

West Virginia Legislature's
Commission on Special Investigations

Thirty-seventh Annual Report

July 1, 2016 – June 30, 2017



Co-Chairmen

Mitch Carmichael – Senate President – Lieutenant Governor

Tim Armstead – Speaker of the House

Charles Bedwell - Director

West Virginia Commission on Special Investigations

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Mission Overview

The Mission of the Commission on Special Investigations is broadly outlined under Chapter 4, Article 5 of the West Virginia State Code and includes investigation into the purchasing practices and procedures of the State, conflicts of interest, bribery of State officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the State, and to conduct investigations to determine if any criminal or civil statutes have been violated at any level of State government. The Commission has conducted hundreds of investigations into fraud and public corruption in which the State of West Virginia was the victim. Commission Investigators work in conjunction with the United States Attorney's offices in West Virginia, the 55 County prosecuting attorneys, local, county and State law enforcement, as well as the FBI, IRS and other Federal law enforcement, regulatory and investigative agencies.

The Commission Staff is currently comprised of a Director, Deputy Director, a Senior Investigator, three Investigators and an Administrative Assistant. The law enforcement and investigative experience of individual Investigators ranges from 25 to 42 years. At any one time the Commission may have a dozen or more active investigations.

The Commission was originally formed as a result of a Federal corruption investigation of Governor W. W. Barron and several members of his Administration conducted in the late 1960s by the Internal Revenue Service. The six-year investigation revealed a need for an independent investigative agency within State government empowered to investigate public corruption unimpeded by politics or other traditional barriers.

In September 1968, Governor Hulett Smith convened a special legislative session and then Senator William T. Brotherton proposed the creation of a special commission to investigate the purchasing practices of the State. The result was the creation of the Purchasing Practices and Procedures Commission (PPPC), which was in 1980 renamed the Commission on Special Investigations, or as it is more commonly known, CSI.

The Commission is comprised of ten members of the Legislature, with the President of the Senate and Speaker of the House of Delegates currently serving as its Co-Chairmen. The remaining eight members (four from the Senate and four from the House) represent both political parties. Meetings are conducted during interim sessions of the Legislature and are generally held in executive session. By statute, all of CSI's records are exempt from the Freedom of Information Act (FOIA).

Early newspaper accounts referred to the Commission's Investigators as "West Virginia's Untouchables" because the Commission was created specifically to be and has remained beyond the reach of the political influence of either the Executive or Legislative branches of government.

Today, more than four decades after its creation, CSI is responsible for the investigation and prosecution of any crimes involving public corruption at any level of State government. Commission Investigators have investigated and successfully prosecuted cases involving embezzlement, larceny, forgery, bribery, extortion, falsifying accounts, obtaining money by false pretenses, and mail and wire fraud, among other criminal violations. CSI Investigators have been actively involved in prosecuting cases in both State and Federal court.

Investigations may involve "any level of State government," i.e., any level where there is an involvement or infusion of State money, resources or personnel. CSI has investigated not only State agencies, officers, elected officials and employees, but also county and municipal entities which receive or use State or Federal funds passed through the State. While some investigations are completed in short order, it is not unusual for CSI matters to remain open for weeks, months and, at times, years.

Many investigations begin with a call from a concerned citizen who has become aware of something "that just doesn't seem right" or which is obviously a violation of law. Investigators work closely with many people within and outside of State government and our reputation for professionalism is second to no other investigative agency, State or Federal.

Commission Members

§4-5-1

“The commission shall continue to be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be from the same political party; and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: **Provided**, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The commission shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.”

These Legislators are responsible for overseeing the investigative activities of the Commission Staff, which are reviewed in executive session during Legislative interim meetings. A quorum, consisting of the majority of the total authorized membership, is required to open or close an investigation or refer a matter to the appropriate Legislative Committee, if the subject falls outside the Commission’s purview.



West Virginia Legislature
Commission on Special Investigations
6/30/2017



Mike Hall (R)
Senate Finance
Chair
Joined CSI 2010



Mitch Carmichael (R)
Senate President
Lt. Governor
Co-Chairman
Joined CSI 2016



Tim Armstead (R)
House Speaker
Co-Chairman
CSI Member 2007-09
Rejoined CSI 2015



John Shott (R)
House Judiciary
Chair
Joined CSI 2015



Corey Palumbo (D)
Senate Minority Whip
Minority Leader
Joined CSI 2011



Tim Miley (D)
Delegate
Minority Leader
Joined CSI 2013



Charles S. Trump IV (R)
Senate Judiciary Chair
CSI Member 1993-2007
Rejoined CSI 2015



Eric Nelson (R)
House Finance Chair
Joined CSI 2017



Mike Woelfel (D)
Senator
Joined CSI 2015



Mick Bates (D)
House Finance
Minority Vice Chair
Joined CSI 2015

Commission Staff

§4-5-2(b) (3)

The Commission is empowered to: “Employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems needed and, within the appropriation herein specified, fix reasonable compensation of such persons and firms as may be employed: *Provided*, That such personnel as the commission may determine shall have the authority to administer oaths and take affidavits and depositions anywhere in the state.”

The current investigative staff has previously distinguished themselves with successful law enforcement careers, ranging from senior supervisors and administrators in both large municipal police departments and the State Police.

Commission Staff designated as “Investigator” are issued special identification credentials including photo identification and Commission badges. Investigators are also authorized to carry firearms in the performance of their duties.

Staff Investigators are responsible for conducting comprehensive and detailed investigations on behalf of the West Virginia Legislature into the purchasing practices and procedures of the State and matters of public corruption. To that end, Investigators work with their counterparts in local, State and Federal law enforcement agencies as well as other State entities and local and Federal prosecutors.





Director

Charles R. Bedwell Joined CSI – 2003

34 years' law enforcement experience

Professional Experience:

WV State Police

Major - Deputy Chief of Staff

**Chief of Criminal Identification Bureau &
Traffic Services**

Director - Planning & Research

Education:

**WV State University, Marshall University,
Northwestern University, WV State Police
Academy**

Deputy Director

James S. Powers Joined CSI – 2002

41 years' law enforcement experience

Professional Experience:

WV State Police

Lieutenant Colonel - Chief of Staff

Chief of Administrative Services

Director – Procurement

BCI Grant Forfeiture Officer

Education:

**Radford University, Virginia Polytechnic
Institute, FLETC – Glenco, WV State Police
Academy**





Senior Investigator

Steven E. Staton Joined CSI – 1999

44 years' law enforcement experience

Professional Experience:

**Beckley, WV Police Department
Lieutenant – Shift Commander**

Education:

**Marshal University, Concord University,
WV State Police Academy**

Investigator

Rick D. Eplin Joined CSI – 2015

31 years' law enforcement experience

Professional Experience:

**Huntington, WV Police Department
Captain – O.I.C Criminal Investigation Division**

Education:

**WV State University, FBI National Academy,
WV State Police Academy**





Investigator

Michael G. Robinson Joined CSI – 2015

27 years' law enforcement experience

Professional Experience:

WV State Police

First Sergeant - BCI Regional Coordinator

Multi-jurisdictional Task Force Coordinator

Detachment Commander

Education:

**Marshall University, Glenville State College, WV
State Police Academy**

Investigator

Jeff Shriner Joined CSI – 2017

28 years' law enforcement experience

Professional Experience:

Investigative Specialist – FBI

Master Corporal – New Castle County DE

Education:

St. Joseph's University

West Liberty University

New Castle County Police Academy





Administrative Assistant

Lisa M. Wilkinson Joined CSI – 1985

Education:

Marshall University, WV State University

Acknowledgements

The Commission on Special Investigations receives information from a variety of sources, both public and private. CSI solicits and accepts information of potential wrongdoing from individual citizens, governmental employees and governmental agencies, many of whom do so at substantial personal risk. Absent this assistance, it would be difficult for the Commission to perform its duties.

While we recognize the contributions to CSI efforts made by various County Prosecuting Attorneys, United States Attorneys and Assistant United States Attorneys, Federal Special Agents, State Troopers, Sheriff's and their Deputies and local police agencies, there have been some who have provided extraordinary assistance to us over the past year that significantly aided in the successful investigation and prosecution of important matters. Due to the ongoing nature of some investigations, and the need to protect the confidentiality of some who have worked closely with CSI, we cannot acknowledge every individual by name; however, we would like to acknowledge the contributions of those listed on the following page.



Individual Acknowledgments

Jarod J. Douglas, Assistant US Attorney, WVND

Robert W. Schulenberg III, Assistant Prosecuting Attorney – Kanawha County

S/A Jeff Goode, IRS CID – Charleston

S/A Jim Lafferty, FBI – Charleston

S/A Hugh Mallet, FBI – Charleston

S/A Stephen Wilburn, DOL OIG – Pittsburgh

Corporal J. W. Smith, WV State Police - BCI



Activities of the Commission

July 1, 2016 – June 30, 2017

During this fiscal year, the Commission on Special Investigations opened 30 investigative files and closed 11. Additionally, Commission Staff conducted preliminary inquiries and exceptionally closed 13 allegations or suspicions of wrongdoing, determining there was no basis for an in-depth investigation, there was insufficient information to proceed, or the matter was resolved prior to a file being formally opened. One additional matter was identified for possible investigation and deferred for future action. Commission Staff processed three requests for special assistance that did not require an active inquiry or investigation. Other matters previously opened for investigation that had not been finalized remained open/active files and investigation of those matters continued.

The Commission met in executive session a total of six times, once during each interim session of the Legislature. During these meetings Commission Staff made oral presentations to Commission members regarding alleged wrongdoing by agencies, governmental employees, and individuals and/or firms conducting business at any level of State government.

When an investigation results in criminal prosecution and/or restitution to the State, or when investigative leads are exhausted or it is determined no evidence of wrongdoing is identified, the file may be closed. It is, however, not unusual for a CSI investigation to result in changes to an agency's policies or procedures or discipline of an offending employee, even though no criminal action is identified or prosecution is not pursued. CSI investigations can also result in changes to State law as proposed by the Commission.

The following are representative of the investigative activities conducted by Commission Staff during this fiscal year:

WV Division of Corrections – Fraudulent Expense Account

CSI received information from the Post Audit Division of the Legislative Manager's Office reference a questionable expense settlement form submitted by James Eli "Jim" Rubenstein, while acting in his capacity as Department of Military Affairs and Public Safety (DMAPS) Deputy Secretary and Division of Corrections Commissioner. Rubenstein submitted the Travel Expense Account Settlement to then DMAPS Cabinet Secretary Joseph Thornton on March 2, 2015. Requested was reimbursement of \$138.25 for a one night stay at the Charleston Four Points Sheraton, occurring February

9, 2015. The reimbursement was questioned by Secretary Thornton's office due to Charleston being the home office for Rubenstein. Rubenstein withdrew the request at that time, stating via email he would "stand corrected" and there was "no need for further processing". However, Rubenstein resubmitted the same document on March 16, 2015, routing the request through Corrections and thereby avoiding DMAPS scrutiny. With the signature approval of two Division of Corrections subordinates, Rubenstein obtained the requested reimbursement. Rubenstein had acquired the hotel room due to the water pipes freezing in his apartment in Charleston, as noted in reimbursement related email traffic.

Investigators learned Rubenstein was not paying rent at his apartment, located on the grounds of PsiMed Inc. in Charleston. PsiMed provided Rubenstein use of the apartment beginning February 2011, at which time Rubenstein purchased furnishings, had a new mattress delivered, and moved out of his former apartment in South Charleston. PsiMed was a subcontractor to Wexford Health Sources and provided services to the Division of Corrections.

The investigation revealed Suddenlink provided cable service to the Kanawha Boulevard apartment from February 2011 through June 2014, arranged and paid for monthly by Rubenstein. Both Rubenstein and a PsiMed representative described an agreement whereby Rubenstein would furnish the apartment and leave the furniture behind when he moved out, the value of which would be considered as partial compensation for the use of the apartment. Rubenstein expended \$3,616.57 to furnish the apartment, the equivalent of \$75.34 for rent and utilities per month over four years. Rubenstein made no rent or utility payments to PsiMed.

On October 11, 2016, Rubenstein signed an agreement with the Kanawha County Prosecuting Attorney's Office wherein Prosecutors agreed to drop the investigation into Rubenstein and refer the matter to the State Ethics Commission. The CSI investigation report was forwarded to the Ethics Commission. Rubenstein agreed to cooperate with the Ethics probe in the agreement and agreed to pay PsiMed back rent, and to repay the State for the \$138.00 hotel bill at the Charleston Sheraton.

On February 1, 2017, The West Virginia Ethics Commission fined Rubenstein \$7,000 and publicly reprimanded him. Rubenstein retired effective April 1, 2017.

WV Division of Highways (US Attorney's Task Force)

On September 1, 2015, a Federal Grand Jury sitting in Clarksburg, West Virginia returned a 29 count indictment against Robert Glen "Bob" Andrew, former head of the

Equipment Division of the West Virginia Division of Highways. MoTrim, Inc. a vendor from Cambridge, Ohio was also indicted on multiple charges.

Late that same evening, Andrew took his own life at a car wash near his home in Anmoore, West Virginia, thereby ending an investigation of over three years duration.

Two days later, on September 3, 2015, information was received from within the Division of Highways relating to corruption on the part of one or more Division of Highways personnel, and a new investigation was initiated, focused largely on the Traffic Engineering Division and entities it dealt with at the time. These included Mark Whitt, owner of Bayliss & Ramey, Inc., an electrical contractor from Teays Valley; Bruce Kenney and Travis Miller, both engineers and former employees of the Traffic Engineering Division; Andrew P. Nichols, PhD, a tenured Professor at Marshall University and researcher at the Rahall Transportation Institute; and Dan Dennis, also an engineer, and principal of Dennis Corporation, an engineering firm from Columbia, South Carolina. At the time the investigation was initiated, Bruce Kenney had retired from the Traffic Engineering Division of WVDOH and was employed by Open Roads, a major WVDOH vendor from Norfolk, Virginia, and Travis Miller had resigned with ten years service and was employed as the West Virginia Manager of Dennis Corporation.

Over the course of the investigation, all of the above individuals, as well as the two businesses, were charged and ultimately pled guilty to one or more felony crimes associated with a pervasive pay-to-play scheme, dating back to at least 2009. Accomplishing this end required the issuance of over 120 Grand Jury subpoenas, myriad witness interviews, and numerous Grand Jury appearances where sworn testimony was elicited. Countless man hours were expended in the analysis of literally thousands of pages of records.

Andrew Nichols, originally from Point Pleasant, West Virginia, earned his PhD in engineering from Purdue University circa 2006 and acquired employment at the University of South Carolina in Columbia. During this employment he acquired secondary employment with Dennis Corporation in Columbia and became acquainted with Dan Dennis, its principal, also an engineer. Nichols' specialty is Intelligent Transportation Systems (ITS), the cutting edge of transportation engineering.

In the summer of 2007, Nichols obtained a position at Marshall University, fulfilling both a desire to come home and the desire to become involved in research within his field, which would be conducted through the Nick Joe Rahall Transportation Institute at Marshall University.

The Traffic Engineering Division at WVDOH relies heavily upon the Rahall Institute for various research needs and, at the time, used the Institute heavily in the role of a consulting engineer, trusting to the expertise and objectivity of the Institute staff. Other entities within WVDOH used the Institute as well. Given the nature of this relationship, Nichols soon became acquainted with Bruce Kenney, the ITS expert within the Traffic Engineering Division of WVDOH. He also became reacquainted with Travis Miller, a WVDOH engineer in Traffic Engineering, whom he had known years before when both were undergraduates at West Virginia University. While these individuals were forming a relationship in West Virginia, Nichols was still in the employ of Dennis Corporation, and was, in fact, the West Virginia face of the Dennis Corporation.

In March 2008, Nichols and Kenney traveled to Columbia where Nichols introduced Kenney to Dan Dennis. By mid-April, Nichols had hired both Kenney and Miller to work for Dennis Corporation, and Kenney began receiving payments of \$5,000 per month. While Miller's early employment with Dennis Corporation was to perform actual engineering work, Kenney's employment was with the object of generating future business for Dennis Corporation by way of WVDOH projects he could influence or control. The relationships of both Kenney and Miller with Dennis Corporation were actively concealed from their superiors at the WVDOH.

In late 2008, efforts were underway to award a pavement marking contract for all interstate and corridor highways in West Virginia. This contract was structured such that it required a "pavement marking coordinator", with this coordinator being paid 6% of the gross value of the contract. The prime contractors, those who would actually mark the pavement, were required to identify who they would use in this secondary role no later than 10 days before bids were opened. Kenney insured all bidders would designate Dennis Corporation by rejecting any efforts by bidders to use any other firm.

This contract was awarded in March 2009, and was carried out over the course of the summer, netting Dennis Corporation approximately \$250,000.

The next giant step forward for Dennis Corporation in West Virginia was gaining a position on the short list of approved consulting engineers maintained by the WV Division of Highways. A position on this list was a near virtual guarantee of additional future work. Kenney, Miller and Nichols all participated in development of the Dennis Corporation presentation to the WVDOH and/or in the preparations for this presentation. Nichols participated in the presentation as a representative of Dennis Corporation, and Kenney participated as a voting member of the DOH selection committee when it met in late May 2009. By early June, Dennis Corporation had gained its position on the short list of consulting engineers.

Statewide On-Call Traffic Engineering Services

Friday, May 29, 2009

10:30AM



Presented by:

DENNIS
CORPORATION

Presenters



Mr. Dan Dennis, PE, PLS
President



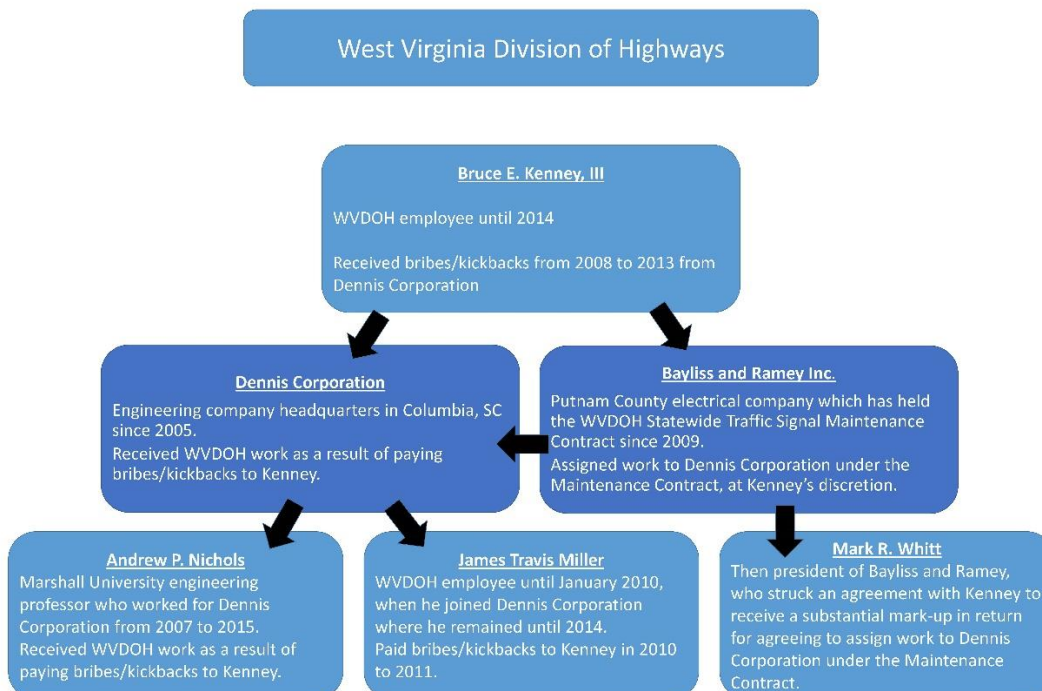
Dr. Andrew Nichols, PE
West Virginia Division
Manager



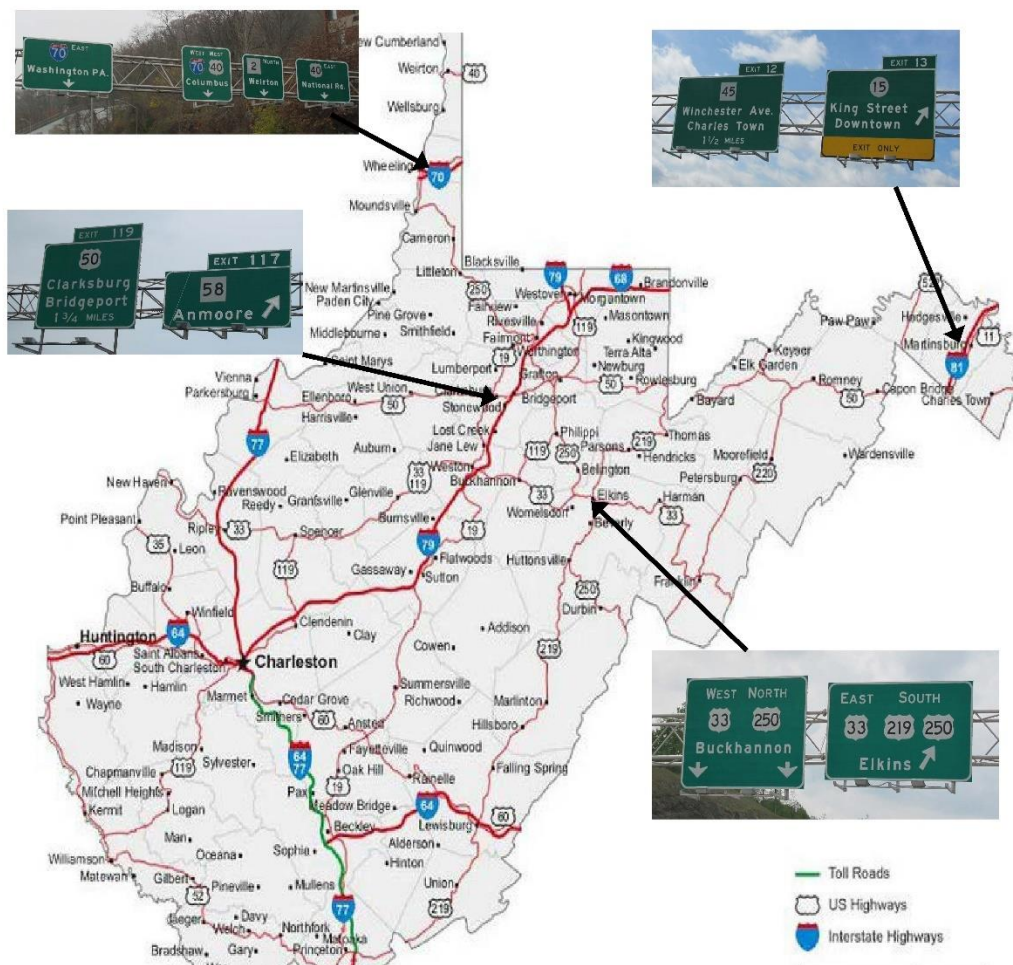
Mr. Berry Mattox, EIT
Traffic Engineering
Manager

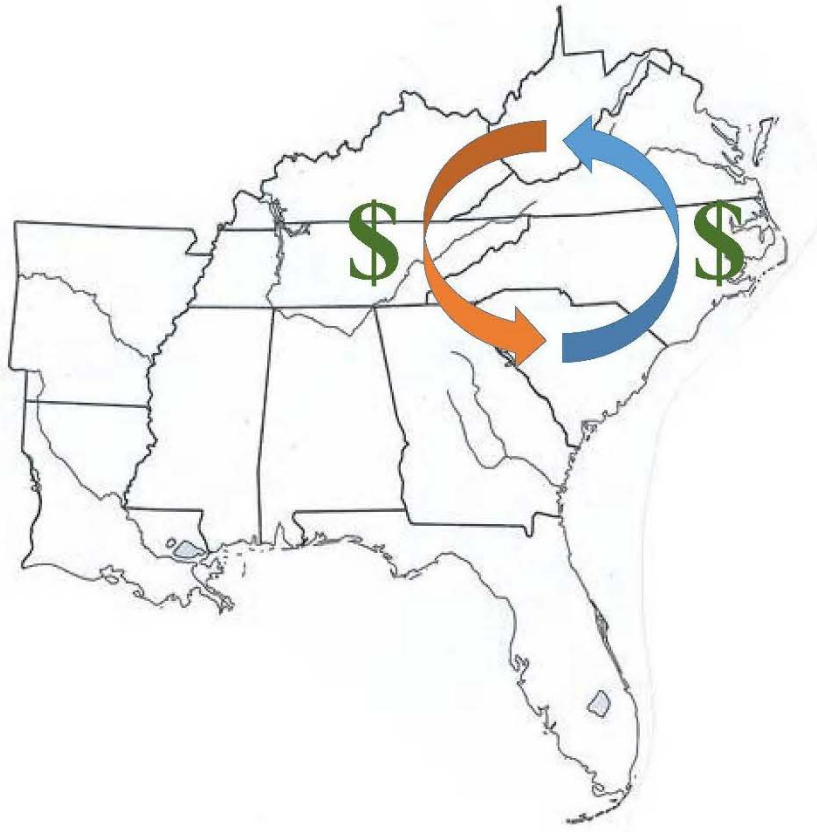
Due to fiscal considerations Bruce Kenney’s monthly payments from Dennis Corporation were terminated at the end of 2008, pending the actual flow of revenue from West Virginia. In early June, Kenney received a “catch-up” payment of \$10,000. In July 2009, Kenney began receiving payments of \$3,750 per month from Andrew Nichols, which were generated by Nichols concealing this cost within his monthly expense account submissions to Dennis Corporation. By their nature, these funds were unreported for tax purposes.

While the pavement marking contract was being put together, Kenney and Nichols were developing a new statewide, open ended traffic signal maintenance contract. This contract provided for the ongoing maintenance of traffic signals, highway lighting fixtures, message boards, and similar devices throughout the state. While the award would of necessity go to a licensed, qualified electrical contractor, Kenney and Nichols insured it included a requirement the winning contractor include within its submission the qualifications of a firm which would be its “engineer of record”. The stated purpose of this requirement was to provide within the contract for any adjunct engineering work required to carry out the purposes of the maintenance contract. When Bayliss and Ramey, Inc. bid and won the contract, their designated engineer of record was Andrew Nichols, on behalf of the Dennis Corporation.



While there were a myriad of problems associated with Bayliss & Ramey’s performance under the maintenance contract, one major cash cow which developed under that contract benefitted both Bayliss and the Dennis Corporation. Through the efforts of Kenney, Bayliss undertook a program of structural inspections of traffic control devices throughout the state. This included traffic signals, lighting fixtures, and highway signs. These inspections were largely the work of a boyhood friend of Travis Miller who had no experience in this field and was not qualified to perform such work.





To Dennis Corporation:

- \$1.2M via Structure Inspections Program (2009-2013)
- \$250K via Interstate / Corridor Striping Projects (2009)

To Bruce E. Kenney, III:

- \$45K in NC Wages (2008)
- \$25K in Nichols Cashier's Checks (2009)
- \$65K in Miller Cashier's Checks (2010-2011)
- \$50K in Checks to WV Control Solutions (2012-2013)



While all of this was occurring, research projects were being channeled to Andrew Nichols through the Rahall Institute, drawing on his expertise in Intelligent Transportation Systems. This inured to the financial benefit of both Nichols and the Institute, vastly increasing Nichols annual salary beyond that of a mere professor of his tenure and experience. It also enabled him to publish and present research papers, thereby enhancing his stature as a member of the Marshall faculty.

With the increase in WVDOH work flowing to Dennis Corporation and the increase in research projects flowing to the Rahall Institute, Travis Miller resigned from WVDOH at the beginning of January 2010 and became the West Virginia Manager for Dennis Corporation. This same month Miller took over responsibility for the covert monthly payments to Bruce Kenney, funded through false entries on Miller's Dennis Corporation expense accounts. Unlike his predecessor, Miller retained a share of the payments flowing to Bruce Kenney. Notwithstanding these changes, Nichols remained on the Dennis Corporation payroll, and remained integrally involved.

Kenney, Miller, and Nichols were all directly involved in the structural inspection project, as was Mark Whitt, the owner of Bayliss & Ramey. Bayliss & Ramey began making payments to Dennis Corporation pursuant to this project in January 2010. The project extended for a period of years, and by the time of the investigation had generated approximately \$1.2 million for Dennis Corporation and approximately \$300,000 for Bayliss & Ramey, all for work of dubious value. The Bayliss & Ramey share was largely a pure mark-up for little work, enabled by the terms and conditions of the Maintenance Contract envisioned by Kenney and Nichols, a contract which neither envisioned nor allowed for such extensive engineering services.

In November 2010, WVDOH executed a contract with the Rahall Institute for what has come to be known as the Morgantown Centrac project. The object of this project was a complete redesign of two corridors within Morgantown to alleviate traffic congestion associated with athletic events at the University. Centrac is a software product created and marketed by Open Roads, which utilizes sophisticated computer programming to control and modify the flow of traffic through a series of intersections in real time, based upon the actual traffic conditions perceived by sensors linked to the system. It consists of both the software itself and the hardware components which both feed data to the system and execute instructions from the system.

When Bruce Kenney retired from WVDOH in February 2014, he accepted employment with Open Roads, in Norfolk, Virginia. Open Roads remains a major vendor to WVDOH, having been the firm responsible for development of both the Traffic Management Center and later, the West Virginia 511 System.

Although the Morgantown Centracs project grew significantly over time, the initial value of the WVDOH agreement with the Rahall Institute was approximately \$1.9 million. The designated “Principal Investigator” for this project on behalf of the Rahall Institute was Andrew Nichols, and this was one of the WVDOH projects that significantly enhanced both his annual income and his academic stature. Of the original \$1.9 million project budget, \$267,458.41 flowed to Nichols’ alma mater, Perdue University, and \$405,905.60 flowed to Dennis Corporation, both of whom were used by the Rahall Institute as subcontractors.

The Dennis Corporation portion of the project budget was developed jointly by Nichols and Travis Miller, with the blessing of Bruce Kenney, all of whom remained on the payroll of Dennis Corporation in one way or another. Also during this time frame, Nichols was commuting to work daily at Marshall University in a corporate vehicle provided to him by Dennis Corporation, a vehicle clearly marked with the Dennis Corporation logo. Notwithstanding this, Nichols regularly charged mileage on expense accounts submitted to the Rahall Institute and defrayed from project funds provided by the WVDOH.

Payments to Bayliss & Ramey for the Morgantown Centracs Project were not included within the Rahall Institute’s project budget. Bayliss performed the hands-on installation of hardware required for the project, and billed this work pursuant to the Maintenance Contract with WVDOH. These billings totaled an additional \$342,142.13.

At the beginning of 2012, Dennis Corporation’s payments to Bruce Kenney utilizing Travis Miller’s expense accounts ended. At this point, Kenney began generating invoices to Dennis Corporation and his payments flowed to WV Control Solutions, an entity he created exclusively for the purpose of receiving these payments.

As stated earlier, this investigation began in early September 2015. The following is bullet point time line depicting the outcomes of the investigation:

July 2016 to November 2016

Proffer sessions were conducted and plea agreements executed.

Bruce E. Kenney -- Honest Services Wire Fraud & Conspiracy to Evade the Internal Revenue Service.

J. Travis Miller -- Money Laundering Conspiracy.

Mark R. Whitt -- Wire Fraud Conspiracy.

Bayliss & Ramey, Inc. -- Wire Fraud Conspiracy.

November 2016

Andrew P. Nichols was indicted for Conspiracy to Commit Honest Services Wire Fraud, Money Laundering, Obstructing Justice, & Making False Statements. Trial was initially scheduled for June 2017.

A plea agreement was pending with Daniel R. Dennis, charging him with Tax Conspiracy.

December 2016

Plea appearances were set for Kenney, Miller and Whitt, before the US District Court in Wheeling.

Mark R. Whitt - one count Wire Fraud Conspiracy (up to 20 years & up to \$250,000). Judgment of \$250,000.

James Travis Miller - one count of Conspiracy to Launder Monetary Instruments (up to 20 years & up to \$500,000).

Bruce Kenney - one count Honest Services Wire Fraud Conspiracy (up to 20 years and up to \$250,000), and one count Conspiracy to Impede the Internal Revenue Service (up to 5 years and up to \$250,000). Forfeiture of \$197,250.

February 2017

Daniel R. Dennis entered a guilty plea to Conspiracy to Defraud the Internal Revenue Service (up to 5 years and up to \$250,000).

Bayliss & Ramey, Inc. entered into a Deferred Prosecution Agreement for Wire Fraud Conspiracy.

Dennis Corporation entered into a Deferred Prosecution Agreement for Conspiracy to Defraud the Internal Revenue Services - Restitution of \$250,000.

April 2017

Andrew P. Nichols - First Superseding Indictment (Trial scheduled for June 2017).

May 2017

Andrew P. Nichols - Second Superseding Indictment - One count of Honest Services Wire Fraud, One Count of Obstruction of Justice, One Count of Making False Statements to a Federal Agent (Trial scheduled for June 2017). Forfeiture Allegation \$197,250.

June 2017

Andrew P. Nichols entered a guilty plea to Conspiracy to Defraud the Internal Revenue Service (up to 5 years and up to \$250,000).

As of the end of the fiscal year 2017, sentencings were pending for all defendants in this investigation. Also pending were actions by the Consolidated Public Retirement Board, the Board of Professional Engineers, and the Purchasing Division of the Department of Administration.

The information set forth herein is not intended to articulate the entirety of the fraud perpetrated by the involved individuals. It is a sample of the information which became public during the course of the investigation and the prosecutions which followed, and is intended to portray the gross breach of trust by the involved parties.

The outcomes set forth herein were achieved by a team effort lead by the United States Attorney's Office for the Northern District of West Virginia, and staffed by the Commission on Special Investigations, the Internal Revenue Service - Criminal Investigation Division, the Federal Bureau of Investigation, and the West Virginia State Police.

WV Division of Highways – Bridge Painting Contract

In August 2013, information was received from S/A Stephen Wilburn, Office of the Inspector General, United States Department of Labor, pertaining to a report of potential contract fraud perpetrated by VHP Incorporated, a bridge painting contractor based in Tarpon Springs, Florida. VHP had painted two bridges on Interstate Route 79 at Gassaway, West Virginia over the summers of 2011 and 2012, projects bid and awarded by the WV Division of Highways. Because the project was largely Federally funded and the provisions of the Davis Bacon Act applied, the nature of the alleged

fraud related to the requirement that VHP pay its workers at the prevailing wage rate.

The success of this investigation hinged on investigative effort undertaken jointly by one member of the Commission Staff and one agent from the US Department of Labor. One was a week of interviews conducted in the Tarpon Springs, Florida area in February 2014 with various workers employed on the bridge painting job in question. Also, key was an interview with the third-party inspector hired to monitor the bridge painting job by WVDOH.

The more time consuming and tedious of the two efforts involved the analysis of literally thousands of pages of records associated with the project. These records included both inspection documents completed by the third-party inspector and DOH personnel, and payroll records submitted by VHP documenting and certifying the payment of prevailing wages to its workers. These records, which are referred to as "Certified Payroll Documents", are completed by the employer and the falsification of these forms constitutes a violation of Federal statute. Numerous corporate records were also acquired by subpoena to fill in information gaps about the project.

Ultimately, the information gleaned in the interviews and information gathered from the records analysis were combined into spreadsheet form creating a complex calculation of the amount by which the affected workers were defrauded, approximately \$200,000. This calculation was complex and required weeks of work to perfect. Because any benefit of the doubt had to be given to the employer for the calculation to hold up in court, the resulting figures were considered extremely conservative.

Plea negotiations between the Northern District United States Attorney's office and the three defense counsel representing the various parties in this matter were complicated by the fact VHP is situated in Florida.

In August 2016, Michael and Nomiki Vavlas, the owners of VHP, Inc., entered guilty pleas in United States District Court in Clarksburg, WV to violations of 18 USC 371, Conspiracy to Commit Mail Fraud. Potential penalties for this offense were: up to five years imprisonment; up to \$250,000 fine; and up to three years supervised release.

Pursuant to the plea agreements in this case, the Government recommended probation for both subjects, and mandatory joint restitution of \$146,249, to ultimately be paid back to the victim workers in the case.

In February 2017 Michael and Nomiki Vavlas were both sentenced by Judge John Preston Bailey in Federal District Court at Elkins to the following: 4 years' probation;

\$30,000.00 fine (\$60,000 total); and joint restitution of \$146,249.00 (to be paid to the workers/victims).

Following adjudication of the criminal charges, further effort was required on the part of Investigators to provide the US Attorney's Office with a calculation of how much restitution was due each of the affected workers. Considerable effort was also expended providing the US Attorney's Office with the best information that could be developed as to the location and identity of the workers, a number of whom were clearly undocumented.

VHP Enterprises, Inc. first registered with the West Virginia Secretary of State in 1997. Its charter was revoked for failure to file an annual report in December 2014, long before this investigation was concluded. Its corporate address was 728 Wesley Avenue, Tarpon Springs, Florida. The corporate officers were Michael H. and Nomiki M. Vavlas (husband and wife), the accused in this case.

International Rigging Group, LLC first registered with the West Virginia Secretary of State in November 2013, and its charter remains active. Its corporate address is the same as that of VHP Enterprises. The corporate officers are Haralambos Vavlas (27 years of age), and Dimitrios Vavlas (25 years of age). All four members of the Vavlas family reside at the same address in Tarpon Springs, Florida.

As of the writing of this report, International Rigging Group, LLC has received payments as follows according to data in the WV State Auditor's System:

WV Division of Highways	\$ 410,786.24
WV Parkways Authority	\$1,131,748.50

An obvious question raised by this matter is how is it possible for a painting contractor from Tarpon Springs, Florida to underbid a local West Virginia painting contractor if the labor costs of both are bound by the Davis Bacon Act, and the quality of materials used is dictated by Federal Highway Administration standards? Violations of prevailing wage standards in cases such as this not only victimize the affected workers, they also victimize any potential vendor not inclined to violate the law.

Hinton Little League – Embezzlement/Fraudulent Scheme

and

Summers County Family Resource Network – Embezzlement/False Statements on Grant Expenditures

There are times when a CSI investigation will reveal other unrelated criminal activities. When such circumstances arise, Investigators treat each criminal activity as a separate investigation. However, when the suspected perpetrator(s) are the same, investigative efforts and prosecution of offenders often converge. Such was the case with these investigations.

CSI received a request from the Prosecutor's Office of Summers County for assistance with a possible embezzlement involving the Treasurer of the Hinton Little League. CSI had previously conducted an investigation for the Summers County Prosecutor's Office, who reached out on this matter in hopes that CSI expertise could be used to assist the Hinton Police Department in the investigation.

Upon joining with an Officer of the Hinton Police Department, Investigators began reviewing financial records of the Treasurer and discovered not only evidence concerning the Little League embezzlement, but also suspicious financial transactions related to the Summers County Family Resource Network, where the Little League Treasurer was the Director and sole employee.

Upon completing a detailed financial analysis of records related to both the Little League and the Family Resources Network and interviewing numerous persons, Kim Huffman was indicted in March 2015 for one count of Embezzlement and one count of Fraudulent Schemes relating to the Hinton Little League. In August 2015, Huffman was indicted for one count of Embezzlement, one count Fraudulent Schemes and four counts Falsifying Sworn Statements of Grant Expenditures Regarding the Summers County Family Resource Network.

Huffman was found guilty of Embezzlement and Fraudulent Schemes in February 2016 relating to the Little League indictments. She then entered into a plea agreement regarding the Family Resource Network case, pleading to one count of Embezzlement and agreeing to repay \$20,260.57 to the WV Department of Health and Human Resources, who had provided the grant funding. Restitution of \$4,739.43 was ordered by the Court in the Little League case. She was sentenced in August 2016 to prison for a term of 1-10 years on each of the two embezzlement charges, to be served concurrently.

Huffman was to self-report to the WV Division of Corrections to begin serving her sentence on October 1, 2016. She failed to report and the court issued a warrant. She was arrested and placed in the custody of Corrections.

Fairmont/Morgantown Housing Authority – Misuse of Federal Funds

CSI received a complaint from a painting contractor located in Fairmont, West Virginia that some false invoices had been submitted to the Fairmont/Morgantown Housing Authority (FMHA).

The contractor alleged the Public Housing Manager for the FMHA conspired with him to paint inside her personal residence and falsely bill the work to the FMHA. With the assistance of the FMHA Maintenance Supervisor, the contractor created false billing statements to be paid by the FMHA, such that the expense of painting the Manager's residence fell to the FMHA. According to the contractor, paint for the project was taken from FMHA inventory and additional paint was ordered by the Manager and Maintenance Supervisor, again at the expense of the FMHA. The contractor alleged participation by both the Manager and Supervisor was necessary for the contractor to be compensated for the fraudulent invoicing.

While conducting a detailed investigation, evidence was established that three fraudulent invoices totaling \$2,476.00 were submitted and paid to the contractor. Each invoice represented the painting of an entire apartment. For each of the fraudulent invoices, the applicable tenant of the apartment for which the painting was invoiced confirmed their apartment had not been painted. One individual stated she had lied to Investigators at the behest of the Manager after initially stating her apartment had been painted, when no actual work had been performed. This tenant stated she had been contacted by the Manager about two days before CSI Investigators interviewed her, and said she had been vacationing out of state when the alleged painting occurred, just as the Manager had instructed her to say.

In addition, a sales representative of a paint supplier to FMHA recalled the Maintenance Supervisor coming to his business, accompanied by a woman the Supervisor identified as "the boss." This woman was said to have brought along "swatches" for the sales representative to match paint to. The woman left and the Supervisor waited for the paint to be prepared. The Supervisor acknowledged to Investigators his involvement in the conspiracy, including remembering the purchase of the paint as described by the sales rep. He also stated he had two cans left over from the purchase, which he turned over to Investigators.

A search warrant was obtained for the Manager's residence, and paint samples were taken from the rooms painted in the (apparent) same color as that of the paint cans the Supervisor had kept. Photos were also taken throughout the residence. The contractor previously informed Investigators that because he had painted the house interior under the conspiracy, he knew the paint color of every room in the house, as well as the layout of the house, to include any unusual detail. The contractor reduced this information to writing, including a hand drawn map of the residence layout. The contractor's recollection of the layout and the room colors proved remarkably accurate, especially considering the manager's suggestion that the contractor had never painted, or even been invited inside, her home. Lab results from the analyses of paint samples from the cans provided by the Supervisor and the walls of the Manager's residence proved helpful for potential prosecution as well.

The Manager was arrested and charged with felony embezzlement, falsifying accounts and conspiracy. This case has not been adjudicated.

Public Defender Services – Fraudulent Billing

This complaint was forwarded to CSI by WV Public Defender Services (PDS) Executive Director, Dana Eddy. The PDS identified a pattern of possible excessive billing on the part of William Lester Jr. Lester served as a panel attorney for PDS and provided legal services in Clay, Braxton, Raleigh, and Wyoming Counties. WV PDS requested that CSI investigate to determine the extent of the fraudulent billing.

The investigation revealed that Lester had fraudulently billed PDS for over \$100,000. Lester frequently billed for over 24 hours in legal services in a single day. The investigation revealed that Lester fled the United States and established residence in Costa Rica in 2014. He has remained in South America since that time.

An investigation report was forwarded to the Kanawha County Prosecutor's Office and presented to the Grand Jury on July 20, 2016. The Grand Jury returned a true bill charging Lester with two counts of Fraudulent Schemes. Mr. Lester did not appear to answer the indictment when summoned to Kanawha County. Mr. Lester was entered into the NCIC database as a fugitive from justice.

CSI has worked with the Prosecutor's Office and the local office of the US Marshals Service to secure assistance in the location and apprehension of William Lester Jr. The International Affairs Division of the US Marshals Service and the US Embassy in San

Jose, Costa Rica have also been assisting CSI on this case. Lester currently remains a fugitive from justice.

Appendix A

News Items



CSI

WV prisons chief had rent-free apartment provided by subcontractor

For at least four years, West Virginia Corrections Commissioner Jim Rubenstein had the use of a rent-free garage apartment provided by a state prison subcontractor, according to an investigative report.

Rubenstein recently signed a deal with Kanawha County Prosecuting Attorney Charles Miller's office to refer the investigation to the state Ethics Commission. In exchange, Miller's office agreed to end a criminal investigation into Rubenstein's use of the Kanawha Boulevard apartment.

Rubenstein also has agreed to reimburse the apartment's owner for back rent.

Terrence Rusin, president and CEO of PsiMed, gave Rubenstein the go-ahead to use the apartment in 2011, according to the report. PsiMed provides mental health services to the state prison system that Rubenstein oversees. The company received more than \$7.5 million in state funds during the years Rubenstein had use of the apartment.

Rubenstein also has agreed to repay the state for a \$138 hotel bill at the Charleston Four Points Sheraton. Rubenstein charged the state for the hotel stay on Feb. 9, 2015, after the pipes in his rent-free apartment froze up that day.

As part of his deal with Kanawha prosecutors, Rubenstein must cooperate with the Ethics Commission's investigation and negotiate a "conciliation agreement," which typically includes a reprimand and fine.

The Gazette-Mail obtained documents related to the investigation after filing a state Freedom of Information Act request.

Rubenstein's lawyer, Carte Goodwin, declined to comment Monday.

During meetings with investigators, Rubenstein asserted that he moved into the garage apartment around February 2013 and moved out in October or November that year. Rubenstein told investigators that he had stayed at the apartment “once or twice” since late 2013, according to the investigative report.

Investigators determined, however, that Rubenstein had use of the free apartment from February 2011 to July 2015, citing interviews with witnesses and Rubenstein’s cable television bills.

Rubenstein claimed he had a deal with Rusin to furnish the apartment and use the furniture’s value to offset rent payments. Rubenstein provided receipts to investigators that showed he had paid about \$3,600 for furniture for the apartment. He promised to leave the furniture behind when he vacated the apartment.

After his rent payments equaled the furniture’s value, Rubenstein was to pay \$50 a night for the apartment — to be billed annually. Rubenstein never paid anything for the apartment and told investigators that he might owe “fifty to a hundred dollars, if anything,” according to the investigative report. Rubenstein and Rusin drew up a lease agreement in 2011, but they never signed it.

In interviews with investigators last December, Rubenstein acknowledged that he still had a key and access to the apartment — and no one else was living there.

Taking into account the \$3,600 Rubenstein paid for furniture, he had use of the apartment for the equivalent of \$75 per month over four years, investigators concluded. Similar apartments near the state Capitol Complex cost \$350 to \$795 a month, according to the report.

Rubenstein and Rusin are longtime friends, according to the report. The two serve as officers for the West Virginia Corrections Training Foundation, a nonprofit group.

The state Legislative Auditor received a tip about Rubenstein’s rent-free apartment and hotel stay during an audit last year.

Rubenstein submitted the \$138 bill for reimbursement, but withdrew the request after an executive secretary with the Department of Military Affairs and Public Safety questioned the expense.

Days later, Rubenstein had his deputy commissioner approve the reimbursement, and the state paid him for the hotel stay.

Rubenstein, who has overseen day-to-day operations of state prisons since 2001, has a house in St. Marys, about 100 miles from Charleston.

The West Virginia Legislature's Commission on Special Investigations started looking into Rubenstein's rent-free apartment and hotel stay in April 2015.

State ethics laws prohibit public officials from receiving gifts from state contractors and submitting travel expenses under "false pretenses." The Ethics Commission inquiry is ongoing.

Rusin did not respond to a request for comment on the Rubenstein investigation Monday. A spokesman for the Department of Military Affairs, which oversees the Division of Corrections, would not comment.

Reach Eric Eyre at ericeyre@wvgazettemail.com, 304-348-4869 or follow @ericeyre on Twitter.

WV prisons chief gets pay cut amid ethics inquiry

West Virginia Corrections Commissioner Jim Rubenstein has had his pay cut by \$10,500 a year amid an ethics investigation.

Gov. Earl Ray Tomblin's administration also recently stripped Rubenstein of his second job title as deputy secretary of the Department of Military Affairs and Public Safety. Rubenstein had served in a dual role as deputy secretary and corrections commissioner since July 2014.

His salary was dropped from \$90,504 to \$80,000, payroll records show.

Rubenstein had access to a rent-free garage apartment provided by a state prison subcontractor for at least four years, according to a state investigation completed last year. The Gazette-Mail published a story about the investigation last week.

A Department of Military Affairs spokesman declined comment on Rubenstein's pay cut Monday, saying it was a personnel matter.

On Oct. 11, Rubenstein signed a deal with Kanawha County Prosecuting Attorney Charles Miller's office. Miller agreed to drop a criminal investigation into Rubenstein's use of the apartment and referred the matter to the state Ethics Commission. In exchange, Rubenstein promised to cooperate with the ethics probe and negotiate a "conciliation agreement," which typically includes a reprimand and fine.

As part of the deal, Rubenstein also agreed to pay the apartment's owner, Terrence Rusin, back rent. Rusin is CEO of PsiMed, which provides mental health services to the state prison system. PsiMed received more than \$7.5 million in state funds during the years Rubenstein had access to the apartment, according to a report by the state Legislature's Commission on Special Investigations.

Rubenstein claimed he had a deal with Rusin to furnish the apartment and use the furniture's value to offset rent payments, the report said. Rubenstein provided receipts to investigators that showed he had paid about \$3,600 for furniture for the apartment. He promised to leave the furniture behind when he vacated the apartment.

Rubenstein has overseen day-to-day operations of state prisons since 2001.

Rubenstein's agreement with Miller's office also requires the corrections chief to repay the state for a \$138 hotel bill at the Charleston Four Points Sheraton. Rubenstein charged the state for the hotel stay on Feb. 9, 2015, after the pipes in his rent-free apartment froze up that day.

Rubenstein and his lawyer did not respond to a request for comment Monday.

Reach Eric Eyre at ericeyre@wvgazette.com, 304-348-4869 or follow @ericeyre on Twitter.

WV corrections chief fined \$7K for ethics violations

by Eric Eyre



West Virginia Corrections Commissioner Jim Rubenstein

The West Virginia Ethics Commission fined Corrections Commissioner Jim Rubenstein \$7,000 and publicly reprimanded him Thursday following an investigation into his use of a rent-free garage apartment provided by a state prison subcontractor.

In a news release, Rubenstein announced he was stepping down from his post. His last day will be April 1.

Rubenstein has overseen day-to-day operations of the state prison system since 2001.

In an agreement with the Ethics Commission, Rubenstein stated his actions “were the result of a lack of vigilance,” and he “profoundly regrets any appearance of impropriety.” Rubenstein told the commission he did not intend to use his office for private gain.

In October, Rubenstein signed a deal with Kanawha County Prosecuting Attorney Charles Miller’s office. Miller agreed to drop a criminal investigation into Rubenstein’s use of the apartment and referred the matter to the Ethics Commission. In exchange, Rubenstein promised to cooperate with the ethics probe and negotiate a “conciliation agreement,” which the Ethics Commission approved Tuesday.

As part of the deal, Rubenstein agreed to pay the apartment’s owner, Terrence Rusin, back rent. Rusin is CEO of PsiMed, which provides mental health services to the state prison system. PsiMed received more than \$7.5 million in state funds during the years Rubenstein had access to the apartment, according to a report by the state Legislature’s Commission on Special Investigations.

Rubenstein claimed he had a deal with Rusin to furnish the apartment and use the furniture’s value to offset rent payments, the report said. Rubenstein provided receipts to investigators that showed he had paid about \$3,600 for furniture for the apartment. He promised to leave the furniture behind when he vacated the apartment.

Rubenstein's agreement with the Ethics Commission also requires him to repay the state for a \$138 hotel bill at the Charleston Four Points Sheraton. Rubenstein charged the state for the hotel stay on Feb. 9, 2015, after the pipes in his rent-free apartment froze up that day.

Last fall, Rubenstein had his pay cut by \$10,500 a year. He also was stripped of his second job title as deputy secretary of the Department of Military Affairs and Public Safety. Rubenstein had served in a dual role as corrections commissioner and deputy secretary since 2014.

In a news release Wednesday night, state officials said Rubenstein was retiring and made no mention of the ethics investigation.

"I cannot describe what it has meant to me to be the commissioner of the West Virginia Division of Corrections," Rubenstein said in the release. "I grew up in corrections. It is part of who I am, and it has been my singular driving force to serve the Division of Corrections to the best of my ability."

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United States Attorney William J. Ihlenfeld, II
Northern District of West Virginia

FOR IMMEDIATE RELEASE

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***Federal charges filed in W.Va. Division of Highways
pay-to-play scheme***

WHEELING, WEST VIRGINIA – Four individuals and a corporation are facing federal charges for conspiring to steer West Virginia Division of Highways projects to a South Carolina business in exchange for bribes and kickbacks, United States Attorney William J. Ihlenfeld, II, announced.

Bruce E. Kenney, III, Andrew P. Nichols, James Travis Miller, and Mark R. Whitt have been charged in a scheme which caused \$1.5 million worth of highway work to be routed to the Dennis Corporation, a Columbia, South Carolina engineering consulting firm. Bayliss and Ramey, Inc., a Putnam County highway electrical contractor, has also been charged.

Kenney, age 60, of Norfolk, Virginia, is alleged to have used his position in the Traffic Engineering Division of the Division of Highways to bypass normal state procedures and funnel structure inspection work to the Dennis Corporation in exchange for covert payments totaling nearly \$200,000. Kenney was charged by Information today with honest services wire fraud conspiracy and conspiracy to impede the Internal Revenue Service.

Nichols, age 38, of Lesage, West Virginia, formerly served as the manager of the West Virginia Division of the Dennis Corporation while also working as an engineering professor. He is alleged to have managed the financial relationships of his co-conspirators, to have ensured that payments were made, and to have lied to federal agents about his involvement in the scheme. Nichols was indicted earlier this month on charges of conspiracy to commit honest services wire fraud and money laundering, along with obstructing justice and making false statements. The indictment was unsealed this morning.

Miller, age 40, of Hurricane, West Virginia, also worked for the Division of Highways before leaving to work for the Dennis Corporation. He is alleged to have delivered covert payments to Kenney in exchange for official actions that were done in favor of Dennis Corporation. Miller was charged by Information today with money laundering conspiracy.

Whitt, 52, of Winfield, West Virginia, was the president and owner of Bayliss and Ramey, Inc., which was awarded the statewide signal maintenance contract in 2009. Whitt allegedly used the contract to funnel construction work to Dennis Corporation. He benefitted financially for helping to conceal the illegal flow of funds from the Division of Highways to Dennis Corporation. Whitt was charged by Information today with wire fraud conspiracy.

Bayliss and Ramey, Inc. submitted invoices with a twenty percent mark-up to ensure that it would be compensated for its role in the scheme. This mark-up by Bayliss and Ramey caused the State of West Virginia to pay a higher price than it should have for engineering services. The corporation was charged by Information today with wire fraud conspiracy.

The criminal conduct in this matter occurred from 2008 until 2014. The investigation began in September 2015 when information about the scheme was provided to the U.S. Attorney's Office.

Each individual defendant faces the possibility of incarceration. Under the Federal Sentencing Guidelines, the actual sentence imposed will be based upon the seriousness of the offense and the criminal history, if any, of each defendant. Each defendant is presumed innocent unless and until proven guilty.

Assistant U.S. Attorneys Jarod J. Douglas and Sarah W. Montoro are prosecuting the case on behalf of the government. The case is being investigated by the U.S. Attorney's Public Corruption Unit, which includes the Federal Bureau of Investigation, the West Virginia Commission on Special Investigations, IRS-Criminal Investigation, and the West Virginia State Police. The investigation is ongoing.

Ihlenfeld commended the efforts of all of the investigators, and encouraged citizens with information regarding public corruption in their community to call the West Virginia Public Corruption Hotline at 855-WVA-FEDS (855-982-3337), or to send an email to wvafeds@usdoj.gov.

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The Intelligencer
November 17, 2016

West Virginia Division of Highways is Victim Of ‘Pay-to-Play’ Scheme



Photo by Janet Metzner Gathering Wednesday to announce federal charges in an alleged scheme to defraud the West Virginia Division of Highways, from left, are Jason Laing of the West Virginia State Police; William Ihlenfeld, U.S. attorney for the Northern District of West Virginia; Robert Johnson of the FBI; Jason Gandee of the Internal Revenue Service; and Jim Powers, deputy director of the state Commission on Special Investigations

Four men and one company face federal charges after a federal corruption unit accused them of steering West Virginia Division of Highways projects to a South Carolina business in exchange for bribes and kickbacks.

The alleged conspirators, including a Marshall University engineering professor, are accused of funneling about \$1.5 million in work, including highway sign inspection work, to the Dennis Corporation, said U.S. Attorney William J. Ihlenfeld.

During a news conference with the federal corruption unit that investigated, Ihlenfeld described the misconduct as “*pay-to-play*,” noting it involved “*bid-rigging*,” which is not allowing any work to go to other, bidding subcontractors.

The alleged conspiracy took place from 2008 to 2014, and occurred because some of the players worked for both public and private organizations at the same time, Ihlenfeld said. The work flowed from West Virginia to the South Carolina firm, and the money flowed back into West Virginia, to the division.

“The message this case sends is that when you violate the laws, no matter how connected you are, no one is above the law, and you will be held accountable,” said Jason Gandee, supervisory special agent with the Internal Revenue Service. *“Our agents are committed to following the money trail, and pursuing the evidence no matter where it leads.”*

Investigators say Andrew Nichols, 38, of Lesage, W.Va., was looking for a way to move back to his native West Virginia from South Carolina. So, he began teaching engineering at Marshall, and networked with his former employer, engineering consultants The Dennis Corporation, to open a West Virginia office. He worked as manager until 2010, according to Assistant U.S. Attorney Jarod Douglas.

James Travis Miller, 40, of Hurricane, W.Va., had worked for the division before he worked for the Dennis Corporation. His part, Ihlenfeld said, allegedly was to deliver covert payments to another alleged conspirator, Bruce E. Kenney III, 60, of Norfolk, Va., a traffic engineer in the division, *“in exchange for official actions that were done in favor of the Dennis Corporation.”*

Kenney allegedly bypassed “*normal state procedures*” to funnel structure inspection work to the Dennis Corporation, and he allegedly got secret payments of \$200,000 for his role, Ihlenfeld said. Miller allegedly *“kept a portion of the kickbacks for himself,”* according to Ihlenfeld.

Mark R. Whitt of Winfield, W.Va., works for Bayliss and Ramey Inc., which was awarded the West Virginia signal maintenance contract in 2009.

“Whitt allegedly used the contract to funnel construction work to Dennis Corporation,” Ihlenfeld said. “Bills sent to the division (from this company) were marked up 20 percent higher than they should have been under the contract. The state was a victim. Really, all West Virginians are victims.”

Kenney, Whitt and the company Bayliss and Ramey Inc., were charged Wednesday by information with wire fraud conspiracy. Kenney was also charged with conspiracy to impede the Internal Revenue Service.

Also on Wednesday, Miller was charged by information with money laundering conspiracy. Nichols was indicted earlier this month on charges of conspiracy to commit honest services wire fraud and money laundering, along with obstructing justice and making false statements. His indictment was unsealed Wednesday.

Marshall professor, Putnam contractor, ex-DOH engineers charged in alleged kickback scheme

[Eric Eyre](#) , Staff Writer [Kate White](#) , Staff Writer

- See more at: <http://www.wvgazette.com/news-cops-and-courts/20161116/marshall-professor-putnam-contractor-ex-doh-engineers-charged-in-alleged-kickback-scheme#sthash.Cr6VDJAu.dpuf>

An award-winning Marshall University professor, the president of a highway contracting business and two former West Virginia Division of Highways engineers were charged Wednesday in a kickback scheme involving companies in Putnam County and South Carolina.

Federal prosecutors allege that the men illegally diverted \$1.5 million worth of Division of Highways projects to Dennis Corp., a South Carolina engineering consulting firm. DOH engineers received \$200,000 in bribes between 2008 and 2013, according to the charges.

"It's pay-to-play corruption within the Division of Highways," said Bill Ihlenfeld, U.S. Attorney for West Virginia's Northern District. "This work was not bid out competitively; it was rigged so this corporation would receive these projects."

A federal grand jury in Clarksburg returned an indictment two weeks ago charging Marshall civil engineering professor Andrew P. Nichols, 38, of Lesage, with conspiracy to commit honest-services wire fraud, money laundering, obstructing justice and making false statements. The indictment was unsealed Wednesday.

Nichols formerly served as manager of the West Virginia division of Dennis Corp. while working as a senior director at Marshall's Rahall Appalachian Transportation Institute. He also is charged with lying to federal agents about his involvement in the alleged kickback scheme.

Nichols, a former resident of Point Pleasant who joined the Marshall faculty in 2007, was a finalist earlier this year for the Professor of the Year Award given by the Faculty Merit Foundation of West Virginia. Last year, Marshall gave Nichols the Charles E. Hedrick Outstanding Faculty Award. He gave the winter commencement address at Marshall's graduation in December 2015.

Nichols is scheduled to be arraigned today before U.S. Magistrate Judge James E. Seibert, in Wheeling.

Nichols' lawyer, Mike Frazier, said Nichols hasn't worked for Dennis Corporation since 2009.

"An indictment is merely an accusation, and Dr. Nichols looks forward to vindicating his name through the legal process," Frazier said in an email Wednesday night. "He is a well-respected professor, and these allegations deal with actions others took long after he left Dennis. We expect him to be fully exonerated."

Marshall spokeswoman Ginny Painter said in a statement that university officials didn't learn about the charges against Nichols until Wednesday, and are reviewing the allegations.

“The findings from our internal review of the evidence and the outcome of the criminal process will determine what, if any, employee disciplinary action will be pursued,” Painter said.

Former DOH traffic engineers Bruce E. Kenney II, 60, of Norfolk, Virginia, and James Travis Miller, 40, of Hurricane, are expected to plead guilty to their roles in the alleged scheme, Ihlenfeld said.

Kenney, who left the DOH in 2014, is charged with honest-services wire fraud conspiracy and conspiracy to evade the Internal Revenue Service. Miller is accused of delivering “covert payments” to Kenney in exchange for the DOH doing favors for Dennis Corp.

“Kenney was the rainmaker, but Nichols was behind the scenes making sure all of this could be managed and coordinated,” Ihlenfeld said. “They identified a way to game the system and steer business to this corporation in Columbia, South Carolina, and the corporation agreed that it would take care of those who were sending business its way.”

Prosecutors filed the charges against Kenney and Miller in the form of an information, which is similar to an indictment and can't be filed without a defendant's consent. It often indicates that a defendant has agreed to plead guilty.

DOH spokeswoman Carrie Jones said the agency has “no tolerance” for employees who take part in illegal activities.

“[The] DOH remains committed to disciplining any employee who abuses the public's trust,” Jones said.

Mark R. Whitt, 52, of Winfield, owner of Bayliss & Ramey Inc., a highway electrical contractor based in Scott Depot, also was charged in an information. Whitt's company has the traffic signal maintenance contract with the state. He is charged with wire fraud conspiracy.

Whitt filed to run for the Putnam County Commission this year, the only Democrat to do so, but dropped out of the race without explanation over the summer.

Kenney, Whitt and Miller could not be reached for comment Wednesday.

Prosecutors filed a separate information charging Bayliss & Ramey, as a company, with wire fraud conspiracy.

The firm submitted invoices to the state with a 20 percent markup, to ensure the company would be compensated for its role in the alleged kickback scheme, according to the charges. Bayliss & Ramey illegally funneled construction work to the South Carolina company, federal prosecutors allege.

Since 2006, the DOH has paid Bayliss & Ramey \$65.4 million, records show. Dennis Corp. has received more than \$1 million directly from the DOH, but also was paid as a subcontractor through Bayliss & Ramey.

More people are expected to be charged in the alleged scheme in the coming weeks, Ihlenfeld said.

Ihlenfeld's office, the state Legislature's Commission on Special Investigations, the State Police, the FBI and the IRS started investigating the alleged kickback scheme in 2015. Investigators received a tip the day after former DOH Equipment Division chief Bob Andrew was indicted on federal charges. Andrew killed himself with a shotgun just hours after being indicted on racketeering charges.

Former Division of Highways employee admits guilt in pay-to-play scheme

WHEELING, WEST VIRGINIA – Bruce E. Kenney, III, 60, of Norfolk, Virginia, pled guilty in federal court today to wire and tax fraud charges, United States Attorney William J. Ihlenfeld, II, announced.

Kenney admitted today that he used his position in the Traffic Engineering Division of the West Virginia Division of Highways to bypass normal state procedures and funnel structure inspection work to the Dennis Corporation in exchange for covert payments totaling approximately \$200,000. He entered a guilty plea to one count of “Honest Services Wire Fraud Conspiracy,” and also to one count of “Conspiracy to Impede the Internal Revenue Service.”

Assistant U.S. Attorneys Jarod J. Douglas and Sarah W. Montoro prosecuted the case on behalf of the government. The case was investigated by the U.S. Attorney’s Public Corruption Unit, which includes the Federal Bureau of Investigation, the West Virginia Commission on Special Investigations, Internal Revenue Service-Criminal Investigation, and the West Virginia State Police.

Citizens with information regarding public corruption in their community are encouraged to call the West Virginia Public Corruption Hotline at 855-WVA-FEDS (855-982-3337), or to send an email to wvafeds@usdoj.gov.

Senior U.S. District Judge Frederick P. Stamp, Jr. presided.

Two more admit guilt in Division of Highways pay-to-play scheme

WHEELING, WEST VIRGINIA – Two more individuals pled guilty in federal court today for their role in the Division of Highways pay-to-play scheme, United States Attorney William J. Ihlenfeld, II, announced.

Mark Rudolph Whitt, 52, of Winfield, West Virginia, was the president and owner of Bayliss and Ramey, Inc., which was awarded the statewide signal maintenance contract in 2009. Whitt admitted today that he used the contract to funnel construction work to Dennis Corporation. He benefited financially for helping to conceal the illegal flow of funds from the Division of Highways to Dennis Corporation. He pled guilty to one count of “Wire Fraud Conspiracy.” He faces up to twenty years in prison and a fine of up to \$250,000.

James Travis Miller, 40, of Hurricane, West Virginia, worked for the Division of Highways before leaving to work for Dennis Corporation. He admitted today that he delivered covert payments to Bruce Kenney in exchange for official actions that were done in favor of Dennis Corporation. He pled guilty to one count of “Conspiracy to Launder Monetary Instruments.” He faces up to twenty years in prison and a fine of up to \$500,000.

Assistant U.S. Attorneys Jarod J. Douglas and Sarah W. Montoro prosecuted the case on behalf of the government. The case was investigated by the U.S. Attorney’s Public Corruption Unit, which includes the Federal Bureau of Investigation, the West Virginia Commission on Special Investigations, Internal Revenue Service-Criminal Investigation, and the West Virginia State Police.

Citizens with information regarding public corruption in their community are encouraged to call the West Virginia Public Corruption Hotline at 855-WVA-FEDS (855-982-3337), or to send an email to wvafeds@usdoj.gov

Senior U.S. District Judge Frederick P. Stamp, Jr. presided.

Marshall professor pleads guilty to tax fraud in DOH kickback scheme

By Eric Eyre

Just a week before he was set to go on trial, an award-winning Marshall University professor pleaded guilty to a federal tax fraud charge Monday in connection with a kickback scheme that included former Division of Highways engineers in West Virginia.

Andrew P. Nichols, who remains employed at Marshall where he teaches engineering classes, admitted he conspired with a DOH worker to impede the Internal Revenue Service from collecting proper taxes between 2009 and 2011. Federal prosecutors allege the scheme caused \$1.5 million worth of DOH projects to be illegally diverted to Dennis Corporation, a South Carolina engineering consulting firm.

Nichols, 38, worked for Dennis Corp. as a traffic consultant from 2006 to 2015. He used the company's expense account to make covert payments with cashiers' checks to a former DOH engineer, according to his guilty plea. He has taught at Marshall since 2007.

Nichols' trial was scheduled to start June 20.

In November, [he was indicted](#) on charges of conspiracy to commit honest services wire fraud and money laundering, along with obstructing justice and making false statements to IRS agents about his involvement in the alleged kickback scheme. He pleaded guilty Monday to a single charge after reaching a plea agreement with prosecutors.

Nichols formerly served as manager of the West Virginia division of Dennis Corp., while working as a senior director of Marshall's Rahall Appalachian Transportation Institute. The indictment alleges that he managed the financial relationships of his co-conspirators, making sure they were paid.

Last year, Nichols was a finalist for the Professor of the Year Award given by the Faculty Merit Foundation of West Virginia. Marshall previously gave Nichols the Charles E. Hedrick Outstanding Faculty Award. Nichols delivered the winter commencement address at Marshall's graduation in December 2015.

Marshall spokeswoman Ginny Painter issued a short statement Monday: "University officials have not yet seen the plea. It's a personnel matter and as such we can't comment further at this time."

Nichols' lawyer could not be reached for comment.

Also charged in the alleged "pay-to-play" scheme were two former DOH engineers — Bruce E. Kenney III and James Travis Miller — along and with Mark R. Whitt, president of Bayliss & Ramey, a Putnam County contracting firm. DOH engineers received \$200,000 in kickbacks between 2008 and 2013, according to the charges.

Kenney, Miller and Whitt have entered guilty pleas. They are awaiting sentencing.

The FBI, state Legislature's Commission on Special Investigations, IRS and West Virginia State Police investigated the DOH kickback scheme. Assistant U.S. Attorney Jarod Douglas prosecuted the case.

MU to fire professor after fraud

Marshall University plans to fire an engineering professor who [recently pleaded guilty to a federal tax fraud charge](#) in connection with a kickback scheme that included former West Virginia Division of Highways employees, a university official said Monday

Andrew P. Nichols, who has taught at Marshall since 2007, admitted he conspired with a DOH worker to impede the Internal Revenue Service from collecting proper taxes between 2009 and 2011, according to his plea agreement. Federal prosecutors allege the scheme caused \$1.5 million worth of DOH projects to be illegally diverted to Dennis Corporation, a South Carolina engineering consulting firm.

“Marshall University has initiated the process to terminate the employment of Dr. Nichols,” said Ginny Painter, a university spokeswoman. “[Nichols] has been notified of the university’s intent and has the right to appeal his termination.”

Nichols, 38, worked for Dennis Corp. as a traffic consultant from 2006 to 2015. He used the company’s expense account to make covert payments with cashiers’ checks to a former DOH engineer, according to his guilty plea.

Nichols’ trial was scheduled to start June 20.

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THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* WEST VIRGINIA

Department of Justice

U.S. Attorney's Office

Northern District of West Virginia

FOR IMMEDIATE RELEASE

Wednesday, August 31, 2016

Florida couple pleads guilty to fraud charges

CLARKSBURG, WEST VIRGINIA – Nomiki Vavlas, 50, and Michael Vavlas, 52, of Tarpon Springs, Florida, pled guilty to committing fraud against the United States today, U.S. Attorney William J. Ihlenfeld, II, announced.

Nomika and Michael Vavlas own and operate VHP Enterprises, Inc, a company that specializes in painting and sandblasting. They were awarded a federal contract to paint bridges in Braxton County, WV from August 2011 through September 2012. The project was subject to the Davis-Bacon Act, which requires employers to pay a minimum hourly wage rate to all employees. The Vavlas' did not pay the full wage rate for overtime hours worked by project employees and falsified payroll reports that were delivered to the West Virginia Division of Highways Office by the United States Postal Service.

Each pled guilty to one count of "Conspiracy to Defraud the United States and Commit Mail Fraud." They face up to five years in prison and a fine of up to \$250,000. Under the Federal Sentencing Guidelines, the actual sentence imposed will be based upon the seriousness of the offenses and the prior criminal history, if any, of the defendant.

Assistant U.S. Attorney Andrew R. Cogar prosecuted the case on behalf of the government. The investigation was led by the Department of Labor Office of Inspector General and the West Virginia Commission on Special Investigations.

U.S. Magistrate Judge Michael John Aloia presided.

Florida couple plead guilty to defrauding the government of Braxton County, WV Bridge project

A Florida couple has admitted falsifying pay records for workers on a federal bridge painting contract in Braxton County, WV, more than four years ago.

Nomiki Vavlas, 50, and Michael Vavlas, 52, of Tarpon Springs, pleaded guilty to committing fraud against the United States, U.S. Attorney William J. Ihlenfeld II said.

The Vavlas's own and operate VHP Enterprises Inc., a company that specializes in painting and sandblasting. They were awarded a federal contract for the Braxton County, WV, bridge project, for August 2011 through September 2012.

The project was subject to the Davis-Bacon Act, which requires employers to pay a minimum hourly wage rate to all employees. The couple did not pay the full wage rate for overtime hours worked by project employees and falsified payroll reports that were submitted to the West Virginia Division of Highways by mail.

They each face up to five years in prison with a fine of up to \$250,000.

The Department of Labor Office of Inspector General and the West Virginia Commission on Special Investigations handled the investigation.

Jury finds woman guilty of taking money from Hinton Little League

SUMMERS COUNTY (WVVA) -

A verdict is reached in the trial against a woman accused of embezzling thousands of dollars from a little league baseball team in Summers County.

Kimberly K. Huffman, is found guilty of one count of felony embezzlement and one count of fraudulent schemes. The two-day trial began on Wednesday.

According to Chief Derek Snavely with the Hinton Police, Huffman stole at least \$5000 from the Hinton Little League between June 2008 and December 2013. She was indicted earlier this year.

A sentencing date has not been set.

Former LL treasurer sentenced for embezzling

Kimberly Huffman was sentenced to one-to-10 years on each of three felony counts in Summers County Circuit Court.

Huffman was convicted of embezzling more than \$5,000 from the Hinton Little League program and also from the Family Resource Network, an organization that helps children and families.

She was convicted in February by a jury on charges of felony embezzlement and felony fraudulent schemes involving the Hinton Little League. Then this summer, she accepted a plea agreement after a second felony embezzlement charge stemming from the Family Resource Network incident, Summers County Prosecuting Attorney Kristin Cook said.

On Monday she was sentenced by Summers County Circuit Judge Robert Irons. The sentences will run concurrent and she must pay restitution to both organizations.

Huffman is slated to enter prison Oct. 1 to allow time for her to meet medical needs.

— Daniel Tyson

Fairmont-Morgantown Housing Authority employee has been charged with embezzlement

By Michelle Dillon Times West Virginian



Michelle Mascaro
(Photo from FMHA website)

FAIRMONT — A Fairmont woman is facing felony charges for allegedly embezzling more than \$2,000 from the Fairmont-Morgantown Housing Authority (FMHA).

Michelle Francine Mascaro, 49, of 87 Hopewell Road, Fairmont, was arrested by the West Virginia State Police and charged with one felony count of embezzlement, one felony count of falsifying accounts and one felony count of conspiracy to commit a felony, according to the criminal complaint.

During April 2015, Masacaro was the public housing manager at the FMHA, and she commissioned a painter to do a painting project at her residence, the complaint said.

Mascaro told the painter to meet with a member of the FMHA maintenance department to get addresses and submit fraudulent invoices for FMHA properties to cover the cost of the work at her residence, State Police Cpl. T.W. Morris said in the complaint.

The painter completed fraudulent invoices totaling \$2,476 for work that he did not complete at three FMHA properties.

Mascaro's bond was set at \$10,000. Records indicate she is not at North Central Regional Jail or any West Virginia Division of Corrections Facility.

Email Michelle Dillon at mdillon@timeswv.com.

Charleston lawyer accused of charging state for work never done

CHARLESTON, WV (WCHS/WVAH) — A Charleston lawyer is facing felony charges for allegedly overcharging the state thousands of dollars for work that was never done.

A flawed accounting system appears to have allowed charges, including multiple days where more than 24 hours of work were claimed.

You know, simple humanity demands that this man not be put in jail,” lawyer Bill Lester said during a 2005 court argument.

Lester was in Panama Friday as a deputy called his name to answer a three-count indictment. A judge then ordered his arrest on charges of fraudulent schemes and computer fraud that took place in 2014, or earlier.

The charges accuse Lester of overcharging for public defender services and Creed Captial, LLC for time he spent working as a court-appointed criminal lawyer.

Creed paid court appointed lawyers up front for a fee rather than making them wait months for the state to pay them.

“He had billed, in a two-year period, over \$600,000 to the state for indignant defense, which at \$45 an hour is an awful lot of hours and the resulting investigation found he had at least 17 days he billed an excess of 24 hours,” said Dana Eddy of Public Defender Services.

Prosecutors think Lester is in Costa Rica but will still attempt to extradite him. About 800 lawyers will get paid yearly by Public Defenders Services to represent people who can't afford a lawyer.

A computerized billing system installed since some of Lester's questionable billing is expected to catch future problems more quickly.

Prosecutors continue search for WV lawyer facing fraud charges

When Assistant Kanawha County prosecutor Fred Giggenbach joined Twitter earlier this month, the first person to follow him was a Charleston lawyer charged with fraud, who prosecutors have been trying to locate for more than a year.

Lawyer William Lester faces charges of fraudulent schemes and computer fraud.

Lester is believed to be in Central America. The expense to possibly extradite Lester internationally is not a deterrent to prosecutors, said assistant Kanawha prosecutor Rob Schulenberg.

Kanawha Prosecuting Attorney Charles Miller made the call last year to expand extradition orders internationally, Schulenberg said. Kanawha prosecutors are working with the U.S. Marshal Service.

While serving as a court appointed criminal defense lawyer around 2014, Lester allegedly billed the state for thousands of dollars worth of work that he never did, according to prosecutors.

Over a two-year period, Lester allegedly billed the state more than \$600,000 for court-appointed work. At times, Lester's invoice showed him working more than 24 hours in a day, prosecutors claim.

Lester didn't show up last summer when he was scheduled to be arraigned in front of Kanawha Circuit Judge Duke Bloom. At the time, Lester was believed to be in Costa Rica, prosecutors said.

On May 5, shortly after following Giggenbach on Twitter, Lester tweeted directly to Giggenbach, writing "My Man Fred! Welcome to Twitter. Send my Best to All!"

Giggenbach and Lester had cases together prior to the filing of the criminal charges against Lester, the prosecutor said.

"Every time I saw him he'd say the same thing, 'My man, Fred,'" Giggenbach recalled.

Prosecutors are aware Lester has internet access, wherever he may be, Schulenberg said. The prosecutor blamed that on why he wouldn't reveal many details about his efforts to locate Lester.

"He could read it. I don't want to let him know what I'm doing," Schulenberg said.

During a hearing in April, Bloom ordered the warrant for Lester's arrest to remain active and applauded Schulenberg's efforts to track Lester down, according to Giggenbach.

"Maybe we can tweet him a plea deal," Giggenbach joked.

Reach Kate White at kate.white@wvgazette.com, 304-348-1723 or follow @KateLWhite on Twitter.

Appendix B
Powers & Duties
of the
Commission

WEST VIRGINIA



CSI

THE LEGISLATURE.

ARTICLE 5.

COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as "commission on special investigations"; composition; appointment and terms of members.

The purchasing practices and procedures commission, heretofore created, shall continue in existence but on and after the effective date of this section shall be named and designated the "commission on special investigations." The commission shall continue to be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be from the same political party; and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: **Provided**, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The commission shall be headed by two cochairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations shall have the power, duty and responsibility, upon a majority vote of the members appointed, to:

(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance or nonfeasance in office by any employee or officer of the state;

(5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;

(6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney or other authority empowered to act on such recommendation; and

(7) Make such written reports to the members of the Legislature between sessions thereof as the commission may deem advisable and on the first day of each regular session of the Legislature make an annual report to the Legislature containing the commission's findings and recommendations including in such report drafts of any proposed legislation which it deems necessary to carry such recommendations into effect.

(b) The commission is also expressly empowered and authorized to:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of section fourteen, article two, chapter fifty-two of this code, to consider any matter which the commission may deem in the public interest and, in support thereof, make available to such court and such grand jury the contents of any reports, files, transcripts of hearings or other evidence pertinent thereto;

(3) Employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems needed and, within the appropriation herein specified, fix reasonable compensation of such persons and firms as may be employed: *Provided*, That such personnel as the commission may determine shall have the authority to administer oaths and take affidavits and depositions anywhere in the state.

(4) Consult and confer with all persons and agencies, public (whether federal, state or local) and private, that have information and data pertinent to an investigation; and all state and local governmental personnel and agencies shall cooperate to the fullest extent with the commission;

(5) Call upon any department or agency of state or local government for such services, information and assistance as it may deem advisable; and

(6) Refer such matters as are appropriate to the office of the United States attorney and cooperate with such office in the disposition of matters so referred.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel must have first successfully completed a firearms training and certification program which is equivalent to that which is required of members of the state police. The

designated persons must also possess a license to carry a concealed deadly weapon in the manner prescribed in article seven, chapter sixty-one of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

The commission shall have the power and authority to hold executive sessions for the purpose of establishing business, policy, an agenda and the interrogation of a witness or witnesses: *Provided*, That if a witness desires a public or open hearing he shall have the right to demand the same and shall not be heard otherwise: *Provided, however*, That if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions with permission of the commission.

The commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairmen, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers or any other tangible thing within his control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha county or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§4-5-4. Compensation and expenses of members; other expenses; how paid; joint committee approval.

The members of the commission shall receive travel, interim and out-of-state expenses, as authorized in sections six, eight and nine, article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever shall be incurred unless the approval of the joint

committee on government and finance therefor is first had and obtained by the commission.

§4-5-5. Investigations exempt from public disclosure requirements.

The investigations conducted by the commission and the materials placed in the files of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.

§4-5-6. False statements to commission.

(a) A person is guilty of making a false statement to the commission on special investigations when:

(1) Such person, with the intent to impede the commission or to impede an investigator of the commission acting in the lawful exercise of his or her official duties, knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry;

(2) Such statement, representation, writing or document is made or given to the commission or an investigator of the commission acting in the lawful exercise of his or her official duties; and

(3) The misrepresentation is material.

(b) The provisions of subsection (a) of this section are not applicable to a person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, of an individual who is the subject of an investigation by the commission.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court.

Appendix C
Rules
of the
Commission

WEST VIRGINIA



CSI

**RULES OF THE
COMMISSION ON SPECIAL INVESTIGATIONS
WEST VIRGINIA LEGISLATURE**

Section 1. Establishment and Purpose of Rules.

A code of fair procedure for the Commission on Special Investigations is hereby established for the purpose of providing for the operation of this Commission in a manner which will enable it to perform properly the powers and duties vested in it, including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good.

Section 2. Definitions.

As used in these rules:

1. "Commission" means the Commission on Special Investigations as enacted by the Legislature at the regular session 1980.

2. "Hearing" means any meeting in the course of an investigatory proceeding (other than a preliminary conference or interview at which no testimony is taken under oath) conducted by the Commission for the purpose of taking testimony or receiving other evidence. A hearing may be open to the public or closed to the public.

3. "Public hearing" means any hearing open to the public, or the proceedings of which are made available to the public.

Section 3. Quorums and Voting.

(a) A quorum shall consist of a majority of the total authorized membership of the Commission.

(b) No action shall be taken by the Commission at any meeting unless a quorum is present. The Commission may act only by a majority vote of the total membership of the Commission.

Section 4. Hearings.

(a) The Commission may hold hearings appropriate for the performance of its duties, at such times and places as the Commission determines.

(b) Each member of the Commission shall be given at least three days' written notice of any hearing to be held when the Legislature is in session and at least seven days' written notice of any hearings to be held when the Legislature is not in session. Such notices shall include a statement of the subject matter of the hearing. A hearing and any action taken at a hearing, shall not be deemed invalid solely because notice of the hearing was not given in accordance with this requirement.

(c) The Commission shall not conduct a hearing unless a quorum is present.

Section 5. Issuance of Subpoenas.

(a) The Commission, by majority vote of the members present, may issue a subpoena requiring a person to appear before the Commission and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the Commission. The Commission also may issue a subpoena or subpoena duces tecum requiring any person to appear before the Commission and bring with him any books, records, documents and such other papers pertinent thereto.

(b) A person subpoenaed to attend a hearing of the Commission shall receive the fees and allowances as provided for in sections sixteen and seventeen, article one, chapter fifty-nine of the Code.

Section 6. Notice to Witnesses.

(a) Service of a subpoena requiring the attendance of a person at a hearing of the Commission shall be made in the manner provided by law, including the Rules of Civil Procedure, for the service of subpoenas in civil actions, except that the subpoenas shall be served without charge. Service shall be made at least seven days prior to the date of the hearing unless a shorter period of time is authorized by majority vote of the members present of the Commission in a particular instance when, in their opinion, the giving of seven days' notice is not practicable; but if a shorter period of time is authorized, the person subpoenaed shall be given reasonable notice of the hearing, consistent with the particular circumstances involved.

(b) Any person who is served with a subpoena to attend a hearing of the Commission also shall be served with a copy of the resolution establishing the Commission, a copy of the rules under which the Commission functions, a general

statement informing him of the subject matter of the Commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

Section 7. Conduct of Hearings.

(a) All hearings of the Commission shall be public unless the Commission, by majority vote of the members present, determines that a hearing should not be open to the public in a particular instance; provided, however, that if a witness desires a hearing in an executive session, he shall have the right to demand the same and shall not be heard otherwise. However, members of the staff of the Commission may be permitted to attend executive sessions with permission of the Commission.

(b) The cochairman on the part of the Senate, if present and able to act, shall preside at all hearings of the Commission and shall conduct the examination of witnesses himself or permit examination by other members of the Commission's staff who are so authorized. In his absence or disability, the cochairman on the part of the House shall serve as presiding officer. Selection of a presiding officer to act in the absence or disability of both cochairmen shall be by majority vote of the members present at a meeting at which there is a quorum.

(c) No hearing, or part thereof, shall be televised, filmed or broadcast except upon approval of the Commission, by majority vote of the members present.

Section 8. Right to Counsel and Submission of Questions.

(a) Every witness at a hearing may be accompanied by counsel of his own choosing, who may advise the witness as to his rights, subject to reasonable limitations which the Commission may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing.

(b) Any witness at a hearing, or his counsel, may submit to the Commission proposed questions to be asked of the witness or any other witness relevant to the matters upon which there has been any questioning or submission of evidence, and the Commission shall ask such of the questions as are appropriate to the subject matter of the hearing.

Section 9. Testimony.

(a) The Commission shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced, which record shall include rulings of the chair, questions of the Commission and its staff, the testimony or responses of witnesses, sworn written statements submitted to the Commission, and such other matters as the Commission may direct.

(b) All testimony given or adduced at a hearing shall be under oath or affirmation unless the requirement is dispensed within a particular instance by majority vote of the Commission members present at the hearing.

(c) Any member may administer an oath or affirmation to a witness at a hearing.

(d) The presiding officer at a hearing may direct a witness to answer any relevant question or furnish any relevant book, paper or other document, the production of which has been required by a subpoena duces tecum. Unless the direction is overruled by majority vote of the Commission members present, disobedience shall constitute a contempt.

(e) A witness at a hearing or his counsel, with the consent of a majority of the Commission members present at the hearing, may file with the Commission for incorporation into the record of the hearing sworn written statements relevant to the purposes, subject matter and scope of the Commission's investigation or inquiry.

(f) A witness at a hearing, upon his request and at his own expense, shall be furnished a certified transcript of his testimony at the hearing.

(g) Testimony and other evidence given or adduced at a hearing closed to the public shall not be made public unless authorized by majority vote of the members of the Commission who are present, which authorization shall also specify the form and manner in which the testimony or other evidence may be released.

(h) All information of a defamatory or highly prejudicial nature received by or for the Commission other than in an open or closed hearing shall be deemed to be confidential. No such information shall be made public unless authorized by majority vote of the members of the Commission who are present for legislative purposes, or unless its use is required for judicial purposes.

Section 10. Interested Persons.

(a) Any person whose name is mentioned or who is otherwise identified during a hearing of the Commission and who, in the opinion of the Commission, may be adversely affected thereby, may, upon his request or upon the request of any members of the Commission, appear personally before the Commission and testify in his own behalf, or, with the Commission's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing.

(b) Upon the consent of a majority of the members present, the Commission may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance or submission of evidence shall limit in any way the Commission's power of subpoena.

(c) Any person who appears before the Commission pursuant to this section shall have all the rights, privileges and responsibilities of a witness provided by these Rules.

Section 11. Presiding Officer.

The cochairman on the part of the Senate, if present and able to act, shall preside at all meetings of the Commission. In his absence or disability, the cochairman on the part of the House shall preside. Selection of a presiding officer to act in the absence or disability of both cochairmen shall be by majority vote of the members present at a meeting at which there is a quorum.

Section 12. Contempt.

(a) A person shall be in contempt if he:

1. fails or refuses to appear in compliance with a subpoena or, having appeared, fails or refuses to testify under oath or affirmation;
2. fails or refuses to answer any relevant question or fails or refuses to furnish any relevant book, paper or other document subpoenaed by or on behalf of the Commission;
or
3. commits any other act or offense against the Commission which, if committed against the Legislature or either house thereof, would constitute a contempt.

(b) The Commission may, by majority vote of the members present, authorize the taking of such steps as are necessary under law to obtain a contempt citation in such cases.

Section 13. Meetings.

Meetings of the Commission, other than hearings, shall be held upon call of either cochairman or upon majority vote of the members present. Unless otherwise directed by majority vote of the members present, such meetings will be held at the State Capitol.

Section 14. Limitation of Rules.

Nothing contained in these Rules shall be construed to limit or prohibit the acquisition of evidence or information by the Commission by any lawful means not provided for herein.

