



**REPORT
OF
THE MARYLAND STATE PROSECUTOR**

**FISCAL YEAR 1992
(Including January - June, 1991)**

141126

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January, 1993

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Note

Since our last report was published in August, 1991, we have converted our records to the State's budget year which encompasses July 1 through June 30. Our last report included calendar year 1990. Therefore, this report covers the period January 1, 1991 through June 30, 1992, an 18 month period.

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OVERVIEW

The severe economic recession caused radical changes in the State Prosecutor's Office during the period covered by this report. Cost containment measures imposed on most State agencies caused the Office to reduce its staff, to cut its space requirements and to establish a more restrictive approach to the types of cases which it will investigate.

Prior to the budget cuts the Office investigated complaints against public officials and officers at all levels of State and local government as provided in the State Prosecutor's statute. During the 1992 legislative budget hearings it was obvious that cutbacks were imminent and that resources would not be available to continue this policy. There simply would not be sufficient staffing to accept cases on such a broad level. Therefore, a workable solution was agreed upon between the Attorney General's Criminal Investigations Division and this Office. Both units have broad authority to investigate corruption in government. The chief difference is that the State Prosecutor's Office, as an independent agency, can undertake investigations free of any supervision by an elected official.

The solution agreed upon by the Attorney General and the State Prosecutor is that the State Prosecutor will focus his investigations on elected officials and those cases in which the Attorney General may have a conflict of interest. Complaints which do not involve elected officials, election law violations or clear conflicts for the Attorney General are referred by the State Prosecutor to the Attorney General. This should substantially reduce the workload of the State Prosecutor and conserve the resources of his Office for those

cases which, by their very nature, require an independent prosecutor. As of this writing the agreement seems to be working well.

The budget cuts have had the effect of reducing the staff of the Office from eleven positions to seven and the space requirements from 4,000 square feet to 2,000 square feet. The total monetary reduction in personnel and rent costs is approximately \$200,000 per year.

In addition to its budget problems, the Office was confronted in the 1992 Legislative Session with a bill which proposed that the State Prosecutor and his functions be transferred to the Office of the Attorney General. Since this would have destroyed the independence of the State Prosecutor, the chief reason for the existence of the Office, both the State Prosecutor and the Attorney General opposed the legislation. The proposed legislation was not given favorable consideration in committee hearings.

Five major cases were litigated during the reporting period. Two members of the General Assembly were indicted for misconduct in office. One pleaded guilty and the other was acquitted in a jury trial. A high official of the Maryland - National Capital Parks and Planning Commission and his co-defendants successfully defended theft charges in two jury trials, one of which ended in the jury not able to reach a verdict. The official is awaiting trial on the remaining bribery charges along with the contractor who is alleged to have paid the bribe.

In an election law violation case, the Office charged a former Baltimore County Councilman with stealing \$50,000 from leftover campaign funds in order to cover stock market losses. A Baltimore County Circuit Court judge acquitted the defendant at the conclusion of the State's case.

A more successful prosecution culminated with a Baltimore City Public Works employee pleading guilty to accepting in excess of \$185,000 in bribes, as well as vacation stays and clothing for steering lucrative truck equipment contracts to the bribers' firms. One of the major bribers was also charged, pleaded guilty and is awaiting sentencing.

An appellate court rendered a decision in an Office prosecuted case which was favorable to the State. This was the first time that an appellate court held that campaign contributions are not the property of the candidate.

The workload of the Office has diminished, but not commensurate with personnel reductions. Of the 119 complaints received in Fiscal Year 1992, twelve resulted in full investigations. Including 37 complaints carried over from Fiscal Year 1991, a total of 156 complaints were investigated. These do not include a large number of election law complaints resulting from the 1990 elections.

The Office also completed 14 full investigations in which reports were rendered to the complainants. Of these seven were made public.

COMPLETED INVESTIGATIONS AND JUDICIAL DISPOSITIONS

1. Delegate Sylvania W. Woods, Jr., Prince George's County

On April 22, 1991, former delegate Woods pleaded guilty in Anne Arundel County Circuit Court to two counts of felony theft and one count of misconduct in office. The delegate had resigned his seat in the General Assembly on January 29, 1991. At that time he was Chairman of the Prince George's County delegation in the House of Delegates.

The investigation, which took nine months to complete, produced evidence that Woods had used the resources of his offices to defraud three cellular telephone companies of \$46,170 in sales commissions and had stolen \$12,810 in campaign funds. Citing Woods' cooperation and the fact that he had resigned, the State Prosecutor recommended that Woods be placed on probation and that he be ordered to make restitution to the defrauded companies. Judge Raymond G. Thieme, Jr. accepted the recommendation and placed Woods on five years probation. Woods has since made full restitution and has requested probation before judgment which has been denied.

2. Maryland - National Capital Parks and Planning Commission,

Prince George's County

On May 9, 1991, a judge declared a mistrial when a jury was unable to reach a verdict after a two week trial of Hugh B. Robey and two co-defendants accused of stealing nearly \$30,000 of M-NCPPC funds. The jury was deadlocked after 18 hours of deliberation. Robey and his son were indicted for theft and bribery along with two private contractors and two Commission employees in a scheme to misappropriate the funds and to cover up the improper disbursements. The theft charges were tried first after the bribery charges had been severed.

On October 25, 1991, the theft charges were retried with a jury acquitting Robey and two co-defendants after eight days of trial and arguments. Following the acquittal the State Prosecutor dismissed theft charges against Robey's son and a Commission employee, but decided to pursue the bribery charges against Robey and Richard G. Coleman, a private contractor from whom Robey is alleged to have demanded a \$30,000 bribe to cover up the theft scheme. Robey appealed the denial of a motion to dismiss the bribery charges on grounds of double jeopardy. The Court of Special Appeals affirmed the lower court's ruling allowing the State to proceed on the bribery charges. The case against Coleman is scheduled for trial in March, 1993.

In a related case Anthony Garner, a maintenance employee of the Commission, pleaded guilty to obstruction of justice. Garner, a key State's witness in the theft case against Robey and his co-defendants, recanted his prior testimony before the Grand Jury shortly before trial of the theft case. At sentencing he received probation before judgment, a \$1,000 fine and six months probation.

3. Former Baltimore County Councilman Gary Huddles

On November 26, 1991, Baltimore County Circuit Court Judge Barbara K. Howe found that Huddles had not violated the State election laws by using \$50,000 of his unused campaign funds in 1987, in order to cover stock market losses, replacing the money and failing to report the use of the funds until his August, 1990, campaign fund report. The case was tried without a jury for two days and the judge acquitted the defendant at the conclusion of the State's case.

4. State vs. Nancy Lott, Montgomery County

On May 24, 1991, Ms. Lott pleaded guilty to perjury under the Election Law. She was sentenced to three years, all of which were suspended. She was placed on supervised probation for five years. She agreed to make restitution of \$18,000 to the campaign committee from whom she stole funds while performing the duties of a campaign treasurer.

5. State vs. Catherine M. Cicoria, Prince George's County

On February 25, 1991, on the fourth day of trial Mrs. Cicoria pleaded guilty to felony theft, election law perjury and failure to appear for trial. She received a five year sentence on the felony theft count and restitution of \$32,000 was ordered. A five year sentence on the perjury conviction was made concurrent with the sentence in the theft count. She also received a one year consecutive sentence for failure to appear. All of her sentences were suspended except for 140 days time served.

Mrs. Cicoria had been charged along with her husband, Councilman Anthony Cicoria, with stealing approximately \$64,000 from his campaign funds and related offenses. However, Mrs. Cicoria failed to appear at her husband's trial in October, 1990, but subsequently appeared at his sentencing in December of that year.

6. Baltimore City Truck Equipment Contracts

On March 9, 1992, Floyd W. Dearborn, a motor vehicle specifications supervisor for Baltimore City, pleaded guilty to accepting bribes totaling in excess of \$185,000 from sub-contractors of International Harvester, Navistar International Corporation and Beltway International Trucks, Inc. In addition to cash payments, Dearborn also received vacation expenses, clothing, a car phone and other items. Dearborn was the first person indicted and convicted in a two year investigation conducted by the Office of the State Prosecutor, the

Baltimore City Department of Audits and the Baltimore City Police Department.

In return for the bribes, Dearborn admitted to tailoring specifications for city trucks to fit the equipment sold by particular suppliers and their sub-contractors.

Sentencing of Dearborn was delayed in order to allow him to continue his cooperation with the investigators seeking additional indictments.

7. Delegate Tony E. Fulton, Baltimore City

On May 7, 1992, a Baltimore City Circuit Court jury found Delegate Fulton not guilty of stealing money from his 1990 re-election campaign. Fulton had been charged with felony theft and misconduct in office. At the conclusion of four days of trial, Judge Ellen M. Heller had dismissed four of the six counts of the indictment.

8. James N. Taylor, Sr., Deputy Sheriff, Dorchester County

On June 2, 1992, former Sheriff's Deputy Taylor pleaded guilty to misconduct in office in Dorchester County Circuit Court before Judge Richard D. Warren. In his guilty plea Taylor admitted to stealing funds confiscated in searches by the Dorchester County Drug Task Force while he was a member of the Task Force. Sentencing was delayed pending a pre-sentence investigation. This case was referred by the State's Attorney for

Dorchester County because it was related to a prior investigation conducted by this Office.

9. Allegations of Official Misconduct Concerning Investigation of Child Abuse.

Harford County

On February 8, 1991, a 34 page report was issued concerning alleged misconduct by the State's Attorneys of Baltimore and Harford Counties, the Bel Air Police Department and certain Harford County judges. The report has been made public.

In a much publicized case, which began in May, 1987, the operators of the Bo Peep Nursery in Bel Air were accused of abusing children under their care. Since the owner of the nursery was related to the State's Attorney for Harford County, the case was transferred to the Baltimore County State's Attorney's Office. After two years of investigation by that office and civil litigation by the Attorney General regarding the nursery's license, complaints were filed with this Office alleging misconduct by the investigators and bias by the judges in favor of the family operating the nursery.

The investigation by this Office involved reviewing all of the investigative files of the police and prosecutors as well as interviews with a large number of witnesses. We also reviewed most of the transcripts of the administrative hearings in order to discover what evidence was available to the various agencies involved in this matter, including the Harford County Health Department. After nine months, a verbal report was made to the

complainants followed by a written report summarizing the evidence. It was our conclusion that there was no evidence of criminal misconduct on the part of any police officer, social service investigator, prosecutor or judge involved in this matter.

10. Forgery of Judicial Signature

A brief report was filed in February, 1991, concerning the investigation of a forged judicial document. The complaint was referred to our Office because an Assistant State's Attorney was one of a number of subjects named in the complaint. A number of witnesses were interviewed including all persons who may have had access to the document (a court order). The Assistant State's Attorney consented to a polygraph which indicated truthfulness on the subject's part. Since the pen used to forge the judge's signature was not recovered, no ink comparisons were possible. The investigation was closed without success in determining the perpetrator of the fraud. The report was not made public.

11. Alleged Sheriff's Misfeasance

On March 28, 1991, a report was issued at the request of County Commissioners who had initiated an investigation by this Office concerning alleged misconduct by the Sheriff of their County. The alleged misconduct involved a failure to disclose information which would have affected their decision in the appointment of a public official. Our findings did not show a corrupt motive on the part of the Sheriff and we did not recommend

prosecution. The report was not made public.

12. Grand Jury Request For Investigation of Alleged Misconduct

This case involved a vehicular manslaughter investigation in which the victim's parents alleged possible collusion of authorities which enabled the defendant to avoid prosecution of manslaughter. The defendant was alleged to have been a police informant who was protected by the police. The victim's parents requested the grand jury to investigate possible misconduct and the grand jury referred the investigation to this Office.

We found no corruption on the part of the police or prosecutors and we explained an unfortunate chain of events which allowed the defendant to establish a double jeopardy bar to prosecution. A report was made to the grand jury on April 11, 1991. The report was not made public.

13. Alleged Misconduct By Assistant State's Attorney, St. Mary's County

On April 29, 1991, a report was issued concerning an Assistant State's Attorney who prosecuted his own traffic citation in district court and received probation before judgment. Our findings, which were made public, disclosed that the prosecutor met with the judge before he presented his case, asked for a special prosecutor, but did not disclose that the incident involved a traffic accident resulting in injuries. He informed the judge that he

intended to plead guilty. The judge told him that a special prosecutor was not necessary if he was going to plead guilty, that he would receive probation before judgment which was the judge's usual disposition in such cases if there was no driving violation record. The case was placed on the docket that day, the prosecutor called his case by citation number only, pleaded guilty and received probation before judgment. We found no corrupt relationship between the prosecutor and the judge. Therefore, we did not recommend prosecution to the State's Attorney who did not know of the prosecutor's action until a reporter called him.

14. Alleged Misuse of Sheriff's Department Funds

On July 18, 1991, a report was issued stating that funds received from a calendar advertising company were not Sheriff's Department funds and; therefore, there was no misappropriation by the Sheriff. The County Attorney agreed with our finding that such funds were not considered to belong to either the County or the Sheriff's Department.

15. Alleged Falsification of Training Records at Baltimore City Jail

On August 21, 1991, a report was submitted to the Executive Director of the Correctional Training Commission. The report was made public. An investigation was requested of our Office due to an audit performed by the Commission which revealed that certain test scores for the 1990 In-Service Training Program at the Jail had been falsified. The audit also revealed that in-service training of correctional officers as prescribed by the

Commission was not provided to eligible officers at the Jail.

Our investigation confirmed the findings of the audit. However, it was also determined that the resources for such training were lacking, that funds were not available to pay overtime to officers who had to attend classes after duty hours and that there was a lack of supervision of the training program. Although there were improper methods used in order to comply with the Commission's requirements, we did not deem criminal prosecution to be warranted in a program that was understaffed and disorganized.

16. Alleged Misconduct by Anne Arundel County Police in Homicide Investigation

On October 2, 1991, a report was issued concerning the conduct of a homicide investigation by the Anne Arundel County police who had determined that the death of Jennifer Taylor was a suicide. The State's Attorney's Office of Anne Arundel County had conducted an investigation at the request of the deceased's parents and had found no evidence to contradict the police findings. The parents hired a private investigator and requested an investigation by an independent prosecutor.

The case presented a number of problems in that the Medical Examiner had concluded based on an autopsy that the cause of death was undetermined and that the police had not taken swabbings from the hands of the deceased's husband in order to determine if gunpowder residue was present. The parents also alleged that there was a

close personal relationship between the husband and the police sergeant who supervised the investigation at the scene of the homicide.

We conducted an extensive investigation and found no misconduct on the part of the police. Our report to the parents was made public by them.

17. Alleged Misuse of Political Action Committee's Funds

On November 1, 1991, a report was issued concerning certain expenditures of a political action committee's funds for legislative purposes. A complaint had been received that officers of the committee had used the funds for lobbying and travel expenses. Although the irregularities were confirmed, we found that none of the funds were used for personal benefit and that there was no intent to violate the election law.

18. Alleged Charter Violations, Town of Berlin

On November 21, 1991, a letter was sent to a complainant concerning allegations that the Mayor of Berlin had authorized expenditures without the approval of the Town Council contrary to provisions of the Town Charter. Our report concluded that violations had occurred; but that the Mayor received no financial or personal benefits from his actions. We did not recommend prosecution for the reason that there was no showing of a corrupt motive on the part of the Mayor. Our letter was later published in a local newspaper.

19. Alleged Misconduct By State's Attorney for Carroll County

On February 28, 1992, a long-delayed 35 page report was issued concerning alleged misconduct by the incumbent State's Attorney during the 1990 political campaign for that Office. The investigation was initially delayed due to the fact that the State's Attorney was a member of the State Prosecutor's Selection and Disabilities Commission. In addition, the Attorney General recused himself from the investigation because of a conflict of interest. Finally, the State's Attorney resigned from the Commission and the State Prosecutor agreed to conduct the investigation.

The complainants, the State's Attorney's opponent and his former campaign manager, asserted that the State's Attorney committed misconduct by (1) revealing an investigation in which no charges were filed and (2) releasing a confidential Maryland State Police Criminal Investigation Report. The investigation, which the State's Attorney revealed in a public debate, and the State police report, which he made public in a press release, dealt with the former campaign manager's alleged use of drugs.

Our investigation and research focused on the law of misconduct as it applies to prosecutors engaged in political campaigns and the release of information concerning uncharged individuals under the State's Public Information Act.

We found no legal basis upon which to charge misconduct in either area. As to

nonfeasance in office, i.e., the prosecutor's duty not to reveal confidential information concerning investigations, we declined to prosecute for lack of clear precedent that such a prosecution could be maintained. Our report was released to the public.

20. Report of Findings - Rocky Gap Foundation, Inc., Allegany County

The Rocky Gap Foundation is a non-profit organization which sponsors the Rocky Gap Music Festival each year at Rocky Gap State Park. Allegations were reviewed by this Office that the Foundation had misused State funds by commingling such funds with campaign contributions during the 1990 elections and, that neither the Foundation nor the State Department of Economic and Employment Development (DEED) had properly accounted for the use of State funds. It was also alleged that a public relations firm, working for the campaigns of two members of the Foundation's Board of Directors as well as for the Foundation, rendered unreported in-kind services to the campaigns and was paid with Foundation funds.

We examined all of the financial records of the Foundation as well as those of the public relations firm pertaining to their Foundation and campaign related work. We also examined in detail the campaign reports of the candidates involved with the Foundation. We found no evidence of fraud or misappropriation. Our findings were reported and made public on April 21, 1992. Prior to that date a letter was sent on January 29, 1992, to the

complainants and the Foundation president stating that we had found no criminal conduct. This unusual step was taken so that the Foundation could negotiate contracts with performers for the 1992 festival without the threat of a criminal investigation while awaiting a written report.

21. Allegations of Non-Disclosure and Misconduct by Former Delegate William H. Cox, Harford County

On May 21, 1992, a report was issued with findings that former Delegate William H. Cox committed no criminal acts in filing required financial disclosure statements and in representing a corporation before the Department of Environment. The allegations resulted from Cox's financial involvement with Maryland Reclamation Associates, Inc. which was applying for a rubble fill permit in Harford County. Cox disclosed that he had guaranteed 25% of the demand note made by MRA when he was potentially liable for \$500,000 of the \$800,000 note. Based on the fact that Cox did disclose a financial interest in MRA, we saw no criminal intent to evade the disclosure statute for public officials. We also found that Cox did not use the influence of his office in meeting with Department of Environment employees on the permit process. The full report was released to the local newspaper by the former delegate.

22. Allegation of False Arrest By Sheriff

On June 3, 1992, a report was filed exonerating a Sheriff, who in company with unnamed deputy sheriffs, was alleged to have falsely arrested, assaulted and detained two men involved in an altercation. The men believed that the arrests were racially motivated.

We found probable cause on the part of the Sheriff and his deputies to arrest and detain the men until proper identification was produced. The alleged assault which consisted of the Sheriff kicking the heels apart of one of the arrestees during the ensuing search was not found to be unreasonable.

23. Alleged Misconduct by Princess Anne Town Commissioners

On June 23, 1992, a report was issued which exonerated the Town Commissioners of Princess Anne of misusing State funds and four other allegations filed by a citizens group. The report was made public by the Commissioners.

NOTE

The above do not constitute all of the completed investigations in the reporting period. They include only those which have been made public and those which we can list without disclosing the parties involved, or subjecting them to unnecessary embarrassment.

Those investigations which did not result in criminal charges and whose subjects would be obvious to the general public are not mentioned.

ELECTION LAW VIOLATIONS

During the reporting period the Office received 261 complaints concerning violations of the election law. Most of these involved failures to file campaign reports and failure to pay late filing fees assessed by the State Administrative Board of Election Laws. However, some of the complaints involved more serious charges such as perjury, false registrations paying walk-around money, and violation of the authority line requirements on political advertisements. A total of 200 complaints were resolved with most of the late filers paying the assessed fines. Thirty-seven persons were charged. All were either found guilty, received probation before judgment or had their cases dismissed after paying fines.

APPELLATE COURT'S RULING

Anthony Cicoria v. State, 89 Md. App. 403, 598 A.2d 771 (1991)

Former Prince George's County Councilman Cicoria appealed his convictions of theft, conspiring to commit theft and tax evasion arising out of his improper use of campaign contributions for his personal benefit. The convictions were obtained by this Office in a jury trial on October 30, 1990.

Cicoria's appeal was based on (1) that the campaign contributions belonged to him and that he could do with them as he pleased; therefore, he could not be convicted of stealing from himself; (2) that the penalty provisions of the election code were exclusive and the State could not prosecute him for theft under other statutes or common law; (3) that the State Prosecutor had no statutory authority to bring the charges; (4) that his re-indictment after the first indictment was dismissed was oppressive and; (5) that the trial judge abused his discretion by failing to recuse himself.

The Court of Special Appeals affirmed the judgment of the lower court. Judge Paul E. Alpert authored the opinion which held that funds contributed to a campaign committee belonged to the committee and, therefore, the committee "owned" the funds within the meaning of the theft statute. He also opined that the penalty provisions of the election code are not exclusive; that the State Prosecutor had statutory jurisdiction to prosecute Cicoria; that the re-indictment was not oppressive and that the trial judge did not abuse his discretion.

The Court's holding and opinion seems to be very important in election code jurisprudence. It is the first time that an appellate court has ruled that political campaign funds are not the property of the candidate.

MARYLAND TAX COURT

In November, 1991, the Maryland Tax Court ruled that Rossville Vending Company owed Baltimore County \$1,515,052.35 in back taxes, interest and penalties on video poker machine revenues collected between 1982 and 1985 but not reported as income. The Assistant Attorney General, Gaylin Sponis, who argued the case told the Court that books seized from the firm in raids initiated by the State Prosecutor in 1985 revealed unreported income of at least \$7 million dollars during those years. Rossville's attorney indicated that the Court's ruling would be appealed.

ADMINISTRATION

There have been a number of changes in the office staff due to budget reductions and normal attrition. Assistant State Prosecutor Scott E. Nevin left the office for private practice. Administrative Aide Deborah A. Constable transferred to the Attorney General's staff. As a result of the latest budgetary cut of over \$100,000, two positions, an Assistant State Prosecutor and a Special Agent were abolished.

All of the changes resulted directly or indirectly from the budgetary reductions. Each of the former staff members had long and dedicated service to the Office.

Due to the abolishment of positions, the Office reduced its space requirement and

annual rent by 50%. The amendment to the lease at One Investment Place in Towson was accomplished with the assistance of the Department of General Services.

Also, as a result of the various changes, Sergeant Rufus (Lee) Caple and Corporal Jackie Whitaker were transferred to the State Police Unit assisting the Attorney General's Criminal Investigation Division and Corporal Benjamin T. Hurdle was transferred to the State Police Barracks in Frederick.

WORKLOAD STATISTICS

In order to simplify workload statistics and to make them compatible with those reported in our fiscal year budget estimates we are focusing on complaints requiring investigation and those complaints requiring litigation. The complaints requiring litigation are listed by defendants who are charged with crimes in circuit or district courts.

It is probably true that in most investigative agencies statistics are not meaningful. One investigation may be resolved in days while another takes years of tedious searching through records. In this agency a great deal of work culminates in written reports which are never made public. The only common denominator is that each complaint requiring the expenditure of work hours results in a file being prepared with a file number. Unless a better system of reporting work units can be determined, without establishing cumbersome statistical reporting, we will use files and defendants as units of measurements.

The files opened, closed and carried over for fiscal years 1991 and 1992 are as follows, along with the number of defendants who were formally charged and litigated:

	<u>FY91 Actual</u>	<u>FY92 Actual</u>
Complaints Requiring Investigation:		
Pending	34	37
New Files Opened	142	119
Closed	139	144
Carried Over	37	12
 Complaints (By Defendants) Requiring Litigation:		
Cases Pending	11	11
Cases Filed	34	25
Cases Closed	34	24
Cases Carried Over	11	12

NOTE: Election law complaints such as failure to file, late fees, inaccurate reports, over-contributions are usually filed in batches by the State Administrator of Election Laws. These receive one file number although there are multiple persons involved. If charges are filed against any of these persons, they are counted as defendants requiring litigation.

SOURCES OF COMPLAINTS INVESTIGATED IN FY92

Citizens	87
Elected and Appointed Officials	14
Law Enforcement Agencies	14
State and Local Election Boards	10
State's Attorney's and Attorney General's Office	10
Self-Initiated	5
Anonymous	<u>9</u>
TOTAL	149

OFFICE OF THE STATE PROSECUTOR
As of January 27, 1993

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Jane M. Skrzypiec

Steno. Legal
Deborah A. Amig

Sr. Asst. State Prosecutor
Thomas M. McDonough

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