



## Minneapolis City Attorney's Office

### 2009 KEY ACCOMPLISHMENTS

**City of Minneapolis**



*Our mission is to enhance public safety, serve justice and vigorously represent the interests of the City of Minneapolis and its residents by holding criminal offenders accountable and delivering the highest quality, cost effective legal services.*



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## Introduction

The City Attorney's Office is pleased to present to the Mayor and Council Members this summary of our 2009 accomplishments.

## Criminal Division

The Criminal Division, which prosecutes all adult gross misdemeanor, misdemeanor and petty misdemeanor cases for the City of Minneapolis, handled 30,418 matters in 2009, which represents a small decrease in caseload over 2008. The caseload per attorney still remains quite heavy, however, with an almost 40% increase in case numbers since 2005.

## Community Prosecution Results

### *TOP 200 CHRONIC OFFENDERS*

The City Attorney's Office (CAO) places an intensive prosecution focus on a list of the top 200 chronic livability crime offenders in the City. The Top 200 list is developed in collaboration with the Minneapolis Police Department (MPD) and community members. The CAO provides additional resources for the prosecution of these cases, seeking significant sanctions and obtaining geographic restrictions and other appropriate conditions.

#### *Prosecution Penalties Average 109 Days per Chronic Offender*

- 109 days was the average length of sentence obtained (including both served and stayed time) for the "Top 200," up from 102 days in 2008.
- 52 days on average were served by each chronic offender, up from 47 days in 2008.
- 57 days on average were stayed to create an incentive for the offenders to abide by probation conditions such as: remaining law abiding; geographic restriction; participate in Mental Health Court; work with a St. Stephen's homeless outreach worker; obtain treatment; and no use of drugs and/or alcohol, a decline of 8 days compared to 2008.

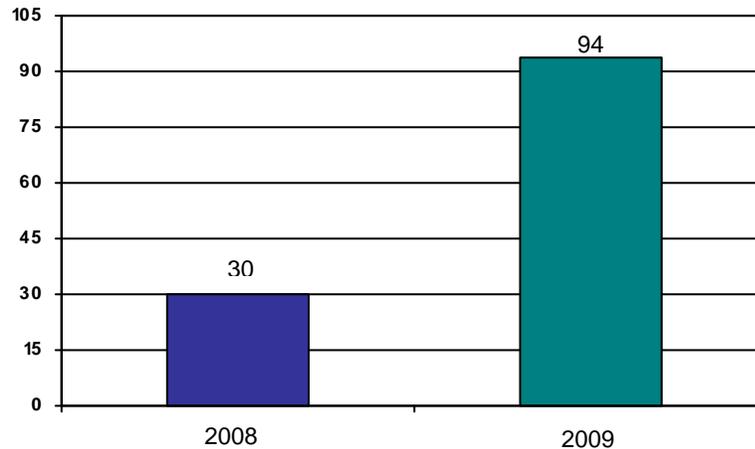
#### *Probation Revocations*

- The CAO obtained revocation of probation for 29 offenders who violated conditions of their probation, compared to 11 in 2008.

#### *Geographic Restrictions*

The CAO seeks geographic restrictions as a probation condition for chronic offenders who have repeated incidents in a particular geographic area and do not have a lawful need to be in that area. The geographic restriction prohibits the offender from being present in that specific area, giving rise to a probation violation if the offender is observed in the restricted area. The restrictions provide relief for the businesses and residents of that area while assisting the offender in remaining law abiding by removing him or her from an environment where they are likely to re-offend.

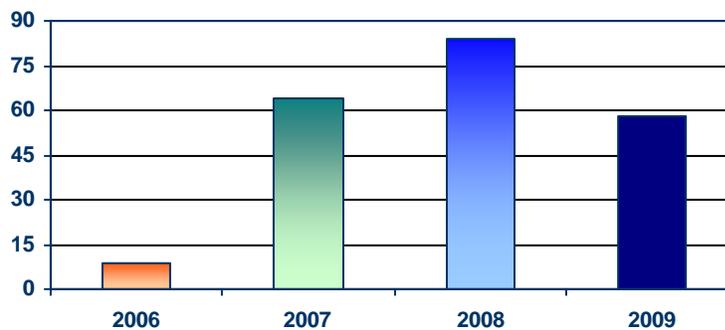
### Number of Geographic Restrictions Obtained for Chronic Offenders



### *TRESPASS ENHANCEMENT LAW*

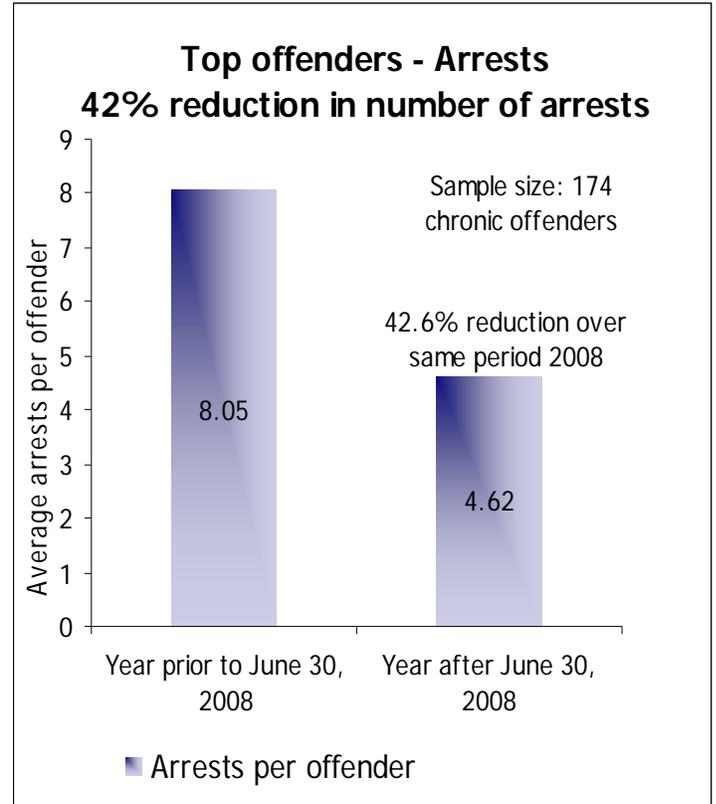
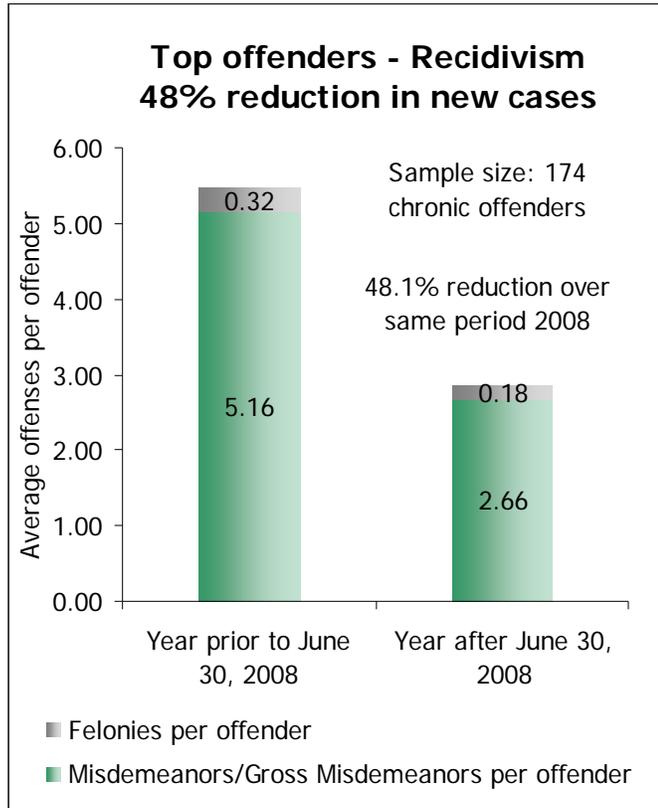
In August 2006, the trespass law was amended to allow prosecutors to charge gross misdemeanor trespassing for repeat offenders. The CAO has made effective use of this statute, making sure that enhanced charges are brought for eligible offenses. The CAO maintains and provides to police a list of the repeat offenders who qualify for gross misdemeanor trespass enhancement.

### Gross Misdemeanor Trespass 2006 – 2009 Cases Charged



**Reductions in Recidivism**

A snapshot of the top offender list shows a 48% reduction in new offenses and a 42% reduction in new arrests per top offender on average in the twelve months after being placed on the list compared to the year before.



**FROM CHRONIC OFFENDER TO NO NEW OFFENSES**

*XKM is a 31 year old female who has been on the City Attorney's Top 200 Chronic Offender list since June of 2007.*

*She had over 20 criminal cases and been listed as a suspect or arrestee in over 30 police matters, primarily related to drug and prostitution offenses. XKM was identified as a candidate for the criminal mental health court in 2007, after being diagnosed with chemical dependency issues as well as depression and other mental health issues.*

*XKM struggled initially and served some substantial jail time when she violated probation. In 2009 XKM decided that she wanted to turn her life around in order to obtain custody of her soon to be born child. Defendant was civilly committed in June 2009 and her child was removed from her care at birth by child protection. In September 2009, XKM voluntarily entered treatment at RS Eden and began to participate in the PRIDE program, a prostitution recovery program. Unlike many prior attempts at treatment, XKM began to do well.*

*XKM is currently in aftercare at RS Eden, has regained custody of her child from child protection, continues to be involved in PRIDE, and has obtained stable housing for her family. XKM has been law abiding and has committed no new offenses in over twelve months.*

## ***DOMESTIC VIOLENCE AND CAO DOMESTIC ASSAULT TEAM***

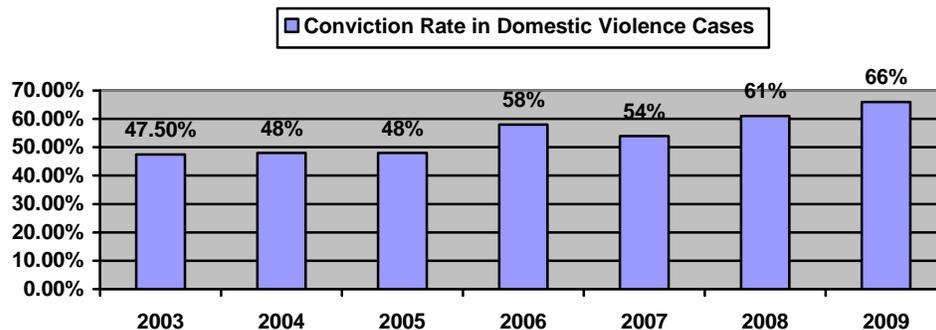
Aggressive prosecution of domestic violence cases remains a top priority for the CAO. The Office has a dedicated domestic violence team and victim witness advocate. The team staffs the Hennepin County Domestic Abuse Service Center on a half-time basis, alternating with the County Attorney's Office. With intense focus on the prosecution of these crimes and the implementation of several initiatives, the CAO has achieved a dramatic increase not only in conviction rates but the number of cases where the conviction is at the level of the crime charged.

The CAO and MPD have been awarded a federal Violence Against Women Act grant for 2010-11. In addition to advocacy and prosecution resources for the MPD Domestic Assault Unit, the grant will fund the development of a repeat offender review team and allow for the drafting of a coordinated community response protocol to combat domestic violence, focusing on best practices for police, prosecution, advocacy and community corrections in responding to domestic violence.

### **2009 Accomplishments**

#### ***Increased Conviction Rate***

- 66% conviction rate, which represents an increase in the conviction rate of 39% since 2003.

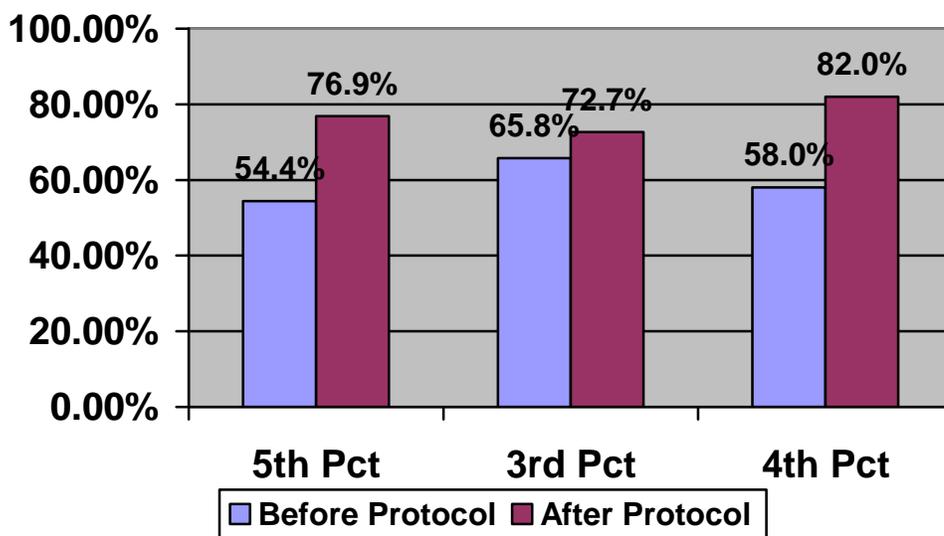


#### ***Misdemeanor Domestic Violence Investigation Protocol Pilot Roll-out***

- ***Implemented.*** In 2009, the CAO, in cooperation with the MPD, expanded city-wide the successful misdemeanor domestic violence investigation protocol. As part of the protocol, patrol officers follow twelve steps to gather on-the-scene evidence when responding to 911 calls alleging domestic violence. The protocol includes steps such as: taking taped, mirandized statements from the alleged offenders on-the-scene using squad video cameras, taking photographs of victim injuries and damaged property, and obtaining written statements from the victims and releases to obtain medical records.
- ***Components of the pilot project roll-out included:***
  - ▶ training provided by the CAO to MPD patrol officers focusing on the dynamics of domestic violence and on the pilot project protocol;
  - ▶ officers were provided with a pocket-sized "Domestic Abuse Incident Response Protocol" card;
  - ▶ medical release and domestic violence supplement forms were downloaded so that officers could access the forms from their squad computers;
  - ▶ CAO provided feedback to individual officers on each case detailing the resolution of the case and commenting on officer compliance;

- ▶ CAO maintained a database to measure compliance with the program and to track conviction rates;
  - ▶ quarterly meetings were held to discuss results and obtain feedback from officers.
- **Results:** The roll-out of the project to the third precinct in January 2009 and the fourth precinct in September 2009 has been extremely successful. In the Third Precinct, the conviction rate increased by 10% from 65.8% to 72.7% and in the Fourth Precinct the conviction rate increased by 42% from 58% to 82%.

**Conviction Rate by Precinct before and after Protocol Implementation**



Conviction rates record the year before the pilot project was implemented in each precinct and the first year of implementation in each precinct

The protocol has now been implemented city-wide with recent training provided in the First and Second precincts.

In addition to the increased conviction rate, the training for patrol officers increased the understanding of responding officers in how best to interact with domestic violence victims.

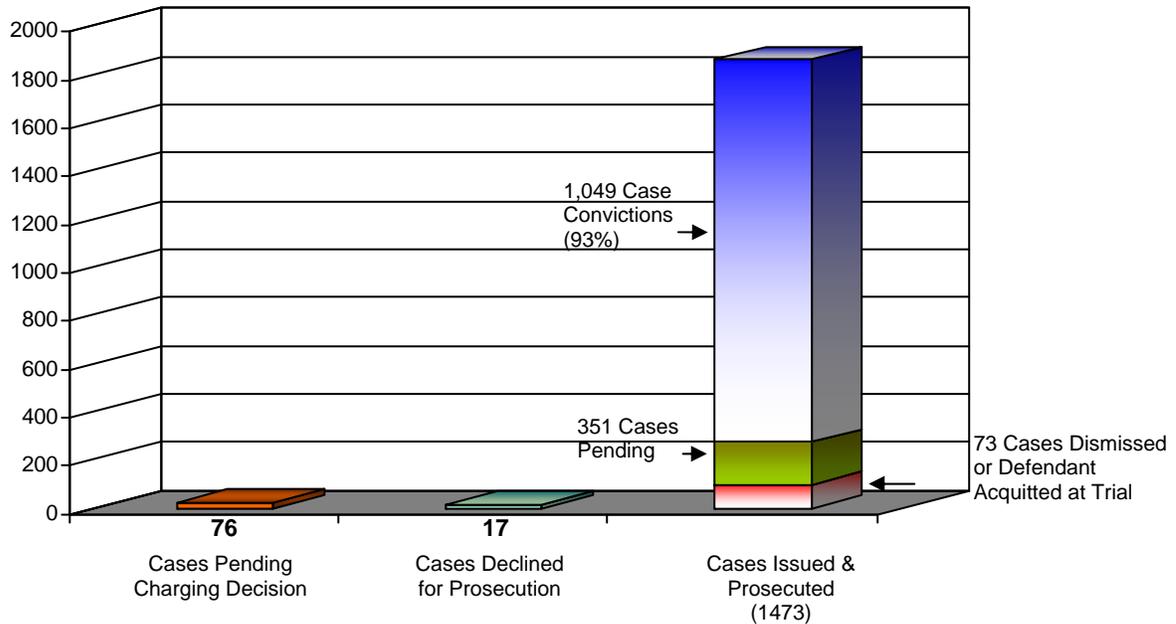
*“As a result of the Domestic Violence Investigation Protocol training, our advocates have seen positive changes in every precinct, particularly in the 3<sup>rd</sup> and 4<sup>th</sup> precincts, relating to police handling of domestic assault cases. Battered women have told our advocates how helpful police officers have been and how respected they have felt in interactions with police.”*

**Carol Arthur**  
**Executive Director**  
**Domestic Abuse Project**

**DWI PROSECUTIONS**

Another priority area for the CAO is aggressive prosecution of driving while under the influence crimes.

**Total DWI / DRE\* Cases for 2009: 1,566**



93% Conviction Rate

\*DRE are driving under the influence of drug cases.  
The CAO prosecuted 28 DRE cases in 2009.

**The Intoxilyzer – Source Code Challenge.** Within the last couple of years, defendants started bringing successful motions to compel the State to produce the computer source code for the Intoxilyzer 5000, the alcohol breath test machine used statewide by law enforcement. The State sued the manufacturer of the Intoxilyzer to obtain access to the source code, which the manufacturer claimed was a trade secret. Because of these challenges, we have asked MPD and other agencies responsible for Minneapolis DWI arrests to discontinue use of the Intoxilyzer. We are now utilizing solely blood and urine tests in our DWI prosecutions. Cases are delayed as a result because of the length of time to process blood and urine tests.

Cases where the Intoxilyzer was used have been consolidated state-wide. A hearing will be held in September 2010, where defense counsel will have the opportunity to present expert testimony on whether the Intoxilyzer is accurate. Until a final ruling is obtained, there will continue to be an added burden on both police and crime labs because of the return to blood and urine tests.

Despite these challenges, we continue to aggressively prosecute these cases and we have been able to maintain a conviction rate of 93%.

**ADULT DWI COURT**

The CAO has been an active participant in the Fourth Judicial District's DWI Court pilot project which began in January 2007. The DWI court provides an alternative approach for repeat DWI offenders who strive to live a



sober, crime-free lifestyle. An eligible defendant must enter a guilty plea and voluntarily choose to participate in the program.

As of December 31, 2009, DWI Court had 76 active participants, and 65 successful graduates. Of the active participants, 39 were Minneapolis cases and 37 of the graduates were Minneapolis cases. Only six participants have reoffended and been charged with a new DWI offense (3.4% recidivism rate). Of these six, four have been convicted of a new DWI offense and of these four, one was a graduate of DWI Court and the other three were still participating in the program when they reoffended. This is well below the statewide average for third-time offenders (11%) and second-time offenders (13%).

The Minneapolis Police Department and Hennepin County Sheriff's Department have made approximately 4,200 unannounced home visits to administer breath and urine tests since the program began in January 2007, to ensure that participants are maintaining sobriety.

DWI Court also utilizes the ignition interlock. All offenders are required to have an interlock device installed on their vehicle for a minimum of one year once their license is reinstated. Through September 30, 2009, thirty-six of our participants are driving with a valid driver's license and an ignition interlock device installed in their vehicle.

*ALC is a 46 year old female who has a long criminal history, including multiple DWI offenses. In April 2007 ALC was convicted of a 2<sup>nd</sup> Degree DWI offense and voluntarily entered the Hennepin County DWI Court Program.*

*ALC had a long history of chemical dependency, abusing both cocaine and alcohol. ALC struggled in DWI court early having trouble maintaining her sobriety and complying with the many rigorous probation conditions. While participating in DWI Court, ALC faced some significant health issues, which caused her to be hospitalized for a long period of time. In October 2008, ALC relapsed again and the court imposed a 90 day jail sentence, with the option to be immediately furloughed to an in patient treatment program. ALC was very upset with the judge, probation and our prosecutor for recommending jail. Eventually, ALC decided that treatment was a better option than sitting in jail and she entered the Women's Recovery Center. ALC was in treatment at WRC until her graduation in February 2009. Despite having been in treatment numerous times before, it seemed that this time the treatment sunk in and ALC had truly embraced her sobriety. So much had changed for ALC that she invited her probation officer and our two DWI Court prosecutors to attend her graduation at the treatment center. No one was more surprised than her fellow treatment participants to see two prosecutors show up in support of a defendant at a treatment graduation.*

*Upon completing treatment, ALC began residing at a sober house. ALC still had some ups and downs but eventually began to submit clean and consistent UAs and alcohol breath tests. In the fall of 2009, ALC enrolled in school, found employment and was able to move into new stable housing. On November 13, 2009, ALC successfully graduated from DWI Court, with 6 months of sobriety, a job, a home and a plan for the future.*

## ***STREET PROSTITUTION***

Our community attorneys work closely with police on efforts to reduce street prostitution in impacted neighborhoods.

We take a progressive approach with prostitution cases, working closely with the prostitution probation officers

and Hennepin County Community Court in seeking treatment and services for prostitutes as probation conditions when appropriate and seeking workhouse time for repeat offenders who are not amenable to treatment.

### **2009 Prosecution Efforts**

- *120 gross misdemeanor and misdemeanor prostitution-related cases were prosecuted by the CAO in 2009.*
- *The cases include prosecution of and specialized treatment and probation conditions for both prostitute and "john" offenders.*
- *The CAO has a conviction rate of 80% for cases resolved in 2009.*
- *14% of the charged cases involved gross misdemeanor patron prostitution cases.*

### **GRAFFITI**

The CAO actively supports efforts to increase the numbers of graffiti cases that can be charged and prosecuted. In 2009, the CAO community attorneys provided roll call and written training for all MPD patrol officers regarding effective collection of evidence for prosecution of graffiti cases.

- *22 new graffiti cases were charged in 2009; one case was deferred for further investigation.*
- *42 cases were resolved in 2009 with convictions, 3 cases were dismissed and 2 were resolved with a continuance for dismissal, for an overall conviction rate of 89%.*

### **MENTAL HEALTH COURT**

The CAO, in collaboration with criminal justice partners, continues to be an active participant in the Hennepin County Criminal Mental Health Court, managed by Judge Hopper. The CAO typically has between 50 to 75 misdemeanor and gross misdemeanor cases being handled in mental health court at any given time. At the end of 2009, the CAO assigned a single prosecutor to handle mental health court cases, to improve coordination and increase the effectiveness of the CAO's role in Mental Health Court and managing outcomes.

### **VETERANS COURT**

The CAO is actively collaborating with Mental Health Court staff and other criminal justice partners as District Court develops a Veteran's Court, specifically designed to work with veterans suffering from PTSD or other mental illnesses. A July 2010 start date is anticipated for Veteran's Court.

### **CRIMINAL DIVISION APPEALS TEAM**

In the last five years, the criminal division has handled nearly 50 appeals to the Minnesota Supreme Court and Court of Appeals with a success rate of nearly 75%. In June 2009, the criminal division established a specialized appeals team in an ongoing effort to improve the quality of its written and oral advocacy in appellate proceedings. The new appeals team is comprised of four prosecutors with significant appellate experience and one paralegal. The prosecutors handle the appeals cases in addition to their regular caseload. Team members were selected from the domestic, trial and special prosecution teams, giving the appeals team a broad array of expertise. Specializing appeals work has provided more significant opportunities for attorneys to better refine their legal writing and oral advocacy skills. In 2009, the criminal division handled 13 cases in the state appellate courts.

## ***COMMUNITY ATTORNEYS – PRECINCT HIGHLIGHTS***

### **First Precinct Highlights**

- ***Downtown Court Watch Wins International Award.*** Downtown Court Watch was recognized by the International Association of Chiefs of Police in 2009. Downtown Court was set out as a best practice through its use of the power of collaboration and partnerships to make a community safer from crime.

Modeled after the Community Law Enforcement Action Network (CLEAN) existing in other Minneapolis neighborhoods, the CAO helped implement a Downtown Court Watch in the fall of 2008. Court Watch completed its first full year in 2009. The Downtown Court Watch includes all neighborhoods within the first precinct. The Court Watch meets the first Friday of the month and has active participation from over 100 community members from the following sectors: residents from all six first precinct neighborhoods; City and County prosecutors; probation; police; homeless outreach workers; shelters; private security; business representatives and owners.

The Court Watch is an important resource for sharing information and tracking problem offenders in the first precinct community. The Court Watch has already proven to be a valuable resource in being able to apprehend and successfully prosecute offenders.

- ***The Downtown 100.*** The Downtown 100 is an innovative prosecution plan that gained significant momentum in 2009. The CAO has partnered with the Downtown SafeZone, the Hennepin County Attorney's Office, Community Corrections, and the Downtown Court Watch to launch this new prosecution initiative in early 2010. The Minneapolis Downtown Improvement District has provided a grant to fund a Downtown 100 prosecutor and a first-ever downtown community probation officer. The goal of the program is to improve public safety and reduce livability crime downtown. The program will use a team-based "holistic" approach to successfully prosecute livability, property, drug and violent crimes and to address underlying causes of criminality such as: mental illness, chemical dependency, homelessness and unemployment.
- ***Collaborative Prosecution.*** Close collaboration with other law enforcement and prosecutorial agencies continued to expand. Examples include work with the Bureau of Alcohol, Tobacco and Firearms and the United States Attorney's Office that resulted in incarceration in federal prison of an offender with a history of violent and gang-related crimes. The collaborations also included work with the Hennepin County Attorney's Office and community members (through community impact statements and in-person Court attendance) that resulted in the incarceration of a prolific drug dealer in State prison. These and other successful collaborations have made way for more cooperative efforts in the future.
- ***First Precinct Electronic Geographic Restriction Database Project.*** The first precinct community paralegal created an electronic database of all Downtown offenders who have a geographic restriction from all or part of the precinct as part of their probation conditions. These are offenders who do not live or work in the first precinct. Nonetheless, they use the first precinct as his/her store-front for committing crime. The new database provides police and Downtown SafeZone participants with immediate access to current information on offenders with geographic restrictions. This new database has proven to be a valuable tool and is accessed on a daily basis by police officers, prosecutors, businesses and residents.

## Second Precinct Highlights

- ***Developed comprehensive search and seizure training.*** In-service training on search and seizure law was developed and provided to MPD and the University of Minnesota Police Department.
- ***Social Host Ordinance.*** The second precinct community attorney researched and drafted the new Social Host Ordinance making it a misdemeanor to host a gathering where you know or have reason to know that underage persons are going to possess or consume alcoholic beverages.
- ***Graffiti Training.*** In 2009, the second precinct community attorney provided roll call trainings covering the enhanced response requested of officers responding to graffiti calls in the second precinct.

## Third Precinct Highlights

- ***Little Earth Community Court and Restorative Justice.*** Little Earth Community Court and Restorative Justice became fully functional in February of 2009. The purpose is two-fold. First, it encourages compliance with probationary conditions. Oftentimes probationary conditions are modified to include more culturally-appropriate programming, or conditions are modified to address issues which arose during probationary supervision. The second purpose of LECC and RJ is to give people who are currently trespassed from Little Earth property an opportunity to be removed from the Little Earth Trespass List. Trespass orders have been lifted for those who have successfully completed a Restorative Justice contract. These contracts are tailored to meet the needs of the restorative justice participants and have included GED class attendance and completion, community service work at Little Earth, completion of chemical dependency evaluations and chemical dependency treatment, parenting group attendance, and obtaining valid driver's licenses, along with any other project, class or group participation that met the needs of the Restorative Justice Applicant.
- ***Traffic Law Enforcement Program.*** In 2009, the Traffic Law Enforcement Program was developed by Lt. Wes Ostlund, Sgt. Bruce Jensen and the Third Precinct Community Attorney. The purpose of the program is to review traffic law reports and to charge these cases by complaint in order to ensure that the offenders were charged with appropriate traffic law offenses. Officers are encouraged to submit cases to the community attorney for review and charging. Even though this pilot program was originally implemented for mid-watch officers, officers from all shifts now submit their cases for review.
- ***Criminal Justice and Community Partners.*** In late 2008, federal funding for Phillips Weed and Seed expired. In order to maintain the community and law enforcement relationship created and fostered by Phillips Weed and Seed, the MPD, the CAO, the MCAO and Hennepin County probation created a partnership with the community by creating the monthly Criminal Justice and Community Partners meeting. Each month, a targeted enforcement area is established by the MPD and the community and the meeting is held at a location inside the targeted area. The targeted enforcement area is located in one of the four greater Phillips neighborhoods, East Phillips, Midtown Phillips, West Phillips or Ventura Village. The purpose of the meeting is to meet with affected community members who live in the targeted enforcement area and gain information about what kind of criminal activity is occurring in their neighborhood. Also, the CAO and HCAO update meeting participants on the progress cases arising out of targeted enforcement arrests. This meeting has attracted community members who have not participated in any previous MPD/community partnership in the past and it appears that crime in the targeted enforcement areas has dropped since the partnership has been created.

## Fourth Precinct Highlights

***Established Business Safety Seminars.*** This was initiated to teach and inform businesses how to address livability crimes. Training was provided for businesses on the crime of trespass and how to issue trespass notices. The City Attorney Office also shared their gross misdemeanor trespass list with the business and informed them how to report an individual who is eligible for enhanced penalties.

These trainings have resulted in a stronger collaboration with the private security companies working for businesses located in the precinct.

- ***MPD and MACC training.*** The Fourth Precinct Community Attorney provided roll call training on search and seizures issues for Fourth Precinct officers and assisted with roll out of the domestic abuse protocol in the Fourth Precinct. Training was provided to new beat officers on livability crimes and how geographic restriction works with chronic offenders and how to arrest someone for contempt of court.

The Fourth Precinct Community Attorney provided training to MACC officers on report writing and evidence gathering. The Fourth Precinct Community and Paralegal also assisted MACC in obtaining warrants to seize dangerous dogs of noncompliant dog owners. The City Council enacted a new ordinance dealing with dangerous dogs and MACC went back three years to make sure all the owners were in compliance.

- ***Fourth Precinct CLEAN program.*** The Fourth Precinct Community Attorney and Paralegal met regularly with MPD officers and Hennepin County Probation to maintain and update the Fourth Precinct's CLEAN sheet of the precinct's top offenders. The paralegal also maintained lists for officers of the precinct's offenders who have warrants and those who are on geographic restrictions.
- ***Launch of the West Broadway COURTWATCH.*** The City Attorney staff worked with the Broadway beat officers, Inspector Martin, Hennepin County and the East Gateway Partnership and other community partners to launch a new Court Watch program to identify chronic offenders along West Broadway. The goal is to hold offenders accountable while also seeking suitable housing and treatment for the offenders.

## Fifth Precinct Highlights

- ***Launch of the "Uptown Offenders."*** Similar to the CLEAN list we are now tracking a select group of repeat offenders that are found in the Uptown and Lyn/Lake areas. The offenders found on the list are given extra attention by the Fifth Precinct community attorney, with the goal of obtaining more geographic restrictions and higher sentences. This list is sent to officers, neighborhoods, and the business associations in the district. The Uptown Offenders' program was highlighted on the front page of the Southwest Journal which increased awareness and participation from the community.
- ***Continuing emphasis on prosecuting Fifth Precinct CLEAN offenders.*** The Fifth Precinct has created a list of the 30 worst livability offenders. The list is updated quarterly based upon community requests, police concerns, and prosecutorial review. Livability crimes include such things as prostitution, public urination, consuming in public, trespass, and code violations related to "problem" properties. These offenders are then assigned to attorneys at the office's Top Offender team. The offenders are given extra attention, which has resulted in increased sentences. Last year CLEAN

offenders were convicted 62 times and averaged 38 days in jail for each livability crime. Due to increased jail times and other measures, recidivism among these offenders decreased 60.07% from 6/30/08 to 6/30/09.

- ***Geographic restriction maps created for four high impact areas.*** In 2009, fifteen offenders have been sentenced to stay out of an entire geographic area, somewhere around 30 square blocks. Offenders caught back in the area are charged with criminal contempt of court. Ten offenders this year have been charged in this way.
- ***Continuing Support for 5<sup>th</sup> Precinct Court Watch Groups.*** There are two groups that provide court watch activities in the fifth precinct:
  - ▶ Stevens Square and Whittier representatives meet every other week for the Law Enforcement Group (LEG) meeting. At those meetings, the cases of chronic livability offenders are discussed. Participants include the safety coordinator/community organizer for the neighborhoods, police, probation, and the City and County Attorney's Offices.
  - ▶ The Lyndale/CARAG/Kingfield/East Harriet Court Watch group was formed in 2007. That group selects cases from crimes committed in their neighborhoods for monitoring. Most of the crimes monitored are felonies, as that was the interest of the group. Participants include neighborhood volunteers, police, and the City and County Attorney's Offices.

## Civil Division

The Civil Division of the CAO performs all legal work for the City, its elected officials, boards and commissions and departments. The Division is divided into the Client Services and Litigation group.

### ***CLIENT SERVICES GROUP***

#### **Significant Accomplishments**

##### ***Minneapolis Downtown Improvement District (DID)***

A special service district, known as the Minneapolis Downtown Improvement district ("DID"), began operation in the summer of 2009. The purpose of the new special service district is to enhance the vitality of downtown and further the City's strategic direction of a "cleaner, greener, safer downtown." The DID encompasses approximately 120 square blocks and is comprised of approximately 650 assessable parcels. Its operations are formulated based on a public-private partnership model of service delivery that has been successful in many other peer cities across the country.

The CAO drafted the City ordinance creating the special service district, a memorandum of understanding (MOU) regarding base level City service provision and the contract with the non-profit management entity. During the 2009 state legislative session, the CAO assisted with a successful effort to amend state law regarding special service districts by testifying in person at several committee hearings and providing written correspondence. Based on the experience of creating the DID, the amendments offer improved clarity and technical streamlining of the law that will assist the DID in the future and facilitate the creation of other new special service districts

throughout the state. The CAO continues to work cooperatively with the DID on an ongoing basis to address legal issues, facilitate desired ordinance amendments, and answer questions pertaining to City Council processes and procedures.

***Ranked Choice Voting*** 2009 saw the successful implementation of ranked choice voting in Minneapolis.

The CAO successfully defended against a legal challenge to the constitutionality of the ordinance, obtaining a favorable decision from the Minnesota Supreme Court on an expedited basis and provided legal advice and guidance to the elections department in implementing the new election system.

***City Charter Amendments*** The CAO has taken a lead role in reviewing and analyzing the “plain language” rewrite of the Minneapolis City Charter prepared over a number of years by the Minneapolis Charter Commission.

## **Regulatory Services**

The CAO assisted the Regulatory Services Department with advice on numerous regulatory matters, prepared ordinance amendments and represented the City in numerous administrative enforcement and litigation matters, including:

- 9 Tenant Remedies Actions (TRA) or Emergency Tenant Remedies Actions (ETRA) in Hennepin County Housing Court;
- 25 appeals from Chapter 249 Orders to Demolish;
- 40 criminal cases for housing violations; and
- 30 cases presented to the Rental Dwelling License Board of Appeals/Hearing Officer and/or City Council for revocation of the owners’ rental licenses.

## **Human Resources/Employee Benefits**

In 2009, the two CAO Human Resources attorneys represented the City in a total of 44 contested case hearings, including arbitrations, Civil Service Commission hearings, and veterans’ preference hearings. This represents a 26% increase in contested case hearings over 2008. The City prevailed in all resolved cases taken through hearing (9 cases). The remainder of the cases have either been settled or are in settlement discussions, are waiting to be heard or waiting for a decision or have been withdrawn by the union.

### **Additional 2009 accomplishments include:**

- Drafted a Transportation Benefit Plan for pre-tax parking, bicycle commuting expenses and van pool commuting expenses.
- Drafted ordinance changes for the City’s Job Bank and Severance for Appointed Employees ordinances so the terminated city employees could take advantage of the COBRA Subsidy created by the federal Economic Stimulus legislation and the City would recognize significant financial savings.
- Drafted retirement incentive ordinances for Police and Fire.

## Public Works

- Assisted the Department of Public Works in resumed negotiations over an Operations and Maintenance Agreement for the Hiawatha LRT Line. A tentative agreement was reached by late 2009.
- Led a team negotiating for expanded easement rights for the proposed Central Corridor LRT line as it proceeds along Washington Avenue through the University of Minnesota.
- Assisted with negotiations with the Minnesota Pollution Control Agency regarding regulatory violations at or relating to the Minneapolis Waterworks in Fridley.
- Assisted the City Team responding to Xcel Energy's proposal to build 2 new substations in south Minneapolis along with a 1 and ½ mile long transmission line.
- Assisted the City Team working to build a solar electric system on the roof of the Minneapolis Convention Center.
- Led a City Team negotiating utility easements for the Minnesota Twins Ballpark.
- Assisted on the condemnation and/or negotiations of easement rights necessary for the Cedar Lake Bike Trail in the Ballpark and Downtown areas.

## CPED

- 2009 saw an influx of millions of federal stimulus dollars to the City that came with complicated new regulatory challenges. The City Attorney's Office provided extensive legal assistance to facilitate the receipt and expenditure of funds under the Housing and Economic Recovery Act of 2008 (HERA) and the American Recovery and Reinvestment Act of 2009 (ARRA), including \$3+M in community development (CDBG-R) funds, \$3+M in Tax Credit Exchange Program (TCAP) funds, \$2.5M in Section 1602 Treasury funds, \$5.5M in homelessness prevention (HPRP) funds and \$14M in Neighborhood Stabilization Program (NSP1) funds. Applications are pending for \$48M in additional Neighborhood Stabilization Program (NSP2) funds and \$38M in energy efficiency (EECBG) funds.
- Legal assistance was provided in structuring regulatory compliant financing mechanisms and program strategies both directly with the above funds and in combination with public and private supplementary funds.
- Artspace Projects, Inc. commenced construction of the Minnesota Shubert Performing Arts and Education Center in December 2009, culminating a 10-year effort to save the historic structure relocated from Block E.
- The City Attorney's Office worked on legislation, council actions and contracts over the years and facilitated the recent closing on the complex real estate and financing transactions, which included New Markets Tax Credits financing, State General Obligation Bond proceeds and CDBG-R funds.
- Legal assistance was provided to strengthen relationships with and acquire 72 foreclosed (REO) properties from institutional lenders like HUD, Fannie Mae, and Wells Fargo in 2009.

## Workers' Compensation

The CAO represents the City on all workers' compensation matters. The CAO workers' compensation attorney has increased the City's recoveries on subrogation claims, collecting more than \$250,000 over the last several years.

## Ethics Officer

In addition to handling incoming ethics complaints and staffing the Ethics Board, the City Ethics Officer:

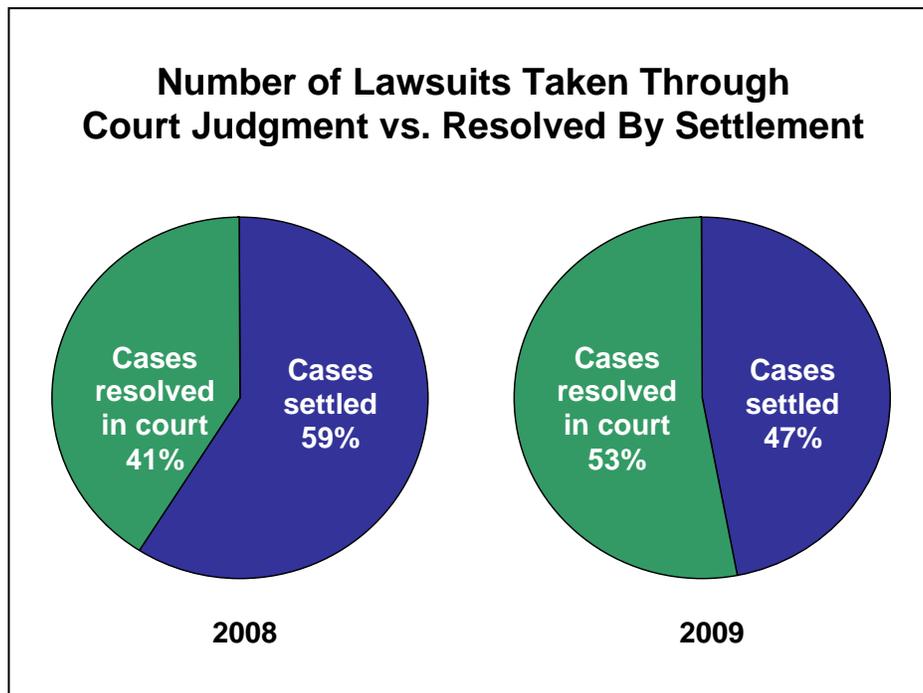
- Conducted 46 Ethics Code training sessions reaching 932 employees, approximately 22% of the City's workforce. Approximately 31% of the ethics education attendees completed survey questions

about the training received. 82.6% of the respondents strongly agreed or agreed that they were engaged in the session and 84% of the respondents rated the Ethics Officer as an excellent or very good instructor.

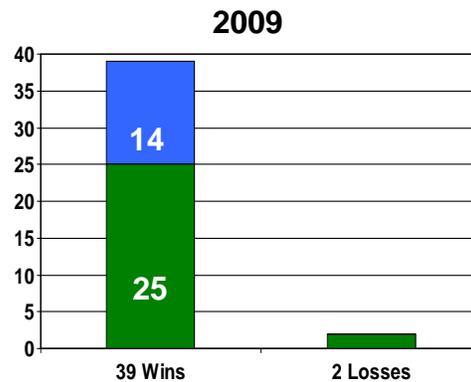
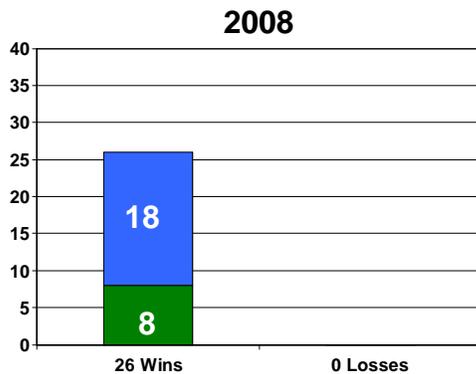
- Created an interactive computerized ethics education course for the city's boards and commissions.
- Collaborated with the Human Resources Training and Development team to create a Train-the-Trainer program for departments to provide their own ethics education.
- Drafted and had approved by City Council policies relating to: Gifts between Employees; Solicitation of Gifts on Behalf of the City; and Solicitation For Charitable Purposes.

### **LITIGATION GROUP**

One of the goals of the Civil Division is to minimize the City's litigation costs and financial liability. One way the Civil Division does this is to take a proactive approach in working with City officials and department staff to identify issues that raise a potential for litigation and advise on steps that can be taken to prevent a lawsuit or claim in the first place. When claims or lawsuits against the City are brought, however, the office continues to pursue a policy of aggressive defense and representation.



## Win – Loss Record (for cases resolved in court)



### Examples of Litigation Results

*Minnesota Voters Alliance, et al. v. City of Minneapolis*

The plaintiffs brought suit against the City claiming that the City’s adoption of ranked choice voting violated the state constitution and was preempted by state law. The Hennepin County District Court granted summary judgment in favor of the City in May 2009. The plaintiffs filed an appeal to the Minnesota Court of Appeals.

To obtain certainty prior to the November 2009 municipal elections, the CAO petitioned the Minnesota Supreme Court for expedited review, bypassing the Minnesota Court of Appeals. The petition was granted and the Minnesota Supreme Court affirmed judgment in the City’s favor comfortably in advance of the November election.

*TJ Waconia – (Mortgage Fraud/ “Flipping” Scam) – Tenant Remedies Action*

Along with co-plaintiffs Family Housing Fund, Greater Metropolitan Housing Corporation (GMHC), several neighborhood associations and named individuals, the City filed a tenant remedies action against the TJ Waconia ownership group (corporate entities, Thomas Balko, and Jon Helgason) regarding a mortgage fraud/“flipping” scam that affected approximately 140 properties in north Minneapolis. The Hennepin County District Court placed these properties into a “receivership” and named a court-appointed property administrator pursuant to the Tenant Remedies Act. The Court subsequently prohibited the sale or transfer of receivership properties without the property administrator’s approval. The case was voluntarily concluded in the Spring of 2009 after the property administrator

ensured that a substantial majority of the receivership properties were brought into compliance with the code prior to sale or other disposition.

The CAO represented the City in all court proceedings, drafted and reviewed all legal documents in conjunction with the lawsuit, and served as a communications conduit with City Inspections staff.

**Rashard Zanders, et al.**  
**v. Lori Swanson and**  
**Susan Segal**

This case arose from a challenge to Minnesota Statutes § 609.505, which makes it a crime to knowingly make a false report of police misconduct. The Plaintiffs claimed that potential prosecutions under the statute deprive them of their First Amendment, due process and equal protection rights in violation of 42 U.S.C. § 1983.

The federal district court granted defendants' motion to dismiss the lawsuit, ruling that the Plaintiffs lacked standing and that the Court would abstain from the pending criminal action. The Plaintiffs appealed the decision.

The dismissal was affirmed by the Eighth Circuit Court of Appeals in a published decision issued in July 2009.

**Citizens for**  
**Independent Parks, a**  
**Minnesota Nonprofit**  
**Corporation, et al. v.**  
**City of Minneapolis, et**  
**al.**

Petitioners sought to create the Minneapolis Park and Recreation Board as a "separate and independent governmental unit" by means of a proposed amendment to the Minneapolis City Charter. Petitioners sought a writ from the district court to direct the City Council to put the charter amendment question on the ballot. The district court dismissed the writ finding that the proposed amendment was manifestly unconstitutional, preempted by state law and against public policy.

**Spann v. City of**  
**Minneapolis, et al.**

The Plaintiff alleged he was falsely arrested and that the officers used excessive force. The officers, suspecting drug activity in a parking lot which is posted as prohibiting trespassing, pulled into the parking lot. The Plaintiff fled on foot and was observed throwing a baggie onto the roof of a pawn shop. The officers used force to handcuff the plaintiff when he refused to cooperate.

The case was tried in May 2009 before a jury in United States District Court. The jury returned a verdict in favor of the defendant officers, finding that the arrest was legal, the force used was reasonable and necessary, and that the Plaintiff had not been assaulted.

**Kenneth Bady v.**  
**Murphy-Kjos, et al.**

This case involved a federal court suit alleging excessive force by five Minneapolis police officers. The suit was taken through trial and the jury issued a verdict in favor of the officers.

The incident leading to the lawsuit occurred after Plaintiff's friends called 911 for medical assistance because Plaintiff was having some trouble breathing. Both a Minneapolis Fire Department crew and an ambulance responded to the scene. While the firefighters attempted to assess Plaintiff's condition, he became combative and punched a friend in the face. Both the firefighters and an ambulance crew made emergency "help" calls to request police assistance at the scene. Police officers responded to the scene and

were told that Plaintiff had assaulted a firefighter. When the officers approached Mr. Bady to handcuff him in order to secure the scene, Mr. Bady began resisting the officers. He struggled and fought being handcuffed, then tried to punch one officer and eventually grabbed at another officer's gun. The officers tased Plaintiff to stop him from fighting. The jury found in favor of the defendant officers that the use of force was reasonable.

***Youa Vang Lee,  
trustee for the Heirs  
and next-of-kin of  
Fong Lee, Decedent, v.  
City of Minneapolis, et  
al.***

This case involved a claim of excessive force and wrongful death arising from the fatal shooting of Fong Lee. The officer testified that Mr. Lee had a gun in his hand and had begun to turn toward the officer or otherwise raised the gun in a manner that was threatening to the officer's safety. Plaintiff alleged that the officer initially ran into Plaintiff's bicycle, knocking him off the bike before Mr. Lee ran from the police. Plaintiff also alleged that Mr. Lee did not have a gun in his possession. Plaintiff relied on testimony from apparent eyewitnesses for these allegations. Plaintiff also claimed that police planted a gun at the scene of the shooting based on old police records that erroneously seemed to indicate that the gun found at the scene had been previously recovered by the Minneapolis Police Department. The case attracted significant negative pretrial publicity. During the trial before a jury in the United States District Court, the City Attorney's Office was able to impeach the eyewitness testimony with video evidence that directly contradicted their allegations and to explain the alleged discrepancies between the officers' narration of the events and the photographic and documentary evidence. The jury returned a verdict in favor of the police officer.