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ARTICLE

THE WORK OF THE UNITED STATES ATTORNEY'S OFFICES ACROSS THE SEQUENTIAL INTERCEPT MODEL

D. Josev Brewer[†]

I. INTRODUCTION

By any timeline, human or cosmic, the public prosecutor is not Jurassic; she is, juridically speaking, very new on the scene. There is not an “ancient” conception of a state-sponsored prosecutor—one who advocates the public good on behalf of the ruling or constitutional authority. Our oldest sources of law did not know her. Indeed, as late as the seventeenth century, most criminal cases in England were brought by a “private” prosecutor, typically of financial means, and sponsored by an independent association chartered for such purposes—criminal prosecution.¹ “Private prosecution refers to the system by which private citizens brought criminal cases to the attention of court officials, initiated the process of prosecution, and retained considerable control over the ultimate disposition of cases”² It was “one citizen taking another to court without the intervention of the police.”³

Older harbingers of this practice included the system in Rome, where private prosecutions were long available.⁴ Likewise, Jewish law recognized the role of private citizens to accomplish a criminal prosecution insofar as two private accusers were required to indict before a tribunal, called “the

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1. ALLEN STEINBERG, *THE TRANSFORMATION OF CRIMINAL JUSTICE PHILADELPHIA, 1800-1880*, 5 (Thomas A. Green ed., 1989).

2. *Id.*

3. *Id.* at 1.

4. JOHN MAXCY ZANE, *THE STORY OF LAW* 130 (Liberty Fund, 2d ed. 1998) (1927). Of course, Roman law also provides us with initial conceptions of “public crimes” and “public prosecutions,” which eventually began to supplant private ones. *Id.*

Synhedrian.”⁵ Indeed, it is unequivocally America’s prosecutorial heritage too, where here in the colonies and through the time of the early Republic, private prosecution was adapted from English practice and pursued, in certain municipalities, through at least the middle of the nineteenth century.⁶

To be clear, “private prosecution” is meant simply to distinguish from the state actor, the *vessel* of criminal prosecution rather than its procedure or laws. Certainly, English criminal common law, as a body of laws, has more historicity.⁷ But, by all accounts, there was not, even in England, “one all-embracing system that could be called ‘the’ English system of criminal law” until the late seventeenth century.⁸

The description and development of the public prosecutor, therefore, is necessarily a modern enterprise. If written law is roughly 4000 years old,⁹ the *office* of the prosecutor—here in the United States (or in all of history, really)—is generously still only in its youth. Simply put, the *public* prosecutor is a new thing. One would not say, for instance, that Antebellum architecture is historical, on a Mayan timescale, even as it feels fairly old to a proud South Carolinian.¹⁰

So, as one undertakes to discuss the basic obligations or parameters of a public prosecutor, this short runway of historical context should caution. Namely, public prosecution remains some work in progress. That it might resemble something slightly different now than it did fifteen or fifty or one hundred and fifty years ago is understandable; the concrete is still wet, in a manner of speaking.

It is out of this want of serious jurisprudential legacy and relative chaos of localized and regional criminal practice that the Department of Justice

5. Theodore Spector, *Some Fundamental Concepts of Hebrew Criminal Jurisprudence*, 15 J. CRIM. L. & CRIMINOLOGY 317, 321 (1924).

6. STEINBERG, *supra* note 1, at 2.

7. See HAROLD J. BERMAN, LAW AND REVOLUTION II 306-307 (2003); George T. Anagnost, *Holmes & the Case of the Curious Palimpsest*, ARIZ. ATT’Y, Apr. 2010, at 38, 45.

8. BERMAN, *supra* note 7, at 306-07.

9. The Hammurabi Code, named for the Babylonian king, is widely recognized as our oldest collection of written law. See ZANE, *supra* note 4, at 58.

10. This Author was born in Detroit, Michigan, and raised in the Baltimore-Washington Metropolitan area, the son of a Bessemer, Alabama beat cop and career FBI agent. Essentially, since undergraduate school at Furman University, South Carolina has been an adult home. For those of us here, the history of architecture essentially begins and ends at Spanish moss and Charleston-ivied brick edifice.

(“DOJ”) was established in 1870.¹¹ The preceding tradition of private prosecution had been characterized by abuse, partiality, and barrier to entry¹²:

Private prosecution was said to often be deployed in the service of malice, harassment, blackmail . . . extortion . . . or what was, in effect, the pursuit of a civil claim through the criminal courts . . . opening the “door to bribery, collusion and illegal compromises” Allegations were made that cases could be brought merely to earn the costs Overall, claimed Lord Brougham, the system was a “perversion of the criminal law for personal and guilty purposes” A matter affecting the public good had been entrusted to those moved by private passion.¹³

It was slowly abandoned precisely for these deficiencies¹⁴ and, therefore, is a reasonable object lesson in what a modern prosecutor, at least, is *not*.

Scholars, therefore, have posited that the DOJ was established as “a new reform movement [of] . . . professionalization and civil service,”¹⁵ (although not necessarily in direct linear response to the excesses of private prosecution). The Attorney General’s office had been established, nearly a century earlier, by the Judiciary Act of 1789.¹⁶ The Act had also designated that the President would appoint a “meet person learned in the law’ in each judicial district to ‘act as attorney for the United States in such district.”¹⁷ These “meet persons” are now known as United States Attorneys.¹⁸ The Attorney General, however, “[o]ver the next eight decades” exercised no

11. Jed Handelsman Shugerman, *The Creation of the Department of Justice: Professionalization Without Civil Rights or Civil Service*, 66 STAN. L. REV. 121, 122 (2014); see also Act to Establish the Department of Justice, Pub. L. No. 41-97, 16 Stat. 162 (1870).

12. STEINBERG, *supra* note 1, at 2.

13. Paul Rock, *Victims, prosecutors and the State in nineteenth century England and Wales*, 4 CRIM. JUST. 331, 338 (2004).

14. STEINBERG, *supra* note 1, at 2.

15. Shugerman, *supra* note 11, at 123. Reforms focused on “restructuring government employment by merit, competitive testing, and job security, rather than political patronage.” *Id.*

16. Charles Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 108-09 (1923); see also Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 92-93.

17. Shugerman, *supra* note 11, at 129.

18. Under the presidentially-appointed United States Attorneys are Assistant United States Attorneys (AUSA), a position created by Congress in response to the “wartime increase in legal casework” starting in 1861. See Shugerman, *supra* note 11, at 140.

control over these districts or United States Attorneys.¹⁹ Even still, a “significant number of the prosecutions were undertaken by private parties during this period.”²⁰ And so, the formalization and “centralization” of the DOJ in 1870 was finally “[intended] to separate federal lawyers from local partisan politics.”²¹

All this to say, the establishment of federal public prosecution in this country was characterized, at least, by two contextual attributes: (1) that it enjoyed no previous historical analog and (2) that it was a repudiation of community corruption in law enforcement. Otherwise, the DOJ abides no real precedent in its responsibilities. It is certainly a creature of statute, submissive to criminal procedural rule and the United States Constitution, and, as will be discussed, its own internal guidance and policy. Within statutory and constitutional constraints, however, the DOJ is precisely whatever kind of prosecutorial arm it identifies itself to be. It is, in philosophical parlance, *a priori*.

But, the United States Supreme Court has affirmed that the prosecutor is, at least, “quintessentially” executive and that “law enforcement functions” are the province of “officials within the Executive Branch.”²² In this vein, the venerated Attorney General, Robert Jackson, in his renowned 1940 speech, entitled “The Federal Prosecutor,” summarized the breadth of the prosecutorial purpose as follows: “This authority [to prosecute] has been granted by people who really wanted the right thing done—wanted crime eliminated—but also wanted the best in our American traditions preserved.”²³

As discussed, though, the question that the history of law cannot quite answer is, what are the contours of those “law enforcement functions”? How many ways and how many opportunities are there to “eliminate” crime? And, how broadly should one view the obligation to “preserve” such “American traditions”?

To be clear, the ambitions of this Article are not so grand. Certainly, prosecutors are litigators, first, and their duties, ethic, and job description are most easily and stereotypically understood with respect to investigations

19. *Id.* at 129.

20. *Id.*

21. *Id.* at 171.

22. See *Morrison v. Olson*, 487 U.S. 654, 705-06 (1988).

23. Robert H. Jackson, U.S. Att’y Gen., *The Federal Prosecutor*, Address Before the Second Annual Conference of U.S. Attorneys (Apr. 1, 1940), in 31 J. AM. INST. CRIM. L. & CRIMINOLOGY 3.

and the in-court prosecution of criminal law.²⁴ Numerous scholars and practitioners have given attention to the duties and responsibilities of the prosecutor in this sense.²⁵ That is not new terrain.²⁶

This Article would attempt something more modest and practical. Rather than a work in apologetic or aspiration regarding what the DOJ prosecutor ought to be, which is neither this Author's station nor mandate, this Article would offer a view of what she has most recently been. Some part public resource and some part institutional "show and tell," this Article would attempt to archive what exactly the present-day federal prosecutor does to mete out her law enforcement functions. If, as previously suggested, the depiction of the prosecutor is necessarily a modern and developing enterprise, where along the evolutionary trajectory do we find her progress? What precisely does it look like, early in the twenty-first century, to secure community safety through the enforcement of law? Violent and gun crime is an existential threat.²⁷ According to the Federal Bureau of Investigation, violent crime rose in 2016 for a second straight year, by 4.1%.²⁸ Specifically, there were an estimated 1.2 million violent crimes last year.²⁹ "Murder and nonnegligent manslaughter offenses increased 8.6%" from 2015 estimates.³⁰ The Department of Justice takes seriously its obligation to resist it, in the courtroom and beyond.³¹

24. See Leslie C. Griffin, *The Prudent Prosecutor*, 14 GEO. J. LEGAL ETHICS 259, 266-74 (2001).

25. Roberta K. Flowers, *A Code of Their Own: Updating the Ethics Codes to Include the Non-Adversarial Roles of Federal Prosecutors*, 37 B.C. L. REV. 923, 933 (1996).

26. See K. Babe Howell, *Prosecutorial Discretion and the Duty to Seek Justice in an Overburdened Criminal Justice System*, 27 GEO. J. LEGAL ETHICS 285, 310 (2014) ("The emphasis on procedural justice and the guilt of individual defendants, rather than the duty to exercise discretion in the public interest, reflects the construction of the duty as flowing from the power the prosecutor wields."). See also Trey Gowdy, *Criminal Dockets Administered by Prosecutors Past, Present and Future*, 21 S.C. LAW. 24 (Jan. 2010); Angela J. Davis, *The American Prosecutor: Independence, Power, and the Threat of Tyranny*, 86 IOWA L. REV. 393 (2001); Griffin, *supra* note 24.

27. Ben Casselman, Matthew Conlen & Reuben Fischer-Baum, *Gun Deaths in America*, FIVETHIRTYEIGHT, <https://fivethirtyeight.com/features/gun-deaths/> (last accessed Feb. 7, 2018).

28. FBI Nat'l Press Office, FBI Releases 2016 Crime Statistics, Press Release (Sept. 25, 2016).

29. *Id.*

30. *Id.*

31. U.S. Dep't of Just. Off. of Pub. Aff., FBI Releases 2016 Crime Statistics in the United States, Press Release (Sept. 25, 2017).

As described below, U.S. Attorneys' Offices ("USAO"), across the country, have embraced their responsibilities along a spectrum of intervention moments with citizens, which both precede and follow, but always supplement and fulfill, the technical in-court prosecution of criminal cases.³² These actions reflect the belief that the public prosecutor "is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system."³³

To this end, the Article has three parts. In Part II, the Article borrows—from mental-health legal scholarship—the "Sequential Intercept Model" as a conceptual framework for thinking about the breadth of prosecutorial work to resist serious crime and to safeguard the public. In Part III, the Article briefly describe some of the statutory, case law, regulatory, ethical, and literary bases for considering prosecutorial work in this way. And, finally, in Part IV, the Article summarizes the programming of the various U.S. Attorneys' Offices along this spectrum of law enforcement intervention, with a particular emphasis on the District of South Carolina as a basic model and case study.

II. THE SEQUENTIAL INTERCEPT MODEL

This Article begins by offering the Sequential Intercept Model (SIM) as a framework to think about the various aspects of prosecutorial work and to improve the efficacy of the prosecutor's overall contribution to law enforcement and community safety. Of course, reference to this framework is not an endorsement or adoption of it by the Department of Justice, as either an institutional or clinical matter. Rather, the SIM represents merely a conceptual and contextual tool to think about the specific law enforcement work of various U.S. Attorneys' Offices, as will be described in Part IV.

Consistent with its mandate, as will be discussed more specifically in Part III, the public-prosecutor role should be imagined in a way that fully maximizes the office's opportunity to prevent crime. The hope is that, by viewing the prosecutorial function in light of the SIM, as described below, prosecutors can ensure that the important work of crime prevention, especially of the violent kind, is accomplished in the most complete sense of that obligation.

32. Executive Office for the United States Attorney 2016 Prevention, Diversion, and Reentry Survey (unpublished) (on file with author) (hereinafter cited as "EOUSA Survey".)

33. STANDARDS FOR CRIMINAL JUSTICE r. 3-1.2(f) (AM. BAR ASS'N 2015).

A. *Origins in Mental Health Context*

The SIM was first propounded by mental health practitioners, Mark Munetz, M.D., Patricia Griffin, Ph.D., and Hank Steadman, Ph.D.³⁴ It identifies, along a procedural spectrum, five points of intervention³⁵ between the criminal justice system and those with mental illness. It was specifically articulated to conceptualize “the ways people typically flow through the criminal justice system and looks for ways to intercept those with mental illness and often co-occurring substance use disorders in order to . . . decrease involvement in the criminal justice system in the first place . . . and . . . decrease the rate of return to the criminal justice system.”³⁶ The five intercepts include:

1. Prevention & Law Enforcement
2. Detention
3. Courts & Jail
4. Reentry
5. Community Support³⁷

The Model originally imagined a series of opportunities to prevent persons with mental illness from “going ‘deeper’ into the criminal justice system.”³⁸ Its authors presumed that, decreasingly, more people will be intercepted at each preceding level, like a filter.³⁹ These intercepts reflect places where individuals with mental health “can leave the criminal justice system, reenter society, and be linked to treatment.”⁴⁰ In other words, the goal of the model is to identify all occasions available to reduce the volume and extent of interaction individuals in the community have with law enforcement and the criminal justice system, while ensuring the same degree of public safety for all. Some elaboration on the specific intercepts is useful. First, this Part will describe the intercepts with respect to how they were originally envisioned for individuals with mental health problems who enter the criminal justice system. Second, some additional and brief

34. Mark R. Munetz & Jennifer L.S. Teller, *The Challenges of Cross-Disciplinary Collaborations: Bridging the Mental Health and Criminal Justice Systems*, 32 CAP. U. L. REV. 935, 941 (2004).

35. *See id.* at 942-43. Some versions articulate six intercept points.

36. *Id.* at 942.

37. *Id.* at 942-43.

38. *Id.* at 941.

39. *Id.*

40. Risdon N. Slate, *Deinstitutionalization, Criminalization of Mental Illness, and the Principle of Therapeutic Jurisprudence*, 26 S. CAL. INTERDISC. L.J. 341, 353 (2017).

comment will be made as to the applicability of that same model to how prosecutors can conceptualize the enforcement of law with respect to the entire population, not just those with mental health concerns.

B. *The Intercepts*

The first intercept, Prevention & Law Enforcement, exists for any individual at all points prior to violating any laws.⁴¹ It is the preemptive opportunity of law enforcement to ensure that individuals do not commit crime. In the context of mental illness, this has meant the availability of relevant treatment, so that procedural diversion from, or accommodation in, the criminal process is entirely avoided.⁴² It is a “[p]rearrest” diversionary opportunity.⁴³ But, broadly conceived, from early childhood education through the normal operation of law enforcement agencies to maintain public safety and peace, this intercept encompasses all available chances to intervene in people’s lives to reduce their proclivity to, or risk of, crime.⁴⁴

The second intercept, Detention, exists for any individual in the moment where the system has reason to believe, to wit, “cause,” that they have violated the law.⁴⁵ With respect to those who suffer mental health issues, this has meant the development of pre-booking approaches used to divert those individuals from the criminal process, including into crisis intervention teams or to community service officers.⁴⁶ Stated more conceptually, however, the second intercept includes the range of alternatives available to law enforcement to either pursue prosecution or to help qualifying individuals, charged with a crime, avoid the full weight of the criminal justice system, where appropriate. This intercept can include options from those related to prosecutorial charging decisions through formal diversionary programing.⁴⁷

The third intercept, Courts & Jails, arises when an individual admits or is proven to have violated the law.⁴⁸ At this intercept, individuals are either

41. See Mark R. Munetz & Patricia A. Griffin, *Use of the Sequential Intercept Model as an Approach to Decriminalization of People With Serious Mental Illness*, 57 *PSYCHIATRIC SERVS.* 544, 545 (Apr. 2006) (hereinafter “Munetz II”).

42. Slate, *supra* note 40, at 354.

43. Munetz II, *supra* note 41, at 545.

44. See *id.* at 544-45.

45. See *id.* at 545-46.

46. Slate, *supra* note 40, at 354.

47. *Id.*

48. See Munetz II, *supra* note 41, at 547.

brought to justice through normal criminal procedure or, in the mental health context, diverted to specialty dockets or courts designed to accommodate and rehabilitate those disorders.⁴⁹ It is the intervention opportunity to incapacitate individuals in proportion to their culpability and threat to community safety.

The fourth intercept, Reentry, occurs after an individual has paid the consequences for having violated the law—prison.⁵⁰ It anticipates behavioral rehabilitation and logistical preparation for their return. Reentry emphasizes the coordination of resources between the incarcerated person and their family, community, and service providers with whom they will eventually reconnect.⁵¹ It is the intervention opportunity for law enforcement to increase the likelihood that such individuals will never reoffend again.

The last intercept, Community Support, includes the continuing opportunities that exist to ensure that those who have previously violated the law, and paid the attendant consequences, never do so again.⁵² As a result of their convictions, previously incarcerated individuals remain subject to the criminal justice system as probationers and parolees.⁵³ That these individuals remain subject to some legal process and supervision, affords ongoing opportunity for law enforcement to increase, through appropriate available services, the likelihood of success back home.⁵⁴

C. Application to Criminal Justice Generally

To date, the SIM has essentially only been discussed and applied with respect to the interface between criminal justice and the field of mental health.⁵⁵ Indeed, recently, some have considered the SIM as a template for implementation of various initiatives under the 21st Century Cures Act,⁵⁶ passed last year. The 21st Century Cures Act proposes federal funding for

49. *See id.*

50. *See id.*

51. *See id.*

52. *See* Munetz II, *supra* note 41, at 547.

53. *Id.*

54. *See id.*

55. *See id.*; *see also* Amber Beard, *Competency Restoration in Texas Prisons: A Look at Why Jail-Based Restoration Is A Temporary Fix to A Growing Problem*, 16 TEX. TECH ADMIN. L.J. 179, 192 (2014); Munetz II, *supra* note 41.

56. Dan Abreu, *Maximizing the Cures Act By Utilizing The Sequential Intercept Model*, POL'Y RES. ASSOCIATES (Feb. 8, 2017), <https://www.prainc.com/curesact-sim/>.

certain programming to reduce the disproportionate prevalence of justice-involved persons with mental illness.⁵⁷

But, while the causes of mental health disorder and the reasonably heightened and associated public sympathies potentially distinguish afflicted individuals from certain other populations of defendants, there is nothing about the SIM, itself, that makes it uniquely suited to persons with mental health issues exclusively. In fact, the framework simply maps the natural, fairly common-sense, cycle of interaction between law enforcement and individuals in the community, law-abiding or not.

Instead, the key and transferable attribute of the SIM is “[t]he crucial role that criminal justice practitioners play in the interface” between the community and criminal justice system.⁵⁸ It necessarily relies on “properly trained” practitioners, in this instance, prosecutors, to recognize attributes of defendant populations in order to associate them with commensurate outcomes.⁵⁹ Its progenitors have observed that “law enforcement agencies have played an increasingly important role in the management of persons” in crisis.⁶⁰

By the SIM’s very nature, the full spectrum of its intercepts is most accessible to prosecutors and law enforcement. Where educators, church leaders, and social service providers can make an impact at certain intervention moments, to wit, early childhood education or transitional housing, the prosecutor is uniquely positioned to make at least some contribution at all five intercepts. Indeed, as will be discussed, relevant sources of prosecutorial power and discretion anticipate as much.

III. SOURCES OF PROSECUTORIAL DUTY & FUNCTION IN LIGHT OF THE SEQUENTIAL INTERCEPT MODEL

This Part, therefore, attempts to identify reasonable bases, in statute, case law, regulation, ethics, and literature, to conceptualize this work of the modern, federal prosecutor along the SIM. As it turns out, “what is a prosecutor?” is a metaphysical query, even as it is a mostly legal one. Sufficient digital bandwidth has already been devoted to the consideration of “pretty phrase[s],” associated with the profession, like “ministers of

57. 21st Century Cures Act, Pub. L. No. 114–255 § 14003 (2016).

58. Slate, *supra* note 40, at 353.

59. *Id.* at 355.

60. See Munetz II, *supra* note 41, at 545-46.

justice.”⁶¹ It is indeed widely recognized that a prosecutor has an ethical and legal duty to “do justice.”⁶² “She must strive to seek justice and fairness. The prosecutor is required to protect his own case and, in some situations, the opponent's case as well. The dual role of the prosecutor produces a quasi-judicial office rather than that of a partisan advocate.”⁶³

Commentators have suggested, however, that such language sometimes fails to give practical texture to the limits or the expanse of the job, and, as an Assistant United States Attorney has noted, risks descending rapidly into “malarkey.”⁶⁴ “The concept [is] protean as well as vague.”⁶⁵ “While conveying an important generalized value, such an imprecise term can be problematic because it gives little specific guidance to prosecutors.”⁶⁶

Again, more comprehensive discussions exist.⁶⁷ But, as this Article eventually attempts to describe the work of various USAOs, it is important to identify basic sources of duty that explain the work of those offices at each intercept along the SIM.

Said differently, what are the signposts in statute, case law, regulation, ethics, and literature, for the broad work of the prosecutor?

A. Statutory

As previously referenced, the U.S. Attorney is first a creature of statute. The enabling legislation reads:

And there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the

61. Kenneth Bresler, *Pretty Phrases: The Prosecutor As Minister of Justice and Administrator of Justice*, 9 GEO. J. LEGAL ETHICS 1301, 1301 (1996); see also Bruce A. Green, *Why Should Prosecutors “Seek Justice”?*, 26 FORDHAM URB. L.J. 607, 608 (1999) (containing a comprehensive discussion concerning the source of a prosecutor's duty to “seek justice”).

62. Fred C. Zacharias, *The Role of Prosecutors in Serving Justice After Convictions*, 58 VAND. L. REV. 171, 173 (2005); see MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13 (AM. BAR ASS'N 2004) (stating that the prosecutor's “duty is to seek justice”).

63. Roberta K. Flowers, *A Code of Their Own: Updating the Ethics Codes to Include the Non-Adversarial Roles of Federal Prosecutors*, 37 B.C. L. REV. 923, 933–34 (1996).

64. Bresler, *supra* note 61, at 1301.

65. Green, *supra* note 61, at 608.

66. Tamara Rice Lave, *The Prosecutor's Duty to “Imperfect” Rape Victims*, 49 TEX. TECH L. REV. 219, 224 (2016).

67. See, e.g., Green, *supra* note 61.

authority of the United States, and all civil actions in which the United States shall be concerned, except before the supreme court in the district in which that court shall be holden.⁶⁸

This statutory language reasonably anticipates duties in investigation, indictment charging, plea bargaining, trial, sentencing, and post-conviction.⁶⁹ Critically, those duties are necessarily conducted with discretion and judgment.⁷⁰ “Full enforcement of the law would not only be impractical, but also unwise. Prosecutors are expected to make decisions regarding which cases *will* be prosecuted out of the many which *could* be prosecuted.”⁷¹ Implicit in these ideals are the seeds of a kind of discretion that reasonably seeks to tailor the responsiveness of law enforcement and prosecution to the disparate needs of varying communities and populations of offenders.

B. *Constitutional*

In accord with this view, the United States Supreme Court has famously expounded on these basic obligations:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; *and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.* As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. *It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.*⁷²

The Supreme Court’s words affirm the ethical impetus at the core of federal prosecution to know when to use, and not use, power.

68. Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 92.

69. Griffin, *supra* note 24, at 266-74.

70. *See id.*; *see also* Roger A. Fairfax, Jr., *Prosecutorial Nullification*, 52 B.C. L. REV. 1243, 1244 (2011).

71. Fairfax, *supra* note 70, 1244 (alteration in original).

72. *Berger v. United States*, 295 U.S. 78, 88 (1935) (emphasis added).

C. Regulatory

To that end, the DOJ has promulgated the United States Attorneys' Manual (hereinafter the USAM), as an internal reference for United States Attorneys, Assistant United States Attorneys, and Department attorneys in the exercise of that prosecutorial judgment and discretion.⁷³ The USAM "contains general policies and some procedures relevant to the work of the United States Attorneys' offices and to their relations with the legal divisions, investigative agencies, and other components within the Department of Justice."⁷⁴ The USAM includes significant language that would explain the presence of prosecutorial involvement all along the SIM. First, concerning the Prevention & Law Enforcement Intercept, the USAM codifies the importance of pre-prosecutorial discretion:

9-27.220 - Grounds for Commencing or Declining Prosecution

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless

- (1) the prosecution would serve no substantial federal interest;
- (2) the person is subject to effective prosecution in another jurisdiction; or
- (3) *there exists an adequate non-criminal alternative to prosecution.*⁷⁵

Relevant here, is the sensitivity to "non-criminal alternative[s] to prosecution."⁷⁶ In that regard, the USAM continues:

9-27.250 - Non-Criminal Alternatives to Prosecution

In determining whether there exists an adequate, non-criminal alternative to prosecution, the attorney for the government should consider all relevant factors, including:

1. *The sanctions or other measures available under the alternative means of disposition;*

73. See U.S. Atty's Manual, U.S. Dep't of Just., § 1-1.100, <https://www.justice.gov/usam> (hereinafter "USAM").

74. *Id.*

75. *Id.* at § 9-27.220 (emphasis added).

76. *Id.*

2. The likelihood that an effective sanction will be imposed; and
3. The effect of non-criminal disposition on federal law enforcement interests.⁷⁷

The Comment to Section 9-27.250 elaborates:

When a person has committed a federal offense, it is important that the law respond promptly, fairly, and effectively. *This does not mean, however, that a criminal prosecution must be commenced.* In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction.⁷⁸

Along with the express authority to pursue aggressively investigation and indictment, the USAM also contemplates a consideration of all possible outcomes and alternatives available in sanction for the universe of criminal conduct, from remedial programming, to civil fines, to criminal penalty. For example, the USAM emphasizes early intervention and attention to youth activity in gang and other violence:

9-63.1220 - Youth Violence

Experience has shown that prosecutors cannot afford to ignore the juvenile gang members. If only the adult members of the gang are investigated and prosecuted, juveniles will fill the void and the gang will survive.⁷⁹

Taken together, Sections 9-27.230 and 9-63.1220 would reasonably imagine both kinds of approaches to young people in the community: intervention and prosecution.

The USAM further contemplates interventions at the Detention Intercept of the SIM, namely, in the form of Pretrial Diversion:

9-22.010 - Introduction

Pretrial diversion (PTD) is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services

77. *Id.* at § 9-27.250 (emphasis added).

78. *Id.* at cmt. B (emphasis added).

79. USAM, *supra* note 73, § 9-63.1220.

administered by the U.S. Probation Service. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed; unsuccessful participants are returned for prosecution.

The major objectives of pretrial diversion are:

To prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services.

To save prosecutive and judicial resources for concentration on major cases.

To provide, where appropriate, a vehicle for restitution to communities and victims of crime.

The period of supervision is not to exceed 18 months, but may be reduced.⁸⁰

Section 9-22.010 is a recognition that, for certain qualifying individuals, some safety valve should exist from the force of the criminal justice system.

Concerning the Courts & Jail and Reentry Intercepts, the USAM provides the following, with respect to the DOJ's commitment to rigorous prosecution at the midpoint intercept of the SIM:

Selecting Charges—Charging Most Serious Offenses

Once the decision to prosecute has been made, the attorney for the government should charge and pursue the most serious, readily provable offenses. By definition, the most serious offenses are those that carry the most substantial guidelines sentence, including mandatory minimum sentences.

However, there will be circumstances in which good judgment would lead a prosecutor to conclude that a strict application of the above charging policy is not warranted. In that case, prosecutors should carefully consider whether an exception may be justified. Consistent with longstanding Department of Justice policy, any decision to vary from the policy must be approved by a United States Attorney or Assistant Attorney General, or a supervisor designated by the United States Attorney or Assistant

80. *Id.* at § 9-22.010.

Attorney General, and the reasons must be documented in the file.⁸¹

Even here the USAM brings in some proportionality and consistency and allows for the possibility of tailored prosecutorial decisions based on proper internal approvals.⁸²

D. Executive Action

Certainly, law enforcement priorities vary some from presidential administration to administration, and such executive level changes can be an additional source of authority that shapes, over time, a federal prosecutor's approach. The Administration of President Barack Obama was marked by significant bi-partisan attention to criminal justice reform.⁸³ Much of these same ideals have persisted. Indeed, very recently President Donald J. Trump signed an executive order, which reads in relevant part:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to maximize the impact of Federal Government resources to keep our communities safe, it is hereby ordered as follows:

Section 1. Purpose. The Federal Government must reduce crime, enhance public safety, and increase opportunity, thereby improving the lives of all Americans. In 2016, the violent crime rate in the United States increased by 3.4 percent, the largest single-year increase since 1991. Additionally, in 2016, there were more than 17,000 murders and nonnegligent manslaughters in the United States, a more than 20 percent increase in just 2 years. The Department of Justice, alongside State, local, and tribal law enforcement, has focused its efforts on the most violent criminals. Preliminary statistics indicate that, in the last year, the increase in the murder rate slowed and the violent crime rate decreased.

81. *Id.* at § 9-27.300 (emphasis added).

82. *Id.*

83. Wesley Losery, *The Bipartisan Push for Criminal Justice Gets a Koch-funded Boost*, WASH. POST (Feb. 29, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/02/19/the-bipartisan-push-for-criminal-justice-gets-a-koch-funded-boost/?utm_term=.9f1a5c132b00.

To further improve public safety, we should aim not only to prevent crime in the first place, but also to provide those who have engaged in criminal activity with greater opportunities to lead productive lives. *The Federal Government can assist in breaking this cycle of crime through a comprehensive strategy that addresses a range of issues, including mental health, vocational training, job creation, after-school programming, substance abuse, and mentoring.* Incarceration is necessary to improve public safety, but its effectiveness can be enhanced through evidence-based rehabilitation programs. These efforts will lower recidivism rates, ease incarcerated individuals' reentry into the community, reduce future incarceration costs, and promote positive social and economic outcomes.

Sec. 2. Policy. It is the policy of the United States to prioritize efforts to prevent youths and adults from entering or reentering the criminal justice system. While investigating crimes and prosecuting perpetrators must remain the top priority of law enforcement, *crime reduction policy should also include efforts to prevent crime in the first place and to lower recidivism rates. These efforts should address a range of social and economic factors, including poverty, lack of education and employment opportunities, family dissolution, drug use and addiction, mental illness, and behavioral health conditions.* The Federal Government must harness and wisely direct its considerable resources and broad expertise to identify and help implement improved crime prevention strategies, including evidence-based practices that reduce criminal activity among youths and adults. Through effective coordination among executive departments and agencies (agencies), the Federal Government can have a constructive role in preventing crime and in ensuring that the correctional facilities in the United States prepare inmates to successfully reenter communities as productive, law-abiding members of society.⁸⁴

The March 7, 2018 Order establishes a Federal Interagency Council on Crime Prevention and Improving Reentry. Along with other designees, the Council includes a representative of the Department of Justice. The Council

84. Exec. Order, *Federal Interagency Council on Crime Prevention and Improving Reentry* (Mar. 7, 2018), <https://www.whitehouse.gov/presidential-actions/federal-interagency-council-crime-prevention-improving-reentry/> (emphasis added).

is tasked with making recommendations for “evidence-based programmatic and other reforms” that help prevent criminal activity and reduce recidivism rates, to include inmates’ access to education, training, work programs, mentors, mental-health and addiction treatment, and employment.⁸⁵ This Executive Order is some additional acknowledgement that crime prevention is best addressed across a series of intervention moments.

E. Ethical

In addition to mandates of statute, policy, and executive order, a review of applicable ethical standards also provides insight into the prosecutor’s efforts along the five SIM Intercepts.

The “McDade-Murtha” Amendment to the United States Code makes federal prosecutors subject to the same ethical rules of the state within which they practice as other lawyers: “An attorney for the Government shall be subject to State laws and rules . . . to the same extent and in the same manner as other attorneys in that State.”⁸⁶

By proxy for their more state-specific counterparts, the following model rule sections have relevance to the SIM and prosecutorial work. Comment 1 to Rule 3.8 of the *Model Rules of Professional Conduct* specifically characterizes the government prosecutor as a “minister[s] of justice.”⁸⁷ Likewise, Rule EC 7-13 of the American Bar Association’s (“ABA”) *Model Code of Professional Responsibility* states that the prosecutor’s “duty is to seek justice.”⁸⁸

The ABA also promulgates a *Criminal Justice Standards for the Prosecution Function*. The standards are intended to guide “policymakers and practitioners working in the criminal justice arena.”⁸⁹ The ABA Standards reinforce the high-language and value-driven approach of the public federal prosecutor, as depicted above, by the Supreme Court and many commentators:

85. *Id.*

86. 28 U.S.C.A. § 530B (West 1998).

87. MODEL RULES OF PROF’L CONDUCT r. 3.8 cmt. 1 (AM. BAR ASS’N 1983).

88. MODEL CODE OF PROF’L RESPONSIBILITY EC 7-13 (AM. BAR ASS’N 1980).

89. *About Crim. Just. Standards*, A.B.A., https://www.americanbar.org/groups/criminal_justice/standards.html (last visited Feb. 14, 2018).

Standard 3-1.2 Functions and Duties of the Prosecutor

(a) *The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court.* The prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function.

(b) *The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.* The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.⁹⁰

Most critically, the Standards emphasize that the prosecutor “*is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system.*”⁹¹

With respect to the various Intercepts of the SIM, the Standards further and quite expansively anticipate:

The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in *developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases.* The prosecutor's office should be available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.⁹²

Ultimately, the Standards speak about the prosecutorial function in the broadest possible terms, as institutional and societal agents of leadership and progress:

The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and

90. CRIM. JUST. STANDARDS FOR THE PROSECUTION FUNCTION § 3-1.2(a) & (b) (AM. BAR ASS'N 4TH ED., 2015).

91. *Id.* § 3-1.2(f) (emphasis added).

92. *Id.* § 3-1.2(e) (emphasis added).

support efforts for remedial action. *The prosecutor should provide service to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A prosecutorial office should support such activities, and the office's budget should include funding and paid release time for such activities.*⁹³

F. Literary

Finally, although lacking an actual historical antecedent, the public prosecutor is not without literary ones. For example, some scholars have analogized prosecutors to the prophets of Jewish tradition. Jewish legal tradition, of course, had great influence over the development of English law.⁹⁴ Notably, “Sir Matthew Hale has traced the influence of the Bible generally on the Laws of England,”⁹⁵ and Alfred the Great inserted in the Saxon Laws several statutes taken from Mosaic Law.⁹⁶ And, this literary and moral influence has been felt in the ethos of the American lawyer, as beneficiaries of that English system:

The Prophets were, more than anything else, lawyers—as their successors, the Rabbis of the Talmud, were. *They were neither teachers nor bureaucrats, not elected officials or priests or preachers.* And the comparison is not an ancient curiosity: Much of what admirable lawyer-heroes have done in modern America has been prophetic in the biblical sense—that is, what they have done is like what the biblical prophets did.⁹⁷

Like the prophets, the prosecutor speaks on behalf of the ruling authority and its law, or covenant, without regard to consequence:⁹⁸ “[They were] men whose ability to prophesy came from a knowledge of man and affairs and an insight into cause and effect; opposing iniquity and injustice, they were champions of justice and righteousness regardless of the risks of

93. *Id.* § 3-1.2(f) (emphasis added).

94. Theodore Spector, *Some Fundamental Concepts of Hebrew Criminal Jurisprudence*, 15 J. AM. INST. CRIM. L. & CRIMINOLOGY 317, 318 (1924).

95. *Id.*

96. *Id.*

97. Thomas L. Shaffer, *Lawyers and the Biblical Prophets*, 17 NOTRE DAME J.L. ETHICS & PUB. POL'Y 521, 521 (2003) (emphasis added).

98. See *id.*; R.C. Sproul, *Covenant Prosecutors*, TABLETALK MAG. (Feb. 1, 2008), <http://www.ligonier.org/learn/articles/covenant-prosecutors/>.

unpopularity.”⁹⁹ Like the prophet, the prosecutor also serves justice.¹⁰⁰ Finally, and most relevant to this Article, the prosecutor speaks in community and for its sake, that is, for its well-being.¹⁰¹ “Prophets speak to communities as what Professor Milner S. Ball calls the mouth of God, because the God of the Prophets speaks to communities.”¹⁰²

The well-being of the community is principally served in the prosecution of the law, a kind of covenant between the governing authority and its people.¹⁰³ “The announcement and pursuit of this controversy by reason of law had the prophets speaking not as priestly defenders of the people, but rather as divine prosecuting attorneys pronouncing God’s judgment and wrath upon them.”¹⁰⁴

Thus, as far as the analogy goes, and none are perfect, the prophet is a kind of literary archetype for the prosecutor’s mandate to “proclaim . . . justice” wherever community is found, on its behalf and against its overreaches.¹⁰⁵ Such an historical picture of prosecutorial obligation lends additional credence, along with these statutory, constitutional, regulatory, and ethical sources, to the involvement of modern public prosecutors, among community, across the spectrum of intercepts contemplated by the SIM.

IV. THE RECENT WORK OF THE US ATTORNEYS & A SOUTH CAROLINA CASE STUDY

The theoretical underpinnings matter, but the “best evidence,” so to speak, of who federal prosecutors are, is evidence of what they actually do. The following narrative descriptions of various efforts of U.S. Attorneys’ Offices (“USAOs”) fairly tracks the statutory, regulatory, and ethical mandates described in Part III along the SIM.

The Executive Office for the United States Attorneys (“EOUSA”) generally provides executive-level assistance and supervision to the Offices

99. Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 *FORDHAM URB. L.J.* 1125, 1129 (1999).

100. See Shaffer, *supra* note 97, at 529.

101. See *id.* at 522, 526.

102. See *id.*

103. See Sproul, *supra* note 98.

104. *Id.*

105. Shaffer, *supra* note 97, at 529.

of the U.S. Attorneys.¹⁰⁶ It functions as a “close liaison” between the DOJ and “93 United States Attorneys located throughout the 50 states, the District of Columbia, Guam, the Marianas Islands, Puerto Rico, and the U.S. Virgin Islands.”¹⁰⁷

In 2016, the EOUSA, by formal survey, queried these ninety-three offices concerning their programming efforts in crime prevention and law enforcement.¹⁰⁸ Although not based on the rubric as specifically contemplated by the SIM, as will be seen, the existence of crime prevention programming across these ninety-three offices maps, with good precision, the basic structure of the SIM from pure prevention efforts through community support.

This Part provides some statistical overview regarding the availability of various types of programming throughout the country and then a basic narrative description of illustrative versions of such programming. Because this Author is an Assistant United States Attorney who practices out of the USAO for the District of South Carolina (hereinafter “USAO-DSC”), the programs of that District will be used as the primary example, with more summary highlight and description given to the programs of other districts.

The data collected from USAOs provides some of the resources that may be available in a jurisdiction relevant to the reader. Also, as earlier stated, this Article operates as a modest historical archive of this moment in the picture of the American public prosecutor, regardless of what future generations or efforts might resemble.

Where available and appropriate, relevant statistical evaluation and data will be included. But, again, the purpose of this Part is not to establish, in an evidence-based or clinical sense, the efficacy of any particular approach or program or to endorse, on behalf of the Department of Justice, any method over another. It does not. Rather, this Part is simply a narrative description intended to briefly account for what has been available and attempted.

A. *Prevention & Law Enforcement Intercept Programming*

As stated, this intercept is an opportunity for prosecutors, in conjunction with other law enforcement and community, to prevent dangerous criminal activity and to reduce the likelihood that individuals will ever engage in it in

106. Executive Office for the United States Attorneys, *Mission and Functions*, <https://www.justice.gov/usao/eousa/mission-and-functions> (last visited Mar. 4, 2018).

107. *Id.*

108. See generally EOUSA Survey, *supra* note 32.

the first place. The following is a partial list of strategies that have been deployed, to these purposes, across USAOs nationally.

1. “Focused Deterrence” and Other Call-In Style Programs

Call-in or “notification” programs are specialized interventions aimed at reducing gun and other violence in high-crime communities.¹⁰⁹ Since the 1990s, they have been a critical tool in reducing dangerous and violent criminal activity.¹¹⁰ These programs are collaborations between federal and state prosecutors, law enforcement, and community leadership. From the federal side, such programs are typically pursued by USAOs as a part of the federally funded Project Safe Neighborhoods (“PSN”) initiative:¹¹¹ “Since 2001, Congress has allocated over a billion dollars to the U.S. Attorney’s Office to oversee PSN programs in the 9 federal districts. Each jurisdiction crafted a set of interventions that typically included increased federal prosecution of gun crimes.”¹¹²

Through these programs, the respective stakeholders present, typically in an open forum, to at-risk community members—those who have been identified by the community and law enforcement as likely to commit crime—a unified voice against violent and other crime.¹¹³

The “distinctive feature” of these programs is the public call-in or the “notification.”¹¹⁴ Individuals who have recently been assigned to state or federal probation or parole are “called-in” on a designated night to meet with law enforcement and community partners.¹¹⁵ Critically, individuals on probation or parole are subject to the legal force of state process by virtue of the supervision, which follows their terms of incarceration. It is that legal force that compels their presence at the notification, sometimes called a

109. Ben Grunwald & Andrew V. Papachristos, *Project Safe Neighborhoods in Chicago: Looking Back A Decade Later*, 107 J. CRIM. L. & CRIMINOLOGY 131, 137 (2017); see also DAVID M. KENNEDY, *DON’T SHOOT: ONE MAN, A STREET FELLOWSHIP, AND THE END OF VIOLENCE IN INNER-CITY AMERICA* (2011).

110. See Allegra M. McLeod, *Confronting Criminal Law’s Violence: The Possibilities of Unfinished Alternatives*, 8 UNBOUND: HARV. J. LEGAL LEFT 109, 116 (2013).

111. Grunwald & Papachristos, *supra* note 109, at 132.

112. *Id.* (citing Edmund F. McGarrell et al., *Project Safe Neighborhoods—A National Program to Reduce Gun Crime: Final Project Report 1* (2009), <http://www.justice.gov/usao-wdwa/project-safe-neighborhoods>).

113. Grunwald & Papachristos, *supra* note 109, at 137.

114. *Id.*

115. *Id.*

forum.¹¹⁶ These meetings are held in non-law enforcement locations of civic importance such as a local park building, community center, or school.¹¹⁷ The call-ins include some combination of a presentation from community leaders (neighbors, family, ministers, educators, and defense bar) and then from law enforcement (state police, solicitors, and probation with federal agencies like the FBI, ATF, and U.S. Attorney's Office).¹¹⁸ The community presentation "discusses the seriousness of gun violence in the community" and represents an expression of solidarity and concern for its citizens and a plea to return to law-abiding behavior.¹¹⁹ The panel of local and federal law enforcement representatives emphasize "the consequences of future gun offenses, including the likelihood of federal prosecution."¹²⁰ The last feature of the "call-in" stresses the choices offenders can make to avoid gun violence or other crime.¹²¹ In this portion of the call-in, service providers, education specialists, health professionals, and employment counselors offer services and outreach.¹²² For the leveraging and precision of the approach, this methodology has been called "focused deterrence."¹²³ "Focused deterrence is a crime reduction strategy in which carefully selected high-risk offenders (prolific or particularly violent criminal offenders) receive concentrated law enforcement attention and, simultaneously, offers of concentrated social services through direct, persuasive communication and rigorous follow-up of these commitments."¹²⁴ It comes from a sociological understanding "that sanctions only deter if people know of them and believe them."¹²⁵ Its efficiency lies in its ability to focus "discretionary enforcement on those

116. Technically, individuals do not have to be on probation. It is a logistical preference. Some versions of the "call-in" program use voluntary rather than compulsory process. See generally Kennedy, *supra* note 109. Indeed, the earliest such versions were essentially door-to-door invitations – to create turnout in some cases. *Id.*

117. *Id.*

118. *Id.*

119. See *id.*; EOUSA Survey, *supra* note 32, at 73.

120. Grunwald & Papachristos, *supra* note 109, at 137.

121. *Id.*

122. For a discussion of reasonable concerns over the use of such programming, see David Thacher, *Channeling Police Discretion: The Hidden Potential of Focused Deterrence*, 2016 U. CHI. LEGAL F. 533, 561 (2016).

123. *Id.* at 549.

124. Michael S. Scott, *Focused Deterrence of High-Risk Individuals*, 4, <http://www.smartpolicinginitiative.com/sites/default/files/SPI%20FD%20POP%20Guide%20Final%20July%202017.pdf> (emphasis omitted).

125. Thacher, *supra* note 122, at 567.

offenders that careful investigations have determined to be most responsible for significant community problems.”¹²⁶ The approach is also highly adaptable to various crimes. From overt drug markets to criminal domestic violence.¹²⁷

a. Programs in Other Districts

The EOUSA Survey indicates that, in 2016, nearly half of the federal districts in this country (forty-two out of ninety-three, or 45%) used some version of a “call-in” or notification program. The USAO for the Eastern District of Michigan, for instance, has partnered with the Detroit Police Department, FBI, ATF, the Mayor of Detroit, and local community groups in a “call-in” initiative entitled Operation: Ceasefire.¹²⁸ The initiative attempts to “disrupt gun crime in the City of Detroit by focusing on the most violent gangs.”¹²⁹ Six call-ins were conducted in 2016 impacting between 175-200 participants.¹³⁰ The U.S. Attorney, law enforcement, and community leadership invite gang members to leave gang life and provide resources to do so. One media outlet has represented that “[i]n one part of the city, Operation Ceasefire has cut shootings by 40%.”¹³¹ The Northern District of Iowa (WARN), District of Arizona (Operation Guardian), Eastern District of Pennsylvania (Project Safe Neighborhoods), the District of Connecticut (Project Longevity), among others, host and support similar programming.

b. The District of South Carolina

The USAO for the District of South Carolina (USAO-DSC) participates with call-in programs in four separate municipalities: Aiken, South Carolina (Aiken Safe Communities);¹³² Hartsville, South Carolina (Hartsville Safe

126. *Id.* at 555; *see also* Grunwald & Papachristos, *supra* note 109, at 137 (“Since the vast majority of the population—including the offending population—does not engage in gun-related crimes, broad sweeping deterrence strategies are an inefficient use of limited resources.”).

127. Thacher, *supra* note 122, at 554.

128. EOUSA Survey, *supra* note 32, at 74.

129. *Id.*

130. *Id.*

131. Heather Catallo, *Operation Ceasefire Aims to End Gun Violence in Detroit*, WXYZ DETROIT (Dec. 30, 2016), <http://www.wxyz.com/news/local-news/investigations/operation-ceasefire-aims-to-end-gun-violence-in-detroit>.

132. *Aiken Safe Communities Participants Sentenced*, AIKEN STANDARD (Apr. 14, 2015), http://www.aikenstandard.com/news/aiken-safe-communities-participants-sentenced/article_4e45a3c2-fb17-5116-9c7f-ecf9cb89d612.html.

Communities);¹³³ Spartanburg, South Carolina (Operation Homefront);¹³⁴ and Greenville, South Carolina (Safe Neighborhoods).¹³⁵

Established in 2013, Aiken Safe Communities¹³⁶ is the longest running program in the District. In a little over four years of operation, one hundred and twelve violent offenders have been notified.¹³⁷ Twenty of those individuals have reoffended at a recidivism rate of only 17.8%, well below national averages for comparable timeframes.¹³⁸

South Carolina's call-in programs generally have included the following characteristics. With respect to establishment of the initiatives themselves, community and law-enforcement discussions have been hosted in advance of any operations.¹³⁹ Stakeholders are educated concerning focused deterrence programming, generally, and are also given opportunity to influence the nature and emphasis of the programming, as will be eventually adopted for their community.¹⁴⁰ Concerning selection of participants, community members and law enforcement participate together in a "blind" selection process.¹⁴¹ Namely, demographic identifiers are removed concerning potential individuals for notification.¹⁴² Participants for the call-in are then identified by the selection group based on the frequency and severity of their prior criminal conduct and law

133. *Hartsville Safe Communities*, HARTSVILLE, SOUTH CAROLINA, <https://www.hartsvillesc.gov/portfolio-items/hartsville-safe-communities/> (last visited Mar. 4, 2018).

134. Daniel J. Gross, *7th Circuit Solicitor's Office Task Force to Pursue Tougher Action on Domestic Violence*, GOUPSTATE.COM (Dec. 7, 2016), <http://www.goupstate.com/news/20161207/7th-circuit-solicitors-office-task-force-to-pursue-tougher-action-on-domestic-violence>.

135. See EOUSA Survey, *supra* note 32, at 73.

136. *Aiken Holds Safe Community Offender Notification Forum*, FOX 54 NEWS NOW (Dec. 13, 2015), <http://www.wfxg.com/story/30664398/aiken-holds-safe-community-offender-notification-forum>; Samantha Lyles, *Hartsville Safe Communities Steering Offenders Away From Crime*, NEWS & PRESS (Mar. 17, 2017), <http://www.newsandpress.net/Hartsville-safe-communities-steering-offenders-away-from-crime/>.

137. Email Interview with Charles Barranco, Aiken Chief of Police, & Cynthia Mitchell, Aiken Police Department Community Services Coordinator (July 6, 2017) (on file with Author).

138. Bureau of Just. Statistics, *Multistate Criminal History Patterns of Prisoners Released in 30 States*, Press Release (Sept. 2015).

139. Interview with Barranco, *supra* note 137, (on file with Author).

140. *Id.*

141. *Id.*

142. *Id.*

enforcement contacts.¹⁴³ In regards to the actual call-in or notification event itself, state probation officers and call-in coordinators host a “fishbowl” or pre-meeting with the participants.¹⁴⁴ Before being addressed by law enforcement and community members, participants are described the process and additionally motivated to take seriously the opportunity and message.¹⁴⁵ In South Carolina, a failure of notified participants to respond to the social services available has resulted in swift and serious federal prosecution.¹⁴⁶

While the Greenville and Hartsville programs also focus on violent and recurring offenders, Spartanburg’s Homefront Initiative, launched last year, targets criminal domestic violence offenders.¹⁴⁷ It has been developed in the tradition of the model as adapted by High Point, North Carolina,¹⁴⁸ who at the direction of Police Chief Marty Sumner, has been a leader in focused deterrence programming.¹⁴⁹ The domestic violence focused deterrence format designates, by class tier, domestic abuse offenders based on the volume and severity of past conduct.¹⁵⁰ The approach includes a range of responses from a formal written notification and warning against future criminal behavior to the traditional in-person call-in, as described above, to state and/or federal prosecution.¹⁵¹

143. *Id.*

144. *Id.*; see also Interview Caroline Caldwell, Executive Director of New Mind Health and Care (Apr. 2017) (on file with Author).

145. Interview with Barranco, *supra* note 137, (on file with Author).

146. U.S. Dep’t of Just., U.S. Att’y’s Off. D. of S.C., “Aiken Safe Communities”: Two Men Sentenced on Federal Gun Charges, Press Release (Apr. 15, 2015); see *Aiken Safe Communities Participants Sentenced*, *supra* note 132.

147. Gross, *supra* note 137; Caitlin Byrd, *In the Fifth Most Deadly State for Domestic Violence Deaths, A New South Carolina Program Sees First Flicker of Success*, POST & COURIER (Jan. 21, 2017), http://www.postandcourier.com/news/in-the-fifth-most-deadly-state-for-domestic-violence-deaths/article_24d2329a-df60-11e6-83b4-d32bf089a0a7.html.

148. Emily Weaver, *Study Shows Positive Results of High Point Domestic Violence Initiative*, TIMES-NEWS ONLINE (Jan. 18, 2015), <http://www.blueridgenow.com/news/20150118/study-shows-positive-results-of-high-point-domestic-violence-initiative>.

149. Thacher, *supra* note 125, at 554.

150. John Hood, *Making Progress in Curbing Domestic Violence*, WINSTON-SALEM J. (May 8, 2016), http://www.journalnow.com/opinion/columnists/john-hood-making-progress-in-curbing-domestic-violence/article_e5bb8bd4-0620-5f85-b6cf-dbd7dbe98236.html.

151. *Id.*; see Rachel Cumberbatch, *Attorney: Spartanburg Man Pleads Guilty to Federal Weapons Charges*, LIVE 5 NEWS (Feb. 8, 2017), <http://www.live5news.com/story/34239802/attorney-man-pleads-guilty-to-federal-weapons-charges>.

2. Other Prevention Intercept Programming

The Prevention & Law Enforcement Intercept is an especially critical interval. As discussed, it includes all the opportunities, prior to the moment someone commits a crime, to have avoided that crime being committed and innocent victims affected. USAOs, therefore, have connected with numerous other crime prevention programming, in schools and communities to fully leverage this intervention opportunity. The following is a partial overview.

a. Programs in Other Districts

In 2016, 68% of USAOs (sixty-three out of ninety-three) nationally had some programming for at-risk youth.¹⁵² Twenty-six of those sixty-three districts specifically had anti-gang or anti-gun violence programs for “hot spot youth.”¹⁵³ For these same at-risk groups, twelve districts had formal mentoring programs.¹⁵⁴

In 2016, 72% of all USAOs (sixty-seven out of ninety-three) were involved with some specific school-based or -connected initiative, including anti-gun violence and literacy events or efforts.¹⁵⁵ Sixteen districts had school-based anti-violence, anti-gun, or anti-gang programs.¹⁵⁶ Seventeen USAOs participated in opioid-specific or other anti-drug campaigns and events.¹⁵⁷ Thirteen had mentoring or other decision-making focused programs.¹⁵⁸ And six districts launched cyber-security or cyber-bullying specific initiatives connected with area schools.¹⁵⁹ In that same year, 41% of all USAOs (thirty-eight out of ninety-three) also had anti-bullying campaigns.¹⁶⁰

Many jurisdictions participate in gun pledges, typically pursuant to their efforts with Project Safe Neighborhoods and the President George H. W. Bush initiative, Project Sentry.¹⁶¹ These programs invite kids to make

152. EOUSA Survey, *supra* note 32, at 28-38.

153. *See id.*

154. *Id.* at 28.

155. *Id.* at 38-48.

156. *Id.*

157. *Id.*

158. EOUSA Survey, *supra* note 32, at 28-38.

159. *Id.*

160. *Id.* at 48.

161. *See* Domingo S. Herraiz, *Project Safe Neighborhoods: America's Network Against Gun Violence*, U.S. DEP'T OF JUST., 2 (June 2004), <https://www.ncjrs.gov/pdffiles1/bja/205263.pdf>; U.S. Att'y's Office Dist. of S.C., *Project*

pledges not to use guns and to develop visual campaigns encouraging classmates to do the same.¹⁶²

By way of example, the USAO in Fayetteville, North Carolina, participates with their local police department in area schools concerning gangs. Students are shown a video concerning young people who have been forced to make decisions regarding gang and gun violence.¹⁶³ The video acts as an introduction into discussions between law enforcement and the students about gang violence and good decision making.¹⁶⁴ The USAO for the Northern District of Illinois similarly partners with local police in a Code of Silence Youth Training Initiative.¹⁶⁵ The training is comprised of eight distinct modules designed to allow students an opportunity to examine issues related to youth violence, including bullying, and to help young people break the code of silence around criminal activity.¹⁶⁶ As of the time of the EOUSA Survey, over 10,000 students have participated in these training sessions.

The USAO for the District of Columbia and for the Eastern District of Pennsylvania have both pioneered Youth Court Clubs and a Youth Court, respectively, that operate as tribunals for disciplinary cases with respect to high school students.¹⁶⁷ The former is with respect to adjudication of alleged violation of the school's code of conduct¹⁶⁸ where the latter operates like a problem-solving court, creating a real diversionary opportunity for some youthful offenders.¹⁶⁹

b. District of South Carolina

Unfortunately, it is many of the same individuals who are repeatedly arrested at each level of the criminal justice system. Starting in their youth, they begin cycling through the respective jurisdictional systems, first, in juvenile facilities, then, onto state ones, and ultimately into long sentences at federal correctional institutions.¹⁷⁰ The USAO in the District of South

Sentry, U.S. DEP'T OF JUST. (Feb. 5, 2015), <https://www.justice.gov/usao-sc/programs/ceasefire/project-sentry>.

162. EOUSA Survey, *supra* note 32, at 29, 34.

163. *Id.* at 44.

164. *Id.*

165. *Id.* at 46.

166. *Id.*

167. *Id.* at 34, 43.

168. EOUSA Survey, *supra* note 32, at 34.

169. *Id.* at 43.

170. See U.S. Dep't of Just., U.S. Att'y's Off. Dist. of S.C., U.S. Attorney's Office and SCDC Continue Partnership for "Real-Time Reentry", Press Release (Mar. 22, 2017).

Carolina, therefore, sees early engagement with this population as critical to reducing future crime.¹⁷¹

For over eleven years now, the USAO-DSC has organized a state-wide logo contest every April to foster a dialogue about school safety among students from K5 through 12th grade.¹⁷² In excess of 250 students from schools across the state participated in 2016.¹⁷³ Importantly, winners are selected by a panel of inmates currently serving active sentences with the South Carolina Department of Juvenile Justice.¹⁷⁴ The contest raises awareness concerning youth gun violence and inspires those in the juvenile justice system to better choices.

For over ten years now, the USAO-DSC has organized a state-wide gun safety initiative every October for schools across the state. In 2016, over 25,000 students participated, signing age-appropriate pledges, promising not to handle firearms and to alert adults whenever they see or hear about firearms or firearms-related threats.¹⁷⁵ The USAO-DSC also coordinated speakers on the topic of gun violence and dispatched speakers to over thirty participating schools.¹⁷⁶ During these presentations, presenters raised topics to include bullying and the dangers of associated threats over social media.¹⁷⁷

USAO-DSC personnel assisted with the Officer Allen Jacobs G.R.E.A.T. (“Gang Resistance Education and Training”) Summer Camp, a summer camp that was held June 13-17, 2016 at Sterling Elementary School, in Greenville, South Carolina.¹⁷⁸ Hosted with the Greenville Police Department, this free camp program was open to students entering the 5th or 6th grade in the fall of 2016, and focused on educating the youth on the dangers of gangs (150 students).¹⁷⁹ The camp was renamed for fallen officer, Allen Jacobs, who was shot and killed in the line of duty in a neighborhood nearby the Sterling School.¹⁸⁰

171. *See id.*

172. EOUSA Survey, *supra* note 32, at 41.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. EOUSA Survey, *supra* note 32, at 41.

179. *Id.*

180. Dal Kalsi, *Greenville Police Rename Gang Prevention Summer Camp After Fallen Officer*, FOX CAROLINA (May 4, 2016), <http://www.foxcarolina.com/story/31655432/greenville-police-rename-gang-prevention-summer-camp-after-fallen-officer>.

USAO-DSC personnel have additionally helped with the Greenville Literacy Association in both tutoring and with locating volunteers for their programs.¹⁸¹ The assistance partially made possible the availability of new programs for Healthcare Administration and an Adult Reading class.¹⁸²

The USAO-DSC also has periodically participated with youth who are serving terms of incarceration at the Department of Juvenile Justice (DJJ), in Columbia, SC.¹⁸³ Specifically, the USAO-DSC has participated at DJJ with Arbitration Kids, a program designed to allow dismissal of charges against individuals who successfully complete the program.¹⁸⁴ Representatives from the USAO-DSC also join the “Insiders” at DJJ on experiential programming intended to educate better their future choices and discourage criminal thinking.¹⁸⁵ Insiders are juvenile offenders selected for their behavior and leadership to participate with schools and young people to educate about good decision-making and the risks associated with criminal conduct.¹⁸⁶

Additionally, the USAO-DSC, for twenty-six years, has been a vital partner in coordinating the Safe Schools Conference, held in multiple cities across South Carolina.¹⁸⁷ The conferences bring together school administrators, teachers, and law enforcement to facilitate a dialogue on issues within schools.¹⁸⁸ Just this past year, the USAO hosted and staffed a Youth Summit, with a special emphasis on the opioid epidemic and bullying.¹⁸⁹ Over 1100 youth and adult leaders were involved.¹⁹⁰ The USAO-DSC has also, from its inception, participated in the annual Project Sentry Gun Pledge described above.¹⁹¹

Lastly, the USAO-DSC anticipates unwanted crime by systematically reaching out to communities who are likely targets and victims of specific types of criminal misconduct.¹⁹² The Office has provided resource and

181. EOUSA Survey, *supra* note 32, at 41.

182. *Id.*

183. *Id.* at 31.

184. *Id.*

185. *Id.*

186. *Id.*; see also Seth Wilson, *National Youth Violence Prevention Hits Home in Columbia*, CAROLINA REPORTER & NEWS (Apr. 11, 2014), <http://www.datelinecarolina.org/story/25225245/national-youth-violence-prevention-hits-home-in-columbia>.

187. EOUSA Survey, *supra* note 32, at 49.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Project Sentry*, *supra* note 164.

192. EOUSA Survey, *supra* note 32, at 55.

guidance with respect to both criminal law and civil enforcement to civilian advisory groups, housing and employment stakeholders and authorities, and religious constituencies.¹⁹³

As described, the work of the USAOs nationally, at the Prevention & Law Enforcement Intercept, reflects a diversity of approach and strategy to influence positively a reduction in crime.

B. Detention Intercept Programming

The Detention Intercept is defined by the presence of legal cause, styled “probable cause,” to believe that an individual has committed a crime. Probable cause is the quantum of evidence required to detain, arrest or indict an individual.¹⁹⁴ Obviously, the presence of such cause transitions the intercept opportunity from one in prevention to one in crime investigation and prosecution. The USAO-DSC has developed and utilized a few strategies tailored for this second intercept of the SIM.

1. “Operation Real Time” Initiative

As a principle of federal prosecution, the DOJ prioritizes cases against individuals who cannot be effectively prosecuted by the criminal justice system of another jurisdiction.¹⁹⁵ Said differently, USAOs look for opportunities to address crime where a state cannot reach, or address completely, a particular type of conduct or individual. One example of this kind of approach is the USAO-DSC’s nationally recognized “Operation Real Time” initiative (“Real Time”).¹⁹⁶

For the overcrowding of state court criminal dockets, numerous individuals are arrested by city and county law enforcement, in possession of firearms and with significant criminal histories, but who are then subsequently released on small or personal recognizance bonds.¹⁹⁷ Historically, it might be months before the state can complete its

193. *Id.*

194. See FED. R. CRIM. P. 4(a), 5.1(e)-(f); USAM, *supra* note 73, § 9-27.200 cmt. (2017).

195. USAM, *supra* note 73, §§ 9-27.220, 9-27.240 (2017).

196. U.S. Dep’t of Just., U.S. Att’y’s Off. Dist. of S.C., Assistant US Attorneys From South Carolina Recipients of National ATF Honor Award in Washington Ceremony Yesterday at ATF Headquarters, Press Release (Aug. 25, 2017) [hereinafter Assistant US Attorneys].

197. See, e.g., ‘Bond Shopping’: The Jailhouse Secret Putting Our Community at Risk, WMBF NEWS (Feb. 10, 2014), <http://www.wmbfnews.com/story/24685391/bond-shopping-the-jailhouse-secret-putting-our-community-at-risk> (describing ability of inmates to circumvent even high state bonds).

prosecution.¹⁹⁸ In the meantime, such violent offenders remain a persistent community risk.¹⁹⁹ The Real Time initiative is a partnership with local, state, and federal law enforcement agencies “to secure communities through the expedited federal arrest, detention, and prosecution of violent, repeat gun offenders in upstate South Carolina.”²⁰⁰ “Working together, this collaborative partnership has been able to identify violent felons with firearms in ‘real time,’ swiftly arrest those individuals on federal charges, and seek detention pending trial or plea—effectively removing armed repeat offenders from the community from point of local arrest.”²⁰¹ Literally, as at the point of arrest, communication between state and federal authorities allows for a decision regarding the adoption of the case by the USAO-DSC for federal charges and prosecution.²⁰² Real Time, therefore, eliminates the lag in prosecution of a serious offender by using federal resources to be more responsive to the threat of qualifying violence. In all, Real Time “has resulted in the expedited federal prosecution of over 125 defendants and the seizure of over 160 firearms as well as assorted ammunition from prohibited persons in the upstate.”²⁰³ Operation Real Time has an associated education and Reentry initiative, called “Real Time Reentry,” which will be discussed below.

2. Drug Market Intervention Initiatives

Another example of effective law enforcement opportunity at the Detention Intercept is the “Drug Market Intervention” (DMI). DMI is a “strategic problem-solving initiative aimed at permanently closing down open-air drug markets.”²⁰⁴ In coordination with community members, law enforcement investigates and establishes legal cause against drug distribution operations that are being conducted flagrantly in

198. David Dykes, *Circuit Court Backlog Threatens Right to ‘Speedy Trial,’* GREENVILLE NEWS (Mar. 17, 2015), <http://www.greenvilleonline.com/story/news/local/2015/03/17/circuit-court-backlog-threatens-right-speedy-trial/24925367/> (indicating that 10% or more of criminal cases in Greenville and Pickens County had been on the docket 18 months or more).

199. See, e.g., *Bond Shopping*, *supra* note 197 (detailing bond scheme of a “career violent criminal”).

200. Assistant US Attorneys, *supra* note 196.

201. *Id.*

202. See *id.*

203. *Id.*

204. David Cole, *Turning the Corner on Mass Incarceration?*, 9 OHIO ST. J. CRIM. L. 27, 41 n.72 (2011).

neighborhoods and within a concentrated geographic area.²⁰⁵ The most serious and culpable offenders, typically of significant leadership and responsibility, are targeted and prosecuted.²⁰⁶ For low-level offenders, the DMI “stages an intervention with families and community leaders.”²⁰⁷ “Law enforcement mobilizes community residents, leaders, and family members of low-level drug dealers to voice their intolerance for this criminal behavior and to create opportunity and support for the offenders.”²⁰⁸ Offenders are given the choice to avail themselves of this help or face lengthy prison sentences. Those who elect the latter “are provided assistance in locating employment, housing, transportation, health care, and access to other social services.”²⁰⁹

It is the presence of actionable criminal conduct, based on probable cause, that distinguishes DMI from the previously described “focused deterrence” or call-in models. But, as discussed, even at this intercept, prosecutors and law enforcement have an obligation and opportunity in proportionality to treat with prosecutorial consistency criminal-minded violators where “[t]here exists an adequate non-criminal alternative to prosecution.”²¹⁰

In recent years, the USAO-DSC has participated with two such DMIs. The first, conducted in North Charleston, South Carolina, in 2011, identified a total of thirty-one narcotics dealers.²¹¹ “Most were arrested . . . and charged on either the state or federal level.”²¹² Eight low-level participants were afforded the opportunity of various social services.²¹³ Four of those eight were eventually arrested for additional criminal conduct.²¹⁴ The other four completed rehabilitation programming and have avoided future difficulty with the law.²¹⁵

205. *See id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. USAM, *supra* note 73, § 9-27.220.

211. Ryan J. Reilly, *Federal Prosecutor Tries a Radical Tactic in the Drug War: Not Throwing People in Prison*, HUFFINGTON POST (Dec. 6, 2017), http://www.huffingtonpost.com/2014/02/27/south-carolina-drug-war_n_4809299.html.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

A second DMI, C-S.T.A.N.D., was successfully executed in Conway, South Carolina, in 2013.²¹⁶ For more than a year, federal and state authorities in Horry County, SC, investigated the local drug network.²¹⁷ As a result of such investigation, ten targets were arrested. Five were indicted on federal charges and eventually received serious federal sentences;²¹⁸ five others faced state charges.²¹⁹ Seven individuals, however, participated in an area call-in, similar to those described above.²²⁰ Through educational opportunities and job-training each of the seven successfully graduated the program.²²¹ These results demonstrate that DMIs ensure that individuals with varying degrees of culpability are met with consequences in proportion to their conduct and responsibility.²²²

3. Courts & Jail Intercept

A federal prosecutor, in his first and truest sense, is a court practitioner. It is well-understood the tremendous discretion a federal prosecutor has in pursuing investigation, instigating indictment, and seeking judgment²²³:

The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence, as to whether the prisoner should get probation or a suspended sentence, and after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our

216. U.S. Dep't of Just., U.S. Att'y's Off. Dist. of S.C., "C-S.T.A.N.D.": Conway Men Enter Guilty Pleas in Federal Drug Conspiracy, Press Release (July 15, 2015) [hereinafter C-S.T.A.N.D.].

217. *Id.*

218. *Id.* (information on file with Author).

219. *See id.*; *see also* Reilly, *supra* note 211.

220. Ryan J. Reilly, *These 7 Drug Dealers Were Caught Red-Handed. Instead of Jail, They Get A Second Chance*, HUFFINGTON POST (Apr. 21, 2015), http://www.huffingtonpost.com/2015/04/21/doj-south-carolina-drug-reform_n_7103042.html [hereinafter Reilly II].

221. C-S.T.A.N.D., *supra* note 216.

222. *See* USAM, *supra* note 73, § 9-27.230.

223. Jackson, *supra* note 23, at 3.

society, when he acts from malice or other base motives, he is one of the worst.²²⁴

It is the sheer width of this influence, from investigation to incarceration, that begs wisdom, consistency, and proportionality.²²⁵ “The prosecutor has more control over life, liberty, and reputation than any other person in America.”²²⁶ So, even as evidence or the defendant, himself, establishes culpability, the inquiry as to process and outcome is not finished.

For these reasons, the wisdom of federal prosecution has included, since the late 1940s, some form of diversionary opportunity.²²⁷ To clarify the procedural moment, diversion is a post-arrest opportunity to be diverted from the full force and exposure of criminal process. Indeed, “[i]n the majority of cases, offenders are diverted at the pre-charge stage.”²²⁸ “Pretrial diversion (PTD) is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the U.S. Probation Service.”²²⁹

a. Traditional Pretrial Diversion

In its most standard iteration, pretrial diversionary programming is technically available in all ninety-three Districts pursuant to the United States Attorney’s Manual § 9-22.000.²³⁰ Forty-seven Districts have local and additional written policy concerning its implementation.²³¹

The main objective of PTD is to “prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services.”²³² As a matter of public trust and fiscal stewardship, PTD is also intended to “save prosecutive and judicial resources for concentration on major cases.”²³³ Lastly, in consideration of

224. *Id.*

225. USAM, *supra* note 73, § 9-27.300 (including “whether the potential charge is consistent with those brought against other defendants with similar criminal histories for similar conduct”).

226. Jackson, *supra* note 23, at 3.

227. Thomas E. Ulrich, *Pretrial Diversion in the Federal Court System*, FED. PROB., Dec. 2002, at 30, 30.

228. USAM, *supra* note 73, § 9-22.010 (2011).

229. *Id.*

230. *Id.*

231. EOUSA Survey, *supra* note 32, at 98.

232. USAM, *supra* note 73, § 9-22.010 (2011).

233. *Id.*

the public harm, PTD “where appropriate, [is] a vehicle for restitution to communities and victims of crime.”²³⁴

“Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed; unsuccessful participants are returned for prosecution.”²³⁵

- b. By policy, the U.S. Attorney, in his discretion, may divert any individual against whom a prosecutable case exists and who has less than two prior felonies, is not accused of offenses related to national security or foreign affairs, and is not a public official accused of a violation of public trust.²³⁶ Also, ineligible individuals include those “[a]ccused of an offense which, under existing Department guidelines, should be diverted to the State for prosecution.”²³⁷ Pre-Sentence Diversionary Courts

PTD is also the basic template for the development of formal diversionary, problem-solving courts. These courts focus pre-trial resources on particular populations or criminogenic factors to include veterans, juveniles, mental health, and substance abuse.²³⁸ Drug courts are the oldest type of problem-solving court; the first drug court began in Florida in 1989 when “the Dade County Circuit Court developed an intensive, community-based, treatment, rehabilitation, and supervision program for felony drug defendants to address rapidly increasing recidivism rates.”²³⁹

- i. Other District Programs

Thirty-one federal districts (33%) have a pre-sentence diversionary court.²⁴⁰ Four are veterans’ courts.²⁴¹ The remainder are either drug, mental health, or a combination of the two. In 2016, it was estimated that there were approximately 1,119 federal defendants in such programs nationally.²⁴²

234. *Id.*

235. *Id.*

236. *Id.* § 9-22.100.

237. *Id.*

238. Stacy Lee Burns, *The Future of Problem-Solving Courts: Inside the Courts and Beyond*, 10 U. Md. L.J. RACE, RELIGION, GENDER & CLASS 73, 80 (2010).

239. ARTHUR J. FRANKEL & SHELDON R. GELMAN, *CASE MANAGEMENT: AN INTRODUCTION TO CONCEPTS AND SKILLS* 173 (3d ed. 2016).

240. EOUSA Survey, *supra* note 32, at 112.

241. *Id.* at 114-18.

242. *Id.* at 118-19.

These programs are not courts of new or differing jurisdiction.²⁴³ Federal district court judges have authority to tailor the terms of pretrial supervision pursuant to 18 U.S.C. § 3142. Such supervision may be ordered to include substance abuse treatment, vocational rehabilitation, education, and increased supervision.²⁴⁴ Pretrial diversionary courts are simply the application of this statutory authority to specific populations, who are distinguishable from other defendants for the presence of some particularized criminogenic factor, which social science indicates can be rehabilitated or addressed in a way that makes future recidivism less likely to a statistically relevant extent.²⁴⁵

To this end, descriptive phrases like “drug court” are partial misnomers. Participants are not necessarily drug crime offenders; indeed, many have been charged with other offenses, like mail fraud or counterfeiting.²⁴⁶ Rather, the nomenclature refers to the underlying demographic or criminogenic risk factor.

Defendants typically participate in intensive supervision programs between twelve to eighteen months, which include drug/mental health treatment, cognitive and behavioral therapy, vocational and educational requirements, financial literacy programs, and soft skills training.²⁴⁷

Some federal programs of note include the Veterans Treatment Court (VTC) in the Western District of Virginia, available to veterans who have been charged with non-violent federal misdemeanors.²⁴⁸

243. See generally Richard S. Gebelein, *Reflections from a Retired Drug Court Judge: What We Have Learned About Drug Treatment Courts in the Past 25 Years*, DEL. LAW., Spring 2017, at 8 (“The term ‘drug court’ or ‘drug treatment court’ does not relate to a separate specialty court; rather, it relates to a special docket or calendar within an existing court in most jurisdictions. Briefly described, a ‘drug court’ uses the coercive power of the court to encourage criminal offenders to stay sober and engage in treatment.”).

244. See 18 U.S.C. § 3142(c)(1)(B) (2012).

245. See Roger K. Warren, *Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism*, 82 IND. L.J. 1307, 1312 (2007) (“Judges have often provided the leadership, for example, in advocating the development of substance abuse, mental health, and domestic violence treatment programs as an important element of problem-solving courts that have successfully reduced recidivism by effectively addressing the criminogenic needs of offenders.”); Stacy Lee Burns, *The Future of Problem-Solving Courts: Inside the Courts and Beyond*, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 73, 77 (2010) (“The original drug court is characterized by intensive client supervision with frequent court monitoring and hearings involving substantial interaction between clients and the judge.”).

246. See generally Gebelein, *supra* note 243, at 10.

247. See EOUSA Survey, *supra* note 32, at 114-18.

248. *Id.* at 114.

The Western District of Washington (DREAM program), the Central District of California (S.T.A.R. program), and the District of New Hampshire (LASER program), which is one of the longest running programs, each host traditional federal drug court programs.²⁴⁹ To varying degrees, these programs identify “low-level drug offenders and to provide them with an opportunity to participate in rigorous substance abuse treatment and life skills training under close Court and probation supervision.”²⁵⁰

“The [Central District of California’s Conviction and Sentence Alternatives (“CASA”)] program is directed at persons with a history of substance abuse, mental health and/or life skills problems that contributed to the charged criminal conduct.”²⁵¹ Participants have typically committed lower level theft crimes or are minimal participants in drug conspiracies.²⁵²

The Southern District of California has an Alternatives to Prisons Solutions (APS) Diversion program which focuses on immigration-smuggling offenders. To be eligible for the program, defendants must be United States citizens and their conduct could not have placed any alien in physical danger.²⁵³

Some diversionary courts utilize a “two-track” system, which distinguishes between anticipated sentencing outcomes. For individuals with minimal or no criminal history, successful completion of the program requirements results in dismissal of the charges against them.²⁵⁴ A second track is designated for individuals with more significant criminal histories. Upon successful completion of the program, those individuals receive non-custodial but probationary sentences.²⁵⁵

ii. District of South Carolina

The drug court for the United States District Court for the District of South Carolina, known as The Bridge, was established November 29, 2010. The Bridge is a (1) pretrial (typically post-plea) (2) intensive supervision and rehabilitation program for (3) defendants whose criminal conduct is more rightly attributable to, and/or motivated by, (4) substance abuse and

249. *Id.* at 114-16.

250. *Id.*

251. *Id.* at 115.

252. *Id.*

253. EOUSA Survey, *supra* note 32, at 117.

254. *See id.* at 115.

255. *Id.*

addiction than independent criminal intent.²⁵⁶ It requires defendants to (a) maintain employment; (b) maintain or commence educational programs; (c) maintain regular contact with a pretrial officer; and (d) undergo treatment for drug and alcohol dependency.²⁵⁷ Individuals with violent, firearms, or sexual offenses are ineligible, with exceptions in rare circumstances at the discretion of the supervisory judge.²⁵⁸ Along with United States Probation, the Federal Public Defender's Office, and the private bar, the USAO-DSC is a partner stakeholder in Bridge, offering eligibility recommendations, staffing hearings, and advocating sentencing outcomes.²⁵⁹

In seven years of operation, Bridge has had over 115 participants (both pretrial and post-conviction) and approximately fifty graduates.²⁶⁰ Over forty individuals have been either voluntarily or involuntarily terminated from the program.²⁶¹ Informal recidivism data among graduates of Bridge indicates there have been two DUI-related re-offenses and at least one additional federal sentence.²⁶²

An interdisciplinary team from Clemson University has conducted a third-party costs savings evaluation of The Bridge program.²⁶³ The study, which focused only on the pretrial participants in the program, indicated the following relevant findings:

Gross Savings

- Total Fixed Cost Savings of Graduates - \$4,431,036²⁶⁴

Costs

- Direct costs of Bridge Court Program participants - \$277,832²⁶⁵
- Total Program Professional Costs - \$834,240²⁶⁶

256. *Id.* at 114.

257. *Id.*

258. *Id.*

259. EOUSA Survey, *supra* note 32, at 114.

260. Bridge Program Records, (unpublished) (on file with Author).

261. *Id.*

262. *Id.*

263. See Clemson Evaluation (on file with Author).

264. *Id.* at 1. Fixed costs savings were calculated on the mean-anticipated-sentence avoided, per individual, at the amount of fixed cost of incarceration, per year (\$31,977.65). See *id.*

265. Direct costs were calculated to include the expense of programs contracted for participants, including resources like inpatient drug treatment or cognitive behavioral therapy. See *id.*

- Total Program Costs (professional + direct costs) - \$1,112,072
- *Net Savings & Per Participant Savings*
- Net Savings (based on fixed cost – operational costs) - \$3,318,964
- Total Net Savings Per Participant (graduates + non graduates) - \$47,413.77

At the direction of the district court and in conjunction with a not-for-profit, Turning Leaf, the USAO-DSC has also participated with a pilot diversionary program for certain higher-risk defendants who might be particularly benefited by cognitive behavioral therapy (“CBT”) programming.²⁶⁷ CBT programming focuses on improving decision making and rehabilitating criminal thinking.²⁶⁸ “Cognitive behavioral therapy is a specific form of psychotherapy that uses a problem-solving framework to change an individual's thoughts and behaviors.”²⁶⁹

4. Reentry Intercept Programming

The Reentry Intercept opportunity occurs after an individual has begun serving his or her sentence up through the point of release.²⁷⁰ It is the process of preparing inmates for a successful return home to their communities and family:

Reentry at the federal level is coordinated among a number of departments and agencies within the federal government. These entities also coordinate with various state and local entities, including community and faith-based organizations, to provide re-entry assistance, including employment assistance, to all offenders trying to reintegrate into their communities.²⁷¹

266. Professional costs were calculated to include the pro rata time contribution of various USAO, USPO, FPD, and court personnel at their salaried rates. *See id.*

267. Sari Horwitz, *U.S. Official Says Prison System's Best Reentry Program Cut 'Dramatically,'* WASH. POST (Oct. 29, 2015), https://www.washingtonpost.com/world/national-security/deputy-attorney-general-prison-systems-best-re-entry-program-has-dramatically-shrunk/2015/10/29/8d96713a-7e66-11e5-beba-927fd8634498_story.html?utm_term=.85a917976a28.

268. Nathaniel Counts, *Accommodating One Another: Law and the Social Model of Mental Health*, 25 KAN. J.L. & PUB. POL'Y 1, 1, 22 (2015).

269. *Id.*

270. *See generally* Lisa A. Rich, *A Federal Certificate of Rehabilitation Program: Providing Federal Ex-Offenders More Opportunity for Successful Reentry*, 7 ALA. C.R. & C.L.L. REV. 249, 264–65 (2016) (discussing reentry at the federal level).

271. *Id.*

In recent years, President George W. Bush's Second Chance Act of 2007 has been central to the implementation of reentry efforts at the federal level.²⁷² Among its goals is "to establish collaborative strategies and joint programs that support the development of career opportunities and enhance the career-readiness of offenders to successfully transition to their communities."²⁷³

As far as this Author has been able to determine, there exists no real etymology of the word "reentry," as applied in the criminal justice system context. Some of its first documented usages include case authorities from the 1960s.²⁷⁴ It can be found in scholastic and journalism periodicals certainly by the 1980s.²⁷⁵

Of course, it cannot be said that the term borrows intentionally from aeronautical nomenclature, and the process of returning astronauts from space, but the attributes of the two endeavors enjoy uncanny similitude:

[R]eentry means to return or attempt to return, purposefully, a reentry vehicle and its payload, if any, from Earth orbit or from outer space to Earth. The term "reenter; reentry" includes activities conducted in Earth orbit or outer space to determine reentry readiness and that are critical to ensuring public health and safety and the safety of property during reentry flight. The term "reenter; reentry" also includes activities conducted on the ground after vehicle landing on Earth to ensure the reentry

272. *Id.* at 265.

273. *See id.*

274. *See, e.g., U.S. ex rel. Felder v. U.S. Bd. of Parole*, 307 F. Supp. 159, 159 (D. Conn. 1969) (stating "the Division granted his a reparole, to become effective on March 10, 1969. In order to assist him in this second *reentry into the community*, Felder was transferred from the prison on January 22, 1969") (emphasis added); *McFarland v. United States*, 284 F. Supp. 969, 977 (D. Md. 1968) (stating "which a life term had been imposed precluded any and all further punishment since a prisoner serving a life term is eligible for parole consideration and *reentry into society* after fifteen (15) years, and petitioner not in fact being guilty consented") (emphasis added).

275. Samuel H. Pillsbury, *Creatures, Persons, and Prisoners: Evaluating Prison Conditions Under the Eighth Amendment*, 55 S. CAL. L. REV. 1099, 1128 (1982) ("While recognizing the intractability of the crime problem, personhood courts ask that penal systems make some attempt to help inmates prepare for reentry into free society.") (emphasis added); *see also* Lou Fintor & Jerry Gillam, L.A. TIMES (Feb. 19, 1986) ("Prison Life Training: AB 3227 by Assemblyman Tom Bates (D-Oakland) would require all state prison inmates to receive basic training in skills needed for successful reentry into society prior to their release from custody.").

vehicle does not pose a threat to public health and safety or the safety of property.²⁷⁶

There are psychological and physiological parallels attendant to isolation and atrophy, physical and mental, between prisoners and astronauts.²⁷⁷ To draw a similar analogy, the logistical and technical complexities inherent in returning individuals from prison is pantomime the astrophysical and mathematical ingenuity required to bring a spacecraft and its crew through the atmosphere and safely to ground.²⁷⁸ The following are some of the USAOs' efforts in this regard.

a. Other District Efforts

In 2016, 61% of federal districts (fifty-seven out of ninety-three) undertook some form of prison “in-reach” or reentry programming.²⁷⁹ Notable examples include the participation of the USAO in the Western District of Pennsylvania with a fairly unique, inmate-led “coaching” and reentry program at FCI Mckean, in Bradford, PA,²⁸⁰ a Southern District of Florida Bureau of Prisons program, which links inmates to community resources prior to formal release;²⁸¹ and mock job fairs hosted “behind-the-fence”.²⁸²

In 2016, the Middle District of Pennsylvania coordinated an innovative reentry opportunity for releasing inmates. The district has a reentry court called the Court Assisted Re-Entry (C.A.R.E.) Program.²⁸³ With assistance from the Federal Bureau of Prisons and the USAO, a simultaneous video conference link between inmates at five BOP facilities and the judges who oversee the reentry program was facilitated.²⁸⁴ Inmates were given

276. 14 C.F.R. § 401.5 (2015).

277. See Bryan Denson, *Researchers figure out how to calm inmates in solitary confinement: Nature Videos*, L.A. TIMES (Sept. 1, 2017) (recommending application of techniques used to reduce violence among inmates to other similarly situated populations, including “astronauts”).

278. See generally Lt. Col. Kerry D. Hicks, *Introduction to Astrodynamic Reentry*, <http://www.dtic.mil/dtic/tr/fulltext/u2/a505342.pdf> (detailing mathematical requirements of various attributes of reentry).

279. EOUSA Survey, *supra* note 32, at 134.

280. *Id.* at 134, 140.

281. *Id.* at 135.

282. *Id.* at 136, 138.

283. *Id.* at 136.

284. *Id.*

information concerning benefits of future and successful participation upon release.²⁸⁵

Some USAOs participate in behind-the-fence “notifications,” in the nature of the call-ins described above, for individuals who are releasing with serious criminal backgrounds, which expose them to heightened statutory sentencing risks for future criminal conduct.²⁸⁶

Nearly the same number of USAOs (fifty-four federal districts) have also partnered with local stakeholders for one-off reentry summits, expos, and simulations.²⁸⁷ The availability and proliferation of the reentry simulation, in particular, has been largely attributable to the work of former U.S. Attorney Kenyen Brown and the USAO in the Southern District of Alabama.²⁸⁸ The simulation is a role-playing exercise that gives participants perspective on the difficulties and obstacles individuals face returning home after prison.²⁸⁹ Across various USAOs, the simulation has been used to help educate and raise awareness concerning issues in reentry for audiences from policy makers to business executives and human resources to incarcerated individuals themselves.²⁹⁰

b. District of South Carolina Efforts

i. In-Reach Notifications

Since 2015, representatives of the USAO-DSC have met quarterly with individuals sentenced pursuant to South Carolina’s Youthful Offender Act²⁹¹ (17-25 year olds), housed within the South Carolina Department of Corrections, prior to their release.²⁹² Like similar notifications highlighted above, USAO-DSC representatives talk with YOA inmates to (1) explain the risks and exposure they might face in the federal system and (2) encourage them to take advantage of the reentry resources available to them as a part of their YOA programming.²⁹³ This effort of the USAO-DSC, entitled “Real

285. EOUSA Survey, *supra* note 32, at 136.

286. *Id.* at 136, 139, 141.

287. *See id.* at 142-149.

288. S. Dist. of Ala., *Project H.O.P.E. Re-Entry Initiative*, <https://www.justice.gov/usao-sdal/programs/ex-offender-re-entry-initiative> (last visited Apr. 10, 2018).

289. U.S. Dep’t of Just., U.S. Att’y’s Off. S. Dist. of Ala., *Reentry Simulation Set for Mobile and State House*, Press Release (Feb. 26, 2016).

290. *Id.*

291. S.C. Code § 24-19-10 *et seq.*

292. EOUSA Survey, *supra* note 32, at 136.

293. *Id.*

Time Reentry” (“RTR”) is a companion program to the Operation Real Time, discussed *supra* Part IV.B.i. RTR represents an in-reach, prevention opportunity to educate individuals about the prohibition against, and the associated sentencing risks of, possessing firearms after a felony conviction.²⁹⁴

Additionally, in recent years the USAO-DSC has made periodic presentations to inmate and camp populations at local Federal Correctional Institutes.²⁹⁵ Presentations include an explanation of reentry priorities and resources and an overview of future risk in the federal system.²⁹⁶ USAO personnel have made numerous trips to speak with inmates and BOP staff, including general population reentry meetings and leadership graduation classes.²⁹⁷ As a part of this collaboration with one of the FCIs and their Reentry Affairs Coordinator, an inmate re-entry council was developed. The council allows inmates to play a proactive role in their reentry preparation.²⁹⁸

ii. Reentry Court

The reentry court concept attempts to apply the drug court principles, described above, to individuals who are finishing prison sentences but remain under the supervision of the United States District Court and its Probation Office.²⁹⁹ Similar to drug court programming, reentry courts rely on active judicial authority to “provide graduated sanction and positive reinforcement and to marshal resources for offender support.”³⁰⁰ Reentry courts coordinate organizational players, involve essential friends and family, and give necessary guidance and direction for individuals who generally lack the direction and resources to survive the demands of federal supervision and reintegration into their communities.³⁰¹ In 2016, fifty-five federal districts conducted some version of a reentry court program.³⁰²

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. EOUSA Survey, *supra* note 32, at 136.

299. Stephen E. Vance, *Judge-Involved Supervision Programs in the Federal System: Background and Research*, 81 FED. PROBATION 15, 15, 17 (2017).

300. *Id.*

301. *See id.*

302. EOUSA Survey, *supra* note 32, at 172.

These courts supported approximately 815 participants nationally. Twenty-two districts had associated assessments or studies with their program.³⁰³

The USAO-DSC participates with the District of South Carolina's Re Entering Able to Lead (REAL) Court reentry program. REAL provides "high-risk participants improved chances of avoiding reoffending while increasing the likelihood of successfully completing supervision."³⁰⁴ REAL combines "regular supervision strategies, structured cognitive behavioral therapy, and regular interaction with a judicial officer."³⁰⁵ REAL relies significantly on the aforementioned Turning Leaf program to populate much of its curriculum in rehabilitation.

5. Community Support Intercept Programming

The last intercept is simultaneously an extension of work in reentry, at the preceding intercept, and a return, full-circle, to strategies at the prevention one.³⁰⁶ In addition to the kinds of approaches detailed above at the reentry intercept, a few illustrative techniques demonstrate how the USAOs continue to fulfill their obligations to ensure that individuals do not offend again, after returning home.

a. Coalitions

Community safety ultimately is the product of a collaboration between numerous law enforcement, governmental, private, and not-for-profit agencies, operating often with different priorities and fulfilling discrete purposes. One way in which such efforts are coordinated is through community coalitions and councils.³⁰⁷ 74% of USAOs (sixty-nine out of ninety-three) participated with at least one such ongoing community support coalition in 2016.³⁰⁸ These coalitions bring varied stakeholders together to better coordinate community safety priorities.³⁰⁹

On a national level, the Executive Office for the United States Attorneys sponsors a Prevention, Reentry and Diversion (PRD) Advisory Group.³¹⁰ This group shares resources and information and provides expertise and

303. *Id.* at 183.

304. U. S. Prob. Off. Dist. of S.C., *REAL (Re-Entering Able to Lead)* (Mar. 3, 2017), <http://www.scp.uscourts.gov/REAL%20Program/index.html>.

305. *Id.*

306. *See* Munetz II, *supra* note 41, at 546-47; Slate, *supra* note 40, at 355.

307. EOUSA Survey, *supra* note 32, at 151-53.

308. *Id.* at 151.

309. *See id.* at 151-53.

310. *Id.* at 153.

training for USAO personnel operating at each of the intercept opportunities.³¹¹ With respect to the USAO-DSC, specifically, it is a participating member of various local and regional reentry and community councils, working in the area of employment, housing, education, and identification.³¹²

On a more comprehensive scale, the USAO-DSC launched and hosts its own Statewide Reentry Council.³¹³ The Council is a collaboration of both state and federal stakeholders (governmental, private sector, and not for profits). All four South Carolina federal correctional facilities, State and United States Probation offices, and numerous state correctional facilities participate.³¹⁴ The purpose of the Council is to promote the cooperation among such representative entities on issues that are of significance to releasing inmates and those already in the community.³¹⁵

Through the Statewide Council, the USAO-DSC has also had an opportunity to coordinate the state Department of Motor Vehicles, Department of Vital Records, and the Social Security Administration on matters related to improving returning citizens' access to all appropriate identification both before release and after (state and federal inmates).³¹⁶ This collaboration has resulted in a pilot program that provides mobile, on-site identification printing.³¹⁷

b. Job Fairs & Expo

As an outgrowth of its leadership with the Statewide Reentry Council, the USAO-DSC has partnered with South Carolina's Department of Workforce Development, South Carolina Probation, Parole, and Pardon Services, and the United States Probation Office to host reentry-specific job fairs in the four main geographical regions of the state.³¹⁸ In total, forty-one federal districts hosted or participated with a job fair or other employment event for returning citizens in 2016.³¹⁹ These fairs "feature[] a variety of

311. *Id.*

312. *Id.*

313. EOUSA Survey, *supra* note 32, at 143.

314. *See id.*

315. EOUSA Survey, *supra* note 32, at 153.

316. Presentation of Richard Boone, S.C. Dept. of Motor Vehicles (Mar. 2017) (live presentation observed by Author).

317. *Id.*

318. U.S. Dep't of Just., U.S. Att'y's Off. Dist. S.C., Pee Dee Reentry Job Fair & Expo, Press Release (Sept. 13, 2017).

319. EOUSA Survey, *supra* note 32, at 160.

employers from various industries, including hospitality, construction, food service, manufacturing, and staffing agencies.”³²⁰ The job fairs also feature workshops related to interviewing and resume building, as well as expungements and pardons.³²¹ In addition to the employers, relevant resource providers and social services agencies are represented, including the Department of Motor Vehicles. The fairs have averaged approximately 150 job seekers.³²²

c. Opioid Initiative

Lastly, an increasingly critical part of USAO’s community support is responsiveness to the crisis in opioids and pharmaceutical narcotics.³²³ Along with many others, each of the Northern District of Texas, the Eastern District of Pennsylvania, and the Eastern District of Louisiana participated, with significant opioid awareness summits in 2016.³²⁴ Last year, the USAO-DSC hosted and staffed a Youth Summit, which specifically included an emphasis on opioids epidemic and bullying. Over 1100 youth and adult leaders were impacted.³²⁵ Moreover, the USAO-DSC has developed a comprehensive Opioid Multi-Year Strategic Plan,³²⁶ which tracks the State of South Carolina’s own initiative in this area.³²⁷

Just recently, the DOJ has “announced \$58.8 million to strengthen drug court programs and address the opioid epidemic nationwide”³²⁸ for state and federal opioid prevention work.

320. U.S. Dep’t of Just., U.S. Att’y’s Off. Dist. S.C., U.S. Attorney’s Office Partners for Second Chance Job Fair, Press Release (Oct. 7, 2016) [hereinafter Second Chance Job Fair]; see also Cynthia Roldan, *Wednesday Job Fair Aims to Help Those with a Criminal History*, THE STATE (May 1, 2017), <http://www.thestate.com/news/local/crime/article147900809.html>; Thad Moore, *South Carolina Wants to Help Former Prisoners Find Jobs, Expand the State’s Tight Job Market*, THE POST & COURIER (July 16, 2017), http://www.postandcourier.com/business/south-carolina-wants-to-help-former-prisoners-find-jobs-expand/article_1320bc74-0350-11e7-967d-3ff6f6be77bf3.html.

321. Second Chance Job Fair, *supra* note 320.

322. See EOUSA Survey, *supra* note 32, at 161.

323. *Id.* at 88-89, 91, 192.

324. *Id.* at 88-89, 91.

325. *Id.* at 49.

326. *Id.* at 192.

327. DHEC, *The Opioid Epidemic*, <http://www.scdhec.gov/Health/Opioids/mindex.htm> (last visited Feb. 15, 2018).

328. U.S. Dep’t of Just., Department of Justice Awards Nearly \$59 Million to Combat Opioid Epidemic, Fund Drug Courts, Press Release (Sept. 22, 2017).

d. Miscellaneous

Other thoughtful community support around the country includes a “warrant clearing initiative,” wherein the USAO works with the U.S. Probation Office, the Bureau of Prisons, and local solicitors to identify and clear, where appropriate, stale and outstanding warrants for federal defendants, which might impede their admission to necessary drug treatment.³²⁹

At least one USAO hosted “Tribal Reentry Summits” for area tribal leaders to discuss recidivism issues unique to reservations and tribal communities.³³⁰ Likewise, various districts have spearheaded collaborations with various agencies to outreach or further safeguard, in awareness and resource, members of the LGBTQA+ communities.³³¹ Lastly, in addition to its criminal outreach, the USAO-DSC participates in regular community outreach to identify itself as an important civil-side resource in civil rights violations, like fair housing and employment discrimination issues.³³²

V. CONCLUSION

For its conceptual insights, the “Sequential Intercept Model” has increasingly been viewed as a recommended “best practice”.³³³ The work of the federal prosecutor, as described, is already well-positioned to benefit from such a framework.

Precisely because law enforcement and community safety require the cooperation and commitment of many stakeholders, pluralistic and varied, a mapping is useful. By official charter or mandate, and in limited resource, stakeholders often serve niche priorities, not irregularly compartmentalized from the work of each other. And then, all at the same time, those partners find themselves overlapping and redundant of similar work. Where a non-governmental agency, not-for-profit, religious congregation, or school might be able to influence at certain points along the SIM, USAOs are uniquely situated to impact, not completely, but in part, at each intercept in order to increase the likelihood of reduced crime. Indeed, USAO participation all along the SIM simultaneously disentangles in one sense, and hubs in another, both the web and the silo of so many partners working in criminal justice.

329. EOUSA Survey, *supra* note 32, at 168.

330. *Id.* at 170.

331. *Id.* at 58.

332. *See id.* at 192.

333. Beard, *supra* note 55, at 192.

As depicted, the contemporary public prosecutor, as a culmination of all her preceding iterations, remains committed to the basic value of justice, sought in the pursuit of safe families and homes.