

Maricopa County Board of Supervisors
301 W Jefferson, 10th Floor
Phoenix, AZ 85003

March 31, 2022

Dear Chairman Gates and Members of the Board:

The undersigned local and state community, advocacy, and faith organizations urge you to appoint an interim county attorney who will hold all prosecutors in the Maricopa County Attorney's Office (MCAO) to the highest ethical standards to protect public safety and ensure accountability for both prosecutors and police who have violated Arizonans' civil rights. We urge you to appoint an Interim County Attorney who will focus on regaining public trust, not their own campaign, and pledge not to seek election in November. Finally, we urge you to implement a fully transparent and inclusive appointment process that meaningfully incorporates the feedback of people directly impacted by the criminal legal system.

Many of the recommendations in this letter are identical to those we made in our September 18, 2019 letter, after County Attorney Bill Montgomery was appointed to the Arizona Supreme Court. Unfortunately, those recommendations were not followed. The result, the appointment of a County Attorney who continued and even worsened the culture of impunity within MCAO, has been disastrous for the people of Maricopa County. The need for change is urgent. We hope that you will meet with representatives of our organizations and those directly impacted by the criminal legal system, and work with us to ensure that the next county attorney prioritizes long-term public safety over a short-term "win at all costs" approach that leads to wrongful and overturned convictions, sends people to prison for far too long, including those with for mental illness and substance use disorder, fails to hold prosecutors who violate their ethical duties accountable, and makes our communities less safe in the long run.

Our full list of recommendations is below:

1. We urge you to appoint a county attorney who will commit to fairly investigating claims of prosecutorial misconduct, properly disciplining prosecutors when necessary, and protecting the due process rights of people charged with crimes.

As we explained in 2019, the Maricopa County Attorneys' Office has a well-documented history of allowing prosecutorial misconduct to go unchecked.¹ This not only ruins the lives of people who are convicted of crimes they did not commit, but also puts our entire community at risk when legitimate cases are dismissed or overturned. Serious misconduct has included *Brady*

¹ Prosecutor Juan Martinez was the most egregious but alas far from the only example of this. As a direct result of his misconduct during her trial, Debra Milke was released after 22 years on death row. Michael Kiefer, "The State of Arizona v. Jodi Arias . . . and Juan Martinez," March 27, 2020, <https://www.azmirror.com/2020/03/27/the-state-of-arizona-v-jodi-arias-and-juan-martinez/?msclkid=4b735e9baa2011ecbc46271f2028616c>. While MCAO finally fired Martinez in 2020, it was for his sexual harassment of colleagues rather than his many years of documented prosecutorial misconduct. Lauren Castle, Robert Anglen, & Anne Ryman, "Juan Martinez's appeal of his firing denied by Maricopa County panel," Arizona Republic, Oct. 6, 2020, <https://www.azcentral.com/story/news/local/phoenix/2020/10/06/jodi-arias-prosecutor-juan-martinezs-firing-upheld-county-panel/5902635002/>.

violations,² which means the failure to turn over evidence that may show the person accused of a crime is innocent.³ MCAO prosecutors’ misconduct also includes deliberately presenting false evidence. The Maricopa County Superior Court was recently forced to *dismiss a murder case* because, among other things, “the State obtained the indictment with perjured testimony” and “failed to disclose *Brady* impeachment evidence regarding its lead witness.” The Court could not “find an iota of appreciation for the seriousness of its misconduct in [MCAO prosecutor John Nelson Schneider’s] briefs,” which “ignore[d] the ethical obligations of candor and honesty to the Court.”⁴

As you are well aware, on Adel’s watch MCAO has constantly been in the news due to the political prosecutions of protestors engaging in First Amendment protected speech.⁵ A recent report by retired Judge Steinle, hired by MCAO to conduct an internal investigation of the problem, found that that “there can be no argument the Phoenix Police Department was attempting stop the marches based upon the content” of the protestors’ expression, which is the clearest possible violation of the First Amendment.⁶ Indeed, this is one of the reasons that PPD is currently under investigation by the Department of Justice.⁷ The Steinle report also found that MCAO prosecutor April Sponsel “colluded” with police “to present the Grand Jury with false information regarding a non-existent gang,” and that many of her supervisors were aware of the “problems” with these prosecutions—yet did nothing.

It is clear that Allister Adel failed to remedy a decades-long culture of impunity that flows from the top down, one that prioritizes winning convictions over pursuing fairness and seeking justice. Our next county attorney must work to win back the trust of the community by pledging to implement all of the recommendations in Judge Steinle’s report, by quickly and thoroughly investigating every time the court finds that a prosecutor has engaged in misconduct, and by firing any prosecutor who knowingly presents false evidence or knowingly withholds exculpatory evidence.

² Dave Biscobing, “Full Disclosure: Arizona fails to properly track problematic ‘Brady list’ cops,” ABC15, Aug. 6, 2020, updated June 29, 2021, <https://www.abc15.com/news/local-news/investigations/full-disclosure-arizona-fails-to-properly-track-problematic-brady-list-cops> (“ABC15 discovered at least 175 times in Maricopa County when officials delayed putting officers on the [Brady] list.”).

³ Dave Biscobing, “Grandmother convicted as a Phoenix officer’s lies are kept secret,” ABC15, Aug. 10, 2020, updated Nov. 9, 2020, <https://www.abc15.com/news/local-news/investigations/a-grandmother-convicted-as-a-phoenix-officers-lies-are-kept-secret> (Prosecutor Elizabeth Lake “quietly tucked a one-sentence notice of disclosure” that the officer was a known liar into the court file – “[s]ix months after trial,” knowing that the entire case rested on the officer’s testimony).

⁴ CR2017-001324-001 DT, Ruling (7/12/21), https://www.acluaz.org/sites/default/files/dismissal_in_cr2017001324.pdf.

⁵ This was extensively reported by Dave Biscobing at ABC15 in “Politically Charged” <https://www.abc15.com/news/local-news/investigations/protest-arrests>.

⁶ Judge Roland Steinle’s report is available at <https://www.maricopacountyattorney.org/CivicAlerts.aspx?AID=845>.

⁷ Department of Justice, “Justice Department Announces Investigation of the City of Phoenix and the Phoenix Police Department,” Aug. 5, 2021, <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department>.

Unfortunately, this culture of impunity will not end under the leadership of Ken Vick, who is currently operating as “acting county attorney,” despite having not been appointed by this Board. While this Board alone has the statutory authority to “[f]ill by appointment all vacancies occurring in county or precinct offices,” Adel “delegated” her authority to Mr. Vick to manage the office until this Board appoints an acting county attorney. This is simply unacceptable. Mr. Vick was Chief Deputy at MCAO under Adel and likely signed off on bringing false gang charges against peaceful protesters.⁸ More recently, it was reported that Mr. Vick was in email contact with then-judge Erin Otis, who was being investigated by the Arizona Commission on Judicial Ethics and presiding over cases prosecuted by MCAO while Mr. Vick and others at MCAO were involved in hiring discussions with her.⁹ Despite this “stunning conflict” of interest, no one at MCAO, including Mr. Vick, disclosed this conflict to defense counsel as required.

2. We urge you to appoint a county attorney who is not under investigation for misconduct by the State Bar and does not have a record of prosecutorial misconduct or the knowing failure to address the misconduct of attorneys they supervise.

It is our understanding that multiple MCAO prosecutors are currently under investigation by the State Bar for prosecutorial misconduct. While they certainly have a right to due process prior to discipline being imposed, nobody has a due process right to a promotion. That is especially true of an appointment to such a powerful position, one in which the appointee will literally have the power of life and death. The new county attorney must be beyond reproach, not someone who could be found to have violated their ethical duties shortly after their appointment, plunging MCAO into scandal once again.

Additionally, no prosecutor that a judge has found on the record to have engaged in misconduct should have that unethical behavior rewarded with a promotion. In one recent case, the Judge said that, because the prosecutor “picked and chose what fit their narrative to the exclusion of accurate facts, . . . the Court now has such a negative opinion of [the] State’s conduct in this case that . . . [t]o be blunt, the Court has no trust in the State [and MCAO prosecutor Tamara Barnett].”¹⁰ That sort of prosecutor shouldn’t have public trust, either.

Nor should any attorney who supervised an unethical prosecutor be made county attorney, at least if the supervisor was aware of the misconduct and did nothing. For example, according to MCAO’s own internal investigation, April Sponsel’s supervisors, up the chain of command to Ken Vick, all knew about the fictitious gang charges and recognized them as problematic as far back as October of 2020, yet did nothing until after the media began reporting on the prosecutions in February 2021.¹¹ They, along with any other prosecutor who knew about and

⁸ Dave Biscobing, “Prosecutor: Allister Adel, Phoenix chiefs approved of protest gang charges,” ABC15, Aug. 10, 2021, updated Aug. 10, 2021, <https://www.abc15.com/news/region-phoenix-metro/central-phoenix/prosecutor-adel-phoenix-chiefs-approved-of-protest-gang-charges>.

⁹ Dave Biscobing, “Emails show Judge, Maricopa County Attorney prosecutors kept job talks secret,” ABC15, Mar. 7, 2022, updated Mar. 10, 2022, <https://www.abc15.com/news/local-news/investigations/dishonorable/emails-show-judge-maricopa-county-attorneys-office-prosecutors-kept-job-talks-secret>.

¹⁰ CR2020-101218-001 DT, Ruling (8/11/21), https://www.acluz.org/sites/default/files/cr2020-101218-001_dt_ruling.pdf.

¹¹ See Steinle report, *supra*.

failed to remedy these political prosecutions, should be disqualified from consideration for appointment as county attorney.¹²

3. We urge you to appoint a county attorney who will address the racial disparities in MCAO’s prosecutions so that all Maricopa County residents are treated fairly.

After being forced to sue the office for access to public records, the ACLU of Arizona analyzed the data and found racial disparities in the way cases are prosecuted by MCAO, which were published in a 2020 report. For example, Black and Hispanic people prosecuted by MCAO spend significantly more time incarcerated than white people, and white people are more likely to have their charges dismissed than people of other races.¹³ Despite saying that “I take [the report] seriously” and that she was hiring a consultant to look at the data in the report,¹⁴ Adel took no action to remedy these disparities. It’s no wonder then that only 26% of Arizonans believe that “the criminal justice system treats everyone equally.”¹⁵ The next county attorney must commit to remedying these racial disparities.

4. We urge you to appoint someone who will be transparent with the public, responsive to public records requests, and comply with constitutional requirements to turn over evidence to the defense to ensure that justice is served.

Unfortunately, while Allister Adel took some limited steps towards transparency, MCAO still has a long way to go. After being appointed by this body, Adel continued former county attorney Bill Montgomery’s fight to avoid turning over public records. The ACLU of Arizona was forced to sue MCAO, at a heavy financial cost to taxpayers, to ensure that the public could see MCAO’s policies—policies that have a huge impact on who goes to jail and for how long.

MCAO’s refusal to disclose information—or even review it themselves—has even more serious consequences in individual cases, destroying lives by prosecuting people for crimes they obviously did not commit. The refusal to view the body camera footage in the political prosecutions is one example. Another example is MCAO’s policy of refusing to review or turn over videos in cases in “Early Disposition Court,” which constitute a significant and growing number of MCAO cases overall. One person spent a month in jail for an assault at a convenience store and—although the case was later dismissed—was pressured by MCAO to accept a plea deal that would have sent him to prison for over seven years. If the prosecutor had bothered to watch the store’s security camera footage, it would have been obvious that the person in jail did not match the description of the person who committed the assault. The coercive and

¹² Significant additional evidence has just come to light demonstrating that more people knew of the problems with these charges sooner than was previously believed. Dave Biscobing, “MCAO, Phoenix PD facing new legal claims for bogus protest gang case,” ABC15, March 14, 2022, <https://www.abc15.com/news/local-news/investigations/protest-arrests/mcao-phoenix-pd-facing-new-legal-claims-for-bogus-protest-gang-case>.

¹³ Analise Ortiz and Melissa Kovax, “The Racial Divide of Prosecutions in the Maricopa County Attorney’s Office,” ACLU-AZ, 2020, <https://www.acluaz.org/en/racialdividereport>.

¹⁴ Steve Goldstein, “Maricopa County Attorney To Hire Independent Investigator To Look At ACLU Prosecution Data,” KJZZ, July 23, 2020, <https://kjzz.org/content/1603445/maricopa-county-attorney-hire-independent-investigator-look-aclu-prosecution-data>.

¹⁵ Gallup, “The Arizona We Want: The Decade Ahead,” 2021, <https://www.arizonafuture.org/the-arizona-we-want/download-report-form/>.

unconstitutional nature of these EDC courts is the subject of an ongoing lawsuit against MCAO filed by the ACLU of Arizona.¹⁶

The next County Attorney must be fully committed to transparency at the outset, ensuring that their policies make public records readily available and do not withhold information from people accused of crimes.

5. We urge you to appoint a county attorney who will not lobby in support of mass incarceration and will ensure that MCAO attorneys do not lie to the Arizona Legislature.

The Maricopa County Attorney long stood in the way of bipartisan, evidence-based criminal legal reform at the state Capitol by lobbying lawmakers to maintain the status quo. As a direct result, Arizona now spends more taxpayer dollars on keeping people in prison than we spend on higher education, and we have the fifth-highest incarceration rate in the country.

More recently, on February 2, 2022, MCAO prosecutor Kristin Larish gave false testimony to the Arizona legislature and, to the best of our knowledge, failed to correct these false statements, which is a violation of an attorney's ethical duties. This was brought to Adel's attention as well, and she again failed to take any action.

We need a county attorney who will be an advocate for smart on crime policies that will keep our communities safe while reducing mass incarceration and respecting the civil liberties of all Arizonans. We also need someone who will not tolerate prosecutors lying to the legislature to advance their cause.

6. We urge you to appoint a county attorney who will pledge not to run for election in 2022.

Voters should be allowed to decide who their next county attorney will be, without the huge advantage that incumbency provides. In addition, by the time an appointment is made, there will only be around half a year before the election. Given the dire need for change at MCAO, the people of Maricopa County deserve a county attorney who is completely focused on reforming that office, not busy worrying about their own campaign.

7. We urge you to make the appointment process fully transparent and inclusive by ensuring the involvement of people directly impacted by the criminal legal system.

In 2019, this Board appointed a county attorney selection review committee to help you choose the next county attorney. Unfortunately, it was not fully representative of the community, because there was no representation of people who had been directly impacted by the criminal legal system or by MCAO's proven misconduct.

This time, we hope you will correct this oversight and ensure that formerly incarcerated people, family members of currently incarcerated people, or people with other direct experiences with unjust prosecution and policing can have a voice in this process. In addition, the voices of victims—representing both victims that had a good experience with MCAO and those who felt their voices were not heard—should be included as well. Those closest to the problem are the closest to the solution, and incorporating the feedback of those directly impacted is crucial to appointing a county attorney who will act in the best interests of all Maricopa County residents.

¹⁶ *Luckey v. Adel*, ACLU-AZ, <https://www.acluaz.org/en/cases/luckey-v-adel>.

While we are hopeful that you will implement all of the recommendations contained in this letter, the community is prepared to hold this Board accountable at the ballot box should you fail to do so.

We appreciate your time and consideration.

Sincerely,

American Center for Religious Freedom

American Civil Liberties Union of Arizona

American Association of University Women Arizona

Arizona Center for Women's Advancement

Arizona Justice Alliance

Death Penalty Alternatives for Arizona

Just Communities Arizona

League of Women Voters of Arizona

LUCHA (Living United for Change in Arizona)

NAACP – Arizona State Conference

NAACP – East Valley - Arizona (1008-B)

NAACP – West Valley

National Council of Jewish Women Arizona

NOW – Central Phoenix Inez Casiano

YWCA Metro Phoenix