BAILIWICK NEWS

Reporting and critical analysis of Centre County public affairs

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Digging into original criminal allegations made against District Attorney Stacy Parks Miller.

By Katherine Watt

Part 2 in a series reporting on law enforcement principles as prioritized by incumbent DA Stacy Parks Miller and challenger Bernard Cantorna in their public work on criminal and civil cases.

INTRODUCTION

The first part of this series provided a timeline of events related to several Centre County criminal and civil justice issues: a sting operation designed by Parks Miller to obtain evidence in a murder-for-hire plot; Centre County defense attorneys' concerns about Parks Miller's potentially unethical and/or illegal actions related to the sting operation and other criminal prosecutions, including the McClure trial; multiple investigations into the alleged misconduct of District Attorney staff members; Right-to-Know requests, denials and court appeals; and a retaliatory civil lawsuit filed by Parks Miller against her critics.

For the second installment, I had planned to focus on detailed descriptions of the legal arguments made in the civil litigation briefs filed between October 2015 and January 2016.

However, while re-checking the source documents this week, I found information that prompted me to focus this second installment instead on the original criminal allegations and how they were handled by the only investigation that, so far, has been carried through to a final, public report: the investigation conducted by the 37th Statewide Investigating Grand Jury in 2015.

The investigating grand jury, as reported last month, was supervised by Cambria County President Judge Norman Krumenacker. The grand jury received the case after Parks Miller referred it to the Office of Attorney General, then under the control of AG Kathleen Kane, and the OAG referred the case to the grand jury.

The referral process had several effects. By mid-March 2015, the grand jury's work stopped the Bellefonte Police Department investigation and the Centre County commissioners' pursuit of an independent investigation, both initiated in January 2015.

By August 2015, just a few weeks after the grand jury released its final report, Parks Miller and her attorney (Bruce Castor) used it as the basis of a pivot maneuver, diverting public attention toward the potential civil liability of Parks Miller's critics, away from further public consideration of Parks Miller's potentially criminal actions – and the effects of her actions on the credibility of the Centre County court system of which the prosecutor's office is part.

In the pivot process, a rather important public question got lost. Do the ends – possibly catching "bad guys" – justify any means, including means that compromise the integrity of the Centre County court's public records repository and the criminal justice system overall?

This report includes an overview of the evidence of Parks Miller's potentially criminal acts, followed by overviews of the relevant statutes and standards.

Next, it presents conflicting analysis of the relevance of the grand jury's findings, offered by Parks Miller, Cantorna, Mary Lou Maierhofer, Kathleen Yurchak and other local attorneys involved in the controversy.

The report includes a brief account of US District Judge Matthew Brann's questioning of Parks Miller's attorney, Bruce Castor, regarding the authenticity of the disputed bail order.

The report concludes with a closer look at the "tampering with public records" aspect of the case, followed by critical analysis of Parks Miller's demonstrated beliefs about her position within the Centre County criminal justice system and the role of engaged citizens in providing oversight to public officials.

Evidence of Misconduct: Three Documents

June 5 – Sept. 9, 2013 Email Thread

In late December 2014, Parks Miller's former paralegal, Michelle Shutt, provided State College attorney Philip Masorti with a copy of a July 18, 2013 bail order bearing the signature of Centre County Court of Common Pleas Judge Pamela Ruest, and copies of a supporting email thread describing the bail order as "fake."

Shutt also swore an affidavit that, on Sept. 9, 2013, she witnessed Parks Miller sign Judge Ruest's signature on the fake bail order and had, at Parks Miller's direction, filed the fake bail order with the Prothonotary, entering it into the Centre County court's public record system.

Masorti provided that set of documents to Bellefonte police investigators on Jan. 6, 2015 and the police opened an investigation into three potential crimes: forgery, tampering with public records, and theft of services.

Masorti also provided the information to the Disciplinary Board of the Supreme Court of Pennsylvania, as evidence of violations of attorney ethics rules. The status of the disciplinary board investigation is unknown; the board works in secret.

The email thread began around June 5, 2013. On that date, Parks Miller and Deputy Attorney General Patrick

Leonard discussed a confidential informant's demand for "time-served" in exchange for cooperating in a sting operation intended to collect evidence to charge another inmate in a "murder for hire" plot.

The thread concluded on Sept. 9, 2013 with an email from Parks Miller to Matt McClenahen, the confidential informant's attorney, and DAG Leonard. (*Typographical errors in original*.)

> "Matt: Attached is the fake Albro bail Order appearing to set his bail to 10% of 100k. Backdated to the date of Pretrials in an attempt to make it look like an oral motion and to make it look like it would correspond with the time period he was "granted release". (He supposedly said he raised the 10% and then he got out the last day of the month or the 29th.) He also is lodged in Clearfield as Robert Halbro. If you look for him in the inmate locator system, it says he is released even though he is safely tucked away in Clearfield.
>
> Please remember, we have an agreement, I would prefer he not even see the Order so that he does not get confused or ambitious. This is only for cover in the event someone is trying to scope out his situation. And you and I have a specific agreement that he would not act on it as this is not a "real" Order, not authorized by the Attorney General OR THE JDUGE, beyond the "ruse" to place it on the record to protect the plan at this point. Neither the Judge nor the Attorney General agrees that his bail be modified in any manner below $100,000 straight. This is simply to further the public's view of him as being "out.", which is what he wanted. Please write back and assure me you understand the terms of this Order and that you and your client will not act on it." (*Source*: June 5 – Sept. 9, 2013 email thread)

Jan. 24, 2015 – Affidavit of Probable Cause

Following up on Masorti's police report filed Jan. 6, 2015, Bellefonte detective Robert Ruggiero began an investigation. By January 24, he had prepared an affidavit of probable cause seeking judicial approval of a search warrant to seize Parks Miller's computer and other records for further investigation.

Ruggiero listed three state laws that Parks Miller had allegedly violated, on the "Violations" page of his affidavit.

Those alleged crimes included: "Forgery, Title 18 Pa.C.S. §4101; Tampering with Public Records or Information, Title 18, Pa.C.S. §4911; Theft of Services, Title 18 Pa.C.S. §3926(b)."

In support, Ruggiero laid out the sequence of events, including the email thread, the bail order in the public record, Shutt's sworn testimony that she witnessed Parks Miller sign Judge Ruest's signature on the disputed bail order and then filed it with the Prothonotary at Parks Miller's direction; and Ruest's statement that she couldn't recall signing the order and couldn't tell if the signature on it was authentic or not.

Judge Craig Miller of the Clinton County Court of Common Pleas approved the search warrant. (*Source*: Jan. 24, 2015 Affidavit of Probable Cause.)

As reported in *Bailiwick News* Dec. 16, 2016, the Bellefonte Police Department investigation was quickly suspended, after Parks Miller referred the case to the Office of Attorney General, which then referred it to the 37th Statewide Investigating Grand Jury.

July 31, 2015 – Investigating Grand Jury Report

Throughout a report released July 31, 2015, the Grand Jury referred to the disputed bail order as the "phony bail order" and the "fake bail order." The jury noted: "All parties understood that the bail order would never be acted upon and that it had no legal validity." (*Source*: IGJ report, p. 6). The jury further noted: "[Parks Miller] stressed that the order was not real…" (*Source*: IGJ report, p. 7).

Based on the information made available to them, the jury concluded: "we believe that the signature on the 'fake bail order' is in fact the signature of Judge Pamela Ruest and criminal action should not be taken with regard to the forgery claim. Further any allegation of tampering with records or identification is also unfounded as it is clear from the evidence presented that there was no intent to injure or harm another; to the contrary, the intent was to protect Mr. Boob from a murder for hire plot." (*Source*: IGJ report, p. 8)

The jury did find evidence of theft of services, in that they found Parks Miller had used Shutt to do campaign-related work valued at about $224. The jury concluded: "the infraction is *de minimis* at best and no criminal action should be taken." (*Source*: IGJ report, p. 8)

LEGAL STANDARDS - CRIMINAL

The discrepancy I noticed this week, triggering the change in reporting focus, is that the grand jury examined the fake bail order evidence against a different statute than the one cited by Detective Ruggiero in his affidavit of probable cause.

The grand jury listed the statute for "Tampering with records or identification," (§4104) which falls under Title 18, Article C: Offenses Against Property, Chapter 41: Forgery and Fraudulent Practices, and is a first-degree misdemeanor or, in some cases, a summary offense. (*Source*: IGJ report, p. 2)

18 Pa.C.S. §4104 states a person has committed the offense if he or she:

> "knowing that he has no privilege to do so, falsifies, destroys, removes or conceals any writing or record…with intent to deceive or injure anyone or to conceal any wrongdoing"

Ruggiero, however, listed §4911, "Tampering with *Public* Records or Information," (emphasis added) which specifically deals with public, governmental records. It falls under Article E: Offenses Against Public Administration,

Chapter 49: Falsification and Intimidation, Subchapter A: Falsification and perjury in official matters.

18 Pa.C.S. §4911 states a person has committed the offense if he or she:

> "(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;
>
> (2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection..."

Understandably, tampering with public records in official matters is a more serious crime than tampering with private records. It's a second-degree misdemeanor if committed *without* intent to defraud or injure, and a third-degree felony if intent to defraud or injure is proven.

A conviction at the second-degree misdemeanor level carries a sentence of up to two years incarceration and no more than $5,000 in fines. A conviction at the third-degree felony level carries a sentence of up to 10 years incarceration and no more than $25,000 in fines.

LEGAL STANDARDS - CIVIL

Throughout the ensuing defamation litigation, Parks Miller has insisted that the July 2015 grand jury report comprised "findings of fact," rendering all contrary statements false.

For example, in making claims for "injurious falsehood," Parks Miller argued that her professional reputation as District Attorney is her business, and that the statements made by the defendants to police, county commissioners and the grand jury during investigations into Parks Miller's actions tarnished her reputation.

She claimed the defendants knew their statements were false, or made them with reckless disregard for their truth or falsity, and that they should have known that publishing the false statements would cause her monetary losses.

Defendants argued that their statements were true and supported by sound evidence that Parks Miller had engaged in forgery, tampering with public documents and theft of services; that their intent was to report evidence of wrongdoing to authorities for full and impartial investigation; and that they had serious doubts about whether the investigation conducted by the grand jury met the full and impartial standard.

Attorney Mary Lou Maierhofer, representing the Centre County government defendants, highlighted those concerns in a January 2016 brief.

Maierhofer wrote: "[Parks Miller] fails to cite to case law or any authority to support her conclusions that the Grand Jury investigation was a criminal proceeding being favorably terminated in her favor. Case law cited by [the County defendants] as well as other named Defendants clearly contradict [Parks Miller's] legal position." (*Source*: Jan. 8, 2016 County brief, p. 3-5)

Maierhofer cited "*Commonwealth v. Slick*…(Pa.Super. 1994), [in which] the Court stated, '...the presentment of an investigative grand jury is a written formal *recommendation*, see 42 Pa.C.S.A. §4542, with the power to indict being withheld specifically from that same body, Id at §4548(c), and reserved to the prosecutor.' "

She cited 42 Pa.C.S.A. §4551(e): "When the attorney for the Commonwealth proceeds on the basis of a [grand jury] presentment, a complaint shall be filed and the defendant shall be entitled to a preliminary hearing as in other criminal proceedings."

Maierhofer concluded: "the [grand jury] 'Recommendations/Findings' are not a criminal proceeding…any claims based upon prosecution for the Grand Jury investigation and subsequent determination, are an incorrect application for the role and results of a grand jury investigation." (*Source*: Oct. 2, 2015 County brief, p. 6-7)

Further, to support her claim that the grand jury's impartiality was compromised, Maierhofer presented identical blocks of text quoted from a court petition filed by the Office of Attorney General in February 2015 (part of an effort to halt the parallel independent investigation launched by the county commissioners) and from the July 2015 report issued by the grand jury.

Maierhofer concluded: "The similar wording between the two writings calls into question the influence (or agenda) by the OAG in conducting the Grand Jury, and how much impartiality actually was present during the process. The findings cannot be "unbiased" based upon those writing." (*Source*: Jan. 8, 2016 County brief, p. 3-5)

Shutt's attorney, Kathleen Yurchak, raised additional questions about the impartiality of the grand jury, in the context of a discussion of Parks Miller's claim that the grand jury's findings rendered Shutt's testimony false. If Parks Miller's claim proceeded, to defend herself, Shutt would need an opportunity to prove her testimony was true, by unsealing the grand jury proceedings.

Yurchak wrote: "Shutt would begin with inquiring as to the qualifications of the experts and the 'independence' of the examination. Were the forensic examiners truly 'independent' or were they, in fact, partners in the same office. If they actually were partners in the same office, was the grand jury told this or were they led to believe otherwise? Why did the OAG conduct this investigation when its own officers were involved in the bail order? Were all existing emails and supporting documentation in the possession of the OAG provided to the Grand Jury? If not, why not?" (*Source*: Nov. 13, 2015 Shutt brief, p. 39-40)

The attorneys' view that the grand jury was compromised found additional supported in an April 1, 2016 report published in the *Legal Intelligencer*. Reporter Lizzy McLellan reported that OAG sources said Kane intervened in the grand jury investigation to ensure that Parks Miller would be cleared.

SCHRÖDINGER'S BAIL ORDER

On March 3, 2016, US District Judge Matthew Brann held oral arguments regarding Parks Miller's defamation suit against Shutt, Cantorna, Ruest, and the other local criminal defense attorneys and public officials.

Judge Brann started the hearing by reviewing Parks Miller's characterization of the disputed bail order as "fake" and "pretend," but also authentic, filed and actionable. Brann observed that in his career in the law, he'd never heard of a fake or pretend bail order and asked Castor to explain the concept.

Castor replied that the disputed order was real, in the sense that it was genuine and actionable. The order was formally filed and appeared in online databases accessible to the public, and the subject of the order could have posted bail and been released from prison.

But, Castor said, it was also pretend, in the sense that the subject of the order, through his attorney, agreed not to exercise his right to post bail, so that he could continue cooperating with state police. The goal was "to create a misimpression" for the target of the sting operation and his cohorts, that the confidential informant had been freed on bail.

Castor compared the bail order to government operations using fake lottery winning notifications to track fugitives, by drawing them in to claim non-existent money. Castor also cited the grand jury's July 31 report to argue that the forgery allegation that stemmed from the bail order was a "fallacy from the start," because the grand jury concluded there was "never an intention for it to be perceived as true" or relied upon, except "to fool a bad guy." (*Source*: Author's notes from March 3, 2016 oral arguments).

BRANN RULING CITED PROBABLE CAUSE

On May 11 and Sept. 1, 2016, Judge Brann dismissed all of Parks Miller's claims against paralegal Shutt; attorney Cantorna, Judge Ruest and all the other defendants.

In dismissing the claims, among other reasons proffered, Judge Brann found that there was probable cause supporting the forgery, records tampering and theft of services allegations. Parks Miller has appealed Brann's decisions to the Third Circuit Court of Appeals; her brief is due Jan. 17, 2017.

CRITICAL ANALYSIS

Tampering with Public Records and Intent to Defraud

Among the allegations levied against Parks Miller, I find the "tampering with public records" issue to be the most important. I think it affects the broadest range of victims: everyone who uses public court records for personal, business or governmental purposes, and benefits from confidence in their authenticity.

We don't know who changed the statute number as the investigation moved from the Bellefonte Police Department to the Office of Attorney General and on to the investigating grand jury.

But it's clear who benefited from the switch. Use of the lesser crime reduced the severity of a worst-case scenario for Parks Miller. If the grand jury recommended prosecution, she would face a first-degree misdemeanor or summary offense charge, rather than a second-degree misdemeanor or third-degree felony charge.

At the same time, the switch opened a path for the OAG prosecutors to focus grand juror attention past Parks Miller's physical actions, instead onto Parks Miller's intent.

This was useful because under the lesser charge, proof of intent is required; no intent means no crime committed.

However, under the standards for tampering with *public* records, proof of intent is only required to seek a third-degree felony conviction. Without proof of intent, a conviction is a second-degree misdemeanor.

To the extent that the grand jury's role is to assess probable cause, analogous to the probable cause assessment conducted Detective Ruggiero and approved by Judge Miller, the grand jury's findings in this case are invalid, because, among other irregularities, the OAG presented the jury with the wrong statute.

The evidentiary record shows that Parks Miller and her colleagues developed a plan to use a "fake" bail order; that she directed her subordinate (Shutt) to file the fake order with the Centre County Prothonotary on Sept. 9, 2013; and that Shutt obeyed the instruction and filed the fake order, which then entered the official public record as if it were authentic.

At a minimum – when lined up against the statute barring tampering with public records – that's evidence of a second-degree misdemeanor, even without proof of intent to defraud or injure.

I agree that there's little to no evidence Parks Miller intended to injure; she was clearly trying to protect a fellow attorney from a perceived threat.

But the statute uses intent to defraud *or* injure. And I do believe Parks Miller intended to defraud, because without such intent, there was no need for the "ruse" at all.

In Parks Miller's own words, the goal of the bail order scheme was to use a public government records repository "to further the public's view of [the confidential informant] as 'out'. "

The target of the deception was Ryan Richards, the inmate who allegedly asked the confidential informant for help hiring an assassin, and anyone Richards was in contact with, in or outside of prison, who could check the online database of court records and report back to Richards on the confidential informant's whereabouts.

The evidence from her own email also shows that she knew the created public impression was false, because she knew the confidential informant was, in fact, imprisoned in Clearfield County under a false name at the time the bail order was filed. That's evidence of a third-degree felony.

Of note: double jeopardy prohibitions don't apply at the level of grand jury investigations; they only kick in when a trial jury is empaneled. Thus Parks Miller remains vulnerable to additional investigation.

Throughout her public service, Parks Miller has repeatedly drawn on the fact that she was elected by Centre County voters in 2009 and 2013, as evidence of her legitimate hold on public office.

She has extrapolated these election results to bar public criticism of her actions while in office, and she's backed up her belief in her non-accountability in non-election years by vigorously blocking public access to information (fighting Right to Know requests through the courts), diverting investigations to secret venues, and suing public critics for defamation.

In one particularly remarkable example, Parks Miller's claimed that the defendants were liable for Intentional and Negligent Infliction of Emotional Distress; she argued that reporting evidence of potential crimes to law enforcement authorities and requesting investigations represent "extreme and outrageous" conduct.

To build that claim, Parks Miller noted that the DA's office is so important that the person holding it must maintain the highest level of public trust. Therefore, she said, any allegation affecting public perception of the integrity of the District Attorney – and through the DA, the entire county criminal justice system – "weighs heavily on the mind of the DA," such that she suffered emotional distress and physical harm "not only for herself, but as the symbol of law enforcement as a whole in the County." (*Source*: Oct. 2015 amended complaint, p. 42)

I concur with Parks Miller that all Centre County citizens have a profound stake in maintaining accountable, impartial, transparent and trustworthy judicial systems.

However, I disagree with her apparent belief that her person and the office of Centre County District Attorney are one and the same, such that challenges to her individual actions are tantamount to attacks on the court system as a whole, and any identified problems with the legitimacy of the criminal justice systems are signs of malfeasance on the part of those who report the infractions, not those who commit them.

I disagree with her belief that possibly catching "bad guys" justifies any means, even violating the integrity of the Centre County court's public records repository and the judicial system overall.

I find those to be odd positions for the county's chief law enforcement officer to take. Taken to their logical conclusions, any citizen who calls the cops to report a crime and ask for investigation should, instead, be sued for undermining the public image of his or her neighborhood as crime-free. And crimes committed by law enforcement officers in the course of investigating other crimes should be ignored.

Blind, mute acceptance of all government agent actions – regardless of their legal or ethical character – is not, in my view, the best way to maintain community trust in the integrity of the courts, the criminal justice system, or any other government entity. For that matter, it's also not a great way to promote community respect for individual law enforcement officers performing their day-to-day work to protect public safety.

To ensure the full accountability of our government, we need accurate, timely, complete information. We need sound public institutions that properly protect the rights of those who are now, or may in the future, be subject to state power.

We're responsible for protecting ourselves not only from individual criminal acts, but also from systemic abuse of governmental power.

It's therefore essential for citizens to watch Parks Miller and all other government officials perform their public service; publicly criticize breaches of ethical and legal standards; promptly report evidence of wrongdoing to authorities; and consistently support independent, thorough investigations.

Trust in the legitimacy of the Centre County courts can't come from ignoring, hiding or excusing abuses of power. It can only be maintained – or in this case rebuilt – through publicly reporting, investigating and then stopping those power abuses.

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KW INVESTIGATIONS LLC
156 W. Hamilton Ave.
State College PA 16801
(814) 237-0996
kw.investigations.llc@gmail.com
steadystatecollege.wordpress.com
Facebook: Keyword "Bailiwick News"