ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

P O Box 41213
Phoenix, AZ 85080-1213
Phone 480 812 1700 • Fax 480 812 1736
Email defense@aacj org • Web www aacj org

December 22, 2015

Lawyer Regulation Division
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

Re: Bar Charge Against Juan M. Martinez
Arizona State Bar No. 009510

To Whom It May Concern

Arizona Attorneys for Criminal Justice ("AACJ"), the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to attorneys who defend the accused AACJ is a statewide membership organization of criminal-defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training, and mutual assistance, and fostering public awareness of citizens' rights, the criminal-justice system, and the role of the defense lawyer

AACJ lodges bar charges against attorneys in egregious cases when evidence of professional misconduct is so clear that it threatens the foundations of the criminal-justice system to allow such misconduct to go without redress That standard applies in this case

Deputy Maricopa County Attorney Juan M Martinez, an Arizona State Bar member and experienced prosecutor, has engaged in a long and continuing pattern of unethical and unprofessional conduct Martinez's misconduct has gone unpunished and uncorrected, despite its being recognized numerous times by Arizona courts, including our Supreme Court AACJ therefore requests that the State Bar initiate an investigation into Martinez's misconduct and take action to impose appropriate discipline

I. Introduction

In blunt pursuit of criminal convictions, long-time prosecutor Juan Martinez repeatedly engaged in material violations of the most basic tenants of the Ethical Rules He has lacked candor to tribunals, unfairly treated opposing parties and counsel, and prejudiced the administration of justice Disturbingly, much of his misconduct has been in capital cases As outlined below, Martinez has repeatedly abdicated the prosecutorial mandate to seek justice, and the Arizona Supreme Court has repeatedly found that he engages in prosecutorial misconduct

II. Standards for Prosecutorial Conduct

In evaluating Martinez's conduct, the Bar should take into account what courts in Arizona and elsewhere have said about the standards governing prosecutors Although "[a] prosecutor has wide latitude in presenting arguments to the jury," *State v Morris*, 215 Ariz 324, 336 ¶ 58 (2007), Martinez's conduct went beyond that latitude in many cases, including those discussed below The following case excerpts and citations are some of the standards that the Bar should take into account when evaluating Martinez's repeated misconduct

Arguing During Opening Statements: Argument during opening statements is improper "Opening statement is not a time to argue the inferences and conclusions that may be drawn from evidence not yet admitted " *State v Bible*, 175 Ariz 549, 602 (1993)

Appeal to Passions and Fear: Prosecutors "may not make arguments which appeal to the passions and fears of the jury " *State v Comer*, 165 Ariz 413, 426 (1990) (improper argument for prosecutor to "characteriz[e] appellant as a 'monster,' as 'filth,' and the 'reincarnation of the devil on earth'"), *In re Zawada*, 208 Ariz 232, 237 ¶ 14 (2004)

Misstating the Evidence: Prosecutors' misstating the evidence is "a serious breach of the prosecutor's duty," *State v Cannon*, 148 Ariz 72, 77 (1985), and is prosecutorial misconduct *E g*, *United States Atcheson*, 94 F 3d 1237, 1244 (9th Cir 1996) (addressing argument outside the record as prosecutorial misconduct), *State v Mayhorn*, 720 N W 2d 776, 788 (Minn 2006) ("A prosecutor commits misconduct by intentionally misstating evidence "), *State v Leon*, 190 Ariz 159, 161 (1997) (condemning prosecutor's references to police reports and telling the jury they were not going to have the "inside information" as to what occurred)

Misstating the Law: "The state may not misstate the law to the jury " *State v Serna*, 163 Ariz 260, 266 (1990) (citing *State v Tims*, 143 Ariz 196, 200 (1985)) ("The prosecutor should not misstate the law in closing argument "), and *State v Daymus*, 90 Ariz 294, 303-04 (1961) ("It is improper to misstate the law in argument but not necessarily prejudicial "))

Attacking Expert Witnesses: It is improper for a prosecutor to "imply unethical conduct on the part of an expert witness" in the absence of evidentiary support *State v Velazquez*, 216 Ariz 300, 311 ¶ 48 (2007)

Impugning the Integrity or Honesty of Opposing Counsel: It is misconduct for a prosecutor to impugn the integrity or honesty of opposing counsel This includes accusing defense counsel or a defense witness of concocting a falsehood *State v Hughes*, 193 Ariz 72, 85-86 ¶ 59 (1998), *State v Newell*, 212 Ariz 389, 403 ¶ 66 (2006), *see also United States v Sanchez*, 176 F 3d 1214, 1225 (9th Cir 1999) (prosecutor commits misconduct when denigrating the defense as a sham), *Carter v State*, 356 So 2d 67 (Fla Dist Ct App 1978) (prosecutor referred to defense counsel as a "mouthpiece"), *People v Weller*, 258 N E 2d 806, 810 (Ill App Ct 1970) (stating defense counsel could "qualify as an SS Trooper"), *State v Lundbom*, 773 P 2d 11 (Or Ct. App 1989) (referring to defense counsel as "pimp" and "hired gun"), *Commonwealth v Long*, 392 A 2d 810, 813 (Pa Super Ct 1978) (prosecutor referred to defense counsel as a "not guilty machine"), *Commonwealth v Sargent*, 385 A 2d 484 (Pa Super Ct 1978) (reference to fact that defendant had a "paid attorney" hired to "acquit"), *Anderson v State*, 525 S W 2d 20, 22-23 (Tex Crim Ct App 1975) (defense attorney "wants to pull the wool over your eyes," "won't argue the law, and he won't argue the facts, all he will do is get up here and lie to you"), *Thornton v State*, 852 So 2d 911, 913-15 (Fla Ct App 2003) (reversing conviction where prosecutor accused defense attorney of scripting a story), *People v Vera*, 94 A D 2d 728, 730, 462 N Y S 2d 467, 469 (N Y Sup Ct 1983) ("While such questioning [of delay in presenting alibi to police] is permissible under certain circumstances it should not be accompanied by the improper characterization of the witness' testimony as a 'story '"), *McCarty v State*, 765 P 2d 1215, 1220-21 (Okla Crim Ct App 1988) ("Mr Macy [the prosecutor] improperly attacked the credibility of defense counsel by accusing him of 'making up a story '") Such arguments "impugn[] the integrity or honesty of opposing counsel " *See Hughes*, 193 Ariz at 85-85 ¶ 59

Presenting False Testimony: "Knowing use of perjured or false testimony by the prosecution is a denial of due process and is reversible error without the necessity of a showing of prejudice to the defendant " *State v Ferrari*, 112 Ariz 324, 334 (1975) (citing *Mooney v Holohan*, 294 U S 103 (1935)), *State v Minnitt*, 203 Ariz 431, 440 ¶¶ 43-44 (2002) (suborning perjury in first two trials was so egregious that conducting a fair third trial free of misconduct could not purge the taint, necessitating dismissal under the double jeopardy clause of the state constitution)

III. Martinez's Ethical Violations in Cases Before the Arizona Supreme Court[1]

The Arizona Supreme Court has repeatedly noted instances of Martinez's misconduct

A. *State v. Morris*

The Supreme Court concluded that Martinez committed misconduct in *State v Morris*, 215 Ariz 324 (2007), though it did not reverse the conviction Morris had killed five prostitutes, discarding their bodies in alleys Despite no supporting evidence, Martinez argued to the jury that Morris strangled them during sex and continued to have sex with their bodies until they

[1] The reported cases discussed in this section are included in **Attachment 2** (Reported Cases Involving Martinez)

rotted and fell apart Martinez committed misconduct when he "invited jurors to put themselves in the place of the victims and singled out specific jurors based on appearance and gender " *Id* at 337 ¶¶ 57-58 Also troubling was when Martinez took a victim's jacket out of a plastic evidence bag for the jury's "smelling pleasure " *Id* at 338 ¶ 62

B. *State v. Andriano*

In *State v Andriano*, the defense argued that Martinez "took every opportunity to infuse the trial with marginally relevant information about Andriano's partying and man-chasing " 215 Ariz 497, 503 ¶ 28 (2007) As the Court noted, however, the defendant did not allege prosecutorial misconduct and reversal was unwarranted because the trial judge instructed the jury that counsel's arguments are not evidence *Id* at 503 ¶ 28 & n 3

C. *State v. Gallardo*

In *State v Gallardo*, Martinez misstated the evidence, ignored sustained objections, mischaracterized expert testimony, and asked the jury to compare the victim to the defendant 225 Ariz 560 (2010) He also "persisted in [a] line of argument"—twice—after the trial court sustained an objection that the argument was misleading *Id* at 569 ¶ 43 Although the Court did not reverse the conviction, it noted that the "repeated statements by the prosecutor were improper " *Id* at 569 ¶ 44

During the *Gallardo* oral argument, Justice Andrew Hurwitz asked about Martinez's unethical conduct

> Can I ask you a question about something that nobody's discussed so far? The conduct of the trial prosecutor It seems to me that at least on several occasions, and by and large the objections were sustained, that the trial prosecutor either ignored rulings by the trial judge or asked questions that the trial judges once ruled improper and then rephrased the question in another improper way Short of reversing a conviction, how is it that we can stop inappropriate conduct?[2]

Justice Michael Ryan then commented

> Well, this prosecutor I recollect from several cases This same prosecutor has been accused of fairly serious misconduct but ultimately we decided it did not rise to the level of requiring a reversal ***There's something about this prosecutor . . . Mr. Martinez***[3]

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[2] **Attachment 1** (Transcript of Oral Argument in *State v Gallardo* before Arizona Supreme Court), at 16

[3] *Id* at 16-17 (emphasis added)

D. *State v. Lynch*

In *State v Lynch*, 225 Ariz 27 (2010) (*Lynch I*), the Supreme Court confronted several instances of Martinez's misconduct but ordered a new sentencing hearing for different reasons

Despite being on notice from *Lynch I*, Martinez repeated the same tactics during the second sentencing This time, although the Supreme Court did not reverse the sentence, it specifically found that Martinez committed misconduct *State v Lynch*, 238 Ariz 84 (2015) (*Lynch II*)

- During opening, the trial court properly sustained two of Lynch's objections because Martinez "improperly made argumentative statements during opening " *Lynch II*, 238 Ariz at --- ¶ 10

- Also during opening, Martinez improperly personalized his argument to prejudice the jury "The prosecutor's first comment was improper By telling the jurors that they could not know what it was like to be 'manhandled' by the knife-wielding defendant, the prosecutor invited the jurors to place themselves in the victim's position and appealed to their fears " Again, because "the trial court properly sustained Lynch's objection, struck the argument, and told the jury to disregard it," the Supreme Court did not reverse the conviction *Id* ¶ 49

- During cross-examination, the trial court sustained two of Lynch's objections to Martinez's "aggressive" questions, and "the court would have been well within its discretion to have sustained the objections and required the prosecutor to rephrase his questions in a more civil manner[ ]" The Supreme Court noted that "the trial court should have exercised more control over the aggressive questioning " *Id* ¶ 12

- During another cross-examination, the trial court properly sustained an objection when Martinez mockingly suggested an expert witness "can vouch for people " *Id* ¶ 15

- The Supreme Court noted that "the prosecutor was aggressive," but did not reverse because the "trial court sustained Lynch's objections to many of the questions, and the court's instructions to disregard the statements cured any possible prejudice " *Id* ¶ 22

- Martinez improperly appealed to juror fears during cross-examination when he asked whether Lynch "could stick or prick" a corrections officer with a sharp object, implying Lynch would be a danger if incarcerated for life The Supreme Court noted that "the cross-examination was argumentative, and the trial judge could have sustained an objection on that basis " The Court did not reverse because the defense's rebuttal cross-examination cured the problem *Id* ¶¶ 23-24

- During both cross-examination and closing Martinez misstated the evidence The Supreme Court concluded that "[a]though the prosecutor made inappropriate remarks, defense counsel's objections were sustained and the prosecutor did not argue the points further" Because of the defense's objections and trial court's curative instructions, the Supreme Court did not reverse *Id* ¶¶ 25-26

- During closing arguments, Martinez misstated the law Again, because "the trial court correctly sustained Lynch's objection to this argument, properly instructed the jury on the issue, and instructed the jury to disregard remarks to which the court sustained objections," the Supreme Court did not reverse *Id* ¶ 37

- During closing argument, Martinez misstated the law regarding the (F)(6) aggravating factor, just as he had done five years earlier in *Lynch I* The Supreme Court noted that "[t]he prosecutor struggled at times during voir dire and closing argument with the disjunctive 'or' and conjunctive 'and' in explaining the (F)(6) aggravator" Again, only defense objection and trial court clarification precluded reversal *Id* ¶ 43

- Regarding Martinez's cumulative misconduct, the Supreme Court stated that "the prosecutor disturbingly made a number of inappropriate comments" Yet again, only the "valid objections by Lynch that the trial court sustained" and the trial court's instructions prevented reversal *Id* ¶ 52

IV. Martinez's Unethical Conduct During Criminal Trials

A. *State v. Beemon*

In *State v Beemon*, Maricopa County Superior Court Case No CR2002-099001, Martinez's theme for closing argument was that defense counsel was like "Hitler" telling "the big lie over and over"

> As I said, if history teaches us anything, it's that it comes around again and again. Remember Hitler? The big lie he told you? It was at the top of his lungs over and over, you are the superior people and people are going to believe it because they heard it over and over again, and that's what he said over and over again was about the state calling him sneaking, calling him lying, calling him cheating, calling him a beast, calling him a dog Did that ever happen by the State? Of course it didn't happen, but you know what? He wants you to believe that it did You know, just like Hitler, that big lie If you put it out there, even though the prosecutor didn't say it, maybe you'll believe it And maybe when you go back there to decide this case, you won't decide it on the facts But if he tells you that over and over again, you're certainly going to start to believe it, aren't you?[4]

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[4] **Attachment 3** (*State v Hulsey*, Maricopa County Superior Court Case No CR 2007-111635-001-DT, Motion to Have Deputy County Attorney Juan Martinez Removed as the Trial

Martinez continued

> He [defense counsel] talks about America and wraps himself around the flag Doesn't wrap himself around the German flag when he calls somebody a cheater, a liar, and sneaking when in fact they never even used those words [5]

And continued further

> All the State is asking you to do is consider the evidence that came from the witness stand Take a look at all of that If you take a look at all of that, even though somebody calls the prosecutor sneaking, lying , cheating, all of that stuff, attributes things like beast and dog and all these terms to him
>
> Even though they may do that, that's an effective argument I[t] worked through history We have the example of Germany It worked through history [6]

Underscoring the impropriety of his argument is that defense counsel in *Beemon*, Robert Stein, is Jewish

When called on his behavior, Martinez claimed, without giving specific examples, that the defense argument justified his disparaging defense counsel

> Well, one of the things that we must keep in mind is that the personal attacks in this case have all come from the defense
>
> I was merely responding to what he said and to indicate that I didn't say those words, then they – they're [the] ones that perhaps are not telling the truth [7]

Regarding his anti-Semitic argument, Martinez again justified himself

> I never personally attacked him I never called him a liar I never called him - he raised this now, I didn't even know he was Jewish, but okay, he's Jewish. Big deal I'm not No one ever called him a Jew. . We know, he made things up, he attributed to the state I'm entitled to respond to it If he calls us liars, cheaters and sneaky, I - we're entitled to do that
>
> I think it's a specious argument to say he read the jurors' minds now and think[s] they'll be prejudiced against him just because he's Jewish Well, they would have been prejudiced against him if they were prejudiced against Jews when he wrote

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Prosecutor in This Case, and Various Connected Motions in Limine, filed March 6, 2009 ("Martinez Removal Motion"), at 2 (quoting *Beemon* Transcript at 43-44))

[5] *Id* (quoting *Beemon* Transcript at 48-49)

[6] *Id* at 3 (quoting *Beemon* Transcript at 56)

[7] *Id* (quoting *Beemon* Transcript at 58)

his name up there, "Stein," and somehow attribute that when he marked that up there and wrote it I think that's a specious argument and I don't think anything he says rises to any level of misconduct on the State's part [8]

B. *State v. Grant*

In *State v Grant*, Maricopa County Superior Court Case No CR 2005-032986-001 SE, Martinez lied to the court and opposing counsel *Grant* was a high-publicity murder trial where the state accused Grant of drugging his wife, Faylene, so she drowned in the bathtub The defense argued that her death was an accident or suicide The state possessed several exculpatory "farewell letters" Faylene wrote showing she believed God meant her imminent death During the years of preparation for Grant's trial, Martinez not only failed to disclose to the defense the "letters," he lied to the court about their existence

Grant began with a poor investigation of Faylene Grant's drowning in September 2001 Officers overlooked numerous "farewell letters" and notes Faylene had written contemplating her own death Some were in the bedroom including post-it notes taped to mirrors Gilbert police did not at first collect or preserve the letters Rather, days after Faylene's drowning, Grant disbursed dozens of "farewell letters" to family members and friends and Gilbert police knew of them from subsequent witness interviews

After Grant's indictment, defense counsel twice sent written requests for disclosure of all "farewell letters " The state ignored the request The defense filed a motion to compel On August 30, 2005, the court ordered the state to disclose all remaining discovery materials

On October 21, 2005, nearly two months later, the defense alerted the court that the state failed to disclose numerous items of evidence, including the critical "farewell letters " The state prosecutor avowed all discovery was complete and nothing else existed Later, a detective acknowledged he had reviewed numerous undisclosed "farewell letters" during the investigation Through November and December 2005, the defense continuously requested these "farewell letters" with no response

1. Martinez's Failure to Disclose and Misrepresentations Regarding Exculpatory Letters

By February 24, 2006, Martinez had taken over Grant's prosecution The County Attorney's bates-numbering system showed that the state never disclosed the letters that had been received by the Eaves family When the defense informed the court, the newly assigned Martinez represented to the court that no additional letters existed

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[8] *Id* at 3-4 (quoting *Beemon* Transcript at 58-60)

> Martinez "I read a lot of the letter[s] that were turned over to the defendant I've seen those letters and they have been turned over to the defendant "[9]

Martinez then accused the defense of harassment

> I believe, it borders on harassment In speaking with them (the Eaves family), they told me that they don't have any more letters I've spoken to the detective about it So what more can we do other than provide the Court the documentation that indicates those letters have been turned over and point out that they have indicated that those matters have been turned over ***We turned everything over.***[10]

Relying on Martinez's representations, the court noted in its February 24, 2006 minute entry, "States [sic] counsel advises that all discovery/letters have been turned over to defense counsel "

But two weeks after Martinez's avowals that no letters existed and his complaint that the defense was "bordering on harassment," he disclosed ***one*** of the "farewell letters" on March 7, 2006, from Terina Eaves He still failed to disclose dozens of other "farewell letters" that later surfaced

Martinez did not explain his false statement to the court on February 24, 2006, that he had already turned over all letters or how he could have interviewed the person who possessed the letter, Terina Eaves, without knowing the letter existed

> Four months later, Martinez again insisted there were no additional exculpatory letters
>
> All I know is I've gone to all the family members They don't have any more letters I personally have gone and checked every item that's in the Gilbert Police Department There aren't any more items So I would just leave that for the court [11]

In response, the court issued a directive regarding the state's obligation to disclose the clearly exculpatory "farewell letters"

> There is still a question as to whether or not those letters, those documents are in the possession of the people that Mr McDonald has indicated in his motion And I will say, I haven't looked at your response, Mr Martinez I have considered your comments here in the courtroom I recall what was said in the past I guess

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[9] **Attachment 4** (*State v Grant*, Maricopa County Superior Court Case No CR 2005-032986-001 SE, Motion to Dismiss with Prejudice or, in the Alternative, to Depose Gilbert Police Detectives Ray and Palmer and Eaves Family Members, filed September 11, 2006, at 7-8 (quoting *Grant* Feb 24, 2006 Transcript at 8)

[10] *Id* at 8 (quoting *Grant* Feb 24, 2006 Transcript at 9) (emphasis added)

[11] *Id* at 11 (quoting *Grant* June 9, 2006 Transcript at 17-18)

> the only thing I can say is that – two things
>
> Mr McDonald, through reference to interviews in his motion, has at least on its face set out a compelling argument that ***these letters do exist or did exist at one point in time, and that they were available and in possession of the people that he claims had them in their possession at a very definite point in time. There's no question about what his argument is.*** If they no longer exist, they no longer exist And no one can change that fact
>
> All I will say is that if those letters do exist, and it's determined at some point in time or they're found and they're not disclosed for purposes of this grand jury remand, they surface sometime later, chances are we will all be back in the courtroom again And there will be a request at that time for, at minimum, a remand to the grand jury again for consideration of those letters, ***and there probably will be another request from Mr. McDonald to dismiss this case based on withholding of evidence or information that should have been disclosed or discovered.*** If that's the case, then I will, in fact, consider the defendant's motions if they're re-urged if that occurs That's a big if
>
> I don't know if any of that is going to happen But I want everybody here to know that I will consider that if it does happen So if you don't have them, Mr Martinez, you can't disclose them and you're not being ordered to disclose them to the grand jury But *if they come up later, we're all going to be here again to talk about the same things All right You have my orders* [12]

The court issued the following minute entry

> States [sic] counsel indicates no additional letters exist to the States [sic] knowledge
> COURT FINDS that if letters surface at a later date, matter may be reconsidered by the court [13]

Despite Martinez's continued avowals to the court that the "farewell letters" did not exist, they continued to appear

Under threat of dismissal, on August 10, 2006, Martinez disclosed twenty-one pages of discovery including the very letters he had denied existed for ten months Martinez blamed Detective Palmer for collecting the letters and losing them Detective Palmer, however, later testified he knew nothing of the letters

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12 *Id* at 12 (quoting *Grant* June 9, 2006 Transcript at 18-20) (emphasis added)

13 *Id* at 13

2. Martinez Lied to the Court and Counsel Regarding Tapes of Witness Interviews

Through 2005 and 2006, prosecutors and detectives insisted that they had no audiotapes of key witnesses Martinez continued the deception when he avowed to Judge Talamante on November 29, 2006, that the discovery of all audiotapes had been completed

Because of the discovery disputes, Judge Talamante ordered a document inspection at the Gilbert Police Department, which occurred on April 16, 2007 Only then did the defense discover audiotaped interviews of key witnesses despite Martinez's attempts to block the defense from viewing the Gilbert property room exhibits

3. Martinez's Unethical Argument

In pretrial hearings, Martinez grilled Grant's new wife and another former girlfriend, Hilary, about irrelevant intimate details of their sex lives, down to whether they wore thong underwear or had performed oral sex in cars

During the trial, Martinez often postulated, with no testimony or evidence in support, that Grant engaged "in some sort of threesome" with Faylene and Hilary Martinez attempted to show that Grant was sex-obsessed

At sentencing, he continued this unsupported theme

> He is not, in our view, a wonderful father as the French call it, that he [went] through It's just tawdry this *ménage à trois*,

Martinez presented zero evidence that Grant and ex-girlfriend Hilary ever even *saw* each other, much less engaged in sexual improprieties, after Grant and Faylene remarried in July 2001

C. *State v. Chrisman*

In *State v Chrisman*, Maricopa County Superior Court Case No CR 2010-153913-001-DT, Martinez caused the defense to lose testimony from a material exculpatory witness and committed repeated misconduct throughout trial

Chrisman was another high-publicity case where Martinez prosecuted Richard Chrisman, a Phoenix police officer charged with murder and animal cruelty after he killed a suspect and the suspect's pit bull The state charged and tried Chrisman for second-degree murder, aggravated assault, and animal cruelty [14]

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[14] *See generally* **Attachment 5** (*State v Chrisman*, Maricopa County Superior Court Case No CR 2010-153913-001-DT, Motion for New Trial, filed Sept 27, 2013)

1. Causing the Defense to Lose an Exculpatory Witness

The Phoenix Police Department hired Andrew Hinz, of Taser International, to examine Tasers to show which officers fired and when He wrote a fifty-one-page report

After repeated defense requests, Martinez on November 20, 2012, disclosed his trial witnesses and listed Hinz The defense requested an interview on May 31, 2013, which Martinez did not arrange until a week before trial on July 24, 2013

After the interview, the defense sought Hinz as a witness and requested his contact information Martinez informed the defense that all contact with Hinz must be made through his office, and the state accepted the defense subpoena for Hinz The defense tried to make Hinz's travel reservations though the Maricopa County Attorney's Office Not until August 20, 2013, *after the start of trial*, did Martinez provide his phone number

The state finally provided Hinz's address on August 22, 2013, well after trial started and too late to subpoena Hinz who lives in Colorado

2. Martinez During Pretrial Hearings

During public pretrial hearings, Martinez committed repeated ethical violations for the benefit of the cameras to portray Chrisman in as bad a light as possible

- At oral argument on a Motion to Remand before Judge Stephens, Martinez stated that Chrisman lied, failed his employment polygraph exam, and was investigated for stealing and lied about it as well Martinez's statements were false

- Martinez badgered one witness at length to force her to admit that she was in a same-sex relationship and demanded her social security number, even though she was an employee of the Maricopa County Sheriff's Office Of another witness Martinez demanded her ex-husband's phone number He asked several witnesses if they had attended parties with Chrisman where disrobing took place This was so Martinez could argue that Chrisman's cell-phone records were important to his cross-examination of character witnesses because they showed "wife-swapping " There was no basis or foundation for these questions, and the implied assertions were false

3. Martinez During Trial

Martinez continued in trial with untrue and irrelevant questions

- Martinez learned that Peoria Police Officer Lon Bartel was using vacation time to testify as a defense expert Martinez presented to the jury, with no factual basis, that Officer Bartel was a "double-dipper "

- Martinez examined Sergeant Mattson on his police-union ties and alleged that taxpayers were supporting him

- Martinez grilled witness Mayra Hawkins Reesen on her maternity leave and why she had been away from work so long, yet had time to attend Chrisman's trial

- Martinez opened his cross-examination of Sergeant Julie Egea by falsely accusing her of lying to him during his unsworn interview with her

- Martinez knew that Elvira Fernandez told Detective Cisneros she lived in and owned the trailer (the scene of the alleged crime), but she had put it in Daniel Rodriguez's name after she incurred medical bills because she did not want to lose her home Martinez tried to have Officer Virgillo testify that Fernandez did not own the trailer The court sustained defense objections Unfazed, Martinez then asked Officer Virgillo whether, if he had known that the trailer belonged to Rodriguez, he would have gone about investigating the domestic violence crime differently The defense objected, and when the court asked Martinez the relevance, he answered "She doesn't own the trailer " When the court asked again, he stated "She did not own the trailer " All of this was to create the false impression in the jury that Chrisman had no valid reason to be at the trailer

4. Martinez in Closing Argument

Martinez in closing argument intentionally made several false statements concerning the evidence

- Four times Martinez stated that Chrisman said Elvira Fernandez was hysterical when he spoke with her, something he never said

- Martinez told the jurors that Lon Bartel was a "double-dipper" who wanted jurors to believe "that SWAT members could look through walls "

- Martinez claimed that Sergeant Mattson and Sergeant Post (who had not even testified) returned Virgillo's "golden clipboard to put pressure on Virgillo to change his mind "

- Martinez stated that Sergeant Egea was "Rich Chrisman's friend" and that Sergeant Mattson was a "union organizer "

All of the above statements were false, not in evidence, nor matters from which legitimate evidentiary inferences could be drawn [15]

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15 *See generally id*

D. *State v. Irizarry*

In *State v Irizarry*, Maricopa County Superior Court Case No CR2010-106178-001 SE, Martinez lied to the court and defense counsel by altering an exhibit and lying about its foundation, using a willing witness to discredit the defendant

Only two living people were present when Christopher Redondo shot and killed Gilbert Police Lieutenant Shuhandler Christopher Redondo and Daimen Irizarry Redondo killed Lieutenant Shuhandler during a routine traffic stop After Irizarry heard the loud "pop," Redondo jumped in the truck and yelled "drive "

The state charged Irizarry as an accomplice under A R S § 13-301, which required Martinez to prove that Irizarry acted "with the intent to promote or facilitate" Redondo's conduct Irizarry's "objective" had to be to help Redondo commit the drive-by shootings and aggravated assaults A R S § 13-105(10)(a) (defining intent), A R S § 13-301 (defining accomplice)

After Irizarry's arrest, he cooperated with the police and for two days consistently told them that he was scared and panicked – he explained what happened and when Irizarry's consistent recounting showed that many minutes passed during the incident

Martinez knew Irizarry's trial defense would be duress and that he would testify Defense counsel confirmed this during opening statements on July 7, 2010 [16] On July 20, 2010, Irizarry consistently testified about his panic during the incident [17]

1. Martinez's Falsified Impeachment

To secure Irizarry's conviction, Martinez impeached him with an altered exhibit and lied about its foundation Martinez's objective was to discredit Irizarry by creating the false impression that the events could not have happened as Irizarry explained

- The day after openings, July 8, 2010, Martinez called Gilbert Police dispatcher Melissa Kingsley to introduce Exhibit 121, an audio recording of when Lieutenant Shuhandler first contacted Kingsley until he was shot by Redondo [18] Exhibit 121 is 2 minutes and 30 seconds long

- Martinez never disclosed to the defense the actual dispatch cassette tape of the communication between Shuhandler and Kingsley, which is much longer than Exhibit 121's 2 minutes and 30 seconds

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16 **Attachment 6** (*Irizarry* Transcripts RT July 7, 2010, at 18-30)
17 **Attachment 6** (*Irizarry* Transcripts RT July 20, 2010, PM, at 33, 39-46)
18 **Attachment 6** (*Irizarry* Transcripts RT July 8, 2010, at 74, 77-80)

- Taking advantage of "laying a foundation," Martinez with leading questions and statements stated

  Q [Martinez] And does include [sic] the time on there? From your memory, does it include at least real time from the time he called at 10 49 with you until the communication ended is real time on the tape, correct?

  A [Kingsley] Yes

  Q That will give us a definite or an exact time as to when things happened, correct?

  A Yes [19]

Martinez's statement that Exhibit 121 was "real time from the time he called at 10 49" was shown to be false during the defense presentation of evidence

- On July 20, 2010, Irizarry testified recounting the numerous events during the traffic stop before the shooting These events took substantially longer than 2 minutes and 30 seconds [20]

- The same day, July 20, 2010, the defense recalled Kingsley, who now clarified on direct examination that she did not know Exhibit 121's length and it is not "real time "[21]

While cross-examining Kingsley, Martinez continued to obfuscate the time issue with leading questions, now essentially establishing it as "six minutes"

  Q [Martinez] With regard to the start of that tape where the officer talks to you, that was at 10 47 p m , correct?

  A [Kingsley] Yes

  Q And where we hear the gurgling sounds at the end, that was at 10 53, wasn't it?

  A Yes

  Q And you testified to that previously as to the time, didn't you?

  A Yes

  Q We did the mathematics, right?

  A Yes

  Q Didn't we?

---

19 *Id* at 79

20 **Attachment 6** (*Irizarry* Transcripts RT July 20, 2010, PM, at 27-33)

21 **Attachment 6** (*Irizarry* Transcripts RT July 20, 2010, AM, at 32-40)

A We did

Q So in terms of the amount of time from the time that this officer first called you or spoke to you to the time that we got to this gurgling sound which you heard was six minutes, right?

A Correct

Q And you testified about that last time, the amount of time, right?

A Yes

Q In terms of this case, we hear you and the lieutenant talking, right?

A Correct

Q But so that we are clear, you previously told us that the whole conversation took and the times are 10 47 to 10 53, right?

A Yes

Q And that's something that you checked, right?

A Yes

Q And that is six minutes, right?

A Correct

Q That tape may not be six minutes, but you previously testified that that's what it was, right?

A Yes [22]

Kingsley had not previously testified to the times of 10 47 or 10 53 She and Martinez had never previously done "the mathematics " Kingsley also had never previously testified that Exhibit 121 was six minutes long Rather, on both July 8 and 20, 2010, Kingsley testified that she did not know Exhibit 121's length

Exhibit 121 is irrelevant to the charges against Irizarry, which occurred at a different time and location. Martinez's purpose was to impeach Irizarry's recounting of events by creating the false impression that Exhibit 121 somehow reflected "real time" or that it "will give us a definite or an exact time as to when things happened " Martinez created this impression by falsifying and lying

V. Martinez's Unethical Conduct During Clemency Hearings

Martinez also has engaged in unethical argument during at least two hearings before the Arizona Board of Executive Clemency The board's composition is mainly non-lawyers

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22 *Id* at 40-42

A. *Landrigan* Clemency Hearing on October 22, 2010

Jeffrey Landrigan presented serious issues to the clemency board as to whether he should have received the death penalty

- Landrigan was convicted of felony murder, not premeditated murder
- At least twice before his trial, the state offered Landrigan a second-degree murder plea that he turned down to exercise his right to trial
- Newly discovered DNA evidence raised questions regarding Landrigan's guilt or, at the very least, relative culpability and whether he deserved the death penalty
- At Landrigan's original sentencing, his defense did not present mitigation Sentencing Judge Cheryl Hendrix appeared before the board and testified that she was going to impose a life sentence, but imposed death when she received no mitigation evidence [23]

At the clemency hearing, Landrigan's post-conviction lawyers presented numerous witness and mitigation Martinez presented none Rather, Martinez responded by misstating the record or arguing unfairly

For instance, Martinez argued that the board should not credit the testimony regarding Landrigan's under-aged mother being raped by his father because "there was no police report "[24]

But more egregious, Martinez argued that the testimony of Landrigan's witnesses, notably Judge Hendrix, was just "a wringing of hands and a gnashing of teeth "[25]

Martinez further attacked retired Judge Hendrix by suggesting bias and economic motive Martinez claimed that Judge Hendrix was now "an advocate" and Landrigan was her "client"

> What that tells you is that she is just an advocate She is an advocate just like myself She has a position to take She is no longer a judge who heard both sides of the equation It's just half of the equation That other half she did not hear [26]

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[23] **Attachment 7** (*Towery* and *Landrigan* Clemency Materials Declaration by Cheryl Hendrix)

[24] **Attachment 7** (*Towery* and *Landrigan* Clemency Materials Video of *Landrigan* Clemency Hearing, Oct 22, 2010, at 11 26 a m (disc 1)) Because of their size, the videos of the *Landrigan* and *Towery* clemency hearings are provided on discs separate from the other attachments

[25] *Id* at 11 09-11 10 a m

[26] *Id* at 11 28 a m

Martinez then baselessly attacked Judge Hendrix's character by asserting the defense compensated her

> I would venture to say that she didn't pay her own way here, I would venture to say that she perhaps had some assistance from the defense in presenting the affidavit that's before you [27]

Judge Hendrix had offered to pay her own way to the hearing, stayed with a friend, and received no compensation for her presentation

Martinez then argued that the Board did not have the power to grant life without possibility of parole [28] The board chair corrected Martinez on this point [29]

The State of Arizona executed Landrigan four days later on October 26, 2010

B. *Towery* Clemency Hearing on March 2, 2012

At Robert Towery's clemency hearing, Martinez again offered no evidence or testimony

Martinez argued that if Towery's childhood abuse "was so heinous, where are all those records?"[30] Martinez knowingly misrepresented the record by arguing,

> [T]here is not one shred of corroboration for that there's no indication that anyone was prosecuted for that there is no reason for an indication that that actually happened [31]

Martinez argued the extensive evidence of physical and sexual abuse was

> [j]ust to shake the sympathy tree even a little further to see if maybe something falls to the ground and you pick it up and eat it as a fruit of this particular tree [32]

In response, Towery's sisters again had to speak and relive the weekly and even daily beatings and sexual abuse from their mother The board clarified with them that they had testified at trial [33]

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27 *Id* at 11 30-11 31 a m
28 *Id* at 11 40-11 41 a m
29 **Attachment** 7 (*Towery* and *Landrigan* Clemency Materials Video of *Landrigan* Clemency Hearing, Oct 22, 2010, at 12 51-12 52 p m (disc 2))
30 **Attachment 7** (*Towery* and *Landrigan* Clemency Materials Video of *Towery* Clemency Hearing, March 2, 2012, at 10 34 a m)
31 *Id* at 10 42-10 43 a m
32 *Id* at 10 43 a m
33 *Id* at 11 09-11 16 a m

As in Landrigan's clemency hearing, Martinez argued that the board could not consider recommending life without parole Martinez not only incorrectly argued the change in law did not apply to Towery, but alleged, with no basis, that his lawyers lied to the board

> See how reasonable we are [referring to Towery's counsel], not only did we come here and lie to you a little bit about what happened at the crime scene or maybe we didn't tell you everything, but now we want you to commute the sentence and we want you to commute the sentence to something that probably you can't But it did not become law until 1994 [34]

Martinez never clarified how Towery's counsel "didn't tell you everything" or lied to the board, even "a little bit "

When the board caught Martinez regarding the issue of its power to recommend life without parole to the governor, he responded,

> Martinez "Right, and I agree with your position, and I think we had the same discussion when we discussed Landrigan "
>
> Board member "We did "
>
> Martinez "And my point was that there was a rule in place back when he committed the killing and that is that life without the possibility of parole did not exist and I know that the board has a wide range to recommend things that may not have been available and I do agree with that "[35]

Thus, Martinez knew he was misstating the law to the board

> Martinez also appealed to the passions and fears of the board
>
> How would you feel if somebody is holding you at gun point, nine o'clock at night, someone that you know and they start going through your stuff? Think that you would feel any terror at that time? You think you would be happy? You think you would be talking about a proportionate review at that time? And then in the midst, and in the middle of this terror, Mr Jones says, "I gotta pee, I gotta go to the bathroom guys because I'm so darn scared "[36]

Martinez did admit, "Those aren't the words, no one said that those were the words," but repeated, "but that's what happened, they scared the pee out of him That's what happened That's how scared he was "[37]

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34 *Id* at 10 47-10 48 a m
35 *Id* at 11 02-11 03 a m
36 *Id* at 10 53-10 54 a m
37 *Id* at 10 54 a m

Martinez went on,

> And the indignity of it We have the bathroom that just went off just now Can you imagine, let's leave the door open so that one of you members can watch The indignity of that while he relieved himself and he was not even allowed to pull his pants up Now the terror is escalating [38]

The Ethical Rules provide for a consistent standard of conduct and boundaries of proper argument If Martinez would have made the same statements to a jury, a trial judge would have either sustained an objection or stopped them on his or her own Appeals courts have overturned convictions for less Because the board consists mostly of non-lawyers, Martinez's improper arguments are just as egregious as if they would have been to a jury

The State of Arizona executed Towery six days later on March 8, 2012

VI. Martinez's Celebrated Misconduct in *State v. Arias*

In *State v Arias*, Maricopa County Superior Court Case No CR 2008-031021, Martinez committed instances of highly publicized misconduct too numerous to recount here Some of the more egregious examples are detailed below

A. Martinez's Misconduct Regarding Pretrial Discovery

During the five-year pretrial phase, judges repeatedly ordered Martinez to produce emails and text messages between the defendant Jodi Arias and the victim Travis Alexander Martinez repeatedly denied that messages existed or asserted that it was impossible to retrieve them In fact, Martinez either never attempted to retrieve them or misrepresented to the court they did not exist

1. Exculpatory Images on Arias's Hard Drive

In 2013, Martinez obstructed defense access to key exculpatory evidence on Arias's hard drive

- Arias advised her counsel that Alexander had sent her pictures of his penis that were on her external hard drive, which was in police possession This evidence was relevant to refute Martinez's attacks on Arias's credibility

- In court, Martinez misrepresented that it would take two weeks to arrange for the defense to have the hard drive

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38 *Id* at 10 54 a m

- Subsequently, the defense learned from the case officer that the reason Martinez did not have access to the hard drive was because he sent it away to Texas for analysis The defense also learned that the hard drive indeed had exculpatory information

- Later, Martinez misrepresented to the court that the hard drive lacked evidence To cover himself, he asserted that the case detective who divulged the information to the defense regarding the hard drive images was either "lying or mistaken "

- At various times the defense contacted the Texas company regarding whether it had retrieved data The information from this Texas company did not conform to Martinez's representations to the defense and the court regarding the status of the data

- Only months later, did Martinez grudgingly comply with his duty to provide the exculpatory information by turning over a copy of the hard drive, claiming it was a "mirror image " He never gave the defense the actual hard drive

2. Travis Alexander's Computer

After a mistrial but before the second trial, Martinez was still fighting with defense attorneys over the contents of Alexander's computer Martinez had argued in the first trial that the victim's computer hard drive did not have pornography, links to porn sites, or viruses from porn sites Martinez put Detective Melendez on the witness stand to testify that Alexander's computer contained no evidence of pornography This was false

Just before the second trial, the defense learned that someone turned on the computer in 2009 and destroyed or overwrote computer data Despite this, the defense still obtained enough information showing Alexander's pornographic voyeurism

Compounding his misrepresentations, Martinez responded by falsely accusing prior defense counsel of causing the data loss. This is the subject of the Maricopa County Legal Defender's Office separate pending bar charge against Martinez

B. Martinez's Misconduct During a Pretrial *Chronis* Hearing

At a pretrial *Chronis* hearing to determine whether the state could proceed with the death penalty, Martinez misrepresented the testimony of the medical examiner

Martinez elicited testimony from Officer Flores that the medical examiner stated that the gunshot wound came first followed by stabbings But the medical examiner later testified that the knife wounds came first followed by the gunshot Only when Martinez got caught on cross-examination did he have Officer Flores change his statement

Only a few days before the first trial did Martinez announce the new sequence as if it had been the case all along During the *Chronis* hearing, he alleged that Alexander had been

shot, then stabbed, then slit. Judge Sally Duncan made a pretrial finding that Martinez's first version was the foundation of the state's allegation that Arias deserved death based on the cruelty prong of the (F)(6) aggravator

Not only did Martinez's statements relate to the foundation of whether the state could proceed with a capital case, it incorrectly contradicted Arias's testimony that the shot came first and later the stabbings as Alexander was attacking her

C. Martinez's Unethical Behavior Toward Defense Counsel

At the bench, as the attorneys debated whether to admit a statement about whether Alexander wanted to kill himself, Martinez said he would "fucking" kill himself if he was married to opposing counsel

> But the thing is that if Ms Willmott and I were married, I certainly would say, "I f---ing want to kill myself"

Defense counsel objected Two days later at another bench conference, Martinez said to the same counsel, "Well, then, maybe you ought to go back to law school" These comments are just examples of Martinez's unprofessional conduct toward defense counsel

D. Martinez Disclosed the Name of a Witness under Seal

Martinez disclosed the name of a witness under seal (designated Witness No 1) three times in open court within fifteen minutes of arguing a motion Each time Martinez did this, the defense objected Although this witness lives in another country, within minutes of Martinez saying the witness's name, the media publicly tweeted the name, and the witness received threatening phone calls Shortly after, the witness wrote the judge advising he would never testify because his anonymity had no protection with Martinez prosecuting the case

E. Martinez Harassed Defense Experts During Trial

Dr Richard Samuels was a testifying expert psychologist for the defense He testified that Arias suffered from post-traumatic stress disorder ("PTSD") In front of the jury, Martinez without basis accused Dr Samuels of having a sexual or romantic interest in Arias

Q [F]or whatever reason you started to like her, right?

A No

Q Oh, so you dislike her?

A I didn't say that either

Q So you do like her then?

A I cannot answer that question yes or no

Q Why not? You spent how many -- you went to see her on 12 separate occasions, right?

A Depends what you mean by like

Q I'm asking you, isn't it true that you went to see her on 12 separate occasions?

A. As part of my role to evaluate her, yes

Q Yes or no, you did go see her on 12 separate occasions, correct?

A Yes [39]

Dr Samuels repeatedly testified he never bought Arias a gift but he did send her a self-help book via Amazon as he had done with other defendants [40] Martinez continued to imply impropriety·

Q So you had this what appears to be a relationship with this individual that you feel is appropriate that you buy her at least one gift, correct?

A I bought her a self-help book [41]

Another expert, Dr Robert Geffner, testified for the defense after he conducted extensive and objective psychological testing on Arias Martinez accused him in front of the jury of manipulating the test results to favor the defense Martinez had no basis for this accusation

F. Martinez "Outed" Juror 17

After the first jury deadlocked on whether to impose the death penalty with four jurors against death, the Maricopa County Attorney elected to again seek death with a new jury

This second jury also deadlocked after sending out conflicting notes From this, Martinez knew Juror 17 was against death At a sealed hearing, Martinez targeted Juror 17 with a motion to strike Martinez attached screen shots of Juror 17's Facebook page showing Juror 17's identity and stated her name in court

Although the hearing was sealed, the victim's family was present In a past instance, the victim's sister had revealed information from a sealed hearing [42] Martinez knew this and also knew that either she or someone else connected to the prosecution would "out" Juror 17.

Arizona Rules of Criminal Procedure 24 1 and 18 3, Arizona Rule of Evidence 606(b),

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39 **Attachment 8** (*Arias* Documents Transcript of Testimony of Dr Richard Samuels at 119-120)

40 *Id* at 114-132

41 *Id* at 128-129

42 **Attachment 8** (*Arias* Documents Tanisha Alexander Twitter)

and other rules prohibit disclosure of juror information

Martinez's motion did not present a legal basis and the trial court did not remove Juror 17 The result was well publicized – Juror 17 held true to the oath to render a verdict without succumbing to undue pressures and voted against death Within minutes of the jurors being dismissed, the media had Juror 17's identity and personal information Contemporaneously, Juror 17 suffered death threats, including:

- "Claudia Police can't/won't protect you forever! ❤ to see what WILL happen to you once the Police done protecting you're ASS!"
- "#Juror17 is a marked woman by Twitter Sold her soul to the Devil! Some people may decide she doesn't deserve to live "
- "Why not circulate pic of #Juror17? She violated laws #DP activism needs punishing "
- "someone will release #juror17 name in time once her name is public i would move or protect myself dead woman walking imo"
- "#Juror17 is the 2nd most hated woman in the world right now #jodiarias in #1 Both are cowardly liars and should rot in hell "
- "#17 better HOPE what happened to #Travis NEVER happens to s/one SHE cares about! #ShameOnYou#17"
- "How would u like to be forever known as JUROR 17 the one who had an AGENDA and single handedly STOPPED justice from the ALEXANDERS #FUSW"
- "she'll 4 ever have to look over her shoulder"[43]

Maricopa County Attorney Bill Montgomery jumped in with suggestions of Juror 17's "misconduct" and that his office was "investigating" Juror 17

Meanwhile, Martinez celebrated the end of the trial with the remaining jurors and the victim's family at a "wrap party" taking numerous photographs and "selfies "[44] This was a "victory party"

> Jurors who voted against Arias joined the family and friends of Travis Alexander, who invited a few of those who stood by them, along with detective Flores and his wife Corinna, and Prosecutor Juan Martinez, to an evening of fellowship, to

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43 **Attachment 8** (*Arias* Documents Emailed Threats to Juror 17)

44 **Attachment 8** (*Arias* Documents Wrap Party Photos of Martinez and Jurors)

> celebrate the end of the trial of Jodi Arias and the sentencing of Arias to natural life in Prison, with no possibility of Parole [45]

The photographs show Martinez having a great time And Juror 17 remains under police protection

VII. Conclusion

To be an attorney is a privilege, not a right To retain the privilege we abide by a code of ethics Given their immense power to destroy lives, prosecutors have an even higher ethical standard Martinez repeatedly fails to meet the standard

The Arizona Supreme Court laments Martinez's behavior even though the law requires it to uphold the convictions his misconduct produces

> Reversing a conviction is a large -- is a very drastic remedy, particularly in a case where the judge sustained the objections, told the jury that they should disregard arguments and that -- how is it that -- we seem to see this [Martinez' misconduct] on a relatively recurrent basis [46]

AACJ respectfully requests that the State Bar investigate Martinez's misconduct in these cases and impose appropriate discipline because, as Justice Ryan recognized

> ***"There's something about this prosecutor . . . Mr. Martinez."***

Please let us know if we can provide additional information

Sincerely,

Kathleen E Brody, President
ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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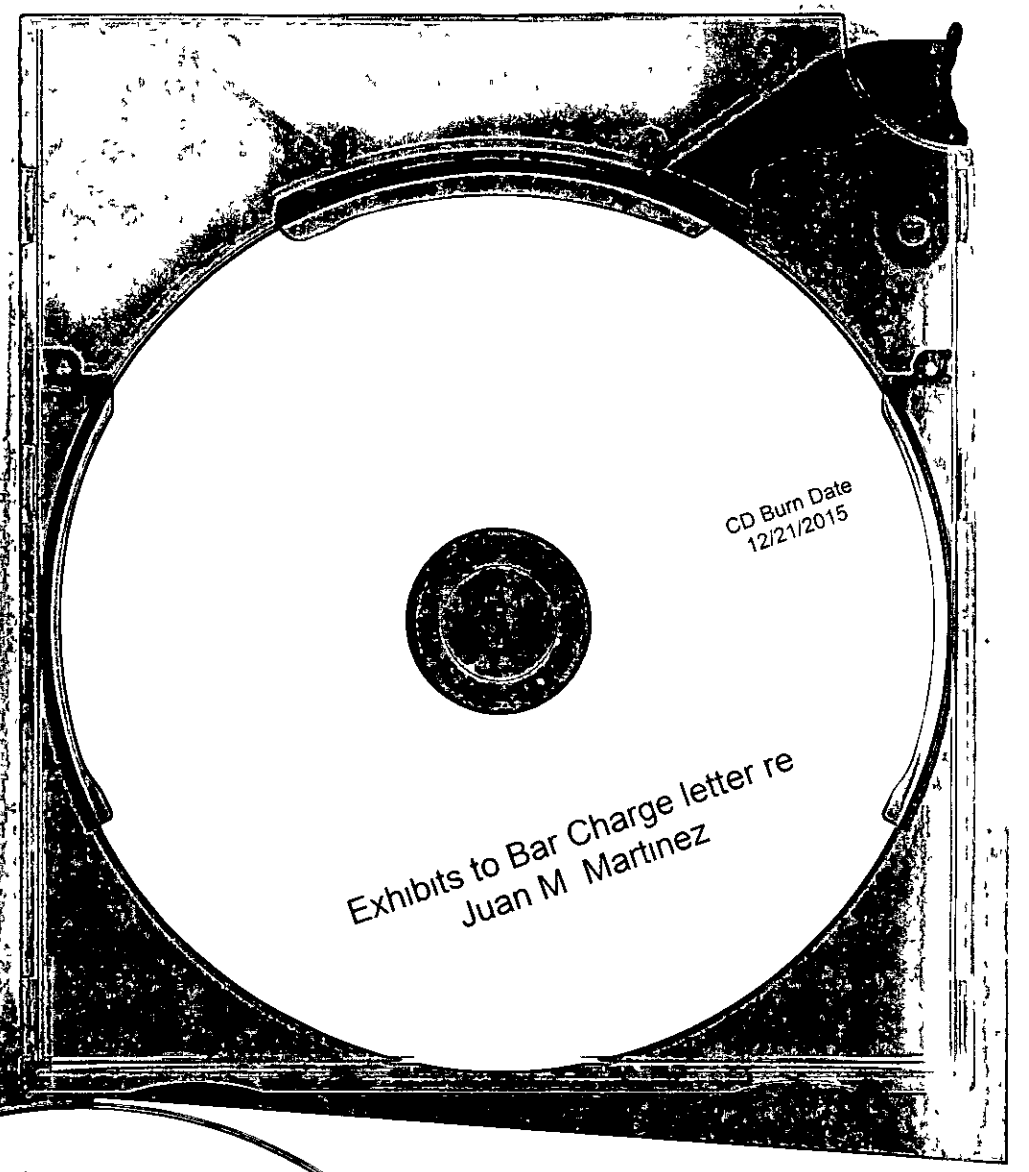
45 *Id*

46 **Attachment 1** (Transcript of Oral Argument in *State v Gallardo* before Arizona Supreme Court), at 16 (statement of Justice Andrew Hurwitz)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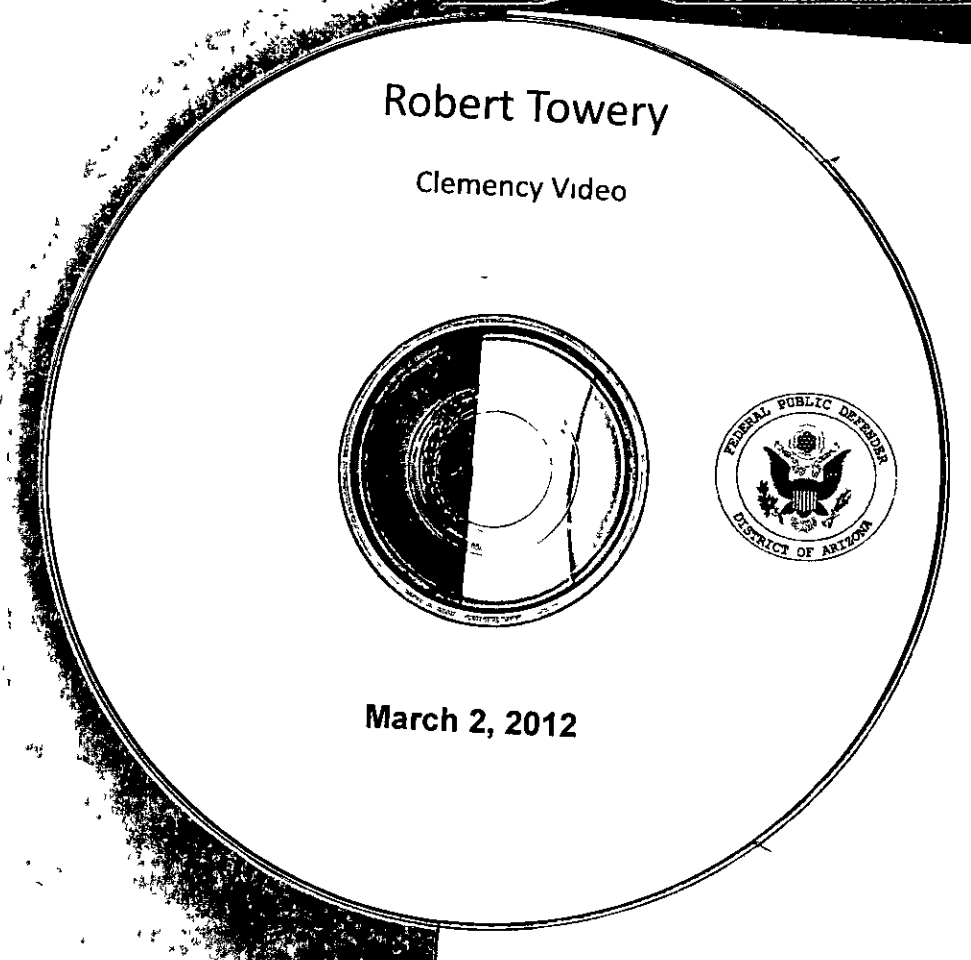
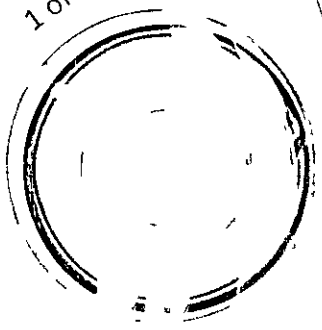
12/21/2015
Exhibits to Bar Charge letter re
Juan M Martinez


Robert Towery
Clemency Video
FEDERAL PUBLIC DEFENDER
DISTRICT OF ARIZONA
March 2, 2012

Jeff Landrigan

Clemency Video

1 of 2

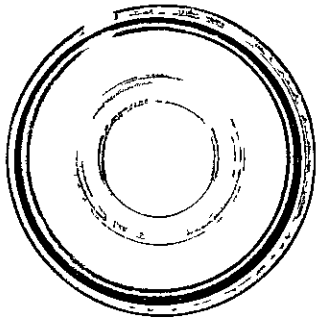


October 22, 2010

Jeff Landrigan

Clemency Video

2 of 2



October 22, 2010

HAND DELIVERY

ACAP

OSBORN MALEDON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

Lawyer Regulation Division
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288