

United States Attorney's Office District of South Dakota Annual Report 2015



Randolph J. Seiler
United States Attorney



**Message from
U.S. Attorney
Randolph J. Seiler**



It is an honor to serve as the United States Attorney for the District of South Dakota. Our office's mission continues to be to improve the quality of life for our citizens, provide public safety, and collect money on behalf of the American taxpayer. A top priority for our District continues to be making tribal communities a safer place to live. Troy Morley, the District's Tribal Liaison, has been serving as a conduit in matters between the USAO and the nine tribes of South Dakota, and he has successfully built productive relationships and helped to empower the tribes in the judicial arena. Troy was intensely involved in the formation of a working group to study reentry alternatives, and that hard work paid off when the Districts of South Dakota and North Dakota announced the signing of a Memorandum of Agreement between the Standing Rock Sioux Tribe and the Multijurisdictional Reentry Services Team. The historic agreement was the first time this many federal, state, and tribal agencies worked together to address a nationwide problem that is amplified in Indian country, and it was also unique jurisdictionally because it covers the Standing Rock Reservation, which encompasses both Districts.

The District's unwavering commitment to protecting the civil rights is reflected in our efforts to achieve equality for all citizens. Civil rights issues at the national forefront include human trafficking, police brutality, hate crimes, marriage equality, access for the disabled, voting rights, and all forms of illegal discrimination. In South Dakota, we have earned a reputation as national leaders in combatting human trafficking. But the District's civil rights efforts have extended even further through our demonstrated commitment to prosecuting color-of-law violations, ensuring equal access for those with disabilities by requiring American Disability Act compliance in municipal facilities, and working aggressively to ensure that Native Americans enjoy an equal right to vote. A large component of addressing civil rights violations is community outreach. We have worked tirelessly to educate the public through conferences and dozens of training programs so that citizens know their rights, know what to do when those rights have been violated, and can identify and respond when other's rights are being violated. The District's civil rights enforcement is vigorous and independent; working at all times to combat injustice.

The case summaries and accomplishments highlighted in this year's report reflect the dedication and commitment of the staff at the United States Attorney's Office, and all of our partner agencies. As the United States Attorney for the District of South Dakota, I am fully committed to the priorities established in the District and look forward to building on those areas.

Sincerely,

A handwritten signature in blue ink that reads "R. Seiler". The signature is fluid and cursive.

Randolph J. Seiler
U.S. Attorney
District of South Dakota

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INTRODUCTION

In 1789, the U.S. Congress passed the Judiciary Act which, among other things, directed the President to appoint an attorney in each federal judicial district to represent the interests of the United States. In fact, U.S. Attorneys were independent of the Attorney General and did not come under the Attorney General's supervision and authority until 1870 when the U.S. Department of Justice was created.

South Dakota has had 41 U.S. Attorneys dating back to 1861 when William Gleason served as the first U.S. Attorney for Dakota Territory. U.S. Attorneys began serving solely for the District of South Dakota in 1889 when Dakota Territory was divided into individual states and the District was created.

U.S. Attorneys are nominated by the President and must be confirmed by the U.S. Senate. Following confirmation, U.S. Attorneys serve at the will of the President for a term of four years, which may be renewed.

U.S. Attorneys are the chief federal law enforcement officers in each federal district. They ensure the fair and impartial enforcement of federal criminal laws and also represent the U.S. government in civil claims brought by and against the government. In 1935, Supreme Court Justice George Sutherland described the role of the U.S. Attorney in the following terms:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 U.S. 78, 88 (1935).

YEAR IN REVIEW

Changing of the Guard: In March of 2015, former U.S. Attorney Brendan Johnson resigned his position. On March 12, 2015, Randolph J. Seiler took over the reins as Acting U. S. Attorney. On October 8, Seiler received the official nomination by President Barack Obama to be the 41st United States Attorney for the District of South Dakota.



FIGURE 1 RANDOLPH SEILER AND BRENDAN JOHNSON

Pursuant to an order signed by U.S. Attorney General Loretta Lynch on October 6, 2015, Seiler was sworn in that same day by U.S. District Judge Roberto Lange at a ceremony at the U.S. District Courthouse in Pierre, South Dakota. Senate confirmation is pending.



FIGURE 2 RANDOLPH SEILER AND JUDGE ROBERTO LANGE

Conference Held to Highlight The Violence Against Women Act: A conference regarding *Tribal Implementation of the Violence Against Women Act (VAWA)* was held on Tuesday, March 31, 2015, in Rapid City. In addition to the District of South Dakota, the conference was co-sponsored by U.S. Attorney Christopher C. Myers, District of North Dakota; U.S. Attorney Deborah R. Gilg, District of Nebraska; and the University of South Dakota School of Law.

The conference focused on the implementation of VAWA by tribal entities. Featured conference speakers explained the law as it relates to addressing domestic violence in Indian country, discussed the role of tribal elected leaders in the implementation of VAWA, and provided tribal perspectives and updates on pilot projects authorized under the new law.

Additionally, breakout sessions addressed the topics of building stability in tribal justice programs, incarceration, re-entry and rehabilitation services, tribal code development, technical assistance, and how to ensure that tribal protection orders and convictions qualify for federal prosecution. The conference was free and open to the public.



FIGURE 3 TROY MORLEY, RANDY SEILER, AND JAN MORLEY

Disabilities Rights Conference: In conjunction with the 25th anniversary of the Americans with Disabilities Act, and October's designation as National Disability Employment Awareness Month, the Disabilities Rights Conference was held on Wednesday, October 21, 2015, in Sioux Falls. The conference was co-sponsored by Avera Health and LifeScape, and was designed to raise awareness about the rights of persons with disabilities, and to educate the public about its role in protecting those rights. Panel discussions addressed substantive areas of disability rights, learning to live with an acquired disability, and respect for people with disabilities. The conference was free and open to the public.



FIGURE 4 DISABILITIES RIGHTS CONFERENCE

Law Enforcement Coordinating Committee (LECC) Annual Conference:

The annual conference was held in Sioux Falls in November, 2015. The LECC is co-chaired by the U.S. Attorney and the South Dakota Attorney General. The LECC sponsors a state-wide conference each year for the purpose of training and information sharing, and it is held in conjunction with the South Dakota Annual Law Enforcement Appreciation Dinner and Children's Charity Fundraiser. The 2015 conference featured speakers on the topics of mental health response to critical incidents, emotionally intelligent policing, and a national heroin update. In addition, the conference included subcommittee meetings of the Health Care

Fraud Task Force, Victim Witness Services, and Asset Forfeiture.



FIGURE 5 TROY MORLEY SIGNING MOA

Historic Memorandum of Agreement Signed Regarding Reentry Services on the Standing Rock Reservation:

A Memorandum of Agreement (MOA) between the Standing Rock Sioux Tribe and the Multijurisdictional Reentry Services Team was signed at a ceremony at the Standing Rock Sioux Tribal Council Chambers in Fort Yates, North Dakota, on Tuesday, July 7, 2015.

The historic agreement is the first time this many federal, state, and tribal agencies have worked together to address a nationwide problem that is amplified in Indian country. The agreement is also unique because it covers the Standing Rock Reservation, which encompasses both South Dakota and North Dakota, and has jurisdictional issues because of its location. The Multijurisdictional Reentry Services Team recognizes that this remote area of reservation typically does not allow people returning home to have access to services and resources found in larger urban areas. The team shares a common interest and goal towards the successful reentry of people returning home to the reservation after their incarceration.

The MOA was signed by the South Dakota U.S. Attorney's Office, North Dakota U.S. Attorney's Office, Standing Rock Sioux Tribe, Bureau of Indian Affairs Office of Justice Services Standing Rock Agency, South Dakota Department of Corrections, North Dakota Department of Corrections and Rehabilitation, South Dakota Unified Judicial System, North Dakota U.S. Probation and Pretrial Services, South Dakota U.S. Probation and Pretrial Services, South Dakota Department of Tribal Relations, and the North Dakota Indian Affairs Commission.

Criminal Jurisdiction in Indian Country (CJIC) Training: AUSAs from the Rapid City office conducted a three-day CJIC training on the Pine Ridge Reservation on October 6-8, 2015. CJIC training is an essential training for tribal officers to get their Special Law Enforcement Cards, which enables them to be federal officers for the purpose of protection under federal laws for assaults against them, and also, under the Federal Tort Claims Act. There were 30 officers, mostly from the Oglala Sioux Tribe, but also three from Rosebud and one from a tribe in Oklahoma. The training concluded with a 40 question test at the end. This training is provided on a need-be basis. On October 13-15, similar training was conducted on the Rosebud Indian Reservation by AUSAs Jay Miller and Carrie Sanderson from the Pierre office.



FIGURE 6 CJIC TRAINING

Rainbow Gathering: The Rainbow Family of Living Light held its 2015 annual gathering in the Black Hills National Forest. The event attracted over 2,000 attendees. During the two-week event, law enforcement personnel from the U.S. Forest Service issued 56 citations for various federal misdemeanor violations. In order to conduct hearings on as many citations as possible while the attendees remained in South Dakota, U.S. Forest Service law enforcement and the U.S. Attorney's Office in Rapid City made arrangements with the U.S. District Court and the U.S. Marshals Service to conduct hearings on the violations at a location in the National Forest. On July 2, 2015, Assistant U.S. Attorneys Megan Poppen, Ben Patterson, and Eric Kelderman handled or resolved 40 citations at a temporary, mobile courtroom which the U.S. Forest Service and the U.S. District Court set up near Deerfield Lake.



FIGURE 7 BEN PATTERSON, MEGAN POPPEN, ERIC KELDERMAN

National Crime Victims' Rights Week

Honorees: Ten individuals were awarded Department of Justice Certificates of Appreciation as part of National Crime Victims' Rights Week (NCVRW) on April 19-25, 2015. Ceremonies were held in Rapid City and Sioux Falls where U.S. Attorney Seiler presented the honorees with their awards and provided brief remarks in recognition of their outstanding dedication, service, and contributions on behalf of crime victims. The award recipients included:

Hollie Strand, an Education Specialist/Forensic Interviewer with the Child Advocacy Center (CAC) of the Black Hills; Doug Thesenvitz, the Tribal Prosecutor for the Flandreau Santee Sioux Tribe; and the remaining eight honorees were selected for their work in the area of sex trafficking, Charla Aramayo, Special Agent - Department of Homeland Security Investigations; Gretchen Slate, Special Agent – SD Division of Criminal Investigation/FBI Joint Terrorism Task Force; Gayle Scott, Victim Specialist – FBI; Matthew J. Miller, Special Agent – FBI; Michael D. Melcher, Special Agent – FBI; Stephanie Knapp, Child/Adolescent Forensic Interviewer – FBI Office for Victim Assistance in Loveland, CO; Cullen McClure, Officer – Sioux Falls Police Department - Street Crimes Unit; and Brad Smidt, Detective – Sioux Falls Police Department - Street Crimes Unit.



FIGURE 8 CRIME VICTIMS' RIGHTS WEEK HONOREES



FIGURE 9 RANDOLPH SEILER AND HOLLIE STRAND

Crow Creek Annual Powwow: For a third year, the Crow Creek Sioux Tribe and the South Dakota Highway Patrol worked together in a joint enforcement operation during the Crow Creek Sioux Tribe Annual Powwow in August. A Memorandum of Understanding between the two entities was signed in 2013, and that spirit of cooperation was recognized as an important step towards future joint law enforcement operations. State troopers, some of them with drug detection dogs, helped tribal police during the weekend powwow in a joint effort to ensure that everyone had a safe experience at the celebration. In addition to assisting BIA Crow Creek Agency officers, troopers also interacted with community residents. The troopers who were part of the operation were sworn in after a training and orientation program. All of the troopers volunteered to work at the powwow.

Staff Retreat: The three district offices gathered in Pierre in September for a staff retreat. The bulk of the two-day retreat was spent on the Crow Creek and the Lower Brule Indian Reservations meeting with tribal members, touring businesses, and participating in community service projects. A highlight was the Lower Brule High School culinary students preparing a traditional Lakota meal for the group.



FIGURE 10 TRADITIONAL BUFFALO STEW AND FRY BREAD

Other Highlights: S.D. Attorney General Marty Jackley and U.S. Attorney Randy Seiler teamed up to raise public awareness regarding the crime of human trafficking. In a recorded PSA, the state's two top law enforcement officers said the recent prosecution of human trafficking crimes in South Dakota should serve as notice that their offices are serious about prosecuting these cases. The PSA aired during Human Trafficking Awareness Week on June 21-27.



FIGURE 11 MARTY JACKLEY AND RANDY SEILER

*AUSA Meghan Dilges, along with Rosebud Sioux Tribe Game Fish and Parks Senior Ranger Ben Bearshield, and U.S. Fish and Wildlife Agent Brad Merrill, presented at the National Advocacy Center (NAC) in Columbia, SC, in July, at the "Tribal and Federal Training on Wildlife and Pollution Enforcement Issues Affecting Tribal Lands." Their presentation was a "Case Study on Tribal and Federal Cooperation to Protect Wildlife." They discussed the Rock Creek Ranch off of the Rosebud Sioux Reservation and how the agencies can work together.



FIGURE 12 MEGHAN DILGES, BEN BEARSHIELD, AND BRAD MERRILL

During that same trip to the NAC, AUSA Meghan Dilges also presented a second lecture with Katherine Kane of ENRD on "Practical and Procedural Issues: Protecting Tribal Resources in Federal Courts."

*AUSA Meghan Dilges was an instructor at the Native American Conservation Officer Training in Billings, Montana, during the week of June 8-12. Eleven instructors from Federal agencies and Tribes provided expertise in federal laws for conservation law enforcement, ethics, unarmed self-defense, paleontological and archeological resource protection, firearm proficiency, and certification in baton and oleoresin capicum spray.



FIGURE 13 NATIVE AMERICAN CONSERVATION OFFICERS

In today's high-tech world, conservation law enforcement must stay current on the dynamic changes in wildlife crime and law, the available tools and resources that may and may not be used to fight and investigate these crimes, and how to keep themselves safe while on duty. Forty-seven Tribal conservation officers, five archeologists, and other conservation professionals attended this instruction.

*U.S. Attorney Randy Seiler and AUSA/Tribal Liaison Troy Morley toured the Sisseton tribal jail and new tribal administration facility on an outreach visit. They were honored to have their picture taken with the Honorable Michael Swallow, Associate Tribal Judge for the Standing Rock Sioux Tribe and the Sisseton Wahpeton Sioux Tribe. Judge Swallow is also on several appellate courts.



FIGURE 14 TROY MORLEY, JUDGE MICHAEL SWALLOW, AND RANDY SEILER

*USAO staff took shifts manning the Human Trafficking Awareness table at the Lakota Nation Invitational basketball tournament in Rapid City in December. The table was sponsored by the West River Human Trafficking Task Force.



FIGURE 15 MARLYS BIG EAGLE, TESS FRANZEN, AND GREGG PETERMAN

*Supervisory AUSA Gregg Peterman participated in the Women Are Sacred Conference in Rapid City in June. AUSA Peterman was part of a panel, and he discussed the importance of MDT and the role of the federal prosecutor in Indian country working cases involving violence against women. During the year, AUSA Peterman also provided Sexual Assault Nurse Examiners (SANE) training for nurses, advocates, and the Tribal Attorney General regarding federal trial work.

*AUSA Alison Ramsdell spoke at the Homeless Coalition Forum in May and gave a general overview of the outreach efforts the District planned to pursue, and assured the group of the U.S. Attorney's "vigorous and independent enforcement of civil rights" as being on the list of priorities. Specifically, AUSA Ramsdell mentioned the ADA Summer Camp Letter, the Disability Rights Conference, and a potential Know Your Rights Workshops which were forthcoming events.

*AUSA and Appellate Chief Kevin Koliner and AUSA Alison Ramsdell addressed the Sioux Falls Chapter of the National Alliance on Mental Illness at their June monthly meeting. Advocates wanted to remind people who suffer from mental illness that they have rights and invited federal prosecutors to explain those rights to the group. In addition, AUSA Koliner spoke about sex trafficking, and AUSA Ramsdell briefed the group on ADA enforcement. They both fielded questions from the attendees.

*AUSA Kevin Koliner also participated in a panel regarding human trafficking in November. He was part of Mount Marty College's Noon Forum focused on human trafficking, and ways we can work together to stop trafficking in our state.

*At the request of the elder board, AUSA and Tribal Liaison Troy Morley met with members of the Sisseton Wahpeton Tribe to educate them about drug awareness. The SD Highway Patrol and the Chief of Police for the tribe brought in paraphernalia and drugs to show the elders what to look for suspicions of drug use. The FBI was also in attendance. AUSA Morley talked to the audience about the need for the elders to be our eyes and ears, and how we cannot help with the problem of drug abuse if we do not know about it. He also mentioned they should watch their medications, their personal belongings, and not give money to family members who they suspect have a drug/alcohol problem. There was also talk from the tribe about strengthening their Tribal Code, enacting the Tribal Law and Order Act, and banishment of drug dealers. The group answered some questions from the audience and from Facebook®. The meeting was well attended and broadcasted over the radio.

*AUSAs Alison Ramsdell, Carrie Sanderson, Troy Morley, and Kathryn Rich were able to take a photo with the former U.S. Attorney General Eric Holder when they were in Washington, D.C., for training in April. They had the opportunity to meet Mr. Holder and receive an update on all of the happenings in the Department of Justice.



FIGURE 16 ALISON RAMSDELL, CARRIE SANDERSON, FORMER AG ERIC HOLDER, TROY MORLEY, AND KATHRYN RICH



FIGURE 17 ERIC KELDERMAN, GREGG PETERMAN, AND BEN PATTERSON

* Supervisory AUSA Gregg Peterman, AUSA Eric Kelderman, and AUSA Ben Patterson helped load turkeys, gifts, and food boxes at a local charity organization that were sent to the Pine Ridge Reservation for needy families over the holidays.



FIGURE 18 CAMMY THEELER AND MEGHAN ROCHE

* Meghan Woster Roche, an AUSA in the Civil Division, was named the *Young Lawyer of the Year* by the South Dakota Bar Association. The award was announced at the bar convention in Rapid City in June.

HUMAN TRAFFICKING

In 2000, the Trafficking Victims Protection Act (18 U.S.C. §§ 1589-1594) was passed to address the problem of trafficking of persons through protection and assistance for victims, prosecution of offenders, and prevention efforts internationally. The Act strengthened federal criminal laws that prohibit human trafficking.

Human trafficking, commonly referred to as “modern-day slavery” is a global phenomenon that involves obtaining or maintaining the labor or services of another through the use of force, fraud, or coercion in violation of an individual’s human rights.

The Department of Justice and the U.S. Attorney’s Offices’ commitment to preventing human trafficking, bringing traffickers to justice, and assisting victims has never been stronger--and our approach has never been more effective. The work being done has sent, and will continue to send, a clear and critical message. In this country, human trafficking crimes will not be tolerated.

The District of South Dakota has become a national leader in the area of human trafficking and that is due, in part, to the federal statutes that provide for mandatory/minimum sentences in certain cases. It is also a credit to our law enforcement partners who conduct the investigations and undercover operations that identify the predators. If the cases meet certain criteria, federal prosecution is sought, given that tougher sentences can be imposed because of the federal guidelines.

Since 2009, our office has been involved in over forty sex trafficking cases.

Federal statutes criminalizing sex trafficking have provided our

office with strong prosecutorial tools. The following statutes have been used with the greatest frequency in our federal cases:

1. 18 U.S.C. § 1591 – Sex Trafficking of Children or by Force, Fraud, or Coercion; and
2. 18 U.S.C. § 2422 – Coercion and Enticement.

The investigations have uncovered dozens of victims of sex trafficking, mostly South Dakota residents. The victims have all been female, and their ages have ranged from approximately 13 years up to about 30 years. The backgrounds of the victims vary, but they are predominantly from low-income homes, often with one or both parents absent. Most victims endured childhoods of abuse and neglect, and they were encountered by their traffickers during periods of drug addiction and homelessness. Many victims were struggling to care for family members, including young children of their own. Several individuals have been identified as victims in more than one of our cases.



FIGURE 19 AWARENESS CAMPAIGN

US v. Jaquon Duckworth/ Prostitution Transportation

A 23 year old man from Milwaukee pled guilty to transporting a woman across the South Dakota border with the intent that she engage in prostitution. Sioux Falls Police detectives on the Street Crimes Unit became aware of prostitution activity occurring at a local hotel on June 22, 2014. Further investigation led to the defendant who was posting advertisements on the internet and accepting phone calls to arrange meetings for commercial sexual activity. He was sentenced to 10 months in prison.

US v. Elijah Wilson/ Traveling with Intent to Engage in Illicit Sexual Conduct

A 25 year old Sioux Falls man, formerly from Liberia, pled guilty to attempting to entice a 13 year-old girl to have sex with him in exchange for money. Using his cell phone, the defendant responded to an online advertisement for sex. Unknown to the defendant, the Street Crimes Unit of the Sioux Falls Police Department posted the advertisement as part of an undercover operation. The defendant went to an arranged location and was arrested with \$350 in cash, two cell phones, and a GPS unit. Upon arrest, the defendant admitted he intended to take the girl to Iowa. He was sentenced to 46 months in prison.

US v. David Nance & Ashley Crayton/ Prostitution Transportation

A 31 year old man teamed up with a 23 year old woman to travel to South Dakota for prostitution. The Sioux Falls police responded to a call from a local hotel regarding a complaint of possible prostitution activity. Several men were observed entering and leaving a specific room in the hotel. The investigation revealed that both defendants worked together to transport a 25 year old female, with a history of physical and mental illnesses, from Minneapolis to Sioux Falls to have her

engage in prostitution. The female defendant posted prostitution advertisements on Backpage.com while the man provided the transportation, paid for the hotel room, and took all of the money from the victim. The female defendant cooperated with authorities and received a reduced sentence, while the male defendant was sentenced to 37 months in prison.

US v. Phillip Holden/ Undercover Sex Trafficking

A Nebraska man was one of five men arrested as part of the undercover sex trafficking operation at the 2014 Sturgis Motorcycle Rally. He was indicted for attempted commercial sex trafficking. On March 12, 2015, he pled guilty to attempted enticement of a minor using the internet. He was sentenced to 144 months in prison on August 18, 2015.

Undercover Sex Trafficking Operation at the 2015 Sturgis Motorcycle Rally

In August of 2015, four men were arrested and federally indicted as a result of an undercover operation conducted during the 2015 Sturgis Motorcycle Rally.

**Toby Magnuson:* Indicted for attempted commercial sex trafficking of children and attempted enticement of a minor using the internet. A change of plea hearing is scheduled for April 15, 2016.

**Marcus Dorsey:* Indicted for attempted commercial sex trafficking of children and attempted enticement of a minor using the internet. A Federal jury trial is currently scheduled for May 10, 2016.

**Michael Preston:* Indicted for attempted commercial sex trafficking of children and attempted enticement of a minor using the internet. A Federal jury trial is currently scheduled for June 7, 2016.

**Aaron Vandekamp:* Indicted for attempted commercial sex trafficking of children and attempted enticement of a minor using the internet. A Federal jury trial is currently scheduled for April 2016.

CRIMINAL DIVISION

The primary responsibility of the Criminal Division for the U.S. Attorney's Office is the prosecution of federal crimes in the District. Many of the offenses prosecuted by the Criminal Division arise on the District's Indian reservations and other Indian lands which constitute Indian country under federal law. By Act of Congress, the most serious offenses involving Native Americans which take place in Indian country must be prosecuted in federal court under the Major Crimes Act, the Assimilative Crimes Act, or other federal statutes. Our office works closely with tribal prosecutors to coordinate the prosecution of offenses arising in Indian country.



FIGURE 20 COURTROOM - RAPID CITY, SOUTH DAKOTA

The other crimes prosecuted by Assistant U.S. Attorneys assigned to the Criminal Division cover a wide range of criminal activities, including drug trafficking, firearms violations, corporate and financial institution fraud, bankruptcy fraud, mail fraud, healthcare fraud, computer fraud, agricultural program fraud, public corruption, terrorism, child pornography, environmental crimes, civil rights violations, federal wildlife

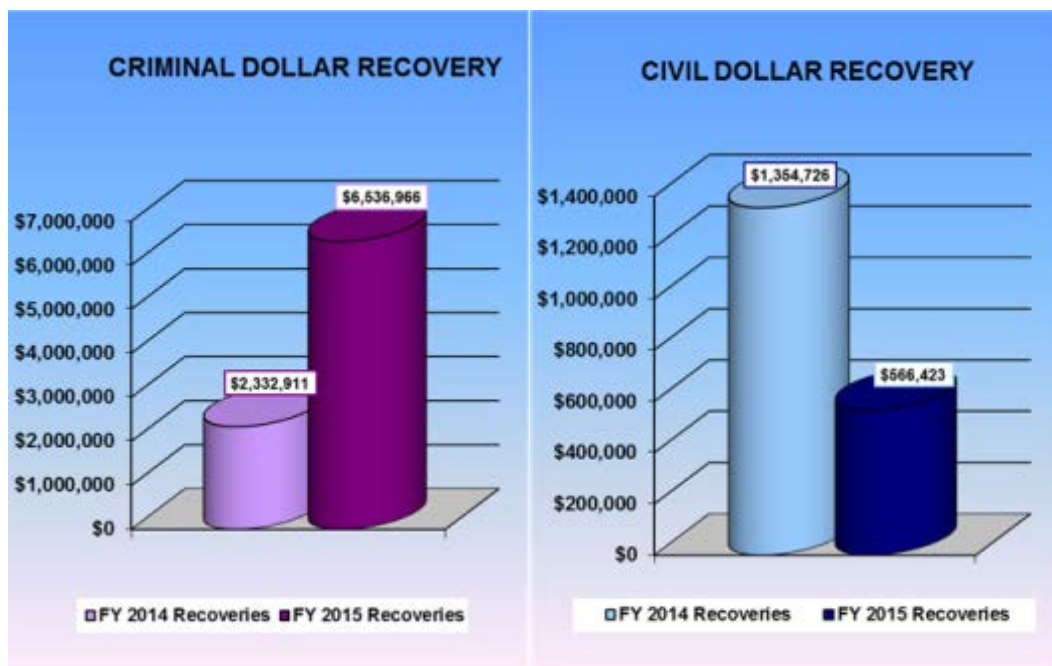
violations, and any of the more than 900 federal offenses that have been created by Congress.

Twenty-three attorneys are assigned to the Criminal Division. This includes two office supervisors and the Criminal Chief, Dennis Holmes. Within the Division, one attorney is assigned to the Organized Crime Drug Enforcement Task Force to handle major drug trafficking prosecutions. One attorney in the Division serves as the District's anti-terrorism coordinator. One attorney and one auditor are assigned to healthcare fraud investigations. The District's asset forfeiture and financial litigation attorneys are also assigned to the Criminal Division.

Financial Litigation Unit

The Financial Litigation Unit (FLU) is responsible for activities related to the collection of civil debts owed to federal agencies, as well as the collection of restitution, fines, penalties, assessments, and court costs imposed by the court in criminal judgments. The goal of the U.S. Attorney's Office is to fairly achieve the maximum amount of recovery with the least amount of cost for each affirmative claim or debt. Our office strives to collect debts due to the United States and victims of crimes in a timely, aggressive, efficient, and cost-effective manner.

Collection Efforts

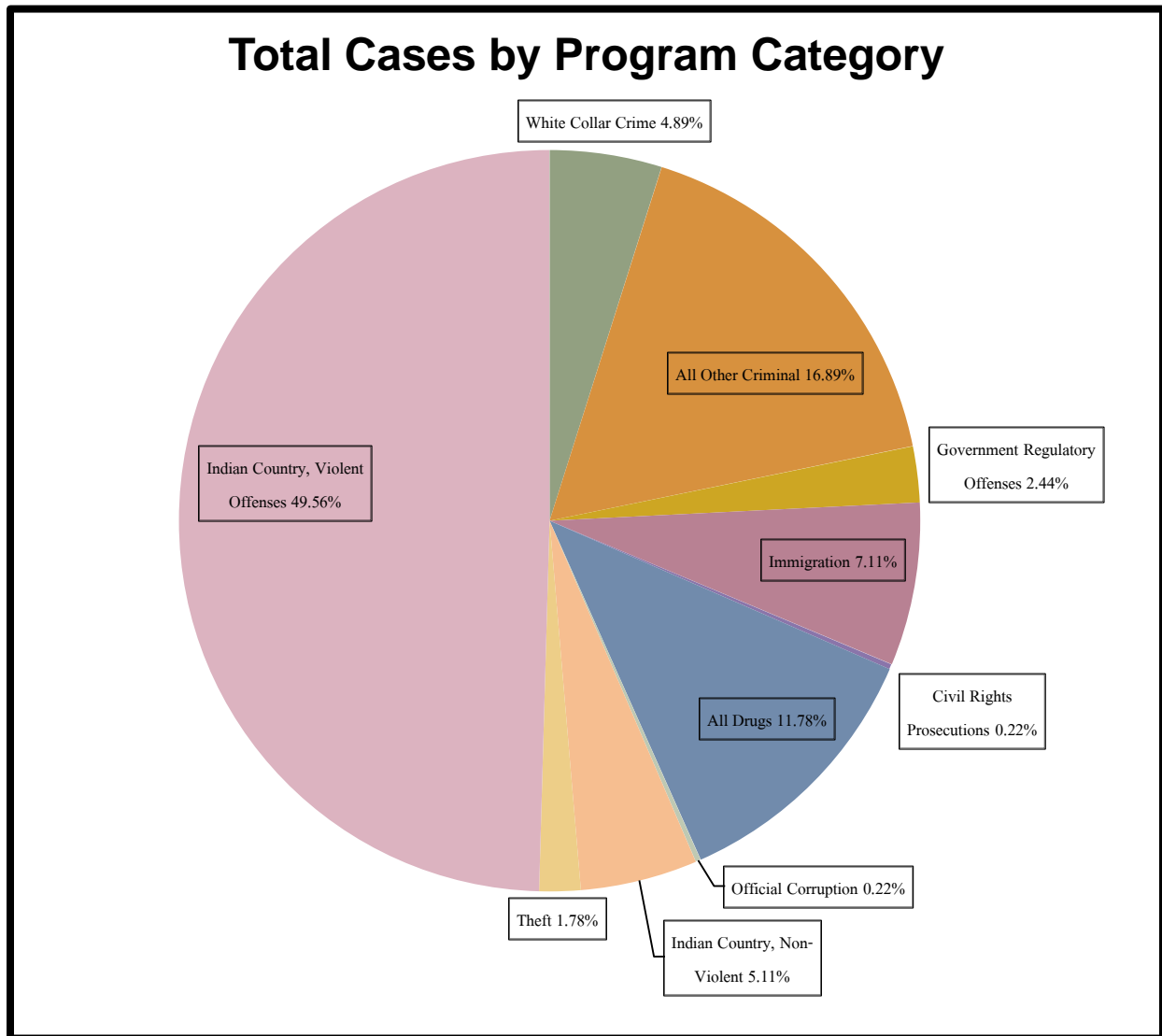


FLU collected \$7.1 million in civil judgments and criminal payments in fiscal year 2015. Although all recoveries are vitally important, the recovery of restitution in an effort to make victims whole is a high priority of this office. In 2015, of the \$6,536,966 recovered from criminal judgments, \$5,454,080 was returned to victims of crime. The rest of the recoveries were deposited into the Crime Victims Fund which is used to fund programs that assist crime victims.

STATISTICAL HIGHLIGHTS

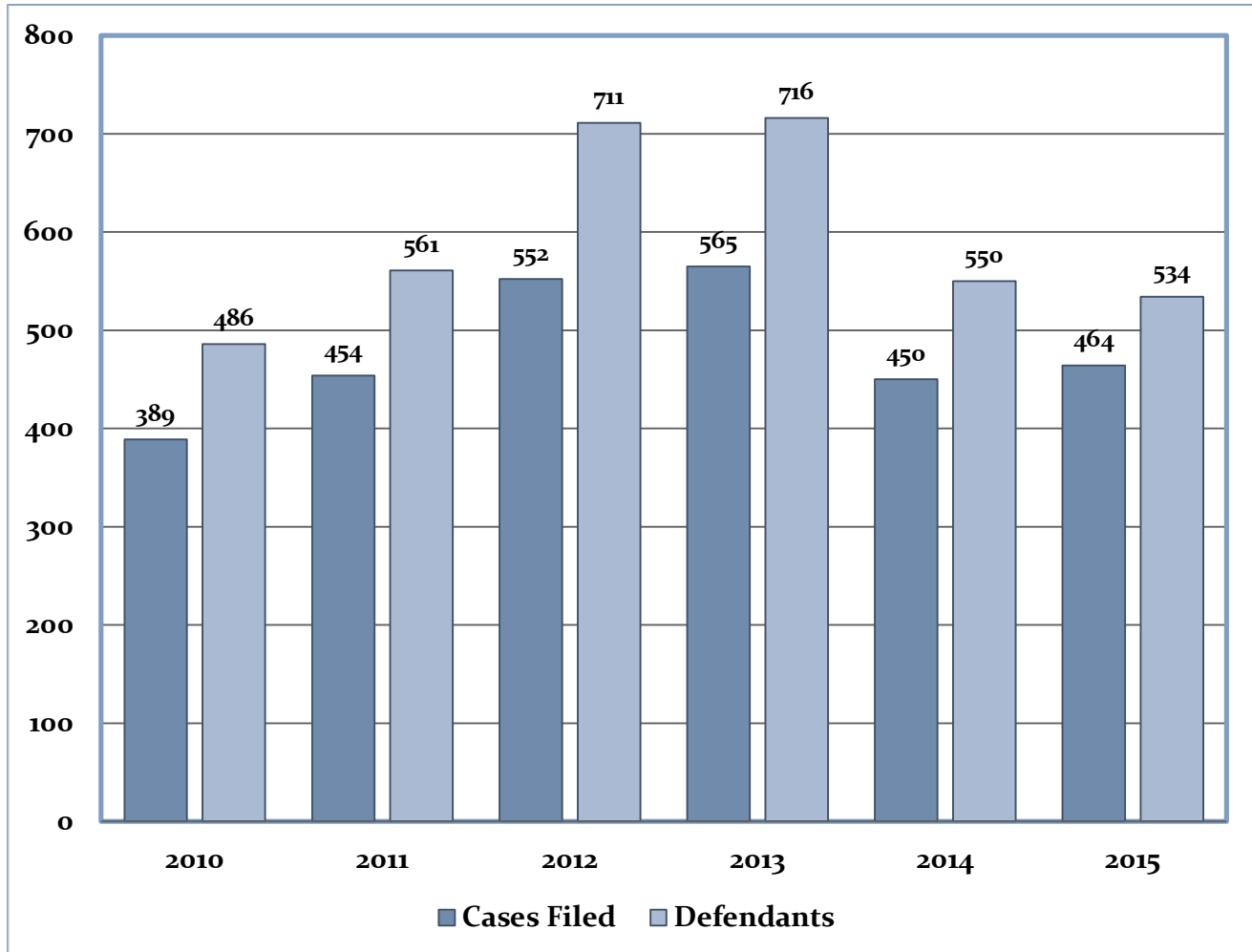
Criminal Caseload Statistics

Total Cases Filed¹

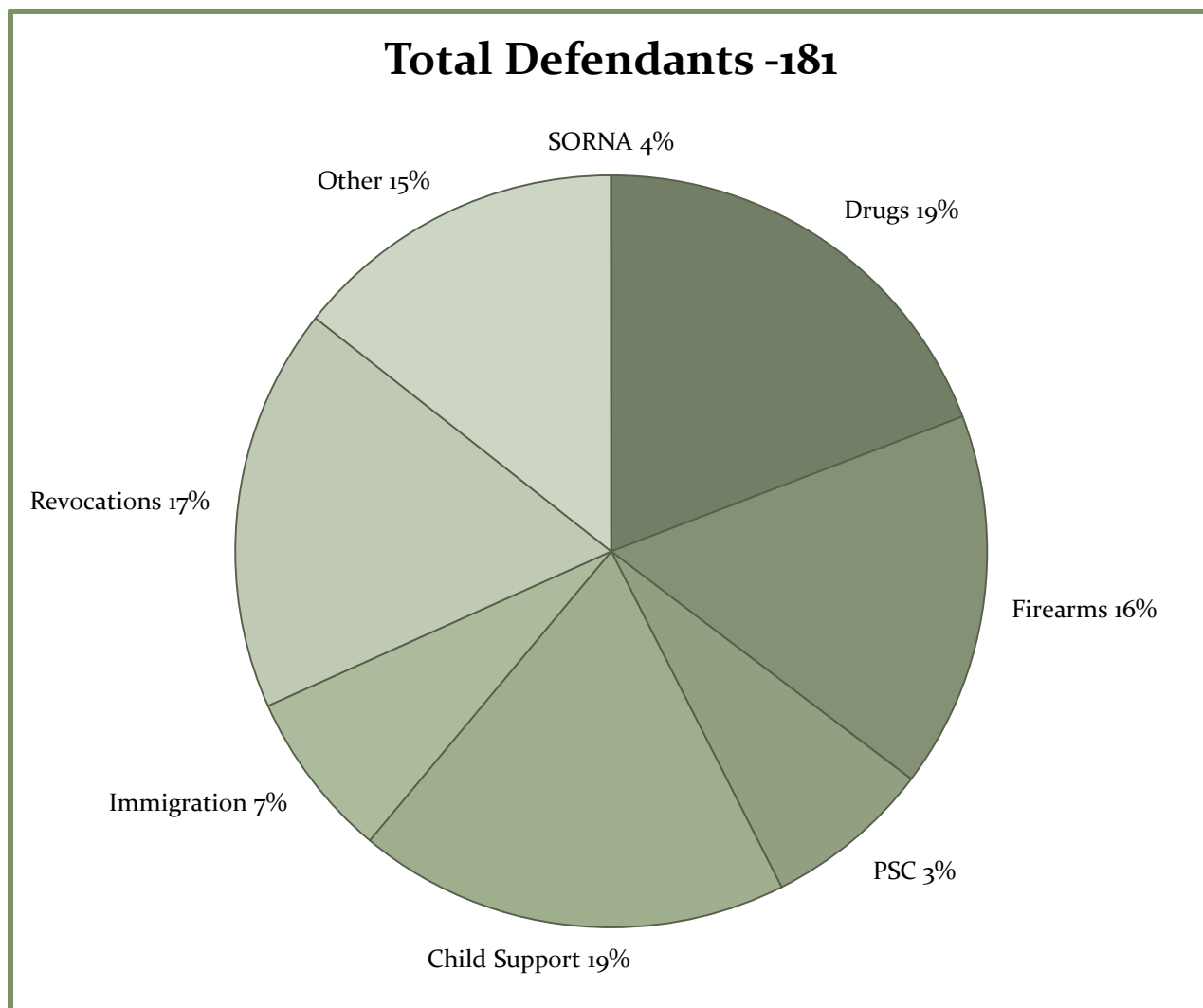


¹ Total cases filed FY 2015.

Cases & Defendants Filed FY 2010 - 2015 Non-Indian Country Defendants by Program Category



Per Division² Southern Division

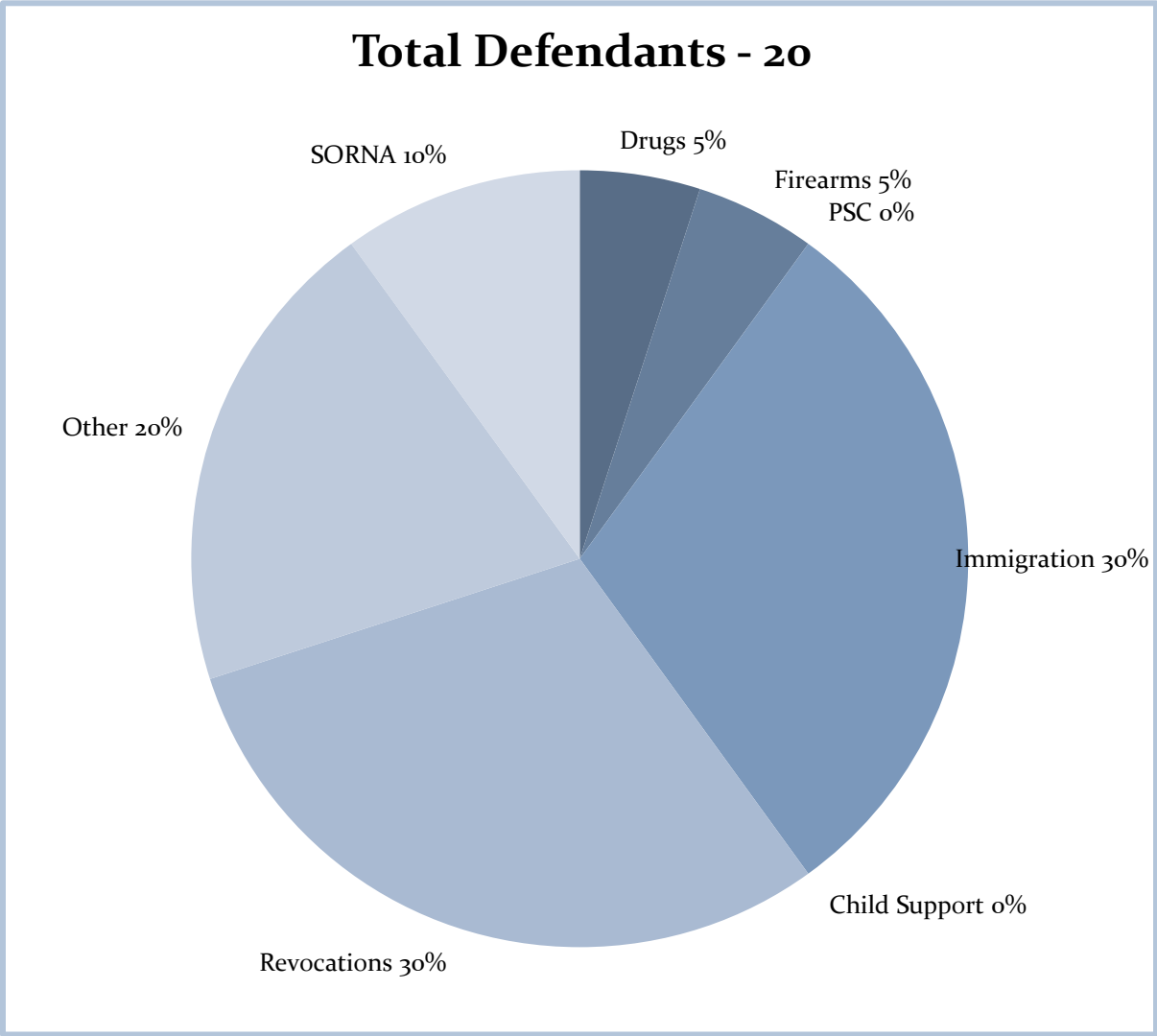


*PSC (Project Safe Childhood) includes all cases concerning child pornography, sex trafficking, human trafficking, etc.

*SORNA (Sex Offender Registration and Notification Act) includes all cases concerning sex offender registrations.

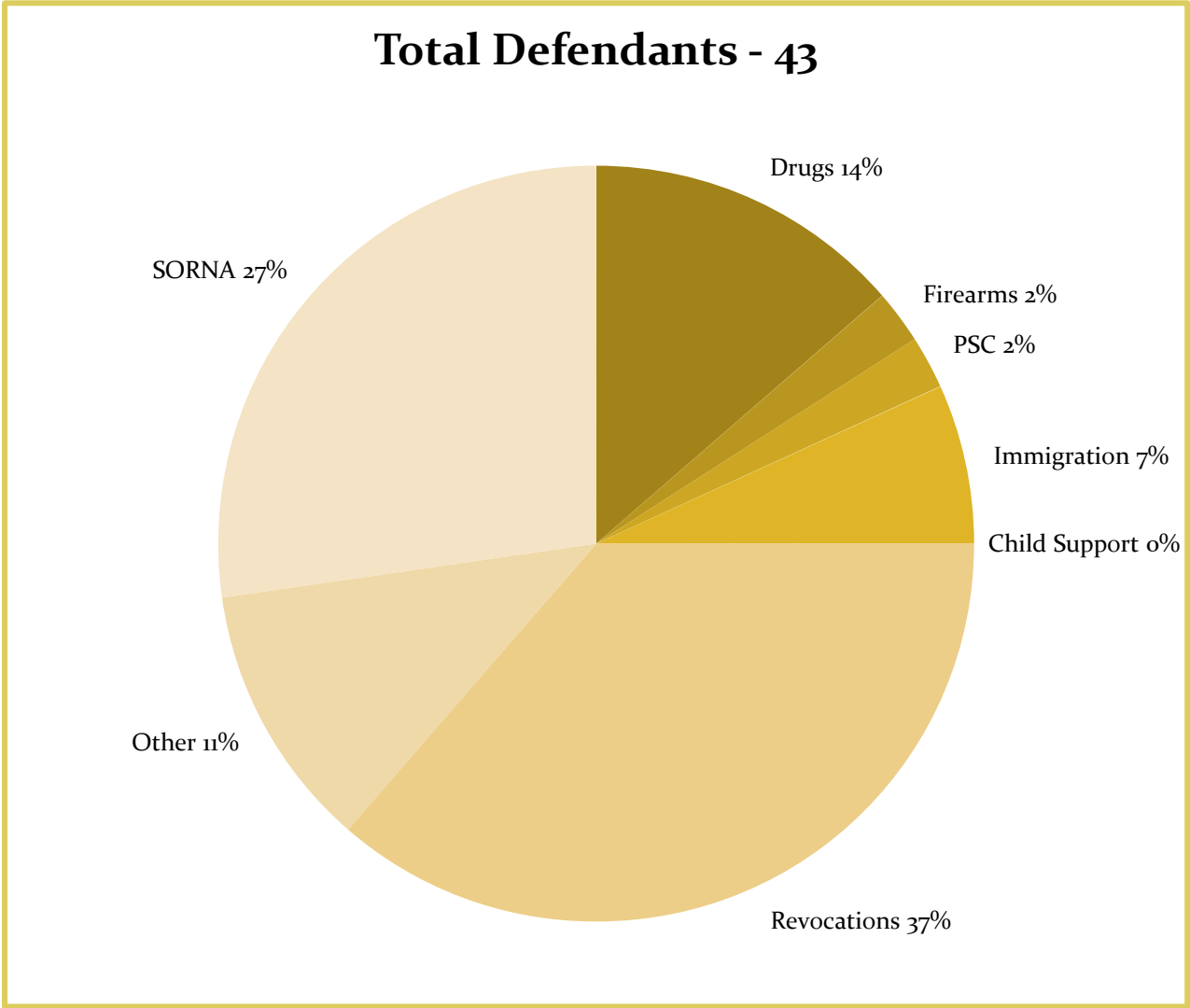
² Total cases filed calendar year 2015

Northern Division



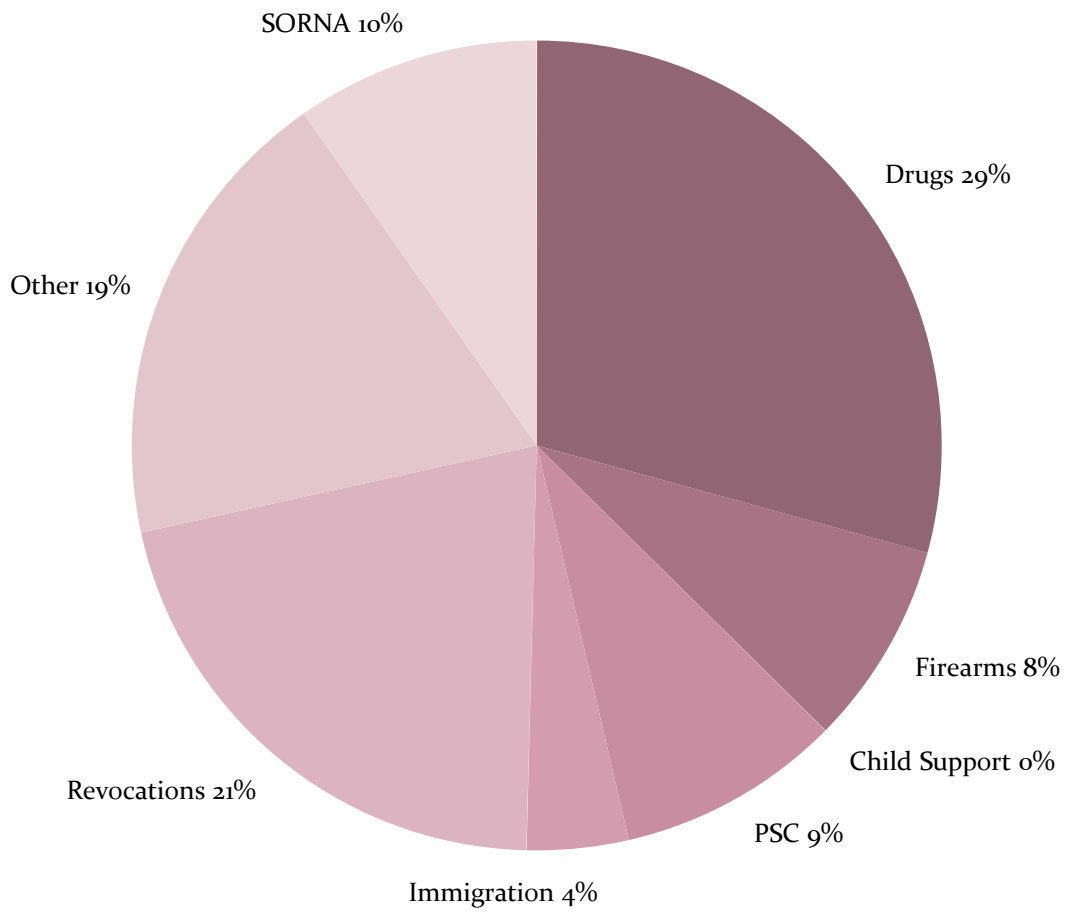
Central Division

Total Defendants - 43



Western Division

Total Defendants - 120



Non-Indian Country Significant Cases

Drugs

US v. Vincent Rios/Felon in Possession of a Firearm; Conspiracy to Distribute a Controlled Substance

A Rapid City police officer witnessed the defendant's vehicle swerve. When the officer turned around to follow, he saw the vehicle speeding away from him, and a long chase ensued. The defendant then fled the vehicle, and officers found a glass pipe containing methamphetamine, along with numerous items of stolen merchandise. After the defendant's arrest, a search of the vehicle uncovered a stolen handgun in the passenger compartment. Three other handguns were located in the engine compartment concealed under the cowl in front of the windshield. Video surveillance showed the defendant, after his initial release from custody, picking up the vehicle. He initially went directly to the location of the three firearms in the engine compartment. Further investigation revealed the defendant, a felon, was involved in extensive methamphetamine trafficking between Denver and Rapid City. The defendant was charged with being a felon in possession of a firearm and conspiracy to distribute a controlled substance. The defendant pled guilty to the conspiracy charge and was sentenced to 87 months imprisonment, followed by 4 years of supervised release.

US v. Trevor Ray/ Conspiracy to Distribute a Controlled Substance; Distribution of a Controlled Substance; Possession with Intent to Distribute a Controlled Substance

Since at least 2013, Ray has been dealing methamphetamine in the northern Black Hills. In November 2014, law enforcement in Rapid City became aware of a growing methamphetamine distribution network headed by Ray. Law enforcement surveyed

his home, workplace, and a storage unit. In March and April 2015, he was seen making frequent trips between the storage unit and his workplace. Numerous co-conspirators confirmed his activities. In February 2015, a confidential informant conducted a controlled buy, at law enforcement direction, of two ounces of methamphetamine from Ray. In April 2015, Ray was arrested and was in possession of drug paraphernalia. A co-conspirator was arrested with methamphetamine, after having been to the storage unit earlier that day. Law enforcement officers obtained a search warrant for Ray's storage unit and found an additional pound of methamphetamine inside. Ray was convicted after a jury trial on June 19, 2015, where co-conspirators testified against him. Sentencing is scheduled for May 2016. He faces a minimum of 10 years in prison up to life.

US v. Jaime Lora Andres/ Conspiracy to Distribute Over 500 Grams of Methamphetamine/Use of a Communication Facility to Cause and Facilitate Conspiracy to Distribute a Controlled Substance

The defendant was involved in multi-year conspiracy to distribute methamphetamine in Sioux Falls. The conspiracy also involved the trafficking of methamphetamine in Fargo, North Dakota; Omaha, Nebraska; Sioux City, Iowa; and various locations in California. In the course of the conspiracy, Andres handled several pounds of methamphetamine, cocaine, and marijuana. The defendant utilized his cell phone to call drug contacts hundreds of times to set up drug deals. The defendant was found guilty after a jury trial on December 4, 2015, and will be sentenced in the spring of 2016.

US v. Heather LeClaire/Conspiracy to Distribute Over 500 Grams of Methamphetamine

The defendant conspired with several individuals to distribute methamphetamine in Sioux Falls. LeClaire took trips to California, Minnesota, and Texas to obtain methamphetamine. Throughout the course of the conspiracy, LeClaire and her co-conspirators distributed approximately 9.5 pounds of methamphetamine. Over \$10,000 in cash and drug dealing paraphernalia were found after a search warrant was executed at her home in November 2014. LeClaire also sold firearms for methamphetamine to a drug dealer in St. Paul, Minnesota, in March 2014. On September 28, 2015, the defendant pled guilty to conspiracy to distribute over 500 grams of methamphetamine. On December 14, 2015, LeClaire was sentenced to 188 months in prison, followed by 5 years of supervised release.



US v. Fred Davis/ Conspiracy to Distribute Over 50 Grams of Methamphetamine

The defendant was involved in a long-term conspiracy to distribute marijuana and methamphetamine in Sioux Falls. In November 2014, Davis was stopped for speeding on Interstate 90. During that stop, South Dakota Highway Patrol Troopers located 33 pounds of marijuana, over \$8,000 in cash, approximately 87 grams of methamphetamine, over 29 grams of cocaine, and several bottles of Oxycodone and Hydrocodone. Davis admitted that he had been selling marijuana for the past five to ten years, and that he had also been

selling methamphetamine and cocaine for some time. Davis stated that he received the drugs from a source in Denver, Colorado. A search warrant executed at his home yielded over three kilograms of methamphetamine, several firearms, Hydrocodone, and over \$6,500 in cash. On August 19, 2015, Davis pled guilty to conspiracy to distribute over 50 grams of methamphetamine. On January 4, 2016, Davis was sentenced to 87 months in prison, followed by 4 years of supervised release.

Theft

US v. Eugene Drong /Identity Theft/ False Statement / Mail Fraud

A 71 year old business owner from Sioux Falls pled guilty to mail fraud and was sentenced to 24 months in prison. The defendant offered large business development loans in exchange for a \$5,000 deposit. The defendant provided a post-dated check for \$5,500 to those applying for loans. However, when some attempted to cash their checks from the defendant, there were insufficient funds. The defendant's claim to loan money from proceeds he expected to earn from investments in coal mines and foreign currency was a scam. He collected over \$100,000 in security deposits and did not fund any loans.

US v. Brent Alan Fowler/Wire Fraud

A 52 year old Sioux Falls man, employed in the accounting department of a local university, pled guilty to wire fraud that involved over \$34,000 of employee funds. Working in the payroll department, the defendant submitted fraudulent payroll requests on behalf of employees. Although the requests were for employees, the funds were directed to be transferred into the defendant's personal account. There were 20 wire transfers that occurred over a year and a half before being discovered. No employees lost any money as part of this scheme and by sentencing, the defendant had paid most of the money back to the university.

**US v. Randall McKee/Wire Fraud;
Money Laundering**

Randall (Randy) McKee served as the trustee for an irrevocable supplemental needs trust that was established to provide for the needs of a disabled adult. While he was trustee, McKee wrote checks from the trust's checking account made payable to himself or to a business he controlled, and then he used the funds for his own purposes. In a separate wire fraud scheme, McKee defrauded investors in a real estate scheme by soliciting investment funds and then using those funds for his own purposes. On August 21, 2015, McKee pled guilty to one count of wire fraud. On December 11, 2015, McKee was sentenced to 41 months in prison, 3 years of supervised release, and restitution of \$684,230.11.

**US v. Theodore Nelson, Jr., et al/
Conspiracy to Defraud the US; Failure
to File Income Tax Returns; Impeding
the Internal Revenue Service**

Theodore ("Ted") Nelson, Jr. and his son, Steven Nelson, inherited and operated a family farm and business in Sanborn County, South Dakota. They planted and sold grain, raised cattle, performed custom work for neighbors, ran a hunting/lodging business, and leased out their land. The Nelsons conspired to evade the assessment and payment of their tax liabilities by agreeing not to file their tax returns, forming numerous sham trusts, opening bank accounts in the names of these trusts and other nominee names, and hiding their

income and assets from the IRS. Ted Nelson became a member of a sovereign citizens group called the "Republic of South Dakota." The Nelsons each sent frivolous documents to the IRS, including documents purporting to be income tax returns. On May 12, 2015, following a six-day jury trial, the defendants were convicted on all counts. Ted was sentenced to 70 months in prison. Steve was sentenced to 12 months and 1 day in prison. Restitution was ordered in the amount of \$1,842,102.14 with a \$25 special assessment.

**US v. Terrance Darrell Elder and
David Blackburn/Bank Fraud -
Blackburn and Elder; Aggravated
Identity Theft - Elder**

The defendants were employed by Wells Fargo Bank and worked together to make unauthorized changes to customer information in bank records, to allow themselves to make unauthorized purchases and withdrawals using those customers' bank accounts to purchase, among other things, a welder and food deliveries. Elder received 25 months in prison for his part in the scheme, and Blackburn received a time-served sentence, followed by 2 years of supervised release.

**US v. Charles Earl Ray
Aggravated Identity Theft**

The defendant used the identity of another person, including his name, date of birth and Social Security number, to obtain a driver's license in South Dakota in September 2014. The defendant was sentenced to 24 months.

US v. Daphne Keeble/False Statement

The defendant applied to the Social Security Administration (SSA) for Title II Survivor's Insurance benefits and to act as the representative payee for her minor nephew after the death of his mother. Over a five-year period, the defendant received more than \$25,000 in benefits from the SSA on behalf of her nephew. The benefits were received after the defendant provided false representative payee reports to the SSA indicating her nephew was living with her and that the funds had been spent or saved on his behalf, which was not true. On June 18, 2015, the defendant was sentenced to 20 months in prison and ordered to pay restitution.

Environmental

US v. Sean Clark & US v. Glencoe CampResort II Clean Water Act Violations—Knowing Discharge of a Pollutant from a Point Source Into a Water of the United States & Negligent Discharge of a Pollutant From a Point Source Into a Water of the US.

Clark and Devorah Lopez purchased Glencoe CampResort II in rural Meade County. Lopez is the managing partner of Glencoe CampResort. Bear Butte Creek runs through the Glencoe Campground and is designated as a cold water fishery by the State of South Dakota. The creek has been designated as a navigable water of the United States by the U.S. Army Corps of Engineers. During the Sturgis Motorcycle Rally, the creek is used by campers at Glencoe for recreational purposes. The creek is also used by other downstream property owners for watering livestock on their properties. In July 2011 and again in July 2012, Clark illegally constructed a dirt dam across the creek impounding the water. The dam in 2012 was approximately 75 feet across, 20 feet wide and 6 feet high. Approximately 500 cubic yards of material was used to construct the dam and the impounded water created a pool approximately 500 feet upstream that Clark advertised as a swimming beach for his campers. The impoundment cut off the water to downstream neighbors causing a fish kill.

Clark and Glencoe CampResort II were each sentenced to 4 years of probation, with terms that include complying with an Administrative Order of Consent with the EPA, preparing and following an Environmental Compliance plan, and a fine and Community Service payment of \$250,000. Clark is also required to perform 100 hours of community service. This case was also highlighted in U.S. EPA's OECA's Case Bulletin for June 2015.



FIGURE 21 BEAR BUTTE CREEK IN MEADE COUNTY, SOUTH DAKOTA

Illegal Reentry

US v. Juan Enrique Barron Montoya/ Illegal Reentry after Deportation

On June 15, 2015, the defendant was arrested for driving under the influence in Minnehaha County. A search of his fingerprints revealed he had previously been deported from the United States. The investigation revealed he was a citizen of Mexico, and not of the United States, and had re-entered the United States without permission of the U.S. government. The defendant was sentenced to 46 months in prison on November 5, 2015. He had a felony conviction prior to the order removing him from the United States, which resulted in an enhanced sentence.

Assaulting Federal Officer

US v. Roger Wayne Love/ Assaulting a Federal Officer

On May 1, 2015, Fugitive Task Force officers were seeking the defendant because of an existing South Dakota warrant for his arrest for possession of a controlled substance and impersonation to deceive a law enforcement officer. Task Force officers saw the defendant outside a residence in Sioux Falls and attempted to arrest the defendant, but he ran from the officers. At one point during the foot chase, the defendant stopped and a deputy U.S. Marshal attempted to handcuff the defendant. The defendant threw rocks at the deputy marshal and began running away again. When the deputy marshal again caught up with the defendant, he attempted to punch the deputy marshal, striking him on the wrist and forearm. On November 2, 2015, the defendant was sentenced to 20 months in prison, consecutive with his state sentences.



FIGURE 22 BUREAU OF PRISONS SEAL

Project Safe Childhood

US v. Casey Godfrey/Attempted Enticement of a Minor Using the Internet; Attempted Transfer of Obscene Material to a Minor; Receipt of Child Pornography

Between December 2013 and January 2014, the defendant communicated with undercover law enforcement agents who he believed to be a minor female and sent images of his genitalia, as well as requesting pornographic images of the minor. At the time of his communications, he was working as a janitor at an elementary school in Rapid City and one of the images of his genitalia was taken in the school's bathroom. During the same time period, Godfrey was communicating with a minor female from Texas and another from the East Coast, and he groomed them and ultimately convinced both of them to send him nude images. Upon forensic evaluation of Godfrey's computer, agents located multiple images of child pornography. He pled guilty to attempted enticement of a minor, listing both girls as victims, and he was sentenced to 20 years in prison, followed by 20 years of supervised release.

US v. Andrew Hiipakka/Attempted Enticement of a Minor Using the Internet; Transfer of Obscene Material; Distribution/Possession of Child Pornography

South Dakota ICAC began an investigation into Hiipakka upon a report of a person using his IP address to download child pornography. Agents executed a search warrant and found Hiipakka, a teacher at a Rapid City middle school, in possession of thousands of images of child pornography. Further investigation showed he solicited pornographic images from many young men around the world and engaged in internet chats, including fantasies of killing young boys during sexual acts. He pled guilty to attempted enticement of a minor using the internet and was sentenced to 25 years in prison and a lifetime of supervised release.



FIGURE 23 COMPUTER DOWNLOAD

US v. Richard Melanson/ Child Pornography Production; Travel with Intent to Engage in Illicit Sexual Activity; Possession of Child Pornography

The defendant made three trips to Guatemala for the purpose of engaging in sexual activities with minors. He went there in 2007, 2008, and 2010; and during the last two trips, he engaged in sexual activities and forced several boys to endure brutal and sadistic beatings--exploiting their poverty for his own sexual pleasure. He pled guilty to travel with intent to engage in illicit sexual activity in 2015, and was sentenced in 2016 to 30 years in prison and a lifetime of supervised release.



FIGURE 24 SARAH COLLINS, MARTY JACKLEY, AND BRENT GROMER

US v. Christopher R. Jansen/Sexual Exploitation of a Child; Distribution of Material Involving the Sexual Exploitation of a Minor

The defendant was an attorney who has worked in Central South Dakota between June 1, 2011, and July 29, 2014. He lived and worked in Walworth County, where he maintained a law firm in Mobridge and a residence in Selby. He was the Walworth County State's Attorney from approximately 2009 to 2012. The defendant has had a professional attorney-client relationship with a family from Central South Dakota, and his minor victims are members of that family. The defendant visited their home, the family visited the defendant's home, and there were situations where the defendant stayed overnight with the children. During a time frame when the youngest child was age 5 to 7, the defendant engaged in oral sex with the child. The defendant had sexual encounters with the child for approximately 2 years, and the last encounter was in 2013. The defendant videotaped about 8 of these encounters, and he maintained those videos on computer media within his home. In total, the defendant has engaged in sexual encounters with 3 minors belonging to his client's family, and he produced videos and images related to sexual acts. The defendant refers to himself as a pedophile and indicated he has been dealing with his attraction to, and acting out, upon minors for a number of years. The defendant was a member of a website that is used to distribute child pornography, and he used the screen name "azmodene." The website is an online bulletin board whose primary purpose is the advertisement and distribution of child pornography. The website requires its users to continually upload child pornography in order to gain and keep membership. Since at least December 2013, the defendant has been a member of the website and has distributed materials containing child pornography, including materials that do not involve the child or the family, to other members of the website. Law enforcement officers observed images available on the website, which establish that the defendant shared images of the child, and the distribution of those materials affected interstate and foreign commerce and were distributed by the use of at least one computer. The defendant was arrested by state and federal law enforcement officers on July 29, 2014. On September 25, 2015, the defendant was convicted of two counts of first degree rape, after he pled guilty to those charges in state court. A state court judge sentenced him to 25 years in prison on each count, for a total of 50 years. On November 17, 2015, the defendant pled guilty to sexual exploitation of a child and distribution of material involving the sexual exploitation of a minor. He was sentenced to 480 months in prison, lifetime supervised release, a \$200 special assessment, and must register as a sex offender and have no contact with minors, as well as his victims and their immediate family.

Theft/Larceny

US v. Linda Anderson/Theft of Public Money

Linda Lee Anderson, of Spearfish, was the representative payee for her daughter and granddaughter, who both received Social Security Supplemental Security Income (SSI) payments, also known as Title XVI benefits. As the representative payee, Anderson received their monetary payments from the Social Security Administration on their behalf. From approximately July 1, 2010, through August 31, 2012, Anderson's daughter and granddaughter were living with her. Despite this, Anderson confirmed multiple times to the Social Security Administration that the daughter and granddaughter were living on their own at a separate residence. When Anderson made these false statements, she knew that this change in residence would affect the rights of the daughter and granddaughter to receive a higher payment of Social Security SSI payments. Anderson, therefore, received higher SSI payments as a result of her misrepresentations. Because of Anderson's conduct and by virtue of her position as representative payee, the daughter and granddaughter were overpaid benefits in an amount of \$43,856.00. Anderson pled guilty to theft of public money and was sentenced on March 5, 2015, to probation and restitution of \$43,856 to the Social Security Administration.



FIGURE 25 PUBLIC MONEY THEFT



FIGURE 26 STOLEN CREDIT CARDS

US v. Juan Crawford/Stolen Credit Cards

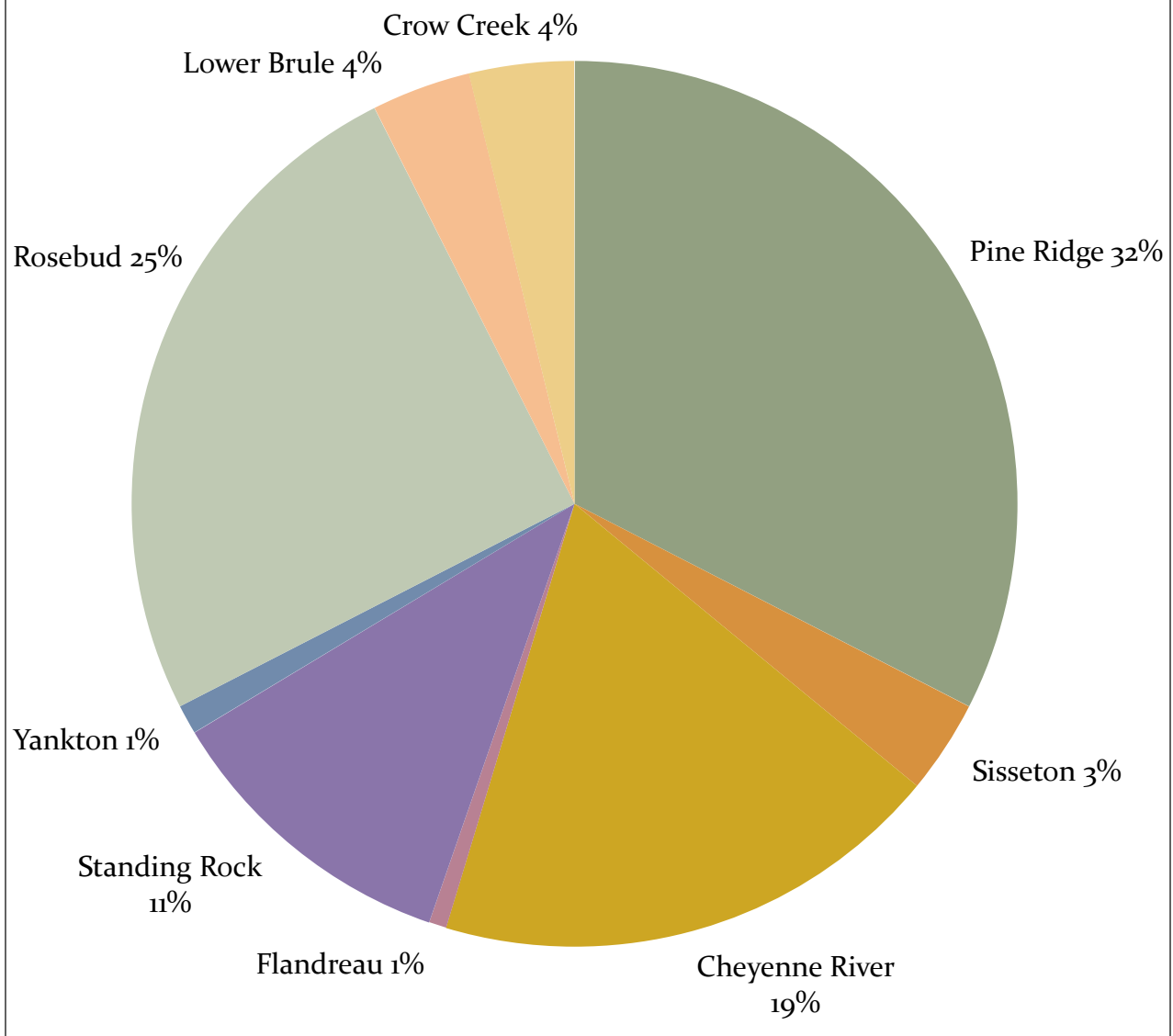
In December 2014, two airmen were exercising at the men's gym on the Ellsworth Air Force Base. After their workouts, they discovered their wallets had been taken from lockers in the gym. One airman was missing a wallet with credit or debit cards. The other airman lost a wallet containing credit and debit cards and cash, as well as a cell phone. U.S. Air Force investigators later received notice that the suspect had attempted to use some of the cards at a store in Rapid City. Video recordings showed a man attempting to use the cards to purchase over \$900 worth of items. Later, another investigator at Ellsworth recognized the person shown in the video recording. Investigators contacted the defendant's former employer who identified the defendant. The defendant was charged with larceny. He pled guilty, and was sentenced to time served, one year of supervised release, and was ordered to pay restitution and a \$25 special assessment.



FIGURE 27 ELLSWORTH AIR FORCE BASE, RAPID CITY, SD

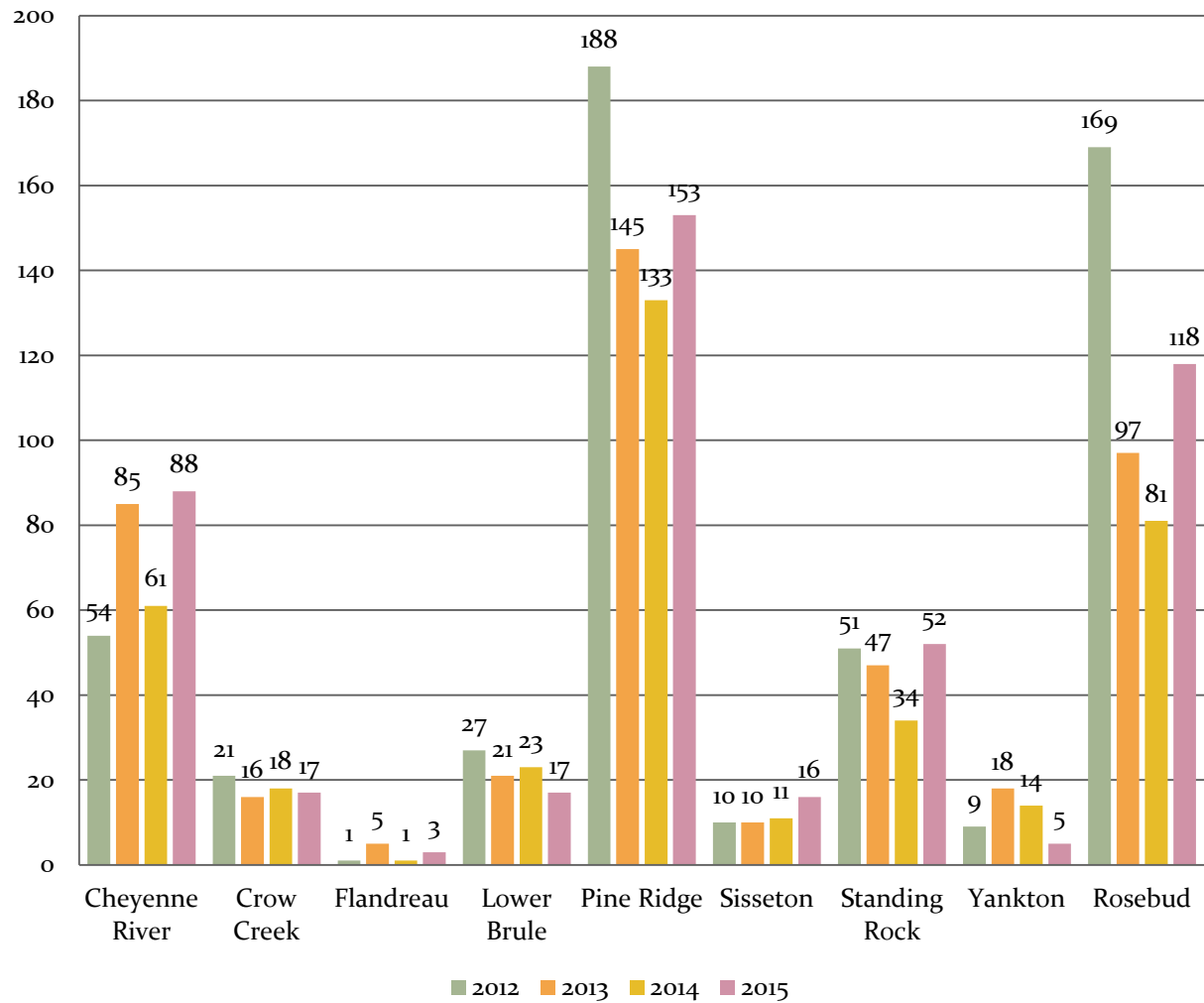
INDIAN COUNTRY STATISTICAL HIGHLIGHTS Calendar Year 2015

Percentage of Defendants Charged by Reservation



Defendants Charged by Reservation

2012 - 2015



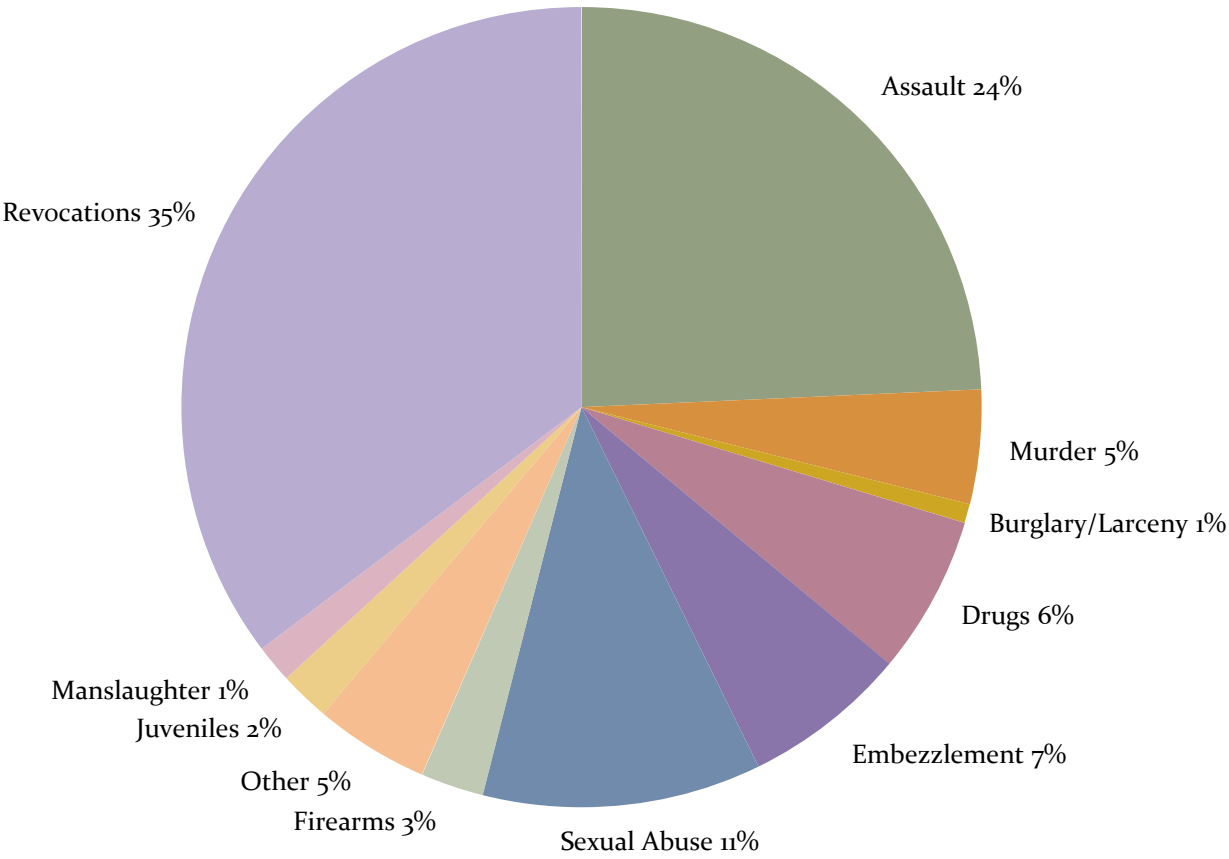
DEFENDANTS CHARGED BY

Reservation	Assault	Burglary/ Larceny/ Embezzlement	Drugs	Firearms	Juveniles	Manslaughter / Murder
Cheyenne River	26	7	2	0	2	2
Crow Creek	3	1	2	2	0	0
Flandreau	1	0	0	0	0	0
Lower Brule	5	1	0	0	0	0
Pine Ridge	17	9	9	2	3	16
Rosebud	24	1	8	6	2	5
Sisseton	1	7	0	0	0	0
Standing Rock	16	3	4	0	1	1
Yankton	2	0	0	0	0	0
Totals	95	29	25	10	8	24

PROGRAM CATEGORY

Reservation	Other	Revocations	<i>Sexual Abuse of Minor</i>	Rape Adult	SORNA	Total
Cheyenne River	3	39	5	2	0	88
Crow Creek	0	8	1	0	0	17
Flandreau	0	2	0	0	0	3
Lower Brule	0	11	0	0	0	17
Pine Ridge	6	69	14	6	2	153
Rosebud	3	60	6	3	0	118
Sisseton	0	6	2	0	0	16
Standing Rock	6	16	3	2	0	52
Yankton	0	3	0	0	0	5
Totals	18	214	31	13	2	469

Defendants by Actual Charge



SOUTH DAKOTA RESERVATIONS

Cheyenne River Sioux Reservation



US v. Ronnie Circle Bear/Sexual

Abuse The defendant, an enrolled member of the Cheyenne River Sioux Tribe, worked in Rapid City, but traveled to various reservations around the state as a part of his job. On one trip, he took a female relative who was 17 years old with him. They planned to attend a powwow in McLaughlin. When they arrived in Eagle Butte, the defendant got a motel room and then bought some peppermint schnapps and flavored vodka, which he took back to the motel room. The defendant and the victim drank the alcohol, and the victim became intoxicated and passed out. The victim later woke up to discover the defendant was having sexual intercourse with her. The victim fled the motel room, went to the front desk, and requested help. The police were called. The defendant pled guilty to sexual abuse. He was sentenced to 121 months in prison, followed by 5 years of supervised release.

US v. Jerry Chasing Hawk/Sexual

Abuse The defendant, his girlfriend, the girlfriend's adult daughter, and other family members traveled from the Cheyenne River Reservation to Fort Thompson. They rented a hotel room and consumed alcohol that evening. At approximately 2:00 a.m. the following

morning, the victim returned to the motel room. Others, including the defendant, were partying. An argument took place among various people in the room, and some people left. The defendant, the victim, and the victim's brother stayed in the motel room. The victim was on the bed and went to sleep and passed out. When she awoke, her clothes had been removed. The defendant was having anal intercourse with her. The defendant was charged with sexual abuse and a jury found the defendant guilty. An appeal based on a claimed error in the jury instructions was filed. The Eighth Circuit Court of Appeals reversed the conviction and remanded the case for re-trial. Following the remand, the defendant pled guilty to sexual abuse and was sentenced to 36 months in prison, followed by 5 years of supervised release.

US v. Jeryn Big Eagle, Sr. / Assault With a Dangerous Weapon; Domestic Assault by a Habitual Offender

The defendant and the victim had been in a relationship since 2009 and had two children together. On Valentine's Day in 2015, the two of them were drinking. The defendant became angry and accused the victim of being with other men. The defendant struck the victim multiple times in the face, head, and body. He then grabbed a red Razor scooter and struck the victim in the forehead with it. The victim started bleeding. A neighbor heard the assault and called the police. The defendant had been convicted previously on three separate occasions for assaults against a spouse or intimate partner. In one of those cases, the victim was the same as in the instant offense. The defendant was indicted for assault with a dangerous weapon and domestic assault by a habitual offender. He pled guilty to assault with a dangerous weapon, with a stipulation that the offense constituted a domestic assault. The defendant was sentenced to 27 months in prison, followed by 2 years of supervised release.

Crow Creek Sioux Reservation



US v. Jared Blaine/Assault by Strangulation and Suffocation

The conviction stems from an incident on August 12, 2014, when Blaine accused the mother of his one year old child of talking to other people. Blaine and his girlfriend left a party, and he began to assault his girlfriend by slapping, hitting her in the face and body, kicking her, and then strangling the victim until she could not breathe. She reported blacking out. The victim was treated at the hospital where she was admitted overnight for observation. She suffered bruising and swelling to the face and body. Blaine was sentenced to 27 months in prison, followed by 2 years of supervised release.

US v. Dillon Bagola/Abusive Sexual Contact by Force

The conviction stems from an August 2014 incident when Bagola, who had been attending a birthday party with the 8 year old victim, took her and two other young girls home afterwards. Instead of dropping the victim off at her home like he had done with the other girls, the defendant drove out to North Shore Road in Fort Thompson, pulled over, and forced the juvenile victim to engage in a sexual act with him. The defendant threatened to harm the victim if she told anyone, and then he took the victim home. She immediately told her grandmother what the defendant had done

to her. Bagola was sentenced to 10 years in prison, followed by 5 years of supervised release.

US v. Brian Iron Boulder/ Attempted Murder of a Federal Employee

The conviction stems from an incident on March 25, 2015, when Iron Boulder came to the Crow Agency building in Fort Thompson to speak with the Superintendent of the Crow Creek Agency. Iron Boulder normally did not carry weapons with him. However on this day, he intentionally brought with him a pocket knife, with a four-inch blade. Iron Boulder had the blade extended on the knife when he entered the building and wanted to speak with the Superintendent. The Superintendent was in a meeting, but agreed to speak with Iron Boulder. The two began to walk down the hallway, with the Superintendent in front and Iron Boulder a few steps behind him. At this time, Iron Boulder took the knife out of his pocket and intentionally stabbed the Superintendent in the center of the back with the knife. Iron Boulder then fled the building. Iron Boulder admitted that he knowingly and intentionally stabbed the Superintendent in the back because of his role as the Superintendent of the Crow Creek agency. As a result of the assault, the Superintendent received life-threatening injuries which required two separate surgeries. The Superintendent has made a full recovery and is back to work serving the people of the Crow Creek Agency. Iron Boulder was sentenced to 18 years in prison, followed by 3 years of supervised release.



FIGURE 28 CROW CREEK AGENCY BUILDING

Flandreau Santee Sioux Reservation



US v. Christina Weston, a/k/a Christina Anderson/ Assault Resulting in Serious Bodily Injury

The defendant, Weston, and a girlfriend were drinking and they started to argue. The girlfriend left the house, unintentionally leaving her purse. When the girlfriend returned to the house, the defendant's husband returned the purse to the girlfriend. This made the defendant angry and she started beating her husband with her fists. Weston then got a metal broom and started striking her husband with it, causing the handle to break in such a manner that the broom handle had a jagged edge. The defendant continued to strike her husband and stabbed him in the nose--literally ripping part of his nose off of his face. The husband sought treatment at the hospital and will need future plastic surgery. The defendant pled guilty to assault resulting in serious bodily injury. She was sentenced to 30 months in prison, followed by 2 years of supervised release.

Lower Brule Sioux Reservation



US v. Cameron LaRoche/Assault by Strangulation and Suffocation

This conviction stems from an incident on August 21, 2014, when LaRoche, who had been in an on-and-off intimate relationship with the victim for the past 14 years, was at his aunt's house drinking whiskey with others. LaRoche began arguing with the victim and started hitting her with closed fists to her face, head, and ear. The victim tried to defend herself by putting her arms up to protect her face. LaRoche then stopped and started apologizing to her for what he had just done to her. LaRoche then told her he wanted to lie down with her, but the victim declined. LaRoche pushed her towards the basement door and forced her to go downstairs anyway. He continued yelling at her, calling her names, and began hitting her again. LaRoche then threw the victim on a bed, where he hit her on the arms, head and face. LaRoche then tried to smother her by lying on top of her while pushing her head into the mattress. She begged for her life. A few minutes later, LaRoche started hitting her again with his fist to her face. He then got on top of her and started strangling her with his hands, squeezing her neck. The victim could not breathe. LaRoche was sentenced to 20 months in prison, followed by 2 years of supervised release.

US v. Elmer LaRoche/ Mail Robbery

The conviction stems from an incident on May 27, 2014. LaRoche wanted to get “high” and knew he and his brother had several cash-on-delivery packages containing synthetic marijuana at the Lower Brule Post Office. LaRoche decided to rob the post office and take the packages. He armed himself with a knife and put on a mask. The postmaster was present when LaRoche jumped over the counter, waved the knife at her, and demanded she give him all of the COD packages. The postmaster was terrified, but complied. LaRoche was located a short time later with several packages of synthetic marijuana. He had smoked some of the marijuana and sold some marijuana to others. LaRoche was sentenced to 57 months in prison, followed by 3 years of supervised release. This sentence is to run concurrently with the sentence he received in a companion case, possession with intent to distribute a controlled substance analogue.

US v. Aaron Dewayne Goodface/ Assault Resulting in Serious Bodily Injury

The conviction stems from an incident on April 25, 2015, when the Lower Brule Police Department investigated an assault of the victim by Goodface, the victim’s nephew. The officer entered the residence and saw that the victim was bleeding from her face. Blood was found on pillows, bedding, and some clothing. The victim was taken to the hospital. A special agent from the Bureau of Indian Affairs was able to speak with the victim who explained that Goodface hit her in the face multiple times with a flashlight. The victim had a large gash to her forehead that required several sutures to close the laceration. She also had a second laceration near her right ear that required two sutures to close, two fractured ribs, and bleeding on the brain that required regular monitoring.

She spent several days in the hospital. Goodface was sentenced to 19 months in prison, followed by 2 years of supervised release.

US v. Lawrence LaRoche, et al/ Possession With Intent to Distribute a Controlled Substance Analogue

Between May 1, 2014, and May 19, 2014, the defendant ordered and received 23 shipments of synthetic marijuana. The total value of the synthetic marijuana was \$5,186.06. On May 27, 2014, the defendant’s brother was aware that packages of synthetic marijuana had been delivered to the Lower Brule Post Office, but had not been picked up. The defendant’s brother, wanting to get “high,” decided to rob the postmaster and take the packages of synthetic marijuana. The defendant’s brother donned a mask, and while wielding a knife, entered the post office, jumped over the counter, and demanded the postmaster put all of the cash-on-delivery (COD) packages into a duffel bag. The postmaster pointed to a metal shelf where the COD packages that had arrived in the recent past were kept. The defendant’s brother fled the post office with the packages. As a part of the robbery investigation, law enforcement learned there were 17 additional COD packages at the post office that had not been taken. A search warrant was obtained to open the packages, and inside was a total of 632.5 grams of synthetic marijuana valued at \$3,193.53. The defendant pled guilty to possession with intent to distribute a controlled substance analogue. He was sentenced to 33 months in prison, followed by 3 years of supervised release. The defendant’s brother pled guilty to robbery of mail and possession with intent to distribute a controlled substance analogue. He was sentenced to 57 months in prison, followed by 3 years of supervised release.

Pine Ridge Reservation



US v. Timothy White Plume/ Child Abuse and Neglect; Assault Resulting in Serious Bodily Injury

In December of 2012, White Plume attacked and assaulted his three month old step-grandson causing permanent and life-long injuries, including blindness, deafness, and microcephaly (his head will not grow.) The victim is not expected to ever walk or play, and ultimately, he will die because of his profound injuries. White Plume refused to take responsibility and took the case to trial in the summer of 2015. The jury convicted him of both charges. He was sentenced in January of 2016 to 96 months in prison.

US v. Bobby Sierra/ Sexual Abuse of a Minor

The defendant and a juvenile attended a party in Pine Ridge with several other juveniles and young adults. The adult defendant and three friends gave a 14 year old victim and her friend a ride. Eventually all the others left the vehicle, and the defendant had sexual intercourse with the victim. The victim became upset with the defendant and began to yell. Her friend and the others came running out of a house where they had stopped. The defendant stopped having sex with the victim after she yelled. The defendant was charged with

sexual abuse of a minor. He pled guilty to the charge and was sentenced to 18 months in prison, followed by 5 years of supervised release.

US v. Tyson Bad Cob/ Abusive Sexual Contact with a Minor

In January 2014, a nine year old victim told investigators the defendant, her older brother, had touched her in her genital area. She stated he had done it several times at their grandmother's house where the defendant lived when she was eight years old. She stated the defendant had told her not to tell their parents. The victim also stated the defendant had performed similar sexual acts when she was six years old. The defendant admitted he had sexually abused his sister as she had claimed. He was charged with aggravated abusive sexual contact. He pled guilty to the charge and was sentenced to 72 months in prison, followed by 15 years of supervised release.

US v. Jerel Running Bear/ Assaulting a Federal Officer

After being arrested on a tribal alcohol offense, the defendant entered the booking area at the tribal jail and became agitated during the booking process. After the handcuffs were removed, the defendant grabbed his cell phone from the desk in front of him. When the corrections officer attempted to get the cell phone back from him, the defendant pulled away. When another corrections officer went to assist, the defendant turned and struck the first corrections officer with his elbow, pushing her back. As the corrections officers tried to get control of the defendant, he punched the second corrections officer in the face with a closed fist causing injury. The group fell to the ground, and the defendant ended up on top of the second corrections officer. Police

officers in the vicinity had to assist in holding the defendant down before he complied. The defendant was charged with assaulting a federal officer. He pled guilty, and was sentenced to 12 months in prison, followed by 3 years of supervised release.

US v. Isaac White Crane/ Assault with a Dangerous Weapon

On January 7, 2014, the defendant was drinking at the residence of the victim, who was his girlfriend. The residence is located in the Potato Creek Community, near Kyle. Late in the evening, White Crane became angry and began to verbally argue with the victim, who was four months pregnant at the time. White Crane threatened to “cut the baby out of her.” He took out a large knife with a serrated edge and began to threaten her with it. White Crane then used the handle of the knife and the non-serrated edge to hit her on her head, chest, and arms. He also used the knife to cut some of her hair. White Crane then began to hit her with his fists and kick her, and put her in a chair and strangled her by squeezing her neck with his hands, cutting off her air supply, resulting in her losing consciousness. This was a life-threatening situation. When she woke up, she was on the bed. The assault continued from the night of January 7 into the morning of January 8, 2014. White Crane apologized to the victim and left the residence. She then called for assistance and was transported to the hospital and was examined. She reported her pain level was a 9 out of a scale of 1-10, and that she was having difficulty breathing. She also indicated her head and chest hurt. On April 28, 2015, White Crane was sentenced to 46

months in prison, followed by 3 three years of supervised release.

US v. Gerald LeBeau and Neil LeBeau/ Drugs

Beginning in 2010, Gerald and Neil LeBeau, father and son, and others began distributing cocaine and marijuana on the Pine Ridge Indian Reservation. Even after his arrest, Gerald LeBeau continued to run the cocaine and marijuana conspiracy from the jail by placing phone calls to Neil LeBeau and others involved in the conspiracy. Following a week-long jury trial in August of 2015, the jury convicted both defendants of conspiracy to distribute cocaine and marijuana, and also convicted Gerald LeBeau of possession with intent to distribute cocaine. In November of 2015, Gerald LeBeau was sentenced to 324 months in prison and Neil LeBeau was sentenced to 120 months in prison.

US v. Twila LeBeau, Pablo LeBeau, and Lona Lee Colhoff/ Drugs

Twila LeBeau, Pablo LeBeau, and Lona Lee Colhoff conspired with Gerald LeBeau and others in the distribution of cocaine and marijuana on the Pine Ridge Indian Reservation. Following their indictment, Twila LeBeau and Pablo LeBeau pled guilty to conspiracy to distribute cocaine. Twila LeBeau cooperated and was sentenced to 5 years of probation in September of 2015. Pablo LeBeau was sentenced to 28 months in prison in April of 2015. Lona Lee Colhoff refused to accept responsibility and went to trial in April of 2015, where she was convicted of conspiracy to distribute cocaine, conspiracy to distribute marijuana, and witness tampering, and in July of 2015, was sentenced to 45 months in prison.

US v. Susan Schrader, Holly Wilson, Whitney Zephier, Marie Zephier and Thomas Patrick Brewer /Drugs

Susan Schrader, Holly Wilson, Whitney Zephier, Marie Zephier, and Thomas Brewer conspired with Gerald LeBeau and others in the distribution of cocaine and marijuana on the Pine Ridge Indian Reservation. Following their indictment, Holly Wilson, a tribal advocate, and Pat Brewer pled guilty to conspiracy to distribute cocaine. Wilson and Brewer cooperated and were each sentenced to 5 years of probation in September 2015. Whitney Zephier and Marie Zephier also pled guilty to conspiracy to distribute cocaine. In April 2015, Whitney Zephier was sentenced to 18 months in prison, and in June of 2015, Marie Zephier was sentenced to 26 months in prison. Susan Schrader, also a tribal advocate, refused to accept responsibility and went to trial in December of 2014, where she was found guilty of conspiracy to distribute cocaine, and in April of 2015, was sentenced to 51 months in prison.

**Rosebud Sioux
Reservation**



US v. Neal LaPointe/ Sexual Exploitation of a Child; Distribution of Material Involving the Sexual Exploitation of Minors; Failure to Appear

Between March 1, 2012, and April 30, 2013, the defendant was living in California and

under the guise of various aliases and online identities, would use computers, the internet, and the social networking site Facebook® to solicit images of minors engaging in explicit sexual conduct, and would then distribute these images via computer and over the internet. Though he was an adult man, at times he acted like he was a minor girl to get other girls to give him pornographic images of themselves. Some of the minor victims lived on the Rosebud Sioux Indian Reservation and elsewhere in South Dakota. Pending trial, the court allowed him to be released on electronic monitoring, and to reside with a third party on the Rosebud Sioux Indian Reservation. The defendant absconded and failed to appear for a scheduled court appearance on July 14, 2014, and his whereabouts were unknown until February 13, 2015, when he was apprehended in Miami, Florida. On September 28, 2015, the defendant pled guilty to sexual exploitation of a child, distribution of material involving the sexual exploitation of minors, and failure to appear. He will be sentenced in the spring of 2016.

US v. Arthur Burnette, a/k/a Kory Young/ Assaulting a Federal Officer; Discharging a Firearm During a Crime of Violence

On March 19, 2015, the defendant was with two women in St. Francis. He was driving erratically and had a short-barreled shotgun and ammunition with him. He was firing the shotgun and harassing people, which caused tribal officers to be summoned. Several officers responded and pursued the defendant who sped away recklessly, including driving over 98 miles per hour. The defendant drove his vehicle in an evasive manner, which included leaving the roadway, recklessly passing other vehicles, and abruptly changing his course of travel. Ultimately, the defendant crossed into Nebraska. Not wanting to be pursued and arrested because he knew he was wanted or

had an outstanding warrant, the defendant turned his vehicle around, extended the shotgun out the window, and fired the shotgun as he passed one officer's pursuing squad car. Later, a different officer stopped his patrol vehicle on a roadway, armed himself with his carbine rifle, and took up a defensive stance using his patrol vehicle as a shield. The defendant drove towards the second officer's vehicle and extended the shotgun out the vehicle window and fired at the second officer. The second officer returned fire. The defendant fled towards Kilgore and Crookston, Nebraska, and then to a different location on Highway 20 in Nebraska. He encountered a third officer who saw the defendant stick the barrel of the shotgun out of the vehicle window, which was followed by more shooting. Nebraska authorities, including the Cherry County Sheriff's Office, had joined the pursuit. The sheriff saw the defendant use his vehicle to drive towards other citizens in vehicles, and saw an oncoming vehicle leave the roadway to avoid a collision with the defendant's white sedan. The defendant drove the sedan off the roadway, into a ditch, breaking a landowner's fencing. The officers saw the defendant get out of the vehicle and toss the shotgun to the ground. The defendant was arrested. At the scene, the defendant said that the officers should have just killed him because that is what he has been trying to do for a while. On September 14, 2015, the defendant pled guilty to assaulting a federal officer and discharging a firearm during a crime of violence. He was sentenced to 177 months in prison, 3 years of supervised release, \$4,105 in restitution, and a \$200 special assessment.

US v. Frederick Marshall/Assault Resulting in Serious Bodily Injury: Child Abuse

On October 30, 2014, the defendant was at his family's home in Sicangu Village on the Rosebud Sioux Indian Reservation. His wife and children were home. There had been

recent talks about a divorce, and he had moved out of the marital home previously for a period of time. That evening, the couple was reconciling, and he had returned to the house. He drank alcohol, became jealous, and argued with the victim. He later punched her in front of some of their children. He also forced her into a bathroom and their bedroom, continued to beat and assaulted her, and menaced her with a sword. The beating caused her to suffer a fractured eye socket and profusely swollen eyes. He used scissors and cut her hair and humiliated her in other ways. The children witnessed some of the abuse. The defendant also brought the children towards the bedroom to witness some of what was occurring, and how their mother was being beaten, humiliated, and degraded. One of the children went into the room and personally witnessed some of the abuse. The child heard her mom begging to not be killed, and also heard Marshall verbally abusing their mother, telling the child how he was making an example of their mother. On June 29, 2015, he pled guilty to assault resulting in serious bodily injury and child abuse. On September 14, 2015, he was sentenced to a total of 156 months in prison, 3 years of supervised release, restitution of \$13,258.90, and a \$200 special assessment.

US v. Ilijah White Lance/ Abusive Sexual Contact By Force; Child Abuse

On February 10, 2015, the defendant was at a home in Parmelee. After some of the other occupants had fallen asleep, he went into the bedroom of the child and had sexual contact with the child. A second child saw this happening. The defendant left the room and confronted the second child, and exposed himself to the second child. He also punched the second child. On June 2, 2015, the defendant pled guilty to abusive sexual contact by force regarding the first victim, and child abuse regarding the second victim. On August 24, 2015, the defendant was sentenced to 15 years in prison, 6 years of

supervised release, a \$200 special assessment, and ordered to register as a sex offender.

US v. Clyde Aquallo/ Possession of Unregistered Firearm (Short Barrel); Prohibited Person in Possession of A Firearm

On February 27, 2014, the defendant was living at a residence on the Rosebud Sioux Indian Reservation. As part of a domestic violence call, Rosebud Sioux Tribe Law Enforcement Services were called to the home where he was living and learned there were firearms in the residence that the victim wanted removed from the residence. As the investigation progressed, officers learned the defendant was using methamphetamine and possessed several firearms, including a sawed-off shotgun, which had a barrel that was too short. On January 30, 2015, the defendant was found guilty of possession of an unregistered firearm and prohibited person in possession of a firearm. On April 20, 2015, he was sentenced to 46 months in prison, 2 years of supervised release, a \$1,000 fine, a \$200 special assessments, and was ordered to forfeit numerous firearms.

US v. Vernon Robert Schmidt a/k/a Sonny Bob Schmidt/ Assault Resulting in Serious Bodily Injury

On May 26, 2014, the defendant was engaged in a verbal argument with another group of men. The defendant pulled out a gun and was waving the gun around and threatening the group with the gun. The gun discharged, the victim was struck in the neck, and the defendant fled the scene. He was later captured. On November 17, 2014, the defendant pled guilty to assault resulting in serious bodily injury. On February 2, 2015, he was sentenced to 46 months in prison, 2 years of supervised release, \$900 in restitution, and a \$100 special assessment.

US v. Misty Swalley/ Assault with a Dangerous Weapon

On June 25, 2014, the defendant was at a gas station in Mission with some other people. The victim was also there talking to an individual who was with the defendant. The defendant became upset at the conversation taking place, and circled behind the victim and stabbed him in the back with a knife. On September 24, 2014, the defendant pled guilty to assault with a dangerous weapon. On May 12, 2015, the defendant was sentenced to 36 months in prison, 2 years of supervised release, and a \$100 special assessment.

US v. Kenneth Little Wolf/ Assault with a Dangerous Weapon

On January 31, 2015, the defendant was at a bar near Mission, and was asked to give a ride to two people. He agreed, but got in an argument with them and stabbed both people. The bar owner, along with a bartender, broke up the fight. The defendant fled the area. On June 24, 2015, he pled guilty to assault with a dangerous weapon. On September 9, 2015, the defendant was sentenced to 44 months in prison, 3 years of supervised release, a \$100 special assessment, and restitution of \$61,569.11 to Wellmark for paid medical bills.

US v. Damon Clyde Has Horns/ Failure to Register as a Sex Offender

The defendant was previously convicted of aggravated sexual abuse. After completing his prison sentence, he began supervised release at a halfway house in Sioux Falls, and properly registered a sex offender. On August 15, 2015, he was terminated from the halfway house and was directed to report to a treatment facility in Rapid City. He failed to report to the new facility, absconded from supervised release, and subsequently failed to update his sex offender registration. On September 1, 2015, he surrendered to the U.S. Marshals Service in Pierre. On November 16,

2015, the defendant pled guilty to one count of failure to register as a sex offender. On January 6, 2016, he was sentenced to 13 months in prison, followed by 5 years of supervised release.

US v. Berdell Shot/ Failure to Register as a Sex Offender

The defendant was previously convicted of sexual abuse of a minor. After completing his prison sentence, he began supervised release at a treatment facility in Rapid City, and properly registered a sex offender. He subsequently moved to a different treatment facility in Rapid City and properly updated his registration. On June 16, 2015, he did not return from work, absconded from supervised release, and subsequently failed to update his sex offender registration. On August 25, 2015, he was arrested on the Pine Ridge Indian Reservation, and was subsequently taken into federal custody. On November 17, 2015, the defendant pled guilty to one count of failure to register as a sex offender. On January 20, 2016, he was sentenced to 15 months in prison, followed by 5 years of supervised release.

US v. Glenford Old Lodge/ Aggravated Sexual Abuse; Sexual Contact

The defendant and the victim both live in Mission and were acquaintances. On April 5, 2014, the victim spent the evening at her apartment drinking with friends. After they left, the victim went to bed without locking the front door. Sometime after midnight, she awoke to the defendant trying to take her pajama bottoms off and engage in sexual contact with her. The victim started hitting, kicking, and screaming at him, and she was able to get him off of her, and then kicked him out of her apartment. On November 17, 2015, the defendant pled guilty to abusive sexual contact. The defendant was sentenced to 60 months in prison, 5 years supervised

release, \$149.50 restitution, and a \$100 special assessment.

US v. John Denoyer/ Assaulting, Resisting, Opposing, and Impeding a Federal Officer

On May 31, 2015, Rosebud Law Enforcement officers responded to a complaint of an intoxicated man threatening people with a bat. One of the officers approached the defendant, at which point the defendant pulled out a canister of pepper spray and started to shake it. The officer retrieved his own canister of mace and instructed the defendant to drop his can. The defendant turned to walk away and the officer sprayed him in the face with pepper spray. The defendant retaliated by spraying the officer with pepper spray. On December 14, 2015, the defendant pled guilty to one count of assaulting, resisting, opposing and impeding a federal officer. He was sentenced to 15 months in prison, 2 years supervised release, and a \$100 special assessment.

US v. Randy Harlan Arcoren, Jr./ Assault With a Dangerous Weapon; Prohibited Person in Possession of Ammunition

The defendant was with his girlfriend at their trailer home in St. Francis when an argument began. The defendant threw objects at the victim, threatened physical harm to her, and hit her arms with a tent stake that he had sharpened. The argument lasted several hours, and the defendant and the victim moved between the trailer home and the victim's vehicle. At one point, the defendant drove the victim to another property. Throughout the course of the argument, the defendant had in his possession 40 rounds of Federal .22 caliber ammunition and 37 rounds of Remington .22 caliber ammunition. The defendant pled guilty to assault with a dangerous weapon

and prohibited person in possession of ammunition. He was sentenced to 46 months in prison, followed by 2 years of supervised release.

US v. Daryl Fool Bull/ Second Degree Murder

The defendant, Victim #1, Victim #2, and a woman were drinking together at a residence in Old Two Strike, Todd County, South Dakota, and all four individuals became heavily intoxicated. At approximately 10:00 a.m., the defendant became upset and, without provocation, he repeatedly stabbed Victim #1 and Victim #2 with a kitchen knife. Two minor children were present in the home. During the altercation, one child woke up and went in the living room. The woman was lying face down on the floor and the defendant was standing beside her holding a knife in his hand. Victim #1 was kneeling on the ground with blood “squirting” from his neck. Victim #2 was in an armchair and was deceased. The child then went to a bedroom and called 911. An ambulance and law enforcement officers arrived a short time later. Both Victim #1 and Victim #2 were pronounced dead at the scene. Victim #1 died from 28 stab wounds to the head, neck, back, hands, and forearms. Victim #2 died from 14 stab wounds to the neck and head. The defendant and the woman were located by law enforcement in a field west of the residence. The defendant pled guilty to two counts of second degree murder. He was sentenced to 21.5 years in prison, followed by 3 years of supervised release.

US v. Christopher Edenso/ Second Degree Murder

The defendant was at his home with his 5 week old son in the Sicangu Village. The defendant’s wife was at work and the defendant was the caregiver for the baby. At approximately 5:30 a.m., the son awoke and began to cry. The defendant became angry

with the baby’s cries, picked up his son by his legs, held him upside down, and shook him violently. Edenso then forcefully slammed his son onto the bed at least three times. The baby became quiet and the defendant wrapped his son in a blanket and fell asleep on the bed. The defendant’s wife returned from work and found the baby on the bed with a brown bubble or blood coming from his mouth. The wife woke the defendant up and rushed the baby to the hospital, where the baby was pronounced dead. An autopsy of the baby revealed the cause of death to be due to blunt trauma to the head, with a broken left femur. The defendant pled guilty to one count of second degree murder. His sentencing hearing is scheduled in May 2016.

US v. Richard Fool Bull/ Assault with a Dangerous Weapon; Prohibited Person in Possession; Failure to Register as a Sex Offender

The defendant was found guilty of sexual abuse of a minor in 1998. He served a custody sentence and, upon entering supervised release, was ordered to properly register as a sex offender. Between January 31, 2015, and May 26, 2015, the defendant did not register as a sex offender. On February 27, 2015, the defendant drove to the Sunrise Apartments in Mission with two other individuals. The defendant stood outside of one of the apartments and discharged a firearm eight times into the apartment. There were five individuals inside the apartment at the time of the shooting. One of the bullets struck Victim #1 in the arm. The bullet was slowed by traveling through the walls of the apartment and the bullet did not break the skin on Victim #1’s arm. A firearm was not recovered. The defendant pled guilty to two counts of assault with a dangerous weapon, prohibited person in possession of a firearm, and failure to register as a sex offender. He was sentenced to 117 months in prison, 5 years supervised

release, \$661.25 restitution, and a \$500 special assessment.

US v. Jason Kimmel/ Involuntary Manslaughter

The defendant was driving with two passengers when he was involved in a single vehicle wreck on a roadway near the Rosebud Adult Corrections Facility in Rosebud. He was driving erratically and lost control of the vehicle. The victim was ejected from the vehicle and died at the scene. The defendant was found inside the vehicle, and the second passenger was found outside the vehicle with significant injuries. The defendant had a blood alcohol concentration of .345 at the time of the accident. He pled guilty to involuntary manslaughter and was sentenced to 50 months in prison, followed by 2 years of supervised release.

US v. Nathan Sharpfish/ Assault, First Degree Burglary

The defendant was drinking alcohol at the home of his uncle, the victim. An argument occurred, and the victim asked the defendant to leave the house. He left and returned a short time later carrying a hatchet. The defendant began to hit the door of the residence with the hatchet. The victim opened the door of the residence, and the defendant subsequently swung the hatchet at the victim, and hit him on the back of the head with the hatchet. The victim sustained a small laceration to the back of his head. The defendant pled guilty to burglary and was sentenced to 27 months in prison, followed by 2 years of supervised release.

US v. Joshua One Star/ Assault of a Federal Officer

A Rosebud Sioux Tribe Law Enforcement Services (RSTLES) officer, Victim #1, pulled over the defendant's vehicle for possible domestic violence occurring inside the vehicle. Victim #1 exited her vehicle and

approached the defendant's vehicle. After a brief conversation, the defendant drove the car at a high rate of speed out of the parking lot. A car chase ensued. The defendant led law enforcement officers on a high speed car chase for over 90 minutes. Throughout the course of the chase, he drove at speeds of up to 90 miles per hour through the Rosebud Indian Reservation and made several evasive maneuvers. At one point during the chase, the defendant swerved his vehicle into Victim #1's vehicle, who was able to maneuver her vehicle to avoid a collision. The car chase ended when the defendant's vehicle ran over spike strips, deployed by law enforcement, and came to a stop. While in custody, the defendant complained of issues relating to a medical procedure on his jaw. He was taken to the hospital in Rosebud. RSTLES officer, Victim #2, escorted One Star to the hospital. While at the hospital, Victim #2 removed defendant's wrist and leg restraints for a short time in order for the defendant to use the bathroom. The defendant exited the bathroom, assaulted Victim #2, and then fled the building and escaped custody. He pled guilty to two counts of assault of a federal officer and was sentenced to 27 months in prison, followed by 2 years of supervised release.

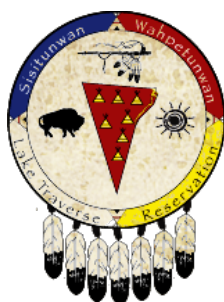
US v. Allan Left Hand Bull/ Assault With a Dangerous Weapon

The defendant and his girlfriend, the victim, were drinking alcoholic beverages in St. Francis. The defendant was intoxicated, became upset with the victim, and left the area. Soon thereafter, the victim was walking down a street in St. Francis when the defendant ran toward her with a knife, put his arm around her, and choked her. The defendant was sentenced to 42 months in prison, followed by 2 years of supervised release.

US v. Clinton Pierce/ Aggravated Incest

The defendant and his step-daughter, the victim, age 16, were checking cattle together and driving around the defendant's family ranch in Todd County. While in the vehicle, the defendant sexually assaulted the victim for several minutes. Pierce pled guilty to one count of aggravated incest. He was sentenced to 54 months in prison, 3 years supervised release, a \$5,000 fine, and a \$100 special assessment.

Sisseton-Wahpeton Sioux Reservation



US v. David Red Thunder, et al/ Conspiracy to Commit Theft from an Indian Tribal Organization; Theft from an Indian Tribal Organization

Defendant Ronald DuMarce was the elected Chairman of the Lake Traverse District of the Sisseton Wahpeton Oyate Tribe. Defendants David Red Thunder, Edward Red Owl, and Darrell White were board members of both the Lake Traverse Economic Development Corporation (LTEDC), a for-profit business entity established by the Lake Traverse District, and Lake Traverse Aid, Inc. (LTAI), a non-profit corporation established by the LTEDC. Through the Sisseton Wahpeton Housing Authority (SWHA), the Lake Traverse District acquired three trailer homes from the Federal Emergency Management Agency. The district gave the

trailers to three individuals from the district who needed better housing, and the district paid to set up the trailers. The defendants prepared and submitted fraudulent paperwork to the SWHA falsely claiming that LTAI had incurred the costs to set up the three trailer homes and needed to be reimbursed by the Tribe's Homebuyers Program. Based on their false representations, the SWHA issued a check payable to LTAI in the amount of \$15,700, which the defendants deposited and distributed among themselves. On July 1, 2015, following a three-day jury trial, each defendant was convicted on each count. On October 27, 2015, each defendant was sentenced to five years of probation, \$15,450 restitution, and a \$200 special assessment.

Standing Rock Sioux Reservation



US v. Aaron Sackreiter, et al/ Conspiracy to Distribute a Controlled Substance; Possession with Intent to Distribute a Controlled Substance

Five defendants were indicted for conspiracy to distribute methamphetamine on the Standing Rock Sioux Reservation. One of the defendants was from California and brought large quantities of methamphetamine to South Dakota to distribute. Another defendant was the South Dakota connection

for the California supplier. He, in turn, recruited the other local defendants to assist him in distributing the methamphetamine. On June 29, 2014, law enforcement officers served an arrest warrant at one of the defendant's homes. The officer detected the odor of marijuana, and law enforcement officers obtained a search warrant for the residence. A loaded Taurus Judge pistol, 65 grams of methamphetamine, over \$6,000 in cash, and other drug-related items were seized. All five defendants have pled guilty and have been sentenced to custody ranging from 20 months up to 9 years in prison for their role in the conspiracy.

US v. Stoney End of Horn/ Assault; Sexual Abuse of a Minor

Following a four-day jury trial, the defendant was convicted of four counts of sexual abuse of a minor and assault resulting in serious bodily injury. The defendant was initially charged in two separate indictments, but the charges were consolidated for trial. The assault resulting in serious bodily injury conviction arose out of an incident which occurred in September of 2008, near Wakpala. The defendant assaulted his then girlfriend, the victim, causing multiple facial fractures and internal injuries to the victim's brain. The surgeon who repaired the victim's face described the bones as "busted up so bad they were like a bag of potato chips." Later, these injuries caused the victim to have a cerebellar infarction on February 9, 2010. The evidence at trial established that the victim never recovered from the cerebellar infarction and died at the Triumph Long-Term Care Hospital in Mandan, North Dakota, on June 25, 2010. The defendant's sexual abuse convictions arose from incidents in 2009 and 2010 when the defendant, who had previously been convicted in South Dakota State Court for possession, manufacturing, and distributing child pornography, knowingly engaged in

and attempted to engage in sexual acts with a minor in Wakpala. He was dating the guardian of the minor victim and was convicted of repeatedly sexually abusing her while she was being cared for by the defendant. In May of 2015, the defendant was sentenced to 293 months in prison, an upward departure from the guidelines due to his criminal history and the heinous nature of the assault.

US v. Brian Ducheneaux/ Abusive Sexual Contact

In October of 2014, the defendant, who was staying with family in Wakpala, entered a bedroom belonging to two young girls. Once inside the bedroom, Ducheneaux laid down on the bed next to the victim and placed his hands between her legs. He then proceeded to place his hand under the victim's pajamas, making direct skin-to-skin contact with her genitalia. Once the abuse came to light, the defendant was asked to leave the house and law enforcement was notified. The defendant was sentenced to 110 months in prison, followed by 5 years of supervised release.

US v. Dawn Muir/ Larceny

The conviction stems from a series of incidents beginning on or about February 2, 2011, while the defendant was the Executive Director of the Pretty Bird Woman House, a domestic violence shelter located on the Standing Rock Sioux Indian Reservation, in McLaughlin, South Dakota. The defendant was writing checks to herself from an emergency fund that the shelter maintained to provide food and relocation money to victims of domestic violence. The shelter received several grants from the Department of Health and Human Services to fund its day-to-day operations. Muir would write the checks payable to herself, claiming the money was mileage reimbursement, travel

reimbursement, or used for other non-emergency tasks. When investigators questioned her about the account, she was unable to produce receipts or vouchers to verify the expenditures. Corresponding deposits into the defendant's personal bank account were also discovered. The check writing scheme resulted in a loss to the Pretty Bird Woman House in the amount of \$29,973.13. Muir was sentenced to 41 months in prison, 3 years of supervised release, and restitution of \$29,973.13 to the Pretty Bird Woman House.

US v. Velnita Hairy Chin/ Child Abuse

The conviction stems from an incident on June 23, 2015, when Bureau of Indian Affairs Law Enforcement officers responded to a house call in Bullhead, South Dakota. Law Enforcement was informed of a female passed out in the residence and multiple young children outside without supervision. Upon arrival, an officer made contact with a young female child in the home. The officer asked her if her mom was home to which she responded no but that grandma was home and was "drunk." The officer came into the home in an attempt to find a responsible adult. In searching for an adult in the home, the officer noticed a baby in a car seat in the living room and multiple other young children. In total, 5 children under the age of 5, and one age 11, were found in the house. In the basement, the officer discovered an adult male and female passed out in a bed. The officer woke the defendant, the passed out female, who identified herself as the caregiver for all of the children. At this point, she was placed under arrest for child neglect and was escorted to the patrol unit. The officer then went back into the house to check on the kids. The officer became concerned when he noticed the baby kept screaming when they would try to touch him. One of the little girls told the officer that the baby had fallen after being dropped.

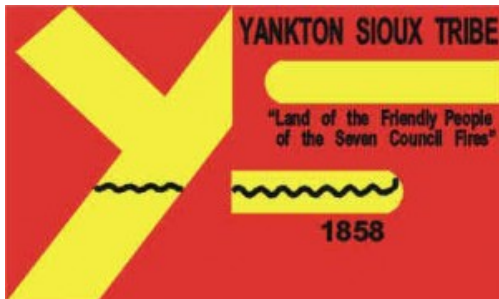
The officer called for an ambulance to come and examine the baby. The EMTs arrived and took the child to the hospital. The baby was treated at the hospital for abrasions on his legs from sitting in the car seat for a long time, bruising on his right leg and buttock, diaper rash, air in his stomach from constant crying, and an untreated right ear infection. The defendant has had 12 previous convictions for child abuse/neglect. At sentencing, the judge determined an upward departure was warranted from the advisory guideline range of 1-7 months and the defendant was sentenced to 37 months in prison, followed by 3 years of supervised release.

US v. Brett Claymore/ Assault of an Intimate Partner by Strangulation

The conviction stems from an incident on April 22, 2015, when Bureau of Indian Affairs Law Enforcement officers were dispatched to a residence in McLaughlin for a domestic disturbance call. Upon arrival, law enforcement officers made contact with the victim who informed the officer that she had gotten into an argument with the defendant. The victim advised the officer that she and the defendant had been in a dating relationship for the past three years. The victim said that the defendant held her against the wall with both hands around her neck, "choking her." The victim denied that she lost consciousness, but did state that she felt like she was going to "blackout" with blurred vision. The victim stated she was unable to breathe or speak to tell him to stop, so she started hitting his arms to get him to stop. Other witnesses who were present when the assault occurred described hearing the victim arguing with the defendant, when suddenly the arguing stopped, and they could hear "choking" noises coming from the room. Immediately following the assault, the witnesses noticed that the victim's face was flushed and her neck appeared to be red. The defendant was

sentenced to 30 months in prison, followed by 2 years of supervised release.

Yankton Sioux Reservation



US v. Keeler Hopkins, Jr. / Assault

The victim, who was nine months pregnant, was in a relationship with the defendant. They had four children together. At the time of the incident, the two were driving around when they got into an argument. The argument escalated to the point where the defendant attempted to strangle the victim by choking her, and the assault continued as they drove around. They eventually came upon the victim's father who had been looking for her. The father went over to the

vehicle and could immediately tell that there was something wrong. The victim got out of the car, and her father took her to the sheriff's office and eventually to the hospital. The defendant pled guilty to assault by strangulation. He was sentenced to one year in prison, 2 years of supervised release, and a \$100 special assessment.

US v. Harley Provost / Sexual Assault

Tribal law enforcement officers were dispatched to a residence after receiving a call about a possible sexual assault. The officers questioned the juvenile victim and she stated she had been in contact with the defendant via text messaging, and she decided to meet him at his residence. Once she got to the house, she reported he grabbed her and would not let go, knocked her to the ground, and attempted to remove her clothing. The defendant was charged with sexual abuse of a minor and abusive sexual contact. He pled guilty and was sentenced to 18 months in prison, 5 years of supervised release, and a \$100 special assessment.

DEPARTMENT OF JUSTICE GRANTS

The Department of Justice offers funding opportunities to support law enforcement activities in state and local jurisdictions, to provide training and technical assistance and to implement programs that improve the Criminal Justice System. Listed below are some of the grants that were awarded in 2015. For more information on grant availability, please go to the Office of Justice Programs website at www.ojp.gov.

Grantee	Project Description	Amount
SD Office of the Attorney General	Criminal History Improvement (NCHIP)	\$281,880
SD Office of the Attorney General	DNA Enhancement and Backlog Reduction Program	\$150,719
SD Office of the Attorney General	Internet Crimes Against Children Task Force	\$233,871
SD Office of the Attorney General	Paul Coverdell Forensic Science Improvement Grant	\$63,705
SD Office of the Attorney General	Adam Walsh Act Implementation Grant Program	\$127,215
SD Office of the Attorney General	John R. Justice Program	\$30,731
SD Department of Social Services	STOP Program	\$877,669
SD Department of Social Services	SASP Formula Program	\$300,801
SD Department of Social Services	Victims of Crime Act (VOCA) Victim Assistance Formula	\$5,606,032
SD Department of Social Services	FY 2015 VOCA Victim Compensation Formula	\$235,000
SD Department of Social Services	Victim Assistance Discretionary Grant Training Program	\$108,824
SD Office of the Governor	Edward Byrne Memorial Justice Assistance Grant (JAG)	\$477,755
SD Office of the Governor	PREA Program	\$13,842
SD Department of Corrections	Title II Formula Grants Program	\$393,667
SD Department of Corrections	Application Guidance for Prison Rape Elimination Act Reallocation Funds	\$6,491
Rosebud Sioux Tribe	PREA Program	\$249,963
Rosebud Sioux Tribe	Youth Development, Prevention, and Safety Applications	\$225,000
Oglala Sioux Tribe	Edward Byrne Memorial Justice Assistance Grant (JAG)	\$11,876
Native Women's Society of the Great Plains	Tribal Domestic Violence and Sexual Assault Program	\$312,608
Native American Community Board	Transitional Housing Grant Assistance	\$272,715
Wiconi Wawokiya, Inc.	Comprehensive Services for Victims of Human Trafficking	\$750,00
Wiconi Wawokiya, Inc.	Rural Domestic Violence Program	\$550,000
Cheyenne River Sioux Tribe	Support for Adam Walsh Act Implementation Grant Program	\$398,382
Sisseton-Wahpeton Oyate	Comprehensive Tribal Victim Assistance Program	\$444,287
White Buffalo Calf Women's Society	Supporting Male Survivors of Violence	\$1,000,000
White Buffalo Calf Women's Society	Sexual Assault Services	\$295,000
Sacred Heart Center	Tribal Sexual Assault Program	\$275,338
Augustana College	Domestic Violence Reduction Program	\$299,929
South Dakota State University	Graduate Research Fellowship Program in Science, Technology, Engineering, and Mathematics	\$33,513
City of Sioux Falls	Edward Byrne Memorial Justice Assistance Grant (JAG) Program:	\$62,365
City of Rapid City	Edward Byrne Memorial Justice Assistance Grant (JAG) Program	\$46,099

Bullet Proof Vest Grants

Agency Name	BVP Amount	Number of Vests
Aberdeen	\$5,227.53	11
Alcester	\$ 578.50	2
Box Elder	\$4,760.01	16
Charles Mix Co.	\$ 472.19	1
Clay County	\$1,713.60	5
Deuel County	\$1,482.66	4
Huron	\$2,899.94	9
Kingsbury County	\$ 732.31	2
Lincoln County	\$2,477.65	7
Mitchell	\$3,222.16	10
Mobridge	\$ 966.65	3
Oglala Sioux Tribe	\$7,673.11	14
Rapid City	\$5,956.11	20
Union County	\$ 673.72	2
Vermillion	\$1,525.64	5
Watertown	\$7,721.47	24
Yankton County	\$1,708.72	5
TOTAL (17 Jurisdictions)	\$49,791.97	140

HIDTA Grants	FY15
DCI-SF Task Force	\$146,383.00
DCI-Pennington	\$217,536.00
Pennington County	\$122,778.00
Minnehaha County	\$64,590.00
SFPD	\$167,674.00
Highway Interdiction	\$25,000.00
AUSA	\$70,636.00
Totals	\$814,597.00



FIGURE 29 GEORGE S. MICKELSON CRIMINAL JUSTICE CENTER IN PIERRE, SOUTH DAKOTA



FIGURE 30 POLICE EQUIPMENT

ADMINISTRATIVE DIVISION

The Administrative Division of the United States Attorney's Office for the District of South Dakota provides consistent and effective administrative services and support to the employees and programs of the United States Attorney's Office.

The Administrative Division provides guidance concerning Department of Justice policies and procedures, as well as central services support in all areas of Administration, including; Human Resources, Budget and Finance, Information Technology, Facilities Management, Records Management, and Purchasing and Property Management. The Administrative Division is responsible for planning and executing a comprehensive range of administrative services that support the mission of the United States Attorney's Office. The Administrative Division is managed by the Administrative Officer who is the principal advisor to the United States Attorney and the District on administrative matters. The Administrative Officer provides guidance on the management and use of the District's financial, manpower, and physical resources, and on administrative policies, procedures, and practices.

Employment opportunities include varied legal and administrative jobs. Currently, the District of South Dakota has 63 positions in support of three offices in Sioux Falls, Rapid City and Pierre. In the Criminal, Civil, and Appellate Divisions, these positions are made up of Assistant United States Attorneys, Paralegal Specialists, Legal Assistants, Victim Witness Coordinators, and Debt Collection Agents. In the Administrative Division, these positions are made up of an Administrative Officer, Administrative Support Services Specialist, Human Resource Specialist, Contracting Officer, Budget Analyst, and Information Technology Specialists focusing on litigation support and computer network management.

In addition, the Administrative Division follows internal control practices that ensure proper use and reporting of tax-payer-funded assets. At the direction of the United States Attorney, the Administrative Division manages an operating plan budget of approximately \$5 million dollars. The Administrative Division also manages equipment and facilities in three locations valued at approximately \$2 million. The Administrative Division is also responsible for the coordination, development, and maintenance of office policies and procedures related to the mission of the U.S. Attorney's Office. In this regard, the Administrative Division works closely with the United States Attorney, Assistant United States Attorneys, and support staff to ensure compliance with a strong internal controls program.

The Administrative Division is led by Deborah Ford, Administrative Officer, who supervises a number of subject matter experts, including an Administrative Support Services Specialist, a Budget Analyst, two Information Technology Specialists, a Human Resources Specialist, a Contracting Officer, and general Administrative students focusing on litigation support and computer network management.

CIVIL DIVISION

The Civil Division, led by Diana Ryan, represents the interests of the United States in civil litigation involving the federal government in the District of South Dakota. The mission of the Civil Division is to promote the fiscal integrity of federal aid programs through an active civil fraud initiative, and to justly defend the interests of the United States in all cases where the government is sued. The office investigates and pursues allegations of health care fraud, seeking monetary reimbursement for losses or overpayments related to Medicare, Medicaid, and TRICARE where appropriate. In addition, this office investigates and pursues civil fraud cases involving a variety of grants or federal programs funded by the U.S. Department of Agriculture, U.S. Department of Defense, U.S. Department of Housing and Urban Development, U.S. Department of Justice, and the U.S. Department of the Interior.

DEFENSIVE TORT LITIGATION

There were a variety of lawsuits filed against the United States arising from alleged negligent acts or omissions of federal employees and tribal employees who are covered under the Federal Tort Claims Act because they fall under a special law that makes the United States liable for the actions of a tribal entity. Significant defensive cases which were resolved in 2015 include the following:

Norma Sorace et al v. United States (U.S. Bureau of Indian Affairs)

In June 2011, Shad Dillon was driving drunk on a highway through Antelope, SD, on the Rosebud Sioux Indian Reservation. He hit a car being driven by Melanie Sorace. Melanie and her young daughter, J.C., died in the accident. Two of Melanie's other children were injured. Dillon pled guilty to

involuntary manslaughter and went to prison for 40 months. Sorace's surviving family sued the Rosebud Sioux Tribe Police Department on a novel claim that the tribal police were negligent for failing to locate and arrest Dillon prior to the accident. The court held that due to the public-duty doctrine, the plaintiffs failed to state a claim against the tribal police and dismissed the case. To hold a public entity liable for civil damages, there must be a showing of a "special duty" that goes beyond the entity's general obligations to the community.

Ronald Fisher and Ronald Fisher as Guardian Ad Litem of C.F. v. United States (U.S. Bureau of Indian Affairs)

Officer Tyler Little Finger of the Oglala Sioux Tribe's Department of Public Safety was out patrolling and responded to an official call while on duty. Following an investigation of the call, he was turning around on a field approach near Red Shirt, SD, to come back over to the reservation side of a bridge when his car and plaintiff's car collided. Plaintiff and his minor son were injured in the car accident. The plaintiff eventually had to have neck/back surgery after the accident, and his doctor stated the need for surgery was caused by the recent car accident. The plaintiff had a history of shoulder, neck, and back injuries from his work as a ranch hand and from rodeo experience. The plaintiff had also recently had an ATV accident where he fell on his head and shoulder. The plaintiff's minor son had minimal head and neck discomfort following the accident. Officer Little Finger was cited for failing to yield by the South Dakota Highway Patrol, and he paid the ticket. Plaintiffs' and Officer Little Finger's depositions were taken in November of 2015. Following discovery and depositions, the parties agreed to participate in

mediation. The mediation was successful, and Ronald Fisher received \$145,000 and his minor son received \$3,500 for a total settlement of \$148,500.

Ivis Black Elk v. United States, et al (Indian Health Service)

Plaintiff's medical expert opined that an IHS ER physician was negligent in failing to timely diagnose and/or protect a partial Achilles tendon injury which led to a complete tear and requisite surgery. Although the government's medical expert opined that the IHS physician met the standard of care by examining the laceration, placing her on crutches, and ordering close follow up, the matter was settled for \$30,000, without admission of liability, and due to litigation risks.

Paul Archambault for the Estate of Harriet Archambault v. United States (Indian Health Service)

This medical malpractice action against the Indian Health Service was dismissed by the court. The allegations arose out of Harriet's sudden death in her home from a heart arrhythmia. Harriet had known medical conditions and was supposed to be taking medications. The court found there was no evidence substantiating plaintiff's allegations that the IHS was responsible for her death.

Umpo Kills In Sight v. Dr. Shilpa M. Sutaria, et al. (Indian Health Service)

Umpo Kills In Sight, as the Special Administrator of the Estate of Cleveland Kills In Sight, brought a FTCA action against the United States alleging negligent hiring, negligent screening, negligent training, and negligent supervision related to the employment of Dr. Shilpa Sutaria. According to plaintiff, Dr. Sutaria attempted to choke the decedent while the decedent was hospitalized, thereby causing bodily injury, loss of enjoyment of life, mental distress, severe anxiety, depression, shame, humiliation, loss of public trust, loss of peace

of mind, worry, and psychological and emotional trauma. The government filed a motion to dismiss based on the discretionary function exception to the FTCA. Prior to the district court's decision, plaintiff agreed to dismiss the United States as a party to the lawsuit.

Jessica Buus and Brian Iverson v. United States (U.S. Army)

This is a FTCA case filed by Buus and Iverson for injuries they suffered after a motorcycle collision with a vehicle driven by an employee of the U.S. Army Reserves. The government driver was in Sioux Falls for training. He had checked a vehicle out to run and get a late night snack and was returning from that errand when the accident occurred. Both Buus and Iverson suffered injuries. The case was resolved through mediation. The government paid \$60,000 to resolve Buus's claims and \$55,000 to resolve Iverson's claims.

Kay Gordon, Individually and in her capacity as Special Administrator of the Estate of Dale L. Gordon v. United States (U.S. Department of Veterans Affairs)

This is a FTCA medical malpractice case where the Gordon family claimed that Dale Gordon was improperly treated at the VA. Dale underwent an aortobifemoral bypass surgery with patch angioplasty of the right lower extremity at the VA. His family claimed that the surgery was not necessary or appropriate, that the surgery was conducted poorly, and that the aftercare at the VA was below the standard of care. Specifically, the family claimed that, shortly after surgery, Dale was given too much water, jello and chewing tobacco (by a nurse) which caused him to aspirate and require ventilation. His family requested that he be moved to the Sanford Hospital where he stayed for approximately two months before he passed away from pancreatitis. This matter was resolved for \$86,385.30 through

informal settlement discussions with plaintiff's counsel.

Ian Solomon, as the Special Administrator for the Estate of Sheldon Solomon v. United States (U.S. Bureau of Indian Affairs – Lower Brule Detention Center)

This is a case arising from an incident at the Lower Brule Detention Center in August of 2013. Sheldon Solomon was heavily intoxicated when he was arrested on a bench warrant. He was not screened by any medical professionals before being put in a jail cell, and he was not given any food or closely monitored after his incarceration. It appears he went through severe alcohol withdrawal which eventually resulted in him seizing and striking his head, causing a skull fracture. Sheldon was taken to the hospital in Chamberlain, and then was transferred to Sioux Falls where he lived for approximately two months before he passed away. The case was resolved for \$875,000 through mediation.

Clayton K. Melton v. Jan Zimmerman (United States Post Office)

A customer of the United States Postal Service (“USPS”) filed a small-claims action against Postmaster Jan Zimmerman alleging that Zimmerman had overcharged for mail-forwarding services. Because the USPS did not want to concede the matter, we removed the case to federal court and filed a motion to dismiss on Zimmerman’s behalf. The court granted the motion to dismiss finding that it lacked subject matter jurisdiction over Melton’s claims pursuant to 39 U.S.C. § 3662, which provides that customers who believe the USPS is charging rates which do not conform to certain policies may lodge a complaint with the Postal Rate Commission (“PRC”). The Court concluded that a complaint to the PRC was Melton’s exclusive remedy.

AFFIRMATIVE FRAUD

The USAO worked jointly with the State of South Dakota, the Department of Health and Human Services, the Department of Agriculture, and the Department of Defense to recover reimbursement for money fraudulently obtained through false statements made to federal agencies, and for services not rendered or not provided by qualified medical personnel. Highlights of our civil affirmative enforcement efforts in 2015 include the following:

United States v. Aurelio Munoz-Escalante, Sergio Munoz-Escalante, Angel and Barbara Munoz, Rogelio Escalante Sr., Rogelio Escalante Jr., and Raul Munoz (False Claims Act – U.S. Forest Service (USFS logging contracts))

In 2014, the USAO obtained consent judgments and settlements totaling \$455,000 against five individuals and their businesses for filing false claims in connection with USFS contracts to thin unhealthy stands of timber in the Black Hills National Forest. In 2015, the USAO obtained civil judgments totaling \$1,218,373 against two other parties for the same conduct. These individuals submitted contract invoices for payment with certifications which contained material false statements that the work to clear timber was done in accordance with USFS contract terms. But, the work was not performed in accordance with USFS contract terms because they knowingly employed undocumented aliens who were prohibited under the USFS contract and federal law.

United States v. John Ford (False Claims – U.S. Railroad Retirement Board)

The USAO obtained a \$279,184 judgment under the False Claims Act because Ford submitted 40 false claims to the RRB certifying his eligibility for unemployment benefits while he was employed elsewhere and failed to report those earnings. The government was awarded treble damages in the amount of \$59,184 and penalties totaling \$220,000.

Brian Poelstra (False Claims Healthcare)

A South Dakota hospital self-reported that one of its physical therapists had failed to document services in its patient records, making the Medicare claims totaling \$150,776.84 and Medicaid claims totaling \$30,801.00 it submitted for those services in error. The hospital repaid the claims and the USAO entered into an integrity agreement with the physical therapist requiring him to undergo training and certify compliance with Medicare and Medicaid requirements for the next three years.

PROGRAM LITIGATION

Dr. Larry Lytle v. United States Department of Health and Human Services, Food and Drug Administration et al (Food and Drug Administration)

Lytle filed a declaratory judgment action and a request for a temporary restraining order to stop the Food and Drug Administration (FDA) from using any of the information it found after executing an administrative search warrant in September 2013. Lytle asked the court to issue an opinion that the private membership associations (PMAs) he is a part of were not subject to federal law or regulation by the FDA. Further, he asserted that he could represent the PMAs, despite the court's order that he, as an individual, cannot represent a corporation/association. The district court issued an order dismissing Lytle's petition. Lytle appealed that decision and the Eighth Circuit Court of Appeals affirmed the district court's dismissal of the declaratory judgment action.

United States of America v. 2035 Inc., a corporation, and Robert L. Lytle, an individual, d/b/a 2035 PMA and QLASERS PMA (Food and Drug Administration)

This is an affirmative case against Robert L. Lytle (also known as Dr. Larry Lytle) where the Food and Drug Administration (FDA) requested an injunction to stop Lytle, his businesses, and his private membership associations (PMAs) from introducing or

delivering for introduction into interstate commerce, unapproved and misbranded lasers. In October 2015, the U.S. District Court issued a permanent injunction against Lytle and his businesses to stop his violations of the Food, Drug and Cosmetic Act. Lytle has appealed this decision to the Eighth Circuit Court of Appeals.

Thomas Perez, Secretary of Labor v. Jan Gray, Individually, and d/b/a American Presidents Resorts, Custer Motel, and All American Inn (U.S. Department of Labor)

The USAO and the United States Department of Labor (DOL) secured a consent judgment of \$8,675 and a permanent injunction ordering Gray and his businesses (all in Custer, SD) to comply with the Fair Labor Standards Act (FLSA) and to pay back wages and overtime pay owed to former employees. The injunction requires Gray to train managers and employees about their rights under the FLSA, pay in accordance with the minimum wage and overtime requirements of the law, maintain accurate records, and not to retaliate against any employee who files a complaint with or cooperates in any investigation by the DOL. Gray has paid the back wages due (\$8,675.66).

United States of America v. Mayfield Hutterian Brethren Inc., a/k/a Mayfield Colony (U.S. Fish and Wildlife Service)

The United States filed an affirmative action to restore wetlands that were drained by a Hutterite Colony. After extensive discovery and work with the U.S. Fish and Wildlife Agency, and the government filing a motion for summary judgment, the Colony agreed to enter into a consent judgment to restore the wetlands to their previous condition, and to be permanently enjoined from further draining of the wetlands.

Arlen and Cindy Foster v. Tom Vilsack, Secretary, United States Department of Agriculture (Review of Agency Action Involving Wetland Determination)

The USAO successfully defended a complaint challenging a USDA, Natural Resources Conservation Service (NRCS) wetland determination under the Swampbuster provisions (16 U.S.C. § 3821). The U.S. District Court concluded that the NRCS properly followed its wetland determination procedures and made a rational connection between the facts and the determination made; thus, the NRCS did not act arbitrarily or capriciously in its decision-making process. The Fosters appealed the decision to the Eighth Circuit Court of Appeals and the appeals court affirmed and agreed with the district court in April 2016.

In The Matter Of Water Permit Application No. 2730-2, by the United Order of South Dakota, South Dakota Water Management Board (Review of Agency Action)

The USAO represented the USFS and USDA/Park Service in protecting water rights affecting natural resources on federal lands (Cascade Springs and Wind Cave) by objecting to a water permit holder's request to increased water drawdowns as not in the public interest. Settlement was reached whereby the permit holder revised the request agreeing to reduce the volumetric limit of their existing permit and to provide reports regarding the actual water used.

Nickolas Berbos v. U.S. Department of Agriculture, Risk Management Agency (RMA) (Review of Agency Action)

The USAO obtained dismissal of a lawsuit challenging a USDA RMA's notice of proposed debarment seeking to deny Berbos in participating in the USDA programs for a period of three years by agreeing to an exclusion period of two years. RMA operates the Federal Crop Insurance Corporation

(FCIC) which provides crop insurance to producers. The USAO also investigated alleged false prevent-planting claims, but declined to bring false claim act litigation when RMA's expert's acreage estimates were challenged by statistical analysis.

Midland Farms, LLC, v. USDA, RMA, FCIC (Review of Agency Action)

The USAO defended the USDA RMA's interpretation of provisions in the standard federal crop insurance policy used by insurance companies. The U.S. District Court remanded, in part, finding that a material part of the decision was "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with the law."

Matter of Derek LeClaire, Mary Grass, and Sandra Fire Lightning (Federal Housing Evictions, Cheyenne River Indian Health Service Housing)

Former Indian Health Service employees refused to vacate government housing after their employment ended, pay rent, and sought injunctions in tribal court to prevent their evictions. Once the tribal court action was dismissed and the U.S. Marshal served them with eviction notices, the holdover tenants moved, freeing up the houses for other government employees.

United States v. Matthew and Corrina Beck (Affirmative Foreclosure of Farm Service Agency Loan)

Debtors defaulted on a FSA note and mortgage secured by their house. The debtors owed approximately \$90,000.00. The debtors' house, near Eureka, SD, was the only viable collateral securing the loan. Based upon the condition of the home and upon the cost of litigation to foreclose upon the property and then attempt to resell it, the USAO initiated settlement discussions with the debtors that would allow them to keep the home, but to pay off a portion of the defaulted loan amount for an amount near the appraised value of the home. The

home was eventually appraised for approximately \$26,000.00. The debtors offered to pay \$21,000.00 to cancel the balance of the debt. The parties settled for that amount with FSA regaining the majority of the value of the secured property. The debtors stayed in the home and the liens placed upon the home were satisfied and released. This case settled prior to filing a lawsuit.

Becky Zirpel vs. Steve Novotny (FSA intervening on behalf of Farm Service Agency)

The USAO assisted with a protection order sought by FSA employee Zirpel against Steve Novotny. It was resolved by a permanent injunction which enjoined and restrained Novotny from coming upon the premises of the FSA property in Winner and Burke, South Dakota.

Nathan Kobasic v. Yankton Medical Clinic, P.C. (Review of Agency Action)

Kobasic was incarcerated at the Federal Bureau of Prisons ("BOP") when he became ill with a rare lung fungal infection. He was taken to the Yankton Medical Clinic for testing and treatment. He sued the clinic alleging a failure to timely diagnose and treat his condition. A BOP physician and physician assistant were deposed with regard to the timing of Kobasic's condition.

EMPLOYMENT DISCRIMINATION

Paula Coome v. Social Security Administration

Paula Coome was a teleservice representative for the Social Security Administration. She filed a lengthy employment discrimination complaint alleging age and gender discrimination and retaliation for bringing an EEO complaint raising age and gender discrimination. This case was resolved through mediation. The government paid Coome \$100,000 to resolve all of her claims.

BANKRUPTCY

When a debtor files for bankruptcy and owes student loans to the Department of Education, owes taxes to the Internal Revenue Service (IRS), or when tax liens are filed by the IRS against a debtor, or other debt is owing to a governmental agency, the United States is often listed as a creditor. The majority of the bankruptcy cases opened in 2015 by the U.S. Attorney's Office involved the IRS.

In 2015 there were 1,095 bankruptcy cases filed in the District of South Dakota, an 8% decrease from the number of bankruptcies filed in 2014 and the fewest since 2006. However, more Chapter 11 and Chapter 12 cases were filed last year in South Dakota than in any year since 2011. Nationwide, the large Chapter 11 caseload is up 27% from last year. The 2015 case filing breakdown by chapter for the District of South Dakota is as follows: Chapter 7 - 974; Chapter 11 - 6; Chapter 12 - 5; and Chapter 13 - 110.

Nationwide 819,240 bankruptcy cases were filed in 2015, a 10% decrease from 2014. The states with the most per capita bankruptcy filings in 2015 were Alabama, Georgia, Illinois, Indiana, Tennessee, and Utah. Alaska had the fewest per capita bankruptcy filings in 2015, followed by Hawaii, Montana, North Dakota, South Dakota, and Vermont.

Chad DuBois v. United States (Bankruptcy Discharge of Student Loans)

DuBois, while incarcerated, filed a complaint with the bankruptcy court to have his student loans discharged. Student loans are not dischargeable in bankruptcy; however, an exception is made if the debt would impose an undue hardship on a debtor. The court found that DuBois "has not pointed the court to anything in the record that would enable the court to determine his past, present, and reasonably reliable future financial resources." The court also held that DuBois' eligibility for an income contingent

repayment plan mitigated a finding of undue hardship. Judgment was entered in favor of the United States and DuBois' student loans were not discharged.

FREEDOM OF INFORMATION ACT (FOIA)

In 2015, The U.S. Attorney's Office opened three new cases relating to requests for information under the Freedom of Information Act (FOIA). FOIA defines when an individual or a third-party can receive records from a government agency. There are exemptions that require protection of records and there is also the Privacy Act which requires protection of records. There is information at www.foia.gov explaining what FOIA is, guidance on how to make a FOIA request, and directions as to where to make a FOIA request.

Food Stamp Redemption Disclosure

The Sioux Falls local newspaper (*Argus Leader*) sought yearly food stamp redemption amounts listed for individual retailers across the United States from 2005 to 2010. The *Argus Leader* attempted to obtain the information by filing a Freedom of Information Act request with the United States Department of Agriculture (USDA), the agency who administers the food stamp program. The case is proceeding at this point after remand from the Eighth Circuit Court of Appeals. The parties continue to litigate whether the release of the redemption information for individual retailers will cause substantial commercial harm to some retail stores, and whether the privacy right of the individual retail stores related to food stamp redemption income outweighs the public's right to know where and how much food stamps are being redeemed.

DEFENSIVE FORECLOSURES

The USAO opened 70 defensive foreclosure files in 2015. This is compared to 55 defensive foreclosures in 2014, 82 defensive foreclosure

files in 2013, 84 cases in 2012, 86 cases in 2011, and 116 cases in 2010. In most foreclosures, banks or other lending institutions bring an action in state court. The USAO becomes involved in a defensive foreclosure when a government agency has a lien on the foreclosed property. The agencies most often involved in these types of cases are the Internal Revenue Service (IRS), Department of Housing and Urban Development (HUD), Farm Service Agency (FSA), and Rural Housing Service (RHS). The majority of the USAO's defensive foreclosure cases involve tax liens filed by the IRS.

HABEAS REVIEW/28 U.S.C. § 2255

A § 2255 petition permits a federal prisoner to seek relief from a sentence on the grounds that "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack[.]" Also a habeas review is an extraordinary remedy and is not to replace an appeal. Two § 2255 decisions issued in 2015 were the cases of *White Face* and *Reddest* as follows:

Conan White Face v. United States

On November 4, 2003, Conan White Face was sentenced to 151 months in prison after pleading guilty to a second-degree murder charge. He did not appeal. More than ten years after he was sentenced, White Face filed his first petition for relief pursuant to 28 U.S.C. § 2255. To file a motion to vacate, set aside or correct a sentence pursuant to § 2255, White Face must have satisfied timing requirements within one year to show newly discovery evidence. White Face could not show new evidence, and the court held that his petition was untimely, and therefore, dismissed it or failing to state a claim.

Leroy Reddest v. United States

On October 23, 2014, Leroy Reddest filed a petition alleging seven grounds as to why his sentence should be vacated, set aside, or corrected. The court found that four grounds were barred because they were not raised on direct appeal; another ground of insufficient evidence was procedurally barred; and a ground of ineffective assistance of counsel was untimely. Also the court found the two cases argued by Reddest had no application to his claims and were just another attempt to argue that the government did not present sufficient evidence at trial. The court dismissed Reddest's petition.

PRISONER LITIGATION / 28 U.S.C. §

2241. The USAO responds to habeas petitions filed by inmates incarcerated at the Yankton Federal Prison Camp. A habeas petition allows inmates to challenge their sentence or conviction on constitutional grounds.

Robert S. McIntire v. Warden Willis (Writ of Habeas Corpus)

An inmate at the Federal Prison Camp in Yankton ("FPC Yankton") filed a petition for writ of habeas corpus after being released from custody, asserting he was entitled to the maximum release gratuity under 18 U.S.C. § 3624(d). To support his petition, McIntire argued that he had no financial support while incarcerated and had no living relatives who could offer financial or emotional support upon his release. Moreover, McIntire asserted that the Bureau of Prisons ("BOP") failed to evaluate his financial needs for a successful reintegration and released him to a common-law halfway house rather than a traditional Residential Reentry Center ("RRC") where he would have access to meals, clothing, and transportation to assist him in securing employment. McIntire then requested that the court award him \$500 in financial gratuity assistance upon his release. In response to the habeas petition, the government argued

that 28 U.S.C. § 2241 was not the proper jurisdictional basis for review of a condition of confinement. Alternatively, the government asserted that the BOP had the sole authority to issue gratuities and those discretionary determinations were not subject to judicial review. The district court found that it lacked subject matter jurisdiction to consider the habeas petition, but nonetheless, it reviewed petitioner's claims under a *Bivens* analysis and concluded that the BOP's actions constituted a reasonable exercise of discretion. The court dismissed the petition and entered judgment in favor of the government.

Travis Emory Correll v. United States, et al (Writ of Habeas Corpus)

An inmate at the Federal Prison Camp in Yankton ("FPC Yankton") filed a petition for writ of habeas corpus alleging that officials at the FPC Yankton violated his equal protection rights. Correll asserted that the Bureau of Prisons ("BOP") provided non-violent federal inmates who had a history of substance abuse an opportunity to earn a one-year reduction in their sentence if the inmate completed a Residential Drug Abuse Program ("RDAP"), but denied the same opportunity to non-violent federal inmates who did not have a history of substance abuse. Correll argued that the BOP should similarly consider a one-year sentence reduction for non-violent federal inmates who do not have a history of substance abuse but who have completed at least 500 hours of educational programming. Responding to the petition, the government argued that the court lacked jurisdiction to consider the matter, as 18 U.S.C. § 3625 precluded judicial review of any individualized "determination, decision, or order" made pursuant to §§ 3621-3624. Alternatively, the government argued that the BOP's determinations related to sentence reductions constituted a reasonable exercise of the BOP's discretion and authority under valid and constitutionally enacted law. The district

court found that it did not have the authority to review the case; and thus, denied the petition for writ of habeas corpus. Correll appealed the district court's decision, and the Eighth Circuit Court of Appeals affirmed.

Lewis Rothman v. J.S. Willis (Writ of Habeas Corpus)

An inmate at the Federal Prison Camp in Yankton ("FPC Yankton") filed a petition for writ of habeas corpus alleging that the Bureau of Prisons ("BOP") failed to give him the predicate individualized assessment necessary for determining whether and how much time he should spend in a Residential Reentry Center ("RRC"). The petitioner further requested that the court order a re-evaluation and grant him a longer period of time in a RRC. During the pendency of the action, Rothman was transferred from FPC Yankton to a RRC, and then from a RRC to home confinement. The government submitted a motion to dismiss arguing that the issue raised in the habeas petition was moot and that the court lacked jurisdiction over the matter. After affording Rothman an opportunity to respond, the court dismissed the petition for writ of habeas corpus.

Gene Jirak v. Warden J.A. Terris, et al (Racketeer Influenced and Corrupt Organizations (RICO) Claim)

An inmate at the Federal Prison Camp in Yankton ("FPC Yankton") filed a complaint against the United States and several individuals from the Federal Correctional Institution in Milan, Michigan, alleging that defendants violated his constitutional rights by subjecting him to acts of retaliation, cruel and unusual punishment, and unsafe working conditions. More specifically, Jirak alleged that he was forced to use an electric power washer in a room with live electricity, known asbestos contamination, and known lead contaminants. Jirak further alleged that particular defendants attempted to intimidate him into withdrawing the administrative tort claim he filed in relation

to the above-alleged events, thereby further violating his constitutional rights under the Eighth Amendment. Last, Jirak alleged that defendants violated the False Claims Act and conspired to defraud the United States when they asked him to sign a document containing false information regarding the inmate's work training. Jirak sought an injunction and an award of damages in the amount of \$33,757,500. The government filed a motion to dismiss based on lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, failure to exhaust administrative remedies, and failure to state a claim upon which relief may be granted. The district court dismissed the complaint for failure to exhaust administrative remedies. Jirak has appealed the decision to the Eighth Circuit Court of Appeals, which appeal is pending.

Luis Olivares v. Special Agent John C. Sally, D.E.A., et al (42 U.S.C. § 1983)

Olivares alleged that defendants planted evidence, manipulated evidence, sent individuals to attack him, tampered with legal mail, and harassed and punished him for no reason. Olivares further alleged that the prosecuting attorney in his pending criminal case paid medical personnel to find him competent to stand trial. Last, he alleged a conspiracy between the police, prosecutor, and medical and prison staff. A jury eventually found Olivares guilty of the underlying criminal charges. The U.S. District Court then dismissed the civil complaint pursuant to *Heck v. Humphrey*.

OTHER LITIGATION

Leslie Pond v Pennington County Sheriff and U.S. Marshals Service (Civil Rights (Eighth & Fourteenth Amendments))

Pond was detained in a South Dakota jail pending his trial on federal charges and complained of several medical issues due to the medical conditions (back and shoulder) of his incarceration. He was transported to medical appointments for various treatments

(pain management) over a period of 12 months. At that point, a MRI was ordered and U.S. Marshals transported Pond. Because sedation had not been ordered, Pond refused the MRI. Before the MRI with sedation could be rescheduled, Pond filed suit alleging cruel and unusual punishment. Dismissal was obtained because Pond failed to serve the U.S. Marshals Service or to respond to the sheriff's motion to dismiss.

Derek LeClaire v. HHS/IHS-Eagle Butte and Charles Fisher, CEO (Temporary Restraining Order)

LeClaire filed a temporary restraining order to enjoin his eviction from Indian Health Service housing in Cheyenne River Sioux Tribal Court. The tribal judge entered an Order of Dismissal for lack of jurisdiction. This case was interesting because the tribal judge requested that the USAO make a special appearance for the purpose of contesting jurisdiction and to request sanctions (implying that he would have granted sanctions).

United States v. Butler Machinery and ASCO Power Technologies (Breach of Contract and Warranty)

A contract dispute arose between the South Dakota Army National Guard and the contractor who installed an ATS switch and generator at Camp Rapid in Rapid City, SD. The manufacturer of the equipment was also involved in the dispute. The switch and generator at issue failed following a significant winter storm that hit Camp Rapid. The failure caused significant property damage. The parties eventually agreed to settle their dispute for approximately \$51,000, an amount that was close to the South Dakota Army National Guard's initial demand for its losses from the malfunctioning switch. This case settled prior to filing a lawsuit.

Kevin Apple v. Individually Named Tribal Officers (Civil Rights Lawsuit Against Tribal Officers)

Tribal officers who received funding from the federal government pursuant to the Indian Self-Determination and Education Assistance Act of 1975 (638 Contract) stopped a van, administered a PBT to the driver, and asked him to step out of the vehicle. The driver stepped on the accelerator, turned the steering wheel to leave, but the officer reached through the window and grabbed the steering wheel. The van collided with a parked police vehicle. Apple sustained abrasions on his left knee and left eyebrow and brought a lawsuit seeking money damages for violation of his civil rights. The officers' requests for DOJ representation were denied; however, the USAO provided assistance to the tribe's attorney in obtaining dismissal because the tribal officers were not acting under color of federal law, but under tribal law.

SENTENCE REDUCTIONS

In Amendment 782 to the United States Sentencing Guidelines, effective November 1, 2014, the Sentencing Commission lowered the penalties for most drug offenses by reducing most offense levels on the 2D1.1 Drug Quantity Table by two levels, and making related adjustments. In Amendment 788, the Commission decreed that Amendment 782 may be applied retroactively to lower the sentences of previously sentenced inmates. This authority derives from 18 U.S.C. § 3582(c)(2). A defendant is eligible for a sentencing reduction if Amendment 782 is applicable to the defendant previously calculated guideline range, and if the defendant did not previously receive a sentence at or below the bottom of the now-amended range. Our office received 158 motions for a sentence reduction pursuant to Amendment 782. 121 were granted and the defendants' sentences were reduced, and 36 were denied. Some reasons for denial included, but were not limited to, the defendant's current sentence was lower than the amended guideline range or the defendant was sentenced to a mandatory/minimum sentence and did not receive substantial assistance.

ASSET FORFEITURE

In 2015, individuals involved in criminal activity in South Dakota forfeited a total of more than \$660,000 in cash, as well as other assets, to the government. The funds and other property represented proceeds of illegal activities and property involved in illegal activities.



FIGURE 31 FORFEITED CASH

The forfeited property included, among other things, firearms and ammunition possessed by prohibited persons, electronic devices, including cellular telephones and computers, utilized by individuals in sex trafficking and child pornography, and cash and bank accounts containing profits from illegal activity.

Notable cases for 2015 included forfeiture of property related to two separate conspiracies to distribute controlled substance analogues.

A conviction for conspiracy to distribute synthetic marijuana also resulted in

forfeiture of over \$160,000 in assets, including bank accounts and vehicles, which represented the proceeds of the drug distribution. The individuals involved in Roll With It stores were indicted for conspiracy to distribute a controlled substance analogue and money laundering, and sentenced in early 2015 for conspiracy to distribute the analogue. The analogue, commonly referred to as spice or K2, was distributed to customers for profit from one or more Roll With It store locations in Sioux Falls. The illegal product is made by treating plant material with certain chemicals that are controlled substance analogues. Under federal law, a controlled substance analogue is a substance which has a chemical structure that is similar to certain controlled substances and has an effect on the central nervous system which is intended to be similar to those controlled substances. Where controlled substance analogues are intended for human consumption, they are treated as controlled substances.

In addition, two individuals from Florida were involved in distributing controlled substance analogues through a business in western South Dakota. Those individuals forfeited \$45,000 worth of vehicles and more than \$500,000 in cash, based on those convictions.

APPELLATE DIVISION



FIGURE 32 UNITED STATES COURT OF APPEALS

The Appellate Division supervises all appellate litigation involving criminal and civil cases in which the U.S. Attorney's Office represents the federal government, and is led by Kevin Koliner. Handling appeals represents a distinct form of advocacy. Appellate courts do not take evidence or adjudicate facts like a trial court or a jury. Instead, appellate courts consider only discrete legal issues arising out of one party's challenge to an order or judgment of a trial court. Appellate lawyers for the U.S. Attorney's Office carefully review the records of trial court proceedings, prepare detailed written briefs, and, in most cases, argue their appellate cases before the U.S. Court of Appeals for the Eighth Circuit which is based in St. Louis, Missouri. Eighth Circuit appellate decisions are generally precedential and govern the disposition of subsequent similar issues litigated in the trial courts of all seven states within the Eighth Circuit, not just South Dakota's federal district courts.

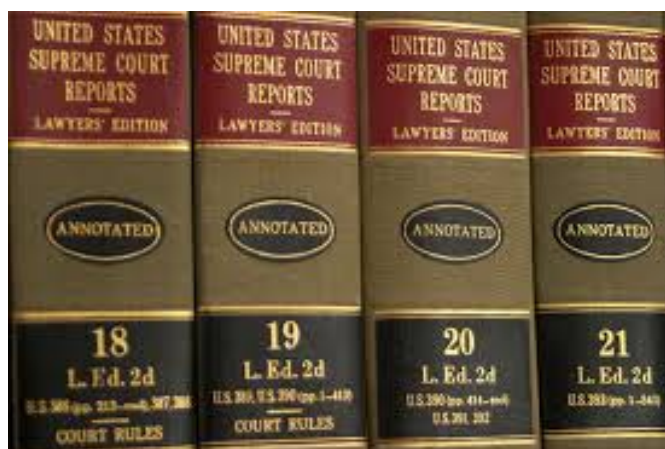


FIGURE 33 UNITED STATES SUPREME COURT REPORTS

The Appellate Division's caseload involves a wide variety of legal issues and different types of substantive law. In many cases, it represents the government in appeals filed by criminal defendants who are seeking appellate review of their convictions or sentences. Roughly half of these cases involve violent crimes committed in Indian country. The remaining criminal appeals deal with other federal offenses such as large-scale drug conspiracies, immigration, firearms offenses, human trafficking, and child pornography cases. The Appellate Division also handles civil appeals which result from civil claims brought by the government or against it. These appellate cases include defending against tort claims brought by individuals or representing federal agencies in challenges to their administrative actions. Civil appeals can also include cases in which the United States has brought an action to advance or enforce a federal right.

United States v. Bear Runner,

589 Fed. Appx. 814 (January 15, 2015)

Following a jury trial, the Eighth Circuit upheld convictions for assault with a dangerous weapon and assault resulting in serious bodily injury, holding that there was substantial evidence the defendant beat his victim with a long object and with a nail protruding from it. The trial court rejected Richard Bear Runner's request, at sentencing, for a new trial based on a minor witness's letter in which she recanted testimony she gave at trial. The appellate court agreed, concluding that the district court was justified in rejecting the letter recantation because it differed in numerous respects from the other facts in evidence and, generally, presented serious credibility concerns.

United States v. Archambault,

777 F.3d 982 (January 30, 2015)

Adjoni Archambault appealed a sentence of 18 months in prison after she was convicted of distribution of a controlled substance for selling Ritalin that was prescribed for her son. The Eighth Circuit affirmed the above-guidelines sentence, reasoning that the sentence was not unreasonable given the circumstances of the case and the history of the defendant.

United States v. Misquadace,

778 F.3d 717 (February 19, 2015)

The district court sentenced Jon Misquadace to probation after he pled guilty to failure to pay child support. His probation was revoked after he failed to report a change of address and he also failed to assign certain income to his child support obligation. He was sentenced to a statutory maximum term of 24 months in prison, and he appealed claiming that the sentence was unreasonable. The Eighth Circuit affirmed, holding that the district court did not abuse its wide discretion and that it properly

weighed the facts and circumstances before arriving at its sentence.

Draper v. Colvin,

779 F.3d 556 (March 3, 2015)

Stephany Draper appealed the termination of her Social Security disability benefits, to which the district court held her ineligible because the funds in her trust raised her assets above the eligibility limit. The Eighth Circuit affirmed, holding that the Social Security Administration's interpretation of its rules regarding trust formation is entitled to deference. It also held that a state court's after-the-fact attempt to ratify the trust she had created for herself was insufficient to transform the funds in a qualifying instrument that would allow her to claim disability benefits.

United States v. Fire Cloud,

780 F.3d 877, (March 13, 2015)

Ronnie Fire Cloud was convicted by a jury of abusive sexual contact and attempted aggravated sexual abuse after he sexually assaulted his friend's girlfriend in the shower of Fire Cloud's home. He appealed the convictions, arguing that the evidence was insufficient to show that he used the type of force required by the statute because he did not physically injure or restrain his victim. The Eighth Circuit affirmed the verdicts, noting that the assault ended only because the victim successfully fought to escape Fire Cloud, and that was not sufficient to disprove that he used force.

United States v. Never Misses A Shot,

781 F.3d 1017 (March 31, 2015)

Randy Never Misses A Shot was convicted by a jury of four counts of sexual abuse of minors and one count of such abuse while registered as a sex offender. He appealed, arguing that the evidence was insufficient to sustain conviction and alleged that the district court erred in making various

evidentiary rulings. The Eighth Circuit affirmed in all respects, holding that the evidence sufficiently established Never Misses A Shot's guilt. It also held that it was not error for the district court to allow the jury to hear evidence that Never Misses A Shot had molested various additional children in the past. Finally, the appellate court held that the district court did not commit error when it refused to allow evidence that one of Never Misses A Shot's victims was also molested by another perpetrator.

United States v. Clifford,

791 F.3d 884 (May 15, 2015)

William Clifford was convicted by a jury of assault with a dangerous weapon and assault resulting in serious bodily injury. The district court allowed the jury to hear that the victim's three year old son, just after witnessing the assault, made a statement that identified Clifford as one of the assailants. Clifford appealed; arguing the admission of that statement violated the Confrontation Clause of the Sixth Amendment. The Eighth Circuit affirmed the conviction, holding that the statement of the young child was properly admitted under the hearsay exception for an excited utterance, and that it did not implicate Sixth Amendment rights because it was not of a testimonial nature.

United States v. Alaboudi,

786 F.3d 1136 (May 28, 2015)

Mohammed Alaboudi was convicted following a jury trial of conspiracy to engage in sex trafficking of a child, sex trafficking of a child, and sex trafficking by means of force, fraud, or coercion. He was sentenced to four life terms in prison. On appeal, he alleged that prosecutors during trial acted inappropriately by asking "expert witness" questions of a lay witness, by using the term

"victim," and by making certain statements during closing arguments. He also alleged that his life sentences constituted cruel and unusual punishment that violated the Eighth Amendment. The Eighth Circuit affirmed in all respects, holding that none of the claims about prosecutorial conduct rose to the level of showing that Alaboudi was prejudiced, especially in light of the strong evidence of his guilt. The appellate court also held that the sentences were not unconstitutionally severe given the gravity of the crimes.

United States v. Hansen,

791 F.3d 863 (June 30, 2015)

Randal Hansen was convicted by a jury of numerous mail fraud, wire fraud, and conspiracy counts for actions he took while operating a hedge fund that lost over \$20 million when it collapsed in 2011. He appealed his convictions, arguing the evidence was insufficient to support his convictions and that the district court improperly instructed the jury on willful blindness and conspiracy. The Eighth Circuit affirmed, holding that there was sufficient evidence of his guilt and, at least, that he had purposefully avoided learning pertinent information – appropriately triggering a willful blindness instruction. Finally, the appellate court held that the district court did not commit error when it instructed the jury that, to find Hansen guilty of conspiracy, it did not have to find that the government proved Hansen knew what he did was unlawful.

United States v. Long,

797 F.3d 558 (August 14, 2015)

Jason Long was charged with various drug offenses after an officer entered a convenience store Long was operating on the Lower Brule Sioux Reservation. The officer entered the unlocked store around 4:00 a.m. after encountering several juveniles who said they had just obtained illegal fireworks there.

After entering, the officer saw illegal drugs in plain view, and based upon that, the officer sought a warrant to conduct a more thorough search. On appeal, Long claimed the entry and subsequent search were unconstitutional and the evidence should have been suppressed. The Eighth Circuit affirmed, holding that Long did not have a sufficient subjective expectation of privacy under the circumstances, given that the store was apparently open to the public when the officer entered.

United States v. Thetford,

806 F.3d 442 (November 18, 2015)

Michael Thetford was convicted of four felonies at trial, after he traveled from

Alabama to South Dakota, impersonated an FBI agent, and threatened a married South Dakota couple in an elaborate scheme to steal their property. He appealed, challenging a jury instruction on the interstate element of a firearms count, as well as some evidentiary rulings that allowed his jury to learn that he pled guilty to related charges in another jurisdiction. The Eighth Circuit affirmed the convictions, holding that his first argument was foreclosed by an on-point decision issued by the court months earlier. It also held the evidence from another case was properly admitted because it was relevant in that it implicated Thetford's guilt on the South Dakota charges.

VICTIM RIGHTS AND ADVOCACY

The U.S. Attorney's Office Victim-Witness Assistance Program was developed to ensure that victims of federal crimes are treated with fairness and respect as they journey through the federal criminal justice system. This program carries out the mandates of the *Federal Victim and Witness Protection Act of 1982*, the *Victims' Rights and Restitution Act of 1990*, the *Victims of Child Abuse Act of 1990*, the *Crime Victims' Rights Act of 2004* and other victim-related legislation. These victim-witness assistance and protection laws apply to all victims and witnesses of federal crime who have suffered physical, financial, or emotional trauma.

A variety of notification and assistance services are provided to victims and witnesses of federal crime by our Victim-Witness Assistance Program staff, Assistant U.S. Attorneys, and other U.S. Attorney's Office staff with the assistance of tribal and federal law enforcement. The U.S. Attorney's Office victim-witness staff work closely with

South Dakota's FBI victim specialists and the Bureau of Indian Affairs victim specialists who assist victims of federal crime in the period between the reporting of a crime and charges being filed by our office. Our shared goal is to provide a seamless path to assist victims of federal crime.

When a federal criminal case reaches the prosecution stage of the criminal justice process, the victim is notified of the status of the case. Victims are notified of all case events through the Department of Justice Victim Notification System (VNS). They may be notified by letter and/or by calling the VNS automated call center. Notifications that may be made include the release or detention status of an offender pending judicial proceedings; the filing of charges against a suspected offender; the scheduling, including scheduling changes and/or continuances, of each court proceeding that the victim is either required to attend or entitled to attend; the

acceptance of a plea of guilty or the rendering of a verdict after trial; the opportunity to present to the court in the presentence report a victim impact statement containing information concerning any harm, including financial, social, psychological and physical harm, done to or loss suffered by the victim of the crime; the date set for sentencing if the offender is found guilty; and the sentence imposed and entry of the victim into the Bureau of Prisons' Victim and Witness Notification Program.

Our victim-witness program staff also provides personal support and assistance to victims and witnesses during court appearances and/or testimony. Each of our offices has a toll-free number to allow victims and witnesses to easily contact our victim-witness staff. When needed, referrals are provided to existing agencies for shelter, counseling, compensation, and other types of assistance services.

A variety of informational materials are available to assist crime victims and witnesses through the federal justice process. Topics include:

- Victims and Witnesses – Understanding Your Rights and the Federal Court System
- Dealing With Crisis
- Surviving Sexual Assault – What You Should Know
- Federal Domestic Violence Laws
- What You Should Know About Restitution Payments to Victims
- Preparing To Testify
- Victim Witness Handbook for Child Support Enforcement Cases

There are several educational videos available that explain the federal court process. *A Journey Through the Federal Justice System* was developed for adult victims and witnesses who must testify in federal court. *BJ Learns About Federal and Tribal Court* is especially for Native American children who must testify in court and has a corresponding activity book, *Learning All About Court*. *Inside Federal Court* is for older children who must be witnesses in federal court and also has a corresponding activity book. Our most recent court orientation video, *Tell the Truth*, was developed as a resource to help young children who must testify in federal court.



FIGURE 34 EDUCATIONAL VIDEOS

This video features a trip to *Court Street* and an animated courthouse where the court process is explained in a simple, effective way, with an emphasis on the importance of telling the truth. *Tell the Truth* also has a corresponding activity book. All of these materials are available at no cost from any of our victim-witness staff.

Each victim-witness advocate has been assigned to assist victims and witnesses from specific reservations. Please call the advocates directly if you have questions or need their assistance.

Reservation	VW Advocate/Office	Phone Number
Cheyenne River Crow Creek Lower Brule Rosebud Standing Rock	Carrie Ann Hannon Pierre	800-603-8157 605-945-4557
Pine Ridge	Aileen Crawford Rapid City	800-603-3750 605-341-1915
Flandreau Sisseton-Wahpeton Yankton	Marlys Big Eagle Sioux Falls	800-804-6790 605-357-2325

Emergency Witness Assistance Program (EWAP). This program allows U.S. Attorneys' Offices to provide financial assistance to threatened witnesses and/or their families during an ongoing investigation or case prosecution. This assistance program was designed to provide short-term help (up to 30 days) to a cooperating witness and has provided relocation funds and transportation expenses. EWAP does not provide protection, but does provide very limited financial assistance to witnesses so that they may help themselves.

Victim Notification System (VNS). The Department of Justice Victim Notification System (VNS) was implemented in 2002. VNS is a cooperative effort between the Federal Bureau of Investigation, the United States Postal Inspection Service, the United States Attorneys' Offices, and the Federal Bureau of Prisons. This free, computer-based system provides two important services to victims of federal crimes — information and notification. Victims receive notification of court events by letter and have the ability to call a toll-free number or access a website for current defendant custody and court information. Each victim receives a Victim Identification Number and Personal Identification Number that allows access to the system. In 2015 the District of South Dakota generated over 26,400 notifications. Questions about this program may be directed to our victim-witness staff.

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