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Federal prosecutions on the decline in Manhattan

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New York City federal prosecutors, wrestling with complex white collar crime and death penalty prosecutions that consume staffing and investigative resources, are bringing significantly fewer cases overall in the past year, according to government data.

Department of Justice data examined by Newsday show that prosecutions started by federal prosecutors in Manhattan dropped 32 percent between Fiscal Year 2005 and Fiscal Year 2006. Large drops were seen in narcotics and organized crime prosecutions while lesser dips occurred in white collar, immigration and weapons cases.

The drop in prosecutions wasn't as large in Brooklyn, which saw a 20 percent dip in the same period, mainly in narcotics and white collar cases.

The statistics are collected by the Justice Department from federal prosecutors and are made available by the non-profit Transactional Records Access Clearinghouse, or TRAC. Nationwide, the drop in cases for all U.S. attorneys offices combined amounted to about 4 percent from Fiscal Year 2005 to Fiscal Year 2006, according to TRAC.

Officials with the U.S. attorneys office in Manhattan and Brooklyn declined last week to talk about caseload statistics, referring calls to the Justice Department in Washington. Justice officials declined to comment on the specific TRAC data but said Friday they weren't always sure how the organization "reconfigured" data.

"We don't reconfigure data," responded TRAC co-director David Burnham. "This is their [Justice Department] data. ... We get it and put it up on the Web."


With the nation's largest metropolitan area and financial center as a base of their operations, Brooklyn U.S. Attorney Roslynn Mauskopf and Manhattan U.S. Attorney Michael Garcia find it easy to make headlines with big cases.


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Last week, Ronell Wilson was formally sentenced to death in Brooklyn federal court for killing two undercover cops. Meanwhile in Manhattan, federal prosecutors announced an agreement not to prosecute a Texas law firm in a tax shelter investigation.

It is those kinds of cases, some experts and defense attorneys said, which have taken much of the effort of prosecutors in the two federal court districts, to the detriment of other kinds of prosecutions.

"The concentration of people and resources in bringing big cases is resulting in the inability to bring more (total) cases," said Gerald Lefcourt, a well-known white collar crime litigator in Manhattan. "The cases are getting so large and so time consuming."

A case in point, Lefcourt said, is the tax shelter fraud cases involving the prominent accounting firm KPMG LLP. Lefcourt, who has been involved in defending the cases, said Garcia has assigned as many as six assistant U.S. attorneys to the matter. In an affidavit filed with the Manhattan federal court, Lefcourt pointed out that 15 million to 20 million pages of documents have been compiled by the government in the cases, a "crushing volume" of material even when reduced to computer discs.

As big as the KPMG case is, the results have been mixed for the government. Garcia's office was criticized last year by Judge Lewis Kaplan, a federal judge in Manhattan overseeing parts of the KPMG case, for using tactics that the jurist said had the effect of pressuring the company into not paying for lawyers for some of its officials.

While Garcia is appealing Kaplan's ruling, his office has been "clipped back" in some other white collar cases by other adverse rulings, said Elkan Abramowitz, another prominent Manhattan defense attorney and columnist for the New York Law Journal.

"They are getting bogged down in the wrong kinds of cases," said Abramowitz, referring to the white collar crime cases that might be better handled by the Securities and Exchange Commission.

Some of the same criticism also is levied on the U.S. attorney's office in Brooklyn.

"I think that some of the cases aren't worthy of a federal prosecution," said Brooklyn defense attorney James DiPietro about some of the gambling and organized crime cases he has seen in the borough recently.

In recent years, Brooklyn federal prosecutors also appear to have been developing more of the difficult-to-prosecute and resource-intensive white collar crime cases, mostly for fraud. A case in point is the current trial in Brooklyn of the so-called "squawk box" prosecution involving brokers accused of illegally allowing clients to listen in on inside stock information.

The work load in Brooklyn also is impacted by the volume of death penalty cases that have developed.

Last December alone, the courthouse on Cadman Plaza East had three death penalty cases underway, including that of Wilson. The cases of drug dealer Kenneth McGriff and contract killer Martin Aguilar ended in convictions but with the juries deciding on life in prison instead of capital punishment.

In May, a two-defendant death penalty case involving murder in the Guyanese immigrant community is slated to start in Brooklyn. Two more death trials are scheduled for later in the year, and officials on Friday decided to see the death penalty against reputed Bonanno crime captain Vincent Basciano.

The death cases in Brooklyn, which require as many as three prosecutors, are "soaking" up staff and resources of prosecutors, said one federal judge who didn't want to be identified.

Labor-intensive cases, coupled with a high attorney vacancy rate, makes it even more challenging to bring prosecutions. In Brooklyn, federal prosecutors currently have 25 vacancies in positions for assistant U.S. attorneys, who do the lion share of the work, said government and judicial sources. The office had 148 attorneys on its roster at the end of January, which indicates a 14.4 percent vacancy rate.

Any time an office is down so many prosecutors, its production is bound to be affected, said Alan Vinegrad, a Manhattan attorney who served as Brooklyn's U.S. attorney from 2001 to 2002.

Garcia's office roster showed 218 attorneys but no vacancy information was available.

Spokesmen for Garcia and Mauskopf said they couldn't disclose the vacancies in their respective offices. Justice Department officials also wouldn't disclose attorney vacancy rates for individual prosecutors' offices but said nationwide the rate was 13.56 percent.

Another problem some attorneys and judges see as peculiar to Brooklyn is the ambiguity surrounding Mauskopf's future with the office. She has been nominated for a federal judgeship in Brooklyn and is expected to be confirmed by the fall. Because of her expected departure, the hiring of replacements for senior staff who have already left is made even more difficult, some judges in Brooklyn say.

The good news in recent weeks, however, is that federal budget constraints have lessened and that will help federal prosecutors to hire more people. In Brooklyn, new hirings already have begun, with six new prosecutors "in the hopper," said one law enforcement official. The result could be more cases in FY 2007.

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