

Md
S7595
AGIS
1989/90
C.1

LEGISLATIVE REFERENCE

AUG 9 1991

LIBRARY



26579-1001

**REPORT
OF
THE MARYLAND STATE PROSECUTOR'S OFFICE
1989 & 1990**

LEGISLATIVE REFERENCE LIBRARY
90 STATE CIRCLE
ANNAPOLIS, MARYLAND 21404

**Office of the State Prosecutor
Investment Building, Suite 100
One Investment Place
Towson, Maryland 21204**

Telephone: (301) 321-4067

August, 1991

TABLE OF CONTENTS

Introduction..... 1

1990

COMPLETED INVESTIGATIONS AND JUDICIAL DISPOSITIONS..... 2

1. Councilman Anthony Cicoria,
Prince George's County..... 2

2. Maryland National Parks &
Planning Commission..... 3

3. Vanguard Communications, Inc.,
Baltimore City..... 4

4. Det. Sgt. Dennis A. Supik, MSP..... 5

5. John T. McQueeney,
Anne Arundel County..... 5

6. Election Law Violations..... 6

7. County Executive Campaign,
Anne Arundel County..... 6

8. Sheriff's Campaign, Harford County..... 7

9. Drug Enforcement Coordinating Committee,
Carroll County..... 7

10. Anne Arundel County Officials..... 9

11. Calvert County Homicide..... 10

12. Town Officials, Garrett County..... 11

13. Alleged Violation of Disclosure Law,
Montgomery County..... 11

14. Alleged Misconduct by Legislators..... 12

15. Alleged Illegal Electronic Surveillance,
Charles County..... 12

TABLE OF CONTENTS (continued)

16.	Alleged Misconduct, Montgomery County.....	13
17.	Alleged Disclosure of Search Warrant, Worcester County.....	13
18.	Alleged Police Brutality, Baltimore County.....	13
19.	Alleged Brutality of Detention Center Inmate, Harford County.....	14
20.	Raynor Banks, Election Law Violation, Baltimore City.....	14
21.	Alleged Misappropriation/Forgery/Election Law Violation, Carroll County.....	14
22.	Complaint Concerning Irregular Processing of District Court Case, Prince George's County.....	15

1989

COMPLETED INVESTIGATIONS AND
JUDICIAL DISPOSITIONS.....

	<u>COMPLETED INVESTIGATIONS AND JUDICIAL DISPOSITIONS.....</u>	17
1.	Report of Findings and Recommendations Concerning the Death of Gregory Rafi Habib and the Arrest of Martin Akin Habib, Prince George's County.....	17
2.	Report of Allegations of Misconduct Concerning Annapolis Police Department, Anne Arundel County.....	22
3.	Robert Gordon, Right-of-Way Administration, John W. Gladding, Jr., Chief, District 5 Department of Transportation, Elmer Schwartzman, President, Elmer Schwartzman Assoc., Inc.....	25
4.	Councilman Cicoria and Mrs. Catherine Cicoria, Prince George's County.....	26
5.	John T. McQueeney, Jr., Anne Arundel County.....	26
6.	Elbert Barnes, Rock Hall Police Department Nathan Montgomery, Jr., Kent County.....	26
7.	James Davis, Anne Arundel County.....	27

TABLE OF CONTENTS (continued)

	<u>PAGES</u>
8. Election Law Violations.....	27
9. Report of Allegations Involving Queen Anne's County School System.....	28
10. Complaint of Improper Use of Process by County Officers, Baltimore County.....	29
11. Alleged Misconduct of Prosecutor and Police Officer, Baltimore County.....	29
12. Alleged Failure of Lobbyist to Report All Expenditures, Baltimore City.....	29
 <u>CASES IN THE APPELLATE COURTS</u>	 31
1. Nathaniel T. Oaks v. State.....	31
2. Bernard P. Goldberg, Sr. v. State.....	32
 <u>ADMINISTRATION</u>	 33
 <u>WORKLOAD STATISTICS</u>	 37
 <u>SUMMARY OF CALENDAR YEARS</u> <u>1989 AND 1990 WORKLOAD</u>	 39
 <u>INVESTIGATIVE CASE HOURS BY JURISDICTION</u>	 40
 <u>SOURCES OF COMPLAINTS</u>	 41
 <u>ORGANIZATION CHART</u>	 42
 <u>INDEX BY JURISDICTION</u>	 43

INTRODUCTION

This is the fourth report of State Prosecutor Stephen Montanarelli, who assumed his duties on May 7, 1984. In accordance with Article 10, Section 33B(j) of the Annotated Code of Maryland, the report contains descriptions of those activities of the Office of the State Prosecutor which are not confidential.

The work of the Office is, by its very nature, confidential and it becomes public primarily upon the filing of criminal charges. However, in recent years, in accordance with statutory provisions, reports of the State Prosecutor's findings in certain investigations have been made public. These public disclosures are permissible when the State Prosecutor finds that no violations of criminal law have occurred or he does not recommend prosecution. In such cases, the person (or persons) who was the subject of the investigation can demand that the report of the State Prosecutor's findings be made public as soon as possible.

Depending upon the complexity of the investigations and their lengths, the reports of findings to the complainants may be short letters or voluminous documents. Since they can be made public great care is taken to answer all allegations and to avoid unnecessary harm to the reputations of persons who have not been charged.

This report would not be complete without listing those investigations in which reports were rendered but not made public. They comprised a large segment of the work of the Office during the reporting period. The listing does not name the individuals

involved in the investigation except in those cases in which the complainants or subjects issued public statements concerning the State Prosecutor's investigations.

1990

COMPLETED INVESTIGATIONS AND JUDICIAL DISPOSITIONS

1. Councilman Anthony Cicoria - Prince George's County

Councilman Cicoria was convicted on October 30, 1990, by a Prince George's County jury of five counts of theft, conspiracy and income tax violations. Judge Robert C. Nalley sentenced him on December 12, 1990 to ten years on each count, suspended all but five years to be served concurrently on each count, and ordered restitution of \$32,000 on the theft charge and \$3,900 to be paid to the State Comptroller on the income tax charges.

On the same date, Catherine Cicoria, Mr. Cicoria's wife and co-defendant, who had failed to appear for trial on October 1, 1990, but reappeared on the date of her husband's sentencing, was remanded by Judge Nalley to the County's Detention Center to await her trial on February 19, 1991.

The Office began its investigation of the Cicorias in April, 1989. Indictments were filed in November, 1989, charging the husband and wife with numerous counts of theft, perjury, election law and income tax violations. All charges except the income tax counts were dismissed by Judge George W. Bowling as a result of pre-trial motions. In March, 1990, the Cicorias were re-indicted by another grand jury and eventually their joint trial was

scheduled before Judge Nalley on October 1. On the first day of trial the case took a bizarre turn when Mrs. Cicoria failed to appear. Her attorney received a letter on October 2, explaining that she was under great stress and could not appear for trial at that time. The letter was mailed from Florida. As her husband's trial commenced state and local authorities began their search for Mrs. Cicoria, but could not locate her. When she finally appeared on the date of her husband's sentencing, she advised the Court that she had spent much of the time in Mexico.

2. Maryland-National Capital Parks & Planning Commission, Prince George's County

On November 1, 1990, a Prince George's County grand jury returned indictments against Hugh "Reds" Robey, Director of Parks and Recreation for the Prince George's County Maryland-National Capital Parks and Planning Commission, two private contractors, Mr. Robey's son and Albert J. Simons, Chief of Maintenance and Development Division, M-NCPPC. Robey was charged with bribery, theft, conspiracy to commit theft and misconduct in office.

The indictments alleged that Robey, his son, Michael J. Robey, Simons and Junia Edward Dailey, owner of a Washington, D.C., certified minority construction business, conspired to steal \$29,000.00 from the Commission for the benefit of Robey and his son. The money was allegedly funnelled through Dailey's company to G&M Hi-Tech Metal Specialty, Inc., a business owned and operated by Robey's son.

The bribery charges allege that Robey demanded and received \$30,000.00 from

Richard G. Coleman, a principal in B&C Paving, Inc., of Mitchellville, Maryland in an attempt to cover-up the initial theft from M-NCPPC.

The charges resulted from a two year joint investigation conducted by the Office of the State Prosecutor and the Prince George's County State's Attorney's Office.

3. Vanguard Communications, Inc. - Baltimore City

On August 17, 1990, Vanguard Communications, Inc., its president, Stephen A. Miller and two other defendants, Clarence Wynn and Vernon Conway, pleaded guilty to paying "walk-around money" in the 1988 statewide elections.

Judge David W. Young, of the District Court of Baltimore City, sentenced each to pay a \$1,000 fine and placed each on 18 months probation.

Payment for walk-around services on election day is specifically prohibited by Article 33, Section 26-9.1 of the Annotated Code. It comprises the payment of money or things of value for electioneering services on election day with some exceptions. Vanguard Communications, Inc., was a public relations firm in Washington, D.C., hired by the Maryland Committee Against the Gun Ban in its unsuccessful 1988 campaign to defeat legislation which established a nine-member board to compile a roster of handguns acceptable for manufacture or sale in the State. The committee was largely financed by the National Rifle Association.

Although the defendants entered guilty pleas and received funds from the Committee, there was no evidence to suggest that the Committee Against the Gun Ban approved the

payment of walk-around money.

4. Detective Sergeant Dennis Andrew Supik, Maryland State Police

Detective Sergeant Supik pleaded guilty on February 5, 1990, to making a false insurance claim on a Jeep vehicle which he had reported stolen. Judge John Grayson Turnbull II, placed Sergeant Supik on two years unsupervised probation and ordered him to make restitution of \$4,267.75 to the insurance company. Shortly thereafter Sergeant Supik was dismissed from the State Police after serving 21 years with that agency.

Trooper First Class Barry LeCompte Smith was also charged with misconduct in that he learned of Supik's scheme, but failed to report it. His charge was dismissed by the State on May 10, 1990.

5. John T. McQueeney, Inspector, Liquor Board and Department of Inspections and Permits, Anne Arundel County

On January 30, 1990, Anne Arundel County Circuit Court Judge Bruce C. Williams acquitted McQueeney of misconduct in office and the theft of video machines seized by County police. Judge Williams commented, "I don't think he thought he was doing anything wrong", in ruling that the defendant's actions were not criminally motivated.

6. Election Law Violations

The State Administrative Board of Election Laws (S.A.B.E.L.) referred 78 complaints to this Office in 1990. Most of these concerned failure to file reports by campaign committees, non-payment of late filing fees and no authority lines on campaign literature.

The 78 complaints resulted in 20 criminal charges in District Court of which 17 were disposed with the payment of fines. Three are pending trial. All of the remaining complaints were resolved with the payment of fees and filing of reports in accordance with the law.

In addition, 22 complaints carried over from 1989 were also resolved in this calendar year. The total of complaints resolved in 1990 is 97 with three pending. Many of these, dating from the 1986 election year, were referred to our Office after S.A.B.E.L. was unable to obtain civil compliance by the violators. It is estimated that the total amount of fees and fines collected was \$45,000.00.

7. County Executive Campaign - Anne Arundel County

One election law case which received some notoriety involved the 1990 County Executive campaign in Anne Arundel County. One of the candidates alleged that his opponent's campaign committee had listed donors on its campaign report who had not contributed to the campaign.

An investigation revealed that the names of senior citizens who had donated in-kind

services were listed as buying tickets to a fund raiser. In addition, there were certain irregularities in the reporting of proceeds from games of chance at the fund-raiser. Although the investigation found no intent to deceive, the campaign treasurer was charged with a failure to file an accurate report. Judge Thomas Curley of the Anne Arundel County District Court fined the Treasurer \$250.00 and granted probation before judgment.

8. Sheriff's Campaign - Harford County

A complaint was received on July 25, 1990, during the campaign for the Sheriff's Office in Harford County. One of the candidates complained that the incumbent had improperly used deputy sheriffs and office resources in a television advertisement promoting his (the incumbent's) campaign.

A preliminary inquiry revealed that the allegations were factually correct, but they did not amount to misconduct in office.

9. Drug Enforcement Coordinating Committee - Carroll County

One of the most extensive investigations undertaken in 1990 concerned allegations among officials of Carroll County emanating from an incident involving a county commissioner. On January 11, 1990, the commissioner was stopped in his vehicle by officers of the Drug Enforcement Coordinating Committee (DECC), a joint task force of law enforcement agencies established to enforce controlled dangerous substance laws, who had

obtained a warrant to search the commissioner and his vehicle.

The search warrant was obtained by the officers after police dogs trained to detect narcotics had alerted to the commissioner's vehicle. The commissioner consented to both a strip search and urine test. No controlled dangerous substances were found on the commissioner or in his vehicle.

After reading the search warrant the commissioner complained to this Office that he believed that a former assistant state's attorney who was a candidate for the Office of State's Attorney and the candidate's wife had given false information to DECC in order to discredit him.

In addition, the State's Attorney and his opponent, the former assistant state's attorney, made cross-complaints alleging misconduct in office concerning the search of the Commissioner and other incidents. All complaints, since they were interrelated, were combined in the same investigation.

The investigation was delayed however, until May 25, 1990, when it became apparent that the State Prosecutor would have a conflict of interest. One of the subjects of the investigation, the State's Attorney for Carroll County was a member of the State Prosecutor Selection and Disabilities Commission. After the State's Attorney resigned from the Commission, the investigation began.

On November 1, 1990, a twenty-five page report was released and made public at the request of one of the subjects. The report contains detailed findings of the events culminating in the stop of the commissioner's vehicle, the activities of the parties involved after the stop, and findings and conclusions concerning allegations and cross-allegations of

the two candidates for the Office of the State's Attorney for Carroll County. As a result of the findings it was concluded that none of the allegations warranted criminal prosecution.

Due to the fact that the three complainants were candidates for public office the State Prosecutor included the following explanation in his letter dated November 1, 1990, to them concerning the timing of the Report:

"Each of you may question the timing of this Report. As you may know, we did not begin an active investigation until May 25, 1990, after Tom Hickman resigned from the State Prosecutor's Selection and Disabilities Commission. There were many allegations and cross-allegations which demanded thorough examination including the review of financial records.

The investigation was completed two weeks ago and we have been assembling evidence and preparing the Report since then. I am aware that this Report is being released prior to a general election in which you are candidates. However, it seems to me that to withhold its release until after the election would be viewed as a political decision. I cannot have my office placed in that position. The final editing was completed today."

10. Anne Arundel County Officials

In February, 1990, a number of complaints were received concerning alleged improprieties in the government of Anne Arundel County. The allegations involved the use of credit cards and reimbursement for county employees' travel, personnel actions resulting

in the termination of a union employee and the purchase of a building for county office space.

This Office found no criminal misconduct and issued a report to that effect in August, 1990. The report was made public by county officials.

11. Calvert County Homicide

On October 11, 1989, the State Prosecutor received multiple requests to investigate the way in which a homicide investigation was performed in Calvert County. The father of the deceased alleged that the Sheriff and the State's Attorney mishandled the investigation, concealed evidence and influenced the grand jury not to return an indictment against the admitted slayer of his son. Shortly thereafter, the State's Attorney and the Sheriff also requested an investigation of their conduct and the conduct of their agencies in the investigation of the homicide.

On March 26, 1990, a seventeen page report was issued and made public. No criminal activity was found on the part of any public official or officer involved in the homicide investigation. During the five-month investigation 75 person were interviewed including the members of the grand jury which considered the case.

The grand jurors were interviewed pursuant to a Court order since one of the allegations alleged prosecutorial misconduct in the grand jury.

The report included a detailed analysis of the entire homicide investigation including the results of laboratory tests. It should be noted that the woman who fired the fatal shot

with a .357 magnum revolver testified in the grand jury that she did so in defense of her husband who was being assaulted by the deceased. Her husband, who lost an eye in the incident, also testified in the grand jury. However, neither one would consent to an interview by State Prosecutor investigators and, through their attorney, indicated that they chose to stand by their statements to the grand jury which had declined to indict them.

12. Town Officials, Garrett County

As a result of a property dispute between the property owner and his tenant and the Mayor and Town Council, allegations arose of misconduct on the parts of the town officials. The citizens complaints were referred to this Office by the State's Attorney of Garrett County.

A lengthy investigation resulted in a seventeen page report issued December 4, 1990, after a meeting with the complainants. No criminal conduct was found. The report was not made public.

13. Alleged Violation of Disclosure Law, Montgomery County

On November 19, 1990, a short letter was issued to the complainant indicating that this Office found no violation of the financial disclosure laws by a county official.

14. Alleged Misconduct by Legislators, State Government

At the conclusion of the 1990 Legislative Session this Office received a complaint that a certain bill had been improperly prevented from passage by members of the Legislature and an employee of the General Assembly.

This investigation involved extensive research involving the doctrine of legislative immunity and judicial interpretation of the meaning of "legislative acts." Our research indicated that the alleged conduct could be construed as legislative acts and that the doctrine of legislative immunity prevented an executive official, such as the State Prosecutor, from questioning the legislators involved, or their aides, regarding such acts.

A six page report was issued September 25, 1990, containing the conclusions of our research. The report was not made public.

15. Alleged Illegal Electronic Surveillance, Charles County

A complaint was received that a public official had illegally tape recorded an employee's meeting concerning personnel matters without the consent of the employees.

A brief investigation revealed insufficient evidence to prosecute for violations of the electronic surveillance statute and that the statute of limitations for misconduct in office had tolled. A report was issued on May 18, 1990. The report has not been made public.

16. Alleged Misconduct, Montgomery County

This investigation involved allegations of altered documents by a municipal officer. Criminal prosecution was not recommended since administrative measures were deemed more appropriate. A confidential report was issued to the State's Attorney and the complainants.

17. Alleged Disclosure of Search Warrant, Worcester County

The complainant alleged that a search warrant for controlled dangerous substances had been disclosed to the suspects named in the warrant. As a result no such substances were found at the execution of the warrant.

A three month investigation revealed that the suspects were warned of the impending search. However, no evidence was discovered which would establish a criminal violation. A four page report was issued to the complainants and the subject of the investigation. The report was not made public.

18. Alleged Police Brutality, Baltimore County

The alleged brutality occurred at the scene of the arrest and in the station house to which the arrestee/complainant was transported. Due to a pending civil matter extensive testimony was available by virtue of depositions. However, this Office found insufficient

evidence to recommend criminal prosecution. Instead, a report to the State's Attorney, recommended deferral to administrative proceedings. The report was not made public.

19. Alleged Brutality of Detention Center Inmate, Harford County

This case was referred to this Office by the State's Attorney. An inmate at the County Detention Center had filed charges against an officer alleging assault and battery.

As a result of the investigation, we recommended dismissal of the charges and referral of our findings to the Sheriff for administrative action.

20. Raynor Banks, Election Law Violation, Baltimore City

Mr. Banks pleaded guilty to an election law violation on April 18, 1988. However, he was not sentenced until February 13, 1990, due to pending litigation. Judge William Nickerson imposed probation before judgment with no conditions.

21. Alleged Misappropriation/Forgery/Election Law Violations - Carroll County

In April 1990, this Office received a request from the Carroll County State's Attorney's Office to investigate the circumstances surrounding the alteration and subsequent deposit of certain contribution checks into the bank account of the Carroll County Republican Central Committee Federal Account. These checks had been provided during

the 1988 presidential campaign by contributors at the national or state level. This Office was asked to evaluate the alleged alterations and disposition of these checks for possible violations of state law.

This Office determined that the provisions of the state election laws would not apply to these funds since they were intended to be used for candidates for federal office and that there was insufficient evidence to support charges for violations of any other state laws. On January 3, 1991, a brief report was issued to the Chairman of the Carroll County Republican Central Committee and State's Attorney Hickman advising them of our findings. This matter was also the subject of an investigation by the Federal Election Commission (FEC) which ultimately issued a report and imposed civil penalties against an individual involved in the disposition of these contributions.

22. Complaint Concerning Irregular Processing of District Court Case to Circuit Court-Prince George's County

On August 3, 1989, a complaint was received which indicated that a charge of driving while intoxicated had been transferred to Circuit Court without proper processing by the District Court. Normally, such cases are transferred to Circuit Court when the defendant prays a jury trial only after they are entered into the District Court's computerized traffic case system and a case file is established. In this case the citation was adjudicated in Circuit Court and the defendant was given probation before judgment and fined \$250.00 and costs without any record of the case being transferred from District Court.

An investigation revealed that an attorney, unfamiliar with the procedures in Prince George's County, had sought to expedite his out-of-state client's case. Due to some misunderstandings the case was "added-on" to the Circuit Court's docket without any documentation in District Court. However, there was no evidence of impropriety on the part of anyone involved. A nine-page report was issued on March 12, 1990 explaining the unusual circumstances.

1989

COMPLETED INVESTIGATIONS AND JUDICIAL DISPOSITIONS

1. Report of Findings and Recommendations Concerning the Death of Gregory Rafi Habib and the Arrest of Martin Akin Habib, May 20, 1989 - Prince George's County

The alleged misconduct of Prince George's County police officers emanating from a traffic stop of the Habib brothers was the focus of one of the most controversial cases ever investigated by this Office. The incident occurred on Saturday afternoon, May 20, 1989, in a densely populated area of Langley Park and was witnessed by scores of people. Gregory Habib was fatally injured and died during the confrontation with police officers after the traffic stop and his brother, Martin, suffered a broken jaw and other injuries. The Habibs were citizens of Ghana. Four of the police officers involved in the arrest are white and a fifth officer is black. The incident generated racial tensions in the community as well as disputes between the Prince George's County State's Attorney's Office and the County Police Department concerning the conduct of the grand jury investigation following the incident.

On July 14, 1989, Prince George's County State's Attorney Alexander Williams requested that the State Prosecutor initiate an investigation to determine:

- 1) If the grand jury investigation had been tainted by perjured testimony, biased witnesses and/or illegal disclosures to the media;
- 2) Whether or not the investigation by the County Police Department was complete and free of police misconduct; and,
- 3) Whether or not the death of Gregory Habib was caused by police misconduct.

The State's Attorney also asked this Office to decide whether or not to prosecute Corporal Steven Kerpelman who had been indicted by the grand jury for assault and battery of Martin Habib, malfeasance in office and assault and battery of Gregory and Martin Habib at the initial confrontation during the traffic stop.

At the outset it became apparent that the entire incident as well as the subsequent police and grand jury investigation required review. This was necessary due to contradictory statements of witnesses, the fact that the medical examiner's report was inconclusive as to the cause of Gregory Habib's death and the lack of any independent witnesses who saw the whole incident which transpired during an estimated six minutes according to police radio transmissions. It was also apparent that investigators who were fluent in the Spanish language were required since many Hispanic witnesses living in the Langley Park community spoke little or no English.

The State Prosecutor's investigation lasted four months. It involved a review of grand jury transcripts, police department and State's Attorney's documentation of witnesses'

statements, police communications, medical examiner's records, and interviews of grand jury witnesses, the Chief Medical Examiner and his staff, members of the State's Attorney's Office and police officers, various medical personnel, members of the media, Martin Habib, his sister, his attorney, the attorney's private investigator and employees of the State Department.

On Saturday, August 19, 1989, a team of ten state police officers and members of the State Prosecutor's Office canvassed the neighborhood in which the events of May 20 took place. This area contains approximately 40 buildings and 250 families. This led to the identification of several witnesses who had not been located previously by other agencies. A Spanish-speaking witness, who saw the entire incident from beginning to end, was identified and interviewed at a later date by a certified Spanish interpreter and the State Prosecutor's Chief Investigator who is fluent in Spanish.

On November 20, 1989, State's Attorney Williams released the 78-page State Prosecutor's Report containing the following recommendations:

1. That no criminal charges be placed against any police officer involved in the death of Gregory Habib and the arrest of Martin Habib;
2. That the State Prosecutor would dismiss the charges against Corporal Kerpelman; and,
3. That the State's Attorney exercise his discretion and dismiss the charges placed by the police against Martin Habib for assaulting officers.

The Report contained appendices showing a matrix of 17 eye-witnesses' observations and where they agreed and disagreed and their locations at the scene. Among the key findings in the Report was the conclusion that Gregory Habib died as a result of two heavy police officers falling on him while one of the officers held his nightstick against Gregory Habib's chest. Six eye-witnesses in close proximity saw the officers fall on Gregory Habib or "wrestle him to the ground". Concerning the observations of these witnesses the Report states:

All agreed that Gregory was struggling with the officers prior to falling and that he lay motionless after he fell. Four of the witnesses noticed that one of the officers hurt his hand in the fall. We know from the autopsy report that the fatal injury, indicated by three bruises above three ribs in the front left area of his chest, broke a fifth rib, bruised his lung and his heart. The Assistant Medical Examiner states that the time between this injury and his death was short because the functions of both the heart and lungs were simultaneously interrupted by the impact which caused those injuries.

The Spanish-speaking witness #4, who did not testify before the Grand Jury since he was discovered during our investigation, gives one of the most credible and detailed accounts of how Gregory Habib was fatally injured. This witness, whose credibility we have no reason to question, saw the confrontation between Gregory Habib and the police officers uninterrupted from its beginning to its end. His recall of details was remarkable under close questioning by Spanish-speaking investigators and his statement is corroborated by established facts and other witnesses.

The witness had a clear view of all of the events concerning Gregory Habib since he was walking towards Kerpelman's vehicle and the Habib truck as the confrontation began. He could hear what was being said, but could not understand all of the words since he understands little English. He ran to his apartment at 1434 Kanawha in front of which the vehicles were stopped. From his front window he could clearly see and hear not only the events transpiring on the street, but also those that

occurred on the lawn directly across the street in front of 1405 Kanawha. Gregory Habib was always in his sight and he is, by far, the only witness who saw everything that Gregory Habib did and what the officers did to him.

Witness #4 saw the man whom we know as Gregory Habib run across Kanawha Street; he saw the officer whom we know as Kerpelman stop him. He saw three officers struggling with Gregory who was "resisting". The officers were trying to put handcuffs on him but they were not successful. He saw Gregory struck in the head with a nightstick, a blow that seems to be corroborated by the autopsy report. He then saw three officers and the man fall face down to the ground. The "fat" officer pulled his arm out from under the man who was on the bottom and the witness says that it was obvious that the officer had hurt his hand or arm. The witness then noticed that the man was lying still in the grass. Witnesses #2, #3, #5, #9 and #12 corroborate the falling of Gregory Habib with the officers struggling with him, but differ on other details. Witnesses #2, #5 and #9 also noticed that an officer hurt his hand in the fall. The most logical explanation of the injuries to Gregory Habib and to Corporal Edwards' hand is that Edwards who is right handed had his right arm around Gregory's body. When Gregory fell to the ground, he fell face first with Edwards on top of him. Corporal Hart, who was also holding Gregory at the time, fell down on both men. Both officers have given statements saying that they fell on top of Gregory Habib with Edwards grasping Gregory around his chest and holding a nightstick in his fist which was pressed against Gregory's chest.

We have established by other evidence that Gregory weighed approximately 130 pounds. Edwards weighed approximately 240 pounds and Hart approximately 260 pounds. It is reasonable to believe that the combined weight of the three men coupled with Edwards' fist holding a nightstick against Gregory Habib's chest caused the critical injuries, described in the autopsy, as the men hit the ground.

We have consulted with the Assistant Medical Examiner and she states that the nature of the three contiguous bruises is consistent with a fist against the ribs.

Although our report on the Habib case was distributed to the media, none of the

media articles contained our factual findings as to the cause of death of Gregory Habib. We have quoted extensively from our report in order that the reader may understand some of the reasoning for our recommendations in this tragic case.

Numbers were used for witnesses in our report due to the fears of some of the witnesses that they would be viewed as police informants in their community. However, the State's Attorney, who adopted our recommendations, was furnished with the names and addresses of all witnesses.

On November 21, 1989, all charges against Corporal Steven Kerpelman were dismissed by the State Prosecutor. State's Attorney Williams followed by dismissing all charges against Martin Habib.

2. Report of Allegations of Misconduct Concerning Annapolis Police Department, Anne Arundel County

The State Prosecutor's Office became involved in another controversy involving alleged police misconduct at the same time in which the Habib investigation was conducted.

On June 23, 1989, Annapolis Mayor Dennis Callahan requested this Office and the State Police to investigate three allegations made by the supervising sergeant of a special narcotics task force known as Delta Force. The allegations were:

1. That a series of raids planned for April 28, 1989, by the Delta Force were obstructed by individuals, possibly police officers, divulging the

- plans to unauthorized individuals;
2. That a detective in the Criminal Investigation Division had approached a female acquaintance of the supervising sergeant of Delta Force in order to implicate the sergeant in a situation leading to criminal charges or his discredit;
 3. That certain information concerning drug violations specifically directed to Delta Force was being intentionally withheld by someone within the Police Department.

At the time of the investigation the Delta Force was a group of black officers organized by the Mayor and the Police Chief to investigate the distribution and use of Controlled Dangerous Substances in Annapolis housing projects. As such, though their contacts and informants in those communities, they were to project a police presence in the communities and discourage "street-dealing" of drugs. In the spring of 1989, the unit planned to secure search warrants and conduct a number of publicized raids in the communities hoping that the raids and subsequent arrests and seizures would have a major impact in deterring drug dealers. The plan was the so-called "Spring Round-Up" on April 28, 1989, which yielded poor results and accusations of sabotage.

The investigation was conducted for three months during which 73 persons were interviewed and all applicable records were reviewed. On October 15, 1989, a 39 page report was made to Mayor Callahan who released it to the public. Based on the

investigators' findings it was concluded that no one should be prosecuted. Those findings included the following:

- a. That the impending raids had been jeopardized by unauthorized and careless disclosures to an individual in one of the communities, to the media, to unauthorized police personnel and to other city officials. However, there was no evidence that the unauthorized disclosures were made maliciously or with the intent to sabotage the Spring Round-Up;
- b. That two CID officers seen in the community before the raids were not responsible for alerting the targets of the raids;
- c. That four of the five search warrants were canceled by a Delta Force officer who feared that the searches would not be successful and that this would reflect upon him and his unit. In his case we recommended administrative rather than criminal proceedings;
- d. That there was no evidence to substantiate the Delta Force sergeant's claim that a Criminal Investigation Division detective had attempted to

discredit him; and,

- e. That the allegation of intentional withholding of information from Delta Force was based on a misunderstanding by the Delta Force sergeant.

3. Robert Gordon, Chief, Right of Way Administration; John W. Gladding, Jr., Chief, District 5 Department of Transportation; Elmer Schwartzman, President, Elmer Schwartzman Associates, Inc., Appraisers - State Government

Messrs Gordon and Gladding were veteran employees of the State's Department of Transportation engaged in land acquisitions. They were indicted and charged with bribery, misconduct in office and perjury on May 1, 1989. On the same date, Mr. Schwartzman and his company were each indicted on two counts of bribery.

On October 12, 1989, Gladding pleaded guilty to misconduct in office before Judge Raymond G. Thieme, Jr., in Anne Arundel County Circuit Court and was fined \$1,000.00, on December 12, 1989.

On October 24, 1989, Gordon pleaded guilty to misconduct in office before Judge Thieme. He was given probation before judgment, five years probation with one year supervised and fined \$1,000.00.

Mr. Schwartzman's company pleaded nolo contendere to bribery on October 31, 1989 before Judge Thieme. The company was fined \$25,000.00 and ordered never again to seek

business with the State.

A nolle prosequi was entered to all remaining counts of the indictments in exchange for the guilty pleas.

4. Councilman Anthony Cicoria and Mrs. Catherine Cicoria - Prince George's County

The Cicorias were indicted by a Prince George's County grand jury on November 21, 1989, for theft of campaign funds and a number of violations of the election laws. The results of their cases appear elsewhere in this Report.

5. John T. McQueeney, Inspector, County Liquor Board - Anne Arundel County

Mr. McQueeney was indicted on May 1, 1989. He was charged with two counts of theft and four counts of misconduct. The charges stemmed from an investigation of missing video poker machines and the alleged misuse of funds seized in a police raid. Mr. McQueeney was acquitted of all charges by Judge Bruce C. Williams of Anne Arundel County Circuit Court on January 30, 1990.

6. Elbert Barnes, Officer, Rock Hall Police Department; Nathan Montgomery, Jr. - Kent County

Mr. Montgomery pleaded guilty to bribing Officer Barnes on December 3, 1989

before Judge Elroy Boyer of the Circuit Court for Kent County. Pursuant to a plea agreement Judge Boyer sentenced him to ten years in the Department of Correction, suspended three years and placed him on three years supervised probation upon his release from his seven year prison term.

The charges against Officer Barnes were dismissed on March 31, 1989, after the tape recording made by Montgomery of his conversations with Barnes was suppressed.

7. James Davis - Anne Arundel County

On February 6, 1989, Mr. Davis was sentenced by Judge Raymond G. Thieme, Jr. to ten years in the Division of Correction for bribing a title examiner at the Motor Vehicle Administration. This case was investigated by the State Police in conjunction with our investigation of the bribe.

8. Election Law Violations

The State Administrative Board of Election Laws (S.A.B.E.L.) referred 67 complaints to this Office in 1989. These complaints involved failures to file reports by campaign committees, non-payment of late filing fees and no authority lines on campaign literature. Twenty of these complaints were resolved without the necessity of filing charges by the offenders paying fines and filing reports. Forty-seven complaints resulted in charges. Twenty-three defendants paid fines prior to trial and their cases were dismissed. Two of the

remaining 24 defendants were non est (unable to serve summonses). The remaining 22 cases were carried over into 1990.

9. Report of Allegations Involving Queen Anne's County School System - Queen Anne's County

On February 28, 1989 the following allegations were made concerning school officials in Queen Anne's County:

1. That certain officials were favoring a select group of independent school bus contractors in the awarding of school bus routes;
2. That certain officials were using Board of Education employees for personal purposes during normal working hours;
3. That a 1984 warehouse fire was intentionally set to conceal shortages of school supplies;
4. That a high level school administrator was not being charged sick leave during extensive periods of illness; and,
5. That the Food Service Coordinator used school funds and supplies in a private catering business.

The investigation did not produce evidence which would amount to criminal misconduct. A number of findings were listed in a report made to the County Commissioner on July 3, 1989. The report was released to the public.

10. Complaint of Improper Use of Process by County Officers - Baltimore County

On November 14, 1988, a complaint was received alleging that improper procedures had been used to secure records in a pending court case. The complainant accused certain county officials of committing misconduct in office.

A preliminary inquiry failed to indicate that a crime had occurred and the matter was closed on April 13, 1989, with a report to the complainant.

11. Alleged Misconduct of Prosecutor and Police Officer - Baltimore County

On November 1, 1989, a complaint was received alleging misconduct in the search of a defendant's cell at the Maryland Correctional Institute by county police and correctional officers. A short investigation ensued in which all of the subjects involved in the matter were interviewed. No misconduct was found and a 17 page report was given to the complainants on December 20, 1989.

12. Alleged Failure of Lobbyist to Report All Expenditures - Baltimore City

A complaint was received on September 22, 1988, that a registered lobbyist had failed to include significant expenditures on behalf of legislation by a corporation which he represented.

An investigation revealed that the omission was not wilful, but the result of a misunderstanding. An eight page report was issued to the complainant on April 6, 1989.

CASES IN THE APPELLATE COURTS

1. Nathaniel T. Oaks v. State of Maryland. 83 Md. App. 1, 573 A.2d 392 (1990)

On May 10, 1990, the Court of Special Appeals affirmed in part and reversed in part the conviction of former Delegate Oaks. As Chief Judge Richard P. Gilbert stated in his opinion, "The net result to Oaks remains the same. " In the footnote Judge Gilbert explained:

"Oaks had been sentenced by Baltimore Circuit Court Judge Joseph I. Pines to five years imprisonment for the theft of over \$300.00, fined \$1,000.00, and ordered to perform 500 hours of community service; three years for misconduct in office, one year for perjury; and six months for failure to file a campaign report. All sentences of imprisonment, ordered to be served consecutively, were suspended; and Oaks was placed on probation for a period of three years."

In addition to his sentence Delegate Oaks lost his seat in the General Assembly as a matter of law.

The Court of Special Appeals reversed Oaks' convictions for perjury and failure to file a campaign report on the basis that, as the candidate, he was not required by statute to file the false reports and, therefore, could not be held criminally accountable. However, his convictions for theft and misconduct in office were affirmed.

On May 29, 1990, Judge Pines vacated the conviction for theft and misconduct and granted Oaks probation before judgment. This modification enabled Oaks in the 1990 election year to file as a candidate for election to the same seat which he has held prior to his conviction.

2. Bernard P. Goldberg, Sr. v. State of Maryland, 315 Md. 653, 556 A.2d 267 (1989)

On April 12, 1989, the Court of Appeals affirmed the conviction of Goldberg for fraudulent misappropriation and statutory theft. A motion for reconsideration was denied on May 26, 1989.

Judge John C. Eldridge stated in his opinion that when the Deputy State Prosecutor and an Assistant State Prosecutor appeared before the Grand Jury for Howard County in its investigation of Goldberg, they were authorized to do so as part of an investigation into multi-county criminal activity.

As a result of the Court's denial of his motion for reconsideration, Goldberg began serving his sentence on June 21, 1989. His petition for Writ of Certiorari to the United States Supreme Court was denied on October 2, 1989.

ADMINISTRATION

Personnel

Chief Auditor Marcelino V. Ferrer became ill in September, 1990, and passed away June 10, 1991. "Mars", as he was known by all who worked with him, was one of the first employees of the newly formed State Prosecutor's Office, having transferred from the Department of Fiscal Services in August, 1980. He soon qualified as an expert accountant and testified as such in most of the major cases prosecuted by the Office.

In March, 1990, Assistant State Prosecutor Bernard Penner transferred to the Attorney General's Office and assumed his duties as an Assistant Attorney General in the Environmental Crimes Unit of the Department of the Environment. During his four years with the Office Bernie became involved in most of the major investigations. He was primarily responsible for the investigation and report of the Habib case in Prince George's County which is discussed elsewhere in this report.

Upon passing the Bar Examination Dolores Ridgell, who had previously worked for the Office as a law clerk and investigator, was promoted to Assistant State Prosecutor on November 1, 1989. She is the first prosecutor in the history of the Office to serve a two year apprenticeship as a law clerk leading to the appointment as an Assistant State Prosecutor.

On July 9, 1990, Albert T. Krehely, Jr., who had been working as an Assistant State's Attorney for Prince George's County and Chief of the District Court Division of the State's

Attorney's Office, assumed his duties as Assistant State Prosecutor. Tom, as he is known, joined our staff with seven years experience as a prosecutor in Prince George's County.

On March 30, 1990, Thomas "Mike" McDonough, who has been with the Office since September, 1984, was promoted to Senior Assistant State Prosecutor. Mike has been a prosecutor for over eight years having served as an Assistant State's Attorney for Baltimore County from May, 1982 to September, 1984, when he joined our Office. Prior to being appointed as an Assistant State's Attorney, Mike served as a law clerk for two years and five months with the Baltimore County State's Attorney's Office.

On July 1, 1990, Scott E. Nevin, who was appointed Assistant State Prosecutor in July, 1987, was promoted to Senior Assistant State Prosecutor. Scott is also an alumnus of the Baltimore County State's Attorney's Office having served five years with that office prior to becoming an Assistant State Prosecutor.

James I. Cabezas, a former Sergeant with 16 years experience with the Baltimore City Police Department, continues his duties as Chief Investigator for the Office. As such he monitors all investigations of the Office and serves as Chief Advisor to the State Prosecutor and his Assistants on all investigative matters. He also supervises all investigators who are either permanent employees or temporarily assigned from other agencies. On July 5, 1989, William J. Pennington, a 27 year veteran of the Baltimore City Police Department, was appointed as a Special Agent reporting to Cabezas. Pennington's primary experience with the City Police was as a Sergeant supervising narcotics and vice units.

Due to the vacancy created by Marcelino Ferrer's disability retirement all of the auditing functions of the Office have devolved to Sharon Allen. Budgetary restraints have

prevented us from filling the vacancy. However, Baltimore City Auditor Alan Reynolds has temporarily assigned Louis Dardick from his office to assist Miss Allen in a major investigation which we are conducting jointly with his office.

Sergeant Rufus Lee Caple of the State Police is in his fifth year with this Office and continues as our primary liaison with his agency. Corporal Henry Bowker was reassigned to other duties with the State Police after a distinguished tour of duty of five years with the Office. Corporals Benjamin T. Hurdle and Jackie Whitaker are now assigned to assist Sergeant Caple in supporting the Office's investigative functions.

Unfortunately, due to the budget reductions imposed on State agencies, we have lost the funds normally used to hire law students as part-time law clerks. During the report period Lori Brill of the University of Baltimore School of Law was with us for one year before leaving to become Baltimore City Judge Robert I. H. Hammerman's law clerk. She was succeeded by Lisa Fox, also from the University of Baltimore, who was with us for six months before joining the Baltimore County State's Attorney's Office as a law clerk. Matthew L. Goldin, the third University of Baltimore law student hired during this period, left in July, 1990, to work as a law clerk with a private firm. Through the years we have been indebted to law school Professor Byron Warnken of the University of Baltimore for recommending some of his best students to us for clerkships.

The administrative support staff has remained the same since our last report. They are administrative aide Deborah Constable and legal stenographers Deborah Amig and Jane Skrzypiec, who was married since our last report and changed her surname to that of her husband, Maryland State Police Trooper First Class Jerry Skrzypiec.

In our last report we stated that the Governor and Legislature approved \$40,000.00 for the purchase and installation of an office automation system. At the final budget conference of the 1988-89 legislative session this amount was reduced to \$30,000.00. However, by reducing the scope of the programs, we were able to hire a consultant who devised and installed a word processing network plus spreadsheet capabilities for our auditors. At the present time we have six terminals connected to two laser printers. Additional terminals and programming for case management and evidence control are planned for the future. The current system has improved enormously the administrative staff's capability to deal with the typing, duplicating and filing requirements of the Office. In addition, spread sheet analysis and information retrieval have become far more efficient. Search warrants, subpoenas and lengthy investigative reports are no longer time consuming interruptions in the regular workload of the administrative staff.

WORKLOAD STATISTICS

A Summary of Workload follows which briefly shows the units of work carried over from each year, new work initiated and work completed. The terms used in the Summary are defined as follows:

Initial Complaint Disposed with No inquiry - The complaint did not amount to a crime or matter within the jurisdiction of the Office. In some cases a complaint is rejected because there is insufficient evidence to justify a preliminary inquiry.

Preliminary Inquiry - The allegation is sufficient to require inquiries, interviews and/or the research of records to determine whether or not a full investigation is warranted. A preliminary inquiry usually takes 30 to 90 days to complete.

Full Investigation - There is sufficient evidence to require an investigative team of at least one prosecutor, an investigator and, when necessary, an auditor to determine whether or not criminal charges can be sustained. Full investigations generally last between 6 and 18 months depending upon the complexity of the case and the need to obtain and examine financial data by court authorization.

It should be noted that the State Prosecutor may only investigate on his own initiative four crimes; bribery, misconduct in office, violations of State election laws, and violations of State ethics laws. If he discovers perjury, obstruction of justice or extortion during the

course of such investigation, he may also investigate those offenses. In addition, at the request of the Governor, the Attorney General, the General Assembly, or a State's Attorney in an applicable jurisdiction, the State Prosecutor may investigate any criminal activity occurring in more than one jurisdiction or partly in Maryland and partly in another jurisdiction.

SUMMARY OF CALENDAR YEARS 1989 AND 1990 WORKLOAD:

CARRYOVER FROM PRIOR YEARS

	<u>1989</u>	<u>1990</u>
Full Investigations	8	8
Preliminary Inquiries	12	11
Total Open Files Carried Over	20	19

NEW WORK IN 1989 & 1990

Full Investigations Initiated	11	12
Preliminary Inquiries	46	56
Initial Complaints Disposed with No Inquiries	65	96
Total New File Opened	122	164
Total Active Files	142	183

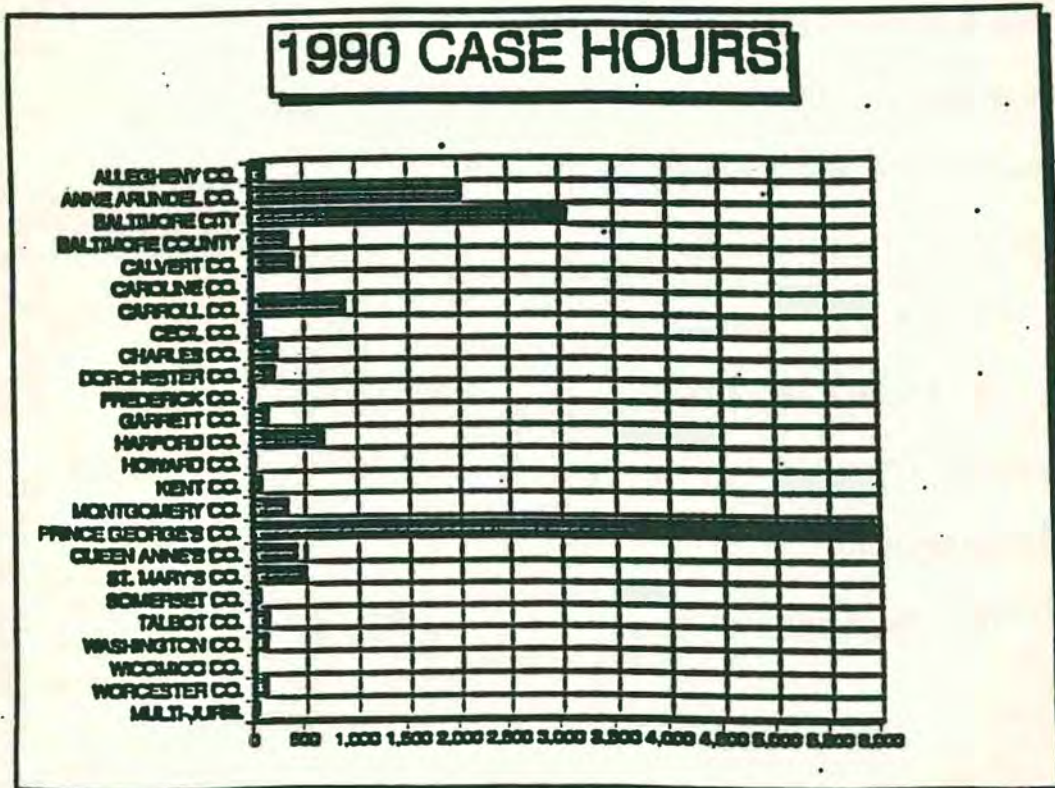
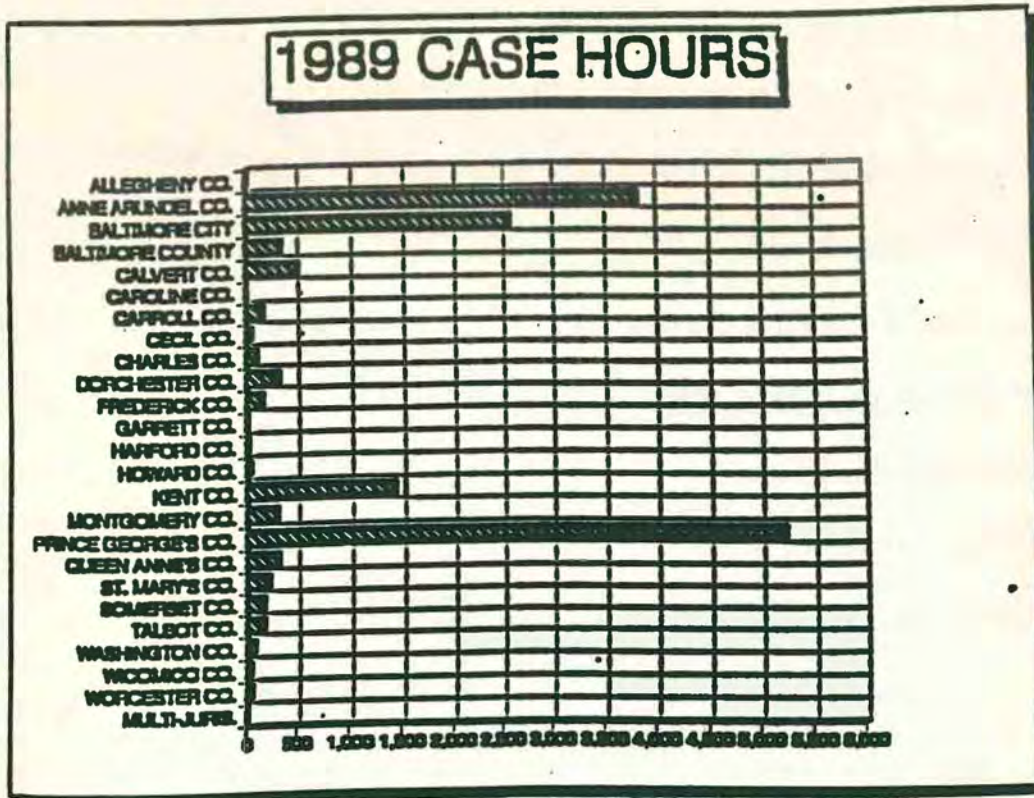
WORK COMPLETED IN 1989 & 1990

Full Investigations Completed	11	8
Preliminary Inquiries Closed	47	55
Initial Complaints Disposed	65	96
Total Work Completed	123	159
Total Files Carried Over	19	24

CLASSIFICATION OF CARRYOVER

Full Investigations	8	12
Preliminary Inquiries	11	12

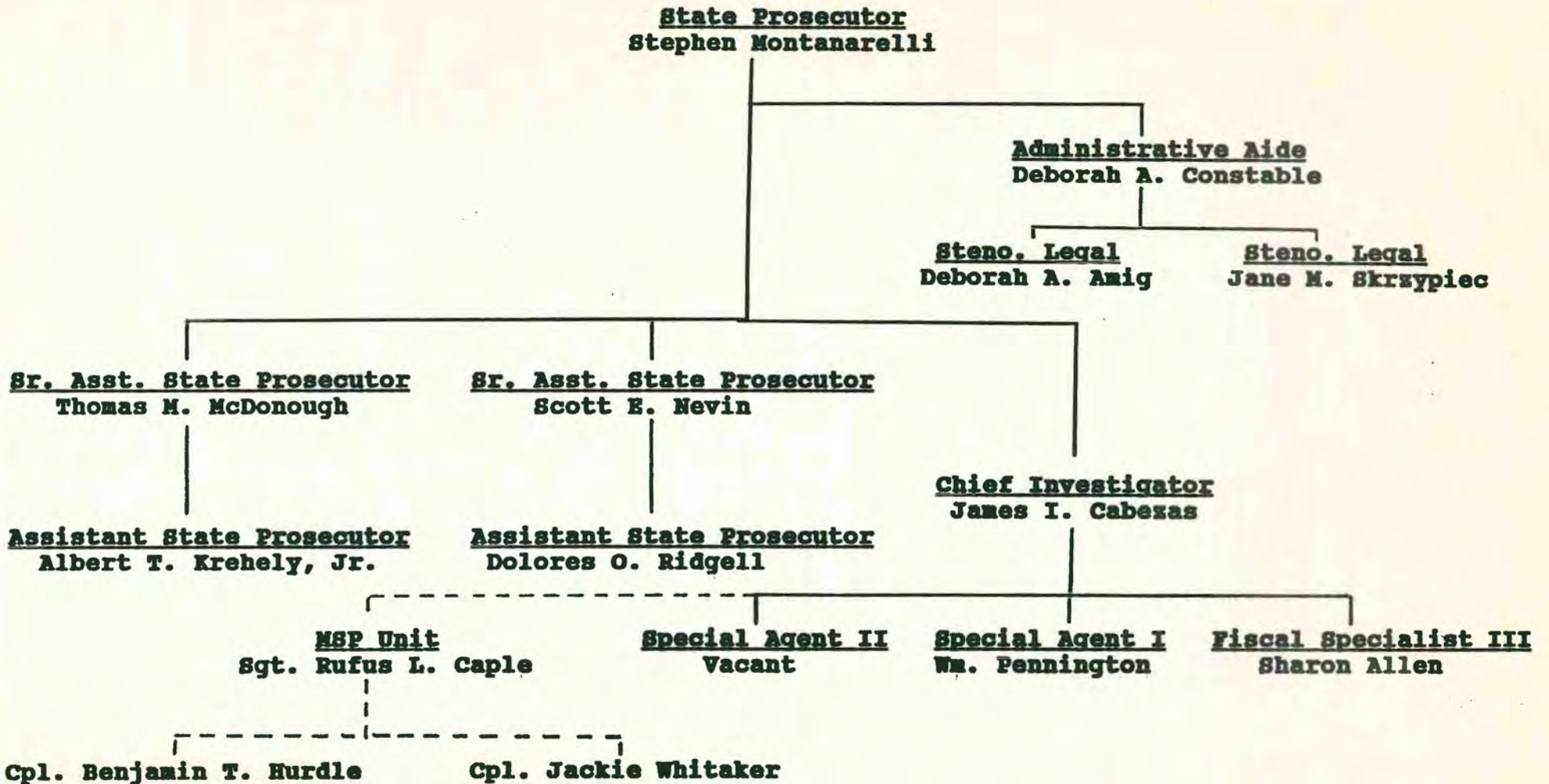
INVESTIGATIVE CASE HOURS BY JURISDICTION



SOURCES OF COMPLAINTS

	<u>1989</u>	<u>1990</u>
Citizens	71	94
State's Attorneys Office & Attorney General's Office	12	24
Law Enforcement Agencies	15	15
Elected Officials	10	13
State and Local Election Boards	9	7
Anonymous	3	7
State Prosecutor's Office (Self-Initiated)	2	4
Total	122	164

OFFICE OF THE STATE PROSECUTOR
As of July 1, 1991



NOTE: Dotted lines indicate personnel assigned from other agencies

INDEX BY JURISDICTION

<u>JURISDICTION</u>	<u>PAGES</u>
Anne Arundel County.....	5, 6, 9, 22, 25, 26, 27
Baltimore City.....	4, 14, 29, 31
Baltimore County.....	13, 29
Calvert County.....	10
Carroll County.....	7, 14
Charles County.....	12
Garrett County.....	11
Harford County.....	7, 14
Howard County.....	32
Kent County.....	26
Montgomery County.....	11, 13
Prince George's County.....	2, 3, 15, 17, 26
Queen Anne's County.....	28
Worcester County.....	13
State Government.....	5, 6, 12, 25, 27