



REPORT OF THE MARYLAND STATE PROSECUTOR

FISCAL YEAR 2006

(July 1, 2005 – June 30, 2006)

**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**

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Introduction

Fiscal year 2006 saw a continuation of the Office's policy of consistent and fair enforcement of the corruption, bribery and election laws. 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.

The Office of the State Prosecutor takes its mission of serving the public very seriously. For instance, in the cases involving the Baltimore City schools, the Office of the State Prosecutor wanted to assure that the real victims, the school children, realized some tangible benefit from the criminal prosecutions. In several instances, the defendants were required to perform community service within the school system. More importantly, two of criminal defendants who were prosecuted by the State Prosecutor made voluntary charitable donations to the non-profit organization known as CollegeBound. To date, this organization has received over \$260,000 in donations as a result of the prosecutions. This money will be used to pay college costs for some of the Baltimore City school students who otherwise could not afford the college tuition.

Even with its limited resources, the Office of the State Prosecutor intends to continue to pursue in the coming years its goal of ferreting out those who would take advantage of their public positions for their own personal gain.

Observations of the Maryland State Prosecutor

In the last annual report, 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, there was even an instance when the General Assembly rejected a recommendation made by the Article 27 Committee chaired by Chief Judge Murphy of the Court of Special Appeals which would have permitted the Office of the State Prosecutor to seek derivative use immunity from the Court during a grand jury bribery investigation. The net result is that the Office continues to be hampered by a lack of the necessary and basic statutory tools which most other prosecutors in Maryland and throughout the country have available.

Nevertheless, it is important that these significant gaps in the Maryland laws be highlighted so that, at least, the public is aware of some of the obstacles the Office faces as it attempts to carry on with its goal of assuring Marylanders have confidence in its public servants. Most of the suggested statutory modifications were submitted in last years report and are repeated herein:

- **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.**

In last year's report, 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."*

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, the State Prosecutor's office will 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.

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.

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.

- **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.

- **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 controls numerous other “Manekin” LLCs . The campaign contributions were directed by Richard Alter and Manekin’s central disbursement bank account was used. The failure of the Maryland law to address “control” versus “ownership” makes it virtually impossible to effectively enforce the legislative intent of the campaign contribution limitation in some cases.

The Office of the State Prosecutor is not engaged in policy making decisions. Its function is to enforce the laws enacted by the General Assembly. However, 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)

REVIEW OF SIGNIFICANT PROSECUTIONS, FY 2006

A. Baltimore City Public School System Investigation

Several significant convictions came in the Baltimore City Public School System investigation. Those included:

1. *The conviction and sentencing of Rajiv Dixit, the former manager of the facilities department of the Baltimore City Public Schools.*

During the past fiscal year, Rajiv Dixit entered guilty pleas to two separate indictments which had charged him with bribery, conspiracy, extortion and felony theft of over three million, five hundred thousand dollars (\$3,500,000) from the Baltimore City school system. In November, 2005, Mr. Dixit was sentenced to twelve (12) years in jail with seven (7) years suspended. He is presently serving the five (5) years in the Department of Corrections. In addition, Mr. Dixit paid \$500,000 in restitution, \$100,000 in fines and \$500,000 in forfeitures to the United States. When the restitution paid by Rajiv Dixit is combined with the restitution paid by Gilbert Sapperstein of over three million five hundred thousand dollars (\$3,500,000), the Baltimore City School System obtained full restitution of the money which had been stolen from it during this decade long scheme.

2. *The indictment and conviction of David Clemons, President of Polar Bear Heating and Air Conditioning.*

On December 19, 2005, David Clemons, 59, was indicted for bribing and conspiring to bribe Rajiv Dixit. On June 2, 2006, Mr. Clemons, the President of Polar Bear Heating and Air Conditioning, admitted that he and his employees provided free

labor and equipment to Rajiv Dixit in exchange for business. Polar Bear charged the Baltimore City Schools for this free work. Mr. Clemons was sentenced to 3 years of supervised probation and was ordered to complete 200 hours of community service. He paid \$10,000 in fines, \$10,000 to the Baltimore City Schools and \$10,000 to the CollegeFund scholarship program.

B. Prince George's County Officials Charged with Bribery

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 Georges 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 Georges 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 Georges 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 agreed to cooperate in the investigation. Under the terms of the plea agreement, Mr. Isom will be testifying and, after the completion of his cooperation, the Circuit Court for Prince George's County will sentence Mr. Isom to one (1) year in jail and fine him \$5,000. As of the close of the fiscal year, Mr. Isom was awaiting sentencing.

In December, 2005, the Grand Jury for Prince George's County, Maryland returned a three (3) count indictment charging Robert L. Thomas and Paul Wright 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. Paul L. Wright, 52, is licensed as a CPA in Maryland and as an attorney in New York.

As of the end of the fiscal year, Mr. Thomas and Mr. Wright were awaiting trial.

C. Cecil County Prosecutions for Bribery and Theft

On December 14, 2005, the Grand Jury for Cecil County returned a seven (7) count indictment against Christopher Joel Vanover, 32, who was a former employee of the Cecil County Government. Mr. Vanover worked in the Cecil County Information Technology department from 1999 until he was terminated in October of 2004. Mr. Vanover was charged with bribery, embezzlement and tax evasion. As of the close of the fiscal year, Mr. Vanover was awaiting trial.

At the same time, Gregory A. Bryan, 38, was charged in a one count criminal information in Cecil County with conspiracy to commit theft. Mr. Bryan was employed by Hilyard's Inc. in Wilmington, Delaware. He has pleaded guilty to conspiring with Mr. Vanover to steal a hand-held computer from Cecil County and agreed to cooperate in the investigation involving Mr. Vanover. The court sentenced Mr. Bryan to 300 hours of community service, ordered restitution and imposed a \$5,000 fine.

D. Anne Arundel County Prosecution of Former Baltimore City Police Officer for Tax Evasion

On March 13, 2006, William West, a former Baltimore City police officer, entered guilty pleas in the Circuit Court for Anne Arundel County to three (3) counts of filing false Maryland State income tax returns. Mr. West was a former purported body guard for Rajiv Dixit and the offenses were uncovered as a part of the Baltimore City School investigation. He was sentenced to 18 months in jail with all but seven days suspended. He was also ordered to perform community service and file accurate amended tax returns.

E. Election Law Over-Contribution Civil Prosecutions

1. Manekin Corporation and Manekin LLC.

Manekin Corporation and Manekin, LLC were each civilly charged with making political contributions which exceeded the \$10,000 maximum limitation. The two entities were fined a total of \$10,000 and agreed to have their political contributions monitored through the end of calendar year 2006.

2. Chevy Chase Land Company

A civil citation was filed in Anne Arundel County District Court against Chevy Chase Land Company, a Montgomery County corporation, for exceeding the amount of campaign contributions which can be made during an election cycle. Chevy Chase exceeded the \$10,000 limitation by \$1,050 during the election cycle that began on January 1, 2003 and Chevy Chase paid the pre-set fine of \$1,050.

3. Barwood, Inc.

Barwood, Inc., which operates a taxi cab service in Montgomery County, agreed to pay a total of \$5,959 in civil fines for making over-contributions in both the 1999-2002 and 2003-2006 election cycles.

F. Campaign Reporting and Finance Violations

1. Failure to File Campaign Finance Reports:

In January, 2006, The State Prosecutor filed criminal charges in Anne Arundel County District Court against twenty-three (23) people for failing to file timely campaign finance reports to the State Board of Elections as required by law. Each person was charged with violating the Election Law Article, §13-304, which carries a maximum penalty of 1 year in jail and/or \$25,000 in fines. These charges result from a referral from the State Board of Elections. The following is a list of those who were charged, and the city or town in which they reside:

Tom Kelly, Owings Mills, MD 20736
Julie L. Spano, Chesapeake Beach, MD 20732
Thomas C. Devor, Houston TX, 77091
Ginger C. Clay, Houston TX, 77091
Christopher Panasuk, Glen Burnie, MD 21061
Seth A. Rosenberg, Baltimore, MD 21207
Linda M. Carpenter, Baltimore, MD 21211
Natalie K. Austin, Baltimore, MD 21229
Akesha Scott, Baltimore, MD 21229
Elesia Bower, Dundalk, MD 21222
Everlette L. Toomer, Suitland, MD 20746
Antonio L. Hayes, Baltimore, MD 21216
Kelly Williams, Baltimore, MD 21217
Josephine Gilliam, Baltimore, MD 21213
Shanae L. Williams, Baltimore, MD 21213
Marva Jo Camp, Mitchellville, MD 20721
Ernestine A. Camp, Mitchellville, MD 20721
Michael L. Rious, Silver Spring, MD 20904
Barbara A. Standard, Washington D.C. 20002
William E. Chambers, Baltimore, MD 21230

Michael W. Thompson, Baltimore, MD 21223
Wilbert Wilson, Mitchellville, MD 20721
Shailender K. Gupta, Greenbelt, MD 20770

2. Illegal Transfer of Campaign Funds:

A civil citation was filed in Anne Arundel District Court against Senator Alex X. Mooney of Frederick County charging Senator Mooney with aiding and abetting his campaign finance committee's treasurer in making an illegal transfer of campaign finance funds. Senator Mooney paid a \$4,000 fine.

The charge against Senator Mooney is a result of a \$10,000 transfer from Senator Mooney's campaign account on December 8, 2004 to The Republican Senatorial Slate of which Senator Mooney was not a member. The transfer was made by Senator Mooney's campaign treasurer at the instruction of Senator Mooney. Maryland Election Law Article, §13-227, limits such transfers to \$6,000. Under the Maryland Election Law statute, a civil citation may be issued if there was no criminal intent to violate the law.

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 "successful" under established 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 2006 that did not result in prosecutions, virtually none were matters of public record that can be discussed in any

detail here. They included allegations of bribery or criminal misconduct of a myriad of State and local officials in almost every class and category. Many cases were closed after a very preliminary inquiry was conducted.

STATISTICS:

The use of statistics by a prosecutor's office can be misleading. Statistics 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 its mission.

Fiscal year 2005 statistics are summarized as follows:

1. Corruption cases:
 - a. Opened during FY06: 58
2. Election law cases (including over-contribution cases):
 - a. Opened in FY06: 85
3. Miscellaneous (including cases where no preliminary inquiry was required):

a. Opened in FY06: 30

CONCLUSION:

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 reportedly one of the smallest state agencies. There are obstacles to be overcome and challenges to be met. Nevertheless, the men and women in the Office of the State Prosecutor look forward to the meeting and overcoming each and every challenge and obstacle. The citizens of the State of Maryland deserve nothing less.

Respectfully submitted,

Robert A. Rohrbaugh
State Prosecutor