

September 17, 2010

Paul Ahler
Interim Chief Deputy
Maricopa County Attorney's Office
301 W Jefferson Street
Phoenix, AZ. 85003

RE: WRITTEN STATEMENT IN RESPONSE TO NOTICE OF TERMINATION

Mr. Ahler,

Your September 8, 2010 Notice and the accompanying findings are unfounded and clearly an attack on the decisions of the prior administration. In the face of Interim County Attorney Richard Romley's thumping in the recent primary, an attack on the prior administration by a politically appointed and temporary administration is not only improper, but reeks of politics and "sour grapes". Of course, ICA Romley was appointed by the very people the prior administration was investigating and in the process of prosecuting for multiple wrongdoings, so this is just another of a spate of recent actions by ICA Romley and his administration that are clearly in retaliation for the prosecutorial efforts against his political allies.

Based on prior actions of ICA Romley's inept administration, the decision to fire me was made many months ago (see my August 13th Notice of Claim), so the aforementioned report and your decisions are clearly a means to a predetermined end. As you well know, an attorney in my role is at most participating in the decision-making process and is ultimately directed to act in every respect by the County Attorney. Whether or not this temporary administration or every attorney working under the prior administration agrees with those decisions or the course of actions taken by Elected County Attorney Andrew Thomas and his administration is completely irrelevant. The fact remains there were no procedural or ethical violations. Every action taken was based on evidence and information supplied by a law enforcement agency and with the intent of bringing corrupt and criminal officials to justice. To now single me out and terminate me for the decisions and actions of the prior administration because some folks question my judgment is not only ridiculous, but also procedurally and ethically wrong.

Nevertheless, I have complied with your April 19th order to stay home and submit to every internal inquiry for the now nearly five-month period this now obvious witch hunt was carried out. During this time, ICA Romley has continued to openly discuss with the media his "investigation regarding issues related to (my) job performance" which, by any level of professional decency, should be a private and personal matter with a proven and established prosecutor once promoted and lauded by former elected County Attorney Richard Romley himself. However, ICA Romley is not one to let established County personnel rules, regulations, and protocol or even common professional courtesy interfere with his personal and political interests. ICA Romley's temporary administration has resorted to extreme measures to smear my reputation and destroy my career as a prosecutor. ICA Romley's administration's guilty until

proven innocent attitude and public persecution approach in this matter has caused irreparable damage to my professional reputation as a prosecutor and severe emotional distress and harm to my family and me.

The flaws in your report are too numerous to count.

Factually, your conclusions are not supported by the evidence. Even as to the cases, you ignored the fact that I was investigating the court tower hindering, not the underlying court tower investigation, after the Donahoe Order; an order that was so riddled with conflicts that any reasonable person would question his conduct. That conduct along with him taking cases from other judges to protect himself, his supervisors, and those paying for the court tower were the basis of those charges. The fact that some issues with the court tower were raised with Andrew Kunasek, who asked for a free talk, does not show any wrongdoing. Mr. Kunasek's letter, filled with defamatory conduct, is where the wrongdoing lies.

As to the evidence to support filing of the Donahoe and RICO matters, a well-respected national expert, Bob Barr, has prepared an opinion that there was sufficient evidence to support the filings. In addition, Robert Driscoll publicly said it was a valid case. There were no sanctions ordered by the judges in either matter despite the fact that the Arizona Supreme Court as well as the federal court had ample opportunity to do so if they believed the actions were frivolous. Clearly, there are people on both sides who feel strongly that the case should or shouldn't have gone forward, but the final decision to pursue the case was made by Elected County Attorney Andrew Thomas, not ICA Romley and his administration, and was based on well documented evidence.

You have also misinterpreted the RICO activity. The failure to provide the evidence was in response to a motion on a completely different matter that Barbara Marshall was handling. Peter Spaw overreacted. Due to other ongoing grand jury matters, it was not appropriate to give them additional information at that time. In addition, your reliance on Peter Spaw, someone with zero experience in federal RICO matters, or Ogletree Deakins, a labor law firm, to second guess the RICO filing is inappropriate at best. Mr. Spaw is not an experienced trial attorney and not competent to make that assessment. He had taken only one criminal case to trial; three times because he kept hanging it, before he transferred to a forfeiture unit. In fact, when he applied for that unit, I informed his supervisors that I did not feel he was ready to be transferred.

Your accusations that I have been discourteous to other employees are false. When the investigator did not do his job; which was to file a complaint but then did not do so because this one was to be filed against someone he felt deserved special treatment, it was appropriate to call him on it. The investigator's supervisor, Mr. Stribling, and I were upset for different reasons. The investigators had never questioned any case filing in the past, so their unwillingness to file this particular case was unprecedented. Nevertheless, since when are heated disagreements between attorneys and investigators grounds for discipline? Certainly, there is no precedent for disagreements resulting in termination. In the other alleged incident, Mr. Spaw was stubborn and would not consider others' opinions on the matter, so I had every right to be upset but at no point was I ever abusive or did I yell at him.

Mr. Romley has misled the public about the actions of the grand jury in ending the inquiry. They requested a draft indictment and only did not vote on the matter when we asked them to stop their inquiry. That is what they agreed to do. With permission of the County Attorney, when I asked Daisy Flores to review the matter, I enclosed a sealed envelope that informed her IF she agreed to review the case, she would have to obtain the grand jury proceedings. I even gave her the numbers. I more than fulfilled my ethical obligations and, had I disclosed to her the actual "end inquiry", I would have been violating grand jury secrecy laws because she had not yet agreed to assume the prosecution. Therefore, you are criticizing me for not violating the law. In addition, as you well know, there is no legal meaning and no binding effect to an "end inquiry". I am aware of situations in your administration where a grand jury actually voted not to indict, but yet you went forward with it a second time. In this case, the grand jury could have voted not to indict but they didn't; they did what I asked, and your office's press conference to the contrary is defamatory and unethical.

The vague assertions that I was somehow hiding evidence are crazy and insulting. Paul Kittredge and I met to separate out the work product associated with the Stapley and Wilcox cases. Mr. Manning was given all of the evidence and I informed him of where to find the evidence if he thought he was missing anything. When I was transferred, the full work product file was sent to Paul Kittredge, but it sat in his mailbox for days.

You have failed to acknowledge that my supervisors, Elected County Attorney Andrew Thomas and Sally Wells, gave me exceptional evaluations. They were the ones who were evaluating the quality of my job performance over the past five years. They were the ones who brought me into their inner circle as a special prosecutor and trusted my judgment. They were the ones who assigned these extremely complex and difficult cases to me. You are simply ignoring the obvious, instead focusing on the opinions of an investigator inexperienced in criminal matters and the opinions of attorneys that were clearly bitter when they were passed over for promotions and special assignments that were given to me by Mr. Thomas, and substituting your assessment gathered over a period of a few months in place of my supervisors' assessments over the past five years.

So, who is an authority on what is good or bad judgment? Prior to his departure, then Elected County Attorney Romley believed I had good judgment. Enough so that he promoted me and subsequently recommended me for a city court judge position.

Kate Baker, an investigator who has zero experience in criminal matters, is second-guessing my charging decisions. Early on in her interviews with me, it became obvious that Ms. Baker, a person who has also accused Judge Gary Donahoe of inappropriate conduct and has had her judgment questioned by a federal judge, had not been able to find any factual or ethical wrongdoing. As such, she began targeting the "bad judgment" angle and the very tone of those interviews was negative from there on out. Without the benefit of any real evidence to back it up, Ms. Baker made several statements indicating her belief that my actions were politically motivated rather than based on facts and evidence provided by law enforcement agencies. Desperate to achieve the ICA Romley administration's goal of finding cause to fire me? Obviously. An expert on judgment? Hardly.

Leonard Ruiz, who is so risk adverse that he would take a case to trial only if it were videotaped and now claims my judgment is so bad it warrants termination, has obviously forgotten about the last evaluation I received from him (also Exceptional). Instead, Leonard has focused on the countless internal battles he has lost since then because he was scared of the targets and the political ramifications of going after them despite the mounting evidence against them. Bitter? Yes. An expert on judgment? Not quite.

Tony Novitsky, who can't seem to make up his mind whether he wants to be married or not or who he wants to be married to for the months that he does want to be married, is not someone I look to for advice when it comes to judgment calls. But there he is, front and center in your investigation and an expert witness on what is good or bad judgment. Indecisive? Yes. An expert on judgment? Hardly.

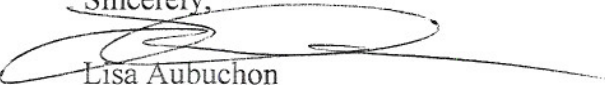
Without question, judgment is subjective; an opinion. In many instances, there is no absolute right or wrong. However, you have inserted yourself into this process and, in a matter of a few months, have decided that my judgment is bad and now intend to fire me. You can't find any procedural or ethical violations, but you're going to fire me anyway because you think I have bad judgment. In and of itself, I think that is bad judgment on your part.

Let me remind you that I have never had a no true bill from a grand jury, I have never had a Rule 20 granted at trial and I have never had a case reversed on appeal. Although I have lost some cases, there has never been a finding that there was a lack of sufficient evidence to go to the trier of fact. Not only did the County Attorney approve the decisions to pursue these cases, but experts such as Bob Barr agreed they were appropriate.

Just because I may be a tougher prosecutor than most doesn't mean my judgment is bad. Being criticized by people for believing the death penalty is appropriate in 80% of cases where the person has been charged with First Degree murder does not mean I have bad judgment. It reflects only a different philosophy about punishment.

In conclusion, your findings are unfounded and clearly an attack on the decisions of the prior administration. Especially now that we know ICA Romley's administration will vacate the office in two months, second guessing the decisions of the prior administration that ICA Romley has openly criticized and worked against and, now in the eleventh hour, focusing your efforts on the discipline of a 20-year career prosecutor with an exemplary record who was complying with the decisions of her supervisors in that prior administration not only reeks of politics, but is totally absurd.

Sincerely,



Lisa Aubuchon

September 17, 2010