

**NOTE: INDIVIDUALLY-FOCUSED DETERRENCE: A
PROPOSED INCENTIVES-BASED NON-PROSECUTION
STRATEGY FOR SECOND CHANCES AND ITS
CONSTITUTIONAL HURDLES**

*Kevin M. Levy**

TABLE OF CONTENTS

I.INTRODUCTION	509
II.A BRIEF HISTORY OF FOCUSED DETERRENCE	512
III.MIXING HONEY AND VINEGAR TO DETER CRIME	514
A. <i>Honey: Incentives for Anti-Recidivism</i>	516
B. <i>Vinegar: Prosecuting the Uncooperative Program Participants</i>	519
IV.CONSTITUTIONAL IMPLICATIONS OF FOCUSED DETERRENCE.....	521
A. <i>Miranda and Interacting with Participating Individuals</i> ..	521
B. <i>Rothgery and the Commencement of the Right to Counsel</i> ..	524
C. <i>Alston v. City of Madison and 14th Amendment Equal Protection Clause Racial Discrimination Concerns</i>	527
V.ALTERNATIVE PROSECUTION STRATEGIES IN NEW JERSEY AS A CASE STUDY	530
VI.CONCLUSION: REINTEGRATING AMERICANS BACK INTO SOCIETY	534

I. INTRODUCTION

The United States of America is home to just five percent of the world's population, and yet it holds twenty-five percent of the world's prisoners.¹ Conservative politicians around the nation tend to capitalize on a fervor of anti-crime sentiments to boost themselves to higher office

* J.D. Candidate, May 2019, Rutgers Law School, Camden, New Jersey. Thank you to Professors Sandra Simkins and Alec Walen; Philadelphia Assistant District Attorney John Tartikoff; and to my father, Corporal Steven Levy of the Washington Township Police Department. Finally, I owe a great deal of gratitude to my mother, Janeen, for putting up with law school hypotheticals and being the primary source of encouragement in my life.

1. Michelle Ye Hee Lee, *Yes, U.S. Locks People Up at a Higher Rate Than Any Other Country*, WASH. POST (July 7, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.974ac07317e0.

and position themselves as “tough on crime.”² Liberal and libertarian politicians tend to focus the conversation on reducing prison populations through vague promises of criminal justice reform.³ But new penalties seem to materialize every day as legislators criminalize a wide array of behaviors and prosecutors prioritize enforcement of a greater amount of offenses.⁴

The current environment of national politics suggests that no real change will occur to improve the ongoing problems of the criminal justice system.⁵ So the burden to create real reforms rests on the shoulders of

2. For examples of politicians taking advantage of such rhetoric, see *60 Minutes Footage Shows Arpaio When He Was Ruthless “Joe the Jailer,”* CBS NEWS (Aug. 26, 2017), <https://www.cbsnews.com/news/60-minutes-footage-shows-arpaio-when-he-was-ruthless-joe-the-jailer/> (observing Sheriff Joe Arpaio’s attitude as a “tough-as-nails jailer” who apparently bragged that he “spent more money on food for the jailhouse dogs than for inmates”); Ronald Brownstein, *Why the Virginia Governor’s Race Could Echo Across the Country*, ATLANTIC (Oct. 26, 2017), <https://www.theatlantic.com/politics/archive/2017/10/virginia-governor-gillespie-northam/543984/> (discussing 2017 Virginia Republican gubernatorial candidate Ed Gillespie’s pledge to fight against the MS-13 gang, similar to President Donald Trump’s initiatives); Donald J. Trump (@realDonaldTrump), TWITTER (June 30, 2017, 5:48 AM), <https://twitter.com/realDonaldTrump/status/880739852286918656> (“Crime and killings in Chicago have reached such epidemic proportions that I am sending in Federal help. 1714 shootings in Chicago this year!”).

3. See, e.g., Ed O’Keefe, *Why Are Rand Paul and Kamala Harris Teaming Up on a Bill?*, WASH. POST (July 25, 2017), https://www.washingtonpost.com/politics/why-are-rand-paul-and-kamala-harris-teaming-up-on-a-bill/2017/07/25/c18a7ed6-7082-11e7-9eac-d56bd5568db8_story.html?utm_term=.427e09d207aa (examining the similarities of Senators Rand Paul, a libertarian, and Kamala Harris, a liberal, on criminal justice reform); see also Chris Goldstein, *Phil Murphy Made Big Promises to New Jersey’s Cannabis Supporters. Here’s What He Has to Do Now*, PHILA. INQUIRER (Nov. 14, 2017, 5:00 AM), www.philly.com/philly/business/cannabis/phil-murphy-legalize-marijuana-cannabis-prohibition-20171114.html (discussing then newly-elected Governor of New Jersey Phil Murphy’s social justice-oriented plan to legalize cannabis usage in New Jersey).

4. *Congressional Task Force on Overcriminalization*, NAT’L ASS’N CRIM. DEF. LAW., <https://www.nacdl.org/overcrimtaskforce/> (last visited Mar. 11, 2019) (noting that “[t]he Congressional Research Service . . . identified at least 439 new criminal offenses enacted between 2008–2013”); see also Jeff Welty, *Overcriminalization in North Carolina*, 92 N.C. L. REV. 1935, 1941–42 (2014) (discussing the overcriminalization phenomenon in North Carolina and finding that the North Carolina General Assembly enacted “an average of 16.8 [felonies] per year”); Ali Watkins & Katie Benner, *Justice Dept. to Prioritize Prosecutions for Lying in Gun Background Checks*, N.Y. TIMES (Feb. 22, 2018), <https://www.nytimes.com/2018/02/22/us/politics/gun-background-checks-prosecutions.html> (noting the Trump Administration’s post-Parkland push to prioritize prosecutions of individuals who lie on state and federal applications to purchase firearms and observing that “[w]hile lying on the background forms is a felony, it is a crime that has rarely, if ever, been prosecuted”).

5. *But see* FIRST STEP Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (representing a broad reform to federal prison reform including renovations to early release programs, enhanced protections for juvenile and pregnant prisoners, and reducing sentencing guidelines for drug-related felonies).

state and local leaders. Further complicating the matter of criminal justice reform is the ongoing epidemic of gun violence, where many are gunned down regularly with seemingly less media coverage of each passing episode.⁶

Alternative prosecution strategies, like Focused Deterrence, have a positive effect on local communities and provide a path back above ground for some suspected offenders.⁷ This Note seeks to offer and endorse an innovative approach to anti-recidivist policing and prosecution through the implementation of Focused Deterrence strategies and bolstering of existing programs. Part II will discuss a brief history of Focused Deterrence and its roots in the Boston Gun Project and Operation Ceasefire initiative. Part III focuses on the implementation of Focused Deterrence programs and their repercussions on individuals who both abide by the prescripts of such programs but otherwise fail to live up to those expectations. Part IV is a collection and analysis of the case law that would possibly affect the implementation of Focused Deterrence programs, looking at the *Miranda* implications of interactions with police who target an individual for increased surveillance and supervision, and at the implications on the right to counsel under the Sixth Amendment. This Part also includes an analysis of a relatively recent Seventh Circuit case that examined Focused Deterrence under the lens of an equal protection challenge under the Fourteenth Amendment.⁸ Finally, Part V discusses the aspects of similar deterrence/alternative prosecution strategies that seek to keep communities whole by intentionally avoiding counterproductive prosecutions that could also be incorporated into a more comprehensive Focused Deterrence program.

6. See *Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary, 113th Cong. 2* (2013) (statement of Sen. Dick Durbin, Member, S. Comm. on the Judiciary); see also Daniel Nass, *Parkland Generated Dramatically More News Coverage Than Most Mass Shootings*, TRACE (May 17, 2018), <https://www.thetrace.org/2018/05/parkland-media-coverage-analysis-mass-shooting/> (observing that news attention dedicated to mass shootings decreases rapidly in the days following such tragedies).

7. See Anthony A. Braga, *Better Policing Can Improve Legitimacy and Reduce Mass Incarceration*, 129 HARV. L. REV. F. 233, 239 (2016) (pointing to positive reactions from community members when law enforcement officials offer gang members a choice, “providing resources to support their transition away from violent behavior” or “simply arresting and prosecuting them”); see also Tina Rosenberg, Opinion, *Taking Aim at Gun Violence, With Personal Deterrence*, N.Y. TIMES (Apr. 3, 2018), <https://www.nytimes.com/2018/04/03/opinion/gun-violence-personal-deterrence.html> (“Focused Deterrence is the opposite of ‘zero tolerance’ policing, which seeks to punish disorder and minor crimes, often with mass arrests, on the theory that disorder sends a message that crime is tolerated.”).

8. See *Alston v. City of Madison*, 853 F.3d 901 (7th Cir. 2017).

Rather than reinforcing the classic provisions of Focused Deterrence, which revolve around intense supervision and surveillance of selected individual—or group—subjects of prosecution, this Note seeks to re-center the discussion on alternative non-prosecution strategies that aim to reintegrate potential and past offenders through incentive-based programs. Further, this Note points to the societal success of other anti-recidivist programs, akin to general probation programs, that buttress the case for Focused Deterrence.

II. A BRIEF HISTORY OF FOCUSED DETERRENCE

It would be irresponsible to discuss overcriminalization in the United States without first recognizing recent incidences of violent crime.⁹ The Trump Administration has emphasized gang violence, especially from international crime syndicate MS-13.¹⁰

In 1996, the City of Boston embarked on an anti-violence initiative known as the Boston Gun Project in response to growing concerns over a mounting spike of homicides. This enterprise took aim at the most violent criminal gangs in the city using quantitative and qualitative data to identify and then systematically dismantle these groups.¹¹ The Gun Project assembled various law enforcement agencies in the city to combat the tide of gun violence. But rather than adopting a haphazard strategy of responding to every instance of gang or gun violence as a type of five-alarm fire emergency, the Boston Police Department zeroed in on the highest profile repeat offenders who were the source of most of the city's

9. *E.g.*, Kevin Rector, *Baltimore Has Now Had 343 Homicides in 2017, Sets Record for Killings Per Capita*, BALT. SUN (Dec. 27, 2017, 8:20 PM), www.baltimoresun.com/news/maryland/crime/bs-md-ci-per-capita-homicides-20171227-story.html. The home of one Rutgers Law School campus—Camden, New Jersey—is also known nationally as one of the most dangerous cities in the country, with grisly statistics like 19.66 violent crimes per 1000 residents. *Camden, NJ Crime Rates*, NEIGHBORHOODSCOUT, <https://www.neighborhoodscout.com/nj/camden/crime> (last visited Mar. 11, 2019). *But see* John Gramlich, *5 Facts About Crime in the U.S.*, PEW RESEARCH CTR. (Jan. 3, 2019), www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/ (finding that national violent crime has hit twenty-five year lows); Ashley Southall, *Crime in New York City Plunges to a Level Not Seen Since the 1950s*, N.Y. TIMES (Dec. 27, 2017), <https://www.nytimes.com/2017/12/27/nyregion/new-york-city-crime-2017.html> (noting substantial drops in homicides in New York City, Chicago, and Detroit).

10. Press Release, White House, *Protecting Am. Cmty. from the Violence of MS-13* (Feb. 6, 2018), <https://www.whitehouse.gov/briefings-statements/protecting-american-communities-violence-ms-13/>.

11. Anne Morrison Piehl, David M. Kennedy & Anthony A. Braga, *Problem Solving and Youth Violence: An Evaluation of the Boston Gun Project*, 2 AM. L. & ECON. REV. 58, 59, 97 (2000); *see also* NAT'L INST. OF JUSTICE, *REDUCING GUN VIOLENCE: THE BOSTON GUN PROJECT'S OPERATION CEASEFIRE 65* (2001).

violence.¹²

After making an example of the “most violent” and “second most violent” gangs, the city saw a sizable decrease in gang violence, ostensibly led by the gangs themselves out of fear of being labeled as a “highly violent” gang and finding themselves next on the list for targeting.¹³ To further the deterrence, Boston officials began a second phase of the Gun Project, known as Operation Ceasefire. This phase saw the Boston Police Department, in conjunction with the Suffolk County District Attorney’s Office, work with local communities to build stronger anti-crime incentives. The Police Department would meet en masse with gang members in town hall-like settings to explain that the gang was under watch, offer them various inducements to end their criminal behavior, and continue to monitor that behavior with the implied threat that the full weight of the law would be brought down upon them if they returned to their ways.¹⁴

Ceasefire set the foundation for many local and statewide Focused

12. David Thacher, *Channeling Police Discretion: The Hidden Potential of Focused Deterrence*, 2016 U. CHI. LEGAL F. 533, 549–50 (2016).

13. VANDA FELBAB-BROWN, MODERNISING DRUG LAW ENFORCEMENT REPORT 2: FOCUSED DETERRENCE, SELECTIVE TARGETING, DRUG TRAFFICKING AND ORGANISED CRIME: CONCEPTS AND PRACTICALITIES 5 box 1 (Int’l Drug Policy Consortium 2013), http://fileserv.idpc.net/library/MDLE-report-2_Focused-deterrence.pdf; see Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of American Policing in the Twenty-First Century*, 111 NW. U. L. REV. 1537, 1548 (2017) (discussing that police who participate in Focused Deterrence programs are more ably equipped to target the “criminogenic” portions of high crime communities).

14. See John Buntin, *How High Point, N.C., Solved its Domestic Violence Problem*, GOVERNING STATES & LOCALITIES (Mar. 2016), <http://www.governing.com/topics/public-justice-safety/gov-domestic-violence-focused-deterrence.html> (“Police, probation officers and prosecutors would identify the most dangerous offenders. Then, working together with gang intervention workers, local clergy and people from other service agencies, they delivered a message to those offenders: We care about you. We’re going to help you. However, if you resort to gun violence, we will come down on you, hard.”); Pat Pratt, *CPD Anti-Violence Program on Horizon*, COLUM. DAILY TRIB. (May 25, 2018, 2:56 PM), <http://www.columbiatribune.com/news/20180525/cpd-anti-violence-program-on-horizon> (delineating Columbia, Missouri’s three-stage Focused Deterrence program as beginning with a community outcry that violence will not be tolerated, followed by the offer of “intense” social services, and finishing with the threat of “swift response” by law enforcement for those who fall off the wagon); see also David E. Patton, *Guns, Crime Control, and a Systemic Approach to Federal Sentencing*, 32 CARDOZO L. REV. 1427, 1447–48 (2011) (comparing Boston’s systematic and carefully targeted Focused Deterrence strategy with Richmond, Virginia’s blunt force “An Illegal Gun Gets You Five Years in Federal Prison” campaign). But see Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 106 n.341 (2017) (noting that the social incentives aspects of Focused Deterrence could be completed without the coercive presence of law enforcement officers).

Deterrence projects. But it was not without its critics.¹⁵ Law enforcement targeting of local criminal activity to “keep[] the peace” generally dates back to early English notions of justice.¹⁶ However, such surgical targeting could reinforce the notion that governmental institutions are at war with American citizens and police them, rather than protect them. Law enforcement strategies like Focused Deterrence should benefit the police and the citizens they are sworn to protect. Accordingly, this Note proposes that Focused Deterrence, specifically, can help repair relations between the public and the police.¹⁷

III. MIXING HONEY AND VINEGAR TO DETER CRIME

Police forces are among the most powerful subdivisions of American government. Through activities ranging from issuing traffic tickets to deciding whether an armed suspect lives or dies, American police officers are often afforded enormous swaths of discretion.¹⁸ Today, law enforcement agencies across the country face a crisis of public trust due to a variety of factors.¹⁹ Notable among them are record-breaking

15. See Allegra M. McLeod, *Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives*, 8 HARV. UNBOUND 109, 116–17 (2012–2013) (criticizing Operation Ceasefire as focusing too much on the aggressive portions of the Focused Deterrence regime instead of adequately “responding to the complex social concerns currently regulated all too often through criminal law enforcement”).

16. Roger Scott, “Roots”: *An Historical Perspective of the Office of Sheriff*, SHERIFF MAG., 2011, at 59, 59, <https://www.sheriffs.org/publications-resources/resources/office-of-sheriff>.

17. See Shawn E. Fields, *Stop and Frisk in a Concealed Carry World*, 93 WASH. L. REV. 1676, 1719 (2019) (describing Focused Deterrence as one of several alternatives to “traditionally invasive stop and frisk policing”); Tom Tyler, *Police Discretion in the 21st Century Surveillance State*, 2016 U. CHI. LEGAL F. 579, 598 (2016) (proposing that utilization of Focused Deterrence strategies is helpful for the added goal of restoring relations between communities and law enforcement).

18. See Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 339–40, 355–56, 376–77 (1998), for an in-depth discussion on discretionary police powers and the (constitutional) dangers that accompany such discretion.

19. See, e.g., David J. Thomas, *Law Enforcement Must Regain the Public's Trust*, NAT'L POLICE FOUND., <https://www.policefoundation.org/law-enforcement-must-regain-the-publics-trust/> (last visited Mar. 11, 2019) (discussing divides between racial minorities, especially the African American community, and law enforcement); see also Jeffrey M. Jones, *In U.S., Confidence in Police Lowest in 22 Years*, GALLUP (June 19, 2015), <http://news.gallup.com/poll/183704/confidence-police-lowest-years.aspx> (revealing that only fifty-two percent of Americans express “a great deal” or “quite a lot” of support for the police); Tracey L. Meares, *Can the Police Regain Trust?*, YALE INSIGHTS (May 3, 2017), <https://insights.som.yale.edu/insights/can-the-police-regain-trust> (suggesting a prime reason for distrust in law enforcement is a lack of perceived empathy from law enforcement officers).

statistics of police shootings²⁰ and politicization of federal law enforcement agencies.²¹ It is clear that law enforcement across the country is hurting. Implementing Focused Deterrence policies in states and localities could serve as an important olive branch for repairing police-community relations and rebuilding communities that have been devastated by crime.²²

The classic Focused Deterrence strategy posits that targeting the highest profile gangs to counter violent crimes systematically results in city-wide deterrence as gangs inevitably fear the label of “most violent gang.”²³ This plan ultimately seems more tactical than strategic. Individuals who consistently commit violent crimes without a desire for reformation should, of course, face prosecution. By changing the formula of Focused Deterrence to prioritize community rehabilitation, communities might be able to simultaneously reduce crime rates by wisely wielding police and prosecution powers on the one hand while offering incentives for anti-recidivism and community reintegration on the other. In this way, police departments and prosecutors’ offices can revitalize communities.

20. German Lopez, *American Police Shoot and Kill Far More People Than Their Peers in Other Countries*, VOX, <https://www.vox.com/cards/police-brutality-shootings-us/us-police-shootings-statistics> (last updated Nov. 14, 2018, 4:12 PM); see German Lopez, *Police Have to Repair Community Trust to Effectively Do Their Jobs*, VOX, <https://www.vox.com/identities/2016/8/13/17938262/police-shootings-brutality-black-on-black-crime> (last updated Nov. 14, 2018, 4:12 PM). See generally Nirej Sekhon, *Blue on Black: An Empirical Assessment of Police Shootings*, 54 AM. CRIM. L. REV. 189, 193, 218 (2017) (discussing growing concern over recent high profile racially-motivated police shootings). It should come as no surprise that levels of distrust in law enforcement institutions rise when communities feel as though they are being targeted.

21. For example, President Trump, presumably yearning to accomplish his repeated campaign promise to “lock her up,” has seemingly directed the U.S. Department of Justice to reignite a political investigation into his 2016 electoral opponent. See Eric Lichtblau, *Trump Camp Refuses to Close Door on Campaign Pledge to ‘Lock Her Up,’* N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/us/politics/trump-clinton-jail.html>; see also, e.g., John Solomon, *FBI Launches New Clinton Foundation Investigation*, HILL (Jan. 4, 2018, 8:35 PM), <http://thehill.com/homenews/campaign/367541-fbi-launches-new-clinton-foundation-investigation>.

22. See Tyler, *supra* note 17, at 598.

23. FELBAB-BROWN, *supra* note 13, at 5; see Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2079 (2017) (emphasizing the “procedural justice” aspects of “hot spots” Focused Deterrence policing); see also Cynthia Lum & Daniel S. Nagin, *Reinventing American Policing*, 46 CRIME & JUST. 339, 340, 351–52 (2017) (briefly discussing the merits of Focused Deterrence and resolving that crimes averted—and not arrests made—should be the main indicator for the successfulness of law enforcement regimes).

A. *Honey: Incentives for Anti-Recidivism*

Instead of focusing on traditional deterrence strategies, prosecutors' offices and police departments around the nation can work in tandem to reduce street violence and restore vitality to ailing communities. This Note emphasizes the latter goal as the more important societal objective as a long-term aspiration.²⁴ One large city has expanded its Focused Deterrence programs to such an extent. With the election of Mayor Jim Kenney, the City of Philadelphia has mounted additional efforts to combat ongoing violence while inflicting minimal damage to neighborhoods through focused prosecutions.²⁵ The mayor's staff described the program as offering part-threats and part-incentives to at-risk communities.²⁶ Notably, the cost to the city was minimal, at only \$150,000 for "social services and job training" since the city was able to reorient many of its existing programs and services, utilizing its resources in better and more productive ways.²⁷ Philadelphia found great success in implementing these strategies by bringing together law enforcement and social services.²⁸ It was important in Philadelphia not only to emphasize the criminal/legal implications of gang activities to those targets for Focused Deterrence programs, but also to include relevant members of the community to speak their minds and share their

24. See *infra* Part V.

25. Max Marin, *City to Expand Successful Violence-Reduction Strategy Beyond South Philadelphia*, PHILLY VOICE (Oct. 17, 2016), <http://www.phillyvoice.com/city-expand-successful-violence-reduction-strategy-beyond-south-philly/>.

26. *Id.* ("If you keep shooting each other, expect a swift crackdown by law enforcement. Stop shooting, and we'll try to help pull you out of the cycle of violence. Jobs, social services, a GED. Whatever it takes."); cf. *The Wire: Straight and True* (HBO television broadcast Oct. 17, 2004):

Bodie: Nothing personal against you, chief, but what happens if we buck?

Maj. Colvin: You remember the carrot, right? Well, if you choose the stick instead, you gonna feel that stick like you ain't never felt before. We gonna indict every corner, every day. I've got over 200 sworn personnel and I plan to free up every one of them to knock every one of y'all down they can. If you're on a corner in my district it ain't gonna be about no humble, it ain't gonna be about no loitering charge, nothing like that. There gonna be some biblical shit happening to you on the way to that motherfuckin' jail wagon.

27. Marin, *supra* note 25; see also Judy Walton, *City Plans to Run VRI Social Services Programs*, TIMES FREE PRESS (June 3, 2018), <http://www.timesfreepress.com/news/local/story/2018/jun/03/city-plans-run-vri-social-services-programs/472309/> (noting that the "re-entry navigators" involved in Chattanooga, Tennessee's Focused Deterrence program will cost the city \$172,444 during the 2019 fiscal year).

28. Marin, *supra* note 25 ("When Philadelphia agencies collaborated to implement Focused Deterrence in 2013, shootings in South Philadelphia plummeted by more than 40 percent.").

resources.²⁹ Two of the original assistant district attorneys on the Philadelphia Regional Gun Violence Task Force³⁰ characterized the implementation strategy as one of redemption and hope.³¹ Philadelphia implemented its take on Focused Deterrence to “save lives and heal [the] city.”³² And it has worked.³³ In fact, the City of Philadelphia is devoting more resources to Focused Deterrence-type programs and continues to enact smart crime-averting policies.³⁴

But all of this progress is premised on the value of alternative crime-prevention strategies. Other jurisdictions have embarked on similar programs and have met varying levels of success. Smaller cities like High Point, North Carolina³⁵ and Jamestown, New York³⁶ have recognized noticeable decreases in crime rates which city officials have

29. Bryan Lentz & Andrew Wellbrock, *Focused Deterrence in Philadelphia: Fighting Crime with Redemption and Hope*, SOC. INNOVATIONS J. (Nov. 3, 2013), <http://www.socialinnovationsjournal.org/sectors/89-government-policy/1397-focused-deterrence-in-philadelphia-fighting-crime-with-redemption-and-hope>.

30. *Gun Trafficking and Community Engagement*, OFF. DISTRICT ATT’Y, <http://www.phila.gov/districtattorney/aboutus/divisions/Pages/GunTrafficking.aspx> (last visited Mar. 11, 2019). In the interest of disclosure, the author was a legal intern in the Gun Violence Task Force during the Summer of 2017.

31. Lentz & Wellbrock, *supra* note 29.

32. *Id.*

33. Caterina G. Roman et al., *Philadelphia Focused Deterrence: Findings from the Impact Evaluation*, TEMP. U. 1, 8 (Sept. 2017), <https://pdfs.semanticscholar.org/1d77/a67057d272ca0298036cb82c93f82990d867.pdf> (noting reductions in gang-related shootings after the initiation of call-in Focused Deterrence meetings in South Philadelphia); *see also* Bobby Allyn, *In Three South Philly Police Districts, ‘Focused Deterrence’ Cuts Shooting Rate by Third*, WHYY (Dec. 23, 2017), <https://whyy.org/segments/three-south-philly-police-districts-forced-deterrence-cuts-shooting-rate-third/> (reviewing the above-cited report and noting ongoing conversations between Mayor Jim Kenney and then-District Attorney-elect Larry Krasner on “whether to expand [Focused Deterrence] beyond the three police districts in South Philly where it was piloted”).

34. Jim Kenney (@PhillyMayor), TWITTER (Jan. 7 2019, 9:34 AM), <https://twitter.com/PhillyMayor/status/1082329585423998976> (praising the above described program that has already employed forty-seven Philadelphians); Antionette Lee, *Southwest Philly Police Start Off Year With Creative Approach to Curb Gun Violence*, KYW NEWSRADIO 1060 (Jan. 6, 2019, 2:19 PM), <https://kywnwsradio.radio.com/articles/news/southwest-philadelphia-police-start-year-creative-approach-curb-gun-violence> (discussing a recent Philadelphia program—Turning a New Corner—which partners police precincts with local employers to venture into Southwest Philadelphia communities in an additional attempt to curb spreading gun violence).

35. *See* Buntin, *supra* note 14. *See also* Ben David, *Community-Based Prosecution in North Carolina: An Inside-Out Approach to Public Service at the Courthouse, on the Street, and in the Classroom*, 47 WAKE FOREST L. REV. 373, 403 (2012), for a discussion in greater detail on the aspects of the “High Point Model” of Focused Deterrence involving community members.

36. Dennis Phillips, *Police Chief: Crime Rate Went Down Last Year*, POST-J. (Jan. 24, 2018), <http://www.post-journal.com/news/page-one/2018/01/police-chief%E2%80%88crime-rate-went-down-last-year/>.

attributed to strategies such as Focused Deterrence.³⁷ The State of New York has begun incentivizing its municipalities to initiate Focused Deterrence programs as part of its Gun Involved Violence Elimination grant by offering funds for “personnel, such as prosecutors and crime analysts, in addition to overtime, equipment, training and community outreach efforts.”³⁸

Some scholars have extensively studied Focused Deterrence and its accompanying results. In a how-to manual, scholars Jessica Saunders, Allison J. Ober, Beau Kilmer, and Sarah Michal Greathouse detailed the benefits and applications of Focused Deterrence programs.³⁹ Although their primary study was focused on drug market interventions, the strategies used to combat open air drug markets and gun violence are strikingly similar.⁴⁰ The success of such programs is dependent on the “buy-in” of community members.⁴¹ The group of authors charted the path

37. See Press Release, FBI St. Louis, Mission SAVE (July 20, 2015), <https://www.fbi.gov/contact-us/field-offices/stlouis/news/press-releases/mission-save> (discussing successful rates of reduced violence in cities that utilize Focused Deterrence strategies); see also Walton, *supra* note 27 (“Not only will re-entry navigators provide legitimacy to [the] focused deterrence message, they will also decrease violence by helping individuals involved in gang violence to become productive community members, ending a cycle of incarceration, crime and harm to the community” (alteration in original)).

38. *Gun Involved Violence Elimination (GIVE) Initiative*, DIVISION CRIM. JUST. SERVS., <http://www.criminaljustice.ny.gov/crimnet/ojsa/impact/index.htm> (last visited Mar. 11, 2019) (“Crime-fighting strategies developed under GIVE vary by jurisdiction and include . . . focused deterrence against violent gangs and groups considered responsible for the most gun violence in communities GIVE also will provide technical assistance so that agencies can effectively implement those strategies.”); see Rosenberg, *supra* note 7 (highlighting Newburgh, New York as a recipient of GIVE funds “which give[] cities with high rates of violent crime money and technical support to use evidence-based programs”); cf. 20 ILL. COMP. STAT. ANN. 2605/2605-605(5) (West 2018) (authorizing the creation of a Violent Crime Intelligence Task Force that “may assist in violence suppression strategies including . . . focused deterrence against violent gangs and groups considered responsible for the violence in communities”).

39. JESSICA SAUNDERS, ALLISON J. OBER, BEAU KILMER & SARAH MICHAL GREATHOUSE, *A COMMUNITY-BASED, FOCUSED-DETERRENCE APPROACH TO CLOSING OVERT DRUG MARKETS* (2016) (ebook).

40. See *id.* at 8 (“Specifically, the DMI relies on focused deterrence with respect to lower-level offenders while incapacitating dangerous offenders and empowering communities to set up norms—such as showing disdain for drug dealers, forming neighborhood watch groups, and reporting drug dealers to the police—that prevent the overt drug markets from reestablishing.”).

41. *Id.* at 9; see also Hannah Erickson, *Grant Allows SIU to Partner with the Springfield Police Department on Project to Reduce Gun Violence*, S. ILL. U. NEWS (July 2, 2018), <https://news.siu.edu/2018/07/070218-reducing-gun-violence.php> (noting a community meeting in which participants came face-to-face with parents of children killed by gun violence); Rosenberg, *supra* note 7 (claiming that community involvement is “[p]erhaps most important” and stressing that law enforcement officials could effectuate a Focused Deterrence program with little engagement).

of a drug market intervention program broken up into a five-phase plan consisting in “formation,” “target[ing],” “buy-in,” “call-in,” and “maintenance” phases.⁴² The formation phase involves members of law enforcement, prosecutors, social services, and community/faith leaders joining together in preparation of the Focused Deterrence program. The targeting phase is when law enforcement and prosecutors create the A-list and B-list of offenders. This list should be carefully curated to have a maximum level of positive impact on communities. Next, the buy-in phase focuses on the communities themselves and aims to engage organizations that have an interest in the betterment of their local neighborhoods to work together on Focused Deterrence programs. Then, the call-in phase is when participants are invited to meetings with law enforcement, prosecutors, service providers, and community leaders. This is the meat of the program where incentives for non-recidivism are explained. Finally, the maintenance phase is where the team members must work together to ensure that participants in Focused Deterrence programs stay on the “right” path. This consists of enhanced enforcement by the police and continuously-provided services by the community.⁴³

B. Vinegar: Prosecuting the Uncooperative Program Participants

The power of Focused Deterrence is two-fold: first in its incentives against recidivism and second in its threatened prosecutions for repeating past wrongs. By combining the two competing powers, law enforcement agencies are able to present past and potential criminals a

42. SAUNDERS ET AL., *supra* note 39, at 8–9. The book does not explicitly describe the phases using these titles, but for convenience and simplicity, the author lifted key words from their description of each phase and will use them as titles here. *See also* Anthony A. Braga & David L. Weisburd, *The Effects of Focused Deterrence Strategies on Crime: A Systematic Review and Meta-Analysis of the Empirical Evidence*, 49 J. RES. CRIME & DELINQ. 323, 323–58 (2012) (discussing the procedures employed by law enforcement in Focused Deterrence programs); Ben Grunwald & Andrew V. Papachristos, *Project Safe Neighborhoods in Chicago: Looking Back a Decade Later*, 107 J. CRIM. L. & CRIMINOLOGY 131, 132–34 (2017) (discussing the positive effects of Chicago’s Focused Deterrence program, Project Safe Neighborhoods: “attendees are cautioned about the consequences of committing further gun crimes and are offered social, educational, health, and employment services”).

43. *See* SAUNDERS ET AL., *supra* note 39, at 8–9. While the community-based five-phase Focused Deterrence regime is based on plans to counter open air drug markets, the system is largely applicable to other contexts as well, such as gun violence. *See id.* at 1.

choice in their lives.⁴⁴

An important aspect of Focused Deterrence is the idea that prosecuting people all of the time for every crime committed is an unfortunate use of resources.⁴⁵ Saunders et al., separated drug dealers into two distinct groups: an “A-list” and a “B-list.”⁴⁶ This classification method was based on the level of danger or violence that the individual drug dealer posed to the community, with the most dangerous and/or violent among them belonging on the A-list.⁴⁷ Their Focused Deterrence strategy intentionally used the A-listers to serve as an example to the less violent B-listers.⁴⁸ Although this Note focuses on what additional remedies might be offered to once and/or future criminals instead of premising itself solely on the negative promise of lengthy incarceration, deterrence of criminal activity still plays a vital role. Targeting the A-list for prosecution “makes the expected punishment salient for the B-listers who are given a second chance.”⁴⁹

Coming down harder on those who have failed to live up to society’s

44. See Charles F. Sabel & William H. Simon, *The Duty of Responsible Administration and the Problem of Police Accountability*, 33 YALE J. ON REG. 165, 187 (2016) (noting that Focused Deterrence “identifies persistent offenders” and responds with a “package of threats, offers of social services, and moral exhortation tailored to the specific circumstances of the actors”). The Newburgh, New York Focused Deterrence program sent personalized letters to prospective/invited participants in which the Chief of Police “laid out the long prison terms they faced if caught with a gun or committing a gun crime.” Rosenberg, *supra* note 7. But see Roman et al., *supra* note 33, at 4 (“Social services are not a required component of FD strategies, and the use of or emphasis on social services varies widely across jurisdictions that have implemented FD.”).

45. Lentz & Wellbrock, *supra* note 29; see Editorial, *Our View: Deterrence Program Carries Great Potential*, ST. J.-REG. (May 23, 2018, 8:05 PM), <http://www.sj-r.com/opinion/20180523/our-view-deterrence-program-carries-great-potential> (“It’s easy to say, they committed a crime, lock them up. That doesn’t get at the root of the gun violence problem: Lack of education and employment opportunities, as well as barriers to assistance from social service groups.”).

46. SAUNDERS ET AL., *supra* note 39, at 9.

47. *Id.* at 1, 9, 34.

48. *Id.* at 2, 9.

49. *Id.* at 66; see also Daniel Robelo, *Demand Reduction or Redirection? Channeling Illicit Drug Demand towards a Regulated Supply to Diminish Violence in Latin America*, 91 OR. L. REV. 1227, 1249–50 (2013) (arguing that Latin American countries should reorient the drug war to focus on drug “traffickers who most frequently or visibly engage in violence”).

expectations is also an evident feature of American criminal law.⁵⁰ While the premise of this Note is that law enforcement agencies should do more to integrate themselves into their own communities by prioritizing the incentive aspects of Focused Deterrence, the underlying programs only work if they are paired with the more coercive side of Focused Deterrence.⁵¹ Law enforcement agencies should be prepared to deal with the possibility—and, in all likelihood, the probability—of targeted individuals failing to comply with the rules and regulations of a Focused Deterrence strategy.

IV. CONSTITUTIONAL IMPLICATIONS OF FOCUSED DETERRENCE

Although this Note's proposed brand of Focused Deterrence seeks to ameliorate relations between law enforcement and communities by limiting future coercive interactions, the programs themselves inherently involve a high level of police-initiated contact with specifically chosen "targets" to participate in a Focused Deterrence program.⁵² Challenges to Focused Deterrence programs should be expected and anticipated. The sections below address potential constitutional challenges and objections to Focused Deterrence programs and analyze one case where such a challenge was heard (and ultimately rejected).⁵³

A. *Miranda and Interacting with Participating Individuals*

Quotidian interactions with law enforcement personnel tend to adhere to U.S. constitutional provisions.⁵⁴ However, when it comes to targeted interactions that police have with individuals, certain protections may need to be examined. Whether an individual selected for participation in a Focused Deterrence program must be *Mirandized* is a key inquiry that may also jeopardize the regime in its entirety. (Imagine

50. Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 CARDOZO L. REV. 1, 10–13 (2010) (discussing ongoing developments in mandatory minimum impositions in the federal courts); see also Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEO. L.J. 291, 301–02 (2016) (discussing the requirement that most probationers not commit any new crimes and, in essence, "be good" in order to avoid re-incarceration); CAL. PENAL CODE § 667 (West 2012) (punishing Californian criminals under a three-strike law that punishes repeat offenders significantly more if they had previously been convicted of a "serious felony").

51. See SAUNDERS ET AL., *supra* note 39, at 9.

52. FELBAB-BROWN, *supra* note 13, at 16.

53. See *Alston v. City of Madison*, 853 F.3d 901 (7th Cir. 2017); discussion *infra* Part IV.C.

54. See *Florida v. Bostick*, 501 U.S. 429, 439 (1991) (mentioning that "the proposition that police officers can approach individuals as to whom they have no reasonable suspicion and ask them potentially incriminating questions" is "by no means novel").

if you were being told in one breath that you have the right to remain silent, but in the next breath that the government is here to help you!)⁵⁵ The constitutional protection against self-incrimination and its due process guarantee could be triggered by a Focused Deterrence situation if meetings begin to resemble interrogations.⁵⁶

In *Miranda v. Arizona*, the Supreme Court of the United States vastly expanded the rights of persons as they relate to custodial interactions with law enforcement.⁵⁷ The common utterances of the police as a result of the *Miranda* decision have been memorized by many television watchers. Post-*Miranda*, a criminal defendant has the right to be informed that he or she has “a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed” following an initial arrest.⁵⁸ But police officers are not required to *Mirandize* every civilian with whom they come into contact. Such a warning is only warranted in the context of police interrogations or in other circumstances of police custody since *Miranda’s* protections exist “to counterbalance the coercive environment of custodial interrogation.”⁵⁹

The United States Supreme Court has not issued a bright-line rule as to when an interaction with a civilian constitutes a “custody” for purposes of determining the initiation of *Miranda’s* protections.⁶⁰ However, the Court has pointed to several factors to determine whether an interaction with law enforcement would constitute a custodial stop,

55. This is not to say that a participant’s knowledge of his or her rights would constitute an obstacle to the successful execution of a Focused Deterrence Program, however. Rather, informing the participant of his or her rights in a *Cops*-esque style might have a counterproductive chilling effect on cooperation and buy-in. *See infra* text accompanying notes 73–74.

56. U.S. CONST. amend. V; *Malloy v. Hogan*, 378 U.S. 1, 10 (1964) (incorporating the Fifth Amendment’s protection against self-incrimination as to the states). It is not too difficult to envision a meeting organized by law enforcement and initiated under false pretenses where a subject is invited to speak to police, prosecutors, and community members, but that later turns into a quasi-interrogation, the purpose of which is to obtain incriminating information. *See SAUNDERS ET AL.*, *supra* note 39, at 46 (firmly noting the importance of expressing that subjects will not be arrested at call-in meetings).

57. 384 U.S. 436, 498–99 (1966).

58. *Id.* at 444.

59. *See Commonwealth v. Bland*, 115 A.3d 854, 855, 861–63 (Pa. 2015) (holding that a defendant who attempted to invoke his *Miranda* protections days before he was actually interrogated, who was located over one thousand miles away awaiting extradition from Florida to Pennsylvania, could not assert these rights to later suppress evidence he provided to police during questioning).

60. *See Howes v. Fields*, 565 U.S. 499, 508 (2012).

including: the location of the questioning,⁶¹ its duration,⁶² statements made during the interview,⁶³ the presence or absence of physical restraints during the questioning,⁶⁴ and whether the interviewee is released at the end of questioning.⁶⁵

In *Berkemer v. McCarty*, the Supreme Court found that a road-side traffic stop by a law enforcement officer did not rise to the level of a *Miranda* custody.⁶⁶ After noticing a swerving car, the officer pulled the car over and initiated a stop.⁶⁷ Even though the police officer considered the driver detained—and the driver was, in fact, prohibited from leaving the location of the car stop—he was not in custody.⁶⁸ Only once the police officer formally arrested the driver was he properly considered in custody and afforded the protections guaranteed by *Miranda*.⁶⁹

Focused Deterrence situations might operate similarly to *Berkemer* traffic stops. Under an effective Focused Deterrence regime, interactions between law enforcement personnel and targets would be limited in duration and scope.⁷⁰ Although the law enforcement agency might confront a participant with knowledge of his or her criminal wrongdoing in order to induce the participant to participate, the point of the interaction is, in fact, to prevent further prosecution and to convince wrongdoers to lay down their weapons and quit violence.⁷¹ Taking the stationhouse out of the equation, meeting targets in their homes or other community centers like churches simply would not be the sort of “coercive environment of custodial interrogation” envisioned and protected by

61. *Maryland v. Shatzer*, 559 U.S. 98, 105–09 (2010).

62. *Berkemer v. McCarty*, 468 U.S. 420, 437–38 (1984).

63. *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004); *Stansbury v. California*, 511 U.S. 318, 325 (1994); *Oregon v. Mathiason*, 429 U.S. 492, 495–96 (1977) (per curiam).

64. *New York v. Quarles*, 467 U.S. 649, 655 (1984).

65. *California v. Beheler*, 463 U.S. 1121, 1121–23 (1983) (per curiam).

66. 468 U.S. at 441–42.

67. *Id.* at 423. The Court noted that the car stop implicated Fourth Amendment Search and Seizure protections based on its temporary deprivation of liberty, “even though the purpose of the stop [was] limited and the resulting detention quite brief.” *Id.* at 437 (quoting *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)).

68. *Id.* at 441–42.

69. *Id.* at 442; *see also Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968) (holding that an individual is only seized within the meaning of the fourth amendment “when the officer, by means of physical force or show of authority, has in some way restrained the liberty” of the individual).

70. *See SAUNDERS ET AL.*, *supra* note 39, at 6–7.

71. *See Lentz & Wellbrock*, *supra* note 29.

Miranda.⁷²

Focused Deterrence works when there is buy-in from communities, law enforcement personnel, and from the participants themselves.⁷³ Approaching the boundary lines of *Miranda* and its progeny not only raises constitutional concerns, but also threatens the integrity of Focused Deterrence programs by undermining the bona fide efforts of community groups to revitalize communities. Law enforcement should thus avoid questions or conversations with participants that might incriminate the participant concerning any open cases of which he or she may be the subject or have knowledge of since the call-in meetings are not designed to be an interrogation.⁷⁴ While law enforcement agencies will likely have information related to the participants' past (and potentially ongoing) criminal activity, it should only be used as a reason for a participant to buy-in to the program instead of setting the stage for a future prosecution.

B. Rothgery and the Commencement of the Right to Counsel

Criminal *defendants* have the right to an attorney.⁷⁵ Ordinary civilians, during their everyday interactions with law enforcement officers, do not. Although readily available access to one's attorney is one of the surest ways to safeguard personal liberty interests,⁷⁶ it might also have a chilling effect on the potentiality of relationship-building between both state and non-state actors and targets of Focused Deterrence programs. Once an attorney is involved, members of the local prosecutor's

72. See *Commonwealth v. Bland*, 115 A.3d 854, 861 (Pa. 2015). *But see* *State v. Innis*, 433 A.2d 646, 651–52, 652 n.8 (R.I. 1981), *cert. denied*, *Innis v. Rhode Island*, 456 U.S. 930 (1982) (holding that a statement made by a defendant in the absence of his attorney in a context that was not designed to elicit from the defendant information related to the crimes for which he was under investigation—the back of a police cruiser—did not implicate *Miranda* concerns and thus was admissible as evidence at trial).

73. SAUNDERS ET AL., *supra* note 39, at 39–40.

74. See *id.* at 45 (noting that it is vital that participants are informed that, during invitations, “the offender will not be arrested at the call-in”). Additionally, it is important to remember that a goal of Focused Deterrence is overall decreased criminal activity, not better prosecution rates. See *id.* at 1. Participants in Focused Deterrence programs should not be treated as informants or cooperating witnesses. Focused Deterrence is not designed to encourage individuals to flip on their friends or to testify against former gang members.

75. U.S. CONST. amends. V, VI; see also *Gideon v. Wainwright*, 372 U.S. 335, 339 (1963) (holding that criminal defendants are constitutionally guaranteed counsel under more than the Fifth Amendment's Due Process clause).

76. Due to the complexities of criminal procedure in the federal and state court systems, a pro se defendant is at a severe disadvantage when it comes to putting on a defense against the weighty State. See Julie M. Bradlow, Comment, *Procedural Due Process Rights of Pro Se Civil Litigants*, 55 U. CHI. L. REV. 659, 660–61 (1988) (describing the daunting “labyrinthine nature of the court system” for both civil and criminal pro se litigants).

offices would be ethically prohibited from communicating ex parte with the participants, for example.⁷⁷

The Fifth Amendment limited right to counsel does not apply in Focused Deterrence situations.⁷⁸ But there is the possibility that the Sixth Amendment plays a part here. “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”⁷⁹ A strict textualist reading of the Constitution would answer the conundrum quickly: Focused Deterrence is not a criminal prosecution. But “textualism only gets you so far.”⁸⁰ While the Sixth Amendment guarantees to counsel are at play in criminal prosecutions, they are variably triggered at different points in an investigation.

The Supreme Court recently addressed and settled the issue of when the Sixth Amendment right to counsel attaches in *Rothgery v. Gillespie County*.⁸¹ In *Rothgery*, the Court confronted a Texas county that had an unwritten policy of refusing indigent criminal defendants access to counsel until after they were formally charged by information or indictment.⁸² Two police officers had arrested Walter Rothgery without a

77. See, e.g., MODEL RULES OF PROF'L CONDUCT r. 4.2 (AM. BAR ASS'N 2016) (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”).

78. The distinction between the Fifth and Sixth Amendments' guaranteed right to counsel may seem trivial but is an important one: a custodial interrogation ensures a pre-indictment criminal suspect the right to have an attorney at all interrogations under the Fifth Amendment whereas the Sixth Amendment's guarantee provides an attorney at all “critical stages” of criminal proceedings. See also *supra* Part IV.A. If it did, participants in such programs would be wise not to request canine solicitors. See *State v. Demesme*, 228 So. 3d 1206, 1206–07 (La. 2017) (Crichton, J., concurring) (mem.) (quizzically finding that the statement “why don't you just give me a lawyer dog” was an ambiguous or equivocal invocation of counsel); Tom Jackman, *The Suspect Told Police 'Give Me a Lawyer Dog.' The Court Says He Wasn't Asking for a Lawyer.*, WASH. POST, (Nov. 2, 2017, 9:39 AM), https://www.washingtonpost.com/news/true-crime/wp/2017/11/02/the-suspect-told-police-give-me-a-lawyer-dog-the-court-says-he-wasnt-asking-for-a-lawyer/?noredirect=on&utm_term=.944d068e99a1 (noting an absurd grammatical and shockingly successful argument the prosecution advanced, that the defendant in *Demesme* was requesting a canine lawyer instead of (obviously) using “dog” as a slang colloquialism).

79. U.S. CONST. amend. VI.

80. See STEVEN LUBET, *THE IMPORTANCE OF BEING HONEST: HOW LYING, SECRECY, AND HYPOCRISY COLLIDE WITH TRUTH IN LAW* 120–21 (2008), for an amusing allusion comparing Supreme Court Justices to baseball umpires on the folly of strict textualism (“In other words, the framers expect the umpire to do the right thing, which calls for a level of situational judgment that written rules can never supply. It's not so much that the rulebook is a 'living document' as that it has to be applied to real live games.”).

81. 554 U.S. 191, 198–205, 213 (2008).

82. *Id.* at 197.

warrant for felony possession of a firearm.⁸³ Following the arrest, the officers brought Rothgery to a hearing before a magisterial judge to determine whether there was probable cause to place him formally into custody.⁸⁴

The officers, without any notification to local prosecutors, obtained approval from the magistrate who denied Rothgery access to counsel on the account that it would “delay setting bail (and hence his release from jail).”⁸⁵ Rothgery was given a respite when the deputy sheriff signed his bond, allowing him to go home.⁸⁶ Rothgery was a free man from July 2002 until January 2003, when a grand jury returned an indictment on the felony possession of a firearm charge with which he was originally assailed.⁸⁷ Without adequate funds to hire an attorney, Rothgery languished in jail for three weeks until his newly-appointed attorney obtained a bail reduction on his behalf and filed paperwork proving that Rothgery—accused of felony possession of a firearm—had never actually been convicted of a felony.⁸⁸ The Supreme Court was troubled by the fact that Rothgery had sat accused of a crime for six months, and held that “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and *his liberty is subject to restriction*, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”⁸⁹

Rothgery represented an important step in the Supreme Court’s criminal law jurisprudence. It also reflected the sentiment that “in our Nation’s tradition, the importance of having counsel to represent one’s interests can hardly be overstated.”⁹⁰

Having recognized the sometimes-competing interests between law enforcement—including prosecutors—and civilians, it is clear to see how a participant of a Focused Deterrence Program could be less likely to engage when presently represented by an attorney.⁹¹ Fortunately again for the proponents of Focused Deterrence, it does not appear as though

83. *Id.* at 195.

84. *Id.*

85. *Id.* at 196–98, 196 n.5.

86. *Id.* at 196.

87. *Id.* at 195–96.

88. *Id.* at 196–97.

89. *Id.* at 213 (emphasis added).

90. Brief of Amici Curiae Twenty-Four Professors of Law in Support of Petitioner at 11, *Rothgery v. Gillespie Cty.*, 554 U.S. 191 (2008) (No. 07-440), 2008 WL 205090, at *10–11.

91. Again, this Note should not be understood to suggest that law enforcement agencies should attempt to trick or fool participants of Focused Deterrence policies about their constitutional rights. The author’s hope is that defense attorneys, if consulted, would encourage those invited to participate in such programs to participate wholeheartedly. See *supra* notes 55–56.

Rothgery's admonitions to the law enforcement community apply here either. Because participants of Focused Deterrence programs are not brought to judicial officers or are ever charged (ideally) with crimes, the Sixth Amendment is never triggered.

C. *Alston v. City of Madison and 14th Amendment Equal Protection Clause Racial Discrimination Concerns*

A third constitutional provision is potentially triggered by Focused Deterrence programs: the Equal Protection Clause. Focused Deterrence, on a conceptual level, should be employed to better all communities and push for safer neighborhoods regardless of race. However, due to the statistics-backed nature of Focused Deterrence initiatives, it is not entirely out of the realm of possibility that a minority group would feel the brunt of the program's effects.

At least one court has considered the implications of the relatively new legal concept of Focused Deterrence.⁹² In *Alston v. City of Madison*,⁹³ the Seventh Circuit dealt with a Wisconsinite take on Focused Deterrence that featured a participant caught on the aggressive enforcement side of deterrence.⁹⁴

Probationer Eric Alston was selected by the City of Madison, Wisconsin, to be a participant in their Focused Deterrence program, designed to “(1) increase surveillance of repeat violent offenders to deter criminal conduct and (2) *provide resources to repeat violent offenders to help them become productive members of society.*”⁹⁵ Alston, as one of the worst violent offenders in Madison, did not take so kindly to being placed

92. Very few courts have tackled the issue of Focused Deterrence, constitutionally or otherwise. Those that have considered Focused Deterrence have not addressed the merits of such programs. In *Webster v. State*, the Maryland Court of Special Appeals recognized the “dramatic” impact that Focused Deterrence has on cities’ homicide rates when combined with “stiffer sentences” for gun crimes. 108 A.3d 480, 498 (Md. Ct. Spec. App. 2015) (citation omitted). In *In re A.B.*, the Pennsylvania Superior Court vacated the revocation of probation of a juvenile who was committed to a secure facility when the presiding judge failed to consider less restrictive alternatives as a matter of heavy deterrence. Nos. 1093 EDA 2014, 1094 EDA 2014, 2014 WL 10786949, at *7 (Pa. Super. Ct. Dec. 23, 2014). Finally, in *Commonwealth v. Smith*, the Pennsylvania Superior Court considered whether being selected for participation in Philadelphia’s Focused Deterrence Program constituted “extraordinary circumstances” that would warrant transferring a probationer to the supervision of another judge under Rule 700 of the Pennsylvania Rules of Criminal Procedure. No. 88 EDA 2017, 2017 WL 4973923, at *2–4 (Pa. Super. Ct. Oct. 31, 2017).

93. 853 F.3d 901, 904–05 (7th Cir. 2017).

94. *Id.* at 905; see Philip J. Cook, *The Great American Gun War: Notes from Four Decades in the Trenches*, 42 CRIME & JUST. 19, 52 (2013) (discussing the aggressive portion of Focused Deterrence programs as a good means to reduce gun violence just by threatening federal gun prosecutions).

95. *Alston*, 853 F.3d at 904 (emphasis added).

into the Focused Deterrence program.⁹⁶ Inclusion in the program led to increased attention from law enforcement personnel.⁹⁷ After a domestic violence incident, Alston's probation was revoked by a hearing officer who was on the selection committee that recommended Alston be placed in the program.⁹⁸

In a § 1983 claim against the city, Alston contended that his rights to equal protection and due process were violated by his inclusion in the Focused Deterrence program.⁹⁹ Under Circuit precedent, Alston needed to prove that the overall Focused Deterrence program had a discriminatory effect on minorities and that it was conducted with a discriminatory purpose in order to prevail on his equal protection claim.¹⁰⁰ He did not.¹⁰¹

Squaring off against the statistical models on which Focused Deterrence programs are based, the Seventh Circuit found that the statistics Alston presented—that African Americans composed just 4.5% of the Madison population, 37.6% of arrests, but 86% of the program participants—were irrelevant.¹⁰² Through sheer statistical force, the numbers represent a disproportionate impact on the community. But Alston failed to show that the Madison Police Department intentionally discriminated against him because of his race.¹⁰³ If anything, and as the court concluded, the Focused Deterrence program was intended “to benefit, not discriminate against, Madison’s minority population.”¹⁰⁴

The incentives of Focused Deterrence offered to the B-list are also accompanied by the disincentives to the A-list, such as the enhanced

96. *Id.* at 905.

97. *Id.* at 905–06.

98. *Id.* at 906.

99. *Id.* Alston also argued that his Fourth Amendment rights were violated when an apprehension request was issued for his arrest. The court affirmed summary judgment on behalf of the City. *Id.* at 910–11.

100. *Id.* at 906 (citing *Chavez v. Ill. State Police*, 251 F.3d 612, 635–36 (7th Cir. 2001)).

101. *Id.* at 909.

102. *Id.* at 906–07.

103. *Id.* at 907. The Seventh Circuit also contrasted this case from classic equal protection cases where the government purposely discriminated against a protected group and was not able to overcome statistical evidence. *Id.* at 908; *see, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339, 347–48 (1960) (holding that redrawing a town’s boundaries systematically to exclude African Americans from city limits violated the Equal Protection Clause); *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886) (holding that denying laundry permits to all Chinese applicants while approving all similar non-Chinese applicants was unconstitutional for the same reason).

The Seventh Circuit also dismissed Alston’s equal protection claim on other procedural grounds—failing to raise factual issues at the district court. *Alston*, 853 F.3d at 907.

104. *Alston*, 853 F.3d at 909.

police scrutiny that Alston faced through participation in the Focused Deterrence program.¹⁰⁵ Alston also claimed that the city deprived him of his liberty without due process because of his inclusion in the Focused Deterrence program.¹⁰⁶ He argued that he faced stigmatization and enhanced police scrutiny because of the program.¹⁰⁷ And he certainly did—that was one of the central points of the Madison Focused Deterrence program.¹⁰⁸ If Alston’s inclusion violated the Constitution, then we have all wasted a good amount of time reading (and writing!) this Note. Fortunately for proponents of Focused Deterrence, the Seventh Circuit found that Alston’s inclusion in the program had not violated his due process rights.¹⁰⁹ Because Alston was a probationer, the Seventh Circuit found that he had lessened liberty interests in “com[ing] and go[ing] as he pleases.”¹¹⁰

Although the Seventh Circuit tailored its ruling in a narrow manner by focusing on Alston’s legal status as a probationer, the court appeared to hint at a rather high burden to challenge Focused Deterrence programs—at least in the Seventh Circuit. Merely placing a stigma on the participant of a Focused Deterrence program,¹¹¹ either A-list or B-list, by virtue of being targeted as a violent offender will not trigger a due process violation, without more.¹¹² The court’s decision suggests that Focused Deterrence programs are in the clear, at least for now, though at least one additional participant in Madison’s Focused Deterrence program has levied new claims against the City.¹¹³

105. *Id.* at 909. See SAUNDERS ET AL., *supra* note 39, at 9, 11 fig.2.1.

106. *Alston*, 853 F.3d at 909.

107. *Id.*

108. *Id.* (“The focused deterrence program’s entire purpose was to monitor repeat violent offenders. Anyone selected for the program carried that brand.”).

109. *Id.* at 910.

110. *Id.* at 909.

111. See Janice Gross Stein & Ron Levi, *The Social Psychology of Denial: Deterring Terrorism*, 47 N.Y.U. J. INT’L L. & POL. 409, 426–27 (2015) (recognizing that “shaming” is an effective tool in the police officer’s kit in the Focused Deterrence framework).

112. *Alston*, 853 F.3d at 909.

113. See *Smith v. City of Madison*, No. 17-CV-856-BBC, 2018 WL 4705872, at *1 (W.D. Wis. Oct. 1, 2018) (disposing of several discovery-related requests related to plaintiff Damien Smith’s claims that the City of Madison’s Focused Deterrence program violated constitutional protections against racial discrimination and due process guarantees by “forc[ing] him to be part of the Focused Deterrence Program because of his race and without an opportunity to be heard”).

V. ALTERNATIVE PROSECUTION STRATEGIES IN NEW JERSEY AS A CASE STUDY

This push to move away from reactive mass prosecutions writ large is not incredibly new or groundbreaking. Alternative prosecution strategies are abundant in the states¹¹⁴ and even internationally.¹¹⁵ Among the most basic incentives for governments to introduce alternative prosecution strategies is to prevent “the accused [from having] a criminal conviction recorded against their name.”¹¹⁶ This ideological drive is comparable to the recent social call to “ban the box,” or to prevent employers from inquiring as to previous criminal convictions on job applications.¹¹⁷ There are other concerns to employing alternative prosecution strategies. For example, some argue that they allow too many mis-doers off the hook, especially white-collar

114. See, e.g., *Alternative Prosecution and Resources (PHOENIX)*, NASSAU COUNTY DISTRICT ATT’Y LONG ISLAND, N.Y., <http://www.nassauda.org/212/Alternative-Prosecution-and-Resources> (last visited Mar. 11, 2019); *Alternative Prosecution Programs*, STATE’S ATT’Y OFF. LAKE COUNTY, IL, <http://www.lakecountyil.gov/1985/Alternative-Prosecution-Program> (last visited Mar. 11, 2019).

115. See, e.g., Stephen F. Pires et al., *The Crime Triangle of Kidnapping for Ransom Incidents in Colombia, South America: A ‘Litmus’ Test for Situational Crime Prevention*, 54 BRIT. J. CRIMINOLOGY 784, 801 (2014) (noting that Focused Deterrence has applications outside of the traditional gun crime context; specifically coordinated kidnapping rackets worldwide); *Alternative to Prosecution*, CROWN OFF. & PROCURATOR FISCAL SERV., <http://www.copfs.gov.uk/about-us/what-we-do/10-about-us/297-alternative-to-prosecution> (last visited Mar. 11, 2019); cf. Patrick Walsh, *Operationalizing the Incentive Theory: Modernizing U.S. Bureaucracy to Effectively Predict and Prevent War*, 224 MIL. L. REV. 87, 101–02 (2016) (observing that implementing diplomatic incentives to other countries, as opposed to embarking automatically on economic sanctions, keeps appropriate forceful alternatives in the government’s back pocket while dealing in good faith to avoid burdensome and antithetical economic pressures).

116. *Alternative to Prosecution*, supra note 115.

117. See Christina O’Connell, Note, *Ban the Box: A Call to the Federal Government to Recognize a New Form of Employment Discrimination*, 83 FORDHAM L. REV. 2801, 2802–03 (2015) (noting that obtaining job opportunities has a positive impact on the lives of ex-convicts, thereby improving communities and social welfare). Some states have already acted on this initiative, including New Jersey. See N.J. STAT. ANN. § 34:6B-14 (West 2017) (“An employer shall not make any oral or written inquiry regarding an applicant’s criminal record . . . during the initial employment application process.”); see also Fair Chance Act, H.R. 1905, 115th Cong. § 9202 (2017) (prohibiting all federal agencies from asking information related to criminal background related to employee prospects). The 115th Congress adjourned prior to consideration of the Fair Chance Act. *But cf.* Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q. J. ECON. 191, 229 (2018) (concluding that ban the box campaigns, while well intentioned, often lead to increased levels of race discrimination once employers cannot control for criminal background history).

criminals.¹¹⁸ Others look outside of the borders of the United States to international human rights violations and see the failures of actual criminal prosecutions, and so resign themselves to the vitality of non-prosecution alternatives like truth and reconciliation committees.¹¹⁹

Within the United States, there are a variety of alternative prosecution strategies utilized by prosecutors. Some of these are simply modified prosecution approaches that dedicate prosecutors to specific zones of jurisdiction so as to better integrate prosecutors' offices within communities.¹²⁰ Other more innovative strategies recognize the harm that accompanies a criminal background. New Jersey has implemented a statewide alternative prosecution strategy to deal with first-time juvenile offenders called "stationhouse adjustment."¹²¹ The premise of the program is to deter future criminal/delinquent acts by juveniles while preserving the integrity of the juvenile and resolving controversies with efficiency and expeditiousness.¹²²

Not every New Jersey juvenile is eligible for a stationhouse adjustment, however.¹²³ As previously mentioned, only kids without criminal records are eligible to participate in this program.¹²⁴ Additionally, juveniles accused of certain offenses, such as sex crimes and

118. See, e.g., David M. Uhlmann, *Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability*, 72 MD. L. REV. 1295, 1302–03 (2013) (criticizing the excessive use of non-prosecution agreements by the Obama Justice Department with corporate criminal defendants while noting their utility in "less serious" violations).

119. Compare Raquel Aldana-Pindell, *In Vindication of Justiciable Victims' Rights to Truth and Justice for State-Sponsored Crimes*, 35 VAND. J. TRANSNAT'L L. 1399, 1403, 1442–43 (2002) (emphasizing that, although prosecutions are generally more preferred than alternative remedies to victims, some alternatives do suffice for purposes of vindication), with Castillo-Páez v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 43, ¶ 107 (Nov. 27, 1998) (holding that States have a duty to prosecute those responsible for violations of human rights laws).

120. See Kay L. Levine, *The New Prosecution*, 40 WAKE FOREST L. REV. 1125, 1151–52 (2005) (discussing new community-based initiatives to "reduc[e] and prevent[] crime, address[] public disorder and misdemeanor offenses, and strengthen[] bonds with citizens . . . to establish community justice") (quoting CATHERINE M. COLES & GEORGE L. KELLING, PROSECUTION IN THE COMMUNITY: A STUDY OF EMERGENT STRATEGIES 34 (1998)). Prosecution strategies like this merely place prosecutors in zones so that they might better interact with their communities. *Id.* at 1152 n.74.

121. DEP'T OF LAW & PUB. SAFETY, OFFICE OF THE ATTORNEY GEN., ATTORNEY GENERAL GUIDELINES FOR STATIONHOUSE ADJUSTMENT OF JUVENILE DELINQUENCY OFFENSES 3 (2005) [hereinafter GUIDELINES].

122. *Id.*

123. *New Jersey Stationhouse Adjustments*, ALISSA HASCUP JUV. DEF. ATT'Y, <https://www.njjuveniledefenselawyer.com/stationhouse-adjustments-in-new-jersey/> (last visited Mar. 11, 2019) (discussing the various benefits of stationhouse adjustments for juvenile offenders from a defense attorney's perspective).

124. GUIDELINES, *supra* note 121, at 3.

bias offenses, would automatically be ineligible for the program unless otherwise authorized by the relevant county prosecutor's office.¹²⁵ A stationhouse adjustment intervention, by its nature, must involve the parents of the accused juvenile so as to involve other stakeholders in the offense.¹²⁶ Some more involved juveniles are eligible for more advanced interventions with the purpose of reducing "the number of youth entering the juvenile court system."¹²⁷ Generally, stationhouse adjustments are conducted so as to avoid permanent repercussions of criminal/delinquent activity, such as a criminal background, incarceration, probation, and fingerprinting.¹²⁸

Additionally, New Jersey operates another juvenile-oriented program known as a Juvenile Conference Committee ("JCC").¹²⁹ These JCCs operate in a similar fashion to stationhouse adjustments which are operated at the discretion of police officers; JCCs are conducted and juveniles referred to such committee by family-court judges.¹³⁰ The chairman of one committee remarked that the existence of JCCs are important because, "[a]fter all, kids make mistakes."¹³¹ In addition to simply reducing the amount of caseload in already-burdened New Jersey courts, the JCCs are able to put kids back on a productive path after a first or second low-level offense.¹³²

New Jersey has created a variety of diversionary programs seeking to limit the effect of criminal prosecution on eligible offenders for various humanitarian or other policy-related goals. For example, veterans and current members of the armed services are offered participation in a diversionary program so as not to impugn military service records and to

125. *Id.* at 4–5. It is possible under the Guidelines that a police officer could conduct a stationhouse adjustment for a juvenile accused of multiple crimes, including bias or sexually-related offenses, and could be "adjusted" for some but not all eligible crimes.

126. *See id.* at 6.

127. *Advanced Station House Adjustment*, SOMERSET CTY., N.J., <https://www.co.somerset.nj.us/government/human-services/juvenile-institutional-svcs/advanced-station-house-adjustment> (last visited Mar. 11, 2019).

128. GUIDELINES, *supra* note 121, at 3 ("[E]arly intervention will deter the youth from continuing their negative behavior and divert the youth from progressing further into the juvenile justice system."); E-mail from Pat Gurcsik, Chief of Police, Wash. Twp. Police Dep't, to author (Feb. 8, 2018, 09:15 EST) (on file with author).

129. *Juvenile Conference Committees*, N.J. CTS., <https://www.judiciary.state.nj.us/public/volunteer/program/jcc.html> (last visited Mar. 11, 2019).

130. *Id.*

131. Eugene Paik, *N.J. Juvenile Conference Committees Seek to Avoid Court for Kids*, STAR-LEDGER (Dec. 5, 2010, 7:15 AM), www.nj.com/news/local/index.ssf/2010/12/neighborhood_justice_system_ke.html.

132. *Id.*

recognize service and sacrifice to the state and nation.¹³³ Similar to the abovementioned stationhouse adjustments and JCCs available to first-time and second-time juvenile offenders, New Jersey offers first-time *adult* offenders access to a pre-trial intervention under certain circumstances.¹³⁴ This statewide program, mirroring some aspects of the juvenile program, “emphasizes that social, cultural, and economic conditions often result in a defendant’s decision to commit crime.”¹³⁵ As such, New Jersey policymakers forged ahead to provide alternative outcomes to first-time offenders. New Jersey’s pre-trial intervention operates as a quasi-probation program that, upon completion, wipes criminal records clean and accompanies the prosecution’s dismissal of criminal charges against the defendant.¹³⁶

Another form of alternative prosecution available to New Jersey criminal defendants is Drug Court.¹³⁷ This procedure is available to criminal defendants accused of non-violent crimes who have ongoing substance abuse issues.¹³⁸ Drug Court programs began as a means to “stop the abuse of alcohol and other drugs and related criminal activity.”¹³⁹ While not excusing criminal activity entirely, the Drug Courts were established—and exist today—to combat rampant drug abuse problems in the state while providing meaningful and lasting relief to eligible participants.¹⁴⁰

Diversions and alternative prosecution strategies are great tools in the kit of prosecutors who exercise extraordinary amounts of

133. N.J. STAT. ANN. § 2C:43-23–24 (West 2017); *see also Veterans Diversion Program*, N.J. DEP’T MIL. & VETERANS AFF., <https://www.nj.gov/military/veterans/diversion-program/> (last updated July 10, 2018) (offering peer mentorship programs to in-need eligible veterans in order to avoid future run-ins with law enforcement).

134. *Pretrial Intervention (PTI) Program Summary and Application*, N.J. JUDICIARY, <https://camdencountypros.org/wp-content/uploads/2014/03/PTI-brochure.pdf> (last visited Mar. 11, 2019).

135. *Id.* (“Simply stated, PTI strives to solve personal problems which tend to result from the conditions that appear to cause crime, and ultimately, to *deter future criminal behavior by a defendant.*” (emphasis added)).

136. *Id.* (“If a defendant successfully completes all the conditions of PTI, then the original charges are dismissed . . . and there is no record of conviction.”).

137. *See Drug Courts*, N.J. CTS., <https://www.judiciary.state.nj.us/courts/criminal/drug.html> (last visited Mar. 11, 2019).

138. *Drug Court*, ST. OF N.J.: DEP’T OF HUM. SERVS., https://www.state.nj.us/humanservices/dmhas/resources/services/treatment/sa_drugcourt.html (last visited Mar. 11, 2019); *Drug Courts*, *supra* note 137.

139. *Id.*

140. Victoria Dalton, *What You Should Know About Drug Court in New Jersey*, N.J.COM (Dec. 12, 2015), http://www.nj.com/south-jersey-voices/index.ssf/2015/12/what_you_should_know_about_dru.html (“New Jersey’s Drug Court Program helps to keep countless people out of prison and gives them a second chance at beating this terrible disease [addiction].”).

discretion.¹⁴¹ They are not without their critics, however. Some argue that the use of diversionary programs for perpetrators of domestic violence endangers, rather than betters, the community,¹⁴² while others argue that the use of diversionary programs at the behest of prosecutors fails to provide adequately for needy criminal defendants.¹⁴³

VI. CONCLUSION: REINTEGRATING AMERICANS BACK INTO SOCIETY

Individuals who are afforded multiple chances to right past wrongs and come back above ground, but unceasingly fail to do so and continue to commit crimes, should likely go to jail. Those who are a constant menace to society do not deserve to live among upstanding citizens or those who are willing to do better. But those who are on the wrong path deserve a second chance at life or—in the least—deserve the ability to right those wrongs.¹⁴⁴ American society and local communities would benefit, too, from giving second chances to those willing to take advantage of them. New progressive advents in the field of criminal law ranging from deterrence and anti-recidivist programs which aim not only to protect society from repeat offenders but also to attempt to ensure that the criminal justice system does not fail perpetrators of crimes,¹⁴⁵ to

141. See Whitney C. Wootton, Note, *Diversion Not Deportation: Mitigating the Harsh Immigration Consequences of Minor Crimes*, 16 SEATTLE J. SOC. JUST. 217, 219, 230–31 (2017) (discussing the societal benefits of using diversionary programs for undocumented immigrants as a means of exhibiting “humanity and compassion”) (quoting Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 N.Y.U. L. REV. 1126, 1159–60 (2013)); see also Maclin, *supra* note 18, at 379 n.200. But see Barbara E. Armacost, “Sanctuary” Laws: *The New Immigration Federalism*, 2016 MICH. ST. L. REV. 1197, 1235 n.148 (2016) (noting that Focused Deterrence strategies can also be used to deter violence in immigrant communities by avoiding maximum prosecution of non-criminal immigrants in favor of targeting “criminal alien[s]”).

142. E.g., Rebecca G. Goddard, Note, *When It's the First Time Every Time: Eliminating the “Clean Slate” of Pretrial Diversions in Domestic Violence Crimes*, 49 VAL. U. L. REV. 267, 298, 302 (2014) (discussing the societal ails of slapping domestic violence offenders on the wrist, including the (unintended) consequences of gun violence perpetrated by those not actually prosecuted for domestic violence-related crimes).

143. E.g., Shaila Dewan & Andrew W. Lehren, *After a Crime, the Price of a Second Chance*, N.Y. TIMES (Dec. 12, 2016), <https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html> (addressing criticisms levied against the prosecutor of Lorain County, Ohio, for making qualifying for diversionary programs too difficult); see also Liesel J. Danjczek, Comment, *The Mentally Ill Offender Treatment and Crime Reduction Act and Its Inappropriate Non-Violent Offender Limitation*, 24 J. CONTEMP. HEALTH L. & POL'Y 69, 84–85 (2007) (discussing why current federal exclusions on mentally ill criminal defendants' access to diversionary programs is insufficient where it excludes violent mentally ill criminal defendants).

144. Email from Pat Gurcsik, *supra* note 128.

145. See Jan Peter Dembinski, *Restorative Justice—Time to Take it Seriously?*, VT. B.J., Winter 2014, at 25–26.

decriminalizing petty drug possession,¹⁴⁶ point in the direction of a new national interest in redefining our perspective on criminal *justice*. It is true that American cities and states continue to invest money in building new prisons¹⁴⁷ and are investigating new corporate opportunities in private prisons,¹⁴⁸ but there is a growing trend in some circles to push for new areas of development in restorative justice.¹⁴⁹

The current presidential administration appears to be more focused on a superficial level of “law and order” instead of actually making communities—especially communities of color—safer.¹⁵⁰ American law enforcement agencies might very well be able to arrest every criminal as crimes are committed, provided enough resources. However, such a strategy would wreak havoc on communities and families by depriving children of their parents. Whack-a-mole prosecutorial strategies like that end up not addressing the roots of criminal activity and indicate that law enforcement agencies are resigning themselves to crime fighting instead of crime prevention.¹⁵¹

This Note proposes an expansion of an already successful strategy that puts communities first by removing the most violent criminals from society’s doorsteps and offering a helping hand to those who are willing to better themselves. Focused Deterrence strategies also have the ability to repair strained relationships between law enforcement agencies and the communities they are sworn to protect.¹⁵² Police should be supported

146. See, e.g., Ryan Sit, *Philly DA Drops Dozens of Marijuana Criminal Charges, Joins Other Big Cities in Decriminalization*, NEWSWEEK (Feb. 16, 2018, 10:48 AM), www.newsweek.com/marijuana-charges-dropped-philadelphia-pennsylvania-district-attorney-809172.

147. Gordon Bassham, *Kansas Lawmakers to Consider Building New Prison*, KSN.COM (Jan. 16, 2018, 5:54 PM), <http://ksn.com/2018/01/16/kansas-lawmakers-to-consider-building-new-prison/> (building a new prison in Kansas); Ryan Dunn, *Lucas County Commissioners Unveil Proposed Jail Site*, BLADE (Feb. 2, 2018, 1:28 AM), <http://www.toledoblade.com/Police-Fire/2018/02/01/Lucas-County-commissioners-unveil-proposed-jail-site.html> (same, in Ohio); Neal Goswami, *Scott to Unveil Plans for New Vermont Prison*, WCAX3 (Jan. 15, 2018, 6:43 PM), <http://www.wcax.com/content/news/Scott-to-unveil-plans-for-new-Vermont-prison-469418293.html> (same, in Vermont).

148. Matt Zapotosky, *Justice Department Will Again Use Private Prisons*, WASH. POST (Feb. 23, 2017), https://www.washingtonpost.com/world/national-security/justice-department-will-again-use-private-prisons/2017/02/23/da395d02-fa0e-11e6-be05-1a3817ac21a5_story.html?utm_term=.459fab881f5a.

149. See Dembinski, *supra* note 145, at 20 (citing VT. STAT. ANN. tit. 28, § 2a (West 2012)); Jane C. Murphy, Opinion, *Restorative Justice: Healing Victims and Reducing Crime*, BALT. SUN (Jan. 24, 2018, 10:30 AM), www.baltimoresun.com/news/opinion/oped/bs-ed-op-0125-restorative-justice-20180124-story.html.

150. See Trump, *supra* note 2.

151. Marie Gottschalk, *Bring It On: The Future of Penal Reform, the Carceral State, and American Politics*, 12 OHIO ST. J. CRIM. L. 559, 579 (2015).

152. See *supra* text accompanying notes 16–17.

and respected, but that support and respect must be earned, and arresting criminals in a reactive way is a haphazard—and likely ineffective—way to earn that respect. It is the hope of this author that members of the law enforcement community will continue to seek innovations in prosecutorial strategies like Focused Deterrence to ensure *fiat justitia*: that justice be done.