

Adam Jarchow: Toney is unfit to lead

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Recently, Republican candidate for Attorney General, Eric Toney, wrote a [letter to the editor](#) defending his prosecution (persecution) of small business owners he charged with violating the Evers Administration's illegal covid lockdown orders. His letter was rather stunning and helped cement my opposition to his candidacy.

He essentially used the "Nuremberg" defense - that he was just "following the law". First, even if it were a law (it never was), his defense was incredibly tone deaf. He essentially said no matter how immoral or unconstitutional, he would prosecute someone for violating any law. Ick. Anyone who has ever driven past a cop while going 58 in a 55, and didn't get pulled over, understands the concept of enforcement discretion. Some transgressions are so minor as to not warrant enforcement. Similarly, with regard to the covid orders, nearly every republican Sheriff and DA in the state declined to enforce / prosecute. But not Toney. He charged business owners. And when asked about it at the time, he defended his actions pointing out "it was an emergency". Really?

More importantly, his claim that he was "following the law" shows that he doesn't even have a rudimentary understanding of the law. In order to understand why, we have to rewind the tape to last Spring. On March 12, Evers issued his Emergency Declaration. It was immediately followed by a Stay at Home Order issued by DHS Secretary Designee Andrea Palm. That order was extended by Palm on April 16 in what was known as order 28. It was Order 28 that was challenged by the Legislature and struck down as illegal by the Wisconsin Supreme Court.

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This history is important because it shows two things. First, Stay at Home was never

a “law” as Toney claims. It was an illegal order by an unelected bureaucrat. Under Toney’s reasoning, if an Evers’ bureaucrat issued an order to seize guns and prosecute those who refused to give them up, he would feel obliged to prosecute. Of course no sane Republican would ever prosecute someone for violating such a wildly unconstitutional order. But, apparently Toney would.

Second, some of Toney’s supporters have argued that Evers had 60 days, so prosecuting during that time was fine, because Evers acted within his powers. This is wrong. Evers did not act. Stay at Home was a DHS order, not an Evers’ order. It was challenged and ultimately struck down. The challenge came before the magical 60 days even expired. The order was never valid, the court ruled, because the order was actually a rule, and DHS failed to follow the law in promulgating the rule. In other words, it was never enforceable – not even on day one.

Many of us recognized this flaw. Many elected sheriffs and DAs declined to help Evers carry out his Administration’s illegal actions. Some of us even used our law degrees to help fight it in court – for free. But not Toney. He used his law degree, government salary and authority to serve as Tony Evers’ handmaid by prosecuting small business owners who were just trying to survive. It’s sad. It’s despicable. It’s disqualifying.

This entire episode, including his defense of his horrific judgment, is proof that he is not fit for the job. He abused his authority as district attorney. He certainly doesn’t deserve a promotion. In fact, his letter makes it worse. Instead of apologizing for his “mistake” and asking forgiveness, he doubles down. While most of us were fighting Tony Evers, Toney was serving Tony. Eric Toney should never be allowed anywhere near the top spot at DOJ.

– Jarchow is a Balsam Lake Republican who represented the 28th AD. He was first elected in 2014 and served through 2018.