INTELLIGENCE-LED PROSECUTION IN A MEDIUM-SIZED OFFICE

Adoption of intelligence-led prosecution has lagged intelligence-led policing, but there is no reason for this to persist, even in small to medium-sized jurisdictions. You might not have the budget of a Manhattan District Attorney, but there are economical ways to share and analyze information about crimes and criminals – and tremendous potential benefit.

South Carolina
14th Circuit Solicitor
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1) The use of technology by criminals and our response:

On July 19, 2015, 15-year-old John Duncan shot and killed 16-year-old Dominique Williams in broad daylight in the most crowded area of Hilton Head Island, South Carolina. Duncan threatened the victim using Snapchat. He obtained the .40-caliber handgun he used to kill Williams after posting a request on his Facebook page. Some of the shooter's friends took him seriously. Those that did not ridiculed and challenged him on their social media accounts.

Perhaps the biggest change in criminal justice over the past ten years has been the use of technology by criminals. Cellphone and social media use is prevalent in our society, and criminals take advantage of it. They use cellphones and social media to plan, execute, photograph and publish their crimes. They also use technology to threaten, bully and exploit people.

While the dark web gets most of the attention for criminal activity, the more mainstream part is just as dangerous. Routinely, gang members produce professional music videos to brag about their crimes and recruit new members, many of which are teenagers searching for a sense of belonging. A few years ago, a local gang from Colleton County, South Carolina, calling themselves the Cowboy Money Gang, produced such a video. In it, the participants are brazenly declaring themselves a gang, flashing gang signs, glorifying drugs, guns and violence. These videos show clips of Sheriff's deputies walking the beat while gang members belittle them. These videos are not on the dark web. They are on YouTube.

The good news is that technology can not only be used to aid criminal enterprises; it can also be used to stop them. Analysts in our office compared this music video with a video from a local convenience store that depicted a shootout and were able to match members of the gang with the shooters. My office then worked with the Justice Department on a RICO Act investigation and prosecution that convicted 15 of these gang members and sent them to federal prison.

Technology is equally important in today's courtrooms. The Duncan trial lasted about a week, during which time we called 17 witnesses. Eight were civilian eyewitnesses, one was a storeowner who videotaped the defendant walking outside of his business and one was a municipal employee that explained the placement of town cameras that captured the location of the shooting. We also called two medical personnel, one from emergency management who was on the ambulance that unsuccessfully tried to save the victim and the pathologist who performed the autopsy. We called three law enforcement officers – a State Law Enforcement Department expert in tool marks, to testify to the caliber of the bullet used to kill the victim; the first responding officer who took statements from eye witnesses, who identified the defendant; and the officer who completed the chain of custody of the bullet from autopsy to evidence. Typically, the last witness that we call in a trial is one that can give the most high-impact testimony. This is usually someone who can explain a summary of why we think the defendant is guilty of the crime we have charged. In the Duncan case, that witness was Dylan Hightower, one of our intelligence analysts. Hightower testified to cell tower hits that showed the movement of the defendant from the point where he obtained the gun until he where he found and shot the victim. He explained the timing of the videos from the store and the town and phone records showing corresponding cell calls between the defendant and some of the witnesses who had previously testified. After our case in chief, Hightower provided Facebook information showing the defendant asking for a .40-caliber handgun. This was crucial cross-examination material.

2) The beginning of Intelligence Led Prosecution:

Intelligence has not always played such a crucial part in the prosecution of criminals. In fact, intelligence led prosecution efforts have, for many years, lagged behind intelligence-led policing. In New York City in the early 1990s, Police Commissioner William Bratten started intelligence-led policing. Using a program called COMSTAT, Bratten and the New York City Police Department analyzed data and distributed the police force according to need. Bratten then used these statistics to hold his commanders accountable. Arguably, this led to the remarkable and steady decline in New York City crime. Today, intelligence-led policing, in some form, is prevalent throughout the country.

It was once typical that prosecutors merely reacted to the cases brought them by law enforcement, instead of using more proactive means. Heather Mac Donald, a fellow at the Manhattan Institute and a contributing editor to City Journal, wrote an op ed piece for the Los Angeles Times concerning intelligence-led prosecution. In it she notes how the dynamic has changed.

> *Prosecution, however, has remained in a reactive mode. District attorneys generally view their role as doing justice in the individual cases that the police bring to them; they are less likely to consider the effect a prosecution might have on broader lawlessness or how a defendant fits into the criminal landscape. Vital information about offender networks gleaned in the course of preparing a case for trial remains on a prosecutor's legal pad without getting conveyed back to the police or to other prosecutors. With few exceptions, prosecutors have gauged their success by convictions, not by crime declines.*
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> *That reactive mind-set is changing, however, aided by the exploitation of social media and other cutting-edge technologies. Prosecutors from San Francisco to New York are reconceptualizing their mission to include preventing violence, and they are developing information-sharing systems to accomplish that goal.*[1]

Manhattan District Attorney Cyrus Vance was the first to create an intelligence unit inside a prosecutor's office. In 2010, he created what he calls the Crime Strategies Unit (CSU). It

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[1] Mac Donald, Heather. "Op-Ed: First came data-driven policing. Now comes data-driven prosecutions," *Los Angeles Times*, Aug. 8, 2014; https://www.latimes.com/opinion/op-ed/la-oe-mac-donald-prosecutor-data-20140810-story.html. (Note: Mac Donald is a fellow at the Manhattan Institute and contributing editor to City Journal. This article is adapted from its summer 2014 issue.)

uses investigators, intelligence analysts and prosecutors to recognize crime trends, target the most prolific offenders and work with community leaders to combat specific problems. [2]

With regard to the unit's casework, MacDonald notes:

> *The unit has compiled a database of Manhattan's most significant criminal players – now numbering about 9,000 – whose arrest anywhere in the city immediately triggers an alert to one of the Crime Strategies Unit attorneys. The attorney will then contact the local prosecutor who has been assigned to the case – whether in Manhattan or another borough – to make sure the defendant is prosecuted to the full extent of the law rather than slipping through the cracks.*
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> *The arrest alert system recognized that a defendant's official history of arrests and convictions may fail to convey his position in the criminal food chain. A 16-year-old gang member may be responsible for numerous shootings, as attested to by his and others' Facebook pages, but never arrested for any of them because his victims and witnesses refuse to cooperate with the police. …*
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> *Social media are central to intelligence-driven prosecution. The value of social media to law enforcement became clear after New York police officers arrived at the home of a Brooklyn gang member who had just been shot, and watched the tweets from his fellow gang members planning revenge pop up on his open cellphone as the gangbanger lay dying in front of them.*
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> *Intelligence-driven district attorneys constantly track the Internet footprints of suspects in their arrest-alert database. The Facebook postings and Twitter feeds of gang members bragging about retaliatory shootings have provided the backbone for several recent gang conspiracy cases in Manhattan. Facebook messages among now-convicted East Harlem gang members, for example,*

[2] Manhattan District Attorney's Office website, https://www.manhattanda.org/our-work/crime-strategies/.

included admonitions to close in on rival gang members before shooting them and to not hog communal guns.[3]

Other prosecutors have followed suit. In Phoenix Arizona, Maricopa County District Attorney Bill Montgomery has started what he calls Intelligence Focused Prosecution (IFP). His approach is similar to Vance's.

Montgomery has created a crime strategies group made up of detectives, paralegals, prosecutors and analysts to identify crime trends. This group also identifies and focuses on the community's most prolific offenders. According to the Maricopa County District Attorney's Office website, "Analysts conduct research using criminal histories, social media, open sources and plain old gumshoe detective work. Geographically assigned prosecutors familiarize themselves with the community drivers in their assigned area and work with police in the assigned crime analyst to best address the problems and offenders."[4]

3) The use of intelligence in South Carolina's Fourteenth Circuit:

The Fourteenth Circuit is comprised of five counties in what is called the Lowcountry of South Carolina. It spans more than 3,700 square miles and has a population of more than a quarter of a million people. One of the counties, Beaufort County, is the second wealthiest county in the state. It houses Hilton Head Island, the PGA Tour's Heritage golf tournament and seemingly endless tourism. Allendale County is also in this jurisdiction. Unless you are from South Carolina, you probably have never heard of it. It is the second-poorest county in the state, with a 30% poverty rate according to the most recent census figures. By way of comparison, the average poverty rate in South Carolina is 16.6%. In fact, three other Fourteenth Circuit counties have poverty rates exceeding the state average. There are heavy and conversely sparse, areas of population. There is a wide variety of racial and ethnic people. The county-level white population within our circuit ranges from 67.4% to 22.5% and the African-American population from 73.5 % to 18.1%. The

[3] Mac Donald, 2014.
[4] Maricopa County District Attorney web site, https://www.maricopacountyattorney.org/CivicSend/ViewMessage/Message?id=66664

Hispanic population makes up between 13.2% and 3.1% of the population. This area is a microcosm of South Carolina and, in many ways, the United States. It suffers the same crime issues as other areas of the country. Its criminals, in both poor and wealthy areas, use technology.

This is why it important that intelligence-led prosecution not be limited to major metropolitan prosecutors' offices. Small and medium-sized District Attorneys' offices can and should employ intelligence to aid in the discovery of crimes and in gathering evidence to improve the prosecution of these crimes. The Fourteenth Circuit Solicitor's Office employs roughly 30 prosecutors and 30 support staff. Nationally speaking, it is an average-sized prosecution office. More than 14% of its personnel budget every year is spent on intelligence and investigation. This includes staff intake specialists, computer and cellphone-extraction experts and investigators. This section provides three functions – intake analysis, law enforcement assistance and courtroom support. All of these functions are essential to providing justice for the community.

The Fourteenth Circuit Solicitor's Office's Intelligence program officially started in 2012, but it came after many years of preparation. The office started the program by enlisting the assistance of the South Carolina Fusion Center. This would turn out to be a crucial step in the process.

According to the U.S. Department of Homeland Security, Fusion Centers are designed to promote information-sharing at the federal level between agencies such as the Federal Bureau of Investigation, the U.S. Department of Homeland Security, the U.S. Department of Justice, and state, local, and tribal law enforcement. As of February 2018, the U.S. Department of Homeland Security recognized 79 fusion centers.[5]

A cyber fusion center is an intelligence-gathering, analysis and dissemination state or major urban area center, which is owned by state, local, or territorial law enforcement, and Department of Homeland Security entities, many of which were jointly created between 2003

[5] "Advancing the Homeland Security Information Sharing Environment: A Review of the National Network of Fusion Centers." (PDF). *House Homeland Security Committee.* (This article incorporates text from this source, which is in the public domain.)

and 2007 under the U.S. Department of Homeland Security (DHS) and the Office of Justice Programs in the U.S. Department of Justice. The DHS Office of Intelligence and Analysis (I&A) and Federal Emergency Management Agency (FEMA) provide Fusion Centers with resources, training, and other coordinated services.[6]

In 2007, analysts from the South Carolina Fusion Center prepared a chart showing the gang activity in Allendale County. Over the next few years, many of the people on the gang chart were arrested and convicted for new offenses. It became clear that these people were the crime drivers in that particular area of the circuit. It also became clear that the office needed this information daily. Creating a Fusion Center in the circuit was financially impossible – the state center in Columbia contained millions of dollars of computers, programs, analysts, investigators and other personnel. However, all of this information was available, free of charge, through a secure, CJIS compliant connection on the internet. We had only to hire someone to be trained in its use. We found an intern working for the Fusion Center, Dylan Hightower, hired him and thereby began the process of intelligence-led prosecution.

Access to the state's Fusion Center gave the office access to a large number of public documents, such as incident reports, criminal records and driving records. It also provided access to facial-recognition software, the Pen Link system for analyzing telephone records and computer programs that collect data on gangs. All of this is used almost daily in the process of identifying, arresting and prosecuting the area's criminals.

4) Intake

The first step in our intelligence-lead prosecution efforts is intake. Our office brings in approximately 5,000 new warrants every year. In order to assign the incoming cases to the proper prosecutor, we needed an intake system. Every morning, our intake specialists contact all five jails in the circuit and gather identifying information on all recent arrests. They then run

[6] "Resources for Fusion Centers." House Homeland Security Committee.

full background checks on each arrestee. This research includes a criminal-history check, a check through national and local databases housing information on gangs, and an internal search to determine if the defendant has another case pending on our docket. After this research has been completed, the intake specialists assign cases to the appropriate prosecutors and puts the cases into the office case management system.

The office has two specialized prosecution units, the Special Victims Unit (SVU) and the Career Criminal Unit (CCU). The SVU is dedicated to the prosecution of sexual assault, domestic violence, child abuse and vulnerable-adult cases. It is a team made up of four attorneys, an investigator and a victim advocate. The CCU focuses exclusively on that small number of criminals that commit a disproportionate amount of crime. The CCU is made up of four attorneys, three investigators and a victim advocate. Most of the CCU attorney offices are physically located alongside the Intelligence Unit. Also, like most prosecution offices, the Fourteenth Circuit has diversion programs for first offenders, veterans, and others suffering from addiction or mental health issues. Intake specialists are currently getting trained to recognize these people so that they can be directed towards an appropriate treatment court from the beginning of the process.

Our intake specialists then send out the Daily Booking Report. This report, generated by our case management system, shows all of the new arrests and any old booking information. It shows if any of the new arrestees are currently out on bond or on probation. This allows the prosecutor to get this information to the bonding judge or to file for a bond revocation, whichever is appropriate. This report goes out to the 21 law enforcement agencies that make cases in the circuit, as well. This allows the law enforcement agencies to know who has been arrested in a neighboring jurisdiction, in case a witness in the new case can provide evidence in a pending one.

5) Casework

Casework is the second step in intelligence-led prosecution and perhaps the most important. It entails three main functions – assisting law-enforcement in their investigations; and assisting

prosecutors with the preparation and execution of their trials, as in the Duncan case; and assisting prosecutors with sentencing recommendations. The intelligence team, made up of analysts, investigators and community volunteers, carry out this purpose in six different areas:

- Monitoring defendants jail calls to anyone other than their attorney;
- Examining social media for any helpful information provided by the defendant or his associates;
- Extracting information from cellphones;
- Gathering cell-tower information from cell-service providers;
- Conducting historical research into crimes that might indicate a pattern;
- Preparing exhibits for court.

a. Jail calls

Each of the five jails in the 14th Circuit have systems in place to record telephone calls made by pretrial detainees. The jails provide a pin number to the defendant upon arrest. One jail uses voice-recognition software to prevent fraud. These steps help us easily identify the person using the telephone. The phone system warns the caller that the call may be monitored. Defendants, however, seldom heed the warning.

Because of the massive number of telephone calls being made by defendants throughout our circuit, we enlist community volunteers to monitor these calls. We do full background checks on the volunteers, train them and require them to sign a nondisclosure agreement prior to beginning their work. These volunteers work alongside our analysts and investigators gathering information that often becomes crucial at trial.

In June of 2012, Joseph Bowers was charged with murder of a man at late-night club shooting. During the incident, there were more than 150 people present and at least seven shooters. Because of the chaos in the scene, it was particularly difficult to prove which shooter fired a fatal bullet. Shortly before trial, Bowers made a telephone call to his girlfriend. Seeking to explain to her it was the doctor's failure to revive the victim that killed him and not his shot, Taylor stated, "I didn't kill the man; I only shot the man." This audiotape was played at trial and

became an essential link establishing Bowers as the shooter.

Similarly, Tyronne Wallace was in the detention center awaiting trial for murder when he was speaking with his aunt who is clearly on a different page. The aunt continued to stress that he should not need to plead guilty because the jury needed to hear his story – it was obvious to her that he was not a cold-blooded killer. However, Wallace replied that he "wanted the mother (of the victim) to know I did that to her son." He too was convicted.

b. Social Media

Social media is another area that provides crucial information to our intelligence division and therefore to our prosecutors and law-enforcement partners. The aforementioned YouTube gang video is an example, and some defendants also are in the habit of posting incriminating information on Facebook and similar sites. Our intelligence analysts and investigators routinely monitor these sites and gather evidence relevant to investigations and prosecutions.

Our prosecutors have used photographs retrieved from Facebook to show things such as a defendant's character, or to suggest a defendant's motive for committing a crime. Walter "Oowee" Tucker, a defendant charged with murder, uploaded a photograph of what appeared to be his 6-month-old son with a 9-mm handgun tucked into his diaper. This went a long way in showing the sentencing judge the defendant's character.

c. Cell phone extraction

In the 1990s, when narcotic officers executed search warrants at drug dealers' homes, they might find drugs, cash from the sales of drugs, scales to weigh drugs and sometimes guns to protect the drugs and the dealer. This was good evidence against that dealer. However, some of the best evidence that could potentially take down the entire drug enterprise was the dealer's notebook. This notebook commonly showed the names of the bigger dealers, coconspirators and buyers and maybe even notes indicating logistics, accountings of the profits and outstanding debt.

Today's drug dealers, gang members and human traffickers operate the same way as their 1990s counterparts. They need suppliers, warehouses, transportation and customers. But today, they do not keep that information in a notebook; they keep it in their cellphone. This is crucial evidence for the investigation and prosecution of all types of criminal activity, if law enforcement can get it.

Our office purchased and was trained to use the Cellebrite cellphone extraction system. Our analysts routinely help law enforcement and prosecutors obtain evidence against criminals by extracting text messages, photographs, videos, the defendant's contacts and even geo location information. We do this only after we have obtained a proper court order. So far this year, our analysts have extracted information from 33 cellphones, with 25 additional phones awaiting analysis.

d. Cell service provider information

Cell service providers store valuable information in two particular areas – call detail records and cellphone content. Verizon retains cell service content for between three and five days. They are currently the only cell service provider that keeps this information. Our analysts routinely send preservation letters asking Verizon to hold onto the information until we can obtain a search warrant.

Cell service providers usually keep call-detail records one to three years, although polices can vary. These records track incoming and outgoing calls, the duration of the calls and the cell tower used for the calls. By supplying the cell service provider with a suspect's or defendant's cellphone number and the date of interest, the provider can usually provide data indicating which cell towers the phone utilized and when. This data, however, is not easily recognizable without loading it into software. Our analysts usually use the Pen Link software made available through our state fusion center to interpret and display the information.

In the Duncan case, cell-tower analysis demonstrated the defendant's movement around the time and place of the crime. By tracking the time Duncan's cellphone connected with cell

towers, we could demonstrate his movement from a relative's home in Hardeeville, South Carolina, 30 miles away to the south end of Hilton Head Island, where the shooting took place. The tower data not only showed Duncan was in the area, it showed he was in the area within the exact timeframe of the murder he committed. This was part of the final testimony presented to the jury which summed up the entire case.

e. **Historical research**

Fusion centers gather and retain incident reports concerning most if not all arrests. This provides a treasure trove of information that can be developed into evidence.

In 2009, Terry Dean Swanger was arrested for beating his girlfriend to death. Although law-enforcement conducted a thorough investigation of the crime scene, they were unable to locate the murder weapon. Without this information, there was a void concerning how Swanger murdered his girlfriend. Our analysts, utilizing the Fusion Center, gathered not only Swanger's criminal record but also the underlying incident reports. These reports showed that he had been arrested three previous times for domestic violence against three different victims. In each one of those instances, Swanger punched the victim, choked her and then, when she fell down, he stomped her. Our analyst took this information to the pathologist and asked him to compare bruising on the victim's body with the boots Swanger was wearing when he was arrested. The pathologist confirmed the match. This information was given to the judge at sentencing and was extremely valuable in explaining how Swanger killed the victim. Swanger is currently serving a life sentence.

e. Court Exhibits

For all of this information to come to life for the judge and jury, prosecutors must have exhibits the witnesses can use to tell their story. These come in the forms of charts and graphs, photographs and videos. Our intelligence team assists the prosecutors in preparing their cases for court by preparing these types of exhibits. In the Duncan case, the first exhibit used was a high-altitude drone photograph of the area surrounding the crime scene. Numerous witnesses were

able to refer to this photograph and easily provide their evidence to the jury. Our analyst made a chart showing the location of the towers the defendant's cell phone used and the time that the defendant's cellphone hit those towers. This chart produced an easy-to-follow timeline and map corresponding with the defendant's locations.

In many cases, law enforcement videotapes statements made by the defendants. In some of these cases, either the law enforcement officer or the defendant says something that is not admissible in court. This requires video editing, which our analysts also perform. Just as important, almost all video and audio needs to be transcribed so the jury can easily follow along with what is being said. It is not an accident that when 911 calls are played on the evening news they are almost always transcribed. Our analysts employee transcriptionists to accurately transcribe what is said and then they use software to embed the transcription into the video. When the audio or video is shown the transcription prints out at the bottom of the screen.

6) Costs

The cost of creating an intelligent unit in a prosecutor's office varies. Some items such as facial recognition and Pen Link software are provided to us through the Fusion Center free of charge. Our only costs are those of the personnel who have the expertise and certification to use the programs. Our office spends a little over $300,000 for the salaries and fringe benefits for our analysts and intake specialists. This does not include the cost of our investigators, who are also working with prosecutors outside of the intelligence unit. The following are other expenses that an intelligence unit may incur.

We purchased the equipment and built our video wall ourselves. There are a number of commercial companies that can supply this, but we generally found that approach cost-prohibitive. We purchased six monitors with 2160 pixels apiece, a Trace nine 3120 gig computer and six Ethernet boxes. It cost us approximately $12,000.

There are a few companies that sell cellphone extractors. Each is priced differently. The Cellebrite system costs $10,500 upfront, plus $4,000 a year for maintenance. Gray Key is

another cellphone extractor and costs $30,000 per year. Another system, for use on unlocked phones, is Mobilize, which costs roughly $600 per year.

We purchased a computer with four separate storage drives. This cost around $4,000. We use this computer to separate and keep the large amount of cellphone data that we extract for law-enforcement. We also purchased a drone that came with a 4K camera for $1,500. There are cheaper options available, as well as more expensive models. We have access to a large printer and the mounting material free of charge through one of our county's Geographic Information System (GIS) office. As these printers are relatively expensive, it is worth your time to contact your county to see if they will allow you to use them.

Transcriptions cost us generally $1 per minute of video time. We outsource this. We bought transcription editing software for $160.

Training is essential in making sure that our personnel are up to date on current technologies and maintain certifications. Training is offered at the National White-Collar Crime Center and in some state fusion centers. There are also individual classes taught by companies such as Cellebrite. Each one of these classes vary in cost.

7) Effect of Intelligence-Led Prosecution

The overall effect of the use of intelligence in prosecutor's office is that law-enforcement does a better job investigating and lawyers do a better job of prosecuting. We have also found that as a result of our intelligence unit, we have developed a stronger relationship with our area law enforcement agencies. Some, in fact, have assigned personnel to our unit. Presently, the State Law-Enforcement Division (SLED), the South Carolina Department of Corrections, and the Bluffton Police Department have people permanently assigned to our unit. Further, the use of volunteers has given our community a vested interest in what we are doing and a better idea of the intricacies of prosecution.

If there is any further information that I can help you with please feel free to contact me.

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