



U.S. ATTORNEY'S OFFICE DISTRICT OF NEVADA

DISTRICT ACCOMPLISHMENTS 2010

NEWS MEMO
MARCH 2011



**Message From U.S.
Attorney
Daniel G. Bogden**

Welcome to the first News Memo summarizing our year-end accomplishments at the U.S. Attorney's Office for the District of Nevada.

We have much good news to report. Three of our attorneys won Director's Awards; our criminal case filings more than doubled since 2007; and we collected \$89 million in criminal and civil debts and forfeited assets, most of which will be returned to the community for crime victims and law enforcement agencies. As our statistics show, 2010 was a very busy and productive year for the District.

The News Memo is a way to get the word out about the important public service work of our office.

DIRECTOR'S AWARDS

In December 2010, three District of Nevada AUSA's received Director's Awards from the Department of Justice's Executive Office for United States Attorneys. AUSAs Christina M. Brown and Crane M. Pomerantz were recognized for their work in *United States v. Seldon*, in which they co-chaired a high profile jury trial resulting in guilty verdicts against a Las Vegas doctor and his wife, Stephen Seldon and Deborah Seldon. The Seldons were convicted of fraud for treating patients with "TRItox," a cheaper, misbranded, non-FDA approved version of the well-known Botox®, a drug used to reduce facial wrinkles. Stephen and Deborah Seldon were sentenced to 46 and 30 months in prison, respectively, three years of supervised release, and ordered to pay a \$144,000 fine. Following the conviction, Stephen Seldon's license to practice medicine in Nevada was revoked.

AUSA Elizabeth A. Olson was recognized for her exemplary appellate work in which she drafts appellate and post-conviction briefs, argues cases in the United States Court of Appeals for the Ninth Circuit and the District Courts, consults on litigation issues, and provides training to AUSAs and law enforcement personnel. In 2010, AUSA Olson briefed and argued numerous winning appeals.

CRIMINAL DIVISION STATISTICS

The Criminal Division had a very busy and productive year, as indicated by the below statistics.

There were 646 criminal cases filed against 806 defendants. Our criminal case filings have doubled between 2007 and 2010.

There were 1278 criminal referrals made. This is a 50% increase over criminal referrals in 2007 (831).

Thirty-one percent (31%) of the cases filed were immigration-related; 12% were drug cases; 26% were violent crime; and 19% were white collar crime.

There were 32 felony trials.

The conviction rate was 93% (includes guilty pleas and trials).

Seventy-seven percent (77%) of the defendants convicted were sentenced to prison.

CRIMINAL CASES OF SIGNIFICANCE

The office prosecuted many significant and successful criminal cases in 2010. Below are just a few highlights.

Connie Farris/ Global Express - In November 2010, following a 13-day jury trial, Connie Farris was convicted of 39 counts of mail fraud for an advance fee scheme in connection with hard money lending fraud. Farris was sentenced on March 18, 2011, to 12 years in prison and ordered to pay \$31 million in restitution.

Joseph Milanowski/ USA Capital - Joseph Milanowski pleaded guilty to wire fraud and was sentenced in April 2010 to 12 years in prison and ordered to pay \$86.9 million in restitution to over 1,000 victims in connection with hard money lending fraud.

Gage/Awand/Kabins — Las Vegas orthopaedic spine surgeon, Mark B. Kabins, M.D., pleaded guilty to misprision of a felony and was sentenced in January 2010 to probation and ordered to pay \$3.5 million in restitution to a victim. Kabins admitted that he concealed a fraud committed by lawyer Noel Gage and medical consultant Howard Awand, in which they agreed to blame another doctor for complications that arose during a surgery Kabins performed on the victim. For his role in the scheme, Gage pleaded guilty to felony obstruction of justice charges, and was sentenced in June 2010 to probation and ordered to pay \$702,600. Awand was sentenced in June to four months in prison and ordered to pay \$700,000. Awand was also convicted by a jury of four counts of Willful Failure To Pay Tax, and was sentenced in April 2010 to four years in prison.

Operation Chronic Problem/ Marijuana Dispensary Cases - In December 2010, federal complaints were filed against 15 individuals alleging they were distributing marijuana in violation of federal and state law through the operation of storefront medical marijuana businesses in Las Vegas. This initiative is ongoing.

Prescription Drug Initiative and Cases - In southern Nevada, 44 persons were charged during 2010 with unlawful distribution of prescription drugs. Included in these numbers is Operation Buck Wild, which resulted in federal complaints being filed against 27 individuals in November 2010 for their alleged involvement in the distribution of thousands of prescription pain killers in Nevada and Alaska, and the laundering of over \$1.2 million. This initiative is ongoing.

Sin City Ink Trials/Convictions - ATF home invasion robbery and drug trafficking sting operation which led to four trials and the conviction of six defendants. Two of the defendants were sentenced to more than 15 years in prison.

U.S.A. v Francisco Garcia, et al./Unemployment fraud scheme - Four men indicted by the federal grand jury in September 2010 on conspiracy and fraud charges for unlawfully obtaining millions of dollars in unemployment benefits from the State of Nevada and federal government.

U.S.A. v. Nicholas Bickle, et al. - U.S. Navy SEAL and three other men charged with conspiring to unlawfully sell weapons and explosives in Las Vegas and Colorado. Illegal weapons and explosives obtained by Navy Seal Bickle who allegedly smuggled the weapons and explosives to the United States from overseas.

PROGRAM DEVELOPMENTS

PSN/Project Safe Neighborhoods (Firearm & Violent Crime Prevention)

161 persons (148 in Las Vegas and 17 in Reno) charged with federal firearms offenses in 2010. Almost all of these defendants were convicted and sentenced to prison. This important initiative is ongoing.



PSC/Project Safe Childhood (Child Exploitation Prevention)

35 persons (19 in Las Vegas and 16 in Reno) charged with federal child exploitation crimes in 2010. These statistics include federal charges filed against 14 persons in the Reno area between July 1 and December 1, 2010, as part of "Operation Northern Justice II: Continued Vigilance," which targeted individuals who were using the Internet to receive and/or distribute child pornography. Over 55,000 images and 13,700 videos of child pornography were seized as part of that operation. This important initiative is ongoing.

project safe childhood



Mortgage Fraud

107 persons (105 in Las Vegas and 2 in Reno) charged with federal mortgage crime offenses in 2010. These statistics include some of the defendants from "Operation Stolen Dreams," in which 123 persons were charged, convicted or sentenced for federal mortgage crimes from March 1 to June 17, 2010. This important initiative is ongoing.



Indian Country

The District compiled and completed a resource guide for tribal matters and hired a dedicated Indian Country prosecutor. The U.S. Attorney, Indian Country prosecutor, and victim witness coordinators traveled to all 26 Nevada Indian Reservations to meet with tribal leaders and tribal law enforcement. This important initiative is ongoing.



Diversity

The Reno Branch Chief served as the head of our newly created diversity committee, and helped draft the diversity plan for the district. The District of Nevada's Diversity Program was recognized and singled out as a model program by Channing D. Phillips, the Deputy Associate Attorney General for Diversity Management on November 18, 2010, at the United States Attorney's National Conference. Additionally, our mentor program is going to be spotlighted on the diversity website, <http://dojnet.doj.gov/diversity/index.php>, in a new effective practices section.



Re-Entry

The Reno Branch Chief worked on the District's first Re-Entry Program, which will be based in Reno, and was recently appointed the re-entry program point of contact.

CIVIL DIVISION CASE FILINGS & INVESTIGATIONS

Our Civil Division statistics indicate that we opened 436 civil cases and investigations.

Approximately 1/4 of the civil cases and investigations were asset forfeiture-related; approximately 1/4 were program litigation-related.

The rest fell into the categories of torts, prisoner litigation, immigration, frauds, environment/lands, commercial litigation, and employment discrimination.

There were 122 judgments filed in favor of the United States.

CIVIL CASES OF SIGNIFICANCE

The Civil Division successfully represented the United States in many cases. Below are just a couple of highlights.

Settlement with Internal Medicine Associates - In August 2010, Emery Steckler Medical Institute, d/b/a Internal Medicine Associates, agreed to pay \$301,167 to the United States to resolve civil allegations that between January 1, 2003, and December 31, 2006, it submitted claims to Medicare and the Federal Employee Health Benefits Program for unnecessary cholesterol tests.

Settlement with Brian Lemper M.D. - In December 2010, Brian Lemper, M.D., a Las Vegas anesthesiologist and pain management physician, paid the federal government \$1.25 million to resolve civil allegations that he defrauded two federal health care insurance benefit programs, TRICARE and the Federal Employee Health Benefits Program by submitting inflated or overstated claims for surgeries and supplies.

MONETARY RECOVERIES

The United States Attorney's Office for the District of Nevada contributed to the collection of approximately \$89 million in 2010. This was the largest amount ever collected by the Nevada U.S. Attorney's Office. The monies come from the collection of civil and criminal debts owed to the United States, such as restitution, fines, court assessments, and from the forfeiture of assets.

APPELLATE DIVISION STATISTICS

Notices of Appeal Filed:	107
Appellate Briefs Filed:	80
Cases Argued in Ninth Circuit:	21
Ninth Circuit Dispositions:	95
Adverse Decisions:	3

APPELLATE DECISIONS OF SIGNIFICANCE

It was a strong year for the district in terms of appellate decisions, as the Ninth Circuit Court of Appeals handed the office some significant appellate victories, three of which were published.

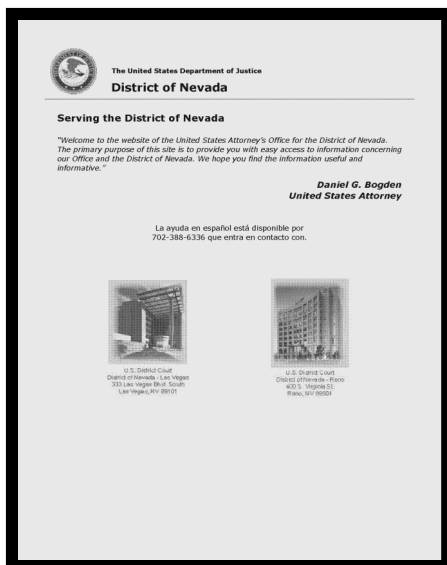
In United States v. Borowy, 595 F.3d 1045 (9th Cir. 2010), the Court rejected Borowy's claim of privacy, indicating that his intent to block the files from public access did not amount to a reasonable expectation, especially "in the face of such widespread public access." Absent this expectation, the Court ruled that the FBI's search for and downloading of the files on a peer-to-peer file sharing network did not violate the fourth amendment.

In United States v. Hofus, 598 F.3d 1171 (9th Cir. 2010), the defendant sought to introduce expert testimony to establish that it was unlikely he would have acted on the illegal intentions he expressed in his text messages to an agent posing as a 14-year-old. The trial court precluded the testimony and the Ninth Circuit upheld that decision, recognizing the critical "distinction between the intent to persuade or attempt to persuade a minor to engage in a sex act and the intent to actually commit the criminal sex act itself." Because Hofus was charged with *attempting* to coerce and entice a minor to engage in sexual activity, the Court sided with the government and concluded that whether he was likely to act on his expressed intentions was legally irrelevant.

In United States v. Capener, 608 F.3d 392 (9th Cir. 2010), the Ninth Circuit again sided with the government in vacating the district court's award of \$279,000 to the defendant's attorney. The appellate court agreed that the trial judge had misapplied the Hyde Act, which permits an acquitted defendant to recoup attorney's fees and expenses if it found that prosecutors brought a case vexatiously, frivolously, or in bad faith. Here, the fee award rested on erroneous findings that ignored or misconstrued the factual basis for certain of the charges brought against the defendant.

ADMINISTRATIVE DIVISION ACCOMPLISHMENTS

In addition to managing acquisitions, finances, human resources, and information technology for the District, the Administrative Division managed a carpet and paint renovation project in Las Vegas; completed renovation of the former library space into a new office complex; completed construction of a sensitive and classified information facility in Las Vegas; completed a security upgrade to the Reno office; and completed a telephone system conversion.



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http://www.justice.gov/usao/nv/about_us/index.html

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