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In Case You Missed It

NM Governor's Race: Denish Distorts DA's Record

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In the New Mexico governor's race, Lt. Gov. Diane Denish, a Democrat, distorts Republican Susana Martinez's 10-year record as district attorney.

An ad claims that her conviction rate in murder cases is "the worst in New Mexico," and the Denish campaign says that rate is 60 percent. But the Denish camp simply used the wrong statistics and came up with invalid figures. In fact, figures from an official state agency show Martinez won nearly 96 percent of her murder cases.

The same ad claims that Martinez gave plea deals to "felony drunk drivers" over 800 times, a claim state officials say is also based on misusing court figures. Martinez admits to settling only 46 such cases with plea bargains, claiming practical necessity.

Murder Convictions

The ad, which began running June 3, says, "Martinez claims she locked up murderers ... but her conviction rate? The worst in New Mexico." The ad cites the New Mexico Administrative Office of the Courts – complete with an image of the court seal and a chart of "average conviction rate" for various judicial districts. It looks very official. But the AOC does not calculate conviction rates; those calculations were done by the Denish campaign — and done wrongly.

AOC Director Arthur Pepin said its records are kept to track caseloads and are not

appropriate for calculating conviction rates. Homicide cases may be double counted in AOC figures, Pepin said. How? If a case gets moved from magistrate court to district court, then the AOC will count that case as a dismissal in magistrate court and a new case in district court, Pepin said. The Martinez campaign said homicide cases are almost always first filed in the magistrate courts, but often they are dismissed and moved to district courts to be tried. The AOC would count those cases twice because they affect the caseload for each court, Pepin said. Using AOC figures, the Denish campaign calculated Martinez's murder conviction rate at 60 percent for fiscal year 1999 through fiscal year 2009. That's wrong.

Martinez's actual conviction rate for that time period is 95.8 percent, according to Kelly Kuenstler, director of the New Mexico Administrative Office of the District Attorneys. The AODA is an official state agency that provides support services for district attorneys. Under state law, its director is also required to gather statistical data. It collects quarterly reports filed by the DA's office. Forty-five of the 47 closed homicide cases in New Mexico's 3rd Judicial District Court resulted in convictions, Kuenstler said. Of the two murder cases that resulted in non-convictions, one was overturned on appeal and the other was lost at trial.

It may well be that all other district attorneys in New Mexico had even better conviction rates than Martinez. We don't know. Kuenstler could not provide homicide conviction rates for other district attorneys, because, "I would need permission from each district attorney individually" and "I don't believe I would obtain all district attorneys' permission." Martinez granted her permission at our request.

Drunk Drivers

The Denish ad also claims "District Attorney Susana Martinez promised she wouldn't give plea deals to felony drunk drivers, but she did. Over 800 times." But there's no support for that figure.

It's true that Martinez made such a promise. The ad cites a Sept. 5, 2004, Las Cruces Sun-News article in which Martinez stated, "We will not plea bargain a DWI case." She went on to explain, "We don't pretend it is a first or second offense just to move the court docket along." A DWI case is considered a felony, rather than a misdemeanor, if the driver has four or more prior DWI convictions.

It's also true that Martinez did give plea deals to some felony drunk drivers. However, the claim that Martinez gave 800 "plea deals to felony drunk drivers" cannot be supported. The Denish campaign cites a May 19, 2010, Albuquerque Journal article that says: Albuquerque Journal, May 19, 2010: Since (2004), more than 800 DWI cases in Martinez's district have been settled with plea bargains, representing about 63 percent of the total DWI cases her office handled from fiscal years 2004 to 2009, according to court records.

The newspaper did not provide a source for the “court records,” but the Denish campaign gave us a chart it created based on AOC records that – once again – are being misused.

According to AOC records, there were 836 plea bargains involving drivers charged with felony drunk driving in Doña Ana County from fiscal year 2004 through fiscal year 2009. (Martinez made her statement about drunk drivers in 2004, when she was running for reelection as the district attorney for the 3rd District, which is all of Doña Ana County.) But here’s the problem for the Denish campaign: A felony drunk driver charged with multiple offenses may accept a plea deal that reduces or eliminates lesser charges and retains the felony drunk driving charge. In that situation, Pepin said the case “would show up as a plea” in AOC records, even though the felony DWI count itself was not reduced.

The Martinez campaign produced records that show the DA’s office in Doña Ana County closed 46 felony DWI cases that were reduced to misdemeanors since 2004. The Martinez campaign claimed that those plea agreements were necessary. In order to charge someone with a felony DWI, prosecutors need proof of prior convictions, and they sometimes run into problems obtaining the information on out-of-state DWI convictions.

We will leave it to you to decide whether Martinez provides a good rationale for the plea deals, but we can say with certainty that there is not enough evidence to support the ad’s claim of “over 800” plea deals. Asked to comment on Martinez’s method of calculating her conviction rate, Pepin said: A district attorney’s office “of course, tracks all the data for all their cases and they should be able to say, ‘Here are all the cases that we prosecuted.’ I would think that that data is fairly reliable.”

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