Since his surprise victory over veteran Public Defender Bill White, Matt Shirk has made some radical moves, including firing much of the office’s top talent and promising to work more closely – and more collegially – with prosecutors and police. Shirk’s critics say his actions are in keeping with his apparent mission: to drain the office of effectiveness and experience, and to take a less adversarial role with law enforcement. by Gwynedd Stuart p. 16.
Incoming Public Defender Matt Shirk is changing the office in ways many believe will diminish its powers.

Brenton Butler was on his way to fill out a job application at Blockbuster Video when his life changed forever. Picked up by police, accused of killing an elderly Georgia tourist in cold blood, the Englewood High School ninth-grader was interrogated, forced by police to sign a confession and eventually tried for first-degree murder. He spent the next six and a half months in jail.

The 15-year-old had nothing to do with the May 2000 crime, as later became clear, but the case against him was strong. An African-American teenager with few resources, he’d already signed his name to a document claiming he’d killed Mary Ann Stephens. The woman’s husband had identified him as the killer. And a city, hungry for justice in the senseless killing, was eager to see someone punished.

Despite the apparent futility of the case, two leading attorneys in the Public Defender’s Office believed their client when he said he was innocent. And slowly, they built a case that exposed the holes in the state’s claim — showing that police had taken the teen out of jail to extract the confession in the woods in the dark of night, and insisting that Butler had been beaten by detectives — a claim backed up by photographs showing his badly bruised face. More importantly, they proved that the “confession” itself was pure fiction, a version of events dreamed up by police that bore no resemblance to the particulars of the crime.

It was a difficult case, one that meant casting doubt on the honesty and motives of police, including lead detective Michael Glover — the sheriff’s son. But attorneys Pat McGuinness and Ann Finnell pressed ahead, and eventually won the case. Brenton Butler was freed.

The outcome was nothing short of miraculous. But what happened after was almost more astonishing. Both State Attorney Harry Shorstein and Sheriff Nat Glover publicly apologized to the boy, admitting their case against him was unjustified. Two other men — both repeat offenders — were later convicted for the crime. And a documentary film about McGuinness’ and Finnell’s work on the case, “Murder on a Sunday Morning,” won an Oscar in 2002.
There are plenty of people who regard the work of public defenders with disdain, believing that the people they represent — poor, uneducated, often accused of heinous crimes — deserve nothing but a stiff sentence and a life behind bars. But the Brennon Butler case proved, irrefutably, that the office is sometimes all that stands between a monstrous injustice and the rights of the accused. It showed, too, that casting doubts on the veracity of police and the claims of the State Attorney is sometimes essential in the pursuit of justice.

It’s telling, then, that in the recent staff bloodletting at the Public Defender’s Office, in which 10 attorneys with a collective 300 years of experience were fired, McGuinness and Finnell were among those let go. Observers in the legal community say the message is in keeping with the apparent mission of incoming Public Defender Matt Shirk: to drain the office of effectiveness and experience, and to take a less adversarial role with the prosecutors and police.

A close ally of incoming State Attorney Angela Corey — he’s often called “her protégé” — Shirk made strong overtures to the law enforcement community during his campaign. Among other things, he promised to be less confrontational when dealing with police in court, ensuring his employees would never call a cop a liar. Shirk has also suggested that his primary goal after taking office will have less to do with seeking justice for his clients than making targets of them. In a Nov. 6 interview with The Florida Times-Union, Shirk said he planned to use the Public Defender’s diminishing resources to investigate whether his clients were truly indigent and deserving of free legal representation. (Shirk declined to be interviewed for this story.)

For office veterans, the future of the Public Defender seems clear. “In some ways, it reminds me of an infant when you give it a new toy,” says McGuinness. “Its first instinct is to destroy it.”
“I think the ‘R’ won it,” says White. “He won because he’s Republican.”

Sitting behind a wide desk in the office he’ll continue to occupy until Jan. 6, White still seems somewhat stunned by the outcome. “I think when you take an office that is essentially apolitical, and you put it into the political arena, anything can happen. A relatively unknown candidate with relatively little experience can win if the party affiliation is that strong,” he adds, “I regret that I’m not that good a politician.”

White never set out to be a politician. In 1967, having decided to concentrate on criminal defense as a law student at the University of Florida, White offered his services to a young, meagerly staffed Public Defender’s Office. Not yet an attorney, he was tasked with investigating the case of a woman accused of murder. With the help of White’s research, the woman was found not guilty, and all charges were dismissed. “I was hooked,” he says.

White was hired by then-Public Defender Lou Frost in 1974, and over the past three decades, he has hired many young attorneys himself. He has a standard warning for them.

“When I talk to them, I say, ‘There’s no money, the whole world dislikes what you do when they find out what you do, your only thanks are going to come from your peers, and you’re going to get knocked down every day… So why do you want to work here?’”

Shirk was among the young attorneys White has seen come and go over the years. After graduating from Florida Coastal, Shirk worked at the PD’s office for five years before entering private practice and eventually opening his own firm with another PD alum, William Durden III.

“I don’t know that he stood out as a superior attorney,” says White when asked about Shirk. “He did his job for the most part, he won some cases… but he never had a supervisory role.”

Shirk’s lack of trial experience has been floated as one reason he decided to fire so many senior attorneys. McGuinness believes Shirk is simply intimidated by the prospect of supervising a much older, more experienced staff.

White says Shirk told him the dismissals were made for financial reasons: The top-salaried attorneys were the first to go. But White disagrees with that premise. He says he’d figured out how to keep the office solvent — even with anticipated budget cuts — without laying off top talent.

The firings certainly weren’t made based on performance, since Shirk didn’t review any personnel files prior to announcing his decision. Indeed, his decision to fire such marquee names as Alan Chipperfield and Susan Yazgi, in addition to Finnell and McGuinness, seemed impersonal in the extreme. Rather than notifying the terminated staffers himself, or at least individually, he had a subordinate e-mail a list of names to White. Two of the names — including McGuinness’ — were spelled incorrectly.

“Most obviously didn’t have the good sense — or manners, I should say — to notify us personally,” says Finnell. “He knows us all, obviously. I supervised Matt Shirk. Al [Chipperfield] or Susan [Yazgi] would have supervised him in county court. These should have been people he felt comfortable contacting personally.”

“If the attorneys weren’t fired for financial reasons or because of job performance, the question of why they were fired remains. For some observers, the answer is State Attorney Angela Corey. Shirk and Corey are close friends and political allies. Corey encouraged Shirk to seek the seat and was publicly supportive of his bid. Shirk interned under Corey, a fact his campaign website noted with pride, saying he worked “under the direct tutelage of Angela Corey.” One fired public defender who asked to remain anonymous said he was disturbed by Corey’s references to Shirk as her “darling” during the course of the campaign.

Since Shirk’s victory, Corey has remained a palpable presence. A Shirk spokesman referred questions from First Coast News’ Donna Deegan to Corey, and White says she contacted at least one of his employees to discuss the “transition” — something akin to Obama making staffing suggestions for the Bush White House.

“She’s apparently a close advisor of his,” says McGuinness, adding that Corey contacted several people in the office prior to the announcement of the cuts. Asked why Corey would have a hand in personnel issues, McGuinness suggests it may represent a simple — if insidious — legal strategy.

“From Corey’s [perspective], a less-experienced Public Defender’s Office gives her prosecutors a target-rich environment.”
Homicide Division Chief Finnell has spent less time wondering about the “whys” of the dismissals, and more time reconciling how the hobbled Public Defender’s Office will operate after their departure. She notes that Shirk fired five lawyers certified to try death penalty cases, leaving only one on staff in Duval County. Finnell fears the move will cripple the homicide unit. “I don’t know if he’s planning on hiring more death-qualified lawyers, but it would be impossible for one attorney to handle all death cases, especially because it’s anticipated that Angela will file more death penalty cases.”

“[The voters] have no idea what they’ve done,” Finnell adds. “The indigent in Jacksonville will suffer as a result of this. … We’re all going to suffer as a result of this.”

Ronald Mallett is the chief executive officer of Thigpen Heating & Cooling by trade, but since the election, he’s acted as Matt Shirk’s unofficial spokesman. He’s advised Shirk to avoid speaking to the press himself until he officially takes office in January.

“He’s not the Public Defender yet,” Mallett told Folio Weekly. “It’s just not a good time to do [interviews],” Pressed for some clarification of Shirk’s relationship with Corey, Mallett snaps, “This isn’t a question-and-answer period.” Though Mallett promised to distribute a press release addressing several questions Folio Weekly submitted, as well as questions posed by other news outlets, he did not produce the document by deadline.

Among the unanswered questions are several dealing with Shirk’s campaign promises. Shirk ran on a platform of fiscal responsibility, promising to operate the office more cheaply and to establish a trust fund for the office to handle budget shortfalls. The office already has a trust fund, something White suspects Shirk is well aware of. And, at least in his personal life, Shirk hasn’t exactly been a model of financial responsibility. As recently as last year, Shirk was sued by the collection agency H.E.C. for failure to make payments on an outstanding credit card balance of $6,544. A deal reached in February requires Shirk to pay court costs and attorney’s fees of $1,035 on top of the original debt, and to pay $500 a month until the sum is paid in full. Also back in 2006, Shirk received a summons regarding an outstanding debt of $13,537 to Bank of America. (The case was later dismissed by the plaintiff.)

There are also questions surrounding Shirk’s promise to investigate his own clients. He has said he plans to use the office’s already overburdened investigative staff — a team that’s traditionally responsible for investigating the state’s cases — to probe the financial capabilities of clients. (“You know whether your clients have money. Either they drive nice cars or wear nice clothes,” Shirk told the Times-Union. “We need to recognize that and at least bring that up to the court.”)

Not only does it seem an odd use of diminishing resources, but it is a policy that conflicts with existing duties of the office. It’s the job of the Clerk of the Circuit Court, not the Public Defender, to determine if someone is indigent and deserving of services. That arrangement is both accepted and encouraged in legal circles. In a list of “dos” and “don’ts” for appointing defense counsel, the Brennan Center for Justice at New York University in September published a study explicitly warning public defender programs not to screen clients’ finances. The study, titled “Eligible for Justice: Guidelines Shirk ran on a platform of fiscal responsibility, but as recently as last year, he was sued by a collection agency for failure to pay an outstanding credit card balance of $6,544.
“I don’t know Mr. Shirk well, but I do know [Corey], and there are people who take an unprofessional adversarial relationship, but that’s prohibited by the rules of good ethical behavior.”

– Harry Shorstein

for Appointing Counsel,” says that such financial probes would constitute a conflict of interest, endanger confidentiality rules and pose a threat to the attorney/client relationship. “As a practical matter, many public defender programs do screen their own clients,” the study concedes. “But as an ethical matter, they should not.”

Shirk plans on demoting the office’s current chief investigator in order to hire a retired police officer. Some contend that asking an ex-cop to investigate police procedure is an obvious conflict, and suggest that pro-law enforcement bias could prevent someone in that position from adequately carrying out an investigation.

“If you have too many [officers on the investigative staff], it can create a situation where you don’t get the point of view that you need to have in a defense office,” says White. He adds, “We have a very different role [than police] to play, which is zealously defending our clients. It’s harder to change their mindset if they come in from law enforcement.”

Although White was endorsed by the sheriffs in all three counties in his district, Shirk did very well in law-enforcement circles. The Fraternal Order of Police was among the organizations whose endorsement he earned. While debating White before the FOP’s membership, Shirk made a pledge not to challenge the credibility of officers at trial. White says the statement was a political gambit to win the FOP support, but one with worrisome consequences. “The implication was that you wouldn’t be going after police officers. Well, we don’t ‘go after’ police officers, [but] we will challenge any witness when their testimony is incredible. If there’s evidence to show that a police officer is lying, you have an absolute duty to bring that forward and tell the jury that the evidence supports your finding that this police officer is lying. And that does happen.”

Still, Shirk’s words resonated with the police union. FOP President Nelson Cuba concedes statements like that went a long way in earning his organization’s support. “I think part of what helped Mr. Shirk get the support is that he was big on — no matter what — his office would … be professional with officers and never be disrespectful with officers.” Cuba says that respect has been lacking in the current Public Defender’s Office, and that he’s looking forward to Shirk’s tenure for improvement. Says Cuba, “That will only tell with time as we move forward.”

Though Shirk isn’t talking, his allegiance with prosecutors and police worries some in the law enforcement community. State Attorney Harry Shorstein says he maintained an “excellent” relationship with White — and Lou Frost before him — but emphasizes that it’s always been, and should be, “purely adversarial.”

“I don’t know Mr. Shirk well,” says Shorstein, “but I do know my successor [Corey], and there are people who take an unprofessional adversarial relationship, but that’s prohibited by the rules of good ethical behavior.” Shorstein agrees it’s unusual for a state attorney to support a public defender in a political campaign, adding, “But, it was purely political and somewhat disconcerting because these offices should not be political. These jobs … should be nonpartisan, just like the judges.”

Defense attorney Teri Sopp notes that Shirk’s law partner Durden commented in open court one day that Shirk wasn’t even interested in being the PD — he wanted to be a state legislator. “It’s clear to me that this is just Shirk grabbing and running for an office … As a stepping-stone to greater political adventures,” says Sopp. “I’m sickened by it.”

Although Mallett was the Shirk advisor who referred Donna Deegan’s questions to Corey, he dismisses any notion that she is too close to Shirk or in any way speaks for him. “He’s his own man,” says Mallett. “She’s not on his transition team, nor does he go to her for advice. But she’s a good friend, and I think they’re going to work really well together.”

One thing’s certain: When Shirk takes office, he’s going to have to deal with some transitional poison. The weekend following the firings, a flier was posted throughout the Public Defender’s Office that read, “Dear Matt Shirk and the Republicans: Thank you for destroying our family, firing our heroes, and crushing the dreams of hope, justice and freedom for the indigent accused.” It was signed, simply, “We the people.”

By Monday, they’d all been taken down and thrown away.