

Testimony

of

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Special Narcotics Prosecutor

Before

The New York City Council
Committees on Public Safety & Finance

Fiscal Year 2014
Executive Budget Hearings

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OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

FY2014

Overview

I would like to thank the City Council for its support of the Office of the Special Narcotics Prosecutor and all of the District Attorneys' Offices. As always, I appreciate the leadership and dedication of the Public Safety and Finance Committees and Chairmen Vallone and Recchia in addressing the criminal justice issues that confront all of our offices.

We are especially appreciative of the new needs funding that has been included in the Executive Budget by the Mayor and the Office of Management and Budget (OMB) to support our new Digital Forensics Unit. We are projecting total funding from all sources in FY2014 still 3.5% lower than in FY2010.

Digital Forensics Unit

As the City has recognized by proposing to set aside \$470,000 for our new Digital Forensics Unit, in order to protect public safety we must keep pace with technological changes. The targets of our investigations are intent on evading us in the ever more complex digital communications landscape. We are thankful for the city's support, which will enable us to launch the unit and address urgent needs. The unit will be staffed by Assistant District Attorneys, analysts and information technology specialists – detectives of the 21st century – who will help us keep pace with tech savvy criminal groups. We anticipate a burgeoning workload for this unit. Right now, our focus is on just catching up. One day, I hope to have the resources to move one step ahead.

Communications Today

The Internet, smartphones and tablets have revolutionized how we communicate and do business. In this digital age, the methods criminals use to exchange information are likewise evolving at an incredibly rapid rate. It is well established that criminal gangs have seized on

SNP Total Funding Reductions	
<i>Fiscal 2010 Modified - Fiscal 2014 Projected</i>	
	<u>Amount</u>
FY 2010 Modified Budget	\$ 18,507,116
A. Funding Changes:	\$ (666,152)
City Budget Reductions	(685,990)
State Funding Reductions	(143,895)
Federal Funding Changes	163,733
FY 2013 Current Modified Budget	\$ 17,840,964
Projected Funding Changes in FY 14	\$ 23,932
Funding for Digital Forensics Unit	470,000
Projected FY 14 Funding Changes	(446,068)
FY 2014 Projected Budget	17,864,896
Net Budget/Funding Reduction - FY 14 vs FY 10	\$ (642,220)
% Reduction	-3.5%

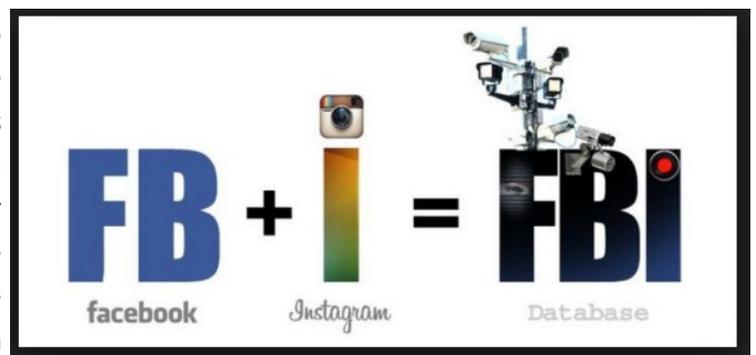
social media, such as Facebook, YouTube, Twitter and Instagram, as a primary means of coordinating activity. While these Internet platforms give criminals greater ability to respond to the police or threats from rivals, new technologies are also a boon to law enforcement. Social media and new Internet applications can be a great source of valuable and reliable evidence, but only if we know how to access, analyze, and present the information as evidence admissible in court proceedings.

Over the past year, my office's Narcotics Gang Unit conducted important investigations into two rival gangs in the Bronx that were involved in a violent and prolonged turf battle. These cases demonstrated how gang leaders made use of technology to recruit new members, share information about gang activities, such as the locations of drugs and weapons, and even to track victims. The Gang Unit used its expertise in mining social media for evidence to build a sweeping indictment against the leaders of these two gangs. By analyzing texts, emails and social media messages on Facebook and Instagram, in combination with traditional investigative techniques, we were able to identify and prosecute a murder conspiracy and remove weapons and narcotics from the streets.

Analyzing the evidence that we collected, we were able to hone in on the major players – the leaders of the criminal activities – and disregard the less significant hangers on, who affiliated with the gangs for social purposes and were not involved in shootings, assaults and drug dealing.

Future Challenges

Criminals are always looking for new ways to thwart law enforcement and to communicate covertly. Already, social media sites such as Facebook and Instagram have gained a reputation for attracting law enforcement scrutiny. As we have become experts in these forms of media, some criminal groups have decided they are passé, and are moving on to other applications that offer free mobile messaging services. In one violent gang investigation, a member signaled his wariness of Facebook and Instagram when he posted a Facebook message stating, "FB + I = FBI."



Facebook message posted by a subject of a narcotics gang investigation.

We now face the challenge of identifying and mastering technologies that criminal groups are turning to because they believe they can more easily conceal their activity using new and evolving communications products. The use of new applications offering free Internet texting is

exploding. Facebook Messenger is available to one billion Facebook users, but it appears other new mobile messaging apps are gaining in popularity. WhatsApp and WeChat launched over the past two years and now serve approximately 200 million and 300 million users respectively. Video chats are also becoming an increasingly mainstream method of communicating. With some of the companies that offer these services located outside of the U.S., obtaining evidence for investigations is no longer as straight forward as issuing a subpoena to Verizon or AT&T for phone and text records.

App Name	Launch Date	Number of Users
Apple Messenger	Oct 2011	Available on all iPhones, iPads and iPods.
Facebook Messenger	Dec 2011	Available to all Facebook Users:1.1 Billion
We Chat	Apr 2012	300 Million
WhatsApp	Sep 2011	200 Million
KIK	Jan 2011	50 Million
MessageMe	Mar 2013	1 million

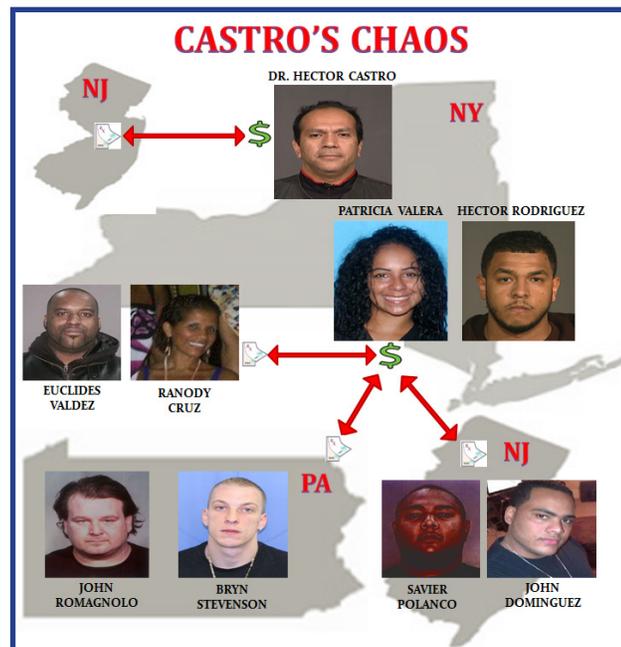
Further complicating matters, apps offering enhanced privacy features are highly attractive to criminals, such as password-protected encryption services and self-destruct mechanisms that erase messages seconds after they are read. Locking options for phones will soon include fingerprints, retinal scans and voice recognition. These privacy apps and security features have the potential of making it more difficult for law enforcement to capture evidence. However, the importance of these communications in building investigations cannot be overstated. That is why it is so important that we invest the time and resources necessary to stay at the cutting edge. Trained personnel armed with the necessary equipment can capture this evidence, analyze it and determine its evidentiary value.

These are the challenges that we face – criminal organizations always on the lookout for new ways to conceal their activity – and a technology industry dedicated to coming out with the newest and flashiest, and sometimes the most covert, communications applications.

Prescription Drug Epidemic

Our ability to intercept digital communications played a major role in a prescription drug investigation, which culminated in the arrest in March of a Gramercy Park

Manhattan doctor and office manager illegally sold prescriptions for \$10 million in pills to drug trafficking rings in three states.



doctor, Hector Castro, and his office manager on charges involving the widespread trafficking in oxycodone, a highly addictive narcotic painkiller, in New Jersey and Pennsylvania. The investigation resulted in 49 arrests and the seizure of 30 guns. Dr. Castro and his office manager ran independent rings out of the same office, with Dr. Castro distributing drugs to a New Jersey organization, and his office manager catering to a trafficking organization in the Poconos. The doctor and his manager had something else in common – both made extensive use of texts to communicate with their buyers.

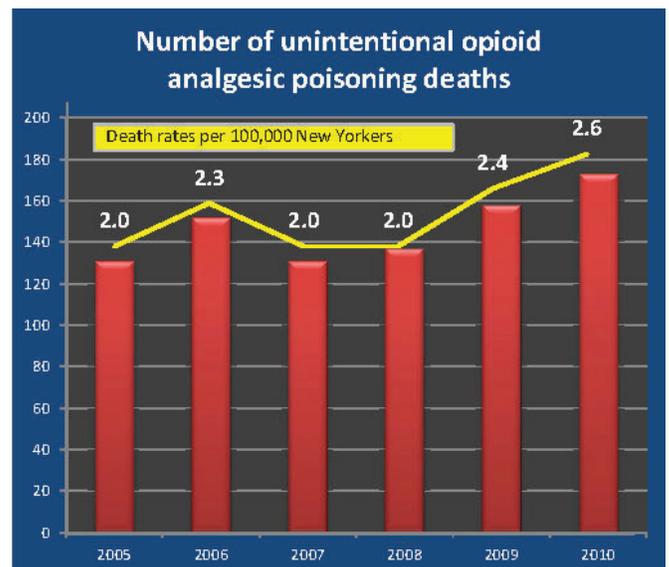
Their text messages provided critical evidence in our case, along with undercover purchases of prescriptions by a Special Narcotics investigator. Our investigation uncovered schemes that distributed more than half a million pills worth \$10 million on the black market with the coordinated efforts of our office, the NYPD, the DEA, the Pennsylvania Attorney General's Office and a host of other federal, state and local agencies.

Now in its second year, my office's Prescription Drug Investigation Unit seeks to cut off the illicit supply of painkillers and other highly addictive prescription drugs at the highest level possible. Since the unit's creation, we have indicted five physicians on charges ranging from Criminal Sale of a Prescription for a Controlled Substance to Manslaughter. My office has also prosecuted numerous other medical professionals, including physicians' assistants, office managers and pharmacists.

As we persevere in our efforts to confront the prescription drug epidemic, the costs keep climbing. Due to the complex and time consuming nature of these cases, and skyrocketing referrals to our Prescription Drug Investigation Unit, we are devoting more and more resources to these cases on a daily basis. While we truly appreciate the funding we have received to date from OMB, we anticipate a shortfall of almost a quarter of a million dollars in FY 2014. We ask the City Council to cover these costs so that we can continue to meet the challenge of investigating and prosecuting these difficult cases.

Death Rates Soar

While New York City is in the forefront of efforts to curb the availability of narcotic pain drugs and to increase public awareness, statistics show the problem is still spiraling out of control. Just last week, the New York City Department of Health and Mental



Source: NYC Office of the Chief Medical Examiner & New York City Department of Health and Mental Hygiene 2005-2010

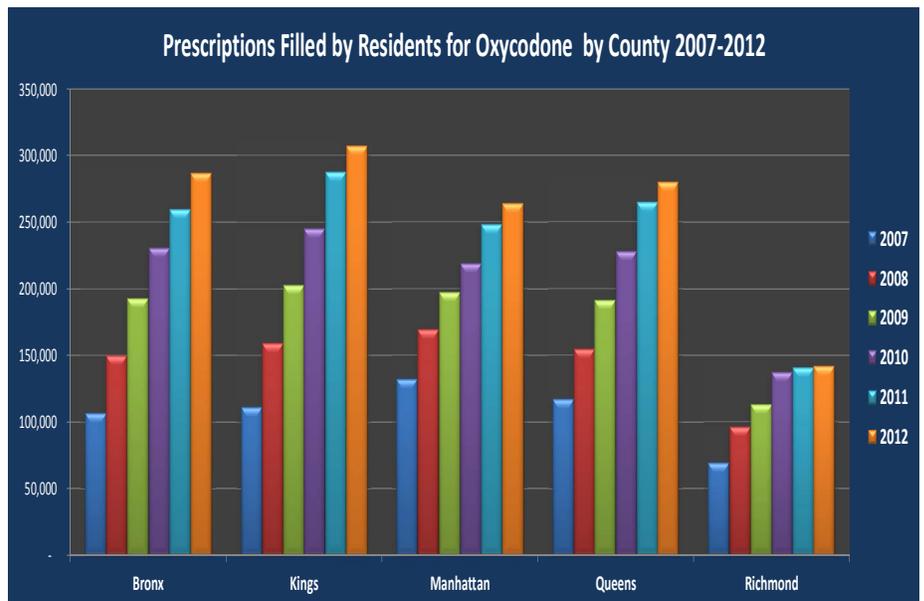
Hygiene released data showing that between 2005 and 2011, the citywide rate of overdose deaths from prescription opioid painkillers increased by 65%. While rates increased in all five boroughs, Staten Island suffered the most dramatic spike. Between 2005 and 2011, rates of opioid painkiller deaths in Staten Island increased by 261%. The 2011 rate in Staten Island was four times as high as that of Manhattan, Queens and Brooklyn.

Citywide, 220 people died of fatal opioid painkiller overdoses in 2011. On average, more than one overdose death involving an opioid painkiller occurred every other day in New York City in 2011. The largest increase of opioid painkiller use between 2005 and 2011 was among New Yorkers aged 24 to 34 – a 227% increase, according to the New York City Health Department. However, the residents aged 45 to 54 had the highest fatal overdose rate.

The number of prescriptions for narcotic painkillers filled in New York City has increased at an alarming rate over the past several years. My office analyzed New York State Health Department data on prescriptions for oxycodone (one of the most commonly abused opioid painkillers) between 2007 and 2012 and found that the number of oxycodone prescriptions filled in New York City increased by 138%. In 2012, there were 1,279,655 prescriptions for oxycodone filled citywide – a 7% increase over 2011.

A Coordinated Approach

Beyond building cases, my office participates in the Mayor's Task Force on Prescription Painkiller Abuse, which is developing and implementing coordinated strategies for responding to the growth of opioid painkiller misuse and diversion. In January, Mayor Michael Bloomberg and City Health Commissioner Dr. Thomas Farley announced new voluntary emergency room guidelines for the prescription of opioid painkillers at New York City's 11 public hospitals. The Mayor's Task Force also created in NYC RxStat, which combines relevant public health and public safety data.



Overall, the number of oxycodone prescriptions filled in New York City has increased by 138% from 2007 to 2012.

Funding

Overall Funding Outlook

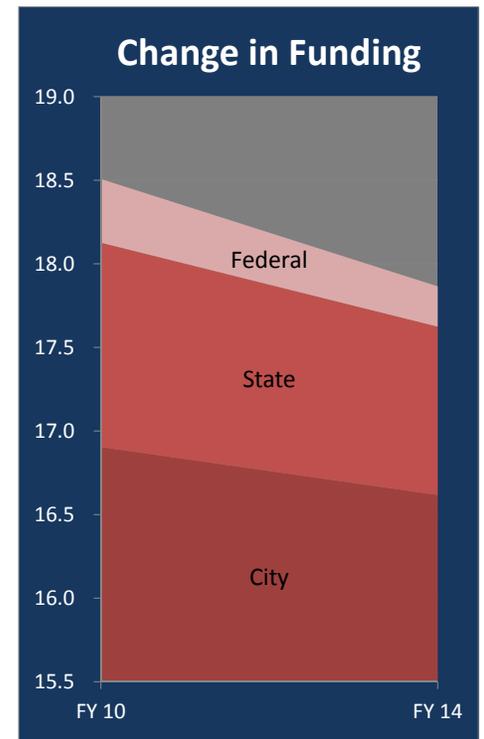
In fiscal year 2014, our projected total funding from all sources, City, State and Federal, will be 3.5% or \$642,220 less than what we received in fiscal 2010. We are facing this shortfall despite the new-needs funding we received from the City for our Digital Forensics Unit. For a small agency, a 3.5% funding loss, coupled with already increased payroll cost associated with our recently established Prescription Drug Investigations Unit and new hires necessary to staff our new Digital Forensics Unit, makes balancing our budget a real challenge each year. In the 40 years since this office was established, we might be faced with our first budget deficit in fiscal 2014.

Loss in City Funding

In fiscal 2014, with the new needs funding provided by OMB, our projected City funds is \$287,113 or 1.7% less than our actual City funding for fiscal 2010.

Since fiscal 2010, we have received three City budget cuts totaling \$1,349,600 or 8%. During the same time period, we have also lost our long-term cash grant for \$850,000 from the City Council, as well as DA revenue funding ranging from \$99,734 in fiscal 2010 to \$433,970 in fiscal 2011. Though the City restored a portion of our Council grant in 2011, we have still faced a \$246,338 shortfall ever since. Luckily, the City recognized the seriousness of the prescription drug problem and provided us with the new needs funding. However, the new needs funding we received for our Prescription Drug Investigations Unit only covers approximately 60% of our cost. We need support from the City Council to continue our initiatives in this important area.

We ask that the City Council renew the cash grant it provided us in fiscal year 2011 and prior, but for the shortfall amount of \$246,338 only, so we have additional resources to pay for costs associated with the investigation and prosecution of prescription drug cases.



Change in funding in millions.

State Funding Reductions

In fiscal 2014, we are hopeful that our SNP Aid to Prosecution and Drug Treatment Diversion Program (DTDP) will remain at the same level as proposed by the Governor's budget. However, we must assume that Crimes Against Revenue Program funding will not be renewed next year.

Over the past 10 years, State funding for our longest running grant, the SNP Aid to Prosecution program, has been cut six times ranging from a 2% cut (23,000) to a cut as high as 15% (\$214,000). Our total loss in this State grant alone amounted to a stunning \$600,000 or 42%. In fact, State funding is now so low that in fiscal 2014 the Governor proposed to keep our funding at the same level. However, we are quite concerned that this might only be a temporary reprieve and the history of grant reductions will resume in fiscal 2015.

Federal Funds

Though we have been fortunate to receive some one-time case-related funding from the Federal government, this grant has decreased by 68% to merely \$100,000. In addition, our long-term and recurring Federal grant fund has plummeted by a staggering 81% or \$557,468, from \$687,468 in 2002 to \$130,000 in FY 2013. The only Federal funding remaining is the Byrne Justice Assistance Grant, which continues to diminish each year.