



**FISCAL YEAR 2004 AND FINAL REPORT
OF MARYLAND STATE PROSECUTOR
STEPHEN MONTANARELLI**

Died in Office, May 14, 2004

&

**FIRST REPORT
OF
MARYLAND STATE PROSECUTOR
ROBERT A. ROHRBAUGH**

Appointed Effective August 31, 2004

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Introduction

For the first time in 20 years the Annual Report of the Office of the State Prosecutor is not authored by Stephen Montanarelli. Following the death in office of State Prosecutor Montanarelli on May 14, 2004, the State Prosecutor Selections and Disabilities Commission was convened to nominate candidates for appointment to fill the Office. Upon the recommendation of that Committee, on August 25, 2004, Governor Robert L. Ehrlich, Jr. announced the appointment of former Assistant United States' Attorney Robert A. Rohrbaugh to a six-year term as Maryland State Prosecutor.

This Annual Report is both a Final Annual Report of Mr. Montanarelli's tenure in Office, including the activities of the Office during Fiscal Year 2004, and the First Report of Maryland State Prosecutor Robert A. Rohrbaugh, providing an overview of his vision for the Office, both in the forthcoming Fiscal Year and for his term in office.

Background, Maryland State Prosecutor Robert A. Rohrbaugh

Immediately prior to his appointment, Mr. Rohrbaugh was engaged in the private practice of law in Rockville, Maryland. He served as Assistant United States Attorney for the District of Maryland from 1974 to 1980. During that time he tried approximately 30 major felony cases, including the first major computer fraud prosecution in the country. In 1997, he took leave from a successful private practice career to serve as Deputy Chief Counsel/Senior Investigative Counsel to the U.S. House Government Reform and Oversight Committee. In that capacity he led approximately fifteen attorneys in the investigation of alleged illegal campaign contributions from foreign sources and conducted the inquiry of witnesses during congressional hearings on the matter.

Mr. Rohrbaugh earned his B.A. in Economics from Wittenburg University in Ohio in 1969 and his J.D. from American University Law School in Washington, D.C. in 1972. He and his wife, Linda, are residents of Brinklow in Montgomery County. They have two daughters.

Message from Maryland State Prosecutor Robert A. Rohrbaugh

I am proud and honored to serve as only the third individual to hold the office of Maryland State Prosecutor. The Office has a hard-earned and well-deserved reputation for independence. It is my goal, over the six years of my term, to develop and improve the effectiveness of the Office in rooting out and aggressively prosecuting those who abuse the public trust. I intend to make the Office a model for effective and independent prosecution of corrupt public officials and employees, securing public confidence in the Office as a potent deterrent to governmental corruption.

Staff and Administration

Staff turnaround presented significant obstacles for the Office in FY 2003 & 2004. With the increase in salary scale for attorneys that became effective July 1, 2004, it is anticipated that staffing will remain more stable for the immediate future.

Senior Assistant Steven Trostle, who joined the staff in October 2003, has proved to be an excellent addition to the Office. Steve, a native of Maryland, spent four years in the Office of the District Attorney in Massachusetts, returning briefly to private practice here in Maryland before joining the Office as a Senior Assistant.

In March 2004, Agent Richard Barger, a former Baltimore City police officer, was hired as an investigator on a contractual basis. Agent Barger was assigned to this Office for several years during his service on the Baltimore City Police Department. After retiring from the police force, Rick spent several years as a corporate fraud investigator for MBNA. His experience and expertise in complex white-collar criminal investigation have made him an important asset.

In July 2004, the Baltimore City Department of Audits assigned an auditor to the Office to assist in financial analysis in investigations impacting upon the City of Baltimore. Anthony Moon and his supervisor, Robert McCarty, have provided and continue to provide invaluable assistance to the Office on those matters.

Investigator/auditor John Draa resigned in September 2004 to accept a position as financial director of the Governor's Office of Crime Control and Prevention. In September, John's position was filled by Erwin Burtnick, an experienced auditor. Erwin brings a wealth of talent and experience to the Office. 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 an effort to ensure that the numerous significant corruption investigations in the Office were fully pursued in a timely manner, I sought authorization to add another experienced financial investigator with a tax background on a contractual basis. Retired Internal Revenue Service Special Agent Woodland (Woody) Morris was hired to fill that position. Woody spent most of his career as a criminal investigator for the IRS, and

worked closely with the Office of the State Prosecutor and the United States Attorneys' Office in a long-term joint investigation in the late 1980's and early 1990's.

The staff now consists of 9 permanent and three contractual employees as follows:

Robert A. Rohrbaugh, State Prosecutor

Thomas M. (Mike) McDonough, Deputy State Prosecutor

Steven Trostle, Senior Assistant

James I. Cabezas, Chief Investigator

Erwin Burtnick, Investigative auditor

John Poliks, Investigator

Cynthia Lewis, Office Administrator

Deborah Amig, Administrative Assistant

Brandi Wright, Paralegal

Amye Rosa, Law Clerk (contractual)

Richard Barger, Investigator (contractual)

Woodland (Woody) Morris, Investigator (contractual)

FINAL REPORT OF STATE PROSECUTOR STEPHEN MONTANARELLI

The Final Report of State Prosecutor Stephen Montanarelli, who departed this life on May 14, 2004, at the age of 75 years, is presented to the Governor and General Assembly by the staff of the Office of the State Prosecutor in his memory and on his behalf:

Thomas M. McDonough, Deputy State Prosecutor
Steven Trostle, Senior Assistant State Prosecutor
James I. Cabezas, Chief Investigator
John Poliks, Special Agent
John Draa, Special Agent
Richard Barger, Investigator
Cynthia Lewis, Office Administrator
Deborah Amig, Administrative Assistant
Brandi Wright, Paralegal
Amye Rosa, Law Clerk

Review of Significant Investigations, FY 2004

Fiscal Year 2004 was a time of significant change and adjustment for the Office of the State Prosecutor. Senior Assistant Kerry Fisher, hired to replace Carolyn Hess in April 2003, left after just three months to take a higher paying position with the Office of the Attorney General. It was not until October that Steven Trostle came on board to replace Fisher. For essentially the first half of the fiscal year, the Office operated with only two prosecutors, Deputy Thomas M. McDonough and State Prosecutor Stephen Montanarelli. Mr. Montanarelli, himself was not at full strength for much of the year, fighting a continuing battle with the cancer that ultimately ended in his death on May 14, 2004. The Office, therefore, only operated at full strength for a few months of the year, while experiencing a significant increase in the number of complaints.

The number of election law complaints more than doubled, from 92 in FY 2003 to 199 in FY 2004. While corruption complaints remained steady, decreasing by only 2 complaints, the number of other complaints (which include ethics and multi-jurisdictional matters) increased by more than 200 percent. Despite these significant obstacles, the Office conducted a number of successful investigations and prosecutions.

Significant Investigations

Of the 232 complaints closed in fiscal year 2004, 29 resulted in charges or other court proceedings against 48 defendants. The cases described below were high profile, significant investigations and prosecutions involving hundreds of investigative hours.

1. Baltimore City Schools

Complaints were received from several sources, including community groups and school officials, requesting an investigation into possible criminal activity in connection with the reported \$58 million dollar deficit reported by the Baltimore City Public Schools. In its first 3 months, that investigation has led to State charges in Baltimore City Circuit Court against Lewis Williams for theft of more than \$ 200,000.00 from the Baltimore City School system. Williams entered a plea of guilty to those charges in August 2004, and has been ordered to pay restitution of more than \$200,000.00 to the Baltimore City Public Schools. In the first case brought by newly appointed State Prosecutor Robert A. Rohrbaugh, a Baltimore City Schools employee and two contractors have been charged in a bribery and theft scheme. The investigation is continuing into other allegations of

criminal conduct by public employees and officials related to the financial crisis in the Baltimore City schools.

2. Attempted Bribery

As a result of a 14-month joint investigation by this Office, the Howard County Police Department, the Maryland Department of Health and Mental Hygiene, the Department of Homeland Security, the Maryland State Police and the Office of the United States Attorney, on June 11, 2004, Sung Yul Kim pled guilty to attempting to bribe two police officers and a State inspector to help him in an effort to take over control of the massage parlor industry in Howard County, Maryland. Kim was sentenced to consecutive terms of one year in jail on each of three counts of attempted bribery. All but six months was suspended, and he was fined \$5,000.00. Kim also faces forfeiture by the federal government of more than \$1,000,000.00 in funds seized as a result of the joint investigation, which originated in the Office of the State Prosecutor.

3. Perjury by a Campaign Chairman

A community organization complained that the campaign fund reports of a councilperson appeared to be inaccurate. Following an investigation that included

examination of the bank records and reports of several committees, William Welch, Jr., a Certified Public Accountant who served as a campaign chairman, entered pleas of guilty to charges of perjury and failure to file complete and accurate campaign fund reports. He was sentenced to one year in jail, which was suspended in favor of 2 years probation. He was fined \$2,500.00.

4. Theft and Perjury by Campaign Treasurer

Richard Irish, campaign treasurer for a candidate for Baltimore County Council, entered guilty pleas to charges of felony theft and to perjury on campaign fund reports filed with the State Board of Elections. Our investigation revealed that Irish had stolen more than \$60,000.00 in campaign funds entrusted to him, and filed perjurious campaign fund reports in an effort to conceal the theft. Irish was sentenced to 10 years in the Department of Corrections, which was suspended in favor of 5 years supervised probation. Restitution of the stolen funds was ordered and judgments of restitution were entered against the defendant. As a condition of probation, and to ensure payment of restitution, Defendant's wages were garnished.

5. Campaign Violation by State's Attorney

A State's Attorney distributed campaign literature soliciting support for his election to a judgeship. The material did not bear the requisite authority line. The State's Attorney was cited and paid a fine of \$500.00 for violating the law governing campaign literature.

6. Walk-Around Money

As a result of an investigation of Election Day activity during the 2002 Gubernatorial Election, three persons were indicted for paying “walk-around money on Election Day in violation of the Maryland election laws. In April 2003 those charges were dismissed by a Prince George’s County judge on a finding that the statute was unconstitutional.

Upon the petition of the State, the Court of Appeals granted certiorari and agreed to hear argument on an expedited basis on September 4, 2003. A unanimous court affirmed the lower court’s judgment, striking down Maryland’s walk-around money statute as an unconstitutional infringement upon free speech.

Campaign Finance Violations

The explosion in the numbers of these cases since the advent of Internet access to the State Board of Elections campaign fund report records have become an increasingly burdensome part of the work of the Office. It is anticipated that the 199 such cases received in FY 2004 will grow to more than 275 in FY 2005.

Investigations Not Resulting in Charges

Of the non-election law violations conducted in FY 2004 that did not result in prosecutions, virtually none were matters of public record that can be discussed in any detail here. The 38 corruption cases investigated during FY 2004 included allegations of bribery or criminal misconduct against State’s Attorneys, members of the General Assembly, Chiefs of Police, a Sheriff, Deputy Sheriffs, numerous town, county and city commissioners and council members, a Mayor and a County Executive.

A Brief Retrospective

The Honorable Stephen Montanarelli, Esquire served the people of the State of Maryland with integrity, honor and distinction as State Prosecutor for almost precisely twenty years, from May 1984 until his death in May 2004. Appointed by Governor Harry Hughes in 1984 to replace the first State Prosecutor, Gerald Glass, Mr. Montanarelli continued to serve under Governors William Donald Schaefer, Parris Glendening, and Robert Ehrlich, Jr. That he continued in Office through the terms of four different Governors was a mark of the respect and esteem in which Mr. Montanarelli was held.

Mr. Montanarelli brought a unique philosophy and perspective to an extremely sensitive position. His mantra, always, was to do the right thing—not the most expedient, most politic or most popular thing—the right thing. Clearing the innocent was at least as important as convicting the guilty, perhaps more so. He recognized the potential for abuse inherent in the powers of his Office, whether by others who sought to manipulate the Office for political advantage or by prosecutors who lost sight of the importance of clearing the innocent in the rush to make cases and gain convictions. Whether conducting high profile investigations and prosecutions like those of Linda Tripp and Senator Larry Young, or investigating and prosecuting less noteworthy public employees, Mr. Montanarelli acted with the highest degree of integrity and independence.

Unquestionably his greatest disappointment was the unsuccessful prosecution of former State Senator Larry Young in 1999. Characteristically, Mr. Montanarelli refused to discuss the witness credibility issues or the exclusion of significant evidence in that case because “[a]ny attempt to explain the failure to obtain a conviction would be a

disservice to an acquitted person.” Report of the Maryland State Prosecutor, Fiscal Years 1997, 1998, 1999, & 2000, page 1.

Among the notable successes of the Office under Mr. Montanarelli’s leadership were the following:

Operation Quartermatch, a joint investigation of gambling, corruption and tax fraud involving the State Police and law enforcement agencies from thirteen counties and Baltimore City coordinated by the State Prosecutor. The project resulted in the prosecution of dozens of individuals and companies involved in the video vending business on charges of gambling, tax evasion and the like, and the recovery of hundreds of thousands of dollars in fines, back taxes and forfeited funds.

Dwight T. Walker, Jr. a Baltimore City employee involved in development, purchase and maintenance of the City’s traffic control system, as well as the principles of two companies providing materials and services to the City were convicted of bribery, and restitution of more than \$150,000.00 was ordered.

The President of the St. Mary’s County Board of Commissioners was convicted of perjury and income tax fraud.

The former Public Defender for Howard County was convicted of theft more than \$600,000.00 in a multi-jurisdictional scheme.

In a separate case, two correctional officers were convicted of criminal offenses related to their official duties—one of bribery and the other of obstruction of justice.

A joint investigation by the State Prosecutor, the FBI and the United States Attorney's Office resulted in convictions of former State Delegate George Santoni and several traditional organized crime figures of racketeering and drug related charges in Maryland and in New Jersey.

A State Delegate, a Sheriff, an MVA examiner and a town treasurer were all convicted of offenses relating to their public offices.

A homebuilder was convicted of multi-jurisdictional theft and related offenses.

Six defendants were convicted of charges related to their participation in a multi-jurisdictional burglary ring.

Prince George's Councilman Anthony Cicoria and his wife were convicted of theft of campaign funds.

A Baltimore City employee and the president of a trucking firm were convicted of a bribery scheme in which the employee steered City business to the company in

return for bribes in excess of \$185,000.00. More than \$275,000.00 in restitution was recovered for the City.

A State Delegate was convicted of theft and misconduct in Office

A Deputy Sheriff was convicted of misconduct and theft.

Talbot County Sheriff John Ellerbusch was convicted of theft, misconduct in office and perjury.

A State insurance adjuster was convicted of misconduct in office.

A town treasurer was convicted of misconduct in office.

Baltimore City Comptroller Jacqueline McLean was convicted of theft and misconduct in office.

The Deputy Comptroller for the State was convicted of tax fraud.

Garrett County Clerk and Roads Administrator Robert Fousek was convicted of theft, perjury, and failure to file a State tax return.

Garrett County Sheriff Randy Sines was convicted of misconduct in office.

St. Mary's County Deputy Sheriff Carmel Gant was convicted of theft and misconduct in office.

The Chief Inspector of the Baltimore City Board of Liquor License Commissioners and a former State Delegate and bar owner were convicted of conspiracy to violate the alcoholic beverage laws of the State.

A member of the Board of Appeals for Frederick County was convicted of misconduct in office.

The treasurer for a Baltimore County Councilman was convicted of theft of more than \$60,000.00 in campaign funds and perjury.

The treasurer for a Baltimore City Council member was convicted of perjury on campaign fund reports.

Lewis E. Williams, a manager for the Baltimore City Public Schools, was convicted of theft of more than \$200,000.00 from the school system.

Two of the cases of which Mr. Montanarelli was most proud resulted in little in the way of prosecution. In 1989, members of the Prince George's County Police Department stopped Gregory and Martin Habib for a traffic violation. A struggle ensued. Gregory Habib died. Martin Habib was injured. State Prosecutor Montanarelli was

asked by the local State's Attorney to conduct an independent investigation into the conduct of the officers involved. As Mr. Montanarelli stated in his 1989 & 1990 Annual Report, at page 17:

The alleged misconduct of Prince George's County police officers emanating from a traffic stop of the Habib brothers was the focus of one of the most controversial cases ever investigated by this Office. The incident occurred on Saturday afternoon, May 20, 1989, in a densely populated area of Langley Park and was witnessed by scores of people. Gregory Habib was fatally injured and died during the confrontation with police officers after the traffic stop and his brother, Martin, suffered a broken jaw and other injuries. The Habibs were citizens of Ghana. Four of the police officers involved in the arrest are white and a fifth officer is black. The incident generated racial tensions in the community as well as disputes between the Prince George's County State's Attorneys Office and the County Police Department concerning the conduct of the grand jury investigation following the incident.

State's Attorney Alexander Williams turned to Mr. Montanarelli for an independent investigation. The intensive and thorough investigation resulted in a 78-page report of findings. The conclusive nature of the evidence developed, and the thorough and independent report provided to the State's Attorney and released by him to the public, both cleared the officers of wrongdoing and helped to ease the racial tensions the incident had generated.

In 1994, the gubernatorial election contest between Republican candidate Ellen Sauerbrey and Democratic candidate Parris Glendening was a closely contested and emotionally charged race. Governor Glendening's margin of victory was exceedingly slim (5,993 votes). Almost immediately following the election, extensive allegations of election fraud were raised. The Office of the State Prosecutor and Federal authorities

undertook a joint investigation of the allegations. As Mr. Montanarelli recounted in his report for fiscal years 1995 & 1996, pages 11-13:

The scope of the investigation was extensive and eventually involved all of the office's personnel for a period of 5 months. Four separate audits were conducted to examine alleged discrepancies in voter counts at the various precincts in Baltimore City where all of the allegations focused....

Other efforts in the investigation were devoted to (a) examining the voting machines with expert advisors as to how they could be manipulated and whether or not there was evidence of tampering; (b) allegations concerning votes being cast by non-existing voters; and (3) allegations against the City Board and its employees.

In all of the above effort more than 200 persons were interviewed in addition to those interviewed by the F.B.I. agents. It is estimated that more than 30,000 documents were examined. In addition, more than 68,000 records were subpoenaed from the Division of Correction, Parole and Probation and the Baltimore City Detention Center and analyzed by a programmer/analyst on contract to the office....

...In a 120 page report with 47 pages of appendices attached the State Prosecutor addressed each of the allegations, summarized the findings and concluded:

...that in all of our interviews and review of documents, as well as those of federal agents, there is not a single person whom we can identify as a witness who can give evidence of personal knowledge or observation that a conspiracy existed.

In addition, neither the State Prosecutor's investigators nor the F.B.I agents found any trace of documentary evidence to warrant further investigation by a grand jury, compulsory process, polygraphing or other investigative technique.

In both cases, through Mr. Montanarelli's leadership, matters of great public controversy and interest were thoroughly and objectively investigated. By issuing reports that outlined the investigations and analyzed the evidence fairly and objectively, much of the public controversy generated by the issues was resolved. Certainly the significant racial tensions generated by the Habib case were eased substantially.

As one public official wrote in a letter to Mrs. Montanarelli on Steve's death:

“Great man; Great loss.”

The State of Maryland is poorer for the loss of this dedicated public servant.