

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

-----X
STATE OF MARYLAND :
v. : Case No. 109210016
SHEILA ANN DIXON :
-----X

**REPLY OF SHEILA ANN DIXON, DEFENDANT,
TO STATE'S OPPOSITION TO MOTION TO DISMISS INDICTMENT**

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ARGUMENT IN REPLY

I. The Indictment Should be Dismissed With Prejudice Because the State Prosecutor Deliberately Violated Ms. Dixon’s Legislative Immunity for the Second Time

The touchstone of Ms. Dixon’s motion, and the aspect of the matter that has given the State the greatest amount of difficulty, is the fact that the State deliberately used evidence of Ms. Dixon’s legislative acts before the Grand Jury. The State Prosecutor clearly understands that such evidence was necessary, if not critical, to show Ms. Dixon’s knowledge that Mr. Lipscomb’s companies were involved in development projects in Baltimore and were conducting activities that implicated Ms. Dixon’s reporting obligations under the Baltimore City Ethics Code. In fact, Mr. Lipscomb’s Grand Jury testimony demonstrates that the State Prosecutor, in conducting the examination, led off the inquiry as to Ms. Dixon’s knowledge by having Mr. Lipscomb describe three years of official meetings with Ms. Dixon, from 2001 to 2003, that had concerned the City’s role in the financing and taxation of the Strathdale project. At the conclusion of that initial line of testimony, the State had Mr. Lipscomb agree that Ms. Dixon’s

presence at those meetings showed that Ms. Dixon was knowledgeable about Mr. Lipscomb's role in that development project.

In its Memorandum on Legislative Immunity, dated May 28, 2009 ("Legislative Immunity Opinion"), this Court issued an opinion dismissing identical charges brought against Ms. Dixon in violation of her legislative immunity. In the face of that ruling, while securing the current Indictment, the State placed before the Grand Jury the same evidence of meetings that Ms. Dixon attended in City Hall in 2001, 2002 and 2003 in her capacity as City Council President with Mr. Lipscomb and his partners for the express "purpose of showing that Ms. Dixon knew he was involved in the Strathdale project." State's Opposition at 5; see Lipscomb Grand Jury Tr. at 8; see also Memorandum in Support of Motion of Sheila Ann Dixon to Dismiss Indictment No. 1092100616 with prejudice at Exhibit 5.6 thereto. The State admits that, in presenting evidence of these meetings to the Grand Jury, it purposefully avoided eliciting testimony about the statements that the various participants made at these meetings, thereby admitting the State's understanding that the substance of those meetings concerned legitimate legislative activity. State Opposition at 5.¹

The State blatantly violated Ms. Dixon's legislative immunity by producing evidence that Ms. Dixon performed legislative acts by attending such meetings, and its effort to avoid the consequences of having done so, by not having the witness recite what each participant said at the meetings, does not relieve the State of the consequences of these violations. In United States v. Swindall, 971 F.2d 1531 (11th Cir. 1992), a case cited by this Court in its Legislative Immunity Opinion (at pages 17, 18), the Court dismissed an indictment where a prosecutor

¹ The State was made aware that these meetings concerned the financing and taxation for the Strathdale project by, among other things, the testimony of Winstead Rouse, before the prior Grand Jury.

introduced evidence before a grand jury that the Congressman had been a member of two Congressional Committees as part of the government's showing that the Congressman must have known of the prohibitions against money laundering. The court held that the prosecutor had violated the Congressman's legislative immunity even though the government had not presented any evidence that the Congressman had attended any meeting of either committee where the subject of money laundering had been discussed. Id. at 1452-5.

Dismissing the counts of the indictment for which such evidence was adduced as proof of knowledge, the appellate court went on to state that:

The government urges that because inquiry was merely made into Swindall's legislative status, not his legislative acts, the Speech or Debate privilege was not violated. Alternatively, the government contends that if the privilege was violated, dismissal is not the proper remedy because the indictment was facially valid. Review of Swindall's Speech or Debate claims is de novo.

We hold that . . . it was error to allow reference to be made to Swindall's committee memberships in the grand jury proceedings and at trial; and . . . the remedy for the violations of the privilege is dismissal of the affected counts.

Id. The court further declared the privilege must be "read broadly to effectuate its purposes;" that "the privilege protects legislative status as well as legislative acts;" and that "The government introduced evidence of Swindall's committee memberships to prove that he performed a legislative act to acquire knowledge of the contents of the bills, which is precisely what the clause prohibits." Id. at 1544, 1546.

In the present case, the State's misuse of evidence protected by the legislative privilege is far more egregious than that shown in Swindall. Here, the State Prosecutor introduced documents that showed, on their faces, that they were City Council Appointment Memoranda. Exhibits A and B hereto. The Memoranda provided detail as to two specific meetings attended

by the City Council President, including their location (the Mayor's office City Hall), the identities of the government officials, government employees and private citizens who participated in the meetings and the fact that the "conversation topic" of both meetings was the proposed "Strathdale" development. These documents were introduced for the specific purpose of corroborating Lipscomb's testimony that such meetings had occurred over a three-year period and that, through her attendance at such meetings in her capacity as the City Council President, Ms. Dixon had acquired knowledge of Mr. Lipscomb's activities as a developer. The improper use of such privileged evidence in the present case far exceeds the misuse of Swindall, and, a fortiorari, requires that the indictment here be dismissed as well.

In its effort to ward off yet another dismissal for having polluted the Grand Jury proceedings with this substantial misuse of evidence protected by the legislative privilege, the State claims: (1) that the legislative immunity doctrine does not apply to criminal actions against local officials (a claim that this Court has already rejected); (2) that evidence of legislative activities may be presented to a grand jury so long as the grand jury is kept ignorant of the facts showing that such evidence may not be used (a claim that cannot be reconciled with the purpose of the legislative immunity doctrine to protect officials from having to answer for their legislative activities); (3) that the legislative immunity doctrine does not apply to legislative activity undertaken by the Board of Estimates (another claim that this Court and the Fourth Circuit have rejected); and (4) that the State could deliberately present protected evidence of legislative activity presented to the grand jury to show that Ms. Dixon was aware that Mr. Lipscomb was involved with the Strathdale project if its misuse of such evidence was not "so extensive that it completely infected these proceedings" (a standard without basis in the case

law). As discussed below, none of these claims can salvage this second Indictment that was obtained through the deliberate use of evidence in violation of Ms. Dixon's legislative privilege.

A. The Legislative Immunity Doctrine Applies In This Criminal Case

Just as it did with the prior Indictment, the State attempts to escape the dictates of the legislative immunity doctrine by claiming, in direct contrast to Maryland law and this Court's prior holding, that the legislative immunity doctrine does not apply to local officials in criminal prosecutions. Legislative Immunity Opinion at 8-12. And, just as before, the State misapplies the case of United States v. Gillock, 445 U.S. 360 (1980), which stands for the unremarkable proposition that the Supremacy Clause of the United States Constitution mandates that federal statutes trump state immunities, and, therefore, federal prosecutions of state public officials under federal statutes do not implicate the legislative immunity doctrine. As this Court has concluded, however, Gillock has no application to this case because Gillock is simply "an exercise of federal power to trump a state law." Legislative Immunity Opinion at 9 (citing Gillock, 445 U.S. at 369).

Indeed, in Montgomery County v. Schooley, 97 Md. App. 107, 113-14 (1992), the Maryland case affirming the applicability of the legislative immunity doctrine to local officials, Judge Wilner recognized the limitation of the holding in Gillock. After tracing the history of the Maryland Constitutional Speech and Debate Clause, Chief Judge Wilner declared that:

Members of local legislative bodies in Maryland, like the Montgomery County Council, are not directly within the ambit of either the State or Federal Constitutional immunity provisions, which apply only to the members of legislative bodies mentioned within them. The doctrine articulated in those provisions has, however, been regarded as applicable to members of local and regional legislative bodies . . . as a matter of common law – the "common law doctrine of official immunity."

Id. at 114-15 (emphasis added).

Judge Wilner also pointed out that, “when invoked in defense of a Federal criminal prosecution, for example, the common law privilege has been held to be inapplicable – ‘trumped’ by the Supremacy Clause in the U.S. Constitution.” Id. (citing Gillock). But, as Judge Wilner importantly continued: “When there is no such paramount Federal interest, however, the privilege has been respected by both Federal and State courts.” Id. (emphasis added). As he explained:

In Baker [v. Mayor and City Council of Baltimore, 894 F.2d 679 (4th Cir. 1990)], the Court . . . declared it “beyond dispute that municipal legislators enjoy the protection of immunity when acting in the sphere of legitimate legislative activity.” Subject to the consequences of the Supremacy Clause, that immunity, conferred as a matter of common law, appears to be co-extensive in scope with the Constitutional immunity enjoyed by members of Congress and the Maryland General Assembly.. . . In various cases, the Supreme Court has construed the Federal provision as immunizing members of Congress against both criminal and civil liability based on their legislative conduct, whether the action is for prospective relief or damages.

Id. 115-16 (emphasis added).

Later in the same opinion, Judge Wilner addressed the question of whether the County was entitled to invoke the privilege when the public official himself has not done so. “When the legislator himself is the defendant or target, whether in a criminal prosecution or a civil action, the privilege is obviously a personal one that he may exercise.” Id. at 120 (emphasis added). Thus, the privilege afforded to legislators under the Speech and Debate Clause is “coextensive” with the common law privilege, and both apply with equal vigor to both criminal and civil actions in State court.

Manders v. Brown, 101 Md. App. 191 (1994) the Court of Special Appeals, reiterating Schooley, stated that:

The privilege as it applies to Congress is found in the Speech or Debate Clause of the United States Constitution, Art. I, § 6; as to the Maryland General Assembly, the privilege is found in Article 10 of the Maryland Declaration of Rights and Art. III, § 18 of the State constitution. The majority of the Supreme Court case law focuses on the application of the federal constitutional privilege as it applies to Congress. Despite the common law origins of legislative privilege as it applies to local legislative bodies, federal and local privileges are essentially co-extensive.

Id. at 205 (citing Schooley, 97 Md. App. at 115) (emphasis added). Accord, State v. Neufeld, 926 P.2d 1325, 1332 (Kan. 1996) (holding that the “state common-law doctrine of legislative immunity and [the Speech and Debate Clause] of the Kansas Constitution provide protection to Kansas legislators equivalent to the protection provided to federal legislators under Article I, § 6 of the United States Constitution because they are based on the same origin and rationale.”).

Courts have routinely found that the legislative immunity contained within the various State constitutional Speech and Debate clauses apply to local officials. See D’Amato v. Superior Court, 167 Cal. App. 4th 861, 871-76, 84 Cal. Rptr. 3d 497 (2008) (holding that legislative immunity applies to local officials in criminal context); Cunningham v. Chapel Hill, ISD, 438 F. Supp. 2d 718 (E.D. Tex. 2006) (legislative privilege protects school district trustee); Clear Lake City Water Authority v. Salazar, 781 S.W.2d 347 (Tex. App. 1989) (Speech and Debate clause of State constitution protects members of water authority commission); Humane Society v. City of New York, 729 N.Y.S. 2d 360 (Sup. Ct. N.Y. Co. 2001) (state Speech and Debate clause protects City Health department employees and Mayor). Moreover, there is no questioning that, absent concerns related to the Supremacy Clause, the legislative immunity doctrine applies to criminal actions generally. See, e.g., United States v. Rostenkowski, 59 F.3d 1291 (D.C. Cir. 1995); United States v. Swindall, 971 F.2d 1531 (11th Cir. 1992) (legislative privilege protected Congressmen from inference of knowledge attributable to him from fact he served on Banking

and Judiciary Committees); United States v. Helstoski, 635 F.2d 200 (3rd Cir. 1980); United States v. Dowdy, 479 F.2d 213 (4th Cir. 1972); Blondes v. State, 16 Md. App. 165 (1972) (reversing criminal conviction of county delegate to General Assembly on the basis that evidence of legislative acts had been improperly used against the delegate).²

Thus, as this Court previously held, the doctrine of legislative immunity unquestionably prohibited inquiry by the prosecutors before the Grand Jury into Ms. Dixon's legislative activities, including attendance at meetings with parties to discuss development projects that were either pending before the Baltimore City Council or the Board of Estimates or were reasonably anticipated to come before those legislative bodies.

B. The State Prosecutor Has Presented To The Grand Jury Evidence of Ms. Dixon's Legitimate Legislative Activities In Violation of Her Legislative Immunity

The State disregards well established precedent when it argues that Ms. Dixon's meetings with interested property owners and other governmental officials and employees about a proposed development project that would require legislative action were not protected legislative acts. In Bruce v. Riddle, 631 F. 2d 272, 279-80 (4th Cir. 1980), the Fourth Circuit rejected the identical argument, stating that:

Meeting with "interest" groups, professional or amateur, regardless of their motivation, is a part and parcel of the modern legislative procedures through which legislators receive information possibly bearing on the legislation they are to consider. The possibility that legislators may be "politically" motivated to attend such meetings cannot take away from the legislative character of the process.

² See also Irons v. Rhode Island Ethics Com'n, 973 A.2d 1124, 1131 (R.I., 2009) (holding that state senator was immune from charges brought before ethics commission based on his legislative activity, stating that the legislative immunity protects "the rights of the people, by enabling their representatives to execute the functions of their office, without fear of prosecutions, civil or criminal."); Burnette v. Bredesen, 566 F. Supp. 2d 738, 745 (E.D. Tenn., 2008) ("Such immunity is granted to legislators so that they can carry out the duties of their positions without fear of criminal or civil prosecution.").

(emphasis added). The Court of Special Appeals in Schooley adopted the holding of the Bruce case, and added that the privilege applies not only to “a meeting with citizens or private interest group,” but also to “caucuses and meetings with public officials” concerning legislation that might be pending or proposed. Schooley, 97 Md. App. at 123. For these same reasons, the privilege has protected legislators from evidence relating to: meetings of the Baltimore City Board of Estimates regarding the fiscal decision to cut a particular employment position, Baker v. Mayor and City Council of Baltimore, 894 F.2d 679 (4th Cir. 1980); a non-public meeting between a city council member and mayor regarding a decision to amend a Planned Urban Development, Manders, 101 Md. App. at 191; and a party caucus and meeting with other political officials regarding a proposed redistricting plan, Schooley, 97 Md. App. at 123-24.

In this case, and for the express purpose of attempting to show that Ms. Dixon had knowledge of real estate development projects for which the City would adopt favorable legislation, the State Prosecutor presented to the grand jury testimony regarding meetings that Ms. Dixon allegedly attended in 2001, 2002 and 2003 at City Hall in her capacity as the President of the Baltimore City Council. As the Grand Jury testimony (that the State attached to its Opposition in total) makes clear, the State Prosecutor asked its only fact witness to affirm that he attended meetings with Ms. Dixon in City Hall that involved a housing project that would affect an entire neighborhood and that those meetings began more than two years before ground for the project was ever broken. Lipscomb Grand Jury Tr. at 8-9. As this Court knows from the extensive testimony and documents presented to the prior grand jury, including the testimony of Mr. Winstead Rouse, those meetings “dealt with aspects of the Strathdale Manor development and its financing and tax status,” and those meetings were undeniably legitimate legislative activities. Legislative Immunity Opinion at 20; see also Memorandum in Support of Motion of

Sheila Ann Dixon to Dismiss Indictment No. 1092100616 with prejudice at Exhibit 5.6, thereto. The State essentially concedes that these meetings were legislative in nature when it attempts to distinguish these acts by claiming that it purposely did not have Mr. Lipscomb testify as to what the individual participants said at these meetings.

In a misguided attempt to circumvent Ms. Dixon's legislative immunity, the State provided the Grand Jury evidence of Ms. Dixon's attendance at meetings that were called to discuss the proposed Strathdale project and asked the Grand Jury to infer from Ms. Dixon's attendance at the meetings that such attendance provided her with knowledge that Mr. Lipscomb was a developer of the Strathdale project and that his activities implicated Ms. Dixon's disclosure obligation. Unlike the attorney-client privilege that protects *communications*, the legislative immunity doctrine protects *activity* and status. Schooley, 97 Md. App. at 115 (quoting Baker v. Mayor and City Council of Baltimore, 894 F.2d 679 (4th Cir. 1990); Bruce v. Riddle, 631 F.2d 272 (4th Cir. 1980)) (“municipal legislators enjoy the protection of immunity when *acting* in the sphere of legitimate legislative activity.”) (emphasis added); see Blondes, 16 Md. App. at 178-79 (“legislative *acts*, to be protected, must be integral part of the deliberative and communicative process”). In deciding whether such an activity is legislative the only question to be answered is whether, regardless of title or elective capacity, the individual claiming immunity was “acting in the sphere of legitimate legislative activity.” Schooley, 97 Md. App. at 115. See also Swindall, 971 F.2d at 1542, 1544-45.

Furthermore, as discussed earlier in connection with Swindall, it is irrelevant whether the Indictment directly alleges legislative activity or whether the Grand Jury was aware that the evidence of the meetings that the Grand Jury was asked to accept as proof of Ms. Dixon's knowledge was evidence that should not have been used by the prosecutor. Put another way, the

issue is not whether the Grand Jury knew all the details of Ms. Dixon's protected legislative conduct, but whether the conduct offered to the Grand Jury falls within the scope of the privilege. In this regard, a prosecutor may not simply avoid the legislative immunity doctrine "solely on what the prosecutor elected to allege." Dowdy, 479 F.2d at 223. In determining if a prosecutor is attempting to hold an individual responsible for protected legitimate legislative activity, "it may be necessary to go beyond the indictment to obtain the full meaning of what appear facially to be perfectly proper allegations." Id. (emphasis added).

The legislative acts in Bruce are closely analogous to those in the present case. There a citizen was seeking to hold local legislators liable for private meetings they attended with wealthy land owners on one side of a zoning dispute. The Court held that those meetings, like the meetings that the State Prosecutor placed before the Grand Jury in this case, were legitimate legislative activities protected by the legislative immunity doctrine. Bruce, 391 F.2d 275. Moreover, regardless of Ms. Dixon's motivation for attending groundbreakings, she was there in her capacity as the President of the Baltimore City Council and was engaging in legitimate legislative activities of communicating with constituents and gaining their feedback in relation to business that was either before the legislative bodies in which she served or, as stated in Bruce, might "possibly" be "bearing" on legislation she would consider. Bruce, 631 F.2d at 280. The State has elsewhere made the point that Messrs. Lipscomb and Paterakis were involved in a series of projects that were developed in Inner Harbor East, and it goes without saying that information gained in connection with any phase of those development projects, including information gained at the groundbreaking for any one of them, was information that would bear on future legislation for other phases or other parcels that were being developed as part of the same series of developments.

The State's deliberate presentation of evidence of Ms. Dixon's legislative acts to prove knowledge of facts to support a charge of perjury, and its clumsy effort to avoid the consequences of having done so, demonstrate a disregard of the injunction that "the guarantees of [legislative immunity] are vitally important to our system of government and therefore are entitled to be treated by the courts with the sensitivity that such important values require." Helstoski v. Meanor, 442 U.S. 500, 505 (1975).

The two Supreme Court cases on which the State relies are completely off point and, if anything, support Ms. Dixon's position. In Gravel v. United States, 408 U.S. 606 (1972), the United States Senator who released the so-called "Pentagon Papers" in a senate committee hearing and then sought to have them published by a private publishing company, intervened to quash a grand jury subpoena issued to one of his aides. The Supreme Court had no difficulty applying the legislative privilege to the Senator and his appointed aide with respect to the preparation and use of the Papers in the committee hearing. The Court held, however, that private publication of the Papers was "not part and parcel of the legislative process" and that, therefore, the aide could be called before grand jury under a properly fashioned order. Id. at 626, 627-29. As the Court noted, the Speech and Debate Clause is to be read "broadly to effectuate its purposes" and can include "anything 'generally done in a session of the House by one of its members in relation to the business before it.'" Id. at 624.

In Gravel, unlike the present case, the activity in question was the private publication of an otherwise classified document. The private publishing activity did not have any relationship to business before the Congress. In contrast, the undisputed evidence before this Court is that the activities for which Ms. Dixon is held to account are meetings and events for the purpose of learning about and discussing a proposed housing project that would be of concern to an entire

neighborhood and for which legislation was critical. Moreover, the private publication of the Papers in Gravel was not legitimate, and, in fact was in violation of the Senator's security clearance, whereas, in the present case, there is absolutely no allegation that Ms. Dixon's attendance at the meetings relating to development projects was in any way illegal or illegitimate.

The other case principally cited by the State, United States v. Brewster, 408 U.S. 501 (1972), adds nothing to the analysis. There, the question was whether a former United States Senator could be tried on charges that he “‘corruptly asked, solicited, sought, accepted, received and agreed to receive’ money ‘in return for being influenced ... in respect to his action, vote and decision’” on a particular topic of legislation (i.e. postage rates). Id. at 525. As the Court noted, the Brewster indictment was founded on a corrupt agreement and did not implicate any legislative act or motivation for a legislative act. Id. The Senator simply claimed that he was immune from prosecution for this indictment. Indeed, the Court held that government could make out its case against the Senator regardless of the Senator's votes or legislative activities:

The illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that appellee fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise.

Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator.

Id. at 526 (emphasis added).

In stark contrast to Brewster, the State has not charged Ms. Dixon with any act of bribery but has seen fit to place before the grand jury evidence of meetings and appearances of Ms.

Dixon. Under the clear language of Bruce v. Riddle and its Maryland progeny, these legitimate legislative activities are protected.

The other cases cited by the State are similarly off point. Hutchinson v. Proxmire, 443 U.S. 111 (1972) (senator's issuance of a "Golden Fleece Award" in a private newsletter); United States v. Rose, 28 F. 3d 181 (D.C. Cir. 1994) (Congressman's civil violation of federal financial disclosure statute was established without reliance on any legitimate legislative activity); Doe v. McMillan, 412 U.S. 306 (1973) (holding that members of Congress could not be held liable for voting to publish a report); United States v. Biaggi, 853 F.2d 89 (2nd Cir. 1988) (trip to Florida was not integral to the legislative process).

Thus, the evidence which the State presented to the grand jury here tramples upon the Defendant's legislative immunity no less than the earlier acts alleged in the original indictment which this Court dismissed, on the same reasoning as the Defendant has advanced here.

C. Every Court, Including This Court, Has Agreed That The Baltimore City Board Of Estimates Engages In Legislative Activities That Are Protected By The Legislative Immunity Doctrine

What the State Prosecutor considers an "absolute, absurd extreme" regarding the legislative nature of the Baltimore City Board of Estimates, this Court, and every other Court that has addressed the issue, has found to be unexceptional. See Legislative Immunity Opinion at 19. This Court's conclusion that Ms. Dixon's Board of Estimates activities are legislative is consistent with Maryland's application of the "'functional' approach" to determining legislative activity. Manders, 101 Md. App at 207-209 (citing Mandel v. O'Hara, 320 Md. 103, 120 (1990)).

The Baltimore City Charter describes the Board of Estimates' function as being to:

"formulate ... the fiscal *policy* of the City to the extent, and in the manner provided for, in the Charter. To exercise its powers and

perform its duties, the Board may promulgate rules and regulations and summon before it the heads of departments, bureaus or divisions, municipal officers, and members of commissions and boards.”

City Charter, Art. VI, § 2 (emphasis added). The City Charter further provides that the Board of Estimates is to prepare and adopt an annual Ordinance of Estimates and provide public hearings giving constituents “the opportunity to appear before the Board to speak for or against the inclusion of any appropriation in the proposed Ordinance of Estimates.” Id. Art. VI, § 3(b); see id. Art. VI, § 5 (“Preparation of proposed Ordinance of Estimates”); id. Art. VI, § 6 (“Adoption of proposed Ordinance of Estimates”). These activities are plainly legislative.

The Fourth Circuit, furthermore, has laid to rest any controversy over this issue. Baker, 894 F.2d at 682 (holding that the legislative immunity applies to the Baltimore City Board of Estimates); Burtwick v. McLean, 76 F.3d 611, 613 (4th Cir. 1996) (applying testimonial privilege to members of Board of Estimates). In Baker, the Fourth Circuit “consider[ed] the function performed by the Board, and not the titles of its members,” and concluded that the Board of Estimates’ “role in the overall budget process persuades us that it is most properly characterized as legislative.” Baker, 894 F.2d at 682 (citing Forrester v. White, 484 U.S. 219 (1988)); see also Burtwick, 76 F.3d at 613 (4th Cir. 1996) (affirming the holding in Baker).

While Ms. Dixon was a member of the Board of Estimates by virtue of her election as President of the City Council, the State takes issue with the holdings that legislative immunity applies to the Board of Estimates because some other members of the Board are not elected officials. In response to the unequivocal holdings of this Court and the Fourth Circuit, the State offers nothing more than a rhetorical question regarding the applicability of legislative immunity to non-elected officials. Again, what the State questions, courts have routinely accepted. Courts regularly hold that non-elected public officials may be protected for their legitimate legislative

activities and that “It is the function of the government official that determines whether or not he [or she] is entitled to legislative immunity, not his [or her] title.” Marylanders for Fair Representation, Inc. v. Schaefer, 144 F.R.D. 292, 298 (D. Md., 1992) (holding Governor of Maryland and members of Governor's advisory committee were entitled to legislative immunity for actions in preparing and presenting legislative redistricting plan); see Gravel, 408 U.S. at 618 (“[T]he Speech and Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself.”); Baker, 894 F.2d at 682; Burtwick, 76 F.3d at 613. See also Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979) (ten appointed members of regional planning authority entitled to legislative immunity to the extent that they performed legislative acts).

D. Dismissal Of the Indictment Is Mandated

In dismissing the prior Indictment because of the invasion of Ms. Dixon's legislative immunity, this Court declared that, “the [Defendant is] entitled to have the Grand Jury consider the matters without the taint of reviewing evidence that is absolutely privileged under Maryland law.” Legislative Immunity Opinion at 24. Just as before, the new Indictment should be dismissed because the “the infection cannot be excised.” Id.; see also United States v. Swindell, 971 F.2d 1531, 1547 (11th Cir. 1992) (dismissing indictment based on privileged evidence being presented to a grand jury). In order to avoid dismissal of an indictment, “All that is required is that in presenting material to the grand jury, the prosecutor uphold the Constitution and refrain from introducing evidence of past legislative acts or the motivation for performing them.” Helstoski, 635 F.2d at 206.

The State Prosecutor would never have introduced evidence before the Grand Jury of Ms. Dixon's legislative acts if he had been confident that he could support the element of knowledge needed for a perjury charge without it. In fact, the State Prosecutor called upon Mr. Lipscomb to testify about Ms. Dixon's attendance at official meetings as his first and foremost evidence of Ms. Dixon's knowledge, and, on the basis of this evidence alone, he led the witness to conclude that, by Ms. Dixon's presence at the meetings, she became aware of Lipscomb's activities as a developer. The State's deliberate use and underscoring of this evidence "makes it specious [for the State] to assert that the grand [jury] did not thoroughly consider this evidence." Helstoski, 635 F.2d at 202.

In its Opposition, the State seeks to create an altogether excessive and unworkable standard that is not supported by the case law and would undermine the protections afforded by the legislative immunity doctrine, which protects officials from answering for their legitimate legislative activities in any other Place" or in "any Court of Judicature." Schooley, 97 Md. App. at 113-14 (quoting U.S. CONST., Art. I, § 6 and MD. DECL. OF RIGHTS, Art. 10). Relying upon the trial court's factual finding in Helstoski and not the standard applied by the Third Circuit in affirming the dismissal of the indictment in that case, the State would have this Court forgive the State's deliberate misuse of evidence of legislative acts, even though this is the second time that the State has done so, because, the State urges, the misuse of this evidence was not "so extensive that it completely infected these proceedings" State's Opposition at 16. While the facts of Helstoski showed extensive use of evidence of protected acts, the standard for dismissal was not limited to such extreme circumstances. Legislative Immunity Opinion at 25.

There is no denying that the State placed Ms. Dixon's past legislative acts before the grand jury and that this evidence of Ms. Dixon's legitimate legislative activity was the

substantial, and no doubt determinative, component of the State's presentation of Ms. Dixon's knowledge of Mr. Lipscomb's development activities. The first and primary testimony that the State elicited from its key witness before the grand jury was Ms. Dixon's attendance at meetings in City Hall regarding the Strathdale Project. The State then went on to elicit testimony about a groundbreaking, which Ms. Dixon attended in her capacity as City Council President and which was part of the legislative process. Moreover, the State presented to the grand jury evidence of a TIF bond, which required approval by the City Council and Board of Estimates, and the approval of the bond was clearly part of the legislative process. The only other evidence offered by the State in this regard were miscellaneous permits and one-line newspaper abstracts, none of which were shown to have ever been seen by Ms. Dixon.

The record can only support the conclusion that the tainted evidence must have infected the Grand Jury's decision. Immediately after questioning Mr. Lipscomb about Ms. Dixon's attendance at the meetings that fall squarely within the privilege, the State Prosecutor specifically asked, "So Ms. Dixon was aware that you were involved with this Strathdale project?" And the witness, having been so led, agreed. Lipscomb Grand Jury Tr. at 9.

The State's disregard of Ms. Dixon's right to be free of inquiry into her legislative activity cannot be sanctioned in the present case because the doctrine of legislative immunity is too important to the effective functioning of government. As the Court observed in Swindall:

“‘[T]he instigation of criminal charges’ is the ‘predominant thrust’ of the [legislative immunity doctrine]. In scrutinizing a criminal prosecution drawing into question legislative acts or the motivation for performing them, ‘we look particularly to the prophylactic purposes of the clause.’

Swindall, 971 F.2d at 1547 (quoting Helstoski, 635 F.2d at 204 and United States v. Johnson, 383 U.S. at 182 (1966)).

The present case presents circumstances more aggravated than those presented by any of the cases cited by either side, and dismissal with prejudice is mandated, because this is the second time that the State has seen fit to pollute the Grand Jury process with evidence that invades the legislative privilege. Whatever excuse the State may have had the first time, the State had the benefit of this Court's guidance, and was specifically alerted to the ruling in the Swindall case, before presenting evidence to the Grand Jury leading to the second indictment. This Court gave the State the opportunity to present a case to the Grand Jury free of any protected legislative evidence. The prosecutor, obviously believing that the State could not secure an indictment free of such taint, deliberately chose to present the Grand Jury with evidence of Ms. Dixon's legislative acts to supply the element of knowledge essential to a charge of perjury. This deliberate misuse of evidence of privileged legislative activity, coming on the heels of the dismissal of a prior indictment for the same type of transgression, cannot be tolerated.

II. The Indictment Fails To Allege Essential Elements

In her Motion to Dismiss, the Defendant argued that the Indictment was insufficient in two respects. First, she maintained that the indictment fatally neglected to allege an essential element of the offense, i.e., that the defendant's actions were done "corruptly," as required by Md. Code Ann., Criminal Law Section 9-103(a). In addition, the Indictment failed to allege any facts whatsoever that Ms. Dixon knew that Mr. Lipscomb or any of his entities were "doing business with," or were "regulated by," the City, another essential element of the crime of perjury. The State has responded by arguing essentially that the Indictment is "close enough."

Article 21 of the Maryland Declaration of Rights guarantees to each citizen the right to be informed of the accusation against him. Of the many purposes served by this constitutional

requirement, two of the most important are to put the defendant on notice of what she is called upon to defend by characterizing and describing the crime, and to protect the defendant from future prosecution for the same charge. Maryland law has consistently required the State to include all the “essential” or “material” elements of the crime in the charging document so as to guard against a wrongful prosecution. See, e.g., Robinson v. State, 298 Md. 193, 202 (1983) (“Maryland law requires a charging document to include all of the essential elements of the offense charged.”); State v. Morton, 295 Md. 487, 492 (1983) (charging document must “include all the essential elements of the crime.”) (quoting Ayre v. State, 291 Md. 155, 164 (1981)); id. (“[necessary] to include all the essential elements of the crime [in a charging document.]”); State v. Williamson, 282 Md. 100, 108 (1978) (“[I]ndictment shall allege fully the essential elements of the offense charged.”) (quoting State v. Wheatley, 192 Md. 44, 50 (1949)); State v. Canova, 278 Md. 483, 498 (1976) (“ [I]t has always been held, that it is an essential requisite in every indictment that it should allege all matters material to constitute the particular crime charged[.]’ ”) (quoting Kearney v. State, 48 Md. 16, 23-24 (1877)); Cropper v. State, 233 Md. 384, 390 (1964) (indictment valid as to substance because “it alleged the necessary essential elements of the offense charged[.]”); Pearlman v. State, 232 Md. 251, 258, (1963) (statutory short-form indictment must contain “the essential elements of the crime it purports to charge[.]), cert. denied, 376 U.S. 943 (1964)); Wheatley, 192 Md. at 50 (“[T]he modern policy of the courts . . . [is] to require only that an indictment shall allege fully the essential elements of the offense charged.”); Neusbaum v. State, 156 Md. 149, 156 (1928) (the “ ‘all essential elements’ ” formula for indictments or informations applies in Maryland); State v. Edwards, 124 Md. 592, 595 (1915) (“[I]t is a well settled rule of criminal pleading . . . [that the indictment] allege all matters material to constitute the offense charged against the accused[.]”); Kearney, 48 Md. at 23-24

(“The want of a direct allegation of any thing material in the description of the substance, nature, or manner of the crime, cannot be supplied by intendment, and hence it has always been held, that it is an essential requisite in every indictment that it should allege all matters material to constitute the particular crime charged, with such positiveness and directness, as not to need the aid of intendment or implication.”); Deckard v. State, 38 Md. 186, 201 (1873) (indictment sufficiently charges an offense when “it sets forth the substance of the offense charged, and that all matters material to constitute the crime, are alleged with such positiveness and directness, as not to need the aid of intendment or implication.”); Whitehead v. State, 54 Md. App. 428, 444 (“[T]he failure to allege in the charging document the essential elements of a crime is fatal.”), cert. denied, 296 Md. 655 (1983); Baker v. State, 6 Md. App. 148, 156 (1969) (“[A]n indictment charging an offense ... should allege every substantial element of the offense[.]”).

In the instant case, the Indictment fails to allege that Ms. Dixon acted “corruptly,” an essential element of the offense of perjury. The State contends that this element is satisfied because the Indictment “substantially states” the crime charged, relying upon the language in Md. Criminal Law Section 9-103 and a case decided in 1884, State v. Bixler, 62 Md. 354, 357 (1884). In Bixler, the court found that the words “willfully” and “knowingly” necessarily involve “corruptly.” But this facile argument does not satisfy the time-honored requirement of alleging all the essential elements directly. And, the State’s position would render the word “corruptly” to be “surplusage, superfluous, meaningless, or nugatory”, which violates the most basic principal of statutory construction. Mayor & City Council of Baltimore v. Hackley, 300 Md. 277, 283 (1984).

Indeed, Section 9-103 of the Criminal Law section, setting forth the requirements for a perjury indictment, was enacted in 2002, one hundred and forty years after Bixler was decided.

Obviously, the Legislature was aware of Bixler when this statute was enacted, and its adoption necessarily supersedes the decision relied upon by the State. See Shifflett v. State, 4 Md. App. 227 (1968) (later statute controls where manifest inconsistency exists with earlier provision). Moreover, the Indictment, which the State concedes to be purposely devoid of facts, simply does not “substantially” allege that the defendant’s conduct was done “corruptly.”

As the Court of Appeals made clear in Ayre v. State, 291 Md. 155 (1981), the failure to allege in the charging document the essential elements of a crime is fatal. This is true even when the indictment is in a statutorily authorized form. The Court said in Ayre:

The failure to allege material elements of the offense is not a mechanical defect in the charge, and thus cannot be brushed off by the facile citation of cases which indicate that the modern trend of courts is to reject outworn legalistic formulas for criminal allegations. We deal here not with hypertechnical rules of pleading which plague unwary prosecutors and free fortuitous defendants, but rather a requirement imposed upon the State as a constitutional minimum.

Id. at 165.

The indictments under review in Ayre charged the defendants with “unlawfully selling a magazine entitled ‘Swedish Erotica 22’ which was reviewed by Judge Ciotola and found to be obscene in violation of [Art. 27] section 418.” Id. at 162. The Court of Appeals held those indictments to be insufficient because they failed to include direct allegations that the material was obscene and because they lacked allegations that the distribution of obscene material had been done knowingly. Id. See also Fitzsimmons v. State, 48 Md. App. 193 (1981). As in Ayre, the Indictment here fails to allege this essential element, and it is not sufficient to “substantially state” the offense.

In attempting to counter the Defendant’s argument that the Indictment fails to allege that Ms. Dixon knew that Mr. Lipscomb’s entities did business with or were regulated by the City,

the State similarly argues that the Indictment “implicitly” makes this allegation. The State cites a number of cases, such as Bosco v. State, 157 Md. 407 (1929), Rice v. State, 9 Md. App. 552, cert. denied, 259 Md. 735 (1970), and Whitehead v. State, 54 Md. App. 428 (1983), for the proposition that a specific element of scienter may be implied from other allegations in the indictment. But, here there are no other facts alleged in the Indictment from which one might even impliedly find that Ms. Dixon knew that Lipscomb was doing business with or was regulated by the City.

Ironically, the Bixler case cited by the State presents a case on “all fours” with the present Indictment in support of Ms. Dixon. In Bixler, the defendant was charged with perjury for falsely claiming that he had not been convicted of an infamous crime, when, as the indictment alleged, he had been convicted of a crime. The court examined the differences between “infamous” crimes and others, and concluded that the failure of the indictment to allege that the defendant had previously been convicted of an “infamous” crime was fatal to the indictment. Id.

As noted above, the absence of any allegation of knowledge or corruption on the part of Ms. Dixon was not merely an oversight by the prosecutor. In order to allege these elements, the State could only present facts which infringed upon the defendant’s legislative privilege. The State should not be permitted to side-step the constitutional and statutory pleading requirements for alleging all the essential facts constituting an offense in order to avoid the Hobson’s choice of pleading tainted evidence.

Because the Indictment fails to allege these essential elements, the Indictment must be dismissed.

III. Insofar as the Indictment is Based on the Broadest Conceivable Definition of “Regulated by the City,” and Fails to Allege Any Conduct by Mr. Lipscomb or His Companies that Would Fit Into a Proper Definition, the Indictment Fails to State a Crime

The State does not deny: that the State Prosecutor advised the Grand Jury that it should use the broadest conceivable definition of “regulated by the City” in deciding whether to return the Indictment in this case; that the Indictment, as drafted, uses the term “regulated by the City” in that broadest sense; and that the Indictment does not allege any facts that would show that Mr. Lipscomb or any of his companies were “regulated by the City” under the narrow definition of the term discussed at length at pages 15 to 22 of Ms. Dixon’s previous Memorandum in support of her Motion to Dismiss the Indictment herein. Under these circumstances, the Indictment must be dismissed because it violates the rule of lenity and fails to allege a crime. United States v. D’Alessio, 822 F. Supp. 1134 (D. N.J. 1993); Canova, 278 Md. at 498 (1976) (“an essential requisite in every indictment [is] that it should allege all material to constitute the particular crime charged”) (quoting Kearney, 48 Md. at 23-24).

The State attempts to defend the Indictment’s overbroad definition of the term “regulated” by referring to Carroll County Ethics Commission v. Lennon, 119 Md. App. 49 (1998), a case that the Defendant has previously cited, that does not support the State at all. In fact, Lennon stands for the proposition that the term “regulated by an agency,” as used in a county ethics code, means to have a “matter that is before the county agency.” Id. at 68. Lennon makes clear that the concept of “regulated,” that the State Prosecutor imported into the Indictment after looking at Google for a meaning of the term, is ill-suited and unworkable for use in an ethics code. Id. at 65.

In Lennon, an attorney who was a member of the Carroll County Planning Commission was representing a client with respect to “off-conveyance applications” (or applications to

subdivide) for his land. These applications were made to the Department of Permits and Regulation, which was subordinate to the Planning Commission. This, however, was not a conflict of interest. Id. When the attorney's client made application to the Planning Commission to extend the water and sewage service to his property, the attorney did not recuse himself from voting on his client's application. It was then, when the client had a matter before the Commission on which the attorney sat, that the attorney violated the conflict of interest section of the ethics code. The county code provided that, "officials and employees who are subject to this Ordinance shall not ... (c) be employed by a business entity that ... is regulated by their agency" Id. at 65.

The Court began its analysis of "regulated" by referring to the dictionary definition. In language that the State overlooks, however, the Court went on to declare that "a statute that purports to regulate activity is *better understood* as 'carry[ing] into effective operation a scheme'" Id. (quoting Mount Vernon-Woodberry Cotton Duck Co. v. Frankfort Maring Accident and Plate Glass Ins. Co., 111 Md. 561, 567 (1909)) (emphasis added). This definition is consistent with the State Administrative Procedure Act, a comparison which the Defendant has continually advocated over the resistance of the State Prosecutor who has relied upon a much more expansive and altogether unworkable "ordinary" definition.

Lennon presented clear-cut issue of conflict of interest before a Planning Commission. Under the circumstances presented there, the Court easily concluded that the attorney had violated the county ethics code because he represented clients who simultaneously had matters before the very Commission of which he was a member. In the criminal context of the present case, where the term "regulated" is not used in conjunction with a particular agency but with reference to any commercial or non-commercial activity within the entire City, the so-called

“ordinary” definition of the term would be susceptible of requiring public officials to disclose all gifts received from anyone who lives or works in, or who travels through, the City. Nevertheless, the State blithely reiterates in its Opposition the so-called dictionary definition of the word “regulated,” which even Lennon, found to be inadequate. Id. (quoting Mount Vernon, 111 Md. at 567). There should be no doubt, in light of Lennon, that the concept of “regulated,” as used in the Baltimore City Ethics Code, is far different and far narrower than the concept in the Indictment, and that, therefore, the Indictment must be dismissed for failure to state a crime.

The State has no real answer for the proposition that the Baltimore City Ethics Code underlying this prosecution would be void for vagueness, for purposes of criminal prosecution, if the term “regulated” was susceptible of the expansive and imprecise meaning that the State attributes to it. While the State cites Montgomery County v. Walsh, 274 Md. 502, 522 (1975), for the proposition that a county public employee can ask for an advisory opinion as to whether he or she is an employee subject to the requirements of a statute, nothing in the Walsh case supports the prosecutor’s argument here. Walsh was a civil case for declaratory relief, not a criminal prosecution, and, to the extent that a public employee might seek an advisory opinion, any such opinion would only be of effect “insofar as the [official body issuing the opinion] itself is concerned.” Id. at 522, n. 7 (quoting United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 580 (1973)).

An altogether different rule applies when a criminal case is brought by a public prosecutor, not the administrative body that administers the ordinance or statute, based on the prosecutor’s own notions as to what the terms of the ordinance or statute might mean. Under these circumstances, as explained in D’Alessio, 822 F. Supp. at 1140, 1142-3, the Indictment must be dismissed when the language of an underlying ethics code lacks clarity. In that case, it

was not clear from the language of an ethics code whether its non-solicitation provisions applied to the defendant, and this “uncertainty render[ed] it an inappropriate basis for criminal charges.” Id. at 1135. The State also completely ignores the Fourth Circuit case on which D’Alessio relies, which holds that, “It is settled that when the law is vague or highly debatable, a defendant - actually or imputedly - lacks the requisite intent to violate it.” United States v. Critzer, 498 F.2d 1160, 1164 (4th Cir. 1974).

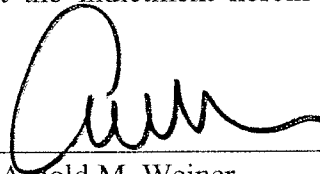
Indeed, if the term “regulated” were to have the meaning that the State attributed to it before the Grand Jury and in the Indictment, the present case, the same as D’Alessio, would be yet another in the long line of cases in which indictments have been required to be dismissed because the statutes on which they are based are too vague and imprecise to serve as the foundation for criminal charges consistent with due process of law. City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849 (1999) (affirming dismissal of criminal indictment where “police are able to decide arbitrarily which members of the public” are loitering); see Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939) (“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.”); Winters v. New York, 333 U. S. 507, 515 (1948) (“The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime ‘must be defined with appropriate definiteness.’”; and “Men of common intelligence cannot be required to guess at the meaning of the enactment.”) (citations omitted). A criminal indictment cannot be sustained where it is brought under the terms of a statute that are so uncertain that their meaning cannot be ascertained from a reading of the underlying statute or the indictment but must be deferred, as the State urges here, for the Court to discern only at trial.

IV. The Failure of the City to Certify and Maintain a List of Entities Doing Business with the City is Fatal to Charges in this Case

The State has done little more than to restate its previous argument that the failure of the City to certify and maintain a list of entities doing business with the City is of no consequence whatsoever. Ms. Dixon respectfully disagrees with that argument, and with this Court's prior decision on the question, for the reasons stated by the Court of Appeals in Hirsch v. Department of Natural Resources, 288 Md. 95 (1980) and discussed at length at pages 22 through 27 of Defendant's previous memorandum herein.

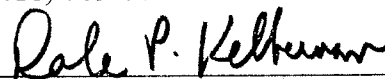
CONCLUSION

For the reasons stated in Ms. Dixon's previous Memorandum, and amplified in this Reply, Ms. Dixon respectfully submits that the Indictment herein should be dismissed with prejudice.




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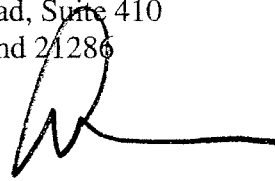
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 25th day of September, 2009, that copies of the within Reply of Sheila Ann Dixon, Defendant, to State's Opposition to Motion to Dismiss Indictment was sent by e-mail and first class mail, postage prepaid, to:

Robert A. Rohrbaugh, State Prosecutor
Thomas M. McDonough, Deputy State Prosecutor
300 E. Joppa Road, Suite 410
Towson, Maryland 21286



Arnold M. Weiner

Exhibit A

Appointment14113	
Subject:	Meeting with Laurie Schwartz, Ted Rouse, JoAnn Copies, Ron Lipscomb, Michael Seipp, Tom Peplinski, Barbara Jackson Bill Zahler re: Strathdale
From:	Michal, Zoe
Start:	10/3/2001 2:00:00 PM
End:	10/3/2001 3:00:00 PM
Location:	Conference Room 1 (Mayor's Office)
Recurring:	No
Appointment Body	
Contact: Cecelia 443-573-4218 (CONFIRMED 10/2/01 @ 11:57 a.m.)	

Outlook Header Information
Conversation Topic: Meeting with Laurie Schwartz, Ted Rouse, JoAnn Copies, Bill Zahler re: Strathdale
Subject: Meeting with Laurie Schwartz, Ted Rouse, JoAnn Copies, Ron Lipscomb, Michael Seipp, Tom Peplinski, Barbara Jackson Bill Zahler re: Strathdale
Sender Name: Michal, Zoe
Sender E-Mail: /O=CITY OF BALTIMORE/OU=CITY COUNCIL/CN=RECIPIENTS/CN=ZMICHAL
Importance: Normal
Priority: Normal
Sensitivity: Normal
Private: No
Reminder: No
Show Time As: Busy
Delivery Time: 8/7/2002 5:36:00 PM
Creation Time: 8/7/2002 5:21:21 PM
Modification Time: 8/7/2002 5:21:21 PM
Submit Time: 10/1/2001 9:13:47 AM
Reminder Date: 10/3/2001 2:00:00 PM
Starting Date/Time: 10/3/2001 2:00:00 PM
Ending Date/Time: 10/3/2001 3:00:00 PM
Flags: 1 = Read
Size: 1609
Duration (Minutes): 60
All-Day Event: No
Reminder Minutes Before Start: 15

EXHIBIT 2

Exhibit B

Appointment 10983	
Subject:	Meeting with Mayor, Bill Struever - INSTEAD OF Teddy Rouse, Ron Lipscomb, Commissioner Paul Graziano, Commissioner, Del. Talmadge Branch re: Strathdale Development Property (WANDA WILL STAFF)
From:	Michal, Zos
Start:	10/15/2001 4:00:00 PM
End:	10/15/2001 4:30:00 PM
Location:	In the Mayor's office
Recurring:	No
Required Attendees:	Dixon, Sheila; Watts, Wanda
Appointment Body	
<p>Mayor - CEM with Rebecca on 9/13/01 (CONFIRMED VIA E-MAIL 10/12/01 @ 11:47 p.m.) Graziano - CTC with Joyce Stewart @ 6-8438 on 9/13/01 (V/m on 10/12/01 @ 12:23 p.m.) (CONFIRMED 10/15/01 @ 10:19 a.m.) Del. Talmadge Branch, CTC with Kim on 9/13/01 @ 11:15 a.m. - 410-841-3257 (V/m 10/12/01 @ 12:19 p.m. to confirm) Ron Lipscomb/Teddy Rouse @ 558-0600 - V/m on 9/13 @ 2:39 p.m. (V/m on 10/12/01 @ 12:23 p.m.) (CONFIRMED 10/15/01 @ 11:19 a.m.; Bill Struever will attend for Teddy Rouse) CTC on 9/20/01 @ 3:40 p.m. JoAnn Copes @ 6-1641 (CONFIRMED 10/12/01 @ 12:24 p.m.) (review file)</p>	

Outlook Header Information
<p>Conversation Topic: Meeting with Mayor, Teddy Rouse??, Ron Lipscomb??, Paul Graziano, Commissioner Del. Talmadge Branch ?? re: Strathdale Development Property Subject: Meeting with Mayor, Bill Struever - INSTEAD OF Teddy Rouse, Ron Lipscomb, Commissioner Paul Graziano, Commissioner, Del. Talmadge Branch re: Strathdale Development Property (WANDA WILL STAFF) Sender Name: Michal, Zos Sender E-Mail: /O=CITY OF BALTIMORE/OU=CITY COUNCIL/CN=RECIPIENTS/CN=ZMICHAL Importance: Normal Priority: Normal Sensitivity: Normal Private: No Reminder: No Show Time As: Busy Delivery Time: 8/7/2002 5:44:49 PM Creation Time: 8/7/2002 5:30:10 PM Modification Time: 8/7/2002 5:30:11 PM Submit Time: 9/13/2001 4:27:56 PM Reminder Date: 10/15/2001 4:00:00 PM Starting Date/Time: 10/15/2001 4:00:00 PM Ending Date/Time: 10/15/2001 4:30:00 PM Flags: 1 - Read Size: 3970 Duration (Minutes): 30 All-Day Event: No Reminder Minutes Before Start: 15</p>

EXHIBIT 3