

**REPORT OF INVESTIGATION OF
PUBLIC SAFETY AND LEGAL AFFAIRS COMMITTEE
OF THE OTSEGO COUNTY BOARD OF REPRESENTATIVES
AS OF DECEMBER 14, 2017**

I. INTRODUCTION:

On March 1, 2017, the Otsego County Board of Representatives, by a 14-0 vote, authorized the Public Safety and Legal Affairs Committee (hereafter the "Committee") to conduct an investigation pursuant to County Law section 209 regarding the Otsego County Sheriff's Department into matters including the discipline of employees and treatment of inmates at the jail. (See Board Resolution No. 134-20170301, attached as Exhibit A).

Interviews of employees were conducted, subpoenas for records were issued, and an investigator was retained. The committee reviewed hearing transcripts, court opinions, subpoenaed documents, video and summaries of interviews. The Committee has also received information from the public and from current and former employees about matters under its purview. Because of the nature and volume of information, the Committee has retained the services of an investigator to assist with its work, which will continue.

The Committee also authorized the Workplace Violence Investigation Report prepared by Matthew Ryan, Esq. of Roemer Wallens Gold & Mineaux, LLP, the County's labor counsel. The Committee reviewed the applicable law with labor counsel and the County Attorney. No actions were taken without consultation with the Committee's legal advisors. All information considered by the Committee is being made available to the public to the extent possible, except that required to be confidential by applicable law. Regarding this report and redactions, any matters that were public record, such as the court proceeding

concerning Rod Devlin's pistol permit, have not been redacted.

Early on the Committee was informed by its legal advisors, the County Attorney and labor counsel, that although the County is considered a co-employer with the Sheriff of Sheriff Department employees for many purposes, the hiring, firing and all employee disciplinary decisions are solely within the authority of the Sheriff.

A guiding principle of the Committee has been that the Sheriff's conflict of interest in this situation is obvious as it is impossible for anyone to be objective when it comes to making a decision about the actions of one's child, especially in the circumstances described below. The Committee believes it is the legal and ethical responsibility of the Sheriff to recuse himself from any decisions involving the discipline of his son and to appoint the County Board or a relevant committee to do so instead. Despite multiple requests, the Sheriff has refused to do so. The Sheriff claimed that he was not permitted by law to do so; however, the Committee's legal advisors advised that this was not accurate and that courts had approved recusal in the past under similar circumstances.

II. FINDINGS OF THE COMMITTEE:

On January 5, 2017 at about 10:45 pm, at the Otsego County Correctional Facility (referred to as "Jail"), Sgt. Ros Devlin, according to several co-workers, was told by his superiors that he had again violated jail policy by bringing his cell phone into the secure area of the Jail and by parking in an unauthorized parking place. Sgt. Devlin expressed resentment and questioned the need for the Jail policy despite the fact that as a sergeant he was charged with the duty of ensuring that other employees followed Jail policy.

According to a co-employee , Sgt. Devlin then (1) threatened to

bring a duffle bag of guns to work to shoot employees at the Jail, including his superior officer whom he blamed for advising him that he would be written up for the cell phone violation; (2) threatened to commit suicide in front of his superior's desk; (3) stated that he would wear an adult diaper to see if anyone would care whether he "shit his pants or not" during the threatened shooting of Jail employees; and (4) threatened to shoot up an elementary school to create a distraction allowing for another person to carry out an attack on another elementary school.

The co-employee's statement of these threats was found credible by multiple reviewers, including Judge Richard Northrup, the County Judge who conducted a hearing to determine whether Ros Devlin's pistol license should be permanently revoked. Both the co-employee and Ros Devlin testified under oath, and Judge Northrup found the co-employee to be a credible witness and Ros Devlin's denials not credible. In addition, the co-employee's statement was found credible by [REDACTED]

Finally, the Sheriff himself, based on his actions including [REDACTED] found the co-employee's statement to be credible. The Committee's conclusion is that the Sheriff would not have taken certain actions unless he believed that his son made the statements as described. The Committee concurs with the other reviewers that Sgt. Ros Devlin in fact made the statements, including threats, as described by the co-employee.

This report examines the response of the Sheriff and the County to the fact that an employee made statements that included threats of violence in the workplace and the response of law enforcement entities when they were made aware of the threats. These statements which are summarized above and described in more detail in Exhibit B attached

hereto are referred to throughout as the "Jail threats."

III. RESPONSE OF THE SHERIFF AND OTSEGO COUNTY TO JAIL THREATS

1. Initial Report and Response

After hearing the Jail threats on January 5th, the co-employee discussed the situation with a superior officer at the Jail, and called Undersheriff Allison to report the incident on January 6, 2017. The co-employee left a voicemail message but did not receive a call back.

On January 9th, the co-employee was attending a class at the SUCO University Police Barracks. Undersheriff Allison and Investigator Henn came to the Barracks and interviewed the co-employee, who stated that the co-employee was frightened about statements made by Ros Devlin at the Jail, but feared retaliation if the Undersheriff was informed about what had happened, and feared for personal safety upon returning to work after the class finished the following week. The co-employee then described to the Undersheriff what had taken place on the night of January 5th including the comments about Sgt Devlin bringing firearms into the jail, threatening to kill employees and shoot up the schools. The Undersheriff advised the co-employee to tell the Sheriff, but the co-employee indicated a reluctance to do so, and stated that the co-employee might go to the Personnel Officer. Advised by the Undersheriff not to do so, nothing further was heard from him. At some point, the co-employee prepared a written statement describing the Jail threats that were heard and gave it to superiors. (See Statement, Exhibit B).

On the morning of January 9th, Jail officers reported the Jail threats to the Sheriff. He did not ask any questions, and they left his office. They heard nothing further that day (which was a scheduled day off for Ros Devlin) and became increasingly concerned because Ros Devlin was due to return to work the following day.

In the late afternoon of Monday, January 9, 2017, the Jail officers reported the Jail threats and their interaction with the Sheriff described above, and gave a copy of the co-employee's statement to the County Personnel Officer. The Personnel Officer (PO) immediately called the Sheriff who advised that he was aware of the Jail threats, that he was investigating the matter, and that Sgt. Devlin remained on the duty roster. The PO advised that it was not appropriate under the County's Workplace Violence Prevention Program for him to do the investigation and directed the Sheriff to place Sgt. Devlin immediately on administrative leave. The Sheriff did so and Sgt. Devlin turned in his keys and badge.

On January 9th and 10th, the PO discussed the matter with labor counsel, County Attorney and County leadership who reviewed the County's Program which prohibits "any behavior that is violent, threatens violence, coerces, harasses or intimidates others, interferes with an individual's legal rights of movement or expression, or disrupts the workplace, or Otsego County's ability to provide services to the public." (See Program attached as Exhibit C). All concurred that it was required that the circumstances be investigated and that it was not appropriate to have the Sheriff investigate allegations involving his son.

On January 11th, labor counsel, County Attorney, Board Chair and Personnel Office participated in a telephone conference and outlined a plan which included:

- a) referring the matter to the District Attorney for investigation and evaluation of the public safety risk and whether any crimes had been committed;

- b) authorizing the County's labor counsel to conduct the required investigation because of the inherent conflict of interest if the Sheriff were to investigate allegations involving his son;

- c) confirming that all weapons were accounted for at the Jail because Ros Devlin was the Jail armorer with access to the weapons;
- d) issuing a written directive by the County Board Chair banning Sgt. Devlin from all County property;
- e) advising all employees at Sheriff's Department and all department heads and security of the written directive;
- f) shutting off Ros Devlin's email and other access to county systems and obtaining copies of emails.

Also on January 11th, the County Attorney called the District Attorney and made him aware of the written statement of the Jail threats. The District Attorney concurred that the Sheriff should not be investigating his own son and sent a letter to Troop C NY State Police requesting assistance. The State Police were provided a copy of all statements collected at that time.

On January 12th, the Committee was informed of the investigation at its committee meeting. On that same day, Committee Chair Frazier and the County Attorney called the Sheriff and informed him that Ros Devlin was banned from county property and requested that a firearms inventory be completed by someone other than the Sheriff. The Undersheriff later reported that all weapons were accounted for. The Chair's directive banning Ros Devlin from County premises was sent out to all County employees.

2. Workplace Violence Prevention Program Report

The Committee also confirmed the authorization of the County's labor counsel Matthew Ryan to conduct an investigation as required by NYS law and the County's Program. The extensive 28 page report, which included interviews with all involved employees, made findings and recommendations that are for the most part confidential as a matter of

law. Specifically, [REDACTED] (See Report attached as Exhibit D [the entirety of which is redacted as required by law except certain of the recommendations which are included below]).

During the Program investigation, it appears that the Sheriff attempted to interfere with the investigation by telling at least three employees that they did not have to cooperate. He met with the employees after their initial interview with Mr. Ryan, and then, following the meeting, the employees sent letters declining further participation. It appears that the letters may have in fact been prepared by the Sheriff for the employees as the letters are on County Sheriff letterhead, identical and unsigned. (Exhibit E).

The Sheriff also was insistent that he be allowed to sit in on the interviews, which would have had a chilling effect on the employees had that been allowed. He also demanded to meet with Mr. Ryan and the Personnel Officer regarding the conduct of the investigation. No meeting occurred as Mr. Ryan and the Personnel Officer concurred that such a meeting would be inappropriate given the Sheriff's involvement in the matter and the appearance of impropriety that could follow with such a meeting.

The Program report concluded [REDACTED]. The report also recommended as follows:

1. [REDACTED]
2. [REDACTED]
3. Changes to county policy to make it explicit that a county officias should recuse themselves from conducting investigations or determining discipline when an inherent conflict of interest exists;
4. That an investigation be conducted of allegations arising from conduct at the jail;

5. That an investigation be conducted of Sheriff's response to the initial incident.

The report was provided to the Committee on February 14, 2017. The Sheriff continued to refuse to recuse himself from the decision making process despite the obvious conflict of interest. The Committee then gave a copy of the report to the Sheriff on February 22, 2017, and strongly urged the Sheriff to follow its recommendations. The Sheriff was also reminded of the upcoming deadline to file disciplinary charges.

3. Court Decision Revoking Pistol Permit of Ros Devlin

On or about April 5, the Committee received the court decision of Judge Richard Northrup, acting as the County licensing officer with jurisdiction over pistol permits, in which he refused to reinstate the pistol permit of Ros Devlin.

At some time after the January 12 Committee meeting, the District Attorney filed a letter with the Otsego County Judge in his capacity as the pistol permit licensing officer, informing the judge of the events that had occurred and providing a copy of the co-employee's statement. Both Otsego County Judges recused themselves from reviewing the matter, and the case was assigned to Delaware County Judge Richard Northrup who suspended Sgt. Devlin's pistol permit on January 25, 2017.

At the request of Ros Devlin, a hearing was held on March 28, 2017. At the hearing, all witnesses testified under oath, the co-employee's written statement was made a part of the record and the co-employee also testified about the statements made in the co-employee's presence on January 5, 2017. Ros Devlin denied making the statements. (Hearing transcript and exhibits are attached as Exhibit F). The judge issued a decision on March 31 denying Ros Devlin's application to reinstate his pistol permit. In making his determination, the judge, after hearing from

Ros Devlin and other witnesses, found the co-employee's statements to be credible and Ros Devlin's statements not credible. The decision in part reads as follows:

"The Court fully credits the testimony of Corrections Officer . . . Her demeanor on the stand, and the substance of her testimony did not reveal any indication that she was not being truthful and despite being cross examined by experienced trial counsel, her testimony was not impeached. Significant in the Court's credibility determination is that there was disclosed no motive for her to have fabricated the initial report or her testimony, and indeed, one might have expected that she not come forward at all given that Sgt. Devlin's father is the Otsego County Sheriff and her highest superior officer. "

"Sgt. Devlin, on the other hand was clearly an interested witness whose testimony is viewed by the Court as suspect since he is the one and only person who may gain or lose, depending upon the Court's decision, something he considers valuable. . . ."

"It is therefore the conclusion of the Court that substantial evidence was presented constituting good cause for the Court to determine that Sgt. Ros Devlin has shown himself to be lacking the essential temperament or character which should be present in one entrusted with a pistol permit." (See Exhibit G attached).

4. Request for Medical Examination under Civil Service Law

After reviewing this decision which was made available to the Sheriff and providing the Program report to the Sheriff, the Committee requested that the Sheriff provide information about what actions he was taking regarding discipline of his son. As the Committee later learned, the Sheriff, in violation of the confidentiality requirements of the Program, shared the Program report with the sheriffs of two other counties, neither of whom provided written comments. Although ordinarily the Sheriff would make disciplinary decisions as soon as possible based on the Committee's

review of his previous practices, in the case of his son, he did not act until on or about April 12, 2017, and only after several inquiries by the Committee.

The Committee directed that he appear at a Committee meeting and at that time he indicated that he planned [REDACTED] and gave no credible reason for the delay of the decision from February 22nd until April 12th, other than that he had been awaiting reviews by the other sheriffs, which were unauthorized and in fact never received to the knowledge of the Committee.

During that same period, he swiftly disciplined at least one other Jail employee for not reporting the Jail threats to him immediately. However, the Sheriff himself violated the County's Program by failing to report the incident immediately to the Personnel Officer.

On April 12th, the Sheriff also advised that he had placed his son on "suspension with pay" which the Sheriff claimed incorrectly was a form of discipline. Ros Devlin has continued to be paid throughout this period as only Sheriff Devlin has the authority to suspend him without pay or take any other disciplinary actions. Suspension with pay is not a recognized form of employee discipline, and, therefore, in the view of the Committee does not constitute a disciplinary penalty.

The County Board Chair, with the support of the Committee and in consultation with its legal advisors, has continued the ban of Ros Devlin from County property. The Committee was concerned and alarmed to be advised that Ros Devlin was seen on County property on or about April 6th, in violation of the ban.

Because of the nature of the Jail Threats, the Committee again requested that the Sheriff require a medical examination pursuant to Civil Service Law section 72 [REDACTED]. To date, the Sheriff has

refused to require such an examination, and so it has not taken place as the Sheriff is the only person legally authorized to require such an examination.

[REDACTED] The Sheriff insists that a mental health exam has already taken place; however, the Committee concurs with Judge Northrup's conclusion that the mental health exam was not comprehensive, was conducted by a mental health provider of Ros Devlin's choosing, and consisted only of the self reported information of Ros Devlin. (See Exhibit G). According to the Committee's legal advisors, such an examination would not meet the requirements of Civil Service Law section 72 which requires a more extensive medical examination by an authorized provider.

The Committee has concluded, based on its knowledge of the County's past practices, that the Sheriff would have required such an examination of any other employee in his department particularly because of the sensitive nature of the work which involves access to firearms and dealing with the public and inmates. Without such an examination, the Committee has concluded that it is unsafe to have Ros Devlin return to work. Work related issues involving the potential discipline of Ros Devlin had originally led to his threats of violence, and there is no assurance that such threats or worse will not take place again, putting employees, members of the public, and inmates at risk.

The Committee also reviewed materials regarding actions taken by Sgt. Devlin while performing his job duties. Some of these actions were of great concern to the Committee, and it did not appear that the Sheriff had taken appropriate disciplinary steps that the Committee believes would have been taken had an employee other than his son been involved. Therefore, the Committee has retained the services of an

investigator and is looking into this matter further and will provide an additional report at a later date.

5. Fulton County Incident

The Committee is aware of a recent almost identical situation that occurred in Fulton County. An employee at the County Jail allegedly said he would go into the control room, get a secured weapon, shoot the control room officer, put the facility on lock down and then shoot a lieutenant. The rest of his potential plans included dragging a captain through the facility, making the captain watch as he shot at inmates and other correction officers. He later tried to claim he was just joking.

Sheriff Richard Giardino, a former District Attorney and former County Judge, immediately placed him on administrative leave and the employee was arrested for making terrorist threats, a class D felony. According to news reports, the Sheriff said that even just stating such things raises red flags and the seriousness is elevated when a member of law enforcement is the speaker. The detailed nature of the threats - similar to the Otsego case- also supports the conclusion that they were not just a joke.

6. Paid Administrative Leave Continues

From January 9, 2017 to date, Ros Devlin remains on paid administrative leave due to the inaction of the Sheriff. Because the son's employment involves access to firearms, interaction with other employees, the public and inmates, the Committee is of the view that it is only reasonable to require a medical examination for the safety of all concerned, including Ros Devlin himself. In the absence of such an examination, the County Chair has banned Ros Devlin from County property for safety reasons. The result is that Ros Devlin continues on the County payroll despite the fact that he does not perform any work for the

County.

This also sets a dangerous precedent for other similar matters that may arise in the Sheriff's Office. Certainly, any other employee potentially facing termination in the face of a workplace violence claim will point to the circumstances involving Ros Devlin as a mitigating factor.

In addition, while the Sheriff has stated that he [REDACTED]. Given Ros Devlin's actions and pursuant to Judge Northrup's decision with regard to the revocation of his pistol permit, it would seem implausible that Ros Devlin would be considered fit for continued employment as a Corrections officer. It is the conclusion of the Committee that the opportunity for continued employment in a position that provides access to firearms, requires interaction with and supervision of inmates and engagement with the general public would have been prohibited for any other employee who had issued such threats to the safety and well being of others.

After review of all the facts and circumstances, including the Sheriff's past practices, the Committee can only conclude that the refusal to require a medical examination and the decision to retain such an employee was made solely because the person involved is the Sheriff's son. By so doing, the Sheriff has provided, to the detriment of taxpayers, a financial benefit to his son that, in the view of the Committee, would not have been available to any other employee.

This Committee has endeavored to carry out the recommendations of the Program Report to the extent it has the authority to do so. The Committee has investigated the circumstances and issued this report with its own recommendations. The County Board also passed a recent amendment to its Ethics Law governing nepotism.

IV. RESPONSE OF LAW ENFORCEMENT TO JAIL THREATS

After the Jail threats were made known, assistance was requested from the following law enforcement agencies with the responses indicated:

1. Sheriff - took no action against his son despite the alarming threats of violence expressed by his son against co-employees and school children and personnel. He did not place him on administrative leave until the Personnel Officer urged him to do so. He did not have him arrested or questioned by law enforcement. (See section III of this report.

The Sheriff did not advise the schools about the threats.

2. NYS Police - the statements and other information were sent to the NYS Police by the District Attorney because of concerns about the safety of those threatened and the lack of objectivity of the Sheriff in handling the situation. The NYS Police were advised that the Sheriff's son was the person making the statements, but they still refused to investigate, stating that there was another law enforcement agency available. The "other law enforcement agency" that they were referring to of course was the Sheriff's Department.

On January 18, 2017, because the County Board has no other agency than the Sheriff to investigate crimes and public safety threats, the County Board Chair sent a letter to Superintendent of Police (See Exhibit H attached) requesting reconsideration of their decision declining to undertake the investigation. Initially, the Superintendent's office refused to reconsider, stating that they don't investigate other law enforcement agencies unless requested by the law enforcement agency itself. After a prolonged discussion with NYS Police counsel, on January 19, the County was informed that the NYS Police had reversed its decision. Personnel from the NYS Police then undertook a cursory investigation which did not include interviewing Ros Devlin.

The NYS Police issued a report which was given to the District Attorney on or about January 24, 2017. The report itself contained factual errors, leading to concerns about the thoroughness and seriousness of the investigation. (See Exhibit H attached)

The NYS Police did not advise the schools about the threats.

3. District Attorney - The District Attorney is an independently elected official and the County's chief law enforcement officer. He does not report to or act under the direction of the County Board of Representatives.

The NYS Police report was turned over to the District Attorney. It was the understanding of the Committee, based on conversations between the District Attorney and the County Attorney, that the District Attorney had advised that he was recused from the case because he worked with the Sheriff personally on many cases and that he should not be the one to determine whether a crime involving the Sheriff's son had been committed. To the knowledge of the Committee, a special prosecutor was never requested or appointed, and the District Attorney alone made the decision not to arrest or prosecute Ros Devlin.

The District Attorney did not advise the schools about the threats.

4. NYS Attorney General - a letter requesting assistance was sent to the Attorney General outlining the events that had occurred and including all information that the County had compiled. In a telephone call, a representative explained that the Attorney General's authority was limited and the office did not have jurisdiction over the matter and could not assist with the investigation.

5. Governor Andrew Cuomo - a copy of the letter to the Attorney General with all exhibits was also sent to Governor Cuomo's office. His office was also copied on the letter to the NYS Police Superintendent

where the County outlined its problems with the NYS Police and their failure to investigate the threats. No response was ever received.

6. US Attorney's office - the same information was sent to the US Attorney's office in Binghamton and a call with an Assistant US Attorney took place. He advised that he would discuss it with the FBI and call the County, but never called back despite a follow-up inquiry by the County.

It is the duty of law enforcement to assess the risk and determine if criminal charges were in order. The Board did not report the threats to the schools as County representatives thought it was the responsibility of law enforcement to assess the threat and advise the schools regarding what safety measures were necessary. Evaluations and recommendations of this type are beyond the expertise of the County Board. In the usual case, threats of this kind would have been handled by the Sheriff as the County Board has no other investigators available to it.

At a meeting after the events in question attended by the District Attorney and other County officials, the District Attorney confirmed that he and the law enforcement agencies are responsible for assessing such threats and making notifications, and not the County Board or this Committee. Nonetheless, it is the Committee's recommendation that should similar circumstances occur in the future, that this Committee give serious consideration to independently notifying the schools or other institutions of a possible threat given the understandable concerns expressed by the schools about the chain of events.

V. CONCLUSIONS:

The Committee recommends the following:

1. That the Sheriff recuse himself from further decisions regarding his son and appoint the County Board of Representatives or other Board Committee to make those decisions;

2. Short of recusal, that the Sheriff require a full medical examination of Ros Devlin pursuant to Civil Service Law Section 72;

3. That the District Attorney request the appointment of a special prosecutor to oversee the investigation especially in light of the outcome in Fulton County. An objective prosecutor is needed to properly evaluate whether criminal charges are warranted, and no other agency has indicated that it has jurisdiction over this matter. The statute of limitations to prosecute a misdemeanor or felony has yet to run.

4. That a process to insure better coordination and communication with law enforcement agencies be established to deal with threats of this nature.

5. That this Committee continue its work.

Respectfully submitted,

Public Safety and Legal Affairs Committee

Edwin Frazier, Chair
Craig Gelbsman
Keith McCarty
Katherine Stuligross
Daniel Wilber