

Environmental Justice: A Path Towards Equity Through Environmental Crimes Prosecutions

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I. Introduction

For decades, many have struggled to address the inequitable burden certain communities bear in connection with our nation's waste and pollution. Notwithstanding presidential and federal agency efforts to advance environmental justice (EJ) in those communities, measurable success remains elusive, especially in the context of criminal violations. This article advocates for strategic prosecutions of environmental crimes given the burdens of pollution offenses and climate change on communities with EJ concerns. Through local and federal partnerships, thoughtful planning, and execution of an enforcement strategy, federal prosecutors can help ensure the protection of human health and the environment for all our communities.¹

¹ Ten years ago, the Executive Office for U.S. Attorneys (EOUSA) published a bulletin on EJ. See Kris Dighe & Lana Pettus, *Environmental Justice in the Context of Environmental Crimes*, 59 U.S. ATT'YS' BULL., no. 4, July 2011, at 3. The bulletin provided a robust discussion of EJ and recommended methods to incorporate EJ considerations into the investigation and prosecution of environmental crimes. Since its publication, a new Government Accountability Office report was issued on EJ in 2019 and, in 2021, a new executive order was issued that addresses EJ. Both of these documents are discussed in this article, as is a novel approach to building an EJ initiative in districts across the nation.

A. Communities with EJ concerns shoulder an unequal burden

The United States Environmental Protection Agency (EPA) defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”² This definition arose because environmental *injustices* have occurred as certain communities have borne a disproportionate share of environmental burdens.

The EJ movement gained national recognition in the early 1980s when the people of Warren County, North Carolina, protested the placement of a toxic waste landfill in their community, which was in a low-income, predominantly Black rural area.³ These protests garnered national media attention.⁴ As a result, in 1982, Congress requested that the U.S. General Accounting Office, now the Government Accountability Office (GAO), “determine the correlation between the location of hazardous waste landfills and the racial and economic status of surrounding communities.”⁵ The GAO reviewed offsite hazardous waste landfills in the eight states comprising EPA’s southeastern region and, in 1983, determined that there was indeed a correlation: Three out of four of the offsite hazardous waste landfills in that region were located in predominantly Black communities in which at least 26% of the population was below the poverty level.⁶ In other words, the few communities with a majority Black population were home to 75% of the toxic landfills in that region. The disparity was clear to anyone who read the 1983 GAO Report.

² *Environmental Justice*, ENV’T PROT. AGENCY (updated Sept 8, 2021), <https://www.epa.gov/environmentaljustice>.

³ When North Carolina decided to build a landfill in rural Warren County to bury thousands of tons of contaminated soil, hundreds of protestors attempted to block the truckloads of toxic material, many of whom were arrested. *See, e.g., 55 Arrested in Protest at a Toxic Dump in Carolina*, N.Y. TIMES, Sept. 16, 1982, at A18 [hereinafter *55 Arrested in Protest*]; *Around the Nation; Congressman and 120 Arrested at PCB Protest*, N.Y. TIMES, Sept. 28, 1982, at A16 [hereinafter *PCB Protest*].

⁴ *See 55 Arrested in Protest*, *supra* note 3, at A18; *PCB Protest*, *supra* note 3, at A16.

⁵ GEN. ACCT. OFF., SITING OF HAZARDOUS WASTE LANDFILLS AND THEIR CORRELATION WITH RACIAL AND ECONOMIC STATUS OF SURROUNDING COMMUNITIES 2 (1983).

⁶ *Id.* at 1.

Four years later, the United Church of Christ Commission for Racial Justice released a report finding that “[r]ace proved to be the most significant among variables tested in association with the location of commercial hazardous waste facilities” and that “[c]ommunities with the greatest number of commercial hazardous waste facilities had the highest composition of racial and ethnic residents.”⁷ These findings were further confirmed by a 1992 report in which EPA determined that “[r]acial minority and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, contaminated fish and agricultural pesticides in the workplace.”⁸

B. Federal efforts to advance EJ have had limited success

EJ has been part of the federal lexicon since at least 1994, when President Clinton issued Executive Order 12,898, titled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (1994 Order).⁹ The 1994 Order directs each federal agency to “make achieving [EJ] part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”¹⁰ It also created an inter-agency working group to coordinate federal EJ efforts.¹¹

Since then, federal agencies have attempted to implement the 1994 Order with varying success and unmeasured real-world impact. For example, in 2012, the Department of Justice (Department) issued its first annual EJ progress report.¹² And in 2014, Attorney General Holder issued revised guidance to promote, among other things, reducing environmental contamination in “all communities” by

⁷ COMM’N FOR RACIAL JUST., UNITED CHURCH OF CHRIST, TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON THE RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES, at xiii (1987).

⁸ 2 ENV’T PROT. AGENCY, ENVIRONMENTAL EQUITY: REDUCING RISK FOR ALL COMMUNITIES 3 (1992).

⁹ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

¹⁰ *Id.* at 7629.

¹¹ *Id.*

¹² DEP’T OF JUST., IMPLEMENTATION PROGRESS REPORT ON ENVIRONMENTAL JUSTICE (2011).

ensuring that the “communities most at risk of environmental harms are protected by enforcement of [environmental] laws and by applying these laws to diminish disproportionate burdens.”¹³ More specifically, this guidance defines an “environmental justice matter” as “any civil or criminal matter where the conduct or action at issue may involve a disproportionate and adverse environmental or human health effect on an identifiable low-income, minority, tribal, or indigenous population or community in the United States.”¹⁴

Nevertheless, in 2019, a GAO review of federal efforts to implement the 1994 Order (2019 GAO Report) found that several agencies in the interagency working group reported taking “some actions” over the 25 years to address EJ concerns, but that progress toward environmental justice was difficult to gauge “because most do not have updated strategic plans and have not reported annually on their progress or developed methods to assess progress.”¹⁵ The 2019 GAO Report concluded that the interagency working group could “benefit from

¹³ ERIC H. HOLDER, JR., ATT’Y GEN., DEP’T OF JUST., GUIDANCE CONCERNING ENVIRONMENTAL JUSTICE 2 (2014).

¹⁴ *Id.* at 4. Rooted in principles of equal protection of the laws to all citizens, AG Holder established five overarching goals for the Justice Department:

- A. Protect environmental quality and human health in all communities;
- B. Use environmental, civil rights, criminal, and civil laws to achieve fair environmental protection;
- C. Promote and protect community members’ rights to participate meaningfully in environmental decision-making that may affect them;
- D. Analyze data that will assist the Department in law enforcement, mediation, and counseling efforts involving environmental justice matters; and
- E. Promote full and fair enforcement of the laws, increase opportunity for access to environmental benefits, and minimize activities that result in a disproportionate distribution of environmental burdens.

Id. at 3. These goals remain in place today for every federal prosecuting office and can be reached with commitment to a defined prosecution strategy.

¹⁵ GOV’T ACCOUNTABILITY OFF., ENVIRONMENTAL JUSTICE: FEDERAL EFFORTS NEED BETTER PLANNING, COORDINATION, AND METHODS TO ASSESS PROGRESS (2019).

clear goals to establish organizational outcomes and accountability.”¹⁶ This was the second time the GAO made such a recommendation, which initially appeared in its 2012 report.¹⁷ The 2019 GAO Report ultimately made 24 specific recommendations to the agencies that were part of the working group at the time; these recommendations are in various stages of implementation.¹⁸

The 2019 GAO Report acknowledged numerous efforts the interagency working group made to implement the 1994 Order¹⁹ including several significant efforts by the Department (such as the Department’s EJ strategic plan and goals, which are consistent with the requirements of the 1994 Order).²⁰ The 2019 GAO Report, however, identified the Department as one of 12 agencies that had not established performance measures or milestones to evaluate progress toward addressing EJ issues.²¹ The report then recommended that the Department update its 2014 plan.²² The Department responded with a letter committing to review its plan and to make updates as necessary.²³

More recently, President Biden issued an executive order in 2021 updating the federal approach to EJ and incorporating EJ into actions oriented towards combating the effects of climate change (2021 Order).²⁴ The 2021 Order calls on federal agencies to “make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”²⁵ It also amends the 1994 Order by creating a White House Environmental Justice Interagency Council, which replaced the interagency working group

¹⁶ *Id.* at 42.

¹⁷ *Id.*

¹⁸ *Id.* at 47–49. For the current status of the recommendations, see *Environmental Justice: Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress, Recommendations*, GOV’T ACCOUNTABILITY OFF. (Sept. 16, 2019), <https://www.gao.gov/products/gao-19-543>.

¹⁹ U.S. Gov’t Accountability Off., *supra* note 15, at 45.

²⁰ *Id.* at 16.

²¹ *Id.* at 24–25.

²² *Id.* at 47.

²³ *Id.* at 72.

²⁴ Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

²⁵ *Id.* at 7629.

discussed above. The 2021 Order directs the Council to “develop a strategy to address current and historic environmental injustice” and to “develop clear performance metrics to ensure accountability, and publish an annual public performance scorecard on its implementation.”²⁶

As of the drafting of this article, the Department is assessing its EJ plan as well as implementing the EJ requirements within the 2021 Order. Notably, both the 2019 GAO Report and the 2021 Order focus on clear goals, clear performance metrics, and accountability as tools for federal agencies to measure and assess progress in addressing EJ issues. With that in mind, this article explores an existing enforcement model from another part of law enforcement that has demonstrated success in these areas.

C. Project Safe Neighborhoods should be considered as a model for advancing the Department’s EJ goals

The effort to incorporate EJ into the investigation and prosecution of environmental crimes would likely benefit from a framework similar to the Department’s successful Project Safe Neighborhoods (PSN) program. PSN is the nationwide initiative implemented to address violent crime in communities.²⁷ In May 2021, Deputy Attorney General Monaco referred to PSN as the “leading initiative that brings together federal, state, local, and tribal law enforcement officials, prosecutors, and a broad array of community stakeholders to identify the most pressing violent crime problems in an area and to develop comprehensive solutions to address them.”²⁸

Using the PSN program as a model for addressing EJ concerns could be extremely effective because PSN’s core values significantly overlap with values that are important to EJ. For example, referring to the PSN program, the Department stated that “[m]eaningful law enforcement engagement with and accountability to the community are essential underpinnings of any effective strategy to address

²⁶ *Id.* at 7630.

²⁷ *Project Safe Neighborhoods*, DEP’T OF JUST., <https://www.justice.gov/psn> (last visited Oct. 27, 2021).

²⁸ Memorandum from Lisa Monaco, Deputy Att’y Gen., to Dep’t of Just. Emps. on Comprehensive Strategy for Reducing Violent Crime 3 (May 26, 2021) [hereinafter *Violent Crime Memo*].

violent crime.”²⁹ The Assistant Attorney General then directed the Department to incorporate “community engagement” into its strategic plans to address violent crime going forward.³⁰ Likewise, the Department has identified community outreach as a “core tenet of environmental justice,” noting that “[e]ffective outreach gives communities the opportunity to voice their concerns about environmental decision-making that could affect them and helps us to better understand those concerns.”³¹ Next, partnering with other law enforcement groups is a major component of PSN. This interagency collaboration forms the foundation of PSN’s focused and strategic enforcement, which “begins with working collaboratively with federal, state, local, and tribal law enforcement partners.”³² Correspondingly, the Department views interagency collaboration as “essential to helping communities address the [EJ] challenges they face.”³³

A third example of how the PSN model aligns with EJ is the need for accountability. The Department “must maintain mechanisms for regularly reassessing PSN plans and ensuring that they both remain effective and continue to adhere to our core principles;” one way to do that is to “gather information about the incidence of violence and the effectiveness of the steps we take to address it.”³⁴ Similarly, the 2021 Order calls for the White House Environmental Justice Interagency Council to “develop clear performance metrics to ensure accountability” and to be transparent to the public about its effectiveness by putting out an annual “performance scorecard on its implementation” of the strategy to address EJ.³⁵ In short, we can draw from PSN’s methods of implementing its principal values—for example, through community engagement, interagency collaboration, and accountability—to build a path towards environmental equity.

Yet, we cannot look to PSN as a model without recognizing the financial support that PSN has received. Part of PSN’s success has been due to its funding. That is, over the years, Congress has allocated billions of dollars to PSN, allowing United States Attorneys’

²⁹ *Id.* at 1.

³⁰ *Id.* at 3.

³¹ DEP’T OF JUST., 2015 IMPLEMENTATION PROGRESS REPORT ON ENVIRONMENTAL JUSTICE 1 (2015) [hereinafter 2015 PROGRESS REPORT].

³² Violent Crime Memo, *supra* note 28, at 3.

³³ 2015 PROGRESS REPORT, *supra* note 31, at 1.

³⁴ Violent Crime Memo, *supra* note 28, at 4.

³⁵ Exec. Order No. 14,008, 86 Fed. Reg. 7619, 7630 (Jan. 27, 2021).

Offices (USAOs) to hire and train new Assistant United States Attorneys (AUSAs) to work full time on gun crime prosecutions, and to secure other resources to support the initiative.³⁶ Therefore, any effective EJ criminal enforcement strategy—and the protection of all of our communities—requires a similar significant investment on a national level.

II. Building blocks for an effective EJ criminal enforcement strategy

Again, there is nothing unusual or novel about a targeted approach to law enforcement. In 1998, based on the success of the Boston Gun Project’s “Operation Ceasefire,”³⁷ the Department launched the Strategic Approaches to Community Safety Initiative (SACSI) to evaluate the effectiveness of a collaborative and data-driven approach to crime reduction.³⁸ Through SACSI, which became the foundation for the PSN initiative, and from lessons learned from the PSN program itself, we know that a crime-reduction program’s effectiveness rests on five building blocks: (A) federal leadership; (B) partnerships with federal, state, and local law enforcement as well as the community; (C) a strategic enforcement plan based on information unique to the criminal conduct/target problem; (D) outreach/prevention; and (E) accountability.³⁹ Prosecutors can use these same building blocks to develop and implement an EJ initiative in their districts.

³⁶ DEPT’ OF JUST., PROJECT SAFE NEIGHBORHOODS: AMERICA’S NETWORK AGAINST GUN VIOLENCE 4 (2004) [hereinafter 2004 PSN REPORT]; see *Project Safe Neighborhoods (PSN): Funding*, BUREAU OF JUST. ASSIST. (updated July 8, 2021), <https://bja.ojp.gov/program/project-safe-neighborhoods-psn/funding>.

³⁷ For more information regarding Operation Ceasefire, see DAVID M. KENNEDY ET AL., NAT’L INST. OF JUST., REDUCING GUN VIOLENCE: THE BOSTON GUN PROJECT’S OPERATION CEASEFIRE (2001).

³⁸ JAN ROEHL ET AL., NAT’L INST. OF JUST., STRATEGIC APPROACHES TO COMMUNITY SAFETY INITIATIVE (SACSI) IN 10 U.S. CITIES: THE BUILDING BLOCKS FOR PROJECT SAFE NEIGHBORHOODS 1 (2005).

³⁹ See *id. at* 7–13; see also *Project Safe Neighborhoods (PSN): Overview*, BUREAU OF JUST. ASSIST., https://bja.ojp.gov/program/project-safe-neighborhoods-psn/overview?program_id=74 (updated July 13, 2021); 2004 PSN REPORT, *supra* note 36, at 3–4; EDMUND F. MCGARRELL ET AL., NAT’L INST. OF JUST., PROJECT SAFE NEIGHBORHOODS—A NATIONAL PROGRAM TO REDUCE GUN CRIME: FINAL PROJECT REPORT iii, 92–93, 167–69 (2009).

A. Federal leadership⁴⁰

1. USAOs

United States Attorneys (USAs) are uniquely situated to lead change in environmental enforcement efforts in their districts. USAs know their jurisdictions; have long-standing relationships with federal, state, local, and tribal law enforcement; are able to build partnerships; and perhaps most importantly, are able to sustain those working relationships.⁴¹ To leverage those connections and provide the requisite leadership, districts should designate a full-time prosecutor to lead, coordinate, and implement any environmental enforcement strategy, that is, a dedicated EJ prosecutor.⁴² And to be an effective leader, the EJ prosecutor must be trained on all aspects of the EJ dialogue and be prepared to train others.⁴³

Training and guidance ensures that investigatory and prosecutorial decisions adequately consider the multifaceted EJ issues unique to each community.⁴⁴ For example, evaluating “the actual or potential impact of the offense on the community and on the victim(s)” includes consideration “of economic harm done to community interests; . . . physical danger to the citizens or damage to public property; and . . . erosion of the inhabitants’ peace of mind and sense of” well-being.⁴⁵ At the same time, prosecutors need to be sensitive to existing disparities

⁴⁰ As noted previously, the authors recognize that the fundamental change advocated herein requires funding and additional resources allocated to USAOs or a shifting of enforcement priorities within the USAOs. This article is premised on funds being earmarked for the proposed EJ initiative.

⁴¹ ROEHL ET AL., *supra* note 38, at 7–8; *see* MCGARRELL ET AL., *supra* note 38, at 167–69.

⁴² Many districts already designate an AUSA as an Environmental Crimes Coordinator. The USAO could designate the same, or a separate AUSA, to be the EJ prosecutor. Either way, a title alone is insufficient to ensure programmatic change to EJ prosecutions. The designated prosecutor’s docket, like a PSN Coordinator’s docket, must be exclusively committed to the efforts to effectuate change. In addition, districts tend to assign more than one prosecutor to handle violent crimes. Therefore, depending on the size of an EJ docket and funding availability, additional AUSAs may need to be assigned to manage the workload efficiently and effectively.

⁴³ As a starting point, the authors recommend EJ Prosecutors read Dighe & Pettus, *supra* note 1.

⁴⁴ HOLDER, *supra* note 13.

⁴⁵ *See* JUSTICE MANUAL 9-27.230 cmt. 2 (Principles of Federal Prosecution, Initiating and Declining Charges—Substantial Federal Interest).

in setting enforcement priorities. Calculating economic harm by property value losses without considering how property values might relate to median income, wealth, or other measures of economic well-being in the same community might cause investigators or prosecutors to erroneously weigh this factor against continuing with a case.

2. The Department’s Environmental Crimes Section

In addition to leadership at the district level, the USAO should pair its EJ prosecutor with a prosecutor from the Department’s Environmental Crimes Section (ECS) (collectively referred to hereafter as the “EJ Prosecutors”). ECS prosecutors bring subject matter expertise to any prosecution, along with access to the national perspective and additional resources. The ECS prosecutor should be co-responsible for all EJ efforts, including training, outreach, and accountability.

Given the complexity of EJ-focused investigations and prosecutions, annual training at the Department’s National Advocacy Center by ECS provides an essential platform to address emerging issues and considerations and to collaborate across district lines. Such comprehensive training and guidance ensures informed leadership by prosecutors, as well as a strong foundation for law enforcement and community partnerships.

EJ prosecution teams also may wish to draw from other experts within the Department, including members of the Environment and Natural Resources Division’s (ENRD) EJ Working Group, for additional guidance on how to identify and respond to EJ issues in their districts. In addition, early in an EJ investigation, EJ Prosecutors should utilize the resources of the new Environmental Crime Victim Assistance Program, operated by ENRD and EPA’s Office of Criminal Enforcement and Forensics Training.⁴⁶ This program helps prosecutors, law enforcement, and victim specialists address the intersection of EJ issues and services for environmental crimes victims under the Victims’ Rights and Restitution Act and the Crime Victims’ Rights Act.⁴⁷

⁴⁶ ENRD and EPA officially announced the formation of the Environmental Crime Victim Assistance Program on April 20, 2021. *Environmental Crime Victim Assistance*, DEP’T OF JUST. (updated Oct. 15, 2021), <https://www.justice.gov/enrd/environmental-crime-victim-assistance>.

⁴⁷ Simone Jones, *Prosecutors Will Turn to Crime Victim Laws in Environmental Justice Cases*, BLOOMBERG LAW (June 9, 2021),

Working together, USAOs and ECS bring a strong, educated leadership foundation with significant resources to any EJ initiative. Such leadership is critical to the success of an EJ enforcement program.

B. Partnerships

Department guidance directs prosecutors to “look for ways to assist state, local, and tribal governments in their efforts to achieve environmental justice.”⁴⁸ It is through partnerships—the second building block—that EJ Prosecutors can accomplish this goal and further equal protection of their communities.

1. Law enforcement partners

Every prosecutor understands the importance of strong law enforcement partnerships in a successful prosecution. Existing data underscores just how critical those relationships are. In fact, “[a] key component of prosecution efforts under SACSI was the unprecedented cooperation between federal and state/local prosecutors.”⁴⁹

An effective tool to encourage such partnerships is task forces that include law enforcement and criminal justice agencies at all levels of government. Additionally, and perhaps as no surprise, a hallmark of a successful task force is “distributed leadership,” meaning there is strong leadership from every key player (for example, federal investigative agencies, local law enforcement, municipal or county government, and state and local prosecutors).⁵⁰ To foster distributed leadership, EJ Prosecutors should emphasize information sharing, when appropriate, to help identify cases, develop evidence, and collectively select the path forward. This “smart prosecution” process—whereby federal/state/local prosecutors and law enforcement review cases and decide “whether a case could most effectively be prosecuted at state or federal level”—contributed to the success of the PSN initiative.⁵¹ It is a process equally suited for EJ cases.

<https://news.bloomberglaw.com/environment-and-energy/prosecutors-will-turn-to-crime-victim-laws-in-environmental-justice-cases>; see 30 U.S.C. § 20141; 18 U.S.C. § 3771.

⁴⁸ HOLDER, *supra* note 13, at 11.

⁴⁹ ROEHL ET AL., *supra* note 38, at 12.

⁵⁰ MCGARRELL ET AL., *supra* note 39, at iv, 169.

⁵¹ *Id.* at 10.

Ideally, every potential EJ prosecution would be reviewed by a USAO, state/local prosecutors, and law enforcement partner agencies to ensure that resources and enforcement authorities are used in the most efficient and effective manner. Ultimately, it is multi-level prosecutions and ensuing consequences that serve as a deterrent against the further victimization of communities with EJ concerns.

Of course, any effective working group or task force requires cross-training law enforcement officers and prosecutors on best practices in environmental crimes investigations, technical and expert resources, and community outreach to build capacity for successful environmental crimes investigations and prosecutions at all levels. Therefore, EJ Prosecutors need to educate its partners on the basic statutes, regulations, and other legal authorities of each jurisdiction so that effective and appropriate referrals can be made between state, local, tribal, and federal authorities.

2. Community partners

Recognizing that community involvement is “crucial to establishing legitimacy and support” for any EJ enforcement program,⁵² the Department’s 2014 EJ Strategy mandated that prosecutors “[w]ork with communities so that enforcement actions and other programs, activities, and policies respond as directly as possible to actual environmental risks and concerns.”⁵³ It further committed the Department to working with other federal agencies “to promote understanding and communication between communities and the [f]ederal government about lawsuits and other actions or policy decisions that affect those communities.”⁵⁴

One way to foster community relationships is to facilitate the exchange of information, as discussed more fully below in subsection D, which addresses outreach and prevention. In addition to soliciting feedback and information from the public, EJ Prosecutors and law enforcement partners should use outreach to inform the public about potential environmental crimes, the criminal process, the types of information and evidence that are used in environmental crimes prosecutions, the types of resolutions available, services available to crime victims, and the various means of reporting potential

⁵² *Id.* at 19.

⁵³ ERIC H. HOLDER, JR., ATT’Y GEN., U.S. DEP’T OF JUST., ENVIRONMENTAL JUSTICE STRATEGY 2 (2014) [hereinafter 2014 Strategy].

⁵⁴ *Id.* at 9.

environmental crimes.⁵⁵ Hopefully, through such efforts, prosecution teams will be able to draw communities into the decision-making process.

3. Researchers/scientists

In addition to law enforcement and community members, researchers and scientists also play a critical role in crime-reduction efforts, especially in strategic planning and problem solving.⁵⁶ In fact, the 1994 Order recognizes the value of data and specifically directs that “each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income.”⁵⁷ It also requires that agencies “use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.”⁵⁸ Section 3-302(b) further directs agencies to

collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action.⁵⁹

Most prosecutors may not have previously considered using a data analyst to formulate an EJ enforcement strategy, but such an expert can be an invaluable resource. Research partners bring expertise in problem identification and analysis, assessments, and planning.

⁵⁵ See Dighe & Pettus, *supra* note 1, at 10–11.

⁵⁶ See ROEHL ET AL., *supra* note 38, at 1 (finding “the integration of a local research partner into the core planning group [set the SACSI approach] apart from its predecessors.”).

⁵⁷ Exec. Order No. 12,898, 59 Fed. Reg. 7629, 7631 (1994).

⁵⁸ *Id.*

⁵⁹ *Id.*

Researchers can assist the law enforcement team in several ways, including:

- Collecting data, identifying the problems, and helping the team understand the EJ issues in the district;
- Working with the EJ Prosecutors and law enforcement partners to develop strategies specifically designed to target the problem;
- Monitoring the implementation of the enforcement strategies;
- Providing feedback to refine and improve programs; and
- Assessing the program's impact.⁶⁰

Districts may want to engage researchers from organizations within their regions due to the particular benefits a local presence may offer. However, given that EJ Prosecutors have access to dozens of experts within other federal agencies, like EPA, the Agency for Toxic Substances and Disease Registry, and the Centers for Disease Control's National Center for Environmental Health, researchers should consult with those experts in making any recommendations to the prosecution team. Such consultation should include, as a starting point, data gathered by EPA and made available through EPA's EJ mapping tool, known as EJ Screen, which incorporates environmental and demographic data into one platform.⁶¹ In addition, researchers should consult with EPA's regional EJ coordinators to ensure that consideration has, or could be, given to data from community sources that may highlight regional issues as well.

Ultimately, data gathered by researchers and scientists allow law enforcement to analyze the problem; to identify patterns to focus on for prosecution, intervention, and prevention; to design the enforcement strategy; and to further ensure that limited resources are used in the most effective way and on the most serious environmental issues plaguing a district's communities.⁶² Such data provides the foundation for any strategic enforcement plan.

⁶⁰ See MCGARRELL ET AL., *supra* note 39, at 1–2.

⁶¹ *EJSCREEN: Environmental Justice Screening and Mapping Tool*, ENV'T PROT. AGENCY, <https://www.epa.gov/ejscreen> (updated Oct. 1, 2021).

⁶² See ELIZABETH GROFF ET AL., STRATEGIC APPROACHES TO COMMUNITY SAFETY INITIATIVE: ENHANCING THE ANALYTIC CAPACITY OF A LOCAL PROBLEM-SOLVING EFFORT 3 (n.d.).

C. Strategic enforcement

Like PSN, any EJ initiative should be a problem-solving program based on a strategic planning process rooted in research data with articulated prosecution, deterrence, and prevention goals.⁶³ This third building block draws from all available resources and the input of every partner to create an enforcement plan unique to the district and its communities.

Because any EJ enforcement plan must be tailored to a district's experience and need, there are many things a prosecution team may wish to consider to determine high priority geographical areas and/or environmental subject areas for targeted enforcement.⁶⁴ Relevant considerations include (1) existing enforcement data; (2) facilities with extensive histories of noncompliance that have not adequately responded to administrative or civil enforcement and continue to violate environmental requirements; (3) contaminants, activities, and/or facilities tied to significant human health and environmental impacts; and (4) areas with damaged, depleted, and/or threatened natural resources and/or where pressures on natural resources are high and/or increasing. Once a prosecution team identifies areas of high priority and/or facilities with frequent, extensive, or egregious non-compliance, the team can use traditional investigative tools, such as compliance sweeps, sampling, surveillance, undercover operations, and other forms of enhanced monitoring, to detect, investigate, and prosecute environmental crimes.

D. Outreach/prevention

While enforcement addresses past harm, a primary goal of prosecution is deterrence.⁶⁵ Outreach serves that goal and, at the same time, invites the impacted community into the decision-making process.

In this multimedia age with a generally technologically savvy public, outreach efforts should take advantage of all messaging opportunities—from local, live presentations to recorded videos to written/electronically published material to social media platforms.

⁶³ MCGARRELL ET AL., *supra* note 38, at 1.

⁶⁴ Prosecutors also may wish to consult templates created in connection with the PSN program as a starting place. See BUREAU OF JUST. ASSIST., PROJECT SAFE NEIGHBORHOODS: STRATEGIC ACTION PLAN TEMPLATE.

⁶⁵ See 18 U.S.C. § 3553(a)(2)(B).

Creative use of all available opportunities helps ensure that relevant information reaches as many members of the community as possible. Excellent resources for navigating the public forum already reside within USAOs—the law enforcement coordinator and the community outreach specialist.

In 1981, Attorney General William French Smith directed every USA to establish a Law Enforcement Coordinating Committee (LECC) “to improve cooperation and coordination among Federal, State, and local law enforcement” in the district.⁶⁶ Each LECC has a law enforcement coordinator. Although functions may vary district to district, the law enforcement coordinator essentially serves as the principal advisor to the USA on state and local law enforcement issues and develops programs and training to facilitate cooperation and communication among all levels of law enforcement in the district.⁶⁷ In addition, districts may have additional staff members with experience facilitating engagement with the local communities. The existing relationships and expertise of each district’s law enforcement coordinator and other personnel with experience in community outreach will be invaluable in EJ outreach efforts.

With the help of the district’s law enforcement coordinator and others in the districts, EJ prosecution teams can draw on established connections with community groups and local new groups to publicize and schedule community meetings. EJ prosecution teams can also leverage press releases to acknowledge the community, to report crimes, and to reach low-income, minority, and environmentally overburdened communities.

Although outreach can be time consuming, it builds trust and a sense of inclusion in the process and was critical to the success of the PSN program.⁶⁸ Some potential avenues for outreach include (1) seeking input from community groups in areas experiencing environmental injustice about the forms of assistance, mitigation, restitution, and protection they are most interested in, or believe to be most helpful, and incorporating that feedback into best practices recommendations; (2) regularly meeting with individuals, community

⁶⁶ William French Smith, Att’y Gen., Law Enforcement Coordinating Committee, AG Order No. 951-81 (1981).

⁶⁷ *E.g.*, *Law Enforcement Coordinating Committee (LECC)*, DEP’T OF JUST. (updated Mar. 3, 2021), <https://www.justice.gov/usao-ednc/law-enforcement-coordinating-committee-lecc>.

⁶⁸ MCGARRELL ET AL., *supra* note 39, at 18–19.

and business leaders, EJ advocates, and others to discuss their concerns;⁶⁹ and (3) providing updates on prosecutions and efforts. Ideally, community partners will provide additional resources for the development of programs that reduce EJ crimes. Ultimately, the opportunity to participate and be heard ensures that affected communities feel part of the process, not simply bystanders.

In conjunction with outreach efforts, EJ Prosecutors should emphasize prevention. Unlike the SACSI projects, where prevention takes the form of mentoring for youth, job skills training and placement, or after-school activities, prevention of EJ crimes will stem from the specific and general deterrent effects of prosecution. Therefore, prosecutors should use all prosecution and sentencing tools to ensure an appropriate punishment within the applicable advisory guidelines range, prioritizing the prosecution of individuals, and then, should publish those results to the community.⁷⁰ In addition, EJ prosecution teams may wish to consider engaging with industry groups to encourage compliance and deter criminal conduct.

E. Accountability

This final and critical building block emphasizes experiential learning through accountability. When the Department implemented SACSI, it required USAOs to “conduct an empirical, objective evaluation of the implementation of the intervention and its effects in order to adjust the strategy to maximize its impact over time.”⁷¹ To that end, USAOs, initially, were mandated to “systematically record the challenges, successes, and failures of the process.”⁷² The idea being that, through experiential learning, prosecution efforts can be

⁶⁹ See 2014 Strategy, *supra* note 53, at 9.

⁷⁰ For a more detailed discussion, see Dighe & Pettus, *supra* note 1.

⁷¹ NAT’L INST. OF JUST., SOLICITATION: ASSESSMENT OF THE STRATEGIC APPROACHES TO COMMUNITY SAFETY INITIATIVE 2 (1998); see ROEHL ET AL., *supra* note 38, at 2 (One of the defining characteristics of the SACSI problem-solving model is the evaluation data and assessment activities, ongoing feedback to the core planning group, and improvement as needed.); see also MCGARRELL ET AL., *supra* note 39, at 13 (DOJ leadership focused on crime reduction and “[t]his accountability component was linked to strategic planning whereby PSR task forces, working with their local research partner, were asked to report levels of crime over time within targeted problems and/or targeted areas.”)

⁷² GROFF ET AL., *supra* note 62, at 3.

refined and improved to ensure that limited resources are being used effectively.

In the PSN context, USAs report on four areas:

(1) the nature of the partnerships with other federal agencies, state and local law enforcement, and the community; (2) the nature and prevalence of gun crime and violence in the community, the strategies adopted to address that gun crime and violence, and how the impact of those strategies is measured; (3) how the local gun crime initiative is being publicized; and (4) whether the partnership has taken advantage of training opportunities and/or conducted trainings at the local level.⁷³

The initial PSN national plan included a review of these reports by a team of individuals with expertise in each of the five PSN elements (partnerships, strategic plan, training, outreach, and accountability), who were to provide feedback to the districts on how to implement or improve their local programs.⁷⁴ Accountability at the local and national level, and transparency of that accounting to the public, ensures that limited resources are used efficiently and that the community has real-time access to law enforcement efforts. Similarly, any EJ initiative should incorporate national accountability through reporting and ultimately, be accountable to the affected communities.

III. Conclusion

Impartial justice to all its citizens remains “the guiding principle for the women and men of the U.S. Department of Justice.”⁷⁵

Environmental injustices and inequities exist in communities across America. By reducing the disproportionate health and environmental burdens borne by vulnerable communities through strategic prosecution of environmental crimes, federal prosecutors will ensure equal protection of all our citizens under environmental laws. The path towards equity requires federal prosecutors to provide the

⁷³ *Project Safe Neighborhoods: A Network to Make America's Communities Safer*, 50 U.S. ATT'YS BULL. no. 1, Jan. 2002, at 4.

⁷⁴ *Id.*

⁷⁵ *About the Department*, DEP'T OF JUST., <https://www.justice.gov/about> (last visited Sept. 24, 2021).

leadership among our partners, to empower communities by including them in the process, and to be accountable to the public.

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