

## COUNTY ATTORNEY'S OFFICE

James M. Reams, County Attorney

Rockingham County Attorney James Reams is pleased to submit the 2009 Annual Report for the Rockingham County Attorney's Office. The office continuously strives to seek justice and improve the quality and efficiency of processing cases within the confines of a delicate balance of resources. The County Attorney wishes to thank the County Delegation for their continued support of the mission of the Office and looks forward to continuing to improve justice for the citizens of this County.

*"The mission of the Rockingham County Attorney's Office is to improve the quality of life for the citizens of Rockingham County by seeking justice professionally, effectively and efficiently."*

The County Attorney is a constitutional officer whose duties and responsibilities have been defined by the common law and various statutes. The County Attorney is the chief law enforcement official in Rockingham County. In the absence of the Attorney General, the County Attorney performs all the duties of the Attorney General's office for the County. He has the responsibility for and exercises general supervisory control over the enforcement and prosecution of the criminal laws of the State.

On October 26<sup>th</sup>, County Attorney Jim Reams was named County Attorney of the Year by the New Hampshire Association of Counties at its annual meeting.

The year 2009 was another challenging one for the County Attorney's Office. We investigated, prosecuted and obtained convictions in some very significant and statewide precedent-setting cases.

**State vs. Schillaci:** In addition, our office prosecuted Jon Savarino Schillaci, one of the FBI's 10 Most Wanted Fugitives. In October of 1999, Schillaci was investigated by the Deerfield Police Department for possession of Child Pornography and Felonious Sexual Assault on a young boy with whom Schillaci resided with. Shortly thereafter, Schillaci fled New Hampshire and eluded police for almost 10 years until his capture and extradition from Mexico in June of 2008. Jon Savarino Schillaci was convicted and sentenced to 20 to 50 years at the New Hampshire State Prison.

**State vs. Marshall:** In March 2009, Jeffrey Marshall was convicted of Dispensing Controlled Drugs-Death Resulting for the 2007 drug overdose death of Anthony Fosher and the theft of money from Fosher as he lay dying. This conviction is the 3rd Drug Dispensing-Death Resulting case in Rockingham County and hopefully it sends a message to drug dealers that we will not tolerate peddling drugs in this County. As a result of this conviction, Jeffrey Marshall received a sentence of 10 years to life at the New Hampshire State Prison.

**State vs. Sanders:** Clarence Sanders was found guilty by a jury and sentenced to 5 to 10 years at the New Hampshire State Prison for the First Degree Assault on a 20 year old victim followed by 20 years to life for the Attempted Murder of the victim's mother by slitting her throat. Sanders attacked the woman and her son in Raymond in May of 2006 and fled the state. He was arrested a few days later in West Virginia and was later extradited to NH to stand trial. This case was a difficult prosecution because the defendant filed numerous claims of incompetency in order to avoid extradition.

**State vs. Mentus:** On October 9, 2009 Adam Mentus was found guilty by a jury for fatally shooting a 21 year old victim by mishandling a loaded firearm. Mentus was sentenced to 10 to 20 years at the New Hampshire State Prison for Manslaughter. This verdict points out the fact that firearms are not toys and must be handled with care.

**State vs. Margaritas (Exeter Restaurant Group, Inc.):** Margaritas was found guilty in October of 2009 of one misdemeanor charge of Prohibited Sales stemming from a 2008 drunk driving accident caused by an over

served patron. As part of the plea agreement, a \$4,000 fine was imposed along with a three-day liquor license suspension held in abeyance for a one year, pending no like infractions.

**State vs. Fat Belly's (Joe's NY Bar & Grill, LLC):** In June of 2009, Fat Belly's was convicted of misdemeanor Prohibited Sales following an over serving incident that led to a vehicle versus pedestrian accident in Portsmouth. The bar and grill was fined \$8,000 and ordered to pay a penalty assessment of \$1,600. In December of 2009, the County Attorney's Office presented Portsmouth Police and the New Hampshire Liquor Enforcement Bureau with checks for \$4,000 each to be used toward the prevention of other such incidents. The two departments are currently using the money to combat over serving and drunk driving.

The County continues to grow at a rate that is well above the rate the State is growing. The threats to our communities are likewise increasing. The laws regarding criminal law, criminal procedure, search and seizure and permissible investigative techniques is increasingly complex. The County Attorney has an important responsibility to provide general oversight, guidance and training to the 37 law enforcement agencies in the County. The responsibility is not only to ensure that the community is protected from criminals and that cases are successfully prosecuted, but also to ensure that all of our citizens' rights are scrupulously protected. In addition, for the ninth straight year, the County Attorney's Office set a record for the number of new cases indicted. We reviewed, prepared and presented 2375 cases for review by the Grand Jury.

Since 1999, when County Attorney Reams first took office, the number of cases handled by the County Attorney's office has dramatically increased. A strict comparison of the actual number of True Bills returned by the Grand Jury reveals a leap from 1254 in 1998 to 2375 in the year 2009, an increase of 189%. Simply comparing these numbers cannot accurately reflect the increased workload handled by this office. Some might suggest that the numbers could be skewed by "overcharging" certain types of cases. This is not done in Rockingham County. The County Attorney exercises great restraint and consideration when making charging decisions. The County Attorney prefers to track the workload by comparing the number of "case files" opened. A file may have numerous charges, but will involve one investigation and one defendant.

**Crime Statistics For Matters Filed In Superior Court:** There is no totally accurate way to measure how "busy" a prosecution office is. However, there are a number of statistics that I measure to give indicators of the volume of work:

- Indictments have increased from 1254 in 1998 to 2375 in 2009;
- 1061 cases were scheduled for trial by the Superior Court in 2009, down from 1116 in 2008 due to the Court not scheduling jury trials for several weeks throughout 2009;
- 246 defendant's closed files were reopened in 2009 covering approximately 855 reopened charges. Reopened cases generally require prosecutors to respond to post conviction motions for a variety of requests and to appear at related hearings (Probation Violations). The Court has adopted a liberal policy with regard to accepting and scheduling hearings for these types of pleadings. The matters have become increasingly time consuming for staff.
- Duty calls from police departments were 291 in 2009;
- Victim/Advocates had 8,047 contacts with victims and witnesses during 2009;
- Our two part-time investigators handled 385 cases; located over 120 trial witnesses; recorded 92 various interviews and handled 13 police department complaints. Additionally, they transported 35+ witnesses for trials.
- Under the new Act that became effective January 1, 2007, prosecutors may file a civil commitment petition for recommitment when a sex offender's prison sentence ends and the offender is believed to be a threat to public safety. Pursuant to RSA 135-E:1, an offender can potentially qualify for a five-year minimum civil commitment in a secure psychiatric facility. The County Attorney's prosecutors reviewed 13 Sexually Violent Predator Notifications received from the Department of Corrections. Thus far, Rockingham County has not had a sex offender that qualified for civil commitment.

Prosecutors: The County Attorney and his Deputy oversee a staff of 34 in the Superior Court office, including 18 Assistant County Attorneys. The Assistant County Attorneys are divided into teams covering three geographic regions of the county, created by the County Attorney.

The County Attorney continues to be proactive in providing assistance during the earliest stages of a case. Prosecutors are available to answer questions from law enforcement regarding investigations and charging decisions 24 hours a day. All prosecutors are periodically scheduled to be “on-call” at night and on weekends. Prosecutors are “exempt” employees who do not receive overtime or other consideration for this added duty. The prosecutors recognize that this is an important function that results in better investigations, better prosecutions, and protection of the rights of the citizens of the county. On an average of every night, prosecutors answer calls from police departments.

In addition to these duties, and as noted above, the prosecutors carry an average of over 115 felony cases at all times. By way of contrast, please note that the Public Defenders have a contract with the State that provides for a maximum *weighted* caseload of 55 cases, including misdemeanors and other duties. Our heavy workload places significant stress on the entire staff.

District Court: While the County Attorney is responsible for criminal prosecution in his County, police departments have traditionally prosecuted their own cases at the District Court level in New Hampshire. The County Attorney’s Office provides assistance to departments when requested and occasionally for short periods when departments have been without personnel. The County Attorney has assumed complete responsibility for District Court prosecution under circumstances where the individual department or municipality reimburses the county for the associated cost of providing that service. This is done because the County Attorney does not provide district court prosecutors for all of the towns in Rockingham County.

The Plaistow District Court prosecutor position was created in 2003 with 6 towns having entered a contract with the County Attorney’s Office to provide a Prosecutor for the towns. In 2004, the County Attorney’s Office was given the authority to hire an administrative employee to assist in the prosecutorial duties of the Plaistow District Court and this position was filled. In 2009, 1790 complaints were handled by the prosecutor which represents 1132 cases.

Additionally, in 2007, the Exeter District Court prosecutor position was created with 2 towns having entered the contract, Exeter and Fremont. Thus far, the departments are very happy and it appears to be a success.

The County Attorney provides prosecution for certain towns in the Auburn District Court area including Nottingham and Candia. This office handled a total of 341 misdemeanor cases filed in the Auburn District Court. The County Attorney previously prosecuted cases for Epping and Northwood. Those towns have opted to hire attorneys on a part time basis to act as their prosecutors.

Victim/Witness Coordinators: The County Attorney’s Office has three full-time Victim/Witness Coordinators. The Coordinators work primarily on victim cases. They provide information and assistance to people affected by crimes with compassion and professionalism. Coordinators guide victims through the criminal justice process and work to ensure that the victim’s rights are protected in accordance with RSA 21-m:8. The Victim/Witness Coordinators averaged over 485 telephone conferences and more than 66 office conferences with victims and witnesses of crime each month.

One of the 3 advocates continues to be partially grant funded through the Violence Against Women Act. This grant limits the types of cases that this advocate may work on. The County has been fortunate to keep this grant for so many years. However, it is now a decreasing amount. It is important to maintain the level of services demanded by the Victims Bill of Rights. With the increasing caseload, it will be necessary to add an additional full time advocate in the near future.

Investigators: The investigators reviewed approximately 385 cases during 2009. In addition, the investigators handled 13 complaints against individual Police Departments, performed background checks for prospective employees, located and transported many trial witnesses and also fielded numerous walk-in contacts during 2009. The investigators review all cases involving victims. Other duties of the investigators include but are not limited to assisting law enforcement agencies in follow-up investigations, locating missing witnesses and conducting some interviews.

Support Staff: The support staff at the County Attorney's Office consists of an Office Administrator, File Intake Manager, Receptionist, five Administrative Legal Assistants, four Legal Assistants and one Paralegal. The support staff is responsible for duties such as transcribing, drafting, filing and mailing various legal correspondence and pleadings, coordinating and scheduling monthly Grand Jury proceedings, as well as assembling all felony files for review by the Prosecutors.

The support staff generated approximately 7,941 trial subpoenas in 2009 and processed approximately 818 cases involving multiple items of trial evidence. Additionally, the office received 34 requests for Interstate Agreement on Detainers (IAD's), 6 requests for Governor's Warrants and the County Attorney approved 78 Out-of-State Arrest transports. The Reception Office received an astonishing 33,854 incoming telephone calls this year.

Medical Examiners: In every case of a medicolegal death, the Medical Examiner, or an Assistant Deputy Medical Examiner is required to respond and conduct an examination. Assistant Deputy Medical Examiners conducted 175 scene investigations and 230 telephone consults this year. We rely on local funeral homes to provide removal and transportation services. It is anticipated that these expenses may continue to rise slightly. However, legislation is centralizing the Medical Examiner's Office and administering the ADME's. This relieves the county of the burden and creates a superior system.

Child Advocacy Center of Rockingham County: The center is the first established in New Hampshire and now provides child friendly forums for multidisciplinary interviews at sites in both Portsmouth and Derry. The Child Advocacy Center was Rockingham County's response to the legislature's mandate that agencies investigating child abuse work cooperatively to minimize the impact on the child. A second Child Advocacy Center site located in Derry was opened in 2003.

The Child Advocacy Center is a non-profit entity that is staffed and funded through grants and fundraising efforts. The County Attorney is on the board of directors and has representatives on the advisory board of the Child Advocacy Center. The model has been so successful that a legislative committee has recommended that our model be implemented statewide. The Governor and Attorney General have supported this model and have made matching funds available to enable the other counties to establish Child Advocacy Centers of their own. Prosecutors attended 120 interviews at the Child Advocacy Center in 2009.

The process is time consuming for the attorneys, but is critical to successful resolutions to these types of cases. As the Court docket becomes more demanding, it will be difficult to keep pace with covering these interviews. In many of the jurisdictions across the country, prosecutors are rotated through full time assignments at their Child Advocacy Centers. Proper coverage for the Child Advocacy Center will be essential for continued success.

New Challenges & Opportunities: During the latter part of 2009, the Rockingham Accountability Project (R.A.P.) was implemented by the County Attorney's Office in conjunction with the Department of Resources and Economic Development (D.R.E.D), Division of Parks. Since the County has limited space available to house incarcerated defendants and the Division of Parks has a need for manual labor to maintain the Parks on limited funds, the goal of this project is to provide alternatives to incarceration in Rockingham County but also holding defendants accountable by providing meaningful community service. The County will benefit from this project by reducing the population at the House of Corrections. In 2009, 36 defendants had been ordered to

perform 4,350 hours of community service through the R.A.P. program. By year end, 7 defendants had completed 535 hours of manual labor to our park systems, having cost the taxpayers no money.

Also established this year is the conception of the Second Chance Program. This program is structured to give non-violent first offenders under the age of 25 the opportunity to earn their way back from their mistake and to atone for the infliction of costs upon society. Second Change agreements must include a fine, 200 hours of community service through the R.A.P. program or an approved non-profit organization, mandatory weekly drug testing (at the cost of the defendant), anger management, drug and alcohol counseling and/or life skills classes as appropriate, and full restitution

Child Pornography: The availability of the internet has provided a new forum for certain criminals and sexual predators. The laws to provide appropriate protections are slowly catching up to meet the threats. Investigating and prosecuting these technology-assisted crimes present new challenges for law enforcement and prosecution. The types of cases that have reached into our communities include a new way to violate a protective order with relative anonymity, cyber stalking, child pornography, solicitation, and identity theft.

The growth of high speed internet access has made the transfer of child pornography easy, fast and inexpensive. The volume and graphic depictions of children being sexually abused is shocking. Law enforcement is fighting to stop the spread of this abuse. Unfortunately, this crime has gone from being statistically insignificant in 1999 to 6% of the caseload in the first 1/3 of 2008.

In closing, I want to commend the entire staff of the Rockingham County Attorney's Office. They are dedicated and compassionate professionals who are committed to the mission of this office. They have and will continue to do what it takes to get the job done. The citizens of this county can be assured that the staff of this office serves them well.

I would also like to thank the Commissioners as well as the entire legislative delegation sitting as the County Convention for their support in equipping the Rockingham County Attorney's Office with the staff and tools necessary to handle the continuing challenges that crime presents to Rockingham County.