

**TESTIMONY OF  
ROBERT M. MORGENTHAU**

**BEFORE THE**

**CITY COUNCIL  
PUBLIC SAFETY COMMITTEE  
MAY 19, 2008**

Thank you for the opportunity to address the Mayor's Proposed Fiscal Year 2009 Executive Budget and its impact on the New York County District Attorney's Office. The city has informed us that it will cut our budget 3.63 percent, or more than \$2.6 million in Fiscal Year 2009. These cuts are on top of the \$7.2 million in cuts we have sustained since Fiscal Year 2002. It is clear that the funding City Council has provided this office previously, which totaled \$1.1 million in FY08, will be even more crucial in FY09 if we are to maintain vital services to the community. We ask that the Council support the restoration of the \$7.2 million in past cuts as well as allocate at least the \$1.1 million to us you have done in the past.

The large reduction in funding we face will force us to terminate some important programs and severely curtail others, hampering our ability to provide the level of prosecutorial services to which the people of New York are entitled. The proposed cuts will also make it difficult for us to pursue worthwhile initiatives for which the city provided funding only last year, in the critically important areas of gun crimes, child abuse and internet crimes. These reductions will not only lessen our ability to prosecute crimes, they will also adversely affect the amount of revenue that we can return to the city. We will be limited in our capacity to conduct many of our most complex and important white collar crime investigations, which produce millions of dollars in fines, taxes and other payments for the city treasury every year.

It is particularly important in a time of economic uncertainty for the city and the City Council to support the city's prosecutors in their efforts to reduce crime and thereby maintain the city's economic health. The reduction in crime over the last decade has been the foundation for the economic renaissance in the City of New York. While other cities have faltered, seeing their crime rates rise and their economic activity decline, New York has kept crime down and continued its economic success. This is due, in no small part, to the efforts of the city's prosecutors. In addition to working with the police to fight violent crime, we play a vital role in helping to ensure safety, honesty, and fair-dealing in business and labor practices, and in maintaining the integrity of the financial markets. It would be extremely short-sighted -- especially in these uncertain economic times -- for the city to impose further cuts on the budgets of offices that are such a vital part of the success of New York. The Council must also do whatever it can to see that we can continue this vital mission.

We need look only to news reports from the not-so-distant past to find a New York which appeared to have no hope of reducing crime and stemming the loss of population. In the 1980's and 1990's, there was a steady escalation of crime that the public saw as unstoppable. Homicides had risen to unprecedented levels. After a long-term effort on the part of police and prosecutors, the city has made a near miraculous recovery where residents, tourists, and businesses feel safe in the city. The economy has responded more favorably than anyone could have expected. It is simply wrong for the city to jeopardize these hard-won gains against crime by imposing new and burdensome cuts on the city's prosecutors.

### Effects of the Proposed Cuts

Reductions of the magnitude proposed, over \$2.6 million for the New York County District Attorney's Office alone, will greatly affect our ability to perform important functions. Our workload has been increasing even as our budgets have been severely reduced. Arrests are up 12.1 percent since 2003. Cuts in our budget in light of caseload increases will no doubt result in increased arrest to arraignment times, longer pre-trial city jail delays, and increased police overtime as prosecutors are forced to reduce staff throughout the office, including many of those responsible for handling and processing new arrests. Additional cuts will cost the city millions in additional police and corrections expenses and risk the release of dangerous arrestees, who, because of delays in arraignment, may be eligible for judicial release. These increased costs will amount to many multiples of the money saved by the \$2.6 million budget reduction proposed for the Manhattan District Attorney's Office.

In addition to meeting our responsibilities to prosecute violent crime, we are obligated to investigate numerous matters beyond street crime. For example, our construction industry investigations have become even more vital during this unprecedented building boom, and the attendant life threatening working conditions and financial corruption.

### Ongoing Construction Industry Investigations

This office has been conducting an intensive investigation into the deaths of two firefighters at the Deutsche Bank fire. This complex case has required a tremendous investment in office resources, drawing personnel and funds from our limited resources. In just one case, the office has dedicated millions in unreimbursed funds: 6 assistant district attorneys, 4 trial preparation assistants, 3 forensic investigators, a number of investigative analysts, expert witnesses; and the purchase of two expensive new software programs. Yet, while proposing cuts to our budget, the City and State have spent over \$2 million in legal fees to hire private counsel to deal with the Deutsche Bank fire investigation that we are conducting. Spending at a rate of \$200,000 a month for private legal fees, while cutting the budget of the office investigating the matter, is not a defensible allocation of taxpayer funds.

In addition, this office is further required to investigate other construction related incidents, such as the recent tragic crane collapse on the east side of Manhattan, which resulted in the deaths of seven and injury of many others. These cases are expensive to undertake, involving legal and investigative personnel, as well as the hiring of engineering and construction experts. In such cases, we have no discretion as to whether to investigate -- it is a sworn responsibility. The proposed cuts, however, severely undermine our ability to undertake this crucial work in the most professional manner possible.

In the past year alone, there were 40 construction accidents which resulted in a total of 14 fatalities. These events require this office to investigate not only to determine if there is criminal responsibility for the loss of life, injury, and property damage; but also determine whether City regulatory agencies are complicit, or negligent in providing safe working conditions. Through its investigative work, the District Attorney's Office is fulfilling the crucial role of neutral, investigatory agency rooting out criminality, as well as ensuring future safer practices.

According to the New York Building Congress, construction spending in New York City by government, businesses and institutions will reach \$83 billion in the years 2007 through 2009, much of it in Manhattan.<sup>1</sup> Despite all of these positive developments, however, the sheer volume of construction activity has produced a fertile environment for crime and corruption. This level of criminality creates tremendous obstacles to businesses in New York City and threatens the city's reputation as a safe and desirable place to work and conduct business.

Corruption and bribery in the construction industry, costs New Yorkers hundreds of millions of dollars each year in the form of lost tax revenue and inflated direct and indirect construction costs. Corruption enters the construction industry through mechanisms including bribery, bid rigging, and kickbacks. These and other illegal activities permeate all levels of the industry, from the agents to the general contractors, from the sub-contractors to the unions. Long-standing relationships between corrupt developers and contractors facilitate covert business dealings that siphon funds from property owners to corrupt personnel. The complex and diffuse nature of construction fraud hinders the investigation of corrupt practices. Most fraud is left undetected by all but the most focused and sophisticated surveillance efforts and investigative personnel.

The New York County District Attorney's Investigation Division has developed the expertise to investigate and prosecute corrupt practices in the Manhattan construction industry. Elimination of the systemic problems that characterizes the construction industry requires this office to conduct long term investigations involving complex surveillance, the use of informants, and the expertise of financial investigators and accountants. Expanded undercover operations are needed to conduct business with, and

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<sup>1</sup> "Construction Remains White Hot: \$83 Billion in Spending Projected Over Three Year Period," New York Building Congress Research & Analysis, <<http://www.buildingcongress.com/code/outlook/2007-2009-outlook.htm>> 16 May 2008.

thereby collect evidence on, the suspected firms. Although these types of operations are extremely expensive, they have led to successful prosecutions.

With the nature of the construction industry evolving to utilize more technologically advanced and sophisticated methods for wrong doing, investigative and prosecutorial activities have also been enhanced accordingly. In order to ensure the health and safety of the citizens of New York, and a favorable climate for legitimate business, we must receive adequate funding.

### Manhattan's Role in the Economic Fortunes of the City

From construction to finance to tourism, Manhattan plays a dominant role in the economy of the city. For example, Manhattan accounted for 79.8 percent of the payroll earnings in the city, and 89.8 percent of the total city personal income tax in 2005. Manhattan also generates 63.6 percent of New York City's total tax revenue. Manhattan will continue to play an essential role in city's economy in the case of an economic downturn and will, inevitably, take the lead in the recovery.

Mindful that Manhattan is the heart of the economy of the city, the Manhattan District Attorney's Office has worked effectively to create an environment that is welcoming to residents, tourists, and businesses. In addition to our continued efforts to reduce violent crime, the office commits substantial resources to the prosecution of white collar crimes, organized crime and corruption in labor and management.

Bringing these complex white collar crime cases, the office plays a crucial role, unique among the city's prosecutors, in maintaining the integrity of the financial markets and ensuring honesty and fair dealing in business and labor practices. In addition, these cases return substantial revenues to the city. Since Fiscal Year 2004, this office has returned nearly \$98.5 million to the city as a result of these investigations. Budget cuts will force this office to reduce the resources devoted to prosecuting white collar crime disproportionately, affecting financial markets and business development in the city and ultimately reducing revenue returned to the city. In fact, the amount of revenue that the city will lose as a result of reducing the investigations that we can bring will be many times greater than the amount of city cuts to our budget.

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In sum, we ask the City Council for its help in eliminating the budget cuts that the city has planned for next year and restoring the funds that have been lost to our baseline budget over the years. We also ask that you keep providing this office with the extremely important funding you have provided to us. Without this funding, our offices cannot continue our important work, fighting street crime and economic crime, at a level which will ensure safety and well-being of all residents, workers, and visitors to New York and promote the continued economic strength of New York City and the metropolitan area.

### **Important Programs at Risk**

This office commits major resources to fighting violent crime and crimes against personal property. Further, we commit resources to the investigation and prosecution of white collar crime. Cuts of the magnitude proposed will affect these efforts. In addition, cuts will also destroy our office's ability to carry out the Mayor's mandate to enhance programs in the areas of child abuse, internet crime, and gun prosecutions.

The following are among the programs that will be affected by the city's cuts:

**Gun Crimes:** Recent cases demonstrate the success of the office in investigating and prosecuting perpetrators of gun crime. Guns and drugs are frequently linked together in criminal activity as demonstrated by another case in which 25 individuals were arrested stemming from two separate year-long investigations into crack-cocaine and heroin dealing in and around the Polo Grounds Towers housing development in Harlem. Fifteen of the defendants, most of whom reside within the Polo Grounds and some of whom are members of "The Best Out" Bloods gang, were indicted on charges of criminal sale of a controlled substance. Twelve others were arrested and charged in Criminal Court complaints with various counts of criminal possession of a weapon, criminal possession of a controlled substance, criminally using drug paraphernalia, and unlawful possession of marijuana.

The stunning decline in the number of homicides and in the level of violence illustrates the excellent work done by the police and prosecutors. The drop in murders has been particularly dramatic in Manhattan. The work of senior assistant district attorneys in the Trial Division and specialized programs in this office, such as the Firearms Trafficking Unit and the Homicide Investigation Unit, have played a major role in lowering the number of homicides and violent crime in Manhattan. Labor intensive investigations using senior investigative legal staff are expensive and are at risk given the magnitude of the proposed cuts.

**Identity Theft:** In recognition of the growing threat posed by identity theft, this office established a unit dedicated solely to the investigation and prosecution of this type of crime. Believed to be the first and largest of its kind, the unit was established in response to the marked rise in complaints from individual and corporate victims in our jurisdiction, as well as to the growing sophistication of the criminals perpetrating these crimes. The cases include everything from simple credit card theft to complex international criminal rings engaged in the highest levels of fraud.<sup>2</sup>

In one notable case, this office investigated and prosecuted two defendants who, in just five months, stole over \$1 million dollars. Using stolen identity information, the

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<sup>2</sup> This office has an Edward R. Byrne federal grant for the investigation and prosecution of identity theft. This grant is currently in peril, as there are plans to reduce federal expenditures for crime fighting. If we lose this federal funding and it is not replaced by the city or state, it will have a devastating impact on our identity theft investigations.

defendants siphoned money from the victims' bank accounts by transferring funds into other accounts they had fraudulently established. In addition, the defendants deposited a number of forged checks, thereby stealing from several local corporations. The defendants were convicted at trial and sentenced to 15-30 and 12-36 years in state prison respectively.

In another case, seventeen individuals and one corporation were indicted on charges related to global trafficking in stolen credit card numbers, cybercrime, and identity theft. This indictment marks the second major phase in a joint two-year investigation by our Identity Theft Unit and the United States Secret Service. The 173-count indictment charges that from 2001 through 2007, the defendants participated in a multi-national, internet-based criminal enterprise -- the "Western Express Cybercrime Group" -- dedicated to trafficking in stolen credit card numbers and other personal identifiers. The group realized millions in illicit profits from the sale and fraudulent use of this personal data, with some members of the enterprise laundering these profits in a variety of technologically savvy ways.

**Child Abuse:** Recognizing that child abuse cases are best managed by specially trained attorneys and support staff, the office created its Child Abuse Unit in 1989, which is now part of an expanded Family Violence and Child Abuse Bureau. The Unit has developed a highly effective, multidisciplinary approach to investigating and prosecuting child abuse cases. In the development of these cases, the office uses the services of staff and consultants, including social workers, psychologists, and physicians.

The office's approach to these cases has proven highly effective, but they are also time and labor intensive. In 2007, over 7,600 reports of child abuse and neglect were made to the State Central Registry from Manhattan, leading to over 1,000 criminal prosecutions through our office. Additionally, in 2006, we initiated an interagency task force with the goal of establishing a co-located child advocacy center in Manhattan. This will be the first child advocacy center in the borough to house police, ACS, medical, and legal resources in the same location. The interagency task force now includes representatives from the Mayor's Office, the New York Police Department (NYPD), the Administration for Children's Services (ACS), Safe Horizon, and the five child medical centers in Manhattan. The group has designed a model for a Manhattan Child Advocacy Center that makes the best use of the world-class medical and social services available throughout the borough and the strong collaborative relationships already in place between these service providers and this office. A location for the Center has been chosen, and the task force has been busy developing protocols in anticipation of the Center's opening, expected in the Fall of 2008. This office will become a permanent presence at the site, itself.

This office is also a member of the Mayor's Task Force on Internet Crime which includes members of various law enforcement agencies, including the five prosecutors' offices and the New York City Police Department. We meet regularly to develop approaches to the ever increasing problem of internet exploitation of children. Another initiative is a Department of Justice program that is aimed at preventing the sexual abuse

and exploitation of children through the internet. Representatives from federal, state and local law enforcement work together to coordinate the investigation and prosecution of internet crimes against children.

**White Collar Crimes:** In addition to construction industry investigations discussed above, this office has prosecuted major cases involving racketeering, kickbacks, and other anti-competitive practices. Several of our recent cases illustrate the importance of our investigations.

#### Racketeering/Extortion

This February, the office announced the indictment of two leaders of an organization called the “Committee on Contract Compliance” on racketeering and extortion charges. The investigation revealed that the defendants used the organization -- as a mechanism to extort money from building contractors throughout the City by threatening to report fake violations at job sites. In addition to the inconvenience and increased costs to contractors caused by the defendants, hundreds of fake complaints were lodged with various city and federal agencies.

#### Fraud

In February, the office announced the sentencing of two physicians who participated in a criminal enterprise run out of medical clinics, which stole millions of dollars by defrauding no-fault insurance companies as well as the New York City Transit Authority.

#### Money Laundering

This past September, Meir Efargan was convicted of using several shell companies to launder over \$20 million in proceeds from a prostitution ring. Efargan pled guilty to the top charge of Money Laundering in the 2<sup>nd</sup> degree and was sentenced to 5 years probation. Mr. Efargan and an associate had been laundering money for several years, transmitting the proceeds to bank accounts in Israel. After a lengthy investigation, in which an undercover police officer spoke to prostitutes and monitored bank account activity, it was revealed that Mr. Efargan operated several escort services and websites, laundering the proceeds through limousine, concierge, and catering companies.

#### Tax Crimes

In December a well-known Tribeca restaurant pled guilty to stealing \$1.1 million in taxes from New York State. As a result of his plea, he will be sentenced to jail and be required to sign a restitution order for the entire \$1.1 million as well as be responsible for all accrued interest and penalties that may total an additional \$1 million.

Cuts of the magnitude proposed by the city will jeopardize the work in these critical areas of gun crimes; child abuse; identity theft; internet crimes; and white collar crimes. These areas of great importance only last year, are placed in jeopardy by the proposed cuts. It is critical that we receive the necessary funding to maintain vital initiatives, and ensure the safety of all the residents, businesses, and visitors to the city.

## Costs to the System Resulting from the 3.6 Percent Cut

### 1. City Jail Costs

In 2007, the Office filed 4,808 defendant indictments in Supreme Court.<sup>3</sup> Estimates are that the City spends \$164 per day on each inmate in City jail.<sup>4</sup> A 3.6 percent reduction in the Office's personnel budget could easily slow the system down enough to result in one extra adjournment per felony case. A single adjournment can increase a case's time to disposition by two weeks, meaning that the defendant spends more time in City jail. If there is even one extra adjournment for every indictment filed next year, it could result in a cost to the city of as much as \$11 million.

### 2. Arrest to Arraignment

Since 2003, arrests have increased by 11 percent, yet arrest to arraignment times have improved to 21.71 hours. This is because the office has devoted additional resources including additional legal and non-legal staff to processing these cases and increased hours of the arrest processing operation (known as Early Case Assessment Bureau or ECAB). Our lawyers typically work until 1:00 am, often later. Because of statutory requirements and police overtime concerns, the office must continue to process cases in a timely fashion. The prospect of a 3.63 percent cut occurring simultaneously with an increase in arrests could lead to a perilous condition for arrest to arraignment times. Reducing the numbers of ADAs and other critical staff by 3.63 percent, in conjunction with the increased volume, would mean a 12 percent increase in workflow in ECAB. This would translate into approximately 2.6 extra hours in processing time, to an average of 24.3 hours per defendant, over the statutory requirement. It would also mean increased police overtime at greatly increased cost to the city. The expenses incurred would likely be more than the 3.63 percent cut to this office itself.

### 3. Police Overtime

The New York City Independent Budget Office (IBO) tracks police department overtime. A recent report released by IBO, entitled "Police Overtime: Tracking the Big Growth in Spending," analyzed a concept called "operational overtime," which causes unavoidable overtime when an officer is required to work extended hours to process an arrest made late in a tour of duty. Since the majority of police officers use the second half of their shifts to process arrests, an increase in the average arrest-to-arraignment time is bound to affect the amount of operational overtime. The largest source of overtime spending was considered to be "new arrest overtime" when an officer must remain available during the process by which a criminal complaint is sworn. IBO estimates that for every percentage increase in new arrest processing time, police

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<sup>3</sup> DANY Monthly Report of Operations, Term 13 2007.

<sup>4</sup> The Correctional Association of New York, Basic Prison & Jail Fact Sheet, March 2006.

overtime per arrest increased approximately 1.4 percent. Our estimate is that a 12 percent increase in processing time (as noted above) could increase police overtime per arrest by 17 percent in 2008. Since police overtime per arrest averaged \$187 in 2007, an increase of this magnitude would translate to \$3.8 million extra in overtime expenditures.

The increased city expenditures occasioned by the proposed cuts would be far greater than the \$2.6 million cut to our office, on top of increasing the inefficiencies in the criminal justice system we have all worked so hard to overcome.