

1 **Larry L. Debus SBN 002037**  
2 **DEBUS, KAZAN & WESTERHAUSEN, LTD.**  
3 **335 East Palm Lane**  
4 **PHOENIX, ARIZONA 85004**  
5 **TELEPHONE: 602-257-8900**  
6 **FACSIMILE: 602-257-0723**  
7 **EMAIL: [lld@dkwlawyers.com](mailto:lld@dkwlawyers.com)**  
8 ***Attorneys for Kathleen Winn and Business***  
9 ***Leaders for Arizona***

7 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

8 In the Matter Of,

Case No. 14F-001-AAG

9  
10 TOM HORNE, Tom Horne for Attorney  
11 General Committee (SOS Filer ID 2010  
12 00003); KATHLEEN WINN, Business  
Leaders for Arizona, (SOS Filer ID 2010  
00375)

**Reply re Cross-Examination**

13  
14 The attorneys for Kathleen Winn reply as follows to the state's response  
15 regarding the cross-examination issue; Thomas Horne and his attorneys join.

16  
17 The right of cross-examination is more than a desirable rule of trial procedure. It  
18 is implicit in the constitutional right of confrontation, and helps assure the  
19 accuracy of the truth-determining process. It is, indeed, an essential and  
20 fundamental requirement for the kind of fair trial which is this country's  
21 constitutional goal. Of course, the right to confront and to cross-examine is not  
22 absolute and may, in appropriate cases, bow to accommodate other legitimate  
interests in the criminal trial process. But its denial or significant diminution  
calls into question the ultimate integrity of the fact-finding process and requires  
that the competing interest be closely examined.<sup>1</sup>

23 The meaningful opportunity for cross-examination doesn't exist only under the Sixth  
24 Amendment, but applies to administrative proceedings as well, as Ms. Winn pointed  
25 out in her memorandum.

26  
27 <sup>1</sup> *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973) (under Sixth Amendment) (internal  
punctuation and citations omitted).

1 In this proceeding, the agent's about face came too little, too late to be  
2 meaningful. He'd already completed his testimony. He'd already committed perjury.  
3 The hearing had moved on to other witnesses.

4 Most importantly, his belated offer was no offer at all, because the topics on  
5 which he would testify only "widened a little bit,"<sup>2</sup> and was but "a little bit" different  
6 from the day before.<sup>3</sup> Regarding the "appropriate documents" that were handed over  
7 to the Maricopa County Attorney's Office, the agent said, "There is information  
8 outside of the scope of that that was not included and I can't talk about because of the  
9 *Touhy* limitation."<sup>4</sup> When asked about documents that hadn't been turned over, the  
10 agents response was similar, "I can't confirm or deny that."<sup>5</sup> This is hardly what the  
11 state calls an "ultimate reversal" or "ultimately willing to answer all of the cross-  
12 examination questions that were asked."

13 Nor was the reliability of the hearsay satisfactorily established, so that Ms. Winn  
14 and Mr. Horne were granted a fair hearing and therefore due process. The notes of  
15 agent Mason of an interview with a most critical witness were altered. The phone  
16 records were not accompanied by the meta data that would authenticate an accurate  
17 time of call and whether or not it was a message or answered call. The email record  
18 was lacking the authentication about when it was actually sent and when it was  
19 actually opened. The hearsay of witnesses based on FBI summaries of interviews  
20 deprived Ms. Winn and Mr. Horne the ability to cross-exam the witness to determine  
21 the accuracy of the FBI agents' account of the interview.

22 The ability to cross-examine only part of the investigation when the agents held  
23 back other parts hampered Ms. Winn and Mr. Horne in determining the truthfulness of  
24 what was presented.

---

25 <sup>2</sup> T 2.11.14 at 281. (Transcript pages are attached)

26 <sup>3</sup> T 2.11.14 at 285.

27 <sup>4</sup> T 2.11.14 at 278.

<sup>5</sup> T 2.11.14 at 278.



1 ORIGINAL OF THE FOREGOING e-filed  
2 this 11<sup>th</sup> day of March 2014, to:

3 Honorable Tammy Eigenheer  
4 Administrative Law Judge  
5 ARIZONA OFFICE OF ADMINISTRATIVE HEARINGS  
6 1400 West Washington Street, Suite 101  
7 Phoenix, Arizona 85007  
8 [casemanagement@azoah.com](mailto:casemanagement@azoah.com)

9 COPIES of the foregoing emailed  
10 (through OAH electronic filing)  
11 this 11<sup>th</sup> day of March 2014, to:

12 Jack Fields  
13 Benjamin Kreutzberg  
14 Deputy County Attorneys  
15 Yavapai County Attorney's Office  
16 255 E. Gurley St., Suite 300  
17 Prescott, AZ 86301

18 Michael D. Kimerer  
19 KIMERER & DERRICK, P.C.  
20 221 East Indianola Avenue  
21 Phoenix, Arizona 85012

22 M.E. "Buddy" Rake  
23 RAKE LAW GROUP, PC  
24 2701 East Camelback Road, #160  
25 Phoenix, AZ 85016

26 By /s/ Desiree Ellis  
27

Exhibit “A”

1 attorney's office who opened a grand jury  
 2 investigation, right?  
 3 A. Well, it's my understanding on the state's  
 4 side a witness to a grand jury is not permitted to  
 5 discuss the grand jury. I don't know if I qualify as a  
 6 witness in that investigation and my confirmation that  
 7 a grand jury was open would subject me to a criminal  
 8 charge of disclosing the existence of a grand jury  
 9 investigation. I just don't know the answer to that,  
 10 so I don't want to confirm or deny.  
 11 MR. FIELDS: If he's going to pursue that line  
 12 of questioning, I'd like an opportunity to consult with  
 13 Mr. Grehoski to clarify his status.  
 14 MR. DEBUS: May I just say that on direct  
 15 examination he mentioned that there was a grand jury  
 16 examination. That's number one.  
 17 Number two, Bill Montgomery, which if you ask  
 18 any one of the people from the media, they'll tell you,  
 19 because he went to the presiding criminal judge,  
 20 Judge Reyes, now a federal judge, and asked permission  
 21 to disclose the fact there was a grand jury, which the  
 22 judge granted, and they disclosed 3,000 pages, which  
 23 they have. And they have that ruling is my guess. If  
 24 they don't have that ruling, then they don't have the  
 25 complete case file.

1 Q. And your investigation included documents and  
 2 transcripts of interviews, 302 reports, were all given  
 3 to the Maricopa County attorney?  
 4 A. I can tell you we handed over all the  
 5 appropriate documents for the Maricopa County  
 6 attorney's office to pursue whatever charges they  
 7 deemed appropriate based on the information.  
 8 There is information outside of the scope of  
 9 that that was not included and I can't talk about  
 10 because of the Touhy limitation.  
 11 Q. But there were documents that weren't turned  
 12 over to the Maricopa County attorney's office, or 302s?  
 13 A. I can't confirm or deny that.  
 14 Q. Well, I thought you just said that.  
 15 A. Can you ask your question?  
 16 Q. Yeah. Were there 302, your reports, or  
 17 documentary evidence or writings of any kind that you  
 18 collected during this investigation -- when I say "this  
 19 investigation," I'm talking about from December to the  
 20 present involving campaign violations.  
 21 Were there documents, 302s, or other writings  
 22 that were not turned over to the Maricopa County  
 23 attorney's office?  
 24 A. My answer to you was I provided everything to  
 25 the Maricopa County attorney's office appropriate for

1 So asking about a grand jury investigation  
 2 does not violate ARS 13-1221, I think. I'm not sure  
 3 what that statute is. But there is a statute about it.  
 4 But if he wants to talk to Mr. Grehoski, I  
 5 don't any objection to that.  
 6 JUDGE EIGENHEER: We will take a short recess  
 7 so you can confer with the witness.  
 8 MR. FIELDS: For the record, Your Honor, we  
 9 were never appointed nor do we have the authority to  
 10 conduct or prosecute criminal investigations with  
 11 regard to Mr. Horne in this whole matter.  
 12 The entire scope of what the Yavapai County  
 13 attorney's office is here to do is civil campaign  
 14 financing under the laws under Title 16.  
 15 JUDGE EIGENHEER: We will go off the record at  
 16 this time.  
 17 (A brief recess ensued.)  
 18 JUDGE EIGENHEER: We're back on the record.  
 19 I believe the last question was about a grand  
 20 jury investigation.  
 21 MR. DEBUS: Yes.  
 22 Q. BY MR. DEBUS: I think before that we were  
 23 talking about the length of the investigation. Still  
 24 open, correct?  
 25 A. Correct.

1 their prosecution of whatever action they deemed  
 2 appropriate, and I can't comment outside of the  
 3 information that was turned over to the county  
 4 attorney's office.  
 5 Q. So when you say appropriate, can you define  
 6 that?  
 7 A. It was any and all information pertinent for  
 8 the county attorney to make a decision on criminal or  
 9 civil proceedings regarding the information.  
 10 Q. So you held some documents back that you  
 11 haven't turned over?  
 12 A. I'm not saying yes or no to that, Mr. Debus.  
 13 I'm saying the information we've provided, all 3,000  
 14 pages that you've mentioned, is all the information  
 15 that we had pertinent to the matter at hand.  
 16 Q. Well, the reason I'm asking the question is  
 17 because 3,000 pages were turned over at the request of  
 18 Arizona Republic or journalists, and it was represented  
 19 that they got the entire investigation.  
 20 And my question to you is, did they?  
 21 A. I don't know who made that representation. I  
 22 can't comment on that.  
 23 Q. My question to you is, did they get the entire  
 24 investigation? Apparently not.  
 25 A. Mr. Debus --

1 MR. FIELDS: I'm going to object --

2 THE WITNESS: -- they got whatever they got  
3 from the Maricopa County attorney's office pursuant to  
4 their public records request.

5 Whatever information they had was the  
6 information that we provided, as I stated twice  
7 already, in accordance with what was appropriate for  
8 them to pursue the appropriate action at hand.

9 I can't confirm or deny other things pursuant  
10 to Touhy.

11 Q. BY MR. DEBUS: And in the documents in the  
12 investigation you've turned over to the Maricopa County  
13 attorney's office, did you distinguish in any way  
14 differences in your investigation?

15 In other words, was the campaign violation  
16 investigation somehow separate, a separate file, or  
17 those 302s, was that evidence separated from other  
18 investigations that you say you're not willing to talk  
19 about? Was it separated somehow?

20 A. Nothing was separated. It was all handed over  
21 as one.

22 Q. It was one investigation, was it not?

23 A. Yes.

24 Q. And there was no distinguishing between the  
25 criminal investigation, the campaign violation

1 investigation, the coordination investigation; it was  
2 one investigation that you turned over to the Maricopa  
3 County attorney's office and the grand jury, right?

4 A. That's correct.

5 Q. But today you're only willing to talk about a  
6 portion of that investigation, and that portion of the  
7 investigation is just the limited documents that  
8 specifically relate to the coordination investigation;  
9 is that right?

10 A. Well, as you're aware, I just conferred with  
11 the attorney from my office, and I am -- my  
12 understanding of the scope of what I'm allowed to talk  
13 about has widened a little bit, and I'd be happy to  
14 address some of the issues that you previously asked me  
15 about.

16 Q. Do you remember the question? Let me ask it  
17 again.

18 A. Go ahead.

19 Q. You're limiting your testimony to a specific  
20 part of this overall investigation, correct?

21 A. I can't answer that with a yes or no.

22 Q. Well, let me ask it a different way. There  
23 are parts of the investigation that you're not willing  
24 to be cross-examined about.

25 Can you answer that yes or no?

1 A. It's not a matter of willingness, Mr. Debus.

2 I'm restricted by the authorization in the Touhy letter  
3 before the court.

4 Q. I understand that, what you claim your basis  
5 is. But I think your answer is, there are portions of  
6 this big investigation that was all one investigation  
7 that you're not going to be cross-examined about today?  
8 That's a yes-or-no question.

9 A. A portion -- I'm going to answer it this way:  
10 I will comment on any of the information you have  
11 before the court today.

12 Q. So your willingness to be cross-examined is  
13 limited to what is before this court and this  
14 particular hearing and not beyond that; is that right?

15 A. Let me expand on that. Any of the 3,000  
16 documents, approximately, that you've mentioned that  
17 were turned over to the Maricopa County attorney's  
18 office and subsequently in some subset, whatever, to  
19 the Yavapai County attorney's office I can comment.

20 Any information, if there is any, that was not  
21 turned over to the county attorney's office, I can't  
22 confirm or deny. It's just not part of my  
23 authorization.

24 Q. The whole traffic accident was turned over to  
25 the Maricopa County attorney's office, wasn't it?

1 A. And I'll be happy to talk about that.

2 Q. And the SIM request was turned over to the  
3 Maricopa County attorney's office, wasn't it?

4 A. And I'll be happy to talk about that, too,  
5 sir.

6 Q. And the part where you had an informant inside  
7 the Arizona attorney general's office was turned over  
8 to the Maricopa County attorney's office, wasn't it?

9 A. And I'm not going to confirm or deny or talk  
10 about that part of it, because it's prohibited.

11 Q. I didn't ask you to confirm or deny it. The  
12 question was, was it turned over to the Maricopa County  
13 attorney's office?

14 A. The information in that document was turned  
15 over to the county attorney's office, yes.

16 Q. What did you provide -- what part of this  
17 investigation did you provide the Yavapai County  
18 attorney's office with?

19 A. I didn't provide them with anything. The  
20 information they received they received from the  
21 secretary of state's office, as I understand it.

22 Q. How did the secretary of state's office get  
23 it?

24 A. Secretary of state's office got it from the  
25 Maricopa County attorney's office.

1 Q. Did you provide any documents to the secretary  
2 of state?

3 A. I don't recall specifically if there were any  
4 documents that we gave to them or not or if they  
5 strictly got all of their information from the county  
6 attorney's office. I just don't remember specifically  
7 which physical documents were handed over.

8 My recollection -- the best of my recollection  
9 is that the Maricopa County attorney's office referred  
10 the matter to the secretary of state's office.

11 Q. That was after the Maricopa County attorney's  
12 office was removed, correct?

13 A. I believe that's correct.

14 Q. Okay. So if I understand you correctly,  
15 you're willing to be cross-examined on anything that's  
16 been brought out, any of this discovery, anything  
17 that's been brought out in this case right here before  
18 the administrative law judge; is that correct?

19 A. So long as it doesn't reveal confidential  
20 sources, methodologies, jeopardize existing  
21 investigations or the other caveats to the Touhy  
22 authorization.

23 Q. Or the Touhy authorization? Do we --

24 A. The Touhy --

25 Q. Do we know what the limits of the Touhy letter

1 talk about it, which is why I'm now willing to discuss  
2 with you, sir, the surveillance that we did. I can  
3 discuss the hit and run, because that was part of the  
4 case file.

5 My erroneous understanding of what my  
6 authorization was yesterday prohibited me from talking  
7 about things not related to campaign finance issues,  
8 so ...

9 MR. DEBUS: Your Honor, of course, he's had  
10 overnight to plan all this, and it's a whole new  
11 revelation about what he can talk about, and we were  
12 unable --

13 MR. FIELDS: I'm going to object to counsel  
14 commenting --

15 MR. DEBUS: You know, it's courtesy to let  
16 your counsel complete what he saying to the court. Do  
17 you understand that? That's --

18 MR. FIELDS: I understand that --

19 JUDGE EIGENHEER: Okay. One at a time.

20 MR. DEBUS: What I'm going to ask is that we  
21 be given -- I'll finish what's planned, but then I'm  
22 going to want the rest of the day and tonight to go  
23 back, see what we want to ask with the new opportunity  
24 that we have and bring him back for cross-examination  
25 tomorrow.

1 are?

2 A. The judge has a letter before her right now.

3 Q. Well, I'm asking you, do you understand what  
4 the limits of the Touhy letter are?

5 A. Yes.

6 Q. What are the limits of the Touhy letter?

7 A. Well, as I said, I'm permitted now, after  
8 consulting with our attorneys, that I can talk about  
9 information in the case file so long as it doesn't  
10 reveal methodologies, confidential human sources,  
11 jeopardize existing investigations. And I believe  
12 there was one other thing in there.

13 Q. Is that different from yesterday?

14 A. Yes, a little bit. After conferring, I was --  
15 I conferred with our attorney, and she explained some  
16 of the differences in my understanding and what I was  
17 permitted to do.

18 Yesterday I was operating under the notion  
19 that anything not pertinent to the campaign finance  
20 issue at hand was off limits because it was unrelated  
21 to the campaign finance issue.

22 And our counsel just advised me that if there  
23 was information in the case file that has been turned  
24 over to the county attorney's office, either Yavapai or  
25 Maricopa, that because it's in the case file, I can

1 JUDGE EIGENHEER: Why don't we proceed and see  
2 where we end up today.

3 MR. DEBUS: Great.

4 Q. BY MR. DEBUS: One of the people you  
5 interviewed was Chuck Johnson.

6 Do you remember that?

7 A. I do.

8 Q. And Chuck Johnson was an employee of who at  
9 the time?

10 A. The attorney general's office.

11 Q. And you talked to him about a variety of  
12 things, but including whether or not during the  
13 independent campaign he had conversations with Kathleen  
14 Winn, right?

15 A. I did.

16 Q. And did you determine what those conversations  
17 were?

18 A. Well, you'd have to look at his transcript,  
19 but in general terms I remember him saying that in  
20 common they had special needs children, they cared  
21 about wounded veterans, things of that nature, and that  
22 all of their conversations were not related to the  
23 Business Leaders for Arizona or their messaging.

24 Q. And you told Chuck Johnson that he was  
25 violating the law; he wasn't supposed to be talking to