



# **REPORT OF THE MARYLAND STATE PROSECUTOR**

**FISCAL YEAR 2005**

**(July 1, 2004 – June 30, 2005)**

**Office of the State Prosecutor  
Suite 410, Hampton Plaza  
300 East Joppa Road  
Towson, Maryland 21286  
Telephone: 410.321.4067  
1.800.695.4058  
Facsimilie: 410.321.3851**

## TABLE OF CONTENTS

Introduction.....	3
Observations of the new State Prosecutor Robert A. Rohrbaugh.....	4
Staff and Administration.....	10
Review of Significant Matters, FY 2005 .....	13
<i>A. Baltimore City School System Investigation .....</i>	<i>13</i>
<i>B. Election Law Over-Contribution Civil Actions .....</i>	<i>15</i>
<i>C. Campaign Reporting Violations .....</i>	<i>16</i>
Investigations Not Resulting in Charges .....	17
Managing For Results .....	18
Conclusion .....	20

## **Introduction**

During the past year, the Office of the State Prosecutor has experienced substantial changes. Not only was a new State Prosecutor appointed on September 1, 2004, the focus of the Office was redirected to emphasize investigations of white collar public corruption cases. Without any guaranty of success, those types of investigations are both time consuming and tedious. Nevertheless, the investigations are important to assure the citizens of this State that its public servants are motivated by public service and not personal greed. If the citizens of this State lose confidence in its public officials and employees, the underpinnings of our entire democratic system will be at risk.

Nowhere are those underpinnings of the public's confidence more important than in the election of public officials. It goes without saying that elections must not only be fundamentally fair, but must strictly comply with the requirements of the Maryland Code. To continue to assure the people of this State that its laws are being observed, the Office of the State Prosecutor has also taken a more proactive role in the enforcement of the State's election statutes. With another election looming in the next year, contributors and candidates should understand that the election laws are to be respected and a violation of those laws will be taken seriously.

## **Observations of the new Maryland State Prosecutor, Robert A. Rohrbaugh**

The past ten (10) months have been interesting and rewarding. In last year's report, I stated that it was my goal to develop and improve the effectiveness of the Office in rooting out and aggressively prosecuting those who abuse the public trust. While there is much to be done, some of those goals have already been accomplished, due in no small measure to the excellent staff which I inherited. As will be highlighted in the later portions of this Report, there have been a series of well-publicized prosecutions especially in the Baltimore City Public School System investigation which have resulted not only in criminal convictions, but also the recovery of millions of dollars in restitution. With those investigations and prosecutions came the realization that there are significant gaps in the Maryland laws which make pending and future investigations more difficult. For example:

- Affidavits supporting a Search and Seizure Warrant cannot be sealed in a white-collar corruption investigation.

*Criminal Procedure Article*, Section 1-203(e) permits a Court to seal affidavits in support of search warrants only in certain homicide and drug cases for a period of 30 days upon a showing that the failure to maintain the confidentiality of an investigation would impair the continuation of the investigation. There is no reason why a Court should not be permitted to exercise the same discretion in a corruption case. In a recent investigation by this Office, the affidavit which was required to be left with the putative defendants gave those individuals, as well as their associates, a road map of the investigation and the evidence already obtained. While it is always

difficult to specify with exactitude how the continuing investigation would have been different, there is no doubt that revealing the nature of the evidence impacted the investigation. Therefore, it is suggested that the Legislature may want to consider expanding the search warrant statute to give judges the same ability to protect the integrity of corruption investigations.

- There is no meaningful penalty for corporations which willfully file false tax returns.

Under Section 13-1002 (b) of the *Tax – General Article* of the Maryland Code, the penalty for “tax evasion” is proscribed in the perjury statute. The penalty for perjury [*Criminal Law Article*, Section 9-101 (b)] is a misdemeanor with imprisonment not to exceed ten (10) years. There is no fine. Since artificial entities such as corporations cannot be imprisoned and there is no fine, the net result is that corporations face no penalty for tax evasion. And, as is almost common knowledge, an effective tool in fighting corruption is a meaningful tax evasion statute. Certainly, this is a matter which the Legislature may want to address.

- The statute of limitations for election law violations is unreasonably short.

*Courts and Judicial Proceedings Article*, Section 5-106 (f) sets the criminal statute of limitations as two (2) years for any violation of the State Election Law or Maryland Public Ethics Law. When attempting to enforce the election and campaign finance laws, this Office has found, unfortunately, that the restriction is unreasonably short and hampers the

effective enforcement of the election laws. Considering many other criminal offenses have at least a three (3) year statute of limitations, it seems logical that the criminal Election Law statute of limitations should be increased. Such change would permit this Office to more fully investigate complaints and, if a criminal prosecution is warranted, to proceed responsibly.

- The Legislative Auditors should be permitted promptly to refer possible corrupt activities to the State Prosecutor.

In 2004, Section 2-1225 of the *State Government Article* was amended to require that the Legislative Auditor report an alleged criminal violation to the Attorney General. Considering the mandate of this Office is to prosecute public corruption cases, it is respectfully suggested that the statute should be amended to include a referral by the Legislative Auditors to the Office of the State Prosecutor. Presently, this Office receives a copy of the Legislative Audits only after the reports are disseminated to the press and public. In any criminal corruption investigation, timing is important. If a criminal investigation is warranted, it should be pursued before the information becomes public and the possible suspects have an opportunity to alter or destroy records or other investigative leads.

- The State Prosecutor should be provided with the same administrative subpoena power as the County State's Attorneys.

In its recent report, the January Term of the Baltimore City Grand

Jury wrote, “Based upon our experiences with the Office of the State Prosecutor, we recommend that the State Prosecutor be legislatively granted subpoena authority similar to the authority granted State’s Attorneys in accordance with the provisions of Article 10, §39A of the Annotated Code of Maryland.” (A copy of the pertinent portion of the Grand Jury report is Attachment A.)

Under Article 10, Section 39A of the Maryland Code, each County State’s Attorney has the authority to issue an administrative subpoena which can be enforced by a Circuit Court. However, the same authority is not granted to the State Prosecutor. In order to pursue a corruption investigation, usually the State Prosecutor needs to obtain a grand jury subpoena which can be very time consuming. For instance, if a grand jury is sitting in a jurisdiction several hours away from the State Prosecutor’s office, an agent will spend needless time traveling to the courthouse in that particular county to get a clerk to stamp the grand jury subpoena before it can be served.

While the State Prosecutor can request a County State’s Attorney to issue its subpoena, this scenario presents potential legal, as well as practical, problems, especially if the investigation may involve the County State’s Attorney, a sitting judge or local judicial employee. It also imposes an extra administrative burden on that State’s Attorney’s office.

Conversely, the granting of subpoena power to the State Prosecutor neither broadens the scope of his authority nor grants the Office additional

power. Like any other subpoena, a State Prosecutor's subpoena can always be challenged in the Circuit Court. However, granting subpoena power to the State Prosecutor would make the Office more efficient and would decrease the likelihood that an investigation will be compromised.

- Enforcement of the existing campaign finance laws regulating corporate and limited liability company contributions is virtually unenforceable.

By law, The State Prosecutor has the responsibility to enforce the campaign finance laws. Section 13-226(b) of the *Election Law Article* prohibits total contributions of more than \$10,000 during any election cycle by a person, including artificial entities such as corporations or limited liability companies ("LLCs"). While sub-section (f) attempts to address the issue of affiliated corporations by referring to the "owners" of the stock, ownership does not necessarily equate to control, as a practical matter.

Nowhere is this premise more graphically illustrated than in the case of *State v. Manekin, LLC* which was opened in FY05, but filed in Anne Arundel District Court during FY06. Manekin, LLC was, and is, essentially controlled by a single person, Richard Alter. Mr. Alter controlled other "Manekin" LLCs such as Manekin Investment Associates 2, LLC, Manekin Investment Associates, 3, LLC, Manekin Aylesbury, LLLP, and Manekin Duvall, LLLP, although the ownership (the "members") of the various LLCs was different. In each instance, the campaign contribution was directed by Richard Alter and Manekin's central disbursement bank account was used. While the contribution checks were issued from the central disbursement bank



account which was embossed with the name “Manekin, LLC”, the campaigns were informed that the campaign’s reports should reflect that the money was from one of the other “Manekin” entities. Due to a lack of clarity in the statute relating to LLCs, no criminal action was filed against the Manekin entities. Instead, Manekin, LLC was fined the maximum amount of \$5,000 on a civil citation. (See Attachment B)

Unlike Manekin, many other affiliated LLCs maintain separate bank accounts, instead of a central disbursement account. In those situations, the Maryland statute permits the maximum contribution by each LLC, notwithstanding all of the LLCs may be controlled by the same manager. The failure to address “control” versus “ownership” results in a gap in the existing law and makes it difficult, if not virtually impossible, to effectively enforce the legislative intent of the \$10,000 campaign contribution limitation.

If the Legislature is inclined to address this enforcement problem, it may wish to be guided by the New Jersey statutes which, although not perfect, provide alternatives. For example, New Jersey prohibits campaign contributions by limited liability companies, limited liability partnerships or joint ventures. (NJAC 19:25-11.10) If a check is received from a limited liability company, the contribution is deemed to have been made by the member who signed the check. With regard to corporations, New Jersey prohibits campaign contributions from related or affiliated corporations and conclusively deems corporations which have a 30% common ownership as being affiliates. (NJAC 19:25-11.9)

## **Staff and Administration**

The Office has two full time assistant prosecutors, Deputy State Prosecutor Thomas “Mike” McDonough and Senior Assistant State Prosecutor Steven Trostle. While each is presently assigned to specific investigations and prosecutions, both have been available on a moments notice to work on any unexpected, urgent matter. Each prosecutor brings a different perspective to an issue and the combination of Mike and Steve has proven to be an invaluable resource both to the Office in general and to the new State Prosecutor.

The Chief Investigator is James Cabezas who is a former Baltimore City police officer. Jim has been a fixture in the Office and is responsible for coordinating all of the investigators and Special Agents. Jim has the unique ability to be able to ferret out facts, almost like a sixth sense. Special Agent John Poliks has been with the Office for the past nine (9) years. John is also a former Baltimore City police officer who has brought a wealth of experience to the office, especially in cases which require surveillance or have other technical requirements.

In March 2004, Special Agent Richard Barger, a former Baltimore City police officer and a corporate fraud investigator for MBNA, was hired as an investigator on a contractual basis. Rick has been the lead agent in the Baltimore City Public School System investigation which has resulted in pleas of guilty by six (6) defendants by the end of FY05. At the end of this fiscal year, the agreed restitution which is binding on the Court under the various plea agreements now totals over three million, five hundred

thousand dollars (\$3,500,000). Rick's experience and expertise in complex white-collar criminal investigations have made him an important asset to the Office.

In September, 2004, the Investigative Auditor's position was filled by Erwin Burtnick. During his career as an auditor for the City of Baltimore and as Assistant Comptroller for the City, Erwin assisted in a number of criminal investigations conducted both by this Office and by the Federal Bureau of Investigation, including the investigations of former City Comptroller Jacqueline McLean and former City Council President Walter Orlinsky.

In October, 2004, another experienced financial investigator with a tax background, retired Internal Revenue Service Special Agent Woodland (Woody) Morris, was hired on a contractual basis. Woody spent most of his career as a Special Agent of the IRS, and worked closely with the Office of the State Prosecutor and the United States Attorney's Office in a long-term joint investigation in the late 1980's and early 1990's. Woody has teamed with Special Agent Barger in working on the Baltimore City School System investigation; and was instrumental in obtaining a federal forfeiture order against a former Baltimore City School employee, Rajiv Dixit.

Last November, the Office's Administrator resigned to spend more time with her young family. Brandi Wright, the Office's paralegal, was promoted to the position of Director of Office Administration and the past year has been a learning experience for her. Not only was Brandi forced to learn the budget and all of the administrative tasks, she had to educate the new State Prosecutor about these important aspects of the Office.

As a result of a grant from the Governor's Office of Crime Control and Prevention, the Office hired an Investigative Analyst, David McAneny, on a contractual

basis. David has a master's degree in Criminal Justice with an emphasis in Intelligence Analysis. With the grant funds, the Office also upgraded its antiquated computer system so that it now has the capability to perform the same type of analytical functions of documents that other law enforcement agencies perform. Finally, the grant permitted the Office to hire an Administrative Clerk, Kristy Kropfelder, who works on evidence control which is a vital aspect in any paper trail investigation. The addition of Kristy has freed the Administrative Aide, Deborah Amig, to work on other matters.

Special thanks are in order to the Governor's Office of Crime Control and Prevention and especially its Director, Alan C. Woods III, for supporting the mission of this Office of pursuing corruption investigations, especially within the Baltimore City Public School system. Without Alan's support, some of the investigations and subsequent prosecutions would have been delayed, if not totally terminated.

At the end of fiscal year 2005, the staff consisted of nine permanent and four contractual employees:

Robert A. Rohrbaugh, State Prosecutor  
Thomas M. (Mike) McDonough, Deputy State Prosecutor  
Steven Trostle, Senior Assistant State Prosecutor  
James I. Cabezas, Chief Investigator  
Erwin Burtnick, Investigative Auditor  
John Poliks, Investigator  
Richard Barger, Investigator (contractual)  
Woodland (Woody) Morris, Investigator (contractual)  
David McAneny, Investigative Analyst (contractual)  
Brandi Wright, Director of Office Administration  
Deborah Amig, Administrative Aide  
Kristy Kropfelder, Administrative Clerk (contractual)  
Amye Rosa, Paralegal

## **REVIEW OF SIGNIFICANT PROSECUTIONS, FY 2005**

### **A. Baltimore City Public School System Investigation**

The most significant prosecutions came in the Baltimore City Public School System investigation. Those prosecutions included:

1. *Two separate indictments of Rajiv Dixit, the former manager of the facilities department of the Baltimore City Public Schools.*

Mr. Dixit has been charged in various counts with bribery, conspiracy, extortion and felony theft of over three million, five hundred thousand dollars **(\$3,500,000)** from the school system. His alleged schemes involved receiving kickbacks from various contractors, including Gilbert Sapperstein of All-State Boiler and Melvin and James Duklewski of EDM, Inc. and Ab-Cor, Inc. At the end of the fiscal year, Mr. Dixit was awaiting trial in Baltimore City Circuit Court. At the request of this Office, the United States Postal Inspectors and the U.S. Attorney's office filed a federal civil forfeiture action which froze the assets of Mr. Dixit while he awaits the trial. This Office is very appreciative of the cooperation and assistance of the U.S. Postal Inspectors and, in particular, Richard Kay, Esq., of the U.S. Attorney's office.

2. *The pleas of guilty by Gilbert Sapperstein in two separate indictments charging him with bribery, conspiracy and felony theft.*

Mr. Sapperstein has admitted to paying off Rajiv Dixit, the former facilities manager of the Baltimore City Public Schools, and Cecil Thrower, a former supervisor at the Baltimore City Department of Public

Works. Under the terms of a binding plea agreement, Mr. Sapperstein has agreed to pay over four million dollars (\$4,000,000) in restitution, fines and charitable donations prior to his sentencing on August 23, 2005. If Mr. Sapperstein makes the agreed payment, he will be sentenced to 18 months in jail at the Department of Corrections. Because of the magnitude of the theft which lasted at least 12 years, the Office was loaned two auditors from Baltimore City, Robert McCarty and Anthony Moon. Those auditors were invaluable in analyzing the mountains of documents and this Office is deeply indebted to them for their hard work and tenacity.

3. *A plea of guilty to bribery by a former supervisor at the Baltimore City Department of Public Works.*

Cecil Thrower, who was a supervisor at the Baltimore City waste water treatment plant, pleaded guilty to accepting bribes from Gilbert Sapperstein and agreed to cooperate with prosecutors against Mr. Sapperstein. Under the terms of the plea agreement, Mr. Thrower will make restitution and any incarceration will be left to the Court's discretion. Sentencing has been deferred until September 2005.

4. *The pleas of guilty to bribery, conspiracy and theft by two contractors in the scheme to defraud the Baltimore City school system.*

Melvin Duklewski and his son, James Duklewski, pleaded guilty in the scheme to bribe Rajiv Dixit and steal money from the Baltimore City schools. Each agreed to cooperate and has received a suspended sentence.

Melvin Duklewski, 80, was ordered to perform 500 hours of community service and his son, James Duklewski, was ordered to perform 300 hours of community service. Total restitution of three hundred, forty-seven thousand, two hundred sixty-five dollars **(\$347,265)** was ordered. James Duklewski has paid, in full, his restitution of forty-seven thousand, two hundred sixty-five dollars (\$47,265) and a lien has been filed against Melvin Duklewski's home to secure his portion of the restitution payment.

**B. Election Law Over-Contribution Civil Prosecutions**

While the Baltimore City Public School investigation was the highest profile investigation to become public, it was not the only matter which received the attention of this Office. Election law violations also come within the jurisdictional purview of the Office. In that area, the Office has taken a more active position in assessing civil fines against contributors who exceeded the \$10,000 maximum aggregate amount during a four-year election cycle. Those companies and persons who were fined are:

1. Albertini and Darby, LLP of Baltimore City	\$1,125.00
2. Amusement Vending, Inc. of Baltimore City	\$2,993.00
3. East Harbor Marine Center, LLC d/b/a Baltimore Marine Center of Baltimore City	\$5,000.00
4. Melvin Benhoff Sons, Inc. of Baltimore City	\$4,890.00
5. Cherry Hill Construction, Inc. of Jessup, Md.	\$5,000.00
6. Doracon Contracting, Inc. of Baltimore City a. [1999-2002 cycle]	\$5,000.00
7. Doracon Contracting, Inc. of Baltimore City a. [2003-present cycle]	\$5,000.00
8. Victor Frenkil, Jr. of Baltimore City	\$3,950.00
9. Jarvis Steel and Lumber Company, Inc. of Baltimore City	\$1,400.00
10. Marcorp, Ltd. of Baltimore City	\$5,000.00
11. Anthony Manganaro of Crownsville, Md.	\$2,000.00
12. Todd Manganaro of Annapolis, Md.	\$2,000.00
13. Munsey Building, LLC of Baltimore City	\$5,000.00
14. Quantum Realty Management, Inc. of Hyattsville, Md.	\$5,000.00
15. Schafer's Roll-Off Service, Inc. of Baltimore City	\$5,000.00
16. Schochor, Federico and Staton, PA of Baltimore City	\$5,000.00

The total fines assessed and paid in fiscal year 2005 were sixty-three thousand, three hundred fifty-eight dollars (**\$63,358**).

**C. Campaign Reporting and Finance Violations**

As any Maryland political candidate knows, there are certain campaign finance reports which must be filed with the State Board of Elections (“SBE”). When campaigns are delinquent in filing the required reports, the SBE refers those matters to this Office for enforcement. Before this Office actually files a criminal action against those campaign chairpersons or treasurers who may be responsible, the Office attempts to contact the responsible persons to urge compliance. When those efforts are exhausted and compliance is not forthcoming, the Office will not hesitate to seek enforcement through the Court system. If the person has repeatedly ignored the campaign laws, the Office intends to pursue the matter to the fullest extent of the law. While such cases are fairly rare, fiscal year 2005 provided an example of the Office’s commitment to enforcement of the campaign reporting laws. Former Maryland Senator Tommie Broadwater was convicted by an Anne Arundel County District Court judge and sentenced to 18 months active probation and fined one thousand, five hundred fifty dollars (**\$1,550**).

In addition to the prosecution of former Senator Broadwater, this Office handled another one hundred sixty-three (163) failure to file campaign report violations which were referred by the State Board of Elections (“SBE”). Many were closed before criminal prosecution was instituted when the respective campaigns came into compliance by filing not only the reports, but paying the costs and fines. In some cases, the initiation



of a criminal action was necessary. In those instances, the responsible chairpersons and treasurers ultimately paid the fines and filed the required reports. During fiscal year 2005, this Office collected sixty-two thousand, eight hundred forty dollars (**\$62,840**) in filing fees, fines and penalties on behalf of the SBE.

### **INVESTIGATIONS NOT RESULTING IN CHARGES**

While the Office is intent upon pursuing prosecutions of those persons who have committed offenses coming within the jurisdiction of the Office, another vital function of the Office is to fairly and impartially determine whether allegations are meritorious. If not, the Office will close the file and the matter will be considered as a “successful” under the Managing For Results (“MFR”) criteria. Rightfully, the public often does not learn of these investigations. Nevertheless, those investigations, even if they are only preliminary inquiries, consume a substantial amount of the Office’s time and resources.

Of the non-election law violations conducted in FY 2005 that did not result in prosecutions, virtually none were matters of public record that can be discussed in any detail here. Forty-eight (48) allegations classified as corruption cases were opened during FY05. They included allegations of bribery or criminal misconduct against State’s Attorneys, judges, General Assembly Senators and Delegates, Chiefs of Police, a Sheriff, Deputy Sheriffs, a Mayor, a County Executive, council members, and various town, county and city commissioners. Most cases were closed after a very preliminary inquiry was conducted.

## **MANAGING FOR RESULTS PROGRAM:**

The prior State Prosecutor, the late Stephen Montanarelli, expressed in the FY01 annual report a healthy skepticism that a survey would be a value in assessing the Office of the State Prosecutor. The number of persons to whom a questionnaire had been sent was small and the responses were even less, casting a doubt about whether the number was statistically meaningful.

In addition, complainants and alleged victims are often dissatisfied with a prosecutor's decisions. For example, if a case is not pursued because the allegations cannot be sufficiently substantiated to warrant the filing of a criminal action, the complainant is dissatisfied. Similarly, if the allegation is not within the jurisdiction of the Office or if the allegation does not warrant the most efficient use of the limited resources of the Office, the complainant is upset with the decision of the Office to close the case. There are other instances when the preliminary inquiry results in a determination that a public official may have used poor judgment, was incompetent or negligent, but was not involved in criminal activity. Once again, the complainant is usually dissatisfied.

Because one of the mandates of this Office is to pursue allegations of possible corrupt relationships which are, by definition, surreptitious and complex, the Office should not be judged on case numbers alone. Nevertheless, some statistics should be provided to reassure the public that its law enforcement officials are working diligently to successfully accomplish its mission. Therefore, the redacted exhibit has been attached to demonstrate the nature, type and number of cases which this Office has opened during the past fiscal year. (See Attachment C) The statistics are summarized as follows:

1. Corruption cases:
  - a. Carry-over from prior years: 15
  - b. Opened during FY05: 48
  - c. Successfully closed during FY05: 49
  - d. Carry-over to FY06: 14
  
2. Election law cases (including over-contribution cases):
  - a. Carry-over from FY04: 7
  - b. Opened in FY05: 37
  - c. Successfully closed in FY05: 33
  - d. Carry-over to FY06: 11
  
3. Ethics law cases:
  - a. Opened in FY05: 3
  - b. Closed in FY05: 3
  
4. Multi-jurisdictional:
  - a. Opened in FY05: 1
  - b. Successfully closed in FY05: 1
  
5. Miscellaneous (including cases where no preliminary inquiry was required):
  - a. Carry-over from FY04: 1
  - b. Opened in FY05: 26
  - c. Successfully closed in FY05: 25
  - d. Carry-over to FY06: 2
  
6. Failure to File Election Reports:
  - a. Carry-over from FY04: 10
  - b. Opened in FY05: 154
  - c. Successfully closed in FY05: 158
  - d. Unsuccessfully closed in FY05: 6
  - e. Carry-over to FY06: 0

**CONCLUSION:**

As the new State Prosecutor, I was fortunate to inherit a collegial group of dedicated, energetic and creative lawyers, investigators and support staff. The employees who work in the Office of the State Prosecutor take great pride in their work and the fact that significant investigations are being pursued by what is purportedly the second smallest state agency. As the new State Prosecutor, I am looking forward to working with these men and women during the challenging new fiscal year. And, speaking for my colleagues in the Office, I think I can confidently say that each person within the Office is not only looking forward to the challenges, but successfully meeting them.

Respectfully submitted,

Robert A. Rohrbaugh  
State Prosecutor