

Protecting America:

The Effectiveness of the Federal Armed Career Criminal Statute



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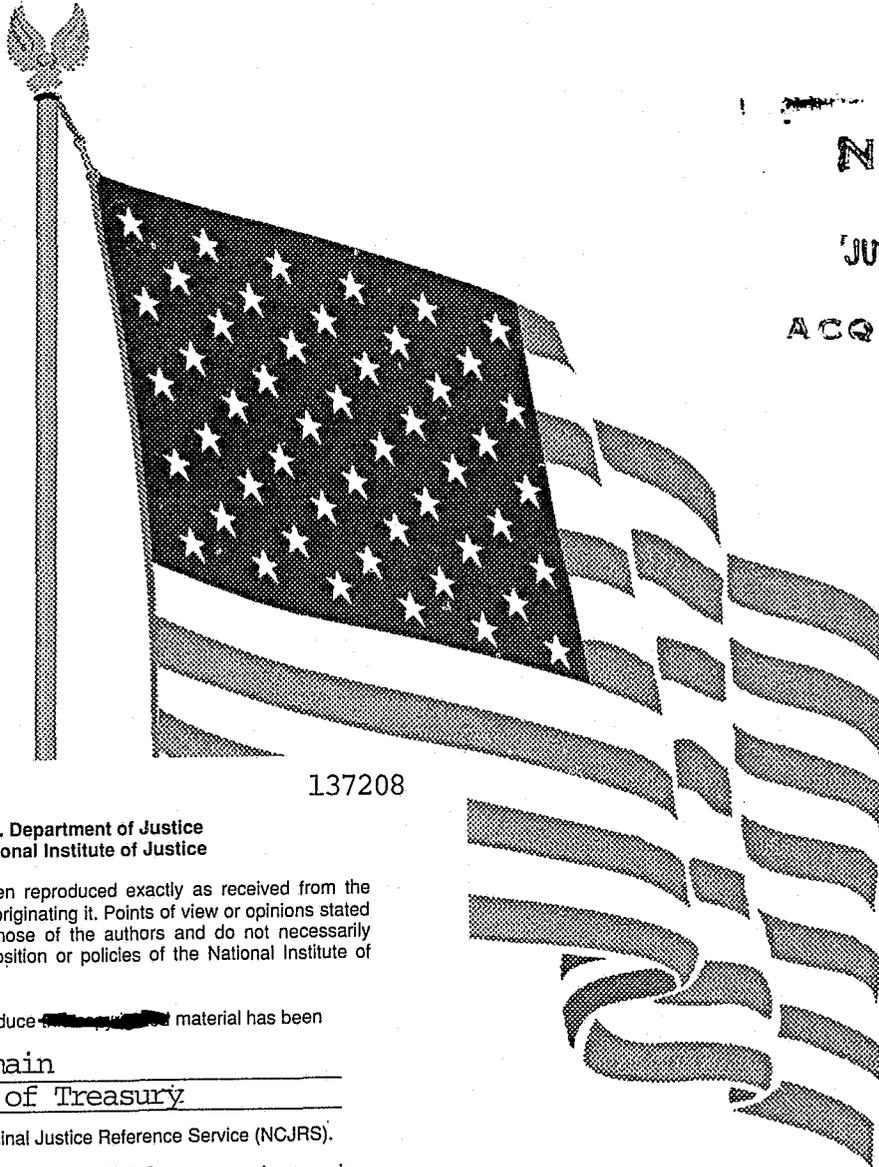
A Study by
the Bureau of Alcohol, Tobacco and Firearms,
United States Department of the Treasury



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Protecting America:

The Effectiveness of the Federal Armed Career Criminal Statute



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An Assessment Conducted by the Bureau of Alcohol, Tobacco and Firearms
MARCH, 1992

Foreword



Stephen E. Higgins

Director

Bureau of Alcohol, Tobacco and Firearms

Since Congress enacted armed career criminal legislation and gave the responsibility for enforcement to the Bureau of Alcohol, Tobacco and Firearms (ATF), over 400 such offenders have been incarcerated under the provisions of this law. We at ATF now believe that it is the optimum time to closely examine the effects of this statute and our enforcement methods. Therefore, a study was conducted to enable the Bureau to scrutinize all aspects and outcomes resulting from the investigation, prosecution, and incarceration of career criminals.

This study was initiated to make an assessment of the legislation's effect on crime, criminal behavior, and the improvement of investigative methods. Unlike certain past studies of this type which have similar analyses in a small locale or only one region of the country, this study has sampled criminals and law enforcement personnel from across the United States. This, we conclude, will provide a greater national perspective on both the criminals' actions and law enforcement's effectiveness.

In attempting to gain the greatest insight into the behavior of the criminal and the effects of an imposed 15-year or greater sentence, we decided to inquire directly with the source: the career criminal.

The Bureau is committed to suppressing violent crime in concert with State and local law enforcement agencies. It is our hope that this study will provide us with the ability to improve strategies for a more skillful utilization of the armed career criminal statute.

In undertaking this endeavor, we received the generous assistance of the Federal Bureau of Prisons, the Bureau of Justice Statistics, and the National Institute of Justice.

In addition, we had the invaluable assistance of many State and local law enforcement agencies who directly participated in the study and with whom ATF shares this pursuit. Every member of ATF joins me in expressing our warmest gratitude.

Stephen E. Higgins

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Chapter 1

Incarcerating the Armed Career Criminal: A Commonsense Concept that Works

This study is about armed career criminals in America: their violent behavior, the enforcement efforts to apprehend them, and the Federal law enacted to incarcerate them for the remainder of their active criminal lives.

In the process of developing the findings and conclusions of this report, ATF surveyed 258 law enforcement officials representing all 50 States, interviewed 100 imprisoned armed career criminals (as defined by 18 U.S.C. section 924(e)), studied a dozen programs aimed at investigating and prosecuting career criminals, and researched a myriad of academic studies concerning career criminals that were performed during the last three decades. This study has shown that the armed career criminal poses a grave threat to the American way of life.

These purveyors of violence have little or no conscience, place their personal needs above all else, and repeatedly violate the acceptable norms of society.

Like modern-day pirates they strike and, even after acquiring their plunder without resistance, they often viciously assault their victims.

As public opinion surveys have clearly demonstrated, crime is at the top of the list of the greatest concerns of the American public. In fact, in 1989, the National Crime Survey found that violent crime or property crime victimized one in four U.S. households. More specifically, 23.5 million households suffered from rape, assault, robbery, theft, burglary, or automobile theft. The same individuals arrested today for the majority of those crimes will be rearrested and convicted tomorrow for like or worse crimes. Although the media continually reports these facts and studies have confirmed them, the public still suffers from the lax treatment of habitual offenders.

In 1984, passage of the Armed Career Criminal Act gave the Bureau of Alcohol, Tobacco and Firearms (ATF) a major opportunity to remove the career criminal from society. Title 18 U.S.C. section 924(e) calls for the mandatory imprisonment of not less than 15 years for anyone possessing a firearm who has three previous State or Federal convictions for a violent felony or serious drug offense, or both. It is significant that this statute does not allow for parole, probation, or early release. In addition, the statute provides for a discretionary fine of \$25,000. Sponsored in Congress by U.S. Senators Arlen Specter

(R-Pennsylvania) and Alfonse M. D'Amato (R-New York), this innovative act was the first of its kind to address career criminals in a single piece of legislation on the Federal level. Enhanced enforcement of the statute has been strongly supported by U.S. Senator Dennis DeConcini (D-Arizona), who has directed funding to establish ATF task forces.

The objective of the study, as stated previously, was to learn the effect this law has on crime, criminal behavior, and ATF's enforcement efforts.

The concept of identifying and incarcerating individuals who choose crime as their way of life is not new. Civilized societies dating back to ancient times have recognized and differentiated prolific offenders from others, who commit occasional criminal acts. Likewise, America has attempted to address the problem of chronic offenders since its existence as a British colony.

In this century, sociologists and law enforcement officials have researched the significance of the repeat offender in the overall suppression of crime in a community. *Recidivist, habitual offender, and career criminal* have become recognized legal terminology. *Black's Law Dictionary* defines these types of criminals in a "legal category by statute, in many States, by which severe penalties ranging up to life imprisonment can be imposed on criminals convicted of any crime the third and fourth time."¹

Since the 1960's, American citizens have identified crime as one of the Nation's most serious domestic problems.

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Recognizing the urgency of the Nation's crime dilemma, President Lyndon Johnson in 1965 established the Commission on Law Enforcement and Administration of Justice to study and make recommendations. After 2 years of study, the Commission reported to the President via *The Challenge of Crime in a Free Society*, that "the existence of crime . . . and the fear of

ecause of the public clamor caused by exalating burglaries, armed robberies of residences and vicious, sadistic assaults, a punitive attitude toward criminals has been adopted.

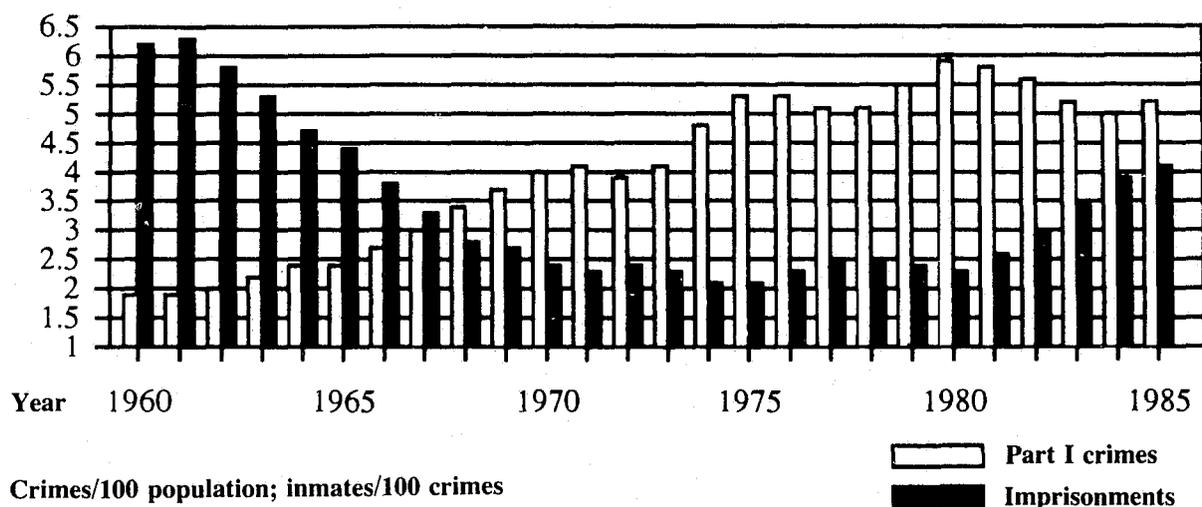
crime, have eroded the basic quality of life of many Americans."²

The Commission also noted in its findings that offenders who were convicted of violent crimes continued to commit crimes and "constituted the hard core of the crime problem."³

“

In the next two decades, Federal, State, and local authorities made a concerted effort to impact crime and professionalize law enforcement. Yet, as we enter the century's last decade, crime and violence, much of which is fueled by drug abuse, have increased epidemically. Once a problem mostly affecting the urban poor, crime now touches every socioeconomic class and continues to be of paramount concern to all citizens.

CRIME RATES AND PRISON RISKS 1960 - 1985



SOURCE: PRISONERS IN 1985, UNIFORM CRIME REPORTS 1985 (FBI) CHART REPRINTED FROM NIJ

Because of the public clamor caused by escalating burglaries; armed robberies of residences; and vicious, sadistic assaults, a punitive attitude toward criminals has been adopted. The theory that criminals who are placed behind bars cannot steal, assault, or murder is simplistic and has sent prison populations soaring with a 76 percent increase from 1980 to 1989. Ironically, this has also created a counterproductive chain reaction. As prisons became overcrowded, courts ruled that cruel punishment existed and ordered inmate reductions. Correctional authorities found ways to release inmates early or to allow for lenient parole policies. Thus, collective incarceration has not reduced the crime rate because inmates once again become free to practice their trade in a matter of months.

When crime statistics rose nationwide and the public reacted with alarm, legislators got tougher on crime. The number of law enforcement personnel was substantially increased, sentences for various violent crimes were doubled, and even the death penalty was reinstated in many States. However, funding for prisons was not sufficient nor could prisons be erected fast enough to hold the significant wave of

new prison incarcerations. This phenomenon seemed to reflect a national trend wherein only 45.4 percent of all original court-ordered confinement was served.⁴

Since this study was conducted, the situation has worsened. National Institute of Justice (NIJ) research recently found the recidivism rate of former inmates to be between 65 and 80 percent.⁵

The Theory Behind Incarceration

Local police, who investigate a multitude of burglaries, armed robberies, and other violent crimes daily, have for years proposed law enforcement methods based on direct knowledge of contact with criminals. These local law enforcement officials have suspected that, if the small number of chronic offenders were removed from contact with society, the crime rate would fall dramatically. Several studies now tend to corroborate these officers' assumptions.

Although research statistics have varied slightly, on average they indicate that as little as 6 percent of the criminals arrested commit up to 70 percent of the serious crimes. Most significantly, evidence primarily from the work performed by Marvin Wolfgang⁶ and the work performed by the Rand Corporation⁷ found that a relatively small number of criminals accounted not only for a disproportionate amount of serious offenses, but also for a significant portion of all the violent crimes.

Economic Common Sense

Budgetary constraints currently affecting Government at all levels also plague criminal justice agencies. The spiraling rate of serious crime in many urban centers fueled by crack cocaine shows every indication of continuing through the 1990's. Therefore, programs that target armed career criminals, which selectively incapacitate those offenders committing a disproportionate number of offenses, translate into economic common sense. The placement of limited resources in investigation, prosecution, and incarceration is becoming a dollar-and-cents issue. In order to attain the most efficient use of criminal justice resources, imprisonment of the career felon is essential.

With extreme shortages of prison beds, choices must be made on selecting the violators who will fill them. Therefore, the decision to be made is obvious: Incarcerate those whose way of life is violent crime. The goal of reducing crime and violence mandates it, and the economics of the times dictate it.

In examining the best use of the criminal justice dollar, we must not forget the crime victim nor the taxpayer. The citizens of the United States need to be free from the fear and terror violent crime perpetuates. Incarcerating armed career criminals is imperative to this endeavor. As shown

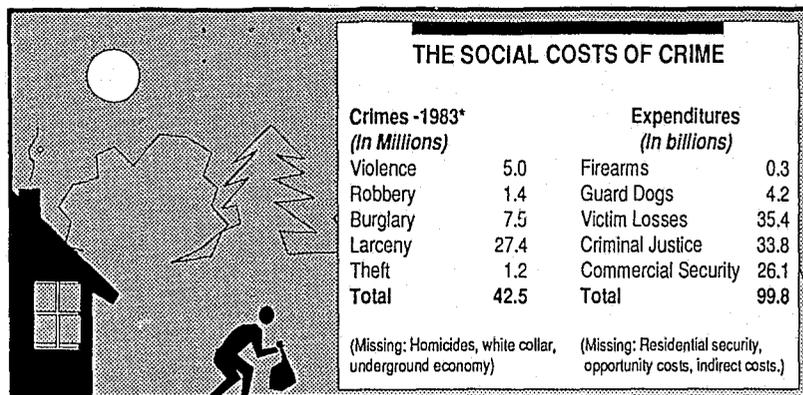
previously in this chapter, even though repeat offenders are a small percentage of the total criminal community, they commit the majority of violent and serious crimes. Logically, if these high-rate offenders are incarcerated, the crime rate will be reduced. Instituting programs that incapacitate the career criminal can balance the scales.

In 1987, the NIJ performed a cost-benefit analysis to investigate whether society spends more funds punishing than it gains from punishment.⁸ The final analysis found that communities were paying far more by releasing recidivists than by providing prisons to house them.

This conclusion was reached after scrutinizing three areas: the cost of crime, deterrent effects, and overall community savings.

Crime: Costs v. Expenditures

A comparative analysis of crime costs and offense rates indicated that \$50 million in confinement investments would average \$107 million in social costs. Therefore, the number of crimes averted by imprisonment and the costs associated with crime are critical determinants of how much prison space is necessary.



SOURCE: NIJ RESEARCH IN BRIEF, JULY 1987. GRAPHIC BY GREGORY MOSLEY

Deterrent Effects

The NIJ found that a deterrent effect also created a substantial savings. The key lies in the certainty and severity of punishment. The NIJ stated that deterrence reduces crimes when offenders, basing decisions on risk versus punishment, decide to commit fewer crimes. Thus, the number of offenders willing to commit crimes decreases as the punishment increases.

Incarcerating recidivists who commit the majority of serious crimes would save communities money by diverting costs imposed by crime to other civic programs. For example, homeowners and businessmen would divert money used for protection to other areas of the economy. In addition, property values would increase especially in inner-city business areas, because of reduced incidents of theft and other crime. Although difficult to quantify, the physiological effect crime has on victims would also be reduced.

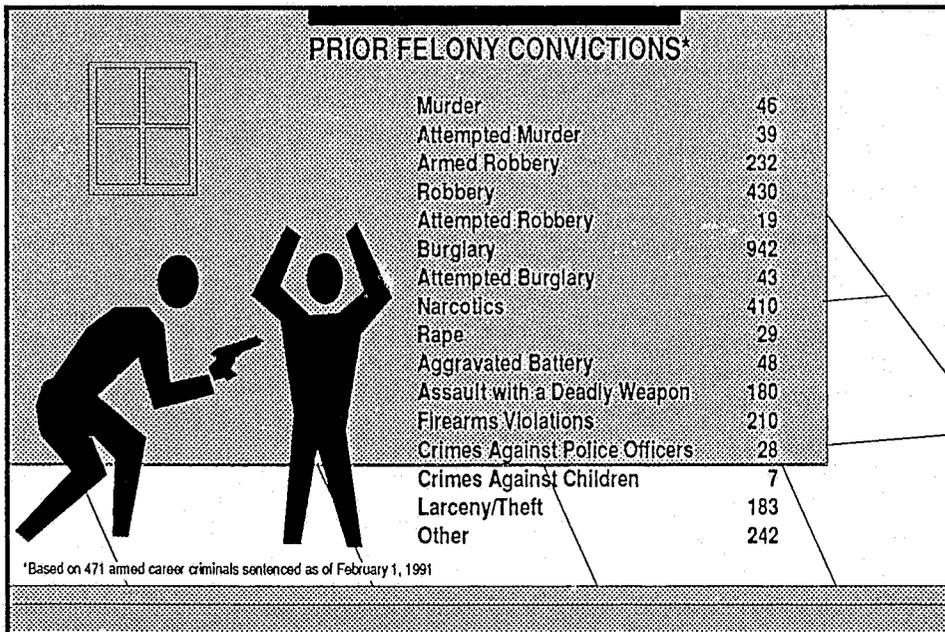
The success of incarceration of armed career criminals rests on the abilities of the entire criminal justice system. This includes the capability to identify, investigate, prosecute, and house high-rate offenders in coordinated efforts. The following chapters will document ATF's endeavors to accomplish this goal and show that the firearm can truly be the criminal's Achilles' heel, which makes him vulnerable to this concerted effort. It is clear that removing the career criminal from society is not the sole responsibility of any one agency but one that belongs to every element of the criminal justice system working in close harmony.

The Most Violent of Our Time

In order to obtain a clearer picture of the armed career criminal, extensive criminal background information was collected on each criminal sentenced under this statute. Upon close review of this data, it was quite evident that these subjects are some of the most violent criminals of our time.

The graphic below contains a breakdown of the number of prior felony convictions of 471 subjects convicted and sentenced as career criminals as a result of investigations conducted by ATF as of February 1, 1991.

The 471 career criminals had a total of 3,088 felony convictions, giving them an average of 6.55 felony convictions each (their convictions under the Federal armed career criminal statute are not included). It should also be noted that the above figures represent only felony convictions. Information regarding their total arrests, misdemeanor convictions, and juvenile records was not assembled. A summary review of their FBI criminal records indicated that many have had extensive arrests resulting in numerous felony charges that were reduced to misdemeanor offenses.



GRAPHIC BY GREGORY MOSLEY

Career Criminal Profile

Judging from this data, it is easy to construct a profile of the average career criminal based on prior felony convictions. The average career criminal has received felony convictions for 1.4 robberies; two burglaries; and one other crime (theft, escape, forgery, kidnaping, etc.). One out of three prisoners has been convicted of murder, attempted murder, aggravated battery, rape, or a crime against a child. Eight of ten prisoners have felony narcotics convictions. Eight of ten prisoners have been convicted of a firearms violation or assault with a deadly weapon. One of every twenty prisoners has been convicted of a felony crime against a police officer.

There are three characteristics that the 471 career criminals all have in common:

1. They are males.
2. They have been convicted of committing numerous acts of violence.
3. They are all in jail for 15 years to life with no probation and no parole.

Collectively, the 471 convicted career criminals have received a total of 7,805 years in prison sentences. Nine subjects have received life sentences, and the average is 17 years in prison. (The nine who received life sentences were not included in formulating the average.)

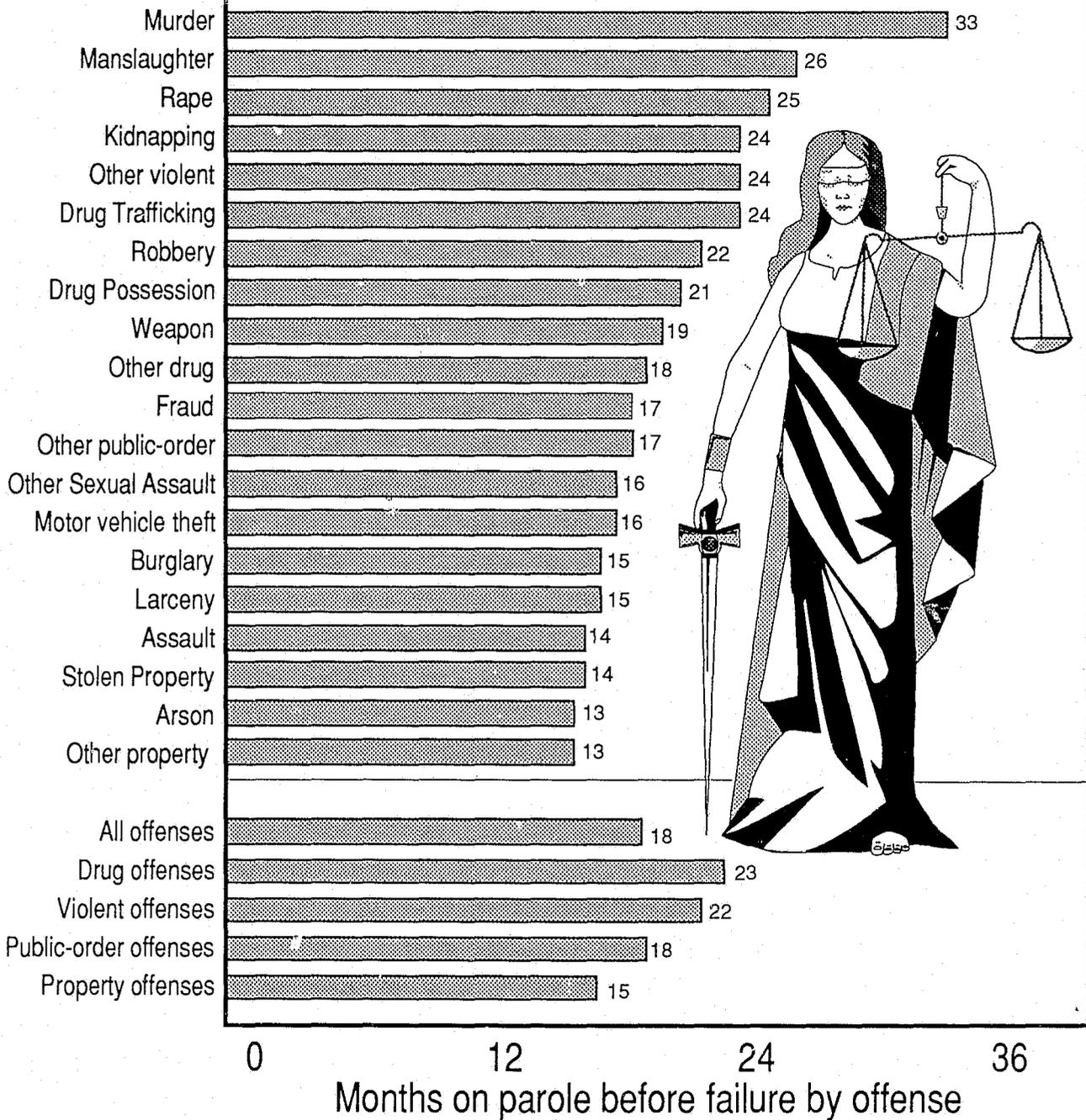
The Inmate Survey: Findings and Conclusions

This chapter presents findings and conclusions based on the responses provided by an identified study group of 100 armed career criminals to a 20-question survey. The study group consisted of 100 adult males, of which 62 percent were

Caucasian or Hispanic and the remaining 38 percent were black. The ages of the group members ranged from 23 to 65. The median age of a prisoner in this study is 40.39. These criminals were from all socioeconomic levels and all sections of the United States. They are currently housed in Federal institutions located in 14 different States across the Nation, having been sentenced under the Federal armed career criminal statute.

OLD HABITS

Unsuccessful parole releases, 1984: Mean Time Spend on parole before failure, by offense



SOURCE: BUREAU OF JUSTICE STATISTICS GRAPHIC BY GREGORY MOSLEY

The Questions

The following is a list of questions posed to prisoners who participated in the study. Each question is followed by a rationale for its use.

Question 1

Can you read and write?

Of the members of the study group who responded, 98 percent reported having the ability to read and write. The other 2 percent were not illiterate but stated that they found it difficult to read. This demonstrates that the group was capable of understanding the questions that interviewers presented to them during the study. This question will provide a building block for additional questions to follow with regard to comparing literacy and career criminal activity.

Question 2

What is the highest level of education that you attained?

Of those who responded, 80 percent stated that they had at least 10 years of formal education, with 64 percent having completed 12 years' or more. This substantiates the statement made in question 1, that the respondents possessed sufficient ability to comprehend the questions found within the survey. It is important to note that, while in prison for previous criminal acts, one of every three of the group members had received some type of schooling in an effort to improve academic competency and social desirability. Obviously, since they are again incarcerated, these efforts at personal enhancement did not deter their criminal behavior. (See graphic facing page top right.)

Question 3

What part of your yearly income came from criminal activity?

This question was asked so that a comparison could be drawn between the inmates' legitimate and illicit incomes. Of the members of the study group who responded, 19 percent advised that they did not gain monetarily from criminal activity. Although we found this to be paradoxical, we have listed this figure as reported. (Note here that the findings from this question were derived only from personal estimations.) Conversely, 20 percent of the study group readily admitted that their entire income stemmed from illegal activity.

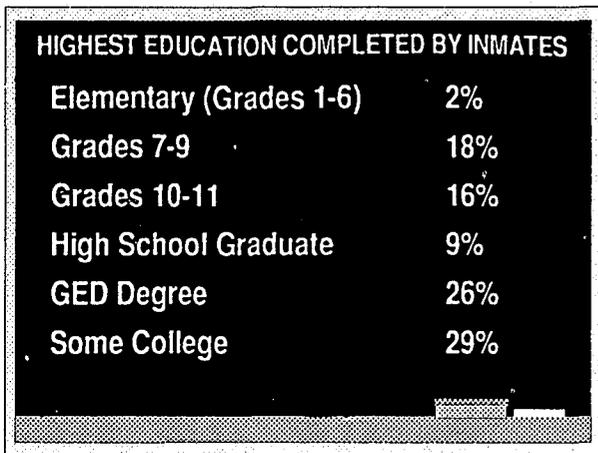
Moreover, an examination of the prior felony convictions of all armed career criminals previously convicted by ATF has found that approximately 66 percent of their prior felony convictions, excluding narcotics convictions, were profit-motivated criminal acts (i.e., burglary, larceny, robbery). Therefore, we have concluded that the inmates' responses are unrealistically low.

As evidenced by the inmates' own reported illicit income figures combined with their past criminal records, the armed career criminals identified in this study are clearly criminals by profession.

Question 4

Approximately how many years of your life have you spent in jail?

Of the members of the study group who responded, the amount of physical jail time served, prior to their armed career criminal convictions, totals 1,042 years or an average of 12.71 years of incarceration per inmate. If adulthood is based on 18 years of age and if the average age of the armed career criminal in the study is 40.39, then the average career criminal has spent 66 percent of his adult life



SOURCE: BUREAU OF ALCOHOL, TOBACCO AND FIREARMS GRAPHIC BY GREGORY MOSLEY

institutionalized. Furthermore, the study group received an average sentence under the armed career criminal statute of 17.56 years (life sentences not included). Coupled with their prior jail time, each inmate will serve approximately 75 percent of his adult life behind bars.

Even with the enormous amount of jail time served by the study group, they were able to amass 679 felony convictions. This, we have concluded, was the result of the so-called revolving door release of inmates who, in essence, were only serving an average of 22.5 months actual prison time per felony conviction. Thus, each subsequent release provided the armed career criminals another opportunity to perfect and repeat their criminal occupation.

Question 5

Were you an illegal drug user?

Of the members of the study group who responded, 69 percent were admitted illegal drug users.

Question 6

If you responded "Yes" to question 5, did you commit crimes in order to pay for a drug habit?

Of the members of the study group who responded, 32 percent answered affirmatively to committing crimes for the purpose of supporting a personal drug habit. If, as indicated in question 5, 69 percent of the same group were admitted drug users, then the majority of these armed career criminals were not committing crimes specifically to fund narcotics purchases. Therefore, it can be con-

cluded that the bulk of criminal acts this group committed were predominantly profit motivated.

Question 7

What age did you start committing criminal acts?

Of the responding members of the study group, the median age at which they began their careers as professional criminals was 17.5 years. This finding is consistent with the 1985 NIJ report titled "The Armed Criminal in America," in which it was reported that by age 19, career criminals had committed their first serious offense.

Question 8

How often did you use or carry a firearm to commit criminal acts?

Of the responding members of the study group, the replies varied from "Never" to "All the time, I lived with a gun"; from a strong negative statement of "I never carried a gun in my life," to the admission of carrying a firearm "Since age 10--in robberies, attempted murder"; from half-admissions such as "Only when robbing drug dealers," to "Always had a gun; if I got out today I'd have a gun"; and other statements of qualifying possession, like "I only carried a gun when I committed armed robberies," "Regularly, especially when I was dealing drugs," and "In every crime a gun was carried except when I was the driver and didn't need to carry one."

Although all the members of this study are presently incarcerated for illegal possession of firearms, over 40 percent denied ever using or carrying a firearm in a criminal act.

In order to thoroughly analyze the responses given to this question, the addition of data from related question 11 must be considered. Therefore, further findings and conclusions will be addressed later.

Question 9

How many crimes did you commit a week?

Of the members of the study group who responded, only 43 inmates supplied a specific crime rate by timeframe. The remaining respondents did not or were not able to provide crime rates within a particular time period. The 43 inmates estimated their total crimes to be 6,858 per year, which averages 160 criminal acts per inmate, per year, or on an average slightly more than three crimes per week. These figures are consistent with previous studies performed, including a study conducted by the NIJ in 1987 titled *Making Confinement Decisions*.

The NIJ study also estimated the average cost per crime in the United States to be \$2,300 and custodial cost of imprisonment per inmate per year to average \$45,000. Extrapolating from these figures and the data provided by the respondents to this question, we can conservatively estimate that the study group's cost of crime to society, economic and social, is \$36.8 million per year. Therefore, we can conclude that the cost benefit to society for incarceration is a derived savings of \$32.3 million per year for the total study group.

Although it is only an estimate to say that the average career criminal commits a given number of crimes per year, or that the cost of crime is a given number of dollars, it does aid the Government in making important decisions. Information about the number of crimes deterred by imprisonment, as well as the cost associated with crime, assists in making decisions on how the criminal justice dollar should be expended.

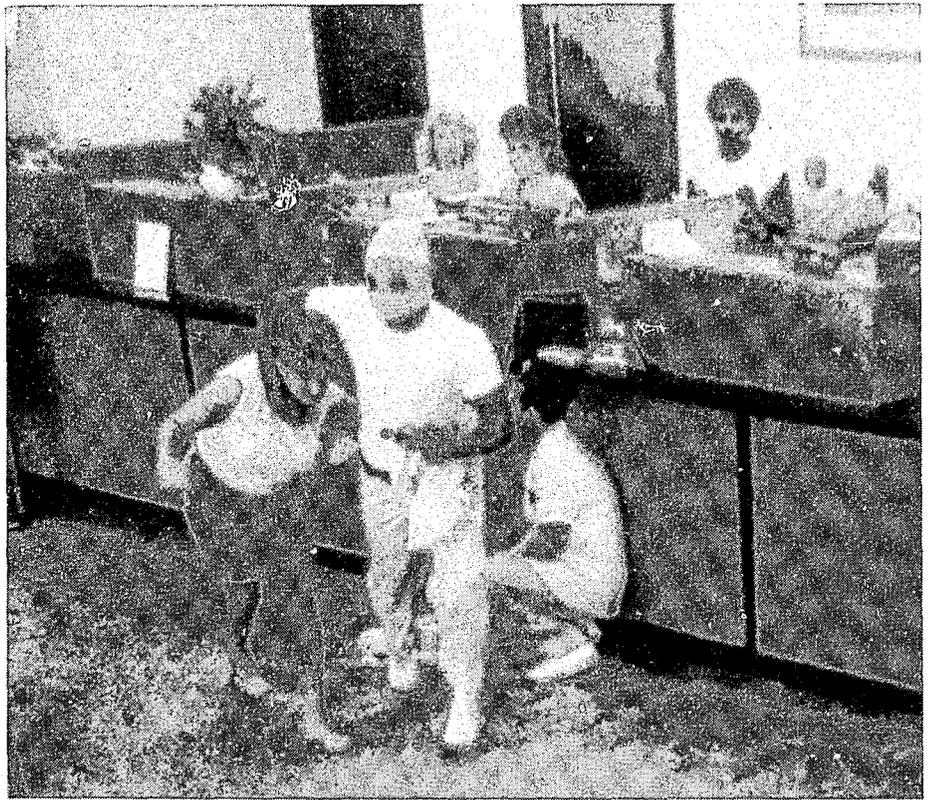


PHOTO COURTESY FBI, ATLANTA

Gerald M. Kelly, 26 racked up one armed robbery, one burglary, two assaults, and finally this armed robbery. Bank security camera photo shows the ruthlessness of the violent, career criminal in action. ATF built a case that resulted in 97 months for armed robbery and a mandatory 60 months for Kelly's use of a firearm in the commission of a violent crime.

Question 10

How did you acquire firearms?

Members of the group who responded identified five major sources of firearms. These sources are private parties (off-the-street sales); involvement with criminal acts (e.g., burglaries, robberies) or criminal associates; retail firearms dealers; flea markets or gun shows; and relatives.

This question received the lowest number of responses from the study group, as 27 percent either refused to provide data or claimed they never acquired firearms. Therefore, it is simple to deduce that armed career criminals are very protective of their sources for weapons. Interviewers commented that it became very easy for inmates to generalize in making a reply, by stating, "I got it off the street." Inversely, some study group

members were much more descriptive, stating for example, "Everybody had a gun, they were always for sale"; "I didn't know where the guns came from. I assumed they were stolen"; "Theft from residences, gun shops, and businesses"; and "It varies; most of the time I would offer to buy or swap drugs for them." In order to thoroughly analyze the responses given to this question, the addition of data from interrelated questions 12 and 14 must be considered. Therefore, this report will examine further findings and conclusions later in the chapter. (See chart on page 27.)

something to conceal"; and "Doesn't matter, just what's available." These last statements give strong indications of the true meaning of a firearm as a "tool of the trade."

In conducting this study, we examined the firearms that each of the study group members had in their possession at the time of arrest. A total of 234 firearms including 1 machinegun and 5 silencers comprised the recovered weapons. Of the recovered firearms, 139 were handguns.

A breakdown of the major calibers of handguns recovered is as follows:

Question 11

What type of firearm do you prefer to use or carry in criminal acts?

Everybody had a gun, they were always for sale...I didn't know where the guns came from, I assumed they were stolen..

Twenty-two were .38-caliber revolvers.

Twenty-three were large-caliber .357-, .41-, and .44-magnum revolvers.

Of the responding members of the study group, not one provided information to lead to the conclusion that any particular type of firearm was preferred over another. Responses to this question covered a diversity of makes, models, calibers, types, and manufacturers of firearms.

Thirty-three were .380-caliber or larger pistols.

(A total of 116 different types, calibers, and manufacturers of firearms.)

These findings demonstrated that the firearm of choice appears to be based on the intended criminal use.

Group members were very specific about their firearms preference and needs. Responses included "I like an automatic pistol better than a revolver"; "A shotgun is more impressive; sometimes a handgun is more practical"; and "Biggest caliber, most rapid firing weapon available." Others gave more elaborate descriptions, for example: "Machinegun, MAC-11, easy to convert, cheap" and ".44-caliber carbine with silencer." Conversely, others stated, "A gun is a gun"; "Don't have a preference, just need

It should be noted here that, although 43 percent of the responding members of the study group denied ever using or carrying a firearm to commit a criminal act in question 8, in comparison, this percentage decreases to only 11 percent by the responses to this question. Coupling the data from question 8 with this question, it can be concluded that at least 89 percent of the study group members did, in fact, use or carry a firearm to commit criminal acts.

Question 12

When acquiring a firearm, what was the most important factor that you considered?

The responses to this question widely varied among all the members of the study group who responded. Although specific makes, models, and manufacturers of firearms preferred could not be determined, or even identified as existing, almost universally, handguns were the firearms of choice. Only one group member did not describe a handgun but instead listed a shotgun as his preference. This determination was based on an analysis of the group's list of important factors, which were the characteristics of handguns.

Examining the characteristics most preferred, we can conclude that *the firearm of choice would be a larger caliber, good quality handgun that would be untraceable and would not link the respondent to past crimes.* Other important factors prominently mentioned were concealability, firepower, magazine capacity, and familiarity with the weapon.

Question 13

Have you ever fired or pointed a firearm at another person?

Of the members of the study group who responded, over 50 percent admitted that they had pointed a firearm at another person. These responses ranged from using firearms in robberies, narcotics transactions, and personal disputes.

More specifically, 17 percent of the group members who responded stated that they actually fired their firearms at individuals. They described some of these incidents as "Yes, I shot a cop, I exchanged gunfire with a 'hitman.' I've also shot an additional four or five people over money, but don't think any died"; "I shot a man over a \$10 gambling debt"; and "I wounded one person who was the victim of my robbery."

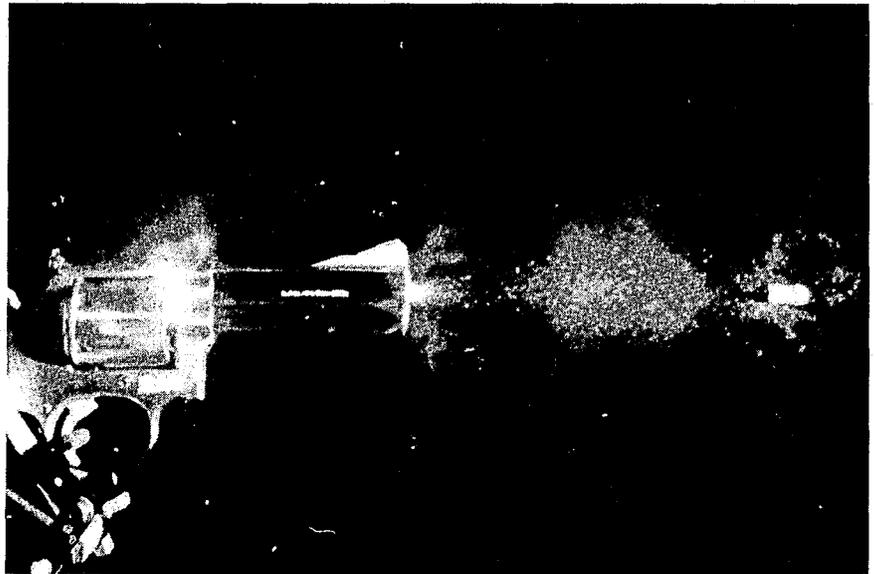


PHOTO COURTESY OF DADE COUNTY MEDICAL EXAMINER'S OFFICE. DADE COUNTY, FL.

A slug speeds out of the gun barrel. This photograph was taken with special forensic photography equipment.

These responses dramatically point to the dangerous personalities of the armed career criminal. Obviously, these individuals have little respect for human life or legal authority. Past actions evidence the fact that they will not hesitate to employ a firearm to achieve personal illegal goals.

Question 14

Prior to your conviction, were you aware that felons could not legally possess firearms under Federal law?

Of the members of the study group who responded, 51 percent advised that they knew Federal law prohibited their possession of firearms. Examination of all the responses revealed that an additional 16 percent were aware of various State prohibitions against their possession of firearms. Thus, 67 percent admitted to knowing it was illegal for them to acquire firearms. This clearly demonstrates a total disregard for any legal restrictions. It also seems incongruous to believe that, taking into consideration

the study group's average number of institutional stays, along with its vast repetitive contact with the entire criminal justice system, the remaining 33 percent could have been unaware that felons were prohibited from possessing firearms.

Examining data received from this question and that of question 12, we believe we are now able to further respond to question 10 ("How did you acquire firearms?"). Given the findings that respondents were protective in supplying specific information of firearm sources (question 10), the group preferred large-caliber, untraceable handguns (question 12), and the group was cognizant of State and Federal prohibitions regarding firearms possession, we have concluded that armed career criminals will attempt to circumvent, whenever possible, detectable legal channels when acquiring arms.

Question 15

Prior to your arrest and subsequent conviction, were you aware that mere possession of a firearm would subject you to a mandatory sentence?

Of the members of the study group who responded, a mere 7 percent advised that they were aware that their possession of a firearm could subject them to a mandatory sentence. Obviously, the knowledge of mandatory sentencing did not deter the study group from acquiring arms.

This included both the respondents who knew and those that were unaware of mandatory sentencing.

Based on the responses to questions 16 and 17 which follow, it appears that knowledge of the law was tempered by a skepticism about whether it really meant what it said.

Question 16

When you first learned about mandatory sentencing provisions, did you believe that you would spend your entire sentence in jail?

Of the members of the study group who responded, 73 percent stated that they did not believe they would spend their entire sentence in jail.

It was determined, based on responses by several study group members, that their rationale was derived from past dealings with the criminal justice system.

When I finally was told about the mandatory sentence, I thought it was a joke, so I pled guilty and got 21 years.

As one respondent stated, "I usually only would do one-third of my sentence."

Several members even now, while in prison, still do not believe that they will serve their entire sentences. Another inmate replied negatively by stating that, "I was used to plea bargaining, even murders get less." Affirming this point best, one group member stated, "When I finally was told about the mandatory sentence I thought it was a joke, so I pled guilty and got 21 years."



A child finds comfort in the arms of an ATF agent on a crime scene. PHOTO COURTESY ASSOCIATED PRESS

Question 17

If you had known that a conviction under the Armed Career Criminal Act would result in your spending your entire sentence in prison, would you have possessed the firearm?

Of the members of the study group who responded, 16 percent answered that they would still possess firearms, even knowing that they could receive a 15-year or greater mandatory sentence. Summarizing this point of view, a group member stated, "I feel you have to take chances no matter what the consequences." Thus, it can be stated that for these hardened criminals, this or any other law clearly would not serve as a deterrent. The only real deterrent for them would be continued incarceration.

On the other hand, for the remaining 84 percent, the mandatory provisions of this law would deter them from illegally possessing firearms. As one member of the study group dramatically stated, "No, I would have eaten the gun if I had known." Another stated, "If I had any idea I would have gotten this much time, I would have thrown my guns in the river."

Question 18

Do you believe that mandatory sentencing serves as a deterrent to the illegal possession of firearms by career criminals?

Of the members of the study group who responded, 45 percent believe that it has a deterrent effect on the career criminal once it is known and the consequences are understood. In addition, 21 percent feel that mandatory sentencing has a deterrent effect for some career criminals. However, 34 percent believe a strong mandatory penalty has no deterrent value whatsoever. Statements by specific inmates best reflect these varying points of view:

Positive Deterrent Effects

"Yes, it is a deterrent, no one with three convictions would have a gun."

No Deterrent Effects

"If a guy makes his living with a gun, he is going to do what he has to do and believes he is not going to be caught. Criminals will shoot at officers to avoid facing the 15 years; it's a life sentence anyway."

Some Deterrent Effects

"No, I think it makes it worse. If you have 10 career criminals, 5 or 6 may be deterred from having a firearm, but the 4 or 5 will shoot to kill if stopped by an officer, rather than face the mandatory 15-year sentence."

Question 19

When you return to society, will you ever attempt to illegally possess a firearm again?

Of the members of the study group who responded, 20.7 percent were sure that they would again possess firearms even after being imprisoned for a minimum of 15 years, and would again face another 15 years to life sentence. The following responses adamantly portray the value placed on firearms possession by the group:

"Yes, if I got out today, I'd have a gun today. If a Government agent showed up at my doorstep, I'd kill her. I'm not going down again. This law is creating a monster—it's creating a lot of people who will kill agents because you've made them hardened criminals--what does he have to lose? A guy facing mandatory sentences will resort to violence."

"Yes, if a cop pulls up on me after this, we will hold court right there. I won't do 15 years again for carrying or having a gun."

"Yes, to get even for my last conviction. I feel a tremendous amount of rage towards the agent who made the case against me."

Question 20

Other than long-term incarceration, is there anything that would prevent you from committing crimes?

Of the members of the study group who responded, 35 percent replied that long-term incarceration would prevent them from committing criminal acts. One of the respondents stated, "True career criminals will never care."

The remaining members of the study group gave a variety of social and economic reasons that create career criminals. These factors spanned the entire social spectrum to include employment, education, financial, family, and environmental factors. They have concluded that shortcomings in these areas were the causal effects that produced their criminal behavior.

If a cop pulls up on me after this, we will hold court right there. I won't do 15 years again for carrying or having a gun.

Since society has been unable to fulfill all these social and economic deficiencies, coupled with the career criminal's inability to overcome them, it is reasonable to conclude that the 65 percent are equally as incorrigible as the 35 percent which responded that long-term incarceration is the only thing that would prevent them from committing crime.

Chapter 2

W

Law Enforcement Professionals and the Federal Firearms Statutes

Within this chapter, ATF presents the survey responses of law enforcement officials and findings based on their responses to a six-item survey detailed in chapter 3.

The survey group consisted of 259 law enforcement officers representing all 50 States. Survey participants are active in the front-line enforcement efforts of State and local agencies. The law enforcement officials who participated in this survey include 54 chiefs and sheriffs, 29 deputy chiefs, 29 majors, 42 captains, 45 lieutenants, 46 sergeants, and 14 detectives and patrol officers.

The Law Enforcement Survey

Item 1

I am familiar with the Federal firearms laws.

Responses to the first statement indicate that 94 percent of those surveyed consider themselves familiar with the Federal firearms

laws. This is not surprising, since those surveyed were law enforcement officials who have been directly involved with ATF in armed career criminal investigations. With the wide range of agencies represented, this positive response indicates success in informing them about ATF's mission of enforcing the Federal firearms laws.

In addition, the overwhelming responses to this statement illustrate and also tend to validate the responses to other items based on this survey group's informed knowledge of the subject matter.

Item 2

ATF has effectively informed law enforcement agencies that persons convicted of three violent or drug-related felonies (armed career criminals) are subject to an enhanced sentence of at least 15 years without parole if convicted of possessing a firearm.

With 83 percent of the officials surveyed agreeing with this statement, it is apparent that these officials are aware of the Federal armed career criminal statute. Informing other State and local officers of this statute will go a long way toward making the enforcement program a success. The relatively large number of law enforcement officers who are familiar with this statute adds validity to the following statements of the survey.

Item 3

ATF's enforcement of the Federal firearms laws is an effective tool in combating crime in your area.

A total of 96 percent of the officials surveyed agreed with this statement and 71 percent of those strongly agreed. This is a noteworthy endorsement of the Federal firearms laws in general, and more specifically, ATF's enforcement of these laws. This response is significant because these officials deal with violent offenders daily and have observed ATF's effectiveness. Moreover, this survey group credits congressional enactment of these laws and ATF's enforcement efforts as being effective tools for addressing violent crime in their jurisdictions.

Item 4

The enforcement of the Federal armed career criminal statute is an effective deterrent to crime in your area.

The majority of the officers, 83 percent, responded that enforcement of the Federal armed career criminal statute is an effective deterrent to crime in their area. The remaining 17 percent who disagreed or were undecided caused us to further examine these responses. Most of the comments expressed concern about the acceptance rate of cases referred for Federal prosecution. Extensive caseloads and overextended court dockets in certain judicial districts may be factors affecting this trend.

Item 5

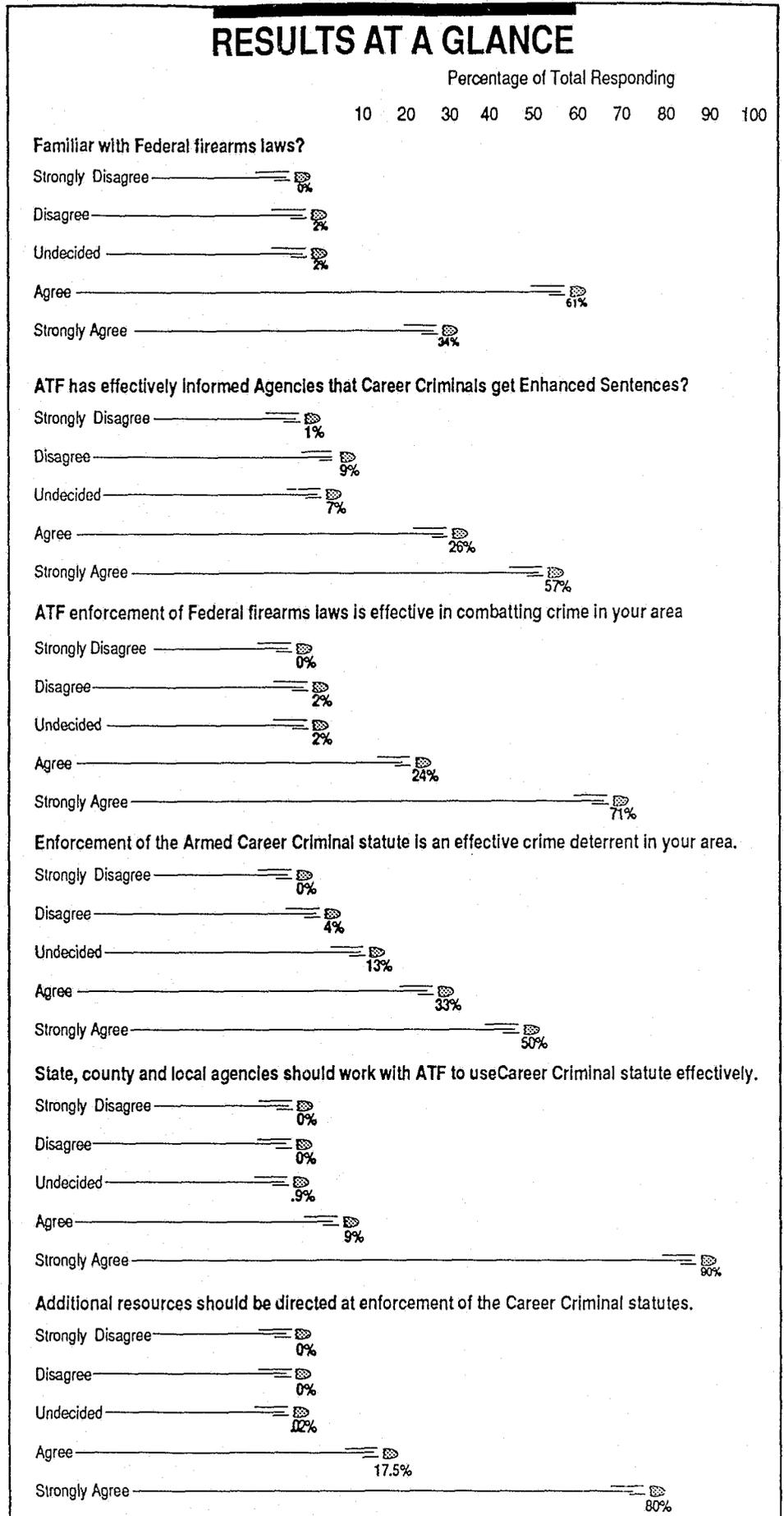
State, local, and county law enforcement agencies should work in concert with ATF to make effective use of the Federal armed career criminal statute.

The response to this statement was the most positive of the six statements, with 90 percent strongly agreeing, 9 percent agreeing, and one law enforcement official undecided. The officers surveyed have observed firsthand the benefits of working cooperatively in combating the armed career criminal. These responses suggest a task force approach (either formal or informal) as the most effective use of resources.

Item 6

Additional resources should be directed at enforcement of the Federal armed career criminal statute.

The response to this statement was overwhelming positive, with 206 officials strongly agreeing, 45 agreeing, and 8 undecided. This endorsement to direct additional resources to enforcing the Federal armed career criminal statute would enhance ATF's enforcement endeavors. Clearly, these law enforcement officials believe that this is the proper course to pursue.



SOURCE: BUREAU OF ALCOHOL, TOBACCO AND FIREARMS GRAPHIC BY GREGORY MOSLEY

Chapter 3

Interviewing the Inmates: Going to the Source

Logic dictates that in order to solve problems or answer perplexing questions, one must seek out the root of the dilemma. Obviously, at the crux of this issue is the career criminal. Therefore, in-depth interviewing of individuals who fit the criteria of the armed career felon was an integral part of this study.

Without the benefit of previous research, this endeavor would have been difficult to undertake. Retrospective studies and criminal histories of known offenders—normally those who are still incarcerated—have been examined. Most retrospective studies have relied solely on police, corrections, and court records to supply information about the career offender's past life of crime.

Some recent analyses, however, have also gathered data through interviews with offenders. This method, known as self-report surveying, is useful for gathering facts not only about known crimes, but also those which are officially unknown. The Rand Corporation reports, *Selective Incapacitation* (Greenwood, 1982) and *Varieties of Criminal Behavior* (Chaiken and Chaiken, 1982) are examples of these types of studies.

Other studies of known offenders have relied on reviewing criminal histories of a sample group of known offenders and the tracking of their criminal activity for a period of years into the future. This method, known as a *prospective study*, likewise employs self-report interviews to gain a broader picture of specific criminal activity. Inspecting individuals released from prison, supervising probation, and monitoring rearrest frequency are examples of methods used in this type of analysis.

Obtaining information directly from identified career criminals has a two-fold significance for ATF.

The first is to glean a greater depth of understanding of the career criminal (e.g., criminal activity and acquisition of firearms) and also to more effectively and efficiently employ the provisions of the Federal armed career criminal statute in investigations and prosecutions.

By using direct contact via survey interviews with offenders, ATF intended to gather information pertaining to crimes that escaped official detection as well as valuable data not found in official documentation. These factors added greater dimension and scope to the study.

The Study Group

Selecting the right inmates for the study was crucial in order to remain focused on the objective of studying the armed career criminal. Many previous career criminal studies have examined offenders from one specific location or several different jurisdictions. The sample group for this study was selected from sites across the United States and was geared toward gaining nationwide insight into career criminal activity.

The sampling was made up of individuals ATF convicted under Federal armed career criminal charges. It is important to note that these offenders closely mirrored the definition of career criminals and all had been previously sentenced under the Federal armed career criminal statute.



PHOTO COURTESY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Special Agents interview a prisoner in one of 100 ATF interviews of armed career criminals.

On May 31, 1990, 396 subjects previously convicted under this statute were listed in order of conviction date and by the location of ATF district offices. Their identities were submitted to the U.S. Marshals Service to determine their present whereabouts in the Federal Prison system.

ATF decided that a target of 100 subjects should be interviewed to obtain a solid sampling for the survey. These 100 subjects would represent a 25.3 percent sampling of all those convicted.

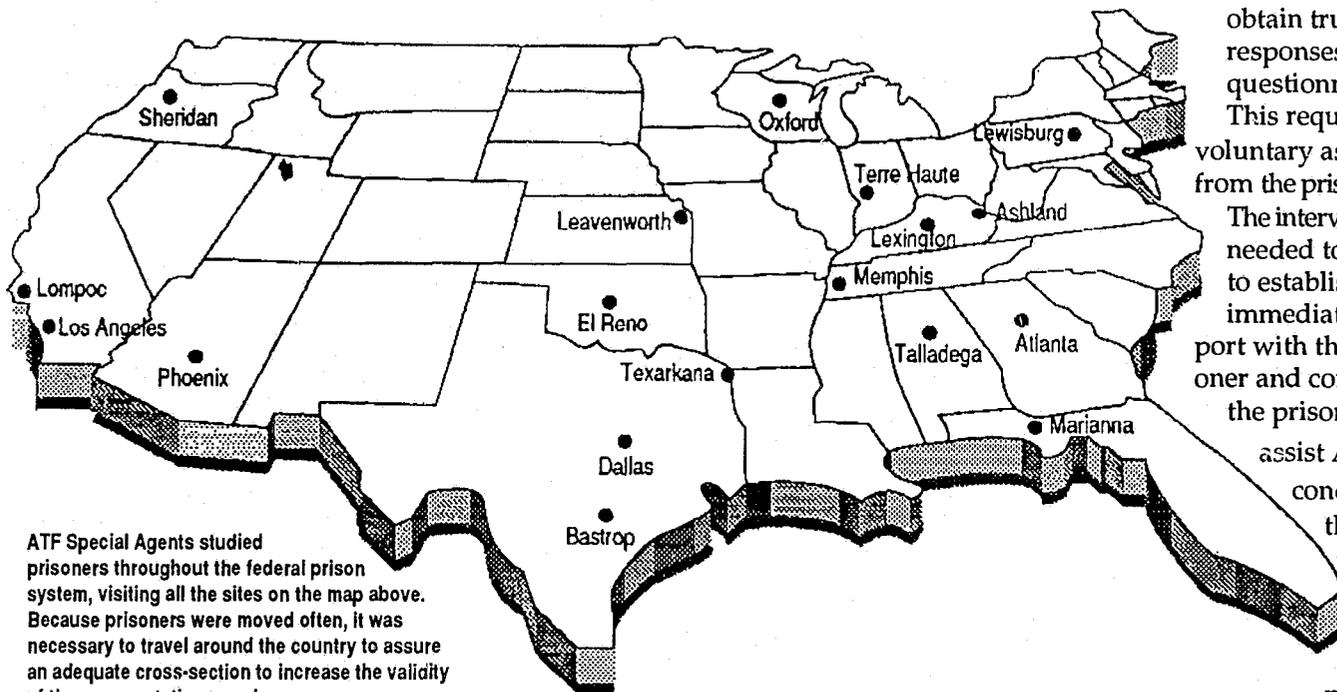
ATF subsequently found that these prisoners were moved from prison to prison on a frequent basis and that, at any given time, many would be in transit. It was also determined that many of the subjects sentenced under the Federal armed career criminal statute were in State custody. ATF estimates that approximately 50 percent of all the subjects convicted under this statute are in custody within the various State prison systems. Several were completing

their State prison terms before entering the Federal system. Many were in State custody pending State or Federal judicial proceedings.

Maintaining survey consistency dictated that all prisoners come from a similar setting within the prison system. To help control consistency, ATF selected and interviewed prisoners located only within the Federal system. These arrangements also helped ATF interviewers obtain information from only those subjects who were not facing additional State charges or sentences, making truthful responses more likely. ATF interviewers reasoned that subjects facing additional charges may not freely respond to the questions for fear that their responses could affect their State case in some way.

In order to achieve the target of 100 surveys, 115 subjects were chosen and identified as being incarcerated in 18 separate Federal prisons throughout the country. These subjects were

PRISON SITES VISITED



ATF Special Agents studied prisoners throughout the federal prison system, visiting all the sites on the map above. Because prisoners were moved often, it was necessary to travel around the country to assure an adequate cross-section to increase the validity of the representative sample.

GRAPHIC BY GREGORY MOSLEY

The primary goal in conducting the interviews was to obtain truthful responses to the questionnaires. This required voluntary assistance from the prisoners. The interview team needed to be able to establish immediate rapport with the prisoner and convince the prisoner to assist ATF in conducting this study. ATF believed that a portion of the selected inmates

selected based on the fact that they had been convicted throughout the United States, providing an excellent representation of all the subjects convicted. The prisons were selected based on the number of selected prisoners housed there. The sampling ranged from 1 to 17 prisoners per prison. All prisons having more than three selected prisoners were included in the survey. The confidence level of the study is 95 percent.

Selecting and Training Interview Teams

The prisoners selected for this study were all "hardcore" lifetime criminals, each having spent many years in various prison systems.

ATF anticipated that the study group would have a general contempt towards ATF special agents because of their current incarceration and their past encounters with members of the law enforcement community.

would resist participation in the study, and others would refuse.

In order to obtain and document the most accurate and truthful replies to the questionnaires, ATF determined that the interviews should be conducted using two special agents in a team concept. This would alleviate the need for one agent to ask the questions and attempt to accurately record the responses. The team would allow one agent to converse with the prisoner and ask the questions while the other agent recorded the responses. It would also allow for an immediate change in interviewers if the prisoner became reluctant to answer the questions. The other interviewing agent would be able to continue the interview using a different approach or technique in an attempt to gain responses to the questions.

Having two special agents conduct the interview would also allow a two-person review of the prisoner's responses in order to gain the most accurate recording of his answers.

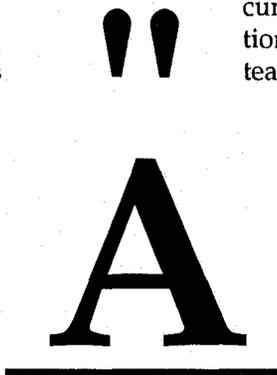
In selecting the special agents to participate in the interview teams, we solicited ATF district offices for nominations of only experienced special agents (journeyman-level) who have demonstrated an expertise in conducting difficult, in-depth, and thorough interviews. Special agents nominated also indicated a desire to assist in this

study fully understanding that this type of interview can be difficult and frustrating. All the agents were familiar with the Federal firearms laws and the enhanced sentencing provisions of the Federal armed career criminal statute.

Fifteen special agent interview teams were selected from the nominees. The 15 teams were sent to conduct interviews at 18 different Federal prisons located throughout the United States. The senior special agent in each team was designated as the interview team leader, responsible for setting up the interviews and submitting the completed questionnaires and background information to Bureau Headquarters. Only one team was designated to conduct interviews at each prison.

After selecting prisoners for interview, teams obtained complete criminal background information on each. They also gathered detailed information regarding the prisoner's most current convictions. In addition, case agents provided teams with information from

the investigations that resulted in each prisoner's current incarceration. This information was used to determine the best interviewing techniques and methods for identifying and overcoming problems that teams might encounter in gaining the inmate's



agents conducted the survey using several interviewing techniques in an effort to obtain truthful and complete responses. The test survey also served to identify other problems in conducting interviews as well as to gauge prisoners' understanding of the survey questions.

cooperation.

After assembling informational packages, agents conducted a test survey on two inmates housed at the Petersburg Federal Prison in Virginia. Agents conducted the survey using several interviewing techniques in an effort to obtain truthful and complete responses. The test survey also served to identify other problems in conducting interviews as well as to gauge prisoners' understanding of the survey questions. Test surveys also gave teams an indication of the effectiveness of these questions in soliciting responses appropriate to the study and helped determine the best methods and manner of conducting the interview.

LAW ENFORCEMENT SURVEY

The following is a sample questionnaire including basic identifying protocol at the beginning.

- A. Name:
- B. What is your job title?
- C. What is the name of your agency?
- D. How long have you been employed by a law enforcement agency?
- 1. I am familiar with the Federal Firearms Laws.
- 2. ATF has effectively informed law enforcement agencies that persons convicted of three violent or drug related felonies (Armed Career Criminals) are subject to an enhanced sentence of at least 15 years without parole if convicted of possessing a firearm.
- 3. ATF enforcement of the Federal Firearms Laws is an effective tool in combatting crime in your area.
- 4. The enforcement of the Armed Career Criminal statute is an effective deterrent to crime in your area.
- 5. State, local and county law enforcement agencies, in concert with ATF, should work together to make effective use of the Armed Career Criminal statute.
- 6. Additional ATF resources should be directed at enforcement of the Armed Career Criminal statute.

GRAPHIC BY GREGORY MOSLEY

The Law Enforcement Survey

The law enforcement survey was designed to collate specific information from law enforcement officials--the professionals believed most closely related to the topic at hand. The response could be used for evaluating the ATF Armed Career Criminal Program.

To accomplish the survey's objectives, ATF provided copies for its 22 special agents in charge located throughout the country and instructed each to contact at least five State, local, or county law enforcement officials representing different departments that have been directly involved with ATF in investigating armed career criminals.

ATF further directed that these officials be at a department level that is responsible for directing enforcement strategy within their departments. ATF emphasized accuracy in the study and required that ATF supervisors or managers make the law enforcement contacts. ATF gave an introduction and justification of the study when it was presented. Also, each person surveyed was asked to be as objective as possible.

Statements were preceded by identifying data to include the officer's name, rank, agency name, and length of service as a law enforcement officer. ATF collected this information for proper analysis and to allow for study results to be disseminated at its conclusion.

Statement Rationale

The following is the rationale for each statement found in the law enforcement survey:

Item 1

I am familiar with the Federal firearms laws.

This item is very appropriately first in the survey. The response demonstrates

this person's knowledge of the laws ATF enforces and also validates responses to the other items. This should provide evidence as to ATF's effectiveness in informing law enforcement agencies of its mission.

Item 2

ATF has effectively informed law enforcement agencies that persons convicted of three violent or drug-related felonies (armed career criminals) are subject to an enhanced sentence of at least 15 years without parole if convicted of possessing a firearm.

Item 2 will provide evidence as to ATF's effectiveness in informing the law enforcement community of the Federal armed career criminal statute. ATF's success in this enforcement effort depends largely on its ability to inform all law enforcement officials of this law. By evaluating item 2, ATF should be able to measure progress. Item 2, like item 1, will lend credence to responses to other items.

Item 3

ATF's enforcement of the Federal firearms laws is an effective tool in combating crime in your area.

ATF asked the law enforcement officials surveyed not only for their response to item 3 itself, but as a lead into following items. ATF believes that the Federal firearms laws are an effective tool in the apprehension of criminals. Item 3 gauges the degree to which this belief is well founded.

Item 4

The enforcement of the Federal armed career criminal statute is an effective deterrent to crime in your area.

Item 4 examines the respondent's opinion based on law enforcement experience and deals squarely with the issue at hand--the effectiveness of the Federal armed career criminal



An ATF special agent demonstrates guns seized from a Jamaican Posse crime organization. Weapons like these add to the peril ATF agents and other law enforcement officers face when pursuing the armed career criminal.

statute. Item 4 is the key in this survey. Other items that follow deal with ways and means ATF can improve enforcement efforts.

Item 5

State, local, and county law enforcement agencies, in concert with ATF, should work together to make effective use of the Federal armed career criminal statute.

Item 5 suggests a task force approach; however, the words "task force" have been omitted. These words were deleted because of the possibility that some law enforcement officials might equate this term with a commitment of large amounts of resources. This might discourage positive responses based on the officer's reluctance to commit resources, even though the concept may be an agreeable one for the officer.



PHOTO COURTESY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

ATF special agents use a "body-bunker" to protect themselves from gunfire during an arrest.

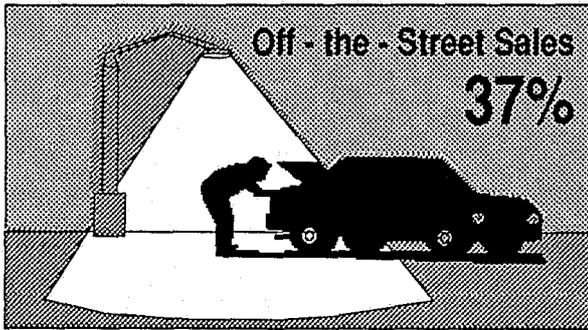
Item 5 was solicited to determine the respondent's opinion as to the merits of the task force idea. Some respondents may be familiar with this recommendation, and item 5 should provide information that could shed light on their attitudes towards the task force approach.

Item 6

Additional ATF resources should be directed at enforcement of the Federal armed career criminal statute.

A positive response to item 6 should indicate support for this program and reinforce ATF's commitment. A negative response would cause us to reexamine our approach. Item 6 is important since ATF's reason for the study is to evaluate and document its effectiveness in the enforcement of the Federal armed career criminal statute.

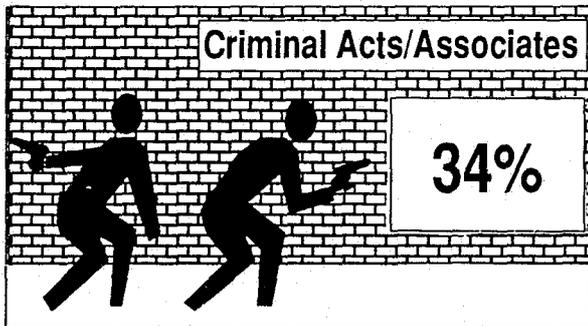
Question 10: How did you acquire firearms?



Armed Career Criminal Responses:*

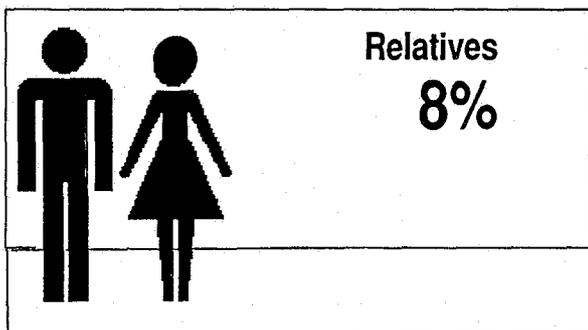
"I traded drugs for them."

"I bought them off the black market."



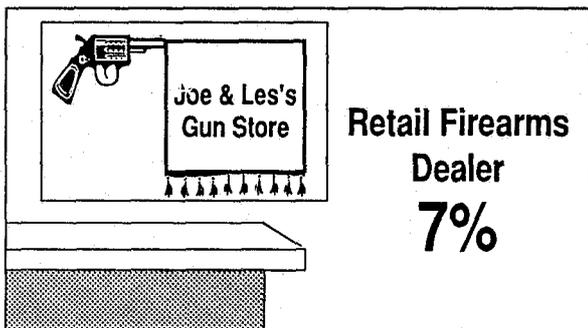
"I got them from burglaries."

"I bought them off the streets from dopers."



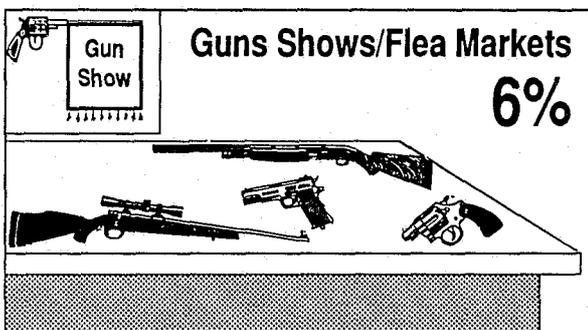
"I got it from my old lady."

"My father gave it to me."



"I bought it from a gun store."

"FFL's - Filled out forms."



"Bought many at Gun Shows"

"Flea markets"

*Twenty-seven percent of the study group either refused to provide data on how they acquired firearms or claimed they never acquired firearms. Of the remaining 73 study group subjects, 18 percent gave multiple responses. The above percentages do not sum to 100 percent due to response multiplicity.

Summary

E **The Study, the Criminals, and the Challenge**

Each year in the United States, businesses, as well as homeowners, spend millions of dollars to safeguard life and property. Such expenditures are for iron bars, security guards, alarm systems, video surveillance cameras, and outside lighting. In addition, American taxpayers spend approximately \$100 billion yearly as a result of crime and crime prevention. In conducting this study, we found that

aggressive enforcement of the Federal armed career criminal statute has both a cost benefit and a deterrent effect.

We concluded that a tremendous cost benefit can be derived when this statute is employed by simply comparing the cost of incarceration against the criminal's illegal activities. Based on the figures supplied by the 100 armed career criminals that were interviewed (see chapter 1, question 9), ATF learned that each criminal committed about 3 crimes per week, or 160 criminal acts per year. Using a value of \$2,300 cost per crime and the custodial cost to house one person for a year at \$45,000 (NIJ estimates), we can show an actual dollar savings of \$323,000 per year per career criminal inmate. Extrapolating further, the cost benefit for the entire study group is well over \$32 million a year.

This simple comparison, however, does not take into account the physical and psychological damage inflicted on the victims of these crimes. Even if we could estimate the medical costs (e.g., bandages, medicines, and doctor fees), as well as the loss of mementos and cherished heirlooms,

the mental health anguish and constant fear of a recurrence are incalculable.

As States grapple with budgetary problems and an overloaded criminal justice system, the armed career criminal statute provides needed Federal assistance. Dexter Lehtinen, the U.S. Attorney for the Southern District of Florida, stated: "The ACC (armed career criminal) statute provides an invaluable tool for identifying and prosecuting hardcore, violent, repeat offenders who are otherwise frequently escaping prosecution at the local level. Court congestion, prison overcrowding, police and prosecution overload, weak statutes, and multiple jurisdictions create often insurmountable burdens to effective State and local sanctions against these offenders. The Federal statute is essential in bringing the hammer down on these violent criminals."

This study has clearly shown that the career criminal has learned through repeated experience how to manipulate the criminal justice system. From an early age, he is programmed to believe that the reward in committing a crime many times far outweighs the certainty and severity of punishment. This is obvious when criminal records of offenders in their middle twenties or early thirties document numerous arrests and convictions with little or no prison time served. In conducting this study, we found that career criminals were serving such short periods of time in prison--averaging less than 2 years--that the potential rewards of crime sufficiently compensated for the risk of incarceration.

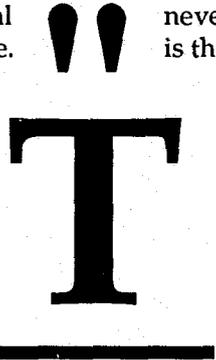
During the study group's periods of incarceration, most were able to increase their education levels and many received college degrees. In spite of these educational advancements that should have allowed for greater job opportunities, the career criminal chose to continue a criminal lifestyle.

If what criminal justice theorists tell us is true, that the instruments of deterrence are certainty and severity of punishment, then the Federal armed career criminal statute should have a dramatic impact. As

Dr. Zedlewski stated in a 1987 study, *Making Confinement Decisions*, "Deterrence saves crimes when potential offenders, considering the risks and severity of punishment, decide to commit fewer crimes. However, for most habitual offenders who by this study have shown little remorse or even responsibility for their actions, true crime savings will only be realized through incarceration. By removal of the career felon who constitutes an estimated 15 percent of all criminal offenders and yet commits as high as 80 percent of the crimes, direct economic and social savings will be visible to local communities, State governments, and the public at large."

Based upon the interviews of the 100-member study group, the greatest deterrent effect will be found in lengthy mandatory sentences. Over 45 percent of the respondents felt that the lengthy mandatory sentencing provisions of the Federal armed career criminal statute would deter them from possessing or using firearms. As a result, it is logical to assume that a direct consequence would be a significant decrease in assaults and murders by the criminals who commit the bulk of the crime. This would translate to safer communities for the public and for the police officers who service them. On the other hand, 34 percent of the respondents believe nothing will deter the hardened career criminal from, "doing what he has to do," and some

even believe this stiff penalty will increase the probability of violent encounters with law enforcement officers. Without question, incarceration is the only answer for these incorrigible and violent criminals. If they choose never to be deterred, then prison is the only answer.



he Federal statute is essential in bringing the hammer down on these violent criminals

Dexter Lehtinen
United States Attorney
for Southern District of Florida



areas. The term *drive-by shooting* has become familiar to describe indiscriminate shootings from vehicles by street gangs.

Violent crime has become such a prevalent disease in our society that it is affecting the health of our Nation.

This report is titled *Protecting America* because, based on our findings, we believe that America can be protected only by the long-term incarceration of the offender who commits the bulk of crime: the career criminal. ATF Director Stephen E. Higgins best stated this when he wrote, "At a time when violent crime is epidemic in our major cities, focusing on the recidivist presents an unprecedented opportunity to channel local, State, and Federal law enforcement resources toward those criminals who day after day, year after year, take the greatest toll on our citizens, our law enforcement community and our court systems."

We found the case of Warren Bland to be illustrative of this statement but far from unique. Bland's life of violence began in 1958 when he stuck a knife into

Comments and Conclusions

In the last two decades, an explosion of violent crime has overtaken

America. Family dwellings have become the target for armed robbers as home invasions have become common-place in metropolitan

the stomach of a man in a Los Angeles bar and received a probationary sentence. What followed was a series of criminal sexual assaults for which Bland was repeatedly arrested, convicted, and later paroled. During this period, a psychological examination of Bland labeled him as "assaultive and/or homicidal toward women." Finally in 1986, Bland molested, tortured, and killed a 7-year old girl. Assistant U.S. Attorney Larry Burns, San Diego, California, working with an ATF Special Agent--after Bland had stolen a firearm--wrote in the Government's sentencing memorandum after Bland's conviction for unlawfully possessing a firearm:

"Warren Bland has led the life of a criminal nomad for the past 30 years. In jail; then out, then back again, he has spent more than 26 years behind bars since 1960. In this regard and in others, he is one of society's abject failures.

During this same 30-year period, Bland has engaged in a pattern of malicious and violent conduct that has escalated in seriousness. He has perpetrated random acts of violence and degradation against victims who for the most part, were particularly vulnerable. In at least a symbolic sense, if not a real sense, Warren Bland represents a failure on the part of the criminal justice system during the past three decades. For such a person, a sentence that is symbolic of a battered society's refusal to be victimized further is entirely fitting."

In August 1989, Bland was given a life sentence and, because of the armed career criminal statute, will stay in Federal prison until his demise.

Every person interviewed in this study concerning the effectiveness of the Fed-

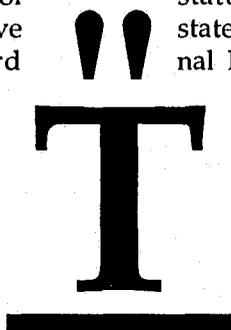
eral armed career criminal statute was delighted with its accomplishments, except the repeat offenders who remained imprisoned because of it. Speaking directly to this point, U.S. Senator Dennis DeConcini (D-Arizona), one of the statute's strongest proponents, stated, "The Armed Career Criminal Program is the only Federal enforcement program which can be called an unqualified success."

Accolades can be attributed only to the solid results the statute has had and will have in the future in decreasing violent crime. Attaining this objective is measured by the actual inability of the criminal to com-

mit crime, not in a decrease in statistical calculations. U.S. Senator Alfonse M. D'Amato (R-New York) stated, "The Armed Career Criminal Program is one of the few Federal enforcement programs that provides quick and concrete results wherein violent criminals are arrested, convicted, and incarcerated for long periods of time."

A measure of the effectiveness and future potential of employment of a career criminal program can be seen in the following example:

During the summer of 1987, within a 5-week period, 10 suspects qualifying for enhanced sentencing as armed career criminals were arrested by ATF and local police in Texas. These 10 career criminals had been arrested a total of 136 times with 96 felony convictions, and had been sentenced to a total of 470 years in prison. Seventy percent of the group had arrests or convictions for narcotics-related offenses, and nine murders



he Armed Career Criminal Program is the only Federal enforcement program which can be called an unqualified success.

Sen. Dennis DeConcini (D-Arizona)



were in their collective backgrounds. Fifty percent were on probation or parole at the time of their arrest. A total of 72 firearms were taken into custody by ATF from the 10 individuals. It is not hard to imagine the impact that enforcement activities like these will have on reducing crime in a given community, because career criminals are serving time in jail instead of plying their violent trade on the public.

Director Fred Taylor of the Miami Metro-Dade, Florida, Police Department said, "Police agencies nationwide must be very aggressive in the use of State and Federal laws which currently exist. Of particular importance is the use of the Federal ACC statute. This law affords all law enforcement agencies the ability to prosecute armed career criminals for minimum mandatory sentences of 15 years for possession of a firearm. The Miami Metro-Dade, Florida, Police Department has enjoyed the full support of the Bureau of Alcohol, Tobacco and Firearms in removing violent criminals from our community through use of this statute. We feel confident that with cooperation such as this, the efforts of all concerned will come together and our communities will reap the benefits."

If we as a Nation want to improve the quality of life for all our citizens, we must remove those who would prevent this. Repeat offenders cease to be a menace only when advancement of age precludes their violent behavior. If the criminal justice system is to function for the betterment of society, career criminal programs must play a major role because, quite simply, they work.

The Faces of Crime: Case Histories

Many of the career criminal sentences were a direct result of State and local law enforcement efforts. The following are a few examples of career criminals who have been sentenced

under this statute:

Michael James Brady, age 35, was arrested by the Detroit, Michigan, Police Department after he had just committed a rape while armed with a handgun. Brady's criminal record included



BRADY

six prior felony convictions, one involving the shooting of two persons in 1981. Just 4 years before, in 1977, Brady was sentenced in State court to a term of 25 to 40 years. ATF initiated a criminal case on Brady that resulted in his conviction as an armed career criminal. *Brady was sentenced to 50 years in prison.*

Thomas Franklin

Clemas, age 48, was arrested by a Minneapolis, Minnesota, SWAT team after a high-speed chase when he fired at the pursuing officers. Clemas has



CLEMAS

9 prior felony convictions, including assault with a deadly weapon. ATF initiated an investigation that resulted in Clemas' receiving a 15-year sentence as an armed career criminal.

Terry Savage, age 41, was charged with Federal armed career criminal violations in Kansas City, Missouri, when ATF special agents found him in possession of a firearm. During the trial, special agents discovered that Savage had inadvertently been released from State prison where he was to begin serving time for murdering an inmate. Savage had six prior felony convictions, including murder, bank robbery, and armed assault. Savage received a 15-year sentence as an armed career criminal.

Billy Joe Ash, age 40, was arrested by San Diego, California, police officers after he attempted to kill a subject (relating to a business matter). Ash had nine prior felony convictions, including one for murder. ATF initiated an investigation that resulted in Ash's being *sentenced to 18 years in prison as an armed career criminal*.



ASH

Richard Vernon Hayes, age 33, was arrested in Cleveland, Ohio, after information was obtained from a Federal firearms dealer. Hayes had 19 felony convictions, including rape, kidnapping, and robbery and had previously been sentenced to 40 to 150 years in State court. ATF's investigation resulted in Hayes' being *sentenced to 15 years in prison as an armed career criminal*.



ALVAREZ

Anthony A. Alvarez, age 58, was arrested by San Diego, California, police officers after he injured a police officer and fired a weapon at a motel manager. Alvarez had over 16 felony convictions, including 8 robberies and 1 for assault with a deadly weapon. ATF initiated an investigation that resulted in Alvarez' *receiving a 30-year prison sentence as an armed career criminal*.

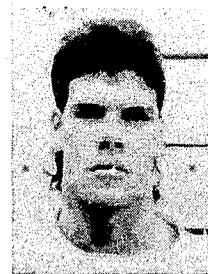
Lamon Jackson, age 21, was arrested by St. Louis, Missouri, police officers regarding three narcotics-related drive-by shootings. One resulted in the death of a 14-year-old girl. Jackson, at the age of 21, had accumulated nine felony convictions, including four burglary and four rob-



JACKSON

bery convictions. ATF initiated an investigation that resulted in Jackson's being *convicted and sentenced to 15 years in prison as an armed career criminal*.

Leonard Ross Hickcox, age 41, was arrested in Lewisville, Texas, after selling a firearm to an ATF undercover agent. Hickcox had previously been convicted of nine prior felonies that included burglary and narcotics violations. He was *sentenced to 19 years in prison as an armed career criminal*.



MCCARTHY

John M. McCarthy, age 24, was arrested by local officers in Florida as a result of a drive-by shooting. McCarthy had seven prior felony convictions, including one robbery, one burglary, and one firearms offense. ATF initiated an investigation that resulted in his *conviction as an armed career criminal, and he was sentenced to 30 years in prison*.

John Cauley, age 30, was arrested by a Miami Metro-Dade, Florida, police officer for traffic violations. At the time of his arrest, he attempted to flee from the officer. He was arrested while in possession of the officer's service weapon. Cauley has five prior felony convictions, including one crime against a police officer. ATF initiated an investigation that resulted in his *conviction as an armed career criminal, and he was sentenced to 45 years in prison*.



CAULEY

Ronald C. Plant, age 44, was arrested at the completion of an undercover storefront operation where he sold stolen firearms to ATF undercover agents. Plant had four prior felony convictions for robbery and narcotics

violations. This investigation resulted in Plant's being sentenced to 15 years in prison as an armed career criminal.

Congress Reacts to the Threat of Violent Crime

Because of the escalation of violent crime throughout the United States, Congress recognized the need to subcategorize convicted felons who possess and use firearms during violent acts. It was theorized that a person who had been repeatedly convicted of violent felonies was more likely to continue a life of crime and was more "violence prone" than the first- and second-time offender.

In an effort to assist law enforcement in its ongoing battle to suppress violent crime and armed career criminals, the Federal armed career criminal statute and the Comprehensive Crime Control Act of 1984 were enacted along with amendments (in 1986) to the Federal firearms laws.

Several members of Congress were involved in spearheading efforts to pass this legislation and were vocal about the significance of enacting these laws. U.S. Senator Arlen Specter (R-Pennsylvania) introduced the original Senate bill regarding armed career criminals. In his introduction of the bill, Senator Specter stated, "The armed career criminal bill for the first time brings the Federal Government into the fight against street crime by making it a Federal offense for a career criminal to possess a firearm. . ."¹⁰

U.S. Representative William J. Hughes (D-New Jersey) said, "In our investigation of the career criminal concept in the 98th Congress, it became apparent that armed career criminals added substantially to the violent crime in America and that it was important to get the U.S. Government involved in



PHOTO COURTESY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

The semi-automatic pistol is compact and deadly at close range and one of the tools of the trade for the armed career criminal.

an appropriate manner to assist State and local law enforcement in dealing with these particular criminals."¹¹

U.S. Senator Specter stated one of his reasons for introducing the original bill, "was to provide prosecutors nationwide with a new tool to be used against the most dangerous criminals—that small percentage of criminals who are responsible for as much as 70 percent of all crimes."¹²

Senator Specter also commented that "the Federal Armed Career Criminal Act . . . has been targeting and apprehending these most violent, vicious, organized criminal groups to emerge in the United States since Prohibition."¹³

During the June 23, 1988, Senate hearing on crimes and criminal procedure, Senator Specter stated, "The only way to deal with such hardened criminals is with stiff prison terms with no prospect for parole."¹⁴

In 1989, Senator Specter stated during the Senate hearing on formulating a realistic program to reduce violent crime, that "the approach for these hardened-violent offenders is to throw away the key."¹⁵

Senator Specter emphasized the importance of increasing the effectiveness of law enforcement in its efforts to imprison career criminals when he stated, "We have in this country perhaps 400,000 to 500,000 career criminals who are not behind bars. Public safety requires that as career criminals they be incarcerated virtually permanently."¹⁶

NOTES

- ¹ Henry Campbell Black, Black's Law Dictionary (St. Paul: West Publishing Company, 1979) 640.
- ² United States, The Challenge of Crime in a Free Society: The President's Commission on Law Enforcement and the Administration of Justice (Washington: GPO, 1967) v.
- ³ Ibid, 45.
- ⁴ Stephanie Minor-Harper and Christopher A. Invesi, U.S. Department of Justice Statistics Special Report. Time Served in Prison and Parole (Washington: GPO, 1984, 1987).
- ⁵ U.S. Department of Justice, Predictions of Dangerousness in the Criminal Law (Washington: GPO, 1987).
- ⁶ Marvin E. Wolfgang, Robert Figlio, and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago: Chicago UP, 1972).
- ⁷ Joan Petersilia, Peter W. Greenwood, and Marvin Lavin, Criminal Careers of Habitual Felons (Santa Monica: Rand Corp., 1977).

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Jan M. and Marcia R. Chaiken, Varieties of Criminal Behavior (Santa Monica: Rand Corp., 1982).
- ⁸ Zedlewski, Edwin W., U.S. Department of Justice. Making Confinement Decisions (Washington: GPO, 1987).
- ⁹ Ibid.
- ¹⁰ Cong. Rec. 16 Apr 1986: S2312.
- ¹¹ United States House of Representatives before the Subcommittee on Crime. Hearings. 99th Cong. (Washington: GPO, 1986).
- ¹² Cong. Rec. 16 Apr 1986: S2312.
- ¹³ Cong. Rec. 13 Apr 1988: S3881.
- ¹⁴ Cong. Rec. 23 Jun 1988: S2557.
- ¹⁵ Cong. Rec. 25 Jan 1989: S106.
- ¹⁶ Cong. Rec. 3 May 1989: S4681.

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