

Good afternoon and thank you for the opportunity to assist our nation's military in reviewing the necessary response to sex assault offenses to ensure thorough investigations and successful prosecutions of offenders without jeopardizing the rights of an accused while treating victims with compassion and respect.

As the elected Maricopa County Attorney, I lead the 3rd largest county prosecuting agency in the country with approximately 300 prosecutors, averaging in excess of 30,000 felony prosecutions each year. We serve a county of roughly four million people and over 9,200 square miles in area. Making us, respectively, the fourth most populous county and the fifteenth largest in the country. The Office is organized by Trial Divisions with Bureaus in each Division assigned to specific areas of prosecution. Sex assault offenses are assigned to the Sex Crimes Bureau in Major Crimes Division II.

We have averaged prosecuting 230 cases of sexual assault in each of the last three years. Arizona defines a sexual assault offense as an instance where “[a] person . . . intentionally or knowingly engag[es] in sexual intercourse or oral sexual contact with any person without consent of such person.” Ariz. Rev. Stat. Ann. § 13-1406.

Sex crimes prosecutors undergo specific training in their first year of assignment, learning how to address issues such as how suspects and victims of sex assault should be interviewed, how DNA is collected and analyzed, why DNA may not be present in a case, and the issues surrounding mixed DNA samples. Prosecutors are also trained on investigation protocols, the importance of confrontation calls, and the use of multi-disciplinary teams housed at family advocacy centers to provide one-stop services for sex assault victims to address medical exams, investigative interviews, counseling, and service referrals. We have six such facilities within Maricopa County alone. Prosecutors are further trained to understand that sex assault victims can have as varied a response to their trauma as there are victims. Some victims may be completely withdrawn and display stereotypical signs of shock while others appear rather stoic. My Office has sponsored joint mandatory training that is required for prosecutors and investigators handling sex assault cases utilizing national experts to ensure a common understanding of how sex assault cases need to be handled to successfully hold offenders accountable.

In handling sex assault cases, we review the criminal history of defendants to check whether there were prior reports of sex assaults even if not charged. This other act evidence, permitted under Arizona Rules of Evidence 404(c) and FRE Rule 413, can be particularly helpful if we have prior victims where we could not charge a case but can now put together a complete offender picture. For the military, access to review previous allegations of sexual assault over a defendant's history of duty assignments in multiple locations in and outside of the US in order to contact prior reporting victims is critical.

Arizona also has a Crime Victims' Bill of Rights in our state constitution that specifically protects a number of enumerated rights, including a right to justice and due process, as well as the right to be treated with fairness, dignity, and respect, and to be free from

intimidation, harassment, or abuse throughout the criminal justice process. To assist Deputy County Attorneys with fulfilling their constitutional and statutory duties to protect a crime victim's rights, I utilize a Victim Services Division staffed by approximately 50 victim advocates who receive particularized training to work with victims of crime and who have bachelor's degrees as a prerequisite. Victim advocates answer questions about the criminal justice system, educate crime victims about their rights, assist with referrals for services, and relay information between a victim and the prosecutor. The Division is organized by Bureaus to parallel the assignment of cases to Trial Divisions. Accordingly, there is a Major Crimes II Bureau with victim advocates trained to work with victims of sexual assault cases assigned to the Sex Crimes Bureau. A good victim advocate can ensure that a victim of crime does not feel alone or helpless - again - while navigating an unfamiliar system that too often falls short of our Pledge of Allegiance's promise of "justice for all."

In addition to having served as a line prosecutor in the office I now lead, I have appeared as counsel of record for victims of crime in state prosecutions. I cannot state strongly enough that there is no conflict between a prosecutor serving as a minister of justice as eloquently described in *Berger v. United States*, charged with ensuring that the guilty do not escape or innocence suffer, while at the same time protecting the rights of the accused and the rights of a victim. It bears noting that even with the rights of crime victims in Arizona, prosecutors still have the ultimate responsibility to seek a just resolution of a case that should fairly take into account the impact to a victim of a crime, as well as abiding by constitutional Due Process requirements and applicable statutes. The bottom line for prosecutors is this: if we seek to do justice in each case we handle, then there is no good reason why we should not listen to the victim of the crime and consider the impact of the crime to them and the harm caused in determining an appropriate resolution and treat them with no less regard than we treat criminals.

While we strive to hold sex assault offenders accountable, these offenses can present unique legal challenges that may lead to a decision to not charge a case even when prosecutors believe a victim was assaulted and the victim adamantly wants to go forward. Prosecutors must, even under those difficult circumstances, decline to proceed where the evidence is lacking. No evidence of a struggle or use of force, the use of alcohol and/or drugs that impact the ability to recall events, the assertion that the sex was consensual, or the reluctance of a crime victim even after an initial report, particularly when the perpetrator is known and in a position of authority, all present challenges to reaching a charging decision. But sex offenses call for our best efforts to investigate, review, and prosecute where and when we have the evidence to do so.

As a former Army officer myself I want our military to get these cases right. The need to maintain unit morale and cohesion is critical to mission accomplishment while always looking out for the welfare of service members in all branches of the military. A poorly handled case can erode trust in the chain of command, result in the loss of the contributions of the victim's service, and allow a predator of fellow soldiers to remain free and able to strike again. As a civilian, I need our military to get these cases right so

the men and women fighting for our way of life can be as successful as humanly possible and receive the justice they serve to protect.

One last point. Given my prior command experience having commanded an armored cavalry troop, I cannot stress enough the need to keep commanders in the loop at all levels and not remove them from their respective roles, whether a Company or Unified Combatant Commander, to address sexual assault offenses. Commanders are responsible for everything that does and does not happen in their areas of assigned responsibility. To set up a parallel process to deal with particular criminal offenses that basically absolves a Commander of responsibility for the men and women in their charge is contrary to the military command structure. If commanders do not abide by whatever process the military develops for handling sex assault cases or if they fail to perform their duties to standard as set forth or fail to exercise discretion responsibly, relieve them. But do not systematically relieve them of their responsibility at the outset.