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Midwestern Intergovernmental Audit Forum  
September 12, 2013

## Trends in Federal Prosecution of White Collar Crime

### National v. Local Trends

- Numbers & types of cases
- Sentencing issues
- Emerging litigation issues

## National Trends

- White collar cases typically represent about 10% of traditional federal criminal cases nationwide
  - Statistics greatly impacted by immigration offenses
  - Immigration & drugs are largest percentages

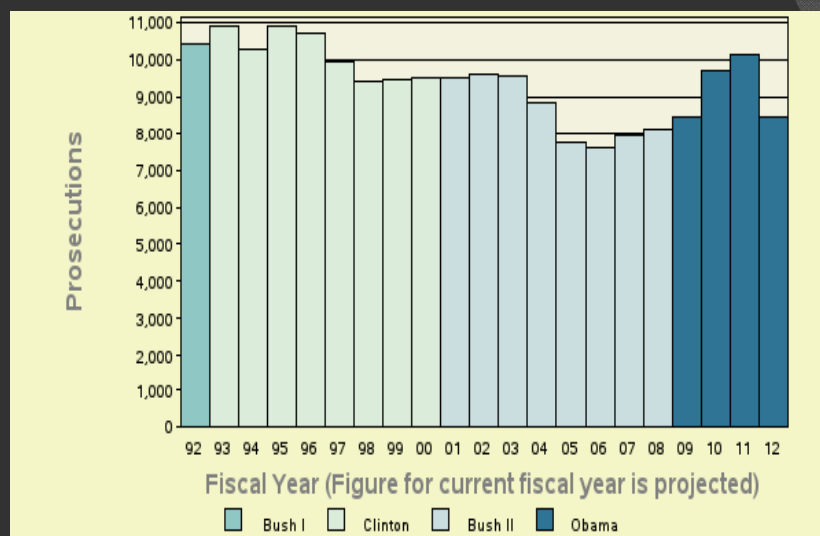
## National Trends

- In FY 2012, federal prosecutors charged 8,433 defendants in white collar cases
- In FY 2011, federal prosecutors charged 10,133 defendants in white collar cases
  - Approx. 17% decrease

## National Trends

- In first 9 months of FY 2013, federal prosecutors charged 6,063 defendants in white collar cases
  - Approx. 4% decrease from FY2012
  - Approx. 20% decrease from FY2011
  - Approx. 26% decrease from peak in FY1993

## White Collar Defendants



## National Trends

- Most common charges:
  - (1) Bank fraud
  - (2) Mail / wire fraud
  - (3) Identity theft
  - (4) Federal program fraud
  - (5) Tax fraud
  - (6) Health care fraud

## Local Trends

- Overall case numbers are decreasing
  - From 2005-07, averaged over 300 cases
  - In 2011: 283 cases
  - In 2012: 239 cases
  - In 2013: On pace for 210 cases

## Local Trends

- Reasons for overall decrease
  - Number of gun cases down
  - Resource limitations
  - Sentencing issues

## Local Trends

- Greater percentage of EDWI case load
  - Typically 30-35% of docket is WCC
  - 2011: 77 of 228 new matters
  - 2012: 58 of 172 new matters
  - 2013: 48 of 133 new matters (so far)
- Consume approx. 45% of AUSA time
- Percentage increasing

## Local Trends

- Types of cases we are seeing
  - Program fraud
  - Bank fraud
  - Mail / wire / other fraud vs. businesses
  - Health care fraud
  - Investment fraud
  - Tax fraud
  - ID theft & access device fraud

## Local Trends

- Major corporate & tax fraud cases taking large amounts of time
- Increasing # of corporate embezzlement and/or corrupt employee cases
  - *U.S. v. Sachdeva*
  - *U.S. v. Kelly*

## Local Trends

- Increase in Aggravated ID theft cases
  - Stolen Identity Refund Fraud (SIRF)
  - Sophisticated groups
    - *U.S. v. Buford*
    - *Jamaican lottery*
  - Credit card rings

## Local Trends

- 18 U.S.C. § 1028A prohibits:
  - the knowing transfer, possession, or use, without lawful authority, of
  - any means of identification of another person
  - during or in relation to any of 100+ felony offenses
- Mandatory 2 years consecutive to any sentence for the underlying offense

## Aggravated ID Theft

- Requires proof that defendant knew the means of identification belonged to an actual person.
  - *Flores-Figueroa v. U.S.*, 556 U.S. 646 (2009)
  
- Jury can infer based on indirect evidence.
  - *U.S. v. Holmes*, 2010 WL 375156 (11th Cir. 2010)

## Local Trends

- Recent sources of stolen identities
  - Corrupt employees
  - Skimming (using electronic device to download credit/debit card information)
  - Data breaches/losses & computer intrusions
  - Compromised point of sale server
  - Phishing & social engineering

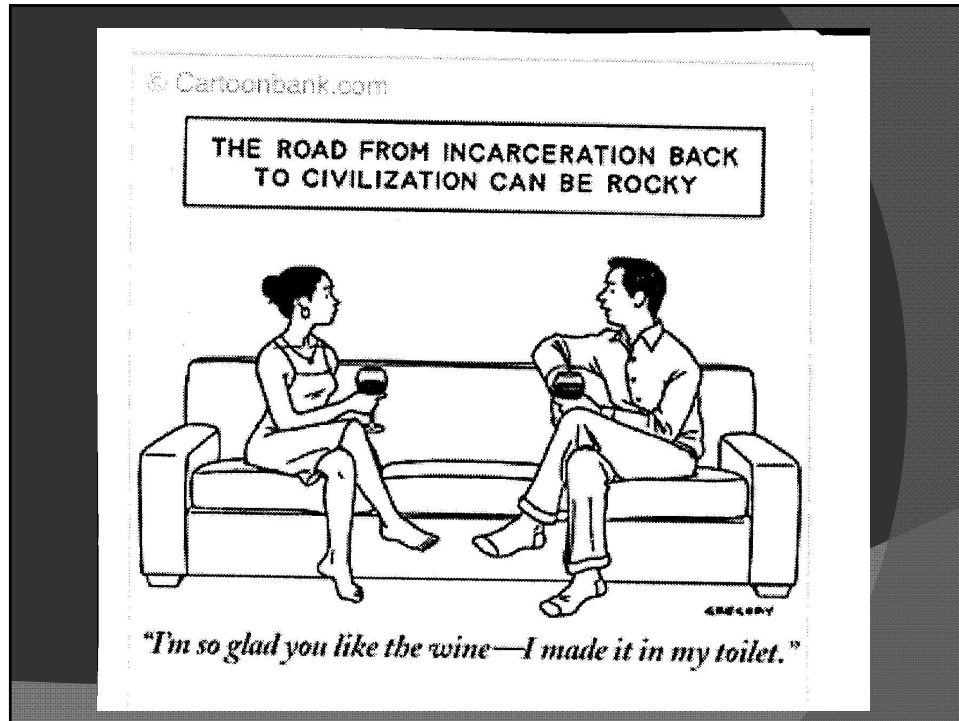


## Local Trends

- Intake guidelines have increased
  - Still taking cases below thresholds depending on totality of the circumstances
  - Most recent DOJ memos ask whether state/local prosecutors could achieve a just sentence
  - Sentencing issues impact intake guidelines

## Sentencing Trends

- In FY2012: 63% of WCC defendants nationwide received any prison time
  - 33% received sentences of 3+ years
  - 14% received sentences of 5+ years
- Over 72% of WCC defendants eligible for non-custodial sentences avoided prison



## Sentencing Trends

- Judges routinely dropping below advisory guidelines
  - National average = 52% of sentences are within the advisory guideline range
  - EDWI= 24.4% (lowest in the country)

## Sentencing Trends

- Other guideline sentencing percentages in MIAF's region:
  - SDIL: 72%
  - CDIL, NDIN, WDMI: 58%
  - EDMI: 53%
  - SDIN, WDWI: 51%
  - NDOH: 45%
  - NDIL: 40%
  - SDOH: 29%

## Local Trends

- Balancing speed of investigation vs. need for full restitution information
- Aggressive use of forfeiture
- Emerging discovery battles
- E-discovery

## Contact Info

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