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## Thinking Strategically: How Federal Prosecutors Can Reduce Violent Crime

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## **Cover Page Footnote**

Elizabeth Glazer is the Chief of Crime Control Strategies in the United States Attorney's Office for the Southern District of New York. The views expressed here do not necessarily represent those of the United States Department of Justice or the United States Attorney's Office for the Southern District of New York.

# THINKING STRATEGICALLY: HOW FEDERAL PROSECUTORS CAN REDUCE VIOLENT CRIME

*Elizabeth Glazer\**

## Introduction

Is the idea of a “federal prosecutor” as a “strategic thinker” an oxymoron? Over the past few years, as local investigators have discovered the efficacy of problem-oriented policing in reducing local crime rates, some police departments have begun to use tools, such as the timely and accurate collection of data, to map affirmative crime reduction strategies.<sup>1</sup> To some degree, this notion of affirmatively anticipating trends and problems and developing goals that measure achievement not process (for example, reductions in crime not number of arrests) has also extended to a few local prosecutors offices<sup>2</sup> where the prosecutor views his role as one piece of puzzle. While the primary task is the prosecution of cases, these offices have also begun to work with non-law enforcement agencies where the early involvement of those agencies in a particular issue (such as truancy) may prevent the later intervention by the criminal justice system.

In this revolution, federal prosecutors have sat on the sidelines, adhering to a traditional model of law enforcement case-processing in which the prosecutor’s exercise of any strategic or problem-solving function is cabined within a particular case. And the prime mover who selects which case appears in the prosecutor’s ambit (or the array of cases from which the prosecutor may choose), is the

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1. Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 562-91 (1997) (tracing the emergence of this way of thinking).

2. ROGER CONNER AND PATRICK GRIFFIN, *COMMUNITY SAFETY LAW: AN EMERGING LEGAL SPECIALTY* (National Institute of Justice 1998) (collecting examples).

investigator, not the prosecutor. That order is affirmed by most federal prosecutors' perception that they are "serving" a "client" agency. Although the complexity of that service and the skill required are considerable, the federal prosecutor still operates to a large extent in an arena constructed by federal investigative agencies. A prosecutor can have a dramatic impact within any particular case but which cases and what areas will be selected for federal attention remain an area of largely undisputed agency discretion — a discretion that itself may be exercised responsively not strategically. The consequence is that the federal prosecutor — by defining his role as case-oriented, excludes himself from any meaningful participation in mapping an effective federal strategy for crime reduction and control.

Because neither federal prosecutors nor investigators view themselves as accountable for the rises or drops in local crime rates, they have also been slow both in using timely data collection and analysis to plot their actions and in measuring the impact of their efforts by anything more than counting arrests or indictments. Serious theoretical issues about the appropriate role of the federal government in areas traditionally reserved to the states may also act as a brake on coordinated and strategic action. I do not mean to downplay the complex federalism concerns raised by the entry of the federal government into the investigation and prosecution of violent crime. But, as a practical matter, it is unlikely that Congress or the courts will, anytime soon, significantly diminish federal power in this area.

The question then is whether it is sufficient for federal law enforcement to play the largely episodic and reactive role they have assigned themselves? The very freedom of federal law enforcement from having to walk a beat provides an opportunity to develop a strategy that targets powerful and unique federal laws at particular problems. While local law enforcement must arrest the murderer today, even if for a minor violation, federal authorities may have the time and the laws to investigate the murderer and his entire crew for subsequent lengthy incarceration. Armed with powerful federal laws and informed by significant federal cases, federal investigators and prosecutors could have an impact on urgent local crime problems — if they could organize their knowledge and harness it to particular objectives in which remedies beyond simple arrest and conviction would be considered.

Although this approach of analyzing data (both local and federal) and designing strategies that mobilize the targeted use of both

federal and local enforcement and non-enforcement remedies could and should be used across a wide swath of subject areas, this Article focuses on the violent crime, narcotics and organized crime dockets.<sup>3</sup> Institutionally, there are any number of players in the federal arena who could organize federal information and resources to identify gaps and mobilize strategies. Ideally, such an effort would rely upon the cooperative engagement of all facets of federal and local law enforcement.

This Article explores some of the assets that federal prosecutors bring to the table in assisting a federal effort to reduce violent crime through the analysis of data, the strategic use of federal laws and the coordination of federal, state, local and private resources. First, because federal prosecutors sit at the center of agency investigations, they have a panoramic view of the agencies' often overlapping investigative efforts; and because they see those efforts, without the filter of any single agency's jurisdictional interests, they can evaluate the direction of those efforts dispassionately. Second, prosecutors are familiar with the array of laws — criminal, civil and administrative — that could be used in a strategic attempt to reduce crime. Although as currently employed, federal laws have had a scattershot effect on crime, they could provide an unparalleled opportunity for federal prosecutors to move towards a comprehensive and strategic approach to combating crime in both geographic and subject matter areas.

Leading an affirmative and goal-oriented strategy to reduce violent crime changes the role that prosecutors have traditionally assumed in combating crime. This new perspective shifts the prosecutor's ambit of concern from any particular case or cases to the impact that a group of cases have in either a particular geographic area or particular subject matter area. In addition, once federal prosecutors begin to think about their work as a specific method to obtain and maintain reductions in crime, their focus will

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3. The area of white-collar crime presents different challenges from the violent crime/narcotics/organized crime area. For example, because of the extensive and intertwining connections in the criminal community involved in violent crime, a strategy which tracks the history of "families" of criminal networks, maps critical incidents of conduct and ultimately prosecutes an extensive organization will have an impact on local crime rates. In the white-collar area, however, the criminal community of fraudsters may not have the same kinds of connections as a mafia family or a street gang. And the kind of data collection and analysis that is helpful to identifying patterns will be very different. It may be that the pattern of cases shows not so much links among individual criminals as administrative or regulatory loopholes which provide the opportunity for criminal activity. Thus, while the remedy may include prosecutions it will also focus on closing those regulatory gaps.

shift from pursuing the arrest-to-appeal trajectory of a particular case to shaping remedies, including both law-enforcement and non-enforcement components, which will affect a broader swath of geographic and subject matter areas. Both features of this shift in the prosecutor's role will contribute to sustaining crime reductions for the long-term.

Part I of this Article discusses how, in their traditional role, federal prosecutors have limited their function to case-processing and accordingly reduced their natural ability to fashion effective crime-fighting techniques. Part II explores how certain features of the prosecutor's function make him well-placed to act as the federal agencies' strategic thinker. Finally, the Article suggests how the strategic potential of the prosecutor's role could be realized.

### **I. The Traditional Model**

The traditional federal prosecutor likes to think of himself as the consummate carnivore: a learned lawyer, a compelling oral advocate, a relentless pursuer of the truth who fights crime by putting "bad guys" in jail. His allies in this fight are the federal investigative agencies. Those agencies identify trends in criminal behavior and "bring" the prosecutor the significant cases. To be sure, any one agency may miss a significant trend because the way in which the criminal world is organized and connected is not a perfect reflection of the divisions in responsibility and jurisdiction of the law enforcement world. To a traditional prosecutor, however, that disconnect is overcome by the federal investigative agency's responsibility to see and make the connections with her sister agencies both within and outside the federal system.

Although there is a continuum of experience, the relationship between prosecutors and investigators is largely shaped by some basic acceptance that the division of labor expressed in the well-worn mantra: "We investigate, you prosecute," is an accurate reflection of the investigator's and the prosecutor's responsibilities.<sup>4</sup> Under this model, the investigator, largely without a prosecutor's involvement or consultation, conducts an investigation of a particular target. At the completion of the investigation, shortly before the arrest (and sometimes shortly afterwards), the agent notifies the prosecutor of the arrest and, while the prisoner is being booked, writes up the complaint on which the defendant will be

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4. Real life is always messier and more infinite than this description captures. However, it attempts to generalize accurately in outline, the kind of structure and assumptions under which the majority of federal prosecutors and investigators labor.

presented. At this end of the spectrum, usually in the simpler cases, for example, a narcotics buy-and-bust, the prosecutor may have minimal knowledge or even no previous knowledge of the target or the investigation: he may have authorized a subpoena or a consensual tape recording, but not know the full scope of the agency's efforts or the target's criminal background.

Some in law enforcement refer to this traditional relationship between an investigator and a prosecutor as the "thrown over the wall" model,<sup>5</sup> a reference to days, now gone by, in the automotive industry when the engineering and marketing departments were distinctly separate operations. Engineering would design a car that would delight any right-thinking gadget-nik. But when engineering "threw the design over the wall" to marketing, marketing saw only an Edsel disaster.<sup>6</sup> The example of the progression of the narcotics buy-bust case, described in the preceding paragraph, is a law enforcement version of the "over the wall" phenomenon: it assumes that there is a neat division between investigation and prosecution, instead of considering that each investigative step may close off or open up prosecutorial possibilities. Most significantly, it confines the prosecutor to the limits of the case because by the time the prosecutor "receives" the case, it is usually too late to explore usefully the connections, possibilities and impact that the case might have had.<sup>7</sup>

In other instances, usually the more complex cases, the relationship between the agency and the prosecutor shifts slightly, at least within the structure of the particular case. In a gang case, for example, the prosecutor will be well aware of the investigation. He conducts the debriefing sessions with potential cooperators and consults with agents on the direction of the investigation: who or what records should be subpoenaed, which potential witnesses should be approached, what the approach should be and what

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5. I am grateful to Robert F. Messner, Executive Managing Attorney, Civil Enforcement, New York City Police Department, for this insight.

6. *Id.*

7. For example, even in the simple buy-bust, it might have been fruitful to ask before the arrest whether the drug-dealing is taking place in a neighborhood where the prosecutor's office is seeing an upsurge in other criminal activity? If so, once the target is arrested, is it useful to ask him, with some specificity, about that activity? If the transaction is taking place in a particular building, what does the investigative or prosecutive agency know about other activity in that building or that quadrant. More specifically, is there a pattern of conduct that may lead prosecutors to conclude that the building is suitable for forfeiture action because the landlord has not taken reasonable steps to exclude drug trafficking?

other investigative agencies or prosecutors might have information on the case.

At whichever end of the continuum the prosecutor finds himself, this model — even the more progressive edition — confines the prosecutor's role to the case itself. Within the case, the prosecutor may play an important role in making tactical choices. But why the investigative agency pursued that case and not another one, is not the prosecutor's concern. In fact, the prosecutor's case-oriented approach means that he does not consider where his case fits into the criminal topography of a neighborhood, either as symptomatic of a general trend in criminal behavior or as exemplary of a part of a remedy to affect an identifiable crime problem.

The limits of the traditional prosecutor's concerns are the quality of the evidence and the likelihood of conviction. It is not important to the careful and successful prosecution of a drug gang to know whether crack is a waxing or waning trend. It is not necessary in a racketeering case to know how many murders were committed in the quadrant of the city in which the enterprise operated. And it is entirely irrelevant, by any measure by which a federal prosecutor's office is evaluated and its budget determined, to find out the effect that any particular federal case had on the crime indicators in the neighborhood in which the prosecution was brought. The prosecutor seeks information that will help him evaluate the strengths and weaknesses of the case. But systematically seeking out and evaluating the criminological data to help him make informed decisions generally about where to target his office's resources is not part of that calculus.

The prosecutor's reliance on the federal agencies to shape his docket is particularly perplexing when one scrutinizes the provenance of the agencies' strategies. Guided by their headquarters' nationwide directives, an agency may decide that this year, drug kingpins are the problem and next year violent crime is. But whether to go after kingpins or murders in the Bronx or in Marin County and how to execute that strategy in a meaningful way, tailored to the infinite variations of crime conditions from neighborhood to neighborhood, is not a feature of that strategy. At the local office level, where one might imagine the tailoring of those broad directives into executable strategies might take place, the agencies often do not have direct access to the kind of data that would enable them to, for example, identify all the drug kingpins in the Bronx and then determine those worthy of initial prosecution. Perhaps, more significantly, the agencies have no incentive to ob-



tain and analyze that data as they do not hold themselves directly accountable for local crime conditions.

Without any determinative role in shaping his docket and directing his resources, the carnivorous prosecutor has defined himself out of a crime-fighting role. He is ferocious and fair-minded in his case; but is he doing anything more than case-processing? He "takes" a case presented by an investigative agency when it fits certain legal, ethical and, sometimes policy, standards.<sup>8</sup> The case-processing prosecutor's job is complete when the defendants in that case are either convicted and their appeals are exhausted, or they are acquitted.

This approach to prosecution is endorsed by every measure of the Department of Justice ("DOJ" or "Justice") which, when it comes to the "war on crime," relies upon "body counts" to measure success. Every month DOJ collects from its prosecutors an array of management information intended to be used to demonstrate the efficacy of its offices' crime-fighting machines. For instance, DOJ measures the number of hours attorneys spend in court and on what subjects; it collects how many indictments have been filed, pleas taken, convictions obtained, and appeals affirmed. But do these "body counts" measure what could be the real impact of federal prosecutorial resources on crime: have the indictments, convictions and appeals done anything in each of the neighbor-

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8. Those policy standards are more often than not oriented to case-specific parameters. For example, many United States Attorney's Offices have guidelines regarding the minimum quantity of drugs that will qualify a case for federal prosecution. Yet one could imagine a scenario in which targeted federal prosecution of certain repeat offenders for relatively low levels of narcotics could have a dramatic impact on a neighborhood's well-being.

A building may have been taken over by a group of crack dealers who traffic in small quantities of drugs. They have been arrested numerous times selling drugs in and around the buildings and each time have been released by state court on bail after a misdemeanor charge or less. Through a federal lens, their years of low-level, crack dealing as a group may aggregate into significant weight and potential years of imprisonment. When brought in front of a federal magistrate on the matter of bail, the string of narcotics arrests in the same location bespeaks a potential danger to the community that might earn them a remand. While in prison awaiting trial, several of the defendants may decide to cooperate and legitimate tenants, emboldened by the disappearance of dealers, may also come forward. Through that cooperation and the tenant information, prosecutors may learn that the open and notorious drug-dealing in the building was accommodated by the landlord in exchange for cash payments. With that and other evidence the building is forfeited and subsequently re-sold, at a nominal sum, to a neighborhood housing group. A prosecutor's office holding fast to its minimum guidelines would not have taken this case; however, a prosecutor looking for a lasting impact on crime conditions in the neighborhood would have achieved that through this chain of events.

hoods where prosecutors have worked to reduce the level of violent crime and enhance the quality of life for the residents of those communities?

What is the alternative to case-processing for a federal prosecutor's office? It could move away from the familiar "body count" world of "responding" to "client" agencies to an impact world of working with the investigative agencies to determine what strategies would reduce crime both immediately and for the long-term. This shift is a difficult one to make both because it is easier to count bodies than to measure impact and because being serious about impact (that is, going beyond the "end" of the case to ensure that neighborhood crime conditions remain low) smacks faintly of "soft" vegetarian concerns. At first blush, such concerns appear antithetical to the carnivorous instinct of prosecutors and investigators that their job is over once the "bad guy" is in jail. But, this more comprehensive and perhaps more "vegetarian" approach provides, in fact, a tougher stance against crime because, although concerned about the individual case, it is focused on how arresting particular defendants advances a broader strategy to reduce crime in a particular area.

This crime-fighting prosecutor plays a different role in which case-processing is an important part, but only a part, of a larger design. He uses his position at the crossroads of investigative information and his fluency in the laws to survey the landscape of criminal conduct and deploy appropriate and available resources in targeted strikes against particular problems. The solutions he employs may not rely upon incarceration as the sole remedy or upon law enforcement agencies as the only remedial mechanism. Where success is measured by *sustained* crime reduction, the true crime-fighting prosecutor may find himself working with school districts, neighborhood groups, with criminal and civil laws or municipal regulations, to ensure that crime reductions obtained by arrests are maintained by ongoing social controls.

From time to time flashes of this strategic approach, grounded in analysis of available data, have appeared on a prosecutor's radar screen, leading to remarkable results. During the 1980s when Rudolph Giuliani was the United States Attorney for the Southern District of New York, he spearheaded investigations and prosecutions of the five La Cosa Nostra crime families who operated in New York. He joined the success of those criminal prosecutions<sup>9</sup>

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9. See, e.g., *United States v. Salerno et al.*, 85 Cr. 139 (S.D.N.Y. 1985) (prosecution of the "Commission," a body consisting of the ranking members of the five New

with a broader attack, by way of civil injunctive power, on mob infiltration of legitimate businesses in New York.<sup>10</sup> When Giuliani became the Mayor of the City of New York in 1993, he also mobilized the city's regulatory powers to constrict further mob influence in an array of industries.<sup>11</sup> For all these successes, the methods developed were neither institutionalized into the way the United States Attorney's Office does business, nor translated by the investigative agencies to other subject matter areas.

## II. Fixing What Is Wrong With the Traditional Model of the Prosecutor's Role

Over the past six years, federal prosecutors have begun systematically to stake out territory traditionally dominated by district attorneys, most strikingly in the area of violent street crime.<sup>12</sup> As federal prosecutors have become more deeply involved in violent crime prosecutions, the frailties of the traditional case-processing model of prosecutorial behavior have inevitably been exposed.

The contrast between the method used to select, investigate and prosecute targets in traditional areas of federal involvement and in the new territory of violent crime highlights how a federal prosecutor may find his role and the effect of his actions changing from reactive case-processing to strategic deployment of federal re-

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York City crime families); *United States v. Salerno et al.*, 86 Cr. 245 (S.D.N.Y. 1986) (prosecution of the hierarchy of the Genovese crime family; *United States v. Persico et al.*, 84 Cr. 809 (S.D.N.Y. 1984) (prosecution of the hierarchy of the Calombo crime family).

10. See, e.g., *United States v. Int'l Brotherhood of Teamsters*, 88 Civ. 4486 (S.D.N.Y. 1988); *United States v. Local 6A, Cement and Concrete Workers*, 663 F.Supp. 192 (S.D.N.Y. 1986) (granting preliminary injunction against cement workers union).

11. See Randy Kerry, *Bill Gives City New Powers to Fight Crime at Markets*, N.Y. TIMES, May 23, 1996, B2 (discussing New York City legislation authorizing administrative measures to combat organized crime at the City's wholesale food markets, and strengthening measures already instituted for the Fulton Fish Market); see also David Stout, *With New Waste Commission, Mayor Vows to End "Mob Tax"*, N.Y. TIMES, June 9, 1996, at 39 (reporting on measure signed by Mayor Giuliani creating the Trade Waste Commission to combat organized crime's influence in private trash hauling).

12. The DOJ officially inaugurated an Anti-Violent Crime Initiative in March of 1994, which asked United States Attorneys to work with local communities to address their most pressing violent crime problems. U.S. DEPARTMENT OF JUSTICE, ANTI-VIOLENT CRIME INITIATIVE: THE ATTORNEY GENERAL'S REPORT TO THE PRESIDENT (February 1995). At the time of the inauguration of this program some United States Attorney's Offices had already been working on street violence for some time. See Matthew Purdy, *Using the Racketeering Law to Bring Down Street Gangs*, N.Y. TIMES, Oct. 19, 1994, at A1 (reporting that the United States Attorney's Office for the Southern District of New York had been targeting street gangs with RICO for the previous two years).

sources (sometimes in conjunction with other non-federal resources) against particular problems. As illustrated below, the federal prosecutor entering this new area may find his role changing first within the case itself, as he works with local investigators who may not know federal law or procedure, just as the federal prosecutor may not be familiar with methods used in investigating local crimes such as murder. This new affirmative role will eventually lead the prosecutor to a recognition of how the case is intertwined with other neighborhood conditions, as he builds, for example, the simple murder case into a federal gang case. Finally, as he sees the impact that a particular case has in a neighborhood, he may begin to seek out the data that will permit him to identify similar patterns and problems in other neighborhoods that could be addressed through a similar strategy.<sup>13</sup>

A federal prosecutor who is working a neighborhood gang case finds himself in a different role from a federal prosecutor working in traditionally federal areas of concern, for example, bank fraud. In a bank fraud case, the investigating agency usually has a well-established and exclusive relationship with a federally chartered bank. A bank that has been defrauded knows which squad to call at the Federal Bureau of Investigation ("FBI"). The FBI squad responsible for those fraud investigations has been working with the federal statutes long enough to know how to conduct the investigation until the case is ready to bring to a prosecutor for indictment or further scrutiny.

A completely different set of expectations and knowledge inform the dynamic in a violent crime prosecution. It is highly unlikely that investigators, either local or federal will "bring" a ready-made gang case to a prosecutor. Except in exceptionally sophisticated law enforcement circles, the more likely course is that the putative gang case will begin with a single homicide that the state, for evidentiary or procedural reasons, cannot prosecute. In this kind of case, the police will usually contact the federal prosecutor rather than their counterpart in the federal investigative agency because the question the cop wants answered — "Do I have enough evidence to arrest the target?" — is one the prosecutor is uniquely

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13. As noted throughout this Article, this is not a role that a prosecutor can or should play alone. Depending on the conditions in each locality, district attorneys, police chiefs, mayors, federal investigative agency heads or others may play a more or less prominent role in planning comprehensive crime reduction strategies. Here, the particular characteristics of the federal prosecutor's responsibilities that permit him to make significant contributions to such a strategy are explored.

equipped to handle. The federal prosecutor will introduce the local investigative agency to an array of options, limits and ways of structuring and developing proof in the federal system with which the local investigator may not be familiar.

The local investigating agency's lack of familiarity with federal substantive and procedural law will also require a closer engagement by the prosecutor in the investigation than he may have had in the initial stages of a bank fraud investigation. This role, in turn, will push the prosecutor to think tactically, at least within the limits of the case, and most likely beyond those limits, as the single murder case presented becomes the first link in a larger impact case. Because the likely outcome is that the federal gang case will look quite different — in size and scope — than the initial murder case presented by the police, the prosecutor will also begin to view the array of federal laws and rules with more scrutiny: the ability exists through these laws to arrest not simply the one defendant for the murder but his entire crew on their expanse of crimes with which they held the neighborhood hostage. Here, the prosecutor can make the difference between simply chalking up another arrest or making an impact on crime conditions within a neighborhood.

Because it is the prosecutor who has the direct connections with the federal investigative agencies, it also falls to the prosecutor to determine whether there are intersections between the case on which the police have focused and cases that other federal investigative agencies might be working in the same neighborhood. Finally, in those jurisdictions where the police have begun to chart the impact that a particular case has on the crime statistics of a neighborhood, they may push the prosecutor out of his case-centric view to a vantage point in which geographically targeted areas become the unit of concern.

This example highlights a number of ways in which a federal prosecutor may find himself at the center of a strategy to address neighborhood crime problems. Although this example begins with a single case, it demonstrates how the approach used in that case could be the first link in changing the way a prosecutor thinks — pushing him to the next step of using data to select areas where his particular skills will have a measurable impact. To his surprise, the federal prosecutor may find that his position confers on him untapped advantages in planning strategic deployment of resources against a particular crime problem.

## A. A Federal Prosecutor's Strategic Assets

### 1. *Structural*

Federal law enforcement agencies are highly balkanized in their approach to crime. In New York City, for example, there are at least twenty federal agencies working in various areas of overlapping as well as exclusive jurisdiction.<sup>14</sup> For an array of reasons (some inadvertent, some intentional) not every agency knows whether another may have a parallel, on-going investigation. For example, the Bureau of Alcohol, Tobacco and Firearms ("ATF") may be investigating gun running out of a grocery store in which the Department of Agriculture is investigating food stamp fraud. There is no natural connection between the two agencies and no particular reason why these two agencies would think, on a regular basis, to coordinate their efforts. Yet, in this example, their investigations will certainly yield information of mutual interest, as their targets, their witnesses and their proof overlap.

In other cases, the connections may be less direct but potentially just as important if captured. For example, Secret Service may arrest an individual suspected of cloning phones. The Secret Service's interest in that person's information will relate to matters of the agency's jurisdiction: does the defendant know who the source of the clones is, can he help the agency to build an investigation of the leaders of the cloning operation? It may well turn out that the defendant is too low on the ladder to be able to offer helpful information and so, in the ordinary course, he will likely plead guilty to the phone charge on which he was arrested. But suppose the FBI or the police department has an investigation on the Latin Kings whose Supreme Crown happens to live next door to the clone phone defendant's apartment? Now, the Secret Service's defendant may become very important. He may be able to identify photographs of other gang members who visit the Supreme Crown; he

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14. See William A. Geller & Norval Morris, *Relations Between Federal and Local Police*, 15 MODERN POLICING 231, 243 (1992) (noting fifty federal law enforcement agencies with the authority to carry firearms, conduct searches and make arrests); see e.g., Federal Bureau of Investigation ("FBI"), Drug Enforcement Administration ("DEA"), Immigration and Naturalization Service ("INS"), Bureau of Alcohol, Tobacco and Firearms ("ATF"), United States Postal Inspection Service, Department of Defense, Department of State, Department of Labor, Department of Health and Human Services, Department of the Interior, Department of Housing and Urban Development, Department of Agriculture, Secret Service, United States Park Service, Internal Revenue Service, United States Customs Service, Securities and Exchange Commission, Environmental Protection Agency, United States Department of Probation, Department of Justice Office of the Inspector General.

may have observed when "Universals" are held. These connections, however, whether between ATF and Agriculture, in the first instance, or Secret Service and the FBI or the police in the second instance, exist only in the world of serendipity. Sometimes institutional rivalries between investigative agencies make it unlikely this information will be known or shared. More often, there is no simple and invisible mechanism to make the many connections that exist among the multitude of investigative agencies and their many targets.

In a world, however, in which the federal prosecutor plays a crime-fighting instead of case-processing role, serendipity gives way to methodical and forensic connection-making. The federal prosecutor already sits at the crossroads of each of these investigations and cases. He has cut the subpoenas to the grocery store in the Agriculture case and authorized the consensual recordings in the ATF case. He has sat in on the debriefings of Secret Service's putative clone phone cooperator and viewed the surveillance photographs of the "Universals" that the Supreme Crown has been leading. Thus, he has the opportunity, if not yet the tools and the role,<sup>15</sup> to make each of the connections among the many players on the street who do not follow the same institutional divides that federal, state and local agencies do. Because in most prosecutors' offices, no single person will be assigned to all those cases, the crucial question becomes whether there is a mechanism that can realize the prosecutor's placement at the center of this flow of information and make the connections methodically.<sup>16</sup>

## 2. *Analytical*

The federal prosecutor also stands in a different relation to the evidence than any other agency. Each agency has its mission to fulfill, usually related to the subject matter of its jurisdiction. Thus, INS's primary concern is the identification and prosecution of illegal aliens; while the Department of Labor's primary concern may be the identification and suppression of unfair labor practices in sweatshops; the FBI's primary concern may be the cracking of an international alien smuggling ring; and the police department's public morals division may be concerned with the proliferation of houses of prostitution. In some cases, each of these areas of concern and responsibility may be connected to one another. For ex-

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15. See *infra* Part III.

16. See *id.*

ample, it may be that the smuggling ring that the FBI is investigating brings illegal aliens into the United States where the INS is charged with finding them. It may also be that the witnesses the FBI wants to use in its smuggling case are also the targets of INS's prosecutorial efforts as well as the victims and witnesses to the unfair labor practices that the Department of Labor is trying to uncover. And the women that Public Morals is rounding up may have been forced into prostitution by the leader of the smuggling ring as a method of paying off their transportation debt.

Who puts the pieces of this puzzle together so that every piece of overlapping evidence is used to ensure that the crimes of degradation that this vignette illustrates do not continue? No single investigative agency in this scenario has the interest or incentive to devote significant resources to a case that will go well beyond the agency's primary mission. Furthermore, criminal sanctions may not be the best remedy for the array of issues raised by this example. One could imagine a solution that would embrace civil and regulatory remedies in the mix with criminal prosecutions with respect to some of the immigration and labor violations. To get to those remedies, information from a number of sources — municipal Departments of Consumer Affairs and Buildings, to name but two — might become important in understanding the full scope of the violations and possible remedies. Moreover, sustaining crime reductions for the long-term may require the participation of those or other non-law enforcement agencies in employing the remedy.

A federal prosecutor brings not only a unique mix of training and knowledge to this situation, but also a panoramic perspective. The prosecutor is the only player on the law enforcement side who is not committed, simply by agency affiliation, to weight one subject matter more heavily than another. Although each agency's mission is to fight crime within their delineated jurisdiction, the prosecutor's mission is to fight crime regardless of agency provinces. Whether more than one agency is necessary to develop a case is not the prosecutor's central concern in determining how a case or investigation should be put together. Similarly, what role each of the participating agencies plays (for example, which is the "lead" agency and who gets the credit for which arrests), although a matter of concern in managing the logistics of a case and ensuring a harmonious and productive working relationship, is not the central motivating force for the prosecutor in how the case is "made." This perspective which emphasizes strategy impact over agency divisions, is one that the prosecutor, by virtue of his responsibilities,



will naturally possess. As the "neutral" and convening party of the investigative agencies, the prosecutor may be best able to convey persuasively to the many agencies involved in a complex case why one agency's work will be the basis for a different agency's arrests.

For example, a targeted use of building forfeiture to eliminate the most egregious examples of crime concentration within a neighborhood may employ the FBI's forfeiture team as the primary investigative agency. But the FBI's work will need to make use of narcotics arrests in and around that building or debriefings of defendants from that neighborhood done by the DEA or the police department. Similarly, in a police department effort to reduce car thefts, it may transpire that the thefts are the result of organized rings who steal the cars for export to other countries. In such a situation, the police department (and ultimately a federal agency such as the FBI or Customs) may want to make a case that is built on important information available only from the Coast Guard which may board the ships, examine manifests and research Vehicle Identification Numbers ("VIN") to trace the pedigree (legitimate or criminal) of the vehicles.

The cooperation of the DEA and the police department in the one instance, and the Coast Guard in the next, will be crucial to the successful completion of these cases. But it may be that no single agency has the institutional incentives to obtain the cooperation of the other agencies. In the car case, the police department's interest may end at the water's edge; the Customs Service's interest may focus on the containers and their destination, but leave behind the indigenous rings of thieves. Finally, it may turn out that the most effective method of suppression of car thefts only incidentally entails criminal arrests.

For example, it may be that chop shops play the crucial and pivotal role between the rings that steal the cars and the figures who organize the shipments overseas. Thus, shutting down the chop shops could be the most effective method of reducing the incentive to the street groups to steal the cars and enhancing the risk to the shippers of exporting the cars.

But are criminal sanctions the most effective deterrent to the chop shop operators? For a first time offender, the federal sentencing guidelines mandate a term of no less than zero to six months and no more than fifteen to twenty-one months;<sup>17</sup> in the state, first time offenders face the possibility of conviction on a

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17. U.S. SENTENCING COMM'N, UNITED STATES SENTENCING GUIDELINES § 2B6.1 (1998).

Class E Felony, but typically receive a \$250 fine and no imprisonment.<sup>18</sup> More painful to the chop shop operators than criminal prosecution may be the cutting off of any financial rewards. Such a strategy may start with temporarily closing the shops through the use of municipal nuisance abatement ordinances; but it might end with a federal civil suit that puts a network of chop shops under some kind of monitor, or it might employ municipal taxing and regulation mechanisms. The work underlying determining the appropriate remedy will include, not only collecting all the criminal violations the shops have accumulated, but also scrutinizing their records with the Department of Consumer Affairs which may have licensed the shops and examining the records of the Department of Sanitation which is responsible for collecting abandoned vehicles from the street — vehicles whose VINs may now be affixed to the cars on a freighter to another country. In this example, one can see how quickly a simple car theft case could metamorphose into a series of cases and actions with a much more far-reaching impact on the problem of theft than any single arrest made by any single agency. This describes an approach that is still reactive and incremental, but may well provide the intermediate step towards affirmative and analytic use of data to identify crime problems and solutions. A prosecutor, properly trained, could enhance a case beyond a simple accrual of arrests and jail time into a series of remedies premised on crime control and reduction.

### 3. *Legal*

The familiar role of the prosecutor as legal advisor to the investigative agencies can also play out in another less familiar role. What the laws, both substantively and procedurally permit or forbid determine at every stage how an investigation or prosecution will unfold and whether it will be successful or not. Under the traditional “throwing over the wall” model of prosecution, the results of that process are largely unintentional. The prosecutor makes do with whatever the evidence is and deals with the consequences of how the evidence was obtained in determining how to proceed. And because the case, thrown over the wall, is presented as a finished package, most opportunities to view and use that case as a piece of a larger array of crime problems or to develop remedies beyond incarceration are lost.

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18. N.Y. VEH. & TRAF. LAW § 415(a)(1) (McKinney 1999).

For example, the immigration service may bring a simple case relating to one alien's illegal re-entry into the United States. In the normal course, a prosecutor will accept the case for prosecution. But a single case could also be the opening wedge or one in a pattern that could expose a large-scale alien-smuggling and forced prostitution ring. Or in a car-stop by the police department, the police may discover an exotic and complicated "trap" used to store money, narcotics and guns. Ordinarily such a case would be prosecuted by the state. But, imagine that by tracking down the garage which installed, not only that "trap" but many more like it for other traffickers, one could chart the beginning of an investigation to uncover a large-scale money-laundering case? In either case, should the prosecutor wait for the serendipity that some informant will expose the rings? Or are there more methodical routes that could be used to identify these patterns and possible responses earlier in the schemes?

If a prosecutor has made the shift from "body count" prosecutions to "impact" prosecutions, it is not enough — for the prosecutor or the investigator — to know, generically, that illegal re-entry or money-laundering is a crime and to prosecute the case presented by the agency. For a prosecutor interested in a case with an impact, embedded in a strategy aimed at a particular problem, every aspect of the investigation has to be tested and analyzed in the light of all available laws and regulations.

In the simple federal murder case — for example, the murder by two drug dealers of a police officer working in a federal task force during a buy and bust case — it would be easy in the body count world to accept the package for prosecution with the witnesses debriefed and the forensics completed. And important values would be served by the simple prosecution of that case, a vindication of the federal interest in the safety of its agents as well as the broader interests of society in punishing the murderer and deterring others from similar criminal conduct. But in the impact world, the alternative — while embracing and vindicating those values — looks very different and has the prosecutor playing a different kind of role at every stage in the proceedings.

First, the prosecutor would want to know every molecule of the criminal histories of the drug targets with whom the police officer dealt. These histories would provide an insight into, not simply the particular two people who murdered the officer and the events of the afternoon on which the two targets killed the officer, but the context in which they operated. Did the murder take place during

a drug deal gone out of control? Was this deal part of a course of conduct that extended over a period of years? Were the murderers dealers or robbers? Were the two killers the only people involved in the drug operation or did their criminal histories and other sources indicate that they played a particular role in a larger organization? Was the apartment in which the officer was killed a building in which a landlord had accepted a pay-offs so dealers could use the flats as stash houses or for packaging operations? And did the previous history of the two killers and their fifteen associates show repeated arrests in that building?

Why are these questions of any significance to a prosecutor? Because the answer to each question determines whether the case is best prosecuted federally or locally (or split between the two authorities) and under what laws; that, in turn, determines whether the rules of engagement between the investigators and their witnesses follow state or federal laws. Those rules, in turn, will determine what evidence is admissible in the case or cases. The nucleus of the case may be the murder. Further investigation may develop a larger drug-trafficking, money-laundering or robbery scheme or reveal a group or groups involved in a variety of criminal acts. In addition to these cases (or this case, depending on how the evidence is put together), the possibility of federal forfeiture may be available. The decision to pursue the forfeiture action will also affect how the investigation is conducted and what kind of long-term remedies are available. For example, upon forfeiture the building may be sold to a non-profit group that would be committed to returning the building to a stable residential cornerstone of the neighborhood.

The prosecutor who thinks strategically will not only look beyond the murderers to the group or groups they work with, but will also ask: how prevalent is this activity in other parts of the city? What kind of comprehensive and targeted method could be used to shut down those other networks? Perhaps focusing on the financing of the drug networks would be more effective and less dangerous than continued buy-bust operations. Or it might be worthwhile exploring the deterrent effect of an analogue of the Boston Gun Project's method: providing powerful disincentives to drug dealers by directly communicating to them the likely consequences of their criminal activities combined with selective and exemplary prosecu-

tion of those continuing violators.<sup>19</sup> Finally, there may well be an important role the non-enforcement community can play in maintaining steep reductions in crime, whether in buying and stabilizing forfeited buildings or some other role.

Thus, the area that even the most traditional investigators and prosecutors would acknowledge is the arena of a prosecutor's primary jurisdiction — the interpretation and execution of the laws — becomes important player at every turn, in not simply the prosecution, but the investigation. The laws and procedures will guide whether pieces of evidence are or are not admissible and thus whether a case will end up in federal or state court. This kind of analysis is more akin to the classic prosecutor's role of thinking inside the case. But by pushing each aspect of the case and by trying to put it in the context of a neighborhood's or city's crime conditions, even a single case can provide the starting point for a prosecutor to begin to think strategically about the broader trends of which a single case may be symptomatic and what resources are needed to have an impact on that larger problem.

#### 4. *Impact, Connection and Geographic Targets*

In the traditional model of joint federal and local efforts to combat violent crime, the federal role has been, for the most part, to prosecute the exemplary case. In the very interesting and successful Boston Gun Project, the United States Attorney's Office played an important role in bringing the exemplary case against a particular neighborhood tough — a case that was credited with serving as a deterrent to the tough's associates and followers. That kind of role is an important one for federal prosecutors to play: with a minimum display of force, select a single target whose swift and certain prosecution and severe punishment will serve as an effective morality play for his associates.<sup>20</sup>

But, strategically viewed, federal laws permit — if federal agencies and information are properly mobilized — an affirmative and comprehensive attack on arrays of interlocking criminal associations within a particular neighborhood. Most criminal neighborhood networks operate in the same way as legitimate

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19. For an excellent description of the Boston Gun Project, the strategy and its effects, see David Kennedy, *Pulling Levers: Chronic Offenders, High-Crime Settings, and A Theory of Prevention*, 31 VALP. L. REV. 449 (1997).

20. See *id.* at 463-68. In Boston that example was successful most notably because the enforcement team deliberately, methodically and effectively used formal and informal neighborhood networks of communication among the target's associates to get out the message of the new rules of the road. See *id.*

neighborhood networks. In the legitimate world, a resident knows where to buy his food, fix his shoes, get his clothes cleaned. In the criminal world, the drug dealer knows where to get his phones cloned, his cars outfitted with traps, his money sent out the country, his rivals taken care of.<sup>21</sup>

For the most part, federal law enforcement misses those connections because at least five different agencies deal with the example in the preceding sentence. In addition, law enforcement is not used to dealing with ongoing neighborhood networks. Once the group of robbers has been arrested, those files are closed, the photo books are boxed, the connections in the case exist only in the minds of the agents or detectives, or perhaps the prosecutors, that worked the case. Six years later, though, that group of robbers may be released from jail: as they rejoin each other in their old neighborhood and return to their old associates and haunts, law enforcement tries to stitch back together its old knowledge of the group and its criminal activity.

Working in partnership with both local and federal investigative agencies, federal prosecutors can serve as the intersection of these cases and events. This role does not signify, by any means, that all the cases would or should be federally prosecuted. Indeed, such an outcome would be a leading indicator that the attempt to think strategically and comprehensively to adapt appropriate resources to the array of crimes has failed. But a federal prosecutor can make at least two important contributions. First, he can mobilize comprehensive federal laws designed to root out the very networks that continue to operate and provide the sustenance for a neighborhood's continuing crime conditions, even once the "big fish" are incarcerated. Racketeering laws, gun trafficking laws and forfeitures, each in a different way, provide methods to attack definitively and at their core certain persistent crime problems.<sup>22</sup> Second, federal prosecutors are well-positioned to highlight the connections between categories of federal cases that are now simply part of their archives of "boilerplate." For example, it is standard fare in obtaining a search warrant in an apartment to search for narcotics, for the judicial officer also to authorize a search for guns on the theory that guns are "tools of the narcotics trade." Case after case has demonstrated the strength of this connection. But could more be done with this connection between drugs and

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21. Elizabeth Glazer, *Treat New York's Gangs Like a Crime Family*, N.Y. TIMES, Nov. 1, 1998, at A15.

22. See *infra* Part III.

guns? It could be useful to overlay a map of recovered crime guns on an outline of neighborhood's drug markets to determine systematically, not serendipitously, which groups are being supplied their weapons, and by which states. Federal gun trafficking laws provide a unique and effective method to use this data to target the flow of crime guns between states.

Employing either strategy, or even thinking of using either method of analysis, crucially depends upon the federal prosecutor moving from a case-centric view of the world to a neighborhood impact-oriented view. Although federal prosecutions may represent only a small percentage of the prosecutions brought nationwide,<sup>23</sup> it is likely that those prosecutions, constitute prosecutions of the serious players in each of these neighborhoods. But the presumption upon which this deployment of power must rest is that the federal prosecutor knows where to go because he understands the crime context of the city in which he works.

#### 5. *Where is the Federal Office of Strategic Planning?*

In large cities where the police departments have been deeply engaged in developing effective, strategic responses to crime, the departments generally rely upon a division whose mission it is to develop and implement those strategies, responding to block by block conditions. In Boston, the police department has a unit within the Police Commissioner's office called the Office of Strategic Planning and Resource Development. Among other things, this office coordinates yearly crime reduction plans and goals crafted by each district commander in consultation with community leaders.<sup>24</sup> In New York City, the Chief of Department (the ranking uniformed member of the department) and the Deputy Commissioner of Operations are responsible for analyzing the department's crime statistics and ensuring, block by block and case by case, that precinct commanders are following through on departmental initiatives and strategies.

No such equivalent office of planning and accountability exists in the federal system, either in the investigative agencies or in the prosecutors' offices — whether district by district or centrally from the Department of Justice. It is true that the FBI collects and dis-

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23. ABA TASK FORCE ON FEDERALIZATION OF CRIMINAL LAW, *THE FEDERALIZATION OF CRIMINAL LAW* 19 (1999) (noting that federal prosecutions comprise less than 5% of all the prosecutions in the nation).

24. BOSTON POLICE DEPARTMENT, *STRATEGIC PLAN FOR NEIGHBORHOOD POLICING* (July 1996).

tributes the statistics for the Unified Crime Report each year,<sup>25</sup> and from time to time the Department of Justice or one of its component agencies, such as the FBI, might issue a "strategy" indicating the areas of particular interest and focus. However, the FBI's collection of data is not used as the basis for planning strategy or tactics on the national or local federal office level — perhaps because the information is neither geographically specific nor timely enough to rely upon in making strategic decisions.<sup>26</sup> And the agency guidance indicating the general areas of focus and concern for the department does not translate to the kind of area and crime specific response that is oriented to impact cases. Indeed, the performance indicators for these agencies do not include any responsibility for significant drops in crime.

Two major obstacles stand in the way of a federal investigative agency describing and implementing a strategy that is specific to a district's crime conditions and that will have a beneficial effect on those conditions. First, in the area of violent crime, a federal investigative agency must rely upon the local investigators for a detailed knowledge of a neighborhood's or city's crime conditions. Sometimes a history of rivalry or dissension may make it difficult to get an accurate or complete sense of the trends and specifics of an area's problems. Even in instances where past relations have been harmonious, sometimes the local investigators may not have analyzed the data in a way that is useful for a federal agency. For example, a police department may be initially concerned with precinct conditions. But they may not be able to assess accurately whether a particular precinct's conditions are linked to a series of events or crimes that cut across precinct boundaries. In the interest of solving a particular crime now, they may be willing to miss the target's associates and past criminal histories. The police department's legitimate interest in immediate arrest and suppression of "hot spots" may mean that certain worthy targets, who require longer-term efforts, slip out of range. For example, a peak in killings four years ago may point to a turf fight between two gangs in which one gang emerged as victor. Having vanquished its rivals,

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25. Federal Bureau of Investigation, *Crime Statistics and Reports* (visited Feb. 20, 1999) <<http://www.fbi.gov/crimestats.htm>>.

26. See *infra* Part III.A. for further exploration of how such analytical and strategic help could be employed at the local federal district level. At the national level, one might think such a capability would be helpful to the Attorney General, or the Secretary of the Treasury (and Secretaries of HUD and HHS, among others) to, at a minimum, determine how to deploy federal resources to combat national trends and coordinate the spending of federal dollars to assist local efforts.



the triumphant gang may avoid police scrutiny because of its complete dominance of the neighborhood as well as judicious and discrete street-selling techniques. The gang is no longer a police target, but remains a potentially dangerous enterprise which may be vulnerable to federal investigative techniques, such as the use of accomplices to uncover and prosecute the group's crimes.

Second, a federal investigative agency is not always best placed to fashion a comprehensive strategy because each agency has a particular mission that is pre-eminent in its view of priorities: the FBI in certain organized criminal groups; the INS in large scale alien-smuggling; the Secret Service and Department of State in counterfeiting of certain kinds of identity documents, and so on. Left to their own devices, as they are, each will draft a strategy in which its own agency's particular jurisdictional features are most prominent. Yet these interests may well intersect; and a comprehensive strategy, while not initially giving pre-eminence to each agency's concerns may ultimately yield a much more significant outcome than any one agency's plan.

How are federal prosecutors positioned to fill this void? It is not a void that they can or should fill alone, as the cooperative sharing of information and strategies will always best unilateral pronouncement. Federal prosecutors are well situated to lead or be one of the leaders in the thinking about the use and allocation of federal resources in this area because (1) they do not need to expend resources in the delicate "coordination" of investigative information, as they already possess the investigative information of a score of agencies; (2) they have an omnivorous crime-fighting mission, viewing that information without the filter of agency partiality — a position that may also make them a helpful bridge between sometimes warring agencies or jurisdictions; (3) although they can play critically complementary roles in local initiatives and strategies, as the Massachusetts United States Attorney's Office did in the Boston Gun Project, they also have a powerful and independent ability to deploy comprehensive federal laws which, standing alone, will have a significant impact on crime; and (4) they can be the natural convenor — because of their disinterested perspective as well as their knowledge of legal mechanisms — to assemble the federal players (and, in some instances, federal *and* local players) to devise a mechanism to sustain long-term crime drops.

### **III. Thinking Strategically: What Federal Prosecutors Should Do About Violent Crime**

Federal prosecutors sit at the center of a legion of agencies designed to investigate and gather information. How can they harness and analyze that information so that their resources are effectively and systematically deployed to reduce violent crime and maintain those reductions in the long term? First, they need to develop the tools to help to organize and analyze the information they already have. Second, in the context of what that information tells them, they should use the comprehensive legal weapons they already have to reduce crime and — where appropriate in the local political context — to coordinate the relevant, and often, non-enforcement groups to implement the broader remedy that will sustain those crime reductions. Finally, having made the transition from counting cases to measuring impact, they must face the most difficult question: what role can and should they play in affecting the array of conditions (e.g., physical deterioration of buildings; high truancy rates; absence of recreational opportunities for youth) that may aggravate or depress crime conditions.

#### **A. Harnessing resources**

Federal prosecutors can be the connecting force among the information of the various federal agencies' investigations and cases. Although this role could also be played effectively by an investigative agency head who could persuade his colleagues to share information, the United States Attorney provides a ready platform to support this role as this office already has access to information from the full complement of federal and local agencies who work with the office. In the United States Attorney's Office for the Southern District of New York, prosecutors have begun experimenting with one way of organizing their existing information to highlight the connections. Critical information from every investigation and case is mapped electronically, including crime locations, defendants' addresses of residence and arrest, the locations of search warrants and areas of knowledge by cooperators — essentially organizing electronically what already exists on paper. A prosecutor who is working on a case on a particular street corner with, for example, the FBI, can pull up a map of the rest of the office's cases and see whether INS just executed a search warrant there or the DEA has a drug investigation across the street.

This program can help a federal prosecutor's office plan its strategy affirmatively. It is now the only method for a prosecutor to

view the office's entire docket at a glance. That glance might indicate that ten different agencies have cases or investigations in a particular area of the city with a severe crime problem. Knowing about that serendipitous concentration of resources may spur the prosecutor to meet with the agencies to discuss how their information on the neighborhood's crime conditions intersect and how they can ameliorate those conditions. Alternatively, the police department might share its data relating to increases in homicides in one borough. By overlaying a map of those open homicides on a map of the areas of knowledge of federal cooperators, the two agencies could begin to draft a plan to develop information from the cooperators to solve the homicides, whether those homicides are prosecuted in the state or the federal system. Mapping is plainly just a tool, not a strategic solution, and a tool whose use may be limited to certain kinds of cases. But it is one example in one subject area of how the first steps can be taken to organize information to permit access to usable data that could help map a strategy.

In addition to the technical tools, a prosecutor's office which is serious about strategic deployment of its resources needs some analytical and investigative help.<sup>27</sup> This analytical/investigative group could be used in a number of different kinds of projects of which the following examples are but two. Imagine a neighborhood that ranks among the city's top five in robbery complaints. Solving or reducing that number can take the traditional route: each case is worked separately for leads, witnesses and informants until arrests are made. Or the solution could take a wholesale route: take a year's worth of robberies and analyze what kinds of

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27. This kind of help could also be usefully placed in an investigative agency. But there are some special considerations that militate in favor of the United States Attorney's Office developing this capability. First, as many of the examples in Part II illustrate, the agencies may not be willing to invest the necessary resources in the breadth of examination initially undertaken to define the contours of a problem because it may not be clear at that early stage exactly which agencies will be involved in executing the strategy. But the prosecutor's office will, whether in a large or small way, be part of whatever strategy the research reveals is the best approach to the problem. Second, even in simple exercises, it may be more fruitful for the prosecutor's office to coordinate the project. In the example of the unsolved homicides being matched against potential information from federal cooperators, whose investigator should debrief those cooperators? The investigative agency which arrested the cooperator may not have the incentive to take the time to make an unrelated case — especially if that case may be prosecuted by the state. But the prosecutor's office which signed the agreement with the cooperator and which is responsible for bringing every aspect of the cooperator's assistance to the judge's attention — whether it results in federal or state prosecution — does have an incentive to ferret out this information.

robberies these are and what the connections among them are. Are they commercial robberies or street robberies or residential robberies? If they are street robberies, are they committed by junkies looking for the fastest way to a fix or are they groups of robbers with a shifting membership? If they are residential robberies, where are the goods being fenced? Each of these scenarios suggests a different approach. Are they better prosecuted federally or locally, in groups or singly, are there repeat offenders who may not be prosecutable on the robbery charge but have other open or developing charges on which they could be held now that the robbery has also been connected to them? An analytic team could look at the year of robbery complaints and, working with the police, begin to separate out whether there are identifiable groups, or individuals who fenced their goods interstate, or simply robbers with other kinds of potential liability (for example, illegal aliens) that might be worth prosecuting.

Or the team, instead of focusing on the particular problem of a particular neighborhood, could begin to analyze a particular subject matter that cuts across many agency and prosecutorial jurisdictions. In the example of the car theft and exportation rings mentioned above,<sup>28</sup> just such sets of data and interests converge. Starting at the export end, the team could begin to compile the lists of freight forwarders connected to the containers of suspect goods that the Coast Guard searched and trace those shipments back to common names or addresses. Or the team could begin to look at the chop shops and match the chop shops against the lists of municipal violations issued by Consumer Affairs or Buildings. Or find the list of abandoned vehicles picked up by Sanitation and determine which VIN numbers had been re-used on cars shipped out of the country. At the outset of such a project, it would not be clear whether the police or Customs or the FBI or the Coast Guard would play the leading or any role. But as the data began to identify various components of the problem — and thus the solution — any or all of these agencies would have important and delineated roles to play.

Finally, within the United States Attorney's Office, the responsibility for coordinating and directing these strategies must be assumed by a high-ranking person with chain-of-command responsibilities to ensure that the strategies are integrated into office operations and become the way the office does business in-

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28. See *supra* Part II.A.2.

stead of another "project" or "initiative." It is not necessary for every prosecutor to be "converted" to a method of strategic thinking, as long as those responsible for setting the direction and goals of the office are. The reigning culture of most prosecutors' offices may make this and associated slots difficult positions to fill because the excitement and satisfaction of prosecuting today's mob boss will, in most cases, outshine the prospect of devising a strategy to ensure tomorrow's murder rate is reduced. But as this strategic function begins to be understood as an omnivorous and essential part of a prosecutor's job, it will become a role that prosecutors serious about reducing crime will seek out.

### **B. The Legal Tools**

What are the weapons of greatest impact that the federal prosecutor can mobilize? There are an array, which in a number of combinations can have a startling effect in a neighborhood's crime rates. For the purposes of this discussion, however, this Article focuses on three that have either proven, or could be proven, to have a significant and lasting effect on crime conditions: racketeering, gun trafficking and forfeiture laws. By themselves they could dramatically reduce crime; in conjunction with an array of criminal, civil and regulatory methods, both federal and local, they could be formidably comprehensive in sustaining those crime reductions.

#### *1. Racketeering*

Some truths about crime have become self-evident. First, a small number of people commit a large percentage of the crimes.<sup>29</sup> If a city has 2,000 robberies in a year, the police are not looking for 2,000 robbers; if they arrest only 200, the robbery rate will tumble. Second, most crimes, although investigated case by case, are connected to other crimes or criminals. The fact the police arrested a defendant for a single robbery may not be entirely descriptive of that defendant's criminal history or the history of his associates. If both of these conclusions are true, to have the greatest beneficial impact on a neighborhood's crime rates, law enforcement should expand its thinking about crime from a case by case approach to an area by area approach.

Police departments, the first line of response to violent crime, must immediately address the individual crime that has been committed. Sometimes that means that a defendant is arrested imme-

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29. See Kennedy, *supra* note 19, at 449, 453-54.

diately for a relatively minor, but easy to prove violation, rather than later for a major violation that is more descriptive of the defendant's activities but harder to gather evidence on. Even when the defendant is arrested on the significant crime, the police department's investigation still may end with the solving of that one crime. If the investigation had continued into the array of crimes the defendant had committed with a shifting group of associates, it would have had a greater impact.<sup>30</sup>

How do the racketeering laws help? The Racketeer Influenced and Corrupt Organizations Act<sup>31</sup> ("RICO") shifts the focus from a single defendant's behavior on a particular afternoon to a group's activities over a period of time.<sup>32</sup> A prosecutor proving a racketeering case has to show that an "enterprise" or group existed and that each charged member of that enterprise committed two or more "acts of racketeering" over a particular stretch of time.<sup>33</sup> The statutorily enumerated acts of racketeering include not only federal crimes, such as Hobbs Act robbery and murder-for-hire, but also state crimes, such as street robbery and purely local murders.<sup>34</sup>

A precinct commander confronted with a defendant who has committed a street robbery will bring that defendant to the state for prosecution. In New York State, after arrest, the robber will likely be released on bail if he has strong ties to the community.<sup>35</sup> Even if his criminal history shows four previous arrests for similar crimes, there will be no remand because a demonstration of the danger the defendant poses to the community is not a factor in determining bail.

Now suppose the precinct commander researches this defendant's criminal history and finds that the defendant's four previous arrests were for robbery. For a variety of reasons in three of the cases, however, the robbery charge was pled down to a gun possession offense. With respect to the fourth arrest, the charge was dismissed after the victim refused to testify. More interesting, the

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30. Until a few years ago, the New York City Police Department took this individualized approach to an extreme. Even where three people were reported as having committed a robbery, the case was considered solved with the arrest of only one of the robbers.

31. 18 U.S.C. §§ 1961-1968 (1984 & Supp. 1998).

32. See Gerard E. Lynch, *RICO: The Crime of Being a Criminal*, 87 COLUM. L. REV. 661, 663-71 (1987) (definitive article on the complexities, possibilities and failings of RICO, with insights into how RICO's panoramic sweep may affect prosecutors' and investigators' focus on a single transaction).

33. 18 U.S.C. §§ 1961(4), (5), 1962.

34. *Id.* § 1961(1).

35. N.Y. CRIM. PROC. LAW § 510.30 (McKinney 1989).

defendant committed those crimes with a revolving group of six comrades. The commander sends out his detectives with photo-arrays of the defendant and his six associates to show to victims of other reported but unsolved robberies. The detectives get "hits" on the photo-arrays in another six robbery cases with a combination of the original seven defendants.

Each of the components of a federal racketeering case of a robbery crew are now in place; there is a core group of individuals who commit a series of related crimes over a particular period of time. None of the robberies would have been federally chargeable standing alone, but grouped in the racketeering statutes they may be charged as state law violations. In addition, if guns were used, the federal statutes require, upon conviction, a minimum of an initial additional consecutive five year sentence followed by another twenty year consecutive sentence for each additional gun.<sup>36</sup> The defendants appearing before a federal magistrate on the question of bail will face a different set of standards than they did in the state: if the prosecutor can show by clear and convincing evidence that the defendants are a danger to the community, the judge will order them held without bail before trial.<sup>37</sup> The precinct commander and the community are also facing a very different option with very different outcomes from that presented by the single robbery. They are assured that repeat serious offenders who had long preyed on the community will be off the street for a long time. The timing of the defendants' incarceration — immediately upon arrest — may embolden other victims, who otherwise would have feared retaliation, to come forward. Until a new group of robbers targets that neighborhood, the robbery rate in that neighborhood will remain low.

Just such an experiment in the use of the racketeering laws to reduce the murder rate was conducted in the United States Attorney's Office for the Southern District of New York beginning in 1992. In 1991, murders in New York City stood at a high of 2,154. First, haphazardly, and then more methodically, the Southern District began picking particularly murderous targets. From 1992 through 1996, the office filed twenty significant racketeering indict-

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36. 18 U.S.C. § 924(c) (requiring not less than five consecutive years if gun was used or carried, not less than seven consecutive years if gun was brandished and not less than ten consecutive years if gun was discharged).

37. 18 U.S.C. § 3142(f).

ments against violent gangs, charging 330 defendants with 205 murders.<sup>38</sup>

Some of these cases concerned criminal activity that was intensely local, such as the now-extinct traditional Asian gangs which operated largely in the Chinatown area of Manhattan. Other gangs operated within a few square blocks of a particular neighborhood. The police crime statistics dramatically demonstrated the immediate impact of incarcerating a small group of repeat serious offenders. In the six months that preceded the November 1994 takedown of two significant Asian gang cases, the local precinct had eight murders and fifteen non-fatal shooting victims.<sup>39</sup> In the six months that followed the takedown, the precinct had one murder and five shooting victims. Between 1993 and 1996, the United States Attorney's Office prosecuted another five Asian gang cases charging 129 defendants with thirty murders. In 1993, the precinct had ten murders; in 1996 it had two.

Another series of large-scale cases in the Harlem area of Manhattan had a similar effect. In the six months that preceded the August 1994 arrest of one gang, the precinct reported forty-six murders and ninety-nine non-fatal shooting victims. In the six months that followed the takedown, the precinct had twenty murders and forty-eight shooting victims. In 1995 and 1996, the United States Attorney's Office prosecuted two additional gang cases in that neighborhood, charging thirty-six defendants with eight murders. In 1993, the precinct had fifty-six murders; in 1996 it had twenty-eight. A neighborhood in the Mott Haven area of the Bronx reported a parallel experience. In the seven months that preceded the May 1994 and July 1994 take downs of a gang and its aspiring successors, the precinct had twenty-nine murders. In the succeeding seven-month period, the precinct had fourteen murders.

If murderers, who surely made their debut in less serious crimes years earlier, are taken off the streets of the neighborhoods where they committed their offenses, crime rates will drop. What this method lacks, however, is a serious effort to marry these one-time "initiatives" to long-term maintenance. That long-term effort implicates more than simply law enforcement resources. The last section of this Article addresses what some of those issues are.

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38. Significant racketeering indictment here means an indictment against ten or more defendants.

39. All statistics have been provided by the New York City Police Department (on file with the author).



## 2. *Gun-trafficking*

Appropriate deployment of the trafficking laws could also have the effect of interdicting guns from a particular crime-ridden neighborhood. Again, the key here is to move from the case-by-case method to a wholesale method that tracks the guns' movements from the manufacturers, through the various dealers to the individual purchaser. Usually investigations start with the recovery of the gun and work their way back. But there are other ways to identify trafficking networks and traffickers. A city like New York, where the vast majority of crime guns come from out of state, could rank, not simply the top source states, but the top source stores as a first step in turning off the spigot. Like crime statistics, it is unlikely that the thousands of crimes involving guns recovered in a particular New York county in one year came from thousands of different stores. This does not necessarily mean that the store or store owner has done anything criminal, but it begins to identify the high traffic routes which can now be worked from both the supply and demand sides to reduce the flow of guns.

## 3. *Forfeiture*

Focusing on recidivist locations,<sup>40</sup> as well as recidivist individuals could have a significant impact as every high-crime neighborhood has at least one building that is a crime magnet for drugs, prostitution or gambling. Federal forfeiture laws are used now against important targets but not necessarily strategically chosen ones. In a strategically driven world, prosecutors would work with local precincts and neighborhood groups to begin to identify the range of problem buildings. Some of those buildings may have drug and other problems that are, for a variety of reasons, beyond the power of a landlord to correct by himself. But other buildings may be crime magnets because the landlord has turned a blind eye to the activity, or in the worst case, is complicit in permitting the activity to continue. In this situation, federal forfeiture of buildings which, if forfeited would clean up the neighborhood, is warranted.

The federal prosecutor's role cannot end with the forfeiting of the building. The most important steps come next as, with other local and federal partners, the prosecutors think through a strategy to ensure that the crime magnet building becomes a neighborhood

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40. See Lawrence W. Sherman, *Hot Spots of Crime and Criminal Careers of Places*, in *CRIME AND PLACE* (John E. Eck & David Weisburd eds., 1985) (documenting that the concentration of crime among repeat places is more intensive than among repeat offenders).

anchor. For example, some federal programs will enable the government to auction the seized buildings to non-profit groups for minimal sums.<sup>41</sup> A stable non-profit group might not only run the building but train its residents in book-keeping and property management, stabilizing not only the building in the neighborhood but its residents within the work force. A problem that began as a law enforcement issue can resolve into a solution that not only addresses law enforcement problems but buttresses certain core values that will stabilize the neighborhood and maintain those crime reductions.

### C. Measuring Impact and Maintaining Gains

Federal prosecutions only account for a small measure of all criminal prosecutions, but each federal prosecution can have a significant impact.<sup>42</sup> If prosecutors are serious about evolving from case-processing to crime-fighting, they need to be measured where it counts. Did their efforts have an effect on crime conditions in a particular community or a certain subject area? The measurement cannot simply be: did this case or series of cases reduce crime? It must be: did this *strategy* — which may have included organizing municipal regulatory restraints or a city's gang injunction statutes *in conjunction* with powerful federal laws — have an impact?<sup>43</sup>

Second, and hardest of all, federal prosecutors who have moved from cases to impact need to sort out what role they can and will play in maintaining that impact. It may be exciting to plan and execute enforcement initiatives, but it is also important to puzzle through how to ensure, through daily efforts, that the effects of those initiatives stick. Often, devising a strategy that “sticks” means inescapably confronting social issues that crime-fighters usually eschew. If law enforcement arrests and convicts the corner drug dealers, is their job done? In the case-processing and body-counting world, it is. In the crime-fighting and impact-measuring world, it is just the beginning.

In the case-processing world, the children to whom the drug dealers paid a few dollars to run errands are not law enforcement's

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41. See, e.g., United States Dep't of Justice, Weed and Seed Transfer Program.

42. See, e.g., *infra* Part III.B.1.

43. One cannot underestimate the complexity and difficulty involved in devising these measurements — taking into account, among other things, the different ways in which federal influence on violent crime or other white-collar crime would have to be counted. At the very least, however, the incentive system for federal prosecutors should be shifted from credit for body-counts to extra credit for using resources strategically.

responsibility. But in the impact world, prosecutors or investigators could act now to ensure that in five years those children are not their next targets. It is not that the prosecutors will run the after-school programs, but rather that they have the wherewithal to bring to the table the front-line service providers who know how to make the world of legitimate work more attractive to those children than the world of their drug-dealing friends.

This role, of convening non-traditional groups in a crime prevention effort, is not an easy or an obvious one for prosecutors, especially federal prosecutors, to be part of or to find what role they should play. But it is a crucial one. Almost every area of urban distress is an area that has an impact on crime: the physical deterioration of the housing development may invite criminal activity. In one world, the solution may be to arrest a rapist. In another, a light in a parking lot may prevent the rape. When truancy rates rise so do burglary rates. Do cops burn up overtime dollars picking up the same truants repeatedly and returning them to the school the children will run from the next day? Or do they pool their knowledge about the kids with front line service providers and educators to come up with a strategy that will reduce truancy and thus burglary rates and their overtime payments. Not incidentally, that strategy could also return some of the children to productive lives.

Why should law enforcement take an active role in any of these problems? To none of these problems do law enforcement agencies, or any particular agency hold the solution. But each agency holds a piece of the puzzle: the police department knows where the rapes occur and its police officers, who work daily with the Housing Authority, may have some influence in ensuring that a light is put in the high crime spot; the cops see the same kids repeatedly who, at different points in the cycle, the schools, social service providers and others see. At every turn, federal dollars are involved, if not directed towards coordinated action: a COPS grant may have put the truant officers on the streets, HUD may be funding the Housing Authority's drug elimination efforts, and so on. A methodical identification and use of the confluence of all this information could play an important role in solving the immediate crime problem and in putting in place a broader mechanism addressing all the non-enforcement aspects of the problem that could contribute to a long-term prevention of crime.

### Conclusion

In the traditional prosecutorial world, the prosecutor sketches the trajectory of his cases from arrest through appeal. The more progressive and strategically minded prosecutors can push the edges of that schematic from a focus solely on the particular (the case) to a focus on the comprehensive (the strategy). But as he pushes those edges, he will inevitably bump into all the other pieces of the problem of which he has but one corner. Here there is no schematic for the role the prosecutor should play and the problems are more complex and less heavily scripted than the progression of a case. But as the prosecutor begins to use his position to match the complexity of connections in the criminal world with remedies that cut across the traditional demarcations of legal and organizational responses, he will have taken the first step in understanding and defining this broader role. Having done so, he will have made the revolutionary move from case processor to crime fighter, concerned not only with putting the "bad guys" in jail, but also with ensuring for the long term sustained reductions in crime.