




MEMORANDUM

TO: Budget and Appropriations Committee of the
Westchester County Board of Legislators

FROM: District Attorney Janet DiFiore 

DATE: November 12, 2009

RE: Fiscal and Program Impact of 2010 Proposed County Budget

The District Attorney is the chief law enforcement officer of Westchester County, and pursuant to the Constitution and laws of the State of New York is responsible for the investigation and prosecution of offenses committed in our county. As such, I have and will continue to proactively investigate and vigorously prosecute those responsible for committing criminal acts. Integral to my ability to accomplish this mandate, is the concomitant responsibility of Westchester County government to provide the funding and the resources necessary to allow me to meet my stated objective.

Further, it is my duty, and accepted responsibility, to insure that the resources and funding provided to this office by county government are utilized in an efficient and productive manner. The fact that my office accomplishes this objective is unquestionable. To insure that we continue to meet and even exceed the high fiscal standards that we set for ourselves, I have initiated a number of new programs and strategies.

The number of cases prosecuted by this office has continued to grow during the last several years. In 2003 this office prosecuted 30,314 cases. Totals for 2004 and 2005 were 33,632 and 35,477 cases respectively. Caseloads increased again in 2006 and 2007 and during 2008 this office prosecuted 39,484 and will potentially end 2009 with over 40,000 prosecuted cases.

While my full budget submission is replete with statistical information, statistics alone are not a measure of our accomplishments. Countless hours are spent on matters that are not readily susceptible to statistical analysis. This is clearly apparent after a review of this year's activities and achievements.

The Violent Felony Screening Protocol which I established within the District Attorney's Office continues to enhance the prosecution of violent crimes in Westchester County. The Deputy Division Chief of the Superior Court Trial Division has now been designated as the Violent Felony Coordinator (VFC). His duties include reviewing immediately upon arraignment in the local criminal court, all violent felony cases with the exception of homicides, sex crimes and child abuse cases, all of which are vertically handled by senior ADAs from the investigation stage. The review by the VFC allows for an

immediate assessment by a veteran trial prosecutor of legal and factual issues warranting further action by the local police department and/or an assistant district attorney to enhance the case for prosecution. This review also serves as an invaluable training method for the newer ADAs who are taught how to view the evidence through the prism of a trial prosecutor. In 2008, 833 violent felony cases were reviewed under this protocol. Cases involving persistent felony offenders who face life imprisonment because of three predicate felony convictions are immediately forwarded and reviewed by Chief of the Career Criminal Bureau for vertical prosecution by trial assistants. Violent felony cases that require special attention, for example, the multi-jurisdictional burglaries involving multiple arresting police agencies or the robbery of an elderly victim, are assigned to trial assistants in the Major Case Bureau for vertical prosecution. Vertical prosecution, where one assistant prosecutes a case from beginning to end, ensures that the most experienced prosecutors handle the most serious cases from police investigation to final disposition.

According to the statistics maintained by the NYS Division of Criminal Justice Services (DCJS), in 2008, the Westchester County District Attorney's Office had a felony conviction rate of over 98.2%. This number includes both guilty pleas and trial convictions. By way of comparison, in 2008 the statewide conviction rate for felony offenses was 90.4%. Our conviction rate in 2008 for violent felony offenders, individuals charged with crimes such as murder, manslaughter, robbery, burglary, aggravated assaults, sex offenses, kidnapping, gun possession, and arson was better than 98.1%. Statewide, the conviction rate for violent felony offenses was 88.3%. The percentage of defendants convicted of violent felony offenses in this County in 2008 who were sentenced to prison/jail was 91.5% as compared to the state rate of 79.8%. We achieved these better than statewide felony conviction rates in a timely and expeditious manner. In 2008, statewide, prosecutors required an average of 204 days to dispose of a felony case. This Office required on average only 84 days to reach a felony disposition. A "quality" indicator of Westchester's outstanding prosecution performance is demonstrated by the fact that 83.1% of all defendants as contrasted with the State average of 58.5% were convicted of the highest charge in the indictment/information (according to statistics reported for the year 2008 by the Division of Criminal Justice Services). So, too, is the Westchester County average for convictions for top counts of violent offenses, which is 71.3% as contrasted with the State's average of 49.4%. Another important figure here is the number of indictments which result in felony convictions by pleas of guilty. Of the 1441 defendants convicted by pleas in 2008, 1360 were felony convictions. This is an extraordinarily high standard. There were a total of 1623 felony defendants disposed of in 2008, including convictions, non-convictions and cases satisfied by the convictions at the Superior Court level. There have been a total of 546 convictions by the end of May 2009. As a result of the seven (7) trial parts in the Westchester County courts, 60 defendants received trials with assistant district attorneys using 859 active court days on trial or conducting hearings in 2008. Additionally, there were 173 cases fully prepared by a trial assistant for imminent trial, which resulted in guilty pleas at this late stage.

My office continues to prosecute violations of probation, having undertaken this responsibility from the County Attorney's Office in 2006. When a defendant is not in compliance with the terms and conditions of probation the Westchester County Department of Probation files a petition and report to the court requesting a Declaration of Delinquency. This is commonly referred to as a Violation of Probation (VOP). The Pleadings Bureau must review the petition and report to the Court, evaluate it for legal sufficiency, amend or otherwise make changes to the VOP paperwork and, in appropriate cases, make applications for arrest warrants. Once the VOP has been scheduled for a court appearance, or when a warrant has been executed, the assistant district attorney must appear in Court to represent the Probation Department, make legal arguments, bail arguments, formulate the prosecution re-sentence recommendations, conference the cases with the judges and defense attorneys, take admissions, conduct hearings where necessary and follow the case to its conclusion. Between January 1, 2008 and December 31, 2008, the Pleadings

Bureau handled one thousand seven hundred ninety four (1,794) felony VOPs. Three hundred fifteen (315) new VOPs were received while three hundred twenty three (323) VOPs were resolved and resentenced. Court appearances were made on one thousand four hundred seventy nine (1,479) felony cases before the designated judges and the ex parte judge. Between January 1, 2009 and April 30, 2009 five hundred sixty eight (568) felony VOPs were handled. One hundred sixteen (116) new VOPs were received while ninety four (94) VOPs were resolved and resentenced. Court appearances were made on four hundred fifty two (452) felony cases before the designated judges and the ex parte judge up to this point in 2009. The Pleadings Bureau assists the individual probation officers and other assistant district attorneys during the resolution of VOPs and related criminal cases prosecuted by the District Attorney's Office. Periodic training sessions are conducted, as needed, with respect to various relevant legal issues. In prosecuting VOPs, numerous telephone calls, e-mails and meetings outside of court are required between the District Attorney's Office, the Probation Department and the defendants' attorneys in order to effectively prosecute these cases.

The most significant advancement in law enforcement is the refinement and application of DNA analysis. DNA is one of the most powerful and reliable evidentiary resources for the just conviction of the guilty and the exoneration of the innocent. In 2008, the application of DNA analysis continued to greatly enhance law enforcement's ability to solve crimes which otherwise would have never been solved. The Combined DNA Index System (CODIS) is a national DNA database maintained by the FBI and contains DNA profiles from convicted defendants. DCJS maintains the New York DNA databank, which is comprised of data generated from DNA testing conducted pursuant to national standards by accredited state laboratories. Evidence collected from crime scenes throughout the County is brought to the Westchester County Laboratory for testing and in the event a DNA profile is developed, the Lab uploads the DNA profile to CODIS. When a match or "hit" is made, the Lab notifies the Office's CODIS administrator as well as the police agency who submitted the evidence tested. The case is assigned to a trial assistant to coordinate with local police for prosecution. With the opening of the Westchester Intelligence Center in 2008, our Office has been able to further enhance our law enforcement capabilities utilizing DNA analysis. To assist local police departments, the Intelligence Center obtains notice of the CODIS hit and, accessing the vast array of data available at the Center, prepares an enhanced intelligence work-up on the subject of the match. In 2008, our Office received Laboratory notification of 98 CODIS hits. This is more than a 100% increase over the 45 CODIS hits received in 2007 and a 450 % increase over the 22 hits in 2006. By June 30, 2009 we received over 40 hits and thus should end this year with approximately 100 notifications.

The dramatic increase in the number of CODIS hits since 2008 is directly attributable to legislation which requires all defendants convicted of Penal Law felonies and certain enumerated misdemeanors to provide a DNA sample after conviction. My Office, working in collaboration with the Department of Probation and the County Department of Correction, developed an innovative system for the local collection of DNA for inclusion in the national and state databanks. In accordance with our model, the 42 local courts of the County, working in conjunction with the 43 local police departments, maintain a countywide DNA local court collection system, under which the local court judge will mandate – and the local police agency will collect – a DNA sample from all designated defendants immediately upon local court sentencing. As a result of these collaborative efforts, each month of 2008, our Office proudly held the distinction of having the highest and most successful DNA collection rate from among all the District Attorney's Offices in the state that participate in "Operation Impact", a DCJS sponsored, multi-agency initiative to reduce violent crime. In 2008, DNA samples were collected from over 2200 defendants convicted in Westchester local courts, all of which have now been added to the CODIS databank. As per the most recent DCJS twelve month report (October 2009) dealing with DNA collection by State District Attorney's Offices by County, Westchester ranked number one with a 91% collection rate compared to a statewide average of 68%.

The District Attorney continues to chair the Westchester County Reentry Task Force (WCRTF), a collaborative effort funded by DCJS that brings together New York State and Westchester County agencies, along with the not for profit and faith based communities. The goal of WCRTF is to prevent crime and reduce recidivism among released offenders by facilitating their successful reintegration into the community. An important aspect of the work of WCRTF is to identify gaps or barriers to needed services that may work against successful reentry. Working closely with Parole, WCRTF recommends needed services and links reentrants to appropriate local service providers. To date, in 2009, WCRTF accepted 160 reentrants into the program a 17% increase over 2008. Of these individuals, 131 were referred to substance abuse treatment; 22 to mental health treatment; 16 to educational services; 44 to employment services; and 38 to Cognitive Behavioral Therapy groups.

The Westchester Intelligence Center, which officially opened in May 2008, is designed to serve as the facilitator for intelligence led policing in Westchester County. Scheduled weekly and monthly meetings continue to be held at the Intelligence Center where various police agencies throughout the county are represented. An intensified focus is placed upon violent crime and criminal gang activity. Information shared at these meetings from countywide field intelligence officers is wedded with analysis of crime data to identify emerging crime patterns and cross jurisdictional offenses. Thereafter, monthly scheduled meetings are held with police chiefs, commissioners, administrators and managers for the purpose of formulating crime intervention strategies. Additionally, the Intelligence Center supports the efforts of Westchester's forty-three local police agencies with a host of law enforcement data resources to augment the criminal investigative process. Duplication of services and effort are a natural outcome of a county that consists of forty-three local police agencies. However, the Intelligence Center allows in some instances, for the consolidation of services and costs for local police departments. Concurrently, the Intelligence Center increases the investigative breadth and depth of local police agencies by providing a host of centralized intelligence based services without any expense incurred by the local municipality. It is not uncommon for local police departments to subscribe to commercial data bases to augment their investigative services where annual subscription costs can rise to \$10,000 per agency. However, these same services are available vis-à-vis the Intelligence Center without cost to local municipalities. Additionally, these same services are provided without cost to county government as they are underwritten by the Intelligence's Center's partnership with the NY/NJ HIDTA (High Intensity Drug Trafficking Area-Regional Intelligence Center). Still in its embryonic stages, the Westchester Intelligence Center has already demonstrated much promise. Inquiries have been made to review cold case homicides, to assist with active investigations and to provide support to police agencies. Parochial interests have been discarded and a tactical approach to address crime by providing essential support for all of Westchester's police agencies is the center's charge. In short order, the center has piloted new data collection protocols with the New York State Division of Criminal Justice Services, is pursuing new protocols with the Bureau of Alcohol Tobacco and Firearms, and is moving forward to connect Westchester's law enforcement intelligence community's disparate data bases. The Westchester Intelligence Center with the support of local police departments is well positioned to provide more opportunities to abate violent crime through intelligence led policing resulting in increased public safety.

Fraud involving real estate, whether it be mortgage fraud by the current owner, refinancing fraud using straw buyers, deed theft, foreclosure rescue scamming, or any combination of these, has been occurring in Westchester County in significant proportions over the last few years. The number of actors in such a case can range from a single perpetrator filing a false deed and then seeking to sell the victim's house for a profit, to a multi-player, multi-level, highly organized ring of thieves preying on a large number of unsuspecting victims. However, even a relatively

uncomplicated one-property case requires amassing a paper trail, reviewing documents, and ascertaining criminal conduct more complicated than the vast majority of street crimes that still, despite significant FBI Index Crime reduction, occupy the vast majority of prosecutorial resources. To adequately address the epidemic of real estate related crime, prosecutors' offices have recognized the need to establish a dedicated task force, sufficiently staffed to investigate and prosecute these types of cases exclusively. In 2009, the DA's Office created such a task force out of existing positions, since the need for such a task force in Westchester County was especially acute. In Westchester, the foreclosure rates are at historic highs while home prices have finally fallen, reversing years of increasing value. Under this approach, the Westchester County District Attorney's Office (WCDAO) hopes to reduce the rampant mortgage fraud rate seen throughout this country. New York State ranked 6th among all of the States according to the 2008 Mortgage Asset Research Institute Report in its incidence of mortgage fraud. In 2008, Westchester County was specifically ranked as the 6th highest county in New York State in terms of its foreclosure filings. Additionally, from 2004 through 2008, there were approximately 600 mortgage fraud related Suspicious Activity Reports filed within Westchester County. Moreover, Westchester County has some of the most expensive property values in the country. As a result, this County is a breeding ground for mortgage fraud, particularly equity stripping scams, which are often accompanied by fraudulent appraisal reports. Also, Westchester County has a significant elderly population which is often a targeted group by mortgage fraud perpetrators. A mortgage fraud task force will improve the Criminal Justice System by providing a focused response to past offenses by prosecuting offenders and obtaining penal sanctions. An increase in penal sanctions will, necessarily, have an immeasurable effect in dissuading future offenses. Further, since restitution for financial losses will form a key component of the cases brought by this Unit, economic wealth will be redistributed from tax-evading offenders to honest, tax-paying citizens.

Specific prosecutorial units are an effective law enforcement tool of long standing and proven effectiveness. The recent wave of foreclosures and mortgage fraud has now made these crimes worthy of the specialized unit model. Our task force, which consists of a unit chief (part time), a full time assistant district attorney, and two criminal investigators, has partnered up with the local United States Attorney, the New York State Attorney General's Office, and geographically contiguous local prosecutors so as to coordinate joint prosecutions, when appropriate, and thereby avoid duplication of effort when perpetrators are already being investigated by one of the above agencies (since there is significant overlap in prosecutorial jurisdiction in this subject area). It is anticipated that the partners will also share, as appropriate, the investigative tasks associated with this area. For example, the New York State Banking Department has an investigative unit for mortgage fraud with whom we are currently working and they have expressed their willingness to continue working jointly with the WCDAO to combat mortgage fraud. Similarly, the WCDAO successfully prosecuted approximately 4-5 real estate fraud cases in 2008 and received approximately more than 20 additional complaints that same year. In 2009 we have targeted approximately 24 individuals engaging in this type of crime and anticipate exceeding our figures from 2008. As a result of these investigations and complaints, the WCDAO has had numerous ongoing contacts with the New York State Banking Department, the Westchester County Clerk's Office (which maintains the County's land records), civil legal service agencies that funnel numerous potential criminal cases to the WCDAO, the United State Department of Housing and Urban Development, the United States Attorney's Office and the Federal Bureau of Investigations.

In order to sustain the significant workload undertaken by this mortgage fraud task force, we are requesting funding for a new position of a Certified Forensic Accountant, who would also handle the significant caseload of financial crimes prosecuted in the Economic Crimes Bureau and the Public Integrity Crimes Bureau. It is an absolute necessity to hire an experienced certified public accountant to forensically examine the financial records that are inextricably interwoven with the facts of a mortgage fraud investigation as well as the variety of financial crimes handled by this office. This request for a single new position in our 2010 Budget Submission will allow our

Economic Crimes Bureau to continue to fully investigate and prosecute complex financial crime cases and is expected to generate income to the benefit of Westchester County in the form of delinquent sales tax recovery. Please see the New Position Request Memorandum attached.

In summary, I have taken care to present to you a budget which I believe to be both fiscally responsible as well as realistic in terms of allowing me to carry out my legal mandate. Many of the initiatives and programs outlined above have been established and/or continued without a request for increased funding by utilizing existing staff and maximizing resources. In addition much of the Intelligence Center has been funded to date through a prudent use of existing resources, grant funding and existing staff personnel.

Although significant in its own right in terms of actual dollars, the District Attorney's budget comprises only a comparatively small component of the overall county budget. In presenting this budget to the Board of Legislators as an elected official, I wish to stress that I have worked closely with the Budget Department in order to present to you a request which is both prudent and responsible and one that takes into account the financial times as they exist today and as they will extend into 2010. As such, I am limiting my request to the creation of only a single new position for the reasons articulated above and in the New Position Request Memorandum attached hereto. It should be noted that this office did not request any additional funding for new positions in 2009. The modest increase of 2.56% in the proposed 2010 budget over the appropriated 2009 budget for the most part is the result of contractual and step salary increases. It should also be noted that the legal and management staff of my office has not received an across the board salary increase since 2007. Also, despite a probable decrease in State grant funding during 2010, I have not asked for an increase in funding in Advance to Grants (4912) and have further decreased our funding requests in a number of lines including Automotive Supplies (3010); Equipment Service and Rental (4070); and Telephones (4160). In addition, I believe that by effectuating budget savings from the 2009 budget and returning these monies to the County general fund that I have again demonstrated my commitment to work with the administration, the Budget Department and the Board of Legislators.



Office of the District Attorney
County of Westchester

MEMORANDUM

To: Anne Reasoner
Budget Director

From: Janet DiFiora
District Attorney

Re: 2010 Operating Budget
New Position Request

Date: August 28, 2009

As you know, mortgage fraud is increasing in Westchester County in significant proportions. Mortgage fraud involves fraud relating to real estate and can occur in a variety of ways. Mortgage fraud can occur by using "strawbuyers" to secure refinancing through false loan applications, by straight deed theft, or by running a fraudulent foreclosure rescue company that ultimately strips the homeowner of title to her house, leaving her homeless. These are simply a few of the many ways in which mortgage fraud rings can destroy the lives of residents in a community. Currently, the District Attorney's Office is investigating approximately 24 targets for mortgage fraud in Westchester County. Moreover, in 2008, we prosecuted approximately 40 white collar criminals for engaging in a variety of different scams or financial crimes and recouped millions of dollars for the citizens of Westchester County who were victimized.

The common denominator in these types of crimes is the fact that the documentary evidence, namely financial documents and bank records, cannot be adequately investigated without the assistance of specially trained individuals. It is the tracing of stolen loan proceeds through an analysis of financial records that often leads one to the true ringleader in such a scam. Accordingly, securing the services of a qualified forensic accountant is not a luxury but a necessity. The Westchester County District Attorney's Office has always engaged the services of a forensic accountant in order to fully investigate and prosecute complex financial crimes. Certified Public Accountants were hired on a contract basis, as needed, in order to assist in these investigations but current financial crime trends no longer makes this a viable option. Market conditions and the drastic increase in the number of financial crimes being investigated by this office require a full-time Certified Public Account on staff as part of the Economic Crime Team.

The Queens County District Attorney's Office employs two (2) full time forensic accountants, who work on financial crimes, as well as two (2) forensic analysts. The two full time forensic accounts are Certified Public Accountants. The Queens County District Attorney's Office employs approximately fifteen (15) Assistant District Attorneys to work on financial crimes while the Westchester County District Attorney's Office currently has approximately five (5) to prosecute this type of crime. The Queens County District Attorney's Office currently has approximately 1600 open financial crime investigations while the Westchester County District Attorney's Office has approximately 125 open financial crimes.

Similarly, the Bronx County District Attorney's office employs four (4) full-time forensic accountants, two of which are Certified Public Accountants and the other two have extensive

backgrounds in accounting. The Bronx County District Attorney's Office employs approximately twenty-five (25) Assistant District Attorneys to work on financial crimes and currently has approximately 100 open financial crime investigations.

Accordingly, we are requesting the appropriate funding for a full time position for a Certified Forensic Accountant with a salary range of approximately \$95,000 to \$120,000.00. By comparison, the salary for a Forensic Account with the Queens County District Attorney's Office ranges from approximately \$95,000 to \$110,000 and the salary range for a forensic accountant with the Bronx County District Attorney's Office ranges from approximately \$90,000 to \$105,000.

The Certified Forensic Accountant's job responsibilities would include investigating financial crimes by analyzing all types of financial data, enhancing case evidence, charting out results, creating exhibits for litigation, and testifying as an expert in both the Grand Jury and at trial. As the Certified Forensic Accountant will be testifying in both the Grand Jury and at trial as an expert witness, it is vital that this position be filled by someone with a certified public accounting license and who is knowledgeable in the state and federal tax laws. In sum, the Certified Forensic Accountant would work closely with the criminal investigator and assistant district attorney assigned to the investigation at each and every stage of the case.

Additionally, any monies recovered from these successful investigations would be used to make the victim(s) whole as well as pay for the costs of prosecution, where appropriate. Accordingly, this position can potentially result in recouping monies expended in the prosecution. Also, when applicable, monies will be returned to State and County Tax Departments; for example, in 2008, the Music Plus case (involving a White Plains store that collected and failed to remit sales tax revenues) returned the following:

Agency	Monies Returned
Office of Alcohol & Substance Abuse Services	\$25,701.51
White Plains Police Department	\$32,930.06
District Attorney's Office	\$21,685.65
State Tax Department	\$119,782.78
Westchester County -From State Tax Department	\$60,759.78*

* Returned to the Westchester County General Fund by the District Attorney's Office

Successfully prosecuted sales tax cases will restore monies back to Westchester, as each municipality collects and pays a portion of sales tax to the County. Presently, The District Attorney's Office has three pending investigations involving multiple businesses which have collected but failed to remit hundreds of thousands of dollars in sales tax revenue to the State. The District Attorney's Office will vigorously pursue collecting the sales tax revenue. As much as 50% of this sales tax revenue is expected to be returned to the County of Westchester. Also, it is expected that more of these cases will be developing as the Tax Department and the DA's Office are working closely to target businesses which have failed to file sales tax returns, accept cash payments and are still in operation--making the collection of these funds to the state and county more probable.

Regarding one such pending case -- (Inv. 09EC-0026, a service station case) it has been verified that on August 13, 2009 \$307,667.60 was remitted to the State Tax Department. The District Attorney's Office has been informed that approximately half of the funds, or approximately \$153,000, would come back to Westchester County as those funds related to Sales Tax collected by the target business but not remitted to the State as sales tax revenue.

Moreover, the Certified Forensic Accountant would be an integral part of most white collar crime prosecutions, which include corporate embezzlements, investment scams, home repair fraud, consumer fraud, scams against the elderly, unemployment insurance fraud and attorney-client thefts. The incumbent hired for the position of Certified Forensic Accountant will work side-by-side with the assistant district attorneys and criminal investigators assigned to financial crime cases and, as such, should be designated in the Non-Competitive Class of Service. Principally it is not practicable to fill this position through competitive examination as the incumbent will serve as a public officer, with a close relationship to the District Attorney and, as such, must always be consistent with the current and new directions of this Office.

In the event that the County's budgetary restraints restrict the creation of a new position, the District Attorney's Office would require that funding be added to Account 4380 Contractual Services in order to retain the necessary services of a Certified Forensic Accountant to perform the above described job responsibilities. Please note, that anything less than a full time person would seriously limit our efforts in successfully pursuing the high volume of financial crimes occurring in Westchester County.

Continued on Next Page

45

OFFICE OF THE DISTRICT ATTORNEY

INVESTIGATIONS DIVISION

ECONOMIC CRIMES BUREAU

ORGANIZATIONAL CHART

Prepared by:

Donna A. Ritucci

9/4/09

