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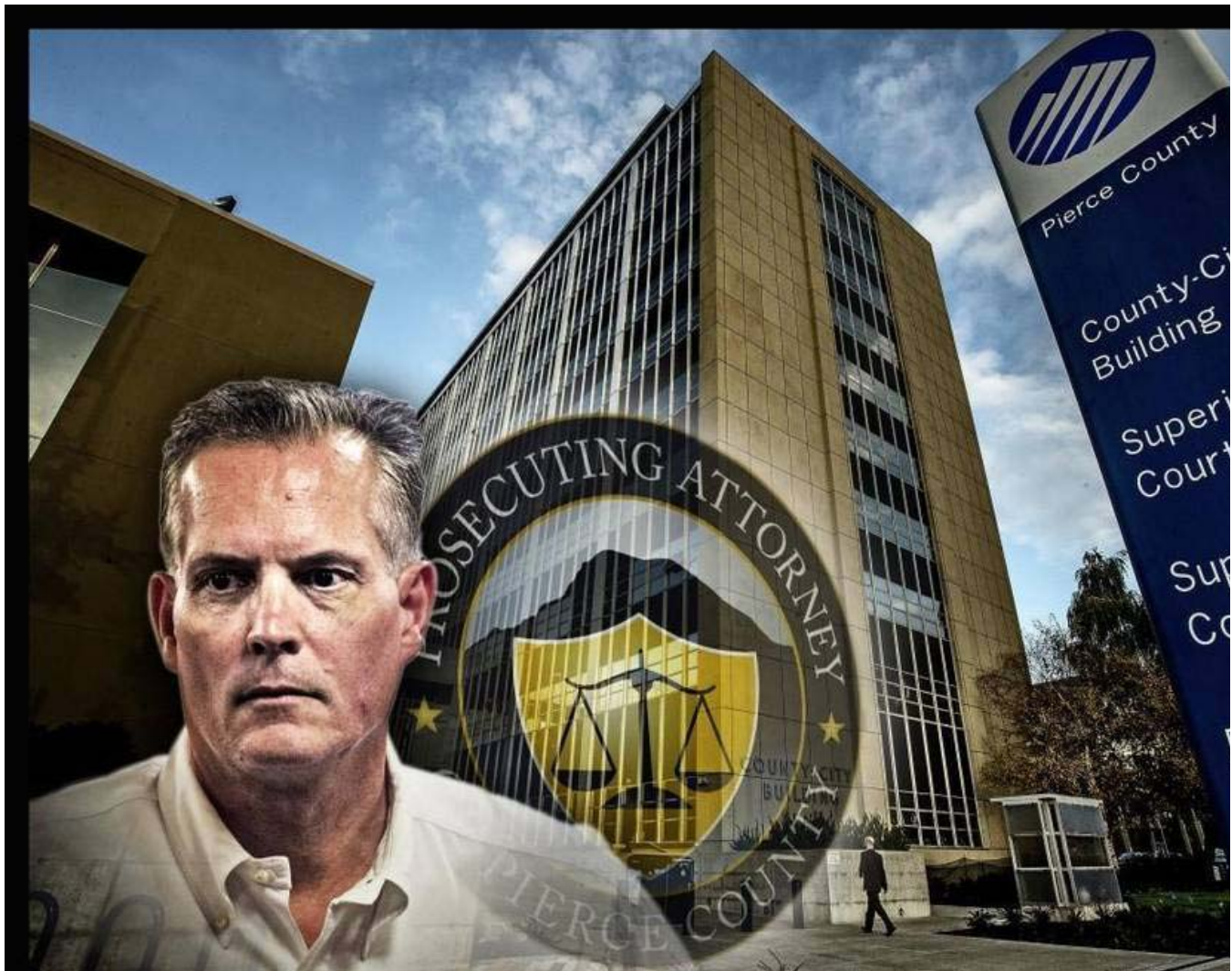
Whistleblower findings: Lindquist runs prosecutor's office based on politics, retaliation

HIGHLIGHTS

Report: Lindquist said Lakewood police officer killings worth "\$100,000 in free publicity"

Retired judge: Lindquist said, "I elect judges, the people don't"

Report cites "inaccurate and intentionally misleading" statements by Lindquist and staff





BY SEAN ROBINSON
Staff writer

Pierce County Prosecutor Mark Lindquist views his office through the prism of his political viability, sees himself as a “judge-maker” and retaliates against employees who criticize him, according to records of a five-month whistleblower investigation.

The 67-page report, obtained Friday by The News Tribune, also said Lindquist urged “no good deals” for a group of defense attorneys who were critical of him.

It also refers to a statement by Lindquist, confirmed by several witnesses, that the shootings of four Lakewood police officers were worth “\$100,000 of free publicity” for his pending re-election campaign.

The report stems from whistleblower complaints filed with the county’s Human Resources Division by Steve Merrival and Steve Penner, two veteran prosecutors on Lindquist’s staff.

It’s based on an outside attorney’s interviews with 65 witnesses, including dozens of current and former prosecutors, as well as Lindquist himself.

The News Tribune sought comment from Lindquist, who provided a short statement Friday:

“Our office’s top priority is making our community safer and serving the public. I am committed to maintaining high standards of public service and making improvements, including better internal communication to avoid misperceptions.

“I will work with our leaders to move forward with the goal of focusing the office on public safety and public service.”

The investigation examined multiple allegations of misconduct by Lindquist and his high-ranking staff members. They include violations of labor law, overzealous prosecution and intimidation of employees who don’t meet Lindquist’s standard of loyalty.

The findings are a mixed bag; in some cases, investigator Mark Busto shied away from legal conclusions, citing active investigations and court proceedings in other venues. In other cases, Busto reached factual findings while declining to address deeper legal implications.

One theme surfaces again and again throughout the report: Lindquist's overriding concern with public image, and his efforts to consolidate political power by retaliating against his perceived enemies.

"I am a politician; you don't understand; you need to attack the person who makes the accusations," Lindquist reportedly said when told that criticizing Merrival for filing a complaint was unwise.

Mary Robnett, formerly Lindquist's chief criminal deputy, now an assistant attorney general, recounted a statement from late 2009, after the deaths of the four Lakewood police officers at the hands of convicted felon Maurice Clemmons.

"Robnett recalled a comment made by Lindquist after the murders of the four Lakewood police officers," the report states. "She said that Lindquist spent significant time at the crime scene.

"Later, he commented that he was going to have to run for re-election and would get \$100K of free publicity from the murders. Lindquist's comment was confirmed by other witnesses."

The report dismisses some complaints against Lindquist; for example, it concludes that he does not preside over a racially hostile workplace.

It takes no position on the reasons for increased numbers of appeals court reversals due to misconduct by prosecutors; the office leads the state in that category.

Nor does it address legal findings of prosecutorial vindictiveness that led to a dismissal of a high-profile case earlier this year. That action is the subject of an appeal, two lawsuits and a recall campaign against Lindquist that began in September.

The report finds that Lindquist did not initiate a large-scale prosecution of gang-related cases for racial or political reasons, but it cites numerous statements from witnesses regarding Lindquist's concern about media coverage of certain cases.

It also notes that he has promoted favored staffers with an eye toward advancing their campaigns to become judges.

A retired judge, unnamed in the report, recalled Lindquist saying, "I elect judges, the people don't."

County Executive Pat McCarthy and Human Resources Director Ginny Dale issued a brief statement Friday in response to a request for comment from The News Tribune.

“Pierce County received two whistleblower complaints. We have a duty and a legal obligation to investigate the allegations. As a result, we hired an expert investigator, Mark Busto. His comprehensive report has been given to the two whistle blowers and to the Prosecuting Attorney.

“The report contains the allegations, the findings of fact and the summary of evidence. Consequently, a number of recommendations based on the findings have been provided to the Prosecuting Attorney. Because the Prosecuting Attorney is an elected public official, he will decide the future course of action.”

The recommendations described in the statement were not available Friday; County spokesman Ron Klein said he could not immediately provide them.

Merrival, who filed one of the original whistleblower complaints, was still digesting the report Friday, and had not finished reading it, but he offered a statement describing its contents.

“It is a condemnation of Mark Lindquist and an indication that he’s not fit to practice law, that he’s not fit to represent the people of Pierce County, that he’s not fit to be the prosecutor of Pierce County,” Merrival said. “His legacy will be the gigantic civil liability that he’s created.”

One potentially explosive finding in the report cites statements from Penner, Lindquist’s chief criminal deputy.

Penner describes an order from Lindquist to tell other prosecutors that “no good deals” should be given to a group of defense attorneys who filed declarations in a lawsuit that criticized Lindquist’s office in 2014.

The attorneys had criticized Lindquist’s tactics against a retired sheriff’s deputy, Mike Ames. Lindquist referred to the group as “the confederacy of dunces.”

Penner disagreed with the instruction and said so, the report states. He was concerned enough to report it to Lisa Hilligoss, the prosecutor’s human resources manager.

Penner later spoke to Lindquist again about the instruction: did he really intend to

say defense attorneys shouldn't get good deals?

"Well, you don't say that out loud," Lindquist reportedly replied. "You use subtext."

Lindquist retracted the directive after speaking to Penner again, the report states. Busto, who spoke to other prosecutors about the background, concluded that the allegation had merit.

"I find that Lindquist gave Penner the instruction and later remanded it," Busto wrote. He also referred to a statement from Hilligoss, who said, "Penner gave Lindquist the opportunity to get off the hook and Lindquist took the opportunity."

Various prosecutors asked about the confederacy allegation gave different accounts of directives that filtered down to them, delivered by different team leaders.

Some said they heard phrases such as "no special treatment," or no special favors" for defense attorneys – but many reported that they were admonished by Lindquist and his chief lieutenants for appearing to be too friendly with the attorneys.

One deputy prosecutor, Ray O'Dell, was chided for being too nice to people on "the list," the report states.

O'Dell reportedly said, "This is high school bullshit."

Busto also found that the "confederacy" nickname was intended to be derogatory, not humorous, as Lindquist suggested.

The report notes that Lindquist believed defense attorney Gary Clower was one of the leaders of the group, that another attorney, Bryan Hershman, had "personal issues," and that Lindquist had "nothing but negative things to say" about Fircrest attorney Joan Mell, who has clashed with Lindquist several times.

Busto steered clear of legal conclusions regarding the defense attorney allegation, noting that it is the subject of a complaint to the Washington State Bar Association, and remains under active investigation.

The report describes a kind of carrot-and-stick approach to office loyalty. After the recall campaign against Lindquist began, his supporters formed a Facebook group; many county employees were added without their knowledge or consent, and protested to human resources.

Ginny Dale, the county's human resources director, asked Lindquist to remove the

employees from the Facebook group, but Lindquist refused, the report states.

He said his employees had the right to add their colleagues, and he would not tell them otherwise. If the employees wanted to be removed, "the individuals can ask themselves," he said – though the act of asking would reveal potential dissenters.

One experienced prosecutor, Jim Schacht, was transferred to a less favored job after speaking out against Lindquist regarding the confederacy issue, Busto found.

Another, Diane Clarkson, was transferred to juvenile court (known informally among prosecutors as "Siberia") after she made public statements regarding the role of the county's minority bar association in evaluating judicial candidates.

The whistleblower complaints referred to those circumstances. After the complaints appeared and generated news stories, Lindquist called Clarkson into his office, apologized for his treatment of her and asked where she saw herself in the office, according to the report.

The offer was "absolutely a bribe," Clarkson told the investigator. "Lindquist doesn't give away favors for nothing."

A similar incident involved deputy prosecutor Brian Leech, who had spoken critically of Lindquist's actions at a union meeting. Hearing of the comment, Lindquist reportedly proposed transferring Leech to juvenile court.

The report states that on the same day Lindquist apologized to Clarkson, his chief of staff, Dawn Farina, met with Leech and asked if he was interested in becoming a judge.

A separate finding involves Merrival.

After he filed his whistleblower complaint and news stories appeared, Lindquist had his staffers issue statements suggesting Merrival was a disgruntled employee, and also told staffers Merrival had a "meltdown."

Those statements were untrue and designed to discredit Merrival, Busto wrote.

"I find that the PCPAO's statements to the press in response to Merrival's complaint were inaccurate and intentionally misleading," the report states. "Furthermore, by describing his behavior as a 'meltdown,' Lindquist suggested that Merrival's complaint was the product of a disorder, rather than a response to perceived grievances and injustices."

Busto compared Lindquist's "meltdown" statement to an earlier remark Lindquist made about Robnett, who left the prosecutor's office in late 2011 following a disagreement with Lindquist.

Reportedly, Lindquist said Robnett had a "breakdown."

The dispute between Robnett and Lindquist originated with Lindquist's intervention in a case involving a death-threat letter Robnett received in 2010.

It notes that Lindquist discouraged sheriff's investigators from focusing on anyone other than deputy Glenda Nissen, whom Lindquist believed had sent the letter; Nissen has always denied it.

The case was supposed to be farmed out to another prosecutor's office due to potential conflicts of interest. Instead, Lindquist intervened, seeking information from investigators that normally would not be disclosed to involved parties.

According to the report, Lindquist's interference led to a separate clash with Craig Adams, then a deputy prosecutor assigned to advise Sheriff Paul Pastor.

Investigators had looked into another possible death-threat suspect who wasn't Nissen; Lindquist wanted Adams to disclose that information to him, but Adams refused to violate his oath of confidentiality regarding discussions with the sheriff, and Pastor also declined to waive it, the report states.

"Adams said that Lindquist and others were upset at the existence of another suspect who could exonerate Nissen," the report states, adding that Civil Division Chief Doug Vanscoy supported Adams' claim of privilege.

After that confrontation, Lindquist reportedly suggested Adams should be replaced as the sheriff's adviser and possibly terminated.

"Adams, knowing that he had angered Lindquist, soon thereafter took a position as a Pierce County Superior Court Commissioner and left the (prosecutor's office) after 20 years in his position," the report states.

Robnett's departure soon followed.

After the death threat investigation and other developments, Nissen filed a claim for damages against the county and a public records request seeking text messages from Lindquist's personal cell phone.

The case eventually rose to the Washington State Supreme Court, which ruled on Aug. 27 that Lindquist must review the text messages and disclose any that pertain to public business.

Lindquist “kind of flipped out” over Nissen’s request, Robnett told Busto. She said she had considered suing Nissen over the death threat issue, but decided against it.

“Nevertheless, Lindquist continued to press Robnett to sue Nissen,” the report states, adding that the two had a pointed conversation. Robnett then went on vacation.

“She decided she could no longer work for Lindquist and the PCPAO and resigned upon her return,” the report states.

The Nissen litigation led to a separate allegation involving possible conflicts of interest. At the urging of another veteran prosecutor, Lindquist intervened personally in the case involving his phone records, and retained attorney Stewart Estes to represent his interests.

Estes has continued in that role since 2011, and has never been paid for his work, the report states.

However, Estes’ firm, which hadn’t worked for the county previously, has received \$587,268 in legal fees from the county to work on five other legal matters. Busto noted those numbers, but drew no legal conclusions about them.

Commenced in June, the whistleblower investigation was conducted by Busto, a Seattle attorney, and overseen by Brian Moran, a former top-ranking deputy to attorneys general Chris Gregoire and Rob McKenna. Both attorneys were hired by the county’s Human Resources Division.

As the chief target of the investigation, Lindquist had no advisory role in the process; Moran is providing legal advice to human resources leaders.

The cost of the investigation, originally capped at \$35,000, has since been increased to a maximum of \$90,000, according to public records.

Those costs could climb again; the report issued Friday does not end the process, and additional inquiries continue, including specific reports regarding potential violation of laws protecting whistleblowers from retaliation.

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