CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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April 25, 2012
Start: 10:25 a.m.
Recess: 12:06 p.m.

HELD AT: 250 Broadway
Committee Room, 14th Floor

B E F O R E:
PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:
Erik Martin Dilan
Helen D. Foster
Daniel J. Halloran
David Greenfield
Vincent J. Gentile
James F. Gennaro
Daniel R. Garodnick
Eric Ulrich

A P P E A R A N C E S (CONTINUED)

Michael Flowers
Analytics Director
Mayor's Office of Policy and Strategic Planning

James Capaldo
Inspector
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Bridget Brennan
Special Narcotics Prosecutor
Special Narcotics Prosecutor's Office

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Vesselin Mitev
John Ray & Associates

2 CHAIRPERSON VALLONE: Okay. Good
3 morning, again. Welcome to this morning's Public
4 Safety Committee hearing. I was told that this
5 would be the first streamed online hearing and now
6 I'm told that it's not, and I'm not given any
7 reason. So city bureaucracy, I guess, I have no
8 idea why we're not the first live hearing, but we
9 are still being recorded with new high-tech, high-
10 definition cameras and we will be online at some
11 point, but we're not going live. So if you start
12 cursing, we can edit it, don't worry about it,
13 okay?
14 So as you know, today we're having
15 a hearing about law enforcement's efforts to stop
16 the abuse of prescription drugs in our city and
17 we'll also consider a--we'll also discuss a
18 Preconsidered Resolution that supports state
19 legislation on this issue.
20 According to the U.S. Center for
21 Disease Control and Prevention, prescription drug
22 abuse has reached epidemic proportions. In 2009,
23 for the first time ever, there were more deaths
24 from drug abuse than there were from automobile
25 accidents nationwide. Our city is not immune to

2 this problem. In fact, painkillers have become
3 the drug of choice for many New Yorkers. Between
4 2004 and 2009, while heroin poisoning deaths
5 decreased by 24%, the death rate from painkiller
6 overdose has increased by 20%. And emergency room
7 visits for painkiller misuse doubled.
8 It's likely we'll see these rates
9 continue to increase and statistics show that
10 nearly 2 million prescriptions for oxycodone and
11 hydrocodone, only two types of painkillers, were
12 filled in 2011. That's approximately one for
13 every four people in this city.
14 While these numbers are troublesome
15 by themselves, they represent only part of a
16 problem. Painkillers are controlled substances
17 because their ingredients are included on the
18 state and federal controlled substance list.
19 However, there is a trend to misuse non-controlled
20 prescription drugs because penalties tend to be
21 less severe. Non-controlled prescription drugs
22 and medications used to treat chronic conditions,
23 such as HIV/AIDS, asthma, diabetes, high blood
24 pressure, erectile dysfunction, and bacterial
25 infections. These drugs are increasingly being

2 resold and used in a manner other than prescribed-
3 -a practice that is known as diversion.
4 Diversion takes place in a number
5 of ways, but usually by patients either doctor
6 shopping or selling the drugs on the street or by
7 criminals forging and stealing prescriptions.
8 Like painkiller abuse, diversion of non-controlled
9 prescription drugs carries with it many health
10 implications, such as diverted drugs being resold
11 after being stored improperly or tampered with or
12 not being taken properly in a properly medically
13 prescribed manner.
14 There's also a lot of criminal
15 consequences as well. According to the data from
16 the DEA, arrests for diverting controlled
17 prescription drugs rose dramatically since 2009 in
18 New York state. In 2009, there were 59
19 individuals for diverting controlled drugs; in
20 2011, 217. Just this month, four pharmacists were
21 arrested for being ring leaders of a massive
22 HIV/AIDS black market prescription drug scam.
23 This scam, which ripped off nearly 150 million
24 from Medicaid, was run from Brooklyn and Suffolk
25 County pharmacists that were reselling illegally

2 obtained drugs. In March, 31 individuals were
3 indicted for being involved in a massive
4 prescription drug diversion scheme that pumped 1
5 million a year into the--of prescription drugs
6 into New York City.
7 There's also been an increasing in
8 robberies and burglaries in pharmacies. In New
9 York City, pharmacy burglaries have increased over
10 100%; statewide even more. There were only two of
11 these in '06 and 28 in 2010.
12 Unfortunately, we have a very real
13 reminder of this issue due to events that unfolded
14 just last week at a pharmacy in Harlem when two
15 men attempted to rob prescription painkillers--an
16 act that resulted in one's death and the arrest of
17 another just yesterday in Rhode Island. We also
18 can't forget the death of an ATF officer in Long
19 Island who attempted to stop a pharmacy robbery,
20 again, for prescription painkillers. And the
21 slaughter of four people in Suffolk.
22 I note we have the attorney who
23 represents that family here and who will testify
24 later. I know that Bridget Brennan will also be
25 testifying about the fact that she's prosecuting a

2 doctor who gave the killer those drugs.

3 We've heard that pharmacies--or we
4 haven't heard, it's actually happening--pharmacies
5 are putting signs up saying No OxyContin. Those
6 No OxyContin signs in pharmacy windows are today's
7 equivalent of the No Radio signs of 20 years ago
8 in people's cars, and like those signs 20 years,
9 No Radio, these are literal reminders and pleas
10 for help that something has to be done. When
11 people were putting No Radio signs in their cars,
12 we acted back then. The Safe Street Safe City
13 program put in by my father and David Dinkins that
14 increased the police force from 31,000 to 41,000.
15 So many prosecutorial changes were made and
16 resources were given and we took control of that
17 problem and you don't see those signs anymore.
18 Now we're seeing No OxyContin signs and that's
19 another plea, something has to be done, and that's
20 why we're here today.

21 Our first two panels are full of
22 experts on these topics and so I want to get right
23 to them. Our first panel is Michael Flowers, who
24 is with the Mayor's Office of Criminal Justice and
25 also Inspector James Capaldo from the NYPD. And

2 following that, we'll have Special Narcotics
3 Prosecutor Brennan, representatives from the
4 Attorney General's Office, representatives from
5 district attorney's offices. And we are going to
6 get to the bottom of the problem today, we're
7 going to figure out what needs to be done and both
8 by law enforcement and by legislatures at the city
9 level, at the state level, and at the federal
10 level to give you guys the resources you need to
11 get a handle on this problem. So thank you all
12 for everything you do every day when it comes to
13 this problem. And I guess we'll turn the floor
14 over now to Michael Flowers.
15 MICHAEL FLOWERS: Thank you, sir.
16 Good morning, Chairman Vallone, my name is Michael
17 Flowers and I am the Analytics Director for the
18 Mayor's Office of Policy and Strategic Planning
19 and the Director of the Mayor's Financial Crimes
20 Task Force. I am also a member of Mayor
21 Bloomberg's Task Force on Prescription Painkiller
22 Abuse. I'm glad to be joined here today by
23 Inspector James Capaldo from the New York City
24 Police Department. Thank you for the opportunity
25 to speak today.

2 I want to begin my testimony by
3 thanking the Council and specifically this
4 Committee for taking the time to address this
5 incredibly important topic. Prescription drug
6 abuse is a major epidemic that has begun to hit
7 our city.
8 Last fall, Mayor Bloomberg formed a
9 task force on Prescription Painkiller Abuse in
10 response to extremely alarming statistics about
11 our city. Between 2005 and 2009, the rate of
12 prescription opioid-involved deaths increased by
13 20% to 2.4 per 100,000 New York City residents.
14 Between 2004 and 2009, the rate of prescription
15 opioid-related emergency room visits doubled,
16 increasing to 110 visits per 100,000 New York City
17 residents.
18 The task force, chaired by Deputy
19 Mayor Linda Gibbs and Chief Policy Advisor John
20 Feinblatt, includes agency heads of many of the
21 city's health and human services agencies, the
22 Special Narcotics Prosecutor, and the Staten
23 Island District Attorney. It also has the
24 director of the New York/New Jersey High Intensity
25 Drug Trafficking Area Program. The task force has

2 focused on developing strategies to reduce opioid
3 abuse by improving the education of physicians who
4 prescribe controlled substances and the patients
5 who take them, analyzing data on controlled
6 substances to target our health and law
7 enforcement resources more effectively, and
8 effectively arresting and prosecuting people who
9 are abusing the system.
10 At the very first meeting of the
11 task force, the membership agreed that the first
12 crucial step to fighting the prescription drug
13 epidemic lies in improving the state's system for
14 collecting and tracking data on opioid prescribing
15 and dispensation. After all, if we do not know
16 who is getting these prescriptions, who's
17 prescribing them, and who's dispensing them, we
18 are clearly hamstrung in our efforts.
19 As it now stands, New York's
20 Prescription Drug Monitoring Program, or PDMP, is
21 largely inadequate. Doctors have minimal
22 interaction with the system, and pharmacies can
23 wait up to six weeks in some cases before
24 reporting prescriptions. The system is also
25 cumbersome and hard to use. These inadequacies

2 seriously impede the ability of our public health
3 officials to identify strategies to prevent
4 addiction and overdoses, of Medicaid oversight
5 agencies to identify fraud, and of law enforcement
6 agencies to find those who fuel the epidemic with
7 their criminal conduct.
8 Because improving the state's PDMP
9 requires action at the state level, the task force
10 sent a letter to the Assembly Speaker, the Senate
11 President, and the chairs of the Health Committee
12 in both houses early this month. The letter sets
13 out recommendations the task force members believe
14 should inform any improvements to the state's
15 system. They include making sure that doctors and
16 pharmacists consistently interact with the system,
17 checking and reporting when drugs are prescribed
18 or dispensed. Of particular importance to the
19 City, the task force recommended that local health
20 and Medicaid agencies gain access to database
21 information for oversight, compliance, and program
22 integrity purposes. We believe strongly that
23 adopting these recommendations as part of any
24 improvement to the state's PDMP will save lives.
25 Beyond improving the PDMP, the task

2 force has focused on ideas to bolster prevention
3 and education. Because this epidemic involves
4 legal drugs, educating doctors, pharmacists, and
5 the public about the risk of opioid abuse is
6 imperative. The city's Department Of Health and
7 Mental Hygiene, led by Commissioner Dr. Thomas
8 Farley, has been at the forefront of these
9 efforts. Indeed, DOHMH has issued guidelines to
10 doctors about prescription opioids that will help
11 doctors identify when it is appropriate to
12 actually prescribe these powerful drugs.
13 My particular focus on the task
14 force relates to using data analysis as a weapon
15 in this fight. What we know is that when we have
16 good data, the sky is the limit in terms of what
17 we can do with it. In the case of prescription
18 drugs, data might be used to target prevention
19 initiatives or identify suspicious patterns at
20 pharmacies or an individual pharmacy. That makes
21 improvements to the state's PDMP all the more
22 critical, whether in terms of increased reporting
23 into the system or giving access to public health
24 agencies and law enforcement agencies so that they
25 can use data to fight the epidemic. And that's

2 the reason we are advocating so strongly that
3 increased reporting and appropriate agency access
4 be part of any legislation to improve the state's
5 PDMP.
6 I applaud the Council for taking
7 this important step towards addressing the issue
8 of prescription drug abuse, and we look forward to
9 working with you in the future. Be happy to take
10 your questions.
11 CHAIRPERSON VALLONE: Thank you.
12 The task force itself, can you give us a little
13 bit more information about how often you meet and
14 what happens at this task force?
15 MICHAEL FLOWERS: Absolutely.
16 We've met twice and there are four subcommittees
17 that have met repeatedly. My subcommittee that I
18 head is the data subcommittee and we've met no
19 less than three times, and, in fact, are meeting
20 again next week. The composition of the task
21 force includes: Alan Aviles from the New York
22 City Health and Hospitals Corporation; Ms.
23 Brennan, the Special Narcotics Prosecutor; Andrea
24 Cohen of the Mayor's Office and Director of Health
25 Services; Robert Doar, Commissioner of the Human

2 Resources Administration; Mr. Donovan, the Staten
3 Island District Attorney; Dr. Farley, who, as I
4 mentioned, is the head of DOHMH; Jon Feinblatt,
5 the Chief Advisor for Policy and Strategic
6 Planning; myself; Linda Gibbs, the Deputy Mayor
7 for Health and Human Services; Dr. Adam Karpati,
8 also of DOHMH; and Chauncey Parker, who is the
9 head of the New York/New Jersey HIDTA.
10 CHAIRPERSON VALLONE: And first of
11 all, we've been joined by Council Members Erik
12 Dilan, who was here momentarily; Helen Foster; and
13 Dan Halloran, welcome all.
14 Inspector Capaldo, can you give us
15 a little bit of background about your enforcement
16 efforts regarding controlled and non-controlled
17 substances and what we can do to help you in that
18 regard?
19 JAMES CAPALDO: Good morning. For
20 the calendar year 2011, our arrests involving the
21 diversion--excuse me, the possession or illegal
22 sale of controlled substance prescription meds
23 comprised about 12% of our total enforcement. To
24 give you an idea of the numbers, that's 5,181
25 arrests for those offenses out of a total of

2 narcotics arrests of just over 44,000. In the
3 first quarter of 2012, that figure has held
4 consistent with 1,230 prescription med controlled
5 substance arrests out of 10,322, for 11.9%.
6 One statistic that has changed
7 lately is that more of our pill arrests are now
8 sale related. In the past, it was less than a
9 third, now it's nearly half. So, obviously, we're
10 successfully targeting dealers of these items more
11 than we have been able to in the past. The
12 busiest areas of the city for this are Manhattan
13 North, which is Manhattan above 59th Street, with
14 1,634 arrests for possession in the calendar year
15 2011, and 673 for sale.
16 CHAIRPERSON VALLONE: Specifically,
17 what areas of Manhattan North?
18 JAMES CAPALDO: Of 125th Street
19 corridor where the methadone clinics are
20 prevalent, there are a number of pill sale
21 operations that focus in that area. One of the
22 things we discovered from studying this is that
23 there are two groups of specifically, opiate pill
24 addicts: One of them are people who become
25 addicted after an illness or injury, and the other

2 group are heroin abusers because the OxyContin
3 pills are obviously opiate made and they have the
4 same type of reaction on a user. So people who
5 have been using heroin and are looking for
6 something else tend to use OxyContin, Vicodin,
7 those type of opiate pills. And of course, people
8 who became hooked after a 30-day stint on a pill
9 following illness or injury are obviously seeking
10 the same meds they were taking as a result of the
11 illness.
12 The second busiest borough is the
13 Bronx, but it falls off dramatically with 464
14 possession arrests and 331 for sale. And then
15 Staten Island is next with 435 possession arrests,
16 and then after that the numbers get lower as you
17 go across the city.
18 We don't track pill arrests by
19 specific type of pill, there's too many, but the
20 popular ones that we've been seeing are specific
21 meds, Adderall, which is a brand name for a
22 amphetamine and dextromorphan [phonetic], which is
23 used to treat Attention Deficit Disorder. And I'm
24 not sure if I'm pronouncing this correctly,
25 clonazepam, it's the brand name for a anti-anxiety

2 medication, it's marketed under the brand name
3 Klonopin in the U.S., and it's also used to treat
4 as a muscle relaxant and to treat epilepsy.
5 CHAIRPERSON VALLONE: Are those
6 listed as controlled substances or not?
7 JAMES CAPALDO: Yes, sir, they are.
8 CHAIRPERSON VALLONE: They are?
9 Can you tell us a little bit about the difference
10 between the two and how that affects your
11 enforcement? There's a problem now with diversion
12 on non-controlled substances. From what I'm told,
13 you're not even allowed to make arrests if someone
14 has a non-controlled substance.
15 JAMES CAPALDO: Well for it to be
16 illegal, it has to be listed in Schedules 1
17 through 6 of Section 3306 of the Public Health
18 Law. So if it isn't, then it's not a violation of
19 law to possess those items.
20 I remember a case in Queens a few
21 years back where, if memory serves, it was a
22 husband and wife MDs who were illegally importing
23 counterfeited non-controlled prescription meds and
24 then reselling them to legitimate distributors in
25 the U.S. And I didn't bring details of that case

2 with me, but it got a lot of news play, the
3 takedown, and I believe one of the subjects fled
4 the U.S. And they were importing massive amounts
5 of erectile dysfunction drugs, blood pressure
6 meds, and a few other things that don't qualify as
7 controlled substances, but they were selling it,
8 you know, inserting it into the food chain as
9 legitimate items and, of course, there's a huge
10 markup because this stuff is made for pennies, it
11 doesn't meet anybody's standards.
12 CHAIRPERSON VALLONE: So you can't
13 arrest them for possession of that, is that true?
14 JAMES CAPALDO: I don't believe you
15 can make a simple possession case for a non-
16 controlled prescription med.
17 CHAIRPERSON VALLONE: There's a
18 bill in Albany, in the state legislature, which I
19 have a resolution in support of, which we're
20 discussing today, which would do three things: It
21 would restructure the existing crime of criminal
22 diversion so that repeat offenders are properly
23 punished. Second, it would create the crime of
24 fraudulent prescribing and dispensing of non-
25 controlled prescriptions. And third, it creates

2 the offense of unlawful possession of non-
3 controlled prescription medications so that law
4 enforcement can charge those. Have you been able
5 to take--I know it's Preconsidered Resolution,
6 have you been able to take a look at that bill in
7 Albany, and do you have any position on it as to
8 whether it will help you?
9 JAMES CAPALDO: I'm not authorized
10 to speak for the police department relative to
11 legislative matters, I can't answer that.
12 CHAIRPERSON VALLONE: Mr. Flowers?
13 MICHAEL FLOWERS: Specifically, no,
14 I'm not familiar with the bill you reference, so
15 I'm loathe to comment on it. Substantively
16 speaking, anything that gives our enforcement
17 authorities more tools to go after the links in
18 the distribution chain is something we would
19 support.
20 CHAIRPERSON VALLONE: When it comes
21 to--what other sorts of arrests and investigations
22 are you undertaking when it comes to doctors or
23 other types of fraud involving these controlled
24 and non-controlled substances?
25 [Long pause]

2 JAMES CAPALDO: I have a recap of
3 six or seven of the recent cases that our
4 Organized Crime Health Fraud Task Force has been
5 involved in. And just for information, that task
6 force consists of members of the NYPD's Organized
7 Crime Control Bureau, the FBI, and the State
8 Department of Health's Bureau of Narcotic
9 Enforcement.
10 There's one ongoing case that,
11 obviously, I can't discuss. The most recent
12 previous one ended in March of this year. One
13 person was charged federally as a result of it.
14 And the way the scam worked was as follows: The
15 subject was recruiting accomplices who possessed
16 valid New York State identification, the subject
17 would then forge a prescription in that person's
18 actual name for OxyContin. The person who
19 received this prescription would get it filled and
20 then return the pills to the subject in exchange
21 for a USC [phonetic] and the subject then had
22 accomplices who would go out and sell these pills
23 on the street. He was arrested on 3/29 of this
24 year. At arrest, we recovered a 9 mm handgun,
25 $8,000 in counterfeit currency--we think he was

2 paying his accomplices in counterfeit cash--1,000
3 OxyContin pills, 406 doses of steroids, and 7
4 rolls of blank prescription paper. So this
5 particular person was not--there was no doctor
6 involved, the pharmacies were legitimately filling
7 the prescriptions, and he was able to create them
8 by having access to a computer and blank
9 prescription paper, which is similar to currency
10 paper, I'm sure you're aware, it has a special
11 watermarking and threads and so on so that it
12 can't be easily re-created.
13 The case before that ended in March
14 of this year, two subjects were charged federally.
15 They were employees of the New York City Human
16 Resources Administration. They created numerous
17 fraudulent Medicaid accounts for which they were
18 paid. And these accounts were then used to
19 defraud the Medicaid system for a total of
20 $380,000, including prescriptions that were filled
21 for 19,000 Oxy 80 milligram tablets which were
22 then sold on the street. The New York City
23 Department of Investigations assisted us with this
24 case. And of course, those two subjects were
25 fired from their city jobs and their pending jail.

2 In the fall of last year, we
3 arrested two people on federal charges. This case
4 involved a doctor who was openly selling
5 prescriptions to patients for OxyContin in
6 exchange for cash.
7 Probably the most notorious case
8 that we had was in late 2010, it involved a doctor
9 on Staten Island who was selling OxyContin
10 prescriptions to patients for $200 each, and would
11 openly state to them, that was the cost of the
12 prescription and it would involve 180 OxyContin
13 tabs. Once he was in custody, a records check
14 revealed that between April and November of that
15 year, he had written 3,000 OxyContin
16 prescriptions--that was an average of 15 a day,
17 seven days a week.
18 And we have a couple of cases that
19 involve pharmacies as well.
20 So we've had basically the entire
21 gamut--doctors, you know, crooked doctors, crooked
22 pharmacists, and people who were just
23 entrepreneurs and able to figure out how to fiddle
24 the system without involving any legitimate
25 people.

2 CHAIRPERSON VALLONE: Tell us a
3 little bit about some of the trends you're seeing,
4 are there--have you seen an increase in these type
5 of cases? Do you see more crooked pharmacists or
6 crooked doctors or just--
7 JAMES CAPALDO: [Interposing]
8 Seeing more doctors of late. Either that or we're
9 getting better at catching them. It's difficult
10 to make the cases against them. There's no
11 medical standard or no legal standard that says if
12 Mr. Vallone comes to Dr. Capaldo's office and says
13 I fell down the stairs to the basement letting the
14 cat out and my back is killing me. There's no law
15 or standard that's established that Dr. Capaldo
16 has to take an x-ray, physically examine you, or
17 even physically touch you. So if you want to tell
18 me that story and I want to wink and nod and write
19 you a prescription for 180 Oxy tabs, I haven't
20 broken any law.
21 So in order for us to make a case
22 against a doctor we have to get an undercover in
23 there and establish that it's fraudulent and we
24 have to be able to record that conversation and be
25 able to prove it in a court of law. We've had,

2 and Ms. Brennan I'm sure will tell you, they've
3 had some excellent cases where the undercover goes
4 in and gets a prescription and comes out all
5 happy, but when we listen to the tape, there's
6 nothing there. You know, and when you confront
7 the undercover, he says well he knew I was--you
8 know, he must have known, he never touched me.
9 Yeah, but so what. He's got to say, you want the
10 prescription, $200, and then we're playing ball.
11 You know, this is not necessarily
12 new. We had OxyContin pharmacy robberies in 2005.
13 And when I was a narcotics captain in 2001, I was
14 in charge of Queens South, it covered five
15 precincts, and at the monthly precinct community
16 meetings I had a speech I would give about the
17 dangers in your medicine chest because even then
18 people were being prescribed opiate-based pain
19 meds and deciding they didn't need them after
20 three or four days, and teenagers or friends of
21 teenagers were stealing that stuff out of the
22 medicine chest and selling it. This is not a new
23 phenomenon, it's just the scope of it is changing
24 dramatically of late.
25 CHAIRPERSON VALLONE: I will speak

2 to the prosecutors and lawyers who come up about
3 what we can do about those doctors and what needs
4 to be changed to allow you to actually arrest
5 them.
6 We go now to Council Member
7 Halloran, I'll be back with some questions.
8 Council Member Halloran.
9 COUNCIL MEMBER HALLORAN: Thank
10 you, Mr. Chair. Appreciate your testimony here.
11 Just curious in terms of how you've structured,
12 obviously, we have street narcotics units that are
13 out there, we have units that are deployed to do
14 these things. Have we looked on the prescription
15 and pharmacy side of the equation? Is there
16 operations going in that regard? And also how
17 does that relate to some of the legislative
18 requests with regard to tracking prescriptions
19 that have been on the table as of late, and are
20 you looking at those as potential models?
21 JAMES CAPALDO: This is for me?
22 COUNCIL MEMBER HALLORAN: Either of
23 you.
24 JAMES CAPALDO: I'll take it if you
25 like.

2 MICHAEL FLOWERS: [Off mic] to you.
3 JAMES CAPALDO: Yes. Firstly, most
4 of our cases developed along the same model as our
5 other narcotics cases, either we get an informant
6 or we get an anonymous tip and if we're able to
7 penetrate the organization, then it's the standard
8 steps that we take.
9 The second part of your question
10 regarding legislation, anything that's going to
11 help us obtain the data regarding narcotics
12 prescriptions being filled in a timely manner and
13 let us pursue the anomalies that are discovered
14 will be of value, whether that's through
15 legislation or regulatory oversight, whatever way
16 we can get it, we'll take it.
17 And the database that Mr. Flowers
18 discussed would be a great value to us going
19 forward.
20 MICHAEL FLOWERS: The one thing
21 that I would add to that, sir, is what the task
22 force is focused on, at least from a data support
23 standpoint, is, you know, I want to highlight
24 something that the inspector referred to, the
25 doctor in Staten Island. Once that doctor came to

2 the attention of law enforcement, the check
3 revealed that he was writing 3,000 scripts in some
4 insanely short period of time. Where we want to
5 get to a position is where we use that information
6 proactively and get to the stage where we're able
7 to identify that kind of outlier conduct. And the
8 legislative proposals and the recommendations of
9 the task force are really centered on generating
10 that capacity. And not just in a law enforcement
11 sense, I want to stress the public health nature
12 of this problem.
13 The fact of the matter is, once
14 it's reached the stage where we're making arrests
15 and sending in officers and whatnot, we've lost,
16 to a certain degree. What we need to do is engage
17 our public health community, and, specifically,
18 just highlighting what Dr. Farley has done, is a
19 very critical first step. If we can reach out to
20 our public health professionals, especially those
21 public health professionals that are identified as
22 potentially being abused, if there are--there are
23 certainly many situations where there are
24 pharmacies and physicians that are duped. And,
25 you know, for short periods of time usually, but

2 they do get duped. Those are the kinds of people
3 where we want to allocate our limited resources to
4 go out and get prophylactics to sit there and sit
5 down with the physician and say, this is what you
6 need to look for in terms of potentially being
7 exploited.
8 COUNCIL MEMBER HALLORAN: And just
9 to follow up in terms of what Councilman Vallone
10 was alluding to, obviously there's more than one
11 piece of legislation at addressing this, but
12 currently, the way things are structured, I know
13 you have expressed some of the issues of
14 prosecution. Do we have guidelines out there in
15 the patrol guide or in arrest processing where we
16 discuss the specifics of this type of an arrest?
17 Obviously, these things happen
18 fairly frequently in terms of observable issues in
19 my district. I know the 109 had a pharmacist who
20 apparently had a ongoing situation similar to what
21 we've been talking about here, that a citizen sort
22 of just walked in and said, hey, by the way, do
23 you know. Does the patrol level officers have a
24 resource to go with this information and deal with
25 it in a manner that's going to lead to you guys

2 being able to effectively perform your
3 investigations?
4 JAMES CAPALDO: Currently, pill
5 cases are considered controlled substance cases,
6 which is the same as crack, heroin. So there is a
7 protocol in the patrol guide for referral of that
8 information to us, patrol does not have the
9 undercover capacity or the ability to pursue these
10 leads and they should refer to us timely, and then
11 of course, we can follow it.
12 COUNCIL MEMBER HALLORAN: Thank
13 you, Mr. Chair.
14 CHAIRPERSON VALLONE: This the last
15 question I have before I get to our next panel
16 because I'm very interested to see Bridget
17 Brennan's PowerPoint presentation. Criminal
18 diversion applies to prescription drugs, not just
19 controlled substances, so if someone sells like a
20 bag full of HIV drugs or asthma drugs or Viagra or
21 something like that, you can make an arrest. But
22 the statute is pretty clear that you need that
23 transfer, someone has to sell or buy, so if you
24 found someone on the street, you stopped them for
25 another reason and they have a giant bag full of

2 pills that are not controlled substances, I'm
3 correct that you cannot make that arrest.
4 JAMES CAPALDO: Well if we arrested
5 them for something else, that would not be--
6 CHAIRPERSON VALLONE: Right, well
7 if--
8 JAMES CAPALDO: --an additional
9 charge.
10 CHAIRPERSON VALLONE: But if you
11 just stopped them because they matched a
12 description and you found this?
13 JAMES CAPALDO: Well if we stopped
14 him because he did have a controlled substance,
15 and, you know, very often, especially with the
16 pill cases, they begin where we stopped them for
17 some other reason--that we saw them purchase
18 heroin or crack and--
19 CHAIRPERSON VALLONE: [Interposing]
20 But if there were no other reason to stop them and
21 they just had this giant bag of--
22 JAMES CAPALDO: [Interposing]
23 Simply possessing it? If the circumstances were
24 suspicious, any good officer would ask him, you
25 know, what are you doing with those, and hopefully

something will come of it. But simple possession, to my understanding, and I didn't do any research on this before I came here today, I didn't expect to be discussing it, but as I understand it, the answer is no.

CHAIRPERSON VALLONE: Myself also, are we correct, Bridget? Yes, Bridget Brennan is nodding yes. So that's one of the things we want to change in Albany, we want to give you that--we want to change that law and make it--to make it a crime to possess that so you don't have to actually watch the transfer. Do you have any information on criminal diversion arrests, how many you've made or if they're--

[Crosstalk]

JAMES CAPALDO: [Interposing] No, sorry, I don't.

CHAIRPERSON VALLONE: Okay. We'll get that from you down the road.

JAMES CAPALDO: For non-controlled substances, no.

CHAIRPERSON VALLONE: Okay. Thank you. Thank you. Any other questions? No. Well thank you both and we look forward to working with

you and figuring out what we can do to help stop this epidemic. Thank you.

JAMES CAPALDO: Thank you.

MICHAEL FLOWERS: Thank you very much.

CHAIRPERSON VALLONE: Next panel will consist of Bridget Brennan, our Special Narcotics Prosecutor; Philip Anderson from the Queens District Attorney's office, Marc Fliedner from the Kings County District Attorney's office; Gregory Krakower from the Attorney General's Office; and Paul Mahoney from the Attorney General's office. [Pause] Bridget, since you have the presentation, why don't you go first and then we'll give others a chance to speak, and then we'll ask some questions. And, Ms. Brennan, let me also thank you for calling this to our attention years ago and for requesting hearings on this topic and assistance in this matter, and you're really the impetus behind this hearing and we want to thank you for what you've done. Thank you.

BRIDGET BRENNAN: I appreciate that. I'm not sure how I get this up on the

2 screen.

3 CHAIRPERSON VALLONE: We will send

4 our--

5 BRIDGET BRENNAN: [Interposing] And

6 let me thank the Committee for hosting this

7 hearing and also commend the briefing report that

8 was put together, it was excellent. A really

9 great synthesis of the information, very

10 informative, a very nice job. Because what we

11 need more than anything else in this area is

12 information, so I commend the Council and the

13 Public Safety Committee for leading the way.

14 CHAIRPERSON VALLONE: While we try

15 to get you some technical assistance, maybe you

16 can just comment on what we were speaking about

17 earlier about the possession of non-controlled

18 substances?

19 BRIDGET BRENNAN: Yeah, what we see

20 is that's one of the big holes in our law. The

21 prescription drug crisis has two components:

22 There is the component that involves controlled

23 substances, and controlled substances are

24 basically defined as those substances that are

25 more subject to abuse. That's why the opioid

2 drugs fall into that category, amphetamine drugs
3 fall into that category, anti-anxiety drugs. The
4 non-controlled substances are substances like AIDS
5 medication, Viagra--substances which may not be
6 subject to abuse, but nonetheless have a value
7 because they're worth a lot of money. And what
8 we've seen in both areas is that the drugs
9 themselves, the pills, have turned into a form of
10 currency and the system, the medical system is
11 gamed in order to achieve a profit by some people.
12 In the area of controlled
13 substances, there's people who become addicted.
14 Many times, as was testified earlier, there are
15 accidental addicts--people who start out taking a
16 prescription simply because they had a surgery;
17 they were prescribed it, legitimately prescribed.
18 But these drugs are now in my view being over-
19 prescribed. That is to say, if you need it for a
20 surgery for three days after the surgery, you
21 shouldn't be getting a prescription for 30 days.
22 That's one of the City health department's
23 recommendations. As a matter of fact, that's
24 among the recommendations that they've already
25 passed out.

2 CHAIRPERSON VALLONE: What
3 specifically?
4 BRIDGET BRENNAN: That the
5 prescription for someone who is in an urgent
6 situation like someone who has just had a surgery
7 should be limited to, for example, a five-day
8 period, and then that person should be evaluated
9 after five days to see if they need to extend the
10 prescription for a longer period of time. I think
11 we all know from our own experience, if we have a
12 surgery, generally speaking, we don't need a
13 heavy-duty opiate to help us through our pain
14 situation for 30 days.
15 CHAIRPERSON VALLONE: So is that a
16 law, is that just a recommendation, what's--
17 BRIDGET BRENNAN: [Interposing]
18 That's just a recommendation, it's a
19 recommendation now from the City health department
20 to the doctors who serve within the city health
21 community. But that's a very critically important
22 first step because, as was testified before from
23 the police department, one of the big problems in
24 this area is developing a standard of care. What
25 is the accepted standard of care for people who

2 come in to get prescriptions? And in order to
3 prosecute a doctor for violating that standard of
4 care, for selling a prescription, we have to prove
5 that he acted in bad faith. And so it's very
6 important for us, that vision, that direction to
7 doctors saying evaluate your patients, don't just
8 give them a 30-day prescription when you know that
9 dependency, drug dependency may come at the end of
10 that 30-day period.
11 CHAIRPERSON VALLONE: So you heard
12 the police department testimony about them sending
13 undercovers in and--
14 BRIDGET BRENNAN: Yes.
15 CHAIRPERSON VALLONE: --how
16 difficult that is, can you comment on that and how
17 that relates to your being able to prove standard
18 of care?
19 BRIDGET BRENNAN: It is very
20 difficult because there is no defined standard
21 with regard to pain medication. In the medical
22 community now, it is sort of the barometer for
23 pain is based on the patient's own assessment of
24 their pain and so if a patient tells the doctor, I
25 really hurt, the doctor may well accept the

2 patient's, you know, word for it without
3 conducting a lot of tests, an MRI, x-ray, et
4 cetera, et cetera, and that makes it difficult for
5 us to prosecute a doctor even if we see soaring
6 rates of prescriptions. And where we see that is
7 particularly pain clinics, which of course, people
8 are going to because they're in pain. And so we
9 have great difficulty making--
10 CHAIRPERSON VALLONE: [Interposing]
11 And I assume if they were giving everybody an MRI,
12 they could be prosecuted for fraudulently
13 prescribing MRIs which cost a lot of money also.
14 BRIDGET BRENNAN: Yes, although if
15 you're going to give someone high levels of opiate
16 drugs for a long period of time, actually in the
17 medical community, many doctors would tell you,
18 you would expect to see some kind of assessment of
19 the pain. What you wouldn't expect to see is
20 always throwing, in a sense, a blanket over the
21 pain. You would expect to see some assessment of
22 what's causing the pain. And all the opiate drugs
23 do is relieve the pain, they don't get to the
24 bottom of the pain. Yay, success, you are the
25 hero.

2 MALE VOICE: Thank you.

3 BRIDGET BRENNAN: Thank you. Let
4 me just get to the beginning there.

5 Would you like me to continue to
6 answer any questions or would you like me to begin
7 my presentation?

8 CHAIRPERSON VALLONE: Might as well
9 begin, yeah.

10 BRIDGET BRENNAN: And, again, I
11 commend your crack staff here for getting us
12 rolling.

13 CHAIRPERSON VALLONE: Thank you,
14 Pierre.

15 BRIDGET BRENNAN: But I do want to
16 thank the City Council's Public Safety Committee
17 for drawing attention to this absolutely critical
18 problem. The City has directed many resources in
19 this effort now, the Mayor's office has done some
20 great work and we've been a part of it, but this
21 is important because critically, here, we have to
22 get the word out and anything any of us can do in
23 that regard can only help.

24 We have seen the supply of
25 prescription drugs in the city, the supply of

2 prescription opioid painkillers in New York City
3 skyrocket over the past five years in particular,
4 and more and more of these highly addictive drugs
5 are finding their way to the streets. And as you
6 see in any situation involving addicted drugs or
7 drugs that can be abused, the problem really boils
8 down to an abundant supply of those drugs. The
9 more drugs that are out there, the more likely
10 they are to be abused.
11 I'd like to thank the Public Safety
12 Committee for supporting a resolution or
13 considering a resolution to support more controls
14 on non-controlled substances. Substances like
15 very expensive HIV drugs, asthma drugs, those
16 kinds of drugs--and I'll talk about that in my
17 testimony--but those drugs are the subject of much
18 fraud, they're the subject of diversion, and they
19 are finding their way back into pharmacies, even
20 though they have been held under conditions which
21 are far from sanitary and far from the pristine
22 way that pharmaceuticals are supposed to be
23 stored.
24 As Special Narcotics Prosecutor for
25 New York City, my office prosecutes felony

2 narcotics crimes in the five boroughs of New York
3 City. Originally, we were set up to address the
4 heroin epidemic in the 1970s. Little did the
5 legislators who crafted that statute creating our
6 office know that some 40 years later we would be
7 confronting a problem of narcotic pills, of
8 narcotic prescription pills. Yet at their core,
9 they're the same thing--it's opiate drugs. The
10 same component that's in heroin is found in
11 narcotic pain relievers. And at present, we have
12 very significant investigations citywide into the
13 diversion and trafficking of prescription drugs,
14 right now, it comprises at least 20% of our
15 caseload. And overdose deaths, unfortunately, and
16 related crimes in the city are soaring, as we have
17 heard.
18 There we go. Now these are the
19 kinds of pills that we're talking about, I thought
20 it might be helpful just to have you take a look
21 at the difference between the controlled
22 substance, which are basically, as I said, those
23 drugs that are subject to abuse--opioid
24 painkillers, drugs like oxycodone, Opana. The
25 picture, the top picture there are oxy 30s,

2 oxycodone, generic oxy 30 milligrams. On the
3 street they're called little blues, and right now
4 they're the favorite of the street trade. Oxy
5 30s.
6 We are also seeing a big market for
7 ADHD drugs--Adderall, Ritalin. Those kinds of
8 drugs are marketed as study aids. Again,
9 addictive drugs with significant health
10 consequences if you take them in non-medically
11 recommended ways--can result in addiction, in
12 stroke, in heart attacks. So that's another
13 problem for us.
14 Both those are controlled
15 substances and they are--we can arrest people for
16 using them illegally or that is to say, for
17 obtaining them and selling them outside of a
18 pharmacy if, in fact, we can prove a case on it.
19 And then there are the non-
20 controlled substances. Some of them are very,
21 very valuable drugs, like the HIV medications,
22 psychotropic medications like Prozac, asthma meds.
23 Those we are finding in different kinds of
24 criminal networks, those we are not finding so
25 much sold on the street. What we are seeing, and

2 those I'll describe later, but it is more of a
3 fraudulent scheme to obtain those drugs and have
4 insurance pay for those drugs, and then resell the
5 drugs on the black--on the gray market, as we call
6 it, back to maybe unscrupulous pharmacists, who
7 will then again sell those drugs, and perhaps
8 again bill Medicaid for those drugs. So the drugs
9 themselves turn into a form of currency.
10 Everybody in today's hearing
11 obviously recognizes the seriousness of this
12 problem. Of course, if we needed another
13 reminder, we saw it a couple of weeks ago in East
14 Harlem with the pharmacy robbery there, and there
15 was just an arrest of the second subject just
16 yesterday. And among the things the robbers stole
17 were, not just money, but the 30 mg oxycodone
18 pills, that's what they were looking for. Opiate
19 painkillers, that's the greatest--there is the
20 greatest demand for that now in the black market.
21 But that wild gun battle was a reminder of the
22 problems that we face, and it's a reminder of just
23 how serious the ramifications of this problem are.
24 We are seeing the implications in increased
25 burglaries, increased robberies, increased petty

2 thefts as we see more and more people addicted to
3 these kinds of drugs.
4 The problems with prosecuting cases
5 involving prescription drugs are very significant
6 because, unlike our typical prosecutions of heroin
7 and cocaine, these drugs are legal drugs. Anytime
8 we find heroin or cocaine, we can prosecute a
9 case. That is not the case with prescription
10 drugs, and so we face some significant hurdles.
11 The biggest problem I think we see
12 now is that there is just too much of the opiate
13 prescription drugs out there. Oxycodone is only
14 one kind of opiate prescription drugs, Vicodin is
15 another very popular and widely prescribed opioid
16 prescription drug, and this shows you the increase
17 in just the past five years in the prescriptions
18 for oxycodone. Now I don't think pain in New York
19 City increased by 100% in the past five years, so
20 this tells you that something else is going on out
21 there. And--
22 CHAIRPERSON VALLONE: [Interposing]
23 Can I ask you how long oxycodone has been around?
24 Because if it's only been around five years, then
25 that might explain it.

2 BRIDGET BRENNAN: [Interposing] No,
3 oxycodone--
4 CHAIRPERSON VALLONE: Playing
5 devil's advocate, I don't believe that, but--
6 BRIDGET BRENNAN: [Interposing]
7 Well you know, you pressed the wrong button
8 because you're going to get a little bit of
9 history here. The opioid drugs, including a
10 variation of this, have been around for a long,
11 long time. But doctors were loathe to prescribe
12 this form of drug until the 1990s, when a
13 pharmaceutical company marketed a version of it
14 that they said was sort of addiction-proof, and
15 that was around 1995. And then actually the
16 pharmaceutical companies convinced the medical
17 community that they were being opioid phobics,
18 that they were not helping people to relieve their
19 pain as much as they could because they were too
20 frightened by the remote possibility of addiction.
21 And this went on and on and on, and over the years
22 in other states this problem hit first because New
23 York State continued to have additional
24 restrictions or additional encumbrances on the
25 prescribing of the opioid medications until about

2 2005.

3 In New York state, you're required
4 to have a triplicate prescription, this really
5 cumbersome, big prescription, which was unlike the
6 normal prescription for oxycodone. Clearly, that
7 there was a signal to a doctor that this is
8 something different. Then in about 2005,
9 thereabouts, New York State changed its practice,
10 and it's around that time you start seeing the
11 number of prescriptions increasing for these
12 opioid-based pain relievers.

13 So it has been around a long time,
14 but the medical community's view of these drugs
15 was, I believe, heavily influenced by the
16 pharmaceutical companies marketing these drugs.
17 And so now is the time when we have to put those
18 snakes back in the cage and we have to really
19 sensitize the medical community to what we see now
20 going on out on the street with this excess of
21 supply of addictive drugs out there.

22 So unfortunately, the problem has
23 not yet abated in New York City. When we started
24 to see these narcotic drugs, prescription drugs
25 pop up in search warrants that we were executing

2 out in the locations where in our normal narcotics
3 investigations, we started to turn up big caches
4 of opioid prescription medication and we started
5 to see this developing. We wondered where is it
6 coming from, is somebody stealing lots of drugs,
7 big cartons of drugs and then marketing them on
8 the street? No, what we determined what it was
9 that, in working with the state health department,
10 was that these drugs were actually being supplied
11 through pharmacies. And this shows you that from
12 2010, we've been trying to enhance public
13 understanding about this issue for the last couple
14 of years, but we are still seeing an uptick in the
15 prescriptions for these drugs.
16 Now the rate of prescription is
17 dropping, for example, in Richmond County in
18 Staten Island, but that area is already saturated.
19 What concerns us is what's shown on this map. The
20 green colors are those areas where the
21 prescriptions have either lessened or about the
22 same. The yellows and reds, the closer you get to
23 red indicates an area of greater increase, and you
24 can see that there are areas of the city where the
25 rate--and this is based on the residence of the

2 person who is obtaining the prescription--and so
3 you can see that there are creeping areas of
4 increase where the increase is certainly
5 escalating throughout the city. Whereas, it is at
6 least leveling off in Staten Island, in other
7 areas of the cities it continues to increase.
8 In fact, we thought we would break
9 down--the information is by ZIP code, we thought
10 for the Chair of this Committee, you would be
11 interested to know that your concern is certainly
12 relevant to your constituents. We broke down the
13 ZIP codes for the Council District, 22, for your
14 district, and whereas the ZIP code lines may not
15 be 100% contiguous with your district, it reflects
16 the uptick in prescriptions in your district. And
17 you can see that you've got a lot of areas of
18 orange and red out there. So we have a lot of
19 work to do.
20 [Off mic]
21 BRIDGET BRENNAN: Beg your pardon?
22 CHAIRPERSON VALLONE: It's not
23 you're your fault.
24 BRIDGET BRENNAN: No, it's not your
25 fault at all, in fact, I think you're prescient,

2 you're aware of a problem going on in your
3 district and you're doing everything you can to
4 abate it, which is, I think, what we all ought to
5 be doing in this area. So much of it is a matter
6 of public information and increasing the public's
7 information about the dangers of these
8 medications.
9 We formed a prescription drug unit
10 in my office last summer. As we saw the number of
11 cases surging and as we recognized that we needed
12 some real specialized training of our own
13 assistants, our investigators in this area, we
14 formed a prescription drug unit. And since we
15 formed that unit, we have received referrals from
16 the public, from doctors, from pharmacists, from
17 elected officials, and we have formed some
18 tremendous partnerships with the State Department
19 of Health, their Bureau of Narcotics Enforcement,
20 with different narcotics units in the city, and
21 with Medicaid Inspector General. We've done work
22 with law enforcement groups that we hadn't really
23 worked with in the past.
24 Now I'm just going to spend a
25 minute telling you that it's not just that these

2 drugs are being sold in all kinds of places,
3 including what I would call the new street corner,
4 at least for Adderall and Ritalin--the Internet,
5 Craigslist, and we conduct investigations into
6 this area. We conduct periodic sweeps the same
7 way we would on any other street corner which is
8 rife with narcotics activity. Again, the
9 economics of it are the same: People obtain
10 Adderall with a prescription and maybe financed by
11 insurance, and so then they sell it on the street.
12 This is that Dr. Li case that you
13 referred to earlier. Dr. Li is under indictment
14 now in our office. This was the picture outside
15 his pain management clinic in Flushing Queens. He
16 ran the clinic one day a week on Saturdays and saw
17 perhaps 90 to 100 patients a day. Generally, it
18 was all cash and our--we did arrest him and indict
19 him and our investigation is continuing. It is a
20 case that has consumed a tremendous amount of
21 resources from my office. And as you mentioned
22 earlier, David Laffer, the person who committed
23 that homicide in the Medford pharmacy on Father's
24 Day, said that Dr. Li was one of those who
25 prescribed drugs to him.

CHAIRPERSON VALLONE: And those people were selling?

BRIDGET BRENNAN: These people were hanging out outside the clinic waiting for Dr. Li to arrive on Saturday morning at eight o'clock. We saw a number of sales, hand-to-hand transactions right outside the clinic. In fact, we made an arrest--a couple of arrests for transactions where someone would come out of the clinic with a prescription, go right to a pharmacy down the block, have the prescription filled, and then a car would drive up and you would see a transaction, the pills being exchanged for cash immediately after the visit to the doctor.

This was an operation that we did in Staten Island, and this mirrors--is the kind of operation we see a lot, where a rogue employee, in this case it was the office manager, steals prescriptions, sells them to someone else for $100 a prescription, those prescriptions get filled. Here, about 40,000 oxycodone pills ended up out on the street being sold out of an ice cream truck and the group netted about $1 million.

We've been involved in many

2 collaborative efforts, and I cannot praise the
3 Mayor's task force and the prescription pain abuse
4 enough. They've pulled together all the
5 resources--a tremendous number of resources in the
6 city, and they've been doing great work, along
7 with the New York State and our agency work group
8 and the federal drug initiative led by the Eastern
9 District.

10 In the non-controlled substance
11 area, this article came out about a year ago now
12 which is talking about the trade in non-controlled
13 substances. This is how it works: Medicaid
14 recipients typically go to pharmacies, obtain
15 drugs, sell them to street dealers, who then
16 collect them in stash houses and resell them to
17 pharmacies. The money is made in that the
18 Medicaid recipient obviously doesn't pay much for
19 the drug, sells it to the street dealer, who then
20 sells it at a greater price to a collector, who
21 then resells it to the pharmacy. The pharmacy
22 gets it at a lower rate than they would from the
23 actual producer of the drug, and then they turn
24 around and sell it again, often billing Medicaid a
25 second time for the same drug.

2 In 2010, we recovered $4 million
3 worth of non-controlled substances in a case where
4 we were expecting to find cocaine up in Yonkers,
5 and we discovered at that time that we did not
6 have one state statute that we could use to charge
7 the people who were collecting these drugs because
8 we only had them in possession of these drugs.
9 Not a single state felony charge, and so the bill
10 that you're considering would enhance the
11 penalties for the possession of large amounts of
12 these drugs, which would give us additional tools
13 that we could use in our efforts in this area.
14 Somebody from our office took this
15 picture just last week, we're seeing more and more
16 of these pictures going up throughout the city,
17 and again, the message--this is not the message
18 that we want to send, this is not an effective
19 response to the problem. And so again, I commend
20 the Committee for your efforts in this area, and I
21 thank you for your time.
22 CHAIRPERSON VALLONE: Does anyone
23 else have anything they'd like to add to that or
24 any testimony? Just identify yourself.
25 PHILIP ANDERSON: I have a little

2 bit of a PowerPoint and I'm from the Queens
3 District Attorney's office, and just a little bit
4 of what's going on out in Queens. Let me see if I
5 can--
6 [Off mic]
7 BRIDGET BRENNAN: You're going to
8 need somebody more skilled than I.
9 CHAIRPERSON VALLONE: Get Pierre
10 back.
11 PHILIP ANDERSON: At least get it
12 started. Okay. Sorry about that. Good morning,
13 Chairman Vallone and members of the committee.
14 I'm Assistant District Attorney Philip Anderson
15 from the Queens District Attorney's Office, and on
16 behalf of D.A. Brown, I'd like to thank the
17 committee for seeking our offices input in this
18 review.
19 I'll just add a few things to what
20 the other witnesses have said so far. And I'm
21 going to start with one bill just because Ms.
22 Brennan mentioned another opioid, Vicodin. There
23 is another bill currently pending, which is S5260,
24 which we all know as the Tramadol bill, and that's
25 really the concentration of that bill. However,

2 there is a small provision in that that is going
3 to repeal part of the Public Health Law,
4 specifically Section 3306, Schedule 3(e),
5 paragraphs three and four. Those paragraphs are
6 significant because, unfortunately, even though
7 Vicodin--the active opioid ingredient in Vicodin
8 is considered hydrocodone, hydrocodone is also
9 scheduled as a narcotic the same way oxycodone is,
10 and if you look up the definition in the Public
11 Health Law, you will find that they are both
12 scheduled as narcotics. However, because of this
13 second scheduling, basically, in the Public Health
14 Law, under 3306 3(e), three and four, four really
15 relates to pills, three relates more to
16 medications that are injectables or taken post-
17 surgery or anything like that. It reduces the
18 level of possession of those drugs from a narcotic
19 to a narcotic preparation.
20 So for instance, I'll just give you
21 a brief, I guess, example. Ten years ago, D.A.
22 Brown recognized already the dangers of
23 trafficking in these prescription pills in our
24 community, and in early 2001, our office was the
25 first city prosecutor's office to initiate court

2 authorized wiretap investigation into the
3 trafficking of some of these pills. That case
4 involved a doctor who was selling prescriptions,
5 mainly just for Vicodin. Back in those days,
6 Vicodin was the predominant painkiller.
7 Eventually, the doctor found out that it was more
8 lucrative to sell the pills themselves, and
9 controls were much more lax over ten years ago.
10 He ended up hooking up with a pharmacist friend of
11 his where he could get 500-pill jars that
12 pharmacies used to dispense these drugs and were
13 selling them directly to our undercover officers,
14 sometimes four jars at a time, so that's 2,000
15 pills.
16 When he was arrested, we could only
17 charge him with a C Felony because of the
18 scheduling of the Vicodin through 3(e)(4). Now
19 had he been selling Percocet, which is an
20 oxycodone-based drug, which is also a synthetic
21 opioid and is described exactly the same way as
22 Vicodin is prescribed, those would have been A1
23 felonies, and we could have charged him with that.
24 Now just to give you an idea of
25 what's been going on in Queens, that first wiretap

2 proved to be actually a really invaluable tool.
3 Listening to a doctor, as the inspector said, it's
4 very hard to send an undercover into a doctor's
5 office and get on tape, you know, that something
6 that the doctor somehow knew that the undercover
7 had no need for the pills. Wiretapping was a
8 little bit easier, especially in this doctor's
9 case, of course, because he was calling a
10 pharmacist friend to obtain the pills. And so we
11 continue to use wiretapping in these kinds of
12 cases.
13 In 2003, we arrested and prosecuted
14 45 people who were trafficking prescription pills
15 in Howard Beach and Ozone Park. There, most of
16 the ringleaders were white middle-class males in
17 their twenties, they got most of their
18 prescription drugs from forged prescriptions, the
19 Internet, and also we found that they were going
20 to Canada and mailing the drugs back to
21 themselves, and I'll get to that in a minute.
22 Two thousand six, another wiretap
23 investigation, we found that one individual was
24 passing about 40 scripts a week. And generally,
25 what forgers do is they target, of course, the

2 pharmacies that--they don't go to a Duane Reade,
3 they will go to a mom-and-pop pharmacy in the
4 hopes that pharmacists will turn a blind eye or
5 not ask too many questions or doesn't have a
6 database, such as Duane Reade, that shows that the
7 same person has been filling prescriptions at
8 another Duane Reade, et cetera.
9 Of course, there were plenty of
10 pharmacists who just willfully turned a blind eye,
11 and through wiretapping, we also were able to
12 prosecute some of the pharmacists, basically,
13 because this guy would call and say, oh, can I
14 pick up my script now--you have to wait 30 days to
15 refill these prescriptions. The pharmacist would
16 say, well, sure, I'll give it to you now, but
17 bring the prescription in in ten days, because
18 then we'll be within the legal timeframe when I
19 input it into the system, so that it wouldn't be
20 caught.
21 Two thousand ten, another 30
22 arrests through wiretapping. The same sort of
23 demographic of individuals. There, we found they
24 were getting same MO, forged prescriptions. We
25 also found, what the inspector had spoken about a

2 little bit, that since these were all young 20
3 adults, they had sort of a peer network and the
4 dealers would basically have their peers go into
5 the peer's parents medicine cabinets and find
6 pills and sell them back to the dealers who
7 collected them and would resell them on the
8 streets.

9 Now, basically, originally, these
10 cases, as I said, were a young, white, middle-
11 class, upper-middle-class demographic, but at this
12 point, as Ms. Brennan said, it's pretty much
13 citywide and it just cuts across all classes.

14 Now so far Queens, as the inspector
15 was saying, hasn't been so hard hit. The recovery
16 of these narcotics pills has been about 3,100 in
17 the first four months of the year. But we have
18 also seen three burglaries of pharmacies in this
19 month alone. One as recently as Sunday, it was
20 discovered Monday morning that the perpetrators
21 had broken through an adjoining business--the wall
22 of an adjoining business to get into the pharmacy.
23 No arrests have been made in that case, but they
24 did steal a lot of these pills, as well as cash.

25 Another problem that we observed--

2 and this gets to the other proposed legislation
3 for the non-controlled substances--is mixing of
4 different drugs. A Percocet addict is basically
5 the same as a heroin addict. When they run out of
6 Percocet and can't find any or, for whatever
7 reason, decide to try and come off of it, they'll
8 often cocktail it with a Xanax because a Xanax
9 will counter the effect of coming down off of the
10 Percocet. But we are also noticing that they're
11 not merely trying to chase a Percocet with a
12 Xanax, we're also finding that they're using a lot
13 of--illegally using a lot of nonprescription
14 controlled medications.
15 Now through some of these wiretap
16 investigations, we found that people who are
17 buying and selling Xanax and Percocet were also
18 buying and selling a lot of Xanax--I'm sorry,
19 Viagra and Cialis. And what was happening is
20 that, apparently, when you take a lot of Percocet
21 and Xanax, they are depressants, they're also a
22 sexual depressant, so the idea being that the
23 Cialis and the Viagra would counter this effect.
24 And if I'm a dealer and I'm already selling
25 controlled substance pills, then hey, it's almost

2 a freebie for me to sell you also a non-controlled
3 because, even if I'm arrested for selling a non-
4 controlled to an undercover, one or two pills,
5 that's an A Misdemeanor of diversion. If you find
6 that I'm holding 30 pills of Viagra, you can't
7 charge me, as we've learned.
8 Now of course, the legislation
9 proposed under S5260 would create Article 219, and
10 219 is really what is addressing--would address
11 that problem. Another thing that we found is
12 because New York City is--
13 [Crosstalk]
14 CHAIRPERSON VALLONE: [Interposing]
15 Can I ask you and Ms. Brennan, why do you think
16 that bill has not passed yet? Is there an
17 argument they're making that people with
18 legitimate Viagra are going to be prosecuted, and
19 what safeguards can you put in against that?
20 BRIDGET BRENNAN: I don't know why
21 it hasn't passed yet. It got pretty far last
22 year, it's been passed the Senate and stumbled in
23 the Assembly. It just wasn't high on somebody's
24 agenda in the Assembly, I guess. We did try to
25 build in safeguards to protect--to address those

2 kinds of concerns, that, you know, just a very
3 low-level person who had one pill that didn't
4 belong to him might be prosecuted, there are some
5 protections built into the bill. And so we've
6 been working with the State Senate and the
7 Assembly to try to address those concerns.
8 Kristine Hamann [phonetic] from my
9 office is sitting in the front row here. She's
10 been up in Albany quite a bit to talk to the
11 legislators on that bill. So we're hopeful, but I
12 can't tell you a specific concern that was raised
13 that would have prevented passage, it just wasn't
14 high on the Assembly agenda, I would say.
15 PHILIP ANDERSON: So just to get
16 back to some of the non-controlled. One of the
17 problems we see in Queens is, of course, the
18 airports. Now our office frequently gets
19 referrals through ICE and we prosecute cases
20 involving individuals who attempt to smuggle non-
21 controlled substances in their luggage through the
22 airport. We had one such referral last year,
23 individual with 50,000 Viagra pills in her
24 luggage. To charge her under Article 178, which
25 is the diversion statute, we need to prove that

2 she committed a criminal diversionary act, that's
3 the standard, and that means that she exchanged
4 those pills for anything of pecuniary value, which
5 is basically a sale. So having 50,000 pills in
6 her luggage doesn't really amount to much of a
7 crime.
8 CHAIRPERSON VALLONE: I'm amazed
9 that you could find somebody transporting 50,000
10 pills and charge them with nothing--
11 [Crosstalk]
12 PHILIP ANDERSON: [Interposing] Let
13 me tell you, so was--
14 CHAIRPERSON VALLONE: --hasn't
15 acted yet, I'm amazed.
16 PHILIP ANDERSON: So was Customs
17 when they called us.
18 CHAIRPERSON VALLONE: So was
19 Customs.
20 PHILIP ANDERSON: Now--
21 CHAIRPERSON VALLONE: [Interposing]
22 It must take a lot to amaze Customs too, and in
23 New York State does amaze Customs. Okay.
24 PHILIP ANDERSON: But just to give
25 you an idea, proposed legislation specifically

2 that creates 219, that individual, if that law was
3 in place, if 219 was in place, 50,000 Viagra pills
4 would be a Class B Felony. So you're going from
5 basically zero to the second highest possible
6 penalty under the penal law in passing this.
7 Now the other challenge in relation
8 to the airport is the U.S. Postal Service. They
9 maintain a huge facility at JFK as well, as do UPS
10 and FedEx, and they also work with areas of the PD
11 and the Port Authority Police Department. And we
12 work with a joint ICE, Port Authority, and NYPD
13 unit that basically, if any kind of contraband
14 comes through the airport, we would attempt to--
15 and it was destined for Queens, this unit has
16 undercover officers, they'll attempt to deliver a
17 package of heroin or a package of cocaine to an
18 address, and if somebody accepts it, they will
19 immediately execute a search warrant to recover
20 the drugs.
21 Now the problem is that also
22 millions of non-controlled pills come through the
23 U.S. Postal Service too, similar to my original
24 case where these kids were going to Canada and
25 finding pharmacies there and then mailing the

2 pills back. In 2001, Customs wasn't so vigilant
3 at the post office as they are now. In the first
4 four months of 2012, ICE has interdicted over 500
5 packages containing over 704,000 controlled
6 substance pills. Now they estimate that
7 approximately 10% of that is destined for the New
8 York market alone--or New York addresses alone.
9 Now for the same four month period, the beginning
10 of the year, ICE has interdicted over four times
11 that amount--2,000 packages containing non-
12 controlled substance prescription pills. There
13 was mention of fake pills, and some of them are
14 included, there is a market for forged pills.
15 CHAIRPERSON VALLONE: What are the
16 largest pills that you're seeing, the types of
17 pills that--
18 PHILIP ANDERSON: [Interposing]
19 Through the airport of the non-controlled, we
20 mostly see coming into the country, it's mostly
21 Viagra, Cialis, those types of medications. I
22 mean, there's a lot of what are considered lower
23 level, but they're still considered controlled
24 substance drugs.
25 I actually have here, just as a

visual…

[Off mic]

PHILIP ANDERSON: Yeah, I'm looking to start it.

FEMALE VOICE: Slideshow.

PHILIP ANDERSON: Here we go. And we can go from current slides, since it's [off mic]. So this is just basically where they process all the interdicted packages at JFK, and you'll see there is one ICE officer there who is, basically, they're just doing paperwork. There is no intention of delivering or doing anything other than just interdicting the packages, but they still have to process it, and those bins are really just waiting to be processed. A lot of them are sent in these, you know, soft pack mail envelopes, which look relatively small and benign, as opposed to, you know these big boxes, but they can hold an incredible amount of pills. I mean, you can see that's 2,000 Valium pills, which is a controlled substance, but you can see that from the size of the person's hand holding the envelope, it's not really a big envelope.

I mean, we have no estimate of how

2 many of these get through Customs. A lot of them
3 are manufactured out of the country so they are--
4 you know, this one is Vicodin made in Malaysia.
5 These are 1,000 Xanax that were just mailed from,
6 I guess, a regular post office judging from all
7 the stamps, in Pakistan. This is Ambien. If you
8 see the little arrow on the right pointing, I
9 don't know if you can read, but it says for sale
10 only in India. Those are the pills, again, a
11 small envelope, but it's 200 pills. Yeah, that
12 I'll get to in a minute.
13 The other thing that just sort of
14 anecdotally, just to get back to the non-
15 controlled, is, you know, last week, the police
16 department got a civilian complaint of a deli
17 selling yellow and blue pills. They sent in an
18 undercover to ask for yellows and blues, they were
19 given a Cialis three--two Cialis and one Viagra
20 for $20, so about $6 a pill. Based on that, they
21 obtained a search warrant, we executed the search
22 warrant, and they recovered a pill bottle. So
23 this is in a deli, as you can see, one of these
24 objects is not like the other. That's the pill
25 bottle which looks like it's been used a million

2 times before, and those are, you can't see from
3 this distance, but they are marked Pfizer, the
4 blue pills are marked Pfizer. This is 109 pills
5 that are just being passed over the counter. The
6 individuals at the deli were charged, of course,
7 with selling the pills themselves to the
8 undercover, that's an A Misdemeanor sale. The 109
9 pills that were recovered, again, no charge. If
10 219 were in place, we could add at least an E and
11 possibly a D Felony, depending on a calculation of
12 the value of the pills, which, of course, would be
13 much more of a deterrent.
14 Now, basically, our office believes
15 that some form of--there is talk of electronic
16 prescription programs for reducing the amount of
17 forged prescriptions that are currently
18 circulated, which compose a huge market. And of
19 course, educating parents about the dangers of
20 these pills, especially parents, when a lot of it
21 comes from medicine cabinets. And as Ms. Brennan
22 was showing you, the numbers for just oxycodone
23 alone in terms of the growth, I don't know if you
24 could read from her diagram, but in Queens alone,
25 266 prescriptions for only oxycodone were written-

2 -these are valid prescriptions validly written.
3 If you assume an average of a 30-day supply of one
4 pill a day, which generally these prescriptions
5 are 120 pills, for 120 pills, so 30 pills is a
6 conservative estimate for an average, we're
7 talking about 7,980,000 pills of oxycodone alone
8 in Queens County alone. It's a huge number. I
9 mean, if you extrapolate that to Vicodin and other
10 controlled pills and add them all together, for
11 Queens, you're talking an astronomical number.
12 CHAIRPERSON VALLONE: That's 7
13 million in what time period?
14 PHILIP ANDERSON: In all of 2008.
15 I'm sorry, 2011.
16 CHAIRPERSON VALLONE: Okay.
17 PHILIP ANDERSON: That would be
18 averaging the prescriptions for oxycodone, which
19 was over 266,000 written in 2011, if you average
20 that one each prescription is for 30 pills--which
21 we believe is very conservative, because most
22 prescriptions are written for 90 to 120--that is
23 almost 8 million pills in 2011 for one of these
24 opiate drugs in one county in the city.
25 So the Queens District Attorney

2 Richard Brown, as everybody probably knows, loves
3 writing a wiretap, has never met a wiretap that he
4 doesn't like. We're going to continue these kinds
5 of investigations if the proposed legislation
6 banning the non-controlled, the possession of non-
7 controlled substances pass too, you know, we fully
8 intend to prosecute those cases exactly the same
9 way. Like I used in my example, the 50,000 Viagra
10 pills, we were talking that's a Class B Felony.
11 So I'd just like to thank the Committee and on
12 behalf of Richard Brown, thanks.
13 CHAIRPERSON VALLONE: Very
14 informative. Does anyone else have a statement
15 they'd like to give? And please identify
16 yourself.
17 MARC FLIEDNER: Yes, hi, I'm Marc
18 Fliedner, I'm the Chief of Major Narcotics
19 Investigations for the Kings County District
20 Attorney's Office, one of the executive
21 prosecutors there.
22 CHAIRPERSON VALLONE: Just move a
23 little closer to the mic or--
24 MARC FLIEDNER: Yep, sure--
25 [Crosstalk]

2 CHAIRPERSON VALLONE: Thanks.
3 Thanks.
4 MARC FLIEDNER: Grateful to be a
5 part of this discussion. I want to take it from a
6 slightly different angle that I think supports
7 fully exactly what we're talking about here. On a
8 date in February, one of my detective
9 investigators and I were asked to go to a town
10 hall meeting that Senator Marty Golden had planned
11 at the Dyker Heights Junior High School on 12th
12 Avenue in Brooklyn. And we do that often because
13 District Attorney Hynes uses a community-based
14 model for prosecution, so the kinds of information
15 that we get through these meetings and sometimes
16 the intelligence that's generated can be
17 tremendous, but this is not a place we usually go,
18 this is not one of our hotspots for drug activity.
19 And while the substance and the structure of the
20 panel discussion was traditional, the tenor of the
21 conversation was actually chilling.
22 These were people that were
23 standing up one at a time with this real sense of
24 urgency because three young men between the ages
25 of 18 and 23 had died within an eight-day period

2 in that community because of prescription drug
3 overdoses. So these people are standing up and
4 they're taking the hand-held microphone and
5 they're saying, we need help.
6 We heard from a woman who described
7 how while her nephew was convulsing and in the
8 process of dying, his friends fled the scene and
9 didn't get him help because they were concerned
10 that they were going to be caught with the oxy on
11 their person. We also heard her tell about how
12 there was sale and distribution of pills at his
13 funeral a couple of days later.
14 We heard from another woman who
15 stood up and said, I see kids, junior high school
16 kids outside of the school, kids I've watched grow
17 up and I try to talk to them about the fact that I
18 see what they're doing and they basically tune me
19 out and blow me off. What can I do to get
20 assistance.
21 And so this was obviously a real
22 call to arms for us. We knew we had a problem,
23 but we did not understand that we were going to be
24 seeing it in these communities that we are--are
25 not the communities that we traditionally serve in

2 the context of organized narcotics investigations.
3 And so what we've got is we've got
4 this situation where, as a law enforcement
5 community, we've battled the narcotics trade using
6 very familiar tools, we know how to identify
7 certain organizations and how they're structured
8 and how to infiltrate them for the purpose of
9 making buys and then ultimately developing
10 investigations. But this is an entirely new drug
11 epidemic and the kinds of tools that we would have
12 used aren't always working, as Bridget and some of
13 the colleagues pointed out.
14 A couple of things that are worth
15 note is that the kid who would not have chosen to
16 use crack or heroin, is now stumbling into this
17 world of prescription drug use because these are
18 legal pills and because they're, unfortunately,
19 readily accessible. The distributors of these
20 drugs are not necessarily the scary drug dealers
21 in neighborhoods that they wouldn't necessarily
22 always think to enter, they are literally the
23 doctors who are, as was pointed out, pain
24 management specialists as advertised and they're
25 operating out of these very nice offices down the

2 block. They're also getting access to pills from
3 their buddies at the school who will pass them
4 around. They're also getting them from, as
5 previously referenced, faceless pitchmen who are
6 on the other end of a computer. So this is a
7 whole new world.
8 Now because the dynamics of
9 prescription drug distribution are new to us, we
10 have to, as the special narcotics prosecutor well
11 pointed out, pool our technological and
12 intellectual resources, we've got to create our
13 own new models to address the problem. Law
14 enforcement agencies that didn't traditionally
15 work together have to be sharing our resources and
16 our databases, that's a critical component of it.
17 We've got to teach each other what we're learning.
18 In an environment where the tricks of the trade
19 are changing, daily. I've in recent weeks met
20 with DEA agents, colleagues at the State Attorney
21 General's office, NYPD detectives that I had never
22 worked with before and we've exchanged ideas about
23 strategies, which sometimes, by the way, can
24 include very valuable civil remedies as a
25 component of the solution to the problem with a

2 particular case, and we've discussed the need for
3 changes in the penal law that recognize the unique
4 nature of this prescription drug epidemic.
5 The District Attorney of Kings
6 County Joe Hynes absolutely supports the
7 legislation that was proposed by Senator Hannon
8 and Assembly O'Donnell, and then there are a
9 couple of specific reasons why we really like it.
10 It recognizes so many of the problems that have
11 led to this specific new epidemic. It recognizes
12 that the over-prescribing by the health
13 practitioners is a problem that's got to be
14 addressed the legislation. It recognizes--and
15 criminal legislation in the penal law--it
16 recognizes that over dispensing by pharmacies is
17 part of it, there's got to be accountability. And
18 it also recognizes that the unchecked use of
19 electronic means for disbursement is part of the
20 problem. It also recognizes that because the
21 prescription form, the true paper prescription in
22 the old days, now the computer electronic
23 prescription, is the initial instrument of
24 distribution, the penalties for its improper use
25 must be adequate. And it recognizes that the

2 availability of--in our community of non-
3 controlled prescription drugs enhances and
4 supports the system that's driving the controlled
5 substance trade. Particularly, what we're seeing
6 in Brooklyn now is OxyContin. Today's heroin, we
7 all know that, it's becoming something of epidemic
8 proportions.
9 In Brooklyn today, the businessman
10 from Staten Island and the college kid from
11 Manhattan and the junior high school student from
12 down the lot can get prescription drugs from a
13 street dealer. Basically, it's what do you need
14 and do you need it delivered and we'll accommodate
15 it. The marijuana and crack is sold along with
16 any variety of prescription and both controlled
17 and non-controlled prescription medications.
18 And so the bottom line is that if
19 these people's lives can be destroyed by addiction
20 no matter which one of these things he chooses
21 from the hand of his drug dealer, then we have to
22 have law enforcement tools, including legislation,
23 that recognize the true dangers of each and every
24 one of these substances. Thank you.
25 CHAIRPERSON VALLONE: That's very

2 interesting about how easy it is for kids
3 nowadays, they no longer have to go into a scary
4 alley and meet a drug dealer, they just have to go
5 to a doctor or know someone who went to a doctor,
6 amazing. Does anyone else have anything they'd
7 like to say? Please identify yourself.
8 PAUL MAHONEY: Yes, thank you, Mr.
9 Vallone, and thanks to the Committee. I am Paul
10 Mahoney, I'm Assistant Deputy Attorney General for
11 the Medicaid Fraud Control Unit. And with the
12 Deputy Attorney General and the 300 staffers in
13 Medicaid Fraud Control, we combat waste, fraud,
14 and abuse in Medicaid program. In fact, the case
15 Mr. Vallone mentioned in his opening remarks, the
16 $250 million HIV takedown last month in Long
17 Island was our case. And we'd like to briefly
18 speak about the Attorney General's response to
19 this problem.
20 I'm going to trim my remarks
21 considerably, in part because there is absolutely
22 no disagreement among healthcare advocates and law
23 enforcement as the cause of the problem and the
24 magnitude of the problem. All I can do here at
25 this meeting is give the City Council and my

2 colleagues some cold comfort that you're not
3 alone. It's a statewide problem, our report in
4 January spelled out that Buffalo has this problem,
5 Rochester has this problem, Syracuse has the
6 problem. It's not a question of city
7 demographics, it's a question of availability of
8 these substances.
9 And in fact, we've come at this
10 question actually in sort of a 180 degree reversal
11 of roles from our counterparts who have done
12 traditional narcotics cases. We addressed it as a
13 question of fraud for many years because, from our
14 perspective, the problem is almost a perfect storm
15 of crime. Not only--and I think this is a real
16 driver of this problem--not only do people get
17 their hands on drugs that they want to get their
18 hands on, but someone else pays for it. With
19 heroin, with cocaine, other traditional per se
20 contraband, you have to come up with your own
21 revenue stream to fund your own need for it. With
22 prescription drugs and prescription controlled
23 substances, in most cases, you can find someone
24 else to pay for it; and if you can't find someone
25 else to pay for it, it's still legal for you to

2 buy it.

3 And so with those problems, we went
4 to a large number of stakeholders and we tried to
5 get at what drives this and we can't immediately
6 address the question of addiction, but we thought
7 that the three key elements involved information,
8 accessibility, and, particularly, accountability
9 for each of the actors in the chain of the
10 problem.

11 And so let me note, the state is
12 paying $1 billion in Medicaid funds alone for
13 controlled substances for 2007 through end of
14 2010, so $250 million a year for the state. It's
15 roughly matched by private insurance, actually
16 private insurance is probably a little bit higher.
17 Each case that Medicaid fraud has taken down has
18 cost the state approximately $1 million in
19 Medicaid loss, but that's a gross
20 oversimplification, because as the prosecutors
21 know, in a grand larceny case once you hit a
22 million-dollar threshold, there's not much need to
23 go beyond that.

24 So our view is that we have to
25 address the problem from each of the built-in

2 defenses that the paper prescription and the
3 medical system gets because at each point where a
4 law enforcement officer--and we heard from the
5 inspector earlier about the problems of doing
6 these undercover operations--each time the law
7 enforcement officer breaks into that circle, each
8 of the actors can point to the other as justifying
9 their decision tree. The doctor who issued the
10 prescription can say that the patient misreported
11 his medical history and his condition. And then
12 the question is who is the jury going to believe,
13 the admitted drug addict or the patient--or the
14 person with a diploma. So we call that the Blame
15 the Patient defense. The pharmacy that dispense
16 the drug, even though they strongly suspected that
17 the person was presenting it in bad faith, can
18 say, who am I to second-guess the doctor, I'm
19 going to blame the doctor. And the drug abuser
20 can say, well, I said I had this problem, I do
21 have a physiological problem, addiction is a
22 serious physiological problem, so who am I to
23 second-guess. And then we call that Blame the
24 White Coats. So it's almost a perfect crime from
25 a criminal perspective.

2 And without reciting the stats that
3 we've all discussed already, let me just say that
4 the I-STOP legislation that the Attorney General
5 has proposed attempts to address each of the
6 factors in this chain without substituting
7 legislation for medical judgment. It puts the
8 good-faith doctor in connection with the patient's
9 total controlled substance history and it doesn't
10 need to rely on misreporting from the patient. It
11 gives the pharmacist access to an electronic
12 record of the prescription being issued and
13 greatly reducing forgery, greatly reducing the
14 delayed timing that we heard discussion of
15 earlier, and greatly reducing the value of the
16 paper prescription as a commodity. And the good-
17 faith patient, who may nonetheless be a good-faith
18 patient but has a drug abuse problem, now has a
19 doctor who has accurate information who can point
20 them towards the needs for treatment rather than
21 simply fueling the addiction by generating more
22 pills. And this legislation, which Mr. Krakower
23 will flesh out in a moment, we think will enhance
24 the prescription monitoring program in New York
25 State, which is useful, but it's outdated, and it

2 will make a large dent in the problem.

3 I wanted to point out one thing

4 about one of the earlier slides, just as an aside.

5 There is a discussion that frequently describes

6 these entities as pain management clinics. One

7 thing we frequently overlook is that pain

8 management as a medical specialty, a board

9 certification, is actually a very rare

10 certification. Most of these places who open up

11 as pain management clinics have the most general

12 certification in general medicine. They are

13 actually often--not every single one of them,

14 certainly some are board-certified and many are

15 acting in good faith, but it often reflects a

16 physician who has gone on a downward slope in

17 their career and is essentially opening a retail

18 storefront for transacting drugs, and that has

19 been the case with most of the pill mills that

20 have been taken down. So the simple veneer of

21 calling something pain management does not

22 indicate a medical judgment, it is merely a

23 marketing aspect for many of these doctors. Thank

24 you.

25 CHAIRPERSON VALLONE: Thank you.

2 Let me just say that we've been joined by Council
3 Members Greenfield, Gentile, Gennaro came by,
4 Garodnick. Did I miss anyone? No, and when we're
5 done, we're going to go to Greenfield for some
6 questions. Thank you.
7 GREGORY KRAKOWER: Well thank you
8 and thank you, Mr. Chairman, and thank you,
9 Members of the Council. I guess it's good to--
10 that I'm wrapping up this panel with what was
11 touched upon very tangentially by several of the
12 speakers and it is a, we think a key component of
13 a solution. And perhaps it's fitting that I'm not
14 a professional prosecutor here, I'm the Senior
15 Adviser and Counselor to the Attorney General.
16 And what the Attorney General has
17 introduced in the legislature is a first of its
18 kind, most comprehensive tracking system which we
19 call the Internet System for Tracking Over-
20 Prescribing, and it really gets to a key component
21 of this problem of updating and modernizing the
22 state's current prescription monitoring program so
23 that doctors and pharmacists and the medical
24 community really know who and why is seeking a
25 legal substance. And because it's new, we know

2 lots of questions have been raised, so I'm going
3 to brief my remarks for description in case there
4 are questions and I'm going to outline it.
5 What the I-STOP legislation would
6 do, it would require at first glance when a doctor
7 wishes to write a prescription for a controlled
8 substance in a non-emergency setting would check a
9 real-time Internet-based database which would
10 contain the drug and prescription history of the
11 patient. The doctor would look on the system and
12 get an up-to-date information of to what
13 controlled substances the person seeking a script-
14 -and in our society, it is a script that is the
15 gateway to a prescription drug--has had.
16 And this is just a sort of
17 accordance with what common medical practice would
18 be--a doctor, physician to say, what's your drug
19 history. And one of the key things to realize as
20 we get to the law enforcement benefits is the
21 Attorney General believes, and we think this is,
22 I-STOP is not only a law enforcement tool, it is a
23 diagnostic tool as well. It gives an accurate
24 computer-based history.
25 So the doctor logs on to the system

2 and/or prior to the patient arriving, they could
3 use their clerks as well, and gets this computer
4 database system of the patient's prescription and
5 drug history. Then, using medical judgment, the
6 doctor can determine what is medically necessary
7 and he or she can issue a script as they do now.
8 At the point of issuing, the doctor's office
9 enters into the system that a script has been
10 entered, and you could do this through I-STOP, you
11 could also, you know, do it through electronic
12 scripting as well, but that is the key point.
13 So, one, then the patient can go
14 across the street to a pharmacist, who needs the
15 drug and who deserves the drug, and get the
16 script. At that point, the pharmacist can check
17 to see that there is a real script. It is not a
18 stolen script, it has not been forged, the patient
19 has not upticked it by entering a zero or changing
20 a three to an eight, or just simply that this
21 hasn't taken a stolen prescription of a kind of
22 the rogue employee that I think was on the
23 previous slide projections.
24 CHAIRPERSON VALLONE: And right now
25 there's no way for pharmacists to know that unless

2 they actually call the doctor, and there's no
3 requirement that they do that, correct?
4 GREGORY KRAKOWER: Correct. Right
5 now, the current system has only pharmacists
6 entering data, mandatory once every 45 days.
7 Many, many pharmacists do it once a week, but the
8 data then sits in the state, it's not really a--
9 doctors have options to have access to it, but
10 very few are, and there certainly is no mandate,
11 as the Attorney General has proposed.
12 So you've actually addressed
13 several of the problems here, not all of them, but
14 several of the problems. One is the doctor
15 shopper, right? You might have a reason why
16 you've lost one script and then you've gone to a
17 second doctor in the same day to get a drug.
18 Right now, the second doctor, the third doctor,
19 the fourth doctor, the fifth doctor a patient has
20 seen in a day--and this is obviously a drug
21 seeking person, not for medical reasons--has no
22 idea that there are two or three or four scripts
23 out there written in the same month, same hour,
24 same day. Now the third doctor will be able to
25 see, you know what, two scripts, you've gotten

2 your two scripts already from two different
3 doctors, and a good-faith doctor will not, on his
4 or her own judgment, probably issue a third of a
5 script there. And that is a key control of the
6 problem of doctor shopping.
7 It also ties into a solution of the
8 bad-faith doctor and the lying patient. And let's
9 be clear, some doctors actually are lied to by
10 their patients and, you know, err on the side of
11 pain management and alleviating pain. Part of I-
12 STOP is, in fact, making sure that patients who
13 need it and are legitimately given a script can
14 get access to their medications. So--
15 [Crosstalk]
16 CHAIRPERSON VALLONE: [Interposing]
17 That is excellent legislation. Just tell us where
18 it is now and in either House and what's the
19 future?
20 GREGORY KRAKOWER: It is pending,
21 we are in active negotiations and we feel
22 optimistic, we think we've gotten the word out
23 and--
24 CHAIRPERSON VALLONE: [Interposing]
25 Well I supported their--it's in our Health

2 Committee, which some people may be confused.
3 We're looking at another resolution here which
4 does other--which stiffens some penalties. Your
5 legislation does what you just described, that's
6 in the Health Committee, and they've had a hearing
7 on that already, but I fully support it, I think
8 it's a great legislation.
9 GREGORY KRAKOWER: Well we
10 appreciate that and we appreciate other Councilman
11 have support it, but, you know, this is new and
12 folks want to make sure that there are protections
13 and there are going to be privacy protections in
14 the bill and, you know, it's not a--we've made
15 sure that there are exemptions for emergency
16 medicines, no one is making a doctor check a
17 database when there is an emergency or someone is
18 in urgent need of care. By the way, those are
19 generally not 30-day scripts, they're emergency 5-
20 day oral scripts.
21 So, you know, we had it new, we
22 wanted to present it at this hearing and take
23 questions on it. But we do think a real-time
24 Internet-based system is work, it's feasible, it's
25 affordable, and with a little hope and a lot of

2 optimism, we think it's the way of the future.
3 And we thank you.
4 CHAIRPERSON VALLONE: Okay. And my
5 Council Members have been waiting patiently so
6 I'll go first to them before I ask questions.
7 Council Member Greenfield.
8 COUNCIL MEMBER GREENFIELD: Thank
9 you, Mr. Chairman. I want to thank you all for
10 your testimony today and for the good work that
11 you do.
12 I'm curious about a couple of
13 things. You know, when we speak about things like
14 painkillers, right, OxyContin and Vicodin and
15 Demerol, I think unanimously we all agree big
16 medicine society, big problem, very nontraditional
17 drug market, right, you know, not necessarily
18 being sold, you know, in the street alleys, and I
19 think it concerns us all. And I applaud you for
20 all the work that you've been doing on that front.
21 I am a little bit concerned, I just
22 am curious in terms of the legislation that's out
23 there, sort of, how it would overlap between the
24 two, right. There is, I guess for lack of a
25 better term, I will call it a gray market perhaps

2 of individuals who seek, in many cases, life-
3 saving drugs that they can't afford here in the
4 United States, whether it be cancer patients or
5 AID patients or heart patients, right, and they go
6 online and they order it from, for example,
7 Canada, it's very popular, right. Now
8 technically, I believe that it's illegal. My
9 understanding, however, is that for whatever
10 reason, it's not prosecuted. And I'm just
11 worried, I guess, the legislation that we're
12 discussing today, would that overlap into that
13 particular area? Now from your perspective, I
14 understand if it's illegal, it's illegal, I get
15 it, right, but from my perspective, you know, if
16 there's life-saving drugs that cost $1,000 a month
17 in the United States and someone can get it for
18 $100 in Canada, you know, I'm honestly
19 sympathetic. So I'm wondering what your views on
20 that and whether the legislation that we're
21 discussing here today would sort of fall into that
22 rubric or not.
23 [Off mic]
24 BRIDGET BRENNAN: Yeah. Kris
25 Hamann has been working on this legislation from

2 my office, we helped draft the legislation, and I
3 think perhaps she might be able to most
4 knowledgeably--
5 COUNCIL MEMBER GREENFIELD: Sure.
6 BRIDGET BRENNAN: --answer that
7 question.
8 COUNCIL MEMBER GREENFIELD: Thank
9 you.
10 KRISTINE HAMANN: I think the--
11 COUNCIL MEMBER GREENFIELD:
12 [Interposing] We just need you to come up and
13 speak in an actual microphone. We're very
14 advanced, today, we actually have all of our
15 hearings being broadcast on the Internet live.
16 And for the millions of viewers that would like to
17 hear--
18 CHAIRPERSON VALLONE: [Interposing]
19 We're not. I was told two hours ago that we were
20 supposed to go live and we're not, so you can
21 curse freely and we can edit it out.
22 [Crosstalk]
23 COUNCIL MEMBER GREENFIELD: Well
24 then I will tell you this then, it will be
25 archived. For the millions of people who would

2 like to watch this on the City Council website.
3 But apologies, it was supposed to go live today,
4 I'm sorry it didn't happen. But, yes, you were
5 saying?
6 BRIDGET BRENNAN: Kristine Hamann
7 is the Executive Assistant District attorney in
8 our office.
9 KRISTINE HAMANN: The main
10 protection in the bill goes to the quantity of the
11 pills that would be possessed so that if someone
12 is getting these pills in the gray market, they
13 would get a quantity that would be amenable to
14 their particular illness and they wouldn't fall
15 within the statute. The statute goes to large
16 quantities that are not something that someone who
17 needs it and gets it from the gray market would
18 normally possess.
19 Nevertheless, it is still important
20 to discourage the gray market because what we have
21 seen is that medications that go through this gray
22 market have a number of major problems. Number
23 one, you might not get the pill that you think
24 you're getting, which is very serious. So if you
25 go in the gray--you don't want to encourage people

2 to do this because they might think they're
3 getting expensive AIDS medication and it is not
4 because we've seen, and the AG's office--
5 COUNCIL MEMBER GREENFIELD: Sure.
6 KRISTINE HAMANN: --I think has
7 seen this, it is falsely packaged. Number two, we
8 have no guarantee that it's being maintained in a
9 way that keeps the pills properly refrigerated, if
10 the expiration date has expired and so forth. So
11 we do have the protections, just that larger
12 quantities is what the bill is going after,
13 because that's what we're seeing, that the
14 business end of it is in large quantities.
15 COUNCIL MEMBER GREENFIELD: So when
16 you say--so I just want to respond to the two
17 points that you made. First of all, we're not
18 encouraging people to do this. The reality is
19 people have no choice, right. I mean, so if
20 you're dying from whatever disease that happens to
21 be out there, whether it's heart disease or cancer
22 or anything else, right, and you can't afford to
23 pay the medication. This is happening--nothing to
24 do with you--because of the failure of, obviously,
25 the American medical system. So I want to be

2 clear--American healthcare system, rather--it's
3 nothing to do with what you folks are doing, but
4 we're not encouraging, but it is happening.
5 Although I will note that, I'm sure you may have
6 read the article, the Op Ed, I think, in the
7 Times, it was either yesterday or two days ago,
8 that pointed out that there are reputable sites
9 that people who do the correct research could
10 actually get proper medication, but there's no
11 question that, like everything else on the
12 Internet, that there's a lot of fraud. I mean,
13 the Nikes that you order you think are legitimate
14 as, in fact, we discovered iPhones, the people
15 thought were legitimate are not either. But
16 there's no question that there are legitimate
17 sites, you know, certified licensed Canadian
18 pharmacies versus, you know, ones that are scams.
19 And just in all honesty, I think it's fair to
20 point out both points.
21 But when you say large quantities,
22 what does that mean? I mean, so obviously 90
23 days, right, I'm guessing that's not going to fall
24 into that rubric. What do we define as a large
25 quantity?

KRISTINE HAMANN: If I can just get the bill?

COUNCIL MEMBER GREENFIELD: Please.

COUNCIL MEMBER HALLORAN: A point of information, the bill 21910 section 1 through 2 lists them. The aggregate value of a non-controlled substance prescription medication exceeds $200 or possesses 20 or more pills.

COUNCIL MEMBER GREENFIELD: Oh, so that's not a very large quantity.

COUNCIL MEMBER HALLORAN: No, it's not and when you're talking about HIV, AZT--

[Crosstalk]

COUNCIL MEMBER HALLORAN: --related drugs, they are far in excess of $200 for a single dose, let alone multiple doses. Just to make the record clear about the point you're making, Councilman.

KRISTINE HAMANN: And that is the misdemeanor.

COUNCIL MEMBER HALLORAN: Yes.

KRISTINE HAMANN: Right.

COUNCIL MEMBER HALLORAN: Yeah, that's criminalizing it, I'm just pointing that

2 out, that's--

3 COUNCIL MEMBER GREENFIELD:

4 [Interposing] Okay. So then I'm a little

5 confused, so that's not a large quantity.

6 KRISTINE HAMANN: Well this would

7 be a--I think it all depends on how much you can

8 get over the Internet in one fell swoop for what

9 your medical needs are. One of the issues that we

10 have been discussing is whether there would be

11 some kind of affirmative defense that we could put

12 into the bill in order to provide a defense for

13 someone who can actually demonstrate a medical

14 need.

15 COUNCIL MEMBER GREENFIELD: Okay.

16 I just want to state for the record that I will

17 not support any bill that does not have a very

18 clear carve out, and once again, I'm just a City

19 Council Member, but I will make it my business to

20 lobby against any particular legislation that does

21 not have a very clear carve out as opposed to an

22 affirmative defense, which means we just busted a

23 cancer patient's door down and now we drag them

24 away in handcuffs, and now after six months in

25 trial he can make an affirmative defense, that's

2 not good enough for me. From where I sit. I want
3 to be clear, again, I think the work that you're
4 doing, and I praised it before, the work that
5 you're doing when it comes to the painkillers--the
6 OxyContin, the Vicodin, Demerol--fantastic work, I
7 applaud you, it's life-saving work. However,
8 unintentionally, I'm honestly afraid that you may
9 end up killing people by creating such a low
10 threshold--$200 or 20 pills. It's routine--my
11 understanding is it's routine for people to order
12 30, 60, 90 days worth of pills and we're talking
13 about literally, in some cases, in life-saving
14 cases, we're talking about AIDS or cancers or
15 heart patients, thousands of dollars. So I
16 respect what you're doing, I have great
17 appreciation, and I believe that your heart's in
18 the right place, but I think that there needs to
19 be a very clear and consistent carve out for
20 people who are taking advantage of the gray market
21 because they have no choice.
22 I want to repeat that these are not
23 people, right--you know, I have a health insurance
24 plan, I work for the City, I get paid well, I can
25 afford these things, I have a reasonable

2 deductible, that's me. We're all lucky, most of
3 us in this room are lucky, but there are plenty of
4 people out there, unfortunately, today, they're
5 unemployed, they have no health insurance, they
6 don't have the ability to pay these astronomical
7 bills. Someone now gets cancer or AIDS or has a
8 heart condition. We're talking about literally
9 thousands of dollars in what it costs over the
10 counter to go and, quite frankly, we can't blame
11 them for trying to seek out another market to save
12 their lives. These are parents, these are
13 children.
14 And so I just want to state that
15 for the record and very strongly encourage you to
16 change the bill, and I think you'd have a lot more
17 support if you did that.
18 KRISTINE HAMANN: I just want to
19 explain one, the phenomenon that we're seeing is
20 that there's a very swift market in these pills,
21 particularly focused on 157th and Broadway, and
22 the very thing that we're seeing there is that
23 people are selling these small amounts of pills.
24 We are, the police--
25 COUNCIL MEMBER GREENFIELD:

2 [Interposing] Which pills? I'm sorry, when you
3 say pills, I just want to be clear--
4 KRISTINE HAMANN: AIDS medication--
5 COUNCIL MEMBER GREENFIELD: --which
6 pills are you talking about?
7 KRISTINE HAMANN: --AIDS
8 medication--
9 COUNCIL MEMBER GREENFIELD: Okay.
10 KRISTINE HAMANN: --are sold on the
11 street in these--
12 COUNCIL MEMBER GREENFIELD: Yeah.
13 KRISTINE HAMANN: --quantities--
14 COUNCIL MEMBER GREENFIELD: Yeah.
15 KRISTINE HAMANN: --and if they're
16 stopped--and this happens all day long, so if
17 someone is stopped with that quantity of pills on
18 them, they have no medical reason for them, they
19 have no prescription for them, that is the type of
20 behavior that we're trying to stop because that is
21 leading to the big stash houses with $4 million
22 worth of AIDS medication that could be tainted,
23 not properly cared for, and could go into the gray
24 market, and also kill people that--
25 COUNCIL MEMBER GREENFIELD:

2 [Interposing] I'm not blaming you, I understand,
3 my--
4 KRISTINE HAMANN: Right.
5 COUNCIL MEMBER GREENFIELD: --
6 point, however, is that you are brilliant
7 attorneys, right, all of you are sitting there,
8 you're the best and the brightest that we have,
9 you can figure out a way--
10 KRISTINE HAMANN: Yes.
11 COUNCIL MEMBER GREENFIELD: --where
12 you can carve out people who have legitimate
13 health needs and, from my understanding of what
14 you're telling me and from what Council Member
15 Halloran is telling me, it seems that right now,
16 you haven't done that yet. So I'm simply
17 encouraging you to do that, and just from my part,
18 until that happens, I will be voting no. Thank
19 you.
20 CHAIRPERSON VALLONE: Thank you,
21 Council Member. And I actually think that's what
22 I was getting at before when I said what may be
23 the reasons that people oppose this, and that's
24 what I was looking for. I assume that's what some
25 of Albany has a problem with and I would encourage

2 you to work that out to address some of those
3 concerns.
4 Council Member Halloran.
5 COUNCIL MEMBER HALLORAN: Let me
6 just follow up just so that we're clear. Section
7 21915 as proposed would make it a felony to
8 possess $500 worth or 50 pills. So, again, I
9 think there is a very legitimate concern when it
10 comes to some of these things. Now I think you
11 can carve out an exception very easily in terms
12 of--
13 KRISTINE HAMANN: Yes, I--
14 COUNCIL MEMBER HALLORAN: --the
15 sale component, right? I mean, that would be your
16 out?
17 KRISTINE HAMANN: [Interposing]
18 It's the medical need. It's the--
19 [Crosstalk]
20 COUNCIL MEMBER HALLORAN: Right,
21 the medical need exception, right?
22 KRISTINE HAMANN: Yes.
23 COUNCIL MEMBER HALLORAN: So I
24 guess that has to be just what's emphasized. And
25 also I'm glad to see, and I will point out so that

2 the Council Member is aware, you redefined the
3 sale component. Most people don't realize this,
4 and it's a bit of an education that I'm about to
5 give them, I think, you can be charged with
6 criminal sale of a controlled substance without
7 actually selling it. You can hand it to somebody
8 and our courts will construe that as a sale, there
9 does not have to be actual money or goods or items
10 transferred, which I think is not right, but
11 that's a whole 'nother issue. But in your
12 particular legislation that's proposed, you've
13 included a pecuniary requirement, so that is a
14 difference, that changes things, right?
15 KRISTINE HAMANN: Yes, that has
16 always been there and we just added sections for
17 if you do it repeatedly, and that enhances the
18 penalties. We did not change the way the law
19 exists in 178.
20 COUNCIL MEMBER HALLORAN: Okay. So
21 I mean, that would be something where I think the
22 Council Member's concerns could be addressed, both
23 in the carve out exception for--
24 KRISTINE HAMANN: [Interposing]
25 Yeah, that's already there, right.

2 COUNCIL MEMBER HALLORAN: Okay.

3 KRISTINE HAMANN: But the medical

4 need issue is one that we are aware of, but we

5 have not sat down and actually hammered out the

6 actual language, but it is something that we are

7 aware of.

8 COUNCIL MEMBER HALLORAN: So and I

9 appreciate the fact that there has been a lot of

10 consideration going on in the drafting of this.

11 KRISTINE HAMANN: [Interposing]

12 Tremendous amount. Yeah, because we're trying to

13 balance to have something that actually is useful

14 to law enforcement, what the officers are seeing

15 on the street. We don't want to draft a bill that

16 would not help prevent this, yet we do understand

17 the concerns about people who would want to go

18 into the gray market, though as I said before, it

19 is a dangerous market--

20 COUNCIL MEMBER HALLORAN: Sure.

21 KRISTINE HAMANN: --to go into.

22 COUNCIL MEMBER HALLORAN: Because

23 you don't know what you're getting, you don't know

24 if it's--

25 KRISTINE HAMANN: You don't know

2 what--

3 COUNCIL MEMBER HALLORAN: --

4 legitimate and there are very real concerns about-

5 -

6 KRISTINE HAMANN: Yes.

7 COUNCIL MEMBER HALLORAN: --are you

8 even getting something that's going to work.

9 KRISTINE HAMANN: And it's--

10 [Crosstalk]

11 COUNCIL MEMBER HALLORAN: Is it not

12 a placebo, is it, you know--

13 KRISTINE HAMANN: --we're trying to

14 prevent the dangers of that gray market and so we

15 don't want to tie our hands to be able to protect-

16 -

17 COUNCIL MEMBER HALLORAN:

18 [Interposing] Most of this is probably a federal

19 problem, some congressman down the road will have

20 to look at the FDA and figure out what to do with

21 it, I'll let you know in November how that works

22 out.

23 PHILIP ANDERSON: Can I just

24 correct one thing though?

25 COUNCIL MEMBER HALLORAN: Sure.

2 PHILIP ANDERSON: For 178 for
3 giving a prescription or a prescription drug that
4 is not a controlled substance, you do have to--the
5 diversionary act for that is something of
6 pecuniary value.
7 KRISTINE HAMANN: Yes, that what
8 he--right, right.
9 PHILIP ANDERSON: Right. Unlike a
10 regular street drug--
11 COUNCIL MEMBER HALLORAN: Which is
12 hand-to-hand is good enough and it doesn't require
13 money.
14 [Crosstalk]
15 PHILIP ANDERSON: --any money or
16 anything, then you're done.
17 COUNCIL MEMBER HALLORAN:
18 Absolutely.
19 KRISTINE HAMANN: And could I make
20 a suggestion, you were going to endorse this bill,
21 which I think is very important, we're in the--
22 we're thick into the legislative--you might want
23 to just add a proviso that your concern be taken
24 into account and yet still be able to support the
25 thrust of the bill itself--

2 [Crosstalk]

3 COUNCIL MEMBER HALLORAN:

4 [Interposing] And, Mr. Chairman, we can make

5 friendly request for if a friendly amendment to

6 the resolution asking that there be a carve out

7 exception with regards to the health need as

8 indicated.

9 KRISTINE HAMANN: Someone who can

10 demonstrate a legitimate medical need, yes.

11 COUNCIL MEMBER HALLORAN: I have

12 one other question and this just has to go with

13 the database itself. Anytime I hear the

14 government compiling a list, I get worried. It's

15 the libertarian in me. So in the privacy

16 components that we're talking about, do we have or

17 have you envisioned safeguards that will both

18 penalize anyone who improperly utilizes the

19 database vis-à-vis disclosing, disseminating,

20 other than the HIPAA or the existing regulations,

21 and if not, why not? Because you should. If

22 we're going to put people in jail for carrying

23 these prescriptions illegally, we should certainly

24 put in jail people who release information from

25 these lists which are now being compiled

2 illegally. So have you thought about things like
3 that?
4 GREGORY KRAKOWER: I can answer
5 this really quickly. Yes, and it's in the
6 legislation.
7 COUNCIL MEMBER HALLORAN: And you
8 have answered my question, thank you very much.
9 Mr. Chair, I give it back to you.
10 CHAIRPERSON VALLONE: Okay. I
11 don't oppose that amendment--I'm speaking to
12 counsel about whether we can legally do it, and I
13 think that's part of the problem that they're
14 facing in Albany too, to make something legal
15 which is federally illegal, buying things on the
16 Internet. So I don't oppose it and if it's going
17 to get committee members to vote on it, I would
18 not have a problem, but I'm going to have counsel
19 take a look at it and then discuss it with these
20 great minds sitting over here also--
21 [Crosstalk]
22 CHAIRPERSON VALLONE: --from the
23 police department who is still here listening, I'm
24 going to put you to work.
25 Does anyone else have any

2 questions? We were joined by Ulrich, who left us.

3 And I've been asking my questions

4 throughout, so I know you've been sitting up there

5 a while, so I want to thank you all for your help,

6 but we'll move forward with this and we'll talk to

7 you about possibly amending it. And if there's

8 anything else we can do, you don't have to let us

9 know today, but if there's anything else, just

10 contact myself or my counsel. When it comes to

11 City laws or resolutions that we can help you with

12 in Albany, you let us know because we want to work

13 with you to solve this epidemic. Thank you all.

14 The next and last witness is the

15 attorney for the family of--I can't read the

16 writing, but I think it's Jaimie Taccetta, the

17 estate of Jaimie Taccetta, and that was one of the

18 victims of the massacre out in Suffolk for

19 prescription drugs. Attorney's name is Vesselin

20 Mitev. Who has writing like mine, which is [off

21 mic] like a prescription.

22 VESSELIN MITEV: It's Vesselin, V-

23 E-S-S-E-L-I-N, last name Mitev, M-I-T-E-V.

24 Chairman Vallone, I want to thank you for giving

25 me the opportunity to speak. Honorable Council

2 Members, ladies and gentlemen, my name is Vesselin
3 Mitev, and my firm represents two little girls who
4 last June were left without their mother when
5 somebody who was a known drug abuser--and his name
6 is David Laffer, you've already heard him
7 mentioned here today--walked into a pharmacy in
8 Medford in Suffolk County and opened fire with a
9 45 caliber handgun, killing everyone inside,
10 including these two women's--these small
11 children's mother, and everybody else. And the
12 reason he was in that pharmacy at that time at
13 that place was because he had an abuse--he was a
14 drug abuser who had an addiction to the painkiller
15 oxycodone and hydrocodone. Who, as you've heard
16 here today, and I won't dwell much on the
17 statistics, but these are highly, in a sense,
18 deregulated drugs, they're absolutely a scourge.
19 And it's everybody here has talked
20 today largely about the demand side and how hard
21 it is to control the demand side of drugs that are
22 seemingly available at every street corner. You
23 heard references to that they're available on the
24 Internet, Craigslist, and everybody who seems to
25 be able to have access to these drugs, but what

2 nobody's really talked about is that there's no
3 efforts, that I can see anyway, to block the
4 supply side. And the supply side that we're
5 talking about, and the prior speakers alluded to
6 tracking down suppliers and pharmacists and pill
7 mills and pain management doctors, but there's an
8 even upper echelon that nobody's mentioned today,
9 and that is the pharmaceutical manufacturers and
10 distributors, who, since 1920, have been working
11 on ways to fashion a more addictive opioid drug,
12 which has--the evolution of that drug as you now
13 know it, is manufactured as Vicodin, oxycodone,
14 hydrocodone. But it's these manufacturers, and I
15 think it was made a reference to earlier, market
16 and advertise their drugs to the public as cure-
17 all, miracle drugs.
18 And the reason that it took so long
19 for it to come on the market was that there was an
20 intense, euphoric effect on the early trials and
21 those intense, euphoric effects were only matched
22 by the fast symptoms of withdrawal. So those
23 symptoms of withdrawal are still present and
24 prevalent, and those symptoms were prevalent in
25 David Laffer, who was the guy who broke into the

2 pharmacy and started shooting everyone in sight.
3 He was suffering from withdrawal because he had an
4 addiction to the painkillers.
5 And so what we've done, you hear
6 about the war on drugs and the war on drugs is
7 something that you've had service members, members
8 of the police department, you know, lose their
9 lives over. Well if what I just heard today is
10 that this is the new crack and this is the new
11 heroin, well then there has to be a war on drugs
12 domestically and that war must also, by
13 definition, then include the manufactures of these
14 drugs who are nothing more, it seems, than pushers
15 in lab coats. And if anybody, you know, anybody
16 know the Wire show and the reference, these are
17 people like Stringer Bell and Avon Barksdale in
18 lab coats. They don't have that regulation. How
19 do these people get the drugs so they can write a
20 prescription? Well they get them from the
21 pharmaceutical companies.
22 And what's even more startling is
23 that, in the wake of all these statistics that we
24 saw today and all the epidemics that are
25 skyrocketing, as you all sat here and saw the

2 PowerPoint presentations, right now there is at
3 least three pharmaceutical companies that are
4 planning or in the patent process stages of
5 hitting the market with a drug that's pure
6 hydrocodone, that's ten times more addictive than
7 what's on the market today. And that's going to
8 come on the market as early as 2013, and two more
9 after that under various brand names are going to
10 come on the market. So your supply side is going
11 to become increasingly harder to control.
12 You already have the demand side,
13 these people are hooked on the pills, they want
14 them, and now, despite all the statistics and all
15 the research that shows that these drugs are
16 incredibly addictive, the legislation is already
17 in the works that you're going to have an even
18 more potent drug, ten times more addictive than
19 Vicodin, on the market in 2013. That is a direct
20 result of the pharmaceutical companies' lobby
21 efforts.
22 And the reason that is goes back to
23 1970, the federal Controlled Substances Act said
24 for certain pills that you can mix with another
25 pill, like a painkiller, you could refill that up

2 to five times. So there's a huge loophole in the
3 law that the manufacturers vehemently fought to
4 get so that they could have their product be
5 refilled up to five times without anyone checking
6 to see if whether or not that prescription was
7 truly needed.
8 Knowing that, and knowing how hard
9 they fought against other preventative measures,
10 such as the time release of the drugs, people
11 would just simply crush them so they could get all
12 the high immediately. Well they got around that
13 by saying, well we won't make the drugs easy to
14 crumble, we'll make them easy to squish, and that
15 was their response to that. But if you squish a
16 pill, you can still take it and the time release
17 factor still kicks in.
18 So knowing what we know,
19 everybody's talked about today, I feel that the
20 legislation that's proposed now is good, but more
21 needs to be done, and more needs to be done at a
22 higher level and that's what we want to do. We
23 want to lead the war, the battle against these
24 manufacturers who are pushing, unloading their
25 product, which is highly potent and highly

2 addictive, to the general public of the United
3 States. And what we saw in Medford in Suffolk
4 County last year was just the most critical
5 example of what goes wrong when somebody that's
6 addicted to a legal drug goes in like a demon and
7 just shoots everyone inside in order to get their
8 fix.
9 So all the other culprits that we
10 talked about here today--the doctors, the pain
11 management specialists, the pill mills--they all
12 had to get that supply, that drug somewhere, and
13 where did they get that? Well we say they got
14 them with the pharmaceutical manufacturers who
15 distribute the drugs. And they have a perfect
16 business model for that because they have a
17 customer for life and they have a distributor in a
18 lab coat, a pusher in a lab coat that will, you
19 know, make sure that he pushes that drugs on the
20 street because he has a client for life, that
21 customer will always keep coming back.
22 So thank you.
23 CHAIRPERSON VALLONE: Well thank
24 you, that was interesting. We hadn't heard about
25 the actual manufacturers until you spoke. I think

2 actually Special Prosecutor Narcotics Prosecutor
3 Brennan mentioned that it was the pharmaceutical
4 companies, '95, I think you said that--
5 [Off mic]
6 CHAIRPERSON VALLONE: --early
7 nineties that convinced the doctors to start
8 prescribing these in greater measures.
9 And I'm going to look into a little
10 bit about that 'cause I do remember reading about
11 that drug that's up for approval in 2013, and
12 perhaps since the City Council isn't bought and
13 sold by pharmaceutical companies, we can do a Reso
14 here opposing that. I want to speak to some of
15 the experts first about that drug and that might
16 be something we do, and we will let you know if we
17 do that.
18 So I don't think there are any
19 questions, but we thank you for taking the time to
20 be here and wait all morning to give us that
21 testimony and good--
22 VESSELIN MITEV: [Interposing]
23 Thank you for allowing me to do that.
24 CHAIRPERSON VALLONE: --good luck
25 to you. I think that's it, so I want to thank you

2 all for being here today on the first--that was
3 supposed to be the first live televised hearing,
4 but wasn't. And we will continue to work on this
5 topic with everyone in this room. Thank you all.
6 [Gavel]
7 MALE VOICE: Thank you, Mr. Chair.
8 CHAIRPERSON VALLONE: It was a good
9 hearing. We're still on.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date _May 10, 2012_