

YEAR IN REVIEW

Year 2013



United States Attorney's Office
Western District of Michigan

Patrick Miles, Jr.
United States Attorney

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Introductory Message



PATRICK MILES, JR.
UNITED STATES ATTORNEY
WESTERN DISTRICT OF MICHIGAN

Thank you for reading the *2013 Year In Review* of the United States Attorney's Office for the Western District of Michigan. The effects of sequestration budget cuts and a lapse in federal budget appropriations (commonly called a government shut-down) resulted in a year with unprecedented challenges. Our attorneys, paralegals, legal assistants, and administrative personnel rose to the occasion despite personal and professional uncertainties as well as sacrifices. A hard hiring freeze meant vacancies could not be filled – even though work levels remained constant or increased. Despite the many hardships, everything was done with a focus on maintaining the primacy and excellence of our case work. Our federal agency partners were also affected by the same circumstances and they too were up to the challenge.

The mission of serving the public and justice is foremost in the minds and hearts of those working in this U.S. Attorney's Office.

The Office continued positioning for the future with the orientation and integration of five new Assistant U.S. Attorneys arriving in late 2012 and one arriving in early 2013. The Office's new strategic planning process allowed all AUSAs to develop ways to work together and with agencies even better, share information, improve skills, communicate with the public on issues of importance, and further the Office's goals. The Criminal Division made great strides in utilizing new technologies and tools. Its late 2012 restructuring and reprioritizations were conducive to the Attorney General's "Smart on Crime" initiative announced in August. In order to most efficiently use and leverage federal resources, reduce or prevent crime, and obtain positive outcomes, the Criminal Division Task Forces continue to proactively develop complex and meaningful cases.

In this regard, our Financial Fraud Section prosecuted more cases than the national average and the Health Care Fraud Task Force expanded its capacity. In the Violent Crimes Section, a dedicated AUSA was assigned to lead a task force to develop and implement an ongoing violent crime reduction strategy in the City of Battle Creek, Benton Harbor, Grand Rapids, Holland, Kalamazoo, Lansing, and Muskegon, respectively, with the relevant County Prosecutor's Office, County Sheriff's Department, local police department, and federal law enforcement agencies. We continued aggressively fighting child exploitation and successfully prosecuting internet child pornographers. Our Organized Drug Section is addressing large scale narcotics traffickers as well as the growth in prescription drug diversion. The National Security Section maintained its productivity and increased its efforts to combat identity theft, cybercrimes, and civil rights violations as well as to protect national security. The Civil Division once again worked hard to preserve, protect, and defend the interests of the U.S. government and its taxpayers. To my great pleasure, the Office maintains a strong and positive relationship with each of the eleven federally-recognized Native American Tribes in the District. The addition of an AUSA situated in the Marquette office who focuses on Indian Country cases demonstrates our commitment to better serving the Tribes and the public.

Over the past few years the Office has seen more employee departures than typical. Perhaps that is a result of time and the Office's dramatic growth in the 1980's and early 1990's. Nevertheless, the Office is continuing its tradition of excellence and continuous improvement. Once again, I encourage you to share your comments or suggestions with us. The Office's telephone number is 616-456-2404 and my e-mail address is patrick.miles@usdoj.gov. Please feel free to stay updated on our progress throughout the year by visiting our website at <http://www.justice.gov/usao/miw> or follow us on Twitter at @USAO_WDMI.

Sincerely,

A handwritten signature in blue ink, appearing to read "Patrick Miles, Jr." with a stylized flourish at the end.

Patrick Miles, Jr.

NEW INITIATIVES

In 2013 the Justice Department launched a comprehensive review of the criminal justice system in order to identify and institute, where they do not already exist, practices that will result in more fair and efficient enforcement of federal law. Dubbed the "Smart on Crime" initiative, the review culminated in the announcement of five principles.

First, the Department identified the criminal law enforcement priorities around which districts should focus their criminal law enforcement resources: protecting Americans from national security threats; protecting Americans from violent crime; protecting Americans from financial fraud; and protecting the most vulnerable members of society. These priorities will look familiar to those who know the current structure of the Criminal Division in the Western District of Michigan. Following his arrival in 2012, U.S. Attorney Miles re-organized the Criminal Division into a National Security Section, a Violent Crimes Section, a Financial Crimes Section and an Organized Drug Crime Section. The Division was further organized at the same time into units and task forces that focus on such areas as child exploitation, investment fraud, identity theft, etc. This first "Smart on Crime" principle also re-affirmed the office's long-standing participation in initiatives that are not tied to specific prosecutions, such as domestic violence coalitions, a human trafficking task force, the Michigan Alliance Against Hate Crime and multi-disciplinary teams that address child abuse in Indian Country.

In addition, the Department pledged to reform sentencing to reduce unfair disparities and reduce the pressure on overburdened prisons. Primarily concerned with lengthy drug sentences, the Department now focuses the pursuit of mandatory minimum drug sentencing on perpetrators tied to large-scale drug trafficking organizations. The existing practice in the Western District of Michigan already largely tracked the new nationwide approach.

The next two principles are to pursue alternatives to incarceration for low-level, non-violent offenders and to invigorate efforts to curb recidivism through programs that attach upon an offender's return to society from prison. These principles track existing programs within this district, including Pretrial Diversion and the District Court's Affirmative Community Entry (ACE) program. In the coming year, the district will see increased time and attention from the U.S. Attorney's Office on re-entry efforts in particular.

Finally, the Smart on Crime initiative called for U.S. Attorney offices to coordinate with local and federal law enforcement and focus violent crime resources to have the most positive impact. This principle dovetailed with U.S. Attorney Miles' efforts to reconstruct the Project Safe Neighborhoods program into a proactive model for violent crime reduction along the lines of what the ATF had already begun to institute in some

urban areas. Such collaborative, proactive efforts had led in recent years to the prosecution of members of the Holland Latin Kings on a RICO charge and of members of the Lansing area Block Burners gang for drug and firearm charges.

NEW CHALLENGES

The office saw several senior attorneys and a senior member of the support staff move on this year to opportunities in other offices or to retirement from public service. The office completed some hiring initiated in 2012, but the effects of the budget sequester soon ended the ability to fill vacancies. The office continues to face a vacancy rate of nearly 20% in support staff. Aggressive efforts to secure authority to hire attorneys at the end of 2012 before the budget sequester allowed the office to avoid such a high vacancy rate in the attorney ranks -- at least going into 2013. Between the new attorneys getting up to speed and the office's renewed focus on complex crime, the Criminal Division charged 16.5% fewer cases and 9.5% fewer defendants in fiscal 2013 than in fiscal 2012.

The budget sequester itself was met with tight litigation expense management and, in light of the hiring freeze, re-shuffling and cross-training of the staff. The office completely shut-down non-essential travel (to the point of ride-sharing with agents and having attorney's cover for each other's hearings away from the main office whenever appropriate), postponed significant equipment purchases or upgrades and prioritized litigation expenses, among other savings efforts. The U.S. Attorney's part-time secretary and office receptionist, Jenelle Kroupa, transitioned to cover a gap in support assistance in the Civil Division; our purchasing officer, Kelly Johnson, cross-trained to back up our Human Resources Officer; our part-time Human Resources Assistant, Jettia Ramey, undertook part-time secretarial duties for the U.S. Attorney; and the office went without a receptionist, transitioning to ad hoc coverage of some receptionist duties to maintain adequate case support, and an automated phone answering system. The Criminal Division continued its practice of third-party contracting for adequate support assistance.

PROMOTIONS, ARRIVALS AND DEPARTURES

Promotions:

AUSA Matthew Borgula accepted U.S. Attorney Miles's offer to assume supervisory responsibilities over the office's Organized Drug Crime and Asset Forfeiture/FLU Section as a Deputy Criminal Chief in September. AUSA Brian Delaney previously held the position until pursuing a hardship transfer to another district, as noted below. Matt has been with the office for eleven years. In that time, he has handled firearm, narcotics and white collar prosecutions and received numerous awards from the Department as well as law enforcement agencies. He was the office's Asset Forfeiture Coordinator for six years—also having taken over that position for Brian Delaney when Brian

was first promoted to management. While in the office's Financial Crimes Section, Matt chaired the Suspicious Activity Report (SAR) Committee, a select group of AUSAs, staff and agents from several federal law enforcement agencies that reviews SARs submitted by reporting institutions for evidence of possible criminal activity. In addition, for the past year, he served as the principal (lead AUSA) for the office's Investment/Bank Fraud Unit. AUSA Borgula has instructed at the National Advocacy Center on the Bank Secrecy Act and forfeiture laws and is an available faculty member for teaching trial advocacy. Matt obtained his undergraduate degree from Northwestern University and his law degree *cum laude* from the University of Michigan.

Arrivals:

Hannah Bobee joined the office as an AUSA in our Criminal Division in March. Hannah spent her first eight months on the job in Grand Rapids before transferring to her Marquette duty station as the Indian Country AUSA for the Northern Division. Hannah obtained her undergraduate degree from the University of Michigan-Dearborn, and her law degree from Michigan State University. In law school, she received an Indigenous Law Certificate and was Secretary of the Family Law Society. Hannah is an enrolled member of the Sault Ste. Marie Band of Chippewa Indians and came to the office after two years as an Associate with the firm of Rosette, LLP, where she served most of her time as the Tribal Prosecutor for the Lac Vieux Desert Band of Lake Superior Chippewa Indians on a contract basis.

Jessica Wright joined the office in March as a Legal Assistant in our Criminal Division. Prior to joining the office, she worked in the Kent County Sheriff's Department as an Emergency Communications Operator. Jessica previously served in the Michigan Army National Guard for eight years, until 2009, as an Army Logistic Specialist, responsible for ground support for her company of 248 soldiers. She served overseas in Operation Iraqi Freedom III from 2004-05. Jessica obtained her B.A. *cum laude* from Ferris State University in 2010. She is assigned to the Violent Crimes Section.

Jettia Ramey returned to the office after an extended leave of absence for dependent care. She returned on a part-time basis just in time to allow some cross-coverage among support staff in the office. A Human Resources Assistant, she also covers duties as the U.S. Attorney's Secretary.

Departures:

AUSA Donald A. Davis retired at the end of November, in his 40th year of public service. In his 38 years with the office, Don served as Criminal Chief, First Assistant and, for almost four years from 2008 to 2012, as the Court-appointed U.S. Attorney. He prosecuted all manner of criminal cases, but he especially liked prosecuting tax protesters. He earned many awards over

the years, including a Director's Award for his role in prosecuting, along with AUSA Tim VerHey, Marvin Gabrion for murder. Gabrion was sentenced by the jury to death, a verdict and sentence finally upheld by the Sixth Circuit *en banc* on direct appeal earlier in the year.

AUSA Agnes Kempker-Cloyd also retired from public service at the end of November—after 35 years with the office. Aggie served in several capacities early in her tenure before settling into the Civil Division where she handled primarily a bankruptcy caseload but also employment and tort defense work. For the past year and a half, she served as the principal of the office's Civil Rights Task Force.

AUSA Brian K. Delaney sought and secured a "hardship" transfer to the Eastern District of California in October in order to follow his wife, who had accepted a prominent position with a private employer there. Brian was with the office for over 20 years in the Criminal Division and received numerous Department and agency awards for his service in that time. He held several posts, beginning with Asset Forfeiture Coordinator and extending to Deputy Criminal Chief, Criminal Chief and, for a three-week period in 2007, Interim U.S. Attorney.

AUSA John Salan retired in May, after 24 years with the office. He served in both the Civil and Criminal Divisions, rounding out the last several years as the lead AUSA handling alien offenses and the office's representative for the Court's Accelerated Community Entry (ACE) program for offenders released from prison.

Legal Assistant Valerie Gave retired in May, as well, after 15 years with the office and a total of 28 years of federal service. Val supported the Chief of the Civil Division as well as the affirmative civil enforcement casework. A highly productive member of the office's Special Emphasis Committee, she was one of several staffers who received a group Director's Award for that committee's work in 2000.

Awards:

DIRECTOR'S AWARD FOR SUPERIOR PERFORMANCE AS AN ASSISTANT U.S. ATTORNEY.

AUSAs Michael MacDonald and Christopher O'Connor received a Director's Award in early calendar year 2014 for their superior performance in the successful prosecution in 2013 of Gerald Singer for using arson to commit mail fraud (insurance fraud), mail fraud and tax violations. A jury convicted Singer after a four week trial. He received a 55-year sentence and was ordered to pay \$652,140 in restitution.

PATRIOT AWARD FROM THE EMPLOYER SUPPORT OF THE GUARD AND RESERVE COMMITTEE.

U.S. Attorney Patrick Miles received the Patriot Award in December from the ESGR for his hiring U.S. veterans and supporting Service members' Guard and Reserve military service obligations throughout the year. Many attorneys and staff over the years have engaged in Guard and Reserve service while employees of the USAO, and that history continues with the support of U.S. Attorney Miles.

THOMAS M. COOLEY LAW SCHOOL MARION HILLIGAN PUBLIC SERVICE AWARD.

AUSA Donald A. Davis received the Marian Hilligan Public Service Award at the 2013 Law Day Celebration. The award "is given annually to recognize contributions by a lawyer in public service to area governmental bodies or community organizations, reflecting greater individual responsibility in promoting public health and welfare through law."

HILLMAN AWARD.

AUSA Donald A. Davis received this award early in calendar year 2014 from the Board of the Hillman Trial Advocacy Program for his contributions over many years to the professional development of lawyers in the Western District of Michigan.

OUTSTANDING VICTIM SERVICES PROFESSIONAL OF 2013.

The Executive Office of U.S Attorneys (EOUSA) selected **Victim Witness Coordinator Kathy Schuette** as the Outstanding Victim Services Professional of 2013 for her work in the *U.S. v. Deuman* murder case. The Director of EOUSA commended her "commitment to combat new challenges and find new solutions to ensure victims of criminal offenses are treated with fairness, respect and dignity, and are provided with the assistance necessary to assist them in rebuilding their lives."

FREDERICK DOUGLASS AWARD FROM THE GRAND RAPIDS CLUB OF NEGRO BUSINESS AND PROFESSIONAL WOMEN.

U.S. Attorney Patrick Miles received the Frederick Douglass Award for outstanding service to the Grand Rapids Community during his 21 years of law practice.

REPRESENTATIVE CIVIL MATTERS

Affirmative Civil Rights Enforcement:

The USAO opened 17 affirmative civil rights cases in 2013. Our staff made significant efforts to contact damage-eligible victims of racially discriminatory mortgage lending and servicing practices so that they could participate in major national settlements involving Bank of America, Sun Trust Mortgage, and Wells Fargo Bank, resulting in greatly increased participation of victims in the Western District of Michigan.

Among other resolutions, we settled a complaint of racial discrimination by a state court judge who attempted to force a member of the Sikh religious community to remove his religious headwear in Court. We recently assisted in the Department of Justice's resolution of a complaint that a Rite Aid pharmacist discriminated against an individual with a disability by refusing to administer a flu shot because the individual has HIV.

The USAO is also involved in the statewide investigation of national origin discrimination in the Michigan Court system due to lack of sufficient language assistance services and materials for individuals with limited English proficiency. AUSAs: Agnes Kemper-Cloyd (former), W. Francesca Ferguson.

Affirmative Civil (Fraud) Enforcement

United States v. LG Chem Michigan, Inc. This False Claims Act case involved a Michigan-based company that received Recovery Act grant funds to manufacture, in Michigan, lithium-ion polymer batteries for use in electric vehicles. The United States alleged that the company falsely billed the U.S. Department of Energy for \$989,127 to pay domestic employees who were engaged in recreational and volunteer activities while the lithium-ion batteries were manufactured in South Korea. The United States further alleged that during a federal audit of these issues, the company made false statements in correspondence to and interviews with federal officials. The company paid a total of \$2,073,508 to resolve the case. AUSA: Adam Townshend. Agency: U.S. Department of Energy.

United States v. Rathod. The United States and State of Michigan obtained a False Claims Act settlement of \$1,000,000 in this whistleblower case against a disgraced physical therapist who owned and operated physical therapy clinics, medical

clinics, and a home health care agency that paid health care practitioners illegal kickbacks for patient referrals. The defendant, who liquidated his business holdings and valuable personal assets to pay the civil settlement, also agreed to a 20-year exclusion from federal health care programs as part of the resolution. The defendant also pled guilty in a parallel criminal case. AUSA: Adam Townshend. Agency: U.S. Department of Health and Human Services.

United States v. Schoenherr. The United States obtained a False Claims Act settlement of \$50,000, representing a damages multiplier, against a physician who received \$2,550 in illegal kickbacks in exchange for referring Medicare patients to physical therapy clinics and home health care agencies. AUSA: Adam Townshend. Agency: U.S. Department of Health and Human Services.

United States v. Thakur. The United States obtained a False Claims Act settlement of \$140,000—representing treble damages, a statutory penalty, and investigative costs—against a physician who received \$2,750 in illegal kickbacks in exchange for referring Medicare patients to physical therapy clinics. AUSA: Adam Townshend. Agency: U.S. Department of Health and Human Services.

Defense Against Claims of Civil Rights Violations:

Kivari v. Laird et al. The Sixth Circuit U.S. Court of Appeals upheld the District Court's grant of summary judgment in this civil rights case. The Plaintiff was honorably discharged from the United States Army in 1972 after being hospitalized for mental illness and alleged drug use. In his complaint against the former Director of the Department of Defense and the Secretary of Veterans Affairs, the Plaintiff alleged that the Army used an improper code on his discharge certificate, which made it difficult to find employment. The Plaintiff also contended that while serving in the Army overseas he was sexually assaulted by Army personnel and that the Army covered up the assault by diagnosing him as schizophrenic. The District Court dismissed the Plaintiff's complaint because he failed to allege any fact establishing that Director Laird or Secretary Shinseki were personally involved in the alleged sexual assaults or the diagnosis of his mental illness, and the Plaintiff could not recover against these individual federal employees for civil rights violations under a respondeat superior theory. The Sixth Circuit agreed with the District Court's conclusion that the Plaintiff failed to allege any fact indicating that the individual defendants violated his rights. AUSA: Carolyn Almassian. Agency: Department of Defense; Department of Veterans Affairs.

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 (FTCA) Defense:

Rock v. United States. The USAO obtained dismissal of this case, which alleged that a tribal employee of an after-school program at a tribal school negligently failed to supervise a minor after dropping him off in a parking lot to be picked up by a church bus. The student was run over by the church bus, suffering serious injuries, after he ran after the bus and slipped on the ice. The government prevailed on the argument that despite general FTCA coverage for tribal school employees in Department of the Interior grant-funded schools, the tribal employee was not deemed an employee of the United States because the school is also a charter school and the appropriations acts provide that there is no FTCA coverage for employees of tribal schools that also are charter schools. The Sixth Circuit recently issued an opinion upholding the dismissal. AUSAs: Ryan Cobb and Jeanne Long. Agency: Department of the Interior.

Lawrence Smith v. United States. Plaintiff originally filed suit in state court against two Iron Mountain employees of the U.S. Department of Veterans Affairs (VA), who Plaintiff alleged defamed him in relation to a veterans' event he was putting together. The Plaintiff contended that the VA employees instructed members of the public not to help with the event, told them the VA was doing its own event, made off-color remarks about the Plaintiff, and attempted to discredit Plaintiff in communications to a Congressional committee. The U.S. Attorney certified that the individual defendants were federal employees acting in the scope of their employment and the USAO removed the case to federal court and substituted the USA as the defendant. The USAO then prevailed on a motion to dismiss the case because the FTCA bars these types of claims against the United States. AUSA: Jeanne Long. Agency: U.S. Department of Veterans Affairs.

Program Litigation:

Alexander v. Michigan Air National Guard. The Sixth Circuit upheld the dismissal of a case brought by a former Michigan Air National Guard technician who was terminated after he failed to maintain his flying status and his security clearance was suspended for alcohol-related issues. He had previously challenged the termination in the Court of Federal Claims and received a severance pay award, though the Court dismissed his back pay and reinstatement claims. In the Western District of Michigan case, he sought to correct his military records regarding his loss of flying status and security clearance, sought a determination that his termination was unjustified or unwarranted, and again sought back pay. The USAO obtained dismissal at the District Court level and the Sixth Circuit affirmed the judgment, determining that the Plaintiff's Privacy Act claim was barred by the statute of limitations and that he

had no claim under the Administrative Procedures Act. AUSA: Michael Shiparski. Agency: Michigan Air National Guard.

Dreger v. HHS et al. The USAO obtained a partial dismissal of this Freedom of Information Act litigation based on the Plaintiff's failure to exhaust administrative remedies with respect to certain requests. Following the partial dismissal, the Plaintiff voluntarily dismissed the rest of the case pending agency responses regarding the remaining requests. AUSA: Ryan Cobb. Agencies: U.S. Department of Health and Human Services; Food and Drug Administration.

Ocon-Fierro v. DEA et al. The District Court granted the USAO's motion to dismiss this Freedom of Information Act (FOIA) case in which the Plaintiff sought records from USAO and DEA files. Even after the Defendants produced responsive records, mooting Plaintiff's initial FOIA case, Plaintiff sought to challenge certain release decisions. The District Court ruled that Plaintiff had failed to exhaust his administrative remedies with respect to these challenges. Plaintiff, who had failed to timely object to the Magistrate Judge's report and recommendation but instead sought an extension of time to object, then attempted to appeal to the Sixth Circuit the Magistrate Judge's decision not to grant an extension of time to object to the report and recommendation. The Sixth Circuit recently upheld the District Court's decision, ruling that Plaintiff waived his appeal by failing to object to the Magistrate Judge's decision not to grant an extension of time and by failing to object to the report and recommendation. AUSAs: Ryan Cobb and Jeanne Long. Agencies: Executive Office for United States Attorneys; Drug Enforcement Administration.

Immigration Litigation:

The USAO handled a number of habeas corpus petitions filed by persons detained pending removal from the country. Several of the cases required significant briefing and oral argument, though most were resolved without need for a decision on the merits from the District Court. For example, in ***Juan Marquez v. Rebecca Adducci et al.***: Petitioner, a citizen of Mexico and lawful permanent resident, was in removal proceedings before an immigration judge and filed a habeas corpus petition alleging that his detention without an individualized custody hearing was unlawful and that he did not fall within the mandatory detention provisions of 8 U.S.C. § 1226(c). The USAO responded that the immigration judge properly relied on *Matter of Rojas*, 23 I.&N. Dec. 117, 2001 WL537957 (BIA 2001), in ruling that petitioner was subject to mandatory detention. Under *Rojas*, the language of section 1226(c) does not restrict mandatory detention to criminal aliens taken into custody immediately at the time of their release from criminal detention, or except those who were never in criminal detention. Respondents also argued that petitioner's due process challenge failed because under *Demore v. Kim*, 538 U.S. 510, 528 (2003), "when the Government deals with deportable aliens, the Due Process Clause does not require it

to employ the least burdensome means to accomplish its goal." While the petition and response were pending, the presiding immigration judge ordered petitioner's removal and the order became final when petitioner did not appeal. As a result, the Petition was voluntarily dismissed as moot. AUSA: Michael Shiparski. Agency: U.S. Department of Homeland Security.

Employment Litigation:

Yuhasey v. Donahoe. The USAO obtained summary judgment and dismissal of claims brought by a U.S. Postal Service clerk who alleged gender discrimination and retaliation in her employment. The District Court concluded that the evidence did not reveal any explicit behavior based on Plaintiff's sex or any evidence of discriminatory comments made about women. The Court also found that the Plaintiff failed to show that the Postal Service treated similarly situated male employees more favorably than the Plaintiff. Finally, the USAO demonstrated that the Plaintiff was not retaliated against for prior Equal Employment Opportunity activity because there was no causal connection between her prior activity and alleged adverse events. AUSA: Carolyn Almassian. Agency: United States Postal Service.

Harris v. Shinseki. The Plaintiff sought equitable tolling of a deadline he missed to file his discrimination complaint alleging discrimination on the basis of race and sex. During the administrative process, he chose to participate in alternative dispute resolution, which resulted in a settlement. After he later complained of a breach of the settlement, the agency reviewed the agreement, decided it was void for lack of consideration, and reinstated his administrative EEO claim in a letter that informed him of his right to either file a formal complaint or reinitiate alternative dispute resolution. He declined alternative dispute resolution but failed to file a formal complaint within the required 15-day time period. The District Court determined that although the initial letter may have been confusing, a subsequent agency letter gave him actual and clear notice of his filing deadline. The Court concluded that Plaintiff had not diligently pursued his rights, took no steps to clear up any confusion he may have had, and was not entitled to equitable tolling based on health problems he was having because he failed to show that those issues interfered with his ability to comply with the law. AUSA (former): Agnes Kempker-Cloyd. Agency: Department of Veterans Affairs.

Proceedings Relating to Government Lien Claims:

The USAO continued to respond to a high 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 significant AUSA and staff time to handling these cases. AUSAs: W. Francesca Ferguson, Agnes Kempker-Cloyd (former AUSA), Michael Shiparski, Jeanne Long.

Social Security:

The U.S. Attorney's Office oversaw the preparation of answers and briefs primarily handled by Special Assistant United States Attorneys from the New York Regional Chief Counsel's office of the Social Security Administration. In 2013, the USAO opened 202 new cases in which Plaintiffs challenged unfavorable Social Security disability benefits determinations. The USAO closed approximately 159 cases – typically cases filed in prior years – after resolution or after decisions by the District Court.

Commercial Litigation:

Fifth Third Bank v. Bentwaters Partners, L.P., USDA - Rural Development et al.: Plaintiff Fifth Third Bank brought an interpleader action to resolve competing interests in funds residing in Defendant Bentwaters Partners' bank account at Fifth Third. Bentwaters obtained a loan from Centennial Mortgage, Inc. for the acquisition of apartment complexes and the loan was guaranteed by the United States through the Guaranteed Rural Rental Housing Program, 7 C.F.R. § 3565. Bentwaters subsequently defaulted, and Centennial submitted a loss claim to the United States Department of Agriculture ("USDA"). After payment on the loss claim, the USDA received an assignment of Bentwaters' promissory note, security agreement, and mortgage from Centennial. Then, Fifth Third, Bentwaters, and the USDA entered into a Deposit Account Control Agreement ("DACA") for the account in question. The USAO joined with Bentwaters and moved for summary judgment. The DACA, by its terms, granted the USDA a secured interest in the account. The District Court agreed that as a secured creditor with "control," the USDA had priority in the account funds. Consequently, the Court granted the motion for summary judgment and entered an order recognizing the superiority of the USDA's interest in the account funds. That was followed by an order that, upon receipt of the funds, the Court would tender the funds (\$486,235.40) to the USDA. AUSA: Michael Shiparski. Agency: U.S. Department of Agriculture and its offices of Rural Development and the Rural Housing Service.

Bankruptcy:

The USAO represented the interests of the United States in approximately 180 new bankruptcy matters it opened in 2013; the USAO also resolved its issues or claims in 187 cases. AUSAs: W. Francesca Ferguson; Agnes Kempker-Cloyd (former AUSA); Michael Shiparski.

REPRESENTATIVE CRIMINAL MATTERS

Financial Crimes Section:

HEALTH CARE FRAUD:

United States v. Babubhai Rathod. Rathod, a health care business owner, received a prison sentence of four years, paid a million dollar civil settlement and agreed to a 20-year exclusion from Medicare and Medicaid program participation in connection with an illegal kickback scheme he orchestrated. Between 2007 and 2012, Rathod directed a scheme to pay physicians, mid-level practitioners, and others for referring patients to medical clinics, physical therapy clinics and a home health care agency he owned. The illegal payments were made in cash and checks disguised as bonuses, mileage reimbursements, and payments under sham contracts for medical director and consulting services never performed. In addition, Rathod routinely submitted claims for medical services in order to fraudulently obtain higher insurance reimbursements than those to which his companies were entitled, a practice known as upcoding. Eight other medical professionals were convicted in connection with Rathod's schemes. AUSAs: Ray Beckering, Adam Townshend in coordination with Michigan Attorney General's Office. Agencies: FBI; HHS-OIG; Blue Cross/Blue Shield of Michigan.

United States v. Kim Mulder et al. In a prosecution proceeding in stages arising from an investigation of Kentwood Pharmacy, multiple executives and pharmacists were charged with conspiring to misbrand drugs and conspiring to create false prescription records. Mulder, the CEO, was also charged with structuring cash transactions in order to avoid bank reporting regulations. The indictment alleges that Mulder and others arranged for unused drugs to be picked up from adult foster care and nursing homes and that these drugs were later misbranded and re-dispensed when the pharmacy placed the returned drugs in stock bottles that bore incorrect lot numbers or expiration dates and into amber vials that bore no lot numbers or expiration dates at all. The indictment also alleges that the conspirators attempted to conceal the activity by sorting the drugs at unlicensed locations, including a strip mall office and the basement of the chief pharmacist's home. The charges in an indictment are merely accusations, and a defendant is presumed innocent until and unless proven guilty in a court of law. AUSAs: Ray Beckering, Adam Townshend. Agencies: FDA; FBI; DEA; HHS-OIG; IRS; Michigan State Police.

INVESTMENT/BANK FRAUD:

United States v. Roger Andrews. A Grand Jury indicted Andrews in September charging him with one count of wire fraud. The indictment alleges that, between August 2006 and June 2010, Andrews devised a scheme to defraud and to obtain money from friends and acquaintances by concocting a story that he owned investment property in Indiana worth more than \$2 million. Andrews allegedly told investors that he would use their money to improve the property prior to selling

it to the State of Indiana at a substantial profit. The Grand Jury further alleged that Andrews never owned any real property in Indiana and that he used investor money for personal expenses, including online market trading. [A jury later convicted Rogers as this edition of the Year in Review went to print in 2014.] AUSA: Christopher O'Connor. Agency: FBI.

MORTGAGE/INSURANCE FRAUD:

United States v. Scott Hoeft. Hoeft was sentenced to 63 months' imprisonment for his role in a conspiracy to defraud title insurance companies and mortgage lenders that resulted in \$8M in losses. From 2002 until 2006, Hoeft performed real estate closing and title services for a local residential developer. The developer obtained significant loans with financial institutions to acquire real estate for developments and to construct homes. As each home sold, a portion of these loans should have been retired with the proceeds deposited to Hoeft's escrow account by the mortgage lender for the purchaser of the home. Instead, Hoeft would either deliberately omit the existence of the developer's loans on the title commitment issued to the purchaser's lending institution, or he would falsely represent that he would pay off these loans as part of the closing. The money actually went elsewhere, including to the construction of new homes to keep the scheme going. As a result of Hoeft's misrepresentations, the purchaser and the lending institution believed that their purchase money mortgage was the only lien that existed against the home that had just been purchased. When the lenders later learned that many of the properties had been sold without their knowledge and without any portion of the land and construction loans having been paid off, they started foreclosure proceedings against the homeowners. Because Hoeft had issued title insurance policies to the homeowners falsely showing that the developer had no existing liens against their properties, two title insurers had to pay in excess of \$8M to pay off the liens and provide the innocent homeowners with clear title to their properties. AUSA: Ronald Stella. Agency: FBI.

United States v. Gerald Singer. Singer, a Muskegon-area landlord, was convicted in an arson-for-profit scheme and later sentenced to 55 years in prison and ordered to pay \$652,140 in restitution. Specifically, after a four week trial and the presentation of over 100 witnesses, the jury found Singer guilty of using fire to commit mail fraud (insurance fraud), mail fraud, filing false tax-related documents and obstructing tax administration. The properties he (or others at his direction) burned included commercial property, investment/rental property and a four-unit apartment complex. Singer infamously protested to the media upon his indictment that "You can't fool a jury," an assertion proved correct with the guilty verdicts. AUSAs Michael MacDonald, Christopher O'Connor. Agencies: ATF; IRS Criminal Investigation; Muskegon Heights Fire Department.

CORRUPTION & EMBEZZLEMENT:

United States v. Ken Hoesch. Hoesch, formerly an attorney in Zeeland, Michigan, was sentenced to 78 months in prison for embezzling from the trusts and trust accounts he controlled as an attorney on behalf of clients as well as for his failure to report this ill-gotten income on his taxes. He was also ordered to pay restitution to his individual victims in the amount of \$1,295,518.19 and restitution to the IRS in the amount of \$211,654. AUSA: Michael MacDonald. Agency: USSS; USPI; IRS Criminal Investigations.

United States v. Christopher Earl Pratt. Pratt, as comptroller for Village Market Food Centers, abused his position by stealing nearly \$7M from the company over the course of six years, nearly putting the company out of business and resulting in the closure of at least three stores and the termination of 170 employees. He used the money primarily to purchase and refurbish dozens of "muscle cars," which the FBI seized and turned over to a receiver seeking to recover assets on behalf of Village Market. Pratt was later sentenced to 87 months in prison and ordered to pay \$6,548,706.30 in restitution to his former employer and ordered to forfeit in addition an equal sum to the government. AUSAs: Matthew Borgula; Joel Fauson. Agency: FBI.

PROGRAM FRAUD:

United States v. John Graczyk and Paul Lettinga. John Graczyk was employed by Paul Lettinga at Yankee Springs Dairy, Inc. in Middleville, Michigan. SSA-OIG determined that Graczyk, with the assistance of Lettinga, falsely reported to the Social Security Administration the number of hours he worked, his pay rate, and his total annual earnings in order to receive federal disability benefits to which he was no longer entitled. Graczyk pled guilty to four felony charges, including conspiring to make, and making, false statements to the Social Security Administration and Lettinga pled guilty to aiding and abetting the theft of government funds. Graczyk was sentenced to two days in custody, Lettinga was sentenced to one year probation and fined \$5,000, and restitution of \$172,932.30 was ordered, of which Lettinga agreed to pay and did pay \$86,466.15 at the time of sentencing. AUSA: Christopher O'Connor. Agency: Social Security Administration - Office of the Inspector General.

United States v. James Ortman. Based on representations from Ortman that improvements to a building he owned in the City of Johns would cost \$416,999 and that the project would ultimately create four permanent jobs for low and moderate-income persons, the City of St. Johns awarded Ortman a federal grant as part of a Downtown Façade Project in 2008. The grant provided that if the project truly cost that amount, and if Ortman invested \$216,999 of his own funds into the project, HUD would fund the remaining cost of \$200,000. Ortman did not invest his own funds as represented and submitted false documents to the federal government to make it appear as if his actual costs equaled the projected amount. As a result, he received the full amount of the grant (\$200,000), when he should have received less than half of this amount.

Similarly, for a Rental Rehabilitation Grant that the City awarded him in 2009, Ortman submitted claims for grant payments to the federal government for work that he did not actually complete. Instead, he diverted those grant payments to other business ventures that were in financial trouble. As a result, many of the income-based apartments were never completed. Ortman caused a combined loss of over \$200,000 to the federal government in conjunction with the façade and rental rehabilitation grants. Charged in 2013, he pled guilty in early 2014 to submitting false claims to HUD in connection with the grants. He faces up to five years in prison and orders to pay restitution. AUSA: Ronald Stella. Agency: U.S. Department of Housing and Urban Development-Office of Inspector General; FBI.

TAX FRAUD:

United States v. Chad Anthony Chertos and Gregory Edward VanDyke. Chertos and VanDyke were business partners who operated under the names “The Tax Guys” and, ironically, “Integrity Tax.” They solicited many of their clients through door-to-door sales pitches in which they told prospective clients the clients could obtain significant tax refunds even if the clients earned little or no income. In some cases, even if the clients actually earned income, the two ignored their clients’ true income information and prepared tax returns reflecting false and fraudulently-inflated income to obtain a substantial refund. Chertos and VanDyke profited from the scheme by taking substantial fees from the fraudulently-obtained refund checks. After pleading guilty to conspiring to defraud the U.S. Treasury, Chertos was sentenced to 30 months and VanDyke to 63 months in prison, and both defendants were ordered to pay more than \$240,000 in restitution. Both defendants also agreed as part of their guilty pleas to be permanently barred from preparing or filing, or assisting in the preparing or filing, of any federal tax return or documents for any other person or entity. AUSA: Christopher O’Connor. Agency: IRS

United States v. Richard Thomas Fulger. Fulger, owner of United Courier Service in Lansing, evaded taxes by routinely under-reporting his S Corporate income and under-reporting his individual income on corresponding federal income tax returns. In 2005, for example, he reported his personal gross income was negative \$23,123 when, in fact, it was \$293,750. He was sentenced to nine months in prison and ordered to pay restitution in the amount of \$139,988 to the IRS. AUSA: B. Rene Shekmer; Agency: IRS

ENVIRONMENTAL CRIMES:

United States v. Anthony Michael Davis. Davis purchased a former paper mill in Otsego, Michigan to salvage valuable scrap metal from a building containing large boilers and turbines. Although he knew from warning labels on site and from the prior owner that asbestos containing insulation was present, he conducted no asbestos investigation and directed a salvage operation that did not follow basic rules for asbestos removal or disposal, resulting in the release of a significant

quantity of asbestos-containing insulation onto multiple floors of the building that were open to the outside environment, endangering both workers and passersby in the process. He received a year in prison and was ordered to pay \$168,029.59 in restitution. AUSA: Christopher O’Connor. Agency: EPA Criminal Investigation Division; Michigan Department of Natural Resources Environmental Investigation Section.

National Security Section:

NATIONAL SECURITY/CRITICAL INFRASTRUCTURE:

United States v. Anthony Mario Fortuna. Fortuna received a five year prison term for falsely reporting to the FBI and the USMS plots to bomb the Gerald R. Ford Federal Building in Grand Rapids and the Palisades Nuclear Plant in Covert, Michigan. AUSA: Hagen Frank. Agencies: FBI, USMS.

IDENTITY THEFT:

United States v. Marcus Montell Thames. Thames was lead defendant among eight convicted in connection with an identity theft conspiracy dubbed “Felony Lane” by law enforcement. He received nine years and seven months for his role in the criminal operation run out of Ft. Lauderdale Florida, in which conspirators traveled throughout the Southeast and Upper Midwest committing bank fraud and identity theft over a period of two years. Thames controlled teams who went to locations such as gyms, daycare centers and other places where they hoped to find purses left in vehicles. After breaking into the vehicles and stealing the purse to obtain checkbooks, drivers licenses and other means of identification, the conspirators would then forge high-value checks from one victim’s account made payable to another victim. They then traveled to bank branches of the payee victim’s bank that had drive-through teller lanes where female conspirators, wearing basic disguises, would cash the forged checks from the farthest lane from the teller window, presenting that victim’s stolen means of identification as proof of identity. AUSA: Hagen Frank. Agency: FBI.

ALIEN RE-ENTRY INITIATIVE:

During fiscal 2013, approximately 26% of all criminal case filings brought in the district involved the charging of undocumented 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 criminal offenses. AUSAs: Donald Daniels, John Salan. Agency: ICE-Enforcement & Removal Operations

Organized Drug Crime Section:

MAJOR NARCOTICS/OCDETF:

United States v. Lance Dale Laird, et al. Eight people were charged for bringing four kilograms of cocaine from the Mexican-American border area in Texas to Michigan, in a three-car caravan, in January of 2013. Six of the eight were convicted -- five by plea and one (Laird) by a jury after four days of trial. Two of the eight were dismissed. The convicted conspirators received sentences ranging from three years in prison up to 11 years in prison. AUSA: B. Rene Shekmer; Agencies: FBI; Tri-County Metro Task Force.

United States v. Verburg, et al. This case involves an organization that was growing large quantities of marijuana in Northern California and shipping it to Western Michigan and elsewhere in large crates and molded "pelican" cases. Nearly a ton of marijuana valued at about \$5.5 million was shipped in this manner. Ten defendants were indicted and resolved in 2012. Another group of defendants was indicted in 2013. The case has resulted in the conviction of 12 defendants to date and the preliminary forfeiture of five parcels of property in Northern California and over \$175,000 in U.S. currency. AUSA: John Bruha. Agencies: DEA; Trinity County, Calif., Sheriff's Dep.; Quincy MA P.D.; Newport Beach, Calif. P.D.; Illinois State Police; NISMIT; L.A. County Sheriff's Office; Michigan State Police; TRIDENT; Kentwood P.D.

PRESCRIPTION FRAUD/DRUG DIVERSION:

United States v. Shelley Wilson, DDS. Based on past allegations of drugs diversion, Dr. Wilson, a dentist, voluntarily surrendered her DEA registration number and entered into a civil agreement with the DEA and the US Attorney's Office which required a \$10,000.00 monetary penalty and a prohibition on applying for another DEA registration number. When it was discovered that Dr. Wilson wrote controlled substances prescriptions using the surrendered DEA number, she was indicted. In December 2013, she pled guilty to a felony charge of omission of material information from a drug record and faces up to four years in prison and a \$250,000.00 fine. AUSA: Ray Beckering. Agency: DEA

United States v. Daniel Combs. From June 2011 through May 2012, Combs obtained tens of thousands of prescription pills via the internet and distributed them in South Haven, Michigan, and across the United States. The vast majority of the pills were Schedule IV controlled substances such as Alprazolam (Xanax), Clonazepam (Klonopin) and Adderall. Combs primarily obtained the pills from an individual in Mexico, who in turn had obtained the pills from a source in India. The Mexican source not only sent the pills to Combs but also provided Combs with a list of customers throughout the United States. Combs re-packaged the pills and mailed them to the customers for a share of the profits. In a *Mirandized* statement, Combs estimated he made approximately \$100,000 through the scheme. He was later sentenced to a term of 30 months in prison and a \$100,000

money judgment. AUSA: Clay Stiffler. Agency: DEA

ASSET FORFEITURE/FINANCIAL LITIGATION UNIT:

In fiscal 2013, the office collected over \$8.1 million from civil and criminal actions and forfeitures. The office obtained judgments, fines, penalties, and restitution in various criminal and civil actions totaling over \$5.5 million paid by defendants in fiscal 2013. Of this amount, \$2.3 million came from criminal actions and \$3.2 million came from civil actions. In addition, the office collected over \$2.5 million in criminal, civil, and administrative forfeitures.

Violent Crimes Section:

CHILD EXPLOITATION:

United States v. Gary William Hampton. Hampton received 23 years in prison for producing and possessing child pornography. The government also forfeited Hampton's house, where the abuse occurred, as a result of the conviction. U.S. Chief District Court Judge Paul L. Maloney, who presided over the case, explained its gravity: "The offense conduct in this case is horrendous. Aggravating factors include extortion of the young person and supplying him with controlled substances... [and] the defendant's statements to his friend that there was no victim here." AUSA: Tessa Hessmiller. Agencies: FBI; Grand Rapids P.D.

United States v. Floyd Andrew Brown. Brown came to the attention of law enforcement in late 2012 when he printed a pornographic image of a minor at a department store. An attentive employee called police, who interviewed Brown and executed search warrants at his home. They discovered a trove of child pornography. Brown later admitted at his guilty plea that he produced child pornography and kept videos of the conduct and specifically admitted to sexually exploiting five female victims aged 12 and under. The Hon. Robert Holmes Bell sentenced him to 60 years in prison. AUSA: Sean Lewis; Agencies: Department of Homeland Security-HSI; Michigan State Police.

FIREARM RELATED VIOLENT CRIME:

United States v. Charles Kunta Lewis, et al. After a two-week trial, a jury convicted all four remaining defendants of conspiring to commit drug trafficking crimes and robbery, and using a firearm during and in relation to a drug trafficking crime resulting in the murder of Lansing resident Shayla Johnson, age 19. Evidence a trial showed that the defendants, Charles Lewis, Wallee Al-Din, Mustafa Al-Din and Rafael Crenshaw, were members and associates of a violent Lansing street gang known as the "Block Burners." The defendants were involved in a violent pattern of robbing and at times beating victims for drugs, money and other valuable items, and engaging in witness intimidation that undermined local law enforcement efforts to bring them to justice. The violence culminated in the kidnapping and murder of Johnson. The defendants incorrectly believed Johnson had access to a large

quantity of marijuana; they planned to kidnap her and compel her to disclose the location of the drugs. When she resisted their attempts to stuff her in the trunk of their car, she was shot multiple times with an assault rifle. The defendants will be sentenced in calendar year 2014. AUSAs: Tim VerHey, Brian Delaney; Agencies: Lansing P.D.; Meridian Township P.D.; ATF.

United States v. Michael Allen. Allen pled guilty to selling a firearm to Rodrick Dantzler, knowing that Dantzler was a convicted felon. Dantzler later used the gun to murder seven people, including two children, before leading police on a high-speed chase through highly-populated areas of Grand Rapids, shooting at police all the while, before using the weapon on himself to commit suicide. Describing the consequences of Allen's sale of the gun to Dantzler as "horrific," Chief U.S. District Judge Paul Maloney sentenced Allen to the statutory maximum term of 10 years in prison. AUSA: Phil Green; Agencies; ATF; Grand Rapids P.D.

United States v. Merza Mizori, et al. In a series of indictments against priority offenders in a Northwest Lansing neighborhood, seven defendants were charged with firearm and/or drug-related offenses. Merza Mizori, Gregory Dalton, DeShun Dalton and Serwan Mizori were charged with trafficking crack cocaine, heroin and marijuana. Jerome Houston, Keith Houston and Brandon Jones were separately charged with firearm offenses, and Demanuel Porter and Kevin Henry were charged with distributing crack cocaine. The defendants received sentences ranging from two and a half years in prison up to 25 years in prison. AUSAs: Sean Maltbie, Russell Kavalhuna; Agencies: ATF; Lansing P.D.

United States v. Eric Ruibal, et al. A federal grand jury indicted 31 alleged members and associates of the Holland Latin Kings gang for a range of offenses, including conspiring to engage in racketeering, committing violent crimes in aid of racketeering, possessing firearms and conspiring to distribute cocaine and marijuana. The grand jury alleged in the indictment that the Holland Latin Kings gang is an enterprise whose members and associates engaged in crimes of violence and drug trafficking in order to promote the gang and enrich its members while insulating themselves from law enforcement among other things. By early in calendar year 2014, all but eight defendants had pled guilty in connection with the charges. AUSAs: Phil Green, Russell Kavalhuna; Agencies: ATF; City of Holland P.D.; Michigan State Police; Ottawa County Sheriff's Office.

INDIAN COUNTRY:

United States v. Joel Thomas Smith. Smith received a sentence of 71 months in prison following his guilty plea to two charges stemming from separate incidents involving different victims. In early 2013, in the Keweenaw Bay Indian Community, he assaulted his then live-in girlfriend, fracturing one of her ribs. The other charge, sexual assault, occurred in 2007 at a residence on the Hannahville Indian Reservation. He was 19 years old at the time and engaged in sexual intercourse with a

13 year-old girl. This latter incident came to light in 2011, when the victim came forward. AUSA: Paul Lochner. Agencies: FBI; Hannahville Indian Community Tribal Police; Keweenaw Bay Indian Community Tribal Police.

United States v. Brian Paul Loonsfoot. Loonsfoot was sentenced to 78 months in prison for sexual abuse of a minor. The abuse had taken place both in Brown County, Wisconsin, and on the Keweenaw Bay Indian Community Reservation. A judge in Wisconsin sentenced him to seven years of confinement for second degree sexual assault of a child under 16. Loonsfoot will begin serving the federal sentence upon his completion of the state term. AUSA: Paul Lochner. Agencies: FBI; Keweenaw Bay Indian Community Tribal Police.

REPRESENTATIVE APPEALS

United States v. Marvin Gabrion. In August of 2011, 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. 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 USAO sought *en banc* review of the decision on the death penalty, which the Sixth Circuit granted. The decision was vacated and the full court heard argument in 2012. In the spring of 2013, in another divided opinion, the Court affirmed the sentence of death, concluding this time that the State's lack of a death penalty was not mitigating evidence of the defendant's background or the circumstances of the crime and that the reasonable doubt standard was not required for weighing the aggravating and mitigating factors. Briefed by Appellate Chief Jennifer McManus and Timothy VerHey; Argued by Timothy VerHey.

United States v. Lumbard. The government charged Lumbard with use of a means of identification without lawful authority — commonly called aggravated identity theft --- for getting a passport in the name of Justin Cheesebrew. Lumbard moved to dismiss his indictment on the basis that Cheesebrew had consented to the unlawful use of his own personal identification (which was true), and therefore there had been no "theft." The Court of Appeals affirmed U.S. District Judge Robert Holmes Bell's denial of the motion. In the opinion of the Court, "one could have permission to use an individual's identifying information, but that permission itself does not confer lawful authority to misuse the information." Since the aggravated identity theft statute "only applies when the information is used in connection with one or more of the enumerated felonies, permission will never be sufficient to avoid its application." The decision is particularly significant because, as the Court noted, the defendant's reading of the statute would have prevented the prosecution of individuals who lawfully possess identifying

information, such as a creditor who obtains an applicant's social security number, but then unlawfully misuse the information later. Briefed by AUSA Clay Stiffler; Argued by Appellate Chief Jennifer McManus.

United States v. Ouedraogo. In an unpublished opinion, a panel of the Sixth Circuit affirmed the District Court's judgment of acquittal on the substantive kidnapping resulting in death count, but reversed its judgment of acquittal and conditional grant of a new trial on the two other counts, conspiracy to commit bank fraud and conspiracy to commit kidnapping. The Court's opinion recounts the myriad pieces of evidence that the trial team had painstakingly gathered, organized, and persuasively presented to the jury, and explaining that a rational juror could find that the evidence, and reasonable inferences that could be drawn from it, supported a verdict of guilty as to the conspiracy counts. The Court also was persuaded that any error in admitting the testimony of an inmate that the District Court later (in co-defendant Saba's trial) determined lacked credibility was harmless. Ouedraogo's conspiracy convictions were reinstated without the need for a resource-intensive retrial that would have been difficult for the victim's family. Briefed by AUSAs Phil Green, Russ Kavalhuna and Appellate Chief Jennifer McManus; Argued by AUSA Phil Green.

United States v. Hodge. Officers received information that defendant possessed firearms and a pipe bomb and was making methamphetamine at his residence. When the officers executed a search warrant at the residence, one of the officers, without giving *Miranda* warnings, asked defendant if there was anything in the house that could harm the officers, like meth-making materials or bombs. The defendant said no, but then a few minutes later blurted out that there was a bomb inside. Upon further questioning, the defendant described the bomb and its location within the house (on top of a cabinet, with a towel over it). The Court held that the defendant's statements about the bomb were admissible under the "public safety" exception to *Miranda*. In a previous decision involving guns, the Sixth Circuit held that the exception requires an officer to have reason to believe (1) that the defendant might have a weapon and (2) "that someone other than police might gain access to that weapon and inflict harm with it." The Court here formally limited that second requirement to cases involving guns. "[I]n a case involving a bomb, the presence of third parties who can access the bomb is usually not a compelling consideration." Also, the pipe bomb would have been inevitably discovered during the search of the house pursuant to the warrant. Briefed by AUSA Sean Maltbie (with assistance from former law intern Bryson Nitta); Argued by AUSA Clay West.

ADMINISTRATIVE DIVISION

The Administrative Division successfully faced a challenging past year. There were significant budget cuts, a hiring freeze, and a two week furlough at the beginning of the fiscal year to test the new Administrative Officer and the mettle of the Administrative Division. Budget Officer Mee Thao-Khang and Budget Analyst Marge Moody made early projections so the office could implement immediate cost saving procedures to help close the gap on funding deficits in several areas. Approximately 430 travel requests were processed during the year. Significant effort was made to identify those places where costs could be cut in local travel. Many of those cost cutting measures will be carried into future years for continued and lasting savings and efficiency.

Human Resources Officer Ellie Drumm processed three new hires before the department-wide hiring freeze was put into effect. She also saw to it that the on-boarding of seven legal interns and five undergraduate interns went smoothly. There were also three retirements processed and the transfer of an AUSA to another district. Ellie also spent a fair amount of time cross-training other staff in administration to do many of the Human Resource functions that she does, in the interest of good succession planning. In the last half of the year our Human Resources Assistant Tia Ramey returned to work from maternity leave and supported the U.S. Attorney while also supporting HR and serving as the office timekeeper.

Support Services Supervisor Warren "Skip" Olson and Support Services Specialist Kelly Johnson executed 142 purchase card transactions and 207 contracting actions in the past year. Skip also oversaw the design and build-out of the new Lansing branch office space, as the office was forced to move from our old space to accommodate some other moves within the Federal building in Lansing. He and Kelly were also able to replace a portion of the worn furniture in the Lansing branch office with virtually new furniture transferred to us from Housing and Urban Development before they moved to Detroit. The move to new space was an overall success, providing our staff with well-organized, comfortable working space.

The IT Unit, including IT Manager Roger Hensley and Assistant IT Manager Tom Keating and ALS Coordinator Cindy Niblick, oversaw multiple roll-outs to keep the office on pace with technological developments in our respective fields, including numerous network and system updates, the deployment of new mobile devices, installation of a new wireless system, development of a SharePoint intranet website, setup of scripts to automatically load Word templates onto user PCs, support for the transition of word processing software from WordPerfect to Word and implementation of a new LAW computer for litigation support to name a few. Cindy processed approximately 905,000 pages of electronic material in her work to coordinate and support the litigation mission. She also

supported our AUSAs in courtroom presentation for several cases and provided training in courtroom presentation for legal support staff. In addition, greater remote access to electronic case materials was also provided to agents using applications available this year. The IT Unit also played an important role in the Lansing Branch office design and build-out, ensuring proper provisions were made to support IT and security needs in that location.

Administration as a whole spent a considerable amount of time finding ways to help the office cope with the budget cuts, spending restrictions, hiring freeze and furlough that occurred this year. Procedures were adapted for conducting day to day business in the absence of resources the office had been privileged to have in previous years. Searching for ways to reduce operating expenses with the least impact on our mission became commonplace. All in all it was a tumultuous, yet productive year.

OUTREACH, TRAINING & PROFESSIONAL DEVELOPMENT

Community Initiatives:

CIVIL RIGHTS:

The office continued to participate in state-wide initiatives, including the Human Trafficking, Health Care Fraud and Hate Crimes Task Forces. U.S. Attorney Miles co-chairs the Michigan Alliance Against Hate Crimes quarterly meetings in Lansing, supported by AUSA Don Daniels. Both U.S. Attorney Miles spoke and AUSA Daniels provided training on fair housing laws and voting rights at the MIAAHC-hosted hate crimes conference.

U.S. Attorney Miles also leads two Advocates and Leaders for Police and Community Trust (ALPACT) groups-- one for the Grand Rapids area and one just recently launched in the Benton Harbor area. The groups engage in topical discussions with area law enforcement and community leaders.

In addition, U.S. Attorney Miles and the principals for the Civil Rights Task Force, AUSAs Agnes Kempker-Cloyd and Francesca Ferguson, met with numerous civic leaders throughout the District to convey what the office and the Department can do in response to civil rights concerns.

In the spring, U.S. Attorney Miles met with Arab and Muslim leaders in the Grand Rapids area. Likewise, First Assistant Andrew Birge followed up on last year's meeting with leaders of a Sikh community to open a dialogue with law enforcement, hear local concerns and build trust.

TRIBAL RELATIONS:

Over the course of the year, U.S. Attorney Miles all 11 federally-recognized Tribes in the District in order to listen to and address their concerns and update where necessary the office's operational plan for Indian Country. At their request, he met with the final tribe in early calendar 2014.

DRUG DIVERSION & ADDICTION:

Along with Eastern District of Michigan U.S. Attorney Barb McQuade and Michigan Attorney General Bill Schuette, U.S. Attorney Pat Miles hosted in Lansing the first-ever Prescription Drug Summit in Michigan. Widely attended by law enforcement, education and medical professionals, the Summit raised awareness of prescription drug diversion and addiction and of various programs and initiatives responding to the epidemic. U.S. Attorney Miles and AUSA Ray Beckering spoke at the event.

HEALTH CARE FRAUD AWARENESS:

Early in the year, Affirmative Civil Enforcement AUSA Adam Townshend spoke as a panelist on a national webinar hosted by the American Law Institute: "Avoiding Health Care Fraud and Abuse: What You and Your Clients Need to Know." Contract Investigator Jacqueline Lack likewise presented at the Michigan Association of Health Plans Summer Conference in July. These events were so well received that AUSA Townshend is scheduled to present at a Michigan Nurse Practitioner's Association in calendar 2014.

Similarly, Criminal Health Care Fraud AUSA Ray Beckering addressed kick-backs, fraud and abuse at a State Bar ICLE Annual Health Care Conference in Plymouth, an Annual Meeting of Michigan Physician Assistants in Livonia, and at Wayne State University to an audience of Wayne State and Detroit Mercy Physician Assistant students.

RE-ENTRY:

In addition to the assignment of AUSA Tessa Hessmiller to cover the Court's Accelerated Community Entry hearings as the office's Re-Entry Coordinator, U.S. Attorney Miles began to lay the groundwork for increased office involvement in re-entry initiatives. Planning was begun for a re-entry conference in calendar 2014, with further plans for on-going cooperative efforts between state and federal law enforcement and service providers.

OTHER:

U.S. Attorney Miles also met with and spoke to numerous local organizations and their representatives on a weekly basis throughout the year about the U.S. Attorney's Office and this office's priorities in the Western District of Michigan, including: remarks at Prosecuting Attorneys Association of Michigan annual conference, Michigan Alliance Against Hate Crimes training, Michigan Human Trafficking conference, Kentwood Rotary Club luncheon, Michigan Health Care Fraud and Prescription Drug Diversion Summit (sponsored by the WDMI and EDMI USAOs and the Michigan Attorney General Office), National Association of Retired and Veteran Rivalry Workers Unit #152 luncheon, and Grand Rapids Urban League Community Dialogue on Violence. U.S. Attorney Miles was the keynote speaker for the Grand Rapids Community College's Criminal Justice Month and for the Grand Rapids Bar Association's Law Day luncheon with the theme "Moving History toward Equality." He also spoke about his support and plans for effective prisoner re-entry programs to the Kent County Black Elected Officials group and the Grand Rapids area Re-entry Service Providers Council. He addressed youth audiences on the Grand Rapids Bar Association's Legal Careers panel at Ottawa Hills High School and at the Cops For Kids summer event.

Law Enforcement Training Program:

Continuing a program that has won a Director's Award in the past, LEC Kaye Hooker organized the training of approximately 6,000 law enforcement officers in the areas of hate crimes, active shooter scenarios, criminal justice in Indian Country, utilization of social media as an investigative tool, interview and interrogation techniques and handling investigations involving "sovereign citizens" among other topics. [See training list in appendix.] The programs were held at no cost to attendees and in locations throughout the state to accommodate attendees. The events only cost the office in local travel. Anne Towns, Kathy Schuette, Janet Strahan and Gary Gibbons assisted Kaye in organizing the programs. The Eastern District of Michigan's LEC also assisted, continuing a tradition and cost-saving practice of inter-district coordination and cooperation. AUSAs Don Daniels, Jeff Davis, Tessa Hessmiller, Dan Mekaru, Maarten Vermaat and Ray Beckering provided instruction.

Victim/Witness Unit:

Victim/Witness Unit personnel counseled hundreds of lay witnesses and crime victims over the course of the year, as well as processed thousands of notifications of proceedings to victims as required by federal law. Kathy Schuette and Janet Strahan were naturally involved in the Human Trafficking Task Force as well as Domestic Violence Task Forces at the State and Tribal level. In addition, Janet along with Teresa Kauppila and AUSA Paul Lochner attended multi-disciplinary team meetings of Tribal law enforcement and civil service agencies addressing child abuse in both the Upper and Lower Peninsulas of Michigan.

Legal Community Training:

Members of our staff were again selected by the Department's National Advocacy Center (NAC) to instruct on various topics. AUSAs Jeff Davis, John Bruha, Phil Green and Mike MacDonald lectured at the NAC on subjects ranging from criminal trial advocacy, to evidence, to crime in Indian Country.

For the annual Hillman Trial Advocacy Program in Grand Rapids, AUSAs Don Davis, Phil Green and Tim VerHey lent their expertise and guidance as instructors.

In addition, AUSAs Chris O'Connor and Mike MacDonald instructed on legal aspects of arson investigations at the Michigan State Police Arson School; AUSA Joel Fauson provided a presentation to the West Michigan FBA on Asset Forfeiture; AUSA Daniel Mekaru gave a presentation to the Intellectual Property section of the Grand Rapids Bar; AUSA Matt Borgula presented an ICLE webinar on the effective use of the latest technology in litigation.

Various AUSAs guest-lectured at local universities in their private capacities but based on their knowledge and expertise as attorneys—a testament to the quality of the lawyers on our staff and their regard within the local legal community.

Special Emphasis Committee:

The Special Emphasis Committee raises cultural awareness and sensitivity within the office as well as public awareness of both the Department's civic mission and career opportunities in order to broaden the appeal of federal employment. Chaired by Legal Assistant Lena Newton, the Committee organized several events over the course of the year. Assisting Lena on the Committee were Sheryl Brugh, Clay West, Ellie Drumm, Val Gave, Roger Hensley, Tessa Hessmiller, Jessica Wright, Tia Ramey, Janet Strahan and June VanWingen. Jennifer McManus and Andrew Birge, Chair and Vice-Chair of the Diversity Committee, also assisted.

In recognition of Rev. Dr. Martin Luther King's birthday in January, Joseph D. Jones, President and CEO of the Grand

Rapids Urban League, spoke about the importance of communities ensuring opportunities for young people. The event also included an interactive program in which staff members delivered oral sketches describing key persons involved in the 1963 Civil Rights March on Washington. In closing, an interpretive dance was performed to "How I Got Over" as sung by Mehalia Jackson.

On August 28, the office celebrated the 50th anniversary of Rev. Martin Luther King's "I Have A Dream Speech" by congregating on the front steps of the office building with bells in hand and reading portions of the famous speech in a small ceremony. Similarly, during lunch hours throughout the week of August 19 the office commemorated the 50th Anniversary of "The March on Washington" by showing episodes of the documentary about America's Civil Rights Years entitled "Eyes on the Prize" over the lunch hour.

Also in August, the office hosted two guest speakers from the Grand Rapids Public Museum who spoke about the demographics of the immigrants that have settled over many decades in the Grand Rapids area and the demographics of those coming to the area present day.

Our annual Veteran's Day program in November included keynote speaker Herb Kenz, a retired Army veteran with a military career that spanned five decades and covered both World War II and the Korean War. He shared some of his military experiences and conveyed perspectives he gained on the commonalities and bonds we all have as humans, regardless of country or origin. Other guests included Michael Peterson, a multiple Grammy and CMA award nominee, who since 9/11/2001, has devoted his musical career to soldiers and advocating for veterans; and Army Colonel (Retired) Jill W. Chambers, who is widely recognized as the first person in the history of the U.S. Military to develop a successful, sustainable strategy designed to reduce the crippling stigma associated with mental health challenges in a culture. She was also selected a "Next Maker" by AOL and PBS, which honors trailblazing women whose physical, intellectual and emotional strength have opened doors, opened minds and inspired change.

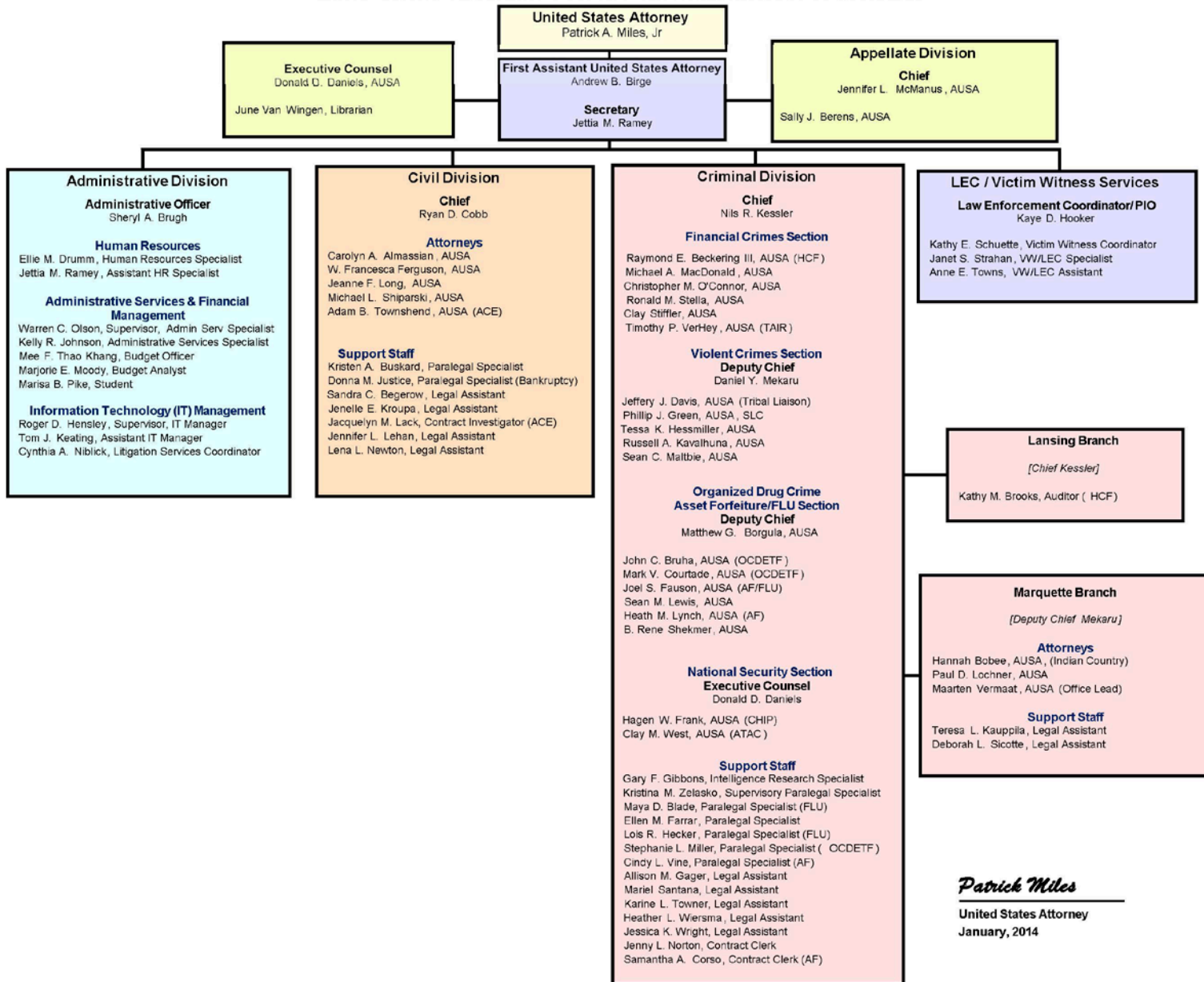
The office participated in the Federal Career Day at Grand Rapids Community College. Attorneys, legal assistants, paralegals, an IT specialist, a human resources specialist and an administrative officer spoke with the students about their careers in federal service.

Similarly, Appellate Chief Jen McManus and AUSAs Ray Beckering and Matthew Borgula addressed law students at the University of Michigan interested in learning about legal careers with the Department of Justice. AUSAs Beckering and McManus serve as official "ambassadors" to area law schools on behalf of the Department to reach a broader pool of individuals and strengthen our connections with law schools and bar associations around the country.

Diversity Committee:

The Attorney General's 2010 "affirmative employment plan" mandated that all offices have a diversity committee that focuses on the office's hiring, retention and mentoring decisions, practices and policies. The initiative is designed to improve the effectiveness of the Department's recruitment, hiring, retention, and professional development efforts. Chaired by Appellate Chief Jennifer McManus, the committee reviewed and updated our job posting practices, exit interview forms and promotion review procedure and forms. The committee also assisted the Special Emphasis Program. Deputy Criminal Chief Dan Mekar and AO Sheryl Brugh joined Jennifer McManus, Andrew Birge, Carolyn Almassian, Ellie Drumm, Lena Newton and Christopher O'Connor on the committee this year.

UNITED STATES ATTORNEY'S OFFICE - WESTERN DISTRICT OF MICHIGAN



Patrick Miles
 United States Attorney
 January, 2014

CRIMINAL DIVISION

Nils Kessler, Chief

**ORGANIZED DRUG
CRIME SECTION**

Matt Borgula, Supervisor &
Deputy Chief

**MAJOR NARCOTICS UNIT &
ORGANIZED CRIME AND DRUG
ENFORCEMENT TASK FORCE:**
John Bruha, Principal
Mark Courtade
Matt Borgula
Heath Lynch
Sean Lewis
Rene Shekmer
Stephanie Miller, Paralegal

**DIVERSION/PRESCRIPTION FRAUD
TASK FORCE:**
Clay Stiffler, Principal
Ray Beckering*
Sean Lewis
Stephanie Miller, Paralegal

**ASSET FORFEITURE & FINANCIAL
LITIGATION UNIT:**
Joel Fauson, Coordinator &
Principal
Heath Lynch
Cindy Vine, AF Paralegal
Lois Hecker, FLU Specialist &
Supervisor
Maya Blade, FLU Specialist

**VIOLENT CRIMES
SECTION**

Dan Mearu, Supervisor &
Deputy Chief

PROJECT SAFE CHILDHOOD UNIT:
Tessa Hessmiller, Principal
Jeff Davis (Southern Indian
Country)
Dan Mearu
Sean Maltbie
Hannah Bobee (Northern
Indian Country)
Ellen Farrar, Paralegal

**FIREARMS, BANK ROBBERY,
VIOLENT CRIMES UNIT AND
PROJECT SAFE NEIGHBORHOOD
TASK FORCE:**
Phil Green, Principal & SLC
Russ Kavalhuna
Sean Maltbie
Dan Mearu
Ellen Farrar, Paralegal

INDIAN COUNTRY UNIT:
Jeff Davis, Principal & Tribal
Liaison
Hannah Bobee
[Paul Lochner, Major Felony
VC, Northern
Division]
[Tim VerHey, Major Felony
VC, Southern
Division]
Ellen Farrar, Paralegal

MARQUETTE BRANCH:
Maarten Vermaat, Principal
Paul Lochner
Hannah Bobee

**FINANCIAL CRIMES
SECTION**

Nils Kessler, Supervisor
Kris Zelasko, Paralegal
(Supervisory Paralegal
Specialist)

INVESTMENT / BANK FRAUD UNIT:
Mike MacDonald, Principal
Chris O'Connor
Tim VerHey
Clay Stiffler
Sally Berens*

PROGRAM FRAUD UNIT:
Tim VerHey, Principal
TAIR Clay Stiffler

TAX FRAUD UNIT:
Mike MacDonald, Principal
Rene Shekmer*

ENVIRONMENTAL TASK FORCE:
Chris O'Connor, Principal
Maarten Vermaat

**HEALTH CARE FRAUD TASK
FORCE:**
Ray Beckering, Principal
Ron Stella
Sally Berens*
Kathy Brooks, Auditor

MORTGAGE FRAUD TASK FORCE:
Ron Stella, Principal
Chris O'Connor
Clay Stiffler Official
Corruption Task Force:
Nils Kessler, Principal
Chris O'Connor,

SAR TASK FORCE:
Chris O'Connor, Principal
Joel Fauson*
Gary Gibbons, Intelligence
Specialist
June VanWingen, SAR
Specialist

**NATIONAL SECURITY
SECTION**

Don Daniels, Supervisor &
Exec. Counsel

ALIEN OFFENSES UNIT:
Don Daniels, Principal
Clay West

ANTI-TERRORISM TASK FORCE:
Clay West, Principal
Hagen Frank
Gary Gibbons, Intelligence
Specialist

**IDENTITY THEFT/CYBERCRIME
TASK
FORCE:**
Hagen Frank, Principal
Clay West

**CRIMINAL CIVIL RIGHTS
VIOLATIONS TASK FORCE:**
Don Daniels, Principal
Russ Kavalhuna*

CIVIL DIVISION
Ryan Cobb, Chief

APPELLATE DIVISION
Jennifer McManus, Chief

DEFENSIVE TORTS & IMMIGRATION UNIT:

Ryan Cobb, Principal
Carolyn Almassian
Jeanne Long

Jennifer McManus, Principal
Sally Berens

BANKRUPTCY UNIT:

W. Francesca Ferguson, Principal
Michael Shiparski
Donna Justice, Paralegal

EMPLOYMENT UNIT:

Carolyn Almassian, Principal
Ryan Cobb
Jeanne Long
Michael Shiparski

**COMMERCIAL LITIGATION/PROGRAM LITIGATION
UNIT:**

Michael Shiparski, Principal
W. Francesca Ferguson
Jeanne Long

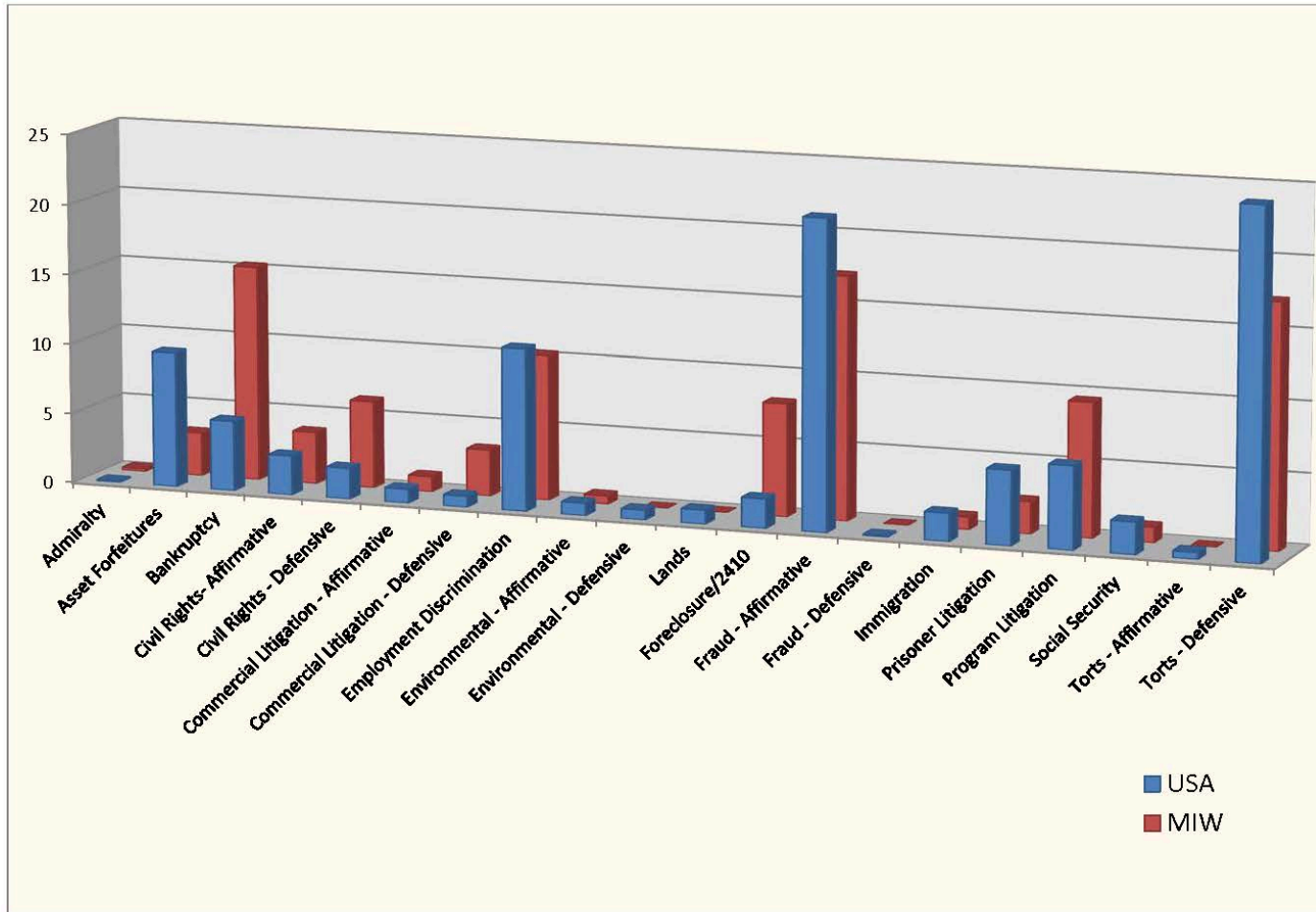
AFFIRMATIVE CIVIL ENFORCEMENT TASK FORCE:

Adam Townshend, Principal
Carolyn Almassian
Ryan Cobb
Jeanne Long
Kristen Buskard, Paralegal

CIVIL RIGHTS TASK FORCE:

W. Francesca Ferguson, Principal
Ryan Cobb

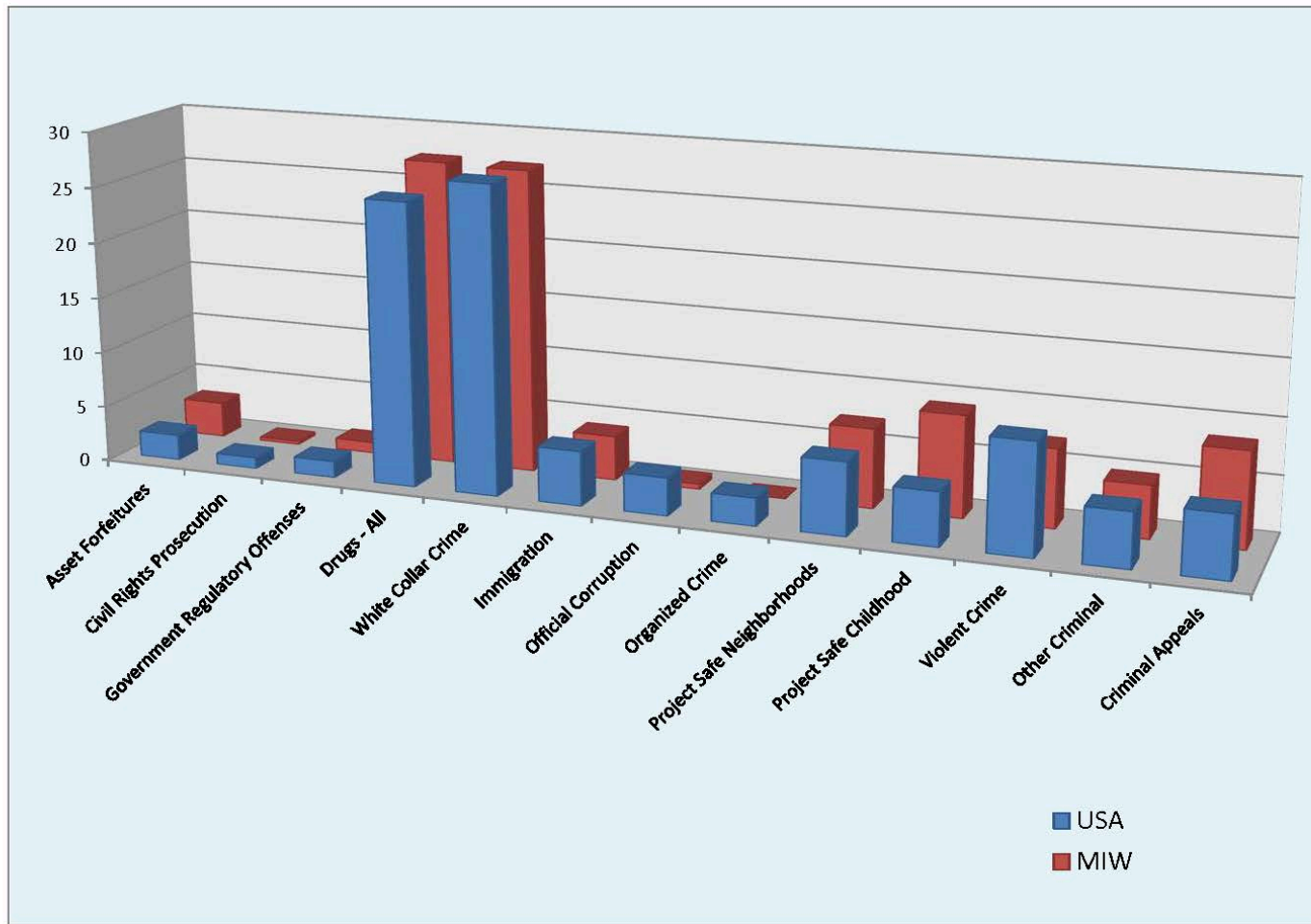
CIVIL WORKYEAR STATISTICS
 [Time spent on various types of matters as a percentage of the total.]



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

CRIMINAL WORKYEAR STATISTICS

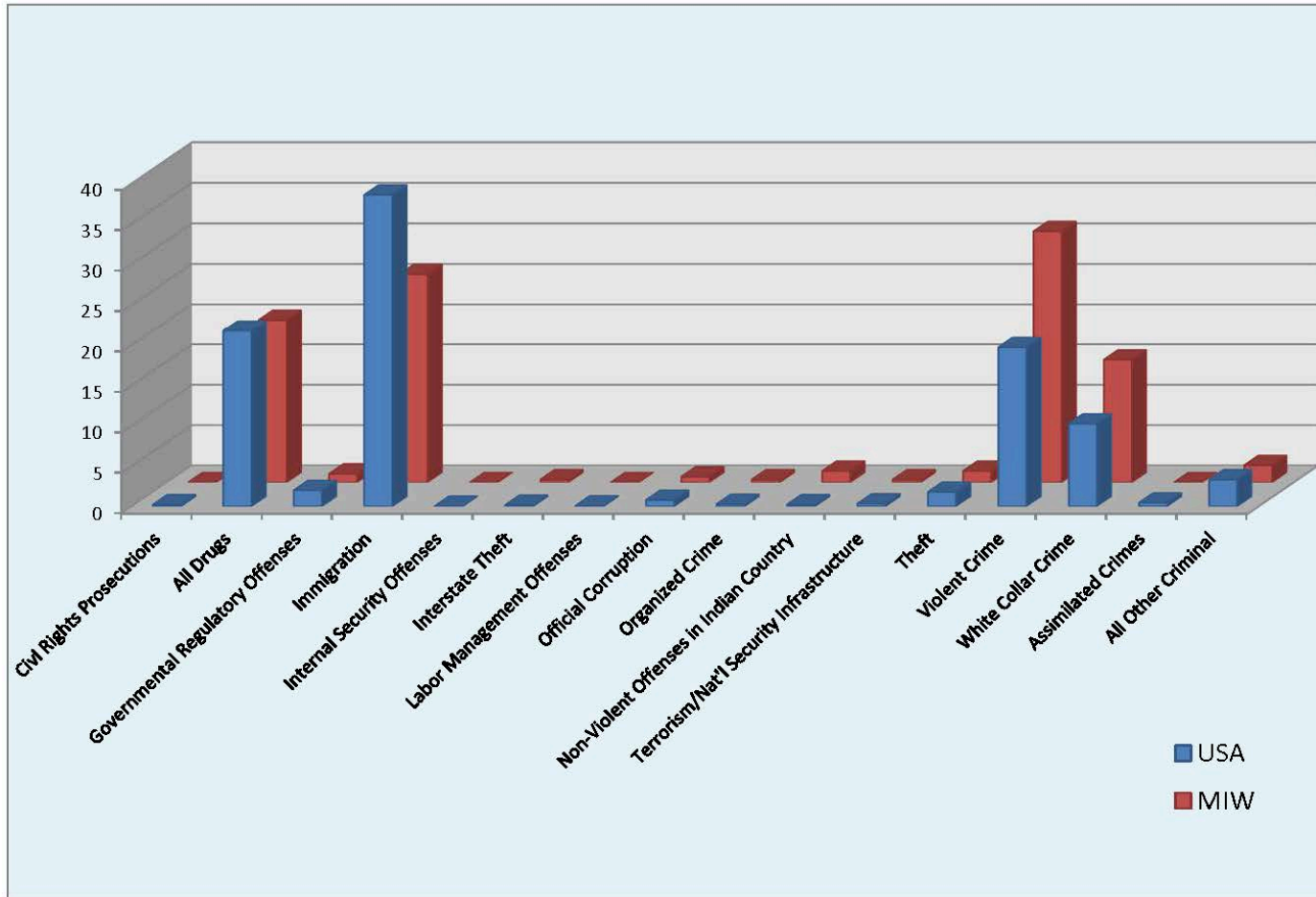
[Time spent on various types of matters as a percentage of the total.]



*USA data includes Southwest Border Districts.

CRIMINAL CASELOAD STATISTICS

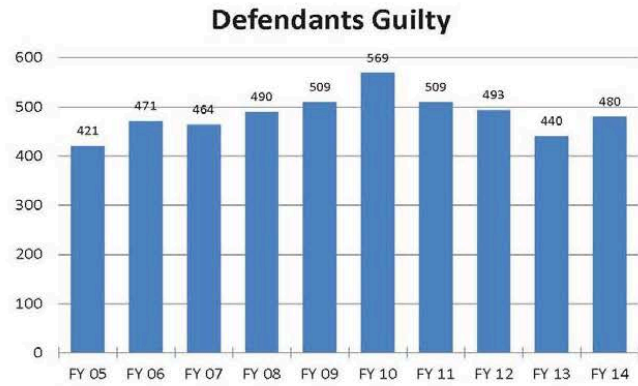
[The types of cases we are bringing as a percentage of the total.]



*USA data includes Southwest Border Districts.

UNITED STATES ATTORNEYS CRIMINAL CASELOAD STATISTICS

Western District of Michigan



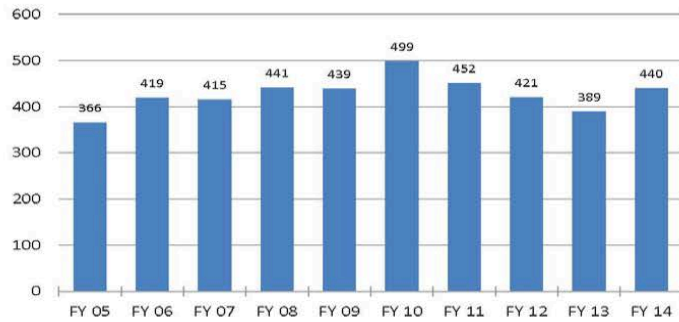
All Districts



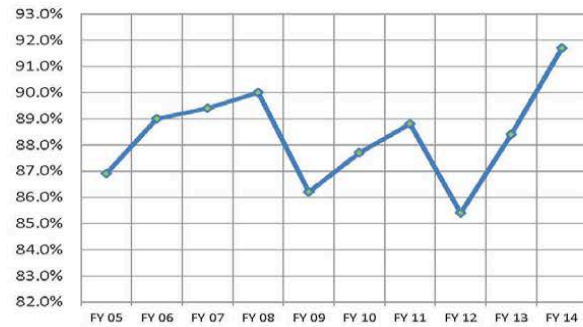
UNITED STATES ATTORNEYS CRIMINAL CASELOAD STATISTICS

Western District of Michigan

Number of Guilty Defendants Sentenced to Prison

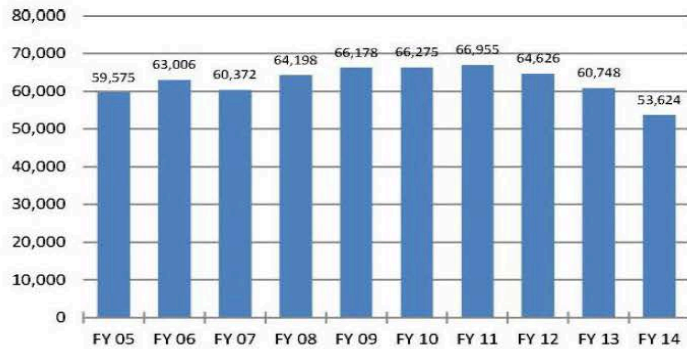


Percentage of Guilty Defendants Sentenced to Prison

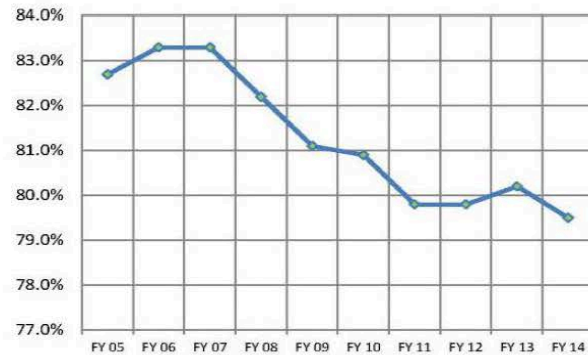


All Districts

Number of Guilty Defendants Sentenced to Prison

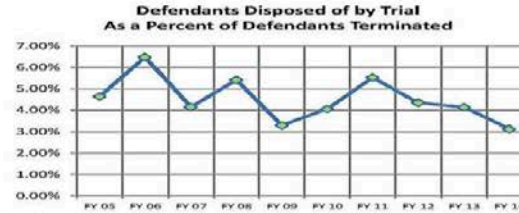


Percentage of Guilty Defendants Sentenced to Prison



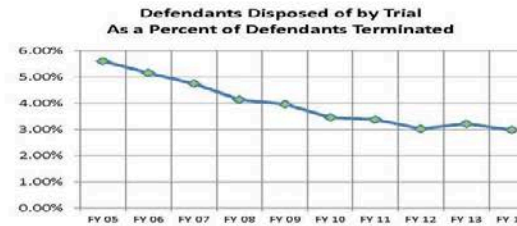
UNITED STATES ATTORNEYS CRIMINAL CASELOAD STATISTICS

Western District of Michigan



| | |
|-------|-------|
| FY 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% |
| FY 12 | 4.34% |
| FY 13 | 4.13% |
| FY 14 | 3.13% |

All Districts



| | |
|-------|-------|
| 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% |
| FY 12 | 3.03% |
| FY 13 | 3.22% |
| FY 14 | 2.98% |

2013 LAW ENFORCEMENT TRAINING

| | | |
|-----------------|---------------------------------------|----------------------|
| March 13 | Social Media Enhancing Investigations | Taylor, MI |
| March 14 | Social Media (<i>repeated</i>) | Taylor, MI |
| March 15 | Social Media Enhancing Investigations | Grand Rapids, MI |
| March 20 | Hate Crimes Training for Law Enf. | Canton, MI |
| April 19 | Hate Crimes Training for Law Enf. | Farmington Hills, MI |
| April 26 | Hate Crimes Training for Law Enf. | Grand Rapids, MI |
| May 6 | Meth Investigative Workshop | Marquette, MI |
| May 7 | Valor Executive Session | Lansing, MI |
| May 14-16 | CJIC/Special Commissions | Sault Ste. Marie, MI |
| May 11 | Critical 13 Workshop | Taylor, MI |
| May 12-13 | Interview and Interrogation | Flint, MI |
| May 13 | Critical 13 Workshop | Grand Rapids, MI |
| May 18 | Crimes Against Children | Grand Rapids, MI |
| July 15-16 | ALERRT [Active Shooter] | Grand Rapids, MI |
| July 17-18 | ALERRT (<i>repeated</i>) | Grand Rapids, MI |
| August 7-9 | Interview and Interrogation | Saginaw, MI |
| August 27-28 | ALERRT [Active Shooter] | Grand Rapids, MI |
| September 10-12 | CJIC/Special Commissions | Traverse City, MI |
| October 16-17 | Human Trafficking Conference | Grand Rapids, MI |
| October 29-30 | Prescription Drug Abuse Summit | Lansing, MI |
| October 30-31 | Sovereign Citizen Workshop | Kalamazoo, MI |
| November 6 | 28 CFR Training | Lansing, MI |
| November 6 | Federal Misdemeanor Summit | Grand Rapids, MI |
| November 22 | MI Response to Hate: 2013 | East Lansing, MI |