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Case No 14 MI 017

## MEMORANDUM

TO: JUDGE BRUCE WINTERS OTTAWA COUNTY COURT OF COMMON PLEAS

FROM: SR. AAG MAGGIE TOMARO, SPECIAL PROSECUTIONS SECTION

DATE: FEBRUARY 27, 2015

SUBJECT: OTTAWA COUNTY ALLEGATIONS AND INVESTIGATION

FILED  
 COMMON PLEAS COURT  
 2015 FEB 27 PM 3:34  
 GARY A. KORNHUBER  
 CLERK OF COURTS  
 OTTAWA COUNTY, OHIO

ACTION DATE: NOVEMBER 26, 2014 THROUGH FEBRUARY 23, 2015

Your Honor, pursuant to your appointment of the Ohio Attorney General's Office to act as Special Prosecutors in entry number 14MI017 dated November 14, 2014, I am submitting the following report. As a result of this investigation and my subsequent review, I have filed charges in the Municipal Court charging Chief Lampela with Aggravated Menacing, Falsification (2 charges) and Dereliction of Duty. As these charges are pending, this report will not deal directly with the pending charges.

The appointment in this case was open ended and regarded general allegations of criminal misconduct. Neither the investigation nor my actions as special prosecutor were an administrative investigation. However, administrative decisions and the culture of the Put-in-Bay police department were alleged by witnesses to be criminal in nature and required further investigation.

During this matter, it became apparent that persons involved could become involved in civil litigation. Appropriate steps were taken to mitigate any concerns that this criminal matter might be being misused to give any person an advantage in an actual or potential civil proceeding.

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I: Background:

I was assigned as the Special Prosecutor for Ottawa County to address allegations into alleged public corruption by members of the Put-in-Bay Police Department. The main complaints<sup>1</sup> are outlined below and addressed accordingly.

As the Court may be aware, Ottawa County Sheriff's Detective Joel Barton began his investigation five months prior to the Attorney General's involvement as special prosecutor in this matter. The Ottawa County Sheriff's Office was the lead investigatory agency and as such was responsible for the investigation.

I utilized the following procedure to gain a comprehensive understanding of the facts:

- Listen to all audio interviews,
- Gather or review all evidence previously or subsequently submitted,
- Review all reports by Det. Barton and BCI SA Lieber,
- Assessed and follow up where needed on information,
- Review of all materials listed in the next section (II).

During the course of my review, several persons or their attorneys contacted me with additional physical items and information. All persons were contacted, and reasonable follow up was conducted and reviewed.

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<sup>1</sup> During the course of the Ottawa County Sheriff's investigation subcomplaints were made, these subcomplaints all have their roots in the main complaints listed. Please refer to the investigative documents for a comprehensive understanding.

## II. Materials Reviewed:<sup>2</sup>

1. List of audio interviews from Ottawa SO (50+ hours), audios/videos submitted by witnesses;
2. Ottawa SO final report, date received February 2015;
3. Follow-up reports (BCI); various dates;
4. Put-in-Bay Police Complaint Report, dated September 2013; tickets, etc.;
5. Put-in-Bay, Ohio Code of Ordinances;
6. Village of Put-in-Bay Policy Manual, not dated;
7. Put-in-Bay PD policies and procedures manual, 2003;
8. Ohio Revised Code, various Sections (cited below);
9. Put-in-Bay Parking Violations Bureau correspondence with parking codes, copies of Tickets;
10. EEOC Documents were sought. However, these documents have been destroyed by EEOC likely in 2006 or 2007, pursuant to State record retention law, prior to Det. Barton opening his investigation.
11. Applicable Ohio Case Law
12. List of email correspondences received.

## III. Main Allegations:

### A. ALLEGATION: Police Chief Robert "Rick" Lampela and/or Put-in-Bay PD Officers Targeted Specific Persons and Establishments.

The main thrust of the allegations that were alleged by witnesses as a part of the Ottawa County investigation was that the Put-in-Bay Police Department at the behest of Chief Lampela targeted certain people or businesses for under enforcement or over enforcement based upon personal feelings.

Current and former officers of the Put-in-Bay Police Department when interviewed stated that they had not been specifically ordered to target any one person or establishment. In contrast, several business owners, employees of establishments, one former police officer, and council members complained of either being targeted or witnessing targeting, or feeling like they could not count on

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<sup>2</sup>The referenced items are intended for the reader to understand the base of knowledge and are not to document every conceivable source of information utilized. Much of the source documentation is not a public record due to the ongoing criminal prosecution please see State ex rel. Steckman v. Jackson, 70 Ohio St.3d 420, 431-432 (1994) "It is difficult to conceive of anything in a prosecutor's file, in a pending criminal matter, that would not be either material compiled in anticipation of a specified criminal proceeding or the personal trial preparation of the prosecutor."

the police department due to disagreements with the Police Chief or the Police Department in general. There are many firsthand accounts of persons disagreeing with Chief Lampela at a council meeting or other places, then subsequently receiving what could reasonably be viewed as poor treatment (such as slow response time or a lack of response) from the police or an unusual amount of citations for his or her business assets (e.g. tickets for golf carts improperly parked) or family members receiving citations when others might be let go with a warning or taken home (such as open container citations or OVIs in a golf cart).

There are several reasons why the targeting allegations do not rise to the level of criminal conduct. First, assuming that persons may have been in fact targeted, this does not mean that probable cause did not exist for their citations by police. Second, as discussed below and outlined in the investigative documents, review of the alleged targeting allegations generally found that police had probable cause for the citations they issued in these specific instances. For example, in a complaint regarding targeting of open container enforcement, one person might be let go with a warning while the other might be cited, but both were in fact in violation. All police officers have some degree of discretion in issuing low-level citations, although that discretion varies from department to department and jurisdiction to jurisdiction. Third, the targeting alleged by witnesses was not the result of prohibited bias such as race, gender, religion, etc. No cases are presented in which probable cause exists to show officers fabricated factual situations.<sup>3</sup>

The term *targeting* as used in this memo, based upon the available facts, does not rise to the level of a crime under Ohio Law. No allegations have been made that a person was targeted for extra scrutiny or lack of enforcement because of their membership in a protected class such as race, gender, ethnicity, religion, or political affiliation. This targeting, to the extent it was documented, is believed to be a product of the current lack of training, oversight, and unprofessionalism of Chief Lampela or his officers at the time of each claimed incident.

The Put-in-Bay Police Department was dealing almost exclusively with relatively minor offenses. The lack of experience dealing with major offenses may have served to reduce appropriate perspective. The use of discretion in issuing citations was often unfair, unprofessional, and problematic, but not criminal.

#### B. ALLEGATION: Mayor(s) Allegedly Failed to Act to Restrain Criminal Behavior & Village Council Member(s) Resigned In Fear of Retaliation.

As noted above, this is a criminal investigation but the following section is discussed due to the fact it not only provides information in regards to potential *mens rea*, but also because it demonstrates a culture of unprofessionalism.

Recently-resigned council member Mr. Terry Bodenbender was quoted in newspaper reports that he quit council out of fear of retaliation and for health reasons. Mr. Bodenbender stated to me that the newspaper misquoted him. He stated that he left because he was frustrated by the process, the inaction of the mayor, and disputes over the legal advice being given by Mr. Wilbur, Village Counsel.

<sup>3</sup> The Village is now apparently grappling with liability insurance issues.

Many complainants noted that they went, at the time of the incident, to the Mayor with their complaints, including the former mayor and current mayor, to no avail. From the investigative report, the current mayor took no notable administrative action against any officers or the department as a whole, based upon the complaints she received, some of which could have been the basis for a criminal investigation.<sup>4</sup>

C. ALLEGATION: Put-in-Bay Police, the Ottawa County Prosecutor, and the Ottawa County Municipal Court engaged in criminal conduct by arresting and later prosecuting individuals for obstruction.

Of considerable recent controversy are the trials regarding arrests at the Put-in-Bay Resort Hotel in September 2013. The persons subject to arrest or indictment were represented by counsel. They had their trial and were acquitted by a jury. Any further issues regarding these trials are a civil matter and not the basis for any criminal prosecution.<sup>5</sup> Most people interviewed are still upset about the events of that evening and the subsequent trial. These witnesses believe there is some sort of criminal conduct that should be prosecuted. For example, the reduction of Mr. Smith's parking ticket has been called, by witnesses, extortion, falsification, etc. I find no evidence of criminal conduct surrounding the parking tickets and the subsequent reduction of the ticket to a \$10 fine because those decisions made by Chief Lampela were within his discretion.

D. ALLEGATION: Chief Lampela/Korossy have Facebook Pages under Pseudonyms

Some witnesses allege they have been criminally intimidated in social media by Put-in-Bay police who allegedly use an online pseudonym by the name of "Bruce Kroger" and other various names. It was alleged that this page contains mug shots and arrest information which is criminally intimidating. There is no direct evidence the "Bruce Kroger" Facebook page was created by Chief Lampela. One witness claimed the IP address of several other Facebook pages show they are manned by another officer, Sgt. Steve Korossy. Even if true, this would merit further investigation only if the messaging involved potential criminal conduct, which it does not.

If the jail photos or criminal records were obtained through confidential law enforcement databases, then some of the social media content could be potentially a crime. However, the pictures and arrest

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<sup>4</sup> I note more than a dozen potential administrative violations of the *Put-in-Bay Policy and Procedure Manual* possibly committed by Chief Lampela.

<sup>5</sup> See, Bradley v. Reno, 749 F.3d 553 (6th Circuit 2014), Rehberg v. Paulk, 132 S. Ct. 1497 (2012), Pierson v. Ray, 386 U.S. 547, 554-555, (1967), Imbler v. Pachtman, 424 U.S. 409 (1976)

information appear to be from publicly accessible websites. Therefore, there is no reason to address the matter any further than has already been investigated.

Furthermore, nothing contained on the Facebook pages was criminally threatening toward any one person or entity. The postings of persons' photos or arrest information may have been embarrassing, but posting public information in that manner is not a crime under Ohio law. The documents and pictures posted appear to be public information, and no one has claimed the documents or pictures posted were fabrications.

#### E. Other Miscellaneous Complaints which Lack Probable Cause for Criminal Prosecution

Some complaints clearly did not rise to the level of criminal prosecution. These allegations, after investigation, could not provide probable cause for a criminal charge. These complaints fall into one of the following categories:

1. They lack sufficient evidence;
2. They are so old that no evidence exists to corroborate the allegations (e.g. duty logs, video, radio, or audio are no longer available);
3. The allegations do not rise to the level of criminal conduct;
4. They are based on hearsay, rumors, or the "telephone game" (e.g. skewed facts over the years where names have been changed and details have been embellished, etc.).

It should be clearly stated that the inability to bring criminal charges does not mean that nothing improper occurred. **To the contrary, the professionalism of the Put-in-Bay Police Department often fell far short of what should be expected. However, it is not a crime to be unprofessional.**

#### IV. Findings and Recommendations:

##### A. Flagrant Violations of Local Policy and Procedure:

The investigation revealed numerous examples of violations of local policies and procedures, which should have been known by Village Council and the Mayor for many years. While not criminal in and of itself, there is what appears to be a pattern of inconsistency in the enforcement of the laws at Put-in-Bay and disparate treatment of individuals. The investigation reveals that numerous persons went to the mayor when the Chief failed to act or they felt they could not get treated fairly by police. A majority of the officers in the department that were interviewed expressed that they were in a constant state of fear of being fired for the smallest infraction and displayed discontent with culture of the Put-in-Bay Police Department.

B. Inadequate Training Program:

Put-in-Bay Police Department officers deal with an especially unique situation in law enforcement. They are, by and large, a part-time department that is expected to perform what amounts to high-level street policing—interacting with large crowds of people who have no ties to the area, are often intoxicated, and often times act inappropriately. Most officers are expected to work only at the height of the busy season, lack experience, are undertrained, and have not been given the particularized guidance needed for this community. Most persons questioned used the word “incompetence” to describe the officers’ action or inaction, rather than “criminal.”

Proper leadership and training is necessary to prevent this type of conduct in the Village of Put-in-Bay.

Respectfully Submitted:



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