



**REPORT
OF THE
MARYLAND STATE PROSECUTOR**

FISCAL YEAR 2007

(July 1, 2006 – June 30, 2007)

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Introduction

Initially, the Office of the State Prosecutor was established to restore public's confidence that the State Government has the integrity and ability to monitor the activities of its public officials and employees. This Office has taken its mission seriously. Over the past several years the Office has had one goal – the consistent and fair enforcement of the corruption, bribery and election laws without regard to political affiliation.

During the past couple of years, the Office has convicted persons throughout the State of various offenses, including bribery, extortion, tax evasion, theft and campaign finance. These convictions have led to millions of dollars in restitution and fines which were not only assessed on paper, but actually collected. In the past three (3) years, the Office has levied fines, collected restitution and obtained forfeiture of over five and one-half million dollars (\$5,500,000), as well as prosecuting, criminally and civilly, scores of cases. The primary focus has been on public corruption investigations which use an overwhelmingly large portion of the limited assets of the Office.

Nevertheless, in the coming fiscal year, the Office of the State Prosecutor intends to continue to pursue its goal of ferreting out those who have violated the law, especially those who have taken advantage of their public positions of trust for their own personal gain.

Significant Events Within the of Office of the State Prosecutor During the Past Fiscal Year.

A. Creation of In-House Computer Forensics Laboratory

During the past couple of years, it became increasingly obvious that the Office of the State Prosecutor lacked even the most fundamental investigatory resources. With the broadening use of computers, it was self-evident that almost all data was being stored electronically. To perform a white-collar investigation, it was obvious that access to this electronically stored data was becoming more and more important. During several investigations, computers were seized pursuant to court authorized search warrants. However, there was no capability to analyze the data stored within these devices. While the Maryland State Police maintained a computer forensics laboratory, their analysts were occupied with homeland security investigations, violent crimes and child pornography cases. The Maryland State Police simply did not have the resources to perform the lengthy analysis which was required in the investigations being conducted by this Office.

With the financial assistance from the U.S. Departments of the Treasury and Homeland Security, this Office sent two investigators for extensive computer forensics training at federal facilities, including the Federal Law Enforcement Training Center in Georgia. Once the training had been completed, the federal agencies loaned the Office the various hardware and software to open the computer laboratory. A six month grant from the Governor's Office of Crime Control and Prevention temporarily funded the salaries of the two analysts.

While the State's FY08 budget maintained the salary funding for one of the positions, there were no general funds available for the second position. However, the

United States Department of Justice stepped in and has agreed to provide a \$100,000 grant to fund the second position commencing in the 2008 federal fiscal year. With no additional funds from the State, the Office of the State Prosecutor will continue to have two in-house computer analysts who can perform their own analysis of computers.

Although almost every other State has larger computer forensics laboratories, the Office's fledging in-house laboratory provides a significant first step in improving the investigative capabilities of the Office.

B. Meeting with Chinese Anti-Corruption Delegation:

Because the main function of the Office is to conduct investigations into allegations of corruption, on November 21, 2006 a delegation from the People's Republic of China met with the Office's staff. The Chinese delegation was headed by the Deputy Procurator-General for Zhejiang Province and the Deputy Director of the Anti-Corruption and Anti-Bribery Bureau. The meeting was initiated by the Chinese delegation who wanted to exchange ideas about techniques used in the United States to investigate bribery and corruption cases. The State Prosecutor and his staff stressed the importance of having an anti-corruption bureau which was totally independent and which had the authority to investigate corruption allegations at every level of government. It was stressed that the Maryland Office of the State Prosecutor does not report to any governmental official and no branch of the government is authorized to attempt to influence the decisions of the State Prosecutor.

While the Chinese legal system has substantial different procedures and concepts, it is a system that is still evolving. The exchange was enlightening for both parties.

Hopefully, the dialogue provided the Chinese delegation with a better understanding of the American investigatory and judicial processes.

Observations of the Maryland State Prosecutor

In the last two annual reports, several suggestions to increase the effectiveness of the Office were made. For whatever reason, most of those suggestions were not adopted by the General Assembly. Indeed, two years ago there was even an instance when the General Assembly rejected a recommendation made by the Article 27 Committee chaired by Chief Judge Joseph F. Murphy, Jr. of the Court of Special Appeals which would have provided the State Prosecutor with the same statutory tools as the various Maryland State's Attorneys. Last year, the General Assembly did not adopt legislation which had been proposed by the State Board of Elections to clarify the scope and duties of an organization self-designated to be a "political club." The net result of these types of omissions is that the Office of the State Prosecutor cannot effectively enforce what seems to be the legislative intent of the statutes enacted by the General Assembly.

Nevertheless, it is important that these significant gaps in the Maryland laws be highlighted again so that, at least, the public is aware of the obstacles the Office faces as it attempts to carry on with its goal of assuring Marylanders have confidence in its public servants.

- **In investigations involving allegations of bribery, the Office of the State Prosecutor should be permitted to seek to compel testimony from individuals under a grant of derivative use immunity.**

During the 2006 Legislative Session, the Article 27 Committee chaired by Chief Judge Murphy of the Court of Special Appeals recommended legislation that would have

amended the Maryland Constitution and §9-201 of the Criminal Law Article to compel a witness to testify under a grant of derivative use immunity, instead of transactional immunity in bribery cases. Such legislation and Constitutional Amendment would eliminate the bribery exception and permit derivative use immunity to be conferred in any criminal investigation, including bribery. It would also permit the State Prosecutor to seek the order from the Court which is the same authority presently granted to the Attorney General and the individual County State's Attorneys.

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

Several years ago, 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."*

Understandably, there are those who fear any increase in the power or scope of a prosecutor's office could be abused. However, the enactment of such a statute would not expand the power of the State Prosecutor. Instead, it would save the State money and promote the more efficient use of valuable resources. Under Article 10, Section 39A of the Maryland Code, each County State's Attorney has the authority to issue an administrative subpoena for records which can be judicially enforced or quashed.

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, the State Prosecutor's agents spend needless time traveling to the courthouse in that particular county for the sole purpose of getting a clerk to literally "stamp" the grand jury subpoena which the Office had prepared. Thus, a statute which would permit the State Prosecutor to issue a subpoena for records would conserve State resources.

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, an administrative prosecutor's subpoena can always be challenged in the Circuit Court. Granting subpoena power to the State Prosecutor would make the Office more efficient and would decrease the likelihood that an investigation will be compromised.

- **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.

REVIEW OF SIGNIFICANT PROSECUTIONS, FY 2007

A. Baltimore City Public School System Investigation:

There were two (2) significant prosecutions in the Baltimore City Public School System investigation. Those included:

1. *The indictment of Ashita Avinash Patel.*

During the past fiscal year, Ashita Avinash Patel was charged with theft from the Baltimore City Schools and bribery in a scheme involving convicted felon, Rajiv Dixit. Ms. Patel is presently awaiting trial.

2. *The indictment and conviction of Stephen J. Weissenberger, former manager at York International.*

In May, 2007, the former manager of York International, Stephen J. Weissenberger, 55, of Towson, Maryland was indicted for bribery. Mr. Weissenberger entered a guilty plea and was sentenced to 3 years of supervised probation and was ordered to pay a \$5,000 fine.

B. Baltimore City Investigation:

1. Indictment of Mildred Boyer.

On December 19, 2006 a Baltimore City Grand Jury indicted Mildred Boyer in a ten (10) count indictment with theft, filing a false tax return, submitting false invoices and making a false loan application to the Municipal Employees Credit Union ("MECU"). Ms. Boyer, a former Special Assistant to former Baltimore Mayor Kurt L. Schmoke, was the owner of Union Technologies, LLC, which was known as Utech. Utech was a minority contractor on several projects in Baltimore. According to the

indictment, Ms. Boyer allegedly created and sent false invoices for payment to Action Capital Company in Atlanta, Georgia. She also allegedly falsified a loan application which was submitted to the MECU. The case is awaiting trial which is presently scheduled for October, 2007.

C. Prince George's County Officials Convicted of Bribery:

1. Sentencing of Robert L. Isom.

In August, 2005, the Grand Jury for Prince George's County, Maryland returned a one (1) count indictment charging Robert L. Isom with conspiring with Robert Thomas, the former Deputy Director of Prince George's County Department of Central Services, and others to demand a bribe in the amount of \$250,000.00 from a company seeking to do business with Prince George's County.

Mr. Isom was employed as Deputy Director of the Prince George's County Department of Environmental Resources from July, 2004 until May, 2005. Prior to his employment with Prince George's County, he was employed as the Deputy Assistant Inspector General for Inspections and Evaluations at the Office of the Inspector General for Washington, D.C. Mr. Isom is also a former candidate for the Prince George's County Council. Mr. Isom has entered a guilty plea and was sentenced to one (1) year in jail and fined \$5,000 which has been paid.

2. Conviction and Sentencing of Robert L. Thomas.

In December, 2005, the Grand Jury for Prince George's County, Maryland returned a three (3) count indictment charging Robert L. Thomas with bribery and conspiring with Robert L. Isom to demand and receive a bribe in the amount of \$250,000.00 from Interior Systems, Incorporated.

Mr. Thomas, 63, was employed as a Deputy Director of the Prince George's County Department of Central Services from December, 2003 to April, 2005. He previously worked for the Internal Revenue Service and was also the Acting Inspector General for Washington, D.C. After a two week trial, Mr. Thomas was convicted by a jury in Prince George's County. In May, 2007, he was sentenced to two and one-half (2 and ½) years in jail and, upon his release, ordered to pay restitution in the amount of \$10,000 and perform 500 hours of community service.

D. Mayor of Forest Heights Indicted

1. Indictment of Mayor Myles Spires of Forest Heights, Maryland.

The Mayor of the Town of Forest Heights in Prince George's County, Myles Spires, Jr., was charged in a seven (7) count indictment filed in the Prince George's County Circuit Court with Theft, Embezzlement, Misconduct in Office and Submitting a Counterfeit Invoice. The investigation began when Forest Heights' officials noticed some questionable expenditures and when the town's attorney questioned a request for reimbursement. Former Mayor Spires is awaiting trial.

E. Three Persons, including the former Deputy Clerk for the Circuit Court, Indicted in Washington County.

1. Indictment of Ricki Hemphill and two others in Washington County.

Three persons, including Ricki Hemphill the former Deputy Clerk for the Circuit Court for Washington County, were indicted on theft from the Washington County Liquor Board and conspiracy charges. The charges were a result of an investigation into improprieties related to the Washington County Liquor Board. One of the individuals has entered a guilty plea while Mr. Hemphill and his mother are awaiting trial.

F. Election Law Criminal Prosecutions

1. Former Delegate Clarence “Tiger” Davis convicted and sentenced.

On January 26, 2007 former House of Delegates member Clarence “Tiger” Davis entered a plea of guilty in Anne Arundel County District Court to an election law violation of failing to pass campaign finance money through the campaign treasurer, as required by law. The case had been referred for investigation by the Maryland State Board of Elections. Delegate Davis was fined \$2,500 and was sentenced to probation before judgment.

2. Son of Delegate Hattie Harrison charged with election law and tax violations.

Having received a referral from the State Board of Elections, a review of the campaign reports of Delegate Hattie Harrison suggested possible improprieties. In June, 2007, an Anne Arundel grand jury indicted Robert “Skip” Harrison on three (3) counts of failing to file tax returns, conspiracy to violate the election laws and theft. As of the close of the fiscal year, the trial date was still pending.

3. President and Treasurer of the Carroll County Republican Club acquitted of failing to file reports with the State Board of Elections.

The President and Treasurer of the newly incorporated entity entitled the “Carroll County Republican Club, Inc.” were acquitted of failing to file campaign finance reports with the State Board of Elections. The evidence established that the new corporation was formed only a month before the primary election. Although it had a limited number of persons, the corporate entity distributed literature and spent money on advertisements endorsing specific candidates, the total cost of which was in excess of \$12,000. The money for such campaign activity came from the members, some of whom “loaned” over \$5,000 to the corporation.

Retired Prince George's County Circuit Court Judge Vincent Femia acquitted the defendants and found that they lacked the requisite *mens rea*. The Court also observed that the law was ambiguous regarding political clubs and campaign activities.

G. Election Law Over-Contribution Civil Prosecutions

The number of over-contribution cases fell during the past fiscal year. In part, it may have been due to the fact that the campaign season had just commenced. Nevertheless, the following is a list of persons or companies which were fined civilly. In each instance, the Office of the State Prosecutor determined that there was either insufficient or no evidence to conclude that criminal prosecutions were warranted.

1. David Nevins -- civil fine of \$2,000.
2. Gray and Sons Co. -- civil fine of \$1,045.
3. Chevy Chase Land Company -- civil fine of \$1,050.

H. Campaign Reporting and Finance Violations

1. Failure to File Campaign Finance Reports:

As was anticipated, the number of election law cases increased rather dramatically due to the 2006 elections. As a result, the number of campaigns which failed to file the required reports with the State Board of Elections increased. Consistent with the policy/practice of the Office, first time offenders who have not complied will be given an opportunity to come into compliance before a decision is made about whether to prosecute.

2. Double Voting Cases:

During fiscal year 2007, the Office received from the State Board of Elections a total of 136 complaints about persons who may have double voted during the 2006 elections. Most of the complaints were a result of reports submitted by various local election boards.

Due to the limited financial resources of the Office, a preliminary review was undertaken on a sample number of the complaints. The sample failed to establish even one instance where a person double voted intentionally. Most often, there was confusion by both the voter and the election judge about voting after a provisional ballot had been cast.

INVESTIGATIONS NOT RESULTING IN CHARGES

One of the fundamental missions of the Office of the State Prosecutor is to prosecute, either civilly or criminally, persons who have committed offenses coming within the jurisdiction of the Office. The Office strives to assure equal, just treatment of all persons. Allegations are easy to make, but difficult to prove. When the Office receives an allegation, it is imperative that the facts be analyzed without any preconception. Often, it is determined the allegations are unfounded or simply cannot be proven. In those instances, it is vital that the reputations of those persons who have not been charged publicly be protected from harm. In other instances such as cases where there has been a failure to file reports with the State Board of Elections, efforts are made to attempt to convince persons to file the necessary reports before prosecution is undertaken. When first time offenders come into compliance before a prosecution commences, the Office takes no further action and the case does not become a matter of

public record, at least as far as the Office is concerned. Therefore, this report can only contain information which is a matter of public record.

This is not to suggest, however, that the Office has handled only those matters discussed in this Report. To the contrary, a substantial amount of the Office's resources are devoted to investigations which never result in public prosecutions. Every allegation referred to the Office deserves at least a preliminary review. Such reviews, even if they are only preliminary inquiries, consume a substantial amount of the Office's time and resources.

STATISTICS:

Of the substantial number of allegations made to the Office during the past fiscal year, only a handful resulted in cases which were filed publicly. Those non-public investigations included a myriad of allegations of bribery or criminal misconduct of State and local officials in almost every class and category. Many cases were closed after a very preliminary inquiry was conducted. Rightfully, those allegations and the results of the reviews performed by this Office cannot be disclosed.

Without commenting on specific investigations, some statistics can be useful to demonstrate how time and resources are being expended. But, the use of statistics by a prosecutor's office can be misleading. Statistics can measure quantity, but rarely measure the true impact of an investigation and prosecution. In part, it is almost impossible to quantify the value of a high profile prosecution which can have a deterrent effect on others and a salutary effect with the general public. One of the most important mandates, if not the most important mandate, of this Office is to pursue allegations of possible corrupt relationships. The investigations into allegedly corrupt officials who

would profit from their office are complex. One investigation may take months or years and there is never any assurance that an investigation will lead to an indictment or conviction. In fact, the Office of the State Prosecutor constantly guards against pre-judging any person until all of the facts are known. As a result, a lengthy investigation might end with no indictment, if the facts do not support the initial allegation. Therefore, 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 their mission.

Fiscal year 2007 statistics are summarized as follows:

1. Corruption cases:
 - a. Opened during FY07: 84
2. Election law cases:
 - a. Opened in FY07: 469
3. Miscellaneous (including cases where no preliminary inquiry was required):
 - a. Opened in FY07: 31

CONCLUSION:

The men and women in the Office of the State Prosecutor have worked tirelessly to provide a professional office consistent with the high standards which the citizens of Maryland have a right to expect. They look forward to meeting the challenges which the next fiscal year will present.

Respectfully submitted,

Robert A. Rohrbaugh
State Prosecutor