

BAILIWICK NEWS

Volume 2 Issue 12 – April 19, 2018

* * *

Catching up with former District Attorney Stacy Parks Miller and her lingering impact on the Centre County justice system

By Katherine Watt

Between December 2016 and May 2017, *Bailiwick News* published a six-part series on law enforcement principles as prioritized by then-incumbent Centre County DA Stacy Parks Miller, and her then-challenger Bernie Cantorna, as evidenced through their respective work on criminal and civil cases. The collected series is available online: bailiwicknews.files.wordpress.com/2017/10/centre-county-da-series-compiled-1-6b.pdf

On Aug. 16, 2017, the Disciplinary Board of the Pennsylvania Supreme Court published a Feb. 22, 2017 “Petition for Discipline” against Parks Miller, and scheduled a disciplinary hearing for Nov. 29, 2017. The hearing was later postponed, and is now scheduled for Monday, April 23, 2018.

This series picks up the threads of the story from the last installment (May 2017).

Brief series recap

Part 1, published Dec. 16, 2016, included a timeline of a public controversy about Parks Miller’s alleged forgery of a Centre County judge’s signature on a fake bail order used in a sting operation gone awry, and Parks Miller’s apparent practice of engaging in *ex parte* communications with Centre County judges, improperly influencing judicial decisions during criminal prosecutions without the knowledge or input of defendants’ attorneys.

The timeline looked at multiple investigations into Parks Miller’s conduct, including a secret grand jury investigation controlled by then-Attorney General Kathleen Kane; document requests filed by defense attorneys under the Pennsylvania Right to Know Law (RTKL) to obtain evidence of text messages exchanged among prosecutors and judges; lawsuits filed by Parks Miller and judges to block public access to those texting records; and Parks Miller’s defamation lawsuit against 11 people who participated in the criminal investigations.

Part 2, published Jan. 6, 2017, took a closer look at the forgery allegation against Parks Miller, and provided an overview of the evidence, statutes and standards – including the fact that the grand jury only investigated “tampering with records or identification,” despite the original police report alleging that Parks Miller had engaged in “tampering with public records or information.”

Part 2 also presented varied interpretations of the legal significance of the grand jury’s investigative findings and a brief account of US District Judge Matthew Brann’s

March 3, 2016 questioning of Parks Miller’s attorney about the legal meaning of a bail order she herself described as “fake” and “pretend,” but which was nonetheless filed with the Centre County Prothonotary and made part of the public record.

Part 3, published Jan. 20, 2017, drilled down into Parks Miller’s prosecution of defendant Jalene McClure; Cantorna’s claims of prosecutorial misconduct bolstered with evidence of text messages between prosecutors and judges; Right to Know requests filed by other area defense attorneys; and Cantorna’s appeals to Superior Court requesting a new trial for McClure. Part 3 also introduced Brian Sprinkle, a forensic examiner at PATCtech called to testify during a hearing Jan. 11, 2017 about his possession of text messages and emails from phones that Parks Miller had claimed were destroyed or lost.

Part 4, published Feb. 5, 2017 focused on *Commonwealth v. McClure* and *Commonwealth v. Grove* as lenses through which to examine whether – under circumstances Parks Miller created and maintained – the Centre County court system was able to uphold citizens’ fundamental right to fair trials before unbiased tribunals.

Part 5, published April 21, 2017, summarized the legal arguments used by Parks Miller and the many defendants to her federal defamation suit as a window into Parks Miller and Cantorna’s differing views on government secrecy, privacy rights of public officials and private citizens, and the role of private citizens and public officials in maintaining the moral legitimacy of government entities.

Issues raised during the federal litigation included First Amendment free speech, immunity, fiduciary duty, negligence, defamation, false light, injurious falsehood, common law abuse of process, intentional and negligent infliction of emotional distress, concerted tortious conduct and conspiracy. In May and September 2016, Judge Brann dismissed all of Parks Miller’s claims; she appealed his rulings to the Third Circuit Court of Appeals.

Part 6, published May 8 and May 13, 2017, reported on the Centre County Investigating Grand Jury’s findings regarding the hazing death of Penn State student Timothy Piazza; the history, structural secrecy and paradoxical sword/shield nature of investigating grand juries generally and in Pennsylvania law; the statewide IGJ’s investigation into Parks Miller’s alleged forgery; Pennsylvania’s lack of a “bystander law” requiring witnesses to a crime to report it or face charges for their failure to report it; the lack of charges filed against the fraternity advisor Tim Bream and Penn State Vice President for Student Affairs Damon Sims; and the implications of selective law enforcement on criminal justice system credibility.

Election Results

At the polls on Tuesday, May 16, 2017, Centre County voters nominated Cantorna for both the Democratic and Republican sides of the ticket.

Among registered Democrats, Cantorna beat Parks Miller by 7,156 votes (69.42%) to 3,135 (30.41%) votes.

Among registered Republicans, who voted by write-in because there was no official Republican candidate, Cantorna beat Parks Miller by 3,633 votes (79.53%) to roughly 930 votes (20.46%)

Cantorna garnered 22,444 votes during the Nov. 7, 2017 general election – 98.54% of the total votes cast.

He was sworn in on December 29, 2017.

Right to Know Litigation

In April 2012, Centre County court reporter Maggie Miller was involved in a conversation with then-Common Pleas Judge Bradley Lunsford during a recess in the four-day *Commonwealth v. Randall Brooks* criminal trial.

During the conversation, Lunsford told Miller that he and District Attorney Parks Miller were texting to each other during the trial. Lunsford complained that through texts, Parks Miller was “bitching to him” about the way Judge Lunsford handled some objections and how he was handling the trial.

Maggie Miller consulted with Lunsford’s secretary, Joan Parsons, who confirmed that Lunsford regularly texted during trials. Shortly after the incidents, Maggie Miller discussed the issue with Sean McGraw who was, at the time, working as an assistant DA in Parks Miller’s office.

From September 8-11, 2014, during the trial of his client, Jalene McClure, Centre County defense attorney Bernard Cantorna observed that the case seemed to be “fixed” between Assistant District Attorney Lindsay Foster and Judge Lunsford, based on a peculiar sequence of pretrial, trial and post-trial rulings appearing to give the prosecutors preferential treatment, by, for example, granting unfounded objections.

On the basis of Cantorna’s own courtroom observations, Cantorna filed a motion on Oct. 13, 2014 asking Lunsford to recuse himself from sentencing based on the appearance of bias.

After filing the motion, Cantorna described his experience to McGraw – who had since entered private practice as a defense attorney. In response, McGraw shared court reporter Maggie Miller’s account of Judge Lunsford’s texting from the bench during the Randall Brooks trial in April 2012.

Pursuing that lead, in late October, Cantorna filed a series of document requests under the 2008 Pennsylvania Right to Know Law (RTKL) with then-Centre County Administrator Timothy Boyde. Cantorna requested phone and email records between Lunsford, Parks Miller, and two assistant district attorneys – Nathan Boob and Lindsay Foster – before, during and after the McClure trial.

At the time, Centre County government had three Right to Know officers: 1) the County Administrator, who handled County-related requests; 2) the Court Administrator, who handled court-related document requests; and 3) the District Attorney, who handled DA-office related requests.

Cantorna directed his document request to Boyde because the Centre County government paid the Verizon phone bills for District Attorney office staff and Centre County judges, making them financial records in the physical control of the County administration.

Also on Oct. 23, 2014, Cantorna filed a motion to preserve and produce evidence, to protect future access to the cell phones and cell phone records, to confirm or refute his belief that the texts were related to the trial.

On Oct. 30, 2014, Judge Lunsford held a hearing on the motion to recuse at which he and Parks Miller both flatly denied that any texting had occurred. Lunsford further denied the recusal request, denied the motion to preserve and produce evidence, and quashed Cantorna’s efforts to obtain testimony from ADA Foster and ADA Boob.

The next day, October 31, Lunsford sentenced McClure to 10-20 years, significantly in excess of the sentencing guidelines for the charges.

(In December 2016 it emerged that the phones belonging to Lunsford, Parks Miller and other DA staff had all been returned to factory settings, “wiped clean, destroyed or otherwise made unavailable,” as reported in more detail in Jan. 20, 2017 and Feb. 5, 2017 *Bailiwick News* reports.)

County Administrator Boyde responded to the Cantorna’s RTK requests on or about Nov. 6. Boyde provided Cantorna with Verizon records showing the dates and times of communications, but not the contents.

Among more than 800 messages exchanged by Judge Lunsford and the three prosecutors (Parks Miller, Boob and Foster) between jury selection (August 4) and October 10, were 100 text messages exchanged between Lunsford and Foster between 8 a.m. and 5 p.m. on the September McClure trial dates, while the judge was sitting on the bench.

By December 5, 2014, then-Centre County President Judge Thomas King Kistler had removed Lunsford from hearing any further criminal cases other than DUIs.

Over the next several months, the initial texting revelations prompted several other defense attorneys to file RTK requests about specific time intervals, to discover whether texting and phone communications had affected the impartiality of their clients’ trials, and to file motions for new trials, new sentencing and recusal of the judges and prosecutors involved in the texting controversy.

For example, in December 2014, Centre County defense attorneys Andrew Shubin and Sean McGraw filed a request for records of communications between Magisterial District Judge Kelley Gillette-Walker, DA Parks Miller and ADA Boob, for March 2-19, 2014, an interval that included court appearances for their client Justin Blake.

Boyde fulfilled the request, revealing extensive texting among Gillette-Walker and the DA's staff. Shubin and McGraw later included the evidence in a motion on behalf of their client on March 6, 2015.

Defense attorney Theodor Tanski, of McShane Law Firm, filed a RTK request seeking records of phone and text communications records among Common Pleas Judge Jonathan Grine, Judge Lunsford, DA Parks Miller and ADA Nathan Boob for Sept. 16 to Nov. 12, 2014, an interval that included judicial hearings concerning Tanski's client Ryan Fleck.

Boyde fulfilled the request, providing evidence of extensive phone and text messages among the judges and DA staff.

March 2015 – Judges and Parks Miller hit back

On March 16, Judge Grine and Judge Gillette-Walker filed suit in Centre County court for emergency injunctions. Grine and Gillette-Walker sought to stop County Administrator Boyde from fulfilling additional RTK requests and to stop the defense attorneys who had already obtained evidence of *ex parte* communications from releasing the information to the general public on grounds that records relating to activities of judges pertain to a judicial agency, and so, under the separation of powers doctrine, the County lacked jurisdiction to release the records.

On March 23, Parks Miller filed her own requests for injunctions, claiming that the District Attorney's office is also part of the state judicial system, and that DA records are therefore judicial records.

Judge Charles Brown granted all three emergency, temporary injunctions, effectively blocking public access to the evidence that would answer the question of whether district attorneys and judges had engaged in prosecutorial and judicial misconduct.

The cases were docketed at 15-1079 (*Gillette-Walker v. Centre County, et al*); 15-1080 (*Grine v. Centre County, et al*) and 15-1185 (*Parks Miller v. Centre County et al*).

The cases were then assigned to Huntingdon County Common Pleas Judge Stewart Kurtz, who heard oral arguments during April and May 2015 and issued a series of permanent injunctions ordering Boyde to stop responding to RTK requests for communications to and from Parks Miller and other DA staff members, and communications to and from Grine, Gillette-Walker and other judges, and directing Boyde to forward future RTK requests for phone records to either the court's RTK officer, or the DA's RTK officer.

In making his rulings on Grine and Gillette-Walker's claims, Judge Kurtz adopted the judges' position that communications records of phone and text messages should be categorized as non-financial judicial records, therefore exempt from disclosure under the RTKL, which only requires judicial agencies to release financial records.

For Parks Miller's case, Judge Kurtz relied on her claim that the District Attorney's office is also a "judicial agency" and therefore exempt from all RTK disclosures

except request for financial records, and that most – if not all – other records held by the DA's office are exempt from disclosure under the Criminal History Records Information Act (CHRIA).

May 2015 – Appeals begin

Mary Lou Maierhofer, Esq., promptly appealed Judge Kurtz's orders to the Commonwealth Court (an intermediate appellate court) on behalf of Centre County.

The "Judicial Cases" (Gillette-Walker/1079 and Grine/1080) were docketed at 854-CD-2015 and 855-CD-2015. The "DA Cases" (Parks Miller/1185) were docketed at 856-CD-2015 and 857-CD-2015.

On the judicial cases, the county insisted that even though the RTKL only requires the judiciary to release financial records, judges' phone records are financial records and therefore subject to disclosure as such.

On the DA cases, the county argued that District Attorney records must be handled as "local agency" records under the RTKL – generally subject to disclosure with limited exemptions – and are not "judicial" records because DA's office is a part of the executive branch, not part of the judicial branch of government.

In all four cases, Parks Miller and the compromised judges sought to block the public right to know the quantity and contents of text messages and phone calls exchanged between prosecutors and judges during criminal prosecutions.

Parks Miller and her personal attorney – Bruce Castor – argued that the DA's office is a judicial agency, DA staff are employees of the judiciary and DA office records are "judicial records" and therefore inaccessible under the RTKL, except for financial records.

Parks Miller claimed that the telephone records provided by Boyde to the attorney requestors were not financial records subject to disclosure, and further claimed that the county RTK officer (Boyde) lacked jurisdiction to respond to RTK requests about the District Attorney's office even if the County controlled those records (as the payer of the phone bills) because the DA's office had its own Right to Know Officer: Parks Miller herself.

On May 8, Judge Lunsford's former court reporter Maggie Miller signed an affidavit memorializing her observation of Lunsford and Parks Miller texting during a criminal trial. Cantorna attached the affidavit to his appeal to overturn the McClure conviction and sentencing. Miller's affidavit was also supplied to the Disciplinary Board and the Judicial Conduct Board of the PA Supreme Court as evidence of ethical violations requiring investigation and disciplinary action.

Meanwhile, also in May, Centre County Chief Public Defender Dave Crowley filed a Right to Know request with the Centre County Administrator for Judge Lunsford's telephone and text message records.

Just after the Kurtz permanent injunctions came out, County Administrator Boyde denied Attorney Crowley's RTK Know request.

Crowley promptly appealed Boyde's denial to the

Pennsylvania Office of Open Records (OOR), where it was docketed at OOR-812.

July 2015 – OOR decision conflicts with Kurtz injunctions

In July 2015, the Pennsylvania Office of Open Records issued a final decision in Public Defender Crowley's appeal (OOR-812) of Centre County Administrator Boyde's denial of Crowley's May 8 RTK request.

The OOR ordered Boyde to fulfill Crowley's request.

Parks Miller's attorney, Bruce Castor, then sent a letter to Boyde demanding he *not* fulfill Crowley's requests, given the contradiction between the OOR-812 ruling and Kurtz' orders.

Caught in the bind between an OOR order to release records and a court order to withhold records, Centre County appealed the OOR-812 decision to Centre County Court of Common Pleas.

The case was assigned to Judge Kurtz, essentially asking him to review his own lower-level orders. Judge Kurtz ordered a stay of the county case pending the outcome of the Commonwealth Court appeals.

Commonwealth Court decisions

After briefing rounds in the autumn of 2015, Commonwealth Court held oral arguments in Philadelphia in February 2016. The five-judge *en banc* panel included Hon. Mary Hannah Leavitt, Hon. Robert Simpson, Hon. P. Kevin Brobson, Hon. Patricia McCullough and Hon. Michael H. Wojcik.

On March 15, 2016 the Commonwealth Court issued the first of two rulings with far-reaching implications for citizen efforts to hold the Pennsylvania court system accountable to the public for fair and impartial administration of justice using the 2008 Pennsylvania Right to Know Law (RTKL).

Judge Simpson, writing for the majority regarding the legal position of the District Attorney's office under the RTKL, (the DA Cases) held that "employees and elected officials of the District Attorney's office are not 'judicial employees' or court-supervised personnel."

District Attorneys, Simpson wrote, are "related staff...those who function aids the judicial process but who are not supervised by the courts...The district attorney is a county-elected position. Its staff attorneys are personnel of the office of the district attorney, not of the judiciary ... Indeed, as district attorneys are a prosecutorial arm of government, court supervision of prosecution could raise separation of powers questions."

Simpson also distinguished district attorneys – whose role is governed by the County Code and includes broad discretion in prosecutorial decisions – from ministerial court officials (clerks of court and Prothonotaries) who have no discretion in fulfilling their duties and are governed by the Judicial Code.

In mid-April 2016, Judge Simpson issued the Commonwealth Court ruling on the Judicial Cases,

affirming the trial court (Judge Kurtz) decision "with modification."

The Commonwealth Court panel ruled that judges are part of a judicial agency, and that their phone records are financial records subject to disclosure to the public, but that the county does not have authority to release those records.

Simpson wrote that, under the separation of powers doctrine, oversight of judges is the sole province of the PA Supreme Court, and that therefore requests for judicial records – including financial, phone and text records – must be handled by the court's RTK officer, not the county RTK officer or the DA's RTK officer.

Appeals to Pa. Supreme Court

Centre County filed a petition to appeal the Commonwealth Court decision in the Judicial Cases to the state Supreme Court. On Oct. 11, 2016, the Supreme Court denied the county's request, leaving the Commonwealth Court decision to stand.

The decision was later reported as *Grine v. County of Centre*, 138 A.3d 88 (Pa. Commonwealth, 2016).

Parks Miller also filed a petition to appeal the Commonwealth Court decision in the DA Cases to the state Supreme Court. Her appeal request was granted, later docketed at 98 MAP 2016 and 99 MAP 2016.

Along with briefs by the two main parties – Parks Miller and Centre County – several organizations filed amicus briefs in support of the county position.

The Pennsylvania Office of Open Records, the Pennsylvania News Media Association, the American Civil Liberties Union Pennsylvania Chapter and the Public Defender Association of Pennsylvania all filed briefs supporting the Commonwealth Court's decision that the DA's office is a part of the executive branch of government and a local agency subject to broad disclosure of its records under the Right to Know law, not a part of the judicial branch of government or a judicial agency, and that defining the District Attorney as a judicial agency would violate the separation of powers doctrine.

Parks Miller argued that the District Attorney is "part of a 'team' comprised of judges, court staffs, lawyers, clerks, etc. that, taken as a whole, serve as the 'unified judicial system.'"

Centre County retorted: "The County has no doubt the District Attorney believes this statement. She sees the judiciary as part of her criminal prosecution team and she created this litigation by communicating with the judiciary as if they were her teammates rather than impartial referees. This Court must correct the District Attorney's misconception. The persons accused of crimes in Centre County have a right to know if they receive fair and impartial justice."

Parks Miller further claimed that defining District Attorneys offices as part of the judicial system would not violate the separation of powers doctrine because, in her view, the state Supreme Court's licensing and disciplinary oversight of attorneys for infractions of Rules of

Professional Conduct under the Judicial Code is just one part of the Court’s “effort at maintaining its exclusive control over the judicial *process* and the persons who conduct it.”

Supreme Court decision

The state Supreme Court ruled on Parks Miller’s appeal on Nov. 22, 2017.

Justice Wecht, writing the majority opinion, cited (among other authorities) the Statutory Construction Act to “ascertain and effectuate the General Assembly’s intent” in adopting the Right to Know Law.

Justice Wecht described Parks Miller’s arguments to include DA’s within the definition of judicial system and related personnel under the Judicial Code and Rules of Judicial Administration “facially curious,” rejected her arguments and affirmed the Commonwealth Court’s March 2016 decision.

Justice Donohue filed a concurring opinion, reaching the same conclusion but focusing more closely on the legislative intent of the RTKL.

Justice Donohue wrote:

“Such analysis leads to the inescapable conclusion that the interpretation urged by Parks Miller is not supported by the language of the RTKL and also leads to an absurd and unreasonable result not intended by the General Assembly.”

Highlighting that Parks Miller identified herself, in her brief, as “an executive branch official,” Justice Donohue pointed out, “[a]s a result, under the RTKL, Parks Miller is not a ‘judicial agency’ but rather is a ‘Commonwealth agency,’ which the RTKL defines as ‘[a]ny office...of the executive branch.’”

Justice Donahue cited to the County Code and the Commonwealth Attorneys Act, to emphasize that the state Attorney General and county DAs are analogous offices, and that since the Attorney General is expressly named in the RTKL as a Commonwealth agency for which all records are presumed to be public records, District Attorneys must also be ‘Commonwealth agencies’ or else the Attorney

General would be required to release documents to the public that the District Attorneys would be permitted to withhold from the public.

Addressing Parks Miller’s claims regarding Supreme Court supervision of attorneys, Justice Donohue wrote: “Parks Miller fails to distinguish between this Court’s authority to license and discipline all attorneys practicing law in the this Commonwealth and our lack of supervisory power over the discretionary acts of prosecutors.”

Justice Donohue used strong language to address Parks Miller’s assertion that prosecutors and judges serve on the same “team,” writing:

“I reject out-of-hand Parks Miller’s notion that district attorneys and the judiciary are on the same ‘team.’ It dangerously conflates those charged with asserting and prosecuting criminal charges on behalf of the citizens of this Commonwealth, i.e. district attorneys, with those charged with overseeing and adjudicating those charges through the impartial administration of justice, i.e., the judiciary. Parks Miller’s highly generalized view of the unified judicial system misconstrues the role of district attorneys in our constitutional system.”

To be continued...

* * *

Bailiwick News is an independent newspaper offering reporting and critical analysis of Centre County public affairs.

COPYRIGHT 2018
KW INVESTIGATIONS LLC
156 W. Hamilton Ave.
State College PA 16801
(814) 237-0996

kw.investigations.llc@gmail.com
bailiwicknews.wordpress.com