

2016 Year-End Report
Ingham County Prosecutor Gretchen Whitmer

It has been an honor serving as Ingham County Prosecutor. As this chapter draws to a close, I will always be grateful for having had this opportunity. Among many other things, I believe that the public's trust in this important office has been restored.

You can live in a community almost your whole life and not see a tough side to it that many citizens confront every day. My 6 months working with the people of the Ingham County Prosecutor's Office (ICPO), victims, the judiciary and law enforcement has been a true education. I am grateful to have seen so many of our great ICPO attorneys and support staff in action. This is a brief summary of the events that have happened over the last 6 months.

Due Diligence on the Ingham County Prosecutor's Office. As we know, my predecessor was charged with numerous crimes, and resigned as he awaited trial. Eventually the former Prosecutor pled to a lesser charge of felony Misconduct in Office. While the case was pled down from the original charges, it is a very serious offense. No one is above the law, and the conduct associated with this offense was enormously destructive.

As Prosecutor, my first action in office was to study the conduct not only of the previous Prosecutor, but also of the entire office. I conducted over 100 interviews with the 63 employees of the ICPO, members of the bench, heads of law enforcement throughout Ingham County and members of the defense bar. On July 22, 2016, I reported that regarding the pending criminal allegations against the former Prosecutor, I had "full confidence that any problem that had existed in this office, left with Mr. Dunnings" and that employees of the ICPO were unaware of his criminal behavior.

Subsequent to that finding, the Attorney General released further evidentiary materials (none of which were available to me at the time) which independently supported my conclusions.

On October 28, 2016, and after reviewing over 500 pages of heavily redacted emails, acquired via the Freedom of Information Act (FOIA), the Lansing State Journal (LSJ) ran an article that questioned my conclusion, citing two issues previously unknown to me, stating

"Indeed, some records indicate Dunnings enlisted aid from other public employees . . . Details included in more than 500 pages of investigatory reports obtained Thursday by the State Journal through a Freedom of Information Act request show more public employees were aware of Dunnings' activities than Ingham County Sheriff Gene Wriggelsworth had earlier described. They also run counter to current Ingham County Prosecutor Gretchen Whitmer's July 22 assertion that all employees in her office were shocked at the March 14 announcement that Dunnings had been charged.

In August 2012, charges were inexplicably dropped in a drug paraphernalia case. When an investigator interviewed the person who dropped the charges — *likely an assistant prosecutor*, whose identity was redacted from the report — the person told the detective she doesn't know why she dismissed the case and "she would've documented if someone had contacted her requesting she dismiss the charges."

(I)nvestigators found at least eight women had been released from the jail in 2015 "at the request of the prosecutor *or the prosecutor's office*." The Sheriff's Office oversees the jail."

Emphasis added.

In light of the LSJ article, I made a FOIA request to ascertain the veracity of these statements. It is now clear that the drug paraphernalia charge stemmed from charges in 54-A District Court under a Lansing City ordinance #622.01B and accordingly would not have been within the jurisdiction of the ICPO, but rather that of the City Attorney's Office. In addition, I contacted the FBI and was told that Mr. Dunnings himself made the 8+ calls to release the women from jail. Therefore, it is my continued belief that the conclusion in the report is accurate.

Recusals. Whenever questions have been raised about the possible improper involvement of Mr. Dunnings in a pending case, I have recused the ICPO from any further participation. Statute allows such cases to be handled by a Special Prosecutor, or by the Attorney General. This is an important law – one that we scrupulously follow, so that even the appearance of impropriety is avoided. To date, the Ingham County Prosecutor's Office has recused on five cases.

I worked with Eaton County Prosecutor Doug Lloyd and Chippewa County Prosecutor Dennis McShane to oppose serial killer Don Miller's release. We worked with victims, law enforcement and witnesses to make our case before the Michigan Parole Board. Miller was convicted of murdering numerous women, and committed other violent felonies, during the late 1970s. As a result of our effort, the Parole Board denied Miller's parole.

As Prosecutor, I established a new Domestic Violence Unit that, for the first time, coordinates domestic and sexual violence cases within one group of dedicated and cross-trained professionals. We believe this is an important reform because the dynamics of sexual assault and domestic violence are similar. We have worked closely with advocates and providers to continuously improve our work on behalf of victims in Ingham County.

Sheriff Gene Wriggelsworth and I announced criminal charges against David Hovarter, a local school teacher, for sex offenses that were allegedly perpetrated against an underage female student.

This past September, at the invitation of Wayne County Prosecutor Kym Worthy, I keynoted the National Sexual Assault Kits Summit in Detroit. This conference featured participation

from advocates around the country. I shared my story as a survivor of sexual assault, and how I am working to advocate on behalf of the voiceless, and those who have been sexually assaulted.

As Prosecutor, I have worked to provide equal justice under the law, without regard to position or privilege holding two public servants to the same legal standards we must all abide. In September, my office charged a Lansing Police Officer Charles Funk with criminal conduct, for failing to yield to a handicapped pedestrian, after he allegedly struck a wheelchair-bound man with his patrol car. My office also filed charges against Jana Dufort, Bunker Hill Township Treasurer, for allegedly embezzling public funds as an elected official. Mr. Funk and Ms. Dufort are currently facing trial, and each has resigned their position.

The Ingham County Prosecutor's Office has a staff of 63 persons, and an annual budget of approximately \$7 million. I managed the office during our annual budget process. We made the case for an additional Diversion caseworker. I believe that non-violent first-time offenders should be sanctioned in a community-based, non-incarcerative setting. It will also save resources and alleviate overcrowding at the jail.

I have worked to improve courtroom security. In September, a violent altercation erupted during the trial of repeat sex offender Joshua Harding. Harding had been convicted of molesting a child in a graveyard. It was his second sex crime conviction. During the trial, Mr. Harding (who had arrived from jail) lunged at Assistant Prosecutor/Unit Chief Jonathan Roth. He was armed with a "shank" or makeshift knife. I worked with the Circuit Court and the Ingham County Sheriff's Office, with the aim of increasing courthouse security and determining how this offender possessed a deadly weapon in court.

As Prosecutor, I attended the annual Prosecuting Attorneys Association of Michigan Annual Conference and addressed my colleagues throughout the state, with a presentation on pending criminal justice legislation. Our local prosecutors have a wealth of experience within the criminal justice system, and I would encourage our legislators to hear their concerns as they consider changes and reforms to the system.

I also addressed the Lansing City Council on laws concerning medical marijuana dispensaries, and providing safe patient access. Subsequent to that address, legislators passed a bill providing for dispensaries (with a local option) on a statewide basis. The new dispensary legislation also provides for above-board tracking of medical marijuana cultivation. I believe this will increase public safety in our state.

As Prosecutor, I handled multiple cases of alleged crimes during political protests. As the home of the Capitol and Michigan State University, our county is ground zero for many political debates that often become heated. We dismissed charges against a disability rights protester, for actions that he allegedly took during a rally on the capitol steps. We declined to press charges for what we ultimately believe was a heated and profane debate between a state legislator and a citizen engaged in protest. And we have returned for further investigation a

case against protesters on the Michigan State campus. In that case, these persons were protesting the “Alt-Right” views of the white nationalist movement as well as the incoming President.

In each of these cases, we have moved with discretion, to be extremely careful to refrain from using the criminal laws to curtail political speech. Whenever possible, I believe we should err on the side of allowing speech, and not use our jails and prisons to punish people for robust debate.

Once I learned of evidence problems in the Ingham County Sheriff’s Office I asked the Michigan State Police to conduct a criminal investigation; I also temporarily hired a special investigative prosecutor (Catherine Emerson) with 20 years of prosecution experience, to audit each one of our cases handled by the Sheriff’s Office from 2010 – 2014. To date, my office has dismissed nine such cases, due to evidence problems. None of these cases involved a violent felony, or the abuse/neglect of a child. Ms. Emerson is still auditing these cases, and she will soon have a full report for my successor, Ms. Siemon.

During my tenure in office, there was no case that was as brutal and heinous as the crime of murder, committed against five-year-old Luna Younger this past November. My office filed murder charges against Thomas McLellan, who was the husband of the victim’s mother.

My office has had successful prosecutions in numerous cases of gun violence and homicides. Recently we secured convictions against Jamell Barber (home invasion, armed robbery, and felony firearm), Herbert Alford (second-degree murder) and Robert Smith (manslaughter).

As Prosecutor, I have worked to reinforce stringent ethical standards for the Assistant Prosecutors in our office, and to provide training on ethics issues. I have also implemented a new policy manual, with direction and guidance on critical issues.

Last summer, my Chief Assistant and I met with many local black pastors, and worked to address issues of common concern, including “open carry” of firearms, and gun violence in our community. It’s an honor to work with those who are in the grassroots of our community, bettering our society through their faith and work.

Our office participated in the annual Michigan Responds to Hate conference, directed by the Michigan Department of Civil Rights. In the past year, we have seen that hate speech has entered the mainstream of our society. Working with advocates across our state who are fighting against hate crimes and bias incidents, we can make Ingham County and Michigan a more tolerant and just place to live.

During my first week as Prosecutor, I rode along with the Lansing Police Department (LPD) on their Friday night shift. I was truly impressed with the professionalism and judgment of the police as they interacted with the people we serve. Many thanks to Sergeant Nick Hughett and the Violent Crimes Unit of the LPD. The incident that vividly remains with me is when the unit

responded to a domestic violence call and arrested a man driving around Lansing with a cache of weapons including two assault rifles, hand guns, knives and nunchucks. He was a purple heart veteran suffering from Post-Traumatic Stress Disorder.

In many cases such as this, police struggle to find adequate services. Often they confront people who are agitated or using substances. Many of these citizens fall through the cracks simply because they do not fit into a well-defined profile. The ICPO works with mental health, Veterans and sobriety courts, to build comprehensive programs that meet people where they live and steer them in the right direction. But we need a better system.

While we have handled a number of serious and violent cases as Prosecutor, I remain hopeful about the future of our community, our state. It has been a great challenge, to go from writing our state's laws to enforcing them. I am moving on, hopeful that I have helped to restore the public's trust in this important office. My best wishes to the people of Ingham County, the women and men of the ICPO and to Prosecutor-elect Ms. Carol Siemon.