
CHARLES KRATOVIL,

Plaintiff/Appellant,

v.

CITY OF NEW BRUNSWICK, and
ANTHONY A. CAPUTO, in his
capacity as Director of Police,

Defendants/Respondents

SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION
DOCKET NO. A-000216-23T1

On Appeal from a Final Order of
the Superior Court of New Jersey,
Law Division, Middlesex County,
Docket No. MID-L-003896-23

Sat Below:
Hon. Joseph L. Rea, J.S.C.

**BRIEF AND APPENDIX OF AMICI CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT CHARLES KRATOVIL**

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**Pro hac vice motions forthcoming*

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AMICI INTEREST STATEMENT

Amici are the Reporters Committee for Freedom of the Press (“Reporters Committee”), the New Jersey Press Association and news organizations that together own many of New Jersey’s major news publications. All amici share an interest in the correct application of the law to the press.

The **Reporters Committee** is an unincorporated nonprofit association dedicated to defending the First Amendment and newsgathering rights of the press. It was founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. As a representative of the news media, the Reporters Committee has a strong interest in ensuring that journalists and news organizations remain free from unconstitutional restrictions on their ability to gather and publish newsworthy information.

Gannett is the largest local newspaper company in the United States. Its 200 local daily brands in 43 states — together with the iconic USA TODAY — reach an estimated digital audience of 140 million each month. In New Jersey, Gannett publishes The Record (Woodland Park), The New Jersey Herald (Newton),

Burlington County Times (Willingboro), Courier Post (Cherry Hill), Daily Journal (Vineland), Asbury Park Press (Neptune), Home News Tribune (Middlesex County), Courier News (Somerville), and the Daily Record (Parsippany).

MediaNews Group is a leader in local, multi-platform news and information, distinguished by its award-winning original content and high quality local media. It is one of the largest news organizations in the United States, with print and online publications across the country, including *The Trentonian* in New Jersey. The grandfather of company chairman Richard B. Scudder founded the *Newark (New Jersey) News* in 1882. Scudder fought in World War II, then returned home to run the family paper, serving as publisher until 1972.

New Jersey Press Association (“NJPA”) is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. It has a membership composed of daily newspapers, affiliate newspapers, weekly newspapers, digital news websites, as well as corporate and non-profit associate members. NJPA is a membership association formed to advance the interests of newspapers and to increase awareness of the benefits of newspaper readership. The mission of NJPA is to help newspapers remain editorially strong, financially sound and free of outside influence. NJPA pursues these goals in every way possible, as a service both to its members and to the people of New Jersey.

NJ Advance Media is the #1 provider of local news in New Jersey and The Lehigh Valley. It drives daily conversations and engages millions of people through quality journalism on NJ.com, lehighvalleylive.com, social channels and in newsletters and print publications, including *The Star-Ledger*, *The Express-Times* and other daily and weekly newspapers.

PRELIMINARY STATEMENT

The press plays an essential, and constitutionally recognized, role in ensuring the public is well informed about the activities of government. Notwithstanding its laudable aim—to protect certain government officials and their families from targeted violence—New Jersey’s Daniel’s Law, N.J.S.A. 2C:20-31.1; N.J.S.A. 56:8-166.1, impermissibly interferes with this vital role of the press when applied, as here, to restrain journalists like Charles Kratovil from publishing truthful, lawfully obtained information about a matter of public concern.

Here the trial court erred when it applied Daniel’s Law to prohibit Kratovil—under threat of civil and criminal penalties—from publishing the residential address of Anthony A. Caputo, New Brunswick’s Director of Police. That Caputo, a high-level local official, lives in a municipality more than two hours from New Brunswick, is unquestionably newsworthy. Both the

New Jersey Constitution and the First Amendment protect publication of that information, including Caputo's street address.

Neither the legislature nor a court may decide if that story should be reported by an independent press. And contrary to the ruling below, how much or how little information that report should include is a decision properly left to a journalist's editorial judgment. If not reversed, the trial court's unconstitutional application of Daniel's Law threatens a free press and accordingly, an informed public—a threat made manifest by the significant amount of public interest reporting that would no longer be possible in New Jersey.

Because Daniel's Law cannot constitutionally be applied to Kratovil's publication of Caputo's address, amici urge this Court to reverse the lower court's dismissal of Kratovil's complaint and direct the court to enjoin defendants from seeking to enforce Daniel's Law against him.

PROCEDURAL AND FACTUAL HISTORY

Amici adopt the Procedural History and Statement of Facts set forth in the brief filed on behalf of Plaintiff-Appellant. *See* Pb4–12.

ARGUMENT

- I. **Daniel’s Law cannot constitutionally be applied either to restrain this reporter from publishing Caputo’s address or to punish him for doing so.**
 - A. **Application of Daniel’s Law to prohibit Kratovil’s publication of a newsworthy fact is an unconstitutional prior restraint on speech.**

The press plays an essential role in ensuring the public is well informed about the activities of government. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980). A prior restraint is “the most serious and least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). It is “by definition . . . an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it at least for the time.” *Id.* Thus, as the Supreme Court of the United States has repeatedly made clear, there is “a heavy presumption against [the] constitutional validity” of a prior restraint. *See New York Times Co. v. United States (Pentagon Papers)*, 403 U.S. 713, 714 (1971); *see also Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418 (1971).

“The damage” wrought by a prior restraint “can be particularly great when [it] falls upon the communication of news and commentary on current events. *Neb. Press Ass’n*, 427 U.S. at 559. Indeed, a core purpose of the First

Amendment is to protect speech about matters of public concern—and particularly speech about public officials—from government interference. “[F]reedom to discuss public affairs and public officials is unquestionably . . . the kind of speech the First Amendment was primarily designed to keep within the area of free discussion.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 296–97 (1964); *see also Connick v. Myers*, 461 U.S. 138, 146 (1983) (speech of public concern is that which can “be fairly considered as relating to any matter of political, social, or other concern to the community”).

Journalists serve a vital function in fostering discussion and debate about matters of public concern, including the conduct of local, state, and federal government officials. “The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs.” *Mills v. Alabama*, 384, U.S. 214, 219 (1966). “A press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For without an informed and free press there cannot be enlightened people.” *Pentagon Papers*, 403 U.S. at 728 (Stewart, J., concurring); *see also, id.* at 717 (Black, J., concurring) (in publishing the Pentagon Papers, *The New York Times* and *The Washington Post* had fulfilled the role of a free press in our democracy by shedding light on the inner workings of government); *Neb. Press Ass’n*, 427 U.S. at 539–40 (a court order restraining the press from reporting on key aspects of a high-

profile murder trial could not meet the “heavy burden imposed as a condition to securing a prior restraint” even if the order was intended to protect the accused’s right to a fair trial); *Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 841–42 (1978) (“[i]njury to the reputation of judges or the institutional reputation of courts is not sufficient to justify repressing speech that would otherwise be free”) (internal quotation marks omitted).¹

The trial court correctly found that Kratovil is a journalist. Its application of Daniel’s Law to prohibit him from publishing Caputo’s address is a prior restraint on speech that has, to date, been in effect for nearly 90 days.² Pa68 (September 21, 2023 order denying “relief by way of temporary restraints”); *see also* Pa29 ¶ 25 (May 4, 2023 cease and desist notice from New

¹ Kratovil has sought relief pursuant to Article I, ¶ 6 of the New Jersey Constitution, which provides: “No law shall be passed to restrain or abridge the liberty of speech or of the press.” Pa34 (Am. Compl. ¶¶ 40-43). That provision has been interpreted to provide protections for speech and the press that are consonant with the First Amendment’s protections. *See State v. Schmid*, 84 N.J. 535, 560 (N.J. 1980) (discussing free speech guarantees under the New Jersey Constitution within the federal First Amendment framework and concluding that, “the State Constitution furnishes to individuals the complementary freedoms of speech and assembly and protects the reasonable exercise of those rights”).

² Defendants wrongly assert that Kratovil has brought a facial challenge to Daniel’s Law. Db1. On the contrary, Kratovil argues only that the statute is unconstitutional “as applied to journalists,” like him, “who would report on an issue where the actual residency of a protected official is germane.” Pb2. Accordingly, this amici brief submitted by the news media addresses the constitutionality of application of Daniel’s Law to Kratovil on the factual record before this Court.

Brunswick Police Department directing Kratovil not to publish address). That ongoing prohibition on Kratovil’s ability to publish a newsworthy fact contravenes the “virtually insurmountable barrier” against the imposition of a prior restraint. *Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 259 (1974) (White, J., concurring) (citing *Pentagon Papers*, 403 U.S. 713).

Courts have uniformly held efforts to restrain speech on matters of public concern to the most exacting standard, even when the gravest of national interests are alleged to be at stake. *Pentagon Papers*, 403 U.S. at 725 (Brennan, J., concurring) (“So far as I can determine, never before has the United States sought to enjoin a newspaper from publishing information in its possession.”). And the Supreme Court has never identified a prior restraint on the publication of newsworthy information that meets that exceptionally high standard. *See id.* at 726–27 (publication of Pentagon Papers could not be restrained because government could not prove that publication would “inevitably, directly and immediately cause” harm to national security); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931) (prior restraints can be justified only in exceptional cases such as those involving war or incitement of imminent violence).

This exacting constitutional standard is not satisfied in this case. Indeed, the State of New Jersey appeared to be recognizing the “heavy burden of

showing justification for the imposition of such a restraint,” *Org. for a Better Austin*, 402 U.S. at 419, when it declined to intervene in this case to defend the application of Daniel’s Law to Kratovil’s reporting, Pa66–67.³ In sum, the trial court’s application of Daniel’s Law to Kratovil’s reporting is an unconstitutional prior restraint. This Court should reverse on that basis. *See Okla. Pub. Co. v. Dist. Ct. In & For Okla. Cnty.*, 430 U.S. 308, 310 (1977) (per curiam) (order prohibiting newspaper from publishing name and photo of juvenile lawfully obtained from a public record was a prior restraint).

B. Kratovil cannot, consistent with the First Amendment, be subjected to punishment for publishing lawfully obtained truthful information about a matter of public concern.

Even if the trial court’s order were not viewed as a clear prior restraint, it *still* fails First Amendment scrutiny. Kratovil cannot be subjected to civil or criminal penalties under Daniel’s Law for publishing truthful information that he lawfully obtained about a matter of public concern. “If a newspaper lawfully obtains truthful information about a matter of public significance then

³ As explained in the Attorney General’s letter to the Court, Kratovil “is not seeking to have the statute invalidated generally, and is seeking only as-applied relief as to him, for his particular factual situation. That is, Plaintiff’s entire theory rests on his factual assertions that he obtained the underlying information lawfully, that the information is otherwise still available, and that he is a journalist who wishes to publish that information in a story relating to a high-level official’s residency.” PA67. While the State expressed its “strong interest in defending Daniel’s Law generally,” it saw no need to do so in this matter involving Kratovil, a journalist. *Id.*

state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.” *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 101–02, 103 (1979). As detailed below, subjecting Kratovil to criminal or civil liability does not advance such an interest.

The U.S. Supreme Court’s decision in *Smith v. Daily Mail* arose out of a shooting that occurred at a junior high school in West Virginia. *Id.* Several media outlets obtained the identity of the alleged assailant—a fourteen-year-old student—by speaking with witnesses and police at the scene, and they included his name in their reporting. *Id.* at 99. The newspapers later were indicted for violating a state statute that prohibited knowingly publishing the name of a minor involved in a juvenile proceeding. *Id.* at 100.

The West Virginia Supreme Court held the statute violated the First Amendment and threw out the indictments; the U.S. Supreme Court affirmed. In so doing, the Court held that the state’s interest in protecting the minor’s identity was insufficient to justify subjecting the press to criminal liability. *Id.* at 104; *see also, e.g., Schrader v. Dist. Att’y of York Cnty.*, 74 F.4th 120, 128 (3d Cir. 2023) (statute criminalizing the publication of materials relating to child abuse investigations could not prevent a grandmother from publishing

lawfully obtained documents related to her grandson's death on Facebook) (citing *Daily Mail*, 443 U.S. at 101–02).

New Jersey recognizes, and adheres to, the *Daily Mail* principle, as a matter of both federal and state law. See *G.D. v. Kenny*, 205 N.J. 275, 300 (N.J. 2011) (legislature could not punish “persons who have spoken truthfully about lawfully acquired information long contained in public records,” even if they know of the existence of an expungement order).

Here, as the trial court correctly found, the people of New Brunswick have a significant interest in where Caputo lives. Tr. of 9/21/2023 Hearing Before Hon. Joseph L. Rea, J.S.C. at 61:13–16. And as the trial court further correctly found, Kratovil is a journalist who wishes to publish truthful information he obtained lawfully, including through an Open Public Records Act request. *Id.* at 53:19–20 (“It cannot be said that [Plaintiff] obtained the information unlawfully.”). *Daily Mail* should guide this Court’s determination of whether Daniel’s Law can be constitutionally applied to subject Kratovil to civil or criminal penalties for publishing Caputo’s address.

As noted above, under *Daily Mail*, a state statute cannot impose criminal or civil liability on a journalist or news organization for publishing truthful information obtained through legal means unless doing so is necessary to further a state interest of the “highest order.” 443 U.S. at 101–02. The Court

has consistently found privacy and safety interests—even weighty ones—insufficient to satisfy this strict constitutional standard. *See id.*; *see also Fla. Star v. B.J.F.*, 491 U.S. 524, 525 (1989) (to hold a newspaper criminally liable for revealing the identify of a rape victim would not further “a state interest of the highest order” because, although protecting privacy of victims is a legitimate interest, punishing the press does not directly advance that interest); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 471–72, 496 (1975) (holding that the First Amendment does “not allow exposing the press to liability for truthfully publishing information released to the public in official records,” even when the privacy interests of a victim of sexual assault are implicated).

Here, no state interest “of the highest order” exists that would permit application of Daniel’s Law’s civil and criminal penalties to Kratovil. In attempting to show such an interest, Defendants-Respondents rely on: general statements about judicial safety stemming from threats made following release of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022); the tragic murder of Judge Salas’s son, which led to the enactment of Daniel’s Law; and other unrelated instances of harassment aimed at public officials. Db24.

While the safety of judicial and law enforcement officials is a legitimate concern, as the *Daily Mail* line of cases makes clear, even weighty interests

cannot justify the imposition of civil and criminal liability on the press for the publication of lawfully obtained, truthful information. And even if protecting the safety of judicial and law enforcement officers were generally a “state interest of the highest order,” subjecting Kratovil to such penalties here “is too precipitous a means of advancing those interests.” *See Fla. Star*, 491 U.S. at 525.

Moreover, defendants have failed to produce any evidence that Kratovil’s publication of Caputo’s address would jeopardize his safety or improperly invade his privacy. The “undifferentiated fear or apprehension of disturbance (which) is not enough to overcome the right to free expression.” *Cohen v. California*, 403 U.S. 15, 23 (1971) (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 391 U.S. 503, 508 (1969)).

II. Application of Daniel’s Law to Kratovil, if not reversed, will stifle journalism in the public interest.

The constitutional right of journalists to gather and publish newsworthy information is not merely symbolic; it is vital to the press’s ability to inform the public. Without access to, or the freedom to publish, information that may fall within the reach of Daniel’s Law, many important news stories simply will not be told—to the detriment of the public.

Several examples from other jurisdictions illustrate this fact. Land records were vital to reporting on allegations of misconduct against a

Michigan Supreme Court Justice in 2012. At that time, WXYZ-TV, a local ABC affiliate, reported on several questionable real estate transactions made by Justice Diane Hathaway. Ross Jones, *Did a Michigan Supreme Court Justice Play a Shell Game to Get Out from Her Underwater Home?*, WXYZ-TV (May 9, 2012). RCa1.⁴ The investigation relied on public records which showed that Justice Hathaway was financially secure and owned four homes in Michigan and Florida. *Id.* Yet she was permitted to do a short sale—a practice where the bank allows a homeowner to sell their home at a loss to avoid foreclosure only after they have proven significant financial hardship. *Id.*

The initial news report described Justice Hathaway’s private residences in detail, including the names of the neighborhoods and streets where those houses were located. *Id.* That information was used to show how the properties had been shuffled between members of her family, allowing her to avoid hundreds of thousands of dollars in mortgage debt. *Id.* Justice Hathaway eventually pleaded guilty to bank fraud and was sentenced to a year in prison. Associated Press, *Michigan Supreme Court Justice Diane Hathaway Charged With Fraud*, Mich. Live (Jan. 19, 2013). RCa6; Press Release, U.S.

⁴ See also Associated Press, *Michigan Justice on Hot Seat Over House Transfers*, Mich. Live (May 11, 2012). RCa3.

Department of Justice, Former Michigan Supreme Court Justice Diane Marie Hathaway Sentenced On Bank Fraud Charge (May 13, 2013). RCa9.

If a version of Daniel's Law had existed in Michigan at the time, and the trial court's application here applied, WXYZ-TV's reporting would have been impossible. The people of Michigan would have been unaware that a member of their highest court was engaged in unlawful activity.

More recently, *The Washington Post* relied on land records and the home addresses of Alabama Senator Tommy Tuberville to investigate his qualifications for office. Glenn Kessler, *Tommy Tuberville: Florida's Third Senator?*, Wash. Post (Aug. 10, 2023). RCa11. Under Article I, Section 3 of the Constitution, senators must "when elected, be an Inhabitant of that State for which he shall be chosen." But real estate records obtained by the *Post* revealed that Tuberville sold the last of his Alabama properties this past summer. While Senator Tuberville's office has represented that his official residence is a house in Auburn, Alabama, campaign finance reports and property documents show that house is owned by Tuberville's wife and his son, and that he has been primarily living in Florida for the last twenty years.

And in Arizona, the *Phoenix New Times* published the addresses of Sheriff Joe Arpaio's properties, including his home address, as part of an investigation into Arpaio's real estate holdings. John Dougherty, *Sheriff Joe's*

Real Estate Game, Phx. New Times (July 1, 2004). RCa14. The reporting raised questions about the source of the funds for Arpaio’s numerous real estate purchases. As several of the properties were in desirable locations with high real estate values, the addresses were an important part of the story. *Id.*⁵

These are just a few examples of important journalism that relied on journalists’ ability to obtain and publish personal information, including land records and home addresses, of government officials. Many others abound. *See, e.g.*, Jessica Parks, *Judge Berry, Ordered to Pay \$180,000 In Damages, Is Retiring*, Phila. Inquirer (Sept. 28, 2012). RCa51 (relying on land records to report that a judge owned a “string of derelict properties” and had been illegally running a real estate business from his judicial chambers); Daniel Gligich, *Nearly a Year After Federal Indictment, Here’s When Ex-Rep. TJ Cox Is Next Due In Court*, The Sun (July 10, 2023). RCa55 (using banking and financial information to report on former Congressman under indictment for wire fraud and money laundering); Daniel Boguslaw, *Samuel Alito’s Wife Leased Land To An Oil and Gas Firm While The Justice Fought The EPA*, The

⁵ Arpaio alleged that the newspaper violated an Arizona privacy law when publishing his address. Over a year later, the two publishers were arrested after refusing to comply with an order requiring them to turn over the names of everyone who read the article on their site. Josh Wolf, *Village Voice Executives Jailed In Phoenix*, CNET.com (Oct. 22, 2007). RCa17. The charges were eventually dropped. William Finnegan, *Sheriff Joe*, New Yorker (July 13, 2009). RCa21.

Intercept (June 26, 2023). RCa58 (reporting on lease agreements reflecting that Justice Alito’s wife received revenue from oil and gas extracted from a plot of land in Oklahoma and raising questions about Alito’s consideration of cases involving oil and gas leases and clean water and air statutes).

When a statute like Daniel’s Law is interpreted to prohibit journalists from publishing all newsworthy information obtained through lawful means under threat of civil and criminal penalties, ultimately the public suffers. *See Gonzalez v. Nat’l Broad. Co.*, 194 F.3d 29, 33 (2d Cir. 1999) (acknowledging a “paramount public interest in the maintenance of a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters”). If the trial court’s application of Daniel’s law here is sustained, such reporting in the public interest will not be possible in New Jersey.

III. The trial court’s application of Daniel’s Law infringes on the constitutionally protected exercise of editorial discretion.

The court below correctly concluded that the distance between where Caputo lives and works was a matter of public concern. Yet it nonetheless concluded that Daniel’s Law restrained Kratovil from publishing Caputo’s address.

The trial court was wrong. It is not the province of legislatures or courts to determine what truthful information the public is entitled to know;

nor may they breach that “virtually insurmountable barrier” that “the First Amendment erects” between government and media to engage in “tampering, in advance of publication, with news and editorial content.” *Miami Herald Publ’g Co.*, 418 U.S. at 258.

Rather, the “choice of material” in a news story “constitute[s] the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this process can be exercised consistent with the First Amendment guarantees of a free press.” *Id.*

As the Supreme Court has emphasized, this “accepted jurisprudence” is an important feature of maintaining an independent press, which is critical to our system of self-government:

We have learned, and continue to learn, from what we view as the unhappy experiences of other nations where government has been allowed to meddle in the internal editorial affairs of newspapers. Regardless of how beneficent-sounding the purposes of controlling the press might be, we . . . remain intensely skeptical about those measures that would allow government to insinuate itself into the editorial rooms of this Nation’s press.

Id.

Newsrooms may sometimes *choose* to withhold information if, in their independent judgment, the public interest would be best served by doing so. But under the First Amendment, that is a question for journalists, not courts. *See Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94, 124

(1973) (“For better or worse, editing is what editors are for; and editing is selection and choice of material”). Interpreting a state statute to prohibit—and to subject a news organization to criminal and civil penalties for—publishing lawfully obtained, truthful information impermissibly interferes with its constitutionally protected “selection and choice of material.” *Id.*

Simply put, neither defendants nor the court should determine that a city or street name—rather than a home address—suffices to fully report a story like the one Kratovil is pursuing. No government official or entity can, consistent with the Constitution, make that decision for the press. *See id.* at 124.

In addition, interpreting a statute like Daniel’s Law to permit the restraint and punishment of the publication of truthful, lawfully obtained information will chill the exercise of editorial decision-making, even when the statute it is not enforced. *Daily Mail* illustrates this point. There the *Charleston Daily Mail*’s first article about the incident did not refer to the alleged attacker by name even though reporters had learned that information by speaking with witnesses and the police. *See* 443 U.S. at 99. As the Supreme Court noted, “[t]he editorial decision to omit the name was made *because of* the statutory prohibition against publication.” *Id.* (emphasis added). The threat of criminal liability under that statute directly influenced

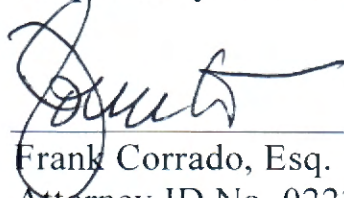
the information the public received about a newsworthy public safety issue by pressuring the news organization into self-censorship. Daniel's Law, as interpreted by the trial court, threatens the same.

CONCLUSION

For the foregoing reasons, amici urge this Court to reverse the lower court's dismissal of Kratovil's complaint and to direct the lower court to enjoin Defendants from seeking to enforce Daniel's Law against Kratovil for his reporting.

Dated: December 19, 2023

Respectfully submitted,



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**Pro hac vice motions forthcoming*

Thursday, January 24, 2013

HOME NEWS WEATHER TRAFFIC VIDEO ENTERTAINMENT LIFESTYLE SPORTS MONEY MARKETPLACE ABOUT

SCHOOL CLOSINGS: There are currently 4 closings or delays.

Did a Michigan Supreme Court Justice play a shell game to get out from her underwater home?

Video Photo A A A A SHARETHIS

Posted: 05/09/2012



By: Ross Jones

GROSSE POINTE PARK (WXYZ) - Behind the stone walls of the gated Windermere Country Club are some of Central Florida's nicest homes. And nestled along the rolling fairways of its 18-hole golf course, you'll find a 4,300 square foot home on beautiful Lake Crescent. Complete with a pool and private boat dock, it was valued last year at almost \$740,000.

And its owner is crying poor.

The owner is Justice Diane Hathaway. Last November, she convinced her bank she didn't have the money to keep making payments on her Michigan home on Lake St. Clair, even though she owned her Florida lakefront home free and clear.

In fact, records show in a little over a year, she's owned four homes: one in Florida, and three in Grosse Pointe Park.

The homes are a part of a dizzying property shuffle that experts say raise ethical and legal questions, but Justice Hathaway has been ducking those questions for more than six weeks.

Hathaway was a Wayne County Circuit Court judge before being elected to Michigan's highest court in 2008. She ran as an ethical and accountable judge.

But records obtained by 7 Action News have some asking if she was she ethical in how she convinced her bank to let her out from her mortgage on her Lake St. Clair home. It saved her potentially hundreds of thousands of dollars in unpaid mortgage payments.

Hathaway was allowed to do what's called a short sale. That's when a homeowner convinces the bank to sell their home at a loss rather than go into a foreclosure. In this economy, with home values plummeting, lots of people try to do the same thing, dodging their debt through a short sale.

But not everyone gets one. To qualify, a homeowner needs to prove to their bank that they can't afford to keep making their mortgage payments because they've suffered some type of hardship, like a loss in income. The process can take months, if not years as Don Marquette learned. When times got tough, his grown-children moved in with him and his wife, and then she lost her job.

He was supporting five adults on his own, so he asked his bank for a short sale, but they wouldn't approve it. The bank kicked him and his family out of their home.

"It was mortifying," Marquette said.

"I'm 60 years old, I've worked 28 years, I've worked all my life. Basically I felt like a bum."

Hathaway's story was different. She hasn't had a shortage of homes to live in. There's home #1 in Florida valued at about \$740,000 that she and her husband bought in 1999. Two years later, they bought home #2 on Lake St. Clair.

More from The Investigators



Where did all of the cash come from?

Where did all the cash come from? That's the question the jury in the Kilpatrick corruption case has to weigh as federal prosecutors detail alleged tax violations for Detroit's former mayor.

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AG wants Diane Hathaway investigated

Attorney General Bill Schuette has asked the Attorney Grievance Commission (AGC) to look into allegations of misconduct by former state Supreme Court Justice Diane Hathaway.

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A few years later, Hathaway bought home number #3: this one on Windmill Pointe in Grosse Pointe Park, assessed at \$208,000.

But then a strange real-estate shuffle began: the homes were moved out of the judge's name and into her step-kids' names. It all happened just months before the bank gave Hathaway the green light for a short sale.

Home #3 on Windmill Pointe was moved into her 26-year-old step-son's name. In Florida, home # 1 was taken out of Hathaway's name, and put into her step-daughter's name.

It took months for the bank to reach its decision, and before it did, enter home #4: this one on Grosse Pointe Park's Balfour Street. Records show it was purchased for cash, placed in Hathaway's other stepdaughter's name and assessed at \$276,000.

We don't know if her stepdaughter ever lived in it, or whose cash was used in the purchase, but we do know who's living there now: over several days, our undercover cameras caught Hathaway watering the plants and being dropped off at the home.

Within a few months of purchasing the 4th home, the bank approved the short sale for Hathaway's Lake St. Clair home. It sold for \$840,000, almost half of Hathaway's mortgage. And not long after, the property shuffle started up again.

The Florida home that Hathaway put into a step-daughter's name was switched back into the Justice's name. The home on Balfour Street listed in Hathaway's other step-daughter's name was also put into Hathaway's.

"It raises questions," said Bingham Farms attorney Howard Young.

Young specializes in asset protection and estate planning. He reviewed the timing of the property transfers, but we didn't tell him they were Hathaway's. He says while it's difficult to know why she did what she did, the timing seems unusual.

"It just sounds like, listen I'm going to park these assets in your name for a while, there'll be deeds recorded, you'll own them for all intents and purposes but our deal is, because you're my child...when the trouble passes, you're going to transfer the property back to me," Young said.

For six weeks we tried to talk to Hathaway. We called her and sent e-mails asking why she moved properties in and out of her relatives' names, and whether she told her bank. She had no comment.

So our cameras caught up with her as she left her home. She ducked our questions again.

"Shouldn't you respond to these? These are important questions," asked 7 Action News Investigator Ross Jones.

"I have nothing further to say," Hathaway said before speeding off.

Without an explanation from Hathaway, it's hard to know why she shuffled her properties in and out of her name, and if it had something to do with her short sale. Howard Young says when his clients have asked about moving assets out of their names to qualify for a short sale, he's told them to be cautious.

"Those are typically fraudulent transfers, because they are done with the intent to delay, hinder, or defraud creditors," said Young.

"And we are very careful to advise against making such transfers because even as an attorney, you can well be considered a co-conspirator in a fraud and that has significant ethical issues, and the state bar is going to come looking," he said.

Judges are held to a high standard of conduct in Michigan, and according to the state judicial code, they need to avoid even the "appearance of impropriety."

The bank that handled Hathaway's short sale wouldn't comment on the specifics of this deal, but said they require homeowners disclose all properties in their name. We've learned Hathaway did pay her bank \$10,000 at the time of the short sale's closing.

As for Don Marquette, two years after his bank kicked him out of his home, it decided to approve his short sale, but the damage had already been done. He and his wife nearly drained their retirement savings just to put a roof over their head.

If you have a tip for the 7 Action News Investigative Team, contact us a (248) 827-9466 or at tips@wxyz.com.

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DETROIT

Michigan justice on hot seat over house transfers

Published: May. 11, 2012, 1:29 a.m.



By The Associated Press



AP File Photo

Justice Diane Hathaway

DETROIT — The chief justice of the Michigan Supreme Court called on a fellow justice to "clear the air" Thursday after a TV station said she put real estate in relatives' names while trying to persuade a bank to allow a short sale on a separate home.

After the sale went through, Justice Diane Hathaway put one of the homes — a debt-free property in Windermere, Fla., valued around \$740,000 — back in her name, WXYZ reported.

"Ordinarily, the financial transactions of any person, including a justice, are personal matters," Chief Justice Robert Young Jr., a Republican, said in a statement. "However, the WXYZ story raises very serious allegations about Justice Diane Hathaway's financial transactions. I am naturally very concerned about these allegations."

He said he "advised" Hathaway, a Democrat, to "respond publicly to these allegations to clear the air." She drove away from a WXYZ^{4a} reporter and declined comment in a report

Steve Fishman, an attorney for Hathaway and husband Michael Kingsley, said there was nothing illegal.

"These were personal matters that involved persons close to her, and she is not going to discuss personal matters in the press," Fishman told The Associated Press. "I'm satisfied there was nothing underhanded."

WXYZ said Hathaway's home on Lake St. Clair in Grosse Pointe Park was sold for \$840,000 in a short sale last fall. A short sale means a bank and a borrower agree to sell a property for less than what's owed on the mortgage. It's not known how much was owed.

Before the sale, another Grosse Pointe Park home in Hathaway's name was put in the name of a stepson, the TV station reported. A third home in Grosse Pointe Park was purchased in the name of a stepdaughter but put in the justice's name after the sale, WXYZ said.

Hathaway, a former Wayne County judge, was elected to the Supreme Court in 2008, defeating then-Chief Justice Cliff Taylor, a Republican, who was hurt by ads that accused him of sleeping on the bench during cases. The victory helped another Democrat on the court become chief justice for two years.

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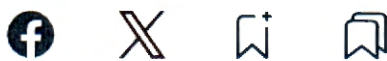
POLITICS & ELECTIONS

Michigan Supreme Court justice Diane Hathaway charged with fraud

Published: Jan. 19, 2013, 5:55 p.m.



Michigan Supreme Court Justice Diane Hathaway



By [The Associated Press](#)

DETROIT — Federal prosecutors have filed a fraud charge against Michigan Supreme Court Justice Diane Hathaway, just a few days before she leaves the state's highest court in a scandal involving the sale of a Detroit-area home and suspicious steps taken to conceal property in Florida.

The charge was filed Friday as a criminal "information," which means it was negotiated and that a guilty plea is expected in federal court. Defense attorney Steve Fishman declined to comment Saturday.

7a

Hathaway is resigning Monday, months after a series of questionable real estate

Michael Kingsley, deeded a Florida home to a relative while trying to negotiate a short sale on a house they couldn't afford in Grosse Pointe Park.

The sale went through and erased any remaining debt they had with the bank, \$600,000. The debt-free Windermere, Fla., home then went back in their names.

The bank fraud charge says Hathaway made false statements to ING Direct, transferred property to others and failed to disclose available cash — all in an effort to fool the bank into believing she had a financial hardship. Kingsley has not been charged.

Hathaway has refused to make any lengthy public comments. She told WXYZ-TV last spring that the property shuffles were a private matter.

The maximum penalty for bank fraud is 30 years in prison, although that would be a rare punishment for anyone and very unlikely for Hathaway. Nonetheless, some time in custody should be expected, predicts former federal prosecutor Lloyd Meyer of Chicago.

"Any bank robber who robs a bank with no gun and just a note goes away to prison. A judge who steals over half a million dollars should enjoy the same fate," said Meyer, referring to the amount of debt written off after the short sale. "As a former federal prosecutor, it would be unthinkable to have this type of defendant get a slap on the wrist."

Hathaway, 58, filed retirement papers with the state Dec. 20, but it was not publicly disclosed until Jan. 7 when a state judicial watchdog filed an ethics complaint against her for the real estate transactions, calling them "blatant and brazen" violations of professional conduct as a judge. Her last day as a justice is Monday, although Hathaway has not participated in court business for two weeks.

It was no secret Hathaway was under scrutiny by prosecutors. The government filed a lawsuit in November to seize the Florida home as the fruit of bank fraud. The civil case is pending and likely will be consolidated with the criminal case.

Hathaway was halfway through an eight-year term on the court, the result of a major election upset over then-Chief Justice Cliff Taylor in 2008. Her victory put Democrats in control of the court for a two-year period. She was a Wayne County judge before joining the Supreme Court.

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PRESS RELEASE

Former Michigan Supreme Court Justice Diane Marie Hathaway Sentenced On Bank Fraud Charge

Tuesday, May 28, 2013

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For Immediate Release

U.S. Attorney's Office, Eastern District of Michigan

Diane M. Hathaway, a former Michigan Supreme Court Justice, was sentenced today to one year and one day in federal prison, after having pleaded guilty in January to committing bank fraud in connection with a property in Grosse Pointe Park, Michigan, United States Attorney Barbara L. McQuade announced today. McQuade was joined in the announcement by Special Agent in Charge Robert D. Foley, III of the Federal Bureau of Investigation ("FBI"), and Michigan Attorney General, Bill Schuette.

At the time of the plea before United States District Judge John Corbett O'Meara, Hathaway, 58, of Grosse Pointe, Michigan, admitted that between 2010 and 2011 she knowingly engaged in a scheme to defraud ING Direct bank by concealing assets from the bank to qualify for a "short sale." A short sale is a forgiveness of debt by the bank to a borrower who claims financial hardship.

Hathaway was also ordered to pay restitution in the amount of \$90,000.

United States Attorney McQuade said, "We have made mortgage fraud a priority in this district because of the harm this crime causes to our housing markets in the aggregate. Homeowners who play by the rules should know that those who don't will be held accountable, no matter who they are."

Michigan Attorney General Schuette said, "Public corruption scandals have damaged the public's trust in government and tarnished our state's reputation. No matter who you are or

what position you hold, the same rules apply. I supported U.S. Attorney Barbara McQuade's request for prison time, and I appreciate her efforts, along with those of FBI Special Agent in Charge Bob Foley, to bring this case to a close."

Robert Foley, Special Agent in Charge of the FBI said, "Regardless of a person's stature or position in life, we must all follow the same set of rules. In this case, an individual in a prominent position of public trust made extremely poor choices that have resulted in criminal activity. The FBI is committed to stopping these illegal acts."

This case was investigated by the FBI with assistance from Michigan Attorney General's Office.

Updated March 19, 2015

Component

[USAO - Michigan, Eastern](#)

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PRESS RELEASE

Shelby Township Doctor Convicted in a \$6.3 Million Illegal Prescription Opioid Conspiracy Involving More than 300,000 pills

December 15, 2023

Tommy Tuberville: Florida's third senator?



Analysis by Glenn Kessler

The Fact Checker

August 10, 2023 at 1:20 p.m. EDT

"Tuberville lives in Auburn, Alabama, with his wife Suzanne."

— website of Sen. Tommy Tuberville (R-Ala.)

In late June, Tommy Tuberville traveled to the Wiregrass region of Alabama, which borders Florida. "The Wiregrass is one of the best-kept secrets in Alabama," Tuberville told a gathering of local leaders in Dothan. "Everyone is seeing the growth in Florida, but that will only last so long because you can only take so many people in the Florida area."

Tuberville — who coached Alabama's Auburn University football team from 1999 to 2008 and was elected senator from Alabama in 2020 — isn't heeding his own pitch.

Three weeks after his Wiregrass appearance, Tuberville sold, for nearly \$1.1 million, the last properties that he owned in Alabama, according to real estate records. The properties, known as Tiger Farms LLC, are in Macon and Tallapoosa counties, on the outskirts of Auburn. That same month, he also sold one Florida condo for \$850,000 and bought another for \$825,000.

Tuberville's office says his primary residence is an Auburn house that records show is owned by his wife and son. But campaign finance reports and his signature on property documents indicate that his home is actually a \$3 million, 4,000-square-foot beach house he has lived in for nearly two decades in Santa Rosa Beach, Fla., located in the Florida Panhandle about 90 miles south of Dothan.

The Alabama sale in July was notarized by a person who lives in Santa Rosa Beach, indicating Tuberville was there on July 14. His wife, Suzanne Tuberville, a licensed real estate agent in Florida, has worked at a Santa Rosa Beach real estate firm since the start of this year; she does not have an Alabama real estate license.

The senator also signed in person a deed, notarized in Florida's Walton County, where Santa Rosa Beach is located, on June 30 — during a two-week period starting June 26 that was designated in the Senate as a "State Work Period," when lawmakers often return to their states to meet with constituents. Tuberville's office issued a news release saying the senator met with local officials on three days of that period, June 26-28, including in Dothan, but was silent on the rest of it.

Under the U.S. Constitution, senators are required to be "an inhabitant" of the state when elected, so residency requirements can be minimal. Two Democrats, Robert F. Kennedy^{1a} and Hillary Clinton, were elected senators from

considered running for Alabama's senate seat. But voters increasingly are sensitive to the perception that a lawmaker is not connected to a state. Sen. Richard Lugar (R-Ind.) in 2012 lost his Senate seat after it emerged that, contrary to Senate rules, he had billed taxpayers for hotel stays in the state. Lugar had sold his home in Indianapolis after he was elected in 1976 and bought one in McLean, leaving him with no residence in the state.

'Carpetbagger' accusations

The question about whether Tuberville is truly a resident of Alabama has affected his political ambitions. In 2017 he announced his decision not to run for governor the next year, citing potential controversy over residency issues. Alabama law requires a person be a state resident for seven years to run for governor — but only for one day to run for Senate.

At the time of his decision on the governor's race — about 10 years after his Auburn coaching job ended — Tuberville owned a lakeside home in Alabama, which he sold 16 months later for \$1.4 million.

In 2018, he voted in Florida in the midterm elections, according to the Birmingham News, but he registered to vote in Alabama on March 28, 2019, a week before announcing his Senate bid. For his voter registration address, he listed as his residence a property, appraised at about \$300,000, located in Auburn.

Local media accounts in 2020 said that Tuberville owns this home with his wife. But property records show it is owned by Tuberville's son, who has the same first name but a different middle name, along with the senator's wife. The home was purchased in 2017, when the son, generally known as Tucker, was in the process of obtaining an Alabama real estate license. The son now works in New York, according to his LinkedIn page. Neither Tucker nor Suzanne Tuberville responded to requests for comment.

The senator also owns a condominium in Washington that he and his wife purchased for \$750,000 in 2021, with a \$674,250 mortgage, according to real estate documents.

During his Senate campaign in Alabama, Tuberville didn't deny he was a newcomer to the state, even though he had once coached football there. "Yes, I am not an everyday resident of Alabama," he acknowledged to a group of voters in a video posted by the campaign of his main challenger for the GOP nomination, former senator Jeff Sessions. "... I'm a carpetbagger of this country."

Tuberville's frequent visits as senator to his home in Santa Rosa Beach can be gleaned through expenditure reports filed with the Federal Election Commission by Tuberville's various campaign organizations and PACs. They show that since Tuberville became a senator, there have been almost monthly expenditures for travel and food in either Santa Rosa Beach or another Florida town, Panama City Beach, which is 50 miles away.

While airline expenditures in the Tuberville filings do not reveal the destination of the tickets, American Airlines at the start of this year suspended service to the airport nearest to Auburn. But the airline provides nonstop service from Washington to Panama City Beach. The campaign finance reports list seven expenditures made to American

Tuberville's response

Steven Stafford, Tuberville's communications director, did not deny that the senator no longer owns property in Alabama. But he suggested that the Santa Rosa Beach property was a vacation home.

"Coach has purchased and invested in real estate for decades," Stafford said in an email. "Coach has owned the property in Santa Rosa Beach for two decades — he bought it while he was coaching at Auburn. He goes there upon occasion if he has a free weekend. It is within driving distance of Auburn. I'm sure many Senators have vacation homes."

It's nearly a four-hour drive from the house in Auburn to the home in Santa Rosa Beach, according to Google maps.

Stafford added that Tuberville "purchased his current Auburn residence for his son when his son was a student at Auburn. After his son graduated, he moved out. After Coach retired from coaching, Coach moved into the Auburn house. The Auburn property is his primary residence — although his job requires him to be in Washington four days a week when the Senate is in session."

Stafford's statement does not match up with documentary record. Tommy Tuberville never owned the house. Tucker Tuberville graduated in May 2016, [according to his LinkedIn page](#), meaning the house in question was purchased — by Tucker Tuberville and his mother — nine months after Tucker graduated from college. Tucker then worked for his father as an assistant football coach at the University of Cincinnati from May to December that year. Tuberville's other son, Troy, did not start at Auburn until 2018 and [graduated in 2021](#); he registered to vote using the same address as his father — this Auburn property. He did not respond to a request for comment.

In a later email, Stafford acknowledged the house was purchased after Tucker graduated from Auburn. "His son lived at the Auburn house briefly and then Coach moved there afterward," he said.

In a [2017 promotional video for ESPN](#), Tuberville says he retired to Florida, not Alabama.

"Six months ago, after 40 years of coaching football, I hung up my whistle and moved to Santa Rosa Beach, Florida, with the white sands and blue waters. What a great place to live," he said, displaying a view over the ocean from the house.

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NEWS

Sheriff Joe's Real Estate Game

How's this for a get-rich scheme? You get elected to public office, say, sheriff. You start scowling like John Wayne and jam the jails full. You put the cons in stripes and house them in surplus Army tents, where four guards oversee 1,800 inmates. Your detention officers beat up prisoners,...

By John Dougherty July 1, 2004

How's this for a get-rich scheme?

You get elected to public office, say, sheriff.

You start scowling like John Wayne and jam the jails full. You put the cons in stripes and house them in surplus Army tents, where four guards oversee 1,800 inmates.

Your detention officers beat up prisoners, while feeding them food unfit for a dog. A paranoid public afraid of crime is grateful because it naively believes your abusive policies will scare people from committing that next robbery and shooting.

Who cares if this is all baloney?

You drum up a few death threats along the way, because that generates free publicity chronicling what a bad-ass you are.

Who cares if innocent people go to jail?

The voters love it. Even as your office is besieged by tens of millions of dollars in lawsuits stemming from beatings and deaths in your Mother of All Dungeons.

The dead guys were druggies anyway, your public relations machine claims. And, hey, that's what the county's insurance policy is for -- settling claims of distraught survivors.

What matters most is that your image as "toughest sheriff in America" has made you into a valuable commodity.

And that image is worth a lot.

Now you're making bank. Giving speeches. Writing books. Selling movie rights. Getting free trips to posh resorts scattered across the country. Hawking novelties like bobblehead dolls, and pink underwear that you autograph personally.

Ka-ching!

Suddenly, a lot of money starts rolling through the sheriff's office doors. Bags full of cash land on your chief deputy's desk. No one's keeping track.

Any time county auditors come over snooping inside your operation, you chase them off and refuse to provide access to the books. No one's going to get an unfettered look at the financial operations of your \$140 million-a-year empire as long as you're in charge.

Everything I have written so far about Arpaio's 12-year run as the Maricopa County sheriff has been documented in countless stories in this newspaper.

Which is why I'm very interested in old man Joe's extensive real estate holdings. Especially after I discovered he's got \$690,000 in cold, hard *cash* invested in two small commercial properties in Scottsdale and Fountain Hills.

The total amount of cash slippery Joe has stashed into at least six other real estate investments may be much more than this. How much more, I don't know. That's because the 72-year-old has taken unusual steps to make sure the public can't find out the amount of cash he's stashed into Maricopa County real estate.

Rather than disclosing details of his real estate investments -- as the rest of us who might dabble in dirt must do -- Arpaio got his records purged from the Maricopa County Recorder's Office. The redacted records include such key information as deeds, mortgages, affidavits of value and conveyances of title.

Everything needed to determine if a deal is done fair and square.

You know, like what's the sales price? Is there a mortgage? What are the terms? The county keeps such records for a reason: It's hoped that full disclosure will keep the marketplace honest.

All of these records are normally available for public inspection. But not Arpaio's.

And neither are the real estate records for his top deputy, the twice-bankrupt, double-dipping David Hendershott, paid a \$131,189 salary plus another \$51,000 in annual pension money (he retired from the sheriff's office and was rehired as chief deputy by Arpaio). Hendershott enjoys his evenings in an upscale neighborhood of \$400,000 homes in Peoria. How much did Hendershott pay for his nice pad at 24232 North 80th Lane? Did he pay cash? Can't tell, because Hendershott's real estate

Arpaio says he's taking advantage of a law that allows cops, judges, prosecutors and public defenders to petition the Maricopa County Superior Court to issue an order that keeps their home addresses and telephone numbers out of records filed with county offices, including those of the recorder, treasurer and assessor.

Arpaio obtained such an order in July 2001. But rather than simply blocking out his home address on real estate records, *all* of the information has been removed, making it impossible to determine details of Arpaio's commercial and residential real estate holdings.

The sheriff says he got the records zapped because he was fearful that someone might be crouched behind the bushes near his home. "It's because of all the death threats," Arpaio told me in an interview last month inside the county jail. He later admitted that he was never "in that much danger" from any of the threats.

Why? We all know that the death threats are more grist for his publicity mill rather than any serious attempt on Joe's head. And now we know that the flimsy, and sometimes fabricated, death threats ("In the Crosshairs," June 24) are used as a convenient excuse to have Arpaio's real estate investments sealed from public inspection.

The county recorder's redaction clerks, however, missed a few of Arpaio's property records, which I'm happy to report I found.

These records raise a number of serious questions, especially since this is a guy who is making \$78,000 a year as sheriff along with his federal Drug Enforcement Agency civil service retirement pay of about \$65,000. His wife operates a small travel agency, Star World Travel, that doesn't appear to be much of a cash cow.

Even if Arpaio managed to save up \$690,000 in *cash* (or inherited the money or won the lottery), why would he invest so much of it in two small projects? He could have spread that money around and purchased additional property. After all, the golden rule of commercial real estate investment is to use other people's money.

This means, invest as little of your own money as possible and borrow the rest, particularly when interest rates are low. Then, use the money collected from leasing the property to pay the mortgage. Whatever interest is paid is always deductible on income taxes. A few years down the road, sell the property and pocket the profit.

It's a pretty simple formula that has generated billions of dollars of profits for commercial real estate investors in the Phoenix area over the last decade.

Why is Arpaio doing the opposite in his commercial real estate deals made through his and his wife's company, AVA Investment Corp.?

On April 14, 1995, Joe and Ava Arpaio paid \$250,000 cash for two adjoining commercial spaces in a strip mall just northwest of the primo intersection of Scottsdale Road and Shea Boulevard. The Arpaios lease the spaces at 10612 North 71st Place to the Bravo Salon.

Arpaio never disclosed this purchase on his personal financial statement that elected officials are required to submit annually to the Maricopa County Clerk's Office. Instead, he just added the square footage of this property to a space he already owned next door.

The Bravo Salon is immediately north of a space Arpaio purchased in December 1993. This space is leased to Tuxedo Express at 10610 North 71st Place. I have no idea how much Arpaio paid for this property. That's because the records have been purged from the recorder's files.

Arpaio made an even bigger investment a few years later. On April 15, 2002, Joe and Ava dumped \$440,000 in cash into a two-story commercial property across the street from the sheriff's substation in Fountain Hills. The 6,000-square-foot office building is at 16743 East Palisades Drive and is leased to several businesses.

The Fountain Hills investment came about a year after Joe and Ava sold their tract home near 67th Street and Thunderbird Road and purchased a faux-adobe in upscale Fountain Hills. The real estate records on both the sale of his old home and the purchase of the new one have also been redacted from the recorder's office.

It's safe to say that Joe and Ava aren't slumming it.

Their nest on North Via Del Sol has lake and mountain views and is surrounded by desert landscaping. Two neighboring homes sold in the \$350,000 range in 2001. Did Joe pay cash for his new home?

There's more.

Joe and Ava own four more commercial spaces in that Scottsdale strip mall, called Sundown Plaza. All of these properties were purchased before Arpaio became sheriff. However, most of the real estate records related to the properties have also been purged.

Did Arpaio purchase these properties with cash as well, or were their mortgages later paid off after he became sheriff? Arpaio reports on his personal financial disclosure statement that he has at least \$200,000 in equity in these properties.

No one from Joe's joint on the 19th floor of the Wells Fargo tower in downtown Phoenix has responded to my request.

The stonewalling raises a huge red flag.

Joe's become a worldwide marketing commodity on the backs of prisoners. His name recognition translates into political and financial power. He's sold books and movie rights to his life story. Tens of thousands of pairs of pink underwear have been sold, generating huge amounts of cash. Because of sloppy accounting, nobody knows how much revenue this one thing has brought in. The sheriff's office budget has been a mess for years, with no independent, outside audit on the horizon.

Now, it turns out, Joe has been dabbling in real estate in some of the most expensive parts of town. He's investing large amounts of cash, violating the cardinal rule of commercial real estate. And nearly all the records of his wheeling and dealing are conveniently sealed.

Come on, Joe! You're the "toughest sheriff in America." How about sitting down and showing us all of your real estate records? Tax returns would be nice, too. While you're at it, bring Hendershott's records, as well.

Explain to us where you -- a retired federal civil servant and county employee -- come up with so much cold, hard *cash*.

Otherwise, even one of your lamebrained posse members might think you're hiding something.

Repercussions continue in the wake of Maricopa County Attorney Rick Romley's recent decision to dismiss charges against nearly 60 women arrested in Sheriff Joe's ludicrous undercover investigation in which deputies and posse men got naked and frisky with alleged hookers.

Contrary to the sheriff's office's vigorous assertions that it's common for undercover officers to strip down in the course of a vice investigation, I've stumbled across sworn testimony by the sheriff's top aide that suggests otherwise.

In March 2002, Chief Deputy Hendershott gave a deposition in a dismissal hearing for sheriff's Deputy Mark Guemes, who had the bad luck to be getting off-duty service (or was it service-*ing*?) inside a massage parlor when it was raided by the Phoenix Police Department vice squad.

The sheriff's office wanted to fire Guemes for engaging in "unbecoming conduct" and lying to superiors about his encounter with a couple of gals inside an Ahwatukee apartment. Guemes paid \$140 for a massage and testified that he was expecting to be masturbated before the cops entered the apartment.

While Guemes was in one bedroom, a Phoenix vice cop was in another. The woman dealing with the Phoenix officer became suspicious when he refused to drop a towel from around his midsection. He also had paid the woman \$140, but she returned it when she suspected the bust was about to occur.

During the deposition, Guemes' attorney, Clarisse McCormick, asked Hendershott why a cop doing undercover work in a vice operation would not be able to remove a towel covering his genitals.

"As a matter of policy now, most agencies will not allow their officers to remove the towel," testified Hendershott, who worked as an undercover vice cop for eight years.

"Basically, because it would be inappropriate?" McCormick asked.

"I believe . . . there is a lack of community acceptance to that without the towel being there as a buffer zone," Hendershott replied.

Eighteen months later, Arpaio went ahead with his big prostitution sting. Romley's decision makes it clear that the "community," which Hendershott referenced, won't condone the slimy investigative tactics he and Arpaio dumbly employed.

E-mail john.dougherty@newtimes.com, or call 602-229-8445.

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Village Voice executives jailed in Phoenix

Just days after the House of Representatives passed the Free Flow of Information Act, the New York Times reports that two executives from Village Voice Media have been arrested in Phoenix, Arizona for revealing "grand jury secrets".

Josh Wolf

Oct. 22, 2007 7:29 a.m. PT

4 min read

Just days after the House of Representatives passed the Free Flow of Information Act, The New York Times reports that two executives from Village Voice Media were arrested in Phoenix, Arizona, for revealing "grand jury secrets".

Michael Lacey, the executive editor, and Jim Larkin, chief executive, were arrested at their homes after they wrote a story that revealed that the Village Voice Media company, its executives, its reporters and even the names of the readers of its website had been subpoenaed by a special prosecutor. The special prosecutor had been appointed to look into allegations that the newspaper had violated the law in publishing the home address of Maricopa Sheriff Joe Arpaio on its website more than three years ago.

The two have since been released, but the reverberations of this blatant assault on the press and of Arpaio's retaliatory behavior will likely resonate for some time. Although the original investigation stems from a column written by John Dougherty about Arpaio's real estate investments, the impetus for yesterday's arrest appears to be this week's *Phoenix New Times* cover story, "Breathtaking Abuse of the Constitution". In the article, Lacey and Larkin acknowledge the fact that the story may generate a legal backlash, and imply that civil disobedience had become their last option.

The article is extensive and provides the context necessary to understand the ongoing dispute, but it also details the unbelievably broad scope of the subpoena the paper received, and perhaps the publication of this frightening piece of information is what led to the jailing of the two executives.

Not only did the subpoena demand "all documents related to articles and other content published by Phoenix New Times newspaper in print and on the *Phoenix New Times* Web site, regarding Sheriff Joe Arpaio from January 1, 2004, to the present," which includes all the notes and recordings produced by the staff, but the subpoena also ordered that New Times provide personal information about visitors to the paper's Web site.

The subpoena demands: "Any and all documents containing a compilation of aggregate information about the Phoenix New Times Web site created or prepared from January 1, 2004 to the present,

including but not limited to:

- A) which pages visitors access or visit on the Phoenix New Times website;
- B) the total number of visitors to the Phoenix New Times website;
- C) information obtained from 'cookies,' including, but not limited to, authentication, tracking, and maintaining specific information about users (site preferences, contents of electronic shopping carts, etc.);
- D) the Internet Protocol address of anyone that accesses the Phoenix New Times website from January 1, 2004 to the present;
- E) the domain name of anyone that has accessed the Phoenix New Times website from January 1, 2004 to the present;
- F) the website a user visited prior to coming to the Phoenix New Times website;
- G) the date and time of a visit by a user to the Phoenix New Times website;
- H) the type of browser used by each visitor (Internet Explorer, Mozilla, Netscape Navigator, Firefox, etc.) to the Phoenix New Times website; and
- I) the type of operating system used by each visitor to the Phoenix New Times website."

Special prosecutor Wilenchik wants this information on each and every New Times reader online since 2004.

The state of Arizona has a shield law that protects journalists and news agencies from having to comply with certain subpoenas. These protections may not apply in this case, however; since the government contends that *Phoenix New Times* broke the law when Dougherty published the sheriff's home address online, the paper is left vulnerable. Shield laws are not written

to protect the accused from complying with orders to disclose privileged information.

Ironically, the print edition of Dougherty's column does not fall under the law; it only applies to content on the Web. It is legal to publish an officer's address in a newspaper, broadcast it on radio and television, or even, as Lacey and Larkin point out, on a billboard. In addition, Dougherty was able to locate Arpaio's address on other Web sites including those maintained by the County Recorder and the Elections Department.

The fact that the Maricopa County government has subpoenaed Village Voice Media under this rather specious law is alarming. The reality that the government is seeking information pertaining to visitors to the paper's Web site is absolutely frightening, and the unfortunate imprisonment of the two executives of *Phoenix New Times* is totally obscene.

It's still unclear how everything will resolve, but two people have already spent time in custody for upholding the public's right to know and the subpoenas are still being fought in court. The First Amendment was written to prevent this and other similar situations, but it is a universal truth that those in power will do everything they can to maintain their status and the Constitution will continue to be attacked as these agents of influence fight to hold onto that power.

While the passage of a federal shield law may be a small victory, the story of Michael Lacey and Jim Larkin is a reminder that the war on the press and the public's right to know will continue indefinitely. It is our duty, both as journalists and members of the public, to stand up to government power and to speak out against the barrage of assaults that continue to threaten our civil liberties.

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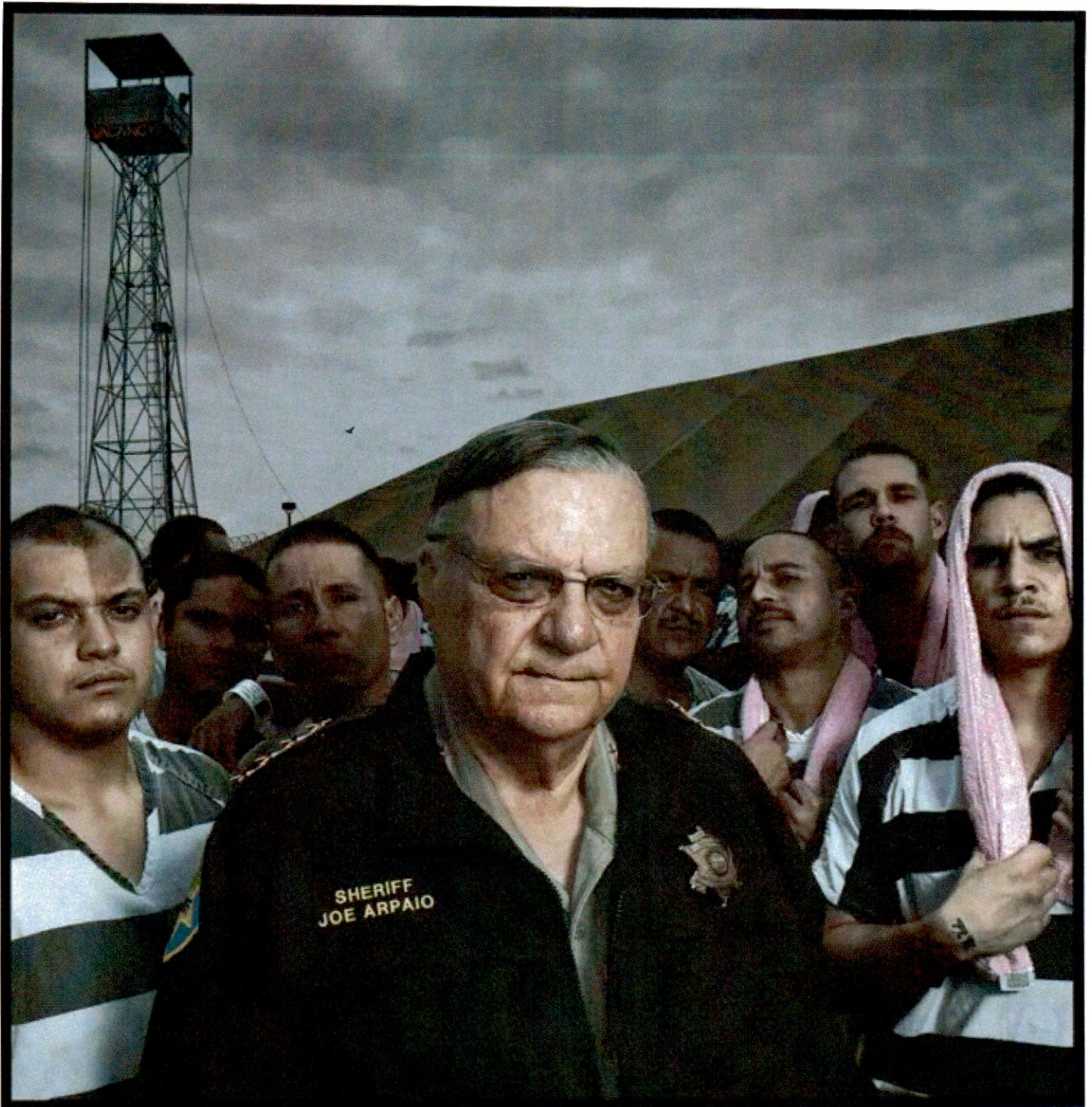
PROFILES

SHERIFF JOE

By William Finnegan

July 13, 2009

 Save this story



Arpaio and inmates at the Tent City jail. Photograph by Dan Winters

Joe Arpaio, the sheriff of Maricopa County, Arizona, looked disappointed. Al Sharpton was supposed to come to Arizona to lead a march demanding Arpaio's resignation. But Sharpton had other plans. "He's going to Alabama this weekend instead," Arpaio told Lisa Allen, his media-relations director. They were riding in the back of the Sheriff's car, a big black Chrysler with

tinted windows. “He’ll never come,” the Sheriff said bleakly. “Alabama—isn’t that where Bull Connor was, that they’re always comparing me of?” Two silent, extra-large deputies rode in the front seat. Arpaio, who is seventy-seven, thick-bodied, and restless, studied the strip malls and waste grounds streaming past. He wore a gray suit, no badge, a tie clip in the shape of a pistol. “But Shaq is coming tonight?” he asked. Allen thought he was. The occasion was the première of the film “X-Men Origins: Wolverine,” at a mall in Tempe, where Arpaio looked forward to walking the red carpet with Shaquille O’Neal.

Arpaio is known as “America’s Toughest Sheriff.” He even wrote (or caused to have written) a book with that title, as well as a second one, published last year, “Joe’s Law: America’s Toughest Sheriff Takes On Illegal Immigration, Drugs, and Everything Else That Threatens America.” When he’s not taking on everything that threatens America, Arpaio pursues his passion for being in the vicinity of celebrities. He made a point of visiting Charles Barkley when Barkley was in his jail on a D.U.I. earlier this year. After it was reported that the Los Angeles County jail was having trouble with overcrowding, he offered to put Paris Hilton into his lockup after her D.U.I. (No luck.)

Tempe had been awarded the “Wolverine” première in an online vote. A modest outdoor stage had been thrown together, under a billboard for Hastings & Hastings, discount accident lawyers, and the mall parking lot was mobbed. “Where’s the red carpet?” Arpaio asked. It turned out to be a long, dirty, maroon rug. The crowd, craning to catch a glimpse of Hugh Jackman, seemed to be mainly teen-agers. A sunburned middle-aged couple approached Arpaio and asked for a photograph with him. He obliged—this was more like it.

The first celebrity arrived, a big guy in heavy stage makeup, with well-muscle arms and long blond hair and extremely white teeth. He bared his teeth and flexed his biceps, mugging for the cameras. I asked a gangly teen-ager in a

tuxedo who he was. Clearly astounded by my ignorance, the teen-ager said, “That’s Sabretooth, from ‘American Gladiator!’” The actor, Hollywood Yates, later told me that his character on “American Gladiator” was, in fact, Wolf.

People who were actually in “Wolverine”—Jackman, Liev Schreiber, Will.i.am—started arriving, each bounding onto the little stage to raucous applause.

Shaquille O’Neal never showed.

I asked Hollywood Yates what he thought of Arpaio.

“He’s awesome!”

Yates’s wife, Shari, who had joined us, grimaced. She was slim, blond, in her late thirties. She wore much less makeup than her husband. “Joe is too hardcore for me,” she said.

“Well, I love it,” Yates said. “Those people are in jail for a reason.”

Maricopa County is not a modest, out-of-the-way place. It includes Phoenix, covers more than nine thousand square miles, and has a population of nearly four million. Joe Arpaio has been sheriff there since 1993. He has four thousand employees, three thousand volunteer posse members, and an overworked media-relations unit of five. Like most sheriffs in America, he is elected. He is currently enjoying his fifth four-year term, and looking forward to winning a sixth in 2012. Maricopa sheriff’s races are, in the age of Arpaio, not lighthearted affairs. Stephen Lemons, a political reporter for the weekly *Phoenix New Times*, told me with some chagrin that Barack Obama’s victory in November was actually overshadowed, in his mind, by Arpaio’s reelection.

Arpaio always wanted to be a cop. His parents were immigrants from Naples. “They came through Ellis Island *legally*,” he says. His mother died giving birth

to him in Springfield, Massachusetts. His father owned grocery stores there, and Joe was raised mostly by friends and relatives. After a hitch in the Army, he became a patrolman in Washington, D.C.—“Black neighborhood,” he told me. He later worked as a federal narcotics agent in Turkey and Mexico and, finally, Arizona, where he retired. He and his wife, Ava, who have two children, ran a small travel agency in a suburb north of Phoenix. Then, in the early nineties, Joe decided to run for sheriff against an incumbent weakened by scandal. In Maricopa County, where the population has more than quadrupled since 1970, it is not always a disadvantage to lack local roots. Arpaio wasn’t eloquent, but he spoke in short, quotable bursts, and he pummelled opponents with gusto. He promised to crack down on crime and to serve only one term. He won the Republican primary, which is traditionally all one needs in Maricopa.

The biggest part of the sheriff’s job is running the jails, and Arpaio saw that there was political gold to be spun there. The voters had declined to finance new jail construction, and so, in 1993, Arpaio, vowing that no troublemakers would be released on his watch because of overcrowding, procured a consignment of Army-surplus tents and had them set up, surrounded by barbed wire, in an industrial area in southwest Phoenix. “I put them up next to the dump, the dog pound, the waste-disposal plant,” he told me. Phoenix is an open-air blast furnace for much of the year. Temperatures inside the tents hit a hundred and thirty-five degrees. Still, the tents were a hit with the public, or at least with the conservative majority that voted. Arpaio put up more tents, until Tent City jail held twenty-five hundred inmates, and he stuck a neon “VACANCY” sign on a tall guard tower. It was visible for miles.

His popularity grew. What could he do next? Arpaio ordered small, heavily publicized deprivations. He banned cigarettes from his jails. Skin magazines. Movies. Coffee. Hot lunches. Salt and pepper—Arpaio estimated that he saved taxpayers thirty thousand dollars a year by removing salt and pepper. Meals were cut to two a day, and Arpaio got the cost down, he says, to thirty cents per

meal. “It costs more to feed the dogs than it does the inmates,” he told me. Jail, Arpaio likes to say, is not a spa—it’s punishment. He wants inmates whose keenest wish is never to get locked up again. He limits their television, he told me, to the Weather Channel, C-SPAN, and, just to aggravate their hunger, the Food Network. For a while, he showed them Newt Gingrich speeches. “They hated him,” he said cheerfully. Why the Weather Channel, a British reporter once asked. “So these morons will know how hot it’s going to be while they are working on my chain gangs.”

Arpaio wasn’t kidding about chain gangs. Foreign television reporters couldn’t get enough footage of his inmates shuffling through the desert. New ideas for the humiliation of people in custody—whom the Sheriff calls, with persuasive disgust, “criminals,” although most are actually awaiting trial, not convicted of any crime—kept occurring to him. He put his inmates in black-and-white striped uniforms. The shock value of these retro prisoner outfits was powerful and complex. There was comedy, nostalgia, dehumanization, even a whiff of something annihilationist. He created female chain gangs, “the first in the history of the world,” and, eventually, juvenile chain gangs. The chain gangs’ tasks include burying the indigent at the county cemetery, but mainly they serve as spectacles in Arpaio’s theatre of cruelty. “I put them out there on the main streets,” he told me. “So everybody sees them out there cleaning up trash, and parents say to their kids, ‘Look, that’s where you’re going if you’re not good.’” The law-and-order public loved it, and the Sheriff’s fame spread. Rush Limbaugh praised him, and blurbed his book. Phil Donahue berated him.

Arpaio’s one-term campaign promise had to be shelved. Opinion polls found that Sheriff Joe, as he was called, was the most popular politician in Arizona. The Democrats didn’t even bother running a candidate against him in 1996. In fact, he often says, the governorship has long been his for the taking. But he likes being sheriff—he pronounces it “shurf.” He got a tank from the Army, had the howitzer muzzle painted with flames, and “Sheriff Arpaio’s War on Drugs”

emblazoned on the sides, and rode in it, with Ava, in the Fiesta Bowl Parade. He decreed that all of his inmates—there are now roughly ten thousand of them, double the number when he took office—must wear pink underwear. And pink socks and pink flip-flops. Even pink handcuffs. Pink, he explains, mock-sincerely, is a soothing color.

“I know just how far I can go,” Arpaio told me. “That’s the thing.”

His deputies, particularly his jail guards, seem to have less sense of how far they can go. Thousands of lawsuits and legal claims alleging abuse have been filed against Arpaio’s department by inmates—or, in the case of deaths in detention, by their families. A federal investigation found that deputies had used stun guns on prisoners already strapped into a “restraint chair.” The family of one man who died after being forced into the restraint chair was awarded more than six million dollars as the result of a suit filed in federal court. The family of another man killed in the restraint chair got \$8.25 million in a pre-trial settlement. (This deal was reached after the discovery of a surveillance video that showed fourteen guards beating, shocking, and suffocating the prisoner, and after the sheriff’s office was accused of discarding evidence, including the crushed larynx of the deceased.) To date, lawsuits brought against Arpaio’s office have cost Maricopa County taxpayers forty-three million dollars, according to some estimates. But the Sheriff has never acknowledged any wrongdoing in his jails, never apologized to victims or their families. In fact, many of the officers involved have been promoted.

Other jails get sued, of course. The *Phoenix New Times* found that, between 2004 and 2008, the county jails of New York, Chicago, Los Angeles, and Houston, which together house more than six times as many inmates as Maricopa, were sued a total of forty-three times. During the same period, Arpaio’s department was sued over jail conditions almost twenty-two hundred times in federal district court. Last year, the National Commission on

Correctional Health Care withdrew the health accreditation of Maricopa County's jails for failing to meet its standards, and a federal judge refused to lift a long-standing consent decree on the jails, finding that conditions remained unconstitutional for pre-trial detainees. (The consent decree mandates that the jails be monitored. But it hasn't had much effect.)

Remarkably, Arpaio has paid almost no political price for running jails that are so patently dangerous and inadvertently expensive. Indeed, until recently there were few local or state politicians willing to criticize him publicly. Those who have, including members of the county board of supervisors, which controls his budget, tend to find themselves under investigation by the sheriff's office. Local journalists who perturb Arpaio have also been targeted. The *Phoenix New Times* ran an investigation of Arpaio's real-estate dealings that included Arpaio's home address, which he argued was possibly a violation of state law. When the paper revealed that it had received an impossibly broad subpoena, demanding, among other things, the Internet records of all visitors to its Web site in the previous two and a half years, sheriff's deputies staged late-night raids on the homes of Michael Lacey and James Larkin, executives of Village Voice Media, which owns the *New Times*. The deputies arrested both men for, they said, violating grand-jury secrecy. (The county attorney declined to prosecute, and it turned out that the subpoenas were issued unlawfully.)

Outspoken citizens also take their chances. Last December, remarks critical of Arpaio were offered during the public-comment period at a board of supervisors meeting, and four members of the audience were arrested and charged with disorderly conduct—for clapping. Their cases are pending.



“I can’t afford to lose my phone. I’ve assigned it talismanic properties.”

Some local politicians have begun to speak up. Phil Gordon, the mayor of Phoenix, publicly denounced Arpaio last year for abuses of power. Gordon told me in his office recently that the Sheriff has imposed “a reign of terror” on Maricopa County. But the Mayor was referring neither to the jails nor to the intimidation of critics. He was mainly talking about a wide-ranging campaign, carried out by Arpaio in recent years, against undocumented immigrants in Maricopa County.

Arizona is a major corridor for Latin Americans sneaking into the United States, and the Phoenix area is both a stopover and a destination. Roughly half a million undocumented immigrants live in the state. Arizona is also full of retirees from the Midwest and the Northeast—Sun City is in Maricopa County—and these elderly Americans are, by and large, not completely delighted to find themselves among folk, mostly poor and brown, who don’t speak English. The state is home to an array of nativist groups, and

its legislature has passed perhaps the harshest anti-immigrant laws in the country. Arpaio, always a discerning student of conservative voter sentiment, surveyed all this a few years back and decided to transform his sheriff's department, with a crucial assist from the Bush Administration's Department of Homeland Security, into a sort of freelance immigration-enforcement agency.

His deputies conduct extensive raids in Latino towns and neighborhoods. They say they have investigated and arrested more than thirty thousand undocumented aliens. This campaign has landed Arpaio on Lou Dobbs's show, on CNN, where he is treated as a conquering hero, and has drawn support from ultra-right and racist groups, including neo-Nazis and the Ku Klux Klan. It has also brought Arpaio critical attention from civil-rights organizations.

In March, the U.S. Department of Justice, at the request of members of Congress, launched an investigation into charges of discriminatory conduct by the sheriff's office in Maricopa County. "It's garbage," Arpaio says—grandstanding by politically correct bureaucrats afraid to enforce the laws, Obama Democrats throwing their weight around. Certainly, it has not slowed the pace of his roundups. "Since I got my letter March 12th, we've locked up another hundred fifty," he told me in April. In the world according to Sheriff Joe, almost every problem in America these days can somehow be traced back to "illegals."

That was presumably why Arpaio seemed so excited to hear the early news about swine flu: *it was coming from Mexico*. "We gotta get something out!" he said. He meant a press release. The Sheriff gathered eight or nine aides around a big table in his office. "Illegal Immigration Breeds Crime, Disease," Arpaio suggested. "Can we get masks for the deputies at the tents? ICE"—Immigration and Customs Enforcement—"has masks, don't they? We should

close the border.”

The press-release team included Lisa Allen and other members of the media-relations unit; a jail administrator; a public-health specialist; and two deputies from the Sheriff’s human-smuggling unit, who had brought with them a map of Mexico. “Ninety, ninety-five per cent of the people we apprehend are from Guerrero, Oaxaca, Chiapas,” one of the deputies said, spreading out the map. “The south.” He and his partner were the odd men out at the meeting.

Everyone else was in business attire; the deputies wore bluejeans and black T-shirts and carried pistols on their hips. Both deeply tanned, with sunglasses pushed up on crewcuts, they were also the only Latinos present. People silently studied the map. Finally, Lisa Allen said, “Mexico City is where?”

Arpaio was getting impatient. Len Sherman, who co-wrote both of the Sheriff’s books, said firmly, “The story here is that Homeland Security is doing nothing about this, just like New Orleans. So we’re taking action.”

The public-health specialist said gently, “Surgical masks do nothing to combat this virus.”

Arpaio erupted. “This is my press release! I’m the sheriff! I have some knowledge! I’m not just some little old sheriff!” He told a complicated story about a Nixon-era anti-narcotics program called Operation Intercept, which he said he ran with G. Gordon Liddy, and which nearly closed the border with Mexico for ten days in 1969.

Len Sherman nodded thoughtfully. “So you’re saying that swine flu is an opportunity to solve other problems.”

“Yes!”

The meeting went on for close to an hour. The Sheriff was called away to an

interview, which he conducted on speakerphone from his desk. His department's executive offices are situated, strangely, on two high floors of a bank tower in downtown Phoenix. They command a tremendous view of suburban sprawl in all directions. Outside, it was hot and hazy; inside, it was icy. The Sheriff's office is the size of a midrange convenience store, its dark wood-panelled walls crowded with memorabilia, including an illustration celebrating the 2001 World Series victory of the Arizona Diamondbacks, with Arpaio's face drawn bigger than even Randy Johnson's, as if the Sheriff had been the Series M.V.P.

The interviewer on the phone wanted to know if Arpaio thought schoolchildren should be asked about their immigration status.

"Yeah. Anything."

"Aren't you concerned about putting schools in that position?"

The Sheriff waved at Sherman, stage-whispering, "What do I say here?"

Sherman: "Drugs in schools."

"I can equate that to drug testing," Arpaio told the interviewer. "It's controversial."

Sherman, who is from New York, later told me, "He's an idiot savant. What he knows, he knows, and that's all he knows. I once saw him debate Alan Dershowitz, and I thought Dershowitz's head was going to explode."

Arpaio walked back to the press-release meeting, interrupting a recitation of facts by the public-health specialist. "Forget this medical stuff," he said. "We're talking about drop houses and human smuggling. I think we should start off with a paragraph about how I'm concerned about the illegals coming over the border. We can't say they're all Mexicans. That would be racial profiling."

Later, Arpaio said, “Can we throw 287(g) in there, give it a little credit?” He was referring to a federal program that allows state and local officers to be cross-trained by Homeland Security and work in immigration enforcement. The Maricopa County sheriff’s office has had more people trained under 287(g) than any other police agency in the country. Arpaio suggested a line: “Arpaio ordered that every detainee be asked by a 287(g) officer what country they came from.” Allen and Sherman wrote that down.

A deputy in the media-relations unit checked his BlackBerry and announced, “Gordon went out at two o’clock.” He meant that the Phoenix mayor had held a press conference.

“About the flu?”

“Yeah.”

“That piece of shit! What did he say?”

“I don’t know.”

The deputies from the human-smuggling unit left with their map of Mexico. I followed them out, and we talked in a conference room. They were Detective Carlos Rangel and Sergeant Manny Madrid. They had been doing this work for two or three years, they said, and 287(g) had made a big difference. “We can now determine alienage,” Madrid said.

Rangel, who grew up in the border town of Mexicali, said, “I thought it would change, that the numbers we catch would drop because people would hear Maricopa was a tough county. But it hasn’t.”

Madrid disagreed. He thought smuggling vans were getting harder to find. “Maybe they’re changing their tactics.”

Rangel said, “Plenty of people come up and thank us for our work.” Madrid nodded. Then Rangel added, “But those people are a hundred per cent Caucasian. I’ve never had a non-Caucasian thank me.”

The Sheriff took me to the tents the next day. But first he gave me the swine-flu press release that his staff had produced the night before. He has a stagy way of speaking out of the side of his mouth when he wants to share something possibly confidential. “If you got any buddies in New York, throw this to ’em,” he said, handing me the press release. “I always send my stuff national.”

Arpaio seems to live and die by the press release. When I met up with him in New York, before an appearance on “The Colbert Report,” he was under attack back home, he told me, “for going on a comedy show when I could be testifying” at a Senate hearing on border violence that was being held in Arizona. The problem, he explained, was that the hearing, which was being held by Senators John McCain and Joe Lieberman, was taking place in Phoenix City Hall—the headquarters of his enemy Mayor Gordon. “Why would I go to Gordon’s office when he’s calling me a racist? I did a nice media release, saying I didn’t want to disrupt the dignity of the proceedings—because there are demonstrators out there every day, demonstrating against me. But nobody’s printing my press release.” He sounded almost hurt. I later heard him tell a journalism class at Arizona State University, “I used to have trust with reporters. Give them scoops. Those were the old days. It’s very strange, when you give a story and it doesn’t come out the right way.”

The swine-flu press release didn’t call for closing the U.S.-Mexico border (Maricopa County is not, incidentally, on the border) but it did note Arpaio’s “unwavering fight to slow the tide of illegal immigration” and warn that the swine flu should “serve as a wake-up call.” Arpaio’s “instrumental part” in

Operation Intercept, in 1969, also got a mention.

At the entrance to Tent City Jail is a sign: “ILLEGAL ALIENS ARE PROHIBITED FROM VISITING ANYONE IN THIS JAIL.”

We swept through an outbuilding, past startled deputies, and into a dusty yard full of rows of twenty-two-man canvas tents. “I’m risking my life for you,” Arpaio said—referring, I gathered, to swine flu. The sides of the tents had been rolled up in the heat. Prisoners in striped outfits lay on bunks, watching us approach. We went into the first tent. The Sheriff and one of his men hurried down the narrow passage between the bunks and out the other side. I stopped midway, and asked the inmates if they felt like talking. They did.

They were all Latinos. They came from Mexico, Honduras, California, Arizona. Some had been in the tents for nearly a year. Their families were afraid to visit them, because they didn’t have papers. They were all facing deportation. The jail food was very bad, they said, and they were always hungry. A slender eighteen-year-old named José Aguilar said that he had lost fifty pounds since being locked up. He showed me a photograph of himself, taken when he was arrested, which had been laminated on a plastic I.D. bracelet, and he had certainly lost weight since then. Aguilar said that he had been in Phoenix since he was a baby, and knew no one in Mexico; his first language was English. An older guy craned his head around to make sure no guards could hear him, then said, “Arpaio is illegal. He’s not really from North America.”

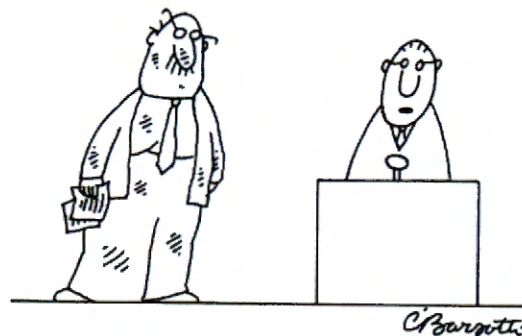
I asked if Arpaio had any nicknames in the tents.

“Hitler.”

“Hitler.”

A fan was moving air around at one end of the tent, but the heat was ferocious, and it was not yet summer. I could hear Arpaio yelling for me to come out. He sent a guard in to get me. Outside, I found the Sheriff talking to a local TV news crew. I made the mistake of mentioning that I had interviewed, inside the tent, an inmate from Mexico City. The Sheriff sent a guard back in to fetch him. Mexico City was, in Arpaio's mind, the epicenter of swine flu. He wanted this guy on TV. And so Fidel Sánchez found himself being questioned by a bilingual newswoman about his infected home town while Sheriff Joe stood by, arms folded, staring balefully into the camera. Arpaio has a big, round head, and there is something turtle-like about his posture.

"The Sheriff, he's a dynamo," a guard murmured to me. "He can stay out here all day, go on sweeps at night, and be ready to go in the morning with a cup of coffee. Puts the rest of us to shame."



"Our next speaker looked into the abyss and made a few notes."

Arpaio, with his inhuman energy, had probably escorted hundreds of camera crews and reporters through his beloved tent jail. Many had been appalled, and produced unflattering stories. Plenty of others had simply served up the

Toughest Sheriff shtick with relish—the British tabloid the *Sun*, in a 2007 story, seemed ready to buy out Arpaio’s contract and take him with them to straighten out the bad guys back home. Arpaio’s main concern seems to be just that he is covered. When I first met Lisa Allen at his offices, she looked at my business card and said, “You’ll probably tear us a new one, but come on in.” Arpaio admits that he gets tired of being called a publicity hound, but says he simply has to get his message out—“I don’t have the budget to do it myself.” He does have the budget, though, to employ Allen and the rest of his unusually serious media-relations unit.

On the way back to Phoenix from the tents, the Sheriff got a call, which he put on speakerphone. Someone named Jim, who sounded like a deputy, was calling from the courthouse. He said he was observing jury selection in a case there. “Sheriff, there was a lady who said, ‘Let’s put it this way. Joe’s my hero.’ So the next lady says, ‘Joe is *not* my hero.’ Then she says she’s the wife of the mayor of Mesa.”

“I knew it!” Arpaio said to one of his men. “I never trusted that mayor. He’s pro-immigrant. He’s never going to fire that chief. We gotta raid Mesa again.”

There are at least twenty-five law-enforcement agencies in Maricopa County. All utilize the county jail. The sheriff’s office is responsible for policing unincorporated areas as well as those smaller communities which contract for its services. In towns and cities with their own police, the sheriff’s deputies must, in theory, tread lightly. Arpaio has had a number of run-ins with his fellow-lawmen, and his present obsession with illegal immigrants has made things even more tense.

Some of the disagreements are basic. For instance, Arpaio and the county attorney, Andrew Thomas, who shares his views, have settled on a novel

interpretation of a state law against human smuggling. The law's target is, of course, smugglers, known as coyotes, but Arpaio and Thomas charge undocumented immigrants, the coyotes' cargo, as "co-conspirators" in their own smuggling. This is a Class 4 felony, which makes the suspects ineligible for bond, and is one reason that Arpaio's jails are so full. Maricopa is the only one of Arizona's fifteen counties that interprets the law this way, and the sheriff's office is the only agency among the twenty-five in Maricopa that does so. The others figure—and a few are vocal about it—that their limited resources are better spent fighting more serious crime.

George Gascón, the chief of police in Mesa—the man whom, Arpaio had bitterly remarked, the mayor was "never going to fire"—has stoutly opposed Arpaio. Mesa is a big town, east of Phoenix, with a population of half a million—larger than that of Cleveland. Gascón, who was an assistant police chief in Los Angeles before taking the Mesa job, three years ago, has had great success in crime reduction in Mesa, using the CompStat crime-mapping model, developed by William Bratton in New York and Los Angeles. But his first challenge in Mesa, he told me, had been to gain the trust of minority communities, particularly Latinos. "They need to believe that you're ethical and honest, that you're not the enemy," he said. In Los Angeles, he had seen what happened when that trust was broken by corrupt officers. No one would talk to the cops, "gang members filled the power void," and crime flourished. With victims and witnesses, or with people stopped for civil violations, Gascón's officers do not inquire about immigration status. "We focus on people who are committing predatory crimes."

Gascón, a Cuban-American, is tall, silver-haired, soft-spoken. He is a member of the California bar. He declined to discuss Arpaio. He did say, however, "I'm not an open-borders man. I believe we have a problem with illegal immigration. But I want to make sure we don't throw away the Constitution in the process of solving it." Gascón made it clear from the start that Arpaio's military-style

immigration sweeps were not welcome in Mesa.

That didn't stop Sheriff Joe. Last October, he sent sixty detectives and posse volunteers into Mesa after midnight. The plan was to raid the Mesa city hall and the public library, to look for undocumented janitors who, according to the sheriff's office, were suspected of identification theft. Gascón was not notified beforehand. (Arpaio claims that he did inform someone at Mesa police headquarters about the raid.) A Mesa police officer spotted a large group of heavily armed men in flak jackets gathering silently in a downtown park. Gascón, when I asked about the episode, took a deep breath. "It was a very, very dangerous scenario," he said. "In my entire law-enforcement career, I have never heard of anything close to this." His officers managed to identify the armed men, but then had trouble getting a straight story from them. The raid eventually went forward, monitored by the Mesa police, and resulted in the arrests of three middle-aged cleaning women. (Arpaio's press release said that another thirteen suspected illegal immigrants were arrested later at their homes.) This was the context for Arpaio's remark "We gotta raid Mesa again."

Two reporters at the *East Valley Tribune*, a Maricopa County paper, did a five-part study last year of the operations of the sheriff's office. They found that, with the diversion of resources to pursuing undocumented immigrants, response times on emergency calls to the sheriff's office had increased significantly, arrest rates had dropped, and dozens of violent crimes were never investigated. The series won a Pulitzer Prize for local reporting. Arpaio rejected its findings and, four months after it was published, won reelection.

His local opponents, including church groups, the N.A.A.C.P., ACORN, and other community organizations, not to mention Mayor Gordon, of Phoenix, have asked the federal government to investigate possible civil-rights violations

by Arpaio's office. Large-scale street protests, including mass marches to the jails, are mounted every few months. Al Sharpton did eventually show up in Phoenix, for one day in mid-June. He denounced racial profiling, met privately with the Sheriff, and announced plans to stage modern-day "freedom rides" in Maricopa County. That evening, he and Arpaio appeared together on Lou Dobbs's show.

The immediate goal of Arpaio's opponents is to persuade the Department of Homeland Security to cancel its 287(g) contract with Maricopa County. Modest as that sounds, activists believe it would make a difference, reducing the power of sheriff's deputies and crimping, however slightly, the culture of impunity that has flourished under Arpaio.

But Janet Napolitano, President Obama's Secretary of Homeland Security, has a history with Arpaio. She was the U.S. Attorney for Arizona when conditions in Arpaio's jails were first investigated by the Justice Department, in the mid-nineteen-nineties. Her performance then was memorably weak. Despite receiving a devastating federal report on brutality inside the jails, she held a friendly press conference with Arpaio in which she announced the settlement of the case against him and, according to the *Arizona Republic*, passed the time "trading compliments with the sheriff." Later, as the state's attorney general, she stood by as Sheriff Joe ran his jails any way he pleased. Then, when she ran for governor in 2002, Arpaio returned the favor by crossing party lines—Napolitano is a Democrat—and making a last-minute campaign commercial for her that, by all accounts, helped her eke out a victory. In 2008, in her second term as governor, Napolitano, a moderate on immigration, finally opposed Arpaio, ordering that \$1.6 million in state funds going to his office be used not for immigration sweeps but for the investigation of felonies. Arpaio was furious and later got his funding reinstated. His opponents in Maricopa County wonder privately about Napolitano's willingness to defy him again, even from a Cabinet position. Last week, she announced a revision of the 287(g) program,

intended to make local agencies more accountable. But, according to her office, ending Homeland Security's partnership with Arpaio is not under consideration.

I met a large family west of Phoenix whom I'll call the Ortegas. Two brothers—both husbands, fathers, and homeowners—had been arrested during a raid on a company where they worked. The men were still in jail, awaiting trial on charges of using invented Social Security numbers. Both were undocumented immigrants from western Mexico. A third brother, who has residence papers, was able to visit them in jail. I talked to him and his wife, and to the wife and the oldest son of one of the jailed men, in a cream-colored suburban living room.

“My husband has been here in Arizona since 1992,” the wife of the jailed man said in Spanish. She wore a green T-shirt and, as she spoke, slowly wrung her hands. “He’s been working and working, paying his taxes. He doesn’t drink, gamble—nothing. Our children were born here. It’s very hard with them. We tell the little ones he’s in Mexico, taking care of his mother. But their cousins tell them he’s in jail. They don’t understand why their father, who’s a good man, is in jail. They say, ‘Is he bad? Don’t lie to me, Mama.’” She added, “We’ve paid three thousand dollars to lawyers. We had to stop making house payments, but I don’t care. We’re living off his tax return now.”

Her sister-in-law said, “Everything that’s happening here is the fault of the federal government, because they empowered Arpaio.”

The third brother cleared his throat, as if he might not agree. He was legal and had a solid job, as a farm supervisor, but most of the field hands at the farm were undocumented. He said, “Everybody’s just trying to keep their noses clean, hoping there will be an immigration reform.”

“Arpaio gets egged on by the national publicity he gets,” his wife said. To her sister-in-law, she said, “If you lose your house, you can come and sleep here on the couch.”

I asked the son of the jailed man, who was sitting with us but kept his eyes on the floor, his age. “I’m thirteen,” he said, in English. He was tall and skinny, with huge eyes and a child’s mouth. He wore a black baseball cap inscribed “Drug Free and Proud.” He spoke very softly. “Who’s going to pay the house bills? Where are we going to live? Am I still going to go to school?” Tears began rolling down his face.

“All he does is study,” his mother said to me.

There was talk about legal strategies, about what could be tried. “We’re just hoping to get in front of Immigration and get *un permiso*.”

“I’m not as strong as I want to be,” the wife of the jailed man said. “But I’m trying to keep the faith. We’re not going to give up. *Sí se puede*.”

Her sister-in-law turned to me and said, “We’re like this.” She held up her fingers, framing something the size of an ant. “*Como así*. Small. And Arpaio is a giant—*un gigante*.”

The Ortegas asked me again not to identify them. Arpaio, they said, “does retaliation.” They seemed terrified that he might show up at their door.

Russell Pearce is a state legislator from Mesa. His specialty is anti-immigrant legislation. Much of what he introduces is beyond the pale, even in Arizona. He has tried to force landlords to ascertain the immigration status of their tenants, couples to produce Social Security numbers and proof of citizenship before they can be married, and even hospitals to stop issuing birth certificates—never mind the Fourteenth Amendment of the Constitution—if

there is a question about the immigration status of the parents. (Pearce can be outré in other areas as well. One law that he supported would have allowed concealed weapons in schools.) Yet Pearce has had some success: he helped pass a law that imposes sanctions on businesses that employ illegal immigrants—the toughest such law in the nation—and ballot measures making English the official state language and blocking access for the undocumented to day care and in-state college tuition.

“They should get nothing, nothing,” Pearce told me. “Not K-12, nothing. Disneyland learned this a long time ago. You want the people to go home? Turn out the lights. Shut down the rides.”

America, Pearce often says, has been “invaded,” and the Fifth Column that abets this invasion is, he told me, an unusual alliance of “big business, folks with thick checkbooks on K Street, the corporate oligarchy,” and “anarchists and seditionists.”

I hadn’t noticed many anarchists in Arizona.

Pearce said, “They’re huge. La Raza, the A.C.L.U.”

More self-evident is the appeal of cheap labor to employers. Whether the Arizona economy could survive without undocumented immigrants picking lettuce and cleaning hotel rooms is an open question.



“First marriage?”

In any case, Pearce and Arpaio are allies. They are heroes to the same nativist groups. They even have the same painting, “The Prayer at Valley Forge,” which shows George Washington kneeling in the snow next to his horse, on their respective office walls.

But Arpaio and Pearce were not always buddies. Pearce worked at the Maricopa County sheriff’s office for twenty-three years, rising to chief deputy, and he reportedly clashed with Arpaio there. (Pearce still claims that the Tent City jail was his idea.) In 2004, Pearce’s son, Sean, also a sheriff’s deputy, was wounded by an illegal immigrant during a raid, and Sean’s wife, Melissa, angry with the Sheriff, decided to attend a meeting for a group called Mothers Against Arpaio, which was seeking a special recall election. Most of the members of Mothers Against Arpaio were relatives of victims of abuse inside Maricopa County jails. (The recall effort was unsuccessful.)

There is also the awkward fact that Arpaio came late to the issue of illegal immigration. Indeed, he for many years publicly assumed the same attitude

toward immigration-law enforcement that most local police chiefs do: more serious crimes deserve precedence. Arpaio was always tougher on prisoners than he was on crime, but he also immersed himself in a series of high-profile campaigns—the war on drugs, reducing cruelty to animals, driving prostitution out of Maricopa. A 2003 anti-prostitution sweep backfired when some members of his vast volunteer posse got naked, on video, with prostitutes they were supposedly arresting. This went sufficiently far beyond the call of duty that the county attorney was unable to file charges. Arpaio, struggling to put this embarrassment behind him, and seeing the success with which other local conservative politicians were wielding the anti-immigrant club, soon picked it up himself.

Mary Rose Wilcox, who is Latina and the only Democrat on the Maricopa County board of supervisors, remembers a quite different sheriff. “Arpaio was not like this before,” she told me. “He was flamboyant. But I don’t know this guy.” For Wilcox, the last straw came this February, when Arpaio marched more than two hundred undocumented immigrants, shackled together, to a new tent jail, parading them before news cameras. Arpaio had staged prisoner marches before. In 2005, he forced nearly seven hundred prisoners, wearing nothing but pink underwear and flip-flops, to shuffle four blocks through the Arizona heat, pink-handcuffed together, to a new jail. When they arrived, one prisoner was made to cut a pink ribbon for the cameras. This elaborate degradation, which is remembered fondly by Sheriff Joe’s fans, was ostensibly in the name of security—the men were strip-searched both before and after the march. But Arpaio also told reporters, “I put them on the street so everybody could see them.” He marched another nine hundred this April.

Wilcox is a restaurant owner with an earnest, matronly air. She told me about a youth program she runs in inner-city Phoenix. “It’s for fifth-grade kids who live near the ballpark but would never be able to afford to go to a Diamondbacks game,” she said. “They all do community-service work, about a thousand of

them, and then they get to go to a game. Sheriff's deputies always helped me with the program till two years ago. But I had to ask them to stop. The kids are just too afraid of those brown shirts. That's what their teachers told me. And I hate to say it but the Sheriff is responsible for all this fear."

We were eating chiles rellenos in Wilcox's restaurant, a modest family-run place with portraits of César Chávez and Martin Luther King, Jr., on the walls. Wilcox stopped eating. "It's like a big joke to him," she said. "He has no idea the harm he's doing—to children, families, communities."

“Be a real sheriff,” the producer said. “You don’t want to be a clown sheriff.”

Arpaio seemed to take this advice in stride. We were in New York, and he was about to be interviewed on “The Colbert Report.” “Is this the greenroom?” he asked. “These walls are blue. Are they going to powder me?”

The producer, an intense young woman, persisted. “Don’t try to be funny,” she said. “He will be funnier than you.”

Arpaio shrugged. He wasn’t familiar with Colbert’s show. “I’m pretty funny,” he said. From a rumpled manila envelope, he pulled two pairs of pink boxer shorts. “I brought the underwear,” he said.

The producer stared. An assistant looked on helplessly. Then the producer reached for the shorts. “Thanks,” she said.

“Don’t you want me to take these on the show?”

“No.”

Arpaio looked nonplussed. “Well, at least let me sign ’em.” He autographed the

shorts—one pair for Colbert (“Stay out of jail!”), one for the producer’s son.

Stephen Colbert popped in and introduced himself. “I will be in character out there,” he warned Arpaio. “My character is an idiot. He doesn’t understand *anything*.” While he spoke, the producer and the assistant chanted at Arpaio, “Set him straight! Set him straight!”

Arpaio wanted to make sure his new book would be plugged on the show. That was why he had come to New York. Colbert assured him that it would, and left to start taping.

Arpaio watched the opening monologue on a monitor, but soon grew bored. He is not accustomed to meeting people who don’t know about the pink underwear. “Where’s my powder?” he called out the doorway. No one replied.

Colbert’s first guest got the Sheriff’s attention. It was Ken Quinn, a second mate from the American container ship that was hijacked off Somalia in April. Quinn barely got to speak, between Colbert’s jokes, but he had a good-natured grin and broad shoulders, and the studio audience gave him a standing ovation. Arpaio seemed jealous. “The *Republic* did a poll last week, ‘Who’s your hero?’ and I beat out Tillman,” he said. He meant Pat Tillman, the Arizona Cardinals football star who joined the Army Rangers and was killed in Afghanistan. “I beat out all these guys. I’m not bragging. I’m just saying.” (The poll, published in May, actually shows Tillman as the winner and Arpaio as a runner-up.)

Except for the ovation, Arpaio’s turn with Colbert went much like Quinn’s: the Sheriff hardly got a word in. He did manage to growl one stock line: “I’m an equal-opportunity law-enforcement guy—I lock everybody up.” Colbert, having mentioned that Arpaio is often accused of racial profiling, kept asking the Sheriff for I.D.

As Arpaio left the studio, by an unmarked door on West Fifty-fourth Street, a

bushy-haired young man waiting outside turned and bellowed, “Never come back here again! Fuck you!” Arpaio ducked into a town car, which sped away into the night. “Scumbag,” he muttered. The Sheriff hadn’t thought much of Colbert. He hadn’t thought much of Conan O’Brien, either, he said. “I’m working on Leno. He’s from my home state, Massachusetts. And my home country, Italy. I said, ‘Hey, Jay, why don’t you have me on your show? Afraid I’ll be funnier than you?’ ”

Back in Maricopa County, the Justice Department was pursuing the investigation requested by Congress in March. Other federal officials were also snooping around. I heard Sheriff Joe tell his jail supervisor about an awkward interview he had just had with someone from Homeland Security. “He wouldn’t even take my underwear.”

“He’s a bean counter,” the supervisor said.

David Hendershott, Arpaio’s chief deputy, seemed to be in charge of handling the Justice people. Hendershott is an enormous man, with enormous self-confidence and an office nearly as enormous as Arpaio’s. He polishes the Sheriff’s image at every opportunity. Not realizing, for instance, that I had already been to the Tent City jail with Arpaio, Hendershott told me, “Every time he goes to the tents, it’s like a rock concert. Everybody wants his autograph. They’ll have him sign toilet paper, anything.”

The key question about the federal investigation, Hendershott said, was “Is it an organized conspiracy to muzzle Sheriff Joe Arpaio by using the Justice Department?” He had been doing some Internet research on the chief of the civil-rights division, he said, and decided that she must be unpopular with at least some of her staff. He brandished a thick set of printouts, and said, “D.O.J. is going to be surprised that we find the truth to be a very strong ally.”

Hendershott pointed at a conference table at one end of his office. “I got seven D.O.J. lawyers coming in here tomorrow. And I’m going to shove it up their ass.”

He wasn’t more specific about his strategy than that, but the bravado itself seemed to be the point. “You think I don’t know how the feds operate?” Arpaio had asked the journalism students at Arizona State. “I don’t bow down to the federal government.”

Guadalupe is one of the small Maricopa communities that have a contract for police protection with the sheriff’s office. Its population is almost entirely Latino and Native American, and one day last year Arpaio launched a major raid there, with a helicopter, paddy wagons, and scores of deputies, including helmeted officers on horseback. They stopped and demanded I.D. from pedestrians, motorists—basically every dark-skinned person they saw. (The sheriff’s office calls these raids “crime suppression” sweeps, and insists that the raiders stop only people who are violating the law.) It was standard practice, Arpaio style, complete with a press release and news crews. Indeed, it was the third such operation in less than a month. But dusty little Guadalupe is not a standard Maricopa community. It is an old town, a throwback, not given to the transience of urban sprawl. Many of its residents live in the houses they were born in; very few are foreign-born. And few appreciated the invasion by Sheriff Joe and his team.

Protesters materialized, many waving homemade placards urging Arpaio to leave. Motorists honked in support. Guadalupe’s young mayor, Rebecca Jiménez, confronted Arpaio in a parking lot where he had established his mobile command center. Why, she wanted to know, did his press release say that Guadalupe town officials were alarmed about illegal aliens in their midst? They were not. Arpaio went ballistic. “He was waving his arms like a crazy

man,” Jiménez told me. “I had to wipe the spit off my face. He said, ‘You’re the one that caused all these riots!’ He said he was going to come back the next day. I said we didn’t want him. They did come back. But he didn’t.”

Arpaio chose to direct the next day’s Guadalupe operation, which was more modest, from a remote command post, and Jiménez was hailed, at least in some circles, for her courage. The two-day raid netted only nine suspected illegal immigrants, but reportedly produced a high volume of traffic tickets, including charges for “improper use of horn.” Jiménez noted that the raid came in the middle of an election campaign. “He used our community to get media attention,” she said. “You know, Brown Town. But he got more than he bargained for.”

The Guadalupe raid did have a chilling effect. It began the day before a Catholic-church confirmation ceremony—a big deal in Guadalupe—was scheduled to take place in the village plaza, and although the children had prepared for months, a number of them were afraid to come out, and missed their own confirmations.

America’s toughest sheriff is, as ever, unapologetic. Over lunch in New York, he told me that he doesn’t mind the effect he has. “If they’re afraid to go to church, that’s good.” ♦

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William Finnegan has been a staff writer at The New Yorker since 1987. His book “Barbarian Days” won the 2016 Pulitzer Prize for biography.



Judge Berry, ordered to pay \$180,000 in damages, is retiring

Philadelphia Common Pleas Court Judge Willis W. Berry Jr. is retiring, leaving the bench on the same day he was ordered to pay \$180,000 in punitive damages in a civil fraud case.

by By Jessica Parks, Inquirer Staff Writer
Published Sep. 28, 2012, 3:01 a.m. ET

Philadelphia Common Pleas Court Judge Willis W. Berry Jr. is retiring, leaving the bench on the same day he was ordered to pay \$180,000 in punitive damages in a civil fraud case.

Berry had reached the mandatory retirement age of 70, said Pamela Pryor Dembe, president judge of Common Pleas Court. He could have served through the end of the year, but decided to leave now. He did not apply to be retained as a senior judge.

"He likes to do outdoorsy things," she said.

Berry had rebuffed calls for his resignation since 2009, when he was suspended for ethics violations arising from an Inquirer investigation into his real estate dealings.

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Berry's attorney, Samuel Stretton, said the judge previously intended to stay through December, but recently changed his mind. "He was tired of it," Stretton said. "I told him to stick it out, but he didn't want to."

The large jury award was related to a real estate transaction in which Berry, as a lawyer, arranged for a client to take ownership of a property on the 1500 block of Girard Avenue and then sell it to Berry for \$1,500. The property was later valued at \$180,000.

Denise Jackson, who had hired Berry as her lawyer in a 1995 slip-and-fall lawsuit, told the court she was unaware that the property had been deeded

She sued Berry, and in 2009 a jury awarded her \$9,858.72 in compensatory damages and \$180,000 in punitive damages.

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The trial judge in that case reduced punitive damages to \$20,000, but his decision was reversed by a panel of Superior Court judges Aug. 31 - which was also Berry's last day on the bench.

Berry, reached at his Philadelphia home, said his retirement takes effect next Friday and he is "on vacation" until then. He declined to comment further.

Stretton has filed an appeal for a rehearing of the punitive damages. Superior Court has until Nov. 10 to decide whether it will review the case.

Concerns surrounding Berry's real estate dealings began to surface in April 2007, when The Inquirer reported that the judge owned a string of derelict properties in North Philadelphia, some of which had drawn complaints from tenants and violations from city code inspectors. For years, tenants told The Inquirer, the judge used his court staff to collect rent, make repairs, and handle paperwork.

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The investigation was published in the midst of Berry's campaign for a seat on the state Supreme Court. He came in last, with 15 percent of the vote.

An investigation by the state Court of Judicial Discipline confirmed that Berry had been running his real estate business out of his chambers. The ethics violation brought a five-month suspension in 2009.

state legislators tried several times, unsuccessfully, to have Berry impeached.

After his suspension, Berry returned to the courtroom for nearly three years and presided over the case of a brazen daylight shooting aboard a SEPTA bus in June 2011.

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BJ By Jessica Parks, Inquirer Staff Writer

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POLITICS

Nearly a year after Federal indictment, here's when ex-Rep. TJ Cox is next due in court

The former Valley Congressman and Federal prosecutors have agreed to multiple continuances over voluminous amounts of discovery.



BY DANIEL GLIGICH • JULY 10, 2023 • 2 MINUTE READ



Nearly a year after pleading not guilty to 28 counts of financial crimes, former Rep. TJ Cox, a Fresno Democrat, is still several months out from appearing in court for the first time.

Last week the status conference, which was originally scheduled for July 12, has now been moved to Nov. 8.



Driving the news: The agreement to move back the case management conference comes after Cox and his attorney – Mark Coleman – requested more time to review the charges and evidence.

- According to the filing, Coleman has made substantial progress reviewing the case so far but needs more time to review the evidence given the massive amount of evidence.
- Such evidence includes hundreds of thousands of pages of records and “large amounts of digital evidence.”

The backstory: Cox was arrested on Aug. 16, 2022 after a federal grand jury indicted him for multiple financial crimes dating back to his work as the head of a local community development firm before he was elected to Congress in 2018, where he served one term in office.

- He was charged with 15 counts of wire fraud, 11 counts of money laundering, one count of financial institution fraud and one count of campaign contribution fraud.
- Cox is accused of illicitly obtaining over \$1.7 million in diverted client payments and company loans and investments that he solicited and stole from 2013 to 2018 with his company Central Valley New Market Tax Credits.
- The indictment also accuses him of fraudulently securing a \$1.5 million loan for the Central Valley Community Sports Foundation – the operator of Fresno’s Granite Park – when he served as treasurer. Cox fabricated a board resolution

from his company showing that the board guaranteed the \$1.5 million loan, even though no such meeting took place, allegedly.

- Cox's 2018 Congressional campaign also took a hit in the indictment as he allegedly funneled over \$25,000 to the campaign from straw donors. He is accused of taking \$20,000 from California Customs Processing – another company of his – to deposit in a family member's bank account. The family members then made the maximum \$5,400 contributions to his campaign.
- After he was released on bail, Cox spoke to the media in front of the Fresno County Jail last August, saying that the indictment was politically-motivated.



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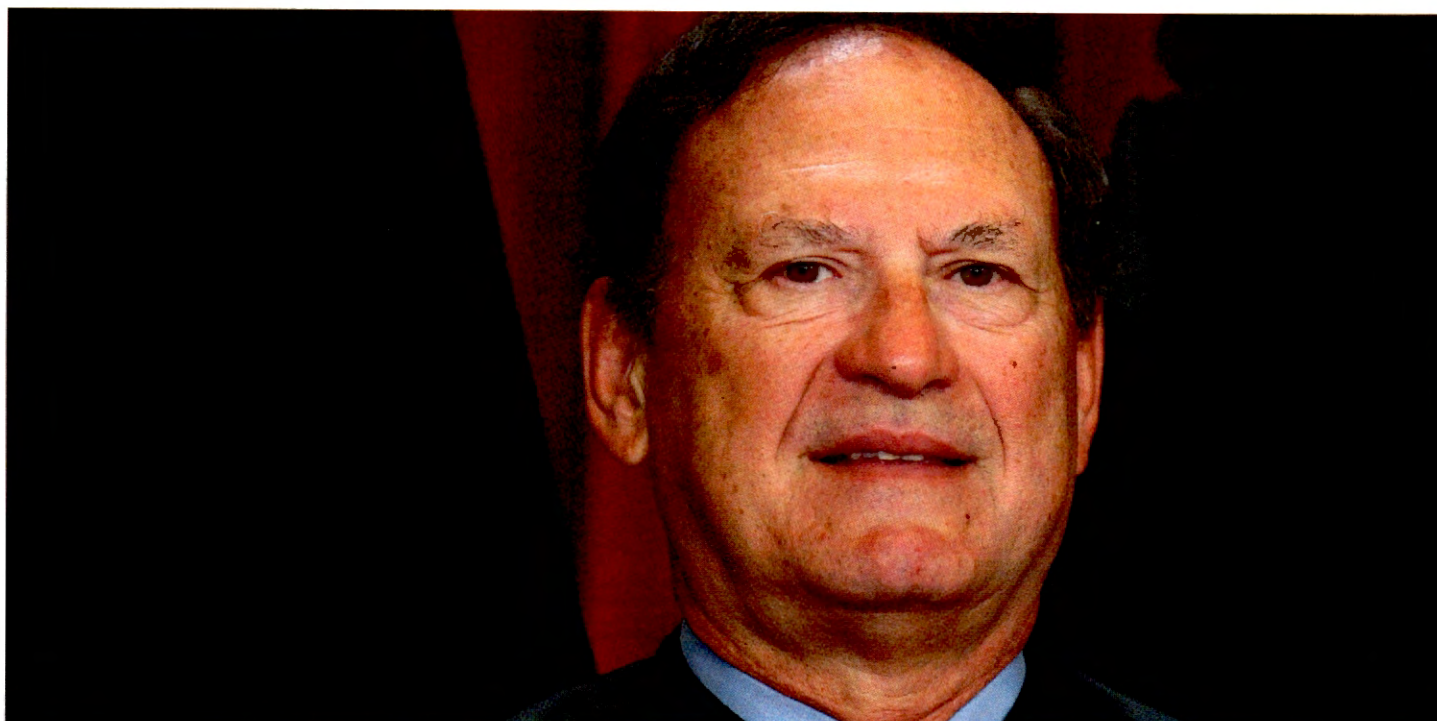
SAMUEL ALITO'S WIFE LEASED LAND TO AN OIL AND GAS FIRM WHILE THE JUSTICE FOUGHT THE EPA

A deal made by Alito's wife with an energy company paints recent Supreme Court decisions on the environment in a damning light.

Daniel Boguslaw

June 26 2023, 12:55 p.m.

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U.S. Supreme Court Associate Justice Samuel Alito at the East Conference Room of the Supreme Court building on Oct. 7, 2022, in Washington, D.C. Photo: Alex Wong/Getty Images

A YEAR AGO this month, Martha Ann Bomgardner Alito decided to see if a 160-acre plot of land in Grady County, Oklahoma, would produce. In a lease filed with the Grady County clerk, the wife of Supreme Court Justice Samuel Alito entered into an agreement with Citizen Energy III for revenue generated from oil and gas obtained from a plot of hard scrabble she inherited from her late father. It is one of thousands of oil and gas leases across Oklahoma, one of the **top producers of fossil fuels** in the United States.

Last year, before **the lease** was activated, a line in Alito's financial disclosures labeled "mineral interests" was valued between \$100,001 and \$250,000. If extraction on the plot proves fruitful, the lease dictates that Citizen Energy will pay Alito's wife 3/16ths of all the money it makes from oil and gas sales.

In the past, Alito has often **recused** himself from cases that pose potential conflicts of interest with his vast investment portfolio. Many of these recusals were born from **an inheritance of stocks** after the death of Alito's father-in-law, Bobby Gene Bomgardner. Because Citizen Energy III isn't implicated in any cases before the Supreme Court, Alito's holding in Oklahoma doesn't appear to pose any direct conflicts of interest. But it does add context to a political outlook that has **alarmed** environmentalists since Alito's confirmation hearing in 2006 – and cast recent decisions that embolden the oil and gas industry in a damning light.

"There need not be a specific case involving the drilling rights associated with a specific plot of land for Alito to understand what outcomes in environmental cases would buttress his family's net wealth," Jeff Hauser, founder and director of the Revolving Door Project, told The Intercept. "Alito does not have to come across like a drunken Paul Thomas Anderson character gleefully confessing to

drinking our collective milkshakes in order to be a real life, run-of-the-mill political villain.”



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In May, Alito penned a majority decision in [Sackett v. EPA](#) which radically scaled back the Clean Water Act, reducing its mandate by tens of millions of acres. According to a [statement](#) released by President Joe Biden, the ruling “puts our nation’s wetlands – and the rivers, streams, lakes and ponds connected to them – at risk of pollution and destruction, jeopardizing the sources of clean water that millions of American families, farmers and businesses rely on.” The plaintiffs’ position in the case was backed by the American Gas Association, the American Petroleum Institute, and the Liquid Energy Pipeline Association.

Prior to targeting the Clean Water Act, Alito joined the courts’ other conservative justices in attacking another set of EPA powers under the Clean Air Act in [West Virginia v. EPA](#). The 2022 ruling [gutted the EPA’s ability to regulate greenhouse gas emissions from power plants](#).

A spokesperson for Alito did not respond to The Intercept’s request for comment.



SINCE HIS APPOINTMENT in 2006, Alito has operated as a judicial firebrand, making high-profile appearances at **Federalist Society** events to excoriate liberal doctrine. He drafted the **historic opinion** that **overturned Roe v. Wade**, **lashing out in public** after the decision was **leaked early to the press**.

Unlike other federal courts, the Supreme Court does not have a legally binding ethics code. While justices are required to file financial disclosures under the Ethics in Government Act, the choice of whether or not to recuse from cases involving a conflict of interest is entirely self-enforced.

This loophole caught the public's attention in April, when a **ProPublica report** detailed the lavish, undisclosed gifts and financial support Justice Clarence Thomas and his family received from billionaire **GOP megadonor Harlan Crow**. Since then, other justices'

financial dealings have been called into question, including **Neil Gorsuch** for an undisclosed property sale to a lawyer with business before the court, and **John Roberts**, whose wife's employment as a legal recruiter for Supreme Court-bound lawyers raised a host of ethics questions.

Alito now finds himself in a position similar to Thomas, after another **ProPublica report** from last week described a fishing trip and private jet ride the justice took with conservative operative Leonard Leo and **billionaire hedge fund manager Paul Singer**, valued at over \$100,000. While pictures from the trip suggest that Alito personally appreciates the bounty of America's dwindling unpolluted landscape, his rulings in environmental cases suggest that politically he does not.

Before publishing its investigation into Alito's relationship with Singer – whose business model is organized around using the courts, including the Supreme Court, to extract payments from distressed bond issuers – ProPublica reached out to Alito with a **list of questions**. Alito responded by penning a defensive essay in the Wall Street Journal, which published the response **before ProPublica had even published its story**.

“What makes political figures who violate ethics laws so exceptional is how much obviously unethical behavior is legal under our current overly permissive rules,” Hauser said. “Our current ethics regime assumes that a person's financial interests need to be extremely specific in order to influence their behavior, a worldview that ignores the foresight rich people and corporations regularly demonstrate.”

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Prior to the lease, Alito ruled on cases with the potential to impact gas and oil prices, both nationally and in Oklahoma. In [Oneok, Inc. v. Learjet, Inc.](#), decided in 2015, Alito ruled with the majority to head off an attempt to block state antitrust laws from being applied to natural gas companies under the Natural Gas Act. Oneok, the largest supplier of natural gas in Oklahoma, runs an active natural gas pipeline through the Alito plot.

In 2017, Alito delivered an [address](#) at the Claremont Institute, a conservative think tank, that further clarified his position on fossil fuels' role in climate change. "Carbon dioxide is not a pollutant. Carbon dioxide is not harmful to ordinary things, to human beings, or to animals, or to plants." Alito said. "It's actually needed for plant growth. All of us are exhaling carbon dioxide right now. So, if it's a pollutant, we're all polluting."

In 2021, Alito joined the majority in [PennEast Pipeline Co. v. New Jersey](#) to protect the right for companies with federal backing to exercise eminent domain in the seizure of state property. PennEast Pipeline, a natural gas distributor, sought to maintain its ability to seize land in the construction of a pipeline, and thanks to the Supreme Court ruling, it was able to preserve a tactic for pipeline construction, which, if overturned, would have [significantly impacted](#) the ability for the natural gas industry to expand pipelines and

production.



Over the past two years, Citizen Energy has launched a buying spree of wells and land rights, positioning itself as one of **the top private producers** in Oklahoma. It operates over 200 miles of natural gas-gathering pipelines and over 700 wells, and produces over 80,000 barrels of oil equivalent per day. It is financially backed by the private equity behemoth Warburg Pincus.