Meet the 2006-2007 KCDAA Board

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Wyandotte County Deputy District Attorney
KCDAA Board: 6 years
KCDAA Member: 13 years

Thomas R. Stanton
Vice President
Reno County Deputy District Attorney
KCDAA Board: 4 years
KCDAA Member: 16 years

David Debenham
Secretary/Treasurer
Shawnee County Deputy District Attorney
KCDAA Board: 4 years
KCDAA Member: 25 years

Ann Swegle
Director
Sedgwick County Deputy District Attorney
KCDAA Board: 2 years
KCDAA Member: 26 years

Jacqie Spradling
Director
Johnson County Assistant District Attorney
KCDAA Board: 2 years
KCDAA Member: 15 years

John Wheeler, Jr.
Director
Finney County Attorney
KCDAA Board: 1 year
KCDAA Member: 14 years

No Photo Available

Melissa Johnson
Director
Seward County Assistant County Attorney
KCDAA Board: Since Dec. 2006
KCDAA Member: 12 years

Doug Witteman
Past President
Coffey County Attorney
KCDAA Board: 5 years
KCDAA Member: 10 years

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Chair, Legislative Committee
Assistant Sedgwick County District Attorney Chief, Narcotics and Vice
KCDAA Member: 23 years

Margaret (Maggie) McIntire
CLE Committee Chair
Assistant Sedgwick County District Attorney
KCDAA Member: 18 years

Nola Tedesco Foulston
NDAA Representative
Sedgwick County District Attorney
KCDAA Member: 18 years
Our mission:
The purpose of the KCDAA is to promote, improve and facilitate the administration of justice in the State of Kansas.

For questions or comments about this publication, please contact the editor: Mary Napier mary@napiercommunications.com (785) 783-5494

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The Mitchell County Courthouse was completed in 1901 at a cost of $38,310. It was called the Queen Mary of Courthouses in Kansas, being built of pitch-faced limestone in the Richardsonian Romanesque design.

The building contains 25 rooms on three floors. In the halls, the original stone floor tiles, decorative metal ceiling and early embossed wall coverings are visible. The original ornate fireplaces can be seen in several offices.

The courthouse was listed on the National Register of Historical places November 23, 1977.
By this time, I am the past president of the KCDAA, but I decided to submit a final President’s Page. For me, last year was a busy year, as I am sure it was for many of you. It was an eventful and productive year for our organization, thanks to the exceptional efforts of many of our members and colleagues. As I look back over the year, I am grateful for the efforts of many and for the help and courtesies extended to me while I have served as president of the Kansas County and District Attorneys Association. While I have enjoyed the opportunity in earlier editions to use this page to wax philosophical ideas, I think it appropriate to now use this space to express my appreciation to those individuals who have worked to make a positive contribution to this organization during the past year.

Initially, I want to express my sincere appreciation for all of the efforts of those who have served as members of the KCDAA Board of Directors during my term: Past President Tom Drees, Vice President Ed Brancart, Secretary/Treasurer Tom Stanton, Director Dave Debenham, Director Ann Swegle, Director Jacqie Spradling and Director John Wheeler. This group has worked diligently and effectively to make decisions, both financial and philosophical, to move this organization into the future. This diverse group of people brought varied and valuable perspectives to the table and while there were occasional disagreements, spirited and productive discussion always led to an informed decision. Because of their work, this organization has continued to fulfill its mission to promote, improve and facilitate the administration of justice in the state of Kansas. It has truly been a privilege and honor to serve with these good people, and I would encourage each of you to join me in thanking them for their efforts.

I would also like to express my gratitude to two of our members who are the chairs of specific committees. Maggie McIntire has done a wonderful job as chair of our CLE committee. We have enjoyed two great conferences that provided outstanding learning opportunities. Maggie would be the first to say that many other people contribute greatly, however, her leadership has been invaluable. Equally worthy of praise is our legislative chair Mike Jennings. Mike has been a prosecutor for 28 years, and his tireless efforts to promote legislation that allows us to better protect the citizens we serve has been truly noteworthy. It was a pleasure to honor Mike this past October with the well deserved Lifetime Achievement Award.

Considerable thanks for this past year’s efforts is also due to another group of people. That group consists of both the Board of Editors and the Advisory Council for The Kansas Prosecutor, the publication that you hold in your hand. This publication is less than two years old, and it has become nothing less than a thoroughly professional magazine that is chock full of useful and interesting information that assists us in our work and professionally reflects our work to those outside of our organization. While I hope that these individuals will forgive me for not listing them individually, for the list is long, I nevertheless would encourage you to turn back a page and review their names in the left hand column. Many of these names are undoubtedly familiar to you, and I would encourage you to thank them when the opportunity presents itself.

This organization has continued to flourish this past year due in large part to individuals who are not members of the KCDAA, but who play a large role in both the day-to-day operations of the organization and in the promotion of the organization’s objectives. Executive Director Steve Kearney and the balance of his able staff not only manage the daily affairs of the organization and effectively
Doug Witteman travels to Washington

Seventeen members of the Kansas Bar Association (KBA) were sworn in before the U.S. Supreme Court in Washington, D.C., at 10 a.m. Monday, Oct. 16. KBA President David J. Rebein, Rebein Bangerter PA in Dodge City, presented the attorneys to the Court for admission.

Following the group ceremony, the new admittees were honored at a reception hosted by the KBA in the west conference room of the U.S. Supreme Court building. Chief Justice John Roberts and Justice Ruth Bader Ginsburg, as well as family and guests of the new admittees, attended the reception.

The KBA & KCDAA would like to congratulate the following individuals who were sworn in before the U.S. Supreme Court:

- Ross D. Alexander, Alexander Casey Dwyer McPherson & Franklin, Wichita
- Laura L. Ice, Cessna Finance Corp., Wichita
- Hon. Cheryl Rios Kingfisher, City Of Topeka Municipal Court, Topeka
- John G. Kite, Kite & Day, St. Francis
- David J. Kuckelman, Smiths Group, Germantown, Md.
- Robert Rex Lee II, Wilson Lee Gurney Carmichael & Hess, Wichita
- Leo L. Logan, Coates & Logan LLC, Overland Park
- Marcia L. Montgomery, Marcia L Montgomery P.A., Overland Park
- Michael G. Norris, Norris & Keplinger LLC, Overland Park
- Gary M. Peterson, Cooper & Lee LLC, Topeka
- John E. Taylor, Slattery & Rawson P.C., Kansas City, Mo.
- Roger Hadley Templin, Payne & Jones Chtd., Overland Park
- Jeffrey Lynn Thompson, Thompson & Thompson, Scandia
- Regine Lucy Thompson, Thompson & Thompson, Scandia
- Craig Lee Uhrich, Jones Day, Dallas
- Deborah C. Westphal, Westphal Law Office LLC, Mission
- Douglas Paul Witteman, Coffey County Attorneys Office, Burlington

KBA members recently admitted to practice before the U.S. Supreme Court: First row (l-r): Laura Ice, Wichita; Marcia L. Montgomery, Overland Park; KBA President David J. Rebein, Dodge City; Hon. Cheryl Rios Kingfisher, Topeka; Regine Thompson, Scandia. Second row (l-r): Deborah C. Westphal, Mission; Michael G. Norris, Overland Park; Gary M. Peterson, Topeka; Robert Lee II, Wichita; Third row (l-r): Doug Witteman, Burlington; John G. Kite, St. Francis; John E. Taylor, Kansas City, Mo.; Jeff Thompson, Scandia; Fourth row (l-r): Hon. Karl W. Friedel, Wichita (previously sworn in by written motion); Roger H. Templin, Overland Park; Leo Logan, Overland Park; David J. Kuckelman, Germantown, Md.; and Craig L. Uhrich, Dallas. Also admitted was Ross Alexander, Wichita (not pictured).
The 2007 session is off and running! There are many new faces in Topeka, so the learning curve will be great for many. Revenues are currently up, which means that tax increases and expanded gaming are less likely. The education debate is no longer thrust before the court, so it appears the desire of the legislature is to focus on other important issues. Those issues include, but are not limited to: campaign/election reform, franchise and property tax relief, technical education reform, deferred maintenance for college campuses, job creation, prison capacity, energy, and immigration.

You might notice that I did not list any specific crime legislation above. Well, I guess we all just assume that enhancements to the Kansas criminal code will pass this session. The judiciary committee never lacks for things to do, so I am sure it will be another busy session for them. (To learn more about what the committee has been doing, see the article on Page 6.)

The major issue related to crime that the 2007 legislature must address is prison capacity. It appears that currently there is an ample amount of bed space for at least the foreseeable future. It is the out years that are a concern for state policymakers. With the passage of Jessica’s law last session, it is no secret that beyond 2009, prison capacity will become a serious problem for our state to address.

One major item that the 2007 Kansas legislature would like to address is the issue of prisoner re-entry. Kansas has one of the highest re-entry levels in the nation for probation violators. Why is this you might ask? The Council of State Governments Justice Center has reported that Kansas does a very poor job at offering training programs for those currently incarcerated. Seventy-two percent of prisoners needing vocational education do not participate in programs prior to release. Half of prisoners in need of substance abuse treatment do not participate in treatment prior to release. It is very evident that Kansas needs to focus some resources in prison programs that help rehabilitate and train those people incarcerated.

Kansas also does a very poor job at offering community-based services for someone either on probation or released from prison and placed on parole. Kansas’ number one problem with prison capacity lies with probation violators. The Council of State Governments’ Justice Center reported that 65 percent of admissions to prison are people who violated the conditions of their probation or parole. Over the last two years, probation revocations increased 17 percent while parole revocations decreased 26 percent. Probation revocations have increased in 10 years from 1,245 in 1996 to 2,038 in 2006. Parole revocations have only risen from 1,447 in 1996 to 1,641 in 2006.

It is expected that by 2009 the prison population for male cells will be full and by 2010 for female cells. Since a peak in 2004 of 9,153 commitments, the prison population has slowly declined to 9,046 in 2005 and 8,933 in 2006. This is the first time in over 10 years that the prison population has seen a two-year decline in the prison population. It is projected to increase to 9,185 in 2007 and 11,231 by 2016. As you can see the prison population is a serious problem that must be dealt with in the very near future.

Prison population is not the only issue related to crime that will be addressed this session. The legislature is going to consider a requirement that controlled substance offenders register with the Kansas Bureau of Investigation. Some legislators feel they are just as dangerous to society as those who are currently required to register under the law.

A major issue for law enforcement and prosecutors during this session is the stand and defend law that was passed during the 2006 legislative session. The argument used last session to pass this legislation was that it was needed because of the conceal carry law that was passed last year. The problem with the bill is rival gang members can take the life of another gang member and use this as a defense from prosecution. This is becoming a severe problem across the state as judges in some jurisdictions are not even allowing prosecutors to file charges. This is a critical issue that must be addressed this session.

Well surely that is enough discussion about crime legislation. Believe it or not, the Kansas legislature comes to Topeka every year to deal with more than just amending our criminal statutes. There are going to be several other hot topics this legislative session.

Let’s start with maybe one of the hottest issues, which is deferred maintenance for our university campuses.
Having been given a report from the Kansas Board of Regents, the price tag has now reached over $700 million. Almost unbelievable, huh? Well, the governor is planning to outline a proposal to solve this problem going forward. Expect some discussion around this issue to focus on expanded gaming. Gaming proponents have struggled for years to get any expansion. Some states use their gaming revenues to support deferred maintenance at their universities. Don’t be surprised to see the discussion on expanded gaming to center around the $700 million problem.

Another area of interest among legislators is campaign finance and election reform. There seems to be some concern among legislators with advance balloting, no photo id requirements, duties of poll watchers and public disclosure of the financing of elections. The legislature has passed measures the last couple of sessions that were ultimately vetoed by the governor. It is only feasible to expect that another attempt at reform is on the horizon.

Energy and tax cuts also appear to be high on the list of priorities. Legislators are expected to look closely at increasing energy exploration to other states, incentives to conserve energy, and additional investment in manufacturing biofuels from Kansas agricultural products. The expansion of electrical capacity in the state will most likely center on wind energy. Energy is an important issue for all Kansans.

You might be asking yourself, why would tax cuts be on the table with all of this additional proposed spending? Republicans are committed to decreasing franchise taxes for small businesses, freezing the unemployment tax and reducing or eliminating the tax on Social Security benefits for senior citizens. Tax policy is always under review each session and with revenue up for our state, it is very likely that this session will include some type of tax cuts.

As these and many other issues develop over the course of the next few months, please be aware and watch what the legislature is debating. This is your government and the very issues they are debating will have some effect on you as a Kansan. As a taxpayer and citizen of Kansas, it is good to be tuned into these issues. Legislators rely on experts, such as prosecutors, for information to make good sound decisions. If you need a resource to find information concerning a bill, please go to www.kslegislature.org. This is the official website of the Kansas legislature, and is a great resource for information concerning the legislature.

### Kansas Prosecutors Foundation begins Feasibility Phase

The Kansas Prosecutors Foundation continues to move forward setting up 2007 as a very exciting year for the KCDAA. The Foundation is the next logical step in moving the KCDAA forward as the Bar Association for Kansas Prosecutors. A feasibility study on a fundraising campaign is beginning in January authorized by your Board of Directors at its December 2006 meeting in Kansas City.

The purpose of the study is to determine the types of individuals and/or communities of interest most likely to contribute to the Foundation; what range of amounts of gifts are indicated; what type of legacy there is interest in sustaining or endowing; and any other relevant information that will aid the Foundation in a fundraising effort.

Over the course of the next couple of months our fundraising consultant will be conducting targeted interviews with Kansas community and foundation leaders; and Kansas County and District Attorneys Association leaders and members. These interviews will assist them in developing their recommendations regarding how this new Foundation should go about the business of conducting the initial fundraising campaign. You may well be one of those selected for an interview. On behalf of your Association, be generous with your time and wisdom so your Board has the best information going into the fundraisers report for implementation.

Following the interviews our fundraising consultant will then prepare a report for the Board detailing such things as the interviewees background and selection; the statistical results of the interviews; analysis and commentary relative to the conduct of a fundraising campaign; conclusions and recommendations for further action; and design of collateral materials to guide future initiatives.

Once this research is complete and the report delivered, the Board will have sufficient information to act upon for conducting the Fundraising Campaign itself. Research of this type takes the guesswork out of how to proceed and assists in setting realistic sets of expectations, goals, and a timeline from which to work.

The opportunity to foster the development of career prosecutors in a variety of ways unavailable to the KCDAA currently makes this endeavor one of the most exciting prospects for the KCDAA family in several years. With the KCDAA and KPT&AI on solid footing, this new phase of organizational development will give your Board another tool in the tool box to advance the mission of quality career professional prosecution, benefiting the citizens of the state of Kansas that you all have taken an oath to protect.
Each year the Kansas Legislature considers a wide array of bills that potentially impact the administration of criminal justice in Kansas. Typically these bills are introduced with the best of motives and represent a sincere attempt to make Kansas a safer place for all its citizens. To make sure that this laudable goal is actually reflected in the legislation that is passed, it is important for legislators to receive feedback from the prosecutors, defense counsel and judges who deal with Kansas criminal law and procedure on a daily basis.

With this in mind, I would like to briefly share with you an overview of a few of the issues recently considered by the Special Committee on Judiciary and that may be given further consideration during the legislative session.

### Enhanced Penalties for Driving Under the Influence

During the 2006 legislative session, SB 341 was introduced. As drafted, this bill would have provided enhanced penalties for persons driving with a BAC of 0.16 or greater. Testimony indicated that as of January 2006, 31 states had enacted enhanced penalties for “high-BAC” drivers. These laws vary in the level at which the enhanced penalties take effect from 0.15 to 0.20. In Kansas, drivers with BAC levels of greater than 0.15 accounted for over 50 percent of fatal accidents from 2003–2005. In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act, which provides grant incentives for states that enact laws aimed specifically at drivers with a 0.15 BAC or greater. In order to qualify for the grant program such laws must include enhanced penalties.

The Special Committee on Judiciary used its consideration of SB 341 to make a number of recommendations relating to DUI law in Kansas. These include:

- Suspension of driving privileges for a period of one year on the first occurrence of a person driving with a BAC of 0.15 or greater.
- Allow admission of testimony regarding a drug impairment assessment conducted by a law enforcement officer certified as a drug recognition evaluator.
- Double the criminal penalty for persons who refuse to submit to a BAC test or who drive with a BAC of 0.15 or greater.
- One month sentence enhancement per child under the age of 14 in the vehicle of a person with a BAC of 0.08 or greater.

### Residency and Proximity Restrictions for Sex Offenders

The Special Committee on Judiciary met jointly with the newly created Sex Offender Policy Board to consider the issue of residency restrictions for convicted sex offenders. Under current Kansas law there is no prohibition on where a sex offender may reside once returned to the community. Furthermore, Kansas law specifically prohibits localities from imposing such restrictions. This policy seems counterintuitive to many Kansans and a good deal of interest has been expressed by legislators and ordinary citizens in establishing residency “buffer zones” around schools, play grounds and other areas where children congregate.

The Department of Corrections has been a strong opponent of residency restrictions and brought in officials from several states to discuss potential unintended consequences associated with their implementation. The Committee learned that the County Attorney’s Association in Iowa, where residency restrictions are in place, has made repeal of that law its number one legislative priority. In particular, concern was expressed regarding the logistical difficulties faced by sex offenders and those
who supervise them when residency restrictions are imposed. This concern coupled with a paucity of data showing the effectiveness of such restrictions were offered as reasons not to adopt such a policy in Kansas.

The Special Committee recommended that the Legislature delay any action on creation of residency restrictions pending the recommendations of the Sex Offender Policy Board. That having been said, the Committee also recommended that the Legislature give consideration to placing specific restrictions on the ability of sex offenders to enter onto the premises of schools or other areas where children congregate.

**Uniform Child Abduction Prevention Act**

The Uniform Child Abduction Prevention Act (UCAPA) is designed to provide states with a process for deterring both domestic and international child abductions by parents or other caregivers. The UCAPA is not intended to supplant existing state law regarding child custody determinations and enforcement. The UCAPA has been drafted to work in conjunction with the existing Uniform Child Custody Jurisdiction and Enforcement Act (K.S.A. 380-1336). Under the UCAPA, prosecutors (among others) would be able to bring an action under the act to seek to protect a child from a threatened abduction.

The UCAPA establishes an extensive list of factors to be considered by a court in determining whether there is a credible risk of abduction. When a determination of credible risk is made and the risk is found to be imminent, a warrant to take physical custody of the child may be issued. Other remedies may include imposing travel restrictions placing the child’s name in the U.S. State Department’s Child Passport Issuance Alert Program, or requiring the person subject to the order to obtain an order from a foreign country containing identical terms to any existing child-custody determination.

The Special Committee on Judiciary recommended that a bill modeled on the UCAPA be introduced during the 2007 Legislative Session. Some concern was expressed regarding the use of “credible risk” rather than “clear and convincing evidence” as the standard of proof under the UCAPA.

**Kansas Crime Stoppers Council**

The Special Committee on Judiciary also gave consideration to SB 2992, which would have provided for the establishment and funding of a Kansas Crime Stoppers Council within the Attorney General’s Office. The Council would be responsible for assisting in the creation of local crime stoppers programs and coordinating the activities of those local programs. The Council’s activities would be funded via a $35 fee collected from offenders placed on probation, community corrections, or diversion.

The Special Committee did not recommend enactment of this proposal. This was largely based upon a perception by the Committee that the creation and implementation of crime stoppers programs is best left to local communities.

**Docket Fees**

Under current law, approximately 15 funds receive all or some of their funding from docket fees. For some time legislators have been concerned that many of these funds do not bear a direct relationship to the operation of the Courts. Furthermore, concern has been expressed that those programs that receive monies directly from docket fees may be unfairly escaping the normal oversight associated with being required to make an appropriation request on an annual basis. While expressing no desire to decrease the funding for any particular program, the Special Committee on Judiciary did recommend that the following funds no longer receive monies from docket fees: Indigents’ Defense Services Fund; Crime Victims Assistance Fund; Protection from Abuse Fund; Kansas Juvenile Delinquency Prevention Trust Fund; Permanent Families Account in the Family and Children Investment Fund; Child Exchange and Visitation Centers Fund; Juvenile Detention Facilities Fund; and the Trauma Fund.

Again, it is important to stress that the intent of this proposal is not to reduce the funding for any of these programs, but to simply subject them to the normal appropriations process. The amount of the docket fee would not be affected and monies currently going to the above noted funds would instead be placed in the State General Fund.
“Can Billy come out to play?”

For parents, this is a familiar scenario. We answer the door to see a neighborhood child, wanting to play with our child of the same gender and age. We send them out to the backyard, or downstairs to the family room, happy to see them play together.

But what if the person at the door asking that question was an unknown adult man, 40 years old, average looking though acting evasive? Would you invite him in? Would you send him out to the backyard to find Billy?

Of course not. You would slam the door in his face, and you’d promptly call 911 to report this suspicious character.

But those we would stop at the front door are slipping in the back, via the Internet. They are communicating with our children. They are establishing relationships with our children based on graphic sexual discussion – a process called “grooming,” which is designed to prepare them for adult/child sexual encounters. And they are arranging to meet our children, to consummate the matters discussed. Examples from my recent case files are:

- A 32-year-old Pennsylvania man who communicated with a 14-year-old Shawnee, Kansas boy, exchanging sexually explicit videos until the man traveled to Kansas to meet the boy.

- A 30-year-old Prairie Village swim coach who developed a relationship with a 14-year-old Missouri girl, which culminated in his traveling to her residence for sexual activity.

- A 61-year-old California man whose computer revealed a history of seducing young girls, progressing rapidly from talk of “deeply spiritual love” into talk of sexual activity, and who traveled to Kansas to have sex with a 14-year-old girl he had contacted over 60 times.

- A 23-year-old Kansas man whose Internet communications with a 14-year-old New Mexico girl led to him arranging (over the Internet) to drive to her home, pick her up at a predetermined location, and return her to his home in Kansas where they engaged in sexual intercourse.

- A 43-year-old college coach who engaged in extremely graphic sexual talk with a 14-year-old New Hampshire boy, sending him sexually explicit videos both of himself and of others.

Some of these child “victims” were in fact law enforcement officers posing as children online to catch these predators before they could damage a real child. But unfortunately, some of these cases involve predators already engaging in this activity with real children.

Before the widespread availability of the Internet, we had some assurance that those prowling for children for sexual contact would have trouble actually finding available victims. Now, however, through the back door known as the Internet, they come into our children’s homes and bedrooms every day.

On February 15, 2006, United States Attorney General Alberto Gonzales announced Project Safe Childhood, a United States Department of Justice initiative aimed at preventing the abuse and exploitation of kids through the Internet. He has directed all United States Attorneys to develop locally designed partnerships of federal, state and local law enforcement officers in their respective districts to investigate and prosecute Internet-based crimes against children. His goals include the following:

- Coordinate and enhance the already ongoing efforts of law enforcement and prosecutors to investigate and prosecute child exploitation cases.
• Identify and rescue child victims.
• Coordinate national investigations and initiatives (note that my own examples above all involved interstate communications).
• Increase federal involvement in child pornography and enticement cases.
• Facilitate training for federal, state and local law enforcement officers, and
• Enhance existing community awareness and educational programs such as the NCMEC and the ICAC programs.

The timing of this initiative has never been more critical. The FBI’s national “Innocent Images” initiative has seen a growth in cases from barely 100 in 1996 to nearly 2,500 each of the last three years. During this time, the nature of child pornography has also become much more alarming. More than four-fifths of child porn offenders possessed pornographic images of children 6 to 12 years old, and two-fifths had pornographic images of children 3 to 5 years old. These images were more sadistic, with 20 percent of offenders having images including bondage, sexual violence or torture. And these images were more sophisticated, with 40 percent of offenders possessing child pornographic videos.

During this same time, we have also learned a lot about the impact of child pornography. A federal Bureau of Prisons study revealed that 80 percent of offenders incarcerated for “only” child pornography offenses admitted to having molested children without detection – on the average of 26 child victims per each child porn offender.

As we’ve all learned, child pornography is not just pictures of scantily clad 14-year-olds, and it’s not just harmless voyeurism. It poses a real danger to our children (to say nothing of the children victimized by the making of such images – children whose agony and distress is evident from the images themselves).

The last time I was honored to write for The Kansas Prosecutor, I wrote about child predators and child pornography. I was somewhat reluctant to return to the same topic on this occasion. However, this area of crime remains the one which concerns me the most. And since my last submission, Attorney General Gonzales announced the Project Safe Childhood initiative. It is new (our first national conference being held in December 2006), it is a priority of the Attorney General, and it is directed toward a critical societal problem, which deserves all of our efforts in opposition. Therefore, I thought it meritorious to use this occasion to direct your attention to this initiative.

Much as our successful Project Safe Neighborhoods gun initiative was, Project Safe Childhood is designed to be a full partnership with state and local prosecutors and law enforcement. We are already in the process of forming working groups with local prosecutors and law enforcement, and with victim service providers across the state. If you’re interested in participating in these working groups, please contact my office. Sometimes these offenses will support federal prosecution and federal prison sentences, and sometimes we will decide that the matter can be most effectively handled by state prosecution. Frankly, the U.S. Attorney’s office and the federal agencies want to see these cases prosecuted – no matter whether it is done federally or locally. We only care that they are investigated, that they are prosecuted, and that our children are protected.

I look forward to working with many of you on this (and other) matters of mutual concern in the near future. I am proud and honored to be associated with each of you, and with our fine law enforcement officers and agents, in our mutual pursuit of justice.
In retrospect, it was too perfect.

The family first met the man at the public pool. He was friendly, striking up conversation. He seemed to be at the pool whenever the family was there. By coincidence, he was a religious man. He had written religious poetry, which he brought to the pool and shared with the family. He could quote Bible verses almost as well as the parents could. He “spoke their language.” He was nice to the parents’ four children, who ranged in age from a baby to a teenage boy, with two beautiful blonde girls in the middle. The parents told him about their life: mom home schooled all four kids, plus kept up the townhouse (barely) while dad worked long hours as a laborer.

Then one day, the man showed up at their doorstep. He was desperate. He had been evicted, and was living in his car. He needed a place to stay. Would they prayerfully consider letting him stay with them for a while? He could help out. What would Jesus do? The couple prayed over it.

Soon, the parents had a boarder. A week turned into two, which turned into a month. But…he was awfully handy. He understood. He saw how hard mom worked, raising and teaching those kids, so he helped out. He cleaned house, cooked, bought food.

Oh, and helped take care of the kids. Especially the girls. The teenage boy did not have much to do with him – did not like him, in fact - but the girls, aged eight and four, that was different. They seemed to like him. He was a great helper. He read to the girls. He took them downstairs to watch videos. He took them to the park. He gave a stressed-out mom a break. And what a relief it was.

He even told the parents about his criminal past, about how he had been to prison for an “incident” involving an 18-year-old girl, a huge misunderstanding, and how Christ had saved his life. He said he had repented. To mom, he was the living embodiment of all the things that her religious beliefs taught her. And he was so helpful.

Eventually, he moved out. Dad was a little upset at how long he had lived there. But he still came by. He knew that mom needed help, needed a break. Her husband worked such long hours. So he continued to help around the house, especially with the girls.

One spring afternoon, a neighbor was sunbathing when some activity near the townhome-complex swing set caught her eye. It was a man. A very obese, pale man, with a girl on his lap. The girl appeared to be touching, no, playing with the man’s bare chest. He took a dollar bill and put it deep in his pocket. The girl retrieved it. He did it again. The neighbor stared. The man looked at her, and stopped. He put the girl down and walked away, leaving her and her toddler brother alone in the park. The neighbor spoke to the parents, who spoke to the children.

The two girls told their parents what had been happening. The girls ultimately disclosed to authorities that they had been touched inappropriately by the man’s hand and mouth. He did it while he was taking care of them, reading to them and watching videos with them. The two girls told a jury about this, also.

The man was actually a convicted sex offender who had served time in prison for touching a little girl. He had a conviction from the 1980s for attempted indecent liberties with a child. An investigation revealed that he had a decade-long track record of molesting girls. Most of the activity had never been reported to authorities. He was the “textbook” predator: a man who attached himself to a family, and knew what to say to get them to invite him into their lives. He groomed the girls, and had his way with them.

The man, whose case is now on appeal, was convicted in Johnson County District Court of two counts of severity level three aggravated indecent liberties with a child, and one count of severity level two aggravated criminal sodomy. He was sentenced consecutively, as a criminal history category “D,” to 322 months. Almost 27 years.

This man most certainly
fits the definition of the term “sexual predator” as envisioned by the legislature: convicted of a sexually-based offense, and likely suffering from a disorder or abnormality, which makes him likely to engage in repeat acts of sexual violence. If, at age 56, he is able to serve out his sentence, he may be evaluated for civil commitment under whatever statute and program exists in 2026 (his earliest release date).

This case illustrates the damage a repeat sex offender can do to a family and a community at large. This is why our legislature passed a series of amendments to the Kansas Statutes Annotated, which significantly increase the penalties for both first-time and repeat child sex offenders.

“Jessica’s Law,” House Bill 2576, created new crimes and increased the penalties for existing crimes.

What would this child molester’s sentence look like if his crimes had been committed today?

As noted above, the defendant was charged with, and convicted of, three offenses involving children well under the age of 14, the triggering age for the most severe penalties in the new child sex-offender scheme. The defendant was 56, well above the minimum age of 18 for imposition of the most severe penalties. The defendant had a prior conviction (pre-guidelines) for attempted indecent liberties with a 9-year-old victim.

Today, he would be charged with aggravated criminal sodomy, K.S.A. 21-3506(a)(1), with an allegation that the offender is age 18 or older, an off-grid felony.

Additionally, he would be charged with two counts of aggravated indecent liberties with a child, K.S.A 21-3504(a)(3)(A), with an allegation that the offender is age 18 or older, an off-grid felony.

He would likely have to be sentenced as a first offender, however.

House Bill 2576, “Jessica’s Law,” has two subsections that deal with recidivist offenders. New Section 1 deals with the worst of the worst, those offenders who have two or more prior convictions for “any sexually violent crime.” These crimes are enumerated in subsection (c) and include “(B): indecent liberties with a child, K.S.A 21-3503, and amendments thereto.”

A person sentenced under Section 1 is an “aggravated habitual sex offender” and “shall be sentenced to imprisonment for life without the possibility of parole.”

The man whose story is told above does not fall under this section because, although he has molested numerous children in the past, he has but one prior conviction.

HB2576, New Section 2, subsection (b)(1) deals with offenders who are 18 years of age or older and have a prior conviction:

On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as such crime, the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years.

The crimes listed in subsection (a)(1) include aggravated criminal sodomy and aggravated indecent liberties with a child. This is what the man discussed above was convicted of. So he gets 40 years, right?

Wrong. The crimes listed in subsection (a)(1) are aggravated trafficking; rape of a child; aggravated indecent liberties with a child; aggravated criminal sodomy of a child; promoting prostitution (child under 14); sexual exploitation of a child (new subsection 5, child under 14); or an attempt, conspiracy or solicitation of any of these crimes.

Indecent liberties with a child is not one of the predicate offenses, which qualify for imposition of a 40-year sentence.

Indecent liberties with a child, K.S.A.21-3503, was changed significantly in 1993 with the passage of the Kansas Sentencing Guidelines Act. Prior to 1993, if you had intercourse with, or sexually touched, a child under the age of 16, you were guilty of
indecent liberties with a child. Aggravated indecent liberties with a child, K.S.A. 21-3504, was defined as the act of indecent liberties committed by a guardian, proprietor or employee of a foster home, orphanage or any public or private institution in whose charge a child has been placed by a court or other agency acting under color of law.

Today, the acts you commit and the age of the child determines whether you are guilty of one of the subsections of aggravated, or “just” indecent, liberties with a child.

The second-offender provision of Jessica’s law in Kansas does not apply to the pool of offenders, including the subject of this article, who were convicted of touching or having intercourse with young children prior to 1993.

So, what would his sentence be?

HB2576, New Section 2 (a)(1) is the first-time offender provision. It states that an offender over the age of 18 who commits, among other things, aggravated criminal sodomy or aggravated indecent liberties with a child under age 14 serves a minimum sentence of not less than 25 years. The exceptions include a provision, found in subsection (a)(2)(B): “the defendant, because of the defendant’s criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for non-drug crimes and the sentencing range exceeds 300 months. In such cases the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.”

In this case, the defendant was criminal history category 2-D on the sentencing grid. His range for the primary crime was 181-190-200 months. The judge sentenced him to consecutive terms of 200, 61, and 61 months for a total of 322 months, or 26.8 years. Does this mean that he was ‘subject to presumptive imprisonment’ for greater than 300 months? Maybe. That will probably be for an appellate court to decide.

If the answer is yes, his sentence today would be the same as it was before Jessica’s law. If the answer is no, his sentence would be 25 years, a year and eight months less than what he received.

Jessica’s law is silent as to whether the 25-year sentence applies to each count of an information, or whether they can run consecutive to one another.

That is for another article, another day.

Either way, it is clear that both the pre-July 1, 2006 law and Jessica’s law contain lengthy prison sentences for defendants who prey on children in Kansas.

About the Author
Scott Toth worked in the Johnson County DA’s office for 18 ½ years. His former position was senior assistant district attorney who specialized in the area of child sexual abuse prosecution. He is now in private practice as a partner with Garrettson, Webb & Toth, a criminal defense firm in Olathe.
Winter 2007

The Kansas Prosecutor

How to Conduct Performance Evaluations

by District Attorney Nola Tedesco Foulston, 18th Judicial District of Kansas

It’s a new year…time for working on those long overdue staff evaluations.

The evaluation of staff attorneys in the prosecution office seems like a daunting task. With the myriad of responsibilities each prosecutor masters, it may seem difficult to draft a fair and comprehensive evaluation document that covers the unique skills that the prosecutor must demonstrate to be effective in carrying out the duties and responsibilities of their appointment.

With more than 50 staff attorneys as well as a great number of other professional staff, the Office of the District Attorney for the 18th Judicial District [Sedgwick County] has undertaken a major project to design new job descriptions for staff members and an evaluation process that is both comprehensive and instructive in guiding attorneys to succeed in their career path and their employment obligations. Let’s consider why evaluations are important, and how the process may be streamlined for optimum effect.

What is an evaluation?

The performance evaluation is a periodic assessment that must objectively appraise the employee’s performance at assigned tasks. In addition, the evaluation is intended to measure the extent to which the employee’s performance meets the requirements of a particular position and to establish goals for the future. Evaluations are also meant to strengthen the relationship between supervisor and employee and to open up channels of communication. The evaluation process appraises past performance, recognizes good performance and identifies areas that might require improvement. For the supervisor, the evaluation process is used to assess their own communication and management skills.

What purpose does an evaluation serve?

The single most important aspect of the performance evaluation is to foster an open dialog and communication between the employee and supervisor that clearly establishes what is expected relative to job performance standards. To be effective, the criteria and assessment of the evaluation must be understood and acknowledged by the employee. Standards for employment evaluations must be applied consistently in order to successfully evaluate the performance of employees and to assist them in advancement and improvement. Periodic evaluations give the opportunity to both the supervisor and the employee for an open dialog that will encourage self-improvement, build knowledge bases and enhance their skill levels.

What skills should you evaluate?

Common employee evaluations have only selected generic categories for appraisal. Too often, these evaluations fit in the “one size fits all” category, and serve little purpose in the objective evaluation process of professional staff. Typically, the broad categories of “cookie cutter” evaluation elements may include: job knowledge, dependability, job performance and production, interpersonal skills and employee characteristics. For supervisors, general areas of evaluation include: planning and organizing, judgment and decision making, employee development, coaching, counseling and evaluating, leadership and control of operation/
resource management. The scale for evaluation commonly includes terms such as: Exceeds, Fully Meets, Meets Most and Does Not Meet job requirements.

These typical evaluations serve little purpose in motivating employees to plan and achieve performance goals, and as a result, many employees consider the appraisal process to be perfunctory. Because employment evaluations must serve key goals of educating the employee, motivating their performance and assisting them in their career path, organizations must design an evaluative process that clearly defines the criteria for assessment and the specific goals that employees must reach in meeting the organizational mission and its goals.

How does a prosecution office evaluate the performance of its staff attorneys?

Prosecutors are unique in the field of employment. While attorneys have requirements that extend to their professional practice from outside of the office [Rules of Professional Conduct], they must also meet performance standards within the operation of the office that may be difficult to specify or quantify. Can you base “success” solely on the number of trials prosecuted in a year and the success rate of an individual attorney? Is there more to measure? Obviously, the answer is yes because we must weigh factors that have little to do with the performance of the attorney…the judge, the jury, the investigation, the witnesses, the crime.

It is clear that in order to objectively assess the performance of a prosecutor, we must measure that which is implicit in their job responsibilities, knowledge base, and performance skills. These are defined as core competencies.

What is a “core competency”?

As early as 1990, the concept of core competencies was developed in the management field. C.K. Prahalad and Gary Hamel introduced the concept in a 1990 Harvard Business Review article, where they wrote that a core competency is “an area of specialized expertise that is the result of harmonizing complex streams of technology and work activity.”

It is important to distinguish between individual competencies or capabilities and core competencies. Individual capabilities stand alone and are generally considered in isolation. Gallon, Stillman, and Coates (1995) made it explicit that core competencies are more than the traits of individuals. Coyne, Hall, and Clifford (1997) proposed that “a core competence is a combination of complementary skills and knowledge bases embedded in a group or team that results in the ability to execute one or more critical processes to a world class standard.” Two ideas are especially important here. The skills or knowledge must be complementary, and taken together they should make it possible to provide a superior product.¹

What are the core competencies of a prosecutor?

What does it take to do the job of a prosecutor? Obviously, education in a specialized field, ability to comprehend complex situations, knowledge of the law, ethical and professional practice, communication skills, workload and case management,
initiative and commitment to their responsibilities and their ability to research, analyze and use good judgment and their own commitment to professional development. As these areas generally reflect what makes a good prosecutor better, then it is important to evaluate these specific skills in an effort to educate the employee and improve performance.

**How is this done?**

One of the most important skills for the supervisor is to maintain a journal regarding each employee that they evaluate. This journal should detail successes of the employee, enhancement of skills, training opportunities and proficiency at legal skills. The manager should take time to evaluate each attorney personally or in larger offices, employ a mentoring system where skilled attorneys can assist in critiquing the skills of less experienced attorneys.

Observing attorneys at work is critical in determining where their individual values lie, and what would assist them in improving their skills and climbing the ladder of success. Supervisors should observe attorney’s skills in the courtroom on different aspects of the case. Hone in on their *voir dire* skills, their direct examination and of course, cross. Does the attorney communicate well with the jury? Does the attorney make and meet objections? Has the attorney appropriately prepared their cases by their legal research, witness interviews, preparation of motions? Has the attorney developed an appropriate courtroom style and an organized method for presenting their case in a clear fashion?

While trial skills are important, they are not the only measure of a successful attorney. Another aspect of the evaluation process that should not be overlooked is their skills in day-to-day office practice. Does the attorney demonstrate commitment to responsibilities? In what ways does the attorney contribute to the success of the office? Does he/she return phone calls and keep on top of deadlines? Does the attorney show respect for other members of the staff and contribute toward a successful working environment that is free from harassment and discrimination? Does the attorney actively share information with colleagues to enhance and facilitate their development as productive and efficient attorneys? Does he/she demonstrate leadership skills and do they seek out opportunities for professional development? Does the attorney work toward building relationships with other criminal justice professionals?

Is the attorney efficient at research skills, and is he/she able to identify relevant facts and relevant issues? Are their recommendations and decisions well-supported and workable? Does the attorney demonstrate knowledge of the fundamentals of advocacy and negotiation?

All attorneys should use sound organizational approaches to managing their workload. Time is short, so we must make the most of it by managing priorities, meeting deadlines, and keeping others advised about the status of work assignments. Of critical importance in the prosecution office is appropriate documentation of the case file. Of course, all relevant data [such as the complaint/information, motions, pleadings etc.] are integral parts of the official case file, but never neglect the responsibility of the staff attorney to manage that file by the addition of notes and information that are critical to the history of the case and its resolution.

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**Observing attorneys at work is critical in determining where their individual values lie, and what would assist them in improving their skills and climbing the ladder of success.**
This practice includes, but is not limited to, documenting the file with witness information, efforts at plea negotiation and final case disposition. In our office, attorneys are required to detail any change in the original charging and to fully document the basis upon which the change was made. Our office practices the policy of truth in charging, and plea negotiation is generally limited to term of years and/or conditions for release. We do not dismiss or reduce charges in exchange for a plea unless there is a legal impediment in the case that makes going forward on the original charges impossible or impractical. [For example, the unavailability of a critical witness, newly discovered facts, etc.]

Therefore, attorneys are required to document the basis for any deviation from the original charges, specifying the legal basis for the amendment. Each time an attorney picks up the file to take action, it must be documented. Many offices do not have the luxury of vertical prosecution of each case that enters the system. Other attorneys may be responsible for handling matters in the absence of the assigned attorney, and without appropriate documentation, this becomes a nearly impossible task. All files maintained by the office should have a method of appropriate documentation of case notes, and the file alone should be able to tell the story of the case. Having this in mind, consider how each attorney manages their caseload and their working file. Supervisors should take the time to review files and determine the practice of each attorney to manage their work in an appropriate and consistent manner.

**Putting it all together...**

If you truly want to improve performance, evaluations must be objective and forthcoming. It does not do an employee any good to just check the boxes on the evaluation without comment on their successes or failures. A supervisor does a great disservice to the employee by failing to prepare an appropriate evaluation of the attorney’s skills and talents, areas of improvement, and future goals for their success.

Some supervisors are not content to deliver “bad news” and in their effort to avoid what they consider to be confrontation, prepare evaluations that do not appropriately assist the employee in improvement. Consider the employee who has always “skated” by with basically good evaluations until one day, you realize that their productivity and work ethic is less than marginal. You have built a record of “successes” that does not accurately describe the employee’s contribution to the agency, and therefore, you may be setting yourself up for legal action in demoting or terminating the employee without an appropriate record to balance your employment action. It is critical that supervisors are trained in management, that they accept their responsibilities, and that they work hard to evaluate employees fairly and appropriately. The successful evaluation is good for the employee and the agency by building confidence in one’s abilities, pointing out the successes and yes, the failures. It is an accurate snapshot of one person’s contribution to the office as a whole. Make it work for you.

**References**


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**District Attorney Nola Tedesco Foulston is a frequent lecturer and author on a number of topics including her area of specialty in Office Administration. Look for her latest article on management and creating excellence in supervision forthcoming from the National College of District Attorneys publication on Office Management. Her article is entitled “Making the Transition to Management.”**
Former KCDAA Member Highlight:

We Remember John Bork

by Jared S. Maag, Deputy Attorney General
Criminal Litigation Division, Office of the Kansas Attorney General

“Death comes to all. But great achievements build a monument, which shall endure until the sun grows cold.”
-George Fabricius

For a common man to build an uncommon legacy is rare indeed. Rarer still is one’s ability to touch deeply the lives of those around them. In the wake of John’s passing I, along with many, are beginning to fully understand the depth of John’s legacy and the meaningful ways in which he touched the lives of us all.

John was never simply an acquaintance or a temporary friend. No matter the situation, he projected instant warmth and ease of conversation. His travels took him throughout the state, but it was the small towns that he loved the most, because it was there that he could strike up a conversation with the local antique shop owner or anyone who might know where the best fishin’ hole was located. Having prosecuted in 30 of the 31 judicial districts, John saw his share of courthouses as well and never had to visit more than once to leave an impression wherever the job took him.

The thing I remember most was that John was always at his best with children and infants. Norman Rockwell could have found no better a subject in painting a portrait of a true grandfather. We had our share of babies come through the Criminal Division over the years and not one shed a tear when John took over. His office proved a veritable wonderland of antique toys and knickknacks for those children who ventured through. Ironically enough, it was the rest of his officemates who ended up playing with those toys the most. I can say with utmost certainty that there was never a conversation in John’s office that did not involve the almost “pavlovian” response to play with the array of spinning tops and other enticing items spread over his desk. John’s office was uniquely his, in a way that no other office could compete.

It goes without saying that John’s prosecutorial life borders on the legendary. From his days as the Jefferson County Attorney in 1981 to his life as an assistant attorney general beginning in 1985, John saw it all. He was and forever will be the backbone of the criminal division; a resource that was called upon by every county and district attorney seeking out sage advice. “Let’s call Bork” was a common phrase uttered by cops and prosecutors alike when looking for an answer or just another take on a tricky criminal question. Or, for some of us, it was just to see how his latest fishing trip went. In every case, John’s approach was based upon what justice required; principled decisions which sought out an appropriate resolution. This approach is demonstrated by his awards for Prosecutor of the Year in 1997 for his work with co-award winner Barry Disney in the Kleypas case and his Lifetime Achievement Award in 2002.

John was first and foremost a family man. His wife, Jean, was his strength, and it showed every time they talked, a discussion that always ended with “I love you” no matter if he was surrounded by 100 cops listening in. John’s pride when it came to his sons was ever present. His office ran a close second to Cooperstown when it came to its hall of fame like atmosphere. Anyone who visited John’s office could not help but notice the wrestling pictures and other family photos, and I’m pretty sure Stanford used him as a recruiting tool for the Midwest.

John was able to take his dream trip before his passing; a trip to Alaska with Jean where
they sat on the balcony of their room and gazed out at the wonder of nature. John was able to squeeze in a couple of guided fishing trips on that vacation, no doubt enjoying every minute while hip deep in ice cold water.

And postcards were always a “must do” for John no matter the town. He loved sending his grandson Eli a postcard whenever the chance presented itself. John’s love of postcards started a tradition in the criminal division, where it is now mandatory for the prosecutors to send back the craziest, oddest, or absolutely silliest postcard from the town where they are presently trying a case.

John’s life could fill volumes. I only hope that this brief account will evoke a personal memory or two. In closing, I ask that each of you take an opportunity now and again to let John know how you’re doing. I’m sure he’ll take a moment away from fishing or gabbing with Justice Gernon to listen, as that was always John’s way.

For those of you who were unable to attend John’s memorial. Below is a reprinting of his obituary.

“Services for John Karrigan Bork, 61, Lawrence, will be at 4 p.m. Thursday, Sept. 28, 2006 at St. Margaret’s Episcopal Church. Private inurnment will be at Oak Hill Cemetery.

Mr. Bork died Monday, Sept. 25, 2006, at Lawrence Memorial Hospital.

He was born Oct. 23, 1944, in Oklahoma City, the son of William Samuel and Julia Karrigan Bork. He graduated from Buhler High School in 1962 and Hutchinson Community College in 1964. He received a B.G.S. degree in 1974 and a J.D. in 1977 from Kansas University.

Mr. Bork served in the U.S. Army during the Vietnam War. He was elected Jefferson County attorney in 1981 and went to work as assistant attorney general in 1985. He was deputy attorney general and head of the criminal division from 1993 to 1995, when he became assistant attorney general.

He litigated cases in 30 of the state’s 31 judicial districts and successfully argued many precedent-setting cases before the Kansas Supreme Court and Kansas Court of Appeals. He was Kansas Prosecutor of the Year in 1997 and received the Kansas Prosecutor Lifetime Achievement Award in 2002. Mr. Bork was a member of St. Margaret’s Episcopal Church and the Kansas County and District Attorney’s associations. He married Jean F. Shepherd on Feb. 4, 1978, in Lawrence. She survives, of the home.

Other survivors include three sons, Reid and wife Amanda Clark, Fort Worth, Texas; Karrigan and wife Laura, Redwood City, Calif.; and Ian, Palo Alto, Calif.; a brother, Bob, Bloomington, Minn.; two sisters, Kathy Markwell, Socorro, N.M.; and Tricia Canavan, Milwaukee; and three grandchildren, Eli, Caroline and John Bork.

A brother, Billy Marlowe, died earlier.

The family suggests memorials to the John K. Bork Memorial Scholarship to benefit Free State High School graduates, sent in care of Warren-McElwain Mortuary with checks made out to the Lawrence Schools Foundation.”
Mike Jennings graduated from Stanford University in 1965. He went on to attend law school at the University of California at Berkeley, graduating in 1968. Mike worked at Wichita Legal Aid from 1970 to 1974. He then became an associate with the Wichita law firm of Fleeson, Gooing, Coulson and Kitch from 1974 to 1977. In 1978, Mike joined the Sedgwick County District Attorney’s Office, a move which has resulted in a fulfilling career for Mike and a safer community in Wichita.

Mike went to work originally for Vern Miller. He also worked for Clark Owens, and was retained as an attorney in the office when Nola Foulston took office in January 1989.

Mike was first assigned to the Juvenile Division of the District Attorney’s office. Three months later, he was assigned to the Consumer Fraud/Anti-trust division in the office. Eighteen months later, he was assigned to the trial division where he prosecuted crimes against persons. Mike is now the chief prosecutor of drug crimes in the office. Mike has worked on some very important cases. One such case was the tragic homicide of Deputy Kevin Easter, who was shot to death serving the people of Sedgwick County. He also prosecuted the cases involving the murders of undercover detectives Terry McNett and Officer Ken Snyder, who were killed while attempting to make an arrest. Mike also prosecuted Larry Peckham, a case wherein the Kansas Supreme Court described the motive as “bizarre.”

Mike’s personnel file is full of accolades heaped upon him by colleagues and law enforcement officers. In 1995, Mike received an award for working 2,621 straight work days without having called in sick. He is also known as the attorney with the worst handwriting in the entire office, and he was described as “the most annoying” attorney in the office. Translated: He is one of the most respected and beloved attorneys in the office.

Mike has been the Chairman of the KCDAA Legislative Committee for the past several years. He has worked tirelessly to draft legislation that is important to prosecutors and citizens of this state, and to insure the passage of that legislation. He has provided leadership in the legal analysis of issues brought to the attention of the KCDAA, and presents a cool head when determining what issues should be taken up by our organization. The time and dedication he has given to his position has resulted in a better legal environment for prosecutors. Mike has also worked hard on the 3R committee, giving some much needed input to a committee, which has sometimes seen issues in a different light than do prosecutors.

Mike Jennings has worked hard as a prosecutor for 28 years. He has shown himself to be the epitome of the career prosecutor.

Stephen Maxwell has been appointed to be the Senior Deputy District Attorney for the District Attorney of the 10th Judicial District. Stephen graduated from Washburn School of Law in 1988. Stephen has prosecuted criminal cases since graduation except for three years when he was active duty in the US Air Force. Stephen was elected the “2006 Kansas Prosecutor of the Year” in October 2006 by the Kansas County and District Attorneys Association. Stephen has prosecuted criminal cases at the Shawnee County District’s Office, the City of Overland Park, the Guam Attorney General’s office and the Kansas Attorney General’s office. Stephen has served the last 11 years in the Kansas Attorney General’s criminal division last serving as the Senior Assistant Attorney General. Stephen is one of the most experienced homicide prosecutors in the state of Kansas having prosecuted over 40 homicide cases including six capital homicides. Stephen tried six homicide cases and one rape case including two capital cases in the last year, obtaining convictions in all cases. Stephen is a Major in the Air National Guard and serves as the Staff Judge Advocate for the 139 Airlift Wing.
**Wedding**

Tricia M. Smith, senior assistant district attorney, juvenile division for the 18th Judicial District in Wichita, got married Oct. 7, 2006. Her new last name is Knoll. She has worked at the office of the DA in Wichita for more than 10 years, and most of that time has been with CINC.

**New Faces**

Elizabeth Evers is a new Assistant District Attorney with the Wyandotte County District Attorney’s office. She started her employment Aug. 24, 2006. She handles a caseload of Child in Need of Care cases.

**On the Move**

Wyandotte County Assistant District Attorney Emily Nydle has left the Wyandotte District Attorney’s office. Emily has been hired by the Iowa Attorney General’s Office as a HIDTA prosecutor. Emily will be assigned to the Iowa U.S. Attorney’s Office in Des Moines.

**Birth**

Jeff Ebel, assistant county attorney with the Saline County Attorney’s office, welcomed his new son into the world July 7, 2006. His son, William Bryan Ebel, weighed 7lbs. 3 oz. and was 20 inches long. Jeff and his wife Dena also have a two-year-old son, Ben.

**Other News**

Pottawatomie County Assistant County Attorney Charles “Cal” Thoman ran in the fourth annual Lewis & Clark Marathon in Sioux City, Iowa Oct. 22, 2006. He placed seventh overall and first in his age group (24-29) with a race time of 2:56:03. Pottawatomie County Attorney Sherri Schuck said, “Cal has been an inspiration to a healthier lifestyle.”

Wyandotte County Assistant District Attorney Paul Waters has been on active duty in Iraq since August 2005. Paul, a captain in the National Guard, returned to the states in December 2006, but is expected to stay active with his unit until Fall 2007.

Wyandotte County Deputy District Attorney Sheryl Lidtke received this year’s Lionheart Award from the Sunflower House. Sunflower House is a children’s advocacy center serving Johnson and Wyandotte counties. Sheryl heads the Wyandotte County DA’s family law division which handles child abuse, sexual abuse, domestic violence, elder abuse and CINC cases. Her 13 years as a Sunflower House volunteer include chairing the group that laid the groundwork for the organization’s founding as the first children’s advocacy center in Kansas. She has given thousands of volunteer hours as a board member and officer, including service as board president in 2000-02.
A Salute To Vern Miller

by Hon. David Kaufman

Editor’s Note: This article is reprinted with permission from the Wichita Bar Association and its author. It was originally printed in the Wichita Bar Association’s Bar-o-Meter, Volume 20, No. 3 in March 2006.

I first remember seeing Vern Miller around 1972 thereabouts. I was 12 years old and was attending my first Wichita Bar show. My dad was in the show so my mom and my three brothers and I went to the show. Just before the show began and as the lights dimmed, the public address announcer came over the speakers and welcomed all in attendance. The announcer then introduced three honored guests or dignitaries who were present for the show. One of those three was Vern. He was the recently elected Attorney General of the State of Kansas at the time. Vern was seated about three rows in front of me and about 12 seats to my right. As his name was announced to the crowd, the spotlight focused on him. He rose from his seat and turned to the crowd all around, acknowledging them with a smile and a wave of the hand. I vividly remember that much of the crowd clapped as Vern stood, some of the crowd booed, and a lot of the crowd laughed at the two varied receptions received by Vern. Vern laughed too. After a few seconds, he sat down and the show began.

It’s been 34 years or so since that memory, and now I’m writing this article. Why me? Because I was asked if I would. What to write? Not sure. I just hope I can capture a lasting memory for you in the words that follow.

First Day on the Job

Let’s start with the first photograph in this article. This is Vern Miller-- 1948. Vern was 20 years old, and it was his first day on his new job. Hours earlier on this day, Vern has gone down to the Sedgwick County Courthouse. Recently out of the army after a medical discharge for rheumatic fever, Vern had been at home on his family’s farm and had seen an ad in the newspaper for a patrol officer. The Sheriff’s Department was hiring. At the courthouse, Vern was interviewed for the job on the courthouse stairs. He was asked if he can ride a motorcycle. Vern said, “Well, sure,” and was then directed to a Harley bike which was parked next to the courthouse. Vern takes it for a ride, he was told. Around the block he rides, returns, and then is asked if he can start at 5 pm that same day. Vern says yes. He’s told to go pick up his uniform, bring a gun to work, and that his 5 pm assignment will be directing traffic. As Vern shares this story with me, he is chuckling. At 5 pm that day, he says, he’s directing traffic and has no idea what he’s doing. Also, Vern shares, look how the times have changed: no 16 week training academy, no psychological testing, none of that. Vern could ride a motorcycle with ease and had been doing that since high school. Good thing, too. Got him his first job in law enforcement. Last point—the gun in that photo? Not a departmental issue. Vern had to bring his own gun, so between the interview and 5 pm, Vern went home and borrowed his dad’s gun.

The Sheriff Goes to Law School

In 1954, after six years in the Sheriff’s Depart-
ment (and the last four under then Sheriff Tyler Lockett whose son would later become Justice Tyler Lockett of the Kansas Supreme Court), Vern was not retained by the newly elected sheriff. Over the next four years, Vern pursued education at Friends University and was an owner/operator of a local gas station. In 1958, Vern made his first run at politics as a candidate for Marshal of the Court of Common Pleas. He wins and serves two two-year terms from 1958 to 1962. In 1962 Vern runs for Sheriff of Sedgwick County. While Vern would eventually serve three two-year terms in that position (1964 to 1970), he loses the race in ’62.

It’s during his days as Marshal, though, that Vern graduated from Friends University and enrolled in the University of Oklahoma City Law School. Night school attendance was allowed so for the next five years, three nights per week from 6 pm to 10 pm on Mondays, Tuesdays, and Fridays, Vern made the three hour drive to Oklahoma City, attended class, and then made the three hour return drive. Vern wanted to be a lawyer. His uncle had been a lawyer and despite his love of law enforcement, all Vern had really ever wanted to do was be a lawyer. He had always just wanted to help people as a lawyer. The law school program was a four year program, but for Vern it was five years. The additional year was because when Vern was elected Sheriff of Sedgwick County in 1964, he quit attending school on Friday nights. Friday nights back then, and probably still today, were one of the busiest nights for law enforcement and being behind a school desk in Oklahoma City on a Friday night was not how Vern was going to serve as sheriff. So what started in 1961 completed itself in 1966—Sheriff Vern Miller graduated from law school. (From what Vern and his family have researched, it appears that Vern was the first Sheriff in the United States to serve as Sheriff and have a law degree.)

1965

Richard Lee McCarther is 22 years old, already a 10-time convicted felon, and an inmate at the Sedgwick County Jail. On May 28 of 1965, Richard Lee escaped from the county jail while awaiting court on charges of robbery, assault, and ironically a previous escape. On May 29, the following day, McCarther’s wife told police that Richard Lee was not going to be taken this time. He would kill the cops before he was captured. Two months pass, and McCarther has yet to be captured. Then on July 27, Vern receives a tip—Richard Lee may be in Omaha, Nebraska. Along with Clay Cox, Vern drives to Omaha and arrives around 4 am. The two of them search out a couple of locations, but no McCarther. After a few hours of sleep, Clay and Vern start the search again. It’s late morning now and as the two of them are driving down a street, they see a man who looks like the escaped McCarther. When the man looks at them, there is recognition in the eyes of all three men. Richard Lee recognizes Vern; Cox and Miller recognize Richard Lee; and all three begin running on foot. With the previous information from McCarther’s wife in the minds of Clay and Vern, a warning shot is fired at Richard Lee. Unfazed by the shot, McCarther
continues to run. Cox and Miller continue to chase. McCarther has about a fifty yard lead on Vern when he, McCarther, turns his head to see how far back Vern is. Well, apparently not far enough, because just as McCarther looks back, Vern fires his gun and hits Richard Lee in the lip. A few more yards of the chase occur and McCarther is then arrested. The photograph shows the return of McCarther to Wichita. If you look carefully at the right side of Richard Lee’s mouth, you see a dark circle. That is the shot. Ultimately, after McCarther’s return to Wichita, he was sentenced for all his crimes. Then District Court Judge Robert Stephan (who would later become Attorney General Robert Stephan) gave Richard Lee 84 years in prison. Just a few years ago, Richard Lee McCarther died. He was still an inmate in the Kansas Department of Corrections.

**Attorney General**

As the sixth year of Vern’s tenure as sheriff came to a close and with his law degree in hand, Vern was ready to begin his law practice. However, a phone call from then Governor Robert Docking altered the course. Asked by Governor Docking to be the Democratic candidate for Attorney General, Vern said yes, and in 1971, Vern began his first of two two-year terms as Attorney General of the State of Kansas. Vern does laugh as he shares this part of his life with me. Here he was—Attorney General for the State of Kansas and not only had he never stepped into a courtroom as a lawyer, he’d never even practiced one day of law. Little did that matter though.

Five weeks after taking his oath as Attorney General in January 1971, Vern organized a drug raid that was executed in Lawrence, Kan. in February. Thirty-three arrests resulted from the raid. From that raid, another story flows…

Vern is back in his office after the weekend raid in Lawrence. His intercom is buzzed by his newly hired young secretary who tells Vern that “some man is in the lobby and is having problems with his house.” Vern tells the secretary to send the man in. A man small in stature quickly enters his office and in a defiant tone of voice demands to know from Vern how much of the Kansas taxpayers’ monies was spent on the Lawrence raid. The man is jabbing his finger toward Vern’s face as Vern stands from behind his desk. No answer has come from Vern yet, and as the man continues to badger him, demanding an answer, Vern begins to circle from around his desk and approach the unknown citizen.

Vern tells the man to leave. The man stays. As the man persists in his demand for an answer, Vern then tells the man that he is going to throw him out of the office---literally.

As Vern approaches the enraged citizen, the man then quickly departs. As Vern tells me, he would have thrown the guy out, so it probably was just as well that the little man left.

Ten minutes later, Governor Docking calls Vern and asks, “What in the world is going on?” Puzzled, Vern in return asks Governor Docking what he meant. Vern is told that the Governor was just contacted by the Kansas House of Representatives Speaker of the House who informed the Governor that he was just cussed out by Vern Miller and tossed out of the Attorney General’s office. Just at that moment, Vern realized that his young inexperienced secretary had somehow confused the “man with problems with his house” with the Speaker of the House. Oh well.

In addition to drug raids throughout his four years as Attorney General, Vern also cracked down on illegal gambling. During this time in Kansas, slot machines were prevalent throughout the state, and they were also illegal. For various reasons, none
of which were good, local law enforcement throughout many Kansas towns did not enforce the law. Vern sent a letter to every district and county attorney in the state. Politely, he informed them or reminded them that slot machines were illegal in the State of Kansas and if they chose not to help address the problem, he would be there to help.

And so it goes during Vern’s first term as Attorney General—raids throughout Kansas, shutting down illegal gambling parlors, dice tables, whatever the law said was prohibited. A lot of people resented Vern for this and were angered by what they perceived as the petty enforcement of the law. I asked Vern why. Why the time and the energy on this. His answer was this: gambling was against the law and local law enforcement throughout many parts of the state was not upholding its oath to enforce the law. As Vern would say later on in his public service career, “Nothing breeds disrespect for the law more than a double standard of enforcement.” Personally, Vern had no moral qualms with slot machines or dice tables or any gambling. Maybe no one asked him about his personal views, but it would not have mattered. He took an oath to uphold the law. Whatever resentments or anger resulted from this first term enforcement of the gambling laws had little affect on Vern’s candidacy for a second term. He carried all one hundred and five counties on election night, something that had never occurred before in Kansas in an election for Attorney General.

After an unsuccessful bid for Governor in 1975, Vern left public service briefly before challenging then incumbent Sedgwick County District Attorney Keith Sanborn in the Democratic primary. Vern won the primary and then won the general election as well. (Former District Attorney Sanborn would later become District Court Judge Sanborn.) So in January 1977, Vern began his final job in public service as District Attorney in Sedgwick County. The term was four years.

In 1981, Vern left Kansas politics and began to fulfill the dream he first started pursuing 20 years earlier when he attended that first night class in law school. Vern finally started his own private practice. As Vern shared with me, “To be a lawyer and be able to help people is the greatest feeling in the world. Just trying to make the lives of those you help just a little bit better. That is the reward and how great it is.”

A couple months ago, Vern dropped by my office. As we sat and chatted, he remarked, “It’s been a great life, Davey, but it goes so fast.” For some reason, those words have settled deep within me. I think maybe it’s because of Vern’s passion for life, for people, for friendships, for family, that it has gone fast. Full of life, full of heart—that is the Vern Miller that I am so fortunate to know. Some may define a man by what he has done, so yes, you can call Vern the former sheriff, the former district attorney, the former attorney general; I think it’s the rare man that transcends all of his accomplishments and rather is known for who he is. So who is Vern Miller? He is a man of integrity, honesty, and loyalty. He exudes a passion for life wherever he goes in whatever he is doing. He is a man who has the unique quality of enriching the lives of others because of his genuine regard for the lives of others. Vern told me, “It’s not the accomplishments that matter; it’s the stories of all the people with whom I have either worked or met. It’s all about the relationships and the friendships.”

The richness of man is measured by the enrichment he brings to the lives of others. Vern, you are indeed a very rich man.
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