

# STATE OF LOUISIANA LEGISLATIVE AUDITOR

District Attorney for the  
Twenty-Sixth Judicial District

October 24, 2001



**Investigative Audit**

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**Daniel G. Kyle, Ph.D., CPA, CFE**  
**Legislative Auditor**



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**District Attorney for the  
Twenty-Sixth Judicial District**

**October 24, 2001**



**Investigative Audit  
Office of the Legislative Auditor  
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE  
Legislative Auditor**



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LEGISLATIVE AUDITOR

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October 24, 2001

**THE HONORABLE JAMES M. MULLERS**  
**DISTRICT ATTORNEY FOR THE**  
**TWENTY-SIXTH JUDICIAL DISTRICT**  
**STATE OF LOUISIANA**  
Baton, Louisiana

Transmitted herewith is our investigative report on the District Attorney for the Twenty-Sixth Judicial District. Our examination was conducted in accordance with Title 34 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our findings and recommendations, as well as your response. Copies of this report have been delivered to you and others as required by state law.

*Respectfully submitted,*

Daniel G. Kyle, CPA, CFE  
Legislative Auditor

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# Executive Summary

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## Investigative Audit Report District Attorney for the Twenty-Sixth Judicial District

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### Highlights . . .

Mr. James Ballera, district attorney, requested that the Legislative Auditor perform an audit.

Certain funds of the district attorney were not received in accordance with state law, were not properly accounted for, and a portion appears to have been spent in violation of the Constitution.

### Background

*(See page 3.)*

As provided in the laws of the State of Louisiana, the district attorney has charge of every criminal prosecution by the state in his district, is the representative of the state before the grand jury in his district, and is the legal adviser to the grand jury. The district attorney also performs other duties as provided by law. The qualified electors of the judicial district elect the district attorney for a term of 4 years. The Twenty-Sixth Judicial District encompasses the parishes of Iberville and Webster, Louisiana.

In July 2001, Mr. James Ballera, district attorney, contacted the Legislative Auditor regarding certain transactions. Mr. Ballera reported he had learned that one or more of his assistants opened a bank account (prosecution account) that was not authorized, deposited proceeds awarded to the district attorney's office by the courts into this account, and used a portion of the funds for unauthorized expenditures. Mr. Ballera requested that the Legislative Auditor perform an investigative audit.

### Summary

*(See page 7.)*

From September 1993 through February 2001, the district attorney received reimbursement for prosecution costs, bond forfeitures, and fines amounting to \$289,498. However:

1. Though state law provides that the district attorney may recover the cost of prosecution, the amounts received as reimbursement of prosecution costs were not based on actual costs, or other reasonable basis



that would approximate actual costs, and appear to be extensive;

2. The funds were deposited into an account that was not properly authorized by the district attorney;
3. The funds received were not included within the district attorney's annual budget and, therefore, were not subject to budgetary controls;
4. The funds received were not included within the financial statements of the district attorney and were not audited in accordance with state law;
5. The funds were not subject to a formal system of accounting, purchasing, and reporting controls; and
6. Of the \$289,488 received, \$22,337 appears to have been expended in violation of the State Constitution.

#### **Recommendations**

*(See page 17.)*

**The district attorney should establish written policy and procedures to properly receive and account for all funds.**

We recommend that the District Attorney for the Twenty-Sixth Judicial District:

1. Establish a written policy and procedures concerning the recovery of prosecution costs. This policy should provide for an accounting of prosecution costs based on actual expenses incurred or some other reasonable and responsible method of estimating actual costs. Recovered costs should be properly accounted for and forwarded to the political entity(ies) that actually incurred the expense.
2. Formalize, in writing, all agreements with entities involving recovered prosecution costs, which are public funds, and ensure that (1) there exists a legal obligation to transfer such funds, (2) the expenditures are for a public purpose consistent with responsibilities of the district attorney's office, and (3) that the services provided are commensurate with the associated costs;



3. Institute policies and procedures to ensure that the recovered prosecution costs are properly budgeted, reported, and audited; and that they are expended in accordance with the State Constitution; and
4. Determine whether any funds remaining in the prosecution accounts were obtained as a result of bond delinquency, restitution, or fines and, if so, reimburse the appropriate entities.

### **Management's Response:**

*(See Attachment 1.)*

Management concurs with the finding and will implement the following:

- To the extent that costs of prosecution are sought pursuant to C.C.P. Art. 887, those costs will be quantified via an itemized statement presented in open court for approval.
- Direct that a review commence to determine the origin and purpose of the funds currently on deposit in the prosecution fund account. In accordance with the recommendations of your office, excessive funds collected from delinquency will be returned whenever possible. Any funds remaining will be disposed of according to law.
- Pledge to implement those recommendations necessary to preclude the unauthorized, improper, and unethical activity that occurred in the Webster office.







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# Background and Methodology

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As provided in the laws of the State of Louisiana, the district attorney has charge of every criminal prosecution by the state in his district, is the representative of the state before the grand jury in his district, and is the legal advisor to the grand jury. The district attorney also performs other duties as provided by law. The qualified electors of the judicial district elect the district attorney for a term of 6 years. The Twenty-Sixth Judicial District encompasses the parishes of Bossier and Webster, Louisiana.

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**The district attorney, Mr. James Bollers, requested that the Legislative Auditor perform an investigative audit.**

In July 2001, Mr. James Bollers, District Attorney for the Twenty-Sixth Judicial District contacted the Legislative Auditor regarding certain transactions. Mr. Bollers reported he had learned that one or more of his assistants opened a bank account (prosecution account) that was not authorized, deposited proceeds awarded to the district attorney's office by the courts into this account, and used a portion of the funds for unauthorized expenditures. Mr. Bollers requested that the Legislative Auditor perform an investigative audit.

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**The investigative audit was performed to determine the propriety of certain transactions.**

This investigative audit was performed to determine the propriety of the transactions and circumstances surrounding the district attorney's prosecution accounts. The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the district attorney's office; (2) interviewing other persons as appropriate; (3) examining selected records of the office of the district attorney; (4) performing observations and analytical tests; and (5) reviewing applicable state and federal laws and regulations.

The results of our investigation is contained herein together with management's response.







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# Findings

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From September 1977 through February 2000, the district attorney received reimbursements for prosecution costs, bond forfeitures, and fines amounting to \$289,498. However:

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Certain funds of the district attorney were not received in accordance with state law, were not properly accounted for, and a portion appears to have been spent in violation of the Constitution.

1. Though state law provides that the district attorney may recover the cost of prosecution, the amounts received as reimbursement of prosecution costs were not based on actual costs or other reasonable basis that would approximate actual costs, and appear to be excessive;
2. The funds were deposited into accounts that were not properly authorized by the district attorney;
3. The funds received were not included within the district attorney's annual budget and therefore were not subject to budgetary controls;
4. The funds received were not included within the financial statements of the district attorney and were not audited in accordance with state law;
5. The funds were not subject to a formal system of accounting, purchasing, and reporting controls; and
6. Of the \$289,498 received, \$32,337 appears to have been expended in violation of the State Constitution.

Mr. James M. Bullers is the district attorney for the Twenty-Sixth Judicial District, which includes Houma and Weber Parishes. Mr. J. Schagler Martin was Mr. Bullers' First Assistant District Attorney for Weber Parish from February 2000 until his resignation in November 2000. Mr. L. Charles Jacobs was an assistant district attorney in the Weber office from February 2000 until his termination in March 2001. Ms. Marilyn Lee maintained the records for the prosecution costs accounts. Ms. Lee was terminated in August 2001.



## **Reimbursements Were Not Based on Actual Cost of Prosecution and Appear Excessive**

**The district attorney may recover all costs of prosecution based on actual expenses incurred. We found no records to support amounts received.**

The Louisiana Code of Criminal Procedure<sup>1</sup> provides that the district attorney may recover from a defendant convicted of an offense all costs of the prosecution. Though not specifically stated, the law implies that this recovery should be based on the actual costs incurred or some other reasonable and responsible basis of estimating such costs. Between September 1997 and February 2001, the Webster Parish office of the district attorney received \$289,498 from defendants for costs of prosecution, bond forfeitures, and fines. Of this amount, \$140,928 was received as reimbursement of prosecution costs; however, we found no records to support that these amounts were based on actual costs incurred or any other reasonable basis which might approximate actual costs.

- \$91,178 in prosecution costs was ordered by the court to be paid by the defendants;
- \$33,794 was identified by Mr. Marvin as cost of prosecution with no supporting court records (\$10,000 in prosecution costs was paid by defendants and agreed to in writing between Mr. Marvin and the defendant);
- \$17,000 was received from defendants purportedly in exchange for the dismissal or disposition of their charges; and
- \$148,570 is unidentified and is possibly other prosecution costs, bond forfeitures, fines, or restitution.

**Amounts recovered appear excessive.**

It appears that the amounts recovered as prosecution costs were excessive. Nineteen cases amounted to prosecution costs of \$123,928 being ordered by the court, or arranged between Mr. Marvin and the defendants. It should be noted that normally, when the court ordered reimbursement of prosecution costs, the district attorney had supported to the court the amount of the costs. Many of the case files examined revealed very little evidence of investigation and/or prosecutorial efforts that would have resulted in the

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<sup>1</sup> C.C.P. Art 587 provides, in part, that a defendant who is convicted of an offense is liable for all costs of the prosecution and such costs are recoverable by the party who incurred the expense.



district attorney incurring substantial costs. All of these cases resulted in the defendant pleading guilty; none resulted in a trial which would add prosecution costs.

In many of the cases reviewed, though not in all, the individuals were arrested for felony drug violations. However, they either-

- a. pleaded guilty to lesser charges, in some instances misdemeanors, or
- b. pleaded guilty to felony charges but incarceration time was suspended.

In addition, they were required to pay the district attorney a sum of money for the cost of prosecution. Two examples are:

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**Example cases.**

**State of Louisiana versus John Houser, Jr.**

- On April 8, 2000, charged with possession of marijuana with intent to distribute (felony)
- Arresting officer found nine bags of marijuana in his possession
- On September 3, 1998, charged with possession of marijuana with intent to distribute
- On October 30, 2000, Mr. Houser entered a plea of guilty to an amended charge of simple possession of marijuana (misdemeanor)
- Mr. Houser was sentenced, in part, by the court to pay \$4,000 for prosecution cost
- There was no documentation in the file to provide a basis for the cost of prosecution
- There was no documentation to support any special considerations



**State of Louisiana versus Veronica Carlson**

- On April 13, 1999, charged with possession of marijuana with intent to distribute (felony)
- Arresting officer found 80 pounds of marijuana in her possession
- On April 28, 1999, (15 days later) Ms. Carlson pled guilty
- The defendant was sentenced, in part, by the court to hard labor for 10 years, suspended, and paid \$15,000 to the district attorney as a prosecution fee
- There was no documentation in the file to provide a basis for the cost of prosecution
- There was no documentation to support any special considerations

**The district attorney was paid for dismissal or disposition of charges.**

Two other cases reviewed resulted in defendants paying the district attorney \$17,000 purportedly in exchange for the dismissal or disposition of their charges. A letter from one defense attorney to Mr. E. Charles Jacobs, former assistant district attorney, stated "Please find enclosed . . . \$7,000 . . . For our agreement, you will dismiss all charges . . ." A second letter to Mr. Jacobs from another defense attorney stated "As per our conversation and agreement for disposition of this matter, enclosed find . . . check for \$20,000 . . ." According to Mr. Jacobs, these arrangements were entered into as part of plea agreements with the defendants; however, he was terminated before these cases were properly adjudicated in court. Upon discovery of the handling of these two cases, Mr. Halloran had the \$17,000 returned to the defense attorney and these cases remain open for prosecution.

The Code of Criminal Procedure provides that the party who incurred the expense may recover the costs of prosecution. However, the district attorney does not appear to have authority to impose or recover costs in excess of those actually incurred. The code provides that the district attorney may recover prosecution cost from a defendant upon conviction. Therefore, it does not appear that the district attorney has the authority to recover prosecution costs from a defendant where the district attorney has



dismissed all charges. Furthermore, there is an implied duty upon the district attorney to document the compensation of such costs.

### **Prosecution Accounts Were Not Properly Authorized by the District Attorney**

**Bank accounts are opened.**

Minden Bank records show that in September 1997, Mr. Charles McConnell, former first assistant district attorney for Webster parish, established a bank account called "Prosecution Fund Account." The account was used to deposit money paid by defendants for costs of prosecution, bond forfeitures, and fines.

In April 1998, Mr. Marvin established another account with Minden Bank called "Prosecution Fund Account #2." The account was opened because it was an interest-bearing account, whereas the first prosecution account was not interest bearing.

In November 2000, Mr. Marvin opened a third account at Citizens Bank, and transferred all of the funds from the first account and most of the funds from the second account into the third account with Citizens Bank. The account was established because Minden Bank charged fees for the accounts and Citizens did not. The Citizens Bank account was also called "Prosecution Fund Account #2." Mr. Jacobo's name also appeared as having signature authority on the account.

According to Mr. Dufresne, Mr. Marvin established a "secret prosecution account" for the Webster office without his knowledge. According to Mr. Marvin, Mr. Dufresne was present when the establishment of the first prosecution account was discussed.

### **Funds Were Not Included in the Budget, Financial Statements, or Audit**

The district attorney maintains offices in Bossier and Webster parishes. The Bossier Parish Police Jury and the Webster Parish Police Jury provide office space, funding, and accounting functions for the district attorney. The district attorney operates primarily through three funding sources, including general fund monies received from the police juries, funds collected through the child support



payment program, and workless check program. In addition, the Webster office of the district attorney collected funds as reimbursement for cost of prosecution. The general fund monies are held by and accounted for by the respective police jury. Funds collected through the child support and workless check programs are held by, and accounted for by, the district attorney. The prosecution cost reimbursements were retained by the Webster office.

Annually, the district attorney prepares a budget for both the Bossier and Webster offices. These budgets are submitted to each police jury for fiscal accountability. The Bossier Parish Police Jury prepares the district attorney's financial statements. In accordance with state law, the district attorney's financial statements are audited by a certified public accountant once every two years.

The funds collected by the district attorney's Webster parish office as reimbursement for cost of prosecution were deposited into the prosecution accounts held by that office. These funds were not included in the budget of the district attorney; they were not accounted for through a formal system of accounting; they were not subjected to a formal system of control over their collection, deposits, and expenditures; and they were not included in the financial statements of the district attorney and therefore, not audited by the independent certified public accountant.

### **Lack of Adequate System of Accounting Control**

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Mr. Bullock provided little oversight for the Webster office.

Mr. Bullock operated the Bossier and Webster offices separately and provided little oversight to the Webster office. Mr. Bullock directed the operations of the Bossier office, while Mr. Marvin directed the operations of the Webster office. According to Mr. Bullock, he visited the Webster office approximately once a month when attending police jury meetings. During his visits, Mr. Bullock would ask Mr. Marvin general questions concerning the operations of the Webster office. He would not ask detailed questions of its finances or management. Additionally, Mr. Bullock did not have a written office policy concerning bank accounts or management of the Webster office. Mr. Bullock stated that he verbally communicated the parameters by which Mr. Marvin should manage the office.



In addition to the lack of policy concerning its general operations, the Webster office did not have an adequate system of internal control over the prosecution funds. An adequate system of internal control would provide for the proper segregation of duties. These controls would have separate employees responsible for incompatible functions including:

- recording amounts directed by the court to be paid to district attorney,
- collecting cash,
- recording collections in accounting records,
- depositing cash into the proper account, and
- receiving and reviewing bank statements.

Mr. Marvin had one employee, Ms. Lea, perform all of the above listed duties. Ms. Lea stated that she had records of all cash and other forms of payments received by the office. However, records of payments received by the office were incomplete.

**We were unable to determine that all payments were deposited.**

Due to the lack of segregation of duties and incomplete records of payments received by the Webster office, we were unable to determine if all payments were deposited into the bank accounts of the district attorney.

### **Funds Appear to Have Been Expended in Violation of State Constitution**

From September 1997 through February 2001, \$288,408 was deposited into the account and \$83,932 was expended from the account. Of the expenditures, Mr. Marvin and Mr. Jacobs approved \$22,937 in payments which appear to be in violation of the State Constitution. The money was used for expenses of state and local police agencies such as:



**\$23,897 appears to have been spent in violation of the Louisiana Constitution.**

- \$11,120 in training seminars for state and local police
- \$10,217 in equipment for state and local police
- \$1,000 to the Webster Sheriff's Office

Although these expenditures appear to be for a public purpose, Article 7, Section 14 of the Louisiana Constitution provides, in part, that the funds of the state or political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. The use of district attorney funds for expenses of other entities would appear to constitute a prohibited donation. The Louisiana Constitution provides an exception for these situations in that, for a public purpose, the state and its political subdivisions may engage in cooperative endeavors for expenditure or transfer of public funds with any public or private association, corporation, or individual where there exists (1) a legal obligation to transfer such funds, (2) the expenditures are for a public purpose, and (3) the services received are commensurate with the associated costs. It is recommended that these agreements be committed to writing, but no written cooperative endeavor agreement exists between the district attorney's office and any of the entities for which the office provided funds. Without a written agreement specifying compliance with the three criteria above, the related expenditures appear to be in violation of the Louisiana Constitution.

### **Remaining Account Balance**

As previously mentioned, \$289,458 was deposited into the prosecution account. During the period September 1997 through February 2001, \$83,352 of these funds were either forwarded to the Webster or Bossier police jurisdictions or were spent for office supplies, rent/mortgage, and in the support of law enforcement, as noted above. The balance includes \$115,800 in certificates of deposit and \$80,346 remaining in the account.



The actions described above may be violations of the following laws:<sup>1</sup>

- Article 7, Section 14 of the Louisiana Constitution
- R.S. 24:513 "Frequency of Audits"
- R.S. 39:1385 "Budget Preparation"

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<sup>1</sup> Article 7, Section 14 of the Louisiana Constitution provides, in part, that except as otherwise provided by this constitution, the funds, assets, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

R.S. 24:513 (1)(B) The financial statements of local entities shall be audited as follows: (B) Any local entity that receives three hundred fifty thousand dollars or more in revenues and other monies in any one fiscal year, but less than three million five hundred thousand dollars, shall be audited once every two years, said audit to include the transactions of both years.

R.S. 39:1385 (A) provides, in part, that each political subdivision shall cause to be prepared a comprehensive budget presenting a complete financial plan for the ensuing fiscal year for the general fund and each special revenue fund.







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# Recommendations

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*We recommend that the District Attorney for the Twenty-Sixth Judicial District:*

1. *Establish a written policy and procedures concerning the recovery of prosecution costs. This policy should provide for an accounting of prosecution costs based on actual expenses incurred or some other reasonable and responsible method of estimating actual costs. Recovered costs should be properly accounted for and forwarded to the political entity(ies) that actually incurred the expense.*
2. *Formulate, in writing, all agreements with entities receiving recovered prosecution costs, which are public funds, and ensure that (1) there exists a legal obligation to transfer such funds, (2) the expenditures are for a public purpose consistent with responsibilities of the district attorney's office, and (3) that the services provided are commensurate with the associated costs;*
3. *Institute policies and procedures to ensure that the recovered prosecution costs are properly budgeted, reported, and audited; and that they are expended in accordance with the State Constitution; and*
4. *Determine whether any funds remaining in the prosecution accounts were obtained as a result of bond forfeiture, restitution, or fines and, if so, reimburse the appropriate entities.*







**Attachment I**

**Management's Response**



# Office of the District Attorney



## James M. Hallers

DISTRICT ATTORNEY

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STATE OF LOUISIANA

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October 18, 2001

Dr. Daniel G. Kyle, CPA, CFE  
Office of Legislative Auditor  
State of Louisiana  
P.O. Box 94297  
Baton Rouge, Louisiana 70804-9387

**In Re: Management's Response to Findings and Recommendations Following  
Examination of Webster Parish District Attorney's Financial Records.**

Dear Dr. Kyle:

This office has received the investigative audit report prepared by your office following an examination of financial transactions conducted by certain former employees of the Webster Parish District Attorney's Office. The thoroughness of the report and the wisdom of its recommendations require little response. However, I shall comment upon a few items contained therein.

The daily affairs of the Webster Parish office have historically been entrusted to a chief assistant. The complexity and volume of cases handled by the Webster Parish Office have necessarily required that I devote most of my time to that office. From experience, I find that the vast majority of Webster Parish issues requiring my direct attention can be handled via telephone. I am in regular telephone contact with the Webster office almost daily. Nevertheless, I did and do travel to the Webster office periodically and whenever the need arises.

Daily affairs aside, the fiscal management of the Boonier and Webster offices has always been exclusively within my purview. The official bank accounts maintained by this office are subject to internal dual-controls and/or oversight by the police jury and periodic independent audits as prescribed by law. I neither authorized nor was I aware that the account under review existed. Moreover, I never authorized the collection of excessive and unsubstantiated "costs of prosecution." Indeed, it was the incident pertaining through what readily appears to be the tale of justice in Webster Parish that prompted my request that your office conduct an examination. It will be useful to be the policy of this office that to the extent that costs of prosecution are sought pursuant to C.C.P. Art. 887, those costs will be quantified via an itemized statement presented in open court for approval. This



appears to be the procedure practiced in other jurisdictions within our state and is the proper means of ensuring that only those costs actually incurred are recovered.

Your report indicates that the prosecution fund account held proceeds from the purported costs of prosecution, bond forfeitures, and fines. My review of the account in question indicates that it contained proceeds from only one bond forfeiture. Bond forfeitures proceeds are properly deposited with the sheriff's office which in turn distributes the proceeds according to law. The thirty percent share of that total received by this office is deposited directly into a bond forfeiture account. Under no circumstances should this office have received the entirety of forfeited bond proceeds.

Concerning the deposit of recovered fines, I am convinced that the account did not hold "fine" proceeds in the proper sense. The "fines" assessed in many of the cases at issue vastly exceed the maximum fines imposed by law for the offenses to which the defendants pled guilty. This disparity suggests that while the sums may have been called an agreed upon fine, they actually amounted to something more sinister. Moreover, fines are properly collected by the sheriff's office for division according to law amongst the entities entitled to a pro-rata share. I will direct that a review commence to determine the origin and purpose of the funds currently on deposit in the prosecution fund account. In accordance with the recommendation of your office, excessive funds collected from defendants will be returned wherever possible. Any funds remaining will be disposed of according to law.

Finally, regarding the improper expenditure of funds from the account, use of surplus funds for the equipping and training of law enforcement is a worthy goal. However, the budget constraints affecting the funding available to this office through its traditional, legitimate sources is insufficient to allow me to engage in such expenditures. Law enforcement has many other funding sources available for these purposes.

I appreciate the diligent efforts expended by your staff in conducting this examination and pledge to implement those recommendations necessary to preclude the unauthorized, improper, and unethical activity that occurred in the Webster office.

Respectfully,

*James M. Sullivan*

James M. Sullivan  
District Attorney  
Twenty-Sixth Judicial District