

YEAR IN REVIEW

Year 2011



United States Attorney's Office
Western District of Michigan

Donald A. Davis
United States Attorney

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ACKNOWLEDGMENT

Special thanks to LEC/VW Assistant Anne E. Towns,
First Assistant Andrew B. Birge and Civil Chief Ryan D. Cobb
for their contributions to this Year in Review.



INTRODUCTORY MESSAGE

Another year has passed and some things have changed and some have not. What has not changed, is the outstanding work being done by the men and women of this office for the people of the Western District of Michigan.

They have been constantly challenged to do more with less and they have done so, as you will see in the pages that follow. We continue to exceed national averages in cases that go to trial and success at trial. And our leadership in the field of electronic evidence is the envy of our peers and our opponents, however, we continue to share those skills at all levels of practice.

The employees that were hired last year have each exceeded our high expectations of them. The students and law clerks who served this district learned much and taught us much.

Six of our employees were recognized at the national level for their accomplishments in the areas of prosecution, forfeiture and training, but each and every one of our employees accomplished much. Please find representative successes in the summaries of some of the cases that follow.

Yours,

D. A. Davis

DONALD A. DAVIS
UNITED STATES ATTORNEY
WESTERN DISTRICT OF MICHIGAN

AWARDS

DIRECTOR'S AWARD RECIPIENTS:

Assistant U.S. Attorney Brian P. Lennon.
Superior Performance as an Assistant U.S. Attorney (Criminal).

This award from the Director of the Executive Office of U.S. Attorneys recognizes AUSAs who have distinguished themselves through outstanding performance of their duties in criminal matters. Only a small handful of nominations from the 93 U.S. Attorney's Offices succeed each year. AUSA Lennon distinguished himself from the field and received this award for his work in the prosecution of the Organized Crime and Drug Enforcement Task Force (OCDF) Operations Rainy Day and Holiday Express. Working-up from a local drug investigation, he dismantled the largest known drug trafficking organization in the region, took down the "source city" suppliers in other districts and now stands at the doorstep of the ultimate drug-supplying Mexican cartel. All told, notwithstanding a bona fide threat to his life and the safety of his family, AUSA Lennon has convicted 47 defendants to date and recovered and forfeited millions of dollars in cash and proceeds.

Law Enforcement Coordinator Kaye D. Hooker, Victim Witness Coordinators Kathy E. Schuette and Janet S. Strahan, LEC/VW Assistant Anne E. Towns, and Intelligence Specialist Gary F. Gibbons (for the WDMI). Law Enforcement Coordinator Robert W. Poikey and Executive Assistant Linda Woodard (for the EDM).
Superior Performance by an Administrative Team.

This award recognizes non-attorney personnel who have demonstrated superior performance in a legal support role over a substantial period of time, and in doing so, successfully surmounted unusual challenges which significantly assisted the organization or office in accomplishing its mission. In recognition of their comprehensive, state-wide training schedule, U.S. Attorneys Donald A. Davis and Barbara L. McQuade jointly nominated this group. The group led the country in organizing seminars state wide for over 5,000 federal, state, local and tribal law enforcement officers on subjects ranging from behavioral recognition, hate crimes and prescription drug diversion to mortgage fraud and identity theft – all at no cost to the attending agents. The Department has asked them to instruct and advise other offices at Department-sponsored seminars on outreach on their unusual and highly successful collaborative effort.

It bears noting that the Law Enforcement Coordination/Victim-Witness (LEC/VW) team for this district trained all of these law enforcement officers while also leading the entire country in case-related victim notifications with over 540,000.

NATIONAL ASSOCIATION OF FORMER U.S. ATTORNEYS AWARD RECIPIENT:

Assistant U.S. Attorney Brian P. Lennon.
Exceptional Service.

The "exceptional service" award from this private, national organization recognizes only outstanding performance above and beyond even the highest expectations for federal prosecutorial service. AUSA Lennon received this award for the same casework for which he received the Director's Award. This marks only the second instance in this Office's history that an AUSA from this district has won such an award from this organization. (AUSA Tim VerHey received the award in 2008.)

MICHIGAN LAWYERS WEEKLY "2011 UP AND COMING LAWYER" RECOGNITION:

Assistant U.S. Attorney Russell A. Kavalhuna.

This annual announcement from the *Michigan Lawyers Weekly* publication recognizes "the best and brightest rising stars in the legal profession." AUSA Kavalhuna started his legal career as a judicial law clerk for Michigan Supreme Court Justice Michael Cavanaugh, joined the U.S. Attorney's Office through the Department of Justice Honors Program in the fall of 2009, and undertook a caseload serving Project Safe Neighborhoods before accepting a role assisting the U.S. Attorney and Deputy Criminal Chief in the well-publicized back-to-back trials of the two men charged with bank fraud, identity theft and the kidnaping resulting in the death of Donald Dietz.

ARRIVALS AND DEPARTURES

OUR GAINS:

Early in the year, AUSA **Ronald M. Stella** returned to the Office following a brief (sixth month) stint in private practice. AUSA Stella is a *summa cum laude* graduate of Valparaiso Law School who has previously served in the Office's Civil Division for nine years, including as the Deputy Chief and Chief of the Civil Division. He rejoins the Office in the position he held before he briefly left, as

an AUSA in the Criminal Division where he handles complex white collar prosecutions, including specifically mortgage fraud. AUSA Stella is also Treasurer to the Western District of Michigan Federal Bar Association.

Late in the year, **Jacqueline M. Lack** joined the Office as our Affirmative Civil Enforcement investigator, a year-long contract position for which this Office competitively secured funding through a Three-Percent Fund allocation. Ms. Lack's prior experience includes working as a Special Agent with the Michigan Department of the Attorney General for 31 years investigating complaints involving health care fraud, illegal writing of controlled substance prescriptions, civil audits and patent abuse. Prior to her career with the State AG, she worked with the Michigan Department of Social Services for four years in Services And Assistance Payments and, prior to that, she walked the beat in Jackson, Michigan, as a patrol officer in the Jackson Police Department for a year.

Mid-year, we were very pleased to secure the services of **Mark A. Totten** as an unpaid and part-time Special Assistant U.S. Attorney. SAUSA Totten is a Michigan State University law school professor, Yale Law School graduate and former law clerk to Sixth Circuit Court Judge Richard Allen Griffin. He is available to us on Fridays through a special and limited program. His insight, skills and remarkable capacity for work on a part-time basis have already proved invaluable in assisting with the office's large appellate and post-conviction caseload.

OUR LOSSES:

After 27 years in the Office as the Administrative Officer, **James W. Hunter** retired on December 31, 2011. During his tenure the number of attorneys and staff in the office quadrupled, two branch offices were built-out and staffed, the main office in Grand Rapids relocated to a stand-alone location and the technology revolution struck. Pressing supply needs went from type-writer ribbons and batteries for dictaphones to computer servers and video-conferencing technology. As Administrative Officer, AO Hunter was responsible for managing and meeting the needs of that growth and development. But Jim will be known best for fostering a service-minded culture in the Administrative Division and for leading, as a collateral duty, the Special Emphasis Program Committee for the Office. He received one Director's Award for the latter and another for his Career Accomplishments. His dedication to public service extended beyond the local Office through his service as Chairperson of the Local Federal Combined Campaign, mentoring of new administrative officers in other districts, instructing at the National Advocacy Center and as an Administrative Team Leader

and evaluator for the Evaluation and Review Program. The Office will miss him greatly. Fortunately, he remains a friend and still lives in the area.

AUSA **Brian P. Lennon** announced his departure from the Office in December, effective early 2012, after thirteen impressive years in the Criminal Division. As previously noted, AUSA Lennon won a Director's Award in 2011 for his OCDEF cases. Before taking on OCDEF cases, he served as the Deputy Chief of the Criminal Division for several years. And prior to that, AUSA Lennon represented the Department of Justice in their Federal Programs Branch in Washington, D.C. As a Harvard University and Notre Dame Law School graduate as well as U.S. Marine, AUSA Lennon possesses a unique blend of strong intellect, sense of duty and Midwestern modesty and humor. He'll be taking that unique blend to the law firm of Warner, Norcross and Judd, in Grand Rapids, where he will head-up their white collar criminal defense practice. We wish him luck but are sorry to see him go.

AUSA **Kathleen G. Sample** left the Office in the late Spring after a far shorter tenure than Jim Hunter's or Brian Lennon's, but she too will be greatly missed. AUSA Sample joined the Office as a Paralegal Specialist with a Hastings College of Law degree to assist in the handling of post-conviction litigation. She so impressed her fellow attorneys in the Office and the management team that she successfully competed for a position as an Appellate AUSA in 2010. Prior to joining the Office, she had been a law clerk on the California Supreme Court and then accepted appellate work on a contract basis upon moving to the Grand Rapids area. After three years as a Paralegal Specialist and a year as an AUSA, she and her husband decided to move back to Northern California where they will be closer to more of her family.

In the late summer, AUSA and Indian Country Liaison **Jeffery J. Davis** had the honor of being selected by the Chair of the Tribal Law and Order Commission, former Colorado U.S. Attorney Troy Eid, to be the Commission's Executive Director. The Commission was established with the passing of the Tribal Law and Order Act in 2010 and will be advising and consulting with Indian Tribes around the country on the Act and reporting back to the White House and Capitol Hill this coming summer with specific proposals to make Indian Country safer and more just. Executive Director Davis is officially on a renewable detail with the Commission through fiscal 2012. We look forward to his return. Fortunately, he remains available to us as he will be working for the Commission out of our office space when he is not otherwise engaged in the extensive travel his Executive Director duties require. In the meantime, Deputy Criminal Chief Phil Green has taken over Indian Country Liaison responsibilities.

REPRESENTATIVE CIVIL MATTERS

AFFIRMATIVE CIVIL ENFORCEMENT

United States v. Scenic View Dairy. The USAO obtained summary judgment and an injunction against a local dairy farm and its managers, who violated the Federal Food, Drug and Cosmetics Act by illegally introducing adulterated food into the food supply by, among other things, failing to keep adequate records of their drug use and using drugs unlawfully.

Agency: Food and Drug Administration.

AUSA: Adam B. Townshend.

United States v. e-TelRx, Inc. This qui tam case involved fraudulent billing of state and federal health care programs for hospice medications and unit dose medications. The USAO pursued a case under the False Claims Act and negotiated a recovery of \$650,000.

Agency: U.S. Dept. of Health and Human Services.

AUSA: Ryan D. Cobb.

United States v. Hackley Hospital; United States v. Sparrow-Ionia Hospital; United States v. Sparrow Hospital. Following a national data mining project that identified overpayments to hospitals for infusion and blood administrative services, the USAO pursued claims and obtained settlements in 2011 with three hospitals who had obtained overpayments totaling \$212,625.80.

Agency: U.S. Dept. of Health and Human Services.

AUSA: Michael L. Shiparski.

United States v. Casher. The USAO obtained a False Claims Act settlement of \$114,000 from a geriatric psychologist who improperly billed Medicare for Mini Mental Status Exams as a separate charge in addition to charges for evaluation and management services.

Agency: U.S. Dept. of Health and Human Services.

AUSA: Carolyn A. Almassian.

United States v. Pride Care Ambulance. The USAO initiated a False Claims Act investigation after the government received a hotline complaint indicating that the company had improperly retained Medicare and Medicaid overpayments, as well as overpayments from private insurance and individual patients. The USAO negotiated a full return of all the improperly retained funds as well as an additional recovery of \$75,828.31 for the government.

Agency: U.S. Department of Health and Human Services.

AUSA: Ryan D. Cobb.

United States v. Dun-Wel Security. The USAO obtained a False Claims Act recovery of \$30,000 from a security company that invoiced the federal government

for security guard services at the Gerald R. Ford Presidential Museum despite failing to properly train the guards it provided, as it was required to do pursuant to its contract.

Agency: National Archives and Records Administration.

AUSA: Carolyn A. Almassian.

United States v. Overkamp. The USAO pursued claims against a pharmacist who violated the Controlled Substances Act by improperly filling internet prescriptions and mailing drugs for patients who obtained the illegitimate prescriptions from out-of-state physicians who had not seen the patients in the usual course of their professional practice. Mr. Overkamp also failed to keep required records of controlled substances. After he filed for bankruptcy, the USAO negotiated a bankruptcy settlement of \$30,000.

Agency: Drug Enforcement Administration (DEA).

AUSA: Carolyn A. Almassian.

United States v. Driver. This False Claims Act case involved a representative payee who fraudulently obtained monies deposited by the U.S. Social Security Administration ("SSA") for the benefit of her deceased grandmother. The defendant, knowing she was not entitled to the SSA benefits, wrote numerous checks payable to "Cash" in order to withdraw mistakenly-deposited funds from her deceased grandmother's bank account. Following investigation, the defendant made periodic remittances to SSA, which, together with a lump-sum settlement payment the USAO obtained, made the agency whole.

Agency: Social Security Administration.

AUSA: Adam B. Townshend.

ENVIRONMENTAL ENFORCEMENT

No resolutions to report for FY 2011.

DEFENSE AGAINST CLAIMS OF CIVIL RIGHTS VIOLATIONS

Wierengo v. Akal Security et al. A former court security officer employed by a contracting company sued the contracting company as well as five individuals employed by the United States Marshals Service for gender discrimination in her employment. She attempted to allege that the USMS defendants violated her constitutional rights by allowing or instigating the gender discrimination as well as her eventual removal from her position. After the USAO filed a motion to dismiss on behalf of the United States Marshals Service employees, the district court dismissed all of the plaintiff's claims against them.

Agency: U.S. Marshals Service.

AUSA: Ryan D. Cobb.

Jackson v. Hill. Plaintiff filed a civil rights action accusing a Deputy United States Marshal of arresting him without probable cause, filing a false criminal complaint, and using excessive force in effectuating the arrest. The district court granted the USAO's motion to dismiss the claims, concluding that the plaintiff did not establish that the Deputy United States Marshal lacked probable cause for the arrest and that the evidence failed to show that the Deputy United States Marshal used excessive force. It concluded that the defendant acted reasonably and was entitled to qualified immunity.

Agency: *U.S. Marshals Service.*

AUSA: *Ryan D. Cobb.*

IMMIGRATION

Estenor v. Eric Holder. Petitioner sought a writ of habeas corpus after being detained by United States Immigration and Customs Enforcement pursuant to an order of removal to Haiti. The United States successfully opposed the petition on the basis that removals to Haiti occur on a regular basis and that government officials were actively working to obtain a removal document for petitioner. The Court denied the petition and the petitioner was removed from the United States to Haiti.

Agency: *U.S. Citizenship and Immigration Services.*

AUSA: *Carolyn A. Almassian.*

The USAO successfully resolved several other immigration-related habeas corpus petitions without the need for the district court to resolve the cases on motions.

SUBPOENA DEFENSE FOR FEDERAL EMPLOYEES AND AGENCIES

The USAO defended federal agency employees and ensured compliance with federal regulations regarding the release of information from agency files in numerous cases in which federal employees were subpoenaed to testify or produce documents.

FEDERAL TORT CLAIMS ACT DEFENSE

Van v. Kirchner. Plaintiff unsuccessfully alleged that he was negligently prescribed medications that caused him to hallucinate, believe that people were trying to kill him, and carry a firearm, leading to his arrest and charges for unlawful possession of a firearm. The district court granted the USAO's motion to dismiss the plaintiff's medical malpractice claim because he failed to present an administrative claim and failed to file an affidavit of merit to support his complaint. On appeal, the Sixth Circuit Court of Appeals upheld the dismissal.

Agency: *Department of Veterans Affairs.*

AUSA: *Carolyn A. Almassian.*

Billings-Carter v. United States. After a federally supported health clinic was defaulted in state court in a wrongful death medical malpractice case, the USAO removed the case to federal court, successfully moved to set aside the default, and obtained dismissal of the case for failure to exhaust administrative remedies and because an administrative claim would be outside the statute of limitations.

Agency: *U.S. Dept. of Health and Human Services.*

AUSA: *Ryan D. Cobb.*

The USAO successfully defended or resolved numerous significant tort claims under the Federal Tort Claims Act, including the resolution of a wrongful death medical malpractice case against the Department of Veterans Affairs.

PROGRAM LITIGATION

Tansil v. Department of Navy. Plaintiff attempted to challenge a discharge from the Navy and court martial for bad conduct, contending that he experienced racial discrimination and should have been offered rehabilitation before being discharged. He sued to obtain correction of his military records and for damages, but the USAO prevailed on a motion to dismiss for lack of subject matter jurisdiction.

Agency: *Department of Navy.*

AUSA: *Michael L. Shiparski.*

EMPLOYMENT LITIGATION

Leitner v. Potter. The USAO obtained summary judgment on claims of a United States Postal Service employee who alleged disability discrimination based on mental impairments when assigned to work near another employee with whom she had a personality conflict. The district court concluded that the plaintiff did not have a disability and the Sixth Circuit Court of Appeals affirmed the decision in September of 2011.

Agency: *U.S. Postal Service.*

AUSA: *Carolyn A. Almassian.*

VanderLee v. Potter. The USAO successfully obtained summary judgment against a former employee of United States Postal Service who complained of disability discrimination, alleging that the Postal Service improperly denied her request to return to a rural carrier craft position after she contended she had recovered from injuries that had caused her to take a rehabilitation job offer as a clerk. The district court agreed that there was no disability discrimination.

Agency: *U.S. Postal Service.*

AUSA: *Carolyn A. Almassian.*

Elias v. Koss. The district court granted the USAO's motion for summary judgment, dismissing claims by an applicant for a position with the United States Postal Service that he was not interviewed for the position due to discrimination on the basis of national origin and political affiliation. Despite a poorly-worded letter inviting the plaintiff to call back for an interview, the plaintiff was not interviewed because he failed to call back, not because of any discrimination by the United States Postal Service.

Agency: U.S. Postal Service.

AUSA: Agnes Kempker-Cloyd.

COMMERCIAL LITIGATION

United States v. Squirt Transfer. The USAO filed suit against a defendant who defaulted on payment obligations after borrowing \$75,000 from the United States Department of Agriculture through the Farm Services Agency. After filing suit, the USAO resolved the case pursuant to a settlement agreement.

Agency: U.S. Department of Agriculture.

AUSA: W. Francesca Ferguson.

Geico Indemnity Co. v. Medicare et al. Two insurance carriers filed suit against the government and various medical providers seeking a determination regarding which lien claimants to pay insurance proceeds to following a catastrophic automobile accident. Following summary judgment briefing and oral argument regarding the amount of no-fault benefits and the priority of various lien claimants, the USAO was able to obtain a favorable settlement in which it received the overwhelming majority of the funds to compensate the government its payments to providers in relation to the injuries suffered in the accident.

Agency: U.S. Dept. of Health and Human Services.

AUSA: W. Francesca Ferguson.

PROCEEDINGS RELATING TO GOVERNMENT LIEN CLAIMS

The USAO continued to respond to an ever-increasing volume of foreclosure litigation and other cases in which federal liens were at issue. Due to the large number of foreclosures in the district, the USAO devotes nearly twice the national average of AUSA time to handling these cases involving federal liens.

SOCIAL SECURITY

The USAO supervised the preparation of answers and briefs primarily handled by Special Assistant United States Attorneys from the Chicago office of the Social Security Administration. In FY 2011, the USAO received 123 new cases challenging Social Security disability determinations.

The federal district court disposed of 113 Social Security appeals during fiscal year 2011.

BANKRUPTCY

The USAO pursued recovery on claims of the United States in 280 new bankruptcy cases and resolved claims in 275 cases during fiscal year 2011.

Agencies: IRS; Small Business Administration, etc.

AUSAs: W. Francesca Ferguson; Agnes Kempker-Cloyd; Michael L. Shiparski.

In addition, AUSA W. Francesca Ferguson co-chaired the 23rd annual FBA Bankruptcy Section Seminar, at which AUSA Michael Shiparski presented. Additional USAO staff members assisted in preparations for the seminar and at the event.

FINANCIAL LITIGATION UNIT

The USAO collected in excess of \$5 million in civil and criminal debts and opened 663 debts for collection.

AUSA: W. Francesca Ferguson.

REPRESENTATIVE CRIMINAL MATTERS

ALIEN OFFENSES

ALIEN REENTRY INITIATIVE: During 2011, approximately 35% of all criminal cases brought in the district involved the charging of illegal aliens for returning to the United States without authorization after having been removed previously and typically also after having been convicted of one or more other criminal offenses. Consequently, the district continues to be a leader among mid-sized districts not situated on the Southwest border in illegal immigration prosecutions. These cases also continue to develop leads for investigations of operations engaged in the production of fraudulent identification documents.

Agency: ICE-Enforcement & Removal Operations.

AUSAs: Donald D. Daniels; John F. Salan.

ANTI-TERRORISM

United States v. Reed Berry. Berry was charged with and pled guilty to assaulting an FBI agent. In the course of surveillance that followed the execution of a search warrant at Berry's home based upon probable cause to believe evidence of material support for a terrorist organization would be found there, Berry observed the FBI agent following him in a car and attempted to ram the FBI agent's car with his own car at a high rate of speed. Berry now faces up to five years in prison for the conviction.

Agency: FBI, Grand Rapids Field Office.

AUSA: Hagen W. Frank.

ASSET FORFEITURE

The Office's asset forfeiture unit secured over \$2.4 million through asset forfeiture counts, fines and recoveries in fiscal 2011.

Agencies: DEA; FBI; IRS; ICE-Homeland Security Investigations; U.S. Secret Service.

AUSAs: Matthew G. Borgula; Joel S. Fauson.

FINANCIAL CRIME

TELEMARKETING FRAUD: *United States v. Jay Vincent.* In 2009, the U.S. Postal Inspection Service initiated a telemarketing fraud investigation of Jay Fletcher Vincent, a former NBA player and member of Michigan State University's National Basketball Championship team in 1979. Vincent advertised "employment" opportunities for "housing inspectors" in various newspaper classified advertisements and across the internet. Vincent traded on his "celebrity status" to lull the victims into sending him advance fee payments. Multiple complaints to various state Attorneys General had failed to halt the fraud. In Spring 2010, the Criminal Investigation Division of the Internal Revenue Service joined the investigation and assisted in executing a search warrant at Vincent's business location and his residence. The voluminous documents (estimated at over eighty banker boxes) seized by federal agents were used to identify in excess of 15,000 victims and document over \$2,000,000 in fraud by Vincent and his co-conspirator. By late 2010, Vincent entered a guilty plea to mail fraud and tax fraud felony offenses. In September 2011, Vincent, who had no prior criminal history, was sentenced to sixty-eight months' incarceration.

Agency: U.S. Postal Inspection Service; IRS-Criminal Investigation.

AUSA: Michael M. MacDonald.

PONZI SCHEME: *United States v. Roger Lee Clark.* Clark owned and operated an entity called "CRM Investors Corp." among other fictitious businesses. He never had any training in financial planning or related financial field, but unfortunately convinced numerous investors to trust him with his money. He claimed to be investing the funds conservatively and safely in such things as "T-Bill trading accounts" but in fact used investor principal to pay "interest" back to the investor and to prior investors as well as to pay his own salary. More than \$9 million was lost in the scheme. Adding to his list of wrongs, Clark also under-reported his annual income to the IRS, resulting in back taxes of over \$160,000.00. Clark ultimately received a sentence of six

and a half years in prison, a money judgment of \$9,162,380.99 and an order to pay his back taxes.

Agencies: FBI; IRS -CI.

AUSA: Daniel Y. Mearu.

IDENTITY THEFT: *United States v. Zhou Chen and United States v. Chee Hong Lam, et al.* In a pair of indictments, two separate but substantially similar identify theft and bank fraud schemes were brought down. The conspirators used stolen credit card numbers that had been re-encoded onto the magnetic stripes of used gift cards to convert the gift cards into fraudulent credit cards. The investigation revealed that the defendants were in illegal possession of over 2,200 valid credit card numbers. The true account holders were located throughout the country, and the known losses were in the hundreds of thousands of dollars. Both schemes were uncovered when Meijer store operators noticed the perpetrators' unusual purchases and use of gift cards. The six defendants received sentences of from five to nine years in prison.

Agency: U.S. Secret Service.

AUSA: Christopher M. O'Connor.

PROGRAM FRAUD: *United States v. Mohamed Sufi and Omar Sufi.* The defendants, Somali refugees, ran a grocery they used as a front for food stamp fraud. They gave cash for Supplemental Nutrition Assistance Program (SNAP) benefits (food stamp benefits), charging a bonus for themselves. They also ran a "Hawala," or unlicensed money transfer business sending cash to various middle eastern and African countries. The defendants collected cash from senders, structured deposits into local banks to avoid bank reporting requirements, and arranged to wire it through intermediaries to the third world. The defendants admitted sending food stamp benefits to Somalia and other countries. Both defendants received 60 months imprisonment, and were ordered to pay \$401,670.24 in restitution to USDA.

Agency: U.S. Dept. Of Agriculture.

AUSA: Nils R. Kessler.

HEALTH CARE FRAUD: *United States v. Aaron and Michelle Clark.* In the last of a series of indictments of health care professionals, all of whom received prison time, Aaron Clark, a physical therapist and his wife, Michelle, were convicted of defrauding Blue Cross Blue Shield of Michigan and Medicare using a variety of schemes to obtain payment for services that were not provided or did not qualify as physical therapy. Aaron Clark was sent to prison for two years and his wife for 90 days, and each was ordered to pay \$345,000.00 in restitution.

Agency: U.S. Dept. of Health and Human Services.

AUSA: Raymond E. Beckering.

TAX FRAUD: *United States v. Kerry Thomas Kilpatrick.* A local chiropractor, Kilpatrick, was convicted of evading taxes for income that he earned as owner of his business. Over an eight year period, Kilpatrick failed to pay over \$467,000.00 in taxes. He used numerous holding companies and entities that lacked any economic substance to hide his income and later falsely claimed deductions equal to his adjusted gross income, giving the appearance that he owed no taxes. He was sentenced to two years in prison and ordered to pay restitution for his trouble.

Agency: IRS - CI.

USA Donald A. Davis. AUSA Raymond E. Beckering.

MORTGAGE FRAUD: *United States v. Joseph Carr.* Carr, a mortgage broker from the Lansing area, was convicted and sentenced to six years in prison for his defrauding banks by recruiting "straw purchasers" to apply for a mortgage loan for a home that he himself intended to occupy and even inflating the value of the home in order to increase the value of the loan. Carr's conviction and decision to cooperate opened up numerous investigations into similar schemes in the area.

Agency: FBI.

AUSA: Timothy P. VerHey.

GENERAL VIOLENT CRIME

United States v. Jordon Ford, et al. In this Hobbs Act conspiracy case, a state and federal task force led by the FBI and Lansing Police Department solved an outbreak of gun violence involving over twenty armed robberies in the Lansing Area. Eight men were identified as perpetrators. Five pled guilty, two were convicted at trial, and one fugitive was captured in July 2011 and currently awaits trial. The two that went to trial were convicted of conspiracy to commit robbery, multiple counts of robbery, and multiple counts of using a firearm during the robberies. Those two were sentenced to 117 years and 122 years in prison, respectively.

Agencies: FBI; Lansing Police Department.

AUSAs: Sean C. Maltbie; Heath M. Lynch.

United States v. Jacob Johnston and Carl Alphonso Crane III. Representing a spate of bank robbery prosecutions in 2011, defendants Johnston and Crane were charged and convicted in connection with their armed robbery of the Great Lakes First Federal Credit Union in Rapid River, Michigan. Crane displayed what appeared to be a handgun (but was actually an "Airsoft" pistol) while wearing a ski mask and demanding money from the three tellers. Johnston had supplied him with the apparent weapon and was his accomplice in the plan.

Johnston received 40 months and Crane received 48 months in prison for their efforts.

Agencies: FBI; Michigan State Police.

AUSA: Maarten Vermaat.

United States v. Rami Saba and Raougo Ouedrago. Saba and Ouedrago went to trial separately on charges of identity theft, bank fraud, conspiracy to kidnap, kidnapping resulting in death and murder for hire in the disappearance and presumed death of Donald Dietz, a retired custodian known locally as "the bicycle man" because he preferred to save money by commuting via bicycle. Ouedrago was convicted by the jury of all charges except the murder for hire before the presiding judge acquitted him of all charges in a post-trial order. In the Saba trial, the judge issued a Rule 29 order on all charges involving an element in which the jury would be asked to find whether Dietz died as a result of the crimes. Saba was convicted of the remaining charges and sentenced to over thirty years in prison, with the judge again concluding among other things the the government failed to prove the defendants had caused a death. The government has filed notices of appeal for both the post-trial acquittal of Ouedrago and the sentencing of Saba.

Agencies: U.S. Secret Service; Michigan State Police.

USA: Donald A. Davis.

AUSAs: Phillip P. Green; Russell A. Kavalhuna.

INDIAN COUNTRY

OPERATIONAL PLAN: The U.S. Attorney, Tribal Liaison, Law Enforcement Coordinator, Victim/Witness personnel and representatives from various federal law enforcement agencies met with each of the 11 Tribes in the district through the summer of 2011. The meetings addressed the areas of communications, investigations, victim advocacy, training, violence against women and accountability.

Agencies: FBI; ATF; DEA; Bureau of Indian Affairs.

USA Donald A. Davis. AUSA Jeffery J. Davis.

United States v. Christopher Frazier. In this case out of the Sault Ste. Marie Tribe of Chippewa Indians, Frazier, a member of the Tribe, was charged with and convicted of sexually assaulting three minor children on the Bay Mills Indian Community Reservation. The Hon. R. Allen Edgar, Senior District Judge, sentenced Frazier to 30 years in prison. Noting that 50% of his time is devoted to sexual assault crimes in Indian Country, the judge stressed that the sentence was intended to send a strong message to tribal communities that committing these types of crimes will result in harsh sentences.

Agencies: FBI; Sault Ste. Marie City Police; Bay Mills Tribal Police.

AUSAs: Jeffery J. Davis; Phillip P. Green.

ORGANIZED CRIME AND DRUG ENFORCEMENT TASK FORCE (OCDETF)

OPERATION BROKEN RECORD. This aptly named operation targeted three interconnected criminal organizations in Lansing that shared common sources of cocaine. One group, the Cho City Boys, identified themselves after a rap label of the same name with which some of them were affiliated. The Cho City Boys were responsible for the street level distribution of approximately one kilogram of cocaine base (crack cocaine) and similar quantities of powder cocaine on a monthly basis. During 2011, eight members of this organization were prosecuted and convicted in the U.S. District Court in this district. The final member of this group, Marlon Oliver, was convicted following a jury trial in December of 2011, and faces a sentence that will be based on a guideline range of 360 months to life.

Some of the cocaine that the Cho City Boys distributed was sold to them by Otis Morris and persons associated with him. Morris was convicted at a jury trial in November of 2011, during which the jury heard testimony that Morris had received 15 kilograms of cocaine during April of 2011 alone and distributed it in Lansing. He had been receiving between five and 10 kilograms of cocaine per month during the last several years and selling it in Lansing and Detroit. On May 6, 2011, he was arrested with fellow conspirators near Paw Paw, Michigan. At that time, he possessed more than four kilograms of cocaine, more than \$24,000 cash and a firearm. He was released on bond, but arrested three weeks later on additional drug distribution charges that occurred after his release. Convicted of numerous violations of federal law, including as an Armed Career Criminal, he faces a mandatory life sentence followed by consecutive terms for federal firearms charges. Also convicted were five additional members of his organization, bringing the total number of convictions to 14.

A third indictment, targeted three additional supply-side sources of cocaine to the group. Three men, Richard Perry, Darryl Stanfield and Corey "Pokey" Goss were caught returning to Michigan from Texas and had 11 kilograms of cocaine in a secret compartment built into their vehicle. The three are slated for trial.

Agencies: DEA; ATF; Lansing Police Department.
AUSA: Mark V. Courtade.

OPERATION TRAP AND ROLL. This operation lived up to its name. After catching a local drug dealer in the act, Lansing DEA convinced the dealer to cooperate. The DEA arranged a controlled delivery of an additional kilogram of cocaine and followed the mule to a location

in Grand Rapids where the kingpin was visiting. Surveillance stopped a vehicle leaving that location and seized more than \$200,000 in cash hidden in a secret compartment. The cash was the proceeds of cocaine trafficking. The investigation showed that between 40 and 50 kilograms of cocaine had been brought to Grand Rapids from the west coast and sold between April of 2010 and September of 2010. An additional five kilograms of cocaine was seized en route to Michigan by police officers in Iowa. The investigation resulted in the dismantling of the organization and conviction of eight persons in Michigan to date. Three defendants remain fugitives and two are facing a jury trial in March of 2012.

Agencies: DEA; Kent County Sheriff's Office.
AUSA: Mark V. Courtade.

OPERATION HOLIDAY EXPRESS: 2011 saw the wrap-up of this OCDETF investigation that targeted the two Los Angeles, California-based drug trafficking organizations that supplied cocaine to the West Michigan "AHH DEE AHH" drug trafficking organization (successfully prosecuted and dismantled in 2009) as well as other organizations. Both Los Angeles-based organizations were being supplied by the Tijuana Cartel. One alone was responsible over delivering over 3,700 kilograms of cocaine to Michigan. By the conclusion of these operations, both of the targeted organizations were completely dismantled, 43 individuals in three states stood convicted, over \$57 million in money judgments had been entered, over \$5 million in money and assets forfeited and the lead AUSA had received a Director's Award for his efforts.

Agencies: ATF; Lansing Police Department.
AUSAs: Brian P. Lennon; Joel S. Fauson.

PROJECT SAFE CHILDHOOD

United States v. Scott Allan Herrick. Herrick was Camp Director for the Gerber Boy Scout Camp in Twin Lakes, Michigan, and worked as a pool safety instructor for third grade children at the YMCA in Muskegon, Michigan. He surreptitiously videotaped boys as they were dressing in the boys' locker room in the YMCA. In addition, Herrick traded child pornography during a series of undercover FBI operations. A search warrant executed on the Gerber Boy Scout Camp revealed evidence of child pornography. As a result of his convictions for possessing, trading and producing child pornography, he was sentenced to 95 years incarceration.

Agencies: FBI; ICE-Homeland Security Investigations.
AUSA: Daniel Y. Mekar.

United States v. Mark Owen Baldwin. After a concerned citizen filed a complaint about a photograph found on the Internet, the Internet Crimes Against Children (ICAC) task force conducted a forensic

examination of Baldwin's computer and found pictures of Baldwin sexually assaulting a nine year-old child. The FBI later determined that pictures of the child had been shared on the Internet and found in child pornography collections in Texas, Massachusetts, Florida, and the Netherlands. In sentencing Baldwin to prison for 30 years, Chief U.S. District Judge Paul Maloney described Baldwin as a "major threat to the public" and described his conduct as "horrific and depraved" and "just off the chart."

Agencies: FBI; Michigan State Police; Niles City Police Department; Berrien County Prosecutor's Office.
AUSA: Daniel Y. Mekar.

PROJECT SAFE NEIGHBORHOODS

United States v. Justin Hayes, et al. The Battle Creek Police Department (BCPD) referral of a felon in possession case, where the gun was identified as having been one of 98 guns stolen from a gun store in suburban Seattle, WA, led to multiple prosecutions and convictions. The U.S. Attorney's Office, ATF, HSI, and BCPD were able to identify the perpetrators of the gun store burglary. Those prosecutions also led to some of the drug dealers the guns were sold to. The case has now become an Organized Crime Drug Enforcement Task Force case that has already resulted in seven convictions and will eventually result in many more.

Agencies: ATF; ICE-Homeland Security Investigations; Battle Creek Police Department.
AUSAs: Sean C. Maltbie; Heath M. Lynch.

United States v. Shane Johnson. Lansing PD made a PSN referral for Shane Johnson, an Armed Career Criminal, who was arrested in connection with a gun found in a hospital maternity ward, shortly after a shooting near that hospital. Johnson went to trial and was convicted after a four day trial of being a felon in possession. Witnesses testified that a man dressed in a black mask and an oil change uniform shot at another man outside an apartment complex. Witnesses observed the shooter flee toward the hospital, and hospital video surveillance showed him entering and walking through the hospital with a bundle of clothing in his arm. The bundle disappeared from his possession in the maternity ward. Police found the bundle and .45 caliber pistol in one of the rooms in a trash can. A mask and glove found with the bundle had Johnson's DNA on them. Johnson was sentenced to 292 months.

Agencies: ATF; Lansing Police Department.
AUSAs: Sean C. Maltbie; Heath M. Lynch.

SIGNIFICANT APPEALS

United States v. Jason Louis Tinklenberg. In February, 2011, the Supreme Court heard oral argument on this Office's appeal of a prior Sixth Circuit opinion on the Speedy Trial Act. In May, the Supreme Court unanimously agreed with the government that pretrial motions automatically toll the "speedy trial clock" without the need of special findings from the trial court that resolution of the motion will necessarily cause a delay in the start of the trial. The Sixth Circuit decision had caused a split among the circuit courts, with the Sixth Circuit standing alone in its reading of the Act, and uncertainty for practitioners and trial courts alike.
AUSAs: Andrew B. Birge; Jennifer L. McManus; Julie A. Woods.

United States v. Marvin Gabrion. In August, a panel of the Sixth Circuit affirmed the 2001 conviction of Marvin Gabrion for the murder of Rachel Timmerman but reversed the jury's sentence of death. After the panel previously ruled 2-1 that the federal government properly invoked its jurisdiction to prosecute Gabrion, the panel unanimously rejected countless substantive arguments for acquittal and all but two arguments for vacating the death penalty. In a divided opinion on the penalty issues, the majority concluded that the jury should have been instructed that it could consider that the State of Michigan does not have a death penalty as a mitigating factor and that the aggravating factors must outweigh the mitigating factors beyond a reasonable doubt for the jury to choose a sentence of death. The Office sought *en banc* review of the decision on the death penalty, which the Sixth Circuit granted. The decision has been vacated and the full court will hear argument in 2012.
USA Donald A. Davis. AUSAs: Timothy P. VerHey; Jennifer L. McManus; Andrew B. Birge.

OUTREACH AND TRAINING

Throughout 2011, U.S. Attorney Davis and the USAO participated in a number of outreach activities.

SPECIAL INITIATIVES

The LEC/VW Unit met with a number of tribes as they began, developed, and implemented domestic violence prevention groups. Additionally, the USAO continued its involvement with statewide task forces involving Human Trafficking, Hate Crimes and Health Care Fraud.

U.S. Attorney Davis and AUSA Donald D. Daniels met on a quarterly basis with the Michigan Alliance Against Hate Crimes.

AUSA Raymond E. Beckering is spearheading the USAO's effort to coordinate Health Care Fraud prosecutions with State authorities and the eastern district USAO. We will see the dividends of those efforts in the coming year.

In September, U.S. Attorney Davis and First Assistant U.S. Attorney Andrew B. Birge met with local representatives of area Muslim and Arab American communities in Lansing, Kalamazoo and Grand Rapids.

As part of the Project Safe Childhood initiative, AUSA Julie A. Woods represented the office and the Department by speaking and answering questions at an "Anti-Bullying" conference with students, school administrators and the Michigan Department of Civil Rights.

LEC/VICTIM-WITNESS PROGRAM

The U.S. Attorney's Office again had an aggressive training schedule for Federal, state, tribal and local law enforcement. [See Training List] We trained nearly 5,000 officers in the areas of anti-terrorism, Brady and Giglio updates and a variety of general law enforcement topics. Additionally, the office trained over 100 officers on Criminal Justice in Indian Country, enabling them to receive Special Commissions from the BIA. As previously noted, Kaye D. Hooker, Kathy E. Schuette, Janet S. Strahan, Anne E. Towns and Gary F. Gibbons received the Director's Award for organizing and managing the events. In addition, several USAO staff lectured as part of the programs, including AUSAs Jeffery J. Davis, Matthew G. Borgula, Hagen W. Frank, Nils R. Kessler, Paul D. Lochner, Michael A. MacDonald, Timothy P. VerHey and Maarten Vermaat, along with Intelligence Specialist Gary F. Gibbons. Various staff members also pitched in to help, as needed.

This accomplishment is all the more remarkable given that the Victim-Witness Unit led the country in victim notifications in 2011, with 542,002 notifications issued. This Office also led the country with an average of 20,268 victim notifications, per AUSA.

LEGAL COMMUNITY TRAINING

Since January of this year, three members of our staff were selected by the Department's National Advocacy Center (NAC) to instruct on various topics. AUSA Matthew Borgula lectured on Suspicious Activity Reports (SARs) at a Money Laundering Seminar. AUSA Michael MacDonald lectured twice over the course of the year on Evidence for Criminal Litigators. And our Automated Litigation Support Specialist, Cynthia A. Niblick, instructed at a Courtroom Presentations Seminar.

For the annual Hillman Trial Advocacy Program in Grand Rapids, USA Davis, and AUSAs Phillip J. Green and Timothy P. VerHey lent their expertise and guidance.

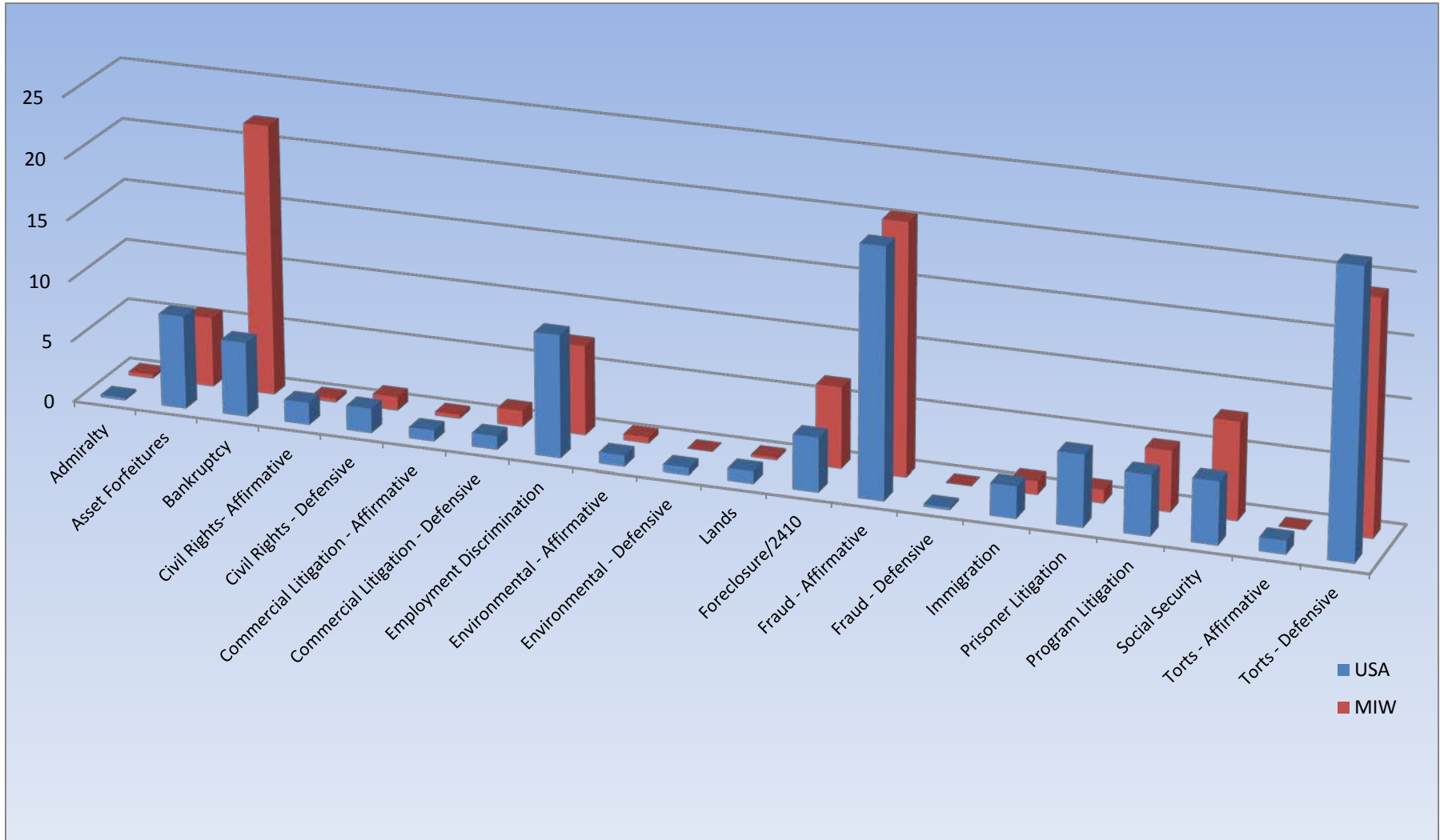
SPECIAL EMPHASIS COMMITTEE

Finally, the office is particularly proud of its Special Emphasis Program. The Committee is chaired by Legal Assistant Lena L. Newton and is comprised of attorneys and support staff alike, including Carrie A. Almassian, Ellie M. Drumm, Valerie A. Gave, Roger D. Hensley, Sean C. Maltbie, Michael A. MacDonald, Jettia M. Ramey, Janet S. Strahan, Mee F. Thao-Khang and June Van Wingen. The program's ambitious schedule appears in the appendix. Largely due to the personal dedication of Lena Newton, our Special Emphasis Committee organized several job fairs and "career days" - a unique effort among USAOs. These job fairs and "career days" educate local undergraduates about federal law enforcement careers. Other Special Emphasis Programs included presentations for Black History Month and an extensive Veterans Day/Native American History Month program that included one of the last surviving World War II "Code Talkers" as the keynote speaker.



CIVIL WORKYEAR STATISTICS

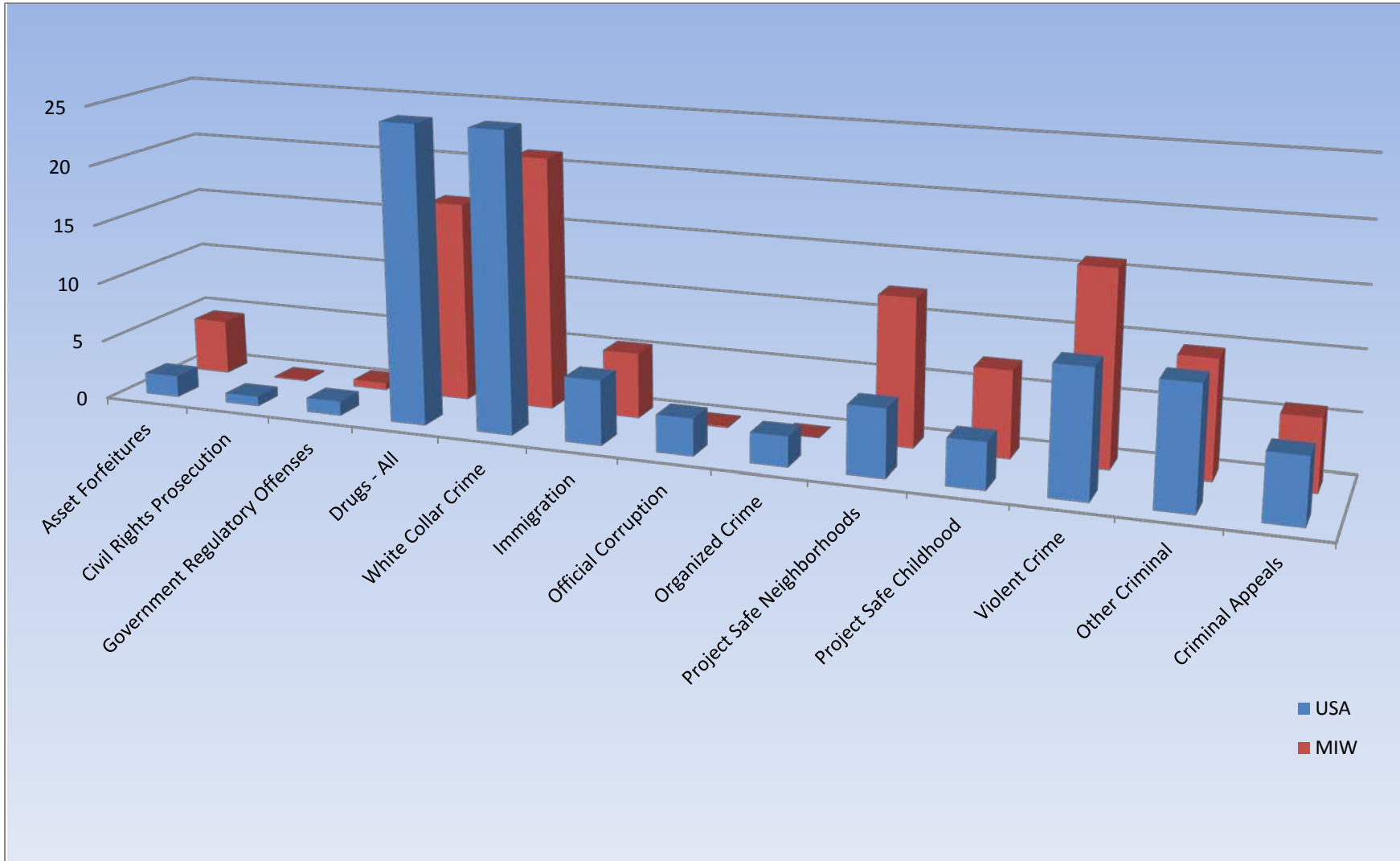
[Time spent on various types of matters as a percentage of the total.]



*USA Bankruptcy includes districts with Regional Counsel representing the United States directly.

CRIMINAL WORKYEAR STATISTICS

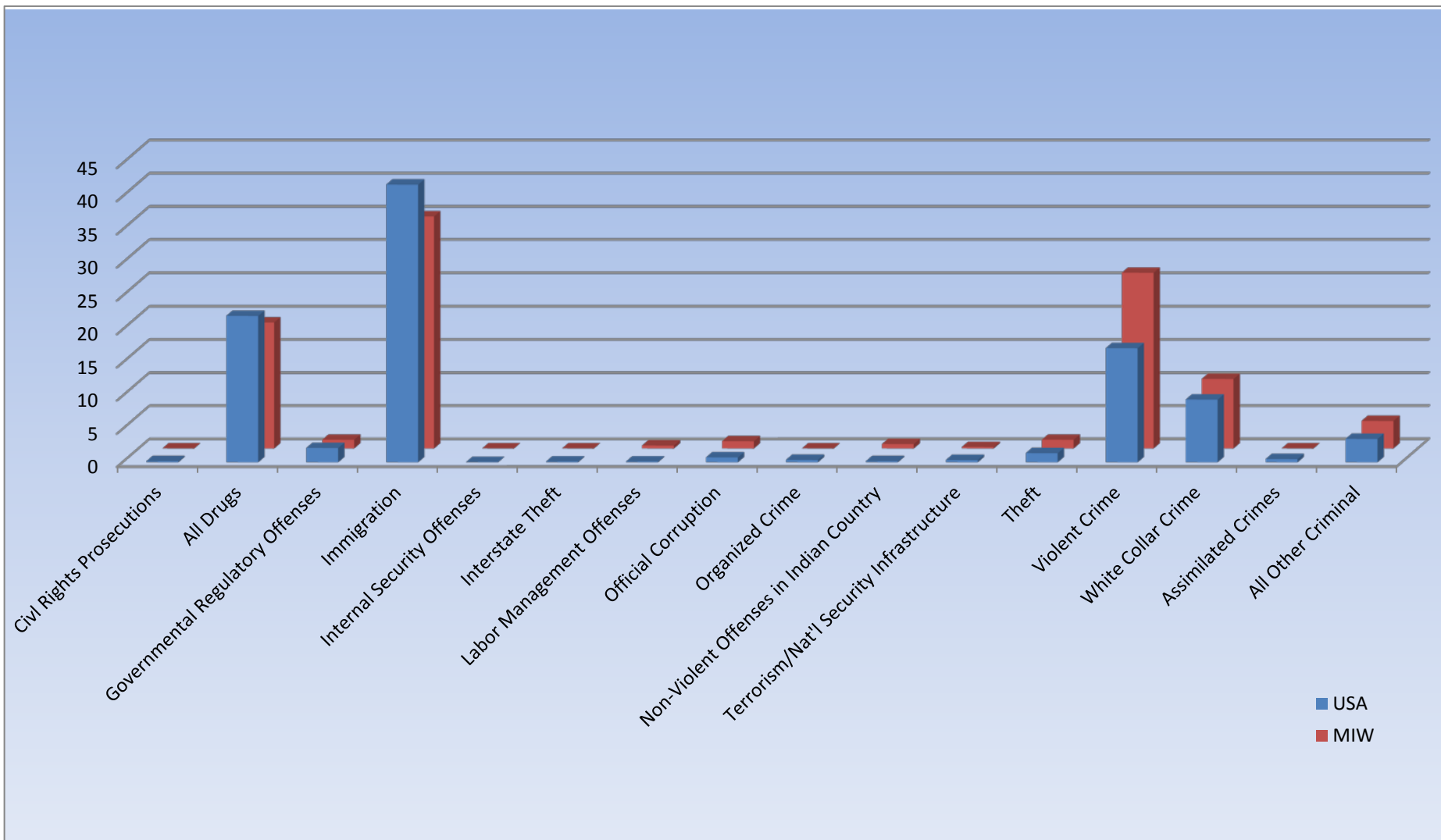
[Time spent on various types of matters as a percentage of the total.]



*USA data includes Southwest Border Districts.

CRIMINAL CASELOAD STATISTICS

[The types of cases we are bringing as a percentage of the total.]

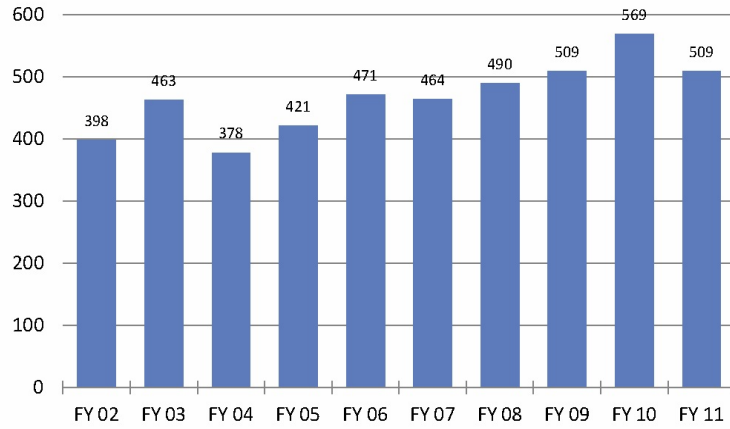


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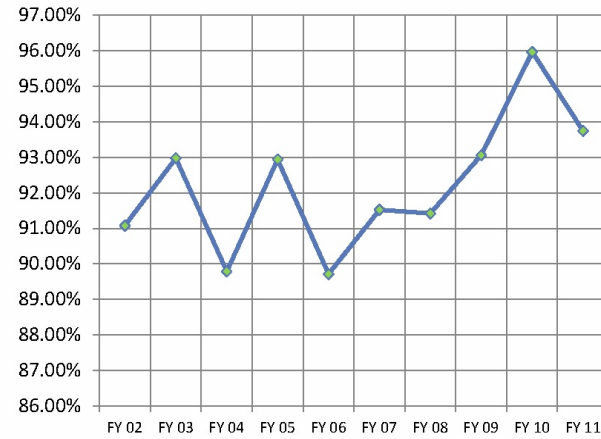
United States Attorneys Criminal Caseload Statistics

Western District of Michigan

Defendants Guilty

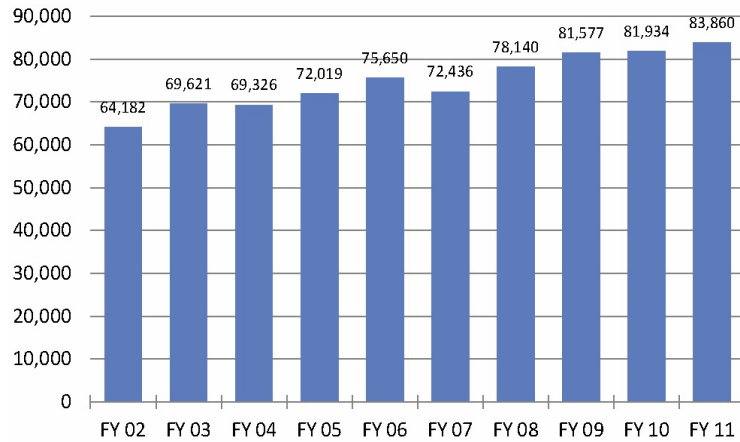


Conviction Rate

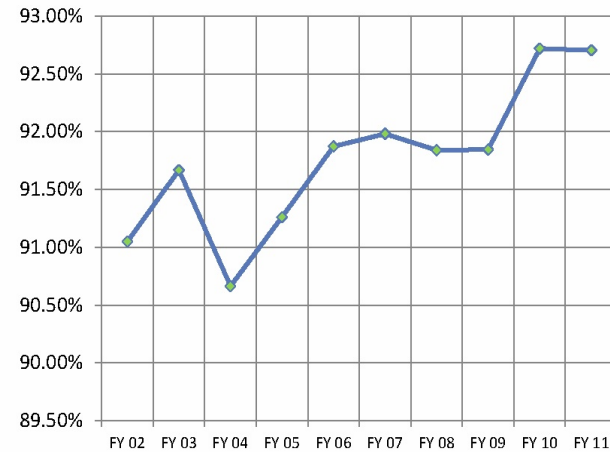


All Districts

Defendants Guilty



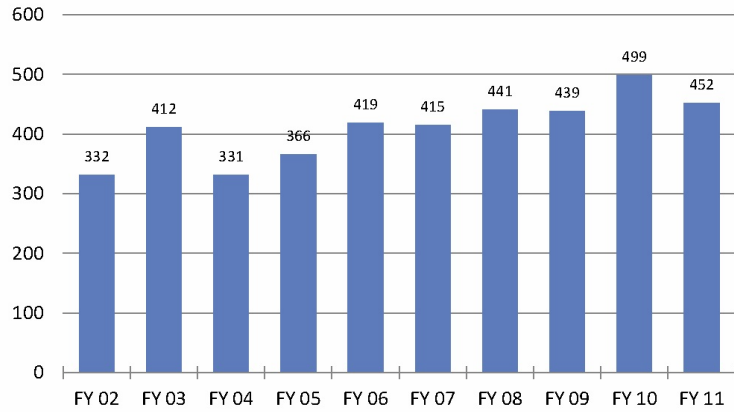
Conviction Rate



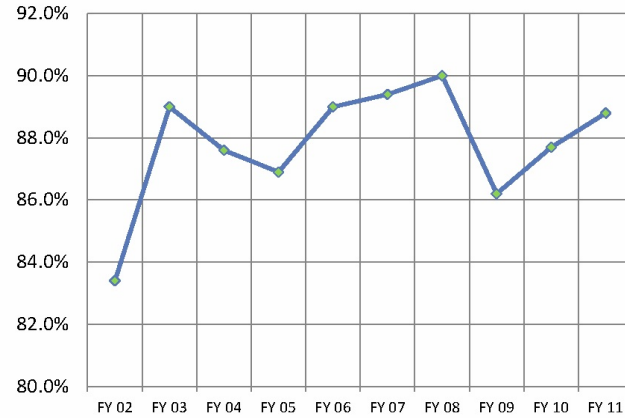
United States Attorneys Criminal Caseload Statistics

Western District of Michigan

Number of Guilty Defendants Sentenced to Prison

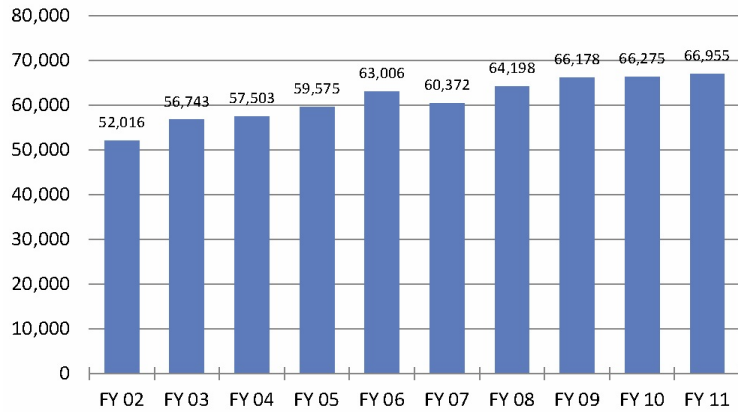


Percentage of Guilty Defendants Sentenced to Prison

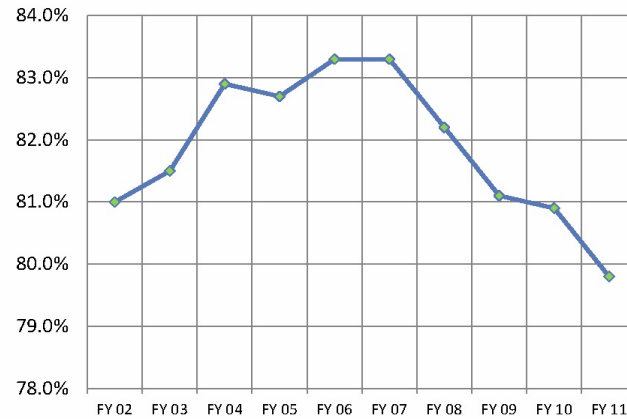


All Districts

Number of Guilty Defendants Sentenced to Prison

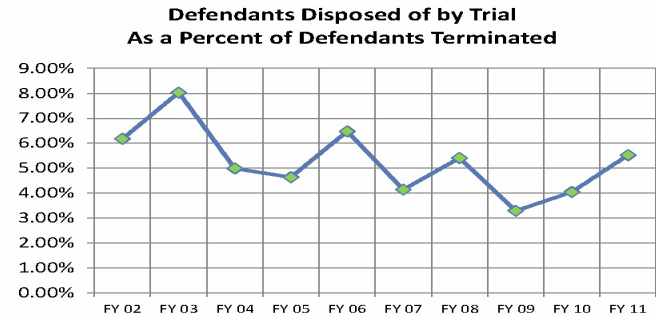
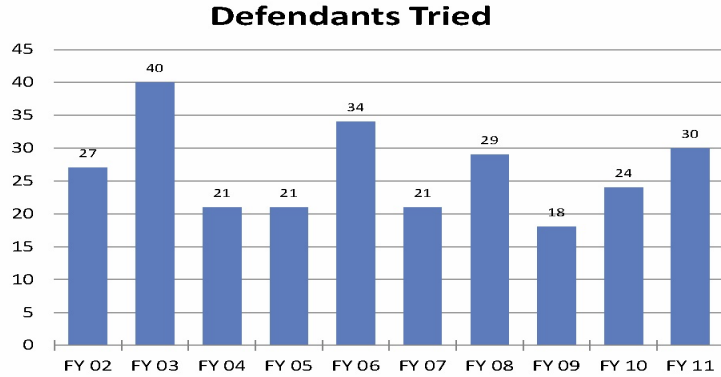


Percentage of Guilty Defendants Sentenced to Prison



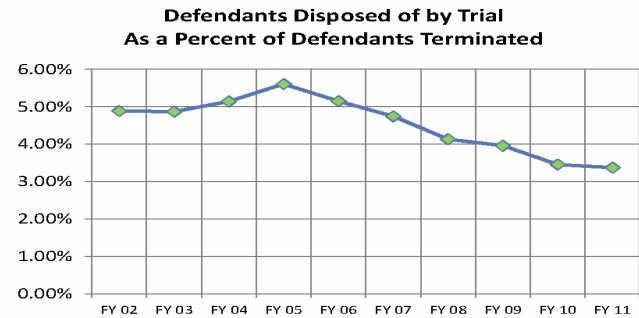
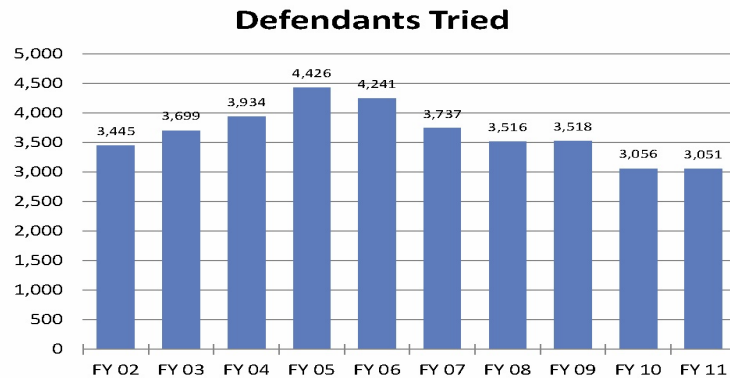
United States Attorneys Criminal Caseload Statistics

Western District of Michigan



FY 02	6.18%
FY 03	8.03%
FY 04	4.99%
FY 05	4.64%
FY 06	6.48%
FY 07	4.14%
FY 08	5.41%
FY 09	3.29%
FY 10	4.05%
FY 11	5.52%

All Districts



FY 02	4.89%
FY 03	4.87%
FY 04	5.14%
FY 05	5.61%
FY 06	5.15%
FY 07	4.75%
FY 08	4.13%
FY 09	3.96%
FY 10	3.46%
FY 11	3.37%

TRAINING	DATES	VENUE
Special Commission	January 20-21, 2011	Gun Lake
Special Commission	February 23-24, 2011	Mt. Pleasant
Street Gang Invest. Course	February 7-10, 2011	Mason
Meth Invest. Workshop	February 28-March 2, 2011	Kalamazoo
Characteristics of the Armed Gunman	April 14, 2011	Dewitt
Bank Secrecy Act	April 21, 2011	Davenport University, Grand Rapids
Regional – National Parks Service Training	April 25-28, 2011	Traverse City
Bankruptcy Fraud	April 28, 2011	USAO, Grand Rapids
Advanced Grant Writing	May 10, 2011	Mason
Border Wars – Narco Terrorism	May 26, 2011	Grand Rapids
Use of Force	June 10, 2011	Hastings
Interview Techniques	June 14, 2011	Adrian(MAGLOCLLEN)
Sovereign Citizen	June 22, 2011	Kalamazoo
Use of Force	July 28, 2011	Berrien Springs
Great Lakes Native American Conf.	August 2-4, 2011	Minnesota
SLATT Campus Security	August 4-5, 2011	Livonia
Use of Force – Train the Trainer	August 4-5, 2011	Petoskey
Law Enforcement Symposium	August 9-11, 2011	Traverse City
LEKOA, Interview & Interrogation/Use of Force	August 15-17, 2011	Schoolcraft College, Livonia
Use of Force	August 19, 2011	Delta College, University Center
Sovereign Citizen	September 8, 2011	Kalamazoo
MIAAHC Hate Crimes Conference	September 9, 2011	East Lansing
Intelligence Commander Course	September 13-14, 2011	East Lansing
LEOKA	September 21, 2011	Marquette
Special Commission	September 26-27, 2011	Sault Ste. Marie
Transient Criminal(MAGLOCLLEN)	October 18, 2011	Mason
Transient Criminal(MAGLOCLLEN)	October 19, 2011	Kentwood
Cell Phone Analysis(MAGLOCLLEN)	October 25, 2011	Kalamazoo
SLATT	October 26-27, 2011	Ann Arbor
Use of Force Symposium	October 31-November 2, 2011	Midland
Use of Force Train the Trainer	November 3-4, 2011	Pontiac
Below 100	November 21, 2011	Detroit
Mental Prep./ Officer Survival	November 22, 2011	Livonia
Below 100	November 23, 2011	Detroit

SPECIAL EMPHASIS PROGRAM COMMITTEE

RECRUITMENT EFFORTS

Federal Opportunities Day..... March 24, 2011
Western Michigan University

Extended Job Shadow Experience April 6 - May 26, 2011
Grand Rapids University Prep Academy

Veteran Employment Job Fair..... June 2, 2011
National Guard Armory

Career Fair..... August 10, 2011
ITT Technical Institute

Veteran Employment Job Fair..... September 15, 2011
Army Reserve Center

Second Annual Federal Career Day..... October 13, 2011
Grand Rapids Community College/Ferris State University

SPECIAL EMPHASIS PROGRAMS

Black History Month Program..... February 28, 2011
African American & the Civil War/Harlem Renaissance

Native American Heritage Month & Veterans Day Program.. . November 10, 2011
The Great American Story of the Navajo Code Talkers.