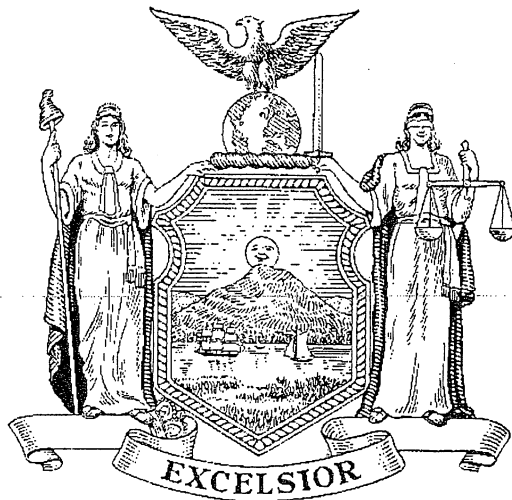


STATE OF NEW YORK COMMISSION OF INVESTIGATION



**AN INVESTIGATION INTO ALLEGATIONS MADE BY
FORMER SUFFOLK COUNTY SHERIFF PATRICK A.
MAHONEY AND FORMER SUFFOLK COUNTY
DISTRICT ATTORNEY JAMES M. CATTERSON, JR.
AGAINST EACH OTHER**

JULY 2003

59 MAIDEN LANE

NEW YORK, NEW YORK 10038

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OF

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TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

SHERIFF MAHONEY’S REQUEST TO THE GOVERNOR FOR A SPECIAL
PROSECUTOR TO SUPERSEDE SUFFOLK COUNTY DISTRICT
ATTORNEY CATTERSON..... 8

SHERIFF MAHONEY’S ALLEGATIONS TO THE GOVERNOR
REGARDING DISTRICT ATTORNEY CATTERSON’S OWNERSHIP
OF THE PRINTER’S DEVIL RESTAURANT..... 11

*District Attorney Catterson’s Suffolk County Ethics Commission
Financial Disclosure Forms* 13

*District Attorney Catterson’s State Liquor
Authority Filings*..... 14

News Reports..... 16

Interview of James M. Catterson, Esq...... 17

THE SUFFOLK COUNTY SHERIFF’S DEPARTMENT ISSUANCE
OF UNAUTHORIZED SUBPOENAS DUCES TECUM FOR THE
STATE LIQUOR AUTHORITY RECORDS FOR THE PRINTER’S DEVIL
RESTAURANT AFTER THE COMMISSION’S IN-DEPTH
INTERVIEW OF SHERIFF MAHONEY..... 20

THE COMMISSION’S TRANSMITTAL OF INFORMATION TO
SUFFOLK COUNTY DISTRICT ATTORNEY SPOTA..... 22

DISTRICT ATTORNEY SPOTA’S FACTUAL REPORT TO THE
COMMISSION..... 23

THE COMMISSION’S CONSIDERATION OF THE DISTRICT
ATTORNEY’S LETTER..... 28

CONCLUSION: DISTRICT ATTORNEY SPOTA DID NOT
ABUSE HIS DISCRETION IN NOT PRESENTING EVIDENCE TO A
GRAND JURY AND IN DECLINING TO PROSECUTE FORMER SHERIFF
MAHONEY AND FORMER DISTRICT ATTORNEY CATTERSON..... 35

EXECUTIVE SUMMARY

On March 3, 2000 and then again on April 5, 2000, Patrick A. Mahoney, at the time the Sheriff of Suffolk County, wrote to Governor George E. Pataki requesting the appointment of a special prosecutor to supersede then Suffolk County District Attorney James M. Catterson, Jr. in a grand jury investigation of the Sheriff and his department. Soon after receipt of each of these letters, Governor Pataki forwarded Mr. Mahoney's requests to the New York State Commission of Investigation ("the Commission") for its review.

In May 2000, Commission staff met with Sheriff Mahoney and his attorney, Douglas T. Burns. Sheriff Mahoney was interviewed in-depth and given an opportunity to provide the Commission with whatever information he had about District Attorney Catterson. In early June 2000, while Commission staff was evaluating Sheriff Mahoney's information, a Suffolk County grand jury returned a 90-count indictment against him and former Suffolk County Undersheriff Edward Morris. On June 6, 2000, Sheriff Mahoney and former Undersheriff Morris were arraigned on the indictment before Suffolk County Court Judge Joseph Farneti. Judge Farneti recused himself, causing the Chief Administrative Judge for all New York State Courts, Jonathan Lippman, to assign Queens County Supreme Court Justice Richard L. Buchter, a judge from outside Long Island, to preside over the case. Judge Lippman was quoted in news accounts as stating that Justice Buchter's appointment was necessary "to avoid any perception of there being a problem." In light of the action of the grand jury and the assignment of Justice Buchter to the case, the Commission took no further steps regarding Sheriff Mahoney's request to the Governor for the appointment of a special prosecutor in

order to give Sheriff Mahoney, former Undersheriff Morris and the District Attorney a fair chance to make motions to the court and to afford Justice Buchter the opportunity to review the issues carefully and render his decision.¹

In a decision dated January 10, 2001, Justice Buchter denied most of the pre-trial motions of Sheriff Mahoney and former Undersheriff Morris, including one to dismiss the indictment on the ground of selective prosecution. That motion incorporated by reference a motion Mr. Burns had made on behalf of Sheriff Mahoney in April 1999 seeking the appointment of a special prosecutor pursuant to County Law §701 to conduct the grand jury investigation that resulted in the indictment against Sheriff Mahoney and former Undersheriff Morris. Justice Buchter scheduled pretrial hearings to start on March 7, 2001, to be followed by the trial.

On February 13, 2001, approximately three weeks before the start of his trial, Sheriff Mahoney wrote again to Governor Pataki, this time alleging that District Attorney Catterson had filed false documents with the New York State Liquor Authority (“SLA”) and the Suffolk County Ethics Commission (“Ethics Commission”) concerning his ownership interest in The Printer’s Devil Restaurant (“The Printer’s Devil”) in Port Jefferson, Suffolk County, New York. These allegations had not been part of Sheriff Mahoney’s earlier letters to the

¹ Current (since January 2002) Suffolk County District Attorney Thomas J. Spota, III, Esq. was one of the attorneys in private practice representing former Undersheriff Morris in this proceeding and was present in court when he pleaded guilty on April 23, 2001.

Governor nor disclosed to Commission staff when Sheriff Mahoney was interviewed in May 2000.

On April 23, 2001, while on trial, Sheriff Mahoney pleaded guilty to three of the many misdemeanor counts in the indictment. Two of the counts to which he pleaded guilty involved violating Public Officers Law §3-b relating to the appointment of special deputy sheriffs. The other count involved violating the Civil Service Law relating to conducting fundraising activities at the Suffolk County Jail. Sheriff Mahoney's guilty pleas were entered in satisfaction of the multiple count indictment that charged him and former Undersheriff Morris with engaging in a course of conduct starting after Sheriff Mahoney was elected Sheriff in 1989 and former Undersheriff Morris was appointed Treasurer of the "Friends of Patrick Mahoney" political campaign committee in June 1990.² As part of the plea agreement, Sheriff Mahoney agreed to pay \$3,000 in fines and to pay \$18,000 in restitution to the Sheriff's Benevolent Fund by a check drawn on a Friends of Patrick Mahoney Fund account and former Undersheriff Morris agreed to pay \$10,000 in fines and to perform 1,000 hours of community service. Sheriff Mahoney did not seek re-election as Suffolk County Sheriff in November 2001.

Justice Buchter's finding, after reviewing the grand jury minutes, that there was legally sufficient evidence to support the charges against Sheriff Mahoney, combined with

² Former Undersheriff Morris pleaded guilty earlier that day to several counts in the indictment, including one felony count of defrauding the government. In his plea allocution, former Undersheriff Morris acknowledged acting in concert with Sheriff Mahoney.

Sheriff Mahoney's knowing and voluntary guilty pleas to three of the crimes for which the grand jury had indicted him, made further Commission inquiry into his original request to the Governor for the appointment of a special prosecutor moot. Sheriff Mahoney's decision not to seek re-election mooted the need for Commission advice to the Governor about whether Sheriff Mahoney's guilty pleas constituted cause for the Governor to remove him from office. The Commission continued its investigation of the allegations Sheriff Mahoney first made to the Governor in February 2001 against District Attorney Catterson pertaining to Mr. Catterson's SLA and Suffolk County Ethics Commission filings regarding his and his family's ownership of The Printer's Devil.

The Commission reviewed District Attorney Catterson's filings with the SLA and the Ethics Commission and interviewed District Attorney Catterson after he left office. The Commission believed that the facts did not appear to constitute provable crimes by District Attorney Catterson. However, during the course of the Commission's review of the allegations made against District Attorney Catterson by Sheriff Mahoney concerning the SLA filings, the Commission uncovered evidence of what appeared to constitute abuse of power and possibly provable crimes committed by members of the Suffolk County Sheriff's Department ("SCSD").

The Commission uncovered that, during 2000 and the early part of 2001, Suffolk County Sheriff Mahoney, using employees of the SCSD, conducted an investigation into District Attorney Catterson in connection with his ownership of The Printer's Devil

Restaurant and his filings with the SLA and the Ethics Commission. The SLA file revealed that the SCSD issued subpoenas, without proper authority, to the SLA for records. A SCSD issued subpoena found in the SLA file was dated January 9, 2001. It contained the signature of SCSD Deputy Sheriff Investigator Sergeant Robert C. Starke (“Sergeant Starke”) and sought all documents relating to the licensing of The Printer’s Devil dating back fourteen years to 1986. The SLA records also contained another subpoena issued by the SCSD dated March 9, 2001. This unsigned subpoena contained the typed name of Sheriff Mahoney and sought all documents relating to the licensing of The Printer’s Devil Inc. and of the Arden Food Corp.³ d/b/a The Printer’s Devil, and to the sale of The Printer’s Devil to Arden Food Corp. in 1999. Both subpoenas seemed to have been copied from a form subpoena that the SLA uses to obtain documents.⁴ The subpoenas served on the SLA referred to SCSD case number 99-2685. Although issued by the SCSD, the administrative offices of which are located in Riverhead, New York, the subpoenas were returnable at the SLA office at 11 Park Place, New York, N.Y. SLA records indicate that, on March 14, 2001, Sergeant Starke and Investigator Michael W. Varga went to the SLA’s offices in Manhattan and reviewed The Printer’s Devil file. Additionally, Sergeant Starke also made requests dated June 15, 2000 and January 11, 2001 to the SLA to examine its file on The Printer’s Devil.

³ SLA records reflect that The Printer’s Devil liquor license also was transferred to the Arden Food Corp. in 1999.

⁴ Although there are copies of only two SCSD issued subpoenas in the SLA file, Sergeant Starke and Investigator Varga told Commission staff during their interviews that they made three visits to the SLA with the first one probably being in June 2000. Sergeant Starke recalled that he did what he called an “information request,” a subpoena, for each occasion and could offer no explanation as to why there is no subpoena in the SLA file for the June 2000 visit, which was within a month of the Commission’s in-depth interview of Sheriff Mahoney and his failure to mention anything about The Printer’s Devil or other false filings.

The Commission transmitted to current Suffolk County District Attorney Thomas J. Spota, III, on June 28, 2002, information uncovered during its investigation and made its staff available for further cooperation. On January 22, 2003, District Attorney Spota wrote to the Commission. Without revealing too much of what should remain confidential between law enforcement agencies corresponding during the course of an investigation, including opinions about witnesses and legal analyses, suffice it to say that the District Attorney's staff reviewed the Commission's information, conducted an investigation and the District Attorney exercised his discretion to decline to prosecute, and not to present charges to a grand jury concerning former Sheriff Mahoney, Sergeant Starke, Investigator Varga and former District Attorney Catterson. The District Attorney wrote "[a]lthough there may be a *prima facie* showing of official misconduct against Mahoney, and possible criminal culpability against Catterson as well, it is my firm conviction that the interests of justice dictate that the Catterson-Mahoney feud be retired just as the principals have been and that the matter be closed." Thereafter, the Commission continued its own investigation in order to fulfill its responsibility to publicly report on potential abuses of power by public officials that do not necessarily rise to the level of provable crimes.⁵ Commission staff then interviewed Sergeant Starke and Investigator

⁵ Mr. Spota wrote, "[a]s the Commission is no doubt aware, the subject matter of this investigation is part of the long-standing Catterson-Mahoney feud that was a black mark on the law enforcement community of Suffolk County and which diverted precious resources from both agencies. As this Commission (referring to the Commission of Investigation) has observed, the pattern of targeting for selective enforcement or investigating public officials who disagree with the investigating official is an improper use of office. So too are actions meant to intimidate others. As the Commission itself found in its investigation of the Putnam County Sheriff as set forth in its report dated November 2002, it was an atmosphere of fear and intimidation that existed in that case created by the actions of the subject of that investigation. The former District Attorney's tactics of threats and intimidation used against

Varga about the details of what they did with the material they obtained from the SLA and at whose direction they were acting in obtaining and using the SLA filings. The Commission concludes, under the totality of the circumstances, that District Attorney Spota's declination to prosecute and decision not to present evidence to a Suffolk County grand jury is not an abuse of discretion and that Mr. Spota's prior representation and connection with the defense of former Undersheriff Morris do not appear to have adversely affected the ultimate conclusion that he reached in the exercise of his discretion.⁶

those who opposed him are legendary in Suffolk County annals and, very likely, were a major reason why the voters of Suffolk County turned him out of office."

⁶ Mr. Spota wrote, "[a]s referred to above, the behavior of both high ranking law enforcement officials was a shameful episode in Suffolk County's history. Certainly, the Commission is aware that I, prior to becoming District Attorney, represented Edward Morris, Mahoney's co-defendant in the criminal trial. Obviously, that prior relationship may call into question the ability of this office to objectively review your referral of June 28, 2002. We believe that we have been fair and objective and stand by our conclusions."

SHERIFF MAHONEY'S REQUEST TO THE GOVERNOR FOR A SPECIAL PROSECUTOR TO SUPERSEDE SUFFOLK COUNTY DISTRICT ATTORNEY CATTERSON

By letters dated March 3 and April 5, 2000, then Suffolk County Sheriff Mahoney asked Governor Pataki to appoint a special prosecutor to supersede then Suffolk County District Attorney Catterson in a grand jury investigation of the Sheriff and his department. In his letters, Sheriff Mahoney claimed that District Attorney Catterson abused his power and had repeatedly threatened and bullied opponents with grand jury action and that District Attorney Catterson's prosecution of him was based on a personal vendetta. Additionally, he reported that his boat was broken into and its log stolen. Three days before the break-in was discovered, the owner of the boatyard where the boat was stored told Sheriff Mahoney that he was subpoenaed by the grand jury to produce records and appear before it. Governor Pataki forwarded Sheriff Mahoney's letters to the Commission for its review.

In May 2000, Commission staff met with Sheriff Mahoney and his attorney, Douglas T. Burns. Sheriff Mahoney was interviewed in-depth and given an opportunity to provide the Commission with all of the information he had relating to his allegations against District Attorney Catterson. In very early June 2000, while Commission staff was evaluating Sheriff Mahoney's allegations and information, a Suffolk County grand jury returned a 90-count indictment against him and former Undersheriff Morris. On June 6, 2000, Sheriff Mahoney and former Undersheriff Morris were arraigned on the indictment before Suffolk County Court Judge Joseph Farneti. However, soon thereafter, Judge Farneti recused himself, and Chief Administrative Judge Jonathan Lippman assigned Queens County Supreme Court

Justice Richard L. Buchter, a judge from outside Long Island, to preside over the case. Judge Lippman was quoted in news accounts as stating that Justice Buchter's appointment was necessary "to avoid any perception of there being a problem." In light of the action of the grand jury and the assignment of Justice Buchter to the case, the Commission determined to take no further steps regarding Sheriff Mahoney's request to the Governor for the appointment of a special prosecutor in order to give him, former Undersheriff Morris and the District Attorney a fair chance to litigate that issue in court, and to afford Justice Buchter ample opportunity to review the matter carefully.

In a decision dated January 10, 2001, Justice Buchter denied most of the pre-trial motions of Sheriff Mahoney and former Undersheriff Morris, including one to dismiss the indictment on the ground of selective prosecution. That motion incorporated by reference a motion Mr. Burns had made on behalf of Sheriff Mahoney in April 1999 seeking the appointment of a special prosecutor, pursuant to County Law §701, to conduct the grand jury investigation that resulted in the indictment against Sheriff Mahoney and former Undersheriff Morris. Justice Buchter scheduled pretrial hearings to start on March 7, 2001, to be followed by the trial.

On February 13, 2001, approximately three weeks before the start of his trial, Sheriff Mahoney wrote again to Governor Pataki, this time alleging that District Attorney Catterson had filed false documents with the SLA and the Suffolk County Ethics Commission concerning his ownership interest in The Printer's Devil. These allegations had not been part

of Sheriff Mahoney's letters almost a year earlier to the Governor nor disclosed to Commission staff when Sheriff Mahoney was interviewed in May 2000. The Governor forwarded Sheriff Mahoney's February 2001 letter to the Commission. Although Sheriff Mahoney did disclose to the Governor and the Commission the results of some of his investigation, he did not disclose that his department issued subpoenas for the SLA's files relating to the Catterson family's restaurant and liquor license for The Printer's Devil.

On April 23, 2001, while on trial, Sheriff Mahoney pleaded guilty to three misdemeanor counts in the indictment. Two of the counts to which he pleaded guilty involved violating Public Officers Law §3-b relating to the appointment of special deputy sheriffs. The other count involved violating the Civil Service Law relating to conducting fundraising activities at the Suffolk County Jail. Sheriff Mahoney's guilty pleas were entered in satisfaction of a multiple count indictment which charged him and former Undersheriff Morris with engaging in a course of conduct starting after Sheriff Mahoney was elected Sheriff in 1989 and former Undersheriff Morris was appointed Treasurer of the "Friends of Patrick Mahoney" political campaign committee in June 1990.⁷ Sheriff Mahoney, whose term of office as Suffolk County Sheriff expired at the end of 2001, decided not to seek re-election in November 2001.

⁷ Former Undersheriff Morris pleaded guilty earlier that day to several counts in the indictment, including one felony count of defrauding the government. In his allocution, former Undersheriff Morris admitted committing this crime while acting in concert with Sheriff Mahoney.

Justice Buchter's finding, after reviewing the grand jury minutes, that there was legally sufficient evidence to support the charges against Sheriff Mahoney in the indictment, combined with Sheriff Mahoney's knowing and voluntary guilty pleas to three of the crimes for which the grand jury had indicted him, made any further Commission inquiry into his original request to the Governor for the appointment of a special prosecutor moot. Sheriff Mahoney's decision not to seek re-election as Suffolk County Sheriff also made it unnecessary for the Commission to advise the Governor on whether his guilty pleas constituted cause for the Governor to remove him from office. The Commission continued its investigation of the allegations Sheriff Mahoney made against District Attorney Catterson pertaining to his SLA and Suffolk County Ethics Commission filings regarding his ownership of The Printer's Devil Restaurant.

SHERIFF MAHONEY'S ALLEGATIONS TO THE GOVERNOR REGARDING DISTRICT ATTORNEY CATTERSON'S OWNERSHIP OF THE PRINTER'S DEVIL RESTAURANT

Sheriff Mahoney's February 13, 2001 letter to Governor Pataki included copies of The Printer's Devil 1992 and 1995 license renewal applications⁸ to the SLA which District Attorney Catterson signed as president of The Printer's Devil, Inc. and a letter dated June 4, 1997 from District Attorney Catterson and his wife, Lola Fae Catterson ("Mrs. Catterson"), in

⁸ The Commission's investigation shows that these documents were probably the documents obtained with an unauthorized subpoena.

support of their application to the SLA to approve a corporate change.⁹ That letter stated that Mrs. Catterson will be carried as The Printer's Devil's owner of record, and that the transfer of the outstanding shares to her occurred in December 1989. The letter explained that an application for this corporate change was not submitted in 1989 because Mr. Catterson was in a rush to close his private law practice and prepare to assume his new responsibilities as District Attorney.

Mr. Catterson was elected District Attorney of Suffolk County on November 7, 1989 and took office on January 1, 1990. Meanwhile, according to records filed with the SLA in 1979, he and two other individuals, Arnold Bardoneschi and Richard Nolan, started a bar called The Printer's Devil. Each partner held 66 shares and they applied for and obtained a liquor license from the SLA. Mr. Bardoneschi withdrew from the business in 1980 and Mr. Nolan in 1987. In the 1980 license renewal application, the SLA was informed that Mr. Bardoneschi had withdrawn from ownership of the restaurant and transferred his shares to the remaining shareholders. There was no application for a change of corporate ownership and officers filed at that time with the SLA. In the February 1989 license renewal application, Mr. Catterson informed the SLA that, in 1988, Mr. Nolan had retired. He provided further information to the SLA in an affidavit. According to this affidavit, this change had been agreed to by Mr. Nolan and Mr. Catterson in 1986. Payments for the purchase were made in 1987. A temporary renewal stipulation was entered into until the corporate change paperwork

⁹ Sheriff Mahoney's February 13, 2001 letter also annexed copies of his correspondence with the Suffolk County Ethics Commission regarding District Attorney Catterson's filings with that agency.

was completed and approved. In November 1989, the SLA approved the corporate change reflecting Mr. Bardoneschi's transfer of his shares to Mr. Catterson and, in a second decision, Mr. Nolan's retirement as treasurer/director and transfer of his shares to Mr. Catterson. The SLA's letter dated November 30, 1989 to The Printer's Devil, Inc. advised its shareholders and officers of the approval of the corporate changes. This letter also warned them against making any future corporate changes, such as in ownership and officers, before obtaining SLA approval.

District Attorney Catterson's Suffolk County Ethics Commission Financial Disclosure Forms

Chapter 61 of the Suffolk County Code requires that certain county officials file an annual financial disclosure statement with the County Ethics Commission. As an elected county official, the District Attorney is one of the officials who must file such a statement. During his tenure as District Attorney, Mr. Catterson filed annual disclosure statements. District Attorney Catterson's filings from 1990 to 2001 are dated: April 15, 1990, May 8, 1991, May 15, 1992, May 15, 1993, May 15, 1994, May 15, 1995, May 14, 1996, May 21, 1997, July 3, 1998, June 7, 1999, May 15, 2000 and May 14, 2001.

In the statement dated April 15, 1990, District Attorney Catterson's wife is listed as president and 90% shareholder of The Printer's Devil, Inc. and there is no indication in the statement as to who owns the other 10%. Presumably, it is not District Attorney Catterson because his interest should have been disclosed in the statement. In the financial disclosure

statements dated from 1991 through 1997, Mrs. Catterson is listed as president and 100% shareholder of The Printer's Devil, Inc. In 1998 and 1999, Mrs. Catterson is listed as president and 85% shareholder.¹⁰ The restaurant was sold by The Printer's Devil, Inc. to the Arden Food Corp. in 1999 (the liquor license was surrendered by The Printer's Devil on October 1, 1999, and transferred to the Arden Food Corp.). In the 2000 financial disclosure statement, Mrs. Catterson is listed as retired. All but the 1997 filings were notarized by Patricia Brown, Mr. Catterson's long-time secretary both before and after he became District Attorney.

District Attorney Catterson's State Liquor Authority Filings

The Commission's review of the SLA file for The Printer's Devil shows that District Attorney Catterson was identified as the president on several occasions between 1990 and 1995. For instance, he signed license renewal applications dated February 4, 1992 and February 9, 1995 in which he identified himself as president of The Printer's Devil, Inc. He also signed an application for permission to make physical alterations to the restaurant on July 5, 1990 and submitted an affidavit to the SLA identifying himself as president in support of the application to make the alterations. In a bond agreement dated January 31, 1995 with Western Surety Company, District Attorney Catterson signed as president of The Printer's Devil, Inc. In an undated Form 260-020 pertaining to The Printer's Devil's February 1995

¹⁰ The SLA records for the application for change of ownership in 1997 indicates that the 15% of the shares were transferred from Mrs. Catterson to Patrick Campbell, the manager of the establishment. That change was approved in the summer of 1997.

renewal application, District Attorney Catterson again signed as president. Meanwhile, in a March 1995 application to the SLA for a caterer's permit, Mrs. Catterson signed in the partnership certification section of the form (and not in the corporation section) but indicated that she was The Printer's Devil's owner and president.

In a letter dated June 4, 1997 to the Division of Alcoholic Beverage Control,¹¹ District Attorney Catterson and his wife wrote to that agency in support of their application for approval of corporate change of officers, directors and stockholders of The Printer's Devil, Inc. and to reflect that in December 1989 District Attorney Catterson's ownership interest had been transferred to Mrs. Catterson. The Cattersons wrote that, in District Attorney Catterson's rush to close his law practice before he became District Attorney on January 1, 1990, the application for approval of this change was not made. The Cattersons' letter indicated that the transfer was a marital transfer of stock made without consideration for estate tax purposes. That letter was submitted along with the application for the corporate change which also proposed that Mrs. Catterson would become president/secretary of The Printer's Devil. District Attorney Catterson signed this application as the former president and Mrs. Catterson signed as the new president. On the same date, another letter and application was submitted to transfer 15% of Mrs. Catterson's shares to Patrick Campbell, the manager of the establishment. The changes were approved by the SLA at their August 1997 meeting. The SLA warned Mrs. Catterson, just as it warned "Sir/Madam" at The Printer's Devil, Inc. in 1989, that prior approval is required before corporate changes are made.

¹¹ The Division of Alcoholic Beverage Control is in the Executive Department. The SLA is the governing authority of the Division.

News Reports

Years before Sheriff Mahoney wrote to Governor Pataki in February 2001, several newspaper articles about the ownership of The Printer's Devil appeared in Newsday. A September 26, 1993 (an election year for the Suffolk County District Attorney) Newsday article concerned a drunk driving fatality, where the person charged criminally by the Suffolk County District Attorney had consumed alcohol at The Printer's Devil, among several other locations, prior to the incident. Newsday reported that the bar was owned by District Attorney Catterson and his wife, that both District Attorney Catterson and his wife are listed on the state liquor license for The Printer's Devil and that District Attorney Catterson claimed that he had thoroughly investigated the possibility of any conflict of interest between his role in law enforcement and his ownership of the bar and had found none. In a September 29, 1993 article, Newsday reported that District Attorney Catterson's opponent in the 1993 election for District Attorney had asked then Governor Mario Cuomo to appoint a special prosecutor to handle the drunk driving prosecution, which he did not do. The article also stated that District Attorney Catterson owned the bar and his wife managed it. A November 27, 1993 article again referred to The Printer's Devil restaurant and bar as being owned by District Attorney Catterson and his wife.

On August 7, 1997 (an election year), Newsday reported that the SLA had unanimously approved the application by District Attorney Catterson to transfer his stock in The Printer's Devil to his wife. That article reported that SLA records showed that District Attorney Catterson had filed documents with the SLA three times since 1990 stating that he

was the president and sole owner of The Printer's Devil. The article stated that Suffolk County records show that during the eight years prior to 1997, District Attorney Catterson swore every year that his wife was the president and sole owner of the restaurant. District Attorney Catterson's wife and his spokesperson both called the matter an oversight and a mistake. In an August 14, 1997 article, Newsday reported that District Attorney Catterson's opponent in the 1997 election was intending to request that the governor appoint a special prosecutor to investigate the inconsistency. In December 1998, Newsday reported that the ownership of the bar was as murky as Suffolk County politics. The newspaper article included a statement that, the previous week, a hostess at the bar identified District Attorney Catterson as the owner, while the spokesperson for the District Attorney's Office is quoted as stating that "His family owns it, his wife." We have not learned of any investigation by Sheriff Mahoney of any of these allegations prior to the one described herein, which occurred only after his own difficulties with District Attorney Catterson ripened years later into what District Attorney Spota described as a "feud."

Interview of James M. Catterson, Esq.

After his re-election defeat by Mr. Spota in the November 2001 election, Commission staff scheduled, with considerable prior notice, the interview of former District Attorney Catterson. At the time of the interview, as noted above, the Catterson family no longer owned or were involved in the operations of The Printer's Devil.

Mr. Catterson stated that after he became District Attorney in 1990, while he was still the president of The Printer's Devil, Inc., his wife, with the help of two employees, took over the responsibility for overseeing the employees and running the restaurant. With District Attorney Catterson's authorization, she used the titles that would facilitate that oversight. By 1992, he said he was "out of the business," but time went by quickly and he was very busy as the Suffolk County District Attorney. He claimed that during that time, he almost filed an application to change corporate ownership and officers twice. However, he did not apply to make the changes with the SLA until 1997, when he was running for re-election and Newsday was looking into him. As to the 1997 filing to change the corporate officers, District Attorney Catterson said that he followed the instructions of the SLA.¹² He was shown a copy of, but did not recall, the June 4, 1997 letter to the SLA. He agreed with the substance of its contents. He stated that The Printer's Devil was a family business and maintained that he had no venal intent with regard to the inconsistent filings.

District Attorney Catterson had no recollection of having previously seen the November 1989 letter from the SLA to The Printer's Devil, Inc. warning the corporation that changes had occurred without SLA authorization and should not occur without prior SLA authorization. As to the July 1990 affidavit that he submitted to the SLA in support of the request for permission to make alterations to the restaurant in which he identified himself as the president in the application, District Attorney Catterson claimed that he was still the

¹² District Attorney Catterson signed the application as the former president for a change in The Printer's Devil, Inc. corporate officers in June 1997. Mrs. Catterson signed it as the new president. This application was accompanied by a letter, which stated that transfer of ownership of the shares of the corporation was actually made in 1989.

president, even though his wife was also using the title with his authorization in the course of her duties, and the renovations needed to be completed. He also denied knowing that in March 1995 his wife signed as the president and owner on a catering permit application to the SLA.

District Attorney Catterson's statement to Commission staff in April 2002 that in July 1990 he was still the president of The Printer's Devil, Inc. was inconsistent with his April 1990 Ethics Commission filing listing his wife as president. He explained this inconsistency by stating that it is the Ethics Commission filing that contains the mistake. He said that his wife filled out the Ethics Commission disclosure form and, after he signed it, filed it. District Attorney Catterson said that he was embarrassed by realizing this during our interview and he had believed that his wife was listed as owner and he as the president in the Ethics Commission filings. District Attorney Catterson stated that "it was a family owned business and what he owned, his wife owned."

As noted above, The Printer's Devil license renewal application to the SLA dated February 1992 and February 1995 contained District Attorney Catterson's signature as the president. District Attorney Catterson stated that these forms were completed by either his wife or the bookkeeper using the previously completed form as a model and just retyping the information. District Attorney Catterson stated that he had nothing to gain by neglecting to make the changes and again blamed his failure to make changes on his own carelessness. He stated that his interest was in building the business and that he never cared to run it. He also

admitted to a little stubbornness. He did not want anyone telling him he could not run a restaurant and bar in the same county where he was the elected District Attorney simply because he was the District Attorney. He pointed out that district attorneys were not prohibited by law or regulation from holding a liquor license, as were police officers, for example. He said that no matter what, "it was a family owned business and what he owned, his wife owned."

THE SUFFOLK COUNTY SHERIFF'S DEPARTMENT ISSUANCE OF UNAUTHORIZED SUBPOENAS DUCES TECUM FOR THE STATE LIQUOR AUTHORITY RECORDS FOR THE PRINTER'S DEVIL RESTAURANT AFTER THE COMMISSION'S IN-DEPTH INTERVIEW OF SHERIFF MAHONEY

After receiving Sheriff Mahoney's February 2001 letter to the Governor, and while investigating Sheriff Mahoney's allegations regarding District Attorney Catterson's filings with the SLA and the Suffolk County Ethics Commission, the Commission learned that the SCSD had been conducting an investigation into District Attorney Catterson's ownership of The Printer's Devil and his filings with the SLA by using unauthorized subpoenas. The SCSD issued subpoenas duces tecum to the SLA seeking fourteen years of records concerning The Printer's Devil. A subpoena contained in the SLA file dated January 9, 2001 contained the signature of SCSD Sergeant Starke, and sought all documents relating to the licensing of The Printer's Devil dating back to 1986. The SLA file also contained a subpoena dated March 9, 2001, bearing the typed name of Sheriff Mahoney and seeking all documents

relating to the licensing of The Printer's Devil, Inc. and of the Arden Food Corp.¹³ d/b/a The Printer's Devil, and to the sale of The Printer's Devil in 1999. Both these subpoenas seemed to have been copied from a form subpoena the SLA uses to obtain records.¹⁴ The subpoenas served on the SLA referred to SCSD case number 99-2685. Although issued by the SCSD, the administrative offices of which are located in Riverhead, New York, the subpoenas were returnable at the SLA office at 11 Park Place, New York, N.Y. The SLA file indicates that, on March 14, 2001, Sergeant Starke and Investigator Michael W. Varga were at the SLA's offices in Manhattan and reviewed The Printer's Devil file. Additionally, the file reflects that Sergeant Starke also made requests to the SLA to inspect files on June 15, 2000 and January 11, 2001 in order to examine its file on The Printer's Devil.

There was no legal authority, statutory or otherwise, for the SCSD to issue subpoenas. Current Suffolk County Sheriff Alfred Tisch's Undersheriff Donald Sullivan, who is also an attorney, agreed that there were no circumstances of which he was aware under which the Suffolk County Sheriff could properly issue a subpoena in a criminal matter. Undersheriff Sullivan made it clear to the Commission's Chief Counsel that the SCSD would not issue a subpoena in a criminal investigation under the leadership of Sheriff Tisch. District Attorney Spota wrote to the Commission: "The law does not permit a sheriff to issue a subpoena."

¹³ SLA records reflect that The Printer's Devil license was surrendered and transferred from The Printer's Devil, Inc. to the Arden Food Corp. in October 1999.

¹⁴ Although there are copies of two subpoenas in the SLA file, as noted later in this report, Sergeant Starke and Investigator Varga told Commission staff during their interviews in April 2003 that they made three visits to the SLA to obtain documents with the first one probably being in June 2000. Sergeant Starke recalled that he did what he called an "information request," a subpoena, for each occasion and could offer no explanation as to why there is no subpoena in the SLA file for the June 2000 visit.

The abuse of authority evidenced by the SCSD's issuance of subpoenas was unwittingly admitted by Sheriff Mahoney himself. As part of his written submission to Governor Pataki in February 2001, Sheriff Mahoney included an unsigned copy of his August 15, 2000 letter to Robert Cimino, the Suffolk County Attorney,¹⁵ that stated, "[a]s you know, **this department has no subpoena power...**" (Emphasis added).

THE COMMISSION'S TRANSMITTAL OF INFORMATION TO SUFFOLK COUNTY DISTRICT ATTORNEY SPOTA

The Commission, by letter dated June 28, 2002, hand-delivered information to Suffolk County District Attorney Spota. The Commission provided copies of documents from the SLA file, including copies of the SCSD subpoenas, the SLA form subpoena, the SLA memorandum to the file and the identifications of Sergeant Starke and Investigator Varga. Attached to this report as Exhibits B, C, D, E, F and G are, respectively, the SLA subpoena, the January 9, 2001 and March 9, 2001 subpoenas and the SLA form entitled "Request for Information - Telephone" dated January 11, 2001 and the SLA forms entitled "Request to Inspect Files" dated June 15, 2000 and January 11, 2001.¹⁶

¹⁵ Please see Exhibit A to this Report.

¹⁶ The Commission mentioned its conclusion concerning the filings by former District Attorney Catterson with the SLA and the Ethics Commission to District Attorney Spota. From Mr. Spota's subsequent response, it is clear that he considered the issue in reaching his decision not to prosecute anyone in this matter.

DISTRICT ATTORNEY SPOTA'S FACTUAL REPORT TO THE COMMISSION

In a letter dated January 22, 2003, District Attorney Spota informed the Commission that his office had reviewed the Commission's information and determined that criminal prosecution of Sheriff Mahoney and the deputy sheriffs in connection with the issuance of the unauthorized subpoenas was not warranted. District Attorney Spota stated, "there may be a *prima facie* showing of official misconduct against Mahoney," but determined that no other provable crimes may have been committed by Sheriff Mahoney and the deputy sheriffs. District Attorney Spota stated, however, that there may be "possible criminal culpability against Catterson as well." District Attorney Spota concluded: "it was my firm conviction that the interests of justice dictate that the Catterson-Mahoney feud be retired just as the principals have been and that this matter be closed."

Prior to reaching his conclusion, District Attorney Spota's staff conducted an investigation. District Attorney Spota's Chief Investigator Robert J. Creighton ("Chief Investigator Creighton") separately interviewed Sergeant Starke and Investigator Varga in the presence of current Suffolk County Undersheriff Donald Sullivan. Chief Investigator Creighton also interviewed SLA employees.¹⁷ District Attorney Spota's staff also attempted to speak to Mr. Mahoney, who at the time was living more than a thousand miles from New York, but he refused to discuss the matter.

¹⁷ Having concluded that members of the SCSD may have committed a crime, the Commission chose not to interview Sergeant Starke and Investigator Varga prior to transmittal of its information to District Attorney Spota.

Sergeant Starke told Chief Investigator Creighton that, at some unspecified time, he was asked by then Sheriff Mahoney to look into the ownership of The Printer's Devil. Sergeant Starke stated that he contacted the SLA and spoke directly to an individual named Harvey Bernstein, who was assigned to answer inquiries from law enforcement. Sergeant Starke stated that he inquired of Mr. Bernstein how to go about obtaining information from the SLA because he had no previous contact with that agency. According to Sergeant Starke, Mr. Bernstein advised him that a subpoena should accompany any request. Sergeant Starke said that he told Mr. Bernstein that he worked with the SCSD, which had no subpoena power. According to Sergeant Starke, Mr. Bernstein advised Sergeant Starke that he would fax to him a copy of what Mr. Bernstein called an "information request." According to Sergeant Starke, Mr. Bernstein told him to white out the name of his department and fill in the "Suffolk County Sheriff's Department." Mr. Bernstein allegedly told Sergeant Starke that the "information request" should contain a case number and should include the title of the person seeking the information. After providing this "information request," the SLA could then provide the SCSD with the requested information about The Printer's Devil. According to Sergeant Starke, he believed that Mr. Bernstein faxed him this "information request" on January 5, 2001, although he is not certain of the date. The document Sergeant Starke said Mr. Bernstein sent to him, and which Sergeant Starke said Mr. Bernstein identified as an "information request," was, in fact, a subpoena that the SLA uses to obtain information. A blank SLA subpoena, contained in the SLA file, stated at the top of the document in bold

letters “State of New York Executive Department, Division of Alcohol Beverage Control.” (See Exhibit B).¹⁸

According to what Sergeant Starke told Chief Investigator Creighton, he did not white out the SLA document, but changed it to comply with what he said Mr. Bernstein had requested. Sergeant Starke typed a new document, changed the name on the top of the document to “Suffolk County Sheriff’s Department,” and added case number “99-2685.” Except for those changes and additions, the document Sergeant Starke created was identical in every way to the document sent to him by the SLA.¹⁹ He completed the document, indicating the return date as the date he intended to be at the SLA, signed it and faxed it back to the SLA on January 9, 2001.

On January 11, 2001, accompanied by Investigator Varga, Sergeant Starke appeared at the SLA offices in lower Manhattan and reviewed the file. Sergeant Starke was allowed to make copies of several documents, which he then turned over to Sheriff Mahoney.²⁰

¹⁸ In his 2003 interview with Commission staff, Sergeant Starke did not identify Exhibit B as the document that Mr. Bernstein faxed him, rather he maintained that Mr. Bernstein sent him a completed subpoena in a different matter.

¹⁹ The body of the “information request” is identical to the language set forth in the SLA subpoena, and there is other language that is printed down the left-hand side of the SLA subpoena that does not appear in the SCSD’s subpoenas, but clearly identifies its language as that of a subpoena. Part of this language is cut off, but the words “[t]he witness is bound by this *Subpoena* to appear at the trial, hearing or examination and at any adjourned date thereof” (emphasis added) are clearly legible. This language reflects Civil Procedure Law and Rules § 2305.

²⁰ Undersheriff Sullivan, present during the interviews of Sergeant Starke and Investigator Varga by Chief Investigator Creighton, was a member of the Patchoque law firm of Cartier, Hogan, Sullivan, Bernstein & Auerbach prior to joining the SCSD. He represented Patricia

According to Sergeant Starke, in early March 2001, Sheriff Mahoney again requested that Sergeant Starke and Investigator Varga visit the SLA and make additional copies of the same documents they had previously obtained. This time around, Sergeant Starke had a concern about obtaining these documents and advised Sheriff Mahoney that he was unfamiliar and uncomfortable with an investigation of this type. According to Sergeant Starke, he told Sheriff Mahoney that his expertise was to investigate crimes within the jail and that his knowledge of "white collar crimes" was limited. Sheriff Mahoney told Sergeant Starke that the information he was seeking was available under the Freedom of Information Law, but he wanted the information immediately. According to Sergeant Starke, Sheriff Mahoney told him that if he could not produce the documents, he would find someone else to do the work.

Sergeant Starke told the District Attorney's staff that, prior to going to the SLA the second time in March 2001, he had spoken to Sheriff Mahoney and wanted Sheriff Mahoney

Brown, Mr. Catterson's secretary, in late January 2001. On February 1, 2001, Mr. Sullivan told the Commission's Chief Counsel that, according to Ms. Brown, on two separate January 2001 evenings, two SCSD deputies came to her home to question her. On January 23, 2001, the two deputies appeared at her door and showed her a page of a multi-page document on which she saw the initials "SLA." She told the deputy sheriffs that one signature was hers and one was Mr. Catterson's. She noted that the document was dated February, date unknown, 1990. On January 25, 2001, the same two deputies returned. At her request, they showed her their badges and business cards identifying themselves as Sergeant Starke and Investigator Varga. She would not answer their questions concerning June 1997 documents and asked them to speak with her lawyer. The deputies never asked for the name and telephone number of her attorney. According to Mr. Sullivan, after the second visit to his then client, Mr. Sullivan called the SCSD and spoke to a named individual who subsequently reported back to Mr. Sullivan that Ms. Brown would not be bothered anymore. If she were needed again, Mr. Sullivan would be contacted.

to sign the subpoena. Sheriff Mahoney refused.²¹ Sergeant Starke stated that the Sheriff wanted the “Foitable” documents immediately, and directed him to “just get it done!” Sergeant Starke told the District Attorney’s staff that on March 14, 2001, Investigator Varga and he went back to the SLA after faxing a copy of a re-vamped “information request” on March 9, 2001. Sergeant Starke stated that he and Investigator Varga reviewed The Printer’s Devil file and made copies of documents. According to Sergeant Starke, they gave copies of the SLA documents to Sheriff Mahoney upon their return to Riverhead. Sergeant Starke stated that, during the course of the “Mahoney-Catterson feud,” he was given no indication of how the information he obtained from the SLA would ultimately be used. Investigator Varga confirmed what Sergeant Starke had said to the District Attorney’s staff. Investigator Varga stated that his role was to accompany Sergeant Starke to the SLA and that he had no direct contact with Sheriff Mahoney.

Following the interviews of Sergeant Starke and Investigator Varga, the District Attorney’s staff interviewed Harvey Bernstein and James Pizzi, two SLA employees. Mr. Bernstein identified Sergeant Starke and Investigator Varga and the dates on which they visited the SLA. The District Attorney’s staff showed Mr. Bernstein a blank copy of an SLA subpoena and asked him if he had faxed such a document to Sergeant Starke. Mr. Bernstein indicated that he might have, but had no direct recollection of doing so. He stated that any law enforcement agency should produce a subpoena or letter authorizing a search.

²¹ As Sheriff Mahoney has acknowledged in his August 15, 2000 letter to the Suffolk County Attorney, at least he knew that he and his office did not have subpoena power.

Mr. Bernstein told the District Attorney's staff that Sergeant Starke and Investigator Varga would have had to have a subpoena to obtain records. Mr. Bernstein was shown a copy of the two subpoenas Sergeant Starke had faxed to the SLA with the similarities between the wording of the SCSD subpoenas and the SLA's blank subpoena. Mr. Bernstein told the District Attorney's investigators that he was satisfied with the subpoena Sergeant Starke had produced to him. Mr. Bernstein was asked if he instructed Sergeant Starke to white out the reference to the SLA and substitute it with his department's name. Mr. Bernstein stated that it might be a possibility, but he could not recall. He pointed out that the visits by Sergeant Starke and Investigator Varga to the SLA were in early 2001, and it would be impossible for him to recall any details. Mr. Pizzi's comments mirrored those of Mr. Bernstein. Neither deputy denied to the District Attorney's staff using the document provided by Mr. Bernstein. Both are adamant that the only reason they sought the information is because they were directed to do so by Sheriff Mahoney. They used the subpoena only after receiving a blank from the SLA, and identified themselves properly at both visits to the agency.

THE COMMISSION'S CONSIDERATION OF THE DISTRICT ATTORNEY'S LETTER

After the Suffolk County District Attorney's Office declined to prosecute and to not present evidence to a Suffolk County grand jury concerning former Sheriff Mahoney, former District Attorney Catterson, Sergeant Starke and Investigator Varga, Commission staff interviewed Sergeant Starke and Investigator Varga in order to conclude its own investigation of what had been done with the material obtained by the use of an unauthorized subpoena by a

law enforcement agency. Commission staff also attempted to speak with Patricia Brown, District Attorney Catterson's former secretary, who had relocated out-of-state and who had been represented by Donald Sullivan before he became an undersheriff in the SCSD.

Sergeant Starke and Investigator Varga were interviewed separately and they clarified and expanded upon some of the investigative steps that they took. Sergeant Starke informed Commission staff that Sheriff Mahoney spoke to him alone in Sheriff Mahoney's office and informed him that he was the chief law enforcement officer in Suffolk County. As such he could order an investigation into any matter that he saw fit and that he was ordering an investigation into James Catterson. Since Sergeant Starke was in charge of the SCSD Criminal Investigation Bureau, Sheriff Mahoney told Sergeant Starke that he was doing the investigation. Sergeant Starke also stated that Sheriff Mahoney made it clear to him that in this matter it was just "him and I." Sergeant Starke did not have a clear recollection about any of the relevant dates. However, the case number listed on the January and March subpoenas the Commission obtained from the SLA file, "99-2685," was the number Sergeant Starke assigned to it when Sheriff Mahoney told him to open a case and identify it as a "confidential investigation." The number is a sequential tracking number with "99" indicating the year the number was assigned. Sergeant Starke thought "2685" would have been assigned approximately in October 1999.²² According to Sergeant Starke, he did not maintain any

²² As previously stated, in April 1999, Sheriff Mahoney's attorney had sought the appointment of a special prosecutor pursuant to County Law §701 to supersede District Attorney Catterson in the grand jury investigation that resulted in the indictment of Sheriff Mahoney and former Undersheriff Morris.

notes or records, rather, he reported orally to Sheriff Mahoney the results of the various investigative steps he took and gave copies of documents he obtained to Sheriff Mahoney.

In addition to the investigation into the filings with the SLA, at Sheriff Mahoney's direction, Sergeant Starke, while on duty, also made attempts to explore whether District Attorney Catterson owned, or was a silent partner in, an impound yard, whether The Printer's Devil paid employees on or off-the-books, whether Patricia Brown was notarizing District Attorney Catterson's filings on county time and what were the circumstances surrounding whether an individual might have been served alcohol at The Printer's Devil before he was involved in a traffic fatality.

As to obtaining the SLA files, Sergeant Starke informed the Commission staff that Sheriff Mahoney directed him to contact the SLA to find out how to review The Printer's Devil file and then review it. Before his first visit, he spoke with Harvey Bernstein at the SLA and provided the "information request" before he and Investigator Varga went to the SLA. Sergeant Starke maintained that he knew he did not have subpoena power and removed all threatening language from the form that he stated Mr. Bernstein sent him.²³ Sergeant Starke believed that he and Investigator Varga went to the SLA on three occasions. Investigator Varga said that they went three times, and the first time "may have been" June 2000 because it was warm. For each visit, Sergeant Starke believed that he provided the

²³ Sergeant Starke said that Exhibit B, the blank SLA form subpoena the Commission obtained from the SLA file with other documents concerning Sergeant Starke's requests, is not the document that Mr. Bernstein sent him, although it is similar. Sergeant Starke maintains that Mr. Bernstein sent him a completed subpoena.

“information request.”²⁴ On at least one and possibly two occasions, Sergeant Starke typed Sheriff Mahoney’s name on the subpoena. He stated that he did not want his name on anything because he believed that District Attorney Catterson was vindictive, hated cops and would come “hunting” for him if he found out. Sergeant Starke did not keep any copies of those requests.

From the totality of the facts, it appears that the three occasions on which Sergeant Starke and Investigator Varga came to the New York City offices of the SLA to review and make copies of documents related to *The Printer’s Devil* occurred on June 15, 2000, January 11, 2001 and March 14, 2001. Sergeant Starke informed Commission staff that when he went to the SLA there would be a form to be filled out. In the SLA file for *The Printer’s Devil* is a SLA form titled “Request to Inspect Files” dated June 15, 2000 (Exhibit F). This partially completed form contains Sergeant Starke’s direct office telephone number, although his name is misspelled and his agency is listed as the Suffolk County P.D. He does not recognize the handwriting on the form. Investigator Varga was not certain, but volunteered June 2000 as his guess as to when was the first trip to the SLA.

As to the January 11, 2001 trip, in addition to the subpoena in the SLA file, Sergeant Starke also completed the SLA form “Request to Inspect Files” (Exhibit G) that day and identified his own handwriting. Additionally, although Investigator Varga estimated that the

²⁴ Sergeant Starke can offer no explanation for why there is no subpoena or “information request” in the SLA file for the June 15, 2000 visit.

second visit was a month or two after the first one, he recalled that police officers were demonstrating in the street for a new contract during this second trip to the SLA. The SLA offices in New York City are down the block from City Hall Park, which borders City Hall. Published news accounts reported that on January 11, 2001, about 6000 off-duty New York City police officers held a rally outside City Hall demonstrating in favor of pay raises. Additionally, Investigator Varga recalled that he and Sergeant Starke spoke to Patricia Brown in the winter because there was snow on the ground.

On the first visit to the SLA, Sergeant Starke and Investigator Varga were directed to obtain copies of anything with James Catterson's name on it after he became the District Attorney. Sergeant Starke gave the copies to Sheriff Mahoney, probably the next day. Some of those documents were redacted copies and they subsequently had to return to the SLA to obtain the non-redacted documents. On another occasion, which both Sergeant Starke and Investigator Varga believed could have been on their third visit to the SLA, they sought documents concerning the "sale" of The Printer's Devil from District Attorney Catterson to his wife. They also believed that at some point Sheriff Mahoney misplaced the documents, because on one occasion they needed to get the same documents as those from a previous trip to the SLA.

After District Attorney Spota reported his views to the Commission, the Commission's Chief Counsel called Undersheriff Sullivan in order to arrange for Commission staff to interview Sergeant Starke and Investigator Varga. In that conversation, Mr. Sullivan

confirmed that he had represented Patricia Brown in 2001. Mr. Sullivan said that he believed that the subject of the deputies' visits to his client, Ms. Brown, in January 2001 were not "relevant" to the matters that Sergeant Starke and Investigator Varga were interviewed about by District Attorney Spota's investigators, because he believed that those visits happened months after the members of the SCSD went to the SLA. The first visit to Ms. Brown, it appears, happened within two weeks, not months, of Sergeant Starke's and Investigator Varga's second visit to the SLA. That fact, even if viewed in the light most favorable to a prosecution, does not change the Commission's determination that the District Attorney did not abuse his discretion in this matter.

Also, after District Attorney Spota reported his views to Commission staff, they attempted to speak to Patricia Brown in an effort to obtain elaboration of the facts. Her attorney in 2001, Mr. Sullivan, had conveyed to Commission staff only very basic information on February 1, 2001. After her retirement, Patricia Brown relocated hundreds of miles away from New York. Commission staff located her and contacted her by telephone. She refused to speak with Commission staff. She said that she wanted to speak to an attorney first. Neither Patricia Brown nor her representative has contacted the Commission since. The admissions by the deputies that they contacted her, and the other facts in this matter noted in the next paragraph, make further expenditure of resources to obtain her testimony unnecessary.

In addition to the information that Mr. Sullivan had provided to the Commission on February 1, 2001 about the deputies' visits to Ms. Brown, the Commission's Chief Counsel had also been informed by then District Attorney Catterson of the visits to his then secretary's home. In a telephone conversation on January 24, 2001, District Attorney Catterson informed the Commission's Chief Counsel that, the night before, sheriff's deputies went to Ms. Brown's home and questioned her as to whether particular signatures were hers and his. On January 26, 2001, District Attorney Catterson again spoke to the Commission's Chief Counsel about the deputies questioning his secretary and stated that she had received a second visit the previous evening. This conversation happened at the New York State District Attorneys Association winter meeting at the Hilton Hotel in New York City. Additionally, Sergeant Starke and Investigator Varga confirmed that they visited her twice. Although their recollections of the dates were vague, both said it was possible that the two visits were in January 2001. Investigator Varga also recalled that it was winter because there was snow on the ground. Based upon the statements of Donald Sullivan, District Attorney Catterson, Sergeant Starke and Investigator Varga about this matter, the Commission has no doubt that Ms. Brown was visited at her residence by Sergeant Starke and Investigator Varga on January 23 and 25, 2001, and that they acted at the direction of Sheriff Mahoney to exploit the information obtained by the unauthorized uses of subpoena powers he knew he did not have.

CONCLUSION: DISTRICT ATTORNEY SPOTA DID NOT ABUSE HIS DISCRETION IN NOT PRESENTING EVIDENCE TO A GRAND JURY AND IN DECLINING TO PROSECUTE FORMER SHERIFF MAHONEY AND FORMER DISTRICT ATTORNEY CATTERSON

This constitutes the report of the Commission concerning the allegations made by, at the time, two very high-level Suffolk County elected law enforcement officials. Both Patrick A. Mahoney and James M. Catterson, Jr. were out of office as of January 2002 and Mr. Mahoney has relocated out of New York. The Commission agrees with the District Attorney of Suffolk County that a sheriff does not have subpoena power.²⁵ The Commission finds that the District Attorney of Suffolk County did not abuse his discretion in not presenting evidence to a grand jury and in declining to prosecute former Sheriff Patrick A. Mahoney and former District Attorney James M. Catterson, Jr., as well as others who acted at their direction.

²⁵ District Attorney Spota's letter stated: "The law does not permit a sheriff to issue a subpoena."

EXHIBIT A

COUNTY OF SUFFOLK
SHERIFF'S DEPARTMENT



OFFICE OF THE SHERIFF

PATRICK A. MAHONEY
SHERIFF

HAND DELIVERED AND CONFIDENTIAL

August 15, 2000

Robert Cimino, Esq.
Suffolk County Attorney
H. Lee Dennison Building, 5th Floor
Veterans Memorial Highway
Hauppauge, New York 11788

RE: **Financial Disclosure Application**

Dear Mr. Cimino:

As you may recall, I advised you in correspondence dated June 19, 2000, that my office was conducting an investigation and, pursuant thereto, requested the Financial Disclosure Statements of the District Attorney. Your Chief Deputy, William J. Burke, forwarded my letter to the Suffolk County Ethics Commission for its consideration.

At the direction of the Commission, I forwarded a *Request for Financial Disclosure Statement* application. Because the genesis of my request for the documents arose from the official business of the Sheriff's Department, it is my belief that the five dollar required fee should be waived. By letter dated August 10, 2000, a copy of which is enclosed, the Ethics Commission has taken the position that the required fee may only be waived when it is "served with a lawful subpoena compelling the production of financial disclosure statements."

My review of the Suffolk County Charter and Code has failed to reveal the statutory basis for the determination made by the Ethics Commission. As you know, this department has no subpoena power, thereby making the Commission's determination an unwarranted impediment to the completion of our investigation. Accordingly, in order to protect the integrity and independence of

the Sheriff's Department, I am considering filing a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. To assist me in this endeavor, I will be retaining outside counsel at the County's expense since your office has a conflict of interest in representing the Sheriff's Department insofar as your assistant, John Holownia, serves as counsel to the Ethics Commission.

Please advise me as soon as possible about what steps must be taken to retain counsel since I understand my petition must be filed within four months.

Very truly yours,

Patrick A. Mahoney
Sheriff of Suffolk County

PAM:ag
enclosure

EXHIBIT B

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Re: Serial No.

The People of the State of New York

TO:

GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the State Liquor Authority of the State of New York, on the day of, 19....., at o'clock in the noon of that day or any adjourned date thereof, at to testify and give evidence relating to the business being conducted by at premises located at under the license to sell alcoholic beverages issued by the State Liquor Authority.

AND THAT YOU BRING WITH YOU, and then and there produce the following books and papers:

AND, FOR FAILURE TO ATTEND, you will be liable to pay all loss and damage sustained thereby, and Fifty Dollars in addition thereto, and be subject to such other penalties as are prescribed by law.

WITNESS: THE STATE LIQUOR AUTHORITY OF THE STATE OF NEW YORK, the day of One Thousand Nine Hundred

and (Name)

(Title)

THE WITNESS
is bound by this Subpoena to appear at the trial, hearing or examination and at any adjourned date thereof.

EXHIBIT C

SUFFOLK COUNTY SHERIFF'S DEPARTMENT

Re: Case No. 99-2685

The People of the State of New York

TO: The State Liquor Authority of the State of New York

GREETING:

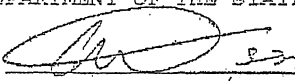
WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear before the Suffolk County Sheriff's Department of the State of New York, on the 11th day of January, 2001, at 10:00 o'clock in the forenoon of that day or any adjourned date thereof, at 11 Park Pl. NY, NY 10007 to testify and give evidence relating to the business being conducted by The Printers Devil, Inc. at premises located at 105 Wynn Lane, Port Jefferson, NY, under the license to sell alcoholic beverages issued by the State Liquor Authority.

AND THAT YOU BRING WITH YOU, and then there produce the following books and documents:

ALL DOCUMENTS RELATING TO THE LICENSING OF THE AFOREMENTIONED BUSINESS DATING BACK TO 1986.

AND, FOR FAILURE TO ATTEND, you will be liable to pay all loss and damage sustained thereby and be subject to such other penalties as prescribed by law.

WITNESS: THE SUFFOLK COUNTY SHERIFF'S DEPARTMENT OF THE STATE OF NEW YORK, this 9th day of January, 2001.



(name)
D/S Inv. Sgt.

(title)

01/09/01 11:21 FAX 2124172069

NYSLA ENFORCEMENT

P01

EXHIBIT D

SUFFOLK COUNTY SHERIFF'S DEPARTMENT

Re: Case No. 99-2685

The People of the State of New York

TO: The State Liquor Authority of the State of New York

GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear before the Suffolk County Sheriff's Department of the State of New York, on the 14th day of March, 2001, at 10:00 o'clock in the forenoon of the day or any adjourned date thereof, at 11 Park Pl. NY, NY 10007 to testify and give evidence relating to the business conducted by The Printers Devil, Inc. an Arden Food Corp. dba The Printers Devil at premises located at 105 Wynn Lane Port Jefferson, NY, under the license to sell alcoholic beverages issued by the State Liquor Authority.

AND THAT YOU BRING WITH YOU, and then there produce the following books and documents:

ALL DOCUMENTS RELATING TO THE LICENSING OF THE AFOREMENTIONED BUSINESSES AND THE SALE OF THE PRINTERS DEVIL BETWEEN THE TWO CORPORATIONS IN 1999.

AND, FOR FAILURE TO ATTEND, you will be liable to pay all loss and damages sustained thereby and be subject to such other penalties as prescribed by law.

WITNESS: THE SUFFOLK COUNTY SHERIFF'S DEPARTMENT OF THE STATE OF NEW YORK this 8th day of March, 2001.

Patrick A. Mahoney
(name)

Sheriff of Suffolk County
(title)

*Reviewed file 3/14/01
@ Books
[Signature]*

EXHIBIT E

STATE OF NEW YORK
LIQUOR AUTHORITY

INTELLIGENCE UNIT

REQUEST FOR INFORMATION - TELEPHONE

DATE: 1-11-01

REQUESTED BY: SGT. STARKE
AGENCY: Suff. Cty. Sheriff Dept.
TELEPHONE #: (631) 852-2290

Has subpoena for;
PRINTERS DEVIL
105 Wynne Lane
Port Jefferson SUFF

Printers Devil
SUFF OP 1798
transferred to
Arden Food Corp
SUFF OP 5182
same address

HAVE SUBPOENA

MESSAGES LEFT

TAKEN BY:

EXHIBIT F

STATE OF NEW YORK
LIQUOR AUTHORITY

INTELLIGENCE UNIT

REQUEST TO INSPECT FILES

DATE: June 15, 2000

LICENSEE: Printers Devil, Inc.

ADDRESS: 105 Wynn Lane

Port Jefferson

CITY: Suffolk

SERIAL #: SUFF OP 1798

Sirs,

Permission is hereby made for permission to inspect your files and records on above named licensee, for purposes of

[STATE SPECIFIC DETAILS]

{Signature}: _____

{Printed name}: Sgt. STARKIE

{Official title}: _____

{Department}: SUFF. CTY. P.D.

{Shield #}: _____

{Address}: _____

{Telephone #}: (631) 852-2290

EXHIBIT G

STATE OF NEW YORK
LIQUOR AUTHORITY

INTELLIGENCE UNIT

REQUEST TO INSPECT FILES

DATE: 1-11-01

LICENSEE: The Painters Devil

ADDRESS: 105 WYHNE CO. Port Jefferson

COUNTY: Suffolk SERIAL #:

Dear Sirs,

Application is hereby made for permission to inspect your files and records on above named licensee, for purposes of

[STATE SPECIFIC DETAILS]

Investigation

{Signature}: [Signature]

{Printed name}: Robert Harker

{Official title}: Deputy Sheriff INV. SGT.

{Department}: _____

{Shield #}: _____

{Address}: _____

{Telephone #}: _____