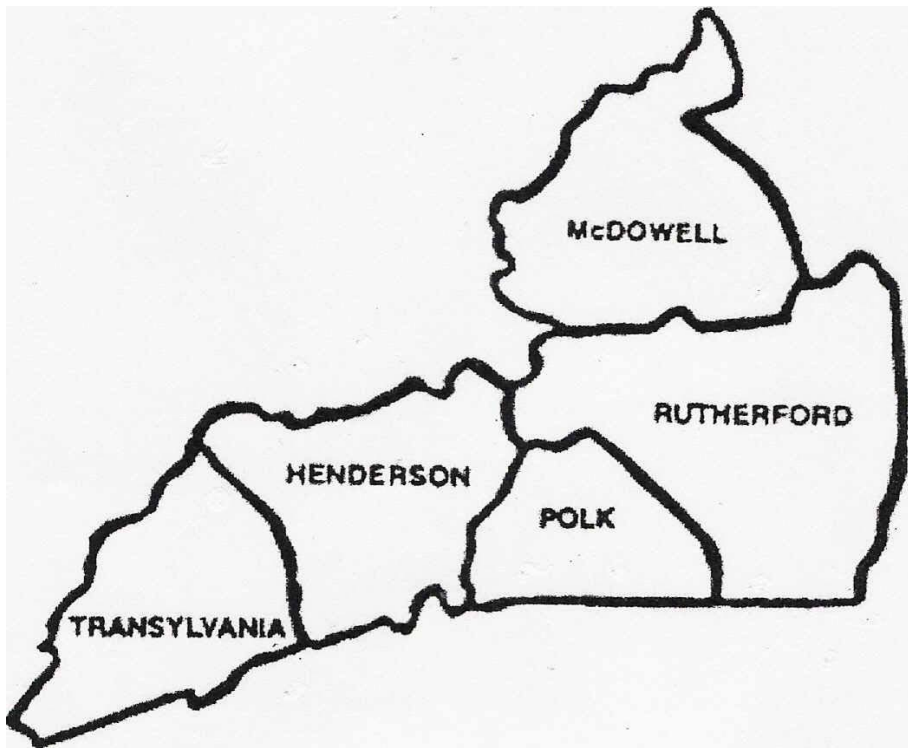


JUSTICE, LAW AND ORDER

A Report From the Office
Of The District Attorney

2005 ANNUAL REPORT



JEFF HUNT

District Attorney

29th Prosecutorial District

(Henderson, McDowell, Polk, Rutherford and Transylvania Counties)

* ANNUAL REPORT FOR 2005 OF THE
29TH PROSECUTORIAL DISTRICT OF
THE STATE OF NORTH CAROLINA

A.) From the desk of Jeff Hunt, District Attorney for the 29th District:

I. Introduction

In 1995 I became one of the first, if not the first elected District Attorney in North Carolina to issue an annual report. Herein is the annual report for 2005 of the 29th Prosecutorial District. Our reports contain non-confidential information and statistics* maintained by the Administrative Office of the Courts (AOC) in Raleigh as part of its statutory responsibilities. These reports manifest my continuing belief that the citizens of the 29th district (Henderson, McDowell, Rutherford, Polk, and Transylvania counties) should have access to information enabling them to more adequately evaluate the prosecutorial function and the criminal court system.

The job of District Attorney in North Carolina continues to evolve in sometimes surprising, dramatic and substantial ways. This year I have tried to streamline and somewhat “distill” our annual report to cover the points of interest and importance to our constituents. I hope to have succeeded to some degree.

II. Prosecutorial Function

The prosecutorial function is certainly one of the most important elements of our criminal justice system. In North Carolina the courts have long recognized the vast authority coupled with the awesome responsibility of the Office of the District Attorney (formerly denominated the “Solicitor”).

The “Solicitor” (District Attorney) position is established in the North Carolina Constitution of 1868 as amended (Article IV, Section 18). The State Supreme Court acknowledged the importance of the Office of the District Attorney by referring to the (then Solicitor) as the “most responsible officer” of the court and as the “right arm” of the criminal court system. State v. McAfee, 189 NC 320, 321, 127 SE 204 (1925); State v. Carden, 209 NC 404, 410, 183 SE 898, cert denied, 298 U.S. 682, 56 S. Ct. 960, 80 L. ed. 1402 (1936).

“Openness” has always been our watchword since my first hours in office. My office is one of the most open district attorney’s offices in the state in terms of our continual efforts to keep the public fully informed of the performance, problems, and needs of the criminal court system as a whole, and the district attorney’s office as a part thereof. That “openness” is a two way street which likewise allows us to learn and absorb the community’s sentiment regarding general and specific philosophies, cases, and situations.

* Some statistics are calendar year and some are fiscal year (July 1, 2004 through June 30, 2005) as indicated. In spite of the Administrative Office of the Courts’ best resolve, these statistics are historically “soft” in that they vary in their accuracy. This is due to differences among our hundred counties and thirty-nine prosecutorial districts in procedures, methods, and manner of recordation. The AOC, judges, clerks of court, and district attorneys have made significant progress toward computerization and standardization, but much is left to do. These numbers do, however remain valuable in enabling us to spot critical trends as we proceed form year to year.

III. Summary of the 29th Prosecutorial District

The 1868 Constitution of North Carolina provides: “a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof...” will be created from time to time by the State Legislature. There are 39 elected District Attorneys. Their districts range from single county metropolitan to multi-county rural, to multi-county districts possessing some characteristics of both other categories.

I maintain an official office in each of the five county courthouses and have been able to increase the degree of services rendered and the number of days each of these offices is manned by our assistant district attorneys and non-lawyer staff members. In the 1995/1996 session the Legislature expanded our number of allocated assistant district attorneys to 11, and non-lawyer staff members to 11. We now have the same number of assistant district attorneys but acquired two additional staff positions (one in 29A; one in 29B) for the new worthless check program.

IV. Some Points of Interest:

Safe Driving School continues to be a valuable, popular and successful tool for us which I instituted early in my first term. The concept is spreading as several newly elected District Attorneys in North Carolina are either considering implementing the program, or have already done so. Last year approximately 40% of the 39 prosecutorial districts offered this important program.

Administrative Traffic Court- 2004 saw our 5th county commence regular administrative traffic court. Transylvania County has joined the other four counties of the 29th Prosecutorial District. Administrative traffic court could not be accomplished without the cooperation of Chief District Court Judge Cilley, each Clerk of Superior Court, and the law enforcement officers of each county as well as the highway patrol.

This traffic court is important because it saves the public substantial time, and the taxpayers thousands of dollars each year by reducing the number of hours law enforcement officers must spend in courtrooms waiting for cases to be called and tried. The result is we substantially reduce the overtime expenses of the respective law enforcement departments, and we keep more law officers on the street rather than waiting in court. Only certain traffic matters are resolved in this way. More serious traffic cases, and all contested traffic cases are still handled in our regular criminal District Courts across our district.

“H” and “I” Felony Cases

In 2005, the 29th district got somewhat back on track regarding guilty pleas which can be handled in District Court in “H” and “I” felony cases. The Legislature in Raleigh partly clarified the issue of “H” and “I” felony pleas in District Court. If the District Court judge agrees and the defendant and his lawyer stipulate with the District Attorney to do so, many “H” and “I” felony matters may be resolved in District Court under North Carolina law by guilty plea.

Several of the 39 North Carolina prosecutorial districts including ours, take advantage of this provision of our law. Through working with our District Court judges and clerks’ offices of the 29th district, we have collectively been able to overcome last year’s hurdles to using this process efficiently.

As District Attorney, I thank, once again, those District Court judges in our district who have chosen to assist us in that endeavor. Both our district and superior criminal courts are badly overburdened with cases. District Court sessions are held more frequently and District

Court judges who entertain guilty pleas in “H” and “I” felony cases perform an important service which saves untold tax dollars and huge blocks of Superior Court trial time. Thanks to our District Court judges who work with us in this effort.

Domestic Violence

I am very proud of the fact that I testified several times in 2004 at the Legislature as President of the North Carolina Conference of District Attorneys. Twice I addressed the committee of the House dealing with the domestic violence laws of North Carolina.

The North Carolina District Attorneys strongly supported toughening up penalties for domestic violence and the Legislature passed a bill late in the 2004 session. We continue to prioritize prosecuting domestic violence, and assisting groups involved in efforts against domestic violence in every way we can. This includes strongly supporting grants for these entities throughout the district.

Domestic violence will continue to occupy a high level of prioritization in the 29th Prosecutorial District, and in the other 38 prosecutorial districts of North Carolina. Now that the budget crisis seems to have passed, it is the District Attorneys’ hope that some additional resources will be directed to this important issue by our Legislature.

V. Worthless Check Program

Early in 2005 we implemented a new “worthless check program.” I pressed for this program for years, and finally succeeded in convincing our legislators of its desirability. Representative Mitch Gillespie of McDowell County spearheaded allowing some start-up funds for the program in his county in the Summer of 2004.

We started the program in McDowell and expanded it into Rutherford County. In the 2005 Legislative session with the direct influence of Senator Tom Apodoca and Representative Carolyn Justus (both of Henderson County) the additional funds were located to begin the program in Henderson County. We hope to ultimately expand it into Transylvania and Polk counties this year, or early next.

The program diverts many of the large number of worthless check misdemeanor cases away from criminal District Court if the defendant pays the bad check with additional costs within a short period of our notice. Only defendants who are not engaged in criminally bouncing checks can qualify for this program.

The program has some other limitations, but helps our honest merchants collect on bad checks with much less time and effort. However, the plan frees up substantial District Court time (always at a premium) by resolving many of those non-criminal worthless checks out of court. This saves taxpayers literally thousands of tax dollars each year, and our merchants are generally very pleased with this new beneficial program.

Of course, defendants with terrible criminal records regarding bouncing checks do not qualify for this program. Likewise, those who qualify, but refuse to pay off their bad check in the period provided after hearing from us will go to criminal District Court for trial.

The best part of the program is, while it saves us court time and therefore substantial tax dollars; it becomes self-sustaining in the districts which already have it up and operating. Defendants who benefit from it pay off the checks and costs which costs ultimately fund the continuation of the program. Once fully operational it should resolve hundreds of these cases which would otherwise clog the District Courts of our district and keep us from devoting our precious court time to other cases.

Thanks to our influential and forward looking State Legislators of this district.

VI. North Carolina Conference of District Attorneys

In North Carolina virtually all of the resources, other than office facilities, directed to each of the 39 prosecutorial districts are allocated directly by the North Carolina State Legislature. Each individual prosecutorial district is unique and the Legislature interfaces with the 39 elected District Attorneys on an individual basis, as well as on a unified basis through the North Carolina Conference of District Attorneys. The statutes of N.C. mandate that each of the 39 elected District Attorneys in the state make up the membership of this conference. I have been fortunate enough to serve since the year 2001 on the executive committee of the North Carolina Conference of District Attorneys.

The Conference of District Attorneys actively informs the public and the Legislature of how the prosecutorial function is being carried out by the 39 elected district attorneys across the State of North Carolina. The Conference of District Attorneys and those of its members who are active in its affairs seek to advise the Legislature, Administrative Office of the Courts, and the public on what prosecutorial resources are needed. In addition, members of the Conference seek to advise and inform about areas where costs can be reduced, efficiencies increased and criminal statutes made more or less severe in order to maximize the impact and efficiency of the public's expenditures of tax dollars on the North Carolina criminal justice system and the prosecutorial function.

In July 2003 I commenced a one-year term as President of the North Carolina Conference of District Attorneys, having been elected by the 39 elected District Attorneys of our state. The 2003 session of the North Carolina General Assembly grappled with one of the grimmest fiscal situations since the Great Depression in the 1930s. The Conference of District Attorneys is very conscious of the budget crisis, and has approached its legislative requests with the budget in mind.

In 2005 the Conference of District Attorneys proposed an extensive legislative agenda centered on a package request for a number of additional assistant district attorney positions which would add at least one to each prosecutorial district in the state.

In addition, District Attorneys in every district are losing more "journeymen" prosecutors who leave for private practice or to other positions in order to make more money. This is in the long run substantially more expensive to taxpayers than reasonably increasing the allowed compensation to assistant district attorneys and support staff. Consequently, the Conference included this request in their legislative agenda.

Although the Conference was able to identify the available funds for these elements of their proposed package, the Legislature "earmarked" them for other expenditures and turned down the Conference requests. Simultaneously, a series of legislation cropped up which District Attorneys and law enforcement thought would damage our criminal justice system.

The Conference of District Attorneys thus confronted these negative proposals, and attempted to urge the passage of two rather small but quite important improvements to the new criminal discovery bill negotiated in last year's legislative session. This took up most of the time of the Conference during the Summer legislative session of 2005, except for one additional proposal.

Once again, certain elements of the public who oppose the death penalty and some Legislators attempted to pass a moratorium of the death penalty in North Carolina. Once again the Conference of District Attorneys expended much energy and resources to oppose this bad idea and once again the will of over 60% of North Carolina's citizens prevailed and the moratorium bill was not passed.

Although, North Carolina's death penalty is reserved for only the most horrendously shocking homicides, the Conference of District Attorneys expects a final effort on the

moratorium in the Summer of 2006. The House has assembled another “study commission” on the matter, and even one of its members has stated that it appears to be stacked with anti-death penalty enthusiasts from the inception.

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VII. 29th District Has Highest DWI Conviction Rate, Again

Over the years the 29th Prosecutorial District has had the highest, or near the highest conviction rate in Driving While Impaired cases. In August of 2004 the Charlotte Observer announced a study involving a 26-month period and conviction rates of contested cases across North Carolina during that period. (see appendix)

The subsequent articles by reporters of the Observer revealed that the 29th Prosecutorial District had the absolute highest conviction rate (98%) in the entire state. We have attached the front page of the initial article referring to the 29th District. (1st page only due to lack of space).

We are proud of this great recognition of the 29th Prosecutorial District. My office places a high priority on DWI cases’ and it is rewarding to be held up again as an example of excellent performance in the prosecution of these cases. (See attached letter to the Charlotte Observer editor.) As you might expect 2005 marked a continuation of our emphasizing the successful prosecution of DWI and alcohol related cases. We continue our tradition of excellence in these cases.

We congratulate our assistant district attorneys, our law enforcement officers, and our judges. Thank you, all!

VIII. Two Important Statutes

In the past we have featured two statutes of interest in this section of our report. The first is a new statute as of last year, but the issue remains a dangerous and important one presently.

N.C.G.S. § 20-157 requires drivers on four lane roads to slow down and pull into the left lane for stopped emergency vehicles including patrol cars, if the same can be done safely. Please continue to obey this safety statute. Recently law enforcement officers in other North Carolina communities have been hurt or killed in mishaps when this requirement was ignored.

The next statute of note is not new. However, I have repeatedly featured it on public service radio announcements which are recorded each Holiday season. The second statute of interest herein is N.C.G.S. § 14-315.1 which requires safe storage of firearms.

In the Winter months especially, children stay indoors for greater periods of time and often have their friends over, sometimes without knowledge of one or both parents or adults in

the home. All too often an improperly stored firearm kept for hunting becomes a tool of a horrible disaster when a minor gains access to it and an accidental shooting results.

It can be a crime for someone who resides with a child, and who possesses a firearm to fail to properly store it and keep it secured away from minors if a shooting accident results. Please exercise your Second Amendment rights responsibly. Properly maintain and store your firearms all year round.

IX. The Figures

Since 1995, my office has paid close attention to the statistics compiled and maintained by the Administrative Office of the Courts for the 29th Prosecutorial District. These statistics are valuable tools of management useful in addressing resource allocation, performance and efficiency issues.

29th District-wide Statistics

2005

| | |
|---|----------|
| Superior Court cases pending Dec. 2005: | 1833 |
| Average age of felony cases pending July 1, 2005 (end of fiscal year): | 287 days |
| Total dispositions by entire criminal court system of the 29 th District in 2005 fiscal (including infractions wherein defendant entered guilty pleas by paying fine and costs by waiver): | 70,236 |

A). Readers should note the substantial reduction in the number of cases pending in Superior Court across the district as of December 2005. This pending case load in Superior Court is over a 27% reduction from last year.

This reduction in pending Superior Court cases at year-end represents a monumental effort in our office, as we are shorthanded by two assistant district attorneys and have been for the better part of the second half of the calendar year 2005.

B). Note also, the trend continues upward for total cases disposed. 70,236 represents over a 4% increase on top of an approximate 5% increase in the fiscal year 2004. Overall these statistics reflect the successful approaches we have taken to continue introducing new efficiencies into the prosecution function in the 29th Prosecutorial District; while at the same time not sacrificing justice and accountability for criminals.

As always, the purpose of an annual report for the 29th continues to be to point out problems developing. As District Attorney I am concerned at the increase in the average age of felony cases. This is an important statistic. However, as with the one year uptick last year in “pending Superior Court cases,” at the end of the year, we know and understand the driving forces behind this increase. As a result, we are putting together an action plan to address this issue.

Part of the problem is the “fallout” from the district split, and our being shorthanded in my offices. Additionally, the two smallest counties which have the least number of weeks of criminal Superior Court allocated by the AOC, have both experienced an increase in those types of criminal cases which require the greatest amount of added court time. As a further

manifestation of the severe shortage of resources allocated to the criminal justice system and law enforcement, the State Bureau of Investigation labs are terribly shorthanded. This has stretched the time prosecutors must wait for laboratory confirmation in drug cases to over a year in many instances.

The drop off in “H” and “I” felony pleas in District Court shows up directly in adding to the average age of felony cases by dumping those “H” and “I” felony cases which would have been resolved in District Court back into criminal Superior Court. Section IV (earlier in this report) and a section in last year’s annual report describe the Appellate Court decision which resulted in many District Court judges determining to no longer do “H” and “I” pleas. As District Court judges begin to again handle guilty “H” and “I” felony pleas, this will have a positive influence on the average age of our felony cases in the district.

Finally, the natural progression of homicide cases in our State is elongated due in large part to the long list of protections extended to criminal defendants under our system of justice. While appropriate at this stage of the cases, the result is a directly negative impact on the average age of felony cases. This is especially true in prosecutorial districts like the 29th which are not allocated criminal Superior Court as regularly as the metropolitan prosecutorial districts. As described hereafter in this report under “Homicides,” we experienced a substantial increase in new homicide cases in the district in 2005 over fiscal 2004 (from 11 to 19).

X. Homicides

As an “indicator” figure we have always tracked homicides. In the fiscal year ending June 2005 we resolved 14 homicide cases in the 29th Prosecutorial District. As we predicted in the last annual report, the new filings of homicide cases for the same fiscal year rose to 19 from 11 in fiscal year ending in June 2004. In the second half of calendar year 2005 my office obtained a death penalty verdict in the Raines case, a double murder which occurred in the Henderson County community of Etowah. This is the first death penalty verdict returned by a Henderson County jury in twenty years (see article attached).

XI. Personnel

This year was unusual in that we have operated for the second half of the calendar year essentially shorthanded. In late Summer Assistant District Attorney David Norris who is in the Army National Guard was activated and is now serving in Kuwait. We do not know when we will have him back. We thank him, needless to say, and his family for this important sacrifice which makes our country safer and stronger.

In addition, another of our senior assistant district attorneys joined the office of the U.S. Attorney for the Western District of North Carolina in 2005. We hold David Norris’ position open for his safe return; and have had difficulty in filling the other open position. Because of the legislation imposing the district split the last day of this year, we have found it thus far difficult to fill that open position.

The result has been our 9 assistant district attorneys have been doing two additional assistants’ caseload along with each of their own. This has created an unusually heavy burden, since we are shorthanded with the assistant district attorney positions we have when fully staffed, due to the vast increases in caseload and hours necessarily expended per case over the last decade which has not been matched by the Legislature with additional prosecutorial resources. It has been since 1995-1996 that additional assistant district attorney positions have been increased in this district and in virtually all other North Carolina prosecutorial districts.

In early 2006 District Court Judge Athena Fox Brooks will leave the bench temporarily as her Army Reserve unit has been called to Germany. She will be back on the bench when she returns with her unit to North Carolina. Judge Brooks was an assistant district attorney in our office in Henderson County prior to her election to the bench. We will miss her and wish her a safe and speedy return.

Thanks to our marvelous assistant district attorneys and staff!

XII. The District Split

From the 1920s to 1954, what is now the 29th Prosecutorial District was the 18th district made up of the following 6 counties: Henderson, McDowell, Polk, Rutherford, Transylvania and Yancey. In 1955 the Legislature placed Yancey County into what is now the 24th Prosecutorial District. For the next half century the then 18th district which is now the 29th district has been made up of the five counties listed less Yancey.

The 2005 State Legislature enacted legislation splitting the district as of December 31, 2006. As District Attorney I actively opposed the split; but lost that argument. I did so respectfully knowing that the Legislature had absolute Constitutional authority to do so.

Until January 1, 2007 I will remain District Attorney of all five counties of the 29th. Thereafter Henderson, Polk and Transylvania will be 29B, and McDowell and Rutherford 29A. Thanks to the citizens of 29A for the privilege of being their District Attorney for 3 terms. In 2006 we will do all in our power to continue effectively and efficiently prosecuting all criminal cases arising in those counties. In 2007 and thereafter, if I am re-elected in 29B, I will do all I can to render assistance to the new District Attorney of 29A whenever asked to do so.

XIII. In closing: "Thanks!"

Each year my office interfaces with, coordinates with, combines efforts with, joins forces with, and often relies upon a seemingly endless list of individuals, groups, agencies, departments, bureaus, boards, commissions, elected and appointed officers and officials, as well as other entities. The list would be too great to print, so we simply thank and acknowledge them for their respective contributions to another successful year for the 29th Prosecutorial District.

XIV. A Special "Thanks"

Our Senior Resident Superior Court Judge, Zoro Guice plans to retire at the close of his current term (December 2006). Judge Guice has been a wise, energetic, and tireless public servant and friend to the citizens and residents of the 29th district. Thank you Judge Guice for your tremendous contributions to our success.

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