

# THE REPORT



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Vincit Omnia Veritas

*Maryland Troopers Association, Inc.*

December 2011



# *President's Message*

Greetings:

Another year has come to an end and I would like to take this opportunity to express my sincere appreciation to the Board, our members and staff who have worked so hard to see the mission of this organization accomplished. With the leadership of our Lodge Presidents and their officers, the Maryland Troopers Association has served the needs of our membership while working to make significant contributions to some very worthy causes in the community. It is this spirit of giving that makes the Maryland Troopers Association so special and I am extremely honored to serve as your President.

I would like to congratulate the members of Lodge 20 on another successful "Christmas for Kids" program in Carroll County. With funding earned at their Golf Tournament in July and other donations from their members and the community, Lodge 20 was able to provide for 60 families in need this year. Without this labor of love by Lodge 20 members, these families would have done without over the holidays. Thanks to everyone who helped with the organizing or donated to make this event a success.

In closing, I wish everyone a very happy and joyous holiday season with family and friends. So often, it is easy to dwell on the things we don't have and forget about all the blessings in our lives. Count each day as an opportunity to reflect on those blessings, recognize the needs of others who might be less fortunate and help when ever we can. Until next time, I remain...

Fraternally yours,

A handwritten signature in cursive script that reads "M. Kirk Daugherty". The signature is written in black ink and is positioned above the printed name.

M. Kirk Daugherty  
President

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The Maryland Troopers Association's December 2011 Executive Board Meeting was called to order on December 20, 2011 at 1700 hours by President Kirk Daugherty. Vice-President Chris Sasse, Secretary Treasurer Vicki Patterson and Executive Director Bob Devers were present. Roll call was taken by Secretary Treasurer Vicki Patterson and the following Lodge Presidents were present:

Tri-County - C. Horner; Lodge 1 - D. Cameron; Lodge 13 - D. Morris; Lodge 14 - R. Ruff; Lodge 15 - J. Vogt, Lodge 17 - A. Michael; Lodge 19 - Absent; Lodge 20 - E. Bredenburg; Lodge 40 - O. Artfitch; Lodge 51 - P. Grotte; Lodge 76 - J. McLeary; Lodge 88 - B. Blubaugh; Lodge 96 - C. Creswell. With a quorum present, the President declared the meeting in order.

The President noted that the minutes from the November 2011 Executive Board meeting were before the Board. A motion was made by Tri-County Lodge to adopt the minutes as recorded. The motion was seconded by Lodge 76 and the motion passed.

## President

M. Kirk Daugherty

I attended the December meeting of the Tri-County Lodge in Salisbury.

Inquired about a possible promotion and transfer list. I have been informed that they are currently working on one but no date for publication has been decided.

## Vice-President

Christopher Sasse

I attended the December 2011 Finance Committee meeting in Pikesville and the Lodge 51 monthly meeting in Frederick.

I have also been forwarding retirement and death notification information to Bob Devers at the office for publication on the listserv..

## Secretary/Treasurer's Report

Vicki Patterson

Nothing to Report

## Executive Director's Report

Robert Devers

I have received a number of death notifications since the last board meeting.

11-21-11 Mr. Harvey Groner, Father of Fallen Hero TFC Mark Groner

11-28-11 Ms. Lubertha Thomas - Mother of Retired Sergeant Michael D. Thomas

12-1-11 Retired Lt. John Davis - Husband of Retired Lt. Nina (Hook) Davis

12-1-11 Retired Cpl. Rich Poffenberger, Jr. - Son of Retired TFC Rich Poffenberger, Sr.

12-8-11 Brian Dowell - Son of Retired TFC Charles "Buckie" Dowell

12-18-11 Ms. Pearl Tatterson - Mother of Retired 1/Sgt. Don Tatterson

## National Troopers Coalition Liaison

Charles Horner

Nothing to Report

## COMMITTEE REPORTS

**By-Laws:** S. Murphy - Absent

**Finance:** J. Diggs - On December 7, 2011 the Finance Committee held its monthly meeting at the MTA Office. In attendance were Finance Chairperson Jay Diggs, Bill Bernard, Earl Bredenburg, Pete Edge, Marvin Hollinger, Bob Kirk, Walt Mills, Mike Smith and Executive Director Bob Devers.

MEETING DATES: January 4, 2012 @ 10am and February 8, 2012 @ 10am at the MTA Office

STATE OF THE MTA:

1. UBS Account - \$513,822

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## OLD BUSINESS:

1. The Board approved October and November's Finance Report. The 2012 budget was tabled per rule from the November meeting.
2. The Aviation Group has agreed to combine efforts with the MTA's bi-annual convention.
3. Just a reminder about the MTA's new affinity program with Capital One. Go to the MTA web site at [www.mdtroopers.org](http://www.mdtroopers.org) for more information
4. The 2012 Budget Preparation – The budget was presented to the Board and was tabled for 30 days per rule at the last Board Meeting. Tonight the Board must vote on the motion tabled.

## NEW BUSINESS:

1. Requests for Donations: None
2. FORM 106 REVIEWS:
  - A. Lobbyist Bernard Shaw's Form 106 for November 2011 in the amount of \$200.69 was reviewed. A motion was made, seconded and passed to accept this report.
  - B. Executive Director Bob Devers Form 106 for November 2011 in the amount of \$57.53 was reviewed. A motion was made, seconded and passed to accept this report.
3. The Treasurer's Report for November 2011 was reviewed. A motion was made, seconded and passed to accept this report.

GOOD OF THE ORDER:                      Time Start: 1000  
hours    Time Ended: 1230 hours

1. Our prayers go out to the Poffenberger and Davis families.

The President called for a motion to accept the Finance Committee reports as presented. The motion was made Tri-County Lodge, seconded by Lodge 1 and passed.

**Legislative/Political Action:** Bernie Shaw - On December 12, 2011, I attended the reception for Senator Mike Miller in Baltimore.

I also attended a Pensions hearing and a fiscal briefing in Annapolis. Discussion was held concerning a \$1.5 billion structural deficit and their request to the Governor to reduce that deficit by 50%. I will continue to monitor these hearings as they occur.

I also canceled my MTA cell phone account with Sprint. I can now be reached on my personal cell phone at 443-417-4054.

Tentative dates for the Legislative reception will be February 7th, 16th or the 21<sup>st</sup>. Senator Kasemeyer will be sponsoring us again this year. We are awaiting confirmation from Senator Miller concerning the use of space in the Senate Office Building.

**Legal Advisory - J. Nichols for G. Tracey - James** passed out the following memo to the Board concerning a court ruling on LEOBR.

## MEMORANDUM

To: MARYLAND TROOPERS ASSOCIATION  
From: WARNKEN, LLC  
Re: Robinson v. Baltimore Police Dept., No. 17, Sept. Term 2011

LEOBR – Statute of Limitations

**Date:** December 20, 2011

**Issue:** Under the LEOBR, does the same one-year statute of limitations date which began when the initial incident came to the agency's attention also apply to allegations of a false statement made during a related IAU interrogation?

**Holding:** The one year limitations period begins when the officer makes the false statement, regardless of the date of the conduct giving rise to the investigation.

**Implications:** No changes to IAU practice and procedures are expected. The holding, however, may cause anxiety for witnesses in hearing boards, as MSP prosecutors have indicated that testimony inconsistent with a Board's findings

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could be a basis for a false statement charge.

**Facts:** On February 22, 2007, Teresa Houssain was arrested for prostitution and she advised that she had recently had sexual intercourse with a “Sgt. Robinson” of the Baltimore City Police Department (BPD). During the investigation that followed, BPD determined that the officer was George Robinson. According to Houssain, Robinson picked her up in a silver SUV, identified himself as an officer, displayed a badge, and then engaged in sexual intercourse. During the act, Robinson allegedly brandished his firearm, but never pointed it at Houssain.

The case was initially investigated for possible criminal charges; however, the criminal allegations were determined to be “unfounded” the following day and the case was returned for an internal affairs investigation. Three months after the investigation began, Robinson was served with a Notification of Complaint stating that, “[i]t is alleged that on February 19, 2007, you engaged in sexual misconduct while on duty.”

BPD interrogated Robinson twice and, on both occasions, he advised that he did not recognize or know Ms. Houssain and denied having any sexual contact with her. Additionally, Robinson advised that, on the date in question, he had been driving his personal sedan, not his work SUV. In support, he provided EZ-Pass records. He also claimed that he used his personal vehicle because supervisors trained him to do so when organizing prostitution stings. Robinson then stated he was unfamiliar with the park-and-ride where the act allegedly occurred.

Following the interrogation, investigators determined that Robinson made multiple false statements. Surveillance footage from the park-and-ride indicated that Robinson and Houssain were together in his personally owned, silver SUV on the day in question. Additionally, investigators determined that the EZ-Pass documentation was fraudulent. Finally, investigators also interviewed Robinson’s supervisors, who denied having “trained” him to use his personal vehicle for prostitution stings.

**Analysis:** LEOBR mandates that an agency file administrative charges against a law enforcement officer “within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.” Md. Code Ann., Pub. Safety § 3-106(a).

However, it was not until more than 18 months after the inception of the investigation that BPD filed six charges against Robinson. Of those charges, four related directly to the sexual acts, two related to conduct over the course of his career, and one alleged the making of 9 false statements during the interrogations that took place on July 11, 2007, and August 1, 2007.

The Hearing Board found Robinson guilty on all counts and recommended termination. Robinson filed for a Show Cause Order in the Circuit Court and argued that the charges had not been filed within the one-year period, as measured from the date the investigation began. The Circuit Court denied relief as to the false statement charge, finding that it had been filed within the one year window based on the date of the alleged interrogations.

Robinson then appealed to the Court of Special Appeals and argued: (1) that the false statement charge was time-barred because the one-year limitations under § 3-106(a) began to run on the date the underlying incident came to light, not the dates the false statements were made to investigators and (2) that treating the false statement charge as separate from the underlying conduct violated the Accardi doctrine because BPD had a “policy” of treating the limitations period for false statements arising during an investigation as running from the date of the underlying conduct giving rise to the investigation. The Court of Special Appeals affirmed the Circuit Court and Robinson successfully obtained a Writ of Certiorari on only the first question.

In interpreting the one-year limitation under § 3-106(a), the Court of Appeals looked to the plain language of the statute first. The Court noted that the statute, by its terms, ran from one year after the act. The Court rejected Robinson’s claim that, “the act” was the act that triggered the investigation, not the act that gave rise to the specific charge. Nothing in the language of § 3-106 supported Robinson’s claim that the legislature intended for the same one-year limit to apply to both the underlying misconduct and any false statement occurring during the investigation.

Moreover, the Court noted that § 3-113(a) of the LEOBR prohibits an individual from “knowingly mak[ing] a false statement, report, or complaint during an investigation or proceeding,” and that such false statements are subject to criminal penalties pursuant to Md. Code Ann. Crim. Law § 9-501. The Court found that § 3-113 indicated a concern

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over false statements made during investigations and the associated criminal penalties evinced an intent that each false statement be treated as a separate instance of wrongdoing.

The Court concluded, therefore, “that when a law enforcement officer knowingly makes a false statement, material to and during the investigation of prior misconduct, the officer commits an “act” that gives rise to a charge within the meaning of § 3-106(a); therefore, pursuant to that subsection, the appropriate law enforcement agency has one year from the day the false statement ‘comes to [its] attention’ to bring a charge against the officer for making that false statement.”

1. There is still no reported appellate opinion that defines which agency officials are “appropriate” in the context of running the statute of limitations.

2. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954), and its progeny stand for the proposition that administrative agencies must act in conformance with the agency’s own policies, procedures, and regulations.” This argument was not properly pursued in the Court of Appeals.

The firm has also received a number of calls concerning federal overtime being scheduled for troopers. In some cases, there have been reports of 6 and 7 days in a row of assigned overtime in an attempt to exhaust the Barrack’s overtime allotment before the end of the year. While there is no legal challenge to this problem, it could be made a bargaining issue through SLEOLA. Kirk noted that he would make an inquiry to determine if this problem could be additionally resolved through more effective scheduling throughout the year.

Mr. Warnken presented Virginia Callahan, a law student working at the firm, as he is introducing her to the various types of work the firm does.

Mr. Warnken also noted that this will conclude his 14<sup>th</sup> year as general counsel to the MTA and that he has enjoyed serving in this capacity. He wished everyone a very joyous holiday season. The president returned the sentiment.

**Minority Affairs** - Ron Ruff - Nothing to Report

**Scholarship:** Brian Blubaugh - Nothing to Report

**Retirees:** Dave Cameron - The MSPAA will be holding their January luncheon meeting at the Bayou Restaurant on January 28, 2012.

The President also noted that the MSPAA recently sent out a notice to all members that their dues must be paid by January 31, 2012. Any members in arrears who have MSPAA license plates will lose them if their dues are not paid.

**SLEOLA** - B. Gill - Absent

## LODGE REPORTS

Lodge 1 - D. Cameron - Expressed his concern regarding the high mileage cars at Prince Frederick. Vehicles are now reaching 250,000 miles.

Lodge 14 - R. Ruff - Ron expressed his sympathy to Lodge 14 Treasurer, Mike Thomas, whose mother passed away last month.

Lodge 17: A. Michael - The elections for Lodge 17 are over and all candidates ran unopposed.

President . . . . . A. Michael  
Vice-President . . . . . E. Pertain  
Secretary . . . . . J. Edmonson  
Treasurer . . . . . M. Gelermino

Lodge 20: E. Bredenburg - We held our Christmas for Kids Party and Dinner over the weekend and it was very successful. We were able to provide for 60 families this year and everyone had a good time.

Lodge 51 - P. Grotte - Lodge 51 will be having it’s annual Shop with a Cop at the Mt. Airy Wal-Mart on December 22, 2012 to provide shopping help for needy children in the Mt. Airy area.

Lodge 76: J. McLeary - Lodge 76 held our joint Christmas party on December 13, 2011 at 6:00 PM at the Lodge which was well attended.

Lodge 88: B. Blubaugh - .Last Tuesday, December 13, 2012, we held our MTA Christmas Party in Hagerstown.

Many members of the lodge attended the funeral services for

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Retired Corporal Rich Poffenberger, Jr. Our thoughts are with the Poffenberger family.

Our sympathies and thoughts also go out to 1/Sgt. Kevin Lewis at the Hagerstown Barrack on the death of his father.

Lodge 96 - C. Creswell - Lodge 96 also held its elections of Officers.

President ..... C. Creswell  
1<sup>st</sup>. Vice President ..... K. Runk  
2<sup>nd</sup> Vice President ..... S. Scala  
Treasurer ..... M. Yingling  
Secretary ..... C. Moore  
Sgt. At Arms ..... H. Reith

Lodge 96 will be holding our 25<sup>th</sup> Annual Christmas Party tomorrow in conjunction with the Harford County Sheriff's Office at Burke's in Bel Air .

## OLD BUSINESS

The first order of business under Old Business is the MTA budget which was distributed to the Board at the November meeting and was tabled until this evening.

Lodge 20 made a motion to accept the budget as prepared and submitted by the Finance Committee. The motion was seconded by Lodge 88 and passed without amendment or discussion.

Joe McLeary, President of Lodge 76 made a motion to have each Lodge make a \$100.00 donation to support the purchase of a memorial for the Phillips baby that passed away this fall. Mr. Warnken brought a point of order to the floor indicating that there cannot be a motion requiring each lodge to disburse funds. There can be a recommendation but it cannot be binding. The motion was withdrawn and Charles Horner, President of Tri-County Lodge, noted that he had an estimate for the monument in the amount of \$1,924. He noted that he has already received donations from the MSPAA and Lodge 96 toward this cost. Charlie indicated that checks from Lodges wishing to donate can be sent to the Salisbury Barracks C/O Kris Phillips, 2765 N. Salisbury Blvd., Salisbury, Maryland 21841.

## NEW BUSINESS

## GOOD OF THE ASSOCIATION

Dave Cameron, President of Lodge 1, inquired about the COLA for 2012. Bob Devers indicated that the estimate was between 3 and 4 percent however, the COLA is based on the CPI from Jan - Dec. and it has not been calculated yet. The number is generally posted by the Retirement System in early March to be effective on July 1.

Earl Bredenburg, President of Lodge 20, indicated that he has learned that all overtime at the MVA would be coming to an end because the MVA could not afford to pay the 30% administrative cost on top of the overtime paid to the trooper. He understands that this overtime will be shifted to the Mdta Police because they don't require the additional administrative fee. Kirk indicated that he would make an inquiry.

Kirk wished the Board and membership a very Merry Christmas and a Prosperous and Healthy New Year.

At 5:22 P.M. a motion to adjourn was made by Lodge 40, seconded by Lodge 76 and passed. The next scheduled meeting will be held on Tuesday, January 17, 2011 @ 1700 hours at the MTA Office in Pikesville, Maryland.

## Chesapeake Investment Advisors Martin Knight

If you have questions concerning the DROP (or any other investment issues), give Marty a call (410-810-0735). The best time to do the research is before your exit-date so very little time is lost reinvesting your assets. Marty can help your transition from active State Trooper to retired investor. And rest assured, he will always put your financial interests first.

Martin Knight  
Chesapeake Investment Advisors  
106 Spring Ave., Chestertown MD 21620  
410-810-0735  
Mknight@chesadvisors.com