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PUTTING THE BRAKES ON CARJACKING OR
ACCELERATING IT? THE ANTI CAR THEFT ACT OF 1992

F. Georgann Wing*

I. INTRODUCTION

"We cannot put up with this kind of animal behavior. These people have no place in decent society, and . . . they can go to jail and they can stay in jail and they can rot in jail for crimes like that."¹ Soon after speaking those words, on October 25, 1992, President George Bush signed the Anti Car Theft Act of 1992² in Detroit, Michigan. For the citizens of Detroit, it was a fitting response to the crime that was coined "carjacking"³ and popularized in the same city—the Motor City—in the heat of the summer of 1991.⁴ Earlier federal legislation, the Motor Vehicle Law Enforcement Act of 1984,⁵ had not curbed auto theft as promised; rather auto theft had gained momentum. When car owners fought back with anti-theft devices, thieves

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1. President George Bush, Remarks in St. Louis, Missouri (Sept. 28, 1992) (transcript available in LEXIS, Nexis Library, Fednews File). President Bush was commenting on a shocking incident of carjacking that led to the death of a young woman. See *infra* text accompanying notes 37-44.

2. Pub. L. No. 102-519, 106 Stat. 3384-3401 (1992) (codified as amended in scattered sections of 15 U.S.C., 18 U.S.C., 19 U.S.C., and 42 U.S.C.) (introduced as H.B. 4542, 102d Cong., 2d Sess. (1992), by Congressmen Charles Schumer, Democrat from New York and James Sensenbrenner, Republican from Wisconsin). Author's Note: As enacted the name of the statute is not hyphenated; to be correct, it should have been: Anti-Car-Theft Act.

3. Scott Bowles, *Detroit Now Ranks 6th in Carjackings*, DETROIT NEWS, Oct. 7, 1992, at A1.

4. James Harney, *Greed, Drugs Drove Detroit's "King": Police Charge He Swiped* 54, USA TODAY, Oct. 7, 1992, at A2.

5. Pub. L. No. 98-547, 98 Stat. 2754 (1984) (codified as amended at 15 U.S.C.A. §§ 2021-2034 (West Supp. 1993)).

turned to carjacking—"a twisted innovation in car theft."⁶

For more than a year, state legislators attempted to enact legislation that would deal with this new version of an old crime. It was armed robbery with new dimensions, and it was occurring everywhere. People were frightened. Their freedom of movement was threatened, and they demanded action. So when the attempts of state legislators failed, Congress stepped in. Thereafter, two questions surfaced. Did Congress focus on carjacking to bring federal forces to bear on auto theft—its true concern? More importantly, will the Anti Car Theft Act of 1992 actually promote carjacking?

This article will examine the problem of carjacking and auto theft, the ineffective defenses to the crime, the interests debated in Congress, and the resulting Anti Car Theft Act of 1992. It will also point to effects that the act may have on carjacking and auto theft.

II. THE PROBLEM

A. *Crimes on the Rise*

In Detroit, car thefts generally had been on the rise before carjacking itself caught on in the summer of 1991. In May 1991, car thefts had increased eight percent since May 1990, totalling 2,319 that year.⁷ Then, perhaps because of media coverage, carjacking escalated. Over the course of two months beginning July 28, 1991, there were 406 carjackings at gunpoint in Detroit.⁸ Then, during the first nine months of 1992, the crime lost momentum in Detroit, with 695 carjackings,⁹

6. 138 CONG. REC. S5,501 (daily ed. Apr. 10, 1992) (statement of Sen. Pressler).

7. Tammy Joyner, *Carjackings Could Capsize Insurance Reform Efforts*, DETROIT NEWS, Sept. 17, 1991, at A5 (figures obtained from Detroit Police reports).

8. *Id.*; see also Harney, *supra* note 4, at A2. Kip Cortez Beasley, a 27-year-old man "who grew up on the streets of west Detroit," was dubbed by the police as the carjacking king. Beasley was arrested on August 21, 1991, by a special Detroit/Wayne County auto theft task force. He said that at times he sold the stolen luxury cars to chop shops, and at other times he used them in other robberies. *Id.*

9. James Harney, *"It's a Crime of Opportunity," But Thieves Do Have Preferences*, USA TODAY, Oct. 7, 1992, at A2; see also Avis Thomas-Lester & Santiago O'Donnell, *Forces Team up to Fight Carjacking and Its "Fear Factor,"* WASH. POST, Oct. 3, 1992, at B1. After the Detroit task force was formed in August of 1991, carjacking in De-

while elsewhere carjackings increased dramatically.¹⁰

Absolute figures are not available because police agencies often report carjackings as auto thefts, armed robberies, assaults and batteries, or homicides. Yet it appears that in 1992 carjacking had increased significantly across the country.¹¹ According to FBI figures, there were approximately 19,000 carjackings reported nationally in 1991, and at least 21,000 carjackings reported during the first ten months of 1992.¹² However, these figures represent only about a third of the actual carjacking crimes.¹³ Thus, carjacking "is much more widespread than originally believed."¹⁴

Even with the increase in carjacking, some observers believe that the numbers are minor when compared with the number of auto thefts that occur each year.¹⁵ The 19,000 carjackings

troit declined from about 75 a week in August 1991 to about 25 a week in October 1991. *Id.* at B4.

10. Nora Zamichow, *Deadly Carjacking Raises Questions and Fears; Crime Wave: Commandeering of Cars is on the Increase. San Diego has had 171 Cases this Year, as the Nationwide Trend Continues*, L.A. TIMES (San Diego Co. Ed.), Oct. 8, 1992, at B1 ("The nation's major cities have reported an increase during the past three years in this terrifying version of car theft, a behind-the-wheel mugging that can leave a hapless driver stranded, injured or dead.")

11. Bowles, *supra* note 3, at A1. According to an FBI report, the top areas for carjackings for the first nine months of 1992, before the Anti Car Theft Act of 1992 was enacted, were: (1) Puerto Rico—4,304; (2) Los Angeles—3,750; (3) Chicago—2,573; (4) New York—926 (first six months); (5) Miami—740; (6) Detroit—707. *Id.* So "[Detroit] may have coined the name for the crime, but Detroit is no longer Carjack City." *Id.* Information obtained from the FBI and local police departments showed the following statistics for carjacking in various United States cities: Baltimore—75; Dallas—817 (first nine months of 1992); Houston—220 (first nine months of 1992); Philadelphia—220 (first nine months of 1992); San Diego—140 (the first eight and a half months of 1992); Washington—245 (first seven months of 1992); *see also* Harney, *supra* note 9, at A2.

12. Telephone interview with Nestor Michnyak, spokesman for the Federal Bureau of Investigation (Feb. 10, 1993).

13. *Id.*

14. INTERSTATE THEFT SUBPROGRAM, U.S. DEPT OF JUSTICE, AN ANALYSIS OF CARJACKING IN THE UNITED STATES 3 (1992) [hereinafter INTERSTATE THEFT SUBPROGRAM].

15. Betsy Wade, *Practical Traveler; Staying Safe on the Road*, N.Y. TIMES, Oct. 4, 1992, § 5, at 3 ("[C]arjackings account [] for 1 percent or less of the . . . auto theft claims" of the Auto Club of Southern California.); *see also* Thomas-Lester & O'Donnell, *supra* note 9, at B1. ("We're not working full time on carjacking in this area [Washington, D.C.] because the problem isn't of the magnitude it's perceived to be. If we were having 100 carjackings a day, our focus would be tremendous, but right now carjackings are just a minor part of the region's car-theft problem.") (quot-

for 1991¹⁶ are only about 1.4 percent of the 1,661,738 vehicle thefts in 1992.¹⁷ In Washington, D.C., the ratio of carjackings to car thefts was 1.8 percent.¹⁸ An official with the fourth largest auto insurer in southern California estimates that carjacking accounts for 1 percent or less of the company's auto-theft claims, not enough to warrant a separate category of claims.¹⁹ But, if there are so few carjackings, why all the fuss?²⁰

ing FBI spokesman Frank Scafidi).

16. Telephone interview with Nestor Michnyak, Spokesman for the Federal Bureau of Investigation (Feb. 10, 1993).

17. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1991 49 (1992) [hereinafter CRIME REPORTS]. There were 1,661,738 motor vehicle thefts in 1991, representing a 1.6 percent increase over 1990. *Id.*; see also 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (stating that one theft occurs every 19 seconds) (statement of Sen. Lautenberg); *Anti-Car Theft Act of 1992: Hearings on H.B. 4542 Before the Subcomm. on Crime and Criminal Justice of the Comm. on the Judiciary*, 102d Cong., 2d Sess. 50 [hereinafter *Hearing*, Dec. 9, 1991] ("Approximately 4,500 cars will be stolen today.") (statement of Robin L. Montgomery, Section Chief, Violent Crimes and Major Offenders Section, Criminal Investigative Division, FBI); *Anti-Car Theft and Content Labeling: Hearing on H.R. 4220, H.R. 4228, H.R. 4230 and H.B. 4542 Before the Subcomm. on Commerce, Consumer Protection and Competitiveness*, 102d Cong., 2d Sess. 79 (Sept. 10, 1992) [hereinafter *Hearing*, Sept. 10, 1992]; "An auto theft occurs every 22 seconds in the United States." *Id.* at 80 (quoting U.S. DEP'T OF TRANSP., NAT'L HWY. TRAFFIC SAFETY ADMIN., AUTO THEFT RESISTANCE STUDY (Apr. 1992), which was submitted for the record); INTERSTATE THEFT PROGRAM, *supra* note 14, at 1 ("According to the FBI's uniform Crime Report, vehicle theft has consistently risen since 1984, increasing 61 percent between 1984 and 1991." Property loss from vehicle theft in 1991 approached \$8.3 billion, representing one-half of all property losses from crime.); 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) ("According to recent figures, Newark [New Jersey] has the highest rate of auto theft in the nation. Several New Jersey cities also share the dubious distinction of being in the top ten.") (statement of Sen. Lautenberg); David Ashenfelter, *Detroit Falls in Rankings of Homicides*, DETROIT FREE PRESS, Apr. 29, 1991, at A1 (In 1990, Detroit, "the nation's seventh-largest city . . . ranked third in per capita vehicle theft.").

18. Wade, *supra* note 15, at 3 ("Emanuel Ross, the statistician for the police in Washington, said there were 147 carjackings [in D.C.] in 1991 out of 8,132 reported car thefts." Through August 1992, there were 190 carjackings.).

19. *Id.*

20. *Hearing*, Dec. 9, 1991, *supra* note 17, at 31-32 (statement of Ron Thrash, Commanding Officer, Auto Crime Division, New York City Police Department) (Carjacking "doesn't seem to be a serious problem in the way of numbers. It's serious because it . . . has the potential for violence.").

B. Carjacking Is an Act of Terrorism

Carjacking is a crime of violence, where the vehicle is taken from a person by "force, violence or intimidation."²¹ It is "essentially an act of terrorism" that causes drivers to fear for their lives.²²

Long before carjacking was known by that name, crime in the United States was at an all-time high.²³ The public heard reports of violence²⁴ that would have been unimaginable a few years earlier—including accounts of random shootings into homes, sniper attacks on the highways, and drive-by shootings. The right of the people "to be safe [had] been trampled upon."²⁵

So the people went on the defense. First, they fortified their homes²⁶ with dogs, alarms, heat detectors, timers, lights, and even mannequins,²⁷ backing up those devices with guns.²⁸

21. INTERSTATE THEFT SUBPROGRAM, *supra* note 14, at 1.

22. Patrick Boyle & Arlo Wagner, *Police Unite on Carjacks; Prosecutor Blasts "Act of Terrorism,"* WASH. TIMES, Sept. 17, 1992, at A1 (quoting U.S. Attorney Jay Stephens); see also Richard Tapscott, *Stiffer Term Sought for Carjacking in Md.; Schaefer Wants Mandatory 15-Year Sentence,* WASH. POST, Sept. 15, 1992, at C1 ("Carjacking is the most terrifying of contemporary crimes.") (quoting Bishop L. Robinson, Maryland Secretary of Public Safety and Correctional Services).

23. See CRIME REPORTS, *supra* note 17, at 5. In 1991, the crime index, which includes murder, manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson rose 3 percent over 1990. *Id.* The crime index was 10 percent higher than in 1987 and 15 percent higher than in 1982. *Id.* at 6. Violent crime rose 29 percent between 1987 and 1991. *Id.* at 12. During that period, murder rose 23 percent, *id.* at 15; forcible rape rose 17 percent, *id.* at 25; robbery rose 33 percent, *id.* at 28; and aggravated assault rose 28 percent, *id.* at 33.

24. 138 CONG. REC. H11,822 (daily ed. Oct. 5, 1992) (statement of Rep. Goss) ("There is a virulent epidemic of crime and lawlessness sweeping this Nation. It's brutal, it's real, it's starting with younger and younger individuals[,] and United States citizens are frightened. Every day we read of another beating or slaying and know that behind those headlines, there are many more unreported incidents."); see also Marco R. della Cava, *A Fearful Way of Life: Trust Lost to Random Violence,* USA TODAY, Oct. 6, 1992, at D1.

25. della Cava, *supra* note 24, at D1 (quoting Irvin Magri, Jr., founder of Victims & Citizens Against Crime, a group from New Orleans that is lobbying for increased protection); see also, CRIME REPORTS, *supra* note 17, at 30 (Residence robberies increased 16 percent between 1987 and 1991.).

26. della Cava, *supra* note 24, at D1.

27. *Id.*

28. Katy Kelly, *Arms Lend A Sense of Security,* USA TODAY, Oct. 6, 1992, at D4;

They changed their schedules, their travelling routes, their travelling times, and their destinations. Fear had gripped their lives.²⁹

Then, with their homes fortified,³⁰ they set out to protect their cars by installing alarms, steering wheel locks, and other devices.³¹ The devices were so effective that the thieves began to take the easier route, literally taking cars out of the hands of drivers.³²

The target of this "no-fuss" crime can be anything the person has with him or her, including jewelry, money, car keys,³³ and registration papers.³⁴ Typically, carjackers are armed with guns or other weapons.³⁵ And they use them.

The horror of this crime struck Americans hard in September of 1992.³⁶ Pamela Basu, a thirty-four-year-old mother and research chemist, had just dropped off one daughter at school and was taking her twenty-two-month-old daughter to a nursery in a prosperous residential area in Howard County, Maryland, just

see also della Cava, *supra* note 24, at D1 (noting that in the last year, 500,000 additional people joined the National Rifle Association, bringing its membership to 2.9 million).

29. *See, e.g.*, della Cava, *supra* note 24, at D1 ("[A] Greenville, S.C. mother of two has her husband take the trash out after dark," but still she is terrified until she hears him return.).

30. *See id.*

31. *See* 138 CONG. REC. S14,988 (daily ed. Sept. 24, 1992) (statement of Sen. Pressler).

32. *Id.*

The sophisticated alarms, steering-wheel locks, and homing devices installed by desperate auto owners as thefts rise are prompting auto thieves to devise new criminal strategies. Carjacking has become a viable alternative for the professional car thief. Today's criminal can just point a weapon and take a car, without the hassle of breaking the windows or popping the ignition.

Id.

33. Zamichow, *supra* note 10, at B1 (It's a "no-fuss method of doing business The primary target is what the person has on—a wallet, purse, jewelry, and keys to the car. It's a crime of opportunity." (quoting John Leas of the Robbery Unit of the San Diego Police Department)).

34. INTERSTATE THEFT PROGRAM, *supra* note 14, at 2.

35. Zamichow, *supra* note 10, at B1; *see also* CRIME REPORTS, *supra* note 17, at 11. Firearms were used in 31 percent of all murders, robberies and aggravated assaults in 1991. This was an increase over 1987, when firearms were used in 26 percent of violent offenses. *Id.*; *cf.* INTERSTATE THEFT PROGRAM, *supra* note 14, at 4 ("In the majority of carjackings, handheld firearms are the weapons of choice.").

36. *F.B.I. Forms Unit to Battle "Carjacking"*, N.Y. TIMES, Sept. 16, 1992, at A21.

north of the nation's capital.³⁷ At a road junction, two men pulled her out of her late-model BMW and sped away, leaving her arm tangled in the seat belt outside her car.³⁸ Her assailants, apparently realizing that she was caught on the car, tried to dislodge her by sideswiping a fence.³⁹ They dragged her almost two miles until she fell away from the car.⁴⁰ She died from massive internal injuries.⁴¹ At one point, the carjackers stopped and tossed her baby, who had been left in the car seat, out onto the pavement.⁴² Miraculously, the baby was unharmed.⁴³

Before carjacking, drivers felt relatively secure in their cars, even when travelling through areas where they would not have stopped. Now "an evening drive with an open window is an experience . . . best avoided."⁴⁴ Victims have been robbed by

37. David Osborne, "Car-Jackings" Plague US, *THE INDEPENDENT*, Sept. 12, 1992, at 11.

38. *Id.*

39. *Id.*

40. *F.B.I. Forms Unit to Battle "Carjacking"*, *supra* note 36, at A21.

41. *Id.*

42. *Id.*

43. *Id.*; see also Jonetta Rose Barras, *Council Members Sew Bail-Law Loopholes*, *WASH. TIMES*, Sept. 15, 1992, at B1. Rodney Eugene Solomon, 27, one of the men accused of killing Ms. Basu, was out on bail at the time awaiting trial on cocaine and heroin charges. *Id.* The prosecutor said that Solomon and his sixteen-year-old companion, Bernard Miller, had been looking for a car to steal in the affluent neighborhood. Their stolen Cadillac had run out of gas. Laura Rehrman, *17-Year Old Convicted in Carjacking*, *LANSING ST. J.*, Apr. 23, 1993, at A5. In April 1993, Miller was convicted of the murder of Pamela Basu and sentenced to life in prison without parole. *Id.* "Rodney Solomon was found guilty of first-degree murder and six other counts, making him eligible for the death penalty." *Carjacking Trial: Man Found Guilty in Dragging Death of Woman*, *LANSING ST. J.*, Aug. 14, 1993, at A3. The prosecutor urged the jury to convict Solomon of first-degree premeditated murder, saying that "Rodney Eugene Solomon savagely, viciously attacked Pam Basu, beat her, ripped her from her car, threw her to the ground, and with knowledge that she was attached to the car, drove away . . . virtually driving the life out of her." *Id.* A few days after the Pamela Basu incident, in a neighboring county, Prince George's County, Maryland, an off-duty FBI agent fatally shot a man who was allegedly attempting to steal his car. Andrew Brownstein & Michael York, *Calling Carjacking Terrorism, Area Officials Coordinate Attack*, *WASH. POST*, Sept. 17, 1992, at D1. Two more carjackings occurred in the same week, in the same area. *Id.* A 43-year-old woman was accosted by a man with a handgun, demanding the woman's wallet and the keys to her 1987 Buick Regal, and a man was accosted in a grocery store parking lot and robbed of his 1991 Subaru sedan. *Id.*

44. 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg); see also 138 CONG. REC. H11,821 (daily ed. Oct. 5, 1992) (statement of Rep. Norton) (Carjackings in the Washington, D.C. area have "my constituents fright-

carjackers in front of their homes, at gas stations,⁴⁵ stoplights, fast-food outlets,⁴⁶ or as they walk to their cars in parking lots.⁴⁷ They are robbed by carjackers answering ads for used cars,⁴⁸ and cars are even carjacked from dealerships.⁴⁹ Carjackers sometimes strike after bumping the victim's vehicle from behind, or drawing the victim's attention to a feigned problem with the vehicle.⁵⁰ Drivers are often stopped at intersections and stranded on the highways at unnerving locations and times.⁵¹ Usually, those victims are left "standing by the side of the road, watching in shock as a stranger drives off in their vehicle."⁵²

ened to drive their cars."); DeWayne Wickham, *Carjacking, Poverty May Be Linked*, LANSING ST. J., Sept. 16, 1992, at A4 (Carjacking has made "us all potential victims in ways we have never known before.").

45. Paul Duggan, *P.G. Triples Count of Carjackings; Redefinition Makes Crime More Common*, WASH. POST, Oct. 6, 1992, at C1. A study conducted by the police in Prince George's County, Maryland shows that "about half of the vehicle robberies occurred from 9 p.m. to 3 a.m. at places where motorists get in and out of their cars, such as service stations, automated teller machines, store parking lots, and pay telephones." *Id.*

46. Gordon Witkin et al., *Willing To Kill for a Car*, U.S. NEWS & WORLD REP., Sept. 21, 1992, at 40, 42.

47. Joyce Price, *Lock Car Doors, Roll Windows Up, FBI Agent Advises*, WASH. TIMES, Sept. 12, 1992, at A6 (observing that in Bethesda, Maryland, a woman was shot in the face and killed as she walked to her Toyota Camry after leaving a doctor's office); see also 138 CONG. REC. H11,821 (daily ed. Oct. 5, 1992) (statement of Rep. Fazio) ("Our neighborhoods and communities are no longer safe. We are afraid to stop at stoplights, to frequent fast-food outlets, to leave our cars in garages and in shopping mall parking lots, and even to stop for gas. Women are scared to walk to their cars after dark, and families are being victimized in front of their homes and in their driveways.").

48. Steve Bates, *Thieves Are Duping Car Sellers; More 'Test-Drivers' Steer Away for Good*, WASH. POST, June 2, 1992, at B1. Police suggest that car owners go along for test drives. But an owner of a 1991 Nissan was forced out of his car at gun point while on a test ride. In another incident, two people answered an ad for a 1992 BMW and stole the \$29,000 car after the owner left and went into his house. *Id.*

49. Wickham, *supra* note 44, at A4 (Two carjackers "waved a gun in the face of a salesman" in a Maryland car dealership "and drove off with a brand new 300 ZX.").

50. INTERSTATE THEFT PROGRAM, *supra* note 14, at 4; see also H.R. REP. NO. 851(I), 102d Cong., 2d Sess. 15 (1992), reprinted in 1992 U.S.C.C.A.N. 2831 (they stage "fender-bender accidents").

51. See Nora Zamichow, "Carjackings" Violent Form of Auto Theft, Reported on the Rise, L.A. TIMES, Oct. 9, 1992, at A3; see also Price, *supra* note 47, at A6. (It is common "to have someone come up and pull open the door of a car or point a gun through an open window if it's stopped at a light or stop sign.") (quoting John Maes, National Auto Theft Bureau).

52. See Zamichow, *supra* note 51, at A3; see also Jim Dwyer, *Thieves Ride the Open Road*, NEWSDAY, Dec. 4, 1991, at 2. In New York, Avi Feder had borrowed his

C. *The Victims and the Perpetrators*

Drivers of expensive, late-model cars are obviously at risk. Carjackers like Mercedes-Benzes, Porches, Acuras, Lexuses, BMWs, Nissan Pathfinders,⁵³ Infinitis, and Toyota 4-Runners.⁵⁴ "These days, the Nissan 300ZX is going like hot cakes"—not because of sales, but because of carjacking.⁵⁵ Thieves in some cities have preferences.⁵⁶ The Nissan 300ZX leads the list in Washington, D.C., with more than 245 thefts occurring while the motorists were inside.⁵⁷ In Detroit, it is the Dodge Shadow; in Newark, the Dodge Stealth; in Dallas, the Dodge pickup.⁵⁸

But drivers of older cars are also at risk of having their cars stolen. Leading the list of vehicles stolen most often in 1991 is the 1986 Chevrolet Camaro, followed by the 1984 Oldsmobile Cutlass Supreme.⁵⁹ But it could be a 1980 Chevrolet

father's 1990 Lexus (a \$40,000 car, new) to attend a weekly lecture at Yeshiva University. After leaving the lecture and while driving on Grand Central Parkway, he and his passengers heard a horn honking from behind. Next, a car shot up beside them and pulled in front, forcing Feder to an abrupt stop. Feder and his passengers thought the two men in the car were good Samaritans who were trying to warn them about a problem with their Lexus. Not so. The two men, armed with a mallet and guns, got out of the car and ordered Feder and the others out of the Lexus. Believing they had no choice in the matter, Feder and the others stepped out into the center lane of Grand Central Parkway, where they stood and watched their Lexus and hundreds of other cars tear by them. The entire incident lasted between 30 and 60 seconds. Before they sped away, one of the men demanded Feder's wallet—"an afterthought in a \$40,000 robbery." *Id.* A few weeks before, two men stole a Lexus after the driver had stopped at an intersection. *Id.* The next night, robbers attempted to carjack a Mercedes, occupied by the chauffeur, an ex-police officer. The chauffeur chased the armed robbers away. An hour later, two men having the same description pulled someone out of a Jaguar. *Id.*

53. Harney, *supra* note 9.

54. Sean Piccoli, *Steering Clear of Carjackings; New Crime Could Bring Flashy Wheels to a Screechy Halt*, WASH. TIMES, Sept. 15, 1992, at E1.

55. Courtland Milloy, *Nightmare in Z Land*, WASH. POST, Sept. 13, 1992, at B1.

56. Harney, *supra* note 9, at A2.

57. Milloy, *supra* note 56, at E1.

58. Harney, *supra* note 9, at A2.

59. Witkin et al., *supra* note 46, at 40.

Chevette,⁶⁰ a 1972 Chevrolet,⁶¹ or a 1969 Dodge Dart.⁶² If it has four tires and runs, it is a target.

According to former U.S. Attorney General William P. Barr: "[T]he vast majority of predatory crimes are committed by a small group of repeat offenders."⁶³ He says the states need to "toughen up" and insure that jail sentences are served.⁶⁴ "He pointed to states like Florida and Texas, where violent crimes are soaring and only 15 to 18 percent of each jail sentence is served."⁶⁵ A 1992 study by the *Detroit News* shows that two-thirds of Detroit's convicted carjackers are serving five years or

60. Piccoli, *supra* note 54, at E1.

61. Zamichow, *supra* note 10, at B1.

62. See *Hearing*, Dec. 9, 1991, *supra* note 17, at 38-39. Barry King, Television Producer, New York, N.Y., testified that his old car, a 1969 Dodge Dart with 80,000 miles on it, was stolen in New York City. "I felt lost[;] I felt betrayed," he said. *Id.* at 38. After concluding that the police "didn't seem very interested or surprised," he decided that if there was any chance at all to recover his car, "it would have to be through [his] own efforts." *Id.* So he pedaled his only form of transportation (a bicycle) through neighborhoods; he posted reward signs and ran an ad—all to no avail. *Id.* at 39. He testified that two weeks later, he called the police precinct to determine whether they had made any progress. "They acted a bit annoyed," saying they would call him if they had anything to tell him. *Id.* "[T]hey never called." *Id.* A few months later, after deciding that having his car stolen was bad luck and, like lightning, would not happen again, he bought a 1976 Toyota Corolla; it was stolen too. Now the victim of two car thefts, occurring within eight months of each other, he says: "As long as I live anywhere that is called New York, I will never own another car. It's just not worth it." *Id.*

63. Nancy E. Roman, *Barr Charges States to 'Toughen Up' Laws*, WASH. TIMES, Sept. 17, 1992, at A8 (quoting Attorney General William P. Barr).

64. *Id.* (quoting Attorney General William P. Barr).

65. *Id.* Compare Witkin et al., *supra* note 46, at 40 ("In Texas, prisons are so overcrowded with violent offenders that its rare for a first- or second-time car thief to serve any time at all. . . . Nowadays, auto thieves don't even run.") (quoting police Sgt. Brett Baumgartner of San Bernardino, California); Ann Devroy, *Bush Rhetoric Subdued on Arkansas Crime*, WASH. POST, Sept. 29, 1992, at A7 ("[F]ederal inmates . . . serve on average 85 percent of their sentences.") (statement attributed to then President George Bush).

less.⁶⁶ And if the crime is less serious, such as auto theft, often the person is put on probation and serves no time at all.⁶⁷

A study conducted by the police in Prince George's County, Maryland, shows that the carjacker is likely to be a thrill-seeking youth. "Of the 54 people arrested in the robberies, 37 percent were younger than 18. . . . Three of the suspects were 14."⁶⁸ Speaking before the United States Senate in support of proposed federal legislation on carjacking and auto theft,⁶⁹

66. Harney, *supra* note 4, at A2. However, Kip Cortez Beasley, who was dubbed by the police as the carjacking king, is serving 25 to 40 years. He was convicted in Wayne County (Detroit) of three of the 54 carjackings attributed to him. *Id.*

But see Joe Swickard, *Jailing Thieves Called Message We Want*, DETROIT FREE PRESS, Sept. 5, 1991, at A1. Two Detroit men, ages 19 and 21, who stole cars from women at gunpoint, were sentenced to 20-40 years and 25-50 years respectively. "It's the kind of message we want out there. . . . *Id.* "There is a price to pay for these crimes, and somebody is going to start paying it." *Id.* (quoting Wayne County Prosecutor John O'Hair). Both men were repeat offenders. The 21-year-old had been given probation for three theft crimes while he was a juvenile, and was later sentenced to seven years on weapon and drug charges. After serving five months in prison, he was sent to a half-way house, from which he walked away after three weeks. Before his arrest for armed robbery, he had been arrested twice on drug charges, but was allowed to post bond after giving a false name. *Id.*

An 18-year-old repeat-offender shot and killed a man during the carjacking of the man's 1983 Oldsmobile Cutlass. Cecil Angel, *Teen Says He Killed Man for a Mistake: 'He Moved'*, DETROIT FREE PRESS, Sept. 5, 1991, at A14. "He moved," the youth said. "That was his mistake. I was tired of walking. . . . I got a bad left leg. I was shot in December." *Id.* In 1990, the youth had been sentenced to "two years probation and 200 hours community service after pleading guilty to a drug charge." *Id.*

67. *Hearing*, Dec. 9, 1991, *supra* note 17, at 2-3 (statement of Charles E. Schumer, Subcomm. Chairman). The problem isn't with the police. *Id.* at 2. Prisons are so overloaded that these less-serious crimes are "virtually ignored." *Id.* Seventy-five percent of sentences for car thieves are probation or jail time of less than 1 year. *Id.* Arrests for auto theft in New York City have increased "129 percent since 1985, far outpacing the auto theft rate. We're making the arrests but as a rule auto thieves don't go to prison. Clearly, the overloaded criminal justice system does not effectively deter auto crime." *Id.* at 3 (statement of Lee P. Brown, Commissioner, New York City Police Department).

68. Duggan, *supra* note 45 at C1 (quoting Captain James White, a police spokesman); *see also* Jim Keary, *Moving Targets Are Safer; Carjacking Data Digested by PG*, WASH. TIMES, Oct. 6, 1992, at B1 (Since 90 percent of the cars involved in the study were recovered, the indication is that most of them were taken by "copycats, joyriders and thrillseekers.") (quoting Captain James White); CRIME REPORTS, *supra* note 17, at 223 (number of persons 21 and under arrested in 1991).

A 15-year-old boy was charged as an adult for shooting a 2-year-old child during a carjacking. The toddler lost his left eye. The carjacker's father, proclaiming the boy's innocence, said he "doesn't know how to drive." Joel Thurtel, *Boy Charged as Adult in Carjack Shooting*, DETROIT FREE PRESS, Oct. 10, 1992, at A4.

69. *See* H.R. 4542, 102d Cong., 2d Sess. (1992).

Senator Lautenberg of New Jersey reported on the rash of thefts by juveniles. "Children, some not even teenagers, are stealing cars at an appalling rate."⁷⁰ Some carjackers start when they are "barely tall enough to see over the steering wheel."⁷¹ They soon become experts who are "able to enter and steal a car in seconds."⁷²

Others believe that it is the poor who commit these crimes.⁷³ These observers decry the "gap between the haves and have-nots."⁷⁴ We are not willing to spend our tax money on the poor, they say; so we spend our tax money protecting us from the poor.⁷⁵

Whatever the offender's profile, auto theft and carjacking are on the rise, and carjacking has caught on because of its ease and effectiveness. It is a no-fuss, quick fix, thirty-second crime of preference for the not-too-ambitious crook.⁷⁶ All that the

70. 138 CONG. REC. S17,961 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg); see also CRIME REPORTS, *supra* note 17, at 223. (In 1991, 70,659 youths under the age of 18 were arrested for motor vehicle thefts, with 20,076 of those being juveniles under 15.).

71. 138 CONG. REC. S17,961 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg).

72. *Id.*; cf. Nancy E. Roman, *supra* note 63, at A8. According to former U.S. Attorney General Barr, Vice President Danforth Quayle is "right on the money," in attributing social ills to the breakdown of the family. "Kids who grow up in families that are dysfunctional, without fathers or moral guidance, are disproportionately likely to become involved in crime. . . . That's the No. 1 corollary—much more so of a correlate to violence than poverty." *Id.*; see also *Hearing*, Sept. 10, 1992, *supra* note 17, at 116 (NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (April 1992)) (The Baltimore, Maryland Police Department has a creative approach for reducing juvenile auto theft. If a young person is found guilty of certain offenses relating to theft of a motor vehicle, he or she could be denied a driver's license at the time of application.).

73. Wickham, *supra* note 44 at A4; see also Roman, *supra* note 63, at A8.

74. Wickham, *supra* note 44 at A4.

75. See Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991). And still others say there's no absolute correlation between poverty and crime. It's a stigmatization to put the "poor" into a separate class of people—a class more likely to commit crime. *Id.*; see also *People v. Johnson*, 227 N.W.2d 523 (Mich. 1975); *People v. Henderson*, 264 N.W.2d 22, 25 (Mich. Ct. App. 1978), *rev'd*, 298 N.W.2d 376 (Mich. 1980) ("We regret the assumption that 'easy money' is more alluring to the poor than to the prosperous."); *People v. LaForte*, 256 N.W.2d 44 (Mich. Ct. App. 1977); *People v. Green*, 254 N.W.2d 788 (Mich. Ct. App. 1977); *State v. Mathis*, 221 A.2d 529, 538 (N.J. 1966) ("[T]here must be something more than poverty to tie a defendant into a criminal milieu.").

76. Press Release, *Pressler Legislation Increases Penalties for Car-Jacking*, Senator Larry Pressler, Sept. 25, 1992 [hereinafter Pressler Press Release] (on file with au-

thief needs is a gun and a nearby motorist. And even if the carjacker is caught, the chance of serving much time is slim.⁷⁷ Carjacking is "the newest crime of opportunity."⁷⁸

D. *The Perpetrators' Motivation*

The typical carjacker or car thief wants a ride or wants to command a profit enterprise.⁷⁹ In the past, joyriding was often considered an annoying but rather harmless⁸⁰ offense, tolerated because boys will be boys.⁸¹ Today's auto thief, however, bears no resemblance to the child of the past; rather, the offender is of a "different stripe"⁸²—a professional criminal, or a would-be professional criminal, bent on committing crime.

Juveniles steal autos and "routinely drive wildly around the streets at night, wreaking havoc with other drivers and pedestrians. The results are often tragic, involving destruction of homes and property, serious injuries, and death."⁸³ "They taunt the police and increasingly ram stolen cars into police cruisers, taking special delight in exploding a cruiser's air bags."⁸⁴ They

thor) ("Today's lazy criminal can just point a weapon and take a car without the hassle of breaking windows or propping [popping] the engine.") (quoting Senator Pressler, Republican from South Dakota); see also 138 CONG. REC. H11,821 (daily ed. Oct. 5, 1992) (statement of Rep. Fazio) ("Auto theft has become too easy and too profitable and presents a growing threat to both our property and—more important—to our physical safety.").

77. Harney, *supra* note 4, at A2. In Detroit, two-thirds of the convicted carjackers serve five years or less. *Id.*; cf. Witkin et al., *supra* note 47, at 40 ("The odds of a car thief being arrested and serving more than one year in prison are 1 in 100."); H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 15 (1992) ("49 out of 50 auto thieves escap[e] punishment"), reprinted in 1992 U.S.C.C.A.N. 2831.

78. Wickham, *supra* note 44, at A4.

79. INTERSTATE THEFT SUBPROGRAM, *supra* note 14, at 3.

80. ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 333 (3d ed. 1982).

81. Press Release, *In Wake of Maryland Carjacking Death, Schumer Urges Prompt Passage of Anti Car Theft Bill*, Rep. Charles E. Schumer, Sept. 10, 1992 [hereinafter Schumer Press Release] (on file with author). "What used to be treated as a joke—the so-called 'joyride'—has developed into a deadly serious business." *Id.* (quoting Rep. Schumer).

82. See, e.g., H.R. REP. NO. 851, 102d Cong., 2d Sess. pt. 2, at 13 (1992), reprinted in 1992 U.S.C.C.A.N. 2846.

83. 138 CONG. REC. S17,961 (daily ed. Oct 8, 1992) (statement of Sen. Lautenberg).

84. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 13 (1992), reprinted in 1992 U.S.C.C.A.N. 2846; see also Schumer Press Release, *supra* note 81.

run circles around the police, even boldly stealing cars from under an officer's nose.⁸⁵ "I hate the word joy riding," said [Sergeant] Thomas DeCastro, the head of the Essex-Union [New Jersey] task force. "They kill others; they kill themselves; they kill us. A teen-age kid with 3,000 pounds of metal under him going 80 miles an hour is not a joy to behold. He's an absolute terror."⁸⁶

Some carjackers steal cars to escape after committing crimes; others steal cars to commit more crimes.⁸⁷ In San Diego, a convict overpowered a deputy sheriff, freed himself from his chains, escaped from the sheriff's van, and then went looking for a car.⁸⁸ After failing to steal a taxi from its driver, the convict ran up to a car at a red light and stole the car after shooting its driver "point blank" in the head.⁸⁹

Carjackers and auto thieves are also motivated by profit.⁹⁰ They have turned auto theft into a full-fledged industry, run by "professional criminals."⁹¹ There are no capital outlays, no unions to appease, no taxes on the profits, and no employee benefits to be paid.⁹² With just a weapon and someone else's car, they turn crime into "profits in three ways."⁹³

85. H.R. REP. NO. 851, 102d Sess., 2d. Sess., pt. 2, at 13 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2846. In New Jersey, "one youth was brought into a police precinct station house for stealing a car and [was] released on his own recognizance. Not much for taking the bus, he stole a police officer's car to go home." *Id.* Another thief stole an Essex County prosecutor's car while the prosecutor was busy giving a talk, in a Newark church, on auto theft. *Id.*

86. *Id.*

87. Brownstein & York, *supra* note 43, at D1. According to U.S. Attorney Jay B. Stephens, "most carjackers appear to be stealing the cars for transportation or for use in another crime." *Id.*

88. Zamichow, *supra* note 10, at B1.

89. *Id.*

90. *Id.* Eighty percent of "highjacked cars" in San Diego "are found within one week . . . Nationwide, however, the cars often are taken to 'chop shops,' where the vehicles are broken down and sold for parts." *Id.* (quoting Sgt. John Leas of the San Diego Police Department's Robbery Unit).

91. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2830; *see also* *Hearing*, Dec. 9, 1991, *supra* note 17, at 2 (statement of Rep. Schumer) ("If car theft were a legitimate enterprise . . . it would rank in the top 50 on the Fortune 500 list.").

92. *See* *Hearing*, Dec. 9, 1991, *supra* note 17, at 2 (statement of Rep. Schumer).

93. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 3, at 1 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2895.

The most common way is selling parts to chop shops.⁹⁴ The thief takes the stolen auto to a chop shop, where it is “dismantled and sold as replacement parts.”⁹⁵ The National Highway Traffic Safety Administration says that between 10 and 16 percent of the vehicles are stolen for parts.⁹⁶ Others estimate the figure at about 40 percent.⁹⁷ That’s big business when the value of used parts is four times higher than the value of the car.⁹⁸ Many thieves solicit orders for parts, and then steal cars to fill the orders.⁹⁹ Repair shops actually support the “business by maintaining willful ignorance”¹⁰⁰ while buying parts faster and cheaper on the black market.¹⁰¹

94. *Id.*; see also H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830.

95. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 1 (1992), reprinted in 1992 U.S.C.C.A.N. 2895; H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830; see also 138 CONG. REC. S5,501 (daily ed. Apr. 10, 1992) (statement of Sen. Pressler). (The chop shop “dismantles the major parts of the car in 10 minutes.”)

96. 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg).

97. *Id.* at S17,960-61.

98. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830; see also *Hearing*, Dec. 9, 1991, *supra* note 17, at 67 (statement of Howard Apple, Unit Chief, Interstate Theft Unit, Federal Bureau of Investigation) (An undercover operation at one salvage yard “recovered 700 stolen parts worth \$700,000.”).

99. 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg). “The chop-shop operator receives an order from an unscrupulous repair shop” and sends his “steal men,” out to “steal that particular make and model and color, if possible.” *Hearing*, Dec. 9, 1991, *supra* note 17, at 27 (statement of Ron Thrash, Commanding Officer, Auto Crime Division, New York City Police Department). The car is brought to the chop shop, cut up, and the part is delivered to the repair shop. *Id.* The other parts from the car are delivered to salvage yards, where they are stockpiled for future business with the repair shops. *Id.* 27-28. The salvage yards become the warehouses. *Id.* at 29. The salvage yards are required to maintain records of articles coming in, but investigations reveal that “quite often the stolen items are never recorded.” *Id.* at 30. “It is almost difficult . . . for a legitimate repair shop to stay in business.” *Id.* They can’t compete when they have to wait four or five weeks for parts and charge “top dollar.” *Id.* at 29.

100. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830.

101. 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg) (“According to a report in U.S. News & World Report, for example, ‘undercover cops in California’s San Fernando Valley offered stolen parts to some 20 body shops; 12 agreed to buy them. [However,] [a]n honest body shop owner may be unaware he’s dealing in stolen parts, because many are sold through regional networks that resemble a Turkish bazaar.’”) (quoting Witkin et al., *supra* note 46, at 42).

Thieves also sell the cars to unsuspecting buyers, complete with "washed" titles.¹⁰² The carjacker will steal a car, forge the title, and take the forged title to the Department of Motor Vehicles in another state, claiming to have just bought the car.¹⁰³ The state will issue the new title and send the old title to the original state for verification. By the time the title is identified as fraudulent, a new buyer will have bought the stolen vehicle.¹⁰⁴ Chop shops also use stolen parts in junked or salvaged cars and sell the rebuilt cars, complete with washed titles, to unsuspecting buyers "at a price four or five times what it is worth."¹⁰⁵

Auto thieves are in the export business too.¹⁰⁶ They steal

(In Detroit, professional thieves hit cars for air bags, removing them in about five minutes. "[T]he air bags are marketed through unscrupulous parts dealers." Corey Williams, *Newest Target for Thieves: Auto Air Bags*, DETROIT NEWS, Sept. 16, 1992, at 1A. The dealers buy cheap, while charging the insurance companies for new air bags. *Id.* (quoting Val Vitols, Executive Director, Auto Theft Prevention Authority, Michigan State Police); *Hearing*, Sept. 10, 1992, *supra* note 17, at 125-30 (NATIONAL HWY., TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (April 1992)) (discussion of insurance fraud, a related subject). One type of fraud is where the owner reports that the vehicle was stolen, sells the parts to salvage yards and auto shops, and collects payment from the insurance company. *Id.* at 125.

102. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2830.

103. *Id.*

104. *Id.* "[T]hieves exploit a loophole in the state motor vehicle titling systems: a state's inability to communicate quickly with other states." *Id.*

105. 138 CONG. REC. H11,822 (daily ed. Oct. 5, 1992) (statement of Rep. Clement) (It's "the modern day equivalent of cattle-rustling."); *see also* 138 CONG. REC. S5,501 (daily ed. April 10, 1992) (statement of Sen. Pressler). Senator Pressler relayed that he purchased a 1988 car at an auction and later discovered that the car had been "put together with parts from a 1985 vehicle." *Id.* Under then existing laws, there was no way to determine whether the vehicle had been "salvaged, junked, or made from parts stolen from another car." *Id.*; *Hearing*, Dec. 9, 1991, *supra* note 17, at 64-72. Seven states—"Alaska, Arkansas, Montana, New Mexico, South Dakota and Wyoming, and the District of Columbia"—do not issue salvage titles. So thieves buy a salvaged car for the vehicle identification number (VIN). Then they steal a similar car, switch the VIN numbers, and the result is "a ready made title and vehicle identification number placed on a stolen car." *Id.* at 64 (statement of Howard Apple, Unit Chief, Interstate Theft Unit, Federal Bureau of Investigation). "About fifty percent of the cars that are stolen are stolen for parts or 'retagging'[,] that is, the vehicle identification number of the stolen car is switched with a car that has been previously declared a total loss or is severely damaged." *Id.* at 72 (prepared statement of Richard Jeffares, Chairman of the New York/New Jersey Anti-Car Theft Committee).

106. *Hearing*, Dec. 9, 1991, *supra* note 17, at 72 (prepared statement of Richard Jeffares, Chairman of the New York/New Jersey Anti-Car Theft Committee) (About 20

and ship some 200,000 autos a year from our ports to locations that include Central and South America, the Caribbean, Western Europe, the Middle East, and Africa.¹⁰⁷ The thieves simply drive the vehicles into standard-sized containers, seal the containers, and haul them to the docks.¹⁰⁸ The vehicles are virtually unnoticed by our customs officials.¹⁰⁹ As a result, billions of dollars escape honest enterprise every year.¹¹⁰

Furthermore, while we have unwittingly fattened the wallets of these "entrepreneurs," our own finances are being drained by the increased costs of owning an automobile, including expenses for off-street parking,¹¹¹ security devices,¹¹² and insurance.¹¹³

percent of the cars are stolen for export.).

107. 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg) ("According to the FBI, one in five vehicles on the docks waiting for Customs clearance in some Caribbean countries show clear signs of having been stolen and shipped from the United States. For vehicles worth over \$15,000, the rate is nearly four out of five." Overseas, vehicles may be worth three times more than in the United States.); *see also Anti Car Theft Act of 1992: Hearings on H.B. 4542 Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary*, 102d Cong., 2d Sess. at 209 [hereinafter *Hearing*, Mar. 31, 1992] (statement of (statement of David F. Snyder, Senior Counsel, the American Insurance Association). The frequency of insurance claims for stolen cars is significantly higher along the Mexican border and in New York State, particularly in New York City. *Id.* at 209. This may be tied to export. *Id.* In 1970, Florida established the Certificate of Right Possession Program (CRP), to ensure that vehicles that were being exported were inspected. *Id.* at 174. "[A]n inspector would physically verify the public VIN plate and check a second VIN against the original ownership documents." *Id.* (statement of Colonel Michael D. Robinson, Director, Michigan State Police, representing the International Association of Chiefs of Police). The law, however, was repealed in 1991, "primarily because of budget restraints." *Id.* at 176. In 1990, before its repeal, 39,998 vehicles were exported in Florida. *Id.* After its repeal, in 1991, the number rose to 70,697. *Id.*; Gordon Witkin et al., *supra* note 46, at 42 (In December 1991, "authorities in New York broke up a ring they believe shipped \$4.4 million worth of stolen cars to Ghana.").

108. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2831; *see also Hearing*, Mar. 31, 1992, *supra* note 107, at 193 (statement of Michael D. Robinson, Director, Michigan State Police, representing the International Association of Chiefs of Police) ("Once the container is sealed up, the vehicle is exported: there's no check of that container, and it really needs to be done.").

109. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2831.

110. *Id.*

111. *Id.*

112. *Id.*

113. *See* 138 CONG. REC. H11,819 (daily ed. Oct 5, 1992) (statement of Rep.

III. THE NATIONAL RESPONSE

The spotlight on carjacking directed the public's attention to a situation that was obviously out of hand. There were many ideas on how to contain carjacking and auto theft.

Several task forces were formed. Probably the most innovative task force was created in Michigan in 1986,¹¹⁴ before carjacking had caught on, but while auto theft was a growing problem. The Michigan Automobile Theft Prevention Authority is supported by a \$1 surcharge on each insurance policy issued in Michigan.¹¹⁵ The Authority is staffed with police officers and full-time prosecutors who are assigned to work on auto theft.¹¹⁶ In 1985, before starting the program, Michigan ranked second among the states in auto theft.¹¹⁷ Michigan has

Sensenbrenner) ("[A]bout 88 percent of the premiums for the comprehensive part" of auto insurance goes to pay for auto theft.). Other sources give conflicting percentages. See e.g., H.R. REP. NO. 851, 102d Cong., 2d Sess. pt. 1, at 15 (1992) ("[A]s much as 64% of an automobile owner's comprehensive insurance premium is attributable to theft claims."), reprinted in 1992 U.S.C.C.A.N. 2831; *Hearing*, Sept. 10, 1992, *supra* note 17, at 123 ("About half of the comprehensive portion of auto insurance premiums is used to compensate victims of automobile theft.") *Id.* (quoting NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1992)); *Hearing*, Mar. 31, 1992, *supra* note 107, at 222 (statement of Herman Brandau, Associate General Counsel, State Farm Insurance Company) ("Nationwide for all types of vehicles, auto thefts account for approximately 36% of our automobile insurance comprehensive premium.") *Id.*; cf. *Hearing*, Mar. 31, 1992, *supra* note 107, at 239-40 (prepared statement of Jack Gillis, Director of Public Affairs, Consumer Federation of America) (Other expenses may include auto rental or other transportation, costs of litigation, lost wages, societal cost of accidents, and costs to the criminal justice system. In addition, cars that are extensively damaged "are rarely restored to their pre-theft condition."); *Hearing*, Dec. 9, 1991, *supra* note 17, at 1 (statement of Charles E. Schumer, Subcommittee Chairman) (Insurance coverage rarely covers the value of the cars. Insurance premiums go up "after the theft and no one pays them [the owners] back for the headache of renting a new car, buying a new car, and all the lost work and leisure time.").

114. Witkin et al., *supra* note 46, at 43.

115. *Id.*; see also *Hearing*, Mar. 31, 1992, *supra* note 107, at 192 (noting that the Michigan program generates 7 million dollars a year) (prepared statement of Michael D. Robinson, Director, Michigan State Police).

116. *Hearing*, Mar. 31, 1992, *supra* note 107, at 172 ("Last year the authority awarded grants in excess of \$7 million. This supported 91 police officers, 7 full-time prosecutors, 13 support staff and 9 community programs. Approximately 2,000 individuals were arrested and charged, resulting in the recovery of 1,850 stolen vehicles with an estimated value of \$17 million.") (prepared statement of Michael D. Robinson, Director, Michigan State Police).

117. Witkin et al., *supra* note 46, at 43.

since fallen to eleventh place.¹¹⁸ Other states, including Texas, Louisiana, Illinois, Arizona, New York, and Florida, have established programs similar to the Michigan program.¹¹⁹

Houston and Detroit were among the cities that launched task forces to fight carjacking. Before the Detroit task force was formed in August 1991, Detroit averaged seventy-five carjackings a week.¹²⁰ Then carjackings declined to about twenty-five a week.¹²¹ After the task force was formed in Houston, carjacking declined by about fifty percent.¹²²

The FBI also established an auto-theft task force, composed of FBI agents who work with police agencies in the Washington, D.C., area¹²³ to fight this fearsome crime. The U.S. Attorney's office created a database of suspects and carjacked vehicles.¹²⁴ In the Washington metropolitan area, data was compiled to "track trends" and to "determine problem areas."¹²⁵ Departments of law enforcement increased their focus on identifying carjackers, exchanging information,¹²⁶ and thoroughly searching for fingerprints and other evidence in the vehicles recovered.¹²⁷ The District of Columbia police department also set up decoys and sting operations to catch carjackers.¹²⁸

118. *Hearing*, Mar. 31, 1992, *supra* note 107, at 170 (prepared statement of Colonel Michael D. Robinson, Director, Michigan State Police). (Michigan's auto theft "rate had been 96% over the national average. In fact, since 1985, while national auto thefts have *increased by 48%*, Michigan's has *decreased by 13%*." (emphasis added).

119. Witkin et al., *supra* note 46, at 43.

120. Thomas-Lester & O'Donnell, *supra* note 9, at B4.

121. Witkin et al., *supra* note 46, at 43. *But see* Jim Schaefer, *Man Killed For Car, Money: Slaying Takes Place At ATM Machine*, DETROIT FREE PRESS, Sept. 19, 1992, Metro Final, Sec. NWS, at 3A (noting that the Detroit task force was disbanded in May, 1992).

122. Thomas-Lester & O'Donnell, *supra* note 9, at B4.

123. *Id.*; *see also* Schaefer, *supra* note 121, at 3A (The FBI has expanded its task forces to include armed auto theft. The task forces were already in place in 42 cities to fight gangs and drugs.).

124. 138 CONG. REC. H11,822 (daily ed. Oct. 5, 1992) (statement of Rep. Norton); *see* Thomas-Lester & O'Donnell, *supra* note 9, at B4.

125. Thomas-Lester & O'Donnell, *supra* note 9, at B4.

126. *Id.*

127. *Id.*

128. *Id.* But the chances of catching a carjacker with a decoy are very small. "It's like . . . buying a lottery ticket and hitting the jackpot . . ." *Id.* (quoting Frank Scaffidi, spokesman for the FBI).

The Bureau of Alcohol, Tobacco, and Firearms extended its toll-free hotline to receive tips on carjacking.¹²⁹ The hotline was originally established for receiving tips on guns.¹³⁰ The state of Maryland prepared 150,000 suggestion cards for distribution to drivers at toll stations, advising drivers on how to avoid being carjacked.¹³¹ Other groups published tips nationwide.¹³² New Jersey passed a law allowing its cities to impose curfew laws that make parents and children liable if the children are on the streets between 10 p.m. and 6 a.m.¹³³ Massa-

129. *Id.* Rewards are paid for helpful tips. Telephone number: 1-800-ATF-GUNS. *Cf. Hearing*, Sept. 10, 1992, *supra* note 17, at 119 (materials submitted for the record). (Michigan has a tip-reward program on auto theft, "administered through Michigan's Automobile Insurance Placement Facility, and funded by the insurance industry in Michigan." *Id.* (quoting NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1992)). The program is called Help Eliminate Auto Theft (H.E.A.T.). It pays up to \$1,000 for the arrest of an auto thief and up to \$10,000 for the arrest of a chop shop operator. *Id.* at 119-20. As of Nov. 19, 1991, H.E.A.T. had paid 448 rewards. *Id.* at 120. The tips resulted in 883 arrests and recovery of 1,143 vehicles valued at \$13,257,708. *Id.*

130. Thomas-Lester & O'Donnell, *supra* note 9, at B4.

131. Laurie Kellman, *Va. Shooting Spurs Drive for Tough Carjacking Law*, WASH. TIMES, Oct. 10, 1992, at A10.

132. Desda Moss, "Being Alert" is Best Protection, USA TODAY, Oct. 7, 1992, at A2. Law officials advise:

- * Be aware of your surroundings, especially in isolated areas.
- * If you see someone near your unoccupied car, keep walking until the person leaves.
- * Lock doors and windows as soon as you are inside.
- * If you feel threatened while driving on city streets, stay in the center lane; don't get blocked into the curb lane.
- * If someone who looks suspicious is approaching your car, carefully drive away. Running a red light may be necessary.
- * If another driver bumps your car or your tire goes flat, keep your windows closed and wait for police. If fearful, drive slowly to the nearest police station—even if the tire is flat.
- * If confronted, don't resist; doing so could aggravate things.

Id.

The American Automobile Association also gave advice for drivers:

- * Know how to get where you are going. . . .
- * Lock all car doors, and keep windows up in unfamiliar areas. . . .
- * Keep your purse or wallet hidden. . . .
- * Park in well-lighted areas. . . .
- * Don't be tricked into getting out of your car. . . .
- * Don't stop for flashing white lights. . . .
- * Drive in the middle lane if you don't like an area.

If your fears materialize, remember the prime rule: Give up your car, your wallet or your jewelry rather than your life.

Wade, *supra* note 15, at 3.

133. Wayne King, *New Jersey Adopts Law on Curfews*, N.Y. TIMES, Nov. 1, 1992, §

chusetts enacted legislation that would allow insurers to charge a higher premium for high-risk cars, or to deny coverage altogether.¹³⁴ The Texas Action Council on Theft, a "nonprofit organization run by the insurance industry, law enforcement officials, and the district attorney's office," launched an anti-theft effort by using billboards and public service announcements to "educate Texans as to the detrimental effects that theft has on insurance costs."¹³⁵

Businesses responded as well. Manufacturers hurried to place new anti-carjacking and auto-theft devices on the market.¹³⁶ One such device, the Lojack homing device, was installed in 150,000 cars in eight states.¹³⁷ Among other popular devices are the Code-Alarm Intercept system,¹³⁸ and the Carjacker.¹³⁹ Consumers spend over \$400 million annually on

1, at 56. A sponsor of the bill held the law out "as a tool that cities could use to combat car theft . . ." *Id.*

134. *Hearing*, Sept. 10, 1992, *supra* note 17, at 122 (NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1992)) (materials submitted for the record).

135. *Id.* at 121.

136. Karen Riley, *Devices to Foil Carjacks Multiply*, WASH. TIMES, Sept. 12, 1992, at A6.

137. John Burgess, *High Tech Homes In on Car Thieves; Some Area Police Trying Electronic Tracking Gear*, WASH. POST, Sept. 22, 1992, at D1. The Lojack homing device allows the police to pick up a transmission and home in on stolen vehicles. *Id.* at D8. Fred Kennerson, of the Stolen Vehicle Recovery Network of the Los Angeles Police Department, says Lojack cars tend to be recovered sooner, have less damage, and allow police to be 25 times more successful in making arrests. *Id.* Law enforcement officials in Los Angeles have traced Lojack equipped cars to 14 separate chop chops. *Id.* But some thieves have caught on. *Id.* Some carjackers leave the cars parked for a day or two; then if the stolen cars are still hidden and not retrieved by police, the chances are high that the cars do not have the special homing devices. *Id.* Police can track LoJack-equipped cars over a 25 square-mile area. *Hearing*, Sept. 10, 1992, *supra* note 17, at 107. "LoJack is available in seven states: Massachusetts, Florida, New Jersey, Michigan, California, Illinois, and Virginia. LoJack reports a recovery record of approximately 95 percent . . ." *Id.* (quoting NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1992)).

138. John Burgess, *supra* note 137, at D8 (noting that the Code-Alarm System pinpoints the location of stolen cars within 200 feet). "One of the features of 'Intercept' allows the central monitoring station (a station operated by Code Alarm employees) to remotely cut-off a stolen vehicle's engine to prevent high-speed chases. . . . The [reported] cost . . . is approximately \$1,500 per vehicle plus a monthly monitoring fee." *Hearing*, Sept. 10, 1992, *supra* note 17, at 104-05 (quoting NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1992)).

139. Karen Riley, *supra* note 136, at A6. The owner flips a switch, the car stops a couple of minutes later, and its lights begin flashing. *Id.* Not everyone recommends

anti-theft equipment, including steering wheel locks and collars, alarm systems, and electronic tracking systems.¹⁴⁰

Michigan State Police officials and other state highway leaders began promoting car phones,¹⁴¹ and the demand rose sharply after a series of crimes against motorists.¹⁴² Some law enforcement officials said it was the smartest purchase that a car owner could make.¹⁴³ In addition, sales of armored cars increased dramatically,¹⁴⁴ because it was no longer safe for employees to take money to the bank.

Despite greater public precautions and increased efforts by law enforcement, the public still clamored for more action to curb carjacking. In an attempt to address their concerns, the state legislative and executive branches studied existing laws and considered making carjacking a specific crime imposing stiff penalties. Such legislation first appeared in the District of Co-

purchasing anti-theft equipment. Some experts fear that once the carjackers catch on, they may simply shoot the owners. *Id.* "These are dangerous devices to have in your car." *Id.* (quoting the President of Auto Sound System, Jim Meyersburg, who makes his customers sign disclaimers). *Id.*

140. *Hearing*, Mar. 31, 1992, *supra* note 107, at 239-40 (prepared statement of Jack Gillis, Director of Public Affairs, Consumer Federation of America). Prices vary from about \$5 for parts-marking, \$35 for add-on devices, to over \$1,500 for sophisticated systems. *Hearing*, Sept. 10, 1992, *supra* note 17, at 81 (NATIONAL HWY. TRAFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (Apr. 1991)). New Jersey and New York have the Combat Auto Theft (CAT) program, where decals are placed in the car windows indicating that the car is rarely driven at night. *Id.* at 122. If it is spotted late at night, then the car is stopped and the driver is questioned. *Id.* Some states "require insurers to give car owners premium discounts for installing anti-theft devices. Those states are: Illinois, Massachusetts, Florida, Kentucky, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, and Washington." *Id.* at 123.

141. Bill Laitner, *Car Telephones Are Plugged As Emergency Alert Devices*, DETROIT FREE PRESS, Sept. 12, 1991, at E1. The Michigan State Police disconnected the "13-year-old citizens band radio system that connected motorists along I-96 to state police dispatchers in Lansing," and then it took out its "motorist aid phone system along I-94 in Detroit." *Id.* In its place are signs telling motorists to use car phones to dial 911. *Id.* Experts argue that "[t]he last thing we need is people stumbling along freeways, looking for help while risking a pedestrian accident or street crime." *Id.*

142. *Id.* "Hertz offers car phones in 40 of the 60 major cities it serves" Wade, *supra* note 15, at 3. The company planned to install 20,000 cellular phones by the end of 1992, and it plans ultimately to install a total of 50,000 phones. Budget Rent a Car, Avis, and National also offer car phones in some areas. *Id.*

143. See Price, *supra* note 47, at A6 ("A car phone is expensive, but it's the most important item in a car . . .") (quoting Donald Murray, President of the Boston Police Patrolmen's Association).

144. Ami Walsh, *Endangered Companies*, 8 CORP. DETROIT MAG. 30 (Dec. 1991).

lumbia as the Carjacking Prevention Emergency Amendment Act of 1992.¹⁴⁵ Under a later addition to the temporary code, unarmed carjacking was punishable by a fine of "not more than \$5,000" and a mandatory-minimum imprisonment of "not less than 7 years."¹⁴⁶ Armed carjacking¹⁴⁷ was punishable by a fine of "not more than \$10,000" and mandatory-minimum imprisonment of "not less than 15 years."¹⁴⁸

In Michigan, a bill was introduced to create the crime of auto piracy.¹⁴⁹ The proposed law would have imposed a penalty for auto piracy¹⁵⁰ of "imprisonment for life, or for any term of years but not less than 10 years."¹⁵¹ Maryland Governor

145. D.C. CODE ANN. § 22-2903 (Supp. 1993) (annotation to D.C. CODE ANN. § 22-2902). This 90-day, temporary emergency act, was approved by Mayor Sharon Kelly on October 14, 1992. *See id.*

146. *Id.* (a)(2). "A person convicted of carjacking shall be fined not more than \$5,000 and be imprisoned for a mandatory-minimum term of not less than 7 years and not more than 21 years, or both." Author's Note: The statute is unclear because of the words, "or both." However, it appears to require both the fine and the mandatory-minimum imprisonment.

147. *Id.* (b)(1). ("A person commits the offense of armed carjacking if that person while armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switch-blade knife, razor, black-jack, billy or metallic, or other false knuckles) commits or attempts to commit the offense of carjacking."); *see* D.C. CODE ANN. § 22-2901 (1989) (robbery statute punishing carjackers); D.C. CODE ANN. § 22-3202 (Supp. 1993) (enhanced penalties if a dangerous weapon was used, and carrying mandatory-minimum penalties).

148. D.C. CODE ANN. § 22-2903 (Supp. 1993) (stating that § 2 of D.C. LAW 9-270, effective May 8, 1993, added temporary D.C. CODE ANN. § 22-2903). (2) "A person convicted of armed carjacking shall be fined not more than \$10,000 and be imprisoned for a mandatory-minimum term of not less than 15 years and not more than 45 years, or both." *See* Author's Note *supra* note 146.

149. 1991 MI S.B. 507 (introduced by Senator John F. Kelly).

150. *Id.* The bill provided:

A person, whether armed or unarmed, who by force or violence, or by threat of force or violence, or by putting in fear[,] robs, steals, or takes a motor vehicle . . . from another person, in the presence of that person or the presence of a passenger or any other person in lawful possession of the motor vehicle, is guilty of auto piracy, a felony

Id.

151. *Id.* Compare with 1991 MI S.B. 539. (allowing the prosecuting attorney to prosecute a 15-year-old juvenile as an adult in an armed robbery case, without a waiver hearing) and compare with 1991 H.B. 5186 (imposing a penalty for armed carjacking of "life, or for any term of years but not less than 5 years" and a revocation or denial of the person's driver's license for 10 years after the prison sentence is served). None of these bills were passed, however. Michigan already had statutes for crimes that carjackers could be punished for, including: unarmed robbery, MICH.

William Donald Schaefer asked for legislation imposing a fifteen-year mandatory sentence for carjacking in that state.¹⁵² Legislation was also drafted in Virginia and Rhode Island. The Virginia legislation would have imposed a fifteen-year mandatory sentence;¹⁵³ the Rhode Island legislation would have imposed a minimum-mandatory sentence of five years.¹⁵⁴

However, these attempts were met with disabling arguments in opposition. The law would create more prison overcrowding; it's too costly; it's not needed; it wouldn't deter theft. Therefore the proposed legislation failed. While the nation had been awakened and it was now at least fighting back, any inroads were small when measured against the momentum that carjacking and auto theft had gained. The United States had won the war in the desert, but it was losing the war on its own streets.¹⁵⁵

More than two decades earlier, in the early 1970's, the federal government had stepped aside and reduced its involvement in auto theft.¹⁵⁶ Other serious matters—"narcotics, organized

COMP. LAWS ANN. § 750.530 (West 1991); MICH. STAT. ANN. § 28.798 (Callaghan 1990) (punishable by imprisonment of not more than 15 years); felonious assault, MICH. COMP. LAWS ANN. § 750.82 (West 1991); MICH. STAT. ANN. § 28.277 (Callaghan 1990); armed robbery and aggravated assault, MICH. COMP. LAWS ANN. § 750.529 (West 1991) MICH. STAT. ANN. § 28.797 (Callaghan 1990), (punishable by a maximum of life imprisonment, with a two-year mandatory minimum sentence if aggravated assault or serious injury is inflicted while committing the armed robbery).

In 1993, a similar auto piracy statute was again introduced into the legislature by a number of state senators, including Senator Kelly. 1993 MI S.B. 773. The bill again did not pass.

152. Kellman, *supra* note 131, at A10.

153. *Id.* Advisors to Virginia Governor L. Douglas Wilder say, however, that mandatory sentences don't deter crime. Wilder's advisers argue that what is needed are "stronger efforts to catch carjackers." *Id.*

154. 92-H7837 (Rhode Island 1992) ("Every person who shall commandeer a motor vehicle or unlawfully drive away a motor vehicle which is occupied shall commit the crime of robbery of a motor vehicle and shall upon conviction be imprisoned for not less than five (5) years nor more than thirty (30) years, or fined not more than ten thousand dollars (\$10,000), or both.").

155. See 138 CONG. REC. H11,822 (daily ed. Oct. 5, 1992) (statement of Rep. Andrews).

156. H.R. REP. NO. 851, 102d Cong., 2d Sess. 14, pt. 2, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2847 (quoting 1989 letters from the Justice Department to John D. Dingell, Chairman of the Oversight and Investigations Subcommittee) ("Thirty years ago [before the federal government turned most areas of auto theft over to the states], over 30 percent of all federal prisoners were incarcerated because of interstate motor vehicle theft offenses while only approximately 2 percent were serving sentences for drug offenses. Today, the figures are the opposite."); see also *Hearing*, Dec. 9,

crime, terrorism, and white collar crime”—required “more immediate attention.”¹⁵⁷ With most auto theft under their jurisdiction, state and local law enforcement officers gained more competence in investigating interstate theft.¹⁵⁸ But auto theft grew, and law enforcement could not keep the streets safe.¹⁵⁹ Many cities and states with the greatest need were often the least able to provide the resources to fight auto theft.¹⁶⁰

Some commentators suggested that the federal government should step in.¹⁶¹ Auto theft had “been on cruise control for too long,”¹⁶² and carjacking was on the minds of people in a way that auto theft had never been. A comprehensive plan was needed to put the brakes on both auto theft and carjacking;—a

1991, *supra* note 17, at 51 (prepared statement of Robin L. Montgomery, Section Chief, Violent Crimes and Major Offenders Section, Criminal Investigative Division, Federal Bureau of Investigation) (“The FBI investigates significant organized commercial theft rings having an impact on interstate commerce. Most investigations of other auto theft incidents are conducted by state and local authorities.”).

157. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2847; *cf.* H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 15 (1992) (“At the federal level, the Interstate Theft Unit of the FBI handles investigation into major auto theft enterprise. There [remained] three federal crimes related to auto theft: interstate transportation of stolen vehicles (18 U.S.C. § 2312), possession or sale of a stolen vehicle that has moved interstate after the theft (18 U.S.C. § 2313), and possession or sale of a vehicle or a part of a vehicle knowing that its ID number has been removed (18 U.S.C. § 2321). Very few individuals, however, have actually been prosecuted for these offenses.”), *reprinted in* 1992 U.S.C.C.A.N. 2831-32.

158. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 14 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2847.

159. 138 CONG. REC. H11,822 (daily ed. Oct 5, 1992) (statement of Rep. Goss) (“Law enforcement cannot keep our street[s], our businesses, our homes, free from crime”); *see also, e.g.*, Memorandum from Representative Charles E. Schumer to Members of the Committee on the Judiciary (July 27, 1992) [hereinafter Schumer Memorandum] (on file with author) (“Despite the pervasiveness and costliness of auto theft, overwhelming caseloads often prevent state and local law enforcement officials from giving the problem the attention it deserves.”).

160. 138 CONG. REC. S17,961 (daily ed. Oct. 8, 1992) (statement of Sen. Lautenberg) (“State and local efforts . . . can be costly. Even where auto theft is rampant, many municipalities simply are unable to devote the resources needed. In fact, many of the areas hit hardest by auto theft are those with the fewest resources to fight back.”).

161. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 15 (1992) (“Clearly, the Committee [on Energy and Commerce] believes that the Justice Department and Federal enforcement agencies need to be involved to a greater extent in dealing with the theft problem.”), *reprinted in* 1992 U.S.C.C.A.N. 2848; *see also* *Hearing*, Mar. 31, 1992, *supra* note 107, at 216 (prepared statement of David F. Snyder, Senior Counsel, The American Insurance Association) (“[T]here is a need for a stronger federal role.”).

162. 138 CONG. REC. H11,818 (daily ed. Oct. 5, 1992) (statement of Rep. Schumer).

plan that would "keep car owners, not car thieves, in the driver's seat."¹⁶³

IV. RESPONSE BY THE CONGRESS: H.R. 4542

H.R. 4542 grew out of a hearing on auto theft, conducted by the House Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary.¹⁶⁴

At the hearing on December 9, 1991, representatives from law enforcement, the insurance industry, and an anti-theft committee testified about "the overloaded criminal justice system," stating that the system had created a "climate in which auto theft is rampant."¹⁶⁵ They reported on carjackings¹⁶⁶ and on trends and increases in vehicle theft.¹⁶⁷ They reported on chop shop operations,¹⁶⁸ title washing,¹⁶⁹ and the methods the thieves use to illegally export stolen vehicles.¹⁷⁰ They recommended that identification numbers be etched on windows¹⁷¹ and on the "14 major parts of all motor vehicle[s],"¹⁷² including light trucks, pickups, vans, and multipurpose vehi-

163. *Id.*

164. Schumer Memorandum, *supra* note 159 (summarizing committee consideration of the bill).

165. *Hearing*, Dec. 9, 1991, *supra* note 17, at 3 (statement of Lee P. Brown, Commissioner, New York City Police Department).

166. *Id.* at 31-32 (statement of Ron Thrash, Commanding Officer, Auto Crime Division, New York City Police Department) ("[I]t [carjacking] doesn't seem to be a serious problem in the way of numbers. It's serious because it . . . has the potential for violence.").

167. *Id.* at 50, 54-59 (prepared statement, Robin L. Montgomery, Section Chief, Violent Crimes and Major Offenders Section, Criminal Investigative Division, Federal Bureau of Investigation).

168. *Id.* at 27-30 (statement of Ron Thrash, Commanding Officer, Auto Crime Division, New York City Police Department).

169. *Id.* at 64 (statement of Howard Apple, Unit Chief, Interstate Theft Unit, Federal Bureau of Investigation).

170. *Id.* at 61-64 (statement of Donald Clark, Assistant Special Agent in Charge, N.Y. Office, Federal Bureau of Investigation).

171. *Id.* at 85 (prepared statement of Paul F. Altruda, Assistant Deputy Superintendent and Counsel, New York State Insurance Department) (Manufacturers and dealers "could be required to etch the windows of all vehicles sold.").

172. *Id.* at 5 (statement of Lee P. Brown, Commissioner, New York City Police Department) (The Motor Vehicle Theft Enforcement Act of 1984 should be amended, because it requires ID numbers "on the parts of only those cars that are deemed most likely to be stolen.").

cles.¹⁷³ They recommended standardized titling procedures,¹⁷⁴ mandatory inspections of salvage or total-loss vehicles¹⁷⁵ and tighter inspection requirements for the Customs Service (such as personal vehicle inspections¹⁷⁶ and inspection of cartons by x-ray).¹⁷⁷ They recommended "RICO type indictments,"¹⁷⁸ pointing out the effectiveness of Michigan's Auto Theft Prevention Authority.¹⁷⁹

On the basis of that hearing, Congressmen Charles E. Schumer¹⁸⁰ and James Sensenbrenner¹⁸¹ introduced a comprehensive bill¹⁸² designed to amend the Motor Vehicle Law Enforcement Act of 1984¹⁸³ and to fight carjacking and auto theft. The bill had four titles, which were drafted to deal with carjacking, title fraud, trafficking in stolen parts, and export of stolen vehicles.

173. *Id.* at 75 (prepared statement of Richard Jeffares, Chairman, New York-New Jersey Anti-Car Theft Committee) (The Anti-Car Theft Committee recommended that parts marking should be expanded to all vehicles; it recommended "VIN stamping or embossing rather than" removable stickers.); *see also* H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 20 (1992) (In 1986, "State Farm's theft rate for 1986 passenger motor vehicles . . . was 64.4 percent, and for specialty vehicles in that same year 23 percent. However, in calendar year 1989, marked 1989 model passenger automobiles accounted for only 9.4 percent of all State Farm thefts, and specialty vehicles accounted for 76.5 percent."), *reprinted in* 1992 U.S.C.C.A.N. 2853.

174. *Hearing*, Dec. 9, 1991, *supra* note 17, at 75 (prepared statement of Richard Jeffares, Chairman, New York-New Jersey Anti-Car Theft Committee).

175. *Id.*

176. *Id.* at 6 (statement of Lee P. Brown, Commissioner, New York City Police Department).

177. *Id.* at 63-64 (statement of Donald Clark, Assistant Special Agent in Charge, N.Y. Office, Federal Bureau of Investigation).

178. *Id.* at 66 (statement of Donald Clark, Assistant Special Agent in Charge, N.Y. Office, Federal Bureau of Investigation).

179. *Id.* at 86 (prepared statement of Paul F. Altruda, Assistant Deputy Superintendent and Counsel, New York State Insurance Department).

180. Representative Schumer (Democrat) was Chairman of the House Subcommittee on Crime & Criminal Justice, Committee on the Judiciary.

181. Representative Sensenbrenner was the ranking Republican member of the Subcommittee on Crime & Criminal Justice, Committee on the Judiciary.

182. *See* 138 CONG. REC. H11,818 (daily ed. Oct. 5, 1992) (statement of Rep. Schumer); Schumer Memorandum, *supra* note 159.

183. *See Hearing*, Sept. 10, 1992, *supra* note 17, at 83. (NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., AUTO THEFT RESISTANCE STUDY (April 1992)). The Motor Vehicle Theft Law Enforcement Act of 1984, Pub. L. No. 98-547, added Title VI to the Motor Vehicle Information and Cost Savings Act. *See id.*

A. *Hearing: Committee on the Judiciary*

At a hearing on March 31, 1992, before the House Subcommittee on Crime and Criminal Justice,¹⁸⁴ of the Committee on the Judiciary, opposition was heard from representatives of the Department of Justice and the Motor Vehicle Manufacturers Association.¹⁸⁵ The opposition focused on three areas.

First, "crimes arising out of street violence normally are best handled by state and local law enforcement authorities."¹⁸⁶

Second, the bill would be too costly to automobile manufacturers, which would be required to expand parts marking to include all major parts on all passenger motor vehicles,¹⁸⁷ including those that do not have high-theft rates. It would also include "light trucks, vans, and MPV's [multi-purpose vehicles]."¹⁸⁸ Manufacturers would have to mark the "grille, floor pan, frame, and windows."¹⁸⁹ To comply with existing law,¹⁹⁰ manufacturers were already spending about fifteen million

184. *Hearing*, Mar. 31, 1992, *supra* note 107; see also H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 14 (1992), reprinted in 1992 U.S.C.C.A.N. 2830; *Schumer Memorandum*, *supra* note 159.

185. *Hearing*, Mar. 31, 1992, *supra* note 107, at 187 (statement of Thomas H. Hanna, President and Chief Executive Officer, the Motor Vehicle Manufacturers Association of the United States, Inc.) (The Motor Vehicle Manufacturers Association conveyed strong support of Titles I, II, and IV of the bill, but opposed Title III, which would require manufacturers to mark major parts on all vehicles.).

186. *Hearing*, Mar. 31, 1992, *supra* note 107, at 143 (prepared statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice) ("[W]e cannot support the extension of federal jurisdiction over robberies of all motor vehicles.") (footnote omitted).

187. The Motor Vehicle Theft Law Enforcement Act of 1984, Pub L. No. 98-547, 98 Stat. 2754 (1984) (codified as amended at 15 U.S.C.A. §§ 2021-2034) (West Supp. 1993)), required marked parts on high-theft lines only.

188. *Hearing*, Mar. 31, 1992, *supra* note 107, at 188 (statement of Thomas H. Hanna, President and Chief Executive Officer, The Motor Vehicle Manufacturers Association of the United States, Inc.); see also *id.* at 148 (prepared statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice).

189. *Id.* at 188 (statement of Thomas H. Hanna, President and Chief Executive Officer, the Motor Vehicle Manufacturers Association of the United States, Inc.).

190. Motor Vehicle Theft Law Enforcement Act of 1984, Pub L. No. 98-547, 98 Stat. 2754 (1984) (codified as amended at 15 U.S.C.A. §§ 2021-2034 (West Supp. 1993)).

dollars each year to mark the major parts on just "their high-theft models."¹⁹¹

Furthermore, H.R. 4542 would ignore the Department of Transportation's findings that data about the effectiveness of parts marking is inconclusive "[a]nd that the marking of additional parts would be premature and cannot be justified."¹⁹²

Third, the bill would place the parts-marking program under the jurisdiction of the Department of Justice, instead of under

191. *Hearing*, Mar. 31, 1992, *supra* note 107, at 187 (statement of Thomas H. Hanna). Fifteen million dollars each year equates to about \$6 a car. *Id.* at 196. See also H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 6 (1992) (F.B.I. statistics show that the cost is about \$3 a car.), *reprinted in* 1992 U.S.C.C.A.N. 2832.

192. *Hearing*, Mar. 31, 1992, *supra* note 107, at 188 (statement of Thomas H. Hanna) (referring to the five-year report of the Department of Transportation, evaluating the effectiveness of parts marking required under the Motor Vehicle Theft Law Enforcement Act of 1984).

"The report, *Auto Theft and Recovery, Efforts of the Motor Vehicle Theft Law Enforcement Act of 1984*, issued in March of 1991, found:

* that the difference in vehicle theft and recovery rates between marked and unmarked cars was statistically insignificant.

* that parts marking has played a very small role in the conviction rate of car thieves (the report cited only 114 convictions due to parts marking out of hundreds of thousands of arrests for vehicle theft).

* that insurance premiums have not decreased as a result of parts marking.

* that under the present system more car lines than necessary are required to have their parts marked.

* that there is no supporting basis to conclude that parts marking would yield reductions in theft for other types of vehicles, such as light trucks, vans and multi-purpose vehicles (MPVs).

* and that the marking of additional parts would be premature and cannot be justified given the lack of results from existing parts marking.

Hearing, Mar. 31, 1992, *supra* note 107, at 190-91.

The D.O.T. also recommended "giving manufacturers an unlimited number of exemptions for vehicles equipped with effective theft deterrent devices; redesigning high theft cars based on actual theft experience; and determining which cars are high theft models based on the most current data." *Id.* (quoting prepared statement of Thomas H. Hanna); see also *Hearing*, Sept. 10, 1992, *supra* note 17, at 85. The National Highway Traffic Safety Administration issued a second report in April, 1992. Referring to its March 1991 report, it stated that, "Since only one year has elapsed since the comprehensive report on parts marking was written, additional data are still insufficient to reach a firm conclusion on the effectiveness of parts marking in reducing theft." *Id.* (NATIONAL HWY. TRAFFIC SAFETY ADMIN., U.S. DEPT OF TRANSP., AUTO THEFT RESISTANCE STUDY (April 1992)).

the Department of Transportation, "which has years of experience."¹⁹³

Nevertheless, "full support of the bill" was given by representatives from law enforcement, the insurance industry, the American Association of Motor Vehicle Administrators, and the Consumer Federation of America.¹⁹⁴ The insurance industry pointed to a 1989 study by the Highway Loss Data Institute suggesting that parts marking may have reduced theft.¹⁹⁵ And a voluntary program in Indiana was successful in reducing theft, where VIN numbers were etched on glass and sheet metal components.¹⁹⁶ Supposedly, the parts-marking program

193. *Hearing*, Mar. 31, 1992, *supra* note 107, at 188 (statement of Thomas H. Hanna); *see also id.* at 150 (prepared statement of John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice) ("[T]his kind of regulatory function would more appropriately be assigned to a traditional rule making agency such as the Department of Transportation.").

194. *Schumer Memorandum*, *supra* note 159.

195. *Hearing*, Mar. 31, 1992, *supra* note 107, at 208-09 (statement of David F. Snyder, Senior Counsel, The American Insurance Association) ("The results of this study suggest that the marking of vehicle parts with identification numbers may have reduced the incidence of thefts of such cars, especially in large urban areas where car theft is common." *Id.* at 209; *see also id.* at 225 (prepared statement of Herman Brandau, Associate General Counsel, State Farm Insurance Co.) ("[W]e are seeing a substantial shift away from stealing automobiles required to be marked under present law to vehicles not marked. . . . [F]or 1988 vehicles with the highest total theft frequency, about one-half were marked. For target 1989 vehicles the fraction of marked vehicles dropped below one-tenth.")

David F. Snyder, Senior Council of the American Insurance Association stated that:

The current high theft line parts marking program has worked, but only moderately well. A recent study by the Highway Loss Data Institute [a group that collects data reported by insurance companies] found a greater decline in the frequency of thefts for parts marked vehicles versus those that were not. But the average cost of a parts marked vehicle theft claim also increased. . . . In view of the mixed success, we suggest that the current parts marking program be carefully studied, improved, scrapped or replaced with a broader program such as proposed in H.R. 4542.

Id. at 213-14.

196. *Hearing*, Mar. 31, 1992, *supra* note 107, at 226 (prepared statement of Herman Brandau, Associate General Counsel, State Farm Insurance Co.). Beginning in January, 1986, VIN numbers were etched on five glass and four sheet metal components of 18 high-theft vehicle models.

During the two-year study period, claim frequencies on the etched vehicles dropped 37.5%, from 8.73 thefts per 1,000 insured etched vehicles to 5.46 per 1,000. Average payment amounts for the etched vehicles decreased 14.2%, from \$4,947 to \$4,246. Actual gross savings for the two-year period from theft reduction of all vehicles were \$652,767. Adjusting

would "help police build cases . . . and . . . break the alliance between car thieves and shady repair shops."¹⁹⁷ Support was also given for placing "the Attorney General in the principal role of coordinating anti-theft activities."¹⁹⁸

Based on comments, Congressmen Schumer offered an amendment to proposed H.R. 4542.¹⁹⁹ The amendment was adopted by the House Subcommittee on Crime and Criminal Justice,²⁰⁰ which reported the bill to the Judiciary Committee and recommended that the bill be approved.²⁰¹ After its minor amendment,²⁰² the Judiciary Committee approved the bill and reported it to the House, recommending that it pass.²⁰³

for etching costs of \$16.50 per car, a net savings of \$476,860 was realized.

Id.

197. *Id.* at 242 (prepared statement by Jack Gillis, Director of Public Affairs, Consumer Federation of America); *see also id.* at 183 (prepared statement of Detective Peter J. Simet, Milwaukee Police Department):

Passage of this bill will lead to more recovered stolen vehicles and diminish the demand for stolen parts. . . .

During my career, I have spearheaded a number of large scale auto theft investigations. These investigations often started with the identification of a single motor vehicle through the use of the security labels.

For example, in 1986 I initiated an investigation that began with the recovery of a stolen 1980 Cadillac Seville. All of the identifying numbers had been removed except for one strategically placed mylar label. This discovery subsequently led to the recovery of 48 other stolen vehicles with a value exceeding \$400,000.

Id.

198. *Id.* at 224 (prepared statement of Herman Brandau, Associate General Counsel, State Farm Insurance Companies).

199. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 17 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2833.

200. *Id.*; *Schumer Memorandum, supra* note 159.

201. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 17 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2833.

202. *Id.* (On July 28, 1992, the bill was amended "to clarify the role of the Department of Justice in establishing the National Stolen Automobile Parts Information System.").

203. *Id.*

B. *H.R. 4542, Reported by the House Judiciary Committee*

H.R. 4542, as reported by the House Judiciary Committee, had four titles.

TITLE I would:

* create the crime of armed carjacking, punishable by up to 15 years in prison;²⁰⁴

* require possession of a firearm during the crime;²⁰⁵

* require that "the stolen automobile [had] moved in interstate commerce;"²⁰⁶

* establish forfeiture sanctions against armed carjacking and other offenses,²⁰⁷

* raise the sentences for existing federal crimes related to auto theft.²⁰⁸

SUBTITLE B OF TITLE I would establish a grant program to fund state and local Anti Car Theft Committees, modeled after the "remarkably successful" Michigan program.²⁰⁹

TITLE II would:

* establish a National Motor Vehicle Information System [NMVIS] to link state departments of motor vehicles,²¹⁰ so the state departments and others can check the validity of out-of-state titles;²¹¹

* provide for voluntary participation, but states would "lose a portion of their federal highway funds" if they did not participate;²¹²

204. *Id.* at 2834.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.* at 2834-35.

212. *Id.* at 2835.

* require "junk yards, salvage yards, and insurance companies to file monthly reports" with the information system.²¹³ Junk and salvage yards would give vehicle "numbers of cars they [had] received," and insurance companies would give vehicle numbers "of cars they [had] acquired and sold as junk."²¹⁴

TITLE III would:²¹⁵

* require automobile manufacturers to put vehicle identification numbers (VINs) on the major parts of "all automobiles, including light trucks, passenger vans, and multi-purpose vehicles,"²¹⁶ thereby eliminating exemptions from parts marking for high-theft lines equipped with anti-theft devices.

* include windows as listed major parts, but would not otherwise change the listed parts that would be subject to being marked;²¹⁷

* limit the costs of manufacturers for parts marking to \$15 per vehicle, excluding the cost of identifying engine blocks, frames, and transmissions.²¹⁸

213. *Id.* at 2836.

214. *Id.* at 2836. The states could then determine whether the vehicle being titled had been junked or salvaged. *See id.*

215. *Id.* at 2836. This title would replace Title VI of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §§ 2021-2034 (1988); *see also Hearing*, Sept. 10, 1992, *supra* note 17, at 83 (outlining the history of federal statutes on motor vehicle theft). "The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. No. 98-547) added Title VI to the Motor Vehicle Information and Cost Savings Act." *Id.* (quoting NATIONAL HWY. TRAFFIC SAFETY ADM., U.S. DEP'T OF TRANSP., AUTO THEFT-RESISTANCE STUDY (Apr. 1992)).

216. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 20 (1992) (This would change Title VI of the Motor Vehicle Information and Cost Savings Act, (15 U.S.C. §§ 2021-2034) which requires only "that the major parts of certain high-risk [high-theft] automobiles be marked."), *reprinted in* 1992 U.S.C.C.A.N. 2836; H.R. REP. NO. 851 102d Cong., 2d Sess., pt. 2, at 24 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2857 (To be exempt under the Motor Vehicle Theft Law Enforcement Act from marking parts for a high-theft line, a manufacturer had to equip, as standard equipment, the line with an anti-theft device that the Department of Transportation determined would be "likely to be as effective as parts marking in reducing and deterring motor vehicle theft.") (quoting a statement from the Department of Transportation).

217. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 20 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2836.

218. *Id.* at 2837.

* require anyone who sold or installed a part marked with an identification number to "first determine that the part ha[d] not been reported as stolen."²¹⁹

TITLE IV WOULD:

* "require a person or entity exporting a used vehicle to report that vehicle's VIN to Customs three days prior to shipment."²²⁰

* require the Customs Service to check *all reported VINs* with the information in the NCIC (Federal Bureau of Investigation's National Crime Information Center) database.²²¹

* eliminate the personal-use loophole that allows cars shipped for personal use to avoid these checks.²²²

* require "Customs to conduct spot checks of automobiles and containers destined for shipment."²²³

C. *Hearing: Committee on Energy and Commerce*

After the Judiciary Committee passed H.R. 4542, the bill went before the House Subcommittee on Commerce, Consumer Protection, and Competitiveness²²⁴ of the Committee on Energy and Commerce.²²⁵ There, on September 10, 1992, the bill faced further challenge.²²⁶ Representatives from the U.S. Department of Transportation strongly opposed Title III, because it would extend the parts-marking requirement²²⁷ and would

219. *Id.*

220. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 22 (1992), reprinted in 1992 U.S.C.C.A.N. 2839.

221. *Id.*

222. *Id.*

223. *Id.*

224. See 138 CONG. REC. H11,820 (daily ed. Oct. 5, 1992) (chaired by Rep. Collins of Illinois).

225. 138 CONG. REC. H11,820 (daily ed. Oct. 5, 1992) (Rep. John D. Dingell chaired the Committee on Energy and Commerce.); see also H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 1 (1992) (The Judiciary Committee, Committee on Energy, and the Ways & Means Committee shared jurisdiction over the bill.), reprinted in 1992 U.S.C.C.A.N. 2829.

226. *Hearing*, Sept. 10, 1992, *supra* note 17.

227. *Hearing*, Sept. 10, 1992, *supra* note 17, at 76 (statement of Paul Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration, U.S. Department

remove the exemption from parts marking on high-theft lines.²²⁸ They pointed to the Department's April, 1992 report to Congress that "data are still insufficient" to determine the "effectiveness of parts marking in reducing theft."²²⁹ The report touted the efforts of manufacturers and car dealers to install anti-theft devices²³⁰ and the effectiveness of those devices in reducing auto theft;²³¹ it recommended allowing manufacturers unlimited exemptions from parts marking.²³²

Representative John D. Dingell,²³³ from Michigan, claimed that H.R. 4542 was "primarily aimed at trying to deal with 'chop shops,'" which are only a small part of the problem.²³⁴ The bill would impose "new and expanded requirements" and costs on states "at a time when they are having budget problems,"²³⁵ on the auto industry "at a time when it is in economic trouble,"²³⁶ and on small business.²³⁷ The estimated

of Transportation) ("The proposed increase in the coverage of the parts marking standard would impose costly requirements without any evidence of being effective.")

228. *Id.* (statement of Paul Jackson Rice) ("While we do not have data providing evidence of the effectiveness of parts marking, we do have data from one manufacturer indicating that anti-theft devices can be extremely effective in reducing theft.")

229. *Id.* at 77 (prepared statement of Paul Jackson Rice) (quoting NATIONAL HWY. TRAFFIC SAFETY ADM., U.S. DEPT OF TRANSP., AUTO THEFT-RESISTANCE STUDY (Apr. 1992)); see also *id.* at 85 ("As the March 1991 report states, 'high and low theft car lines represent different populations. Motives for stealing cars in high theft lines may differ from those leading to thefts in low theft lines. For example, joy riding or fraud may be more of a factor in one line than another. As a result of this, available theft data, which are not broken down by motives, provide only an imperfect basis on which to draw conclusions on the effectiveness of the Theft Act.") (quoting NATIONAL HWY. TRAFFIC SAFETY ADM., U.S. DEPT OF TRANSP., AUTO THEFT-RESISTANCE STUDY (Apr. 1992)).

230. *Id.* at 88-113.

231. *Id.* at 96-97. As an example, "General Motors voluntarily installed" its PASS-KEY system, "along with parts marking," in its model-year 1989 Pontiac Firebird and Chevrolet Camaro. *Id.* at 96. "These two carlines had been among the top 10 on the high-theft listing since MY [model year] 1983/84." *Id.* After General Motors introduced the PASS-KEY system, theft rate decreased 67 percent on the Firebird and 65 percent on the Camaro. *Id.* at 96-97 (quoting NATIONAL HWY. TRAFFIC SAFETY ADM., U.S. DEPT OF TRANSP., AUTO THEFT-RESISTANCE STUDY (April 1992)).

232. *Hearing*, Sept. 10, 1992, *supra* note 17, at 102 (NATIONAL HWY. TRAFFIC SAFETY ADM., U.S. DEPT OF TRANSP., AUTO THEFT-RESISTANCE STUDY (Apr. 1992)).

233. Chairman of the Committee on Energy & Commerce.

234. *Hearing*, Sept. 10, 1992, *supra* note 17, at 157 (statement of Rep. Dingell) (Chop shops "are less than 20 percent of the problem." Further, the bill "strikes from the law provisions aimed at encouraging automakers to build theft-proof cars.")

235. *Id.* at 156 (statement of Rep. Dingell).

236. *Id.* (statement of Rep. Dingell). The window-marking requirements "would

\$210 million annual costs to the auto industry under the bill must be reduced "down closer to the \$20 million costs under the 1984 law."²³⁸

The Automotive Dismantlers and Recyclers Association voiced its concern that the "parts information system created by Title III is unworkable."²³⁹ About "200,000 of the parts sold per day . . . would be candidates for parts marking" ²⁴⁰ That's 200,000 calls a day—or "300 calls a minute"—to check on the parts.²⁴¹ "[T]he potential adverse economic impact on average business operations and sales could be severe."²⁴²

Furthermore, the National Motor Vehicle Title Information System would duplicate an existing system.²⁴³ And according

place an estimated burden on automobile manufacturers in excess of \$130 million "without proof of the effects of parts marking." *Id.* at 157 (quoting Secretary of Transportation, Andrew H. Card, Jr., in a letter opposing H.R. 4542, dated August 28, 1992). *But see supra* note 107, at 196 (regarding one study showing the effectiveness of etching glass with VIN numbers). *See also Hearing*, Sept. 10, 1992 *supra* note 17, at 65 (statement of Rep. Schumer) ("[T]he company that is producing Nissan's etching system estimates that a manufacturer's entire output could be marked for under \$3 a car.").

237. *Hearing*, Sept. 10, 1992, *supra* note 17, at 157 (statement of Rep. Dingell). (The Automotive Dismantlers and Recyclers Association claims that the "burdensome and costly requirements" of the proposed law would "force the closing of hundreds of small automotive recycling businesses and could result in the loss of thousands of jobs, without reducing auto theft crime.") (quoting Letter from The Automotive Dismantlers and Recyclers Association to Rep. Dingell opposing the bill (Sept. 8, 1992)).

238. *Id.* at 157 (statement of Rep. Dingell); *see also* H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 19 (1992) (The "cost to consumers of this expanded program would be close to \$15 per car, for a total annual cost of \$210 million." That's 14 times more than under the Motor Vehicle Theft Law Enforcement Act.), *reprinted in* U.S.C.C.A.N. 2852, 2884.

239. *Hearing*, Sept. 10, 1992, *supra* note 17, at 188 (statement of James Watson, speaking on behalf of the Automotive Dismantlers and Recyclers Association).

240. *Id.*

241. *Id.* This many calls would easily overload the system. *Id.* at 203 (prepared statement of the Automotive Dismantlers & Recyclers Association).

242. *Id.* at 189 (statement of James Watson); *see also Hearing*, Sept. 10, 1992, *supra* note 17, at 202, 203 (prepared statement of Automotive Dismantlers & Recyclers Association) (The costs under Title III "would add a minimum of \$30,000 in overhead expenses to thousands of small, financially-struggling businesses." It would threaten "thousands of automotive recycling businesses and the 117,000 jobs of the people it employs.").

243. *Hearing*, Sept. 10, 1992, *supra* note 17, at 161 (statement of Rep. Dingell). This concern was expressed by Secretary Card, Department of Transportation. The existing system is the National Law Enforcement Telecommunications System (NLETS); *see also* H.R. REP. NO. 851, 102d Cong. 2d Sess., pt. 2, at 17 (1992) ("All

to Representative Dingell, it “[w]on’t work” because there won’t be full participation by the states, since it is voluntary.²⁴⁴

The bill does not “address the real problem—namely, the prevention of thefts.”²⁴⁵ Auto theft is not “primarily a State and local enforcement problem,” as the Justice Department contends.²⁴⁶ It’s an “important national issue” which “needs greater attention by” the Justice Department.²⁴⁷ Federal enforcement against carjacking “should be encouraged.”²⁴⁸ But Titles III and IV of this bill have nothing to do with” carjacking.²⁴⁹

As to whether the existing parts-marking program had worked, Representative Schumer responded: “[T]he auto manufacturers say it has not; law enforcement and insurance companies say that it has”; and the National Highway Traffic Safety Administration says “it cannot say either way.”²⁵⁰ But according to law enforcement, all cars have to be marked, because the “cops in the field can’t tell which parts are supposed to be marked and which aren’t.”²⁵¹ And the only increase in per-car cost would be for window etching,²⁵² which is “an extremely cost-effective way to fight auto theft.”²⁵³

The requirement of parts verification will take away “[t]he key moment in an auto theft cycle”: when the stolen part “is sold from a chop shop to a legitimate repair shop, to be put in a customer’s car.”²⁵⁴ Under this bill, the parts dealer could not

50 states currently participate voluntarily in the NLETS, which instantly provides an inquiring State with the information entered on a vehicle title at the time of its issuance.”), reprinted in 1992 U.S.C.A.N. 2850.

244. *Hearing*, Sept. 10, 1992, *supra* note 17, at 163 (statement of Rep. Dingell).

245. *Id.* at 157 (statement of Rep. Dingell).

246. *Id.* (statement of Rep. Dingell).

247. *Id.* (statement of Rep. Dingell) (“The Federal Government under existing law and under this bill has extensive enforcement authority. It is rarely used. I think it is time that the Justice Department wake up to the fact that it [auto theft] is rising in importance to other crimes and needs greater attention by that Agency.”). *Id.*

248. *Id.*

249. *Id.*

250. *Id.* at 65 (prepared statement of Rep. Schumer).

251. *Id.*

252. *Id.* (“[T]he company that is producing Nissan’s etching system estimates that a manufacturer’s entire output could be marked for under \$3 a car.”).

253. *Id.*

254. *Id.*

sell it,²⁵⁵ so he would not buy it. "This bill is totally different" because of the parts-marking requirements of Title III.²⁵⁶

V. ANALYSIS: WHAT CONGRESS GAVE IT TOOK AWAY

After vigorous debate, the two House Committees reached a compromise,²⁵⁷ and on October 25, 1992, the Anti Car Theft Act of 1992²⁵⁸ was signed by President George Bush. Although the structure of the four titles remained, and some specifics were polished and strengthened, much of its force was taken away.

A. Title I

1. Carjacking and Other Theft Crimes

The Act makes it a federal offense to take a motor vehicle, or attempt to take a motor vehicle, "from the person or presence of another by force or violence or by intimidation."²⁵⁹ Federal

255. *Id.*

256. *Id.* at 63; see also H.R. REP. NO. 851, 102d Cong., 2d Sess. 1, pt. 2, at 28 (1992), reprinted in 1992 U.S.C.C.A.N. 2844, 2861. The House Subcommittee on Commerce, Consumer Protection, and Competitiveness considered and amended the Judiciary Committee's bill, H.R. 4542, and on September 17, 1992, ordered it reported and recommended that it pass. *Id.* The bill was referred to the Subcommittee on Trade, Committee on Ways and Means:

On September 10, 1992, the Subcommittee on Trade, by voice vote, ordered H.R. 4542 favorably reported to the full Committee on Ways and Means, with an amendment in the nature of a substitute consisting of the bill as ordered reported by the Committee on the Judiciary.

On September 22, 1992, the Committee on Ways and Means, by voice vote, ordered H.R. 4542 favorably reported to the House, as amended. The Committee approved the bill as reported by the Subcommittee on Trade, with an amendment.

H.R. REP. NO. 851, 102d Cong., 2d Sess. 1, pt. 3, at 28 (1992), reprinted in 1992 U.S.C.C.A.N. 2896.

257. 138 CONG. REC. H11,820 (daily ed. Oct. 5, 1992). The act resulted from a compromise between H.B. 4542 as reported by the Committee on the Judiciary and the version reported by the Energy & Commerce Committee. *Id.*

258. Pub. L. No. 102-519, 106 Stat. 3384 (1992) (codified as amended in scattered sections of 15 U.S.C., 18 U.S.C., 19 U.S.C., and 42 U.S.C.).

259. 18 U.S.C.A. § 2119 (West Supp. 1993). The statute provides:

Whoever, possessing a firearm as defined in section 921 of this title, takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—

jurisdiction lies where the carjacker had possession of a firearm²⁶⁰ and took a motor vehicle that had "been transported, shipped, or received in interstate or foreign commerce"²⁶¹ prior to the theft.²⁶²

These requirements will limit federal jurisdiction. Even though the gun may be the carjacker's weapon of choice,²⁶³ not all carjackers will have a gun in their possession. The carjacker will escape federal prosecution if, instead of a gun, he had a knife or other deadly weapon, or if he was not armed.²⁶⁴

(1) be fined under this title or imprisoned not more than 15 years, or both,

(2) if serious bodily injury (as defined in section 1365 of this title) results, be fined under this title or imprisoned not more than 25 years, or both, and

(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

18 U.S.C.A. § 2119 (West Supp. 1993).

260. *Id. Cf. United States v. Singleton*, No. 93-3479, 1994 U.S. App. WL 71535, at *4 (5th Cir. Mar. 10, 1994). ("Mere' possession of the firearm is insufficient; some relation between the firearm and the taking of the vehicle is required. . . . We conclude that a requirement that the firearm be possessed 'in relation to' the carjacking is implicit in § 2119." *Singleton* at *4. See *Singleton* at *8 n. 21; *United States v. Sabini*, No. 93-0448-CR, 1994 U.S. Dist. WL 31871 (S.D. Fla. Jan. 19, 1994), at *3; *United States v. Harwood*, 834 F. Supp. 950, 951 n.1. (W.D. Ky. 1993); *United States v. Moore*, 832 F. Supp. 335, 337 (N.D. Ala. 1993). *Contra United States v. Payne*, 841 F. Supp. 810, 813-814, (S.D. Ohio 1994); *United States v. Zukinta*, 830 F. Supp. 418, 421 (E.D. Tenn. 1993); *United States v. McHenry*, 830 F. Supp. 1022 (N.D. Ohio 1993).

261. See *supra* note 259.

262. *United States v. Watson*, 815 F. Supp. 827, 830 (E.D. Pa. 1993).

263. See sources cited *supra* note 35.

264. *Watson*, 815 F. Supp. at 833 (Representative Schumer's original version of the bill "punished all violent car theft, while the enacted version punishes only those car thefts involving firearms." See *United States v. Singleton*, No. 93-3479, 1994 U.S. App. WL 71535, (5th Cir. Mar. 10, 1994). Although the Pamela Basu case (see accompanying text for *supra* notes 37-42) may have prompted Congress to federalize carjacking, this law could not have been used to prosecute her killers, "even if it had occurred after the law's enactment, because a gun was not used." *Id.* at n.25 (quoting Senator Lieberman, 139 Cong. Rec. § 5821 (daily ed. May 12, 1993). In an attempt to correct the problem. Senators Lieberman and Pressler have jointly introduced S. 942. *Id.*; See also 138 CONG. REC. S17,960 (daily ed. Oct. 8, 1992) ("My own reservation with the carjacking section in H.R. 4542 goes to the provision that makes the use of a firearm an essential element of the crime. First, this element is unnecessarily restrictive because it does not cover carjacking committed with the use of other type of weapons nor would simple brute force be covered. Second, it creates a firearm crime outside the context of the existing gun laws. Firearm crimes have been and should be the primary responsibility of the experts in this area, the Bureau of Alcohol, Tobacco

Jurisdiction is also limited because the vehicle had to have been "transported, shipped, or received in interstate or foreign commerce."²⁶⁵ In other words, the vehicle had to have crossed state lines before it was carjacked.²⁶⁶ Furthermore, since Con-

and Firearms [ATF].") (statement of Sen. DeConcini). 264.

265. 18 U.S.C.A. § 2119 (West Supp. 1993); see *United States v. Van Johnson*, 834 F. Supp. 985 (E.D. Tenn 1993 (mem.)). "[T]his court concludes that the language "has been transported . . . in interstate" commerce applies to stolen motor vehicles that at least at some point in the past were transported in interstate commerce, but may not necessarily be involved in interstate commerce at the time of the carjacking," *Id.* at 986. *But see United States v. Cortner*, 834 F. Supp. 242 (M.D. Tenn 1993) "[I]f it is sufficient to invoke the powers of the Commerce Clause that something has been manufactured outside the state of Tennessee and previously transported here, 90% of the merchandise on every merchant's shelf will qualify and any robbery of any store can be federalized by the Congress under this rationale." *Id.* at 243.

266. *Watson*, 815 F. Supp. at 830. "[T]he statute applies only if the stolen car at issue is 'transported, shipped or received' in interstate commerce prior to the theft." *Id.* at 830. In *Watson*, the defendant challenged the statute as "an invalid exercise of Congress' powers under the Commerce Clause." *Id.* at 829. Relying on *Hodel v. Indiana*, 452 U.S. 314, 325, (1981), the court reasoned that:

[t]he exercise of Commerce Clause power will support the enactment of federal criminal statutes in at least three contexts: One, where the regulation relates to things 'in commerce' . . . ; two, where the targeted activity occurs solely intrastate but affects interstate commerce . . . ; and three, where the regulation involves protection of the instrumentalities of interstate commerce themselves Since the statute applies only to cars that have crossed state lines, it applies only to things which are said to be 'in commerce.'

Id. at 829-30.

"[T]he statute as originally drafted was intended to apply to the theft of both interstate and intrastate cars." *Id.* at 833. The legislative history suggests "that Congress included the requirement that the stolen motor vehicle be transported, shipped, or received in interstate or foreign commerce in order to insure the statute's constitutionality." *Id.* at 834. The court held that "under the circumstances of this case it was both a legitimate and rational function of legislative craftsmanship to shape the contours of the anti-carjacking statute to perceived safe constitutional bounds for fear that failure to do so would render the legislation vulnerable to invalidation." *Id.* at 836; see also *United States v. Stith*, 824 F. Supp. 128 (S.D. Ohio 1993) "This phrase ['in commerce'] has been interpreted broadly to include virtually any activity or instrumentality that has an effect upon interstate commerce or that is affected by interstate commerce." Auto theft nationwide causes the price of insurance to increase, providing "a rational basis for Congress' finding that 'carjacking' affects interstate commerce . . ." *Id.* at 129. See also *United States v. Payne*, 841 F. Supp. 810 (S.D. Ohio 1994) ("[T]here is a rational connection between § 2119 and Congress's asserted objective of addressing the serious national problems associated with automobile theft. Accordingly, we conclude that § 2119 is not constitutionally defective.") *Id.* at 813. See also *United States v. Eskridge*, 818 F. Supp. 259 (E.D. Wisc. 1993) ("Congress could rationally believe that . . . theft of motor vehicles has more than a de minimis effect on interstate commerce [supported by thieves using interstate commerce to traffic stolen vehicles and increasing automobile insurance premiums and costs of

gress used the term "motor vehicle," the argument may be precluded that jurisdiction is established if the vehicle's parts had crossed state lines.²⁶⁷ Therefore, carjackers who steal motor vehicles manufactured and sold in the same state, like those manufactured and sold in Detroit, Michigan, may avoid federal prosecution—a result that some courts will label unfair discrimination.²⁶⁸ And would federal jurisdiction lie if the owner himself drove the car across state lines before the carjacking?²⁶⁹

owning a car]);" *but cf.* *United States v. Cortner*, 834 F. Supp. 242 (M.D. Tenn. 1993) (mem.). The court determined that 18 U.S.C. § 2119 "lacks any rational nexus to interstate commerce and that Congress lacks the power to legislate thereon." *Id.* at 244. It reasoned:

If anything that will take you across a state line is an "instrumentality of commerce," then there is justification for Congress to regulate anything done on a bicycle or, for that matter, on foot.

.....
The Congress has had a recent penchant for passing a federal criminal statute on any well-publicized criminal activity. The courts, in an obeisant deference to the legislative branch, have stretched the Commerce Clause of the Constitution beyond the wildest imagination of the Framers and beyond any rational interpretation of the language itself.

.....
It has been a widely held and historically accepted premise of our governmental structure that law enforcement was primarily the business of state and local governments and that we as a nation deplored the idea of a national police force.

Id. at 243-44.

267. *Watson*, 815 F. Supp. at 832, n.12. "[T]he shipment of a part is not the same as the shipment of a 'motor vehicle.' Further, acceptance of the 'parts are cars' argument would effectively nullify the limitation set forth in the statute, in that it would appear reasonable to conclude that all cars being driven today contain parts that were manufactured in states other than the state in which they were manufactured. The court will not construe the statute in a manner that nullifies one of its provisions." *Id.*

268. *Cortner*, 834 F. Supp. at 243. ("If a carjacking occurs in Tennessee as to a Saturn or Nissan made in Tennessee, then the carjacking statute does not apply. If the public welfare truly requires this legislation, then it unfairly discriminates against Tennesseans who own Saturns.")

269. *United States v. Van Johnson*, 834 F. Supp. 985, 986-87 (E.D. Tenn. 1993) (mem.). "The language in § 2312 dealing with transportation of a motor vehicle in interstate commerce has been interpreted to include driving the vehicle across state lines. See *United States v. Hayes*, 739 F.2d 236 (6th Cir. 1984) (car driven from Michigan to other states provides element of transportation in interstate commerce)." *Id.* at 987.

Because of these gaps²⁷⁰ and the anticipated constitutional challenges,²⁷¹ the states may choose to enact their own carjacking statutes. The statutes could be broad enough to make carjacking a specific offense where a knife or other deadly weapon was used, or where the carjacker was not armed.²⁷²

The Attorney General "is urged to work with State and local officials to investigate" and prosecute criminals for carjacking.²⁷³ To that end, the states may call in the FBI and have the advantage of the Bureau's special investigational expertise.²⁷⁴ Because the states can prosecute for the crime under their own laws—whether the crime is labelled robbery, murder, assault, or something else—the U.S. Attorney will undoubtedly defer most carjacking prosecutions to them. In determining which jurisdiction will prosecute, several factors may be considered, including the severity of the crime, the maximum punishment available in the competing jurisdictions, the sentencing guidelines, the deterrent effect, and prison overcrowding.

For example, the U. S. Attorney may defer to the state in situations where the victim was not seriously injured, where the carjacker is a juvenile, where the death penalty is available, and where the federal punishment guidelines would provide no more punishment than would the state. However, the U.S. Attorney may decide to take jurisdiction in cases where the FBI has investigated, where there are assets that may be seized in forfeiture, where gangs are involved, and where (be-

270. Federal jurisdiction would only lie if the carjacker has possession of a gun and if the motor vehicle has crossed state lines. *See supra* note 266.

271. *See supra* notes 266, 268.

272. *See, e.g.*, FLA. STAT. ANN. § 812.133 (West Supp. 1993). Florida is one state that enacted a robbery statute specifically directed to carjacking, requiring "the use of force, violence, assault, or putting in fear." *Id.* The statute became effective July 1, 1993, and makes carjacking a felony of the first degree even "[i]f in the course of committing the carjacking the offender carried no firearm, deadly weapon, or other weapon." *Id.*

273. 18 U.S.C.A. § 2119 (West Supp. 1993).

274. *Id.* ("[T]he Attorney General, acting through the Federal Bureau of Investigation and the United States Attorneys, is urged to work with State and local officials to investigate car thefts, including violations of section 2119 of title 18, United States Code, for armed carjacking, and as appropriate and consistent with prosecutorial discretion, prosecute persons who allegedly violate such law and other relevant Federal statutes."). Note following 18 U.S.C.A. § 2119 (West Supp. 1993).

cause of the deterrent effect) the U.S. Attorney is asked to prosecute or the crime has received extensive media coverage.

If sufficiently provided, federal investigation, prosecution, and incarceration of carjackers will give the states some badly needed relief. It may also mean that carjackers will serve more time.²⁷⁵ And when the word gets around that carjacking is now a federal offense, thieves may pause and take their crimes elsewhere.

The final legislation extended the maximum imprisonment of 15 years for armed carjacking²⁷⁶ to 25 years if serious injury

275. See Devroy, *supra* note 65, at A7.

276. 18 U.S.C.A. § 2119(1) (West Supp. 1993) ("fined under this title or imprisoned not more than 15 years, or both"); see also 18 U.S.C.A. § 924(c)(1) (West Supp. 1993) which provides for cumulative sentences if the person "uses or carries a firearm" while committing a crime of violence:

Whoever, during and in relation to any crime of violence . . . (including a crime of violence . . . which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) . . . , uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence . . . , be sentenced to imprisonment for five years . . . , [with increased punishments ranging from 10 years to 30 years depending on the firearm, and increasing punishments for second or subsequent convictions]. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person, convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence . . . in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

18 U.S.C.A. 924(c)(1).

As to whether the Fifth Amendment's double jeopardy clause bars prosecution under both 18 U.S.C.A. 2119 and 18 U.S.C.A. 924(c)(1), see *United States v. Singleton*, 824 F. Supp. 609 (E.D. La., 1993), *rev'd* No. 93-3479, 1994 U.S. App. WL 71535, at *7 (5th Cir. Mar. 10, 1994). (*Singleton* was charged in Count II with violating 18 U.S.C.A. 2119 and charged in Count III with violating 18 U.S.C.A. 924(c) (the firearm statute) by using the firearm referred to in Count II during the carjacking. The United States District Court concluded that the two statutes failed the Blockburger test (*Blockburger v. United States*, 284 U.S. 299, 304 (1932)), and that congress did not intend to impose cumulative sentences. *Singleton*, 824 F. Supp. at 612. On appeal, in what appears to be the first United States Court of Appeals decision on the double-jeopardy concern, the court held that, "Because carjacking is a 'crime of violence' under § 924(c)(3) [an offense that is a felony][. . . Congress clearly indicated its intent to cumulate the punishment of § 924(c)(3) with the punishment of § 2119." *Singleton*, 1994 U.S. App. WL 71535, at *6. "Absent language expressing a departure from § 924(c), . . . we must read the later enacted statutes in harmony with congress's previously expressed intent to impose cumulative punishments." Sin-

occurs,²⁷⁷ and "up to life" in prison if death results.²⁷⁸ The Act doubles the maximum imprisonment for other theft crimes,²⁷⁹ from five years to ten years, and it provides civil²⁸⁰ and criminal forfeiture²⁸¹ sanctions for enumerated violations, including armed robbery of motor vehicles.²⁸² The Act defines the term "chop shop"²⁸³ and imposes a maximum

gleton, 1994 U.S. App WL 71535, at *8. "[C]lear indication of Congress's intent saves the statutes from the double jeopardy bar even though they fail the Blockburger test." *Id.* *4. However, the district courts are split.

Cases finding no double jeopardy bar include *United States v. Sabini*, No. 93-0448-CR, 1994 U.S. Dist. WL 31871 (S.D. Fla. Jan. 19, 1994); *United States v. Payne*, 841 F. Supp. 810 (S.D. Ohio 1994); *United States v. Zukinta*, 830 F. Supp. 418 (E.D. Tenn. 1993); *United States v. Harwood*, 834 F. Supp. 950 (W.D. Ky. 1993); and *United States v. McHenry*, 830 F. Supp. 1020 (N.D. Ohio), *app. dism'd*, 993 F.2d 1548 (6th Cir. 1993) (table) (dismissing on jurisdictional grounds without reaching double jeopardy issue. . . . Cases holding that double jeopardy bars cumulative punishments for violations of §§ 2119 and 924(c) include *United States v. Smith*, 831 F. Supp. 549 (E.D. Va. 1993) (citing the district court's opinion in the case).

Singleton, 1994 U.S. App. WL 71535, at n.7.

277. 18 U.S.C.A. § 2119(2) (West Supp. 1993) ("fined under this title or imprisoned not more than 25 years, or both").

278. 18 U.S.C.A. § 2119(3) (West Supp. 1993) ("fined under this title or imprisoned for any number of years up to life, or both.").

279. Knowingly exporting or importing a stolen vehicle, or attempting to do so, 18 U.S.C.A. § 553(a) (West Supp. 1993); transporting a stolen vehicle in "interstate or foreign commerce," 18 U.S.C.A. § 2312 (West Supp. 1993); and receiving, possessing, concealing, storing, bartering, selling, or disposing of a stolen vehicle "which has crossed a State or United States boundary after being stolen," 18 U.S.C.A. § 2313(a) (West Supp. 1993).

280. 18 U.S.C.A. § 981(a)(1)(F) (West Supp. 1993).

281. 18 U.S.C.A. § 982(a)(5) (West Supp. 1993).

282. 18 U.S.C.A. § 981(a)(1)(F)(iii) (West Supp. 1993). The enumerated offenses are:

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2312 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

18 U.S.C.A. §§ 981(a)(1)(F), 982(a)(5) (West Supp. 1993).

283. 18 U.S.C.A. § 2322(b) (West Supp. 1993), defines a chop shop as:

[A]ny building, lot, facility, or other structure or premise where one or more persons engage in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing any passenger motor vehicle or passenger motor vehicle part which has been unlawfully obtained in order to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number or

15-year sentence for the first conviction of “knowingly” owning, operating, maintaining, or controlling a chop shop or conducting “operations in a chop shop.”²⁸⁴

2. Carjacking Committees

Subtitle B, Title I, of the act provides that Anti Car Theft Committees²⁸⁵ may apply for federal grants²⁸⁶ to assist them in combating motor vehicle theft.²⁸⁷ To be eligible, an applicant must state that the committee will be “financed in part” by a fee of not less than \$1 per vehicle,²⁸⁸ or financed by a program that is similar to a program “implemented in a State like Michigan.”²⁸⁹ The applicant must also state that the resources of the committee will be “devoted entirely to combating motor vehicle theft,”²⁹⁰ and will include “financing law enforcement officers or investigators”²⁹¹ and prosecutors²⁹² and establishing “[m]otor vehicle theft prevention programs.”²⁹³

derivative thereof, of such vehicle or vehicle part and to distribute, sell, or dispose of such vehicle or vehicle part in interstate or foreign commerce.

284. 18 U.S.C.A. § 2322(a)(1) (West Supp. 1993) (“[A]fter the first conviction, . . . the maximum punishment shall be doubled with respect to any fine and imprisonment.”).

285. 42 U.S.C.A. § 3750b(b)(1) (West Supp. 1993) (“a State agency or an agency of a unit of local government”).

286. 42 U.S.C.A. § 3750b(a) (West Supp. 1993); *see also* 42 U.S.C.A. § 3750a(b) (West Supp. 1993) (“The Director of the Bureau of Justice Assistance shall make grants to Anti Car Theft Committees . . .”).

287. 42 U.S.C.A. § 3750b(b)(4) (West Supp. 1993).

288. 42 U.S.C.A. § 3750b(b)(2) (West Supp. 1993) (by “a fee on motor vehicles registered by the State or possessed or insured within the State (and that such fee is not less than \$1 per vehicle) . . .”).

289. 42 U.S.C.A. § 3750b(b)(2) (West Supp. (1993); *see Hearing*, Mar. 31, 1992, *supra* note 107, at 43).

290. 42 U.S.C.A. § 3750b(b)(4) (West Supp. 1993).

291. 42 U.S.C.A. § 3750b(b)(4)(A) (West Supp. 1993).

292. 42 U.S.C.A. § 3750b(b)(4)(B) (West Supp. 1993).

293. 42 U.S.C.A. § 3750b(b)(4)(C) (West Supp. 1993) (“[I]ncluding vehicle identification number etching programs, programs implemented by law enforcement agencies and designed to enable the electronic tracking of stolen automobiles, and programs designed to prevent the export of stolen vehicles.”).

The potential expenditures of \$30 million for grants²⁹⁴ will be a huge expense for the federal government. However, the additional funds for officers, investigators, and prosecutors should eventually pay off and reduce these crimes, much as it has done in Michigan. The Michigan Auto Theft Prevention Authority, which was used as a model for the act, has deterred auto theft, changing Michigan's ranking in auto theft from seventh place to eleventh.²⁹⁵ At the same time that auto theft decreased in Michigan, nationally it increased dramatically.²⁹⁶

B. *Title II: The National Motor Vehicle Title Information System*

The Act directs the Secretary of Transportation to establish, not later than January 1996, an information system that in this title is referred to as the "National Motor Vehicle Title Information System."²⁹⁷ The system will instantly and reliably make titling information provided by a state available to other states.²⁹⁸ It will also make certain information in the system²⁹⁹ available to participating states,³⁰⁰ law enforce-

294. 42 U.S.C.A. § 3750(d) (West Supp. 1993) (The Act authorizes appropriations of "\$10,000,000 to carry out this subtitle for each of the fiscal years 1993, 1994, and 1995.").

295. *See supra* note 117 and accompanying text; *see also Hearing*, Mar. 31, 1992, *supra* note 107, at 170 (prepared statement of Colonel Michael D. Robinson, Director, Michigan State Police) (Before starting the program in Michigan, the state auto theft rate had been "96% over the national average." Since starting the program in 1985, "while national auto thefts have increased by 48%, Michigan's has decreased by 13%.").

296. *Hearing*, Mar. 31, 1992, *supra* note 107, at 170 (statement of Colonel Michael D. Robinson, Director, Michigan State Police).

297. 15 U.S.C.A. § 2042(a)(1) (West Supp. 1993).

298. *Id.*

299. 15 U.S.C.A. § 2042(b)(1-5) (West Supp. 1993). At a minimum, the available information must allow a system user to ascertain:

(1) the validity and status of a document purporting to be a certification of title,

(2) whether an automobile bearing a known vehicle identification number is titled in a particular State,

(3) whether an automobile known to be titled in a particular State is or has been a junk vehicle or a salvage vehicle,

(4) for an automobile known to be titled in a particular State, the odometer reading information, as required in section 1988 of this title, of such vehicle on the date its certificate of title was issued and such later odometer information, if noted by the State, and

ment officials,³⁰¹ prospective purchasers,³⁰² and insurance carriers.³⁰³

The argument that the information system would duplicate an existing system³⁰⁴ is perhaps met, because the Act relieves the Secretary of Transportation from establishing the new system if the Secretary determines that the requirements of the act are being met.³⁰⁵

The states must make titling information available for the system,³⁰⁶ and the states must "establish a practice of performing" title checks before issuing titles on automobiles purchased in another state.³⁰⁷ Insurance carriers,³⁰⁸ salvage yards, and junk yards³⁰⁹ must also file monthly inventories of

(5) whether an automobile bearing a known vehicle identification number has been reported as a junk vehicle or a salvage vehicle pursuant to section 2044 [15 U.S.C.A. § 2044 (West Supp. 1993)] of this title [reporting requirements of junk or salvage yards and insurance carriers].

Id.

300. 15 U.S.C.A. § 2042(c)(1) West Supp. 1993 (information "pertaining to any automobile"); *see* 15 U.S.C.A. § 2042(c)(5) (West Supp. 1993) ("Notwithstanding any provision of paragraphs (1) through (4), the operator shall release no information other than what is necessary to reasonably satisfy the requirements of subsection (b) of this section. In no event shall the operator collect an individual's social security number or enable users of the information system to obtain an individual's address or social security number.").

301. 15 U.S.C.A. § 2042(c)(2) (West Supp. 1993) (information "pertaining to a particular automobile, salvage yard, or junk yard").

302. 15 U.S.C.A. § 2042(c)(3) (West Supp. 1993) (information "pertaining to such automobile").

303. 15 U.S.C.A. § 2042(c)(4) (West Supp. 1993) (information "pertaining to such automobile").

304. *See Hearing*, Sept. 10, 1992, *supra* note 17, at 161 (statement of Rep. Dingell) (expressing a concern of Secretary Card, Department of Transportation).

305. 15 U.S.C.A. § 2042(a)(1) (West Supp. 1993).

306. 15 U.S.C.A. § 2043(a)(1) (West Supp. 1993) ("Each State shall make titling information maintained by such State available for use in establishing the National Motor Vehicle Title Information System . . .").

307. 15 U.S.C.A. § 2043(a)(2) (West Supp. 1993).

308. 15 U.S.C.A. § 2044(b) (West Supp. 1993) (Insurance carriers must file inventories "of all vehicles of the current model year or any of the 4 preceding model years which such carrier has, during the preceding month, obtained possession of and determined to be salvage or junk vehicles.").

309. 15 U.S.C.A. § 2044(a)(1) (West Supp. 1993) (Operators of automobile junk or salvage yards must file monthly reports containing "an inventory of all junk vehicles or salvage vehicles obtained . . . during the preceding month." Among other required information, the inventories "shall contain the vehicle identification number . . . and a statement of whether the vehicle was crushed or otherwise disposed of for sale or other purposes.").

salvage and junk vehicles that they have received. Therefore, after the system becomes operational, one should be able to determine the validity of a purported title, the odometer readings, and whether a vehicle has been titled in another state or reported as junk or salvage.³¹⁰

Since all 50 states currently participate in an existing electronic system, the National Law Enforcement Telecommunications System,³¹¹ the concept of linking the states together for the transfer of title information is not new. What should make a real difference, however, is the requirement that the states check the information system before issuing titles for vehicles purchased in other states, and the requirement that insurance carriers and operators of salvage and junk yards file inventories of the vehicles they have received.

A break in the link, however, occurs with the month-long delay in the reporting requirements for insurance carriers, salvage yards, and junk yards. By the time the information is reported and entered into the system, transfers may have been made.

C. *Title IV: Export of Stolen Vehicles*

The Act eliminates the personal-use exemption³¹² that has allowed thieves to simply drive automobiles over our nation's borders or ship them overseas. Now, vehicle identification numbers and proofs of ownership of *all* used automobiles exported "by air or ship" must be provided "to the Customs Service, at least 72 hours before the export."³¹³ Customs will make vehicle identification numbers available to the FBI upon the Director's request.³¹⁴ However, the Customs Service won't routinely check vehicle identification numbers against information

310. 15 U.S.C.A. § 2042(b)(1-5) (West Supp. 1993).

311. H.R. REP. No. 851, 102d Cong., 2d Sess., pt. 2, at 17 (1992) ("All 50 states currently participate voluntarily in the NLETS [National Law Enforcement Telecommunications System], which instantly provides an inquiring State with the information entered on a vehicle title at the time of its issuance."), *reprinted in* 1992 U.S.C.C.A.N. 2850 (quoting a letter from the DOT).

312. 19 U.S.C.A. § 1646c (West Supp. 1993).

313. *Id.*

314. *Id.*

in the National Crime Information Center; instead, it will only check for those vehicles that fall within its established criteria for random inspections of used automobiles.³¹⁵ The required random inspections fall far short of the Judiciary Committee's proposal³¹⁶ that all vehicles be checked.³¹⁷

The Act requires the Secretary of Treasury³¹⁸ to study "the utility of a nondestructive examination system to be used for inspection of containers that may contain [stolen] automobiles leaving the country."³¹⁹ Since some undaunted thieves will take the risk and continue to conceal vehicles in standard-sized shipping containers to get past the Customs Service, non-destructive devices for inspecting containers, such as x-rays or portholes,³²⁰ seem imperative if the practice of exporting stolen vehicles is to be curbed.

D. *Title III*

1. Accountability: Insurance Carriers and Parts Dealers

The Act makes insurance carriers accountable when they transfer junk or salvage vehicles. Before transferring or selling a junk or salvage vehicle, the insurance carrier must verify whether the vehicle has been reported stolen.³²¹ If the vehicle has not been reported stolen, the insurance carrier must provide both verification of that fact and the vehicle identification

315. *Id.*; see also 19 U.S.C.A. § 1646b (West Supp. 1993) ("The Commissioner of Customs shall direct customs officers to conduct at random inspections of automobiles, and of shipping containers that may contain automobiles that are being exported, for purposes of determining whether such automobiles were stolen.").

316. H.R. 4542, 102d Cong., 2d Sess. (1992).

317. H.R. REP NO. 851, 102d Cong., 2d Sess., pt. 1, at 22 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2839; see text accompanying *supra* note 221.

318. 19 U.S.C.A. § 1646b (West Supp. 1993) see note ("acting through the Commissioner of Customs").

319. *Id.*

320. *Hearing*, Dec. 9, 1991, *supra* note 17, at 63-64 (statement of Donald Clark, Assistant Special Agent in Charge, N.Y. Office, Federal Bureau of Investigation) ("We must go to some type of device perhaps, maybe some type of x-ray device, some type of portholes in the container, . . . [to] verify that it may very well be what it's reported to be.").

321. 15 U.S.C.A. § 2026a(a)(1) (West Supp. 1993) "[T]he Attorney General . . . in consultation with the Secretary of Transportation," shall establish the procedure for verification according to the rules under § 2026c of the Act. *Id.*

number to the transferee or buyer of the salvage or junk vehicle.³²² If the vehicle has been reported stolen, the insurance carrier must provide verification that it "has recovered the vehicle and has proper legal title to the vehicle," and again provide the vehicle identification number.³²³

Persons who deal in used parts are also made accountable. A "person engaged in the business of salvaging, dismantling, recycling, or repairing passenger motor vehicles" cannot sell "or install a major part marked with an identification number," unless the person first determines that the "major part has not been reported as stolen."³²⁴ The person must also provide "the purchaser or transferee with a verification identifying the vehicle identification number" on the major part and verifying that the "major part has not been reported as stolen."³²⁵

As a result of the Act, purchasers may check the National Motor Vehicle Title Information System, or its equivalent system, for detailed information about the vehicles they plan to purchase, including information about whether the vehicles have been junked or salvaged.³²⁶ If purchasers buy from insurance carriers, the insurance carriers will provide them with verifications that the vehicles have not been stolen or, at the least, that the insurance carriers are transferring good title.³²⁷

And parts dealers will no longer buy faster and cheaper on the black-market, as they too will have to provide verifications to purchasers.³²⁸

It remains to be seen whether the added costs imposed on small businesses for verifying parts will threaten the jobs of the

322. 15 U.S.C.A. § 2026a(a)(2) (West Supp. 1993).

323. *Id.*

324. 15 U.S.C.A. § 2026b(a)(1) (West Supp. 1993) "[T]he Attorney General in consultation with the Secretary of Transportation" shall establish the procedure according to § 2026c of the Act. *Id.*

325. 15 U.S.C.A. § 2026b(a)(2) (West Supp. 1993); *see also* 15 U.S.C.A. § 2026b(c) (West Supp. 1993) (for exceptions to the requirements of 2026b(a)).

326. *See supra* note 299 and accompanying text; *see also* 15 U.S.C.A. § 2042(c)(3) (West Supp. 1993) (the operator will make information in the system available to prospective purchasers.)

327. 15 U.S.C.A. § 2026a(a)(2) (West Supp. 1993); *see supra* notes 321-23 and accompanying text.

328. 15 U.S.C.A. § 2026(a)(2) (West Supp. 1993); *see supra* notes 324-25 and accompanying text.

persons they employ. However, since these businesses are only required to verify used parts that are marked with identification numbers, the impact of the Act on small businesses may not be as significant as predicted.³²⁹

2. Parts Marking and Exemptions

The most serious concerns about the Anti Car Theft Act of 1992 pertain to parts marking, the exemptions from parts marking, and the anticipated impact on carjacking.

The Act increases the number of passenger motor vehicles that are subject to the parts-marking standard, by including "any multi-purpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less."³³⁰ The vehicle theft standard³³¹ will initially apply only to covered major parts installed in those passenger motor vehicles that are classified as high-theft lines.³³² Then, two phase-in periods follow. "Within two years after October 25, 1992, the Secretary [of Transportation] shall promulgate a vehicle theft standard" that applies "to the covered major parts" installed by all manufacturers in not more than half the lines (except for light-duty trucks) not designated as high-theft lines.³³³ Then, within three years

329. See *Hearing*, Sept. 10, 1992, *supra* note 17, at 188-89, 202-03.

330. 15 U.S.C.A. § 2021(1) (West Supp. 1993). The Department of Transportation will interpret the terms "multi-purpose passenger vehicle" and "light-duty truck." Telephone interview with Barbara Gray, Chief, Motor Vehicle Theft Group, Dep't of Transportation (July 22, 1993).

331. Motor Vehicle Information and Cost Savings Act, 15 U.S.C.A. § 2021(10) (West Supp. 1993) ("The term 'vehicle theft prevention standard' means a minimum performance standard for the identification of—(A) major parts of new motor vehicles, and (B) major replacement parts, by inscribing or affixing numbers or symbols to such parts.").

332. Motor Vehicle Information and Cost Savings Act, 15 U.S.C.A. § 2022(a)(1),(2) (West Supp. 1993) (The vehicle theft prevention standard "applies with respect to—(1) the covered major parts which are installed by manufacturers into passenger motor vehicles in lines designated under section 2023 of this title as high theft lines; and (2) the major replacement parts for the major parts described in paragraph (1)."); see also 15 U.S.C.A. § 2023 (West Supp. 1993) (designating high-theft lines and parts.).

333. 15 U.S.C.A. § 2022(f)(1) (West Supp. 1993); see 15 U.S.C.A. § 2022(c)(4) (West Supp. 1993) ("Such standard shall take effect not earlier than 6 months after the date such final rule is prescribed"); see also 15 U.S.C.A. § 2022(c)(5) (West Supp. 1993) (The standard applies to "(A) major parts which are installed by the motor vehicle manufacturer in any passenger motor vehicle which has a model year designation later than the calendar year in which such standard takes effect, and (B)

after the Secretary promulgates this rule, the standard will apply to all remaining lines except for light-duty trucks.³³⁴ The Secretary and the manufacturer will select the lines and the major parts covered by the standard; but if they cannot agree, the Secretary will select the lines and major parts following notice to and an opportunity for the manufacturer to give written comment.³³⁵

Thus, as more and more passenger motor vehicles, including multi-purpose vehicles, will be subject to parts marking, eventually they will all be covered—or, at least they will be covered until the Attorney General decides otherwise.³³⁶ But presumably some day all motor vehicles may be covered; all, that is, but light-duty trucks, which will be subject to parts marking only if they fall within the high-theft classification.³³⁷ Since at least one report indicates that specialty vehicles, which may include light-duty trucks, have become increasingly popular with thieves,³³⁸ one could question why light-duty trucks are not subject to the same theft-prevention standard as all other passenger motor vehicles.

major replacement parts manufactured after such standard takes effect.”).

334. 15 U.S.C.A. § 2022(f)(2) (West Supp. 1993); *see also* 15 U.S.C.A. § 2022(f)(3) (West Supp. 1993) (The Secretary shall promulgate the rule that begins the second phase “unless the Attorney General finds . . . that requiring such additional parts marking for all of the applicable passenger motor vehicles would not substantially inhibit chop shop operations and vehicle thefts.”).

335. 15 U.S.C.A. § 2023(a)(2) (West Supp. 1993).

336. 15 U.S.C.A. § 2022(f)(4) (West Supp. 1993) (The Secretary must terminate one or both of these rules if the Attorney General finds that the rule or rules have not been effective in “substantially inhibit[ing] the operation of chop shops and vehicle theft, taking into account the additional cost, competition, and available alternatives.”)

337. 15 U.S.C.A. § 2022(f)(1),(2) (West Supp. 1993). *But see* 15 U.S.C.A. § 2023(a)(1)(B) (West Supp. 1993) (unless the motor vehicle line is “likely to have a theft rate exceeding such median theft rate”); *see also* 15 U.S.C.A. § 2023(a)(1)(C) (West Supp. 1993) (and unless “the major parts contained in such vehicles are determined under paragraph (2) [15 U.S.C.A. § 2023(a)(2)] to be interchangeable with the majority of the major parts which are subject to the standard and which are contained in the motor vehicles of a line subject to the standard”)

338. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 2, at 20 (1992) (In 1986, “State Farm’s theft rate for 1986 passenger motor vehicles . . . was 64.4 percent, and for specialty vehicles in that same year 23 percent. However, in calendar year 1989 [after automobiles became subject to parts marking], marked 1989 model passenger automobiles accounted for only 9.4 percent of all State Farm thefts, and specialty vehicles accounted for 76.5 percent.”), *reprinted in* 1992 U.S.C.C.A.N. 2853.

Another shortcoming is that the Act did not increase the number of major parts covered by the standard beyond that required by the prior act.³³⁹ Therefore, manufacturers are not required to etch identification numbers onto windows. Thus, the Judiciary Committee's bill was shortchanged in this respect too, since studies seem to indicate that window etching has been effective in deterring auto theft.³⁴⁰

These omissions may be explained by the manufacturers' outcry that even the potential \$15 cost per vehicle for parts marking³⁴¹ was far too much. This potential cost for *all* ve-

339. Motor Vehicle Information and Cost Savings Act, 15 U.S.C.A. § 2021(6), (7) provide:

(6) The term 'covered major part' means any major part selected in accordance with sections 2022(d)(1)(B) [It appears that Congress may have intended to remove 2022(d)(1)(B)] and 2023 of this title for coverage by the vehicle theft prevention standard issued under section 2022 of this title.

(7) The term 'major part' means—

- (A) the engine;
- (B) the transmission;
- (C) each door allowing entrance or egress to the passenger compartment;
- (D) the hood;
- (E) the grille;
- (F) each bumper;
- (G) each front fender;
- (H) the deck lid, tailgate, or hatchback (whichever is present);
- (I) rear quarter panels;
- (J) the trunk floor pan;
- (K) the frame or, in the case of a unitized body, the supporting structure which serves as the frame; and
- (L) any other part of a passenger motor vehicle which the Secretary, by rule, determines is comparable in design or function to any of the parts listed in subparagraphs (A) through (K).

See Anti-Car Theft Act of 1992, Pub. L. No. 102-519, Sec. 302, 106 Stat. 3394, amending 15 U.S.C.A. § 2022. (It appears that Congress intended to remove § 2022(d)(1)(B) of the Motor Vehicle Information and Cost Savings Act, providing that the standard may not require "any motor vehicle to have identification of more than 14 of its major parts." This section, however, was retained in the U.S.C.A. West Supp. 1993; it was removed from the statute published in U.S.C.S. Lawyers Coop. Supp. 1993); see also Pub. L. No. 102-519, Sec. 303(2), 106 Stat. 3395-96 amending 15 U.S.C.A. § 2023. (The act removed the provision limiting selection of high-theft lines to no more than fourteen lines of any manufacturer.)

340. *Hearing*, Mar. 31, 1992, *supra* note 196, at 226 (prepared statement of Herman Brandau, Associate General Counsel, State Farm Ins. Co.); see also H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 20 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2836. (The House Judiciary Committee's bill would have required manufacturers to inscribe VIN numbers on windows.)

341. 15 U.S.C.A. § 2024(a) (West Supp. 1993) (The act retained the provision of

hicles, however, would hardly seem burdensome, as the cost would be passed on to purchasers, who would scarcely notice the \$15 or so increase and would appreciate the added protection.³⁴²

Even with these shortcomings, auto theft would seemingly be reduced because more and more vehicles would have marked parts. Parts dealers would not buy stolen marked parts, because they could not give the required verifications to purchasers. Parts marking would therefore decrease the business of the chop shops, perhaps putting them out of business.

Unfortunately, what Congress provided in protection, it bartered away in exemptions. Manufacturers may petition for an exemption from parts marking on a vehicle line if they equip that line with an anti-theft device (as standard equipment)³⁴³ that would be as likely to deter theft as parts marking.³⁴⁴ "For each subsequent model year through model year 1996," manufacturers may be granted exemptions for an additional

the Motor Vehicle Information and Cost Savings Act that the standard may not "impose costs upon any manufacturer . . . in excess of \$15 per motor vehicle.>"; *see also* 15 U.S.C.A. § 2024(c)(1),(2) (West Supp. 1993) (The costs can be adjusted upward or downward, depending on "the percentage difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period [calendar year 1984]."); *see also* 15 U.S.C.A. § 2024(b)(1) (West Supp. 1993) ("[T]he cost of identifying engines and transmissions shall not be taken into account in calculating such manufacturer's costs").

342. H.R. REP. NO. 851, 102d Cong., 2d Sess., pt. 1, at 6 (1992) (According to the F.B.I., the cost of complying with the Motor Vehicle Information and Cost Savings Act was about \$3 a car.), *reprinted in* 1992 U.S.C.C.A.N. 2832; *see also* *Hearing*, Mar. 31, 1992, *supra* note 107, at 196 (statement of Thomas H. Hanna, President & Chief Executive Officer, the Motor Vehicle Manufacturers Association of the United States) (It was about \$6 a car.).

343. 15 U.S.C.A. § 2025(a)(3) (West Supp. 1993) "[S]tandard equipment' means equipment which is installed in a vehicle at the time it is delivered from the manufacturer and which is not an accessory or other item which the first purchaser customarily has the option to have installed.")

344. 15 U.S.C.A. § 2025(a)(1) (West Supp. 1993) ("[A]n anti-theft device which the Secretary [of Transportation] determines is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of such standard."); *see also* 15 U.S.C.A. § 2021(2) (West Supp. 1993) ("The term 'line' means a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design."); Telephone Interview with Barbara Gray, Chief, Motor Vehicle Theft Group, Dep't of Transportation (Oct. 22, 1993) (included in a line: vehicle make, line, and model. Example: Pontiac Firebird, Pontiac Firebird Formula, Pontiac Firebird TransAm, Pontiac Firebird TransAm GTA).

two lines of vehicles, and each additional exemption will not "affect the validity of the exemption of any line previously exempted."³⁴⁵ "For model year 1997 through model year 2000," manufacturers may be granted an exemption for one additional line of vehicles each year, again without the new exemption affecting any exemptions that were previously granted.³⁴⁶

Manufacturers will probably opt for installing anti-theft devices instead of marking parts, because anti-theft devices are attractive features that might promote sales; marked parts would not be as apt to attract purchasers. Thus, in time, the exemptions may swallow the requirements of parts marking.

In the future, in the minds of thieves, there will be two kinds of motor vehicles on the road: those with marked parts and those with manufacturer-installed anti-theft devices. Whether the thieves will be choosy about the cars they steal will depend on their motives—which brings this discussion back to carjacking.

If the thief's motive is to steal a car for the ride or to put it in a container that will perhaps get past the Customs Service, the thief will steal whatever car is available. But if the thief's motive is to steal a car for its parts, the thief will look for a car with unmarked parts, because chop shops will only buy unmarked parts. This means the thief will either learn ways to get past the continuing array of new anti-theft devices installed in vehicles, or the thief will take the easier route and bring the crime to the driver in the form of carjacking.³⁴⁷

While, in the past, most carjackers may have carjacked a car to take a joyful ride or to commit another crime,³⁴⁸ tomorrow's thief may carjack a car for its unmarked parts that can be sold to unprincipled parts dealers, who could thereby avoid the verification requirements. The Anti Car Theft Act of 1992 may therefore bring about more carjacking than ever before.

345. 15 U.S.C.A. § 2025(a)(2) (West Supp. 1993).

346. *Id.* (The Attorney General will determine the number of model lines, if any, for which an exemption shall be granted after model year 2000.).

347. 138 CONG. REC. S14,988 (daily ed. Sept. 24, 1992) (statement of Sen. Pressler).

348. Brownstein & York, *supra* note 88.

VI. CONCLUSION

When the Anti Car Theft Act of 1992 was enacted, car theft was clearly out of control. State prisons were overcrowded, and the average car thief was either put on probation or given a light or reduced sentence. Thieves had so little fear of being punished that some did not even run when officers appeared. The states were either losing or had lost the battle.

The thieves were stealing the cars for two reasons. Some thieves wanted a ride. They were tired of walking or they wanted to terrorize other drivers and pedestrians. It was a new, violent form of joyriding. Others wanted the cars so they could commit other crimes or escape after committing crimes.

Thieves were also stealing cars for profit. One way to make a profit was to steal cars, drive them to another state and obtain new titles, and then sell the cars to unsuspecting buyers. Another way was to take the stolen cars to chop shops where they were dismantled in about 10 minutes. The stolen parts were then sold to dealers, who looked the other way while buying faster and cheaper on the black market. Thieves also profited by exporting the stolen cars—some 200,000 a year—to other countries. Some cars were simply driven over our nation's borders, under the guise of personal use. Others were concealed in containers, where they would not be checked.

Insurance companies would recover junk or salvage cars and sell them, and purchasers would not know what they were buying. Salvagers and junk yards would also receive and sell parts without being too concerned about whether the parts had been stolen. The system was self-perpetuating, with no checks and balances—and no accountability. Auto theft was big business. It was costing billions of dollars each year, and we were allowing the system to work.

Then carjacking captured the attention of the public in a way that auto theft had never done. Some theorize that carjacking became popular because it was easier for thieves to take cars at gunpoint than to fight the anti-theft devices that they contained.³⁴⁹

349. 138 CONG. REC. S14,988 (daily ed. Sept. 24, 1992) (statement of Sen.

The people were frightened. It was one thing to be without transportation for a while, but quite another to be facing a gun. They demanded protection. So a comprehensive bill that would fight carjacking—and auto-theft too—had promise. A bill was introduced and passed, after vigorous debate in the House of Representatives.

In time, the Anti Car Theft Act of 1992 will correct some problems that have allowed auto theft to flourish. It will assist the states in establishing Anti Car Theft Committees; it will require states to check the National Motor Vehicle Title Information System to determine the status of an automobile before issuing a title if the automobile was purchased in another state; it will require accountability of those who deal with used parts or dispose of junk or salvage vehicles; and it will close the personal-use loophole that allowed stolen cars to be driven or shipped to other nations. But it will also mean that manufacturers will install more anti-theft devices, rather than mark the parts on their motor vehicles. The result: To get unmarked parts they can sell, more lazy criminals may now take another proven route—carjacking.

Like the tail that wagged the dog, it was carjacking that got the attention of the people. It was carjacking that led the crusade and prompted Congress to enact the Anti Car Theft Act of 1992. But the Act that set out to put the brakes on auto theft—and carjacking too—may actually accelerate carjacking.

