

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON JUSTICE SYSTEM

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B E F O R E: RORY I. LANCMAN  
Chairperson

COUNCIL MEMBERS:  
ANDREW COHEN  
ALAN N. MAISEL  
DEBORAH L. ROSE  
ERIC A. ULRICH

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

George A. Grasso  
Supervising Judge for the Arraignments of the  
Criminal Court of the City of New York

Maria Almonte Weston  
Project Director of Bronx Community Solutions

Bridget Brennan  
Special Narcotics Prosecutor for the City of New  
York

Michael McMahon  
District Attorney of the Office of the District  
Attorney Richmond County

Karen Rankin  
Chief of the Narcotics Trials Bureau in Queens  
District Attorney's Office

Leroy Frazer  
Chief of Staff at Kings County District  
Attorney's Office

Aisha Greene  
Bureau Chief of the Alternative to Incarceration  
Bureau of the Bronx County District Attorney's  
Office

Chauncey Parker  
Executive Assistant District Attorney Senior  
Policy Advisor to Manhattan District Attorney Cy  
Vance, Director of the New York/New Jersey High  
Intensity Drug Trafficking Area Program, HIDTA

Melissa Moore  
Deputy State Director for New York at the Drug  
Policy Alliance

Yong-Mi Lee  
Supervising Attorney in the Criminal Defense  
Practice at Brooklyn Defender Services

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

Erin Pollock  
Deputy Director of Crime Strategies at the  
Mayor's Office of Criminal Justice

COMMITTEE ON YOUTH SERVICES JOINTLY WITH COMMITTEE  
ON EDUCATION 4

[gavel]

CHAIRPERSON LANCMAN: Good afternoon.

Very good. I'm Council Member Rory Lancman, Chair of the Committee on the Justice System and today we are here to discuss how opioid prosecutions are handled in New York City by our district attorneys, the special narcotics prosecutor and our courts. The opioid crisis is ravaging communities across the city, neighborhoods like Mott Haven in the Bronx and South Beach in Staten Island have been hit the hardest but the damage can be seen across the city. There were 1,441 overdose deaths in the city last year compared to just 292 homicides. If there were 1,441 homicides in the city of New York that would be all we would be talking about. More and more we see the opioid epidemic as a public health crisis, but it has also fostered us to reevaluate how our criminal justice system treats drug crimes especially those driven by addiction. We need thoughtful and determined prosecutors who will correctly draw the line between opioid users and addicts on the one side and predatory dealers and drug organizations on the other. The city's five district attorneys and the special narcotics prosecutor have sought to cut off

1  
2 the supply of illicit narcotics in the city while  
3 offering diversion programing to some individuals  
4 charged with possession. Our inquiry is into how  
5 these officers deal with these sometimes-competing  
6 concerns and whether their strategies for protecting  
7 New York from the opioid trade are effective and of  
8 course how can the council and the administration  
9 support these efforts. Recent reporting in the New  
10 York Times in particular about a growing trend among  
11 prosecutors around the country of charging so called  
12 co-users often friends and family with homicide is  
13 alarming. Likewise, are reports of undercover  
14 operations outside methadone clinics stigmatizing  
15 treatment while doing nothing to address supply.  
16 Distinguishing between addicts tragically looking for  
17 their next fix and criminal re-culpable dealers in  
18 the business of dealing is no doubt a tremendous  
19 challenge but justice demands that we do so. This  
20 council and this city including its criminal justice  
21 system has embraced the importance of diverting  
22 people into treatment and out of the cycle of arrest  
23 and incarceration. Many of our city's prosecutors  
24 have supported and invested in a number of new  
25 creative diversion programs devoted to treatment over

1  
2 punishment. The heroin overdose prevention and  
3 education program or HOPD in Staten Island and  
4 Manhattan, the collaborative legal engagement  
5 assistance response or CLEAR program in Brooklyn, the  
6 over, overdose avoidance and recovery or OAR program  
7 in the Bronx and the Queens treatment and  
8 intervention program or QTIP in Queens are intended  
9 to compliment existing drug treatment programs that  
10 pre-date the current opioid crisis. What do they do,  
11 is there... is there eligibility as broad as possible,  
12 consistent with public safety and do they have the  
13 capacity to meet the growing need? We look forward to  
14 hearing from our judiciary, from all five of our  
15 district attorney offices, the special narcotics  
16 prosecutor and our public defenders and advocates on  
17 these critically important issues facing our city.  
18 With that it's my pleasure to welcome the honorable  
19 George A. Grasso, Supervising Judge of Bronx Criminal  
20 Court as our first, first witness. Judge, Judge  
21 Grasso we're very grateful that you came and.. that  
22 you've come to give testimony and we're very  
23 interested in the work that you're doing up in the  
24 Bronx.

25

1  
2           GEORGE A. GRASSO: Thank you very much.  
3 Good afternoon Chairman Lancman and members of the  
4 Committee on the Criminal Justice System. It is truly  
5 my pleasure to have this opportunity to address the  
6 city council on this crucial matter. With me are  
7 Maria Almonte Weston, Project Director of Bronx  
8 Community Solutions and on my right my Court Attorney  
9 Miss Charlene Daniels. Without a doubt our city is  
10 facing a crisis, according to data provided by the  
11 New York City Department of Health and Mental Hygiene  
12 there were 1,441 unintentional overdose deaths in New  
13 York City in 2017. Of that number 342 were recorded  
14 in the Bronx, for a matter of scale I would compare  
15 that to the 292 homicide deaths recorded in New York  
16 City by the NYPD in 2017. I find it sadly ironic that  
17 as our city is experiencing record low numbers in  
18 homicide deaths that unintentional overdose deaths  
19 are spiking year after year. For example, in the  
20 Bronx the number of unintentional overdose deaths  
21 have more than doubled from 162 in 2013. Behind those  
22 numbers lie the scourge of opioid abuse. New York  
23 City data tells us that opioids are involved in more  
24 than 80 percent of all overdose deaths and that  
25 Fentanyl; a highly potent synthetic opioid is

1  
2 involved in approximately half of these deaths.  
3 According to the Center for Disease Control, CDC,  
4 Fentanyl is much more potent than heroin and up to  
5 100 times more potent than morphine. The danger of  
6 Fentanyl lies not only in it's potency but also in  
7 it's appearance, users are generally unable to  
8 recognize when the drug they have purchased is laced  
9 with Fentanyl. The really terrible news is that  
10 Fentanyl is now being mixed with everything from  
11 heroin to pills to cocaine and wreaking havoc and  
12 death throughout New York City. The question for us  
13 today is how best to address this crisis in the  
14 criminal court of the city of New York. the first  
15 thing we need to be cognizant of is that early  
16 engagement of an individual at high risk of overdose  
17 is crucial. Every day this individual is buying drugs  
18 on our streets that individual is engaging in a  
19 version of Russian Roulette. The criminal court is  
20 the key component of the criminal justice system for  
21 early engagement after an individual is arrested  
22 and charged with the crime. In this respect our  
23 arraignment parts need to be fully engaged. It is the  
24 recognition of this fundamental principle that has  
25 led to the creation of the overdose avoidance and



1  
2 recovery track, OAR. Working in partnership with the  
3 Bronx district attorney, Bronx Community Solutions,  
4 BCS and the Bronx Defense Bar the criminal court  
5 launched the OAR track in, in December of 2017. OAR  
6 is a highly specialized court track to address the  
7 high risk of drug overdose and death resulting from  
8 the scourge of opioids including the deadly Fentanyl.  
9 In February of 2018, in her state of the judiciary  
10 address, Chief Judge Janet DeFiore charged me with  
11 spearheading the expansion of the OAR tracks  
12 citywide. With the full support of our Chief  
13 Administrative Judge Lawrence Marks and the  
14 Administrative Judge of the criminal Court Tamiko  
15 Amaker specific plans to expand the OAR track are  
16 currently underway. It is my belief that the OAR  
17 track will soon be in place in Manhattan and  
18 Brooklyn. OAR track cases are identified at  
19 arraignments, assistant district attorneys, ADAs  
20 identify and flag all misdemeanor complaints that  
21 contain a charge of criminal possession of a  
22 controlled substance in the 7<sup>th</sup> degree, penal law  
23 section 220.03 and if no temporary order of  
24 protection is attached to the case it is  
25 presumptively eligible for OAR, but the district

1  
2 attorney still retains discretion. The ADA then  
3 refers the case to BCS staff who notify the defense  
4 council of the OAR designation. The defense council  
5 then reviews the case with their client and advises  
6 if their client wishes to be interviewed, if the  
7 client declines then the case proceeds to  
8 arraignment. In those cases where a defendant agrees  
9 to be interviewed BCS will conduct an assessment to  
10 ascertain if the defendant is at a high risk of  
11 overdose, if so the defendant is deemed eligible for  
12 the OAR track, if not the case proceeds as any other  
13 case would. Cash bail is never requested in cases  
14 where an eligible defendant chooses to proceed on the  
15 OAR track. OAR track defendants are released on their  
16 own recognizance or placed on supervised release.  
17 Defendants participating in the OAR track agree to  
18 avoid re-arrest and meaningfully engage in a BCS  
19 designated program. They also agree to participate in  
20 a post arraignment follow up assessment usually the  
21 next business day with BCS, so an appropriate  
22 treatment plan can be developed. If the defendant  
23 decides to opt out of the OAR track at any time the  
24 defendant will not be penalized in any way. Post  
25 arraignment OAR track cases are adjourned to a

1  
2 specialized court part, AP7 which I preside over or  
3 AP9 which is presided over by Judge Linda Poust  
4 Lopez. While cases are in the OAR track, the district  
5 attorney suspends criminal prosecution and the  
6 defense council tolls motion practice and waives  
7 speedy trial provisions in CPL 30.30. defendants are  
8 advised by the court on their first appearance that  
9 OAR track cases are not typical crime and punishment  
10 matters. They are advised that if they uphold their  
11 end of the agreement that they made at arraignment  
12 that the district attorney, the defense attorney, and  
13 the judge are aligned with the same interest which is  
14 to see that the pending criminal case is dismissed  
15 and sealed. It is explained to them that the  
16 dismissal will occur once the BCS representative  
17 makes a record that the defendant has meaningfully  
18 engaged in treatment, is on a path to recovery and is  
19 no longer at a present risk of overdose. Since we  
20 have begun the OAR track in December I have found  
21 that in general those defendants who have made an  
22 initial appearance have been positively engaged with  
23 the goals of the program. The intensity and frequency  
24 of the courts interaction with various defendants is  
25 dependent upon feedback from BCS as to the quality of

1  
2 the defendant's engagement with the assessed  
3 treatment program, obviously some individuals require  
4 a bit more TLC than others. What I have shared with  
5 you is a brief overview of the criminal court's  
6 efforts to play a positive role in engaging with our  
7 partners in the criminal justice system to utilize  
8 our resources in a meaningful and compassionate way  
9 to save lives of individuals who are at serious risk  
10 of overdose and death. I cannot say enough about the  
11 commitment of our fellow stakeholder. The Bronx  
12 district attorney, Darcel Clark and her team of  
13 dedicated assistants led by ADA Aisha Greene have  
14 gone all in, in assisting the court to make OAR a  
15 reality. We are continuing to work together to expand  
16 the reach and scope of OAR in the Bronx. Maria  
17 Almonte Weston and her team in BCS led by Carmen  
18 Alcantara have literally worked around the clock,  
19 seven days a week to provide hope to individuals who  
20 had all but given up on themselves. The Bronx  
21 defenders and the legal aid society have worked with  
22 us as partners every step of the way from conception  
23 to implementation. Their input and cooperation has  
24 been crucial to the courts ability to establish  
25 credibility with individuals in need and steer them

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2 to a path to recovery. All in all, our experience in  
3 creating and implementing the OAR track in the Bronx  
4 is a working model of the potential of the criminal  
5 court to engage stakeholders and innovate in real  
6 time. Our ultimate goal is to do what we can in the  
7 criminal court to reduce the totally unacceptable  
8 rates of overdose and death in our city. Before I  
9 close I would like to leave you with the feedback  
10 from one of our defendants as requested him to  
11 approach the bench and receive a certificate  
12 acknowledging his successful completion of the OAR  
13 track this past April. The court, yes I'm going to  
14 ask you what if anything you've gotten out of this,  
15 the defendant, well back when I was arrested I don't  
16 look at it as I got arrested, I got rescued actually  
17 and it was coming to your court and taking advantage  
18 of your court and the things that you implement I  
19 never seen before so I thank you for your clemency, I  
20 thank you for... they talk about they're going to give  
21 me a certificate, they need to give you a  
22 certificate, I sit here and I listen to you talk to  
23 the people, you are sincere, I hear you talk Judge  
24 Grasso and I'd just like to thank you, like I said I  
25 didn't get arrested I got rescued and I've got to

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2 take it a day at a time, I go to narcotics anonymous,  
3 I have a sponsor who has a sponsor, I will just take  
4 it a day at a time your honor and I would like to  
5 just thank you from the bottom of my heart. The court  
6 let me tell you something, you just gave me my  
7 certificate, I wanted to congratulate you and I'm  
8 going to ask you to come up here, so I can give you..  
9 come up here sir. The defendant, can I shake your  
10 hand. The court, thank you sir. What I have just  
11 shared with you is taken from the official court  
12 transcript of the OAR track proceeding on April 11<sup>th</sup>,  
13 2018. The defendant was an African American man of  
14 about 50 years of age who had a substantial previous  
15 history with the criminal justice system. I was very  
16 moved by his feedback and I think it really sums up  
17 what we are trying to accomplish. I thank you all for  
18 your attention and Miss Almonte Weston would like to  
19 take a few moments, she has some pertinent  
20 information to share with you as well and then we  
21 will be glad to answer any questions you may have.

22                   MARIA ALMONTE WESTON: Thank you your  
23 honor. Thank you Chairman Lancman and committee  
24 members. I wanted to just be able to share three  
25 stories to just bring this to light. CT is a 52-year-

1  
2 old African American male who disclosed usage began  
3 when he discovered heroin was cheaper than his  
4 Percocet co-pay under Medicare. CT was formerly part  
5 of a laborers union and living off his retiree  
6 pension. During assessment CT divulged having lost  
7 three friends to fatal overdose, he was referred to a  
8 medication assisted treatment facility that would  
9 offer groups and methadone maintenance on a sliding  
10 scale fee. At his first court appearance laboratory  
11 analysis concluded that Fentanyl was found in the  
12 substance he purchased, it contained 2.71 percent of  
13 Fentanyl. CT was surprised by the report and stated  
14 this arrest possibly saved his life. During the  
15 course of treatment CT experienced another loss due  
16 to the opioid epidemic, the impact of this news led  
17 to a brief psychiatric hospitalization but upon  
18 discharge this further motivated CT to continue in  
19 treatment as he did not want to be another statistic.  
20 He continued in treatment and sought mental health  
21 services, due to his continued efforts in outpatient  
22 services and medication assisted treatment the  
23 district attorney's office requested CT to be  
24 requested a dismissal and seal. As Judge Grasso  
25 granted dismissal of case and presented CT with the

1  
2 certificate of completion CT stated he wished he  
3 could award the judge a certificate for saving his  
4 life and offering moral support through the process.  
5 Young EM is a 22-year-old Hispanic male who reports  
6 his primary substance of choice to be street Xanax.  
7 Six months prior to his arrest EM was in a dirt bike  
8 accident that led to a titanium rod and screws being  
9 implanted in his left leg. EM who reported never  
10 engaging in usage other than marijuana was disabled  
11 and prescribed Percocet which left him feeling like a  
12 zombie. A friend offered him Xanax at which time  
13 began... he began his illicit usage. After his arrest  
14 he was referred to BCS for assessment. EM was  
15 resistant and stated he did not want to be labeled as  
16 a quote, unquote "drug addict". When referred to  
17 provider A, EM stated that councils did not make any  
18 effort to engage him and he felt as if he could not  
19 identify with any other clients there. After multiple  
20 attempts to conference with provider A, BCS made the  
21 decision to refer EM to another provider. Upon intake  
22 with provider B, EM stated that he felt as if someone  
23 was actually listening to him. He went from refusing  
24 to engage to sharing with peers, EM refrained from  
25 usage of his primary substance of choice and also



1  
2 began to address his cannabis use. He was connected  
3 to a primary physician and referred to pain  
4 management. After almost 45 days with provider B, EM  
5 was moved to a vocational track and secured  
6 employment. At his last court appearance, EM stated  
7 that he had never felt as if anyone ever cared before  
8 until he was referred to BCS and the OAR program. He  
9 stated this... that his recovery would be a long road,  
10 but he was confident he now had all the support he  
11 needed. And finally, I wanted to introduce you to Mr.  
12 D, who is a 50-year-old Hispanic male who reported a  
13 social usage of cocaine. Mr. D had never been in  
14 treatment and was unable to recognize his need for  
15 intervention services. Upon entering outpatient  
16 services Mr. D was very resistant, avoided toxicology  
17 testing and denied all usage. After four months of  
18 unsuccessful outpatient services, the judge gave Mr.  
19 D one last opportunity and, and requested that he  
20 consider inpatient rehab. This time was different,  
21 and his wife and daughter were in the audience. Mr. D  
22 recognized that he had to change for his future and  
23 his family, it was at that moment that Mr. D was  
24 motivated for change. He became an active participant  
25 during group sessions not only learning from his

1  
2 peers but sharing his experiences with them. He went  
3 from aggressive to active engagement. At his last  
4 court appearance Judge Grasso signed two  
5 certificates, one in English and one in Spanish, Mr.  
6 D's sole language. The Judge presented one to Mr. D  
7 and the other to his wife because without her support  
8 his success would not have been possible. Thank you  
9 for letting me share.

10 CHAIRPERSON LANCMAN: Thank you very  
11 much, I appreciate hearing that, that personal  
12 experience. At the end of the day that's what we're  
13 here for, for the people who are in the criminal  
14 justice system and we want to make sure the criminal  
15 justice system is, is, is fair and, and finely  
16 calibrated as, as possible. Let me mention that we've  
17 been joined by Council Member Eric Ulrich from  
18 Queens. Judge I, I just want to ask you a few  
19 questions if I... if I can. I'll start with the, the  
20 big picture before we get into the, the details of  
21 the... of the OAR program. I just want to understand  
22 the, the mandate or the... or the, the goal to expand  
23 OAR citywide because... [cross-talk]

24 GEORGE A. GRASSO: Uh-huh... [cross-talk]  
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CHAIRPERSON LANCMAN: ...we have the other  
district attorneys here and the... [cross-talk]

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GEORGE A. GRASSO: Yes... [cross-talk]

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CHAIRPERSON LANCMAN: ...special narcotics  
prosecutor and they have their respective programs;

7

HOPE, CLEAR... [cross-talk]

8

9

GEORGE A. GRASSO: Uh-huh, right... [cross-  
talk]

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CHAIRPERSON LANCMAN: Q-TIP, I feel like  
there's someone at every office whose responsibility

12

is just to come up with clever acronyms... [cross-talk]

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GEORGE A. GRASSO: Uh-huh, right... [cross-  
talk]

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CHAIRPERSON LANCMAN: Big picture, can  
you tell me how the mandate to expand OAR to all five

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boroughs will, will it supplant those programs or,

18

or, or compliment them in some way?

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GEORGE A. GRASSO: It will... it will work  
with... will work with the programs. So... and in fact,

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pleased to say as I alluded to in my testimony we

22

have very specific efforts under the... underway right

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now, you're going to hear testimony in Manhattan and

24

let Manhattan testify for itself but we are very

25

focused in, in moving in, in, in Manhattan, into the

1  
2 midtown community court we're somewhat along in, in  
3 conversations in Brooklyn and then I'm... and was just  
4 on the phone this morning with the administrative  
5 judge in Richmond Supreme Court, Judge Desmond Green  
6 about plans to continue... to move to the court in  
7 Staten Island and then we're certainly going to be  
8 following up in Queens so we are... we are serious and  
9 we're focused on that. So, for example, with respect  
10 to... with respect to the HOPE concept, so the HOPE  
11 concept is based on something called project Reset  
12 which is a conceptual idea that you could potentially  
13 divert people before they actually got into the  
14 criminal courthouse and I think that's a great idea  
15 and I think that it's got a lot of room to grow not  
16 only on Staten Island, I think in the Bronx, I... and  
17 throughout the city but... and then in the world we'd  
18 like to live in, the world we'd like to live in you  
19 could take something like that and you could wave  
20 that magic wand and you could save people and you  
21 could have deaths plummeting but that's not the world  
22 we live in, everybody who comes through that system  
23 and interacts with that system isn't ultimately going  
24 to be, you know at the point where we're not going to  
25 see them anymore in the criminal justice system,

1  
2 that's not the reality. Also, different programs have  
3 different rules of engagement. So, the OAR concept is  
4 how to engage the criminal court as the central  
5 player in the criminal justice system and I, I've  
6 been involved in the... in the police department for 30  
7 years before I became a judge and in my 9<sup>th</sup> year as a  
8 judge so, you know I know a few things about  
9 different elements of the criminal justice system and  
10 I, I feel that traditionally the criminal court has  
11 not been involved as much as I, it should and could  
12 be in proactive and positive solutions to, to  
13 problems more or less just kind of like a, a clearing  
14 house and arraignments are a, a critical and crucial  
15 function of the criminal court because that's where  
16 the early engagement begins so what we're doing here  
17 and what we have done already is created a, a working  
18 model. As of yesterday, when I presided over the OAR  
19 track we had two more graduations, that brought us up  
20 to 29, 29 since December 4<sup>th</sup> and we're, we're just...  
21 we're just getting started with this concept. So, I  
22 see it... is... the criminal court is in the middle of  
23 the system, the DAs are in the criminal court, the  
24 defense bar is in the criminal court, we have service  
25 providers in the criminal court, arraignments have

1  
2 not typically and traditionally been thought of as  
3 problem cop solving courts. We're in the process of  
4 changing that because we need the early engagement.

5 CHAIRPERSON LANCMAN: Well I think that's  
6 very, very wise. A lot of the work of this committee  
7 ends up focusing on what happens at arraignment when  
8 all the bail work that we do and, and... you know we've  
9 got projects that the, the council is funding to, to  
10 make that process fair and you know we, we fund a lot  
11 of these diversion programs. In the budget that we  
12 just passed we increased funding for HOPE in Staten  
13 Island for, for CLEAR in Brooklyn, for OAR in the,  
14 the, the Bronx and I think we did for, for, for  
15 Queens is... as, as well. So, let me ask you about the  
16 role of the arraignment part in, in sorting and, and  
17 sifting amongst the thousands of defendants that  
18 it's... that are seen there every year and, and, and  
19 get to the issue of eligibility.. [cross-talk]

20 GEORGE A. GRASSO: Uh-huh... [cross-talk]

21 CHAIRPERSON LANCMAN: ...so, I understand  
22 for the OAR program eligibility is limited to  
23 possession of a controlled substance in the 7<sup>th</sup>  
24 degree... [cross-talk]

25 GEORGE A. GRASSO: 220.03... [cross-talk]

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CHAIRPERSON LANCMAN: Two, 220.03. First question, why did you limit... or why is eligibility so, so limited, there are other charges that people are, are, are brought that relate to, to opioids and, and their addiction just within this... the, the realm of people charged with a drug offense why not expand it?

GEORGE A. GRASSO: Okay, great question. So, the short answer... the short answer to the first part of your question, you know why the 220.03, here's the short answer, we had to start somewhere, you know we had to... we had to start somewhere so, so, so criminal possession of a controlled substance in the 7<sup>th</sup> degree be picking up the heroin, the pills, the crack cocaine, etcetera, etcetera so it seemed a logical starting point. Furthermore, it's important to understand and I alluded to this in my testimony that we're not talking about complaints that are exclusively 220.03 complaints, you're going to have the 220.03 with trespass, theft of service, etcetera, the one excluder is the... a case that involves a, a compliant and then an order of protection because we don't want to be in the business of terminating orders of protection as much as we're enthusiastic

1  
2 about OAR. So, that was the starting point, I know  
3 you're going to hear from the Bronx district  
4 attorney's office, they'll be able to give you more  
5 data etcetera but that was the starting point. We had  
6 stakeholders, it was a very collaborative process  
7 which was crucial, crucial, this isn't something  
8 like, you know we just came up with in the criminal  
9 court, we had many meetings with the Bronx defenders,  
10 with the legal aid society, with the district  
11 attorney's office, with the service providers and get  
12 to a place where we thought we could get something  
13 real, get it going and do it in the way we're going  
14 to have the broad buy, buy in that is critical  
15 because that's one of the difficult problems of  
16 innovating in the criminal justice system, we have so  
17 many pieces to the puzzle and if you don't think it  
18 through properly in the beginning where you get the  
19 pieces fitting properly and get all the key  
20 components thinking that they've been heard and that  
21 they've had an opportunity to have a voice. You can  
22 have something that's great on paper but it's going  
23 to go nowhere so that's how we started. As we speak,  
24 and the good, good news is with... as we are continuing  
25 we're having regular stakeholders in the Bronx, we



1  
2 meet roughly every four to six weeks and we go over  
3 our data, we talk about where we want to go. Here's  
4 where the energy in the Bronx is now, all of the  
5 energy in the Bronx is to expansion so we're on the  
6 same page. We're certainly looking at expanding  
7 complaints to 155.25 case, the dependent larceny  
8 cases, the tress... look and here's what else we're  
9 looking at... [cross-talk]

10 CHAIRPERSON LANCMAN: That was... that was  
11 my next question... [cross-talk]

12 GEORGE A. GRASSO: Yes, there you...  
13 [cross-talk]

14 CHAIRPERSON LANCMAN: ...outside the realm  
15 of drugs... [cross-talk]

16 GEORGE A. GRASSO: ...go... there you go...  
17 [cross-talk]

18 CHAIRPERSON LANCMAN: ...and drug offences.

19 GEORGE A. GRASSO: Here's what... we're  
20 also looking at felonies, we're also looking and you  
21 might say well how can we do felonies in criminal  
22 court, well the way we could do them is we wouldn't  
23 be able to handle a felony matter the same way we  
24 handle a misdemeanor so for example you couldn't take  
25 a live felony out of arraignments and designate it

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2 into the OAR track and just send it to me but what  
3 you could do is you could send it to one of our  
4 felony parts in criminal court and we have a specific  
5 part that's been recently... that we've recently  
6 created called the FC part, you could give the  
7 district attorney an opportunity to carefully review  
8 the case and see what kind of buy in bus type felony  
9 sale case they're dealing with. Certainly, if you're  
10 dealing with someone who's intentionally selling  
11 Fentanyl, no; if you're dealing with somebody who  
12 they've got a basis to think is, is an operator and  
13 a, a member of a drug gang, no but if you think maybe  
14 what you have is an addict selling to an addict then  
15 what you're really looking at is a glory... glorified  
16 220.03, yes, maybe you should and then what you could  
17 do is the DA could see if there was interest in OAR  
18 with their counterpart, we could have BCS in our  
19 felony part and if everybody thought it was an  
20 appropriate case the district attorney could... and,  
21 and, and there was an interview and... by BCS right in  
22 the felony part indicating the person was at high  
23 risk of overdose we could turn the felony part into  
24 the equivalent of an arraignment part, we could  
25 dismiss the felony and we could send the case to the

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2 OAR track so those are the kinds of ideas that we  
3 have in the Bronx and in fact we've already done that  
4 with one.

5 CHAIRPERSON LANCMAN: We think those are  
6 good ideas.

7 GEORGE A. GRASSO: Thank you.

8 CHAIRPERSON LANCMAN: I don't know who  
9 among you might be able to answer this question but  
10 how, how do you determine if a defendant is a high  
11 risk of, of overdose and what if they're not a high  
12 risk of overdose but they've just been addicted for a  
13 long time and they need to get... they need to get  
14 treatment otherwise they're just going to be back,  
15 you know every few weeks?

16 MARIA ALMONTE WESTON: So, because we  
17 are... Bronx Community Solutions is in the arraignment  
18 court part we have court representations, we use a  
19 screening tool that was developed by NYU, very quick,  
20 five questions that focuses specifically on high risk  
21 of overdose, yes, it's self-reporting as well as user  
22 of multiple systems which has been proven to, to be  
23 another indicator of someone who might have been  
24 through the emergency room or any other kind of  
25 criminal justice system or health care and if they

1  
2 are interested and they've talked to their defense  
3 attorney and they want to be part of the OAR track  
4 then we offer them treatment, if they're not  
5 interested because we are still provider we offer  
6 them treatment. Individuals for multiple charges are  
7 offered as many services as possible through Bronx  
8 Community Solutions regardless of an alternative to  
9 incarceration mandate or not.

10 CHAIRPERSON LANCMAN: Just to clarify  
11 when, when you testified that if the defendant  
12 decides to opt out of the OAR track at any time the  
13 defendant will not be penalized in any way, the...  
14 just... the case just resumes from, from where they got  
15 in... [cross-talk]

16 GEORGE A. GRASSO: If there were no law...  
17 [cross-talk]

18 CHAIRPERSON LANCMAN: Right, so it's not...  
19 it's not a program where the ticket to participation  
20 is pleading guilty to... [cross-talk]

21 GEORGE A. GRASSO: Pre-plea.

22 CHAIRPERSON LANCMAN: Got it. so, you,  
23 you, you said that there were I think 29 people who  
24 have completed the program?

25 GEORGE A. GRASSO: Yes, as of yesterday.

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CHAIRPERSON LANCMAN: Good, so I've got to ask how many... out of how many who started and, and how didn't complete the program?

GEORGE A. GRASSO: Right, well we have some data and the DA is going to be testifying as well but I can go to some relevant data. So, what I got from the district attorney's office and Bronx Community Solutions is from December 4<sup>th</sup> through May 31<sup>st</sup>, 2018 that 614 cases were screened as eligible of that deemed eligible ultimately based on the use of the NYU tool and the approach that Miss Almonte discussed, 183 cases were deemed eligible out of that we ended up with 138 defendants entering the program representing 167 cases and the number completed to date is the 29. So, there are different steps along the way. Also what I have found and you know we're gathering data, we're relatively new in the... in the program, you know there are a fair amount of all defendants like I said to you, if you're qualified for OAR and you... and the defendant accepts OAR there's never cash bail so it's either ROR or supervised release now where supervised complete... release comes in we're dealing with a population of people some of whom have been around the block a

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2 number of times in the criminal justice system, have  
3 significant flight histories and you know but for  
4 supervised release and but for all may very well be  
5 ended up going... ending up with some kind of cash bail  
6 based upon their flight risk. Frankly, a number of  
7 these individuals don't follow through, some of them  
8 don't... even end up going... many of them who don't  
9 follow through don't even end up going for their  
10 first appearance the first next business day  
11 assessment with Bronx Community Solutions they end up  
12 with bench warrants and they end up getting expelled  
13 from OAR and put back on the regular track, I call  
14 those individuals just my own terminology, the un-  
15 serious OAR defendant, someone who just showed up at  
16 arraignment, you mean I can get out today, yeah, I'm  
17 down with everything and then boom they're in the  
18 wind and we're picking up... they're getting picked up  
19 on a warrant, we'll call that the un-serious and  
20 let's say ballpark maybe as many as 40 percent but  
21 then there's the serious OAR defendant and the way I  
22 define serious OAR defendant is that person does  
23 follow up the next business day, they do go to BCS,  
24 they cooperate their assessment, I see them at their  
25 first court appearance, that type of an individual

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2 although we've had and we are continuing to have some  
3 rocky roads like I said some people need more TLC  
4 than others, they tend to want to remain in place and  
5 often times they have their defense attorneys, you  
6 know advocating, you know give them another chance  
7 and, and one of the great things about working with  
8 BCS and what I think is crucial to a success of this  
9 kind of program, is we are very flexible, you know  
10 we... she, she mentions a couple of scenarios in her...  
11 then yeah, where people started off in one way, it  
12 wasn't quite working and we weren't like saying well  
13 no it must be this way, that was your original  
14 assessment that... okay, we'll try something else and  
15 we, we've had some very nice success stories doing  
16 that. So, that... essentially the data is the data and  
17 that's the best way I can explain what we're looking  
18 at and how it's shaking out right now.

19 CHAIRPERSON LANCMAN: Thank you, I know  
20 Council Member Ulrich you have questions.

21 COUNCIL MEMBER ULRICH: I'll be brief  
22 Chair, thank you very much and I apologize for being  
23 a little late today. Judge thank you for your  
24 testimony and for your service and I did get a chance  
25 to read it in full so even though I sort of walked in

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2 in the middle of it. I have a few questions and, and,  
3 and they really come out of my experiences more with  
4 the treatment court in Queens with Judge Hirsch who  
5 does a great job and we're very proud of the Veterans  
6 treatment court that we were able to push for in all  
7 five boroughs. I, I think Judge Moore in the Bronx is  
8 the Judge for the... [cross-talk]

9 GEORGE A. GRASSO: He retired... [cross-  
10 talk]

11 COUNCIL MEMBER ULRICH: Oh, he's retired,  
12 okay, alright... [cross-talk]

13 GEORGE A. GRASSO: You're talking about  
14 Supreme Court?

15 COUNCIL MEMBER ULRICH: Yeah, Supreme  
16 Court... [cross-talk]

17 GEORGE A. GRASSO: Right, uh-huh this is...  
18 [cross-talk]

19 COUNCIL MEMBER ULRICH: ...he was doing...  
20 he... [cross-talk]

21 GEORGE A. GRASSO: ...criminal... [cross-  
22 talk]

23 COUNCIL MEMBER ULRICH: ...he had testified  
24 here, and you know the research that we've seen is  
25 one of the things that made the Veterans treatment



1  
2 court so successful was the mentorship component...

3 [cross-talk]

4 GEORGE A. GRASSO: Uh-huh... [cross-talk]

5 COUNCIL MEMBER ULRICH: ...and I don't know  
6 if that would help with the dropout rate in a  
7 criminal court that you experienced with the quote,  
8 unquote "un-serious" defendants that are coming  
9 before the court but if there was any way to get some  
10 sort of trained mentors to... volunteer... these are  
11 volunteers, in the Veterans treatment court they're  
12 veterans who are, you know sober and clean and on the  
13 right track and they're able to establish a  
14 connection and work with... because they're court  
15 mandated, the, the defendants there that are facing  
16 particular crimes but the other problem that I think  
17 we see not only in the... in the Supreme Court but also  
18 I'm sure in the criminal court as well is that it  
19 requires the consent of the local district attorney  
20 and... for participation in these diversion programs  
21 and I always wondered why they didn't just have  
22 automatic referrals for a non-violent sort of first  
23 time offenders or for certain categories of crimes  
24 where we could automatically sort of put these people  
25 on that path, right now you, you need the, the

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2 permission of the local district attorney and I don't  
3 know how, how good that is. I would... I would  
4 challenge it, I know the, the, the prosecutors never  
5 want to give up their discretion, we know that and I  
6 think that for the most part they do a fine job  
7 determining which people should and should not  
8 participate but if there was any way to capture more  
9 individuals sort of save them and not let them fall  
10 through the cracks I think we might also see a  
11 different outcome in the statistics. So, I'm just  
12 wondering if there's any way for you to incorporate  
13 into what you're doing in the Bronx some sort of  
14 mentorship component to try to go after the people  
15 that I think really need to be saved the most and  
16 those are some of the folks that you mentioned that,  
17 you know they don't even show up the next day  
18 perhaps... [cross-talk]

19                   GEORGE A. GRASSO: Right, so you, you got  
20 a lot going on there so just for starters just in the  
21 context of the OAR concept and what we're trying to  
22 do, when... the people who I'm referring to is un-  
23 serious it's hard to help them if they don't show up,  
24 it's hard to help somebody if they agree they're  
25 going to go to the assessment and they blow off the

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2 first assessment, they blow off the court appearance  
3 and then maybe you finally bring them in, I've had a  
4 few of them that have come in on involuntary returns  
5 and I still bent over backwards in giving them a  
6 chance, you know it's knowing enough... [cross-talk]

7 COUNCIL MEMBER ULRICH: They're on the  
8 other... [cross-talk]

9 GEORGE A. GRASSO: ...it's, it's knowing...  
10 [cross-talk]

11 COUNCIL MEMBER ULRICH: ...you're on the  
12 other side of the... [cross-talk]

13 GEORGE A. GRASSO: ...knowing enough of a  
14 program I can actually visualize the people that I'm  
15 talking about... [cross-talk]

16 COUNCIL MEMBER ULRICH: Right... [cross-  
17 talk]

18 GEORGE A. GRASSO: ...and then they just  
19 don't do it so you can't do that but in terms of your  
20 general concept of, of mentorship playing a role in  
21 certain difficult cases, I couldn't agree with you  
22 more and that... what that ties into in the model that  
23 we've built with Bronx Community Solutions and I'm  
24 hoping and intending that we can build it throughout  
25 the city, it is... the hallmark is flexibility that

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2 we're working with multiple service providers, we're  
3 working with multiple approaches so for example one  
4 of the service approach... providers that we bring in  
5 in some of our cases is the Osborn Association and  
6 one of the hallmarks of the Osborn Association is, is  
7 building in a mentorship component and they've had... I  
8 would... I don't only work with them on OAR I also run  
9 a, a youth part in my courtroom and, and they've been  
10 absolutely wonderful with some of my more difficult  
11 cases involving young people, so we do that as well.  
12 Now when you... and when you talk about difficult cases  
13 I, I'm with you, I understand, by definition if an  
14 individual is qualified into OAR they're a difficult  
15 case, they're running that high risk of death and I  
16 explain to them straight up when I see them, you know  
17 you, you should... if you're buying street product in  
18 the Bronx you should assume every day is going to be  
19 your last day and that's Russian roulette and we've  
20 had people come in in terrible straights. We did... one  
21 of the people we graduated yesterday, I mean he came  
22 in... this man was an African American man I would say  
23 in his early 60's, he was a complete mess and he knew  
24 he was going to be recommended to, to get a  
25 certificate and to get his case... he came in in a

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2 suit, he had a... he was so proud, it was like a  
3 graduation almost so we've seen in a relatively short  
4 period of time these kinds of transformations in very  
5 difficult cases but they have to engage and I tell  
6 them all the time they thank us, I always say yeah  
7 thank you, we appreciate that you're grateful but you  
8 know what the DA, the service providers, your lawyer  
9 and the court it would all amount for nothing if you  
10 weren't serious and it was your seriousness, you're  
11 your commitment so that's where we go.

12 COUNCIL MEMBER ULRICH: Sometimes as you  
13 know Judge a lot of these people suffer from various  
14 mental health issues and that plays a, a large role  
15 in, you know I think a lot of the bad decisions that  
16 they make or the, you know lack of good judgment and  
17 again I think the... getting back to the mentorship it  
18 was... it's so key, that one intervention... [cross-talk]

19 GEORGE A. GRASSO: In some cases... [cross-  
20 talk]

21 COUNCIL MEMBER ULRICH: ...and some people  
22 who perhaps are sober for many years who are able to  
23 inspire, to connect with, to establish some sort of  
24 bond with the defendants to keep them in the  
25 programs, to keep them on the straight and narrow, to

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2 check in on them every day with a phone call if it..  
3 if it pleases the court. So, I just think that that  
4 is something that if there's any way to work that  
5 into your model... [cross-talk]

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7 GEORGE A. GRASSO: In certain cases... in  
8 certain cases we have worked it in, it makes sense,  
9 other cases it'd be a more of a medically assisted  
10 treatment approach, it really is case by case in this  
11 business... [cross-talk]

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13 COUNCIL MEMBER ULRICH: For sure, no I'm  
14 not suggesting it's a one size fits all approach but  
15 I... [cross-talk]

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17 GEORGE A. GRASSO: Yeah... [cross-talk]

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19 COUNCIL MEMBER ULRICH: ...I do know that  
20 it's done wonders... [cross-talk]

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22 GEORGE A. GRASSO: Uh-huh... [cross-talk]

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24 COUNCIL MEMBER ULRICH: ...in the Veterans  
25 treatment court... [cross-talk]

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27 GEORGE A. GRASSO: Yeah... [cross-talk]

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29 COUNCIL MEMBER ULRICH: ...and they're  
30 doing terrific work and we certainly support and  
31 applaud everything that they're doing but, you know  
32 we have to share best practices... [cross-talk]

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34 GEORGE A. GRASSO: Uh-huh... [cross-talk]

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2 COUNCIL MEMBER ULRICH: ...and we know what  
3 works well and what doesn't work, clearly,  
4 collectively whatever we're doing now is making  
5 somewhat of a dent but there's overdoses every day  
6 throughout the five boroughs so we as elected  
7 officials and, and members of the judiciary and, and  
8 service providers we have to do more, and we have to  
9 keep sort of tackling this and finding a way to do  
10 this. I've been to more funerals and wakes... [cross-  
11 talk]

12 GEORGE A. GRASSO: Couldn't agree with  
13 you more... [cross-talk]

14 COUNCIL MEMBER ULRICH: ...than I care to  
15 mention, and I just think that we have to do more,  
16 and I wish there was something... I wish I had all the  
17 answers and I don't and I know that you wish the same  
18 but maybe... like I said that mentorship thing is key,  
19 I'm telling you, if, if there's any way to work that  
20 you're your model as a... [cross-talk]

21 GEORGE A. GRASSO: Some cases we do  
22 depending... [cross-talk]

23 COUNCIL MEMBER ULRICH: Please... [cross-  
24 talk]

25 GEORGE A. GRASSO: ...on the... [cross-talk]

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COUNCIL MEMBER ULRICH: Please do because I think... I think it could really be a game changer for helping people... [cross-talk]

GEORGE A. GRASSO: Thank you... [cross-talk]

COUNCIL MEMBER ULRICH: ...get back on path. Thank you, Chairman, thank you.

CHAIRPERSON LANCMAN: Thank you. Judge, Miss Almonte, Miss Daniels thank you so much for being here this morning... this afternoon... [cross-talk]

GEORGE A. GRASSO: It was our pleasure... [cross-talk]

MARIA ALMONTE WESTON: Thank you... [cross-talk]

CHAIRPERSON LANCMAN: Thank you... [cross-talk]

GEORGE A. GRASSO: Thank you so much.

CHAIRPERSON LANCMAN: Thank you. Next, we'll hear from our Special Narcotics Prosecutor and representatives for... our district attorneys themselves.

[off-mic dialogue]

CHAIRPERSON LANCMAN: There's a Queens DA's Office Center representative? You're up. Queens



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2 DA, this is.. these are the DAs, we'll get you a  
3 chair. Joshua can you get her a chair? No, no, over  
4 there. Alright, so the DAs we do need to, to swear in  
5 so folks if you'll raise your right hand? Do you  
6 swear or affirm the testimony you're about to give is  
7 the truth, the whole truth and nothing but the truth?

8 [panel affirms]

9 CHAIRPERSON LANCMAN: Terrific, thank you  
10 all so much for being here and if we could we'd love  
11 to start with the Special Narcotics Prosecutor.

12 BRIDGET BRENNAN: Thank you very much. My  
13 thanks to Council Member Lancman, the Chair of the  
14 Committee here for giving us the opportunity to  
15 discuss how we can justly, fairly and effectively  
16 address the opioid crisis in the city. As you know my  
17 office has citywide jurisdiction over felony  
18 narcotics offenses and we don't have jurisdiction in  
19 criminal court, those kinds of cases are handled by  
20 the district attorney's offices. Before I outline my  
21 strategy, our strategy to combat the critical  
22 challenges we face I'd like to address some commonly  
23 held beliefs about drug enforcement strategy because  
24 I think it's important that we all share the same  
25 facts before we can discuss some, some of our ideas

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2 about how we can best approach our work. Now my  
3 office handles higher level offenses because we have  
4 citywide jurisdiction over simply felony offenses but  
5 first and foremost we need to realize that even  
6 though nine years after New York State eliminated the  
7 Rockefeller drug laws and mandatory prison sentences  
8 for low level drug dealers there's still a lingering  
9 perception that large numbers of low level offenders  
10 are sent to prison for drug offences, sent to state  
11 prison. So, I urge you to review the chart on page  
12 three of my written testimony, it was prepared by the  
13 state Division of Criminal Justice Services and the  
14 Department of Corrections which shows that this  
15 perception is misguided. In New York City the number  
16 of felony drug arrests and commitment to state prison  
17 has declined by 50 percent from 2008 to 2006. In  
18 fact, in 2010 the first year we sounded the alarm on  
19 the opioid crisis in New York City since then the  
20 number of felony arrests has declined by 47 percent  
21 and commitments to state prison have declined by 40  
22 percent. The second commonly held belief is that mere  
23 opioid possession is usually treated as a felony,  
24 which can result in long prison sentences for users  
25 and dealers alike, but this too ignores some of the

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2 changes in the law which date back to 2004 as well as  
3 a 2009 sentencing reform. For a first-time felony  
4 offender to face a mandatory drug prison sentence on  
5 an opioid possession charge in New York State they  
6 have to possess on average at least 2,000 glassines  
7 envelopes of heroin or Fentanyl and more likely close  
8 to 5,000 glassines, that's not the amount you likely  
9 find if you arrest a substance abuser. It's different  
10 of course if you're charged with a B felony offense  
11 of possession with intent to sell but then you're  
12 only facing prison if, if you have a prior felony  
13 conviction or a prior violent felony conviction.  
14 That's because heroin and Fentanyl are light  
15 substances and the first narcotics charge which  
16 requires a state felony... a state prison sentence  
17 requires that you possess at least four ounces and  
18 the amount of Fentanyl that can kill you is measured  
19 in grains of salt and it requires a lot of those  
20 grains to make up four ounces.

21 CHAIRPERSON LANCMAN: What, what... sorry,  
22 what's the typical... if I'm a heroin addict and I want  
23 to buy some heroin what's the typical... [cross-talk]

24 BRIDGET BRENNAN: Amount you're buying...  
25 [cross-talk]

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CHAIRPERSON LANCMAN: ...unit of purchase?

BRIDGET BRENNAN: Well it... usually you're buying in glassines, you'll buy... depends on what your level of use is, you might buy more than one bag at a time, depends on how much money you have... [cross-talk]

CHAIRPERSON LANCMAN: So, how... just weight wise since, since these things are measured by weight and... [cross-talk]

BRIDGET BRENNAN: Weight, grains, I mean it's measured in, in... a grain is a unit of measure which was... you know it originally corresponds to a grain of wheat, it's an ancient unit of measure and it's used by jewelers to weigh... to weigh gold so it's measured in grains and it's... a half of a grain is typically in a glassine and I think there are... [cross-talk]

CHAIRPERSON LANCMAN: How many of those does it take to make an ounce like... [cross-talk]

BRIDGET BRENNAN: To make an ounce... [cross-talk]

CHAIRPERSON LANCMAN: Because you were... you were... [cross-talk]

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BRIDGET BRENNAN: There are about 440 grains in a gram, so it requires a considerable number of grains to reach... [cross-talk]

CHAIRPERSON LANCMAN: So, you would have to... one would have to have a huge number of glassines... [cross-talk]

BRIDGET BRENNAN: Yes... [cross-talk]

CHAIRPERSON LANCMAN: ...to trigger the felony... [cross-talk]

BRIDGET BRENNAN: That's, that's right...

CHAIRPERSON LANCMAN: Is what you're saying basically?

BRIDGET BRENNAN: That's right.

CHAIRPERSON LANCMAN: Okay, thank you.

[off mic dialogue]

BRIDGET BRENNAN: Yes... [cross-talk]

KAREN RANKIN: It requires a lot more in... [cross-talk]

BRIDGET BRENNAN: It's a lot lighter... [cross-talk]

KAREN RANKIN: ...order for you to get a felony weight on the heroin but typically on the cocaine it would be a lot less, sometimes it would be 20, 30 bags of cocaine... [cross-talk]

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BRIDGET BRENNAN: Right...

CHAIRPERSON LANCMAN: To get to the  
felony level... [cross-talk]

KAREN RANKIN: To get... yeah, that's...  
[cross-talk]

CHAIRPERSON LANCMAN: Got it, thank you...  
[cross-talk]

BRIDGET BRENNAN: Okay and the third  
common belief and it's easy to see why there is this  
belief, is that the DAs may not be in favor of  
treatment and I just want to make sure that we all  
understand that we all have treatment programs and my  
office actually along with the Brooklyn DA's office  
was at the forefront back 30 years ago when they were  
conceived but the problem is highlighted in my  
written testimony when it shows how few felony drug  
offenders are going into felony drug court. The... my  
written testimony shows that in 2016 in all of New  
York City only 441 felony drug offenders went into  
drug court, felony drug court in New York City and so  
it shows I think that there's a problem in getting  
the defendants, the criminal defendants in felony  
court into those kind of programs and it's a problem  
that we really want to think about because

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2 historically in New York City a lot of our people who  
3 are being admitted to drug programs were coming from  
4 the criminal justice system and I just don't think  
5 you're going to see that happening so much anymore.  
6 So, we have to think about what are the better ways  
7 to do outreach to bring defendants into treatment.  
8 I've looked at these numbers, I've looked at the  
9 numbers from OASAS about how many people are entering  
10 treatment programs voluntarily and we see a steep  
11 decline during the time of the opioid crisis, so we  
12 have to think creatively as Judge Grasso was  
13 testifying and as you'll hear from the other DAs  
14 about the misdemeanor programs, think creatively  
15 about how we're going to do that but it's not all  
16 going to come from the criminal justice system. In  
17 fact, I think we have to think much more broadly and  
18 I'd love to see the city council and the city really  
19 put all your creativity and your commitment behind  
20 that to think about those kinds of outreach programs  
21 because I think they are so very important. And so  
22 now that I've talked about some of those issues  
23 which... some of which effect the challenges that we  
24 face at the higher levels when we're looking to build  
25 strategic cases to target what we target which is

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2 high volume coming into the city, a high volume of  
3 narcotics coming into the city, some of them more  
4 potent, some of them more lethal, opioids that are  
5 killing so many people in this city. Some of the  
6 challenges that we face are what I'd like to share  
7 with you today. The goal of my office in conjunction  
8 with all of the DAs as well as NYPD and the Mayor's  
9 Office of Criminal Justice and the, the.. all, all the  
10 agencies who work to reduce addiction, overdose and  
11 death, we are looking to reduce.. primarily reduce the  
12 supply of deadly drugs coming into the city. Our  
13 priority targets are the suppliers of the most lethal  
14 drugs. So, we often spend a lot of time trying to  
15 figure out who those people are, who those sources of  
16 supply are, we always look for the greatest volume  
17 and the most violent organizations distributing  
18 drugs. We want to seize and destroy the drugs  
19 themselves and we want to appropriately punish those  
20 who are profiting from creating this tragedy. So, in  
21 the eight years we have seen this crisis unfold we  
22 have seen an escalating pattern of evermore dangerous  
23 lethal drugs starting with pain pills followed by  
24 heroin then Fentanyl and now Fentanyl analogues which  
25 may be our greatest challenge yet. the Fentanyl



1  
2 analogues have basically the same chemical  
3 composition as Fentanyl only slightly different so  
4 slightly different though that they're not included  
5 under the state law that defines Fentanyl and so in  
6 order to prosecute cases involving Fentanyl analogues  
7 each one of those new analogues has to be added to  
8 the state schedule. Now as you'll see in page five of  
9 my written testimony our Fentanyl seizures increased  
10 by 1,300 percent last year, 2017 over 2016 and  
11 included the nation's largest single seizure of  
12 Fentanyl in really nondescript department in Kew  
13 Gardens, Queens, that was the nation's largest...  
14 single seizure of Fentanyl. That Fentanyl we believe  
15 was transported in connection with the Mexican  
16 Cartels and the Mexican Cartels are the ones that are  
17 responsible for the large volume, it's often mixed in  
18 with Heroin and then it is supplied to organizations  
19 which package the drugs in big mills which produce  
20 millions of glassines pumped out to the city and  
21 throughout the East Coast, all that originates here  
22 in New York but one of the things we've noticed about  
23 the Fentanyl that we're seizing from the Cartels is  
24 that it is Fentanyl, it's not a Fentanyl analogue.  
25 Fentanyl is up to 50 times more powerful than heroin

1  
2 as you've heard, and the analogues are even more  
3 potent, multiple times more potent than Fentanyl  
4 itself and they come into this country in a different  
5 way. They originate in China primarily and come  
6 through the mail through packaged delivery service  
7 often ordered in very small amounts by very diverse  
8 criminal organizations so it's very difficult to find  
9 the origin of a supply of a Fentanyl analogue, it's  
10 more like trying to stamp out an army of ants because  
11 it's coming in in a relatively large volume but what  
12 we do see is that the deaths tend to be concentrated  
13 in certain geographic areas so that it appears that  
14 perhaps a small criminal organization gets a hold of  
15 an analogue and then distributes it causing great  
16 numbers of deaths in concentrated areas. So, we've  
17 been looking at that pattern because I believe it is  
18 the most challenging pattern that's facing us on the  
19 level that my office is working. SMP and the NYPD are  
20 working together to examine the narcotics data and  
21 we've worked very closely with the DA's Office,  
22 Staten Island provided us with the... some of their  
23 overdose data, we've looked at overdose data from the  
24 South Bronx because what we're looking to do is to  
25 identify patterns and trends which will help us find

1  
2 those sources to develop more systematic ways of  
3 identifying sources so that we can reduce the number  
4 of deaths. The information that we've analyzed is  
5 gleaned from laboratory reports, overdose data,  
6 arrests, seizures and community complaints and we  
7 have developed a detailed understanding of the  
8 citywide trends that allows us to synchronize our  
9 efforts well with the DAs, with the NYPD and with the  
10 DEA. And most recently we used these tools to examine  
11 Fentanyl analogues in New York City's black market in  
12 a concentrated area, we looked very closely at South  
13 Brooklyn and at Staten Island because we had the data  
14 for those areas and we had seen a concentrated number  
15 of deaths in both of those areas related to these  
16 analogues and so, what we saw is pretty alarming. Now  
17 as I said the analogues have the same basic chemical  
18 composition as Fentanyl but they're more potent and  
19 although we have identified them, and we know they're  
20 causing many deaths across the city and state, many  
21 of these analogues have not been added to the state's  
22 list of prohibited substances which creates  
23 substantial obstacles to our prosecutions. Obviously  
24 if we arrest somebody for selling it even if it's  
25 killing people if it's not an illegal substance much

1  
2 like K2, the problem you saw with K2, we're unable to  
3 proceed with that arrest and unable to continue to  
4 work up the chain, we may be unable to use wire taps  
5 or search warrants or other tools because those  
6 require that you have probable cause to believe a  
7 crime is committed and if selling it you're not  
8 selling a controlled substance, it's not a crime. Now  
9 we've been hampered in some of our efforts, but I  
10 think our, our analysis is important for us to  
11 consider, we have so far identified at least 48  
12 deaths in Brooklyn South and Staten Island in 2017  
13 that involved four analogues that Governor Cuomo  
14 proposed to add to the list of controlled substances  
15 in February and the state legislature did not add  
16 those four.

17 CHAIRPERSON LANCMAN: Just, just a quick  
18 question, who, who has to add these analogues to the  
19 list, it's the legislature or the State Department of  
20 Health or... [cross-talk]

21 BRIDGET BRENNAN: It's the legislature.

22 CHAIRPERSON LANCMAN: Really? So, each  
23 new... [cross-talk]

24 BRIDGET BRENNAN: That's the problem...  
25 yes.

1  
2 CHAIRPERSON LANCMAN: How, how is it  
3 possible to keep up in this day and age?

4 BRIDGET BRENNAN: It's not... well there's  
5 another way that's been done, the federal government  
6 has what's called a core structure statute where they  
7 prohibit any substance that has the same basic core  
8 structure and there have been proposals like that  
9 before the state legislature, but they haven't been...  
10 none of that's been passed. The only thing that the  
11 state legislature has done is add kind of one by one  
12 as the analogues show up and you saw this again it's  
13 an issue that's familiar to the city council because  
14 you saw it with K2. As they show up one by one and  
15 they're identified they've been willing to add  
16 certain of those to the list. The ones that I... that  
17 they have added have been added to the DEA's  
18 permanent list, the ones that they have failed to add  
19 are on the DEA's emergency list and the problem with  
20 that is the emergency list tends to reflect the most  
21 current trends, those tend to be the ones that are  
22 effecting us right now and that's certainly true in  
23 this instance when 20 percent of the deaths that we  
24 analyzed in Staten Island and South Brooklyn were  
25

1  
2 caused by four of the analogues which were rejected  
3 for addition to the list of controlled substances.

4 CHAIRPERSON LANCMAN: They, they were...  
5 this... they were affirmatively rejected like we're not  
6 doing this or just... [cross-talk]

7 BRIDGET BRENNAN: Well they added two of  
8 the 11 that he proposed... [cross-talk]

9 CHAIRPERSON LANCMAN: Uh-huh... [cross-  
10 talk]

11 BRIDGET BRENNAN: ...and they rejected the  
12 other nine and of those nine four of them have shown  
13 up... yeah, in the tox... ME toxicology reports, exactly  
14 as being present in the deaths of a good number of  
15 people and so that's the reason for my concern about  
16 it. I agree with you wholeheartedly that there's a  
17 much better way to do this which would be adopting  
18 something like a core structure type statute, but we  
19 haven't been able to get that through, so you know  
20 what we do the best we can as we always do. So, what  
21 I'd like to do is ask for the city council's support  
22 in, in supporting the effort to add these analogues  
23 to the list of controlled substances, I'll do a much  
24 more comprehensive report, we're only beginning our  
25 analysis but I thought this was an opportune time to

1  
2 bring it to your attention and then we'll see across  
3 the city which of the analogues are causing... wreaking  
4 the most havoc which are causing the most death and I  
5 would be... I would urge you to add your voices to this  
6 because, you know they're killing people and we are  
7 hamstrung to a certain degree in what we can do about  
8 it. so, I thank you so much for the opportunity to  
9 the opportunity... for the opportunity to talk about  
10 our strategy and what at this time is our priority  
11 concern and how we can work closely with the council  
12 and I look forward to working with you on other  
13 projects. Thank you so much.

14 CHAIRPERSON LANCMAN: Thank you very  
15 much, Mr. McMahon.

16 MICHAEL MCMAHON: Thank you, Mr.  
17 Chairman, and to Council Member Ulrich, thank you  
18 very much to you and your staffs and it's always an  
19 honor to be with my colleagues from across the city  
20 to talk about this very important issue. Before I get  
21 to my formal testimony, I just want to point  
22 something... a, a number or two out. 1,500, that's how  
23 many New Yorkers are likely to die this year from an  
24 opioid overdose, that's probably four or five a day.  
25 In my opinion there is no crisis that comes close, no

1  
2 issue that is as important as this issue right now  
3 for the people and those who govern the city of New  
4 York. I'm a little... what should I say, I don't want  
5 to... it's a little surprising to me or maybe... perhaps  
6 not that next door there are hundreds of people here  
7 to testify on a, a hearing about banning straws as  
8 someone who once led the Sanitation and Environmental  
9 committees in this council, I understand it's a very  
10 important issue I just wish there were hundreds of  
11 people here today and... [cross-talk]

12 CHAIRPERSON LANCMAN: So, the, the  
13 council... [cross-talk]

14 MICHAEL MCMAHON: ...that the... [cross-talk]

15 CHAIRPERSON LANCMAN: ...the council now  
16 has its official recyclable straws... [cross-talk]

17 MICHAEL MCMAHON: I'm, I'm glad to see  
18 that but I wish... [cross-talk]

19 CHAIRPERSON LANCMAN: ...I'm, I'm not being  
20 whimsical with my candy-striped straw here this is...  
21 [cross-talk]

22 MICHAEL MCMAHON: Got it but I wish that...  
23 [cross-talk]

24 CHAIRPERSON LANCMAN: ...this is what I  
25 got... [cross-talk]



1  
2           MICHAEL MCMAHON: ...the days were fuller  
3 and the... there was more attention brought to this  
4 issue because we are on the frontlines seeing every  
5 day that our friends, our neighbors, our relatives,  
6 our co-residents of our boroughs and our city are  
7 dying every day from this terrible crisis so I want  
8 to thank you for continuing to bring a focus on it  
9 and although I know that the, the, the topic for  
10 today is the, the opioid crisis and the role of the  
11 criminal court, I think all of us want to address  
12 that but expand just a little bit on the overall  
13 strategies that we think are important and we, we  
14 really think you for the opportunity for presenting  
15 them to you this afternoon. As you already know  
16 Staten Island, the city has been combating a deadly  
17 opioid and heroin epidemic which every day continues  
18 to claim far too many lives. Sadly, this year on  
19 Staten Island alone there have already been 52 fatal  
20 overdoses and an additional 125 Naloxone saves,  
21 that's one overdose every day and every third day a  
22 death. When I took office as Richmond County District  
23 Attorney in January of 2016, Staten Island had one of  
24 the highest drug overdose rates in the... New York  
25 City, it seemed like we were losing more lives every

1  
2 week and the crisis showed little sign of receding  
3 with the introduction of deadlier substances like  
4 Fentanyl which you've heard about and its numerous  
5 analogues. The heroin and opioid epidemic felt as if  
6 it had turned into a plague on Staten Island and as a  
7 result it demanded immediate action. Recognizing the  
8 significant challenges facing the borough I launched  
9 a multi-faceted response that has expanded the role  
10 of local law enforcement and prosecutors and has  
11 given them the tools they need to address the crisis.  
12 Those efforts have included prosecuting serious drug  
13 dealers, offering treatment and other supportive  
14 services to effected individuals and families and  
15 increasing public awareness to reach... and reducing  
16 the stigma of addiction illness through media and  
17 educational outreach. Our prosecutorial strategies to  
18 combat the opioid crisis on multiple fronts using  
19 various strategies and approaches, we are vigilant in  
20 our pursuit of those drug dealers that are pedaling  
21 this poison and taking advantage of those dealing  
22 with the throes of addiction. We're also  
23 compassionate enough to understand that there are a  
24 number of people who are suffering with the cycle of  
25 addiction and thus we are dealing with the supply

1  
2 side and the demand side of this crisis through  
3 justice and mercy. On the supply side we have  
4 increased enforcement efforts and investigative  
5 methods to our overdose response initiative which has  
6 allowed assistant district attorneys from my office  
7 to work side by side with the NYPD and the detectives  
8 of course and investigate each overdose as they would  
9 a criminal crime case... as a criminal case. This is  
10 done in an effort to trace back the source of these  
11 toxic drugs and hold dealers more accountable. On  
12 Staten Island the ORI has led to dozens of major  
13 drugs take downs as well as the arrest of over 100  
14 drug dealers many of which were directly tied to  
15 overdoses. The office has also expanded a number of  
16 investigations due to ORI with 350 investigations  
17 opened in 2016 and over 400 that were opened in 2017  
18 and this is compared to just 192 in 2015 before we  
19 came in. This successful model is now being  
20 duplicated by the NYPD and the D... other DA offices  
21 throughout the city and when you're little Staten  
22 Island you take pride in that. Currently this office  
23 has no cases pending in response to your question Mr.  
24 Chairman, where we have charged any co-user with the  
25 accidental overdose of another person nor in

1  
2 accordance with New York State's Good Samaritan Law  
3 have we charged a co-user with possession or use when  
4 they have called in and accidental overdose but our  
5 office is the first in the city of New York to charge  
6 a dealer, a death by dealer, with the overdose death  
7 of an individual through our overdose response  
8 initiative. However, that defendant was not a co-  
9 user, but a supplier and that case is still pending  
10 before the courts, so I cannot expand further on the  
11 facts and or the circumstances of that investigation.  
12 And while I'm immensely proud of our success and I've  
13 stayed committed to holding drug dealers accountable  
14 I also recognize that we cannot simply arrest our way  
15 out of this problem and that is why my office has  
16 also worked together with groups from across the  
17 spectrum of law enforcement, the defense bar,  
18 treatment and social service providers and the Staten  
19 Island Community as a whole to create the Heroin  
20 Overdose, Prevention and Education program or HOPE.  
21 HOPE is the first of its kind diversion program in  
22 New York City to redirect low level drug offenders in  
23 Staten Island pre-arraignment to community-based  
24 health and treatment services instead of jail and  
25 prosecution and to date the program has seen

1  
2 tremendous success with approximately 90 percent of  
3 participants having meaningfully engaged in treatment  
4 services and their criminal cases withdrawn. I want  
5 to thank the council and this administration for  
6 being on the forefront of funding the peer monitor..  
7 mentors who are dispatched to the precinct to meet  
8 each individual arrest. These recovery coaches are  
9 critical to HOPE's success. And through all of our  
10 combined efforts last year Staten Island experienced  
11 a 15 percent decrease in overdose deaths, almost 400  
12 people have also received treatment services through  
13 the HOPE program and to your question earlier Council  
14 Member Ulrich, yes, having a peer mentor engage in  
15 that program is extremely effective. I am also proud  
16 to say that HOPE like ORI is being duplicated by my  
17 colleagues here today recognizing the importance of  
18 offering treatment early at the moment of arrest. Our  
19 office is also moving to expand the HOPE program on  
20 Staten Island to reach more people so that no one  
21 suffering from addiction is left behind or falls  
22 through the cracks. In furtherance of your questions  
23 of Judge Grasso Councilman we're trying to expand the  
24 charges as well in the HOPE program be, beyond the  
25 220.03. At the same time our CDA has continue to

1  
2 utilize other successful diversion model for hundreds  
3 of offenders each year, Staten Island drug treatment  
4 court, drug treatment alternative to prison and  
5 treatment accountability for safer communities are  
6 all programs with the mission to rehabilitate  
7 substance abusing offenders in order to improve not  
8 only their quality of life but also that of the  
9 Staten Island Community by breaking the cycle of  
10 crime associated with addiction. At the same time, I  
11 also successfully fought and advocated for a full  
12 narcotics court part on Staten Island that will  
13 handle felony narcotics cases and trials for dealers,  
14 treatment court and compliance for other diversion  
15 cases such as TASK in essence a truly full narcotics  
16 part. To oversee these initiatives, we also recently  
17 appointed an, an alternative to incarceration program  
18 coordinator to supervise and expand our efforts.  
19 Still when I was running for this office and when I  
20 entered office in 2016 my team and I noticed a  
21 significant drop off in people accepting and entering  
22 traditional treatment court between 2014 and 2015,  
23 158 people in 2014 down to 60 people in 2015 and this  
24 trend continued in 2016 and 2017 with 69 people and  
25 64 people entering treatment court respectively. I

1  
2 was encouraged to hear these numbers confirmed by our  
3 great colleague, Richard Brennan here this afternoon.  
4 This does not mean that prosecutors under the former  
5 administration or under my administration made fewer  
6 offers of treatment court in these years but rather  
7 that less people were willing to accept those offers  
8 and participate given the intensity and requirements  
9 of the program and I believe given the nature of the  
10 current addiction that people find themselves in.  
11 This decline is one of the reasons we created the  
12 HOPE program, we recognized that we needed to expand  
13 the diversion opportunities to address the spectrum  
14 of individuals who would benefit from treatment and  
15 behavioral health services instead of incarceration  
16 and make these diversion points earlier in the  
17 process to steer more individuals towards treatment  
18 and away from incarceration and made... make a greater  
19 impact to save lives. As I mentioned above we are  
20 working to expand the HOPE program because we  
21 recognize that there's still more that can be done to  
22 continue to expand diversion opportunities and  
23 capture an even greater universe of participants with  
24 addiction illness. With our partners in the courts we  
25 have also begun conversations about expanding the

1  
2 eligibility and varying the requirements of Staten  
3 Island drug treatment court to achieve similar ends.  
4 Related we are also working to expand mental health  
5 treatment court to include misdemeanor offenses in  
6 order to increase the number of people who can be  
7 helped by mental health services and... as an  
8 alternative to incarceration. We have proposed this  
9 expansion to the court and to legal aid society and  
10 eagerly await their approval and assistance to make  
11 this a reality. My office also offers two antidrug  
12 programs to encourage our youth the choices and  
13 consequences program and it is an... interactive high  
14 school presentation designed to prevent drunk,  
15 drugged and reckless driving while the No D program  
16 is offered to all middle and high schools on Staten  
17 Island where assistant district attorneys travel to  
18 schools throughout the borough to give anti-drug  
19 presentations to youth. We are also actively involved  
20 in bringing too good for drugs program into all of  
21 the middle and high schools with our terrific  
22 partners in the NYPD and Borough President Jim Oddo  
23 but members of the council this council has to do  
24 more in requiring mandated education programs in our  
25 schools because too many young people are making a



1  
2 choice to use these terribly toxic drugs and do not  
3 have the, the foundation and education to, to make  
4 the right choice at a... at a critical time. In Staten  
5 Island we've also launched Staten Islanders against  
6 drug abuse, a grassroots public awareness campaign  
7 aimed at combatting the heroin, Fentanyl and opioid  
8 epidemic on the Island while also providing resources  
9 and help to those battling addictions. The, the  
10 initiative includes a one stop shop website SI HOPE  
11 dot org, an online resource designed for those  
12 struggling with addiction, those with a loved one  
13 struggling with substance abuse and those that simply  
14 want to get involved to help stop the heroin and  
15 opioid epidemic in Staten Island. As part of this  
16 campaign more than 3,000 SI HOPE lawn signs have been  
17 placed in public locations throughout Staten Island  
18 to help raise awareness to this serious issue.  
19 Additionally, we worked and used asset forfeiture  
20 money to install med safe drug disposal receptacles  
21 at four pharmacy locations on the island and since  
22 last year we have collected more than 300 gallons of  
23 pills helping to ensure that addictive drugs are  
24 thrown away before they fall into the wrong hands. We  
25 know that to most effectively combat the drug

1  
2 epidemic we need a marshal plan approach, we must  
3 address the supply by aggressively prosecuting those  
4 who deal drugs, address the demand by educating our  
5 young people of the dangers of drug use and  
6 critically get those battling addictions into the  
7 hands of health professionals who can help them beat  
8 their illness. The expansion of drug courts and  
9 alternatives to incarceration including programs like  
10 HOPE or whatever acronym is used Chairman, must be a  
11 key element of any strategy to combat the epidemic in  
12 localities across the nation. The old way, jailing  
13 those battling addictions for a short stint and  
14 sending them back to the streets only exacerbates the  
15 existing problem and does little to improve public  
16 safety. While there is still much work to be done on  
17 Staten Island and, and, and other struggling towns  
18 and other parts of the city, the successes we have  
19 seen already show that law enforcement must embrace  
20 new roles and develop innovative strategies to lead  
21 the way. Initiatives like ORI and HOPE work to allow  
22 our ADAs to take that, that type of balanced and  
23 multipronged approach necessary to finally overcome  
24 the drug crisis while saving lives and keeping our  
25 community safe. And if I could also just mention that

1  
2 we have had in the HOPE program, I just want to give  
3 you those numbers. So, since we started a year ago  
4 January, 475 individuals have been offered HOPE, 366  
5 participants have meaningfully engaged and their  
6 cases have been withdrawn, 450 people have been to  
7 the resource center for an assessment, 448 people  
8 were met by the peer in the precinct and were given  
9 naloxone treatment and of those who accepted the  
10 program and finished, it's a success rate of 95  
11 percent and just out of... what we're very proud of is  
12 the results that these people have reached so not  
13 only was their case never docketed and their arrest  
14 record sealed but the result that they received,  
15 this... the meaningful engagement as defined by the  
16 providers, not by me and my office, by the providers,  
17 30 people have been referred to outpatient treatment  
18 programs, nine have been referred to inpatient  
19 treatments... oh these are for this year, hold on, I  
20 got better numbers... here we go, that was just for  
21 this year but for the overrun of the program; 133  
22 people have been referred to outpatient treatment  
23 programs, 32 have been referred to inpatient, 16 have  
24 been referred to detox and 32 have been referred to  
25 harm reduction programs so that's taking out of a

1  
2 misdemeanor arrest, a very serious outcome and at the  
3 same time HOPE has immediate contact, immediate  
4 diversion and as I said a sealing of the arrest  
5 record and no docketing of the court case. So, I, I  
6 thank you for your attention to listening to what  
7 we've been doing and clearly there's a great role for  
8 the courts to play and for this council to play as  
9 our partners in addressing this terrible crisis.

10 CHAIRPERSON LANCMAN: Thank you very  
11 much, who wants to volunteer to go next? There you  
12 go.

13 KAREN RANKIN: Good afternoon everyone..  
14 [cross-talk]

15 CHAIRPERSON LANCMAN: And just step.. just  
16 use the microphone please.

17 KAREN RANKIN: Thank you. Good afternoon  
18 everyone and thank you Chairman Lancman for giving us  
19 this opportunity to be here today to discuss with you  
20 and highlight for you the strategies that we are  
21 employing in the Queens district attorney's office  
22 with respect to prosecution and divert... with respect  
23 to our prosecutorial strategies and diversion  
24 strategies to combat the opioid crisis in our county.  
25 Obviously, it is our hopes of reducing death and

1  
2 saving lives. Please allow me to just introduce  
3 myself and my colleagues who are here with me today;  
4 I'm the Chief of the Narcotics Trials Bureau in  
5 Queens District Attorney's Office where I've worked  
6 since 1990. The Narcotics Trials Bureau as I... as the  
7 name suggests concentrates its efforts and resources  
8 to combat narcotics related crimes in Queens County.  
9 To that end our bureau is assigned most of the felony  
10 narcotics in selling and driving while intoxicated  
11 crimes however the bureau handles other types of  
12 crimes as well and they include and are not limited  
13 to robbery, assault, attempted murder and so on.  
14 Also, with me from our office is Phil Anderson,  
15 Supervising District Attorney.. Assistant District  
16 Attorney from our Narcotics Investigations Bureau who  
17 handles the investigative side of the felony narcotic  
18 related crimes and is the liaison to the NYPD  
19 overdose investigation team. Now our bureaus work in  
20 conjunction with Douglas Knight who many of you may  
21 know who's the Director of our Alternative Sentencing  
22 in our office, he has a master's degree in criminal  
23 justice and is credentialed... and he's a credentialed  
24 alcohol and substance abuse counselor with over 30  
25 years of alternative sentencing experience. Together

1  
2 we are responsible for the development and  
3 implementation of office wide alternative sentencing  
4 programs offered to defendants by our office or the  
5 courts. We collaborate with the court and treatment  
6 agencies on a daily basis and overseeing all  
7 compliance with treatment programs associated with  
8 the Queens County Criminal Justice System. We're  
9 proud to say that district attorney Brown has been  
10 and continues to be a leader in diverting both non-  
11 violent and a select few violent offenders, offenders  
12 into treatment as a way to assist and address the  
13 needs of those who's criminal behavior is motivated  
14 by substance abuse, alcohol abuse or mental health  
15 issues. Our office has a wide variety of alternative  
16 sentencing programs particular... targeting particular  
17 types of offenders including veterans, DWI offenders,  
18 those with mental health issues and those who have a  
19 dual diagnosis. As soon as a case is assigned to our...  
20 to a bureau in the office a supervisor immediately  
21 assesses that case and determines... and, and in... and  
22 determines whether that defendant or the nature of  
23 the crime meets the treatment criteria for some of  
24 our specialized courts. He or she then inputs the  
25 information into our system and Mr. Knight, who's the

1  
2 Director of our alternative sentencing immediately  
3 gets a notification to begin the process of  
4 scheduling the defendant for assessment with his  
5 counsel if the defendant is interested in this type  
6 of treatment. Now as we're all aware and why we're  
7 here today our nation is facing an opioid crisis and  
8 we're all tasked with the responsibility to address  
9 this issue. Too many of our citizens especially those  
10 between the ages of 25 and 54 years of age are  
11 overdosing and dying from the use of opioids most  
12 notably heroin and Fentanyl as has been mentioned  
13 here today. As I'm sure you're aware and as you've  
14 mentioned Councilman, over 1,400 New York City  
15 residents died in last year from overdose death. Our  
16 city... excuse me... has seen a significant increase in  
17 overdose deaths since 2014, approximately 80 percent.  
18 In 2014 there were only 800 such reported deaths in  
19 New York City according to the Department of Health  
20 and as was stated by many... by you and our colleagues  
21 we've seen over 1,400 this year. We certainly  
22 understand the importance of this crisis and have  
23 made efforts to address it. Those efforts include  
24 tracking both fatal and nonfatal overdoses, treating  
25 each overdose death as a homicide investigation from

1  
2 inception with our writing assistants who are  
3 notified immediately by the detective squad and who  
4 go to those scenes to ascertain and collect evidence  
5 in hopes of continuing with the investigation,  
6 coordinating with the NYPD narcotics borough of  
7 Queens overdose teams and any other agencies  
8 including RxStat working group to offer assistance  
9 with investigations in an effort to bring criminal  
10 charges against those who sold the drugs or those who  
11 supplied the drugs to the deceased, taking a harsher  
12 position on those found to have sold Fentanyl, we  
13 also proffer arrested, thank you... we also proffer  
14 those arrested and charge to ascertain the source and  
15 the location of the drugs and most importantly we  
16 continue to identify those who are substance addicted  
17 and offer them treatment in our alternative to  
18 incarceration programs, our courts as well as  
19 providing literature to educate them about the risks  
20 of drug use and making them aware about the use of  
21 Narcan. Now alternative to incarceration programs  
22 were established to focus on the increasing number of  
23 substance addictive defendants who we began to see in  
24 the 90's. unfortunately we're still dealing with sub...  
25 individuals who are addicted and now we are at a



1  
2 crisis with overdose. We continually see them appear  
3 in our courts on a daily basis, towards that end we  
4 have a number of programs. The drug treatment  
5 alternative to prison which is our DTAP program  
6 supported by our district attorney Brown since it's  
7 inception in 1993 has had a tremendous success. Now  
8 that program was developed for nonviolent second  
9 felony drug offenders who's involvement with the  
10 criminal justice system stems from their abuse of  
11 drugs. Each defendant is screened and assessed to  
12 determine whether he or she suffers from an addiction  
13 and the extent of that addiction. Before acceptance  
14 into our treatment program which is usually 12 months  
15 of court monitoring the defendant must plead guilty  
16 and abide by the court-imposed requirements, the  
17 defendant will be monitored through frequent court  
18 appearances to determine whether they are progressing  
19 with their treatment and complying with the other  
20 requirements. Drug testing is given periodically  
21 through the program and those who successfully  
22 complete treatment will be eligible to have their  
23 cases dismissed and sealed or charges reduced, or  
24 sentences lowered and to be given a second chance at  
25 life in essence. However, those who fail will be

1  
2 sentenced to an alternative jail sentence that was  
3 negotiated at the time of the plea. This serves as a  
4 balance we believe in enforcing the law while also  
5 treating those who need and want help for their  
6 addiction. We also believe that a jail alternative in  
7 the event of repeated failures serves as a legitimate  
8 incentive to get well and not reoffend. Over the  
9 years and as a result of the success we've  
10 experienced with our DTAP population we expanded our  
11 network of drug treatment diversion programs,  
12 programs. In 1998 we launched our Queens treatment  
13 court which as council has indicated is overseen by  
14 Judge Hirsch for nonviolent first-time felony  
15 offenders. It is a unique core part in all... in that  
16 all parties operate as a team; the judge, the  
17 prosecutor, the defense attorney, their staff members  
18 and treatment providers work together in a  
19 collaborative effort. They meet on a daily basis to  
20 discuss the defendant's treatment progress and  
21 violations and determine the best course of action to  
22 take in any given situation. We're proud to announce  
23 that we recently celebrated our 20<sup>th</sup> anniversary  
24 which has afforded over 2,000 otherwise jail bound  
25 defendants the opportunity to avail themselves of

1  
2 treatment, resources that resulted in charges being  
3 dismissed and sealed and a return to productive lives  
4 free of substances. Because of our tremendous success  
5 with felony treatment court in 2002 we launched our  
6 misdemeanor treatment court which concentrates on the  
7 recidivist misdemeanor nonviolent drug addicted  
8 population. This court exposes these participants to  
9 a structured graduated sanction approach to address  
10 the substance abuse issues that they are continually  
11 struggling with over the years. The model employed in  
12 this court is similar to the felony treatment model.  
13 In 2006 we developed a DWI treatment court, this  
14 court operates out of the Queens treatment court and  
15 specifically addresses the underlying alcohol related  
16 issues of DWI offenses. We currently have a  
17 recidivism rate of less than 10 percent. Moreover, a  
18 DWI defendant will not receive a dismissal upon  
19 successful completion instead he or she will be  
20 sentenced on a misdemeanor DWI charge and receive  
21 probation. We also provide services for those who  
22 criminal behavior is motivated by complicated mental  
23 health issues. Among the many services in the... is the  
24 Queens mental health court, the court focuses on the  
25 defendants who have mental health issues especially

1  
2 those having a major depressive disorder. As all of  
3 you know this population is extremely difficult to  
4 accommodate yet we work diligently on a regular basis  
5 to provide the necessary services and linkages to  
6 allow them to succeed. Now the programs identified  
7 above are just a few of the programs, options offered  
8 in Queens County. There are numerous other  
9 alternative to incarceration programs offered on a  
10 daily basis which assist hundreds of defendants in  
11 need of clinical services. With respect to the ever-  
12 growing opioid concern we recently launched the  
13 Queens treatment intervention program also Q-TIP to  
14 specifically address misdemeanor nonviolent  
15 individuals addicted to opioids. Q-TIP is a  
16 collaborative program with industry leaders Samaritan  
17 Daytop Village and Office of Alcoholism and Substance  
18 Abuse services, a licensed treatment provider that  
19 will clinically engage defendants charged with 7<sup>th</sup>  
20 degree possession of a controlled substance under  
21 penal law section 220.03 and other low-level offenses  
22 associated with opioid addiction. In lieu of  
23 traditional community service defendants will plead  
24 guilty to disorderly conduct under penal law 240.20,  
25 a violation and not a crime and will be directed for

1  
2 clinical assessment to determine if further treatment  
3 services are warranted. If assessed and not  
4 determined to need any clinical services upon return  
5 to court the case will result in the adjournment of...  
6 will adjourn... will result in an adjournment and  
7 contemplation of dismissal also known as an ACD. In  
8 the event the defendant is assessed and the... and  
9 determined to be in need of clinical services but he  
10 or she declines these services the plea to disorderly  
11 conduct with... will stand and the defendant will be  
12 sentenced to a conditional discharge. If assessed and  
13 treatment is recommended, and the defendant takes the  
14 necessary steps to enroll in services on the  
15 following court date the defendant will receive an  
16 ACD regardless of the outcome of the case our goal is  
17 to clinically evaluate as many eligible defendants as  
18 possible and at the very least plant a seed that  
19 professional services exist to address their opioid  
20 addiction. It is this population that we believe is  
21 most susceptible to overdosing. If we can reach these  
22 people in this early stage and connect them to  
23 treatment and services, we believe that this will  
24 help reduce the number of cases resulting in  
25 overdoses and death. Since Q-TIP began 73 defendants

1  
2 has accepted our offer to participate in the program,  
3 thus far 79 percent of those assessed satisfied our  
4 requirements resulting in their cases being ACD'd. it  
5 should be noted that 84 percent are male, and we have  
6 a retention rate of 88 percent. Furthermore, there is  
7 no cost to the defendant associated with Q-TIP and to  
8 serve our diverse constituency we provide services in  
9 all languages and we will continue to identify other  
10 OASAS, licensed treatment programs to achieve our  
11 desired goals. As stated before most of these  
12 programs have been in existence for several years and  
13 we're simply attempting to expand them and we're  
14 extremely proud of our retention and success rates.  
15 Again, these are the programs under which we are for  
16 a comprehensive array of treatment services to  
17 offenders who have been diverted through specialized  
18 courts that assess their treatment needs and then  
19 design a treatment plan to address those needs. At  
20 this time the existing alternative to incarceration  
21 programs are prepared to link the opioid population  
22 to the comprehensive existing services and resources  
23 to address their needs. District attorney Brown is  
24 delighted to join in the efforts to provide the  
25 needed services. This population is in need of unique

1  
2 outreach, peer support, specialized services and  
3 treatment to further educate them and to avoid the  
4 dire consequences associated with drug addiction and  
5 opioid use in today's society. In sum we're glad to  
6 be a part of these innovative alternatives sentencing  
7 initiatives and welcome any support that will better  
8 serve the pressing needs of this deserving and  
9 eligible population who suffer from trauma and  
10 addiction. We will continue to provide effective  
11 professional alternatives to defendants in need of  
12 treatment services and we will continue to link them  
13 with the appropriate agencies in our specialized  
14 courts. Finally, we encourage any one of you who are  
15 interested in visiting our existing initiatives to  
16 come and meet with us to learn more about the  
17 services we provide. We look forward to meeting with  
18 you and keeping you informed of our programs in this  
19 innovative and important initiative. We hope that our  
20 efforts will go a long way in addressing the opioid  
21 crisis and saving lives of Queens residents. Thank  
22 you

23 CHAIRPERSON LANCMAN: Thank you, so just...  
24 let's move on down the line.

25

1  
2 LEROY FRAZER: Good afternoon Chairman  
3 Lancman and members of the justice system. I am Leroy  
4 Frazer, Chief of Staff to the Brooklyn District  
5 Attorney and I am here representing Kings County  
6 District Attorney's Office. Thank you for the  
7 opportunity to speak to you today about how my office  
8 is addressing the opioid crisis in court and  
9 especially I'm happy to be here today because this is  
10 my farewell speaking to the city council in that I  
11 will be retiring in another couple of weeks after  
12 almost 38 years of service.

13 [applause]

14 LEROY FRAZER: The opioid crisis has hit  
15 us hard in Brooklyn, in the last five years we have  
16 lost well over 1,000 people to overdose with the  
17 numbers increasing every year. Our priority with  
18 regard to the opioids is and must be keeping people  
19 alive. This means that while we focus enforcement  
20 efforts on apprehending major distributors of opioids  
21 to interrupt supply chains at a high level most of  
22 our resources must be directed to prevention and  
23 treatment. To interrupt the supply chain our office  
24 conducts targeted long term narcotics investigations  
25 in conjunction with other law enforcement agencies.



1  
2 When successful these investigations reveal large  
3 scale networks consisting of suppliers, wholesale  
4 dealers and their workers as well as stash locations  
5 and recovery both of their stockpile product and the  
6 proceeds of their illicit activity. The individuals  
7 behind these large-scale narcotics operations tend to  
8 contribute to the shootings and violence that we see  
9 in Brooklyn so apprehending these drivers of crime  
10 has a dual effect for the moment of cutting off a  
11 source of dangerous narcotics and removing violent  
12 criminals from the streets. Nevertheless, with  
13 respect to street level dealers we realize that each  
14 individual seller who is arrested and taken off the  
15 street is immediately replaced with someone else who  
16 is willing to risk arrest and incarceration to make  
17 money providing a product for which there is an  
18 unceasing demand. And in many cases these street  
19 level sellers are themselves addicted to the  
20 substances they sell so for these individuals we take  
21 a nuanced approach to their cases. Under New York  
22 penal law if a person shares heroin or another drug  
23 with another person there can be considered a sell of  
24 narcotics, it is not our policy to prosecute as a  
25 seller someone who has merely shared drugs with

1  
2 another user. Moreover, we are not inclined to  
3 prosecute as seller's individuals who are merely  
4 steerers, that is who direct in undercover for  
5 example to a seller though that too could be  
6 considered selling under an active and concert theory  
7 of the penal law. Finally, we see cases sometimes in  
8 which an undercover asks an individual to buy  
9 narcotics for them, the undercover gives the  
10 individual money, the individual procures the drugs  
11 for the undercover and in exchange the undercover may  
12 give a person a tip or a form of... in the form of cash  
13 or a portion of the drugs and then arrests that  
14 individual for selling. Our office policy is to  
15 evaluate these cases on an individual basis however  
16 going forward, we will endeavor to carve out those  
17 cases where the exchange is motivated by an  
18 individual's addiction as opposed to merely selling  
19 for a profit. One question that has been posed is  
20 whether our office will prosecute for homicides  
21 someone who sold drugs from which a buyer later  
22 overdosed and died. While there is a possibility that  
23 an appropriate case might at some point present  
24 itself district attorney Gonzalez recognizes that the  
25 causes of drug use and overdose are complex and

1  
2 involve a certain amount of free will on the part of  
3 the user and that charging a seller with homicide  
4 will not be appropriate in a lot of cases nor does  
5 district attorney Gonzales favor laws that create a  
6 new category of homicide as a result of death from  
7 overdose. Our investigations have however revealed  
8 that a high... that high leveled dealers are often  
9 aware that their product contains Fentanyl which can  
10 cause death by overdose therefor a factually  
11 appropriate case could result in a homicide  
12 investigation. The level of... that level of  
13 callousness in the appropriate case could rise to a  
14 depraved indifference to a human's life that would  
15 justify a homicide prosecution but in general we  
16 normally would not seek to charge a low-level seller  
17 of opioids with a homicide. We understand that the  
18 supply side enforcement responses alone will not  
19 solve the opioid crisis, we cannot arrest or charge  
20 or incarcerate our way out of this problem. We  
21 believe that drug misuse is and should be treated as  
22 a health issue rather than a criminal issue and this  
23 is not something that we and law enforcement can do  
24 on our own. We must work with public health  
25 professionals, medical providers, treatment and other

1  
2 service providers and members of the community to  
3 solve this problem. Our Brooklyn CLEAR program is the  
4 best example of our approach to opioid use and here I  
5 have to stop and thank Chairman Lancman and the  
6 members of this committee for your tremendous support  
7 in helping us to obtain funding for CLEAR during the  
8 recent budget, budget negotiations. As you know money  
9 for CLEAR was not in the Mayor's original proposal  
10 and you went all hands-on deck to make sure that we  
11 got the funding to be able to offer this crucial  
12 treatment option. We are deeply grateful to you for  
13 stepping up on our behalf and on behalf of the people  
14 of Brooklyn who are suffering and who need this  
15 program. CLEAR is a pre-charge diversion program  
16 modeled on Staten Island HOPE program, but we go a  
17 little further we think and provide services to  
18 people arrested and eligible for a desk appearance  
19 ticket on all non-marijuana drug charges, not just  
20 opioids and we do not screen our people with criminal  
21 records. In fact, we believe that these people who  
22 are most in need of the services and treatment  
23 options that the program provides. Here's how it  
24 works, when an individual is arrested on a drug  
25 charge typically 220.03 of the penal law and is found

1  
2 to be DAT eligible the NYPD notifies our office and  
3 we dispatch peer counselors directly to the precinct.  
4 The peer counselor explains that if the person is  
5 assessed by a case manager before the return date  
6 which is seven days from the date of arrest they do  
7 not have to appear in court. If arrested... if the  
8 arrested individual, then meaningfully engages in the  
9 recommended services we are chosen jointly between  
10 the arrested person and the case manager those  
11 services I mean within the next 30 days the office  
12 will decline to prosecute the case and the case will  
13 be dismissed and sealed. The peer counselor also  
14 trains the arrested person on how to use naloxone and  
15 gives the person their kit whether or not they accept  
16 the program. This program which was initially funded  
17 in Brooklyn by a grant from the city council under  
18 the previous speaker was initially piloted in six  
19 precincts in Brooklyn South where there were the  
20 greatest number of overdoses and where we perceive  
21 the need to be greatest. Last month we expanded the  
22 program to the rest of Brooklyn South and with the  
23 additional funds we secured from CLEAR in this  
24 process as a result of your advocacy on our behalf we  
25 built a... will be expanding CLEAR throughout the

1  
2 borough over the summer. CLEAR is a pre-charge  
3 diversion program, an individual who meaningfully  
4 participates in CLEAR will never see the inside of a  
5 courtroom on that case. For cases that are not  
6 eligible for CLEAR and do not end up at court our  
7 office offers additional opportunities for diversion  
8 into treatment and other programs. Again, we believe  
9 that drug misuse is a health issue not a criminal  
10 issue and so the goal is to divert those cases out of  
11 the criminal justice system at the earliest point.  
12 So, in addition to CLEAR our office offers several  
13 other treatment programs; Brooklyn treatment court  
14 for felony drug offenders, misdemeanor treatment  
15 court for misdemeanor drug offences, screen treatment  
16 enhancement part for nonviolent, nondrug offenders  
17 and DTAP for nonviolent predicate fellows. For those  
18 who serve our country through military service  
19 specialized treatment for addiction is offered in  
20 both our misdemeanor and felony veterans courts. An  
21 important point to make is that going forward our  
22 office will increasingly take a harm reduction  
23 approach to drug cases, we will not insist on a  
24 complete abstinence from all drug use as a condition  
25 of being accepted to.. into or remaining in the

1  
2 program. We won't automatically recommend terminating  
3 someone from... in a program or put them, them in jail  
4 for their failure to remain abstinent. We understand  
5 that addiction to be a chronic relapsing condition  
6 that setbacks a part of recovery process and that we  
7 know that complete abstinence is the ultimate goal  
8 and we wish that everyone who is addicted to drugs  
9 will get off them however we realize that that goal  
10 is unrealistic for many people and we no longer see  
11 it as our job to enforce abstinence through criminal  
12 sanctions. Similarly, in our treatment courts we  
13 intend to greatly reduce the extent to which we  
14 require an individual to plead guilty in order to  
15 access treatment or other services. We believe that  
16 this approach along with the cornerstone of the  
17 treatment model in Brooklyn and many other  
18 jurisdictions around the country sets people up for  
19 failure, increases incarceration, has severe  
20 consequences for non-citizens and is simply  
21 ineffective as a way of solving the problem we face.  
22 Offering pre-plea treatment options is one of the  
23 recommendations we receive from our offices justice  
24 2020 committee which the district attorney formed in  
25 January to recommend ways to increase public safety

1  
2 while reducing incarceration. In addition to the  
3 programs we offer for those who are arrested for drug  
4 offence crimes in Brooklyn we are always looking for  
5 creative ways to deal with this issue to engage with  
6 the community and get in front of this enormous  
7 challenge that we face. Our office is an active  
8 participant in the RxStat led by Chauncey Parker of  
9 the New York County District Attorney's Office and  
10 the New Jersey New York HIDTA and we commend him for  
11 his leadership and for the creative approach he has  
12 taken on these issues. District Attorney Gonzales  
13 recognizes that a major reason for the opioid crisis  
14 we now face is the overprescribing of lawful  
15 prescription opioids by doctors, pharmaceutical  
16 manufacturers misled these doctors about their  
17 addictiveness and the dangerousness of their drugs  
18 and so our office was happy to join with the New York  
19 State Attorney General in suing the pharmaceutical  
20 companies responsible for creating and marketing  
21 these drugs. Substance use disorder is a chronic  
22 relapsing disease that requires a lot of support to  
23 overcome. Cycling someone through the criminal  
24 justice system only exacerbates that... the disease by  
25 cutting them off from the tools that they need... they



1  
2 need to have any chance at success. Our office is  
3 committed to treating the diverse non-punishing the  
4 person suffering from the disease, our behavioral  
5 health approach is in keeping with our offices vision  
6 of keeping Brooklyn safe and strengthening the  
7 community trust by ensuring fairness and equal  
8 justice for all. Thank you, sir.

9 CHAIRPERSON LANCMAN: Thank you.

10 AISHA GREENE: Good afternoon. Good  
11 afternoon Chairman Lancman and members of this  
12 committee. My name is Aisha Greene and I am the Chief  
13 of the Alternatives to Incarceration Bureau at the  
14 Bronx County District Attorney's Office. On behalf of  
15 district attorney Clark who apologizes that she could  
16 not be here today thank you for allowing us the  
17 opportunity to speak to you about her offices  
18 response to the opioid crisis in the Bronx. Upon  
19 taking office in 2016, District Attorney Clark made  
20 tackling this public health crisis one of her top  
21 priorities. Home to 1.4 million people in 2016, Bronx  
22 County had the second highest rate of overdose deaths  
23 with 376 fatalities. If the Bronx were a state, we  
24 would have the 15<sup>th</sup> highest overdose rate in the  
25 country. We ranked higher than large states such as

1  
2 Florida, New Jersey, California and our home state  
3 New York but this problem has been around for 40 plus  
4 years and is not a new epidemic in our county. The  
5 average person that overdoses in the Bronx is 46  
6 years old and has been arrested seven and a half  
7 times for drug possession. This signifies that the  
8 Bronx's population is much different than our  
9 bordering counties and our population of users is  
10 older and more experienced than in other areas.  
11 Moreover in 2017 in the Bronx, a total of 2,405  
12 arrests were made for criminal possession of a  
13 controlled substance in the 7<sup>th</sup> degree. District  
14 Attorney Clark believes this provides our office with  
15 2,405 opportunities to intervene and potentially save  
16 a life. Based on that philosophy our office has  
17 developed a four-prong strategy to reduce the number  
18 of overdoses in Bronx County and titled Operation  
19 HEAT, Heroin, Education and Access to Treatment.  
20 These prongs include prosecution, diversion,  
21 coordination and resources and outreach. At base we  
22 must remove the supply of illegal narcotics and  
23 opioids lining our streets, to that end we are  
24 working with our partners including the New York City  
25 Police Department, the Drug Enforcement

1  
2 Administration, Homeland Security Investigations, the  
3 Office of the Special Narcotics Prosecutor and other  
4 local, state and federal law enforcement agencies to  
5 investigate and prosecute individuals and groups who  
6 illegally manufacture and distribute opioids and  
7 other narcotics in the Bronx. These investigations go  
8 beyond the typical street level drug trade and work  
9 to dismantle high level drug trafficking rings that  
10 pose a danger to the Bronx and the New York City more  
11 broadly. But supply reduction is only half of that  
12 puzzle, District Attorney Clark is committed to  
13 providing access to treatment for justice involved  
14 individuals with substance use issues especially  
15 those at high risk for opioid overdose. This  
16 commitment extends beyond creating typical drug  
17 treatment courts and ensures a continuum of care at  
18 all touch points attempting to remove barriers and  
19 collateral consequences associated with the criminal  
20 justice system. First District Attorney Clark is on  
21 the forefront of diversion programing and currently  
22 operates one opioid based diversion program and a  
23 second is in planning. In partnership with Bronx  
24 administrative Judge George Grasso, the Office of  
25 Court Administration and the Center for Court

1  
2 Innovation, the District Attorney developed OAR which  
3 is short for Overdose Avoidance and Recovery. This  
4 court-based pre-plea diversion program is designed to  
5 divert individuals that are high utilizers and are at  
6 high risk for overdose away from the criminal justice  
7 system and into treatment. This program is available  
8 to all individuals arrested for simple drug  
9 possession in the Bronx. What is different about this  
10 diversion program is that we effectively pause the  
11 criminal case and allow individuals to access  
12 treatment in lieu of criminal prosecution. Indeed,  
13 the defendant is offered connections to treatment  
14 pre-plea and this allows providers to develop a  
15 treatment plan that suits their needs without the  
16 hammer of a promised sentence forcing defendants into  
17 treatment. If they meaningfully engage in this plan,  
18 then the Bronx District Attorney's Office dismisses  
19 and seals this case. If the individual doesn't  
20 meaningfully engage or decides that they do not want  
21 to, to complete the OAR program the office returns  
22 their case to the regular case processing track  
23 without prejudice and we will make the offer that  
24 they would have received at arraignment. In the six  
25 months that we have been operating we have gauged..

1  
2 engaged over 150 people in treatment and just last  
3 week as Judge Grasso testified earlier a middle-aged  
4 man who works as a cab driver successfully completed  
5 the program, it was a long road but with his wife by  
6 his side at every court appearance he was able to  
7 meaningfully engage and successfully complete  
8 treatment. He is just one of 29 examples lives saved  
9 in this short period. Also, thanks to city council  
10 and the Mayor for making funding available we are  
11 currently planning HOPE which stands for Heroin  
12 Overdose Prevention and Education. this initiative  
13 was designed to combat the heroin and opioid epidemic  
14 to... by diverting low level substance use offenders  
15 and to treatment at the time of arrest. First  
16 implemented in Staten Island, the HOPE program uses  
17 trained peers to meet arrestees at the precinct in an  
18 attempt to immediately connect people to resources.  
19 These peers walk individuals through treatment and  
20 harm reduction services. If after a period of time  
21 the defendant meaningfully engages with the peer and  
22 makes a connection to a community-based organization  
23 the office will decline to prosecute the case. These  
24 diversion and treatment alternatives only work if we  
25 are identifying individuals most at risk for overdose

1  
2 and in need of care. As such through our partnership  
3 with New York Universities Maritime Institute the  
4 District Attorney's Office developed a tool to  
5 identify individuals at high risk for high  
6 utilization and overdose in the Bronx. The tool which  
7 consists of five questions will be validated in late  
8 2018 should funding become available and is being  
9 piloted in one of our two diversion programs. Our  
10 efforts and activities must be coordinated to ensure  
11 that we are reaching our intended audiences and our  
12 efforts are not duplicative. In summer 2017 the Bronx  
13 District Attorney launched a working group modeled on  
14 District Attorney Vance and HIDTA Director Chauncey  
15 Parker's RxStat in an effort to create coordinated  
16 responses to the opioid crisis. The Bronx opioid  
17 working group brings together an interdisciplinary  
18 group of stakeholders including public safety and  
19 public health professionals to establish consistent,  
20 timely and accurate analysis of opioid overdoses. The  
21 working group provides a forum for partners to review  
22 shared data in order to craft responses, discuss  
23 emergent finds and coordinate related policy efforts  
24 or program activities. The working group helps to  
25 reconcile different missions of public health and

1  
2 public safety agencies by adopting a data driven  
3 focus on information sharing. The group has been  
4 influential in assisting with the creation Bronx OAR  
5 and HOPE programs which I have already mentioned. In  
6 addition, through our... through our partnership with  
7 Columbia University School of International and  
8 Public Affairs and Office of the Special Narcotics  
9 Prosecutor the Bronx District Attorney's Office just  
10 completed a needs assessment to identify factors  
11 contributing to this crisis including treatment  
12 access, the continuum of care and prevention  
13 strategies. This assessment provides recommendations  
14 for strategies to improve access to opioid use  
15 disorder treatment, initiatives that can support  
16 individuals through their recovery and beyond as well  
17 as strategies to improve and expand existing  
18 prevention efforts. Furthermore, the report will help  
19 share... excuse me, furthermore the report will help  
20 shape the Bronx opioid working group and the Bronx  
21 District Attorney's efforts moving forward. And  
22 finally getting the message out about the dangers of  
23 opioids and Fentanyl is necessary to saving lives.  
24 Through District Attorney Clark's strategic  
25 enforcement division and community affairs unit she

1  
2 is working to educate the public about the risks of  
3 opioid overdose. The office participates in Town  
4 Halls throughout the County and provides speakers at  
5 community meetings to discuss this important issue  
6 and we are exploring new ways to prevent overdoses  
7 and outreach to the public about the dangers  
8 associated with opioids and other substances. We hope  
9 that this multifaceted strategy which focuses equally  
10 on demand and supply reduction will help stem the  
11 number of overdoses and improve public safety in the  
12 Bronx. Thank you again for the opportunity to speak  
13 with you, I look forward to any questions that you  
14 may have.

15 CHAIRPERSON LANCMAN: Thank you.

16 CHAUNCEY PARKER: Good afternoon Chairman  
17 Lancman and Councilman Ulrich. My name is Chauncey  
18 Parker and I'm an Executive Assistant District  
19 Attorney and a... and a Senior Policy Advisor to  
20 Manhattan DA Cy Vance and I also serve as the  
21 Director of the New York/New Jersey High Intensity  
22 Drug Trafficking Area Program or HIDTA which is a  
23 federal grant that invests in federal, state and  
24 local partnerships to build safe and healthy  
25 communities. Thank you for the opportunity to speak



1  
2 with you today about DA Vance's strategy to combat  
3 the opioid epidemic. The opioid epidemic is one of  
4 the worst public health crisis in American history  
5 and in New York as my colleagues and Chairman you  
6 noted last year with 1,441 fatal overdose deaths,  
7 there are more than twice as many New Yorkers last  
8 year... far more than twice as many New Yorkers who  
9 died of a fatal drug overdose than murders, motor  
10 crash, motor... vehicle collisions combined. In  
11 response to this opioid crisis DA Vance has launched  
12 and expanded several initiatives focusing on one goal  
13 and that is helping our communities to be safe and to  
14 be healthy. To increase the safety of our communities  
15 we're utilizing an intelligence driven strategy  
16 focusing our prosecutorial efforts on individuals who  
17 sell the most lethal drugs in particular Fentanyl and  
18 Fentanyl analogues. And to increase the health of our  
19 communities we're focused on the care and recovery of  
20 the individuals suffering from substance use  
21 disorders. These efforts include investing in  
22 diversion programs such as creating the city's first  
23 alternative to incarceration or ATI unit 2016. This  
24 unit identifies treatment and programs that could  
25 serve as effective diversion options as well as

1  
2 helping to identify defendants who can benefit from  
3 these programs without compromising public safety.  
4 The ATI unit has enhanced our office's institutional  
5 capacity to evaluate programs, encourage their  
6 utilization and monitor their effectiveness. Last  
7 year DA Vance also announced the creation of the  
8 Manhattan HOPE program aimed at diverting cases for  
9 those charged with misdemeanor drug possession and  
10 connecting people to services to harm reduction and  
11 rapid engagement. Manhattan HOPE which is modeled  
12 after DA McMahon's program HOPE pairs high need  
13 individuals with peer navigators at the point of  
14 arrest to better facilitate access to treatment and  
15 other services. Upon completion of the program we  
16 will decline to prosecute those criminal cases. The  
17 other side of HOPE as Judge Grasso spoke about is a...  
18 that HOPE is a pre-arrest... pre-arraignment diversion  
19 program, OAR is a post-arrest diversion program and  
20 we're working with the Bronx District Attorney's  
21 Office with Judge Grasso and, and our partners in  
22 Manhattan to explore expanding that to Manhattan.  
23 More broadly the Manhattan DA's Office also funds and  
24 participates in a diversion program called Project  
25 Reset. In 2015 the office developed Project Reset, a

1  
2 pre-arraignment diversion program for people arrested  
3 of... for low level offences in partnership with the  
4 Center for Court Innovation and the NYPD. Given the  
5 success of Project Reset with a 98 percent completion  
6 rate for teens the office recently expanded the  
7 program to adults of all ages and expanded its  
8 partners to include the Osborne Association and young  
9 New Yorkers. As part of a suite of program offerings  
10 Project Reset participants can be trained on Naloxone  
11 administration and receive a Naloxone kit to carry  
12 with them at the end of the training. In addition, we  
13 are also collaborating with the Office of Court  
14 Administration to expand resources for our Manhattan  
15 drug court by funding an addiction psychiatrist and  
16 social workers to help the judge in court make  
17 treatment decisions as well as the DA has invested in  
18 expanding resources to the Department of Health and  
19 Mental Hygiene and the Office of the... of the Medical  
20 Examiner by funding epidemiologists and, and data  
21 analysts. Another significant drug policy investment  
22 made by DA Vance is RxStat which some of my  
23 colleagues have spoken about, it's a groundbreaking  
24 public health public safety partnership to reduce  
25 overdoses. When it comes to public safety New York

1  
2 City has proven that when people work together toward  
3 a common goal anything is possible. New York City  
4 RxStat is a public health public safety partnership  
5 which applies the same data driven, evidence based,  
6 ideologically agnostic principles of COMPSTAT to drug  
7 policy. The goal of RxStat... of RxStat, the North  
8 star of RxStat is to save lives and reduce overdoses.  
9 Over the past few years RxStat has expanded from a  
10 handful of representatives sitting around a  
11 conference room table to a monthly meeting that hosts  
12 more than 80 senior representatives from 25 key  
13 federal, state and local agencies including the five  
14 New York City District Attorney's Office, the Office  
15 of the Special Narcotics Prosecutor, the NYPD, the  
16 Department of Mental... of Health and Mental Hygiene,  
17 the Drug Enforcement Administration, the two United  
18 States Attorney's Offices, Eastern District and  
19 Southern District, the Mayor's Office of Criminal  
20 Justice, the New York City Department of Probation,  
21 the New York State Department of Corrections and  
22 Community Supervision, the New York City Fire  
23 Department, the Office of Alcohol and Substance Abuse  
24 Services, the Office of the Chief Medical Examiner,  
25 the New York City Health and Hospitals Corporation

1  
2 and the New York City Department of Homeless  
3 Services; all of these agencies are working together  
4 like COMPSTAT looking at the same map, at the same  
5 time, with the same goal. Last year New York City  
6 launched the next phase of RxStat called Operational  
7 RxStat which is hosted every three months at the NYPD  
8 at the Jack Maple COMPSTAT Center. At Operational  
9 RxStat which is co-chaired by the NYPD, DOHMH, and  
10 HIDTA partner agencies review or, or table top case  
11 studies of fatal overdoses to identify opportunities  
12 where working together we can save lives in the  
13 future. RxStat has been featured at numerous national  
14 conferences as a model for public health and public  
15 safety collaboration to reduce overdoses. The opioid  
16 epidemic is one of the most daunting challenges we  
17 have ever faced but we have faced daunting challenges  
18 before and we know as New Yorkers that nothing is  
19 impossible especially when we work together, and we  
20 focus like a laser on our North star. Thank you for  
21 the opportunity to speak with you about DA Vance's  
22 vision for how to combat the opioid epidemic and I'm  
23 happy to answer any questions.

24 CHAIRPERSON LANCMAN: Thank you, that was  
25 a, a marathon session of prosecutors. So, let me ask

1  
2 a, a few general questions and I'm sure at this point  
3 everyone is self-motivated to be brief. Just for the...  
4 for the council that, that we're not prosecutors or,  
5 or, or doing this work day to day, just the division  
6 of labor between the district attorneys and the  
7 special narcotics prosecutor especially as it relates  
8 to prosecuting opioid cases, what... which, which cases  
9 get sent to you, what kind of cases get sent to you  
10 and what kind of stay with the, the DAs?

11 BRIDGET BRENNAN: We tend to get the  
12 higher-level cases that cross county borders. The... I  
13 would say those would tend to be the ones that would  
14 come to us, we work a lot with the DEA. We have  
15 jurisdiction over both of the, the Eastern district  
16 and the Southern Districts so sometimes our citywide  
17 jurisdiction is greatly... of great assistance in those  
18 cases. DA McMahon once characterized it as we're the  
19 Air Force... and they're the infantry which is a nice  
20 way of looking at it and we work very closely with  
21 each of the DAs Offices though because each one has  
22 different challenges and different ways they want to  
23 utilize us, and we have DAs from each of the offices  
24 in my office. So, it... you know I hate to put it this  
25 way but it kind of depends on what they want.

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CHAIRPERSON LANCMAN: And how do the cases come to you, do... does, does a DA office have to say okay, this is a special narcotics case or...

BRIDGET BRENNAN: No, it doesn't work quite that way but when, when a... well it sort of does in that if we have a case that develops whichever county it crosses over in we have a discussion with that county about whether or not... you know how we're going to work that case, whether it's appropriate to work it together, whether we're going to take it, whether they're going to take it so the case may come to us through one of the enforcement agencies but we always then contact the... whichever DA's Office is involved.

CHAIRPERSON LANCMAN: Right. Now there's someone from ERIN POLLOCK here, right? So, I have some questions, it might be useful for you to, to, to come up now and just... yeah, or a folding chair or whatever... because we, we want to understand... the police department's focus on opioid cases and the PD is not here today but policy... where do you get your cases from, are they... are they from the police department make an arrest and they bring it to you, what percentage if you could even talk about it in

1  
2 those terms are the result of your own... your offices  
3 own sort of in, investigations and, and, and then the  
4 collaboration between your offices and the U.S.  
5 Attorney's Offices, what can you... what can you tell  
6 us about, about those things? Whoever, whoever wants  
7 to take it.

8 LEROY FRAZER: I, I would... I'll just say  
9 that most of the cases that are, are street arrests  
10 obviously come from NYPD, but we also have  
11 specialized bureaus within our offices such as the  
12 violent criminal enterprise bureau or a gang unit or  
13 something like that that generate investigations when  
14 you're going after the major dealers. Now in terms of  
15 cooperation with the U.S. Attorney's Office, there  
16 are times when, for... when you're doing a drug case  
17 you, you do it... you decks it or you look to see  
18 whether or not somebody else is looking at it and if  
19 the U.S. Attorneys are looking at it you have a  
20 conversation and that's... on those particular cases  
21 but it... again there's a variety of, of means in which  
22 a case is generated but normally where someone does  
23 an investigation they have significant contacts with  
24 the... that office is going to go ahead and move  
25 forward on that case.



1  
2 BRIDGET BRENNAN: And, and I would just  
3 add to that, our cases come in... a lot come in from  
4 the NYPD, we work with the DEA with other federal  
5 enforcement agencies, we generate some of our own  
6 cases particularly in the area of prescription drug  
7 investigations, we have our own investigators who  
8 work that case as we work with specific analysis  
9 within our office, we work with the Bureau of  
10 Narcotics Enforcement and the State Health Department  
11 and we do have cross overs with the U.S. Attorneys'  
12 Offices. Sometimes it makes more sense for them to  
13 take a case even if we've done most of the underlying  
14 work because they either have better jurisdiction for  
15 it, more appropriate statutes, we've done that  
16 sometimes in some of the... there was one particular  
17 case involving a number of basically pill mill  
18 clinics throughout the city and they had... we worked  
19 on a couple of the clinics along with the Brooklyn  
20 DA's Office, Astramed and then the U.S. Attorney's  
21 Office had already been developing another case so  
22 then we joined forces and they ended up taking the  
23 case after we made some of the arrests so it just...  
24 it... you know it's idiosyncratic somewhat in our  
25 office.

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CHAIRPERSON LANCMAN (21321: Okay...

CHAUNCEY PARKER: Can I...

MICHAEL MCMAHON: Go ahead...

CHAUNCEY PARKER: No, no, you.

MICHAEL MCMAHON: I was just going to add that with the advent of the overdose response initiative or the overdose task forces there's a very strong coordination I think between our offices now and the, the, the detective bureaus... the narcotic detective bureaus because a lot of the investigations are beginning from, from connecting those dots and doing some on the street things and going all the way up to a wire investigation so that's an added tool in the kit but there... depending on the tools being used, the interplay or the cooperation between or amongst our offices is on a case by case basis.

CHAUNCEY PARKER: And, and... [cross-talk]

KAREN RANKIN: And I would agree with mostly what everyone said because in Queens we get... most of our cases come from the NYPD and as you know we also have the airport in, in our county so the feds typically don't take those cases and they, they release them to us and so we end up prosecuting those cases from the airport unless they're large seizures

1  
2 then the feds take them, the rest of those cases...

3 [cross-talk]

4 CHAIRPERSON LANCMAN: So, let me... [cross-  
5 talk]

6 KAREN RANKIN: ...come to us... [cross-talk]

7 CHAIRPERSON LANCMAN: ...ask and I know  
8 you're eager to, to answer but what are the cases  
9 that the feds are, are taking, I know that their  
10 resources are vast compared to, to yours if I'm not  
11 mistaken, the Special Narcotics Prosecutor is looking  
12 at me like I'm, I'm, I'm crazy so maybe I'm... maybe I  
13 am... [cross-talk]

14 BRIDGET BRENNAN: They just have fewer...  
15 they have fewer attorneys than, you know in our  
16 offices among us we have thousands of attorneys, they  
17 actually have fewer prosecutors, the federal  
18 agencies, the investigatory agencies are, are big and  
19 they're numerous and they have big jurisdiction and...  
20 but just in terms of absolute numbers they actually  
21 have fewer numbers, they indict fewer cases every  
22 year...

23 CHAIRPERSON LANCMAN: I guess... I guess  
24 what I meant is when, when they decide to make  
25 literally a federal case of something... [cross-talk]

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KAREN RANKIN: Right... [cross-talk]

CHAIRPERSON LANCMAN: ...they can throw an enormous amount of resources at it, is, is that... [cross-talk]

KAREN RANKIN: Right... [cross-talk]

CHAIRPERSON LANCMAN: ...a fair description, not that it's relevant for anything... [cross-talk]

BRIDGET BRENNAN: No, no, I think that's absolutely right, I think, you know the cliché... it's a... it's a federal case or it's not a federal case actually has some meaning.

CHAIRPERSON LANCMAN: Okay and so what kind of cases do they take and I... and I'm interested in the context of, you know they have laws available to them that we don't... that you all don't have if I'm not mistaken the specific federal crime to, to deal and, and cause injury or... serious injury or death so which, which cases are they doing, is it... is it... is it possible to categorize?

CHAUNCEY PARKER: Yep...

BRIDGET BRENNAN: Yeah, I, I can't say across the board, they have certain threshold limits when it comes to taking narcotics cases. For example,

1  
2 they would take only... as, as was mentioned the larger  
3 amounts. When it comes to taking a death case where  
4 someone died in connection I just haven't seen that  
5 many of them, there's only one I can think of that I...  
6 that I became aware of, the death happened in  
7 Manhattan and initially I think it was brought to the  
8 police department, there was some underlying  
9 investigation and then that was taken by the federal  
10 prosecutor but that doesn't happen with great  
11 frequency that I'm aware of, that particular set of  
12 circumstances doesn't.

13           MICHAEL MCMAHON: There was recently a  
14 case where a teacher, who was a teacher in the Bronx  
15 overdosed in the school, he came from Putnam County  
16 and it started with the overdose response initiative  
17 and then the feds did take the case and they did...  
18 they are prosecuting that case so that's one. What  
19 I've seen is they are also very interested when...  
20 with, with the pill cases, right, with the doctors  
21 that you... [cross-talk]

22           BRIDGET BRENNAN: It just depends...  
23 [cross-talk]

24           MICHAEL MCMAHON: It depends on the case...  
25 [cross-talk]

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2

BRIDGET BRENNAN: ...sometimes they are...

3

yeah, sometimes they are.

4

MICHAEL MCMAHON: Uh-huh...

5

CHAIRPERSON LANCMAN: That one in the

6

Bronx I, I read about it, it was... it was written up.

7

Who, who's getting prosecuted there, the person

8

whoever sold him the, the drugs?

9

MICHAEL MCMAHON: Yes, the dealers.

10

CHAIRPERSON LANCMAN: The dealers and,

11

and they're being prosecuted for homicide?

12

BRIDGET BRENNAN: I believe what it is

13

under federal law there's a sentencing enhancement if

14

someone sells drugs... [cross-talk]

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CHAIRPERSON LANCMAN: Uh-huh... [cross-

16

talk]

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BRIDGET BRENNAN: ...and a death results

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then I believe there's a substantial sentencing

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enhancement, 20 years is it? It's, it's substantial,

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minimum 20 years.

21

CHAIRPERSON LANCMAN: So, so just a

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couple of questions for ERIN POLLOCK and sorry I've

23

got to swear you in. You ready?

24

ERIN POLLOCK: Sure.

25

1  
2 CHAIRPERSON LANCMAN: Raise your right  
3 hand.

4 ERIN POLLOCK: Yep.

5 CHAIRPERSON LANCMAN: Do you swear or  
6 affirm the testimony you're about to give is the  
7 truth, the whole truth and nothing but the truth?

8 ERIN POLLOCK: Yes.

9 CHAIRPERSON LANCMAN: Thank you, I hope  
10 you even know the answers to these questions but a  
11 large part of the Mayor's opioid... addressing the  
12 opioid crisis agenda is, is, is law enforcement, can,  
13 can you tell us what kind of increase there has been  
14 in let's say I don't know the number of detectives  
15 who are devoted to investigating these kinds of cases  
16 and, and whether or not it's, it's city policy, it...  
17 may be DA's Offices policy, I mean I want to ask  
18 about that to treat each opioid death as a... as a  
19 homicide?

20 ERIN POLLOCK: So, like... good afternoon  
21 Chairman Lancman, my name is Erin Pollock [sp?],  
22 Council Ulrich. My name is Erin Pollock, I'm the  
23 Deputy Director of Crime Strategies at the Mayor's  
24 Office of Criminal Justice. I think as to the  
25 specific number of increase in NYPD detectives I

1  
2 think it's best suited for NYPD to answer but I'd be  
3 happy to follow up after this hearing with the  
4 specifics of that request. If the latter question is,  
5 is whether it is NYPD's policy to investigate every  
6 overdose fatal incident as a homicide investigation I  
7 think it's more in the... in the language that's being  
8 used, I don't think that means that they're treating  
9 every overdose fatality as a homicide, but I think  
10 what they're meaning is they're... that kind of shows  
11 the commitment that PD's making in investigating..  
12 [cross-talk]

13 CHAIRPERSON LANCMAN: Right... [cross-talk]

14 ERIN POLLOCK: ...these incidents and I'm  
15 going to defer it obviously to the... to the  
16 prosecutors who are here who work in partnership with  
17 NYPD in these incidents.

18 CHAIRPERSON LANCMAN: So... but before you  
19 answer that, and I want you to... I just want to put..  
20 lay down the, the framework, there is concern and I..  
21 you know I don't know how valid it is that if you  
22 treat every investigation like a homicide  
23 investigation you are going to result in more  
24 homicide prosecutions now I don't know if that's true  
25 but there's something to the case that if you view,



1  
2 you know yourself as a hammer every problem is going  
3 to look like a nail...

4 KAREN RANKIN: Well, I don't necessarily  
5 believe that Councilman, I believe why we treat those  
6 cases as homicides is so that we can go out and  
7 gather intelligence and information with those who  
8 are... especially those that are saved, we then are  
9 able to speak with those victims, ultimately our  
10 family members, obtain their phones in an effort to  
11 find out where the drugs are coming from, how did  
12 they get these drugs so that we can then put  
13 intelligence towards locating the dealers, locating  
14 who was selling them and also in terms of identifying  
15 those people who are saved and offering them  
16 treatment at, at least, getting them access to  
17 treatment and keeping in our database so that if they  
18 end up in our system we know what type of disposition  
19 and how to treat them. We know that this is someone  
20 who had a prior overdose situation and therefor they  
21 should be connected to treatment services as quickly  
22 as possible as well as using them in an effort to  
23 gain intelligence to continue to investigate and  
24 hopefully bring a case against those who were selling  
25

1  
2 the substance that led to either the accidental  
3 overdose or the fatal death... [cross-talk]

4 CHAIRPERSON LANCMAN: So, you all  
5 vigorously shook your, your heads, I think that's a,  
6 a fair representation of your head movements in  
7 response to my statement but go ahead.

8 MICHAEL MCMAHON: To add, they're not  
9 treated like a homicide scene, it's treated like a  
10 crime scene and that's... an investigation is done, I  
11 think that, that sort of... if that helps clarify it.

12 CHAIRPERSON LANCMAN: Okay... [cross-talk]

13 MICHAEL MCMAHON: In addition.

14 CHAIRPERSON LANCMAN: Yeah, so, so rather  
15 just for the sake of time, is it... is it fair to say  
16 that the fact that these overdoses may be treated as  
17 a... as a homicide investigation or a crime scene  
18 doesn't necessarily indicate a desire in any of your  
19 offices parts to start treating... to treat these  
20 overdoses... or to bring, bring homicide charges...  
21 [cross-talk]

22 KAREN RANKIN: Not against those... [cross-  
23 talk]

24 CHAIRPERSON LANCMAN: ...in these kinds of...  
25 [cross-talk]

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KAREN RANKIN: ...or overdose are... [cross-

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talk]

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CHAIRPERSON LANCMAN: ...circumstances...

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[cross-talk]

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KAREN RANKIN: ...are saved... [cross-talk]

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CHAIRPERSON LANCMAN: I just... you get it...

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KAREN RANKIN: I'm sorry. Well... alright,

9

our goal is not to criminalize the person who

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overdoses and is saved or... but to find evidence to

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ultimately cut off the supply as we've all talked

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about so it is certainly fruit... the, the scene is an

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area that evidence is ditched, it... by way of their

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phone, by way of talking to their friends, by way of

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talking to family members so that we can ascertain

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who the individual has been in contact with, who... if

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they know have been supplying them, the drugs that

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they've been... [cross-talk]

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CHAIRPERSON LANCMAN: No, I get... [cross-

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talk]

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KAREN RANKIN: ...taking... [cross-talk]

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CHAIRPERSON LANCMAN: ...I get it, I

23

understand that and, and, and you said that so...

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[cross-talk]

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BRIDGET BRENNAN: So, but... [cross-talk]

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CHAIRPERSON LANCMAN: ...maybe I should...

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maybe I shouldn't have tried to, to, to, to shorten

4

it but, but we want to... we're interested in knowing.

5

BRIDGET BRENNAN: Yeah, I, I think the... I

6

mean the best answer is if we're going to bring

7

homicide charges we have to... we have to meet the

8

standards required by law and we've brought two

9

homicide cases against two doctors... [cross-talk]

10

CHAIRPERSON LANCMAN: Right... [cross-talk]

11

BRIDGET BRENNAN: ...who had multiple

12

deaths... [cross-talk]

13

CHAIRPERSON LANCMAN: So, let's... so, at

14

this point let's, let's do that, if each of you can

15

tell me what your offices... [cross-talk]

16

BRIDGET BRENNAN: Yeah and... [cross-talk]

17

CHAIRPERSON LANCMAN: ...which homicide...

18

[cross-talk]

19

BRIDGET BRENNAN: ...that's it for us just

20

two homicide cases against two doctors, one was just

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affirmed by the first department where they again

22

articulated what the standard of criminal

23

recklessness is regardless of what the manner of

24

death is, it was people v. Lee and it was just

25

affirmed this past, past fall that doctor was

1  
2 convicted in connection with three deaths and he's  
3 serving ten years.

4 CHAIRPERSON LANCMAN: Got it, if, if you...  
5 just for each of your offices have you brought any  
6 homicide cases against... [cross-talk]

7 AISHA GREENE: The Bronx... [cross-talk]

8 CHAIRPERSON LANCMAN: ...dealers or, or  
9 others to being responsible for the death of someone  
10 else, thank you.

11 AISHA GREENE: The Bronx County District  
12 Attorney's Office has not brought those charges.

13 CHAUNCEY PARKER: The Manhattan DA has  
14 not brought those charges, I just want to add one  
15 thing, if there were 1,400 fatal overdoses last year  
16 you can probably count on one hand the number of... how  
17 many... whether federal or state that were done, I  
18 think people are very carefully deciding whether to  
19 use that, I think what's happening I think which is  
20 very important is that these overdose deaths you're  
21 getting not just you're getting the police, you're  
22 getting the prosecutors, you're also getting partners  
23 at Riker... you know the doctors at Rikers Island who  
24 are really looking at this as is there opportunity  
25 here not... it may lead to a criminal case but you can

1  
2 count on one hand when it actually does lead to a  
3 criminal case, you're also leading to defects in our  
4 system where we could possibly save lives in the  
5 future like what was the release plan from Rikers  
6 Island, what happens at this homeless shelter, what  
7 happened in criminal court, is there anything we  
8 could have done differently that kind of scrutiny I  
9 think we want to welcome that the four corners of  
10 government as right on top of these cases to identify  
11 opportunities not... rarely is it a criminal case but  
12 they're really treating it seriously.

13           MICHAEL MCMAHON: And to add to that,  
14 when the cases of overdose saves, the city has a  
15 program, we have an incentive as well where peers are  
16 dispatched to try to an... to talk to that person to  
17 try to navigate them into a, a... it's such a valuable  
18 tool, I, I hope you will not leave this hearing  
19 thinking that the overdose response initiative or the  
20 task force investigations are trying to criminalize  
21 something further than it exists, it's a very  
22 effective tool in going after the supply but also the  
23 demand and we're going to try to use that data to go  
24 even further and establish outreach programs that go  
25 to these individuals and try to get them help like

1  
2 happens now with domestic violence cases, it's a very  
3 valuable tool. With that being said in Staten Island  
4 we do have one prosecution that arose out of the  
5 overdose response initiative but also many other  
6 investigative tools that gave us the probable cause  
7 to charge someone for manslaughter above and beyond  
8 what happened in just that investigation but our goal  
9 in investigating these cases is to go after the  
10 dealers for dealing and to, to cut down that supply  
11 but also in the case of the saves to help those  
12 individuals and try to give them... give them an  
13 outreach and that is in partnership with the  
14 administration.

15 CHAIRPERSON LANCMAN: Right, but you, you  
16 each... I don't mean... I'm going to get to you I just  
17 want to... want to say look you're... you each either  
18 are... represent independently elected offices, you're  
19 responsive to the public in the same way that we are  
20 so you don't... you don't need me to tell you what the  
21 public wants, right, but from the council's  
22 perspective I think we certainly don't think that  
23 people want to see dealers or sharers or co-users  
24 prosecuted for homicides except in the most truly  
25 egregious and somebody had used the word callous

1  
2 circumstances, we, we don't want to see happening  
3 here what, what the New York Times reported as  
4 happening around the country and I'm not saying that  
5 we see that but we want to just kind of get that out  
6 there in the open...

7           MICHAEL MCMAHON: Oh, I think we agree  
8 but I'll, I'll just say that without talking about a  
9 specific case I think we will agree if someone  
10 callously and knowingly purveys a very deadly product  
11 to someone and knows that it's deadly and does it and  
12 knowingly and that can be proven beyond a reasonable  
13 doubt I, I think that case should be prosecuted but  
14 otherwise in the normal courts of things none of us  
15 has as... as I know them all intend to do that but  
16 again this tool that we're using by investigating  
17 these overdoses not only allows us to go after  
18 dealers, help individuals who need help, give help to  
19 the families who've lost a loved one or have a  
20 family... someone who's in crisis and gives us real  
21 time public health data as to what's going on in our  
22 borough so that if there is a bad batch out on the  
23 streets we can sound an alarm to people to say  
24 there's... you know given on heat maps or indexing that  
25 there are... that... our data analysis that there is a



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2 crisis out there, it is a very, very valuable tool  
3 and so I, I just want to make sure Councilman that,  
4 that the... that the panel understands that there's so  
5 much benefit to this and it is not geared to  
6 investigate homicide scenes it's treated like a crime  
7 scene to gather evidence to allow us to do our jobs.

8 LEROY FRAZER: Yes, as you said, I think  
9 it was I who, who used the term callous, DA Gonzalez  
10 feels that it would be a very particularized set of  
11 facts and circumstances that would warrant the  
12 homicide prosecution. As DA McMahon just said I... I  
13 mean he made me think of, I know of at least one  
14 instance where on a wiretap we overheard someone  
15 saying that they knew that those Fentanyl laced  
16 heroin that was causing the problem and they pulled  
17 it back, so I can... I would foresee that it would be  
18 difficult, it's a very high standard to meet but  
19 again our approach is to do... go after the opioid use  
20 as a public health hazard.

21 KAREN RANKIN: I would just like to add  
22 as it relates to Queens... [cross-talk]

23 CHAIRPERSON LANCMAN: And just, just to  
24 confirm Brooklyn hasn't had any... [cross-talk]

25 LEROY FRAZER: No... [cross-talk]

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CHAIRPERSON LANCMAN: ...regarding homicide cases... good.

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KAREN RANKIN: I would like to say Queens does not have any homicide cases I've ever... however we did... we, we, we did bring several cases as a result of the overdose team and the information that was obtained from those seen by utilizing undercovers once they got the information to then conduct buys that led into us arresting actual dealers, as we say we're looking for dealers who are actually dealing not someone who's also a substance abuser just trying to make a buck with someone but someone who's actually dealing the substance that we believe is causing people to die and so we, we had several of those cases that we successfully prosecuted with respect to charging them with selling drugs based upon additional... [cross-talk]

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CHAIRPERSON LANCMAN: And, and in... [cross-talk]

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KAREN RANKIN: ...investigations... [cross-talk]

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CHAIRPERSON LANCMAN: ...those... and in those cases you had made a determination that... [cross-talk]

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KAREN RANKIN: They were... [cross-talk]

CHAIRPERSON LANCMAN: ...for want of a  
better... for... those are... those are dealers in the  
business... [cross-talk]

KAREN RANKIN: Those were dealers...  
[cross-talk]

CHAIRPERSON LANCMAN: ...of dealers,  
they're not... [cross-talk]

KAREN RANKIN: Yes, they... [cross-talk]

CHAIRPERSON LANCMAN: ...you know... [cross-  
talk]

KAREN RANKIN: ...weren't addicts or you  
know...

CHAIRPERSON LANCMAN: ...sharers or co-  
users or... [cross-talk]

KAREN RANKIN: Sharers... [cross-talk]

CHAIRPERSON LANCMAN: ...whatever... [cross-  
talk]

KAREN RANKIN: No, they were not, we  
have... we have not prosecuted anyone who we believe  
was sharing the drugs with someone, with a family  
member or a friend. In, in actuality... [cross-talk]

CHAIRPERSON LANCMAN: Have, have any of  
your offices have prosecuted anyone that we would

1  
2 categorize as sharing or, or co-users for, for, for...  
3 under the selling statute?

4 LEROY FRAZER: I don't know the answer to  
5 that as I sit here but I will tell you what my  
6 testimony said and what I've had discussions with DA  
7 Gonzalez is certainly this is a practice change, I  
8 said... my, my words were going forward, we will keep  
9 an eye on examples like the ones that I used with the  
10 undercover, tipping someone, for steering them or  
11 someone who's sharing and those are the ones we're  
12 going to look to carve out.

13 CHAIRPERSON LANCMAN: Okay, my last  
14 question on prosecution and then Council Member  
15 Ulrich has a question then I want to come back and I  
16 do want to ask some questions about your diversion  
17 programs. Have, have there been any incidents,  
18 occurrences where, where police have like staked out  
19 or arrested people who've, who've... coming out of a, a  
20 methadone clinic, have, have any of those cases been  
21 brought to your offices, are you aware of any of  
22 those?

23 LEROY FRAZER: I am not.

24 KAREN RANKIN: I will say in the past,  
25 not recently, we've had cases that involved arrests

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2 that were made because undercovers made buys near  
3 methadone clinics and so forth and when we discovered  
4 that or learned that information we dispose of those  
5 cases because we didn't... we thought that was not the  
6 best way of utilizing because obviously many of those  
7 cases the individual that comes out believes that  
8 person that they're helping is actually going through  
9 withdrawal and he's seeking to share the drugs with  
10 them not, not selling as we know selling should be or  
11 is the statute although to give or to exchange those  
12 are... the, the language that's used in the statute so  
13 ultimately individuals were arrested but once we  
14 discovered the location, where they were and, and  
15 that that person was actually a participating in a  
16 methadone clinic and came out of that methadone  
17 clinic, we disposed of those cases quickly.

18 CHAIRPERSON LANCMAN: Anyone else on  
19 that?

20 MICHAEL MCMAHON: Same answer.

21 CHAIRPERSON LANCMAN: Same answer, okay.  
22 Council Member...

23 CHAUNCEY PARKER: No, I was just... I just...  
24 [cross-talk]

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CHAIRPERSON LANCMAN: You got to speak up  
Counselor, don't be shy. If you were in Judge  
Grasso's courtroom and you were wavering, I mean  
forget it... [cross-talk]

CHAUNCEY PARKER: No, you know I... I'm  
just say... I would just make this point that there are  
cases in, you know New York City wide that when  
there's methadone clinics, you know... I mean they're  
not prosecuting, I'm not saying a specific case but I  
could understand the law enforcement response that  
there are drug dealers who come to methadone clinics  
and prey on people who are seeking treatment and  
realize that that's a vulnerable population that  
group of people who are coming there to sell drugs  
not the... not the clients who are going to the  
methadone clinic but the others and there are cases  
like that, that's why it really depends on the facts  
and it depends on the discretion of, of prosecutors  
to know the difference but I think those cases to  
protect people I could see that being a, a, a case  
where someone would make the, the drug save case.

CHAIRPERSON LANCMAN: Okay, Council  
Member Ulrich.

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COUNCIL MEMBER ULRICH: Alright, thank you Chair, I appreciate the few minutes that I have. I just want to first sort of congratulate Mr. Frazer on his retirement... [cross-talk]

LEROY FRAZER: Thank you... [cross-talk]

COUNCIL MEMBER ULRICH: ...coming up on... you will be sorely missed, you've done a really terrific job in not only Brooklyn, but the city of New York is very lucky to have dedicated people like you serving, you know the public good so thank you. I think my first question is probably best directed to Mr. Parker or to the Special Narcotics Prosecutor regarding the trafficking in of drugs, I know that we talked somewhat about how some of these opioids are getting into the city and I think you mentioned Miss Brennan that they're coming in small amounts in the mail my question is why aren't we having like drug sniffing dogs at the mail processing centers to like sniff these things out literally, I mean I'm, I'm... I hope I'm not being ignorant, I'm, I'm just trying to understand why we're not slowing down the supply that's being mailed into the city of New York?

BRIDGET BRENNAN: The... most of the drugs are coming from international, international sources,

1  
2 most from China, the.. when I'm talking about the  
3 Fentanyl analogues now, the ones that I referred to  
4 in my testimony and there are basically a few sites  
5 around the country where international mail comes in,  
6 the one.. the local one is at JFK and that is.. the  
7 screening there is done by customs border patrol and  
8 they have.. they have a facility there, they do a lot  
9 of screening but these are little envelopes because  
10 it doesn't take very much substance, they.. you know  
11 it's a minute amount that might be within an envelope  
12 so yes, they do have screening there, they do have  
13 dogs, I don't know if they have dogs, they have all  
14 kinds of.. [cross-talk]

15 CHAUNCEY PARKER: Detection.. [cross-talk]

16 BRIDGET BRENNAN: ...mechanisms.. [cross-  
17 talk]

18 CHAUNCEY PARKER: Right.. [cross-talk]

19 BRIDGET BRENNAN: It's not.. its far from  
20 perfect and maybe Chauncey can expand on that..  
21 [cross-talk]

22 COUNCIL MEMBER ULRICH: So is the city or  
23 the District Attorney's Office participating in that  
24 in any way or.. [cross-talk]

25 BRIDGET BRENNAN: Well.. [cross-talk]



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COUNCIL MEMBER ULRICH: ...is that... we  
leave that... [cross-talk]

BRIDGET BRENNAN: ...that's all federal...  
[cross-talk]

COUNCIL MEMBER ULRICH: ...it's all federal  
and we leave it up to them...

BRIDGET BRENNAN: Well yeah, I don't know  
that we would have the ability to do, do that, we,  
we've been in discussions with them, they've come and  
done presentations to us, we're looking to partner up  
with them as well as we possibly can...

COUNCIL MEMBER ULRICH: How bout when it  
comes to the local mail processing centers, I mean  
how about these random sweeps maybe like a... like the,  
the places where the mail gets sorted and then handed  
out to the carriers, certainly if it's still in the  
envelop it's still going to be delivered, I mean  
like... [cross-talk]

BRIDGET BRENNAN: That I... [cross-talk]

COUNCIL MEMBER ULRICH: ...we can't just  
rely only on what, what they're doing at JFK, is  
there any way for us to partner with the US postal  
service to find out... to, to, to... literally, you know

1  
2 find the, the drugs that's being mailed into the  
3 city?

4 CHAUNCEY PARKER: I, I think you're... it's  
5 a... it's a super important point that you're making, I  
6 would urge you to go to the JFK International Mail  
7 Facility because it's... I'd, I'd never been there, and  
8 I recently went there, 60 percent of all  
9 international mail comes through there, I think it's  
10 a million packages a day... [cross-talk]

11 COUNCIL MEMBER ULRICH: Right... [cross-  
12 talk]

13 CHAUNCEY PARKER: ...they come from all  
14 over the world and they arrive and then they go all  
15 over so a typical thing when they do... and they have  
16 dog sniffing dogs... they have the drug sniffing dogs,  
17 they have equipment, there's more resources from the  
18 federal government actually pouring in to these  
19 international mail facilities but as Bridget was  
20 saying something as... you know it could be... the recent  
21 seizure was a... one of those birthday cards where you  
22 open it up it starts to sing has five, you know grams  
23 of Fentanyl, I mean so it doesn't take much, it's  
24 almost... sort of related almost like weapons of mass  
25 destruction but they come in but then you just... when

1  
2 you seize it now what criminal case do you make,  
3 someone's going to now make that controlled delivery  
4 to a barber shop in Pittsburg, Pennsylvania and you  
5 get... you know whatever... you... there's law enforcement  
6 resources for each one of them, they are tracking it  
7 and they're putting together and, and... both at the  
8 state, federal and local level everybody is working  
9 on this because it's the, the threat of the dark web  
10 and drugs coming in on the dark web and the  
11 synthetics coming in on the dark, dark web is a huge...  
12 is a... more than an emerging threat, its' an existing  
13 threat.

14 COUNCIL MEMBER ULRICH: I have a, a more  
15 technical question if I can, one, one... we talked  
16 about how many people in the city died last year  
17 because of an opioid overdose, one of them was a...  
18 well many of them were my constituents but one in  
19 particular was a 30 year old man who I know very  
20 well, he was not a drug abuser, he was not somebody  
21 that we might call a junkie, he was a very young,  
22 bright, hardworking, educated young man who was at a  
23 party and did some drugs that were laced with  
24 Fentanyl and his father very tragically found him on  
25 the kitchen floor at six o'clock in the morning and

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2 he had regurgitated as commonly when you find them  
3 what was inside of him but he was... unfortunately he  
4 had passed, you said that you treat some of these as  
5 homicides, the father has been since this young man  
6 passed has been desperately trying to get the police  
7 to go on his i-phone because he says I want to know  
8 where... who, who gave my son those drugs, where did my  
9 son get those drugs and he said that the detective  
10 because the phone is locked said that they can't go  
11 into the phone and, and find that out, isn't that  
12 part of the investigation, can't a judge give them or  
13 the DA request that a judge break into the phone,  
14 crack the code and, and, and find out who he was  
15 texting, who he was buying or getting the drugs from,  
16 I mean we have to save other people because obviously  
17 he got... [cross-talk]

18 BRIDGET BRENNAN: Right... [cross-talk]

19 COUNCIL MEMBER ULRICH: ...he got a dirty  
20 batch of whatever he consumed, and the father said my  
21 son is gone I want to save other lives, how come we  
22 can't get into my son's phone, you know what is the  
23 reasoning behind that?

24 BRIDGET BRENNAN: Yes, they can get into  
25 the son's phone, I don't know if he meant that that

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2 phone is not... you, you know they don't have the  
3 capability... sometimes some of the phones... [cross-  
4 talk]

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COUNCIL MEMBER ULRICH: Well he's got an  
6 I-phone like everybody... every other 30-year-old so...  
7 [cross-talk]

8

BRIDGET BRENNAN: Right... [cross-talk]

9

COUNCIL MEMBER ULRICH: ...my point is how  
10 come we don't have the... [cross-talk]

11

BRIDGET BRENNAN: You know what I...  
12 [cross-talk]

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COUNCIL MEMBER ULRICH: ...capability the  
14 police or the DA to get into his phone, I mean the  
15 phone... the phone... this is... this is ruin... [cross-talk]

16

BRIDGET BRENNAN: We could take some  
17 inform... we could get specific information from you  
18 and maybe together we might be able to see if we can  
19 get something more done.

20

COUNCIL MEMBER ULRICH: Okay, I hope so...  
21 [cross-talk]

22

BRIDGET BRENNAN: Afterwards, we'll,  
23 we'll get some specific information... [cross-talk]

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COUNCIL MEMBER ULRICH: Finally, I'll,  
25 I'll... [cross-talk]

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2 BRIDGET BRENNAN: ...or if he wants to  
3 contact... [cross-talk]

4 COUNCIL MEMBER ULRICH: I think he would,  
5 I'll close... [cross-talk]

6 BRIDGET BRENNAN: Okay... [cross-talk]

7 COUNCIL MEMBER ULRICH: ...with this Chair,  
8 you know there's a lot of... and rightly so there's a  
9 lot of concern and attention paid to preventing  
10 people from getting hooked on these drugs and helping  
11 people get the treatment that they need but there is  
12 a lack of support and services for the families that  
13 they leave behind and maybe that's not a very big  
14 political issue because it's not a, you know very  
15 large constituency but it is a very needy one and  
16 these families need support, they need counseling,  
17 they need help and you know they have been deeply  
18 affected by this and they could speak to this crisis  
19 better than you or I because they are personally  
20 affected by it obviously. If there's any way to use  
21 some of the drug forfeiture money or the money that  
22 you get from these big money laundering cases to pay  
23 for support for the families of the victims they need  
24 it, they're crying out for help and, and they don't  
25 always get it from the right places so if there's any

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2 way to... I just put that... I just offer that as a... as  
3 a... as a humble suggestion if there's any way for you  
4 to provide help for the grieving families in support  
5 they really need it.

6 CHAUNCEY PARKER: Well if I can just give  
7 you one... okay, you go ahead.

8 KAREN RANKIN: If I can just add, those  
9 two cases that I spoke about it was the father of the  
10 deceased that came to us and, and, and asked for help  
11 because he, he was able to get into his son's phone  
12 and then we sent in the overdose team who  
13 investigated and actually got an undercover make  
14 contact with the number that the individual had been  
15 in communication with in, in order to secure his  
16 drugs and I will tell you that father was grateful,  
17 he came to our office after the prosecution was  
18 completed, he met with our DA and he met with our  
19 team and he was very thankful for the efforts that  
20 our office had made in connection with... in  
21 conjunction I would say with the NYPD in order to  
22 bring the individual that he thought had sold his son  
23 those opioids that led to his death, certainly we  
24 couldn't bring a homicide case but we did the best we  
25 could

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CHAUNCEY PARKER: I just, just wanted to add that, that one of the, the medical examiners offices just added to your... to your point has just added an investigator who's a social worker who is calling families and it was just a gap and it... and it's a really important gap that's a little bit filled but is to talk to the family who wants to both figure out what was... what was the path of the person who... [cross-talk]

CHAIRPERSON LANCMAN: He wanted closure... [cross-talk]

CHAUNCEY PARKER: ...died but also... [cross-talk]

CHAIRPERSON LANCMAN: ...they wanted information... [cross-talk]

CHAUNCEY PARKER: ...linking... but from that conversation is linking them to bereavement services, grief services things like that that they're... you're absolutely right that there's' a huge need there that has been unaddressed and it's starting to be.

MICHAEL MCMAHON: And, and we do... part of our overdose response initiative protocol and every family either a detective investigator or victim advocate reaches out to that family to see if they



1  
2 need help; counseling, guidance, make sure that... if,  
3 if, if the death issues a resolving funeral if we can  
4 somehow help so it is part of what we do in terms of  
5 adding more we certainly can but it, it is part of  
6 the original plan.

7 COUNCIL MEMBER ULRICH: Mr. McMahon I  
8 know that Staten Island is a lot like Queens in many  
9 ways and you have certainly been dealing with your  
10 fair share of these cases, I want to thank you and  
11 all the district attorneys and the special narcotics  
12 prosecutor for the good work that you do, we can  
13 always do more, we can do better but we have a long  
14 way to go to really address this crisis, it's  
15 affecting every single community and every  
16 neighborhood, every demographic and we've got to  
17 figure out a better way forward because we're leaving  
18 too many good people behind. Thank you, Mr. Chairman,  
19 thank you.

20 MICHAEL MCMAHON: Thank you...

21 BRIDGET BRENNAN: Thank you.

22 CHAIRPERSON LANCMAN: Thank you and just  
23 part two but it will be much shorter than part one, I  
24 promise. Diversion, I just want to ask a bunch of  
25 questions about diversion programs. The special

1  
2 narcotics prosecutor you, you had said that there are  
3 fewer felony drug defendants going into drug court...

4 [cross-talk]

5 BRIDGET BRENNAN: Yep... [cross-talk]

6 CHAIRPERSON LANCMAN: ...I think... I think  
7 that's what you said, why is that?

8 BRIDGET BRENNAN: Citywide... [cross-talk]

9 CHAIRPERSON LANCMAN: Why is that?

10 BRIDGET BRENNAN: Well first of all  
11 there's just fewer numbers of arrests. If you...

12 [cross-talk]

13 CHAIRPERSON LANCMAN: Okay... [cross-talk]

14 BRIDGET BRENNAN: ...and the police  
15 strategies have changed as well so not only are there  
16 fewer arrests, there... the police strategy is not  
17 targeting that kind of low level narcotics offender  
18 who might be selling drugs to support their own  
19 habit, you know that kind of strategy is not the one  
20 that we're seeing used so frequently now certainly  
21 not the one at least of the cases coming into my  
22 office. And so you've got that combination of number  
23 one, fewer cases, number two different police  
24 strategies and then the third factor that you really  
25 have to keep in mind is that the sentences were

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2 changed very substantially and so these were always  
3 viewed as alternative to incarceration program and  
4 one of the big motivating factors is that people were  
5 otherwise facing incarceration and now they're not  
6 facing incarceration so they're not opting into a  
7 treatment program because it's not the same incentive  
8 that there was before so that was an incentive which  
9 did push a significant number of people into drug  
10 treatment and it's not there anymore so you have a  
11 confluence of several factors I think that are  
12 affecting it. Those numbers are really low, we used  
13 to have 500 referrals from my office alone, you know  
14 some years, so I don't think that's going to change  
15 though and maybe it's good, maybe it's bad, I, I  
16 think treatment is good however we get people in  
17 treatment I'm all for it and we need more of it and I  
18 don't know if anybody else wants to add to that.

19           AISHA GREENE: Some of it too is just  
20 thinking about cases that may come into us, you may  
21 look at them and say... because you're doing early case  
22 evaluation that this is not a felony, this is a  
23 misdemeanor case so you don't have those cases in the  
24 felony treatment parts, we're dealing with them  
25 within the overdose avoidance and recovery part and

1  
2 we'll be dealing with them earlier on for HOPE so  
3 that's why you may see it. Also, what... it's, it's  
4 pre-indictment, also with the overdose avoidance and  
5 recovery program it's, it's something that is  
6 voluntary, we want to make sure that people are  
7 treatment ready and you may see us offer other  
8 alternatives if someone is not ready for treatment  
9 which may work for... like individual counseling or, or  
10 something along those lines so that's why you may see  
11 the decreases in those areas.

12 CHAIRPERSON LANCMAN: Well... yes.

13 MICHAEL MCMAHON: And, and just to  
14 underscore that there are so many different options  
15 now and there's a, a menu of so many different  
16 options whether it's traditional drug treatment court  
17 where you see the decline in numbers but there's the  
18 early diversion, pre-arraignment, post-arraignment,  
19 pre-indictment, there's TASK doing cases within our...  
20 that's our, our provider in Staten Island Court so  
21 all those cases together there are many people who  
22 are finding alternatives to incarceration but not in  
23 that traditional drug court model for the reasons  
24 that everyone else said here so there's a lot going  
25 on but the traditional drug court model really needs

1  
2 to be revisited because... I also want to mention the  
3 nature of this addiction, so without that... this stick  
4 then the carrot a lot of people are, are saying it...  
5 well I don't want to take drug treatment because I  
6 have to plead and the, the plea is held in... is in  
7 advance and I go into a long term; six months, nine  
8 months, a year and if I fail once I have to... I have  
9 to live with that plea so that model has to be  
10 revisited but there are a lot of other programs that  
11 are going on and a lot of people are being diverted  
12 or getting alternatives to incarceration but not by  
13 that traditional model which I think has to be  
14 revisited and reworked and we're all talking about  
15 doing that.

16 CHAIRPERSON LANCMAN: I'm, I'm so glad  
17 you brought that up because that's where I was going  
18 with this, we've been asked by advocates and, and  
19 public defenders is there a rethinking of the drug  
20 court model where people have to, I don't know if  
21 this is uniform but people have to plea to the top  
22 charge and then it's a... it's an onerous... beneficial  
23 but nonetheless onerous program they have to  
24 participate in and if they, they, they fail then,  
25 then they really have the hammer coming down upon

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2 them, is, is there thinking about being more flexible  
3 with just your, your run of the mill drug courts?

4           AISHA GREENE: As I testified earlier,  
5 yes, it's, it's looking at different modalities of  
6 treatment, when we're talking about harm reduction  
7 services, when we're talking about MATs and so that's  
8 why you're, you're seeing that there are a lot of  
9 alternatives that are happening outside of the drug  
10 treatment court. When Judge Grasso was talking about  
11 the overdose of one incident recovery program, where  
12 we're considering felonies, and this is about meeting  
13 people where they are and making sure that we have  
14 customizable services to wrap around them and not  
15 requiring things like pleas so yes, we are looking at  
16 different models to make sure that we're engaging the  
17 people that we're seeing.

18           MICHAEL MCMAHON: And we're trying very  
19 hard in Staten Island to bring a... the community  
20 justice model, the Red Hook court model which is a  
21 very intensive judicial involvement, a very co-  
22 located services in the building so that it allows  
23 for immediate testing and assessment and treatment  
24 right in the courthouse and we're working towards  
25 that and I think that is the model of the future

1  
2 because this way there's, there's a, a, a very  
3 frequent visit in the court, the judges are very  
4 actively engaged but then there's that co-located  
5 multi-modality support that exists and I think that  
6 is the best model for the future.

7           LEROY FRAZER: Also as I testified we  
8 certainly are looking at that in, in Brooklyn but I  
9 think that in general I think that we have seen  
10 together as a group over the years how things have  
11 changed not only in the type of drugs that are used  
12 and, and how people engage within the court system  
13 and I think that we all realize and are looking at  
14 doing things differently that's why even the HOPE,  
15 the CLEAR, the Q-TIP those programs are just.. as, as  
16 opposed to forcing somebody into a program we're  
17 getting them to minutely engage and once they.. that's  
18 the first step, you take those first steps and then  
19 I, I can see it evolving even, even more as they  
20 proceed down the road.

21           KAREN RANKIN: I, I agree with what  
22 everyone says but... said but I think you should also  
23 bear in mind that it is important that there be a  
24 moving forward of the case so if.. sometimes if you  
25 don't allow someone to plead at something and they

1  
2 don't succeed then we have to start... take this case  
3 from its inception all the way through, through the  
4 court system as well and it may be that they are in a  
5 program for a year and then they fail and now we have  
6 to start that process all over again, that affects  
7 prosecution, that affects witnesses and so forth and  
8 I think... experience tells us... and I... and, and, and I  
9 know it might not be... it might... what's the word I  
10 want to use... the, the, the view of many but... [cross-  
11 talk]

12 CHAIRPERSON LANCMAN: Fashionable?

13 KAREN RANKIN: Yes, fashionable but it's  
14 certainly and experience has told us that having a  
15 hammer or... because as many people say, people don't  
16 want to necessarily go into treatment, okay, they're  
17 not ready, they're in denial and so it takes  
18 something for them to complete the program and having  
19 the, the possibility that if you don't succeed or if  
20 you fail there may be a jail alternative, there may  
21 be something... it, it gives them incentive to actually  
22 succeed in the program and to not re-offend. I, I  
23 don't think anyone here wants to continue to  
24 criminalize those who are addicted and are truly in  
25 need of help but I do believe that there has to be a



1  
2 balance and, and, and we believe that that has worked  
3 in the past having someone plead guilty with the  
4 understanding that if you succeed and it gives you  
5 incentive to succeed your case will ultimately be  
6 dismissed or the... or, or reduced to whatever other  
7 charges but if you... if you don't follow through... and  
8 let me say this, I think someone had said that, you  
9 know if you fail once you are punished, that is  
10 certainly not the case in drug treatment courts, I  
11 think we recognize that addicts relapse, they're  
12 given many opportunities to correct their behavior,  
13 there are graduated sanctions that are used before we  
14 ever get to someone who doesn't succeed and having to  
15 actually impose the alternative sentencing. So,  
16 although I, I agree with everyone that we are looking  
17 into creative ways and other ways to possibly  
18 offering treatment to individuals without them  
19 possibly having to plead that we need to keep that in  
20 mind as incentive to make sure that they actually..  
21 [cross-talk]

22 CHAIRPERSON LANCMAN: Right, well not  
23 necessarily plead to the top count or not necessarily  
24 plead with the understanding that if you... if you fail  
25 after all the chances that you're given, you know the

1  
2 sentence that you're going to be able to negotiate  
3 for yourself is going to be... going to be worse than  
4 if you had just like done a plea deal in the  
5 beginning, this is what we hear from...

6 BRIDGET BRENNAN: I agree but I also.. but  
7 I... [cross-talk]

8 CHAIRPERSON LANCMAN: What's that?

9 BRIDGET BRENNAN: That's kind of an old  
10 model, that's the DTAP model, the drug court model,  
11 you know the statutory drug court model is somewhat  
12 different I think, I mean... [cross-talk]

13 KAREN RANKIN: Well the diversion, you're  
14 talking about Article 216 diversion... [cross-talk]

15 BRIDGET BRENNAN: Yes... [cross-talk]

16 KAREN RANKIN: ...is, is different but you  
17 still have to plea to the top count unless there are  
18 immigration consequences that a judge will allow you  
19 not to plead and proceed through treatment and then  
20 if you fail... if you fail then we have to start the  
21 process all over again because that person... that case  
22 is... it has just been in limbo and obviously if you  
23 succeed your case is dismissed but, but that is a  
24 caveat that carved out with Article 216 in the CPL as  
25

1  
2 it relates to immigration consequence not as to all  
3 defendants.

4 CHAIRPERSON LANCMAN: Judge Grasso had  
5 testified and I, I don't think the, the, the Bronx  
6 would contradict it that they're looking to maybe  
7 broaden the eligibility for OAR so it's not just  
8 possession in the 7<sup>th</sup> degree and, and it's not just  
9 drug cases per se but other cases where there... is  
10 that something that Queens might look to with Q-TIP?

11 KAREN RANKIN: I think we, we, we are  
12 looking at that, currently we started out with the  
13 misdemeanor drug population 220.03 but as.. I think as  
14 we've indicated we're looking into the petty offences  
15 that we believe are typically associated with  
16 addiction; there are petty larceny, there are even  
17 forgery in check cashing cases that we see people do  
18 that that are actually addicted so we intend to  
19 expand but we're... this is baseline because we believe  
20 once we target this population it certainly will  
21 expand and obviously with the resources that you're  
22 providing will help us to, to staff and be able to  
23 continue to do that and expand and even expand to our  
24 DTAP, our DAT population as well so that we can  
25

1

2 connect them as early as possible to services..

3 [cross-talk]

4

5

CHAIRPERSON LANCMAN: Alright... [cross-talk]

6

7

KAREN RANKIN: ...and those particular crimes as well.

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CHAIRPERSON LANCMAN: And just, just the last one for, for DA McMahon, the, the, the number of people who are applying or... I don't know if that's even the right term, for HOPE like how many people apply for HOPE, how many people try to seek it and, and, and how many are, are deemed ineligible, is that... as I said I don't even know if that's the right to phrase it but... [cross-talk]

16

MICHAEL MCMAHON: So, HOPE... [cross-talk]

17

18

19

20

CHAIRPERSON LANCMAN: ...because we're concerned that, that there are far more people who are trying to get into HOPE than, than are able to get in.

21

22

23

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MICHAEL MCMAHON: So, yes and no but let me explain how we got to where we are, it, it went through a ten month planning process with multiple partners at the table; the Mayor's Office of Criminal Justice, Department of Health, the Mayor's... Deputy

1  
2 Mayor for Health and Human Services, Legal Aid, all  
3 the providers, the Staten Island Partnership for  
4 Community and Wellness, the... our local PPS, I don't  
5 know who I'm leaving out but sat around a table for  
6 ten months and worked out the program and it had to  
7 be operational to be successful and so it was  
8 determined that we would do the specific charge which  
9 you've heard a lot of programs so far are charge  
10 specific with the hope to expand going further but by  
11 making it charge specific that mean... meant that a  
12 33,000 member police force could, could make it  
13 operational with an operations order and to qualify  
14 you have to be DAT-able meaning that you qualify for  
15 a desk appearance ticket which in most cases means  
16 that you have an extensive history and that you don't  
17 have any warrants and you have identification on you  
18 that is how people qualify for it but then there is a  
19 conversation as well because sometimes people may not  
20 exactly qualify, there may be an issue, we... and  
21 people are on the phone trying to offer it anyway,  
22 sometimes people don't get the offer right away at  
23 the precinct but they'll get it before arraignment if  
24 there's some discussion so we try to do it in a way  
25 that is more inclusive than exclusive by far but if

1  
2 you're DAT-able and your charge specific then you are  
3 offered HOPE pretty much automatically and that's why  
4 the number you see is... think about the numbers that  
5 we've talked about over 350 people successful who  
6 have meaningfully engaged, it's a very high number so  
7 it is inclusive and just to the other topic of all  
8 the, the different programs, I think whatever  
9 programs we seek to employ and use going further the  
10 more resources we have, the more court involvement we  
11 have and back to the topic of this hearing, drug  
12 treatment court only works if the judge has the time  
13 and the resources available to him and her to have  
14 discussions with the defendant, to have graduation  
15 programs, to have the resources in the court to make  
16 those connections whatever the requirements are,  
17 whatever the charges are it can only work that way  
18 and what we've seen in Staten Island is we've gotten  
19 away from that, it's now mixed in a regular court  
20 calendar and I think that's one of the reasons  
21 amongst all the others that it's not as effective as  
22 it should be.

23 CHAIRPERSON LANCMAN: Though for the  
24 record we gave you the HOPE money you asked for.

25

1  
2           MICHAEL MCMAHON:  And for the record I  
3 thanked you in my testimony effusively.

4           CHAIRPERSON LANCMAN:  As, as a former  
5 Council Member can we be thanked enough?

6           MICHAEL MCMAHON:  No.

7           CHAIRPERSON LANCMAN:  Thank you all very  
8 much, you all have very important responsibilities, I  
9 appreciate your spending so much time with us, thank  
10 you.  next we'll hear from our public defenders and if  
11 the drug policy alliance could testify alongside the  
12 public defenders we would appreciate it.  alright,  
13 let's, let's get sworn in and we'll get started,  
14 alright?  Do you swear or affirm that the testimony  
15 you're about to give is the truth, the whole truth  
16 and nothing but the truth?

17                           [panel affirms]

18           CHAIRPERSON LANCMAN:  Thank you, so just  
19 identify yourself for the record and testify away.

20           MELISSA MOORE:  Good afternoon, my name  
21 is Melissa Moore and I'm the Deputy State Director  
22 for New York at the Drug Policy Alliance.  Thank you  
23 Chair and Council Members for being here.  The Drug  
24 Policy Alliance appreciates the opportunity to  
25 testify this afternoon.  As the overdose crisis

1  
2 continues, it's imperative to examine the role of the  
3 criminal... [cross-talk]

4 CHAIRPERSON LANCMAN: Sorry, let me just  
5 interrupt for a moment, do you have written  
6 testimony?

7 MELISSA MOORE: I'm sorry?

8 CHAIRPERSON LANCMAN: Do you have written  
9 testimony?

10 MELISSA MOORE: I didn't bring copies  
11 today, but I'll follow up... [cross-talk]

12 CHAIRPERSON LANCMAN: Okay... [cross-talk]

13 MELISSA MOORE: ...with the office.

14 CHAIRPERSON LANCMAN: I just wanted to  
15 make sure if you did I wanted it, okay thanks.

16 MELISSA MOORE: Right, apologies.  
17 Historically the Criminal Justice System has  
18 delivered punishment to individuals for crimes  
19 related to substance use. The opioid overdose crisis  
20 has led to some procedural and rhetorical shifts of...  
21 as we've heard just now in this panel that have  
22 increased access to treatment and diversion programs.  
23 However, the criminal justice system has yet to  
24 embrace a total public health approach toward  
25 addressing people who use drugs. This is most evident



1  
2 when prosecutors are determining who should be  
3 diverted into a treatment program and who receives  
4 the protection of legal intervention such as the 9-1-  
5 1 good Samaritan law. There is no evidence to support  
6 the assertion that we just heard, that coercing  
7 people into treatment is any way effective, that's a  
8 dangerous flawed model. The criminal justice system  
9 is often employed when public health response would  
10 be more appropriate and disparities and enforcement,  
11 prosecution and outcomes are rampant with regard to  
12 this in New York. despite the lower arrests pointed  
13 out by the special narcotics prosecutor there are  
14 quite extreme disparities. Research from the  
15 misdemeanor justice project at John Jay outlines  
16 trends for misdemeanor arrests and non-marijuana drug  
17 offences in New York City and in 2016 the arrest rate  
18 for drugs other than marijuana was 2.2 times higher  
19 for black people than the arrest rate, rate for  
20 whites and 1.5 times higher for Latinos. Disparities  
21 extend to outcomes in terms of conviction and  
22 sentencing as well. For example, in Kings County  
23 Court 63 percent of white people are convicted versus  
24 72 percent for black people and 74 percent for Latino  
25 people versus 23 percent who receive an ACD, that's

1  
2 for white people and only 14 percent and 13 percent  
3 for black and Latino folks respectively. We urge this  
4 committee and the district attorneys of each borough  
5 to closely examine their data and change their  
6 policies to avoid these disparities. Criminal courts  
7 are attempting to divert more people into treatment  
8 however initiatives such as Staten Island's HOPE  
9 program still leave people behind, as you noted it  
10 ex... potentially excludes people who have previous  
11 felony convictions and despite what DA McMahon said  
12 he failed to mention that for everyone person who's  
13 been accepted into the program two are denied. Courts  
14 looking to adopt the HOPE model need to ensure that  
15 the door is open to everyone who is in need of care  
16 for substance use and not withhold treatment because  
17 of a person's criminal history. While people can be  
18 denied treatment due to their criminal history Judges  
19 are also given extreme discretion to determine  
20 whether or not a person is eligible for diversion and  
21 these choices can be influenced by their own personal  
22 bias. As we've seen in so many other aspects of the  
23 criminal justice system, like your work on... around  
24 marijuana enforcement has pointed out, where there's  
25 discretion there can often be stark disparities. A

1  
2 former public defender working in a New York County  
3 court reported that a judge denied a defendant  
4 admittance to a diversion program because she  
5 believed the defendant to be dishonest because the  
6 defendant was abstinent for a period of time and  
7 could not account for when he had relapsed. The  
8 defender working on behalf of the client stated that  
9 the judge often rationed treatment only affording it  
10 to those she considers to be the most deserving. It's  
11 important to note that the decision to route people  
12 into the criminal justice system and incarceration  
13 instead of treatment can have deadly consequences.  
14 People exiting incarceration are at extremely high  
15 risk of overdose compared to the general population.  
16 Research shows that in the immediate two weeks after  
17 release formerly incarcerated people are almost 130  
18 times more likely to die of an overdose than the  
19 general population. Clearly incarcerating people who  
20 use drugs is not an effective public health response  
21 and one of the most concerning elements of the  
22 criminal court's response to addressing the overdose  
23 crisis is the prosecution of people who exchange or  
24 sell drugs with homicide or manslaughter charges.  
25 While the federal court has been the common path for

1  
2 these drugs induced homicide prosecutions the State  
3 Island DA's Office has attempted to bring  
4 manslaughter or homicide charges against sellers in  
5 more than 240 overdose cases.

6 CHAIRPERSON LANCMAN: I just have to stop  
7 you there, what does, what does that mean they  
8 attempted to?

9 MELISSA MOORE: My, my understanding is  
10 that they investigated it as such and put a lot of  
11 pressure on people who, who were around that person  
12 who had died to, to either testify or to come forward  
13 in the case, I can find out more specifics.  
14 Additionally, drug induced homicide, homicide  
15 measures can potentially exacerbate the overdose  
16 crisis, the undermine good Samaritan laws which were  
17 implemented precisely to encourage people to contact  
18 emergency services to respond to an overdose. The  
19 most common reason that witnesses cite for not  
20 seeking medical attention for an overdose is fear of  
21 police involvement and those who do call the police  
22 are likely to delay the call by five or more minutes.  
23 When we know that in this moment with Fentanyl being  
24 in the supply the window for an overdose can be 60  
25 seconds those five minutes people just don't have.

1  
2 The increased criminalization of people who use and  
3 sell drugs only exacerbates the very problem that  
4 prosecutors are supposedly trying to address, it  
5 increases stigma, drives people away from needed care  
6 and will likely result in the same racial disparities  
7 that are non-synonymous with other drug war tactics.  
8 It's also key to note that half of the over 140  
9 million dollars budgeted through the New York City  
10 Healing NYC plan is allocated to the NYPD and  
11 although some of that funding does go toward Naloxone  
12 training and distribution a significant portion goes  
13 toward death scene investigations in an effort to  
14 arrest sellers. This is a significant waste in  
15 resources and will do little to avoid these overdose  
16 deaths. And I also want to remind the committee that  
17 the Office of the Special Narcotics Prosecutor was  
18 created during the heroin crisis in the 1970's but it  
19 hasn't worked. Substantial evidence shows that supply  
20 side interventions and increased criminal penalties  
21 do not have any effect on reducing either the supply  
22 of drugs or the demand for them. All efforts should  
23 be made to divert people who use drugs from criminal  
24 court and place them into community-based treatment  
25 or harm reduction settings where they can receive the

1  
2 necessary care. If actors from the criminal justice  
3 system wish to intervene in response to the opioid  
4 crisis all adopted practices must be non-punitive and  
5 again we would note that the DAs and NYPD are not  
6 social workers or providers of social support. We  
7 need resources to go to the organizations and  
8 entities that are outside of the criminal justice  
9 system to provide those services. We would also  
10 recommend that people diverted into mandated  
11 treatment should have access to all forms of evidence  
12 based treatment and harm reduction serve... resources,  
13 that law enforcement officials should divert people  
14 into community based treatment spaces in lieu of  
15 criminal court, judges... judicial discretion should be  
16 checked so that individual biases do not influence  
17 treatment decisions and should make more offences  
18 eligible for diversion, we should not exclude people  
19 because of their criminal histories if they need care  
20 and support. Thank you very much.

21 YONG-MI LEE: My name is Yung-Mi Lee, I'm  
22 a Supervising Attorney in the Criminal Defense  
23 Practice at Brooklyn Defender Services. I want to  
24 first of all thank the Council and Chair Lancman for  
25 inviting us to testify today. First, I want to

1  
2 applaud BDS, Mayor De Blasio for embracing the safer  
3 consumption space model sought by people who use  
4 drugs and harm reduction specialists. The four  
5 overdose prevention centers if approved by the New  
6 York State Health Department will build on the  
7 successes of other sites around the world and save  
8 lives. We hope the program becomes an example for the  
9 rest of the country as public health initiatives  
10 originating in the city often are. Crucially these  
11 centers must not become drag nets for the NYPD which  
12 could seriously undermine their ethnicity and I'll  
13 talk about that later. BDS believes a public health  
14 approach is essential to reducing the harms of  
15 addiction and recreational drug use alike. The  
16 criminal legal system is simply ill equipped to  
17 prevent drug use, meaningfully reduce the supply of  
18 drugs or most important to help people to... help, help  
19 keep people who use drugs as safe as possible and to  
20 minimize the harm to their families and communities.  
21 Yet still our city and state pursue and fund this  
22 approach lavishly. The fourth and fifth top arrests  
23 in New York City are low level marijuana possession  
24 and low-level possession of other drugs. The city's  
25 and state's discordant efforts to meld the

1  
2 enforcement and public health approaches often result  
3 in unnecessary and counterproductive incarceration  
4 and criminal records, social stigma and tragic  
5 deaths. In Brooklyn there are four specialized  
6 treatment courts and my written testimony explains in  
7 much greater detail what each of them are about  
8 however I, I do want to point out that as a result of  
9 these treatment courts the, the number of  
10 incarcerations... the number of people who are  
11 incarcerated on drug or non-violent cases has  
12 obviously significantly gone down but with that said  
13 these treatment courts do not address really... are  
14 not... they're the band-aid in terms of the public  
15 health crisis that we face right now. We have cases,  
16 we have technically violent felonies where people  
17 really need treatment and they're ineligible for drug  
18 treatment. We have underfunding of treatment programs  
19 where people are simply kicked out on very simple  
20 technical violations and then they face a lengthy  
21 prison sentence. So, there are disincentives to  
22 participating in these treatment programs especially  
23 those charged with the felonies and I've been doing  
24 this for 20 years and I can tell you that when  
25 treatment is mandated, when it's coerced by a court,



1  
2 by the police, by prosecutors the success rate is  
3 just not as high as it should be. We often get people  
4 who are charged in these drag net or predatory buy  
5 and bust operations, which still happen by the way  
6 and those are situations where undercover police  
7 officers pretend to be drug addicts and they prey on  
8 other drug addicts and it's clear who they are,  
9 they're often mentally ill and they're often, I hate  
10 to say it, they look like drug addicts, they're  
11 strung out, they're looking for a hit on the street  
12 and they approach these individuals and arrest them  
13 after making a so called drug exchange or a drug sale  
14 when in fact what they're doing is they're just going  
15 up to someone knowing that a fellow drug addict will  
16 be sympathetic and help them purchase drugs both for  
17 himself, for herself as well as the undercover  
18 officer. This is still going on, this is a waste of  
19 police resources, these are people who do end up in  
20 the treatment courts, the, the police are not really  
21 using these arrests to enhance the arrests to go and  
22 arrest major... the major narcotics dealers and, and  
23 the treatment programs are lengthy and sometimes  
24 they're very onerous. Even if law enforcement  
25 interventions were an effective tool to reduce the

1  
2 supply of drugs these NYPD tactics are simply not the  
3 way to get the drug... the true drug dealers off the  
4 street. Earlier there was a question about whether  
5 arrests are still made outside... are still being made  
6 outside methadone clinics, they are in fact still  
7 occurring outside methadone clinics, we have clients  
8 who are arrested on felony charges of sale of  
9 methadone where clients will go and get their supply  
10 of methadone to sustain them and they are approached  
11 by undercover officers outside these methadone  
12 clinics where they basically beg our clients to give  
13 them a portion of their supply because they, they  
14 look desperate and any fellow drug addict  
15 unfortunately knows that feeling and they will share  
16 their methadone so that is still happening. This,  
17 this police tactic is not saving lives, many times  
18 these people do not... are not incentivized to enter  
19 into a drug treatment program, there is a sense of  
20 outrage and as I said earlier if treatment is forced  
21 upon people and there is coercive police tactics that  
22 are being used there's really no incentive to do drug  
23 treatment. I, I'm a big proponent of drug treatment  
24 courts in Brooklyn, I have a lot of clients over the  
25 years who have gone through the treatment process and

1  
2 successfully completed the process but I am not  
3 seeing as a result of this the reduction in drug  
4 dealings that are happening, I am seeing clients who  
5 fail and who do end up with criminal records, who do  
6 end up going to prison or jail and, and overall there  
7 are a wide swath of people out there who are, even  
8 when they do try to get a dismissal upon completion  
9 of the treatment even though they do try the  
10 treatment and they still fail it's not the way to  
11 address this public health crisis. We have had  
12 clients who were doing treatment voluntarily, they  
13 got arrested by the police, we had a 40-year-old  
14 client recently who was a homeless man, he was  
15 getting treatment services, he was arrested, he was  
16 incarcerated and unfortunately that set his whole  
17 treatment process backwards and now there's a  
18 question as to whether he will do treatment through  
19 the treatment court. It's a... it's a very precarious  
20 position for our clients once they are arrested. Most  
21 of our clients do understand what the treatment  
22 process is like but they also understand that the  
23 treatment programs out there are not necessarily  
24 sufficient especially if our clients do have the dual  
25 diagnosis with a mental illness as well, those

1  
2 programs in particular when the DA's Office or the  
3 treatment court insists on residential treatment  
4 those programs will often times have a long waiting  
5 period for a bed and that again is a reason for our  
6 clients to not choose that treatment alternative. So,  
7 rather than spending... I understand that the New York...  
8 that the Mayor's Health NYC initiative half the  
9 budget is going towards the investigation of these  
10 opioid deaths towards NYPD that seems like an  
11 extremely large amount of money to spend on  
12 investigating these deaths as opposed to expanding  
13 treatment services and I will tell you that with the  
14 treatment programs that the drug treatment courts use  
15 those are treatment programs that people also  
16 voluntarily enter without a court mandate so there's,  
17 there's a large amount of people who are... who want to  
18 do the drug treatment program voluntarily and then  
19 there are those people who are being mandated through  
20 the drug treatment court hence often times the wait  
21 to get those residential beds... to get those  
22 residential beds. I think what we need is perhaps an  
23 expansion of these types of programs, an effort to  
24 make them more voluntary and what's also very  
25 important unfortunately is to ensure that there's'

1

2 proper oversight of these programs because I see a  
3 wide variety in the quality of treatment that our  
4 clients receive when they do enter these programs.

5 So, I do want to emphasize again that BDS really is a  
6 big proponent of the health... the public health  
7 approach to this opioid crisis.

8 CHAIRPERSON LANCMAN: Thank you both. So,  
9 I, I just want to understand the... you don't think  
10 that there's, there's any value to, to the carrot and  
11 stick... the stick part of the carrot and stick  
12 approach, I mean don't you have... because, because  
13 I've, I've heard from, from, from public defenders  
14 and, and advocates something that, that the stick  
15 could be too, too much and that there's certain  
16 circumstances or... like a lot of circumstances where  
17 the, the, the stick of the, the, the stick is, is so  
18 much towards... if you're going to go into a program  
19 that, that you'd rather... you'd rather get the shorter  
20 stick and, and just plead guilty and just take your  
21 lumps and, and, and move on but, you know... [cross-  
22 talk]

23 YONG-MI LEE: The stick... the stick can be  
24 too much and I'm not advocating for a change in the,  
25 the drug law reform act but for people who are first

1  
2 time offenders, for me when I... when I talk to my  
3 clients who are first time felony, you know this...  
4 sometimes the carrot is if you successfully finish  
5 the program you will get a dismissal, it will be off  
6 your record, it's not necessarily the jail  
7 alternative, alternative, I mean obviously people  
8 don't want to go to jail but at least with the  
9 Brooklyn DA's Office they are willing to work on  
10 reasonable jail alternatives if it is the first  
11 felony offense. So, often times even if the upfront  
12 plea is to maybe the D, non-violent drug felony, the  
13 jail alternative might be six months so... but then  
14 there are plenty of clients who, who, who need...  
15 people I should say who, who need to be ready who  
16 want to do it voluntarily, they know that even with  
17 the graduated sanctions for relapses they also know  
18 that sometimes the drug treatment programs will kick  
19 them out for really minor infractions and then there  
20 will be a period of incarceration while the drug  
21 treatment court staff will have to find a new  
22 treatment program, a different program to place them  
23 in so there is a perception out there that the, the  
24 jail sanctions that could follow for minor  
25

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2       infractions can be heavy and that's a disincentive  
3       for people to at the outset want to do the program.

4               MELISSA MOORE:   And I would just add on  
5       to that that the criminal justice system and the, the  
6       jail system in general just is not an appropriate  
7       mechanism for providing treatment to people. The fact  
8       that Rikers is actually one of the largest providers  
9       of medication assisted treatment and other actually  
10       very effective and evidence-based treatments for  
11       people who struggle with substance use is a, a  
12       testament to the doctors working at Rikers but is  
13       wholly inappropriate that people have to be in that  
14       setting in order to receive treatment.

15               CHAIRPERSON LANCMAN:   The same... the same  
16       could be said unfortunately for mental health.

17               MELISSA MOORE:   Exactly...

18               CHAIRPERSON LANCMAN:   I don't know that  
19       they do as good a job as... in providing those mental  
20       health services but Rikers is basically the largest  
21       mental health institution in, in the five boroughs.

22               MELISSA MOORE:   Exactly and I... you know I  
23       would posit that it's inappropriate for funds and  
24       resources to be directed into that system and for  
25       people to have to channel into that system in order

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2 to receive those services when we're recognizing that  
3 people are struggling with a range of different  
4 things and we need to... [cross-talk]

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CHAIRPERSON LANCMAN: Right... [cross-talk]

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MELISSA MOORE: ...to intercept that but  
7 you know I'd also just say that I think substantial  
8 evidence from across the 40 year war on drugs shows  
9 the failure of criminalizing and, and the stick part  
10 of the carrot and stick to, to move people in this  
11 direction at all and research from Pew also shows  
12 that states that increase their incarceration rates  
13 don't experience any decrease in drug use whatsoever  
14 so... in terms of looking... [cross-talk]

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CHAIRPERSON LANCMAN: Do you... right. Do  
16 you... I get it, do you think it's a mistake for the  
17 police and the DA's to treat every opioid overdose  
18 as, as a homicide investigation?

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MELISSA MOORE: I think it has a chilling  
20 effect, you know what we've heard anecdotally from  
21 people is... [cross-talk]

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CHAIRPERSON LANCMAN: How so?

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MELISSA MOORE: The more the, the  
24 narrative is out there, that they're going after  
25 anybody who possibly has connection to somebody



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2 deters people wanting to call 9-1-1 under the good  
3 Samaritan law... [cross-talk]

4 CHAIRPERSON LANCMAN: But, but... [cross-  
5 talk]

6 MELISSA MOORE: ...it deters people from  
7 even wanting to go to the hospital after they've been  
8 revived from an overdose by Naloxone, we've heard  
9 many, many stories from harm reduction agencies  
10 talking about reversing an overdose with Naloxone and  
11 the person seeing... just EMS workers in uniform  
12 walking up thinking that they're NYPD... [cross-talk]

13 CHAIRPERSON LANCMAN: Uh-huh... [cross-  
14 talk]

15 MELISSA MOORE: ...and having just been on  
16 the brink of death trying to get up and run away  
17 because they're so concerned that it's an officer and  
18 not being willing to go to the hospital and actually  
19 receive care and treatment because they're so  
20 concerned about the criminalization.

21 YONG-MI LEE: Yeah, I, I have to agree, I  
22 think even those who, who do survive the drug  
23 overdose...

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CHAIRPERSON LANCMAN: I'm reminded that the good Samaritan law only protects you from dealing and possession charges and not homicide charges.

YONG-MI LEE: It, it, it definitely does but we... my office actually we recently had a case where there was an arrest, we did eventually get the dismissal based on that law but there was an arrest and the NYPD will still arrest and say well that can be resolved by the prosecutors so it's not necessarily a win, win situation where the police will show up and the 9-1-1 caller will say well actually you can't arrest me. I also think to, to a certain extent just for practical purposes it's counterproductive, I have had plenty of clients where law enforcement, the DAs have asked for cooperation and it's not... it's not something that's necessarily... it's not something that people want to do so, it's counterproductive and, and people also get into questions about invasion of privacy if they have to turn over their phones, it's just... it gets very... we're talking about police interrogations, about searches, it's not something that we would support and our clients would not want that.

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MELISSA MOORE: I would also highlight some of the unintended consequences, you know this is often sort of the chain of events that we see when there is a crackdown response in a criminalization response to a public health issue now because of some of these patterns of investigations and the fact that every overdose is treated this way by the DA's Offices and by the NYPD we're seeing that the people who sell are less likely to stamp there, their product with a uniquely identifying stamp which actually before it was really helpful for people who use drugs to be able to, to identify if there was a bad batch that they could avoid it and so now that there is a reduced likelihood that stamps will be there it's a lot harder for people to avoid what's bad and what they know is contaminated so it's actually a contributing factor to some of the overdose deaths that would posit.

CHAIRPERSON LANCMAN: That's interesting.

YONG-MI LEE: I mean I, I do think, you know the NYPD will have to investigate these opioid deaths as homicides, I, I think the large amount of funding that's going towards that is just maybe misguided and the allocation of resources is being

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misused and that maybe not so much money should go towards NYPD but maybe more towards dealing with really the public health crisis, that issue in terms of the, the intervention centers, the programs, diverting people away from the criminal justice system.

CHAIRPERSON LANCMAN: Alright, well thank you very... both very much.

MELISSA MOORE: Thank you... [cross-talk]

YONG-MI LEE: Thank you very much.

CHAIRPERSON LANCMAN: That concludes our hearing.

[gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date

June 30, 2018