, Staff, 1999 – 2000; Associate Articles Editor, 2000 – 2001; Phi Alpha Delta; Christian Legal Society; Federalist Society; and the Homeless Legal Assistance Project.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

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USMA: Dean's List 8 Semesters; Distinguished Cadet 2nd Semester, 1987-1988; Intramural Brigade Boxing Team Championship, 1986; West Point Representative, Student Conference on United States Affairs, 1988; Battalion Activities Officer, 1st Semester 1988 - 89.

ASU: Non-Resident Tuition Scholarship/Waiver; Dean's List/Pedrick Scholar six semesters; Truman R. Young Prosecution Fellow, 2000-2001; graduated Magna Cum Laude and Order of the Coif; Pro Bono distinction for volunteer service.

Employment during law school:

From May of 2000 through the first part of August of 2000, I worked at the Phoenix City Prosecutor's Office as part of the Truman R. Young Fellowship. Continuing with the Fellowship, I worked at the Maricopa County Attorney's Office approximately six hours a week from the second half of August through December 2000. Finally, I split the last semester of law school working between the Arizona Attorney's General Office and the U.S. Attorney's Office for the District of Arizona for approximately six hours a week at each office.

During the summer between my first and second years of law school, I worked as a Summer Associate for Meyer, Hendricks & Bivens in Phoenix.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Arizona Supreme Court, 2001
US District Court, District of Arizona, 2005
9th Circuit Court of Appeals, 2012
United States Supreme Court, 2013

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance.

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Maricopa County Position: Maricopa County Attorney	11/2010 – Present	Phoenix, AZ
Candidate, Maricopa County Attorney	5/2010 – 11/2010	Gilbert, AZ
Maricopa County Position: Deputy County Attorney	7/2008 – 4/2010	Mesa/ Phoenix, AZ
Lewis, Brisbois, Bisgaard & Smith Position: Associate	9/2007 – 7/2008	Phoenix, AZ
Arizona Voice for Crime Victims Position: Senior Counsel, Federal Enforcement Project	1/2007 – 9/2007	Tempe, AZ
Candidate, Arizona Attorney General	6/2006 – 11/2006	Gilbert, AZ
Arizona Voice for Crime Victims Position: Staff Attorney, Crime Victims Legal Assistance Project	4/2005 – 5/2006	Tempe, AZ
Lewis, Brisbois, Bisgaard & Smith Position: Associate	9/2004 – 2/2005	Phoenix, AZ
Maricopa County Position: Intern/Conditional Hire/ Deputy County Attorney	5/2001 – 9/2004	Mesa, AZ
Law Student	8/1998 – 5/2001	Tempe, AZ
Hitachi PC Corporation Position: Product Marketing Engineer	3/1997 – 6/1998	Milpitas, CA
Applied Materials Position: Product Marketing Engineer	11/1995 – 3/1997	Santa Clara, CA
United States Army Position: Armor Officer	5/1989 – 12/1995	Fort Knox, KY, Fort Hood, Fort Bliss, TX

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve. Please see **Tab A**.
16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

My law practice over the last five years encompasses management of a civil practice and a criminal practice. I supervise over 1,000 total employees, including over 350 attorneys, and manage a budget of approximately \$100 million. The criminal law practice is about 65% of my direct legal work and encompasses juvenile and adult matters, including supervising over 330 prosecuting attorneys. The scope of the criminal practice ranges from establishing guidance for prosecutors to ensure the appropriate disposition of offenders, direct supervision of select high profile prosecutions, decisions regarding capital punishment, and providing guidance on criminal appellate matters.

In establishing guidance for the disposition of offenders, I regularly research changes to criminal statutes and assess legislative intent and the overall goals of the criminal justice system to ensure prosecutors are pursuing justice in each and every case with the rights of the accused, the rights of the victim of crime, and the wider community impact in mind.

Personal supervision of select high profile prosecutions can occur when there has been a crime uniquely impacting the community. My criminal practice then includes reviewing the strength of the evidence in the case and the potential for a pretrial resolution in conjunction with the assessment of the assigned prosecutor, as well as the potential need for retaining experts, strategies for the presentation of evidence, and potential themes for closing arguments.

For capital cases, my direct supervision and approval of reviewing cases for capital punishment includes a careful consideration of the appropriateness of a capital sentence based on all available evidence, input from the next of kin, and information provided by defense counsel to help inform the decision whether to seek capital punishment in the first place. This has also included establishing an enhanced system of communication between capital defense counsel and capital prosecuting attorneys for the sharing of information that has led to the lowest percentage of capital case filings, less than 10% of cases reviewed, in over twenty years.

Lastly, the Bureau Chief of the Appeals Bureau for criminal cases has been a member of my Senior Management Team since I became the County Attorney. This creates the opportunity for a bi-weekly review of appellate matters in which I

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provide guidance on issues whether to pursue an appeal. I also review recent Arizona Courts of Appeal and Arizona Supreme Court cases to provide guidance on implementing decisions where called for. The same holds true for reviewing cases decided at the federal level. I have also provided direct guidance in select criminal case appeals and reviewed and edited appellate briefs.

The civil practice constitutes approximately 35% of my time. It consists of advising government entities and officials regarding the execution of statutory and constitutional duties. Given the varied responsibilities of county departments and officials, advice can range from issues related to taxing authority, civil rights matters, to zoning, general civil liability, and defense of state statutes. I supervise and engage directly in civil litigation on behalf of Maricopa County agencies and departments, elected and appointed officials, in state and federal court at the trial and appellate levels.

When providing advice to the Board of Supervisors and other officials and county departments, I regularly provide personal input and review and edit memoranda prior to delivery to the client, which has also included conducting legal research and writing myself to address issues officials have raised with me directly. This permits me to personally carry out my duties as the attorney for my statutory clients and assist them with implementing the advice in serving the people of Maricopa County.

As part of my civil practice responsibilities, I also supervise a civil department of approximately 45 attorneys. I also have supervisory responsibility for matters that have been assigned to outside counsel for reasons other than a legal conflict. In the case of matters being considered for appeal, I regularly review the bases for appeal, consider the issues to be raised and applicable case law, brief the Board of Supervisors, and then provide advice on whether to pursue an appeal. Appellate matters over the course of my tenure have included matters in the Arizona Court of Appeals, the Arizona Supreme Court, the 9th Circuit Court of Appeals, and the U.S. Supreme Court.

17. List other areas of law in which you have practiced.

Crime Victim Rights law, enforcing state constitutional and statutory provisions in trial and appellate courts and enforcement of federal statutory provisions in trial and appellate courts.

While working at Lewis Brisbois Bisgaard and Smith, my work encompassed: Workers Compensation; Medical Malpractice and Elder Law; General Liability and Subrogation; Professional Liability; Insurance and Re-Insurance; Insurance Coverage and Bad Faith; Construction and Surety; Public Entity; Personal Injury; Employment; Labor and Entertainment; Business Practices; and, Directors and Officers Liability.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. Not applicable
19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

Throughout my entire career as an attorney I have been involved in numerous collaborative efforts to draft pleadings, settlement documents, proposed legislation, and proposed rules of evidence, as well as rules of procedure for civil and criminal practice.

My first six months as the Maricopa County Attorney involved negotiating and drafting documents to resolve litigation over civil representation of the Board of Supervisors and Maricopa County. This effort directly led to the reestablishment of the County Attorney's Civil Services Division without any further litigation. During this time frame and shortly after, I also helped negotiate and draft agreements between criminal justice information stakeholders for Maricopa County that led to the resolution of ongoing litigation. These documents regarding civil representation and managing criminal justice system information sharing are still in effect today, though they have been modified as necessary over time. I have also directly participated in the drafting and negotiating of Maricopa County's Revised Restated Declaration of Trust for the County's Self-Insured Risk Trust Fund.

I was directly involved in creating the Office of Child Welfare Investigations and the Department of Child Safety, developing legislation addressing the investigation, handling, and processing of sex assault kits, and legislation addressing human trafficking affecting services for victims, sentences for perpetrators, and additional statutory tools for law enforcement. Each legislative session, I serve as a reference for legislators and associated stakeholders to review a variety of legislative proposals for statutory changes affecting numerous titles in our Arizona Revised Statutes.

With respect to other important legal documents, in my capacity as County Attorney, I have a recurring duty to negotiate and draft protocols addressing child abuse investigations, sex assault investigations, and domestic violence.

I have also served on the Legislative Committee for the National District Attorney's Association where we review federal legislative proposals and work with respective legislators and their staffs. I have also worked directly with members of our congressional delegation on various legislative proposals.

Lastly, I have been involved in the drafting of numerous criminal and civil rules of procedure sponsored by the Maricopa County Attorney's Office, the Arizona Prosecuting Attorneys Advisory Council, and various committees through delegates from my Office.

20. Have you practiced in adversary proceedings before administrative boards or commissions? No If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency. Not applicable

b. The approximate number of these matters in which you appeared as:

Sole Counsel: Not applicable

Chief Counsel: Not applicable

Associate Counsel: Not applicable

21. Have you handled any matters that have been arbitrated or mediated? Yes
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 2

Chief Counsel: Not applicable

Associate Counsel: 1

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

CR 2008-168161, *State v. Kenneth McCarter*. The State filed a Direct Complaint on December 8, 2008 and the Defendant was sentenced on March 2, 2010 with an Order discharging him from probation entered on April 6, 2012.

Attorney for Defendant:

Jeremy Mussman, Jeremy.Mussman@Maricopa.Gov, 602-506-7711, ext. 38202

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Attorney for the State:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260

The case involved charges of Aggravated Assault with a Deadly Weapon and DUI that occurred in the context of a road rage incident. The case was significant in that it involved reviewing the Defendant's military records to negotiate a just result under all the circumstances. Ultimately, the original plea agreement was modified to take into account the serious nature of the offense, the Defendant's PTSD directly associated with service in Iraq, and the opportunity to connect him with in-patient treatment at a VA facility instead of a prison sentence. About a year later, I received a letter from the Defendant's father notifying me about the Defendant's success in treatment and stating the father had his son back. The review of this case also provided a guide to reviewing similar cases of prior military service and is still a reference point for how to handle similar matters today.

CV 2008-033194, *William G. Montgomery, et al. v. Maricopa County Board of Supervisors, et al.* This matter was litigated from January 9, 2009 to February 15, 2011.

Attorneys for William G. Montgomery, et al.:

J Scott Rhodes, srhodes@jsslaw.com, 602-262-5862

William G Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260

Attorney for Maricopa County Board of Supervisors, et al.:

Thomas K. Irvine represented Maricopa County 602-999-3650

The case involved a declaratory judgment action by the county attorney at the time regarding the ability of a board of supervisors to hire outside legal counsel to advise the board on conflicts of interest between the county attorney and the board in civil representation. The action also challenged the ability of the Board to create and fund separate litigation departments under the supervision of persons outside of the County Attorney's Office.

The case was significant in that it involved the basic statutory framework for civil litigation representation for Arizona county governments and the respective duties and responsibilities between a county attorney and a board of supervisors as a client and not just as a relationship between elected officials. The litigation also highlighted the degradation in the relationship between and among county officials that significantly impaired the ability for county government to properly function. The case was ultimately resolved with a stipulated dismissal.

CR2014-113297-001, *State v. Shanesha Shaine Taylor*. A Direct Complaint was filed on March 25, 2014, for two counts of Child Abuse, each a Class 4 Felony.

Attorneys for State of Arizona:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260
Faith Klepper, klepperf@mcao.maricopa.gov, 602-372-1027

Attorney for Ms. Taylor:

Benjamin P. Taylor, BT@taylorgomezlaw.com, 602-403-0212

The Defendant left her two small children in a car while she went inside of a business to interview for a job. Prosecution was suspended on July 30, 2014, following agreement for terms of a diversion program I negotiated with the Defendant and her attorney.

The case was significant due to the community attention the case received and the surrounding circumstances that called for a tailored resolution to ensure accountability and safeguard the children while demonstrating fairness and maintaining the Defendant/Mother's ability to secure employment. I personally participated in resolving the case where the Defendant was permitted to avoid a felony conviction by participating in parenting classes, establishing an education trust fund for each child from a "Go Fund Me" windfall she received, and a child care account to ensure the children would have safe and reliable child care. Unfortunately, the Defendant later violated the terms of the agreement and was subject to prosecution.

CV 14-01356-PHX-DGC, *Puente Arizona, et al., v. Joseph M. Arpaio, et al.* The first Complaint in the case was filed on June 18, 2014 and the Notice of Settlement resolving the case was filed on January 26, 2018.

Attorneys for Plaintiffs:

Anne Lai, alai@law.uci.edu, 949-824-9894
Sameer Ashar, sashar@law.uci.edu, 949-824-9894
Daniel J. Pochoda, dpochoda@acluaz.org, 602-650-1854
Jessica Karp Bansal, jkarp@ndlon.org, 213-380-2214
Ray A. Ybarra Maldonado, rybarra@stanfordalumni.org, 602-910-4040

Attorney for Defendant Sheriff Joseph Arpaio:

Michele Marie Iafrate, miafrate@iafratelaw.com, 602-234-9775

Attorney for Defendant State of Arizona:

G. Michael Tryon, michael.tryon@azag.gov, 602-542-5025

Attorneys for Maricopa County and Maricopa County Attorney:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260
Ann Thompson Uglietta, uglietta@mcao.maricopa.gov, 602-506-8541

The case involved a challenge in federal court against two Arizona identity theft statutes and Arizona's forgery statute, alleging that enactment and enforcement of the statutory provisions resulted in discrimination. The suit sought declaratory and injunctive relief arguing, among other points, that the enforcement of the laws in question were preempted by federal law, violated the Equal Protection Clause of the United States Constitution, and sought to preclude enforcement in the employment context. The case was ultimately settled following a 9th Circuit ruling upholding the district court's determination that the laws were not preempted and were being constitutionally enforced. Each side agreed to forego continued appeals/litigation.

The case was significant in that it involved a federal preemption challenge of state criminal statutes in a highly charged area of continuing controversy regarding illegal and legal immigration and the ability of people to secure employment without lawful authority under federal law. I worked with and through associated counsel to respond to legitimate points made by Plaintiffs – we ceased relying on federal forms for charging decisions – while defending Arizona's ability to deter conduct that was harming innocent people. I personally reviewed and participated in the drafting and editing of the pleadings and the appellate briefs filed in the case.

23. Have you represented clients in litigation in Federal or state trial courts? Yes
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 5

State Courts of Record: 500 - 600

Municipal/Justice Courts: 500

The approximate percentage of those cases which have been:

Civil: < 1%

Criminal: 99%

The approximate number of those cases in which you were:

Sole Counsel: 99%

Chief Counsel: < 1%

Associate Counsel: < 1%

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 25%

You argued a motion described above 10%

You made a contested court appearance (other than as set forth in the above response) 98%

You negotiated a settlement: 95%

The court rendered judgment after trial: 1%

A jury rendered a verdict: 4%

The number of cases you have taken to trial: (approximated)

Limited jurisdiction court 50

Superior court 20

Federal district court 1

Jury 15

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

Complete records of cases I handled before 2008, at Arizona Voice for Crime Victims, Lewis Brisbois Bisgaard and Smith, and the Maricopa County Attorney's Office are incomplete or inaccessible. Additionally, the numbers above do not reflect the hundreds of civil and criminal cases I have supervised in my capacity as the County Attorney.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 8

Criminal: 15

Other: 5 (Crime Victims' litigation)

The approximate number of matters in which you appeared*:

As counsel of record on the brief: 15

Personally in oral argument: 1

* - Note: these numbers do not reflect the number of cases in which I have directly supervised appellate attorneys. When adding in those numbers, there are easily ten times as many cases, aside from direct oral argument, that I have been involved in reviewing issues, editing and drafting briefs, or both for the Arizona Court of Appeals, Arizona Supreme Court, United States Court of Appeals for the 9th Circuit. With respect to briefs filed with the United States Supreme Court, I have been directly involved in developing the issues to be raised and arguments to be presented on four different petitions for certiorari in *Isaacson v. Horne, et al., Maricopa County, et al. v. Lopez-Valenzuela, et al., Maricopa County v. United States*, and *Maricopa County v. Melendres, et al.* As noted at Question 16, on at least a bi-weekly basis I have been involved in reviewing and providing guidance for criminal appeals matters over the last eight years.

25. Have you served as a judicial law clerk or staff attorney to a court? No If so, identify the court, judge, and the dates of service and describe your role.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

CR 2003-031102-001, *State v. George Tallman*. Defendant was found guilty on all counts by a jury on November 6, 2003 following issuance of an Indictment for two counts of Aggravated Assault - Dangerous on March 11, 2003. The matter was heard in the Maricopa County Superior Court, Southeast Facility, by Judge David M. Talamante.

Attorney for the State:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260

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Attorney for George Tallman, Jr.:

Brandon Cotto, 602-443-2220

In this tragic case, the Defendant crashed into another car while his blood alcohol content was measured at .228 less than an hour after the collision. Two people were seriously injured. The driver of the other car suffered significant injuries that precluded her from ever working as a dance teacher again and the passenger in the Defendant's car was rendered a quadriplegic.

The case was significant because the paralyzing injuries to the passenger required the state, the defense, and the court to travel to her long-term care facility and conduct a videotaped deposition. The State previously filed a motion specifically requesting a videotaped deposition so that the jury would be able to see the passenger, whom the defendant asserted was the actual driver, and be able to assess her credibility better than with just a transcript of her testimony. The proceedings called for collaboration with defense counsel to permit a sensitive approach to the direct, cross, and redirect examination mindful of her rights to be treated with fairness, respect, and dignity and the Due Process rights of the accused.

CR 2009-030276-002, *State v. Nathaniel Sample*. This case was tried in the Maricopa County Superior Court before Judge Kristin Hoffman. Indictments were returned against the Defendant and a Co-Defendant on February 9, 2009 and Defendant was convicted on September 15, 2009.

Attorneys for the State:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260
Elizabeth Cottor, Elizabeth.A.Cottor@USDOJ.gov, 480-586-8692

Attorney for Defendant:

J. Craig Mehrens, mehrens@azdefender.com, 602-258-4485

The case involved a violent assault of a bar employee by two members of a notorious motorcycle gang. Efforts to resolve cases against both defendants by way of plea agreement were not successful as the terms captured the circumstance that the beating was intended to further the gang's reputation and to intimidate others, though the Co-Defendant did plead guilty and agreed to testify due to racially discriminatory treatment by other gang members. Expecting the case to be contentiously litigated, and it was, I assigned myself as co-counsel. I later directly supervised and participated in drafting response to subsequent post-conviction review.

The case was significant because it resulted in the first finding by an Arizona jury that the gang did satisfy, under Arizona law, the criteria for a finding that it was a criminal street gang. Furthermore, during the trial, instances of witness intimidation occurred and the safety of all involved personnel was a concern that I actively managed. Post-trial, the court also considered whether to pursue remedies for conduct by counsel for the defense.

CV2012-053585, *White Mountain Health Center v. Maricopa County, et al.*
Plaintiffs filed their Complaint on June 19, 2012 and a judgment was entered in their favor on December 3, 2012. The case was heard in the Maricopa County Superior Court by Judge Michael D. Gordon.

Attorney for White Mountain Health Center, Inc.:

Jeffrey Kaufman, jeff@kaufmanesq.com, 602-999-7205

Attorneys for Maricopa County:

William G Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260
Peter Muthig, muthigk@mcao.maricopa.gov, 602-506-1735

Attorney for Arizona Department of Health Services and Director Will Humble:

Kevin D. Ray, kevin.ray@azag.gov, 602-542-8328

Attorney for State of Arizona and Arizona Attorney General:

Charles Grube, Charles.grube@azag.gov, 602-542-8341

The Plaintiffs sought declaratory, injunctive, and mandamus relief to secure the necessary paperwork to open a medical marijuana dispensary under Arizona's Medical Marijuana Act. The case was litigated in the trial court and subsequently in the court of appeals.

The case was significant because it involved questions of federal preemption, statutory construction, and county zoning authority all associated, for the first time, with the citizen's initiative creating the Arizona Medical Marijuana Act (AMMA). I asserted that the conflict between state and federal law created significant conflicts for county employees and raised other issues of first impression that required resolution by the courts and not by the determination of an executive branch official with law enforcement duties. Following the Court's ruling and eventual appellate court action, Maricopa County complied with all court orders and statutory provisions of the AMMA. I also directly supervised the and participated in the preparation of appellate briefs.

CIV 12-01501-JAT-PHX, *Isaacson v. Horne, et al.*. Plaintiffs filed suit on July 12, 2012 and the matter was decided by the court on July 30, 2012 before Judge James Teilborg of the District Court for the District of Arizona.

Attorneys for Plaintiff Paul Isaacson, M.D.:

Janet Crepps, janet.crepps@radprogram.org, (864) 238-3036

David Brown, dbrown@lawyeringproject.org, (646) 425-1225

Christopher LaVoy, cal@tblaw.com, 602-452-2731

Attorneys for Plaintiffs William Clewell, M.D. and Hugh Miller, M.D.:

Susan Talcott Camp, tcamp@aclu.org, (212) 549-2500

Kelly Flood, Kelly.Flood@asu.edu, (480) 894-8996

Attorneys for Maricopa County Attorney:

William G. Montgomery, montgomw@mcao.maricopa.gov, 602-506-1260

Doug Irish, irishd@mcao.maricopa.gov, 602-506-3411

Attorneys for Arizona Attorney General, Arizona Medical Board and its Director:

Dave Cole, dave.cole@azag.gov, 602-542-8305

Evan Hiller, hiller@sackstierney.com, 480-425-2600

Attorney for Pima County Attorney:

Paula J. Perrera, paula.perrera@pima.gov, 520-724-7923

Plaintiffs filed suit to prevent enforcement of a state law that was set to take effect on August 2, 2012. The law regulated abortions after a gestational age of 20-weeks and set penalties and punishments for violations. I personally argued the case at the federal district court and after the Plaintiffs appealed the district court judgment, I also argued the case before the 9th Circuit Court of Appeals.

The case was significant because it involved the application of U.S. Supreme Court precedent to legislative action by the State of Arizona in a highly controversial area where new scientific evidence was the basis for state action. Specifically, the case called for reviewing prior U.S. Supreme Court decisions in the area of abortion in light of current scientific evidence and the role of states in our system of federalism.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or

agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.). Not applicable

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3)

the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case. Not applicable

29. Describe any additional professional experience you would like to bring to the Commission's attention.

As a publicly elected official, I have had to ensure that the political dimensions of the Office never interfere with the obligation to seek justice in all the matters that Arizona law requires me to address. While I may engage in debate over various public policy matters that intersect with the duties and responsibilities of the office I serve in, I have never let politics affect the decisions I have to make. First and foremost in my mind is the constant realization that I have to set an example for the men and women of the Office. If I am to expect civil attorneys and prosecutors to base their decisions on objective information and argue from facts, then I must do the same. The approach to deciding cases of statewide impact for a Supreme Court Justice reflects a similar reality. While controversy may swirl about a pending case, the members of the Court must stay focused on the matter before them and on the facts and the law to be applied.

Additionally, I have experienced the necessity for ignoring the political rhetoric that often flows from advocating for a position different than that of various special interest groups, whether it involves criminal justice policy or ballot initiatives. I have the practical experience of not letting political differences interfere with my obligation to work with fellow county officials or with fellow criminal justice system stakeholders in Maricopa County, independent of political affiliation or their side of an issue. While high volume criticism, regardless of the justification or lack thereof, may be a part of the political dimension of the job, I have never let it define how I work to maintain the public's confidence in our civil, criminal, and juvenile justice systems.

This understanding of the nature of my position and the work I have engaged in over the last eight plus years gives me a greater sensitivity for the apolitical nature of the judiciary and the fact that the public policy matters I have engaged in are for the Executive and Legislative branches. In order to uphold the integrity

and impartiality of the judiciary and to serve honorably as an Arizona Supreme Court Justice, I recognize I must forego all such activity and I actually look forward to pursuing a new challenge in doing so.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? No If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? Yes If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Non-profit 1st Way Crisis Pregnancy Centers, board member through 2019. Along with other board members, we provide oversight and direction for the management of the non-profit entity that provides pregnancy and post-pregnancy services to women in crisis pregnancies, as well as educational and counseling services for men and women.

Non-profit Association of Prosecuting Attorneys (APA), Director through 2020. I serve on the Board of Directors that approves budgets and provides direction to the President/CEO. APA seeks grant funding for training initiatives and best practices for prosecutors throughout the country.

Non-profit Great Hearts Arizona (GHA), Vice-President through this next year with service until 2020 remaining on the Board of Directors. GHA serves as the Charter Management Organization for Great Hearts charter schools providing education to K-12 students in the Phoenix Metropolitan area.

Non-profit National District Attorney's Association (NDAA), Vice-President. I serve on the Executive Committee that approves budgets, provides direction to and approves purchases by the Executive Director, and provides training and advocacy for elected and appointed prosecutors across the country and their offices.

Non-profit Tepeyac Leadership Initiative, Director through 2019. I serve on the Board of Directors that provides guidance to a nonprofit developing Catholic lay leaders for service in the community.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed?

Yes If not, explain your decision.

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes If not, explain.
33. Have you paid all state, federal and local taxes when due? Yes If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? No If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? Yes If so, identify the nature of the case, your role, the court, and the ultimate disposition.

As the County Attorney, I am frequently named in lawsuits in my official capacity for purposes of advocating on behalf of Maricopa County and as a named defendant in suits against the Maricopa County Attorney's Office. No suit where I have been named as a defendant has ever resulted in a finding of liability or improper conduct on my part. Please **Tab B** for suits where I am a named party.

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No If so, provide details.

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? No

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition. Not applicable

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

12/95 Honorable Discharge from the United States Army, Active Duty.
1/2002 Honorable Discharge from the United States Army Reserve
2014 (approximate) Honorable Discharge from the United States Army Reserve

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice.

Please see **Tab B** for lawsuits alleging wrongdoing related to criminal prosecutions.

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42.

Not applicable

44. List and describe any sanctions imposed upon you by any court. Not applicable

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction

from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? No If so, in each case, state in detail the circumstances and the outcome.

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? Yes. If so, list with the citations and dates.

I publish a monthly office newsletter at:

<https://www.maricopacountyattorney.org/237/Monthly-Newsletters>

"Setting the Record Straight on Sentencing," *Arizona Capitol Times*, July 11th, 2011; "Adding to Prosecutor Duties Adds Little Justice," *Arizona Attorney*, May, 2013; "Correcting wrongs on Victims' Rights Bill," *Arizona Capitol Times*, April

11, 2014; "We already get criminal justice right in Arizona because we ask the right questions," *Arizona Republic*, March 8, 2015; "A spotlight on what matters," *Arizona Republic*, May 15, 2015; "Fix Arizona's revenge-porn law," *Arizona Republic*, July 13, 2015; "My Turn: Prop. 205 would cost the criminal-justice system more than it saves," *Arizona Republic*, October 30, 2016; "Split Up the Ninth Circuit," *National Review* (with Congressman Andy Biggs) June 15, 2017; "Congress should 'Just Say No' to dangerous drug policy," *The Hill*, July 14, 2017; "We have no standard for measuring recidivism," *The Hill*, November 15, 2017; "Necessity of the Death Penalty," *Arizona Republic*, November 27, 2017; "Letter to Law Enforcement on Public Records," *Arizona Republic*, May 30, 2018; "My Turn: 3 Years to Stop Recidivism", *Arizona Republic*, February 23, 2018; "Arizona's criminal justice system has much to admire," *Arizona Daily Star*, January 19, 2018; "The Time to Prepare for a Police Shooting Is Before It Happens," *Route Fifty*, September 6, 2017; "Much not Told in ACLU Report on Criminal Justice," *Arizona Capitol Times*, September 13, 2018; "21st Century Prosecutors Strive for More Than Convictions," *Arizona Capitol Times*, December 6, 2018; "Arizona Leads the Way in Criminal Justice Reform," *Arizona Capitol Times*, December 21, 2018.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes If so, describe.

Adjunct Faculty at Sandra Day O'Connor College of Law: Victims in Criminal Procedure, Spring 2018, Fall 2018, Spring 2019.

Adjunct Faculty at Duquesne University, Tempe Campus: Undergraduate course in Business Law, 2018, Fall 3d term, Spring 6th Term, and Undergraduate course Introduction to Constitutional Law, Spring 7th Term.

I also regularly lecture incoming prosecutor training classes throughout the year on professionalism and expectations of MCAO.

Numerous guest lecture presentations:

2011 – Present:

ASU – Undergraduate Classes: Death Penalty Seminar, Leadership, Arizona Criminal Law, Crime Victims' Rights

Sandra Day O'Connor College of Law – Prosecutorial Ethics, Sentencing, Criminal Justice Issues, Crime Victims' Rights

Numerous CLE Presentations since 2010. Recent presentations include:
Maricopa County Bar Association, Panel on 50th Anniversary of Miranda v. Arizona, May 4, 2016
Extrajudicial Statements and Pretrial Publicity, May 20, 2016
Arizona Criminal Justice, Scottsdale Bar Association 2016
Arizona Criminal Justice, East Valley Bar Association, August 2016
Arizona Criminal Justice, West Valley Bar Association, 2017
Social Media: Pitfalls and Pratfalls, May 2, 2017 and May 14, 2018

Arizona State Bar Convention Presentation, Politics and the Public Practice of Law, June 15, 2017

Arizona Paralegal Association, Social Media, April 13, 2018

Military Justice Regional Symposium, March 14, 2017

53. List memberships and activities in professional organizations, including offices held and dates.

Arizona County Attorneys Association, Member since November 2014
Arizona County Attorneys and Sheriffs Association, Member since November 2010, Vice-President 2011 – 2013, President 2013 - 2015
Arizona Criminal Justice Commission, Member since November 2010, Vice-Chair 2011 – 2013, Chair 2013 - 2015
Arizona Prosecuting Attorneys Advisory Council, Member since November 2010
Association of Prosecuting Attorneys, Member since 2011, Director since 2017
National District Attorneys Association, Member since 2011, Vice-President since 2017

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? Yes

Arizona State Bar ER 8.4 Task Force
Numerous delegates to committees on Criminal Rules of Procedure, Criminal Jury Instructions, and Fair Justice for All Task Force
Religious Liberty Law Section, Executive Committee

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like. Not applicable

54. Describe the nature and dates of any relevant community or public service you have performed.

Legislative GPS Study Committee, 2008

Chair, Governor's Child Safety Task Force, October – December, 2011

Member, Governor's Human Trafficking Task Force, April – September, 2013

Chair, Arizona Substance Abuse Partnership, 2015 - Present

Co-Chair, Governor's Sex Assault Evidence Collection Kit Task Force, January – September, 2016

Department of Child Safety Legislative Oversight Committee, 2015 – 2016

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

Town of Gilbert Community Excellence Awards, 2004, Mayoral Award for Community Service

National Crime Victims' Rights Awareness Week Commemoration: Justice for Victims . . . Justice for All, April 14, 2008, recognition for work on behalf of Arizona's crime victims

ASU Sun Devil Army ROTC Battalion, April 23, 2011, award for community service and support of future Army leaders

CPLC Parenting Arizona, 2012, Champion for Children Award

notMykid, 2016, recognition for leadership and advocacy on behalf of children

Si Se Puede Foundation, April 2, 2016, Child Advocate of the Year Award

The Greater Phoenix Chamber of Commerce, May 10, 2017, recognition for leadership, support, and advocacy on behalf of business

Latino America Primero, January 27, 2018, recognition for work with the Hispanic Community

Founder's Award, Childhelp, May, 2019, recognition for support of Childhelp's mission of serving children victimized by physical and sexual abuse

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Precinct Committeeman, 1998 – 2001
Candidate for Arizona Attorney General, Republican Primary and General Election, 2006

Candidate for Maricopa County Attorney, Republican Primary and Special Election 2010, Republican Primary and General Election 2012, Republican Primary and General Election 2016
Service as Maricopa County Attorney 2010 - Present

Have you ever been removed or resigned from office before your term expired?
Yes. If so, explain.

Due to Maricopa County's Employee Merit Rules, once I began employment with the Maricopa County Attorney's Office in 2001, I could not continue serving as a Precinct Committeeman.

Have you voted in all general elections held during the last 10 years? Yes If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

Italian cooking (I can make a mean, award winning Tiramisu!), grilling, traveling, and reading.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration. Please See **Tab C**

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

Given the role of the Supreme Court in administering the Judicial Branch of State government, I would highlight that I have extensive experience working collaboratively with partners across Arizona at various levels of government on matters of widespread concern. Over the course of my time as the Maricopa County Attorney, I have had the opportunity to serve on commissions, committees, workgroups, and task forces to address areas of public policy and public administration from improving the response to children in crisis to redesigning our child welfare system, to improving our state's response to human trafficking victims, to resolving a statewide backlog in the testing and processing of sex assault kits.

My service on the Arizona Criminal Justice Commission and the Arizona Prosecuting Attorneys Advisory Council has given me numerous opportunities to work with men and women from across our state in rural and urban settings to tailor solutions to common problems in a way that reflects the differences in resources and the nature of populations served, including the marginalized and disadvantaged and our fellow Native American citizens. In my role as a county official, I have negotiated multi-million dollar budgets and managed a workforce of over 1,000 employees across multiple functional areas from investigators, administrative professionals, to paralegals, IT staff, and attorneys. Additionally, my earlier career in Silicon Valley gives me a deeper familiarity with software and computer design that has been the subject of Court inquiry and development of rules of procedure and evidence in areas such as electronic discovery, GPS technology, and issues related to the implementation and editing of video evidence.

Given the role of the Supreme Court in the administering the Rules of Professional Responsibility and attorney discipline, I would also note my responsibilities as the hiring authority for the Maricopa County Attorney's Office. I have been responsible for the recruitment, training, recognition, and discipline of employees. Shortly after taking office, I implemented a formal initial training program to develop professional and ethical prosecutors committed to seeking justice in each and every case they handle. We incorporated ethics training wherever possible and I began the practice of personally administering the oath of office to each new attorney to underscore the importance of the oath and our shared duty to uphold it. I also expanded the authority of our Office's Ethics Committee to include reviewing suspected misconduct by our own attorneys and not just reviewing complaints about judicial officers or criminal defense attorneys. Furthermore, I charged the Ethics Committee with the duty to report any allegations of misconduct against me to the State Bar and forbade them in policy from communicating or notifying me of their action. I also directed the practice of

reviewing Arizona Court of Appeals and Supreme Court cases where attorney misconduct was addressed to identify trends and concerns that we could incorporate into our training program.

In matters that did call for discipline, each incident was used as an opportunity to underscore the standards of conduct expected of attorneys without favor or prejudice. Regardless of the employee involved, I have also insisted on fairness and objectivity to model the same approach expected of how prosecutors should deal with defendants. Whenever called for, I directed cooperation with the Arizona State Bar and, when appropriate, the Office's Ethics Committee has utilized its expanded authority under my leadership to refer attorneys to the State Bar for a review of their actions. To address the imposition of discipline in the Office, the specific approach for one employee is provided at **Tab D**.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? Yes If not, explain.

62. Attach a brief statement explaining why you are seeking this position.

I consider the opportunity to serve as an Arizona Supreme Court Justice as the highest calling to which a lawyer can aspire. It would be an opportunity to strengthen the rule of law which is at the foundation of every healthy society. Specifically, engaging in the interpretation and application of our state and federal constitutions that guide the work of government and protect the rights of the people, interpreting and applying statutes that affect the relationships among and between fellow citizens, and the constant intellectual challenge the law presents is what I want to do in service to Arizona. As my own background sets forth in my answer to Question 59, I am only where I am at today because I had a fair opportunity to follow a path where I could apply myself and take advantage of opportunities. The law is at its best when everyone has a fair chance to rise above their circumstances and use their talents and abilities to pursue dreams of making a difference. I want to serve as an Arizona Supreme Court Justice to make sure that path is available to anyone who wants to travel down it.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. Please see **Tab E**.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. Not applicable
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. Not applicable

**-- INSERT PAGE BREAK HERE TO START SECTION II
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

Ackermann,Laura R	Brady,Tiffany L	Davidson,Kurt N
Adib,Samin	Brenneman Jr,Harold F	Davis,Christine A
Agra,Zacharias M	Bridger,Stephen A	Davis,Sarah K
Aiken,Stephen M	Briggs,Steven E	DeFusco,Bryn K
Albach,Dale L	Brinker,John Eric	DeGrado,Alexander J
Albo,Joe Albert	Bronyah,Ramesey K	Denney,Michael G
Alexov,Ann	Brown,Jacob D	DeRango,Jenna N
Anderson,Michael A	Brown,Jeffrey R	Dickinson,Chrystal K
Anderson,Sandra L	Brumbaugh,Shawna L	Diederich,Amy K
Andrews,Angela Kay	Burch,Richelle A	Diekelman,Jason T
Angelina-Charron,Juliana M	Burnett,Joneice S	Duran,Gino A
Arellano Edwards,Ross G	Burroughs,Aaron C	Duvendack,Jeffrey R
Arhangelsky,Laura Freed	Campbell,Kathleen M	Edwards,Suzanne S
Arif,Sadaf S	Caplinger,Samantha L	Egan,Joshua D
Arino,Michelle	Caragher,Regina G	Eicker,Peter J
Ashton,Edwin R	Carper,Jennifer N	Eidemanis,Lori A
Astrowsky,Adena J	Carrico,Rachael E	Eisenberg,Mitchell S
Austein,Lisa J	Caughlin,Stephenie S	Elias,Matthew H
Babb,William H	Cechanowicz,Alan M	Eliason,Jon D
Badreddine,Fatima M	Cecilia,Gregory K	Ensign,Travis D
Baek,Richard L	Certo,Melissa J	Erickson,Jessica M
Bailey,Thomas A	Chamberlain,Kimberly D	Erickson,Nathan R
Bakardjiev,David K	Chang,Soo Y	Eshelman,Megan J
Baker,Michael W	Charbel,Susie	Evans,Kayla M
Baker,Rebecca L	Charnell,James V	Everman,Zachary T
Balon,Geoffrey A	Christensen,Alexander M	Faas,Andrew T
Balson,Jamie A	Chung,Chong-Ho	Faulkner,Ruth A
Baptiste,Nakeshia D	Clark,Joshua D	Fauth,Misty Marie
Barnett,Tamara	Clark,Taylor M	Feeney,Maureen E
Basta,Eric D	Clouse,Aaron R	Felcyn,Kimberley D
Baumann II,James H	Coccaro,Jenessa G	Fenton,Jerome L
Beardsley III,Robert	Coe-Smith,Heather N	Ferguson-Gilbert,Catherine M
Beasley,Shaylee C	Cohen,Yigael M	Fetter,Kristen L
Beatty,John F	Cole,David R	Figueroa,Riley N
Beaver,Jeffrey A	Cole,Lisette C	Fisher,Daniel F
Beecher,Marcus J	Collopy,Amy C	Flader,David J
Bellerson,Elizabeth A	Cook,Marlene K	Flaherty,Megan E
Beringhaus,Elizabeth N	Cook,Neldon V	Fleming,Rachel E
Bernick,Harriet M	Corcoran,Sarah L	Forsyth III,Thomas M
Bhatia,Neha	Cotterell,Jacie E	Foster,David R
Bigler,Tristan J	Coyne,Luke M	Foster,Kristen De Cabooter
Bingert,Elizabeth T	Cucuzella,Gina N	Fowler,Lara Palmer
Birkemeier,Sara E	Cummings,Kimberly J	Fu,Catherine C
Bizzozero,Gregory R	Cunningham,Benjamin H	Fuller,Shelby N
Blackman,Martha D	Curtisi,Nathan A	Furneaux,Kristin Sherman
Blair,James	Dahl,Ellen M	Gadow,Blaine D
Blum,Scott M	Dahmer,Veronica R	Gallagher,Jeannette R
Boehm,Kate M	Daiza,Mayar M	Gallagher,Sharon Lee M
Bollig,Rachael L	Dannenbaum,Katherine C	Galus,Jeremiah J
Bonaguidi,Steven M	Davidson,Danielle I	Galusha-Troicke,Nichole J

Gamble,Jenna C	Harris,Michael J	Kelemen Jr,George S
Garcia,Hermelinda T	Hart Jr,James R	Kelly,Sean
Gardner,Dallen D	Hartrick,Rebecca A	Kemper,Karen K
Garry,Bruce S	Hawkins,Meredith B	Kerfoot,Desiree M
Garvin,Adam L	Hazelton Jr,Arthur G	Kerker,Kara J
Garza,Devin J	Heckathorne,Sarah E	Kerr,Jeffrey C
Garza,Krystal R	Hepner,Mischa L	Kever,Andrea L
Gattuso,Jessica A	Herman,Elise S	Klepper,Faith C
Genco,Adriana D	Hernandez,Evelyn R	Komrada,Karen E
George,Brett T	Herrick Jr,Ronald L	Kontak,Joshua R
Gephardt,Lindsay M	Herriot,Katherine	Krachenfels,Kirsten C
Gialketsis,V George	Hesla,Chelsea A	Kratovil,Vicki L
Giaquinto,Louis T	Hess,Sara C	Kultala,Rachel L
Gilla,Marischa H	Heydenreich,William M	La Porte,Natalie C
Gillies,Kaleigh E	Heykoop,Jennifer L	Lake,Elizabeth M
Gilman,Lindsey E	Hill,Eric J	Larish,Kristin L
Gingold,Hilary Weinberg	Hinrichsen,Joseph R	Leckrone,Sherry K
Gingold,Michael G	Hogard,Brittany R	Lehman,Kristian D
Girgenti,Michael D	Holloway,Kayla M	Leichter,Lauren K
Gleason,Tracey L	Holmes,Jason R	Leisch,Eileen C
Godbehere Thomas,Gina M	Horn,Nashly G	Leiter,Edward D
Goddard,Kyra Johnson	Hovater,Emily M	LeMense,Leslie A
Goddard,Vinson S	Hubbard,Robert S	LeTellier,Janine M
Good,Stacey Y	Hubbell,Loren D	Lewis,Jason D
Goodhand,Sydney D	Hudson,Jill M	Lindquist,Alexis L
Goodman,Michael J	Hustead,Tessa P	Lindsay,Jeffery D
Goudreau,Constance G	Hutchison,Casey R	Lines,Justin H
Graham,Zachary W	Hutto,Daniel I	Linn,Jennifer K
Grant,Gerald R	Hymas,Douglas T	Livingstone,Heather L
Grant,Thomas K	Imbordino,Vince H	Logue,Ann K
Gray,Lacey A	Irwin,David E	Losicco,Vanessa M
Green,Ryan P	Isvoranu,Krystle M	Loudenslagel,Kate M
Greer,Dyanne C	Jansen,Mark D	Low,Stephanie D
Greve,Matthew R	Jennings,Terry H	Lozano,Miguel A
Grimsman,Frankie L	Johnson,Elizabeth M	Luder,Susan L
Hagerman,Karrie L	Johnson,Jared L	Lueders,Christian M
Hagler,Andrew J	Jones,Frankie Y	Luther,Keli B
Hakiman,Damona T	Jones,Rachelle E	Lynas,Clayton A
Hall,Krista Jane	Jones,Rebecca K	Lynch,Edwin C
Hamadeh,Abraham J	Jones,W C	Macias,Carolyn J
Hamilton,Azadeh	Jorgensen,Burt A	MacMillan,Shawn L
Hanna,Diana K	Judge,John M	Magnus,Matthew A
Hannan,Lindsey M	Kalish,Herbert W	Malady,Evan D
Hanson,Jennifer K	Kalish,Jason	Mandigo,Erica K
Harbulot,Maryvonne F	Kassab,Seema	Mandwee,Masar H
Harder,Aaron R	Kay,Treena J	Mangum,John D
Hardt,Samantha M	Keer,Jason S	Manning,Julia S
Harris,Debra L	Keffeler,Kristina L	Manning,Keith D
		Maricle,Kevin H
		Maroney,Leona L

Marquoit, Thomas L	Noble, Kara L	Rassas, Jourdan L
Marshall, Barbara A	Nordeen, Kristin L	Reamer, Elizabeth L
Marshall, Lauren M	Northup, Nicole M	Reckart, Laura M
Martin, Lisa M	Novitsky, Anthony M	Reddy, Guntaka S
Martinez, Jeremy M	Nye, Kimberly D	Rittman, Ari B
Martinez, Juan M	Ogus, Adam R	Rivera, Antara N
Martinez, Octavia L	Okano, Kevin K	Rivera, Esdras M
Mascot, Rebecca M	Oliver, Jaimee C	Roche, James J
Mauger, Stephen P	Olson, Joshua L	Rodriguez, Armando C
Maxwell IV, Thomas J	Ondracek, Jacqueline	Roll, Chris M
May, Gregory P	Ondreyco, Mary J	Rooper, Elaina S
Mayer, Robert J	O'Neill, Judith C	Roseberry, Jeffrey C
Mc Gregor, Susan R	ORourke, Denise M	Rouintan, Tanya N
McBride, Jarred J	Owen, Addison B	Rowley, Adam S
McCarthy, Ryan J	Owens-Johnson, Kendra L	Rubalcaba, Manuel D
McCarty, Thomas R	Paine, Edward G	Ruiz, Leonardo L
McCormack, Christopher W	Palmer Jr, Richard J	Rush, William T
McCormick, Kathryn E	Parker, Amanda M	Sakato, JoAnn M
McGary, Mary E	Parker, Anica P	Sales, Richard P
McGregor, Matthew E	Paul, Gavin A	Salwin, Stewart F
McKee, Maria G	Paulsen, Dane-Christian	Sammons, Christopher T
McKessy, Maryann	Pedicone, Erin M	Sandish, Linda A
McPhie, Ryan H	Pennell, Lonnie A	Sauer, Dawn M
Mehrotra, Anshika	Perez, Eduardo M	Savage, Danalyn E
Meloche, Diane M	Perkins, Kristy K	Sawyer, Tamara L
Metz, Kalon W	Perry, Bradley F	Schmitt, Elizabeth M
Meyers, Travis B	Petersen, Amanda L	Schneider, Beth A
Micflikier, Sara J	Petrowski, Robin	Schneider, Jane M
Michaud, Nicholas D	Phipps Yonas, Rachel A	Schneider, John N
Millar, Christopher R	Piccirilli-Ramunno, Elisa M	Schneider, Susan G
Miller, Bradley L	Piper, Jessica S	Schoeler IV, Edward C
Miller, Jeremy D	Pitts, Jeffrey W	Sciarrotta, Karen B
Millington, Alexander J	Pixler, Reid C	Seeger, James M
Mills, Kurt N	Plicht, Jonathan J	Seiden, Daniel B
Minicozzi, Michael A	Plomin, Mary K	Segovia, Daniel T
Mitchell, Chelsea M	Pokrass, Serena C	Self, Douglas C
Mitchell, Michael J	Polk, Matthew E	Serafin, Ariel N
Mitchell, Jim	Pollak, Kevin A	Serden, Richard E
Mitchell, Rachel H	Polse, Anthony A	Shaver, Stephen J
Moldrem, Leighana M	Pousson Garcia, Janee D	Shaw-Jones, Danielle S
Moore, William A	Powell, Ryan D	Sheriff, Jennifer A
Morales, Crystal J	Prather, Robert Earl	Shin, Bobbie S
Morales, Nathan A	Preciado III, Humberto R	Shutts, Robert J
Morgan, Michelle M	Price, Jared D	Siegal, Brett S
Morrison, Michael R	Prigmore, Andrea S	Simmons, Richard L
Mueller, Matthew S	Primack, Allyson O	Singer, Heather L
Mufarreh, Stephen S	Prochko, Tara L	Skinner, Brittany L
Mundell, Casey A	Pugh, Karen L	Smith, Jordan A
Munoz, Cecilia Yvette	Pyper, Jefferson S	Smith, Robert E
Murphy, Noble Lycester B	Rademacher, Jay R	Sochacki, Monica R
Nannetti, Cindi S	Raimondo, Jordyn R	Sorensen, Jana L
Neal III, Kelly S	Rand, Mitchell	Sorensen, Maren E
Neisess, Daniel P	Rapp, Christopher T	Sornsin, Jessica C
Nielsen, Erika T		Sorrentino, Jeanine M
		Spahr, Korin L

Spaw, Peter S	White, Bruce P
Spilsbury, David W	White, Julia V
Sponsel, April A	White, Mark A
Staab, Katherine O	White, S Lee
Stalzer, Louis F	White, Tarah L
Stanley, Parker A	Witt, Alan W
Stansil, Barbara J	Wolfe, Jeffrey C
Starr, Kristin N	Wolfram, Barrett S
Stevens, Patricia L	Woodard, Margaret K
Stewart, Julie M	Wright, Donielle I
Strange, Daniel P	Wright, Tammara J
Stranieri, Valerie E	Wu, Margaret
Struble, Shannon R	Yew, Sydney D
Stuart, John N	Yost, Joshua
Sullivan, Courtney M	
Sullivan, Todd J	
Tan, Christabel	
Tate, Benjamin L	
Taylor, Aaron S	
Thomas, Cynthia M	
Thurston, Gregg A	
Tirrell, Kimberly S	
Tobin, Timothy J	
Todd, Merilee	
Torres, Mercedes J	
Trudgian, Jeffrey W	
Trusken, Christine J	
Tucker, Desarae A	
Turken, Seth A	
Tutelman, John	
Udall, Nathan T	
Uglietta, John J	
Umpleby, Stephen S	
Vaitkus, Michelle R	
Valenti, Julia C	
Valenti, Richard M	
Valenzuela, Kirsten R	
Valles, Jose M	
VanBrakel, Linda J	
Vanscoy, Alexander P	
Vela, Analise E	
Vick, Kenneth N	
Villa Rodriguez, David	
Vollmer, Paul J	
Wade Kalish, Jessi C	
Walker, John H	
Walker, Stephen P	
Walter, Mary-Ellen	
Ward, Christin K	
Warzynski, Juli S	
Weeks, Ashelee J	
Weiler-Parsons, Lisa A	
Wendell, Jon D	

Austin,Tawn T	Trullinger,Charles E
Benton,David H	Uglietta,Ann T
Branco,Joseph J	Vigil,Joseph I
Brenden,Daniel R	White,Bruce P
Bressler,Davina D	Wood,Michelle L
Briggs,Sharon A	Zawislak,Gosia M
Cherny,Stephanie F	
Cohen,Gail I	
Comus III,Louis F	
Connor,Mary C	
Craiger,Emily M	
Cummings,Andrea L	
Decker,Nikolaus G	
Fifer,David C	
Flaggman,Sherle R	
France III,Edward W	
Fritz,James W	
Fuller,Catherine A	
Goodrich,Steven C	
Grant,Patricia A	
Gross,Naqeeba L	
Halbig-Sparks,Kimberly D	
Hamilton,Christina M	
Irish,Douglas	
Jue,James R	
Kiefer,Joseph S	
Leibsohn,Rachelle Z	
Lewis,Lori Ann	
Liddy,Thomas P	
Lockerby,Jennifer G	
Longo,Anne C	
MacMillan,Scott M	
Mak,Maxine S	
Mangum,James K	
McBride,Chad	
Miller,Roberta N	
Muthig,Klaus P	
Newton,Brandon A	
Offord,Talia J	
Palmer,Brian J	
Palmer,Steven B	
Patterson,Kathleen A	
Paulsen,John W	
Peck,Wayne J	
Pennington,Randall B	
Pregulman,Betsy A	
Preston,Bruce	
Pulver,Robert	
Rice,Jean W	
Schwab,Douglas A	
Smith,Otis	
Stewart,Richard A	
Stutz,Christine B	
Swan,Robert C	

Matter	Court	Case Number	Nature of Case	Role	Disposition
Angel Lopez-Valenzuela & Isaac Castro-Armenta vs Maricopa County	US District Court, Arizona; 9th Circuit Court of Appeals	CV0800660	Challenges to Prop. 100 bail provisions	Named Defendant in official capacity	Dismissed, overturned on appeal and judgement for plaintiffs
Valle del Sol, et al vs Michael B. Whiting, et al	US District Court, Arizona	CV1001061	Challenge to SB 1070 provisions	Substituted as named Defendant in official capacity	Portions stricken by U.S. Supreme Court
League of United Latin American Citizens vs Janice Brewer	US District Court, Arizona	CV1001453	Illegal funds used in the creation of training materials related to S.B. 1070 and training; using county taxes collected from county tax payers for implementation; immigration	Substituted as named Defendant in official capacity	Dismissed
Gary & Cherie Donahoe vs Joseph Arpaio	US District Court, Arizona	CV1002756	Freedom of speech, abuse of power, unconstitutional policies, substantive due process, equal protection, conspiracy to commit violations,abuse of process, defamation, racketeering, negligence & intrusion of seclusion / invasion of privacy	Substituted in as Named Defendant in official capacity	Settled
Susan Schuerman vs Joseph Arpaio	US District Court, Arizona	CV1002757	Freedom of speech, abuse of power, unconstitutional policies, substantive due process, equal protection, conspiracy to commit violations,abuse of process, defamation, racketeering, negligence & intrusion of seclusion / invasion of privacy	Substituted in as Named Defendant in official capacity	Settled
Sandra & Paul Wilson vs Joseph Arpaio	US District Court, Arizona	CV1002758	Freedom of speech, abuse of power, unconstitutional policies, substantive due process, equal protection, conspiracy to commit violations,abuse of process, defamation, racketeering, negligence & intrusion of seclusion / invasion of privacy	Substituted in as Named Defendant in official capacity	Settled
Donald T. Stapley, JR & Kathleen Stapley vs Joseph	US District Court, Arizona	CV1100902	Freedom of speech, abuse of power, unconstitutional policies, substantive due process, equal protection, conspiracy to commit violations,abuse of process, defamation, racketeering, negligence & intrusion of seclusion / invasion of privacy	Substituted in as Named Defendant in official capacity	Settled
Douglas John Zolnierz vs Jack Harris	US District Court, Arizona	CV1101182	Civil Rights suit by Prison Inmate alleging Misconduct by Phoenix Police Officers, seize of personal property and monetary funds, incompetent legal representation, abuse of the judicial process from 2009 criminal matter	Named Defendant in official capacity	Dismissed

Matter	Court	Case Number	Nature of Case	Role	Disposition
Fox Salerno vs Bill Montgomery	US District Court, Arizona	CV1200202	Inmate Petition for Habeas Corpus, Violation of Fourteenth Amendment; MCAO (Bill Montgomery) failed to provide records of EDRs to plaintiff for examinations.	Named Defendant in official capacity	Dismissed
Dimitri Rozenman vs City of Phoenix	US District Court, Arizona	CV1200230	Prison Inmate Habeas Corpus Petition, Malicious prosecution; deliberate suppression of exculpatory evidence	Named Defendant in official capacity	Dismissed
Imran A. Jamali vs Robert Gottsfeld	US District Court, Arizona	CV1200280	Petition for Writ for Habeas Corpus; violation of rights, assigned judge, prosecutors, et al.	Named Defendant in official capacity	Dismissed
Paul A. Isaacson, M.D. vs Thomas C. Horne	US District Court, Arizona; 9th Circuit Court of Appeals	CV1201501	Plaintiff's sought declaratory and injunctive relief regarding Arizona statutes (HB2036) regulating abortions	Named Defendant in official capacity	Judgement for Defense overturned on appeal
Thomas Morgan vs Phoenix Police Department	US District Court, Arizona	CV1202329	Inmate Habeas Petition re: assault by Phoenix Police	Named Defendant in official capacity	Dismissed
Imran Ahmad Jamali vs Emma Hyatt	US District Court, Arizona	CV1202702	Alleging Conspiracy to Violate Civil Rights	Named Defendant in official capacity	Dismissed
Brian & Andrea R. Weymouth vs Deputy Chief Gerald Sheridan	US District Court, Arizona	CV121002	Misconduct, abuse of power by MCSO officers, civil rights violation	Named Defendant in official capacity	Dismissed
Imran A. Jamali vs Stephanie D. Low	US District Court, Arizona	CV1301054	Conspiracy, malicious prosecution, deceit, false Imprisonment and loss of livelihood	Named Defendant in official capacity	Dismissed
Daniel L. Kloberdanz vs Joseph M. Arpaio	US District Court, Arizona	CV1302182	Civil Rights suit alleging excessive force, wrongful arrest and false imprisonment by Deputy Sheriff	Named Defendant in official capacity and counsel for MCSO Deputies	Dismissed as Party by Stipulation
Leonard D. Franks vs State of Arizona	US District Court, Eastern District of Michigan, Southern Division	CV1310088	Challenge to asset seizure, CV2011-003938 IMO \$24,800.00	Named Defendant in official capacity	Dismissed
David-Family: Tomasello vs State of Arizona	US District Court, Arizona	CV1400029	Alleging prosecution lacked subject matter jurisdiction	Named Defendant in official capacity	Dismissed
Geary W. Walton vs O. Joseph Chornenky	US District Court, Arizona	CV1400958	Prison Inmate Habeas Petition, Inadequate representation and malicious prosecution	Named Defendant in official capacity	Dismissed
Puente Arizona vs Joseph M. Arpaio	US District Court, Arizona	CV1401356	Declaratory and Injunctive Relief sought against Arizona Identity Theft statutes claiming civil rights violations	Named Defendant in official capacity	Stipulated resolution on one claim for Plaintiff, Judgment for MCAO on others, Settled

Matter	Court	Case Number	Nature of Case	Role	Disposition
Manuela Villa vs Maricopa County	US District Court, Arizona	CV1401681	Declaratory/Injunctive relief; requesting that MCAO follow procedures for sealing wiretaps.	Named Defendant in official capacity	Dismissed but overturned, in part, on appeal; Pet. for Cert. to US Supreme Court pending
Antigone Books vs Tom Horne	US District Court, Arizona	CV1402100	Suit challenging Arizona criminal statute (HB 2515) regarding nude images - "Revenge Porn"	Named Defendant in official capacity	Settled
Allen Beasley vs City of Phoenix	US District Court, Arizona	CV1402121	Police misconduct; use of unnecessary force; ethnic profiling; false arrest; slander; conspiracy; malicious prosecution by City of Phoenix and Maricopa County Attorney Bill Montgomery	Named Defendant in official capacity	Dismissed
Michael D. Davis vs Jennifer Hanson	US District Court, Arizona	CV1402751	Malicious prosecution and false imprisonment	Named Defendant in official capacity	Dismissed
Lorraine Patterson vs ADES	US District Court, Arizona	CV1500321	Civil Rights complaint arising out of dependency proceeding alleging fabrication of evidence; judicial misconduct; and defamation.	Named Defendant in official capacity	
Debra J. Milke vs City of Phoenix	US District Court, Arizona	CV1500462	Suit by former defendant convicted of murder alleging prosecutorial misconduct in case from 1990	Named Defendant in official capacity	Pending
Matthew Ericson vs Maricopa County Attorney Rebekah Browder	US District Court, Arizona	CV1500628	Suit seeking release of property	Named Defendant in official capacity	Dismissed
Anthony Johnson vs Phoenix Police Department	US District Court, Arizona	CV1500824	False Arrest; Assault; malicious prosecution; and negligence	Named Defendant in official capacity	Dismissed
Anthony Camboni vs Mark Brnovich	US District Court, Arizona	CV1502538	Various allegations of wrongdoing by various levels of government officials related to 2014 election for Attorney General	Named Defendant in official capacity	Dismissed
Duane Isaacs vs William Montgomery	US District Court, Arizona	CV150960	Inmate Habeas Corpus Petition alleging false defamatory information	Named Defendant in official capacity	Dismissed
Michael Ruffin El vs United States	US District Court, Arizona	CV1601289	Breach of contract, treaty and property rights. Unlawful search and confiscating property/marijuana by Maricopa County Superior Court and MCAO.	Named Defendant in official capacity	Dismissed
Marcella Hernandez & Alfredo Navarrette vs MC	US District Court, Arizona; pending before 9th Circuit	CV1700034	Civil rights action stemming from dismissal of criminal case	Named Defendant in official capacity	Dismissed, on appeal to 9th Circuit
Josiah English III vs Theodore Campagnolo	US District Court,	CV1703221	Malicious prosecution	Named Defendant in official	

Matter	Court	Case Number	Nature of Case	Role	Disposition
Leslie A. Merritt Jr. vs State of Arizona	US District Court, Arizona	CV1704540	Lawsuit alleging wrongful arrest, malicious prosecution, false imprisonment, Brady violations, gross negligence, intentional infliction of emotional distress, aiding and abetting tortious conduct in case where state dismissed prosecution after further investigation	Named Defendant in official capacity	Settled/Dismissed
Delbert Wauneka vs MCSO	US District Court, Arizona	CV1800286	Suit for assault by detention personnel at LBJ	Named Defendant in official capacity	Pending
Francisco A. Mishenko III vs William G. Montgomery	US District Court, Arizona	CV1800644	Habeas review	Named Defendant in official capacity	Pending
Mitchell Taebel vs MCAO	US District Court, Arizona	CV1802496	Bail set unlawfully high/denial of due process.	Named Defendant in official capacity	Pending
Justin D. Hill vs MCSO	US District Court, Arizona	CV1802613	Jail Inmate field Civil Rights complaint, Wrongfully prosecuted by MCAO personnel; Charges dismissed; Denied access to court & legal materials from ILS	Named Defendant in official capacity	Pending
Deshawn Briggs vs William Montgomery	US District Court, Arizona	CV1802684	Lawsuit challenging operation of drug diversion program	Named Defendant in official capacity	Pending
Michael A. Channel Sr. vs State of Arizona	US District Court, Arizona	CV1804628	Inadequate representation by the Legal/Public Defender; Malicious prosecution by MC Attorney's Office	Named Defendant in official capacity	Pending
Kenneth Fields vs MC	Maricopa County Superior Court	CV2010032888	Suit by Maricopa County Superior Court Judge against County law enforcement officials and prosecutors for a criminal action naming him - and others - a defendant	Named Defendant in official capacity	Matter settled
Arthur Coleman vs State of Arizona	Maricopa County Superior Court	CV2011007926	Suit by Jail Inmate seeking a Declaratory Judgment	Named Defendant in official capacity	Dismissed
Jessie Lewis vs William G. Montgomery	Maricopa County Superior Court; Court of Appeals Div. I	CV2011020897	Jail Inmate suit alleging civil rights violations for underlying criminal prosecution	Named Defendant in official capacity	Dismissed/ Affirmed
Rachel Alexander vs MC	Maricopa County Superior Court	CV2012008862	Special Action seeking Declaratory Relief and alleging Breach of Contract Claims	Named Defendant in official capacity	Case dismissed
Treulich's Plaza vs City of Phoenix	Maricopa County Superior Court	CV2012008959	Suit regarding City of Phoenix zoning and application of state statute	Named Defendant in official capacity	Dismissed
Estella Medrano vs Maricopa County	Maricopa County Superior Court	CV2012009943	Suit filed by former criminal defendant alleging malicious prosecution, loss of consortium, and seeking punitive damages	Named Defendant in official capacity	Dismissed
White Mountain Health Center vs MC	Maricopa County Superior Court, Court of Appeals Div. I	CV2012053585	Plaintiff sought declaratory and injunctive relief to operate a dispensary pursuant to Arizona Medical Marijuana Act.	Named Defendant in official capacity and counsel for Defendant Maricopa County	Judgment for Plaintiff, affirmed on appeal

Matter	Court	Case Number	Nature of Case	Role	Disposition
Samuel L. Fuller vs. Ryan Powell	Maricopa County Superior Court	CV2013002191	Suit filed by Jail Inmate, alleging civil rights violations in separate criminal proceeding	Named Defendant in official capacity	Dismissed
Kathleen Winn vs Maricopa County Attorney's Office	Maricopa County Superior Court	CV2013003007	Appeal from Administrative Hearing regarding campaign finance violations	Head of Defendant Agency	Relief granted and the case remanded for further administrative proceedings
Mary Rose Wilcox vs William Montgomery	Maricopa County Superior Court	CV2013008488	Declaratory Judgment Action to rescind County Attorney Opinion	Named Defendant in official capacity	Dismissed
Bill Montgomery vs Laurie J. Whelden	Maricopa County Superior Court	CV2013010191	Injunction Against Harassment sought addressing threats	Named Plaintiff	Injunction Against Harassment granted
Zander Welton vs State of Arizona	Maricopa County Superior Court	CV2013014852	Declaratory Judgment Action interpreting provisions of Arizona Medical Marijuana Act	Named Defendant in official capacity	Judgment for Plaintiff
Sandeep Singh vs Bill Montgomery	Maricopa County Superior Court	CV2013051642	Suit for Declaratory and Injunctive Relief based on criminal prosecution	Named Defendant in official capacity	Case dismissed
Lisa M. Aubuchon & Rachel Alexander vs MC	Maricopa County Superior Court	CV2014009351	Suit filed by former employees of Maricopa County Attorney's Office alleging contract claims related to State Bar proceedings	Named Defendant in official capacity	Removed to federal court
Wayne B. Prince vs Bill Montgomery	Maricopa County Superior Court	CV2014011285	Special Action seeking records for pending Capital Case Post-Conviction Review proceeding	Named Defendant in official capacity	Petition granted for purpose of State providing an index of records
Ronnie L. Joseph vs Bill Montgomery	Maricopa County Superior Court	CV2015003681	Special Action seeking records for Post-Conviction Capital Case Review proceeding	Named Defendant in official capacity	Petition granted for purpose of State providing an index of records
Joe H. Stephenson vs Joseph I. Vigil	Maricopa County Superior Court	CV2015053225	Suit alleging civil rights violations from separate criminal proceeding	Named Defendant in official capacity	Dismissed
Isaac Bonelli vs Deputy B. Wisda	Maricopa County Superior Court	CV2015091583	Prison Inmate brought suit against law enforcement and prosecutors alleging withholding of evidence	Named Defendant in official and personal capacity	Dismissed
Seth Leibsohn vs Michele Reagan	Maricopa County Superior Court, Court of Appeals Div. I, Arizona Supreme Court	CV2016009546	Pre-election challenge to Regulation and Taxation of Marijuana Act	Plaintiff in my personal capacity	Matter dismissed/ affirmed on appeal

Matter	Court	Case Number	Nature of Case	Role	Disposition
Leslie A. Merritt Jr. vs State of Arizona	Maricopa County Superior Court	CV2016013436	Lawsuit alleging wrongful arrest, malicious prosecution, false imprisonment, Brady violations, gross negligence, intentional infliction of emotional distress, and aiding and abetting tortious conduct in case where state dismissed prosecution after further investigation	Named Defendant in official capacity	Removed to federal court
Bernardino Valenzuela Jr. vs Bill Montgomery	Maricopa County Superior Court	CV2017001403	Suit filed by Jail Inmate alleging violations of rights during criminal investigation up to and including indictment by the Grand Jury	Named Defendant in official capacity	Dismissed
Jason Simpson vs Maricopa County	Maricopa County Superior Court	CV2017007082	Suit seeking damages for actions by prosecutors in prosecuting plaintiff	Named Defendant in official capacity	Dismissed
Kimmie Baker vs State of Arizona	Maricopa County Superior Court	CV2017012177	Suit alleging false arrest, malicious prosecution, negligence and/or gross negligence, and aiding and abetting tortious conduct arising out of a prosecution for burglary and theft in 2011	Named Defendant in official capacity	Dismissed
Judicial Watch Inc vs City of Phoenix	Maricopa County Superior Court	CV2017014294	Suit seeking records from Phoenix Police Department and Maricopa County Attorney's Office	Named Defendant in official capacity	Dismissed
Jason H. Rovey vs Maricopa County	Maricopa County	CV2017014367	Consolidated cases involving condemnation	Named Defendant in official capacity	Pending
Jason C. Bullard vs State of Arizona	Maricopa County Superior Court	CV2018002610	Jail Inmate suit alleging violations of trademark and copyright in claims of Breach of Contract, Negligence, Identity Theft, and Commercial Fraud	Named as Defendant in individual and official capacities	Judgment for Defendant
David Khalaj & Juliet D. Youmaran vs Maricopa County	Maricopa County Superior Court	CV2018003294	Falsely arrested and imprisoned by Customs and Border Protection and City of Phoenix Police; malicious prosecution by the Maricopa County Attorney's Office.	Named Defendant in official capacity	Dismissed
State Bar of Arizona vs George M. Papa	Maricopa County Superior Court	CV2018003913	Third Party Claim seeking to have another person declared innocent	3d Party Named Defendant in official capacity	Dismissed
Leah Suppo vs Maricopa County	Maricopa County Superior Court	CV2018004814	Crime victim alleged she was not made aware of a cap on restitution agreed to in plea agreement with Defendant	Named Defendant in official capacity	Court found victim was not notified of plea/ restitution cap
Anthony J. Merrick vs MCAO	Maricopa County Superior Court, pending before Court of Appeals Div. I	CV2018005685	Prison Inmate suit seeking a "Judicial Determination of Innocence"	Named Defendant in official capacity	Dismissed

Matter	Court	Case Number	Nature of Case	Role	Disposition
Timothy E. Diaz vs Maricopa County Attorney William Montgomery	Maricopa County Superior Court	CV2018011970	Civil Suit for false arrest, negligence, false imprisonment, negligent infliction of emotional distress, malicious prosecution, and defamation.	Named Defendant in official capacity	Pending
ACLU/Sean Holstege v. Maricopa County Attorney William Montgomery	Maricopa County Superior Court	CV2019007636	Civil Suit regarding records requests and responses pursuant to Arizona records statutes	Named Defendant in official capacity	Pending
Lisa Aubuchon (Merit Appeal) vs MC Merit Commission	Maricopa County Superior Court, Court of Appeals Div. I	LC2011000323	Appeal from Merit Hearing upholding termination of employment	Substituted as named Defendant in official capacity	Dismissed, appeal dismissed
Committee for Justice and Fairness vs. Arizona Secretary of State's	Maricopa County Superior Court	LC2011000734	Administrative Enforcement Action from Title 16 violations	Head of Agency responsible for enforcement	Matter settled
Gregory W. Smith vs Hon. Elizabeth Rogers	Maricopa County Superior Court	LC2014000351	Special Action challenging reassignment of defendants' criminal matters after Rule 10.2 notices filed	Named Defendant in official capacity	Judgment for Plaintiffs
Nicholas O. Ramirez vs MCAO Custodian of Christopher A. Hargrave vs MCAO	Maricopa County Superior Court	LC2015000414	Prison Inmate lawsuit seeking records from	Named Defendant in official capacity	Dismissed
	Maricopa County Superior Court	LC2016000367	Special Action seeking records for Post-Conviction Review proceeding	Named Defendant in official capacity	Dismissed
Jason C. Bullard vs Michael K. Jeanes	Maricopa County Superior Court	LC2017000375	Jail Inmate Special Action seeking records and a stay related to other criminal proceedings	Named Defendant in official capacity	Dismissed
Francisco A. Mishenko III vs William G. Montgomery	Maricopa County Superior Court	LC2017000477	Jail Inmate Special Action regarding separate criminal prosecution	Named Defendant in official capacity	Dismissed
Ernest C. Carbajal vs. William Montgomery	Maricopa County Superior Court	LC2018000005	Jail Inmate Special Action seeking an "Adjudicative Hearing and Declaratory Order" whether he is person being prosecuted in separate criminal proceeding	Named Defendant in official capacity	Dismissed
Joshua M. Harvey vs William G. Montgomery	Maricopa County Superior Court	LC2018000034	Jail Inmate Special Action seeking an "Adjudicative Hearing and Declaratory Order" whether he is person being prosecuted in separate criminal proceeding	Named Defendant in official capacity	Dismissed
Joshua M. Harvey vs. William G. Montgomery	Maricopa County Superior Court	LC2018000035	Jail Inmate Special Action seeking an "Adjudicative Hearing and Declaratory Order" whether he is person being prosecuted in separate criminal proceeding	Named Defendant in official capacity	Dismissed
Richard E. Corley vs William G. Montgomery	Maricopa County Superior Court	LC2018000045	Jail Inmate Special Action seeking an "Adjudicative Hearing and Declaratory Order" whether he is person being prosecuted in separate criminal proceeding	Named Defendant in official capacity	Dismissed
Gary Michael Strouse vs Michael K. Jeanes	Maricopa County Superior Court	LC2018000132	Special Action filed seeking public records	Named Defendant in official capacity	Judgment entered
David S. Sovero vs MCAO	Maricopa County Superior Court	LC2018000255	Special Action filed by a Prison Inmate seeking records	Named Defendant in official capacity	Dismissed

Matter	Court	Case Number	Nature of Case	Role	Disposition
Lemuel H. Palmer vs William Montgomery	Maricopa County Superior Court	LC2018000312	Special Action filed by a Jail Inmate seeking dismissal of another criminal matter	Named Defendant in official capacity	Dismissed
2006 Primary Election Complaint	Clean Elections Commission	Unk	Complaint regarding Primary expenditures under Clean Elections Rules	Candidate/Respondent	Settled

Tab C

Looking around the small apartment I shared with my Mom, younger sister, and younger brother, the West Point Admissions Coordinator had to have noted the lack of furniture in the living room and the fact that the table we were sitting at in the kitchen space did not match the chairs, which didn't match each other either. Maybe that's why his first question to me was, "How did you accomplish all that you have?" My simple answer then is the same answer I give now when people ask how I got to where I am, "I worked hard."

To get to that moment in the kitchen, I had to overcome a number of obstacles that make me particularly aware of the need for hope, opportunity, and fairness for hard work to be able to pay off, fairness especially when it comes to the application of rules, regulations, and the law. I grew up in an economically, socially, and culturally diverse community south of Los Angeles, CA, raised by a single mom. Welfare was sometimes the only source of income and we lived in neighborhoods with violence, drug use, and gang activity. I attended six different elementary schools before starting the 6th grade. We moved thirteen separate times before I graduated from high school and not all of those moves were voluntary. The other kids I lived near, played with, and went to school with were from just about every background imaginable. This gave me an early appreciation for the simple fact that we all share the same humanity and are imbued with the same value and dignity.

At the start of the 10th grade, I was homeless and lived separate from my Mom, younger sister, and younger brother. I had to come to terms with the reality that it was going to take hard work and my own effort to create opportunities to excel in academics, athletics, and to have a shot at a different future. I learned not to expect anything to come easy. Not long thereafter, my father was arrested while trying to enter the United States at the Brownsville crossing in Texas and criminally charged for transporting marijuana from Belize. He skipped bail and was a fugitive of justice. I was almost late for high school one morning due to the service of a search warrant for my father by the Los Angeles County Sheriff's Office. I later visited my father twice while he was incarcerated in a federal prison. I experienced firsthand what it is to be a child of an incarcerated parent and I made a personal vow to never let my children experience anything similar.

Around this same time, I learned a hard and difficult lesson about the importance of maintaining the trust of others and upholding responsibility. I was the Junior Assistant Scoutmaster of Troop 423, Downey, California, on my way to become an Eagle Scout. Despite all the chaos in my family life, my Mom believed that by continuing with scouting it would give me some degree of stability. To say I was shocked when I was called to the Assistant Principal's Office to speak with detectives from the Downey Police Department is a gross understatement. The Scoutmaster was being investigated for sexually abusing one of the boys in our Troop. Aside from the anger and hurt of what had happened was the acknowledgment that the other boys in the Troop and I had

been jealous of the victim, not knowing at the time what he was enduring. Jealous because he was the one who always got to sit in the front seat of the van on trips we would take and who always got to share the Scoutmaster's tent on camp outs. I/we learned the other important lesson: do not judge someone else's circumstances until you know what is really going on.

Despite these difficult circumstances, I managed to graduate fourth in my high school class and become the first Paramount High School graduate to attend West Point. My service at West Point gave me the unique opportunity to learn what Duty – Honor – Country means and to internalize the values so important to those entrusted with public service and essential to maintaining the public's confidence. During my six and a half years on active duty with the Army, I was responsible for the lives of others, responsible to their families and our country for their safety, and for accomplishing the mission. Aside from my marriage of twenty-two years this June 14th and the births of our two children, the accomplishment I am most proud of was bringing home all of my soldiers from the First Gulf War safe and sound to their families. Overall, my leadership experience in the Army taught me once again that with diversity of the people I have had the privilege to work with comes the chance to weave together the talents and abilities of Americans from all walks of life for a common purpose. It also underscored the importance of treating people with respect and of the need to apply rules in a fair and impartial manner.

Finally, my service as the elected Maricopa County Attorney has afforded me the privilege of demonstrating what can happen when you value people and give them the chance to do the work they want to do in service to others in an honorable and humble way. When I first became the County Attorney, the Office was mired in conflict and was not exercising all of the statutory duties and responsibilities to provide civil legal representation and advice to County government and officials. It was only through the steady and patient exercise of personal example that I was able to secure the trust of fellow officials and the public to create an environment of confidence necessary for the fair administration of justice, independent of politics. It took the dedicated efforts of many to make it happen, but it did.

Overall, the width and breadth of my diverse life experience gives me understanding for people from all kinds of backgrounds, and makes me sympathetic to the disadvantaged, encouraging to the struggling, and supportive of those seeking a fair opportunity to achieve while ensuring the law applies to everyone equally. In America and Arizona, people need a fair opportunity for their hard work to give them a chance to overcome obstacles and rise above their circumstances. Just like I did.

Tab D

The first time I became aware of any allegations of inappropriate conduct towards women in the Maricopa County Attorney's Office (MCAO) by Juan Martinez was in December of 2017. These allegations were initially brought forward by a male attorney when he learned of the behavior. I directed an immediate and full investigation. This was prior to the allegations made in a State Bar Complaint in February of 2018, involving other women outside of the Office. The MCAO investigation took over five months and included interviews of 30 current and former employees in and out of Arizona.

When the MCAO investigation was completed, the findings were reviewed, approved by me, and discipline was imposed following a thorough review of applicable employment law, Maricopa County Employee Merit System Rules, and MCAO Employee Policies and Procedures. That discipline included a formal written reprimand placed in the employee's file and mandatory training conducted with his senior managers on hand. The formal written reprimand meant that the employee was ineligible for performance pay that year, which resulted in the loss of at least several thousands of dollars.

Following the imposition of discipline, I personally notified every affected employee that the investigation was completed, and that action had been taken. I then visited with each MCAO employee myself. Whether they had been the target of inappropriate conduct or not, if they had provided information in the investigation I wanted them to see and hear exactly what my position was with respect to what happened.

I personally delivered the important message with three elements: 1) I was grateful for their forthright participation in helping me and Office leadership understand what had happened and how it had affected them; 2) I wanted them to know that while current Office leadership had no previous knowledge of what had occurred, I took it personally that they had been made to feel uncomfortable and somehow less than the valued employee that they are, and that I would never condone such behavior due to my personal belief of our shared inherent value and dignity; and 3) to encourage them to remain committed to helping us maintain the standards of conduct in the Office to which every employee is held accountable. I affirmed that even I am held accountable to these standards and that, as lawyers, we must have an environment in which we are willing and able to hold one another accountable to maintain the public's confidence in the work we do.

As for complaints involving court reporters and other court personnel, as soon as we became aware of the allegations my Office contacted Superior Court administration and requested records regarding any complaints so our Ethics Committee could conduct an initial review. The Superior Court responded that there had been no complaints and there was no information to share. Accordingly, the matter was left in the hands of the State Bar and is now set for a hearing later this year. When the outcome of the

proceedings is known, appropriate action will be taken. Due Process is due to all. If I am to set the proper example in my role as the Maricopa County Attorney, then I must carry out my duties and responsibilities in a just manner, fair to all.

Next, any characterization of my views about the investigation, its findings, or the discipline imposed as dismissive or protective were solely the opinion of one reporter, and that characterization was and is not accurate. Similarly erroneous is the claim that MCAO was responsible for records being sealed in the ongoing State Bar disciplinary process. The fact that records were initially sealed was not to hide any information from public scrutiny. Records of the MCAO internal investigation were sealed because of efforts to figure out the best way to provide unedited and unredacted information in cooperation with the State Bar investigation, while also protecting the privacy and rights of MCAO employees who cooperated and provided information. The agreed upon resolution between the State Bar and MCAO was for the State Bar to seek a protective order. No attorneys from MCAO appeared or filed a motion to seal the investigation. Unfortunately, I could not discuss the matter much further during my March 1st interview with the Commission on Appellate Court Appointments in order to honor the Judge's decision and protect the State Bar's process.

Finally, State Bar allegations at the time involving a female defense attorney and claims of prosecutorial misconduct were resolved by the Presiding Disciplinary Judge in his Supplemental Findings of Fact and Conclusions of Law (Findings), filed on September 2, 2018. These Findings resulted in no discipline. Though the State Bar has appealed the Findings, given the Judge's analysis and resolution of the State Bar's Complaint, it would have been an error for me as an employer to have imposed discipline based on the claims alone. This outcome also underscores the need to permit the disciplinary process to take its course and ensure that allegations are proven true.

On April 3, 2000 , Appellant filed a timely notice of appeal from the judgment and sentence. (R.O.A. at 85.) This Court has jurisdiction under Arizona Constitution Article VI, Section 9, and Arizona Revised Statutes §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

ARGUMENT

I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE VICTIM'S STATEMENTS TO HER SISTER FELL UNDER THE EXCITED UTTERANCE EXCEPTION.

Appellant argues that the trial court abused its discretion by finding that the victim's hearsay statements to her sister were admissible as excited utterance exceptions. Appellant's argument is meritless.

"Absent a clear abuse of discretion, an appellate court will not reverse a trial court ruling under [the excited utterance] exception." *State v. Anaya*, 165 Ariz. 535, 538, 799 P.2d 876, 879 (App. 1990); *accord State v. Taylor*, 196 Ariz. 584, 590, 2 P.3d 674, 680 (App. 1999) (citing *State v. Jeffers*, 135 Ariz. 404, 419, 661 P.2d 1105, 1120 (1983)).

In order for a hearsay statement to qualify as an excited utterance: "(1) there must have been a startling event; (2) the statement must relate to the startling event; and (3) the statement must be made spontaneously, that is, soon enough after the event so as not to give the declarant time to fabricate." *Jeffers*, 135 Ariz. at 419, 661 P.2d at 1120. With regard to the first requirement, there is no question that a

startling event occurred. Ms. Lucas was violently attacked without warning and beaten with a rock by Appellant, whom she had previously been romantically involved with and had never before displayed such violence towards her. As for the second requirement, the statements made by Ms. Lucas to her sister related to what happened and how it happened, as well as Ms. Lucas' shock and surprise at what had happened. The only requirement remaining is that the statements had to have been spontaneous.

Although Appellant initially recognizes that a lapse of time between a statement and the startling event is not singularly dispositive for an excited utterance exception, Appellant's argument that the foundational requirements of Rule 803(2) have not been met focuses on and stresses the time interval involved herein. (Opening Brief, at 9-11.) However, "[l]apse of time is only one factor." *State v. Yslas*, 139 Ariz. 60, 65, 676 P.2d 1118, 1123 (Ariz. 1984); *see also State v. Ruelas*, 174 Ariz. 37, 42, 846 P.2d 850, 855 (App. 1992) (stating that "time limits are not fixed" when circumstances indicate a statement was not the product of conscious reflection); *State v. Rivera*, 139 Ariz. 409, 411, 678 P.2d 1373, 1375 (1984) (reasoning that "[s]ince the length of time such stress will last varies among individuals and with the nature of the events producing the stress, there have been no fixed time limits set to determine whether a statement will qualify as an excited utterance"). Accordingly, the fact that Ms. Lucas' statements were made approximately 2 hours after the beating does not render them inadmissible. *See*

State v. Owen, 101 Ariz. 156, 157, 416 P.2d 589, 590 (1966) (statements made by victim approximately one and a half hours after rape); *State v. Taylor*, 196 Ariz. 584, 2 P.3d 674 (App. 1999) (statements made by a child 45 minutes after molestation event); *State v. Starceovich*, 139 Ariz. 378, 678 P.2d 959 (App. 1983) (statement of adult rape victim made 9 hours later); *see also State v. Jean*, 469 A.2d 736 (R.I. 1983) (adult statement made between 3 and 5 hours after a robbery).

Instead, given that the premise underlying the excited utterance exception is that "the excitement of certain startling events stills the reflective faculties, . . . increas[ing] the likelihood of reliability and truthfulness," *Ruelas*, 174 Ariz. at 41, 846 P.2d at 854, "the crucial point is that the court must be able to find that the declarant's state at the time [she] made the declaration ruled out the possibility of conscious reflection." *State v. Thompson*, 169 Ariz. 471, 473, 820 P.2d 335, 337 (App. 1991); *see also Yslas*, 139 Ariz. at 65, 676 P.2d at 1123 (stating that "[t]he physical and emotional condition of the declarant is the important thing") (citing M. Udall & J. Livermore, 1 Law of Evidence, § 127, at 270 (2d ed. 1982)). Consequently, "if the totality of the circumstances indicates that the statement was not likely to be fabricated because of the effect of the startling event on the declarant, it will be admissible." *Yslas*, 139 Ariz. at 65, 676 P.2d at 1123 (citing *State v. Barnes*, 124 Ariz. 586, 606 P.2d 802 (1980)).

There was consistent testimony from all observers of Ms. Lucas that evening that her physical and emotional state was readily apparent and that she was in a

continuous physical and emotional state which would have precluded fabrication of the events that evening. The paramedics and Deputy Vanderhoven found Ms. Lucas on the couch "sobbing and visibly, extremely upset." (*Id.* at 149, 203.) She was crying, "hunched over holding her head." (*Id.* at 149, 203, 234.) When the Schlicht's arrived, they saw Ms. Lucas "crying or sobbing" and emotional. (R.T. 1/13/00, at 271, 273.) At the point when Ms. Borquez first arrived at Ms. Lucas' home, Ms. Lucas was still visibly upset and nervous, talking loud "like she was scared" and hunched over "like she was trying to curl inside herself" (R.T. 1/14/00, at 8.) At the time Ms. Lucas made the statements at issue to her sister, during the approximately twenty minute drive to the hospital, she was still expressing shock at what had happened, telling her sister that "nothing like this had ever happened to [her] before," that she "never saw this coming", and that she "never believed [Appellant] would do something like that." (R.T. 1/14/00, at 13-14.) Furthermore, Ms. Borquez observed that Ms. Lucas was still "really upset "and crying and shaking, appearing to Ms. Borquez that she was going into shock. (R.T. 1/14/00, at 13-15, 17.) In fact, Ms. Lucas was shaking so much that Ms. Borquez turned the heat on inside the car during an evening *in July*. (R.T. 1/12/00, at 122.) Finally, even at the point when she was in the hospital being examined by Dr. Markham, he testified that Ms. Lucas was still "tearful but oriented, mild and moderate distress." (R.T. 1/13/00, at 13.)

Therefore, given the totality of the circumstances regarding the effect of a sudden, unexpected violent attack resulting in a significant wound to the head, it is unlikely that Ms. Lucas' statements to her sister were the result of conscious reflection. *See Rivera*, 139 Ariz. at 411, 678 P.2d at 1375 (stating that "where the time interval between the event and the statement is long enough to permit reflective thought," the "[t]estimony that the declarant still appeared 'nervous' or 'distraught' and that there was a reasonable basis for continuing emotional upset will often suffice" to permit admitting the statement). Rather, consistent with the trial court's specific findings, Ms. Lucas' statements were the result of a startling event and were properly determined to fall within the excited utterance exception to the hearsay rule.

Moreover, even if the trial court had abused its discretion in admitting Ms. Lucas' statements to her sister, the error would be harmless beyond a reasonable doubt.

"When an issue is raised but erroneously ruled on by the trial court, [an appellate] court reviews for harmless error." *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993) (citing *State v. McVay*, 127 Ariz. 450, 453, 622 P.2d 9, 12 (1980)). "For error to be harmless, and therefore not prejudicial, we must be able to say 'beyond a reasonable doubt, that the error did not contribute to or affect the verdict.' " *State v. Fulminante*, 193 Ariz. 485, ¶ 49, 975 P.2d 75 (1999)

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Background

On August 27, 2009, Defense Counsel in the underlying criminal case, Mr. [] filed thirty-seven (37) Motions in Limine, asserting various points of law and arguments regarding how the Defense believed the impending trial against Defendant should be conducted. The State filed a written Response just four (4) days later on August 31, 2009. On September 1, 2009, the first day of trial, following placement before this Court by Judge Timothy Ryan pursuant to the Master Calendar, State's Counsel, Bill Montgomery, brought to the attention of Mr. [] and this Court numerous citation errors and outright mis-citations to authority during argument on Mr. [] Motions in Limine. Of the 118 citations to authority in the Motions, three (3) do not exist, at least another forty (40) purport to support a proposition of law inaccurately – at best, and two (2) present a proposition of law to this Court that Arizona law does not follow and/or support without any notice to this Court of the contrary law on point. At no time did Mr. [] acknowledge any errors nor attempt to correct any errors then or throughout the trial, despite other instances in which he sought to raise a point referenced in the Motions in Limine and errors were brought to his and this Court's attention.

Trial to the jury in the underlying criminal case began September 3, 2009. Less than thirty (30) minutes into the State's Opening Statement, Defense Counsel was instructed by the Court to refrain from making speaking objections. The Court had to repeatedly remind Mr. [] of this prohibition over the course of the trial. Later that same morning, State's Counsel, Bill Montgomery, made a record that the State was concerned about the ability to have a fair trial given the nature of Defense Counsel's behavior. These concerns and specific requests for this Court to take action against Defense Counsel for repeatedly violating the Court's orders to refrain from making speaking objections were repeated throughout the course of the trial up to and including Defense Counsel's behavior in Closing Argument. In particular, Defense Counsel's reference to the State purchasing

the testimony of a cooperating co-defendant had been the subject of prior discussions with Judge Sanders, as well as with this Court, and was the basis for a specific request for sanctions.

Following the Jury's verdict of guilt against Mr. [] client on September 15, 2009, State's Counsel, Bill Montgomery, contemplated filing a petition for an Order to Show Cause Hearing with this Court to address Mr. []' conduct over the course of the trial. In a deliberate effort to keep the sentencing proceeding of Mr. [] client and the issues with Mr. []' conduct separate and avoid any issue with the Court being asked to consider the conduct of Defense Counsel during a pending sentencing proceeding, the State refrained from filing the petition until after Mr. [] client was sentenced. Thereafter, the State was initially prepared to file the petition on November 2, 2009; however, that sentencing date was continued to December 4, 2009. At the sentencing hearing on December 4, 2009, State's Counsel, Bill Montgomery, had the petition in hand but held off filing it until after the sentencing was actually conducted. This finally occurred on December 7, 2009, and the petition was filed after the sentencing was completed in open court by State's Counsel, Bill Montgomery. The petition specifically set forth three areas regarding Mr. [] conduct: the 37 Motions in Limine; repeated speaking objections in violation of the Court's orders; and the improper reference to testimony offered by a co-defendant. This action was separate and independent of any proceedings initiated by the defendant in the underlying criminal case.¹

Mr. [] filed a Response on December 15, 2009, addressing the points raised in the State's pleading and raising extraneous issues regarding an unrelated State Bar proceeding. In the Response, Mr. [] states that "Defense Counsel has reviewed the Motion[s in Limine] and there does not appear to be anything improper." ([]' Resp. dtd. Dec. 16, 2009, at 1.) Thereafter, *the Court* issued an Order to Show Cause and set a Hearing on January 8, 2010.

1. Of note is that Mr. [] Motions refer to the actions of Ms. [] regarding the Motion for an Order to Show Cause and unrelated proceedings. She did not draft the Motion, did not submit it to the Court, and has not

At the Show Cause Hearing, Counsel for Mr. [] filed several Motions, including a Motion to Dismiss for Lack of Jurisdiction. As set forth in the Motion, Mr. [] notes that “[t]he prosecutor’s Motion does not allege any criminal conduct. . . .” (Mot. To Dismiss for Lack of Jurisd. at 1.) Additionally, Mr. [] Motion to Disqualify acknowledges that “the alleged conduct all took place in the presence of the Court. . . .” (Mot. To Disqualify at 5.) Furthermore, respective Counsel and the Court discussed the fact that there were no sanctions contemplated that would necessitate a jury trial pursuant to a criminal contempt proceeding. Specifically, the State set forth the likely request of a finding of contempt and an order from the Court to undergo continuing legal education to address proper legal research and citation, as well as a course of professional conduct. Similarly, the Court stated it would not impose any jail or any fine in excess of \$300.

II. Law

“The superior court has original and concurrent subject matter jurisdiction over all criminal cases in Arizona.” *Trombi v. Donahoe, Alvarez-Miranda, RPI*, __ P.3d __, ¶ 19, 2009 WL 4980349 (App. 2009) (citing Ariz. Const. art. VI, § 14(4) and A.R.S. § 12-123(A)). “The Court also has statutory authority to redress contempt.” *Id.* (citing A.R.S. § 12-864). Furthermore, “[c]ourts also have *inherent* contempt power.” *Id.* at f.n. 4 (citing *Owens v. City Court of City of Tucson*, 123 Ariz. 267, 268, 599 P.2d 223, 224 (1979)) (emphasis added). “If a contempt is criminal, but not within the bounds of [§] 12-861, i.e., the contemptuous act is not a criminal offense by itself, the provisions of Rule 33, [Ariz. R.Crim. P.,] are applicable.” *Riley v. Superior Court*, 124 Ariz. 498, 499, 605 P.2d 900, 901 (App.1979). Likewise, “[i]n order for § 12-861 to apply, the allegedly contemptuous conduct not only must violate a court order, the conduct also must constitute a crime in itself.” *Ottaway v. Smith*, 210 Ariz. 490, ¶ 7, 113 P.3d 1247, 1249 (App.2005) (citation omitted); *State v. Verdugo*, 124 Ariz. 91, 94, 602 P.2d 472, 475 (1979); *see also* Ariz. R.Crim. P. 33.1 cmt. (rule

represented the State before the Court in these proceedings regarding the Motion for an Order to Show Cause.

“applicable to all types of contempt except the comparatively narrow class of direct criminal contempts covered by ... §§ 12-861 to-863”).

Rule 33.3 provides the manner in which the Court has proceeded thus far. Specifically, “a person shall not be found in criminal contempt without a hearing held after notice of the charge [and] [t]he hearing shall be set so as to allow a reasonable time for the preparation of the defense; the notice shall state the time and place of the hearing, and the essential facts constituting the contempt charged. . . .” Ariz. R. Crim. Pro. 33.3.

Pursuant to Rule 33.4 of the Arizona Rules of Criminal Procedure, if the Court were to punish a contemnor “by imprisonment longer than 6 months, or a fine greater than \$300, or both” the contemnor is entitled to a jury finding of guilt before such punishment could be imposed.

III. Argument

A. Rule 33 governs these proceedings.

Given that there is no conduct complained of that is criminal in and of itself, as recognized by Mr. [] in the Motion to Dismiss for Lack of Jurisdiction, (Mot. To Dismiss for Lack of Jurisd. at 1), the statutory provisions of A.R.S. §§ 12-861 – 864 do not apply to the procedure to follow in holding Mr. [] in contempt. *See Riley*, 124 Ariz. at 499, 605 P.2d at 901. Rather, Rule 33 of the Rules of Criminal Procedure governs the Court’s next steps. *See Id.*

B. The Court has constitutional, statutory, and inherent authority to redress contempt.

It cannot be fairly argued that this Court may not hold an Order to Show Cause Hearing to redress conduct that occurred before this Court during the trial heard by this Court and Mr. [] Motion to Disqualify acknowledges that the conduct upon which these proceedings is based “all took place in the presence of the Court. . . .” (Mot. To Disqualify at 5.). That the State’s petition instigated the instant proceedings is of no moment. The Court has inherent and statutory authority to address the conduct in question. *See Trombi*, ___ P.3d at ___, ¶ 19, 2009 WL 4980349.

C. There is no instant prosecution to support the Motions to Dismiss or to Disqualify.

Since the failure to be candid with the Court regarding the citations to legal authority is not a separate criminal act, nor the failure to abide by the Court's repeated orders to refrain from making speaking objections, nor the improper reference to the nature of the testimony offered by the cooperating co-defendant, the provisions of Rule 33 provide for the manner in which to proceed and there is no requirement to proceed by Information. *See* A.R.S. § 12-861 – 864. Even Mr. [] own Motion to Dismiss for Lack of Jurisdiction acknowledges this fact. (Mot. To Dismiss for Lack of Jurisd. at 1.) Accordingly, with no criminal conduct to charge, there is no criminal conduct to prosecute. Therefore, the instant proceedings cannot be fairly characterized as a prosecution in order to invoke otherwise inapplicable statutory provisions. Therefore, the arguments by Mr. [] that the proceedings could only have been initiated by way of formal Information, as would have been required if A.R.S. § 12-862 applied, are incorrect. Consequently, the Motions to Dismiss for Failure to State a Claim, Disqualify, and for Vindictive Prosecution, rest on a failed premise and should be denied.

D. The Court has proceeded correctly under Rule 33.

The State filed a Motion for an Order to Show Cause on December 7, 2009, setting forth three specific areas, previously addressed on the record with Mr. [] and the Court. Mr. [] filed a Response addressing each of these areas and, with respect to the failure to be candid with the Court regarding citations to legal authority, specifically noted that he had "reviewed the Motion and there does not appear to be anything improper." ([]' Resp. dtd. Dec. 16, 2009, at 1.) The Court, only after giving Mr. [] an opportunity to respond, issued an Order to Show Cause specifically citing the State's Motion on January 8, 2010 for a Hearing on January 29, 2010. Therefore, as required by Rule 33.3, Mr. [] has had notice of the conduct in question at least as early as December 7, 2009, to which he responded on December 16, 2009. The Court set a Hearing date three (3) weeks from the date of the Order, which was more than three(3) weeks from