

# POLICY *report*

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## Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office

by Clint Bolick, Director of the Goldwater Institute Scharf-Norton center for Constitutional Litigation

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### EXECUTIVE SUMMARY

The Maricopa County Sheriff's Office is responsible for vitally important law-enforcement functions in one of the largest counties in the nation. It defines its core missions as law-enforcement services, support services, and detention.

MCSO falls seriously short of fulfilling its mission in all three areas. Although MCSO is adept at self-promotion and is an unquestionably "tough" law-enforcement agency, under its watch violent crime rates recently have soared, both in absolute terms and relative to other jurisdictions. It has diverted resources away from basic law-enforcement functions to highly publicized immigration sweeps, which are ineffective in policing illegal immigration and in reducing crime generally, and to extensive trips by MCSO officials to Honduras for purposes that are nebulous at best. Profligate spending on those diversions helped produce a financial crisis in late 2007 that forced MCSO to curtail or reduce important law-enforcement functions.

In terms of support services, MCSO has allowed a huge backlog of outstanding warrants to accumulate, and has seriously disadvantaged local police departments by closing satellite booking facilities. MCSO's detention facilities are subject to costly lawsuits for excessive use of force and inadequate medical services. Compounding the substantive problems are chronically poor record-keeping and reporting of statistics, coupled with resistance to public disclosure.

Our focus in this paper is exclusively on effective law-enforcement. We find that MCSO's effectiveness has been compromised for the past several years by misplaced priorities that have diverted it from its mission. We recommend several reforms that will increase the effectiveness of MCSO specifically as well as law-enforcement agencies throughout Arizona.

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I N S T I T U T E

***Mission Unaccomplished:  
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Sheriff's Office***

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**Introduction**

The Maricopa County Sheriff's Office (MCSO), which provides law-enforcement services to nearly four million residents of the nation's fourth-largest county,<sup>1</sup> is inextricably intertwined with the persona of Joe Arpaio, who has served as sheriff since 1993. The carefully self-cultivated image of Sheriff Arpaio and MSCO is one of toughness. The office's website home page, which prominently displays the sheriff's photograph, states that MCSO, "headed by the famed Sheriff Joe Arpaio, is the most talked about and nationally recognized Sheriff's Office in the country today." Citing Arpaio's "immense popularity," the website boasts of 2,000 convicts in tents, women prisoners in tents and chain gangs, and meal costs of under 15 cents per meal (although no mention of the famed pink underwear).<sup>2</sup> Arpaio's two autobiographies echo the theme. The first, in 1996, was *America's Toughest Sheriff: How We Can Win the War Against Crime*.<sup>3</sup> The second, published earlier this year, was even less modestly titled *Joe's Law: America's Toughest Sheriff Takes on Illegal Immigration, Drugs and Everything Else That Threatens America*.<sup>4</sup>

*Toughness is only one ingredient for a successful sheriff's department, and by itself is far from sufficient.*

There is no question that Sheriff Arpaio and MCSO are "tough" on people arrested for or convicted of crimes—and that a large majority of Maricopa County voters applaud that toughness as evidenced by polls and past elections. But toughness is only one ingredient for a successful sheriff's department, and by itself is far from sufficient. In this report, we examine MCSO's record in light of its vision as the office itself defines it:

The Maricopa County Sheriff's Office is a fully integrated law enforcement agency committed to being the leader in establishing the standards for providing professional quality law enforcement, detention, and support services to the citizens of Maricopa County and to other criminal justice agencies.<sup>5</sup>

We find that too often, in a variety of ways, MCSO falls short of accomplishing this vitally important mission.

## The Maricopa County Sheriff's Office

As set forth in its vision statement, MCSO has three primary functions: law enforcement, detention, and support services. It is the primary law-enforcement agency in unincorporated parts of Maricopa County and in incorporated jurisdictions that have contracted for its services in lieu of maintaining police departments. MCSO operates jails for all of Maricopa County. Finally, MCSO provides support services such as booking criminal suspects and processing warrants.

However, in certain important instances, jurisdictional lines are blurry. The sheriff has county-wide jurisdiction, meaning that even in incorporated municipalities with police departments, MCSO has concurrent and overlapping law-enforcement authority. The overlap has engendered highly publicized clashes between Sheriff Arpaio and such officials as Phoenix Mayor Phil Gordon and Mesa Police Chief George Gascon. Moreover, although the sheriff has the responsibility to process criminal warrants, no law-enforcement agency has the primary responsibility to serve them. The lack of clearly defined lines of authority and responsibility are the cause of many of the law-enforcement concerns raised in this report.

The Maricopa County Board of Supervisors controls the sheriff's budget. But because the sheriff is an elected official, he can decide how to spend it,<sup>6</sup> unless the board attaches specific conditions. For the fiscal year 2009, MCSO has a budget of nearly \$270 million.<sup>7</sup> Since fiscal year 2001, the budget excluding jails has nearly doubled from \$37.6 million to \$72.5 million<sup>8</sup>—roughly four times the rate of the county's population increase during that period.<sup>9</sup>

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## Crime Statistics

It is difficult to assess precisely how well MCSO is fulfilling its core law-enforcement function, largely because MCSO's record-keeping is inadequate and inaccurate. In 2006, MCSO reported a lower crime rate than other Maricopa County law-enforcement agencies.<sup>10</sup> Sheriff Arpaio's biography on the MCSO website says that the sheriff "continues to reduce crime with hard-hitting enforcement methods."<sup>11</sup> But apart from references to specific cases, the website provides no support for the proposition that crime rates are decreasing within MCSO's jurisdiction. To the contrary, the available statistics reported by MCSO to the Federal Bureau of Investigations suggest a substantial increase in violent crimes, particularly homicides, over the past several years.

Police departments are supposed to report crime statistics to the FBI each year. MCSO provided no data in 2005. However, between 2004 and 2007, crimes reported by MCSO soared. Reported violent crimes grew by over 69 percent, including a 166 percent increase in homicides over the three-year period.<sup>12</sup>

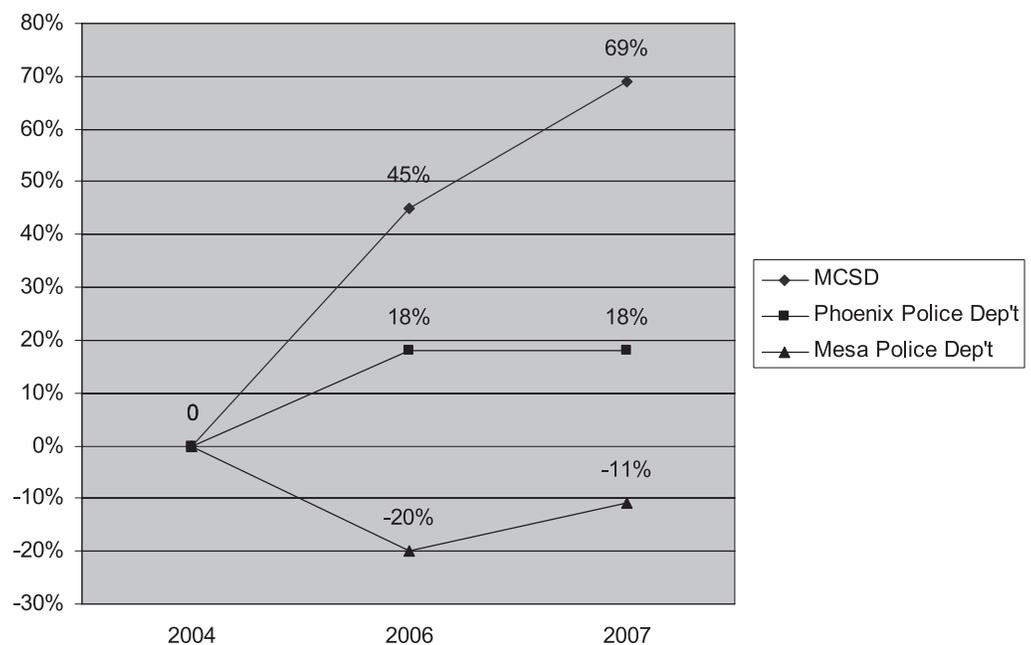
At the same time, despite significant population increases across the county, the same FBI statistics reveal that the two jurisdictions with which Sheriff Arpaio feuds most frequently, Phoenix and Mesa, did not experience similar increases in violent crimes, as reflected in Tables A and B. Reported violent crimes in Phoenix between 2004-07 increased by 15 percent, while homicides increased by more than 5 percent. Those statistics certainly are nothing to brag about, but they are vastly better than MCSO's. In Mesa, the annual reported violent crimes actually decreased by 11 percent, and the number of reported homicides stayed the same from 2004-07.

MCSO reports that its most recent statistics will show a 10 percent decrease in violent crimes from last year.<sup>13</sup> Even if true, the net increase over the past four years, as illustrated by MCSO's own statistics, is quite significant.

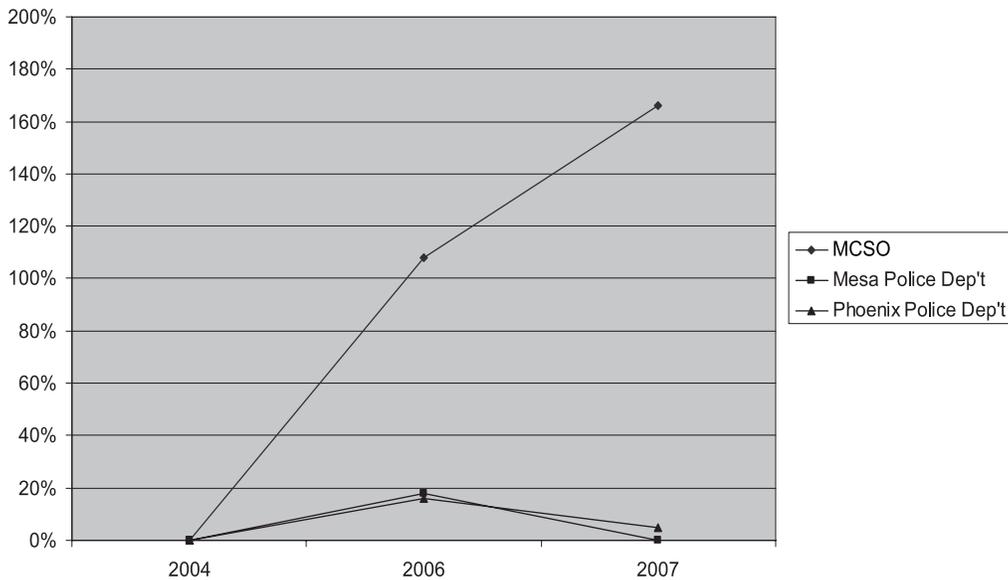
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As sobering as those statistics are, they actually may be understated due to the disarray in MCSO's crime-reporting systems. The *Tribune* recently completed an

**Table A: FBI Statistics reporting percentage change in violent crimes in Maricopa County law-enforcement jurisdictions**



**Table B: FBI Statistics reporting percentage change in homicides in Maricopa County law-enforcement jurisdictions**



extensive investigation of MCSO's operations based on unprecedented access to internal MCSO documents. The *Tribune* found that "MCSO's arrest rate has plunged the past two years even as the number of criminal investigations has soared,"<sup>14</sup> with the percentage of crime investigations leading to an arrest declining alarmingly from 10 percent in 2005 to only 3.5 percent in 2007.<sup>15</sup> Moreover, the newspaper reported that "it is impossible to know how sheriff's detectives are handling the roughly 10,000 criminal investigations they open each year."<sup>16</sup> As the report explains,

Clearance rates, which represent the number of criminal investigations law enforcement agencies finish, are among the most basic of police statistics, and virtually every police department in the United States tracks them. Detectives generally clear cases by making arrests, finding a case has no merit or closing it because they lack leads or victims who are willing to prosecute.

But sheriff's officials admit they don't know exactly how many investigations detectives open or close. Or the precise number of cases that end with an arrest. Or whether there are cases that detectives fail to investigate. MCSO has not connected all of its law enforcement divisions to its computer records-keeping system, agency officials say. As a result, a number of cases never get counted; it's unknown how many.<sup>17</sup>

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The *Tribune* reports that each year when MCSO provides its crime clearance statistics to the county's Management and Budget Office, the figures are always accompanied by the caveat that the data is not complete and therefore "is not considered accurate."<sup>18</sup>

Nonetheless, even the numbers that the sheriff's department provides to the county fall short of MCSO's own stated goal of a 65 percent clearance rate. The *Arizona Republic* reports that MCSO's self-reported clearance rate fell from 62 percent in 2004-05 to 57 percent in 2006-07. The *Republic* indicates that clearance rates for specific types of crimes are in line with other law-enforcement agencies in large cities.<sup>19</sup> Indeed, the MCSO clearance rate is actually significantly higher than the national clearance rate average, which is 44.3 percent for violent crimes and 15.8 percent of property crimes.<sup>20</sup>

But in 2008, MCSO reported that while it cleared 7,200 cases (out of 9,500 cases investigated), only 1,300 (or 18 percent of the cleared cases) culminated in an arrest, leaving a huge question about how the vast majority of cases were "cleared."<sup>21</sup> For instance, the Phoenix Police Department actually reports more arrests than clearances (suggesting that in many instances more than one person was arrested for a crime).<sup>1</sup> Among violent crimes that Phoenix cleared in 2007, over 78 percent culminated in an arrest.<sup>22</sup>

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The low arrest rates correlate to what appears to be MCSO's excessive use of the category of "exceptionally cleared" cases coupled with inadequate priority on meaningful investigation of many serious crimes. A case may be designated "exceptionally cleared" only when a suspect is known and enough evidence exists to make an arrest, but circumstances beyond the control of law enforcement prevent an arrest.<sup>23</sup> The *Tribune* recounts the instance of a 15-year-old girl in El Mirage who entered a convenience store and reported a rape to the store's manager. Paramedics took the girl to a hospital, where evidence of sexual assault was found. The sheriff's office dispatched a detective from the special victims unit to the hospital, but thereafter it appears no investigation whatsoever took place. Yet less than a month later, MCSO closed the case as "exceptionally cleared," despite having no suspect and while still awaiting DNA evidence.<sup>24</sup>

That case does not appear an aberration. Cases that are "exceptionally cleared" are supposed to be exactly that: exceptional. But they are increasingly routine in MCSO: In 2006, MCSO detectives closed 2,725 cases as exceptionally cleared—three times as many cases as were closed by arrests. The *Tribune* found specifically that many cases in Queen Creek and Guadalupe were closed as "exceptionally cleared" showed no evidence that investigations were performed. When El Mirage formed its own police department, MCSO turned over crime case files from the two years that MCSO was responsible for policing the community. The *Tribune*

reviewed 350 violent crime files and found no evidence of MCSO investigations of 18 armed robberies and 12 sexual assaults.<sup>25</sup>

Yet another measure of law enforcement is response times to 911 calls. MCSO has a response-time goal of five minutes. In 2007, its median response time was just over seven minutes and its average response time was nearly 11 minutes.<sup>26</sup> By contrast, the Phoenix Police Department reports an average response time of four minutes.<sup>2</sup> The *Tribune* found that in 2006 and 2007, MCSO patrol cars took more than five minutes to arrive on two-thirds of the most serious calls for police assistance.<sup>27</sup> In many instances, people in areas for which MCSO provides law-enforcement instead call police departments in neighboring communities, although city police are not reimbursed when they respond to the calls.<sup>28</sup>

The problem is not inadequate MCSO resources. It took six years (from 2000-06) for Maricopa County's population to increase by 22.6 percent,<sup>29</sup> but MCSO's budget grew by 23 percent in only two years (FY 2005-06 to FY 2007-08).<sup>30</sup> The county's population grew by only 2.7 percent in 2006,<sup>31</sup> while MCSO's budget increased more than 12 percent.<sup>32</sup>

Judged by its own standards and statistics, MCSO appears to be falling seriously short of fulfilling its core law-enforcement duties. The surge in violent crime rates since 2004 coincides with MCSO's diversion of substantial resources to other priorities.

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## **Immigration Sweeps**

One activity on which MSCO has intensely targeted its resources is its highly publicized and controversial immigration sweeps. No question exists that a large number of illegal immigrants reside in Maricopa County and that they are disproportionately associated with crime. Illegal immigrants make up approximately nine percent of the county's population. While official figures suggest that the percentage of illegal immigrants who are booked or incarcerated in Maricopa County jails is only slightly higher than that, County Attorney Andrew Thomas reports that in 2007, illegal immigrants made up 18.7 percent of those who were actually convicted of felonies—including 33.5 percent of drug convictions, 20.7 percent of crimes with weapons, 20.3 percent of felony DUIs, and 10.6 percent of murders and manslaughters.<sup>33</sup>

Hence, apart from policing illegal immigration itself, a strong law-enforcement justification exists to focus resources on secondary crimes associated with illegal immigrants. Still, it is necessary to raise two questions regarding the sweeps: (1)

are they effective in accomplishing their objective and (2) do the costs outweigh the benefits in terms of relative law-enforcement priorities?

The answer to the first question appears to be a qualified no. The sweeps may, as Sheriff Arpaio claims, have contributed to the exit of an unknown number of illegal immigrants from Maricopa County. It is difficult, if not impossible, to determine the effect of the raids in that regard compared to laws increasing employer sanctions for hiring illegal immigrants and the declining condition of the economy generally. Certainly anecdotal evidence exists that the raids are a factor in creating a less-hospitable climate for illegal immigrants in Maricopa County.<sup>34</sup> But other tactics appear to be much more effective in identifying illegal immigrants for deportation, and the raids have little, if any effect on actual human smuggling operations or on rates of crime. Moreover, the sweeps often are conducted in jurisdictions that have their own police departments, yet without coordination with those departments, which creates extremely dangerous conditions for law-enforcement personnel and bystanders.

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In 2007, the Maricopa Board of Supervisors approved a partnership between the sheriff's office and U.S. Immigration and Customs Enforcement (ICE). The state also awarded MCSO \$1.5 million for its anti-human-smuggling operation.<sup>35</sup> MCSO's contract with ICE requires specific procedures for immigration enforcement, such as establishing trustworthy evidence that crimes are taking place. Such evidence has not always preceded the sweeps, such as the sweep in October 2007 in Fountain Hills, the town where Arpaio lives. Fountain Hills is not connected to human smuggling activity.<sup>36</sup> To the criticism that he has not followed requirements of the ICE contract, Sheriff Arpaio has responded, "Do you think I'm going to report to the federal government? I don't report to them."<sup>37</sup>

Before the sweeps, MCSO targeted "coyotes" –the people who transport immigrants illegally into the country. "I don't expect to concentrate on some guy in a truck with six illegals," Sheriff Arpaio said in 2005. "I want to go after the smugglers who do this for money, the top people." But in 2006 and 2007, the MCSO human smuggling unit arrested only low-level operatives, such as drivers and drop-house guards. As the *Tribune's* analysis of MCSO's internal documents reveals, "Arpaio's human smuggling unit, which has grown to 18 members, has yet to arrest a single boss."<sup>38</sup>

The sweeps are even less likely to nab smuggling kingpins. So far, eight "saturation patrol sweeps" have taken place in six communities. Cars are stopped for violations such as burned-out license-plate lights and failing to use turn signals, and the immigration status of the drivers are checked. The sweeps have resulted in 400 arrests, including more than 200 suspected illegal immigrants.<sup>39</sup>

Other jurisdictions, such as the Mesa Police Department, focus on violent crimes and determine immigration status after the suspects are booked into jail.<sup>40</sup> Even for MCSO, that approach yields far more illegal immigrants: The *Republic* reports that MCSO jailers have identified 16,000 illegal immigrants during the booking process, compared to 2,000 who have been arrested by the human smuggling unit and only 200 or so who have been arrested in sweeps.<sup>41</sup>

But MCSO has diverted substantial resources away from other law-enforcement activities to the immigration sweeps and the human-smuggling unit.<sup>42</sup> As Arpaio described it, “We are quickly becoming a full-fledged anti-illegal immigration agency.”<sup>43</sup> The eight sweeps have involved hundreds of deputies and thousands of work days.<sup>44</sup> The *Tribune* found that “MCSO has repeatedly used regular patrol deputies for immigration enforcement.”<sup>45</sup> The human smuggling unit was staffed through “temporary” reassignments of deputies from patrol units, many of which were not replaced.

In addition to diverting patrol deputies from their normal assignments, the shift in focus resulted in massive overtime. Shortly after the ICE contract was signed, deputies amassed 4,500 extra hours per two-week pay period, compared to the previous average of 2,900 overtime hours. The predictable result was a \$1.3 million deficit in MCSO’s budget in only three months. The sheriff covered part of the deficit by keeping patrol division positions unfilled, to the tune of 66 deputies. Meanwhile, the sheriff curtailed overtime. On at least one occasion, as many as 46 criminal defendants missed their court appearances because deputies were told to skip overtime.<sup>46</sup> Likewise, immigration enforcement diminished. As the *Tribune* reports, MCSO “eliminated its deficit,” but “deputies now rarely arrest illegal immigrants under the state smuggling law, MCSO records show, even when suspects are clearly involved in human smuggling.”<sup>47</sup>

MCSO’s massive diversion of resources into policing illegal immigration—largely in communities such as Phoenix and Mesa that have police departments—coincides with growing rates of violent crimes, plummeting arrest rates, and increased response time to citizens’ calls for help.<sup>48</sup> At the same time, the *Republic* found that crime rates in areas that were the subject of saturation raids were largely unchanged after the sweeps.<sup>49</sup>

Far from the careful coordination that might reasonably be expected in such large-scale law-enforcement operations in jurisdictions with police departments—a hallmark of MCSO before Arpaio---the sweeps often have taken place with little warning and virtually no coordination.<sup>50</sup> As Arpaio put it, “I’m the sheriff, and I don’t need to be invited to Mesa. I can go in anytime I want.”<sup>51</sup> The sweeps involve not only large numbers of deputies but armed posse members, facing scores of impassioned demonstrators who either favor or oppose the sweeps. Instead

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of aligning their operations, the police departments in the targeted jurisdictions have to call out large numbers of their own officers—diverting them from other assignments and/or paying overtime—to maintain order. Characterizing the sweeps as “a circus,” Mesa Police Department Sergeant Fabian Cota charges that “the way [MCSO] is doing the sweeps, it’s endangering our guys.”<sup>52</sup>

The clash between MCSO and Mesa came to a head in October 2008 when 60 sheriff’s deputies and posse members in battle gear stormed the Mesa City Library and City Hall in the middle of the night searching for illegal aliens on cleaning crews. Three people were arrested at the sites. MCSO provided no advance notice of the raid to Mesa officials, and Mesa police already were investigating the immigration status of cleaning crew employees. Sheriff Arpaio responded to a reporter’s query about the raid by saying, “It’s my jurisdiction, too.” But Mesa mayor Scott Smith charged that “the safety of our citizens was greatly compromised” by the unannounced raid.<sup>3</sup>

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Immigration enforcement is important. But in its decision to add to its law-enforcement duties those of a “full-fledged anti-illegal immigration agency,” MCSO has accomplished neither task well. By diverting precious law-enforcement resources on high-profile, extremely expensive, yet low-yielding immigration sweeps, MCSO has undermined its effectiveness in its core mission of protecting the lives and property of the people who look to it for protection. And by failing to coordinate its raids with local police authorities, MCSO places law-enforcement officers and citizens at great risk.

## **Honduras**

Another diversion of resources away from direct law-enforcement activities is MCSO’s repeated and curious deployment of deputies to Honduras. The operation, called “The Bay Islands Sister Agency for Justice and Service,” has been widely investigated by Channel 12 News, which obtained extensive public records from MCSO and has interviewed law-enforcement officials from MCSO and other state and federal agencies. MCSO justifies the operation on grounds of (1) obtaining photos from Honduras to aid in its facial recognition program, (2) training Honduran law-enforcement authorities, and (3) aiding in the prevention of gang activities in Arizona. But the connection between the Honduran operation and core law-enforcement activities in Maricopa County seems tenuous at best, especially given the substantial manpower and financial resources devoted to the project at a time when both are stretched thin.

Channel 12 News and the *Republic* report that 12 mostly high-level MCSO

employees, led by Chief Deputy David Hendershott and Captain Jim Miller, have traveled to Honduras. The groups, which ranged in size from two to seven MCSO staffers, have made at least six trips of a few weeks' duration, with some employees spending between six and ten weeks in Honduras in 2007. The money and time appear to have been spent mainly to train Honduran police and security officials. MCSO also paid round-trip airfare for four Honduran dignitaries to visit the United States. The trips have consumed 65 work weeks and an additional 125 hours of overtime. Moreover, \$30,000 in Racketeer Influenced and Corrupt Organization (RICO) funds have been used for travel costs.<sup>53</sup>

In December 2007, MCSO received permission to use \$264,450 from the Arizona Department of Homeland Security to expand its facial recognition program. Sheriff Arpaio claims he has received "millions of photos" from Honduras, though Honduras Secretary of Security Jorge Rodas told 12 News they have sent no photos to MCSO.<sup>54</sup> Regardless, it is not clear why those photos are noteworthy, or what the exact nature of the relationship is between Honduras and MCSO.

MCSO also defends the program on grounds that it will help to prevent the spread of a violent gang called MS-13. But the U.S. Department of Justice says that the gang, which originated in California, is mainly associated with El Salvadorans, not Hondurans; and the Arizona Department of Public Safety has seen no evidence of MS-13 activity in Arizona. An ICE official told 12 News that Hondurans do not play a significant role in organized crime in Arizona.<sup>55</sup>

Whatever the benefits of the "sister agency" relationship, the costs to MCSO are significant. In a memorandum sent to top MCSO officials on September 14, 2007, Financial Chief Loretta Barkwell wrote, "All fund balances for General Fund, Detention Fund, RICO and JEF are in the tank. As such, approval of travel, training, purchase of new equipment, computers, guns, tasers, cars, furniture, chairs, etc. are on hold. Only basic supplies for day to day operation will be approved for expenditure funding." Yet 12 News found that three weeks later, seven MCSO deputies left for a 26-day trip to Honduras.<sup>56</sup> One of the detectives diverted from traffic accident investigations to Honduras wrote an e-mail to another MCSO staffer in January 2008, stating that "my cases are only back logged about six months and this no overtime (expletive) is killing me as far as getting caught up."<sup>57</sup>

Sheriff Arpaio announced in February 2008 that he was temporarily suspending the Honduras program to evaluate it. However, the trips continued.<sup>58</sup> Meanwhile, the Arizona Auditor General moved up by a year an audit of MCSO's use of RICO funds.<sup>59</sup> Taxpayers, and particularly residents served by MCSO, deserve a clear explanation of the program's full scope, costs, and purposes.

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## Warrants

When two Phoenix police officers stopped a man and two women for jaywalking in September 2007, a confrontation ensued and Officer Nick Erfle was shot and killed. Erfle was 33 years old, the father of two young children, and had just overcome a battle with cancer. The man suspected of killing him, Erik Martinez, was an illegal immigrant who previously had been deported. Notably, he was the subject of an outstanding felony warrant for aggravated assault.<sup>60</sup>

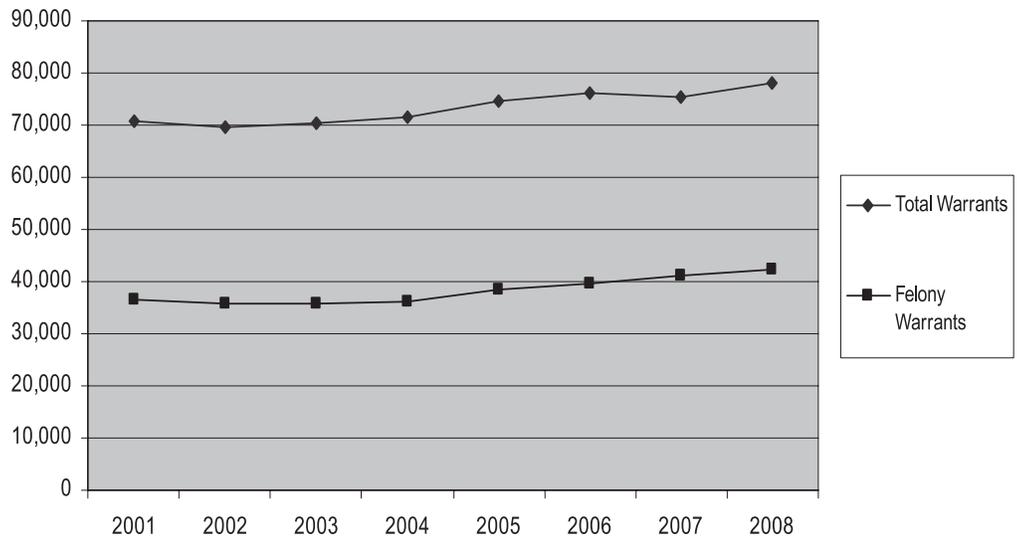
For many years, Maricopa County has experienced a huge back-log of unserved warrants. Tens of thousands of felony warrants are unserved at any particular moment. No specific law-enforcement agency is responsible for serving warrants. Yet among competing law-enforcement priorities, few seem more important than serving such warrants and bringing those suspected of felonies into custody.

MCSO is the depository for all warrants for law-enforcement agencies throughout Maricopa County.<sup>61</sup> It indicates that as of September 2008, a total of 77,949 warrants were outstanding, including 42,297 felony warrants.<sup>62</sup> Apparently both numbers represent the highest totals of outstanding warrants ever in Maricopa County. MCSO claims its deputies cleared 7,900 warrants by arrest last year,<sup>63</sup> but the backlog as reported by MCSO is larger than ever.

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Unserved warrants often have deadly consequences. Mesa Police Sergeant Fabian Cota compiled statistics on officer-involved shootings of criminal suspects

**Table 3: Outstanding warrants reported by MCSO**



in Mesa. In 53 instances involving 62 suspects, 19 (nearly one-third) of the suspects had outstanding felony warrants and seven had unserved misdemeanor warrants. Having felony suspects at large endangers police officers and the public.

Other law-enforcement agencies combine resources to arrest suspected felons with outstanding warrants. Several police departments, for instance, created the East Valley Fusion Center, housed in the Mesa Police Department, that uses RICO funds to share resources and information to target felons. The Fusion Center has partnered with ICE, the U.S. Marshals Service, and Pinal County Sheriff Chris Vasquez to target career criminals and fugitives, including violent illegal immigrants. Mesa police alone arrested 515 suspects in violent felony crimes in the first three months of 2008. The U.S. Marshals Service reports that its marshals and fugitive task forces arrested over 6,000 fugitives statewide in 2007.<sup>64</sup>

MCSO has expanded its on-line database of outstanding warrants, which contains last-known addresses of the suspects.<sup>65</sup> However, it appears that no MCSO personnel are assigned specifically to coordinate or effectuate the service of outstanding warrants.<sup>66</sup> Rather, outstanding warrants usually are served on suspects stopped or arrested for other crimes or at the time they are booked into jail.<sup>67</sup> Unfortunately, what that means is that people for whom felony warrants have been issued are not usually taken into custody until they commit another crime.

Given that the sheriff is the only law-enforcement official with county-wide jurisdiction, and that MCSO is the depository for all felony warrants, it makes sense for the sheriff's office to take the lead in coordinating and serving those warrants. That tens of thousands of known felony suspects are at large is attributable at least in part to MCSO's failure to assign appropriate priority to the serving of outstanding warrants.

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## **Satellite Booking Facilities**

One of the most important services provided by MCSO is booking criminal suspects for all 26 police departments in Maricopa County. Because the county is extremely large, MCSO maintained satellite booking facilities in Surprise, Avondale, and Mesa. In response to the financial crisis in fall 2007, MCSO closed all three facilities, over the protests of police chiefs across the Valley. Now all crime suspects from all jurisdictions must be booked at the Fourth Avenue Jail in Phoenix.<sup>68</sup>

Every law-enforcement official or officer I spoke with formally or informally during research for this paper said closing the booking facilities had a significant

negative impact on law enforcement throughout Maricopa County. For jurisdictions with a satellite facility nearby, it took as little as 15 minutes to book a suspect; now, the drive and processing time can take three to four hours from the more far-flung jurisdictions. That in turn forces police officers to make a Hobson's choice between whether to arrest a suspect at the cost of taking three or four hours away from their primary responsibilities, or to cite and release the suspect. The closure of satellite booking facilities predictably has resulted in an increased use of the cite-and-release procedure for suspects.<sup>69</sup> As the *Tribune* observes, "Cite-and-release can cause a vicious cycle because many defendants miss their court dates and then a warrant is issued for their arrest,"<sup>70</sup> which of course in turn exacerbates the problem with unserved warrants. Hence, closing booking facilities has a ripple effect on law-enforcement efforts throughout the county.

## Court Judgments

*Although Sheriff Arpaio says that he wins the vast majority of court claims that are filed against him, he has lost a substantial number of high-profile cases, at great taxpayer expense.*

Being tough on criminals and criminal suspects may come at a price if the practices fail to meet legal standards. Although Sheriff Arpaio says that he wins the vast majority of court claims that are filed against him, he has lost a substantial number of high-profile cases, at great taxpayer expense. According to Maricopa County Risk Manager Peter Crowley, over the five-year period from 2003-07, the county has paid out Sheriff Department General Liability claims of \$30 million, in addition to liability insurance coverage costing \$11.3 million.<sup>71</sup>

According to *Phoenix New Times*, the New York City, Los Angeles, Chicago, and Houston court systems together housed more than 61,000 inmates per day last year, and had a combined 43 federal prison-condition lawsuits filed against them from 2004-07. MCSO, which houses 9,200 prisoners per day, was the target of 2,150 federal court lawsuits during the same period. That amounts to roughly one-sixth the number of prisoners but over 40 times the number of lawsuits filed. The payouts have resulted in an increase in MCSO's insurance deductible from \$1 million to \$5 million and a quadrupling of the insurance premium in recent years.<sup>72</sup>

It does not take a soft-on-crime liberal to have serious concerns about the financial costs of policies that result in successful legal claims and attendant taxpayer costs. One possible cause of the excessive legal and insurance costs may be that the county, not MCSO, picks up the tab for insurance premiums and legal awards, so there is a separation between those responsible and those held accountable.

At least three of the largest damage awards and settlements—in the apparent

excessive-force deaths of Deborah Brailard, Charles Agster III, and Clint Yarbrough—involved inmates who had not yet been brought to trial on their charges.<sup>73</sup> In 1999, a federal audit found that “unconstitutional conditions exist at the Jails with respect to (1) the use of excessive force against inmates and (2) deliberate indifference to inmates’ serious medical needs.” MCSO entered into an agreement with the U.S. Department of Justice to change procedures and conditions, but the Justice Department apparently has not inspected MCSO jails.<sup>74</sup>

The situation may get worse before it gets better. In September 2008, the National Commission on Correctional Health Care revoked its accreditation of MCSO’s jails for failure to provide adequate health care to inmates. Accreditation is an important defense against lawsuits by inmates challenging prison conditions. Relatedly, U.S. District Court Judge Neal Wake who was appointed to the federal bench by President George W. Bush found in October 2008 that unlawful conditions continue to persist in county detention facilities.<sup>75</sup>

It should be possible to be tough on convicted criminals—indeed, even to be America’s toughest sheriff—without running afoul of minimal standards of procedure and care, particularly with regard to inmates who have not yet been convicted of any crimes. To the extent MCSO fails to do so, the taxpayers will bear the financial burden.

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### **Transparency**

Government agencies and officials are truly accountable only if their records are open to the public. But as the *Tribune* found in its investigative reports, MCSO “tries to stifle almost anyone checking on its operations.” Specifically, MCSO “keeps secret the most basic data about its police work that other departments publish every year. It refuses to release public records—or tries to remove information from those records—without any legal right to do so.”<sup>76</sup>

For instance, the troubling “clearance” rates. When MCSO reported a 57 percent clearance of its criminal investigations during the 2005-06 fiscal year, the Maricopa County internal audit department tried to obtain records to support that figure, but MCSO refused to provide them. In 2007, MCSO had to pay \$38,000 in legal fees to the *West Valley View* for withholding press releases. It lost another case to the *Tucson Citizen* for taking six months to provide public records.<sup>77</sup>

Despite its aversion to producing public records, MCSO has deployed the public-records process in its feud with Phoenix Mayor Phil Gordon. MCSO made

a request for at least 10,000 city-generated e-mails regarding illegal immigration. Two deputies were dispatched to scan the documents. When *Phoenix New Times* reporter Ray Stern asked to inspect the same documents, four more deputies were brought in to cordon off the records, and they threatened Stern with arrest.<sup>78</sup>

It is difficult to track even basic MCSO crime statistics. Local police departments, including Phoenix and Tempe, make crime rate statistics available on their websites. By contrast, MCSO's website appears to contain no crime statistics or budget figures, except for an occasional news release.

The taxpayers and their representatives cannot determine MCSO's effectiveness or its stewardship of public funds without carefully kept and easily accessible statistics. MCSO annually reports that the most basic crime statistics it provides to the county are incomplete. Given that the safety and security of Maricopa County's citizens is at stake, better record-keeping and greater transparency is essential.

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## **Policy Recommendations**

To ensure effective and efficient law enforcement in Maricopa County, we recommend the following:

1. Jurisdiction. To prevent possible conflicts and duplication of resources, the legislature should formally assign primary law-enforcement responsibilities to (1) sheriffs in unincorporated areas and in jurisdictions that have contracted for their services, and (2) to local police departments within the areas of their jurisdiction. Those primary duties have been recognized by the Attorney General,<sup>79</sup> but are not codified in statute. Arizona law already expressly provides for authority of a peace officer to extend into any jurisdiction with the prior consent of that jurisdiction.<sup>80</sup> The blurry existing jurisdictional lines give rise to law-enforcement anarchy, rather than the coordination that often is essential to effective law enforcement.

2. Warrants. The legislature should expressly delegate to county sheriffs the responsibility for assuming primary leadership and coordination in serving warrants. The Maricopa County Board of Supervisors should require deployment of MCSO deputies dedicated to serving warrants.

3. Crime statistics and transparency. The legislature should adopt uniform national standards for "clearance" of criminal investigations and require prompt and accurate reporting of clearance rates. The Legislature should require all law-enforcement agencies to report and post current and accurate crime statistics,

including rates of violent and property crimes, yearly changes, and the percentage of crimes that are cleared by arrest. Additionally, the Goldwater Institute has called for greater financial transparency for all governmental entities.<sup>81</sup>

4. Satellite booking facilities. MCSO should re-open satellite booking facilities to assist police departments in efficiently booking criminal suspects, which would allow officers to spend more time on the streets rather than transporting suspects to Phoenix—or, worse, merely citing and releasing criminal suspects.

5. Investigation of MCSO detention facilities. As a follow-up to the 1999 agreement, the new U.S. Attorney should investigate the conditions and practices in MCSO jails, and take vigorous action to prevent and punish wrongdoing.

6. Audits. The Maricopa County Board of Supervisors should regularly and carefully audit MCSO crime statistics and expenditures. In particular, the county should randomly audit cases that are “exceptionally cleared” by MCSO to determine that the criteria are met.

## Conclusion

The Maricopa County Sheriff’s Office falls seriously short in all three of the core components of its mission as MCSO defines it. Over the past several years, MCSO has lost sight of its most essential priorities. The escalating rates of violent crimes in its jurisdiction coupled with diversion of resources to less-important priorities, less-effective law-enforcement tactics, or to jurisdictions that have their own police departments, indicates it is not “the leader in establishing the standards for providing professional quality law enforcement.” Its failure to assume leadership in reducing the huge backlog of outstanding warrants and its closure of satellite booking centers means that it is not effectively providing essential law-enforcement support services. Its detention of criminal suspects and convicted criminals has been the subject of successful and expensive legal verdicts and settlements, of investigations by the federal government, and of revocation of accreditation. Its records are inadequate and opaque rather than transparent.

Reforms aimed at increasing transparency and accountability, and at defining jurisdiction and responsibility, will make law enforcement in Maricopa County more efficient and effective.

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